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 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 was issued, 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 IALANA have been able to increase 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 and elsewhere. IALANA will be taking the lead in lobbying delegations 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 in 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 1988 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 said the cost of the litigation would be considerable and it is for the Government to decide what support it will give to a General Assembly 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 increasing 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 illegal, however, is likely to lead to more international efforts for disarmament and arms control.

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