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# **WORLD LAW BULLETIN OCTOBER 2002**

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## **Some highlights of this month's issue:**

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Cooperation on Cross-Border Crimes-United Kingdom  
Foreign Investment Rules-Vietnam  
Racism and the Internet-Australia

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*EDITORIAL NOTE: The items presented in the World Law Bulletin have been selected for their special significance to the U.S. Congress, either as they relate to a particular or general legislative interest, or as they may have a bearing on issues affecting the U. S. 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.*

## AMERICAS

### **MEXICO– Court Ruling on Investigation into Illegal Contribution to President Fox Campaign**

The Federal Electoral Institute (IFE), based on information alleging illegal financing of the presidential campaign, sought access to a report from the National Banking and Securities Commission (CNBV) that specifies the transactions of the former organization called “Friends of Vicente Fox,” the group that helped finance the primaries and part of the presidential campaign of Mr. Fox, who is now the President of Mexico. However, the fourth administrative court granted a definitive stay, denying the IFE access to the document requested and at the same time protecting the friends of the President, who are accused of acting as intermediaries for money transfers, from examination of their business and personal accounts by electoral authorities.

The length of the stay is at present indeterminate, but if the protection granted by the court to the “Friends of Vicente Fox” remains unchanged, the electoral authority will be unable to determine whether the accusation of illegal campaign contributions was true or false. A further complication has arisen because some judges have declared that the IFE cannot be considered a “third party plaintiff” in this matter and that this is not an electoral issue but a dispute between the CNBV and individuals. (“Mexico: Court Ruling Hinders Investigation into Fox Campaign Financing,” Mexico City *La Jornada*, Internet version, Sept. 4, 2002, via FBIS; *La Jornada*, Internet version, via <http://serpiente.dgsca.unam.mx/jornada/> ) (Norma C. Gutiérrez, 7-4314)

### **MEXICO--Request by the United States To Extradite a Cocaine Smuggler Denied**

A Mexican federal court has rejected a request by the United States to extradite Jaime Aguilar Gastelum, also known as “Don Jaime,” a member of the Juarez Cartel considered to be a principal smuggler of cocaine into the United States. The court stated that for a person to be extradited to the United States, two conditions must be met: first, as stated in a court ruling of October 2001, a guarantee should be given that the suspect is not going to receive a sentence of life imprisonment or capital punishment; second, such a commitment should be submitted to the Secretariat of Foreign Affairs to study the request before taking any action.

Aguilar Gastelum was apprehended during a campaign dubbed “Operacion Impunidad” carried out in September of 1999 and is suspected, according to the Drug Enforcement Administration (DEA), of being very closely allied with Gilberto Garza Garcia, the person identified by the DEA as the coordinator of the transportation of drugs from Mexico to several cities of the United States. (“Federal Court Denies Extradition of Aguilar Gastelum to US,” Mexico City *Reforma*, Internet version, Sept. 12, 2002, via FBIS Sept. 13, 2002; *Reforma*, [http://reforma.com/ed\\_impresa/portada/](http://reforma.com/ed_impresa/portada/)) (Norma C. Gutiérrez, 7-4314)

## ASIA

### **CHINA– Health Check-Ups in Chemical Plants**

On September 4, 2002, the Ministry of Health promulgated a circular stipulating that manufacturers who use hazardous chemicals in the production process are required to offer free medical examinations before November 1 to employees who come in contact with such materials and have not yet had medical check-ups. Employees discovered to have been stricken with work-related poisoning must be sent

immediately to an occupational disease diagnosis and treatment unit. Employers will bear the costs of the check-ups and any subsequent treatment. A Ministry of Health spokesperson said that the circular was issued as part of a nationwide campaign to combat toxic chemical poisoning of factory workers, instituted in the wake of a series of factory poisonings that occurred earlier this year. (See WLB June 2002 for a discussion of related legislation.)

The regulation covers factories engaged in a variety of production activities, such as processing of bags, suitcases, leather, and ornaments; manufacture of toys, shoes, and furniture; and embroidery and other trades. In conformity with the Law of the People's Republic of China on the Prevention and Treatment of Occupational Disease, manufacturers that do not conduct the required health examinations within the time limit will be ordered to correct their conduct within a specified time limit and be given a warning and may also be fined; those that fail to arrange for diagnosis and treatment of employees found to suffer work-related poisoning will either be ordered to discontinue the harmful operations or be threatened with closure if the circumstances are serious (*CND-Global Weekly Summary*, Sept. 12, 2002; <http://www.moh.gov.cn>)  
(W. Zeldin, 7-9832)

### **CHINA– New Water Law**

China adopted a revised Water Law in August 2002 that came into force October 1. It replaces the Water Law of 1988 and places a greater stress on unifying management of water resources. Efficient water consumption, increased macro-level management, and a national strategy on water resources are included. Emphasis is put on the importance of a balance between the supply of water and the demand placed on it by population, economic development, and the environment, with a goal of building a water-efficient pollution-free society with sustainable use of water resources that allows for social and economic development. (*Xinhua*, Sept. 6, 2002, via FBIS.)  
(Constance A. Johnson, 7-9829)

