The Law Library of Congress ~

serving the U.S. Congress since 1832

WORLD LAW BULLETIN

February 2003

Law Library Site:

Http://www.loc.gov/law/congress

Some highlights of this month's issue:

Damages for Pain and Suffering--Germany
Labor Reform--Colombia
Military Reservists--United Kingdom
Money Laundering--China

Special Supplements:

Law Library Forecast: Various Legal/Legislative Issues in Foreign Jurisdictions for 2003– Table of Contents

France: Antisemitism– Draft Bill and Special Report

Full listing of topics follows

The Law Library serves the needs of the U.S. Congress for research in foreign, international, and comparative law. For legal research, please call or fax the Director of Legal Research (tel: (202) 707-9148; fax: (202) 707-1820)

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

The Global Legal Information Network (GLIN) a primary source of authentic legal information serving congressional research needs, is accessed through the Internet at: http://www.loc.gov/glin.
Law Librarian of Congress and Chair, Executive Council, GLIN: Rubens Medina, tel.: 7-5065.

Contents by Region

Topics this Month

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

WLB 2003.02, February 2003

AMERICAS

COLOMBIA--Expropriation Law

On December 27, 2002, the Colombian government passed a new Expropriation Law streamlining the process of asset forfeiture. According to Law 785 of 2002, the asset forfeiture process will take only four months instead of two years as established by the previous law. The reformed process also allows citizens who report the existence of assets obtained illegally or used to commit crimes to be granted an award equal to five percent of the commercial value of the assets. The new Law provides that assets subject to expropriation include those that have been obtained using illegal funds and that once in the possession of the State, they can be allocated for community purposes. A more transparent system to manage expropriated assets, whose seizure is assigned to the National Drug Directorate, is also covered by the Law. ("Uribe Signs New Expropriation Law,"*El Espectador*, Jan. 3, 2003, via FBIS.)
(Sandra Sawicki, 7-9819)

COLOMBIA--Labor Reform Law

President Alvaro Uribe signed a Labor Reform Law on January 2, 2003, that includes a number of incentives for businesses to create jobs quickly and, at the same time, provides greater social protection for the poorest citizens. Law No. 789 extends the work day so that companies can hire two shifts, creates subsidies for employment and unemployment, and reduces the surcharges for work on Sundays and holidays. The employment subsidy is aimed at small- and medium-sized businesses that create jobs for unemployed heads of households. The subsidy will be given directly to the employer and priority will be given to businesses in rural areas, especially those most affected by displacement and armed conflict. The Law creates a six-month unemployment subsidy intended for unemployed female heads of households with children under the age of 18 years. ("Uribe Signs Labor Reform Law," *El Espectador,* Jan. 3, 2003, via FBIS.)
(Sandra A. Sawicki, 7-9819)

ECUADOR--Urgency for Tax Reform

It was reported that in late January 2003, the Ecuadorian government will send a tax reform bill to the national legislature and recommend that the debate be a matter of economic urgency. The package will include basic laws on customs and the petroleum sector. The bill will widen the taxpayer base for the value-added tax and eliminate loopholes in the income tax. The greatest increase will be in special excise taxes, and a ten percent tax will be imposed on the purchase price of new motor vehicles. ("Ecuadoran Government To Send Tax Reform Bill to Congress for Urgent Debate," *CRE Satelital,* Jan. 22, 2003, via FBIS.)
(Sandra Sawicki, 7-9819)

PERU--Concern over Terrorists' Legal Strategies

The Attorney General of Peru, Pilar Freitas, recently expressed concern for Peru's justice system and security in view of the large number of *habeas corpus* writs that have been filed by persons found guilty of terrorism seeking to have their verdicts annulled on the grounds that they were tried according to legislation that is currently being challenged. These prisoners could demand to be released from prison upon the overturning of their sentences and before the start of new trials. Freitas said that this gap in time would be a "judicial limbo," during which terrorists' lawyers could demand their clients' release from prison since there would be no arrest warrants against them. Convicts would also revert back to defendant status with all the related rights.

The Attorney General also said that more judicial tools are needed to avoid the legal bind that is evolving and that the government should establish a judicial strategy in order to prevent a deluge of

lawsuits of this type against the judicial system. Moreover, she stated, prosecutors and judges should be provided with proper and adequate facilities and means to perform their jobs. ("Attorney General Views Terrorists' Legal Tactics," El Comercio, Jan. 2, 2003, via FBIS.)
(Sandra Sawicki, 7-9819)

ASIA

CHINA–Criminal Code Amended

The Standing Committee of the National People's Congress adopted an amendment to the Criminal Code on December 28, 2002, that was effective immediately. The stated purpose of the amendment was to protect the market economy, the administration of public order, the modernization of society, and the security of citizens. Its eight substantive articles increase the severity of punishment for a variety of crimes, including producing and selling medical equipment that is not up to standard and employing a minor under the age of 16 in heavy physical work or work in dangerous places or with hazardous materials. Environmental provisions include harsher punishments for evading customs in the transportation of solid, liquid, or gaseous wastes from abroad and illegally destroying protected trees or other plants. In addition, the use of the law for personal gain or favoring or unfairly targeting an individual by a judicial officer involved in a criminal investigation is defined as a crime, which, in the most serious cases, can result in a significant prison term. Similar provisions apply to those rendering civil or administrative decisions, and increased punishments are also applied to judicial officers who accept bribes. ("Full Text of Amendment (IV) of PRC Criminal Law," Isinolaw, Dec. 28, 2002, via FBIS, Jan. 14, 2003.)
(Constance A. Johnson, 7-9829)

CHINA–Money Laundering

The People's Bank of China (PBOC) issued China's first set of provisions against money laundering on January 13, 2003. On January 14 and 15, the Bank also published measures requiring financial institutions to report suspicious and large *renminbi* transactions and foreign exchange transactions. The provisions and the two sets of reporting management measures all enter into effect as of March 1, 2003. China's drive against money laundering was reportedly launched in June of 2002 when the PBOC set up two departments to monitor suspicious transactions and to coordinate inter-ministry cooperation.

