

One-man mass movement

Former jurist on the warpath

By PHIL TWYFORD

THE nuclear ships ban, like Norman Kirk's dispatch of a frigate to protest French testing at Mururoa in 1973, was a bold and idealistic statement of New Zealand's independence.

Now Harold Evans, retired magistrate, is prodding the Government to 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 (il)legality 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 rallying some impressive support behind his project.

In March last year he presented a 100-page open letter to Lange and Hawke comprising the legal opinions of six eminent international jurists including former Minister of Justice and Attorney-General Martyn Finlay QC and former Ombudsman Sir Guy Powles. The submission urged, on legal grounds, that New Zealand and Australia initiate a United Nations General Assembly request that the World Court be asked for an advisory opinion of the (il)legality of nuclear weapons.

Hawke's reply was dismissive. He said the idea would not be given priority because "we do not consider that it would be likely 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 month. But Evans, a slightly built, clear-eyed man with a passionate faith in the potential for judicial process to do good, is more optimistic about the New Zealand response.

Lange initially said Evans' idea was not one the Government had seriously considered and he would like to reflect on what might be achieved by it. In June last year he said Foreign Affairs was considering it.

More recently Russell Marshall said, although he found the proposal attractive in principle, he worried that if the World Court found against the illegality of nuclear weapons it would damage the anti-nuclear cause and do little to enhance New Zealand's reputation. And that if the court declared them illegal, the nuclear powers would ignore the judgement — as the US did against the court's condemnation of its actions against Nicaragua — thus undermining the court's credibility.

The issue, nevertheless, is before the Public Advisory Committee on Disarmament and Arms Control, due to meet next month.

In his reply to Marshall's misgivings as to the uncertainty of the court's ruling, the former stipendiary magis-

trate 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 after she found a partly decomposed snail in her drink. In the second, a South Australian man won damages for a pair of woollen underpants that gave him dermatitis.

In both, reassured Harold Evans, the plaintiffs journeyed successfully on an uncertain road.

Evans is no stranger to uncertain roads himself and is uncowed 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 criticised a fellow magistrate who suppressed the name of a Supreme Court judge's son up on drink driving charges and let him off with a fine instead of the periodic detention more usual for such a conviction.

In 1977 he drew flak by criticising the appointment by then Prime Minister Rob Muldoon of his National Party

colleague Sir Keith Holyoake to the office of Governor-General.

After his retirement a year later, he published a booklet on the eve of the 1978 election claiming Muldoon's "defects of judgement, temperament and character" made him unfit to lead the nation.

In 1981 he pleaded guilty to obstructing a Christchurch street during an anti-Springbok tour demonstration and was given a Section 42 discharge without conviction.

Two years later he publicly renounced the allegiance to the Queen he had made as a magistrate, criticising the monarch's support for Britain's conduct in the Falklands War.

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

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 less than impartial justice the defeated Japanese met at the hands of the tribunal left its mark on Evans.

It was in Japan he cemented his friendship with Guy Powles, 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 (il)legality of nuclear weapons in 1973 when Australia and

Harold Evans: A passionate faith in the potential for judicial process to do good.



New Zealand collaborated in taking France to court over its atmospheric testing at Mururoa. The Anzacs succeeded in gaining an injunction of sorts against the tests, but a definitive judgement was pre-empted by France's decision mid-proceedings to take the tests underground.

EVANS is unfazed by the charge, raised by Russell Marshall among others, that his proposal to take nuclear weapons to court could result at best in a toothless symbolic victory.

"There is such a thing as international public opinion," he says. "People like Reagan and Margaret 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. And he supports the view of the ICJ's secretary-general Niall McDermott who argues that a declaration of illegality may not persuade nuclear nations to abandon their bombs. But "it would nevertheless mark an important step forward in awakening the peoples and governments of the world to the extent to which nuclear weapons have outrun basic concepts of international law as well as all morality and humanity."

While Evans concedes the prospect of Australia taking up the cudgels is dim, he is hopeful of Lange's response.

"As a New Zealander I would like the Government to be first in on the act."

Auckland Star
Tuesday 4 October 1988
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