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WORLD LAW BULLETIN

June 2003

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the Netherlands, Singapore, Thailand)

Tobacco Regulation (Japan, Lithuania)

Marijuana Law (Australia, Canada)

Special Supplement--

Belgium: War Crimes—Law of Universal Jurisdiction

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

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AFRICA

BOTSWANA–HIV Drug Program

Botswana is the first country in Africa to implement widespread distribution of antiretroviral (ARV) drugs through its public health care system under a year-old program designated *Masa* or “New Dawn” (*United Nations Integrated Regional Information Networks*, May 28, 2003). A multi-sectoral response to the disease has been employed under the National AIDS Coordinating Agency, which reports directly to the President of Botswana. Its goal is to have no new HIV infections in the country by 2016.

The *Masa* program provides free ARVs and counseling, focusing in the interim on the four main problem areas of Francistown, Gaborone, Serowe, and Maun. Those being targeted are expectant mothers, children, TB patients, and adult patients with AIDS-defining illnesses. The Ministry of Health, with the assistance of the African Region’s African Comprehensive HIV/AIDS Partnership, manages and implements the program. People are still reluctant to disclose their HIV status, which undermines governmental efforts to effectively distribute ARV treatments. In addition, the HIV Vaccine Trials Network has launched an international clinical trial which will test an HIV prevention vaccine in Botswana and the United States (*Southern African Press Association*, May 15, 2003; *The Chronicle* (Lilongwe, Malawi) May 15, 2003). The vaccine is called EPHIV-1090 and would be tested on 42 volunteers. Participants would receive inoculations at the same time in the Boston, Massachusetts, area, St. Louis, Missouri, and Gaborone, Botswana.
(Charles Mwalimu, 7-0637)

AMERICAS

ARGENTINA–New President’s Criminal Law, Other Initiatives

Nestor Kirchner was sworn in as President of Argentina on May 25, 2003, following a campaign in which he promised fiscal probity and prudence backed by his record governing Santa Cruz province for 12 years. To this end, he has already assigned the necessary funds to render operative six special tax courts that had heretofore never received the necessary budgetary support. His administration has promised to strengthen MERCOSUR (Common Market of the South) not only among member countries (Brazil, Paraguay, and Uruguay, with Chile and Bolivia as associate members) but also in its relations with the Andean Pact group.

Kirchner also emphasized the urgent need to control crime, which in the last decade increased to unprecedented levels, especially blackmail-kidnapings. The new administration will speed up the passing of pending legislation that will amend the Code of Criminal Procedure to allow the judges and prosecutors to go beyond their jurisdiction to investigate this type of crime and to authorize prosecutors to order searches and wiretaps. Punishments will also be increased from 10 years to 25 years of imprisonment when the victim of a crime is pregnant or older than 70 years old or if the crime is perpetrated by a public officer or a present or former member of the security forces. A new feature of the regulation of crime is the creation of the status of “repentant,” a defendant who might get a reduction in his or her sentence by naming other participants in the crime. (*Diario Clarin*, Buenos Aires, June 2, 2003, via <http://www.clarin.com>)
(Graciela Rodriguez-Ferrand, 7-9818)

CANADA–Marijuana Reform

Canada's Minister of Justice has introduced a bill in the House of Commons to reform legislation outlawing the use of marijuana. ("Liberals To Lighten Penalties on Pot Use," Canadian Press, via <http://www.canada.com>, May 27, 2003). This bill has been expected for several months and, until recently, the Government indicated that its aim would be to "decriminalize" possession of small amounts of the drug. The concerns of Canadian police officials and U.S. law enforcement officials who were briefed about the plan, as well as criticisms voiced by members of the Opposition, have all led the Government to drop the term "decriminalization" in favor of the term "sentencing reform." Under the proposal, possession of marijuana, even for personal use, would still be against the law. However, possession of 15 grams or less would only be a minor offense, punishable with a fine, that is not entered as a criminal record. Under the Cannabis Reform Bill, fines can generally be up to approximately \$Can200 for minors and approximately \$300 for adults. In aggravated circumstances, such as possessing marijuana while driving or on school property, fines could be higher.

In recent years, Canada's marijuana laws have been successfully challenged in the courts on several grounds, including the lack of an exception for medical use. Whether such an exception is constitutionally required has not yet been decided by the Supreme Court. The bill introduced by the Minister of Justice does not address this issue. However, to balance the reforms it would bring to the laws respecting possession of small amounts, the bill provides for increases in the maximum prison terms for growers and traffickers.

(Stephen Clarke, 7-7121)

MEXICO–Fine Imposed on the Institutional Revolutionary Party

On May 13, 2003, the Electoral Tribunal of the Federal Judicial Branch affirmed the one-billion *peso* (US\$49.5 million) fine imposed by the Federal Electoral Institute on the Institutional Revolutionary Party (PRI) last March for not reporting additional income during the 2000 presidential campaign. The case became known as the Pemexgate case because the investigation was triggered by reports that the PRI had received funds from PEMEX, the state-owned oil company, through PEMEX's workers' union. These allegations were not proved. The PRI was in power for 71 years, a tenure which ended when President Vicente Fox of the National Action Party (PAN) won the elections in 2000. ("Mexico's Political Parties Call PRI Fine Historic Victory," Panama City *ACAN-EFE*, via FBIS, May 14, 2003.)

(Norma C. Gutiérrez, 7-4314)

MEXICO–New Forestry Law

Mexico promulgated a new forestry statute, the "General Law on Sustained Forestry Development," which implements article 27 of the Mexican Constitution. The Law regulates the organization and administration of the forestry public sector. It covers the national policy on forest matters; the management and exploitation of forest resources; measures for forest conservation; incentives for forest development; social participation in forestry matters; and means of forest control, inspection, and sanctions. (*Diario Oficial*, Feb. 25, 2003.)

(Norma C. Gutiérrez, 7-4314)

PERU--Monetary Awards for Human Rights Victims; Lori Berenson Case

The government of Peru recently announced that it has paid a total of US\$4 million to victims or their families in eight cases of human rights violations committed over the last 20 years. The Justice Ministry had heard the cases and made the awards at the recommendation of the Inter-American Court of Human Rights. The cases included the forced disappearance of two students, presumably at the hands of the Peruvian army; the extrajudicial executions of 15 people in Lima in 1991 attributed to a paramilitary group; the seizure of a television station; and removal from office of three judges on the Constitutional Court who opposed the reelection in 2000 of former President Alberto Fujimori. The three vacated seats on the Court were restored to the judges who also received money for reparations.

