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WORLD LAW BULLETIN

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Criminal Law Amended
Criminal Procedure Reform
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WORLD LAW BULLETIN

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AFRICA

SEYCHELLES – Prevention of Terrorism Act

On June 25, 2004, Seychelles enacted the Prevention of Terrorism Act, No. 7 of 2004 (SUPP. TO SEYCHELLES OFFICIAL GAZETTE, June 28, 2004, at 251-295). The Act contains provisions prescribing activities that constitute terrorism. According to section 3, if the Attorney General entertains grounds that an entity has knowingly committed, attempted to commit, participated in committing, or facilitated the commission of a terrorist act or acted on behalf, at the direction of, or in association with any terrorist entity, the Attorney General will make a recommendation to the responsible Minister under an order to declare that entity a terrorist organization or, in the case of an individual, a terrorist. Anyone who commits a terrorist act that causes death is subject to life imprisonment. Any other terrorist act merits a penalty of seven to thirty years of imprisonment, according to section 4 of the Act. The Act also covers investigations, trial, and extradition.

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

SEYCHELLES – Small Enterprises Promotion Agency Act

On May 3, 2004, Seychelles promulgated the Small Enterprises Promotion Agency Act No. 5 of 2004 (SUPP. TO THE SEYCHELLES OFFICIAL GAZETTE, June 7, 2004, at 233-234). Under this law, a small enterprise is defined as any small business of any kind, in a manner similar to those within the purview of the Small Business Administration (SBA) of the United States. The agency in Seychelles promotes these businesses, while regulating a viable business environment for growth.

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

AMERICAS

CANADA – MP Expelled from Liberal Caucus

A longtime critic of United States foreign policy and a recent critic of the Prime Minister has been expelled from the Liberal caucus following her latest series of anti-United States and anti-Paul Martin comments and actions (Maria McClintock, *Maverick MP Turfed by PM*, EDONTON SUN, Nov. 19, 2004, at 5). As a result, Carolyn Parrish will now sit as an independent Member of Parliament for a municipal area bordering the city of Toronto. Ms. Parrish will not be eligible for committee assignments as a member of the Liberal Party and will be limited to one question a week during the question period in the House of Commons.

Expulsions from a caucus for publicly opposing a party leader are not uncommon in Canada. Party discipline is greater in Canada's parliamentary system than it is in the United States' congressional system. One reason for this is that Prime Ministers must count on the support of party members to stay in office. The current Liberal government is a minority government that does not have a majority of the seats in the 309-member House of Commons. Another reason is that because Prime Ministers are selected from the Members elected to the House of Commons rather than in a direct election, voters tend to vote more for parties than for individual candidates. Maverick members who oppose their Government on major political

issues are liable to be expelled to avoid further embarrassment. Ms. Parrish's expulsion from the Liberal caucus, but not from Parliament, came on the eve of President Bush's first official trip to Canada.

(Stephen F. Clarke, 7-7121, scla@loc.gov)

CANADA – Province Not Required To Offer Treatment to Autistic Children

On November 19, 2004, the Supreme Court of Canada overruled a trial judge and a provincial Court of Appeal in holding that the province of British Columbia is not required to provide ABA/IBI (Applied Behavior Analysis/Intensive Behavioral Intervention) treatment to all autistic children (*Auton (Guardian ad litem of) v. British Columbia (Attorney General)*, 2004 S.C.C. 78, available at <http://www.lexum.umontreal.ca/csc-scc/en/rec/index.html>). In this widely anticipated decision, the Supreme Court first looked at Canada's health laws and found that they only require the provinces to fund what are considered to be core services and that the provinces are not required to meet all health needs. The Court then found that the denial of the costly experimental treatment did not violate the equal rights provision of the Canadian Charter of Rights and Freedoms merely because some other types of experimental treatments are provided to persons suffering from other types of disorders. This decision gives the administrators of the provincial health care programs discretion in deciding what types of non-core services should be provided.

Many health care experts believed that the lower courts' decisions would have imposed a large and previously untapped financial burden on the provinces at a time when all of the provinces are already encountering difficulty in delivering essential services. Supporters of the respondents argue that there is greater funding for the treatment of autistic children in the United States. Canadian contributions vary from province to province. In the largest province, Ontario, some financial help is offered to autism sufferers, but the waiting lists are long. Of the other provinces, Alberta has one of the most generous programs, and government officials do not expect that their services will be affected by the Supreme Court's decision. (Janice Tibbetts, *Top Court: Health Care Not a Right: Governments Applaud as Autism Precedent Rejected*, NATIONAL POST, Nov. 20, 2004, at A1.)

(Stephen F. Clarke, 7-7121, scla@loc.gov)

CHILE – New Law on Civil Marriage; Divorce Allowed

On November 18, 2004, a new Law on Civil Marriage entered into force in Chile that governs the requirements to contract marriage, the form of its celebration, the declaration of the nullity of marriage, its dissolution, and the means to moderate marriage breakups and their effects, while at the same time protecting the interests of children and the most vulnerable spouse in the marriage. The new Law propels Chile out of the ranks of the few nations where divorce is still prohibited for couples. In the last census, 500,000 Chileans were found to be separated, and authorities predict that there will be an avalanche of at least 50,000 divorce petitions filed under the new statute.

According to article 54 of the new Law, divorce can be demanded by one of the spouses, upon the imputable defect or error of the other, as long as it constitutes a grave violation of the duties and obligations imposed upon them by marriage or of the duties and obligations toward the children and makes life in common intolerable. The couple must be separated for a year if both spouses wish to divorce or for three years if only one spouse wishes

to terminate the marriage. Couples that are separated at the time the law enters into effect may demand separation, nullity, or divorce and must present to the judge sufficient background material, such as witness testimony or other documentation, that proves that they have not been living together for a determined number of years.

The Law specifies that children will continue to have a relationship with both parents, that the responsibility under the law to feed and materially support the children will go on, and custody issues will be resolved in the best interests of the children at the time of the divorce proceedings. After November 18, 2004, legal aid offices will cover the cost of petitions for divorce, separation, or nullity for anyone without the economic means to legally terminate his or her marriage. (*Chile: en vigor derecho al divorcio*, BBC MUNDO.COM, Nov. 18, 2004, http://news.bbc.co.uk/hi/spanish/latin_america/newsid_4021000/4021413.stm; *Noticia destacada. Ministra Perez: Esta es la mejor legislacion que Chile ha tenido en materia de matrimonio civil*, Gobierno de Chile, Nov. 13, 2004, at <http://www.gobiernodechile.cl/noticias/detalle.asp>)
(Sandra Sawicki, 7-9819, sasa@loc.gov)

HONDURAS – Constitutional Amendment Banning Gay Marriages and Adoptions

On October 28, 2004, a two-thirds majority of the National Congress approved an amendment to articles 112 and 116 of the Constitution of Honduras banning gay marriages. Under the amendment, marriage must be between a man and a woman who were born as such. Thus, marriage between persons who changed their gender through surgery would not be recognized under Honduran law, nor would foreign marriages of homosexuals. The amendment also bans adoption of children by homosexuals.

The bill on gay marriage was submitted to Congress with the unanimous consent of the leaders of the five political parties represented in the Congress and the political support of the evangelical and Catholic churches. The bill's submission came about as a consequence of the legal recognition granted by the Secretariat of Interior to three civil associations of homosexuals. The amendment will enter into force if it is ratified by a two-thirds majority of the next Congress, which is scheduled to hold its first session in 2005. (*Congreso Prohibe Bodas y Adopciones Entre "Gays,"* LA TRIBUNA, Oct. 29, 2004, available at <http://www.tribuna.icomstec.com>.)
(Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

MEXICO – Consular ID Now Valid ID in Mexico

The Chamber of Deputies, the lower house of Mexico's Congress of the Union, unanimously approved a bill submitted by the Institutional Revolutionary Party (PRI) to amend article 3 of the Law on Nationality to adopt the Consular ID card as a valid proof of nationality. The amendment will allow Mexicans living in the United States to use the Consular ID to conduct personal business in public and in private institutions in Mexico. The Deputies stated that this amendment will end the inconsistency of the Consular ID being accepted in many places of the United States but not in Mexico. (*Diputados Validan Como Documento Oficial, Aceptan Matrícula Consular*, EL DIARIO DE NUEVO LAREDO, Nov. 4, 2004, <http://www.diarario.net>.)
(Norma Gutiérrez, 7-4314, ngut@loc.gov)

MEXICO – President Fox Declares Goal of Legalizing Mexican Illegal Aliens Living in the United States

On November 9, 2004, in Mexico, President Vicente Fox declared that his government's most ambitious goal is "to achieve the legalization of at least four million Mexicans who live in [the United States]," and its "minimum aspiration is to bring an end to the persecution of Mexicans in the north border region." Mr. Fox stated that his government and the U.S. government have devised a possible solution to the immigration problem and that "we cannot waste more time" if their objectives are to be realized. He predicted that this opportunity to achieve an immigration agreement would only last until September or October 2005, because after that Mexico will enter into the pre-election period for the presidential elections of 2006. (José Luís Ruiz, *La Meta, Regularizar a 4 Millones en EU: Fox*, EL UNIVERSAL, Nov. 9, 2004, <http://www.el-universal.com.mx>.) (Norma Gutiérrez, 7-4314, ngut@loc.gov)

