



VOLUME 12, No. 3  
FALL, 2000

### *Working for Peace Through Law*

*"The quest for a war-free world has a basic purpose: survival. But if in the process we learn how to achieve it by love rather than by fear, by kindness rather than by compulsion; if in the process we learn to combine the essential with the enjoyable, the expedient with the benevolent, the practical with the beautiful, this will be an extra incentive to embark on this great task."*

— Dr. Joseph Rotblat, Nobel Peace Prize Laureate, 1995

## IN THIS ISSUE

**Cover:**  
Producer Liability by  
T. Ashtakala

**LSR Statement:**  
NATO, International  
Law, and the Kosovo  
Campaign — p. 4

Meet a few of LSR's  
Directors — p. 3

David Wright:  
Challenging the  
Nanoose  
Expropriation — p. 6

[www.nucleus.com/~lsr](http://www.nucleus.com/~lsr)

# LAWYERS FOR SOCIAL RESPONSIBILITY NEWSLETTER

## Speaking Tour A Success!

*Big Radioactive Landmines*, a speaking tour co-sponsored by Lawyers for Social Responsibility and the Simons Foundation, visited 12 cities across Canada this September and October to raise awareness among law students and faculty, media, citizens organisations, politicians and government officials about the current threat of nuclear weapons and the model Nuclear Weapons Convention (NWC).

Merav Datan, Director of the UN Office of International Physicians for the Prevention of Nuclear War and Physicians for Social Responsibility, Penelope Simons, Vice-President of Lawyers for Social Responsibility and The Simons Foundation and Alyn Ware, Consultant at Large for the Lawyers' Committee on Nuclear Policy, gave presentations at law schools, public meetings and to government officials outlining the current nuclear threat, the implications of the International Court of Justice Advisory Opinion on nuclear weapons, international progress towards a NWC and elements of the Model NWC which has been circulat-

ed as a discussion document by the United Nations.

"The feedback from the tour was very positive," says Datan, "and we were very encouraged both by student interest in the issue and by our meetings in Ottawa with Senators, Members of Parliament and department officials." It is hoped that the tour will encourage students to get involved in the nuclear disarmament movement either through LSR or independently and prompt the Canadian government to move forward on the issue of promoting discussion of the model convention. The model NWC is a draft a multilateral treaty prohibiting nuclear weapons and providing for verified elimination of those weapons. It was drafted with the goal of promoting discussion of the legal, political and technical aspects of nuclear disarmament in order to help stimulate negotiations leading to complete nuclear disarmament.

The Canadian tour has encouraged the U.S.-based, Lawyers' Committee on Nuclear Policy to consider a similar but much more ambitious project in the United States beginning next year.

## Producer Liability

By Tara Ashtakala

*(The following is excerpted from a report for Land Mine Monitor 2000. This annual report of the International Campaign to Ban Land Mines provides a comprehensive, country-by-country evaluation of the status of the 1997 Ottawa Land Mines Treaty, as well as detailed studies on thematic issues).*

### Introduction

There is a general principle of law which dictates that whoever harms another is liable for that harm. The damage and destruction caused by land mines are now both well-known, thanks largely to the efforts of the International Campaign to Ban Land Mines, and illegal, by virtue of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction (hereinafter the "Land Mines Treaty"). Having achieved the goal of securing international legis-

lation against these weapons, the efforts of the ban movement are now focused on assisting the victims of land mine injury. However, from mine clearance to prosthetics, this help requires more than the moral authority that has been won. Funding is now in great need. While many State Parties to the Land Mines Treaty have already provided significant amounts of assistance to those who have survived land mines blasts, more money will be needed as long as people continue to be harmed by existing mine emplacements. One possible solution to this problem is to hold those who produce land mines financially liable for the destruction caused by their products. In the second part of this report, private law remedies will be discussed, focusing in particular on the recent landmark lawsuits against the manufacturers of two other lethal products, tobacco

over

## *Producer Liability*

(from cover)

and handguns: the arguments used and settlements reached in these actions will afford a valuable model for constructing a similar case for liability against the makers of land mines, as it is the opinion of this author that such suits offer the greatest promise in winning compensation for victims of land mine injury.

