



WORLD LAW BULLETIN

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Some highlights of this month's issue:

New Internet Regulation - Australia, Chile, China, S. Korea

Campaign Financing Reform - Greece

Handicapped Children--"Wrongful Birth" - France

WLB Special Attachment **LEGAL RESPONSES TO TERRORISM:**
CANADA - Supreme Court Rules On
Deporting Terrorists Facing Possible Torture

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SPECIAL ATTACHMENT:

Legal Responses to Terrorism: Canada Supreme Court Rules on Deporting Terrorists Facing Possible Torture

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AMERICAS

CHILE--Law Allows Electronic Signatures

On January 15, 2002, the Chilean Congress approved a bill that permits virtual commercial or financial operations through the use of electronic signatures on contracts and invoices, making the physical presence of contracting parties unnecessary. Alvaro Diaz, the Undersecretary of the Economy, said the objective of the new law is to give a person who has made a purchase or a company that sells products “confidence that the contracts concluded over the Internet are legal and valid in the courts.”

The Law will also regulate documents that verify transactions carried out in Chile through electronic means and will allow for the accreditation and certification of electronic signatures of people and companies. The government will prepare a regulation to complement the new Law. (*CNNenEspanol*, Jan. 15, 2002, via http://www.cnnenespanol.com/2002/americas/01/15/chile_transacciones.reut/index.html) (Sandra Sawicki, 7-9819)

MEXICO--Congress Approves Scaled Back Tax Plan

During the final days of December 2001, the Mexican Congress approved a tax plan that is hoped will bring needed revenues into government coffers and strengthen the tax collection system. The current system leaves the country heavily dependent on volatile oil exports. The newly approved plan, however, does not provide for all the reforms advanced earlier in the year by Mexican President Vicente Fox Quesada, which included taxes on food, medicine, and books. Fox’s original tax reforms aimed to raise 120 billion *pesos* (about US\$13.2 billion), but Congress agreed on measures that are expected to bring in about half that much. The plan boosts taxes on soft drinks, cigarettes, alcohol, cellular phone use, and luxury goods such as smoked salmon and fur coats.

Speaking on January 2, 2002, President Fox lauded the limited tax increases as significant steps toward stabilizing the national economy, even as he lamented that they did not go far enough. “This does not satisfy the requirements for a modern reform of the Mexican economy. However it lets us visualize some progress in the year 2002...” (*Los Angeles Times*, Jan. 3, 2002, via <http://www.latimes.com/news/nationworld/world/la-000000640jan03.story?coll=la%2Dheadlines%2Dworld>). A parliamentary leader, Alejandro Zapata Perogordo of the National Action Party (*PAN* in Spanish), stated that the fiscal reform approved by Congress can be further perfected, and it will require analysis of additional changes in the law to combat evasion and corruption in the tax system. He predicted that a series of pending tax laws such as the Fiscal Code of the Federation, the Law of the System of Tax Administration, and the System of Retirement Savings, would have to come under scrutiny soon. (“Parliamentary Leader Admits More Fiscal Reform Changes Needed,” *El Economista*, Jan. 15, 2002, via FBIS.) (Sandra Sawicki, 7-9819)

ASIA

CHINA–New Internet Rules

The Ministry of Information and Technology has issued new rules governing certain Internet service providers (ISPs), requiring that detailed records of users' online activities be kept. According to the *South China Morning Post* (Jan. 18, 2002), the regulations require all ISPs that offer services in what are called "sensitive and strategic sectors," including news and bulletin board services and online forums, to compile the detailed information on users. The records are to include account numbers, addresses, telephone numbers, and the times the service is used. In addition, software must be installed to screen and copy email messages with sensitive material and to stop messages with material considered obscene or subversive from being sent; information on illegal activities by users must be given to the Ministry of Information and Technology, the Ministry of Public Security, and the Bureau for the Protection of State Secrets.

News sites are limited to carrying news from Chinese media sources. ISPs are further required to take steps to protect users' accounts and passwords and to prepare for possible system crashes with backup hardware and software. (CND-Global, at <http://www.cnd.org/Global/02/01/19/010119-1.htm>) (Constance A. Johnson, 7-9829)

CHINA–Population Control Law

The Standing Committee of the National People's Congress adopted the Law of the People's Republic of China on Population and Family Planning on December 29, 2001. The Law will go into effect as of September 1, 2002. It is China's first national level legislation on family planning and basically incorporates current policy and practice (*South China Morning Post*, Jan. 5, 2002, via FBIS).

The Law upholds the late marriage policy and the one-child policy, as well as the policy to allow a second birth under certain conditions (e.g., if both parents are only children, or one or both is from a national minority). Violators of the policy may be subject to a fine to be paid into a fund to cover the social burden of out-of-plan births. The Law also provides for a "national population development plan" and local plans formulated in accordance with it; whether this equates to a centrally determined quota system handed down to lower levels, continuing the old system, is unclear. The Law bans discrimination against, maltreatment, and abandonment of female infants as well as discrimination against the mothers. It also bans the use of ultrasound to detect fetal gender and abortion based on gender bias. (CND-Global, Dec. 30, 2001.) One controversial provision of the Law is the stipulation that all citizens have the right to have a child, for the first time clearly according men that right. Some argue that it may harm women by making it possible for them to incur blame if they refuse to bear a child and be subject to demands for compensation. (*China Daily*, Jan. 8, 2002, via FBIS.) (W. Zeldin, 7-9832)

HONG KONG–Right of Abode

On January 10, 2002, the Court of Final Appeal (CFA) of the Hong Kong Special Administrative Region (HKSAR) concluded a two-year legal battle over the fate of thousands of Mainland immigrants seeking the right of abode in Hong Kong. The claimants asserted their right to residency on the basis of landmark court rulings of January 29, 1999, which accorded broad residency rights to any Mainland Chinese person with parents living in Hong Kong. Those rulings were overturned in June 1999 by a

reinterpretation of the Basic Law (the HKSAR “mini-Constitution”) issued by the National People’s Congress Standing Committee (NPCSC) of the People’s Republic of China . (See WLB2000.01, 2000.08, 2001.08.) In essence, in its new ruling, the CFA had to decide which claimants, appealing on various grounds, should not be affected by the reinterpretation and should be able to have their residency status verified in accordance with the January 1999 rulings. Also at stake in the process was the judicial independence of the HKSAR; there was concern that the rule of law would be eroded if the Hong Kong Government felt it had to again seek a reinterpretation from Beijing. (*South China Morning Post*, Jan. 10, 2002, via FBIS.)