The Anti-Money Laundering Provisions of Financial Institutions define money laundering as acts of nominally legalizing the illegal gains of drug crimes, organized crime, terrorist acts, and smuggling and the income derived therefrom by going through various means to cover up and hide their origin and nature. Penalties in the form of a warning, a fine, or demotion for the high-level personnel in charge are imposed for an institution's failure to set up its own specialized anti-money laundering organs, to report on large or suspicious transactions, or to refuse services to customers with suspicious identities, among others. The Reporting Management Measures for Large and Suspicious Payment Transactions in *Renminbi* and the Reporting Management Measures for Large and Suspicious Foreign Exchange Fund Transactions contain detailed definitions and penalties for violation of the provisions. ("Bank Cleans Up Cash Laundering," China Daily, Jan. 16, 2003, via LEXIS/NEXIS; "China Issues Money-Laundering Regulations for Financial Institutions," AFX-Asia, Jan. 14, 2003; "China issues Regulation on Money Laundering," *Xinhua,* Jan. 13, 2003, via FBIS; "People's Bank of China Steps Up Supervision of Foreign Exchange Trading," *Xinhua*, Jan. 15, 2003, via FBIS; "PRC Announces Move To Tighten Control of RMB Payments, Ward Off Money Laundering," *Xinhua,* Jan. 14, 2003, via FBIS.)
(W. Zeldin, 7-9832)

JAPAN–Intellectual Property Proposals

The Strategic Council on Intellectual Property submitted six bills relating to intellectual property (IP) to the Japanese Diet (Parliament) on January 20, 2003. A proposed revision to the copyright law, covering all multimedia products on which copyright is still valid when the revised law is enacted, extends authorial copyright for movies and animation from the current 50 years to 70 years after initial publication. To accelerate legal procedures for lawsuits involving patents, the Code of Civil Procedure will be revised to allocate more patent experts to focus on such lawsuits to the Tokyo and Osaka district courts (*see also* next paragraph). The Seed and Seedling Law will be amended to raise to ¥100 million (from ¥3 million) (US$846,740 versus $25,402) the penalty for corporate infringement of registered growers' right to exclusive use of new plant varieties. A proposed revision to the Customs Tariff Law places an import ban on crop plants grown in violation of the right of seed growers and allows petitions against imports of items produced through piracy of patents and other industrial rights. A bill drafted by the Ministry of Economic Trade and Industry (METI) calls for the Unfair Competition Prevention Law to be amended to create criminal penalties for "highly mischievous" leaks of trade secrets. The scope of leaks subject to punishment will apparently be limited, however, so as not to discourage whistle blowers and media reporting.

In a related move, the Government and the Liberal Democratic Property have begun talks to create by 2006 a high court specializing in intellectual property issues, in order to develop IP law and reconcile conflicting decisions from the current eight appellate high courts. Creation of such a court would reportedly be "the most drastic organization reform of the courts since World War II." The reform would occur in two stages: 1) appeals of patent infringement cases will be concentrated in the Tokyo High Court, a change incorporated in a proposed bill of amendment to the Code of Civil Procedure; 2) the IP department of the Tokyo High Court will be turned into the ninth high court and would use an *en banc* system (all judges of the court sit on the panel) for major cases in order to effect unified decisions.

In addition, METI plans to establish offices in China to help Japanese companies fight copyright violations in China. The offices, to be set up in the Japanese Embassy in Beijing and in the Japan External Trade Organization in Shanghai and Hong Kong, will provide data on fake goods to local subsidiaries of Japanese companies and will respond to complaints from Japanese companies whose products have been pirated, in some cases asking the Chinese government to take action against violators. ("Japanese Government Eyeing Extension of Copyright on Movies, Animation," *The Daily Yomiuri*, Jan. 16, 2003, via FBIS; "Laws on Intellectual Property Protection To Be Revised," *Kyodo*, Jan. 16, 2003, via FBIS; "Japan: Government Considers Creating Intellectual Property High Court by 06," *Nikkei Telecom 21*, Jan. 14, 2003, via FBIS, Jan. 15, 2003; "Japan: METI To Set Up Offices in China To Stop Copyright Violation," *Nikkei Telecom 21*, Jan. 21, 2003, via FBIS.)
(W. Zeldin, 7-9832)

KOREA, SOUTH–Domestic Violence Law Amended

Public prosecutors can order the detention of a violent family member in a police cell or prison under an amendment of the domestic violence law adopted December 18, 2002 (Law No. 6783, *Kwanbo* No. 15278, Dec. 18, 2002). In order to promote sound family life and protect the human rights of victims of domestic violence and members of their households, when the violence is likely to recur and when other measures such as restraining orders have not been effective by themselves, the nine-article amendment authorizes detention as a provisional remedy. [**GLIN**]
(Constance A. Johnson, 7-9829)

KOREA, SOUTH–Draft International Convict Transfer Law

The Justice Ministry of the Republic of Korea (ROK) has proposed a draft law on international

transfer of convicts, under which South Koreans imprisoned abroad would be able to serve their sentences in the ROK, while foreigners convicted of crimes in the ROK would be allowed to be incarcerated in their home countries. Prisoners who have more than six months of their prison terms left to serve and who are approved by both countries involved would be eligible for transfer, with the exception of those who fail to pay fines. Convicts transferred home to Korea will have to serve the terms imposed in the foreign jurisdiction, but the maximum time will be limited to 25 years unless the sentence is life imprisonment. They may also benefit from paroles, pardons, and sentence reductions available under domestic law.

