

Mr. Fairley suggested that Ottawa is clearly the arena for the nuclear issue. The federal government has unilateral power to deal with defence, and has paramountcy even over "provincial" issues like health, when national interests are clearly at stake.

Efforts to invoke the Charter of Rights and Freedoms in relation to nuclear weapons face a significant hurdle. In the Operation Dismantle case, the Supreme Court ruled that the threat posed by cruise missile testing to rights such as the right to life, was too remote to be challenged under the Charter. It also found that the case involved foreign policy issues that were beyond the Court's scope and therefore non-justiciable.

The Secretary of State for Foreign Affairs has referred the World Court Opinion to the Standing Committee on Foreign Affairs and International Trade. He appears to be taking the position that it is an Advisory Opinion, and as such is a matter of policy, not law.

For the same reason, the federal government is unlikely to put a reference case -- as it could do -- on the legality of nuclear weapons before the Supreme Court of Canada.

Mr. Fairley suggested that using the legal route is an expensive and risky way to establish the significance of the World Court decision for Canadian policy. Resources might be better invested in the political sphere, in the form of a lobby campaign.

Question/Discussion Period

In response to Mr. Fairley's presentation, it was noted that a distinction must be made between the applicability of law and the possibility of litigation. The role of legal action in de-legitimizing current policy was underlined, particularly given the current government's commitment to support and expand the application of the rule of law in international affairs. An opinion on this issue by the world's highest authority on international law should be embraced as an important step in the development of the rule of law. It was pointed out that the use of legal institutions is not an end in itself, but rather one instrument to achieve what will ultimately be a political decision that will be based as much on military and strategic factors, economic interests and public opinion, as on legal arguments.

Mr. Fairley agreed on the need for a legal approach to policy making. The government has put the question on the agenda of the Standing Committee. That is the place to start, with a legal argument that Parliament must ensure that Canadian policy is adjusted to conform with customary international law. While there is a legal issue here, political institutions may be a better place to deal with it than judicial institutions. It was agreed that at a minimum, the Canadian government should be pressed to formally respond to the World Court Opinion..

It was suggested that NATO policy appears to be a contravention of the legal obligation, identified in the Court opinion, to conduct good-faith negotiations leading to the conclusion of a nuclear disarmament treaty. It was also noted that Canada has attached a reservation to its