



WORLD LAW BULLETIN

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Respectfully submitted,

Walter Gary Sharp, Sr.

WALTER GARY SHARP, SR.
Director of Legal Research



Directorate of Legal Research for
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AFRICA

ANGOLA – A Step Toward Compliance with the Ottawa Convention

Twenty-five trainees have begun a course on stockpile destruction in Luanda, Angola. The project is designed to ensure Angola's compliance with article 4 of the Ottawa Convention, an international agreement that bans anti-personnel landmines. The participants will be trained to identify and destroy all stockpiled anti-personnel landmines existent in the country. The goal is to complete the process by December 2006. (*Course on Stockpile Destruction*, UNDP ANGOLA, Aug. 22, 2005, at <http://mirror.undp.org/angola/>.)

(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

BOTSWANA – Ecology Research Regulation Urged

The Okavango River Delta region of Botswana has been gradually losing wetlands, threatening the natural abundance of flora and fauna the area and hence the livelihood of the people there. Local residents have suggested that expatriates blocking the river at various points to support tourism schemes are at least partly at fault. In addition, the numerous conservationists who have come to study the unique ecology of the delta and determine what is needed to save it are viewed with suspicion. Members of the North West District Council have demanded that the organizations that send experts to the region at least report back on their findings. They have argued that the delta is over-researched and that public funds have been wasted, raising questions about the motivation of the researchers. The councilors have requested that the government regulate the activities of both researchers and tour leaders. An Okavango Delta Management Plan has recently been created as a project under the Ministry of Environment, Wildlife, and Tourism. Officials have asked for cooperation from the communities in the region as the project staff works to sustain the wetlands. (*Plans Afoot to Regulate Research in Delta*, DAILY NEWS ONLINE, Sept. 8, 2005, <http://www.gov.bw/cgi-bin/news.cgi?d=20050908>.)

(Constance A. Johnson, 7-9829, cojo@loc.gov)

BOTSWANA – Motorists Advised to Demand Receipts For Fines

The Commissioner of Police in Botswana's capital city, Gaborone, has issued a warning to drivers, recommending that they ask for receipts when paying fines for traffic offenses directly to police officers. The receipts will serve as proof of payment and help combat corrupt practices by police officers. The Commissioner, Edwin Batshu, also asked motorists to report suspicious acts that are linked to police corruption. He described a typical situation as one in which a person charged with a traffic offense is given the chance to pay a lesser fine on the spot, without a receipt. Disciplinary measures, including in some cases prison sentences, have been taken against some corrupt officers.

Crime is a growing problem in the country. According to Batshu, the jails are over-crowded with criminals, both citizens and foreigners, and crime syndicates have recently recruited young people and women as members. He recommended that the public not waste police resources on petty issues, decreasing their ability to respond to true emergencies. (*Batshu Advises Motorists to Demand Receipts*, DAILY NEWS ONLINE, Sept. 7, 2005, <http://www.gov.bw/cgi-bin/news.cgi?d=20050907>.)

(Constance A. Johnson, 7-9829, cojo@loc.gov)



CONGO (Democratic Republic of) – Law on the Constitutional Referendum

On June 22, 2005, the Democratic Republic of the Congo adopted a Law on the Organization of the Constitutional Referendum. (Law No. 05/010, text available in the Global Legal Information Network, Record ID 157046, <http://www.glin.gov>.) It states that the referendum is to be held on November 27, 2005, and that the Independent Electoral Committee will manage the balloting. The Law, which contains sixty-seven articles arranged under eight titles, has provisions on the procedures for the referendum.

The Senate passed the draft Constitution in May 2005, after a difficult process of negotiation between factions. The text must be approved in the national referendum for it to become effective. If accepted, this constitution will replace a three-year old transitional Constitution. The draft Constitution is designed to end years of conflict and political instability. It provides for presidential and parliamentary elections and establishes free universal primary education. (*New DR Congo Constitution Backed*, BBC NEWS, May 14, 2005, at <http://news.bbc.co.uk/go/pr/fr//1/hi/world/africa/4546535.stm>.)

(Constance A. Johnson, 7-9829, cojo@loc.gov)

CONGO (Republic of) – Airspace Ban on Old Soviet Planes

The Congo is reported by the Italian-based Missionary News Service to have closed its airspace to the aging Soviet-made Antonov 24 passenger planes flown by airlines in the neighboring Democratic Republic of the Congo. The government in Brazzaville imposed the ban because of the high accident rate of the aircraft. (*Congo Bans Old Soviet-Made DR Congo Planes from Its Airspace*, MISNA NEWS, Sept. 20, 2005, Foreign Broadcast Information Service online subscription database.)

(Donald R. DeGlopper, 7-9832, ddeg@loc.gov)

ETHIOPIA – Ruling Party Wins Elections

On May 15, 2005, general elections took place in Ethiopia. The elections were marred by controversy and were considered contrary to international standards in key areas. Repeat elections were held on August 21 in twenty constituencies where the ruling party had complained of irregularities and in eleven districts where the opposition had filed challenges. Originally, complaints had been filed in 299 constituencies. According to the final results released by the election board on September 5, 2005, Ethiopia's ruling party has retained power and now controls fifty-nine percent of the 547 seats in parliament, having lost about 150 seats. Human rights groups claimed that security forces fired on and killed at least forty-two people who protested what they termed election fraud. (*Ethiopia Ruling Party Named Winner in Final Result of Disputed Poll*, UN INTEGRATED REGIONAL INFORMATION NETWORKS, Sept. 5, 2005, at <http://allafrica.com/stories/200509050136.html>.)

(Ruth Levush, 7-9847, rlev@loc.gov)

GUINEA-BISSAU – Prime Minister Does Not Recognize New President

Guinea-Bissau's Prime Minister Carlos Gomes Junior recently stated that he does not recognize the newly elected president Joao Bernardo Vieira, but will remain in the government nonetheless. This has prompted widespread speculation as to how the political cohabitation will work.



Former military ruler Vieira was declared the new head of state after winning a mid-July 2005 ballot, fending off a strong challenge from Malam Bacai Sanha, the candidate of the ruling PAIGC party to which Gomes Junior belongs. Claiming electoral fraud, the PAIGC lodged an appeal with Guinea-Bissau's Supreme Court, but it was dismissed in late August.

Gomes Junior, who became prime minister after parliamentary polls in March 2004, dubbed Vieira a "bandit and mercenary who betrayed his own people" during this year's presidential election campaign. He threatened to resign if Vieira won, but under pressure from international mediators and diplomats in Bissau, he later backed down and promised to stay. However, Gomes Junior's declaration has raised doubts about how he can work with the new president. Vieira has thus far declined comment on the Prime Minister's remarks. (*Guinea Bissau: Prime Minister Says Doesn't Recognize New President but Won't Resign*, Integrated Regional Information Networks (IRIN) website, part of the UN Office for the Coordination of Humanitarian Affairs (OCHA), Aug. 23, 2005, available at http://www.irinnews.org/report.asp?ReportID=48716&SelectRegion=West_Africa&SelectCountry=GUINEA-BISSAU.)

(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

KENYA – Nationwide Constitutional Referendum

Kenya will hold its first-ever nationwide referendum on November 21, 2005, when voters cast ballots on a new constitution that has already deeply split the East African nation. On that date, 11.8 million registered voters will be asked to accept or reject a draft constitution containing the most sweeping changes to Kenya's founding document since it was drawn up before independence from Britain in 1963. The text of the referendum has drawn criticism from the opposition and from elements of President Mwai Kibaki's coalition government, as well as from church leaders. The political opposition, led by the son of Kenya's revered founding president Jomo Kenyatta, is calling for a "no" vote as the draft retains nearly absolute presidential powers. Influential leaders in Kenya's Christian church are opposed to the draft document; they argue that it gives rights to religious courts and contains provisions that could legalize on-demand abortion and gay marriages. Protests against the constitution sparked street violence in the capital in July 2005 in which at least one person was killed, and there are fears the campaign for the referendum may reignite tensions.

According to the chairperson of the Electoral Commission of Kenya (ECK), Samuel Kivuitu, approximately 14,500 polling stations will be opened around Kenya from 7:00 am to 5:00 pm. Officials said that this would cost Kenya, which is already cash-strapped, nearly US\$40 million on top of the US\$50 million spent on preparing the draft.

The draft, which took nearly a decade to prepare, will be ratified if approved by a simple majority of the votes cast. If passed, only a two-thirds majority in the 222-member national assembly can amend it. (*Kenyans to Vote on New Constitution in November 21*, JURIST LEGAL NEWS & RESEARCH, Sept. 5, 2005, at <http://jurist.law.pitt.edu/paperchase/2005/09/kenya-constitutional-referendum-set.php>.)

(Karla Walker, 7-4332, kdwa@loc.gov)



LIBERIA – U.N. Security Council Extends Peacekeeping Force

On September 20, 2005, the United Nations Security Council extended the mandate for the peacekeeping force in Liberia for another six months, until March 31, 2006. There are currently around 15,000 peacekeepers and 1,100 international police officers in Liberia. The Security Council asked the U.N. Secretary General, Kofi Anan, to provide recommendations for a schedule for troop reductions. Some candidates in the presidential election set for October 11, 2005, and other Liberian citizens have expressed a desire for a continued U.N. security force in the country. (*Liberia: UN Extends Peacekeeper Mandate but Wants Plan for Troop Withdrawal*, UNITED NATIONS INTEGRATED REGIONAL INFORMATION NETWORKS (IRIN), Sept. 21, 2005, <http://irinnews.org/>.) (Donald R. DeGlopper, 7-9832, ddeg@loc.gov)

MALAWI – Constitutional Review Conference Scheduled

A national constitutional review conference is scheduled to occur in Malawi in November 2005, thanks to funds having been made available to the Malawi Law Commission. Of sixty million *kwacha* (about US\$480,000) given to the Commission, the Government of Malawi contributed forty-five million (about US\$360,000) and the United Nations Development Program will contribute the remainder. Before the funding came through, the consultative process was losing momentum because of the government's indecision about setting a date for the conference. Part of the money will reportedly be used to establish a special law commission, which will examine proposals from all sectors of society after the conference concludes and forward them to the Malawi Parliament via the Ministry of Justice for approval. Among the critical issues to be discussed at the conference are an age limit for presidential candidates, a recall provision, and the presidential term of office. (*Malawi: National Constitutional Conference to Be Held in November 2005*, BBC MONITORING INTERNATIONAL REPORTS, July 23, 2005, LEXIS/NEXIS, News Library, 90days File.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

MAURITANIA – Anti-Terrorist Bill's Status Unclear in Wake of Coup

An official spokesperson announced on June 23, 2005, that the Mauritanian Government had examined and adopted an anti-terrorism bill for submission to Parliament for approval within a few days, in accordance with "urgency procedures" allowing an accelerated timetable. The government also examined and adopted a related bill on money laundering and terrorist financing. The government's adoption of the anti-terrorism bill reportedly came in the wake of the theft with "terrorist motives" of a four-wheel drive vehicle belong to an international organization, an attack on the Aioun El Atrouss brigade and gendarmerie, and an attack on the Lemgheity garrison. The authorities had also reportedly imprisoned "scores" of opponents, who were accused of being Islamist terrorists. Opposition leaders and some analysts contend, however, that these charges had more to do with politics than reality and that the government was linking its Islamist critics to cross-border bandits affiliated to some extent with Algeria's Salafist Group for Preaching and Combat. (*Mauritania Passes Antiterrorist Bill*, PANAFRICAN NEWS AGENCY (PANA) DAILY NEWSWIRE, June 23, 2005; *Anti-Terror Campaign in Mauritania Causes Worry, Uncertainty*, ASSOCIATED PRESS WORLDSTREAM, July 5, 2005; & Olly Owen, *Mauritanian Government to Introduce New Terror Act*, WORLD MARKETS ANALYSIS, June 24, 2005, LEXIS/NEXIS, News Library, 90days File.)



The status of the bills seems unclear, however. On August 5, 2005, army officers who seized power in Mauritania the day before, while President Maouiya Ould Taya was out of the country, dissolved the parliament. (*Mauritania Regime Dissolves Parliament*, HERALD SUN, Aug. 5, 2005, http://www.heraldsun.news.com.au/common/story_page/0,5478,16159238%5E1702,00.html.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

MAURITIUS – Laws on Education, Small Businesses

On May 7, 2005, Mauritius issued several pieces of legislation on education and small businesses:

1. The Open University of Mauritius Act (No. 17, 2005). This instrument establishes and constitutes a new university for Mauritius. The law describes the university as the focal point of open and distance learning in the country. It has four initial schools, Applied Sciences, Business and Management, Education, and Social Sciences and Humanities. (LEGAL SUPPLEMENT TO THE GOVERNMENT GAZETTE OF MAURITIUS, No. 44, May 7, 2005, at 328-360.)
2. The Education and Training (Miscellaneous Provisions) Act (No. 18, 2005). This Act amends the Education Act, 1982, previously amended in 2000. The amended law promotes new academic standards at primary and secondary schools. It also contains the authority to recognize similar qualifications from other institutions outside Mauritius. The Act also amends the Mauritius Qualifications Authority Act, 2001, as well as the Education Commission Act, 1988, amended to 2000, that deal with post secondary education in the country. (*Id.* at 361-372.)
3. The Small Business Enterprises and Handcraft Act (No. 28, 2005). This Act adopts new provisions regulating small businesses in the country. It also contains regimes of registration of small businesses. A Small Enterprises and Handcraft Development Authority is the new enforcement agency, taking over the functions previously performed by the National Handcraft and Promotion Agency and the Small and Medium Industries Development Organization. (*Id.* at 386-408.)

(Charles Mwalimu, 7-0637, cmwa@loc.gov)

NAMIBIA – Enclosure of Common Lands

Holders of land under customary rights are reported to be enclosing lands by erecting fences, even though this contravenes the Communal Land Reform Act 2002. That Act requires all holders of customary land rights to apply for their existing or new rights before March 2006. The Ministry of Lands and Resettlement says that people are registering their existing customary land rights, but do not seem to be applying for authorization to keep fences or erect new ones. The fences protect crops and livestock from wild animals, but there is concern that large amounts of communally held land have been fenced off, denying poor people access to water and grazing. (*Communal Farmers Flout Reform Act*, NEW ERA (Windhoek), Sept. 19, 2005, <http://allafrica.com/stories/printable/200509190097.html>.) (Donald R. DeGlopper, 7-9832, ddeg@loc.gov)



NIGERIA – Imposition of *Sharia* Law on Public Transportation

The government of Kano State in Nigeria has decided to institute gender segregation on public transportation. Women in the state have been banned from riding in the same buses as men and from riding behind men on motorcycles, as the state government extends its application of Islamic *Sharia* law. The separation of the sexes in this state in northern Nigeria will be enforced by a 9,000-officer religious police force with the power to fine people who ignore the new rules.

This decision could potentially pose a larger political and social challenge, well beyond the immediate impact on women's rights. Kano is not the first Nigerian state to segregate public transportation. Zamfara, a state in the northwestern portion of the country, has done so since 1999. However, unlike Zamfara, the population of Kano is forty percent Christian, and Kano was the scene of widespread religious rioting in 2004. This new legislation will apply to Christians as well as Muslims, and much of the Christian community in Kano City is strongly opposed to it. Christian women's rights groups and other city leaders argue that implementation of this program without an exception for Christians could lead to a repeat of earlier civil disturbances, similar to those experienced in Kaduna state in 2000, when that state's Christians revolted against the imposition of Islamic law. The Kaduna riots resulted in a compromise in which *Sharia* was applied to Muslims only. (*In Northern Nigeria, Riding Too Close for Comfort*, WASHINGTON POST, Aug. 23, 2005, at <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/22/AR2005082201218.html>.)

(Karla Walker, 7-4332, kdwa@loc.gov)

NIGERIA – Minister Accuses Swiss Banks of Accommodating Looters

Frank Nweke, Jr., the Information and National Orientation Minister, has accused Swiss banks of fraud for accommodating looted public funds from Nigeria and other countries around the world. The KPMG (an international accounting firm) survey of fraud and misconduct in Africa in 2005, in which 386 companies drawn from construction, engineering, technology, government, financial services, insurance, manufacturing and other sectors in thirteen African countries, including Nigeria, were questioned, showed that fraud is still a major problem in both the public and private sectors. Nweke acknowledged that Nigeria has an internal problem with fraud, but he maintained that the banks in question harbor money stolen from the country. He argued that this is a larger problem than the internal corruption, since the banks knowingly accept funds that have been looted, and if they would cease this practice, people would stop depositing stolen moneys there, reducing fraud. Nweke further acknowledged that no country is free of con men, adding, "The administration of President Olusegun Obasanjo, has zero tolerance for corruption, and is working hard to see to it that fraud is reduced to the barest minimum." (*Money Laundering: Minister Indicts Swiss Banks*- VANGUARD, Sept. 23, 2005, at <http://www.vanguardngr.com/articles/2002/southwest/sw223092005.html>.)

(Karla Walker, 7-4332, kdwa@loc.gov)

NIGERIA – Trial of Alleged Homosexuals Adjourned

On August 24, 2005, it was reported that a Nigerian Islamic court adjourned the trial of alleged homosexuals. (AFRICASIA.COM/AGENCE FRANCE-PRESSE, <http://www.africasia.com/services/news/newsitem.php?area=Africa&item=050824162437.gbgk3uyn.php>.) The two men face the death penalty if convicted. The defendants are a forty-year-old, Yusuf Kabir, and an eighteen-year-old,



Usman Sani. They remain in custody after failing to meet a bail condition, imposed at their last hearing, that they find two citizens to act as their guarantors. Judge Mustapha Sani Saulawa of the Upper Sharia Court in the northern city of Katsina set the next trial date as September 8, 2005. Prosecutors explained that three police witnesses were away on a training course. The pair were arrested by police in June after witnesses alleged that they had been having sex in a public bathroom. Sodomy is punishable by stoning to death under northern Nigeria's interpretation of Islamic Sharia law. The case has attracted the attention of gay rights lobbyists in France, democratic lawmakers in the United States, and a senior United Nations envoy. The envoy has called on Nigeria to show tolerance towards homosexuals.