The Ministry expects the bill to take effect at the earliest during the second half of 2003. An official stated that about 300 Koreans and 300 foreigners may be affected by the proposed law and that the Government would seek to bring home the overseas prisoners after concluding treaties with the relevant countries. ("ROKG Drafting International Convict Transfer Law," *The Korea Times*, Jan. 18, 2003, via FBIS.)
(W. Zeldin, 7-9832)

TAIWAN– Bill Passed to Protect Women's Finances

On January 14, 2003, Taiwan's parliament, the Legislative Yuan, passed a bill designed to amend the Civil Code to give greater protection to the finances of married people, especially women who are more likely to be financially dependent. The proposed law would allow a married person to file a request to have a spouse's property seized provisionally during the process of a divorce. This would prevent departing spouses from avoiding the payment of alimony in the earlier stages of the process of ending a marriage. The request for provisional seizure must be accompanied by collateral in a value of one-tenth that of the property to be taken. (Hong Kong, AFP, Jan. 14, 2003, via FBIS, Jan. 14, 2003.)
(Constance A. Johnson, 7-9829)

TAIWAN–State Secrets Law

The Legislative Yüan passed the Statute To Safeguard National Secrets on January 14, 2003. A companion draft freedom of information act has been approved by the Executive Yüan (Cabinet) but is not yet on the legislative agenda. The new Law divides national secrets into three categories: top secret, extremely secret, and ordinary secret, to remain secret for no longer than 30 years, 20 years, and 10 years, respectively. Under previous measures, there were four categories of secrets, and documents could remain secret for up to 60 years. The Law stipulates who is empowered to declare a document secret (e.g., for top secret documents, only the President, Premier, or authorized ministers) as well as a clear procedure for the determination, management, and review of confidential documents. The degree and duration of confidentiality must be clearly listed on such material. Each government agency is obligated to review all of its confidential documents and determine whether or not they should remain classified; those not re-classified as confidential within two years will lose their secret status. The act of illegally probing into or gathering national secrets is punishable by a prison term of up to five years; leaking or selling such secrets, by a term of one to seven years. Legislators struck down a draft provision that would have given government agencies the right to take out an injunction against media outlets to prevent them from publishing State secrets. ("CNA: Taiwan Enacts National Secret Protection Law," Taipei *Central News Agency*, Jan. 14, 2003, via FBIS; "Taiwan 'State Secrets' Law Approved," *Taiwan News*, Jan. 15, 2003, via FBIS.)

The Law has been criticized in the press for failing to provide for an independent supervisory mechanism, for failing to clearly delimit the scope of what can be classified as secret by the authorized officials, and for failing to set forth how courts will determine what constitutes secret versus public information in the case of a dispute. ("CNA: Taiwan Enacts National Secret Protection Law," Taipei *Central News Agency*, Jan. 14, 2003, via FBIS; "Taiwan 'State Secrets' Law Approved," *Taiwan News*, Jan. 15, 2003,

via FBIS; "Taiwan: Lien-ho Pao Editorial Discusses Need for Supervision of State Secrets Law," Lien-He Pao, Jan. 22, 2003, at 2, as translated in FBIS, Jan. 21 [sic], 2003.)
(W. Zeldin, 7-9832)

EUROPE

CZECH REPUBLIC–Supreme Administrative Court

Although the Czech Constitution of 1992 provided for the establishment of a Supreme Administrative Court in its article 91, the Court has been established only with the enactment of a Law (Law of Mar. 21, 2002, No. 150, *Collection of Laws*). The Court began to function as of January 1, 2003, in the city of Brno. The Law also established regional administrative courts to act as first-level administrative courts, on the basis of whose decisions a petition of cassation may be brought to the Supreme Administrative Court.

The regional administrative courts and the Supreme Administrative Court constitute the administrative law system. They deal with actions brought against the decisions of any office of state or local government made against any physical or legal person in matters of public administration. They protect such persons against abuse of power, as well as against inaction, by the government. In addition, they are competent to deliver decisions on electoral matters and on those involving political parties. The Supreme Administrative Court sits in panels of eight, seven, or three judges and in plenary sessions of all judges (eventually to number no more than 60), according to the subject matter under consideration. Regional administrative courts sit in panels of three judges. The court judges are now being appointed and the courts are beginning to function.
(George E. Glos, 7-9849)

GERMANY–Tort Reform Law

A major reform of German torts law was enacted on August 1, 2002. The Second Act Reforming Provisions on Damages (*Bundesgesetzblatt* I at 2674) reformed the torts law provisions of the German Civil Code (*Reichsgesetzblatt* 1896 at 195, as amended), as well as many special liability statutes, including the strict liability regimes for pharmaceuticals, road traffic, and railroad and airline accidents.

A major accomplishment of the reform was the removal of some of the heretofore existing restrictions on damages for pain and suffering. According to the newly enacted section 253 of the Civil Code, damages for pain and suffering can now be claimed whenever there is liability for physical injury, whereas formerly they could be claimed only if liability was based on proven fault and not on strict liability. In addition, many special liability statutes were amended to provide additional rules on causation and the shifting of the burden of proof to the suspected tortfeasor. On the whole, the Act brings many improvements in favor of torts victims.
(E. Palmer, 7-9860)

THE NETHERLANDS–Proposal For Non-Court Punishment

The Minister of Justice has submitted a draft proposal of a law, applicable to less serious crimes, under which the Office of the Public Prosecutor will have the authority to impose various penalties and measures (punishment orders), such as fines, community service orders, and other measures including disqualification from driving or confiscation of the driver's license, without the intervention of a court. These

punishment orders can only be imposed on a suspect after it has been explicitly established that he or she is guilty of the punishable offense. Before the punishment order may be issued, the suspect has to be given a hearing and if a fine higher than €2,250 is imposed, a lawyer must be present. If a suspect disagrees with the punishment order, he or she may lodge an objection with the criminal court and the case will be tried in accordance with regular procedures.

The proposal is in line with the Government's aim to encourage out-of-court settlements in criminal cases in order to ease the judges' workload and enable the judicial authorities to make a more effective use of their existing capacity. (Ministry of Justice, *Press Release*, Jan. 17, 2003, at http://www.ministerievan justitie.nl)
(Karel Wennink, 7-9864)

UNITED KINGDOM–Parish Councillors Revolt Against "Snoopers Charter"