ASIA

CHINA – Criminal Law Being Revised

The Standing Committee of the National People's Congress of the People's Republic of China is reviewing a draft amendment to the Criminal Law, which will be the fifth amendment of the Law since its comprehensive overhaul in 1997. The amendment targets white-collar crime. In particular, it deals with such areas of emerging crime as evasion of debt through filing for bankruptcy, credit card fraud, and deliberate interference with or harm to national military communications, adding five new charges in all. (Yang Binyuan, *China Amends Criminal Law*, CRI ONLINE NEWS, Oct. 27, 2004, at <http://en.chinabroadcast.cn/1174/2004-10-27/103@162749.htm>.) (Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Election Law Revised

On October 27, 2004, the National People's Congress Standing Committee (NPCSC) adopted amendments to the Electoral Law for the National People's Congress and Local People's Congresses of the People's Republic of China (PRC) and to the Organic Law of Local People's Congresses and Governments at Various Levels. Both of these laws were adopted in 1979 and amended in 1982, 1986, and 1995. The changes are hailed as introducing "more democracy" into grassroots elections. In China, direct elections are held at the county level and below; indirect elections (by the people's congresses at the next lower level) are held at higher levels. (*China Daily: Law Amendment Injects 'More Democracy' into Grass-Roots Elections*, CHINA DAILY, Oct. 28, 2004, Foreign Broadcast Information Service (FBIS) online subscription database [hereinafter CHINA DAILY].) Although there are eight non-communist "democratic parties" in China, they are essentially elitist groups that have not contended for power and are not opposition parties; the Chinese Communist Party retains political and organizational leadership over them (J. CHEN, CHINESE LAW 73-75 (1999)).

To remedy the previous lack of transparency in creation of the shortlist of candidates on the final ballot, a widely criticized shortcoming of the Electoral Law, the amendment reintroduces preliminary elections, whose use was abandoned in the 1986 version of the Law.

The revision stipulates that when there is no consensus in the short-listing of candidates by an electoral committee (comprised of government and party officials), a primary will be held to select official candidates for local congress deputies from among nominees of the masses. (The Law provides that candidates can be nominated by political parties or organizations or they can be nominated by groups of ten or more voters. The list of candidates in direct elections is then finalized by the electoral committee.) Candidates may now also brief voters and take questions from them; the direct contact is to be organized by the election board. In the past, election organizers would usually post information about the candidates, but voters reportedly did not often meet them in person. Even under the revised Law, however, candidates will not run full-fledged election campaigns. The Law also now lays down stricter conditions for removal of deputies and introduces tougher punishments for those who commit illegal election-related acts. Vote-buying is defined and associated punishments for it are set forth. (*SCMP: PRC Scholars Welcome Changes to Election Laws*, Hong Kong SOUTH CHINA MORNING POST, Oct. 29, 2004, FBIS.)

The revision to the Organic Law of Local People's Congresses and Governments at Various Levels stipulates that all local people's congresses are to have a five-year tenure. Formerly, those at the township level enjoyed only a three-year term. (CHINA DAILY, *supra*).

At the same session, the NPCSC adopted a decision to the effect that deputies of local people's congresses at the county and town level are all to be elected during the same period, July 1, 2006, to December 31, 2007, nation-wide (*China's Top Legislature Approves Amendment to Electoral Law*, BBC WORLDWIDE MONITORING, Oct. 27, 2004, LEXIS/NEXIS, News Library, 90days File).

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

CHINA – Fuel Efficiency Standards

On October 28, 2004, the State Administration of Quality Supervision, Inspection and Quarantine (SAQSIQ) and State Commission for the Administration of Standardization issued China's first compulsory fuel efficiency standards. They are to be phased in as of July 1, 2005. Models under production (approved before that date) will be given a one-year grace period in which to meet the standards. Under the first stage of the plan, which lasts until January 1, 2008, passenger vehicles must meet the current average level of fuel efficiency for Chinese-made passenger vehicles. The standards include an index of fuel consumption and exhaust discharge, which means that Chinese automakers will have to increase investment in research and development and production of engines. Fuel-efficiency standards for other types of vehicles will be issued in the future, according to an SAQSIQ official. At present, automobile fuel consumption reportedly accounts for one-third of China's crude oil imports; the demand for fuel has been rapidly increasing along with the dramatic rise in the number of automobiles in China. (*China Issues Compulsory Automobile Fuel Efficiency Standards*, XINHUA ECONOMIC NEWS SERVICE, Oct. 29, 2004, and *China To Issue Auto Fuel Economicalness [sic] Standard*, SINOCAS, Oct. 25, 2004, both from Lexis/Nexis, World Library, Allwld File.)

According to the standards, cars that weigh between 980 kg and 1,090 kg (about 2159 to 2401 lbs) are required to use less than 8.3 liters of fuel per 100 km (about 28 miles per gallon). During the second stage, fuel consumption is required to drop by ten percent from the first-stage level; the fuel-efficiency level will be raised to 7.5 liters/100 km (about 31 miles per gallon). The standards are to be less stringent for vehicles with automatic transmission, SUVs,

and vans. For an SUV weighing between 980 and 1090 kg, fuel efficiency must be 8.8liters/100 km in the first phase and 8 liters/100 km in the second. (Lee Peart, *China Introduces First Fuel-Efficiency Standards for Cars*, WORLD MARKETS ANALYSIS, Oct. 11, 2004, Lexis/Nexis, World Library, Allwld File.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

HONG KONG – Ruling on Falun Gong Protest

In a unanimous decision by a three-judge panel, the Court of Appeal of Hong Kong overturned the convictions of sixteen Falun Gong practitioners, including five foreign nationals, who had been found guilty by a magistrate's court on August 15, 2002, of obstructing the Liaison Office of the central (Mainland Chinese) government. The ruling stated that whether a group's views were popular or not had no bearing on its right to express them. Mr. Justice Stock added that "[t]hose who were demonstrating were members of a sect which had fallen foul of the central authorities.... A demonstration by followers...was likely to be distasteful to those whose entrance to the liaison office was said to be obstructed." The justices agreed that Falun Gong members enjoy the same freedoms as other persons in Hong Kong. They also agreed that the demonstration would have a greater impact at the Liaison Office than at places further away recommended by the police, upholding the right of a group to protest where it was "likely to bring home the intended message."

In separate but related cases, nine of the protesters who were convicted of obstructing a police officer in the execution of his duty and of assaulting a police officer also lodged appeals. However, the Court of Appeal dismissed their petitions, ruling that "the convictions stood because even if, as lawyers for the Falun Gong suggested, the arrests were unlawful, the police officers were 'bitten, scratched and grabbed on the neck' and this was unjustified." The group is considering appealing to the Court of Final Appeal to overturn their convictions. (Ravina Shamdasani, *Falun Gong Followers Escape Convictions: Court of Appeal Upholds Fundamental Freedoms of Assembly, Demonstration and Expression for Religious Activists*, SOUTH CHINA MORNING POST, Nov. 11, 2004, LEXIS/NEXIS, News Library, 90days File.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

JAPAN – Alternative Dispute Resolution Expansion

The Law Concerning Promotion of the Use of Dispute Resolution Procedures Outside the Courts was enacted in November 2004. It establishes a certification system for dispute resolution institutions and requirements for the certified dispute resolution centers. (House of Representatives, *Saiban gai funsō kaiketsu tetuduki no riyō no sokushin ni kansuru hōritsuan* [The Bill of the Law Concerning Promotion of the Use of Dispute Resolution Procedures Outside the Courts], at http://www.shugiin.go.jp/index.nsf/html/index_gian.htm.)
(Sayuri Umeda, 7-0075, sume@loc.gov)

JAPAN – Criminal Law Amended

The Criminal Law was amended in November 2004. The changes included raising penalties, as follows:

- The maximum term of penal servitude for a single offense was raised from fifteen years to twenty years.
- The maximum term of penal servitude for multiple offenses was raised from twenty years to thirty years.
- The minimum term of penal servitude for murder was raised from three years to five years.
- The term of penal servitude for rape was raised from a range of between three and fifteen years to a range of between five and twenty years.
- The statute of limitations for prosecution of a criminal action was extended from a maximum of fifteen years to twenty years.

(Ministry of Justice, *Keiho to no ichibu wo kaisei suru horitsuan* [The Bill To Amend Part of the Criminal Law], at <http://www.moj.go.jp/>.)
(Sayuri Umeda, 7-0075, sume@loc.gov)

TAIWAN – Cabinet Sues Nationalist Party

On November 1, 2004, the Executive Yüan, Taiwan's cabinet, sued the Kuomintang (KMT or Nationalist Party), alleging that the KMT stole government property during the years it was in power (1945-2000). Cabinet spokesman Chen Chi-mai claimed that assets worth about NT\$20.1 billion (about US\$601 million) ought to be returned to the state, but only NT\$220 million, one percent of the total, has as yet been returned. Additional actions are contemplated in the future.

