One-man mass movement

Former jurist on the warpath

By PHIL TWYFORD

THE nuclear ships ban, like Norman Kirk's March of a frieze to protest French testing at Mururoa in 1973, was a bold and symbolic statement of New Zealand's independence. Now Sir Harold Evans, a former High Court judge, feels the Government should move on the nuclear issue again.

He wants the Lange Government and Australia too. If it can be persuaded to ask the International Court of Justice to rule on the ( illegality of nuclear weapons.

For the past year and a half Evans has been a one-man mass movement, harrying Governments on both sides of the Tasman and riling some impressive support behind his project.

In March last year he presented a 110-page open letter to Lange and Hawke comprising the legal opinions of six eminent jurists including Sir Robert Young of London, former Secretary of State for Foreign Affairs Sir Alec Douglas-Home, former Prime Minister Sir Alec Douglas-Home, former Attorney-General Sir John Napier, former Foreign Minister Sir John Napier, and former Governor-General Sir John Kerr.

Hawke's reply was perfunctory. He said the idea would not be given priority because "we do not consider it necessary to lead to the effective arms control and disarmament measures we all seek."

"Raised again in the Senate, Foreign Minister Gareth Evans reiterated that position last week. In a big way with clear tones, he said Foreign Affairs was considering it.

"One of the most recent Russell Marshall said, although he found the idea attractive in principle, he worried that if the Court found against the illegality of nuclear weapons it would damage the situation already developed in co-operation and the enhancement of New Zealand's reputation. And that if the court declared them illegal, the nuclear powers would ignore the judgment — as the US did against the court's condemnation of its actions against Nicaragua — thus undercutting the court's credibility.

The meeting, which it is before the Public Advisory Committee on Disarmament and Armed Control, due to meet next month, as a reply to Marshall's misgivings as to the uncertainty of the court's ruling, the former stipendiary magistrate from Christchurch cited two famous law cases well-known to first-year law students.

The first concerned a Scottish woman in 1932 who successfully sued a ginger beer manufacturer for damages. The plaintiff found a partly decomposed snail in her drink. In the second, a South Australian man won damages for a pair of wooden underpants that gave him dermatitis.

"In both, measured Harold Evans, the plaintiff's journeys successfully on an uncertain road. Evans is no stranger to uncertain roads himself and is unacquainted by controversy. As a magistrate in Christchurch (1965-77) he discharged without conviction two men on homosexuality charges because he considered the law anachronistic. The Crown successfully appealed.

"Then there was the time he publicly criticized a fellow magistrate who suppressed the name of a Supreme Court judge's son in a drug driving charge and let him off, with a fine, instead of the periodic detention more usual for such a conviction.

In 1977 he drew flak by criticizing the appointment by then Prime Minister Rob Muldoon of his National Party colleague Sir Keith Holyoake to the office of Governor-General.

Evans' connection with international law and nuclear weapons is not new. After World War II he was served as an associate to Sir Ernè Northcroft, the New Zealand judge who sat on an international military tribunal set up by the Allies to try Japanese war criminals.

The Japanese argued the bombing of Hiroshima and Nagasaki was a crime under international law, but the tribunal decided the matter was outside its jurisdiction.

Experiencing the devastation of post-war Japan and the need for impartial justice the defeated Japanese met at the hands of the tribunal's left its mark on Evans.

In Japan he cemented his friendship with Guy Pownall, then with the Far Eastern Commission. Sir Guy has lent firm support to Evans' crusade to have nuclear weapons taken to the Hague.

The World Court came close to considering the illegality of nuclear weapons in 1979 when Australia and New Zealand collaborated in taking France to court over its atmospheric testing at Mururoa. The attempt succeeded in gaining an injunction against the tests, but a definitive judgement was post-empted by France's decision mid-proceedings to test the tests underground.

E VANS' is unfazed by the charge, raised by Russell Marshall among others, that his proposal to take nuclear weapons to court could result in the court's being exposed to the threat of death.

"There is such a thing as international public opinion," he says. "People like Reagan and Thatcher couldn't calmly ignore it. They might argue their way out of it but they would be put on the spot."

He is supported by the New Zealand section of the International Commission of Jurists which says there is a strong argument that the use of nuclear weapons would be a crime against humanity under international law. He also supports the view of the IUC's secretary general...