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Respectfully submitted,

Walter Gary Sharp, Sr.

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Director of Legal Research

Directorate of Legal Research *for*
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WORLD LAW BULLETIN
Table of Contents

SPECIAL ATTACHMENTS:

Directorate of Legal Research *for*
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AFRICA

BOTSWANA – National Security

The Minister of Presidential and Public Administration Affairs has announced that only seven people have ever been charged under the National Security Act since its enactment in 1986. (DAILY NEWS OF BOTSWANA, Mar. 31, 2005, http://www.gov.bw/ cgi bin/news.cgi.) This statement was in response to a question in Parliament on the frequency and effective use of the legislation and whether the government was intending to repeal the Act. Botswana has been a relatively stable country since independence in 1966. Only two African countries, Botswana and Mauritius, continue to be governed by the constitutional instruments they had when they achieved independence – namely, the Constitution of Botswana of 1965 and the Constitution of Mauritius of 1968, as amended to the present. Recent trends in global security have led Botswana to review its security laws, and the government indicates it has no intention of repealing the National Security Act 1986, as amended. (3 L. BOTSWANA, Ch. 23:01 (2002).)
(Charles Mwalimu, 7-0637, cmwa@loc.gov)

EAST ASIA & PACIFIC

CAMBODIA – Draft Election Law

According to a report in the *Cambodia Daily,* a draft law on elections for the Cambodian Senate is being considered. Two options are being studied; under one, the general public would vote directly for members of the body, and under the other, commune chiefs and commune council members would select the legislators. Cambodia is a constitutional monarchy with a bicameral legislature consisting of the National Assembly and the Senate. There are at present sixty-one senators, all appointed by their political parties after a royal decree extended the Senate's normal five-year mandate. The decision on the future election procedure for the Senate is expected by the end of 2007. (*New Law To Change Senators' Election Process,* AGENCE KAMPUCHEA PRESSE, Mar. 16, 2005, Foreign Broadcast Information System online subscription database.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

CAMBODIA – Drug Trafficking Law Amended by National Assembly

On March 17, 2005, Cambodia's National Assembly passed forty-nine amendments to the drug control law, originally enacted in 1997. The main goal was to strengthen penalties for trafficking in illegal drugs. The new provisions were written with the assistance of the United Nations Office on Drugs and Crime, and laws in other Asian nations were reviewed in the drafting process. Under the amended law, jail terms would be mandatory; in addition, when the sentence for dealing in illicit drugs is five years to life imprisonment, there will also be a fine. In the past, the punishment could be a fine, a jail term, or both. For example, the amended law mandates sentences of twenty years to life and fines of up to US$25,000 for those arrested with 100 grams of heroin, replacing the previous more lenient provision of ten to twenty years, with or without a fine of up to US$12,500.

The amendments were passed unanimously by those legislators present for the vote and now must be approved by the Senate and the King. Cambodia has become a key trans-shipment route for

methamphetamines and heroin, following Thailand's 2002 enactment of tougher anti-trafficking legislation. (*Cambodia Toughens Drug Trafficking Law*, AGENCE FRANCE PRESSE, Mar. 18, 2005, LEXIS/NEXIS, Asiapc Library, Curnws file.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

CHINA – Anti-Secession Law

On March 14, 2005, the National People's Congress of the People's Republic of China (PRC) adopted an Anti-Secession Law. While the Law contains no major surprises in terms of content, since it is essentially based on oft-repeated PRC policies concerning reunification of the two sides of the Taiwan Strait, it codifies the mainland's longstanding threat to use force against Taiwan should Taiwan take steps toward de jure independence, changing its current status of de facto self-determination.

The Law is in ten articles. Its stated purpose is to "oppose and check Taiwan's secession from China by secessionists in the name of 'Taiwan independence.'" Other stated purposes are to promote peaceful reunification, maintain peace and stability in the Taiwan Straits, preserve China's sovereignty and territorial integrity, and safeguard the "fundamental interests of the Chinese nation" (art. 1). The PRC's longstanding "one China principle" (*yige Zhongguo yuanze*) is put forth as the basis for reunification under article 5. Article 8 of the Law may be viewed as the most controversial. It states that in the event that "Taiwan independence secessionist forces" act "under any name or by any means" to cause Taiwan's secession from China in actuality, if there occur major incidents entailing Taiwan's secession, or if the possibilities for peaceful reunification are completely exhausted, the State will adopt "non-peaceful means and other necessary measures" to protect its sovereignty and territorial integrity. The State Council and the Central Military Commission will decide on and carry out the said non-peaceful means and other measures. The provision leaves unclear what kind of event would precipitate the PRC's use of force against Taiwan, giving the PRC flexibility in determining when such action might be necessary. The kind of force that would be used is also left vague. (*Full Text of Anti-Secession Law,* CHINAVIEW, Mar. 14, 2005, *at* http://news.xinhuanet.com/english/200503/14/content_2694180.htm; Philip P. Pan, *China Puts Threat to Taiwan into Law*, THE WASHINGTON POST, Mar. 14, 2005, at A01, *available at* http://www.washingtonpost.com; *see also CHINA—Draft Reunification Law*, 6-7 W.L.B. 11-12 (June/July 2004).)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Fifth Amendment to Criminal Law Adopted

On February 28, 2005, the Standing Committee of the National People's Congress passed Amendment Five of the Criminal Law of the People's Republic of China. It was promulgated and entered into force on that same day and involves three clauses. First, the amendment adds a new provision, article 177-1, on punishments for disruption of credit card management. The punishments range from criminal detention or up to three years of fixed-term imprisonment and/or a fine of 10,000 to 100,000 *yuan* (about US$1,210 to US$12,097) to fixed-term imprisonment of from three to ten years and a fine of 20,000 to 200,000 *yuan* (about US$2,419 to US$24,194). Punishable activities include, for example, possession or conveyance of credit cards one knows to be counterfeit or of a rather large number of blank credit cards one clearly knows to be counterfeit; illegal possession of other persons' credit cards, in rather large numbers; use of a false identification card to knowingly obtain by deception a credit card; and so on. Second, article 196, on credit card fraud, is amended to expand on the various types of fraudulent activities by including among them not only the use of a counterfeit credit

card, but also the use of a credit card knowingly obtained through deception by means of a false identification card.

The third revision affects article 369, on sabotage of military weapons, installations, and communications. Two new paragraphs are added. Paragraph two states that even unpremeditated sabotage is punishable, with up to three years of fixed-term imprisonment or a sentence of criminal detention when it creates "serious" results, or with three to seven years of fixed-term imprisonment when there are "especially serious" effects. Paragraph three incorporates part of a previous provision regarding heavier punishment for military sabotage offenses committed during wartime and extends coverage to such acts even when unpremeditated.

Originally two other clauses were to be included in Amendment Five: one on unlawful begging and the other on cheating in bankruptcy liquidation. They were set aside because the draft laws on offenses against public order and on enterprise bankruptcy are still being deliberated. (*Zhonghua Renmin Gongheguo Xing Fa Xiuzheng An (Wu)* (Amendment to the Criminal Law of the People's Republic of China (5)) (in Chinese), *at* WWW.LAW-LIB.COM, http://www.lawlib.com/law/law_view.asp?id=89168; *Criminal Law Amended To Curb Credit Card Crimes*, XINHUA, Feb. 25, 2005, *at* PEOPLE'S DAILY ONLINE, http://english.people.com.cn/200502/25/eng20050225_174746.html.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Regulations on Religion

On March 1, 2005, China's new Regulations on Religious Affairs entered into force. The Regulations were adopted by the State Council on July 7, 2004, and issued on November 30, 2004, and comprise forty-eight articles. The Regulations replace the 1994 Regulations on the Management of the Places of Religious Activities (but not a parallel set enacted that year governing foreigners' religious activities in China). The seven chapters of the Regulations cover general principles, religious groups, places for religious activities (the longest chapter, in fifteen articles), religious professionals, religious property, legal responsibility, and supplementary provisions.

Although Chinese government officials and experts have reportedly termed the Regulations a "paradigm shift" in the treatment of religious matters in the PRC, international human rights groups and other experts outside China contend that the new measures continue the government's practice of and even tighten State control over religion by imposing more bureaucratic hurdles. Thus, for example, the requirement that all religious organizations register with the government is reaffirmed in articles 6, 12, and 15; article 7 continues State control over publication of religious material; and article 19 maintains the supervisory role of religious affairs departments. The registration requirement in particular is apparently made more stringent by the fact that a religious group must now not only register its activities site with the religious affairs department but also register the group with the Ministry of Civil Affairs, so that two bureaucracies are now involved in oversight of religious affairs.

Another significant feature is the addition of a specific provision penalizing members of unregistered religious groups and prohibiting religious activities on the part of non-religious groups or organizations (article 43). Such a provision may be directed against house churches. Other new provisions prohibit the construction of large-scale open-air religious statuary, ban persons "masquerading as religious professionals" from conducting religious activities, and provide for

confiscation of any illegal gains made by such persons. (*Zongjiao Shiwu Tiaoli*, *at* Chinalawinfo.com, http://law.chinalawinfo.com/Newlaw2002/SLC/SLC.asp?DB=chl&Gd=56332; Congressional-Executive Commission on China, *China's New Regulation on Religious Affairs: A Paradigm Shift?* Testimony of Mickey Spiegel, Mar. 14, 2005, *at* http://www.cecc.gov/pages/roudtables/031405/Spiegel.php; Xu Mei, *China's New Religious Law Promises Little Change*, Jan. 17, 2005, *at* Christian News Service WORTHY NEWS website, http://www.worthynews.com/christian-persecution/china-law-change.html.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Renewable Energy Law

The Standing Committee of the National People's Congress adopted the Law of the People's Republic of China on Renewable Energy. The Law was promulgated the same day and will enter into force on January 1, 2006. Its eight chapters cover general provisions, resource investigation and development planning, industrial guidance and technical support, popularization and application of the Law, price administration and expense apportionment, economic encouragement and supervisory measures, legal liability, and supplementary provisions.

