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WORLD LAW BULLETIN

July 2003

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The WORLD LAW BULLETIN: a monthly awareness service prepared by the Staff of the Law Library of Congress. Editors: Constance Axinn Johnson and Wendy Zeldin. The Bulletin and information on Law Library services for Congress can be found online: <http://www.loc.gov/law/congress>

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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.

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Correction to WLB June 2003 Special Supplement, “Belgium: War Crimes–Law of Universal Jurisdiction”: p. 25, paragraph 2, substitute “years” for “months.”

AFRICA

KENYA–Children’s Act

The Children’s Act of 2002, as amended, contains provisions requiring parents’ responsibility for their children. Other new provisions safeguard the rights and welfare of children from the point of view of non-discrimination, right to parental care, right to education including religious education, right to health care, protection from child labor, right to a name and nationality, disabled children’s rights, protection from abuse, and other similar rights. The Act also includes provisions on foster care, adoption, custody, maintenance, and guardianship.

(Charles Mwalimu, 7-0637)

MAURITIUS–Accounting and Auditing Standards Act

The Mauritius Accounting and Auditing Standards Act, 1989 was issued for entry into force in July of 2000 according to General Notice No. 1308 of 2000. The Standards are binding on all public corporations and also non-exempt private corporations. They are based on the International Accounting Standards published by the International Accounting Standards Committee (IASC).

(Charles Mwalimu, 7-0637)

AMERICAS

ARGENTINA--Foreign Financial Institutions

New legislation was passed that requires foreign-capitalized local financial institutions and local branches of foreign financial institutions authorized by the Central Bank that operate in Argentina to inform the public if the parent company or its majority foreign stockholders guarantee the financial operations performed in Argentina by their local branches or offices, as well as the scope of such a guarantee (Law 25738, June 2, 2003, *Boletín Oficial*, June 3, 2003). If such a guarantee is not offered, there should be an express statement in transactions with clients to warn them about the absence of that type of guarantee. Advertising requirements may be met by notices in their facilities, on their web pages, and in any other advertising they conduct in the country. Violation of this requirement will be sanctioned by the Central Bank.

This measure is a response to the claims filed by clients of financial institutions before national and foreign courts, who had been affected by the devaluation of the *peso* and the re-scheduling of the maturity of their deposits in US dollars in January 2002. The claims were based on the fact that many banks advertised that the deposits held in their banks were backed by their parent companies, which was untrue. (Graciela I. Rodriguez-Ferrand, 7-9818)

BRAZIL--Affirmative Action

New government policies that are intended to close the gap between rich and poor and between white and black citizens by establishing strict quotas for college admissions, contracts, and jobs, have created controversy in Brazil. Given the great diversity of the population and the mixed nature of society, one key affirmative action issue is who is going to be considered black. The State University of Rio (SUR)

is Brazil's first public institution to implement affirmative action in universities, under Law 10558 (Nov. 13, 2002, *Diario Oficial*, Nov. 14, 2002). After the affirmative action program was established, the SUR has dramatically increased the enrollment of black and mixed-race students in elite professional schools such as medicine, law, and engineering. At present there are almost 300 lawsuits against the SUR because of its quota policy, raising issues parallel to those in the U.S. Supreme Court case challenging the University of Michigan's admissions process.

President Lula da Silva has racial equality as a top priority for his administration. The Racial Equality Statute is draft legislation that has been introduced and is pending congressional approval (Draft Law No. 213/2003, *Diario do Senado Federal*, May 30, 2003). If the statute is passed, Brazil would require quotas for all levels of government positions, even in the casting of television programs and commercials (*Washington Post*, June 26, 2003). (Graciela I. Rodriguez-Ferrand, 7-9818)

EL SALVADOR–Public Health and Social Security

Legislative Decree 1024 of November 18, 2002, contains provisions on government guarantees regarding public health and social security. Public health and social security are considered a public good and public services of a mandatory nature, as established in articles 65 and 50 of the Constitution. The Decree defines the concept of social security and public health services and prohibits the privatization, concession, purchase of services, or any other modality aimed at the transfer to private entities of public health and social security services provided by the Salvadoran Institute of Social Security and by the hospital network and health units of the Ministry of Public Health and Social Welfare. Exceptions to the ban are laboratory work that cannot be performed in the above-mentioned institutions; cases of national emergency caused by an epidemic affecting part of, or the entire, national territory; cases of public calamity originated by natural disasters affecting the facilities of the health centers, hindering their normal operations; and cases of disease whose treatment cannot be handled by institutions of the national system of public health and social security. (*Diario Oficial*, Nov. 19, 2002.) (Norma C. Gutiérrez, 7-4314)

GUATEMALA–Law on National Languages

A significant boost for the cultural identity of three indigenous communities in Guatemala occurred on May 23, 2003, when the Law on National Languages was signed by Juan Francisco Reyes Lopez, Vice President of the Republic, acting as President. The Law "recognizes, promotes, and respects" the languages of the Maya, Garifuna, and Xinka Indians and qualifies them as essential elements of the national identity. Under the terms of the new Law, these languages can be used in all their forms without restrictions in educational, academic, social, economic, political, and cultural activities. Laws, instructions, advisories, resolutions, and orders must be translated and disseminated in these languages, as well as in the official language, Spanish. Writing and inscriptions in the languages must be heeded and respected in all acts of registration by officials of public and private institutions and of autonomous or decentralized agencies of the State. The Law further provides that the State must allow the performance of public services in the languages of the Indian communities and that information concerning access to health, education, legal, and security services be available in the native tongues. It calls for a socio-linguistic census by the National Institute of Statistics for planning purposes and efforts by the government to identify Indian languages that are in danger of becoming extinct. (*Diario de Centro America*, May 26, 2003.) [GLIN] (Sandra Sawicki, 7-9819)

VENEZUELA--Agreement Based on Constitution Reached Between Government and Opposition

On May 29, 2003, representatives of the government of President Hugo Chavez and his opposition signed an agreement opening the way to an electoral solution to the crisis that has divided Venezuela for 14 months. The parties have been in conflict over whether the President should resign or accept early elections. The agreement culminates six months of negotiations by the Organization of American States, assisted by the Carter Center of Atlanta, the United Nations, and a six-nation Group of Friends of Venezuela.

The salient point of the agreement is that both sides will follow the system set up in the Venezuelan Constitution for a presidential recall. Under the pact, President Chavez and his supporters, who hold a narrow lead in the unicameral legislature, cannot amend the law to thwart the holding of an election. The opposition promises not to attempt to remove Chavez from office through a coup. If enough signatures are presented to the National Electoral Council by August 19, 2003, the midway point of Chavez' current term, the Council will have 90 days to organize and call a referendum. If this election votes Chavez out of office, a new presidential election will be held. (*CNNenEspañol.com*, May 29, 2003, via <http://www.cnnenespanol.americas/05/29/venezuela.firma/index.htm>; *latimes.com*, May 30, 2003, via <http://www.latimes.com/news/nationworld/la-fg-venez30may30,1,2202086.story?coll=1a%2Dhead>; *The Washington Post*, June 4, 2003, at A22.)
(Sandra Sawicki, 7-9819)

ASIA

AZERBAIJAN–Mandatory Insurance

According to the Law on Compulsory Insurance for Property and Civil Responsibility of Legal Entities Engaged in Business, adopted on June 20, 2003, real estate and movable property of enterprises and the responsibilities of those enterprises to third parties are subject to insurance. Some types of property, however, including works of art, models, drafts, documents, cash, securities, and precious metals, are not covered by the Law. It is expected that the Law will serve as a safeguard for the protection of the property of legal entities and social protection of the population; however, caps on insurance payments are introduced. Property will be covered by insurance for a period of no less than one year. The maximum insurance coverage for civil responsibility in the case of fire is 20% of the property's estimated value, and damage to health is capped at US\$2,160 per person, not exceeding US\$21,160 in total. The portion of risk exceeding US\$100,000 will be re-insured abroad. Commissions for insurance companies will be no less than 20%. Seven types of tariffs, applied depending on the type of business, were introduced. (*Information Agency Trend*, Baku, at <http://www.site.securities.com>, June 20, 2003.)
(Peter Roudik, 7-9861)

