



# WORLD LAW BULLETIN

## November 2005

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Respectfully submitted,

*Walter Gary Sharp, Sr.*

WALTER GARY SHARP, SR.  
Director of Legal Research



**Directorate of Legal Research for**  
*International, Comparative, and Foreign Law*

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## AFRICA

### BURKINA FASO – Legal Challenge to Third Presidential Term

On October 2, 2005, the Constitutional Council of Burkina Faso approved thirteen of fifteen applicants to run for president, including Blaise Compaore, the current president, in his bid for a third term. Compaore had seized power in 1987 in a coup but won election to office in 1991 and 1998, in contests boycotted by the main opposition parties. Two of the current presidential candidates, a lawyer and a parliamentarian, have now appealed to the Council to reverse its decision and stop Compaore from running again.

Speaking about the issue, the challenger Benewende Stanislas Sankara, a leading candidate, referred to the constitutional provision specifying a two-term limit. There is controversy over the application of a constitutional amendment to the present election. When adopted in June 1991, article 37 of the Constitution did impose a two-term rule, but in 1997, the legislature changed that provision, removing the limitation. In April 2000, however, the two-term limit was re-introduced and the president's term of office was reduced from seven to five years. Compaore had already been elected to his second seven-year term at the time. The incumbent's supporters argue that he can be a candidate and that his term in office should be calculated from the last constitutional amendment in 2000. The Council to which the appeal has been made is an appointed one, with the members all owing their positions to Compaore. (Text of Constitution in French, *Constitution du Burkina Faso*, [http://www.legiburkina.bf/codes/constitution du burkina faso.htm](http://www.legiburkina.bf/codes/constitution%20du%20burkina%20faso.htm) (last visited Oct. 11, 2005), *Burkina Faso: Opposition Launches Legal Bid to Stop Compaore Running for Third Term*, IRINNEWS.ORG, Oct. 7, 2005, [http://www.irinnews.org/report.asp?ReportID=49428&SelectRegion=West Africa&SelectCountry=BURKINA FASO](http://www.irinnews.org/report.asp?ReportID=49428&SelectRegion=West%20Africa&SelectCountry=BURKINA%20FASO).) (Constance A. Johnson, 7-9829, cojo@loc.gov)

### EQUATORIAL GUINEA – Trial of Alleged Mercenaries Called Unfair

Amnesty International (AI) recently issued a report indicating that the arrest, trial, and detention in Equatorial Guinea of a group of alleged mercenaries was rife with human rights violations. In a report entitled *Equatorial Guinea – A Trial with Too Many Flaws*, AI provides a detailed account of several human rights violations in the investigation and prosecution of an alleged coup plot against Equatorial Guinea's President Obiang Nguema.

The report's findings are based on three months of monitoring of the trial by AI delegates. AI stated that no evidence was presented in court to support the charges against the accused. In addition, AI claims that the court repeatedly ignored allegations that defendants had been tortured while under interrogation in order to extract confessions. (*Equatorial Guinea – A Trial with Too Many Flaws*, AMNESTY INTERNATIONAL, June 7, 2005, available at <http://web.amnesty.org/library/index/NGAFR240052005>.) (Gustavo Guerra, 7-7104, ggue@loc.gov)



## **KENYA – Amendments to Encourage Foreign Investment**

Kenya's Trade Minister Mukhisa Kituyi has told Parliament that the Investment Promotion Act will be amended to lower the minimum foreign investment from US\$500,000 to US\$100,000. Investing this amount would "fast-track" projects by exempting the investor from bureaucratic procedures and making Kenya's Investment Promotion Center a "one-stop shop" for all documentation. The amendment would also abolish the Investment Certificate, currently required of every foreign investor, and eliminate the current preferential "fast-tracking" of investments, under which Kenya's government decides that some types of foreign investment are more desirable and hence entitled to a faster track than others. Henceforth all businesses and investments will have the same priority. (*Kenya Unveils Plan to "Fast-Track" Foreign Investment*, EAST AFRICAN STANDARD, Oct. 20, 2005, Foreign Broadcast Information Service online database, ID No. AFP20051020950005.)

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

## **LIBERIA – Death Penalty Abolished**

On September 16, 2005, Liberia acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at Abolition of the Death Penalty, becoming the 139th country to abolish capital punishment. This treaty was one of a record eighty-three treaties that Liberia endorsed on the same day. They became law in the country with immediate effect. (*Liberia. Death Penalty Abolished*, Sept. 16, 2005, at [http://www.handsoffcain.org/archivio\\_news/200509.php?iddocumento=401667&mover=0](http://www.handsoffcain.org/archivio_news/200509.php?iddocumento=401667&mover=0).)

(Karla Walker, 7-4332, kdwa@loc.gov)

## **MALAWI – Test Case on Media Freedom**

On September 20, 2005, Capital Radio, a popular private broadcaster in Malawi, initiated a test case to challenge the validity of the Protected Names, Flags, and Emblems Act (1967), which is one of the country's laws impeding media freedom by protecting the president from being called names. The Act states:

Any person who does any act or utters any words or publishes any writing calculated to or liable to insult, ridicule or to show disrespect to the President, the National Flag, the Armorial Ensigns, the Public Seal, or any protected emblem or protected likeness, shall be liable to a fine of 1,000 pounds (sterling) and to imprisonment for two years.

The Managing Director of the station, Alaudin Osman, retained two prominent lawyers to present the case before the Constitutional Court, arguing that the Act is in conflict with the Constitution. The Malawi chapter of the Media Institute of Southern Africa (MISA), a media watchdog of the region, has also joined the legal challenge. According to Malawi MISA's director, the Malawi Government has invoked the Act fifteen times in the past ten years. Malawi MISA is also engaged in a broader campaign to lobby for the repeal of sixty-six Malawi laws that impinge on media freedom.

Capital Radio took the action after the Malawi Communications Regulatory Authority demanded a recording of a September 11, 2005, political rally, broadcast live by the station, at which the country's opposition politician Gwanda Chakuamba spoke. Chakuamba was subsequently arrested for insulting and ridiculing President Bingu wa Mutharika at the meeting (but has since been granted bail). Chakuamba had apparently just been fired from his Cabinet post by the President; he was



demoted from Minister of Agriculture to Minister of Irrigation. (Media Institute of Southern Africa, *Malawi: Radio Station Challenges Law Impeding Media Freedom*, AFRICA NEWS, Sept. 23, 2005, & *Malawi's Private Radio Challenges 'Insult Laws,'* XINHUA, Sept. 22, 2005, LEXIS/NEXIS, News Library, 90days File.)

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

### **NAMIBIA – Violence Against Women**

On October 12, 2005, Prime Minister Nahas Angula proposed a law to specifically outlaw violence against women. The law is designed to address both women's rights and the punishment for the violation of these rights. Mr. Angula said violence against women had reached a "crisis point" in Namibia. "[The] deprivation of life is the most flagrant violation of women's rights and of our Constitution," he said. Therefore, he proposed the introduction of measures, such as "zero tolerance" for violence against women, to bring about social transformation.

According to Mr. Angula, the reform should encompass the economic empowerment of women, gender-sensitive education, public health systems that provide appropriate care and support for victims, and the mobilization of communities and of young and adult men to take a strong stand on the issue. He also called for law-enforcement agents to receive more training on how to handle gender-based violence. (Lindsay Dentlinger, *It's a Crisis*, THE NAMIBIAN, <http://allafrica.com/stories/200510130106.html> (last visited Oct. 14, 2005).)

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

### **NIGERIA – Report on Role of Islamic Law**

The United States Institute of Peace has issued a report entitled *Applying Islamic Principles in the Twenty-First Century, Nigeria, Iran and Indonesia* (by David Smock, Sept. 2005, available at <http://www.usip.org/pubs/specialreports/sr150.html>.) The author indicates that modern Muslim societies encounter a variety of obstacles in the application of Sharia Islamic jurisprudence.

Smock argues that Islamic jurisprudence and other traditional concepts of law have changed in practical application since their original inception and implementation. The relationships between *Sharia* and justice and sustainable democratic ideals require objective exploration for relevance to modern times. Smock's opinion is that in northern Nigeria, Sharia must be modernized and rendered compatible with universal human rights, pluralism, and democracy, while retaining its unique features of genuine Islamic law.

The special report also refers to the Conference "Implementation of the Sharia in a Democracy: The Nigerian Experience," organized by the Center for Islamic Legal Studies, Zaria, Nigeria, and the London-based International Forum for Islamic Dialogue. As reported by Smock, the Center for Islamic Legal Studies states that Sharia has become a very divisive issue in Nigeria. Simmering discontent among the various ethnic groups over Sharia frequently results in sectarian violence, leading to loss of life and destruction of property. The Center traces this problem to the imperfect nature of the system of federal government and the Constitution of Nigeria.

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



### **RWANDA – Extradition Treaty Approved**

On October 5, 2005, the Rwandan Cabinet, chaired by President Paul Kagame, approved a Presidential Decree endorsing an Extradition Treaty with Uganda. The treaty had been signed in Kampala, Uganda, on July 15, 2005. The next step is for the Rwandan Foreign Minister to sign the treaty before President Kagame formally assents to it.

Rwanda already has extradition treaties in place with Burundi, the Democratic Republic of the Congo, Kenya, and Tanzania. In addition to helping to develop better relations between the two signatories, the new agreement will strengthen the fight against cross-border criminal activities in the entire region, according to the Secretary General of the Rwandan Ministry of Justice, Johnston Busingye. (*Government Approves Extradition Treaty with Uganda*, ALLAFRICA.COM, Oct. 7, 2005, <http://allafrica.com/stories/200510070006.html>.) (Constance A. Johnson, 7-9829, cojo@loc.gov)

### **SENEGAL – Radio Stations Closed by Religious Leader**

On September 30, 2005, three radio stations in the holy city of Touba, Senegal, were ordered closed by a spiritual leader, chief caliph Serigne Saliou Mbacké. The stations – the privately owned Disso, a local branch of the state-owned Radio Télévision Sénégalaise, and a community station, Hizbut Tarqiyah – were given three days to go off the air and vacate their offices. Touba is a center of activity for the *mourides*, a Senegalese Muslim community with a great deal of influence. Rulings by the caliph are not legally binding but carry considerable weight in practice. The purpose behind closing the radio stations was reported to be to “preserve the holy city from occult practices contrary to Islam.”

Disso, Touba’s first commercial radio station, had begun operations only a few months before the order and had broadcast call-in discussion programs that were critical of the city’s governing council. A committee of scholars, journalists, and civil society leaders in Senegal’s capital, Dakar, issued a statement expressing concern about threats to freedom of the press in the country and citing the closure of the Touba stations. Ann Cooper, executive director of the New York organization Committee to Protect Journalists, spoke about the matter, stating:

This unilateral decision to bar radio stations from broadcasting in Touba is deeply troubling. ... Senegalese authorities must ensure that journalists are free to report and comment on the news throughout the country without fear of reprisal.

(*Three Radio Stations Shuttered by Religious Leader*, ALLAFRICA.COM, Oct. 3, 2005, <http://allafrica.com/stories/200510040498.html>.) (Constance A. Johnson, 7-9829, cojo@loc.gov)

### **SOUTH AFRICA – Repeal of Last Remnant of Apartheid Law**

On October 13, 2005, South Africa’s Parliament repealed the Black Administration Act, considered the cornerstone of apartheid. The legislation, which dates back to 1927, set the framework for a uniform system of administration for black people by strengthening the power of tribal chiefs. It was later tightened to allow for forced evictions from land. According to Justice Minister Bridgitte Mabandla, the "Act was also a statute on to which many aspects of apartheid could latch and build."





(Rhiannon Edward, *South Africa Scraps Last of Its Apartheid Laws*, THE SCOTSMAN, <http://news.scotsman.com/international.cfm?id=2085582005> (last visited Oct. 17, 2005).)  
(Ruth Levush 7-9847, rlev@loc.gov)

### UGANDA – Top Rebel Leader Indicted

On October 6, 2005, Uganda named five Lord's Resistance Army (LRA) rebel commanders sought by the International Criminal Court (ICC). These were the first ICC warrants in Uganda and include LRA leader Joseph Kony and his deputy Vincent Otti, according to the Ugandan defense minister. The LRA, formed in 1987, is a rebel paramilitary group operating mainly in northern Uganda. The group is engaged in an armed rebellion against the Ugandan government in what is now one of Africa's longest-running conflicts. Joseph Kony, a self-proclaimed spirit medium who wishes to establish a state based on his interpretation of biblical millenarianism, leads it.