"Renewable energy" is defined under the Law as types of non-fossil energy including wind, solar, hydro, biomass, geothermal, and oceanic energy. Application of the Law to the generation of hydroelectric power will be prescribed by the competent government energy department under the State Council (Cabinet) and be reported to the State Council for approval. The Law stipulates that the development and utilization of renewable energy will be ranked as a priority area of energy development. The competent government-pricing department will determine the network electricity price for projects that generate electricity through renewable energy and make timely adjustments thereto. The determination is to be based on such factors as how the electricity is generated, regional differences, and the principle of encouraging the development, utilization, and economic soundness of renewable energy. The network electricity price is to be publicized. (*The Renewable Energy Law To Promote Sustainable Development,* 7 ISINOLAW WEEKLY (Feb. 28-Mar. 6, 2005), from webmaster @isinolaw.com.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

INDONESIA – Excise Taxes To Be Raised

According to the Director General for Customs and Excise of the Ministry of Finance, as reported by the *Jakarta Post,* Indonesia's government is preparing a revised excise law under which rates would be raised and the number of categories of goods subject to the tax would be increased (Law No. 11/1995). The changes are expected to increase excise revenue by more than five percent annually. The Ministry's goal is to have the amended law in force next year. Under the proposal, the maximum excise duty would be raised from fifty-five percent to sixty-five percent. Compact disks, video compact disks, and digital video disks would be covered for the first time. At present, only tobacco products and cigarettes, liquor and alcohol, and ethanol ethyl are subject to excise tax. (*Indonesia To Amend Excise Law To Raise Rates, Expand Categories,* AFX-ASIA, Mar. 2, 2005, LEXIS/NEXIS, Asiapc Library, Curnws file.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

JAPAN – Incumbrancer's Right To Evict a Lessee

The Supreme Court of Japan decided in March 2005 that an incumbrancer can evict a lessee who leased the property after the incumbrance was established, if the lease contract was made in order to adversely affect the sale at auction and if the auction price is lowered by the existence of the lessee, so that the incumbrancer cannot recover his credit. The Supreme Court had at one time decided that an incumbrancer could not evict a person occupying the incumbranced property. However, in 1999, the Court ruled that an incumbrancer could evict an occupier who had no legal right to the property. The March 2005 decision further enhanced incumbrancers' rights. (Heisei 13 (o) No. 656; (ju) No. 645, Supreme Court, First Petit Bench, Mar. 10, 2005, *at* http://courtdomino2.courts.go.jp/judge.nsf/dc6df38c7aabdcb149256a6a00167303/cac6139ba6a24caf49256fc0001f6a8a?OpenDocument.)
(Sayuri Umeda, 7-0075, sume@loc.gov)

JAPAN – Shipowners' Liability Insurance Required

The recently amended Oil-Spill Liability Law of Japan went into effect on March 1, 2005. Ships without shipowners' liability insurance cannot enter ports in Japan. Not only North Korean ships, but ships from all over the world are subject to this law. However, the Law impacts North Korea the most because the proportion of North Korean ships that have insurance is very low. Some North Korean ship owners have recently bought such insurance. In February 2005, for example, sixteen North Korean ships obtained certificates of shipowners' liability insurance from the Japanese Ministry of Land, Infrastructure, and Transportation. (*Kita chosen sen 16so ni shomeisho kofu* (Certificates Issued for 16 North Korean Ships), ASAHI SHINBUN, Feb. 25, 2005, *at* http://www.asahi.com/politics/ update/0225/004.htm.)
(Sayuri Umeda, 7-0075, sume@loc.gov)

TAIWAN – Compensation for Sexual Offenses

In mid February 2005, the Taiwan city of Taichung expanded regulations on financial compensation for victims of sexual offenses to include foreign residents of the city who are victimized. The compensation program seeks to provide financial assistance for victims of sexual offenses, covering the cost of counseling sessions and legal fees connected with the crime. A sexual violation is an offense that falls among offenses against sexual autonomy set forth under chapter 16 of the Criminal Code.

According to a spokesperson for the Domestic Violence and Sexual Assault Prevention Committee (DVSAPC) of the Ministry of the Interior, more local governments are easing their regulations on such matters to include foreigners in the compensation programs. A local government may initiate a compensation program as long as a county or city council approves the budget for it. Past victims of sexual offenses may also seek compensation under the program. However, foreign spouses might not qualify for the financial assistance if they have not been naturalized as Taiwan citizens. If a local compensation program does not include foreigners, a foreign national may still apply for compensation on a case-by-case basis through the local government's department of social affairs. (Cody Yiu, *Taichung Extends Sex-Crime Aid to Foreign Residents*, TAIPEI TIMES, Feb. 28, 2005, at 1, *at* http://www.taipeitimes.com/News/front/archives/2005/02/28/2003224891.)

In a related development, on March 4, 2005, the Taiwan Coalition Against Domestic and Sexual Violence called upon the government to upgrade the DVSAPC to the level of "department" in light of an increasing number of sexual crimes. There reportedly was a fourteen-percent increase in such crimes in 2003, compared to 2002. (*Coalition Urges More Be Done Against Sex Crimes*, TAIPEI TIMES, Mar. 5, 2005, *at* 4, *at* http://www.taipetimes.com/News/taiwan/archives/2005/03/05/2003225549.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

TAIWAN – Draft Gender Equality Regulations and Guidelines Against Campus Sex Crimes

The Ministry of Education of Taiwan announced on March 2, 2005, the drafts of two sets of provisions concerning sex education and sexual harassment and abuse. The Implementation Regulations of the Gender Equality Education Law cover such matters as the establishment of safe campuses, assistance to pregnant students, and incorporation of education about gays and lesbians in the curriculum. According to the Ministry of Education, military and police academies, which the Ministry does not administer, are also to abide by the Regulations. The Gender Equality Education Law, promulgated on June 23, 2004, requires schools to devote at least eight hours per semester to sex education courses, teachers to incorporate issues related to gender equality in their curriculum, and colleges to provide more gender-related courses. The Law also addresses, among other matters, prevention and control of sexual offenses and harassment on campus, means of filing for investigation and remedies, and penalties.

The other set of draft provisions, the Criteria for Sexual Abuse or Harassment Prevention on Campus, asks schools to offer lessons on sexual abuse and prevention of harassment. The Ministry noted that schools are responsible for investigation of complaints regarding such actions even after a case begins to go through the judicial process. (Mo Yan-chih, *Ministry Details Sex Laws' Regulations*, TAIPEI TIMES, Mar. 3, 2005, at 4, *at* http://www.taipeitimes.com/News/taiwan/archives/2005/03/03/2003225279; Global Legal Information Network (GLIN), GLIN ID 138074 (Taiwan, Equal Education of the Sexes Law), *at* http://www.glin.gov.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

EUROPE

DENMARK – Stricter Rules for Foreign Workers

Denmark's Employment Minister has reached an agreement on stricter rules for foreign workers with the other parties that support the government's policy on this issue. The agreement means that foreign workers in Denmark will be required to obtain a European Union declaration to prove that they have the right to work in Denmark. The declaration's purpose is to ensure that workers are covered by health and welfare programs in their home countries. The rules on temporary work will also become stricter, requiring residence and temporary work permits. (*More Restrictions for Foreign Workers*, DENMARK.DK:DENMARK'S OFFICIAL WEBSITE, Mar. 17, 2005, *at* http://www.denmark.dk (last visited Mar. 18, 2004).)
(Linda Forslund, 7-9856, lifo@loc.gov)

FINLAND – HIV Transmission Is Battery Not Attempted Manslaughter

The courts in Finland (district through Supreme Court) have found that having unprotected sex knowing that one is infected with the HIV virus no longer constitutes manslaughter (or attempted manslaughter), but battery. The Supreme Court of Finland decided on February 28, 2005, not to hear an appeal by Mr. George Kwasi Okoke Mensah, who has been found guilty of battery in the district court and Court of Appeals for having unprotected sex with twenty-three women while knowing that he was infected with the HIV virus. One of the women was infected with the virus. Both lower courts agreed that the crimes constituted aggravated battery and attempted aggravated battery, but not manslaughter, due to the new and improved medications. The decision by the Supreme Court not to hear Mr. Mensah's appeal means that the decisions by the lower courts will be upheld. (Staffan Bruun, *Hiv-sex är misshandel – inte dråpförsök*, HUFVUDSTADSBLADET, Mar. 1, 2005, *at* http://www.hbl.fi/cgi-bin/mediaweb (last visited Apr. 5, 2005).)
(Linda Forslund, 7-9856, lifo@loc.gov)

FRANCE – Amendments to Constitution

On February 28, 2005, both houses of Parliament met in a special session in Versailles to adopt two amendments to the 1958 Constitution, one paving the way to a referendum on the ratification of the European Constitution and the other making a new "Environment Charter" part of the Constitution. The referendum on the European Constitution is to take place before the summer, and its outcome at this time is far from certain.

The Environment Charter consists of ten articles, and under them French people now have the constitutional right to live in a balanced environment that does not damage their health. The Charter points out the duty of each person to take part in the safeguarding and improvement of the environment. It affirms the public authorities' duty to apply the precautionary principle in cases of scientific uncertainty regarding serious and irreversible risk of damage to the environment. Finally, it emphasizes the roles of communication, participation of the public, education, training, research, and innovation in protecting the environment.

These new rights and duties have the same constitutional standing as the Rights of Man of 1789 and the social and economic rights recognized by the Preamble of the 1946 Constitution, both of which were incorporated in the 1958 Constitution. (Constitutional Laws 2005-204 & 205 of Mar. 1, 2005, JOURNAL OFFICIEL, Mar. 2, 2005 *at* http://www.legifrance.gouv.fr/.)
(Nicole Atwill, 7-2832, natw@loc.gov)

GERMANY – Electronic Communications in Court System

An Act on Communications in the Administration of Justice was enacted on March 22, 2005 (BUNDESGESETZBLATT I at 837). The new law is part of a major effort at computerizing the work of the federal government. It is designed to establish effective online communications between courts and parties and to replace paper records with digital records. Although the Act became effective April 1, 2005, its implementation may be slow due to disputes over the states bearing the cost for this Federal mandate. If the suitable infrastructure were created, it would be possible for parties to submit pleadings

by electronic mail and to include documentary evidence in scanned documents. (FRANKFURTER ALLGEMEINE ZEITUNG, Mar. 16, 2005, *at* 25.)
(Edith Palmer, 7-9860, epal@loc.gov)

KAZAKHSTAN – Terrorist Organizations Banned

On March 15, 2005, the Supreme Court of Kazakhstan ruled behind closed doors that seven international organizations registered in Kazakhstan are terrorist bodies and ordered their elimination. This decision implements the Law on Countering Extremist Activities, the new version of which was adopted in February 2005. Among the banned organizations are the Muslim Brotherhood, the Taliban, the Social Reform Society, and Jamaat Mojaheddin of Central Asia. These organizations have been recognized as terrorist organizations in the United States, Pakistan, Russia, and some other countries. Last year, four other organizations were banned as terrorist organizations in Kazakhstan. The Supreme Court ruling upheld a suit filed by the Prosecutor General of Kazakhstan. The decision is not subject to appeal and became effective as of the date of promulgation. (THE TIMES OF CENTRAL ASIA, Mar. 15, 2005, *at* http://site. securities.com/doc.html?pc=KZ&doc_id=70389806&query=law&hlc=ru.)
(Peter Roudik, 7-9861, prou@loc.gov)

LATVIA – Bio-Fuel Law

On March 21, 2005, the Parliament of Latvia adopted the Bio-Fuel Law, which requires at least two percent of fuel used in the country to be of biological origin by the end of 2005. The Law was passed in accordance with European Union requirements that by December 31, 2010, about six percent of fuel placed on the market must be of biological origin. The Law determines state and municipal support for promoting the development of bio-fuel, including state guarantees for loans and subsidies for bio-fuel refineries or rapeseed farmers, although the Government has yet to finalize these regulations. The government must prepare guidelines for promoting the consumption of bio-fuel by May 2005. Amendments to tax legislation in order to exempt bio-fuel from excise taxes are to be passed. (*Bio Fuel Law Adopted*, NORTHROUP NEWSLETTER, Mar. 21, 2005, at http://www.securities.com/.)
(Peter Roudik, 7-9861, prou@loc.gov)

LATVIA – Communists May Have Access to State Secrets

On March 17, 2005, the Parliament of Latvia adopted amendments to the nation's Law on State Secrets, which would allow Latvian National Armed Forces officers who had been members of the Communist Party after January 13, 1991, the day on which Latvia declared its independence from the Soviet Union, to be cleared for access to state secrets. Under these amendments, at the commander's recommendation and after screening by the highest national security agency, the Constitution Protection Office, Communist Party members will be able to obtain a special clearance for access to state secrets.