(Charles Mwalimu, 7-0637, cmwa@loc.gov)

RWANDA – Extradition Requested for Genocide Suspects; ICTR Trials

The Rwandan Government has requested the extradition of fifteen Rwandans suspected of taking part in the 1994 genocide in the nation, in which some 800,000 people perished. Deputy Prosecutor General Martin Ngoga stated that the suspects are hiding in Norway and that the Rwandan Government is "in close collaboration with the Norwegian judicial authorities." It has been reported that the fact that the Rwanda Penal Code includes the death penalty as the most serious criminal punishment has been an obstacle to the successful extradition of those genocide suspects now in countries that have abolished capital punishment. For example, Canadian officials have reportedly agreed to extradite Leon Mugesera, wanted on charges of genocide, only under the stipulation that he will not be given the death penalty. The Canadian Supreme Court recently rejected Mugesera's application for political asylum in Canada because of his alleged complicity in the Rwandan genocide. Ngoga expressed concern that the mandate of the International Criminal Tribunal for Rwanda (ICTR) is set to expire in 2008. He argued that suspects must be tried when the crimes in question are of an especially serious nature, such as genocide, war crimes, and other crimes against humanity, stating of countries that

They could be in disagreement with our judicial standards but they cannot afford to condone impunity. We don't mind if these genocide culprits are on trial in whichever country they may be found. ... Something must be done at the UN Security Council to ensure that no criminal goes scot-free in the event ICTR's mandate expires.

(Prosecution Pursues 15 Genocide Suspects, ALLAFRICA, INC., Sept. 2, 2005, & Rwanda Seeks Extradition of 15 Genocide Suspects from Norway, BBC MONITORING INTERNATIONAL REPORTS, Sept. 2, 2005, LEXIS/NEXIS, MDEAFR Library, Curnws File.)

The ICTR trials are proceeding and the Court reports that it is "on course" to complete the trials of some sixty-five to seventy defendants by 2008. Twenty-two people have been convicted, three have been acquitted, twenty-five are now under trial, and sixteen are in custody awaiting trial. The former Rwandan Minister for Family and Women's Affairs, Pauline Nyiramasuhuko, the only woman indicted for the Rwandan genocide, has denied allegations that she encouraged local pro-Hutu militia to attack Tutsis in southern Rwanda. *(Ex-Minister Denies Part in Rwanda Genocide, XINHUA GENERAL NEWS SERVICE, Sept. 3, 2005, LEXIS/NEXIS, MDEAFR Library, Curnws File; UN Genocide Tribunal Says It's on Track to Bring Rwandan Criminals to Justice by 2008, UN NEWS SERVICE, Sept. 26, 2004, UNNews@un.org.)*

(Constance A. Johnson, 7-9829, cojo@loc.gov)



SIERRA LEONE – Human Trafficking

A national human rights group working on human and child trafficking, the Network Movement for Democracy and Human Rights (NMDHR), has alleged in a press release that sixty-five cases of human trafficking have been discovered in three chiefdoms in the Kailahun District, close to the border between Liberia and Guinea. The three chiefdoms named by NMDHR are Kissi Kama, Kissi Teng, and Kissi Tongi. The press release further states that the average age of the victims at the time of abduction was fourteen years and that thirty of them were girls and thirty-five were boys. The findings disclosed that thirty percent of the victims were discovered in neighboring Guinea and Liberia, while half of the trafficked victims were suspected to have been exploited within Sierra Leone. Most of the victims were taken from internal displaced persons camps, particularly in the eastern and southern regions. The press release further stated that twelve of the abduction cases that were unresolved were determined to be results of the war.

According to Abdul Karim Habib, who is the program manager of NMDHR, the organization is aware of the fact that there may be about three hundred trafficking cases in the whole of Kailahun district and that many people are not clear about what constitutes human trafficking. He therefore stressed the need for the thorough education of the local populace on issues relating to human trafficking. (*Human Trafficking Discovered in Kailahun*, CONCORD TIMES, Sept. 22, 2005, at <http://allafrica.com/stories/200509220686.html>.)

(Karla Walker, 7-4332, kdwa@loc.gov)

SOUTH AFRICA – Children’s Bill Bans Virginitiy Testing

A new Children’s Bill was approved by the South African Parliament in July 2005. The bill provides for the right of children to family care; the right to be protected from maltreatment, abuse, and neglect; and the rights to social services and to legal representation, among others. The bill specifically bans female genital mutilation and virginity testing and awards the child the right to refuse to be circumcised. The ban was designed to protect children’s rights to privacy, bodily integrity, and dignity, but faced fierce criticism by traditionalists who argued that this is an effort to “ban our culture, religion—but it’s not going to work.” Some supporters of the testing had argued that it could stop the spread of HIV/AIDS and reduce the prevalence of teenage pregnancy. A study at the Center for HIV/AIDS Networking at the University of KwaZulu-Natal, however, proved that the testing was not effective in HIV/AIDS prevention. (*Vote Is a Milestone for Defence of Rights*, The International Child and Youth Care Network, at <http://www.cyc-net.org/cyc-online/cycol-0805-jamieson.html>; see also *SOUTH AFRICA: Virginitiy Testing – Absence of a Small Tissue Becomes Big Issue*, IRN, Sept. 8, 2005, at <http://allafrica.com/stories/200509080665.html>.)

(Ruth Levush, 7-9847, rlev@loc.gov)

TOGO – Law on Child Traffickers

In early August 2005, the Togo National Assembly passed a law banning trafficking in children. The law stipulates prison terms of up to five years and fines ranging from about US\$1,000 to \$2,000 for trafficking activities. If the trafficked children die or disappear, the penalties may be doubled. The punishments also apply to persons convicted of attempted trafficking or of acting as accomplices of traffickers. The law also provides that a child not in the presence of his parents or



official guardians may not leave the country without special authorization; what form such authorization will take has not yet been decided. According to National Assembly President Abass Bonfoh, “the law targets all those who are intimately or casually mixed up in the trafficking process; those who recruit the children, transport them and house them, in addition to parents and close relatives who are accomplices.” (*Togo: A Valuable Weapon in the Fight Against Trafficking*, AFRICA NEWS, Aug. 23, 2005, LEXIS/NEXIS, News Library, 90days File.)
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

ZIMBABWE – Constitutional Law

The Parliament in Zimbabwe voted on August 30, 2005, to give President Robert Mugabe new constitutional powers to seize farmlands and to restrict travel by government opponents in a country whose government is already considered among the most repressive in Africa. (*Mugabe Gains Expanded Powers*, WASHINGTON POST, Aug. 31, 2005, at A20.) The Parliament is flush with new members from Mugabe’s ruling party after recent elections that were denounced by many international observers as rigged.

The members of Parliament from the ruling party cast 103 votes for the constitutional change, enough for the two-thirds majority needed in a body of 150 members. The practical effect of the changes is hard to predict in a country where the government has already endorsed violent takeover of private land, demolished hundreds of thousands of homes, shuttered independent newspapers, and threatened would-be protesters with arrest and violent attacks. Mugabe is expected to sign the changes into law.

(Charles Mwalimu, 7-0637, cmwa@loc.gov)

EAST ASIA & PACIFIC

AUSTRALIA – New Counter-Terrorism Measures Proposed

On September 8, 2005, Australia’s Prime Minister John Howard provided a detailed list of provisions his government hopes to include in new counter-terrorism legislation. Most of these would require amendment of existing criminal law and criminal procedure law. Because most such law in Australia is the subject of state and territory, rather than federal (Commonwealth), codes, implementation of the plans would require action by state and territory legislatures. This will be discussed at a joint conference of the heads of the Commonwealth government and the eight state and territory governments on September 27, 2005.

The proposed changes include orders controlling the movements of people who pose a terrorist threat, including tracking devices; preventive detention for up to forty-eight hours by federal authorities and up to fourteen days by state police; the ability of the federal police to serve orders requiring people to disclose information to aid terror investigations; extended powers for state police at transport hubs and mass gatherings; clarification of existing laws on advocating terror; and extended search and entry powers for the agents of ASIO (the Australian Security and Intelligence Organisation, the domestic intelligence agency). In addition, the waiting period for Australian citizenship would be extended from two years to three. The Prime Minister said that some of the changes reflected the experience of



Australian police officials who visited London after the July 2005 bombings. (John Howard, Prime Minister of Australia, *Counter Terrorism Laws Strengthened*, Media Release, Sept. 8, 2005, available at http://www.pm.gov.au/news/media_releases/media_release_1551.htm.) (Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

AUSTRALIA – Workplace Surveillance Law

A law prohibiting employers from monitoring employees without explicit notice goes into effect in the Australian state of New South Wales on October 7, 2005. The Workplace Surveillance, Act No. 47, 2005 will replace the Workplace Video Surveillance Act 1998. It makes it an offense for employers to engage in covert surveillance of e-mails or Internet use or to use tracking devices, without a court order. Employees must be notified in writing fourteen days before any surveillance begins. New South Wales Attorney-General Bob Debus says that the legislation promotes transparency in the workplace and strikes a balance between the employee's rights to privacy and the legitimate needs of employers to protect their intellectual and commercial property.

Employers may block spam and messages containing viruses, Trojan horses, or offensive and harassing material. The Australian Privacy Foundation says that the law does nothing to help workers or employers. The law does not force managers to be held accountable for surveillance, but employers could be prosecuted for accidentally breaching the law. (New South Wales, Parliamentary Counsel's Office, Acts in Force database available at <http://www.legislation.nsw.gov.au/>; Samantha Baden, *Spying Bosses Will Have to Come Clean*, ZDNET AUSTRALIA, Aug. 26, 2005, available at http://www.zdnet.com.au/news/security/soa/Spying_bosses_will_have_to_come_clean/0,2000061744,39208891,00.htm.) (Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

CHINA – Foreign Cartoons Limited

The State Administration of Radio, Film, and Television (SARFT) urged all local television stations on September 13, 2005, not to broadcast foreign cartoons without official approval from SARFT. Moreover, the percentage of the approved foreign cartoons may not constitute more than forty percent of the total number of cartoons broadcast. SARFT further stated that foreign cartoons with violent, sexual, or "superstitious" content would not be allowed on air to harm the younger generation. This notice from SARFT is designed to protect the local entertainment industry and promote local movies. (SARFT website, <http://www.sarft.gov.cn/manage/publishfile/35/3295.html> (last viewed Sept. 16, 2005).) (Rui Wei, 7-9864, rwei@loc.gov)

CHINA – Law on Penalties for Offenses Against Public Order

On August 28, 2005, the National People's Congress Standing Committee adopted the Law on Offenses Against Public Security Administration, targeting non-criminal minor offenses. The Law enters into effect on March 1, 2006, at which time the currently effective Regulations on the subject (issued on September 5, 1986, and revised on May 12, 1994) will be made void. The Regulations comprised forty-five articles divided among five chapters; the Law has 119 articles and an entirely new chapter on supervision of enforcement of the Law.



Among other changes, the Law includes as a new, fourth category of punishment (the three others are warning, fine, and administrative detention): the revocation of a public security organ-issued license. It also newly stipulates that foreigners who commit offenses against public order may as a supplementary punishment be ordered to leave the country within a certain time limit or be deported. The maximum period of detention that may be imposed is fifteen days, except for multiple offenses, in which case the total is up to twenty days. Unlike the former Regulations, the Law has provisions about Internet use; for example, relatively serious public order offenses against national provisions regarding the Internet can incur up to ten days of detention.

There is in addition a new provision against incitement of racial hatred or discrimination, be it in print or on the Internet. Sports hooliganism is also punishable under the Law. Perhaps to complement anti-terrorist provisions in the Criminal Law, articles in the new Law specifically target public order offenses involving theft, damage, or unauthorized removal of airplane and railroad facilities and equipment, as well as the manufacture, sale, transport, etc., of explosive, poisonous, radioactive or corrosive substances or contagious pathogens in violation of state provisions. (*NPC Adopts Law to Penalize Offenses Against Public Order*, CHINA THROUGH A LENS, Aug. 28, 2005, <http://www.china.org.cn/english/2005/Aug/140008.htm>; *Law of the People's Republic of China on Public Security Administration Punishment* (in Chinese) ZHONGGUO RENDA XINWEN, Aug. 28, 2005, <http://npc.people.com.cn/GB/14957/3648664.html>.)
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

CHINA – No More Counterfeit ID Cards

According to the *Legal Daily*, the National Citizen Identity Information Service (NCIIS) (<http://www.id5.cn>) officially commenced on September 15, 2005. It is sponsored by the National Citizen Identity Information Center under the Ministry of Public Security, China Mobile Communications Corporation, and Beijing GZT Network Technologies Inc. NCIIS will only provide information on the consistency between the name and the identity number of a citizen sent in to the service electronically. The public may request this service by sending NCIIS a text message via cell phone or by visiting the website through a computer or cell phone. Information about one person per request will cost RMB 5 *yuan* (about US\$0.65). The NCIIS is expected to include identity information on all Chinese citizens in its database by 2006. Because NCIIS will only send the message “consistent” or “inconsistent” about a citizen’s name and identity number to the public users who request the information, it contends that there will be no infringement of privacy. (*New Identity Information Service Available from Today*, XINHUA NEWS, Sept. 15, 2005, at http://news.xinhuanet.com/newscenter/2005-09/15/content_3493466.htm.)
(Rui Wei, 7-9864, rwei@loc.gov)

CHINA – Public Opinion Sought on Trademark Examination Criteria

The State Administration of Industry and Commerce (SAIC) has solicited public opinion from September 8 to September 30, 2005, on the amendment of the Trademark Examination Criteria. The SAIC said that they welcome opinions and suggestions from the public to help improve the present Trademark Examination Criteria, which came into effect in 1994. The regular and electronic mail addresses are published on the SAIC website. (SAIC website, <http://www.saic.gov.cn/sbyw/zqyj.asp> (last viewed Sept. 16, 2005).)
(Rui Wei, 7-9864, rwei@loc.gov)



CHINA – Prospective Anti-Terrorism Law

The Ministry of Public Security (MPS) stated in June 2005 that China plans to formulate an anti-terrorism law and establish an anti-terror emergency coordination mechanism as a measure against terrorist attacks. It will reportedly define China's basic principles against terrorism, anti-terrorist departments and their jurisdiction, acts that constitute the crime of terrorism, and measures for the prevention of terrorist crimes. At present China does not have a unified law against terrorism. In the view of an MPS expert on the subject, the most important aspect of the anti-terrorist drive is severance of terrorists' financial resources. (*Crime in China, June-Jul 05*, BBC MONITORING INTERNATIONAL REPORTS, Aug. 30, 2005, LEXIS/NEXIS, World Library, Allwld File.)
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

CHINA – Sexual Harassment Outlawed

On August 28, 2005, the Standing Committee of the National People's Congress adopted a Decision on Amendment of the Law on the Protection of the Rights and Interests of Women. The amendments, some thirty-nine in all, will enter effect on December 1, 2005. Although the Law does not contain an explicit definition of sexual harassment, it regulates such matters as sexual harassment and domestic violence for the first time. For example, it states in general that women are to enjoy the same rights as men in every aspect of political, economic, cultural, social, and family life; that it will be the basic policy of the State to implement equality between men and women; that the state will adopt the necessary measures to gradually perfect every institution that guarantees women's rights and interests and abolish all formal discrimination against women; and that it is prohibited to discriminate against, abuse, abandon, or inflict bodily harm upon women (art. 2, in part). Sexual harassment is prohibited under the revised Law and the injured woman has the right to lodge a complaint with her work unit and the relevant agency (art. 4). There is also a new provision that forbids trafficking in, kidnapping, and purchasing trafficked or kidnapped women or impeding their rescue. It calls upon the government and various departments at all levels, in accordance with their official duties, to take timely measures to rescue the victims (art. 39).

The Decision also stipulates that there is to be an appropriate number of women members of urban residents' committees and villagers' committees. It provides that in regard to student enrollment, schools are not to reject female students or raise the standards for their admission on the basis of gender, except for special majors. If a husband and wife enter into a written agreement whereby they respectively own their own property while their marriage is in good standing and the wife bears relatively more of the obligation in terms of rearing children, parental care, and assisting the husband in his work, she will have right to request compensation from the husband at the time of divorce. (*The National People's Congress Standing Committee Decides to Revise the Law on the Protection of the Rights and Interests of Women* [the Chinese text of the Decision], ZHONGGUO REN DA XINWEN, Aug. 29, 2005, <http://npc.people.com.cn/GB/14957/3648679.html>; 30 ISINOLAW WEEKLY (Aug. 22-28, 2005), webmaster@isinolaw.com; *China Outlaws Sexual Harassment*, CHINA VIEW, Aug. 29, 2005, http://news.xinhuanet.com/english/2005-08/29/content_3415372.htm.)
(Wendy Zeldin, 7-9832, wzeld@loc.gov)



INDONESIA – Rebels Released in Amnesty

On August 30, 2005, President Susilo Bambang Yudhoyono of Indonesia signed a decree of amnesty for members of the Free Aceh Movement (GAM), fulfilling one of the conditions agreed to in the August 15, 2005, peace accord with the separatist movement (*see* 9 W.L.B. 2005). Over 1,400 prisoners were released the next day. The amnesty covers all GAM members, whether detained and serving jail sentences or currently free; GAM members convicted of crimes unrelated to the separatist movement, however, are not eligible for release under the decree. Among those freed were four senior GAM leaders, Tengku Kamaruzzaman, Amni bin Ahmad Marzuki, Nashiruddin bin Ahmad, and Muhammad Usman bin Lampo Awe, who had been arrested for treason in 2003. District Secretary Muhammad Dahlan expressed hopes for peace at a ceremony marking the prisoners' release at a state prison in the capital of Aceh province, stating:

From today on, there is no more GAM. We are all only peace-loving Acehnese. ... For thirty years Acehnese have suffered greatly, living in fear of terrorism, intimidation, extortion, kidnappings and killings ... I, on behalf of the government, implore that there will not be lies among us.

(Official Tells AFP: Indonesia Frees 1,424 Aceh Rebel Prisoners & Further on Indonesia Frees Hundreds of Aceh Rebel Prisoners, HONG KONG AFP, Aug. 31, 2005, Foreign Broadcast Information Service online subscription database.)