The LRA is accused of widespread murder and torture during nearly twenty years of fighting against the army. It has kidnapped thousands of children, to become fighters or to be sex slaves. Human rights groups also accuse its members of murder, mutilation, torture, and rape.

The Roman Catholic Church in Uganda has warned that the warrants jeopardize efforts to mediate an end to the rebel insurgency. Many northern Ugandans had hoped negotiations would solve the conflict, in which thousands have been killed and 1.5 million people forced from their homes. Uganda asked the ICC to investigate violations in northern Uganda last year. The request was the first time a state had asked the Hague-based court to take up a case. (*Ugandan Top Rebel Leader Indicted*, BBC NEWS, Sept. 7, 2005, at <http://news.bbc.co.uk/2/hi/africa/4320124.stm>.)  
(Karla Walker, 7-4332, kdwa@loc.gov)

## EAST ASIA & PACIFIC

### AUSTRALIA – High Court Judges Overworked

Ian Callinan, a judge on Australia's High Court since 1998, has called on the government to appoint more judges to the seven-member Court. This would be only the second expansion of the Court since 1913, when it was increased from the original five judges. Judge Callinan said the backlog of cases forces the current judges to work on weekends and during their holidays. He identified one of the greatest burdens as dealing with over 900 applications each year for special leave to appeal to the Court, with each application being considered by two judges. Retired High Court Chief Justice Gerard Brennan acknowledged the heavy workload, but said there were alternatives to appointing more judges. He suggested adopting the Canadian method of dealing with special leave applications, which he described as an administrative procedure with judges required only to say yes or no. Caseloads could also be reduced by considering only landmark cases and allowing judges to make some decisions without giving reasons. A spokesman for Attorney-General Philip Ruddock said there were no plans to increase the number of High Court judges. (*SOS on Backlog in High Court*, THE AUSTRALIAN, Oct. 8, 2005, at <http://www.theaustralian.news.com.au/>.)  
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)



## CHINA – Controls on Internet News Tightened

On September 25, 2005, China's State Council Information Office (SCIO) and Ministry of Information Industry jointly issued the Provisions on the Management of Internet News Information Services. The Provisions replace interim provisions that were issued in November 2000. They are much more extensive in scope and in general more strictly regulate Internet news. "News information" is defined under the Provisions as "news information on current political affairs, including reports and commentary on political, economic, military, foreign, and other social and public affairs, as well as reports and commentary on unexpected events in society." "Internet news information services" include "the publication of news information on the Internet, provision of electronic bulletin board services on current political affairs, and the sending of messages on current political affairs to the public via the Internet."

The new Provisions, unlike the former ones, prohibit any organization from establishing Internet news information service units (INISUs) in the form of Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures, or wholly foreign-owned enterprises. Cooperation in Internet news information services between INISUs and such joint ventures or enterprises at home or abroad must be reported to the SCIO for a security assessment. The SCIO will make the final decision on approval of any newly established INISU and, if approved, grant a license. The new Provisions add two more types of content to the list of nine banned from being published or transmitted as news information under the interim Provisions. These are: content that instigates illegal assembly, association, parade, demonstration, or gathering of a crowd to disturb social order, and content that features activities carried out in the name of illegal civic organizations. The new Provisions, unlike the former ones, for the first time allow INISUs to be established by non-media organizations. However, there are certain stipulations as to their legal nature and their constituent personnel, and they can only republish news already reported by state-approved media. (*The Complete Text of the Provisions on the Management of Internet News Information Services*, XINHUA, Sept. 25, 2005, [http://news.xinhuanet.com/politics/2005-09/25/content\\_3538899.htm](http://news.xinhuanet.com/politics/2005-09/25/content_3538899.htm); Kathleen E. McLaughlin, *China's Model for a Censored Internet*, THE CHRISTIAN SCIENCE MONITOR, Sept. 22, 2005, <http://www.csmonitor.com/2005/0922/p01s02-woap.htm>.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

## CHINA – Disaster Death Toll No Longer State Secret

On September 12, 2005, at a joint news conference, the National Administration for the Protection of State Secrets (NAPSS) and the Ministry of Civil Affairs (MCA) announced that the Chinese Government would no longer consider the death toll from national disasters a state secret. It is reportedly the first time that the NAPSS has issued a news statement before the media and the public. Spokesperson Shen Yongshe stated that the NAPSS and the MCA decided that as of August 2005, the total number of human casualties caused by natural disasters nation-wide and at the provincial level, as well as related material, is declassified, and the relevant content of the year 2000 Provisions on the Concrete Scope of State Secrets and Their Secrecy Level in Civil Affairs Work (in article 3(3) item 4) was no longer applicable. The decision was reportedly issued in Document Number 116, "Circular Concerning Declassification of the Total Number of Deaths Caused by Natural Disasters and of Related Materials." (*National Administration for the Protection of State Secrets, Ministry of Civil Affairs Jointly Issue a News Release: China Declassifies the Total Number of Casualties Caused by Natural Disasters*, Ministry of Civil Affairs website, Sept. 12, 2005, <http://mca.gov.cn/news/content/recent/>)



[20050912142357.html](http://www.chinalegalnews.com.cn/legaltimes/20050919/0102.htm); Zhi Zhenfeng, *People's 'Right to Know About Disasters,'* FAZHI ZAOBAO, Sept. 19, 2005, <http://www.chinalegalnews.com.cn/legaltimes/20050919/0102.htm>; *Perfecting the State Secrets Law Is the Cornerstone of Openness of Government Information,* LEGAL DAILY, Sept. 26, 2005, [http://www.legaldaily.com.cn/misc/2005-09/26/content\\_199208.htm](http://www.legaldaily.com.cn/misc/2005-09/26/content_199208.htm); *Xinhua Commentary: Number Killed in Disasters in China No Long State Secret,* XINHUA, Sept. 12, 2005, translated in Foreign Broadcast Information Service online subscription database, ID No. 20050912000186.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

### CHINA – First National Legislative Hearing

China's National People's Congress (NPC) held its first public hearing on September 28, 2005, on the subject of proposed amendments to the Law on Personal Income Tax. Although it was hailed by Yang Jingyu, Chairman of the NPC Law Committee, as "a major step to increase legislative transparency and democracy," only twenty representatives (from among almost 5,000 applicants) were chosen to represent the views of China's 1.3 billion people. In addition to these representatives, government department and provincial government spokespersons were allowed eight minutes each for individual presentations at the hearing. (Meng Nuo & Ni Siyi, *Individual Income Tax Hearing: China's Supreme Legislative Organ Holds a Legislative Hearing for the First Time,* RENMIN WANG, Sept. 28, 2005, <http://npc.people.com.cn/GB/28320/52885/52886/3734427.html>; Cary Huang, *A Small Step Towards Transparent Law-Making,* SOUTH CHINA MORNING POST, Sept. 28, 2005, & *China's Top Legislature Holds First-Ever Legislative Hearing,* XINHUA, Sept. 27, 2005, Foreign Broadcast Information Service online subscription database, ID Nos. CPP20050928505010 & CPP20050927062030, respectively.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

### CHINA – Macao Chief Executive Appoints Seven Legislators

On October 9, 2005, Edmund Ho Hau Wah, Chief Executive of the Macao Special Administrative Region, appointed seven members of the region's third Legislative Assembly.

The appointment concluded the formation of the new Legislative Assembly, a group of twenty-nine members. In accordance with the Basic Law, the other twenty-two Legislative Assembly members were elected through direct and indirect polls on September 25, 2005, and the Macao Court of Final Appeal has since approved them. (*Macao Chief Executive Appoints Seven Legislators,* ISINOLAW, Oct. 10, 2005, at [http://www.isinolaw.com/isinolaw/english/detailnews.jsp?channelid=7111&record66&statutes\\_id=10008534&skind=180](http://www.isinolaw.com/isinolaw/english/detailnews.jsp?channelid=7111&record66&statutes_id=10008534&skind=180).) (Rui Wei, 7-9864, rwei@loc.gov)

### CHINA – Reinstatement of Supreme Court Review of Death Sentences

In a public lecture on China's judicial reform delivered on September 25, 2005, Vice President Wan Exiang of China's Supreme People's Court (SPC) stated that three new courts of review, in addition to the two existing ones, are to be established within the SPC to review death penalty sentences. The move is aimed, Wan said, at reinstating in practice SPC review of such sentences, making the death penalty review process truly independent of administrative agencies and preventing interference by any other authorities. He stated that the role of judicial independence is very important, and so the first step in what is to be a series of reforms – focusing on achieving judicial independence,



openness, adherence to procedure, and finality of judgments – is for the SPC to reinstate its power of death sentence review. That power had been derogated to certain higher people's courts for cases involving some violent offenses.

It is estimated that at least 300 judges will be appointed to the three new courts, which reportedly will take over the right of review of death sentences from 2006. The details of implementation of the judicial reform must first be approved by the national judicial reform group, which was formed in 2003 and is headed by Luo Gan, a member of the Standing Committee of the Politburo of the Chinese Communist Party Central Committee (CCPCC) and Secretary of the CCPCC's Political-Legal Committee.

However, according to an SPC justice, a three-member collegiate bench will be established to review a death penalty case submitted by a higher people's court and will take into consideration such factors as the age of the accused; whether, if the accused is a woman, she is pregnant; the sufficiency of the evidence; the consequences of the crime; and whether there is any scope for leniency. (*The Supreme People's Court Will Additionally Establish Three Criminal Divisions by Way of Response to Reinstatement of the Power of Review of Death Sentences*, CHINA YOUTH DAILY, Sept. 27, 2005, [http://zqb.cyol.com/gb/zqb/2005-09/27/content\\_70228.htm](http://zqb.cyol.com/gb/zqb/2005-09/27/content_70228.htm); Wang Zhiyong, *Supreme Court's Review of Death Sentences Reinstated*, CHINA THROUGH A LENS, Sept. 28, 2005, <http://www.china.org.cn/english/2005/Sep/143780.htm>.)

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### **INDONESIA – Monitoring of Muslim Schools**

Indonesia's Vice President, Jusuf Kalla, stated on October 19, 2005, that as part of the country's effort to combat militant violence and suicide bombings, Indonesia would monitor Islamic boarding schools (*pesantren*). According to Mr. Kalla, it's "possible that there are one or two very extreme pesantren among 17,000 pesantrens, and their teachings are not in line with those recognized by our Ulemas (Muslim preachers), therefore they must be put under surveillance." He added that the government had assigned the Minister of Religious Affairs the task of examining all the boarding schools and locating those that "could bring the young to kill themselves and others, including other Muslims, for nothing."

The Vice President did not mention any schools by name, but several persons convicted in connection with or linked to bomb attacks in Indonesia in recent years were reportedly militants who had studied at al-Mukmin, a Muslim boarding school in Ngruki, near the city of Solo, in central Java. The school was co-founded by the jailed militant cleric Abu Bakar Bashir, the alleged spiritual leader of Jemaah Islamiah, which has links to al-Qaeda. (*Indonesia Says to Monitor Muslim Boarding Schools*, THE STAR, Oct. 20, 2005, <http://www.thestar.com.my> (last visited Oct. 21, 2005).)

