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WORLD LAW BULLETIN

March 2003

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Terrorism-Australia, China, Japan
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Anti-Violence Agreement--Venezuela

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AMERICAS

- Colombia– *Government teleconferencing*
 - *Paramilitaries granted same benefits as guerillas*
- Peru– *Congressional proposal on coca growing*
 - *Court permits constitutional reform by Congress*
- Venezuela– *Anti-violence agreement*
 - *Debate on media responsibility law*

ASIA

- Cambodia– *Investment law approved*
- China– *Anti-trust law proposed*
 - *Terrorism charge used in trial of democracy activist*
- Japan– *Planned law on terrorism involving maritime transport*
- Korea, South– *Immigration law*
- Taiwan– *Proposal to allow local languages in court*
 - *Qualified foreign investors requirements eased*
- Uzbekistan– *First legal aid clinic opened*
- Vietnam– *Human cloning and surrogacy banned*

EUROPE

- Belgium– *Cellphones*
- Bulgaria– *Alternative military service*
- Estonia– *New bankruptcy law*
 - *New criminal procedure code*
- Ireland– *Alien fingerprinting*
- Lithuania– *Court rules against spam*
- Russia– *Attempts to eliminate subliminal messages*
 - *Trial telecommuting*
- Ukraine– *New anti-money laundering measures*
- United Kingdom– *Government must support late claim asylum seekers*

– *Muslim cleric banned from preaching extreme politics*

NEAR EAST

- Armenia– *Changes to law on foreign investments*

SOUTH PACIFIC

- Australia– *Bats win in federal court*
 - *Federal funding for state counter-terrorism*

INT'L LAW & ORGANIZATIONS

- Central America/United States– *Start of trade talks*
- El Salvador/Guatemala– *Stock exchanges sign agreement*
- Honduras/Nicaragua– *Tariff bill under consideration*
- Kazakhstan/Uzbekistan– *Border agreement ratified*
- South Korea/Chile– *Free trade agreement*
- WHO– *Draft global tobacco convention approved*

PLUS: EU Developments and UK Bibliography

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.*

WLB 2003.03, March 2003

AMERICAS

COLOMBIA– Government Teleconferencing

The Constitutional Court of Colombia upheld a government decree issued in 2002 allowing city council members facing death threats to participate in council meetings via the Internet, telephone, and other electronic means. The decree was issued in August by the then new administration of President Alvaro Uribe Velez as part of a series of emergency steps. Judge Eduardo Montealegre, head of the Court, stated on January 23, 2003, that use of electronic means such as the telephone, the Internet, videoconferencing, and other modern technology is permissible when threats to public order make it dangerous for council members to be physically present at meetings. It is reported that in 2002 the Revolutionary Armed Forces of Colombia issued death threats against more than half of Colombia's mayors and other government officials. ("Colombian Court Approves City Council Meetings Via Internet," *ACANEFE Press Agency*, Jan. 24, 2003, via FBIS.)
(Sandra Sawicki, 7-9819)

COLOMBIA--Paramilitaries Granted Same Benefits as Guerrillas

Members of paramilitary groups, one of the armed components in Colombia's present civil strife, will now receive such legal benefits as pardons, conditional suspension of sentences, stay of proceedings, dismissal of hearings, or motions to remove cause from court under Decree 128 of 2003 (see also WLB, Jan. 2003). Up until the new Decree was enforced, only guerrilla groups were able to enjoy these benefits. Persons (paramilitary or guerrilla) interested in these advantages will be eligible once they turn themselves over to judges, prosecutors, military, or police authorities, representatives of the Attorney General's Office, the Ombudsman, or territorial authorities, who will immediately inform the Prosecutor General's Office and the appropriate military installation. The Operative Committee for the Laying Down of Arms, made up of delegates from the interior, justice, and defense ministries, the Prosecutor General's Office, the Colombian Family Welfare Institute, and the Ombudsman's Office, will arrange for the benefits when appearing before sentencing judges.

The Decree denies eligibility to people on trial or convicted of crimes for which the Constitution, legal standards, or international treaties signed and ratified by Colombia bars them from receiving these benefits. If a paramilitary member or guerrilla decides to desert, he or she will also receive such benefits as funds for development project proposals, health services, education, or training. Those who provide information about their organization and weapons will receive an economic bonus from the Ministry of Defense. These benefits will be granted only once to each person and will be terminated when the person completes his or her reintegration into civilian life. ("Decree 128 Grants Paramilitaries Same Benefits Granted to Guerrillas," *El Tiempo*, Jan. 28, 2003, via FBIS.)
(Sandra Sawicki, 7-9819)

PERU– Congressional Proposal on Coca Growing

A member of Peru's Parliament announced on January 28, 2003, that he would introduce a bill with the purpose of regulating the farming, marketing, and use of the coca leaf. Congressman Walter Alejos of the Peru Possible Party prepared the bill in conjunction with the coca leaf farmers of the Apurimac and Ene Valleys. The bill calls for creating and maintaining a modernized land registry of farming areas located in each river basin under the supervision of the Ministry of Agriculture, in coordination with regional governments. Alejos specified that the areas not within this registry would be considered illegal for coca leaf farming. He indicated that the traditional use of the coca leaf and its use in religious observances will have to be legally recognized and that the Peruvian government will have to attain this

legal recognition under the scrutiny of the international community.

According to Alejos, the farming, marketing, and other use of the coca leaf would have to be under the exclusive surveillance and control of the government. He stressed the importance of starting alternative crops and sustained agricultural production programs. Under the bill, the legal marketing of the coca leaf would be handled exclusively through the National Coca Enterprise, which will have decentralized offices in all coca-producing areas. Export of the coca leaf would be banned. (“Congressman Proposes Land Registry for Coca Growing,” *El Comercio*, Jan. 28, 2003, via FBIS.) (Sandra Sawicki, 7-9819)

PERU– Court Permits Constitutional Reform by Congress

The Constitutional Tribunal of Peru issued a verdict on January 24, 2003, that allows the Congress to continue with a constitutional reform and declared groundless a motion by the Cusco Bar Association of Lawyers objecting to Congressional activities in this regard. The Cusco Bar Association argued that the ability to reform the Constitution belonged to a constituent assembly and not to the legislative branch.