(Constance A. Johnson, 7-9829, cojo@loc.gov)

JAPAN – Asbestos

Even after the World Health Organization identified asbestos as a carcinogen in 1980, Japanese industry continued to use the product. (Ban Asbestos Network Japan, *Japanese Situation of Asbestos Issues and BANJAN's Activities*, <http://park3.wakwak.com/~banjan/main/taisaku/pdf/taisaku-jyoho29-3.pdf> (last viewed Sept. 20, 2005).) Many companies have been disclosing information since late June 2005 on the asbestos-related deaths of hundreds of workers at their factories. Some predict that as many as 100,000 people in Japan will develop mesothelioma, a rare form of cancer caused by asbestos exposure, in the next four decades. The government finally tightened asbestos regulations and proposed a new law to give victims of asbestos financial relief. (*State to Draft Law on Asbestos Redress*, JAPAN TIMES, Aug. 25, 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050827a2.htm>.)

(Sayuri Umeda, 7-0075, sume@loc.gov)

JAPAN – Law on Elections Found Unconstitutional

Under Japan's current Public Offices Election Law, eligible voters living overseas are allowed to vote under the proportional representation segment of national elections, but cannot vote for specific candidates in single-seat districts. On September 14, 2005, the Supreme Court ruled that this provision of the law was unconstitutional. This is the seventh case in which the Supreme Court has judged a law unconstitutional. (*Supreme Court Rules that Expats' Right to Vote Violated*, JAPAN TIMES, Sept. 15, 2005, <http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050915a1.htm>.)

(Sayuri Umeda, 7-0075, sume@loc.gov)



KOREA, SOUTH – Record Industry Wins Battle in War With P2P Site

The Seoul Central District Court decided that “Soribada, an online music service company, should stop its peer-to-peer (P2P) file swapping service. If it does not, it will be fined an amount to be decided by the court” (Korean Association of Phonogram Producers v. Soribada, Seoul Central District Court, Aug. 30, 2005). This puts an end to the pioneering P2P site that has drawn a monthly average of one million Internet users sharing MP3 files.

The decision is said to reflect the U.S. Supreme Court decision, which ruled “P2P file-sharing services can be sued and shut down if they intentionally induce copyright infringement” (Metro-Goldwyn-Mayer Studios v. Grokster, No. 04-480 (U.S. June 27, 2005)). Although the district court said “it cannot directly hold the online music site accountable for the losses because it is uncertain whether a P2P company that only provides the means of sharing files to users is illegal,” the plaintiff is now moving forward in an attempt to recover its losses, which it assesses are up to US\$1.1 million per day or US\$400 million a year, due to Soribada. The future of online file sharing sites in South Korea is at stake. (Un-Jung Park, *The Implications of the U.S. Supreme Court’s Decision on P2P*, MY DAILY, July 1, 2005, http://www.mydaily.co.kr/news/read.html?NewsID=2005070_11333331000.) (Beom Chul Shin & Sayuri Umeda, 7-0075, sume@loc.gov)

NEW ZEALAND – Strong Anti-Spam Law Proposed

Shortly before the dissolution of the 47th Parliament and the holding of a general election, the Government of New Zealand, headed by Prime Minister Helen Clark, introduced a strong anti-spam bill in the House of Representatives. This bill took an “opt-in” approach to the sending of unsolicited electronic messages of a marketing nature and an “opt-out” approach to the sending of non-commercial electronic messages. Under these approaches, commercial messages could only be sent to persons who had consented to receive them. The proposed enforcement regime was a civil penalty with Internet and telecommunications service providers being required to take action in response to customer complaints and a government agency acting as an overseer.

The September 17, 2005, election apparently resulted in the two major parties returning fifty-two and fifty-one Members of Parliament. Although the final results have not been announced or certified, it appears that the Labour Party will again head the government. If so, it can reintroduce its proposed anti-spam legislation as a Government Bill (Unsolicited Electronic Messages Bill, No. 281, 47th Parl. (2005)). (Audrey Young, *Behind-the-Scenes Government Talks Continue*, NEW ZEALAND HERALD, Sept. 19, 2005, at 1, http://www.nzherald.co.nz/section/story.cfm?c_id=1&ObjectID=10346759.) (Stephen Clarke, 7-7121, scl@loc.gov)



PHILIPPINES – Arroyo Escapes Impeachment Bid

On September 6, 2005, the Congress of the Philippines formally rejected an opposition attempt to impeach President Gloria Arroyo. The vote should strengthen Mrs. Arroyo's bid to ride out accusations of corruption and electoral fraud, but opposition leaders have vowed to keep up their campaign to unseat her, using the courts and popular rallies as the means.

Mrs. Arroyo has denied any wrongdoing but admitted to a "lapse in judgement" in phoning an election officer during the 2004 presidential poll. The opposition needed seventy-nine votes to reject the report's findings but managed to secure only fifty-one. (*Arroyo Escapes Impeachment Bid*, BBC ONLINE, Sept. 6, 2005, at <http://news.bbc.co.uk/1/hi/world/asia-pacific/4217952.stm>.) (Gustavo E. Guerra, 7-7104, ggue@loc.gov)

TAIWAN – High Court Case Involving Disabled

In late August 2005, the Taipei High Court issued a controversial ruling holding a high school and one of its students, Chen Yi-chin, liable for negligence in the death of a disabled student and imposing an NT\$3.3 million award (about US\$102,485) against Chen. The sixteen-year-old schoolboy slipped on a wet surface in September 2000 while helping to carry a disabled classmate, Yen Hsu-nan, down some stairs, resulting in the death of the friend, who suffered from Osteogenesis Imperfecta, or brittle-bone disorder.

Yen's family filed criminal and civil lawsuits on charges of manslaughter against Chen and the school's physical education teacher (Chen was carrying Yen to a physical education class in the school's basement). The criminal court acquitted the teacher in April 2004 and a juvenile court hearing found that Chen should undergo counseling to "correct" his behavior. However, the civil case created a stir when the High Court handed down its recent decision, reversing a lower court ruling that had absolved Chen and the high school of blame. The verdict reportedly states, "It takes highly professional skills to take care of handicapped people. The student (Chen) was not well trained and failed to realize his lack of such professional skills." According to a public opinion poll, more than ninety percent of 788 respondents surveyed disagreed with the High Court ruling. The poll also revealed that it might negatively affect people's willingness to help the disabled.

On the other hand, activist James Liu of the League of Welfare Organizations for the Disabled contended that the case might help the cause of the disabled in Taiwan by putting pressure on the government to enforce the elimination of barriers on access of the disabled to the physical environment. Although existing laws make schools and government agencies liable for fines if they fail to provide equal access, Liu stated that only about thirty percent of the adaptations necessary in schools have been completed. Chen and the school announced that they would appeal the case to the Supreme Court. (*Good Deed That Turned to Tragedy Stirs Debate over Disabled in Taiwan*, AGENCE FRANCE PRESSE, Sept. 12, 2005, LEXIS/NEXIS, News Library, 90days File.) (Wendy Zeldin, 7-9832, wzel@loc.gov)



TAIWAN – Insider Trading

Taiwan's Financial Supervisory Commission announced at the end of August 2005 that the government plans to crack down on insider trading by expanding the definition of "insiders" to include members of the board who have left their posts in the last six months and representatives sent to a board by institutional investors. Other proposed amendments to the Securities Exchange Law (as last amended May 18, 2005) would ban insiders from trading within twelve hours after "major news regarding a company" is publicized. The responsible government agencies will be tasked with defining such news and how it is to be made public. They will establish guidelines for these matters based on "strict legal provisions" and "clear and unambiguous violations" but also taking into account changes in the market. In civil disputes, the current "limited maximum amount" will be changed to "compensation amount"; i.e., characterized as the difference between the selling or buying price on the disputed day and the average of the closing prices in the ten days after the company news became public. Punishment for criminal offenses involving insider trading provisions include three to ten years of imprisonment plus a fine of between NT\$10 million and NT\$200 million (about US\$304,000 and \$6.1 million). (*Taiwan Govt Toughens Insider Trading Law*, ASIA PULSE, Aug. 29, 2005, LEXIS/NEXIS, News Library, 90days File.)
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

TAIWAN – Judge Replacement System Criticized

During an inspection of the Taipei Municipal Court on September 13, 2005, Wang Yueh-sheng, President of the Judicial Yuan, Taiwan's highest judicial organ, stated that Taiwan's system of replacing corrupt or incompetent judges and prosecutors is insufficient, that unfit judges must be terminated, and that judges and prosecutors should oversee each other's actions. His comment comes in the aftermath of a number of recent cases involving judicial and prosecutorial corruption charges. Taiwan law does not at present prohibit judges or prosecutors who face charges from remaining in their posts. The Judicial Yuan is drafting provisions of a judge's law that would prevent judges in such circumstances from staying on the bench; it would transfer them to other posts. In addition, the Judicial Yuan has formed a special committee to investigate the general conduct of judges and prosecutors. Those found to be involved in "inappropriate" activities will be punished. It was also reported on September 13 that the Supreme Prosecutor's Office is investigating four cases of corrupt judges and prosecutors who hold positions in central and southern Taiwan, in addition to five others already facing graft charges. (*Judicial Yuan Chief Says System of Replacing Judges Insufficient*, THE CHINA POST, Sept. 14, 2005, <http://www.chinapost.com.tw/taiwan/detail.asp?ID=68559&GRP=B>.)
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

TAIWAN – Proposal to Protect Foreign Laborers

The Council of Labor Affairs (CLA) stated on September 6, 2005, that within two months it would propose the amendment of the Employment Services Act to improve the treatment of foreign workers in Taiwan. The proposed revision would allow the government to hire such workers without using brokers, permit the workers to switch to a different employer from the one they apply to work for when they enter Taiwan, and eliminate the limit on the number of years (at present a maximum of six) foreign laborers are allowed to stay in Taiwan. Members of Taiwan's second-largest opposition party, the People First Party (PFP), had vowed at the end of August to push for an amendment to the Act.



The impetus for the PFP and CLA moves was a riot by Thai laborers on August 21, 2005, in southern Taiwan to protest inhumane treatment. According to PFP legislator Sun Ta-chien, their employers and employment brokerage firms in both Taiwan and Thailand had exploited the workers. (*Taiwan to Amend Law for Better Treatment of Foreign Workers*, ASIA PULSE, Sept. 7, 2005, LEXIS/NEXIS, News Library, 90days File; *CNA: PFP Lawmakers Plan Law Amendment to Protect Foreign Laborers*, CENTRAL NEWS AGENCY, Aug. 26, 2005, Foreign Broadcast Information Service online subscription database.)

(Wendy Zeldin, 7-9832, wzeld@loc.gov)

EUROPE

AUSTRIA – Equality for the Disabled

Austria enacted a Disability Equalization Act on August 10, 2005 (Bundesbehindertengleichstellungsgesetz, BUNDESGESETZBLATT No. 82/2005), that will become effective on January 1, 2006. The Act aims at eliminating discrimination against the disabled through various measures, among them a requirement that public buildings be made wheelchair-accessible within the next ten years, and new rules to which employers must adhere in their treatment of the disabled. Moreover, new legal remedies have been fashioned to facilitate the enforcement of the rights of the disabled. Although the Austrian legislation does not live up to the stringent requirements of the Americans with Disabilities Act of the United States (42 U.S.C. § 12101), it nevertheless strengthens the rights of the disabled. (M. Salomon, *Gehändicapt im öffentlichen Raum*, DIE PRESSE, July 7, 2005, at <http://www.diepresse.at>.) Part of the reform is a constitutional guarantee of sign language (Bundesverfassungsgesetz, Aug. 9, 2005, BUNDESGESETZBLATT No. 81/2005), amending article 8 of the Austrian Constitution (Bundesverfassungsgesetz, Jan. 1, 1930, BUNDESGESETZBLATT No. 1/1930, as amended). (Edith Palmer, 7-9860, epal@loc.gov)

BELGIUM – Circular on Prevention of Money Laundering Updated

On July 12, 2005, the Belgian Banking Finance and Insurance Commission published a new circular on prevention of money laundering. It aims at incorporating recent developments at the national and international levels relating to prevention of the use of the financial system for money laundering and terrorist financing. These developments include the recommendations prepared by the Basel Committee on Banking Supervision that were contained in two documents respectively published in February 2003 and October 2004 and entitled “General Guide to Account Opening and Customer Identification” and “Consolidated KYC Risk Management.” The circular also takes into account the forty recommendations regarding the fight against money laundering and the subsequent nine special recommendations on terrorist financing, prepared by the Financial Action Task Force (FATF).

The circular, for example, contains guidelines on identifying long-distance clients by means of electronic identity cards or certificates of identification. It further addresses, among other matters, financial institutions’ specific duties in handling wire transfers and funds transfers, record keeping requirements, and the notification duty of attorneys and/or public notaries when money laundering or terrorist financing activities are suspected. (Circular PPB2005/5 and D. 258, July 12, 2005, at http://www.cbfa.be/fr/ki/circ/pdf/ppb_2004_8_d_250.pdf.) (Nicole Atwill, 7-2832, natw@loc.gov)



BELGIUM – Introduction of a Tax Deduction for Risk Capital

The Law of June 22, 2005, on Establishing a Tax Deduction for Risk Capital results in two major changes to the Belgian tax regime for companies. The first change concerns the 0.5% registration duty on capital contributions that the new Law abolishes. The second change is the introduction of a tax deduction for risk capital. The Law is designed to encourage capital investments in Belgium. Any Belgian company and any foreign company paying tax in Belgium will be able to deduct from their taxable income an amount equal to the interest they would have paid on their capital in the case of long-term debt financing. The rules regarding the calculation of the tax deduction are thoroughly described in the Law. The tax deduction will enter into force as from assessment year 2007. (Law of June 22, 2005 on Establishing a Tax Deduction for Risk Capital, LE MONITEUR BELGE (Belgium's official gazette), June 30, 2005, at <http://www.ejustice.just.fgov.be/cgi/welcome.pl>.) (Nicole Atwill, 7-2832, natw@loc.gov)

FINLAND – Amendments to Finnish Companies Act Proposed

The Finnish government has proposed amendments to the Finnish Companies Act. The amendments would make the Act clearer and more comprehensive, offering companies greater operating freedom with the removal of different restrictions and formal requirements. Provisions on the legal protection of minority shareholders and creditors would be enhanced. Some of the proposed amendments include:

- Permitting the Articles of Association of a company to be very short and include only trade name, domicile, and branch of the company;
- Removing the requirements that shares have a par value (a minimum value paid for each share) unless the Articles of Association require it;
- Supplementing the provision on the distribution of a company's profits or other funds with a provision that would prohibit the distribution of funds if the persons knew or should have known that the company was insolvent or that it could become insolvent due to the distribution of the funds;
- Speeding up the merger procedure of companies;
- Adding new provisions on the presumption of negligence in cases where damage has been caused by actions taken against the law or the Articles of Association or by an act favoring a party within the inner circle of the company;
- Abolishing the right of an individual shareholder to compensation for indirect damage;
- Establishing that liability of a shareholder for damages for breach of the Companies Act or the Articles of Association will no longer require gross negligence, but negligence alone.

(The New Finnish Companies Act to Increase Clarity and the Operating Freedom of Companies, MINISTRY OF JUSTICE, Press Release, Sept. 2, 2005, available at <http://www.om.fi/tulostus/32704.htm>.)

(Linda Forslund, 7-9856, lifo@loc.gov)



FRANCE – Protection of Strategic Sectors from Foreign Takeovers

On August 31, 2005, the Ministry of the Economy confirmed that a decree aimed at protecting certain “strategic” enterprises from foreign takeovers had been drafted. According to the Ministry, ten sectors are of concern: casinos (to guard against money laundering), security, biotechnology, antidote manufacturing, encryption and communication equipment, data security, dual technologies, defense, arms manufacturing, and cryptology.

This initiative has been criticized at home and by European officials, in particular, Charlie McCreedy, the European Union’s Commissioner for the Internal Market, who stated that he would “vigorously pursue” any breaches of EU law in anti-takeover regulations. (Annie Kahn, *La France veut protéger dix secteurs jugés stratégiques*, LE MONDE, Sept. 09, 2005, online subscription archive. (Nicole Atwill, 7-2832, natw@loc.gov)

GERMANY – Antitrust Law

Germany enacted a major reform of the Act Against Trade Restraints on July 7, 2005, (BUNDESGESETZBLATT I at 1954). It adapts parts of German antitrust law to European Union law by replacing the former German system of prohibiting cartels but allowing for exceptions upon individual application, with the European system of group exemptions that can be applied by qualifying groups without prior approval (Council Regulation 19/65, OFFICIAL JOURNAL OF THE EUROPEAN ECONOMIC COMMUNITIES (OJ) Spec. Ed. 35, as amended by Regulation 1/2003 OJ L 1/1).