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### **INDONESIA – Terrorism Laws to Be Revised**

The Indonesian Government has decided to revise and strengthen its laws on terrorism. Indonesian Foreign Minister Hassan Wirajuda met with Australian Foreign Minister Alexander Downer in Jakarta to discuss the possibility of Australian assistance with the legal reform. Australia is particularly interested in having Indonesia ban the radical Islamic organization Jemaah Islamiah,



reported to be responsible for bombings in Bali in 2002 and in October 2005. A team of advisors who are experts in counter-terrorism legislation will help Indonesia amend its anti-terrorist provisions, with the goal of outlawing conspiring or consorting with terrorists. (*Indonesia to Review Anti-Terror Laws with Help from Australia*, JURIST LEGAL NEWS AND RESEARCH, Oct. 12, 2005, <http://jurist.law.pitt.edu.paperchase/2005/10/indonesia-to-review-anti-terror-laws.php>; *Indonesia to Reform Terror Laws*, SUNDAY MAIL, Oct. 12, 2005, <http://www.theSundaymail.news.com.au/printpage/0,5942,16900780,00.html>.)

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### **JAPAN – Postal System Privatization**

On October 14, 2005, the Diet (Japan's Parliament) passed bills to privatize the postal system, which includes a huge savings bank. Prime Minister Junichirō Koizumi took the initiative with the privatization project, considering it one of the main reforms that he would attempt to accomplish. When the upper house of the Diet refused to pass the bills in August due to rebels inside his own party, the Liberal Democratic Party (LDP), Koizumi dissolved the lower house. The Prime Minister cannot dissolve the upper house. Koizumi focused on the issue of the privatization of the postal system during the election campaign that followed the dissolution of the lower house. He punished the rebels in the lower house by recruiting new powerful candidates to be the LDP's official candidates in their constituencies. The LDP won the election by a landslide. In the new Diet session, most of the former rebels in the upper house voted for the bills, commenting that the voters had shown strong support for the bills in the election. Under the bills, Japan Post, which has 25,000 post offices and US\$3 trillion in assets, will be divided into four entities under a new holding company and will be privatized in 2007. (*Yūsei min'eika hō seiritsu*, SANKEI NEWSPAPER, Oct. 15, 2005, at <http://www.sankei.o.jp/news/051015/morning/15iti002.htm>.)

(Sayuri Umeda, 7-0075, sume@loc.gov)

### **JAPAN – Sovereign Immunity Denied in Labor Case**

The Tokyo District Court rendered a decision in the case of a person who was fired by the Tokyo office of the State of Georgia and who sued the State in Tokyo. The court decided in an interlocutory judgment that it has jurisdiction over the case, and sovereign immunity is not applicable. The court acknowledged that the purpose of the employment was to pursue the State's commercial activities in Japan. (*Chūnichī jimusho kaiko meguru soshō*, YOMIURI NEWSPAPER, Sept. 29, 2005, at <http://www.yomiuri.co.jp/national/news/20050929i105.htm>.)

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### **KOREA, SOUTH – Hyundai's Rights in Business with North Korea**

According to amended article 17, paragraph 1, of the Law on Inter-Korean Exchanges and Cooperation that takes effect from November 3, 2005, the Unification Ministry can approve inter-Korean business plans on condition that they do not cause disputes between South and North Korea or with already existing inter-Korean businesses.

Recently, the North offered tourism business deals to other companies and excluded Hyundai. On October 12, 2005, South Korea's Vice Unification Minister Rhee Bong-jo said that Hyundai Asan continues to be the designated business partner of North Korea in seven broad fields for the next thirty



years, as Hyundai agreed with authorities in the North five years ago, and the government of the South would respect that agreement. He also said, “if the North tries to get other contracts on business to Mt. Kumgang or Kaesong, we cannot but deal with the situation according to our law.” (*Hyundai’s NK Business Rights Still Valid*, Oct. 12, 2005, KOREA TIMES, at <http://times.hankooki.com/page/nation/200510/kt2005101217523610510.htm>.) (Seung Eun Lee & Sayuri Umeda, 7-0075, [sume@loc.gov](mailto:sume@loc.gov))

### NEW ZEALAND – Paid Parental Leave Extended

New Zealand has enacted a Parental Leave and Employment Protection Amendment Act to expand entitlements to parental leave. As of December 1, 2005, qualified employees will be eligible to receive up to fourteen weeks’ pay from the government, subject to a weekly maximum of approximately US\$243. This amount may be supplemented by payments from employers. Many labor contracts negotiated through collective bargaining in New Zealand provide for such additional payments. In order to qualify for parental leave payments from the government, a person must have been employed by the same employer for at least six months and have worked an average of at least ten hours a week. Primary eligibility for paid parental leave is given to mothers. However, mothers can transfer all or a part of their entitlement to a partner. In the case of adoption, adoptive parents can choose who will have primary eligibility for paid parental leave. In almost all cases, employers are required to keep an employee’s job open while he or she is on parental leave. Employees are generally required to give three weeks’ notice of their intention to return to work. (Parental Leave and Employment Protection Amendment Act 2004, 2004 N.Z. STAT. No. 89.) (Steve Clarke, 7-7121, [scla@loc.gov](mailto:scla@loc.gov))

### TAIWAN – Guilty Verdict in Peer-to-Peer File-Swapping Case

On September 9, 2005, the Taipei District Court found the largest peer-to-peer (P2P) operator in Taiwan, Kuro, guilty of infringement of intellectual property rights. It may be the first incidence of criminal convictions being handed down in connection with the operation of an Internet file-sharing service. Kuro president Chen Shou-teng was sentenced to a two-year prison term; his two sons, who are executives with Fashionow Co. Ltd., the company that runs the Kuro website, were each given three-year sentences. The three men were also fined US\$91,000 each. In addition, a Kuro member who downloaded a reported 970 songs through the service received a sentence of four months in jail (for which a fine of NT\$300, about US\$9, per day can be substituted) and three years of probation on conviction of illegally downloading music in MP3 format. Prosecutors had sought a prison term of seven years for Chen Shou-teng and a fine of US\$15 million; they indicated they would appeal the case on grounds that the fines handed down by the district court were too low. Kuro has stated that it would appeal the verdict as well. After the verdict was delivered, it also initiated an online petition to amend Taiwan’s Copyright Law.

The government-sponsored *Taiwan Journal* noted that the court’s ruling has been compared to an Australian court’s decision, issued only a few days prior, against another P2P giant, Kazaa. It has also been likened to a U.S. Supreme Court verdict issued in June against Grokster and StreamCast Networks. By contrast, in the June 30, 2005, verdict of the Taipei Shihlin District Court involving a similar case, another file-sharing operator, Weber Wu of EzPeer, was found not guilty of copyright infringement. (Rita Fang, *District Court Delivers Guilty Verdict in Peer-to-Peer File-Swapping Case*, TAIWAN JOURNAL, Sept. 27, 2005, <http://gio.gov.tw/taiwan-website/4-oa/20050927/2005092701.html>); Zhang Zhongxin, *Analysis of the Kuro Case*, Copyright Note website, Sept. 20, 2005 (in Chinese),



<http://www.copyrightnote.org/crnote/bbs.php?board=6&act=read&id=58>; Jessie Ho, *Kuro Bosses Guilty of IPR Violations*, TAIPEI TIMES, Sept. 10, 2005, at 1, <http://www.taipetimes.com/News/front/archives/2005/09/10/2003271076>; see also *TAIWAN—P2P Case Ruling*, 7 W.L.B. 2005.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

### VIETNAM – Adoption Measures

Vietnam has recently taken further steps towards accession to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (The Hague Adoption Convention, approved by sixty-six countries on May 29, 1993). On June 21, 2005, Vietnam's Minister of Justice and the U.S. Assistant Secretary of State for Consular Affairs signed an Executive Agreement between the United States and the Socialist Republic of Vietnam Regarding Cooperation on the Adoption of Children. Vietnam has also newly signed a similar agreement with Canada, but as of mid-October neither agreement had entered into effect. In 2006, Vietnam plans to sign bilateral adoption agreements with three additional countries. According to the Deputy Director of the International Adoption Agency under the Ministry of Justice, Vietnam is planning to accede to The Hague Adoption Convention by the end of 2005.

Under draft amendments to Decree No. 68/2002/ND-CP (of July 10, 2002, effective as of January 2, 2003, on implementation of various articles of the Law on Marriage and Family regarding marriage and family relations involving foreigners), foreigners from countries that have not yet signed agreements on adoption cooperation with Vietnam may be permitted to adopt Vietnamese children if they have worked or studied in Vietnam for over six months, if their spouses or parents are Vietnamese citizens, or if they are of Vietnamese origin or have a blood relationship with the children to be adopted. The draft expands the category of children eligible for adoption to include those with disabilities, handicaps, or suffering from dangerous diseases. It also provides for dossiers of prospective adoptive parents and of the children to be adopted to be simplified and for processing to be completed within six to twelve months. (*Vietnam Prepares to Accede to the Hague Convention on Adoption*, VIETNAM LAW & LEGAL FORUM, Oct. 11, 2005, <http://news.vnanet.vn> (last visited Oct. 12, 2005); *Vietnam Program Update*, Children's Hope International website, <http://www.childrenshopeint.org/hotline.htm> (last visited Oct. 12, 2005); U.S. Department of State, Bureau of Consular Affairs, *Hague Convention on Intercountry Adoption and the Intercountry Adoption of 2000 Background*, [http://travel.state.gov/family/adoption/convention/convention\\_2290.html](http://travel.state.gov/family/adoption/convention/convention_2290.html) (last visited Oct. 12, 2005); *Adoption Agreement Between U.S. and Vietnam*, INFO UPDATES, July 1, 2005, <http://www.holtintl.org/infoupdates/>.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

### VIETNAM – Bill on Associations

Vietnam's Ministry of Home Affairs issued the fifth draft of a bill on associations in October 2005. It reportedly defines an association as a voluntary organization with legal person status, operating for non-profit purposes to protect its and its members' legitimate rights and interests and contributing to national socio-economic development. Foreigners who have lawfully resided in Vietnam for two years or more are eligible to establish or join an association, and foreign specialists may be admitted to an association as an associated or honorary member if they have made a contribution to associations operating in their respective fields. The draft provides that associations must be self-financing and "non-self-seeking"; that is, they may carry out for-profit activities provided



the profits derived therefrom be used for operating costs and not be divided among the members. Procedures for establishing an association are simplified under the bill; there is now a registration process instead of an application-for-approval process. The bill apparently includes specific provisions on state management of associations, but it still contains no stipulations on the required number of founders of an association or the state's responsibilities toward associations. (*Bill on Associations*, VIETNAM LAW & LEGAL FORUM, Oct. 11, 2005, <http://news.vnanet.vn/vietnamlaw/index1.asp> (last visited Oct. 12, 2005).)

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### **VIETNAM – Bill on Gender Equality**

It was reported in mid-October 2005 that Vietnam's latest draft bill on gender equality, comprising six chapters and forty-eight articles, provides for the same retirement age for male and female workers: they may opt to retire at any age between fifty and fifty-five, or fifty-five and sixty, depending on their occupation. The bill stipulates equality of men and women in all social activities and sets forth the responsibility of agencies, organizations, and individuals in guaranteeing gender equality. It requires the state, agencies, and organizations to ensure a balanced proportion of male and female candidates standing for election to the National Assembly and the people's councils. There must also be such proportionality among those standing for election and being elected to leading positions in socio-political organizations (except for the Vietnam Women's Union) and in mass organizations. Under the bill, housework expenses of female business owners and female laborers in female-dominated enterprises will be deemed reasonable expenses for purposes of identifying taxable income, and production or transportation enterprises will be exempt from enterprise income tax corresponding to their expenses associated with female workers. (*Bill on Gender Equality*, VIETNAM LAW & LEGAL FORUM, Oct. 11, 2005, <http://news.vnanet.vn/vietnamlaw/index1.asp> (last visited Oct. 12, 2005).)

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## **EUROPE**

### **AUSTRIA – Corporate Governance**

On July 4, 2005, Austria enacted a Corporate Reform Act (BUNDESGESETZBLATT No. 59/2005) aimed at improving investor confidence in the domestic stock market. The law strengthens the role of the board of supervisors, while imposing new responsibilities and limitations on its directors. Among the new provisions are incompatibility rules that limit to a maximum of ten the number of director's positions on boards of supervisors that an individual may hold simultaneously; this number is reduced to eight for directors of supervisory boards of corporations that are listed on a stock exchange. The supervisory boards of major companies must appoint a special committee to review the annual financial statements. The law also provides more stringent conflict-of-interest restrictions on the auditors of corporations, to ensure more accurate and transparent financial statements. Currently, the industry-wide voluntary corporate governance code is being reformed to reflect the new statutory provisions. (WR. Gillinger, *CG-Kodex wird neu geschrieben*, WIRTSCHAFTSBLATT 17 (Sept. 7, 2005).)