The Parish Councils (Model Code of Conduct) Order 2001, SI 2001/3576 has caused outrage amongst Parish Councillors across the nation. Under the Order, Parish Councillors, who are elected, unpaid officials, are required to publicly declare and register their financial and property interests. The government claims that this is to increase public confidence and openness in local government, as well as to prevent Councillors from acting in their private interests. Individuals who fail to comply with the Order face disqualification from office for up to five years. This Order has incensed numerous Councillors who consider it an invasion of privacy and unnecessary to have to disclose their interests in such a manner. They believe that the Order will deter people from pursuing a local government position and pose a financial disadvantage to Councillors with property and businesses in the local areas. Rather than abide by the Order, many have opted not to continue in office or have not declared their interests. In the first case of its kind, Councillor Chris Garner was recently found in breach of the Order for failing to declare his interests and disqualified from office for one year by a Tribunal. Ten Councillors in the same area have also declined to sign the Code of Conduct and stated that they intend to remain in office while they bring a case against the government for breaching their human rights. (Charles Clover, Parish Councillors to Fight "Snoopers Code," *Daily Telegraph*, Jan. 18, 2003; Charles Clover, "Parish Councillor Declares an Interest in Abolishing the Snooper's Charter," *Daily Telegraph*, Jan. 13, 2003; Lewis Smith, "Ban for Parish Councillor in Privacy Battle," *The Times,* Jan. 17, 2003; Stephen Robinson, "Snooper's Code Claims its First Parish Victim," *The Telegraph*, Jan. 17, 2003.)
(Clare Feikert, 7-5262)

UNITED KINGDOM–Reservists Fear Job Losses

On January 7, 2003, the Secretary of State for Defense, Geoff Hoon, made an Order under section 54(1) of the Reserve Forces Act 1996 (ch. 14) authorizing him to call up members of the reserve forces to duty. It has caused widespread concern amongst reservists as to whether their civilian jobs will be secure if they are mobilized. The Reserve Forces (Safeguard of Employment) Act 1985 (ch. 17) was enacted to protect reservists who are liable to be called up. While there is no requirement for employers to maintain the employment or benefits of reservists during the mobilization period, the 1985 Act places a duty on employers to reinstate the reservist in his/her job, or in a similar position on the most favorable terms, if the person applies for reinstatement upon return. If the employer does not follow these requirements, the reservist may apply to the Reinstatement Committee, which can either order compensation for or reinstatement of the reservist. Despite these provisions, many reservists are requesting exemption from mobilization. They fear that they will be dismissed from their jobs due to widespread ignorance among employers about their obligations under the Acts as well as concern over the difficulty of enforcing the provisions. Some estimate that if 7,000 reservists are called up, only half would serve since the remainder would be unable to leave their

jobs. The Ministry of Defense has been conducting a long-term campaign to increase awareness about reservists and employment and has recently run a series of newspaper advertisements to ensure that employers are aware of the responsibilities imposed upon them by the Acts. (Statement from the Rt. Hon. Geoff Hoon MP, Secretary of State for Defence, at http://www.army.mod.uk/ta/news/SoS7jan03.htm; Michael Smith *and* Benedict Brogan, "Reservists Who Fear the Sack Fight Call-Up," *The Telegraph*, Jan. 17, 2003; Jessica Learmond-Criqui, "Military Call-Up and the Rules of Engagement," *The Times*, Jan. 14, 2003; Ewen MacAskill, "Tank Brigades Prepare for Desert War: Britain Prepares Tanks," *The Guardian*, Jan. 7, 2003.) (Clare Feikert, 7-5262)

NEAR EAST

ISRAEL–Alleged Illegal Intervention in Election Campaign

Information regarding a police investigation into allegations of wrongdoing in Sharon's campaign for the Likud party leadership in 1999 was leaked to the Israeli press during the recent 2003 national election campaign. A senior prosecutor in the Central District Attorney's Office, who served as a referent to the police investigation, admitted to having leaked Israel's request that South African authorities question one of their nationals about a $1.5 million loan to Prime Minister Ariel Sharon. In her interrogation, the attorney told investigators she had leaked the document because her son was going into the army and she did not want Sharon to be prime minister while he was serving. Israel's Attorney General, Mr. Elyakim Rubinstein, stated in a press conference that the leaking of the secret document just before the elections amounted to an intervention in the sensitive political system. In addition, the leak itself had caused serious damage to the investigation into Sharon's activities. According to the Attorney General, an inquiry is a procedure of which the person who is to be questioned is ignorant and so that person cannot prepare advance. The publicity about the request made the investigation much more difficult.

According to sources in the Ministry of Justice, the senior prosecutor who leaked the secret document can be tried on charges of obstructing justice and disclosure in breach of duty in violation of the Penal Law. Paragraph 117 of the Penal Law specifically provides that a public servant who passes along information in an unauthorized manner to a person who is not authorized to receive it may be punished with up to three years in prison. Moreover, under paragraph 244, a person who does anything with intent to prevent or foil a criminal investigation is similarly punishable with imprisonment for three years. It may be noted that in recent years Israeli newspapers have been filled with leaks from ongoing investigations into the activities of public figures, including former Prime Minister Binyamin Netanyahyu and Jerusalem Mayor Ehud Olmert. Often the information proved to be incorrect or inaccurate. (D. Izenberg, "Prosecutor Admits Leaking Loan Probe to Hurt Sharon," *Jerusalem Post Online*, Jan. 23, 2003, http://www.jpost.com ; B. Kara, "The Long Road of the South African Money," *Ha'aretz Online*, Jan. 7, 2003, http://www.haaretz.co.il)
(Ruth Levush 7-9847)

SOUTH PACIFIC

AUSTRALIA--Crackdown on Overseas Tax Havens

The Australian (federal) Taxation Office has announced that use of overseas tax havens, once restricted to large corporations and the very rich, is now becoming increasingly common for small businesses and middle income taxpayers. Tax-avoidance programs are now promoted over the Internet, which has made it simple to set up offshore bank accounts, purchase foreign life insurance policies, or obtain offshore credit or debit cards. In 2001-2002, at least A$5 billion was transferred to such tax havens as Bermuda, Vanuatu,

the Cayman Islands, and the Channel Islands of Guernsey and Jersey. A spokesman for the private Tax Institute noted that liberalization of Australia's financial markets has reduced the requirements to report on transactions and that many transfers of funds can no longer be traced. The Australian Taxation Office reportedly will endeavor to sign bilateral agreements with tax haven states in order to share information about accounts held by Australian citizens. Australia will form a partnership with New Zealand to negotiate agreements with Pacific tax havens and will use a similar partnership with Canada to negotiate with Caribbean nations. (*The Australian*, Jan. 7, 2003, at http://www.theaustralian.news.com.au/)
(D. DeGlopper, 7-9831)

