



LAWYERS FOR SOCIAL RESPONSIBILITY THE NEWSLETTER

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Taking Social Responsibility


Lawyers for Social Responsibility was established in 1984 by Canadian lawyers and law students in order to respond to the threat of nuclear weapons and other weapons of mass destruction. At that time there was a broad movement among the Canadian people which opposed the testing of the Cruise missile in Canada. This movement culminated in an application to the Court for an injunction to stop that testing (Operation Dismantle). In 1989, LSR broadened its mandate to include the study of the legal aspects of Canadian and international environmental problems which result from military activities. Our specific approach has been to use the skills we have acquired as lawyers to make a contribution to the peace movement by studying, creating and enforcing laws and legal mechanisms which will serve to avert or resolve conflicts without resort to violence. In other words, to build peace through law.

Today, there is a growing concern among NGOs and middle-power states that the international law regime and the United Nations system are being undermined. US plans to build a national anti-ballistic missile

Feds Ignore 2,369 Objections and Expropriate

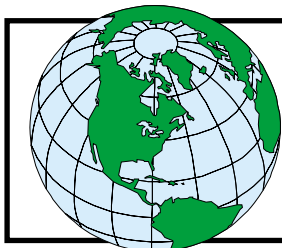
Over 2,600 objections—of which 2,369 were deemed to be valid objections—were filed by concerned citizens and citizen organizations with respect to the proposed expropriation by the Federal Government of the Canadian Forces Maritime Experimental Test Range (“CFMETR”) in the Strait of Georgia at Nanoose Bay on Vancouver Island. Under Section 10(3) of the *Expropriation Act*, the filing of even one objection obliged the government to hold a public hearing on the issue. A series of hearings took place July 19-31, 1999 in Nanaimo and August 3-17, 1999 in Vancouver. Over 240 objectors appeared and spoke to their objections at the hearings or submitted written submissions. Among the objectors were the Province of British Columbia, the Nanoose First Nation, Greenpeace, Lawyers For Social Responsibility, the Physicians for Global Survival, the Nuclear Age Peace Foundation, Veterans Against Nuclear Arms, End the Arms Race and Women’s International League for Peace and Freedom.

defence system contrary to its obligations under the *Treaty on the Limitation of Anti-Ballistic Missile Systems (1972)* is a cause of great unease and concern with Russia and China and may very well provoke another arms race. The Nuclear Weapon States are not fulfilling their obligations under Article VI of the Treaty on Nuclear-Non Proliferation and are steadily re-rationalising nuclear weapons. NATO has increased its membership and, with its recent engagement in Federal Republic of Yugoslavia without the sanction of the UN Security Council, appears to have taken on a role in the international community that is outside of its original mandate. In Canada, the Minister of National Defence, Art Eggleton, has recently stated that Canada will go to war for humanitarian reasons even if the action is contrary to international law and the UN Charter.

In this issue and previous issue of the LSR newsletter we have attempted to bring you up to date and comment on some of these crucial issues which threaten civil society today. We invite our readers to participate in the discussion of these important questions through letters to the editor, opinion pieces, letter writing or by activating a local chapter of LSR in your area. 

The grounds of objection ranged from environmental, safety and sovereignty issues to constitutional and international law arguments. The focus of concern among objectors centred on the dangers inherent in allowing the U.S. to deploy and test nuclear powered vessels, which might be carrying nuclear weapons, in Canadian territorial waters. The U.S. has a policy to neither confirm nor deny whether any particular vessel is or is not carrying nuclear weapons at any time. According to Bill Robinson of Project Ploughshares, while U.S. tactical nuclear weapons have not routinely been carried aboard U.S. surface vessels since 1991, such vessels sometimes do carry these weapons. In addition, U.S. Navy ballistic missile submarines (“SSBNs”) carry strategic nuclear weapons at all times. There are eight SSBNs based at Bangor, Washington, each of which carry up to 24 Trident missiles. Each missile is armed with up to eight 100-kiloton W76 nuclear warheads. Thus, each SSBN carries the equivalent of the total destructive

(cont'd over)



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force used in World War II. These submarines have visited CFMETR in the past and may very well visit again.

The Canadian government allows the U.S. to use CFMETR under the “neither confirm nor deny” policy despite Canada’s declared commitment to nuclear disarmament and notwithstanding the fact that in 1992 an all party resolution of the Legislature of British Columbia declared the province to be a nuclear weapons free zone.

CFMETR’s relatively flat, shallow and soft seabed allows tested torpedoes to be retrieved. The U.S. has saved US\$2 billion over the 30 years by using CFMETR rather than areas off the coasts of California or Hawaii. During this period 93,000 km of copper wire and 2,200 tons of lead, lithium batteries and other toxic waste has been deposited on the CFMETR seabed as a result of such use.

Several objectors, including the Province of British Columbia and the Nanoose First Nation raised constitutional issues at the hearings. It was argued the Federal Government does not have authority under the *Expropriation Act* to expropriate lands under the administration and control of the Provincial Government. Under section 92(13) of the *Constitution Act*, British Columbia has exclusive legislative authority over “Property and Civil Rights in the Province” and section 109 of that Act provides that all lands falling within the boundaries of British Columbia belong to the Province. In the 1984 *Georgia Strait Reference*, the Supreme Court of Canada held that the seabed of the Strait of Georgia belonged to British Columbia. It was also argued that while the *Expropriation Act* grants authority to expropriate lands for a public purpose, the purpose set out in the Notice of


Intention to Expropriate does not fall within the authority of the *Expropriation Act*. The Federal Government cannot rely on section 117 of the *Constitution Act* to justify expropriation in the case of CFMETR since that section allows for expropriation only for fortifications or for the defence of Canada.

