



# WORLD LAW BULLETIN

## July 2005

7 W.L.B. 2005

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Respectfully submitted,



WALTER GARY SHARP, SR.  
Director of Legal Research



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## AFRICA

### ANGOLA - Diamond Deal

The world's largest diamond producer, De Beers, will form a joint venture with the Angolan firm Endiama to mine in the country's Lunda Norte province. Under the terms of the deal, De Beers will re-enter Angola, after having left in 2001 following a breakdown in a previous agreement with Endiama. The new joint firm will have exclusive mineral rights to mine and market gemstones from deposits that may be discovered in the region.

Angola's Council of Ministers approved the new arrangement on May 27, 2005. In line with Angolan legislation, Endiama will own fifty-one percent of the joint venture and De Beers forty-nine percent. De Beers produces about sixty percent of the world's diamonds. (*Debeers in Angolan Diamond Deal*, BBC.COM, <http://news.bbc.co.uk/2/hi/business/4587269.stm> (last visited June 6, 2005).)

(Gustavo E. Guerra, 7-7104, [ggue@loc.gov](mailto:ggue@loc.gov))

### NIGERIA – Plan to Amend the Constitution

Nigeria's President Olusegun Obasanjo announced on June 5, 2005, that he plans to use the report of a conference on political reform as the basis to propose amendments to the Constitution of 1999. In addition, he stated, reforms of other existing laws will be drawn up, together with new laws for topics not now covered by legislation and policy statements for matters that do not require statutory treatment. He explained that the purpose of these reforms would be “to strengthen our unity, to strengthen our democracy, to strengthen our security, to strengthen our togetherness and all that.” The constitutional amendments will follow the process stipulated in the current constitution for such changes.

The existing constitution has been controversial. A group of ten lawyers asked the Federal High Court to invalidate the document, arguing that it has been imposed by a military cabal, rather than created by the people of Nigeria. Justice Stephen Adah turned down their request in May 2005. (*Obasanjo Unveils Plan to Amend Constitution After National Conference*, LAGOS THIS DAY, June 6, 2005, Foreign Broadcast Information Service online subscription service; *I Won't Invalidate 1999 Constitution, Says Justice Adah*, VANGUARD, May 23, 2005, LEXIS/NEXIS, World Library, Curnws File.)

(Constance A. Johnson, 7-9829, [cojo@loc.gov](mailto:cojo@loc.gov))

### SOUTH AFRICA – Constitutional Court Recognizes Usefulness of Considering Foreign Law

On June 13, 2005, in NK v. Minister of Safety and Security, the South African Constitutional Court ruled that a woman who was raped by three uniformed police officers may collect monetary damages from the Minister of Safety and Security based on the theory of vicarious liability. The Court decided that the common law concept of vicarious liability must comport with the spirit of the constitution and its guarantees of freedom and security of the person and the right to be free from all forms of violence. Quoting from a previous case, the Court emphasized, “few things can be more important to women than freedom from sexual violence.” The Minister of Safety was vicariously liable



for the actions of the three officers because there was a sufficient connection between their employment and their criminal conduct.

The Constitutional Court considered the vicarious liability laws of several foreign jurisdictions in reaching its decision. The Court remarked that

[i]t would seem unduly parochial to consider that no guidance, whether positive or negative, could be drawn from other legal systems' grappling with issues similar to those with which we are confronted. Consideration of the responses of other legal systems may enlighten us in analysing our own law, and assist us in developing it further. It is for this very reason that our Constitution contains an express provision authorising courts to consider the law of other countries when interpreting the Bill of Rights. It is clear that in looking to the jurisprudence of other countries, all the dangers of shallow comparativism must be avoided. To forbid any comparative review because of those risks, however, would be to deprive our legal system of the benefits of the learning and wisdom to be found in other jurisdictions.

(The Constitutional Court of South Africa, *NK v. Minister of Safety and Security*, <http://www.concourt.gov.za/files/5204/5204.pdf>.)  
(Shannon Roddy & Ruth Levush, 7-9847, rlev@loc.gov)

## EAST ASIA & PACIFIC

### AUSTRALIA – Immigration Detention Modified

On June 17, 2005, Australia's Prime Minister John Howard announced planned changes to the law and administrative practices governing the mandatory detention of illegal immigrants. The principle of mandatory detention, pending deportation, of all foreign citizens without visas is to be maintained. However, the Migration Act will be amended to permit the Minister for Immigration to specify alternative arrangements for detention. Other amendments will set three-month time limits for Immigration Department decisions on applications for asylum, as well as for review of Department decisions by the Refugee Review Tribunal. Families of illegal immigrants will no longer be held in prison-like detention centers, but will be permitted to reside in the community.

The mandatory detention policy has been the subject of controversy for several years, but had become a domestic issue in the past few months after revelations that the Immigration Department had wrongfully deported an Australian citizen, confined a mentally ill permanent resident for several months as an illegal immigrant, and was investigating a further 201 cases of possible wrongful detention. News accounts of the plight of a three-year old who had spent her entire life in a detention center and appeared to be suffering mental problems from the environmental stress highlighted the human costs of the policy. (Prime Minister John Howard, Media Release, *Immigration Detention*, June 17, 2005, at [http://www.pm.gov.au/news/media\\_Releases/media\\_Release1427.html](http://www.pm.gov.au/news/media_Releases/media_Release1427.html); *PM Accepts "Softer Edge" on Detention*, THE AUSTRALIAN, June 18, 2005, at <http://www.Theaustralian.news.com.au/>.)  
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)



### **AUSTRALIA – Improved Security for Airports and Seaports**

On June 7, 2005, Australia's government outlined its plans for improving security at seaports and airports. Some 130,000 maritime workers and 70,000 airport workers will be subject to background checks intended to identify those with criminal records or what Deputy Prime Minister John Anderson described as "a pattern of involvement with people that might be dark and murky." The immediate concern is organized crime, with drug smuggling, cargo theft, and theft from airline luggage targeted, but the review also has counter-terrorism elements. A British expert who had directed a review of security at the United Kingdom's major airports will undertake a special review of airport security. He will report to the government with recommendations for strengthening security and making necessary legislative changes by early September 2005. The government will immediately require major airports to intensify the inspection of all persons, vehicles, and goods entering or leaving airports and will remove the legal obstacles to increasing video surveillance in all areas of airports. (Australian Government, Attorney-General's Department, Joint Media Release, *Securing and Policing Australia's Major Airports*, June 7, 2005, at [http://152.91.15.12/agd/WWW/MinisterRuddockHome.nsf/Page/Media Releases 2005 Second Quarter 7 June 2005 - Securing and policing Australia&apos.](http://152.91.15.12/agd/WWW/MinisterRuddockHome.nsf/Page/Media%20Releases%202005%20Second%20Quarter%207%20June%202005%20-%20Securing%20and%20policing%20Australia&apos;))

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

### **CHINA – Biosafety Convention Ratified**

The People's Republic of China (PRC) ratified the Cartagena Protocol on Biosafety on May 19, 2005, the 120<sup>th</sup> country to do so. The Protocol, which entered into effect in September 2003, is a subsidiary agreement to the U.N. Convention on Biological Diversity and seeks to regulate the transboundary movement of genetically modified organisms (GMOs). The PRC is a major importer of GMOs. According to Wan Bentai, director of the National Ecosystem Department of the State Environmental Protection Administration, China's ratification of the Protocol will "promote the country's legislation on the topic, strengthen its management of GMO cross-border movement, improve GMO labeling system and promote public involvement in biosafety." He noted that in order to better implement the international instrument, China is drafting a law on GMO safety. The United States, along with several other major GMO exporters, such as Argentina, Australia, and Canada, has not yet ratified the Protocol. (*World Biosafety Standard Adopted*, CHINA DAILY, May 20, 2005, & *China Ratifies GMO Trade Protocol*, BBC MONITORING INTERNATIONAL REPORTS, May 19, 2005, LEXIS/NEXIS, News Library, 90days File.)

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

### **CHINA – Brain Death, Organ Transplant**

China's Ministry of Health is reportedly drafting rules that would regulate those persons qualified to determine when patients are brain dead. According to a member of the drafting committee, it is likely under the rules that only doctors in intensive care, anesthesia, and internal and surgical neuropsychiatry departments will be empowered to determine brain death, even though the patient's family and loved ones have the final authority on whether to accept the diagnosis. The doctors will have to be employed in higher-level medical institutions and have at least ten years of experience in treating severe brain injuries in order to be qualified to diagnose brain death. The first reported



diagnosis of brain death in China occurred in 2003. According to Vice Minister of Health Huang Jiefu, the diagnostic standard for brain death has been clearly established in China since the 1980s, but doctors cannot pronounce on brain deaths because of the lack of legislation to protect them. (*Brain Death Diagnosis Rules in the Making*, CHINA DAILY, June 21, 2005, china.org.cn, <http://www.china.org.cn/english/2005/Jun/132690.htm>; Wang Qian, *Vice Minister of Health: Brain Death Law Necessary*, china.org.cn, Aug. 29, 2002, <http://www.china.org.cn/english/2002/Aug/40874.htm>.)

It was also reported that China is planning to issue “in the near future” new regulations on the organ transplant operation market, which would prohibit trade in human organs in conformity with the World Health Organization’s guiding principle against commercialization of human organs. The regulations will set forth eight principles governing the operations, including non-commercialization as well as the patient’s consent to undergo the operation, his or her right to know in advance about the operation, and technological standards for access. Two criteria for determining the donor’s death and the safety of carrying out a transplant to others would apparently be adopted: cardiac arrest or brain death. (*China to Ban Trade in Human Organs*, June 6, 2005, APTMNET, <http://www.apctt-tm.net/standard/display.jsp?id=2708>; *China Plans to Ban Trade in Human Organs*, INDEPENDENT ONLINE, June 5, 2005, <http://www.iol.co.za>.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **CHINA – Interpretation of Land-Use Right**

On June 18, 2005, the Supreme People’s Court of the People’s Republic of China promulgated the Interpretation of Issues of Applying Law in Hearing Cases of Contractual Dispute Concerning the Right to Use of State-Owned Land. The Interpretation covers three types of such contractual disputes: those involving assignment of the right to use of land, transfer of the right to use of land, and cooperation in real estate development. The rapid growth of China’s real estate development has clashed with government efforts to strengthen protection of farmland and control housing prices, resulting in a spate of contractual disputes in these three areas. The Interpretation was adopted on November 23, 2004; it will enter into effect on August 1, 2005. (22 *iSinoLaw Weekly* (June 20-26, 2005), e-mail subscription; *Xin Fagui Su Di*, www.law-lib.com, [http://www.lawbook.com.cn/law/law\\_view.asp?id=92461](http://www.lawbook.com.cn/law/law_view.asp?id=92461).)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **JAPAN – Parenthood of Intended Mother Denied**

On May 23, 2005, the Osaka High Court affirmed a district court judgment that it was legal for the government to refuse to accept a couple’s report of a birth. Twin babies were born to a surrogate mother in California. The twins were conceived using eggs from a donor, who was not the surrogate mother, and the father’s sperm. Both the high court and the district court relied on a Supreme Court decision of 1962, which stated that a woman who physically gives birth to a baby is the mother of the baby. The high court also stated that a surrogacy contract offends public policy and good morals.

