

On the one hand, Australia and Canada are re-evaluating their own policy in light of the Court's opinion. On the other, however, Russia has thumbed its nose at the Court by announcing (possibly in response to changes in NATO policies) that it will reserve the right to a nuclear strike in the face of a conventional attack. Citizens need to convince governments, such as Canada's, that they have an obligation to act in support of the World Court opinion.

Question/Discussion Period

During the discussion period that followed, a panellist said she was troubled by the proviso that a state could use nuclear weapons if its existence was threatened. How would that threat be defined? Prof. Hatfield-Lyon proposed that the International Law Commission be asked to clarify this question. It is troubling, for instance, that the Opinion might provide justification for a nuclear strike in a case where national borders are threatened by a secessionist movement.

Prof. Clark discussed two additional hypothetical situations. The first, if the ruling had been made before the atomic bomb was dropped on Japan in 1945, it would have made that action illegal. Second, if a state -- for instance, Israel -- was surrounded by neighbouring states that had announced their intention to commit genocide the Opinion would make a nuclear response legal.

Another participant reiterated that the Court opinion states that any use of atomic weapons in self-defence still must conform to the norms of humanitarian law; in particular, that any use of nuclear weapons can't be indiscriminate. As a result, he argued, it might only be legal to use nuclear weapons when under attack from a nuclear submarine -- which is perhaps the only conceivable way of using nuclear weapons against a purely military target. All the current hardware and strategies that target population centres would become illegal. There followed a lengthy discussion on the way the Opinion treats human rights law and humanitarian law, and whether humanitarian law supersedes human rights law in times of war.

Prof. Clark added that he thought the Court defined war in a more narrow, political light. The mere existence of nuclear hardware and strategies did not constitute the threat of using nuclear arms as defined by the Court; rather, there had to be a specific utterance in a specific circumstance.

A law professor said the World Court opinion presents the dilemma of whether "the master's tools can be used to remake the master's house." In other words, can the law successfully address a question if it is based on a certain world view? She also remarked on what she saw as two shortcomings of the Opinion. The first, the dissenting view that the maintenance of the system of deterrence is legal because it has long been agreed upon by a club of nuclear nations. She argued that this is like saying that several people who agree to participate in criminal activity have somehow risen above the laws of the land. Second, the failure of the Court to acknowledge the widely accepted legal principle that the threat of violence (through the building of nuclear