The current case concerns eight lots located in Banciao, part of Taipei County in northern Taiwan. The suit was filed against the Broadcasting Corporation of China (BCC), owned by the KMT, at the Banciao District Court by the Ministry of Transportation and Communications and the Directorate General of Telecommunications. The land in question is valued at over NT\$1.5 billion (about US\$44.8 million), and the suit is filed now to prevent sale of the property to a third party. Questions have been raised on the legitimacy of the transfer of the land from state agencies to the BCC in August 1985. For its part, the BCC claims it acquired the land legally and suggested that the suit was an "obvious political maneuver" before the legislative elections. (*Cabinet Sues KMT Over "Stolen" Assets in Banciao*, TAIPEI TIMES, Nov. 2, 2004, available at <http://www.taipeitimes.com/News/front/archives/2004/11/02/2003209329>.)

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

TAIWAN – Election Nullification Lawsuit Rejected

On November 4, 2004, the High Court of the Republic of China (on Taiwan) dismissed a lawsuit filed on March 29, 2004, by government opposition parties led by the Kuomintang (KMT) (known as the “pan-blue alliance”). The plaintiffs demanded a recount of the March 20th presidential elections and nullification of incumbent Chen Shui-bian’s re-election. Chen won the election by the narrow margin of 0.22 percent. The plaintiffs have twenty days to appeal the ruling to the Supreme Court, and they apparently plan to do so. (Jacky Hsu, *Challenge to Taiwan Poll Results Rejected: High Court Decision Adds Legitimacy to Chen Shui-bian’s Narrow Election Win*, SOUTH CHINA MORNING POST, Nov. 5, 2004, LEXIS/NEXIS, News Library, 90days File.)

The opposition parties had claimed that the election was compromised by widespread voting irregularities and by the ruling Democratic Progressive Party’s (DPP) taking advantage of the election eve shooting of Chen and his running mate Annette Lu to put security forces on alert, thereby preventing hundreds of soldiers from casting their ballots. Traditionally the military is regarded as being pro-KMT. (Chen and Lu suffered minor injuries; no one as yet has been arrested for the shooting.) According to a High Court spokesman, the Court did not accept any of the opposition’s allegations, because they failed to provide sufficient hard evidence for their claims. The spokesman stated that the security alert did not cause an increase in the number of military personnel on duty; according to several top security officials, the aim of the mechanism is simply to “help stabilize the public morale” in the event of a national emergency. (AFP: *Peaceful Protest After Taiwan Court Rejects Bid To Overturn Chen’s Victory*, AFP, Nov. 4, 2004, Foreign Broadcast Information Service online subscription database.)

The High Court is expected to issue a ruling in the near future on another suit filed by Lien Chan, the KMT’s defeated presidential candidate, and his running mate James Soong, of the People First Party. That suit called for a fresh election to be held. (Kathrin Hille, *Taiwan Court Upholds Vote for President*, FINANCIAL TIMES, Nov. 5, 2004, at 12, LEXIS/NEXIS, News Library, 90days File.)

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

TAIWAN – New Anti-Terrorism Legislation Proposed

It was reported in mid-November 2004 that the Executive Yüan (Cabinet) has drafted a revised bill on the establishment of a law enforcement framework for Taiwan’s anti-terrorism efforts. The chief purpose of the legislation, according to a Cabinet spokesman, is to create an office under the Cabinet to develop anti-terrorism policies and preventive measures in coordination with national security authorities. The special office is envisaged as having seven contingency units that would draft contingency plans and preventive measures. They would also hold simulation exercises at least once every three months in order to test their procedures. The units would handle measures to counter terrorist violence; biological, toxic, and radioactive terrorist tactics; and attacks against major public infrastructure and facilities that house information and communications enterprises and equipment.

The meeting of the Cabinet’s task force on policy for an anti-terrorism campaign, which made the decisions about the revised bill, agreed that a coordinated anti-terrorism mechanism under the leadership of the President should be established among the Cabinet, the

National Security Bureau, and the National Security Council (NSC). According to Premier Yu Shyi-kun, this anti-terrorist framework is to have “well-defined decision-making procedures and protocols for both the normal and contingent phases of operation.” The Cabinet spokesman indicated that the framework would be comprised of three phases of crisis management (preventive, responsive, and recovery) and three levels of risk management (coded green, yellow, and red). During a contingency, a crisis management decision-making unit would be formed within the NSC to work with the Cabinet’s contingent anti-terrorism center, relevant ministerial mission control centers, and local governments’ field contingency centers. In addition, under a planned conversion mechanism, the duties of civil service officers could be redefined during a contingency in the event of a terrorist attack. (*Cabinet Proposes Anti-Terrorism Legislation*, TAIWAN NEWS, Nov. 17, 2004, LEXIS/NEXIS, News Library, 90Days File.)

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

EUROPE

BELARUS – Foreign Trade Protective Measures Adopted

On October 29, 2004, the newly elected Parliament of Belarus adopted the Law on Protection of Economic Interests in Foreign Trade, which nullifies the 1999 Law on Belarus’ Economic Interests. The purpose of the new law is to meet WTO requirements. The Law regulates the application of antidumping and compensation measures and determines the procedure for antidumping investigations. The Law prohibits the use of special protective measures in regard to goods originating from those least developed countries that use Belarus’ national preference system. It is expected that this law will form the basis for the next stage of business integration between Belarus and Russia, which will elaborate joint antidumping measures against goods from third countries. (PRIME-TASS BELARUS NEWSWIRE, Oct. 29, 2004, at <http://www.securities.com/>.)

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

BULGARIA – Liability of State Servants Increased

On November 8, 2004, President Georgi Purvanov of Bulgaria signed into law amendments to the State Liability Act of 1989. The amendments extend the scope of the Act, which had been in force for individuals only, to provide for the right of juridical persons to sue the public administration if its activities or lack thereof in any way caused harm to them. The new Act specifically regulates the right of companies to seek compensation in court when their tax refunds are not received in due time and when license applications fail to be approved within thirty days. The amendments also introduce the concept of the personal financial liability of state officials. (STANDART, Nov. 10, 2004, at <http://dlib.eastview.com/sources/publication.jsp?id=584&uid=4>)

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

BULGARIA – Lie Detector Findings Admitted in Courts

On November 16, 2004, amendments to the Bulgarian Code of Criminal Procedure entered into force. These amendments provide for the admission of polygraph test results as evidence in criminal trials. However, the Code specifies that verdicts cannot be based

exclusively on polygraph test findings. Previously, such findings were accepted only in the operative stage of investigation and might be considered by a court only at the discretion of the judges. Bulgaria at present has five lie detectors: three in the Interior Ministry's Institute of Psychology and two in privately-owned companies. (BTA BULGARIAN TELEGRAPH AGENCY, Nov. 16, 2004 at <http://www.securities.com/>.) (Peter Roudik, 7-9861, prou@loc.gov)

DENMARK – New Family House as Correction Facility

The Danish Prison and Probation Service in early 2005 will open a “family house” for people convicted of crimes and their children, making it possible for children to accompany their parents to prison. The inmates will be trained in parenting while serving their time. The Prison and Probation Service hopes that by teaching the offenders how to be better parents and showing them how their lifestyles affect their children, it will help to prevent them from committing future crimes. The project leader for the family house believes that this is the first time in Denmark or abroad that imprisonment and parent training have been combined. (*Med mor og far i fængsel*, INTERNETAUVISEN JYLLANDS-POSTEN, Nov. 12, 2004, at <http://www.jp.dk/>.) (Linda Forslund, 7-9856, lifo@loc.gov)

ENGLAND AND WALES – Hunting Bill Passed Contrary to Wishes of House of Lords

In what has been one of the most contentious domestic issues in England and Wales, the government has finally forced a ban on hunting with dogs onto the statute books. The House of Commons had voted with a large majority to enact this law on various occasions, but each successive time the bill was defeated in the House of Lords. To force the Act through both Houses of Parliament, the Commons invoked the rarely used Parliament Act 1911 that allows bills that have been passed by the House of Commons in two successive sessions and rejected by the House of Lords in both instances to become acts of Parliament without approval from the House of Lords. Opponents of the hunting ban are requesting a challenge of the law in the High Court. (Hunting Act 2004, c. 37 (Eng.) at <http://www.legislation.hmso.gov.uk/acts/acts2004/20040037.pdf> [last visited Nov. 19, 2004]; Alun Michael, Minister of State for Rural Affairs and Local Environmental Quality, *Government "Goes Extra Mile" To Ease Transition to Hunting Ban*, Nov. 18, 2004, at <http://www.defra.gov.uk/corporate/ministers/statements/am041118.htm>, [last visited Nov. 19, 2004].) (Clare Feikert, 7-5262, cfei@loc.gov)

ESTONIA – Business Code Amended

On November 11, 2004, the Estonian Parliament, the Riigikogu, adopted government-proposed amendments to the nation's Business Code aimed at guaranteeing equal treatment of Estonian and European Union entrepreneurs in Estonia. Previously, the Code required that at least half of a company's board members have Estonia as their place of residence. The new version allows companies to have at least half of the board members be residents of Estonia or of another EU member state. (BNS [Baltic News Service] DAILY NEWS, Nov. 12, 2004, at <http://dlib.eastview.com/>.) (Peter Roudik, 7-9861, prou@loc.gov)

FRANCE – Early Retirement for Disabled Workers

For the first time, French disabled workers whose degree of disability is above eighty percent and who are employed in the private sector may retire before age sixty. As a result, a disabled person who has worked thirty years may be entitled to retire as early as age fifty-five. According to the Prime Minister, “This measure represents an important social improvement for disabled persons.” Twelve thousand workers may benefit from the decree, which became effective on July 2004.