The parents obtained a judgment from a California court that they were the parents and the babies have United States citizenship. The Japanese government would admit the parental status of the father. Therefore, it is not impossible for the couple to obtain Japanese nationality for the babies if the





father registers the children as his children and then the intended mother adopts the children. (*Dairi Shussan no boshi kankei mitomezu - Osaka kosai ga kokoku kikyaku* [Intended Mother/Children Relationship Through Surrogacy Denied – Osaka High Court Rejected the Appeal], ASAHI SHINBUN, May 23, 2005, at <http://www.asahi.com/national/update/0523/OSK200505230065.html>.) (Sayuri Umeda, 7-0075, [sume@loc.gov](mailto:sume@loc.gov))

### **KOREA, SOUTH – Fines on Cell Phone Spam Messaging**

The Ministry of Information and Communication punished thirty marketers with fines of 450 million *won* (about US\$4.5 million) for randomly sending promotional short message service (SMS) messages to cell phones. Ten of them were fined 30 million *won* (about US\$300,000), the statutory ceiling, for a reported more than 100 spam mail-related matters. The Ministry introduced an opt-in system in March 2005 that requires spammers to obtain a recipient's consent in advance before sending promotional messages. The Ministry says the new rule reduced the daily average number of unlawful spam messages to a cell phone from 1.7 in December 2004 to 0.62 in June 2005. The Ministry decided to begin in July 2005 to examine ways of compelling e-mail spammers to obtain their recipients' permission in advance. Previously, spam mail could be distributed at random if the text "advertisement" appeared in the subject line. (*Hyudae ch nhwa spam kwango'e kwajing'g m* (Fines for Spam Messaging to Cell Phones), CHOSUN IL-BO, June 9, 2005, at <http://www.chosun.com/economy/news/200506/200506090308.html>.) (Jung-Hwa Lee & Sayuri Umeda, 7-0075, [sume@loc.gov](mailto:sume@loc.gov))

### **KOREA, SOUTH – Government Law Firm Planned**

The Korean government will set up its own law firm by April 2006. The legal bureau aims to reduce the number of lawsuits the public sector loses. The Justice Ministry will submit the relevant legislation to parliament this autumn. The Ministry took as its model the Australian Government Solicitor, which has over 300 lawyers handling government legal affairs. Its primary clients would be the central government, local governments, and other public institutions. (*Justice Ministry Submits Plan for Gov't Legal Bureau*, May 27, 2005, CHOSUN IL-BO, at <http://english.chosun.com/w21data/html/news/200505/200505270015.html>.) (Jung-Hwa Lee & Sayuri Umeda, 7-0075, [sume@loc.gov](mailto:sume@loc.gov))

### **MONGOLIA – U.N. Expert Reports on Torture**

On June 13, 2005, Manfred Nowak, Special Rapporteur dealing with torture and other cruel, inhuman, or degrading treatment or punishment, stated that serious abuses of human rights occur in Mongolia. Although there have been laudable efforts at reform, he said that suspects kept in police stations and other pre-trial detention facilities are still at risk of torture. Nowak, who is attached to the U.N. Commission on Human Rights and based in Geneva, had traveled to Mongolia at the government's invitation.

Among the other abuses reported are the very poor conditions on death row, the lack of notification of families, and the secrecy about the application of the death penalty. Furthermore, Nowak noted that some prisoners were serving thirty-year terms in isolation.



The report also included preliminary recommendations for reform, including making torture a crime and permitting the National Human Rights Commission to make visits to detention facilities. (*UN Rights Expert Says Torture, Other Abuses Persist in Mongolia*, UN NEWS SERVICE, June 14, 2005, e-mail listserv from [news5@list.un.org](mailto:news5@list.un.org).)

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

### **NEW ZEALAND – Citizenship Denied to Babies of Foreigners**

New Zealand is a common law jurisdiction that inherited the *jus soli* principle from the United Kingdom. Under this common law principle, which was later incorporated in legislation, persons born in the country have always been New Zealand citizens unless their parents were foreign diplomats. (Citizenship Act, 1977, 31 R.S.N.Z. s. 6 1979.) In recent years, there have been numerous reports in New Zealand newspapers of foreign women taking “childbirth tours” to New Zealand to take advantage of free social services. It has been reported that a prime incentive for these women has been to ensure that their children will be eligible for free education in the country. (Gray Kristi, *Citizenship Denied to Babies of Foreigners*, THE PRESS (Christchurch), Apr. 16, 2005, at 2.)

The government recently responded to this situation by amending the Citizenship Act to provide that from January 1, 2005, babies born in New Zealand will only be citizens if at least one of their parents is a New Zealand citizen or if either parent has been admitted to the country for permanent residence. The new law also gives citizenship to babies who have been abandoned by unknown parents. (2005 N.Z. Stat. No. 43.) Thus children born to foreign parents will generally be ineligible for New Zealand citizenship.

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

### **TAIWAN – Constitution Revised**

On June 7, 2005, the National Assembly of Taiwan, a special body distinct from the Legislative Yuan, the functional legislature, adopted a revision of the Constitution by a vote of 249 to 48, with one abstention. The revisions had been initially approved by the legislature in August 2004. A second phase of reform is still in the planning stages, according to the Office of the President.

In the first round, the size of the Legislative Yuan has been reduced from 225 members to 113, and the National Assembly itself has been abolished. Future proposals for constitutional amendments or territorial changes will go through a new process, including ratification by public referendum following passage by the legislature. Elections for the legislature will be on a “single-member district, two vote” system beginning in 2008, and terms of office will increase from three years to four at that time. It has been reported that a number of incumbents are concerned about their future chances of being elected and that some gerrymandering is expected as the new constituencies are defined.

In addition, resolutions to impeach the president or vice president under the amendments require proposal by a majority of the members of the Legislative Yuan and consent by two-thirds to pass. (*“Pan-Blue” Ignores Chen’s Reform Call for Constitutional Reform*, THE CHINA POST, June 8, 2005, at <http://www.chinapost.com.tw/detail.asp?ID=63501&GRP=A>; *National Assembly Approves Reforms*, TAIPEI TIMES, June 8, 2005, at <http://www.taipeitimes.com/News/front/archives/2005/06/08/2003258394>; *Blueprint for 2nd Constitutional Reforms Due in a Week: Official*, CENTRAL NEWS



AGENCY, June 8, 2005, at <http://www.cna.com.tw/eng/>; *Lawmakers Start Worrying About Gerrymandering*, THE CHINA POST, June 8, 2005, at  [\(Constance A. Johnson, 7-9829, cojo@loc.gov\)](http://www.chinapost.com.tw/taiwan/..%5Cp_detail.asp?id=63508&GRP=B&onNews=.)

### **TAIWAN – Cultural Property Law Amended**

The Legislative Yuan of the Republic of China (on Taiwan) adopted extensive amendments to the Law on the Protection of Cultural Property on January 18, 2005. The revised Law, which was promulgated on February 5, 2005, redefines the scope of cultural property as well as the competent authorities prescribed under its provisions. It also defines “temporarily designated historic sites” and stipulates that the owner, user, or keeper will be in charge of their management and maintenance. The Law also provides that the competent authorities (the Council for Cultural Affairs, at the central level; the government, at the local level) may create a dedicated agency to handle such matters as cultural property preservation and research.

Under the Law, the competent authorities may manage, maintain, and restore mismanaged historic sites and collect the expenses incurred. The Law states that publicly owned historic sites, historic structures, and settlements, as well as private ones that are government subsidized, should be open to the public as appropriate. The Law also covers archaeological sites and artifacts; traditional art, folk traditions, and archives; and natural geological landscapes that should be classified as natural conservation areas and natural monuments. It adds provisions on tax reduction and on exemption from property tax, land value tax, and inheritance tax imposed on cultural property and the fixed land. The amounts of fines for violation of the Law’s provisions are increased and for such offenses as destruction of historic relics or sites an attempted offense has become punishable. (Global Legal Information Network, ID 146741, <http://www.glin.gov>.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **TAIWAN – Finance Laws Amended re Money Laundering-Related Acts**

On May 18, 2005, the President of Taiwan promulgated a number of amendments to Taiwan’s financial laws. Among other changes, all of the laws added a provision specifying that article 3, paragraph 1, of the Money Laundering Prevention and Control Law (adopted in October 1996, last amended in June 2003) concerning punishments for serious crimes would govern certain specified provisions in each of the laws. Article 3, paragraph 1, includes crimes for which the minimum punishment is five years of fixed term imprisonment, certain crimes covered under the Criminal Law, as well as crimes set forth in provisions of the Act for the Prevention of Child Prostitution, the Statute for Firearms, Ammunition, and Harmful Knives Control, the Statute for the Punishment of Smuggling, the Securities Exchange Law, the Banking Law, the Bankruptcy Law, and the Organized Crime Prevention Act.

It seems that the criteria triggering application of the Money Laundering Prevention and Control Law for the various offenses are illegal gains in the amount of 100 million NT (about US\$3.1 million) or more for some of the affected laws, or serious damage to the company or institution in the others. The amended laws in the former category include: the Trust Companies Law, Banking Law, Cooperative Societies Law, Management of Bills Finance Law, and the Financial Holding Company Law; those in the latter category include the Securities Exchange Law and Insurance Law. (Global



Legal Information Network, *Amendment to Trust Companies Law*, ID 152380; *Amendment to Banks Law*, ID 152270; *Amendment to Cooperative Societies Law*, ID 152267; *Amendment to Management of Bills Finance Law*, ID 152089; *Amendment to Financial Holding Company Law*, ID 152088; *Amendment to Securities Exchange Law*, ID 152370; and *Amendment to Insurance Law*, ID 152090, <http://www.glin.gov>.)

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

### **TAIWAN – P2P Case Ruling**

On June 30, 2005, the Shihlin District court found a local peer-to-peer (P2P) file-sharing operator not guilty of copyright infringement, delivering a setback to Taiwan's music industry. The industry is already having difficulties; the first legal online music distributor in Taiwan, iBIZ Entertainment Technology Corp, lasted only fifteen months after being launched in November 2003.

The ruling is Taiwan's first on file-sharing cases. The court found that the president of Ezpeer, a platform for fee-paying subscribers to swap files, did not engage in reproduction or public distribution of copyright holders' works. It also held that Taiwan's current laws and regulations do not specifically ban or limit file-sharing activities. The plaintiff is the International Federation of the Phonographic Industry (IFPI) in Taiwan, which represents the major record labels. IFPI has reportedly been engaged in legal battles with P2P operators for three years; another lawsuit, against kuro.com.tw, Taiwan's largest file-sharing site, has not yet been decided.

Intellectual property experts critical of the decision contended that Taiwan courts should emulate the U.S. Supreme Court ruling of June 27, 2005, which makes file-sharing companies liable for encouraging third parties to use their products to infringe copyrights, and that Taiwan consumer awareness of IPR protection needs to be enhanced to block the filing-sharing operators. IFPI plans to appeal the verdict and also target individual file-sharers for further legal action. (Jessie Ho, *Ezpeer Found Not Guilty in Landmark Copyright Verdict*, TAIPEI TIMES, July 1, 2005, at 1, <http://www.taipetimes.com/News/front/archives/2005/07//2003261705>.)

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

### **VIETNAM – Decree on Money Laundering**

On June 7, 2005, the Vietnamese government reportedly issued its first decree on money laundering. The decree applies "to all Vietnamese and foreign individuals, agencies, and organisations inside Vietnam, and individuals and organisations outside the country involved in transactions for or that offer services relating to cash or other forms of property to clients in Vietnam." The Decree seeks to ensure that measures to deal with money laundering conform to the law in order to eliminate abuse of power, safeguard national sovereignty and security, ensure the normal operations of economic activities, and protect the legitimate rights of individuals and organizations, among other purposes. The Decree stipulates that where provisions of international treaties to which Vietnam is a party contain provisions different from those of the Decree, the treaty provisions will apply. (*Gov't Issues First Sub-Law Against Money Laundering*, VIETNAMNET BRIDGE, June 9, 2005, <http://english.vietnamnet.vn/politics/2005/06/448911>.)

