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## Landmines: A Deadly Legacy

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# Landmines: A Deadly Legacy

Morris Panner

## **Abstract**

Landmines: A Deadly Legacy (“Deadly Legacy”) is both a powerful advocacy piece calling for an international ban on the production, stockpiling, trade, and use of landmines, as well as a compelling reference work carefully detailing what can only be deemed a global landmines crisis. The book, a joint effort of The Arms Project, a division of Human Rights Watch, and of Physicians for Human Rights, is the culmination of a three year effort, including extensive field research in such places as Cambodia, Angola, Mozambique, Iraqi Kurdistan, and northern Somalia, as well as documentary research drawing on previously classified U.S. Government documents obtained through the Freedom of Information Act. This carefully documented work forcefully supports its central thesis, namely that existing international protocols are insufficient, and only a complete ban on the production and use of landmines will ease the landmine crisis and comport with international humanitarian law.

## BOOK REVIEWS

LANDMINES: A DEADLY LEGACY. By The Arms Project, A Division of Human Rights Watch, and Physicians for Human Rights, New York, NY, 1993. Paper \$25.00.

*Reviewed by Morris Panner\**

*Landmines: A Deadly Legacy*<sup>1</sup> ("*Deadly Legacy*") is both a powerful advocacy piece calling for an international ban on the production, stockpiling, trade, and use of landmines, as well as a compelling reference work carefully detailing what can only be deemed a global landmines crisis. The book, a joint effort of The Arms Project, a division of Human Rights Watch, and of Physicians for Human Rights, is the culmination of a three year effort, including extensive field research in such places as Cambodia, Angola, Mozambique, Iraqi Kurdistan, and northern Somalia, as well as documentary research drawing on previously classified U.S. Government documents obtained through the Freedom of Information Act. This carefully documented work forcefully supports its central thesis, namely that existing international protocols are insufficient, and only a complete ban on the production and use of landmines will ease the landmine crisis and comport with international humanitarian law.

*Deadly Legacy* is a leading work in the movement to ban landmines, relegating them to the same category as biological and chemical weapons. Moreover, this sentiment on the part of the human rights and development communities is gaining powerful support from both the United States and the United Nations. In early December 1993, the Clinton Administration wrote to the leaders of more than forty countries pressing them to stop trade in landmines.<sup>2</sup> This came on top of Congress' extension of a moratorium on landmine exports by the United States. In addition, at the end of 1993, the United Nations General Assembly passed a non-binding resolution calling for a

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1. THE ARMS PROJECT (A DIVISION OF HUMAN RIGHTS WATCH) & PHYSICIANS FOR HUMAN RIGHTS, *LANDMINES: A DEADLY LEGACY* (1993) [hereinafter *DEADLY LEGACY*].

2. *Ban the Mine*, *ECONOMIST*, Dec. 25, 1993, at 15.

worldwide ban on exports,<sup>3</sup> demonstrating a shifting attitude in the international community toward a weapon that was once thought to be an indispensable part of an army's arsenal.<sup>4</sup>

*Deadly Legacy* presents much of the analytical and logical basis for this transformation in attitudes. As a collaboration between two human rights groups with different specialties, the book makes the most of an interdisciplinary approach to this human rights issue. Moreover, the book is noteworthy in that it brings a human rights approach to an issue that traditionally has been the domain of the disarmament movement. This, however, is not a disarmament tract; the arguments are much more nuanced than a simple denunciation of war. This work seeks to influence a world where so-called "low-intensity conflicts" have become the order of the day. The authors implicitly acknowledge that these conflicts will continue to rage and that the human rights community must turn its attention to this aspect of state conduct.

The book is divided into eleven chapters, detailing, among other topics: the development and use of landmines; global production and trade in landmines; an overview of the medical and social consequences of the use of landmines; country case studies on the devastation resulting from landmine usage; data on the difficulty and expense of mine clearance; and a comprehensive discussion of the international law governing landmines.