AUSTRALIA--Privacy Law Blinds Private Eyes

On December 21, 2001, Australia's Privacy Amendment (Private Sector) Act 2000 went into effect. It applies to all businesses with an annual turnover above A$3 million (about US$1.77 million). The president of the Australian Institute of Private Detectives has claimed that the law has made it far more difficult for his members to obtain information on individuals and that in consequence witnesses have been lost, tenants absconded owing rent, and loan defaulters have disappeared. The federal deputy privacy commissioner, whose office oversees implementation of the law, has responded, "With all due respect to private investigators, the community has made a decision to set up a police force to do that work...." The Commissioner's office said that after a year, misunderstandings of the law were common. Some bank staff were not allowing co-signatories of joint bank accounts individual access to the accounts, which is an error to be remedied by better training. Contrary to some complaints, the privacy law does not stop church congregations from public prayers for the sick, nor does it prevent parents from seeing their children's report cards or school records. It does prevent schools from providing rosters of pupils' names and addresses to parent associations, unless parents have given permission for such access. The law, which prohibits adding addresses to a mailing list without explicit permission, has forced major changes on the direct-marketing industry. The number of names on "do not call" and "do not mail" lists has almost doubled since the law came into effect. (*Sydney Morning Herald*, Jan. 10, 2003, at http://www.smh.com.au/)
(D. DeGlopper 7-9831)

INTERNATIONAL LAW AND ORGANIZATIONS

BRAZIL/COLOMBIA– Antiterrorism Efforts

The inauguration of Brazilian President Luiz Inacio Lula da Silva in late December 2002 provided the opportunity for Colombian Vice President Francisco Santos and his Brazilian counterpart Jose Alencar to agree that Brazil will support Colombia's counter-terrorism programs. The meeting also involved the new Brazilian foreign minister; defense minister; development, industry, foreign trade minister, and other high ranking Brazilian officials. The two countries will hold a bilateral presidential and ministerial conference on the border in the coming months. The Colombian Vice President also reached an agreement with the new Brazilian institutional security minister, Gen. Jorge Armando Felix, to strengthen bilateral exchange of information and intelligence. ("Brazil To Support Colombia's Counter-Terrorist Efforts," *El Tiempo*, Jan. 3, 2003, via FBIS.)
(Sandra Sawicki, 7-9819)

CAPE VERDE/CUBA--Agreement Between Political Parties

On January 21, 2003, the African Party for the Independence of Cape Verde and the Cuban Communist Party, both of which hold power in their respective countries, signed an agreement to develop

a partnership through the exchange of experts and delegations during congresses and conferences that will facilitate bilateral consultations about issues of common interest, especially in the political, social, educational, and scientific fields. ("Cape Verdean, Cuban Ruling Parties Sign Accord To Strengthen Cooperation," *Lusa News Agency,* Lisbon, Jan. 21, 2003, via FBIS).
(Sandra Sawicki, 7-9819)

COLOMBIA/UNITED STATES--Possibility of Trade Ties

Colombian officials and businessmen are undertaking an evaluation of the conditions and prospects for a possible signing of a trade agreement with the United States. Colombian Foreign Trade Minister Jorge Humberto Botero announced at the opening of the 15th Colombiatex Meeting on January 22, 2003, that the government and industry representatives will examine proposals that will bring about a trade agreement with the U.S. to be implemented bilaterally or with neighboring Andean Group countries. The minister referred to the agreement recently signed between the U.S. and Chile, which took 12 years to come to fruition and be signed. Botero warned that a possible trade agreement with the U.S. should include protections for foreign investment and intellectual property and mechanisms for conflict resolution. Colombia will ask the World Bank to help in a review of the NAFTA agreement between North American trading partners and acknowledges that the key to revitalizing exports will be to follow the example of tariff preferences granted through the new Andean Trade Preferences Act. ("Colombian Government, Businessmen View Possible Trade Agreement with US," *El Tiempo*, Jan. 22, 2003, via FBIS.)
(Sandra Sawicki, 7-9819)

MEXICO/UNITED STATES--Hearing Before the International Court of Justice

The Mexican government requested that the International Court of Justice block the executions of 51 Mexicans on death rows in the United States. A hearing on the subject began on January 21, 2003, in The Hague, the seat of the highest tribunal of the United Nations. Mexico insists that the United States is violating the rights of these prisoners because it has denied them access to consular officials as stipulated by the Convention of Vienna on Consular Relations of 1963, which has been signed by most nations, including the U.S. and Mexico. The treaty permits people accused of committing crimes in a foreign country to seek help from their consulates and obtain legal counsel in their own language. Mexico asserts that U.S. state and local officials have systematically ignored the treaty.

This is the latest flare-up in tensions between the U.S. and Mexico over the death penalty. Mexico has protested the use of capital punishment in the United States on various occasions. Laurence Blairon, a spokesman for the International Court, stated that Mexico desires that the U.S. refrain from further executions until the Court rules on the matter and that new trials be ordered eventually for the Mexicans who are imprisoned in ten different states of the U.S. (*BBCMundo.com,* Jan. 21, 2003, via http://news.bbc.co.uk/hi/latin_america/newsid_2678000/2678981.stml; *Los Angeles Times,* Jan. 22, 2003, via http://www.latimes.com/news/nationworld/world/l-fg-mexico22jan22,0,4316487.story?coll= %2Dhead; and *The Toronto Star,* Jan. 22, 2003, via http://www.thestar.com/NASApp/cs/Contents= 1035776909368& call_pageid= 68332188854)
(Sandra Sawicki, 7-9819)

UNITED STATES/MALAYSIA, SOUTH KOREA–Container Security Initiatives

The United States has signed two more Container Security Initiatives with Asian trade partners. An initiative with the Republic of Korea was initialed on January 17, 2003; one with Malaysia was signed on

January 20. The United States Customs Service has already concluded CSI arrangements with Hong Kong, Japan, Singapore, and Thailand, among others (*See* WLB2002-10). ("ROK's Yonhap: Korea, U.S. Sign Container Security Initiative," *Yonhap*, Jan. 17, 2003, via FBIS; "Xinhua: Malaysia, US Cooperate in Customs Container Security Initiative," *Xinhua*, Jan. 20, 2003, via FBIS.)
(W. Zeldin, 7-9832)

WESTERN HEMISPHERE--Inter-American Conference Against Terrorism

Government representatives from around the hemisphere gathered in San Salvador, El Salvador, on January 22, 2003, for a three-day Inter-American Conference against Terrorism. Important issues on the agenda included creation of units to gather financial intelligence, database development, establishment of a policy exchange and coordination network, and the monitoring of all movement of merchandise and luggage and transit of persons. The latter issue is related to the movement of weapons and explosives and drug smuggling.