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



## EUROPE

### **BELARUS – Iron Curtain for State Servants**

On June 17, 2005, the Decree of Belarusian President Alexander Lukashenko on Business Trips Abroad entered into force. The Decree regulates business travel of all government officials, members of the national legislature, and members of local self-government bodies. It extends to travel to Western countries as well as to destinations within the former Soviet Union. According to the Decree, business trips of these groups of officials are to be conducted only if approved by the President of Belarus personally. Documents for approval must be submitted no less than ten days before the proposed travel date. The decree limits the length of foreign travel to two days, without any exceptions. Upon their return, all officials, including the highest, must submit to the President a detailed report with information on the results achieved during the trip. The Decree makes the President of Belarus the only public official who remains unrestricted and uncontrolled in his business travel. (*Iu. Viktorovich, Zheleznyi Zanaves dlia Chinovnikov*, KOMMERSANT-DAILY, June 20, 2005, at 11.)  
(Peter Roudik, 7-9861, prou@loc.gov)

### **CYPRUS – EU Constitution Ratified**

On June 30, 2005, following a two-day debate, the Cyprus House of Representatives ratified the EU Draft Treaty Establishing a Constitution for Europe. Three of the four major parties voted in favor of the Constitution, while the main government coalition party, AKEL (Progressive Party of the Working People), voted against it. Supporters noted that the document, despite its shortcomings, “consolidates political solidarity among Member States and it is a very significant move on the part of the European family.” Those who voted against it argued that the Constitution restricts the political rights of citizens for the sake of security and maintains the democratic deficit. (*Cyprus House Ratifies European Constitution*, EMBASSY NEWS, June 30, 2005, available at <http://www.cyprusembassy.net/home/index.php?module=article&id=2719>.)  
(Theresa Papademetriou, 7-9857, tpap@loc.gov)

### **ENGLAND AND WALES – No Damages Rights for Parents Negligently Accused of Child Abuse**

The House of Lords recently dismissed an appeal from parents who were denied damages for harm, including psychiatric illness that resulted from being unfoundedly accused of child abuse. The House of Lords found that unless bad faith or malice was found to exist, no duty of care was owed to the parents in cases of negligent accusations of child abuse. The judgment recognized that a fine balance had to be established between the interests of the children and their parents, and it ranked the children’s rights as paramount to ensure confidence in the child protection system. It considered that a professional, when acting in good faith in the child’s best interests “should not be subject to potentially conflicting duties when deciding whether the child might have been abused ... [and] looking over his shoulder to see if, his doubts proving unfounded, he might be exposed to claims by a distressed parent.” (*JD (FC) v East Berkshire Community Health NHS Trust et al* [2005] UKHL 23; Dr. B Mahendra, *Doc Brief*, 155 N.L.J. 899, (2005).)  
(Clare Feikert, 7-5262, cfei@loc.gov)



## FRANCE – Electronic Commerce

Ordinance 2005-674 of June 16, 2005, on the Accomplishment of Certain Contractual Formalities by Electronic Means, was published in the *Official Gazette* of June 17, 2005. The Ordinance modifies provisions of the Civil Code subordinating the formation, validity, or effects of certain contracts to written formalities. These formalities, including contractual conditions, information on the products or services, or any other information necessary for contract formation, may now be provided by electronic means.

In addition, the Ordinance allows regular, registered, or certified letters, when required by contract law, to be sent by electronic means. Finally, it reinforces the protection of consumers when entering into contracts by electronic means. (Law 2005-493, JOURNAL OFFICIEL, June 17, 2005, at 10342).

(Nicole Atwill, 7-2832, [natw@loc.gov](mailto:natw@loc.gov))

## FRANCE – Investigation of Guantanamo Detainees' Complaints

On June 1, 2005, the Investigating Chamber of the Paris Court of Appeals authorized the investigation by two renowned investigating judges of the detention of two French citizens in the United States base in Guantanamo Bay. The judges will investigate the complaint of illegal arrest and arbitrary detention filed by the families of Nizar Sassi and Nourad Benchellali, who were repatriated from Guantanamo in July 2004.

The complaint was originally filed in November 2002 in the Lyon lower court, before the return of the detainees. It was rejected by one of the Lyon investigating judges, then by the Lyon Court of Appeals. However, in January 2005, the *Cour de Cassation* (highest judicial court) quashed the Lyon Court of Appeals' decision, opening the door for the investigation of the complaint.

Both men are currently in jail in France. Nizar Sassi was placed under judicial investigation for suspected links to a criminal group related to a terrorist enterprise, while Mourad Benchellali was placed under investigation for alleged links to terror groups. (Piotr Smolar, *Ouverture d'une instruction sur la détention des Français de Guantanamo*, LE MONDE, June 3, 2005, at <http://www.lemonde.fr/web/article/0,1-0@2-3226,36-657352,0.html>.)

(Nicole Atwill, 7-2832, [natw@loc.gov](mailto:natw@loc.gov))

## GERMANY – Biometric Passports

On June 1, 2005, the German Federal Minister of the Interior, Otto Schily, announced that Germany would begin issuing biometric passports in November of this year. (*Bundeinnenminister Schily stellt den neuen Reisepass mit biometrischen Merkmalen vor*, <http://www.bmi.bund.de>, (the official website of the Federal Ministry of the Interior)/ File Nachrichten (last accessed June 13, 2005).) The new passports will contain an embedded radio frequency identification chip that will store a digital passport photo, and beginning in 2007, fingerprints will also be stored. The chips will be readable only by certified devices and only when the passport is opened.



The new biometric passport will implement European Council Regulation (EC) No. 2252/2004 of December 13, 2004, on standards for security features on biometrics in passports and travel documents, issued by the Member States. (OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES 2004 L 385/1; & German counter-terrorism legislation that was enacted in 2002, BUNDESGESETZBLATT 2002 I at 361.) (Edith Palmer, 7-9860, epal@loc.gov)

### **GERMANY – Court Upholds Use of Global Positioning System**

In a judgment of April 12, 2005, the Federal Constitutional Court of Germany ruled that the use of a concealed global positioning system (GPS) in the automobile of a criminal suspect and the use of the evidence gained thereby in his trial are reconcilable with the German Constitution. (Docket number 2 BvR 581/01, at JURIS commercial legal database, RECHTSPRECHUNG file.). The case was brought by a German terrorist who was convicted in 1999, largely on the basis of evidence obtained from a GPS that the police had installed secretly in his car. In his petition to the Federal Constitutional Court, the convicted terrorist argued that the use of the GPS was unconstitutional because it violated the suspect's privacy. The court dismissed these arguments and found that the practice was sanctioned by section 100 c, paragraph 1, number 1, letter (b), of the German Code of Criminal Procedure (BUNDESGESETZBLATT 1998 I at 1818, as amended), which allows for the long-term use of recognizance devices in the investigation of serious crimes. (Edith Palmer, 7-9860, epal@loc.gov)

### **IRELAND – Minimum Age of Criminal Responsibility**

As part of the Irish government's efforts to reform its juvenile justice system, the government has signaled that the minimum age for criminal responsibility might soon be raised to ten. Under current Irish law, a child below the age of seven is considered incapable of forming wrongful intent and the presumption can be rebutted for a child between the ages of seven and fourteen. The Bar Council has suggested that the age be raised to twelve. However, the Minister of State for Children has announced that the government is considering raising the age to ten and also stated a desire to replace teenage detention facilities with correction schools. These intended changes in the Irish juvenile system come months before Ireland must report to the United Nations on its progress on advancing the rights of children. Ireland has faced criticism from the United Nations and child rights advocacy groups for having the lowest criminal responsibility age in Europe and for its use of teenage detention facilities. (Carl O'Brien, *Age of Criminal Responsibility Likely to Be Raised to 10 Years*, THE IRISH TIMES, June 16, 2005, at [http://www.ireland.com/newspaper/front/2005/0616/1184599962\\_HM1CHILDREN.html](http://www.ireland.com/newspaper/front/2005/0616/1184599962_HM1CHILDREN.html); *Boy Acquitted of Father's Murder*, THE IRISH TIMES, Jan. 4, 2005, at 9.) (Joann Chang, 7-4988, jchang@loc.gov)

### **LATVIA – Loyalty Oath for Foreigners Introduced**

On May 26, 2005, the Latvian Parliament (Seimas) adopted an amendment to the nation's Immigration Act under which all foreigners who intend to stay in Latvia more than three months or who apply for a work permit regardless of its length of validity are obliged to take an oath of loyalty to the nation and to pass a language test. The amendment requires that as of July 1, 2005, when it enters into force, foreigners who receive certificates of temporary or permanent registration will submit a signed Declaration of Integration to the relevant police department. The foreigner will declare therein his loyalty



to the state and respect for the Latvian language, culture, and traditions, and will promise to pass the language test during the first third of the registration term. Failure to pass the test may result in the cancellation of the residence registration. (16 VALSTUBES ZINIOS (official gazette) 104 (2005).) (Peter Roudik, 7-9861, prou@loc.gov)

### MACEDONIA – Legal Status of Ethnic Flags

On June 10, 2005, the Parliament of Macedonia adopted amendments to the Flag Law regarding the use of national flags by the country's ethnic communities. Without naming it, the Law addresses the use of the Albanian national flag by the Albanian ethnic minority, which is seen as a symbol of ethnic separatism. Previously, the use of foreign flags for official purposes in Macedonia was prohibited. The new law permits the use of ethnic minorities' flags on a local level, in the communities where ethnic groups that are minorities nationally make up more than fifty percent of the population in a municipality. In such cases, they may fly their flag on official occasions such as national holidays, during the visits of high-ranking state representatives, and on holidays of ethnic or religious communities. The minorities' flags must always be flown alongside the Macedonian state flag. The Law also states exactly where such flags may be flown: at town halls, on central squares, and at other official sites. The Law does not specify what a community flag is or what it looks like, except that it is a flag that a community has chosen itself and uses as an expression of its identity. (9:110 RADIO FREE EUROPE/RADIO LIBERTY NEWSLINE, Part I, June 10, 2005, received as an e-mail.) (Peter Roudik, 7-9861, prou@loc.gov)

### MALTA – Domestic Violence Act Debated

The Maltese government has moved forward in its effort to pass the Domestic Violence Act of 2005 by debating the bill in parliament this month. The bill introduces a series of reforms that include the establishment of a Commission on Domestic Violence, harsher penalties in the Criminal Code for violence or threats of violence committed by family members, and shelter and assistance for victims. In addition, the courts would be given the power to issue treatment orders for accused or convicted persons. The government has expressed hope that this act would promote early detection of domestic violence and would also encourage family reconciliation, if possible. Despite criticism from some Ministers that domestic violence victims do not receive complete protection under the bill and that the establishment of the Commission on Domestic Violence is unnecessary, the Nationalist Party's Women's Movement is supporting the bill. (Domestic Violence Act, 2005, 195-208, at <http://www.doi.gov.mt/EN/bills/2005/Bill45E.pdf>; *MP Underscores the Need for Early Detection of Domestic Violence*, THE TIMES OF MALTA, June 9, 2005, at <http://www.timesofmalta.com/core/article.php?id=189685>; *Domestic Violence Bill Needs to Be 'More Concise and Precise,'* THE TIMES OF MALTA, June 16, 2005, at <http://www.timesofmalta.com/core/article.php?id=190381&hilite=domestic+violence>.) (Joann Chang, 7-4988, jchang@loc.gov)

### NORWAY – Adoption of EU Regulation on the European Border Control Agency Proposed

On June 3, 2005, the Norwegian government proposed to the parliament, the Storting, that it accept the European Union regulation on the establishment of a Border Control Agency under the Schengen Agreement. The main aim of the Agency, which began its work in May 2005, is to strengthen and coordinate the member states' control of their external borders. Norway's coastline is an external border of the EU, and as a result, Norway plays a role in the protection of the Schengen area. If it joins the Agency, Norway will be granted a seat on the Agency's Management Board. It would be the first time Norway has had a right to vote in an EU agency, as Norway is not an EU member state. (Ministry of





Foreign Affairs, *Norway to Join the European Border Control Agency*, Press Release No. 78/05, June 3, 2005, available at <http://www.odin.no/odin/english/news/news/bn.html>; Norway Mission to the EU, *Norway to Join the European Border Control Agency*, June 7, 2005, available at <http://www.eunorway.org/policyareas/justice/news+archive/European+Border+Control+Agency.htm>.) (Linda Forslund, 7-9856, lifo@loc.gov)

### **RUSSIA – Tax on Inheritance Terminated**

On June 13, 2005, President Vladimir Putin of Russia signed into law amendments to the Tax Code that will eliminate inheritance tax and substantially transform the gift tax. At present the tax rate depends on the degree of relationship and the value of the inherited property and cannot be more than forty percent. As of January 1, 2006, when the amendment enters into force, all inherited property will be exempt from taxation regardless of the relationship. Even though some analysts believe that this exemption may be used by those who plan to use a fictitious marriage in order to avoid paying property taxes, the government believes that it is not possible to enforce the tax, which has gone widely unpaid by Russians, and that the creation of a monitoring and enforcement mechanism will be more expensive than just forgiving the tax. The gift tax is also cancelled. Under the new amendment, the amount of a gift is included in the annual income of an individual and is taxed according to the regular flat income taxation rate, which is currently at thirteen percent. (ROSIISKAIA GAZETA (official gazette) June 15, 2005, at 3.) (Peter Roudik, 7-9861, prou@loc.gov)

### **SPAIN – Same-Sex Marriage**

On June 30, 2005, the Spanish lower house of parliament voted in favor of allowing gay couples to marry and adopt children. The controversial decision overrules the week prior's rejection of the bill by the Senate. The law was published in the official gazette on July 2, the date it became effective. Spain is now the third nation in Europe, after the Netherlands and Belgium, to allow same-sex marriages.

