

Taking nuclear weapons to court

The World Health Organisation has asked the World Court to give an advisory opinion on whether the use of nuclear weapons is illegal under international law. Dr COLIN AIKMAN reviews the possible dangers for disarmament and arms control from the ploy.

IN March, 1987 a retired magistrate from Christchurch, Harold Evans, addressed "An Open Letter to the Prime Ministers of New Zealand and Australia". He was attempting to persuade the two Governments to initiate action in the General Assembly of the United Nations under which the assembly would request the International Court of Justice at the Hague to give an advisory opinion on the legality or otherwise of nuclear weaponry at international law.

The two Prime Ministers were unpersuaded. Nevertheless, the persistence and energy with which Mr Evans has pursued his objective played a large part in the development of worldwide support for what has come to be called "The World Court Project." The project had its first success when the World Health Assembly resolved in May of this year to request the ICJ 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?"

The ICJ has since addressed an invitation to all members of WHO asking them to submit, within six months, statements on whether the use of nuclear weapons would be illegal under international law. There is also the likelihood that interested States will have the opportunity to present oral arguments to the Court. It is important that these statements and arguments should fully explore the complex legal issues that are involved.

Harold Evans has remained on the offensive. He has addressed "An Open Letter to the Members of the New Zealand House of Representatives" asking Parliament to support and co-sponsor, he hopes unanimously, a UN

General Assembly resolution requesting the ICJ to give its opinion on whether the use of, and the threat of the use of, nuclear weapons is permitted under international law. Parliament had not taken any action on the open letter by the time it dissolved and it is for the Government to decide what support it will give to a General Assembly resolution.

Harold Evans was able to interest the New Zealand section of the International Physicians for the Prevention of Nuclear War (IPPNW) in his 1987 initiative. It was then taken up by the IPPNW at the international level and the International Association of Lawyers Against Nuclear Arms (IALANA) and other peace groups.

Both the IPPNW and the IALANA have been able to use their observer status with the United Nations. The NZ section of IPPNW spearheaded the World Court campaign in the WHO and has been active in gathering support in New Zealand for the project. IALANA will be taking the lead in lobbying delegates at the UN General Assembly now in session.

IPPNW and IALANA and other groups supporting the World Court Project cannot themselves appear before the ICJ. They will want WHO, and, if another request is made by the UN General Assembly, the UN, along with States sponsoring the resolutions, to make effective cases for illegality to the court.

Many of the 21, mostly third-world countries, which sponsored the WHO resolution will not have the resources to present extensive written and oral arguments. No doubt they, and other sympathetic states, will be encouraged and offered support by IPPNW, IALANA and others.

In his open letter, Mr Evans refers to the 1989 decision of the Labour Government not to try to take the issue

of the legality of nuclear weapons to the ICJ "at this stage". The then Minister of Disarmament, Ms Wilde, no doubt with the support of legal advisers, said that her assessment was that the likely reaction of the ICJ was "considerably less optimistic" than that of Mr Evans.

"In a case like this you simply cannot afford to lose," she said. The Minister also referred to the question of cost. It had been estimated that even the most modest case at the ICJ would cost in the order of \$US1 million.

The New Zealand delegate, in abstaining on the vote on the World Court resolution in the World Health Assembly, questioned the appropriateness of the procedure proposed. However, the position of the Government may be changing. The Minister of Foreign Affairs and Trade, Mr McKinnon, has since said in Parliament that, although there is room for legitimate doubt about the tactical wisdom of the approach to the World Court, if a reasonable and workable resolution comes forward at the UN General Assembly, the Government would probably support the resolution.

A statement to much the same effect has been made by the Minister for Disarmament and Arms Control, Mr Graham. The New Zealand Government will also have to decide what approach it takes to the ICJ request for a statement on the issue of illegality raised by the WHO resolution.

By no means all international lawyers share the apparent confidence of Mr Evans that the ICJ would find that the use of nuclear weapons is in all circumstances illegal. Indeed, the ICJ would appear to be in a "no-win" situation. An opinion that the use of nuclear weapons is illegal is unlikely to be respected by the nuclear powers.

An opinion that there are circumstances in which their use is not in conflict with international law could make those powers less interested in agreeing to measures of control and also help to create an environment in which other States feel that they are

free to develop nuclear weapons. A decision by the Court to exercise its discretion not to deliver an opinion could lead to accusations that it is a "wimp".

The danger is that the project could divert attention from, and support for, attempts that are already being made to move towards that consensus. The New Zealand Government's priority must be support for a Comprehensive Nuclear Test Ban (now espoused by President Clinton); retention and strengthening of the Non-Proliferation Treaty which comes up for renewal in 1995; progress on conventional arms control; and other disarmament measures.

In a position paper, the New Zealand section of IPPNW expresses the hope that the success or even the prospect of success of the World Court Project may help to soften the nuclear stance of the US. Nevertheless, the paper goes on to say that, should the US at any time enter into multi-lateral negotiations for an anti-nuclear convention, that would be the moment to jettison the project and to throw the weight of the IPPNW behind support for the convention. It is thus recognised that priority must be given to international agreement, rather than a decision of the ICJ, as the effective way to establish the illegality of nuclear weapons.

The New Zealand Government has difficult issues to face as it decides what positions to take on a General Assembly resolution requesting and advisory opinion from the ICJ and in replying to the invitation of the ICJ to make a submission on the WHO request. Any action it takes should not, however, be at the expense of its support of multilateral efforts for disarmament and arms control.

Tomorrow: Ken Coates reports on local support for the World Court Project.

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