### The Tobacco and Handgun Litigation Models:

Given the continued presence of sovereign immunity as an obstacle to seeking accountability, a more promising prospect for land mine victims may be found in the lawsuits launched in the US against the old, entrenched tobacco and handgun industries. American courts have recently become a haven for those who have long suffered from some of the most lethal products of the corporate machine. Like land mines, cigarettes and guns have been indiscriminate in their effects, killing both first-hand and second-hand casualties and incurring huge health-care costs to both the victim's families and the communities in which they live. However, these victims have not only begun to fight back, but have actually begun to win against these seemingly all-powerful industries. Such victories against products that kill offer much promise to victims of land mine injury also seeking corporate accountability.

This Newsletter is published  
four times a year by

**Lawyers for Social Responsibility**  
5120 Carney Road, N.W.  
Calgary, AB, T2L 1G2

#### **Editorial Board:**

Penelope Simons  
email: penelope.simons@agra.com  
Tara Ashtakala  
email: srashtak@hotmail.com  
David Wright  
email: wright@bc.sympatico.ca

**Typesetting, Design & Layout:**  
Chameleon Publishing & Graphics Ltd.  
(403) 931-4896; Fax: 931-4897  
email: chameleon@telusplanet.net

### i. Big Tobacco Extinguished

The tobacco companies had fended off lawsuits by individuals for years with the defence that smoking is a personal choice and that they should not be held accountable for people's voluntary decisions.<sup>1</sup> They also insisted that there was no tangible proof that cigarettes killed smokers. Then, a private attorney in Mississippi thought of getting around this shield by suing the tobacco companies to reimburse the billions of dollars spent by the State in providing medical treatment to patients suffering from illnesses to which tobacco is a major contributor. The State made the perfect plaintiff as "it had never smoked a cigarette."<sup>2</sup> Faced with this and other litigation that threatened to bankrupt all of them, the six major tobacco companies decided to settle with the U.S. government, in exchange for all lawsuits against them being dropped. Some of the provisions of this settlement<sup>3</sup> may be applicable to similar litigation against land mines manufacturers.

Any entity that sells directly to consumers – whether a manufacturer, wholesaler, importer, distributor or retailer – would require a permit. Also, there would be comparable licensing programs, enforced by the federal government, at military facilities; this last scheme, in particular, would be effective in curtailing access to land mines by non-State actors.

Forcing a fundamental change in the way the tobacco industry does business by ensuring compliance with the letter of the law and providing incentives to prevent misuse of product and develop better warning mechanisms. Transparency in the arms industry is sorely needed as well, although the development of mines with reduced risk would legitimize the creation of alternatives to land mines and detract from the goal of a total ban.<sup>4</sup>

Needless to say, the most attractive feature of the Tobacco settlement, namely the final award agreed to of \$368.5 billion over 25 years, would go a long way in the battle against land mines.

### ii. The Hand Gun Fight

In an historic retribution of their constitutional right to bear arms, American citizens, States and municipalities filed lawsuits against the firearms industry. The

Centre to Prevent Handgun Violence says, "Just as the tobacco industry's conduct increases the risk of tobacco-related disease, the gun industry's conduct in marketing unreasonably dangerous products increases the risk of gun violence. In both cases, industry conduct imposes significant costs on the public treasury, which States and cities are entitled to recover."<sup>5</sup>

The claims of the cities fell into three general categories:

- Unsafe design: under one of the theories of product liability, a product can be defective, even if it works as intended, if the product is unreasonably dangerous in its design. Similar to the way in which car manufacturers have been held liable for failing to install seat belts and air bags, the cities argue, gun makers should be liable for failing to install safety devices to prevent unintentional or unauthorised use. Along these same lines, the absence of a disarming device on a land mine could render it unreasonably destructive and thus the manufacturer could be held liable for unsafe design. However, the 1988 case of *Boyle v. UTC*<sup>6</sup> has allowed many companies that supply mines to the U.S. government to be shielded from liability. So it is now unlikely that a case based on unsafe design will succeed.

- Another theory holds liability against the manufacturer if the product fails to work as intended: like a safety lock on a gun not working, a self-destructing mine that fails to do so and thus lies dormant to claim post-conflict victims, can be argued to represent a defect in manufacture.<sup>7</sup> This argument would offer mine victims good chances of success.

