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WORLD LAW BULLETIN

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Some highlights of this month's issue:

Acquittals Made Irreversible–Russian Federation
Anti-Terrorism Developments–Hong Kong, The Netherlands, Ukraine
Legal Status of an Unborn Fetus–France
Rules on Stock Reporting–Mexico

EDITORIAL NOTE: The items presented in the World Law Bulletin have been selected for their special significance to the Congress of the United States, either as they relate to a particular or general legislative interest, or as they may have a bearing on issues affecting the United States and its interaction with other nations. Selections should in no way be interpreted as an indication of support or preference for any legal or political stance.

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AFRICA

SOUTH AFRICA– AIDS Drugs Ruling

On July 5, 2002, the Constitutional Court, the highest judicial authority in South Africa, denied the government leave to appeal against a High Court ruling that forced it to provide anti-AIDS drugs to all HIV-positive pregnant women in state hospitals. In a suit brought against the government by the AIDS lobby group Treatment Action Campaign in December 2001, Pretoria High Court Judge Chris Botha had ruled that the Minister of Health and all responsible provincial bodies (except the Western Cape's) extend anti-retroviral nevirapine programs beyond the existing 18 pilot sites, which reach some 100,000 women. On March 11, 2002, Botha allowed the government to apply to the Constitutional Court for leave to appeal against that order. At the same time he granted an execution order under which the Government was to go ahead with the nevirapine distribution pending the outcome of the appeal application.

In its appeal against the High Court ruling, the Government had argued that the courts did not have the right to set government policy. However, the Constitutional Court stated that the government's refusal to immediately expand the pilot program violated South Africa's Bill of Rights, which guarantees the right to health care. Chief Justice Arthur Chaskalson said that the government's restriction of nevirapine to the 18 sites fell short of its constitutional obligation to offer the best treatment available. (RSA: Constitutional Court Orders Govt To Provide Anti-AIDS Drugs in Hospitals," Johannesburg *SAPA*, July 5, 2002, via FBIS; *Channel NewsAsia*, July 6, 2002; "S. African Govt Will Implement Court Ruling on HIV Drugs: Health Minister," *Agence France Presse*, July 7, 2002, both via LEXIS/NEXIS News Library.)
(W. Zeldin, 7-9832)

AMERICAS

MEXICO– Products Subject to Official Mexican Standards on Import, Export

The Ministry of Economy published in the March 27, 2002, issue of *Diario Oficial* (the official gazette) an Accord that identifies the tariff items (*fracciones ansilarias*) under the Law of General Import and Export Taxes that classify products subject to the fulfilment of Official Mexican Standards (NOMs) upon entrance into and departure from the country. This Accord updates the one published on June 2, 1997, as last amended on February 7, 2002.

To make Mexican tariff schedules conform to the international nomenclature of the harmonized customs system, the Congress of the Union promulgated the Law on General Import and Export Tax and officially published it on January 18, 2002. The Law modifies some of the coding and nomenclature of products listed in the above-cited Accord, and for this reason, updating of the Accord was needed. (*Diario Oficial*, Mar. 27 & Jan. 18, 2002.)
(Norma C. Gutiérrez, 7-4314)

MEXICO– Rules on Stock Reporting

On April 25, 2002, the Secretariat of Finance and Public Credit issued the General Rules Applied to the Acquisition of Securities That Must Be Disclosed and to Public Offerings for Purchase of Stocks. The purpose of the Rules is to increase the transparency of transactions and provide the means to protect the interests of investors in the securities market. The Rules set forth requirements for parties related to

corporations issuing securities – by virtue, e.g., of their participation as shareholders, their employment, or their institutional position – to disclose to the National Banking and Securities Commission (the Commission) the transactions they made with securities issued by those corporations.

If a holder of less than 10% of the capital stock of an issuer corporation directly or indirectly acquires shares or certificates of participation resulting in a shareholding of 10%-30% of the corporation's capital stock, the holder must notify the Commission and the stock market where the stock is traded, in order to have that information disclosed to the general public. The notice must be given no later than one working day after the transaction is made. Similar requirements are imposed on relatives of the issuer. The Board of Directors and other officers also must provide quarterly notice of certain transactions.