The Law still bars from access to state secrets those individuals who after January 13, 1991, were active in other pro-Soviet organizations in Latvia. The amended law makes state secrets inaccessible to people with addictions to alcohol, drugs, or psychotropic substances; to persons who work or have worked for security agencies of the Soviet Union, Soviet Latvia, or foreign countries, except the European Union and NATO member states; and to those whose ability to keep secrets has

come to be doubted in the course of the security screening. (BNS BALTIC DAILY NEWS, Mar. 17, 205, *at* http://site.securities.com/doc. html?pc=LV&doc_id =70510780&query=law&hlc=en.)
(Peter Roudik, 7-9861, prou@loc.gov)

LITHUANIA – KGB Collaborators Allowed to Become Members of Cabinet

On March 1, 2005, the Seimas (Parliament) of Lithuania concluded its special investigation of the implementation of the Lustration Law, under which all individuals who worked for the KGB and other Soviet special services were given six months to confess and to register with a special commission. The information volunteered by such people was made secret. The investigation was initiated when the Lustration Commission learned that high-ranking state officials such as the current Lithuanian Minister of Foreign Affairs and the Director General of the nation's State Security Department were included in the KGB reserves during the Soviet period. The present Lustration Law does not require that former KGB reservists approach the Lustration Commission and confess, because enlistment in the reserves is not stipulated as conscious collaboration with Soviet-era repressive structures.

Upon investigating the circumstances of the enlistment of Lithuanian officials in the KGB reserves, the Seimas established that "the USSR KGB reserve was the KGB's mobilization force designed for extraordinary circumstances, and in contrast with the regular staff and secret agents, the reservists did not perform active functions or combat tasks." Based on the investigation panel's conclusions that the presence of KGB reservists even in the highest positions does not pose a threat to national security, the Seimas issued a resolution that exempted former KGB reservists from the lustration requirements; however, it proposed measures to publicize a list of such reservists. (*Presence of KGB Reservists No Threat to National Security*, BNS DAILY NEWS, Mar. 1, 2005, *at* http://www.securities.com/doc. html?pc=LT&doc_id=6961243.)
(Peter Roudik, 7-9861, prou@loc.gov)

RUSSIAN FEDERATION – Dog Recognized as Weapon

A city court in Novosibirsk, a Russian West Siberian city of 3.5 million people, ruled for the first time in Russian history that a fighting dog can be considered a weapon. The dog's owner, a retired police officer who was found guilty of committing several acts of hooliganism, was sentenced to one year of imprisonment. The court found that the accused person verbally assaulted his neighbors, who were plaintiffs in this case, did not exercise control of his pit bull terrier, and did not undertake measures to prevent the dog's attacks on people and other dogs. This ruling is important because it creates a precedent and allows the imposition of stricter penalties on felons who used dogs in committing their crimes, just as if they used a more conventional type of weapon. (ROSSIISKAIA GAZETA [Russian Government official newspaper] Mar. 18, 2005, *at* http://www.rg.ru/2005/03/18/sobaka-orujie.html.)
(Peter Roudik, 7-9861, prou@loc.gov)

RUSSIAN FEDERATION – Parliamentarians' Privileges Decreased

On March 15, 2005, amendments to the Law on the Status of the Members of the State Duma of the Russian Federation (lower house of the federal legislature) were signed by President Vladimir Putin of Russia. These amendments are in line with the national campaign to substitute monetary

compensation for privileges and are aimed at the optimization of the Duma's budget expenditures. The new law restricts previously free use of long-distance telephone connections, government-financed travel within Russia and abroad, and free use of public transportation to which the elected Members of the Duma were entitled.

The Law states that the Duma's Committee on Rules must establish time limits for free use of long-distance telephone service for each member of the Duma. Exceeding the limits will result in the disconnection of service. In regard to travel expenses, the Law limits the government-funded travel of a Member between Moscow and the region he is representing to travel only for the purpose of "work with the constituents," to be defined later, in order to prevent government payment for the personal travel of a parliamentarian. Members of the Duma will receive special allowances for use of public transportation in the city of Moscow. They are allowed to hire a taxi or be compensated for use of their own cars. The Law establishes the obligation of Duma Members who do not own residences in Moscow to pay for utilities in government-owned apartments they are using for the period of their parliamentary terms. However, the rent for these apartments and their maintenance will remain free for the Members. The Law establishes the possibility that Members of the State Duma will be given awards with the money saved by the new restrictions. The Law will enter into force in 2006. (ROSSIISKAIA GAZETA (Russian Government official newspaper), Mar. 17, 2005, *at* http://www.rg.ru/2005/03/17/deputati-privilegii. html.)
(Peter Roudik, 7-9861, prou@loc.gov)

SERBIA – Restitution Law Adopted

On March 18, 2005, the Law on the Registration of Property Expropriated after March 9, 1945, was adopted by the Serbian legislature. The Law establishes a deadline for registration of expropriated property with the Serbian Property Directorate. All individuals whose property had been expropriated under the Socialist Federative Yugoslavia's Law on the Expropriation of Property of 1945 will be able to submit their claims until June 30, 2006. The registration of the claims to the expropriated property will be the first phase of the restitution process. In the second phase, according to legislation that will be passed before the end of 2005, the method of restitution will be determined on a case-by-case basis. The Law provides for the following forms of restitution: financial compensation, return of the property in question, and exchange for some other property. The estimated value of the expropriated property is between US$60 and 150 billion. Citizens of other nations also have the right to report nationalized property in Serbia, unless their respective governments have taken on the obligation to compensate their citizens through bilateral inter-State agreements. (TANYUG, FRY News Agency, Mar. 21, 2005, *at* http://site.securities.com/search/search.html?pc=YU&abstract=1&profile=&key word=law.)
(Peter Roudik, 7-9861, prou@loc.gov)

SWEDEN – Strengthening of Copyright Protection Proposed

On March 10, 2005, the Swedish government submitted government bill number 2004/05:110 to the Parliament, proposing several amendments to the Swedish Copyright Act. Here are the key proposals:

- It will be illegal to copy materials that in their turn have been illegally copied. As in other areas of law, it should not be permissible to take advantage of criminal actions committed by others.
- Copies can still be made for private use (i.e., a person can make a copy for personal use of a CD he or she owns), but the right to copy whole books will become limited.
- The rules that ensure that compensation is received for the legal copying of materials for private use should be extended to encompass digital media such as CDs, DVDs and MP3s.
- The right to make copies of materials available to people with disabilities should be expanded.
- It should become easier for schools and universities to enter into copyright agreements enabling these institutions to make digital copies available to students. The same should be true for some libraries.
- It will become illegal to break technological devices that are installed to protect materials available on the Internet. It will also become illegal to make and sell products that can break such technological protection and to sidestep such protection to copy protected materials. Just as it is illegal to steal a DVD from a store, it will now become illegal to download movies from the Internet without paying for them.

The proposed effective date for the amendments is July 1, 2005. (Ministry of Justice, *Upphovsrätten i informationssamhället*, Mar. 17, 2005, *available at* http://www.regeringen.se/ (last visited Mar.18, 2005).)
(Linda Forslund, 7-9856, lifo@loc.gov)

SWITZERLAND – Reorganization of Immigration Authorities

On December 7, 2004, Switzerland enacted a federal regulation that combines the heretofore separate offices for refugees and for immigration in one office within the Swiss Ministry of Justice and Police (AMTLICHE SAMMLUNG DES BUNDESRECHTS 2004 at 4813). The regulation became effective on January 1, 2005. It aims to improve communication and cooperation between federal and cantonal officials on all matters concerning the entry and sojourn of aliens. The new office consists of four divisions that are responsible respectively for entry and immigration, freedom of movement and labor, integration, and asylum petitions. In addition, a central support office maintains an extensive database of aliens' personal information. The new measure is expected to enhance law enforcement and to cut costs (NEUE ZÜRCHER ZEITUNG, June 8, 2004, *at* 13.)
(Edith Palmer, 7-9860, epal@loc.gov)

UKRAINE – First Criminal Case Against a Spammer

A regional police department in the eastern Ukrainian city of Donetsk filed a criminal case against a local resident who is accused of sending electronic messages with the aim of suppressing the operation of a computer server. This is the first such case launched in Ukraine. The suspect was detained by police two days after the victim, a private Internet service provider, reported that he had uncovered interference in the operations of his company's computers used to provide access to the Internet, which resulted in the disruption of services. Law enforcement authorities established the IP address of the computer that was used for the spam attack. According to the Criminal Code of Ukraine, attacks on computers or telecommunication networks are punishable by imprisonment of up to

three years. (UKRAINE ON-LINE, Mar. 22, 2005, *at* http://site.securities.com/doc.html?pc=UA&doc_id=70691128.)
(Peter Roudik, 7-9861, prou@loc.gov)

UNITED KINGDOM – Constitutional Reform Bill Receives Royal Assent

After Tony Blair's controversial press release in 2003 that announced the abolition of the Lord Chancellor's Office and the creation of a Supreme Court of the United Kingdom to replace the Law Lords sitting as a Committee in the House of Lords, Parliament has passed a Constitutional Reform Bill. The government faced considerable opposition in its ambitious aims and has had to compromise on numerous occasions in order to get the bill through Parliament. The bill creates a new Supreme Court, ensures the independence of the judges by prohibiting the Law Lords from sitting in the House of Lords, and establishes a new independent Judicial Appointments Commission to recruit and select the judges. (Constitutional Reform Bill (HL) Bill 18.) The bill has received royal assent and is now Constitutional Reform Act 2005, c. 4.
(Clare Feikert, 7-5262, cfei@loc.gov)

NEAR EAST

IRAN – Embryo Donations Legalized

Following long debate regarding the highly controversial issue of the legitimacy under Islamic law of the transfer of embryos to sterile couples by means of artificial insemination, the Law Legalizing Donation of Embryos by Artificial Insemination was passed on August 29, 2003. The Law provides that couples unable to bear children may apply to a court to be allowed to receive artificially inseminated embryos under certain conditions. It also requires that the couple requesting the transfer of an artificially inseminated embryo must, among other requirements, be citizens of the Islamic Republic of Iran. The implementing regulations of the Law, which were recently approved by the Council of Ministers, provide that the embryo must belong to couples married legally and according to Islamic law. Both the receiving and donating couples must be physically healthy, have adequately high IQs, and be free from addiction to narcotic drugs and hard-to-cure diseases such as AIDS and hepatitis. The regulations provide that strict confidentiality must be observed throughout the donation process. The procedure must be performed with the written consent of the donating couple. Medical centers that treat sterility must separate embryos of Muslim from those of non-Muslim couples. (HAMSHAHRI, Tehran, Mar. 17, 2005, *at* 4 & 5, http://www.hamshahri.org/hamnews/1383/831227/news/ejtem.htm.)
(Gholam H. Vafai, 7-9845, gvaf@loc.gov)

IRAN – Noruz Celebration To Be Registered with UNESCO

Iran, in cooperation with the countries that celebrate the Iranian New Year (Noruz), Afghanistan, Azerbaijan, India, Kazakhstan Kyrgyzstan, Pakistan, Tajikistan, Turkey, Turkmenistan, and Uzbekistan, has filed a request with the United Nations Educational, Scientific, and Cultural Organization (UNESCO), asking that the celebration be registered as an International Heritage and Tourism event. The request includes registration of films and historic documents depicting the spectacular celebrations conducted annually on the first day of the spring equinox. The Noruz event was celebrated in the past in countries outside the geographical area of the Middle East, including

China. Today, due to the presence of large Iranian communities in the United States and Canada, it is also being celebrated in those two countries. (HAMSHAHRI, Tehran, Mar. 15, 2005, at 9 & 10.)
(Gholam H. Vafai, 7-9845, gvaf@loc.gov)

ISRAEL – Equal Rights for Persons with Disabilities

On March 22, 2005, the Knesset (Parliament) approved a major amendment to the Equal Rights for Persons with Disabilities 1998 Law. Originally, the Law mandated equal opportunities in employment, accessibility in public transportation, and the establishment of an agency for persons with disabilities. The new amendment concentrates on accessibility in residential buildings, places of work and trade, public institutions, schools and medical facilities, nature resorts, and entertainment sites, as well as at traffic intersections and on sidewalks, for persons with physical and mental disabilities.