Such a step will be unnecessary. The Court ruled that only about 500 of the more than 5,000 claimants would be entitled to permanent residency; the others must be deported to mainland China by the March 31, 2002, deadline. The main beneficiaries of the judgment are claimants who had received letters from the Hong Kong Legal Aid Department stating that it was unnecessary for them to join in the proceedings that culminated in the January 1999 rulings. Lawyers for the unsuccessful claimants plan to petition the United Nations Secretary-General, Kofi Annan, to urge the Hong Kong government to grant residency status to the claimants on the grounds that they had been unfairly deprived of their human rights. Although the CFA may have resolved certain gray areas left unresolved by the NPCSC reinterpretation, how the judgment applies to individuals who were not a party to the proceedings remains open to dispute, with the possibility of future Immigration Department rulings being appealed against, so that the legal battle over right of abode is not entirely over. (*Hong Kong iMail*, Jan. 11, 2002, via FBIS; *Agence France Presse*, Jan. 11 & 22, 2002, via LEXIS/NEXIS) (W. Zeldin, 7-9832)

KAZAKHSTAN--Mandatory Registration of Religious Organizations

Amendments to the Law on Freedom of Religion of 1992 were enacted by the *Mazhilis* (the Parliament) of the Republic of Kazakhstan on January 17, 2002. The amendments create a strong system of government supervision over religious activities in the country. According to the amendments, all missionary activities are outlawed and the existing religious organizations will undergo mandatory state registration conducted by the Ministry of Justice. The organizations must submit founding documents, including a description of major theological principles recognized by the followers, to the State authorities for approval. The new law does not provide for appeal to the courts of any denial of registration. All existing religious organizations are divided into two categories-- traditional, which includes Islam, Buddhism, and Russian Orthodox Christianity, and unconventional religious denominations, a category that includes all other religious organizations and that is subject to more government scrutiny. (*Kazakh Information Agency*, Jan. 17, 2002, via <http://site.securities.com>) (Peter Roudik, 7-9861)

KOREA, SOUTH--Illegal Copying of Online Digital Contents, Spam

In December 2001, the National Assembly passed a law on the development of the online digital contents industry slated to go into effect on July 15, 2002. The law provides that anyone who copies or transmits online contents without proper authorization will face up to one year of imprisonment or fines of up to 20 million *won* (US\$15,220). It also stipulates a five-year ban on any act that encroaches on the business interests of digital content manufacturers. Digital content providers will be permitted to sue unauthorized copiers for compensation up to five years after the date of the content creation. (*Yonhap*, Jan. 16, 2002, via FBIS.)

On January 17, 2002, the Ministry of Information and Communication issued regulations tightening restrictions on unsolicited e-mail, or “spam.” The new measures require senders of electronic ads to add a feature allowing receivers to reject the mail and to specify in the title the type of message being sent—“advertisement” for commercial ads, “information” for non-profit data, and “adult advertisement” for sexually oriented material. Failure to add the feature will incur a five million *won* fine (US\$3,762). The regulation applies not only to e-mail, but also to short messaging services sent through wire, wireless, and fax media. With the help of the Government-led Information Dispute Arbitration Committee, individuals will be permitted to claim mental and physical compensation for damages incurred through unsolicited e-mail. The Ministry also plans to press for revision of the Telecommunications Network Usage and Information Security Law in the near future to help curb the spread of spam messages. (*Yonhap*, Jan. 21, 2002, via FBIS; *The Korea Herald*, Jan. 18, 2002, via LEXIS/NEXIS.)
(W. Zeldin, 7-9832)

MONGOLIA—Legislative Developments

Bills on management and finances for the budget office and regulations governing the administrative office of the Parliament were considered in the autumn session of the legislature, which lasted from November 10, 2001, to January 12, 2002. Members will work in their electoral districts until the Mongolian New Year holiday, February 14, 2002. Land reform, the Criminal Code, and the Civil Code will be discussed in the spring parliamentary session, scheduled to begin April 5.

Efforts are underway to strengthen parliamentary governance in the country. The Executive Director of the Canadian Parliament Center visited Mongolia in January and conferred with the Vice-Speaker on designing a strategic plan of parliamentary development. Training workshops and a conference on the subject were held at which detailed recommendations were considered. (*Montsame News Agency*, Jan. 14 & 15, 2002, <http://web.mol.mn/~montsame/>)
(Constance A. Johnson, 7-9829)

TAIWAN—New Merger Law

Taiwan passed an Enterprises Mergers and Acquisitions Act on January 15, 2002, that is predicted to generate a trend in mergers within traditional industries in the next few months. Mergers and acquisitions deals that meet government criteria will be exempt from securities trading tax, business income tax, and stamp tax under this new legislation. In addition, companies will be allowed to use group share exchanges in the merger and acquisition process; previously the law required negotiations for the purchase of shares with each shareholder. A company can now approach managers of an enterprise it wishes to acquire and request that a shareholders meeting be held; a two-thirds vote would be binding on all shareholders.