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## BULGARIA – Preserving GMO-Free Status

In October 2005, the Government of Bulgaria adopted a series of regulations aimed at implementing the Law on Genetically Modified Organisms (GMOs), which was passed in August. In conformity with the provisions of the Law establishing a moratorium on producing and conducting research on GMO foods, the Government exempted maize, barley, lucerne (a plant similar to clover), and soy from this prohibition. Sale of transgenic maize is also allowed. Laboratory tests of genetically modified varieties of grapes, tobacco, and wheat are prohibited. Labeling rules for products containing GMOs are also specified.

After the country joins the European Union in 2007, only two transgenic maize varieties allowed by the EU will be permitted for cultivation and distribution in Bulgaria. Because of the EU requirements, the new regulations state that producers of GMO food in Bulgaria are allowed to export their products only to third-world countries. Unlike the EU requirements, which establish the maximum level of GMOs in food at 0.9 percent, the Bulgarian regulations provide for the validity of the norm established by the Law on Foodstuffs of Bulgaria, which sets the limit for GMO content at 0.5 percent. (S. Velinova, *Bulgaria-Still GMO Free*, CAPITAL WEEKLY, No. 41, Oct. 6, 2005, <http://www.capital.bg/>.)

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## DENMARK – Constitutional Amendments Proposed

The Danish Parliament's two largest opposition parties have proposed amending the Danish Constitution by removing a description of Denmark as a "limited monarchy," thus making it more democratic. The Danish Government has also recently proposed amending the Constitution to change the laws of succession so that the future monarch is the first child born to the previous monarch. Now, the first-born son is first in line to become the future monarch. The opposition supports the government's proposal to amend the laws of succession so that the Constitution makes it clear that Denmark is a "monarchy where women and men have equal rights to inherit the throne."

The opposition also wants to amend the passage in the Constitution that calls Denmark a "limited monarchy" to label it "an independent state whose form of government is built upon democracy and the rule of law." (*Opposition Wants More Democratic Constitution*, DENMARK.DK, THE OFFICIAL WINDOW, Oct. 5, 2005, available at [http://denmark.dk/portal/page?\\_pageid=374,610566&\\_dad=portal&\\_schema=PORTAL&\\_extitemno=11&\\_itemid=877160](http://denmark.dk/portal/page?_pageid=374,610566&_dad=portal&_schema=PORTAL&_extitemno=11&_itemid=877160).)

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## ESTONIA – Law on E-Money

On October 19, 2005, the Parliament of Estonia passed the E-Money Institutions Act aimed at regulating the issuance of e-money, activities of e-money institutions, and state control over them. The law defines e-money as an electronic means of payment that is recorded on an electronic device such as a plastic card or computer memory by more than one company.

Under this Act, the stock capital of an e-money institution must be at least one million *euros* (about US\$1,194,000). Supervisory council and board members of an e-money institution have several additional administrative duties in comparison with ordinary public or private companies, and the



responsibility of the e-money institution is higher than that of an ordinary enterprise in cases of fraud associated with e-money transaction activity. The adoption of this law was in compliance with European Union requirements. (*Estonia to Introduce E-Money as of New Year*, BNS BALTIC NEWS SERVICE, Oct. 19, 2005, [http://site.securities.com/doc.html?pc=EE&doc\\_id=89806344&query=e-money&hlc=et](http://site.securities.com/doc.html?pc=EE&doc_id=89806344&query=e-money&hlc=et).) (Peter Roudik, 7-9861, prou@loc.gov)

### **FINLAND – Privacy Law Amendment Would Permit Emergency Messaging**

On October 6, 2005, the Finnish Government issued a bill proposing amendments to the Act on the Protection of Privacy in Electronic Communications. If adopted, the amendment will allow public authorities to issue emergency alerts to the public by text messages. This would enable authorities to contact the public through mobile phone messages in the event of an emergency. At present such emergency alerts are broadcast via radio and television.

The Finnish authorities have used text messaging once. After the tsunami disaster in December 2004, the authorities sent messages to Finnish mobile phone subscriptions in Thailand, India, and Sri Lanka. The amended act is proposed to enter into force on April 1, 2006. (Press Release 243/2005, Ministry of Transportation and Communications, National Emergency Alert System for Use in Finland, Oct. 6, 2005, available at <http://www.valtioneuvosto.fi/vn/liston/print.lsp?r=97002&l=en&page=0&rapo=1240>.) (Linda Forslund, 7-9856, lifo@loc.gov)

### **FRANCE – Database on Terrorist Attacks**

On September 22, 2005, the Foundation for Strategic Research, an independent think tank, opened an Internet database detailing forty years of terrorist attacks against France and its interests. The French Ministry of the Interior funded the project. The database may be consulted, free of charge, via either the Foundation website or the Ministry of the Interior website.

At present, the database covers the years 1965 to 2003 and approximately 1,500 terrorist acts, an average of three terrorist acts a month. In the next few months, the database will be updated to cover all terrorist acts to date. The site does not contain classified or confidential information. Its aim is to inform the public, with a chronology that enables users to establish correlations and detect trends. The creation of a database covering attacks against other European Union Member States is being considered. (*French Government Funds Internet Database on Terror Attacks*, YAHOO NEWS, Oct. 4, 2005, at [http://news.yahoo.com/s/afp/20051004/tc\\_afp/franceattacks](http://news.yahoo.com/s/afp/20051004/tc_afp/franceattacks); Foundation for Strategic Research, at <http://www.frstrategie.org>; Ministère de l'intérieur, at <http://www.interieur.gouv.fr>.) (Nicole Atwill, 7-2832, natw@loc.gov)

### **FRANCE – State of French Prisons**

On October 20, 2005, the International Observatory of Prisons, based in Paris, published its annual report. The report states that the 185 French prisons were in a deplorable state, marked by overpopulation and poor hygiene. According to the report, this situation is not the result of negligence or a lack of funding, but a deliberate governmental policy that emphasizes tougher sentences and the creation of new offenses, thereby increasing the prison population.



The rate of inmates' suicides (115 in 2004, 53 for 2005 as of June 1, 2005) is 6.4 times higher than that of the general population. Medical care is insufficient, seventy to eighty percent of the inmates have psychiatric troubles, and one-third of them are drug addicts when they enter prison. Only thirty percent of the prisoners have a remunerated job. Violent incidents have increased by 155% in the last five years.

There were 57,163 inmates on October 1, 2005, but only 51,144 places, an occupancy rate of 112%. The recent opening of five new establishments did not decrease the overpopulation. (*Prisons: la situation empire, selon l'OIP*, YAHOO! ACTUALITES, Oct. 20, 2005, at <http://fr.news.yahoo.com/20102005/5/prisons-la-situation-empire-selon-l-oip.html>.)  
(Nicole Atwill, 7-2832, natw@loc.gov)

### GERMANY – Class Actions

On July 8, 2005, Germany enacted an Investors' Model Procedure Act (BUNDESGESETZBLATT I at 2437). The new law allows for class actions in securities cases, a major legal innovation for Germany. (T. Möllers, *Das Kapitalanlage-Musterverfahrensgesetz*, 58 NEUE JURISTISCHE WOCHSCHRIFT (NJW) 2737 (2005)). The new law was needed to cope with a multitude of lawsuits brought in the year 2000 against the German communications company Telecom for alleged false statements in its prospectus.

The suits were consolidated before one court and the proceedings had been pending for three years when the Federal Constitutional Court was invoked to set a trial date. The Federal Constitutional Court refused to accept the case, but in its reasoned dismissal (decision, July 30, 2004, docket number 2 BvR 1436/04, *reprinted in* 57 NJW 3319 (2004)) it held that the trial court would have to schedule the trial promptly, unless a class action law was enacted.

The new law can be applied if at least nine plaintiffs claim damages from the same statements in a prospectus or other corporate statements and if either the plaintiff or the defendant requests the application of the model proceeding. If the court grants the request, a model plaintiff is chosen to determine the facts, legal issues, or liabilities. The costs of the model proceeding are shared among all plaintiffs. If the decision is favorable to the plaintiffs, each plaintiff may bring an individual action claiming damages on the basis of the binding decision of the model proceeding.  
(Edith Palmer, 7-9860, epal@loc.gov)

### GERMANY – Disclosure of Corporate Salaries

On August 3, 2005, Germany enacted a Director's Compensation Disclosure Act (BGBl I at 2267) that requires corporations to disclose the compensation paid to directors and top executives. The disclosures have to be shown in the yearly financial statements of the company and must include all aspects of the compensation package, including stock options and retirement benefits. The first time the information must be disclosed is in the financial statements for the year 2006. Corporations can opt out of this requirement if the annual stockholders' meeting votes with a three-quarters majority to forego disclosure. Such a decision is valid for five years.  
(Edith Palmer, 7-9860, epal@loc.gov)



### ITALY – Cross of Honor for Victims of Terrorist Acts

The Italian Government approved the creation and award of the "Cross of Honor" to bestow upon victims of acts of terrorism or of hostile acts carried out in military and civilian operations abroad (Law No. 207, Oct. 10, 2005). According to the Law, the Cross of Honor is created for state military and civilian personnel and for personnel performing functions under the jurisdiction of the Ministry of Defense, including personnel of the Italian Red Cross, who have died or suffered a permanent disability equal to or above eighty percent of their work capability as a result of wounds or injuries reported as the effect of acts of terrorism or of hostile acts perpetrated against them abroad during the development of military and civilian operations authorized by the government.

The Law specifies the procedures to be followed when the Cross is awarded in memory of the deceased. It further stipulates that the awarding of the Cross does not prejudice the granting of compensation based on the same reported facts of the case. The Law also states that its provisions are applicable to events that took place as of December 1, 2001. (GAZZETTA UFFICIALE, No. 239, Oct. 13, 2005.)

(Dario Ferreira, 7-9817, dfer@loc.gov)

### ITALY – New Rules on Blood Transfusions

The Italian Government approved new rules on blood transfusion and national production of blood by-products (Law No. 219, Oct. 21, 2005). Among the objectives of the Law are the attainment of regional and national self sufficiency in blood, blood components, and blood by-product medicines; the creation of a more efficient health care system for Italians through maintenance of the highest levels of safety during the entire process of blood donation and transfusion; the realization of uniform conditions of transfusion service throughout the country; and the development of transfusion medicine, efficient uses of blood, and specific programs of diagnosis and cure, particularly in the areas of care provided to patients with blood disorders or cancer, emergency medicine, and transplantations.

The Law specifies the organization of the system of transfusions, including a permanent technical consultation program. It has provisions related to associations and federations of blood donors, the role of the Ministry of Health, and the coordination functions of the *Centro Nazionale Sangue* (National Blood Center). Measures to achieve national self sufficiency include establishment of an annual plan, production of blood by-product medicines, import and export of blood products, rationalization of consumption of blood products, and an information system for transfusion services; the authorization and accreditation of structures of transfusion; and rules for the quality and safety of blood and its by-products.

Those who violate the Law will be subject to fines. Persons who give their own blood or blood components for profit will be punished with a fine of 154 to 1,549 *euros* (about US\$181 – US\$1,825). The Law also devotes an article to transfusion services in the armed forces. (GAZZETTA UFFICIALE, No. 251, Oct. 27, 2005.)

(Dario Ferreira, 7-9817, dfer@loc.gov)



## ITALY – Violence at Sports Competitions

The Italian Government raised Decree Law No. 162, with amendments, of August 17, 2005, to the category of Law (as Law No. 210). It had amended provisions of Law No. 401 of December 13, 1989, to add measures aimed at controlling violence in sports competitions. The measures newly adopted state that the prohibition of access to sports events imposed on some fans can be implemented even for events held abroad that are specifically identified. The same provisions are applicable to persons who violate in Italy the prohibition of access to places where sports events are held adopted by the competent authorities of one of the Member States of the European Union.

