

CHAPTER 10

BUILDING PUBLIC AND GOVERNMENT SUPPORT: 1992-1994

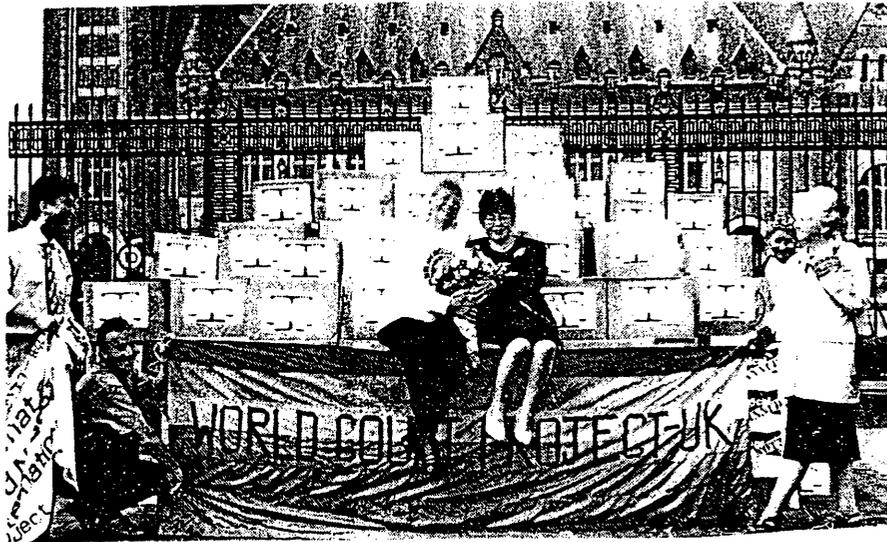


Photo by Martin Dunkerton

CHAPTER 10

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I am convinced that the legal crusade against nuclearism has reached a crucial stage. We have an opening in these years after the Cold War that will not last ... never have we needed more this joint effort of IALANA, IPB and IPPNW, which by itself may prefigure the sort of new coalitions of the 1990s dedicated in various ways to the growth of global democracy. As always, denuclearisation and demilitarisation will depend on the intensity and effectiveness of popular struggle. Falk [1]

10.1 Introduction

Following the successful international launch and the 1992 World Health Assembly (WHA) attempt, the anti-nuclear movement made the World Court Project (WCP) a priority and focused on strengthening global public support. The primary tools adopted were the collection of Declarations of Public Conscience (DPC); endorsements from citizen groups and prominent individuals; and publicising it in the media and group newsletters. Staging media events, often involving eminent supporters, helped educate the public and decision makers. While a few individuals lobbied diplomats in New York and Geneva, others corresponded with and met their local MPs and officials. ISC members met Foreign Ministers and officials in the capitals of key countries, held public meetings and spoke with the media.

Public education programmes proved effective in a few of the 'middle' Western nations where nuclear disarmament already had a reasonably high profile: A/NZ, Australia, Canada, Ireland and Japan. This chapter takes as a case study the growing support in A/NZ over a decade, and how the government and officials shifted from opposition in 1992 to support during 1994. It ends with the struggle to convince them and others to make submissions to the ICJ on the WHA question.

10.2 Public Participation

For nearly a decade, Keith Mothersson had written extensively about how citizens could use existing international law to hold their governments accountable. During the 1980s he was closely involved with INLAP and the *Snowball* campaign, and was arrested in 1983 during an action linking the law and nuclear weapons. This experience convinced him that anti-nuclear campaigns would never succeed 'until we bring the criminality perspective to bear on these devices'. [2] He provided activists with legal arguments to use in their defence.

In late 1991, he wrote the International Peace Bureau (IPB) Guidebook for WCP campaigners, which outlined existing international law in relation to nuclearism; how to approach the International Court of Justice (ICJ); the role of lawyers; and how citizen organisations could influence public opinion. [3]

He saw the WCP serving an 'educative, focusing and mobilising function, whereby the entire civil society of the global community finds its voice and its dignity over against the pretensions of those who would treat us as global hostages'. [4] He advocated cooperation with politicians, diplomats and governments of many nations; international civil servants servicing UN agencies and committees; and international groups such as the Non-Aligned Movement (NAM) and Nuclear Free Local Authorities. The development of an efficient, well coordinated network of citizen groups was fundamental to the success of the campaign:

Every group - every society, club, union, guild, municipality, party, institute, small business, co-operative, kinship network, ethnic group, artistic project, band, team, religious community, round-table, fraternity, sisterhood ... each can be seen as one node of a global 'ecological' system. Together they comprise world civil society, a truly vast web of social relations ... [5]

The book described how through education, declarations, lobbying and outreach, groups could activate their members in a global movement. Although it was only published in English, Mothersson was well aware of previous peace movement tendencies towards middle class Eurocentricism, and male dominance. He challenged:

Who will reach out, and how, to... women of Ghana? Rotary Clubs of Ecuador? Aboriginal people of the Pacific? children of Bulgaria? veterans of Vietnam? human rights activists in India? building workers of Madagascar? municipalities in the Ukraine? environmentalists of Algeria? nurses of Canada? mothers of China? Mexican lawyers? Muslims of Indonesia? footballers of Brazil?

He advocated using brochures to outline briefly the WCP, and include a sample DPC documenting global support from groups and individuals. These could then be modified, translated and easily reproduced in each country, and include their own prominent supporters. The collection of individual signatures would also attract donations to help support the campaign. [6]

Declarations of Public Conscience (DPCs)

Although the collection of DPCs was only one facet of the global campaign, it became the most effective tool for empowering and educating grassroots individuals. Originally Mothersson's idea, it was later developed extensively by WCP(UK). He envisaged them as 'socio-ethical declarations with legal significance made by groups and ordinary people before the world', to which he anticipated the ICJ (and government legal advisers) would pay attention. Because the ICJ is only empowered to deal with states and other intergovernmental organisations, the DPCs could only be presented as an adjunct to various states' written statements.

Mothersson drafted a detailed DPC which he presented to the July 1991 London meeting. Inspired by the idea of individuals making moral statements of conscience to the ICJ, George Farebrother initiated a pilot scheme with his local peace group and launched it in October. They hand-delivered copies of a more succinct declaration to a small group of Eastbourne householders asking them to study them. If 10% signed they planned to produce a 'posh version'. [7] Farebrother briefed the inaugural meeting of WCP (UK) that month, was appointed Secretary and asked to develop the DPC project.

Like Mothersson, Farebrother became aware of outlawing nuclear weapons through *Snowball* and had appeared in court after 'laying informations' against Mrs Thatcher (see 4.2). Farebrother saw the DPCs as a vehicle

for activating groups. As a rather deferential character, he 'enjoyed the sense of power attained when sitting behind a table with posters outlining the project'. The DPCs had an air of authority and facilitated education of others in a non-confrontational way. He was excited by the level of community support and wanted the idea to be extrapolated globally.

He began working on this full time from home, building up supporters, refining the DPC and collecting donations.[8] Within a few months overseas groups began using the British model. For the next five years Farebrother coordinated the international collection of DPCs which were printed in 40 languages. On World Disarmament Day in October 1993, over 100,000 were presented to the UN in New York in support of the draft UN General Assembly (UNGA) resolution. In a ceremony which provided the focal point for international groups, boxes of DPCs from various countries were presented by various prominent citizens. Similar ceremonies were held in several other countries.

One of the most effective DPC collectors was Lilian Emsley, who single-handedly amassed over 75,000 signed DPCs in three years at her local stall in Croydon, UK. She reported that they gave people a sense of hope that groups of ordinary, determined individuals could change things. They were excited by going over the heads of government direct to international law using letters, faxes and meetings with decision makers rather than resorting to marches and rallies. The WCP was presented as:

... a very serious, well-informed, competent international grouping in which they could put their trust. Everybody wants to sign and nothing will deter them; not arthritic or rheumatic hands and fingers, nor blindness, nor illiteracy, nor being in a wheelchair, not those walking supported by sticks, nor those bent over with age. And the youngsters are so keen! A few people tell me they have never before signed anything in the street, but, they say, this is really important. [9]

Emsley's personal approach touched people - they felt they had an important role to play in signing a DPC which would go to the ICJ. Approaching people individually established an immediate intimacy, facilitated dialogue and helped educate people about the UN and the ICJ. The brochures and DPCs gave people an opportunity to participate in a

global action which was new, and different from signing a petition. Each DPC was personalised, and people could choose to become an active member of a group or make a donation. The WCP had an achievable goal and decision makers took the DPCs into account during their deliberations. Brochures with tear-off DPCs were easily included in mailings by a wide range of groups. In the UK in particular it became a very successful fundraising exercise and gave local groups, which had often gone stale on old campaigns, a renewed sense of purpose and inspiration.

Endorsing Groups and Prominent Individuals

Jaipal stressed the need for supportive letters from important NGOs to accompany any request to the ICJ. In 1991, Mothersson and Dewes gained endorsement from some very influential international NGOs (see chapter 8). National NGO support came initially from the UK and ANZ, and a few groups from Canada, Germany and the US.

The May 1992 international launch gave groups an incentive to achieve results. The New Zealanders successfully campaigned to get prominent endorsers to lobby the government. Maori elder Pauline Tangiora wrote to the Maori Queen and other elders. Dewes and Ware approached mayors, academics, former PACDAC members, bishops and media personalities, while Evans wrote to legal associates. At the launch, the delegates were encouraged by their success and enthusiastically adopted the ANZ model. Initial prominent endorsers included Vallentine, Caldicott, Joseph Rotblat (Pugwash), and a former Chief Justice of India.

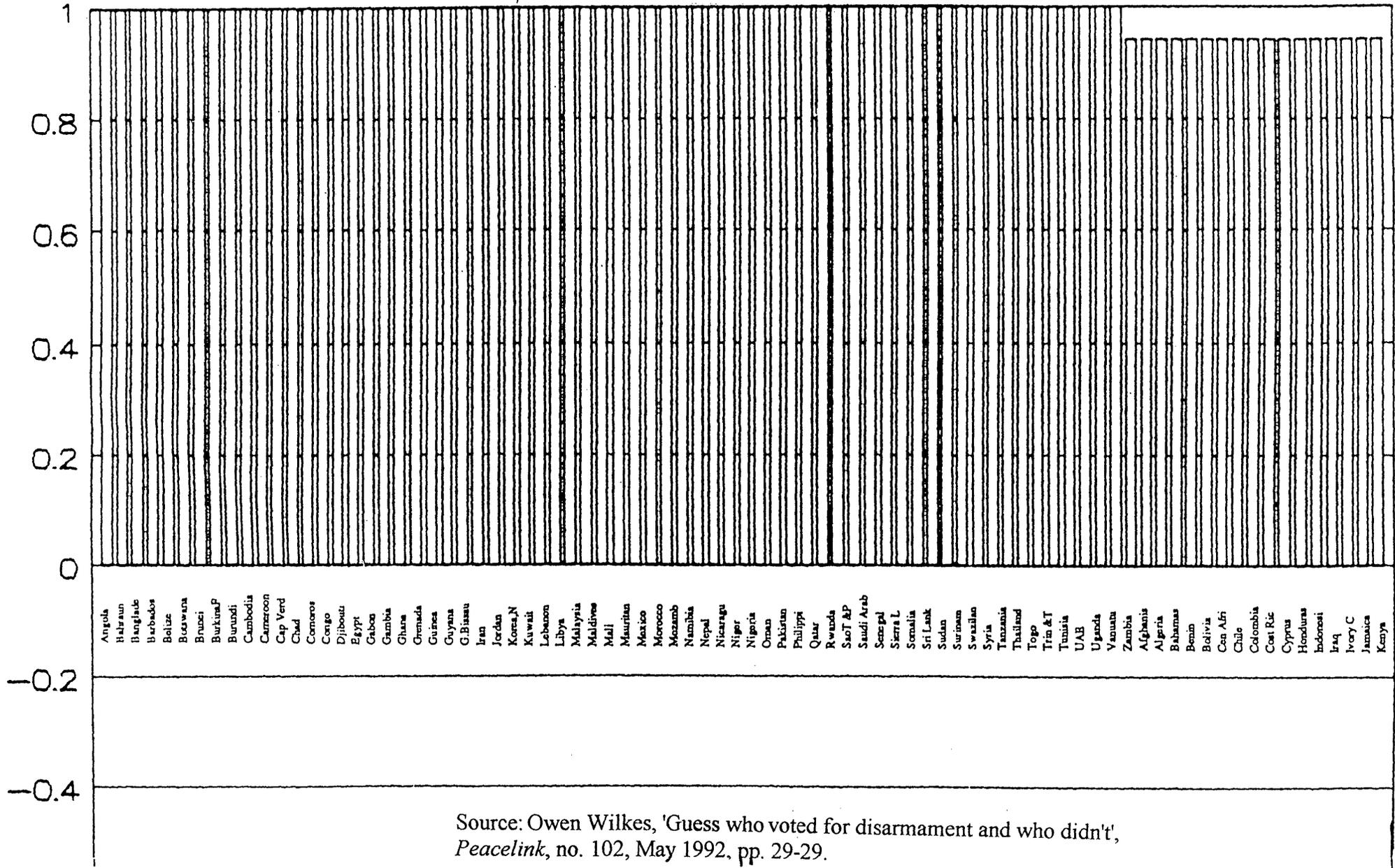
Reports of the launch were published in NGO newsletters; but the mainstream media barely touched it, with no media coverage of parallel launches in Helsinki, India and the UK House of Commons. In ANZ there was considerable interest from sympathetic journalists during the first WHA attempt, and Briant and Dewes were interviewed in-depth on national radio from Geneva. Securing publicity for the campaign was a major agenda item at the first meeting of the ISC. The IPB took responsibility for distributing most of the WCP material worldwide. They sent packs, which included sample brochures and DPCs, to over 100 groups asking them to

disseminate them within their regions. In Geneva, the New Zealanders distributed copies of their peace movement's magazine *Peacelink*, which highlighted the WCP and provided analysis on A/NZ's UN disarmament votes (Figure 10). A graph showing which countries consistently voted for all disarmament resolutions (predominantly the NAM), those which voted in favour of about half (including A/NZ, Ireland, Sweden and Australia) and the tiny minority which consistently vote against (US, UK, and France) became a very useful tool for activists.[10] Later that year, Ware and Mendlovitz published a major article in the *UN Disarmament Times*, read widely by diplomats and international NGOs. [11]

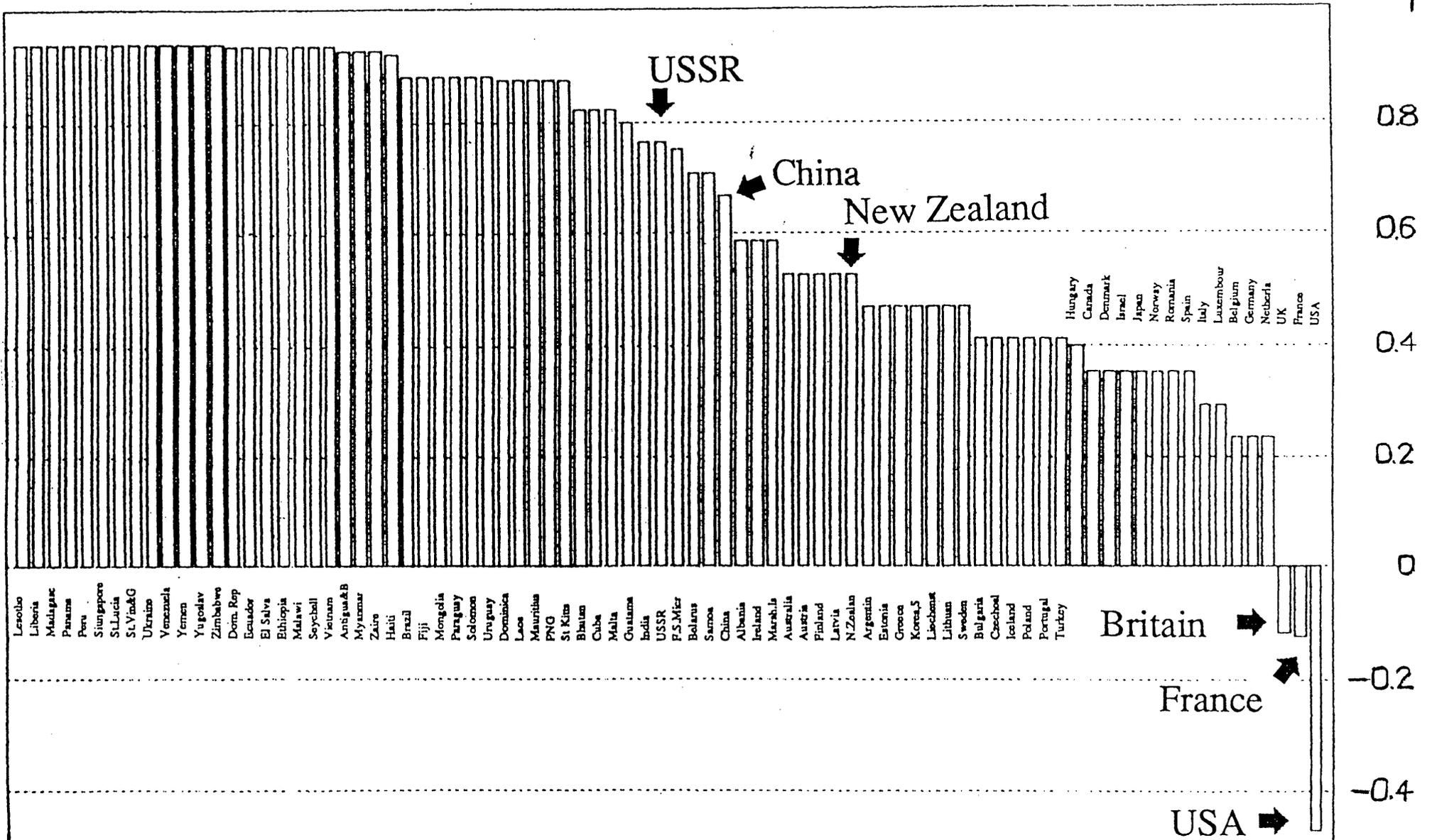
Visits by ISC members to various countries helped raise the WCP profile and often attracted media coverage. For example, WCP (UK) Chair Robert Green toured A/NZ, Australia, Canada and Japan during 1992, where he addressed public meetings and encouraged groups to establish WCP branches. His recent nuclear weapon experience intrigued journalists, giving them a personal angle on which to base the more complex subject of nuclearism and international law. His military status gave him easier access to decision makers, especially within Commonwealth countries. Dewes met with NGOs, politicians, officials and journalists in Australia and Ireland, and addressed local WCP group launches around the UK with Green.

Ware, accompanied by Spanish speaker and LCNP media officer Gabriela Fried, visited Costa Rica, Mexico and Nicaragua where they held 28 meetings with officials and citizen groups in 10 days. He then toured California and other states meeting groups and distributing WCP material. As a direct result of these meetings, Earth Action sent out a WCP Action Alert to 750 NGOs in 101 countries. Ware also visited Japan and met with lawyers, doctors and the organisers of the 'Appeal from Hiroshima and Nagasaki For a Total Ban and Elimination of Nuclear Weapons'. Part of the Appeal states: 'The use of nuclear weapons will destroy the whole human race and civilisation. It is therefore illegal, immoral and a crime against the human community' (Appendix II). Begun in 1984, the Appeal numbered 42,888,670 signatures by 31 July 1993 and 56 million by 1997 - 47% of the Japanese population signed it, and it included signatures from over 160

Figure 10: Diagram of 1991 UNGA Voting on Disarmament



Source: Owen Wilkes, 'Guess who voted for disarmament and who didn't', *Peacelink*, no. 102, May 1992, pp. 29-29.



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countries. [12] The organisers agreed to present a sample at the October 1993 UN DPC handover ceremony, and sent 30 delegates.

By then over 480 groups from 86 countries had endorsed the WCP (Appendix II). The list included 30 international organisations, with the bulk of national and local endorsers coming from Western states: ANZ (90), Australia (64), United States (44), Netherlands (43), Canada (29), Norway (20) and UK (15). ANZ and Australia respectively gathered 20% and 14% of the total group support. The *modus operandi* of the Australasian peace groups was different from many of those in the US. Considering the small populations of both states, their achievement was remarkable and reflected how, particularly in ANZ, the movement had built up strong coalitions during past campaigns. It reinforced that public opinion was strongly in favour of the illegality of nuclear weapons and nuclear abolition.

ANZ's peace movement had developed a non-hierarchical, participatory network during the early 1980s, whereas US groups tended to work more as individual cells. Ware discovered that LCNP, for example, was a more learned organisation, writing and publishing articles. It was established as an educational, charitable NGO with a set context in which to work. According to Ware:

US groups tended to focus on bits of the nuclear issue such as the Freeze, Strategic Defence Initiative and nuclear testing. Networking is something which hasn't been done until now to the same degree as it has in the Pacific movement. There is not a lot of outreach, they might cooperate when a big thing comes up, but most of the time they are just doing their own thing. Money comes from Foundations, and in order to get money they have to emphasise their uniqueness and it actually detracts from working together a lot. [13]

When Ware returned to New York in June 1992, he worked as an unpaid volunteer for LCNP for six months. He visited New York groups to encourage their endorsement and sent brochures to groups he had met in 1989 and 1991. Gradually the list of US endorsing groups grew, and by June 1994, their tally had doubled to 88; the UK's had grown from 15 to 40, Germany's from five to 36, Canada's from 29 to 60, and France's from three to 14. Internationals totalled 41, with over 500 organisations from 88 countries.

The outreach that Mothersson had envisioned began to materialise. There was a Green Earth Organisation from Ghana; Physicians from Ecuador; the Nuclear Free and Independent Pacific Movement (including Aborigines); groups from Madagascar; a women's Collective from India; Waterside Workers from Australia; nurses from Canada; grandmothers from Norway; Mexican lawyers; Muslims from Indonesia; and doctors, but no footballers from Brazil (see 10.2).

As the list of groups grew, more prominent individuals signed up including Countess Pamela Mountbatten, the Dalai Lama, Rigaberto Menchu and other Nobel Laureates. Amongst the prominent politicians were Gorbachev, a former President of PGA, the Australian Minister of Consumer Affairs and Zimbabwe's Foreign Minister. By October 1993 the list included musicians, film-makers, a former President of the World Council of Churches, Members of the European Parliament, General Secretaries of large unions, a Russian Princess, a former Secretary General of the International Commission of Jurists, 50 British MPs, 18 Bishops and two Archbishops. There was significant support from the wider churches, including the Anglican Consultative Council and Primates of the Anglican Communion; the Anglican Church in A/NZ and Polynesia; the Anglican, United Churches and Union of Spiritual Communities of Christ of Canada; the Dutch Reformed Church and the Inter-Churches Peace Council; the Church of Scotland; the British United Reformed Church; and Quaker Peace and Service International. At the 1993 Parliament of the World's Religions held in Chicago and attended by 6,000 delegates, a resolution was presented supporting the WCP and a Nuclear Weapons Convention. [14]

Support from indigenous peoples came through the Canadian Dene Nation; Ka Lahui Hawai'i; the Kauai Guardians (US); the NFIP; and Maori in Aotearoa. Ware, who has a Maori daughter, had a long history of working biculturally. He ensured that Native Americans welcomed delegates to the 1993 DPC handover ceremony at the UN. A Mohawk woman elder of the Wolf Clan, Chief Raymond Yowell of the Western Shoshone National Council, Hilda Lini and Pauline Tangiora spoke and shared traditional

prayers and songs. Other speakers included Theorin, Weiss, Marin-Bosch and Dewes. Presentations were made by representatives from Africa, Aotearoa, Australia, Canada, Europe, India, Ireland, Japan, Latin America, Native American nations, Russia, South East Asia, the UK and US. A coalition of Japanese groups presented the Hiroshima and Nagasaki Appeal. The meeting room opposite the UN was adorned with banners, rainbows, quilts and other symbols from around the world. Large posters carried the updated list of groups and prominent endorsers. The UN Disarmament representative was impressed by the degree of international citizen support and promised to convey this to the Secretary-General. A media briefing was held but attracted little response.

While many NGOs awaited news of whether the NAM would introduce the UNGA resolution (Appendix III), Dewes, Green, Lini, St John and Tangiora joined Ware as the UN lobbying team. Weiss and Mendlovitz offered legal advice, Theorin was a member of the Swedish delegation, and US and Canadian NGO volunteers helped staff the LCNP office. This group symbolised the ingredients Falk had earlier outlined for a successful structure. It drew on the strengths of professional groups, women and indigenous peoples, and made a powerful combination.

The international public education campaign was extremely successful in a very short time. Mainly as a result of the 1993 WHA, government delegates attending the 1993 UNGA were well aware of the growing international campaign. This in turn helped buttress them as they experienced increasing pressure from some of the NWS. Groups continued to collect DPCs to present to the ICJ during 1994 in support of the WHA question.

10.3 Case Study of Aotearoa/New Zealand:1992-1994

There is no humanity in the logic which holds that my country must be obliged to play host to nuclear weapons because others in the West are playing host to nuclear weapons. That is the logic which refuses to admit that there is any alternative to nuclear weapons, when plainly there is. It is self-defeating logic, just as the weapons themselves are self-defeating; to compel an ally to accept nuclear weapons against the wishes of that ally is to take the moral position of totalitarianism, which allows for no self-determination. Lange [15]

As global public support strengthened, parliamentarians became increasingly aware of the need for a government response. The views of a wide range of respectable community leaders, city councils, church groups and professional organisations could not easily be dismissed as 'rabble rousing activists'. Government Ministers, especially in Western allied states, were confronted by highly articulate professionals demanding answers to awkward questions on the legality of nuclear deterrence. Parliamentary colleagues requisitioned answers as to prospective voting in the UNGA and arguments presented in ICJ submissions on the WHA resolution. In ANZ's case it seemed schizophrenic to outlaw nuclear weapons at a state level and not argue their illegality internationally. Democracies where parliamentary majorities were slim, such as ANZ, Australia, Canada, Ireland and Sweden were particularly vulnerable to strong public opinion. Elections were due in Canada and ANZ during the 1993 UNGA session, and opposition parties in both countries responded to growing pressure from their constituents to support the WCP.

This case study documents how public opinion affected both Labour and National governments in ANZ, particularly the latter during 1992-94. Over a decade both parties had changed their policies to reflect growing public opinion, thereby ultimately influencing international decision making. Of all the Western states, ANZ perhaps provides the best example of how participatory democracy can work when committed individuals and groups work collectively at the grassroots while maintaining close dialogue with decision makers. This section explores why ANZ broke ranks with its traditional allies by indicating support for the ICJ resolution at the 1993 UNGA, voting for it at the 1994 UNGA, and arguing forcefully for the illegality of nuclear weapons at the ICJ in 1995.

Many factors contributed to the reluctance of both Labour and National governments to support the WCP until 1993. During the Cold War, ANZ would not have succeeded in rallying support from sympathetic Western governments, nor could it be guaranteed support from NAM countries which usually supported UN anti-nuclear initiatives. ANZ had for too long voted with the West or abstained on some anti-nuclear resolutions. Thus, leading

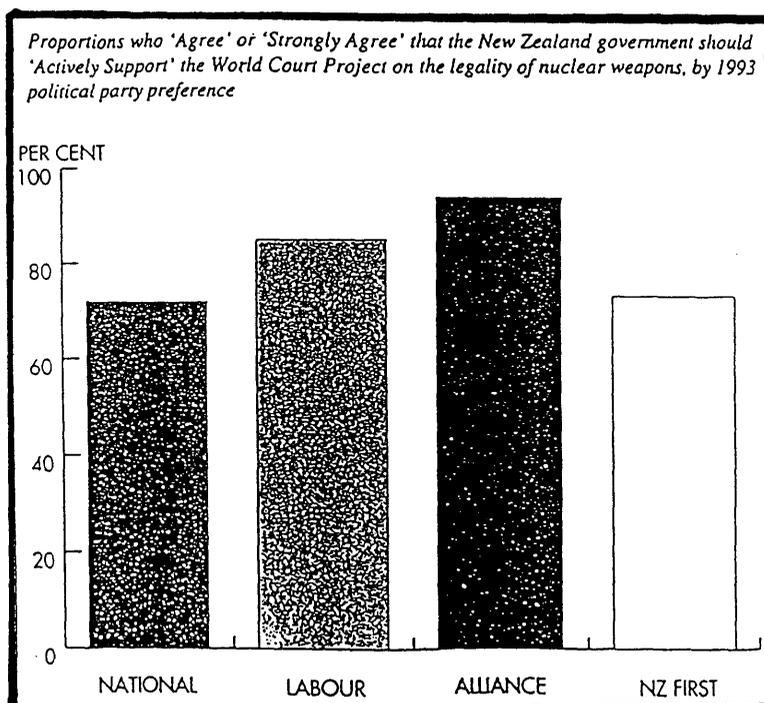
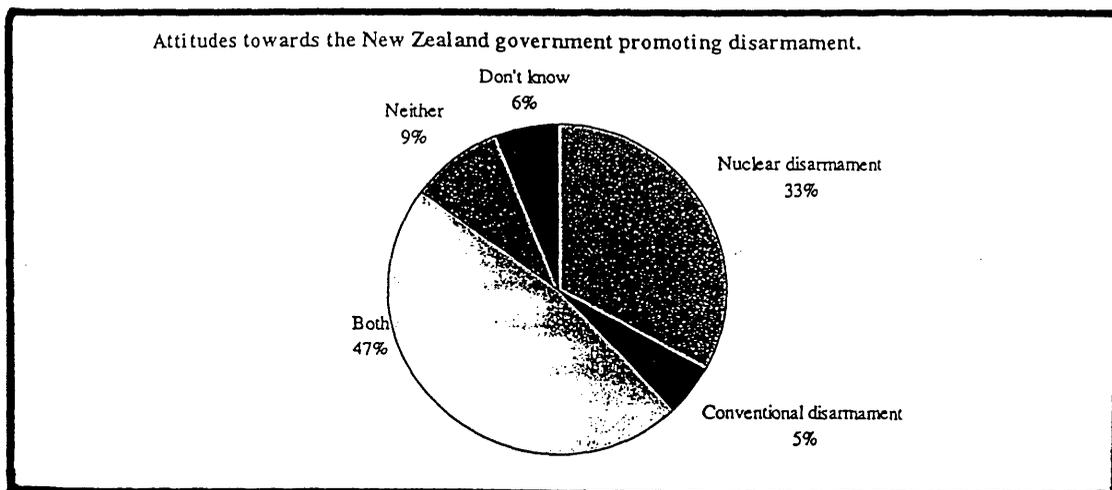
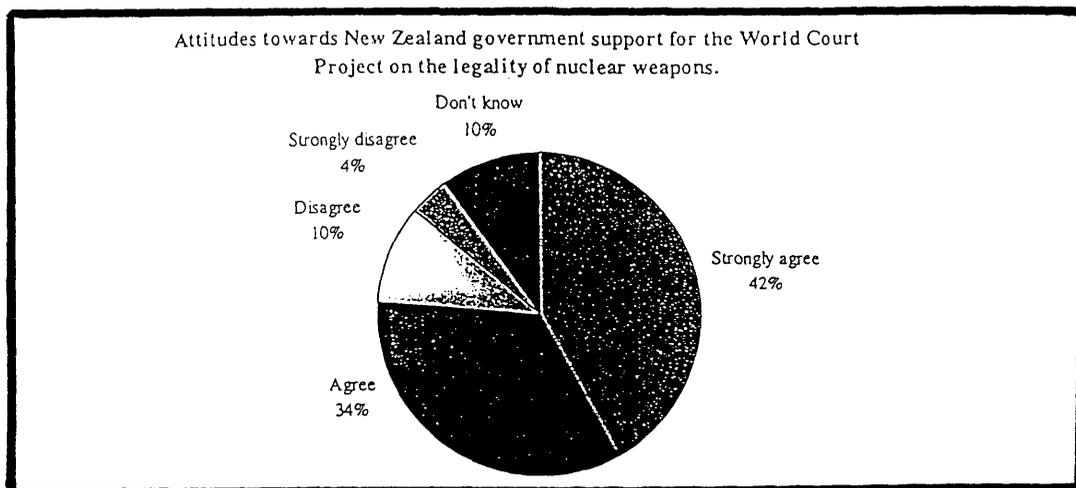
NAM members did not believe that an ANZ-led initiative would really challenge the Western NWS; nor did they trust ANZ officials to argue consistently a strong anti-nuclear line when under pressure. Without Lange at the helm during 1989-90, Labour lacked the personal and political will to commit funds and personnel to an initiative. Officials were also unwilling to alienate their Western colleagues further. The WCP was then perceived as a 'one man band' which did not command sufficient national or international backing from citizens and governments.

At the peace movement level, past experience with both the nuclear free legislation and the South Pacific Nuclear Free Zone indicated that consequential achievements in the area of nuclear disarmament often took a decade or more to come to fruition. A sufficient number of committed activists who had already persevered in these earlier campaigns knew instinctively that the present challenge was far greater, and would require a mammoth effort at home and abroad. Coalitions which had developed during the nuclear free struggle formed a strong base which helped bolster the key advocates promoting the cause overseas.

As early as 1986, opinion polls showed 92% support for the government promoting nuclear disarmament within the UN; 88% supported the promotion of NFZs; and 80% backed the nuclear free legislation. Another poll in late 1994 revealed that 85% wanted the government to put 'most effort' into promoting either, or both, conventional or nuclear disarmament; and 76% favoured the government backing the WCP; and over 77% of all MPs also supported it (see Figure 11). [16] With domestic public opinion firmly behind anti-nuclear initiatives such as the WCP, ANZ activists focused on international outreach.

The catalyst for Green's 1992 ANZ tour had been the establishment of a Special Committee on Nuclear Propulsion.[17] This was an attempt by the government to be seen as trying to resolve the anti-nuclear dilemma which had become one of the key impediments to normal US relations. Prior to the election, National's Foreign Minister McKinnon and Prime Minister Bolger promoted 'the principal objective ... to be seen as a nation

Figure 11 : NZ attitudes towards WCP and disarmament.



Stephen Levine, Paul Spoonley and Peter Aimer, *Waging Peace Towards 2000*, Foundation for Peace Studies Aotearoa/New Zealand, Auckland, 1995, pp.145, 90, 146.

reasserting its *bona fides* in the Western alliance', to revive the ANZUS alliance and restore full defence cooperation with Great Britain'.

[18] In 1987, Bolger said:

We intend to amend the legislation to remove those sections which were included to prevent New Zealand's defence co-operation with our allies, while making it clear that New Zealand did not want nuclear weapons in its ports.[19]

In 1991, McKinnon reasserted his intention to remove 'the constraints we have imposed on ourselves by the anti-nuclear legislation'. [20] The attempt to change it in 1992 followed the US and UK decisions to withdraw nuclear weapons from surface ships, thereby facilitating a resumption of ship visits if the legislative clause banning nuclear propulsion were removed. Early in 1992, veteran peace researcher Owen Wilkes shocked the peace movement by promoting the 'impeccable' safety record of US nuclear-propelled ships. The government promoted this *volte face* vigorously, sparking controversy during 1991-93. A leaked US intelligence telex said the government's decision to form a committee was 'part of a continuing effort by Bolger to weaken or skirt anti-nuclear laws that have strained US-New Zealand relations'. [21] Canada's Disarmament Ambassador Peggy Mason visited A/NZ to promote her government's permissive nuclear ship policy. She touted Canada's strict environmental monitoring regime for the visits, which had shown no radioactive contamination despite more than 100 port calls a year. She also reiterated the importance of accepting the nuclear deterrent as part of membership of a nuclear alliance. These media reports were sometimes linked with NZ's Security Council bid, sparking fears that selling out the anti-nuclear policy could be the price of gaining Western support for the privilege. [22]

The peace movement urgently needed an authoritative figure who could counter the safety claims, challenge nuclear deterrence and promote the WCP. Green's credentials were impeccable. He also had damning evidence of British nuclear-powered submarines being banned from foreign port visits because of reactor cooling pipe cracks. [23] Peace groups organised meetings which attracted large audiences and extensive media coverage. He met with influential politicians, and members of the Nuclear

Inquiry. In Auckland he joined Lange to launch the WCP officially, and addressed the IPPNW AGM.

Following Green's visit, a strong network of WCP groups based in Auckland, Wellington and Christchurch worked assiduously to build support. Part-time paid workers and volunteers in the main centres ensured that the campaign was well-coordinated and that smaller towns were included. Auckland took responsibility for national coordination; Wellington for lobbying MPs and Missions and preparing draft ICJ submissions for the government; and Christchurch worked primarily on international coordination and lobbying governments. Each node networked groups in their region encouraging them to design their own DPCs, hold local ceremonies and meet MPs. Politicians in marginal electorates and on Foreign Affairs and Defence Parliamentary Committees were prioritised. Letters were sent to city councils, tertiary student associations and church organisations, and displays put in community libraries and shopping centres. The Prime Minister was sent thousands of postcards calling for A/NZ to vote for the UNGA resolution and make a strong ICJ submission (Figure 12). Prominent endorsers were asked to write to key government ministers, secure signatures from their friends and colleagues, and send donations.

Events such as International Women's Peace and Disarmament Day, Hiroshima and Nagasaki Days and an international 'Peace, Power and Politics Conference' were used to attract media interest. On the 11th Anniversary of Wellington's Nuclear Free Declaration, Mayor Fran Wilde and other Councillors publicly signed DPCs and received considerable media coverage. In Hiroshima Week, Wellington groups organised a WCP play at a street festival, a Dedication Service in the Cathedral, and a UNA sponsored public meeting addressed by Lange, Kenneth Keith, Salmond and Kathryn Asare (Asare had run extensive interviews with Geiringer, Dewes and Ware on National Radio). The UNA sent cards outlining the WCP history to their international branches seeking endorsement. A feature article including a clip-out DPC was published in the Presbyterian newspaper sent to 55,000 churchgoers.