AZERBAIJAN–Voting Rights Violations Punished

Amendments to the Criminal Code proposed by President Aliiev of Azerbaijan were passed by the Parliament, the Milli Majlis. Such actions as intimidating voters, boycotting of elections, forcing individuals to vote for a particular candidate, or preventing someone from voting for a particular candidate are now considered crimes and are punishable by fines and compulsory reformatory work. Under the new provisions, a government official ordering his or her subordinates to vote for a particular nominee will be

fined up to US \$1,000 and banned from holding certain offices for three years. If voting rights are violated by State-run organizations or political parties, the organizations will be restricted in participation in elections and responsible officials can be imprisoned for a term of up to three years. Simultaneously adopted amendments to the Code of Civil Procedure allow citizens to apply directly to the National Court of Appeal, in addition to regional and municipal courts, if their voting rights are violated. (*Sharg Daily News*, June 18, 2003, <http://www.sharg.az/news>) (Peter Roudik, 7-9861)

CAMBODIA–Anti-Corruption Bill

A long-anticipated bill against aimed at preventing and eradicating corruption and promoting good governance was approved by the government on June 20, 2003. It was expected to be sent on to the National Assembly for debate during the week of June 23. (“Anti-Corruption Law To Be Debated by Cambodian Parliament ‘Soon,’” *Agence Kampuchea Presse*, June 23, 2003, via FBIS.) (W. Zeldin, 7-9832)

CHINA–Draft Securities Fund Law Revised

The Standing Committee of the National People’s Congress reviewed but did not pass a draft securities fund law in August 2002; a revised draft has been prepared by a drafting panel and will be sent to the Committee. The law will cover securities investment fund enterprises, whether domestic or foreign-owned. Among the points that were controversial in the first draft were the regulation mechanisms for industrial investment funds and venture capital funds, the fact that no oversight was included for privately-placed funds, and the lack of measures protecting investors. If the new draft is considered by the Standing Committee by August, then the law will most likely be adopted by the end of the year. There has been a rapid expansion in the fund management business in China in the last few years. (*China Daily* (Hong Kong Edition), June 4, 2003, via FBIS.) (Constance A. Johnson, 7-9829)

CHINA–Forced Detention and Repatriation System Abolished

After a young graphic designer, Sun Zhigang, died in March 2003 from a beating by fellow inmates at the instigation of an officer in a “custody and repatriation” center, the State Council abolished measures on the centers in effect since 1982. The centers formed an integral part of a system of forced repatriation of internal migrants whose identity papers were not in order. Those without valid papers could be held in the centers for prolonged periods of extra-judicial detention. According to a State media report, the system saw “massive abuse”; there were daily routines of beatings, random detentions, and blackmail (“AFP Cites Nanfang Dushi Bao Report on Abuses at PRC Detention Centers for Migrants,” *Hong Kong AFP*, June 19, 2003, via FBIS).

In abolishing the measures, the State Council adopted new “Measures for the Management of Assistance for Vagrants and Beggars With No Means of Livelihood in Urban Areas” on June 20, 2003, effective from August 1. They specifically prescribe that “relief stations” must not collect fees from assistance recipients or their families or work units, and must not organize the relief recipients to engage in productive labor “under any pretext,” abuses that occurred under the 1982 provisions. Despite the abolition of the provisions, its underpinnings, the household registration system, which classifies households into agricultural and non-agricultural, essentially remains in place. (“Crime and Banishment,”

South China Morning Post, June 17, 2003, via FBIS; “SCMP: PRC Scholars Praise Move To Scrap Custody and Repatriation System,” *id.*, June 20, 2003; “PRC Procedures for Assisting, Supervising Homeless Vagrants in Cities,” *Xinhua*, June 22, 2003, as translated in FBIS.)
(W. Zeldin, 7-9832)

CHINA–Infectious Diseases Law Review

A legislative plan approved by the National People’s Congress Standing Committee on June 16, 2003, includes reviews of 13 laws; one of those to be considered is the law on prevention and control of infectious diseases, first enacted in 1989. The vice-chairman of the Standing Committee said that the goal was to amend the statute by the end of this year, as the SARS outbreak has given the work urgency. The current law has no specific measures for combating new epidemics and the disease reporting system needs improvement, according to the Ministry of Health. Revision is also envisioned for the sections covering prevention and treatment measures such as quarantine of infected persons. (*South China Morning Post*, June 17, 2003, via LEXIS/NEXIS, Asiapc library.)
(Constance A. Johnson, 7-9829)

CHINA–Sexual Harassment

It has been reported that legal experts have begun drafting amendments to the law on the protection of women’s rights, to include a new clause on sexual harassment as well as changes in women’s political and labor rights, rights to social security, and rights within the family and marriage. At present it is difficult for victims to successfully sue for damages for sexual harassment, since China does not have a law on the subject and civil law provisions on infringement of personal rights are not very clearly defined.

In what was viewed as China’s first sexual harassment lawsuit, in 2001, a female worker in a State-owned enterprise lost the case against her boss because of insufficient evidence. Since then, several high-profile cases have been in the headlines. Most notably, in early June 2003, in what appears to be the first case in which a Chinese court ruled in favor of a sexual harassment suit plaintiff, a teacher won a landmark victory against her former boss and was awarded 2,000 *yuan* (about US\$242) in compensation for psychological damage. (“Legal Push To Boost Women’s Rights,” *South China Morning Post*, June 24, 2003; “PRC: Female Teacher Wins Landmark Sexual Harassment Suit Against Former Boss,” *Xinhua*, June 9, 2003, via FBIS.)
(W. Zeldin, 7-9832)

GEORGIA–Financial Police

According to the Law on the Financial Legion, adopted by the legislature on June 3, 2003, the authority of the investigation department of the Ministry of Finance, created for fighting money laundering, tax evasion, and corruption, will be expanded. It will be transformed into the Financial Legion, a law enforcement institution that will remain under the supervision of the Minister of Finance. Investigations of economic crimes, at present conducted by police and other law enforcement agencies, will become the exclusive jurisdiction of the Financial Legion. (*Starke News Agency*, at <http://www.securities.com>, June 18, 2003.)
(Peter Roudik, 7-9861)

HONG KONG–Racial Discrimination Legislation Planned

The Chief Executive and the Executive Council of Hong Kong have agreed in principle to the need for legislation against racial discrimination, according to an announcement issued on June 19, 2003. A consultation paper on the legislative proposals for the law is to be published for public review. The government plans to introduce the anti-discrimination bill in the Legislative Council during the 2004-05 session. (“Xinhua: Hong Kong To Legislate Against Racial Discrimination,” *Xinhua*, June 19, 2003, via FBIS.)

(W. Zeldin, 7-9832)

INDIA--Offshore Minerals

India enacted the Offshore Areas Mineral (Development and Regulation) Act, No. 17 of 2003, on January 30, 2003. The Act provides for development and regulation of mineral resources in the territorial waters, continental shelf, exclusive economic zone, and other maritime zones of India. (*Government of India Press*, Apr. 2, 2003.)