When a person or group of persons decides to obtain significant share participation in a corporation, but not more than half of the voting stock on or off the market, a tender offer must be made. Any person or group of persons who directly or indirectly seek to obtain 50% or more of the securities with voting rights of an issuer corporation, on or off the market, must make a tender offer for 100% of the capital stock, in accordance with five requirements provided in the Rules. Persons required by the Rules to make a tender offer must prepare and present a catalog to the Commission revealing the characteristics of any prior agreement on the acquisition, including the rights and obligations adopted therein. The Commission may waive the tender Rules in some circumstances. (*Diario Oficial*, Apr. 25, 2002.) (Norma C. Gutiérrez, 7-4314)

ASIA

CHINA– Procurement Law

On June 29, 2002, the Standing Committee of the National People's Congress adopted five new laws, on procurement, promotion of small and medium-sized enterprises (see WLB entry below), work safety, popularization of science and technology, and promotion of clean production. The Standing Committee also ratified the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. The Law of the People's Republic of China on Government Procurement will come into force on January 1, 2003. It contains chapters on general principles, the parties involved in procurement, methods of procurement, procedures, contracts, supervision and inspection, legal liability, and supplementary provisions. In the past, according to Ministry of Finance officials, the PRC lacked universal standards and strong law enforcement in regard to procurement practices. They hope that the law will standardize practice, raise it to meet international standards, and help curb corruption.

The Law defines government procurement as the procurement with government funds of goods, construction, or services on lawfully formulated centralized procurement lists or those goods, etc., that exceed procurement threshold standards set by state agencies, institutional units, and organizations at any level. Government procurement must comply with the principles of openness, transparency, fair competition, impartiality, and good faith. *Xinhua* news agency hailed the passage of the law as a decisive step in adopting transparent and nondiscriminatory practices in government procurement under WTO rules. However, some critics question whether it does mark a significant step towards giving foreign suppliers full access to China's government procurement market, since "national treatment" rules are not incorporated and instead priority seems to be given to domestic suppliers. ("China Moves Toward Transparency Under WTO Rules With Adoption of Procurement Law," *Xinhua,* June 29, 2002, via FBIS;

http://www.chinalegalchange.com/subs/2002-12/C0212002.htm)
(W. Zeldin, 7-9832)

CHINA– Promotion of Small and Medium-Sized Enterprises

On June 29, 2002, the Standing Committee of the National People's Congress adopted a law on the promotion of small and medium-sized enterprises (translated by Hong Kong Isinolaw, June 29, 2002, via FBIS, July 5, 2002.) The law, which will come into effect on January 1, 2003, has as its stated purposes the improvement of the business environment for small and medium-sized enterprises and the increase of employment opportunities. The enterprises concerned are defined as including businesses with any form of ownership that are small to medium-sized in scale and established within the borders of the People's Republic of China. They must further meet the State industrial policies. Standards to classify enterprises will be drawn up to include factors such as the number of employees, sales volume, and total assets; those standards will be approved by the State Council, which will also formulate the detailed policies for the promotion of these enterprises.

The law specifies that fiscal, financial, and tax supports for the enterprises should be developed. Currently, State-run banks may be reluctant to extend credit to privately run enterprises; the law states that the Government will promote a credit system for these businesses. In addition, reductions of or exemptions from income tax will be made available to designated enterprises. Estimates are that 99% of domestic enterprises, employing 75% of the urban workforce and producing 60% of the national industrial output, will be classified as small or medium-sized enterprises. (*China Daily*, July 5, 2002, via FBIS.)
(Constance A. Johnson, 7-9829)

HONG KONG– Anti-Terrorism Bill Passed

On July 12, 2002, the Legislative Council of the Hong Kong Special Administrative Region passed the United Nations (Anti-Terrorism Measures) Ordinance by a 32 to 18 vote. It will implement Resolution 1373 of the U.N. Security Council issued on September 28, 2001.

The Ordinance defines a terrorist act as using or threatening to use violence to cause serious damage to life and property in order to compel the government or intimidate the public for political, ideological, or religious causes. The law empowers the Chief Executive to specify persons or groups listed by the U.N. as terrorists or, subject to court approval, to name persons as terrorists. The Secretary for Security can freeze terrorist funds for up to two years and seize terrorist property. A maximum prison term of 14 years is prescribed for persons who provide funds, financial services, or weapons to suspected terrorists. Spreading a false report of a terrorist attack with the intention of alarming the public will incur a maximum sentence of seven years' imprisonment. Persons who have had their funds seized may use part of the funds for living and legal expenses. The Ordinance provides that persons cleared by the courts as having been wrongly branded as terrorists can claim compensation from the government provided that the court is satisfied that the authorities committed a serious mistake. ("HK Legislators Worry About Loopholes as Anti-Terrorism Law Rushed Through Legco," *South China Morning Post*, July 13, 2002, at 1, via FBIS; "Hong Kong Journalists' Association Says Anti-Terrorism Legislation Restrictive," *id.* at 5.)
(W. Zeldin, 7-9832)