In Rangiora, a small town near Christchurch, local pensioner Colin Ayers hung a huge WCP banner across the main street, asked local people to sign DPCs, and funded a DPC clip-out in the local paper. The first day netted 235 signatures, with 1500 by the end of the week. The local National MP held a marginal seat, and eagerly signed a DPC when a delegation presented them before waiting media. [24] Celebrity signing events were held throughout the country on Hiroshima Day, and by early October 1993 there were 358 prominent endorsers including Mayors, Councillors, Church leaders, politicians, Judges, media personalities and academics (Appendix II).

A ceremony at Parliament House was planned for 28 September in order to put maximum pressure on the government, and to allow time to transport 24,000 DPCs to the UN. The Wellington ceremony was hosted by Labour's Disarmament spokesperson Chris Laidlaw, and Maori elders welcomed the participants. The Rangiora banner hung on the stairs near a large pair of scales depicting a nuclear weapon balanced by DPCs. Representatives from a wide range of groups presented Disarmament Minister Doug Graham with 24 boxes each containing 1,000 DPCs.

The Minister's response was extremely encouraging. In a speech reminiscent of Kirk's call for A/NZ to 'bring alive the conscience of the world' and Lange's international promotion of the issue, he described the 'impressive' number of declarations as an 'expression of democracy at its best'. He paid particular tribute to Evans and added:

...I don't think there would be anybody in New Zealand who does not think and worry about nuclear weapons. I suppose there aren't very many people throughout the world who aren't worried about it, although I suppose there are some countries where matters are so difficult that international causes rather pass them by. When that occurs I think it is even more important that countries such as ours take up the challenge and are heard. Now it is a fact of life that times change and attitudes change and there's a time sometimes to make a move and a time to pause. It seems to me the time to make a move has certainly arrived ...and the cause is so great that we should never turn down any initiative which is sensible, which is rational and constructive.

He indicated that there would be little doubt that A/NZ would support the UNGA resolution if it went to a vote. [25] He agreed to send the DPCs to the UN, where his brother was to help present them to the UN.

This public statement was the first official indication of government support. Minister of Trade Phillip Burdon had earlier paid tribute to Evans and others during a DPC ceremony in Christchurch, and reflected on the role of substantive movements for change:

Whether it be the women's movement ... the elimination of racism.. indeed the environmental concerns that are now rightly a part of the conservative deliberations of world leaders. It has not happened simply because someone in Parliament has raised it. It has happened specifically and indeed exclusively because groups such as yours have moved to act as a catalyst to marshal public opinion.[26]

That said, politicians were crucial in helping change the government's position. Prior to the 1993 UNGA, both the Labour and Alliance Parties announced they would co-sponsor the ICJ resolution if they became government. Labour's election manifesto stated that they would 'actively promote and work for a judgement by the ICJ on the legality of nuclear weapons ... and vote for UN resolutions which are critical of nuclear deterrence and which attempt to outlaw nuclear weapons'. Both Helen Clark and Chris Laidlaw asked Parliamentary Questions on the government's voting intentions and its WHA abstention. Two National politicians signed as supporters and lobbied their colleagues. In May the Attorney-General Paul East hoped 'NZ would vote in favour' of the resolution; and in late July even Foreign Minister McKinnon admitted it was 'quite likely' the government would support it and might co-sponsor. [27]

It is illuminating to trace how the government's arguments changed in response to growing public support prior to the election. This section draws on letters from Ministers to citizens, press statements, answers to Parliamentary Questions and Ministry briefing papers obtained under the Official Information Act. The latter revealed instructions to the 1992 WHA delegation not to give an explanation of vote, and to oppose the resolution 'provided most western countries do likewise and that we are in company

with either or both Canada and Australia'. Following the resolution's failure on procedural grounds, the Ministry stated that 'this result sets a useful precedent, should the issue arise again in similar fora'. [28]

However by 1993, the situation had changed. Support within A/NZ and the WHA had grown substantially and the government reviewed its position. Excuses given by Ministers still echoed similar arguments appearing in Australia, Canada, the UK and even Ireland. They included:

- a preference for negotiation rather than declaratory judgements;
- it was a political and security matter rather than a legal argument and should be dealt with in the UNGA and not clog up the WHA agenda;
- it might jeopardise efforts to permanently extend the NPT and negotiate the CTBT;
- little international political will would be generated by an ICJ opinion;
- NZ strongly supports other moves which are likely to be effective in controlling and eventually eliminating nuclear weapons. [29]

The 1993 WHA delegation was instructed to vote in favour of the US amendment (to scuttle the resolution), and to 'co-sponsor, but only in company of like-mindeds like Australia, Canada, Sweden and preferably some non-WEOG'. (WEOG: Western European and Others Group) If the amendment were defeated they were to abstain.[30] So, effectively A/NZ was part of the strong Western opposition, while presenting a public face that the other considerations were paramount. The Minister even admitted that it was 'no secret that we would have been glad for the resolution not to have been proceeded within the Assembly'. He explained to IPPNW(NZ) that it would cost the WHA up to US\$200,000 to take the question to the ICJ, despite this being exposed as misinformation during the Assembly. [31]

Following the dramatic success of the WHA resolution, Ministry officials asked the Disarmament Minister: 'Do we maintain our existing reservations, which are partly legal, partly procedural and partly practical, or do we give more weight to the positive, essentially symbolic and presentational aspects

of the concept even if it is unlikely to be effective?' In an interesting admission of the power of public opinion, they advised that:

...the WCP will not go away, momentum is gathering behind the Project with support coming from an increasing number of countries and from NGOs; domestic public opinion ... is continuing to grow and it is now inevitable that a resolution will come before this year's UNGA. This resolution is virtually certain to succeed. Pressure will mount on the government immediately prior to the election to support this resolution and even to co-sponsor it, rather than to abstain on it.[32]

They added that 'a contrary judgment could be counterproductive to the goal of eliminating nuclear weapons' and even 'if the judgment favoured the proponents' the opinion would not commit governments. This rejection would undermine the ICJ by setting back the parallel but more promising, path of negotiation. However, for the first time the Ministry outlined some positive arguments:

- if the ICJ finds the use or threat of use of nuclear weapons to be illegal, it will further de-legitimise them in the eyes of international public opinion;
- even if nuclear weapon state governments initially take no notice, ultimately they will be obliged to do so;
- it would be consistent with NZ's long advocacy of a CTBT, which would also serve to de-legitimise nuclear weapons, and our support for their eventual elimination;
- as a matter of principle we should not stand in the way of legitimate recourse to the courts;
- support would accord with the preferences of many New Zealanders.

The Ministry advised the government that it would be advantageous to support the resolution earlier rather than later. This could anger the Western states which might 'lead them to block our efforts to become a member of the Conference on Disarmament, where the CTBT is likely to be negotiated'. They recommended future public statements should indicate that 'although there is room for legitimate doubt about the tactical wisdom of the approach, if a reasonable and workable resolution comes forward the Government will be inclined to support it'. [33]

By this time the WCP had become an election issue. In early April, Labour led in the polls with 48% and National at 30%. Two months later Labour had a 28% lead with 52% of the vote. [34] National had already undermined the anti-nuclear policy by attempting to change the law in relation to nuclear propulsion. A February opinion poll had confirmed that nearly 60% believed that nuclear-powered ships were unsafe, and although 56% supported the resumption of traditional defence ties, two thirds of them said any revival of ANZUS should be conditional on the US accepting NZ's anti-nuclear law. [35] In August, Prime Minister Bolger mollified public opinion and reaffirmed National's support for the nuclear free policy.

Following the election on 6 November, there was a week when it was not clear which party had won. This was during a critical phase at UNGA when the resolution's future was in jeopardy. Dewes, on her return from the UN, publicly called on the four main parties to consider co-sponsorship with some non-aligned states in order to save it. Labour and Alliance political parties were already committed to co-sponsoring and requested consultation with National. In the event the National government held power by a slim majority, and the opportunity was lost. On 17 November, Graham confirmed the government's intention to vote for the resolution if it went ahead.[36] Foreign Minister McKinnon still opposed the initiative. It gradually became clear that the perceived change in government policy was for political expediency and did not indicate a real shift. He felt that the last-minute withdrawal of the resolution by the NAM two days later (see Chapter 11) was sensible as it had 'provoked considerable division among delegations'. [37]

10.4 WHA Submission and the UNGA Resolution

As will be described in Chapter 11, the UNGA resolution was introduced but not voted on in 1993. During 1994, states prepared submissions to the ICJ on the WHA question, and prepared to re-introduce the resolution during the UNGA. As a result of ANZ's indication of support, politicians and the public were subject to pressure from Western allies to refrain from

Figure 12 : Postcard sent to Prime Minister Bolger re WCP. Graphic designed by Robert Green.

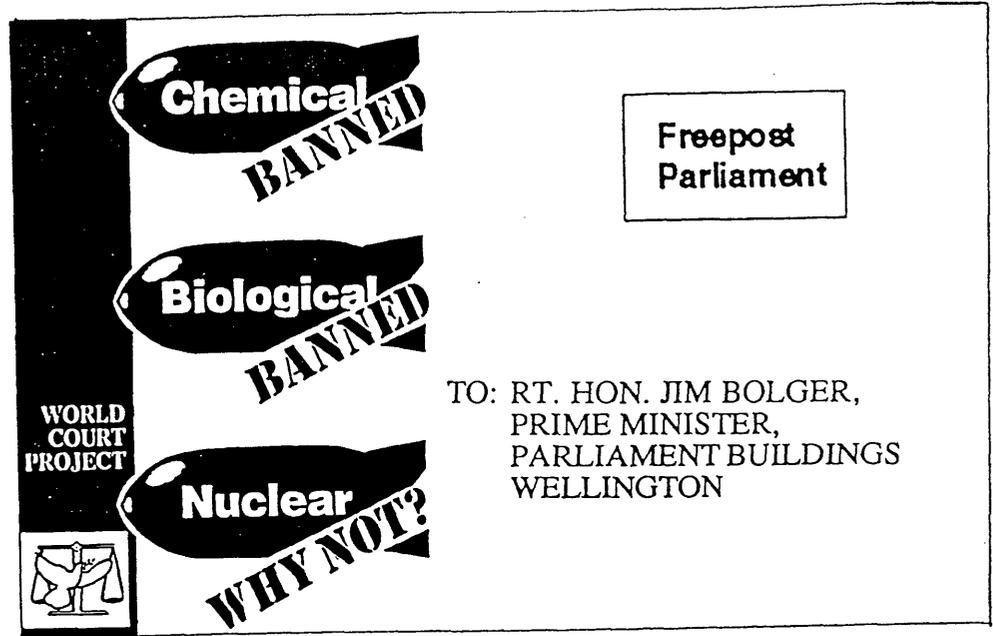


Figure 13 : Garrick Tremain, *Christchurch Press*, 13 June 1994, showing NZ's Prime Minister and Minister of Foreign Affairs 'muzzling' the peace movement.



supporting the WCP. High-level US and UK military and diplomatic visitors urged ANZ to support the indefinite extension of the NPT in 1995, and some openly criticised the WCP (Figure 13). [38] The National leadership vacillated between Western collegiality and its own democratic principles. A group of eight National politicians (led by members of Parliamentarians for Global Action) joined their Labour and Alliance colleagues in attempts to convince the government to make a submission, and vote independently in the UN. [39]

In February 1994, WCP supporters sent congratulatory letters to key Ministers acknowledging their mooted support for the resolution. They also sent briefing papers on the ICJ's invitation for submissions on the WHA question by 10 June 1994. They called for the establishment of a non-partisan working group involving representatives from the major parties and the three WCP co-sponsors. The Ministry's abrupt and evasive response noted the ICJ Communique was 'strictly speaking a notice of time limit' and it was 'incorrect to characterise it as an invitation'. [40]

Following National's 1993 election victory, the Ministry pursued policies aimed at securing a thaw in ANZUS: therefore an ICJ submission which challenged the legality of the West's fundamental security policies was antithetical to this. WCP supporters alerted their parliamentary allies to explore all avenues to force the government to reflect the strong public support. The Opposition Spokesperson on Health, Lianne Dalziel, was MP for Christchurch Central and personally very supportive. She convened a PGA meeting, and discussed strategies with Lange and others. A WCP delegation met with McKinnon to present him with IALANA's and IPPNW's draft submissions and argue their case. He reassured them that a decision was imminent.

A February 1994 Ministerial briefing paper advised consultations 'with a range of countries on the basis that the Government is at present disposed not to make a submission to the ICJ, but reserves its decision until it can be made in light of the known attitudes of others whose judgement we value'. Ministry officials were concerned that Western countries would oppose an ANZ submission arguing that in previous advisory opinions 'only

a small number of concerned governments have responded'. They also warned that there would be considerable legal costs including engaging international legal counsel. However, there was pressure to put in a submission because it 'would be responsive to the considerable degree of public support..., would be consistent with the Government's willingness to support a UNGA resolution and would avoid domestic criticism'. [41]

In March, three months before the ICJ submission was due, Dalziel forced two debates in the few weeks before Parliament went into a seven week recess. She moved an amendment to the motion for the Address-in-Reply the day before the Foreign Affairs and Defence Select Committee heard submissions on a WCP petition from Nelson. The amendment called on the Government to 'make a forthright and comprehensive submission to the ICJ ...' and was debated the day after the Select Committee hearing. This was addressed by the Nelson petitioner, WCP representatives and the Ministry on 23 March.

The Ministry repeated previous negative arguments in an effort to retract their pre-election support. They reported on the 'initial skirmishing stages in discussion with 20 other governments: only four will submit opinions to the WHA, 10 were undecided (likely not to) and six will not make submissions'. These included all the NATO countries, three Western non-NATO, all five nuclear weapon states, Australia and Japan. Claims were again made that international legal help was necessary, and that the Ministry lacked time, money and resources to prepare a highly technical paper. Lange challenged the 'same old Ministry advice in that vein' adding that 'it's time to get some competent and up-to-date legal advice'. [42] The Ministry denied any knowledge of submissions being prepared by Sweden, Ireland and Mexico, contradicting the information provided by Dewes. She immediately faxed contacts in these countries who confirmed her information. The Ministry's paper was faxed to Ware in New York, where he refuted their arguments and provided Opposition politicians with up-to-date analysis and indications of support from other governments. These independent documents were vital in order to counter Ministry misinformation during Parliamentary debates.

The Chair of the Select Committee, Joy McLauchlan, was sympathetic to the WCP. As pressure grew within her Committee to take action, she joined seven other National MPs in publicly calling on the government to make a submission. They called for a specific debate solely 'to determine Parliament's viewpoint on this critical international matter'. The Prime Minister and Chief Whip assured them that a debate would follow the Foreign Affairs Select Committee's Report the next week.

In a feisty debate on the amendment on 24 March, Lange challenged the government to 'ditch' their 'informal system of knee capping' and allow the maverick MPs to follow their consciences and vote in favour. In a passionate plea, he begged the government to stop 'smelling the armpits' of other states, and make an independent judgement and submission. With the prospect of another parliamentary debate, the government reined in the dissident MPs, winning by two votes (42 to 40). [43]

Lange led the second debate initiated by Dalziel, recounting Labour's previous reluctance to pursue the WCP. He acknowledged that times had changed, and cited the WCP as a test of the nation's sovereignty:

It is an issue of principle, not an issue of popularity. It is an issue of survival, not an issue of cocktail-socialising with the diplomatic representatives of a whole bunch of countries that could not care less.

He reminded them of the ICJ's milestone judgment on French nuclear testing in 1973-4, and challenged Doug Graham to lead his party through a process of thinking about change. The previous week, Graham had delivered a remarkably liberal speech saying 'New Zealand would be better off equipping itself to work with multinational defence forces in the UN than trying to revive the ANZUS alliance'. He suggested that 'the world had moved on to such an extent that alliances of one sort or the other do more harm than good'. [44] This caused severe ructions, with Defence Minister Cooper fearing this could be a 'signal to Australia, our American friends and other partners in the five-power defence arrangement that we were not serious about defence'. McKinnon was obviously displeased. [45] However, a few days later Graham defended government inertia on the submission,

and in contrast to his earlier public support, echoed the Ministry's fears that there was very little international support for the WCP, and A/NZ might be the only non-nuclear state to submit. He confirmed that of the countries contacted, four would make a submission challenging the jurisdiction; 13 would not submit and three were undecided. The NAM 'backed off when it came to the crunch and even Zimbabwe ... was seen running out the door'. Lange retorted that they were probably carrying a large cheque from the US. Of the now 12 openly-supportive National MPs, only three spoke out. They were joined by the leaders of the Alliance, Labour and NZ First parties. Dalziel again pushed for a vote, but the motion lapsed due to a time limit technicality. [46]

Following the debate, Dewes alerted Doug Graham to a resolution by the Swedish Foreign Affairs Committee which bound the government to put in a submission. In the December 1993 PGA newsletter, Theorin described how Swedish MPs were working across party lines to prepare an ICJ submission. PGA (NZ) wrote immediately to the Ministers of Foreign Affairs and Disarmament formally requesting that A/NZ make a submission: 'We do not believe there are any circumstances where the use of nuclear weapons could be considered legal, having regard to the corpus of international law'. Ironically the letter was drafted by Doug Graham's brother (Secretary-General of PGA) who had also sought support from the Australian branch. Both groups eventually gave unanimous support and lobbied their Ministers. The Australian government's response, and news of the Swedish initiative, were then published in PGA's newsletter. [47]

With Parliament in recess, it was almost impossible for politicians to take any further action. However, David Caygill, (former Labour Minister of Justice), assisted by Geoffrey Palmer, drafted a bill entitled *Legality of Nuclear Weapons* which, if adopted, would have ensured a written submission to the ICJ by A/NZ. It argued the WHO's competence, outlining the legal merits of the case. Meanwhile WCP supporters maintained a barrage of letters to Ministers, wrote to newspapers, met National MPs and sent out WCP Bulletins to politicians and others. Evans wrote further Open Letters, and the Wellington group placed a large advertisement in a

community paper which named supportive National MPs and asked people to fax Ministers.

Within a fortnight of the parliamentary debate, the visit of Admiral Larson, US Commander-in-Chief of the Pacific Command, attracted intense media attention. It was the first significant contact with the US military in nearly a decade and was aimed at re-establishing top-level military and political contact, and upgrading the relationship from 'friend to ally'. Ironically while Clinton praised Belarus for making 'the right choice by ridding itself of nuclear arms' Larson reiterated his country's disapproval of the anti-nuclear legislation and the WCP, strongly recommending NZ's support for unconditional extension of the NPT. [48] The public was being prepared for Bolger to meet President Clinton at the D-Day commemorations in Britain and France in June (Figure 13). Newspapers carried editorials warning that 'domestic political pressure to jeopardise other productive relationships should be resisted', and that 'the WCP could seriously undermine the renewal of the NPT and the possibility of the acceptance of a CTBT...'. [49] Bolger assured Australia of ANZ's commitment to defence after blunt warnings from their Ministers that ANZ was not pulling its weight, causing a 'significant irritant' in the Trans-Tasman relationship. [50]

On the eve of the ICJ submission deadline, Bolger indicated that a British warship would visit within a year, symbolising a breakthrough in the 'impasse that had existed between New Zealand and former allies since the anti-nuclear legislation'. [51] ANZ's Western allegiance was severely tested by the WCP, and an ICJ submission arguing illegality could sound the death knell of any future ANZUS relationship. Previously sympathetic Ministers like Graham were muzzled. He even began to argue that the government had a moral obligation to avoid taking the question to the ICJ and stated in Hiroshima at a UN Conference on Disarmament Issues that 'World War Three may have been prevented by nuclear deterrence'. [52]

As with the Labour government, the National Party experienced personality differences between key Ministers who saw themselves as future Prime Ministers. While McKinnon was viewed as an apologist for US foreign policy and in particular nuclear alliances, Graham held more independent and

liberal views. McKinnon sought to reactivate ANZUS, even if it meant changing the nuclear free legislation, whereas Graham argued for post-alliance status and common security.[53] Graham was more receptive to public opinion and as both Minister of Disarmament, and Justice, had a statutory responsibility to uphold the law. As external pressure was exerted on the government, seniority of Ministers held sway and Graham was touted as a credible messenger.

It was difficult to ascertain where Prime Minister Jim Bolger's sympathies lay. During the early 1990s the media portrayed fundamental differences between him and McKinnon on ANZUS and nuclearism. A pragmatist, Bolger was fully aware of the public's aversion to anything nuclear.[54] In response to Parliamentary Questions a fortnight before the June closing date for ICJ submissions, he expressed fears of a negative opinion which could give comfort to Iraq and North Korea, and was disdainful of Ukraine's submission. He indicated that 'no other country that we would seek guidance from' was putting in a submission, and the government had still not formed a final view. [55]

Despite media reports and updates indicating that Sweden, Ireland, Ukraine and at least 15 other states were submitting to the ICJ, the government relied on Ministry advice which eventually proved misleading and inaccurate. In answer to Clark's parliamentary questions, McKinnon announced that only two states had submitted, scornfully naming Rwanda and North Korea. This undermined his earlier statements that the ICJ 'does not release details of who has made a submission' and that 'submissions are confidential to the Court unless the Court eventually decides otherwise'.

Just prior to a press conference, the day before the ICJ's deadline, McKinnon played 'cat and mouse' with Parliament, refusing to admit that A/NZ had made a submission and not divulging its contents. [56] He then announced that A/NZ had adopted a 'wait and see' position, misleadingly stating that 'most nations that are making submissions are asking the Court not to make a judgement on this', and that he did not know of any sovereign state that had asked the ICJ to use its discretion to adjudicate on the issue. However, A/NZ's two-page submission was to stay confidential. If the ICJ

chose to take up the case, A/NZ reserved the right to make more extensive submissions at a later date. The ICJ, he said, was likely to say that nuclear weapons were legal if used in self defence. He explained how both he and Graham had met Ambassadors from India, Indonesia, Malaysia and Mexico in Geneva and New York who felt that this 'didn't appear to be going anywhere' and 'it wasn't going to be productive'. [57]

In fact, 27 states submitted by the due date, with India, Malaysia and Mexico arguing strongly for illegality, and a few months later Indonesia led the NAM's re-introduction of the UNGA resolution. Four South Pacific states gave strong statements for illegality (Nauru, Papua New Guinea, the Solomons and Samoa), and both Sweden and Ireland welcomed the case. Besides four NWS, only Finland, Germany and the Netherlands argued against the case being heard, which was only a quarter of all submissions.

At first, Japan indicated that it would argue that the use of nuclear weapons was 'not always legal from the standpoint of international law', but after a public outcry modified their statement to: 'The use of nuclear weapons is clearly contrary to the spirit of humanity that gives international law its philosophical foundation'. [58] Within a few days India published its submission as an official UN document, and Ireland, Sweden and Australia distributed their submissions to interested citizen groups. While the ICJ was bound to keep the submissions confidential, each state could decide whether to make theirs public.

Why had A/NZ prevaricated until the last minute and then refused to release its position? On the eve of the deadline, Trade Minister Burdon disclosed that it was his understanding that Australia was to put in a submission, but had pulled out at the last minute. A/NZ did not want to go it alone or be seen as the leader of the pack, preferring to wait to see what other countries were doing first. [59] Strong pressure from Western allies prevailed and A/NZ, without an imminent election demanding accountability, opted for international collegiality. Biased Ministerial advice skewed decision making, thereby undermining the opinions of South Pacific and Asian neighbours and disarmament supporters such as Ireland and Sweden. Without strong public and parliamentary advocacy, it is highly

unlikely that A/NZ would have put in a submission or eventually voted for the UNGA resolution.

Following the announcement of the submission, Helen Clark slammed the government's position as 'spineless' and 'wishy-washy'. The eight National MPs supportive of the WCP were muted in their criticism, describing it as an 'adequate interim solution which they can live with' and a step in the right direction. Once the ICJ had settled procedural matters they hoped A/NZ would make an anti-nuclear submission.[60]

In later correspondence, Graham substantiated his concerns about the NPT and CTBT, reiterating that he did not want those negotiations derailed in any way. The ICJ was considering the question of 'use' and not 'possession' which he said was already reflected in various treaties such as the NPT. He argued that if the Court upheld that 'use' was legal in self-defence it might take the pressure off the NWS during the negotiations. With these considerations in mind, he felt that A/NZ's position was 'eminently sensible' and a full submission at this stage was neither necessary nor desirable. [61]

On 10 June, the ICJ announced an extension of the date for submissions to 20 September 1994, with a cut-off date of 20 June 1995 for comment on other states' submissions. It could be construed that some pressure was applied to the ICJ to ensure that any opinion would not be released before the indefinite extension of the NPT was secured in May 1995. This theory was later substantiated by other states who had been warned by pro-nuclear states that both the NPT and CTBT could be affected by the ICJ's opinion. Prime Minister Bolger repeated the spurious Western line:

At present nuclear weapons are legal only for five countries. They are, under the NPT illegal for all other signatories. An opinion saying they were legal in certain circumstances would very seriously undermine the NPT by suggesting that they could after all be regarded as legal for any one of the 150 other signatories to the Treaty. This is certainly not something I would welcome. [62]

With another three months' grace, WCP supporters stepped up the pressure to convince the government and other states in the region to put in

substantial submissions. The government's primary excuse was based on whether the ICJ would proceed with the case. Ware alerted Graham to the fact that only A/NZ, Australia and Germany had confined themselves to the question of admissibility, whereas most other states argued on the substantive issues and that it was most unlikely that the ICJ would first decide on admissibility and then issue a further invitation for submissions. The usual practice in advisory opinions was for the ICJ to consider both jurisdictional and substantive issues together. Graham concurred, but thought that the decision on 'whether or not to take the case would be made earlier in the proceedings rather than later'.^[63] In August, Caygill redrafted his Bill and placed it in the ballot. Nothing eventuated, and the government remained intransigent, refusing to make another submission. Campaigners tried to use the Official Information Act, the Ombudsman and parliamentary questions to prise copies of the submission from the government, but to no avail. McKinnon refused to release it, so finally an exasperated Labour MP tabled in Parliament a copy obtained from overseas. It contained no surprises and the government's charade was finally exposed.

By 20 September, total submissions numbered 35 and now included Australia, Papua New Guinea, the Philippines and Kazakhstan. Of these, nine argued that the case was inadmissible with seven saying that the ICJ should use its discretion and reject the case; only five argued that 'use' was legal *per se*, and of those only France and the US gave detailed rebuttals; of the 23 arguing that 'use' was illegal, six gave detailed briefs. ^[64]

In August 1994, Dewes sent Graham the NAM Ministers' communique outlining their intention to 're-table and put to the vote' the 1993 UNGA resolution reminding him of his earlier statement that A/NZ 'would have supported a resolution if it had come to a vote...'. He responded that any draft resolution 'would be studied in the light of the circumstances at the time, while wishing to be as positive as possible'.^[65] Lange sparked debate during the Foreign Affairs Estimates, while Clark constantly asked written and oral questions. By mid-October McKinnon still denied seeing any 'hard evidence' that the NAM intended to present the same resolution, refusing to

make a decision until he had seen a draft. This was in spite of ANZ representation at the New York NAM Ministers' meeting on 5 October, where Indonesia confirmed their decision. Clark provided evidence from Ware right up until a week before the UNGA.

Irish sources indicated their government would probably abstain due to intense pressure from the UK, where the Foreign Ministry had admitted that it would be 'urging governments not to support the resolution'. Theorin confirmed that the Swedish Foreign Minister had said Sweden would vote in support, although they eventually abstained. Following further representations to Ministers, Parliamentary debates and questions, McKinnon, on the eve of the vote, expressed doubts but confirmed the government's intention to vote in favour, 'providing it continues to be supported by the NAM'. [66]

10.5 Conclusions

This period saw the fruition of ten years' meticulous preparation by Mothersson on how to mobilise and demonstrate public support on the legality issue. His innovative approach was exemplified by the DPC concept, which was adapted by WCP (UK)'s Secretary George Farebrother for practical use and creatively developed as an educative and fundraising tool whilst providing evidence of public support.

The international WCP launch created an important springboard for gathering endorsements and building the WCP network. Momentum was sustained by the DPC presentation to the UN during the introduction of the UNGA resolution, and by the groundbreaking initiative to deliver them to the ICJ in support of government submissions on the WHA question.

The sustained intensity of the parliamentary and citizen campaign in ANZ, which finally forced the pro-Western alliance government to make a non-committal ICJ submission on the WHA question, demonstrated how radical the issue was, even in a state with nuclear free legislation. Central to this was the decision by Sweden, Ireland and Ukraine to make submissions (following lobbying by WCP delegations).

Reasons for New Zealand's continued reluctance became apparent as the 1994 UNGA vote approached. The visit by a British warship would break an 11-year impasse in the NZ-UK relationship. NZ Defence Forces awaited confirmation of a visit by their Chief of Defence to Washington on an 'ANZUS freeze-breaking mission' - the first such visit in over a decade. The new US Ambassador Beeman began organising Bolger's visit to the White House, and openly criticised the WCP two days before the UNGA vote. He asked what would happen if the ICJ ruled they were legal:

Where would you be then? Would New Zealand be prepared to be in violation of a decision of the International Court of Justice by keeping tactical nuclear weapons out of your country when the World Court has declared they are legal? [67]

The drive to reactivate ANZUS came from Foreign Minister McKinnon, backed by some senior Ministry officials. Inevitably this issue clouded decision making over the ICJ case, and caused tension between senior Ministers who were personally more supportive of the case. Younger colleagues, acutely aware of the strength of support for the anti-nuclear policy among women and young voters, were prepared to challenge Cabinet and Ministry decisions publicly. By reviewing the nuclear free policy with regard to nuclear-powered ships, and promoting the extension of the NPT, the government indicated their commitment to Western collegiality. However, anti-nuclearism was so deeply imbedded in the public psyche that the government could not risk political suicide by overturning the legislation or appearing pro-nuclear on this issue.

Eventually, A/NZ withstood international peer pressure, voting for the 1994 resolution as the only Western-allied state. This dramatic move put A/NZ firmly alongside her small Pacific Island neighbours and out on a limb from her closest ally Australia. It was a credit to the persistence of individual MPs, activists and groups of concerned citizens who remained resolute in their endeavours to force the government to represent the views of the people. At a national level, the A/NZ struggle prefigured the sorts of coalitions Falk had called for in the development of a global democracy, and epitomised a popular struggle which was both intense and effective.

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- [25] Speech by Hon Doug Graham at Wellington Declaration Ceremony, 28 September 1993.
- [26] Speech by Hon Phillip Burdon at Christchurch Declaration Ceremony, 24 September 1993.
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- [28] Briefing papers from P.W. Adams for the Secretary of External Relations and Trade to the Minister of External Affairs and Trade, 12 and 14 May 1992.
- [29] *Ibid.*
- [30] 'Instructions on Voting to the NZ delegations for 46th WHA Agenda item 33'; NZ Explanation of Vote, Item 33; Letters from McKinnon to Dewes, 22 April 1993 and 19 May 1993; Letter from McKinnon to Evans, 14 May 1993.
- [31] Letter from McKinnon to Dewes, 20 September 1993;

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[45] Mike Munro, 'Ministers at odds over NZ's future defence role', *The Dominion*, 23 March 1994; 'Cool reaction to ANZUS plan', *Evening Post*, 22 March 1994.

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[47] Maj Britt Theorin, 'Can Use of Nuclear Weapons ever be Legal?', *Global Action*, December 1993, p 8; Letter to Editor of *Global Action* from Garrie Gibson, PGA Australia Chair, March

1994, P 14; Dianne Yates and Nick Smith, 'Are Nuclear Weapons Illegal? - Views from PGA-New Zealand and PGA-Australia', *Global Action*, June 1994, pp. 5-6 and p.12. Letter from Dianne Yates to Dewes, 5 May 1994.

[48] 'US praises nuclear-free State', *The Press*, 17 January 1994; Interview with Ian Fraser, *TVNZ*, 14 April 1994, Brendon Burns, 'US thaw comes with nuke-stance caution', *The Press*, 15 April 1994; Admiral Charles Larson, 'Pursuing the Pacific Paradox, The United States-New Zealand Military Relationship: Past, Present and Future', Speech to NZ Institute of International Affairs, 12 April 1994. In August the Assistant Secretary of State Ambassador Winston Lord restated US policy that 'as long as New Zealand retained its 1985 legislation preventing the entry to its ports or nuclear-powered ships, or those which could have nuclear weapons aboard, "we cannot envisage a full return to our alliance relationship" '.

[49] 'On Speaking Terms', Editorial, *The Press*, 22 February 1994, 'Risky Business', Editorial, *The Press*, 10 May 1994; 'Important invitation', *The Press* editorial, 12 January 1995; Michael Rentoul, 'Prime Minister to visit White House in March', *The Press*, 1 February 1995; 'Back to the White House', *The Press*, editorial, 2 February 1995; David Lange, 'We can't agree, so let's do little', *The Press*, 17 January 1995.

[50] 'Australia pushes NZ on defence commitment', *The Press*, 12 February, 1994.

[51] 'Royal Navy to visit NZ soon-Bolger', *The Press*, 6 June 1994.

[52] Letter from Doug Graham to Dame Laurie Salas, 13 April 1994, Speech by Graham to UN Conference on Disarmament Issues, Hiroshima, 24-27 May 1994.

[53] Oliver Riddell, 'NZ 'legislated away deep trust' with US', *The Press*, 16 September 1991; 'PM signals review of N-ship ban', *The Press*, 1 October 1991; Gordon Campbell, 'Like the Bomb, Dammit', *The Listener*, 8 July 1991, pp. 10-15; David Lange, 'When posturing gets in the way of principles', *The Dominion*, 17 June 1991. Richard Long, "'Warhorse' McKinnon opens up second front", *The Dominion*, 1 May 1991; John Goulter, 'National, McKinnon wriggle on anti-nuclear policy hook', *The Evening Post*, 4 May 1991; Don McKinnon, 'New Zealand's Role in Collective Security', Address to Royal Institute of International Affairs, Chatham House, London, 25 April 1991; Brendon Burns, 'National walks out on ANZUS: McKinnon leads attack', *The Press*, 9 March 1990; Brendon Burns, 'McKinnon and PM at odds over ship visits', *The Press*, 5 March 1991; Paul Gorman, 'McKinnon calls for 'open' foreign policy', *Otago Daily Times*, 9 August 1991.

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'Setting a clear vision: a foreign policy for the CNN age, *NZIR*, September/October 1994, vol. XIX, no. 5, pp. 20-22. See also, Malcolm Templeton, ed., *New Zealand as an International Citizen: Fifty Years of United Nations Membership*, NZ Ministry of Foreign Affairs and Trade, Wellington, 1995, especially chapters III, V and XI; pp. 90-91, p. 167.

[55] Parliamentary Questions re Nuclear Weapons - International Court of Justice, 25 May 1994. Dewes wrote confidentially to McKinnon, Graham, Fletcher and Burdon attaching copies of the Swedish, Irish, Ukrainian submissions and copies of private correspondence from the Mexican Mission, 3-5 and 8-9 June 1994.

[56] Hansard, Questions for Oral Answer, 7 June 1994, pp. 1433-4, 8 June 1994, p. 1511, 9 June 1994, p. 1590.

[57] Transcript of Press Conference with Don McKinnon, 9 June 1994, 6 pp. Transcript of interview between Kim Hill and Don McKinnon, Radio NZ, 10 June 1994.

[58] Kevin Rafferty, 'Japan agonises over N Korean sanctions', *The Guardian*, 6 June 1994; Japan's submission to the ICJ October 1995.

[59] Notes of phone conversation between Philip Burdon and Dewes, 7 June 1994.

[60] Media release by Chris Fletcher, Pauline Gardiner, Michael Laws, Joy McLauchlan, Brian Neeson, Katherine O'Regan, Tony Ryall and Nick Smith: 'National MPs welcome World Court Submission as a step in the right direction', 9 June 1994. Media release by Rt Hon Helen Clark, 'National deprives New Zealand public of a role in important World Court case', 9 June 1994.

[61] Letter from D. Graham to Carla Heslop, 1 July 1994.

[62] Letter from Bolger to Arthur Quinn, 29 August 1994.

[63] Letter from Ware to D.Graham, 25 July 1994 and from D. Graham to Ware, 22 August 1994; Fax from Ware to D. Graham, 11 October 1994.

[64] Chart outlining statements submitted to ICJ on WHO case in 'World Court Project Report #6', LCNP, Spring 1995, p.4.

[65] Letter from Dewes to D.Graham, 13 July and 10 August 1994 and D.Graham to Dewes, 29 August and 15 September 1994. Letter from Dewes to Ombudsman, 23 August 1994 and from Ombudsman to Dewes, 26 August 1994.

[66] Parliamentary Question by Helen Clark to Doug Graham, 10 November 1994 and Ministerial Briefing paper 8 November 1994 (Released under OIA).

[67] 'Envoy urges trust on arms', *The Press*, 15 December 1994; Dave Wilson, 'Washington invitation awaited', *The Press*, 18 November 1994; Hank Schouten, 'Envoy sees threat to anti-nuke law', and Brent Edwards, 'US ship visits still over horizon', *Evening Post*, 15 December 1994.

CHAPTER 11

UN GENERAL ASSEMBLY RESOLUTIONS: 1993 AND 1994



Source: Klarc, *NZ Herald*, 10 July 1996

CHAPTER 11

THE UNGA RESOLUTION: 1993 and 1994

Of course there were strong attempts to coerce and intimidate countries not to go with this 'riff-raff' ... there was a huge amount of pressure ... the French pressured the Africans ... the US, UK and France visited the Malaysian capital and you can be sure they visited others. They must have talked many times over to the Indonesians. That we squeaked through was a wonderful achievement!