### **HONG KONG– Anti-Subversion Law Controversy**

The government of Hong Kong has proposed a new law outlawing sedition. The legal basis for the law would be article 23 of Hong Kong's Basic Law, the so-called mini-Constitution adopted in 1990 by the People's Republic as the structure for Hong Kong's governance as a Special Administrative Region (SAR) after its return to Chinese sovereignty in 1997. Article 23 states that the SAR "shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies" (Cham & Clark. *eds.*, *The Hong Kong Basic Law* (London, 1991).)

Thirty-one non-governmental organizations signed a statement on September 19, 2002, opposing the proposed creation of a law against subversion. They said they were concerned that the sedition legislation would create a "white terror," with the legislation a "pretext to silence different opinions, suppress the development of our civil society, and deprive Hong Kong people of their basic human rights protections." In response, Hong Kong's Secretary for Security stated that the groups were overly sensitive and that their concerns were speculative, as they had not seen a draft of the proposal. Other officials have stated that the legislation would be tightly drafted and that statements of opinion would not be criminalized, unless they amount to an incitement of criminal conduct. ("Hong Kong NGOs Oppose Anti-Subversion

Law,” *BBC Monitoring*, Sept. 20, 2002; “Free Speech Vow on Subversion Law,” *South China Morning Post*, Sept. 20, 2002, both via LEXIS/NEXIS.)  
(Constance A. Johnson, 7-9829)

### **INDONESIA– New Law to Liberalize Electric Power Sector**

In early September 2002, Indonesia passed a law clarifying the role of central and regional governments in the power sector and establishing incentives for foreign investment to expand production. The new law effectively curtails the monopoly on supplying electric power and setting tariffs, held for many years by the state power company, PT PLN. Although electric power has largely been produced privately, each independent power producer (IPP) remained obligated to sell exclusively to PT PLN at that company’s unilaterally established tariffs, quoted in US dollars. During the economic crisis in 1997, this policy received a fatal blow when PLN proved unable to pay the producers. The supply steadily declined while the demand grew at the rate of 9% per annum.

The new law is designed to create a market-friendly environment to attract much needed foreign investment. Most importantly, the law opens up markets and tariff negotiations. Although the State power company retains the first right of distribution, IPPs will be able to sell directly to consumers in markets where PT PLN is either not present or unable to meet consumer demands. The law also introduces a new approach with respect to pricing. PT PLN’s former exclusive authority is reduced to setting base rates. IPPs may now freely negotiate final tariffs with private customers and regional governments to attract private foreign investment to the region and to safeguard consumers against sudden and drastic rate hikes. It remains to be seen whether the new measures are sufficient to generate the anticipated? foreign investment. Even under the best case scenario, it will take years before new power plants are operational and the capacity of existing ones is sufficiently expanded to meet the predicted need for sustained economic growth. (*The Business Times Singapore*, Sept. 12, 2002, via LEXIS/NEXIS.)  
(Christa McClure, 7-5065)

### **MONGOLIA– Legal Development with UN Aid**

The United Nations Population Fund project in Mongolia has been working with the Mongolian Parliament, according to J. Byambadorj, the vice-speaker of that legislature. The agency has been cooperating in the design of laws as part of a project of assistance to the government over the last four years. One result of the cooperation is a draft law against sexual harassment, drawn up with the input of prominent female politicians and social workers, which has been presented to the Parliament. The overall goal of the activities of the Fund in Mongolia has been to solve problems related to reproductive health. (“UN Population Fund Helps Mongolia Draft Laws,” *Montsame News Agency*, Sept. 16, 2002, via FBIS.)  
(Constance A. Johnson, 7-9829)

### **NORTH KOREA– Law on Special Zone**

On September 26, 2002, North Korea made public the Shinuiju Special Administrative Region Basic Law, which will create a 50-square-mile special autonomous economic zone within the communist country. The Special Administrative Region (SAR) will have its own legislature, administration, and judiciary; the Cabinet, the central government, and other provincial governments may not intervene in the zone’s affairs, but the North Korean military may station forces in the zone if necessary and can declare a state of emergency in case of rebellion or armed riots. The Law guarantees private property rights within the SAR, including the right to protection of private assets and the right to inherit property. Should private

property have to be appropriated to protect national security, compensation would be paid. The Shinuiju government will have the power to apply its own policies on currency and finance, and residents will be allowed to bring in or send out foreign currency in any amount. The zone may set up a preferential customs system to determine customs rates and also draft its own budget subject to approval of the Presidium of the Supreme People's Assembly. Foreign investment will be encouraged but will be banned in areas that might undermine the health, environment, or national security of North Koreans.