The Court’s decision established that any reform of the Constitution by the legislative branch should be subject to public validation through a referendum. The verdict asserted that Congress can carry out the constitutional amendment because it is only a partial reform that will maintain the essential contents of the current Constitution. Magistrate Manuel Aguirre Roca cast the only dissenting vote, based on his allegation that Congress does not have the ability to draw up a new charter. (“Constitutional Tribunal Gives Congress Green Light on Constitutional Reform,” *La Republica*, Jan. 24, 2003, via FBIS.) (Sandra Sawicki, 7-9819)

VENEZUELA– Anti-Violence Agreement

On February 18, 2003, representatives of the government and the opposition coalition signed a Declaration Against Violence for Peace and Democracy as a step toward a solution to the turmoil that has existed in Venezuela for over two months (see WLB, Jan. 2003). This development reanimates the negotiations between the two sides that have been stalled since December. The agreement was reached with the help of the Organization of American States, the Carter Center of Atlanta, and the United Nations Development Program. OAS Secretary General Cesar Gaviria read the eight-point document whereby the parties stated their agreement to stop the general climate of confrontation and violence in the country. The parties, including President Hugo Chavez Frias, pledged to use mutually respectful language, tolerance, and respect for all others’ ideas, to ensure democratic coexistence, and to use all possible means to resolve differences peacefully. The agreement stresses that any violent act is “absolutely unjustifiable,” and it appeals to all competent administrative and jurisdictional bodies to be dealt firmly with any person under investigation and mete out appropriate punishment for causing death or personal injury to others. The document urges the National Assembly to establish a Truth Commission.

Among the provisions of the Agreement are references to the public and private news media and their role in promoting programs and articles that foster peace, tolerance, and coexistence. The signatories reaffirm their respect for the effective exercise of constitutional rights, including freedom of expression and information, according to the Constitution. It urges religious organizations, professional associations, trade unions, political parties, and civil society organizations to articulate ideas and messages that espouse democratic principles and increase public awareness. The highest ranking government official to sign the document was Jose Vicente Rangel, Vice President of Venezuela, and the chief signatory for the opposition was Manuel Cova, Secretary General of the Venezuelan Workers Confederation. (*BBC Mundo.com*, Feb. 18, 2003, via http://news.bbc.co.uk/hi/latin_america/newsid_2778000/2778273.stml; *CNNenEspanol.com*,

Feb. 19, 2003, via <http://www.cnnenespanol.com/2003/americas/01/19/venezuela.acuerdo/index.htm>; and “Venezuelan Government, Opposition Sign Anti-Violence Agreement, *Globovision Television* and *El Universal*, Feb. 18, 2003, via FBIS.) (Sandra Sawicki, 7-9819)

VENEZUELA– Debate on Media Responsibility Law

The Venezuelan Congress approved a Radio and Television Responsibility Law in a lengthy first debate that ended early in the morning on February 13, 2003. Votes fell as expected between supporters of President Chavez, who believe the proposed Law will democratize broadcasting, and opposition lawmakers, who see the legislation as a deterrent to freedom of expression. The voting was preceded by debates on the role the communications media has played in the current crisis and the opening of court procedures involving the four major private television channels in the nation. The president of the Council on Telecommunications, Jesse Chacon, has come out in favor of the future law as a way to modernize relations between the media and society and stated that it provides for controls similar to those in effect in Europe, the United States, and other Latin American countries. Among the controls, the Law calls for restrictions on the hours in which political programming may be transmitted. The Law faces a second debate during which all 150 articles will be analyzed. (*BBC Mundo.com*, Feb. 13, 2003, via http://news.bbc.co.uk/hi/latin_america/newsid_2757000/2757903.shtml; and “Venezuelan Lawmakers Approve Radio, Television Responsibility Law in First Debate,” *El Observador*, Feb. 13, 2003, via FBIS.) (Sandra Sawicki, 7-9819)

ASIA

CAMBODIA– Investment Law Approved

On February 3, 2002, the National Assembly passed an investment law by a vote of 76-10, following one day of debate. The law is designed to increase the tax base, as well as to respond to the complaints of investors that without reform, investment in Cambodia is too difficult. In comparison with the existing investment law, however, the new legislation provides for shorter tax holidays for new investments. Those investors who came into the system under the older law will be permitted to keep the current tax break schedules. The Cambodian government has long expressed a desire to improve the investment environment by strengthening the administrative system, in order to facilitate trade, and by improving methods for resolving disputes between labor and management. (*Xinhua*, May 1, 2002, & *Malaysia General News (Phnom Penh)*, Feb. 28, 2002, via FBIS.) Investors may be wary, however, following recent riots that targeted Thai-owned businesses in Phnom Penh, inflicting extensive damage (*Channel Business Asia*, Feb. 9, 2003, via LEXIS/NEXIS). Tax code amendments must be passed and executive directives issued before the changes can be implemented (*Kaoh Santepheap*, Internet version, Feb. 5, 2003, via FBIS). (Constance A. Johnson, 7-9829)

CHINA– Anti-Trust Law Proposed

According to the State Economic and Trade Commission's (SETC) department of economy and laws, a first draft of an anti-monopoly law has been completed. The law would be designed to limit the development of market monopolies and thus create equal opportunities for new businesses and better

protect consumers. Enacting anti-trust legislation is also considered a part of the process of legal reform undertaken since China joined the WTO in December 2001. The law may take up to two years to enact. It should help China's economy to grow, as it is designed to promote healthy competition among enterprises, according to Wang Xiaoye, a trade law specialist at the Chinese Academy of Social Sciences. It will prohibit cartels, illegal use of market dominance by large companies, and administrative monopolies. Corporate merger and acquisitions procedures will be streamlined, with restrictive rules about hostile takeovers. The increased access to the Chinese market given to international companies by WTO rules is expected to make market dominance more of a problem in the next few years. Wang has pointed out that one issue at present is the lack of an enforcement agency, although several new departments, attached either to the SETC or the Ministry of Foreign Trade and Economic Cooperation, have been established that are tasked with market oversight. (*China Daily* (Business Weekly Supplement), Feb. 11, 2003, via FBIS.) (Constance A. Johnson, 7-9829)