Although polls suggest that most Spaniards support gay marriage, the Roman Catholic Church, which has great influence in Spain, has emphatically opposed the law. The Spanish Episcopal Conference issued a public statement to declare the situation “serious and regrettable” and urged Spanish society as a whole to fight against the law by all legal means. Even the Vatican, through a statement issued by the Family Prefect, declared “Spain is a nation that does not want to accept something that breaks the strong Catholic tradition of Spanish society.”

The new legislation is one of a number of recent social reforms, including the introduction of speedy divorce proceedings, adopted by law on June 29, 2005. The Divorce Law was amended to allow a divorce to be granted even without a previous separation period. The reform also grants the court the authority to assign joint custody of the children, even if the parents do not agree thereto. (EL MUNDO Digital, June 30, 2005, <http://www.elmundo.es/elmundo/2005/06/30/espana/1120086353.html>.) (Graciela Rodriguez-Ferrand, 7-9818, grod@loc.gov)



## SWEDEN – Stricter Rules for Animal Testing

On June 16, 2005, the Swedish government submitted a proposal to the Council on Legislation requesting stricter rules on the use of animal testing. The government asserts that animal testing is important for research in Sweden, but that its use should be limited to cases where it is absolutely necessary. According to the proposal, the terms “animal testing” and “laboratory animals” will be defined in the law. Animals that are used for educational purposes and are not put to sleep, operated on, or in other ways caused to suffer will no longer be referred to as laboratory animals. It will be clarified that breeding animals with manipulated DNA will be considered animal testing. The government also wants to introduce rules concerning the ethical grounds that animal testing committees must take into consideration when deciding to approve testing.

The government wants to perform further studies to clarify whether permission should be needed for the breeding of animals in ways that cause the animals to suffer. The Swedish Animal Welfare Agency has been given the task of further investigating this matter, as well as evaluating the current system used to estimate animals’ suffering. It was proposed that the amendments take effect on April 1, 2006. (Ministry of Agriculture, *Förslag på Stramare Regler för Djurförsök*, Press Release, June 16, 2005, available at <http://www.regeringen.se/sb/d/5644/a/46516>.) (Linda Forslund, 7-9856, [lifo@loc.gov](mailto:lifo@loc.gov))

## NEAR EAST

### EGYPT – Speaker of Parliament Sues the Press

The Speaker of the People’s Assembly in Egypt, Dr. Ahmed Fathy Surur, brought a defamation complaint before the Office of General Prosecution against the editor-in-chief, the executive editor-in-chief, and one reporter of the independent newspaper *Saut al-Umma*. The newspaper reported under the headline “Fathy Surur’s Children Got Millions in Unsecured Loans” that an Egyptian company founded by Surur’s children asked the Cairo Bank for an unsecured loan of about seven million Egyptian pounds (about US\$1,215,000). (ASHARQ AL-AWSAT NEWSPAPER, June 20, 2005, <http://www.asharqalawsat.com/details.asp?section=4&issue=9701&article=306760>.) (Issam Saliba, 7-9840, [isal@loc.gov](mailto:isal@loc.gov))

### IRAN – Adoption Law Amendments Drafted

Any Iranian couple may accept guardianship of a child by a court order, according to a bill drafted by the Ministry of Justice Committee. The current Law on Protection of Children with No Guardian of 1975 provides that the Iranian couple must be resident in Iran. While previously only couples without children could qualify, the bill makes it possible for any couple, with or without children, to accept guardianship of a child. Women without husbands, if they are not younger than fifty years of age, will be allowed to accept guardianship of a female child. The court order establishing the guardianship provides for a probationary period of six months. The bill provides that the couple accepting guardianship must undertake to provide for maintenance and education of the child by donating part of their property for this purpose after their death. Provisions have been made in the draft bill for cancellation of the guardianship agreement if the couple displays undesirable conduct or loses their ability to provide for the maintenance of the child or if the child’s conduct has become



intolerable for the couple. (It should be noted that because of the Islamic prohibition of adoption, the title of the bill that the Iranian lawmaker has drafted uses the term “guardianship” instead of adoption.) (HAMSHARI, June 2, 2005, at 2, available at <http://www.hamshari.org/hamnews/1384/940124/new/ejtem.htm>.)

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

### **IRAN – Greater Power for Coroner’s Organization**

The Law on the Coroner’s Organization of the Islamic Republic of Iran of June 27, 2005, states that the organization has an independent personality and has the objectives of promoting high Islamic values in all medical activities and protecting the patients’ and medical professionals’ rights. The Organization has the following powers and authorities:

- expressing opinions with regard to any bill, plan, draft law, or regulations related to medical fields;
- drafting promotional advertisements in the cosmetics, food and drug, beverages, and medical fields;
- preparing and approving guidelines to standardize medical advertising and prescriptions;
- expressing authoritative opinions with regard to medical crimes to courts and law enforcement agents;
- expressing opinions with regard to taxation of the medical profession;
- issuing medical licenses to practice and to establish medical offices or clinics.

Membership in the Organization is mandatory for those engaged in medical practice. (OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN, 803/1383, June 1, 2005, at 1225-1240.) (Gholam H. Vafai, 7-9845, gvaf@loc.gov)

### **ISRAEL – Regulation of Organic Products**

On May 31, 2005, the Knesset (Israel’s parliament) passed the Regulation of Organic Products Law, 5765-2005. The Law is designed to regulate organic agriculture and prevent consumers from being misled. The Law prohibits the display and offer for sale of agricultural products as organic in the absence of prior authorization by a special review body and their labeling with special organic and review labels. The use of any labels on agricultural products depends on authorization by the review body, which is appointed by an authorized employee of the Ministry for Agriculture and Village Development. The Law further regulates the conditions for authorization as well as the voiding of authorization of use of the review label. (*Regulation of Organic Products Law, 5765-2005*, at <http://www.knesset.gov.il/>.)

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

### **JORDAN – Government Requires Palestinians to Obtain Visas**

The Jordanian Government is requiring Palestinians with travel documents to obtain a visa and a Jordanian sponsor as a condition for entering its territory, confirming that a waiver for Palestinians to enter Jordan is limited to those who are West Bank residents. The Jordanian Minister of Interior, Aouni Yerfas, said that regulations aimed at facilitating Palestinians’ entry into Jordan are limited in



their application to Palestinians of the West Bank and do not include Palestinians holding travel documents and living in Arab countries. (ASHARQ AL-AWSAT NEWSPAPER, June 3, 2005, <http://www.asharqalawsat.com/print/default.asp?did=id303359>.) (Issam Saliba, 7-9840, [isal@loc.gov](mailto:isal@loc.gov))

## SOUTH ASIA

### INDIA – Weapons of Mass Destruction Bill

A Weapons of Mass Destruction (Prohibition of Unlawful Activities) Bill, 2005, has been introduced in India's Parliament. It is designed to prevent the proliferation through export of weapons of mass destruction (WMD), whether nuclear, chemical or biological, and of missile technologies, in accordance with U.N. Security Council guidelines. The bill would give legal backing to India's resolve to prevent the proliferation of such weapons, although India is not a signatory to the two hallmark international agreements, the 1970 Nuclear Nonproliferation Treaty and the subsequent Comprehensive Test Ban Treaty. The government believes the proposed export ban on WMD materials, equipment, and technologies is in keeping with the country's obligations under U.N. Security Council Resolution No. 1540 (2004), which required states to establish domestic controls for the prevention of the proliferation of WMDs.

A statement of the reasons for introducing the proposed law accompanied the draft bill. This statement indicated that the bill was deemed necessary "in view of India's status as a nuclear weapon state and its international commitments." This overarching legislation would prohibit unlawful activities in relation to WMD and their means of delivery and related dual-use materials, equipment, and technologies. The bill also provides for appointment of advisory committees and an appellate authority.

The bill further seeks to prohibit individuals from dealing with WMDs in any form, including their manufacture, transport, possession, export, and brokering. The punishment for manufacturing WMDs or abetting terrorists is a minimum jail term of five years, which may be extended to life imprisonment, in addition to a fine. The first conviction for unauthorized export of such banned materials will be a fine of up to two million rupees (approximately US\$22,000). A second conviction will result in imprisonment for a term of six months to five years and a fine. (*Weapons of Mass Destruction Bill*, THE HINDU, May 11, 2005, at <http://www.hindu.com/2005/05/11/stories/2005051104581301.htm>; *India Takes Legislative Action to Prevent the Proliferation of Weapons of Mass Destruction and Missile Technologies in Accordance with U.N. Security Council Guidelines*, THE INDIA DAILY, May 10, 2005, at <http://www.indiadaily.com/editorial/2632.asp>.) (Krishan Nehra, 7-7103, [kneh@loc.gov](mailto:kneh@loc.gov))

### PAKISTAN – Seminar on an Independent, Accountable Judiciary

The Center for Democratic Development, a project of the Human Rights Commission of Pakistan (HRCPP), on April 29, 2005, organized a seminar in Islamabad. Participants at the seminar, which included legislators, lawyers, and human rights activists, "described the judicial system as flawed and called for an independent, transparent and accountable judicial system to strengthen democratic institutions" in Pakistan. (*Independent, Accountable Judiciary Stressed*, THE DAWN, Apr. 30, 2005, <http://www.dawn.com/2005/04/30/nat3.htm>.) The speakers viewed the judiciary as being in collusion with the civil and military bureaucracy.



Discussion centered on a bill to be presented to Pakistan's National Assembly by the minority Pakistan People's Party to amend article 177 of the Constitution dealing with the appointment of the Chief Justice of Pakistan and other judges. In detailing the proposed bill, the speaker representing the opposition said that the Supreme Judicial Commission would consist of the Chief Justice of Pakistan, the two senior-most judges of the Supreme Court, the four chief justices of the four provincial High Courts, the president of the Supreme Court Bar Association, the four presidents of the High Court Associations in each province, a member of the National Assembly nominated by the prime minister, and a member of the Senate from each province. The bill, he suggested, would curtail the President's discretionary powers relating to the tenure of ad hoc and additional judges and also withdraw powers of the federal government exercisable through the President to affect inter-provincial transfers of judges. He suggested that the judicial system should be transparent and accountable, free from the control of the executive, and it should dispense justice without fear or favor.