Critics of the creation of the “Hong Kong of North Korea” have expressed major concerns about the project. In order to populate the new capitalist zone, the government plans to forcibly relocate as many as 700,000 people, about three percent of the country's population. The Chinese entrepreneur tapped to run the zone said that over the next few years 200,000 Shinuiju residents would be moved out, while 500,000 others with technical and administrative skills would move in. The enclave will also be walled off in order to prevent people from entering or leaving at will. According to a North Korea expert with the World Bank, “That is the vulnerable underbelly of this project.... They are bringing in politically correct people and taking out the old people. It is not a trivial percentage of the population of the whole country, and you wonder what the social and political costs will be.” (“NK Unveils Shinuiju Special Law,” *Korea Times*, Sept. 27, 2002, via LEXIS/NEXIS; “Doubts Raised About N. Korea's Free Zone,” *Chicago Tribune*, Sept. 26, 2002, at 24.)

(W. Zeldin, 7-9832)

#### **TAIWAN– Draft Political Party Law**

On September 11, 2002, the Executive Yuan (Cabinet) approved a draft bill on political parties and submitted it to the Legislative Yuan for deliberation and approval, along with a bill on political party assets. The draft Political Party Law is considered one of Taiwan's four “sunshine laws,” which also include the draft laws on lobbying and political donations and the already enacted Trust Enterprise Law. Highlights of the bill include:

- a ban on political parties' operation of or investment in profit-making enterprises, including television and radio stations. Parties that already operate or invest in such enterprises must sell the property or place it in a trust within two years of the law's taking effect. Violators of the ban face a fine of NT\$5 to 25 million (about US\$144,200-720,900). However, political parties would be allowed to operate or invest in newspapers, magazines, books, and other publications, including online media, in order to disseminate their views;

- a ban on political parties' establishing local chapters on campuses, in the military, in judicial institutions, and in government organizations;

- promotion of greater transparency by limiting a party's financial resources to membership fees, campaign donations, campaign subsidies, or bank interest; by requiring parties to keep copies of receipts for at least five years and account books for at least 10 years; and by requiring the annual financial report to be ratified by a certified accountant and made public in a government bulletin, newspaper, or online; and

- a ban on possession of any real estate except party office buildings. Parties that already own real estate other than office buildings would be required to sell it. (“Taiwan: Party Law Sent to LY,” *Taipei Times*, Internet version, Sept. 10, 2002, via FBIS.)

(W. Zeldin, 7-9832)

### **TAIWAN– Harassment Case Debated**

Taiwan's legislature held a public hearing debating whether kissing a stranger's cheeks without permission constitutes the crime of sexual harassment. The discussion followed the Supreme Court's decision not to hear an appeal of a case that originated in Taoyuan, Taiwan, in February 2000. A teenage convenience store clerk accused a man of holding her and kissing her on the cheeks for about two minutes, without consent. Her cries for help brought another employee from the store's storage area, and the suspect fled the scene but was later apprehended. Both the district court and a higher court ruled that the man was not guilty of harassment; the district court judge stated that "kissing on the cheeks is an international custom rather than sexual harassment."

During the discussion of the case, one legislator, Chin Huei-chu, stated that the definition of harassment in the Criminal Code should be changed, to protect the right to say no. The Criminal Code, last amended in 2001, defines sexual harassment as actions inspiring the defendant's sexual desires, rather than basing the standard on consent. However, Josephine Ho, an adviser to the Gender Sexuality Rights Association, dismissed concern over the case, stating that kissing on the cheeks is a Western friendly action, "just like shaking hands. It's that simple. Since when did it become sexual harassment?" (*Taipei Times*, Sept. 19, 2002, via <http://www.taipeitimes.com>) (Constance A. Johnson, 7-9829)

### **VIETNAM– New Foreign Investment Rules**

As of September 28, 2002, foreign investors are allowed to convert profits made on the stock exchange to US dollars. This new rule, signed by the governor of the State Bank of Vietnam on September 13, is designed to encourage investment in the stock market in Ho Chi Minh City. Under the new regulation, foreign individual and institutional investors may convert all stock profits into dollars one year after investing. (*AFX-Asia*, Sept. 17, 2002, via LEXIS/NEXIS.)

In addition, a draft regulation has been submitted by the Ministry of Finance to the Prime Minister that would permit wider choice for foreigners investing in Vietnamese companies. Current regulations limit such investments to equitized State-owned businesses; the proposal would allow foreigners to acquire shares in any State-owned enterprise, limited liability company, partnership, private company, cooperative, or enterprise owned by a social or political organization. In addition, foreigners could be founding members of limited liability and joint stock companies. The cap on foreign investment at 30% of total capital for all companies other than the foreign direct investment companies that fall under the provisions of the Law on Foreign Investment will remain in place. (*Vietnam News Briefs*, Sept. 18, 2002, via LEXIS/NEXIS.)

