

organizations founded specifically to work for nuclear disarmament are now broadening their focus to issues of "human security", yet nuclear weapons remain an exceptional threat worthy of special attention.

Prof. Le Bouthillier responded that the Court seems to have disregarded the risks of "leaving the door open" to nuclear weapons. He noted that the judges most strongly opposed to any use of nuclear weapons drew on a range of ethical traditions to support their views. In contrast, those most inclined to accept the legitimacy of nuclear weapons, focussed on the practical question of whether nuclear threats actually work as a deterrent.

In answer to a question about the composition of NATO's Nuclear Planning Group, it was explained that all current NATO members, with the exception of France, are represented, and that new members in an expanded NATO would have the right to participate as well. Cdr. Green noted that information on discussions and decisions made in the group's twice-yearly meetings is extremely limited. He expressed his concern that a two-tier nuclear planning structure may emerge, with nuclear weapons states on one tier and remaining NATO members on the other.

A participant suggested that NATO's failure to respond to the Court Opinion opens the way to further legal action, and that principles that have become important in addressing environmental issues may prove useful in this context. These include the "precautionary" and "reverse onus" principles, the duty to prevent disasters, the exercise of "responsible care", and so on, deriving either from customary international law or international declarations.

Cdr. Green noted that the British position, based on consultations with NATO partners, is that the World Court decision introduces no new factors in the determination of nuclear policy, since it does not prohibit the use of nuclear weapons per se. He remarked that it strains credulity to suggest that in a crisis situation anyone will actually sit down and weigh the legal implications of all the circumstances. Rules must be established beforehand. Reverse onus is relevant here: the burden has shifted to the nuclear powers to explain under exactly what circumstances the use of nuclear weapons would be justified.

Prof. Le Bouthillier observed that the Court did identify an obligation to negotiate in good faith for nuclear disarmament, and that Canada's obligations must be re-examined in that light. He noted that the Court made no reference to the precautionary principle, and that, in general, it is a weakness of the Opinion that it is highly compartmentalized, with laws governing the use of force, environmental law, humanitarian law, and so on, all treated independently. The environmental impact of nuclear weapons would extend far beyond the duration of a state of war, and therefore cannot be justified in terms of military necessity.

A participant expressed disappointment that the Court had not made more use of the reverse onus and precautionary principles, which are critical from the perspective of the small Pacific states, both in relation to nuclear weapons and to global warming.

In answer to a question on the link between NATO policy and the Non-Proliferation Treaty