Under the new German law, a cartel that falls under a European group exemption may commence operations without prior German approval, while being liable for economic damage caused by misinterpretations of the law. The reform expands these liabilities to damages suffered by the consumer. The European Council Regulation (EC) No. 1/2003 on the Implementation of the Rules on Competition (Dec. 16, 2002, OJ 2003 L1/1) led Germany to make this change (Council Regulation (EC) No. 1/2003), which was controversial for Germany due to its long-standing tradition of registering cartels (K. Schwenn, *Zum Schutz des Wettbewerbs*, FRANKFURTER ALLGEMEINE ZEITUNG, June 27, 2005, at 13.). This recent reform of German antitrust law makes no changes in controls on corporate mergers, which continue to be governed by different criteria from those applicable in European Union law. (Edith Palmer, 7-9860, epal@loc.gov)

GREECE – Cash Bonus Extended to Families with Three Children

It has been a long-standing practice in Greece, which faces a low population growth rate, that families with four or more children are granted benefits to assist them in meeting the costs of raising a large family. In addition to cash bonuses, other incentives provided by the state include low-interest loans, reduced fees on the public transportation system, preference in civil service postings, and other benefits. On September 17, 2005, the Government of Greece announced that it will pay a one-time cash bonus of €2,000 (about US\$2,400) to families that will have a third child as of January 1, 2006. The amount will be increased to €2,500 a year later. In addition, families with three or more children will not have to pay a vehicle license fee. The Government plans to fund these measures by cost-cutting in the public sector. The opposition party criticized the Government’s action for not extending



this benefit to families who already have three children. (Embassy of Greece/Press & Communications Office, ATHENS NEWS AGENCY BULLETIN, from pressoff@greekembassy.org.) (Theresa Papademetriou, 7-9857, tpap@loc.gov)

ITALY – Avian Flu Measures Approved

On September 17, 2005, Italy's Cabinet was reported to have approved a decree on measures to cope with a possible avian influenza pandemic. Five million *euros* will be allocated to purchase thirty-six million doses of vaccine, which will cover eighty percent of the Italian population. Contracts have been signed with three pharmaceutical companies that are working on perfecting "the pandemic vaccine." The veterinary health department will be strengthened with the hiring of sixty contract veterinarians and fifty specialists in prevention, so that imported meat may be more thoroughly inspected. In mid-October 2005, obligatory labeling of all poultry meat will go into force, so that both veterinarians and consumers will be able to follow each step of the birds' progress from farmyard to market. The Health Minister is quoted as saying that cases of avian influenza have been found in northern Italy, but with low pathogenicity, and no transmission from person to person has been verified. (*Italian Cabinet Approves Avian Flu Measures Including Mass Vaccinations*, LA STAMPA (Turin), Sept. 17, 2005, Foreign Broadcast Information Service online subscription database.) (Donald R. DeGlopper, 7-9832, ddeg@loc.gov)

LITHUANIA – Closing of Separatists' Website Deemed Constitutional

On September 19, 2005, the Constitutional Court ruled that public authorities must take immediate action to prevent activities that, on the pretext of the freedom of press, violate constitutionally protected values. In June 2003, the State Security Department closed a website widely seen as a mouthpiece of Chechen terrorists and a tool instigating ethnic and religious hatred. The Department also initiated administrative proceedings against the owner and chief executive of the Internet provider company that hosted the website. Later a local court found the shutdown of the website unjustified and dropped charges against the IP company. The security office appealed the ruling, so the dispute advanced to a higher court, which halted the proceedings and requested that the Constitutional Court clarify whether the government-issued procedure for control of dissemination of prohibited and restricted public information in public use computer networks complies with the nation's Constitution and Mass Media Law. The Court did not find any contradictions and confirmed the legality of closing the website, which as independent experts have established, contained materials related to terrorist propaganda and instigation of ethnic and religious enmity. Based on this decision, a local court must adopt a final judgment. (*The Constitutional Court Ruled That Closing the Controversial Website Was Justified*, BALTIC BUSINESS NEWS, Sept. 13, 2005, <http://www.securities.com>.) (Peter Roudik, 7-9861, prou@loc.gov)

LITHUANIA – New Election Rules

On September 13, 2005, the Lithuanian legislature adopted amendments to the Law on Elections aimed at regulating the forthcoming elections of local government boards. The amendments affect the procedure for spending campaign funds and regulate the publication of campaign materials. The new law, which enters into force on October 15, 2005, expands the definition of "bribing the electorate by politicians" and outlaws the use of concerts, lotteries, or free trips to entice voters. The



Law also prohibits the distribution of goods or food to potential voters, equating such acts with bribery. The Law limits the campaign materials that may be distributed to brochures, leaflets, stickers, and special pins and reinstates a prohibition on the use of television for political advertisement. This ban was in force before the 2004 election. These amendments were passed in order to meet the requirements of a Constitutional Court ruling, which stated that gifts for potential voters cannot be allowed or tolerated because they violate the principle of fair competition and may influence the free choice of voters. (*Parliament Bans Political Ads on TV*, BALTIC BUSINESS NEWS, Sept. 13, 2005, <http://www.securities.com>.)
(Peter Roudik, 7-9861, prou@loc.gov)

MALTA – Illegal Immigration Reaches Crisis Level

Malta's illegal immigration crisis has reached record proportions with the arrival of 175 "irregular migrants" discovered on a ship in Maltese waters and brought to shore by patrol boats of the Maltese Armed Forces. The individuals on board the ship had stated they were having technical difficulties and requested an engineer so that they could continue to their destination of Italy; however, if Malta had fulfilled this request it would have been in violation of international law. The two detention centers in Malta that house illegal immigrants were already at maximum capacity, and tents had to be constructed to accommodate the new arrivals. The Maltese government has been lobbying the international community, particularly the European Union, for assistance with the illegal immigrants that land on its shores, and the House of Representatives is currently considering an amendment to the Refugees Act to help ease the issue of the "irregular migrants" that claim asylum. (*House to Meet After Summer Recess*, THE TIMES OF MALTA, Sept. 26, 2005, <http://www.timesofmalta.com/core/article.php?id=200281>; Ministry for Justice and Home Affairs, *Visits by Experts from the Netherlands in Relation to Asylum and Immigration Matters*, Press Release, Sept. 7, 2005, http://www.mjha.gov.mt/news/pressreleases/pdf2005/09september/pr_dutchexperts_07092005.pdf; Mark Micallef & Darrin Zammit Lupi, *175 Irregular Migrants Arrive*, THE TIMES OF MALTA, Sept. 26, 2005, <http://www.timesofmalta.com/core/article.php?id=200281>.)
(Clare Feikert, 7-5262, cfei@loc.gov)

MOLDOVA – Compensation for Victims of Political Repression

On September 8, 2005, the Law on Rehabilitation of the Victims of Political Repression was amended by the legislature. Under the amended provisions, victims of Stalinist repression and their heirs will regain confiscated, distained, or in any other way seized property. If the confiscated property cannot be returned to them in kind, they will be paid compensation in an amount based on the property price as calculated by the territorial Land Registration Service referring to market prices on the application submission date. Compensation will be paid in installments, depending on the actual amount of the payment. The payment period may be extended for up to five years. The return does not cover land plots, woods, plots with perennial plantings, or property expropriated for reasons other than political repression. The Law requires the government to negotiate international agreements with foreign states in regard to those Moldovan citizens who suffered political repression in the territories of other former Soviet Republics, if their property was confiscated there. (*Stalinist Regime's Victims May Receive Compensation for Confiscated Property*, EKONOMICHESKOE OBOZRENIE (in Russian), No. 32, Sept. 9, 2005, <http://dlib.eastview.com/sources/publication.jsp?id=540&uid=3>.)
(Peter Roudik, 7-9861, prou@loc.gov)



NETHERLANDS – Calvinist Party Discriminates Against Women, Loses Subsidies

A Court in the Hague decided on September 7, 2005, that the Government of the Netherlands should suspend its subsidy to the National Reformed Party because the party's discrimination against women violates the International Convention on Women. (Presumably, the International Convention on the Elimination of All Forms of Discrimination Against Women, of 1981.) The National Reformed Party (SGP, *Staatkundig Gereformeerde Partij*) is a small party representing some of the principles of the Calvinist Dutch Reformed Church. It has held two or three seats in the 150-seat lower House of Parliament since the mid-1950s. It prohibits women from becoming full members; they cannot vote on party affairs or hold leadership positions. In 2001 the United Nations Committee for the Prevention of Discrimination Against Women (CEDAW) criticized the Netherlands for permitting the party to continue to discriminate against women. The party receives around €800,000 per year from the government, excluding the salaries of the two Members of Parliament and their staffs. (*Reformed Party Discriminates Against Women*, HANDELSBLAD (Rotterdam), Sept. 7, 2005, Foreign Broadcast Information Service online subscription database.) (Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

NORWAY – Supreme Court Imposes Stricter Sentence for Racially Motivated Crime

The Supreme Court of Norway has sentenced to prison a man who at the age of seventeen attacked three asylum seekers in Norway, even though the defendant was under eighteen at the time of the crime. According to the United Nations Convention on the Rights of the Child, which Norway has ratified, a person under the age of eighteen will be sentenced to prison only as a last resort.

The District Court had sentenced the man to seventy-five days in prison, of which a minimum of fifty days was to be served. The Court of Appeals believed the sentence to be too harsh and changed it to seventy days of community service. The Supreme Court has decided to uphold the District Court's ruling, and the perpetrator, now nineteen years old, will serve the fifty days. The Supreme Court stated in its decision that the defendant's young age must be weighed against the public interests in this case. The Supreme Court attached importance to the fact that the attack was racially motivated. (NTB, *Skjerper straff for rasistvold*, NRK, Sept. 19, 2005, available at <http://nrk.no/nyheter/innenriks/5065687.html>.) (Linda Forslund, 7-9856, lifo@loc.gov)

RUSSIAN FEDERATION – Air Traffic Control Consolidated

On September 6, 2005, President Vladimir Putin signed a decree ordering the creation of a unified air traffic control and airspace management system, which would consolidate its civil and military sectors. Under this decree, a special government agency solely responsible for managing the country's air traffic is to be established before the end of 2005. This new federal aeronautical agency will be directly subordinate to the Deputy Prime Minister of Russia and take over from the existing air traffic control departments within the ministries of transport and defense. Its functions will include airspace regulation, control and oversight, and making search-and-rescue arrangements. The newly created agency will also handle all air traffic control assets, define navigation fees, issue permits to use Russian airspace to foreign airlines, and charge transit fees. A unified air traffic control network will include 126 area control units and other air navigation facilities that are now handled separately by civil



and military authorities. Later, this number will be decreased to fifteen fully upgraded regional control centers. A federal law on providing air traffic control services under the new structure is to be adopted by the legislature within the next three months. (ROSSIISKAIA GAZETA [Russian government newspaper], Sept. 9, 2005, <http://www.g.ru>.) (Peter Roudik, 7-9861, prou@loc.gov)

SERBIA & MONTENEGRO – Court Upholds Government Involvement in Minority Education

On September 13, 2005, the Constitutional Court of Montenegro confirmed the constitutionality of the acts adopted by the Education Ministry and National Council for General Education regarding the curriculum of secondary school programs on minority literature and languages. According to the Law on Minority Languages, all ethnic groups that make up more than two percent of the local population may request that classes be taught in their native language.

The Ministry of Education ruled that minority language studies cannot substitute teaching in Serbian, which is the official language in the country, and the Ministry has developed curricula for programs initiated by minority groups in ethnic enclaves. Minority activists, who demanded more independence for local minority councils, disputed the decision. The Court ruled that it was within the competence of a relevant executive government agency to name curriculum subjects and that this did not contradict any of the country's constitutional or legal principles. (*Montenegrin Court Rules in Favor of 'Native' Language in Education*, BBC MONITORING, Sept. 19, 2005, at <http://www.securities.com/>.) (Peter Roudik, 7-9861, prou@loc.gov)

SPAIN – Amendments to Law on National Defense Proposed

On September 15, 2005, the Congress of Deputies (*Congreso de los Diputados*) approved a bill amending the Law on National Defense, to require Congressional authorization by the *Cortes Generales* before any Spanish troops are sent abroad. The proposed legislation provides for exceptions to this requirement in cases when Spanish interests are at stake or as a response to an attack. In these cases, no prior authorization will be required.

The bill must be debated in the Senate before it may become law. It is expected that the bill will be passed without major changes, even with the opposition of the *Partido Popular* (government opposition party). (*Politica*, DIARIO LA VANGUARDIA, Sept. 15, 2005, <http://www.lavanguardia.es/>.) (Graciela I. Rodriguez-Ferrand, 7-9818, grod@loc.gov)

SWEDEN – Commission to Investigate How to Stop Discrimination at Restaurants

On September 1, 2005, the Swedish government decided that additional tasks were to be added to the commission set up to establish strengthened and clearer supervision within the social welfare services. The commission will investigate how to stop discrimination against patrons at restaurants and how to make the serving of alcohol more responsible. The commission will look into the feasibility of making the right to serve alcohol conditional upon the completion of a course in responsible alcohol serving for the permit holder, serving staff, and others who work at the restaurant. If training is deemed feasible, the commission will also propose the content of the training, specifically how it will be designed, and how to ensure that all who have taken the course possess the required skills. The



commission must also ensure that the requirements for passing the course are the same all over Sweden. (*Beslut om översyn för att motverka diskriminering på krogen*, SOCIALDEPARTEMENTET, Pressmeddelande, Sept. 1, 2005, available at <http://www.regeringen.se>.)
(Linda Forslund, 7-9856, lifo@loc.gov)

SWEDEN – Request to Check Transactions Against OFAC-List

Swedish banks want to be able to check all transactions to and through the United States against the “OFAC-list,” created by the U.S. Office of Foreign Assets Control. The list contains information about persons and companies suspected of terrorism. The Swedish Bankers’ Association has requested that the Swedish Data Inspection Board examine whether such a practice would be in conflict with the Swedish Personal Data Act of 1998. If Swedish banks do not adjust and start checking transactions, there is a risk that their clients’ transactions could be frozen or become unreachable, the Association’s President has concluded.

Some do not agree with the proposal and believe that such a practice would not be in conformity with the principle of a state governed by law, because those who are on the list do not have an opportunity to defend themselves. (*Banker vill använda terrorlista*, DAGENS NYHETER, Sept. 13, 2005, available at <http://www.dn.se/DNet/jsp/polopoly.jsp?d=147&a=461816&previousRenderType=6>.)
(Linda Forslund, 7-9856, lifo@loc.gov)

UKRAINE – Constitutional Court Approves Political Reforms

On September 13, 2005, the Constitutional Court of Ukraine approved amendments to the Constitution that introduce political reforms initiated by the legislature in 2004, as a compromise reached during negotiations between the two presidential candidates. The political reforms, aimed at transforming Ukraine into a parliamentary-presidential republic, transfer most of the presidential powers to the parliament. Following the Court’s approval, as of next year, the national government will be created by a coalition of parliamentary factions. The parliamentary term will be extended to five years from the present four, and the parliament will appoint the Prime Minister, the Minister of Defense, and the Minister of Foreign Affairs upon submission of one nominee for each office from the President of Ukraine. Appointment of other members of the Cabinet of Ministers will be conducted upon submission of a list of nominees from the Prime Minister; and the Prime Minister will appoint regional governors (at present, they are appointed by the President). Substantial changes in the organization of local governments are also foreseen. Provisions implementing this political reform will enter into force on January 1, 2006. (*Political Reform Complies with the Constitution*, KOMMERSANT [Russian newspaper], Sept. 14, 2005, <http://www.kommersant.ru>.)
(Peter Roudik, 7-9861, prou@loc.gov)

UKRAINE – WTO Standards Accepted by Food Industry

With the goal of joining the World Trade Organization by the end of 2005, the Ukrainian legislature continued to adopt laws aimed at bringing national legislation into compliance with WTO requirements. On September 5, 2005, the Ukrainian Parliament adopted a Law on Harmonizing Sanitary, Veterinary, and Phytosanitary Regulations of the Food Market with WTO Standards. The Law regulates relations between government executive agencies, sellers (suppliers), and consumers of food products and outlines the legal procedure aimed at ensuring safety and quality of food products



that are produced, in circulation, imported, or exported. The Law provides for measures to ensure a high level of protection of the safety of public health and protection of consumers and establishes the responsibility of suppliers for the quality and safety of their food products. The Law also defines mechanisms of transparent and rational legislative regulation. The drafters hope that these measures will ensure the competitiveness of the Ukrainian food industry and will expand exports within the framework of the common market. (*Rada Harmonizes Regulation of Food Market with WTO Standards*, UKRAINIAN NEWS AGENCY, Sept. 6, 2005, <http://www.ukranews.com/cgi-bin/openarticle.pl?lang=eng&id=665873&lenta=po.>)
(Peter Roudik, 7-9861, prou@loc.gov)

UNITED KINGDOM – Briton Convicted of Terrorist Offenses

In the first trial prosecuted by the newly established Counter-Terrorist Division of the Crown Prosecution Service, a British citizen was convicted of two counts of possessing an article for terrorist purposes. The accused was found to have traces of explosives on a pair of socks while attempting to travel back to Britain from France through the Channel Tunnel. Subsequent searches of his home found plans for producing mortar bombs and coded communications. Despite the lack of evidence of a specific planned terrorist act, the Crown Prosecution Service successfully managed to link the articles the defendant possessed with additional supporting evidence to obtain a conviction that the defendant possessed them for terrorist purposes. The judge, in sentencing the defendant to 7.5 years of imprisonment for each offense, called upon the government to immediately and urgently consider the adequacy of the maximum term of ten years of imprisonment for possession of articles for terrorist purposes and provide the courts with the option of a discretionary life sentence. (Crown Prosecution Service, *Crown Prosecution Statement on Conclusion of Andrew Rowe Trial*, Sept. 23, 2005, http://www.cps.gov.uk/news/pressreleases/146_05.html; Press Association, *Muslim Convert Jailed for 15 Years on Terrorism Charges*, INDEPENDENT (London) Sept. 23, 2005, <http://news.independent.co.uk/uk/crime/article314641.ece.>)
(Clare Feikert, 7-5262, cfei@loc.gov)

UNITED KINGDOM – Proposed Anti-Terrorism Laws Draw Criticism

The new anti-terrorism laws hurriedly announced by Prime Minister Tony Blair in the wake of the July bombings in London and prior to his departure on vacation in the summer have caused considerable angst for his government. A planned early recall of the British Parliament to discuss the measures failed to transpire, and legal and political hostility towards the measures is growing from both politicians and members of the judiciary. It has been predicted that many of the proposals will have to be diluted in order to pass through Parliament. The already fragile relationship between the government and the judiciary looks set to move onto more precarious ground. Some senior Law Lords have stated that the Blair government does not fully understand the reality of the independence of the judiciary. (Nigel Morris & Robert Verkaik, *Backlash Will Scupper Anti-Terrorism Bill in the Lords, Say Critics*, INDEPENDENT (London), Sept. 17, 2005, <http://news.independent.co.uk/uk/politics/article313205.ece>; Nigel Morris & Robert Verkaik, *Judges Will Ignore Ministers' Diktats on Terror Laws, Warns Senior Law Lord*, INDEPENDENT (London) Sept. 15, 2005, <http://news.independent.co.uk/uk/legal/article312740.ece.>)
(Clare Feikert, 7-5262, cfei@loc.gov)



UZBEKISTAN – Greater Role of Judiciary in Criminal Procedure

In the course of ongoing judicial reform, on August 8, 2005, President Islam Karimov of Uzbekistan issued the Decree on Transferring to Courts the Right to Issue Sanctions for Arrest. The Decree expands the jurisdiction of the courts and states that as of January 1, 2008, courts will sanction all arrests of persons suspected or accused of perpetrating crimes. Enforcement of this Decree is in abeyance pending the introduction of relevant changes to the nation's Correctional Code and Code of Criminal Procedure.

