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APRIL 2004

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WORLD LAW BULLETIN

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AFRICA

ANGOLA – Joint Training Course for Justice Officials

The first joint training course for court officials from the Portuguese-speaking countries of Africa (Angola, Cape Verde, Guinea Bissau, Mozambique, and Sao Tome e Principe) concluded on March 5, 2004, in Luanda, Angola. The training, which opened on February 9, 2004, was promoted by the National Institute of Judicial Studies in partnership with the European Union and the courts of the countries involved. Among the themes covered by the course were civil and criminal procedural rights, judicial and administrative practices, and judicial costs.

At the closing of the course, the Deputy Chief Justice of the Supreme Court of Angola, Caetano de Souza, emphasized that proper administration of justice ensures full exercise and respect of human and civic rights and prompt resolution of lawsuits. He added that the training allows a greater integration of the courts of the five countries that share language and legal systems. ("Supreme Court Deputy Chief Judge on Justice," *allAfrica.com*, Mar. 6, 2004, <http://www.allafrica.com/stories/printable/200403080229.html>.) (Sandra Sawicki, 7-9819)

SOUTH AFRICA – Approval of Anti-Terrorism Bill

An anti-terrorism bill was approved on February 24, 2004, in the South African Parliament's second house, the National Council of Provinces, after having been approved by the National Assembly. In passing the law, South Africa implements its commitment under the U.N. and African Union conventions on terrorism. The bill includes definitions of terrorist offenses and enables suspects to be detained for a maximum of forty-eight hours without charge. It also authorizes courts to conduct special hearings to seek information about past or planned terrorist activities.

The bill is said to have been widely debated in 2000 when several bombings attributed to Muslim fundamentalists occurred in the coastal city of Cape Town. The Government again stressed the bill's importance after white extremists detonated a bomb in the black township of Soweto in 2002. ("South Africa Approves Anti-Terror Bill," *The Times of India*, accessed on Feb. 26, 2004, at <http://timesofindia.indiatimes.com/articleshow/519752.cms>.) (Ruth Levush, 7-9847)

AMERICAS

CANADA – Church Liability for Sexual Assaults

The Supreme Court of Canada recently ruled that a local diocese was liable for hundreds of sexual assaults committed by a Newfoundland priest, but declined to decide the issue of whether the Roman Catholic Church is a worldwide corporate entity that can be sued directly. Since the diocese has sufficient assets to cover the claims, the latter issue did not have to be decided. However, the issue may yet be raised in connection with the nearly 30,000 lawsuits that have been launched by natives who were placed in residential schools jointly operated by the Government and Church. These plaintiffs will be assisted by the ruling that

non-profit organizations do not have any special immunity or protection from the requirement that they be aware of wrongdoings committed by their employees. Like other corporations, non-profit organizations can be held to be liable for negligent behavior. In the case at hand, the local diocese was found to have created the circumstances under which the priest could abuse his power. (John Doe v. Bennett, 2004 S.C.C. No. 17, <http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2004scc017.wpd.html>.)

(Steve Clarke, 7-7121)

CANADA – Muslims Vote To Create Islamic Institute of Civil Justice

A group of Canadian Muslims recently voted to create an Islamic Institute of Civil Justice in the Toronto area that will employ *sharia* (Islamic jurisprudence) to resolve certain types of marital disputes and other types of civil cases through arbitration. (Marina Jimenez, “Canadian Muslims Seek To Use Islamic Law To Resolve Ontario Marital Disputes,” *Canadian Press*, Dec. 11, 2003.) Under Ontario’s Arbitration Act, 1991, (1991 S.O. ch. 17), the powers of the province’s courts to overturn the decisions of arbitration tribunals selected by the parties are very limited. The law was intended to encourage arbitration to reduce the backlogs in the courts.

The founder of the Islamic Institute contends that Muslims are required to follow *sharia* if the local law allows for that practice. Not all members of Canada’s nearly 600,000 strong Muslim community support the proposed implementation of Muslim law in Canada. The Canadian Council of Muslim Women has released a position statement in which it states that “we see no compelling reason to live under any other form of law in Canada and we want the same laws to apply to us as to other Canadian women.” ([http://www.ccmw.com/Position%20Papers/Position Sharia Law.htm](http://www.ccmw.com/Position%20Papers/Position%20Sharia%20Law.htm).) This group is particularly concerned that divisions of family property under *sharia* favor men. Other opponents of the proposal fear that Muslims will be forced to agree to let the Islamic Institute settle their civil disputes through community pressure.

(Steve Clarke, 7-7121)

MEXICO – Electoral Reform Bill Sent to Congress

On March 22, 2004, President Vicente Fox signed an electoral reform bill, which he then sent to the Congress of the Union for deliberation. The bill aims to shorten the length of political campaigns, reduce their cost and their public financing, and foster their transparency, in addition to rescheduling election dates to have them held on a single day nationwide. A similar bill was submitted jointly by the Institutional Revolutionary Party (PRI), the Party of the Democratic Revolution (PRD), and Convergence for Democracy (CD). (Notimex, “Firma Fox Iniciativa de Reforma Electoral” and “Propuesta de Reforma Electoral,” *El Universal* online, at <http://www.el-universal.com.mx>.)

(Norma C. Gutiérrez, 7-4314)

MEXICO – Supreme Court Ruling on Electoral Reform

In early March 2004, the Mexican Supreme Court ruled that the recent amendments to the Code of Electoral Institutions and Procedures making the creation of new political parties at the national level more difficult are constitutional. In a nine to two vote, the Court dismissed the constitutional challenge brought by the Labor Party. The former President of the

Court, Genaro David Góngora Pimental, in one of the two dissenting opinions, stated that the reforms violate the freedom of association and that the current political parties aim to use them to monopolize the Mexican citizens' options for access to power by making the creation of new parties practically impossible. Representing the ruling majority, Justice Juan Díaz Romero and Justice Sergio Salvador Aguirre Anguiano respectively stated that the ruling strengthens Mexico's young democracy and avoids the possibility of having fifty political parties vying for power at a time. (Carlos Avilés y Francisco Gómez, "Validan Reformas a Leyes Electorales," *El Universal* online, at <http://www.el-universal.com.mx>; Jesús Aranda, "Aprueba la Corte Endurecer Requisitos para Formar Partidos," *La Jornada*, <http://www.jornada.unam.mx>.) (Norma C. Gutiérrez, 7-4314)

ASIA

CHINA – Constitutional Amendment

On March 14, 2004, by a nearly unanimous vote, the National People's Congress, China's highest legislative body, passed an amendment to the Constitution guaranteeing both human rights and property rights. The Constitution, adopted in 1982, has previously been amended three times.