Malaysian UN Ambassador Razali Ismail [1]

11.1 Introduction

The most crucial phase of the WCP's precarious journey to the ICJ was the successful adoption of a resolution at the 1994 UNGA. Two herculean efforts were required finally to succeed on what veteran UN expert Bill Epstein termed 'the most exciting night at the UN in thirty years'. Described by various journalists and academics as the most historic, contentious and significant UN disarmament resolution ever adopted, this was borne out by lengths to which the nuclear weapon states (NWS) and their allies were prepared to go to prevent it coming to a vote in 1993. It also provided an opportunity for outstanding leadership by members of the Non-Aligned Movement (NAM) to guide it through the labyrinth of UN bureaucratic hurdles and to use their anti-nuclear majority to secure its adoption.

This chapter draws extensively on the personal experiences of those who lobbied diplomats and governments during this time, and documents responses from those at the forefront of the struggle within the diplomatic community in New York. It highlights the role of another New Zealander, Alyn Ware, who, like Evans and Geiringer, played a decisive role in this phase of the WCP. It also provides some analysis of how countries

responded to pressure from their allies and peers, and to strong public opinion.

11.2 Alyn Ware

It has been a great privilege and fascinating experience to work with Alyn Ware through the final weeks of nearly two years' relentless, lonely lobbying in an often hostile and alien environment for a young Aotearoa peace activist. His ability to slip into his \$5 suit and tie, take the subway uptown from his cramped office, and gain the confidence of hard-bitten diplomats in the delegates' lounge in the UN, was wonderful to witness.
Robert Green [2]

From mid-1992 until late 1995, Ware was responsible for the lobbying in New York and the coordination of submissions to the ICJ. After the 1992 WCP launch, he was the unpaid volunteer for six months for the Lawyers' Committee on Nuclear Policy (LCNP), eking out an existence with help from sympathetic peace people. At first he sought support within the US NGO community and made initial 'soundings' with Missions. By October 1992 he had been appointed LCNP WCP Director and by January 1993 had become LCNP's salaried Executive Director. How did this young, humble kindergarten teacher from A/NZ achieve this position? What were the skills that he brought to this challenging task; and how did he gain the trust and respect of the majority of the UN diplomats?

Ware's mother describes her son as a high achiever in sport, drama, academic pursuits and music. From an early age he had a strong sense of justice, challenging his teachers when unfair treatment was meted out to fellow students. He came from a problem-solving family where his parents encouraged the children to find 'win-win' solutions through dialogue and participation. Ware trained as a kindergarten teacher where he put his drama, music and conflict resolution skills into practice. His mother remembers that while at kindergarten he had painted only vivid rainbows. Later he carried the image of the rainbow all over the world and taught about the work of the Greenpeace flagship *Rainbow Warrior*, where his sister was a crew member.

For over a decade he lived at subsistence level, promoting peace principles wherever he went. Funding for peace work in A/NZ was scarce but he had

a strong belief, based on Gandhian principles, that if work needed to be done, support would materialise. During this time he further developed his skills, lobbied ANZ decision makers and made his first attempts at UN international diplomacy.

In the early 1980s he founded a University Peace Group, the Hamilton Nuclear Free Zone Committee, Youth Peace Network and the Mobile Peace Van Society. From 1984-88 and again from 1991-92, he visited many schools, community groups and kindergartens nationwide in the Peace Van, sharing peace education resources and teaching peace in the classroom. His positive visions and peaceful teaching techniques empowered the children, who warmed to his enthusiasm and zest for life.

He participated in government consultations aimed at establishing peace education in schools. In 1986 he was given a UN International Year of Peace Award and a Winston Churchill Memorial Trust Scholarship. He co-organised a Peace Walk for a Nuclear Free New Zealand in 1987, produced Planet Earth posters and an environment-peace book *A Planet in Every Classroom* in 1989, and became a member of the Working Group for Peace Movement Aotearoa.

As mentioned earlier he travelled to the US and USSR (see 8.3), and in mid-1988 he joined the 'Soviet American Peace Walk' from Odessa on the Black Sea to the capital of Ukraine, and then travelled to Moscow arriving as the Soviets tested in Kazakhstan. The group then marched around the Kremlin with banners and flags including Ware's rainbow banner which read: 'To Russia from Nuclear Free New Zealand'. [3] He went back to the US under the banner of 'Nuclear Free Kiwis Abroad', networking with peace organisations and joining anti-nuclear protests. Eventually he fulfilled the dream he had had since he was 14, to attend a UN session, where he heard David Lange address the UNGA calling for a CTBT. [4] He worked for a few months as a researcher for the World Association of World Federalists in New York 'monitoring of proposals to strengthen the UN, especially in the areas of international law, disarmament, common security and peacemaking'. Two key UN initiatives which he researched were the draft convention to ban chemical weapons and the establishment of an

International Criminal Court. He also promoted the proposal to declare the nineties a UN Decade of International Law.[5] Dewes also sent him the Evans' illegality proposals and asked him to 'sow some seeds with diplomats and others'. [6]

In the early 1990s he organised a War Toys Amnesty and helped establish the 'Cool Schools' Peer Mediation Programme. In 1990-91 he was the UN Gulf Peace Team Representative, meeting New York diplomats to explore nonviolent solutions. He believed that '... the principles of conflict resolution are the same at the international level as they are at the domestic level' and could be applied in the Gulf conflict. [7]

Like St John, Mothersson and others, one of the catalysts for Ware's commitment to international law was Delf's *Humanising Hell*. After reading it he organised a Waikato University Seminar on 'Nuclearism and International Law'. In 1991, after further briefing from Dewes he distributed WCP material to diplomats and NGOs in New York. As already discussed LCNP was still not pursuing the idea (see 8.2). Buoyed by initial interest from six UN Missions, Ware returned home and joined the growing campaign (see 8.3).

Ware discovered fundamental differences between US and A/NZ anti-nuclear groups (see 10.2). Because the A/NZ movement had experienced major successes as a result of working closely with decision makers and building strong public support using the law, the WCP seemed an achievable goal. By contrast, US groups worked on elements of the nuclear problem, and US policies in particular, and engaged in little networking. They preferred to secure funding before launching projects. A 'Kiwi' characteristic is:

...if something is broken then you go and try and fix it yourselves ... you don't wait until you have the money to call in an expert, or to fund the campaign. Because peace is in everybody's interest, everyone should have a voice. [8]

The health and environmental problems caused by Pacific nuclear testing gave Ware a personal and passionate basis for his anti-nuclear work.

Nuclear weapons were not merely a possible threat to humankind's existence should they be used in war; the testing and production of them were already causing casualties. He made links between nuclearism, colonialism and the abuse of the lands and cultures of indigenous peoples. This later helped build empathy and trust with diplomats from developing countries. Fostering these relationships by trying to see the issue from their point of view was fundamental to Ware's working style. The diplomats admired his role in upholding A/NZ's nuclear free status despite threats to military and economic relationships. Ware believed that '...the way we operate is very important ... it is not just the getting rid of nuclear weapons, but how we are going to build up the world that we want. Our relationships with peoples, whoever they are, are part of that'.

Ware identifies the following key influences in developing his 'people skills': nonviolence training workshops, 'Heart Politics' seminars, peace movement and feminist analysis, and Maori spirituality. He followed the teachings and principles of the Maori pacifist Te Whiti, Gandhi, Jesus Christ, Martin Luther King, Greenpeace and Amnesty International, embracing the following philosophical themes:

- the people you are trying to work with are not the enemy : the 'enemy' is a particular way of thinking;
- you are trying to change hearts and minds, not build walls by confrontation, but by seeing where people are coming from and where you can move them forward;
- facts and figures are important, but the 'heart' must also be through personal stories and experiences;
- the need to develop non-hierarchical, consensus decision making, the politics of inclusion rather than exclusion, and participatory democracy;
- building coalitions, thinking globally and acting locally;
- a Maori saying : '*Ka Patai koutou ki au, he aha te mea nui o te Ao? Ka ki atu ahau ki a koutou, he tangata, he tangata, he tangata.*

You ask me what is the greatest thing in the world? I answer you all, it is people, it is people, it is people.' [9]

He was sustained by the knowledge that many New Zealanders and Pacific Islanders supported his work. He felt privileged to do this work on their behalf, and was bolstered by the 'rightness' of the cause. 'I have dreams and visualisations about what I should be doing ... it is not me alone ... a lot of energy is with me and I'm more a tool than a prime mover ... and that gives me confidence.' [10] Seasoned activists expressed surprise that over the years Ware did not compromise his personal beliefs in the highly bureaucratic, hierarchical, sterile UN environment. While he donned a suit, the necessary UN 'uniform', he kept his ponytail, pulled out his guitar and sang at functions, and brought his 'heart and spirit to the centre of the debate'. [11] Veteran Mexican diplomat Marin-Bosch affectionately describes him as:

...a pain in the arse in a good way ... he doesn't take no for an answer ... persistent ... never gives up ... the rightness of the cause ... you know that he's decent ... it's the goody-goody-ness ... and, to be effective you have to be informed. [12]

The Samoan UN Ambassador, and former Attorney General, was surprised by Ware's cheap suit and ponytail. He wanted to 'dress him up so he can carry the weight of the serious argument', but sensed that '... he's saying .. "no, it's not my dress that matters, it's what is in my heart and what I say to you that matters" ...'. [13]

The Malaysian Ambassador, and UNGA President, praised Ware's style:

... he allowed the diplomats to take initiatives here and there, but at the same time backed this up by giving the right papers, making the right points quite smoothly - not in an obtrusive fashion - understanding that the highly opinionated government servants did not want to be upstaged by anybody else. He understands the ecosystem he's been working in and has been very successful. He's been very persistent. I remember many times when I thought there would be a serious problem - we'd come to a brick wall. Alyn would come back and try another way of looking at it and eventually moved the process along. [14]

Mendlovitz was impressed by Ware's capacity to 'see the positive aspect of whatever view was being expressed and try to state it in its best form even when he disagreed with it'. He was struck by his ability to understand the complexities of international law : 'He is not a lawyer and he has to learn what we are saying - first he puts it in his own language, then he learns the

law and by the time he goes to a Mission, he has got it!' Like Weiss, he conceded that Ware's role in New York was crucial - 'without him, I don't think anything would have happened'. [15] He became the bridge between the UN, ANZ and the rest of the world community on the WCP.

Maori elder Pauline Tangiora acknowledged Ware's humility, sincerity, tolerance, determination and ability to express complicated arguments in simple terms. His foundation was solid - he was in touch with his heart and soul. Maori believe the *wairua* (spirit) must be right for anything to be successful and various tribal elders had given Ware, and the WCP, their blessing. [16]

Ware's style differed from Evans, St John and Geiringer in a number of ways. They worked more as individuals using their professional contacts, had financial security, and were highly educated in their specialised fields. Ware was over two generations younger, worked collectively with people from all walks of life, and achieved a multitude of tasks with no secretarial support and meagre funding. He sought guidance from a wide range of people, always consulting carefully before acting. Thus he built up confidence amongst the international peace community, who grew to respect him deeply and value his analysis and intuition.

11.3 Lobbying New York Diplomats and Governments

Ware's second UN WCP lobbying experience was strengthened by Grief's Legal Memorandum, the growing international support and the three distinguished co-sponsoring organisations. The campaign now had respectability and momentum behind it. Initially, Ware reconnected with his 1991 contacts and the New York counterparts of the Geneva Missions visited by Dewes and Archer, to update them, seek the current level of interest, discuss outreach to other Missions, and ensure continuity between Geneva and New York. Priority was given to the WHA co-sponsors, leading members of the NAM, and those which voted consistently for the Indian UN resolution calling for a Convention on the Prohibition of Use of Nuclear Weapons.

The first meeting of the LCNP WCP Working Group in June 1992 decided to finalise wording for an UNGA resolution during 1993; seek a large number and cross-section of co-sponsors; and then lobby them to support the resolution. Sympathetic contacts in Missions and citizen groups were identified and approached. The first lobbying team consisted of Epstein, Mendlovitz, Ware and Weiss. Ware also advocated the inclusion of 'a woman, preferably non-white and a non-northerner'. [17]

His discussion papers for Mission meetings included an update on WCP support; the possible effects of a successful advisory opinion; the case for illegality; and answers to concerns from some states reluctant to support the idea. Initial responses from Missions were as follows: Belarus, Brazil, Chile, Colombia, Costa Rica, India, Mexico, Pakistan, Uruguay and Vanuatu were all very supportive. Argentina was not interested; Namibia and Peru were interested but their priorities were on other issues; Egypt expressed concern about pressure from opposing countries; while Saudi Arabia, Iceland, Russia and China were sympathetic but could not state their country's positions. The Filipinos encouraged Ware to secure support from Zimbabwe and Nigeria to ensure a strong African vote, and from Indonesia to attract the Asians. [18]

Zimbabwe's Foreign Minister Shamuyarira was an early WCP supporter. His country had a 'deeply cherished principle of universal participation' and a commitment to the 'full observance of international law' as substantiated by their leadership of the UN Decade of International Law (see 8.2). [19] It was also leading negotiations for an African NFZ treaty, and was concerned that NAM was abandoning its trailblazing with regard to nuclear disarmament. Zimbabwe had chaired the Security Council during 1990-91 when it had been outraged by US manipulation of the Council to gain UN support for its actions in the Gulf War.

Shamuyarira, a past colleague of Mendlovitz, was convinced by the merits of the WCP and personally began to drive the NAM campaign. [20] In late September 1992, he hosted a meeting of Ambassadors and diplomats from 17 states with the three WCP NGO co-sponsors, where he announced his intention to ask the NAM to support the resolution at their Foreign Ministers'

Meeting the following week. The Chilean representative indicated that his Ambassador (an IALANA member) would publicly support the WCP in his UNGA address. Others were keen to secure NAM endorsement to help withstand pressure from other states, and encouraged the NGOs to keep building up support, especially among indigenous groups and developing nations. [21] By this stage, Ware had sent WCP updates to over 400 individuals, and 400 NGOs in the US, many of which were international organisations with UN status.

The NAM Foreign Ministers expressed considerable interest in the idea, with the majority taking the Legal Memorandum and an LCNP paper outlining the possible outcomes and impacts of an ICJ decision.[22] The Indonesian Chair announced that it would be discussed further at a subsequent meeting. After only five months of lobbying, 22 states were strongly considering co-sponsorship, and it was likely the resolution would be adopted if put to the vote. Meetings with some of the more reluctant states such as Austria, Belgium, Ireland, Japan, Spain and Sweden uncovered where blocks lay.

Zimbabwe acknowledged that, while the NAM could lose, the risk was still worth taking. Its strongest advocate was Godfrey Dzaivro, senior diplomat in the Zimbabwe Mission who had been given responsibility by his Minister to spearhead the initiative. He had a long interest in nuclear disarmament, and was prepared to risk his career to ensure the resolution was adopted. He was keen for Zimbabwe to announce its intention to sponsor the resolution during the upcoming UN Disarmament Commission, and encouraged ongoing meetings with NGOs and diplomats including some of the very hesitant Europeans. [23]

During the 1992 UNGA, A/NZ, Australia and Canada affirmed the UN Secretary-General's call for compulsory jurisdiction of the ICJ, encouraging other states to do the same, and supported his advocacy of greater use of ICJ advisory opinions. [24] At the same time, NGOs in the more liberal Western states lobbied parliamentarians encouraging them to work together to support an UNGA resolution. By May 1993, and before the successful outcome of the WHA resolution, the tally of likely co-sponsors

had reached 38, with a further 9 indicating abstention with possible movement to a 'yes' vote. There was still no clear position from Russia or China; and Belgium, Denmark, Estonia, Hungary, Ireland, Norway and Sweden expressed opposition, but indicated that abstention might be possible.

The surprising success of the WHA resolution bolstered the waverers and strengthened support within the NAM; and the ICJ called for submissions a month before the UNGA resolution was introduced in October 1993. Inevitably, with this success came intense pressure on the leading proponents and sympathetic members of the Western group. Most of the Latin American support dropped off during the WHA, and their leaders and citizen groups needed reassurance that the initiative would succeed if the majority of states stood together. Mexico was finding it hard to withstand the threat to their trade with the US, and encouraged Ware to travel to key states in Latin America to convince Ministry officials in the capitals and build national support. Mexico was also under pressure because it was not supporting the indefinite extension of the NPT in 1995. So in July 1993, Ware (see 10.2), accompanied by Latin American colleague Gabriel Fried, visited Costa Rica, Mexico and Nicaragua meeting Ministers, advisers, ambassadors, politicians, delegates to WHA, and representatives from PGA, IPPNW, IALANA, Democratic Lawyers' Associations and peace groups. [25] Spanish versions of the Legal Memorandum and DPCs were liberally distributed, and twelve influential organisations endorsed.

Vanuatu's Ambassador Robert van Lierop also played a significant role in the resolution's introduction in the UNGA. He was a lawyer and a friend of Hilda Lini. Vanuatu's new coalition government was pro-French and most reluctant to support the resolution. Van Lierop was determined to raise the WCP at a meeting of the South Pacific Forum UN delegations, but needed pressure to be applied to the Ministers and their advisers at home. He suggested that Ware attend the South Pacific Forum in August to lobby them personally.

In the meantime, other ISC members held meetings with Ambassadors and Ministers worldwide. Green visited the Ukraine and Belarus Missions in

London, and the Australians, Irish and Canadians in their capitals; while Dewes met diplomats from the Philippines, Thai, Indonesian, Fijian and Western Samoan Missions in Wellington, Irish Ministers in Dublin and Christchurch, and a Pakistani Prime Ministerial adviser in Christchurch. IPB Vice-President Fredrik Heffermehl lobbied the Norwegians and travelled to Iceland for meetings; Phon van den Biesen met the Dutch in Amsterdam; Ware and others met Belgian officials during an ISC meeting in Brussels; and Theorin lobbied her Swedish colleagues and distributed 40 Legal Memorandums to the World Women Parliamentarians for Peace gathering in Spain. IPPNW, IPB and IALANA affiliates met with their governments. During the May 1993 ISC meeting in New York, Green and Dewes held follow-up meetings with A/NZ, Australian and Irish Missions updating officials on the current views of key decision makers in the capitals, media coverage and growing public support.

With elections pending in A/NZ and Canada, there was considerable Canadian interest in the A/NZ situation, especially from their Disarmament Ambassador, Peggy Mason. She noted the growing support amongst Canadian Opposition parties and the public following Green's intensive speaking tour, keenly aware that their elections were due in October with the likelihood of a new Prime Minister. She indicated possible abstention. [26] Australia's Ambassador Richard Butler was personally very supportive, indicating that his government might shift if other 'middle' Western states also moved. With majority support throughout the Southern Hemisphere and increasing public pressure at home and the region, his government would be forced to respond more positively. Ware's trip to the South Pacific Forum in Nauru in August therefore was timely.

While the New York lobbying was extremely effective, final decisions are made in capitals: so personal meetings with Foreign Ministers and their advisers were vital. Ware noted that, although New York diplomats may appear interested or supportive, they will act according to their perceived greater interests, which are often influenced by the NWS which wield considerable economic and political power. Thus, early indications of support did not necessarily materialise. 'In some cases it was the

politicians at home who spoke somewhat favourably for domestic consumption, but then did not follow up in the backrooms of the UN or even in the vote'. [27]

Most South Pacific States are not NAM members. Some are members of the WHO but not the UN. Many are signatories to the SPNFZ, and five were WHA co-sponsors, so their support was worth pursuing. The leaders of 15 nations and their advisers gathered for the Forum on one small island. Despite busy schedules and other priorities, Ware managed eight meetings which resulted in six states indicating likely co-sponsorship and another (which was 85% aid-dependent) supportive. As few meetings were pre-arranged, Ware used his 'Kiwi flair' to exploit opportunities. For example, while in a bus he recognised a key official walking from a meeting; so he jumped off and talked with him while he walked to the next meeting; and he briefed another official in a taxi during a brief ride to his hotel. [28]

Overall, South Pacific states played a disproportionate role supporting this initiative, considering their size and economic vulnerability. There were inevitable repercussions following the WHA success. Although Lini was sacked as Minister of Health and Vanuatu felt the pinch economically, she was undeterred. She was awarded the IPB MacBride Peace Prize and in October addressed a successful WCP Rally in London before joining the WCP lobbying team in New York. Earlier, the NFIP network sent out an Action Alert highlighting Lini's role and urged groups to lobby their governments.

Just prior to the UNGA, NGOs worldwide strongly lobbied their politicians. PGA sent briefing papers to over 600 parliamentarians, and Sonja Davies urged her World Women Parliamentarians for Peace colleagues to ask parliamentary questions. NGOs, especially in the middle Western states, kept close contact by fax and phone (few had e-mail), sharing media coverage, letters from politicians, answers to parliamentary questions and reports of conversations with Ministers and their advisers. These were instrumental in bolstering decision makers who were sympathetic, but bound by Western collegiality constraints to abstain or vote against. When NAM announced their co-sponsorship, it became more likely that a group of

Western disarmament 'liberals' might vote in favour. A/NZ's early positive indication of support, reported in the media, encouraged Australia, Canada, Ireland, Japan, Sweden and even Italy.

During 1992-93, St John wrote extensively to Foreign Minister Evans and met his advisers. Following a successful WCP launch throughout Australia in March 1993 and the WHA outcome, NGOs visited MPs and collected DPCs and prominent endorsements. Vallentine and St John met Senator Evans in July 1993: he promised to review the situation and request a report from UN Ambassador Butler. He gave the traditional Western excuses for blocking the initiative, adding that the ICJ was about to consider a case by Nauru against the UK and Australia regarding compensation for phosphate removal. It was proving extremely expensive and embarrassing for the Australian government, and he was loath to risk the ICJ being ignored by the NWS if it did advise illegality.[29] However, he was aware of the growing international, and especially regional, support for the WCP.

In Italy, IALANA Council member and parliamentarian Dr Joachim Lau initiated a resolution in the Foreign Affairs Committee which, if adopted, would bind the government to vote for the resolution. He used newspaper articles from A/NZ, Australia and Malaysia to convince Italian papers to publish an article. [30] Canadian groups maintained the pressure on all political parties, and by July 1993 had secured a public statement of support from both Lloyd Axworthy, External Affairs Spokesperson of the Liberal Party, and his counterpart Svend Robinson in the New Democratic Party. Former PGA Chair and senior political figure Warren Allmand became a prominent endorser. Just prior to the UNGA, future Prime Minister Jean Chretien replied to Canadian lawyers confirming that if the Liberal Party became government they would 'undertake a comprehensive review of all aspects of defence policy, not the least of which is the issue of nuclear deterrence'. He affirmed the WCP as an initiative 'which we certainly endorse in principle'. [31]

Ireland was a leader on nuclear disarmament issues, having pioneered the NPT and consistently called for the elimination of nuclear weapons. With a

proud history of neutrality, independence and a nuclear free status, it was a likely partner with A/NZ. However, by 1993 other political considerations were paramount. Its international agenda was dominated by a public debate on the Maastrich Treaty and European Union (EU) membership which would compromise Irish neutrality on military issues. Foreign Minister Dick Spring was due to meet with US Secretary of State Warren Christopher to explore a solution to the Northern Ireland security crisis. Ireland, like A/NZ, expressed fears that the WCP could jeopardise the extension of the NPT. During 1992-93 both Green and Dewes met Irish Ministers and officials, updating them regularly on the positions of other governments. The Irish anti-nuclear movement collected over 10,000 DPCs and secured significant media coverage.

Fortuitously, Dewes met Brian Lenihan, the Chair of the Foreign Affairs Select Committee and a former Deputy Prime Minister, while visiting other parliamentarians. He asked why she was in Dublin, and immediately showed great interest in the WCP both as a lawyer and former acquaintance of MacBride. After a briefing by Irish CND and Dewes he prioritised the issue on the Committee's agenda that week. Within a few days, *The Irish Times* ran a front-page story entitled 'Move to outlaw use of nuclear weapons supported'. Representatives of Dublin CND, Earthwatch and Pax Christi convinced the Committee to recommend government support for the resolution. Lenihan promised that a Committee delegation would pursue it in New York during the UNGA. Ministry officials indicated that Ireland would not be the first European country to vote in favour, but would find it easier if A/NZ, Australia and Canada were supportive too. [32] Spring also indicated his personal support when he met Dewes in Christchurch during the centennial celebrations of women's suffrage opened by Irish President Mary Robinson. Harold Evans had met her in Dublin in 1992 where she too, informally, had shown considerable interest and sympathy.

Sweden was ruled by a four-party coalition Cabinet where the Conservative Party, representing only 20% of the vote, held the positions of Prime Minister and Foreign Minister. According to Theorin, this was like 'using the

goat to watch over the sack of grain'. She expressed concern publicly that Sweden had moved into the shadows after being a leading nation in the field of peace and disarmament. It was no secret that Ministry officials had long opposed the WCP; and the Conservative Party 'never supported any limitations on nuclear weapons in earlier days, and they do not do so today. They do not want a prohibition, only a regulation of their use - they accept their use'. [33] Sweden, like A/NZ, Australia, Canada and Ireland had opposed the WHA resolution and was unlikely to support it in the UNGA without strong public pressure. Also, Sweden wanted to join the European Union (EU) and did not wish to alienate NATO EU members.

The Liberal Democrats had ruled Japan for 38 years, and supported the US-Japan Mutual Security Treaty as protection against the Soviets during the Cold War. Post Cold War, most regional governments saw it as the mechanism for a US presence and supported its continuation. In the latter part of 1993, the Liberal Democrats and the Socialists formed a coalition government, but with the former in ascendancy. During the next year, four Prime Ministers held power with Murayama as the second Socialist to lead the country in July 1994. Surprisingly, he endorsed the US-Japan Treaty despite a long tradition of Socialist opposition to the 'nuclear umbrella'. [34] Strong anti-nuclear groups lobbied hard during 1993 to force the government to reflect public antipathy towards nuclear weapons by supporting the resolution - but political and military considerations remained paramount. Prime Minister Hata, in reply to a parliamentary question on the ICJ advisory opinion asking whether the 'use of nuclear weapons is a violation of international law', said:

Considering the reality that world peace and security is ultimately kept by the deterrence of military force including nuclear weapons, it is necessary to be prudent on resolutions banning the use of nuclear weapons, and that so far we have abstained on this kind of resolution.

[35]

As the UNGA approached, polls indicated that the incumbent Canadian government would lose and it would be a very close result in A/NZ. Ireland watched closely to see if others would reveal their position, while Australia and Sweden stayed silent. The result of Lau's Italian initiative was expected

during the UNGA; but Japan was most unlikely to bow to public pressure and threaten the US relationship.

11.4 Role of the Non-Aligned Movement

From June 1992 onwards Ware worked closely with Zimbabwe's diplomats in New York drafting the UNGA resolution. Following Shamuyarira's Ambassadorial Roundtable, he opened the WCP US launch in New York in May 1993. On 27 August 1993, Zimbabwe sought NAM co-sponsorship for the draft resolution. Mexico, Nigeria, Pakistan, Sierra Leone and Tanzania spoke in favour. The resolution was referred to a Working Group to give countries the opportunity to discuss it and offer amendments before presentation to the full NAM in mid-September. LCNP was asked to provide legal assistance at various stages.

The NAM does not vote, but passes resolutions by consensus which, once adopted, members are expected to support and vote for. Indonesia, as Chair, was required to introduce it to the First Committee on behalf of the 110 members and other co-sponsors. During the First Committee meetings, the NAM planned closed Roundtables and informal discussions where other interested countries could make proposals. [36] In mid-September the NAM Working Group discussed the resolution, and there was no dissent. By mid-October, opposition had appeared; and as the UNGA began, it was apparent that intense efforts were being made to break NAM consensus and scuttle the resolution.

The draft UNGA resolution still held basically to Evans' original version which asked the ICJ 'to render an advisory opinion on the legality or otherwise of the use or threat of the use of nuclear weapons or methods of warfare'. Costa Rica had wanted to include specific reference to possession, testing, manufacture and deployment, but a consensus developed that 'threat or use' would succeed more easily than a more encompassing one. In consultation with LCNP advisers, the NAM Working Group slightly amended Zimbabwe's draft. The preambular paragraphs noted the UN Charter's obligation for states to refrain from the threat or use of force against any State; recalled earlier UN resolutions which declared

the use of nuclear weapons a violation of the UN Charter and a crime against humanity; welcomed the Chemical and Biological Weapon Conventions; noted insufficient progress towards the complete elimination of nuclear weapons; recalled the UN Decade of International Law; noted the provisions of the UN Charter empowering the UNGA to request an advisory opinion on any legal question; recalled the UN Secretary-General's recommendation to use advisory opinions; and welcomed the 1993 WHA resolution. The operative paragraph read:

Decides pursuant to Article 96, paragraph 1, of the Charter, to request the International Court of Justice urgently to render its advisory opinion on the following question: *Is the threat or use of nuclear weapons in any circumstance permitted under international law?*[37] (Appendix III)

As Cold War enmities faded, the climate became more conducive to real nuclear disarmament. In July 1993, Clinton had announced a 15-month extension to a moratorium on nuclear testing, which also curtailed further UK testing at Nevada; and Russia confirmed it would also extend its moratorium. Clinton's initiative was in direct response to fears that the NPT would unravel following North Korea's sudden threat to withdraw in March. A number of NAM states were vociferous in their expressions of anger and frustration at the lack of progress towards total nuclear disarmament to which all NWS are committed under Article VI of the NPT. Securing a CTBT was thought to be a sufficient appeasement for many states and could help save the NPT. North Korea's threatened defection confirmed that without a Convention banning nuclear weapons, the NPT could not prevent states developing nuclear weapons; and the UN had no legal grounds to take actions against such states. Therefore the idea of having the legal arm of the UN declare nuclear weapons illegal was increasingly attractive to many states, which had become frustrated by the NPT's discriminatory nature and the UN's inability to bind the NWS to total nuclear disarmament. [38]

All UNGA disarmament resolutions are either adopted by consensus or majority vote. If a resolution is unlikely to attract a majority, the co-sponsors

either refrain from introducing it, withdraw it or defer it to a subsequent session of the First Committee. Most UNGA resolutions are declaratory and have little real effect on the policies and practices of NWS. For many years most disarmament resolutions had been adopted by consensus, and there was general antipathy towards introducing new, controversial resolutions.

In 1993 the First Committee had six new resolutions on the agenda, with the ICJ one being the most divisive and effective because it would require action which could impact strongly on the NWS. Powerful countries had in the past applied intense pressure to prevent countries from introducing effective resolutions.[39] The NWS had been on the back foot following their defeat at the WHA, and had therefore stepped up pressure on key NAM governments and diplomats months in advance of the UNGA. Seasoned disarmament experts described the resolution as the most contentious the UNGA had ever encountered, and warned of a severe backlash.[40]

11.5 UN General Assembly 1993

The NAM, since its establishment 35 years ago, has always called for a nuclear free world and continues to wage a war against the supremacy of nuclear weapons. However, as was evident during the vote on the UNGA Resolution, NAM members are not immune to the pressure of nuclear weapon states who launched intensive lobbying at the capitals and the Missions in New York. Ambassador Ismail [41]

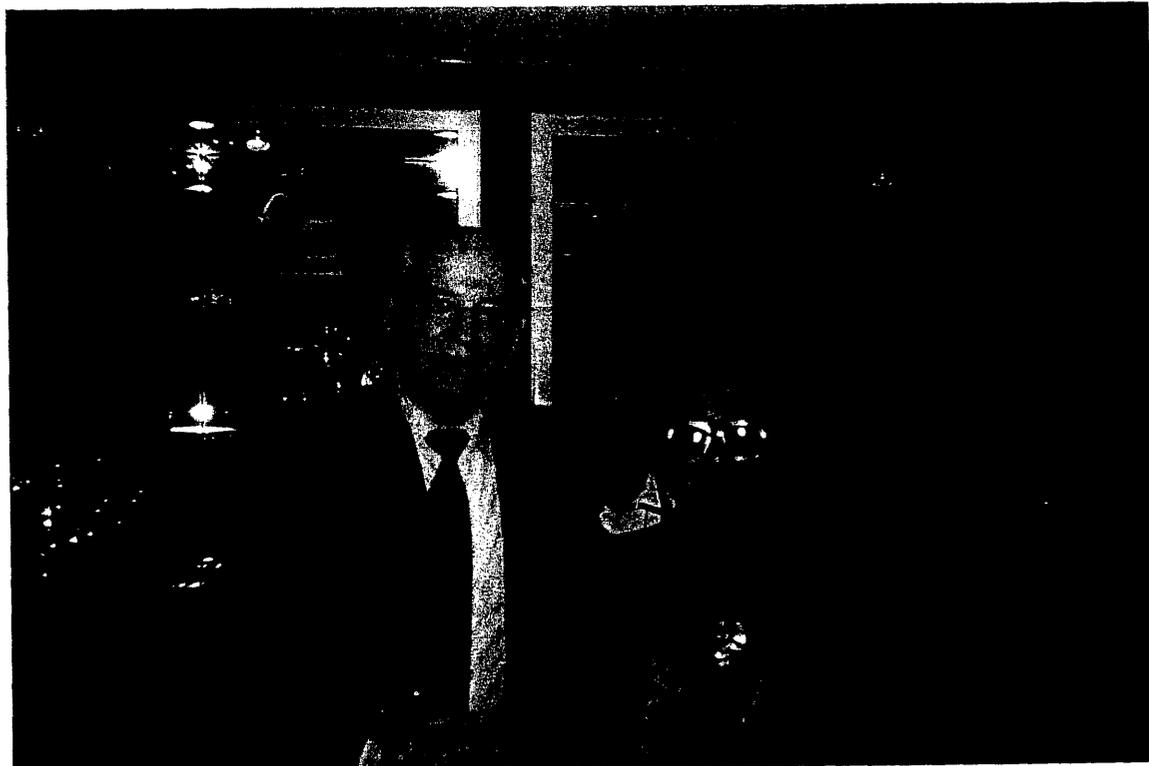
This section is based on the experiences of the WCP lobbying team consisting of Dewes, Green, Lini, Tangiora, St John and Ware. It traces the precarious journey of Draft Resolution L25 through the UNGA from 26 October- 19 November 1993, highlighting NAM's decision making processes, providing insights from senior diplomats. Some assertions cannot be substantiated officially because the sources feared for their jobs. However, their comments were documented immediately by the author, and for the purposes of this discourse are considered to be reliable information.

On arrival in New York, the WCP team heard genuine concerns that the NAM would not withstand the pressure and remain a cohesive group.

Figure 14: Photos of Ware, Tangiora and Gorbachev



Alyn Ware outside the Hague, 1995



Mikhail Gorbachev (Prominent Endorser of WCP) and Pauline Tangiora

Zimbabwe experienced such severe pressure that diplomats were forced to avoid public contact with NGOs prior to the NAM Coordinating Meeting on 26 October. Shamuyarira reported *demarches* (diplomatic representations) to Harare from five delegations, including Australia, all applying strong pressure. The British government had even phoned the President personally asking him to withdraw the resolution. [42] Shamuyarira phoned Mendlovitz suggesting deferment until 1994 in order to build up support amongst other Foreign Ministers. Vanuatu's Ambassador van Lierop discussed with Papua New Guinea (the other South Pacific NAM state) about leading a breakaway group of co-sponsors, but he lacked his government's backing and Lini's Ministerial clout. He hosted a luncheon for Ambassadors from the Asia-South Pacific region to honour Lini's MacBride Peace award, promote the resolution and boost confidence amongst diplomats. It was held on the eve of the NAM meeting and just before the UN handover of DPCs.

Van Lierop was highly respected and valued for his legal expertise on many issues. He realised his advocacy for the resolution would probably cost him his position; but like Lini and others he was prepared to sacrifice his personal security for such an important matter of principle. About 30 Missions sent representatives including Australia's Ambassador Butler and John McKinnon, the brother of A/NZ's Foreign Minister. Lini invited some of the WCP lobbying team, providing an opportunity for them to discuss the resolution discreetly. Both Lini and Tangiora were respected as traditional Chiefs by the South Pacific states; while Weiss, Theorin and Dewes already knew some of the Ambassadors, which facilitated frank discussion.

That evening van Lierop reported on a function at the German Mission where the ICJ President, Sir Robert Jennings told diplomats that the WCP would damage the reputation of the ICJ and asked them not to support it. van Lierop feared the NAM would crumble, and warned the team to prepare for defeat. Lini, Tangiora and Dewes wept silently at the news. The following day they stood outside the NAM meeting room greeting supporters and waited for the result. Lini joined them, determined to 'eyeball' her colleagues. Later she confided that some diplomats were moved by the

women who were there representing their peoples and in effect became their conscience. Knowing the women were standing outside gave them the courage to try again, and they succeeded. After hours of deliberation, the NAM agreed by consensus to introduce the resolution. The Indonesian Ambassador wrote to all members stating that it 'will be submitted to the First Committee as NAM's draft resolution on 28 October 1993' - the deadline for all resolutions. [43]

It did not arrive. Indonesia withheld it, and called for another NAM consultation, citing earlier poor attendance and opposition from within and outside NAM. Unusually, the UN extended the resolution deadline for a week. Zimbabwe announced they would not introduce the resolution if NAM faltered. In the meantime, the lobbying team met discreetly with diplomats in the UN Delegates' Lounge or at Missions, trying desperately to sustain supporters. Meetings were held with the Australasian Missions to encourage them to join a breakaway group of co-sponsors if the NAM collapsed. Butler was personally very supportive: during the night, he had phoned Foreign Minister Evans trying to convince him to support it on procedural grounds. He had argued that it was only a question being asked and not an indication whether a country thinks nuclear weapons are legal or not. He was quietly confident of Evans' support. He indicated that they were under intense pressure to 'show their cards', as the UK and US were assuming loyalty from Western states on this resolution.

