

## CHAPTER 4

### THE 1980s: OTHER DOMESTIC CHALLENGES



Demonstration against mass destruction : Snowballers at a Nuclear Base. — *Wiltshire Times*

## CHAPTER 4

### THE 1980s: OTHER DOMESTIC INITIATIVES

#### 4.1 Introduction

In the early 1980s a plethora of citizen organisations, especially strong in the UK, began to focus on nuclear weapons and international law. Although the UK Lawyers for Nuclear Disarmament (LND) helped inspire groups of non-lawyers such as Campaign for Nuclear Disarmament (CND), the International Law Against War (INLAW), the Institute of Law and Peace (INLAP) and Pax Legalis to use international law, it did not survive long. MacBride was an early influence on all these groups, and initiated further projects with a final goal of obtaining a request for an International Court of Justice (ICJ) advisory opinion through the UN.

A variety of groups in the Netherlands, West Germany, Canada and the US challenged their government's policies in the courts. Inspired by the Greenham Women and the Nuremberg (1983) and London (1985) Tribunals, they worked collectively with lawyers taking creative actions which included the development of legally binding Nuclear Free Zones (NFZs) in cities, ports and states. Over 100 citizen-initiated Tribunals were held in Japan; and several states banned visits by nuclear warships through legislation or their constitutions (see 5.4 and 5.5). This chapter highlights some of these initiatives to illustrate how by the end of the decade the ground was fertile for pursuing the World Court Project (WCP) internationally. It is deliberately selective and only briefly outlines some of the more prominent groups which used the law to challenge nuclearism, in order to introduce some individuals and groups which later played important roles in the WCP.

## 4.2 United Kingdom

### ***Campaign for Nuclear Disarmament (CND)***

A leading figure in CND UK for many years was Monsignor Bruce Kent. Later he became IPB President and an active member of WCP UK. He credits MacBride as the 'major influence on CND and the peace movement in general in raising the legal profile'. When Kent, as Chair of CND, addressed a rally outside the gates of the Royal Naval Submarine Base at Faslane, Scotland in June 1979 he reminded the sailors that they too were bound by the Hague Conventions. He challenged them to 'make your voice heard' and to 'refuse to take any part in the operation of weapons of indiscriminate destruction'. [1] In 1982 CND formed a legal working group which promoted debate within CND's newsletter, *Sanity*. [2] Later in 1984, as CND's General-Secretary, Kent urged soldiers on duty at Greenham Common to refuse orders related to cruise missiles citing the Nuremberg Principles, British Manual of Military Law, Hague Conventions and Lord Mountbatten. [3]

### ***International Law Against War (INLAW)***

In 1983 CND asked George Delf, a former IPB Secretary-General and head of INLAW, to draft a press statement for their Annual General Meeting. It stated briefly that all forms of mass destruction are illegal; current nuclear policies were a gross violation of the law; and it charged the government with conspiracy to commit war crimes. CND had agreed to publish his War Crime leaflets 'warning British and American military personnel of their responsibility to avoid war crimes and obey the law', [4] but after legal advice indicated its distribution would constitute an offence, decided not to proceed. So, Delf printed the leaflets himself and distributed them to groups throughout Britain. Disillusioned by the lack of commitment and analysis and action from Lawyers for Nuclear Disarmament (LND), he established International Law Against War (INLAW). This small network promoted a worldwide citizens' prosecution of the main agents of nuclear crime. The first case in 1985 indicted three British leaders, including Thatcher, with

jurists and their professional associations to pledge their commitment to the implementation of international law and the Nuremberg Principles even in relation to their own government and its leaders.[8]

Following the Tribunal, MacBride tried to implement some of the recommendations. In mid-1986, he met with Alexander Sukharev, (head of the Association of Soviet Lawyers (ASL) and the Minister of Justice of the Russian Republic of the USSR) in Moscow where he gained his signature for a petition under IPB auspices entitled 'Appeal of Lawyers Against Nuclear War' (Appendix I). It declared that the use of a nuclear weapon would constitute a violation of international law and human rights, and a crime against humanity. MacBride admitted 'it could have been improved ... but it was the furthest upon which I could get agreement ... it is difficult to get a good rousing document when you want to reach a consensus'. He planned the following:

...When we have completed the signature process we should present the signed declarations to the General Assembly of the United Nations and notify the International Court of Justice that we have done so, and that in our view this affirmed the consensus necessary to secure a declaration that nuclear weapons and other weapons of 'societal destruction are illegal under international law, and that their use would constitute a crime against humanity'. It is my hope that the General Assembly would then request an Advisory Opinion from the International Court. [9]

He aimed to collect 30-40,000 signatures from lawyers internationally by asking lawyers' groups and IPB affiliates to promote it. Originally he hoped the International Commission of Jurists, International Association of Democratic Lawyers (IADL), Association of Catholic Lawyers and LCNP would carry out the operation and share the burden. By mid-1987 10,000 copies had been printed in English and 5,000 in French; and it was also distributed in Spanish, German, Italian and some Eastern European languages. IPB mailed 4,500 copies to Australia, Canada, France, ANZ and Switzerland. The IADL was well organised, and by early 1988, nearly 9,000 signatures arrived from Mongolia (2,000), Bulgaria (2,640), Czechoslovakia (1,100), Poland (1,450), Bangladesh (570), Latin America (228) and others. Ironically, few signatures came in from the West: US (116), Austria (98) Germany (90) and France (60). [10]

At the end of 1987, MacBride asked Francis Boyle (LCNP Board of Directors) to organise a UN press conference with the UN Secretary General, Sukharev, former US Attorney-General Ramsey Clark and himself in order to announce the project. A tentative date was set for February but, with MacBride's death in January 1988, it was cancelled. IPB continued to act as a repository for the signatures, and the Appeal and the advisory opinion idea languished due to lack of support from the newly emerging international body of lawyers (see 6.7). MacBride's success in securing the signatures of 50 international judges and other lawyers, including 10 members of the International Commission of Jurists and two ICJ judges (including the President during the 1995-96 hearings), helped secure further support, and by 1992 it had signatures from 11,000 lawyers from 56 countries.

Just before his death, MacBride encouraged the IPB to try to enlist Costa Rica, Hungary, Mexico, Senegal and Sweden in the final approach to the UN to request the advisory opinion. [11] According to Boyle, MacBride assumed that with Sukharev's endorsement he had the *de facto* support of the Soviet government and therefore the other Socialist countries: 'with his name alone, he could get the Third World countries behind it, using the IPB to organise them ... and he could get the UN Secretary-General and therefore the UN behind it'. [12] MacBride was described as 'a founder and guiding light for the creation of the International Association of Lawyers Against Nuclear Arms (IALANA)', but it did not hold its first International Congress until the end of 1989 [13] and the 'evidence, commentary and judgment' of the London Nuclear Warfare Tribunal (LNWT) was not published until then either. So, with his death the energy and drive behind the LNWT recommendations, the MacBride Appeal and the related advisory opinion initiative dissipated.

### ***Pax Legalis***

Inspired by the LNWT, Delf's book *Humanising Hell: The Law V Nuclear Weapons*, and the publications of LND, a group of four non-lawyers in North

Wales, founded Pax Legalis in 1984. They put together a 'well-researched case supported by extensive documentary evidence and by legal authority'. They believed that the laws of war were made for the benefit of people, not governments. In June 1987, they presented the Attorney-General with a dossier, asking for a private prosecution of Prime Minister Thatcher for conspiracy to incite murder and genocide, and for grave breaches of the Geneva Conventions. In over ten years the case was never heard on its merits. A range of excuses given by the judges, magistrates and the Crown Office included: 'it is not the Court's role to test the legality of Government policy'; 'it is an attack on government policy and Courts have no competence in the matter'. [14] In 1991, their legal researcher Robert Manson began to 'lay informations' before a magistrates' court against every Secretary of State for Defence since Polaris was deployed in 1969. [15]

### ***Institute of Law and Peace (INLAP)***

During 1987 another group of non-lawyers, including Keith Mothersson, formed INLAP. They had attended the LNWT and heard Professor Pentz's plea for 'Massive Interventions of Democracy' to call to account governments' illegal nuclear strategies.[16] Frustrated by CND's wide diversity of urgent issues, problems associated with running an organisation of over 100,000 members, and lack of direct focus on the legal campaign, they decided to produce research material to educate and empower people on the relevance and application of the law to peace campaigning. [17] Many of them were also members of Pax Legalis and INLAW. Later that year Christine Soane, Angie Zelter and others began a Register of Supporters of the Law directed to MPs and the Scottish Lord Advocate. It culminated in 1989 with over 500 signatures in Scotland and 750 in England. [18]

### ***Snowball***

In 1983, Falk outlined six considerations which must underpin a 'beneficial international law regime for nuclear weapons'. The final principle was:

...a definite mandate directed towards citizens to take whatever steps are available to them to achieve a law-oriented foreign policy for their own country, including, as both conscience and good sense dictate, nonviolent acts of civil disobedience, and efforts to persuade members of all branches of government to overcome the gap that separates the normative consensus of the public as to the illegality of the use of nuclear weapons from prevailing official policies. [19]

A campaign which put this into practice and which grew out of Greenham and INLAP, was 'Snowball Civil Disobedience'. Established by Zelter in 1984, it began with three people at Sculthorpe US Air Force base. Each participant cut a single link of fencing around their local military or nuclear establishment, gave themselves up to police and handed them a pre-written statement explaining their actions. They then wrote three letters to friends or public figures with 'reasonable and possible' requests to the government such as asking them to support a CTBT, encourage a 'nuclear freeze', and take some unilateral step such as cancelling Trident.

By 1987, 2,796 people had taken part in actions at 43 different locations with 2,419 arrests, most of which ended up in the courts. Hundreds of Snowballers refused to pay fines, went to prison, conducted their own defence citing international law and common law, and were interviewed frequently by the media. Community leaders, professionals, churchgoers, former military men and others chose this action as a way of overcoming what Caldicott termed 'psychic numbing'. The aim was to have two 'snowballing' effects: a snowball of letters to public figures, and of more and more people prepared to cut one strand of wire around their local base. [20] The action provided a flexible, de-centralised, self-disciplined and nonviolent way for people to express their individual decisions.

This campaign further developed into the 'Enforce the Law' campaign, using 'Declarations of Responsibility' which were distributed to civilians and military alike. These specialist campaigns, coupled with the wider actions at Greenham and within some CND groups, illustrated a paradigm shift in the British peace movement, reframing nonviolent action as 'law enforcing' rather than 'law breaking'. [21] Later Keith Mothersson, an active member

of all the above groups, adapted this idea into Declarations of Public Conscience (DPCs). Eventually millions of these were presented as evidence of citizen concern to the ICJ.

### 4.3 Other Countries

#### *Japan*

In the early 1980s, citizen groups in many Western countries adopted the NFZ idea both locally and nationally and Belau, Vanuatu, the Solomon Islands and Aotearoa/New Zealand (ANZ) became nuclear free states. In the UK, LND and other NGOs established an International Nuclear Free Zone (NFZ) Register in Manchester. [22] However, the idea of nuclear free cities and ports had originated in Japan with the declaration of a 'Non nuclear armament zone' in Handa City in June 1958. Over the next few years similar declarations were made in Kamakura, the Minato District of Tokyo, and Mishima, Tatsuno and Akashi cities. In 1975, Kobe City Council declared the harbour a NFZ and demanded a written declaration by the commander of any warship entering the area that no nuclear weapons were on board. [23]

In 1985 there were over 1,600 local body NFZs in 17 countries. By 1992 this had grown to over 4,495 in 25 countries, [24] and by 1997 included 68% of all Japanese councils.[25] In general, they did not have legislative force, although in Germany they were considered to be close to legislative enactments. Some British local authorities refused to co-operate with central government civil defence plans, using their powers over transportation to try to prevent movement of nuclear weapons through their zone. [26]

The success of the international NFZ movement cannot be judged only in legal terms. Throughout the world it politicised and democratised local decision making structures and broadened public debate. In Germany and

the UK it was a factor in contributing to the change in public opinion which forced the eventual withdrawal of Cruise missiles from Europe.

### ***West Germany***

In West Germany, activities organised by a single political party or NGO were being rejected in favour of a coalition of groups operating at a local level. Slogans adopted included 'participatory peace politics' and 'democratisation of defence policies'; and two actions illustrate this emerging 'participatory democracy'. The first was to declare nuclear free city councils in 1982; and the second used the Federal Constitutional Court to review the legality of stationing of US nuclear missiles in Germany in 1984. [27]

The NFZ campaign was inspired by similar actions by local authorities elsewhere. Their aim was to achieve a nuclear free Europe on a practical level by linking a multitude of small zones. This was seen as more successful than using centralised political parties and parliaments. Some councils moved resolutions which demanded specific actions from the local administration, such as refusing to co-operate with measures which served to support the production, transport, stationing and storage of nuclear, biological or chemical weapons. When councils refused to allow the NFZ question on the agenda, activists sought recourse to the administrative court.

The impetus for the review came from 140 lawyers who had formed 'Judges and Prosecutors for Peace' in 1981. They placed advertisements, signed by about 500 judges and prosecutors, in newspapers declaring NATO's nuclear weapons immoral and illegal. Judge Ulf Panzer outlined their activities:

We formulated a resolution which we submitted to every Member of Parliament. We held a march right through the downtown area of our capital - an old-fashioned demonstration with bands, banners, scrolls, chanting peace slogans, singing peace songs. And we read our declaration to the open-mouthed citizens of Bonn who couldn't really

believe we were genuine judges and prosecutors who dared to hold a demonstration. [28]

Working with the Greens and others they used the German Constitution in various court cases to argue the illegality of stationing the missiles. In one judgment, the court held that:

Pershing II missiles were not a first-strike but a first-use weapon; that a first-use of nuclear weapons would always be illegal under public international law, and that the stationing of such weapons was a threat to use force. [29]

### ***Netherlands***

In the Netherlands there was also broad-based opposition to the proposed deployment of 48 US cruise missiles and some military conscripts objected to all involvement with nuclear weapons. Many have appealed to international law, the NPT and UN resolutions in military court cases. In December 1983, the Foundation to Forbid Cruise Missiles issued a writ of summons against the government for its decision to allow the stationing of these missiles in violation of international law. Over 20,000 individuals and groups answered a newspaper appeal signing as co-claimants. These included the municipality of Woensdrecht, trade unions, political parties and peace, medical and environmental NGOs. The lawyers made extensive use of Greenham cases and other actions. Although the District Court of The Hague declared itself unable to judge the case, the groups kept appealing. In 1989 the Supreme Court declared that deployment and use of nuclear weapons would not violate existing rules of international law. A leading advocate for the case, Phon van den Biesen, became IALANA's international secretary in 1990. [30] Following the 1984 case, a Belgian-Dutch Peace Tribunal, modelled on the earlier citizen Tribunals, was held. It examined the legal arguments which were barred from discussion in the Dutch court.[31]

### ***Canada***

As early as 1978, Canadian Ken McAllister had developed a strategy of 'taking governments and civil and military leaders to the World Court... in a

class action to prevent nuclear genocide and other crimes against humanity'. In 1980 he asked Canada's Attorney-General to commence charges against top officials in NATO for 'criminal actions endangering the peace of the world and for conspiracy...'. claiming 'gross criminality under the Nuremberg Principles'.[32]

In 1987, the Canadian World Federalists became the coordinating plaintiff of a lawsuit on nuclear weapons, based on international law, which was filed in the Ottawa federal court. This was followed by the 'Nuclear Weapons Legal Action' in which the World Federalists used section 53 of the Supreme Court Act to ask 'whether the first-use of nuclear weapons is contrary to the law of nations as part of the law of Canada'. They were supported by the Assembly of First Nations, Voice of Women for Peace, Lawyers for Social Responsibility, National Union of Provincial Government Employees, Veterans Against Nuclear Arms and the United Church of Canada. There were 21 volunteer lawyers researching the case, and over 200 endorsing organisations and 21 municipal governments. In 1990 the Justice Minister rejected it, arguing that the federal court should be free to set its own agenda. [33]

In 1985, Canada's Supreme Court ruled in the *Operation Dismantle* case - an effort to obtain an injunction against US testing of Cruise missiles in Canada - that government decisions in external affairs and defence must conform to the new 1982 Constitution and the Charter of Rights and Freedoms. Although it ignored the specific injunction, like the Greenham case it opened the door for further cases. [34]

Undeterred by the outcome, Lawyers for Social Responsibility (LSR) in Vancouver organised a conference in 1986. It explored taking legal action to restrain the Canadian government from cooperating with America's nuclear weapons policy through allowing nuclear-armed ship visits and providing uranium, personnel and facilities. Six months later, Canadian lawyers held the first International Conference on Nuclear Weapons and the Law in Ottawa from 15-18 June 1987. It brought together about 150 'legal

scholars and leaders of the bar from all of the world's legal systems to discuss, debate and deliberate the role of the law in preventing nuclear war' and included participants from 'both sides of the Iron Curtain'. One of the aims was to 'form a world network of lawyers and their professional associations to march in step with the scientists and others'. [35] It was a precursor to one held in New York two months later where a committee to establish an international body was finally appointed. Meanwhile, Canadians began declaring NFZs, and by 1992 over 65% of the population lived in 180 nuclear free communities.