JAPAN– Convicted Former Cult Member's Sentence Reduced

On July 5, 2002, the Tokyo High Court sentenced former AUM Shinrikyo cult member Masahiro Tominaga to 15 years in prison, overturning a lower court ruling that had given him an 18-year term. Tominaga was convicted of several counts of attempted murder, including an attempt to kill the former governor of Tokyo with a parcel bomb at a government building in May 1995, an attempted gas attack at Shinjuku station the same month, and a gas attack on a lawyer in May 1994. Presiding Judge Shogo Takahashi stated that the 18-year sentence imposed by the lower court was too heavy, because the defendant had shown remorse by paying 4 million *yen* compensation to the victims of the bombing incident. The High Court dismissed Tominaga's lawyers' arguments that he did not have the intent to kill, that his responsibility was limited in the bombing incident, and that he played a minor role in the other two cases. (Kyodo, July 5, 2002, via FBIS.)
(W. Zeldin, 7-9832)

KOREA, SOUTH– Legislators Lose Seats Due to Campaign Actions

As a result of separate convictions for offenses related to campaign financing, two members of the legislature lost their seats on June 28, 2002. The cases had been appealed to the Supreme Court, which upheld the lower court rulings that Representative Jang Jeong-eon and the head of the campaign staff for Representative Chung Jey-moon were guilty of illegal electioneering during the 2000 campaign. Jang was fined 5 million *won* (about U.S. $3,890) for giving 34 million *won* (about US$28,600) to his election team, and Chung's head of staff was sentenced to one year in prison for distributing 25 million *won* (about US$21,000) to campaign staff members. Under South Korean election law, legislators lose their parliamentary seats if they are fined more than 1 million *won* or if their campaign heads or relatives are sentenced to jail for illegal electioneering. To date, seven legislators have lost their positions due to irregularities in the campaign of 2000. Special elections to fill the seats will be held in affected districts on August 8, 2002. (*The Korea Herald,* June 29, 2002, via http://www.koreaherald.co.kr; Seoul *Yonhap*, June 28, 2002, via FBIS.)
(Constance A. Johnson, 7-9829)

KOREA, SOUTH– Newly Proposed Tax Incentives for Foreign Firms

The Ministry of Finance and Economy has announced new tax incentives for foreign firms and their employees. A draft bill exempts foreign manufacturing firms investing $50 million or more in a future special economic zone from payment of corporate or income taxes for seven years. They will enjoy a 50% reduction of these taxes for an additional three years. They will also receive a 100% reduction in tariffs, excise, and value-added tax on capital products they import for a period of three years; a 100% cut in acquisition, registration, property, and real estate taxes for five years; and a 50% reduction in such taxes for an additional three years. The same incentives will apply to foreign distribution firms and resort developers that invest more than $30 million in Korea.

Medium-sized firms that invest from $10-15 million in manufacturing, $10-30 million in distribution and resort industries, or $10-20 million in the hotel and convention sector will be eligible for a 100% corporate and income tax deduction for three years and a 50% cut for the subsequent two years, as well as exemption from tariffs on capital goods and research and development equipment for two years and other tax benefits.

Employees of the foreign firms will be eligible for better tax exemptions on the housing and education expense allowances they receive from corporate headquarters– as of January 1, 2003, the ceiling would be raised to 40% from the current 20% of their total income. Those earning salaries under $100,000 would also see their income tax rate reduced, from the current 14.5% to 11% (vs. 9.6% in Hong Kong and 11.2% in Singapore). (*Yonhap,* July 7, 2002, via FBIS; *Korea Times*, July 9&11, 2002, via LEXIS/NEXIS, News Library.)
(W. Zeldin, 7-9832)

MALAYSIA– Child Prostitution Penalties To Increase

Malaysia's Child Act 2001, which entered into force on August 1, 2002, is aimed at cracking down on child prostitution and protecting children 18 years of age and younger from sexual abuse by adults. The Act applies to "clients" of underage girls as well as to brothel owners and pimps. Offenders will face prison terms of from 3 to 15 years and a mandatory whipping of up to six strokes of the rattan. Repeat offenders will be subject to a whipping of up to 10 strokes.