The A/NZ Ambassador, although not personally opposed to the resolution, was less forthcoming. He indicated that there was no nation prepared to bear the costs to relationships, and that A/NZ would not be the first one to break out of the Western group. He contended that there was strong support within the South Pacific community, saying that 'no Pacific countries had expressed interest in the WCP to NZ'. However, South Pacific Ambassadors had given the lobbying team strong indications of support. This exposed a lack of trust felt by some Island states towards A/NZ. In fact, Lini confirmed that A/NZ had made representations to leaders in Vanuatu's capital Vila to stop them supporting it.[44] Ireland indicated that they might vote in support, but not co-sponsor. The Italian Foreign

Affairs Commission unanimously approved the motion binding the government to vote in support. Joachim Lau immediately met with the Italian Mission in order to hold them accountable. [45] The WCP team distributed the Italian communique, the *Irish Times* article, letters from the Canadian Opposition Parties, and evidence of A/NZ government support to many delegates. Theorin confirmed that her government would abstain if the resolution went to a vote.

A US Armed Services Committee member spoke with the US Mission which confirmed that 'the US had been opposing the resolution for a long time and had been working with the Indonesian Foreign Minister Ali Alatas to have it stopped'. They felt they were losing and complained about the NGOs: 'These doctors who think this is a public health issue and these lawyers who want it to go to the ICJ - the very nerve of these people!' They were furious at the 'Minister of Health from Vanuatu who pushed it through the WHA'. Alatas had assured them that 'it would not be voted on this year, ... but it is always open to the random idiot factor'. [46] Indonesia was under pressure from the US because of its human rights record in East Timor and there were threats to withhold the sale of F16 aircraft and nuclear power plants if it did not 'kill' the resolution.[47] In turn, Indonesia pressured the Philippines and Malaysia. Filipino groups reported that Prime Minister Ramos (pro-US former Defence Minister) was meeting Clinton to discuss aid and military matters. The Philippines 'owed' Indonesia for its support during their anti-nuclear transition and removal of US bases, and for earlier financial help. Also, at this critical stage one of the strongest proponents, Mexico's Ambassador Marin-Bosch, was sent to Washington to negotiate the North American Free Trade Agreement. The Francophone-leaning Vanuatu government was suffering intolerable pressure. Van Lierop was ordered to be silent during NAM discussions, and was sent to the Netherlands for other meetings. His secretary was also silenced; and Lini was trailed by a French agent while in New York.

Intimidation was evident even amongst citizen groups, who experienced interference with their work. The first box of 350 Legal Memorandums were 'lost' in transit from LCNP to IALANA's Hague office. Some ISC members

had mail opened, and one home was broken into but nothing was taken. Mail sent from LCNP to all Missions inviting Ambassadors to attend the UN handover of DPCs did not arrive. During the weekend prior to the event, activists faxed invitations to every Mission and followed this up with another phone call. Less than 20% of these faxes arrived. When members of the lobbying team phoned the LCNP office there was a recorded message saying that the line was temporarily out of order, but Ware was there and the phones were working.

Supporting citizen groups began to fax Missions encouraging them to put the resolution to the vote. Nicholas Grief, the Legal Memorandum's author, faxed Indonesia's Ambassador:

Please introduce the resolution today, and resist any coercion by the nuclear weapon states. Such coercion is unlawful under International Law: "No state may use or encourage the use of economic, political or any other type of measures to coerce another state in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind." (General Assembly Declaration on Principles of International law, 1970.) [48]

When the NAM Coordinating Bureau met on 2 November, French-dominated Benin, backed by Belize, Morocco, and Sierra Leone, opposed the resolution. Chile, Ecuador, Egypt, Guyana, Malaysia, Nigeria and Papua New Guinea countered by strongly supporting it. The NAM decided to introduce it, but to reserve their decision on whether to push for a vote. As the extended deadline for resolutions approached, NAM members reported mounting pressure in New York and their capitals. Butler confirmed that Australia was likely to vote in favour. The US had recently threatened to expose Australia's Aboriginal human rights record if they did not support a continued boycott of Cuba. This angered Butler, who sensed that US pressure was becoming counter-productive.

An hour before the cut-off time, Indonesia presented the resolution to the First Committee and the NAM continued consultations over whether to vote or defer. Ware and others immediately prepared a paper for delegates arguing in favour of putting the resolution to the vote. An ANZ official confirmed that most NATO states would abstain or oppose if put to the

vote. [49] A/NZ was also wavering. Confidential Ministerial briefing papers on 18 November revealed the Ministry's recommendation 'that the resolution ... no longer qualifies as meriting New Zealand support. Instead we should support ways of finding more breathing space to enable the resolution's proponents to attract more balanced support'. It argued that A/NZ should move to an abstention which would 'support tactical moves to avoid the resolution going to a vote in its present form and with its current backing'. One of the stalling tactics promoted was to refer the resolution to the Sixth (Legal) Committee for a report. [50]

On 10 November, NAM debated strategy in two three-hour sessions. In a last minute attempt to appease the West, Indonesia proposed 'no action'. This would 'take into account' the First Committee decision to 'adopt by consensus the resolutions on CTBT and the prohibition of the production of fissile material, and also of the desire of delegations to ensure the best international atmosphere for the negotiations on these two issues which will contribute greatly to the non-proliferation of nuclear weapons'. [51] It was not accepted, but neither was another proposal for action: so a deadlock ensued. The pressure intensified, and most countries began to move towards the fence. Theorin confirmed that Austria, Denmark and Greece would join Sweden and Norway in abstaining. Peggy Mason, who chaired the Western Consultative Group, reported that the USA, UK and France (Permanent Three or 'P3') were threatening to stall the CTBT and the fissionable material ban, 'until the illegality issue is decided'. She affirmed Canada's proposed abstention and described France's approach as 'hysterical'. [52]

On 17 November the NAM held an all-day meeting. Chile, Colombia and Cuba, in an attempt to break the deadlock, offered to co-sponsor the resolution with Zimbabwe and about nine others, and invited other countries to join them. Ghana, with support from Benin, Indonesia, Morocco and Senegal, opposed this because for that to happen, NAM would have to withdraw the resolution completely first, to allow the other countries to introduce it - but the resolution introduction deadline had already passed.

Chronology of Draft UN Resolution L 25 : 1993

28 September 1992: Zimbabwe presents resolution to NAM Ministerial Meeting at UN. Indonesia (Chair) refers it to NAM Working Group at UN.

27 August 1993: Zimbabwe formally requests NAM to introduce resolution at UNGA. Working Group to examine feasibility and procedures and report back. No opposition within NAM until mid-October.

25 October: Ambassadorial lunch for Hilda Lini in honour of her MacBride Peace Prize helps build support within Asia/South Pacific countries.

26 October: NAM agrees to introduce resolution; Working Group finalises text.

27 October: Indonesia informs NAM it will submit by deadline on 28 October. NGO coalition presents UN with over 100,000 DPCs, the MacBride Appeal and sample of the Hiroshima/Nagasaki Appeal.

28 October: Indonesia withholds resolution, calls for another NAM meeting to reconsider. UN extends deadline for submitting resolutions to 4 November.

2 November: Closed meeting of NAM; Benin and Morocco oppose. Decide to introduce resolution but leave open whether to vote on it, or defer.

3 November: Heavy pressure in leading NAM capitals by US, UK, France.

4 November: Indonesia tables resolution advocating 'no action'. Still no consensus.

8 November: Resolution published by UN with number A/C.1/48/L.25.

10 November: NAM closed meeting all day; still no consensus.

11 November: Intimidation rife, most nations 'on fence', Italy bound by Parliament to vote for resolution; Austria, Canada, Denmark, Greece, Ireland and Sweden indicate abstentions; A/ NZ and Australia might vote for.

16 November: Indonesia argues for deferral in NAM meeting; still no consensus.

17 November: NAM meets all day; investigates independent team of co-sponsors led by Zimbabwe, Colombia and Chile. Only 5 NAM members block this initiative.

18 November: NAM split deepens, risk of losing vote too great; agree 'no action'.

19 November: Indonesia confirms NAM decision 'not to press for final action... at this time', but reserves the right to re-introduce at a later date.

Indonesia informed the First Committee that the NAM consultations were still in progress, and deferred a final decision on the resolution until 19 November, the last day of action on disarmament items. The day before, Chile, pressured by the UK, withdrew as a co-sponsor. Zimbabwe argued that despite a lack of total consensus, they should still go ahead. Others used the lack of consensus to argue for 'no vote'. Some indicated they would ask for a vote even if the NAM did not. Others responded that although they would vote in favour, they opposed forcing a vote as it would split the NAM which was already very divided. Supportive countries feared they could lose it altogether, and reluctantly agreed to take no action.

When the First Committee convened on 19 November, Indonesia's Ambassador Wisnumurti delivered the NAM position stating that 'in the spirit of cooperation and compromise' they would 'not press the resolution for a final action by the Committee at this time'. This concession was 'in order to preserve the momentum and progress generated' by other nuclear disarmament initiatives. He reiterated that the UN had 'pronounced itself in no uncertain terms that the use of nuclear weapons would be a violation of the Charter and a crime against humanity', and castigated the NWS for 'steadfastly refusing to provide assurances that they will not use or threaten to use nuclear weapons against the non-nuclear nations'. The NAM, he said, 'reserved their rights to raise this issue at any time they deem it as necessary and appropriate'. [53]

Although badly bruised by the experience, NAM members were furious with the level of intimidation and pressure applied, and this reinforced their determination to keep up the momentum. Many were swayed by the argument that the CTBT and fissile ban resolutions could be a casualty of the resolution's success. Indonesia had chaired the PTBT Amendment Conference in 1991, and the NAM as a whole was keen to see a CTBT secured. By letting the dust settle and starting CTBT negotiations, they could consider another attempt in 1994.

In the weeks following, some senior diplomats went public about the intimidation by NATO's P3. Marin-Bosch's colourful description was: 'The nuclear powers are scared shitless. Their turn is up. And they are holding

on to the only toys that have been the guarantee of their legitimacy'. [54] Theorin wrote of her observations as a UN delegate in the PGA Newsletter: 'This unacceptable coercion of the non-nuclear states shows that they are determined to retain their freedom to threaten the use of nuclear weapons'. [55] Butler commented that you cannot expect the P3 to 'fill up with great warmth if something that is a critical part of their defence is suddenly declared illegal'. [56]

Following her retirement as Chair of the Barton Group, Peggy Mason candidly described how the P3 tried desperately to hold this Western consultative group (consisting of the 16 NATO members, Australia, ANZ, Japan and Ireland), in line. She had hoped, post-Cold War, that they could move away from the 'bloc' mentality and work more cooperatively with other states. Instead, 'the Western P3 in particular argued the line about solidarity ... it was absolutely essential that the bad guys, the malefactors, not be given any comfort by thinking that they could drive a wedge between us'. When different arguments were expressed 'it was judged in terms of whether or not you were holding the line or weakening it'. The group works by voting, so countries could not hide - they had to stand up and be counted.

Another important factor was the European Union (EU) 'political coordination', where 12 of the 20 member group were already coordinating policies and effectively silencing the 'moderates'. In the past Germany would have spoken out, but was wary because of its closer relationship with France. 'On each issue there was this EU position which was really the French/British position, and all the rest of them, one after the other, would line up and repeat this statement'. This left only a 'tiny little group which could respond to them: Ireland, ANZ, Australia and Canada, all by themselves'. With Canada in the Chair, it was difficult to speak freely in their support, and Ireland was an EU member.

She described how 'psychological intimidation tactics' were used against any non-Ambassador who spoke up. They were effectively ignored, put down or accused of 'not toeing the line, undermining the cause of nuclear non proliferation, implying they were sliding into the Iranian camp'. [57] Not

surprisingly, in this acrimonious atmosphere few Ambassadors attended meetings.

Although Canada voted differently from the US over 50% of the time, 'there was a kind of rule: we wouldn't be by ourselves, we normally had at least one NATO country such as Norway, Netherlands or Germany with us because we were in an alliance relationship, relying on a nuclear deterrent... and normally in addition to Australia, NZ and Ireland'. Many of Mason's superiors in Ottawa were schooled in Cold War groupings and still used the judgement that 'moderate Europeans should be with them', without taking into account the new EU realities. Mason felt the Barton Group was 'in denial, convincing themselves that nothing would happen... and then it did!' It was clear from the start that the P3 were going to be 'totally hysterical' about it and NATO states were going to vote against: 'That was the position and they all repeated it'.

When the Australians led in the First Committee on the CTBT resolution, the French threatened to block consensus, linking it to the illegality resolution. In Canada, the supportive letters from the Prime Minister and Foreign Minister caused 'terrible angst in the Foreign Ministry' and the US. 'There were *demarches* going fast and furious, not just in NAM countries but in Barton Group countries, including Canada'. Within the group, the P3 demanded a 'go-round' to declare positions, in an effort to isolate Ireland and ANZ. When a UN vote looked likely, Indonesia was given a 'diplomatic lunch' to find a way to keep the resolution alive but not vote on it. Canada, normally assumed to be one of the most 'credible' countries, was asked to move a vote of deferral in the First Committee if NAM did not accept 'no action'. At first Mason's Ministry gave permission, then phoned 'sweating' saying they were reviewing their position. The UK and France told Mason: 'In light of discussions in Ottawa, Canada should not move the motion ... we shouldn't have waffling ... we need a strong NATO country like the Netherlands'. So, the Barton Group was saved by NAM's decision. Mason described the P3 'hanging on by their fingernails to this absurd nuclear deterrent which the NAM doesn't take seriously at all ... it is absolutely silly'.

[58]

So, although it looked as though the resolution was doomed, it was an amazing feat to have reached the First Committee. Every UN state was forced to review their policies and take a position on it. The P3's reaction highlighted how extremely significant it was. The NAM's resolve was strengthened to file ICJ submissions on the WHA question, and to try again in the 1994 UNGA. In spite of unprecedented coercion aimed at the vulnerable NAM and South Pacific states, 96% of the 110 NAM states and at least another ten non-NAM states including ANZ and Ireland, sustained their positions. Overriding considerations, such as the future of the NAM, the CTBT and other disarmament initiatives, swayed the already beleaguered diplomatic community to await a more conducive environment.

The second WHA attempt in 1993 had a much greater chance of success than the first UNGA initiative, because it surprised an unprepared nuclear cartel; it was confined to the issues of 'use' and health and not the law and defence policies; Health Ministers were not as constrained as Foreign Ministries by their officials and wider 'political considerations'; the WHA agreed to a vote on a secret ballot; and IPPNW had some very close working relationships with Ministers in capitals. The NAM governments were more easily swayed by arguments linking the UNGA resolution with other disarmament negotiations, and there was inadequate public pressure in most NAM states to persuade governments to withstand the well-funded and organised campaign by the P3 against the UNGA resolution.

Conversely, the UNGA question went to the heart of nuclear deterrence. It was the correct forum to raise the issue, so it could not be challenged on procedural grounds. While the WHA success undoubtedly strengthened support in the UNGA, it was also used as an excuse to let the UNGA resolution lapse because the ICJ was already considering it. The UNGA resolution would never have survived without the numbers commanded by the NAM and courageous leadership by a few diplomats and politicians. The fact that members of ANZUS and NATO indicated breaking ranks with the P3 by abstaining or voting in favour, was a testament to the strength of WCP support within those countries.

Inevitably there were casualties. In December, van Lierop was dismissed as Vanuatu's UN Ambassador, which prevented him from chairing the forthcoming UN Global Conference on the Sustainable Development of Small Island States in Barbados. French pressure was suspected, as his replacement was both Francophile and French-speaking.[59] During a subsequent visit to the US, Lini discovered that the US had closed down its embassy in the Solomon Islands and withdrawn a significant amount of aid to South Pacific states. A sympathetic member of the Congressional Research Service indicated that there was only interest in Vanuatu while her brother was Prime Minister, 'to try to get him out'. The excuse given for the cuts was lack of money: but when elections loomed a year later, she reported that the Americans were offering \$1 million scholarships to study at their East/West Centre while cutting projects on child health and clean water. French, US and Australian 'aid' money poured in to ensure the more conservative government remained in power. Later Lini reported how during the run-up to the 1995 NPT extension conference, US President Clinton offered the Marshall Islands compensation for US nuclear testing if they supported indefinite extension: 'They were not just twisting arms - they were breaking legs!' [60] High level bribery and corruption was later exposed as endemic in Papua New Guinea, making it extremely vulnerable to pressure from the P3. The former Governor of the Bank of PNG described the rampant corruption as 'systemic because it has invaded the whole process of policy making and decision making'. [61]

Both Tangiora and Lini remarked on the responsiveness of some Ambassadors, and especially van Lierop, to the presence of women on the lobbying delegation. Lini felt it was vital to have a mix of gender among delegates because of the different way women approach issues:

Sometimes in a very difficult situation, just the fact that a woman is there makes a difference. Certain men become more sympathetic to the cause because a woman is bringing the issue up and relating it to the family and the community level ... they are emotional and down to earth in their reasoning and arguments. [62]

Tangiora described how Lini pricked many consciences when she spoke during the luncheon: 'All those guys were sitting there in their suits fighting

within themselves for honesty. It is a good excuse to hide behind a government position, but deep down there were many, many people for a long time after trying to rack their consciences and atone for what they did.' [63] The presence of strong South Pacific women sustained Ware as he juggled the myriad roles of leading lobbyist, information gatherer and disseminator, office coordinator, writer of background papers and press releases, and organiser of the UN DPC Handover Ceremony. Ware valued the complementary roles of the various members of the WCP team, especially the two indigenous matriarchs who commanded the trust and respect of the NAM diplomats. They provided a different authority from the legal and ex-military members.

With the decision to defer, there was some soul-searching - particularly in New York - as to whether alternative, more assertive lobbying strategies may have worked. Some critics in LCNP felt the team had not done adequate 'vote counts' before the resolution was introduced; or that it should have been introduced by individual countries instead of the NAM so that it would not be vulnerable to NAM consensus requirements. Ware countered in his lobbying analysis paper that 'vote counting' methods which may work in US Congressional lobbying are inappropriate in the UN context - particularly as WCP lobbyists were often trying to influence governments of which they were not citizens. Ware also argued that it appeared necessary to have the NAM introduce the resolution because no single country had either the desire to introduce it themselves - or the capability to withstand the counteractions of the P3. In addition, without NAM's endorsement, even if such a government had been found, it would have been difficult to muster sufficient votes. [64]

Citizen groups working closely with the leading delegations kept a discreet distance to prevent the resolution being perceived as NGO rather than government sponsored. There was a fine line between productive and counterproductive lobbying; and with issues as sensitive as this, it was paramount that the team respected these boundaries and behaved accordingly. By the time the resolution was introduced it was too late to

influence dynamics within the NAM or to prevent NWS from pressurising capitals.

When evaluating the fate of Resolution L25, Weiss and Mendlovitz acknowledged that they should have worked full time lobbying, but it was not practical for them. Weiss thought that 'ideally it needed a team of 60-80 lobbyists starting earlier, plus a staff of 15-20 to keep countries under pressure, plus a public relations team'.^[65] However all three co-sponsors were in financial difficulties. IPB was effectively bankrupt; IPPNW had a half million dollar deficit; and IALANA was struggling. WCP UK and Aotearoa scraped by, working voluntarily and wholly dependent on individual donations. The ISC relied totally on Ware's ongoing work in New York, gifts of legal expertise for the submission drafts, and interested groups and individuals lobbying governments in capitals.

The high level of public support behind the resolution was reflected in the thousands of DPCs from a wide range of countries. This encouraged the leading NAM countries when they met to decide to make another UNGA approach in 1994. Meanwhile, media coverage of the resolution was scant. As with the WHA case, the ANZ media responded to the high level of public interest, but there was little response from the European media, so the WCP network was left to spread the news via newsletters and the internet.^[66]

11.6 UN General Assembly 1994

When Ware met Evans, Green and Dewes in ANZ in January 1994, they were despondent about whether NAM would risk another attempt. Unless a significant number of ICJ submissions on the WHA question could be amassed and international citizen support increased, it was most unlikely they would take the risk. The WCP ISC prioritised these two strategies prior to the 10 June deadline for submissions. At the February ISC meeting in Amsterdam, Christ reported from the WHO Executive Board meeting a few weeks earlier that support for the WHA initiative was 'holding up well' with no evidence of any direct challenge to it. IPPNW affiliates maintained pressure on governments to put in submissions, while IALANA prepared

draft legal arguments. A Hague DPC handover to the ICJ Registrar was planned for 10 June. Citizen groups continued collecting DPCs, and sympathetic governments were asked to refer to them in their submissions.

During the next ISC meeting which coincided with the WHA in Geneva, the IPPNW team confirmed there had been no challenge to the 1993 resolution and that delegates were under 'enormous pressure' not to make ICJ submissions. The IPPNW team provided at least 50 delegations with material for inclusion in submissions, and - finding widespread ignorance of ICJ procedures - even offered to help transmit them to the ICJ.[67]

Following soundings by Ware and Mendlovitz, Shamuyarira outlined a plan for the 1994 UNGA. Mexico was still keen to form an independent group of co-sponsors if the NAM faltered. The NAM Foreign Ministers' conference was held in Cairo in early June. Many countries, including the Francophones, Egypt and Latin American states, had received *demarches* and there was tremendous pressure not to introduce the resolution. After a protracted debate, including concerns expressed that Zimbabwe was acting as the mouthpiece of NGOs, the Ministers decided to re-introduce it and put it to a vote. [68]

A week later, 27 countries had put in ICJ submissions; and following requests from some governments for more time, on 22 June the ICJ extended the time limit until 20 September. On 10 June in the Peace Palace at The Hague, an ISC delegation presented the ICJ Registrar with over 175,000 DPCs; the MacBride Lawyers' Appeal; a sample of the Hiroshima and Nagasaki Appeal; and other material surveying 50 years of popular opposition to the nuclear arms race, as 'citizen evidence' in support of the WHA question. By 20 September, 35 countries had submitted, making it the largest case ever brought before the Court. Of these, 23 argued for illegality (Nauru and the Solomon Islands each submitted over 100 pages); and three threshold states (India, Iran and North Korea) and two former *de facto* NWS (Ukraine and Kazakhstan) argued that any use of nuclear weapons would be illegal. One EU member (Ireland) and one EU candidate (Sweden) supported the case. Japan argued that 'the use of nuclear weapons is

clearly contrary to the spirit of humanity that gives international law its philosophical foundation'. [69]

Shortly before the NAM Foreign Ministers' New York consultation a few weeks later, Ware distributed a briefing paper to diplomats outlining why UNGA Resolution L25 should proceed and informing them of the NAM's decision to re-introduce it. He summarised its history, pointing out that 'the high hopes expressed at the 48th UNGA for the conclusion of a CTBT and a prohibition of fissile materials have not been fulfilled'. He argued that it would be sensible to have both the WHA and UNGA questions decided by the Court concurrently, and that the prospect of an advisory opinion could strengthen efforts to implement Article VI of the NPT. [70]

The NAM Foreign Ministers, greatly encouraged by the level of international support and the WHA submissions, reaffirmed their earlier decision. Once this was made public, WCP (UK) and LCNP organised a fax campaign to Missions in New York and Foreign Ministers in capitals to encourage them to stand firm, and to remind them that millions of people around the world were watching them. [71] Meanwhile, Ware supported the NAM's lead by lobbying discreetly on behalf of the ISC, alone in New York. He monitored the First Committee, and disseminated information indicating how countries had voted on earlier disarmament resolutions, pointing out which ones might be swayed either way. On 9 November, Indonesia re-introduced the 1993 resolution unchanged, renumbered L36, to the First Committee on behalf of 111 NAM members (which now included South Africa, a former *de facto* nuclear state).

The First Committee's agenda included a range of contentious resolutions, including one with proposals for the step-by-step reduction of the nuclear threat and the ultimate elimination of nuclear weapons. India proposed a resolution calling for negotiations on a Nuclear Weapons Convention. Japan sponsored a weaker resolution to counter this, calling instead for 'Nuclear disarmament with a view to the ultimate elimination of nuclear weapons'. At the last minute, India withheld its resolution and Japan introduced its one, couched in terms of the NPT and therefore less objectionable to the NWS. Eventually this was revised to exclude any

reference to Article VI or specific disarmament steps and was adopted by 140 votes with no votes against and 8 abstentions (140:0:8). The resolution proposing the Convention on the Prohibition of the Use of Nuclear Weapons was adopted by 98: 23: 31.

The step-by-step resolution sponsored by nine NAM countries (Brazil, Colombia, Egypt, India, Indonesia, Malaysia, Mexico, Nigeria and Zimbabwe) outlined a five to ten year agenda to implement the plan. It included a proposal for 'effective legally binding measures to deter the use or threat of use of nuclear weapons'. It had been drafted by PGA a few months earlier and brought together many of the leading proponents behind the ICJ resolution. The step-by-step resolution was far more controversial and was adopted by only 91: 24: 30.

Not surprisingly the draft ICJ Resolution L36 again caused the most commotion. When it was debated in the First Committee, a larger group of NAM dissenters - including Benin, Cote d'Ivoire, Malta, Morocco and Senegal - stated that they would 'disassociate' themselves from the NAM position. Just prior to the vote on 17 November, Senegal (one of the 1992 WHA co-sponsors) proposed that it be postponed 'in order to enable delegations to continue consultations'. According to Marin-Bosch this was really aimed at 'giving some NWS extra time for applying bilateral pressure'. [72] The US opposed L36 on the grounds that 'it would be inappropriate to ask the Court for an advisory opinion on such an abstract, hypothetical and political issue'. The UK saw it as 'a deliberate attempt to exert political pressure over the Court to prejudice its response', it would 'only serve to confuse and complicate' other disarmament negotiations and 'risks serving the interests of those who wish to distract attention from the destabilising accumulation of conventional arms and from clandestine programmes aimed at acquiring weapons of mass destruction...'. Russia argued that nuclear weapons are not a weapon of war, but a means of deterring war, and are thus a tool for peace. France's response was the most extreme:

The very fact of asking for an advisory opinion on the legality of a particular category of arms amounts to questioning the inalienable right of any State or group of States to remain sovereign, as long as they comply with international law, in the choice of their means of defence.

Such an approach is a blatant violation of the UN Charter. It goes against law. It goes against reason. if some people think they can deny sovereign States their right to defend themselves by any means recognised by applicable international instruments, or if they think a tribunal should be established to prosecute the recognised nuclear powers, these people should think twice. One day, they could also be faced with a situation where the legitimacy of the means they use to ensure their security would be challenged.Let us not ruin this collective effort by obsolete methods, which indeed might serve the purposes entertained by a few, but which are certainly contrary to the interests of the overwhelming majority. [73]

The next day Senegal announced that it could not support the resolution and Morocco moved that 'no action be taken'. Only two delegations were allowed to speak in favour of the motion (Germany and Hungary) and two against (Indonesia and Colombia). Germany pointed out that 'not only Germany, but also the European Union as a whole, regret having failed to convince co-sponsors of the resolution to withdraw this proposal...'. The motion was rejected by 67:45:15 (57 did not vote/ were absent), reflecting how few of the NAM members were prepared to show their cards at this stage. A/NZ abstained along with the neutrals Austria, Ireland and Sweden.

The First Committee adopted Resolution L36 by 77: 33: 21 (53 no vote/absent). Those voting against included 17 Western states, 12 East European, Israel, South Korea, Benin and Senegal. Abstentions included Argentina, Cameroon, the Marshall Islands and Niger; six Eastern Europeans (including Ukraine and Belarus); and nine Western states: Australia, Austria, Canada, Ireland, Japan, Liechtenstein, Norway, San Marino and Sweden. Although in 1993 some of these states and Italy had indicated that they would vote for the resolution, the only Western-allied state to break ranks was A/NZ. China did not vote, creating a split among the NWS. Reflecting French influence, 24 of the 46 African states did not vote, only four of the eight small Pacific Islands voted in favour and Vanuatu and the Federated States of Micronesia did not vote. On the other hand, only two of the 22 Latin American states and nine East Europeans did not vote; and in South East Asia only Cambodia and Laos were absent. Interestingly 15 of the 53 states not voting were in arrears with their UN dues and therefore could not vote unless the UNGA was 'satisfied that the failure to pay is due to conditions beyond the control of the Member'. [74]

This could have been a factor why Vanuatu, after taking such a leading role, did not vote. Also, some of the smaller states could not afford to run UN Missions and monitor every vote.

Four weeks of intense lobbying by NGOs, and counter- pressure by the P3, preceded the final Plenary vote in December. Normally resolutions adopted in the First Committee are rubber-stamped by the Plenary. However, in this case, it was clear that the P3 would make unusually strenuous efforts to block its adoption by the Plenary. Indeed, a UK delegate informed Ware, after the First Committee vote, that the P3 still had a few weeks to 'kill it'.

In the Plenary session on 15 December the other disarmament resolutions passed through relatively unscathed. Not so L36, which was initially challenged outright when France moved a motion that 'no action be taken'. The Moroccan delegate, infuriated by the severity of the intimidation, fled the Plenary 'having led the charge in the First Committee, leaving France to do their own dirty work' (Morocco did not vote in either session). [75] Again, Germany and Hungary (a NATO candidate) spoke in favour, and Malaysia and Indonesia against. When this motion was narrowly defeated 68:58:26 (only 32 non-votes/absent), France again took the floor to propose an oral amendment to the operative paragraph in an attempt to delete the word 'urgently'. This was serious, because without it the case could have been delayed, perhaps for years. Indonesia noted that it was too late for amendments, and moved that no action be taken on the motion. Malaysia recalled that the First Committee had already adopted the draft, that the Plenary had already rejected a 'no action' proposal, and urged that 'no further devices be allowed to prevent the adoption of this draft resolution'. This time France's motion was lost by only five votes by 61:56:30 (37 non-votes). Sweden's role in this was possibly decisive. In its explanation of vote in the First Committee, it had argued that it did not support the UNGA resolution because it could delay the WHA case. Ware faxed this to Theorin in Sweden. According to this explanation, Sweden would be hypocritical if it now supported removal of 'urgently'. Theorin used this to ensure Sweden's opposition to the motion. However, A/NZ abstained with Ireland and Austria.

After four hours of intense wrangling, the vote was finally taken. Resolution L 36 was adopted by 78:43: 38 with only 25 non-votes (Appendix III). It was the only resolution where the abstentions and negative votes changed significantly between the First Committee and the Plenary. Ten more states voted against and the abstentions increased by 17. An analysis of the countries which did not vote in the First Committee but did in the Plenary shows fairly equal pressure, with 10 moving to 'yes' (including South Africa and Burkina Faso - whose UN dues were in arrears) and nine to 'no' (including Comoros - also in arrears).[76] Both the Marshall Islands and San Marino moved from abstention to 'yes', while six states moved from 'yes' to 'no' (Cape Verde, Kuwait, Madagascar, Mauritius, Mongolia and Panama). As with the WHA vote, Latin American states were vulnerable, but this time there were fewer casualties: only Chile, Argentina and Panama. The 'middle' Western states maintained their earlier abstentions. (For further analysis see Appendix III).

WCP supporters were extremely relieved that the US did not repeat its earlier ploy during the 1993 WHA where it had moved an amendment to have the resolution judged 'important' which required a two-thirds majority to secure adoption. Factors mitigating against included *inter alia* that the P3 did not wish to give it that prominence and feared it might fail. If it had succeeded the final vote would not have reached the majority required.

Diplomats reported how the NGO fax campaign had bolstered their resolve to resist the pressure. In one case, a distressed South Pacific Ambassador confided to Ware that P3 pressure in his capital had resulted in him not receiving any final instructions which meant he could not vote. Fortuitously, Ware had a copy of a reply from the Ambassador's Prime Minister to a WCP (UK) campaigner's fax which stated:

My government and other members of the South Pacific Forum will continue to stand firm on our strong wish for a nuclear-free Pacific. Accordingly, my Government's support for the initiative... will stand.

On seeing this, the Ambassador decided this constituted a valid instruction and voted for the resolution. [77] This example highlights how, at a personal level, many diplomats wanted to see the resolution succeed, but

were torn between official instructions from their capitals, their loyalty to the NAM and the issue. It also illustrates how a good letter from one individual WCP supporter saved a 'yes' vote. There were probably other examples where diplomats chose to be absent rather than fulfil instructions with which they did not agree.

11.7 Conclusions

While some key members of LCNP had until 1992 viewed the advisory opinion as 'the Holy Grail, somewhere up in the sky', unlikely to succeed during the Cold War,[78] the outstanding efforts of their Executive Director, and others, helped make the dream a reality. This remarkable young man pursued the seemingly impossible through quiet perseverance and unshakeable faith in the cause. Despite minimal funding and a small ISC, the WCP captured the imagination of the international movement, the public and diplomatic community alike. Many partnerships were forged between citizen groups and governments, which continued to bear fruit as states prepared to present their written and oral arguments at the Hague during 1995.

After eight long and often lonely years, Harold Evans celebrated one of the pinnacles of his vision when the UNGA adopted this resolution. Sadly two of the writers in his original Open Letter, St John and Powles, did not live to witness it, both dying on 24 October (UN Day), during the UNGA. The leading role played by various New Zealanders, and the high level of public support for the initiative, were reflected in the government's 'yes' vote. The abstentions by Australia, Canada, Ireland, Norway and Sweden were the direct result of well-organised citizen campaigns aimed at key decision makers and actions by key politicians and diplomats. Those governments which usually succumbed to P3 pressure sensed a sea change in the nuclear debate and wanted to be 'seen on the side of the angels'. NAM states, infuriated by the bullying, threats and bribes of the P3 during 1993-94, had realised that a second attempt would only succeed if the Foreign Ministers agreed to stand firm as a group. The hysterical reaction during 1993 convinced them of the resolution's importance. Empowered by the ICJ WHA submissions and evidence of growing public support, they

collectively withstood the pressure, ensuring that the UN nuclear disarmament agenda had been fundamentally challenged against the wishes of the P3. It was one of the few UN resolutions which required an urgent response from the ICJ and sought participation from all member states.

Nuclear deterrence would now be on trial in the highest court in the world, and the NWS found themselves on the defensive. Former Soviet states joined ANZUS and EU members in arguing for illegality and the NATO consensus buckled. Coupled with the success of the step-by-step resolution demanding a time frame for complete nuclear disarmament, the NWS now feared another show down at the NPT five months later. Real progress towards the elimination of nuclear weapons might be needed if an indefinite extension were to be adopted. With the inclusion of 'urgently' in the resolution, the ICJ was likely to move swiftly to call for submissions in order to hear both cases simultaneously during 1995.

Footnotes.

- [1] Interview by Dewes with Ambassador Razali Ismail, New York, 22 March 1998.
- [2] R. Green, 'Report to WCP ISC', December 1993.
- [3] 'News and Views from USA and USSR', Alyn Ware and Annie Doherty, 1989, 16 pp.
- [4] Letter from Ware to Dewes, 24 May 1988 .
- [5] Ware and Doherty (1989), op.cit.
- [6] Letter from Dewes to Alyn Ware, 6 November 1988.
- [7] 'NZ classroom skills at UN', *NZ Herald*, 14 January 1991; Interview with Marlene Ware, Christchurch, June 1997.
- [8] Interview by Dewes with Ware, Christchurch, 9 January 1996.
- [9] Ibid.
- [10] Ibid.
- [11] Interview by Dewes with David Kreiger, New York, April 1995.
- [12] Interview by Dewes with Miguel Marin-Bosch, New York, May 1995.
- [13] Interview by Dewes with Ambassador Neroni Slade, New York, 23 March 1998.
- [14] Ismail interview, (1998).
- [15] Mendlovitz interview, (1996).
- [16] Interview by Dewes with Pauline Tangiora, Christchurch, 5 April 1995.
- [17] Minutes of WCP LCNP group, 16 and 25 June 1992.
- [18] Alyn Ware papers: 'Mission Contacts Summary', August 1992; 'Visiting Government Representatives: Discussion Points', August 1992; 'Report on meeting with Philippines Mission', September 1992.
- [19] Keynote address by Nathan Shamuyarira to WCP Launch, WCP Proceedings, IPB, Geneva, November 1992 pp. 4-6.
- [20] Interview by Alyn Ware with Godfrey Dzvairo, Rome, 1 July 1998.
- [21] Alyn Ware, 'Report of Meeting with UN Missions', 24 September 1992; Statement by Chile's Ambassador Juan Somavia to First Committee of UNGA, 13 October 1992, p.4.
- [22] William Epstein, Alyn Ware, Peter Weiss, 'World Court Project: How might the Court rule? What effect will that have?', LCNP, New York, September 1993, 14pp.
- [23] Notes of Ware's meeting with Dzaivro, 16 December 1992.
- [24] Statement by Canada's representative, Mr Strauss on behalf of Australia and A/NZ to UNGA 1992, Doc A/C.6/47/SR.36; Boutros Boutros-Ghali, *An Agenda for Peace*, UN Department of Public Information, July 1992 pp. 22-23; Alyn Ware, Delegation Tally paper, 14 May 1993.
- [25] Notes of Ware's meeting with Mexican UN Ambassador, 3 March 1993; Ware's summary report of meetings held

during the tour of Mexico, Costa Rica and Nicaragua, July 5-15 1993, 8 pp.

[26] Notes of meeting between Mendlovitz, Ware and Mason, New York, 3 June 1993.

[27] Interview with Ware, Christchurch, August 1997.

[28] Ware's report from Nauru detailing lobbying at the South Pacific Forum, 4-11 August 1993, 10pp.

[29] Draft letter from St John to Evans, June 1992; Jim McClelland, 'Ted St John drops a new bombshell' *Sydney Morning Herald*, 24 March 1993; WCP Lobbying Report by Jo Vallentine, 22 July 1993.

[30] Letter from Dr Joachim Lau to IALANA, 1 September 1993; 'Mai piu guerre con armi atomiche?', *Giovedì*, 5 Agosto 1993, p.17.