The Law provides general time limits for meeting the accessibility requirement. Among specific requirements are accessibility of institutions to wheelchair users, provision of signs in Braille and of acoustic ceilings and amplifiers for the deaf, shortened waiting time for persons suffering from mental diseases, use of simplified and clear signals for persons who are mentally challenged, etc. According to the Chairman of the Knesset Committee for Labor and Welfare, the Law is designed to enable the integration of a large population of persons with disabilities living in Israel, a population that has until now suffered discrimination. (Equal Rights for Persons with Disabilities (Amendment 2) 5765-2005, *at* http://www.knesset.gov.il/; *see also* R. Sinai, *The Knesset Approved Without Objectors: Places of Employment and Education Facilities Will Be Accessible to the Handicapped*, HAARETZ, Mar. 22, 2005, *at* http://www.haaretz.co.il/.)
(Ruth Levush, 7-9847, rlev@loc.gov)

ISRAEL – Law on Implementation of Disengagement Plan

On February 16, 2005, the Knesset (Parliament) passed the Law on the Implementation of the Disengagement Plan, 5765-2005. The Law is designed to regulate the evacuation of Israelis and their assets from the Gaza Strip and the northern part of Samaria (the West Bank), in accordance with government decisions; to provide fair and suitable compensation and assistance in moving and finding new employment to those found entitled to such; and to relocate groups of settlers and residential cooperatives to replacement locations.

The Law establishes a special office within the Prime Minister's office that will be in charge of implementation of various tasks, including collecting data on and estimating the scope of entitlements. The Law also sets forth the procedure for determining eligibility for entitlements. It regulates the evacuation procedure and prescribes offenses for unauthorized entry or stay in those areas to which access is prohibited by special decrees issued by the Prime Minister and the Minister of Defense. (Law on the Implementation of the Disengagement Plan, 5765-2005, http://www.knesset.gov.il/ (last visited Mar. 11, 2005).)
(Ruth Levush, 7-9847, rlev@loc.gov)

KUWAIT – Legal Precedent in Administrative Matter

In a legal precedent that is the first of its kind in administrative matters in Kuwait, the criminal court issued a decision removing the undersecretary of the Ministry of Health, D. Abd Al-Raheem Al-

Zaid, from his position and sentencing him to six months in prison for refusing to enforce a judgment. A Kuwaiti physician obtained the judgment after the Ministry of Health refused to give him a permit to open a private clinic. The Ministry of Health originally gave approval to the physician, one of its own, to open a private practice after regular working hours, then denied him the necessary permission. He sued and obtained the judgment, which the undersecretary refused to uphold. (AL-SHARQ AL-AWSAT Newspaper, Internet edition, Mar. 18, 2005, http://www.asharqalawsat. com.)
(Issam Michael Saliba, 7-9840, isal@loc.gov)

KUWAIT – Parliamentary Investigation of Fuel Sale

On March 27, 2005, a parliamentary investigative committee in Kuwait revealed the existence of irregularities in the sale in 2003 of fuel oil to the American military in Iraq, resulting in the loss of millions of dollars to the public treasury. The Chairman of the Committee, Ali Al-Rashed, called for an investigation into a contract between the Kuwaiti National Oil Company and an intermediary company to deliver 1,500 tons of fuel daily to the American military in Iraq, through Haliburton, the giant American oil company. (Al-Jazeera TV station, Internet edition, Mar. 28, 2005, http://www. aljazeera.net/.)
(Issam Michael Saliba, 7-9840, isal@loc.gov)

SOUTH ASIA

INDIA – High Court Dismisses Pakistan Doctors' Plea To Practice in India

Three Pakistani physicians who graduated with degrees in medicine from the Sind University in Pakistan and had been living in India for some years as visitors applied to the Indian Medical Council for permission to practice medicine in India on the grounds that their graduate degrees in medicine are recognized in India. However, the Council did not grant them permission to practice.

Upon the Council's denial of permission, the physicians filed a petition for issuance of a *writ of certiorari* for quashing the impugned order of the Medical Council in the Bombay High Court. The petitioners had come to India previously on visitors' visas. They wished to stay in India and make a living by practicing medicine there before becoming citizens of India. A division bench (two judges), presided over by Justice F.I. Rebello, dismissed their petition, stating that since the validity of the recognition of the Sind University degrees was withdrawn by the Indian Medical Council in 1999, the Council correctly denied them the permission to practice medicine in India.

The petitioners have stated that they will appeal the decision of the High Court to the Supreme Court of India. Meanwhile, other similar petitions of Pakistani doctors who have been staying in India since 1995 are likely to be decided shortly by the same High Court. (THE HINDUSTAN TIMES, Mar. 1, 2005, http://www.hindustantimes.com/2005/Mar/01/181_1262736,000600010004.htm.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

INDIA – India Wins Battle for Neem Patent in Europe

The neem tree is renowned for its fungicidal characteristics and is widely used in traditional Indian Ayurvedic medicines. In 1995, the European Patent Office granted a patent for neem products

to the United States Department of Agriculture and the multinational corporation WR Grace. India challenged the grant of the patent on the grounds that the use of neem in varied forms is a part of traditional Indian knowledge and that it was not a novel product. The acceptance of the Indian challenge led to the revocation of the patent in the year 2000.

WR Grace, however, filed an appeal challenging the order of revocation and the withdrawal of the patent. India produced additional evidence during the appellate proceedings to show that the neem patent was not given for a novel product and to confirm that its fungicidal character was a part of traditional Indian knowledge. On March 9, 2005, dismissal of the appeal gave India a major victory and ended a ten-year-long battle at the European Patent Office.

According to Vandana Shiva, head of India's Research Foundation for Science, Technology, and Ecology, India considered the award of the patent damaging because WR Grace had tried to enlarge the scope of the patent to include all neem end-products. (THE HINDUSTAN TIMES, Mar. 9, 2005, http://www.hindustantimes.com/news/181_1272993,0004.htm.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

WESTERN HEMISPHERE

BOLIVIA – Controversial Hydrocarbons Law Jumps One Hurdle

On March 16, 2005, the Bolivian Chamber of Deputies approved a controversial law on hydrocarbons that creates a new thirty-two percent tax on production for foreign corporations, but maintains petroleum royalties at eighteen percent. The administration of President Carlos Mesa had insisted on the eighteen percent royalties, while the opposition in the Chamber had wanted to increase royalties to fifty percent. According to the approved reform, the new tax would be applied immediately and universally. The new law will also cover the migration of contracts, which will be obligatory; introduce participation of Indian communities; and allow recovery of fifty percent of the hydrocarbons. The law now passes to the Senate for action and must ultimately be signed by the President to become effective. (*Bolivia: Controversial Law Approved*, BBC MUNDO.COM, Mar. 16, 2005, *at* http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin_america/newsid_4353000/4353415.stm.)
(Sandra Sawicki, 7-9819, sasa@loc.gov)

BRAZIL – Stem Cell Research Supported

The Chamber of Deputies of Brazil voted on March 3, 2005, to legalize stem cell research using leftover, frozen embryos, in hopes of ultimately finding cures for such conditions as diabetes, Parkinson's, and spinal cord injuries. The law, to be known as the Law on Biodiversity, will permit research with embryos from in-vitro fertilization that have been frozen at least three years. The lawmakers voted to uphold a ban on cloning embryonic stem cells for therapeutic use, as well as on cloning babies. It is expected that President Luiz Inacio Lula da Silva will sign this bill into law shortly. (*Brazil Approves Law on Biodiversity*, BBC MUNDO.COM, Mar. 3, 2005, *at* http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin_america/newsid_4314000/4314319.stm; *Legislature Legalizes Stem Cell Research*, LOS ANGELES TIMES, Mar. 4, 2005, http://www.latimes.com/news/nationworld/world/la-fg-briefs4.1mar04,1,56575.story?coll=la-headlines-world.)
(Sandra Sawicki, 7-9819, sasa@loc.gov)

CANADA – Alberta Senate Elections To Be Ignored

Canada's upper chamber, the Senate, is composed of members appointed by the Governor General acting upon the advice of the Prime Minister. For many years, dissatisfaction with the appointment process and the formula for regional representation in the Senate has been greatest in the western part of the country. The province of Alberta has tried to inject itself into the appointment process by holding several elections for open seats since 1989. One person elected in this manner was appointed to the Senate by former Prime Minister Brian Mulroney in 1990. However, the former Prime Minister indicated that he would not be bound by future elections, and since then the Liberals, under former Prime Minister Jean Chretien and current Prime Minister Paul Martin, have taken an even stronger line. A spokesman from the Prime Minister's office has indicated that the Prime Minister will not consider the election results in appointing the three new senators needed to fill the open seats reserved for Alberta. No other province has held elections for seats in the Senate. However, many favor Senate reform. The Liberal Government also favors reform in theory, but is wary of formally opening up the matter for debate because of the rancor that followed the last formal proposals contained in the Charlottetown Accord of 1992. That Accord was defeated in a national referendum. (Alexander Panetta, *Martin Set To Make First Senate Appointments; Won't Respect Alberta Elections*, CANADIAN PRESS, Mar. 14, 2005, *at* Yahoo! News Canada, http://story.news.yahoo.com (last visited Mar. 24, 2005).)
(Stephen Clarke, 7-7121, scla@loc.gov)

CANADA – Call for Stiffer Drug Sentences

In the aftermath of the murder of four Royal Canadian Mounted Police Officers who were killed during a recent raid on a "grow op" in Alberta, the Minister of Justice has called on the judiciary to battle the cultivation of marijuana in homes and farm buildings with stiffer sentences. (Sue Bailey & Sandra Cordon, *Judges Must Hand Down Firm Sentences for Grow Ops, Says McLellan*, CANADIAN PRESS, Mar. 4, 2005, *at* Yahoo! News Canada, http://story.news.yahoo.com (last visited Mar. 24, 2005).)

The Canadian government has been committed to vigorously prosecuting "grow op" offenders for several years. Officials have responded to suggestions that the controversial Bill C-17 would "decriminalize" marijuana by pointing out that while the bill would largely replace potential imprisonment with fines that would not create a criminal record for simple possession, it would also increase the maximum penalties for trafficking. Bill C-17 was referred to the Justice Committee in the House of Commons in November 2004 and is not expected to be taken up for at least a couple of months. (Bill C-17, 38th Parl. 1st Sess.) Justice Committee staffers believe the tragedy in Alberta may result in the government waiting even longer before taking up reform of the country's marijuana laws. (Discussions, Mar. 2005.)
(Stephen Clarke, 7-7121, scla@loc.gov)

CHILE – New Law on Sexual Harassment

After fourteen years pending congressional action, Law 20005 on sexual harassment was passed on March 8, 2005, by unanimous vote in both chambers of Congress, an event that is clear evidence of the cultural and political change that has occurred in Chile.

The text of the new law, to be inserted in the Labor Code, mandates that companies with more than ten employees adopt an internal regulation requiring a work environment of mutual respect and dignity. Under the new legislation, a victim of sexual harassment should submit a complaint in writing to the head of the company, institution, or service or the pertinent *Inspeccion del Trabajo* (Office of Labor Compliance). Once the complaint is received, these authorities must start an internal investigation or submit the case and all the background information to the Directorate of the Workforce within five days. In addition, they must adopt measures to protect all people involved in the case. The measures may include reassignment of physical space in the workplace or rescheduling of work time, depending on the seriousness of the alleged facts. The investigation must conclude within thirty days of submission.