The new statement on human rights is simply that "[T]he state respects and protects human rights," and the property right provision states, "Legally obtained private property of the citizens shall not be violated." Article 10 on requisition of land by the State has an added clause stating that when land is expropriated it is to be "in accordance with the provisions of law" and with compensation. In addition, the clause on "state of siege" has been revised to read "state of emergency." Legislation on how states of emergency should be handled is now on the agenda. The recent outbreaks of SARS have highlighted the need for the law. ("Constitutional Amendments Signal Breakthrough in Legislative Progress," *China Daily*, Mar. 22, 2004, via FBIS, "China Codifies Property and Human Rights," *Washington Post*, Mar. 15, 2004, available at <http://www.washingtonpost.com/wp-dyn/articles/A58578-2004Mar14.html>, text at *People's Daily Online*, <http://english.peopledaily.com.cn/constitution/constitution.html>.) (Constance A. Johnson, 7-9829)

CHINA – Lawyers' Rights in Criminal Litigation

On February 10, 2004, the Supreme People's Procuratorate issued the Provisions Concerning the Supreme People's Procuratorate's Guaranteeing Lawyers' Carrying Out Their Work According to Law in Criminal Proceedings. The Provisions modify the (general) procuracy rule that a procuratorate must arrange a meeting between a lawyer and a detained client within forty-eight hours (without any starting point) to specify forty-eight hours "after the lawyer submits a request" for such a meeting. The Provisions also clarify the topics that may be discussed in lawyer-client meetings and include a catch-all "other case-related circumstances that must be understood." A new provision allows lawyers handling criminal cases to submit complaints against procuratorial departments or personnel for violations of the law. Other sections of the document cover procuratorial interviews of lawyers during the investigation phase, lawyers' examination of case materials, and applications by defense attorneys to collect and obtain evidence.

Legal experts reportedly view the introduction of the Provisions as “a critical move to protect the rights of the accused,” especially since lawyers in China have often encountered difficulties in meeting with detained clients and obtaining documents and evidence. However, according to one law professor, the Provisions will not completely remove lawyers’ concerns about taking on criminal cases, given that lawyers are disadvantaged not only by the procuratorates but also by the police and some administrative units and that the Law of Criminal Procedure lacks detailed provisions on the protection of lawyers’ rights. (“Chinese Procuratorate Moves To Protect Rights of the Accused,” *Xinhua*, Mar. 11, 2004, via FBIS; *Guanyu yin fa “Guanyu Renmin Jianchayuan baozhang lüshi zai xingshi susong zhong yifa zhiye de guiding” de tongzhi*, at http://www.law-lib.com/law/law_view.asp?id=82376.) (Wendy Zeldin, 7-9832)

CHINA – New Code of Conduct on Judicial Corruption

On March 19, 2004, the Supreme People’s Court (SPC) and the Ministry of Justice issued a new code of conduct for dealings between judges and lawyers. The Provisions on Regulating Judges and Lawyers Interrelationships and Upholding Judicial Justice embody parts of the Law on Judges and the Law on Lawyers and also a list of “do’s and don’ts.” A senior SPC official is quoted as saying that illegal relations between judges and lawyers have long been a problem in China’s judicial field and the Provisions are needed to “strictly streamline” their ties.

The Provisions proscribe judges from meeting in private with either a party to a lawsuit or the party’s lawyer and proscribe lawyers from meeting in private with judges. The longest article of the Provisions details the kinds of goods or benefits that judges may not seek or accept - e.g., gifts, money, valuable securities, dinner invitations, paid entertainment or travel, borrowed use of a vehicle - and the corresponding actions that lawyers may not take to curry judges’ favor. A lawyer can report a judge who violates the Provisions to the court concerned, and a judge can report a lawyer to the judicial administrative department or lawyers’ association concerned. In addition, parties in a case as well as non-parties may report judges or lawyers who have violated the Provisions to the relevant court, judicial administrative department, discipline inspection department, or lawyers’ association. (“China Issues Rules To Control Communications Between Judges, Lawyers,” *Xinhua*, Mar. 18, 2004, and “SCMP: PRC Academics Discuss New Code of Conduct on Judicial Corruption,” *Hong Kong South China Morning Post*, Mar. 20, 2004, both via FBIS.) (Wendy Zeldin, 7-9832)

INDIA – Public Interest Litigation

On March 14, 2004, the Supreme Court of India came down heavily on frivolous petitions filed as Public Interest Litigations (PILs) that it deemed to be self-serving and publicity-oriented. Stating that “[i]f such type of petitions are permitted to be entertained it will cause immense damage to the system itself,” the Court penalized the petitioner in the case at hand by imposing on him a ten-thousand rupee (approximately \$225) fine.

In dismissing the PIL by Dr. B. Singh, who had questioned the personal standing of a person who had been appointed as a judge, the Court found that the petitioner had no personal knowledge of the allegation made against the respondent-judge. Earlier, the Punjab and

Haryana High Court had also dismissed the petition. Thus, the Supreme Court found that the petition had no trace of public interest.

Despite the existence of clear guidelines for the filing of PILs that had been laid down by the apex court in a number of cases, the Court expressed concern that the parameters of the guidelines were ignored in entertaining such frivolous petitions. The Bench observed that “it is shocking to note that courts are flooded with a large number of so-called PILs, whereas only a minuscule percentage can legitimately be called PILs.” Cautioning the High Courts on the misuse of such procedure, the Court stated that great care and circumspection must be used by the judiciary to weed out petitions which, under the guise of public interest, are in fact born of private malice and a vested interest in seeking publicity. A PIL should be aimed at avoidance of a genuine public wrong or public injury and not be founded on personal vendetta, said the Court. (*The Hindu*, National section, Mar. 15, 2004, at <http://www.hindu.com/2004/03/15/stories/2004031502971500.htm>.) (Krishan Nehra, 7-7103)

JAPAN – Bird Flu Counter Measures

The Livestock Infectious Disease Prevention Law (Law No. 166, 1951) provides various measures to prevent the spread of specified infectious diseases of livestock, including bird flu. Owners of chickens and ducks must isolate any infected with bird flu. The prefectural governor may order an owner to slaughter the birds; their bodies then must be burned and buried. Based on the Law, the Ministry of Agriculture, Forestry, and Fishery released a Bird Flu Prevention Manual on September 17, 2003, which was amended on March 10, 2004. The Manual coordinates the efforts of owners and various government agencies with detailed instructions. (*Bird Flu Prevention Manual* [in Japanese], <http://www.maff.go.jp/tori/manual.pdf>.) (Sayuri Umeda, 7-0075)

KOREA, SOUTH – Relief for Credit Defaulters

One in thirteen of South Korea's forty-eight million people is three or more months behind on debt payments. The Korean government released the so-called “bad bank” scheme on March 10, 2004. The bad bank, a consortium bank, will be established in May 2004. The bad bank program applies to credit defaulters who borrowed less than fifty million *won* from at least two lenders as of March 10, 2004. About 1.8 million Koreans may meet this criterion. The bad bank will allow defaulters to replace their debt with new loans at an annual interest rate of five to six percent for up to eight years, with three percent payment of the principal.