- Under the charge of negligent distribution, manufacturers, suppliers and dealers are liable for the way in which they sell their products, a duty which was defined in the case of *Hamilton v. Accu-Tekix*.<sup>8</sup> The rule stipulated therein is that when a product is designed to be uniquely hazardous, i.e. when it is made to kill, the manufacturer must monitor and control its sale by distributors and dealers, in order to prevent the product falling into criminals' hands.<sup>9</sup> If a land mine is sold to a non-licensed purchaser, who subsequently uses it in a manner

# Meet Some of Our Directors

---

## David Matas

David Matas has been practising refugee, immigration and human rights law in Winnipeg since 1979. Mr. Matas has had an illustrious career of promoting peace and human dignity through law. He obtained his Bachelor in Civil Law from Oxford University and was called to the Manitoba Bar in 1971. He has received numerous government and academic appointments, including being named as a member of the Board of Directors of the International Centre for Human Rights and Democratic Development and teaching Immigration and Refugee Law at the University of Manitoba. For his voluntary work in different aspects of human rights and peace advocacy, Mr. Matas was awarded with the Governor-General's Confederation Medal in 1992, just one of numerous honours conferred upon him. He has been a tireless and invaluable source of guidance as a Director of LSR.

## Tara Ashtakala

Tara Ashtakala is a graduate of both engineering and law. From a young age, she has been actively involved in community affairs in Montreal in a variety of ways, in particular her own Indo-Canadian association. Tara has concerned herself with the welfare of vulnerable communities outside of Canada as well, in examining and advocating for the health rights of women in developing countries and in collaborating on projects with the International Centre for Human Rights and Democratic Development based in Montreal. She has taken a special interest in the plight of civilians injured by anti-personnel land mines, and as a member of the International Campaign to Ban Land Mines, produced a study exploring legal measures to seek compensation for victims from the companies that manufacture those weapons. Translating the theory of human rights and humanitarian law into meaningful consequences for whole populations remains at the core of her career goals, and, after working in a private law firm, Ms. Ashtakala has recently moved closer to this objective in accepting a position with the International Policy department of the Canadian Red Cross.

## Penelope Simons

Penelope Simons has an LLB from Dalhousie Law School, and an LLM and PhD in International Law from Cambridge University. She was called to the British Columbia Bar in 1996 and practised corporate law with McCarthy Tetreault. She served on the Harker Mission which was sent to Sudan in December, 1999 to investigate allegations of human rights violations related to oil exploration and extraction. Penelope is a director and Vice-President of both Lawyers for Social Responsibility and The Simons Foundation and works on issues of nuclear disarmament, international human rights, international humanitarian law and humanitarian intervention.

## **U.S. still itches for nukes; military mindset in U.S. still favors "Star Wars" programs**

*Reckless streak shows in fascination with 'Star Wars,' defiance of world law*

*National Catholic Reporter  
July 28, 2000*

When President Reagan announced "Star Wars" in 1983, most arms control observers predicted that it would quickly collapse from its inherent weakness. The idea that the United States could construct a device that would shoot down incoming nuclear missiles was deemed to be preposterous.

Many thought the Strategic Defense Initiative would disappear when Clinton's first Secretary of Defense, former Congressman Les Aspin, declared it dead.

But the idea is still around. It is advocated by the Defense Department and seemingly has the approval of President Clinton. The arms control world and the entire European Community, including Russia, are opposed. The major argument against Reagan's proposal of a shield against incoming missiles was that it violated the 1972 anti-ballistic missile — ABM — treaty, in which both the United States and the Soviet Union agreed not to build a comprehensive defense against the other's long-range nuclear arsenal. The agreement was based on the assumption that neither superpower would use its nuclear weapons since this would trigger mutually assured destruction.

The theory worked and probably helped to bring about the demise of the Soviet Union. That welcome event prompted the defenders of nuclear weapons to invent the threat of "rogue" nations like Libya, North Korea and Iran that could create nuclear weapons that would threaten the United States.

The Union of Concerned Scientists, which has opposed "Star Wars" since its inception, argues that if any "rogue" nation is scientifically developed enough to launch a nuclear missile, it would also be sophisticated enough to make decoys capable of fooling the interceptors that are designed to shoot down the missile. The demonization of the "rogue" nations has received remarkably little attention or analysis by the press or the public.

It is unclear whether the missile shield will be an issue in the presidential campaign. Texas Gov. George W. Bush has said that as president he would

*cont'd page 7*

# NATO, International Law

## LSR Statement, May, 2000

**W**e strongly believe that Canada's actions within NATO should comply with international law. The North Atlantic Treaty created NATO in 1949. The Preamble states that NATO is founded on respect for the rule of law. Article I of the North Atlantic Treaty of 1949 states:

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

We believe that NATO is in contravention of both of these commitments. Specifically, we are concerned about NATO's conduct in relation to the use of force in Yugoslavia.