### ***United States***

NFZs also flourished within the US from 1982 onwards. By 1992, 188 councils had made similar declarations covering 17 million citizens. [36] Weiss claims that more US citizens were charged for actions taken to highlight the illegality and immorality of nuclear war preparations than those charged for similar moral acts during the Vietnam War. The charges included tax resistance, sabotage of nuclear weapons, 'disorderly conduct' at nuclear research and weapons installations, and impeding the progress of trains carrying nuclear missiles.[37]

Bringing a lawsuit in a US state or federal court seemed futile, as it would not rule on the merits of a case considering the legality of nuclear weapons. Attempts to present arguments by international lawyers were blocked by judges because 'no US court had ruled that possession of nuclear weapons was illegal'. [38] Recourse to the ICJ is not available to citizens - only states. However, under the Constitution of the fledgling NGO Federation of the Earth, a Provisional District World Court could be established which was empowered to hear such matters. A lawsuit was filed in 1982 in such a court in Los Angeles on behalf of 'all persons on Earth', against 28 'nuclear' nations including the superpowers, nuclear host nations and nuclear-capable nations. During the lawsuit one of the presiding judges, Francis Boyle, declared:

Under article 38 (1) (d) of the Statute of the International Court of Justice, this Opinion constitutes a 'subsidiary means for the

determination of rules of law'. It could therefore be relied upon by some future international war crimes tribunal. [39]

In 1987 he published a guidebook for lawyers which outlined the legal theory of civil resistance in foreign policy settings. [40]

The Lawyers' Committee on Nuclear Policy (LCNP) had formed in 1981 at the same time as the Lawyers Alliance for Nuclear Arms Control (LANAC). Soon after, LANAC's San Francisco branch filed an action on behalf of a US Senator to enforce the Anti Ballistic Missile Treaty, and another to ensure that 'our President does not use nuclear weapons first without a declaration of war by our Congress'. They pursued 'bringing an action before the ICJ on environmental and treaty grounds to have the manufacture, testing and use of nuclear weapons declared illegal'. This built on the 1973 ICJ case on nuclear testing led by ANZ and Australia against France. [41]

According to LCNP's Co-Chair Peter Weiss:

LCNP challenged the received dogma of the policymakers through various kinds of intellectual guises such as articles, speeches, conferences and gave support to nonviolent activists who 'put their bodies on the line'. Members talked about an advisory opinion in the early days, but ...it was like the 'Holy Grail' in the first 10-12 years of the Committee's existence...because of the Cold War,... and until an international organisation of lawyers was formed.[42]

In August 1987, LCNP and the ASL co-sponsored a three-day international conference in New York. It was attended by 180 lawyers, legal scholars, judges and political leaders from 18 nations. Some of the speakers became prominent players in the WCP : Phon van den Biesen, Miguel Marin-Bosch, John Burroughs, Jerome Elkind, William Epstein, Richard Falk, Robert van Lierop, MacBride, Saul Mendlovitz, Sukharev, Edward St John, Theorin, Christopher Weeramantry and Weiss. The participants decided to form an international body like their professional counterparts such as religious leaders, physicians, educators and retired military. Fourteen people from 11 countries attended the first executive meeting of the International Association of Lawyers Against Nuclear Arms (IALANA) in Sweden in April

1988 and agreed a plan of action based on some of the LNWT's recommendations. [43]

#### **4.4 Conclusions**

Throughout the early 1980s, efforts by citizens to create a 'Magna Carta for the nuclear age' ranged from nonviolent acts of civil disobedience to taking governments to their Supreme Courts to challenge the legality of official policies. Sparked by international events such as NATO's decision to deploy Cruise missiles in Europe, Reagan's election as US President, and the shift in military strategy from 'mutual assured destruction' to 'winning a limited nuclear war', ordinary people were strongly motivated to take whatever actions they could.

Realising they could not succeed by continuing to work in small isolated citizen groups, they formed coalitions across the whole spectrum of the newly emerging movement. Groups formed along professional and sectorial lines and covered most members of society. These enabled people to reach their peers and to mobilise the particular skills of a profession or interest group. So while doctors focused on education concerning the medical consequences of nuclear war, lawyers worked with peace activists to declare NFZs, litigation against governments, drafting nuclear free constitutions and laws and educating people about nuclearism and international law. The prospect of Cruise missiles on their soil gave European groups a tangible target and a sense of urgency. Mass grassroots mobilisations and peace camps at missile sites forced politicians to take the issues seriously. Three UN Special Sessions on Disarmament (1978, 1982 and 1988) gave NGOs a focus and a forum to address their concerns at the highest level. They also provided peace activists with opportunities to network and exchange ideas.

By the end of the 1980s an international lawyers' organisation was established with key objectives for the next decade, including asking the ICJ for an advisory opinion. They had risen to Falk's challenge to 'study the means whereby the power of the modern nation-state may be restrained by

the rule of law' and were becoming a formidable force. Using their 'unique blend of analytical and negotiation skills' and their high status in society, they acted as an 'independent resource of insight and inquiry and analysis' on the major issue of the time - nuclear weapons. [44]

By working with other predominantly middle-class, professional groups, and often backed by church groups, lawyers gained access to decision makers usually denied to ordinary citizens. Women demanded representation on foreign affairs committees, inclusion on government delegations to disarmament meetings, and representation at international peace gatherings. As the missiles were withdrawn from Europe in response to the mass public actions, and the South Pacific joined Latin America as a NFZ, the movement moved from the streets to the corridors of power to dialogue with decision makers.

Skills learned while lobbying and educating politicians about the dangers of nuclear war were translated into actions internationally. NGO coalitions which had used the law to defend their actions at nuclear bases and challenged their government's nuclear policies, sought out similar groups in other countries. The success of ANZ's anti-nuclear legislation empowered others. In 1989 the UN announced a Decade of International Law and the Cold War ended. The time was finally ripe to initiate the ICJ action.

Leading Western lawyers sympathetic to the ICJ idea were on the Executive of the International Commission of Jurists. Increasing numbers of lawyers were promoting the issue internationally, and offered their services for the common good of society. As those in 'professional' groups became more 'activists', peace campaigners began developing 'professional' lobbying skills. As these individuals and groups joined forces, they became a potent force in the struggle to mobilise politicians and diplomats internationally to support the WCP.

A decade earlier, when MacBride had tried to update the laws of war, he had failed due to lack of a strong international base of citizen groups which

could lobby their governments, especially Western ones. As the new decade dawned, that base was secure and the political climate opportune. What was needed was a coalition of groups willing to devote their resources and energy to this cause for up to five years and to coordinate the existing support into an international network.

### Footnotes.

- [1] Speech by Monsignor Bruce Kent: Chairman of the CND at Faslane Naval Base, 2 June 1979, 3 pp.
- [2] John Millner, 'Nuclear Weapons are illegal say lawyers', *Sanity*, December 1982, p.33.
- [3] Paul Brown, 'Kent urges armed forces to defy orders over cruise missiles', *The Guardian*, 14 May 1984, and Letters to the Editor by Delf and Mike Garnier, *The Guardian*, 16 May 1984. See also John Minnion and Philip Bolsover, *The CND Story*, Allison and Busby Ltd, London 1983, pp.141-143 and Bruce Kent, *Undiscovered Ends: An Autobiography*, HarperCollins, London, 1992, pp. 189-191.
- [4] George Delf, *Humanising Hell!: The Law V Nuclear Weapons*, Hamish Hamilton, London, 1985, pp. 8-9.
- [5] Minnion and Bolsover, op.cit., pp. 351-356.
- [6] Weiss, op.cit., in John Dewar, et al (eds), *Nuclear Weapons, the Peace Movement and the Law*, MacMillan, Hampshire, 1986, p.195.
- [7] Minutes of Annual Meeting of LCNP, 11 January 1984, New York, p.2; See also Frank Field, Report of the Seminar 'The Illegality of Weapons of Societal Destruction', 14-15 September 1984, IPB, Geneva, 4 pp.
- [8] Geoffrey Darnton (ed), *The Bomb and the Law : London Nuclear Warfare Tribunal*, Alva and Gunnar Myrdal Foundation, Sweden, 1989, pp. D-3 and 7-6.
- [9] Letter from MacBride to Edward St John, 25 July 1987.
- [10] 'Situation Report about the Signature Collection', IPB, 22 January 1988.
- [11] Ibid.; Rainer Santi, IPB Briefing Paper on MacBride Appeal for UNSSOD III, May 1988.
- [12] Emails from Francis Boyle to Dewes, 16-17 November 1997.
- [13] Francis Boyle, 'In Honour of Seán MacBride (1904-1988)', *LCNP Newsletter*, Fall 1988, p. 4.
- [14] Letter from Fred Starkey to Robert Green, March 1999.
- [15] Robert Manson, *The Pax Legalis Papers: Nuclear Conspiracy and the Law*, John Carpenter, Oxford, 1995, pp. xx-xxii. After being rebuffed several times, they sought leave to apply for Judicial Review in the High Court. However, at the hearing in May 1995 the case was dismissed on grounds that it was speculative, and an abuse of the criminal jurisdiction of the Court.
- [16] Darnton, op.cit., p. 5-5.
- [17] INLAP Annual Report, 1988-89, and Keith Mothersson, 'Campaign for

Civilian Immunity', 1985, 4pp.

[18] Correspondence from Christine Soane to Dewes, 10 February 1996.

[19] Sol Picciotto, 'Nuclear Weapons, State Power and Legitimacy in International Law', in Dewar etc, op.cit., pp. 18-19.

[20] Angie Zelter, *Snowball: The Story of a Nonviolent Civil-Disobedience Campaign in Britain*, Gandhi-in-Action, New Delhi, 1991, pp. 1-3. A. Zelter. 'Snowballing in Britain', *Peacelink*, New Zealand, September 1987, p. 22.

[21] Manson, op.cit., p. xvi.

[22] Abdul Paliwala, 'Peace Protest, State and Law', in Dewar, op.cit., pp. 143-145.

[23] Makoto Kondo, 'New Zealand Nuclear-Free Law and Kobe Harbour System', Lecture document, Kobe, 3 August 1994.

[24] Nuclear-Free America list of 'Nuclear-Free Zones in the World', May 1992.

[25] Noboru Yasuga, 'Movement for Nuclear-Free Local Government in Japan', March 1997.

[26] Offczors and Ruete, 'Law and Peace in West Germany', in Dewar, op.cit., pp. 222- 224; Working Paper Number One, 'Nuclear Free Zones', Lawyers for Nuclear Disarmament, London, undated, 40 pp.

[27] Offczors and Ruete, op.cit., in Dewar etc, op.cit., pp. 219 - 230. See also David Pitt and Gordon Thompson, *Nuclear-Free Zones*, Croom Helm, New York, 1987; Kennedy Graham, 'Nuclear Weapon-Free Zones', PhD Dissertation, University of Victoria, Wellington, 1983; Jan Prawitz, 'The Concept of NWFZ with comments on Three Recent Proposals', Paper presented to 45th Pugwash Conference, Hiroshima, 23-29 July 1995, pp. 1-60.

[28] Interview with Ulf Panzer in *Ground Zero*, September-November, 1985.

[29] Offczors and Ruete, op.cit., in Dewar, op.cit., p. 227.

[30] Phon van den Biesen and Peter Ingelse, *Legal Proceedings on the Deployment of Cruise Missiles in the Netherlands: Writ of Summons*, Ars Aequi Libri Publishers, Nijmegen, 1986, pp.1-2, 103-104.

[31] Theo de Roos, 'Nuclear Missiles in the Netherlands', in Dewar, op.cit., pp. 231-240.

[32] Letter from Kenneth McAllister of the Committee for Judicial Action to Prevent War to Canadian Attorney General Jean Chretien, 8 June 1980; Ben Metcalfe. 'It's Time to Take Our Law Into Our Own Hands', *Vancouver Free Press*, March 28-April 3 1980, p. 3; K. McAllister, 'Judicial Action Agenda, Document 1', April 11 1980; R.Falk, 'What's Happening to Our Country?', *Promoting Enduring Peace Inc*, 1980.

[33] Letter from Fergus Watt, Executive Director, World Federalists of Canada on behalf of Nuclear Weapons Legal Action to supporters, June 1991. Duncan Graham, Report on 'Illegality of Nuclear Weapons', *Purple Dawn Newsletter*, November 1986.

[34] Maxwell Cohen and Margaret Gouin, eds., *Lawyers and the Nuclear Debate*, University of Ottawa Press, Canada, 1988, pp. 4,10,147. Letter from Andrea Cartier to Harold Evans, December 1988; Ross Smyth, 'Challenging the Legality of Nuclear Weapons and Strengthening International law', Address to World Federalists, Montreal, June 1986; Letter from Peter Brown (NWLA) to Harold Evans, 13 April 1989.

[35] Letter from Judge Maxwell Cohen to Harold Evans, 9 July 1987; Article by Alrick Huebener in *The National*, Ottawa, 1987; Joey Thompson, 'Meeting to discuss how law might prevent nuclear war', *The National*, Vancouver, December 1986.

[36] Weiss, op.cit., in Dewar, op.cit., p. 191.

[37] Ibid., pp.188-189; For details of some of these actions see Jackie Cabasso and Susan Moon, eds., *Risking Peace: Why We Sat In the Road*, Berkeley, Open Books, 1985; John Burroughs, *Nuclear Obligations: Nuremberg Law, Nuclear Weapons, and Protest*, Western States Legal Foundation, California, 1991 (PhD thesis).

[38] James Munves, 'Beyond the Law', *The Nation*, 4 December 1982, p.580.

[39] F.Boyle, A. Rubin, B. Weston, S. MacBride, R. Falk, D.Hodgkin, M. Wilkins, P. Weiss, *More Than 50,000 Nuclear Weapons: Analyses of the Illegality of Nuclear Weapons Under International Law*, Alatheia Press, Massachusetts, 1991, p. x-ii.

[40] Francis Boyle, *Defending Civil Resistance under International Law*, Transnational, New York, 1987, p. xix.

[41] Letter from Thomas Robertson (LANAC) to Ian Prior and Owen Wilkes, 11 March 1987.

[42] Interview by Dewes with Weiss, New York, 24 March 1998. See also, Newsletters of the LCNP from 1981-1998 held at LCNP office, New York.

[43] The Executive agreed to:

1. Mobilize lawyers, teachers of law, and judges throughout the world to join in the struggle against nuclear weapons, both as citizens and on the basis of their professional capacity;
2. Sponsor educational activities, including research projects and publications regarding legal aspects of the nuclear weapons debate, for professional groups, political leaders and the public at large;
3. Promote the nonviolent resolution of disputes between nations and the development of institutions designed to support the rule of law;
4. Call attention to violations of international law that endanger world peace and especially those likely to lead to nuclear war;
5. Organise exchanges among lawyers and legal scholars to increase international understanding and knowledge with respect to nuclear weapons and the law;
6. Support arms control treaties, other international agreements and nuclear-free-zone regimes that contribute to the elimination of nuclear weapons.

[44] Keith Suter, 'Lawyers and the arms race: where to now?' *Legal Service Bulletin*, August 1986, pp. 154-158. Quoted from Richard Falk, 'Strategic Deterrence and Nuclear War', *Proceedings of the American Society of International Law*, Washington D C, 1982, p. 23. See also Keith McDonald, 'Peace Protester in a three-piece suit', *The West Australian*, 27 August, 1986, p. VI, Weekend 6.

## CHAPTER 5

### GOVERNMENTS RESPOND



*Prime Minister Norman Kirk farewelling the RNZN frigate Otago as it sets out for Mururoa, June 1973.*

COURTESY NEW ZEALAND HERALD

## CHAPTER 5

### GOVERNMENTS RESPOND

*If one were to look back over the last 25 years of negotiations with cold-blooded objectivity and a total absence of self-delusion, there has not been a single worthwhile treaty on real disarmament. Jaipal [1]*

#### 5.1 Introduction

Within the newly-formed UN in 1946, both the US and the Soviet Union (USSR) produced proposals aimed at banning nuclear weapons. The US Baruch Plan was rejected by the USSR because, whilst effectively allowing the US to maintain its nuclear monopoly, it would have placed control of nuclear know-how and materials in the hands of an international authority dominated by Western interests. [2] During the 1949 Geneva Convention conference, the Soviets presented what was effectively a draft Nuclear Weapons Convention, but after hard US lobbying they were outvoted. Suspicion, fear and power politics prevailed and future attempts seemed futile. In December 1946 the UK Prime Minister Attlee had claimed that 'it was the Government's intention to seek to prohibit the use of the atom bomb'. [3] Yet it was the US, UK and French governments which blocked any inclusion of nuclear weapons in the Geneva Conventions.