In a related move, the National Assembly passed the Individual Debtor Rehabilitation Law, which bails out at least 400,000 individuals who cannot pay their debts, on March 2, 2004. The details of the scheme based on this Law have not yet been decided. (Suk-Ho Shin, *Support for Credit Recovery*, donga.com, Mar. 17, 2004, at <http://english.donga.com/srv/service.php3?bicode=020000&biid=2004031801708>.) (Sayuri Umeda, 7-0075)

SINGAPORE – Spam

A spokesperson from the Infocomm Development Authority (IDA) of Singapore stated on March 12, 2004, that the Singapore government is reviewing several measures, including legislation, to curb e-mail spam (unwanted messages sent to multiple recipients). The IDA, which is Singapore's information technology watchdog, is working with three local Internet Service Providers on viable steps to be taken against spammers, and the results of their discussions are to be shared with the public in the next few months. ("Singapore Government Mulls Anti-Spam Law," *Agence France Presse*, Mar. 12, 2004, via LEXIS/NEXIS, News library.)

(Wendy Zeldin, 7-9832)

TAIWAN – Disputed Election Results

The Taiwan High Court stated on March 22, 2004, that, in accordance with law, verdicts on two lawsuits filed to suspend the March 20 re-election of President Chen Shui-bian and Vice President Annette Lü and to declare the balloting a fraud will be handed down in "less than six months." Mr. Chen won the disputed election by a narrow margin of about 30,000 ballots, a mere 0.2 percent. Presidential contenders Lien Chan, Chairman of the KMT (Kuomintang, or Nationalist Party), and James Soong, Chairman of the People First Party, lodged the suits. The Taiwan High Court's Court No. 9, one of three "election courts" that preside over all election-related disputes, is handling the case. On March 21, ten hours after the election results were announced, the High Court sealed the ballot boxes. The election court judges are reviewing the evidence provided by the plaintiff and will decide whether to recount the ballots, all or in part or not at all. If either suit is granted, the judges have the authority to decide whether a national or a regional re-election should be held. If the plaintiff or the defendant is not satisfied with the verdict, either party may appeal to the Supreme Court. (Jimmy Chuang, "High Court To Hear Suits on Election," *Taipei Times*, Mar. 23, 2004, p. 1, at <http://www.taipeitimes.com/News/front/archives/2004/03/23/2003107381>; Robert Marquand, "Taiwan's High-Stakes Election Drama," *The Christian Science Monitor*, Mar. 22, 2004, at <http://www.csmonitor.com/2004/0322/p01s03-woap.htm>.)

In the meantime, President Chen Shui-bian has asked the legislature to change the Public Officials Election and Recall Law to allow ballots to be recounted if the margin of victory in an election is less than one percent. Typically, the President is to sign legislation into law within ten days of adoption, but in urgent situations it can be done in one or two days. A Central Election Commission official stated that a recount could take place after the President signed such a bill into law. ("Stage Set for Taiwan Recount," *ABC Online*, Mar. 23, 2003, at <http://www.abc.net.au>.)

(Wendy Zeldin, 7-9832)

UZBEKISTAN – Law on Currency Regulation

The new Law of Uzbekistan on Currency Regulation has been published in the national press, which means it has entered into force. The Law establishes rules for conducting currency transactions in the territory of Uzbekistan. According to the Law, the Central Bank of Uzbekistan is the authorized body for currency regulation in the country. The Central Bank establishes the procedures for foreign currency circulation in Uzbekistan, creates mechanisms for setting the exchange rate of the domestic currency, called the *sum*, to foreign currency, and

is entitled to introduce regulations binding on all national banks and other participants in the securities market. At its own discretion, the Central Bank can stop or restrict currency regulations when there is a threat to economic stability. The Law also provides for the imposition of some restrictions on currency operations in order to fight the legalization of income received from criminal activity and the financing of terrorism. (38 *Narodnoe Slovo* Feb. 25, 2004, at <http://dlib.eastview.com/sources/article.jsp?id=5948672>.) (Peter Roudik, 7-98461)

UZBEKISTAN – New Import Duties

New customs duties on foodstuffs have been introduced in Uzbekistan in accordance with the Government Resolution on Measures To Further Improve Customs Regulation. The Regulation establishes duties on the import of fish, fish products, tea, soybeans, and animal and vegetable fats at 5% of the goods' customs cost. For the import of meat and meat by-products, the duty has been established at 10% of the customs cost. Duty in the amount of 30% of the customs cost is established for the import of sugar, wheat flour, and cereals. Previously, these duties did not exist. The State Customs Committee of Uzbekistan explained the introduction of these duties by referring to the necessity to protect domestic manufacturers and to pursue a more effective tariff policy. In 2003, food products comprised 13.7% of the total volume of imports. Simultaneously, the rates of excise tax for the import of rice and bottled and mineral water were increased to 50%, compared to a previous 35% rate. (33 *Narodnoe Slovo*, Mar. 2, 2004, at <http://dlib.eastview.com/sources/article.jsp?id=5945372>.) (Peter Roudik, 7-9861)

EUROPE

BELGIUM – Abolition of the Death Penalty

The death penalty may be finally and formally abolished in Belgium. The Commission for the Revision of the Constitution of the Chamber of Deputies decided to inscribe the abolition in article 14 of the Constitution. The measure must be voted on in the Chamber and in the Senate. At present, art. 7(3) of the Criminal Code provides that the death penalty is replaced by imprisonment for life, but this does not amount to its abolition. The Commission considered that the constitutional provision will have no effect on Belgian extradition practice, since Belgium would extradite a foreigner to a country that still applies the death penalty only if the requesting State gives assurances that the death penalty will not be carried out. This principle is embodied in article 11 of the European Convention on Extradition of December 13, 1957 (*Moniteur Belge*, Nov. 22, 1997) and in Belgian treaties of extradition with foreign countries. It is also present in article 4 of the Treaty of Extradition between Belgium and the United States of April 27, 1987, which entered in force on September 1, 1997 (*Moniteur Belge*, Aug. 15, 1998). (*Le Soir en ligne*, Feb.11, 2004, http://www.lesoir.be/rubriques/belg/page_5168_189638.shtml.) (George E. Glos, 7-9849)

BULGARIA – Distribution of State-Subsidized Medicines

The Bulgarian Health Ministry has enlarged the list of state-subsidized pharmaceuticals by 50%, to 246 medicines and ordered a change in the distribution procedure as of April 1, 2004. The previous system of public procurement tenders for the supply of vitally important medicines, which were fully reimbursed by the Health Ministry budget, has been cancelled because the distribution of medicines under that procedure was slow due to prolonged appeals of tender results. The system was also unable to secure the continuity of supply because of the necessity to conclude new contracts periodically. According to the new rules, the Ministry will determine the hospitals and pharmacies entitled to receive and distribute state-subsidized medicines. The state coverage is expanded to drugs that treat cancer, AIDS, genetic disorders, and some other rare diseases. In addition to the Ministry's list of vitally important drugs fully covered by state funds, there is a list of other drugs fully or partially covered by the National Health Insurance Fund. (*Dnevnik*, Mar. 9, 2004, <http://www.dnevnik.bg>.) (Peter Roudik, 7-9861)

CZECH REPUBLIC – Law on the Constitutional Court Amended

The Law on the Constitutional Court was amended in December 2003 (Law No. 83, Dec. 11, 2003, *Collection of Laws*, amended Law No. 182/1993). The amendment created new articles on reopening of proceedings in criminal cases decided by the Court (arts. 19, 19a, & 19b). The amendment provides that if an international court rules that the authorities of the Republic violated human rights or fundamental freedoms and such an action is upheld by the Constitutional Court, the case decided by the Court can be reopened. The petition to reopen proceedings can be presented within six months of the ruling by the person in whose favor the international court ruled. The Constitutional Court decides on the petition in chambers without a public hearing. If the Court finds that its decision is incompatible with that of the international court, it will annul its decision and reopen the case. An international court is defined as a court whose decisions are binding on the Czech Republic by international treaties.