Prior to the law's entry into force, most culprits found to have sex with underage girls would just have their statements recorded without facing any legal punishment, although persons found to have had sex with girls of 16 or younger, with or without their consent, may be prosecuted for statutory rape under the Penal Code. Even if a girl does not lodge a report about being compelled to have sex, the police can make a report and charge the offender under the same provision of the Code. (The Protection Project, http://67.97.249.5/daily_ news/2002/ne717.htm)
(W. Zeldin, 7-9832)

TAIWAN– Proposed Amendment to Statute on Corruption

On July 10, 2002, the Executive Yüan (Cabinet) approved amendments to the Statute for the Punishment of Corruption. The draft bill states that persons who bribe foreign civil servants will be subject to a prison term of one to seven years or a fine of up to NT$3 million (US$90,877). However, offenders who report themselves to the police within the first year of the amendment's implementation will be leniently dealt with or not be prosecuted. The bill must be sent to the legislature for review and final approval. Cabinet sources indicated that the aim of the measure is to improve Taiwan's international image as well as to deter Taiwan businessmen from using inappropriate means in order to accelerate their international trade. A Cabinet spokesman noted that neither the current Statute nor the Criminal Code cover the bribery of foreign officials.

Part of the impetus behind the revisions is to conform to a policy adopted by the Organization for Economic Cooperation and Development (OECD) to curb the practice of bribery of foreign civil servants. The 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which entered into force on February 15, 1999, makes it a crime to offer, promise or give a bribe to a foreign public official in order to obtain or retain international business deals. The 35 signatory countries are bound to adopt common rules to punish companies and individuals who engage in such transactions (Note: Taiwan is not a member of the OECD nor a signatory to the Convention). ("CNA: Amendment Outlawing Bribing of Foreign Civil Servants To Be Passed," *Central News Agency*, July 10, 2002, & "Taiwan Getting Tough on Corruption," *Taipei Times*, July 11, 2002, both via FBIS; http://www.oecd.org/EN/about0,,EN-about-31-nodirectorate-no-no-no31,00.html)
(W. Zeldin, 7-9832)

EUROPE

BULGARIA– Banks Act Amended

The National Assembly (the legislature) approved two sets of amendments to the Banks Act that provide for broader powers of the Central Bank to investigate the background and ability of the direct and indirect shareholders in a bank. A new requirement for shareholders with three percent or more of voting shares to provide the Central Bank with information concerning their legal status, ownership, origin of capital, business activity, and related persons has also been introduced. According to the new law, the Central Bank will be able to force a shareholder to transfer his/her shares to another shareholder if it finds that a shareholder does not meet the requirements. The present version of the Law states that information about shareholders with less than three percent of the voting shares will be required only on specific occasions and where there is a good reason to require it. Another significant change in Bulgarian banking legislation is that the new Law drops the requirement for bank managers to have a degree in law or economics. (*The Sofia Echo*, June 18, 2002, http://www.securities.com)
(Peter Roudik, 7-9861)

FRANCE--Legal Status of an Unborn Fetus

On June 25, 2002, the Cour de Cassation, France's highest judicial court, confirmed its jurisprudence on the legal status of the fetus. It ruled that, under existing law, a fetus does not enjoy the legal rights of a person.

The Court overturned a decision of the Versailles Court of Appeal, which had found guilty of involuntary manslaughter the gynecologist and midwife who attended to the delivery of a baby who was stillborn by caesarean section eight days after the mother's due date. The cause of death was lack of oxygen. The court strictly interpreted existing criminal law, finding that the law does not protect the fetus. The mother hopes that the Parliament will modify the law.

The decision is the second of its kind. On June 9, 2001, the Cour de Cassation held that a drunk driver who caused an accident in which a pregnant woman was hit and lost the baby she was carrying could not be ruled guilty of involuntary manslaughter. (*Le Monde*, June 27, 2002, http://www.lemonde.fr)
(Nicole Atwill, 7-2832)

LATVIA--Ban on Fighting Dogs Outlawed

Latvia's Constitutional Court ruled the amendment to the Government Regulation on Keeping Dogs and Cats as Pets, adopted last summer, inconsistent with the Constitution. The amended Regulation.banned the importing, keeping as pets, and breeding of fighting dogs in Latvia and ordered the neutering of such dogs by August 2002. The Constitutional Court ruled that the restrictions under the Government regulation failed to conform with a provision under the Constitution granting citizens the right to property and also conflict with a provision of the Law on the Composition of the Cabinet of Ministers on the Government's competence in adoption of legal acts.