As the authors explain in the beginning of the work, one of the reasons for a complete ban on the use of landmines is the transformation in the use of the weapon. Landmines have shifted from being defensive, tactical, battlefield weapons to offensive, theater-wide, strategic weapons. As such, landmines are indiscriminate, delayed-action weapons that cannot distinguish between a soldier and an innocent civilian. Moreover, landmines have, in many instances, become a means to terrorize civilian populations and control and restrict their movements and ability to support themselves. Armed forces have mined wells, farmland, grazing areas, irrigation systems and other areas vital to civilian survival. More sophisticated delivery systems and arming systems have allowed military forces to scatter a greater

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3. G.A. Res. 48/75K, U.N. GAOR, 48th Sess., U.N. Doc. A/RES/48/75 (1994), at 14.

4. *Id.* at 2.

number of mines over extensive areas at what a few years ago would have been an unheard of rate.<sup>5</sup> The authors estimate that some 100 million uncleared landmines contribute to the humanitarian, human rights, development, medical, and ecological disaster that is the landmine crisis. In short, the authors conclude that landmines are “a weapon of mass destruction in slow motion.”<sup>6</sup>

The crisis is truly a global one, according to the authors, with more than 100 million landmines scattered in more than sixty nations, but there is no doubt that it is a crisis that most directly harms those least able to cope with the costs of the crisis, i.e., the nations of the developing world. The worst mine infestations are in Afghanistan, Angola, Cambodia, Iraq (particularly Iraqi Kurdistan); Kuwait, Mozambique, Somalia, Sudan, and parts of the former Yugoslavia (Bosnia, Croatia, and Serbia). Even in those nations where hostilities have officially ceased, the presence of landmines means that the consequences of war will be with the civilian populations of these nations virtually indefinitely. In Cambodia alone, there are more than 30,000 amputees, mostly due to landmines. This is a pattern repeated in virtually all infested nations with hundreds, if not thousands, of people killed or maimed by landmines each month — most civilians. According to medical reports, mine deaths and injuries in the past three decades total in the hundreds of thousands.<sup>7</sup>

Landmines, of course, are produced and sold like any other weapon, and it is in this area in which *Deadly Legacy* makes a significant contribution in painstakingly detailing the sources of production and global trade in landmines. The authors have identified almost 100 companies and government agencies in 48 nations which have manufactured landmines in the past decades. The authors estimate that manufacturers have probably produced an average of between five and ten million antipersonnel landmines per year in recent decades for a global production worth between U.S.\$50 million to U.S.\$200 million annually. Moreover, there is plenty of blame to go around. Production and trade in landmines, until very recently, appear to have been undertaken with great enthusiasm by a variety of nations,

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5. *DEADLY LEGACY*, *supra* note 1, at 3-15.

6. *Id.* at 11.

7. *Id.* at 16-34.

irrespective of their ideological alignment. China, Italy, and the former Soviet Union, according to the authors, were probably the largest producers and exporters of antipersonnel mines, although field reports from mine clearance groups suggest that the United States must have been in the front ranks in the, not-too-distant past. Data obtained by the authors under the Freedom of Information Act reveal that the United States has exported more than 4.3 million antipersonnel mines since 1969, the bulk of these exports taking place before 1983.<sup>8</sup>

In addition, many developing nations are becomingly increasingly active in landmine production and trade, particularly as industrialized nations such as the United States unilaterally ban exports. A recent study by the U.S. Defense Intelligence Agency obtained by the authors under the Freedom of Information Act names China, Egypt, Pakistan, and South Africa as new "ambitious marketers of landmine munitions deeply involved in high technology proliferation."<sup>9</sup> Other nations, according to the author's investigations, that probably rate as significant exporters include Belgium, Chile, Greece, Israel, Portugal, Singapore, Spain, and the former Yugoslavia.

Although this seemingly endless pipeline of supply fuels the landmine crisis, the truly debilitating aspect of the landmine crisis is the fact that once landmines are put into place, the time, cost and danger involved in demining virtually guarantees that a mine will never be removed until it is activated by an unsuspecting and unintended (usually) civilian victim. According to the authors, the ratio of time to plant a traditional mine against the time it takes to lift and disarm it is about 1:100. For modern, scatterable mines delivered by aircraft or artillery at the rate of thousands per minute, it could take demining teams weeks or months to clear mines laid in a single hour. While most mines cost only U.S.\$10 to U.S.\$20, and some sell for less than U.S.\$3, the costs of clearance, including support and logistics costs, are estimated by the authors to be U.S.\$300 to U.S.\$1,000 per mine.<sup>10</sup>

Moreover, despite claims by advocates of continued landmine use, there is no reliable way to make landmines more

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8. *Id.* at 38-46.