In the Nanoose Bay Expropriation Hearings Report, Hearing Officer, Michael Goldie, states with reference to the above arguments that these grounds “raise important questions which, if proven in a court of competent jurisdiction, would render the intended expropriation illegal”.

Mr. Goldie’s report is otherwise disappointing. There is no analysis of the nature and grounds of each objection. Rather, the report is set out in table form. The grounds of objection have been reduced to 22 categories. The objectors’ names are set opposite these categories and references to a particular category are noted. In addition, many of the objectors, and in particular the citizens organizations who took a stand, are classified into one of four groups based on:

- the likelihood that the person or group would pursue the issue after expropriation;
- their role in opposition to the CFMETR, their level of activity — whether community, provincial or federal;
- their ability to network; and
- their apparent belief or disbelief in statements from the U.S. and Canadian military sources minimizing danger of nuclear risks in general and with respect to Nanoose.

With the Federal Government’s decision to expropriate, a coalition, made up of the Human Rights Institute of Canada, The Ukrainian Orthodox Archdiocese of Canada, Citizens Concerned about Free Trade and The Defence of Canadian Liberty Committee, has applied to both the B.C. Supreme Court and the Federal Court for injunctions to stop the expropriation and for judicial review on constitutional and other grounds of the Ministers decision to expropriate. The Federal Court, September 2, 1999 refused to issue a temporary injunction until it can rule on the constitutionality of the issue. In addition, an appeal is being sought against the September 21, 1999 decision of the Supreme Court of British Columbia which denied the application for a stay which would have prevented the Federal Government from transferring title of CFMETR.

Court challenges to the expropriation have also been launched by the government of British Columbia, the Nanoose First Nation and the Society for Promoting Environmental Conservation. In addition, the Nanoose Conversion Campaign and the Sierra Legal Defence Fund have applied to the Federal Court for judicial review of the military dumping of debris in CFMETR. 

— by *Penelope Simons*

The objection of the government of British Columbia is available at:

http://www.nanoose.gov.bc.ca/proceedings_a.html

The Report of the Nanoose Bay Expropriation Hearings is available at:

<http://www.pwgsc.gc.ca/comm/text/nanoose-e.html>

International Law: “Making It Work” — Summary of Speech Delivered by D. W. Wright, Q.C.

cont’d From Volume 11, no. 1

I am heartened by signs that both our thinking and priorities are slowly changing concerning the nature of security and the role of international law. For centuries we assigned the military the task of defending our freedom with arms. This produced wars. Diplomats and politicians entrusted with the job got side-tracked by the power game. Science gave us the ultimate weapons which only provided ultimate insecurity. In desperation we appear to be turning to the law.

There are many hurdles to overcome, mostly in the minds of men concerned with power. We should involve more knowledgeable NGO women in decision-making. We need civil society members and not just governments at the bargaining tables of the world. People not just corporations in the back rooms of power. There are legitimate

concerns with indictment processes, arrest and prosecution procedures, appointment of judges, enforcement logistics and the laws themselves. These did not stop us holding the Nuremberg Trials.

The time has come to insist that the power is ours and must be exercised for the benefit of all. The time has come to write legal exceptions to the supposedly sacrosanct rule concerning interference in the internal affairs of another state. Powerful nations ignore it, violators of international law invoke it. If humanitarian law is to mean anything it must be given precedence over the internal affairs of a state engaged in violating it. No nation however powerful can be above the law. This fundamental principle must be enforced.

What international law really lacks is the “political will” of nations to make it work. The

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challenges before us, the fears we have, the entrenched positions we must overcome are no less vulnerable than many seemingly invincible institutions and ideas long ago consigned to the trash heap of history in our advance from nomadic families to tribes, to city states and to nations. God did not save the divine right of kings and determined people have dismantled empires.

Nothing is more powerful than an idea whose time has come. We are just beginning to understand and use the people-power unleashed by computers and instantaneous worldwide communications.

There is no rational reason why international law will not work. There is much room for improvement in domestic law but few suggest dispensing with our current system of justice. Most vocal critics of domestic law call for strengthening it. Why not strengthen international law?

Criminals don't write our penal legislation. We should not allow violators of international law to dictate the norms to be adhered to by majority of the global community. Many solutions adopted in the domestic arena could be adapted to international requirements.

To get at the root of one of the most serious impediments to peace and justice, a product liability type law could be adopted which would impose proportionate liability on corporations and nations involved in the arms trade for the cost of peace-keeping, reconstruction and reparations to victims of such weapons.

Another important problem lies in the difficulty of enforcing judgments of the International Court of Justice (the "ICJ"). The UN could enforce court rulings through sanctions and embargoes. Crimes against peace, war crimes, ongoing genocide, etc., may require military intervention sanctioned by the UN Security Council. A significant standing UN police force might be considered. A treaty limiting the size of armies would help. The most effective implementation tools may be world opinion and insistence by citizens that their government comply with ICJ decisions.

Changing Our Thinking and Priorities
School curricula need revision. Modern history should focus on humanitarians and philosophers rather than kings and generals, on advances in the arts, science and technology rather than armies. Examination of the root causes of wars, the victims, costs, and who benefits should open minds, spark critical thinking and serious debate.