The Decree introduces a gradual decrease in the length of terms of pre-trial detention, a reduction of the preliminary investigation period from two years to one year, and a decrease in the length of time a person can be placed in custody from one and a half years to nine months, and in exceptional cases to one year. The extent of application of this kind of preventive punishment has also been reduced. The Decree states that pretrial detention will be carried out in exceptional cases, when the application of other preventive measures established by the law appears to be inefficient. This Decree continues legal reforms under which a system of specialized criminal, civil, and economic courts has been created and an appellate procedure and reformed cassation system have been introduced. (Website of the Embassy of Uzbekistan to the United States, Aug. 8, 2005, <http://www.uzbekistan.org/press/>.)

(Peter Roudik, 7-9861, prou@loc.gov)

NEAR EAST

IRAN – Heavy Penalties for National Exam Cheaters

Disciplinary regulations were published regarding those who cheat and commit exam fraud in the course of national-level college admission tests for both the state and private academic institutions of Iran. Examples of cheating and fraud in admission tests include:

- Using papers belonging to other applicants;
- Having unauthorized materials;
- Engaging in conversation with other applicants during exams;
- Taking an exam under a false name.

A Special Board will decide each case depending on the nature and gravity of the fraud. The Board may decide to deprive the a guilty student of the right to take part in the college admission exam for the same subject or deny the student participation in future admission tests for a period of from one to ten years.

If the participant in the college admission tests is not a student and the person for whom the exam is being taken is also not a student, both will be deprived of participation in the national college admission tests for two to ten years. If one or both of the participants committing the fraud are students, they will be expelled from the university and may not participate in the national college tests ever again. If the participant is a state employee, the question of fraud will be reported to his



employment institution for other disciplinary punishments. (HAMSHAHRI DAILY PAPER (Tehran), June 29, 2005. at 1 & 2, <http://www.hamshahri.org/hamnews/1384/840409/news/ejtem.htm>.) (G.H.Vafai, 7-9845, gvaf@loc.gov)

IRAN – Minorities to Receive Same Blood Money as Muslims

The highly controversial issue of *dia* (blood money) for non-Muslims was settled in 2003 between the House of Representatives and the Guardian Council (a twelve-member constitutional council that oversees the conformity of parliamentary legislation with Islamic teachings and the Constitution), following the final decision by the Expediency Council and the opinion of the Supreme Leader in support of the change. Article 1 of the Islamic Criminal Act of November 1982 defines *dia* as “property paid to the victim of a crime or to his heirs as compensation for his death or bodily injury.”

Article 3 of the Act provided:

Blood money [when there is a murder] of a Moslem man is one of the following items, of which the murderer has the option to select one:

- 1) One hundred healthy camels;
- 2) Two hundred healthy cows;
- 3) One thousand healthy sheep;
- 4) Two hundred new suits of Yemen material;
- 5) One thousand *dinars* [old Arabic coins], equal to four kilos of gold.

By mutual agreement, the person sentenced for murder may pay the price of any of the above items.

The Ministry of Justice of Iran makes periodic announcements based on based on the official rate of inflation, so that judges can convert the price of items into the currency. In order to avoid keeping the persons in prison for non-payment of blood money, judges are authorized to make efforts to seek the agreement of the persons entitled to receive compensation to either reduce the amount of *dia* or receive it in payments.

According to a recent conversion table of the price of the animals to be delivered to the victim of the crime or his heirs, a criminal may pay \$49,000 instead of sheep, \$35,000 instead of cows, or \$18,700 instead of camels. (*Equal Blood Money for Minorities*, IRAN TIMES INTERNATIONAL, Jan. 2004, at 2.)

Islamic scholars of different sects of Islam have expressed different opinions regarding the amount of *dia* to be paid when the victim is not a Muslim. Some believe that the amount of blood-money should be the same as would be paid to a Muslim. Others have expressed different opinions, based on their interpretation of the Islamic sources on this subject. Among the scholars, those of the Imamiah sect, who hold power and are in the majority in Iran, believe that the amount of the blood-money for the non-Muslim minorities (Jews, Christians, and Zoroastrians) is 800 *dirhams* (an ancient form of currency).

The debate came to an end, however, by the passage of the following amendment to the Islamic Criminal Code of May 22, 2003:



Single Article: The following text under the Note is added to Article 297 of the Islamic Criminal Code:

Note: On the basis of the Religious Ruler the amount of the blood-money of the religious minorities recognized in the Constitution of the Islamic Republic of Iran is set to be equal to the blood-money of a Muslim.

(OFFICIAL GAZETTE OF THE YEAR 2003-2004 OF THE ISLAMIC REPUBLIC OF IRAN, at 1473.)
(G. H. Vafai, 7-9845, gvaf@loc.gov)

ISRAEL – TV Broadcasts (Captions and Sign Language) Law

On July 26, 2005, the Knesset (Israel's Parliament) passed the TV Broadcasts (Captions and Sign Language) Law 5765-2005. The Law imposes an obligation on broadcasters of public TV, as well as on holders of cable and satellite broadcasting licenses, to add either closed or open captions in Hebrew, Arabic, or Russian, without extra charge. The captions should provide in writing what is said on the program or in an emergency announcement, in the language of the broadcast. The obligation to accompany pre-recorded broadcasts with captions will take effect on January 1, 2005, on forty percent of all broadcasts, and the requirement will increase by ten percent annually until January 1, 2013, when 100% of all broadcasts will have to be accompanied by captions. Twenty-five percent of programs broadcast live will be accompanied by captions starting on January 1, 2009, and that percentage will increase to seventy-five by January 1, 2013. Special requirements apply to news captions. In addition to written captions, the Law requires broadcasters to accompany 2.5% (beginning January 1, 2006) and 5% (by January 1, 2007) of all programs broadcast in prime time with translation into sign language.

The Law also requires that, beginning on January 1, 2006, and to the extent that it is feasible, every emergency announcement broadcast by the Broadcasting Authority or other broadcasters, be accompanied by Hebrew or Arabic summary captions. Full captions, as well as a translation into sign language, are required, as appropriate, starting on January 1, 2007. Broadcasters are exempted from this requirement if they accompany their broadcasts with an announcement directing viewers who are hearing impaired to the emergency announcement broadcast by the Broadcasting Authority.

Emergency announcements include announcements regarding public crises such as mass disasters, radioactive releases or releases of other dangerous materials, major accidents or terrorist activity, the outbreak of war, mobilization for military operations, extreme weather conditions, etc. The Law permits exemptions and reduction of the level of compliance for broadcasters who can show that compliance imposes too heavy a burden on them. (TV Broadcasts (Captions and Sign Language) Law 5765-2005, the Knesset website, <http://www.knesset.gov.il/Laws/Data/law/2026/2026.pdf>.)
(Ruth Levush, 7-9847, rlev@loc.gov)

JORDAN – Discontinuance of Grant of Citizenship to Arab Investors

The Jordanian government has decided to stop giving Jordanian citizenship to Arab investors because of what it called the absence of the reasons that led to that action. The executive director of the Jordanian Investment Promotional Organization, Dr. Maan Al-Nsour, said that granting of Jordanian citizenship to Arab investors was based solely on commercial needs and circumstances. He added that such needs have been met and that giving Jordanian citizenship to Arab investors ought to cease.



(*Jordan Decides to Discontinue Granting Citizenship to Arab Investors*, AL-JAZEERA, Internet edition, Aug. 26, 2005, at <http://www.aljazeera.net/News/asp/print.htm>.)
(Issam M. Saliba, 7-9840, isal@loc.gov)

SAUDI ARABIA – Creation of Human Rights Committee

On September 12, 2005, the Saudi Council of Ministers, presided over by King Abdullah bin Abdul Aziz, approved the creation of a governmental committee for human rights. The Committee is intended to promote and protect human rights, consistent with Islamic law, or *Shari'a*. The Committee will have eighteen members and will be headed by a president appointed by a royal ordinance, with the rank of Minister. (*Saudi Arabia-Creation of a Human Rights Committee Dependent Directly of the Prime Minister*, AL-SHARQ AL-AWSAT, Internet edition, Sept. 13, 2005, at <http://www.asharqalawsat.com/>.)
(Issam M. Saliba, 7-9840, isal@loc.gov)

SAUDI ARABIA – Direct Contact with Israel

The Saudi Minister of Commerce and Industry, Hashim Yamani, declared that upon joining the World Trade Organization (WTO) his country will deal directly with its members in accordance with the provisions of the Organization treaties. Yamani, who heads team negotiating Saudi Arabia's membership in the WTO, did not mention Israel by name, but said that the secondary and tertiary boycott (of Israel) had ended early this year, consistent with the decision the Supreme Council of the Gulf Cooperation Council rendered during its fourteenth session in 1993. (*Saudi Arabia-Ready to Deal with All World Trade Organization Members*, AL-JAZEERA, Internet edition, Sept. 13, 2005, at <http://www.aljazeera.net/News/asp/print.htm>.)
(Issam M. Saliba, 7-9840, isal@loc.gov)

SAUDI ARABIA – Women's Candidacy Permitted for Saudi Chambers of Commerce Boards

For the first time in the history of the Kingdom of Saudi Arabia, Saudi authorities have permitted businesswomen members of the Chamber of Commerce and Industry in the city of Jeddah to nominate themselves for the elections for the board of directors that will take place in November of 2005. Minister of Commerce and Industry Hashem Abdullah Yamani made the historic decision on September 13, 2005, after Saudi authorities monitoring the Jeddah Chamber of Commerce polls had rejected nominations of women in an earlier request. They had closed the nominations for the board of directors on September 10, without accepting any nomination applications from several businesswomen seeking election. However, the matter was referred to Minister Yamani for review, whereupon he made this historic decision.

The authorities monitoring the Jeddah Chamber subsequently reopened the nominations for board of directors for an additional fifteen days, to allow male and female candidates to announce their candidacy for twelve of the eighteen eligible seats on the board. The Minister of Commerce and Industry has the right to appoint six other members to the board in addition to the twelve elected. Businesswomen will now participate in the elections as candidates, not just as voters.

The ministerial decision is expected to open the door for women's candidacy for the boards of directors of chambers of commerce and industry in other major cities in Saudi Arabia as well.



Chairman of the Board of the Jeddah Chamber of Commerce Dr. Ghassan Al-Sulaiman stated, “I hope that the voters would consider the nominees based on their qualifications, campaign platform, and the best to represent them regardless of gender; that will show a maturity in our society.” (*Jeddah Chamber of Commerce and Industry Election Postponed to Open the Door for Nomination*, ARABIANET, Sept. 14, 2005, at <http://www.alarabiya.net/Articles/2005/09/14/16778.htm>; *Jeddah: Women Permitted on Chamber of Commerce Board*, ARAB NEWS.COM, Sept. 15, 2005, at <http://www.arabicnews.com/ansub/Daily/Day/050915/2005091501.html>; Maha Akeel, *Women’s Position in JCCI Explained*, ARAB NEWS, Sept. 16, 2005, at <http://www.arabnews.com/?page=6§ion=0&article=70159&d=16&m=9&y=2005> ; UPI: *Saudis Ban Women Chamber Candidates*, MIDDLE EAST NEWS, Sept. 4, 2005, at http://news.monstersandcritics.com/middleeast/printer_1045891.php.)

(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

SOUTH ASIA

BANGLADESH – Kibria Murder Trial

A bomb attack on January 27, 2005, in Bangladesh killed Mr. Shah A.M.S. Kibria, former Finance Minister of Bangladesh and the father of a U.S. citizen, Ms. Nazli Kibria of Newton, Massachusetts. Ms. Kibria contacted Senator John Sununu's Claremont office to urge United States involvement in the case. Sixteen members of Congress, including nine Senators, requested that Secretary of State Condoleezza Rice recommend to President Bush that he raise the issue of political violence in Bangladesh at the U.N. World Summit in New York. The members of Congress proposed to send a U.N. investigative team to Bangladesh to examine the Kibria murder trial files and to investigate the broader issue of political violence in Bangladesh. (*Political Violence in Bangladesh: 16 US Congressmen Ask Bush to Raise Issue at UN Summit*, THE NEW NATION, Sept. 14, 2005, at http://nation.ittefaq.com/artman/publish/article_21722.shtml.)

According to a June 28, 2005, press release, the Government of Bangladesh has made significant progress in the investigation of the bomb attack that killed Mr. Kibria. Eight people have been arrested and warrants have been issued for two others. The district court also rejected bail petitions submitted by the accused. The case is now before a special tribunal for further proceedings. Foreign agencies, including the U.S. Federal Bureau of Investigation (FBI), are working with the law enforcement agencies of Bangladesh to ensure an efficient and comprehensive investigation. The FBI agents are being accorded full access to the witnesses and evidence for the trial. “The Government remains firmly committed to upholding the due process of law” in the investigation of all political killings, including that of Mr. Kibria, the press release stated. (Embassy of Bangladesh, *Press Release: Investigation of the Kibria Killing Case*, June, 28 2005, at <http://www.bangladoot.org/Press Release Kibria Killing 29june05.doc>.)

(Shameema Rahman, 7-3812, srah@loc.gov)

BHUTAN – Draft Constitution

On March 26, 2005, the Kingdom of Bhutan issued a draft constitution that will be made widely accessible to the people of Bhutan through government organizations, schools and training institutions, the business community, and the Internet. There is a special website for the Constitution that contains the draft, along with a glossary of terms (see <http://www.constitution.bt/html/constitution/>)



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[constitution.htm](#)). The thirty-four article draft, which is the culmination of four years of preparation and which will replace the royal decree of 1953 that gives the king absolute power, proposes a parliamentary democracy and outlines the roles of the monarchy and the clergy and the rights and duties of the people. Some aspects of the draft document are perceived as a reflection of the country's Buddhist heritage. There is, for example, the commitment of the state to "maximize gross national happiness." In addition, most of the fundamental duties set forth are reportedly derived from Buddhism: citizens have the responsibility to "provide help to the greatest possible extent to victims of accidents and in times of natural calamity," be pacifist, uphold justice, and act against corruption. A referendum is planned for the end of 2005 to ratify the constitution. (*Bhutan Unveils New Constitution*, BBC NEWS, Mar. 27, 2005, http://news.bbc.co.uk/1/hi/world/south_asia/4385649.stm; Michelle Norris, *Bhutan's New Buddhist Constitution*, NATIONAL PUBLIC RADIO: ALL THINGS CONSIDERED, July 5, 2005, LEXIS/NEXIS, News Library, 90days File; *Draft Constitution to Be Distributed to All Bhutanese*, RA ONLINE, Mar. 2005, http://www.raonline.ch/pages/bt/pol/bt_polconst01d.html.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

BHUTAN – Narcotics Legislation

The first draft of the Narcotic Drugs and Psychotropic Substances Act of the Kingdom of Bhutan was presented to the national committee for control of narcotic and psychotropic substances on July 31, 2005. The drafting committee, comprised of health, education, and legal affairs officials, pointed out that a key feature of the act is that it encompasses three international conventions: the Single Convention on Narcotic Drugs, 1961; the Convention on Psychotropic Substances, 1971; and the 1988 Convention Against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances. According to a drafting committee member, the general control measures constitute the core of the act. The draft proposes the formation of a "narcotics control board" to take steps to prevent and combat drug abuse and illicit trafficking, with a narcotics control agency to execute the day-to-day tasks. Under the act, production, manufacture, import, export, distribution, possession, and use of narcotics and psychotropic substances are prohibited. Cultivation, domestication, or harvesting of cannabis, opium poppies, and coca shrubs are also banned unless required for medical and scientific purposes. The draft legislation also has provisions on money laundering, protection of informants, treatment and rehabilitation centers, and punishments. (*Bhutan Drafting New Drugs Legislation*, BBC WORLDWIDE MONITORING, Aug. 1, 2005, LEXIS/NEXIS, News Library, 90days File.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

INDIA – Poet to Be Tried for "Defiling" Goddess

A court in Calcutta has ordered West Bengal's leading poet to appear on December 3, 2005, to answer charges of having defiled a Hindu Goddess. In a newspaper article in 2005, Mr. Sunil Gangopadhyay, aged 71, said that in his youth he had been "sexually aroused" by an idol of Saraswati, the Hindu Goddess of Learning. A retired policeman filed a lawsuit, claiming that the comments had hurt his religious sentiments. The court also ordered the publisher and editor of the newspaper to appear as well. (*Trial of Poet for "Defiling" Idol*, BBC NEWS, Sept. 12, 2005, http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/4237076.stm.) (Donald R. DeGlopper, 7-9831, ddeg@loc.gov)



INDIA – Supreme Court Rules Against College Placement Quotas for States

The Supreme Court of India ruled on August 12, 2005, that the states have no right to appropriate seats as their quota in any private professional college, whether or not the college receives state aid, or in any religious minority educational institution. A seven-judge bench, headed by the Chief Justice, observed that the minority institutions were free to admit students of their choice, including students from other communities, but the admissions must not change the minority character of the institution.

The Court ruling also allows private professional institutions to admit fifteen percent non-resident Indians (NRIs) based on merit. Admissions of NRIs can involve monetary assistance to poor students. The Court observed that the power to admit students to and administer these institutions must not lead to mal-administration or profiteering. While the states may take steps to prevent the charging of capitation fees and profiteering, the institutions are free to frame their own fee structure. At the same time, admissions must be centralized through a “single window” system that promotes merit and excellence and also curbs malpractice.

The Court upheld its earlier judgment on setting up two committees to regulate the fee structure and admission procedures for such private professional colleges. It stated that until the enactment of legislation for these purposes, regulation by the two committees may be deemed a stop-gap arrangement. (*States Can't Appropriate Quota in Colleges: SC*, THE HINDUSTAN TIMES, Aug. 12, 2005, http://www.hindustantimes.com/news/181_1459500,0008.htm.) (Krishan Nehra, 7-7103, kneh@loc.gov)

NEPAL – Recent Supreme Court Actions

On September 7, 2005, Supreme Court of Nepal rejected the public prosecutor's argument calling for annulment of the Court's previous order (of August 11, 2005) to resume news broadcasts on private radio FM stations. As a result, the stations will be allowed to continue their news broadcasts until the next full hearing of the case at the end of November. The Court's August ruling held that the government cannot terminate Nepal FM's broadcast license because it had broadcast news. (*Nepalese Court Rejects Government Appeal on FM Radio News Broadcasts*, KHATMANDU KANTIPUR FM, Sept. 7, 2005, as translated in Foreign Broadcast Information Service (FBIS) online subscription database; *Nepal's Supreme Court Orders Government to Back Off Radio Station Shut Down*, ASSOCIATED PRESS WORLDSTREAM, Aug. 11, 2005, LEXIS/NEXIS, News Library, 90days File.)