The law is also expected to encourage activities by foreign corporations as it establishes a “level playing field,” with the same requirements for domestic and foreign businesses interested in the Taiwan market. (*Taipei Times*, Jan. 18, 2002; *Taiwan News*, Jan. 17, 2002; *China Post*, Jan. 18, 2002.)
(Constance A. Johnson, 7-9829)

TAIWAN—Gender Equality Law

The Legislative *Yuan* passed the Gender Equality Employment Law on December 21, 2001; it was promulgated on January 16, 2002; and it becomes effective as of March 8, 2002. Twelve years in the

making and hailed as a milestone, the Law is designed to provide female employees with wide-ranging workplace protections. Its six chapters cover general principles, prohibition of gender discrimination, prevention and handling of sexual harassment, measures to promote equal employment, complaint and remedy procedures, and penalties [GLIN].

The Law provides that employees should be treated equally in terms of employment opportunities, salary, promotion, and assignments, among others. Among the measures to promote equal employment are expanded maternity privileges, e.g., provision of up to two years of unpaid leave for working mothers with a child under three years old (provided other conditions are met) and national health insurance benefits with three-year deferrable premium payments while on leave, or alternatively, rearrangement or reduction of work hours. Firms with more than 250 workers must provide childcare facilities. (*Taipei Journal*, Jan. 4, 2002, via FBIS).

(W. Zeldin, 7-9832)

EUROPE

BELGIUM--Restructuring of the Bar

A new law has abolished the existing Belgian Bar and replaced it with two separate bars, divided along linguistic lines (Law of July 4, 2001, *Moniteur Belge*, July 25, 2001). The two new bars are the French and German-speaking Bar and the Flemish-speaking Bar. The French and German-speaking Bar incorporates all specifically enumerated French-speaking local bars, including the French-speaking Bar of Brussels, and the only German-speaking bar, Eupen. Similarly, the Flemish-speaking Bar incorporates all specifically enumerated Flemish-speaking local bars, including the Flemish-speaking Bar of Brussels. Both bars have legal personality and are located in Brussels. The structure of the individual bars and their organs and committees are virtually the same as before; the change consists of the split along linguistic lines. These changes are incorporated into Book III of the Judiciary Code, which has been largely rewritten. The change does not affect the Bar of the Court of Cassation, regulated in separate articles of the Judiciary Code and consisting of 20 members from each bar.

(George E. Glos, 7-9849)

BULGARIA--New Legal Status for Foreigners

A new Statute on Asylum and Refugees has been approved by the Bulgarian Government. The Statute introduces four new forms of protection of foreigners in Bulgaria: asylum seekers, refugees, humanitarian status holders, and persons under temporary protection. It also regulates their legal status, and determines the status-granting procedures. It is expected that the Statute will bring international legal instruments into Bulgarian national legislation.

According to the Statute, asylum is granted by the President of Bulgaria to persons persecuted in their countries for their beliefs or for their activities in defense of internationally recognized rights and freedoms. Refugee and humanitarian status will be granted by the Chairman of the State Agency for Refugees, a government entity responsible for the implementation of the national migration policy, following a prescribed procedure. Aliens who have a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group, or political opinion, who are outside the country of their nationality or, if stateless, outside the country of their habitual residence, and for these reasons are

unable or unwilling to avail themselves of the protection of that country or to return to it, are considered refugees. Humanitarian status is granted to persons forced to leave their countries because their life, security, or freedoms have been threatened or because of violence in the case of armed conflicts, as well as because of threat of torture or other forms of inhuman or degrading treatment. Humanitarian status will be granted temporarily until the reasons justifying its granting cease to exist. Temporary protection is granted by the Chairman of Government on the proposal of the Chairman of the State Agency for Refugees in the case of entry of large groups of people forced to flee their country due to armed conflicts, civil war, foreign aggression, large scale violations of human rights, and violence in the home country or in a region of that country. (*Durzhaven Vestnik* (Bulgarian official gazette), No. 113 (2001) at 14, <http://www.lex.bg>) (Peter Roudik, 7-9861)

FRANCE--“Wrongful Birth”

On January 10, 2002, the National Assembly almost unanimously approved a bill effectively overturning a ruling rendered on November 17, 2000, by the *Cour de cassation*, France’s highest judicial court (see WLB 2001-02). The ruling, known as the Perruche ruling, provides for compensation to handicapped children when a medical error has denied the mother the choice of an abortion. It had caused an uproar among doctors, jurists, and disabled people, to the medical fault.

A week before the bill was passed, French doctors had begun a strike, refusing to carry out routine ultrasound scans on pregnant women. Under the bill, “no one, even those born handicapped, can sue for the sole fact of their birth.” As a result, handicapped children will not be able to seek damages simply because they exited from the womb and were not aborted. The bill, however, further states that a person born with a handicap resulting from a medical error may sue for damages when the medical error has either directly caused the handicap, made it worse, or did not permit the family to take the measures that would have attenuated it. Parents would still be able to seek compensation to benefit their handicapped child when the doctor(s) committed a blatant error or failed to diagnose a grave handicap during the pregnancy of the mother. Compensation would correspond to the expenses resulting from the handicap and incurred throughout the life of the individual, minus the money and services provided by social services. The bill will be incorporated into the new bill on the rights of patients, which is scheduled for review before the Senate on January 22, 2002. (“Les députés ont voté la fin de la jurisprudence Perruche,” *Le Monde*, Jan. 10, 2002, <http://www.lemonde.fr/>) (Nicole Atwill, 7-2832)

GREECE--Campaign Financing Reform

On January 4, 2002, the Greek government, amidst political controversy, announced its plan to amend the basic law on campaign financing. The old statute that was enacted in 1984 underwent a major transformation in 1996, with some additional changes in 2000. In 2001, the 1975 Constitution was amended and new provisions on campaign financing were introduced. The current reform aims to achieve the following goals: a) more transparency in the area of private and public financing of political parties and candidates for Parliament; b) more efficient and in-depth audit control of campaign funds; and c) deterrence through the introduction of stiff penalties for those who violate the new provisions.

