

(NPT), it was pointed out that the Court did not see any contradiction between NPT accession and possession of nuclear weapons. The nuclear weapons states argued before the Court that the NPT actually legitimizes the possession and possible use of nuclear weapons. The Opinion did stress that the NPT imposes an obligation on the nuclear powers not merely to limit their use of nuclear weapons to "legitimate" purposes, but to negotiate nuclear disarmament.

A participant asked if the Opinion creates a new principle of international law by concluding that a threat to the survival of a state might justify the use of nuclear weapons. The right of self-defence already exists, but is subject to humanitarian law. Is its scope being broadened to a less conditional right of state survival?

Prof. Le Bouthillier agreed that the Court's introduction of state survival and "extreme circumstance", without clearly stating that humanitarian law still applies, is a trap that must be rejected. Dissenting judges objected that state survival was being placed above international law, conferring on states the right to wipe out the rest of humanity to ensure their own survival, or even by extension, to protect their "vital interests". It could also be used to justify the use of nuclear weapons by a state against its own people.

The nuclear powers should be pressed to state explicitly that the exercise of such a right is constrained by humanitarian law. It was reported that Britain plans to produce a revised military manual of law which will take the World Court opinion into account. This will be a significant test, since it is adherence to law that distinguishes military professionals from "hired killers".

It was noted that the International Covenant permits the derogation of fundamental rights when the existence of the nation is threatened. While this has been extensively used and widely interpreted by states, it does not permit suspension of the right to life. The Nuremberg principle -- that international law may not be violated to win a war -- was disregarded by the majority of the Court, as was the Human Rights Committee declaration that nuclear weapons violate human rights.

Cdr. Green noted the British Foreign Office contention that the Court Opinion does not affect the use of nuclear weapons for collective self-defence i.e. use by one state to ensure the survival of another.

Pointing to the potentially destabilizing effects of NATO expansion, particularly the danger of undermining Russian support for START II and of promoting European rearmament, a participant stressed the need for an effective counterweight to NATO. Cdr. Green agreed that if nuclear weapons are to be eliminated, alternative security arrangements must be developed. The Organization for Security and Co-operation in Europe (OSCE) provides a potential framework, if it is strengthened and given a leadership role to which NATO military policy would be subject. This has been proposed by various actors in Europe. Although the OSCE has acted on crises, like Chechnya and Albania, which NATO has been unable to address, it has extremely limited resources. This may be an area for Canadian initiative.