CHINA– Terrorism Charge Used in Trial of Democracy Activist

In a verdict pronounced by the Shenzhen Municipal Intermediate People's Court on February 10, 2003, U.S. permanent resident Wang Bingzhang– a Chinese dissident and co-founder of two banned political groups who has been in Chinese custody since July 3, 2002– was found guilty of spying and of organizing and leading a terrorist organization. It is apparently the first time that the charge of engaging in acts of "terrorism" has been applied to a pro-democracy activist. According to the verdict, Wang provided intelligence to Taiwan from 1982 to 1990 and since 1996 had published articles and books that advocated violence and terrorist activities such as assassinations, kidnappings, and bombings. The court said that he had plotted an assassination for the 1999 China National Day ceremony and that he had twice been to Thailand to plot a bomb attack on the Chinese Embassy and establish a terrorist training base there. On the spying conviction, Wang was sentenced to life imprisonment and deprivation of political rights for life; the terrorism verdict carried a sentence of 10 years' imprisonment and deprivation of political rights for three years. The two sentences are to be concurrently executed. Wang lost on appeal against the verdict. ("AFP: Chinese Dissident' Wang's Life Sentence Outrages Relatives, Rights Groups" & "AFP: PRC FM Spokesman Says China Rejects Criticism of Life Sentence for Activist," *HK AFP*, Feb. 10 & 11, 2003, respectively, via FBIS; "CNA: US Supporters Say Dissident Wang Bingzhang Sentenced on Trumped Up Charges," Taipei *Central News Agency*, Feb. 12, 2003, via FBIS.) (W. Zeldin, 7-9832)

JAPAN– Planned Law on Terrorism Involving Maritime Transport

The Land, Infrastructure, and Transport Ministry plans to submit a bill to the Diet (Japan's Parliament) on dealing with terrorism in maritime transportation, in the wake of the incorporation in the revised International Convention for the Safety of Life at Sea of mandatory port facility security plans, security assessments, and supervision of ships. The new law will apply to all international passenger ships and cargo ships weighing over 500 tons. The key elements of the bill are the compilation of port facility security plans and security assessments for relevant ports that serve ships engaged in international transport and on-the-spot inspections to be carried out by Coast Guard officials before ships arrive in port. Domestic shipping companies will be required to devise measures to prevent suspicious persons from boarding (e.g., by separating exit and entry points), to introduce a crime-prevention system (through the installation of monitoring cameras, and the like), and to create a security plan (by hiring security guards, providing preventive training against attackers, etc.) The Ministry will issue a "Security Certificate for International Voyage" (as currently proposed) after the plans and the ship itself have been examined according to new

standards to be set by the Government. The ports at which a ship subject to monitoring arrives will have to make a similar facility security plan, to include cargo inspections using X-ray equipment and the establishment of off-limits areas. (“Japan: Government To Create Law To Deal with Terrorism on Maritime Transportation,” *Tokyo Shimbun*, Feb. 15, 2003, as translated in FBIS, Feb. 18, 2003.) (W. Zeldin, 7-9832)

KOREA, SOUTH– Immigration Law

The Justice Ministry of the Republic of Korea (ROK) plans to revise the Immigration Law to allow issuance of permanent visas to foreigners who made a “special and significant” contribution to the nation. If the draft plan to revise the enforcement ordinance of the law is approved by the Cabinet, such persons would be permitted to receive permanent residency before having lived in the ROK for at least 5 years, the minimum requirement for ordinary applicants under the current Immigration Law. Those foreigners granted the special status would be accorded the same treatment as that given to Koreans with permanent residence in the foreigner’s home country, based on the principle of reciprocity. They will reportedly be able to freely engage in economic activities, seek employment and education, and receive a wide range of social benefits. They will also be permitted to maintain their home country citizenship. Under the current Law, foreigners who have rendered meritorious service to Korea are given a special right to be naturalized, and the Justice Ministry annually chooses candidates for naturalization, but those selected are prohibited from seeking dual nationality. As a result, according to a Ministry official, the system has had little effect. (“Seoul Drafts New Status for Honored Foreigners,” *The Korea Herald*, Feb. 18, 2003, via LEXIS/NEXIS; “ROK’s Yonhap: Foreigners With Excellent Service To Be Accorded Permanent Status,” *Yonhap*, Feb. 17, 2003, via FBIS; “Gov’t Will Grant Permanent Visas to Distinguished Foreigners,” *Korea Times*, Feb. 18, 2003, via LEXIS/NEXIS.) (W. Zeldin, 7-9832)

TAIWAN– Proposal To Allow Local Languages in Court

Equal treatment in court proceedings to speakers of languages other than Mandarin Chinese, including Hoklo, Hakka, and numerous aboriginal languages, would be provided under a new law proposed by the Mandarin Promotion Council of the Ministry of Education. The Council plans to hold public hearings on the issue in March and review the results in April. The law would prohibit discrimination against testimony not presented in Mandarin and require the courts to provide translations. The same requirements would be imposed on legislative proceedings, and consideration is being given to requiring local language knowledge for some civil service examinations.