[31] Dr Bill Singleton, Executive Director CPPNW, Report on Parliament Hill and Government Visits, May 27 1993; CPPNW WCP Report, no. 4, 23 August 1993; Letter from Chretien to Beverly DeLong, 1 September 1993; Letter from Lloyd Axworthy, to Henrietta Langan, CPPNW, 10 June 1993.

[32] C. Boland, 'Move to outlaw use of nuclear weapons supported', *The Irish Times*, 21 October 1993; Address by Minister for Foreign Affairs, Gerard Collins to Fourth Review Conference of NPT, 21 August 1990; Irish CND Newsletter, August 1993. Notes of Meeting with Department of Foreign Affairs and Dewes/Dublin CND, 18 October 1993.

[33] Translation of article 'The Cabinet is being forced to Act!' submitted to *Aftonbladet* by Maj Britt Theorin, 2 June 1994; See Swedish Ministry position: 'The Swedes will not support the taking of a case to the ICJ', (no author), 27 April 1988.

[34] Editorial 'Japan and its military', *The Press*, 8 August 1994; Stuart McMillan, 'How the end of the Cold War has altered Japan's foreign policy', *The Press*, 22 December 1994; S.McMillan, 'Japan seeks defence role while staying constitutionally pacifist', *The Press*, 6 February 1995.

[35] Parliamentary Question to Prime Minister Hata, 22 November 1993.

[36] Notes by Ware of meeting with G.Dzvairo, Zimbabwe Mission, 31 August 1993.

[37] UN General Assembly Resolution, 'Request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons', A/C.1/48/L.25.

[38] Peter Beaumont, 'Clinton puts Britain in atom chaos', *The Observer*, 4 July 1993; Douglas Jehl, 'Clinton asks nuclear powers to join test ban', *New York Times International Sunday*, 4 July 1993. Alyn Ware, 'World Court Ruling Could Halt Proliferation', LCNP, 2 page briefing paper, March 1993.

[39] Alyn Ware, 'Report on the Progress of General Assembly Resolution L25', to WCP Inner Network, 7 December 1993.

[40] Mark Shapiro, 'Mutiny on the Nuclear Bounty', *The Nation*, 27 December 1993, pp. 799-800, 'Ban the Bomb?',

The Nation, January 9/16 1995; Kevin Sanders, 'The World Court and the Bomb: Report from the Hague', *War and Peace Digest*, vol.3, no.5. September 1994; K.Sanders, 'UN Calls on World Court to Ban the Bomb', *War and Peace Digest*, vol.3, no. 6, January 1995.

[41] Razali Ismail, 'The UN and Nuclear Disarmament: Perspectives of Non-Nuclear Weapon States', Keynote address to XII World Congress of the IPPNW, Massachusetts, 26 July 1996, 12pp.

[42] Dzvairo interview,(1998), op.cit.

[43] Letter from Ambassador Wisnumurti to all NAM members, 27 October 1993.

[44] Notes taken by Dewes, Green and St John during meetings in New York with Ambassador Butler (22 October 1993), Ambassador Keating (26 October 1993); phone conversation with Hilda Lini, 21 November 1993.

[45] Letter from Fabio Marcelli to Joachim Lau, 28 Oct 1993.

[46] Notes of phone conversation between unnamed member of House Armed Services Committee and Adviser to the US Mission and member of WCP lobbying team, New York, 5 November 1993.

[47] Dzvairo interview, op.cit.

[48] Letter from Nicholas Grief to Ambassador Wisnumurti, 4 November 1993.

[49] Sources include reports written by Dewes, Green and Ware and their notes taken during the UNGA in New York.

[50] Briefing paper from G.C.Fortune (Acting Secretary of Foreign Affairs and Trade), to Ministers of Foreign Affairs and Disarmament, 18 November 1993, released under OIA.

[51] Proposed Statement read by the Indonesian Ambassador to the NAM meeting on 10 November 1993.

[52] Interview by Dewes with Mason, Ottawa, 25 March 1998.

[53] Statement by Indonesian Ambassador Wisnumurti on behalf of the NAM on draft resolution A/C.1/48/L25 before the First Committee of the 48th Session of the General Assembly, 19 November 1993.

[54] Shapiro, op.cit.

[55] Maj Britt Theorin, 'Can Use of Nuclear Weapons ever be legal?', *Global Action*, December 1993.

[56] Shapiro,op.cit., p. 800.

[57] At the time the Iranians had put a 'killer' amendment into a consensus resolution on the Chemical Weapons Convention and they were seen as the most radical NAM state.

[58] Interview by Robert Green with Peggy Mason, Melbourne, July 1995. Note that Mason's attitudes to nuclear deterrence had shifted from her position in 1992 when she visited ANZ and expounded its virtues publicly.

[59] Ian Williams, 'van Lierop dismissed', *Pacific Islands Monthly*, January 1994, p. 33. There were other factors involved as well as his role in the WCP.

[60] Lini interview (1995).

- [61] David Robie, 'Corruption claims mar anniversary', *The Press*, p. 26, 3 July 1995.
- [62] Lini interview (1995).
- [63] Tangiora interview (1995).
- [64] Ware interview (1997).
- [65] WCP International Steering Committee Meeting Minutes, 11-12 February 1994.
- [66] See Christopher Bellamy, 'Big Five nuclear powers braced for move to ban bomb', *Independent*, 4 January, 1994; Kevin Sanders, 'Nuclear Powers Seek to Block World Court N-Bomb Ban', *War and Peace Digest*, vol. 3, no.3 Jan 1994.
- [67] Minutes of ISC Meeting, Geneva, 13-14 May 1994.
- [68] Dzvairo interview, op.cit.
- [69] 'Nuke policy statement draws fire', *Asahi Evening News*, 4 June 1994; 'Tokyo alters stance on nuclear weapons', *Japan Times*, 9 June 1994; Japan's Oral Statement to the ICJ, CR 95/2 (The Hague 1995), p. 18.
- [70] Alyn Ware, 'Why proceed with the request at the 49th General Assembly', September 1994, 2pp.
- [71] Action Alert from WCP UK, 12 October 1994, LCNP Press Release: 'Non-Aligned Movement Calls for World Court Opinion on Nuclear Weapons', 11 October 1994.
- [72] Miguel Marin-Bosch, 'The NPT Non-Proliferation/Nuclear Disarmament "Bargain" on the eve of the Extension Conference', Longer version of a paper delivered in Dublin to the Royal Irish Academy on 2 December 1994, 23pp.
- [73] Statements by the US, UK and France to the UNGA First Committee, 18 November 1994.
- [74] See UN document, 'Scale of Assessments for the Apportionment of the expenses of the United Nations', A/49/400, 20 September 1994 and A/49/838, 26 January 1995. Fifteen of the countries which did not vote in the First Committee on resolution L.36 were listed as in arrears between 20 September and 26 January 1995: Burkina Faso, Central Africa Republic, Chad, Comoros, Dominican Republic, Equatorial Guinea, Gambia, Granada (January list), Guinea-Bissau, Liberia, Mauritania, Sao Tome and Principe, Somalia, Vanuatu (Jan.) and Yugoslavia. For details of UN votes in relation to funding arrears see UN Charter, Articles 17-19. Guatemala, Burkina Faso and Comoros were on both these lists but voted in both sessions. In June 1994, the UNGA agreed that the arrears of South Africa were beyond their control and allowed them to vote.
- [75] Interview with Marin-Bosch, New York, May 1995.
- [76] South Africa was in transition to black rule. Dzvairo convinced his First Committee colleague to support the vote and some other African states eventually changed too.
- [77] Letter from Prime Minister of Papua New Guinea to Mrs Dinwiddie, 3 November 1994; Ware interview (1996).
- [78] Interview by Dewes with Peter Weiss, New York, 24 March, 1998.

CHAPTER 12

GOING TO COURT: 1994-1996

"And what does the Government intend to tell the International Court about the use of nuclear weapons?"



QUESTION-TIME AT THE BEE-HIVE

CHAPTER 12

GOING TO COURT: 1994-1996

Such moments erupt with unexpected power. The pro-nuclear consensus is more fragile than it seems - and the WCP is testing it. We need to create the climate to give the Court the moral courage to confirm illegality. Falk [1]

Five countries cannot arrogate to themselves forever the exclusive privilege of having their fingers on the nuclear trigger... If the laws of humanity and the dictates of the public conscience demand the prohibition of such weapons, the five nuclear weapon states, however powerful, cannot stand against them. Ismail [2]

12.1 Introduction

The UN's fiftieth anniversary coincided with the middle of the UN Decade of International Law. 1995 was also the fiftieth anniversary of the atomic bombings of Hiroshima and Nagasaki. Ironically, it became a watershed in the nuclear disarmament debate. The NPT was acrimoniously reviewed but indefinitely extended; the International Court of Justice (ICJ) received written and oral submissions on the legality of the threat or use of nuclear weapons; France and China broke their moratoria on nuclear testing, which caused ANZ to reopen its 1973 ICJ case against France, and Australia to establish the Canberra Commission on the Elimination of Nuclear Weapons. Non-Aligned states, exasperated by the NPT outcome, and emboldened by the World Court Project (WCP) and the international furor over renewed French testing, introduced a new UN resolution calling for 'the elimination of nuclear weapons within a time-bound framework'.

Following the successful 1994 UN General Assembly (UNGA) resolution, WCP campaigners continued closely monitoring governments and provided

them with legal briefs. The Oral Proceedings on both the World Health Assembly (WHA) and the UNGA questions were held in the ICJ in November 1995. This provided a public forum for states to challenge national activities which they believed were 'illegitimate' in terms of the planetary interest i.e. 'those which grossly pollute a neighbouring state, degrade the global commons or engage in an act that would devastate the planet'. [3] The International Steering Committee (ISC) used the occasion formally to present further citizen evidence, give moral support to those arguing for illegality, and remind the judges that 'the peoples' were watching them. Forty-five governments and the WHO eventually participated.

12.2 Submissions to the Court

World Health Assembly Question

Following an inordinate delay of nearly four months after the successful 1993 WHA resolution, the ICJ had announced 10 June 1994 as the deadline for written statements to be submitted to it. Despite the receipt of 27 submissions, this was extended to 20 September 1994. Those who had submitted could file comments on submissions by other countries until 20 June 1995. Eventually 35 states and the WHO made submissions and nine made comments.[4]

Throughout this period IPPNW remained vigilant, determined to save the resolution from being withdrawn during the 1994 WHA, and to encourage a WHO submission.[5] When the WHA had requested an advisory opinion in 1980, the WHO had not made a submission. During the January Executive Board meeting, Swedish doctors Johan Thor and Hege Raastad met with various WHO Executive members and officials, plus diplomats from seven Missions. [6] They discovered that the financial forecast for preparing a WHO submission, originally mooted at US \$200,000, was 'merely a deception' to scare IPPNW and the resolution's proponents. After receiving legal advice, IPPNW withdrew its promise of US\$30,000 given in 1993 because it 'could be misconstrued as exercising improper influence on WHO's submission'. The WHO legal counsel indicated that it would just

present the facts and review the law, thereby remaining neutral: the costs would therefore be minimal. [7]

Few Board members knew about the ICJ's invitation for submissions, nor how to prepare and present one. The IPPNW team recommended that a legal brief be drafted outlining why the WHA was entitled to ask the question and citing existing international law. The ICJ had turned down IPPNW's request to make a submission, so they helped prepare 'Legal Memorials' for governments. [8] Four LCNP lawyers drafted a model memorial in consultation with other IALANA affiliates, IPPNW and the WCP ISC. It was disseminated to sympathetic governments in mid-May 1994, just before the deadline.[9] Canadian Lawyers for Social Responsibility (LSR) also prepared comprehensive material on genocide, war crimes and human rights for consideration by LCNP. As only a small excerpt was included, they distributed it independently to 25 UN Ambassadors. Another memorial was prepared by German members of IALANA and IPPNW. [10]

Prior to the 1994 WHA, there were no firm indications which governments were submitting. IPPNW sent a strong delegation to lobby supportive governments to prepare submissions. This resulted in confirmation that Mexico would submit in time, and indications of serious interest from about 15-20 states. Governments were encouraged at least to submit a short statement welcoming the clarification of the issue, and thereby reserve the right to participate in the Oral Proceedings even if they did not submit a lengthy written statement. [11]

With less than a month to go to the June deadline, there was intense activity throughout the WCP network. Surprisingly and unbeknown to the WCP, North Korea had submitted first on 26 January arguing that the use of nuclear weapons was illegal. On 16 May, the Ukrainian Embassy in London sent WCP (UK) its government's submission, which had resulted from their lobbying effort. When Christ announced this on the IPPNW email conference:

...there was all kinds of excitement ... a few days later there was another one and another one - you could FEEL the excitement - it was palpable...it was challenging affiliates to go to their governments ... last minute stuff ... like a domino effect. [12]

Kazakhstan responded, and IALANA offered to draft a submission and represent them at the ICJ. [13] Lithuania submitted on 31 May, and then India was followed by Mexico, Nauru, and the Solomon Islands with substantial briefs arguing strongly for illegality.[14] Sweden and Ireland welcomed the case while A/NZ prevaricated asking, like Australia, to submit more fully if the cases proceeded. Of the nuclear weapon states (NWS), China took no part, while Russia and the US, UK and France (the P3) made full submissions opposing the case, supported by the Netherlands, Germany and Finland. In early May, Zimbabwe's new Foreign Minister had asked for IALANA's Memorial so they could submit it before 10 June. [15] However, having led the NAM at the UNGA, Zimbabwe failed to submit any written statements on either question before the deadlines.

Nauru already had a case against Australia before the ICJ for compensation for phosphate mining. [16] It appointed Auckland academic and IALANA member Jerome Elkind as Counsel after he offered to represent Pacific Island states *pro bono*. Elkind included IALANA's Memorial and the brief by IPPNW (Germany) in Nauru's submission which, along with the Solomons' submission, were by far the biggest and most comprehensive. Samoa's was brief, and Papua New Guinea was the only South Pacific co-sponsor of the 1993 WHA resolution to submit. Again this reflects the pressure which was applied after the WHA vote, and the lack of resources to mount a legal case and maintain UN Missions.

As late as 8 September, Malaysia's Foreign Ministry asked McCoy to help draft a submission. [17] Australia submitted extensively that the question was beyond WHO's mandate, the case was inadmissible and the ICJ should therefore decline to give an opinion. Japan modified its position in response to outraged public opinion, but still stayed on the fence. Not surprisingly, Australia's line echoed that of the four NWS, the latter adding

that there was no specific prohibition against the use of nuclear weapons. While agreeing that the principles of international law applied to nuclear weapons, whether a particular use is legal or not depended on the specific circumstances.[18]

In summary, only nine states argued the case was inadmissible, with five of these arguing that 'use' was not illegal *per se*. Of those, only the P3 submitted detailed arguments whereas six of the 23 arguing 'use' was illegal submitted comprehensive briefs. The last-minute rush indicated that many states waited to see what others did before revealing their positions. Smaller states - especially Pacific Islands - risked the wrath of the more powerful states by presenting some of the most strident and cogently argued submissions. Having revealed their position, other less economically vulnerable states like Malaysia then assumed leadership from Zimbabwe.

UN General Assembly Question

The success of the WHA resolution, coupled with the largest response ever to an ICJ request for submissions, helped encourage the NAM states which had earlier decided to re-introduce the UNGA resolution in November 1994. Inclusion of the word 'urgently' secured immediate action - a vital victory by only five votes. Unlike the WHA request, the UNGA one was transmitted to the ICJ within four days of the final vote. On 1 February 1995, the ICJ set the following dates: 20 June 1995 for written statements, 20 September for written comments, and Oral Proceedings on both cases from 30 October to 15 November. [19]

Following further requests from governments, Ware sought out law graduate Merav Datan, to work voluntarily coordinating the research on an IALANA model memorial on the UNGA question and model responses to arguments submitted for both the WHO and UNGA resolutions. These drew heavily on LSR's earlier drafts and Grief's work [20] and were widely distributed to sympathetic governments.

By 20 June 1995, nine states had made written comments on the WHA submissions. The four NWS were openly pro-nuclear, while Nauru and the Solomons again submitted the most comprehensive anti-nuclear rebuttals, along with India, Malaysia and Costa Rica.

At the same time, the Court received 28 submissions on the UNGA question including eight from new states (Bosnia, Burundi, Ecuador, Egypt, Lesotho, Marshall Islands, Qatar and San Marino). Submissions by tiny states like San Marino and the Marshall Islands, and other vulnerable ones such as Bosnia and Lesotho, reflected close relationships between decision makers and WCP members. Again the Solomon Islands presented the biggest brief, which had been prepared in great secrecy independently of IALANA and other NGOs. Both the Marshalls and Nauru included statements by Marshallese victim Lijon Eknilang about the intergenerational effects of US nuclear testing.[21] This time A/NZ forthrightly reflected public opinion and changed attitudes within government towards the likely success of the case by arguing strongly that nuclear weapons were illegal in all circumstances. Certain key Ministers were becoming increasingly frustrated by the lack of effort by the NWS to make substantial cuts in their nuclear stockpiles in response to the indefinite extension of the Non Proliferation Treaty (NPT) and there was still minimal movement on the Comprehensive Test Ban Treaty (CTBT). Australia remained silent, despite the fact that over a quarter of the 19 supportive submissions came from the South Pacific.

More than half the non-nuclear NATO governments remained mute (Belgium, Canada, Denmark, Greece, Iceland, Luxembourg, Portugal, Spain and Turkey), reflecting public disquiet about NATO's nuclear doctrine. Norway, like Australia and Japan, kept its options open. Ireland and Sweden, torn between growing public pressure and the European Union (EU) 'party line', broke ranks and filed independent arguments.

Three 'threshold' states (India, Iran and North Korea) argued strongly for illegality. With China's lack of participation, the other NWS became

increasingly isolated. The only supportive states were Finland and NATO members Germany, Italy and the Netherlands. Repeating the WHA inadmissibility argument caused difficulties, because some had previously argued that the UNGA was the correct forum. Openly arguing that threat or use might be legal in some circumstances could encourage proliferation, and exposed governments to parliamentary and public criticism, and electoral vulnerability. For example in May 1995, 93% of the German population demanded the rapid worldwide elimination of all nuclear weapons.[22] During the 1993 UNGA an Italian Parliamentary Committee had bound the government to support the resolution, while Finland and the Netherlands had histories of strong anti-nuclear sentiment amongst their public. However none of these countries had strong peace movements which were active on the WCP at the time leaving their governments free to side with the NWS.

However, the story was very different in Japan where their WCP groups grew considerably throughout 1994-5. They amassed some 3 million DPCs and formed a coalition to lobby the government to put in a submission on the UNGA question. Just prior to the deadline, a WCP delegation, including the powerful Japanese Federation of Cooperatives, visited the Prime Minister's Residence. They presented a model submission which had also been sent to all Missions in Tokyo. Eventually Japan put in a brief submission reiterating its WHA statement that 'the use of nuclear weapons is clearly contrary to the spirit of humanity that gives international law its philosophical foundation', confirmed its commitment to the 'three non-nuclear principles', and promoted the ultimate elimination of nuclear weapons. It did not mention the Shimoda case (see section 2.4), and sidestepped the merits of the case and further legal issues, reflecting the dilemma posed by its close security relationship with the US.[23]

Only three states went on to present written comments on the UNGA submission: Egypt, Nauru and the Solomons. Nauru later withdrew them, and also from the Oral Proceedings, because the counsel had allegedly not properly consulted with the government before submitting.[24] Prior to this

the counsel had asked the Mayors of Hiroshima and Nagasaki, plus Hilda Lini and Lijon Eknilang, to appear as witnesses. Both Mayors had continually asked their government for permission to testify. Finally on 20 September it agreed, making Nauru's request superfluous.[25] However, this undoubtedly helped force Japan to 'own' them, thereby preventing the dangers and embarrassment of the Mayors testifying for a more strident anti-nuclear government.

With Nauru unable to include the Pacific women, WCP (NZ) approached other Pacific governments, including A/NZ. Almost at the last minute the Marshall Islands included Eknilang in its delegation. Ironically, her women elders had called for nuclear weapons to be outlawed in 1954. This was extremely courageous for vulnerable islands almost totally dependent on Western aid and intimately linked to the US through a Compact. In addition, the Solomon Islands asked Joseph Rotblat, who had just received the 1995 Nobel Peace Prize, to present a statement, in the first ICJ case which allowed ordinary citizens to testify.

12.3 Aotearoa/New Zealand Reopens 1973 Nuclear Test Case

In May 1995, the NPT had been indefinitely extended following intense lobbying by the P3 and their allies. Part of the compromise was an agreement by the 'Permanent Five' (P5) to complete negotiations on a CTBT no later than 1996. Pending its entry into force, the NWS agreed to 'exercise utmost restraint'. Also, in line with their commitment to Article VI of the NPT, they would pursue 'systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons..'

Within two days of the NPT's extension, China had resumed testing, and France had announced a series of eight nuclear tests. Subsequent to the 1973 ICJ case, France had carried out 130 underground tests and in 1992, with China, had signed the NPT and announced a moratorium. France had

justified the tests by claiming that, as a P5 member and a NWS recognised by the NPT, she had 'special responsibilities, and particularly the right to maintain her deterrent at a credible level...'. [26] The UK had also cited the NPT as the legal justification for continued possession. [27] This had reinforced NAM concerns that the response of the NWS to the UNGA resolution revealed 'their true intentions regarding the permanence of nuclear weapons' under an extended NPT. [28] Ironically, the chief US NPT negotiator stated:

While the NPT reflects the reality that five nuclear-weapon states existed in 1968, it does not legitimize the permanent possession of nuclear weapons.[29]

As in the early 1970s, South Pacific populations were outraged and took every possible action to influence world opinion. Again citizen groups created the climate to allow politicians to act. In July 1995, Greenpeace sent *Rainbow Warrior II* and other boats to France's test site to try to stop the tests. The screams of Stephanie Mills (Greenpeace's disarmament spokeswoman) reverberating around the globe as French commandos stormed the control room, became a 'wake-up' call to the world. Moreover, this happened on the tenth anniversary of the French bombing of *Rainbow Warrior I* in Auckland.

This ignited the core of the ANZ anti-nuclear psyche. The whole country erupted in strong and creative protests, demanding immediate and radical political action from the government. Within days a fairly reluctant Prime Minister Bolger, heading a minority government, agreed to send a naval vessel with various politicians aboard, to Moruroa to accompany an ANZ peace flotilla. In addition, he recalled ANZ's Ambassador from France and announced a freeze on all military contact, including arms purchases. For a government whose anti-nuclear credentials were dubious, these actions were decisive, and reflected the new proportional representation voting system which had just been agreed by referendum. [30]

Following a unanimous parliamentary resolution condemning the tests, Bolger established multi-party talks with other political leaders and, despite strong misgivings from the Foreign Ministry, announced that the government was considering reopening the 1973 ICJ case. He indicated that Britain's Prime Minister John Major would be under pressure at the forthcoming Commonwealth Heads of Government Meeting (CHOGM) in Auckland. Major had refused to criticise France, having earlier eyed Moruroa as a shared test site.[31] Emulating Kirk, Bolger sent letters to over 100 world leaders; and politicians from various parties presented A/NZ's concerns to the European Union (EU) and the Inter Parliamentary Union. [32]The government raised the issue in every conceivable forum, including the Fourth World Conference on Women in Beijing. Bolger himself publicly criticised nuclear deterrence, called for nuclear abolition and a Nuclear Weapons Convention.

Australian Prime Minister Paul Keating's initial response was 'about as effective as whacking France with a cockerel-feather duster'. [33] He was scathing about A/NZ's attempt to reopen the ICJ case, calling it 'cosmetic'. However, following Bastille Day (14 July) marches of 20-30,000 in Sydney, 3,000 in Perth and elsewhere, accompanied by radical actions by trade unions, both he and Foreign Minister Gareth Evans reviewed their positions. Evans had borne a great deal of hostility from the public following his initial statement that 'things could have been worse', indicating that the tests were underground, finite in number and linked to a commitment by France to sign the CTBT once concluded. When polls showed 95% opposed the tests and 61% viewed the government's protests as too weak [34] Evans changed his position and on Nagasaki Day announced support for A/NZ's ICJ case. Keating then declared that Australia would make 'an oral submission condemning the tests at a separate hearing before the Court into the legality of nuclear weapons'.[35] Elections were due in March 1996, and Labor desperately needed the youth and green votes.

Although Bolger and Keating had met briefly to promote a united front, trans-Tasman rivalry abounded as each country vied for leadership on the

anti-nuclear testing issue. [36] Australia excluded A/NZ from a South Pacific delegation to France, and declined to send a naval vessel to Moruroa. However, they agreed to coordinate their efforts at the South Pacific Forum in August, where Japan joined the 16 nations in drafting a UN resolution. They also explored linking all existing or potential NFZs to create a Southern Hemisphere NFZ. [37] France later responded by offering aid to disgruntled Pacific states, reducing the tests to six, and joining the US and UK in signing the protocols to the SPNFZ Treaty.

The ICJ had held in its 1974 Judgment that 'if the basis of the Judgment were to be affected', A/NZ could return to the ICJ and request an 'examination of the situation'. The 1995 case therefore requested that the ICJ re-examine the situation based on justifiable concerns regarding the environmental risks of ongoing French tests. A/NZ also appealed for an interim injunction to stop the tests. On 21 August, A/NZ supported by Australia, the Marshall Islands, the Federated States of Micronesia, Samoa and the Solomon Islands, filed the requests. France replied that the Court had no jurisdiction; but oral hearings were held in September which it attended. On 22 September, the ICJ rejected the requests by 12 votes to three on technical grounds, noting that the 1974 Judgment dealt exclusively with atmospheric testing. Judges Weeramantry and Koroma joined A/NZ's *ad hoc* judge, Geoffrey Palmer, in issuing dissenting opinions. [38]

Although the A/NZ government knew it was unlikely to succeed, it took the risk to appease domestic *angst* and give the issue international prominence. It succeeded in strengthening the resolve of South Pacific states, and provided a preliminary run at the ICJ. Two months later the Marshall Islands, Samoa and the Solomons again worked closely together, this time coordinating their oral presentations. The nuclear test furore exposed Australia's almost total isolation within the Southern Hemisphere on the WCP. The Oral Proceedings on the WHA and UNGA questions, therefore, provided Australia with an opportunity to wrest leadership from its close neighbours and claim the moral high ground.

12.4 Commonwealth Heads of Government Meeting (CHOGM)

Another parallel high profile international event was the CHOGM in Auckland. Held from 10-13 November 1995, it was opened by the British Queen and attended by 51 governments linked closely to Britain through the Commonwealth of Nations. The UK risked total isolation within the Commonwealth on nuclear issues. Keating was so infuriated by Major's endorsement of French testing as 'a responsible act', that he threatened to 'smack (him) with a ruler'. ANZ and Malaysia indicated they would take a firm stand against nuclear proliferation and tests. [39]

During 1993-95, Green had held regular meetings with the Commonwealth Secretariat in London, exploring ways to raise the WCP and other nuclear issues at CHOGM. When he was in Malaysia in August 1995, he discussed drafting an anti-nuclear resolution for CHOGM with the Ministry, and the media featured his WCP work. [40] He then worked closely with the Malaysian Foreign Ministry, McCoy, Greenpeace and Helen Clark to draft a strong statement for Bolger to present to CHOGM for inclusion on its communique. [41]

After days of rancorous debate, the communique condemned continued testing and called for the elimination of nuclear weapons but did not mention the WCP. Furious at the 'incorrect, intellectually inconsistent and unbalanced' wording, the beleaguered UK Prime Minister defiantly reaffirmed Britain's commitment to nuclear deterrence and retreated home. [42] Future Prime Minister Tony Blair called for uniting the Commonwealth 'in urging France to stop its nuclear tests', and the Duke of Edinburgh supported environmental monitoring of Moruroa Atoll. [43] IPPNW(NZ) distributed documents about nuclear abolition to all delegates. [44]

12.5 Citizens Gather at The Hague

The priority for most WCP groups during 1995 was to ensure the maximum number of submissions and to amass DPCs for their final ICJ presentation.

Middle Western states such as Canada, Ireland, Japan, Norway and Sweden were singled out for lobbying by the ISC, and Green spoke extensively in Australia.[45] The ISC explored ways of securing 'ordinary citizens', indigenous peoples and *hibakusha* as witnesses and lobbied for a younger woman judge (of 67 ICJ judges, none had been women, only two were under 50, and the average age was 67). In July, Rosalyn Higgins (UK), in her late fifties, became the first woman judge. [46]

During the 1992 WCP launch, Dewes had envisioned:

...over a million DPCs, vigils outside the Court, vigils outside our own Parliaments, boat loads of DPCs sent to the Netherlands, so that by 1995 we can see an advisory opinion from the ICJ stating that the use and threat of use of nuclear weapons is indeed illegal.

... if we can convince countries like the 'threshold nuclear states' to take a lead, we will have a chance of rallying support from most non-aligned states. The support of countries like Sweden, Ireland and Aotearoa will be critical in withstanding the inevitable pressure of the nuclear weapon states.[47]

Within three years the dream had become reality. 'Threshold' states India and Iran had helped promote the UNGA resolution within the NAM and made anti-nuclear submissions, along with ANZ, Ireland and Sweden.

As the 'wise elders of the human tribe' gathered to render a 'uniquely spiritual judgment to save humanity from annihilation' [48] in what became the 'trial of the century', groups of Quakers, Buddhists and others held vigils throughout the Oral Proceedings. There were some DPC ceremonies in capitals, and vigils outside parliaments. Over a hundred WCP representatives based themselves in IALANA's cramped offices opposite the Peace Palace. They came to present the citizen evidence, support those delivering their government's anti-nuclear oral statements, alert the media, monitor the statements, and disseminate daily reports to interested citizens via electronic mail and fax. IALANA and ISC members worked assiduously to analyse statements; help some government delegations refine theirs; draft answers to the judges' questions; lobby Missions; and give media interviews. Others coordinated citizen activities such as the

DPC presentation, vigils, press conferences, a photo exhibition from Nagasaki, a WCP Seminar and an Abolition 2000 strategy meeting.[49]

IALANA's close relationship with ICJ officials facilitated communication so that these activities proceeded smoothly. Convincing the ICJ to accept 3.3 million DPCs, and temporarily house them there, was a major achievement and a logistical headache. The ICJ was scheduled to accept the DPCs on 27 October, the Friday before the start of the Oral Proceedings. However, on 24 October - the 50th anniversary of the UN's founding - the Venezuelan Judge Mawdsley died. This reduced the number of judges to 14, complicating the decision making process. Five judges were from the NWS, with Italy, Germany and Japan also represented. In a split vote, the Algerian President would have the casting vote. Meanwhile, the DPC ceremony was postponed because the Judge's body was lying in state.

On hearing the news, Maori elder Pauline Tangiora sought permission for a citizens' delegation to pay their respects. Breaking with protocol, which usually only allowed diplomats this privilege, the Registrar accepted. On entering the Peace Palace, Tangiora explained the significance of the death: 'In Maori tradition, we believe that if something historic is about to happen, a Chief passes on'. The women led the international group into the magnificent room where the 14 judges stood in line to receive mourners. A truly memorable moment occurred when the 'people's representatives' shook hands with each judge and looked into their eyes. Tangiora then stood before the coffin and she farewelled the judge's spirit in Maori. The spiritual energy was palpable. There was an awareness of humanity's vulnerability, and the formidable responsibility of those tasked with probably the most important question ever requested by the UN.

The following week, the ICJ's Deputy Registrar and Secretary also broke protocol by meeting the WCP delegation in the Judges' Deliberating Room, and by accepting the citizen evidence. Responding to the global interest in the case, and the scope and size of the material presented, they agreed to make it available to the judges. Dewes presented a large laminated DPC

signed by Harold Evans and briefly outlined ANZ's role in the WCP. Elmsley explained how she had personally collected 35,000 of the 100,000 UK total to date (she doubled this in the following six months). Green outlined the DPCs' history and presented documents including a tally of the DPCs from various countries (Appendix II). [50] The Japanese Consumers' Cooperative Union handed over half of their 2.8 million DPCs (the rest were being shipped from Japan). They presented material from Hiroshima and Nagasaki, signatures from Mayors of 212 Japanese Nuclear Free Municipalities and 122 'prominent people'. The indigenous representatives from Aotearoa, Australia and Peru were granted a separate meeting, where they presented the Beijing Declaration of Indigenous Women and the Declaration of Salzburg from the World Uranium Hearings.[51] They raised concerns about genocide being committed on indigenous peoples due to the health effects of the production and testing of nuclear weapons, most of which was on indigenous lands. [52]

At the close of the Proceedings, the ICJ President commended the role of the citizen groups, and some states referred to the DPCs and the level of international support behind the initiative.

12.6 ICJ Oral Proceedings

The 1995 UNGA coincided with the Oral Proceedings where states presented submissions on both the WHA and UNGA questions before the Court. An UNGA resolution condemning French and Chinese testing caused ructions; the Hiroshima and Nagasaki Appeal, with 51 million signatures calling for nuclear abolition, was presented to the UNGA President; the CHOGM was about to begin; and France carried out its third test. The NWS became increasingly pilloried as anti-nuclear sentiment raged worldwide. The climate could not have been more conducive for threatening the fragile pro-nuclear consensus. Falk was right: '...such moments erupt with unexpected power'. Anabel Dwyer, an IALANA lawyer, described how for two-and-a-half weeks, the Peace Palace 'sustained a transfixing confluence of enormous courage, chilling lies, terrifying

knowledge of the effects of radiation, and profound and absurd expositions of the law'. [53]

Although 25 countries were initially listed to make statements, Nauru and India withdrew. [54] Zimbabwe, having made a late request to present an Oral submission, was not on the list. Following a last-minute meeting between World Federalist President Bill Pace, Alyn Ware and Prime Minister Mugabe at the NAM Summit in Colombia, Zimbabwe decided to participate and exploit its position as final speaker alphabetically, to rebut the NWS. [55]

The WHO opened the Proceedings by claiming its 'neutrality', and submitted documents on the effects of ionizing radiation and nuclear war, and the legality of the use of nuclear weapons. It noted the role of IPPNW and the WFPHA in bringing this 'question without precedent' before the ICJ.

Australia

As the first state to address the Court, Australia consolidated its anti-nuclear testing rhetoric and reflected growing public support for the WCP. In a remarkable policy turn-around, Keating marked the UN's 50th anniversary in Canberra the week before by calling for 'the creation of a world totally free of nuclear weapons'. He pre-empted Australia's oral statement by announcing the establishment of an international group of 'knowledgeable and imaginative individuals from around the world to produce a report for the next UNGA and the Conference on Disarmament' outlining how this could be achieved. (This later became known as the Canberra Commission). Hailing Australia's leading role in the Chemical Weapons Convention and other disarmament initiatives, Keating urged that the same energy be put into achieving a nuclear free world. [56]

As citizen delegates gathered inside the Peace Palace, excited speculation raged as to how Australia would reconcile its WHA submission with calls for nuclear abolition. How could it support nuclear deterrence by maintaining an active role in ANZUS, continue to host US bases and nuclear warship

visits, export uranium, and retain any credibility with the overwhelming majority of anti-nuclear states?[57]

Keating had consulted with Australia's allies before his announcement. [58] Australia wanted Security Council membership, and needed support from the NAM. It was no secret that Foreign Minister Evans was seeking nomination as the next UN Secretary-General, and as a lawyer hankered after appearing before the ICJ. He had recently advocated the feasibility of a nuclear weapon free world. [59] On his way to the ICJ, he lobbied for the UNGA's anti-testing resolution in New York and at the NAM Summit in Colombia.

In a decidedly equivocal opening presentation aimed at appeasing both factions, Australia's Solicitor-General asked the ICJ to 'decline to give either of the advisory opinions'. Fearing an opinion which might impede the disarmament process, he cited examples of how the ICJ might decide that some uses might be legal. Foreign Minister Evans then took over and delighted WCP supporters by condemning not only any threat or use of nuclear weapons as illegal, but their acquisition, development, testing and possession. Calling nuclear weapons incompatible with current international humanitarian law, he said, 'It cannot be consistent with humanity to permit the existence of a weapon which threatens the very survival of humanity'. He urged the ICJ to declare that the NWS have a legal obligation under the NPT to abolish nuclear weapons within a reasonable timeframe. He then advanced the schizophrenic claim that during progress towards a nuclear weapon free world, the 'principle of stable deterrence' be maintained 'for the sole purpose of ensuring that nuclear weapons are never used by others' but that 'such deterrence can only be a temporary necessity'. [60]

Later he denied that this position signalled a changed relationship with the US. Australia's Opposition spokesman immediately responded that

...if Senator Evans' arguments were to be taken seriously the government would logically ban ship visits by American and British warships, would terminate military exercises with those countries and, above all, would tear up the ANZUS Alliance. [61]

Whatever his motivation, his performance was in marked contrast to his response to Evans and St John a decade earlier. At times their arguments echoed through his presentation. At others, the pragmatist politician urged caution. Nonetheless, within weeks Australia's anti-nuclear policy had moved forward, but there was no certainty that it reflected a solid consensus of national support as in ANZ. The ICJ presentation, coupled with the establishment of the Canberra Commission on the Elimination of Nuclear Weapons gave the government increased credibility with the electorate's vehement anti-nuclear sentiment, and international prestige as a seemingly leading proponent of nuclear abolition.

Non-Aligned Movement Representatives

Originally 11 NAM members planned to speak, but India withdrew and Zimbabwe was a late admission. Then, on the third day, following France's presentation, Guyana and Colombia (one of the largest recipients of US aid) suddenly pulled out. Colombia was chairing the NAM, and had regularly attended Malaysia's coordinating meetings at the ICJ. The next day, the President declared a state of emergency after the former Colombian presidential candidate and outspoken critic of the government was assassinated. Guyana's excuse was that it was assuming the UNGA Presidency. [62]

Egypt began by reminding the ICJ that it was required to respond to both requests unless there were compelling constitutional reasons for not doing so. It also argued strongly in favour of the illegality of nuclear weapons. Angered by France's arrogant presentation, Mexico warned it might withdraw from the NPT should the NWS not fulfil their obligations for total nuclear disarmament. It argued that 'to postpone giving a legal opinion on the threat or use of nuclear weapons until an actual case occurs is like substituting medicine with an autopsy'. Earlier, Indonesia argued that nuclear deterrence was illegal.

