

although the risk of nuclear confrontation is diminished with the post-Cold War reduction in the number of weapons, NATO is concerned about the possible proliferation of nuclear weapons in North Africa. The official also remarked that observers were wrong to think that NATO's expansion in to Eastern Europe would lead to greater numbers of nuclear weapons or pose a greater threat to Russia. Since NATO refuses to provide a written guarantee that it won't use nuclear weapons against Russia, however, it has done little to diminish Russian fears, said Prof. Le Bouthillier. He added that what is known of NATO's plans "leads us to be sceptical."

Although NATO needs to study and take into account the World Court Advisory Opinion, it has so far shown a "disturbing" indifference towards it. A December 1996 news release, for instance, reaffirmed NATO's nuclear policy and ignored the Opinion. NATO's position -- that the decision is not binding because it is only an Opinion -- is not valid, Prof. Le Bouthillier said, since an Opinion per se could only be expected in a situation where nuclear war is imminent.

Canada must also study the Opinion and clarify its policy. To do this, she should keep in mind key elements of the Advisory Opinion:

- 1) The Court said that the Advisory Opinion ought to be considered as a whole, not as component parts. Dissenting views should also be considered, since they could help interpret the whole document.
- 2) The Court dealt mostly with principles and did not address specific scenarios. This leads to different interpretations of the Opinion.

The most common interpretation is that the Court determined that the use of nuclear weapons is illegal but could not determine if this remains true when the existence of the state is threatened. This ambiguity stems from the Court's inability to decide whether humanitarian law or the recognised right of states to survive is the foremost consideration. In the absence of international opposition, states have been left free to act as they see fit. The Court, however, did not equate state silence on the matter with acquiescence.

Prof. Le Bouthillier, in the interest of nuclear disarmament, warned against taking the matter to the International Law Commission for clarification. NATO would surely attempt to influence the decision in its favour, and success by nuclear states would clearly reverse the momentum that is now on the side of states that want to ban nuclear weapons.

Other serious questions remain around the meaning of "the survival of the state". This concept originated in the 19th century and has profound implications. It was refined in 1945 to refer more narrowly to extreme situations of self-defence.

Questions raised by the concept include the following: What threat to the state would justify the use of nuclear weapons? Could Kuwait have used nuclear weapons against Iraq? Could Iraq use nuclear weapons if it is attacked by an ethnic group such as the Kurds, from a