NATO has breached international and national law in the use of force in Yugoslavia.

### What is the law on the use of force?

The UN Charter in Article 2(4) states:

"All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the UN."

In Article 51 the Charter recognizes a right of individual or collective self-defence if an armed attack occurs. Article 42 anticipates a use of force if the Security Council takes military enforcement measures under Chapter VII of the Charter. Under Article 5 of the North Atlantic Treaty an attack on one member state is considered to be an attack on all.

### What action did NATO take?

During the crisis in Kosovo, no NATO state was subjected to armed attack. NATO states were not threatened by the low intensity civil conflict in Yugoslavia. Thus neither the UN Charter nor the North Atlantic Treaty contains grounds to justify or legitimize NATO's action in bombing in Yugoslavia. NATO did not

obtain the approval of the UN Security Council. Not only did the members of NATO fail in their solemn obligations under the UN Charter and the North Atlantic Treaty by going to war in Kosovo but they appear to have violated every one of the rules of international humanitarian law in the manner in which they conducted the war in Yugoslavia. These actions have very serious ramifications for the future security of the world regardless of whether there were any valid reasons for going to war or not and underline the need for a full open public examination of NATO and Canada's place within it in a post-Cold War world.

A Uniting for Peace resolution was proposed by Lester B. Pearson and passed by the UN General Assembly during the Suez Canal crisis when the Security Council was split over the appropriate action to take. We propose that Canada begin to work with other interested countries to build consensus on the criteria and the legal procedure which should be pursued in instances calling for humanitarian intervention. Acting in defiance of the current Security Council processes (as occurred with Kosovo) can only build disrespect for international law. NATO's activities with respect to Kosovo will justify other states in accepting lawless conduct and disregard for the UN Charter and the United Nations itself. The Government of Canada was further in breach of national legislation when it failed to gain the consent of Parliament for placing the Canadian Forces in Kosovo on active service. This degrades the authority of the Canadian Parliament that is charged with assessing the political and military requirements of any such call to war. It is critical that Parliament — not NATO — maintain authority over the Canadian Forces.

***"NATO has breached international and national law in the use of force in Yugoslavia"***

### Action Proposed:

- 1) This Committee should usefully inquire into NATO's legal mandate for the use of force. Clarity needs to be sought in the determination of when intervention should occur, particularly when force is being used. The option of working through the UN General Assembly should be considered as an alternative to the Security Council.
- 2) This Committee should also inquire into the failure of the Government of Canada to observe the National Defence Act when tasking Canadian Forces.

NATO's conduct in negotiations concerning Yugoslavia requires investigation.

### What is the law on negotiations?

The North Atlantic Treaty states that:

"The Parties undertake, as set forth in the Charter of the United Nations, to settle any international dispute in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered, and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations."

The North Atlantic Treaty claims that NATO will promote "stability and well-being".

The Vienna Convention on Treaties states:

"Article 52: A treaty is void if its conclusion has been procured by the threat or

# *and the Kosovo Campaign*

use of force in violation of the principles of international law embodied in the Charter of the United Nations”.

We believe that honesty in the conduct of negotiations is a common sense necessity to maintain trust among parliamentarians, diplomats and negotiators during the course of this very serious decision-making process. It also seems an obvious point that peace will not ensue unless key sectors of the populations in conflict are involved in and consent to the arrangements made for the post-conflict period.

## **What did NATO do during the Yugoslavian negotiations?**

News reports indicate that NATO offered President Milosevic a form of the Rambouillet Agreement that allowed NATO troops to have access to all of Yugoslavia and required a vote on sovereignty in three years. Such terms would clearly be unacceptable to any sovereign state. We understand further that the form of the Agreement shown to NATO Parliamentarians to seek their consent to bombing Yugoslavia omitted these critical terms. Such conduct breaches the most obvious rules of honesty among diplomats and negotiators. It builds distrust for the system of international diplomacy and among NATO member states. Bombing President Milosevic into an agreement breaches Article 52 of the Vienna Convention. In any event the bombing was ineffectual in bringing President Milosevic around to NATO's terms. The terms of the final agreement were much the same as those originally proposed by the Serb Government.