The president of the Republic vetoed the law on the grounds that it subjects the Czech legal order to the arbitrary decisions of any international authority or institution of which the Republic is a member and also that it is discriminatory in that it limits the reopening proceedings to criminal cases, omitting civil cases. The Parliament, however, overrode the president's veto by a decision of February 10, 2004 (No. 84, *Collection of Laws*). The Law entered into force on April 1, 2004. (George E. Glos, 7-9849)

ESTONIA – Registry of Military Goods Traders

In accordance with the recently adopted amendments to the Strategic Goods Law, the Estonian Government established the national register of military goods traders and intermediaries. As of March 1, 2004, every company involved in trade of military-related materials is obliged to register with the Economic Affairs Ministry and to be included in the special list regularly updated and published on the web page of the Estonian Foreign Ministry. It is expected that this measure will facilitate the business operations of Estonian companies and will permit the authorities in other countries to quickly find out whether or not an entity is conducting its business legally. The registry will include information on both Estonian companies and foreign companies that wish to provide services in Estonia. This registration is

not required for companies that are already included in the register of a country that has joined all the four principal export control regimes: the Australia Group, which focuses on trade in chemical and biological items; the Missile Technology Control Regime (MTCR); the Nuclear Suppliers Group; and the Wassenaar Arrangement, which focuses on trade in conventional weapons and related items with both civilian and military (dual-use) applications. (*BNS Baltic News Service*, Feb. 27, 2004, at <http://www.securities.com/>.) (Peter Roudik, 7-9861)

ESTONIA – Telephone and Internet Eavesdropping

On March 12, 2004, the Riigikogu, the Estonian legislature, adopted amendments to the Telecommunications Act. The amendments establish the responsibility of the Government to pay the costs of eavesdropping on telephone conversations and screening of electronic messages, if conducted according to a judge's order. The law previously in force required private telephone operators and Internet providers to establish the equipment necessary for eavesdropping at their own expense and make it available to government services. Agreement to conduct eavesdropping was a precondition for the issuance of a license. The amendments prescribe that these costs will be paid from the Economic Affairs and Telecommunications Ministry Budget. (*BNS Baltic News Service*, Mar. 15, 2004, at <http://www.securities.com/>.) (Peter Roudik, 7-9861)

FRANCE – Adapting the Justice System to Fight Organized Crime

Law 2004-204 of March 9, 2004, on Adapting the Justice System to the Development of New Forms of Crimes was promulgated on March 10, after being approved by the Constitutional Council, which only ordered two technical changes. The Law, known as the “Perben Law II” after its author, Justice Minister Dominique Perben, extends reforms started in 2002 to give the justice system more effective procedural means to fight forms of organized crime that have developed over the last few years, in particular international mafia-style structures and terrorism. The Socialist Party, lawyers, and human rights groups vehemently oppose the Law. They fear that the changes will undermine civil liberties despite assurances given by the Government that the Law is only aimed at criminal organizations and would not be used against common criminals.

The Law contains approximately 400 revisions to the Criminal Procedure and Penal Codes. It increases the powers of the police and prosecutors. The changes include permitting houses searches at night and doubling the time during which suspects can be held without formal charges from forty-eight hours to four days. In addition, certain categories of suspects may be detained for up to forty-eight hours without having access to a lawyer. Wiretapping and videotaping are made easier, along with the infiltration of criminal networks by the police. There are also provisions to encourage turncoats.

The Law creates new categories of offenses. For example, the act of disseminating by any means, except for the use of professionals, information describing the making of instruments of destruction incorporating explosive substances; nuclear, biological, or chemical matter; or any other products for domestic, industrial, or agricultural use is a criminal offense. Such diffusion of information through the Internet is punishable by a three-year term of imprisonment and a fine of €45,000 (about US\$55,000).

The Law further introduces the use of European arrest warrants and includes for the first time American-style plea bargaining for minor offenses. It also strengthens the fight against child pornography and racist and xenophobic acts. (Website of the National Assembly, [http://www.assemblee-nationale.fr/.](http://www.assemblee-nationale.fr/)) (Nicole Atwill, 7-2832)

FRANCE – French Attorney To Defend Saddam Hussein

French attorney Jacques Verges has announced that he has agreed to serve as defense counsel for Saddam Hussein. Born in Thailand in 1925 to a French diplomat father and a Vietnamese mother, he grew up on the French Indian Ocean island of La Reunion, where, surrounded with racism, he is said to have acquired his fiercely anti-colonialist views.

During World War II, he became part of the Free French Forces under General Charles de Gaulle. He then joined the Communist Party in 1945. After the war, he went to the Sorbonne to study law. In 1949, he became president of the Association for Colonial Students, where he met and befriended Pol Pot. In 1950, at the request of the Communist Party, he went to Prague to lead a youth organization for four years.

After returning to France, he became an attorney and joined the Paris Bar in 1955. He took many controversial cases, including the defense of several Algerians accused of terrorism against France. One of his clients was Djamila Bouhired, who was sentenced to death in 1957 for planting bombs in cafés in Algiers. He had her sentence commuted on account of her youth and married her when she was released in 1962. He was jailed for sixty days in 1960 for “anti-state” activities and temporarily lost his license to practice law.

After the Algerian war, Mr. Verges opposed Israel’s existence and defended the terrorists who were tried for hijacking EL AL airplanes. From 1970 to 1978, he disappeared from public view without explanation. He returned to the Paris Bar in 1978 and continued to defend terrorists with political causes. Among his famous clients were Klaus Barbie, the former Gestapo chief known as the Butcher of Lyons, and the terrorist Carlos the Jackal. Mr. Verges is also the author of several books, including *On Judicial Strategy*, *The Beauty of Crime*, *Justice Is a Game*, and *I Defend Barbie*. (*The International Who’s Who 2000* (Europa Publications), *Le Monde*, Mar. 29, 2004, via LEXIS/NEXIS, & *BBC News* at <http://news.bbc.co.uk/2/hi/europe/3578421.stm>.) (Nicole Atwill, 7-2832)

FRANCE – Law Prohibiting Conspicuous Religious Symbols in Schools

A Law Regulating, in Application of the Principle of Laicism, the Wearing of Conspicuous Religious Signs or Clothing in Public Schools was promulgated on March 17, 2004 (Law 2004-228, Mar. 15, 2004). The Law was adopted by a majority of 496 to 36 votes in the National Assembly and by 276 to 20 votes in the Senate. The measure is to take effect with the start of the new school year in September 2004 and will be reexamined after a year in force. (*See* 1 W.L.B. 2004.)