The Ministry of Justice also heard two other cases at the behest of the Inter-American Court. One involved a Chilean convicted of directing terrorist kidnappings; the other involved Lori Berenson, an American citizen who was arrested in Lima and charged with the crime of terrorism. She was tried in a military court, convicted, and sentenced to 20 years in prison. The Peruvian ministry agreed to hold new trials for these individuals in the civil courts. (“Peru Paid \$4 Million to Rights Abuse Victims,” *ACAN-EFE Press Agency*, May 11, 2003, via FBIS.)
(Sandra Sawicki, 7-9819)

ASIA**CHINA–New Economic Measures Due to SARS**

Emergency measures designed to deal with the economic impact of the SARS epidemic and to encourage its rapid control were announced jointly by the Finance Ministry and the Health Ministry on May 8, 2003. All localities are urged to give free medical services to poverty-stricken citizens, so as to ensure timely treatment regardless of economic status. Medical workers considered to be on the front lines of the struggle against SARS will be freed of income taxes, and individual vegetable vendors in Beijing, one of the hardest hit cities, will be exempt from the value-added tax, individual income tax, and other levies during the epidemic. Preferential tax policies have been created to exempt medical equipment sent by overseas donors from import duties.

In addition, funds equivalent to US\$242 million will be set aside for SARS prevention and control; almost half has already been allocated. Local finance departments across the country will also arrange funding for SARS control. A central fund to support development of tests for the SARS virus and medications for treatment has been allocated, and money has been committed for the construction of infrastructure facilities for disease prevention and control. (*Washington Post*, May 8, 2003, at A30; *Xinhua*, May 8, 2003, via LEXIS/NEXIS, ASIAPC library.)
(Constance A. Johnson, 7-9829)

CHINA–New Regulations and Judicial Interpretation re Contagious Disease

On May 9, 2003, effective the same day, the State Council issued the Emergency Regulations on Sudden Outbreaks of Public Health Incidents. Chinese officials stated that although the Regulations were formulated to combat SARS, “they are also an important step...toward establishing a long-term, comprehensive contingency mechanism.” The Regulations for the first time clearly stipulate a time of one

to two hours for reporting a major epidemic. They also establish for the first time a national reporting hotline and a two-way information network rather than a top-down only mode of communication. Additionally, the Regulations create an organizational system for dealing with public health emergencies that is led by the State Council rather than the Ministry of Health, a move anticipated to help resolve the problem of inadequate enforcement. (“PRC Officials Explain Public Health Emergency Regulations to Xinhua Reporters,” *Xinhua*, May 16, 2003, as translated in FBIS.)

On May 14, 2003, effective as of May 15, the Supreme People’s Court and Supreme People’s Procuratorate jointly issued “Interpretation of Several Issues Concerning Specific Legal Applications for Dealing with Criminal Cases Involving Hindering the Prevention or Control of Calamities Including Sudden Contagious Disease and Epidemic Outbreaks.” The Interpretation stipulates that persons convicted of intentionally spreading sudden contagious disease pathogens that endanger public security or lead to serious personal injury, death, or the heavy loss of public or private property will subject to imprisonment for 10 years to life or the death penalty. (“Supreme Court Explains Punishment for Intentional Spread of Contagious Disease,” *Xinhua*, May 14, 2003, as translated in FBIS, May 15, 2003.) (W. Zeldin, 7-9832)

INDIA–Anti-Defection Law

A bill to strengthen the anti-defection law, which binds elected officials to their political parties, was introduced in the Parliament of India on May 4, 2003. The bill also pegs the size of the Council of Ministers at the central and local levels to the size of the legislature at the corresponding level. It provides that the number of ministers in the central government and in the state governments may not exceed 10 percent of the member strengths of Parliament and the state legislatures, respectively. (*Hindustan Times*, May 5, 2003.) (Krishan Nehra, 7-7103)

INDIA--Foreign Investment in Electronic Media

Having limited foreign investment in print media to 26 percent in any one enterprise, the Indian Government has decided to similarly cap, at the same percentage, the amount of foreign investment in news channels for satellite uplinking from within the country. The decision, which was made in April 2003, came upon an application made by media baron Rupert Murdoch’s wholly foreign-owned Star TV to uplink from Indian soil following the termination of its contract with India’s NDTV. (*The Hindu*, Mar. 19, 2003.) (Krishan Nehra, 7-7103)

JAPAN–Passive Smoking Prevention

The Health Promotion Act (Law No. 103 of 2002) became effective as of May 1, 2003. Article 25 of the Act provides that persons who manage a facility used by many people, e.g., a school, office, theater, restaurant, or retail store, are to make an effort to prevent passive smoking by non-smokers. In addition, the Ministry of Health, Labor, and Welfare issued a Notice on April 30, 2003, that provides examples of adequate measures to prevent passive smoking. No sanction is provided in the law for violation of article 25. However, many municipal governments and firms have entirely banned smoking in their facilities in accordance with the Act and the Notice. (*Asahi Shimbun*, May 1, 2003; The Ministry of Health, Labor & Welfare, <http://www.mhlw.go.jp/topics/tobacco/houkoku/judou.html>) (Sayuri Umeda 7-0075)

KAZAKHSTAN–Tax Reform

The national legislature adopted amendments to the Fundamentals of Tax Legislation proposed by President Nazarbayev. Aimed at the legalization of high incomes and the development of the middle class in the country, the new Law provides for a significant reduction of the tax rate. The VAT will be reduced from 20% to 15% and the highest rate of the individual income tax will be reduced from 30% to 20%. According to the amendments, the social security tax will range from 20% to 7% under a regressive scale, depending on the employers' spending on wages. The areas in which special tax regimes are used are also expanded. The minimum non-taxable income is raised by over 30%, and as of January 1, 2004, it will be equal to US\$8 per month. Individual income tax rates are lowered, while their differentiation is preserved. The tax for incomes under US\$86 per month will be 5%, while the maximum tax rate is 20% for incomes over US\$3,500 per month. Special privileges and exemptions from corporate tax and VAT are foreseen for enterprises manufacturing products with a high added value and considerable depreciation costs. (*Interfax News Agency*, May 16, 2003.)

(Peter Roudik, 7-9861)

PAKISTAN–Shariat Law

The North-West Frontier Province Assembly of Pakistan unanimously passed the Shariat Bill, 2003, on June 1, 2003; it became effective immediately. Henceforth, the Shariat law, which exempts non-Muslims from its applicability, will override all other laws in the provincial courts, and all educational and financial sectors are required to be brought in line with Islamic teaching.

The Provincial Government shortly may also pass the Hisba Act, called the implementing arm of the above Act, which will grant judicial powers to a single man (*mokhtaseb*), to be appointed at provincial, district and sub-district levels, with his own religious police force. His rulings on issues of vice and virtue will be non-appealable. The new bill has raised concerns among the educated elite, the military, and, apparently, even among the presidential circle in Islamabad. It has been described as an Urdu translation of the Shariat Act, 1991, which having been passed by the National Assembly, went to the Senate floor but could not be passed there because the then President dismissed the Nawaz Sharif government of the time. (*The New York Times*, June 3, 2003; *The Dawn*, June 3, 2003.)