In the meantime, draft legislation reforming the existing basic legislation on people with disabilities, which dates from June 30, 1975, is pending in Parliament. This reform is one of the priorities set by President Jacques Chirac in July 2002 for his second five-year term of office. The government’s goal is to have a final vote on the bill by the end of December 2004, with a view to bringing the reform into force by January 2005. (Decree 2004-232, Mar. 17, 2004, JOURNAL OFFICIEL, Mar. 18, 2004, at 5253, & DOSSIERS LÉGISLATIFS – LOIS EN PRÉPARATION at http://www.legifrance.gouv.fr/html/actualite/actualite_legislative/egalite_handicap.htm.)

(Nicole Atwill, 7-2832, natw@loc.gov)

FRANCE – Implementation of Law Prohibiting Religious Clothing in Public Schools

Law 2004-228 of March 15, 2004, provides in its first and principal article that “in public elementary schools, junior high schools and high schools, students are prohibited from wearing signs or clothing through which they exhibit conspicuously a religious affiliation.” The Law took effect at the start of the academic year on September 2, 2004.

A review of some of the leading French newspapers shows that since that date, at least fourteen girls have been expelled from schools for refusing to remove their headscarves, following disciplinary hearings (*Le Monde*, *Le Figaro*, *Libération*, *La Croix*, and *Le Parisien*.) As provided by the Law, these hearings take place after a period of dialogue between the students and the school authorities, when such authorities are unable to persuade students to respect the ban on religious signs or clothing. In addition to the Muslim girls, three Sikh boys were expelled for wearing turbans to class. They were the first Sikhs forced out of school under the Law.

Some of the girls wore headscarves for a few days, and then replaced them with bandanas. Their headmasters, however, deemed it to be an insufficient compromise. Before the school year started, the Ministry of Education had given instructions on distinguishing between “ordinary bandanas” and “bandanas which would be used as disguised headscarves,” which are defined as those bandanas that are worn all day long without interruption, every day of the week and fully hide all hair.”

According to the Ministry of Education, approximately 700 students nationwide came to school wearing conspicuous religious signs at the start of the school year. However, six weeks later, most of the cases had been resolved through dialogue, and only seventy-two students still refused to conform to the ban. Apart from the seventeen who have been expelled, some of the students are still in the dialogue phase with school authorities, while others will attend disciplinary hearings shortly.

Finally, on October 8, 2004, the *Conseil d'état* (Supreme Court for administrative matters) denied a request to void a circular issued by the Ministry of Education on May 18, 2004, implementing the Law Prohibiting Conspicuous Religious Signs or Clothing in Public Schools. The *Conseil d'état* found that the infringement of freedom of thought, conscience, and religion by the Law, which was also reflected in the circular, was proportionate to the general interest pursued, respect for the principle of secularism in public schools. This decision conformed to the recent decision of the European Court of Human Rights, which ruled that Turkey has the right to prohibit the wearing of headscarves at its universities. (See 6-7 WLB 2004.) (Law 2004-228, Mar. 15, 2004, JOURNAL OFFICIEL (J.O.), Mar. 17, 2004, at 5190; CE, sect., Oct. 8, 2004, nos. 269077 & 269704, Union Française Pour la Cohésion Nationale, at http://www.conseil-etat.fr/ce/jurisprd/index_ac_ld0437.shtml; and Leyla Sahin v. Turkey, Eur. Ct. H.R., June 29, 2004, at <http://www.echr.coe.int/>.) (Nicole Atwill, 7-2832, natw@loc.gov)

GERMANY – Application of European Human Rights Convention

In a decision of October 14, 2004 (docket number 2 BvR 1481/04), the Federal Constitutional Court ruled on the relationship between the German Federal Constitution (BUNDESGESETZBLATT 1949 at 1) and the European Human Rights Convention (signed Nov. 4, 1950, EUROPEAN TREATY SERIES No. 5). In Germany the Convention ranks on a par with a federal statute but is outranked by the German Federal Constitution. The Court held that judgments of the European Court for Human Rights have to be considered carefully, even if the possibility exists that they may be in conflict with German constitutional provisions.

In the case at issue, the European Court of Human Rights had issued a judgment against Germany (decision of Feb. 26, 2004 docket number 74969/01) for violating article 8 of the European Human Rights Convention by denying a father visitation rights. The German Federal Constitutional Court held that the German Court that refused to enforce the decision was in error due to its failure to consider the European decision carefully before making its decision on the basis of the best interest of the child, a principle that is mandated by article 6 of the German Federal Constitution. (Edith Palmer, 7-9860, epal@loc.gov)

GERMANY – Campaign Finance

In a decision of October 26, 2004 (docket number 2BvE 1/02), the Federal Constitutional Court invalidated a provision of the Campaign Finance Act that made it more difficult for small political parties to obtain government funding. The Court held that section 18, paragraph 4, sentence 3 of the Act on Political Parties (Parteiengesetz (BUNDESGESETZBLATT 1989 I 327), as amended by the Reform Act of 2002 (BUNDESGESETZBLATT 2002 I 2268)) violated the equal opportunity principle for political parties by introducing new requirements for smaller parties to obtain funding. Prior to the reform, a party could obtain partial government funding for its nationwide operations if it obtained half of one percent of the vote in a federal election and had in addition obtained one percent of the vote in a state election. According to the Reform Act of 2002, a party would have obtained government funding only if, in addition to obtaining half of one percent of the vote in a federal election, it also had obtained either at least one percent of the vote in three state elections or five percent of the vote in one state election. The Court held that these new restrictions on funding would have reduced the plurality of political opinions that could compete

for the vote.
(Edith Palmer, 7-9860, epal@loc.gov)

GREECE – Granting of Legal Aid

On February 4, 2004, the Greek Parliament enacted a Law on the Granting of Legal Aid to Citizens of Low Income. Eligible recipients of legal aid are those who are poor and are citizens of a Member State of the European Union, citizens of third states, or stateless persons, provided that they reside legally or habitually in the EU. Low income is defined as an annual family income that does not exceed two-thirds of the lowest annual individual income as set forth under the National General Collective Employment Agreement.

The appropriate authority to receive requests for legal aid by citizens of other EU Member States is the Minister of Justice. Legal aid is granted upon a written request submitted by the applicant, along with information about the pending trial and any other documentation. In criminal cases, a defense attorney is appointed based on a list drafted by the appropriate Greek bar association and remains on the case until a final decision is reached and all means of appeal have been used. The recipient of legal aid must accept the appointed attorney. In civil and commercial cases, legal aid is granted in the form of a waiver excusing payment of part or the whole of trial expenses. (EPHEMERES TES KYVERNESEOS TES HELLENIKES DEMOKRATIAS [EKHD] (Gazette of the Hellenic Republic), Part A, No. 24, Feb. 4, 2004.)
(Theresa Papademetriou, 7-9857, tpap@loc.gov)

ICELAND – Oil Companies Accused of Price Fixing

Iceland's Commission on Competitiveness has found the three largest oil companies in Iceland guilty of price fixing. The Commission found in its report that Esso, Shell, and Olís had conspired to keep oil prices high. Reykjavik's mayor, who at the time in question was working for Esso, maintains that he had no knowledge of the price fixing, but he is still facing pressure to resign. (*Price Fixing*, ICELANDREVIEW-ONLINE, Nov. 5, 2004, at <http://icelandreview.com/default.aspx?nodeID=60692>.)
(Linda Forslund, 7-9856, lifo@loc.gov)

LATVIA – Mail Order of Prescription Drugs Restricted

On November 4, 2004, the Government of Latvia issued a regulation restricting mail delivery of medicines. Based on a study that showed that medicines may lose their efficacy if they are exposed to excessively high temperatures during shipping, the Government prohibited mailing those medicines that include dose-regulating dispensers and ordered mandatory thermal insulation for all mailed medications. According to the regulation, as of 2006, all retailers who fill individual prescriptions by mail should use packing technologies that will indicate to the patient whether or not safe environmental parameters have been breached. The retailer must also inform the patient that all proper packaging and shipping requirements have been met. (NOVIS PHARMACEUTICAL NEWS, Nov. 8, 2004 at <http://www.securities.com/>.)
(Peter Roudik, 7-9861, prou@loc.gov)

LATVIA – Maternity Support Measures Extended

As of January 1, 2005, amendments to the Law on Social Support will enter into force. According to these amendments, one of the parents of a newly born child will be able to receive seventy percent of their average wage during the previous year for one year after the child is born, provided they do not have other income during this period. The monthly amount of the support ranges between US\$110 and \$700. For unemployed parents, the maternity support will add an extra US\$80 to their unemployment benefits. Additional child support for children one to two years of age will amount to US\$50 a month for working parents. The amendments do not allow parents to work while receiving maternity benefits. The level of child support for other children will be increased subsequently. (BALTIC NEWS SERVICE, Nov. 11, 2004 at <http://www.securities.com/>.)