The control of the constitutionality of laws in France is entrusted to the Constitutional Council. It takes place before the promulgation of a law. Law 2004-228, however, was not reviewed before its promulgation, as ordinary laws may only be referred to the Council by the

President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, or, more commonly, by sixty deputies or senators. They decided not to do so. (Legifrance, at <http://www.legifrance.gouv.fr>.) (Nicole Atwill, 7-2832)

GEORGIA – New Rules for Financial Monitoring

Amendments to the 1999 Law on Suppressing Legalization of Illegal Assets were adopted by the legislature on February 26, 2004. They provide for government monitoring of a financial transaction if there is any suspicion it is linked to terrorism. Transactions in an amount exceeding the equivalent of US\$20,000 and all cash payments in an amount of more than US\$10,000 are subject to monitoring. Financial institutions have three days to report all activities subject to monitoring to the State authorities. A supplemental regulation adopted simultaneously with the Law states that this three-day period may be shortened to a one-day period at the discretion of the national government. Other amendments include the Government's right to confiscate illegal assets and an extension to all citizens of the Criminal Code's provisions on punishments for State officials for engaging in illegal financial operations. These amendments are aimed at the implementation of the International Convention for the Suppression of the Financing of Terrorism, which was ratified by the Georgian Parliament on the same day. (*Sake News Agency*, Mar. 3, 2004, <http://www.securities.com>.) (Peter Roudik, 7-9861)

GERMANY – Preventive Detention

In a decision of February 10, 2004 (docket number 2 BvR 834/02), the Federal Constitutional Court struck down a Bavarian statute that allowed for the preventive detention of dangerous criminals if their dangerous propensities were discovered while they served a prison sentence (Bavarian Act for the Detention of Especially Dangerous Recidivism-Prone Offenders, Dec. 24, 2001, *Bayerisches Gesetz-und Verordnungsblatt* at 978) and a similar act of the State of Sachsen Anhalt (Detention Act, Mar. 6, 2002, *Gesetz-und Verordnungsblatt für das Land Sachsen-Anhalt* at 80). Both acts were unconstitutional because they infringed on the Federation's legislative power over matters pertaining to criminal law (Federal Constitution, May 23, 1949, *Bundesgesetzblatt* at 1, as amended, art. 74 ¶ 1, no. 1).

The states had enacted the preventive detention statutes to fill a perceived gap in federal law. According to the Criminal Code (re-promulgated Nov. 13, 1998, *Bundesgesetzblatt* I at 3322, § 66), preventive detention for dangerous criminals can be imposed by the court at the time of sentencing for an offense, and the offender is to be detained after serving the prison sentence. According to the current federal provisions, preventive detention to protect the public cannot be imposed if the dangerous propensities become apparent while the offender is serving the sentence.

Although the two state laws are unconstitutional, the Federal Supreme Court has allowed them to remain in effect until September 30, 2004, thus giving the Federal legislature time to fill the gap and to create more adequate measures to detain dangerous offenders, particularly sex offenders. (Edith Palmer, 7-9860)

ITALY – Revision of Constitution Considered

Italy is currently considering a major revision of its method of governance. If eventually adopted, it would be the most dramatic change to Italy's Constitution since its adoption in 1948. On March 25, 2004, the upper house of Italy's Parliament, the Senate, approved the revision by a vote of 156 to 110 in the Senate. In order to come into force, however, the bill must pass three other required votes in the two houses of Parliament and a referendum. The change would give the twenty regions of the country more autonomy, making the Senate a federal body with the power to legislate on regional matters. The regions would have more control over health care, education, and the police. In addition, the regions would have a role in choosing members of the highest court. The role of the Prime Minister would be strengthened by the addition of the power to nominate and dismiss other ministers, so that he would be more insulated from the effects of shifts of alliances among political parties in the legislature. Further, the bill proposes a reduction in the number of members of the Parliament. The Senate would be reduced to just over 200 members, compared with the present 315, and the lower house would go to just over 400 from the current 630.

The revisions have been described as a response to demands of the Northern League, a political party that is part of the ruling coalition, for more independent governance for northern Italy (*Financial Times*, Mar. 26, 2004, at 6, available at LEXIS, Europe Library, Fintme file).

(Constance A. Johnson, 7-9829)

THE NETHERLANDS – Extension of Preventive Searching

A recent evaluation report has shown that there was a decrease in crime after selected cities were given the authority to perform preventive, random searches in certain areas of town. As a result of this success, the Minister of Justice has proposed an extension of the program, to include preventive searches of people on trains, buses, and in heavily congested traffic areas. (*NRC-Handelsblad*, Mar. 17, 2004, at <http://www.nrc.nl/binnenland/>.)

(Karel Wennink, 7-9864)

THE NETHERLANDS – Legal Position of Victims Strengthened

The Minister of Justice intends to propose an amendment of the Code of Criminal Procedure by the end of the year through which the legal position of the victim in criminal proceedings will be strengthened. A separate section to be added to the Code will include a number of victims rights, such as the right to information on the progress of the criminal case and on the availability of compensation and the right of victims to add information to the criminal file. (Ministry of Justice, *Press Release*, Mar. 11, 2004, at <http://www.ministerievanjustitie.nl/>.)

(Karel Wennink, 7-9864)

SCOTLAND – Farmer Fined for Violating BSE Laws

A Scottish farmer has been fined £1000 (US\$1,700) for sending a cow over thirty months old to be slaughtered. Laws were passed in Scotland preventing the slaughter of cattle over thirty months old to attempt to prevent those with Bovine Spongiform Encephaly (BSE) from being sold for human consumption. Health inspectors visiting the slaughterhouse

discovered the cow; a veterinarian determined that it was older than thirty months as it had more teeth than cattle should at that age. The farmer denied knowing that the cow was over thirty months old and stated that he had brought it in good faith, with all of the required paperwork. The Sheriff said that the farmer had failed to make reasonable inquiries to ascertain the age of the cow. (“Fine for Cow Clocker Farmer,” *BBC News*, Mar. 4 2004, http://news.bbc.co.uk/2/hi/uk_news/scotland/3533255.stm, accessed Mar. 5, 2004; Alistair Munro, “Farmer Fined £1000 for Cow Clocking,” *The Herald* (Scotland), web issue 1968, Mar. 5, 2004, at <http://www.theherald.co.uk/news/11326-print.shtml>, accessed Mar. 24, 2004.)

(Clare Feikert 7-5262)

SWITZERLAND – Parliamentary Law

On December 1, 2003, the Swiss Act on the Federal Assembly went into effect (enacted Dec. 13, 2002, *Amtliche Sammlung des Schweizerischen Bundesrechts* at 3543). This Act contains many revisions of Swiss parliamentary law that had become necessary after enactment of the new Swiss Constitution (enacted Apr. 18, 1999, *Systematische Sammlung des Bundesrechts* No. 101, effective Jan. 1, 2000). The main purposes of the new Act were the precise description of the relationship between the legislative and executive branches of government and the elimination of earlier controversies over this relationship.