(Krishan Nehra, 7-7103)

JAPAN--Food Safety Basic Law

The Food Safety Basic Law was enacted on May 23, 2003 (Law No. 48, 2003). In relation to this legislation, the Food Safety Law and other laws were amended. The Ministry of Health and the Ministry of Agriculture have both had jurisdiction over food safety control, so that making comprehensive policies or reacting to emergency situations was administratively awkward. Based on the new law, a Food Safety Committee will be established under the Cabinet Office. The Committee will be authorized to advise the Ministries about food safety policy. The Committee will coordinate an emergency communication system, and form expert committees to research and investigate the risks of food additives, agricultural chemicals, viruses, and genetically modified foods, among other food-related matters. (Food Safety Administration, Prime Minister’s website, <http://www.kantei.go.jp/jp/singi/shokuhin/index.html>)

(Sayuri Umeda, 7-0075)

JAPAN–Regulating Use of GMOs

The Law Concerning Protection of Biological Diversity by Regulating Use of GMOs (genetically modified organisms) was enacted on June 18, 2003 (Law No. 97, 2003). The Law’s adoption is a necessary step for Japan’s signing and ratification of the Cartagena Protocol on Biosafety, which will take effect on September 11, 2003. Japan has plans to join the Protocol this autumn. Under the Law, an exporter of a GMO must give advance notice to an importer regarding specified information about a GMO if the GMO is supposed to be introduced into the environment. Importers of certain products also need to notify the government in advance. Authorization by the government is needed when a person uses a GMO in a way such that it will be introduced into the environment. Even when a person uses a GMO while preventing its introduction into the environment, the person must take specified measures. (“About the Law Concerning Protection of Biological Diversity by Regulating Use of GMOs” (in Japanese), the Ministry of Environment’s website, http://www.env.go.jp/info/hoan/156_idenshi/index.html)

(Sayuri Umeda, 7-0075)

KOREA, SOUTH--First Extradited U.S. Citizen Not Guilty

A former U.S. female exchange student, Kenzi Snider, who had been accused of the murder of another U.S. female exchange student in Korea in March 2001 and returned to the United States during the investigation, was the subject of an extradition request from Korea, based on the extradition treaty of June 9, 1998. A U.S. judge ruled that there was a probable cause to extradite her in October 2002, and Ms. Snider became the first U.S. citizen to be extradited from the United States to South Korea. South Korean prosecutors indicted her on homicide charges in January 2003 and had sought a seven-year prison sentence.

The Seoul District Court decided that Ms. Snider was not guilty on June 19, 2003. Under the Criminal Procedure Law of Korea, a written report of an investigation conducted by persons other than prosecutors is inadmissible if the accused does not agree to the contents of the report. Although an investigation was conducted by the FBI and the army criminal investigation unit (CID) while Ms. Snider was in the United States, resulting in a later-disputed confession, Ms. Snider did not agree with the contents of the U.S. investigative reports. The court ruled that FBI and CID investigators are not equivalent to prosecutors under the Criminal Procedure Law of Korea. Thus, Korean prosecutors lost the use of the most important evidence. If the investigative report containing the confession had been made by a U.S. prosecutor, rather than by other investigators, perhaps the report would be admitted as an evidence in the court. The Korean prosecutor has appealed the case. (*JoongAng Daily*, June 19, 2003, at <http://joongangdaily.joins.com/200306/19/200306192331353309900090409041.html>; *Digital Chosunnibo*, June 19, 2003, <http://english.chosun.com/w21data/html/news/200306/200306190019.html>) (Sayuri Umeda, 7-0075)

PAKISTAN–Power To Remove Officials from Service

The Removal from Service (Special Powers) (Second Amendment) Ordinance, No. 2 of 2003, issued on May 16, 2003, has empowered the Government to remove from service any official who is corrupt or has a persistent reputation of being corrupt, or who is engaged or is reasonably believed to be engaged in subversive activities, or who was found to have been promoted on extraneous grounds in violation of law and the relevant rules. (*The Gazette of Pakistan*, extraordinary issue, May 16, 2003.) (Krishan Nehra, 7-7103)

SINGAPORE–Post SARS Crisis Measures

On June 1, 2003, one day after it was declared free of severe acute respiratory syndrome (SARS), Singapore was considering measures to improve the country's ability to handle similar crises in the future. To that end, it has been reported that hospitals will be issued directives on three alert levels. Each level will have a set of precautions that hospitals must take, to ensure that they know immediately which rules (e.g., temperature checks, wearing of protective gear, isolating feverish patients, already in place) they should relax or tighten if they have to switch from one alert level to another. It is argued that having the different levels would allow for some of the more stringent rules, such as that of no visitors, to be gradually and systematically eased. ("Singapore Sets Regulations To Manage Future Crisis After Declared SARS-Free," *The Straits Times*, Internet version, June 1, 2003, via FBIS.) (W. Zeldin, 7-9832)

TAIWAN–Copyright Law Amended

On June 6, 2003, the legislature passed an amendment to the Copyright Law that imposes heavier punishments on persons who sell pirated disks. Offenders will be subject to a prison term of up to seven years and a maximum fine of NT 8 million (US\$231,214). They will face charges whether or not a complaint has been filed against them by a third party. Under current law, no charges are pressed unless police receive a complaint about disk piracy acts.

The amendment also has prescriptions on CD burning. If the number of burnt CDs is less than five and the value does not exceed NT\$30,000 (about US\$867), no charges will be brought against the party concerned, provided that the CDs are not made for profit. If the person is guilty of burning CDs for profit, he or she will face a maximum prison term of five years and a fine of NT\$5 million (US\$144,509). The amendment stipulates that no charges will be brought against those who download MP3s or who bring in books, CDs, or DVDs from abroad as long as the items are not for resale in Taiwan. (“Taiwan Copyright Laws ‘Strengthened,’” Taipei *The China Post*, Internet version, June 7, 2003, via FBIS, June 9, 2003.) (W. Zeldin, 7-9832)

TAIWAN–SARS Rules Amended

On June 18, 2003, the May 2003 Provisional Statute for the Control, Prevention, and Relief of Severe Acute Respiratory Syndrome was amended, based on the recent experience of working to control the disease (*Gazette of the Office of the President*, No. 6259, June 18, 2003, via GLIN). Among its provisions are statements that local governments must adhere to the orders given by the central government and must instruct the districts in their jurisdictions to establish units to fight SARS; that additional measures against SARS may be taken by the central government as needed; that land, medicines, medical devices, and other resources may be expropriated by the government to use against SARS; that the customs agency will set up a special window to quickly clear items imported to fight SARS; and that such items are not subject to fair trade and product labeling restrictions or business taxes. In addition, the central health authorities will give aid to any public or private medical facility that has been designed for SARS work, if there is a shortage of workers, facilities or materials.

The amendment also established punishments for actions that negatively impact efforts to control the outbreak. It states that those who hoard needed medical supplies will be subject to imprisonment for up to seven years and a fine equivalent to up to US\$144,092. Fines were also set for those who conceal their exposure to SARS, those who ignore requests from the authorities to monitor their own temperatures or wear surgical masks, and those who circulate rumors or give false information to the public. (*Central News Agency* report, <http://www.cna.com.tw/eng/>, June 5, 2003, before final promulgation of the amendment.)

(Constance A. Johnson, 7-9829)

VIETNAM–New Regulation on Internet Domain Names

Vietnam has issued a new regulation detailing the rights and duties of the Vietnam Internet Center (VNINC), the official Internet representative of the country. VNNIC registers and maintains all the Internet resources and oversees the development of the national domain name extension for website, .vn. It has the job of establishing the domain name server network and supervising the usage of IP addresses and domain names granted to organizations and individuals.