We need to examine our strongly held views to determine if they are rooted in pre-nuclear age thinking. We must abide by the laws of the nation in which we live. We must

Tokyo Forum Final Report

The Tokyo Forum for Nuclear Non-Proliferation and Disarmament was organized at the initiative of Prime Minister of Japan, Mr. Ryutaro Hashimoto in August, 1998. The Forum, a panel of independent experts, including ambassadors and academics from over 20 countries, met four times since August, 1998, the final meeting being held in Tokyo, in July, 1999. The final Report of the Forum made 17 key recommendations.


The NPT Parties were urged to reaffirm the Treaty, and to eliminate nuclear weapons through phased reductions. The U.S., Russia, China, India, Pakistan, North Korea and Israel were called on to ratify the Comprehensive Nuclear-Test-Ban Treaty (the "CTBT"). The U.S. and Russia were urged to revitalise the START processes and to further extend reductions to 1000 deployed strategic warheads.

The Forum called on all states with

demand that all nations abide by international law since our security and survival depend on it.

We recently launched stage one of a \$145 billion space station to explore new frontiers. Why can't we find that kind of money to repair the space station on which we live. Since 1945 the world has spent an estimated \$8 trillion on nuclear weapons to produce the greatest insecurity the human race has ever known. No one knows how much it will cost to clean up, the actual extent of the suffering caused by radiation related diseases, the damage to the human gene pool and the environmental degradation.

Concluding thoughts

As Martin Luther King, Jr. once said: "If we can't learn to live together as brothers and sisters we will all perish together as fools." We must work and dream together to produce the world we want our children and grandchildren to inhabit. That vision must become the most important part of our estate planning. If we leave our children a world filled with enemies, held at bay by weapons of mass destruction. A world of fear, without hope of peace. An environment ravaged beyond recovery. We will have failed ourselves and all succeeding generations in our stewardship of this wonderful planet we call home. And nothing else we leave them will really matter. 


nuclear weapons to endorse and implement the goal of zero nuclear weapons on hair-trigger alert and called on the U.S. and Russia to immediately stand down nuclear forces slated for reduction in START II.

In addition to urging work on the Fissile missile Control Treaty, the Forum requested that China, India, Pakistan and Israel declare moratoria on fissile material production and that all excess military stocks of fissile materials be put under International Atomic Energy Agency safeguards.

As a warning to the US, the Forum commented that all states contemplating the deployment of advanced missile defence systems must proceed with caution. Proposals with respect to India/Pakistan, the Korean Peninsula and the Middle East were also made.

In an apparent reference to the stalemate at the Conference on Disarmament (the "CD") - due to its procedural requirement for consensus on its work - the Report stated that the CD should revise its procedures, update its work program and carry out purposeful work, or suspend operations.

Our colleagues in the peace movement in Japan generally consider the Report to be fairly weak but are grateful that the Forum noted "with appreciation recent efforts by the New Agenda Coalition to provide new impetus to multilateral fora that are mired in competing theologies of nuclear deterrence and time-bound frameworks for nuclear disarmament" and "the efforts of non-governmental organisations to promote non-proliferation and disarmament". In addition, our colleagues appreciate the Forum's comment that "[c]reative coalitions between 'middle powers' and non-governmental organisations might help provide leadership that is currently lacking elsewhere".

The Japanese peace activists hope this will encourage their Government to vote for the New Agenda Coalition resolution in the UN and act more independently of the United States. 

The Government of Japan has committed to making the Report an official UN document. The full text is available at:

<http://serv.peace.hiroshima-cu.ac.jp/English/final1-e.htm>.

Iraq, Sanctions & International Law

by David Matas

The sanctions which are presently maintained against Iraq by the global community were imposed by the UN Security Council (the "SC") in 1990. The sanctions were continued by SC Resolution 687 (1991) and conditioned on the "destruction, removal or rendering harmless, under international supervision, of:

- (a) all chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities;
- (b) all ballistic missiles with a range greater than 150 kilometres and related major parts, and repair and production facilities".

The resolution further decided that Iraq must unconditionally undertake not to use, develop, construct or acquire chemical and biological weapons, nuclear weapons or nuclear weapons usable material or any related subsystems or components or any related research, development or support of manufacturing facilities.

These sanctions raise several issues of international law. The first is whether the conditions of the sanctions have been complied with. The second is whether the conditions for the sanctions are necessary for the maintenance or restoration of international peace and security. These two issues will not be dealt with in this article. The third issue, and the one that will be addressed here is whether the sanctions violate human rights and humanitarian law standards, in particular the right to food and the right to medical care.

The Law

Under the UN Charter, the SC has the power to decide what measures shall be taken to restore international peace and security, including the imposition of sanctions. This broad power is limited by the duty to respect human rights.

Certain human rights such as the right to food and the right to medical care relate very specifically to sanctions. The Universal Declaration of Human Rights, Article 25 provides that

"[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...".

The International Covenant on Economic,

Social and Cultural Rights, Article 11(2) recognizes "the fundamental right of everyone to be free from hunger". In addition, Article 12(1) recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Article 12(2)(d) provides that the steps to be taken to achieve the full realization of this right must include those necessary for "the creation of conditions which would assure to all medical service and medical attention in the event of sickness". The Convention on the Rights of the Child imposes similar obligations with respect to children.²

These obligations are also incorporated into the laws governing armed conflict. Article 23 of The Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) (the "Geneva Convention IV"), provides that each party

"shall allow the free passage of all consignments of medical supplies and hospital stores ... intended only for civilians ... [and] shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases".