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

THE NETHERLANDS – Increase in Anonymous Reporting

A telephone line named “Report Crime Anonymously,” which was started two years ago at the initiation of the Ministries of Justice and Interior, insurance companies, and the police department, on which people were given the opportunity to report information about criminal activities anonymously, has seen the number of tips double since the murder of the moviemaker Theo van Gogh. The government is aware of the possibility that the suspected murderer is part of a violent movement directed not just against individuals and groups, but also against the values and principles underpinning society in the Netherlands. The anonymous information supplied was with respect to terrorism and the dealing in and possession of weapons. The police in Amsterdam are considering publicizing the telephone line in the English, Arabic, and Moroccan languages. (NRC-HANDELSBLAD, Nov. 18, 2004, at <http://www.ncr.nl>.)

(Karel Wennink, 7-9864, kwen@loc.gov)

THE NETHERLANDS – Response to Muslim Extremism

As a response to the murder of Dutch filmmaker Theo van Gogh, which has been labeled an attack of a terrorist nature and had an enormous impact on the Netherlands, several Ministers have written a letter to the Second Chamber of the Parliament announcing a number of measures to be taken. These include the following:

- The Dutch General Intelligence and Security Service will be expanded.
- More resources will be made available for the protection of individuals and/or property.
- It will be possible to rescind the Dutch nationality of individuals with dual nationality.
- If it becomes apparent that a mosque acts in contravention of public order, the Public Prosecution Service will request the court to ban and dissolve the mosque.
- The Government will invest resources aimed at eradicating breeding grounds for radicalization by deploying professionals for the timely recognition of relevant signs in order that the necessary measures can be taken.

(Press Release Ministry of Justice, Nov. 11, 2004, at <http://www.justitie.nl/>.)
(Karel Wennink, 7-9864, kwen@loc.gov)

NORWAY – Implementation of Renewables Directive

Norway will implement Directive 2001/77/EC of the European Parliament and of the Council of Europe of September 27, 2001, on the promotion of electricity produced from renewable energy sources in the internal electricity market.

The Directive states that each EU Member State must set a target for the share of renewable electricity to be used in 2010. Norway has set its target at ninety percent. Each Member State must also provide a guarantee of origin to producers of renewable electricity. The guarantee will serve as proof that the electricity is in fact renewable and that it can be traded between countries.

Norway is not a member of the EU and thus does not have a duty to implement the renewables directive. The directive is not part of the EEA agreement, to which Norway is a party. Norway nevertheless wants to implement the Directive in order to contribute to an environmentally friendly energy supply and take part in the international market for renewable energy. Norway already trades with guarantees and certificates for renewable energy, but the implementation of the Directive may give producers access to a bigger market. (Press Release 123/04E, Ministry of Petroleum and Energy, *Renewables Directive to be Implemented in Norway*, Oct. 22, 2004, available at <http://odin.dep.no/oed/engelsk/aktuelt/pressem/026021-070145/dok-bn.html>.)

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

RUSSIAN FEDERATION – Beer Law Adopted

On November 17, 2004, President Vladimir Putin of Russia signed the Beer Law, aimed at limiting beer trade and consumption. The Law, which will enter into force on April 1, 2005, prohibits beer retail trade involving or near children and in educational, health, and sports organizations and facilities. Youths under eighteen years of age are not allowed to purchase beer. The Law also forbids beer consumption in the street and on means of public transport and establishes advertisement restrictions. Beer commercials cannot be aired during sports broadcasts and children's programs, and their content may not propagate the idea that beer consumption may lead to achieving success. At the same time, the Law reduces the beer equipment import duty and makes it permanently five percent. (ROSSIISKAIA GAZETA, Nov. 18, 2004, at <http://www.rg.ru/>.)

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

RUSSIAN FEDERATION – Undercover Police Allowed to Break Law

On November 3, 2004, the State Duma (legislature) of the Russian Federation adopted amendments to the Federal Law on Operative and Investigative Activities. The amendments provide for law enforcement and security agents' immunity from prosecution if they break the law while working undercover in criminal gangs or during sting operations. Even though law enforcement agencies undertake such operations, these actions are technically illegal, and detectives are required to prove the need to violate the law in court. New provisions make it easier for law enforcers to entrap suspects by allowing them, among other things, to steal and

transport weapons or drugs. Another proposed amendment, which required the detention of terrorists' relatives in the event of a terrorist hostage crisis and their use as a negotiating tool, was rejected by legislators. These amendments were proposed by the Office of the Prosecutor General and have been strongly criticized by the public because the Moscow police force is known for such practices as planting drugs and guns to blackmail people and making false arrests in order to inflate their productivity statistics. (THE MOSCOW TIMES, Nov. 3, 2004, at <http://dlib.eastview.com/sources/articles.jsp?issue=301382>.)
(Peter Roudik, 7-9861, prou@loc.gov)

SERBIA – New Corporate Law Ensures Investment Security

On November 15, 2004, the Serbian Parliament adopted the Corporate Law. The Preamble of the Law states that its task is to improve the protection of minority shareholders, create a good business climate and investment security, and harmonize Serbian legislation with European Union regulations. A two-year transitional period will be established for implementation of these principles. The Law provides for the equality of corporations and declares the principle of a tripartite interest relationship to be the basis for regulating relations among owners, creditors, and employees. The Law simplifies registration procedures and reduces the compulsory amount of minimum initial capital for establishing companies. The Law will be implemented in conjunction with the Law on Private Entrepreneurs. The Law does not affect public enterprises, which are subject to other regulations. (TANJUG NEWS AGENCY, Nov. 17, 2004, at <http://www.securities.com/>.)
(Peter Roudik, 7-9861, prou@loc.gov)

UNITED KINGDOM – Tax on Foreign Sports and Entertainment Personalities' Incomes

The Inland Revenue, the body responsible for the administration of taxes in the United Kingdom, has received a legal blow on taxing the income of foreign sports and entertainment personalities during their tours of the United Kingdom. The Court of Appeal ruled that such personalities are not liable to pay income tax in the United Kingdom on income earned from overseas products and endorsements while on tour in the United Kingdom, as they do not have a tax presence in the United Kingdom. The Inland Revenue has stated that it will petition the House of Lords, the final court of appeal, for leave to appeal the decision. Without an amendment to the law or a successful appeal, this decision is likely to cost the government hundreds of millions of dollars in lost taxes. (Mike Taylor, *Agassi Wins Tax Battle Round Two*, Nov. 19, 2004, at <http://news.independent.co.uk/uk/legal/story.jsp?story=584484>, [last visited Nov. 19, 2004].)
(Clare Feikert, 7-5262, cfei@loc.gov)

NEAR EAST

AZERBAIJAN – New State Secrecy Law

On November 15, 2004, the new State Secrecy Law was signed by President Ilham Aliyev of Azerbaijan. The new law greatly differs from the previous one, which was adopted in 1995. The main difference is that the number of entities that have the right to define state secrets has been increased; however, the law does not define the criteria for the three levels of securing information: “especially important,” “top secret,” and “secret.”

Under the Law, commercial enterprises are given the right to classify certain data as state secrets. The declassification period of a state secret depends on the secrecy level and cannot be shorter than fifteen years. Information which is now in the public domain, such as data on the export and import of strategic materials, general reserves of rare metals, stones, etc., is reclassified as secret. (BBC MONITORING, Nov. 16, 2004, at <http://www.securities.com/>.)

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

IRAN – Criminal Procedure Reform

The Head of the Judiciary has ordered the judicial authorities, police, and intelligence officers to discontinue the arrest of suspects without a judicial warrant. In a sweeping order to all investigating magistrates, judges, police, and intelligence officers, Ayatollah Shahrudi has warned the investigating authorities to act according to the law and in a transparent manner. The judges and other investigating officers must avoid misusing their authority, brute conduct, and exercise of personal prejudice. Sentences must be supported by unequivocal legal and reliable religious evidence. The officials must always bear the basic principle in mind that every person is innocent unless proven guilty. The memo asserts that courts and the public prosecution offices must allow the suspects the possibility to defend themselves through defense lawyers and experts. Investigations have to be conducted in conformity with the Islamic values and ethics. Covering the faces of the suspects or sitting behind them in the course of trial or investigation are forbidden. In the course of a search, the investigation officers must avoid disturbing or seizing family photos and films unrelated to the crime. The memo bans any kind of torture with the purpose of exacting confession. The Head of the Judiciary recommends the use of scientific methods in the course of investigation. Any attempt to discover personal and family secrets is considered irreligious and illegal. A special board has been assigned to see that the directives are carried out. (*Hamshahri*, Apr. 4, 2004, at <http://www.hamshahri.org/hamnews/1383/830209/news/siasi.htm>.)