Among the more important changes are the granting of better information rights over the executive branch of government, parliamentary oversight rights over the effectiveness of executive conduct, parliamentary participation in the conduct of foreign affairs, and increased powers of members of parliament.

(Edith Palmer, 7-9860)

UKRAINE – New Law on Presidential Elections

The *Verkhovna Rada*, Ukraine’s legislature, almost unanimously passed the Law on Elections of the President of Ukraine. According to the Law, the President of Ukraine is to be elected by popular vote from a single national constituency divided into 225 electoral districts. The Law states that a citizen of Ukraine who is 35 years of age or older may be elected President for a term of 5 years. A person cannot be elected President for more than two consecutive terms.

Presidential elections are to be scheduled by the Parliament. Election campaigns are to start 120 days before elections under the oversight of the central and local electoral commissions. These commissions are comprised of representatives of all political parties and coalitions that received more than 4% of popular votes during the most recent parliamentary elections. Presidential candidates can be nominated by political parties registered no later than one year before the date of the elections. A candidate can be registered upon collecting 500,000 voter signatures in support of his candidacy and depositing UAH500,000 (about US\$91,000) in one of the Ukrainian state banks. If a candidate secures 7% of the votes cast in presidential elections, this deposit will be refunded. Otherwise, the deposit will be transferred into the state budget.

Presidential elections are to be financed exclusively by State budget allocations and candidates’ campaign funds. The campaign fund of a presidential candidate is to be created

with money from the political party that nominated the candidate, the candidate's own resources, and voluntary donations from individuals. The Law limits the campaign funds of a presidential candidate to the equivalent of 50,000 times the minimum monthly wage (equal to US\$1.9 million). Additionally, 15,000 times the minimum monthly wage may be spent by a candidate who qualifies for the second round of elections. Individual donations are limited to the amount of 25 times the minimum wage (US\$930). Anonymous donations, donations from foreigners, and those from stateless persons are prohibited. The candidate who receives over 50% of all the votes cast in an election is to be considered elected as the President of Ukraine. This year's presidential elections are scheduled for October 31. (*BBC Monitoring*, Mar. 18, 2004, available at <http://www.bbc.co.uk/>.)
(Peter Roudik, 7-9861)

UNITED KINGDOM – Indefinitely Detained Suspected Terrorist Released

One of the first individuals suspected of having links with al Qaeda and indefinitely detained under the British Anti-terrorism, Crime and Security Act 2002 has been released. The Court of Appeal ruled that the detention was unjustified as there was insufficient evidence to provide reasonable grounds to indefinitely detain the suspected terrorist without charge or trial. The legislation was enacted in response to the September 11, 2001, terrorist attacks against the United States and allows the indefinite detention of foreign nationals without charge or trial if they have been certified as terrorists by the Home Secretary and cannot be deported. The suspected terrorists are allowed to leave the United Kingdom for any third state that will permit them entry at any time. Lawyers for the remaining suspected terrorists indefinitely detained have called for a review of their situation. (*The Secretary of State for the Home Department v. M* [2004] Civ 324; Robert Verkaik, “Terror Laws in Disarray After Woolf Frees Libyan,” *The Independent*, Mar. 22 2004, at <http://news.independent.co.uk/uk/legal/story.jsp?story=502761> accessed Mar. 22, 2004.)
(Clare Feikert 7-5262)

NEAR EAST

EGYPT – Islamic Writer Denounces the Veil

Jamal Al-Banna, an Egyptian writer who is the brother of the founder of the Muslim Brotherhood party, told Reuters that Muslim women's wearing the veil was forced upon Islam. He said it is the result of social customs and that Muslim thinkers were influenced by earlier civilizations with respect to their attitudes towards women. The Muslim Brotherhood party (*Jamiyyat al-Ikhwan al-Muslimun*, or *Ikhwan*), founded in Egypt in 1928, has been described as the first contemporary Islamist movement and “probably the most influential.” (*Asharq Al-Awsat Newspaper*, Mar. 5, 2004; Y. Sikand, “The Emergence of the Egyptian Ikhwan,” *Crescent International*, at <http://www.muslimedia.com/archives/book01/ikhwanbk.htm>.)
(Issam Saliba, 7-9840)

IRAN – Military Service Reduced

Under an order proposed by the Chief of Staff of the Armed Forces of the Islamic Republic of Iran and approved by the Islamic leader, the twenty-four-month military service obligation has been reduced to twenty months. The length of military service for areas of the country having hard winter or summer climates, however, will be nineteen months and for

border or operational areas, eighteen months. The new order will be in effect until the year 2007. The order will be applied to the conscripts already performing their military service. (*Hamshahri Daily Newspaper*, Tehran, Feb. 26, 2004.)
(Gholam Vafai, 7-9845)

IRAN – Unemployment and Inflation Rates Down

Bringing the rates of unemployment and inflation down to a desired level was mentioned as a major goal of the Fourth Development Plan of Iran. The President, in presenting the Fourth Development Plan to the Iranian Parliament, stated the ambitious targets of the Plan to bring both the unemployment and inflation rates down to single digits. He stated that the economic growth during the implementation of the Plan is set at 9%. Economic improvement during the Fourth Development Plan is intended to prepare the ground for joining the World Trade Organization, according to the President. (*Hamshahri Daily Newspaper*, at <http://hamshahri.org/hamnews/1382/821025/news/eqtes.htm>.)
(Gholam Vafai, 7-9845)

ISRAEL – High Compensation for Violation of Copyright on the Internet

The Jerusalem District Court ordered an unprecedentedly high compensation for violation of copyright on Internet sites. The plaintiffs, three companies that sell photographs and sixty-nine photographers, sued Reut Electronica and Components Company for displaying seventy-one of their works on its Internet site and on twenty-four other websites it built for other companies for a fee. The plaintiffs argued that the defendant had no permission to use the photographs, which they owned.

Judge Yoseph Shapira held that the burden of proof is on the defendants to prove that they did not violate the copyright of the plaintiffs. This is because the plaintiffs' own Internet sites clearly state that they preserve their rights and the companies' names appear on all the photographs. The judge held that the easy access to protected materials on Internet sites and the small likelihood of bringing charges against violators make it necessary to award a high financial compensation to the copyright holders in order to deter the public from violating their rights. The amount of compensation awarded in this case was determined in accordance with the number of creations whose copyrights were violated. (Y. Yoaz, "Unprecedented Compensation Amount for Violation of Copyright on the Internet," <http://www.haaretz.co.il/>, last accessed Mar. 11, 2004.)
(Ruth Levush 7-9847)

ISRAEL – License To Broadcast from Playboy Channel Based on Freedom of Expression

An extended panel of eleven Justices of the Supreme Court sitting as a High Court of Justice approved the decision of the Committee for Broadcasts Via Cables or Satellite to allow, under certain conditions, broadcasts from the Playboy channel in Israel. The Court rejected a petition lodged by feminist and social organizations to prohibit the broadcasts, which they view as portraying women as sexual objects, strengthening sexual discrimination in society, encouraging physical and mental harm to women, and endangering public order. The Court interpreted the applicable law, the Telecommunications (Bezek and Broadcasts) Law (Amendment No. 27) 5762-2002, in light of the basic constitutional principles of freedom of expression and freedom of occupation. The Court held that erotic and pornographic

expression, including any description of a sexual act, is not different from any other protected expression. Such expression forms part of human creation in modern times and promotes public debate.