After public hearings and a review period, the bill will be submitted to Taiwan’s parliament, the Legislative Yüan. The proposal will probably be controversial in the legislature. While members of the Democratic Progressive Party and of the Taiwan Solidarity Union have expressed support for the bill, one Nationalist (Kuomintang) legislator has opposed it, stating that the law would complicate communication and create unnecessary problems. During the decades of Nationalist rule following the establishment of the Republic of China government on Taiwan in 1949, the state promoted Mandarin officially and prohibited the use of local languages in schools. (*Taipei Times*, Feb. 19, 2003, via <http://www.taipetimes.com>)

(Constance A. Johnson, 7-9829)

TAIWAN– Qualified Foreign Investors Requirements Eased

Effective as of January 7, 2003, the Securities and Futures Commission of the Republic of China (on Taiwan) declared a major relaxation of eligibility requirements, application procedures, and scope of investment for qualified foreign institutional investors (QFIIs) in Taiwan's stock market. Investment agencies such as banks, insurance companies, and fund management institutions now need to manage assets of only US\$100 million (versus 200 million in the past) and securities firms, only US\$50 million, in order to qualify. While a US\$3 billion ceiling for each QFII investment is still in place, experience requirements are being abolished. Notarized documents are no longer required for the application process; applicants need only list certifications in their documentation, a change in procedure that may save up to a month in processing time. In the past, overseas academic and charitable institutions, which by their nature are not considered QFIIs, could not invest in the Taiwan markets. Under the new rules, they may do so provided that their charters stipulate that funds can be invested or commissioned to outside agencies for management. The scope of foreign investment allowed in futures trading has also been broadened. Regulations on forward positions have been abolished and there is no longer any requirement of a "futures investment position," but certain restrictions remain regarding the trading of futures and option contracts and futures products. QFIIs may now carry New Taiwan dollar derivatives, including forward interest agreements, interest swaps, and options. ("SFC Relaxes QFII Eligibility Requirements," *Taiwan Journal*, Jan. 24, 2003, at 3.)

(W. Zeldin, 7-9832)

UZBEKISTAN--First Legal Aid Clinic Opened

The first legal aid clinic opened in Tashkent, the Uzbek capital, on February 10, 2003. Law students will provide free legal assistance on issues of human rights to Uzbekistan's needy citizens. The clinic will provide consultations on such issues as labor rights, the right to freedom of migration, freedom from sexual, ethnic, or religious discrimination, and rights of persons implicated in the criminal process, such as due process and rights of arrested persons. Twenty-eight students from the Tashkent Law Institute will be associated with the clinic. All student consultations will be observed and approved by professional lawyers who were trained by the American Bar Association Central Europe and Eurasia Legal Initiative project and financed by the U.S. State Department's Bureau of Democracy, Human Rights, and Labor. This clinic is the only such establishment in Central Asia. (*UzReport Daily*, Feb. 11, 2003, at www.site.securities.com)

(Peter Roudik, 7-9861)

VIETNAM– Human Cloning and Surrogacy Banned

On February 12, 2003, the Vietnamese Government issued a new Population Ordinance in seven chapters. It outlaws human cloning, surrogacy, termination of a pregnancy as a method of selecting an unborn child's gender, import and supply of fake contraceptive devices, and any activities that violate family planning. Scientifically assisted reproductive technologies are permitted, provided that sperm donors are between 20 and 55 years of age, ovum donors are from 18 to 35 years old, and the donors are healthy and free of infectious or hereditary disease. Information about the donors is to be kept confidential, and persons born through reproductive technology will not be entitled to rights of inheritance from or child-rearing by the sperm, egg, or embryo donors. The Ordinance will enter into effect on May 1, 2003. ("Vietnamese Presidential Office Issues Ordinance Banning Human Cloning," *Hanoi Voice of Vietnam*, Feb. 15, 2003, as translated in FBIS, Feb. 17, 2003; "Health & Environment: Surrogacy and Human

Cloning Banned in Vietnam,” *Vietnam News Briefs*, Feb. 14, 2003, via LEXIS/NEXIS.)
(W. Zeldin, 7-9832)

EUROPE

BELGIUM--Cellphones

The Royal Decree on the Establishment and Use of a Network of Cellphones amended several existing royal decrees on the subject in order to prevent theft and illegal use of cellphones (Oct. 10, 2002, in *Moniteur Belge*, Nov. 1, 2002). There are about seven million cellphones in Belgium using the Global System for Mobile Communications. If a cellphone is stolen, the owner can electronically block the Subscriber Identification Module in the phone so that the thief cannot make calls at the owner’s expense. However, the thief can insert another Subscriber Identification Module in the cellphone and use it. The new Royal Decree requires the use of an Equipment Identity Register, a database containing International Mobile Equipment Identity identification numbers. There is a Central Equipment Identity Register in Dublin, Ireland, that contains the identity numbers of all cellphones stolen worldwide. Upon obtaining such numbers, Register operators can deny access to the network by the stolen cellphones.
(George E. Glos, 7-9849)

BULGARIA--Alternative Military Service

The Law on Replacement of Military Obligations by Alternative Service entered into force on February 15, 2003. It establishes that the national Government will, according to the proposal from the ministries of labor and of defense, establish annual quotas for those who will do alternative service instead of active military duty. The alternative service shall be conducted in military units in positions that do not require direct access to arms, in government organizations, and in State-owned and municipal companies. The Law emphasizes that accommodation for alternative service will be provided in regular military units. Permission to substitute alternative service for military service will be given by a specially appointed commission upon submission of evidence that the person’s religious beliefs prohibit the taking up of arms. It is mandatory for the existence of such beliefs be attested to by a Orthodox Christian clergyman. The term of alternative service is one and a half times longer than military service and is 9 months for university graduates and 13 and a half months for all others. (*BTA* (Bulgarian Telegraph Agency) *Daily News*, Feb. 12, 2003.)
(Peter Roudik, 7-9829)

ESTONIA--New Bankruptcy Law

A new Bankruptcy Act was approved by the Estonian legislature on January 22, 2003. The government-proposed legislation is aimed at speeding up bankruptcy proceedings and improving supervision of trustees. The new Law reduces the number of stages in which creditors are entitled to payments from bankrupt estates, establishes a limit on the extent to which holders of secured claims must cover the cost of proceedings, and introduces special terms for bankruptcy proceedings for individuals. Analysts say it also offers an improved framework for the recovery of companies facing insolvency instead of liquidation and provides more clearly defined rules for preventing abuses by people involved in bankruptcy proceedings. (*Radio Free Europe/Radio Liberty Daily Report*, Jan. 31, 2003.)
(Peter Roudik, 7-9861)