(Gholam Vafai, 7-9845, gvaf@loc.gov)

IRAN – Drug Addiction on the Rise

The number of drug addicts in Iran has officially surpassed 3.7 million, according to the latest figures issued by the Office of Prevention of Addiction. This figure represents only ten percent of the total addicted population, an authority in the same Office disclosed. The average age of the addicts ranges from 25 to 34, and women constitute about half a percent. The government has set up centers to which the addicts may go voluntarily for assistance to overcome their addiction, but only a small number of addicts have gone to these centers. Fear of legal consequences, the popular stigma carried with drug addiction, a lack of trust of the centers by the addicts, and addiction being a barrier to their employment are among the reasons why addicts rarely go to such centers. Statistics indicate that more than eighty percent of the addicts resume their use of drugs. (*Hamshahri*, [Tehran daily] Jan. 21, 2004, at 2.)

(Gholam H. Vafai, 7-9845, gvaf@loc.gov)

IRAN – In Defense of Banking Without Usury

The Iranian banking system, based on the Islamic principle that usury is forbidden, has come under attack by some Islamic critics who argue that the current practice of setting a fixed rate of interest at the time of deposit by a cash depositor bears the assumption that it is usury,

and therefore it is a non-Islamic practice. “The current banking system in Iran has the assent of the great Islamic religious leaders as well as the Council of Guardian,” stated Ayatollah Rizvani, a leading member of the Council. He argued that the money deposited with the bank belongs to the depositor and not the bank. The money is deposited with the bank, not lent, and the bank is authorized to invest it for purposes that accord with religious principles. “What is forbidden according to the Islamic law,” added Mr. Rizvani, “is when the money is lent and an interest is charged when returned.” (*Hamshahri*, Oct. 25, 2004, at <http://www.hamshahri.org/hamnews/1383/830804/news/>.)
(G.H. Vafai, 7-9845, gvaf@loc.gov)

KUWAIT – Cleric Convicted

The Court of Appeals in Kuwait upheld the conviction issued June 19, 2004, by the Felonies Court against Hamed al Ali, a well-known mosque cleric. He is accused among other things of having, in a Friday sermon delivered last March 26th, blemished the person of the Emir of Kuwait and described the Arab rulers as traitorous and doomed to failure. He was sentenced to two years suspended imprisonment and a \$3400 fine. (ASHARQ AL-AWSAT, (Internet Edition), Nov. 29, 2004, <http://www.asahrqalawsat.com/>.)
(Issam M. Saliba, 7-9840, isal@loc.gov)

SOUTH PACIFIC

AUSTRALIA – National Register of Sex Offenders

A November 17, 2004, meeting of the Australasian Police Ministers’ Council, which consists of the Cabinet Ministers responsible for police from Australia’s federal government, all the Australian states and territories, and New Zealand, agreed to set up an Australia-wide register for child sex offenders. This will be a police file, with no public access. The Federal Justice Minister said that states will also be able to include in the register adults who offend against other adults. The ministers further agreed to adopt uniform national laws to combat child pornography. In Australia, most criminal law is the responsibility of the state and territory governments, rather than the federal government, and bodies such as the Police Ministers’ Council have been established to promote uniform legislation and record-keeping. (Australian Broadcasting Corporation, ABC NEWS ONLINE, Nov. 17, 2004, <http://www.abc.net.au/news/>.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

INTERNATIONAL LAW AND ORGANIZATIONS

AUSTRALIA/UNITED NATIONS – Underwater Land Claim

On November 16, 2004, Australia lodged a claim with the United Nations to vast areas of the continental shelf adjoining the Australian landmass. According to a joint media release by the Minister for Foreign Affairs, the Attorney-General, and the Minister for Industry, Tourism and Resources, the area being claimed beyond the 200 nautical mile zone totaled about 3.4 million square kilometers. This area was about half the size of the Australian landmass and potentially the world’s largest such claim. The Ministers stated, “It is in Australia’s interests to

gain legal certainty on the outer limits of these areas, which give Australia exclusive rights to explore, exploit and conserve the natural resources of the relevant seabed areas.”

The claim was lodged with the Commission on the Limits of the Continental Shelf, a body established under the United Nations Convention on the Law of the Sea. The terms of the Convention required Australia to make its submission by the tenth anniversary of the Convention’s entering into force for Australia, which was November 16, 1994. (Hon. Alexander Downer, MP, Minister for Foreign Affairs, Australia, *Joint Media Release*, Nov. 16, 2004, at http://www.foreignminister.gov.au/releases/2004/joint_continental_shelf_submission_161104.html.)

(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

CHINA/VIETNAM – Border Negotiations

In a meeting of the Inter-Government Committee for Land Border Demarcation held in Hanoi from October 25 to November 1, 2004, China and Vietnam committed to an accelerated schedule for the demarcation of their border. In addition, markers will be planned along the borderline. This was the ninth round of meetings of the joint committee and resulted in signed minutes. The next round of discussions is set to be held in Beijing in the first half of December.

The border between China and Vietnam is about 874 miles. There are currently eighty-two border posts established, out of the 1,373 posts proposed in the border treaty signed by both countries on December 30, 1999. (*Vietnam, China Agree To Speed Up Land Border Demarcation*, VIETNAM NEWS BRIEFS, Nov. 2, 2004, LEXIS/NEXIS, News Library, 90Days file.)

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

CITES/UNITED STATES - Great Cats and Rare Canids

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) establishes an international system of import and export regulations for the purpose of preventing the overexploitation of animals and plants in need of protection. Since trade in wild animals and plants crosses the borders of many countries, international regulation and cooperation became necessary to ensure the future survival of many species. CITES was drafted in 1963, through a resolution adopted by the members of the World Conservation Union. The text of CITES was agreed to by eighty countries in Washington, D.C., on March 3, 1973, and it entered into force on July 1, 1975. The United States ratified CITES on September 13, 1973, effective on July 1, 1975 (1976 U.N.T.S. 224). Today, there are 166 Member States to CITES. The Multinational Species Conservation Fund (MSCF) was created in part to fulfill U.S. obligations under CITES (16 U.S.C. § 4246). The MSCF currently provides funding for the African Elephant Conservation Act of 1988, the Rhinoceros and Tiger Conservation Act of 1994, the Asian Elephant Conservation Act of 1997, and the Great Ape Conservation Act of 2000.

On July 15, 2004, U.S. Representative Clay Shaw introduced a new bill, H.R. 4826, the Great Cats and Rare Canids Bill of 2004. The bill will create a separate fund under the MSCF, to protect cheetahs, jaguars, leopards, lions, lynx, wild dogs, and rare wolves outside of North America that are identified as endangered or threatened under international law. The

Great Cats and Rare Canids Fund will receive five million dollars annually. The funding will be allocated to conservation efforts in countries outside of North America that are in need of financial support “to restore and perpetuate healthy populations of rare felids and rare canids in the wild; and to assist in the conservation of rare felid and rare canid populations” (H.R. 4826, Sec. 3). These rare felids and canids face an array of problems, such as loss of habitat, natural predators, high cub mortality rates, intentional and unintentional killings by humans, diseases, and genetic deformities due to inbreeding. The bill has been referred to the House Committee on Resources. (The text and status of the bill are available through the Library of Congress “Thomas” legislative information database, at <http://thomas.loc.gov>.) (Lisa Ann Tekancic, 7-1167, ltek@loc.gov)

FINLAND/ECHR – Freedom of Expression

The European Court of Human Rights (ECHR) issued two decisions on November 16, 2004, on breaches of freedom of expression in Finland: *Karhuvaara and Iltalehti v. Finland* and *Selistö v. Finland*. In the first case, a Member of Parliament sued a newspaper for writing about her husband’s drunken and disorderly conduct at a restaurant. A Finnish court awarded the MP approximately 30,000 Euro (about US\$39,800) for libel and infringement of her privacy. In the second case, a journalist and the newspaper’s editor were sued for writing and printing an article about a surgeon who allegedly performed an operation while under the influence of alcohol and whose patient died. The surgeon was never charged with any crime. The journalist was convicted of defamation and ordered to pay a fine, and she and the editor were ordered to reimburse the surgeon’s legal expenses.

In both cases the applicants complained to the ECHR. They claimed that article 10 of the European Convention of Human Rights, protecting the freedom of expression, had been breached. The Court agreed with the applicants and found that in both cases article 10 had been breached. (*Domar mot finländska medier kränkte pressfriheten*, HUFVUDSTADSBLADET, Nov. 17, 2004, available at <http://www.hbl.fi/cgi-bin/mediaweb>; Registrar of the ECHR Chamber Judgments, Press Release 575, *Karhuvaara and Iltalehti v. Finland and Selistö v. Finland*, Nov. 16, 2004, at <http://www.echr.coe.int/Eng/Press/PressReleases.htm> (search using “575”).)

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LAOS/WTO – Membership Negotiations

WTO Membership negotiations began on October 28, 2004, for Laos. The Commerce Minister, Soulivong Daravong, opened discussion by pointing out that his country is a least developed nation and is also land-locked, with eighty percent of the population in rural areas. Since the mid-1980s, Laos has been implementing a reform program to move from a centrally planned economy to a market economy. This program has included making trade policies more transparent, having trade regulated by legislation passed by the National Assembly, rather than by decree, and improving access to the market. However, because the trade and access issues are complex, the Minister stated that Laos will need comprehensive technical assistance in intellectual property, customs valuation, sanitary and phytosanitary measures, and technical barriers to trade, in order to meet WTO standards.