In evaluating the possible impact of prohibiting the Playboy broadcasts on the rights to expression and to occupation, the Court considered opposing interests such as the public interest in protection against harm to feelings and the right of women to human dignity. After balancing these competing interests, the Court found that a broad interpretation of the Law's prohibition in a way that would deviate substantially from accepted social norms might create a wide opening for the prohibition of many works of sexual content currently contained in a variety of TV, cable, and satellite broadcasts. The Court warned against a return to a past era of intensive censorship incommensurate with an open democratic society that respects human rights. (H.C. 5432/03, 5477/03 *SIN for Equal Presentation of Women et al. v. The Committee for Broadcasts Via Cable or Satellite et al.*, Mar. 3, 2004, <http://www.court.gov.il/>, accessed on Mar. 11, 2004.)
(Ruth Levush 7-9847)

SAUDI ARABIA – Human Rights Association

King Fahd of Saudi Arabia has approved the creation of a National Association for the Defense of Human Rights in Saudi Arabia. This is the first non-governmental association of its kind in the kingdom. The crown prince and deputy prime minister Abdallah received the chairman, Abdallah Bin Saleh Al-Abeid, and the members of the newly established association. (*Asharq Al-Awsat Newspaper*, Mar. 10, 2004.)
(Issam Saliba, 7-9840)

SOUTH PACIFIC

AUSTRALIA – Government Increases Refugee Numbers

On March 23, 2004, Australia's Immigration Minister, Amanda Vanstone, announced an increase in the number of refugees accepted under humanitarian criteria from 12,000 per year to 13,000. This is the first increase in seven years. The refugees will be those who have been certified by the United Nations High Commission for Refugees as deserving asylum and resettlement. The Minister reiterated the Government's continued policy of mandatory detention of asylum-seekers who arrive, most often in small boats, without United Nations certification. Refugee organizations in Australia applauded the decision, but continued to urge the Government to resolve the cases of asylum-seekers already in Australia under temporary visas pending determination of their status. (*Australian Broadcasting Corporation (ABC), News*, Mar. 23, 2004, at <http://www.abc.net.au/news/>; *Sydney Morning Herald*, Mar. 24, 2004, at <http://www.smh.com.au/>.)
(Donald DeGlopper, 7-9831)

AUSTRALIA – New Measures To List Terrorist Organizations

On March 4th, 2004, Australia's Attorney-General welcomed Parliamentary approval of amendments to the Criminal Code, intended to permit the Government to respond quickly to identification of an organization as posing a terrorist threat. Under previous legislation, only organizations identified by the United Nations Security Council as terrorist threats could be the

object of counter-terrorist measures such as questioning of suspects, interception of communications or listing as an illegal organization. The new Act, the Criminal Code Amendment (Terrorist Organisations) Act 2004, authorizes the government to issue a regulation listing an organization as a terrorist threat. The regulation is subject to subsequent Parliamentary examination and possible amendment or overruling. (“Terrorist Listing Bill Passes Parliament,” Media Release 019/2004 (Mar. 4, 2004) of Attorney-General Philip Ruddock, at <http://www.law.gov.au/ag>; Criminal Code Amendment (Terrorist Organisations) Act 2004, No. 7, at <http://scaleplus.law.gov.au/>.) (Donald DeGlopper, 7-9831)

INTERNATIONAL LAW AND ORGANIZATIONS

DOMINICAN REPUBLIC/UNITED STATES – Free Trade Agreement

On March 15, 2004, the United States and the Dominican Republic concluded a free trade agreement that opens markets and phases out tariffs by fully integrating the Dominican Republic into the recently concluded Central American Free Trade Agreement (CAFTA). The agreement expands the benefits of the CAFTA to the United States, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. The combined total of goods traded between the United States and the original five Central American CAFTA countries is \$23.2 billion. The addition of the Dominican Republic to the CAFTA represents an additional \$8.7 billion in goods trade.

CAFTA will not only reduce barriers to U.S. trade, but also require important reforms of the domestic legal and business environment. Such reforms include providing greater transparency for government actions and rule making, strengthening the rule of law, and improving the protection and enforcement of intellectual property rights. (United States Trade Representative Website, at <http://www.ustr.gov/releases/2004/03/04-19.pdf>.) (Gustavo E. Guerra, 7-7104)

FRANCE/INDONESIA/IRAN – Consortium To Produce Liquefied Gas

An agreement was signed in Tehran late in February to produce eight million tons of liquefied gas annually for export to world markets. The Iranian side will have a 50% share of the joint venture. The company French Totale will have a 30% share and Indonesia’s Petronas 20% of a total US\$2 billion dollar partnership, to be known as the Pars Liquefied Gas Company. The Consortium will continue its operations for a period of twenty-five years if everything proceeds satisfactorily. The Company’s products will enter world markets in five years. (*Hamshahri Daily Newspaper*, Tehran, Feb. 26, 2004.) (Gholam Vafai, 7-9845)

MEXICO/UNITED STATES – WTO Sides with U.S. on Mexico's Telecom

On March 12, 2004, the United States claimed victory following a World Trade Organization ruling in its complaint against Mexico's telecommunications laws. Mexico requires United States carriers to connect with Mexican telecommunications providers to complete calls originating in the United States. The Government gives exclusive authority to negotiate rates charged to U.S. companies for connecting these calls to the dominant Mexican carrier, Telefonos de Mexico SA, or Telmex. A WTO panel sided with the United States,

ruling that the Mexican Government breached a commitment to ensure that United States companies pay cost-based rates and failed to prevent Telmex from engaging in anticompetitive practices. "Mexico has provided a single, dominant company with a government mandate to set excessive rates for international calls to Mexico," United States Trade Representative Robert Zoellick said. The USTR said Mexico's artificially high interconnection charges have resulted in excess payments by U.S. companies and consumers of more than \$1 billion since 2000. The ruling was expected, since the WTO panel in November 2003 issued a preliminary decision favoring the United States. The WTO panel also found that Mexico violates international trade laws by failing to ensure that U.S. carriers operating within Mexico can lease lines from Mexican carriers. However, the WTO said Mexico may prohibit U.S. carriers from using leased lines in Mexico to complete calls originating in the United States. Under WTO rules, Mexico can appeal the decision. (*The Wall Street Journal*, Mar. 15, 2004, via Westlaw.) (Gustavo E. Guerra, 7-7104)

SINGAPORE/VIETNAM – Cooperation Agreement

The Foreign Ministers of Singapore and Vietnam signed the Joint Vietnam-Singapore Declaration on Comprehensive Cooperation Framework in the 21st Century on March 8, 2004. Under the agreement, specific measures may be taken to expand political, security, and economic cooperation. The two sides discussed closer ties in the fields of economics, science and technology, education and training, and culture, and in implementing the two countries' initiatives to attract investment to Vietnam from a third country and to export goods to that country. ("Vietnam, Singapore Ink Comprehensive Declaration," *Vietnam News Briefs*, Mar. 9, 2004, via LEXIS/NEXIS, News Library.) (Wendy Zeldin, 7-9832)

TAIWAN/ACWL – Membership

Taiwan became the 35th Member of the Advisory Center on WTO Law (ACWL) on March 8, 2004, after Taiwan's permanent representative to the WTO signed an accession protocol with senior ACWL officials in Geneva. According to Taiwan's Deputy Director-General of the Bureau of Foreign Trade, since Taiwan joined the organization in its capacity as a developing country, it will be eligible for a certain number of hours of legal consultation and services provided by ACWL specialists in cases of trade disputes; in addition, membership will help Taiwan train its own officials in international trade, economics, and legal affairs.