Australia's Hague Ambassador thought Iran made the most compelling and comprehensive argument for the illegality of nuclear weapons.[63] Iran viewed a positive ICJ decision as 'an instrument of preventive diplomacy, a particular *[sic]* suitable means for the Court to defuse tension and ward off conflict by determination of law'. Qatar, the Philippines and Costa Rica also argued for illegality. Costa Rica submitted a letter from the International Committee of the Red Cross stating that nuclear weapons are weapons of mass destruction and their use would be incompatible with the Geneva Protocols, which the ICRC had been instrumental in finalising.[64]

Malaysia's Ambassador Ismail reminded the ICJ of the NAM's crucial role in submitting the UNGA question, and made a powerful case on behalf of its 113 members. He highlighted the role of civil society and fearlessly exposed the ongoing power politics:

The Non-Aligned Movement is representative of the peoples of the world to whom this issue before the Court is of the most urgent and critical interest. We are home to a huge majority of humanity with a multiplicity of problems. Our countries are custodians of natural resources and biodiversity crucial to the continued survival of people and the planet, threatened now by the destructiveness of nuclear weapons.

At this moment in The Hague, itself, the Court should be aware of the large number of members of civil society that have gathered here from many parts of the globe in the expectation that the Court will declare that the threat and use of nuclear weapons is illegal. Even in the countries outside the NAM, amongst governments that did not support the UN General Assembly resolution, there is increasing public support for this position.

....I am mindful that the General Assembly resolution did not enjoy complete support..... but how can it be otherwise in the real world when five nuclear weapon States, who are themselves the five permanent members of the Security Council, have the ability and leverage to apply enormous influence on the hapless States? The negative votes and abstentions are an indication of the extremely heavy lobbying of the nuclear weapon States. The pressure continues even at this moment and this pressure cannot be underestimated.

...the political role of the Security Council is clearly dominated by a powerful group of countries, the nuclear powers, and... there is little hope of placing the issue of nuclear weapons before such a Council

Figure 16: Photos of ICJ Judges and South Pacific Legal Team



ICJ President Bedjaoui announces Court's decision 8 July 1996



Legal team from the Marshall Islands, Solomon Islands and Samoa includes Neroni Slade (far left) and Lijon Eknilang (white)

Figure 17: Photos of DPC Display and NZ Legal Team meeting
WCP Supporters



Keith Mothersson, Rob Green, Fredrik Heffermehl and Peter Weiss
outside the ICJ with 52 boxes of DPCs



NZ's Attorney General Paul East shakes hands with Ware and Dewes
outside the ICJ just before presenting the oral submission.

for an objective and fair consideration. Our recourse to the Court now, with the full support of civil society, is tantamount to a last appeal for justice. [65]

Much of Zimbabwe's submission was finalised with vital assistance by Ware and some IALANA lawyers and the night before, and revised during lunch following the UK and US presentations. It was a powerful rebuttal of the NWS' arguments and a grand finale to the Oral Proceedings.[66]

South Pacific Islands, Japan and San Marino

The Marshall Islands, Samoa and the Solomons made a joint presentation (Figure 16). They had hoped for four and half hours, but were given the customary one and a half hours allotted to each state. The large delegation included legal experts from Australia, Belgium, France, A/NZ, UK and the US. All three states argued for both cases to proceed, and offered substantive documentation in support of illegality. Samoa praised the citizen groups in bringing the issue to the ICJ. Citing the UK's written submission which asserted that the requests 'are the result of a sustained campaign by NGOs', Samoa responded, 'My government is not at all offended by the involvement of NGOs in this matter. The UN Charter... takes NGOs seriously'. [67]

The most moving testimony came from Lijon Eknilang, dressed in white with a wreath of flowers in her hair. Often overcome by emotion, she shared how the experiences of the Marshallese were relevant to the questions,

...because unnecessary injuries, indiscriminate impacts, and adverse collateral environmental effects of the radioactive fall-out resulting from the atmospheric tests which have so gravely affected the Marshall Islands would be repeated for other people and their lands in the event of any military use of nuclear weapons.

Like Lini at the WHA, she spoke graphically of the health and environmental effects of the tests, including the intergenerational effects:

My own health has suffered very much as a result of radiation poisoning. I cannot have children. I have had miscarriages on seven occasions. One child I miscarried was severely deformed; it had only one eye. I have lumps in my breasts, as well as kidney and stomach

problems ... my eyesight is blurred and everything looks foggy to me.

Women have experienced many reproductive cancers and abnormal births. ... they give birth ... to things we could only describe as 'octopuses', 'apples', 'turtles' ... and 'monster babies' with two heads. The most common birth defects have been 'jellyfish' babies. These babies are born with no bones in their bodies and with transparent skin. We can see their brains and hearts beating. Many women die from abnormal pregnancies and those who survive give birth to what looks like strands of purple grapes. [68]

Ambassador Slade described how, '... in her simple Sunday best, she held the Court spellbound ... she wasn't fazed by these 14 old characters ... it was amazing'. [69] Her personal experiences provided balance to the abstract legal expositions.

When New Zealand's legal team arrived at the ICJ they shook hands with Ware, Dewes and others who were holding a huge rainbow banner, 'Nuclear Free New Zealand/Aotearoa', outside the gates (Figure 17). Inside, Attorney-General Paul East began by acknowledging New Zealanders who had helped bring the question to the ICJ, 'some of whom are here today'. Sadly, Evans could not attend, and Geiringer had died in August. In stark contrast to Australia, East told the Court that it was:

...bound to exercise its jurisdiction to reach a decision on the substantive issue put to it. The answer to the question... should be no; the threat or use of nuclear weapons should no longer be permitted under international law. [70]

It was a proud day for those who had struggled for nearly a decade to convince their elected representatives to advocate this position with confidence. Although at times the relationship between officials and NGOs had been acrimonious, here, at last, was a real sense of partnership.

The Japanese NGOs did not feel the same. Prior to the hearings, the government had tried to prevent the Mayors of Hiroshima and Nagasaki from declaring that all uses of nuclear weapons were illegal. On the morning of their presentation many *hibakusha*, wearing garlands of paper cranes and flanked by a huge painting of a weeping Black Madonna and child, held a vigil at the gates. Following a brief reiteration of the

government's written statement, the Mayors were asked to give their statements 'independent of the government'. Hiroshima's Mayor said: 'History is written by the victors. Thus the heinous massacre that was Hiroshima has been handed down to us as a perfectly justified act of war'. The powerful presentations of photos and personal stories of *hibakusha* moved many to tears. The Mayors invited the judges and the leaders of the nuclear states to visit their cities. Nagasaki's Mayor concluded with the hope that

... this Court will decide impartially about the inhumanity of nuclear weapons and their illegality... This indeed will contribute more than anything else to the repose of the souls of the 214,000 people who perished in the atomic wastelands of Nagasaki and Hiroshima 50 years ago. [71]

The only Western European country to oppose nuclear weapons on this occasion was the ancient Republic of San Marino, which credits its 400 years of peace to forsaking all weapons. It rejected NATO's policy of nuclear deterrence, arguing that it is 'contrary to international law and morally unacceptable'. [72]

Nuclear Weapon States and their Allies

In stark contrast to its tiny neighbour, Italy - together with the P3 - asked the ICJ not to give an opinion. It went further than the P3 by arguing that nuclear deterrence was permitted by the UN Charter, which gave the UN the right to threaten and use nuclear weapons. This position totally contradicted a Parliamentary resolution which stated that 'nuclear weapons, as weapons of mass destruction, are prohibited under Italian and international law'. [73] Germany argued that NATO's nuclear weapons provide '... the ultimate deterrence against a threat whose consequences would lead to a national catastrophe were it to materialize'. [74]

Russia dismissed arguments against nuclear weapons as 'political and emotional' and, like the P3, argued that international law does not contain a general ban on nuclear weapons *per se*. France indulged in a show of frivolous semantic quibbling over the framing of the two questions, made no

reference to weapons of mass destruction, ignored the entire body of international law codified in the Hague and Geneva Conventions, and emphasised that nuclear weapons are not fundamentally different from other types of weapons.

The UK and US clung tenaciously to their position that it is legal to use nuclear weapons under certain circumstances. The US claimed that 'nuclear deterrence has saved many millions of lives from the scourge of war during the past 50 years. In this special sense, nuclear weapons have been "used" defensively, every day for over half a century - to preserve the peace.' The UK declared: 'It is nonsense to suggest that states which have relied on nuclear weapons for fifty years have implicitly agreed to a ban on them'. [75]

As the judges began their deliberations, citizen groups worldwide hoped they would remember Malaysia's concluding plea:

In the present time of darkness and deep crisis when the world is under the nuclear sword of Damocles, the nations of the world seek the wisdom and shelter of its sages, that is, you the wise Judges of the World Court in this Great Hall of Justice in this great Peace Palace. We await your answers to the questions posed, and have the fullest confidence that, despite scepticism by many eminent commentators of international law, this Court will positively respond to the collective cry for help from the world community.

12.7 Conclusions

The ICJ Oral Proceedings were the climax for the international citizen coalition promoting the WCP. They provided a focus for all strands to work together, using their various strengths to ensure independent legal advice was shared with governments and that 'we, the peoples' found a voice within the often sterile and austere proceedings. The ICJ's officials allowed a surprising degree of participation by citizen groups and the NGO network worked hard at their task of educating the global public about the ICJ's role. Media interest was also enhanced by the strong public support for the case.

Outraged international public opinion over French testing in the South Pacific undoubtedly emboldened Australasia and the small Pacific states to re-open the 1973 ICJ case and join together to challenge the NWS at the ICJ and CHOGM. At the 1995 UNGA they succeeded in attracting 40 co-sponsors for a resolution condemning renewed nuclear tests. Australia's Ambassador Butler even went public exposing how 'the French went out in the last week in a massive programme of twisting arms, threatening and cajoling States to either abstain from or vote against this resolution'. One delegate from a Francophone nation spoke of 'the worst pressure he had suffered in his public life'. [76]

As two of the most tumultuous years in nuclear disarmament history drew to a close, the two superpowers plus the UK and France, supported by two Western allies, found themselves for the first time having to justify the legality of their nuclear arsenals in court. Some 16 states opposed them, including another two Western allies (Australia and A/NZ), arguing for illegality and calling for total abolition. States infuriated by heavy-handed bullying by some NWS, and betrayed by the extension of the NPT and renewed nuclear testing, banded together to confront them head-on in the ICJ. Within the NAM the leadership baton passed from Costa Rica, Zimbabwe, Vanuatu, and Indonesia to Mexico, Colombia and finally Malaysia. Economically less vulnerable, backed by strong public support and with a Prime Minister personally driving the issue, Malaysia led the final phase without fear of economic or military reprisals. [77] At the same time, the revitalised NAM introduced a UN resolution calling for 'the elimination of nuclear weapons within a time-bound framework', which passed by 106 for (including China), 39 against and 17 abstaining (including Russia). [78]

Australia's Foreign Minister denied that his pronouncement on the illegality of nuclear weapons affected the Australia-US relationship. However the High Court of Australia granted a Melbourne barrister the 'right to bring legal proceedings against the Commonwealth to force the Federal Government to declare nuclear weapons illegal' under Australian municipal law, including the Constitution. [79] It also helped empower the Australian

citizen movement to challenge their government's ongoing support for nuclearism.

Trans-Tasman rivalry between electorate-conscious governments helped move along the wider anti-nuclear agenda with initiatives such as a SHNFZ and the Canberra Commission. Although A/NZ and Australian UN disarmament votes usually converged, [80] the nuclear free legislation and strong public support forced the conservative A/NZ government to align far more closely with the NAM. This in turn helped Ireland, Sweden and Australia to follow suit and split the normally compliant Western bloc.

For all three co-sponsoring NGOs, the WCP galvanised individual members and affiliates to use their newly-developed relationships with decision makers in a wide range of countries to maximise support and the number of submissions. With the conclusion of the Oral Proceedings, few tasks remained for the WCP network as they anticipated the final decision during 1996.

Footnotes.

- [1] Richard Falk, 'Speech to World Court Project Seminar', New York, 19 April 1995.
- [2] Ambassador Razali Ismail, Malaysia's Oral Presentation to the ICJ, 7 November 1995.
- [3] Kennedy Graham, 'The Planetary Interest', Global Security Paper, no.7, Cambridge, UK, May 1995, pp. 6-7.
- [4] Written statements were filed by : Australia, Azerbaijan, Colombia, Costa Rica, Democratic People's Republic of Korea, Finland, France, Germany, India, Ireland, Islamic Republic of Iran, Italy, Japan, Kazakhstan, Lithuania, Malaysia, Mexico, Nauru, Netherlands, New Zealand, Norway, Papua New Guinea, Philippines, Republic of Moldova, Russian Federation, Rwanda, Samoa, Saudi Arabia, Solomon Islands, Sri Lanka, Sweden, Uganda, Ukraine, United Kingdom, United States of America. Written statements were submitted by: Costa Rica, France, India, Malaysia, Nauru, Russian Federation, Solomon Islands, United Kingdom and United States of America. See also ICJ, General List No. 93, 8 July 1996, 'Legality of the Use by a State of Nuclear Weapons in Armed Conflict, p.3.
- [5] 'Nuclear attack on WHA 46/40 imminent', *IPPNW (NZ) Newsletter*, no.38, February 1994.
- [6] Full report by Drs Johan Thor and Hege Raastad to IPPNW on WHO Executive Meetings, 9 February 1994.
- [7] See IPPNW Briefing Paper Regarding the Offer of IPPNW to Assist WHO in Raising Extra-Budgetary Funds to Implement Resolution WHA 46.40: 'Health and Environmental Effects of Nuclear Weapons', (no date); Summary Progress Report by Drs Johan Thor and Hege Raastad on WHO Executive Board Meeting, 21 January 1994, pp.1- 4 and Erich Geiringer, Memorandum: IPPNW Financial Assistance to WHO, 7 March 1994, 4pp.
- [8] Letter from Registrar of the ICJ to Barry Levy (IPPNW), 28 March 1994.
- [9] Draft Memorial in support of the Application by the WHO for an Advisory Opinion by the ICJ on the legality of the use of nuclear weapons under international law, including the WHO Constitution, prepared by Peter Weiss, Burns Weston, Richard Falk and Saul Mendlovitz, May 1994.
- [10] LSR members Chris Jones, Chris Gora and Chris Harland drafted the section on genocide, David Matas drafted the war crimes section while Don Conrad and Bev DeLong drafted the human rights section. Michael Bothe, *Nuclear Weapons and the International Court of Justice: The admissibility of the request of the WHO*, IALANA, Marburg, 1994.
- [11] IPPNW, WHA.47-Preliminary Report, May 1994.
- [12] Interview by Dewes with Christ, New York, May 1995.
- [13] Letters from Christ to WHO Liaison Officer in Kazakhstan, 23 and 27 May 1994; letter from Phon van den Biesen to Dr Karagulova, 3 and 6 June 1994.
- [14] India published its written submission as a UN document on 20 June 1994, A/49/181; Excerpts of Solomon Islands' submission reprinted in Roger Clark and Madeleine Sann, eds., *The Case Against the Bomb: Marshall Islands, Samoa, and Solomon Islands before the International Court of Justice in Advisory Proceedings on the Legality of the Threat or*

Use of Nuclear Weapons, Rutgers University of Law, New Jersey, 1996,
pp. 37-62,

(For full text see www-camlaw.rutgers.edu/publications/crimlawforum/).

[15] Letter from N. Shamuyarira to Saul Mendlovitz, 5 May 1994.

[16] Later Britain and New Zealand also paid compensation.

[17] Letter from Ron McCoy to Harold Evans, 9 September 1994.

[18] See World Court Project Report, #6, LCNP, Spring 1995, pp. 3-4;
IPPNW Summary of WHO submissions, 28 November 1994.

[19] ICJ Communique, no. 95/32, 27 September 1995. 20 June 1995 was
also the deadline for written comments on submissions on the WHA
question.

[20] *IALANA Newsletter*, No 10, July 1995, p.3.

[21] *Pacific Women Speak*, GreenLine, Oxford 1987, pp. 15-17.

[22] 'Votum gegen Kernwaffen', *Deutschland Im Trend*, 13/14 Mai 1995,
p.7.

[23] Report from Japanese Lawyers International Solidarity Association,
'Japanese Government Urged to Submit a Statement', 8 June 1995; Written
Statement of the Government of Japan to ICJ, June 1995.

[24] Letter from J. Elkind to Dewes, 7 February, 1996; Interview by Dewes
with Ambassador Neroni Slade, 23 March 1998.

[25] Letter from Manabu Masada to Jerome Elkind, 27 September 1995.

[26] Letter from Bernard Chappedelaine, for the Ambassador of France to
the UK to George Farebrother, 16 June 1995.

[27] Letter from David Davis, Foreign and Commonwealth Office to Austin
Mitchell, 11 December 1995.

[28] See 'Marin-Bosch v. The Nuclear Five', *War and Peace Digest*, vol. 3,
no.6, March-April 1995, p. 4; William Epstein, 'Stand and Be Counted: Give
More to Get More', *The Bulletin of the Atomic Scientists*, Nov/Dec 1994, pp.
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the Treaty on the Non-Proliferation of Nuclear Weapons', LCNP, 20 August
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Renewal', *The Washington Post*, 14 April 1995; Marin-Bosch, (1994) op.cit.;
'Issues for the NPT Conference', NGO Committee on Disarmament,
February 1995, 4 pp., '170 countries vote to extend nuclear treaty',
Guardian, 12 May 1995.

[29] Statement by Thomas Graham to NPT Preparatory Committee
Meeting, Geneva, 1994, published in *Acronym*, no. 4, p.28.

[30] The minority National government (conservative) elected under a
'first-past-the post- system was acutely aware that in the new era of
proportional representation (due at the next election in 1996) they would
have to start to put 'consensus politics' into practice by consulting closely
with the leading opposition parties on contentious issues such as nuclear
testing.

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Plenary of the Fourth World Conference on Women at Beijing in September
1995. The NZ and South Pacific delegations ensured that nuclear testing
was mentioned in the final language on nuclear disarmament. See Ministry

of Women's Affairs, Beijing and Beyond: The Report of the New Zealand Delegation to the United Nations' Fourth World Conference on Women', Wellington, 1996, pp. 30-31, 59-61.

[33] Godfrey Wiseman, 'Learning to love to hate the nuclear bomb', *The Canberra Times*, 4 November 1995.

[34] Kate Dewes, 'Update from Aotearoa re French Tests', 7 July 1995.

[35] *The Press*, 9 August 1995.

[36] Jane Clifton, 'PMs show united front on N-tests', *Sunday Star Times*, 23 July 1995.

[37] 'French may cut back on tests', *Herald*, 7 August 1995; 'N-test protest to world court', *Herald*, 7 August 1995; See 'Chronology of Opposition to a Resumption of Nuclear Testing', Greenpeace, 1995, 20pp; 'France and nuclear testing: More tests at Moruroa', Background Briefing Paper, Nuclear Free and Independent Pacific Campaign, Melbourne, 1995, 12pp.

[38] *New Zealand at the International Court of Justice: French Nuclear Testing in the Pacific: Nuclear Tests Case, New Zealand v. France (1995)*, Ministry of Foreign Affairs and Trade, Wellington, 1996, 352 pp; Simon Reeves, 'The Palmer Approach - a commentary on the dissenting decision of Sir Geoffrey [sic] Palmer', *Lawtalk* 446, 6 November 1995, pp. 11-12. See also, 'Govt weighs N-test legal action', *The Press*, 18 July 1995; 'Foolish gesture', *The Press*, 9 August 1995; 'A loss at the World Court', *The Press*, 24 September 1995; 'World Court case against France unlikely to make much headway', *The Press*, 17 August 1995; 'World Court refuses to reopen French test case', *The Herald*, 23 September 1995; 'French environmental duties noted', *The Herald*, 25 September 1995.

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[40] 'From Warrior to Peace-maker', *New Sunday Times*, Sunday Style, 10 September 1995, pp. 2-3.

[41] Draft CHOGM communique prepared by Helen Clark, Greenpeace, Green and Dewes, 17 August 1995; Letters from Green to H.Clark, 19 and 27 July 1995; Letters from Ron McCoy to Dewes, 22 and 31 August 1995.

[42] John Armstrong, 'Fragile compromise over nuclear testing', *NZ Herald*, 11 November 1995; 'Major firm on nuclear deterrence', *Otago Daily Times*, 10 November 1995; 'Major blasts nuclear statement', *Press*, 11 November 1995; 'Talks fail to isolate nuclear issue from Communique', *NZ Herald*, 10 November 1995; Ted Reynolds, 'Out of four days of meetings comes ...', *NZ Herald*, 14 November 1995, p. 7; *New Zealand and the Commonwealth*, Ministry of Foreign Affairs and Trade, Information Bulletin no.55, June 1995.

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[44] 'Towards a Nuclear Weapon Free World', IPPNW NZ, Wellington, November 1995.

[45] Green did three speaking tours of Australia in 1995, gaining significant media coverage chiding the government for not making a submission and meeting with politicians, trade unionists, doctors, Aboriginal elders, and academics. Rob Green, 'Australia Report', December 1995; Rob Green,

- Annual WCP Report, 1995. See also, Norman Aisbett, 'N-weapons question poses big challenge', *The West Australian*, 27 May 1995.
- [46] Alyn Ware, Election of Judges to the ICJ, Memo to IALANA affiliates, May 1993; Letter from Willemijn Straeter, IALANA, to UN Secretary General, 2 August 1993, Letter from UN Under Secretary General to van den Biesen, 26 August 1993, Letter from Dewes to International Federation of Women Lawyers, 22 June 1993, Letter from Dewes to Maj Britt Theorin, 3 July 1993, Letter from Judge Silvia Cartwright to Dewes, 29 June 1993; ICJ Communique no.95/15, 22 June 1995, ICJ Communique, no. 95/20, 13 July 1995.
- [47] Katie Boanas-Dewes, 'Mobilising Civil Society' in *World Court Project: International Launch*, IPB, Geneva May 1992, pp. 51-56.
- [48] Ambassador Razali Ismail presented Malaysia's Oral Submission to the ICJ, 7 November 1995.
- [49] During the 1995 NPT Review and Extension Conference in New York representatives of many international NGOs met to establish the Abolition 2000 movement. This group created a statement which was initially supported by over 300 NGOs representing millions of people around the world. Its central aim is to have in place by the new millennium a Nuclear Weapons Convention committing the nuclear weapon States to get rid of their nuclear arsenals within a fixed timetable.
- [50] Christine Soane and Peter Norris, *Going to Court Not War*, Tweeddale Peace Group, Scotland, 1995.
- [51] Sibylle Nahr, Uwe Peters, eds., *Poison Fire, Sacred Earth*, The World Uranium Hearing, Munich, 1992.
- [52] Letter from Pauline Tangiora to ICJ Registrar, 4 November 1995. World Court Project Report, LCNP, Winter 1995, p.4.
- [53] Anabel Dwyer, 'When Nuclear Weapons Go Before the International Court of Justice', *Benchmark*, Michigan, vol. XVIII, no.1, 1996, pp 8-12.
- [54] Nauru withdrew because of earlier concerns about their counsel. India did not appear citing its two previous submissions sufficiently covered their arguments. See letter from Phon van den Biesen to Peter Weiss, 10 October 1995.
- [55] Interview with Alyn Ware, Christchurch 9 January 1996. Ware had gone with Bill Pace from the World Federalist Movement to lobby governments during the Colombian NAM Summit. In 1989 Zimbabwe had invited Pace to the NAM summit to promote the Decade of International Law as an 'independent lobbyist'. Ware suggested that Pace ask Mugabe outright if he wanted Zimbabwe to present an oral submission. As Shamuyarira was no longer Foreign Minister and the current Minister was not supportive of the WCP, 'we had to go directly to the President'. 'Once we had the OK from Mugabe, I had to go back with his verbal OK to the New York people asking them to prepare a submission'. (Ware interview with Dewes).
- [56] Speech by Prime Minister P.J. Keating, 'The 50th Anniversary of the United Nations, Australia and a World Without Nuclear Weapons', Canberra, 24 October 1995, 7pp; Keith Suter, 'PM's nuclear policy could bomb', *The Melbourne Age*, 26 October 1995; 'PM's push to remove nuke threat', *The Canberra Times*, 25 October 1995.
- [57] 'US-Australia defence ties strengthened after joint talks', *The Press*, 21

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[59] Gareth J. Evans, *Cooperating for Peace: The Global Agenda for the 1990s and Beyond*, Allen and Unwin, St Leonards, NSW, 1993. Joseph Rotblat, Jack Steinberger and Bhalchandra Udgaonkar, eds. *A Nuclear-Weapon-Free World: Desirable? Feasible?*, Westview Press, Boulder, 1993; Wiseman, op.cit. See interview by Evans on ABC Radio, Australia, 25 October 1995. See also, Gareth Evans, Bruce Grant, *Australia's Foreign Relations in the World of the 1990s*, Melbourne University Press, 1991; Gareth Evans, 'Australia's Commitment to Global Multilateralism and its Implications for the Asia Pacific Region', Keynote address to a Conference at La Trobe University, Melbourne, 2-6 July 1995; Gareth Evans, 'International Law and Australia's Interests', Address to the Australian Branch of the International Law Association, Sydney, 30 March 1989.

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[62] Interview by Dewes with Razali Ismail, New York, 23 March 1998, 'Veteran political leader gunned down', *The Herald*, 4 November 1995.

[63] Discussion between Australia's Ambassador Michael Tate, Dewes and Green, 9 November 1995.

[64] See 'World Court Hearings: Summaries of statements made to the ICJ', LCNP, December 1995, p.8; See Cornelio Sommaruga, President of ICRC, 'Nuclear Weapons and International Humanitarian Law', *Le Monde*, 28 July 1995; Letter from Yves Sandoz (Executive Board member of ICRC) to President Bedjaoui, 19 September 1995.

[65] Ambassador Razali Ismail, Oral Statement by Malaysia before the ICJ, 7 November 1995.

[66] Jonathan Wutawunashe, Zimbabwe's Oral Presentation to the ICJ, 15 November 1995.

[67] Clark and Sann, op.cit, p.247.

- [68] Ibid., pp. 239 -243.
- [69] Slade interview (1998), op.cit.
- [70] International Court of Justice, Verbatim Record, CR 95/28, 9 November 1995, p 19.
- [71] Statements by Takashi Hiraoka, Mayor of Hiroshima and Iccho Itoh, Mayor of Nagasaki to the ICJ, 7 November 1995.
- [72] Mrs Federica Bigi, San Marino's Oral Presentation to the ICJ, 13 November 1995.
- [73] Resolution on nuclear weapons by the Senate of the Italian Republic, 13 July 1995, passed by a two thirds majority.
- [74] Hartmut Hillgenberg, Germany's Oral Presentation to the ICJ, 30 October 1995.
- [75] The quotes are from individual government statements to the Oral Hearings at the ICJ, 30 October - 15 November 1995. For further reading and quotes see: Kevin Sanders, 'Nuclear Weapons on Trial: The People Vs. the Bomb', *World Citizen News*, December 1995/January 1996, pp. 18-25; John Burroughs and Jacqueline Cabasso, 'Nukes on Trial', *The Bulletin of Atomic Scientists*, March/April, 1996, pp. 41- 45; Mary Riseley and Karin Salzman, 'Nuclear Weapons on Trial', *Santa Fe Reporter*, November 20 - December 5, 1995, pp.15-19; David Morgan, 'A Report on A Visit to the World Court, The Hague, Netherlands', 3 December 1995; Kate Dewes, 'Nuclear Weapons on Trial', Foundation for Peace Studies, Background paper no.11/23, December 1995; WCP ISC Press Releases, 24 October - 15 November 1995; John Pilger, 'A Principled Audacity', *New Statesman and Society*, 17 November 1995, Kevin Sanders, 'UN calls on World Court to Ban the Bomb', *War and Peace Digest*, vol.3, no.6, January 1995.
- [76] 'UN under French N-Vote pressures', *NZ Herald*, 18 November 1995.
- [77] Razali interview, op.cit.
- [78] 'G.A. calls for Elimination of Nuclear Weapons in Fixed Period; Non-Aligned Countries Resurgent', *Disarmament Times*, 19 December 1995, pp. 1 and 4.
- [79] Rachel Gibson, 'High Court allows anti-nuke challenge', *The Age*, 29 November 1995; 'Writ tests Keating stance on N-weapons', *The Press*, 1 December 1995; Writ, *Lindon v Kerr & Ors*, VG 111 of 1995. Lindon argued that under the Australian Constitution and legislation such as the *Australia Act 1986*, 'the people had reserved to themselves certain powers. These included the power to institute or defend legal proceedings in order to protect the lives of Australians against imminent threat and to vindicate the public interest in human rights'. Secondly, ' Australian domestic law embodied the principles of international law, reflected in such sources as the *Convention on the Prevention and punishment of the Crime of Genocide*,' which was approved by Australia in the Genocide Convention Act of 1949. Ibid, pp. 7-8.
- [80] Adrian Wills, 'New Zealand in the United Nations General Assembly: A Comparative Survey of Alignment', Working Paper no.3, Centre for Peace Studies, University of Auckland, April 1994, pp. 22-24.

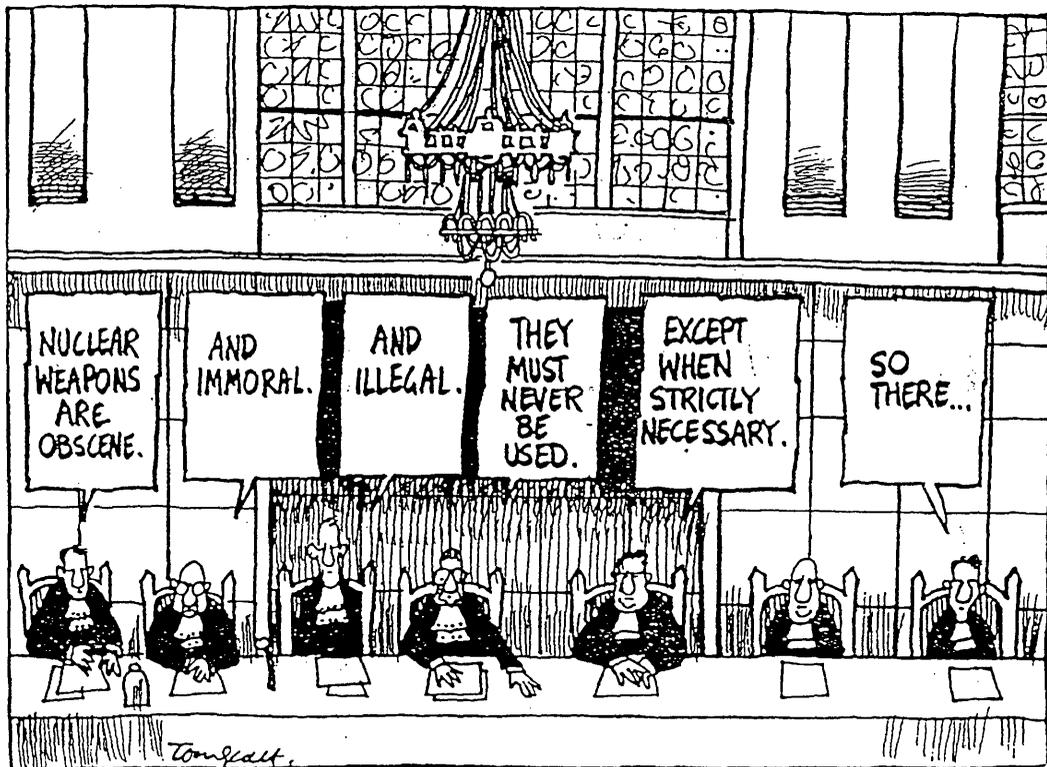
PART IV

CONCLUSIONS

The power of ideals is incalculable. We see no power in a drop of water. But let it get into a crack in the rock and be turned to ice, and it splits the rock. Albert Schweitzer

CHAPTER 13

THE IMPACT OF THE WORLD COURT PROJECT



Tom Scott, *Otago Daily Times*, 10 July 1996

CHAPTER 13

THE IMPACT OF THE WORLD COURT PROJECT

The Court lived up to its historic challenge by responsibly addressing the momentous question posed by the General Assembly about the legal status of a threat or use of nuclear weapons. ... As with other normative projects, such as the abolition of slavery and the repudiation of apartheid, perseverance, struggle and historical circumstance will shape the future with respect to nuclear weaponry, but this process has been pushed forward in a mainly beneficial direction by this milestone decision of the World Court. Falk [1]

The forces ranged against the view of illegality are truly colossal. However collisions with the colossal have not deterred the law on its upward course towards the concept of the rule of law. It has not flinched from the task of imposing constraints upon physical power when legal principle so demands. It has been by a determined stand against forces that seemed colossal or irresistible that the rule of law has been won. Once the Court determines what the law is, and ploughs its furrow in that direction, it cannot pause to look over its shoulder at the immense global forces ranged on either side of the debate. Weeramantry [2]

13.1 Responses to the Court's Decision

On 8 July 1996, almost a decade after Falk and Weeramantry had argued in support of an ICJ advisory opinion in the Evans Open Letter, the 14 ICJ Judges (including Weeramantry) delivered their historic decision on the World Health Assembly and UN General Assembly requests. Despite the inclusion of the word 'urgently' in the UNGA resolution, it took over three years and 18 months respectively for the ICJ to give its verdict on both cases. In May 1996, rumours were rife that the judges were under pressure to drop or delay the case because of threats by NATO nuclear weapon states (NWS) to stall CTBT negotiations which were at a critical phase. [3]

The ICJ decided by 11 votes to 3 that it was unable to give the Advisory Opinion requested by the WHA because it 'does not relate to a question which arises "within the scope of [the] activities" of that organisation' (Appendix III). This was the first time the ICJ had refused to answer a question from a UN agency. [4] On the UNGA question it gave a 34-page main Opinion followed by over 200 pages of individual statements and Dissenting Opinions by each Judge. In the crucial subparagraph of the *Dispositif*, (Appendix III) the ICJ decided that:

...a threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.

It added a very controversial caveat:

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.

However, in the final paragraph the Judges unanimously agreed:

There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control. [5]

The Opinion received a mixed reaction from governments, academics, lawyers, the military, anti-nuclear campaigners and the media. While some Western NWS cited clauses which they claimed justified their continuing reliance on nuclear deterrence, others warned it could still jeopardise the CTBT. [6] However, in most anti-nuclear countries it was heralded as a landmark decision, which would impact strongly on nuclear disarmament.

The Australasian responses merit special consideration as the first countries approached by Harold Evans. In contrast to their earlier opposition and cynicism, they were extremely positive. Former Australian Foreign Minister Gareth Evans criticised the ICJ for not making 'a clear-cut decision ... that the use and threat of nuclear weapons in all circumstances was illegal', but still claimed it would 'drive Australia's push to eliminate the world's nuclear arsenal' and 'help very much the role of the Canberra Commission'. Evans' successor Alexander Downer said Australia would use

the Opinion to 'garner support for an enforceable worldwide ban on nuclear armaments'. [7]

A/NZ's Prime Minister Jim Bolger joined Opposition leaders in welcoming the outcome, saying 'it has vindicated the anti-nuclear crusade'; 'it's a tremendous victory, it's a great watershed decision'; and 'the tide has turned against nuclear weapons'. [8] Almost immediately he announced A/NZ would lobby for a Fissile Material Cut-Off Treaty and help establish a Southern Hemisphere Nuclear Free Zone (NFZ). Disarmament Minister Doug Graham even asked if international law could now also 'ban the innocent passage of warships and submarines through international waters'. [9]

On the whole the Opinion was favourably received by academics and lawyers, and some US military legal advisers seriously analysed it. [10] Although some anti-nuclear activists criticised its shortcomings, most hailed it as a milestone. Others vowed to accelerate nonviolent civil 'obedience' campaigns and use the Opinion in their defence. [11]

Harold Evans felt a 'mixture of immense relief, a sense of achievement, satisfaction, exhaustion and surprise', and the Opinion was 'marvellous ... better than expected' and 'a great step forward'. He expressed regret that three of his 'six wise men' (MacDermot, Powles and St John) had died, along with two other leading figures, MacBride and Geiringer.[12] Ware described the outcome as having 'monumental significance' while Mothersson viewed the 'compromise necessarily involved' thus:

By presiding over a degree of fudge and reticence/indecision, Bedjaoui may have secured the best vote possible in the circumstances, to allow the backward (but powerful) elements in world opinion time to get used to complete illegality. [13]

Media interest in Australasia outstripped the rest of the world and reflected public support, strong government presentations to the ICJ and the WCP's good contacts. Most A/NZ commentators acknowledged that the WCP and the government had been vindicated by the decision (Figure 17). [14] There was significant coverage in Japan, the UK, Ireland and Norway but, as with the UN resolutions, there was little interest throughout North America

Figure 18: Collage of media headlines on ICJ Opinion

Outlawing nuclear weapons
World Court movement wins important victories

Nuclear Weapons on Trial
Ban the Bomb?

When Nuclear Weapons Are Summoned Into Court
THE ASSOCIATED PRESS
At the World Court

Nuclear weapons on trial for the first time in their history
The bomb must join the outlaws

UN supports anti-nuclear court case

World Court pressed to ban the Big Five's bombs

World Court Weighs Legality of Atomic War

Nuclear Powers Seek to Block World Court N-Bomb Ban

Legal Opinion on Nuclear Weapons

World Court To Ban The Bomb?

