

# Remarkable nuclear campaign succeeds

"The threat of use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict."

The International Court of Justice.

**T**HIS week's advisory opinion from the International Court of Justice represents the culmination of a remarkable campaign by a group of individuals who were able eventually to get the United Nations General Assembly and the World Health Organisation to take up the issues (individuals and non-government organisations cannot approach the ICJ for an advisory opinion).

The statement also represents a new step in the campaign to rid the world of nuclear weapons. It coincides with the work of Australia's Canberra Commission on the Elimination of Nuclear Weapons, which is due to report to the UN later this year.

A decade ago, retired New Zealand magistrate Harold Evans first raised the possibility of the ICJ being asked for an advisory opinion on the legality of nuclear weapons.

One of his earliest supporters was the late Ted St John QC (a former Liberal MP in Sydney).

The campaign to get an advisory opinion was officially launched in 1992 by three co-sponsoring organisations: International Physicians for the Prevention of Nuclear War, International Peace Bureau and the International Association of Lawyers Against Nuclear Arms.

Undeterred by the hostility of the nuclear powers, these organisations obtained agreement from the Non-Aligned Movement in the UN General Assembly and World Health Organisation to request an advisory opinion.

Another example of "people power" was the way that the ICJ, for the first time in its history, accepted evidence from citizens (only governments can deal with the ICJ).

An argument against nuclear weapons was that they violate the conscience of humankind. The "conscience of humankind" was manifested at the ICJ by 3.2 million "declared of public conscience" signed by members of the general public.

At the ICJ, it was argued that the use of nuclear weapons would violate a basic principle of international humanitarian law: the need to distinguish between legitimate military targets (such as soldiers and ships) and persons and objects which are not to be attacked (such as civilians and historic sites).

Nuclear weapons are too explosive to maintain that distinction. Additionally, radioactive material could also fall on neutral countries.

However, the countries with nuclear weapons urged the ICJ not to meddle in international politics.

KEITH SUTER discusses how a dedicated group of individuals has influenced world bodies' attitudes on weapons bans.

and so they said that it ought to refuse to deal with the merits of the question. They claimed that nuclear weapons have kept the peace since 1945 and so are vital for international peace and security.

They also argued that there is no specific prohibition on nuclear weapons (which is true because they have used their political muscle at the UN and elsewhere to stop one from being created!).

Australia initially gave in to that political muscle from the nuclear powers — and then changed its mind because of domestic pressure. The initial Australian statement was that the ICJ ought not to take on the task. Australia's written submission to the ICJ, in June 1994, argued that the question was more political



Gareth Evans: made a fiery second submission.

than legal, an adverse opinion could hinder disarmament negotiations, and an advisory opinion would have little effect on the arms race.

But throughout 1994 and 1995 a ground-swell developed in Australia among peace groups and the mass media for Australia to change its mind.

This was boosted by France's announcement that it would resume nuclear testing in the South Pacific. With an Australian election on the horizon, the Keating Government changed its policy.

In October/November 1995, governments were permitted to make oral submissions to the ICJ. Australia

(probably for the first time in the ICJ's history) made two oral submissions, one after the other. The first submission reaffirmed its written submission that the ICJ ought not to tackle this question.

However, the second submission was a fiery, post-French-nuclear-testing speech by the then-Foreign Minister, Gareth Evans.

He said that if the ICJ were to decide on the merits of the question, then the ICJ should declare that not only threat and use but also deployment, testing and possession of nuclear weapons were prohibited under international law.

The ICJ took a long time to make up its mind. Given the closeness of this week's vote, there must have been considerable private debate.

The judges are independent of their countries, but they are nominated by their governments and so come to the ICJ with a natural bias reflecting the political values of their respective countries.

The ICJ advisory opinion is not binding on any country. But the nuclear powers have been hostile to the entire project from the outset and so they have recognised the symbolic significance of an adverse opinion. If the advisory opinion were of no significance, then the nuclear powers would not have spent effort so much in lobbying their allies on the issue.

The advisory opinion now goes to the UN General Assembly, which starts in September. It will add to the growing campaign to rid the world of nuclear weapons. Also to go to that Assembly is the report from the Canberra Commission on the Elimination of Nuclear Weapons. This was set up by the Keating Government in November, 1995.

Unfortunately, the Keating Government, anxious to win back some traditional Labor voters, used the creation of the commission as a cynical political exercise. It was seen at the time in Australia as just another vote-getting stunt.

However, for the first time, there is now discussion in US think-tanks and elsewhere on how nuclear weapons can be eliminated entirely. An international campaign called Abolition 2000 is under way.

Therefore, although the Keating Government's media staff failed to emphasise this, the Canberra Commission is in a good position to augment the research work already under way on the elimination of nuclear weapons.

The Howard Government, to its credit, decided to keep the Canberra Commission in operation. The commission's report will be an Australian contribution to the campaign to get rid of nuclear weapons.

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