The ACWL, established in 1999 and formally operational in July 2001, is a public world body independent of WTO. Its purpose is to offer legal advice on WTO law to developing countries, less-developed countries, and customs territories. ("Taiwan's ACWL Membership Good for Dispute Settlements: Official," *Asia Pulse*, Mar. 10, 2004, via LEXIS/NEXIS, News library.) (Wendy Zeldin, 7-9832)

UNITED NATIONS – Draft Legislation for Post-Conflict States

States emerging from armed conflict frequently need assistance to rebuild justice systems and establish the rule of law. The United Nations Office of the High Commissioner for Human Rights is sponsoring a meeting this September on the policy tools to be used for countries emerging from war, and in preparation for that meeting, legal and human rights

experts have drawn up model legislation. Drafts of a Penal Code and a Code of Criminal Procedure, including statutes on police powers and detention, were composed at a workshop held in Galway, Ireland, in March 2004. The origin of the project was a report to the Secretary General in 2000 on reforming peacekeeping operations. The draft laws are designed to be cross-cultural and built on internationally recognized standards. (“Draft Legislation Set for UN-Backed Meeting on Rule of Law in Post-Conflict States,” UNNews@UN.org listserv, Mar. 18, 2004.)

(Constance A. Johnson, 7-9829)

RECENT DEVELOPMENTS IN THE EUROPEAN UNION¹

By Theresa Papademetriou, Senior Legal Specialist, Western Law Division

New Measures To Combat Terrorism

Following the recent terrorist bombings in Madrid and the conclusion of the European Council of March 25-26, 2004, a recent Communication adopted by the European Commission introduces some new measures in order to intensify the European Union's response to terrorist attacks. A key feature of the Communication is the proposal to expand the obligation to exchange information among EU Members on all individual terrorist offenses and offenses committed by terrorist groups, including attempts to commit, complicity in, and incitement as well as financing of terrorism offenses. Members are also obliged to exchange information on all stages of criminal proceedings, including convictions. They must forward relevant information to the two EU bodies that have jurisdiction on terrorism, Europol and Eurojust. Three additional important aspects of the Communication include:

- establishing a European court record. The Commission intends to introduce a proposal at the end of 2004;
- ensuring that EU Members put in place systems that allow holders with bank accounts to be identified and that Members facilitate the flow of information on pending investigations into such accounts and transfers of funds; and
- introducing new legislation on criminal organizations to replace the 1998 Joint Action on participation in a criminal organization.

Ethical Issues of Umbilical Cord Blood Banking

On March 16, 2004, the European Group on Ethics in Science and New Technologies (EGE), which plays an advisory role to the European Commission, published its Opinion on the ethical aspects of umbilical cord blood banking. Currently, cord blood is saved in public or not-for-profit banks when given by donors for any patient in need of cord blood cells, provided that the donor's and patient's cells are compatible. The EGE stated that "support for public cord blood banks for allogeneic transplantations should be increased and long term functioning should be assured." Moreover, it argued that the ethical issues raised are similar to those for any tissue bank and involve respect for privacy and confidentiality of data, fairness of access, consent of donors, and other matters. As far as autologous use is concerned, the EGE questioned the "legitimacy of commercial cord blood banks, as they sell a service which has presently no real use regarding therapeutic options."

Child Pornography, Racism, and Spam on the Internet

The European Commission, in its efforts to effectively limit child pornography, racism, and spam on the Internet, has proposed a four-year program to increase public awareness and mobilize public and private sectors to fight illegal, harmful, and unwanted content and promote a safer environment. Some specific activities include setting up hotlines that will allow the public to report illegal content and providing funding for high technology that will enable users to limit spam.

¹ European Union website, at <http://europa.eu.int/rapid/start>.

Draft Decision on Transfer of Air Passenger Records

The European Commission and the United States worked diligently during 2003 to finalize an agreement on the processing and transfer of Passenger Name Record (PNR) data by airlines to the Department of Homeland Security, Bureau of Customs and Border Protection. The agreement allows U.S. authorities to access the PNR data electronically from the airlines' reservation/departure control system. Such access will continue to be available until the airlines develop a system to transmit the data themselves.

The Draft Council Decision calls for the conclusion of this agreement on behalf of the EU. However, the agreement has raised serious privacy concerns, and there is a strong belief that it infringes on EU legislation on privacy. The European Court of Justice is shortly expected to deliver its opinion on the compatibility of the agreement with European Community rules. Meanwhile, on April 6, 2004, the European Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs urged the Council not to approve the agreement at least until the Court delivers its opinion.

European Parliament Subject To Scrutiny by OLAF

On March 30, 2004, the European Court of Justice upheld a decision of the Court of First Instance validating the competence of the European Office for the Fight Against Fraud (OLAF) to include investigations of members of the European Parliament in cases involving allegations of corruption, fraud, and other illegal practices. The Court opined that there is no need to exclude the Parliament from the review powers of OLAF, since OLAF has the jurisdiction to review such allegations against all the other institutions. In the case under review, the Court of First Instance rejected a complaint submitted by some members of the Parliament against the Parliament's decision to subject its members to review by OLAF.

European Health Insurance Card

A number of EU countries intend to introduce a European health insurance card on June 1, 2004, while others plan to do so by the end of 2005. The card will primarily be used by individuals in need of emergency health care when visiting a Member State. It will replace all the forms one formerly needed to present to the national medical authorities of the provider Member State prior to seeking health care there. The Member State that provides care will be reimbursed by the patient's home social security institution. The card cannot be used to cover situations where a sick individual is looking for better medical treatment in another State than would be provided in the home State. That will have to be arranged through an agreement between the insuring institution of one's home state and the institution of the country where the patient intends to seek treatment.

Ratification of the Council of Europe Convention on Notification of New National Rules

On March 22, 2004, the EU ratified Convention No. 180 of the Council of Europe, which establishes an international mechanism that requires prior notification of national rules on online services. Consequently, Members are required to consult with each other prior to adopting regulations that may affect electronic services. The Convention used the EU system introduced by the Notifications Directive (98/34/EC) as a model. Third States - non-members of the Council of Europe, including the United States, Canada, Japan, and Mexico - may also become members.