Article 23 further provides that this obligation is subject to the condition that the Party who is to allow free passage "is satisfied that there are no serious reasons for fearing:

- (a) that the consignments may be diverted from their destination;
- (b) that control may not be effective; or
- (c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the ... consignments for goods which would otherwise be provided or produced by the enemy. ...

The [party] which allows passage of the consignments...may make such permission conditional on the distribution to the persons benefited thereby being made under local supervision of [the representative of a neutral state]".

The state that permits free passage of a consignment has the right to prescribe the technical arrangements under which such passage is allowed.³

Article 54(1) of Protocol I Additional to the Geneva Conventions (1949) provides that the "[s]tarvation of civilians as a method of warfare is prohibited". Article 70(2) provides that parties to a conflict "shall allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel".

The Crisis in Iraq

In November of 1997, the Secretary General of the UN reported that the population of Iraq faced a serious nutritional and health situation and that there was an urgent need to con-

tain the risk of further deterioration. He concluded that the current food ration and its composition fell far short of meeting the nutritional needs of the Iraqi population. In addition, at this time the WHO conducted a survey showing that out of the 96% of patients interviewed for whom treatment had been prescribed, only 39% had received all the prescribed drugs and, for 28% of them, the prescribed drugs were not available at the health facilities visited.

For children, the situation is even more alarming. Again in November, 1997, the UN International Children's Emergency Fund found that 32% of children under the age of five, some 960,000, were chronically malnourished and 23% were underweight. In badly hit areas, chronic malnutrition appeared in almost 50% of children.

In April 1999, a humanitarian panel established by the SC on Iraq, reported on the social and economic deterioration in Iraq and concluded that the gravity of the humanitarian situation of the Iraqi people was indisputable and could not be overstated.

Violations and International Law

It is clear that the basic human rights to food and medical care are being violated in Iraq. Whether the sanctions themselves are in violation of international human rights and humanitarian law is another question. If sanctions are necessary, they must be executed in a way that conforms to human rights and humanitarian standards.

The sanctions regime imposed by the SC is *prima facie* in compliance with international human rights and humanitarian law. SC Resolution 661 (1990) explicitly states that such sanctions do not include "supplies intended strictly for medical purposes and, in humanitarian circumstances, foodstuffs to any person or body in Iraq". In addition, the SC has set up a system which allows Iraq to sell oil for food and medical supplies. Resolution 687 (1991) allows a SC Sanctions Committee to approve exceptions to the prohibition against the import of commodities and products originating in Iraq when required to assure adequate financial resources on the part of Iraq for food and medical supplies.

In 1995, the SC authorized states to permit the import of oil originating in Iraq sufficient to produce a sum of up to US\$2 billion every six months for the purchase of food and medical supplies.⁴ The funds were to be put in an escrow account established by the UN Secretary General. The latter was requested to use the funds to finance the export to Iraq of medicine, health supplies, foodstuffs and materials and supplies for essential civilian needs. Furthermore, in 1998 the SC bumped up the permissible ceiling of oil for food to US \$5.256 every six months.⁵ Since the initiation of the oil for food program, Iraq has

never reached in sales the dollar ceiling set by the SC resolutions.

It must be emphasized that the obligations imposed by international human rights and humanitarian law are also applicable to Iraq and therefore the actions of the Iraqi government must also be examined.

Iraq did not take advantage of the "oil-for-food" exception to the sanctions regime for 5 years. The UN Secretariat and the Government of Iraq signed a memorandum of understanding in May, 1996 to implement the "oil-for-food" regime offered by the SC in 1991.⁶ It is therefore arguable that the inaction of the Iraqi government in this respect as well as its refusal to co-operate under the sanctions regime are the main causes of the present humanitarian crisis.

This conclusion is borne out by the observations of independent experts. UN Human Rights Commission Special Rapporteur on the human rights situation in Iraq, Max van der Stoel stated in his 1995 Report:

"the actual situation is not very much at issue: it is well accepted that millions of innocent people are suffering. The question is one of responsibility. On this important point, the Special Rapporteur must reiterate the fact there exists no embargo upon the import by Iraq of medicaments or foodstuffs for humanitarian purposes Aside from the general lack of foodstuffs and medicaments which affect most of the population, the Special Rapporteur must emphasize yet again that the Government of Iraq is wholly responsible for discriminatory policies in the distribution of such resources as do exist."⁷

In addition, in his 1998 report, Mr. van der Stoel stated that:

"had the Government of Iraq not waited five years to decide the 'oil-for-food' agreement ... to meet the humanitarian needs of the population, millions of innocent people would have avoided serious and prolonged suffering"⁸

Mr. Van der Stoel also reported that the Iraqi government has refused to co-operate on the elaboration of a distribution plan and planning on an ongoing basis and to assure uninterrupted sales of oil. As such, Iraq has acted to undermine effective implementation of the "oil-for-food" program.⁹

Furthermore, the UN Committee on Economic, Social and Cultural Rights, in its concluding observations on the third periodic report of Iraq on its compliance with the provisions of the International Convention Economic, Social and Cultural Rights, noted that, to date, sufficient measures had not been taken by the Iraqi authorities to alleviate the extremely difficult living conditions of the Iraqi population and the deprivation of their basic economic, social and cultural rights. The

Committee expressed concern about reports of discrimination against members of certain minorities, especially the Kurds, Marsh people, Assyrians, Shi'a Muslims and Turkomans.