The ban was imposed by the Latvian Government in July 2001 after several attacks by dogs on children took place, causing grievous bodily injury to the children. The ban extended to the following breeds: pit bull terriers, Staffordshire terriers, Fila Brasilario, Dogo Argentina, Tosa Inu, and their mixed

breeds. In the wake of the Constitutional Court ruling, the President of Latvia proposed amending the country's Criminal Code to provide that owners of aggressive dogs carry criminal responsibility for incidents such as attacks on children. (*Baltic News Service*, BNS Daily News, June 21, 2002, http://www.site.securities.com)
(Peter Roudik, 7-9861)

LATVIA– Different Punishments for Drug Users, Dealers

The nation's Supreme Court, in a review of court verdicts passed in Latvia last year on cases related to the purchase, possession, and sale of drugs, noted the need to differentiate the responsibility of drug users and drug dealers in Latvia's criminal law. The review of drug-related cases found that judges and prosecutors do not have a common understanding of the dangers of narcotic and psychotropic substances and their social and medical consequences. The Supreme Court stated that court verdicts lack clear justification in applying punishments less than those set by law. The review shows that in all 236 cases last year involving the purchase of drugs for personal use, courts passed verdicts with circumstances of lessened guilt to which they applied sentences less than those mandated by law. Drug dealing cases made up 18% of all the drug-related cases last year, indicating that relatively few of such cases actually end up in court.

Under Latvian law, the review of drug-related cases is not in any way binding on Latvia's courts; however, the Supreme Court suggested that its chamber of criminal cases regularly analyze court practice and develop recommendations to be used by the courts. Based on the Supreme Court's recommendations, the President of Latvia submitted a legislative proposal to Latvia's Parliament, which was immediately included in its agenda, to review sections of the Criminal Code to differentiate between applicable punishments for the crime of buying drugs for personal use and the crime of drug dealing. According to the proposal, compulsory treatment for drug addicts who have committed crimes will supplement their punishment. (*Baltic News Service*, BNS Daily News, July 16, 2002, http://www.site.securities.com)
(Peter Roudik, 7-9861)

LITHUANIA--New Gaming Law Adopted

Despite strong resistance from the companies that have invested in Lithuanian gambling businesses, a new Gaming Law will enter into force on September 1, 2002. The companies are concerned about possible losses due to mandated reorganization of operations and re-registration of licenses.

The Law differentiates between gaming machines with limited cash payouts and those with no prize limit. Gambling machine halls will have the right to operate limited payout machines only and bingo halls are limited to the organization of bingo games only, but casinos can operate table games (roulette, cards, and dice) and machines with unlimited prize amounts. The latter will operate with tokens and the prize will be token-based. The limited prize machines may operate with tokens (including metal ones), and prizes will be paid in coins or tokens. For the gaming machines with limited prizes, the maximum prize cannot exceed 200 *litas* (US$60) and a single stake cannot exceed 1.0 *litas*. The time per game will be no shorter than three seconds.

Thus far, four companies have been granted licenses for gambling operations in Lithuania and another three applications are under consideration by the State Gaming Control Commission. Three slot machine halls and two casinos are currently operating in the country. *(Baltic News Service*, Daily News,

Jul. 11, 2002, http:// www.site.securities.com)
(Peter Roudik, 7-9861)

THE NETHERLANDS– Higher Penalties for Terrorist Offenses

On July 5, 2002, the Minister of Justice submitted a bill to the Lower House of Parliament increasing the penalties for terrorist offenses. The maximum prison sentences for offenses such as manslaughter, gross maltreatment, hijacking, or kidnaping are to be higher if they are committed with "terrorist intent," i.e., with the intention of arousing fear among a country's populace or forcing a government or international organization to do something, fail to do something, or tolerate something against its will. One can also speak of terrorist intent if an offense is committed in order to seriously disrupt or destroy the economic, political, or social structure of a country or international organization.