Sanctions may include self-separation from the job, with compensation for unjust separation increased to up to eighty percent of the employee's salary. This compensation is in addition to any other to which the victim may have a right, such as compensation for moral and psychological damage as granted by the courts. If the employer does not consider the complaint, it may be subject to fines and payment of monetary compensation. There are also severe sanctions for those submitting frivolous or unfounded complaints. (Law 20005, Mar. 3, 2005, DIARIO OFICIAL, Mar. 18, 2005.)
(Graciela Rodriguez-Ferrand, 7-9818, grod@loc.gov)

CUBA – Severe Restrictions on Tourism Industry

Cuba's government recently enacted regulations barring Cubans who work in the tourist industry "from having personal contact with foreigners." Resolution 10, issued by the Tourism Ministry, forbids employees – from waiters to high-level executives – to accept tips, gifts, and invitations from foreigners and demands that Cubans' contact with non-Cubans be restricted to "that which is absolutely necessary." Regulations also require a witness to be present during business negotiations with foreigners. Any non-professional contact with a foreigner, not just by an employee but also by any member of his or her family, must be reported to a superior within seventy-two hours.

Staff members are now required to report any foreigner whose behavior or comments are considered offensive to the Cuban government. They are further instructed to "be vigilant at all times of any deed or attitude that could be harmful to the State." The norms also apply to Tourist Ministry employees who work abroad. They are instructed to refuse all personal invitations from diplomats, business associates, and even colleagues, if they are foreigners. Resolution 10 went into effect in February 2005 in most Cuban tourist resorts and is expected to go into effect shortly in Havana. (*Cuba: Restricciones en Turismo*, (in Spanish) BBC, Feb. 25, 2005, *at* http://news.bbc.co.uk/hi/spanish/latin_america/_newsid_4296000/4296143.stm**;** *see also Cuba Gets Tough on Tourism*, CNN, *at* http://www.cnn.com/2005/WORLD/americas/03/02/cuba.tourism/_index.html (last visited Apr. 19, 2005).)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

MEXICO – Chamber of Deputies To Vote on Outlawing Death Penalty

In a plenary session, the Senate voted to repeal the death penalty, torture of any kind, corporal punishment, and excessive penalties from the Federal Constitution. To that effect, with seventy-nine votes in favor and two against, the Senate voted to amend articles 14 and 22 of the Constitution. The senators argued that the above penalties neither serve to reduce crime levels, nor serve any corrective

purpose. The amendments were sent to the Chamber of Deputies for its consideration. If approved by the Chamber, they will then need to be approved by the local legislative assemblies. The last time the death penalty was applied was on August 9, 1961, in the State of Coahuila. The death penalty was repealed from the Military Penal Code in April 2004. (Jorge Herrera, *Eliminan Senadores la Pena de Muerte*, EL UNIVERSAL, Mar. 18, 2005, *at* http://www.el-universal.com.mx.)
(Norma C. Gutiérrez, 74314, ngut@loc.gov)

MEXICO – Coffee and Sugar Production Bills Approved

On March 18, 2005, the Mexico City newspaper *El Financiero* reported that the Chamber of Deputies approved, in a rushed debate among the political parties, the Law on Overall and Sustainable Development of Coffee Farming, which will benefit 483,000 producers who work on 670,000 hectares and about five million workers who work indirectly or indirectly in this industry. The bill, which was approved by 239 votes in favor from the Party of the Democratic Revolution (PRI), the Party of the Democratic Revolution (PRD), the Green Ecologist Party of Mexico (PVEM), and the Convergence for Democracy Party (CD), versus 112 votes opposed from the National Action Party (PAN), calls for the creation of a Mexican Coffee Council as a decentralized, autonomous government institution to advise on and evaluate the national coffee policy.

The bill aims at the revitalization of the coffee industry in Mexico to encourage consumption. Jorge Utrilla, a PRI Deputy, stated that the existing commission on coffee will have as its priorities the promotion of the commercialization, industrialization, and consumption of coffee as well as the improvement of revenue-yield capacity, quality, and the equitable distribution of income.

The Chamber of Deputies also approved the Law on Rural Sustainable Development of Sugarcane. The Law provides for the creation of a National System Product Committee on Sugarcane and a Permanent Arbitration Board. The Law imposes upon the state the obligation to promote the policies and programs of the industry, to support and promote sugarcane production, and to disseminate technological achievements in the field, as well as to control inventories of sugar, diversify the use of sugarcane, and implement joint projects between sugarcane suppliers and sugar mills. Both the bill on coffee production and the bill on sugarcane have been sent to the Senate. (Martín Román Ortiz, *Aprueban Diputados Nuevo Marco Regulatorio para Café y Azúcar*, EL FINANCIERO, Mar. 18, 2005, *at* http://www.elfinancero.com.mx.)
(Norma C. Gutiérrez, 74314, ngut@loc.gov)

NICARAGUA – Appeals Judge Reduces Prison Term in SAM-7 Case

Judge Rafaela Urroz of the 8th District Criminal Court of Managua confirmed the prison sentence imposed by a trial judge on two persons charged with terrorism for the possession of a Soviet-made C_2M surface-to-air missile, known as a SAM-7. However, Judge Urroz reduced the initially imposed prison term by six months. She argued that there were extenuating circumstances favoring both of the accused. According to Judge Urroz's ruling, one of the accused, Jorge Iván Pineda, will serve time in prison for one year, and the other, Oscar Rivera Lacayo, will serve a six–month term. (Mirna Velásquez Sevilla, *Rebajan la Pena a los del Caso del Misil*, LA PRENSA, Mar. 16, 2005, *at* http://www.laprensa.com.ni.)
(Norma C. Gutiérrez, 74314, ngut@loc.gov)

INTERNATIONAL LAW AND ORGANIZATIONS

AFRICA – Model Biotechnology Safety Law

On March 17, 2005, the London-based non-profit organization AfricaBio posted a new African Model Law on Safety in Biotechnology on their Internet site. (*African Model Law on Safety in Biotechnology, at* http://www.africabio.com/policies/MODEL_LAW_0N_BIO_SAFETY_ff.htm.) The proposed model law would regulate the import and export, transit, contained use, release, and marketing of genetically modified organisms (GMOs), whether intended for release into the environment, for use as pharmaceutical products, or for use as food or feed or as a product of a GMO. The model law would include a national focal point as the policy-formulating body and a liaison with other entities in the country, including an enforcement agency. The proposed law also covers public participation, decision-making procedures, review of decisions, risk assessment and risk management, unintentional release of GMOs and emergency procedures, identification and labeling of GMOs, preservation of confidential business information, liability and redress, and offenses and penalties.

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CHINA/ICAO – Air Carriage Convention Approved

On February 28, 2005, the Standing Committee of the National People's Congress of the People's Republic of China (PRC) ratified the Convention for the Unification of Certain Rules Relating to International Carriage by Air, which had been adopted on May 28, 1999, by the International Civil Aviation Organization at a meeting held in Montreal. At the same time, it was announced that until further notification by the PRC government, the Convention temporarily will not apply to the Hong Kong Special Administrative Region. (WWW.Law-Lib.Com, *at* http://lawbook.com.cn/law/law_view.asp?id=89164 (in Chinese) (last visited Mar. 30, 2005).)

The Montreal Convention, which entered into force on November 4, 2003, replaces the 1929 Warsaw Convention on carriage by air. It reportedly makes significant changes in the way compensation for passenger death, harm to health, and damage to baggage is handled and "drastically" streamlines compensation collection procedures. (*Russian Air Legislation*, BUSINESS LAW REVIEW, Nov. 16, 2004, LEXIS/NEXIS, World Library, Allwld File; International Civil Aviation Organization website, *at* http://www.icao.int/cgi/AirLaw.pl?date.)

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

THE PHILIPPINES/U.N. – Anti-Terrorism Branch Assists in Drafting Legislation

Philippine Foreign Affairs Secretary Alberto Romulo recently announced that the United Nations will provide advice to the government of the Philippines in drafting domestic anti-terrorism legislation. The U.N. Office on Drugs and Crime will assist the Philippine government in ensuring that Philippines legislation conforms with the principles, measures, and penal provisions provided by twelve U.N. multilateral conventions and protocols concerning anti-terrorism measures, including the International Convention on the Suppression of Terrorist Bombings (1997), the International Convention for the Suppression of the Financing of Terrorism (1998), and the International Convention

Against the Taking of Hostages (1979). The Philippines is a State Party to all twelve instruments. U.N. experts and Philippine officials will also assess the state of the Philippines' current implementation of the provisions of these international instruments. **(***U.N. Anti-Terrorism Branch To Assist RP in Drafting Legislation,* PHILIPPINES NEWS ONLINE, Feb. 25, 2005, *at* http://www.newsflash.org/2004/ 02/hl/hl101848.htm.)

(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

Conclusions of the Brussels European Council

The European Council, composed of heads of state and government and foreign and finance ministers, convened in Brussels on March 22 and 23, 2005. The top priorities on its agenda were the discussion of fiscal rules for the *euro* and the Stability and Growth Pact, which includes treaty rules on economic and monetary union. Under the Pact, Member States are required to coordinate their budgetary policies in order to avoid excessive deficits. Major highlights of the Pact are that: 1) current reference values of three percent of Gross Domestic Product (GDP) for the deficit ratio and sixty percent of GDP for the debt ratio deficit remain unaffected and 2) the time period a Member State is given to remedy an excessive deficit has been lengthened from one year to two years. The two-year time limit can be extended for an additional two-year period, if "unexpected adverse economic events with major unfavorable budgetary effects occur during the excessive deficit procedure."

Other topics discussed were the opening up of the services market in order to promote competition, growth, and jobs and the Services Directive, otherwise known as the Bolkestein Directive, which covers a wide range of providers, including travel agencies and healthcare services. Once it is approved, the Directive will require Members to reduce administrative burdens, which deter businesses from offering services across the EU. (*European Council Brussels, 22 and 23 March 2005 Presidency Conclusions*, DOC/05/01, Mar. 23, 2005, *at* http://www.europa.eu.int/rapid/pressReleasesAction.do?reference=DOC/05/1&format=HTML&aged=0&language=en&guiLanguage=en.)

Implementation of Copyright Rules

The European Union (EU) copyright directive adopted in 2001 provides legal protection against hacking and other unauthorized forms of copying to authors and other rights-holders in the digital environment. Member States were required to implement the Directive by the end of 2002. In 2004, the European Court of Justice (ECJ) issued decisions against Belgium, Finland, Sweden, and the United Kingdom for the territory of Gibraltar for failing to implement the Directive. The Commission is planning to initiate infringement proceedings against all four countries.

Recently, the European Commission decided to refer two other EU Member States, Italy and Luxembourg, to the ECJ for failing to transpose into national legislation the "public lending right." In neither country are authors compensated if their works are lent by public entities. In Luxembourg, the latter includes all public lending entities, whereas in Italy it is limited to public music and book libraries. (*Copyright in Libraries: Commission Acts To Ensure That Authors Are Remunerated*, Press Release IP/05/347, Mar. 21, 2005, *at* http://europa.eu.int/rapid/pressReleasesAction.do?Reference=IP/05/ 347&format=HTML&aged=0&language=EN&guiLanguage=en.)