According to a retired justice, "Law has never been implemented on the strong nor has it preserved dignity of the weak and the poor." Political pressure – not merit – is the basis of elevation of judges and despotic rulers compel judges to give favorable judgments, it was argued. According to another speaker, the judiciary, as the ultimate arbiter of justice, must ensure the rule of law. (Krishan Nehra, 7-7103, kneh@loc.gov)

## WESTERN HEMISPHERE

### ARGENTINA – Supreme Court Declares Amnesty Laws Unconstitutional

On June 14 2005, in a 7-2 vote, the Supreme Court of Argentina declared "unconstitutional" the 1986 and 1987 laws on amnesty for military officers who perpetrated human rights abuses during the rule of the 1976-1983 junta. The laws were passed after the return to democracy, but under the threat of a military coup if trials of officers continued. Only a few high-ranking officers were convicted before the trials were blocked. The officers were freed by further amnesty laws passed in 1989 and 1990. After this Supreme Court decision, many trials are expected to be resumed, particularly cases of those suspected of being involved in the *ESMA* death camp, a navy compound in Buenos Aires where 1,500 people were reportedly killed. (Fallo S. 1767 XXXVIII at <http://www.csjn.gov.ar/documentos/verdoc.jsp>.) (Graciela Rodriguez-Ferrand, 7-9818, grod@loc.gov)

### BOLIVIA – New Hydrocarbons Law Ignites Another Gas War

A long-awaited Hydrocarbons Law was finally approved by the Bolivian Congress on May 6, 2005, but failed to gain either a signature or veto from President Carlos Mesa. On May 17, Senate President Hormando Vaca Diez, as required by the Bolivian Constitution, signed the measure and put it into effect. The new law returns legal ownership of all hydrocarbons and natural resources to the state, maintains royalties at eighteen percent, but increases taxes from sixteen to thirty-two percent. In addition, the statute gives the government control in the marketing of the resources, allows for continuous government control with annual audits, and mandates that companies consult with indigenous groups when gas is found on their land.

Adversaries of the Law, among them millions of Aymara, Quechua, and other Indian groups, protest that it does not go far enough to protect the nation's natural resources from exploitation by



foreign corporations. Between May 24 and June 6, 2005, thousands of Indian and other peasant farmers mobilized and marched in the streets of La Paz, the capital city, to demonstrate for the nationalization of the gas industry and also to demand a constitutional convention that would “reestablish the Bolivian state” and grant more power to the indigenous populations that constitute a majority of Bolivia’s nine million people.

On June 6, President Mesa resigned and was replaced by an interim head of state, Eduardo Rodriguez, who met on June 12 with Indian leaders in the metropolis of El Alto, the hub of the Indian uprising on the outskirts of La Paz, in an effort to restore order. In October 2003, a so-called First Gas War occurred when strikes and civil unrest took place over the government’s economic plan, coca eradication policies, and corruption. At that time, the government of President Gonzalo Sanchez de Lozada fell after he resigned from office and was replaced by then Vice President Mesa, who put the gas issue to a referendum on July 18, 2004. (*Bolivian Gas War*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Bolivian\\_Gas\\_War](http://en.wikipedia.org/wiki/Bolivian_Gas_War) (last viewed June 20, 2005); *Revolt on High; The Indians of Bolivia’s El Alto Lead a Drive for Social Change That Has Toppled Two Presidents*,” LOS ANGELES TIMES, June 16, 2005, at <http://www.latimes.com/news/nationworld/world/la-fg-elalto16jun16,1,7117272.story?coll=la-headlines-world>.)

(Sandra Sawicki, 7-9819, sasa@loc.gov)

### **CANADA – Ban on Private Health Care Insurance Struck Down**

The Supreme Court of Canada has struck down a ban on individuals enrolled in a provincial health care plan obtaining private insurance for services covered by the public plan. (*Chaoulli v. Quebec Attorney General*, 2005 S.C.C. 35.) The grounds for the ruling were that the ban violates the right to life and personal inviolability guaranteed by Quebec’s Charter of Freedoms. (R.S.Q. ch. C-12, ss. 1, 9 (1979), as amended.) The Court was evenly divided on the separate issue of whether the ban also violates the Canadian Charter of Rights and Freedoms. Thus, the decision does not apply in the other provinces. However, other provincial laws could still be found to contain a guarantee similar to Quebec’s. Therefore, the case is of national importance.

Canada has a single-payer health care system. Under this system, virtually all residents are covered by a provincial health care plan that is subsidized by the federal government. Most physicians are in private practice and most are enrolled in a provincial health care plan. By enrolling, physicians can bill the provincial plan for their services. However, a condition of being enrolled is their agreement not to engage in extra-billing or otherwise giving preferential treatment to patients who are willing to pay extra amounts to receive services in an expedited manner.

Waiting times for health care services have become a major problem in Canada. To obtain services, patients have tried to purchase private health insurance and seek treatment from physicians who are not enrolled in the provincial plans. Prior to the court’s ruling, this was only allowed with respect to services not covered by the provincial health care plans. However, the court’s ruling may force Quebec’s government to change the rules respecting private health insurance. If Quebec allows private health insurance, it will be difficult for the federal government to maintain its prohibition on extra billing in the other provinces. The ruling may also encourage more physicians to opt out of the provincial plans and offer their services to patients willing to pay for health care.

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



### **MEXICO – Criminal Jurisdiction Extended to 200 Nautical Miles**

The Mexican Supreme Court of Justice has ruled that the jurisdiction of Mexico's criminal law be extended to 200 nautical miles beyond its coast, coextensive with its Exclusive Economic Zone. Therefore, any crime committed within that maritime zone must be tried as if it were committed on land. The Supreme Court issued its ruling in an appeal filed by four drug traffickers who were arrested with twenty-nine kilos of cocaine in their possession, eighty-five nautical miles from the Mexican coast, in 2001. A lower court had imposed a prison term penalty of twenty-one years on the appellants. (*Se Amplía a 200 Millas Náuticas la Jurisdicción Penal*, LA JORNADA, June 20, 2005, <http://www.jornada.unam.mx>.)

(Norma C. Gutiérrez, 7-4314, [ngut@loc.gov](mailto:ngut@loc.gov))

### **MEXICO – Supreme Court Rules Former President Can Face Genocide Charges**

On June 15, 2005, the Mexican Supreme Court ruled that a special prosecutor could present genocide charges against former president Luis Echeverría, accusing him of ordering a 1971 massacre of student protesters. The decision was the latest step in President's Vicente Fox's bid to bring to justice those who committed crimes during Mexico's "Dirty War" of the 1960s and 1970s. (Official website of the Mexico Department of Justice, <http://www.htm.pgr.gob.mx/homepage.htm> (last visited June 16, 2005).)

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### **NICARAGUA – Foreign Investment Affected by Legislative-Executive Disputes**

Juan Carlos Pereira, executive president of the Nicaraguan Investment Promotion Agency, stated in a recent newspaper interview that due to the political stalemate between the National Assembly and the Executive branch, involving a wide range of disputes, foreign investors have hesitated to invest in Nicaragua since the end of last year. He added that the political crisis, plus student protests and threats of sedition, are delaying the establishment and expansion of investments in the free zone and the tourist sectors. For instance, the Canadian Gildan company decided to postpone investment of \$60 million in a textile production venture and to transfer the money instead to a project in Honduras. A Mexican jeans factory and three hotel chain companies from Spain, Costa Rica, and the United States have made similar decisions to invest their capital elsewhere. (Amparo Aguilera, *Crisis Congela Millonarias Inversiones*, LA PRENSA, June 17, 2005, <http://www.laprensa.com.ni>.)

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### **PANAMA – Unrest over Reform Laws**

President Martin Torrijos has agreed to a ninety-day "discussion period" with large segments of the population who oppose new laws he supports to reinvigorate Panama's finances and initiate a \$5-billion expansion of the Panama Canal. His agreement comes after two weeks of protests that reflect a sharp drop in his popularity, especially among unions and business leaders. The public anger is perceived to be the result of little public consultation or debate over the reforms and a general lack of transparency on the part of the current administration. A referendum on a ten-year plan to expand and modernize the Canal had been planned for this November, but experts believe it would not pass if held today because the middle class is strongly opposed to the latest legislative initiatives of the government.



Since May 2005, when lawmakers passed a bill to overhaul Panama's generous social security system, more than 80,000 teachers, construction workers, and government employees have been on strike. Under the reforms that would take effect next year, average middle-class workers could lose one quarter of their salaries. Social security contributions by employees would increase by forty percent on average, and the retirement ages of both men and women would be extended by several years. Earlier in 2005, President Torrijos had pushed a bill through the Congress that would erase deficits and broaden the tax base. This bill met with approval by international financiers, but a leading Panamanian business executive, Enrique De Obarrio, expressed fear that new taxes could cut economic growth in half. (*Amid Unrest, Panama President Agrees to Talks*, LOS ANGELES TIMES, June 16, 2005, at <http://www.latimes.com/news/nationworld/world/la-fg-panama16jun16,1,6532030.story?coll=la-headlines-world>.)

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### **PUERTO RICO - Ex-Governor's Aide Sentenced for Corruption**

A woman who was an aide to former Puerto Rican Governor Pedro Rossello was sentenced to four years in prison after her conviction on extortion charges. Angeles Rivera Rangel will also serve three years of probation and be fined \$36,000 following her release from prison, U.S. District Judge Carmen Consuelo Vargas said at the sentencing in San Juan on June 1, 2005. Rivera has until July 20, 2005, to turn herself over to authorities.

At trial, prosecutors said Rivera demanded a total of \$125,000 from four businessmen in exchange for millions of dollars in contracts. She is alleged to have received the payments between 1997 and 2001. A jury found Rivera guilty in August 2002, but a federal judge in Puerto Rico overturned her conviction in September 2003, ruling there was not enough evidence. The First U.S. Circuit Court of Appeals in Boston later reinstated the conviction.

Rivera was one of several people convicted of corruption during the tenure of Rossello, who served as governor from 1993-2001. Former Education Secretary Victor Fajardo was convicted of fraud in a separate case. Rossello has not been implicated in any corruption case during his administration. (*Ex-Governor's Aide Sentenced for Corruption*, CNN.COM, at <http://www.cnn.com/2005/WORLD/americas/06/02/corruption.case.ap/index.html> (last visited June 6, 2005).)

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### **VENEZUELA - Extradition of Anti-Castro Militant Sought from United States**

On June 16, 2005, the Venezuelan government requested the extradition of Luis Posada Carrilles from the United States, where he was arrested in Miami in May and is currently being held in a U.S. detention center in El Paso. The detainee is a strong opponent of Fidel Castro wanted by Venezuelan prosecutors for plotting the bombing of a Cuban aircraft that killed seventy-three people in 1976 and is considered a terrorist by the Venezuelans. It was reported that a delegation of Venezuelan congressmen is planning to visit Washington, D.C., to submit to the U.S. Congress and administration a document requesting Posada's extradition and to meet with officials at the Organization of American States and the U.S. Department of State. (*Venezuela Formally Seeks Custody of Posada*, LOS ANGELES TIMES, June 16, 2005, at <http://www.latimes.com/news/nationworld/world/la-fg-briefs16.2jun16,1,1707611.story?coll=la-headlines-world>; *Venezuelan Congressmen Travel to*





*Washington to Demand Posada's Extradition*, CARACAS AGENCIA BOLIVARIANA DE NOTICIAS, June 14, 2005, Foreign Broadcast Information Service online subscription service.)  
(Sandra Sawicki, 7-9819, sasa@loc.gov)

## INTERNATIONAL LAW AND ORGANIZATIONS

### G8 NATIONS – International Pedophile Register

On June 16, 2005, during a summit meeting, the Interior Ministers of the G8 nations made considerable progress in their discussions about creating an international pedophile register. The idea originated in a previous meeting of the G8 nations in 2003. This time, the Ministers explored the technical details in order to make the register an effective tool. The register will store images of victims and offenders found on the web and in computers. Such images will be shared by police forces worldwide. (*World Paedophile Register Closer*, BBC WORLD, available at [http://news.bbc.co.uk/2/hi/uk\\_news/politics/4096060.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/4096060.stm).)  
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### HONG KONG – Tax Treaties

The government of the Hong Kong Special Administrative Region (HKSAR) has entered into agreements for the avoidance of double taxation with seven countries: Denmark, Finland, Iceland, Jordan, Kenya, and Switzerland. Notices of the orders putting these agreements into effect went into the official government gazette. The agreement with Denmark covers taxes on income from shipping transport and was concluded on December 9, 2004. For Finland (July 2004) and Switzerland (Sept. 2004), the agreements amended previously concluded air service agreements to add clauses on avoiding double taxation and were done through exchanges of letters in July and September 2004, respectively. New agreements on air services that included double taxation provisions were concluded with the other four nations over the period of April to August 2004. In discussing the agreements, a government spokesman stated:

It is our policy to include provisions on double taxation relief for airline income in bilateral air services agreements negotiated between the HKSAR and our aviation partners, and to conclude avoidance of double taxation agreements for revenues arising from the operation of ships in international traffic with our shipping partners.