Political organizations must use the .vn national domain name extension and must store their information on servers housed in Vietnam. Other common domain names, including .com, .net, and .org, can be used by electronic newspapers. In all cases, domain names must be registered with VNNIC. Registration will be permitted for foreign organizations and individuals; those involved must comply with Vietnam's Internet usage regulations. (*VietnamNet*, June 13, 2003, via FBIS, June 20, 2003.) (Constance A. Johnson, 7-9829)

EUROPE

BULGARIA–New Healthcare Act

The new Healthcare Act will enter into force in 2005. This law bans smoking in public places and requires bars and restaurants to have separate smoking and non-smoking halls. Municipalities are allowed to ban or restrict alcohol and tobacco use in certain places. No alcohol will be sold to minors under 18. The fines for violators will vary from US\$120 to \$300 for the first misdemeanor and from US\$1,800 to \$6,000 for each subsequent violation. After 2006, 1% of the collected excise duties for alcohol and tobacco will be spent on campaigns against smoking and drug addiction.

The law introduces new rights protecting patients: they are allowed to seek several opinions for their diagnoses, treatment, and health prognosis. Doctors are allowed to treat a patient only after they explain the expected results and possible risks and receive the patient's agreement. The only exceptions are in emergency cases. Children under 18, pregnant women, and mothers with small children will have free access to specialists without receiving referrals from general practitioners. The law makes prophylactic medical examinations and immunizations obligatory and imposes fines on those who miss them. A system of punishment is established for physicians who issue sick leave approvals to healthy patients and for those who illegally produce, import, or trade in medicines. In addition, the law completely prohibits euthanasia and the cloning of human beings in Bulgaria. (*Dnevnik Daily*, June 20, 2003, <http://www.dnevnik.bg>) (Peter Roudik, 7-9861)

ENGLAND AND WALES–Restrictions on Driving While Using Cellphones

The government has just introduced new measures to make driving while using a mobile phone a criminal offense. Drivers found committing this offense can be subject to a fixed fine of £30 or up to £1,000 if convicted and, when legislation is passed, receive 3 penalty points on their license. Using hands-free phone devices in vehicles will still be permitted due to the difficulties in enforcing such a restriction. This changes current legislation, which does not explicitly prohibit driving while using a mobile phone but permits fines if drivers engage in careless or reckless driving while using one. (Robert Verkaik, "Drivers Who Use Mobile Phones Face Fines of up to £1,000," *The Independent*, June 25, 2003.) (Clare Feikert, 7-5262)

FRANCE–Environmental Charter

The French government has completed a draft of a constitutional law that provides for a ten-article Environmental Charter. If adopted, the text will add to the Constitution a third generation of rights and duties related to the protection and improvement of the environment. These new rights and duties will have the same constitutional standing as the Rights of Man of 1791 and the economic and social rights

recognized by the preamble of the 1946 Constitution incorporated into the present Constitution.

The charter establishes the right of each individual to live in a balanced environment, favorable to good health. It points out the duty of each person to take part in safeguarding and improving the environment and affirms the public authorities' duty to apply the precautionary principle in cases of scientific uncertainty and risk of serious and irreversible damage. Finally, it emphasizes the roles of communication, participation of the public, education, training, research, and innovation.

President Jacques Chirac has two alternative methods to reform the Constitution: either a referendum or the parliamentary process, which requires a three-fifths majority of the votes cast by the National Assembly and the Senate convened in Congress. He has not yet chosen which option to use. (<http://www.environnement.gouv.fr/>)
(Nicole Atwill, 7-2832)

GERMANY–Minority Shareholders

On June 12, 2003, Germany reformed a complaint proceeding that minority shareholders may invoke when they are dissatisfied with the compensation received in the case of a restructuring of the company on the occasion of a buy-out or merger. The Reform Act for Company-Law Complaint Proceedings (*Bundesgesetzblatt I*, at 838) is based on a suggestion of the German Corporate Governance Commission. It streamlines the complaint proceeding through various procedural measures with the aim of reducing the duration of the proceeding from the current five years to a much shorter period, while also reducing the procedural costs.
(Edith Palmer, 7-9860)

GREAT BRITAIN–Racism in Medical Profession

A new survey by the British Medical Association (BMA) has found that racism is evident in access to medical training and careers and is seen as acceptable in the National Health Scheme (NHS). The report, which is part of the BMA's research study based on the careers of 500 medical students who qualified in 1995, is a cause for concern among doctors from ethnic minorities, of which Indians constitute a large percentage. (*The Hindustan Times*, UK Edition, June 26, 2003).
(Krishan Nehra, 7-7103)

HUNGARY–Amendments to Status Law

Hungary has amended its Status Law, which grants work, health, and travel benefits to ethnic Hungarians living in neighboring countries. Under the Law, ethnic Hungarians living in Romania, Slovakia, Ukraine, Serbia and Montenegro, Croatia, and Slovenia are entitled to work in Hungary for a limited period and enjoy medical treatment and educational aid. Romania and Slovakia, home to many ethnic Hungarians, contend that the Law discriminates against other ethnic groups and interferes with their territorial sovereignty, because it allows Hungarian state-sponsored groups to give aid to people, schools, and other institutions for being ethnically Hungarian. The EU is requesting that Hungary change the Law, citing the fact that it would not be valid in the EU. (<http://www.praguepost.com/P03/2003/Art/0626/region.php>; <http://www.euobserver.com/index.phtml?aid=11861>, June 25, 2003.)
(Karla Walker, 7-4332)

ITALY–Immunity for High Ranking Officials

The Italian Parliament approved a law on June 20, 2003, granting the five highest-ranking officials of the Republic—the President, the Prime Minister, the two Speakers of the Chambers, and the Chief Justice of the Constitutional Court—immunity from criminal prosecution for the time they are in office. From the date the law entered into force, all criminal proceedings against those officials must be suspended, irrespective of the nature of the crime and the time it was committed, even if the alleged crime precedes the date of the official’s assumption of office.

The law is seen by many as an escape for the Prime Minister from prosecution before the District Court of Milan. The law’s constitutional legitimacy is expected to be challenged by the office of the Public Prosecutor of Milan before the Italian Constitutional Court. (*Official Gazette of Italy*, No. 142, June 21, 2003.)
(Giovanni Salvo, 7-9856)

LATVIA–Political Donations Restricted

The Law on Political Parties has been amended to eliminate the financing of political parties through third persons, by using them as a front for money actually given by somebody else or for donations in excess of US\$15,000. The amendments require the submission of an annual tax return declaration by private individuals together with the donation and place restrictions on the legal entities entitled to make donations. Under the new rules, business enterprises with a positive balance are eligible to donate funds only to political parties. Donations cannot be higher than the profits of those entities, the companies’ share capital can be no less than a certain minimum established by the enterprise’s charter, and they must be free of debts to the State budget. Individual donors who cannot show corresponding income are prohibited from donating. Amendments outlaw donations to a party by members of one family having no registered business or donations by current or former business partners of candidates for office. (Baltic News Service, *Daily News*, June 9, 2003.)
(Peter Roudik, 7-9861)

LATVIA--Restrictions on Advertising Lotteries

The newly adopted Law on Goods and Services Advertising Lotteries imposes State duty in the amount of 25% of the total lottery prize fund as of January 1, 2004. Previously, such lotteries were not subject to any regulation. Under the Law, one producer or seller of goods or distributor or provider of services will be allowed to hold only three advertising lotteries a year per category of products. The limit will not apply to lotteries having newspapers, magazines, or other periodicals as the prize. If the lottery prize fund is above US\$700, the lottery organizers must receive a license from the State Lottery and Gambling Inspectorate and pay the duty, while lotteries with lower prizes are subject to notification of the Inspectorate. The Law also bans lotteries of goods and services in which persons can participate by buying tobacco, medicines, or alcoholic beverages, including beer. These items are not permitted as lottery prizes. (Baltic News Service, *Daily Business News*, June 19, 2003.)
(Peter Roudik, 7-9861)