On August 25, 2005, an eleven-member bench including the Chief Justice of the Supreme Court began hearing a writ petition demanding the revival of Nepal's House of Representatives, a case that has been pending “for a long time” at the Court. The justices had reportedly decided to resume discussion of the case after the first round of deliberations on the writ petition. Subsequently, however, deliberations came to a halt. In the meantime, the bench officers had been asked to submit the precedent chart of the petitions filed thus far against revival of the House of Representatives; such charts have reportedly already been prepared. It was unclear when the hearing on the case would be resumed. (*Writ for Revival of Nepalese Parliament Waiting on Supreme Court Hearing*, SAMARCHAPATRA, Sept. 11, 2005, as translated in FBIS.)



It was reported on September 12, 2005, that the Supreme Court had for the seventh time summoned the Foreign Ministry to make available to the Court the agreement between the government and the United Nations on sending Royal Nepalese Army (RNA) personnel on U.N. peacekeeping duties. The Court wants to examine the terms regarding pay and perquisites set forth in the agreement. The directive follows a hearing on a writ petition that was filed four years ago by a former RNA soldier who demanded transparency regarding the agreement. He charged that the government was cheating soldiers who went on U.N. missions by not providing them with the actual pay and perks given by the U.N. The Court has directed the Foreign Ministry to present the agreement by October 25, the scheduled date for hearing the case, or face being charged with contempt of court. (*Nepal Supreme Court Warns Foreign Ministry over UN Deal*, KHATMANDU KANTIPUR, Sept. 12, 2005, as translated in FBIS; *Nepal Ordered to Reveal Pay Details of Soldiers on UN Peacekeeping Missions*, BBC MONITORING INTERNATIONAL REPORTS, Aug. 23, 2005, LEXIS/NEXIS, News Library, 90days File.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

NEPAL – Timetable for Democratic Elections

After seven months of absolute rule by King Gyanendra, Nepal announced that it will move forward with local elections by April 2006 and national elections within two years. On February 1 of this year, Gyanendra fired the elected government of Nepal, a constitutional monarchy, and set up his own Cabinet. He claimed the takeover was necessary to fight corruption and quell an anti-monarchist communist insurgency that has claimed nearly 12,000 lives in nine years.

Nepalese Foreign Minister Ramesh Nath Pandey told the U.N. General Assembly on September 21, 2005, that the government will hold the elections that it has promised for months in the face of continuing pro-democracy protests. Nepal's government had already promised to hold elections, but the recent statement provided a more specific time frame.

In his address, Pandey assured the U.N. of King Gyanendra's total commitment to multiparty democracy. The elections announcement comes shortly after Maoist rebels announced a unilateral cease-fire that suggested peace talks could follow. (*Nepal's Leader Pledges Elections*, Sept. 22, 2005, NEW YORK TIMES, at <http://www.nytimes.com/2005/09/23/international/asia/23nepal.html>.) (Karla Walker, 7-4332, kdwa@loc.gov)

PAKISTAN – Madrassas' Registration to Be Completed by November

On August 16, 2005, the President of Pakistan, General Pervez Musharraf, issued an Ordinance that amends the Societies Registration Act, 1860, and requires 11,882 seminaries (madrassas) in the country to register with the government. According to Wakil Ahmed Khan, Secretary of the Ministry of Religious Affairs, the registration requirement takes effect immediately, and the registration process is expected to be completed by the end of November 2005. Issuance of the Ordinance resulted from an agreement with the country's alliance of seminaries. It resolves the conflict between the Ministries of Education and Interior on the one hand and the Ministry of Religious Affairs on the other. The former two had sought the adoption of a new ordinance for the purpose, while the latter favored an amendment of the old Societies Act.

As a result of the amendment and insertion of a new section 21, no seminary will operate if it is not in compliance with the registration requirement. However, the territorial jurisdiction of the



ordinance is limited to Islamabad, the federal capital, since three out of four provinces already have similar provisions while the North-West Frontier Province, it is hoped, will soon follow suit.

By way of distinguishing among seminaries, the new law requires institutions that provide board and lodging to be subject to the requirement of registration, whereas those operating in mosques will not need to be registered. (*Registration to Be Completed by Nov: President Issues Ordinance*, THE DAWN, Aug. 17, 2005, <http://www.dawn.com/2005/08/17/top3.htm>.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

PAKISTAN – Prevention of Corruption and Money Laundering

While visiting China to attend the Twenty-Second Law Congress, the Chief Justice of Pakistan declared during a panel discussion in Beijing that Pakistan had enhanced cooperation with foreign countries for the elimination of money laundering. According to him, “[T]he main objective of such cooperation is to retrieve national assets and the ill-gotten money deposited in foreign banks.” The session at the congress was devoted to discussing anti-corruption laws and administrative measures, with a view to having more interaction among members of the international community to combat the prevailing corruption.

The Chief Justice further stated, “We have developed a lot of cooperation at the international level through the signing of treaties and agreements” as anti-corruption measures and “we stand by the international community in its efforts to root out corruption and other illegal practices.” A senior official of the Chinese National Anti-Corruption Bureau stated that the international community needs to work together in its fight against corruption to catch criminals who, before being found guilty of corruption offenses in their own country, flee to other countries that may not have signed extradition treaties. (*Efforts On to Curb Corruption: CJ: Cooperation Being Expanded*, THE DAWN, Sept. 7, 2005, <http://www.dawn.com/2005/09/07/top15.htm>.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

PAKISTAN – Writ Sought Against Oil Companies for Price Hikes

On September 5, 2005, stung by rising oil and gas prices in the country, Maulvi Iqbal Haider of the Awami Himayat Tehrik (a political party) petitioned the Supreme Court of Pakistan for issuance of a writ against the Secretary of the Ministry of Petroleum and the oil companies Attock Petroleum, Caltex Oil, Pakistan State Oil, Shell Pakistan, Total Parco, Emmanuel Laurenty, National Refinery, Pak Arab Refinery, and the Pakistan Refinery, declaring frequent price rises under a pricing formula of the Oil Companies Advisory Committee (OCAC) to be illegal and in violation of the fundamental rights of the people. The petitioner’s contention is that the OCAC formula for increasing the cost of gas and diesel by levying an additional tax was unconstitutional, because imposition of a tax can only be approved by the Parliament of Pakistan under article 77 of the Constitution. The petitioner further pleaded that such increases in prices encouraged wholesale and other traders to enhance the prices of essential commodities at their own will, at the cost of the common man. (*SC Moved on Oil Price Hike*, THE DAWN, Sept. 6, 2005, <http://www.dawn.com/2005/09/06/top16.htm>.)
(Krishan Nehra, 7-7103, kneh@loc.gov)



SRI LANKA – Injunction Against Tsunami Relief Agreement Extended

On September 12, 2005, the Supreme Court of Sri Lanka extended an interim injunction, originally issued in July 2005, against the implementation of some clauses of the Post-Tsunami Operation Management Structure Agreement (P-TOMS). The extended injunction, now in force until November 22, 2005, applies to several operational provisions, including the establishment of the P-TOMS headquarters in Kilinochchi. The injunction resulted from several petitions to the Court, including one by a political party that was in the ruling coalition. (*Sri Lanka Supreme Court Extends Interim Injunction on P-TOMS until November*, SRI LANKAN DAILY NEWS AND REPORTS, Sept. 13, 2005, <http://www.colombopage.com/archive/September13105602RA.html>.)

The Agreement had been signed on June 24, 2005, between the Government of Sri Lanka and the rebel group LTTE (Liberation Tigers of Tamil Eelam), and it provided that the rebels would extend aid for the relief of people affected by the December 2004 tsunami in the areas held by LTTE, in the northern and eastern portions of Sri Lanka. (*Government of Sri Lanka Signs P-TOMS (Joint Mechanism) with LTTE*, MANZI'S ONLINE JOURNAL, June 24, 2005, <http://manzi.weblogs.us/archives/029501.html>.) The Agreement was drawn up in the form of a Memorandum of Understanding and contains nine articles and a preamble, stating in part "there is an urgent need for all communities, Sinhala, Tamil, Muslim and others, to cooperate on humanitarian grounds in the face of this common adversity." (*Full Text of P-TOMS Agreement*, SRI LANKAN NEWS AND DISCUSSIONS, June 25, 2005, <http://www.lankanewspapers.com/news/2005/6/2392.html>.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

WESTERN HEMISPHERE

CANADA – Every Albertan to Receive Can\$400

With increasing revenues from sales of oil and gas, the government of the Province of Alberta has decided to send checks of Can\$400 to every man, woman, and child. Alberta already has the lowest personal and corporate tax rates in the country. (Can\$1.00=U.S.\$0.85.5). Since 2001, there has been a ten percent single rate on individuals that is reduced through tax exemptions and credits.

The result is that persons with incomes of under Can\$15,200, as well as persons with two children who have incomes of less than Can\$35,700, are usually exempt from provincial income tax. (*Alberta Tax Advantage*, Ministry of Finance website, Mar. 24, 2004, <http://www.finance.gov.ab.ca/publications/budget/budget2004/tax.html>.) The government decided to refund part of its large surplus instead of reducing the tax rates because it did not want to commit to long-term tax reform. It also decided against launching several new programs out of concern that future provincial revenues might not be sufficient to continue funding those initiatives. (*Albertans to Get \$400 Each from the Province's Burgeoning Surplus Cash*, YAHOO NEWS, Sept. 20, 2005, http://news.yahoo.com/s/cpress/20050921/ca_pr_on_na/alta_dividend_cheques.)
(Stephen Clarke, 7-7121, scl@loc.gov).



CANADA – Ontario to Ban *Sharia* Arbitrations

The Premier of Ontario, Canada's largest province, has announced that his government will follow the example of Quebec and ban the practice of conducting arbitrations in accordance with religious law. The decision comes after several years of rising concern within segments of the Muslim community over plans by certain Muslim clerics to establish an institute to resolve disputes between Muslims in accordance with the principles of *Sharia* law. Some Jewish and Christian tribunals have been resolving arbitrable matters in accordance with their own religious laws since Ontario's Arbitration Act was changed in 1991. (1991 S.O. ch. 17.) The Muslim clerics' proposal is to not only follow this example, but to extend it to cover more type of disputes and to have it be used on a much larger scale. This proposal has worried many Muslim women who believe that *Sharia* law is unfair to them in such matters as the division of family assets upon divorce. These opponents believe that even if they cannot be legally required to submit to arbitration, community pressures will effectively force them to accept the jurisdiction of the Muslim tribunals. The current law does not allow religious tribunals to grant divorces or award custody of children. However, it does allow matters respecting contracts, personal injuries, aspects of employment, and family property to be arbitrated. (L. Greenberg, *Ontario Could Face Court Challenge: End to Faith Arbitration*, NATIONAL POST, Sept. 21, 2005, at 4, <http://www.canada.com/national/nationalpost/news/story.html?id=83974525-0dfe-4b6>.) (Stephen Clarke, 7-7121, scla@loc.gov)

DOMINICAN REPUBLIC – Free Trade Pact Approved

On September 6, 2005, the Dominican Republic's Chamber of Deputies approved the U.S.-Central America-Dominican Republic Free Trade Agreement (CAFTA-DR). The Senate had approved the treaty on August 26, 2005. (*U.S Trade Representative Rob Portman Statement Regarding Dominican Republic's Passage of CAFTA-DR*, Office of the U.S. Trade Representative, Sept. 6, 2005, http://www.ustr.gov/Document_Library/Press_Releases/2005/September/US_Trade_Representative_Rob_Portman_Statement_Regarding_Dominican_Republics_Passage_of_CAFTA-DR.html.) (Gustavo E. Guerra, 7-7104, ggue@loc.gov)

MEXICO – Cooperation Agreement Allowing Mexicans Abroad to Vote

On August 30, 2005, the Federal Electoral Institute (IFE) and the Foreign Relations Ministry (SRE) signed a cooperation agreement to promote voting by Mexicans abroad during the 2005-2006 federal elections. The cooperation agreement commits the IFE and the SRE to take the necessary steps to publish and make available to Mexicans residing abroad the requisite voter registration forms. The Foreign Ministry must provide the IFE with statistical information about eligible Mexican voters residing abroad so that the voter registration forms can be effectively distributed overseas. (*The Federal Electoral Institute (IFE) and the Foreign Ministry Sign a Cooperation Agreement Allowing Mexicans Abroad to Vote*, Press Release from the Mexico Ministry of Foreign Relations, Aug. 30, 2005, at <http://portal.sre.gob.mx/sre/index.php?option=news&Itemid=2&topid=1#>.) (Gustavo E. Guerra, 7-7104, ggue@loc.gov)



MEXICO – Former Foreign Relations Secretary to Sue Government

Jorge Castañeda, former Secretary of Foreign Relations of Mexico, announced that he plans to file a suit in Washington, D.C., before the Inter-American Commission of Human Rights against the Mexican Government for violation of his political rights and denial of access to justice. The legal background that prompted this decision is: On February 11, 2004, Mr. Castañeda filed an *amparo* constitutional challenge before the Supreme Court of Justice against several provisions of the Federal Code of Electoral Institutions and Procedures (Electoral Code) that establish that only two political parties may register candidates. On March 11, 2004, the Federal Electoral Institute (IFE) rejected Mr. Castañeda's application for registration as an independent candidate for President of Mexico, thereby leaving him with no means to run in the 2006 presidential elections. Consequently, he filed a second *amparo* appeal before the Supreme Court. On August 7, 2005, the Supreme Court rejected the constitutional challenge to the disputed provisions of the Electoral Code. On August 11, 2005, the Supreme Court rejected Mr. Castañeda's appeal to run as an independent candidate. The Court rejected both appeals without reviewing their merits, but on procedural grounds. (Carlos Avilés, *Derrota Jurídica de Castañeda*, EL UNIVERSAL, Aug. 17, 2005, <http://www.el-universal.com.mx/>, & *Lleva Castañeda Su Pelea Ante Organo Internacional*, REFORMA, Sept. 4, 2005, <http://reforma.com/>.) (Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

MEXICO – Supreme Court Decision Opens Way to Extradition to United States

In an extraordinary decision of eight votes in favor and two against, the Supreme Court of Justice of Mexico held on September 6, 2005, that a life jail sentence or a sentence with a jail term of more than 100 years is not unconstitutional. This holding reverses previous Court decisions that had been a legal barrier to extraditing to the United States of drug criminals who would face life incarceration there. The ruling involved a Constitutional challenge to the amended article 27 of the Criminal Code of the State of Chihuahua, which allows an accumulation of jail term penalties of up to 105 years to be imposed upon serial killers of women in Juarez City, Chihuahua, Mexico.

There are at least fifteen criminals, including drug dealers, currently in Mexican jails who are wanted by the U.S. Drug Enforcement Agency (DEA) and could be extradited to the United States. The total number of drug dealers who are wanted by the DEA increased in the last nine months from 121 to 226. According to a member of the Chamber of Deputies' Foreign Relations Committee, Rodrigo Iván Cortés, extradition is going to be one of the issues to be discussed in the next Mexico-United States Inter-Parliamentary Meeting. (*Abre Corte Puerta a Narcoextradición & Buscan en Estados Unidos a Narcos Presos en Mexico*, REFORMA, Sept. 7 & 8, 2005, <http://reforma.com/>.) (Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

NICARAGUA – Controversial Rulings by Supreme Court of Justice

On August 30 2005, the Supreme Court of Nicaragua upheld a series of controversial amendments to the Constitution, which were approved by the National Assembly in January 2005. President Enrique Bolaños rejected the amendments, on the grounds that they transfer many of the executive prerogatives to the National Assembly.



In another ruling issued on the same day, the Supreme Court upheld a lower court's order that allows convicted former president Arnoldo Alemán to travel freely in the Managua metropolitan area. Mr. Alemán is serving a twenty-year sentence for corruption-related offenses.

The rulings were deemed to be a result of a political pact between Daniel Ortega, Secretary General of the Sandinista National Liberation Front, and Mr. Alemán, party boss of the Constitutional Liberal Party. The Supreme Court is made up of justices affiliated with both parties. (Mirna Velásquez Sevilla y María José Uriarte R., *Pacto Firme y Arrollador*, LA PRENSA, Aug. 31, 2005, <http://www.laprensa.com.ni/>.) (See also *Former President Released from Jail*, 1 W.L.B. 2005, at 26.) (Norma Gutiérrez, 7-4314, ngut@loc.gov)

INTERNATIONAL LAW AND ORGANIZATIONS

CAFTA – Sandinista Leader Rallies People Against CAFTA-DR

On August 28, 2005, Daniel Ortega, Secretary General of the Sandinista National Liberation Front of Nicaragua, urged people to go to the streets to protest against the ratification of the Central American and Dominican Republic Free Trade Agreement (CAFTA-DR). Mr. Ortega argued that the American “subsidized products” covered by the Treaty would destroy Nicaraguan industry. (Luis Eduardo Martínez M., *Ortega Llama 'Ir A La Calle' Contra El CAFTA*, LA PRENSA, Aug. 29, 2005, <http://www.laprensa.com.ni/>.) (Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

CHINA/UNITED KINGDOM – Standard Chartered to Create Chinese Bank

According to the Associated Press, the British bank Standard Chartered PLC on September 6, 2005, announced plans to invest US\$123 million to establish Bohai Bank in Tianjin, China. Bohai Bank will be the first commercial bank approved since 1996 and the first ever to have a foreign promoter.

Standard Chartered said it would be holding 19.9 percent of the shares of Bohai Bank. The other partners are Chinese banks and corporations, including Tianjin TEDA Investment Holdings Co. Ltd., with 25 percent of the shares, China Ocean Shipping (Group) Co., with 13.7 percent, and Shanghai Baosteel Group Corp. and the State Development & Investment Corp., each with 11.6 percent.