(Krishan Nehra, 7-7103)

SINGAPORE–Insurance Payouts for SARS

The Manpower Ministry of Singapore amended the Workmen's Compensation Act on May 20, 2003, to include SARS as an occupational disease that can be compensated. Manual laborers regardless of their income, or persons doing non-manual labor but earning S\$1,600 (about US\$927) or less monthly, will be eligible for compensation if they contract SARS in certain occupations. Such persons include healthcare workers treating SARS patients and those involved in SARS research, postmortems of SARS cases, or funeral services. The Ministry will also consider claims made on a case-by-case basis when the SARS victim's occupation is not listed, provided that the employee is covered under the Act. ("Singapore Changes Rules To Include SARS Payouts," *Insurance Day*, May 21, 2003, via LEXIS/NEXIS.)

(W. Zeldin, 7-9832)

TAIWAN–Child and Juvenile Welfare Law Adopted

The Legislative Yuan passed a new Child and Juvenile Welfare Law on May 2, 2003, aimed at protecting youth under 18 years of age and characterized by officials as possibly “the toughest child protection statute in Asia.” The Law fines parents and guardians from NT\$3,000 to 300,000 (about US\$86 to 8,641) if they are found negligent in monitoring their children’s activities. The parents will be held responsible for children caught smoking, drinking, taking drugs, drag racing motorbikes, running away from school or home, viewing violent or pornographic television, video, or printed materials, etc. Any adult found providing cigarettes, alcohol, or betel nuts to minors will be fined up to NT\$15,000 (about US\$432); those guilty of giving drugs to minors will be subject to a fine of up to NT\$300,000 and imprisonment. Parents and guardians are also required to prevent their children from going to sex clubs and video game arcades. A fine of up to NT\$15,000 will be imposed on those found to leave their children under the age of six at home alone. (“Taiwan Parents To Get Fined for Misbehavior of Children,” *Deutsche Presse-Agentur*, May 2, 2003, via LEXIS/NEXIS.)

(W. Zeldin, 7-9832)

TAIWAN–Human Rights Law To Be Drafted

The Human Rights Advisory Group, a body under the Office of the President, is drafting the Basic Human Rights Law of the Republic of China, to be submitted to the legislature in July or August 2003. The Law will incorporate important international human rights treaties into domestic law; the authors of the draft are referring to the United Nations human rights treaties, European documents such as the European Convention on Human Rights, and the constitutions of Germany, Japan, and the United States. There will be provisions to protect both the civil and political rights and the economic, social, and cultural rights of the people. A draft National Human Rights Commission Institutional Law was submitted to the legislative branch in 2002, but has not yet been adopted. (*Central News Agency*, May 4, 2003, via FBIS.) (Constance A. Johnson, 7-9829)

THAILAND–New Measures for Visitors from SARS-Affected Countries

In its fifth announcement since March, the Public Health Ministry announced on May 2, 2003, that for 10 days after their arrival, people entering Thailand from SARS-affected countries and territories will be given the choice of wearing a face mask, staying at home, or having a medical check-up every three days. Previous measures had advised such travelers advised to isolate themselves for the 10 days. The medical check-ups would be in addition to the present daily checks carried out by SARS-control authorities on listed travelers by phone or home visit for the 10-day observation period. The punishment for breaching the new measures is the same as before—a maximum six-month prison term and/or a fine of up to Bt10,000 (about US\$239). After being screened at the point of entry, visitors will have their particulars recorded, then be monitored at their place of residence by a local undercover SARS control team. According to Dr. Thawat Suntharajarn, head of Thailand’s SARS control center, “no one will be out of sight of our surveillance network. And if they break the rules and cause problems, they will be punished for sure.” (“Thai Health Ministry To Issue New Measures on Those from SARS-Affected Nations,” Bangkok *The Nation*, Internet version, May 3, 2003, via FBIS.)

In a related development, on May 19, 2003, the Thai Cabinet agreed to buy SARS-related insurance cover for foreign tourists. It would pay out \$100,000 should a tourist die from SARS contracted

while visiting Thailand. (*Insurance Day*, May 21, 2003, via LEXIS/NEXIS.)
(W. Zeldin, 7-9832)

VIETNAM–Law on Supervision

On May 20, 2003, the National Assembly (NA) approved a Law on Supervision, which was 10 years in the making. The Law is expected to improve the NA's efficiency and increase its power. It enables the NA to dismiss the President, Prime Minister, heads of the Supreme People's Court and the Supreme People's Procuracy, and other NA-elected officials if they fail to win a no-confidence vote (a vote of agreement constituted by more than 20% of the delegates). Delegates also now have the authority to remove part or all of a legal document not in conformity with the Constitution and laws. If they find violations by an executive body, they can request the responsible agency and officials to solve the problem; if it is still unresolved within 30 days, they will notify the body's superiors and report the matter to the NA. Inquiry sessions of Cabinet members are also regulated under the new Law. ("Politics & Law: Vietnam's Assembly Approved Law Supervisory Activities," *Vietnam News Briefs*, May 21, 2003; "Law To Fortify Lawmakers," *The Vietnam Investment Review*, May 12, 2003, both via LEXIS/NEXIS.)
(W. Zeldin, 7-9832)

EUROPE

AUSTRIA–Holocaust Compensation

On April 25, 2003, Austria extended the period during which forced and slave labor victims of the National Socialist era may claim compensation (*Bundesgesetzblatt* No. 18/2003) to December 31, 2003, and extended the operational period of the Fund to December 31, 2004. The Fund was created in August 2000, through enactment of the Conciliation Fund Act (*Bundesgesetzblatt* No. 74/2000), which also provides the terms under which individuals who served as forced or slave laborers on the territory of present day Austria may claim a one-time compensation payment. The resources of the Fund were contributed by the Austrian Federal government, Austrian local government units, and Austrian industry.
(Edith Palmer, 7-9860)

BELGIUM–Law Favors Victims of Spousal Abuse

The Law of January 28, 2003, provides that if a spouse commits or attempts rape or assault and battery or causes injuries of any kind to the other spouse, the victimized spouse, upon his or her request to the court, will be awarded the use of the family residence in all but exceptional cases (*Moniteur Belge*, Feb. 12, 2003). In the case of a divorce granted fully or partially on the above grounds of violence, the victimized spouse will in most cases be awarded the family residence. The same rule applies to violence between legal cohabitants. The provisions of the 2003 Law were incorporated in articles 223, 1447, and 1479 of the Civil Code and in article 1280 of the Judiciary Code.
(George E. Glos, 7-9849)

BULGARIA–Duty-Free Shops Outlawed

According to a Government resolution, all 44 Bulgarian duty-free shops will be closed by the end of May 2003. The decision was announced on May 16 in a bid to fight the shadow economy in the country. Among the reasons cited for this decision were that tobacco products and alcoholic beverages sold

in duty-free shops are usually eventually put on the domestic market and that local enterprises operating in the duty-free sector carry out various loss-making activities, covering the losses with the net profits of the duty-free shops. In 2002, the official turnover of operations in the duty-free sector was reported as US\$109 million, but the actual turnover estimated by the Finance Ministry was more than double that amount. The Bulgarian Trade Company, which is the biggest duty-free operator in the country, announced that it will initiate legal proceedings against the Bulgarian Privatization Agency. (*Dnevnik Daily*, www.dnevnik.bg, May 21, 2003.)
(Peter Roudik, 7-9861)