ESTONIA– New Criminal Procedure Code

The Estonian Parliament passed a Criminal Procedure Code that considerably changes the judicial procedure. The Code will replace the amended version of the Soviet Estonian Code of 1961, currently in effect. The Code of nearly 500 articles provides for more confrontation between defense and prosecution and increases the role of the prosecutor, allowing both the prosecutor and the defense to submit evidence. It is hoped that greater emphasis on judicial investigation will increase the independence of courts and the judge's freedom to decide a case on the basis of questions raised during the procedure. The new Code is expected to speed up criminal proceedings and cut their cost. (*BNS Baltic Daily News*, Feb. 11, 2003.) (Peter Roudik, 7-9861)

IRELAND– Alien Fingerprinting

In an effort to address the massive increase in identity fraud, the Department of Justice is considering the compulsory fingerprinting of all resident non-EU nationals. At present, the approximately 93,000 non-EU nationalists living and working in Ireland have to register annually with the Garda National Immigration Bureau (GNIB) and obtain a photo ID each time. The new proposal would mean compulsory fingerprinting for all those immigrants, including students and workers. Currently, only the 11,500 asylum seekers arriving annually are fingerprinted by the GNIB. Civil liberties groups, such as the Irish Council for Civil Liberties and Amnesty International, have decried the proposal, saying that there was no evidence that non-EU nationals were any more likely to commit identity fraud than Irish people and that such a move would be a gross infringement on privacy. The GNIB, citing the increasing numbers of illegal immigrants masquerading under several different identities, considers fingerprinting the only way to eliminate such fraud. Should the proposal be approved, it would be consistent with the Aliens Order 1946, which already permits the fingerprinting of non-nationals. (*Irish Examiner*, Jan. 29, 2003, via <http://www.examiner.ie>) (Karla Walker, 7-4332)

LITHUANIA--Court Rules Against Spam

The Supreme Court of Lithuania dismissed an appeal lodged by a telecommunications firm accused of spam distribution. In 1999, Lithuania's leading telecommunications company, Lietuvos Telecomas, concluded a data transmission agreement with a firm that was granted access to a number of Internet addresses and given the ability to send data in large quantities. Later, Telecomas was informed by a foreign-based Internet service provider that its contractor was engaged in massive distribution of advertising messages and did not react to the provider's warnings to discontinue its activities. At Telecomas' request, the ISP blocked the contractor's traffic, and the latter sued Telecomas over an alleged breach of agreement. The case was dismissed by courts of all instances, and the Supreme Court acknowledged that the sending of unwanted commercial information via Internet is an abuse of the right to transfer information. Amendments to the Lithuanian Law of January 2001 prohibit unsolicited electronic commercial advertising. (*BNS Baltic News Service*, Feb. 17, 2003.) (Peter Roudik, 7-9861)

RUSSIA– Attempts To Eliminate Subliminal Messages on TV

Because of the increased number of broadcasts of filmed material with hidden messages, which contain commercial advertisement and whose adverse impact on the human subconscious has been recognized by specialists in several areas of science, including medicine, the Government of the Russian Federation

recently announced that the Russian Press and Media Ministry's State Inspectorate will install new equipment aimed at the identification of the so-called 25th hidden frame in video materials in order to monitor television broadcasts. This move is justified by provisions of the federal Media Law, which explicitly bans the use of concealed inserts that affect the human subconscious and are detrimental to health in televised, video, and cinematic products and in computer files and computerized textual information. The federal Law on Advertisement contains a similar prohibition. (*BBC Monitoring*, Feb. 18, 2003.) (Peter Roudik, 7-9861)

RUSSIA– Trial Telecommuting

The Department of Corrections in the Russian province of Kaliningrad arranged the first televised conference between convicts and Russia's Supreme Court. Under Russian law, persons who lodge a petition with the Supreme Court are guaranteed participation in the trial. However, this provision was almost never implemented because it is too expensive for the provincial penitentiary department to transport convicts to Moscow. Seven cases have now been resolved, however, by the use of telecommuting. After analyzing the results, the Supreme Court will decide whether to expand this experiment to other regions. ([Http://www.supcourt.ru](http://www.supcourt.ru), website of the RF Supreme Court, visited Feb. 19, 2003.) (Peter Roudik, 7-9861)

UKRAINE--New Anti-Money Laundering Measures

On January 29, 2003, the Government of Ukraine adopted a new anti-money laundering plan, after the OECD's Financial Action Task Force imposed measures against Ukraine on the grounds that the country was not doing enough in the fight against money laundering. The plan provides for further measures for combating money laundering and confiscating illegal income and envisages closer cooperation between local financial institutions and law enforcement agencies in Ukraine and abroad. According to the plan, the National Bank of Ukraine intends to hire more staff in order to monitor the country's largest banks more closely. The State's central bank will create an information system that will allow it to track the Bank's financial condition and improve calculations of its capital. The elimination of the FATF sanctions against Ukraine followed the adoption of the plan. (*The Economist Intelligence Unit*, Feb. 6, 2003.) (Peter Roudik, 7-9861)

UNITED KINGDOM--Government Must Support Late Claim Asylum Seekers

To combat the apparent widespread abuse of the asylum system and unfounded claims in the United Kingdom, the government enacted a law requiring asylum seekers to claim asylum as soon as reasonably practicable after arrival in the UK (the Nationality, Immigration and Asylum Act 2002, ch. 41, §55). The relevant section of the law has been implemented in a manner that requires asylum to be claimed at the port of entry, or in some cases within 24 hours of arrival, unless there is a reasonable excuse for not doing so. If individuals do not follow this procedure they are denied all forms of support prior to a decision being made on their application.

The law was challenged in the High Court by six asylum seekers who were denied support under the legislation. The judge ruled that the law breached article 6 of the European Convention on Human Rights, as asylum seekers were denied the right to appeal the decision. The judge held that the legislation forced genuine refugees to choose between returning to persecution in their home country or destitution in the UK. The result of the decision is that the provision must be interpreted more broadly so immigrants no

longer have to apply for asylum upon arrival in the UK.

