

### **Session 3**

#### **Applying the World Court Ruling to Canada**

*Presenters: Peter Weiss, a distinguished American peace activist, practising lawyer, professor of law and Co-Chair of the International Association of Lawyers Against Nuclear Arms (IALANA); Scott Fairley, practicing lawyer, past-President of the Canadian Council on International Law*

Prof. Peter Weiss stressed the Court's acknowledgement of the unique nature of the effects of nuclear weapons and the fact that any use or threat of use of these weapons must comply with the principles of proportionality. He noted the Court's requirement that methods and means of warfare must distinguish between civilian and military targets and must avoid causing unnecessary suffering to combatants. Prof. Weiss noted that the principle of necessity cannot justify civilian casualties. The Court may allow an exception to the general rule of illegality in an extraordinary situation - perhaps for a mini-nuke in the Gobi Desert.

Weiss suggested that implications of the decision for Canada be examined in the context of Canadian involvement in nuclear war preparations. He made reference particularly to Canada's role in NATO's nuclear planning group and Canadian participation in NORAD.

Scott Fairley stated that the decision of the Department of Foreign Affairs to refer the Court's opinion to the Standing Committee on Foreign Affairs and International Trade (SCFAIT) appears to indicate that the Government views the opinion as a matter of policy, not law. Parliament must ensure that Canadian policy is adjusted to conform to international law.

In discussing binding versus advisory opinions both Weiss and Fairley stated that the Advisory Opinion ought not to be dismissed lightly. Despite being called an "Advisory" Opinion, the opinion must be regarded with the greatest of care as it is rendered by the highest tribunal in the world for the interpretation of international law. The UN General Assembly asked for the opinion and, after receiving it, did not declare that political factors outweigh legal considerations. Discussion ensued concerning the possibility of taking the Government of Canada to court for failure to comply with the decision of the ICJ.

### **Session 4**

#### **Conclusions and Looking to the Future**

*Presenters: Tom Keating Professor of Political Science, the University of Alberta; Douglas Roche former Canadian Ambassador for Disarmament*

Professor Keating described this point in time as an interesting juncture in NATO's history and that a decision has been made "from the top down" to take NATO's nuclear mandate into the emerging era. He reminded participants that NATO was not always a nuclear body, and that Canada had strong reservations about going nuclear in the 1950s. It is now time for a decision "from the bottom up" on whether and how NATO can serve the interests of peace.

In the final session, Douglas Roche summarised the various points of consensus from the