BULGARIA–Toll System Introduced

The Toll System Act, together with amendments to the Road Act, Local Taxes and Charges Act, and Interior Ministry Act, has entered into force. Under this legislation, as of January 2004 a one-time payment of toll stickers will become mandatory for all automobile owners. The price for the annual sticker will initially be about US\$40, regardless of car make, weight, and engine volume. The current road tax will be revoked after the toll system enters into effect. Later, stickers for cars and trucks will be differentiated and they will be purchasable for periods of a year, six months, a month, or a week. Daily stickers will not be introduced because of the high production price. Different prices for Bulgarians and foreigners will be introduced initially, but the rates will be equalized by 2007. All receipts from sales of toll stickers will go to the government Roads Agency and will be used for maintenance of the road infrastructure. (*Durzhaven Vesnik* (Bulgarian state gazette), May 21, 2003.)
(Peter Roudik, 7-9861)

ESTONIA–Former KGB Agents’ Names Listed

Following the requirements of the Lustration Act, the Estonian official gazette, *Riigi Teataja*, started publication of lists of former KGB agents. These lists of individuals who were working for the KGB during the Soviet period but failed to voluntarily notify the authorities of that fact by March 1, 2003 (the deadline set by the Lustration Law), were prepared by the Estonian security police. None of the more than 100 names published on the initial list is well known to the general public. They are predominantly individuals of Russian origin and none of them is employed by Estonian State institutions at present. The Law provides for the publication of names of KGB associates until the lists are exhausted. (*BBC Monitoring*, May 14, 2003.)
(Peter Roudik, 7-9861)

FRANCE–Draft Bill on Organized Crime

On the first reading, the National Assembly adopted a draft bill on organized crime prepared by the government. The goal of the government is to give the justice system more effective procedural means to fight forms of organized crime that have developed over the last few years, such as trafficking in human beings and acts of torture or terrorism, and, in particular, to tackle international mafia-style structures. If adopted, the bill will result in a major overhaul of the current legislation.

The bill increases the power of the police and the public prosecutors and creates new categories of offenses. The changes include permitting house searches at night and doubling the time during which suspects can be held without formal charges from two days to four. Both measures until now have been limited to cases involving terrorism. Wiretapping as well as the infiltration of criminal networks will be

made easier. For the first time, American-style plea bargaining will be permitted for minor offenses, to lighten the load of heavily overcrowded criminal courts. There are also provisions to encourage turncoats with reduced or cancelled sentences. Furthermore, the State could give them a new identity and the means to change their life.

The socialist and communist parties and many professional organizations oppose the reform, denouncing it as detrimental to the rights of the defense. The text of the bill will be sent to the Senate, which is expected to review it at the end of June. ([Http://www.assemblee-nationale.fr/](http://www.assemblee-nationale.fr/)) (Nicole Atwill, 7-2832)

ITALY–SARS Controls

The Italian Minister of Health, by an urgent decree dated May 9, 2003, imposed strict controls on passengers arriving in Italy from areas that the World Health Organization (WHO) has determined to be affected by SARS. The ministerial decree requires such passengers to undergo sanitary controls. The necessary prophylactic measures will be adopted in order to prevent the spreading of the disease when someone arrives with symptoms fitting the WHO definition of what is suspicious for SARS.

The Italian Executive decided to adopt this decree after its Minister of Health did not succeed in obtaining approval of strict common measures at the European Union level. (*Official Gazette*, May 12, 2003.) (Giovanni Salvo, 7-9856)

LATVIA–Civil Service Reforms

The Latvian Parliament passed amendments to the Law on State Civil Service, allowing for the rotation or transfer of civil servants to different positions, including ones of lower rank and in different agencies, without announcing an open contest. The amendments took effect on January 1 of this year, after adoption by the Government. State officials may be posted to different positions with the decision of the respective institution heads, the head of the State Civil Service Administration, and the Prime Minister or respective Minister. The amendments state that the opinion of the civil servant is to be considered, but if he or she does not agree, the transfer is to be coordinated with the State Civil Service Administration, which has been placed under direct supervision of the Prime Minister. Civil servants who are transferred to lower positions will retain previous salaries and social benefits, unless the transfer is taking place due to the liquidation of the agency or a general job cut or if the worker has been deemed unfit for the previous position. The amendments also include regulations allowing the State Civil Service Administration and the Prime Minister to launch an investigation of any disciplinary case and provide for the preservation of salaries of temporarily dismissed officials undergoing investigation. (*BNS Daily News*, May 15, 2003.) (Peter Roudik, 7-9861)

LATVIA–Mandatory Travel Insurance for Foreign Visitors

Amendments to the Immigration Law that took effect on May 1, 2003, require that all foreigners entering Latvia must have a valid health and life insurance policy guaranteeing their health care costs and return trip home in case of illness or death. These conditions are applicable to citizens of all countries, except Finland, Sweden, Estonia, and Ukraine, with which Latvia has signed bilateral treaties on social security. Foreigners entering Latvia who did not purchase travel insurance beforehand will be able to buy

insurance policies at border points. The refusal to buy insurance will result in denial of entry. (*Baltic Business Weekly*, May 5, 2003.)
(Peter Roudik, 7-9861)

LITHUANIA–New Rules for Tobacco Trade

The government issued a resolution that changes tobacco retail regulations. The new rules forbid offering bonus lighters, ashtrays, or similar promotional items when retailing tobacco products and prohibit the sale of cigarette-imitating non-tobacco products, such as toys, candies, chewing gum, and the like. The new rule will come into effect on July 1, 2003. In making this decision, the State Tobacco and Alcohol Control Service used its authority to define whether a promotion or sale of a particular item is legal or not and explained that the adoption of this amendment was needed to bring existing tobacco retail legislation into conformity with the new Civil Code. (*Northrup Newsletter*, <http://www.news2biz.lt>, May 21, 2003.)
(Peter Roudik, 7-9861)

LITHUANIA–Restrictions on Beer Advertisement

The national legislature adopted amendments to the laws on advertisement and on alcohol to prohibit free promotional distribution or the use as prizes of beer and sparkling wine containing less than 15% of alcohol. The adoption of this amendment is needed to stop the spreading practice of giving out a bottle of beer for a cork or for one Lithuanian cent, which has led to a rapid growth of beer consumption, particularly among young people, and the loss of tax revenues by the State because the beer is not sold. Even though the provision of the Law that allows outdoor advertisement of alcoholic beverages was not repealed, certain restrictions in regard to outdoor advertisement were introduced. As of October 1, 2003, a ban on such advertising during outdoor mass events, festivals, and concerts will enter into force. (*BNS*, Baltic News Service, May 19, 2003.)
(Peter Roudik, 7-9861)