The Law also imposes penalties for different types of violations of its provisions. One of the provisions states that the penalty is increased if as a result of the action of the individual(s) persons are injured or the sports event is postponed, suspended, interrupted, or cancelled. The period of time of a prohibition of access to places where sports events are held can be extended by the competent authority that adopted the measure to include specific sports events held abroad.

To help improve the implementation of the provisions on prevention and control of violence at sports events, the Law orders the creation, within the jurisdiction of the Ministry of the Interior, of the *Osservatorio Nazionale sulle Manifestazioni Sportive* (National Observatory of Sport Events). The Observatory's objectives, among others, will be to monitor violence and intolerance occasioned by sports events and the safety conditions of sports facilities; analyze the problems related to particular events and determine the risk level; promote coordinated initiatives for the prevention of violence and intolerance in the field of sports; and define measures that can be adopted by sports community to guarantee the normal development of sports events and ensure public safety. (GAZZETTA UFFICIALE, No. 242, Oct. 17, 2005.)

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## KAZAKHSTAN – New Rules for Use of Subsoil

On October 17, 2005, President Nazarbaev of Kazakhstan signed into law amendments to one of the most important pieces of Kazakh legislation, the Law on Subsoil. These amendments are aimed at further expansion of state regulation of relations between subsoil users. In particular, the amendments change the permit-issuing procedure for the transfer of subsurface use rights. The changes enable the executive branch of government to refuse a permit for the transfer of subsurface use rights if it contradicts the interests of national security.

The amendments also legitimize the involvement of law enforcement and national security authorities in the affairs of foreign companies working in Kazakhstan in the field of subsoil resources extraction. Additionally, this law secures the priority right of the Kazakh government to purchase shares on the secondary market of alienable share holdings. (*Kazakhstan Adopts Changes on Subsurface Use*, KAZAKHSTAN TODAY, Oct. 17, 2005, [http://site.securities.com/doc.html?pc=KZ&doc\\_id=89561589&query=subsurface&hlc=ru](http://site.securities.com/doc.html?pc=KZ&doc_id=89561589&query=subsurface&hlc=ru).)

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### **MOLDOVA – Competition Protection Agency Established**

On October 19, 2005, the Parliament of Moldova adopted legislation that will establish a national Agency for the Protection of Competition (APC). According to the law, this agency will be a government institution with legal entity status. The APC will be responsible for developing and implementing state politics aimed at protection and development of competition, restriction of monopolistic activity, and drafting and proposing of government legislation aimed at improving the application of existing regulations. The law states that, among other duties, the APC will control the implementation of anti-monopolistic legislation, report cases of violations to the State Prosecutor's Office, and supervise securities trading by market participants. On behalf of the government, the APC will be able to interfere to avoid the abuse of dominant market positions by economic entities. Under the law, the APC must report directly to the Cabinet of Ministers, and it is to be independent from public administration. (*Moldova to Establish Competition Protection Agency*, ROSBUSINESS-CONSULTING, Oct. 20, 2005, [http://site.securities.com/doc.html?pc=MD&doc\\_id=89879097&query=competition&hlc=en](http://site.securities.com/doc.html?pc=MD&doc_id=89879097&query=competition&hlc=en) (last visited Oct. 21, 2005).)  
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### **NETHERLANDS – Burqa Ban Considered**

The Netherlands Minister for Integration and Immigration, Rita Verdonk, has told Parliament that she will investigate where and when wearing the burqa should be banned. If done, this would make the Netherlands the first country in Europe to so limit the wearing of the distinctively Muslim garment in public. Minister Verdonk acknowledged that a complete ban on the burqa would be legally difficult because of freedom of religion laws. She said that she was considering prohibiting the garment in specific situations, such as in public buildings, shops, airports, trains, and busses “on grounds of public safety.” A government spokesman suggested as a precedent legislation that prohibits people from entering football stadiums with their faces covered by scarves.

In a related matter, a Dutch Muslim woman has brought a case to the Equal Opportunities Commission, claiming that she was refused a position as an Arabic teacher at the prestigious Islamic College in Amsterdam because she refuses to wear a headscarf. She argues that non-Muslim teachers at the College are not required to wear headscarves and that the school is discriminating between staff members on grounds of religion, which is contrary to Dutch law. Hers is the first such case before the Commission. (*Dutch to Hear Muslim Rights Case*, BBC NEWS, Oct. 17, 2005, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/4349584.stm>; *Dutch Unveil the Toughest Face in Europe with a Ban on the Burka*, THE TIMES, Oct. 13, 2005, <http://www.timesonline.co.uk/article/0,,13509-1823334,00.html>.)  
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### **RUSSIAN FEDERATION – New Passports with Biometrics**

On October 20, 2005, President Vladimir Putin signed a decree ordering the Ministry of Internal Affairs (police) to begin issuing new external passports by January 1, 2006, that would be valid for travel abroad by Russian citizens. The new passports will have microchips containing a digital photograph of the passport bearer and his fingerprints. The decree provides for inclusion in subsequently issued passports of such biometric information as iris scans and face temperature maps. It sets forth measures for keeping this data confidential and orders the legislature to adopt necessary amendments to the passport legislation within the next three months. According to the decree, the transfer to the new passport system must occur before the end of 2008. Old passports will be valid until replacements are



issued. It is expected that new external passports will help Russia to simplify visa procedures with countries that are developing similar passport programs. (*Russia to Issue Foreign Passports with Biometric Data Jan. 1*, RIA NOVOSTI, Oct. 20, 2005, [http://site.securities.com/doc.html?pc=RU&doc\\_id=89875471&query=law&hlc=ru](http://site.securities.com/doc.html?pc=RU&doc_id=89875471&query=law&hlc=ru).)

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### **RUSSIAN FEDERATION – Tax Claims Exempt from Court Jurisdiction**

On October 19, 2005, the State Duma (the legislature) approved the bill on amendments to the Tax Code submitted by President Vladimir Putin in exactly the same wording as it was proposed. The law, which enters into force on January 1, 2006, is aimed at relieving courts of the burden of settling tax claims. According to the amendments, tax authorities are empowered to collect fines under US\$175 for individuals and US\$1,750 for organizations without a court decision. Businesses that commit technical violations such as late tax filings could find fines withheld from their bank accounts without a prior court hearing.

Tax inspectors are allowed to qualify accounting errors as severe violations and to fine violators without first substantiating the claim in court. Even though the taxpayers' right to challenge the fine has been preserved, there is no specified grace period in which violators are guaranteed an appeal. All amendments to the bill proposed by Duma members to specify procedures for fine collection and appeals were rejected. (A. Lebedev, *Changes to Tax Code Get Duma Blessing*, THE MOSCOW TIMES, Oct. 20, 2005, Eastview paid subscription database (last visited Oct. 21, 2005).)

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### **SCOTLAND – FOIA Exemption Considered for G8 Summit Information**

Nine months after the implementation of the Freedom of Information (Scotland) Act 2002, the Minister for Parliamentary Business announced that the Scottish Executive is evaluating the charges made for information requested under the Act and considering if the provisions of the Act should be extended or restricted. In particular, the Executive will examine whether there is a continuing need for a Ministerial certificate, signed in May 2005, to protect certain security-related information from the Gleneagles G8 Summit from release under ambit of the Act on the grounds of national security. (Press Release, Scottish Executive, *Freedom of Information Conference*, Oct. 4, 2005, <http://www.scottishexecutive.gov.uk/News/Releases/2005/10/03105649>.)

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### **SCOTLAND – Man Jailed for Displaying Iraq Beheading on Video Phone**

A man has been sentenced to sixty months of imprisonment for displaying to a shop worker in Scotland a video of the beheading of an individual in Iraq, which he had downloaded from the Internet to his mobile telephone. The Court convicted the man of breach of the peace. (BBC News, *Phone Beheading Man Found Guilty*, Sept. 28, 2005, at [http://news.bbc.co.uk/2/hi/uk\\_news/scotland/4189382.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/4189382.stm).)

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### SWEDEN – New Law on Martial Arts Proposed

On October 17, 2005, the Swedish Ministry of Justice presented a proposal for a law to ban certain martial arts. The proposed law aims to regulate all martial arts where kicks and blows to the head, as well as other violent acts, are permitted. Martial arts competitions where such violence is allowed cannot be organized without a permit under the new law. A permit will only be granted if the sport's rules and the security regulations ensure the participants' safety. A martial arts organization may be exempt from the permit requirement if an investigation shows that the above-mentioned requirements are met. The proposal aims to ensure that martial arts sports that are safe for participants remain legal. The proposal is now in circulation for consideration until December 2006. (Press Release, Ministry of Justice, *Ny lag föreslår förbud mot farliga kampsporter*, Oct. 17, 2005, available at <http://www.regeringen.se/pub/road/Classic/article/11/jsp/Render.jsp?m=print&d=5976&nocache=true&a=51708>.)

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### SWEDEN – Sperm Donor to Pay Child Support

In the early 1990s, a man donated sperm to a lesbian couple that, as a result, had three sons during the years 1992-1996. According to the man, he was never supposed to have any parental responsibility. Instead, the two women were the children's parents, and the biological father had the right to visit the children now and then. After some pressure from the two women, the man agreed to sign an acknowledgement of paternity. Shortly thereafter, the two women separated, and the woman who had given birth to the children asked that the biological father pay child support, to which the man has objected. In court, the man has maintained that the acknowledgment of paternity is invalid because conception occurred through insemination. He has further maintained that he was coerced into signing the acknowledgment.

The Supreme Court of Sweden has ruled that the acknowledgement of paternity is valid and it does not matter how conception occurred. The man is the children's father and as such he is under an obligation to pay child support. (*HD: Spermdonator underållsskyldig*, SVENSKA DAGBLADET, Oct. 12, 2005, available at [http://www.svd.se/dynamiskt/inrikes/did\\_10751963.asp](http://www.svd.se/dynamiskt/inrikes/did_10751963.asp).)

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### SWITZERLAND – New Sterilization Law

On December 17, 2004, Switzerland enacted an Act on Sterilization that became effective on July 1, 2005. (AMTLICHE SAMMLUNG DES BUNDESRECHTS 2499 (2005).) The Act was not challenged by a referendum. The new law is a response to the practice of sterilizing the unfit without their consent, a practice that had prevailed until the 1980s and had come under severe criticism since 1990. The new law was enacted instead of paying compensation to the victims. (K. Fontana, *Sterilisation als Ultima Ratio*, NEUE ZÜRCHER ZEITUNG 14 (Sept. 4, 2003), LEXIS/NEXIS, News Library, Zeitng File.) Under the new law, the mentally incapacitated may be sterilized only in exceptional cases, under stringent safeguards that include permission of the guardianship court. Other adults can have the procedure performed with their written consent, albeit after extensive medical disclosure.