(Constance A. Johnson, 7-9829)

## **EUROPE**

### **GERMANY– Disability Legislation**

With the enactment of an Equal Rights Act for the Disabled on April 27, 2002 (*Bundesgesetzblatt* (BGBl)I at 1468), Germany adopted a new philosophy in regard to disability legislation that emphasizes the importance of allowing the disabled to be fully integrated into the community. The Equal Rights Act pursues this goal by requiring the removal of barriers in public transportation, information technology,

telecommunications, and the accessibility of buildings. Remedies for violations of the Act are granted in the form of class actions, to be pursued by recognized associations of the disabled.

Enactment of the Equal Rights Act for the Disabled completes a major overhaul of German disability legislation that commenced in 1994 with a constitutional amendment that prohibits discrimination against the disabled (German Constitution, May 23, 1949, BGBl. I at 1, art. 3, ¶ 3, as amended by *Gesetz*, Oct. 27, BGBl. I at 314) and was continued in the year 2000 with the enactment of an Act Combating Unemployment of the Severely Disabled (Sept. 29, 2000, BGBl. I at 1394) and in the year 2001 with the enactment of Title 9 of the Social Code (June 19, 2001, BGBl. I at 1046). Title 9 of the Social Code codifies the heretofore existing social assistance benefits for the disabled into one law, whereas the Act Combating Unemployment reforms provisions in various laws that require employers to hire the disabled. These two enactments continue to uphold the longstanding German tradition of providing for the material needs of the disabled and of integrating them into the work force.

(Edith Palmer, 7-9860)

### **GERMANY--Illicit Advertising via E-mail**

On July 12, 2002, the *Bundesrat* (the Upper House of the German Parliament) approved the Second Directive for the Revision of the Regulation on Telecommunications and the Protection of Customers (*Telekommunikations-Kundenschutzverordnung--TKV*), previously approved by the *Bundestag*, the Lower House. This amendment may be regarded as the Federal Diet's response to growing public demand for protection against illicit advertising via telephone, e-mail, and other electronic means, through "dialers" and "Spam" via the special bulk dialing numbers, 0190 and 0900.

The amendment takes a three-pronged approach. First, it authorizes "lessors of these numbers," in essence telephone and cable companies, to block their use for unsolicited dialing and spamming. Second, service providers may no longer hold the blocking net operator liable for lost business caused by denying their clients the use of these numbers. Recovery may only be had from the perpetrating advertiser. Third, the net operator must provide customers the address of service providers using these numbers, free of charge and in a format suited to downloading. The general language suggests that this amendment may also cover American companies advertising through German net operators and service providers. ([Http://www.ra-kotz.de/tkv-aenderungen](http://www.ra-kotz.de/tkv-aenderungen))

(Christa McClure, 7-5065)

### **LATVIA--Court Refuses To Delete Criminal Record for a Communist Activist**

The Supreme Court of Latvia stated in a recent ruling that the criminal record of participants in the 1991 pro-Soviet military coup d'état will not be erased before schedule. The Court decided that in order for the record to be removed before schedule, the guilty party must not only show faultless behavior, but must also regret what was done and express the desire to never do it again. In the case of the former leader of Latvia, Alfred Rubiks, who in 1991 led the anti-independence movement, the court concluded that Rubiks' claim that he has decided not to breach any existing law is merely a formal promise. The Court asserted the general rule that a criminal record can be erased eight years after serving the jail sentence if a court confirms a person's good behavior and reformation. The Court also specified that the decision applies to all Latvian Communist leaders who were arrested in 1991 after the failed coup attempt, sentenced in 1995, and released for good behavior after serving three-quarters of the sentence. Even if his criminal record were erased, it would not make Rubiks eligible to participate in politics. Under Latvian



law, those who remained active in the Communist party after Latvia restored its independence are not allowed to run for election. (*Baltic News Service*, Sept. 25, 2002 at <http://www.securities.com>) (Peter Roudik, 7-9861)

#### **LITHUANIA--Visa To Be Required for Travelers from Russia and Belarus**

The Government of the Republic of Lithuania announced that it will stop the existing visa-free entry for certain Russian and Belarusian citizens and as of January 1, 2003, will renounce interim inter-governmental agreements with these two countries on the simplified transit of residents across State borders. The decision was made in order to fulfill Lithuania's commitments to the EU and those concerning accession to the Shengen Treaty. According to the decision, the visa requirement will apply to those residents of Russia who travel by train between Russia and its Kaliningrad territory. As of July 1, 2003, the residents of the Kaliningrad enclave who travel via Lithuania to Russia proper will also be asked to obtain transit visas. Simultaneously, the right to visa-free entry will be cancelled for currently exempt groups of the Belarusian population, such as residents of bordering regions, seniors who are 60 years of age and older, and drivers of transit trucks. (*ELTA*, Lithuanian National News Agency, Sept. 20, 2002, at <http://www.securities.com>) (Peter Roudik, 7-9861)