In most cases, commission of a terrorist offense will involve a 50 percent increase in the punishment for the crime, but if the offense already carries a maximum prison term of fifteen years, such as that for manslaughter, then the penalty will be raised to life imprisonment or a maximum term of twenty years. The prison term for participation in a terrorist organization will be set at eight years. The leaders can incur a maximum prison sentence of fifteen years. The bill is the implementation by the Netherlands of obligations resulting from a European Union framework decree on combating terrorism. (Press Release, Ministry of Justice, July 5, 2002, via http://www.ministerievanjustitie.nl)
(Karel Wennink, 7-9864)

RUSSIAN FEDERATION--Acquittals Made Irreversible

The Constitutional Court of the Russian Federation ruled on July 17, 2002, that Soviet-era laws giving prosecutors the power to cancel acquittals and send cases for re-trial before and after a verdict comes into force are inconsistent with the Federal Constitution. The current criminal procedure legislation in Russia allows verdicts to be challenged in the courts of appeal and through supervisory institutions. In the case of the former, the verdict does not come into force until the court reviews all the appeals filed by the defense and/or prosecution. In the case of the latter, the revision of a verdict that has already come into force may be initiated by a convict, a victim, their representatives, or the prosecutor. The Court ruled the revision or cancellation of a supervisory institution's verdict of not guilty to be inadmissible. However, in some cases, prosecutors will still have the right to appeal such verdicts, e.g., on the grounds that court proceedings were biased or examination of the case was incomplete.

The Constitutional Court ruling was issued after its review of a complaint filed by a group of citizens who questioned the legality of provisions of the Criminal Procedure Code allowing supervisory institutions to review not-guilty verdicts. The applicants contended that the provisions of the Soviet-era Criminal Procedure Code contradict the Constitution, as they create a risk of double jeopardy for an acquitted person. Despite the fact that the new Criminal Procedure Code entered into force on July 1, 2002, certain provisions of the old Code, including those challenged in the Constitutional Court, remained in effect. According to the ruling, persons whose verdicts of not guilty were cancelled by higher courts are allowed to apply to the Supreme Court for an assessment of the legality of such decisions. (*Rossiiskaia Gazeta* [official newspaper of the RF Government], July 18, 2002, via http://www.rg.ru)
(Peter Roudik, 7-9861)

RUSSIAN FEDERATION--First Ruling of the European Court of Human Rights Against Russia

The European Court of Human Rights unanimously upheld the complaint of a former Russian convict and ruled that the conditions of his detention constituted treatment banned by the European Convention on Human Rights. The Russian Government has been ordered to pay 8,000 *euro* (about US$7,870) to the plaintiff. It was the first case against Russia publicly heard in Strasbourg.

According to the judgment, Russia was found responsible for the violation of three provisions of the European Convention on Human Rights; in particular, article 3, which stipulates that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment." The cell in which the plaintiff, the president of a commercial bank accused of embezzlement and abuse of office, had spent several years was overcrowded and overrun by cockroaches. Inmates suffered skin and fungal diseases and had to sleep in turns since there were only 8 beds for the 24 of them.

The Court also ruled that Russia violated article 5.3 of the Convention, which states that everyone "arrested or detained…shall be entitled to trial within a reasonable time or release pending trial." The plaintiff spent four years and two months in remand. Article 6 of the Convention, on the right to a fair trial, was also breached, since a trial that lasted so long cannot be considered just.

The representatives of the Russian Government contended that it was because of the highly complicated nature of the case that the investigation and court examination lasted from February 1995 to June 2000, when the plaintiff was released under an amnesty act. However, the Court ruled that the complexity of the case cannot serve as a justification for such a prolonged period of detention. (*Rossiiskaia Gazeta*, July 15, 2002, http://www.gazeta.ru)
(Peter Roudik, 7-9861)

UKRAINE--Additional Anti-Terrorist Measures

The Government of Ukraine issued a regulation that allows national border troops to use military weapons and equipment in Ukraine airspace to prevent and stop unlawful activities on hijacked aircraft, even though such a practice is prohibited by the International Civil Aviation Organization, of which Ukraine is a member. The regulation provides for amendments to the Statute on the Use of Weapons and Military and Special Equipment for the Protection of the State Border and Exclusive Economic Zone of Ukraine. According to the regulation, the use of weapons, including missiles, is allowed after a warning shot has been fired by jet-fighters and helicopters patrolling the air space of Ukraine. The regulation sets forth ten circumstances in which missiles can be used after the warning has been given. These include the prevention of the violation of the national border by foreign-piloted military aircraft or by any jet, including civil and/or passenger aircraft, hijacked in order to commit a terrorist act. (Http://www.site.securities.com, July 15, 2002.)
(Peter Roudik, 7-9861)

UNITED KINGDOM--Criminal Justice Overhaul

Home Secretary David Blunkett has issued a white paper, *Justice For All,* detailing reforms he considers will provide a 'fairer justice.' Certain provisions have been strongly criticized by civil liberty groups, senior barristers, and the Bar Council. They consider that many of the changes, particularly the abolition of the 800-year-old 'double jeopardy' rule for cases of murder, manslaughter, rape, and armed

robbery, are contrary to the principles that the criminal justice system is founded on and will result in miscarriages of justice, sloppy investigations by police, and tireless pursuit of innocent suspects. The motivations behind the white paper stem from a manifesto pledge issued during the 2001 general elections to convict 100,000 more criminals a year. This target has not yet been met, causing friction between the Labour government and Conservative opposition. The Home Secretary's aim is to readjust the balance of justice to favor victims and the community rather than defendants.