Agreements will be adopted by the participating countries following the recommendations of the plenary session and are aimed to make security efforts in airports, land and sea customs points, and borders stronger in the Americas. Russia and France are attending as observers. ("Inter-American Conference Against Terrorism Begins 22 Jan," *El Diario de Hoy*, Jan. 21, 2003, via FBIS.)
(Sandra Sawicki, 7-9819)

CUMULATIVE CONTENTS–AVAILABLE UPON REQUEST:
Call 7-LAWS or *e-mail* lawcongress@loc.gov

****

LAW LIBRARY CONGRESSIONAL LEGAL INSTRUCTIONAL PROGRAM

Two seminars on legal and legislative research methodologies exclusively for Congressional staff are taught by Law Library staff onsite at the Law Library (James Madison Building):

- Fundamentals of Federal Legal Research
- Legislative History and Statutory Research

For further information or to register,
call: 7-7904

Permanent Congressional staff members are also invited to attend a **Law Library/Congressional Research Service briefing**.

These sessions are held every Thursday from 10 to 12 noon and provide an orientation to the services provided to Congress.

To register, **call 7-7904**.

****

LAW LIBRARY RESEARCH REPORTS

(for copies of these and other LL products, call the Office of the Law Librarian,7-LAWS) One of the ways in which the Law Library serves Congress is by providing in-depth analyses of how other societies handle some of the same legal issues faced in this country. Some recently prepared studies are:

NEWLY AVAILABLE: Law Library Forecast – Various Legal/Legislative Issues in Foreign Jurisdictions for 2003

Campaign Financing–Comparative Analysis and selected individual country reports
Cloning
Corporate Governance and Accounting Standards
Cybercrime and Terrorism
Hague Convention Countries–Applicable Law and Institutional Framework (http://travel.state.gov/abduct.html)
Laws Protecting Persons with Disabilities
Privatization of Postal Services–Canada, Germany, the Netherlands, the United Kingdom
Public Health Emergency Legislation in Other Nations
Terrorism: Foreign Legal Responses
European Legal Cooperation Against Terrorism (24 countries)

FOREIGN LAW BRIEFS –current titles

Japan: Recent Development in ***Product Law Liability***, by Sayuri Umeda, December 2002, LL-FLB2002.09

European Union: Privacy and Personal ***Data Protection****, the "Safe Harbor" Agreement*, by Theresa Papademetriou, November 2002, LL-FLB2002.08

Japan: Overview of the ***Banking*** *System*, by Sayuri Umeda, August 2002, LL-FLB2002.07

Human Trafficking*– the Need for a Comprehensive Legislative Approach in the Russian Federation*, by Peter Roudik, October 2002, LL-FLB2002.06

Israel: Extradition Law – its Evolution and the Effect of the ***Sheinbein Case***, by Ruth Levush, November 2002, LL-FLB2002.05

Russian Federation: ***Religious Issues*** *in Newly Adopted Legislation*, by Peter Roudik, October 2002, LL-FLB2002.04

Japan: Recent Legal Developments in ***Employment Discrimination***, by Sayuri Umeda, September 2002, LL-FLB2002.03

Russian Federation: History and Analysis of the ***Constitution****,* by Peter Roudik, June 2002, LL-FLB 2002.02.

Compensation for ***Victims of Terrorist Actions****: Israel as a Case Study,* by Ruth Levush, May 2002. LL-FLB 2002.01.

The Netherlands: ***Same Sex Couples****, Registered Partnership, Marriage and Adoption,* by Karel Wennink, Oct. 2001. LL-FLB 2001.04.

The New ***Russian Code of Criminal Procedure***, by Peter Roudik, Sept. 2001. LL-FLB 2001.03

Japan: Recent Legal Developments in ***Health Care****,* by Sayuri Umeda, July 2001. LL-FLB 2001.02

Capital Punishment *in Foreign and International Law*, by Constance Johnson, June 2001. LL-FLB 2001.01

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

European Council Presidency Conclusions[1]

The European Council convened in Copenhagen on December 12-13, 2002. The main conclusions of the Presidency include:

- **Accession:** It endorsed the accession of ten candidate countries– Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia– which will become Members as of May 1, 2004. In regard to Cyprus, the Council expressed its preference for accession of a unified state and welcomed the efforts of the two communities (Greek and Turkish) to conclude a comprehensive settlement by February 28, 2003. It also urged Turkey to continue its reform process and stated that in December 2004 the EU will open accession negotiations, provided that Turkey fulfills the political criteria. Finally, it approved continued provision of assistance with accession efforts to two additional countries, Bulgaria and Romania.

- **Middle East:** It urged Palestinians and Israelis to stop the violence and condemned the illegal settlement activities that threaten the creation of two States. It endorsed the adoption of a plan which proposes the creation of a Palestinian state by 2005.

- **Iraq:** It supported Security Council Resolution 1441 of November 8, 2002, to disarm Iraq of weapons of mass destruction.

Agreement on Exchange of Personal Data Between Europol and US authorities[2]

In December 2002, the European Police Body (Europol) and the United States signed an agreement on the exchange of personal data and other information in the law enforcement field. Under the Europol Convention, the exchange of personal data between Europol and a third country is possible only if the third country in question (in this case the United States) provides an adequate level of data protection and if it is for the purpose of preventing or combating serious crimes.

The aim of the new agreement is to prevent or detect and investigate criminal offenses that fall within the jurisdiction of each party and to foster cooperation for "any specific analytical purposes." The means for carrying out this objective is the mutual exchange of information, including personal data. Some significant highlights of the agreement are: a) Any information exchanged on the basis of this agreement, with the exception of information that is already in the public domain, will be deemed as law enforcement information and be afforded all the necessary safeguards; b) the phrase "analytical purposes" also includes exchange of information related to immigration investigation and proceedings or to *in rem* or *in personam*

---

* LL.B. University of Athens Law School, LL.M. George Washington University, International and Comparative Law.