#### **RUSSIA--Ban on Pre-Election Referenda**

In what has been reported as a move to prevent a Communist Party plan to hold a plebiscite on whether to allow free sales of farmland in the run-up to parliamentary elections next year and the presidential polls in 2004, The Government has initiated the adoption of a new Law that amends Russia's election legislation and prohibits the organization of referenda during a national election campaign or during the last year of a president's or an elected federal body's term of office. The Government argued that referenda could be manipulated to influence public opinion and win votes during election campaigns. The amendment bans only referenda authorized by federal bodies, while allowing a national referendum during these periods if it is initiated in accordance with international treaties to which Russia is a party. This would permit a referendum approving the creation of a "union state" merging Russia and Belarus. President Vladimir Putin and other officials have suggested that the merger could be put to a national vote. The bill requires the collection of two million signatures and a long legal process before the Russian President could issue a decree to stage a referendum. (*Rossiiskaia Gazeta* [daily newspaper published by the RF Government], <http://www.rg.ru>, Sept. 26, 2002.) (Peter Roudik, 7-9861)

#### **SLOVAKIA– State Security**

The Constitutional Law of April 11, 2002, on State Security lays down provisions concerning the security of the State (No. 227, *Collection of Laws*). A declaration of war may be made by the president, empowered by Parliament, when the State is attacked by a foreign power or in fulfilment of a treaty obligation of collective security or mutual assistance. Fundamental rights and freedoms may be limited for the duration of a war, and the government may use exceptional powers at such times. In addition, the president may, at the government's request, declare a state of war when the country is threatened by a foreign power. The president may declare a state of national emergency at the government's request if there is an impending terrorist attack, an actual attack, public disorder, plundering of stores, or public violence. A state of national emergency can be declared for a time strictly necessary to cope with the

situation but not exceeding 60 days. It can be extended for another 30 days at the most. The government may declare a state of disaster emergency of up to 90 days in case of a natural disaster or an industrial or other disaster that threatens life and health.

During any emergency, the government may limit fundamental rights and freedoms and use exceptional powers. The Law created a Parliamentary Council composed of the president and vice-presidents of Parliament, chairmen of parliamentary committees, and party whips. The Council will attend to the usual parliamentary business if the Parliament is not in session due to war, a state of war, or an emergency. Its measures must be approved by Parliament when it convenes; otherwise they will expire. The Law also created a nine-member Security Council composed of the prime minister, ministers of defense, interior, foreign affairs, and finance and another four members appointed by the president at the request of the prime minister, who is the chairman. In time of peace, the Council stands at the head of the security system of the republic. In time of war or emergency when the entire government cannot convene, it exercises the government powers.

(George E. Glos, 7-9849)

### **UKRAINE--Criminal Charges Exchanged**

The Prosecutor General's Office has filed criminal charges against opposition Members of Parliament for protest actions taken on September 16 and September 23, 2002, involving blocking traffic and taking over the newsroom of National TV Channel 1. The Members, consisting of a broad coalition of political forces calling for President Kuchma's resignation, began a hunger strike in the presidential administration building on September 24 to protest graft, corruption, suppression of the media, and freedom of speech, and in particular the murder of opposition journalist Hryhoriy Gongadze two years ago. ([Http://www.ukraine-observer.com](http://www.ukraine-observer.com), visited Sept. 25, 2002.) A movement to impeach the president has been started, but has thus far not garnered the needed support in the legislature. ("Anti-Kuchma Demonstrations Continue in Kyiv and Elsewhere," Askold Krushelnycky, *RFE/RL Weekday Digest*, Sept. 24, 2002.)

(Natalie Gawdiak, 7-9838)

### **UNITED KINGDOM--Cooperation on Cross-Border Crimes**

After the September 11<sup>th</sup> attacks, Britain considered how it could improve communications and relations with the United States on issues of international crime, terrorism, and extradition. The extradition process is often slow, due to the length of time that it takes to exchange correspondence. The UK therefore decided that it would appoint one of its senior lawyers from the Crown Prosecution Service to a new post of "Special Prosecutor," to be known as a Liaison Magistrate, in Washington, DC. Liaison Magistrates are already in place in Brussels, Rome, Madrid and Paris and serve to coordinate prosecutions, reduce the amount of red tape that hinders cross-border investigations, and break down barriers between countries. The creation of the position in Washington was announced at the International Association of Prosecutors' annual conference and is one part of a number of commitments to establish a worldwide team specifically created to tackle international crime and terrorism. (Robert Verkaik, "Britain to Send Prosecutor to US to Help Terror Extraditions," *The Independent*, Sept. 17, 2002, at 4; "Judicial Liaison Across the Borders," *The Times*, Sept. 17, 2002, at 11.)