According to Press Info 56 released February 21, 1999 by the Transnational Foundation for Peace and Future Research, NATO's negotiations also failed as they excluded the non-violent elected leaders of Kosovo who were opposed to war and the eminent leaders of civil society on both sides. There were no women present. Certain minority groups were unrepresented. We cannot then expect civilian populations to accept any agreement arising out of those negotiations. Their lack of involvement in the peace negotiations will be a factor in the instability now apparent in this region. The resultant agreement does not reflect the concerns of civil society for reconstruction, schools, housing, teaching of peace, hospitals. PressInfo 56 also further states that the negotiations failed in not ensuring a face-to-face meeting among those representatives present. The “mediators” between the parties apparently had no professional training in mediation, conflict resolution, conflict-transformation, reconciliations, or peace and conflict studies.

Clearly the resort to violence to respond to ethnic conflict served only to entrench and prolong ethnic hatred and to make the area less stable.

We need to create the conditions under which the Balkan people can determine their own destiny. The Government of Canada cannot act to force upon any peoples a democratic government: democracy must be called for by those people.

## **Action Proposed:**

1) We urge this Committee to investigate the circumstances of the negotiation of the Rambouillet Agreement. Should the content of the agreement presented to President Milosevic differ from that presented to Parliamentarians of NATO countries, those responsible must be disciplined. Further, this Committee should usefully examine this negotiation in order to make recommendations through Canadian authorities and NATO for improved

procedures for future conflict resolution.

2) We urge this Committee to investigate the capabilities of the OSCE and encourage increased Canadian political and financial support for their more effective efforts in peacebuilding in the Balkans.

Beverley Tollefson Delong, President

## **Steps Forward: NAC Resolution Adopted 154-3-8**

The New Agenda Coalition Resolution (GA Res. 55/33C) calling for a new agenda on complete nuclear disarmament was adopted November 20, 2000 in the plenary session of the General Assembly with 154 states voting in favour. Since the vote in the First Committee in early November, eight more states voted in favour. Israel, India and Pakistan voted against the resolution and in the final vote Bhutan, France, Kyrgyzstan, Mauritius, Monaco, Russia, Uzbekistan, and Tajikistan abstained. There were separate votes on Preambular Paragraph 15 (160-3-1) and Operative Paragraph 16 (161-0-4) both of which welcome the Final Document of the 2000 NPT Review Conference. France did not participate in the votes on these paragraphs in either the First Committee or the plenary. Canada and other NATO states moved from an abstention last year to a ‘yes’ vote and the U.S., U.K. and China also voted yes.

The ICJ Resolution (GA Res. 55/33 X) which calls, among other things, for negotiations leading to a nuclear weapons convention (Operative Paragraph 2) was adopted 119 Yes, 28 No, 22 Abstentions. Canada abstained but was the only NATO state not to oppose the resolution and did not call for a separate vote this year on Operative Paragraph 2. A copy of the text of the resolutions will be available at :

<http://www.un.org/Depts/dhl/resguide/r55all1.htm> and

<http://www.reachingcriticalwill.org/1stcommitee/1comindx.html>

***“... the resort to violence to respond to ethnic conflict served only to entrench and prolong ethnic hatred and to make the area less stable.”***

# Challenging the Nanoose Expropriation

by David Wright

Since August, 1999 the Society Promoting Environmental Conservation (SPEC), with the assistance of two members of LSR, has been pursuing a challenge in the Federal Court of Canada to the federal government's expropriation of the Nanoose seabed. The case is slowly making its way over various hurdles of the Court process.

Readers may recall six weeks of public hearings were held August to September 1999 to hear from some of the over 2600 objectors (LSR was one) who filed objections to the expropriation of CFMETR from the Province of B.C.

CFMETR, the Canadian Forces Maritime Experimental Test Range at Nanoose Bay just north of Nanaimo on Vancouver Island, is primarily used by the U.S. Navy to test torpedoes and submarine tracking devices. These tests involve nuclear-powered and possibly nuclear-armed vessels, many of which are not allowed in major U.S. ports for reasons of safety. Notwithstanding the filing of studies documenting over 1600 accidents in which vessels visiting CFMETR have been involved, the federal government saw fit to complete the expropriation for a purpose related to "the safety or security of Canada or a state allied or associated with Canada". Clearly the interests of a foreign state were placed ahead of over three million Canadians living around the Georgia basin, well within the area that could be affected by radioactive material released as a result of an accident at Nanoose. And remember: B.C. is Canada's only "nuclear-free" province, (including uranium mining). The only non-natural, non medical, highly radioactive material in B.C. occurs on U.S. vessels plying the crowded sealanes of the Strait of Georgia.