[1] Http://www.europa.int

[2] Http://www.statewatch.org

seizure or restraint and confiscation of assets used to finance terrorism; c) Europol may transmit personal data to the United States only upon prior consent of the Member State where the personal data originated; and d) Europol shall not consent to onward transmission of personal data by the United States.

The agreement regulates the manner in which exchange of personal data may occur, the authorities responsible for requesting and receiving information, and the content of each request. Thus, requests for exchange can take place when initiated either by the points of contact established by the December 2001 agreement (i.e., the Department of Justice for the US and Europol for the EU) or directly between Europol and designated U.S. federal, state, or local authorities.

Draft E.C. Merger Regulation[3]

This Regulation will replace Regulation No. 4064/89 on the Control of Concentration of Undertakings (Merger Regulation). Even though the overall system has been considered successful, the new Regulation rectifies certain shortcomings associated with the old one. Its main objectives include: a) better allocation of merger cases between the Commission and the competition authorities of the Member States in line with the subsidiarity principle. The Commission will deal with those cases that have a Community impact, whereas those with a national or local impact will be handled at the national level; b) improved criteria for referrals of cases to the Commission. The Commission will have exclusive jurisdiction if all the Member States or at least three Members concur in a case being referred; c) giving the Commission the right of initiative to make referrals; d) incorporating in the definition of concentration the previously unwritten criterion that the "change in control has to take place on a lasting basis"; e) incorporating in the dominance criterion the case law of the European Court of Justice; and e) elimination of the one-week deadline for submitting notification of concentration (merger) with a Community dimension to the Commission. However, the system is still based on notification of the Commission prior to the implementation of concentration.

Agreement on New Tax Rules[4]

The EU economic and finance ministers (ECOFIN) agreed on adopting a new Directive on taxation. Member States will exchange more banking information on the savings of non-residents. This will in effect terminate banking secrecy from 2004 and make it possible for the EU to fight tax evasion. Austria, Belgium, and Luxemburg declared that they will abstain until non-EU tax havens such as Switzerland agree to information sharing. The three countries will continue to levy a withholding tax on non-residents' savings, rather than exchange information on those savings. The tax will reach 15 percent by 2004 and to 35 percent by 2010.

---

[3] COM(2002) 711 final (Brussels, 12.11.2002).

[4] Http://europa.eu.int/rapid

Draft Regulation on Action by Customs Authorities Against Goods Violating Certain Intellectual Property Rights [5]

The proposed Regulation defines the conditions under which Customs authorities are authorized to act when there are grounds for suspicion that goods may violate an intellectual property right and stipulates the measures that can be taken in such cases. The main principle of this Regulation is the same as that of the previous one: in cases of suspected infringement of intellectual property rights, the holder of such rights can apply for action to the Customs authorities, who are empowered to detain the goods for a certain period. However, the proposed Regulation does have a wider scope than its predecessor, in order to include new intellectual property rights, such as plant variety rights, geographical indications, and designations of origin. Other highlights include: harmonization of the period of validity and the form of application for action, improvement of the quality of information provided to Customs by right holders who apply for action, and extension of the right of Customs authorities to act on their own (*ex officio*).

Future EU and US Cooperation Agreement on Transport Security[6]

The European Commission recently proposed to negotiate an agreement with the United States on establishing rules for Customs controls on goods, especially those transported in containers. In the aftermath of the September 11th, 2001, attacks, the United States devised the Container Security Initiative to ensure that containers will not be used for terrorist purposes. Seven Member States– Belgium, France, Germany, Italy, the Netherlands, Spain, and the United Kingdom– have signed declarations of principle with the US Customs for this purpose. As of February 2003, the United States announced that it will impose the "24-hour rule," which requires that carriers provide the US Customs with cargo manifest information 24 hours prior to the cargo's being loaded on any vessel going to the US. The Commission expressed its concerns over the extraterritorial effects of this decision.

The Commission has proposed the following: a) provision of a definition of "information" in order to identify high-risk consignments and elaboration of how to collect and exchange it between the competent authorities; b) establishment of common definitions of controls and explication of how to use such definitions for proper identification of high-risk goods; and c) development of a unified approach consistent with international commitments. The next step is for the Council to give a mandate to the Commission to amend the 1997 EU/US customs cooperation agreement.

Documents Related to Terrorism Are Not Accessible to the Public[7]

On January 14, 2003, the European Ombudsman issued a decision holding that Europol has the right to deny public access to documents related to a counter-terrorism conference that took place in Madrid in February 2001. The decision was made in response to a complaint submitted by a Dutch citizen to the Ombudsman, stating that Europol rejected his request for access to preparatory documents for the

---

[5] COM(2003) 20 final (Brussels, 01.20.2003).

[6] *Supra* note 4.

[7] *Id*.

conference, and was based on Europol's rules on public access to documents. The Ombudsman accepted Europol's reasoning that disclosing certain information "related to the functioning of the national authorities as well as the functioning of Europol could interfere with the effectiveness of combating crimes related to terrorism." The Ombudsman held that the nature of police work is such that it necessitates confidentiality in handling documents and other information in the interest of the public.

EU Establishes European Maritime Safety Agency[8]

The EU established a European Maritime Safety Agency in 2002 that will be fully operational in the summer of 2003. The Agency will be responsible for maritime safety issues and will support the Member States, the candidate countries, and the Commission in their attempts to reduce the risks of marine pollution and loss of life at sea. The Commission intensified its effort to establish the Agency, which for the time being will be located in Brussels, since the occurrence of the recent European maritime incident, which involved the "Prestige" along the northwest coast of Spain. The Administrative Board of the Agency is composed of one representative of each Member State, four from the Commission and four experts.

European Parliament Endorses the Cosmetics Directive[9]

The European Parliament endorsed an amendment to the Cosmetics Directive that prohibits the testing on animals of ingredients used in cosmetic products once alternative tests have become available. The final deadline for suspension of all animal testing is 2009. The main objective of this amendment is to reduce animal suffering. The amended Directive also includes rules on the labeling of 26 allergenic substances and prohibits the inclusion of substances classified as carcinogenic or mutagenic.