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**UKRAINE – Anti-Tobacco Law**

On October 19, 2005, Ukrainian President Viktor Yushchenko signed the Law on Measures to Prevent and Reduce Consumption of Tobacco Goods Hazardous to Health. The Law sets requirements for the quality and marking of tobacco goods. Import and production of high-nicotine cigarettes in Ukraine is banned. The nicotine content is restricted to 1.2 milligrams per cigarette, and tar is restricted to 12 milligrams in tobacco products sold in Ukraine. “Light” and “Ultra-Light” labels on cigarette boxes are prohibited, because they deceive the customer about the harms of smoking. The Law also defines the size and content of the warning that has to be placed on a cigarette pack: the inscription must cover no less than thirty percent of the outer surface on each broad side of the pack. The Law bans tobacco sales to minors under eighteen and stipulates fines in an amount of ten to ten thousand U.S. dollars to be imposed on violators. It prohibits smoking in public places and at work and obligates owners of the premises to designate specially ventilated areas for smoking. The Law enters into force on January 1, 2006. (Website of the President, <http://www.president.gov.ua/documents> (last visited Oct. 20, 2005).) (Peter Roudik, 7-9861, prou@loc.gov)

**UKRAINE – Real Estate Sales Tax Abolished**

On October 14, 2005, the Verkhovna Rada (the legislature) of Ukraine adopted amendments to the Law on Income Taxation of Individuals that abolish taxation of operations involving sale of real estate by individuals. The amendments remove real estate from the list of inheritances subject to taxation and add to the existing law a provision stipulating that income received as a gift by an individual will not affect the taxation of his/her family members. As stated in the preamble to the Law, the purpose of the amendment is to avoid double taxation, stabilize housing prices, and facilitate development of mortgage lending. According to the new amendment, which will enter into force as of January 1, 2006, the total elimination of the real estate sales tax will apply to properties purchased in 2005 only. Properties purchased in 2004 will be taxed on a progressive scale depending on the property’s size, in an amount of from one to five percent of the profit value. A thirteen-percent tax will be levied on the profit received from the sale of a property acquired before 2004. (Official website of the Ukrainian legislature, [http://gska2.rada.gov.ua/control/en/searcher?ccid=33722&showfn=true&ROOT\\_MENU\\_JSP=true&metaQuery=tax&metaCategoryId=33722](http://gska2.rada.gov.ua/control/en/searcher?ccid=33722&showfn=true&ROOT_MENU_JSP=true&metaQuery=tax&metaCategoryId=33722) (last visited Oct. 20, 2005).) (Peter Roudik, 7-9861, prou@loc.gov)

**UNITED KINGDOM – Schools to Ban Junk Food**

In an attempt to reduce levels of childhood obesity, the U.K. Government Education Secretary has announced that all foods high in fat, salt, or sugar, such as hamburgers, are to be banned from schools from September 2006. The government is currently considering excluding vending machines from the ban, but it is very likely that the machines will be prohibited from stocking candy, chips, and high-sugar drinks. (BBC News, *Junk Food to Be Banned in Schools*, Sept. 28, 2005, at [http://news.bbc.co.uk/2/hi/uk\\_news/education/4287712.stm](http://news.bbc.co.uk/2/hi/uk_news/education/4287712.stm).) (Clare Feikert, 7-5262, cfei@loc.gov)



## NEAR EAST

### IRAN – Comprehensive E-Business Development Plan Adopted

By virtue of article 79 of the E-Business Law of January 2004, Iran's Council of Ministers, upon the recommendation of the Ministry of Commerce, approved a Comprehensive E-Business Development Plan in July 2005. According to the Council of Ministers decree, the Ministry of Justice, in cooperation with the Ministry of Commerce, is required to take the following steps:

- Draft a procedure law adaptable to the e-business environment, with special emphasis on providing the possibility of filing civil cases based on the commercial law and on ensuring a speedy trial.
- Draft a law on the jurisdiction of e-business operations, including provisions regarding extradition, judicial cooperation and exchange of information, and ways and means of preventing crimes related to e-business internationally.
- Draft a criminal law to prosecute violators (juristic or real persons) of e-business laws and regulations.
- In cooperation with the Central Bank and the Commerce Department, the Ministry of Justice is required to prepare a draft law providing for the criminal responsibility of juristic persons in the e-business environment, covering industrial espionage, disclosure of commercial secrets, fraud, credit card use, electronic banking, and patent and copyright matters.
- The Ministry of Commerce is required to prepare a draft law on mediation in the settlement of electronic business disputes. It must also draft e-business contract forms modeled after the UN/CEFACT and European forms of 1995, to facilitate healthy e-business relations without legal problems. (OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN, No. 17640, Aug. 2005, at 3 & 4.)

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### IRAN – Women Permitted to Drive Motorbikes

For the first time since the Islamic Revolution of 1979, women in Iran have been allowed to drive motorbikes. The prohibition was thought to have been based on the idea that driving a motorbike would reveal a woman's figure, even though under the Islamic code enforced in Iran women must cover up their bodies and wear non-revealing clothing. Women have thus not been issued licenses for driving motorbikes or riding bicycles since the Revolution. In recent years, however, as a result of growing opposition, the driving code was relaxed and women were allowed to ride bicycles. Now it has been announced it "is not an offense for women to ride motorcycles. They can apply, just like men, for a driver's license and ride while respecting Islamic values." (INTERNATIONAL IRAN TIMES, Oct. 7, 2005, at 1.)

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### ISRAEL – Reform in the Financial Market

On July 25, 2005, the Knesset (Israel's Parliament) passed three laws implementing the recommendations of a bi-ministerial team for the regulation and supervision of financial market activity in Israel. The main objective of the recommendations was to strengthen the competitive structure of the financial market in Israel and improve its efficiency. The laws contain measures to minimize the



centralization and conflict of interest of bodies active in this market, especially in the banking system, and increase control and oversight of such bodies and of those who control them. The three laws passed in order to implement the reforms are: Law for the Increase of Competition and Decrease of Centralization and Conflict of Interest in the Financial Market in Israel (Amendments), 5765-2005; Law for Supervision over Financial Services (Money Funds), 5765-2005; and Law for Supervision over Financial Services (Consulting and Marketing of Retirement Plans), 5765-2005. (Knesset website, at <http://www.knesset.gov.il> (last visited Oct. 14, 2005).) (Ruth Levush, 7-9847, rlev@loc.gov)

### **ISRAEL – Supreme Court Prohibits Use of Human Shields**

On October 6, 2005, the Israeli Supreme Court, sitting as a High Court of Justice, accepted a petition to declare illegal the use by Israel Defense Forces (IDF) soldiers of local Palestinian residents when attempting to detain a suspected terrorist. The procedure in question was that of making a resident deliver to the suspect an advance warning of the possible harm to him and whoever is with him should he or they resist.

The Court held that the law of belligerent occupation prohibits using protected residents as part of a military action. Based on this principle, it is illegal to use local residents as human shields or as deliverers of warnings from the military to those whom the military wishes to detain. According to Chief Justice Barak, based on the inherent imbalance of power between the military and local residents, it is unreasonable to expect that a resident will resist the military request to deliver a warning to the requested person.

Following the High Court's decision, the IDF Chief of Staff ordered IDF commanders to immediately cease using the above practice for the detention of terrorist suspects in the West Bank. It was reported that alternative detention procedures were being formulated in order to continue detentions while minimizing the risk to soldiers' lives. Among such detention techniques are the use of dogs to enter suspects' homes, destroying the house when a suspect refuses to surrender, etc. (H.C. 3799/02 Adalla - the Legal Center for the Rights of the Arab Minority In Israel et al. v. IDF Central Command Commander et al., <http://elyon1.court.gov.il/files/02/990/037/a32/02037990.a32.pdf>; Amos Harel et al., *Haluts Ordered to Immediately Stop Activating 'Neighbor Procedure,' IDF Compiling Alternate Detention Procedures*, HAARETZ ONLINE, <http://www.haaretz.co.il> (last visited Oct. 6, 2005).) (Ruth Levush, 7-9847, rlev@loc.gov)

### **SAUDI ARABIA – National Security Council Upgraded**

On October 16, 2005, King Abdullah issued a Royal Order approving the regulation of the National Security Council in Saudi Arabia. Another Royal Order, issued on the same date, appointed Prince Bandar Bin Sultan, the former Saudi ambassador to the United States, to a twenty-two-year term as Secretary General for the Council, at the rank of a Minister. The King will chair the new National Security Council, and Crown Prince Sultan bin Abdulaziz will be the Deputy Chairman. The Council will also include the head of the general intelligence service, the deputy commander of the National Guard, and the Ministers of Interior and Foreign Affairs.



The National Security Council will work under an expanded security concept to protect the Saudi military, political, societal, and economic interests and will consider internal and external national security matters that have a direct impact on the security of the Kingdom. The Council was first established during King Faisal's lifetime as part of the Ministry of Interior. It was previously headed by Nasser al Sudairi, who was also appointed, by a Royal Order issued on the same day, to be an advisor to the Interior Minister, Prince Naif bin Abdulaziz. (*Royal Orders No. A/296, A/297, & A/298*, Oct. 16, 2005; OKAZ NEWSPAPER, Oct. 17, 2005, [http://www.okaz.com.sa/OKAZ/Data/2005/10/17/Art\\_273786.XML](http://www.okaz.com.sa/OKAZ/Data/2005/10/17/Art_273786.XML); Syed Rashid Husain, *Saudi NSC to Have Extensive Powers*, THE DAWN, Oct. 20, 2005, <http://www.dawn.com/2005/10/20/top14.htm>; *National Security Council System Approved by King Abdullah*, ASHARQ AL-AWSAT, Oct. 17, 2005, <http://aawsat.com/english/news.asp?section=1&id=2203>.)

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### **SAUDI ARABIA – New Labor Law**

On September 26, 2005, the Saudi Council of Ministers approved new Labor Law that is designed to replace foreign manpower with Saudi workers. The new Law requires employers to have no less than seventy five percent of their work-force be Saudi nationals, and employers with twenty-five employees or more are required to reserve no less than four percent of the jobs for disabled persons who are professionally qualified. One of the most important items in the new law is the permission given to women to work in all fields compatible with their nature, though the Law does not clarify what "compatibility" with the women's nature exactly means. (AL SHARQ AL AWSAT NEWSPAPER, Internet edition, Sept. 27, 2005, at <http://www.asharqalawsat.com/>.)

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### **YEMEN – New Restrictions on Money Transfers**

A Yemeni official declared that the Yemeni Central Bank has begun imposing new control procedures over moneychangers and companies dealing with money transfers. He added that such procedures have been implemented in response to the recommendations made by the Joint Arab Monetary Committee working on the prevention of money laundering. A previous official order issued by the Central Bank to commercial banks, money changers, and financial institutions doing business in Yemen specified more stringent control regarding all monetary instruments sent out of or coming into the country, requiring the identification of the names of the owners of such instruments through submission of copies of their IDs or passports. (AL SHARQ AL AWSAT, Sept. 27, 2005, at <http://www.asharqalawsat.com/>.)

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## SOUTH ASIA

### AFGHANISTAN – Independent Human Rights Commission Established

The Council of Ministers of Afghanistan approved the Law on the Structure, Duties, and Authorities of the Afghanistan Independent Human Rights Commission in April 2005. Article 1 of the Law states,

This law is based on Article 58 of the Constitution of Afghanistan and Resolution 134 of December 20, 1993, of the United Nations Charter, with the purpose of supervising the observance of human rights and their improvement, and of lending support to the administration and operation of the Independent Human Rights Commission of Afghanistan.

The Commission operates under the authority of the Islamic Republic of Afghanistan. It is to function independently under the provisions of the Constitution, this new law, and other laws of the country.

The Law defines human rights as including the basic rights and freedoms of the citizens enumerated in the Constitution and in international declarations, conventions, agreements, protocols, and other international documents that Afghanistan is required to observe. Included among the human rights are equal and fair enjoyment of the insurance, social security, and services offered by the government. The Commission, composed of nine members (male and female) who are appointed by the President for five-year terms, has the duty to:

1. Supervise the implementation of human rights;
2. See that the provisions of the Constitution and other laws and regulations in relation to human rights are fully observed;
3. Supervise the operation of administrative and judicial authorities with respect to the execution of human rights;
4. See that government and non-government authorities are fairly distributing social security and services;
5. Inspect prisons and institutions for the insane;
6. Investigate violations of human rights;
7. Collect documents on violations of human rights;
8. Submit cases of violations of human rights to the respective authorities;
9. Present opinions and suggestions regarding changes and improvements in the laws and regulations in connection with human rights;
10. Advise the government on the joining of international accords in connection with human rights;
11. Publish information regarding human rights for the general public;
12. Present an annual report on the status of human rights to the President.

(OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, No.855, June 2005, at 1-24 (In Dari and Pushtu languages).)

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## AFGHANISTAN – Law on Firearms, Ammunition, and Explosives

The Council of Ministers of the Islamic Republic of Afghanistan approved a law in May 2005 on administration and control of firearms and explosives in the country. Article 4 of the law provides:

All firearms, ammunition, and explosives shall be under the control of the government. Other persons (juristic or real) have no right to manufacture, produce, export, or use them without legal permission. Violation of the provisions of this law shall be punishable according to the Criminal Code. The Ministry of the Interior may, in cases of emergency, distribute arms and ammunition among persons in defense of state or individual ownership or to protect the lives of people in accordance with the provisions of this law. Distribution of arms shall be made under a separate bill by the Ministry of Interior, which is the sole authority for the enforcement of the provisions of this law in the country.