This chapter outlines how, from 1945 until the early 1980s, there were numerous attempts by the Non-Aligned Movement (NAM), and several neutral, states to break through the gaming manoeuvres characteristic of disarmament negotiations. They tabled many resolutions and proposals, and used their majority to pass resolutions declaring the use of nuclear weapons a 'crime against humanity' and calling for their prohibition. Two distinguished leaders in this process were Alva Myrdal (Swedish Disarmament Ambassador) and Rikhi Jaipal (India's UN Ambassador, Assistant UN Secretary-General, and later an IPB Vice-President). They

documented how the UN General Assembly (UNGA) is limited to making recommendations on disarmament matters which have no restraining effect on the arms race. [4] The superpowers rejected those which they claimed were 'unrealistic or impractical'. The reality was that the superpowers, despite their outwardly fierce disagreements, secretly colluded because neither of them wished to be restrained by effective disarmament measures. Real nuclear disarmament therefore was replaced by attempts to manage the risks of nuclearism under the term 'arms control', thereby making the world 'safer for nuclearism'.

## **5.2 Treaties and Resolutions: 1945 -1980**

The historic 1961 UNGA resolution declared that 'the use of nuclear and thermo-nuclear weapons is contrary to the spirit, letter and aims of the UN, and, as such, is a direct violation of the Charter of the UN'. It spelt out how their use would cause indiscriminate suffering, which is contrary to the rules of international law, and any state which uses these weapons is therefore 'committing a crime against mankind and civilization'. Similar resolutions were passed by an overwhelming majority in 1972, 1978-81, and 1983. From 1958-85 the UNGA adopted 35 resolutions demanding the ending of nuclear weapons tests.[5] Few countries promoted the ICJ, but in 1956 India sponsored an unsuccessful resolution in the UN Trusteeship Council requesting an advisory opinion on the legality of atmospheric nuclear testing. [6]

Jaipal believed that, from its inception, the UN desperately wanted to outlaw these weapons, but was powerless to do so. Its only recourse was to adopt resolutions prohibiting their use, recommend that the NWS declare they will not be the first to use them, and call on the Conference on Disarmament (CD) to devise political and legal measures to prevent nuclear war. UN studies were prepared by experts nominated by governments. According to Jaipal, the differing views were 'doctored and diluted by the overcautious gentlemen of the UN Secretariat' in order to reach a weak and meaningless consensus, which in turn undermined their credibility and utility.[7]

From 1962, the Mexican and Swedish UN Ambassadors acquired a formidable reputation for criticising the US and USSR for obstructing any real negotiations within the CD. Several treaties were adopted over this period which prohibit nuclear weapons in Antarctica (1959), Latin America (1967), Outer Space (1967), and the Sea-bed beyond the limit of national territorial seas (1973). The 1963 Partial Test Ban Treaty (PTBT) outlawed the testing of nuclear weapons in outer space, under water, and within the earth's atmosphere. Others were designed to reduce the risk of outbreak of nuclear war, such as the Hot Line Agreements (1963), the Accidents Measures Agreement (1972) and the Prevention of Nuclear War Agreement (1972).

These were all partial measures which allowed the nuclear powers to proliferate unabated. The PTBT permitted testing underground while the Threshold Test Ban Treaties of 1974 and 1976 limited underground tests to yields not exceeding 150 Kilotons. The Outer Space Treaty bans nuclear weapons but not other weapon systems, and has been exploited to develop new defensive weapons. Many satellites are in orbit which are potential military targets because they are vital for nuclear targeting on earth. The Latin American Nuclear Free Zone Treaty allows transit of nuclear weapons through territorial waters, and the assurances given by nuclear weapon states (NWS) are subject to certain conditions. [8] The Sea-bed Treaty bans the emplacement of nuclear weapons on the sea-bed, but places no restriction on warships. The 1968 Non Proliferation Treaty (NPT), while outlawing the possession of nuclear weapons for signatory non-NWS, has not prevented proliferation by the five NWS, despite their commitment to Article VI. This binds them 'to pursue negotiations in good faith on effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament'.

The extreme frustration of the non-nuclear states is encapsulated in this statement by the Brazilian Ambassador:

What does it offer besides discrimination for most and privilege for a few? If possession of nuclear weapons is the legitimate right of a few, it must necessarily be the legitimate right of all. If nuclear weapons are not legitimate, they can only be banned and eliminated.[9]

Ambassador Myrdal promoted outlawing nuclear and other 'cruel' weapons. Like MacBride, she argued for an updating of humanitarian law questioning why chemical and biological weapons were outlawed but not nuclear weapons.[10] She called for pressure from the public to force governments to divulge the true facts about the lack of real disarmament. Advocating societal verification of treaties and governments' commitment to them, she called for all states to be open and accountable on these critical issues. In her experience she found that the military, political and legal fraternities had proven not to be the best guardians of humanitarian principles, and that they should be supervised by groups of civilians in as many countries as possible. If officialdom was not prepared to establish such a group, then citizens should create one themselves. She suggested that any new weapon acquisition or production should be screened in light of international law, and all field manuals and military textbooks should be open to public scrutiny. [11]

Jaipal believed that procedural wrangles within the UN concealed fundamental differences over the legality of nuclear weapons. The NWS argue that nuclear war has been prevented by mutual deterrence, and claim their nuclear policies are legal in the absence of any express prohibition of nuclear weapons in any international treaty. They ignore the opinions of the majority of non-nuclear states expressed in numerous UN resolutions and Treaties, which form a consensus that there is already a prohibition on the use of nuclear weapons.[12] Jaipal called for a 'world-wide social movement to restore sanity, legality and morality to the ideologues, technologists, scientists, strategists and political leaders, who have become prisoners of their own invention'. [13]

The IPB under MacBride, with Myrdal and leaders from the Non-Aligned Movement (NAM) leaders, campaigned throughout the 1970s for a UN Special Session on Disarmament (UNSSOD), succeeding in 1978. Its Final Document asserted that 'the most effective guarantee against the danger of nuclear war and the use of nuclear weapons is nuclear disarmament and the complete elimination of nuclear weapons'. [14] UNSSOD I constituted a watershed in the activities of NGOs and resulted in the World Disarmament

Campaign which promoted public education about disarmament throughout the world. [15]

### **5.3 The 1980s: A Decade of New Thinking**

At the opening of the 1982 UNSSOD II, the UN Secretary-General mentioned the growing, increasingly organised and assertive public movement making special reference to:

...millions of people in all walks of life - scientists, physicians, and other experts ...who have voiced a growing fear and anxiety about the present disastrous course. This new expression of popular concern and resolve is an encouraging phenomenon. In a divided and distracted world we witness an upsurge of feelings over an issue that transcends all political differences and is related to common survival. [16]

Many governments acknowledged the growing popular movement and 17 Heads of State shared new insights and proposals. India's Foreign Minister said:

The first and most urgent step in the efforts to root out the menace of nuclear weapons is to agree immediately upon the total prohibition of their use. While there is the Geneva Protocol of 1925 prohibiting the use of both chemical and biological weapons, and there are ongoing negotiations to prohibit, inter alia, the use of radiological weapons, it is strange that the banning of the use of nuclear weapons has not been seriously considered so far.... [17]

He then called for a nuclear freeze, combined with a cut-off in the production of fissionable material for weapon purposes. Mexico and Sweden co-sponsored a nuclear freeze resolution which was later adopted at the 1982 UNGA. Japan reaffirmed its Peace Constitution, spelling out the commitment to the three non-nuclear principles; and the USSR and China offered no-first-use assurances to the other NWS. China also offered unconditional negative security assurances (NSAs) to all non-nuclear states.

An Indian and Mexican draft resolution requested the Secretary-General to:

...appoint a representative group of public persons of great eminence, consisting of statesmen, scientists, physicians, jurists, religious leaders, philosophers, and other suitable qualified persons, for the

purpose of advising on special measures and procedures - practical, political and legal - designed for the collective control, management, and resolution of critical or confrontational situations which could escalate to nuclear war, in addition to those already provided for in the Charter of the UN. [18]

It was barely considered, but was included in the Final Document. Another Indian resolution included a draft convention on the prohibition of the use of nuclear weapons, which was later adopted at the 1982 UNGA. [19]

Although there was failure to agree on a Final Document at UNSSOD II, it did advance various disarmament initiatives which included a CTBT, NSAs, and a Chemical Weapons Convention.

Heads of State also took independent action. In 1980, Swedish Prime Minister Olaf Palme established the Independent Commission on Disarmament and Security Issues which promoted the concept of 'common security'. It stated:

There can be no hope of victory in a nuclear war, the two sides would be united in suffering and destruction. They can only survive together. They must achieve security not against the adversary but together with him. International security must rest on a commitment to joint survival rather than on a threat of mutual destruction. [20]

Its 1989 report concluded that 'a doctrine of common security must replace the present expedient of deterrence through armaments,' [21] and called for the strengthening of international institutions such as the ICJ and for states 'to support the emergence of the rule of law'. [22] An earlier UN study on nuclear weapons had also stated:

If nuclear disarmament is to become a reality, the commitment to mutual deterrence through a balance of terror must be discarded. The concept of the maintenance of world peace, stability and balance through the process of deterrence is perhaps the most dangerous collective fallacy that exists. [23]

In May 1984, the leaders of Argentina, Greece, India, Mexico, Sweden and Tanzania issued the Delhi Declaration, under the auspices of the 'Six Nation Initiative' of Parliamentarians for Global Action (PGA). It aimed to revive negotiations on a CTBT and stated :

All people have an overriding interest in *common* security and the avoidance of war which threatens human survival. ...The support and encouragement of an informed public will greatly strengthen governmental action to reverse the nuclear arms race. [24]

In 1983, Norway's woman Prime Minister Gro Harlem Brundtland chaired a UN World Commission on Environment and Development. Its report was published in 1987 and was the third compelling call for political action, following the Brandt Commission's Programme for Survival and Palme's Common Security report. They all highlighted the interconnectedness between security, development and the environment. These examples illustrate how world leaders responded to public pressure to use the international political system to present credible proposals for action against threats to world security. [25]

Gorbachev challenged the NWS to put these ideas into action; and in 1985 he announced a moratorium on nuclear tests in an effort to break the stalemate on nuclear disarmament. In 1986 he offered three separate proposals for the abolition of nuclear weapons by 1999. When Reagan refused to consider abandoning his Strategic Defence Initiative, negotiations between the US and USSR were halted. Undeterred, Gorbachev joined India's Prime Minister in issuing the 1988 'Delhi Declaration for a Nuclear-Weapon Free and Non-Violent World', outlining a 10-point plan for complete nuclear disarmament.

While none of these proposals resulted in specific action, they influenced global leaders' attitudes towards nuclear weapons. Earlier bilateral negotiations between the superpowers prepared the way for treaties to eliminate certain classes of nuclear weapons under the Intermediate Range Nuclear Forces Treaty (1987), First Strategic Arms Reduction Treaty (START I, 1991-2) and START II (1993).

With the failure of UNSSOD II, the anti-nuclear movement reviewed their strategies. Were their methods of educating, political action, lobbying, demonstrating, and committing civil disobedience inadequate? What other revolutionary measures could be taken to precipitate real action? [26]

Gradually more serious consideration was given to using national and international law. During UNSSOD III in 1988 Sweden's Prime Minister Carlsson reinforced that Six Nation Initiative's Stockholm Declaration which stressed that :

...all states have the responsibility to uphold the rule of law in international relations. Those who possess nuclear weapons have a crucial role. One important step would be to prohibit the use of nuclear weapons. And I believe that the time has come to explore the possibility of such a step... Now that we approach the end of the 20th century, states and political leaders should be civilised enough to accept the rule of law in international relations.

The following year, NAM Foreign Ministers called for a UN Decade of International Law to work towards universal acceptance of the compulsory jurisdiction of the ICJ. The West refused to accept this goal, but the UNGA adopted a watered-down proposal and the UN Decade was declared. Ironically, during the 1991 Gulf War US President Bush called for a New World Order based on the law:

Today a new world is struggling to be born. A world quite apart from the one we have known. A world where the rule of law supplants the rule of the jungle ... America and the world must support the rule of law.[27]

#### **5.4 Unilateral Actions by States**

Meanwhile, frustrated by the ongoing lack of commitment by the NWS to elimination, individual states took unilateral actions to ban them from their sovereign territory. As early as 1963 Denmark enacted a law which prohibited nuclear weapons on its territory and visits by nuclear-armed ships.[28] Later, similar policies were adopted by Sweden, Norway and Finland. However, both Denmark and Norway, as NATO members, maintained the option of receiving nuclear weapons in times of crisis or war. [29] Japan's non-nuclear principles should also preclude visits by nuclear-armed warships. China and India, do not allow nuclear weapons from other NWS to visit their ports. Neutral states Austria, Ireland and

Switzerland ban overflights by nuclear-armed aircraft. The first national NFZs were declared by Mexico (1962) and Sri Lanka (1964).

Up to 23 states adopted policies which prohibit port calls by nuclear-armed warships. However, under the policy of neither confirm nor deny (NCND) of the US, UK and France, only a few maintained the integrity of their policies throughout the 1980s (but not necessarily the 1990s). Amongst these are A/NZ (1984), Belau (1979), Iceland (1985), Iran, Solomon Islands (1984) and Vanuatu (1982). [30] Kobe is the only Japanese port which stringently observes a non-nuclear policy. The rest of the 23 countries (including Egypt, Malta, Nigeria, the Philippines, Seychelles and Spain) expect their policies to be respected by the NWS and trust them to comply. [31] A/NZ passed legislation in 1987 which puts the onus on the Prime Minister to decide if a warship is nuclear-armed, thereby challenging NCND head-on. However, A/NZ accepts NCND in relation to visiting aircraft. Substantial evidence suggests that the US in particular does not honour the nuclear free policies of most of the above-named states. According to a senior US official, NCND is :

...aimed at the publics in allied countries, and at governments prepared to let the US store nuclear weapons on their soil, or to have ships with nuclear weapons call at their ports; provided that their people do not find out. [32]

The US Navy recorded that, in 1984 and 1985 alone, nuclear-armed ship visit days to Denmark, Egypt, Finland, India, Japan, Norway and Sweden totalled 5833, with 5557 for Japan. [33] A/NZ's policy exposed this hypocrisy in relation to ship visits.

Thus, it has been at the periphery rather than the strategic centre of nuclearism that the Cold War really began to melt. Small South Pacific states such as A/NZ, Belau, the Solomons and Vanuatu enshrined their nuclear free status in law or by Constitution in order to maintain the integrity of their policies. Encouraged by the example of the Latin American NFZ (Tlatelolco) Treaty, they worked together to establish a similar zone in the South Pacific.

## 5.5 Nuclear Free Zones (NFZs)

It was in Europe that the idea of regional nuclear (weapon) free zones first took hold. In 1957, Poland proposed a zone covering Poland, Czechoslovakia and the two Germanys. It was the first NFZ proposal to define the essential features as entailing:

... the absence of all nuclear weapons and delivery systems, adequate multilateral inspection and verification systems, a commitment by nuclear weapon states not to use nuclear weapons against zone and territory and implementation through a treaty or other legally binding instrument.

[34]

Not surprisingly it was rejected by West Germany, the US and UK because they argued that it would undermine NATO's nuclear posture. It did however influence subsequent proposals in the Balkans (1959), Asia and Pacific (1957 and 1958), Africa (1960), Latin America (1962), the Mediterranean (1963) and the Nordic region (1963). [35]

The Antarctic became the first demilitarised zone in 1959 with nuclear explosions and the disposal of radioactive waste prohibited. [36] The first NFZ in a populated region was the Tlatelolco Treaty of 1967. Costa Rica had raised the idea in 1958 and in 1960 Mexico linked an Irish suggestion of 'disarmed areas of law' with the Latin American region. In 1961 Brazil submitted a draft UNGA resolution; and in 1963 Mexico, with support from four other states, succeeded in getting it adopted. [37] Three decades later Costa Rica, Mexico and other Latin American states played pivotal roles in the WCP.

In 1962, the Australian Labor Party leader proposed that the Antarctic NFZ be extended to cover the Southern Hemisphere. CND in Australasia petitioned their governments for 'No Bombs South of the Line', which culminated in over 200,000 and 80,000 signatures in Australia and A/NZ respectively. Prime Minister Holyoake affirmed A/NZ's commitment to a South Pacific NFZ but took no action. It was promoted again at the UNGA in the early 1970s by the future Labour Prime Minister Norman Kirk. [38]

In 1975 the UN sponsored a study on NFZs, and at UNSSOD I the idea was affirmed as an 'important disarmament measure'. In 1985, the South Pacific Nuclear Free Zone (SPNFZ) became the second zone in a populated region. It did not, however, prohibit transit by nuclear-armed warships and aircraft; uranium mining; nuclear command, control and communication facilities; or joint exercises with nuclear-armed forces. Watered down by the Australians, it was a far cry from the comprehensive zone promoted during the previous decade by the Nuclear Free Pacific movement and a few determined anti-nuclear island states such as Vanuatu, Solomons and Papua New Guinea. Years later these states, like their Latin American predecessors, were at the forefront of the WCP.