THE NETHERLANDS-International Criminal Offenses

On June 17, 2003, the Upper House of Parliament unanimously approved a bill on crimes against humanity. It penalizes widespread or systematic deportation, torture, disappearances, persecution, extermination, and slavery of parts of the civilian population with a maximum prison term of life or 30 years. Provided that the suspect is in the Netherlands, the authorities will be able to prosecute these crimes even when they are committed outside the Netherlands. The bill maintains immunity from prosecution based on the Law of Nations principles for heads of state, diplomats, and the like. The bill's advent coincides with the arrival of the International Criminal Court in the Netherlands and is expected to become effective later this year. (Ministry of Justice, *Press Release*, June 17, 2003, online at <http://www.ministerievanjustitie.nl>) (Karel Wennink, 7-9864)

POLAND--“Yes” to European Union

On April 16, 2003, in Athens, the treaty on further extension of European Union by ten new members—including Poland – was signed by all 25 present and future EU members. On April 17, 2003, the Polish parliament (the *Sejm*) adopted a resolution ordering a national referendum to accept the ratification of the Treaty by Poland (text available at <http://www.sejm.gov.pl>). The Resolution requested that a national referendum be conducted pursuant to the Law on National Referendum (Mar. 14, 2003, *Dziennik Ustaw* (Polish official gazette, hereinafter Dz.U.) No. 57, item 506, (2003)). According to the Polish Constitution, if more than one half of all eligible voters participate in a referendum, its result is binding (art. 125, §3).

In order to ensure a high rate of participation by voters, the *Sejm* set the referendum date to span two days, June 7 and 8, 2003 (Dz.U. No.66, item 613, 2003). Opinion on joining the European Union was divided; there was strong opposition against it voiced by different political and economic groups. Nevertheless, voter turnout was 58.85%, among whom 77.45% voted for the EU Treaty ratification (<http://unia.gery.pl/index.php?id=unia&ue=referendum>). (Bozena Sarnecka-Crouch, 7-9851)

RUSSIA--Farming Allowed for Non-Residents

The Federal Law on Private Farming entered into force on June 17, 2003. The Law authorizes Russian and foreign citizens and stateless persons, regardless of whether or not they reside in Russia, to establish private farms in Russia. The Law stipulates the legal, economic, and social bases of private farm establishment and activities and guarantees personal rights to establish farms and act independently. The Law defines a private farm as a unit of private persons in kinship and/or other relationship, who possess common property and together directly engage in production and/or other economic activities. A private farm may be established by one person. A private farm cannot be a legal entity engaged in entrepreneurial activities. The Law prohibits any form of government intervention in economic and other activities of private farmers, with the exception of instances stipulated by existing legislation. The Law stipulates the establishment procedure and offers a standard list of property, movables, and livestock, and the order of possession and use thereof and of property distribution in case one of the co-holders leaves a private farm. Landed property and means of production will be immune to division. (*Rossiiskaia Gazeta*,

<http://www.rg.ru>, June 7, 2003.)
(Peter Roudik, 7-9861)

RUSSIA--Media Restrictions During Campaigns

On the eve of a national parliamentary election campaign, the Duma passed amendments to several laws, including the Law on Elections, the Law on Charitable Activities, and the Criminal Code. Under the new provisions, using administrative resources during election campaigns will be punishable by a prison term, and chief editors of media outlets that violate the Law on Elections will bear administrative responsibility. According to the amendments, any media outlet, whether print or electronic, could be shut down during an election campaign if the court found it guilty of violating electoral legislation twice. The amendments contain no list of violations, and the court is supposed to decide each time whether a particular action or a publication violates existing legislation. Special rules establish personal accountability of the chief editors. If a chief editor is brought to trial for breaking electoral laws and repeats a violation, the electoral commission has the right to petition the Media Ministry or its territorial branches to have the activities of the media company suspended. In order to sustain accusations, TV and radio broadcasting companies must keep copies of programs containing campaign coverage reports for up to a year. The new legislation regulates financial issues specifically. A fine or corrective service work of up to 12 months is envisaged for media enterprises that provide material assistance to bypass the electoral fund and produce propaganda materials at reduced rates. (*Johnson's Russia List*, No. 7224, June 16, 2003, <http://www.cdi.org>)
(Peter Roudik, 7-9861)

SLOVAKIA--Referendum on Entering the European Union

The Slovak referendum to enter the European Union was held on May 16 and 17, 2003. Of the total number of 4,174,097 registered voters, 52.15% (2,176,990 persons) voted. The number of “yes” votes was 2,012,870 (92.46%); “no” votes, 135,031 (6.2%). The entry of Slovakia into the European Union was therefore approved.

Slovakia's Law on Referenda (No.564/1992, *Collection of Laws*) provides that in order to be valid a referendum must have the participation of over 50% of the registered voters. Although this requirement was met, the tally was only 89,941 votes over the 50% required for validity. The irony is that if those who voted “no” had instead abstained, the number of participants would have fallen below 50% and the referendum would have been invalid, giving victory to the opponents of entry into the European Union. (Decision of the Chairman of the Slovak Parliament of May 19, 2003, No. 175, *Collection of Laws*.)
(George E. Glos, 7-9849)

UKRAINE--Civil Procedure Code Adopted

A new Code of Civil Procedure was adopted by the Verkhovna Rada, the Ukrainian legislature, on June 19, 2003. In accordance with the Code, methods of judicial protection in Ukraine will be writs and consideration in lawsuits or separate jurisdiction of civil cases. Court documents will be compiled in the State language and given to individuals participating in the trial, after translation into the participants' native languages as needed. In the course of civil due process, the court will consider the following cases:

those on defense of infringed or appealed cases that are being conducted based on a specific court order or separate conduct; those challenging decisions of courts of arbitration and those on issuing writs of execution for compulsory implementation of the decisions of these courts; and those on the recognition and execution of decisions of foreign courts. Non-working days are not included in the procedural periods. Court summonses will be carried out with the help of writs of summons and subpoenas. Cases will be considered within a period of two months from the day of receipt of a statement by the court. Default judgements are allowed in case of non-appearance by a respondent at a court session, if a plaintiff does not protest it. The new Code repeals the existing Code of the Ukrainian Soviet Socialist Republic of 1964. (Ukrainian News online, June 19, 2003 , at <http://site.securities.com>) (Peter Roudik, 7-9861)

UKRAINE--Single Environmental System Created

The Law on the Ecological System of Ukraine was adopted on June 19, 2003. The ecological system is defined as a single spatial system, which is being created with the aim of improving conditions for the formation of a sound environment as well as preservation of the biological and landscape environment. The ecological system consists of territories and facilities of the nature reserve fund, forests, water, protective zones of land for recovery and recreational purposes, and territories or facilities that have special significance for protecting the natural environment. The Ministry for Natural Resources and regional authorities are responsible for the implementation of national environmental programs and for State management in the areas of formation, preservation, and usage of the environmental system. The Law provides for targeted allocations in State and local budgets. It also establishes incentives for entrepreneurs involved in the creation of the ecological system, in particular, reduction of the land tax rate and rendering of loans on preferential terms for conducting environmentally sound activities. (Ukrainian News online, June 19, 2003, at <http://site.securities.com>) (Peter Roudik, 7-9861)

NEAR EAST

ISRAEL–Law on Fighting Organized Crime

The Law on Fighting Organized Crime, 5763-2003 passed the Knesset (Parliament) on June 9, 2003. The Law is designed to combat law enforcement problems posed by organized crime's infrastructure, in particular the difficulty of proving the connection between the heads of crime organizations and the commission of offenses perpetrated by others. The difficulty arises because the hierarchy of some criminal organizations deliberately creates a distance between those who make decisions and determine the organization's policy and those who commit the crimes. The Law therefore prescribes offenses related to organized crime activities including assisting such activities. The Law is not restricted to organizations designed for economic gain; it also applies to terrorist and other organizations that commit offenses for ideological reasons.

