

# WORLD COURT PROJECT REPORT #6

## Lawyers' Committee on Nuclear Policy

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### Congratulations: We won. UN takes up nuclear case

France, the U.K. and the U.S. lost a bitter battle in the United Nations last December when they failed to prevent the General Assembly from adopting the resolution requesting the International Court of Justice to state whether or not the use and threat to use nuclear weapons violates international law.

The resolution was introduced at the UN on November 9 by Indonesia on behalf of the 111 countries which are members of the Non-Aligned Movement. Indonesian Ambassador Witjaksana Soegarda noted that "...mankind (sic) throughout history has used every weapon invented including nuclear arsenals," and that "...the safety, security and survivability of nations must be assured by banning the use of nuclear weapons."

A number of diplomats reported privately that they then came under intense pressure from the major nuclear powers to drop their support for the resolution. The western nuclear states reportedly visited many of the capitals of potentially supportive countries with implicit threats against their interests.

However the huge international support from citizen's groups for the resolution encouraged the majority of countries to resist the threats and pass the resolution, but not before an intense battle in the UN itself.

France and Germany attempted to block the resolution by introducing a motion of no action in the General Assembly. When that failed the U.S. and France attempted to hold up any action in the Court by amending the resolution, again without success.

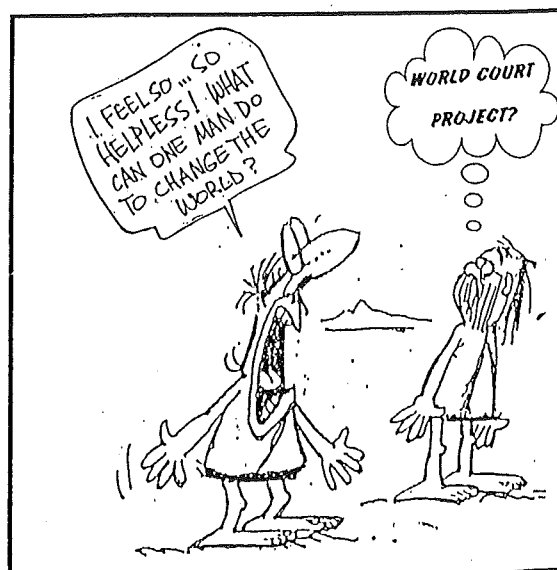
Gerard Errera, Ambassador of France to the United Nations in Geneva told the UN that testing the legality of nuclear weapons "...goes against law. It goes against reason. Such an approach (to the Court) is a blatant violation of the UN Charter." said Mr Errera. "It would 'bring disrepute to the International Court of Justice.'"

This was indeed a novel statement from a country which withdrew its recognition of compulsory jurisdiction of the Court in 1974 in protest against the Court case challenging French nuclear testing in the South Pacific. The Nuclear Tests Case gained the Court considerable respect from small developing states, many of which had previously considered it a tool of the five declared nuclear powers.

Despite this procedural maneuvering and intense counter lobbying by France, the U.K., the U.S. and Germany, the resolution was adopted by 78 votes in favor, 43 against and 38 abstentions.

Thank you all of you who sent letters and faxes to UN Ambassadors and Foreign Ministers urging them to support the resolution. Mr Razali Ismail, Ambassador for Malaysia, speaking in the General Assembly, specifically noted the importance of the support from citizen groups around the world, including those in nuclear countries.

For a copy of the UN debate on the World Court Project resolution, contact LCNP (include a donation to cover costs).



# 35 Countries join World Court Proceedings

An unprecedented number of countries, 35 in all, have joined the proceedings of the World Court case considering the legality of the use of nuclear weapons.

An analysis of their submissions is contained in the table overleaf.

A number of countries making submissions used the model brief

prepared by the International Association of Lawyers Against Nuclear Arms and the memorandum on admissibility of the case which was prepared by the German branch of IALANA. In addition, Nauru appointed Mr Jerome Elkind, a member of the Lawyers' Committee on Nuclear Policy, as their Counsel.