The next step is for Laos to submit an action plan for enacting legislation. The Chairperson of the working party on Laos’ membership process, Ambassador Tim Groser of

New Zealand, expressed cautious optimism about the negotiations, stating that there is still much to be done before accession. “As we all know, adherence to WTO rules typically requires reform of both legislation and the complementary enforcement infrastructure.” (*Laos Membership Negotiations 28 October 2004*, WTO NEWS, Oct. 28, 2004, http://www.wto.org/english/news_e/news04_e/laos_28oct04_e.htm.)
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MEXICO/UNITED STATES – Binational Commission Meeting

Secretary of State Colin L. Powell led the United States delegation to the twenty-first meeting of the United States-Mexico Binational Commission (BNC) on November 9, 2004, in Mexico City. The BNC was established in 1981, and meets annually, alternating between Washington, D.C. and Mexico City. In addition to the Secretary of State, five United States Government Cabinet-level officers attended the meeting: Secretary of Homeland Security Tom Ridge, Secretary of Transportation Norman Mineta, Secretary of Education Rod Paige, Secretary of Housing and Urban Development Alphonso Jackson, and Environmental Protection Agency Administrator Michael Leavitt.

The BNC reviewed activities and announced a number of new initiatives, including:

- Secretaries Powell and Ridge stressed that immigration reform will be a high priority during President Bush's second term. The President spoke on January 7, 2004, about his proposal to match willing workers with potential employers.
- Secretaries Powell and Ridge and their Mexican counterparts, Foreign Secretary Luis Ernesto Derbez and Government Secretary Santiago Creel, reaffirmed the excellent state of border security cooperation by announcing a new Cyber-Security Working Group and by further developing their infrastructure protection strategy.
- Secretary Mineta and Mexican Secretary of Communication and Transportation Pedro Cerisola discussed the broad binational relationship in air, maritime, rail, and highway transportation and agreed to explore opportunities for expanding cooperation in each of these areas.

(Official website of Mexico's Department for Foreign Affairs, at <http://www.sre.gob.mx/comunicados/comunicados/2004/nov1e/b-252.htm>.)
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SWEDEN/EU – Legality of Swedish Gambling Monopoly Questioned

The European Commission has issued a notice to the Swedish government questioning the legality of the Swedish gambling monopoly, stating that it may be in breach of the European Union rules on freedom to provide services and freedom of establishment. Those who favor a gambling monopoly state that it is a means both of controlling the negative consequences of gambling for those who gamble and of securing the use of gambling proceeds for the common good. The Commission does not share this view and states in its notice that the Swedish rules on gambling appear to be motivated not by the aim of protection of the public good but for economic gain.

While the EU Commission questions the legality of the Swedish gambling laws, the Swedish Supreme Administrative Court ruled on October 26, 2004, that the Swedish gambling monopoly is legal and in accordance with EU law. The Court states in its decision that a specific prohibition against promoting gambling abroad as well as the Swedish legislation in general are illegal with regard to the EU's rules on freedom to provide services and the freedom of establishment, but that the Swedish legislation and its restrictions are acceptable because of public health and other reasons. The Court based its ruling on a number of decisions of the European Court of Justice, which has accepted exceptions to the freedoms of services and establishment in order to protect players from addiction and to prevent crime. Sweden has two months to answer the Commission's notice. If the Commission does not agree with the Swedish government's answer, it will write a reasoned opinion. If the Swedish government still does not comply, the Commission may take the case to the European Court of Justice. (*EU underkänner spelmonopolet*, DAGENS NYHETER, Oct. 25, 2004, available at <http://www.dn.se/DNet/jsp/polopoly.jsp?d=672&a=335785>; *Svenska spelmonopolet lagligt*, EXPRESSEN.SE, Oct. 26, 2004, at <http://expressen.se/index.jsp?a=199692>.) (Linda Forslund, 7-9856, lifo@loc.gov)

WTO – SPS Decision Approved

At a recent meeting of the Sanitary and Phytosanitary (SPS) Committee of the WTO, the decision was made to allow special treatment for developing countries (Document G/SPS/33, Nov. 2, 2004). Developing countries, when exporting products, may seek revisions or ask for technical assistance when new or revised measures are proposed or introduced. The special treatment could be in the form of revised measures for imports from all WTO members, the importing country could provide technical assistance to the exporting developing country to help it meet the new standards, or there could be a longer period of adjustment for developing countries when new standards are implemented. This decision, agreed to in principle in April 2003 but delayed for a year and a half, now applies to all areas covered by the WTO SPS agreement, including food safety and animal and plant health measures.

A number of other SPS issues were discussed, including trade specific issues, measures to control Ochratoxin A in soluble coffee, deviation from international standards on solid wood packing, individual diseases of concern (mad cow disease, foot-and-mouth disease, avian flu), regionalism (which is designating specific regions as free from certain diseases or pests), China's transitional review mechanism, and transparency (improving notification). (*Final OK for SPS Special Treatment Decision*, WTO NEWS, Nov. 5, 2004, http://www.wto.org/english/news_e/news04_e/sps_27_28_oct04_e.htm.) (Constance A. Johnson, 7-9829, cojo@loc.gov)

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

Fight Against Terrorism: Update

On October 20, 2004, the European Commission adopted a new Communication on Preparedness and Consequence Management in the Fight Against Terrorism. The Communication takes stock of the measures adopted so far in the area of civil protection and proposes a number of new initiatives: a) adoption of a general rapid alert system (ARGUS), to be established within the Commission, designed to connect all the specialized emergency systems in case of disaster requiring action at the EU level; b) a Central Crisis Center to be created within the Commission; the Center will gather representatives of all services that deal with emergencies and will coordinate all efforts for the most effective and appropriate response; c) a European Law Enforcement Network (LEN) to be established under the supervision of European Police Force (EUROPOL) and be linked with the ARGUS system. (Press Release, *New Measures Against Terrorism- Enhancing the Prevention and Consequence Management of Terrorism Attacks* IP/04/1278, Oct. 20, 2004.)

Communication on Terrorism Financing

This Communication is part of the measures introduced recently by the Commission to combat terrorism threats. Communications are documents adopted by the Commission and addressed to the Council that may confirm new legislative initiatives. The document emphasizes the need to allow cooperation and exchange of information among financial authorities, the Justice Departments, the intelligence community, and law enforcement authorities of Member States. Thus, Member States are encouraged to ensure information exchange between public and private sectors and to allow law enforcement authorities to have access to databases run by financial institutions. This would be done through encrypted data and would allow access in case there is a match between the suspect and his account in the database. Members are also urged to ensure that law enforcement authorities have funds for training of personnel to follow the money trails to persons who provide the funds to terrorist cells. (Press Release, *New Measures Against Terrorism – Communication on the Terrorism Financing* IP/04/1276.)

Protection of Critical Infrastructure Against Terrorist Threats

On October 20, 2004, the Commission adopted a Communication on Critical Infrastructure Protection in the Fight Against Terrorism. The Communication proposes two additional measures: 1) the establishment of a European Program for Critical Infrastructure Protection (EPCIP) to provide extra security for critical infrastructure; and 2) the creation by the Commission of an EU Critical Infrastructure Warning Information Network (CIWIN), designed to assist Member States to exchange information on common dangers and suggest appropriate measures to prevent terrorist attacks. (Press Release, *New Measures Against Terrorism – The Protection of Critical Infrastructure Against Terrorist Attacks*, IP/04/1277, <http://www.europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/1277&format=HTML&aged=0&language=EN&guiLanguage=en>.)

Rapid Reaction Force Approved

The European Union has long planned to create its own defense mechanism, to be used as the need arises but outside the NATO framework. On November 23, 2004, EU defense Ministers took a step further towards this objective by agreeing to establish a military rapid reaction force within three years. Its composition will include a number of units, each one having about 1500 troops. France, Italy, Britain, and Spain each agreed to form a unit. Other countries promised to follow suit soon. (*EU Approves Rapid Reaction Force*, BBC NEWS, available at <http://news.bbc.co.uk/2/hi/europe/4034133.stm>.)

Endorsement of International Accounting Standards on Financial Instruments

On November 19, 2004, the European Commission passed a regulation adopting the International Accounting Standards (IAS) No. 39 Related to Financial Instruments: Recognition and Measurement. Thus far, the Commission has adopted thirty-three IAS standards. As of January 1, 2005, No. 39 will be binding on all listed companies in the European Union. It was passed in its entirety, with the exception of the rules on the use of full fair value and on hedge accounting, which the Commission decided not to adopt. The first exception is consistent with the Fourth Company Law Directive, which does not permit full fair valuation of all liabilities, thus companies are prohibited from fair valuing their own debt. The second exception was requested by the majority of European banks, which claimed that adoption of such provisions would compel them to make expensive adjustments to their asset/liability management and to their accounting systems. (Press Release, *Accounting Standards: Commission Endorses IAS 39* IP/04/1385, Nov. 19, 2004.)