THE NETHERLANDS–DNA Evidence

As of September 1, 2003, the judiciary and the police will be able to use visible external personal characteristics from DNA investigations based on cell tissue in their search for as yet unidentified perpetrators. This is a new type of DNA investigation that is provided for in a bill that was adopted unanimously by the Upper House of Parliament on May 2, 2003. The new DNA investigation is important when DNA profile comparisons and other methods of detection have failed to provide results and there are few or no indications as to the identity of the suspect. It is a last resort for the judiciary and the police for solving serious crimes. The DNA investigation may only focus on determining visible external personal characteristics—the physical characteristics that a given unknown suspect has had since birth and that anyone can see. Non-visible characteristics, such as concealed hereditary disorders or diseases, may not be the subject of the new type of DNA investigation. (Ministry of Justice, *Press Release*, May 6, 2003, at <http://www.ministerievanjustitie.nl>)
(Karel Wennink, 7-9864)

THE NETHERLANDS–Electronic Signature

As of May 21, 2003, under a new law, an electronic signature that conforms to specific reliability requirements will be considered equivalent to a written signature when it comes to judicial matters. The

law lays down the requirements that must be met if an electronic signature is to be considered sufficiently reliable, including that the signature should be bound to the signatory in a unique way, that identification of the signatory should be made possible, that the signature should be the result of means solely under the control of the signatory, and that any alteration made subsequently can be traced. The law provides liability rules for certification service providers, third parties who link the unique code to a person and record this information on a digital certificate. (*De Telegraaf*, May 20, 2003, at <http://www.telegraaf.nl>) (Karel Wennink, 7-9864)

THE NETHERLANDS–SARS

The Ministries of Justice and Health are investigating whether or not emergency legislation has to be enacted that would make it possible to force persons to be admitted to a hospital if they are suspected of being infected with the SARS virus. Under present law, only those persons who actually are infected with a viral disease and who refuse to be treated can be forced to be transferred to and isolated in a hospital.

Even though there does not appear to be concrete evidence that SARS can be transferred by blood, starting May 1, 2003, persons returning to the Netherlands from a “SARS-area” are not allowed to donate blood for a period of 4 weeks. (*NRC-Handelsblad*, May 3, 2003.) (Karel Wennink, 7-9864)

RUSSIA--Cash Registers Law

The Bill on the Utilization of Cash Registers in Cash Settlements with Individuals was signed into law by the President of Russia. The Law has an exhaustive list of settlements that may be conducted without the use of cash registers, including the sale of newspapers, magazines, and similar goods securities; lottery tickets; and transport tickets. Under the Law, organizations and individual entrepreneurs will be able to handle cash settlements, including settlements through the use of payment cards, without cash registers if forms for strict record-keeping approved by the Government are used. These forms will have the same status as receipts. Rules for conducting cash operations by lending institutions with the use of cash registers will be determined by the Central Bank of Russia, which will also control the observance of this law. (*Interfax News Agency*, May 3, 2003.) (Peter Roudik, 7-9861)

RUSSIA--Individual Mining Allowed

Amendments to the Law on Precious Metals and Precious Stones that allow individuals to extract precious metals and stones entered into force on April 25, 2003. The Law states that precious metals and stones may be extracted by organizations that have obtained licenses to use subsoil areas. Precious metals and stones, except diamonds, may also be extracted by individual Russian citizens registered as individual entrepreneurs and possessing a license to use the allotted subsoil area. Amendments allow individual entrepreneurs using their own equipment to extract precious metals and stones in local subsoil areas that are not being developed industrially or that represent residual, non-standard, or written-off reserves or other subsoil areas containing a small amount of precious metals and stones. (*Interfax News Agency*, Apr. 29, 2003.) (Peter Roudik, 7-9861)

UNITED KINGDOM–Communications Bill Relaxes Cross-Media Ownership Rules

The Communications Bill aims to reform the regulatory system of the communications sector. It will transfer the functions of five different communications regulators to a newly established Office of Communications. In an attempt to “reinforce the UK’s position as one of the most attractive places for communications companies to do business,” the bill will permit cross-ownership. This will allow owners of newspapers to enter into broadcasting and, most controversially, permit foreign ownership. The House of Lords is currently threatening to defeat the bill unless the foreign ownership provision is removed. (Communications Bill, H.L. Bill 41; “Rebel Peers Toughen Stance on Broadcast Legislation,” *The Times*, May 12, 2003; “Dyke Labels US War Coverage Too Patriotic,” *Financial Times*, Apr. 25, 2003.) (Clare Feikert, 7-5262)

NEAR EAST

BAHRAIN–Refusal To Revoke Amnesty Law

Bahrain has refused to revoke its general amnesty law, enacted in October 2002, as demanded by the Bahraini national Committee for Victims of Torture. The law covered, among others, members of the law enforcement agencies whom the Committee wants to sue for alleged acts of torture. (*Agence France Presse* as reported by *Asharq Al-Awsat*, May 28, 2003.) (Issam M. Saliba, 7-9840)

ISRAEL--New Economic Recovery Plan

The Plan for the Recovery of Israel’s Economy (Statutory amendments for reaching budget goals and the economic policy for Budget Years 2003 and 2004), Bill, 5763-2003 was adopted on May 29, 2003. The plan encourages privatization of government companies by issuing their shares and selling them on the open market, as well as opening the electricity and telecommunications industries to free competition. In addition, the plan calls for cancellation of certain tax benefits, speeding the application of the tax reform which will lower tax rates on individual taxpayers, improving tax collection/enforcement, toughening of punishment for tax offenders, and imposition of special tax on employment of foreign workers, as well as certain reductions of social security and health benefits and payments. (Brief summary of the bill, <http://www.knesset.gov>; S. Shefer, “The Economic Plan,” *Haaretz*, <http://www.haaretz.co.il>, May 12, 2003.) (Ruth Levush, 7-9847)

ISRAEL–Pension Fund Reform

A major reform of the management of pension funds was adopted as a part of the Plan for the Recovery of Israel’s Economy. Under the reform plan, the funds will be nationalized and have a State-appointed administrator for each. In addition, the funds’ huge deficits will be cancelled by a State bail-out. A uniform system will be adopted for calculating pension benefits based on an averaging of the employee’s income throughout the years of employment, rather than on income received in the later years only. The age of retirement will be raised to 67 and premium rates will also be increased. The economic recovery plan (see previous item) in general and the reform of the pension funds in particular have drawn strong

opposition from various sectors of the Israeli public. The Histadrut, the main labor organization, headed a general strike to oppose the plan. (See bill summary cited in previous item; see also H. Bior *et al.*, “Thousands Protested in Jerusalem Against the Economic Plan,” *Haaretz*, <http://www.haaretz.co.il>, May 27, 2003.)