The federal government has set a dangerous precedent expropriating land from a province. Separists, both east and west, can make use of this. The expropriation was an executive decision, made without debate, against Provincial interests for the benefit of a foreign state. That's bad enough but it gets worse.

Canada has strongly advocated the importance of nuclear weapons-free zones. The sole issue standing between B.C. renewing the seabed lease on terms acceptable to the federal government was the exclusion of nuclear weapons from CFMETR. In 1992 B.C. declared itself to be a NWFZ by a vote of 51 to 1 in the legislature. While a Province may lack authority to legally establish such a zone it is clear from this declaration and subsequent opinion polls that the people of B.C. overwhelmingly support excluding not only nuclear weapons but also nuclear power from their province. This arbitrary action represents a serious attack on the democratic principals upon which our nation was founded.

Until recently Canada has supported international law and contributed to its advancement in many notable areas. The World Court declared nuclear weapons illegal, Canada signed and champions the non-proliferation treaty. Opinion polls showed the people of Canada overwhelmingly (92%) support Canada taking a leadership role in ridding the world of nuclear weapons. This expropriation to allow the testing of sophisticated nuclear weapons delivery systems appears at odds with Canada's international obligations and the will of its people. Reports filed showed massive pollution of the Strait of Georgia,

with thousands of kilometers of copper wire, tons of lithium batteries, etc., yet the federal government continues to exempt the military from federal environmental requirements, (as well as Transport Canada marine regulations), refuses a public environmental assessment, and denies seriously polluting the salmon migration route to the Fraser River spawning grounds.

The Human Rights Institute of Canada, et al, and the BC Government, in two separate actions, are pursuing challenges based on the questionable constitutionality of the expropriation process. SPEC assumed this argument would be well presented and has focused its resources on serious flaws in the expropriation process and possible violations of international obligations. Accordingly, in an effort to expedite the case and avoid having its application joined with the others, SPEC abandoned the constitutional argument.

SPEC's LSR lawyers filed affidavits outlining many flaws in the process and raising important issues underlying the expropriation. The affidavits and application are posted on SPEC's website at <http://www.spec.bc.ca>, or the Peace Centre's website at <http://www.islandnet.com/~emerald/peace.htm>.

In the first of many motions SPEC convinced the court the expropriation as a whole could be challenged, rather than requiring separate challenges of each of the "decisions" which made up the process.

The Federal Government agreed to share the cost of providing SPEC with copies of all exhibits filed during the six weeks of public hearings by some of the objectors who testified. SPEC felt that having been marked as exhibits and forwarded to the minister by the Hearing Officer they would have formed part of the record. The Government took the position that since "the exhibits weren't before the Minister at the time of making his decision" they were not part of the record. It appeared to be in everyone's interest to negotiate rather than litigate the point but after reading the Hearing Officer's report one is left wondering just what the minister did consider in arriving at his decision.

SPEC is negotiating with the Government's lawyers to provide the Court with a transcript of portions of the public hearings SPEC is asking the Court to review. Under the Court's practice it appears SPEC is unable to compel the preparation and filing of a transcript. At the moment SPEC lacks resources to cover the cost of a complete transcript. After this detail is sorted out the Federal Government's witnesses will be cross-examined on their affidavits and a hearing date fixed. It is difficult to predict just when that will be but SPEC is most anxious to proceed at the earliest possible date. Stay tuned for further developments ...

SPEC continues to fundraise to pay legal expenses and any contribution you are able to make (after sending in your LSR membership renewal) would be most welcome. Financial contributions may be sent to SPEC at 2150 Maple Street, Vancouver, B.C. V6J 3T3 marked "Nanoose Court Case".

## **Mauritania Marks 100th Ratification of the Mine Ban Treaty**

JULY 26 THE NOBEL PEACE PRIZE-WINNING INTERNATIONAL CAMPAIGN TO BAN LAND MINES (ICBL) welcomed the 100th ratification of the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (hereinafter "Mine Ban Treaty"), when Mauritania deposited its instrument of ratification with the United Nations in New York.

"This landmark achievement of 100 ratifications shows how deeply and quickly the world is embracing a total ban on antipersonnel mines," said Jody Williams, ICBL Ambassador. "Those who continue to cling to this discredited weapon should be feeling the heat," said Ms. Williams, adding, "We will not rest until all countries of the world adhere to the ban, until the number of new victims reaches zero and until mine-affected land is demined and returned to communities."