9. *Id.* at 9.

10. *Id.* at 73.

detectable or to implant a reliable self-destruct mechanism. In short, the authors contend, there is no "technological fix" for mine clearance. A metal tag attached to a plastic mine would tell experts that an area was mined, but would be of little help in clearing individual mines, which would still be done by prodding with sticks. Despite advance in landmine delivery systems, the only sure way to clear minefields is "prodding," in which an individual combs every inch of territory, poking a prod into the ground until encountering a mine, which is either destroyed in place or disarmed to be removed and destroyed elsewhere. Increasingly, as mines are being produced with no metal parts, they become impossible to detect even with the most sophisticated mine detection equipment. Moreover, even if one were to credit the claims of the manufacturers of mines that include self-destruct mechanisms, claims that, according to the authors, many experts don't believe, it seems unlikely that developing countries, which are now the main users of landmines, would respect a ban that permitted expensive mines with a self-destruct mechanism and banned cheap mines without one.<sup>11</sup>

The medical and social consequence of these latent explosives are enormous. In the case of landmines, in particular, it is impossible to fully grasp the urgency of the international legal arguments for a total ban without appreciating the trauma mines cause. Mines commonly kill or inflict ravaging wounds, usually resulting in traumatic or surgical amputation. Mines drive dirt and bacteria as well as shrapnel up into the tissue, causing rapid spread of infection. Those who survive the initial blast, according to the authors, require antibiotics, large amounts of blood, and extended hospital stays. After discharge from the hospital, amputees require physical therapy and prosthetic devices.<sup>12</sup>

This type of devastating medical problem has implications for all levels of society, particularly in developing countries where scarce resources make even ordinary medical treatment difficult to supply. A landmine victim, however, requires much more than immediate trauma care and physical therapy. In nations where manual labor is often the only means of survival, the consequences of a landmine injury can be complete economic incapacitation. These individuals not only are unable to contrib-

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11. *Id.* at 83.

12. *Id.* at 93.

ute to their own well being, but they place a burden on the whole community for its support. This specter has led many refugees to abandon any hope of returning to their lands even after fighting has ended. This class of permanently displaced rural poor places a long-term strain on the social fabric beyond any immediate trauma caused by the short-term traumas resulting from the injuries.

The authors include a number of case studies to illuminate the concrete impact of the landmines crisis. Of particular note is the case study on Cambodia. As the authors conclude, "few countries exemplify humankind's capacity to inflict cruelty upon itself more than Cambodia."<sup>13</sup> In its recent global landmine survey, the U.S. State Department concludes that "[in] no country in the world have uncleared landmines had such an enormous adverse impact as in Cambodia."<sup>14</sup> The same report concludes that Cambodia is "a textbook case of a country crippled by uncleared landmines."<sup>15</sup> In short, landmines have become one of the greatest deterrents to Cambodia's economic development. The stark conditions in Cambodia provide enormous moral support for the need for controls on landmines.

The authors are again at their best when it comes to transforming the enormous moral and documentary force of their work into a compelling piece of legal advocacy. The book includes a preface by Senator Patrick J. Leahy, chairman of the Foreign Operations Committee of the United States Senate, who was instrumental in establishing the U.S. moratorium on landmine export and who strongly endorses the argumentation of the book. Chapters Eight and Nine undertake the task of setting out the international legal basis for a ban and demonstrating that existing initiatives to ban landmines, including the United Nations 1983 Landmines Protocol,<sup>16</sup> are deeply flawed

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13. *Id.* at 165.

14. U.S. DEP'T OF STATE, HIDDEN KILLERS: THE GLOBAL PROBLEM WITH UNCLEARED LANDMINES 64 (1993).

15. *Id.* at 1.

16. Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices, U.N. Doc. A/Conf. 95/15 and Corr. 1-5, *reprinted in* 19 I.L.M. 1529 (1980) [hereinafter Landmines Protocol]. The Landmines Protocol ("Protocol II"), two other agreements concerning Non-detectable Fragments ("Protocol I"), and Prohibitions or Restrictions on the Use of Incendiary Weapons ("Protocol III") are attached to the U.N. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious and to Have Indis-



and have been routinely ignored by nearly all landmine users.

International law does not currently regulate the production, stockpiling, transfer, or export of landmines. The use of landmines, however, is regulated by the laws of war, specifically the 1983 Landmines Protocol, and by the customary laws of war,<sup>17</sup> particularly those codified in the 1977 Additional Protocol I.<sup>18</sup> As the authors cogently argue, the Landmines Protocol, given the nature of landmine usage, has been a practical failure, and, given the status of international law, a theoretical legal failure as well.

The goal of the Landmines Protocol was to reduce harm to civilians from mine warfare, thus reinforcing fundamental principals of customary international law. The instrument does not, however, ban the use of landmines, but simply restricts their use in a manner designed to comport with international legal guidelines barring deliberate and indiscriminate use of the weapons against civilians. As the authors forcefully show in other parts of the book, however, even nations that are party to the Landmines Protocol do not abide by these restrictions. Armed forces employing landmines in recent conflicts have used them with blatant disregard for any limitations.

Nevertheless, as the authors argue, the problem with the Landmines Protocol is not simply a problem of non-compliance. The fundamental problem is that the very nature of landmines as a modern weapon of warfare makes it impossible for anyone to comply with any restrictions on its use. It is simply a weapon that by its very nature remains latent and indiscriminate in its application and effect. It is this aspect of the authors' argument that most forcefully supports a complete ban on landmines.

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criminate Effects ("Weapons Convention"). *Id.*, reprinted in 19 I.L.M. at 1524. The provisions of the Weapons Convention apply to all three Protocols. *Id.* The Weapons Convention and the Protocols entered into force on December 2, 1983. Thirty-six countries are parties to the Landmines Protocol as of this writing; the United States is not among them, having signed, but not ratified the document.

17. See Human Rights Watch/Arms Project, Memorandum of Law, Landmines in International Law: Why is a Complete Ban Required? (Mar. 4, 1994) (on file with Human Rights Watch). International customary law derives its status as law not by being written down in a formal international agreement or treaty, but by reason of having been followed for a long period of time by a large number of states, and regarded as binding law by them.

18. Text of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts. U.N. Doc. A/32/144, Anns. I and II, Aug. 15, 1977, reprinted in 16 I.L.M. 1391 (1977).

Given their indiscriminate and latent nature, the use of landmines *per se* violates the following provisions of humanitarian law:

- (1) customary and treaty laws protecting civilians from indiscriminate attack;
- (2) customary and treaty laws mandating that parties to a conflict weigh the expected military utility of a particular weapon against the anticipated human toll; and
- (3) treaty laws regarding the protection of the environment.<sup>19</sup>

Because of these factors, the authors conclude the Landmines Protocol fails to conform to customary humanitarian law, particularly as set forth in Articles 51(4) and 35(1) and (2) of Additional Protocol I.<sup>20</sup> In essence, the authors argue for a fundamental transformation in the legal and political thinking regarding landmines. Landmines no longer can be viewed as a combat weapon, the authors maintain, but must be considered as an instrument of indiscriminate terror of the same class as chemical and biological weapons.

Finally, the authors set out a series of recommendations for governments in the form of interim steps toward a total ban on the production, stockpiling, trade, and use of landmines. Included in these measures are that government should:

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19. Customary law, as codified in Article 51(4) of Protocol I, obligates combatants to employ means of warfare capable of distinguishing between civilian and military objectives.