(Clare Feikert, 7-5262)

### **UNITED KINGDOM--Government's Deportation of Asylum Seekers Unlawful**

A high profile case that resulted in the deportation of an Afghan family to Germany, after police forcibly removed them from a mosque, has been successfully challenged in the High Court. Farid Ahmadi, his wife Fariba, and their two children fled from Taliban-controlled Afghanistan and originally claimed asylum in Germany, where they stayed for seven months. They then came to Britain and sought asylum there, claiming that they had been subjected to racism and religious abuse in Germany which had worsened Mrs. Ahmadi's post-traumatic stress disorder. Under the UK's immigration and asylum laws, asylum-seekers are permitted to remain in the UK if they are appealing against removal on human rights grounds. The Home Secretary, David Blunkett, described the claims as "manifestly unfounded," therefore falling outside human rights grounds, and deported them. The Ahmadi's appealed their deportation, and a High Court Judge ruled that Mr. Blunkett had acted unlawfully as significant damage to a person's mental health may constitute a breach of article 8 of the Convention on Human Rights, which protects the right to private life and family. The judge ruled that this arguable point gave the Ahmadi's grounds to stay in the UK while their case was heard by an independent adjudicator. Although the government has been granted leave to appeal this decision, Mr. Blunkett is concerned that the judgement will create a precedent that permits failed asylum seekers to submit claims of psychological damages to frustrate the asylum and immigration legislation. The Ahmadi's have not been granted permission to travel back to England for their case and will be heard via a video-link from Germany. (Nikki Tait, "Deportation of Afghan Family Ruled Unlawful," *The Financial Times*, Sept. 12, 2002, at 2; Joshua Rozenberg and Philip Johnston, "Blunkett Broke Law To Deport Family of Afghans, Says Judge," *The Daily Telegraph*, Sept. 12, 2002, at 11; Hannah Hennessy, "Refugees Cannot Return for Appeal," *The Times*, Sept. 12, 2002, at 4.)  
(Clare Feikert, 7-5262)

### **NEAR EAST**

#### **ARMENIA--New Copyright Legislation**

The Parliament of Armenia adopted a package of amendments focused on improvement of intellectual property protection. The revised Law on Copyright and Neighboring Rights brings Armenian legislation on intellectual property protection into compliance with the Berne Convention to which Armenia acceded on October 19, 2000. Adopted amendments specify the list of objects of intellectual property, including objects of adjoining rights, firm names, industrial models, and trademarks, and the legal mechanism for their protection. The Law introduces responsibility for rights infringement connected with the object of a copyright or licensing right. The newly adopted legislation requires further amendments to the Criminal Code, because it establishes criminal responsibility for infringement of rights not stipulated in the current Code. ([Http://www.securities.com](http://www.securities.com), Sept. 18, 2002.)  
(Peter Roudik, 7-9861)

#### **AZERBAIJAN– Legislation on State Secrets**

In order to implement the 1996 Law on State Secrets, which was strongly criticized by the Council of Europe, the President of the Republic issued Rules on Preventing the Dissemination of State Secrets in the Media on September 22, 2002. These Rules establish a procedure according to which media dissemination of reports related to State secrets is disallowed. The Rules apply to all mass media founded and operated in the territory of Azerbaijan, regardless of their ownership. Editors and journalists are given

the responsibility to prevent the dissemination of State secrets and must not allow their publication in the media. If an editorial board has doubts as to whether a report is about a State secret, it must appeal to the newly created Azerbaijani President's Interdepartmental Commission on State Secrets Protection. The Commission is obliged to give an official reply to such a request within seven days. If the Commission establishes that the submitted report relates to State secrets, it may demand that the source of the report be disclosed and that the original document be presented. The editor is obliged to fulfill this demand. If a report that relates to a State secret is disseminated, the Commission must go to the Court to request the disclosure of the name of the source. Editors and journalists will be held criminally responsible if they break these Rules. (*BBC Monitoring International Reports*, Sept. 25, 2002.)

(Peter Roudik, 7-9829)

## SOUTH PACIFIC

### **AUSTRALIA--Racism and the Internet**

In a landmark decision, the Australian Federal Court has found that a website created by a Holocaust-denier breached the Racial Discrimination Act 1975 and ordered the offending material removed. Acting Race Discrimination Commissioner Dr. William Jones said, "This case confirms that, at least for Australian sites, the Internet is subject to the same legal standards as other forms of communications." The President of the Executive Council of Australian Jewry had applied to the Federal Court to enforce an October 2000 determination by the Human Rights and Equal Opportunity Commission that the website was in violation of the Racial Discrimination Act. That Act makes it unlawful to insult, humiliate, offend or intimidate another person or group in public because of their race. The author of the offending site was also ordered to pay the legal costs of the Executive Council of Australian Jewry. (*Jones v Toben FCA 1150 (2002)* at [http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2002/1150.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2002/1150.html); "Landmark Decision on Race Hate and the Internet," Australian Human Rights and Equal Opportunity Commission, 2002 Media Releases, Sept. 17, 2002, at [http://www.hreoc.gov.au/media\\_releases/2002/61\\_02.html](http://www.hreoc.gov.au/media_releases/2002/61_02.html))