All of the Western Hemisphere has signed the ban treaty except the U.S. and Cuba, all of the European Union except Finland, all of NATO except the U.S. and Turkey. Other notable hold-outs include Russia, China, India, Pakistan and a number of countries in the Middle East. The ICBL also condemns the use of antipersonnel mines by countries that had already signed on to the Treaty, in particular Angola, and by nations who have refused to do so, including Russia and Israel. Armed rebel groups in Chechnya, Kosovo, Colombia, Uganda, Lebanon, Sri Lanka, Afghanistan, Burma and the Phillipines were also condemned.

The ICBL released its Landmine Monitor Report for 2000 on 7 September and the Second Meeting of State Parties to the Mine Ban Treaty took place in Geneva from 11-15 September.

---

## **US Itching for Nukes**

*from page 3*

deploy anti-missile defenses as soon as possible. If the national missile defense had not been proposed in the last years of the Soviet Union it would be inconceivable that it would be proposed today. But 40 years of opposing the "evil empire" is too much a part of the psyche of the hawks in Congress and at the Pentagon for them to think that nuclear weapons could be obsolete and unnecessary.

Hence the itch — indeed the addiction — for the use of weapons of mass destruction goes on. The addiction is so strong that its adherents will not even agree to the banning of all tests as proposed in the Comprehensive Test Ban Treaty.

The United States seems to have a reckless streak in its claim that its military power should operate outside the constraints of international security. Some U.S.-elected officials want the United States to be a "lone ranger" unencumbered by normal and accepted methods of international diplomacy.

There are other issues in the international order where the United States refuses to carry out its duties. The United States has 260,000 military personnel stationed worldwide but it has only 34 persons assigned to the 29,286 U.N. peacekeepers in the field — the highest number since 1995.

The United States continues to evade its duties to the potential victims of the 80 million land mines hidden in 65 nations. President Clinton continues to delay signing the International Treaty on Landmines, now subscribed to by 138 countries. Every 22 minutes there is a new victim of these indiscriminate weapons. The United States refused to join the International Criminal Court, which is on its way to being ratified by a majority of nations. The United States is openly seeking to weaken the court by claiming that it would not offer adequate protection to U.S. troops around the world. However, the court explicitly provides that no national of any country will be tried by the court if the country of origin will try him or her for the alleged international crimes. Resistance to some international norms has always been present in some areas of the U.S. electorate. The United States' present embrace of "Star Wars" constitutes a classic case of that neglect and defiance of world law.

*Jesuit Fr. Robert Drinan is a professor at Georgetown University Law Center. His e-mail address is DEROSA@wpgate.law3.georgetown.edu*

## **Axworthy Launches Commission on Humanitarian Intervention**

Foreign Affairs Minister Lloyd Axworthy launched the International Commission on Intervention and State Sovereignty (ICISS) on September 14, 2000. The establishment of the Commission, a Canadian initiative, was announced by Prime Minister Chrétien in his address to the United Nations General Assembly (UNGA) on September 7 during the Millennium Summit in New York. "In his Millennium report, the UN Secretary-General challenged the international community to address the highly complex problem of state sovereignty and international responsibility," said Mr. Axworthy. "Canada's human security agenda is all about putting people first. We are establishing this Commission to respond to the Secretary-General's challenge to ensure that the indifference and inaction of the international community, in the face of such situations as occurred in Rwanda and Srebrenica, are no longer an option." The Commission has a mandate to promote "a comprehensive debate on the issues surrounding the problem of intervention and state sovereignty, to contribute to building a broader understanding of those issues, and to fostering a global political consensus." For more information see the ICISS website at <http://www.iciss.gc.ca>.

## **U.S. Offers Cautious Welcome to Putin Nuclear Proposals**

Agence France Press reported on Nov 14, 2000 that the United States offered a low-key and cautious welcome to Russian President Vladimir Putin's proposal that the two countries slash their nuclear arsenals to less than 1,500 strategic warheads and reopen discussions on issues relating to the Anti-Ballistic Missile Treaty.

*Producer Liability*  
from page 2

contrary to international law, the manufacturer can be held accountable for injury to non-combatants. It should be noted that gun distributors in the U.S. have been found to intentionally oversupply market areas with weaker gun laws. Land mine dealers shut out of countries that have adhered to the Land Mines Treaty should be strictly monitored for greatly increased sales to non-signatory States, in order to prevent mines from making their way to back to State Parties' territories. However, with respect to mines produced by the United States, this is not a viable option, in light of the Arms Export Control Act, which gives the American President wide discretion in deciding to whom U.S.-made mines may be sold.