In addition to imposing imprisonment for periods of 10 to 25 years on persons convicted of involvement in organized crimes, the Law permits confiscation of property (even if not in the possession of the offender) related to the offense or of value similar to that of property involved in the offense.

Property financed or donated by the convicted felon may also be confiscated. The Law prescribes special procedures to be followed for confiscation of property in civil procedures not preceded by convictions in criminal trials. Israel is a signatory to (but has not yet ratified) the 2000 Palermo, Italy, Convention against International Organized Crime. (<http://www.knesset.gov.il>) (Ruth Levush, 7-9847)

SAUDI ARABIA–Money Laundering Legislation

The Consultative Council in Saudi Arabia has recently approved new regulations providing severe penalties for those who commit money-laundering crimes by channeling funds through charitable organizations, the use of violence or weaponry, or deception. The maximum punishments for such crimes are 15 years in jail and 7 million *ryals* (US\$1.8 million) in fines. (*Asharq al-Awsat* newspaper, June 2, 2003.) (Issam Saliba, 7-9840)

SOUTH PACIFIC

AUSTRALIA–Detention of Child Asylum Seekers

On June 19, 2003, the (federal) Family Court of Australia ruled that it is unlawful to indefinitely detain children in immigration detention centers. Currently all asylum seekers who arrive in Australia without visas are detained pending grant of refugee status or removal from the country. It is possible for individuals to spend months or years in detention. The Court stated that indefinite detention was never intended to be part of the Migration Act, and that it had the power to order the release of children. The Immigration Minister stated that the government does not accept that the court has jurisdiction to determine the lawfulness of migrant detention and will appeal to the High Court.

Within Australia, the federal courts and the executive branch have often been at odds over treatment of asylum-seekers. Recent legislation and bills introduced in Parliament have consistently attempted to limit judicial review of decisions of the Immigration Department or the relevant tribunals. (Family Court of Australia, B and B and Minister for Immigration & Multicultural & Indigenous Affairs [2003] FamCA 451, <http://www.familycourt.gov.au/judge/2003/html/bb2.htm>; *Canberra Times*, June 21, 2003, <http://www.canberra.yourguide.com.au/>; Australian Broadcasting Corporation *ABC Online*, June 25 2003, <http://www.abc.net.au/news/newsitems/a886952.htm>) (D. DeGlopper, 7-9831)

AUSTRALIA–Flag Burning

On June 9, 2003, the Children's Court in Perth dismissed charges against a 17-year old who had burned an Australian flag to protest Australian participation in the invasion of Iraq. The Attorney-General of the state of Western Australia said that freedom of speech, even that involving offensive behavior such as burning the flag, was what set Australia apart from regimes such as Saddam Hussein's or the Taliban. He added that the police who had charged the boy were unaware of the proper interpretation of the Constitution. (*Sydney Morning Herald*, June 10, 2003, <http://www.smh.com.au/>) (D. DeGlopper, 7-9831)

INTERNATIONAL LAW AND ORGANIZATIONS

ASEAN/CHINA–Transnational Crime Cooperation

The Association of Southeast Asian Nations (ASEAN) and China, one of ASEAN's 10 dialogue partners, identified priorities of cooperation against transnational crime, including terrorism, maritime piracy, human and drug trafficking, and international economic crimes. It was announced on June 13, 2003, that the two sides had agreed to enhance exchanges of technical and intelligence information, share experience in fighting international crime, strengthen law enforcement cooperation, promote personnel exchange and training for law enforcement officers and experts, and encourage joint research activities. ("Xinhua: ASEAN, China To Intensify Cooperation Against Transnational Crime," *Xinhua*, June 13, 2003, via FBIS.)

(W. Zeldin, 7-9832)

CHILE/UNITED STATES–Free Trade Pact Signed

After eleven years of negotiations, the governments of Chile and the United States signed a bilateral free trade agreement on June 6, 2003. The Chilean Minister of Foreign Relations, Soledad Alvear, and the U.S. Trade Representative, Robert Zoellick, placed their signatures on the document at a ceremony in Miami. The agreement places Chile in a privileged position with US investors and businessmen and is a symbol of the seriousness of the Bush administration in establishing a Western-Hemisphere-wide free trade zone. (*BBC Mundo.com*, June 6, 2003, via http://news.bbc.co.uk/hi/spanish/newsid_2968000/2968192.stm)

(Sandra Sawicki, 7-9819)

INDIA/CHINA–Historic Declaration on Cooperation and Other Pacts

On June 24, 2003, the Declaration on Principles for Relations and Comprehensive Cooperation Between the People's Republic of China and the Republic of India, signed by the Chinese Premier and the Indian Prime Minister the previous day, was made public. It sets forth four principles for a long-term partnership, one of which is the non-use or threat of force against each other. Minutes after the joint declaration was signed, aides signed a border trade memorandum of understanding (MOU), which appears to acknowledge the PRC's de facto acceptance of Sikkim's accession to India in return for India's recognition of the "Tibet Autonomous Regions as part of PRC territory.

The two leaders also signed nine other MOU's, covering cooperation in law and justice, educational exchange, simplified visa procedures, renewable energy, ocean science and technology, cultural exchange, among others. ("Xinhua: Sino-Indian Declaration Proposes Four Principles for Future Relations," *Xinhua*, June 24, 2003; "Report Views Border Pact Signed Between India, China," *The Indian Express*, New Delhi, Internet version, June 24, 2003; "Xinhua: China, India Sign Nine Documents in Beijing," *Xinhua*, June 23, 2003, all via FBIS.)

(W. Zeldin, 7-9832)

MEXICO/UNITED STATES–Economic Initiatives

In the framework of a Partnership for Prosperity Business Workshop, Mexican and US government officials, businessmen, and academics signed various economic and cooperation initiatives that will boost Mexico's economic development. The Partnership's achievements at the Workshop include:

- The signing of an agreement that will allow the U.S. Overseas Private Investment Corporation to offer a broad range of financial and risk insurance services to U.S. enterprises doing business in Mexico.

- The signing of an agreement among the U.S. Small Business Administration, NAFIN (Mexico's development bank), and the Department of the Economy to work together to develop more solid commercial ties that will boost trade and joint investments among small and medium-sized enterprises.

- The creation of an automated clearing house for financial transactions between the two countries. The International Electronic Funds Transfer System will speed transfers and is expected to cut the costs of financial transactions substantially.

- The U.S. Bank and the National Savings and Financial Services Bank announced a new low-cost service for the transfer of funds from the United States to Mexico's rural communities. This service is offered through the banking alliance known as L@ Red de la Gente (the people's network). (“The Partnership for Prosperity Activates Economic Initiatives Between Mexico and the United States,” <http://www.presidencia.gob.mx/?P= 2&Orden= Leer&Tipo= Pe&Art= 5523>)

(Gustavo Guerra, 7-7104)

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Recent Publications from Great Britain Obtainable from the Law Library

House of Commons. Culture, Media and Sport Committee. PRIVACY AND MEDIA INTRUSION. H.C. 458-I. London: May 2003. 60 pp.

The report focuses on reconciling freedom of expression with respect for individuals' private lives and recommends that the Government produce legislative proposals to clarify the protection that individuals can expect from unwarranted intrusion by anyone, including the press. This is necessary fully to satisfy obligations under the European Convention on Human Rights.

----- Defense Committee. ARMS CONTROL AND DISARMAMENT (INSPECTIONS) BILL. H.C. 321. London: Apr. 2003. 42 pp.