(Mary Swire, *Hong Kong Gazettes Seven Double Tax Avoidance Agreements*, TAX-NEWS.COM, June 21, 2005, at <http://www.lawandtax-news.com/asp/story.asp?storyname=20228>.)  
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### MEXICO/UKRAINE/RUSSIA – President Seeks Energy, Technology Agreements

After a two-day visit to Ukraine, on June 21, 2005, President Vicente Fox made the first visit by a Mexican president to Russia, where he signed oil and energy agreements with President Vladimir Putin. The two leaders also signed a cooperation agreement on public health and social development and a reciprocal agreement on mutual assistance in criminal matters. President Fox also discussed advancing a joint project to build a maintenance and assembly plant for Mi-17 helicopters, in Sahagun City, Mexico and the possible purchase of Russian military transportation trucks. (José Luís Ruiz,



*Busca Fox Acuerdo en Energía y Tecnología*, EL UNIVERSAL, June 20, 2005, <http://www.eluniversal.com.mx>; Office of the President of the Republic, *Conferencia de Prensa Conjunta y Firma de Documentos, que ofrecieron los Presidentes de México y Rusia*, Press Release, June 21, 2005, <http://www.presidencia.gob.mx>.)  
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### OSCE – Declaration on Anti-Semitism and Intolerance

On June 8-9, 2005, the Organization for Security and Cooperation in Europe (OSCE) held a conference in Cordoba, Spain, on anti-Semitism and other forms of intolerance. The topics discussed included fighting anti-Semitism and other forms of discrimination and promoting tolerance; responding to anti-Semitic and hate-motivated crimes; fighting intolerance and discrimination against Muslims, Christians, and members of other religions; and fighting racism, xenophobia, and other forms of discrimination. The purpose of the conference was twofold: a) to evaluate the status of previously assumed commitments by the participating OSCE states with regard to fighting racist, xenophobic, and anti-Semitic propaganda on the Internet and hate crimes; and b) to encourage best practices with respect to the above actions. The conference adopted the Cordoba Declaration, which *inter alia* emphasized the following:

- responsibility for dealing with incidents of intolerance and discrimination lies primarily with the participating states;
- international developments or political issues do not justify racism or discrimination against Muslims or Christians; such developments involving Israel or other countries in the Middle East do not justify anti-Semitism;
- identification of terrorism and extremism with any religion, culture, nationality, or race is not acceptable;
- legislation and law enforcement are important tools to deal with discrimination and intolerance.

(United States Commission on Security and Cooperation in Europe, *Progress and Challenges: The OSCE Tackles Anti-Semitism and Intolerance*, available at [http://www.csce.gov/index.cfm?Fuseaction=ContentRecords.ViewDetail&ContentRecord\\_id=101&ContentType=G](http://www.csce.gov/index.cfm?Fuseaction=ContentRecords.ViewDetail&ContentRecord_id=101&ContentType=G).)  
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### SWEDEN/EUROPEAN COURT OF JUSTICE – Swedish Pharmaceutical Monopoly Rejected

On May 31, 2005, the European Court of Justice (ECJ) ruled that Sweden's monopoly on sales of pharmaceutical products is in breach of EU law. Swedish pharmaceutical products are sold by Apoteket AB (Apoteket). Apoteket has an agreement with the Swedish government making it the sole retailer of medical products in Sweden. The ECJ found that the Swedish monopoly discriminates against pharmaceutical products from other member states. The producers of pharmaceutical products that are not chosen by Apoteket to be sold in Sweden do not have a right to know why their products were not chosen and the decision cannot be appealed. According to the ECJ, it is enough that there is a risk that foreign producers may be discriminated against to declare that the Swedish monopoly is in breach of EU law.

In Sweden, the ECJ's decision has created debate. The Swedish government believes that the decision does not mean that the monopoly has been rejected and believes that it can be kept. The Minister



for Health and Elderly Care has stated that the government will review its agreement with Apoteket, the producers of pharmaceutical products who are unhappy with Apoteket's selections will be able to appeal the decision, and Apoteket's marketing and product information will be reviewed. Many legal experts disagree with the government's interpretation of the decision, however, and believe that the decision renders the present Swedish monopoly unlawful and opens the Swedish market to competitors. (*Apoteksmonopol Kvar Trots EU-dom?*, SVENSKA DAGBLADET, May 31, 2005, available at [http://www.svd.se/dynamiskt/naringsliv/did\\_9848888.asp](http://www.svd.se/dynamiskt/naringsliv/did_9848888.asp).)

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## RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

### Proposed Subsidy Cuts for Sugar Firms

Based on last year's ruling of the World Trade Organization that declared subsidies to be illegal, the European Commission recently came up with a proposal to discontinue its current scheme of subsidies to white sugar producers. Businesses in Germany, France, Denmark, and the UK strongly criticized the proposed cuts and stated that a forty percent cut in the guaranteed minimum price would result in employment losses and reduced profits. It is likely that the cuts would completely eliminate production in other EU countries, such as Greece, Italy, and Portugal. (BBC News, *Sugar Firms Sour on Subsidy Cut*, June 23, 2005, available at <http://news.bbc.co.uk/hi/business/4122480.stm>.)

### Regulation on Health Claims

On June 3, 2005, the European Council reached a political agreement on the proposed Health and Nutrition Claims Regulation that was introduced by the European Commission in July 2003. The proposal imposes strict requirements on the use of nutritional claims such as "high fiber" "reduced sugar" or "low fat." Health claims, including "good for your heart" and others, may be inserted provided that such claims have been proven based on scientific data and have also been authorized by the European Food Safety Authority (EFSA). The proposal is expected to be adopted in early 2006. (*Commissioner Kyprianou Welcomes Council Agreement on Health Claims*, Press Release, IP/05/668, June 3, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/668&format=HTML&aged=0&language=EN&guiLanguage=en>.)

### Expansion of Schengen Area to the New Members

On June 1, 2005, the Commission introduced a number of proposals to replace the current Schengen Information System (SIS) – which allows cooperation and exchange of information with the competent authorities of the Member States – with the Second Generation Information System (SIS II). Under SIS II the ten new EU Members will be part of the Schengen area, which is an area of free movement of people without internal border controls. This measure will become effective in 2007, when the new Members will be allowed to fully apply the Schengen provisions. In addition, the SIS II system will be used to facilitate police and judicial cooperation in criminal matters and improve the tools for exchanging information with the new Member States. For example, the system will store fingerprints and facial images in order to confirm the identity of wanted persons. (*SIS II: Commission Presents a Set of Proposals for Enlarging the Schengen Area to the New Member States*, Press Release, IP/05/651, June 1, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/651&format=HTML&aged=0&language=EN&guiLanguage=en>.)

### Montreal Biosafety Protocol and Genetically Modified Organisms (GMOs)

The Cartagena Protocol on Biosafety, which governs the cross-border transport of genetically modified organisms, entered into force on September 11, 2003. It has 119 participating states, including the EU and all Member States. Pursuant to the Protocol, participating states were required to decide documentation requirements within two years of the Protocol's entry into force. The Second Meeting of the Parties to the Cartagena Protocol took place in Montreal from May 30, 2005, to June 3,



2005. Participants discussed the issue of the documentation that must accompany GMO products, such as soya, wheat, and maize, when transported across borders. The European Commission negotiated for clear and transparent rules on documentation that are in compliance with EU rules on GMOs. However, no agreement was reached. The third meeting will take place in Brazil in March 2006. Until new rules are in place, countries must apply the provisions of the Cartagena Protocol that require the States Parties to ensure that documentation accompanying GMOs or food or feed or for processing must clearly state that the shipment “may contain living modified organisms (LMOs) intended for use of food or feed or for processing and are not intended for intentional release in the environment.” (*Biosafety: International Meeting to Adopt Binding Rules on Trade in GMOs*, Press Release, IP/05/623, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/623&format=HTML&aged=0&language=EN&guiLanguage=en>, see also *Montreal Biosafety Protocol Conference Ends Without Agreement on GMO Shipping Documentation Rules*, AGNET, June 8, 2005, available at [http://archives.foodsafety network.ca/agnet/2005/6-2005/agnet\\_june\\_8.htm](http://archives.foodsafety network.ca/agnet/2005/6-2005/agnet_june_8.htm).)

### **New Cotonou Agreement Signed**

On June 24, 2005, the European Union and seventy-six African, Caribbean, and Pacific (ACP) countries signed a revised Cotonou Agreement. This long-standing agreement establishes the basic legal framework for the relations between the two partners. While the basic goal of the agreement is the elimination of poverty, the new provisions also take into account the latest legal developments and the September 11, 2001, and Madrid terrorist attacks. Thus, there are provisions for fighting terrorism, on cooperation in countering proliferation of weapons of mass destruction, and on the International Criminal Court. (*Revised EU-ACP Cotonou Agreement*, email listserv from the European Union delegation at the United Nations, June 24, 2005, [Delegation-New-York-Euinfo@cec.eu.int](mailto:Delegation-New-York-Euinfo@cec.eu.int).)

### **New Improved Generalized System of Preferences**

The reform of the EU’s Generalized System of Preferences (GSP), introduced by the European Commission and supported by the Member States under the leadership of the Luxembourg Presidency, is considered to be an important trade development. The new system, which will apply as of January 1, 2006, will result in simpler and fairer preferential market access for developing countries. Provisions that contain incentives for developing countries that pursue good governance and sustainable development policies will apply as of July 1, 2005. (*Reformed EU GSP System*, e-mail listserv from the European Union delegation at the United Nations, June 24, 2005, [Delegation-New-York-Euinfo@cec.eu.int](mailto:Delegation-New-York-Euinfo@cec.eu.int).)

### **Geographical Indications and Doha Development Agenda**

The Doha negotiations require WTO member states to establish a multilateral system of notification and registration for wines and spirits. On April 1, 2005, several countries, including Argentina, Australia, Canada Chile, and the United States, proposed language for a voluntary geographical indication system. WTO members would thus be permitted to establish their own protection system. However, the EU came forward with its own counterproposal, recommending the establishment of a multilateral register that offers a “more effective level of protection for all GIs alike.” This proposal calls for expanding the GI beyond wines and spirits. The EU’s position is based



on complaints from many EU companies whose financial interests have been hurt because their GI-protected products are deemed as generic under special exceptions included in the Trade Related Intellectual Properties Agreement. (*Blasting the EU on GIs*, 14: 120 WASHINGTON TRADE DAILY, June 16, 2005, at 2.)

### **Commission Imposes Stiff Fine for Pharmaceutical Patent Violations**

The European Commission fined AstraZeneca €60 million (about US\$72.6 million) for abusing its dominant market position and violating patent rules and procedures for the marketing of pharmaceuticals. According to the Commission, during the period 1993-2000, AstraZeneca violated European Community competition rules by blocking or delaying market access for the generic version of Losec, an AstraZeneca product, and also preventing parallel imports of Losec. As Competition Commissioner Neelie Kroes explained:

health care systems throughout Europe rely on generic drugs to keep costs down. Patients benefit from lower prices. By preventing generic competition, Astra Zeneca kept Losec prices artificially high. Moreover, competition from generic products after a patent has expired itself encourages innovation in pharmaceuticals.

(*Competition: Commission Fines AstraZeneca 60 Million Euro for Misusing Patent System to Delay Market Entry of Competing Generic Drugs* Press Release, IP/05/737, June 15, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/737&format=HTML&aged=0&language=EN&guiLanguage=en>.)