The Government is unhappy with the judgment. Home Secretary David Blunkett stated that he intends to continue implementing the policy and was “fed up with having to deal with a situation where Parliament debates issues and the judges then overturn them...[W]e did mean what we said and, on behalf of the British people, we are going to implement it.” The Home Office intends to appeal the judgment. *R v Secretary of State for the Home Department*, 2003 EWHC 195 (Admin); “Asylum Support Judgment: Response from the Home Secretary,” at <http://www.ind.homeoffice.gov.uk/news.asp?NewsID=242>; “Asylum System Flawed, Rules High Court,” *The Independent*, Feb. 20, 2003; “A Victory For Humanity: Asylum Seekers Have a Right to Survive,” *The Guardian*, Feb. 20, 2003, “Court Rules that Blunkett Asylum Policy Is Illegal,” *The Times*, Feb. 20 2003.)
(Clare Feikert, 7-5262)

UNITED KINGDOM--Muslim Cleric Banned From Preaching Extreme Politics

Muslim cleric Abu Hamza was banned from preaching at a North London Mosque by the Charities Commission on the same day that he remarked that Allah destroyed the space shuttle Columbia because it was a “trinity of evil” against Islam. The Charities Commission is a government organization that aims to preserve the integrity of charities. The Mosque is registered as a charity in England and Wales. Mr. Hamza had continued to preach despite being suspended by the Charities Commission in April 2002. At one point he preached on the steps of the Mosque after it was closed by police on public health and safety grounds following a raid in which a CS gas canister, an electric stun gun, fake passports, and stolen cards were discovered there. The Charities Commission stated that Mr. Hamza’s comments were so extreme and political that they conflicted with the Mosque’s charitable status and were damaging its reputation. It restored control of the Mosque back to its trustees, who alleged they had been driven out of the Mosque by Mr. Hamza. Both shoe bomber Richard Reid and Zacarias Moussaoui had reportedly attended the Mosque and were followers of Mr. Hamza.

In another recent case, a Muslim cleric was found guilty by a jury of charges of soliciting murder and stirring up racial hatred. This was the first prosecution of a Muslim cleric in the UK and the first time that jurors were prevented from sitting on a jury based on their religion. Mr. Hamza joined demonstrators outside the court alleging that the British legal system had Islam on trial. (“Hamza Banned from Preaching Hate at Mosque,” *The Daily Telegraph*, Feb. 5, 2003, at 4; “Radical Muslim Loses Right to Preach at London Mosque,” *Financial Times*, Feb. 5, 2003, at 3; “Radical Cleric Barred From Mosque: Abu Hamza Vows to Defy Ban By Charities Commissioners,” *The Guardian*, Feb. 5, 2003, at 10; “Mosque Trustees Back Preaching Ban on Hamza,” *The Times*, Feb. 5, 2003, at 4; “Shuttle Destroyed by God, Says Hamza,” *The Times*, Feb. 4, 2003, at 1; “PA News, Muslim Cleric Found Guilty of Soliciting Murder,” *The Times*, Feb. 24, 2003.)
(Clare Feikert,7-5262)

NEAR EAST

ARMENIA– Changes to Law on Foreign Investments

Amendments to the Law on Foreign Investments aimed at bringing the Armenian legislation into compliance with international legal acts entered into force on February 1, 2003. The major novelty is the introduction of a procedure to settle disputes between the Government and foreign investors in an

international arbitration forum in the country of the investor's choice. Formerly, such disputes were resolved in Armenian courts exclusively. At present, Armenia has international agreements on mutual protection and stimulation of foreign investments concluded with 30 countries and is negotiating with 25 more states. (*Arminfo News Wire*, Feb. 3, 2003, at <http://www.site.securities.com>, visited on Feb. 20, 2003.)

(Peter Roudik, 7-9861)

SOUTH PACIFIC

AUSTRALIA– Bats Win in Federal Court

On February 12, 2003, Australia's Federal Court for the Queensland District decided that the federal Minister for the Environment and Heritage, who administers the Environmental Protection and Biodiversity Conservation Act 1999, had not acted in accordance with the law by exempting landowners from complying with the provisions of the Act. Under the Act, landowners wishing to "cull" two endangered flying fox (fruit bat) populations would be obligated to file environmental impact assessments. In November 2002, the Minister advised fruit growers that they could legally shoot spectacled or grey-headed flying foxes as long as they had the approval of state government agencies. The case was brought by the Humane Society International, whose Director observed that "next season it will make a huge difference...it's good news not just for the bats but all species on that federal list [of endangered species]." (*Humane Society International v Minister for the Environment and Heritage* [2003] FCA 64, Feb. 12, 2003, at http://www.austlii.edu.au/au/cases/cth/federal_ct/2003/64.html; *ABC Online News*, Feb. 12, 2003, at <http://www.abc.net.au/news/australia/qld/metqld-12feb2003-9.htm>)

(D. DeGlopper, 7-9831)

AUSTRALIA– Federal Funding for State Counter-Terrorism

Specialized counter-terrorism teams have been established in each of Australia's six states and two territories. The teams, of state or territory police officers, will work in conjunction with local tactical response units, which deal with hostage, siege, or terrorist situations. The teams' goal is to coordinate intelligence provided by federal and state police agencies and from the federal intelligence agencies to stop terrorist attacks before they occur. Each team will operate under its state's criminal laws. The teams will be linked to the Australian Federal Police Transnational Crime Coordination Center, a 24-hour response desk intended to improve sharing of terrorism-related information. The Australian Federal Police will fully fund all positions. (*Sydney Morning Herald*, Feb. 20, 2003, at <http://www.smh.com.au>)

(D. DeGlopper, 7-9831)

INTERNATIONAL LAW AND ORGANIZATIONS

CENTRAL AMERICA/UNITED STATES– Start of Trade Talks

On January 27, 2003, in San Jose, Costa Rica, negotiating teams from five Central American countries and the United States, close to 240 delegates in total, began the first round of talks regarding the Free

Trade Agreement between Central America and the United States. The four-day session was the first of nine planned before a final text is drawn up. Chief of Negotiations for Costa Rica, Anabel Gonzalez, stated that the six participating countries (Costa Rica, United States, El Salvador, Guatemala, Honduras, and Nicaragua) want to negotiate an agreement that will become a tool for development. It was reported that the issue of solidarity will play a key role in the course of negotiations, as the groups applied the “solidarity principle,” under which it is stipulated that the participating countries will deal with sensitive issues of the others’ sectors as if they were their own. Outside the meetings, there were demonstrations against the free trade proposal (“US-Central American FTA Talks Begin in Costa Rica,” *La Republica*, Jan. 28, 2003, via FBIS.)