This bill provides broader access rights to arms inspection teams by adding new rights of entry to private lands and properties. It also allows for future amendments to be made by Order of Council rather than by legislation.

----- European Scrutiny Committee. THE CONVENTION ON THE FUTURE OF EUROPE AND THE ROLE OF NATIONAL PARLIAMENTS. H.C. 63-xxiv. London: June 2003. 51 pp.

The report follows up proposals made earlier by the Committee on Democracy and Accountability in the EU and highlights the more significant proposals in the draft constitutional treaty produced by the Convention on the Future of Europe. It also emphasizes that, because of weaknesses in the Convention's methodology, the Convention's proposals must be examined carefully by governments and national parliaments.

----- Work and Pensions Committee. EMPLOYMENT FOR ALL: INTERIM REPORT. H.C.401-I. London: Apr. 2003. 41 pp.

Focusing on the unemployment rate of disabled persons, this report raises the issue of the split between considering incapacity and establishing the ability to work how that disadvantages the disabled. The division between benefits and work is too vast and inflexible to enable many disabled persons to move into employment.

-----, ----- THE FUTURE OF UK PENSIONS. H.C. 92-I. London: Apr. 2003. 112 pp.

This report finds that while the pension system in the UK as a whole is sound, there are some problems. Lack of security of private funds, pensioner poverty, excessive complexity, the current distribution of tax relief, and lack of understanding of the needs of pensioners, especially groups that encounter barriers to the system such as ethnic minorities and persons who live in rural areas, are issues that require immediate redress to assure current and future pensioners a sustainable system of provision of pensions.

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

Signing of EU--US Extradition Treaty¹

On June 26, 2003, following arduous negotiations on contentious issues, the EU and the United States signed an agreement on judicial cooperation in criminal matters and a long-awaited agreement on extradition. The idea for these agreements was born in the aftermath of the September 11, 2001, terrorist attack in the US and were the culmination of the 2003 EU-US Summit in Washington, D.C. The negotiation process was shrouded in secrecy, until the EU succumbed to pressure from various groups and Western parliaments and made it public. The concerns raised in Europe involved the death penalty that could be imposed in the United States on a suspect extradited from EU territory; the subjecting of suspects to military tribunals; the sharing of personal data by investigation teams, since privacy and protection of personal data are afforded greater safeguards under EU law; and the quality of evidence that the US must produce for a successful extradition process. Under the new rules, a suspect may be extradited to the United States only if the latter provides sufficient guarantees that the death penalty will not be imposed, or if it is imposed, that it will not be carried out.

Conclusions of the Thessalonika European Council²

The European Council, which convened in Thessalonika, Greece on June 19-20, 2003, reached conclusions on a number of important issues, including the Draft Constitutional Treaty, immigration, frontiers and asylum, enlargement, employment, and external relations.

On the Constitutional Treaty, the Council held that the draft provides a solid basis for convening the Intergovernmental Conference in October 2003, which subsequently will adopt the Treaty. The acceding members are expected to participate in the conference on an equal basis. On the issue of immigration and asylum, the Council emphasized the importance of further developing the groundwork for full implementation of the Visa Information System (VIS) and adopting a comprehensive approach to biometric data to be applied to documents of third-country residents. On the sensitive issue of border control, and especially maritime borders, the Council supported continuation of Community action for the management of the borders and noted the progress made by the Common Unit of External Border Practitioners, whose role includes the making of strategic decisions on border control. Regarding the return of illegal immigrants, which remains an area that falls under the responsibility of the Member States, the Council urged the Commission to adopt a Community instrument prioritizing the issues included in the Return Action Program. On the issue of asylum, the European Council urged the Council to adopt by the end of 2003 the two pending Directives dealing with minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons in need of international protection and with the procedure to be followed by the Member States for granting and withdrawing refugee status.

¹ <http://europa.eu.int>

² *Id.*

With regard to enlargement, the Council urged the additional ten members to continue their efforts to be fully ready to assume their membership commitments as of April 1, 2004. It noted that Bulgaria and Romania may become members in 2007, provided that they step up their efforts to conform their legislation to meet EU standards. The Council expressed its satisfaction for the progress made by Turkey's recent reform efforts to meet the economic and political criteria. A decision as to when and if accession negotiations with Turkey will be initiated will be made by the European Council in December 2004. On Cyprus, the Council stressed that even though the lifting of movement restrictions between the northern and the southern part of Cyprus is a positive development, this is no substitute for a political solution to the Cyprus question.

On the issue of employment, the Council endorsed the draft Broad Economic Policy Guidelines and the draft Employment Guidelines. On enlargement, it welcomed the progress made in developing its capabilities to manage the three components of civilian crises, that is, rule of law, civilian administration, and civil protection. With regard to EU-NATO relations, the Council endorsed the implementation of the permanent arrangements for partnership between the two organizations. A declaration on non-proliferation of weapons of mass destruction was appended to the conclusions.

Report on EU External Action in the Fight Against Terrorism³

The Greek Presidency submitted a report for consideration to the European Council in Thessalonika on the external activities of the EU intended to combat terrorism. The report includes the completion of three regional threat assessments on Central and Latin America and South Asia. These assessments contain recommendations for EU strategy towards the countries and regions that have been reviewed. An analysis of the issue of Islamic fundamentalists and terrorism, which was prepared by the Extreme Fundamentalism and Terrorism Group, will be forwarded to the Council for future review. The report mentions the procedure followed by the EU in reviewing its relationships with third-world countries in regard to counter terrorism, through the inclusion of standard anti-terrorism clauses in the agreements signed with Chile, Algeria, Egypt and Lebanon. In order to assist third-world countries in their implementation of UN Resolution 1373 on terrorism, the EU has approved technical assistance to certain countries that have been selected on criteria adopted by the Council and the UN Counter Terrorism Committee.

The report also states the progress made on the drafting of the Guidelines for a Common Approach to the Fight Against Terrorism. The guidelines are intended for internal use in the implementation of the EU's Action Plan.

As far as the fight against the financing of terrorism, the EU has amended the regulation on the freezing of funds and economic resources a number of times in order to bring it in conformity with the Sanctions Committee of the UN Security Council. The list of persons, groups and entities whose funds are targeted is updated regularly.

The EU has also been actively engaged in all major efforts undertaken by the UN and has participated in the Special Meeting of the Counter-Terrorism Committee with international and regional

³ *Id.*

organizations. The EU follows the developments within the International Maritime Organization (IMO) regarding a possible amendment to the 1988 Convention and Protocol on Maritime terrorism. The EU has also strengthened its ties and cooperation in the fight against terrorism with the United States. Lastly, the report covers developments in the area of using military assets and capabilities in order to safeguard the civilian population from biological, chemical, and nuclear attacks.

Farm Policy Reform⁴

On June 26, 2003, the EU Common Agricultural Policy Reform underwent a dramatic transformation. The major innovations include the following: a) a single payment to farmers irrespective of productivity level; b) linkage of the payment to environmental, food safety, and animal and plant health standards along with the requirement to preserve the farmland in good agricultural and environmental condition; c) a new invigorating farm policy with more funds to assist farmers to meet EU production standards as of 2005; and c) a reduction in direct payments to larger farms. This reform is expected to give the EU more negotiating power in future WTO trade talks with the United States.

Opening of Negotiations between EU and US on Air Transport Freedom⁵

The EU and the US recently reached an agreement to begin negotiations in the fall on lifting the restrictions on air transport and creating a free trade area between US and EU airlines. It is hoped that once implemented the accord will result in a more competitive market and will offer more choice of services and lower fares for air travelers. It will also augment employment in the air transport sector for both partners.