Funding will continue to be State and private as before. However, State funding will be reduced from the current 0.0017% to 0.00123% of the budget. Private funding from businesses will be completely banned. Only individuals will continue to be allowed to make donations, not to exceed 300 *euros* (about

US\$266) per person. The recipient party would be obliged to identify by name the individual who made the donation. Another significant innovation is the introduction of accounting books for parties, much like the ones kept by businesses. In order to achieve more transparency, the new rules prescribe that 80% of the parties' income and expenditures must move through bank accounts. The amendments limit the amount of access to the mass media by candidates and parties during the pre-election campaign. Finally, following the constitutional mandate, the composition of the Parliamentary Review Committee, which performs enforcement duties, will include judges from the highest courts in addition to Members of Parliament. (Embassy of Greece, Press Office, Jan. 4, 2002, <http://www.greekembassy.org/press>) (Theresa Papademetriou, 7-9857)

PORTUGAL--Rulings on Abortions

On January 18, 2002, a Portuguese nurse who performed illegal abortions in her home was convicted and sentenced to eight and one-half years in prison. Maria do Ceu Ribeiro, 46, was found guilty of performing abortions, falsifying prescriptions, administering medicine illegally, and earning money through illegal means. The cases of forty-one other women were adjudicated at the same time; 17 were accused of having illegal abortions and 24 of being members in a network promoting abortions. The judgments took place in the small northern city of Maia, in a tennis stadium. Ribeiro's agenda was entered into evidence by the prosecutor, who stated that Ribeiro had performed over 100 abortions. He requested a sentence of 12 years in prison, but the court settled on a shorter term because "Ribeiro was helping other women." Sixteen of the women on trial were absolved, and one was condemned to four months in jail or a fine of US\$105.

As the first case of its type in the European Union, it became front page news in many European newspapers. The sentence was handed down despite international protests that accused Portugal of maintaining archaic laws. Hundreds of abortion rights activists traveled to Maia to hear the verdict. Abortion is banned in Portugal, a mostly Catholic country, except in cases of rape or for strictly defined medical reasons. It is believed that thousands of Portuguese women terminate their pregnancies clandestinely or travel to neighboring Spain to have abortions there. (*BBC Mundo*, Jan. 18, 2002, via http://news.bbc.co.uk/hi/spanish/news/newsid_1767000/1767763.html) (Sandra Sawicki, 7-9819)

RUSSIA--New Election Rules

The Constitutional Court of the Russian Federation declared a number of clauses in the electoral law unconstitutional and established that elections can be overturned in the future if a candidate has been unlawfully removed or denied registration as a candidate. Under current legislation, which follows the principle that the right of one person to run for election should not prevail over the right of several thousand to cast their vote, election results can be annulled only if procedural violations are so extensive that the "will of the electorate could no longer be properly discerned." Because it was almost impossible to prove that, the courts had refused to establish the impact of procedural violations on the course of an election and on the true expression of the will of the electorate.

The case adjudicated by the Constitutional Court arose following a complaint by an individual whom a district electoral commission in one of the Russian provinces refused to register as a candidate to the State Duma (national legislature) in a single-seat constituency. The refusal was overturned by the regional court, and the plaintiff then asked the same court to annul the results of the election in the constituency. The court

rejected this petition, citing the legal provisions mentioned above. In his petition to the Constitutional Court, the plaintiff argued the constitutionality of these provisions. In addition to the recognition of these provisions as unconstitutional, the Constitutional Court stated that the plaintiff is entitled to apply to a lower court to remedy the breach of his rights. It is expected that this ruling will give more protection to potential candidates, and the authorities will now find it harder to get rid of “inconvenient” candidates, a common practice in the current Russian electoral process. (Ruling No. 1-P, Jan. 15, 2002, <http://ks.rfnet.ru/> (official web site of the RF Constitutional Court).)
(Peter Roudik, 7-9861)

RUSSIA--Restrictions on Foreign Involvement in Broadcasting Organizations

The State *Duma* (legislature) of the Russian Federation passed the Federal Law on Amendments to the Law of the Russian Federation on Mass Media, aimed at restricting the involvement of foreign persons in establishing broadcasting organizations in Russia. The Law, which was introduced by the Duma’s Information Policy Committee, states that foreign legal entities or Russian legal entities with foreign involvement are subject to restrictions in setting up broadcasting organizations if their share in the charter capital amounts to 50% or more. This rule covers citizens of the Russian Federation with dual citizenship as well as foreign individuals and those without citizenship.

The amendment does not cover the founders of television and video channels who registered their channels before the existing federal law came into force or legal entities that were created and that started television broadcasting before the law entered into force. (ITAR-TASS news agency, Moscow, in Russian, Dec. 20, 2001, at www.ntv.ru)
(Peter Roudik, 7-9861)

UKRAINE--Prevention of Money Laundering

On January 1, 2002, Ukraine initiated a number of measures designed to tighten control over all financial transactions defined as large or suspicious under Ukrainian law. These measures were prescribed by a Decree of the Ukrainian President signed in December 2001 under pressure from the United States to step up efforts to combat money laundering. The Decree is a preliminary act that will remain in effect until the legislature enacts an assets control law, expected later this year.