Sharing of Information on Criminal Convictions

Pursuant to the adoption of a White Paper on exchanges of information on criminal convictions and the effect of such convictions in the European Union, issued on January 25, 2005, the European Commission recently adopted a proposal for a Council Framework Decision regarding convictions handed down during the course of criminal proceedings by the national courts of the EU Member

States. The purpose of the proposal is to facilitate the flow of information among the competent national authorities. It is an important issue, because the existence of convictions handed down in one Member State may affect the pre-trial stage of new criminal proceedings, the trial itself, or the time of execution of a sentence in another Member State. The proposal gives Member States a number of mandatory and optional reasons not to take into account convictions handed down in another Member State, especially if a defendant would be more severely treated in another Member State based on identical facts. Finally, it establishes minimum rules for entry of data in a national criminal record, in order to avoid major discrepancies in criminal records across Europe. (*Criminal Procedure: Proposal on Taking Account of Convictions Handed Down in Other Member States*, Press Release IP/05/328, Mar. 17, 2005, *at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/328&format=HTML&aged=0&language=EN&guiLanguage=en.)

EU Financial Assistance to the Palestinian Authority Not Linked to Terrorist Activities

In September 2000, the European Union decided to provide financial assistance to the Palestinian Authority in response to the unilateral freezing by Israel of monthly tax transfers previously agreed to between Israel and the Palestine Authority. The European Commission provided close to 246 million *euro* (about US$315.3 million) as direct budgetary assistance during the period of 2000–2002. The assistance was discontinued in the fall of 2002, once the tax transfers were resumed. Following allegations about possible misuse of the funds, the European Commission initiated its own investigation and concluded that there was no evidence that EU taxpayers' money was used to fund terrorist or other illegal activities. On March 17, 2005, the anti-fraud office of the EU (OLAF) completed its investigation and concurred with the Commission's findings. It stated that "[T]here is no conclusive evidence of support of armed attacks or unlawful activities financed by the European Commission's financial contributions to the (Palestinian Authority) budget." (*OLAF Finds "No Conclusive Evidence" to Link EU Funds and Terrorism: European Commission Welcomes Final Report on Assistance to the Palestinian Authority*, Press Release IP/05/327, Mar. 17, 2005, http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/327&format=HTML&aged=0&language=EN&guiLanguage=en.)

Ethical Issues Arising from Information and Communication Technology Implants in the Human Body

On March 16, 2005, the European Group on Ethics in Science and New Technologies (EGE), an independent group that advises the European Commission, adopted an opinion on the ethical aspects of implantation of information and communication technologies (ICT) in the human body. The EGE explained that although certain ICT implants are mainly used to repair human disabilities, others, especially the ones that may be accessible through digital networks, might raise ethical issues in the case of misuse or manipulation. Among the examples cited of positive applications are brain implants used to assist patients with Parkinson's disease. Whether an ICT is used for health reasons or for non-medical purposes, the consent of the person concerned is necessary before an implant may be done. The EGE raises the issue that non-medical applications of ICT implants "are a potential threat to human dignity and democratic society." Consequently, the EU privacy principles must also apply in this field. (*Ethical Aspects of ICT Implants in the Human Body: Opinion Presented to the Commission by the European Group on Ethics*, Press Release MEMO/05/97, Mar. 17, 2005, *at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/97&format=HTML&aged=0&language=EN&guiLanguage=en.)

UNITED KINGDOM: ANTI-TERROR LAWS DECLARED UNLAWFUL

Prepared by Clare Feikert, Foreign Law Specialist, Western Law Division

Executive Summary

The Anti-Terrorism, Crime and Security Act 2001 has been controversial since its passage. Among its provisions, that allowing for the indefinite detention of foreign nationals suspected of being terrorists has been most frequently challenged. Recently, nine detainees challenged their detention before the House of Lords, the United Kingdom's highest court, based on the argument that the provision violated the European Convention on Human Rights. Nine Law Lords heard the case. They determined in December 2004 that as the detention was applied only to foreigners and not British citizens suspected of being terrorists, it was an unjustified form of discrimination. The detainees have now been released.

One of the most controversial and legally challenged pieces of legislation passed in the United Kingdom (UK) in recent years is the Anti-Terrorism, Crime and Security Act 2001 (ATCSA).[1] The ATCSA is temporary, emergency legislation that was adopted in the wake of the terrorist attacks in the United States on September 11, 2001. The government's intention was to strengthen the existing anti-terror legislation to ensure that the UK had the necessary powers to counter the increased threat posed by terrorists.

Currently, the most legally challenged part of the ATSCA is the ability of the government to indefinitely detain foreign nationals without charge or trial, if they have been certified as a suspected international terrorist by the Secretary of State and cannot be deported either due to the prohibition on *non-refoulement* or for practical reasons.[2] Prosecution of these individuals under existing laws is often not possible due to insufficient evidence or evidence that is of such a sensitive nature that it, or its source, cannot be revealed in a criminal trial.[3]

Part IV of the ATCSA contains the powers relating to the preventive detention of suspected international terrorists. The most relevant part, which essentially permits the indefinite detention of foreign nationals, is section 23:

> A suspected international terrorist may be detained under a provision specified in subsection (2) despite the fact that his removal or departure from the United Kingdom is prevented (whether temporarily or indefinitely) by -
>
> (a) A point of law which wholly or partly relates to an international agreement, or
> (b) A practical consideration.

An individual is a "suspected international terrorist" if he is certified as such by the Secretary of State. To issue a certificate, the Secretary of State must state that he reasonably believes that the

[1] Anti-Terrorism, Crime and Security Act 2001, c. 24.

[2] *Id.,* Part IV.

[3] 376 PARL. DEB., H.C. (5th ser.) (2001) 921.

individual's presence in the UK is a threat to national security and suspects that the individual is a terrorist.[4] The ATCSA defines a terrorist as a person who "is or has been concerned in the commission, preparation or instigation of acts of international terrorism, is a member of or belongs to an international terrorist group or has links with an international terrorist group."[5] A terrorist group is defined as any group "that is subject to the control or influence of persons outside the United Kingdom and the Secretary of State suspects that it is concerned in the commission, preparation or instigation of acts of international terrorism."[6]

Case Challenging Preventive Detention of Terrorists

Nine foreign nationals, who were either detained indefinitely[7] or detained without charge or prospect of a trial under Part IV of the ATCSA, argued that the legislation they were held under was:

> inconsistent with obligations binding on the United Kingdom under the European Convention on Human Rights, given domestic effect by the Human Rights Act 1998…[and] that the United Kingdom was not legally entitled to derogate from those obligations; that, if it was, its derogation was nonetheless inconsistent with the European Convention and so ineffectual to justify the detention.[8]

The detainees did not directly seek their release but sought "an order quashing the derogation order and a declaration of incompatibility of Part IV of the ATCSA."[9] The result of such an order would be that the government would have to repeal or amend the ATCSA, and thus lead to either the release of the detainees or detention as is otherwise provided for under law. Due to the constitutional significance of the issues involved, nine Law Lords, rather than five, from the House of Lords, the highest court of appeal in the UK, heard the case.

The detainees contended that there was not a public emergency in existence that justified the derogation from the European Convention on Human Rights (hereinafter Convention). They relied upon three main arguments: that no public emergency was in existence; that if a public emergency did exist, the derogation was not a proportionate or rational response to the threat; and finally that it discriminated against foreign nationals in contravention of article 14 of the European Convention on Human Rights.[10]

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[4] Anti-Terrorism, Crime and Security Act 2001, c. 24, § 21(1).

[5] *Id.* § 21(2).

[6] *Id.*

[7] A brief profile of each individual detained on the basis of being a suspected international terrorist is available online *at* BBC News, *Who Are the Terror Detainees?* Feb. 1, 2005, *at* http://newswww.bbc.net.uk/1/hi/uk/4101751.stm (last visited Mar. 3, 2005).

[8] A et al., v Secretary of State for the Home Department, [2004] UKHL 56, ¶ 3.

[9] Paul Mendelle, *No Detention Please, We're British?* 77 N.L.J. 155.7160 (Jan. 2005).

[10] Article 14 provides: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Definition of Public Emergency

When defining the term "public emergency," the House of Lords referred to several judgments. One, from the European Court of Human Rights in 1961, involved a challenge to the Irish government's decision to derogate from the Convention in order to detain individuals suspected of terrorist activity without charge or trial. In this case, the natural and customary meaning of public emergency was considered to be "sufficiently clear" as referring to "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the State is composed."[11] The meaning of public emergency was further examined in another case in which the Greek government unsuccessfully attempted to derogate from the Convention. In that instance a public emergency was considered to require certain characteristics:

> [The public emergency must be] actual or imminent. Its effects must involve the whole nation. The continuance of the organized life of the community must be threatened. The crisis or danger must be exceptional, in that the normal measures or restrictions, permitted by the Convention for the maintenance of public safety, heath and order, are plainly inadequate.[12]

While there is no requirement in the Convention that the emergency be imminent, the European Court has treated it as necessary for a valid derogation. The courts interpret "imminent" in an objective manner and have stated that derogation may not be "imposed merely because of an apprehension of potential danger."[13]

The detainees argued that the public emergency used to justify the derogation was not temporary in nature, an argument supported by the continued anxiety expressed in reports of the UK's Joint Committee on Human Rights that state "derogations from human rights obligations are permitted in order to deal with emergencies. They are intended to be temporary. According to the government and the Security Service, the UK now faces a near-permanent emergency."[14] In hearing the case, the Law Lords added to the position that it is difficult to class the emergency in existence as temporary, stating "it is indeed true that official spokesmen have declined to suggest when, if ever, the present situation might change."[15]

In considering whether a public emergency existed, the House of Lords was not permitted to review confidential material that had been presented before the Special Immigration Appeals Commission (SIAC) as the Attorney General had concluded that it would not assist the case.[16] In arriving at their decision, the Law Lords considered the open evidence that was available to them and the open judgment of the SIAC and connected the disparate treatment of foreign and British nationals, with both groups posing a comparable threat,[17] in determining whether a public emergency was in existence.

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[11] A et al., v Secretary of State, *supra* note 8, ¶ 17.

[12] *Id.* ¶ 18.

[13] *Id.* ¶ 21.

[14] Joint Committee on Human Rights, Eighteenth Report, 2004, H.C. 713.

[15] A et al., v Secretary of State, *supra* note 8, ¶ 22.

[16] *Id.* ¶ 185.

[17] *Id.* ¶ 189.

The Law Lords ruled against the detainees in this instance and considered that a public emergency was in fact in existence. A cautious approach was taken, as the Law Lords considered that while the common view regarding the nature of the public emergency in the United Kingdom is that the danger of terrorist action, although uncertain, is imminent and as such the terms strictly necessary should be interpreted in accordance with the precautionary principle.[18] The Law Lords concluded that the democratic body is in a better position than the courts to assess the threat posed to the national security of the country and respond to it, as the issues were "of a political character calling for an exercise of political and not judicial judgment."[19] As such, it gave considerable latitude to the discretion and decision of the executive. However, one Law Lord approached this issue with disdain, referring to the judgment of the SIAC as "peppered with references to the need for them to accord the appropriate margin to the executive and legislature in relation to the various points that they had to consider. Indeed my noble and learned friend…considers that SIAC gave not too little, but too much leeway to the executive and legislature."[20]

While the Law Lords accepted that a "wide margin of discretion" should be given to the executive in national security issues and in the determination of whether a public emergency is in existence, they resoundingly stated that the width of the margin of discretion would depend upon the context. The Law Lords emphasized that in the context of the fundamental human right to liberty any interference with the right would be "accorded the fullest and most anxious scrutiny."[21]

Practice of Other States

The practice of other states did not enhance the British government's decision to derogate from the Convention, as it stands alone in Europe in doing so. After the events of September 11, 2001, several European organizations went to great lengths to discourage derogation from any articles of the Convention. On various occasions the Council of Europe has stated that "in their fight against terrorism, Council of Europe members should not provide for any derogations to the European Convention on Human Rights"[22] and specifically called on Member States to refrain from limiting the rights and liberties guaranteed under article 5 by derogating from it.[23]

The Council of Europe Commissioner for Human Rights explicitly stated that "an increased risk of terrorist activity post September 11th 2001 cannot…be sufficient to justify derogating from the Convention."[24] However, the European Court has accepted differences among states in the practice of derogating from the European Convention, noting that:

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[18] *Id.* ¶ 209. The precautionary principle refers to a court's adoption of a risk assessment type of approach, requiring it to have more justification for its decision if the case entails substantive interference with human rights.