Third nuclear blast aids court challenge

Customary Law Is Anti-Nuclear

Weapons have kept the peace for 50 years, World Court hearing is told

NZ to ask court for nuclear illegality ruling

World Court To Ban The Bomb?

The case for making nuclear arms illegal

NZ wants nukes illegal

World Court opens nuclear case

L'ARME NUCLÉAIRE, N-question for court

France pleads with World Court

Next on the World Court's Docket: Are Nuclear Arms Legal?

Nuclear campaigner's faith on court ruling

Legality of nuclear weapons faces challenge

World Court Could Outlaw Nuclear Threat

Can Use of Nuclear Weapons Ever Be Legal?

What Australia will tell the World Court.

World Court calls on nuclear states to disarm

L'ONU a adopté hier le Traité d'interdiction complète des essais nucléaires, malgré l'opposition de l'Inde.

World Court: Nukes Must Go

Klart nei til atomvåpen
Haag-domstolen stiller krav til atommakters

Nuclear states put names to test ban treaty

PM will hear plan to disarm N-powers

Unofficial Preliminary Draft Resolution to the 51st General Assembly
September 20, 1996

International Court of Justice Advisory Opinion on the Threat or Use of Nuclear Weapons

Group of 21 countries submit programme for elimination of nuclear weapons

Atomvåpenforbud en seier

„neuter Schlag ins Gesicht der Atompolitik“
Canberra-Kommission erteilt atomarer Abschreckung ein „A“

DE BOM IN DE BAN

8 July 1996 — Historic Day!
International Court of Justice says "NO" to Nuclear weapons.
Great Cause for Celebration in the Peace & Disarmament Movements World-Wide!



and the rest of Europe. Some international correspondents only waited to hear the outcome of the WHA request before filing distorted reports. [15]

The Opinion was the culmination of years of intense work by a few key citizens and groups working closely with governments. What this thesis has sought to achieve is an assessment of the role of citizen groups in facilitating the process and the impact on UN bodies. This final chapter draws conclusions on the role of NGOs and the WCP's broader impact in terms of nuclear disarmament and the peace movement. It does not discuss the legal ramifications of the ICJ Advisory Opinion because it lies outside the scope of the study and is well covered by others.[16] This next section offers some answers to the ten questions posed in the introductory chapter. In one instance a couple of questions are dealt with together because they are closely interrelated.

13.2 Preparing the Ground

- 1. What initiatives by individuals, groups and governments prepared the ground for the WCP?*
- 2. Why had the peace movement or governments not tried the advisory opinion route before?*

Between 1945 and 1986, only a few initiatives used international law to challenge nuclearism, and even less had any real impact on nuclear disarmament or the peace movement. The most outstanding individual was Seán MacBride, whose efforts were unsurpassed to update the law of armed conflict and to educate lawyers and the public about nuclear weapons and international law using seminars, the London Nuclear Warfare Tribunal and his Lawyers' Appeal. The Greenham Women's high-profile nonviolent direct actions, and subsequent court cases citing international law; the Nuremberg Tribunal; and Petra Kelly's leadership within the German Greens, helped the resurgence of the international anti-nuclear movement in the 1980s. The most significant initiative from governments was the 1973 ICJ contentious case on the legality of French atmospheric nuclear testing.

While groups in Australia, Canada, Germany, Japan, the Netherlands, UK, US and elsewhere used international law in the courts; tribunals; nuclear free zone campaigns; and published articles promoting it, these hardly impacted on UN nuclear disarmament negotiations and rarely filtered through to decision makers. They were primarily domestic challenges, and recourse to the ICJ was rarely mentioned. Some exceptions were the call by an ANZ lawyer to use the advisory opinion in what became the 1973 ICJ case; the Japanese Shimoda case; and MacBride's and Jaipal's attempts to convince Sweden and India, respectively, to run with the advisory opinion during the early eighties (see 7.3; 2.4; 3.4; 6.8).

These early initiatives were also primarily within countries with nuclear weapon-based security policies where the peace movement was preoccupied with focusing on the immediate threats to their environment (e.g. deployment of nuclear weapons, bases, ship visits and nuclear testing). Only MacBride had the unrivalled advantages of being from a neutral state, versed in international law, having the prestige of former high office, independent funding of a Nobel Prize, and direct access to decision makers.

Between 1945 and 1975, the Western peace and anti-nuclear movement relied heavily on distinguished individuals such as Schweitzer, Russell, Pauling, MacBride and others to attract publicity and speak for them. Although Pugwash developed an elite international network of scientists, their views were tempered such that even NWS governments viewed them as 'very respectable'.^[17] Doctors did not form their international body until 1980, and lawyers not until 1988. WILPF and the World Peace Council (WPC) were active, but there was little cooperation between them; and at times the International Peace Bureau (IPB) was moribund. WILPF and IPB attracted primarily West European membership, whereas WPC was closely aligned to Communist countries, externally discredited and internally divided. Also, there was really no effective international network or coordination of activities. ^[18] There was little effort to build support within Non-Aligned Movement (NAM) countries; or to liaise with Japanese and Australasian groups. Publications by academics, lawyers and scientists

were frequently inaccessible and unintelligible to ordinary citizens, and religious bodies were relatively inactive and ineffective. [19]

During this time, NATO states understandably regarded the movement with suspicion and hostility, whereas the NAM welcomed and even encouraged it. Some prominent anti-nuclear NGOs were accorded observer status during NAM's first Conference in 1961, [20] and Prime Ministers such as India's Nehru worked closely with other independence leaders like MacBride. Therefore, initiatives to outlaw nuclear weapons were likely to come from stronger NAM countries in conjunction with neutrals such as Ireland and Sweden.

Based in Geneva, with exceptional experience in diplomacy, MacBride was uniquely placed to implement such initiatives. His former positions gave him easy access to influential diplomats, politicians and lawyers in Europe and the NAM; and his executive roles in many peace and human rights groups gave him strong backing from NGOs.[21]. He combined the passionate activist with the savvy politician, and despite extremely heavy work commitments, he maintained close links with the movement.

However, MacBride's calls to outlaw nuclear weapons via the Draft Rules, 1977 Geneva Protocols, a Convention and finally an advisory opinion were severely hampered by many factors. These included the Cold War realities within the UN and the peace movement; lack of an international NGO campaign focused on these initiatives; and reluctance by lawyers to question state policies. There was also serious ignorance among politicians, diplomats, lawyers and the general public about nuclear weapons, international law, and the ICJ. The NAM was highly cynical towards the ICJ and preoccupied with other priorities; and most Western-allied states refused to directly challenge the fundamental security policies of their allies.

For many of the same reasons, during the late 1960s nuclear disarmament dropped off NAM's agenda. Successful negotiations over the PTBT (1963), Treaty of Tlatelolco (1967) and the NPT (1968), coupled with the Vietnam War, changed the peace movement's priorities. Many groups faded due to

disempowerment, loss of momentum, lack of leadership and funding.[22] Following the failure specifically to include nuclear weapons in the Geneva Protocols, and lack of any real movement within the UN to negotiate non-discriminatory and comprehensive nuclear disarmament treaties, MacBride briefly withdrew due to other commitments and exhaustion. However, he continued speaking internationally about the need to outlaw nuclear weapons, and built up support for a UN Special Session on Disarmament (UNSSOD). He still lacked significant backing from lawyers, and few diplomats were promoting nuclear abolition strongly within the UN (see 5.2). Between 1974 and 1982, he helped rebuild the international peace movement via IPB, establish an international group of lawyers and educate the public about using international law. He understood that, without interest from the mass media and a popular movement, future initiatives would most likely fail.

Few governments took initiatives during the 1970s because public concern dissipated. However, Canada, Japan and Sweden had earlier foresworn the possibility of becoming nuclear states, and South Pacific states took France to the ICJ. Few politicians met with peace movement leaders; and although some NGO representatives attended UN disarmament meetings such as the Diplomatic Conferences, there was an absence of well-organised and experienced NGOs with political leverage especially on 'middle' Western governments (see 2.3).

The first UNSSOD in 1978 was a turning point for the UN and NGOs. It helped revive the flagging movement, which was re-emerging with growing leadership by women. Many had been alienated by the male-dominated, predominantly Eurocentric movement and explored new strategies, including direct dialogue with decision makers and using international law to challenge parliamentary colleagues (see 3.4) and governments (see 3.5). They transcended the earlier East/West, North/South boundaries by making strong connections with women throughout the world, which changed the face of the future movement. Governments responded to heightened public anxiety over the stationing of cruise missiles in Europe and the rampant nuclear arms race by forming coalitions such as the Six Nation Initiative,

and establishing expert studies on common security and nuclearism. Although they did not achieve any breakthroughs, they provided precursors for post-Cold War initiatives.

As other courageous lawyers now joined MacBride in his efforts to educate the public about the ICJ and nuclear weapons, non-lawyers like the Greenham Women, Delf, Mothersson and Zelter translated the ideas into usable grassroots actions with Snowball, INLAP, INLAW and others. The re-invigorated anti-nuclear movement formed coalitions with groups of professionals to organise citizen tribunals, promote NFZs and attempt dialogue with decision makers. Following the mass rallies of the early 1980s, conditions became more favourable for an ICJ initiative.

13.3 Reasons for Success

3. Why did members of the Aotearoa/New Zealand peace movement play such critical roles?

In 1982, Falk warned the anti-nuclear movement not to be too complacent about its growing support:

The entrenched forces that stand behind nuclearism are powerful, wily, and, if necessary, ruthless. Popular movements are notoriously easy to coopt, divert, infiltrate, bore, and outlast. For the anti-nuclear movement to succeed, it desperately needs 'a politics', ...which also include(s) an alternative idea of security ... it will not succeed unless it combines a negation of nuclearism with the persuasive creation of new ways to protect the independence and territorial integrity of the states that make up world society. [23]

Attempts by governments and citizens to create independence and protect territorial integrity were reflected in NFZ initiatives such as the Treaty of Tlatelolco, SPNFZ, and policies adopted by Belau, Vanuatu, the Solomon Islands and A/NZ. A/NZ's nuclear free legislation, compared with the policies of Japan, Denmark and others, was the most far-reaching. This recourse to the law had a powerful impact on the New Zealand psyche and underpinned future initiatives by the movement and government. The 1973 case put A/NZ's long tradition of promotion of the ICJ into practice, attracted international media attention, and helped educate the public about it.

Over the years A/NZ government policies changed markedly, from endorsement of Western nuclear testing and nuclear deterrence to direct challenges to the security policies of its allies via UN resolutions, the 1973 ICJ case and the banning of their nuclear warships from A/NZ ports. The 1984-90 Labour government encouraged unprecedented access to decision makers through the Public Advisory Committee on Disarmament and Arms Control (PACDAC); inclusion of citizen advisers on UN government delegations; and Party Policy Committees. These accountability mechanisms facilitated close examination of policies, including UN voting patterns, and of decision making processes within the bureaucracy and the UN. A symbiotic relationship developed where ideas flowed both ways and respect grew for the complementary roles. This in turn helped build trust and confidence.

Lange capitalised on Kirk's strident anti-nuclearism, epitomised in the high-profile warship protest against French testing and his more independent foreign policies. During the early eighties the movement grew rapidly, empowered by the courageous actions of the Greenham Women, deeply stirred by Caldicott's passion and sense of urgency, and mobilised by the massive European anti-nuclear marches. The *Rainbow Warrior* bombing in Auckland Harbour by French government agents in 1985 consolidated the movement's resolve which in turn encouraged politicians to take strong actions.

In 1986, Falk sensed the exhilaration over the nuclear free policy, which provided an 'enormous potential source of energy and freedom'. Other factors which helped create a fertile environment for the WCP were: an active working democracy of just over 3 million citizens, with relatively easy access to a parliament of less than 100 politicians; political leaders of a party promoting anti-nuclearism as their primary election plank; consistently overwhelming public support for the policy and nuclear disarmament generally; a proud tradition of leadership on social and nuclear issues; the 'Kiwi' spirit of individualism and independence; A/NZ's geographical isolation; strong participation by women in the movement; and demotion from 'ally' to 'friend' within the ANZUS alliance, which forced politicians to

develop alternatives to traditional 'Western bloc' thinking based on nuclear deterrence.

During the early 1980s, the A/NZ peace movement evolved into a non-hierarchical network of over 300 autonomous groups. It encouraged loose coalitions across a wide range of society, including indigenous peoples; gained the support of prominent individuals; lobbied politicians; drafted policies for political party manifestos (including the nuclear free legislation); convinced most local authorities to make nuclear free declarations; and provided decision makers with cogent arguments in support of the law, backed by large numbers of signatures on petitions.

It was this non-hierarchical, participatory model, and an extension of these strategies which the WCP eventually adopted internationally. Evans, Geiringer, Ware and Dewes operated on a variety of levels: locally, through grassroots participation; nationally, through lobbying and policy-making positions; and internationally, through UN experience and as members of citizen networks. Their skills and backgrounds proved complementary and included networking; lobbying; using the media; working with different cultures; drafting resolutions, parliamentary questions and briefing papers; and having access to leading lawyers from the 1973 ICJ case for advice. They were committed, persistent, articulate, well-organised, had a sense of the rightness of their cause, and believed strongly in the power of the law. They came from a strongly supportive movement with no foundation or government funding, which paradoxically gave them maximum freedom to speak out strongly. Donations from local supporters helped enable important initiatives to be pursued. They practised the self-reliant Kiwi trait of 'just fixing it'. Once the legislation was enacted, they were keen to challenge directly the fundamental problem: the lack of accountability by the NWS to the UN and international law.

They activated the international co-sponsors, provided continuity to the project, and ensured that South Pacific states took a leading role. Ware's decision to work in New York was fortuitous. His contribution to lobbying and international networking was outstanding, and much of the WCP's success can be attributed to him. Furthermore, it is unlikely that either UN

resolution would have been pursued without the vision, persistence, tenacity and skills of Evans and Geiringer.

4. What were the main factors which contributed to the success of the WCP?

In sum, the WCP adopted many strategies and processes which the A/NZ peace movement had built on in the eighties. The international project which eventuated, epitomised what Falk terms 'globalisation-from-below'. This "incorporates some of the following values embodied in "normative democracy" which takes into account the emergence of global village realities: consent of affected peoples; rule of law in all arenas of decision; human rights; effective modes of participation; accountability; ...transparency; and non-violence as a principle of public order'. [24]

Incorporating these principles, the New Zealanders built on the groundwork laid by many others and worked very closely with the innovative UK groups to develop early WCP strategies. In global terms no other national grouping was motivated enough, or free from other priorities to precipitate the WCP. The Irish and Swedish movements were possibilities but Sweden was moving towards EU membership and, following the deaths of MacBride and Palme, both lacked the political leadership. Ireland's relationship with the UK and US was further complicated by the Northern Ireland situation, and its proximity to the UK.

With the end of the Cold War, the international climate was more conducive to radical legal initiatives such as the WCP. The NAM's experience of securing the UN Decade of International Law underpinned its later WCP leadership. This was reinforced by regional and national NFZs, and world public opinion became generally supportive of nuclear abolition.

The WCP adopted strategies such as the collection of Declarations of Public Conscience (DPCs), and endorsements from a wide range of international, high profile citizen groups and individuals who had credibility with decision makers. These NGOs then involved their affiliates by building support within their states and regions. Prominent endorsers added

respectability and raised the WCP's profile, which encouraged the growing membership to prioritise it within their own organisations.

The three prestigious co-sponsoring organisations, IPB, IPPNW and IALANA, proved a potent combination of complementary skills and influential contacts. From 1993-5 tasks were divided fairly equitably between them; the doctors organised the WHA cases; the lawyers focused on UNGA lobbying, writing papers and legal briefs for diplomats; and the wider peace movement (predominantly IPB members) lobbied governments in capitals and mobilised public opinion. This allowed for autonomy and flexibility in terms of decision making, with no group taking control. The International Steering Committee (ISC) predominantly comprised younger representatives experienced in the more non-hierarchical, participatory decision making model. Three members worked near the key UN bodies in Geneva, New York and the Hague, which facilitated closer relationships with diplomats; the coordination of the UN and ICJ handovers of DPCs; and the international launch and support for the Oral Proceedings. The UK and ANZ members prioritised the collection of DPCs and endorsements, especially in Australia, Canada and Ireland where they also lobbied politicians and received significant media coverage.

The DPC campaign was novel, educative and a way of making international law relevant to ordinary citizens. Emulating MacBride's earlier strategies, the DPCs were easily modified and reproduced in large numbers and a variety of languages. Each country took responsibility for their collection and subsequent presentation to the UN. It helped attract media attention and convince politicians of public support, especially in 'middle' Western states. In some of these this was translated into positive votes and submissions.

Both the role of NGOs, and the importance of the DPCs and the Martens clause, were highlighted in some government submissions to the ICJ, and some judges' Dissenting Opinions.[25] The main Opinion recognised the 'continued existence and applicability' of the Martens clause. It also vindicated the ICRC and MacBride by acknowledging that although 'the Conferences of 1949 and 1974-1977 left nuclear weapons aside ... it cannot

be concluded from this that the established principles and rules of humanitarian law applicable in armed conflict did not apply to nuclear weapons'. [26]

For the first time, the ICJ accepted 'citizen evidence' in the form of endorsements from over 700 NGOs and hundreds of prominent citizens; nearly 4 million DPCs; the MacBride and Hiroshima and Nagasaki Appeals; and oral testimonies from victims. This significant democratisation of the ICJ resulted from close relationships between NGOs, governments and ICJ officials. Although some Western governments castigated the NGOs for initiating a 'politically driven campaign', the ICJ welcomed the resultant publicity and dissemination of the Opinion through publications and electronic mail. The ICJ President expressed 'homage to all those who had written moving letters and sent messages of support', apologising that 'at least for now, the Court cannot give any prerogatives to individuals or NGOs', only states. [27]

Before this, and in parallel, had come the approach to governments via the Evans Open Letters, lobbying during UNSSOD III, and visits to Missions in New York and Geneva which provided invaluable guidance on strategy. Access to diplomats was facilitated by contacts in Parliamentarians for Global Action (PGA) and a letter of introduction from Lange. Throughout the process, friendships and acquaintances with Prime Ministers, Foreign and Health Ministers, parliamentarians and diplomats were paramount in gaining leadership from states. This was particularly evident during the WHA lobbying, and with Zimbabwe's influence in the NAM. Other examples where this was achieved included A/NZ, Australia, Egypt, Ireland, Malaysia, Mexico, Samoa, San Marino, Sweden and Vanuatu. However, it was Ware in particular who built trust and confidence among many in the diplomatic community, so that they absorbed the WCP literature, and convinced their governments of the merits of the case. Governments then drew upon the Legal Memorandums and model IALANA texts for their submissions.

Another strategy was to focus on lobbying Ministers and their advisers face-to-face in capitals, or at regional gatherings such as the South Pacific Forum. The lack of response to the Evans Open Letters illustrated how the

written word alone does not move decision makers. Unless that is coupled with evidence of public opinion, ongoing education, dialogue and personal contact, it is unlikely to succeed. Decision makers needed constant reassurance that the project could succeed, and evidence of support within their region or 'bloc'. The NGOs' role was to liaise between governments and build this support without the advocacy coming directly from individual leaders or states. This helped protect them from being 'singled out' by the Western NWS for special attention. Inevitably NAM leaders were subject to this, but were shielded by the large membership.

Buoyed by growing support from significant NGOs and governments, diplomats and even Ministers were prepared to risk their jobs and reputations. The physical presence of NGOs in the WHA, UN and ICJ, accompanied by thousands and later millions of DPCs, sustained them during critical periods when pressure intensified from the Western NWS and their allies.

It is highly unlikely that the UNGA resolution would have succeeded without the WHA request being before the ICJ and the backing of the majority of the NAM. It was this alternative route via the WHA, using Health Ministries rather than the more conservative Foreign Ministries, and the link with humanitarian issues that saved it from oblivion within the UN. MacBride's earlier UN resolution had also been adopted because it went through the Human Rights committee, rather than the more conservative Legal Committee (see 2.3).

Other key factors in its success were the development of a truly global network backing an initiative with an achievable goal within set time frames, linked to UN meetings such as the WHA and UNGA; the cooperation between governments and WCP members in preparing the legal, medical and political arguments for both Assemblies and the written and oral submissions to the ICJ; countering NATO-led propaganda with well-researched and authoritative documents; the recent successes such as the Chemical Weapons Convention and progress towards a CTBT, coupled with global outrage at resumed nuclear testing by France and China following the indefinite extension of the NPT; politicians using

parliamentary questions, binding resolutions or debates to put pressure on their governments; media coverage especially in 'middle' states; and regional solidarity among leading NAM and South Pacific states.

The WCP was a fine example of how a few individuals, supported by strong citizen groups, can work in partnership with decision makers to move public, legal and political opinion to overcome the debilitating power politics of the UN system.

13.4 The Role of Small States

5. What role did small states play?

For small states to risk the ire of the Western NWS and their allies, according to Lange, they require not only political will and courage but a 'broad coalition ... of small countries crossing regional and other group lines'. [28] They also need the backing of strong public opinion. What were the international, regional and domestic factors which caused most small, economically vulnerable South Pacific; and NAM states such as Colombia, Costa Rica, Mexico, Zimbabwe, Vanuatu and others to lead so strongly at different stages during the WCP?

The WHA resolutions were co-sponsored and led by small states from regions which had already secured regional NFZs, such as Latin America and the South Pacific. They were experienced in promoting initiatives together in coalitions, and had shown leadership on nuclear issues in the past. Costa Rica's early interest was linked to its Peace Constitution, coupled with personal advocacy by a diplomat with specialist knowledge in advisory opinions. The Health Ministers from Colombia, Mexico, Nigeria, Tonga, Vanuatu and Zambia - some of whom were also IPPNW members - led on this issue. The Latin Americans and Pacific Islanders were well-versed in the health and environmental effects of nuclear testing and lived in close proximity to US, UK and French nuclear test sites. Hilda Lini's passion and rhetoric, combined with her leadership as a WHO Vice President, helped sway weaker states. The mechanism which facilitated the 1993 resolution's early progress was the secret ballot. This allowed

sympathetic but vulnerable states to give support. The degree of pressure was exposed when five intimidated co-sponsors did not even vote in the 'open' final vote (see 9.5). South Pacific states in particular viewed the ICJ as an important vehicle to help rid their region of nuclearism, and were empowered by the 1973 ICJ case.

Following the 1993 WHA success, Zimbabwe, Mexico and Vanuatu strongly promoted the WCP in the UNGA. Again this was led by diplomats and Ministers who were personally extremely committed to the issue, which later resulted in some of them losing their jobs. They worked very closely with the NGO community, especially the 1993 UNGA lobbying team. Even when the NAM indicated it might not co-sponsor, individual members plus the Solomon Islands offered to 'go it alone'.

When A/NZ responded to public opinion and announced support for the resolution, this helped Sweden, Ireland and other 'middle' states to shift despite intense pressure from NATO members. None of these states had strong political leaders prepared to risk Western retribution by joining with the NAM to secure the resolution. They were also bound by Western collegiality to help stall the case until the NPT was permanently extended in 1995. However, it was the crude bullying by the P3 which eventually proved counterproductive. The infuriated NAM consequently used their UN majority to push the resolution through. Inevitably there were NAM casualties but two Western states, San Marino and A/NZ, voted in support as did the Marshall Islands despite its dependence on the US (see 11.6).

Following the UNGA success, it was the Pacific Islands which led again, with the largest ICJ written submissions from Nauru and the Solomons. Samoa, the Solomon and Marshall Islands gave a joint oral statement, combining mutual support with a more substantial and focused presentation. They were among the founding members of the Alliance of Small Island States, which total almost 20% of the UN membership, and which works constructively to strengthen international law. [29]

On the whole, the most vulnerable states shouldered the biggest burden throughout. They tended to be led by strong personalities, backed by public

opinion and able to attract regional coalitions. Some, more isolated within their regions, like Ireland and Sweden, made fairly 'safe' submissions. A/NZ's strong presentations reflected overwhelming public, and Southern Hemisphere government, support which, when coupled with renewed French testing, eventually forced Australia to join them.

13.5 The Role of Women

6. What role did women play?

Women have always played an important role in peace movements; but it was not until the 1970s and 1980s that their particular strengths gained global prominence. They have traditionally led on issues relating to the protection of health, environment and future generations. However, unless they had financial support few could participate fully in international initiatives like the WCP. Many grassroots women were inspired by Caldicott, Kelly, Lini, Theorin and Vallentine who were all highly skilled in creating dialogue with decision makers. They combined emotion with intellect, and encouraged participatory democracy both within government and the movement. Like many Greenham Women they espoused the principle of trying to reach the conscience and humanity of those in authority. Lini, Theorin and Vallentine helped mobilise their parliamentary colleagues and diplomats to support the WCP while continuing to build support within their regional peace movements.

The 1980s women's movement promoted radical transformation from below, based on law and cooperative politics. Their strategies of taking women-only direct actions outside key organisations such as NATO headquarters, the Pentagon and nuclear bases empowered ordinary women to pursue dialogue within bureaucracies, parliaments and the UN. The Greenham Common legal case against Reagan was the citizens' precedent for the WCP and brought together legal, political, medical, scientific, moral and women's perspectives in a powerful presentation which attracted significant media coverage.

The WCP ISC sought gender equity in the composition of lobbying delegations, prominent endorsers and conference presenters. They also ensured inclusion of indigenous women who had an affinity with many NAM representatives. Some diplomats commented on the power of women to speak truth strongly on behalf of humanity and future generations, transcending the nation state. Women politicians played important roles in A/NZ, Australia and Sweden in particular; and women in IPB and IALANA lobbied the UN Secretary General to appoint the first woman ICJ judge in 1995.

13.6 Aotearoa/New Zealand Government Reluctance

7. Why was the Aotearoa/New Zealand government reluctant to pursue the initiative?

Before 1984, the policy making process was relatively devoid of direct input from the public, although the National Consultative Committee on Disarmament established by the government in 1977 met extensively with Ministry officials in preparation for the 1978 UN Special Session on Disarmament. However, during the 1984-90 Labour administrations, politicians needed a close relationship with representatives of the mass movement in order to justify and sustain the policy, in the face of conservative reactions within the bureaucracy. It is no secret that many within the Foreign Affairs Ministry strongly opposed Lange's strident anti-nuclearism and its resultant damage to traditional Western relationships. The 1973 ICJ case only confronted France over nuclear testing in the region, whereas the nuclear free policy undermined the West's fundamental security policy, and the WCP challenged the heart of it. Therefore it is not surprising that both Labour and National governments received very cautious, and initially negative, advice from the Ministry between 1986 and 1996.

Already under intense pressure from allies, officials were extremely reluctant to pursue a course which could fail, thereby damaging A/NZ's credible disarmament record and the ICJ's reputation; further alienate Australia and other allies which in turn could affect real progress on nuclear

disarmament; and threaten A/NZ's bid for Security Council membership. These very real concerns were obfuscated by NATO-led propaganda regarding cost and competence issues, purported lack of support from other states, and the UN Study on Nuclear Weapons. Lange, although sympathetic, was already under siege for his international advocacy and as a lawyer was sceptical about the ICJ's effectiveness. He and certain officials felt that A/NZ had done enough on the nuclear issue. His deputy, Geoffrey Palmer was a conservative lawyer, and Foreign Minister Marshall was susceptible to Ministry pressure. So, during the Cold War, the government and bureaucracy were understandably reluctant to promote the WCP without Western support and evidence of considerable government and public backing.

As the Cold War ended, a conservative government was elected with a Foreign Minister committed to restoring Western defence relationships. Officials advised against challenging NATO's nuclear deterrence policy. However, public support for the WCP grew rapidly; and following the successful WHA resolution, NAM co-sponsorship and A/NZ support for the 1994 UNGA resolution, the Ministry began preparing a substantive submission. They welcomed public input into its content, in order to 'head off public criticism that the Government had kept its intentions secret'. [30]

Allan Bracegirdle, who presented part of A/NZ's ICJ oral submission, later admitted that the Ministry's earlier concerns 'became less compelling'. The disarmament process had improved dramatically; the international security environment had radically changed; there was 'renewed concern over stability and proliferation in light of the recent disintegration of states'; NWS came to 'see these weapons as more problematic ... and less "usable".' The government felt obliged to support the WCP because New Zealanders were 'prime movers behind the WCP' and there had been a 'long-standing and continued opposition of many New Zealanders to nuclear weapons'. [31]

13.7 Impact on Nuclear Disarmament

8. *How did the WCP impact on international nuclear disarmament?*

Leading NAM states, infuriated by the behaviour of the NWS during the 1993-94 UNGA resolution followed immediately by the NPT extension process, seized upon the ICJ Opinion to initiate action and debate. As the ICJ case proceeded, NATO, ANZUS and former Warsaw Pact allies increasingly distanced themselves from the NWS, and few were prepared to act as stooges for them in ploys to undermine the UN system of accountability. The Opinion increased the confidence of states determined to promote more far-reaching resolutions and initiatives to achieve nuclear disarmament.

For example, the day after the ICJ delivered its decision, the Philippines President Ramos called for NPT members to convene immediately to 'negotiate a comprehensive Nuclear Weapons Convention pursuant to their obligation and responsibility under Article VI...'. [32] Within a month, ANZ and South Africa signed a Memorandum of Cooperation on Disarmament and Arms Control, noted the ICJ's unanimous call for nuclear elimination, and affirmed their support for a Southern Hemisphere Nuclear Free Zone (SHNFZ) which would combine the older SPNFZ and Latin American NFZ with recently created South-East Asian and African counterparts under an umbrella treaty. During the 1996 UNGA they were among 69 co-sponsors of a SHNFZ resolution supported by all states in the region, but opposed by NATO and their 'aspiring' allies. [33] In September 1996 US Senators drafted a letter to Clinton asking him to comply with the ICJ Opinion by initiating a review of nuclear policy to consider how current policy might conflict with US obligations to adhere to international humanitarian law; and to initiate negotiations for the elimination of nuclear weapons. [34] In November, the Canadian government announced the first review by a NATO country of its nuclear weapons policy in light of the ICJ Opinion. [35]

Malaysia, having coordinated the NAM's ICJ oral presentations, took the strongest lead in the 1996 UNGA by introducing a resolution on behalf of 45 co-sponsors on the ICJ Opinion. Adopted by 115 votes to 22 with 32

abstentions (115:22:32), it called for negotiations 'leading to the conclusion of a Nuclear Weapons Convention' (NWC). A paragraph which welcomed the ICJ's unanimous conclusion regarding the obligation to 'bring to a conclusion negotiations leading to nuclear disarmament...' was voted on separately, and adopted by 139:7:20. Two other UN resolutions also mentioned the ICJ Opinion and supported calls for a Convention: [36] the Convention on the Prohibition of Use of Nuclear Weapons (114:31:27); and another calling on the CD to establish ... an *ad hoc* committee on nuclear disarmament ... to achieve the elimination of nuclear weapons within a time-bound framework through a nuclear weapons convention (110:39:20). It also urged the CD to act on a NAM 'Group of 28' 'Programme of Action for the Elimination of Nuclear Weapons', and the CTBT resolution was overwhelmingly adopted by 158:3:5. [37] Meanwhile, an international team of lawyers, scientists and disarmament experts drafted a Model Nuclear Weapons Convention which was circulated by Costa Rica as a UN document during the 1997 UNGA. [38]

The Canberra Commission's 120-page report, written by 17 eminent scientists, military leaders, diplomats and politicians, was published in August 1996 and formally presented to the UNGA and CD. Described as 'a circuit-breaker in the international debate' on nuclear disarmament, it recommended against a time frame for nuclear elimination, but did call for some far-reaching practical steps and negotiations required for its achievement. It also noted 'with satisfaction' the Opinion's final paragraph that a legal obligation existed to conclude nuclear disarmament negotiations. [39]

Other related positive developments can be partially attributed to the WCP case. The renewed interest and faith in the ICJ resulted in more cases being heard. ICJ President Bedjaoui admitted that there were times during the 1960s and 1970s when the ICJ had no cases, and only rendered 'one judgment every three years'. However, from mid 1995-96 there were five cases. The increased focus on the ICJ helped educate the wider peace movement that only 47 states accepted the ICJ's jurisdiction, with the UK as the only permanent member on the UN Security Council to do so. It also

highlighted the lack of women judges and the 'semi-permanent' status of the P5. [40] The Malaysian UNGA resolution promoted the Opinion's unanimous final paragraph, which in turn pleased the ICJ judges 'from the bottom of our hearts'. They hoped their final paragraph in the Opinion would push the international community to negotiate for complete nuclear disarmament. It is open to speculation whether the ICJ went beyond its brief with the inclusion of this paragraph as a response to heightened public awareness of the case. However, international public interest could have also persuaded all 14 judges to append 'a rainbow of opinions' [41]. It is not surprising in light of Weeramantry's personal involvement in the case since 1986 and his past membership of IALANA's Executive that Weeramantry's was the largest, most far-reaching and comprehensive dissenting opinion.

There is no doubt that especially during 1992-1995, the WCP helped democratise three key UN organs: the ICJ, WHA and UNGA. It was unequalled in terms of effective peace movement coalitions working in close partnerships with a wide range of governments within the UN. (The dramatically successful anti-personnel landmines campaign deliberately sidestepped deadlocked UN institutions.) [42]

13.8 Impact on Peace Movements

9. What impact did the WCP have on peace movements?

The ICJ case, coupled with renewed Chinese and French testing, heightened public awareness about the recalcitrant behaviour of the NWS despite the end of the Cold War, and the urgent need for nuclear abolition. In March and September 1997, opinion polls in the US and UK respectively found that 87% wanted their governments to negotiate a nuclear weapons convention (NWC). In February 1998, 92% of Canadians wanted their government to lead negotiations for a NWC; in June, 87% of Germans supported the NWS achieving nuclear abolition as quickly as possible; in July, 92% of Norwegians wanted their government to work actively for nuclear abolition; [43] and in September, 72% of Belgians wanted their government to lead negotiations for a NWC (Figure 19). [44]

These results empowered peace movements within these leading NATO countries to strongly petition their governments to review their policies in light of the Opinion. The Norwegian poll reinforced the governing Labour Party's earlier demand for 'a treaty on timebound elimination of nuclear weapons'. The Norwegian Vice-President of IPB who was also a member of IALANA wrote to 186 Foreign Ministers informing them of the Opinion, with appropriate requests to NWS to change policies, allies to re-evaluate them and the rest to insist on compliance with the Opinion. [45] Activists began 'inspections' of nuclear bases and used the Opinion in their defence. For example, in September 1996, a Belgian judge accepted the ICJ Opinion as evidence and adjourned the proceedings. In Scotland protesters, including six wearing judges' robes and wigs, stopped a convoy carrying Trident nuclear warheads and claimed it was illegal; the 13 arrested were acquitted after citing the Opinion. In Germany another seven who broke into a nuclear base were acquitted after the judge agreed that deployment of nuclear weapons in Europe violated the ICJ Opinion. [46] A Wisconsin Court also acquitted two protesters charged with sabotage against a US Navy communications system. Francis Boyle, believed these decisions were 'likely to set a precedent for cases involving anti-nuclear civil disobedience'. [47]

However, the empowered movement was not limited to activists and outspoken lawyers. They were joined by top retired military chiefs, scientists, politicians and civilian leaders. In September 1996, the Pugwash Council welcomed the ICJ's unanimous final paragraph; and in December 1996, 60 retired admirals and generals from 17 countries called for nuclear abolition and immediate steps similar to those in the Canberra Commission's Report. The most influential member of both groups was retired USAF General Lee Butler, who was Commander in Chief of US Strategic Command in charge of all US nuclear planning between 1992 and 1994. In March 1997, the European Parliament welcomed the ICJ Opinion and called on its member states to start negotiations for a NWC. In February 1998, 120 civilian leaders, such as Jimmy Carter, Lord Callaghan, Helmut Schmidt and Pierre Trudeau, also called for nuclear abolition. [48]

Figure 19: Summary of opinion polls in six NATO states

**SUMMARY OF OPINION POLLS ON NUCLEAR WEAPONS
IN SIX NATO MEMBER STATES: 1997-98**

US (27-30 March 1997)

The US has signed global treaties to prohibit and eliminate chemical and biological weapons. Should the US help to negotiate a global treaty to prohibit and eliminate nuclear weapons? **YES 87%**

UK (5-10 September 1997)

Do you think it will be best for the security of your community if Britain does or does not have nuclear weapons? **DOES NOT HAVE 59%**; **DOES HAVE 36%**

Britain has signed global treaties to prohibit and eliminate chemical and biological weapons. Should Britain help to negotiate a global treaty to prohibit and eliminate nuclear weapons? **YES 87%**

CANADA

(February 1998)

Should Canada support the negotiation of an international treaty to outlaw nuclear weapons? **YES 93%**

Should Canada lead such negotiations, as it did with landmines? **YES 92%**

(4-14 June 1998)

Is it acceptable or unacceptable for certain countries such as India and Pakistan to have nuclear weapons? **UNACCEPTABLE 91%**

Is it acceptable or unacceptable for the five original nuclear powers to have nuclear weapons? **UNACCEPTABLE 77%**

GERMANY (2 June 1998)

Should the nuclear weapon states, in order to create a nuclear weapon-free world, start getting rid of their own nuclear weapons as quickly as possible? **YES 87%**

Do you agree that nuclear weapons are basically contrary to international law and should neither be produced nor stockpiled? **YES 93%**

NORWAY (July 1998)

Do you want your government to work actively for a ban on nuclear weapons? **YES 92%**

BELGIUM (September 1998)

Should Belgium take the lead to negotiate a global treaty banning nuclear weapons? **YES 72%**

As the WCP approached its climax, Abolition 2000 emerged from the 1995 NPT conference of NGOs and held its first international strategy meeting in the Hague during the ICJ Oral Proceedings. This global network aims to have in place by the new millennium a NWC committing the NWS to abolish their nuclear arsenals within a fixed timetable. It has grown to over 1,100 endorsing groups with national networks in some countries. [49] It uses electronic mail to maintain communication between many NGOs and interested individuals, and has become a powerful medium for groups to launch joint actions, disseminate information and what officials and politicians are saying on behalf of their populations within the UN and other fora. The movement has become more sophisticated as a result, ensuring that competent analysts and researchers monitor UN proceedings and post reports frequently on email. These are then distributed around networks in various countries and regions. Ideas for action spread quickly: for example, fax and email campaigns were effective during the 1998 series of nuclear weapons tests conducted by India and Pakistan. WCP supporters ensured that politicians and anti-nuclear activists had copies of India's ICJ submissions arguing that all uses of nuclear weapons were illegal.