## NZ prof in Nauru nuke battle

By BRIAN RUDMAN

**A** NEW Zealand professor is leading tiny Nauru's battle with the world's nuclear giants over the legality of their nuclear arsenals.

Last week the 21sq km Pacific atoll broke ranks with its much larger neighbours, Australia and New Zealand, and challenged the legality of nuclear weapons before the International Court of Justice.

Auckland University International law expert, Professor Jerome Elkind, who prepared Nauru's written submissions to the World Court, praised the country's courage in taking on the great powers.

"Every state in the world should be involved, because a nuclear war anywhere in the world could set off clouds of radiation which could float anywhere and poison the populations of states anywhere in the world," Professor Elkind said.

Nauru is backing the World Health Organisation's request to the international court for an advisory opinion on nuclear weapons.

The WHO assembly in 1992 voted 73 countries to 40 (with 10 abstentions) to take this action "in view of the health and environmental effects" of nuclear war.

The campaign to declare nuclear weapons illegal began in 1986 when a retired Christchurch District Court judge, Harold Evans, wrote an open letter to the then prime ministers of Australia and New Zealand.

Since then, international doctors' and lawyers' organisations have taken up the cause and nearly 100 million signatures have been collected as citizens' evidence.

The USA and Britain are supporting the legality of nuclear weapons, while Australia is arguing the court has no jurisdiction. New Zealand is taking a

wait-and-see attitude, asking for the right to make submissions if the court agrees to hear the case.

Professor Elkind says the New Zealand Government is just "cosying up to the Americans" in its stance.

Nauru argues it is illegal to use anything which is poisonous or has poisonous effects, and that radiation is clearly poisonous. It further argues it is illegal to use weapons which cause unnecessary or aggravated suffering.

Finally, Nauru argues the use of nuclear weapons is likely to destroy hospitals and medical facilities, actions which are prohibited by the Geneva Convention.

Written submissions had to be made by last week. The court wants comments on these submissions by next June. Following that, there will be a public hearing for oral questions.

## What they said to the Court: A summary of selected submissions

**Nauru and Solomon Islands** submitted the most comprehensive submissions to the Court, totalling over 100 pages each. Both states referred to the unique and destructive nature of nuclear weapons, the long term damage caused by radiation, and the fact that nuclear weapons use would violate a number of principles of humanitarian law.

The **US, France, UK and Russia** argued that the Court should not consider the question claiming that the World Health Organization does not have the mandate to ask such a "political" question. In addition, they argued that i) there is no specific prohibition against the use of nuclear weapons, ii) while the principles of international law apply to nuclear weapons, whether a particular use is legal or not would depend on the specific circumstances of the situation, iii) the Court should not engage in speculation on such circumstances.

**Japan** was intending to state that the use of nuclear weapons did not necessarily violate international law.

However, the Japanese peace movement learned of the proposed submission before it was passed to the Court, and made it a major issue in the media and Diet (Japanese Parliament).

As a result Japan removed from their submission the phrase stating that nuclear weapons use does not violate international law. The resulting submission, referring as it does to the use of nuclear weapons being contrary to the principles upon which international law is based, is a very strong anti-nuclear statement.

**Sweden and Ireland**, both members of the European Union made supportive submissions. Ireland noted that seeking a clarification of the international law in respect to nuclear weapons is in no way incompatible with efforts for the abolition of nuclear weapons.

Sweden's submission was made via Parliamentary resolution introduced by Maj Britt Theorin, President of the International Peace Bureau. It argued that the use of nuclear weapons would

violate existing principles of international law.

**India**, an undeclared nuclear power, and **Iran and North Korea**, both threshold countries, argued that any use of nuclear weapons would be illegal. Such submissions amount to a self imposed legal bind against them using nuclear weapons. This contradicts the claim that these "rogue" states are more likely to use nuclear weapons than the five declared nuclear powers.

**Moldova, Belarus and Ukraine** all cited the health and environmental effects of the Chernobyl accident as evidence of the devastation that could be caused by any use of nuclear weapons.

Considering that the International Atomic Energy Agency and other official bodies have downplayed the effects of Chernobyl, an interesting offshoot of the Court case may therefore be the revealing of the true extent of the health problems caused by this disaster.