[19] *Id.* ¶ 37

[20] *Id.* ¶ 175.

[21] *Id.* ¶ 107.

[22] *Id.* ¶ 23, *citing* Parliamentary Assembly of the Council of Europe, Resolution 1271, Jan. 2002, at ¶¶ 9 and 12.

[23] *Id.*

[24] Council of Europe Commissioner for Human Rights, Comm DH (2002) 8, Aug. 28, 2002, ¶ 33 *at* http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Documents/CommDH(2002)7_E.asp (last visited Mar. 1, 2005).

> by reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it.[25]

This explicit and direct acknowledgement of the differences among, and individuality of, states appears to contradict the argument that the practice of other states be strictly observed. Parallels can be drawn with the practices of other states, particularly with Spain, which experienced a terrorist attack on its soil attributable to Al-Queda but did not consider it to be necessary to derogate from any rights under the Convention. The actions of these countries stem from a number of facts, both political and practical. It is worth considering that the legal systems of these countries may grant them greater powers to combat terrorism, which makes them consider derogation unnecessary.

Proportionality and Rationality

The detainees claimed that the preventive detention provisions of the ATCSA did not rationally rectify the threat posed by Al-Queda as the law only applied to foreign nationals, and it permitted the detainees to leave for any third country that would allow them entry and, subject to the legal controls of the third country, pursue their terrorist activities there with impunity.[26] The Law Lords examined whether this type of discrimination was proportionate to the circumstances in existence or if it went beyond "what is strictly required by the exigencies of the situation" and also whether it complied with the non-discrimination provisions contained in article 14 of the Convention.

1. Rational and Proportionate Discrimination

The fact that individuals detained under the ATCSA were permitted to leave for any third country that would allow them entry was subject to public criticism as defeating the purpose of the detention by simply exporting terrorism.[27] The government argued that the reasoning for this provision was that if the individual left the country it would, at the minimum, have the effect of "disrupting the activities of the suspected terrorist."[28] They further claimed the option was "tailored to the state of emergency"[29] and that it removed "one of the adverse effects from the continuing and unrestricted presence in the United Kingdom of suspected terrorists who could not be removed…[which] was the perception in other countries…that the United Kingdom was weak in response to international terrorists operating in its country."[30] The European Commissioner for Human Rights disagreed with the British government's justifications and stated that:

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[25] Ireland v United Kingdom (1978) EHRR 25, ¶ 207.

[26] A et al., v Secretary of State, *supra* note 8, ¶ 31.

[27] At this time, it is believed that exportation of terrorists is not subject to any WTO controls. PRIVY COUNSELLOR REVIEW COMMITTEE, ANTI-TERRORISM, CRIME AND SECURITY ACT 2001 REVIEW: REPORT, 2003, H.C. 100, ¶ 42.

[28] SECRETARY OF STATE FOR THE HOME DEPARTMENT, COUNTER-TERRORISM POWERS: RECONCILING SECURITY AND LIBERTY IN AN OPEN SOCIETY, 2004, Cm. 6147, ¶ 43.

[29] A et al., v Secretary of State, *supra* note 8, ¶ 44, *citing* decision from the SIAC, ¶ 51.

[30] *Id.* ¶ 125.

> it would appear…that the derogating measures of the Anti-terrorism, Crime and Security Act allow both for the detention of those presenting no direct threat to the United Kingdom [through the broad definition of terrorist and international terrorist group] and for the release of those of whom it is alleged that do [pose a threat to the national security of the United Kingdom]. Such a paradoxical conclusion is hard to reconcile with the strict exigencies of the situation.[31]

2. Compliance with Article 14 of the Convention

The justification given by the Home Secretary in applying Part IV of the ATCSA exclusively to foreign nationals was that "the serious threats to the nation emanated predominantly (albeit not exclusively) and more immediately from the category of foreign nationals."[32] The House of Lords found that the distinction between the two groups was irrational, for while the threat posed by British nationals was "quantitatively smaller" than the threat from foreign nationals, it "was not qualitatively different."[33] Furthermore, the detainees maintained that British nationals and foreign nationals who are suspected international terrorists share the same characteristic of being irremovable from the UK, yet the latter group receives treatment that even the government considers authoritarian:

> While it would be possible to seek other powers to detain British citizens who may be involved in international terrorism it would be a very grave step. The Government believes that such draconian powers would be difficult to justify.[34]

Even in the face of substantial criticism from government departments, the government argued that the measures were justified with regard to foreign nationals because the foreign nationals were detained prior to deportation and thus held in an immigration capacity, which could never apply to a British national. The issue therefore was not discrimination against foreign nationals, but rather a matter of immigration. Furthermore, the government argued that the different treatment could apply to foreign nationals in times of war or public emergency[35] and that it was justifiable to discriminate between foreign and British nationals due to the different rights and responsibilities of each group.[36] One government report noted that Part IV of the ATCSA is modified immigration and asylum legislation containing immigration powers that have been adapted, rather than expressly designed, to deal with the issue of terrorism.[37] The House of Lords dismissed this view and held that the provisions were inescapably discriminatory and disproportionate because the treatment given to British nationals who pose the same threat to national security is fundamentally different from that given to foreign nationals.[38] In addition, the House of Lords stated that:

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[31] European Commissioner for Human Rights, Opinion 1/2002 (28 Aug. 2002).

[32] A et al., v Secretary of State, *supra* note 8, ¶ 32, citing the Secretary of State for the Home Department.

[33] *Id.* ¶ 33.

[34] SECRETARY OF STATE FOR THE HOME DEPARTMENT, *supra* note 28, ¶ 36.

[35] A et al., v Secretary of State, *supra* note 8, ¶ 69, referring to Geneva Convention Relative to the Protection of Civilian Persons in Time of War 1949; Geneva Convention Relating to the Status of Refugees 1951; Convention on the Status of Stateless Persons 1954; International Covenant on Civil and Political Rights; U.N. Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live, 1985; the Treaty Establishing the European Community; and the European Convention (art. 16).

[36] Privy Counsellor Review Committee, *supra* note 27, ¶ 42.

[37] *Id.* ¶ 32.

[38] A et al., v Secretary of State, *supra* note 8, ¶ 138.

> section 23 of the 2001 Act is not rationally connected to the legislative objective. If the threat is as potent as the Secretary of State suggests, it is absurd to confine the measures intended to deal with it so that they do not apply to British nationals, however strong the suspicion and however grave the damage it is feared they may cause.[39]

In its earlier decision in this case, the SIAC stated:

> If there is to be an effective derogation from the right to liberty enshrined in article 5 in respect of suspected international terrorists…the derogation ought rationally to extend to all irremovable suspected international terrorists. It would properly be confined to the alien section of the population only if, as the Attorney General contends, the threat stems exclusively or almost exclusively from that alien section. But the evidence before us demonstrates beyond argument that the threat is not so confined. There are many British nationals already identified – mostly in detention abroad – who fall within the definition of 'suspected international terrorists', and it was clear…that…there are others at liberty in the United Kingdom who could be similarly defined. In those circumstances we fail to see how the derogation can be regarded as other than discriminatory on the grounds of national origin.[40]

Decision of the House of Lords

The Law Lords held that the indefinite detention of foreign nationals without trial was not strictly required by the exigencies of the circumstances. They opined that as the Convention requires that its rights, including the freedom from discrimination, apply to every person within the signatories' jurisdiction and as no derogation to article 14 exists, the legislation provided discriminatory treatment between different groups.[41]

One Law Lord dissented from the majority opinion and agreed with the government's justification, stating:

> A power of interning British citizens without trial, and with no option of going abroad if they chose to do so, would be far more oppressive, and a graver affront to their human rights, than a power to detain in 'a prison with three walls' a suspected terrorist who has no right of abode in the United Kingdom, and whom the government could and would deport but for the risk of torture.[42]

The dissenting Law Lord argued that Part IV only applied to a small group of non-nationals and that there were other provisions in the ATCSA applicable only to British nationals that could not be considered discriminatory. In addition, the Law Lord stated that British nationals were in a fundamentally different position from that of foreign nationals because they possess a right of abode in the UK[43] and cannot be deported from it and, as such, cannot be detained prior to deportation. The

[39] *Id.* ¶ 132.

[40] A et al., v Secretary of State for the Home Department, [2002] HRLR 1274, ¶ 94-95.

[41] A et al., v Secretary of State, *supra* note 8, ¶ 68.

[42] *Id.* ¶ 215.

[43] Immigration Act 1971, c. 77, §§ 1-2.

Law Lord argued that the safeguards in place under the Act, such as the temporary nature of the provisions, the review of the Secretary of State's powers by the SIAC, and the review of the legislation by the Privy Counsellor Committee, demonstrated that the powers under the 2001 Act impinged on human rights only as much as was strictly necessary.

The Law Lords attempted to reconcile the difference in treatment between foreign nationals and British nationals under the ATCSA. In doing so, eight out of the nine Law Lords considered that the derogation from the Convention was not strictly required by the exigencies of the situation, that Part IV of the ATCSA was not a proportionate response to address the threat to national security because it applied only to foreign nationals, and that, as such, it was discriminatory towards foreign nationals.[44] The House of Lords concluded that "the disparity of treatment between the two groups…simply point[s] to the conclusion that…the detention of foreign suspects"[45] was irrational and not proportional, and as such it could not meet the criteria of being "strictly required" under article 15(1) of the Convention. The judges concluded that the principal weakness of the ATCSA is the discriminatory treatment accorded to foreign nationals.[46] The most biting judgment came from Lord Hoffman, who disagreed with the majority of the Law Lords that the provisions were unlawful because they were disproportionate and discriminatory, expressing concern that the wrong impression may be given that all that is necessary to rectify the situation would be to extend the power to British nationals. Lord Hoffman instead addressed the political question that the other Law Lords pointedly avoided and stated:

> The power which the Home Secretary seeks to uphold is a power to detain people indefinitely without charge or trial. Nothing could be more antithetical to the instincts and traditions of the people of the United Kingdom.… Of course the government has a duty to protect the lives and property of its citizens. But that is a duty which it owes all the time and which it must discharge without destroying our constitutional freedoms.… This is a nation which has been tested in adversity, which has survived physical destruction and catastrophic loss of life.… Terrorist violence, serious as it is, does not threaten our institutions of government or our existence as a civil community.… The real threat to the life of the nation…comes not from terrorism but from laws such as these.[47]

The Law Lords issued an order quashing the derogation order from the Human Rights Act and declared that section 23 of the ATCSA was incompatible with articles 5 and 14 of the European Convention on Human Rights as it is disproportionate and discriminates on the basis of nationality or immigration status and that the government must pay the costs of the appeal.[48] Essentially, the majority of the Law Lords ruled that it was not detention under Part IV of the ATCSA that was unlawful, but rather its limited application to foreign nationals.