While it is Iraq's actions with respect to the sanctions and not the sanctions themselves which are in violation of international law, the extent of the humanitarian tragedy requires reflection on the adequacy of an international law regime which allows the imposition of such measures but ultimately leaves a population vulnerable to an unscrupulous government.

In addition, it should be noted that the rule of proportionality which is applicable in humanitarian law does not apply to sanctions. Therefore sanctions directed against dual purpose goods or against the development of infrastructure are not required to be proportional to the gain to peace and security anticipated from the imposition of the sanctions.

The sanctions regime in Iraq should allow for an exemption for foreign participation in infrastructure development where the benefit to the civilian population outweighs the gain to peace and security anticipated from the application of sanctions. As well, the UN Sanctions Committee should revisit its decisions¹⁰ to prohibit dual purpose goods denied entry into Iraq, using the criterion of proportionality. Where the loss to the civilian population from the prohibition of the goods outweighs the gain to peace and security, the decision to prohibit them should be reversed.

The SC humanitarian panel has made a series of recommendations with respect to oil for food program which would help to alleviate the suffering of the population and to rebuild the Iraqi infrastructure. These recommendations should be implemented. The global community must make every effort to lessen suffering in Iraq, whether that effort is undertaken in co-operation with, or in spite of the Iraqi government. Even if the Iraqi government is primarily to blame for the current suffering, the global community must continue to do what it can to promote respect in Iraq for fundamental human rights and humanitarian principles. ¹¹

¹ Security Council Resolution 661 (1990).

² See for example Articles 24-27.

³ The Geneva Convention IV, Article 23.

⁴ Security Council Resolution 986 (1995)

⁵ See Security Council Resolution 1153 (1998).

⁶ Resolution 687 (1991)

⁷ UN document E/CN.4/1995/56, 15 February 1995, paragraphs 45 and 46.

⁸ UN document E/CN.4/1998/67, 10 March 1998.

⁹ Ibid.

¹⁰ The decision of the Sanctions Committee to prohibit dual use goods was made in its application of Security Council Resolution 687, April 3, 1991.

Motions in Canadian and Australian Senates call for Y2K De-Alerting

In light of the growing concern that the Y2K bug could infect command, control, communication and intelligence systems of nuclear forces, Senator Douglas Roche introduced into the Senate of Canada on September 7, 1999 a motion calling on the Government of Canada to urge all nuclear powers to de-alert their nuclear weapons as soon as possible. However, Senator Roche stressed that the Y2K danger merely highlights the danger to the world that exists because of the ongoing alert status of approximately 5,000 nuclear weapons. The motion reads: "That the Senate recommends that the Government of Canada urge the nuclear weapons States plus India, Pakistan and Israel to take all of their nuclear forces off alert status as soon as possible."

The Parliament of Canada was prorogued on September 18, 1999 so that a new Session of Parliament could begin on October 12, 1999. This means that the De-Alerting Motion will have to be reintroduced in the Senate in the new Session of Parliament.

On September 20, 1999 the Australian Senate passed a similar resolution without opposition. The resolution calls on the government of Australia "to adopt as policy that nuclear weapons be taken off hair-trigger alert, in accordance with the recommendations of the Canberra Commission on the Elimination of Nuclear Weapons (1996) and subsequent resolutions of the United Nations General Assembly". The resolution further "[u]rges the Governments of the United States and Russia to take their weapons off hair-trigger alert before the Y2K rollover period".

Russia and the U.S. which each have about 2,500 nuclear-armed missiles poised for immediate firing, are alone among the world powers able to trigger a nuclear holocaust on very short notice. There have been no moves by either government to stand down their nuclear forces.

Talks between the U.S. and Russia were due to resume in mid-September on a Center for Y2K Strategic Stability (the "Center") in which the two countries would collaborate so as to avoid problems caused by computer glitches which could shut-down or confuse Russia's early warning system and possibly cause a pre-emptive missile launch.

However, the Center is not scheduled to be operational until December 27, 1999. This means that a delay of just four days would render it useless. ¹²

Items Likely not Seen in Your Local Newspaper (being deemed of NO public interest by the editors or owners?)

It Is Better to Light a Candle than Rail at the Darkness: A Children's Crusade

Columbia is a violent country scarred by decades of violence, cocaine trafficking and guerrilla warfare. Out of it all a most improbable movement for peace arose. A movement led by children. In October, 1996, 2.7 million children ages 7-18, turned out to vote in a special election known as the children's mandate for peace and rights. Although the vote was only symbolic, it changed lives and gave a sceptical, war-weary country renewed hope for peace

Enter the Candle Snuffers ... Sept.15, 1999 (The Guardian)

Pres. Andres Pastrana unveiled Columbia's latest weapon on drugs: a specialized army battalion designed to confront narcotics traffickers ... observers warn the US funded and trained battalion marked a shift towards direct US involvement in Colombia's guerrilla war ... as the line between drugs and counter insurgency operations has become blurred. "... it's clearly focusing on direct combat with the rebels" - Winifred Tate, Washington. The announcement came during a wave of political violence triggered by the foundering peace process.

Columbians fear Washington hawks are advocating a military solution to the 38 year-old civil conflict and the action will fuel the conflict and destabilise whole region. Columbia is the third largest recipient of US military aid, for narcotics. (US aid to the military was suspended in 1980's for human rights abuses.) "Many commanders think human rights were invented to impede their operations". Last month two army officers were convicted of murdering a left wing senator in 1994. They were given a public reprimand and remain on active service.