Cyprus: EU adopts Measures for Turkish Cypriots⁶

Recently the European Commission adopted a package of measures intended to boost economic recovery in the Turkish-occupied northern part of Cyprus and to bring it closer to the EU. In so doing, the Commission expressed its continued support for contributing to a settlement of the Cyprus issue based on the UN Secretary's plan. The support would include one million *euro* for feasibility studies to facilitate economic integration with the EU in the event of a political solution to the Cyprus question, one million *euro* for educational seminars on EU legislation, and six million *euro* for infrastructure projects involving, sewage, waste water, and drinking water.

⁴ <http://europa.eu.in/rapid>

⁵ *Id.*

⁶ *Id.*

CANADA: SAME-SEX MARRIAGE*

The Court of Appeal, the highest court of Ontario, Canada's most populous province, recently decided that the common law rule that a marriage can only be celebrated by a man and a woman denied same-sex couples the rights that have been "read into" the equality rights section of the Canadian Charter of Rights and Freedoms.¹ This decision went beyond similar decisions in two other provinces in that it ordered the provincial government to immediately grant marriages licenses to the same-sex couples who have applied for them. The provincial government has complied with this order, and same-sex couples are now being granted licenses if they comply with the provisions of the provincial Marriage Act (R.S.O. ch. M.3 (1990)). This statute does not contain a residency requirement, and same-sex couples from the United States have traveled to Ontario to get married in that province.

The Ontario Court of Appeal's decision could be overturned by the Federal Government. Although the provinces grant licenses, the Federal Government has the authority to define marriage. Thus, the Federal Government could decide to pass a law stating that marriage is the union of a man and a woman and declare it to be in force "notwithstanding" the equality rights section of the Charter. This power to overturn a court decision through the invocation of the "notwithstanding" clause was created to preserve the principle of parliamentary supremacy, but it has seldom been used by either the Federal Government or the provinces.

The members of the ruling Liberal Party are reportedly divided in their opinions on same-sex marriages. Although some argued that the court decisions should at least be appealed to the Supreme Court of Canada, the Government has announced that it intends to pass a law defining marriage to encompass same-sex unions. The Government also announced that it would ask the Supreme Court to rule on the constitutionality of its new law in a "reference" case. Such cases are referred directly to the Supreme Court, and they are resolved by that court without consideration of the facts of a particular case.

The Government of Alberta has already indicated that even if the Federal Government follows through on its plans, the Province will block same-sex marriages through its powers over the granting of licenses.² However, most constitutional experts seem to believe that the courts will ultimately decide that the Federal Government has the exclusive authority to determine who may marry.

* Prepared by Stephen Clarke, Senior Legal Specialist, Western Law Division.

¹ Haperin v. Attorney-General for Canada, <http://www.ontariocourts.on.ca/decisions/2003/June/haiperinC39172.htm>

² *Nine Provinces Accepting of Gay Marriage*, GLOBE AND MAIL, June 19, 2003.

GREAT BRITAIN: Abolition of Office of the Lord Chancellor*

In an unexpected move that signals the end of 1,400 years of British constitutional history, the United Kingdom's Prime Minister released a press notice on June 12, 2003, announcing the abolition of the office of Lord Chancellor and the creation of a new Department for Constitutional Affairs as part of his Cabinet reshuffle.¹ The changes will have a wide-reaching impact on the operation of the judiciary and aim to ensure better transparency and independence in that area.

The office of Lord Chancellor is considered to be one of the most "spectacular denials of the doctrine of the separation of powers" due to the Lord Chancellor's roles in the judiciary, the legislature, and the executive. In these branches, the Lord Chancellor is the head of the judiciary, member and speaker of the House of Lords, and a senior member of the Cabinet, where he is subject to dismissal by the Prime Minister. Despite the extent to which many Lord Chancellors have gone to ensure that these duties were done as independently as possible, the fact that there was the opportunity for conflicts of interests did little to meet with the maxim that justice not only must be done, but be seen to be done.

Due to these conflicting roles, the abolition of the office of Lord Chancellor has been welcomed by most; many believed that it was an inevitable occurrence after the enactment of the Human Rights Act 1998. However, the virtually unilateral manner in which the Prime Minister has presented one of the most important constitutional changes in recent history and the apparent lack of planning and consultation have raised questions in Parliament. Reports have emerged that even some members of the Cabinet, which consists of Ministers appointed by the Prime Minister and supposedly close to him, remained unaware of his intentions.²

The notice indicates the government's aim to separate the three branches of state to provide more transparency and independence. A new post of Secretary of State for Constitutional Affairs will replace that of Lord Chancellor. The distinction between the new post and that of Lord Chancellor is that the Secretary will only have a role in the executive. Judicial appointments will move to a newly created Judicial Appointments Commission, and the new Secretary will no longer sit as a judge. The Lord Chancellor's role of Speaker of the House of Lords will be taken over by an individual who is not a Minister. Peers in the House of Lords are to be consulted about what procedures should be used to appoint the new Speaker. The Lord Chancellor's Department has already been renamed the Department for Constitutional Affairs, although its functions have not changed.

The new Judicial Appointments Commission is to be placed on a statutory basis. There has been no formal statement on the procedures that the new Commission will use to appoint judges, although there were reports indicating that it could be similar to the system in the United States. However, the Secretary for State for Constitutional Affairs has denied that the judges will be appointed for the duration of their life. There are already doubts that the new Commission will prove to be different than the current appointments system. The former Master of the Rolls has stated that the Commission could be "independent of the

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¹ 10 Downing Street, Press Notice: *Modernising Government--Lord Falconer Appointed Secretary of State for Constitutional Affairs*.

² Kanal Ahmed and Gaby Hinsliff, *After the Reshuffle: Blair's Botched Revolution*, THE GUARDIAN, June 15, 2003.

judiciary, but tailor-made to produce an entirely different kind of judge who perhaps would be more acceptable to the Home Secretary,"³ who has been having highly publicized conflicts with the current judiciary and the former Lord Chancellor over prison sentences.

To further ensure the separation of powers, the Government also announced the creation of a new Supreme Court to replace the Law Lords, who currently work as a committee of the House of Lords. To date there have been few details released on the plans for the Supreme Court, with the spokesperson for the Prime Minister stating that, as with all of the other changes, information will be provided in a consultation paper that is to be produced in mid-July.⁴ Amongst the few pieces of information to emerge have been reports that to further separate the judiciary from the legislature, the location of the Supreme Court would be moved from the House of Lords to another building and that it may take approximately three years to bring the court into effect.

The Prime Minister on a previous occasion has stated his admiration for the US Supreme Court, although reports have indicated that the structure of Supreme Courts in the former British colonies may be more suitable models for comparative purposes.⁵

Overall, while the result of the changes is likely to be a more transparent judicial system, the announcement has not been well received due to the lack of notice and prior consultation. There are reports that the House of Lords is considering a form of revolt by not cooperating with the Government to pass its already controversial and full legislative program before the end of the current session. Another embarrassing twist for the Prime Minister emerged after a spokesman for the Prime Minister had stated that the new Secretary of State for Constitutional Affairs would not perform the role of speaker of the House of Lords; a statute dating from the 17th century requires the Lord Chancellor's presence in the House of Lords at the beginning of each session. This has resulted in the new Secretary ceasing to act as a conventional Cabinet Minister, as stated in the press notice, and having to accept some of the duties of Lord Chancellor until the appropriate legislation is passed.⁶

³ 407 PARL. DEB., H.C. (5th ser.) 219 (2003).

⁴ 10 Downing Street Press Briefing, 5:45 pm, June 12, 2003, available at <http://www.pm.gov.uk/output/page3895.asp>

⁵ Michael Beloff, Q.C., *After the Reshuffle*, THE OBSERVER, June 15, 2003.

⁶ *Supra* note 4.