(Sandra Sawicki, 7-9819)

EL SALVADOR/GUATEMALA– Stock Exchanges Sign Agreement

The Salvadoran Stock Exchange signed an agreement with its Guatemalan counterpart on January 27, 2003, to accelerate the integration process of the exchanges. The accord standardizes mechanisms that will allow investors to acquire foreign stocks or bonds negotiated in other exchanges in their local market. Last year, the Salvadoran Stock Exchange signed similar agreements with Honduras and Panama, and it is hoped that agreements will be signed later in 2003 with stock exchanges in Costa Rica, Nicaragua, and the Dominican Republic. The latest agreement initially sets up information and technology exchanges. Both El Salvador and Guatemala use an electronic system to execute market operations. The partners hope to receive assistance from international organizations to create a central regional securities deposit, which would serve as the custodian of the securities, stocks, or Eurobonds negotiated between the countries. (“Salvadoran Stock Exchange Signs Integration Agreement With Guatemalan Counterpart,” *El Diario de Hoy*, Jan. 28, 2003, via FBIS.)

(Sandra Sawicki, 7-9819)

HONDURAS/NICARAGUA– Tariff Bill Under Consideration

It was reported that a bill to suspend the 35 percent tariff on Honduran products was ready to reach the Nicaraguan National Assembly on February 10, 2003, and has the approval of the ministries of Development, Industry, and Trade and Foreign Affairs, as well as Nicaraguan President Enrique Bolanos. The bill focuses on ending the 35 percent tariff that importers and exporters must pay to enter Honduran products into Nicaragua. The Nicaraguan private sector has expressed its support of the proposed legislation. (“Bill Considered To End 35 Percent Tariff on Honduran Products,” *El Nuevo Diario*, Feb. 10, 2003, via FBIS.)

(Sandra Sawicki, 7-9819)

KAZAKHSTAN/UZBEKISTAN– Border Agreement Ratified

On February 11, 2003, the ratification procedure for the Agreement between the Republic of Kazakhstan and the Republic of Uzbekistan on the border between these states was concluded. The demarcation line, which is more than 1,300 miles long, was defined by the parties according to the former administrative and territorial division between the Kazakh Soviet Socialist Republic and the Uzbek Soviet Socialist Republic, legislatively finalized in 1964. The description of the State border is a part of the agreement. It declares that any natural changes in the border line, including those of border rivers, do not

entail any changes in the State border line. The parties agreed to resolve all issues concerning the interpretation and application of the agreement by means of consultations and negotiations. A joint demarcation commission will be established. (*Kazakhstan Today*, Feb. 12, 2003.) (Peter Roudik, 7-9829)

SOUTH KOREA/CHILE– Free Trade Agreement

On February 15, 2003, the Republic of Korea (ROK) and Chile signed a free-trade agreement (FTA)– South Korea’s first– that may set a precedent for similar arrangements between the ROK and other Pacific Rim countries. The agreement will eliminate tariffs on two-thirds of Korean goods, in particular cars and electronic items, as well as a wide range of farm products. The two countries reportedly overcame some of the same difficulties that have hampered efforts in the World Trade Organization to cut agricultural tariffs. According to the semiofficial ROK news agency *Yonhap*, the signing of the agreement “means a new start in trade policy for South Korea.” The country is seeking similar ties with Japan, Mexico, and Singapore and is studying the possibility of forging FTAs with other Southeast Asian countries. The agreement is also viewed as opening the ROK to increased foreign competition, in the face of continued barriers that Korea has presented in the form of regulations and subsidies. (“South Korea, in Deal With Chile, Signs Its First Free-Trade Pact,” *The New York Times*, Feb. 17, 2003, at C3, via LEXIS/NEXIS.) (W. Zeldin, 7-9832)

WORLD HEALTH ORGANIZATION– Draft Global Tobacco Convention Approved

On March 1, 2003, 171 Member States of the World Health Organization (WHO) agreed on a draft treaty designed to control tobacco supply and consumption and thereby reduce smoking-related morbidity and mortality. The text of the WHO Framework Convention on Tobacco Control, produced after four years of work, will go to the World Health Assembly in May for adoption. Once adopted, it will be open for signature, and it will come into effect after ratification by 40 nations. Provisions include tobacco taxation, smoking prevention and treatment programs, control of illicit trade, and restrictions on advertising, sponsorship, and promotions. Reservations were expressed by China, Germany and the United States, the latter arguing that the clauses on banning advertising violate free speech protections. (WHO website, <http://www.who.int/mediacentre/events/2003/pr21/en/print.htm>; *The Washington Post*, Mar. 2, 2003, at A27.) (Constance A. Johnson, 7-9829)

CUMULATIVE CONTENTS– AVAILABLE UPON REQUEST:

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Recent Publications from Great Britain Obtainable from the Law Library

Home Office. THE NATIONAL POLICING PLAN 2003-2006. London: Nov. 2002. 52 pp.

The National Policing Plan is a three-year program to deliver improved police performance and greater public reassurance, with particular regard to tackling anti-social behavior and disorder; reducing the volume of crime and street, drug-related, violent, and gun crime in line with local and national targets; combating serious and organized crime operating across force boundaries; and increasing the number of offenders brought to justice.

House of Commons. Culture, Media and Sport Committee. THE STRUCTURE AND STRATEGY FOR SUPPORTING TOURISM. H.C. 65. London: Dec. 2002. 261 pp.