Coming soon—a warm, fuzzy, glow-in-the-dark world

Pembroke, Ont. (Globe and Mail, Sept 28, 1999) Rhubarb near a sign factory contained 1000 times more radioactive tritium than was found in sample taken 45 kilometres away.

Halifax, N.S. Sept. 22,1999—The CBC reports that the Canadian navy fired thousands of D.U. shells at a test range off Halifax harbour ... (eaten any red lobsters lately?).

Japan, Oct. 1, 1999, After 24 hours of terror, the people of Tokaimura were assured that the immediate danger from the uncontrolled nuclear chain reaction had ended.

Primosky (Far East) - 750 tons radioactive

waste on the vessel "Pinega" flowed from special container into its hold threatening to leak further into sea. An environmental disaster in the making.

Nuclear Deterrence:

The irrational hope that terrible fear will somehow continuously promote wise decisions by fallible humans operating under enormous pressure in conditions they can never fully understand. Achin Vinnai, The Hindu, July 1, 1999.

The Way to get on with Nuclear Disarmament

Jiang Zemin- President of China !

"For 50 years , hanging over our heads like the sword of Damocles, nuclear weapons have never ceased threatening humanity's survival. The end of the Cold War has not brought about their disappearance All countries, regardless of their size, strength, and wealth, have an equal right to security. If the great majority of the developing countries cannot have security, there will never be tranquillity throughout the world Disarmament should not become a tool for stronger nations to control weaker ones To reduce the armaments of others while keeping one's intact, to reduce the obsolete while developing the state-of-the-art, to sacrifice the security of others for one's own, and to require other countries to scrupulously abide by treaties while giving oneself freedom of action by placing domestic laws above international law—all these acts apply double standards. They make a mockery of international efforts and run counter to the fundamental objectives of disarmament Historical experience shows that unrestrained arms build-up hampers economic growth and does not help to maintain peace and security The Nuclear Non-Proliferation Treaty is both the basis of the international nuclear non-proliferation regime and the prerequisite for progress in disarmament ... nuclear weapon states should undertake, unconditionally and in a legally binding manner, to ensure that they will not be the first to use nuclear weapons China is ready to push for the early conclusion of an international legal instrument on this issue Negotiations should be conducted as soon as possible for the conclusion of a universal, verifiable treaty banning new production of fissile materials. A convention on the comprehensive ban of nuclear weapons should be negotiated ... there is no reason why nuclear weapons, ... should not be comprehensively banned and thoroughly destroyed. All it takes is strong political will Research for and development, deployment and proliferation of sophis-

ticated anti-missile systems, and revision of, or even withdrawal from, the existing disarmament treaties, would inevitably exert a negative impact on international security and stability, triggering new arms races and obstructing disarmament and non-proliferation efforts Disarmament is not the prerogative of a few."

The Children for Whom No Bell Tolls ...
UNICEF (estimates) child victims of last 10 years of armed conflicts: killed- 2 million; disabled- 4-5 million; homeless -12 million; orphaned more than 1 million; traumatized psychologically - 10 million ... (ticking time bombs?)

Quote of the Year

President Clinton on the Japanese nuclear accident: "... when something like this happens we realise we live in a world where perfection eludes us".

Bill ... about those nukes on hair-trigger alert ...

The People Protest

U.S.A., June 5, 1999 - 10,000 march on Pentagon to protest war against Yugoslavia. John Jones, Vietnam veteran, "We need a ground war right here against poverty, racism, and the Pentagon."

U.S.A., July 31, 1999 - 700 participate in Independent Inquiry Investigating NATO war crimes.

U.K., August 26, 1999 - Charges laid against 8 women for "disrupting a lawful activity" were dropped by the Crown Prosecution Service on the basis that the trial would not have been in the public interest. The accused had entered the RAF Fairford base, spray painted bombs and delayed NATO bombing operations in Yugoslavia.

Belgium, Sept. 5, 1999 - 80 people were arrested as they joined 30 writers in the "literary bomb spotters" inspection of the NATO base. They were protesting the suspected deployment of weapons of mass destruction in Belgium. At the trial of MP's in July the Belgium Criminal Court declared itself incompetent to prosecute as their action was clearly political and not criminal.

U.K., Sept. 15, 1999 - Brit invokes European Convention on Human Rights in Argyle and Bute District Court in defence of a charge laid for "breach of the peace" when he was peacefully demonstrating against the UK nuclear weapons system at Faslane Naval Base in Nov. 1998.

Rule of Law, Compliance and Eliminating Nuclear Weapons: The Model Nuclear Weapons Convention, April 1997

By *Moira McConnell*

Recent significant developments in the field of international law with respect to disarmament and war crimes suggest that the idea, if not always the particulars, of “law” as a source of global cohesion and an instrument for creating and managing behavioural change in the international sphere is experiencing a renaissance. However, for international law to be effective in the long run, especially in the crucial area of nuclear disarmament, it must entail compliance with the law by state actors. But what is meant “compliance” and its correlates “compliance regime” and compliance methodology?”

The word compliance is highly fashionable shorthand, used in domestic and international negotiations, to refer to the notion of obeying both the letter and, ideally, the spirit of the law. At its simplest, a compliance strategy or regime involves a scheme, usually set down in the same legislation or convention, to ensure that the purpose of the convention or the law is achieved. Thus the word compliance describes both an objective and the process to obtain the objective.