Under the terms of the Decree, financial institutions have the primary responsibility for identifying transactions to be reported to a government monitoring agency being established within the Finance Ministry. Large transactions include any currency movement in excess of 20,000 *euros* (about US\$17,730). Transactions involving amounts between 10,000 and 20,000 *euros* are considered suspicious. The Decree requires the tracking of transactions that involve amounts of money that appear to exceed the officially declared financial capabilities of the parties involved in the transaction and vigilance in efforts to identify money belonging to international terrorists. According to press reports, the United States requests that Ukrainian authorities close more than 20 bank accounts allegedly owned by or otherwise connected to international terrorists. (*Kyiv Post*, Jan. 3, 2002, via <http://www.sputnikmedia.net>)
(Peter Roudik, 7-9861)

UNITED KINGDOM--Conviction for Defacing US Flag Overturned

A Divisional Court of the Queen’s Bench in London has allowed an appeal against conviction under the Public Order Act 1986 of a claimant who defaced the flag of the United States at a US Air Force base

in Feltwell, England. The alleged offense was committed during a protest against the use of weapons of mass destruction and against American military policy, including the national missile defense system. The flag was defaced by putting a stripe across the stars and by writing the words “Stop Star Wars” across the stripes. The claimant stood upon the flag, and American service personnel regarded her actions as a desecration of the US flag.

The High Court found that in convicting the claimant the district court had given insufficient weight to a presumption arising under the European Convention on Human Rights, article 10, which guarantees the freedom of expression unless a restriction on the freedom is strictly necessary. It went on to hold that the conviction was incompatible with the article. Under the Human Rights Act 1998, the United Kingdom has incorporated the provisions of the Convention into domestic law. The claimant had submitted that flag denigration is a renowned form of protest and has been afforded protection in other jurisdictions, including the United States in *Texas v. Johnson*, 491 US 397 (1989). (*Percy v. Director of Public Prosecutions*, *The Times*, Jan. 21, 2002.)

(Kersi B. Shroff, 7-7850)

UNITED KINGDOM--Final Claims for Compensation of Nazi Victims

Under a scheme launched in March 1999 to compensate victims of Nazi crimes, applicants have until March 31, 2002, to submit their claims to the Enemy Property Claims Assessment Panel in London. Thus far the Panel has received and assessed 1,078 claims from across the world and has paid out more than £7 million. Under the Trading with the Enemy Act 1939, the government confiscated property held in Britain by citizens of countries with which it was at war. Countries occupied by an enemy also were considered enemies. After the war, legislation was enacted to authorize the realization of enemy property and for the distribution of the proceeds. Some *ex gratia* payments were also made to victims of Nazi persecution.

The current scheme is based on the recognition that at the time enemy property was confiscated, it was impossible to differentiate between genuine enemies and their victims and that some of the property belonged to victims of Nazi persecution. For further information on the topic, see Law Library Report to Congress on Restitution of Property of Victims of Nazi Crimes (1999). (Dept. Of Trade, *Hewitt Invites Final Compensation Claims for Nazi Victims*, Press Release, Jan. 16, 2002; <http://www.enemyproperty.gov.uk>)

(Kersi Shroff, 7-7850)

NEAR EAST

ISRAEL--Prevention of Stalking

The Prevention of Stalking Law, 5762-2001 was passed by the *Knesset* (Israel’s parliament) on October 16, 2001. The Law’s stated objective is the protection of peaceful life, privacy, liberty, and the person from harm inflicted by any other person by stalking or physical force. The Law defines stalking as a repeated or suspected repeated harassment of another person in any way including by means of surveillance, invasion of privacy, threats, contact either orally or in writing, or by causing damage to the victim’s property, reputation, or freedom of movement. The explanatory notes for the bill state that most victims of stalking are women harassed on the basis of present, past, or imaginary relationships. The Law

applies to all types of stalking, and is not restricted to those arising from relationships within the family. The Law authorizes circuit, family, and juvenile courts to issue injunctions against stalking of persons and order for forfeiture of weapons against people suspected of stalking. (<http://www.knesset.gov.il>) (Ruth Levush, 7-9847)

SOUTH PACIFIC

AUSTRALIA--Internet Gambling Ban

On January 11, 2002, the Australian Broadcasting Authority (ABA) began accepting complaints about online access to “prohibited Internet gambling content.” The procedure was mandated by the Interactive Gambling Act 2001, which went into force on July 11, 2001. The Act prohibits Internet service providers from providing access to a set of interactive gambling activities and requires the Internet Industry Association to develop a code of practice for the interactive gambling industry. On December 13, 2001, the ABA approved the code. Using the same approach to sites outside Australia as that set out in the Broadcasting Services Amendment (Online Services) Act 1999, which focuses on “offensive” matter such as pornography, the code requires Internet service providers to offer Internet content filtering software to their subscribers. Internet service providers are not responsible for identifying sites with prohibited content; that responsibility belongs to users to notify the ABA through their complaints. (Interactive Gambling Act 2001, No. 84, at <http://www.austlii.edu.au/au/legis/cth/>; Australian Broadcasting Authority, Internet Gambling, at <http://www.aba.gov.au/internet/gambling/index.htm>)

(D. DeGlopper, 7-9831)

INTERNATIONAL LAW & ORGANIZATIONS

BRAZIL/RUSSIA--Strategic Partnership

During an official visit to Russia in mid-January 2002, Brazilian President Fernando Henrique Cardoso held talks with his Russian counterpart, Vladimir Putin. The main result was the signing of a joint bilateral statement on countering international terrorism and organized crime. The presidents reaffirmed their resolve to fight terrorism to the end. In addition, the leaders came out in favor of retaining the ABM Treaty and urged countries that have not yet ratified the Comprehensive Nuclear Test Ban Treaty to do so with dispatch.