### **Framework Convention on Tobacco Control**

On June 30, 2005, the European Union deposited instruments of ratification for the World Health Organization Framework Convention on Tobacco Control with the U.N Secretariat, thus bringing to completion the ratification process. The Convention is the first international treaty dealing with a health hazard. It requires countries to take measures to reduce the detrimental effects of smoking by going through a series of steps; for instance, by protecting the health of non-smokers from second-hand smoke, introducing programs to assist smokers to quit, and discouraging young people from smoking. The EU will play a leading role in organizing the Conference of Parties that will take place in February 2006. (*Tobacco Control Goes Global: EU Ratifies WHO Framework Convention on Tobacco Control*, MIDDAY EXPRESS, June 30, 2005, available at [http://europa.eu.int/comm/health/ph\\_determinants/life\\_style/Tobacco/Documents/mid\\_20050630.pdf](http://europa.eu.int/comm/health/ph_determinants/life_style/Tobacco/Documents/mid_20050630.pdf).)



**Succession Process in Saudi Arabia:  
A Brief Overview of the Historical, Religious, Legal and Royal Family Traditions**

Prepared by Dr. Abdullah F. Ansary, Senior Foreign Law Specialist, Eastern Law Division

*Saudi Arabia's Custodian of the Two Holy Mosques, King Fahd ibn Abdul Aziz Al-Sa'ud, died on August 1, 2005, in Riyadh following a prolonged illness. Crown Prince Abdullah ibn Abdul-Aziz Al-Sa'ud was appointed the country's new monarch. Defense Minister Prince Sultan ibn Abdul-Aziz Al-Sa'ud, has been named the new Crown Prince. The process of succession has been a smooth one, in harmony with religious, as well as legal values and beliefs and in agreement with the best traditions of the royal family. In March 1992, King Fahd issued several decrees outlining the basic statutes of government and codifying for the first time procedures concerning royal succession. This brief overview explains the succession process for designating the King and the Crown Prince as carried out in Saudi Arabia.*

## I. Introduction

On August 1, 2005, the Royal Diwan (Royal Court) announced that the Crown Prince Abdullah was proclaimed King of the Kingdom of Saudi Arabia, succeeding King Fahd. The Custodian of the Two Holy Mosques King Abdullah ibn Abdul-Aziz then chose Prince Sultan ibn Abdul-Aziz as the Crown Prince.<sup>1</sup> King Abdullah is the fifth son of Saudi Arabia's founder King Abdul-Aziz to ascend the throne. The leadership transition apparently occurred smoothly following the death of King Fahd, which is viewed as a sign of stability in the kingdom.<sup>2</sup> The succession process followed familiar religious, historical, and legal procedures, with little emphasis on the royal family's long established and inherited traditions.

## II. Background

The first Saudi State was founded on the basis of Islam more than two and a half centuries ago and followed many of the Islamic traditions in designating a Muslim ruler. The Qur'an does not specify mechanisms for the selection of a head of state, leaving this task to the Muslims. A succession system, consistent with the teachings of the Qur'an, as interpreted with the help of the Sunnah, was to be developed by Muslims, in accordance with their times, circumstances, and principles. In Islamic history, Muslim leaders, such as the first four caliphs (Al-Kholafa Al-Rashidon), were selected through the process of *bay'ah*, oath of allegiance between Muslim subjects and a ruler.<sup>3</sup> *Bay'ah* takes place when one or more individuals inform another that they support his assumption of the leadership position and pledge allegiance to him. In the past, this was usually done by visiting the potential leader,

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<sup>1</sup> See *Royal Court Announcement*, THE SAUDI ARABIA INFORMATION RESOURCE, Aug. 1, 2005, <http://www.saudinf.com/main/y8061.htm>.

<sup>2</sup> See, e.g., *Prince Talal hails smooth transition of power*, MIDDLEEAST ON LINE, Aug. 3, 2005, <http://www.middle-east-online.com/english/?id=14186>; Richard Engel, *Saudi succession stable, for now*, NBC News., Aug. 2, 2005, <http://www.msnbc.msn.com/id/8797628/>; Roger Wilkison, *New Saudi King Expected to Push Cautiously for More Reform*, Aug. 4, 2005, NEWSVOA.COM, <http://www.voanews.com/english/2005-08-04-voa39.cfm>.

<sup>3</sup> See Jalalu'd-Din 'Abd'ur-Rahman as -Suyuti, *Tahrik al Khulafah Rashideen* [The History of the Khalifahs who took the Right Way] 67, 122 (Abdassamad Clarke trans., Ta-Ha Publications 1995). See also JOSEPH A. KECHICHIAN, *SUCCESSION IN SAUDI ARABIA* (2001).



expressing allegiance face to face, and shaking his hand. No *bay'ah* is valid without the acceptance of the potential leader. If the majority of the people give their support, the potential leader will ascend to the leadership position. As heads of an Islamic state, all leaders rule in accordance with the laws of God, serving as his representatives on earth.<sup>4</sup>

The importance of religion was evident in the 18<sup>th</sup> century when Al-Sa'ud allied with a major religious reformer at that time – Mohammed ibn Abd Al-Wahhab. According to Muhammad ibn Abd Al-Wahhab's teachings, a Muslim must present a *bay'ah*, or an oath of allegiance, to a Muslim ruler during his lifetime to ensure his redemption after death. The ruler, conversely, is owed unquestioned allegiance from his people, as long as he leads the community according to the laws of God.<sup>5</sup> This interpretation of Islamic law is supported by Hadith (the sayings and deeds of the Prophet Muhammad), which directs Muslims to pay allegiance to the selected ruler, while remaining loyal and obedient towards him, as long as he rules in accordance with the Qur'an and the tradition of the Prophet.<sup>6</sup>

Loyalty to Islam continued during the era of King Abdel-Aziz ibn Abdul-Rahman ibn Faisal Al-Sa'ud who founded the Third Saudi Dynasty in 1902 and ruled Saudi Arabia from 1902 until his death in 1953. He founded the Kingdom of Saudi Arabia and unified it on the same course. Prior to 1992, the crown had passed to one of the thirty-five surviving sons of King Abdul-Aziz, according to seniority and family consensus. This event has allowed a smooth transfer of power over six decades, covering four ascensions to the throne.<sup>7</sup>

Kingship is not hereditary and Islamic Law does not acknowledge the law of succession where the first-born male automatically succeeds his father. Hence, every King and Crown Prince has to be elected through *al bay'ah* system. The relatively smooth transitions in kinship seem to stem from King Abdul-Aziz's truly significant decision to implant the concept of allegiance established by the Shari'a (Islamic Law) and sanctioned by tradition. The adoption of this approach has continued in all subsequent monarchies as successive rulers have continued to adhere to Islamic Law.

<sup>4</sup> See M<sup>AWARD</sup>-I, 'AL<sup>I</sup> IBN MUHAMMAD, AHK<sup>AM</sup> AL-SULT<sup>ANIYAH</sup> WA-AL-WIL<sup>AY</sup>AT AL-D<sup>IN</sup> IYAH [THE ORDINANCES OF GOVERNMENT] 5-7 (Wafaa H. Wahba trans., 1st ed. 1996).

<sup>5</sup> MUHAMMAD IBN ABDEL<sup>WAHHAB</sup>, AL<sup>JAMI</sup> AL<sup>FAREED</sup> MIN KUTOB WA RASA<sup>EL</sup> L<sup>AIMMAT</sup> AL<sup>DAWA</sup> AL<sup>ISLAMIAH</sup> [COLLECTION OF ISLAMIC SCHOLARS MESSAGES] 281 (Minister for Islamic Affairs, Endowment, Dawaa and Guidance, 2nd ed. 1997). See also SAUDI ARABIA A COUNTRY STUDY 13-16 (Helen Chapin Metz ed., 5th ed., 1993).

<sup>6</sup> "Whoever frees a hand from obedience [to his ruler] shall meet Allah (God), on the Day of Judgment, in a state that he shall have no excuse [for his behavior]. Whoever dies without allegiance [to his ruler], dies a death of Jahiliyyah [state of ignorance]." See MUSLIM IBN AL-AJAJ AL-QUSHAYRI, JAMI AL-SAHIH [Collection of the Right Hadith] Hadith No. 1851, al-Riyā: Dār al-Mughnī; Bayrūt: Dār Ibn azm, 1998. In another text, Al-Bukhari and Muslim reported on the authority of Ubadah ibn As-Samit who said:

The Messenger of Allah (peace and blessings be upon him) called us and we took the oath of allegiance to him. Among the injunctions he made binding upon us was: [l]istening and obedience (to the ruler) in our pleasure and displeasure, in our adversity and prosperity, even when somebody is given preference over us, avoiding to dispute the delegation of powers to a man duly invested with them ([o]bedience shall be accorded to him in all circumstances) except when you have clear signs of his disbelief in (or disobedience to) Allah (that could be used as a conscientious justification for non-compliance with his orders), and telling the truth in whatever position we be without fearing in the matter of Allah the reproach of the reproacher." *Id.* Hadith No. 3441.

<sup>7</sup> See SANDRA MACKEY, THE SAUDIS: INSIDE THE DESERT KINGDOM 198 (Houghton Mifflin, 1987). See also JOSEPH A. KECHICHIAN, *supra* note 3, at 25-26.





### III. Legislative Reforms

On March 1, 1992, King Fahd ibn Abdul-Aziz issued three major laws: the Basic System of Governance, the Consultative Council Law, and the Law of Provinces. These laws represent positive progress towards reform, recognition of citizens' civil and political rights, and public participation in government. The source of the Basic System of Governance, as well as its foundation, is Islamic Law. This Law has been guided by Islamic Law in defining the nature, the objectives, and the responsibilities of the State, as well as defining the relationship between a ruler and the ruled based on brotherhood, consultation, friendship and cooperation.<sup>8</sup>

The Basic System of Governance confirms that the system of government is a monarchy,<sup>9</sup> and reserves the right to rule to the children and grandchildren of King Abdul-Aziz ibn Abdul-Rahman ibn Faisal Al-Sa'ud. However, Fahd's 1992 decree on succession established two precedents: an acknowledgement that the grandsons of King Abdul-Aziz were legitimate claimants to the throne and a royal prerogative to choose and to withdraw approval for the Crown Prince.

The Basic System introduces changes in the rules of succession by allowing the selection of a King or Crown Prince from among the children of the sons of the founding King, Abdul-Aziz ibn Abd al-Rahman Al-Faysal Al Sa'ud, on the basis of "suitability" and the most upright among them, rather than seniority. Article 5(b) of the Basic System of Governance states: "Rule passes to the sons of the founding King, [Abdul-Aziz ibn] Abd Al-Rahman Al-Faysal Al-Sa'ud, and to their children's children. The most upright among them is to receive allegiance in accordance with the principles of the Holy Koran and the Tradition of the Venerable Prophet."<sup>10</sup>

In addition, the new Law gives the reigning monarch absolute authority over the appointment and dismissal of his heir apparent, doing away with the traditional role of the family in this decision.<sup>11</sup> The law allows the King, for example, to choose as his Crown Prince a son or a nephew instead of one of his brothers who, traditionally, have been the only persons eligible for succession. King Fahd never exercised his right to dismiss a designated Crown Prince. By proclaiming the new Law, King Fahd revived persistent rumors originating in the 1970s that he and his half brother Prince Abdullah disagreed on many political issues.<sup>12</sup> To forestall speculation that his intent was to remove Abdullah as Crown Prince and replace him with his full brother Sultan, Fahd reaffirmed Abdullah's position.

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<sup>8</sup> See King Fahd, *King Fahd's speech on issuing the Basic Law of Governance* ( March 1, 1992), <http://saudiembassy.net/1992News/Statements/SpeechDetail.asp?cIndex=476>.

<sup>9</sup> See Basic System of Governance, art. 5 (a), Royal, Decree No. A/90, Mar. 2, 1992, available at <http://www.mofa.gov.sa/Detail.asp?InNewsItemID=35297>.

<sup>10</sup> *Id.* art. 5(b). See also JOSEPH A. KECHICHIAN, *supra* note 3, at 72.

<sup>11</sup> *Id.* art. 5(c).

<sup>12</sup> Alfred B. Prados, *Saudi Arabia: Current Issues and U.S. Relations*, CRS Issue Brief for Congress, Sep. 15, 2003, available at <http://www.globalsecurity.org/military/library/report/crs/24673.pdf>.