Compliance in international law has generally involved supplementing primary convention obligations with supporting behavioural obligations, as means of ensuring that sovereign states agree to measures which go beyond simply passing a domestic law to implement the convention. Not surprisingly, investigating the reality of implementation or compliance in the international sphere is complex, since the very emphasis on compliance seems contrary to the foundational notion of state sovereignty. Many of the mechanisms designed to ensure compliance have run into resistance on that front.

In domestic law difficulties arise, not because of sovereignty, but rather because of scarce resources for effective enforcement of the law. Given the consensual nature of the international legal system, it is however, clear that compliance must have a different function in this sphere than it does in the domestic legal system. It is this functional role and the extent to which comparative research and parallels drawn from the domestic context (environmental law or gun control come to mind) might be applied, which warrant greater attention in the context of disarmament and compliance research.

There is an extensive body of writing on

the general topic of nuclear disarmament, focusing on particular operational steps and strategies for compliance, but research on the concept of compliance and studies to evaluate specific methods to achieve it are still fairly sparse and tend to assume the “confidence building” role of compliance. For example, the Verification Technology Centre (VERTIC) in London, England has published a series of studies on the verification issues that might arise during the process of nuclear disarmament. Similarly, the Markland Group of Canada, an organization devoted to nuclear disarmament and compliance research, suggests that a “compliance regime” in a disarmament convention should contain institutional structures (usually an intergovernmental administering agency); transparency obligations (access to information and data collection); evaluation procedures (a process of determining whether or not there has been non compliance); enforcement provisions (sanctions and dispute settlement); and other features such as a domestic implementation requirements (in some states this is automatically part of the ratification process).

Most compliance methodology studies are directed to the operational particulars of these elements. However, the Henry L. Stimson Center has produced several studies which deal with the underlying nature of the human experience involved in the process of disarmament. For example, one study argues that in order to develop mechanisms to address violations of a total ban on weapons of mass destruction, one has to address the reason states might be tempted to cheat, that is a concern for security. The study also takes into account an equally important human instinct in situations of perceived risk—hedging of bets—and suggests that it might also be useful to retain an international nuclear force as a hedge against cheaters.

Thus the problem in disarmament can be characterized as a negotiating environment based on total distrust, although there is general agreement on the best outcome and an understanding that there is a common interest. The problem facing negotiators, advocates and citizens is how to move from the locked in “lose/lose” of mutual deterrence where the psychological block to risk-taking does not permit any state to take the first “step” to create trust.

The solution, offered by experts researching in the area of compliance, is that of step-by-step low risk actions to create trust. This

has usually involved registration/cataloguing, verification/monitoring and the creation of “neutral” international machinery to manage or mediate the process. This is a “slow but steady” approach which attempts to recognize the complete absence of trust and factor it into the process of disarmament. This is also the approach adopted in the Model Convention on the Prohibition of the Development, Testing, Production, Stockpiling, Transfer, Use and Threat of Use of Nuclear Weapons and on Their Elimination (the “MNWC”).

In its 19 Parts and various Protocols the MNWC, like many other recent international agreements, incorporates most of the compliance elements summarized above in the Markland definition. The MNWC sets out both state level obligations and obligations pertaining to “persons” (legal or natural) to ensure international jurisdiction to prosecute nuclear criminals. There are 21 primary state obligations which revolve around the undertaking to “never under any circumstance... use or threaten to use nuclear weapons”. As the full title of the MNWC suggests, these include promises regarding facilities, researching, testing and stockpiling nuclear materials, delivery vehicles and equipment, as well as use and threat of use of nuclear weapons.

Part IV, the Convention, contemplates 5 phases of disarmament spread over 15 years to achieve elimination of nuclear weapons through annual or multi year “round-by-round” reductions. The phasing focuses on elimination of the supporting activities and equipment (e.g. nuclear materials, delivery vehicles etc.) while target numbers for reduction for nuclear states are left open to negotiation. The Convention also creates an international agency, a conference of States Parties which is responsible for the international monitoring system and for liaison with the UN and the Security Council in the event of non-compliance and a need for collective security measures.

Compliance strategies are reflected in various Parts as well as being explicitly found in Part XIV, Cooperation, Compliance and Dispute Settlement, which sets out the process of responses and sanctions for perceived non-compliance. For example, Part V sets out comprehensive verification procedures and confidence building measures such as “challenge” inspections. In Part III, “Verification” is defined as “a comprehensive system for ensuring compliance and implementation” (para. 59). Verification measures include providing information on nuclear weapons, equipment, materials and facilities through declarations, monitoring, consultation, clarification, citizen reporting and any other measures deemed necessary by the intergovernmental

Rule of Law

(cont'd from previous page)

agency. Thus, verification is a compliance mechanism and may also constitute compliance in itself.

The MNWC also provides for national implementation which, arguably, would allow citizens of States Parties, operating under a rule of law system, to challenge non-compliance at a domestic level. It also provides "whistle blower" protection for persons who report on breaches of obligations.

As with most international agreements the express sanctions tend to be confined to resort to the ICJ and suspension of the non-compliant State's entitlements under the Convention. In other words, the main incentive for compliance by any State is the overriding interest in securing the equal compliance of other States. The threat or use of nuclear weapons is deemed to be a threat to the peace subject to the provisions of the UN Charter and allows for collective response and sanctions.