It was announced that Brazil supports Russia’s drive to join the World Trade Organization. The two sides promised to discuss coordinating agricultural policy during the new round of trade talks. Moscow described Brazil as a worthy candidate for the UN Security Council, should it be expanded. In the field of military-technical cooperation, the Russian and Brazilian chief executives agreed to sign a government memorandum on questions of cooperation in the area of high technology in the near future. (“Russia-Brazil Antiterrorism Treaty ‘Main Result’ of Cardoso’s ‘Milestone’ Visit,” *Moscow Kommersant*, Jan. 15, 2002, via FBIS)

(Sandra Sawicki, 7-9819)

JAPAN/SOUTH KOREA–Extradition Treaty

Japan and the Republic of Korea initiated a draft agreement of an extradition treaty on January 17,

2002. Officials hope that the treaty will be formally signed when Japanese Prime Minister Junichiro Koizumi visits South Korea, most likely in March. The two sides believe that the treaty will help law enforcement authorities combat cross-border crimes and international terrorism.

The draft treaty targets the extradition of criminal suspects who will be subject to the death penalty or to prison terms of at least one year or to life imprisonment. It excludes persons liable to be politically persecuted in the other country. Flaws in the judicial procedures of one treaty partner (e.g., absentee trials) are grounds for the other partner to refuse to comply with an extradition request. (*Kyodo*, Jan. 24, 2002; *Yonhap*, Jan. 24, 2002, via FBIS.)
(W. Zeldin, 7-9832)

MEXICO/PANAMA–Free Trade Treaty Near

Meliton Arrocha, Vice Minister of Foreign Trade of Panama, stated on January 16, 2002, that his country will focus on securing a Free Trade Treaty with Mexico in the first trimester of 2002 and will then move on to forming similar agreements with the rest of Central America. He stated that the treaties will facilitate the attraction of foreign investors because Panama will offer them a market with millions of consumers. Discussions on a free trade agreement between Mexico and Panama stalled in November 1996, under the governments of then Presidents Ernesto Zedillo (Mexico) and Ernesto Perez Balladares (Panama), but the current heads of the two nations (President Fox and Panamanian chief executive Mireya Moscoso, respectively) ordered a renewal of talks in June of last year. (*El Universal*, Mexico City, Jan. 16, 2002, via http://www.eluniversal.com.mx/pls/impreso/version_imprimir?id_nota=44234&tabla=notas)
(Sandra Sawicki, 7-9819)

UKRAINE/US--Trade Dispute

On November 10, 2001, Ukraine placed a temporary ban on poultry imports from the United States, citing the use of antibiotics in the product, a practice that is illegal under Ukrainian veterinary law. Some analysts say the timing of the ban on US poultry imports, which reached 69 tons last year according to Reuters (*see planetark, infra*), seemed to be linked to coincide with US sanctions against Ukraine for its rampant CD piracy (“Ukrainian Minister Denies US Poultry Ban is Political” & “Trade War Looms Between Ukraine and USA,” BBC Monitoring Services-U.K., Jan. 28, 2002, via <http://global.archive.ft.com>; *see* <http://www.rferl.org/nca/features/2002/01/25012002103723.asp>). On January 28, 2002, Petro Verbytsky, head of Ukraine's Veterinary Inspectorate, said that now imports might be allowed to go forward again, but only from US farms where fodder does not contain antibiotics. In 2000, Ukraine banned beef imports from 12 European nations, because of fears of "mad cow" disease. ([Http://www.planetark.org/avantgo/dailynewstory.ctm?newsid=14269](http://www.planetark.org/avantgo/dailynewstory.ctm?newsid=14269), visited Jan. 29, 2002.)
(Natalie Gawdiak, 7-9838)

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Recent Publications from Great Britain Obtainable from the Law Library

EXPORT CONTROL BILL. HL Bill 20. Jan. 8, 2001.

The Bill represents the Government's efforts to implement the Scott Report (a report that exposed limitations in the system of arms sales and made subsequent recommendations) and creates a new legislative framework for strategic export controls and export controls on cultural objects. The Bill includes powers to impose controls on various UK exports, specifically technology and technical assistance; the prescription of licensing procedures on controlled exports; and the application of measures that will enforce EU legislation on controls on "dual use" items, exports with a civil and potential military application. Additionally, the Bill includes provisions on parliamentary scrutiny of secondary legislation made under the Bill and on the purposes for which an order imposing export, transfer, trade, or technical assistance controls may be made.

FOOTBALL DISORDER (AMENDMENT) BILL. Dec. 2001.

Prior to the year 2000, magistrates had a range of options to limit violence at domestic games under legislation such as the Public Order Act of 1996 and the Football Offences Act of 1991. The Football (Offences and Disorder) Act of 1999 gave them the power to issue international banning orders for football-related offenses. Following considerable violence surrounding the Euro 2000 games, the Home Secretary announced emergency Government action to address football "hooliganism." The Football (Disorder) Act 2000 came into effect on August 28, 2000. The present Bill merges previous domestic Orders to cover all domestic and international bans and provides that the surrendering of an individual's passport during specified periods is a mandatory condition of a banning order. The Bill also allows the courts to impose banning orders on individuals who have not been convicted of a football-related offense (or, in fact any offense); however, the courts must believe that the individual has caused or contributed to violence or disorder in the UK or elsewhere and that a banning order would help prevent violence or disorder at football games.

House of Commons Library. THE PRIVATE FINANCE INITIATIVE. Research Paper 01/117. Dec. 18, 2001.

The Private Finance Initiative (PFI) is a form of public-private partnership. PFI enables public sector purchases of private sector capital items and the extension of contracting-out, where public services are contracted from the private sector. The difference between privatization and PFI is that the public sector retains a substantial role in PFI projects, while the private sector provides the capital assets and the services and arranges the finances for the project. This paper examines the origins of PFI and expenditures on PFI projects. Proponents argue that PFI is an improved form of public procurement that yields efficiency, savings, and value, while opponents cite inherent risks such as higher interest rates and lack of persuasive evidence of service and monetary value.