It took another decade before calls for similar zones in Africa (1996) and South East Asia (1995) came to fruition because the NWS and their allies successfully blocked earlier proposals. Their fears were summed up by Admiral Hayes, US Commander of Pacific Fleet, when he justified the US refusal to sign the SPNFZ Protocols in 1988:

If we endorse one zone, then how about endorsing the next one and the next one, and so forth until you have no room remaining to do the things that are necessary to maintain your deterrent posture? If it ever got to that, then we're in trouble. [39]

## **5.6 Conclusions**

While NGOs tried valiantly to persuade politicians to take strong nuclear disarmament initiatives within the UN and nationally, little of real significance was achieved, besides NFZs and the NPT, until the late 1980s with the end of the Cold War. Certain diplomats and political leaders, primarily from the neutral and non-aligned states, persevered within the system; but their efforts remained frustrated by the Cold War mentality and the NWS veto. Myrdal credits the strength of the few UN disarmers to the cohesion of the NAM, whose numbers surged during the 1970s as newly independent nations joined. The NAM worked closely with some of the neutrals and at times they were joined by Western-allied states like Australia and ANZ. However, their role was largely 'as intermediaries

trying to knit together whatever minimal agreement seems possible'. The result was either total failure or some incomplete and ineffective treaties under the label of disarmament. [40]

Countries which succeeded in unilateral and regional actions through Nuclear Free Zone (NFZ) declarations still succumbed to pressure from the nuclear weapon states (NWS) to allow most of their nuclear weapon activities to continue. As long as 'neither confirm nor deny' (NCND) remained, few states could give categorical assurances to the public that no nuclear weapons would be brought into their countries. ANZ's nuclear free legislation was probably the most stringent in its ban on nuclear weapons. The policy was monitored by a group of citizens appointed by the government to hold them accountable to the law. It fulfilled the function of societal verification mooted by both Jaipal and Myrdal.

In direct response to the massive public outcry and UNSSOD I and II, some states took independent action. Political leaders worked together on strategies to reduce threats to global security, publishing reports and prioritising plans of action. Parliamentarians for Global Action (PGA) worked closely with the Non-Aligned Movement (NAM) states to pursue many of these initiatives. The result was a more pro-active parliamentary lobby, both at international fora and in national legislatures.

Inevitably, tensions developed between politicians trying to reflect the public opinion, and the bureaucracy which was relatively immune to the changing whims of the political wing. In ANZ, the high level of public support for the nuclear free policy sustained politicians trying to withstand pressure from the traditional Western allies and a conservative bureaucracy. With the rapid expansion of the international peace movement and the growing opposition to nuclear weapons, Western non-nuclear governments in particular were forced to take notice and reflect public opinion at home and in the UN. With the easing of Cold War enmities in the early 1990s, countries like ANZ would play a key role in forcing policy changes by their allies and supporting more radical initiatives such as the WCP.

## Footnotes.

- [1] Rikhi Jaipal, *Nuclear Arms and the Human Race: To die or Not to Die*, Allied Publishers, New Delhi, 1986, p.201.
- [2] For a detailed outline of these initiatives see Elliott Meyrovitz, *Prohibition of Nuclear Weapons: The Relevance of International Law*, Chapter IV entitled 'The Baruch Plan: A Proposal for Atomic Disarmament', pp. 87- 196.
- [3] 'Atom Bomb Dropped after Jap Peace Plea', *The News Chronicle*, 5 December 1946.
- [4] Alva Myrdal, *The Game of Disarmament: How the US and Russia Run the Arms Race*, Pantheon Books, New York, 1976. See also Gunnar Fredriksson, Lars G. Lindskog, Bo Pellnas, Scune Persoon and Peter Wallensteen, *Sweden at the UN*, Svenska Institutet, Stockholm, 1996, pp. 35-43.
- [5] Jaipal (1986), op.cit., p.204.
- [6] Draft Resolution T/L 498 (15 June 1956) in Stephen Kos, 'Interim relief in the International Court: New Zealand and the Nuclear Test cases', *Victoria University Wellington Law Review*, no. 14, 1984, p. 359.
- [7] Jaipal, op.cit., p. 206.
- [8] Ibid., p. 187.
- [9] Ibid., p. 249.
- [10] Myrdal, op.cit., pp. 226-267.
- [11] Ibid., pp. 265-66, 302-304.
- [12] Jaipal, op.cit., p. 218.
- [13] Ibid., p. 224.
- [14] Homer A. Jack, *Disarm - or Die: The Second UN Special Session on Disarmament*, World Conference on Religion and Peace, New York, 1983, p. 75.
- [15] Jaipal, op.cit., p. 258.
- [16] Jack, op.cit. pp. 35-6.
- [17] Ibid., p. 41.
- [18] Ibid., p. 86-87
- [19] Ibid., pp. 87-9.
- [20] Harry Hollins, Averill Powers, Mark Sommer, *The Conquest of War: Alternative Strategies for Global Security*, Westview Press, San Francisco, 1989, p. 72; See also Kennedy Graham, *National Security Concepts of States: New Zealand*, UNIDIR, Taylor and Francis, New York, 1989, p. 157; Kennedy Graham, 'Common security - a link to the global age', *NZIR*, June/July 1986, pp. 12 -16; Kennedy Graham, 'New Zealand's Non-Nuclear Policy: Towards Global Security', *Alternatives*, vol. XII, 1987, pp.228-242. *A World at Peace: Common Security in the Twenty-first Century*, The Palme Commission on Disarmament and Security Issues, Stockholm, 1989; Shridath S Ramphal, 'Development and the rule of law', *NZIR*, Sept/Oct 1981, vol. VI, no. 5, pp. 2-6.
- [21] Palme Report, op.cit., pp. 6-7.
- [22] Ibid., pp. 8-10.

- [23] *General and Complete Disarmament: Comprehensive Study on Nuclear Weapons* (UN DOC: A/35/392), New York, UN, 1980, p. 157 quoted in Keith Suter, Allan McKnight, *The Forgotten Treaties: a Practical Plan for World Disarmament*, The Law Council of Australia, 1983, p. 5.
- [24] Jaipal, op.cit., p. 249 and 264; Boyle, op.cit., p. 64.
- [25] Graham (1989), op.cit., pp. 156-157; *The Report of the World Commission on Environment and Development, Our Common Future*, Oxford, 1987, pp. xix-xv, 19-23.
- [26] Jack, op.cit., p. 13.
- [27] Address before a Joint Session of Congress on the Persian Gulf Crisis and the Federal Budget Deficit, 11 Sept 1990, 26 WEEKLY COMP.PRES.DOC.1358, 1359, 17 Sept 1990.
- [28] Derek Wilson, *Neither Confirm Nor Deny*, Pacific Institute of Resource Management, Wellington, 1991, p. 23.
- [29] Ramesh Thakur, 'Nuclear ship visits: the Nordic practice', *NZIR*, May/June 1987, vol. XII, no 3, pp. 16-21.
- [30] Michael Hamel-Green, *The South Pacific Nuclear Free Zone Treaty: A Critical Assessment*, Peace Research Centre, Canberra, 1990, pp. 82-104; R.E. White, 'Do We Want the Ships Back?', University of Auckland, May 1987, p. 8; Wilson (1991), op.cit., p. 21.
- [31] R.E. White, *Nuclear Ship Visits: Policies and Data for 55 Countries*, Tarkwode Press, Dunedin, A/NZ, 1989; R. E. White, *The Neither Confirm Nor Deny Policy: Oppressive, Obstructive, and Obsolete*, Working Paper no. 1, Centre for Peace Studies, University of Auckland, 1990; Peter Wills, 'The New Zealand Nuclear Free Zone', Submission to the Defence Review, 1986.
- [32] Former Assistant Secretary of Defence, Morton Halperin stated this before the Senate Foreign Relations Committee during hearings on Nuclear Weapons and Foreign Policy, 93rd Congress, 2nd session 1974, quoted in Derek Wilson, *Neither Confirm Nor Deny*, PIRM, Wellington, 1988, pp.1-2.
- [33] Wilson (1991), op.cit., pp. 35-36; William Arkin, *The Nuclear Arms Race at Sea*, Neptune Papers No 1, 1987; Peter Hayes, Lyuba Zarsky, Walden Bello, *American Lake: Nuclear Peril in the Pacific*, Penguin, 1986, pp. 76, 85, 98; Hamel-Green, op.cit., p. 7.
- [34] K.G.M. Graham, 'Nuclear Weapon-Free Zones', PhD Dissertation, Wellington, 1983, p. 71 and Hamel-Green, op.cit., pp. 8-9.
- [35] Graham (1983), op.cit., pp. 236-238; M. Hamel-Green, 'The UN Role in Facilitating Regional Denuclearization and Arms Control', Paper presented in Melbourne, 2-6 July 1995, pp. 3-6.
- [36] Graham (1983), op.cit., p. 71 and p. 165.
- [37] *Ibid.*, pp. 165-172.
- [38] Elsie Locke, *Peace People: A History of Peace Activities in New Zealand*, Hazard Press, Christchurch, 1992, pp.

180-182; K. Graham (1989), op.cit., p.21. Note the ANZ Labour Party spells their name differently from the Australian Labor Party.

[39] Lesley Stevens, (Film Director), *Niuklia Fri Pasifik*, New Zealand, 1989, Producers: Alister Barry and Philip Shingler.

[40] Myrdal, op.cit., pp. 326-327.

# **PART II**

## **WORLD COURT PROJECT GESTATION: 1986-1992**

*Never doubt that a small group of thoughtful, committed citizens  
can change the world. Indeed, it's the only things that ever has.*

Margaret Mead

## CHAPTER 6

# CITIZENS MOBILISE IN AOTEAROA/NEW ZEALAND: 1986-1990

CASE FOR THE WORLD COURT

being

AN OPEN LETTER

to

THE PRIME MINISTERS

of New Zealand and Australia

in which the writer respectfully tenders  
opinions upon the question of seeking a ruling from  
the International Court of Justice concerning the  
legality or otherwise of nuclear weaponry

Harold James Evans, LL.M.  
Retired Suspendiary Magistrate (District Court Judge)  
Christchurch, NZ, 1965-77)

As Presented to the Two Prime Ministers

19-20 MARCH 1987



*David Lange and Bob Hawke in Canberra*

## CHAPTER 6

### CITIZENS MOBILISE IN AOTEAROA/NEW ZEALAND: 1986-1990

#### 6.1 Introduction

Aotearoa/New Zealand (A/NZ) is the subject of special attention because it became the base for the development of the international World Court Project (WCP) movement. Eventually in 1994, A/NZ became the only Western-allied state to support the UN WCP resolution. This was a direct result of extremely strong anti-nuclear public opinion, and the untiring efforts of a few individuals who devoted much of their time to this initiative for nearly a decade.

Prior to 1980, the A/NZ peace movement was preoccupied with nuclear testing, the Vietnam War and promoting a Southern Hemisphere Nuclear Free Zone (SHNFZ). During the early 1970s there was a period of nonviolent direct action at Moruroa, supported at government level by the dispatch of a frigate to the French testing zone; and an associated contentious case against France in the ICJ by A/NZ and Australia. These actions attracted international media coverage, as did the Peace Squadron confrontations with visiting US and UK warships (1976-84). There was also a strong education campaign about the health and environmental effects of nuclear war and nuclear power generation.

By 1980 a loose coalition of peace groups had begun to coordinate a national nuclear free zone (NFZ) campaign; screen powerful anti-nuclear films; research disarmament initiatives; monitor UN voting patterns; and organise visits by high-profile speakers such as Helen Caldicott, Petra Kelly, Maj Britt Theorin, Richard Falk and Bruce Kent. In 1983, as one of several similar initiatives a NFZ bill was introduced into parliament; and in

1984 the new Labour government pledged to ban visits by nuclear-armed and powered warships. This precipitated a crisis within the ANZUS Alliance and the Ministry of Foreign Affairs.

In their first years in office, Labour helped broker the South Pacific Nuclear Free Zone (SPNFZ), drafted the nuclear free legislation and held a public Defence Review. It was an exciting time for the peace movement. Local NFZs proliferated throughout the country, and hopes were high that Prime Minister David Lange would export the policy globally. Never before had the peace movement had access to so many sympathetic politicians, nor participated so fully in the decision making process. A wide range of people sent in submissions outlining other initiatives which the government could pursue to promote the anti-nuclear policy. The ground was highly fertile for the germination of the WCP.

This chapter describes how a former A/NZ magistrate worked closely with an Australian jurist and the Australasian peace movements to promote and sustain what became known as the WCP. It documents their attempts from 1986-90 to convince both the international peace movement and their governments to support the campaign.

## **6.2 Harold Evans**

Harold Evans is recognised internationally as the primary initiator of the WCP (Figure 4). He, like Seán MacBride, had the 'principled audacity' to pursue a cause which had ramifications far beyond his homeland. What were the factors which underpinned his commitment to a nuclear free world and his faith in international law? What gave him the courage to withstand the ostracism by his former Foreign Affairs and legal colleagues? What were the methods he adopted which eventually helped convince politicians, diplomats, lawyers, doctors and international peace activists to join his campaign?

Harold Evans was born into a conservative Wellington family in 1916. His father was a devout Anglican who became Chancellor of the Wellington Diocese, and A/NZ's Solicitor-General from 1945-57. Young Evans boarded at Christ's College in Christchurch and 'sort of slipped into' a legal career, despite his desire to become a musician. [1] He studied law at Victoria University and became interested in international law after studying the Hague Conventions. After completing his degree, he worked in a law firm before serving with the Royal NZ Air Force in the UK from 1941-45.

There is no history of political activism or outspokenness within the family. Even at university, Evans shied away from more radical groups such as the Student Christian Movement. It was not until he was in a British military convalescent home following a flying accident that he read the works of leading authors such as Karl Mannheim, Erich Fromm, E. H. Carr, and Commander Stephen King-Hall. Later, religious writers such as Dietrich Bonhoeffer, William Temple and Schweitzer also profoundly affected his thinking.

On his return to A/NZ, he worked in the Ministry of Foreign Affairs before being seconded as Secretary to Prime Minister Peter Fraser. One of his most formative experiences was as Associate to Justice Northcroft, the A/NZ Judge on the International Military Tribunal for the Far East in Tokyo. This trial of the major Japanese war criminals lasted from 1946-48. [2] Later he took up private law practice and from 1965-77 he was a Stipendiary Magistrate in Christchurch. He retired early due to his deteriorating hearing; and from 1979-96 he took a strong interest in defence and foreign policy issues, devoting most of the last decade to the WCP.

During the Tokyo Tribunal, Evans and his colleagues often discussed why the victors were trying the vanquished as they had done at Nuremberg. Why not appoint judges from neutral states? Had that been the case, when the Japanese legal team questioned the atomic bombing of Hiroshima and Nagasaki, they might have been allowed to argue its illegality. Under the

circumstances, it was not surprising that this was disallowed. Although this Tribunal was equivalent in stature to the Nuremberg Trials and contained twice the evidence, written material on it is comparatively small. Evans found the Trials revealing:

... They loosened me up, and opened my eyes to all the expediencies that go on - things done by nations apart from principle. [3]

During this time, Evans married the daughter of the wartime German Naval Attaché (an Admiral) in Tokyo, which led to his dismissal from Foreign Affairs on his return to ANZ. [4] In 1949, he wrote to a newspaper challenging the UK Chief of Naval Staff who had contended that 'international law is now virtually erased from the Statute Book because of its non-observance by our enemies'. Evans suggested that the opposite was true, citing the UK's role as a victorious ally at both the Nuremberg and Tokyo Trials in enforcing and upholding international law. [5]

In 1958 he wrote to Prime Minister Nash calling for ANZ to support an immediate and unilateral suspension of nuclear testing, [6] and questioned ANZ support for the British during the Suez crisis. [7] Just prior to his appointment as a Magistrate, he wrote about the independence and impartiality of judges. [8] Later he challenged the Establishment on local issues and won. These early successes possibly encouraged later attempts to question the status quo. [9]

As a Magistrate in Christchurch, Evans was known for his sometimes liberal and controversial opinions. His idiosyncrasies - such as installing a piano in his chambers where he practised - were noted by his colleagues. He prided himself on his independence, and tried to deliver fair judgements in terms of the law and his own conscience, even if it resulted in raising the ire of his more conservative peers. In 1967 he dismissed a case against a homosexual couple, because he considered the charges anachronistic (the Supreme Court objected and his opinion was reversed). Undeterred, he challenged the attempted suppression of the name of a Magistrate's son charged with driving with a high blood alcohol level. Evans' colleagues were

dismayed by his decision to deliver a long critical statement in court to the awaiting media. The Legal Association, the Canterbury District Law Society and the Solicitor-General all disapproved of a Magistrate entering into public discussion on an associate's sentence. Evans thought that silence would be a greater travesty of his judicial oath than going public. [10]

Shortly before his retirement, Evans angered the conservative government by criticising the appointment of a former Prime Minister as Governor-General and publishing a statement during the Queen's visit to Christchurch. Evans declared:

If no other person in an Establishment post was going to say a bloody thing ... I wanted to say something from the judicial position. [11]

The Prime Minister responded publicly:

...when magistrates were appointed they were people knowledgeable in the law who, the Government thought, had wisdom and discretion 'but occasionally the Government makes an error'. [12]

Evans later documented the controversy in his first Open Letter which he sent to all MPs. [13]

### **6.3 Open Letters**

The Open Letter, earlier adopted by Schweitzer, became the vehicle for Evans to challenge a variety of establishment figures on a range of issues. It provided the media with a professionally presented document, including extensive appendices and references. Some read like magisterial opinions, infused with both legal and official language:

It had to be done properly. It was no good waving my arms about. I had to express the case that I wanted to and make the points in a sober and convincing sort of way. My father passed on the desire to write good English, with clarity: believing in the case, but expressing it in a rational and reasonable way so it doesn't necessarily antagonise the person who is reading it. [14]

Over the next 20 years he published over 25 Open Letters or Memoranda at his own expense. They ranged in length from 4-170 pages and were

mostly prepared without secretarial support; and they frequently attracted media attention. He also bought newspaper advertising space to publicise important information such as Lord Mountbatten's 1979 speech, the Nuremberg Principles, and details of the ICJ initiative to coincide with the A/NZ Law Conference on Nuremberg Day in 1987. [15]

The Open Letters covered a range of topics including visits by nuclear ships, the Queen's and churches' roles in opposing nuclearism, the Falklands War, the South African Rugby Tour of A/NZ and the nuclear free legislation. [16] On two occasions Evans mentioned his local support group, the Christchurch Peace Collective, which he joined in 1979. Its activities included nuclear free zone declarations, protests against nuclear warship visits, peace education in schools, publications, public meetings on US bases and ANZUS, letters to newspapers, and lobbying politicians. Some Open Letters grew out of the activities within this group.