Among the proposals that have been criticized are that judges will have discretion to release information about a defendant's prior convictions and acquittals to juries when they deem the information as pertinent to the case. Hearsay evidence will be permitted in courts when certain circumstances are met, and defendants' pre-trial statements will be available to jurors. The reforms remove the right to a trial by jury, a principle enshrined in the Magna Carta, for defendants in serious and complex fraud cases and cases in which the facts are considered complex or lengthy; or when judges believe a jury has been intimidated as well as in cases of organized crime. The duration of sentences that Magistrates can impose will be increased from six months to one year. Sentences may be lowered for defendants who submit guilty pleas and a new form of indeterminate sentence will be introduced for those perceived to be a danger to society.

Sections of the paper that have been given a warm response include suggestions on measures to increase support to the victims and witnesses of crimes, adoption of a more flexible approach to sentencing and rehabilitation, and the selection of more representative juries. (*Justice For All*, Cm. 5563, 2002; Ian Burrell *and* Robert Verkaik *A Criminal Injustice?* July 18, 2002, http://news.independent.co.uk/uk/legal/story.jsp?story= 315994)
(Clare Feikert, 7-5262)

UNITED KINGDOM– Terrorism as a Defense to Child Abduction

A mother who wrongfully removed her baby daughter from Israel without lawful permission, due to the breakup of her marriage there and related psychological problems, lost a court appeal to keep her daughter in the United Kingdom. The mother used article 13(b) of the Hague Convention on the Civil Aspects of International Child Abduction (the 'Convention') as a defense, arguing that returning the child to an area rife with violence and terrorist attacks would place the girl in a position where there was grave risk of physical and psychological harm and expose her to an intolerable situation.

Case law on the article 13(b) defense provides precedence that the article is to be narrowly interpreted. This is due to concerns that a broad interpretation would lead to political judgments that would detract from the objective of the Convention, which is the prompt return of the wrongfully removed child to the country of habitual residence. In this situation, despite the risks of returning the child to Israel, the UK court reasoned there was not a compelling risk of harm to the daughter, but rather that the risk was one of "being caught up in an unpredictable attack, being in the wrong place at the wrong time." The court dismissed the appeal, concluding that, although the mother may find the situation intolerable, her reaction and the problems in Israel were not sufficient to create an intolerable situation for the child. It ordered that she should return her daughter to the jurisdiction of Israel in accordance with articles 3 and 12 of the Convention. *(Re: S (Child) (Abduction: Custody rights),* [2002] EWCA Civ 908.) (For a Law Library Report on this topic, *see Hague Convention on International Child Abduction, a Report to the Committee on Foreign Relations United States Senate*, S.PRT 106-76.)
(Clare Feikert, 7-5262)

SOUTH PACIFIC

AUSTRALIA--Uniform Gun Control Laws

At the July 17 annual conference of state and territory police ministers, Australia's Commonwealth (federal) Justice Minister called for all states and territories to enact uniform gun control laws. Prison terms for possession of unlicensed firearms now range from 2 years in Western Australia to 14 years in New South Wales. The Minister said that some states did not have laws to deal with removing or altering serial numbers on weapons. He also pledged to use the Commonwealth's constitutional powers to regulate trade and commerce to crack down on gun trafficking. Under the proposed National Firearms Trafficking Policy Agreement, all states and territories will have substantial penalties for illegal possession of handguns, consistent regulations governing manufacture of firearms, and consistent and strengthened administration of regulations governing transactions in firearms parts. The Minister also called on all jurisdictions to review their auditing of the firearms registries of legal weapons. ("4,000 Guns Reported Stolen Across Australia Every Year," Media Release, Minister for Justice and Customs, July 11, 2002 at http://www.ag.gov.au/aghome/agnewsjus/ e90_02.htm ; "Unified Gun Laws Targeted," July 17, 2002, at http://www.news.com.au)
(D. DeGlopper, 7-9831)