POLICING A NEW CENTURY: A BLUEPRINT FOR REFORM. Cm. 5326. Dec. 2001.

In the context of the rising need for public security and protection and the increased number of support staff substituting for trained police officers, this policy paper initiates a discussion of police reform legislation and concentrates on aspects of reform that directly affect the police, specifically the fundamental inability to effectively address the current wave of anti-social behavior and criminality that is affecting a growing proportion of the public. The report contains recommendations for all levels, including Ministers, chief constables, and “beat constables,” on mandatory sentencing requirements, the paring down of the bureaucracy, and the reassigning of tasks that will enable more constables “...to do their real job more effectively.”

Secretary of State for Defense. MINISTRY OF DEFENSE PERFORMANCE REPORT 2000/2001. Cm.5290. Nov. 2001.

This report details the targeted performance specified in the Public Service Agreement (PSA) for 1999-2000. The targets that have not been met are the reduction of sick days lost by civilian staff and reduction of the number of personnel in the Armed Forces to effectively carry out specific tasks. These targets have been incorporated into the a new PSA, along with a detailed and focused commitment to achieving the targeted goals.

Secretary of State for the Home Department. CONTROL OF IMMIGRATION: 2000 STATISTICS. Cm. 5315. Nov. 2001.

This report details the immigration process from pre-entry to acceptance, deportation, and appeal. The net migration into the UK in 1998 was 169,000, and in 1999, the last year for which data is available, it was 180,000. Work permit holders, spouses required to serve a probationary year, and students were the largest categories of immigrants. The largest number of asylum requests were from Afghanistan, Iran, Iraq, Sri Lanka and Yemen. The majority of deportations were either at the point of entry or were of asylum applicants who had entered illegally.

----- CRIMINAL STATISTICS ENGLAND AND WALES 2000. Cm. 5312. Dec. 2001.

This report covers statistics relating to crime for 2000-2001. It includes the Abstract of Police Returns presented to Parliament in accordance with the Police Act of 1996. The statistics focus on criminal offenses recorded by 43 police forces in England and Wales and on offenses dealt with by formal police cautions, warnings, reprimands and criminal court proceedings. There were 5.2 million notifiable offenses recorded by the police during the report period. This represents a drop of 2.5% over 1999-2000. Property crimes comprised 82% of crimes committed, and violent crimes amounted to 12% of the current total, with the remaining 6% classed as other offenses. Offenses in which firearms were reported to have been used remained at the previous year’s rate of 0.3%.

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

by Theresa Papademetriou, Senior Legal Specialist, Western Law Division*

Draft Directive on Environmental Liability¹

In order to implement the “polluter pays principle,” which is one of the fundamental principles of environmental policy of the European Union, the European Commission recently adopted a Directive on Environmental Liability. The proposal covers “risky or potentially risky” activities, such as those releasing heavy metals into water or into the air, installations producing dangerous chemicals, landfill sites, and incineration plants. The Directive places the burden on operators of such activities to assume the costs of preventing or repairing any environmental damage caused. Operators may also be held liable for the expenses necessary to prevent or restore bio-diversity damage, should they be found negligent. There are a number of exemptions and defenses to the basic rule. For example, an exception is made in the case of emissions that have been authorized or activities and emissions that were believed to be environmentally safe at the time they occurred. The Directive gives the right to request that the competent authorities take action and to challenge such actions (or lack of action) to public interest groups, such as consumer advocates and persons who show sufficient interest.

European Union Contemplates Possible Action Over US Decision Imposing Protective Duties on Uranium²

The recent decision of the United States International Trade Commission (ITC) to impose definitive duties on exports of enriched uranium from certain Member States of the European Union was met with concern by the Trade Directorate-General of the European Commission. According to the Trade Commissioner, such a decision, once implemented, will adversely affect EU exports worth US\$500 million. Consequently, the EU has reserved its rights for possible action before the WTO. The issue arose in December 2000, when the Department of Commerce began an anti-dumping and countervailing duty investigation against imports of uranium from France, Germany, the Netherlands, and the United Kingdom. A complaint was also filed by the US Enrichment Company. The Department of Commerce issued its definitive findings on December 4, 2001. The EU and the Member States involved have cooperated with the US authorities in an effort to refute the arguments advanced.

Two Proposals on Taxation and Customs³

On January 28, 2002, the European Commission, in its effort to assist Member States and candidate countries to cooperate more effectively to fight tax and customs fraud, adopted two decisions. They introduce two new programs, “Fiscalis 2007” and “Customs 2007,” which will replace the ones that are due to expire

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¹ <http://europa.eu.int/rapidstart/cgi/gtxt=gt&doc=IP/02/127/0/RAPID&lg=EN&display=>

² <http://europa.eu.int/rapidstart/cgi/gtxt=gt&doc=IP/02/126/0/RAPID&lg=EN&display=>

³ <http://europa.eu.int/rapidstart/cgi/gtxt=gt&doc=IP/02/144/0/RAPID&lg=EN&display=>

at the end of this year. These programs provide for information exchange between national administrations, training seminars for tax and customs authorities, and cooperation in investigations undertaken by tax and customs authorities. The cost will be shared by the participating countries and the EU budget.

End-of-Life Vehicles and United Kingdom⁴

Implementation of the End-of-Life Vehicle Directive has not been without hurdles in some Member States. The Directive, whose primary goal is to prevent waste, defines an end-of-life vehicle as any type of vehicle that is at the end of its usefulness. It imposes a number of obligations on those who manufacture vehicles and other related material and equipment, including the following: a) limiting the use of hazardous substances when designing vehicles; b) designing and producing vehicles that facilitate the dismantling, re-use, recovery, and recycling of end-of-life vehicles; and c) increasing the use of recycled materials in the manufacturing of vehicles. Two of its basic principles are the “free-take back,” under which the last holder and/or owner may dispose of the vehicle free of charge due to the vehicle’s having no or a negative market value, and the provision that the producers must bear all or a significant part of the cost incurred.