Customary law also has long held that parties to a conflict do not have unlimited discretion in choosing their means of warfare, and that military needs must yield to humanitarian considerations when weapons cause unnecessary suffering. These principles, codified most recently in Article 35(1) and (2) of Protocol I, are generally applied in the form of a balancing test in which the anticipated military utility of a particular weapon must be balanced against the expected humanitarian toll. This proportionality requirement also has been incorporated into Article 51(4) specifically with regard to the protection of civilians which bars attacks which may be expected to cause incidental harm to civilians in excess of the concrete and direct military advantage anticipated.

Finally, although international laws enacted to safeguard the environment have not yet achieved customary law status, they are becoming increasingly accepted internationally. Landmine use is problematic with respect to humanitarian laws protecting the environment under at least two rules codified in Protocol I: Article 35(3) proscribes means of warfare which "are intended or may be expected to cause widespread, long-term and severe damage to the natural environment," and Article 55(1) prohibits means of warfare that "are intended or may be expected to cause damage to the natural environment and thereby prejudice the health or survival of the population."

20. See *supra* note 19.

- adopt unilateral legislation to control landmine production, export and use;
- ratify the Landmines Protocol and actively participate in the United Nations review conference expected in 1995 with the goal of enacting a total ban, ensuring that the conference undertakes a full examination of the Protocol, not a mere fine tuning of its flawed provisions;
- provide more funds for humanitarian mine clearance; establish better training for deminers and better coordination of mine clearing efforts; funding of programs to develop new humanitarian mine clearance technologies; and funding for rehabilitation and medical programs to deal with landmine victims worldwide;
- press for greater transparency regarding production and trade in landmines, particularly the inclusion of landmines in the United Nations Register of Conventional Arms; and
- require domestic mine producers to manufacture and sell only mines that are readily detectable, and permit their own armies to use only such mines.<sup>21</sup>

The power of *Deadly Legacy* lies in its encyclopedic command of the subject matter made possible by the interdisciplinary approach to the difficult and pressing problem of landmine use. The work is not only important in the current debate, but sets a standard for how the arms control movement and the human rights effort can work toward improving a pressing set of problems that still confront the world in a post-cold war world where so-called low intensity conflicts have become all the more prevalent.

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21. See generally *DEADLY LEGACY*, *supra* note 1, at 354-55 (explaining steps needed for reaching total ban on landmines).

INSIDER TRADING: THE LAWS OF EUROPE, THE UNITED STATES AND JAPAN. Edited by Emmanuel Gaillard, Kluwer Law and Taxation Publishers, Dordrecht, The Netherlands, 1992. xviii 466 pp. ISBN 90-6544-529-7.

*Reviewed by James D. Yellen\**

Insider trading<sup>1</sup> outside the United States has only recently become the subject of regulation. This is so despite the fact that the United States has developed case law on insider trading based on statutes passed approximately sixty years ago.<sup>2</sup> Professor Emmanuel Gaillard's recent compilation of foreign and domestic insider trading chapters in his book, *Insider Trading: The Laws of Europe, the United States and Japan*, provides a tremendous service for both international lawyers and United States securities practitioners.<sup>3</sup>

The book is a handy reference guide, as its title suggests, to recent statutory provisions passed throughout Europe and Japan, as well as an effective summary of the insider trading laws of the United States.

The book is efficiently divided into three major sections. Part I includes the international sources of insider trading law throughout Europe.<sup>4</sup> The book starts with separate chapters treating the EC Directive of 1989 and the Council of Europe's Convention of 1989.<sup>5</sup> Professor Gaillard stresses the need for closer cooperation among governmental authorities with the responsibility of overseeing national securities markets. Among EC Member States, cooperation is organized by the 1989 EC Directive, which requires each Member State to designate the administrative authorities competent to monitor insider trading of-

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1. The term "insider trading" generally refers to the wrongful use of material, non-public information related to publicly-traded securities.

2. See The Securities Act of 1933, 15 U.S.C. § 77 *et. seq.* (1988); The Securities Exchange Act of 1934 ("the '34 Act"), 17 C.F.R. § 240 *et seq.* (1975). Interestingly, except for section 16 of the '34 Act, even the securities acts do not expressly deal with the subject of insider trading and its consequences.

3. EMMANUEL GAILLARD, *INSIDER TRADING: THE LAWS OF EUROPE, THE UNITED STATES AND JAPAN* (1992) [hereinafter *INSIDER TRADING*].