In mid-1979 he also joined the more 'respectable' Auckland-based Foundation for Peace Studies (Peace Foundation). An independent, non-partisan, non-profit charitable trust with no political affiliations, it attracted the support of 'establishment' patrons and sponsored visits by leading disarmament experts.

Media coverage of Evans' causes was predominantly sympathetic. However, some journalists raised questions as to his motivation. Was he trading on his status as a retired magistrate in order to get more attention than other ordinary citizens? Was it not somewhat presumptuous to rap leaders over the knuckles for their perceived failings?

His departure from the accepted behaviour of magistrates meant that Evans did feel the 'cold air of disapproval at times', acknowledging that some people thought he was a 'nutter'. This did not deter him from speaking out candidly about issues. He felt a duty to express his views if he thought they were right. [17] However, only a few lawyers were linked publicly with any of his endeavours. Some local lawyers would have preferred him to

speak as an individual, not as a 'retired magistrate'. His choice of attire - a windbreaker and small haversack, instead of the 'lawyer's suit and briefcase' - also offended. 'He didn't embody the nuances, the etiquette, the unwritten characteristics of the profession'. Some found the Open Letter technique distasteful - 'a shotgun approach to anyone and everyone' was not how lawyers worked. 'The soundness of his causes might have been obscured by his personality'. [18] Within the peace movement, however, he was held in high regard for fearlessly challenging the status quo. He endeared himself to local activists because of his honesty, forthrightness, detailed research on peace issues and devotion to the cause.

#### **6.4 Richard Falk's Visit**

In June 1986, Falk gave the Peace Foundation's Annual Peace Lecture. It was hoped that his visit would help stimulate the fledgling ANZ Lawyers for Nuclear Disarmament (LND). Until then lawyers, apart from a few politicians such as David Lange, had been rather quiet on nuclear issues. LND formed in Auckland in October 1984, focusing primarily on securing the nuclear free legislation. Other professional groups of doctors, teachers, architects, scientists and clergy had formed in 1983 after an extremely successful tour by Drs Helen and Bill Caldicott, and worked closely with other peace groups. Following Falk's tour, LND's membership rose to 125, but once the legislation passed in 1987, the group disbanded, leaving only a few to give minimal support to Evans. [19]

Evans dates the WCP's beginnings to the Falk visit:

He made a strong impression in Christchurch (mainly among non-legal people) and in Auckland, where he met and expounded his views to a small group of lawyers (NZ LND). His particular suggestion at that time was for proceedings by NZ in the International Court of Justice for the purpose of clarifying its obligations (if any) under the ANZUS Alliance of 1951. [20] The Government did not take up the suggestion, but Professor Falk's ideas alerted some of us to the possibility of having the World Court render an advisory opinion on the larger question of nuclear weapon (il)legality. [21] (Figure 2)

FEATURES

# 'Take nuclear policy to World Court,' U.S. expert advises

New Zealand should offer to test its anti-nuclear ship legislation in the World Court, advises an eminent visiting American lawyer, Dr Richard Falk, professor of international law and practice at Princeton University.

He will urge that course in talks with the Government, and in submissions to the Foreign Affairs and Defence Select Committee considering the New Zealand Nuclear-Free Zone Disarmament and Arms Control Bill.

Dr Falk, whose most recent book is "Indefensible Weapons: the Political and Psychological Case Against Nuclearism," has been brought here for a lecture tour by the New Zealand Foundation for Peace Studies.

He describes New Zealand's anti-nuclear policies as a relatively uncharted course which the Government has handled in a way that has brought a lot of admiration for the country — and brought it to the world attention in international affairs for the first time.

"The United States is saying that the proposed legislation is incompatible with the A.N.Z.U.S. alliance, which is an international treaty," Dr Falk says.

"From the public relations point of view, New Zealand could offer to have the compatibility of its policies tested by international law, by any method the United States chose.

"It could propose to test the transit rights for nuclear vessels at the International Court of Justice, in the Hague, or within some special framework."

Dr Falk regards New Zealand's anti-nuclear policy as

beneficial to New Zealand, to the Pacific region, and to the struggle for peace throughout the world. "It has been quite inspirational for people in the United States who feel that they are not adequately represented by the Government at present in power when it comes to national security."

It is a mistake, he adds, to assume that the Reagan Administration reflects the American interpretation of what the New Zealand Government has done. As in any democratic society, there is a wide range of points of view in a country as complicated as the United States.

## Survival is threatened

"Many are very grateful that New Zealand seems to be asking what policies uphold its national security, and saying that it is not necessary for countries to assume that their interests are served by subordinating themselves to the super-Powers.

"We are at a very delicate and crucial stage in world history and the arms race, where continuation of present policies will make the world more dangerous and insecure. This is dramatised by plans to go ahead with the 'star wars' programme and validation of the findings of the 'nuclear winter' hypothesis.

"We are faced with ever more destructive technology and with evidence that it poses a threat to

By GARRY ARTHUR

human survival as a whole — a threat that there is no real reason to believe will not at some point be realised."

Dr Falk points out that the Chernobyl disaster was the kind of accident the experts assured the world could never happen. "What we are doing in the military-security area is creating a terribly dangerous structure which will work only as long as there is never a breakdown or a failure."

He says the cost of basing security on threats of mass destruction is the loss of democracy. Such a course concentrates power and the fate of the planet in the hands of one or two leaders who are not accountable. They can make decisions that would unleash terrible destructive power, and the whole world is at their mercy.

"Either those leaders, or those who may usurp their positions, could do it, and we don't know much about it because it is shrouded in such secrecy. Democracy doesn't operate in this area of public policy. It is outside any constitutional structure of accountability.

"The President has never tried to explain the grounds for using nuclear weapons, nor has Congress tried to impose such a framework. It is a form of unconstitutional authority not guided by law, morality, or any premises of religion or spiritual belief."

He feels pessimistic if he

thinks that the prevailing tendencies are inevitable, but he becomes hopeful when he sees the variety of important reactions to these tendencies — "and I place New Zealand's initiatives in that broader hopeful setting."

He believes there is a general capacity for human enlightenment which is stimulated by that kind of thinking. It is the sort of wisdom that comes when lives are threatened by danger — a burst of enlightening energy.

"More and more evidence has accumulated that we really are part of a single human experience," he says, "and the division into states, race, ethnic groups, religions, and ideologies is comparatively artificial."

Dr Falk says the space programme has helped to fashion these images of unity. So have the images that the news media convey, fostering the realisation that we are all involved in the events of the world, including famine and apartheid, and that we cannot escape even if we are in faraway New Zealand.

He sees two opposite potentialities in the nuclear arms race — the potential for failure and disaster, and the potential for reversal of such a dangerous course.

"There is growing realisation," he adds, "that war and violence may not be the answer. People sense that it is an illusion that more military hardware makes one safer. More people realise that the arms race is more

dangerous to the security of New Zealand than is the Soviet Union, and so if you are to promote security, the way is to gain distance from the arms race — which threatens both destruction and political independence and sovereign rights."

A country that is swept into the pattern of geopolitical conflict loses its sovereignty and becomes passive and subordinate to a super-Power.

## Exporting by example

"A reason that it is New Zealand which has stepped across this line is that it has a tradition of fierce independence and individualism — the Kiwi spirit. And its geographical position gives New Zealand the detachment and perspective that enable a more objective appreciation."

Dr Falk is aware of the debate over whether New Zealand should be "exporting" its anti-nuclear policy, but he considers that the best way to export it would be by example — by the successful pursuit of New Zealand's own independent course.

He adds, however, that it is not enough for a country to distance itself from the nuclear arms race. It would also involve closer connection with other countries in the region and efforts to establish a more viable economic destiny so that the powerful states could not easily manipu-

late and frighten. Fear is a tremendous manipulative force, he says, and we must struggle to overcome it.

Dr Falk puts New Zealand's initiative alongside those other countries that are groping for independent policies, such as Greece, Sweden, Tanzania, Zimbabwe, and, to some extent, Canada.

He recognises that the A.N.Z.U.S. pact has rocked out of all proportion to the movement that New Zealand has made. "There has been tremendous over-reaction in Washington. But they're not stupid. What New Zealand has done is important, not because the intrinsic change of policy is important, but because it is an example of a country stepping across that line of passivity — and if little old New Zealand can do it, why not the Philippines, Australia, Greece? It's the threat of the domino effect.

"And there's another thing. Once you cross that line you set in motion a lot of other forces that keep you moving. There is exhilaration in exercising your independence. It builds up a momentum of its own that raises other important questions. Should New Zealand be part of a military alliance? Should it seek a Pacific and Asian identity instead of one based on its Anglo-Saxon background?"

"It's like learning to walk. The first step does not take you far, but the capacity to move yourself is an enormous potential source



Dr Richard Falk: Arms race is more dangerous to New Zealand security than the Soviet Union.

of energy and freedom.

"It also forces the super-Power to examine its own place in the world. It starts reflection and dialogue. There's no question that it's a healthy thing for the United States, too. I think of myself as a loyal American, but I consider the present United States security policy a great

danger to others and to ourselves."

He says the United States is missing the opportunity to reach a fundamental understanding with the Soviet Union, which now, for the first time since the end of the Second World War, has a leadership which genuinely wants to end the arms race.

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Figure 2: Example of media coverage of Richard Falk's visit to Christchurch.

In 1985, the Peace Foundation's lecturer Charlotte Waterlow had summarised and promoted the London Nuclear Warfare Tribunal's (LNWT) findings, [22] and Wellington doctor Erich Geiringer referred to Falk's advisory opinion idea in his anti-nuclear primer, *Malice in Blunderland*. [23] However, it was not until Falk personally shared his experiences and analysis, that ANZ peace activists became enthusiastic about using international law to further the anti-nuclear policy. Groups were already actively linking with international bodies such as the Women's International League for Peace and Freedom (WILPF), the International Peace Bureau (IPB) and the International Physicians for the Prevention of Nuclear War (IPPNW); and women were in regular contact with the Greenham Women and others.

Falk also encouraged the peace movement to study the ingredients of previous social movements which, at their outset, had seemed impractical and unlikely to succeed. These included the campaigns against slavery, royalism, colonialism and infanticide. He suggested building on the 'embryonic' structures which were already in place for global reform, such as IPPNW and IPB. He added:

Another important source to tap is the women's movement with its creative contribution of feminine consciousness. This includes positive images of authority, order and power that do not rest on a hierarchy of violence and patriarchal systems that we have become accustomed to. Similarly we can draw on perspectives on society offered by indigenous peoples of diverse cultures.

Falk articulated some reasons why ANZ had stepped out on the nuclear issue citing:

...the tradition of fierce independence and individualism - the Kiwi spirit. And its geographical position gives NZ the detachment and perspective that enable a more objective appreciation. Once you cross the line you set in motion a lot of other forces that keep you moving. There is exhilaration in exercising your independence. It builds up a momentum of its own that raises other important questions. ... The first step does not take you far, but the capacity to move yourself is an enormous potential source of energy and freedom. It also forces the superpower to examine its own place in the world. It starts reflection and dialogue... it is a healthy thing for the United States ... [24]

With these observations he encapsulated the sense of empowerment within the local peace movement. A year before, the country had been outraged by the sinking of the Greenpeace ship *Rainbow Warrior* in Auckland by French agents. 1986 was the UN International Year of Peace and the country was actively anticipating the nuclear free legislation. A Defence Review was underway, and the government intended appointing a Disarmament Minister and a Public Advisory Committee on Disarmament and Arms Control (PACDAC). Anti-nuclear politicians, keen to placate the burgeoning peace movement, were open to new initiatives.

Falk impressed New Zealanders with his mixture of knowledge and feeling. Like Caldicott before him, he became the catalyst for expanding the horizons of citizens keen to exploit their new-found independence. Falk's brief biographical notes include the following statements:

I have become convinced that two attitudes toward life have special value for me - perseverance despite the odds and receptivity to new ways of thinking, feeling, acting. Of course, discipline and some belief in the importance of what one is doing can also be helpful, as well as sufficient self-confidence to risk failure, and what's worse, seem foolish. All of this implies an essentially religious view of human experience. [25]

These sentiments could apply equally to Evans, who found a kindred spirit in Falk. Evans was so impressed by his three Christchurch presentations that he attended his Auckland lecture and LND's AGM. Inspired by Falk's idea of taking the US to the ICJ, he took immediate action. He felt this initiative provided 'an opportunity of getting the World Court to pronounce upon the legality or otherwise at international law of the use and/or threat of the use of nuclear weapons'. [26] He outlined the proposal to the Minister of Defence Frank O'Flynn, who believed that the anti-nuclear policy was 'not a breach of either the letter or the spirit of the ANZUS Treaty'. [27] Evans then met Attorney-General Geoffrey Palmer who was 'firmly dismissive of the whole idea', indicating that the government had already considered and rejected it. [28]

Unbeknown to Evans, Falk had also inspired Rupert Glover, a Christchurch international law lecturer, who wrote to Lange promoting Falk's ANZUS

proposal and suggested recourse to the advisory opinion.[29] Lange responded:

However, in the final analysis, we do not see this disagreement with the United States as a legal matter and there is no evidence at the present time that the US is taking a specifically legal view of the matter either. If this were to change, we might of course want to review the situation. [30]

As a lawyer, Lange showed real interest and expressed surprise at the lack of serious academic work on this idea. Palmer, also a lawyer, was less forthcoming. There was little point in 'exacerbating the political relationship with the US by pursuing a legal action simply to prove a theoretical point'. He cited the cost, commitment of scarce human resources, and the US withdrawal of acceptance of compulsory jurisdiction of the ICJ as further reasons for not taking the step. [31] When Evans and Glover discovered their mutual paths a few months later, Evans began working for an advisory opinion. [32]

Although MacBride, Falk, Weiss, and the London Tribunal had recommended the advisory opinion route, it was not until late 1986 that there was a concerted effort to secure a group of countries to run with it. MacBride had planned to use his Lawyers' Appeal to build up support before approaching the UNGA and had held unsuccessful discussions with Sweden. Weiss had pointed to Sweden, Vanuatu and ANZ as likely contenders, while Falk singled out neutral states. In 1987 MacBride suggested Mexico, Senegal, Costa Rica, Sweden and Hungary. Vanuatu's economy was too vulnerable and there were no resources to support a campaign. New Zealand in concert with Australia, were the most likely states: they were economically stable and members of the Western alliance. They had previously challenged the legality of France's nuclear testing at the ICJ, and both had strong anti-nuclear movements to bolster the governments.

So the seeds sown by Falk germinated within Christchurch. His legal challenge to ANZUS, which included clarification of the (il)legality of nuclear

weapons, shrivelled and died within the harsh climate of the NZ- US relationship. However, the advisory opinion approach, took root and grew vigorously. In October 1986 Evans met Professor Christopher Weeramantry (former Sri Lankan Supreme Court Judge and later ICJ Vice-President) at Australia's Monash University. Weeramantry gave him copies of his writings which made a comprehensive case for illegality of use, threat, possession and manufacture of nuclear weapons. [33] Bolstered by these, Evans then met another eminent jurist, Edward (Ted) St John in Sydney, who became his staunchest supporter within the legal fraternity.