Yong Zilin, who until recently served as chairman of the Import-Export Bank of China, has been appointed as chairman of Bohai Bank. (*Standard Chartered to Create China Bank*, CHINA DAILY, Sept. 6, 2005, at http://www.chinadaily.com.cn/english/doc/2005-09/06/content_475544.htm; Lingyan Sun & Qiuying Du, *Bohai Bank Sails Large*, FINANCIAL NEWS, Sept. 7, 2005, <http://www.financialnews.com.cn/jryw/200509070115.htm>.) (Rui Wei, 7-9864, rwei@loc.gov)



CHINA/UNITED STATES – Cooperation in Viagra Counterfeiting Case

According to a statement at a joint press conference, China and the United States have cracked a major counterfeiting case involving pharmaceuticals sold on the Internet in eleven countries. Huge amounts of counterfeit medicine, including Viagra, made by Pfizer, Cialis, manufactured by Eli Lilly, and Levitra, created by Bayer, as well as Lipitor, a cholesterol-reducing drug, with a retail value of millions of U.S. dollars, were recently seized at five facilities in China. Eleven Chinese and one American were arrested. The drugs were marketed online in countries including the United States, Britain, and Israel.

The operation marked the second time that United States – China joint anti-piracy efforts have resulted in arrests. Two Americans were jailed in Shanghai in April 2005 for up to two-and-a-half years for selling pirated DVDs on the Internet. Along with two Chinese nationals, they were accused of running an operation that sold some 180,000 movie and music discs worth more than seven million *yuan* (about US\$863,000), via the United States-based commercial website eBay.com and the Russian-based website threedollardvd.com. (*China, US Smash Viagra Counterfeiting Case*, CHINA DAILY, Sept. 08, 2005, at http://www.chinadaily.com.cn/english/doc/2005-09/08/content_476184.htm.) (Rui Wei, 7-9864, rwei@loc.gov)

CHINA/WHO – Tobacco Treaty Signed

China's National People's Congress Standing Committee (NPCSC) ratified the World Health Organization's (WHO) Framework Convention on Tobacco Control on August 28, 2005. The Chinese government had signed the Convention on November 10, 2003. It is apparently only the second nation, aside from Norway, to have completed ratification of the pact, which was adopted by the WHO on May 21, 2003. In approving the treaty, the NPCSC announced that China would ban tobacco vending machines in its territorial area, including the Hong Kong and Macao Special Administrative Regions. An estimated thirty-six percent or more of the Chinese population smokes, and last year about 1.2 million persons died in China from tobacco-related diseases. (*China Ratifies Int'l Treaty on Tobacco Control*, CHINA VIEW, Aug. 29, 2005, http://news.xinhuanet.com/english/2005-08/29/content_3416351.htm; *PRC: NPC Standing Committee Ratifies WHO Framework Convention on Tobacco Control*, XINHUA Aug. 28, 2005, as translated in Foreign Broadcast Information Service (FBIS) online subscription database; *SCMP Editorial Says PRC's Anti-Smoking Effort Impressive First Step*, South China Morning Post, Aug. 30, 2005, FBIS; *Foreign Ministry Spokesperson Zhang Qiyue's Press Conference on 7 December 2004*, China's Ministry of Foreign Affairs website, Dec. 8, 2004, <http://www.fmprc.gov.cn/xwfw/s2510/t173619.htm>.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

GULF COOPERATION COUNCIL – New Economic Standards for Unified Currency

Determined to achieve further integration, the Member States of the Gulf Cooperation Council (GCC), Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, are planning to unify their currency. Governors of their monetary agencies and central banks met in Bahrain for the GCC's thirty-ninth meeting on September 16, 2005. The GCC central banks set a target to meet the requirements and set up a common currency by 2010. They recommended a model of unified economic standards to establish a common economic approach among the GCC countries. The GCC central



bankers agreed to keep budget deficits under three percent and limit debt to sixty percent of GDP (Gross Domestic Product). They also agreed on “capping inflation at the weighted average of the six countries plus two per cent and interest rates at the average of the lowest three countries plus two per cent.” All GCC countries must meet these requirements by 2007, before a complete unification of their currency in 2010.

Bahrain Monetary Agency (BMA) Governor Rasheed Al Maraj, who chaired the meeting, said “the countries were very close to meeting the requirements anyway.... All the countries’ positions are very good, but some time is still needed for adjustments and technicalities.” Mohammad Mazrooei, Assistant Secretary-General for Economic Affairs at the GCC, stated: “Gulf Arab states will seek help from the European Central Bank in establishing a monetary authority to oversee their planned single currency.” (*Unified Currency “a Crucial GCC Target,”* 28:179 GULF DAILY NEWS, Sept. 15, 2005, at <http://www.gulf-dailynews.com/Story.asp?Article=122067&Sn=BNEW&IssueID=28179>; Tariq Khonji, *Unified Currency Deadline is Set, id.*, at <http://www.gulf-dailynews.com/Story.asp?Article=122066&Sn=BNEW&IssueID=28179>; *GCC to Seek ECB Advice*, BUSINESS TIMES Sept 16, 2005, at http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/business/2005/September/business_September340.xml§ion=business.)

(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

ISRAEL/EGYPT – Philadelphi Route Agreement

On August 23, 2005, Israel and Egypt entered into an agreement on the deployment of 750 Egyptian security forces in Rafah, on the Philadelphi route on the Egyptian side of the border with the Gaza Strip. The agreement follows Israel’s disengagement from Gaza and is designed to enable the redeployment of the Israeli Defense Force (IDF) out of the region. The agreement is titled “Agreed Arrangement in the Matter of Deployment of a Task Force of the Border Guards Along the Length of the Border in the Rafah Region.”

Under the agreement, Egypt pledged to prevent smuggling and open transfer of weapons to the Palestinians who will control the Gaza Strip following IDF redeployment. The Egyptian force will be equipped with police-style armored personnel carriers, light arms, and rocket-propelled grenade launchers. In addition, the Egyptian force will build unfortified observation posts. Egypt will also deploy a small naval unit to patrol the maritime border with the Gaza Strip. The task force is designed to prevent weapons smuggling, terror attacks, and cross-border infiltration. (Aluf Benn, *Mofaz: Israel, Egypt Finalize Details of Philadelphi Route Deal*, HAARETZ ONLINE, Aug. 24, 2005, at <http://www.haaretz.com/hasen/spages/616259.html>; see also D. Bahur-Nir, *Philadelphi Deal Struck*, YEDIOT ACHARONOT ONLINE, Aug. 24, 2005, at <http://www.ynetnews.com/articles/0,7340,L3132501,00.html>.)

(Ruth Levush, 7-9847, rlev@loc.gov)

MEXICO/OAS – Special Commission on Transnational Organized Crime

On August 25, 2005, the Permanent Council of the OAS inaugurated the new Special Commission on Transnational Organized Crime, in fulfillment of the mandate issued during the last OAS General Assembly, which was held in June 2005 in Fort Lauderdale, Florida. The Permanent Council elected Mexico’s representative to the OAS, Ambassador Jorge Chen, as the Commission’s first president.



The new OAS Special Commission – comprised of thirty-four member states – will assist states to adopt and/or strengthen their legislation, develop a draft Hemispheric Plan of Action against Transnational Organized Crime, and strengthen cooperation and coordination between authorities and agencies to fight the various manifestations of crime in the hemisphere. The latter include, for example, illegal drug trafficking; asset laundering; illegal trafficking of arms and persons; cyber crime; criminal youth gangs; kidnapping; and the corruption associated with these crimes and the connections that they can have with terrorism. (*Mexican Is Elected To Head The OAS/Special Commission on Transnational Organized Crime*, Mexico Foreign Relations Ministry website, Aug. 26, 2005, at <http://portal.sre.gob.mx/sre/index.php?option=news&Itemid=2&topid=1>.)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

MEXICO/UNITED STATES – Oasis Program

Mexican government officials announced an agreement recently reached with the Office for Customs and Border Protection of the U.S. Department of Homeland Security in order to launch the "Oasis Program." This Program will allow government officials in both countries to facilitate the exchange of information and evidence in order to effectively prosecute individuals involved in activities of trafficking in persons along the US-Mexico border. (*Mexico and the US Launch the OASIS Program to Protect Migrants*, Mexico Foreign Relations Ministry website, Aug. 17, 2005, at <http://portal.sre.gob.mx/sre/index.php?option=news&Itemid=2&topid=1>.)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

NAFTA – Constitutionality Challenged in Federal Appeals Court

The Coalition for Fair Lumber Imports has challenged the constitutionality of a North American Free Trade Agreement dispute settlement arrangement in a case filed in the U.S. Court of Appeals for the District of Columbia. The Coalition represents a group of lumber companies that believe the panels appointed under the agreement should not have the power to override decisions by the U.S. Department of Commerce and the U.S. International Trade Commission. A representative of the Coalition is quoted as having stated that “the Constitution does not permit these panels to be the final arbiter of whether U.S. law can provide protection from unfair trade practices.”

The Coalition’s challenge is the latest chapter in the long running softwood lumber dispute between Canada and the United States. The United States has imposed antidumping and countervailing duties on Canadian softwood lumber after successfully arguing that Canadian lumber is unfairly subsidized through Canadian leasing practices. However, Canada has recently claimed victory in the dispute as to whether Canadian imports pose a threat of material injury to the U.S. industry. While the United States has argued that the panels have exceeded their authority in a number of hearings, the Government continues to maintain that the dispute settlement process contained in NAFTA is constitutional. Canadian officials contend that the suit is without merit, but have been aware that the constitutionality of the dispute settlement process has never been judicially confirmed since the original Canada-United States Free Trade Agreement was implemented in 1988. (1988 S.C. c. 65; Mark Drajem, *Lumber Group Battles NAFTA*, MIAMI HERALD, Sept. 14, 2005, at C2, LEXIS/NEXIS, News Library, Curnws File.)
(Stephen Clarke, 7-7121, scla@loc.gov)



UNITED NATIONS – Crime Prevention Cooperation Urged

The United Nations Crime Prevention and Criminal Justice Program, a project of the U.N. Office on Drugs and Crime (UNODC), has called on member states to adopt universal protocols and conclude border cooperation agreements to strengthen crime prevention work. In particular, the Program is focusing on terrorism, drugs, organized crime, and corruption, and it has provided expertise for peacekeeping operations and for post-conflict reconstruction of the rule of law.

A recent report to the Security Council by the UNODC stresses the importance of technical cooperation across borders. The Program has given assistance to more than 100 countries since January 2003 to strengthen their legal systems and implement the twelve anti-terrorism conventions, in particular by working with them to incorporate the provisions of these conventions into national legislation. (Information on the conventions can be found at the UNODC website, http://www.unodc.org/unodc/en/terrorism_conventions.html.) The Program has also assisted nations to assess trafficking in persons, develop national plans for criminal justice, and build law enforcement and judicial capacity. In some countries, training has been provided in responding to the needs of asylum seekers, who are seen as particularly at risk of being victims of traffickers. (*Technical Cooperation Urged in Crime Prevention, UN Secretary-General Report*, UN NEWS SERVICE, Sept. 6, 2005, from UNNews@un.org.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

UNITED NATIONS – Governments Invited to Sign, Ratify Treaties

The United Nations has campaigned to encourage nations to sign, ratify, or accede to thirty-two treaties on a variety of issues. The 2005 World Summit, which opened on September 14, 2005, and commemorated the sixtieth anniversary of the United Nations, was an opportunity for nations to become parties to conventions on such topics as the environment, human rights, law of the sea, organized crime, refugees, and terrorism. One of the early results of the campaign was seen on September 15, 2005, when the Convention Against Corruption, which opened for signature in December 2003, went into effect due to Ecuador's becoming the thirtieth nation to approve it. Liberia made news by endorsing 103 international treaties on September 16.

U.N. Secretary-General Kofi Annan described the importance of the general treaty-signing initiative, stating

Ours is an age of unprecedented interconnectedness ... The destinies of peoples around the world and the threats they face are interwoven. ... [There is a] central challenge for the twenty-first century – to fashion a new and broader understanding ... of what collective security means.

(*Annan Invites Summit Leaders to Sign or Ratify a Raft of International Treaties*, Sept. 12, 2005, *UN Convention Against Corruption Gets Go-Ahead During Summit Treaty Event*, Sept. 15, 2005, & *Liberia Submits Record Number of Treaty Actions at World Summit Event*, Sept. 16, 2005, UN NEWS SERVICE from UNNews@un.org.)

(Constance A. Johnson, 7-9829, cojo@loc.gov)



WIPO – Online Gazette of International Marks

The World Intellectual Property Organization (WIPO) began publishing an online edition of the *WIPO Gazette of International Marks*, the official publication of the Madrid System for the International Registration of Trademarks, on September 1, 2005. (WIPO, *Madrid Agreement and Protocol Concerning the International Registration of Marks*, Sept. 14, 2005, http://www.wipo.int/edocs/madrdocs/en/2005/madrid_2005_13.pdf.) (Sayuri Umeda, 7-0075, sume@loc.gov)

WORLD BANK – Regulatory Reforms Ranked in “Doing Business” Report

The World Bank (WB) and the International Finance Corporation (IFC) have published the third in a series of annual reports on business regulations “that enhance or constrain investment productivity and growth.” *Doing Business in 2006 – Creating Jobs* updates old indicators used in the WB’s “Doing Business” database (comparable across 155 economies, *available at* <http://www.doingbusiness.org>) and adds three new ones on licensing, payment of taxes, and cross-border trade. The September 2005 publication attempts to rank the 155 countries on their reforms to business regulation and ease of opening a new business. Thus, in 2004, New Zealand ranked first and the Democratic Republic of the Congo came in last at 155.

The report cites Serbia and Montenegro as the top reformer in 2004 in terms of making the kinds of changes that can stimulate growth in companies and employment. For example, the capital requirement for starting a new business was slashed from €5,000 to 500 (about US\$6100 to \$610) and the time required from fifty-one days to fifteen, and a new labor law was introduced that makes hiring easier. In terms of regions, the most reform took place in Eastern Europe and Central Asia, according to the WB and IFC criteria. Aside from Serbia and Montenegro’s simplification of start-up procedures, Egypt’s streamlining of customs procedures and trade documents and Brazil’s improvements to its bankruptcy law were deemed to be among the boldest reforms in 2004 that drove the biggest improvements based on the *Doing Business* indicators.

The study also placed Pakistan high in the ranking: number ten of the top twelve overall reformers in 2004. Pakistan is credited with making it easier to start a business, reducing the cost of registering property, increasing penalties for violating corporate governance rules, and replacing a requirement to separately license every international shipment with two-year licenses for traders. In both Pakistan and India, there were eleven procedures to start a business, but in Pakistan this required only twenty-four days, while in India it took seventy-one days. The rankings for all South Asian countries (with 1 the easiest and 155 the most difficult) are as follows: Maldives – 31; Nepal – 55; Pakistan – 60; Bangladesh – 65; Sri Lanka – 75; Bhutan – 104; India – 116; Afghanistan – 122. (World Bank, *Overview of DOING BUSINESS IN 2006*, http://www.doingbusiness.org/documents/2006_overview.pdf (last viewed Sept. 28, 2005); *India Does Business the Hard Way*, ONLINE ASIA TIMES (Hong Kong), Sept. 15, 2005, http://www.atimes.com/atimes?Global_Economy/GI15Dj01.htm.)

(Donald R. DeGlopper, 7-9831, ddeg@loc.gov; Wendy Zeldin, 7-9832, wzel@loc.gov)



RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

New Measures in the Area of Immigration and Asylum

On September 1, 2005, the European Commission adopted a set of measures to tackle issues that are on “two sides of the same coin,” asylum and immigration, as Franco Frattini, Vice President for Freedom, Security and Justice, remarked. The measures include a proposal for a Directive on Return and three communications on integration, regional protection programs, and migration and development. The draft Directive on Common Standards and Procedures in Member States for Returning Third-Country Illegal Immigrants establishes common rules to be followed by the Members regarding return, removal, and use of coercive measures; temporary custody; and re-entry.

The Communication on “A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union” follows the adoption of Common Basic Principles of Integration (CBPS) by the Justice and Home Affairs Council in November 2004. The Communication proposes concrete actions to the Member States in the implementation of the EU’s policies on integration.

The Communication on Asylum Policy and the Communication on Migration and Development deal with the external aspects of migration and asylum policy issues. The former outlines regional protection programs aimed at assisting third countries that have large refugee communities or a large number of asylum applicants. The latter promotes linkage of migration and development cooperation with the countries of origin in order to reduce poverty in these countries. (European Commission, *Press Release, Commission Adopts Major package of Measures in the Field of Immigration and Asylum*, IP/05/1079, EUROPA (portal site of the European Union), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1079&format=HTML&aged=0&language=EN&guiLanguage=en>.)

EU – United States Agreement on Wine Trade

On September 15, 2005, after a twenty-year period of negotiations, the European Union and the United States reached an agreement on trade in wine. The United States is the EU’s biggest wine market, with imports of wine from Europe worth about €2 billion (about US\$2.43 billion) in 2004. Under the first phase of the accord, the parties recognize each other’s names as “names of origin.” They accept the basic principles governing EU labeling rules and agree to resolve any upcoming conflicts over trade in wine through bilateral negotiations rather than through dispute settlement mechanisms. On the other hand, the EU for its part recognizes the winemaking methods that have been approved in the United States. EU wine exports, including those that have less than seven percent alcohol content, are exempted from the 2004 U.S. certification requirements.

A second round of negotiations is expected to begin three months after the date of entry into force of the agreement. During that phase, a wide range of issues will be debated, such as geographical indications, the issue of origin, and certification requirements. (*Press Release: EU-US Wine Trade Accord Will Enhance Protection of European Names and Safeguard EU’s Biggest Market*, IP/05/1145,



Sept. 15, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1145&format=HTML&agd=0&language=EN&guiLanguage=en>.)

New Proposals on Third-Country Nationals in Need of Visas

Under the current EU visa regime, a third country national with a visa issued by a Schengen State is still required to obtain a visa from that state in order to enter, stay, or transit in any one of the ten new states that are not fully part of the Schengen area. Moreover, a third country national who holds a residence permit obtained in Switzerland or Liechtenstein needs a visa to enter the territory of an EU Member State, even when the third country national only transits through a Member State to return to his country of origin.