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[44] The prohibition on discrimination is provided in article 14 of the Convention, which applies to both foreign and British nationals equally. *See also* art. 1, The Convention and Conka v Belgium, 2002 34 EHRR 1298.

[45] A et al., v Secretary of State, *supra* note 8, ¶ 168.

[46] *Id.* ¶ 75.

[47] *Id.* ¶¶ 95-97.

[48] *Id.* ¶ 73.

Effects of the House of Lords Judgment

After the judgment of the House of Lords was issued, the Secretary of State for the Home Department, David Blunkett, met with additional criticism for not acting immediately upon the ruling. Instead the detainees remained in prison for several months after the judgment, as they were still considered to be a threat to the national security of the United Kingdom. The Secretary of State declared on January 26, 2005, that the provisions permitting the indefinite detention of suspected international terrorists would be replaced and cease to have effect upon replacement.[49]

One new approach that is currently being investigated by the current Secretary of State for the Home Department, Charles Clarke, is to enter into Memoranda of Understanding between the United Kingdom and the governments of the detainees' countries of origin to ensure that if the detainees were deported to their home countries they would not be subject to the death penalty upon their return.[50] Additional ideas to replace the preventive detention aspect of the ATCSA are control orders that would apply to both foreign and British nationals and subject suspected international terrorists to bail-like conditions, such as house arrest, electronic tagging, or curfews, as well as new rules that would permit the entry in court of intercepted evidence from telephones.[51] The Prevention of Terrorism Act 2005 implemented these proposals regarding house arrest.[52]

[49] Jan. 26, 2005, PARL. DEB., H.C. (5th ser.) (2005) 307, *at* http://www.publications.parliament.uk/pa/cm200405/cmhansrd/cm050126/debtext/50126-04.htm - 50126-04_spmin0 (last visited Mar. 7, 2005).

[50] BBC News, *UK Plan To Deport Terror Suspects*, Jan. 19, 2005, *at* http://news.bbc.co.uk/1/hi/uk/4186457.stm (last visited Feb. 16, 2005).

[51] *Supra* note 49; *See also* LORD CARLILE OF BERRIEW, ANTI-TERRORISM, CRIME AND SECURITY ACT 2001 PART IV SECTION 28 REVIEW 2004, ¶ 11, *at* http://www.homeoffice.gov.uk/docs4/Part_IV_Feb_05.pdf (last visited Mar. 7, 2005).

[52] Prevention of Terrorism Act 2005, c.2.

SWEDEN:
PENSION REFORM INTRODUCING PRIVATE ACCOUNTS

By Linda Forslund, Contract Foreign Law Specialist, Western Law Division

Executive Summary

In 1999, a new state pension system was introduced in Sweden. Previously, Swedish retirement was secured through earnings-related benefits in addition to universal coverage. After the reform, compulsory private retirement accounts were created for retirement benefits, in addition to income-related benefits and a guaranteed pension. Although the new system has been characterized as a success in many ways, there are also problems. This paper describes the old and the new retirement schemes and examines the outcome of the introduction of private retirement accounts under the reformed system.

I. The System Prior to Reform[1]

The first pension reform in Sweden took place in 1913, when a new pension law was introduced. It is sometimes called the origin of Sweden's universal social protection, even though it did not offer universal coverage. It was a "means-based" system and as a result excluded some people from coverage.

A universal pension system was not established in Sweden until after World War II, through the establishment of a People's Pension in 1946. The system extended equal benefits to all people who reached the pension age. The people's pension reform received unanimous support in Parliament, but the decision on how to organize and execute the pension system provoked political conflict. Agreement was not reached until 1960, when the ATP-plan (*allmän tilläggspension* or supplementary earnings-related pension) was implemented. The ATP plan meant that the working age population earned entitlements to earnings-related benefits on top of the universal coverage benefits. Funds called *allmänna pensions fonder* (public pension funds or AP-funds) were established to compensate for a decline in private savings and make up for possible future demographic and economic instability. The ATP plan was a pay-as-you-go and defined benefits plan. Full pension benefits were reached after thirty years of employment, based on the fifteen best years of earnings. The target level was sixty percent of past earnings, and pensions were fixed to a consumer price index that formed the so-called base amount.[2]

The People's Pension resulted in poverty and inequality for the elderly population in Sweden being almost erased.[3]

[1] For a review of the old and present pension systems in Sweden, *see* Joakim Palme (Director of the Institute for Future Studies in Stockholm), *The "Great" Swedish Pension Reform*, *available at* Official Gateway to Sweden, Sweden.se, http://www.sweden.se (last visited Mar. 14, 2005).

[2] *Id.* at 1.

[3] *Id.*

Despite the success, the system faced serious problems. It was under financed, and the AP-funds were at risk of depletion. The alternatives available were to lower benefits or to increase contributions, but to increase contributions to match benefits would have imposed too heavy a financial burden on the working population.[4]

II. The New System

In the early-to-mid-1990s, a new pension system was debated in Sweden. In June of 1994, the Swedish Parliament adopted new guidelines for the pension system, and in April of 1998, a government bill based on the adopted guidelines was introduced in the Parliament. The bill proposed an overall reform of the public pension system.[5] The purpose of the pension reform was to create a system that would be in conformity with economic and demographic developments in Sweden.[6]

In 1999, the new pension system was introduced. A novelty of this new system is that pension entitlements are based on a person's entire working life. The system has three components: 1) a defined contributions system, that is, a pay-as-you-go system (DC PAYG), 2) a funded premium pension system (private retirement accounts), and 3) a guaranteed pension financed with general revenues from the government's budget. Pension contributions are 18.5% of a person's total income; 10.21% is paid by the employer and the rest by the employee.

The DC PAYG System

The DC PAYG system is financed through contributions from both the employer and the employee for a total of sixteen percent of earnings. Contributions are recorded in personal accounts and are used to pay current pensions. The accounts thus represent claims on future pensions. The self-financed system is autonomous from the central government's budget, but the government does contribute to cover unemployment, parental leave, and sick leave.

The retirement age is flexible, and benefits can be collected from the age of sixty-one.[7] The annual benefits are calculated by dividing the amount in an individual's account by the number of life-expectancy years.

The Funded Premium Pension System – Private Retirement Accounts

The premium pension is a fully funded private retirement account that is compulsory. Of the total 18.5% pension contribution, 2.5% is invested in funds by the individual. There are over 600 funds to choose from (both Swedish and foreign), and the individual can opt for a fixed or variable annuity upon retirement. If the worker does not choose a fund, the 2.5% is placed in a specific publicly managed fund (*Premiesparfonden*), not distributed among the 600 other choices.

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[4] *Id.* at 2.

[5] Proposition (Prop.) 1997/98:151 Inkomstgrundad ålderspension m.m. (Government Bill) (Swed.).

[6] *Id.* at 1.

[7] The maximum retirement age is 67. Anna Kleen, Tomas Nordstrom, Ministry of Finance, Nils Holmgren, & Edward Palmer, National Social Insurance Board, *Country Fiche for Sweden*, Nov. 2, 2001, *at* 3.

The Guaranteed Pension

The guaranteed pension ensures that those with low or no income receive benefits upon retirement. The benefits are graduated, making it possible to receive a small guaranteed pension while receiving most of one's pension from the earnings-related systems. The guaranteed pension, together with a means-related housing allowance, is higher than the minimum income standard in Sweden.[8]

In addition, ninety percent of Swedish employees have supplementary funded pensions based on collective bargaining agreements, with contributions of about two to five percent of earnings. This accounts for seventeen percent of total pension spending. Four percent of the total pension spending is done through voluntary pension funds or insurance companies.[9]

III. The Outcome

The Swedish pension reform was seen as radical and has been perceived as a model for other European countries.[10] The reform has made the system more financially stable and increased saving incentives.[11] Still, the system is under debate in Sweden, and even though in many ways the reform has been a success, there are also a few problems.

One of the main problems seems to be either a lack of public information or the failure of that information to reach the broader population.[12] As was mentioned above, having over 600 funds to choose from for a private retirement account can cause confusion. Only forty-two percent of workers know what a premium pension is, seventy-five percent cannot tell how their money is administered, and only sixty-seven percent make an active choice of a particular fund. When a fund is closed, thirty percent of savers make an active choice to place their savings in another fund; seventy percent do not make a choice and their savings are thereby transferred to the *Premiesparfonden*.[13] This fact suggests that information about the system needs to be improved. Recently, the Swedish Prime Minister admitted that he believes that information given to the public about the new pension system has not been clear enough and that some people may be upset when they realize the effects of the pension reform. Many politicians do not agree with his assessment and believe that propagation of the information has been extensive.[14]

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[8] *Id*. at 4.

[9] David Natali, "Sweden: The Reformed Pension System," *in La Méthode Ouverte de Coordination (MOC) en Matière de Pensions et de l'Intégration Européenne* (research project supported by le Service Public Fédéral Sécurité Sociale), L'OBSERVATOIRE SOCIAL EUROPÉEN (2004), at http://www.ose.be.

[10] *Id*.

[11] Palme, *supra* note 1, *at* 4.

[12] Every year, pension savers receive through the mail account statements with information about their pension savings.

[13] Socialförsäkringsutskottets betänkande 2003/04:SfU5 Det reformerade pensionssystemet (Committee Report: The Reformed Pension System) *at* 6.

[14] Michael Winiarski, *Persson varnar för sämre pension,* DAGENS NYHETER, Feb. 18, 2005, http://www.on.se (last visited Feb. 18, 2005).

One cannot choose to place one's savings in *Premiesparfonden*, and once savings are removed from the *Premiesparfonden,* they cannot be returned. This has sparked criticism[15] and apparently created frustration among would-be investors, because *Premiesparfonden* has been doing very well. As a result, those who have not made an active choice in placing their pension savings have had better results with less risk than those who have made an active choice.[16] Some experts have suggested simplifying the system by punishing or removing "bad" funds, that is, funds that do not reach the index or funds with too few members. There is, for example, a fund that only has one member. There is disagreement on whether reducing the number of funds would be a good alternative; while it could make choosing a fund less confusing,[17] it would also decrease the variety of fund offerings.[18] One suggestion is to create a rating system for the funds and have the Premium Pension Authority administer the rating system.[19]

One of the goals of the new system was to provide those with no or low income with security upon retirement. Under the new system, those who receive the guaranteed pension and a survivor's pension or housing allowance have a higher net income than they would have had under the old ATP-system, which is a success for the reformed system.[20]

The Vice President for the Seventh AP-fund, Peter Norman, has stated that it is a benefit that every individual can choose the level of risk at which to administer his own savings and that it is possible to easily and quickly change funds and thereby also change the risk profile. The system allows the individual to speculate, he contends, and if the speculation generates profits the individual keeps the profit, but if he loses the state compensates for some of the losses through the guaranteed pension.[21]

Still, despite the fact that the system is generally considered a success, some critics contend that it entails too much risk and that the public does not possess enough knowledge to properly administer their pension savings. Many Swedes valued the security of knowing exactly how much they were going to receive in pension payments every month and find the new system confusing, partly because of the large numbers of funds from which to choose and partly because of the risky nature of investing in the stock market.[22]

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[15] *Id.* at 5, 7.

[16] *Id.* at 6.

[17] Alan Cowell, *Sweden's Take on Private Pensions*, THE NEW YORK TIMES, Feb. 12, 2005, http://www.nytimes.com.

[18] Committee Report, *supra* note 13.

[19] *Id.*

[20] *Id* at 7.

[21] *Id.* at 6-7.

[22] Cowell, *supra* note 17.