[8] *Id.*

[9] *Id.*

Law Library Forecast

Various Legal/Legislative Issues in Foreign Jurisdictions for 2003

(multinational study #2002-14026)

Directorate of Legal Research
Law Library of Congress
January 2003

The Directorate of Legal Research of the Law Library of Congress offers the unique service of information and analysis of the laws of other nations, as well as on issues of international and comparative law.

WORLD LAW BULLETIN SUPPLEMENT **(for full text, call 7-LAWS)**

VARIOUS LEGAL/LEGISLATIVE ISSUES IN FOREIGN JURISDICTIONS FOR 2003

TABLE OF CONTENTS

INTRODUCTION

The purpose of this innovative research product is two-fold. First, it is to showcase the unique research capability that is in place to serve the Congress in its legislative activities. The foreign legal specialists in the Law Library are generally trained and admitted to practice in the foreign jurisdiction represented by their expertise. Such authoritative presence, with the extensive collection of primary foreign legal materials housed in the collection of the Law Library, is an extremely rich and reliable source for legal information and analysis. Second, other legislatures around the world are involved in many of the same social, economic, and political issues that face the Congress of the United States. As is evident from the treatment herein, just as in the United States, some issues lend themselves easily to brief summaries or overviews while others demand a more protracted treatment.

The research staff of the Law Library stands ready to assist in such foreign law matters, as well as in issues involving a comparative law or international law approach. Such research possibilities can be explored or requested through the Director of Legal Research at 202-707-9148 (fax: 202-707-8120).

For illumination on the value to the Congress of comparative law considerations, a brief piece on that insight is set forth at the end of the individual nation reports.

FRANCE: ANTISEMITISM

DRAFT BILL and COMMITTEE REPORT*

On December 10, 2002, after a first reading, the National Assembly unanimously adopted the "Draft Bill on Increasing the Penalties for Certain Offenses with Racist, Antisemitic or Xenophobic Characteristics."[1] A few days before, a report prepared by one of the sponsors of the bill and presented in the name of the Constitutional Laws, Legislation, and General Administration Committee[2] had been distributed to other members of the Assembly. The report takes note of the sharp rise in the number of antisemitic acts since October 2000, the date of the second Intifida. It paints a fairly grim picture of the situation. In its introduction, the author states:[3]

In spite of a notable diminution these last months, France has been confronted in the last two years with a wave of racist attacks without precedent, reminiscent of certain somber hours of the Republic.... These attacks, reported in foreign newspapers, tarnish France's image in the world, portraying the French people as racist, xenophobic, and antisemitic, even though these acts are committed by a minority that does not recognize the values of the Republic.

In addition to providing statistics on attacks on synagogues, Jewish schools, private property, and cemeteries and assaults on individuals, the parliamentary report stressed the growing and "alarming" verbal antisemitic violence taking place in schools that further led to physical violence, driving Jewish children to leave public schools. Although this wave of antisemitic attacks and verbal violence has been mostly attributed by the authorities to youths originally from the Maghreb (Algeria, Morocco, and Tunisia), the report states that this "resurgence is facilitated by an almost complete lack of criminal prosecution undertaken by the judicial authorities and by the indifference of public opinion and the media, with certain members of the extreme left elite even approving of it."[4] The report further states that the gravity of the situation made it imperative to add a new legal tool to fight offenses committed with racist motivation, hence the formulation of the draft bill.

The bill, if adopted by the Senate in identical terms, would increase the penalties incurred for certain crimes and

---

* Prepared by Nicole Atwill, Senior Legal Specialist, Western Law Division. For full reports on terrorism-related legislation in France and several other foreign countries, call the Law Library at 7-LAWS and request *Terrorism: Foreign Legal Responses* or copies of individual country reports contained therein. Abstracts of the reports were attached to WLB 2001.10.

[1] < http://www.assemblee-nationale.fr/12/ta/ta0044.asp>

[2] M. Pierre Lellouche, ASSEMBLEE NATIONALE, RAPPORT 452 (Dec. 4, 2002), at < http://www.assemblee-nationale.fr>

[3] *Id.* at 5.

[4] *Id.* at 9.

délits[5] if committed with a racial, antisemitic, or xenophobic motive. Article 132-76 would be added to the Penal Code under the section defining "circumstances bringing about the aggravation of penalties." It provides as follows:

Penalties incurred for a crime or a *délit* are increased when the perpetrator of the offense bases his motive on the true fact or erroneous supposition that the victim belongs or does not belong to a specific ethnicity, nation, race or religion.

The aggravating circumstance defined above is constituted when the commission of the offense is preceded, accompanied or followed by remarks, writings, images, objects or acts of any nature defaming the honor or the regard for the victim or of a group that the victim belongs to, [and when commission is motivated] by reason of their belonging or not belonging to a specific ethnic group, nation, race or religion, whether this membership is real or supposed.

The maximum prison terms for the offenses specified in the draft bill would be increased as follows: (1) murder: from 30 years to life imprisonment; (2) torture and barbarous acts: from 15 years to 20 years; (3) violence unintentionally causing death: from 15 years to 20 years; (4) violence resulting in mutilation or permanent infirmity: from 10 to 15 years; (5) violence resulting in a total incapacity to work for more than eight days: from three years to five years (violence resulting in an incapacity to work for less than or equal to eight days or not resulting in incapacity to work will be punished by three years' imprisonment); and (6) destruction, defacement or impairment of private property: from two years to three years, with a €45,000 fine (about US$48,861). In addition, destruction, defacement or impairment of religious buildings, schools, educational or recreational buildings, and vehicles transporting children would be punished by five years' imprisonment and a €75,000 fine (about US$81,435).

[5] There are three grades of criminal offense under French Law: *crimes*, *délits*, and *contraventions*. *Crimes* (the gravest offenses) include, for example, murder, armed robbery, rape, and serious drug offenses. *Délits* are the largest group of offenses and include sexual violence, theft, fraud, and assault, among others. *Contraventions* are punishable only by a fine.