

The Court's rejection of the WHO appeal is "very troubling," said Prof. Clark, since in fact the Court said that "the WHO can make futile plans to clean up after a nuclear war, but it trespasses by making incursions into the law."

The second question before the Court was whether the threat or use of nuclear weapons in circumstances would be permitted under international law.

Prof. Clark stated that many branches of the law had to be consulted to answer this question: human rights law, international law, humanitarian law, UN charters, common law and all law. One lawyer on the Solomon Islands team had said he believed the whole answer was stated in the 1868 Declaration of St. Petersburg which limits the size of shells that can be used and outlawed the creation of excessive human suffering and the targeting of civilian populations. "One hundred and thirty years ago people had the same ideas that we are still talking about," said Prof. Clark.

Prof. Clark then outlined the positions held by all the judges. Only Judge Oda (Japan) included that the legality of nuclear weapons ought not to have been brought before the Court because it was not a judicial issue. The Court determined that states did not have a "green light" to use nuclear weapons. Conversely, it recognized that there were no "prohibitions as such" against nuclear weapons. Clark explained that the "as such" in the clause refers to the prohibition for proportional use of nuclear weapons. The prohibition becomes apparent in specific situations where the nuclear threat appears disproportionate to the situation -- which simply could be every case, given the vast destructive power of nuclear weapons.

In the remaining sections of the Opinion, the Court declared that nuclear weapons are generally illegal, but it could not conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in the "extreme circumstance of self defence" in which the very survival of a State would be at stake. In addition, it stated unanimously that "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."

The Chair then introduced the second speaker, Professor Jenia Hattfeldt-Lyon. Prof. Hattfeldt-Lyon began her presentation by calling the World Court opinion on the legality of nuclear weapons the most significant decision affecting many areas of international law since the *Corfu Channel* case. She believes it will have implications for Canadian policy, and should provide guidance to the ILC on the inter-relationship between "the great corpus of international law norms" that govern nuclear weapons issues.

Prof. Hattfeldt-Lyon then reviewed specific aspects of the Advisory Opinion, including its dissenting views. The Court commenced its Opinion by conclusively dismissing the argument offered by some states that the Court could not grant the ILC request because the question