Similar to that of the tobacco award, the terms of the settlement<sup>10</sup> in the gun suit serve as a useful model for a similar potential agreement that could be reached with a mines manufacturer:

The manufacturer must implement specific safety features into their guns under a strict timetable, for the first time committing to minimize the risk that children or irresponsible users could harm themselves or others, and dealers must sell only guns that have these fea-

tures. Similarly, the whole land mines industry could commit itself to manufacturing only self-disabling mines.

In concluding this section, the main point to note is that the mere threat of these handgun liability lawsuits and the generous settlements they have extracted from a powerful weapons-maker offer the best hope, in this author's opinion, for success in an analogous products liability suit against the manufacturer of another lethal weapon, the land mine.

Conclusion

This study has looked at possible recourses that may be pursued by victims of land mine injury seeking compensation for their trauma, from the actors who caused it either by using anti-personnel mines or by producing them. The rules of international law offer one potential avenue of relief: examples were drawn from the subdivisions of international environmental law and from international human rights law which show how a remedy has been successfully obtained in the past for States having employed actual land mines or having sought similar consequences. Domestic law has a longer tradition of securing monetary compensation for injury: from traditional theories of liability that were used by former combatants to litigate for

relief for their war trauma, to the recent battle of public opinion against products whose effects are as lethal as land mines, class-action lawsuits on behalf of victims of mine injury would do well to employ these models. Whatever method is used, though, the moral justification for seeking sustainable sources of funding to assist the never-ending stream of innocent civilians, injured by weapons that continue to cause damage long after the reasons for using those arms have ceased, is unquestionable. It is only fair that those who produce such devastating armaments are made accountable to those who are unwillingly subjected to their products, in keeping with the general principle of law which states that whoever harms another is liable for that harm.

1 *The People V. Big Tobacco* (New York: Bloomberg Press) at 25.

2 *Ibid.*

3 *Supra* note 8 at 271-317.

4 E-mail correspondance with Public Information Office of Attorney-General of Mississippi, Jan 29/00

5 Centre to Prevent Handgun Violence, Legal Action Project: [www.handguncontrol.org/lap/cities/citygna.html](http://www.handguncontrol.org/lap/cities/citygna.html)  
6 487 U.S. 500 (1988).

7 *Ibid.*

8 62 F. Supp. 2d 802 (E.D.N.Y. 1999).

9 *Supra* note 21

10 *Ibid.*

-----  
*Yes, I would like to support this Newsletter and the valuable ongoing work of*

**Lawyers for Social Responsibility / Avocates en Faveur d'Une Conscience Sociale**

*for peace and security through the rule of law.*

PLEASE PRINT CLEARLY

\_\_\_\_\_  
Name

\_\_\_\_\_  
Firm, Agency or Law School

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
P/C

\_\_\_\_\_  
Office Phone      Home Phone      Fax #

\_\_\_\_\_  
EMail Address

I am a Lawyer \_\_\_\_\_ Judge \_\_\_\_\_ Law Professor \_\_\_\_\_

Law Librarian \_\_\_\_\_ Law Student \_\_\_\_\_ Legal Secretary \_\_\_\_\_

Paralegal \_\_\_\_\_ Other (please specify) \_\_\_\_\_

My area of specialization is \_\_\_\_\_

Enclosed please find my cheque payable to LAWYERS FOR SOCIAL RESPONSIBILITY. Please enroll me as a:

\_\_\_\_\_ \$50 Sustaining Member (Judges, Professors, and Lawyers in practice more than 2 years).

\_\_\_\_\_ \$25 Member (Lawyers in practice less than 2 years, legal secretary, paralegal or law librarian).

\_\_\_\_\_ \$15 Law Student.

\_\_\_\_\_ \$1,000 Life Sustaining Member (may be paid in ten annual installments of \$100 each).

\_\_\_\_\_ Enclosed is my additional contribution of \$ \_\_\_\_\_ to support LSR's work.

\_\_\_\_\_ I prefer not to be a member of LSR but wish to receive its Newsletter. I enclose a subscription of \$15 for one year (4 issues).

\_\_\_\_\_ I would like to establish an LSR Chapter in my area. Please send me information.

Please remit this form and your cheque to the nearest LSR/AFCS Chapter or to LSR c/o Maia Veleva, #301, 1111 11th Ave SW, Calgary, AB T2R 0G6