4. *Id.* at 5-282.

5. *Id.* at 5-21.

fenses and provides for their mutual cooperation. In addition to the 1989 Directive, the book also reviews the Council of Europe's Convention on Insider Trading of April 20, 1989, effective after ratification.<sup>6</sup> The Convention generally provides for mutual assistance among its members in the exchange of information relating to insider trading.

Additional chapters within Part I then review the individual insider trading laws of each of the European Community nations, plus those of Austria, Finland, Liechtenstein, Norway, Sweden, and Switzerland.<sup>7</sup> This is the book's strongest point. The authors' analyses of the insider trading laws of these eighteen European countries, most of which were only recently enacted, are quite extensive, spanning nearly 250 pages. Each chapter is written by either a professor of law from the subject country, a practitioner in a leading law firm, or jointly by both.

Each country's chapter includes the following: an overview of the law; the definition of insider trading; a review of the country's control mechanisms for insider trading; the statute's provisions against other stock-related infractions in addition to the prohibition of insider trading; a review of international law situations involving foreign or international elements of insider trading; and other stock-related operations to which the country's insider trading statute might also apply.

Part II of the book provides a thorough summary of the laws of the United States and Japan.<sup>8</sup> The book's chapter on U.S. law, written by Joseph T. McLaughlin and M.A. Helen Macfarlane, is particularly extensive and detailed. The authors conclude with praise for increased efforts of the SEC and its international counterparts to pursue insider trading offenders beyond U.S. borders, and note the growth of international cooperation for that purpose.

Part III of the book provides the reader with helpful source

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6. *Id.* at 23-33. As of the book's publication date, the Convention on Insider Trading, ETS No. 130, had been ratified by three states (Norway, The United Kingdom, and Sweden) and signed by one state (Cyprus). According to the book's chapter on the 1989 Convention, at least six other states had already indicated clear intentions to become parties to the Convention. *Id.* at 23 n.1. The Council of Europe, which opened the Convention for signature, has 26 member States and is the main multilateral treaty-making body in Europe. *Id.*

7. *Id.* at 37-282.

8. *Id.* at 285-342.

materials in the form of annexes that otherwise are difficult to retrieve.<sup>9</sup> The annexes include the EC Directive, The Council of Europe's Convention, and the actual statutes as passed and amended in each country previously reviewed, including the United States and Japan.

The book's overall strength lies in the comprehensive breadth of its descriptions of the insider trading laws in twenty different countries. Professor Gaillard has ensured that the respective authors use consistent methodologies and approaches in analyzing the insider trading laws of the country at issue. Three reviews in particular, those of the United States, France, and Japan, stand out as excellently presented.

The same compilation format that provides the book's strength also accounts for the book's only notable detractions. The breadth of coverage at times leaves the reader curious for a deeper or more detailed analysis of a given country's laws. Furthermore, because of the strict deadlines necessary to produce a work from twenty separate authors and just as many countries, one wonders whether, and if so for how long, a particular article contains the most recent decisional or statutory authority on the subject of insider trading. For example, the United Kingdom's Criminal Justice Act of 1993, which received Royal Assent on July 27, 1993, contains new legislation on "insider dealing."<sup>10</sup> Although the Act has replaced the Company Securities (Insider Dealing) Act of 1985 and implements the EC Directive on Insider Trading, the book's chapter on the United Kingdom deals with the new Act only sparingly.

Professor Gaillard sets forth in the book's introduction that the goal of his project is "[t]o unite together the studies by professors of law, government officials, and practicing lawyers from around the world in order to comment on the status of insider trading laws in their respective countries."<sup>11</sup>

Whether that goal is viewed as lofty or plain, Professor Gaillard has attained it. Particularly when considered in light of the increasing globalization or internationalization of the world's se-

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9. *Id.* at 345-457.

10. See Peter King, *New Regime for Insider Dealing*, SOLICITORS JOURNAL 1242-44 (Dec. 1993).

11. INSIDER TRADING, *supra* note 3, at vi.

curities markets, this is a compilation that should be on the shelf of both securities lawyers and international practitioners alike.