(Ruth Levush, 7-9847)

SOUTH PACIFIC

AUSTRALIA–Prime Minister Supports Medical Marijuana Trial Use

The government of New South Wales, Australia’s most populous state, will introduce legislation in the state Parliament to authorize a four-year trial of the prescription of marijuana to persons suffering chronic pain or wasting diseases. The state government has yet to detail how the cannabis would be distributed to patients. The Premier (head of the state government) suggested that new cannabis derivatives developed by the British company GW Pharmaceuticals, which include tablets and an inhalable form, would be considered. He emphasized that the government does not support decriminalization of recreational use of marijuana. John Howard, Prime Minister of Australia, expressed in-principle support for the legislation, provided that the marijuana prescription is applied only in cases where there is no mainstream medical treatment and that people are not permitted to grow their own marijuana. (*Sydney Morning Herald*, May 21 & 22, 2003, at <http://www.smh.com.au/>)

(D. DeGlopper, 7-9831)

AUSTRALIA–Progress in Reducing Tax Evasion by the Wealthy

Australia’s Commonwealth (federal) government claims progress in its ongoing campaign to reduce evasion of income tax by high-income persons in general and trial lawyers in particular. A joint taskforce was organized by the Attorney-General and the Assistant Treasurer in March 2002 to consider the activities of barristers who have repeatedly filed for bankruptcy and transferred assets to family members and thereby avoided paying tax on their high incomes. It recommended a series of amendments to the Bankruptcy Act and the Family Law Act, some of which went into effect in August 2002. A May 2, 2003, news release by the Attorney-General claims that there has already been a positive change regarding compliance with the obligation to pay income tax and details legislative and administrative changes intended to further improve compliance with the tax laws. (Commonwealth of Australia, Attorney-General’s Department, *Progress of Government Action To Strengthen Laws To Prevent Tax Abuse* (Joint News Release), May 2, 2003, at <http://www.attorneygeneralHome.nsf/>; Attorney-General’s Department, Office of Legal Services Coordination, *Use of Bankruptcy and Family Law Schemes to Avoid Payment of Tax*, at <http://www.law.gov.au/olsc>)

(D. DeGlopper, 7-9831)

INTERNATIONAL LAW AND ORGANIZATIONS

ALBANIA/US–Criminal Court Exemption Accord

On May 2, 2003, in Tirana, Albanian Prime Minister Fatos Nano and U.S. Secretary of State Colin Powell signed an agreement to exempt each other’s citizens from prosecution by the International Criminal

Court. The Czech Republic, Slovakia, Hungary, Romania, and Croatia are among the Eastern European nations that have signed similar agreements with the United States, as have Israel and Italy. (*International Herald Tribune*, May 3, 2002, <http://www.iht.com/articles/95115.htm>; <http://www.budapestnews.com>) (Karla Walker, 7-4332)

ASEAN + 3–Anti-SARS Resolution

On May 16, 2003, the Association of Southeast Asian Nations (ASEAN) along with China, South Korea, and Japan adopted a joint resolution on measures to counter the spread of SARS by standardizing border controls. The resolution calls for the introduction of standard “health declaration cards” at airports by June 15 for completion by air travelers before departure and upon arrival and for implementation by August 15 of temperature screening of people making international departures at airports. Persons with SARS symptoms would be advised to postpone travel, but it was unclear if they would be forcibly prevented from traveling. The 12 nations agreed to exchange information on passengers in order to be able to trace any who might have had contact with a suspected SARS victim and to give “priority clearance to medical equipment and supplies” related to SARS control. (“AFP: Asian Countries Agree To Standardize Border Controls in Fight Against SARS,” *Hong Kong AFP*, May 16, 2003; “E. Asia Airport Officials Agree on Measures To Contain SARS,” *Tokyo Kyodo World Service*, May 16, 2003, both via FBIS.) (W. Zeldin, 7-9832)

COLOMBIA/NICARAGUA--Suit Filed in International Court

In late April, Nicaragua filed a suit against Colombia in the International Court of Justice in the Hague, seeking Nicaraguan sovereignty over Colombian island territories and adjacent waters in the Caribbean. The islands are known as San Andres, Providencia, and Santa Catalina. Nicaragua has requested that the Esquerra-Barcenas Treaty (signed between the two nations in 1928 in order to establish maritime boundaries between the nations in the Caribbean) be declared void, since Nicaragua was under United States intervention at that time. Nicaragua argues that the 1982 United Nations Convention on the Law of the Sea (ratified by Nicaragua in 2000) has extended the country’s territorial waters from 12 to 200 miles; this zone includes the Colombian island territories and extensive waters that are potentially rich in oil reserves.

The Colombian Ambassador to the Netherlands Vladimiro Naranjo said that a group of international law experts will study the Nicaraguan case. They could possibly challenge the court’s jurisdiction to annul an international treaty, he said. All challenges will have to be presented in three months. If it does not present any challenges, Colombia has 14 months to respond, and the ruling could take five years. The governor of San Andres and Providencia Department told the press that residents of the territory desire to be Colombian and that she will lead a campaign to defend Colombia’s sovereignty. (“Colombia Receives Notice of Suit Filed by Nicaragua at International Court,” *El Espectador*, Apr. 29, 2003, via FBIS.) (Sandra Sawicki, 7-9819)

CYBERCRIME CONVENTION–Racist Crimes Protocol

On January 28, 2003, an additional Protocol to the Cybercrime Convention was adopted to deal

specifically with the issue of crimes of a racist and xenophobic nature committed via computer systems. State Parties are required to take legislative action to criminalize acts committed intentionally that lead to distributing racist or xenophobic material through computers; threats committed through a computer system to commit serious offenses against persons based on national or ethnic origin, race, color, or religion; and acts that lead to distribution through a computer system of material that denies, greatly minimizes, or justifies genocide or crimes against humanity as defined by international law.

The Protocol will enter into force three months after five States have expressed consent to be bound by its provisions. (*European Treaty Series* 189 (Mar. 2003).) (Theresa Papademetriou, 7-9857)

EUROPEAN UNION/LATIN AMERICA–Parliamentarians’ Meeting

On May 20, 2003, in Brussels, Belgium, parliamentarians from the nations of the European Union and Latin America began a three-day meeting to discuss forming closer links between the regions. The agenda includes economic relations, migration, cooperation, measures against violence, democracy, and development. It is expected that a joint declaration will be drawn up and signed by the delegates at the conclusion of the sessions. (*BBC MUNDO.com*, May 20, 2003, via http://news.bbc.co.uk/hi/latin_america/newsid_3043000/3043677.stml) (Sandra Sawicki, 7-9819)

U.N. GENERAL ASSEMBLY/CAMBODIA–Agreement on Genocide Trial

On May 13, 2003, the UN General Assembly approved an agreement with Cambodia, reached in March after more than five years of negotiations, to establish a tribunal to try former Khmer Rouge leaders for genocide and crimes against humanity. The consensus resolution calls for voluntary donations to fund the tribunal. The Cambodian legislature must take action to ratify the agreement and create the UN-assisted court.