While in principle the MNWC's approach of repeated low risk reductions and consistent adherence to obligations may *mutatis mutandis* enable elimination of nuclear weapons in 15 years, for many, this time frame may simply be too long and the risk of global destruction in the interim too high. On that view the likelihood of interminable haggling and conflict over these verification and inspection provisions suggests that efforts are better expended in creating a global citizen consensus for an immediate ban on all nuclear weapons with immediate destruction of existing stockpiles and equipment. If a Convention to that effect was negotiated and in force, then enforcement and compliance efforts would be devoted to verification of breaches of the ban as opposed to violations of the reduction provisions.

Although the process of incrementalism and the notion of compliance and confidence building are attractive in theory, the concern is that if there is a great deal of political instability then the process of trust building though consistency in actions is necessarily threatened. The negotiating dilemma posed by nuclear weapons may mean that middle power non nuclear states, such as Canada, are the best placed to take a lead in this issue and work to develop a global community consensus for a ban on nuclear weaponry, with citizen groups to monitor the disarmament process. The result may be that both approaches are needed to ensure a sufficiently timely disarmament process. ^{LSR}

Peace Law Essay Contest

WE ARE PLEASED TO ANNOUNCE THE WINNERS OF THE 1999 WILLIAM HANLEY LEGAL ESSAY CONTEST.

1st Prize to Maureen Kirkpatrick (UBC Law) "The Terrible Justice of Reality"

2nd Prize to Dwight Newman (U. of S. Law) "A Human Security Council? Applying a 'Human Security' Agenda to Security Council Reform"

3rd Prize to Julia Barss (U. of O. Law) "Surfacing Rape in Time of War: The Development of Gender Based crimes in International Humanitarian Law"

Our thanks to Professor Moira McConnell of Dalhousie Law School for her willingness to serve as our Judge.

State Terrorism and Human Rights Continued from Vol. 11 No. 1 (Excerpts)

Human rights organizations want the terrorists to be caught. But they do not want a man to be branded a terrorist if he is actually a political worker or a leader of the tribals, or because he has championed some unpopular cause, or is disliked by a local landlord or not favoured by a particular business man ...

State Terrorism

When, in any society, a violent act which is more heinous than a normal crime occurs and it is termed terrorism, there is a great temptation to kill the suspects without giving them a fair trial on the pretext that a terrorist does not warrant the normal safeguards of a routine criminal.

The immediate temptation to adopt totalitarian strategies to deal with terrorism, howsoever destructive, has little chance of success. If we are to be cavalier about principles of democracy, we will only fall into the same error as the terrorists who have no dearth of arguments to justify their means and ends ...

Criminalization of the Polity

The European Commission for the protection of human rights and fundamental freedoms, in the *Lawless Case* in 1961, held that even if the applicant is a "terrorist" of the Irish Republican Army, described as an organization engaged in destructive activities, this did not absolve the respondent state, Ireland, from observing those provisions of the Convention conferring freedom from arbitrary arrest and detention without trial. Every society has an underlying criminal substrata of drug racketeers, smugglers, arms dealers and felons. This limited but omnipresent criminality becomes widespread and assumes a political objective for itself whenever a large section of people becomes alienated from the mainstream. But as long as legal methods to redress grievances exist, terrorism, howsoever noble the objectives may be, ultimately merges with the prevailing criminality.

The situation turns critical if it becomes apparent that the state itself has adopted violence and terror as a policy aimed at suppressing just struggles. Thus, it loses the right to hurl the accusation of terrorism at people who launch an armed struggle to bring about a more lawful method of governance. Herein lies the need to define state terrorism whereby a government acts without sanction of law and does not seek people's support and help for governance ... ^{LSR}

Reprinted from the *South Asian Review*

LSR President Visits Japan

It was my pleasure to travel to Japan for 6 days in July, 1999 at the invitation of a number of peace groups. The focus of the visit was the "Citizens' Conference—Abolish Nuclear Weapons Now" held July 20 in Tokyo to provide NGO support to the upcoming and final gathering of international experts in the Tokyo Forum.

My task was to provide the NGOs at the Conference with information on the major activities organized by Canadians to move our government to a policy position more supportive of abolition. I discussed the creation of the Canadian Network to Abolish Nuclear Weapons, the launching and support of the Middle Powers Initiative, the Ploughshares Round Tables, the public hearings organized by the Standing Committee on Foreign Affairs, and, generally, our work to build evidence for the government of public support for abolition.

In addition, I gave interviews to the Japan Times, Nagasaki Broadcasting and Japan Broadcasting Corporation. I also participated in meetings with students from Sokka University, with members of Gensuikin, with Hidanyko—the national organization for survivors of the bomb—and with young activists working with Peace Boat.

In the context of these interviews and meetings, I encouraged the Government of Japan to use its high moral authority to call for support for a clear and unequivocal commitment to the New Agenda Coalition ("NAC"). I noted the terms of the Japan-US Security Treaty and its inconsistency with policies of nuclear deterrence. I also encouraged work on a North East Asian Forum for a Nuclear-Weapons-Free-Zone ("NWFZ"). President Jiang Zemin of China had indicated in June that he was willing to consider the negotiation of a Nuclear Weapons Convention. If true, there might indeed be a possibility of a Far East NWFZ.

In the course of the various meetings, we developed ideas for possible strategies for Japanese activists to consider such as maintaining a national coalition, calling on their Foreign Affairs Committee to have public hearings on the Report of the Tokyo Forum, requesting a meeting with the Prime Minister to discuss the Report, organizing an Expert Seminar on regional Confidence-Building Measures and hosting Citizens Forums in major cities. ^{LSR}

August 25th, 1999

Beverley J. Tollefson Delong

LSR Update:

Donations should now go to:
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