

This is what the nuclear weapons states have sought to do, to which the Court appears to have opened the door. "Exceptional circumstance" and "state survival" cannot be used to justify the use of nuclear weapons in any conceivable circumstance.

The position taken by the nuclear weapons states is that they accept the principles of humanitarian law, and will only use nuclear weapons in self-defence. They also insist that the World Court Opinion, as an Advisory Opinion, is not binding. Since the Court is the highest forum for the interpretation of international law, this is tantamount to saying that international law may be ignored.

Prof. Weiss suggested that the implications of the Opinion for Canada should be examined in the context of Canadian involvement in nuclear war preparations:

- Canada's role in NATO's Nuclear Planning Group -- although this is impossible to assess, since we don't know what happens in Planning Group meetings;
- Canadian participation in NORAD, which clearly gives Canada a role in determining when a nuclear strike/retaliation is to be triggered;
- A variety of other Canadian roles, documented in the background paper by Bill Robinson documents a variety of other roles;
- The "war reservation" attached to US adherence to the Non-Proliferation Treaty, under which Canada could be given direct control of American nuclear weapons in a war situation.

Mr. Scott Fairley began his presentation by situating the World Court Opinion in the context of Canadian domestic law. He contended that to the extent that the Opinion confirms customary norms in international law regarding the use of nuclear weapons, these also form part

of Canadian law, and can be applied by Canadian judges unless overridden by an explicit declaration of the Parliament or Government of Canada.

The Canadian Constitution presents both opportunities and limitations in dealing with nuclear weapons. Since patriation, the Constitution is now the supreme law of the land. While it does not expressly forbid Parliament from violating international law, the Supreme Court has found (in the 1980's Operation Dismantle case on cruise missile testing) that actions of the Minister of Defence and the Minister of Foreign Affairs are subject to review under the Constitution.