### **6.5 Edward St John**

Like Evans, St John had a conservative upbringing (Figure 4). The son of an Anglican priest, he was immersed in evangelical traditionalism, growing up with a strong sense of conviction. He felt a moral obligation to take action, and did so often with a biblical fervour, selflessly pursuing the truth. He served with the Australian Imperial Force during the war, started his own law practice in 1945, and became a Queen's Counsel in 1956. He was Acting Judge of the Supreme Court of New South Wales for a brief period, but declined permanent appointment. He chaired the Council of Civil Liberties and was a member of the Malta Constitutional Commission. President of the Australian International Commission of Jurists (1961-73), he served on the International Council when MacBride was Secretary-General. In 1960 he established an Australian anti-apartheid South Africa Defence and Aid Fund, which created bitter enemies within the conservative Liberal Party. Nevertheless, at 50 he became a Liberal MP in a safe seat, despite a vicious campaign by apartheid supporters.

During three years in Parliament 'he assumed the role of a Socratic gadfly, constantly stinging the Liberal government into action on issues that it would much sooner have left alone'. [34] These included: opposing higher salaries for MPs, his government's policies on Papua New Guinea and Rhodesia; and criticising the purchase of the US F-111 fighter bomber. He was labelled a maverick and trouble-maker by his peers, who also

complained of his 'odour of sanctity' and his self-righteousness. The Defence Minister pronounced that '...he is too independent and too pure of heart'. [35] He was not re-elected, and spent time in business before returning to the Bar.

After hearing Falk speak in Sydney in 1986, he wrote a book which explored the development and proliferation of nuclear weapons and the relevant principles and evolution of international law. [36] It was infused with Biblical quotations and drew heavily on the writings of Falk, Jaipal, Myrdal and Delf. He distributed Delf's book to key WCP promoters describing it as follows:

Emotional as it is, it is replete with a multitude of references, a cogent argument in support of his thesis, and his condemnation of the hypocrisy, apathy, pusillanimity and equivocation on the part of lawyers and others which has concealed or failed to proclaim the manifest criminality of nuclear war and nuclear weapons. [37]

Evans and St John also expressed extreme frustration at the lack of enthusiasm by lawyers in the nuclear debate. Like its ANZ counterpart, the Australian Lawyers for Nuclear Disarmament (LND) was a late starter, forming in 1984. It disbanded in 1990 despite intensive efforts by St John to maintain it. He became a patron of Institute for Law and Peace (INLAP), attended the 1987 LCNP Conference, and supported the development of the International Association of Lawyers Against Nuclear Arms (IALANA).

His colourful personality was described in various obituaries as follows:

Edward St John was a restless spirit. He attracted calumny and praise in equal measure. At various times he was dubbed a McCarthyist, a communist, a neo-Nazi, a pornographer and a puritanical wowsler. Even he could not make all of these epithets true. Yet, he was a man of intriguing contradictions ... [38]

Ted St John preached the need for reform in society: he saw public apathy as the root cause of parliament's weakness, exacerbated by the mass media's penchant to pursue a comfortable life. Austere, quietly spoken, driven by a moral fervour, he was unfailingly polite and held firmly to due process. [39]

Evans found another soul-mate in St John. They had similar personalities and convictions. Both loved music and had a commitment to Christianity. Their belief in the paramountcy of the law underpinned many of their actions. Tenacious in their desire to see a successful conclusion to their efforts, they made a formidable pair within IALANA and the WCP. Neither lived in fear of how others perceived them: they exuded the 'rightness' of their cause. Using their extensive contacts, they strove hard to convince others. Evans asked local peace activists to help disseminate the opinions of the six eminent jurists in his first WCP Open Letter:

... they needed your help: indeed without your help, ... their views will remain nicely filed away somewhere. [40]

## 6.6 Approaches to Governments

*Is it possible that this initiative\* will lead to the start of yet another even more vital miracle and someone, somewhere will take that first step along the long stony road which will lead us to an effective form of nuclear arms limitation, including the banning of Tactical Nuclear Weapons? Lord Mountbatten [41]*

(\* Middle East Peace Initiative 1979)

Perhaps it is not surprising that the WCP 'miracle' germinated within the A/NZ peace movement. As Falk had warned, 'without political pressure from the grassroots, any effort to pursue a legal case against nuclear weapons would fail' and international lawyers would 'maintain a discreet silence on the subject as long as this was politically possible'. [42]

The movement had used the law to ban nuclear weapons from A/NZ: so there was considerable public support for pursuing legal avenues aimed at a global ban. The South Pacific and Australian peace movements were also quite strong, and they expected their governments would seriously explore this option. With a strong peace movement; an anti-nuclear policy firmly in place; an active, responsive democracy; a small population and easy access to politicians, A/NZ was well-placed to take a leadership role with Australia and thereby consolidate their tradition of support for the ICJ.

Until 1986, legal challenges to nuclearism had been attempted within sovereign states using domestic and state courts. The ICJ's only nuclear case had been in 1973 on the legality of nuclear testing. Evans therefore sought initial support from NZ's former Minister of Justice, Martyn Finlay who had presented the ICJ case; and from Sir Guy Powles (A/NZ's first Chief Ombudsman and President of the NZ International Commission of Jurists). [43] Both gave almost immediate endorsement. He then asked Weeramantry, Falk and St John to contribute to an Open Letter to the Australasian Prime Ministers. [44]

In 1986, Evans sought permission to reproduce an article by Niall MacDermot, Secretary-General of the International Commission of Jurists. MacDermot replied suggesting that the ICJ should be asked to pronounce separately on: first-use; use; manufacture; deployment and possession, because first-use would gain more support from the judges and was the strongest case. He advised governments to seek the support of many 'third world' states, before launching the matter formally, rather than Australia and A/NZ co-sponsoring alone. [45] Former Australian Labor Prime Minister Gough Whitlam declined a request to write a contribution, but promised to ask all South Pacific Forum member states to accept the ICJ's compulsory jurisdiction. Falk's contribution sought to 'emphasize recourse to the ICJ rather than the potential criminal liability of leaders in nuclear weapon states'. [46] He encouraged the A/NZ-Australia role because 'countries that are in an alliance relationship with the US cannot be dismissed as hostile'.

With the second reading of the A/NZ Nuclear Free Bill due in 1987, the time was propitious for attracting public and government attention.[47] Internationally, there was renewed interest in the nuclear issue. The US had tested again and, along with France and the UK, had refused to sign the SPNFZ protocols.

In March, Evans presented his 100-page Open Letter to Lange in Wellington and Australian Prime Minister Hawke in Canberra. He distributed copies to Senators Janine Haines, Jo Vallentine and Gareth Evans, and

Disarmament Ambassador Richard Butler, who later played significant roles in the WCP. That week an *A/NZ* newspaper reported Lange's initial response: the government had chosen to concentrate on what could be done 'at home and in the neighbourhood' such as the SPNFZ and the anti-nuclear law. [48]

The Evans letter requested the governments to use Article 96 of the UN Charter to request an advisory opinion from the ICJ on the question of the legality or otherwise of nuclear weaponry. Arguments outlined by the six 'distinguished international law jurists' covered the rules based on the Hague Conventions (1899,1907), the Geneva Gas Protocol (1925), the UN Charter (1945), the Nuremberg Principles (1945), the Genocide Treaty (1949) and the Geneva Conventions (1949). [49] They argued that on the basis of these rules/principles, the UNGA has repeatedly condemned the use of nuclear weapons as an 'international crime', 'a violation of the UN Charter' and 'a crime against humanity'. The Shimoda and subsequent legal cases against nuclear weapons also demonstrated an emerging global consensus that nuclear weapons violate 'the laws of humanity and the dictates of the public conscience'. [50]

Hawke's response, though not wholly negative or dismissive, was unsupportive and espoused Australia's view that:

... a stable deterrent relationship between the US and the Soviet Union is the best means currently available of avoiding nuclear war and of providing the necessary confidence to engage in negotiations to reduce, and eventually eliminate, the nuclear arsenals. [51]

Lange, on the other hand, was more encouraging, indicating that he would study the papers in detail and reflect on what the initiative might achieve; but his first priority was to secure the nuclear free legislation. Subsequently, in reply to a Parliamentary Question, on the day the law was enacted, Lange said:

... in so far as the (proposal) is a positive one that looks at testing a critical issue in a quasi-judicial atmosphere, it is one that the Ministry and I are seriously considering. [52]

By June, Lange had become more sceptical - it was election time and he was unlikely to make a decision to proceed until he was firmly ensconced as Prime Minister for another term. He explained:

Before undertaking action through the ICJ, New Zealand would need to be satisfied as to the real effectiveness and purpose of this approach. Hitherto, we have tied our approach to practical and achievable measures. This is what ensures credibility of our policies. Specifically, New Zealand's policy is to support measures designed to encourage mutual, balanced and verifiable reductions in nuclear weapons, and to prevent their use. But there is no point in charging ahead with proposals which amount to no more than empty declarations because they press for the unachievable. ... on disarmament questions NZ works closely with the like-minded countries, notably Australia, in the United Nations. Their views will also be critical to the feasibility of an exercise such as that suggested by Mr Evans. [53]

Following the presentations to both governments, Weeramantry and Falk suggested that Evans send the letter to other UNGA states. Daunted at first by the size and cost of the task, he finally decided to approach the 71 countries with embassies in Wellington and Canberra. In May he invited them to join with other 'like-minded' in promoting the initiative.

By September, Evans had received only 22 replies. Most just acknowledged that the letter had been forwarded to their governments, but a few sent comprehensive responses. Positive but uncommitted responses came from Argentina, Chile, Cyprus, India, Iran, Mexico, Poland, Sweden and Zambia. The Soviet Ambassador requested a meeting with Evans at his Christchurch home to discuss Gorbachev's proposals for using the ICJ. On 11 September, Evans sent a further Open Letter to the 71 missions, which included the responses from Hawke and Lange. This time, nearly 40 countries acknowledged receipt, including the five NWS.

By October 1987, it was clear that the ANZ government had no intention of acting during the UNGA, but indicated it would consult closely with any state that showed interest. [54] In the meantime St John, Weeramantry and Falk attended the New York Lawyers' Conference. Weeramantry publicly 'promoted Harold's idea which was quite well received and fitted in well with Seán MacBride's endeavour to obtain signatures for the Appeal ...'. [55] St

John met with Robert Van Lierop, Vanuatu's UN Ambassador, who was 'very keen' about the proposal. He offered to recommend it to Vanuatu's Prime Minister Walter Lini, and suggested that St John should meet officials and the Foreign Minister when he visited Australasia, noting that he supported the idea. However, nothing transpired partly due to financial constraints, and political considerations on the part of Vanuatu. [56]

So by the end of 1987, nearly half of the 73 countries approached had not bothered to reply, none had shown enthusiasm for promoting the idea amongst other states, and Australia was unsupportive. With Lange's re-election, A/NZ still seemed the only country likely to pursue it.

Evans devoted the next few years to building up public opinion and received considerable media coverage in Australasia.[57] In November 1987, he addressed A/NZ's Foreign Affairs Committee (chaired by Helen Clark), who indicated they would unanimously recommend the initiative to the government. St John persisted with the Australians, despite Judge Kirby's warning that 'for reasons of foolish pride, Australia might not follow a New Zealand initiative'. [58] Between 1987-90, the only real attempts to convince other governments were in 1990 when Disarmament Minister Fran Wilde consulted informally with Theorin, and when Evans and Dewes attempted to interest India, Ireland, Denmark and Canada in discussing the proposal with A/NZ.

Weeramantry had viewed A/NZ's early responses as 'a significant step forward'. He felt that many countries would await steps taken by others, and 'with a little bit of urging some other countries can be made sufficiently interested in this'. At the beginning of 1988 he promoted the Evans proposal when he met UN Ambassadors in New York to lobby for his own resolution on nuclear weaponry and scientific responsibility. [59]

## 6.7 Approaches to Citizen Groups

### *Lawyers*

As already discussed, few A/NZ lawyers supported Evans. Many maintained their distance because the project was viewed as 'a crazy scheme being promoted by a local eccentric who happened to be a magistrate. It was unlikely to succeed and therefore didn't really merit too much consideration'. They felt Evans was on a 'major ego trip', and although Glover was initially active, he did not stay involved:

There was energetic, eccentric Harold in the middle with octopus tentacles going out in lots of directions with lots of little circles at the end; and within each little circle where something had been put, there was no communication around circles on the circumference. There was only communication through the middle, and that communication only occurred when the middle permitted it. [60]

In late 1987, Evans wrote two Open Letters to the A/NZ International Commission of Jurists, and included MacBride's Appeal and an article by an eminent A/NZ lawyer Kenneth Keith. [61] The Commission gave it strong endorsement and urged the government actively to support it. Signalling the government's quandary, the Foreign Minister waited eight months before replying. In the meantime, Evans approached the Australian branch of the International Commission of Jurists and in July 1988 they were joined by the Society of Labour Lawyers in asking their government to join A/NZ in this endeavour.

Evans discovered that a five-day conference for 2,000 lawyers in Christchurch began on Nuremberg Day, 1 October 1987. Seizing the opportunity to educate and mobilise A/NZ lawyers, he placed a full-page advertisement in the local paper. It summarised the Nuremberg Principles, asked participants to sign the MacBride Appeal and detailed the WCP initiative. Readers were asked to send coupons to the Foreign Minister, indicating their support. According to the Ministry only five were returned, and none were from lawyers. Evans continued to search for supportive A/NZ lawyers over the next few years; but it took until October 1990 before

the Public Issues Committee of the Christchurch branch of the Law Society gave public endorsement.

At the international level, it was also difficult to convince Western lawyers that this idea could succeed. MacBride did not mention the advisory opinion in his Appeal, probably because of lack of support. According to Francis Boyle (LCNP Director and Consultant), there was 'little enthusiasm', and later 'outright opposition' from some leading LCNP members to both the Appeal and its subsequent objective of an advisory opinion, which were seen as 'Sean's ideas'. [62] LCNP wanted to establish an international organisation of lawyers along the lines of the Nobel Peace Prize winning IPPNW which was led by US and Soviet doctors. Prior to the August 1987 New York Lawyers' Conference, LCNP asked Boyle to travel to the USSR to lecture on 'Nuclear Weapons and International Law' and to discuss with the Association of Soviet Lawyers (ASL) how to build an international body. Like MacBride, the Soviets were reluctant to have an organisation dominated by lawyers from the superpowers: 'MacBride had convinced them that Third World lawyers should run it' as most of the support for the Appeal had already come from there, not the West. The Association of Soviet Lawyers and LCNP asked Boyle to draft a substantive communique for the conference which included the advisory opinion proposal. [63]

However, according to Boyle, within LCNP there was a 'grave reluctance to criticise US nuclear weapons policies to any extreme' because 'they always wanted to retain their "credibility" with the establishment'. Things came to a head at the conference with MacBride, Sukharev and Boyle on one side and the LCNP hierarchy on the other: 'LCNP reluctantly, and only at Sukharev's insistence' approved the Appeal, and the Boyle draft communique was not considered. [64] The eventual 'New York Anti-Nuclear Declaration' acknowledged the 'earlier momentous contribution made by the IPB, which has obtained the signatures of thousands of leading international figures on its International Appeal, originated and inspired by Seán MacBride', but did not include any mention of the advisory opinion.[65] MacBride, Sukharev, Falk and Gustafsson were among the six

appointed to the preparatory committee to organise what became IALANA. Ironically, MacBride was given a standing ovation for his dinner speech where he outlined his proposal and received considerable support.[66] Weeramantry also promoted the Evans initiative during the conference, and for the first time, both ideas came together. The LCNP Newsletter following the Conference described the MacBride Appeal, and highlighted how 'lawyers are starting to cooperate internationally...' with 'Harold Evans ... leading a multinational campaign to have the UNGA request an advisory opinion'. [67]

It is surprising that Falk, Weeramantry and Weiss were not listed among MacBride's '50 eminent lawyers' promoting the Appeal as all of them had previously advocated the advisory opinion route. However Sir Guy Powles, who had served on the International Commission of Jurists with MacBride, was among them. He was also one of Evans' 'six wise men', along with Weeramantry and Falk. Despite this, Evans did not hear of MacBride, the IPB or the Appeal until MacBride wrote to St John and Evans in July 1987, after receiving a copy of the Open Letter via Bruce Kent.[68] MacBride congratulated them and asked them to support the Appeal. Evans, much to his regret, never replied. [69] Ironically these two men, who had pursued slightly different versions of the same goal from mid-1986 on opposite sides of the planet, did not seek closer cooperation for their initiatives. MacBride's health was failing, he had retired from IPB and did not have funding. With his death less than five months later, and the legacy of the dispute with LCNP, Evans was left relatively isolated as the primary proponent.