INTERNATIONAL LAW & ORGANIZATIONS

AUSTRALIA/UNITED STATES--Climate Change Partnership

On July 9, 2002, Australia's Minister for the Environment announced a US-Australia Climate Action Partnership, which will promote the exchange of information on climate change and reduction of greenhouse gas emissions. Although Australia has signed the Kyoto Protocol on Reduction of Greenhouse Gases, Prime Minister Howard has said that his government will follow the policy of the United States and will not ratify the Protocol. One project of the Partnership will be the development of a carbon-trading market outside the framework of the Kyoto Protocol. Within Australia, an industry association representing firms in the energy, water, sanitation, and construction sectors warned that failure to ratify the Kyoto Protocol will result in Australian firms being excluded from markets for greenhouse gas reduction projects in East, South, and Southeast Asia. It claimed that an A$70 million waste-to-resource project in China, projected to generate over A$1 billion (about US$544 million) in sales over 30 years, would go to European firms, whose nations participate in the Clean Development Mechanism market established under the Kyoto Protocol. ("Australia and the United States Working Together on Climate Change," Media Release, David Kemp, Minister for the Environment and Heritage, July 9, 2002, at http://www.ea.gov.au/minister/env/2002/mr09july02.htm; *The Australian*, July 15, 2002, at http://www.theaustralian.news.com.au)
(D. DeGlopper, 7-9831)

MONGOLIA/RUSSIA– Law Enforcement Cooperation Agreement

A protocol on cooperation between the Russian Ministry of International Affairs and the Mongolian Ministry of Law and Internal Affairs was signed after talks held in the Mongolian capital, Ulaanbaatar, in late June 2002.

The agreement provides for coordinated operations to uncover terrorist and other extremist activities, organized crimes, crimes involving illegal trade in arms or narcotics, economic crimes, and illegal migration. The document establishes a program, funded by Russia, to train Mongolian personnel in Russia, at the Ministry of Internal Affairs University in St. Petersburg. In order to enhance cooperation between the law enforcement agencies of the two countries, the talks covered the possibility of setting up representative offices of the Russian Ministry in Mongolia and the Mongolian Ministry in Russia. (*RIA-Novosti* (Moscow), June 27, 2002, translated in FBIS, June 27, 2002.)
(Constance A. Johnson, 7-9829)

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RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

European Parliament Backs European Commission Proposals on GMOs[1]

The European Parliament completed a reading of proposals on how products containing Genetically Modified Organisms (GMOs) will be labeled for the consumer. At issue is ensuring consumer choice through comprehensive labeling, as the long-term effects of genetic modification on food and feed are as yet unknown. The EU rejected the proposal to label all meat, milk, and eggs obtained from animals given GM feed, but it accepted the labeling of all GM food.

EU Tables Market Access Request To Inject Momentum into WTO Services Negotiations[2]

The EU submitted an initial request to other WTO members for improved market access to services, seeking a reduction in restrictions and expansion of market access opportunities. It stated that liberalization of trade in services will contribute to sustainable development and encourage greater participation by developing countries. The request also noted that trade in services is important to maintain growth and employment in the EU.

EU Sets Up Aviation Safety Agency[3]

A regulation creating an Aviation Safety Agency was formally adopted on June 18, 2002, by the Council of Transport and Telecommunications. The Agency is being established as the essential instrument for European air safety to ensure the highest level of protection for citizens of the EU while facilitating the aviation industry's ability to compete in the world market.

Commission Proposes Integrated Management of the EU's External Borders[4]

The EU proposed measures for the management of its external borders on a genuine Community basis rather than through a set of national systems of border control. It plans to further improve checks at external borders to ensure that the freedom of movement within the EU does not mean less security for the general public. Under the terms of the proposal, there are four major challenges to be met: 1) ensuring mutual confidence between the Member States that have abolished checks on their internal borders; 2) having the means to combat all forms of internal and external threats that terrorism poses to the Member States and the security of persons; 3) increasing the effectiveness of the fight against illegal immigration

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* LL.B. University of Athens Law School, LL.M. George Washington University, International and Comparative Law.

1 Http://europa.eu.int/rapid

2 *Id.*

3 *Id.*

4 *Id.*

while respecting principles of asylum rights; and 4) ensuring a high level of security within the EU after enlargement, especially since the incorporation of new Member States will considerably lengthen the external land borders in regions where maintaining security is often more difficult.