The law forbids the issuance of permits to carry firearms for hunting of birds and animals for ten years. All private security organizations are subject to this law, but a separate law will regulate their operations. Article 9 of the law provides:

Afghani citizens and citizens of other countries who held firearms for hunting or as antiques prior to the passage of this law must apply to register such arms or ammunition within three months following the enforcement of this law.

Any person who refuses to register arms and ammunition mentioned in this law shall be subject to a fine equal to the price of the unregistered arms, plus confiscation of the arms and weapons.

Article 14 states, “[f]ollowing the implementation of the general disarmament plan, any person who possesses firearms, ammunition, and explosives must deliver them to the Ministry of the Interior in the Capital or the governors or gendarmerie in the provinces, against a receipt.” Persons or armed groups must deliver their arms to the special committee assigned to collect arms and ammunitions. (OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF AFGHANISTAN, No. 855, June 21, 2005, at 25-36 (in Dari and Pushtu languages).)

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## BANGLADESH – Alternative Dispute Resolution

The judicial system of Bangladesh moves slowly and is expensive to use. However, in 2002 the Civil Procedure Code (Amendment) Act was enacted to introduce an alternative dispute resolution (ADR) system in Bangladesh for the disposal of simple civil suits. Section 89A and 89B have been added to the Civil Procedure Code to allow parties to settle their disputes through mediation or arbitration. Before the enactment of this amendment, application of alternative dispute resolution was only available in suits involving family matters. Writing recently about the new system, Justice Latifur Rahman said, “[a]lternative dispute resolution by way of mediation, arbitration or conciliation is an alternative route to a more speedy and less expensive mode of settlement of disputes.” (Justice Latifur Rahman, *The Judiciary and Its Importance*, THE DAILY STAR, July 16, 2005, at <http://www.thedailystar.net/law/2005/07/03/>.)

The Civil Procedure Code (Amendment) Act, 2002 became effective on July 1, 2003, and civil courts in Bangladesh have started referring cases for mediation in disputes on topics other than family matters. Under the current Civil Procedure Code, the courts are required to refer relatively simple



cases to the mediators, leaving the cases involving complicated questions of facts and law to the civil courts for adjudication. (The Civil Procedure Code of Bangladesh, §§ 89A & 89 B, 2003.) (Shameema Rahman, 7-3812, srah@loc.gov)

### **BANGLADESH – New Anti-Terror Law**

Following a series of terrorist bomb attacks that killed and injured hundreds of people in Bangladesh, the Law Ministry has prepared a stringent new, comprehensive anti-terror law. The draft bill suggests that it would provide the death penalty as the maximum punishment for those involved in terrorist activities and would also establish special tribunals to deal with such cases. The proposed law would be similar to the anti-terror laws in Great Britain, and the United States.

Four hundred nearly simultaneous bombings and attacks on courts and meetings prodded the Bangladesh Government to combat the menace of terrorism. The bill proposes that a person may be arrested without warrant and will not be granted bail by any court until the investigation and proceedings are completed. According to the Government, the provisions in the bill are similar to those contained in the American, British, Indian and Pakistani laws. (*Bangladesh Plans Harsh New Anti-terror Law*, THE MANORAMA ONLINE, Oct. 12, 2005, <http://www.manoramaonline.com/servlet/ContentServer?pagename=manorama/MmArticle/CommonFullStorry&cid=11286662>.) (Krishan Nehra, 7-7103, kneh@loc.gov)

### **INDIA – Government to Computerize Judiciary**

The Government of India has drawn up a five-year National Program for Computerization of the Judiciary, to be implemented in three phases at a cost of approximately 200 million dollars. The program is based on the National Policy and Action Plan prepared by the E-Committee for appropriate implementation of information and communication technology (ICT) in courts across the country and their web-based interlinking. The first phase of the plan includes introduction of ICT and a computer-based environment in the judicial system, installation of a computer room at court complexes, uploading a website (<http://www.indianjudiciary.in>) for in-depth information on the judiciary, creating a National Judicial Data Grid, and establishing committees to monitor the ICT implementation in court complexes. This phase involves implementation of Wi-Fi (wireless fidelity) on the Supreme Court and High Court premises, introducing video conferencing between courts and prisons at one hundred locations, and providing judges with laptop computers.

The second phase will extend the information technology-related infrastructure and training programs. The last phase will include the creation of a digital archive and installation of a digital library management system. (*Plan to Computerise Judiciary Unveiled*, THE HINDU, Oct. 5, 2005, <http://www.hindu.com/2005/10/05/stories/2005100508081500/htm>.) (Krishan Nehra, 7-7103, kneh@loc.gov)

### **INDIA – Right to Information Law**

A right-to-information law has come into effect in India. It focuses on information held by government agencies, but some information reported to government bodies by private-sector organizations is also covered. The law is intended to limit corruption and inefficiency in the government and provides for fines and disciplinary action against offending officials. It covers a wide



range of information, including records, documents, memos, e-mails, opinions, reports, and data held in any electronic form. Penalties are provided for failing to release information in time, for refusing to accept an application for information, and for giving incorrect, incomplete, or misleading information. There are exemptions in the law on grounds of personal privacy and for some intelligence agencies. (*Indians Win Right to Information*, BBC NEWS, Oct. 14, 2005, <http://news.bbc.co.uk/go/pr/fr/-/hi/south%20asia/4334080.stm>; *India Gets Teeth Against Corruption*, ASIA TIMES ONLINE, Oct. 21, 2005, [http://www.atimes.com/atimes/South Asia/GJ21Df01.htm](http://www.atimes.com/atimes/South%20Asia/GJ21Df01.htm).) (Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

### INDIA – Supreme Court Voids Presidential Proclamation Dissolving State Assembly

On October 7, 2005, the Supreme Court of India granted the petitions against the Presidential Proclamation of May 23, 2005, dissolving the State of Bihar Assembly. The Supreme Court criticized the haste with which the State Governor had acted and the President had accepted the Governor's recommendations on dissolution that were contained in two reports of April 27 and May 21, 2005. The petitions involved highly intricate and important questions of law that would have far reaching impact. The decision of the constitutional bench of five judges produced a major embarrassment for the United Progressive Alliance (UPA), a political coalition composed mainly of the Congress Party and the Communist Party. Despite the unconstitutionality of the impugned Proclamation, the court stated it would not be fitting to restore the *status quo ante* for restoration of the Legislative Assembly, since the Election Commission had already taken steps to hold new elections for the state assembly. While criticizing the action of the governor, the court observed that it was obvious that the "indecent haste" with which the governor acted was due to his intention to prevent the formation of a government by the opposition parties, the Bharatiya Janata Party and the Janata Dal. In further castigating the Central Government, the court stated that there was no explanation given for the hurry shown in having the Proclamation signed by the President. (*The Bihar Assembly Dissolution Unconstitutional: Apex Court*, THE HINDU, Oct. 8, 2005, <http://www.hindu.com/2005/10/08/stories/2005100813740100.htm>.) (Krishan Nehra, 7-7103, kneh@loc.gov)

### NEPAL – Court Calls for Ban on Female Segregation

On September 14, 2005, the Supreme Court of Nepal ordered the government to ban the practice of *chhaupadi* (also spelled *chhapadi*), under which a menstruating woman is to be separated from her home and live in the barn for the duration of her period. The joint bench, comprising justices Anup Raj Sharma and Arjun Prasad Singh, ordered the government to declare *chhaupadi* illegal within one month and to draft legislation within three months that would abolish the "evil practice." The Court has also asked the government to submit "as soon as possible" a report to be prepared by a team of doctors on the impact of *chhaupadi* on the lives of women and children in the areas where it has been practiced. *Chhaupadi* is apparently commonly implemented in remote villages in western Nepal, but in other parts of the country menstruating women may also face discrimination by being prohibited from entering temples, attending religious ceremonies, and cooking food. (*Nepal Court Calls for Ban on Traditional Segregation of Women*, BBC MONITORING INTERNATIONAL REPORTS, Sept. 15, 2005, & *Nepal's Supreme Court Orders End to Discrimination Against Women*, ASSOCIATED PRESS WORLDSTREAM, Sept. 15, 2005, LEXIS/NEXIS, News Library, 90days File.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)





**NEPAL – Public Interest Litigation on Tear Gas Use**

On September 13, 2005, three students filed at the Supreme Court a public interest litigation petition against Nepal's Cabinet Secretariat, Ministry of Home Affairs, army and police headquarters, and the Kathmandu district administration, urging the Court to order these government authorities not to use water cannons and tear gas shells against pro-democracy demonstrators. The petitioners contended that a number of the protesters had been injured during recent protests. They argued that the government had no authority to suppress people fighting for their rights and that "use of tear gas shells is affecting the health of both the agitators and those living in the vicinity"; therefore the use of such force by the government should be mandated to end. (*Nepal Supreme Court Asked to Ban Use of Tear Gas Against Protesters*, THE HIMALAYAN TIMES website, Sept. 14, 2005, LEXIS/NEXIS, News Library, 90days File.)

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

**PAKISTAN – Same-Sex Marriage Concluded in Frontier Area**

A forty-two-year old Afghan refugee in the Tirah Valley, near the Afghan border, is reported to have taken a sixteen-year old boy as his "male bride." The boy's impoverished parents accepted 40,000 rupees (about US\$668) as bridewealth, and the marriage was celebrated with the customary tribal (presumably Pathan) pomp. Such a marriage would have no validity under the laws of Pakistan, but Pakistani law is seldom enforced in the remote tribal areas of the Northwest Frontier. (*First Gay 'Marriage' in Pakistan*, BBC NEWS, Oct. 5, 2005, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/south asia/4313210.stm>.)

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

**SRI LANKA – Media Election Guidelines**

On October 13, 2005, the Sri Lankan Elections Commissioner, Dayananda Dissnayake, issued guidelines to both government and independent media organizations on reporting in the period before the November 17, 2005, presidential election. The rules are binding on state-run media, but only advisory for private organizations. The Commissioner directed media not to report news that is "biased and partisan towards any presidential candidates." Furthermore, he said that any reports about public meetings, press conferences, or public statements about the election made by the head of the government or by a political party leader should be subject to a right of reply. (*Sri Lanka Poll Chief Issues Guidelines to All Media Over Election Reporting*, COLOMBO PAGE: SRI LANKAN INTERNET NEWSPAPER, Oct. 13, 2005, <http://www.colombopage.com/archive/October13134600JV.html>.)

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

**WESTERN HEMISPHERE****BRAZIL – Safeguards Against Chinese Imports**

The Brazilian government issued a decree on October 5, 2005, allowing companies to ask the federal government to increase safeguards against Chinese imports. Decree No. 5,558 establishes that the federal government may apply safeguards against Chinese textile imports that are increasing in such quantity and under such conditions that they cause or threaten to cause the disorganization of the local



market, preventing the orderly development of the textile industry. The Decree was issued in response to numerous complaints from Brazilian shoe, toy, and textile companies that were being hurt by the new bilateral relationship between the two countries and the resultant tremendous increase in inexpensive Chinese imports into the Brazilian market.