(D. DeGlopper, 7-9831)

## INTERNATIONAL LAW & ORGANIZATIONS

### **ASEM– Declaration on Cooperation Against Terrorism**

At the fourth Asia-Europe Meeting (ASEM) held in Copenhagen on September 23-24, 2002, heads of State and government of the Members– the 15 EU Member States and the European Commission and 10 Asian countries (Brunei, China, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand, and Vietnam) issued a declaration on cooperation against terrorism. Among other points, the declaration stresses the leading role of the United Nations in fighting terrorism and reaffirms ASEM's commitment to UN Security Council Resolutions on the subject as well as to the General Assembly Resolution 56/24/T on multilateral cooperation in disarmament and non-proliferation and global anti-terrorism efforts.

The declaration also sets forth the ASEM Copenhagen Cooperation Program on Fighting International Terrorism, divided into short-term, medium-term, and long-term activities. Short-term activities include, among others, the establishment of an informal consultative mechanism to help combat terrorism by enabling ASEM coordinators and senior officials to confer expeditiously on "significant"

international events; convening of an anti-terrorism seminar in China in 2003 to discuss cooperation between law enforcement agencies in fighting terrorism and international organized crime; early accession to and implementation of existing international conventions and protocols on terrorism and transnational organized crime; and support for finalization of the new UN Comprehensive Convention on International Terrorism and the International Convention for the Suppression of Acts of Nuclear Terrorism. (“Asia-Europe Meeting Issues Declaration on Cooperation Against Terrorism,” *Copenhagen Danish Presidency of the European Union*, Sept. 23, 2002, via FBIS; [http://europa.eu.int/comm/external\\_relations/ asem/intro](http://europa.eu.int/comm/external_relations/ asem/intro)) (W. Zeldin, 7-9832)

#### **AUSTRALIA/SINGAPORE--Money-Laundering Agreement**

Australia and Singapore have signed a Memorandum of Understanding for exchange of financial intelligence. The bodies that will exchange information are the Australian Transaction Reports and Analysis Center (AUSTRAC) and the Singapore Suspicious Transaction Reporting Office (STRO). Australia’s Minister for Justice and Customs described the agreement, which follows similar agreements with New Zealand and Vanuatu, as part of an effort to stamp out opportunities for terrorist financing and money-laundering in the region. (“Money Laundering Avenue Washed Up,” Senator Christopher Ellison, Minister for Justice and Customs, *Media Release*, Sept. 18, 2002, at <http://law.gov.au/aghome/agnews/2002newsjus/e118-02.html>) (D. DeGlopper, 7-9831)

#### **AZERBAIJAN/RUSSIA--Caspian Delimitation Agreement**

On September 23, 2002, Russia and Azerbaijan signed an Agreement delimiting their common border in the oil-rich Caspian Sea. This Agreement followed similar treaties concluded by Azerbaijan and Russia with Kazakhstan. The accord divides the Caspian seabed along a modified median line drawn down the middle of the sea, and gives each country a portion of the sea whose size is based on the length of each country’s shoreline. The Agreement provides a legal basis for cooperation among these three countries in exploiting the resources of the central and northern parts of the Caspian. The Agreement confirms Russia’s stance in favor of joint exploitation of the seabed and a phased settlement of the ultimate status of the Caspian Sea. This position is opposed by Iran and Turkmenistan, which favor the five countries around the Caspian Sea each having an equal 20 percent of the seabed. ([Http://www.gazeta.ru](http://www.gazeta.ru), Sept. 24, 2002.) (Peter Roudik, 7-9861)

#### **CUBA/MEXICO--Interparliamentary Meeting**

On September 19, 2002, Mexican and Cuban legislators convened in Havana, Cuba, for the Fifth Interparliamentary Meeting, a three-day series of discussions to review cooperation between the legislative bodies of the two nations. Cuban and Mexican sources stressed that no topic will be off limits, including the thorny issue of human rights. This openness was reiterated by Eric Villanueva, vice-president of the Chamber of Deputies of Mexico, who met with the press in Havana. He spoke of the intensification of Cuban-Mexican relations and commercial and strategic interests connecting the countries. Other topics expected to be discussed by the legislators included commerce, culture, technology, the Free Trade Area of the Americas, and the North American Free Trade Agreement. (*El Universal*, Mexico City, Sept. 19,

2002, via [http://www.el-universal.com.mx/pls/impreso.version\\_imprimir?id\\_nota= 90247&tabla= nota](http://www.el-universal.com.mx/pls/impreso.version_imprimir?id_nota= 90247&tabla= nota)) (Sandra Sawicki, 7-9819)

### **SINGAPORE/UNITED STATES– Container Security Pact**

On September 20, 2002, Singapore became the first country in Asia to sign the Declaration of Principles for the Container Security Initiative (CSI) with the United States. The pact provides a framework for cooperation in pre-screening US-bound containers in Singapore for terrorists and weapons. According to US Customs Service commissioner Robert Boner, “Singapore is very important because more cargo containers are transhipped through the port of Singapore to the U.S. than any other ports in the world.” Under the agreement, Singapore will permit the exchange of information and collaboration between the two countries to facilitate identification, screening, and sealing of containers deemed to be of high risk. Up to a dozen US customs officials will be stationed in Singapore as part of the initiative. As yet no exact date has been given for implementation of the pact. (“Singapore Seals Antiterror Container Security Pact with U.S.,” *Kyodo*, Sept. 20, 2002, via FBIS.)