St John gave sterling support from Australia, and in mid-1987 sent the Open Letters to INLAW and various US groups. Not surprisingly, he received a lukewarm response from LCNP. Following the 1988 visit by Dewes to New York where she met LCNP's Executive Officer and others, LCNP offered to 'serve as coordinator between Harold Evans, New Zealand activists, the IPB, IPPNW and other organisations and individuals'.

However, nothing transpired, and the New Zealanders were left to coordinate most of the international support until 1992.

Reasons given by LCNP for this inaction included: too many other projects; understaffing ('no assistant, no intern, no volunteers'); underfunding ('it would entail major fundraising'); no researcher to study the feasibility of obtaining the Opinion; and difficult times in the US peace movement. [70] So although Weiss has since claimed that 'seeking the World Court's advisory opinion was an integral part of the LCNP from its inception', it was not considered ripe for action until after the Cold War had ended and IALANA was established.[71] It never became a priority for LCNP during the 1980s and no other individuals or group except MacBride, Evans, St John and IPB were sufficiently convinced by its merits to commit their personal time and resources to it. In fact, MacBride had used most of his Nobel Prize money to fund the MacBride Appeal and to educate the public about the illegality of nuclear weapons.[72]

By contrast, Evans convinced key ANZ activists and groups that it would succeed if enough support was mobilised behind it. Over many years a few people worked voluntarily nearly full-time from their homes. They frequently used their own savings to cover travel, communication and publication costs. Unlike their counterparts in the US and Sweden, the ANZ peace movement was not funded by foundations or government and relied heavily on the generosity of individual supporters.

### ***Physicians***

The visits by the Caldicotts in 1983 and 1984 had boosted the profile and membership of IPPNW (NZ). From the outset, Evans prioritised four ANZ organisations which he hoped would help convince the government to act: IPPNW, LND, United Nations Association (UNA) and the NZ International Commission of Jurists. He saw IPPNW as an integral part of the strategy: 'The world's medical people are professionally and traditionally right alongside the world's legal people, and ought to be in a matter of this

magnitude'. [73] He hoped these groups would help exert pressure on the government. By the end of 1987, LND, UNA, the International Commission of Jurists and the Peace Foundation had officially endorsed the project.

Early in 1988 IPPNW(NZ)'s new President, Robin Briant, asked Evans to speak at the March AGM, where a motion was adopted requesting that the government urgently propose a UNGA request for an ICJ advisory opinion.[74] In June 1988, delegates from 55 countries attending the IPPNW Congress in Montreal passed the following A/NZ-sponsored resolution:

That IPPNW affiliates work with their Governments and United Nations Representatives, to move in the UN General Assembly a request for the International Court of Justice to provide an advisory opinion on the illegality of nuclear weapons in International Law.

The resolution was directed specifically to individual affiliates to work in their own way to promote the initiative. Briant warned Evans that the IPPNW Council had no great enthusiasm to take up the issue at that stage, due to lack of resources and pressure of other projects. She therefore took the responsibility for promoting it, and prepared a brief statement for all affiliates.

The Malaysian affiliate, led by Ron McCoy, was particularly interested in it. [75] He later became an adviser to the Malaysian government when it took a leading role in the WCP, and in 1995 he was elected Vice President of the IPPNW Asia-Pacific Region and appointed by the Australian government to the Canberra Commission on the Elimination of Nuclear Weapons. IPPNW (Italy) reported to Evans that in 1984 they had held a symposium on the illegality of nuclear weapons: of special interest had been 'the articles of the Italian Constitution which make American military bases and the deployment of mass destruction and first strike weapons illegal'. [76]

Figure 3: Some key international personalities mentioned in the text.



RIKHI JAIPAL



Alva Myrdal



Ron McCoy: IPPAH, Malaysia



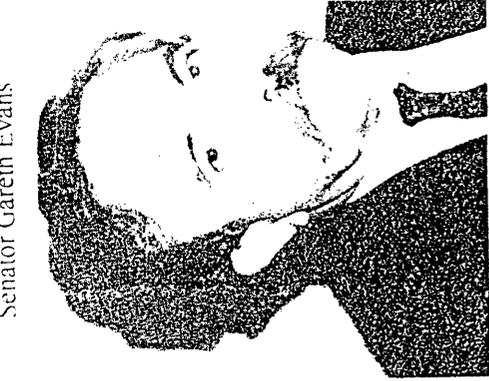
Sir Guy Powles



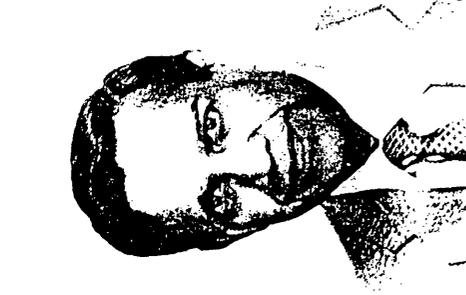
Richard Falk



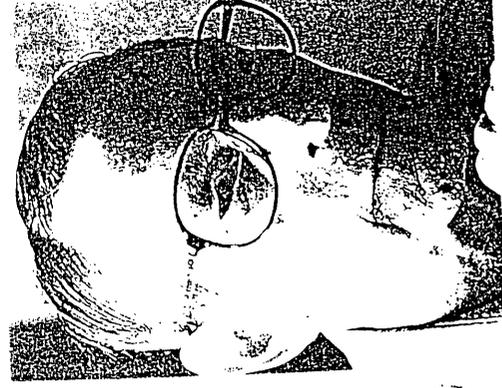
Senator Gareth Evans



Mexican Ambassador Miguel Marin Bosch

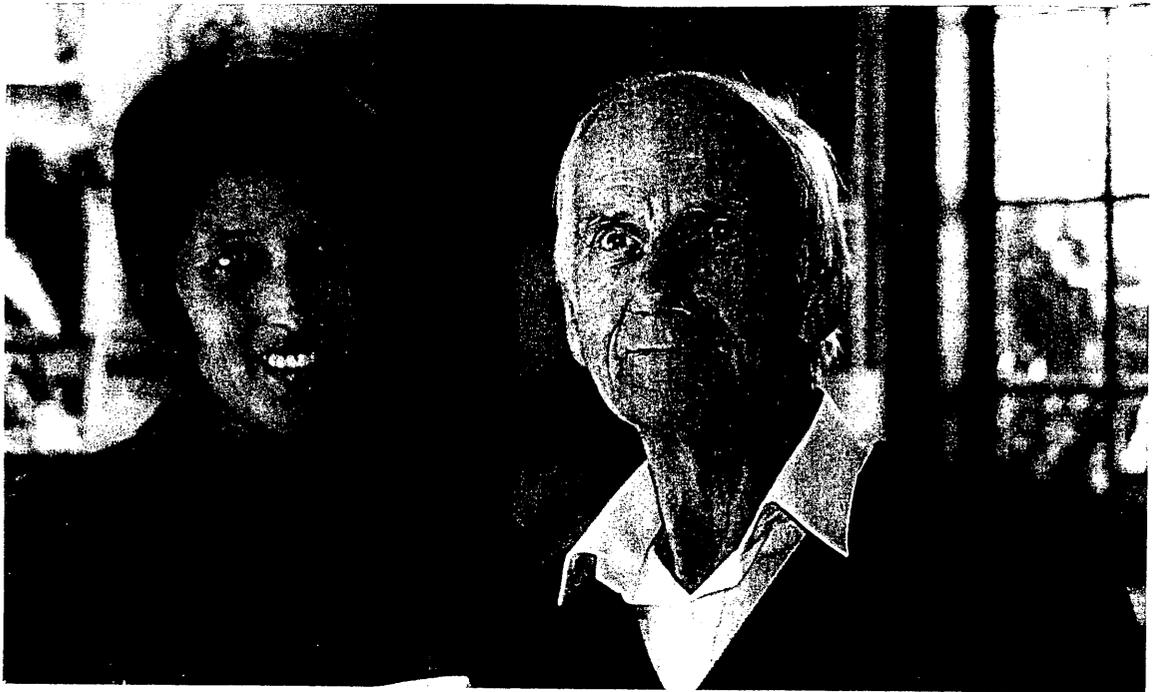


C G WEERAMANTRY



Dr Martyn Finlay

Figure 4: Some key personalities and the PACDAC Committee.



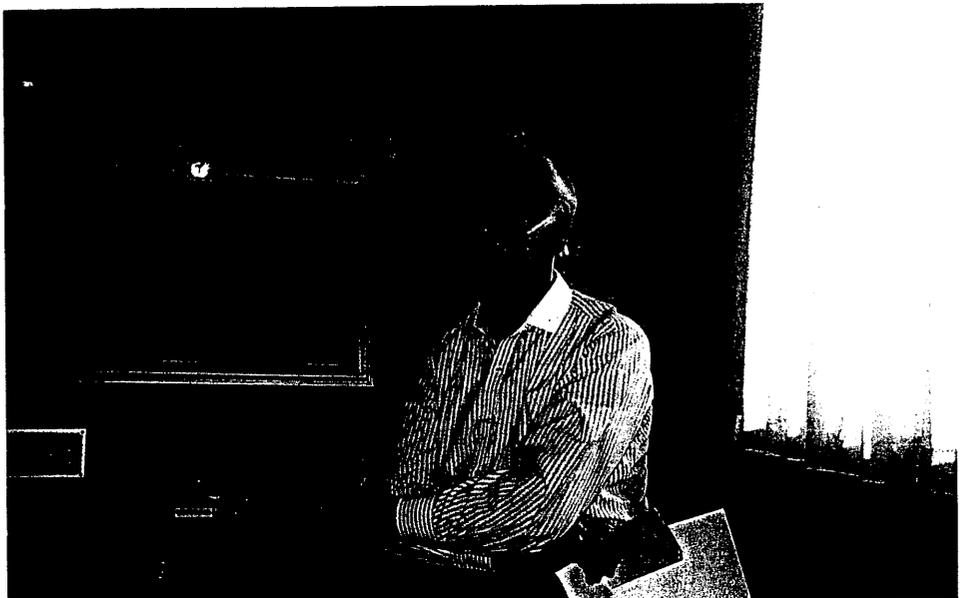
Kate Dewes

Harold Evans



Public Advisory Committee on Disarmament and Arms Control 1987-1990  
Neil Cherry, Kate Dewes, Laurie Salas, Rod Alley, Fran Wilde, Robin Briant  
Frank O'Flynn (Absent: Manuka Henare, Mary Woodward)

Edward St John



Although IPPNW was the first major international organisation to endorse the project, the onus was on individual affiliates to pursue it in whatever way they saw fit. Not surprisingly, few chose to act independently. In fact IPPNW, like IALANA and LCNP, did very little on this until early 1991 after others had built up the international, NGO and government support. Initially, few IPPNW International Council members thought it would succeed. [77]

### **6.8 Public Advisory Committee on Disarmament and Arms Control (PACDAC) and the Third UN Special Session on Disarmament**

The PACDAC was appointed in December 1987, under Section 16 of the *NZ Nuclear Free Zone, Disarmament, and Arms Control Act (1987)*. The Committee's function was to advise the Prime Minister and Minister of Foreign Affairs on the implementation of the Act, and on 'any disarmament and arms control matters it thinks fit'. The initial eight appointees included the former Minister of Defence Frank O'Flynn, Robin Briant, Dame Laurie Salas (UNA) and three Peace Foundation office holders (including the author) (Figure 4). When the Evans proposal was discussed at PACDAC's first two meetings in early 1988, most members were already very supportive.[78] Foreign Minister Russell Marshall agreed informally to float the idea among delegations at the forthcoming UNSSOD III, where Dewes represented PACDAC as an adviser on the government delegation. She was asked to 'sound out' NGOs and diplomats about the WCP and report back to the committee. This was fortuitous, providing a unique opportunity to gain access to diplomats and leaders of the peace movement.

However, even before the UNSSOD began, Marshall's correspondence with Evans revealed strong misgivings about the project. While tempering his remarks with the rider that he personally found the idea attractive in principle, he articulated his concerns about the outcome: even if the ICJ were to opine illegality, it would be ignored by the NWS, which would undermine the ICJ's authority. Traditionally, ANZ did not support

declaratory initiatives which were unlikely to make a practical contribution to disarmament. [79] During PACDAC meetings, Ministry officials also raised concern over the allegedly inordinate costs involved in taking the case. Similar reservations were expressed by Australia's Foreign Minister.

At the UN, Dewes spoke informally with the Swedish and Indian delegations, which included Theorin and Jaipal. She also briefed representatives from IPB, LCNP, IPPNW and US, Canadian, Japanese, Mexican and Nordic NGOs. The IPB was promoting MacBride's Appeal, but was not actively seeking government sponsorship of a UN resolution. An important meeting was held with Rikhi Jaipal and the Director of the ANZ Foreign Ministry's Disarmament Division, Brett Lineham. Jaipal confirmed that Indira Gandhi had explored the idea in 1981 and that the former ICJ President Nagendra Singh, the Chief Justice of the Indian Supreme Court, and the Indian Society for International Law were supportive. Indian academics believed there was a strong case for illegality. Several ICJ judges had indicated that the wording of the question was very important, and the time was ripe for the matter to come before the Court. [80] Theorin wanted the idea researched more fully by her Ministry, and agreed to discuss it during a visit to ANZ later that year.

Dewes highlighted the proposal in her NGO speech to the UN Committee of the Whole [81], and it was mentioned in the Minister's UN speech. [82] It was also advocated at the parallel NGO International Peace Conference. Copies of a substantial *Canberra Times* article outlining Marshall's intention to 'float' the idea at UNSSOD III, and support from the Australasian International Commission of Jurists, were widely distributed amongst NGOs and some diplomats. This brought some pressure to bear on both Foreign Ministers, whose photos were also in the article. [83]

Evans was encouraged by Irish Prime Minister Haughey's strong speech, and wrote to him enclosing MacBride's 1987 letter and recent media coverage. He suggested that Haughey discuss the proposal with Lange and Hawke during his forthcoming visit to Australasia. He also wrote to the

Canadian High Commission with a similar proposal when their Deputy Prime Minister visited A/NZ. Evans offered to draft a UN resolution in consultation with the LCNP for possible submission to the 1988 UNGA; but most of his letters and faxes to LCNP went unanswered. This surprised him, as he was unaware of the LCNP's earlier reluctance to support MacBride's initiative.

Evans persisted with Foreign Minister Marshall and Prime Minister Lange, urging specific action. Marshall side-stepped the decision, opting for more time for PACDAC to consider the proposal. He signalled his ambivalence by offering Harold Evans, Sir Guy Powles and Edward St John an afternoon meeting with PACDAC and Ministry officials in late November - too late for any UNGA action. This compromise demonstrated the Minister's commitment to ongoing consultation, but partially appeased PACDAC.

Prior to this meeting, a *Canberra Times* editorial had castigated the Australian government for its inconsistency in supporting a ban on chemical weapons while refusing to take up this issue. The *Auckland Star* ran a full-page feature documenting public support for the case. [84] Australian Senators Haines and Vallentine persisted with parliamentary questions, forcing Senator Evans to confirm sympathy for the cause, and to reiterate the government's decision not to support it.

In November 1988, PACDAC witnessed an historic struggle between the democratic wishes of the people and the *realpolitik* of the bureaucracy. Powerful presentations were delivered by Powles, St John and Evans. These were countered by the Ministry's legal advisers Kenneth Keith, Chris Beeby and Colin Keating. [85] They outlined their earlier concerns, which were reported in the PACDAC minutes as:

...the West has placed a heavy reliance on nuclear weapons and the first use of nuclear weapons because of what it perceived as a conventional Soviet advantage. The West would view the initiative as aimed directly at their strategic posture. The United States and its NATO allies would not respond favourably to an opinion condemning the first use policy as criminal. It would be a severe reaction. .... (The Ministry) was

sure that the Australians would be lobbying to stop the New Zealanders taking the initiative, and ...the proposal would be opposed by a large number of Western countries and would be met with a great deal of anxiety by them.. NZ's participation would be viewed most suspiciously. [86]

Other reasons for their reluctance included: a possible negative decision by the Court which would jeopardise its reputation; costs of up to US \$1million coupled with ongoing Ministry budget cuts; the lack of impact of advisory opinions; the Court might side-step the case as they had done over South West Africa in 1966 and in the 1973 nuclear testing case; the presence of five ICJ judges from the nuclear weapon states; and the effect of a negative decision on existing disarmament negotiations. Despite these reservations, PACDAC passed another unanimous resolution which read:

Bearing in mind resource constraints the Committee recommends the implementation of the proposal by Mr Harold Evans and eminent jurists that New Zealand officially in 1989 propose in the UN General Assembly that the ICJ adjudicate on the legality or otherwise of nuclear weapons.

