

be taken to enable nuclear disarmament. She noted the Court's Advisory Opinion obliges all states to conclude 'negotiations leading to nuclear disarmament....under strict and effective international control.'

## **Session 2**

### **NATO/Allied Nuclear Policy and the World Court Ruling**

*Presenters: Commander Rob Green RN (Ret'd) current Chair of the World Court Project in the UK ; Yves Le Bouthillier, Professor of International Public Law and International Protection of the Person at the University of Ottawa*

After examining NATO policy since 1989 Commander Rob Green (Ret'd) stated it is clear that the Alliance has no intention of renouncing nuclear weapons. It will continue to maintain strategic and sub-strategic nuclear weapons for the foreseeable future as it believes that they play an essential stabilizing role in Europe; guard against uncertainties and provide a hedge against the possible re-emergence of substantial military threats, most likely to come from North Africa and the Near and Middle East.

In light of the ICJ opinion, Green believes that aspects of NATO's current nuclear weapons policy are vulnerable to legal challenge. These include: NATO's option of first use; plans by the three NATO nuclear states to use nuclear weapons against non-nuclear recalcitrant states to counter the proliferation of weapons of mass destruction or to protect US/UK/French "vital interests"; deployment of ballistic missile submarines on so-called deterrent patrols; NATO nuclear umbrella doctrine and; current NATO opinion that nuclear might is right.

Prof. Yves Le Bouthillier claimed that NATO's position that the ICJ decision is only an opinion and therefore not binding, is invalid. In light of the decision, he asserted both NATO and Canada need to study the opinion and clarify their existing policies.

He continued by explaining that different interpretations of the opinion exist. The most common is that the Court determined the use of nuclear weapons illegal but could not determine whether this was so when the very existence of the state is threatened. Le Bouthillier noted the Court was innovating in describing the "survival of the State" concept. The principle was considered dangerous in the 19th century. Despite the possible scenarios that this interpretation raises, the decision makes most uses of nuclear weapons illegal.

The second less common interpretation of the opinion, is that nuclear weapons can be used not only when survival of the State is at stake, but also when their use would be in keeping with humanitarian law. This interpretation provides no indication of what the threshold of horror would have to be to justify this action.

Prof. Le Bouthillier suggested that the principle of reasonable possibility of persecution that exists within refugee law be extended to allow humanity the benefit of living in a world in which nuclear arms are illegal.