Moreover, inline with Article 5(d), on January 1, 1996, King Fahd exercised his authority and announced that because of ill health he was temporarily transferring the powers of state to Abdullah.<sup>13</sup> Article 5(d) of the Basic System of Governance states: “The Crown Prince shall devote himself exclusively to his duties as Crown Prince and shall perform any other duties delegated to him by the King.”<sup>14</sup> King Fahd relinquished many executive responsibilities to Prince Abdullah who ruled in King Fahd’s absence until the King formally reassumed his position as head of the government on February 21, 1996. Since that time, Prince Abdullah continued to play a key role in ruling the kingdom when King Fahd, weakened or incapacitated by his physical condition, was incapable of exercising power.<sup>15</sup>

The Basic System of Governance asserts that, upon the death of the King, the Crown Prince shall assume the royal powers until a pledge of allegiance is given. Article 5(e) of the Basic System of Governance states: “The Heir Apparent takes over the powers of the King on the latter’s death until the act of allegiance has been carried out.”<sup>16</sup> Article 6 of the same law requires Citizens to pay allegiance to the King in accordance with the Qur’an and the tradition of the Prophet, in submission and obedience, in times of ease and difficulty, fortune and adversity. After King Fahd’s death, and in line with Article 6 of the Basic System of Governance, Citizens pledged allegiance to King Abdullah ibn Abdul-Aziz and Crown Prince Sultan ibn Abdulaziz at the Governorate Palace in Riyadh on August 3, 2005. During the succession process, the new King receives pledges of support from tribal leaders, ordinary Saudis, princes, ministers, members of the Shoura Council, and leading religious figures. Governors from provinces all over the country also accepted allegiance on behalf of the King and his Crown Prince.<sup>17</sup> For the assertion that every citizen is able to exercise his political right, the Saudi Foreign Ministry also urged Saudi citizens living abroad to report to the Saudi legation offices within the following three days to pledge allegiance to the Custodian of the two Holy Mosques – King Abdullah ibn Abdulaziz – as the King of the Kingdom of Saudi Arabia.<sup>18</sup>

Furthermore, in line with tradition, an appointed council of Ulama (Muslim scholars) declared the transfer of power to the new King legitimate. Before the allegiance process, the kingdom’s top cleric, Grand Mufti Sheikh Abdul-Aziz Al-Sheikh, urged Saudis to pay their allegiance to the new King and his Crown Prince. “We call on Muslims to pledge allegiance to them and to gather around them in support. This pledge of allegiance is legitimate under Shari’a,” he stated.<sup>19</sup> Ulama traditionally have endorsed the choice of the large royal family, which agrees on a candidate by consensus. On August 3,

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<sup>13</sup> Public Statement, *King Fahd delegates Crown Prince to undertake State's affairs*, (Jan. 1, 1996), <http://saudiembassy.net/1996News/Statements/StateDetail.asp?cIndex=457>.

<sup>14</sup> Basic System of Governance, art. 5(d), Royal Decree No. A/90, Mar. 2, 1992.

<sup>15</sup> See JOSEPH A. KECHICHIAN, *supra* note 3, at 203-207.

<sup>16</sup> *Id.* art. 5(e).

<sup>17</sup> Government News, *Royal Family pledges allegiance to Crown Prince Abdullah as King*, (Aug. 2, 2005), <http://www.mofa.gov.sa/Detail.asp?InSectionID=3981&InNewsItemID=38341>.

<sup>18</sup> *Foreign Ministry Urges Saudi Citizens To Pledge Allegiance To New King*, SAUDI ARABIA INFORMATION RESOURCE, Aug. 3, 2005, <http://www.saudinf.com/main/y8492.htm>.

<sup>19</sup> *Saudi Arabia's King Fahd dies after 23-year rule*, THE DAILY STAR, Aug. 2, 2005, [http://www.dailystar.com.lb/article.asp?edition\\_id=10&categ\\_id=2&article\\_id=17285](http://www.dailystar.com.lb/article.asp?edition_id=10&categ_id=2&article_id=17285).



2005, Sheikh Abdulaziz Al-Sheikh confirmed the transition asserting that Ulama paid allegiance to the King and to the Crown Prince in accordance with the Qur'an and the tradition of the Prophet, in submission and obedience, in times of ease and difficulty, fortune and adversity.<sup>20</sup>

It is worth mentioning that in the Islamic tradition of designating a caliph, after the *bay'ah* has occurred and has been accepted by the caliph, he delivers his “*bay'ah* speech” - always regarded as one of the most illustrious embodiments of wisdom and sound judgment speeches. The Kingdom and the new King did not break from this tradition. King Abdullah's first speech to the nation was a short declaration in which he welcomed advice and help to support him in carrying out his new responsibilities. He promised to “dedicate [his] time to enhancing the pillars of justice.”<sup>21</sup>

While the Basic System strengthens the hand of the King in the rules of succession, it is silent on the conditions under which the King himself may be legally removed. Traditionally, the oldest of King Abdul-Aziz's sons was chosen by the family to rule and the next oldest became heir apparent, unless either one formally declined the offer, willingly relinquished his power, or died. It is worth mentioning that, historically, the process of the *bay'ah* for a Muslim ruler, or *khalifah*, consisted of two stages. In the first stage, certain individuals, referred to as *Ahl Al-Hil Wa Al-Aqd* (the people of responsibility and decision – a group of honest, wise, experienced and righteous people who possess the right to elect or remove a ruler) engaged in extensive consultations to build a consensus and then gave the *bay'ah* to a potential *khalifah* whom they found worthy.<sup>22</sup> Their choice was tantamount to a nomination and it carried great weight. In the second stage, the general public gave its *bay'ah* to the chosen candidate selected in the first stage.

It is permissible for *Ahl Al-Hil Wa Al-Aqd* to overthrow an oppressive ruler and choose another one if they are almost sure that this decision will not lead to extended or greater evil. The history of Saudi Arabia suggests the *Ahl Al-Hil Wa Al-Aqd* was a more informal and powerful decision making body that lacked any official, organizational structure, existing throughout the history of the kingdom, composed of members that were primarily from the Saudi Royal Family and its allies.<sup>23</sup> On November 2, 1964, this body exercised its influential powers, and allied with the Ulama, forced King Sa'ud (King

<sup>20</sup> *Sheikh Abdulaziz al-Sheikh*, SAUDI PRESS AGENCY (SPA), Aug. 4, 2005, <http://www.spa.gov.sa/newsview.php?extend.280907>.

<sup>21</sup> Anthony Shadid & Steve Coll, *At a Crossroads, Saudi King Tests the Winds of Reform*, WASHINGTON POST FOREIGN SERVICE, washingtonpost.com, Aug. 18, 2005, at [http://www.washingtonpost.com/wp-dyn/content/article/2005/08/17/AR2005081701844\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/08/17/AR2005081701844_pf.html).

<sup>22</sup> Individuals engaging in consultations at the first stage had to meet certain requirements. Basically, they had to be just and had to possess the kind of knowledge that would enable them to make the best choice for *Khalifah*, in light of the requirements that the *Khalifah* had to meet. They also had to be capable of making a wise choice in light of all the relevant circumstances at that time. As the requirements were loose enough to qualify a large number of people, no limitations were placed on the number of individuals who could be considered part of *Ahl Al-Hil Wa Al-Aqd*, nor were there any economic, racial, or gender-related requirements for obtaining this status in society. There is no reason in Islam for *Ahl Al-Hil Wa Al-Aqd* not to be chosen by the Muslim community. See Azizah Al-Hibri, *Pluralism & Civil Society: Democratic Principles an Islamic Point of View*, THE INTERNATIONAL FORUM FOR ISLAMIC DIALOGUE, 2002-2003, <http://www.islam21.net/pages/keyissues/key3-6.htm>.

<sup>23</sup> MAHMOOD AL-KHALDI, *AL-BAIAH FI AL-FIKR AL-ISLAMI [ALLEGIANCE IN ISLAMIC POLITICAL THOUGHT]* 87, Maktabat Al-Risalah Al-Hadethah, Amman, Jordan 1985. See also, SA'UDI ARABIA YEARBOOK 34-35 (Jebran Chamieh ed., 1980-81); JOSEPH A. KECHICHIAN, *supra* note 3, at 18.



Abdul-Aziz successor) to delegate direct conduct of Saudi government affairs to his younger brother Prince Faisal who was more capable of running the country.<sup>24</sup> On November 18, 1964, the Law of the Council of Ministers was amended so that the king is always the Prime Minister; thus, allowing King Faisal to continue as Prime Minister. It is worth mentioning that the Basic System is silent on the family consensus procedure traditionally exercised by members of the Council – most of whom came from the royal family. However, the royal family members always have continued to exercise this long-standing tradition. Recently, the solidarity and unity of the members of the royal family was observed through their pledged allegiance to King Abdullah ibn Abdul-Aziz on the same day of King Fahd's death.<sup>25</sup>

There was another, less common form of choosing the head of an Islamic state, which existed during early Islam. This system consisted of choosing one's own successor or *Istikhlaf*. The Prophet did not use this form. After his death, Muslims chose his successor though *bay'ah*. Some of the early Muslim rulers, however, did choose their own successors (first exercised by the First Caliph in Islam), and this form of transfer of power later took root.<sup>26</sup> Since the modern Saudi state's formation in 1932, the King and the royal family have named the next two monarchs on the principle of "an heir and a spare." When King Fahd became king in 1982, his half-brother, Prince Abdullah, was named First Deputy Prime Minister and heir apparent. Prince Sultan, a full brother of King Fahd, was made Second Deputy Prime Minister, an indication that he would be the next Crown Prince. On August 1, 2005, King Abdullah designated Sultan ibn Abdul-Aziz as Crown Prince. The succession process introduced by the Basic System of Governance did not introduce a mechanism for a Second Deputy Prime Minister, which traditionally has been exercised. To this date, the new King has not utilized his traditional authority to appoint a Second Deputy Prime Minister.

#### IV. Conclusion

The recent succession of power went as smoothly as expected and was in accordance with the Basic System of Governance. The existing system for the King's selection restored stability to the Saudi Government by establishing a procedure for succession. The positive transition of power is an indication that the kingdom will continue to flourish, as it has since the founding of the modern state. Furthermore, Saudi Arabia will continue to be a key player in the region and in the world because of its oil - which amounts to one-fourth of the world's known reserves. King Fahd's death and Crown Prince Abdullah's accession to the throne are unlikely to have any negative impact on Saudi stability and may help the kingdom move forward in dealing with a number of major issues, such as terrorism and reform.

It will take time before the political map clearly indicates who is next in line after Prince Sultan. Interior Minister Prince Nayef, seventy-one, and Riyadh Governor Prince Salman, seventy, are

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<sup>24</sup> On Mar. 23, 1964, atwa by 'ulama' proclaims that King Sa'ud is unfit to rule. See J. E. Peterson, *Historical Dictionary Of Saudi Arabia* (2nd ed. 2003), <http://www.jepeterson.net/Publications/SADCHRON.pdf>; See also Chamieh ed., *supra* note 20, at 34. See also Helen Chapin Metz ed., *supra* note 5, at 31; DAVID E. LONG, THE KINGDOM OF SAUDI ARABIA 35, (Reprint ed., 1998); JOSEPH A. KECHICHIAN, *supra* note 3, at 44, 93-94.

<sup>25</sup> JOSEPH A. KECHICHIAN, *supra* note 3, at 39, 55.

<sup>26</sup> Abdassamad Clarke, *supra* note 3, at 145.



positioned in the succession chain. The royal family always negotiates the royal succession, and it is unclear at this time how the next generation of grandsons will factor into future succession decisions. If the new King exercises his power to declare the Second Deputy Prime Minister and the royal family approves of his nominee, this situation might sustain the sense of stability in the Kingdom. Some diplomats worry about Saudi Arabia's stability in the long-term. However, the royal family has always shown wisdom in handling affairs and always has come together in times of crisis. Still, stability is a fragile concept in the Middle East. Fortunately, in a Middle East that is increasingly defined by instability, the Saudi Royal Family has moved swiftly and assuredly to project an image of certainty, for the benefit of both domestic and international stability.

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