Export of Generic Medicines to Poor Countries

The European Commission has issued a regulation that permits manufacturers of generic pharmaceuticals to produce patented medicines for export to poor countries that lack the resources to produce them. The document is in line with a 2003 WTO decision that allows national authorities to grant a “compulsory license for such productions provided that the destination country has submitted a prior notification to the WTO that it needs the medicine covered by the license.” In order to ensure that patients have access to such medicines and to protect patent holders, the draft regulation allows customs authorities to prevent the re-importation into the EU of medicines covered under this system. (Press Release: *Access to Medicines: Commission Proposes To Allow Export of Generic Medicines to Poor Countries*, IP/04/133, at <http://www.europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/1332&format=HTML&aged=0&language=EN&guiLanguage=en>.)

New Initiative on Money Laundering

In 2002, the Commission disclosed that during the period 1999-2000, the total cross-border cash movement exceeded €1.35 billion (about US\$1.76 billion). On the basis of this information and because such large amounts raise concerns about possible money laundering activities, the Commission decided to introduce a draft regulation with the objective of putting in place controls on the movement of large amounts of cash in and out of the EU. On November 16, 2004, the Council of Ministers for Economic and Financial Affairs reached a common position on this proposal. Once it is in place, Members will be obliged to ensure that travelers who enter or leave the EU territory declare amounts larger than €10,000 (about

US\$13,000) or the equivalent in other currencies. (Press Release, *Cash Controls: Commission Welcomes Council Agreement on New Measures to Combat Money Laundering*, IP/04/1373.)

Protection of Whales and Limits on Sonar

On October 28, 2004, the European Parliament adopted a resolution urging Member States to discontinue the use of high intensity sonar during naval exercises until further research establishes whether or not sonar use causes whales to beach and consequently die. In July 2004, the International Whaling Commission found evidence supporting the theory that high-intensity sonar was dangerous for the whale population. The resolution also calls on Member States to lobby NATO and other international organizations to follow a similar approach. (Marc Kaufman, *Curbs on Sonar Use Sought in Europe*, WASHINGTON POST, Oct. 29, 2004, at A2.)

**UNITED NATIONS:
DRAFT LEGISLATION FOR POST-CONFLICT STATES**
Prepared by Constance A. Johnson, Senior Legal Research Analyst

The United Nations High Commissioner for Human Rights has been involved in a two-year project to develop model legislation for states emerging from conflict situations. A workshop on the subject was held in September 2004 and the Security Council discussed it in October 2004.

I. Background

The United Nations High Commissioner for Human Rights (UNHCHR), with assistance from the European Commission, began a two-year project to help nations rebuild rule of law and criminal justice systems after the end of any form of armed hostilities. Initial consultations, called “Experts Meetings,” on draft transitional criminal codes were held in June 2003 in Geneva and in February 2004 in Galway, Ireland. The Geneva meeting had eighty participants from twenty-four countries; forty additional experts from around the world have provided comments on the drafts. The United States Institute of Peace¹ and the Irish Centre for Human Rights prepared the drafts.²

In June 2004, the next step was taken with a meeting hosted by the UNHCHR to discuss the drafts of a Penal Code and a Code of Criminal Procedure. That meeting was technical in nature and included both the drafters and a criminal law consultant from the European Community. In addition to the two Codes, the project will eventually include model laws on police powers and detention.

In August 2004, the Security Council issued a report on the subject.³ That report stressed that a “one size fits all” approach to building legal systems in post-conflict societies will not work and that national needs and aspirations must be taken into account. Additional meetings are planned with specialists from various parts of the world, including Islamic legal experts and consultants in Southeastern Europe, Africa, and Asia. The end of the project is predicted to be early 2005, when the final package of model statutes, described by David

¹ The Institute, established in 1984, describes itself as “an independent, nonpartisan federal institution created by Congress to promote the prevention, management, and peaceful resolution of international conflicts.” It has a web site: <http://www.usip.org/>.

² The Centre was established in 2000, and its web site states that it “is dedicated to the study and promotion of human rights and humanitarian law. Whilst the Centre is autonomous in both its physical location and day-to-day operations, its academic staff are members of the Faculty of Law at the National University of Ireland, Galway with whom the Centre is linked and maintains a close and cooperative working relationship.” Its web site is at: http://www.nuigalway.ie/human_rights/.

³ United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary General*, Aug. 23, 2004, S/2004/616, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>.

Marshall of the office of the UNHCHR as “an essential tool for legal reform policy makers and legal actors,” will be completed.⁴

II. Issues Covered at September 2004 Transitional Justice Workshop

The UNHCR sponsored a workshop in Geneva, Switzerland, September 27-29, 2004, entitled the “Transitional Justice Workshop.” In opening remarks, the High Commissioner addressed rule-of-law needs in post-conflict nations and tools for building institutions and the collective will to live in peace. While each conflict is a unique situation, he stated, there are similarities in the challenges that nations face once conflicts end. The High Commissioner therefore feels that there is an important purpose in the UN developing tools that societies can use to establish the rule of law and respect for human rights.⁵

One of the key issues in transitional justice efforts is accountability for serious human rights violations that may have occurred. There is a need to address the demand for justice, while at the same time maintaining stability. The goals of truth and reconciliation may be in conflict; if the true extent of atrocities committed during wartime is revealed, it may be difficult for the different groups involved to forgive each other once full information on human rights is known. Without forgiveness, there may be calls for revenge rather than reconciliation. The High Commissioner recommends accountability through prosecutions and the rejection of impunity, within the framework of international and national criminal law, including the International Criminal Court. The national justice system must be “able and willing to deliver justice.”⁶

On the question of amnesties for actions committed during the conflict that violate human rights, which may seem to be an appealing solution to end a long series of mutual recriminations and to facilitate reconciliation, the High Commissioner recommends that they be granted only within the framework of law. The United Nations Human Rights Committee, commenting on the article dealing with torture in the International Covenant on Civil and Political Rights, noted

Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation, and such full rehabilitation as may be possible.⁷

⁴ *OHCHR Hosts Further Talks on Draft*, <http://www.ohchr.or/english/about/publications/docs/issue1.pdf>.

⁵ *Rule of Law Tools for Post Conflict States*, address in Geneva, Switzerland, Sept. 2004, at 1-2, <http://www.unhchr.ch/hurricane/hurricane.nsf/0/149CB152C7E8E223C1256F25004F824A?opendocument>.

⁶ *Id.* at 2-3.

⁷ *Id.* at 4. For the text of the Covenant, see web site of the office of the UNHCHR, http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

A second area of concern involves dealing with crimes that may be committed in the aftermath of the major conflict, including revenge attacks and looting. National criminal justice institutions may have been weakened by the conflict itself, so resources to deal with these crimes may be scarce. A related problem is the need to identify existing laws, clarify their status in relation to international human rights standards, and enforce them. There may be difficulties in compiling copies of statutes in all the needed languages, and in disseminating them. The UN discussed these issues in a report issued in 2000, concluding that there is a need for a package of laws to be used in peace-support operations, as an interim tool to establish an effective justice system. This is the rationale for the drafting of the model codes.⁸

The final issue discussed at the workshop is the creation of judicial institutions that can be effective in upholding the rule of law. This is considered an essential component of maintaining peace. The UN has been involved in some nations in capacity-building through training judges, prosecutors, and defense attorneys. The High Commissioner considers it essential to “find ways to transfer more effectively our capacity building skills so as to better establish society’s respect for legal institutions and the rule of law.”⁹

III. Security Council Discussion in October 2004

On October 6, 2004, the Security Council held a one-day discussion of the subject of the rule of law and transitional justice. The then-president of the Council, the United Kingdom, sponsored the debate. It was opened by Secretary-General Kofi Annan, who described the support of the UN for the rule of law in post-conflict states. Annan stressed that peace-building activities must reflect international norms and standards and be suited to the needs and aspirations of the people in the countries involved if they are to succeed. Furthermore, his statement said, “peace and stability can only prevail if the causes of conflict are addressed in a legitimate and fair manner”; the causes may include ethnic discrimination, gross disparities in the distribution of wealth and social services, abuse of power, and the denial of the right to property or citizenship. Among the tools to establish the rule of law are UN peace-building missions for the national justice system, the International Criminal Court and *ad hoc* international tribunals and truth commissions, and the distribution of reparations to victims of human rights abuses. The statement noted that the process must be gender-sensitive and that “Ending the climate of impunity is essential in a conflict and post-conflict society’s efforts to come to terms with past abuses, and in preventing future abuses.”¹⁰

⁸ *Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects*, U.N. Doc A/55/305-S/2000/809, Aug. 21, 2000, available at http://www.un.org/peace/reports/peace_operations/docs/55_502e.pdf.

⁹ *Supra* note 5, at 6.

¹⁰ *U.N. Seeks To Bolster Rule of Law*, UPI, Oct. 6, 2004, LEXIS/NEXIS, News Library, Wires File; full text of statement carried by FEDERAL NEWS SERVICE, Oct. 7, 2004, LEXIS/NEXIS, News Library, 90Days File.