The approach of Directive’s April 2002 implementation deadline has raised a number of concerns in the United Kingdom. One major complaint raised by the local councils and opposition Members of Parliament is that the Government has not announced how the additional expenses will be met and who will carry them. Meanwhile, the Department of Trade and Industry is reviewing a number of options, such as charging the last owner of the car, imposing a tax on new cars, or requiring manufacturers to pay. Another problem is the increased number of abandoned and burnt-out vehicles, which is expected to rise after April.

Conclusion of Negotiations for Association Agreements between EU and Algeria and Lebanon⁵

The European Union recently concluded negotiations on Association Agreements between Algeria and Lebanon and the European Union.

Draft Directive on the Safety of Third Countries Aircraft⁶

This Directive applies to third-country aircraft that land at airports located in the Member States. State-owned and light aircraft are exempted from its scope. The proposal aims to improve the safety of aviation by ensuring that its three objectives are met. These are: a) to collect and disseminate information in order to decide what measures are required to ensure the safety of the travelers and those on the ground; b) to inspect third-country aircraft and their crew when there is reasonable suspicion that international standards are not met; and c) to ensure that appropriate measures to rectify identified problems are proposed and implemented. When noncompliance with international safety standards is hazardous, the competent authorities of the Member States have the right to ground the aircraft until the problem is corrected.

⁴ [Http://www.telegraph.co.uk/](http://www.telegraph.co.uk/), Jan. 28, 2002.

⁵ [Http://europa.eu.in/comm/external_relations/w3/3/.htm#sf](http://europa.eu.in/comm/external_relations/w3/3/.htm#sf)

⁶ COM(2002) 8 final (Brussels, 1/14/2002).

LEGAL RESPONSES TO TERRORISM: CANADA

Supreme Court Rules On Deporting Terrorists Facing Possible Torture*

The Supreme Court of Canada recently ruled that constitutional law does not prohibit the deportation of a person posing a security risk to the country when he or she has a reasonable fear of being tortured by authorities (*Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 S.C.C. 1).¹ This ruling was a victory for the Government in its efforts to deport a suspected Tamil fundraiser to Sri Lanka, but it did not settle the case. The Supreme Court also ruled that while Canadian law does not require the Minister of Immigration to give a suspected terrorist a full oral hearing, it does require the Minister to present relevant material to the person named in a deportation order, subject to security interests, and to provide written reasons for the ministerial decision. As this had not been done, the court ordered a rehearing. The result is that the suspected member of a terrorist organization, who entered Canada in 1995, will be allowed to stay in Canada for what is expected to be at least one or two more years. Even then, the Minister will have to be able to show that there are reasonable grounds for concluding that the subject poses a serious risk to national security.

The Supreme Court of Canada found that international law generally rejects deportation to possible torture, even when national security might be compromised. The Court did not find that Canadian law offers this much protection to refugees, but it did indicate that it believed that rarely would national security concerns outweigh constitutional requirements to generally ensure that deportees do not face torture. In balancing these interests, the Minister of Immigration can consider pledges received from foreign governments. However, the Court made it clear that such pledges are not as reliable as pledges not to impose a certain type of punishment or sentence in normal criminal cases, including ones in which a deportee might otherwise face capital punishment.

The ruling in *Suresh v. Canada* raises many questions. On its face, it reaffirms the legality of a tool to be used against terrorists. However, the qualifications inserted by the justices in their unanimous decision may well provide many grounds for appeals in individual cases. One particularly difficult issue that could arise in the future is the question of what types of information can be withheld for national security reasons when a person named in a deportation order is provided with the material relied upon in the deportation decision. The Supreme Court did not attempt to establish guidelines in this area. Therefore, the question of whether information can be withheld because to reveal it would disclose how it was obtained remains open. This is one reason why the Supreme Court's decision cannot be wholly embraced by the many Canadians who believe that the laws have been interpreted far too generously for persons who have entered the country illegally or have entered for illegal purposes.

In a related case, the Supreme Court allowed the deportation of an Iranian suspected of terrorist activities on the grounds that there was not sufficient evidence that he would face torture at the hands of Iranian authorities (*Ahani v. Canada (Minister of Citizenship and Immigration)*, 2002 S.C.C. 2). The individual in this case is believed by the Canadian Security Intelligence Service to be a trained assassin who

* Prepared by Stephen Clarke, Senior Legal Specialist, Legal Research Directorate, 7-7121.

¹ Supreme Court of Canada decisions may be found at <http://www.lexum.umontreal.ca/csc-scc/en/rec/html>

has been living in Canada as a “sleeper” agent, waiting for instructions to carry out acts of violence against Iranian exiles or other targets. Following the Supreme Court’s ruling, this individual appealed his case to the United Nations Human Rights Committee. The Government contends that it is not obliged to wait for a ruling from that body before proceeding with the deportation, but the suspect’s lawyers have applied to a provincial court for a stay pending a decision on that issue.

The Minister of Citizenship and Immigration publicly embraced the Supreme Court’s decisions in the above cases for helping ensure that Canada will not become a “haven for terrorists.” In truth, the Supreme Court’s decisions might not have been so warmly received, at least openly, if the Government had not been anxious to reassure the public that it has been taking meaningful steps against terrorism and the United States that border measures that have not been agreed to are necessary for American security.²

² See Sue Bailey, *Refugees Posing Serious Security Threats Can Be Deported To Face Torture Risk*, CANADIAN PRESS, Jan. 11, 2002, <http://www.ca.news.yahoo.com/020111/6/gxgb.html>