Two recently adopted proposals by the European Commission are designed to simplify the above procedures. The first proposal, addressed to the ten new Member States, covers all third-country nationals who are subject to a visa requirement based on Regulation No. 539/2001. The proposal allows the Member States to cease requiring a national transit visa from third-country-national holders of visa or residence permits issued by a Schengen State when crossing their territory, under the condition that the duration of the transit is a maximum of five days. Under the second proposal, the twenty-five Member States may allow holders of residence permits from Switzerland and Liechtenstein to transit their territory without a visa (also for a period limited to five days). The proposal is optional for new Member States but mandatory for the fifteen that fully participate in the Schengen area. (European Commission, *Press Release: The Commission Adopts Two Proposals Facilitating Transit of Third Country Nationals Requiring a Visa*, IP/05/1143, Sept. 15, 2005, EUROPA website, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1143&format=HTML&aged=0&language=EN&guiLanguage=en>.)

EU Court Upholds Community's Power to Protect the Environment

In a judgment issued on September 13, 2005, the European Court of Justice upheld the Commission's application to annul the Council Framework Decision on the Protection of the Environment Through Criminal Law. Under the EC Treaty, the European Commission has the power to initiate legislation on environmental issues. The European Parliament also plays a role in the legislative process. Therefore, the Commission argued that the Decision adopted by the Council infringed upon its powers, because legislation on the environment can be adopted only through the "Community method" as provided by the EC Treaty. The Council adopted the Decision as an aspect of police and judicial cooperation among the Member States in criminal matters. The Decision required Member States to criminalize certain conduct that may have detrimental effects on the environment. The Court annulled the Decision on the grounds that it encroached upon the powers of the Community in environmental matters granted by the EC Treaty, thereby violating the Treaty on the European Union that gives priority to such powers. (European Commission, *Press Release: The European Community has the Power to Require the Member States to Lay Down Criminal Penalties for the Purpose of Protecting the Environment*, CJE/05/75, Sept. 13, 2005, EUROPA website, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=CJE/05/75&format=HTML&aged=0&language=EN&guiLanguage=en>.)



EU and China Agreement on Climate Change

The European Union and China have a longstanding history on cooperation on a number of issues, including the environment. Both are parties to the United Nations Framework Convention on Climate Change and the Kyoto Protocol. One significant outcome of the recent EU – China summit is the Partnership on Climate Change, agreed upon on September 2, 2005. The Partnership aims to develop and employ clean energy technology.

The Partnership encompasses the China-EU Action Plan on Clean Coal and the China-EU Action Plan on Energy Efficiency and Renewable Energies. It contains two concrete cooperation objectives to be met by parties by 2020: 1) to develop in China and in the EU advanced “zero-emissions” coal technology that will allow the capture of CO₂ emissions from coal-fired plants; and 2) to reduce the cost of energy-related technologies.

The agreement will also reinforce the parties’ commitment to the Clean Development Mechanism envisioned by the Kyoto protocol. (European Commission, *Press Release: EU and China Partnership on Climate Change*, Memo/05/298, Sept. 2005, EUROPA website, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/298&format=HTML&aged=0&language=EN&guiLanguage=en>.)



ISRAEL'S CONSTRUCTION OF A BARRIER IN THE WEST BANK AND THE IMPACT OF THE INTERNATIONAL COURT OF JUSTICE ADVISORY OPINION

Prepared by Ruth Levush, Senior Foreign Law Specialist, Eastern Law Division

On September 15, 2005, an expanded panel of nine justices of Israel's Supreme Court, sitting as a High Court of Justice (HCJ), granted a petition to dismantle the barrier constructed by the Israel Defense Force (IDF) in Alfei Menashe, beyond the "Green Line."¹ In reaching its decision,² the Court examined the effect of the International Court of Justice (ICJ) advisory opinion and concluded that while it would grant full weight to the rules of international law as developed and interpreted by the ICJ, it is not bound by the ICJ's conclusion. The HCJ held that Israel has the authority to build the barrier in the West Bank and was under no obligation to move it to within the Green Line. According to the ruling, the barrier should not be treated as a whole. Rather, each one of its sections should be examined separately for proportionality in order to balance Israel's security needs and the human rights of Palestinians. The HCJ held that the particular barrier around Alfei Menashe was not proportional and therefore ordered it to be re-routed.

*For a comprehensive review of the issue and legal resource citations, see *Israel's Construction of a Barrier in the West Bank: Legal Ramifications, Report for Congress (March 2005)*, available from the Directorate of Legal Research, at 7-9148. Law Library File No. 2005-01685. An updated report is forthcoming.*

I Background

In 2002, Israel began the construction of a barrier along the West Bank, the area west of the Jordan River that had been part of Jordan before 1967. The barrier was proclaimed to be an effort to protect the lives of its citizens from terrorism perpetrated by Palestinian suicide bombers and other terrorists since September 2000. The construction of the barrier in various areas of the West Bank, among other measures, is viewed by Israel as having contributed to a drastic reduction in loss of life and injuries incurred through terrorist actions. Palestinians strongly objected to the construction of the barrier, arguing that it negatively impacts their quality of life and that its real objective was in fact Israeli annexation of West Bank land that they view as part of their future State.

On October 21, 2003, the U.N. General Assembly adopted a resolution demanding that Israel stop construction and reverse the building of the barrier. After determining in its resolution that construction of the barrier was in violation of international law, the General Assembly proceeded to request that the International Court of Justice (ICJ) issue an advisory opinion regarding the consequences arising from the construction.

¹ The "Green Line" in the West Bank is based on the General Armistice Agreement, Hashemite Jordan Kingdom-Israel, Apr. 3, 1949, 42 U.N.T.S. 304-320, and is not recognized as a final border.

² HCJ 7957/04 Zaharan Yunes Mahmud Maraba et al. v. Israel's Prime Minister et al., State of Israel, the Judicial Authority website, at <http://elyon1.court.gov.il/Files/04/570/079/a14/04079570.a14.pdf> (last visited Sept. 19, 2005).



The ICJ issued its opinion on July 9, 2004. The majority opinion held that Israel was in breach of international humanitarian and human rights law and that repeated deadly terrorist attacks against Israel and Israelis originating from the West Bank did not create a right for Israel to self-defense. The ICJ majority opinion further ruled that the exercise of a right to self-defense does not apply in a case where the defense is against non-state perpetrators of terrorism. The ICJ held that Israel had not established grounds for the necessity of constructing the barrier.

The ICJ American judge, Thomas Buergenthal, dissented, holding that the Court did not have before it the requisite factual basis for its “sweeping findings.” Judge Buergenthal further opined that the ICJ determination that a right to self-defense cannot be ascertained against non-state actors is “wrong.” He contended that military necessity and security needs, given the repeated deadly terrorist attacks on Israel and its people, could preclude wrongfulness if it is shown that the measures taken are proportional. According to Judge Buergenthal, the ICJ passed its judgment without examining any facts regarding the nature and scope of the deadly terrorist attacks to which Israel is exposed or the factual situation regarding specific segments of the wall, their defensive purpose, and related topographical considerations.

On July 20, 2004, shortly after the ICJ rendered its advisory opinion, the U.N. General Assembly passed a resolution demanding that Israel abide by the ICJ ruling to dismantle the barrier. The resolution passed by a vote of 150 to 6 (including the United States), with 10 abstentions.

II. The HCJ Leading Decision in the *Beit Sourik* Case³

The HCJ made a different legal evaluation of the barrier construction project. In its decision in the *Beit Sourik* case, rendered nine days before the ICJ rendered its opinion, the HCJ recognized the conflicting rights of both the Palestinian petitioners and the Israeli military. It held that international humanitarian law applied to the West Bank, but that the military commander had a right to order the construction of a barrier in the area under belligerent occupation based on military considerations. The HCJ applied the rule of proportionality, by balancing the harm caused by the construction against the military benefit it provides. It held that the proportionality of the fence (barrier) should be determined in accordance with the answers to the following three questions:

1. Is there a rational nexus between the location of the fence’s path and achieving the goal?
2. Among the different paths of the fence that could achieve the goal, was the path selected the least harmful?
3. Is the harm caused to the local residents by the elected path so severe that there is no appropriate balance between the harm and the security benefit arising from it?

Accordingly, the path selected will be found disproportional if an alternative path can be found to provide a lesser security advantage but cause significantly smaller harm.

³ HCJ 2056/04 *Beit Sourik* et al. v. Government of Israel et al., State of Israel, the Judicial Authority website, at <http://elyon1.court.gov.il/files/04/560/020/a28/04020560 tmp.a28.HTM>.



Based on an evaluation of the specific evidence submitted by the petitioners, the HCJ accepted most petitions after determining that the harm alleged in these cases was not proportional to the benefit and could be minimized by a selection of alternative construction routes.

III. The HCJ Leading Decision in the *Alfei Menashe* Case and the Impact of the ICJ's Decision

Significance of the Alfei Menashe Decision

Since the beginning of the construction of the barrier, about ninety petitions have been submitted to Israel's Supreme Court. Forty-four have been resolved, typically by agreements reached between the parties, and after modifications of the barrier route; forty-three petitions are still pending, in anticipation of the Israeli Court determination regarding the influence of the ICJ's opinion on its own decisions. On September 2005, the HCJ rendered a decision specifically addressing the ICJ advisory opinion and its implications.⁴

General Law

In a unanimous decision by nine justices (with one Justice concurring with the verdict but not with the reasoning) the HCJ held that Judea and Samaria (the West Bank) are held by Israel in belligerent occupation and are controlled in accordance with public international law regarding belligerent occupation. Based on regulation 43 of the Hague Regulations, the military commander is authorized to take all steps necessary to ensure security, the HCJ held. This authority is not conditional upon the question of whether Israeli settlement conforms to international law, a question on which the HCJ took no stand. The HCJ held that Israelis living in the area held under Israel's control in belligerent occupation are entitled to the constitutional rights granted by Israel's Basic Laws and common law to every person within Israel, including the right to security, property rights, freedom of movement, freedom of profession, etc. Therefore, the military commander is authorized to erect a barrier in order to protect the lives and safety of Israeli settlers in the area.⁵

In determining the route of the barrier, the HCJ held, the military commander must take into account both security-military considerations regarding defense of the state and the human rights of the local Arab population and balance them according to the principle of proportionality.⁶ The HCJ reaffirmed the *Beit Sourik* ruling that the question of the legality of the barrier according to international law should not be answered sweepingly, but rather each segment of the route must be checked to determine whether it infringes upon the rights of the Palestinian residents and whether the impingement is proportionate.

The Difference Between the ICJ Decision and the HCJ's Beit Sourik Decision

Having examined the ICJ advisory opinion, the HCJ concluded that although the normative basis upon which both the ICJ and the HCJ decisions in the *Beit Sourik* case relied was a common one, the factual bases upon which each court decided was different and therefore resulted in different

⁴ *Supra* note 2, ¶¶ 18-23.

⁵ *Id.*

⁶ *Id.*, ¶¶ 24-30.



conclusions. Based on specific statements in the decisions of four ICJ Judges, Judges Buergenthal, Higgins, Kooijmans and Owada, pointing to the lack of sufficient information, Chief Justice Barak recognizes that the “meager factual basis regarding Israel’s security-military need for constructing the fence did not escape the eyes of the Judges at the International Court in the Hague.”⁷ In an *obiter dictum*, he expresses his doubts as to who is responsible for the neglect in considering Israel’s security-military needs. He states:

There is no need, and we do not have before us a sufficient factual basis to determine who is guilty of this serious omission. It is questionable whether it is the file of evidence that was submitted to the Court; or an omission of the State of Israel itself, or the lack of willingness of the Court to resort to data submitted to it by Israel and to other data accessible to all. And may be it is the method of the examination, that examined the fence as a whole, without examining its different portions...⁸

Chief Justice Barak further concludes:

Be that as it may, the reality is that the International Court at The Hague based its judgment on a factual basis regarding the injury to the rights of the Palestinian residents, without dealing with the factual basis regarding the security-military justification for this injury. In contrast, in the *Beit Sourik* case, the Court was guided by an extensive factual basis regarding both the impingement upon the human rights of the local residents as well as the security-military needs. This comprehensive factual basis allowed the Court to decide that certain segments of the fence violate rules of international law, and that others do not violate those rules...⁹

An additional difference between the ICJ’s and the HJC’s rulings relates to the scope of injury to the rights of the local residents. As a result of the factual basis before the ICJ, full weight was placed on the rights violation side of the scales. No weight was given to the state’s security-military needs, therefore, there was also no discussion of the question of the impingement’s proportionality or the margin of appreciation. The result is the conclusion of the ICJ that Israel violated international law. The HJC held:

The different factual basis resulted in different legal conclusions. This is particularly evident in those portions of the opinion of the International Court in The Hague dealing with *Kalkilia*. The Court laid on one scale the serious injuries to the rights of Palestinians in *Kalkilia*. Even if we remove the inaccuracy in these data, it is enough in what remains to indicate a serious injury to their rights. On the other scale the Court did not lay - because of the factual basis provided to it - any data regarding security-military considerations. It was not mentioned that the city *Kalkilia* is located at a distance of 2 kilometers (1.25 miles) from the (Israeli) city of *Kfar-Saba*; that *Kalkilia* served as a transfer point of suicide bombers into Israel, especially in the years 2002-2003, for conducting mega attacks within the areas of the State of Israel; that adjacent to the city - and within Israel - passes the Cross Israel Road (Route No. 6), and that its users need to be protected; that the route of the fence in the western part of the city mostly coincides with the Green Line and part of it is in Israel; that ever since the fence was built around *Kalkilia* -

⁷ *Id.*, ¶ 46, and especially ¶ 64 (last visited Sept. 19, 2005).

⁸ *Id.*, ¶ 65, translated from Hebrew by the author (last visited Sept. 19, 2005).

⁹ *Id.*



including the barrier in its western part touching Route No. 6 - terrorist infiltrations from this area have ceased.¹⁰

The HCJ held that the difference in the factual basis was influenced by the difference in the process of the ICJ case and that of the *Beit Sourik* case. In the process before the ICJ there were no injured parties. Israel was not a party to the process. There was no adversary process designed to substantiate a factual basis by making a determination between contradictory factual data. The process before the HJC in the *Beit Sourik* case, however, was less formal and enabled the parties, during the hearings, to offer alternative routes to be examined by the other party.¹¹

The difference between the results of the decisions also stems from the scope of examination. The ICJ considered the entire barrier route as a whole, without having any detailed specific reference to the local population in each segment of the barrier's route and without differentiating between segments adjacent to the Green Line, those that do not contain Palestinian localities or agricultural land, and those whose location causes grave injury to the local residents. Unlike the ICJ decision, the *Beit Sourik* case dealt with one specific segment of the barrier.¹²

The Impact of the ICJ's Advisory Opinion on the Beit Sourik Ruling

Based on an extensive review of the ICJ's ruling, the HCJ concluded that although the normative basis for both decisions is the same, the factual basis presented to each court was different. Therefore Israel's Supreme Court will

... grant full weight to the rules of international law, as developed and interpreted by the ICJ, which is the highest judicial body in international law. In contrast, the ICJ's conclusion, based upon a different factual basis, is not *res judicata* and does not obligate the Supreme Court of Israel to determine that all segments of the fence violate international law.¹³

In accordance with the *Beit Sourik* ruling, the Israeli Supreme Court will continue to examine the particular circumstances of each segment of the route of the barrier as they are brought before the Court's for a ruling and examine whether the given segment meets the requirement for proportional balance between security-military needs and the rights of the local population. In so doing, the Court will not disregard the complete project, but its determination will always be specific for each segment as part of the whole.¹⁴

A Determination in the Alfei Menashe Case

The HCJ examined the specific facts of the barrier in the case at hand in accordance with the ruling cited above. Alfei Menashe is an Israeli community in Samaria, southeast of the Palestinian

¹⁰ *Id.*, ¶ 68, translated from Hebrew by author (last visited Sept. 19, 2005).

¹¹ *Id.*, ¶ 69.

¹² *Id.*, ¶ 70.

¹³ HCJ 7957/04 The Judgment on the Fence Surrounding Alfei Menashe, at http://elyon1.court.gov.il/heb/dover/html/hodaot_hanhalat.htm#msg4862 (last visited Sept 19, 2005). English summary provided by the court administration spokeswoman.

¹⁴ Zaharan Yunes Mahmad Maraba et al. v. Israel's Prime Minister et al., *supra* note 4, ¶ 74.



town of Qalqiliya, approximately four kilometers (2.5 miles) beyond the Green Line. The petition centers on the legality of the barrier that was constructed in August 2003 and that surrounds Alfei Menashe and five Palestinian villages, creating an enclave of those five villages located and Alfei Menashe on the “Israeli” side of the barrier. Residents of the Palestinian villages, with support from their village council heads and the Association for Civil Rights in Israel, submitted the petition.

The HCJ was convinced that the decision to erect the fence in the Alfei Menashe area was based not on political but on the security-military considerations of preventing infiltration by terrorists into Israel and into Israeli communities in the Judea and Samaria (West Bank) area. The HCJ recognized that the barrier was a central security component in the fight against terrorism, that security-military considerations prevented building the fence on the Green Line, and that the barrier is inherently temporary. The decision to construct the barrier at the Alfei Menashe enclave was therefore within the framework of the military commander's authority.

However, the HCJ was not convinced that the route of the barrier is proportionate. The Court recognized that the barrier makes the lives of the enclave residents very difficult, by creating a chokehold around the villages and severely injuring their entire fabric of life. The Court, however, rejected the petitioners' argument that the state can make due with a barrier on the Green Line. The Court determined that constructing the barrier on the Green Line would leave Alfei Menashe on the eastern side of the barrier, vulnerable to terrorist attacks. Having evaluated all facts, the Court was not convinced that there is a security-military reason to include in the enclave the five villages in its southwest, northern, and northwestern part. If the route is changed, the HCJ concluded, it would have the additional effect of removing the two barriers that separate Qalqiliya and the town of Habla south of it, thus reconnecting them as one urban bloc. The Court stated that the necessary effort had not been made to find an alternate route that could ensure security and cause less injury to the residents of the villages, nor had such a route been examined in detail.

The HCJ ordered the state to reconsider the existing route within a reasonable period and to examine the possibility of removing the enclave villages – all of them, or some of them – from the “Israeli” side of the barrier, while examining security alternatives that lessen the injury to the daily lives of the residents of the Palestinian villages in the enclave.

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