The Minister agreed to present a paper to Cabinet in February 1989 recommending that the government support the initiative. [87] However, in March 1989, Fran Wilde succeeded Marshall as Disarmament Minister. She informed PACDAC that the government was unable to pursue the proposal, but that she 'wanted to keep it on the table' by appointing Lineham to the UN Comprehensive Study on Nuclear Weapons chaired by Theorin. However, its 1990 report carried only a two-page discussion of the legality question, due to the 'consensus' decision making demanded by the team's pro-nuclear members. [88] Despite Wilde's announcement, PACDAC passed another forthright resolution urging the 'continuing support of the Government in furthering attempts to assess the matter of the legality of nuclear weapons by seeking the opinion and support of other governments through whatever means are available'. Throughout 1990, PACDAC actively pursued the proposal and ensured input into the UN Study from international lawyers. Dewes provided Committee members, Ministers and their officials with books and articles by international lawyers outlining the arguments.

Evans persisted, refusing to accept Wilde's authority to make the final decision. In April 1989, he wrote another Open Letter to Lange demanding a response from the highest level. He further alienated Ministers by publishing Palmer's letter containing confidential reports of 'soundings' made by officials with ICJ judges, and diplomats from some neutral and non-aligned states. Lange responded by referring Evans back to Wilde's recommendation. Palmer's curt and dismissive reply reflected the government's exasperation. They hoped he would accept that the time was not right, and direct his energies at other governments.

Right up to the October 1990 election, Wilde promoted the initiative with a few other politicians internationally, and explored the possibility of co-sponsorship with Sweden during the 1990 UNGA. [89] With the resounding defeat of the Labour government in late 1990, and replacement of seven PACDAC members in 1991, the opportunity for A/NZ leadership seemed doomed. A glimmer of hope emerged when Weeramantry was elected as an ICJ Judge in late 1990. He received an absolute majority in both the UNGA and the UN Security Council, in spite of his publications on the illegality issue and being an IALANA Vice-President.

## **6.8 Conclusions**

MacBride's Appeal attracted support from a wide range of international lawyers and raised awareness about its ultimate aim of obtaining an advisory opinion. Although it was not given priority by LCNP, it made a major contribution towards the eventual mobilisation of international lawyers.

Falk's 1986 A/NZ visit was fortuitous. He was the link between LCNP, MacBride and the Australasian anti-nuclear movement. He had a unique grasp of the issues of nuclearism and international law, combined with an analysis of how peace movements work. He aroused the 'activist lawyer' in both Evans and St John who, with their unique contacts in the Australasian legal and political fraternity, were best placed to take leadership roles in a

legal initiative. He called for a new way of thinking, feeling and acting, thereby enthusing others about working together to use international law in the struggle for a nuclear free world.

He recognised the power of the 'Kiwi spirit' with its 'fierce independence and individualism', and acknowledged A/NZ's unique role as a firmly anti-nuclear state allied to a nuclear superpower. The strength of the peace movement provided Evans and his supporters with a solid base from which to lay the foundations for the project. Evans and St John combined legal expertise with persistence, outspokenness and passion for their cause. Together with other activists from well-respected NGOs, links were forged between influential international groups such as IPB, IPPNW, INLAP, LCNP, IALANA, CND (UK) and PGA. With the decision by A/NZ not to sponsor a WCP resolution at the 1990 UNGA, it was left to these committed individuals and groups to convince key international NGOs to commit resources and expertise to ensuring that the momentum built up over the past four years was not lost.

#### Footnotes.

[1] Interview by Dewes with Harold Evans, April 1996.

[2] See 'Index to the Records of the International Military Tribunal for the Far East, 3 May 1946-4 November 1948', compiled by K.M. Wells from the personal papers of Justice E.H. Northcroft, University of Canterbury Library, Christchurch, 1983.

[3] Interview by Dewes with Harold Evans, April 1996; Arnold Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials*, William Morrow and Company, New York, 1987.

[4] Edward St John, 'Judgment at Hiroshima: The people of the Earth versus the President of the United States', (Unpublished book draft- later published in Japan in 1995), 1992, pp. 136 -137. (See bibliography for list of places where the draft can be obtained).

[5] Letter to the Editor, *Evening Post* (Wellington) by Harold Evans, 14 September 1949.

[6] Telegram to Prime Minister Nash, 28 April 1958 and reply from Nash on 13 May 1958, (Personal correspondence of H. Evans).

[7] Letter from Alistair McIntosh (Secretary of External Affairs, 1943-66) to Harold Evans (30 January 1957) reprinted in *Open Letter to Ministry of Foreign Affairs*, December 1980, p.12. 'I am sure the British have never

committed a more stupid action in the whole of their national history. I felt, and still feel, bewildered and sick over the whole thing. Our justification for the Government's line is simply that one stands by one's friends, especially when they are in a hole; and more especially, perhaps, one stands by them out of loyalty when one knows they are wrong.' See also, Harold Evans, 'Not yet unconcerned outsiders', *Church and Community National Council of Churches in New Zealand*, vol. 29, no. 5, July 1972, pp. 4-5.

[8] Harold Evans, 'The Independence of the Judges', *The New Zealand Law Journal*, 20 February 1962, pp. 65-66.

[9] Garry Arthur, 'Harold Evans, SM., turned his back on the Establishment', *Christchurch Press*, 20 June 1980; See also, Harold Evans, 'New Zealand's role ahead - victim or venturer?', *NZIR*, vol. X, no. 2, March/April 1985.

[10] Penny Deans, 'Unlikely crusader takes up his pen', *Christchurch Star*, 11 April 1981.

[11] *Ibid.*

[12] Prime Minister Muldoon reported in *The Press*, 8 March 1977, in Harold Evans, 'Case against Robert Muldoon and his National Party Government', Pegasus Press, Christchurch, November 1978, p.12.

[13] Harold Evans, 'Case for Change', Open Letter to all MPs, Pegasus Press, Christchurch, May 1979, 14 pp.

[14] Evans Interview (1996).

[15] 'The Threat from Nuclear Arms - Lord Mountbatten's warning', *Christchurch Press*, June 1980; 'Law Report: Nuremberg Day', *Christchurch Press*, 1 October 1987.

[16] A list of the Open Letters is included in 'Sources Consulted'.

[17] Arthur, *op.cit.*, and Deans *op.cit.*; Ken Coates, 'Queen told how to do her job in open letter', *Christchurch Press*, 19 October 1983.

[18] Interviews with some Christchurch lawyers who prefer to remain anonymous.

[19] Philip Recordon, 'New Zealand Lawyers for Nuclear Disarmament', *Canterbury Law Review*, vol. 3, no. 1, 1986, p. 168-169.

[20] Garry Arthur, " 'Take nuclear policy to World Court', U.S. expert advises", *Christchurch Press*, 25 June 1986.

[21] Harold Evans, 'The World Court Project on Nuclear Weapons and International Law', *NZLJ*, July 1993.

[22] C.M. Waterlow, and D.M.A. Leggett, *The War Games that Superpowers Play : An Examination of the Motives and Misperceptions which Sustain the Nuclear Arms Race*, London Centre for International Peacebuilding, 1985, pp.31-33.

[23] Erich Geiringer, *Malice in Blunderland: An Anti-Nuclear Primer*, Benton Ross, Auckland, 1985, p. 78.

[24] *Christchurch Press*, 20 June 1986.

[25] Biographical notes of Richard Falk reprinted by Harold Evans in 'Open Letter to the Prime Ministers of NZ and Australia, Case for the World Court', 19-20 March 1987, Appendix 8.

[26] Letter from Evans to Sir Guy Powles, 11 September 1986.

[27] Letter from Evans to Frank O'Flynn, 31 August 1986, p. 2; O'Flynn's Parliamentary Statement on 7 August 1986; *Christchurch Star*, 28 August 1986.

[28] Letter from Evans to Powles, 11 September 1986.

- [29] Rupert Glover, 'Is a Nuclear-Free ANZUS Possible?' *CLR*, vol. 2, 1985, pp. 328-342.
- [30] Letter from David Lange to Glover, 16 September 1986.
- [31] Letter from Geoffrey Palmer to Evans, 7 October 1986.
- [32] Speech by David Bowman, senior journalist with *Sydney Morning Herald* to Media Seminar, Canberra, October 1990; Memo from Evans to supporters, 29 September 1986, 3 pp. Rupert Glover, 'Jurisprudence of Nuclear Weapons' in Colin Burrows, ed. *The Nuclear Predicament: Problems and Solutions*, "Peacewriters", University of Canterbury, Christchurch, July 1987.
- [33] C. G. Weeramantry, 'Nuclear Weaponry and Scientific Responsibility', *Indian Law Institute Journal*, vol. 27, no. 3, July-September, 1985; C. G. Weeramantry, *The Law in Crisis*, Capemoss, London, 1975.
- [34] Mungo MacCallum, 'Maverick Liberal caused a storm', *The Australian*, 1 November 1994; Tony Stephens, 'They came to honour Edward St John: a pilgrim of the power of one', *Sydney Morning Herald*, 4 November 1994; 'A crusader who put his party second', *SMH*, 26 October 1994. Obituary notes of Justice Michael Kirby and Stella Cornelius.
- [35] MacCallum, op.cit.
- [36] St John, op.cit.
- [37] Evans, (1987) op.cit., p. 5, Appendix 1.
- [38] Justice Michael D Kirby, 'Edward St John QC - Valiant for Truth', Obituary notes, 27 October 1994, p.1.
- [39] David Bowman, draft obituary on St John submitted to *Daily Telegraph* (London), November 1994, p. 4.
- [40] Letter from Evans to Christchurch Peace Collective members, 17 March 1987.
- [41] Mountbatten, op.cit.
- [42] Richard Falk, 'Towards a Legal Regime for Nuclear Weapons', *McGill Law Journal*, Montreal, vol. 28, 1983, p. 532.
- [43] Hank Schouten, 'Idealist and servant of the public', *Evening Post* (Wellington), 26 October 1994; 'Inspirational New Zealander', Editorial, *Dominion* (Wellington), 27 October, 1994; 'Sir Guy Powles a fighter for justice and liberty', *Dominion*, 27 October 1994.
- [44] Evans, (1987), op.cit.
- [45] Letter from Niall MacDermot to Evans, 5 February 1987.
- [46] Letter from Falk to Evans, 9 February 1988.
- [47] Letter from Harold Evans to Richard Falk, 28 January 1987.
- [48] Murray McLaughlin, 'Jurists urge test on nuke legality', *Dominion Sunday Times*, NZ, March 22 1987.
- [49] These are summarised as:
1. It is prohibited to use weapons or tactics that cause unnecessary or aggravated devastation or suffering.
  2. It is prohibited to use weapons or tactics that cause indiscriminate harm as between combatants and non-combatants, military and civilian personnel.
  3. It is prohibited to use weapons or tactics which violate the neutral jurisdiction of non-participating states.
  4. It is prohibited to use asphyxiating, poisonous or other gas, and all analogous liquids, materials and devices, including

bacteriological methods of warfare.

5. It is prohibited to use weapons or tactics that cause widespread, long-term and severe damage to the natural environment.
6. It is prohibited to effect reprisals that are disproportionate to their antecedent provocation or to legitimate military objectives, or disrespectful of persons, institutions, or resources otherwise protected by the laws of war.

[50] IALANA, 'Nuclear Arms and the Law', The Hague, August 1990, pp. 13-15; David Birman, (ed) & LCNP, 'Statement on the Illegality of Nuclear Warfare', New York, 1990, pp. 16-17.

[51] Letter from Hawke to Evans, 1 June, 1987.

[52] Parliamentary Question from Jim Anderton to Lange, 4 June 1987.

[53] Letter from Lange to Rev. David Taylor, 22 June 1987.

[54] Letter from Geoffrey Palmer to St John, 4 October 1987.

[55] Diary notes from Ted St John, 17 September 1987.

[56] Ibid.; Correspondence between St John and van Lierop from October 1987 to February 1988.

[57] Harold Evans, 'Time to test a critical issue', *Dominion*, 9 May 1988;

Murray McLaughlin, 'Humanity v the Bomb', *The Listener (NZ)*, 12

September 1987, pp. 32- 34; Ian Mathews, 'Bowling to the Bomb', *Canberra Times*, 30 July 1989, (Magazine); Letter to Editor from Evans, 'Outlawing nukes', *The Dominion*, 24 March 1988.

[58] Letter from Justice Kirby to Evans, 9 December 1987.

[59] Letter from Weeramantry to Evans, 25 June 1987.

[60] Interview by Dewes with Glover, 7 May 1996.

[61] Kenneth Keith, 'Nuclear Weapons and the Law: a Legal Viewpoint', *Law Talk*, 16 September 1987.

[62] Email from Francis Boyle to Dewes, 15 September 1998.

[63] Email correspondence between Boyle and Dewes, 16-18 September 1998; Francis A. Boyle, *The Future of International Law and American Foreign Policy*, Transnational, Dobbs Ferry, New York, 1991, pp. 355 - 368.

[64] Email from Boyle to Dewes, 16 September 1998.

[65] 'The New York Anti-Nuclear Declaration', *LCNP Newsletter*, vol.3,no.1, Winter 1987/1988, p.9.

[66] John Burroughs, 'Lawyers Tackle Nukes at NYC Conference', *Bay Area Lawyer Guild Newspaper*, Nov/Dec 1987.

[67] *LCNP Newsletter*, vol.3,no.1, Winter 1987/88, pp. 3 and 7.

[68] Letter from MacBride to Ted St John, 25 July 1987; Letter from MacBride to Evans, 13 July 1987.

[69] Conversation between Evans and Dewes, 22 September 1998.

[70] Letter from LCNP Executive Director Alex Miller to Jerome Elkind, 13 July 1988; Letter from LCNP Executive Director David Birman to Jerome Elkind, 11 September 1989, Paper by Birman to LCNP Executive Committee, 17 March 1989, p. 2.

[71] Ved P. Nanda and David Krieger, *Nuclear Weapons and the World Court*, Transnational, New York, 1998, Chapter 5. Communication to David Krieger from Peter Weiss, 3 December 1997.

[72] Letter from MacBride to Dr Armand Hammer, 2 June 1987.

[73] Letter from Evans to Ian Prior, Philip Recordon and Laurie Salas, 2 October 1987.

- [74] Letter from Robin Briant to Evans, 8 February 1988, and Briant to Lange, 29 March 1988.
- [75] Letters from Briant to Evans, 13 June, 8 August and 8 September 1988.
- [76] Letters from Dr Maurizio Nazari, AIMPNG, to Evans, 9 February and 20 March 1989.
- [77] Interview by Dewes with Mary-Wynne Ashford, Ottawa, 27 April, 1998; Interview by Dewes with Ron McCoy, New York, 20 April 1998.
- [78] PACDAC members were: Frank O'Flynn, Salas, Briant, Neil Cherry, Manuka Henare and Mary Woodward, Roderic Alley and Dewes (Peace Foundation officers).
- [79] Letters from Marshall to Evans 17 May 1988 and NZ International Commission of Jurists, 5 August 1988.
- [80] Report of UN meetings to PACDAC by the author, 21 July 1988.
- [81] The Committee of the Whole was for all UNSSOD III delegates and NGOs.
- [82] Marshall's speech to the UN included the following:  
 'Most New Zealanders focus on nuclear weapons and their elimination as the major task of the international community. There is great concern in my country about the morality of nuclear weaponry. Some would like to see the legality of nuclear weapons tested in international law.' (June 1988)

The author's UNSSOD III speech included the following:

'We strongly urge all nations and peace groups to support a move by jurists in NZ and in other countries to have the ICJ give an advisory opinion on whether or not nuclear arms are legal. The symbolic power of such a ruling would be immense, perhaps even more so than the spreading of nuclear weapon free zones'.

- [83] Ian Warden, 'NZ struggles to illegalise nuclear arms', *Canberra Times*, 8 June 1988.
- [84] 'Opinion of World Court has value', *Canberra Times*, 10 October 1988; Phil Twyford, 'One-man mass movement: Former jurist on the warpath', *Auckland Star*, 4 October 1988.
- [85] Both Keith and Beeby had been members of the NZ government delegation to the ICJ in 1973.
- [86] PACDAC Minutes, November 1988. Copies released to Peace Movement Aotearoa under the Official Information Act.
- [87] Notes taken by St John during PACDAC meeting, 28 November 1988.
- [88] Interviews with Theorin, May 1994 and Lineham, 4 August 1995. United Nations, *Comprehensive Study on Nuclear Weapons: Report of the Secretary General, A/45/33*, New York, 18 September 1990, pp. 130-131. See also 1980 UN study, *Comprehensive Study on Nuclear Weapons*, UN Publication (E. 81.1.11), para. 519: 'The concept of the maintenance of world peace, stability and balance through the process of deterrence is perhaps the most dangerous collective fallacy that exists.'
- [89] For a summary of events from 1986-1989, see Harold Evans, 'An attempt to bring before the International Court of Justice the question "Are nuclear weapons legal or illegal"', in Gordon Rodley, ed., *Beyond Deterrence*, Centre for Peace and Conflict Studies, University of Sydney, 1989, pp. 241- 247.