Hong Kong and Japan have also just signed CSI pacts with the United States, on September 23 and 26, 2002, respectively. Similar agreements have already been signed between the United States and Canada, the Netherlands, Belgium, France, and Germany. (“Hong Kong Set To Allow US Screening of Suspect Containers” and “Hong Kong, US Sign Declaration on Container Security Initiative,” Hong Kong, *RTHK Radio 3*, Internet version, Sept. 22 & 23, 2002, respectively, both via FBIS; “Japan, U.S. To Take Step To Cut Smuggling of Terrorist Weapons,” *Kyodo*, Sept. 26, 2002, via FBIS.) (W. Zeldin, 7-9832)

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## RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

### Signing of a Cooperation Agreement between European Union and Chile<sup>1</sup>

On September 23, 2002, the EU and Chile signed a scientific and technological cooperation agreement, similar to the one already in force between the EU and Argentina. Under the agreement, scientists from both sides will participate in joint research programs, such as studies of the genome, biotechnology and health, information technology, food safety, and climate change. The scope of the agreement also includes exchange and sharing of facilities and equipment, as well as visits and exchanges of technical experts. A joint steering committee will oversee the implementation of this agreement.

### Foreign Sales Corporations<sup>2</sup>

On September 13, 2002, the European Commission, based on prior World Trade Organization (WTO) approval to impose tariffs on imports from the United States, prepared a list of products to be reviewed by the industry sector with the intent to impose countermeasures. The products were selected from the 46 chapters of the Common Customs Tariff. The tariffs imposed can be up to 100% *ad valorem*, to a maximum of US\$4.043 billion per year.

This issue first arose in 1984, when the European Union contested the legality of the Foreign Sales Corporation (FSC) Scheme imposed by the US. Subsequently, in 1997, the EU requested a WTO ruling on the issue. The WTO panel held that the FSC constituted an illegal export subsidy under the Subsidies Agreement and the Agriculture Agreement. The US appealed the decision, but the ruling of the panel was upheld on appeal. The US was requested to discontinue the FSC by November 2000. The Replacement Act was to go into effect by November 2000, but the EU protested again on the grounds that the FSC remained essentially unchanged and also requested countermeasures up to the amount of US\$4.043 billion. In August 2001, the WTO issued a report supporting the EU arguments. In January 2002, the US appealed the decision, but the WTO Appellate Body confirmed the panel's decision.

### Ban on the Use of Certain Antibiotics in Animal Feed is Upheld by the Court of First Instance<sup>3</sup>

A 1998 regulation prohibited the use of four antibiotics as additives in animal foods while allowing the use of four others. For a long time, antibiotics in very low doses have been added as growth promoters to foods intended for consumption by certain animals. When the regulation was adopted, the Council based

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<sup>1</sup> [Http://europa.eu.int/rapid/](http://europa.eu.int/rapid/)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

its decision to impose the ban on the “precautionary principle,” since there was no scientific evidence as to the connection between the use of antibiotics and the development of resistance to those antibiotics in humans. Two pharmaceutical companies brought an action for annulment of the regulation before the Court of First Instance. In its judgment, the Court held that even though there is uncertainty as to whether there is a link between the use of those antibiotics as additives and the development of resistance in humans, the prohibition on these antibiotics is not a disproportionate measure in comparison to the objective pursued, that is, the protection of human health. This judgment is subject to appeal before the Court of Justice.

#### **New Rules on Imports of Meat and Milk for Personal Use<sup>4</sup>**

There is a pending proposal to impose strict rules against imports of meat and meat products as well as milk and milk products. The proposal would require that individuals who arrive at the EU from certain countries not be able to carry such products in their luggage unless they hold official veterinary documentation. Meat and milk products have been allowed under current rules if intended for private consumption. The proposal will allow some exceptions for infant milk and for packaged goods if the packaging is intact.

#### **New Rules on Detergents<sup>5</sup>**

The European Commission adopted a proposal for a regulation to protect the aquatic environment more effectively. The regulation will replace the existing five directives on biodegradability of detergent surfactants. Its scope is broad enough to include all kinds of detergent surfactants. Previously, surfactants used as fabric softeners and for dishwashing were not included. The proposed regulation also would introduce mandatory labeling of (?) information on the contents of the detergent and cleaning products and of information on certain detergent ingredients that might cause an allergic reaction among consumers.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*