

It was suggested that the application of external standards under international trade law rests on a principle that should also apply here: that it can not be left to any one state to define the circumstances under which use of nuclear weapons is warranted. The validity of the practice of invoking "national security" to justify breaches of international trade rules is currently being challenged within the World Trade Organization.

SESSION 3: APPLYING THE WORLD COURT RULING TO CANADA

Presenters:

Peter Weiss, American peace activist, practicing lawyer and law professor. Current Co-chair of the International Association of Lawyers Against Nuclear Arms (IALANA).

Scott Fairley, Practicing lawyer. Past President of the Canadian Council of International Law.

Chairperson: Janis Alton

Professor Peter Weiss began by highlighting several aspects of the World Court Opinion:

- It emphasizes the unique character of nuclear weapons -- that the direct impact of a nuclear explosion is vastly more destructive than is the case with other weapons, and the indirect effects are uncontainable in time or space.
- It states that although the proportionality principle may not preclude the use of nuclear weapons in every circumstance, their use must come under the laws of armed conflict, and hence humanitarian law.
- It makes no distinction between the use and threat of use of nuclear weapons.
- It notes the emergence of norms indicating the prohibition of nuclear weapons, contradicting the contention of the nuclear powers that the existence of the Non-Proliferation Treaty and Nuclear Free Zones actually legitimizes their possession/and possible use of nuclear weapons.

Prof. Weiss noted that the "elementary conditions of humanity" that are at the centre of humanitarian law require that the rule of law continue to apply in situations of armed conflict. This principle is almost universally acknowledged, as demonstrated by the broad accession to the Hague and Geneva Conventions. He advanced the proposition that the various principles of humanitarian law and laws of armed conflict are not fungible -- states may not, for example, use the principle of necessity to justify an act that the principle of unnecessary suffering proscribes.