UN legal counsel Hans Corell has stated that the agreement now has standards and provisions to protect the integrity of the judicial process that are much stronger than previously negotiated. Cambodia insisted on a majority of Cambodian judges despite the UN’s original call for a majority of international judges, but at least one international judge must join in any judgment rendered by the trial and appeals chambers. Nevertheless, human rights groups and some legal experts voiced opposition to the agreement’s placement of the Cambodian judiciary at the heart of the tribunal. They contend that Cambodia’s judicial system is too corrupt and too much subject to political pressure to ensure justice. (“General Assembly Approves U.N. Agreement with Cambodia on Genocide Trial for Former Khmer Rouge Rulers,” *AP*, May 13, 2003; “UN Should Not Approve Khmer Rouge Tribunal: Human Rights Watch,” *Agence France Presse*, Apr. 30, 2003, both via LEXIS/NEXIS.) (W. Zeldin, 7-9832)

CUMULATIVE CONTENTS–AVAILABLE UPON REQUEST:

Call 7-LAWS or e-mail lawcongress@loc.gov

Recent Publications from Great Britain Obtainable from the Law Library

House of Commons. Committee of Public Accounts. *INDIVIDUAL LEARNING ACCOUNTS*. H.C. 544. London: Mar. 2003. 50 pp.

As part of the Government's life-long learning strategy, Individual Learning Accounts are a Government-backed source of funding that enable adults aged 19 and over to receive tuition assistance for certain types of courses, such as business, economics, IT and web-based skills, and science. This report details a substantial level of fraud and abuse of the accounts, due to shortcuts taken by the Department for Education and Skills in designing and managing the scheme.

-----, -----, *TACKLING PENSIONER POVERTY: ENCOURAGING TAKE-UP OF ENTITLEMENTS*. H.C. 565. London: Apr. 2003. 37 pp.

Two million pensioners live in low-income households, but almost £2 billion of benefits available to them remains unclaimed. The Department for Work and Pensions and the Pension Service, which was created in 2002, have begun to focus more on increasing levels of claiming ("take-up") of benefits by developing partnerships with local authorities and nationally, through the Partnerships Against Poverty Forum.

-----, Comptroller and Auditor General for Northern Ireland. *AREAS OF SPECIAL INTEREST*. H.C. 499. Belfast: Mar. 2003. 51 pp.

Areas of Special Scientific Interest (ASSI) are areas of land identified by a scientific survey as being of the highest degree of conservation value. When an ASSI is declared, owners and occupiers receive a list of activities that the Department of Environment considers might harm the nature conservation interest of the site. This procedure was developed in response to a combination of factors that have caused major changes to the landscape and wildlife resources of the United Kingdom, with the result that in many areas the original natural habitats and wildlife have been destroyed.

-----, Environment, Food and Rural Affairs Committee. *BADGERS AND BOVINE TB*. H.C. 432. London: Apr. 2003. 132 pp.

Bovine TB has recently re-appeared in the West Midlands and Wales. A wide range of other animals, including badgers, is susceptible to bovine TB; badgers are common carriers of the disease. The Government-sponsored multi-year research plan to find a vaccine that will prevent TB is unacceptable to area farmers, who are calling for the proactive culling of badgers.

-----, Scottish Affairs Committee. *HOMEWORKERS IN SCOTLAND AND THE MINIMUM WAGE*. H.C. 335. London: Mar. 2003. 89 pp.

One hundred thousand people in Scotland are industry homeworkers, who knit, weave, pack, or work in the financial sector. Many were forced to become, or falsely believed they were, self-employed and not entitled to receive the minimum wage of £4.20. Government efforts to ensure that these workers are receiving the minimum wage have failed thus far. Future proposals include

enlisting the involvement of local community groups and launching an extensive media advertising campaign.

House of Commons. Treasury Committee. SPLIT CAPITAL INVESTMENT TRUSTS. H.C. 418-I. London: Feb. 2003. 42 pp.

Split capital investment trusts are investment trusts with varying classes of shares. Out of 160 split trusts, 120 have lost up to 90% of their investors' money due to fraud and mis-management; the remaining trusts are cumulatively valued at £13 billion. This report details the government's investigation and response to the issue and future plans for uncovering and addressing collusive behavior on the part of companies and their managers.

House of Lords. Ecclesiastical Committee. REPORT BY THE ECCLESIASTICAL COMMITTEE UPON THE CLERGY DISCIPLINE MEASURE. H.L. 87-II. H.C. 613. London: Apr. 2003. 71 pp.

The Clergy Discipline Measure (CDM) replaces the Ecclesiastical Jurisdiction Measure of 1963 (§§3(2)(b)-(c) Eng.). Included in the CDM are clarifications and expansions of the diocese's complaint and investigative procedures, the process of appeals, and the penalties that may be imposed by the Church against bishops, archbishops, and other clergy members.

NOTE: Mad Cow Disease Study Materials:

The Law Library collection contains 17 volumes of the Bovine Spongiform Encephalopathy (BSE) Inquiry, issued by Order of the House of Commons in October 2000. The findings and conclusions of the Inquiry are contained in Volume 1 and provide a valuable insights into the lessons learned in the United Kingdom about the disease.

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

Update on the GMO Controversy between the US and the EU¹

The recent decision of US authorities to request consultations with the WTO regarding the authorization system for Genetically Modified Organisms (GMOs) established by the EU was criticized by the EU Trade Commissioner as “legally unwarranted, economically unfounded and politically unhelpful.” The Commissioner reiterated that the EU system is transparent and non-discriminatory and does not contradict WTO rules. Under the EU system, the possible impact of GMOs on human, animal, and plant health and on the environment must be scientifically evaluated prior to a GMO being authorized to enter the marketplace. The US claims that a “moratorium” exists on the approval of GM varieties because since 1998, no GMOs have been authorized for release into the environment. On the other hand, the EU insists that there is no such moratorium and that the lack of additional authorizations was due to the drafting of new legal rules that were finally adopted in March 2001 and have been in force as of October 2002.

EU Parliament Voices Concerns Over EU-US Agreements on Extradition and Judicial Cooperation²

The soon to be finalized agreements between the EU and the US on extradition and judicial cooperation have raised concerns among the members of the Committee for Citizens’ Freedoms and Rights of the EU Parliament. According to article 24 of the EU Treaty, these agreements will be concluded only by the Council of the EU, without involvement of the national Parliaments and the European Parliament. The Committee also argues that the pending agreements must have a clause forbidding the extradition of the accused to the US should that persons be in danger of being subject to the death penalty. Moreover, in cases where an EU citizen has committed a crime within the EU, the Committee holds that the US should present evidence as to why the person should not be tried in his or her home country, rather than being extradited to the US. Lastly, the Committee suggests the formation of an inter-parliamentary committee to supervise the implementation of the agreements.

Convention on the Future of Europe³

The final draft of the Constitutional Treaty will be presented to EU leaders at the European Council to be held in Thessalonika, Greece, on June 20, 2003. The Treaty will be debated by the Member States during an Intergovernmental Conference that will take place in the second part of 2003 and will be signed after the signing of the EU enlargement agreement on May 1, 2004.

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¹ <http://europa.eu.int/rapid>

² <http://www2.europarl.eu.int>

³ *Supra*, note 1.