In Canada, the NGOs working on the WCP formed the Canadian Network to Abolish Nuclear Weapons which instigated a series of Roundtable discussions in cities across Canada to review and implement the ICJ Opinion. This model was then adopted in the UK. The six tons of DPCs were taken from the ICJ on a 'triumphal tour' of cities in the Netherlands, Belgium and France. 'Declaration mountains were built outside NATO Headquarters in Brussels and the Belgian Foreign Ministry' and after a seven city tour in the UK were finally stored in the new peace museum in Bradford. [50]

13.9 Lessons Learned

What were some of the lessons learned?

The World Court Project activated existing groups via autonomous movement networks which were both decentralised and spontaneous in their actions. According to Sidney Tarrow in *Power in movement: Social*

movements, collective action and politics, heterogeneity and interdependence are greater spurs to collective action than homogeneity and discipline. Power in movement grows when ordinary people 'with common purposes and solidarity' are 'in sustained interaction with elites, authorities and opponents'. [51] Certainly within Aotearoa/New Zealand and Australia the WCP eventually created political opportunities for elites which became divided and new alignments occurred. At times opportunistic politicians seized these openings to 'proclaim themselves tribunes of the people'. [52] The leading peace campaigners from A/NZ also drew strength from their experiences of a working democracy, a tradition of successful citizen campaigns behind them, easy access to the decision making process and a working model of a decentralised peace movement. This model has since become an effective process for members of the wider peace movement as they struggle to convince governments to implement the ICJ Opinion.

The Opinion has become the authoritative legal underpinning for all future initiatives to secure nuclear weapon abolition. It is a useful tool for reminding political and military decision makers of their responsibility under the Nuremberg Principles to uphold the law; [53] activists involved in 'citizen inspections' of nuclear bases; NGOs trying to convince their countries to adopt nuclear free legislation similar to that of Aotearoa/New Zealand; states pursuing the legal implications of the transit of nuclear-armed warships through NFZs, and aircraft overflights and warship visits under 'neither confirm nor deny' policy; and NATO/ANZUS members wishing to redefine nuclear strategies within the alliance, and for NPT signatories to hold the NWS to their commitment to elimination under Article VI (Figure 20).

It helped strengthen the 'New Agenda Coalition' - of 'middle power' states, independent of the Cold War blocs, of which Ireland, Mexico, New Zealand and Sweden had played significant roles in the WCP - to issue a joint statement in June 1998 which proposed a practical, realistic plan for achieving a fast track to zero nuclear weapons. [54]

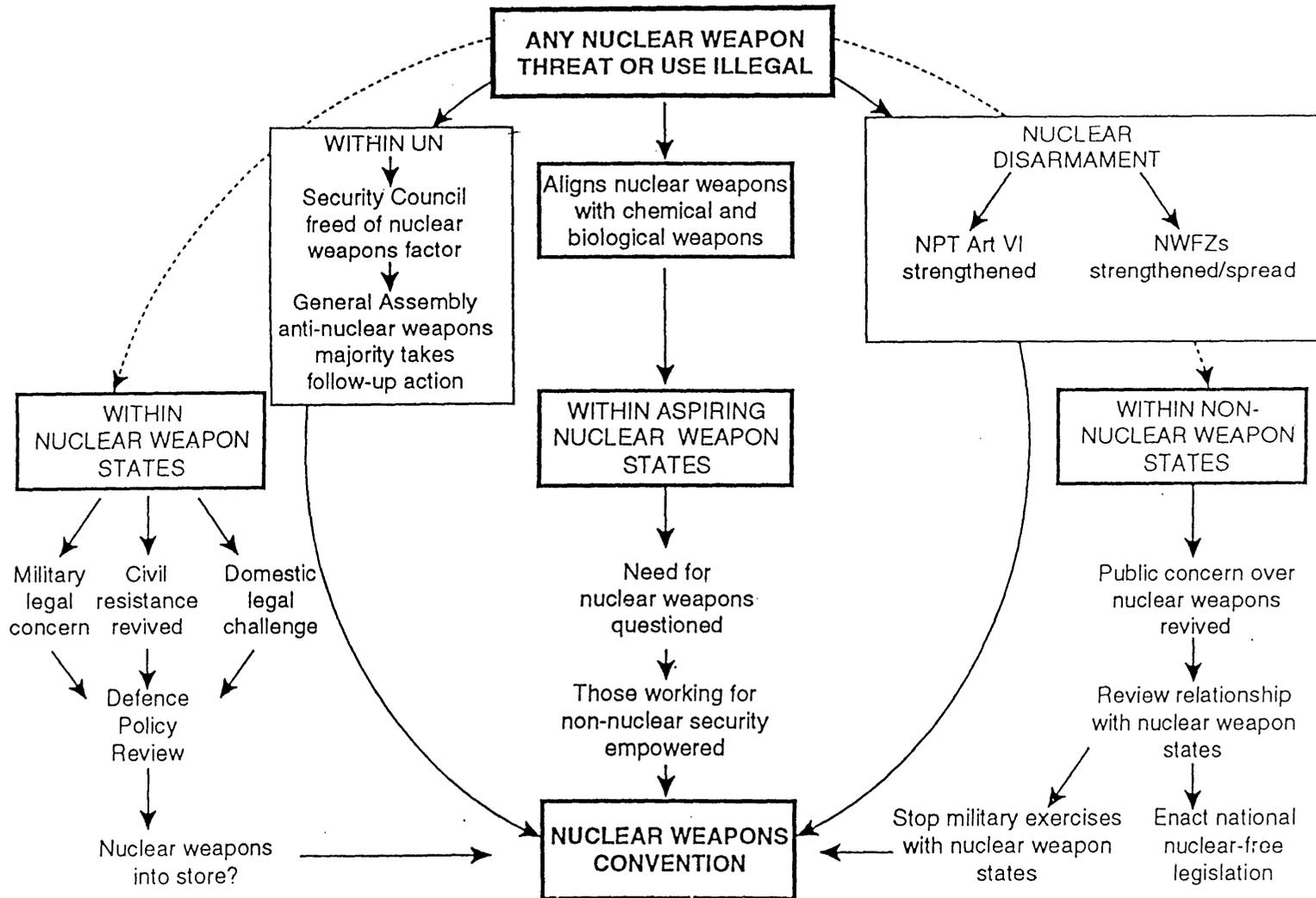


Figure 20: ICJ Opinion implications flow diagram

Figure 20 : Robert Green and Kate Dewes, graphic from World Court Project, *Implications of the Advisory Opinion by the International Court of Justice on the Legal Status of Nuclear Weapons*, Pottle Press, London, 1996.

On becoming aware of the WCP, the international legal community was empowered to speak out; for example, an organisation of law students representing 21,000 students from 184 European Universities in eight European countries issued a joint statement in support of the ICJ case [55]; legal academics published the Opinion for their university courses; and politicians and legal advisers to governments spoke publicly about it. [56] This awareness, amongst young lawyers in particular, will have a long-term effect on how the ICJ, and nuclearism as a whole, are perceived. This in turn will influence the future democratisation of the ICJ, for example, the need to end the unwritten practice of almost always having judges from each of the P5; and for more representation by women.

The main lessons for the peace movement which can be drawn from the WCP experience are listed below. It is important to foster good relationships with government and UN officials, politicians, military and the media through regular meetings, briefings and mailings. Meetings with Ministers and advisers need to be in capitals, the UN and where leaders are gathered, e.g. CHOGM, NAM and South Pacific Forum. It is vital to present them with succinct, well-researched briefing papers to be read in conjunction with a more comprehensive book or report in the language of the recipient. Politicians from all parties should be requested to ask parliamentary questions and to obtain documents such as ministerial briefing papers, which may not be accessible under an Official Information Act. Movement representatives need to be at the UN meetings to monitor voting and explanations, report back immediately and speak with media and opposition politicians so that there is direct accountability. International delegations to meet officials, politicians and others should represent different regions of the world, youth and gender. It is also important to include indigenous peoples and *hibakusha* in international events.

Campaigns aimed at influencing the UN or governments need to have evidence of widespread public support, especially from prestigious NGOs, prominent people, and involvement by the grassroots movement. At the end of a campaign any evaluations of the implications, and official UN

documents need to be shared widely with the community and decision makers in digestible form so that they have impact and cannot be ignored.

Governments and other institutions should be encouraged to build closer partnerships with NGOs whom they can trust and who can offer them independent research, ideas and legal briefings for their consideration. These partnerships can be nurtured through processes such as public advisory committees, and NGO representation on government delegations which help create 'societal verification and accountability'. NGOs are then free to be the public advocates for ideas, and to build up support even amongst other governments and their advisers. Indeed, in recent years, NGOs have emerged as prime movers on a broad range of global issues, framing agendas, mobilizing constituencies toward targeted results, and monitoring compliance as a sort of new world police force. [57]

13.10 Concluding Thoughts

Although some governments which pride themselves as democracies were highly critical of the 'sustained campaign by a group of NGOs' during the WCP, other governments were not at all offended and in fact welcomed their involvement. Samoa's representative reminded the ICJ of the Preamble to the UN Charter which begins, 'We the Peoples of the United Nations determined to save succeeding generations from the scourge of war...' and continued:

One might consider the reference to the 'peoples' as no more than a pious phrase, a conceit perhaps, were it not for Article 71 of the Charter, which gives an institutionalised standing to those NGOs which have consultative status. The Charter takes NGOs seriously. Indeed Article 66 of the Statute of this Court empowers the Court to avail itself in advisory proceedings of information furnished by NGOs. The United Nations and the WHO are strengthened by the efforts of NGOs, inconvenient and demanding as those bodies may sometimes be. [58]

As one of the privileged participants in this odyssey to the heart of the United Nations and back again to my local community, the most important lesson I have learned is the power of each individual to contribute

something towards creating a more peaceful and just planet for everyone. It was Helen Caldicott who challenged me, the day after the birth of my third child in 1983, to dialogue directly with decision makers about taking urgent action to create a safer world for all children. She shared a similar message throughout ANZ at a critical moment in its anti-nuclear history:

By exerting electoral pressure, an aroused citizenry can still move its government to the side of morality and common sense. In fact, the momentum for movement in this direction can only originate in the heart and mind of the individual citizen. [59]

The following sentiments by Robert F. Kennedy encapsulate the amazing contributions to the creation and implementation of the World Court Project by those trail-blazers who did not live to see its outcome: Seán MacBride, Petra Kelly, Ted St John, Guy Powles, Erich Geiringer, and Niall MacDermot; and by those who keep the flame alive: Harold Evans, Richard Falk, Hilda Lini, Keith Mothersson, Maj Britt Theorin, Jo Vallentine, Alyn Ware, Christopher Weeramantry and countless other beacons of energy....

Each time a person stands for an ideal, or acts to improve the lot of others, or strikes out against injustice, he or she sends forth a tiny ripple of hope. And crossing each other from a million different centers of energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and resistance. Few are willing to brave the disapproval of their fellows, the censure of their colleagues, the wrath of their society. Moral courage is a rarer commodity than bravery in battle or great intelligence. Yet it is the one essential vital quality for those who seek to change a world that yields most painfully to change. [60]

Footnotes.

[1] Richard Falk, 'Nuclear Weapons, International Law and the World Court: a Historic Encounter', *The American Journal of International Law*, vol.91, no.1, January 1997.

[2] Ginger (1998), *op.cit.*, p 246.

[3] In the CD, negotiations were deadlocked over the CTBT and there were rumours that the NWS were using the imminent ICJ Opinion as a pretext for non-cooperation. At a conference in Edinburgh the former ICJ President Sir Robert Jennings warned that budget cuts had forced the Court's typing pool to be closed; translation services were curtailed; and the Information Officer retired abruptly without replacement. Jennings appealed for the Court to be 'protected at this decisive moment for this precious creation'. At the time the UN faced collapse because many states had not paid their full dues (US\$2.3 billion owing) - including the US with \$1.6 billion outstanding. See Action Alert from International Office of Peace Action, New York, email message on abolition-caucus, 14 May 1996; Hank Schouten, 'UN crisis blamed for nuke judgment delay', *The Evening Post*, 22 May 1996; Andrew Gilligan, 'Court to deliver nuclear judgment', *The Age*, 8 July 1996.

[4] International Court of Justice Communique, 'Legality of the Use by a State of Nuclear Weapons in Armed Conflict (Request for Advisory Opinion by the World Health Organisation)', no.96/22, 8 July 1996; See also World Court Project, *Implications of the Advisory Opinion by the International Court of Justice on the Legal Status of Nuclear Weapons*, Pottle Press, London, 1996. Clark and Sann (1996), *op.cit.*, pp. 295-304.

[5] ICJ Communique, 'Legality of the Threat or Use of Nuclear Weapons (Request for Advisory Opinion by the General Assembly of the United Nations)', no. 96/23, 8 July 1996.

[6] Christopher Lockwood, 'Nuclear Arms are Illegal, Court Rules', *Daily Telegraph*, 9 July 1996 reported a spokesman for the British Foreign Office saying 'British and Nato military doctrine remain intact. No changes are envisaged'; David Fairhall and Richard Norton-Taylor, 'International Court fudges nuclear arms ruling', *The Guardian*, 9 July 1996 reported that Captain David Humphrey, Chief Naval Judge Advocate, in a private legal opinion said: 'If the Court were to deliver an adverse opinion it would be ignored by the nuclear powers, and the servants of the states concerned - including SSBN commanding officers - would not be acting illegally in obeying the orders and carrying out the policies of the state of which they were citizens'; Christopher Bellamy, 'D-day for nuclear arms powers', *The Independent*, 8 July 1996; Reuters, 'Judgment upholds our stand, say French', *NZ Herald*, 10 July 1996, p.7; Christopher Bellamy, 'World closer to banning the

bomb', *The Independent*, 9 July 1996; Gordon Cramb, 'Use or threat of nuclear arms 'unlawful'', *Financial Times*, 9 July 1996.

[7] Cameron Stewart, 'Downer urges worldwide N-bomb ban', *The Australian*, 10 July 1997; Alan Attwood, 'Nuclear Arms Ruling helps to make world safer, says Evans', *The Age* (Melbourne), 10 July 1996; 'Australian win in fight to ban bomb', *The West Australian*, 10 July 1996; Andrew Gilligan, 'Court rules on N-bombs today', *Sydney Morning Herald*, 8 July 1996.

[8] See Michael Rentoul, 'PM hails World Court decision: "Tide turns" against N-weapons', *The Press*, 10 July 1996; Reuters, 'Nukes Called "The Ultimate Evil"', *Asahi Evening News*, 9 July 1996, front page; Simon Kilroy, 'Bolger welcomes nuclear ruling', *The Dominion*, 10 July 1996; Simon Kilroy, 'World Court split on nuclear arms use', *The Dominion*, front page, 9 July 1996; Editorial, 'World Court gives partial 'no' to nukes', *The Australian*, 10 July 1996.

[9] Hank Schouten, 'Nuke-free zone expansion eyed', *The Evening Post*, 31 July 1996; 'NZ seeks no-nukes zone', *Evening Post*, 27 July 1996; Sarah Boyd and Brent Edwards, 'Nuke Ruling Studied for Disarmament', *Evening Post*, 9 July 1996; Editorial, 'Court winds back the Doomsday clock', *Evening Post*, 12 July 1996;

[10] Critical comment included: Sam Blay and Ryszard Piotrowicz, 'All but nuked by the counter-strike', *The Australian*, 11 July 1996; Ron Smith, 'Nuclear ruling leaves us much as we were', *NZ Herald*, 22 August 1996; Jeremy J. Stone, 'Less than meets the eye', and Kathleen Bailey, 'So What?', *Bulletin of the Atomic Scientists*, September/October 1996, pp. 43-45 and 46-47. Predominantly positive comment included: John Burroughs, 'World Court Verdict: kill nuclear weapons', *Point, South Carolina's Independent Newsmoonthly*, vol.7, no.81, August 1996; Keith Suter, 'Remarkable nuclear campaign succeeds', *Canberra Times*, 11 July 1996; Bernard Lane, 'World Court speeds N-ban: lawyer', *The Australian*, 11 July 1996; 'Len Lindon's Legal Challenge', *Anti-Bases Campaign Bulletin*, Australia, May 1996; Stuart McMillan, 'World Court on nuclear weapons', *The Press*, 13 July 1996; Scott Davidson, 'World Court opinion falls short of declaring nuclear arms illegal', *The Press*, 15 July 1996, p.11; Robert Green, 'Judgement and the Bomb', *The Tablet*, 20 July 1996, p. 946; Andrew Mack, 'Disarming Logic a test for nuclear powers', *The Australian*, 10 July 1996; Andrew Mack, 'Delegitimising Nuclear Weapons: the World Court Decision', *Pacific Research*, August 1996, pp. 3-4; Mike Moore, 'World Court says mostly no to nuclear weapons', Peter Weiss, 'And now, abolition', Michael Krepon, 'The Counter-revolution', *Bulletin of the Atomic Scientists*, September/October 1996, pp. 39-43, pp. 45-46. Analysis by US legal advisers included: Lt. Col. Michael N. Schmitt, USAF., 'The International Court of Justice and the Use of Nuclear Weapons', *Naval War College*

Review, Newport, New York, Spring 1998, vol.L1, no.2, pp. 103-116; Col. Charles J. Dunlap, Jr., USAF, 'Taming Shiva: Applying International Law to Nuclear Operations', *The Air Force Law Review*, 1997, pp. 157-171.

[11] The Japanese peace movement was particularly vocal in its criticism of the Opinion - see Fumihiko Yoshida, 'Nuclear warfare risk remains', *Asahi Evening News*, 9 July 1996; 'A shock wave of disappointment', *AEN*, 9 July 1996; 'ICJ's position on N-weapons draws mixed reactions', *Mainichi Daily*, 11 July 1996; Kenji Urata, ICJ Opinion: Potential and Problems, *Disarmament Times*, vol.XIX, no.4, September 1996. For more positive coverage see: Alyn Ware, 'Clarification of nuclear law highly significant', *NZ Herald*, 4 September 1996; Lynne Robertson, 'Scots activists hail ruling as victory', *Glasgow Herald*, 9 July 1996, Jonathan C. Randal, 'World Court: Nuclear Arms Mostly Illegal', *The Washington Post*, 9 July 1996; 'World Court calls on nuclear states to disarm', *Morning Star*, 9 July 1996; David Williams, 'Nuclear decision 'a leap forward'', *Christchurch Star*, 10 July 1996; Pat Haward, 'A Triumph for Peace', *Morning Star*, 12 July 1996; Keith Locke, 'What NZ can do to rid world of nuclear arms', *NZ Herald*, 25 July 1996; 'World Court Verdict: Nuclear Weapons Illegal', *The Guardian: Socialist Party of Australia*, no. 821, 10 July 1996; Katrina Brookland and NZPA, 'Anti-nuclear campaigners elated', *The Nelson Mail*, 9 July 1996; Pip Hinman, 'More action needed after nuclear weapons decision', *Green Left Weekly*, Australia, 17 July 1996; 'Following up on the Nukes Verdict', *CND News*, Wellington, October 1996; Michael Christ and Brett Feldman, 'Nuclear Weapons Challenged Globally: Citizens Gain New Leverage for Abolition', *IPPNW Vital Signs*, vol. 10, Issue 1, pp. 5, 10-11.

[12] Yvonne Martin, 'Nuke fighter bows out with victory', *Sunday Star Times*, 14 July 1996; Veronika Meduna, 'Towards a nuclear-free future', *The Press*, 13 July 1996.

[13] 'Judgement Day', *Inlap Times*, vol.2, no.2, Summer 1996, p.3.

[14] Audrey Young, 'World Court vindicates retired NZ magistrate', *NZ Herald*, 10 July 1996; Mike Fletcher, 'City battlers are vindicated', *Christchurch Star* editorial, 13 July 1996; 'The World Court decision', *The Press* Editorial, 11 July 1996; 'Moves to keep the bomb away', *Sunday Star Times* editorial, 14 July 1996; 'Anti-nuclear pressure up', *NZ Herald* editorial, 10 July 1996; Jennifer Scott, 'Knife-edge vote to end threat of Armageddon', *NZ Herald*, 10 July 1996, p. 7; Reuters, 'World Court long on rhetoric, short on substantive decisions', *Dominion*, 10 July 1996.

[15] Examples include: Michael Binyon, 'Hague court declines to give nuclear ruling', *The Times*, 9 July 1996; The Associated Press, 'World Court Rules Nuclear Arms Aren't Illegal in Themselves', *International Herald Tribune*, 9 July

1996; Reuters, 'Court partly rules against use of nuclear weapons', *The Press*, 9 July 1998.

[16] Ryszard, Piotrowicz, 'The World Court Judges nuclear weapons unjudgeable', *The Australian Law Journal*, vol. 70, pp. 959-962; L.H. Horace Perera, 'Legality of the Threat or Use of Nuclear Weapons: The Advisory Opinion of the International Court of Justice', January 1997. See footnotes 3 and 7 in Chapter 1.

[17] Lawrence Wittner, *Resisting the Bomb: A History of the World Nuclear Disarmament Movement, 1954-1970* Stanford University Press, California, 1997, p.33, p.293. The largest Pugwash conference held in London in 1962 drew 175 participants from 36 countries.

[18] Ibid., pp. 307-317; Rainer Santi, *100 Years of Peace Making: A history of the International Peace Bureau and other international peace movement organisations and networks*, IPB, Geneva, 1991; pp. 34-35, 43.

[19] Wittner (1997), op.cit., p.297.

[20] Ibid., pp. 335-337.

[21] Ibid., pp. 302-306. He was appointed as Vice President of the International Confederation for Disarmament and Peace in 1963. ICDP was a loosely structured body formed in 1963 to 'coordinate, publicize and otherwise encourage the activities of member groups'. In 1964 it had 31 affiliated groups from 15 countries. It was not joined by the US Women Strike for Peace and was debilitated by the lingering tensions between the direct actionist, pacifist and non-pacifist groups that comprised it. By 1967 it had grown to include 56 non-aligned peace groups in 18 countries with three affiliates in two NAM countries (India and Nigeria).

[22] Ibid., p.441-442.

[23] Robert Jay Lifton and Richard Falk, *Indefensible Weapons: The Political and Psychological Case Against Nuclearism*, Basic Books, New York, 1982, p.133.

[24] Richard Falk, 'Global Civil Society: Perspectives, Initiatives, Movements', *Oxford Development Studies*, vol. 26, no.1, 1998, pp. 99-110; Richard Falk, 'Nuclear Weapons Opinions and Global Jurisprudence', *Transnational Law & Contemporary Problems*, vol.7, no.2, Fall 1997, pp. 334-352.

[25] Rupert Ticehurst, 'The Martens Clause and the Laws of Armed Conflict', *International Red Cross Review*, no. 317, March/April 1997, pp. 125-134. Judges Weeramantry and Shahabuddeen discussed it in detail in their Dissenting Opinions. Ginger (1998), op.cit., pp.293-326;137, 145-152.

[26] Ginger, op.cit., pp. 66 -67.

[27] Interview between Mr Ishibashi from Asahi Shimbun, Japan and President Bedjaoui during July 1996.

[28] David Lange, Information Bulletin No.14, November 1985, p.3. See last page of Chapter 7 for full quote in text of thesis.

[29] Samoa's Oral Presentation reported in Clark and Sann (1996), op.cit., p. 199.

- [30] N. D. Walter for Secretary of Foreign Affairs and Trade briefing to Ministers of Foreign Affairs and Disarmament, 'World Court Project: New Zealand Submission', 5 May, 1995; M.J. Powles, MFAT, Letter to Minister of Disarmament, 'World Court Project: Cabinet Paper on the Legal Position', 11 April 1995; M. J. Powles, Briefing Paper to Ministers of Foreign Affairs and Disarmament, 'International Court of Justice: Legality of Use of Nuclear Weapons', 9 March 1995.
- [31] Allan Bracegirdle, 'The ICJ Advisory Opinion on Nuclear Issues: Substantive Issues', Notes for Presentation to ANZ Society of International Law Seminar, Canberra, May 1996.
- [32] Statement by President Ramos, 'The ICJ Ruling that the use or threat of use of nuclear weapons is contrary to international law', Manila, 9 July 1996.
- [33] 'Memorandum of Cooperation on Disarmament and Arms Control', signed by President Mandela and Prime Minister Bolger, 8 August 1996. See *The United Nations Disarmament Yearbook*, vol.21, 1996, pp. 59-61, 256-257, 335-6; John Armstrong, 'Hemisphere may be made nuclear-free', *NZ Herald*, 26 July 1996.
- [34] Draft Congressional Sign-on letter sponsored by Representative Schumer to President Clinton, 7 September 1996, email communication. See also, 'Congressman Schumer discusses nuclear weapons', *The Wave, Rockaway Beach*, New York, 7 September 1996.
- [35] Jeff Sallot, 'Canada reviewing nuclear-weapons policy', *The Globe and Mail*, 8 November 1996.
- [36] For details of the resolutions and voting patterns see, *UN Yearbook*, op.cit., pp. 62-64, 274-5, 343-344; *Bombs Away*, LCNP Newsletter, Spring 1997, p.1.
- [37] *UN Yearbook*, op.cit., pp. 311-326, 47-56, 264-265, 246-248. See also Jim Wurst, 'Comprehensive Test Ban Overwhelmingly Adopted', and 'G-21 Program of Action to 2020', *Disarmament Times*, vol. XIX, no.5, 20 September 1996, pp. 1-4. Peter Weiss, 'ICJ and CTBT: A Significant Relationship', *Disarmament Times*, vol.XIX, no.4, September 1996, p.3.
- [38] Model Nuclear Weapons Convention, UN document A/C.1/52/7, 1997. See Robert Green, *Fast Track to Zero Nuclear Weapons*, Middle Powers Initiative, Massachusetts, 1998, p.20.
- [39] Michael Gordon, 'Downer backs N-ban Strategy', *The Age*, 13 August 1996; Andrew Mack, 'Nuclear Weapons: A Powerful Case for Getting Rid of Them', *International Herald Tribune*, 19 August 1996; Grahame Armstrong, 'Nations urged to sign Naccord', *West Australian*, 15 August 1996; David Jenkins, 'Downer praises report seeking N-weapon ban', *The Sydney Morning Herald*, 15 August 1996, Michael Dwyer, 'End nuclear alert, says Canberra commission', *Freemantle Recorder*, 15 August 1996; Mike Steketee, 'Risk of nuclear attack on rise, experts warn', *The Australian*, 15 August 1996;

Padraic P. McGuinness, 'Anti-nuclear gimmick may gain credibility', *The Age*, 23 January 1996; Duncan Campbell, 'Utopian gesture will not disarm the warheads', *The Australian*, 22 January 1996; Andrew Mack, 'One mistake is one too many in nuclear realm', *Canberra Times*, 17 August 1996; Ian McPhedran, 'Possibility of nuclear terrorism:experts', *Canberra Times*, 15 August 1996; Field Marshal Lord Carver, 'We don't need nuclear bombs', *Independent*, 16 September 1996. *Report of the Canberra Commission on the Elimination of Nuclear Weapons*, Commonwealth of Australia, August 1996, pp. 27-28.

[40] Geoffrey Palmer said 'there's no doubt .. that this Court needs a shake-up. In the 1980's it only gave 10 judgments and five advisory opinions. In the 1970's six judgments and three advisory opinions and in the 1960's nine judgements.' Interview between Kim Hill and Sir Geoffrey Palmer on Radio NZ, 28 May 1996 (Transcript from Newstel News). See also, Vivek Chaudhary, 'Justice sans frontieres', *Guardian*, 12 October 1993.

[41] Interview with Mr Ishibashi and ICJ President Bedjaoui from *Asahi Shimbun*, July-August 1996, pp. 2-3.

[42] The Landmines campaign was closely linked with some of the Canadians doctors' organisations affiliated to IPPNW. Many of the same groups had been working on the WCP as well. There was no formal link between the two campaigns, but many of the WCP techniques were also employed in the Landmines Campaign.

[43] Green (1998), op.cit., p.45. Polls were commissioned by leading NGOs such as IPPNW and carried out by reputable research organisations.

[44] 'Belgium needs to initiate negotiations for a treaty banning nuclear weapons', Press release by 'For Mother Earth', email, 21 September 1998.

[45] Email correspondence from Norwegian Fredrik Heffermehl to Dewes, 13 November 1996, 28 February 1997; Professor Staale Eskeland, 'Nuclear Weapons found illegal under international law', *Norwegian Law Journal*, 8 October 1996. Letters from Fredrik Heffermehl (IPB Vice President) and Maj Britt Theorin (President) to all Foreign Ministers, 22 November 1996.

[46] Alan Wilkie, 'International Court Opinion Begins to Bite', December 1996, 2pp.

[47] Mary Thompson, 'Wisconsin Protest Case May Signal Redefinition of Sabotage', *The Christian Science Monitor*, 20 September 1996.

[48] Green (1998), op. cit., pp. 48-9; *Bombs Away* (1997), op.cit., p. 3., George Farebrother, 'Information Package for a Citizens' Forum on Nuclear Weapons Elimination', WCP UK and Abolition 2000 UK, 1998, pp.2-3; 'Pugwash Council Statement on a Nuclear Weapon Free World', *Disarmament Times*, 20 September 1996, p. 4; Reuters, 'N-warriors say

ditch warheads: Call for deep cuts now', *NZ Herald*, 6 December 1996; Pat Baskett, 'Lebed joins call to scrap N-weapons', *NZ Herald*, 10 December 1996; David Fairhall, 'Generals call for an end to nuclear weapons', *Guardian*, 6 December 1996; Editorial, 'The new nuclear orthodoxy: Who are we to resist the arguments of so many generals?', *Guardian*, 6 December 1996; R. Jeffrey Smith, 'Retired Nuclear Warrior Sounds Alarm on Weapons', *The Washington Post*, 4 December 1996.

[49] Green (1998), op. cit., p. 21.

[50] George Farebrother, 'Bringing the Hague Back Home', WCP (UK) Newsletter February 1997, pp 1-2; 'Julia Hinde, 'Petition mountain for new peace museum', *Bradford Telegraph and Argus*, 10 July 1996.

[51] Sidney Tarrow, *Power in Movement: Social movements, collective action and politics*, Cambridge University Press, Cambridge, 1994, pp. 3-4, 150.

[52] *Ibid.*, p. 98.

[53] Robert Green, 'Trident and Nuremberg: An Open Letter to the Prime Minister, First Sea Lord and all others involved in planning and executing deployment of Britain's Trident Submarine Force', Christchurch, 1 October 1997.

[54] Green (1998) op.cit., pp. 49-51. The Coalition is led by Ireland and Sweden with Brazil, Egypt, Mexico, New Zealand, Slovenia and South Africa.

[55] Statement by the European Law Students' Association, 24 June 1996. This association has 21,000 members in 184 European Universities.

[56] See Ginger (1998), Ved Nanda and David Krieger (1998) etc., in Sources Consulted. Allan Bracegirdle (NZ Ministry) and others addressed public meetings about the ICJ process.

[57] Peter Spiro, 'New Global Communities: Nongovernmental Organizations in International Decision-Making Institutions', *The Washington Quarterly*, vol.18, Winter 1995, pp. 45-46, in James N. Rosenau, 'Powerful Tendencies, Enduring Tensions, and Glaring Contradictions: The Challenge of Studying the United Nations in a Turbulent Era', Paper presented to a UN Conference, Melbourne, 2-6 July 1995.

[58] Oral Presentations by the UK and then by Samoa's UN Ambassador Neroni Slade to the ICJ, in Clark and Sann (1996), op.cit., p. 204.

[59] Dr Helen Caldicott quoted in *Seeds of Peace: A Catalogue of Quotations*, compiled by Jeanne Larson and Madge Micheels-Cyrus, New Society , Philadelphia, 1987.

[60] *Ibid.*, p. 213.

CHRONOLOGY

1945

- August 6 US nuclear strike on Hiroshima
- August 8 Nuremberg Charter agreed by the US, USSR and UK
- August 9 US nuclear strike on Nagasaki

1946

- January 24 First UN Resolution calls for elimination of atomic weapons
- February Harold Evans to Tokyo for International Military Tribunal
- April 18 International Court of Justice established as UN judicial body
- June 14 US Baruch Plan to UN Atomic Energy Commission (AEC)
- June 19 Soviet Draft Nuclear Weapons Convention to UN AEC
- October 1 Nuremberg International Military Tribunal Judgment
- December 4 UK states its intention to prohibit the use of the atom bomb
- December 30 UN AEC supports Baruch Plan: Soviets veto it

1949

- Geneva Conventions for the Protection of War Victims signed

1956

- India sponsors unsuccessful UN Trusteeship Council resolution for ICJ Advisory Opinion on legality of atmospheric tests

1958

- Fourth Japan World Ban-the-Bomb Conference of Jurists calls for ICJ to judge nuclear weapons; world's first nuclear free zone declared in Handa City, Japan

1959

- Nuclear weapons prohibited in Antarctica

1961

- UN Resolution declares that nuclear weapon use violates UN Charter

1962

- "No Bombs South of the Line" Petition by CND in A/NZ and Australia

1963

- Partial Test Ban Treaty signed
- Denmark prohibits nuclear weapons on its territory in peacetime
- Shimoda case rules Hiroshima and Nagasaki strikes illegal

1967

- Outer Space Treaty signed
- Latin America Nuclear Free Zone (Tlatelolco) Treaty signed

1968

- Nuclear Non-Proliferation Treaty signed
- Teheran UN Conference adopts MacBride's resolution

1972

- Biological Weapons Convention signed

- 1973 A/NZ and Australia ICJ case on French atmospheric tests
Sea-bed Treaty signed
- 1977 Additional Protocols to Geneva Conventions signed
1978 First UN Special Session on Disarmament (UNSSOD I)
- 1979 Mountbatten calls for banning of tactical nuclear weapons
Belau declares first nuclear free constitution
- 1981 US Lawyers' Committee on Nuclear Policy founded
- 1982 Vanuatu adopts nuclear free policy
Second Special Session on Disarmament (UNSSOD II)
- 1983 German Greens hold Nuremberg Anti-Nuclear Tribunal
- 1984 Solomon Islands declared nuclear-free
- 1985 London Nuclear Warfare Tribunal
South Pacific Nuclear Free Zone (Rarotonga) Treaty signed
- 1986 Richard Falk visits New Zealand
MacBride launches Lawyers' Appeal Against Nuclear War
- 1987
March Evans publishes first WCP Open Letter
June 10 Aotearoa/New Zealand enacts nuclear free legislation
June 15-18 Ottawa International Conference on Nuclear Weapons and the Law
August 29-31 LCNP and Association of Soviet Lawyers hold International Conference in New York
- 1988 Third UN Special Session on Disarmament (UNSSOD III)
IPPNW World Congress in Montreal endorses WCP
- 1989
September IALANA World Congress and IPB endorse WCP
October Malaysian IPPNW Conference and CHOGM
- 1990 UN Decade of International Law begins
- 1991
March Ware visits UN Missions in New York
June Dewes visits Geneva Missions and UK
October 12 WCP (UK) established
- 1992
January IALANA and IPB co-sponsor WCP
February IPPNW joins as third co-sponsor

May 11-14	First approach to World Health Assembly fails
May 14-16	International WCP Launch, Geneva
September 28	Zimbabwe presents draft UNGA resolution to NAM
1993	
January	Chemical Weapons Convention signed
January	WHO Executive Board accept WCP resolution on WHA agenda
May 14	WCP resolution adopted at WHA
August 27	Zimbabwe requests NAM to introduce UNGA resolution
September 3	ICJ acknowledges receipt of WHA question
October 26	NAM agrees to introduce UNGA resolution
October 27	Presentation of DPCs to UN, New York
November 4	WCP resolution introduced at UNGA
November 19	NAM defer action on resolution
1994	
June 3	NAM decides to put resolution to vote in 1994 UNGA
June 10	Initial deadline for written submissions to ICJ on WHA question; DPCs presented to Registrar
September 20	Extended deadline for submissions on WHA question
November 9	NAM re-introduce UNGA resolution
November 18	First Committee vote on WCP resolution
December 15	UNGA Plenary adopts WCP resolution
December 19	ICJ acknowledges receipt of UNGA question
1995	
May 11	Non-Proliferation Treaty indefinitely extended
May 13	China resumes nuclear tests
June 13	France resumes nuclear tests
June 20	ICJ deadline for written comments on WHA question submissions, and for written submissions on UNGA question
August 21	NZ re-opens 1973 ICJ case against French tests
September 20	ICJ deadline for written comments on UNGA question submissions
September 22	ICJ rejects A/NZ request against French tests
October 24	Australian Prime Minister announces Canberra Commission
October 30-November 15	ICJ Oral Proceedings on both questions
November 10-13	Commonwealth Heads of Government Meeting, Auckland
1996	
July 8	ICJ announces its decision on both questions
August 14	Australia publishes Canberra Commission report
September 10	Comprehensive Test Ban Treaty signed
December 4	61 Generals & Admirals call for elimination of nuclear weapons
December 11	Malaysian UN resolution on ICJ outcome adopted