## World Court Announces Timetables

On September 23 the International Court of Justice announced that it had received written submissions from 34 countries on the question asked by the World Health Organization on the legality of the use of nuclear weapons. A further submission, from Azerbaijan, was received late.

The Court set June 20 as the date by which states wishing to make responses to these submissions could do so. The submissions are

being treated as confidential, but may be released to the public on or after the opening of the oral proceedings, the date of which has not been set.

On February 2 the ICJ invited states to make submissions on the question asked by the UN General Assembly on the legality of the threat or use of nuclear weapons. June 20, 1995 was set as the time-limit for submissions, and September 20, 1995 was set as the time-limit for responses.

## World Court Project Seminar

On April 19 there will be a one day seminar in New York on the implications of the World Court cases and on how citizens can use these to further the campaigns for the elimination of nuclear weapons.

The seminar will feature UN Ambassadors, politicians, international lawyers, military commanders and citizen activists from around the world. For details and to register see the enclosed brochure or ph 212 674 7790.



## Quilt comes to New York

A group of women from Tamaki Makaurau, Aotearoa (New Zealand), including a number of Samoan immigrants, have co-operated to make a full color patchwork quilt in support of the World Court Project and calling for the elimination of nuclear weapons.

The quilt project was directed by Joanne Bains

and includes messages in Samoan and English. It will be displayed at the World Court Project Seminar and the Citizens' Assembly in New York, 19-21 April.

Full color photo-cards of the quilt are available from LCNP for \$4 each plus postage.

ANALYSIS OF STATEMENTS SUBMITTED TO ICJ IN WHO CASE

COUNTRY	In-ADMIS-SIBLE	ICJ SHOULD REJECT IN EXERCISE OF DISCRETION	USE NOT ILLEGAL PER SE	NUCLEAR WEAPONS LEGIT-IMIZED BY TREATIES	DETAILED REBUTTAL	ADMIS-SIBLE	ICJ SHOULD CAREFULLY STUDY ADMIS-SIBILITY	USE ILLEGAL PER SE	DETAILED ARGUMENTS	STATE (COMMITTED TO TOTAL NUCLEAR DISARMAMENT	POSITION ON MERITS RESERVED
Australia <sup>1</sup>	x	x								x	x
Azerbaijan								x			
Colombia								x			
Costa Rica <sup>2</sup>								x			
Finland	x	x									
France <sup>3</sup>	x	x	x	x	x						
Germany <sup>4</sup>	x	x	x	x							
India								x			
Iran								x	(x)		
Ireland						x				x	
Italy	x										x
Japan <sup>5</sup>								(x)		x	
Kazakhstan								x			
Lithuania								x			
Malaya <sup>6</sup>								x	x		
Mexico <sup>7</sup>								x	x		
Moldova								x			
Nauru <sup>6</sup>								x	x		
Netherlands	x	x	x	x							
New Zealand											x
N. Korea								x			
Norway							x				
Papua New Guinea								x			
Philippines								x			
Russia	x			x							
Rwanda								x			
Samoa						x		x			
Saudi Arabia						x		x			
Solomon Islands						x		x	x		
Sri Lanka <sup>2</sup>								x			
Sweden								x	x		
Uganda								x			
Ukraine								x			
United Kingdom	x	x	x	x							
United States	x	x	x	x	x						

<sup>1</sup> Useful appendix re treaties in force and in negotiating stage

<sup>2</sup> Existing nuclear treaties support illegality.

<sup>3</sup> Reference to WCP brochure (13); admission that illegality of use would imply illegality of possession (17); deals with state practice (25), opinio juris (26, 27), argument from humanitarian law principles (26), UN Resolutions (27).

<sup>4</sup> Stresses prohibition against attacks on the civilian population (p.3).

<sup>5</sup> Indirect statement on illegality: "...the use of nuclear weapons is clearly contrary to the spirit of humanity that gives international law its philosophical foundation."

<sup>6</sup> Includes detailed arguments based on model brief.

<sup>7</sup> Detailed arguments re, i.a., health and environment