Rapid Alert System on Food and Feed⁴

The rapid alert system on food and feed began reporting weekly updates on the Commission's Europa web site. The system is a network composed of the relevant authorities of the Member States, which was established by the Regulation on Food Safety in 2002 to deal specifically with food crises through the exchange of information on measures taken by the national governments. The updates contain information on all notifications involving food or feed received by the Member State that indicate the type of product and the particular problem associated with it, as well as the origin of the product and the Member that sent the notification.

Reform of the Commission⁵

A plan to transform the Commission into a two-tier system was approved in early May, almost two months prior to the completion of the Convention on the future of the EU. A key element of this plan is that each Member State, including the ones that joined recently, will have one commissioner to represent them in Brussels. While it was argued that a Commission with 25 Members would be too unwieldy, the larger nations supported the expansion of the Commission membership, provided that the President was given more executive powers. The latter proposal is acceptable to the smaller states as long as they retain the right to send representatives to the Commission.

Rapid Reaction Force⁶

On May 19, 2003, the Ministers of Defense of the European Union endorsed the creation of a rapid reaction force. The 60,000-person body, which has been operating in the Former Yugoslav Republic of Macedonia (FYROM) for the last two months, was declared to be fully operational and ready to undertake further duties. The endorsement took place under the Greek presidency, which sought to commit all Members to provide the weapons necessary for the operation of this force.

Action Plan To Fight the Problem of Illegal Timber⁷

On May 21, 2003, the Commission adopted an action plan to deal with the problem of unlawful harvesting of timber. The plan emphasizes voluntary partnerships with other countries to ensure that only legally harvested timber will be marketed in the EU and also focuses on efforts to establish international cooperation with other nations.

⁴ <http://europa.eu.int/rapid>

⁵ *Financial Times*, May 1, 2003.

⁶ Embassy of Greece, Press and Information Office, May 20, 2003.

⁷ [Http://europa.eu.int/comm/external_relations/w21/7.htm](http://europa.eu.int/comm/external_relations/w21/7.htm)

Regulation To Ensure Delivery of Affordable Medicines to Third Countries⁸

On May 26, 2003, a Regulation was adopted that allows exporters to deliver critical medicines to combat certain diseases, such as HIV/AIDS, malaria, and tuberculosis, to developing countries at more affordable prices and at the same time market the same items within the EU at higher prices. Exporters may register their patented and generic products on a tiered-price list kept by the European Commission. To be eligible for registration, medicines have to be offered with a price reduction of 75% off the average “ex factory” price in OECD countries, or at the cost of production plus 15%.

⁸ [Http://europa.eu.int/comm/trade](http://europa.eu.int/comm/trade)

BELGIUM: WAR CRIMES–LAW OF UNIVERSAL JURISDICTION

by George E. Glos, Special Law Group Leader, Legal Research Directorate

Background

Belgian courts have been given the authority to prosecute any foreigner not present in Belgium for alleged crimes of genocide, crimes against humanity, and war crimes committed abroad under the Law of June 16, 1993, on the Repression of Grave Breaches of International Humanitarian Law,⁹ as amended by the Law of February 10, 1999.¹⁰ The Law denied immunity to persons prosecuted by reason of their official function. The enactment of the Law was prompted by the desire to prosecute persons committing such crimes in the former Belgian Congo.

Crimes of genocide are defined in the 1948 Genocide Convention, crimes against humanity in the 1998 Rome Statute of the International Criminal Court, and war crimes by the Four Geneva Conventions of 1949 as well as the 1977 Additional Protocols I and II to those Conventions.

In 2003, the Law as interpreted by the Belgian Court of Cassation and as recently amended has further evolved both in terms of applicability of international criminal law and in terms of the scope of crimes covered. The Court's decision in a high profile case and the amendments to the Law are considered in turn below.

The Case Against Ariel Sharon *et al.*

The operation of the Law is illustrated by proceedings in Belgium against Ariel Sharon and Amos Yaron. The Brussels Court of Appeal held in its decision of June 26, 2002, that the mere fact that the defendants were not present on Belgian soil was sufficient in terms of law and logic to prevent any judicial action whatsoever to be taken against them in a Belgian court. The court thus subjected the Law to principles of international criminal law. The Court of Cassation, in its decision of February 12, 2003, reversed and held that prosecution based on acts of genocide, crimes against humanity, and grave breaches of the Geneva Conventions as embodied in the Law of June 16, 1993, did not require the presence of the accused on Belgian soil, but international criminal customary law gave immunity from prosecution to heads of state and heads of government as long as they were in office. Therefore, the Court ruled, Ariel Sharon, as Prime Minister, was protected by immunity and his prosecution could be resumed after the termination of his official function, but Amos Yaron, director general in the Ministry of Defense, was not so protected, and the case against him could proceed in his absence to judgment and possible conviction. As the Law of June 16, 1993, did not recognize any application of international criminal law to its provisions and expressly denied any immunity to persons prosecuted by reason of their official function, the imposition

⁹ MONITEUR BELGE, Aug. 5, 1993.

¹⁰ 2 LES CODES LARCIER 303 (Bruxelles, Larcier, 2002).

of such doctrine by the courts is more than surprising and testifies to the political nature of the trial.

The Amendment of April 23, 2003

The aforementioned Law of June 16, 1993, as amended, was further amended by the Law of April 23, 2003.¹¹ It again provides for the prosecution of any foreigner not present in Belgium for alleged crimes of genocide, crimes against humanity, and war crimes committed abroad, but adds to these “grave breaches of international law” defined in article 15 of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, made in the Hague on March 26, 1999, and defined in article 18, sections 1 and 2, of the Hague Convention of 1954, and in article 22 of the aforementioned Second Protocol.

The 2003 Law, unlike earlier versions of the Law, expressly recognizes the application of international law, which grants immunity from prosecution to persons in high office. It further provides that if the alleged offense was not committed on Belgian soil, if the presumed offender is not Belgian and is not present in Belgium, and if the victim is not Belgian and has not resided in Belgium for at least three months, prosecution on the aforementioned grounds can be initiated only at the request of the federal procurator. The federal procurator may instruct the court to proceed, but will not do so if the claim is manifestly unfounded, if the facts alleged do not fall within the provisions of the Law and public prosecution could not be founded on them, or if on the facts of the case it appears that in the interest of the administration of justice and in view of Belgium’s international obligations that the matter should be brought before an international court, or before a court of the state where the alleged offense was committed, or of which the alleged offender is a citizen, or where the offender was apprehended, but always on condition that the courts of such state are competent, independent, impartial, and equitable.

A decision of the federal procurator not to prosecute is to be communicated to the complainant, who can appeal within 15 days to the chamber of accusations of the court of appeal. The chamber will rule within 15 days and its decision is final. If the case is not prosecuted in Belgium, the Minister of Justice, upon a decision of the Council of Ministers, may transfer the case to the International Criminal Court or to the state where the alleged offense was committed, or of which the alleged offender is a citizen, or where he was apprehended.

¹¹ MONITEUR BELGE, May 7, 2003.