

involved matters unrelated to the work of the General Assembly. It found that the Assembly was granted specific competence to "consider the general principles . . . in the maintenance of international peace and security", and to "initiate studies and make recommendations for the purposes of . . . encouraging the progressive development of international law and its codification".

Prof. Hatfield-Lyon reported that the Court was unable to arrive at a conclusion concerning the legality of deterrence. It specifically declined to pronounce on the argument put forward by several judges that the practice of a certain number of nations could amount to state practice. Some judges commented on the issue separately. Judge Schwebel stated that the constant readiness of the nuclear weapons machine and the expense involved in its construction lent a customary legal legitimacy to deterrence as an international practice. In contrast, however, Judge Fleischhauer used case law to substantiate his opinion that the long-term adherence to the policy of deterrence by some states does not in itself give the policy the stature of law. In addition, Judge Shi warned that the sanctioning of the practices of a handful of states as law would violate the principle that all 185 UN member states have "sovereign equality".

Prof. Hatfield-Lyon agreed with Prof. Clark that although the Court found no specific authorization for the threat or use of nuclear weapons, nor any comprehensive and universal prohibition of them as such, it declared that their use or threat of use must be proportional to the attack and only invoked when a state is under armed attack. The Court was unable to decide whether the use or threat or use of nuclear weapons in an extreme circumstance of self-defence was lawful or unlawful.

The Court's inability to settle this question contradicted its declaration that nuclear weapons are a special class of weapon with characteristics that are "scarcely reconcilable" with humanitarian law. The Court has suggested that there is a gap in international law that makes it unclear whether the right to self-defence or the principles of international law should prevail. Three dissenting judges took exception to the Court's inability to resolve this issue; one remarked that it is the physical survival of peoples that must be kept in constant view.

The Court returned to more solid common ground when it found that nations are under an obligation to negotiate in good faith for nuclear disarmament. Prof. Hatfield-Lyon said while it is possible to put in place treaties banning nuclear weapons -- similar to those that ban chemical and biological weapons -- this achievement would first require significant political work in confidence-building and in creating monitoring systems and enforcement regimes.

Prof. Hatfield-Lyon concluded her presentation by stating that the World Court opinion represents a strong consensus that nuclear weapons are either absolutely illegal (3 judges) or generally illegal (7 judges), and provides the UNGA with the opportunity to clarify the international law governing nuclear weapons.

Prof. Hatfield-Lyon was uncertain about what the political impact of the opinion will be.