As a generator of income and as a provider of jobs in the private sector, tourism is a vital part of the UK economy. The Government has formed a single body from the existing British Tourist Authority (responsible for the promotion of Britain overseas) and the English Tourism Council (responsible for the strategic organization of English tourism) to improve support for tourism in the UK.

----- European Scrutiny Committee. SCRUTINY RESERVE BREACHES. H.C. 63-iii. London: Nov. 2002. 29 pp.

The scrutiny reserve resolution admonished Ministers to not agree to legislative or other proposals in the European Council of Ministers that have not been cleared by the Committee or, when a debate was recommended, if the House has not yet come to a resolution on the proposal. This ensures that the House and individual Members have the opportunity to comment on proposals before Ministers agree to them.

----- Home Affairs Committee. EXTRADITION BILL. H.C. 138. London: Dec. 2002. 79 pp.

The Government's Extradition Bill creates category 1 territories (EU member states and Gibraltar), which will qualify for "fast-track" extradition arrangements based on "taking on trust" those countries' judicial and administrative systems, and category 2 territories (countries with which the UK has extradition arrangements and which do not fall into category 1), which will be subject to a streamlined version of the existing extradition procedures.

----- National Audit Office. SAFETY, QUALITY, EFFICACY: REGULATING MEDICINES IN THE UK. H.C. 255. London: Jan. 2003. 56 pp.

Over a billion prescriptions and over-the-counter medications are dispensed or bought in the UK each year. This report by the National Audit Office points out that not all medicines on sale in the UK are licensed by the Medicines Control Agency. Some are licensed through a centralized European procedure or through mutual recognition of licenses granted originally by other EU member states. Some medicines, including the majority of herbal medicines and traditional and homoeopathic medicines, are not currently licensed.

-----, Public Administration Select Committee. MINISTERIAL ACCOUNTABILITY AND PARLIAMENTARY QUESTIONS: THE GOVERNMENT'S RESPONSE TO THE COMMITTEE'S NINTH REPORT OF SESSION 2001-2002. H.C. 136. London: Dec. 2002. 14 pp.

This report details how Ministers should answer Parliamentary Questions and is regarded as an important step towards openness and the protection of the public interest.

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

Public Access to Environmental Information¹

On February 14, 2003, No. Directive 2003/4/EC dealing with public access to environmental information was adopted. Under the Directive, public authorities are required to provide information related to the environment to any natural or legal person upon request. The applicant does not have to detail any interest. Access to public registers or lists pertaining to environmental information must be free of charge, and the requested information must be provided within a month, or two months in complex cases. Member States have the option to refuse access to information if the information is not held by or for the public authority, if the request is unreasonable, or if it concerns internal government communications. In addition, Members may refuse disclosure of environmental information when such disclosure would affect international relations, public security or national defense, due process of law, intellectual property rights, or the confidentiality of personal data.

Communication in Support of Drafting a Convention To Protect the Rights and Dignity of Persons with Disabilities²

In January 2003, the European Commission published a Communication to indicate its support for a United Nations legally binding Instrument to promote and protect the rights of persons with disabilities. There is already a UN Ad Hoc Committee established to consider proposals on the eventual adoption of such a comprehensive international convention. In addition to an article that prohibits discrimination on the grounds of disability that was introduced by the Treaty of Amsterdam in 2000, Directive No. 78/EC establishing a general framework for equal treatment in employment and occupation was adopted. The Directive incorporates the principle of non-discrimination and also states that failure to provide reasonable accommodation in the work environment may constitute discrimination. The Commission intends to propose a recommendation to the Council to grant a mandate to the Commission to participate on behalf of the EU in the upcoming sessions of the UN Ad Hoc Committee.

New Regulation Establishing Criteria To Determine the Member State Responsible for Examining an Asylum Application Filed in a Member State by a Third-Country National³

The EU intends to create a Common European Asylum System based on full application of the Geneva Convention Relating to the Status of Refugees of July 28, 1951, as supplemented by the New York Protocol of January 31, 1967. Against this background, the EU recently adopted a Regulation and a

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¹ OJ L 041/26, 2/14/2003.

² COM(2003) 16 final Brussels, 1/24/2003.

³ Council Regulation (EC) No. 343/2003. OJ L05/1, 2/25/2003.

Directive. Under the Regulation, the application of a third-country national at the border or within the territory of a Member State will be examined by a single Member State based on the criteria and in the order established by the Regulation. For instance, the Member State where the asylum seeker first lodged his/her application will be responsible. In the case of an unaccompanied minor, the Member State responsible will be the State where a member of the minor's family is legally present. If the asylum seeker has a family member in a Member State, that Member State will review the application. Under the humanitarian clause, any Member State, even if it is not the State responsible under the established criteria, may bring together family members or other dependent persons. The Member State found responsible for reviewing the asylum application must also complete the examination of and take back an applicant whose application is under examination and who is in the territory of another Member State.

Directive on Establishing Minimum Standards for the Reception of Asylum Seekers⁴

The Directive applies to all third-country nationals and stateless persons who apply for asylum. It establishes minimum standards; Member States are allowed to adopt more favorable ones, if they so wish. Within three days of application, the applicant must be provided with a document verifying his status as an asylum seeker. The asylum seeker has the right to move freely within the territory of the host Member State or within an assigned area. For reasons of public security, applicants may be confined to a special place. Applicants are required to inform the competent authorities of their current address and notify them of any change. Minor children of asylum seekers have the right to education. In regard to employment, Member States have the right to determine a period of time during which the applicant does not have access to the labor market. However, Members may allow asylum seekers access to vocational training, regardless of access to the labor market. The Directive also provides general rules on reception conditions and access to health care.

Official Journal

As of February 1, 2003, the *Official Journal of the European Communities* has changed its name to the *Official Journal of the European Union*. It is currently published in 11 languages, including Irish for special editions. Once the process of enlargement is completed, the *Official Journal* will be published in 20 languages.

⁴ Council Directive 2003/9/EC of Jan. 27, 2003, laying down minimum standards for the reception of asylum seekers. OJ L031/18, 2/6/2003.