

Towards a nuclear-free future . . .

This week, through an initiative that began in Christchurch, the International Court of Justice in The Hague delivered an advisory opinion being hailed as a major breakthrough in the struggle to outlaw nuclear weapons. VERONIKA MEDUNA talks to the campaigners for whom the decision is an endorsement of 10 years' persistent lobbying.

A mixture of immense relief, a sense of achievement, satisfaction, exhaustion, and surprise — that is how retired Christchurch District Court judge Harold Evans described his emotional state following this week's International Court of Justice statement rejecting the use of nuclear weapons in armed conflict.

Credited with being the first person in New Zealand to promote the idea of an International Court of Justice clarification of the issue of legality of nuclear weapons, Harold Evans gained, somewhat reluctantly, celebrity status, receiving standing ovations not only from members of the peace movement, but politicians, during the days of jubilation and press conferences which followed the court decision.

He says his 10-year marathon of persistent campaigning for a world without nuclear weapons has finally paid off for him, and fellow peace campaigners such as Christchurch peace studies lecturer Kate Dewes, when the ICJ, known as the World Court, delivered a statement he describes as "only the beginning of total disarmament and the beginning of the abolition of war".

Both peace campaigners have been prominently involved with the World Court Project, a global citizens' initiative which had its beginnings in Christchurch more than 10 years ago. The loose network of individuals and non-governmental organisations has been lobbying the United Nations to ask the World Court, the UN's judicial branch and the world's most authoritative court on questions of international law, for an advisory opinion on the legality of the use, and threat of use, of nuclear weapons.

The final goal of the campaign is a UN resolution outlawing nuclear weapons on grounds similar to those covering chemical and biological weaponry, namely the weapons' indiscriminate and mass-destructive nature.

On Monday, the court voted on the question that "the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable to armed conflict, and in particular the principles and rules of humanitarian law". The vote was equally split: seven for and seven against, with the president having the casting vote in favour of the motion.

Harold Evans and Kate Dewes — and members of the peace movement worldwide — launched into day-long celebrations of the nervously awaited statement, which both consider a victory and big leap towards total nuclear disarmament.

"It's marvellous. Better than expected really. I was expecting a lot of ifting and butting . . . but what we've heard from the court is certainly encouraging and, to a degree, unexpected," says Harold Evans.

It had taken eight months of deliberations for the court to release its opinion on questions put before it simultaneously by the World Health Organisation and the United Nations General Assembly.

In December 1994, when the General Assembly voted whether or not to request an advisory opinion from the court, New Zealand and San Marino were the only Western countries within the UN General Assembly to vote in favour.

Harold Evans says he was not surprised when the court rejected the WHO request on the grounds that it is outside the UN body's competence to raise legal issues.

The statement relating to the General Assembly's request, however, sparked jubilation and relief despite the fact that the court could not decide on the legal status of



PHOTO: DON SCOTT

Peace campaigners Kate Dewes and Harold Evans consider the World Court statement a big leap towards total nuclear disarmament.

using nuclear weapons "in an extreme circumstance of self-defence, in which the very survival of a State would be at stake".

Harold Evans says the court delivered a strong enough message, despite the qualifying statement, to make it difficult for the five declared nuclear-weapon States — the United States, France, Britain, China, and Russia — to justify their nuclear deterrence doctrine in the increasingly anti-nuclear atmosphere within the UN.

"States now have to confine themselves to justifying the use of nuclear weapons. In a specific instance where the very existence of a State is threatened, the wording (of the court's advisory opinion) puts the onus on the State which contemplates the use of nuclear weapons to show that survival . . . is at stake. I don't like the word positive, but it is all very encouraging — and that's coming from a sort of pessimist — or realist."

Kate Dewes says nuclear weapons "have never created security, and nuclear deterrence is a dangerous fallacy". She says that even if the court had declined to deliver an opinion, the years of campaigning have "changed the mindset within the UN."

"You've now got an empowered majority of non-nuclear States (in the UN) that will not be deterred from demanding abolition. In the past they have cowered in the face of threats to aid and trade."

She says it became clear during the World Court hearings that many countries demanded the implementation of Article 6 of

the Non-proliferation Treaty, which commits signatories to complete nuclear disarmament.

"That is what the judges have reiterated — the commitment to total elimination which is already legally binding under the treaty, when they say that 'there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament'," she says.

Harold Evans says it is also important to keep in mind that the "knife-edge balance" of the vote is due to three of the opposing judges rejecting the qualifying statement regarding the use of nuclear weapons in self-defence, rather than the actual statement.

He says the more difficult issues are those of nuclear tests and the development of nuclear weaponry.

"But I should have thought that, logically, it would be rather like testing. If it's illegal under almost all circumstances to use nuclear weapons or threaten to use them, as a matter of logic I would have thought that it almost certainly follows that there would be at least a great doubt as to the legality of producing, developing, and testing them."

"Possessing them is perhaps more difficult. If you test a nuclear weapon, it must obviously be for the purpose of perfecting for its possible use. But the actual possession of them, particularly residual possession — after all, there are plenty of nuclear weapons in the possession of the nuclear-power States

— it doesn't logically follow that they are not going to just keep their storage forever."

He says his involvement with the anti-nuclear campaign began on inspiration by a visiting American lawyer, Dr Richard Falk, who in 1986 suggested New Zealand should test its anti-nuclear legislation in the World Court and use it to clarify "its obligations, if any, under the ANZUS Treaty with regard to hosting port visits by US nuclear-powered and armed vessels".

He compiled the legal opinions of six eminent international jurists who all pronounced against nuclear weapons and supported an approach to the court.

He sent the 98-page document as an open letter to then Prime Ministers of New Zealand and Australia, David Lange and Bob Hawke. The list of participating lawyers included Falk himself and Christopher Weeramantry, today one of the World Court judges.

This earned Harold Evans a reputation as the "father" of the World Court Project, but he is reluctant to take the credit for his initiative, saying that he would not have done it "if the six respected jurors had not been prepared to put their reputations on the line".

He says the statement has brought the world closer to becoming nuclear free and should be of "positive assistance in reaching the aim of a compulsory test ban treaty" when negotiations continue later this month.

Harold Evans, in his 80s, says he may not be able to give the project as much energy as he would like, but the "concentration will now be on obtaining a treaty . . . to ban nuclear weapons by the year 2000."

"The court's opinion does provide a basis for this, provided it is taken seriously and is well known throughout the world."

"It shows that there is firm legal support for banning by treaty the use of nuclear weapons."

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