Brazil is now facing the consequences of a political decision made in November of 2004, recognizing China as a market economy where there is minimal state intervention and goods and services are traded according to their exchange values. This decision has the effect of making it harder for Brazil to impose penalties on China for the practice of dumping, for example. Market economy status entitles China to the protection of WTO rules, complicating the investigative process in a dumping case. The difficult task for Brazil is going to be to demonstrate that Chinese prices are not artificial due to government participation and still maintain the commercial relationship between the two countries at the same level. (Decreto No. 5,558, Oct. 5, 2005, D.O.U. Oct. 6, 2005, (Brazil), at <https://www.planalto.gov.br/>; see also Fernanda de Negri, Instituto de Pesquisas Econômicas Aplicadas, *Concorrência Chinesa no Mercado Brasileiro: Possíveis Impactos da Consessão, para a China, do Status de Economia de Mercado. Contexto e Implicações da Consideração da China Como Uma Economia de Mercado*, BOLETIM DE CONJUNTURA 68 (Mar. 2005), available at [http://www.ipea.gov.br/pub/bccj/bc\\_68l.pdf](http://www.ipea.gov.br/pub/bccj/bc_68l.pdf); Vicente Marcos Fontanive, *Parecer Técnico sobre a Regularidade Jurídica do Procedimento adotado pelo Executivo Federal no Processo de Reconhecimento da República popular da China como Economia de Mercado*, Nov. 18, 2004, available at Brazilian Chamber of Deputies website, <http://www2.camara.gov.br/comissoes/credn/publicacao/Economia%20de%20Mercado%20da%20China.htm>; Matt Moffett & Geraldo Samor, *Brazil-China Trade Romance Cools Off*, THE WASHINGTON POST, Oct. 11, 2005, at D6, available at <http://www.washingtonpost.com>.)

(Eduardo Soares, 7-3525, esoa@loc.gov)

#### **CANADA – No Charitable Immunity in Sexual Abuse Case**

The Supreme Court of Canada has ruled that a church found to have been partially responsible for sexual abuse that occurred at a residential school could not claim immunity from damage claims because it tries to do good works. Canada had a number of residential schools prior to the 1970s that were composed primarily of native students. The federal government and various churches jointly ran these schools. There have been many allegations of sexual abuse having occurred at the residential schools. At a trial held in British Columbia, the federal government was found to be seventy-five percent responsible and a church twenty-five percent responsible for damages suffered by a particular group of plaintiffs. The Court of Appeal for that province ruled that the church enjoyed immunity and that the federal government should be held wholly responsible. The Supreme Court restored the trial court's decision. The Court took the position that giving the church full immunity "would not motivate such organizations to take precautions to screen their employees and protect children from sexual abuse." (Blackwater v. Plint, 2005 S.C.C. 58 (Oct. 21, 2005), <http://www.lexum.umontreal.ca/csc-scc/en/rec/html/2005scc058.wpd.html>.) The lead claimant in the case is to receive approximately US\$170,000 in damages as a result of the ruling. (*Ottawa Not Fully Liable for Residential School Claims: Supreme Court*, CBC NEWS, Oct. 21, 2005, <http://www.cbc.ca/story/canada/national/2005/10/21/residential-school-ruling051021.html>.)

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



### **CANADA – Ontario to Follow United States Savings Time**

The Government of Ontario has announced that the province will follow the United States in extending daylight savings time by four weeks, beginning in 2007. The matter had been studied by a committee, which concluded that a misalignment with the United States could have a negative impact. Of particular concern were possible trade disruption and increased border pressures. The Government also believes that the extended hours could reduce pedestrian injuries. (*Ontario to Follow U.S. on Daylight Time*, Oct. 20, 2005, GLOBE AND MAIL.COM, <http://www.theglobeandmail.com/servlet/story/RTGAM.20051020.wtime1020/BNStory/National/>.) The authority to extend daylight savings time was conferred upon the Government by the Time Act (R.S.O. c. T.9 (1990), as amended.) Most other Canadian provinces are expected to follow Ontario's lead. Saskatchewan is the only province that does not generally have any form of daylight savings time. (Steve Clarke, 7-7121, scla@loc.gov)

### **CANADA – Rwandan Charged with Genocide**

A Rwandan man who entered Canada with a counterfeit passport in 1998 and claimed refugee status in the country has become the first person to be charged under Canada's Crimes Against Humanity and War Crimes Act. (2000 S.C. c. 24.) This statute was enacted in 2000 to give Canadian courts jurisdiction to try persons for acts of genocide, crimes against humanity, and war crimes committed outside of Canada. The Act defines the term "genocide" as an act intended to destroy, in whole or part, an identifiable group of persons. (S. 7(3).)

The Rwandan now accused of genocide was denied refugee status in 2000 on the grounds that there was evidence that he had committed atrocities before coming to Canada. However, he was allowed to appeal the decision. In 2002, the Federal Court upheld the Immigration and Refugee Board's decision, but the accused was still not deported. Instead, the Canadian Government sought assurances from Rwanda that he would not face the death penalty if he were returned to that country (*see related story in 2005 WLB 10*). Rwanda has declined to give such assurances and the accused has continued to live in Toronto. When another Rwandan refugee came forward to give evidence against the accused, the police decided to lay charges in Montreal. Montreal was chosen because it is the place where the accused first presented his refugee claim. If convicted in Canada, the accused could be sentenced to life imprisonment. (*Accused Hutu Appears in Court*, GLOBE AND MAIL.COM, Oct. 21, 2005, <http://www.theglobeandmail.com/servlet/story/RTGAM.20051021.wxwarcrimes21/BNStory/National/>.) (Steve Clarke, 7-7121, scla@loc.gov)

### **COLOMBIA – New Divorce Law**

On July 8, 2005, Law 962/2005 was passed to allow a faster process for a number of administrative and other official procedures, including divorce. Under the new law, couples without minor children may be divorced when authorized by a notary public, upon the agreement of both parties. If there are children, a custody agreement must be submitted before a family affairs court official, who would then authorize the divorce or refer the case to the competent court to decide.



This procedure will only apply to Colombians and foreigners married in Colombia. The new law was strongly criticized by the Catholic Church in Colombia, which believes the new procedure will encourage couples to resort to divorce more easily. (Law 962, July 8, 2005, DIARIO OFICIAL July 8, 2005, <http://www.serviotu.com/Leyes/2005/962.htm>.) (Graciela Rodriguez-Ferrand, 7-9818, [grod@loc.gov](mailto:grod@loc.gov))

### **MEXICO – Guidelines on Money Laundering Operations**

The Financial Intelligence Unit of the Secretariat of Finance and Public Credit (SHCP) issued and distributed guidelines to banks, stock exchange institutions, and insurance companies on approximately one hundred unusual and suspicious operations that could be related to money laundering. In addition, the SHCP insisted that these institutions thoroughly verify the information relating to clients who perform operations with countries with “preferential fiscal regimens” or with countries and territories considered by the International Financial Action Task Force Against Money Laundering (GAFI) as not being cooperative in combating money laundering. (Romina Román Pineda, *SHCP Difunde Guía Contra el ‘Lavado’*, EL UNIVERSAL, Oct. 24, 2005, <http://www2.eluniversal.com.mx>.) (Norma C. Gutiérrez, 7-4314, [ngut@loc.gov](mailto:ngut@loc.gov))

### **MEXICO – Freedom of Expression Limited in Flag Desecration Case**

In a three-to-two decision, Mexico’s First Chamber of the Supreme Court of Justice rejected a constitutional challenge to article 191 of the Federal Penal Code, which stipulates prison time and fines for anyone who offends the national flag and symbols, whether by word or deed. The constitutional challenge was filed by a person charged by the Office of the Federal Attorney General with offending the national flag in a poem. The Court held that “offenses to the flag” violate the limits that the Constitution imposes on freedom of speech and the press; therefore, such offenses can be penalized with imprisonment because that punishment is not unconstitutional in connection with those acts. The Court added that legislators can create laws that prohibit and penalize free speech in cases where they believe that when making use of free speech there is an attack on morality, infringement on the rights of others, incitement to the commission of crimes, or disturbance of the peace or when in making use of the freedom of writing and publishing on any subject there is a violation of respect for private life, morality, or public order. In sum, legislators can create laws curtailing free speech in cases in which they believe such speech violates the limits articles 6 and 7 of the Constitution impose on freedom of expression and the press.

A dissenting opinion stated that the right to free speech protects the expression of ideas that are unpopular. Moreover, it held, to use criminal law to protect the flag against the crimes of flag desecration typified in article 191 of the Federal Criminal Code contradicts the very idea of freedom that the flag represents. (Carlos Avilés, *Corte Respalda Acusación Contra Ultraje a la Bandera*,” EL UNIVERSAL, Oct. 6, 2005, <http://www2.eluniversal.com.mx>.) (Norma C. Gutiérrez, 7-4314, [ngut@loc.gov](mailto:ngut@loc.gov))



## MEXICO – Visa Waiver Program Suspended for Three Nations

The Mexican government announced recently that individuals from Brazil, Ecuador, and South Africa will no longer be allowed to enter Mexico through the visa waiver system. The National Immigration Institute (NII) stated that individuals from these countries often became victims of abuse in traveling to Mexico through the visa waiver program. Therefore, the NII determined that travelers from these countries will be safer entering Mexico under the regular visa system.

The NII stated that government officials in Mexico and Brazil discovered organized criminal networks that smuggle aliens from Brazil to Mexico. Mexican immigration authorities reported that thousands of Brazilians were arriving at the Mexico City airport with one-way air tickets and no luggage, which prevented them from entering Mexico as tourists. However, the NII stated that during 2005, almost 50,000 Brazilians complied with immigration regulations and were allowed to enter Mexico as tourists without visas. (Press Release 171/05, Mexico National Immigration Institute, *Mexico Suspends the No-Visa Policy for Individuals from Brazil, South Africa and Ecuador*, <http://www.inami.gob.mx/paginas/boletinescs/comunicado171.htm> (last visited on Oct. 19, 2005); Press Release 205/05, Mexico National Immigration Institute, *Mexico Will Issue Multiple-Entry Visas to Brazil, Ecuador, and South Africa*, <http://www.inami.gob.mx/paginas/boletinescs/boletin205-05.htm> (last visited on Oct. 19, 2005).)  
(Gustavo Guerra, 7-7104, [ggue@loc.gov](mailto:ggue@loc.gov))

## NICARAGUA – National Assembly Ratifies CAFTA

After lengthy debates, the National Assembly of Nicaragua ratified the United States-Central America and the Dominican Republic Free Trade Agreement (CAFTA-DR), with forty-nine votes in favor and thirty-seven against. The “no” votes were from lawmakers from the Sandinist National Liberation Front (FSLN), the votes in favor were from legislators of the Constitutional Liberal Party, the Blue and White [the colors of the flag] Party, and the Christian Way Party.

The two most senior Sandinist leaders in the National Assembly were not present for the vote. Tomás Borge left the Assembly before the voting started, and Bayardo Arce did not even attend the debate.

During the debates, Alba Palacios, a Sandinist legislator, warned that approximately one million rural countrymen, who depend for a living on their small agricultural production, would face a serious situation when they compete with U.S. producers who receive large subsidies. On the other hand, after the ratification, Azucena Castillo, the Minister of Industry, Development and Trade, stated that Nicaragua would absorb approximately 500 million dollars in direct foreign investment during the first year of the Agreement. (Luis Nuñez Salmerón, *CAFTA-DR Approved*, LA PRENSA, Oct. 11, 2005, <http://www.laprensa.com.ni>.)  
(Norma C. Gutiérrez, 7-4314, [ngut@loc.gov](mailto:ngut@loc.gov))



## INTERNATIONAL LAW AND ORGANIZATIONS

### AFRICAN NATIONS – Poultry Import Bans

Seven African nations from different parts of the continent, Congo, Ghana, Kenya, Senegal, Sudan, Tanzania, and Uganda, have banned imports of poultry from the parts of Asia affected by avian flu. There is still concern among African countries that migratory birds from East Asia and Europe may carry the disease.

In Mauritius, which is an island nation, “we are on high alert because of around 3,000 migratory birds which come to Mauritius every year which can transmit the disease,” stated Lewis Prayag, the chief veterinary officer. (*Senegal Follows Kenya in Poultry Imports Ban*, THE STANDARD, Oct. 22, 2005, [http://www.eastandard.net/hm\\_news/news.php?articleid=30906](http://www.eastandard.net/hm_news/news.php?articleid=30906).) The ban in Ghana covers imports from thirteen countries, including China, South Korea, and Iran, which together sold eighty tons of poultry to Ghana in 2004. In addition to the ban put in place on October 21, 2005, in Senegal, veterinarians are now required to inspect all poultry stock, any dead bird must be wrapped in plastic and taken for inspection, and an emergency plan is being drawn up to handle cases of infected birds migrating to the national parks. Kenya has launched a public awareness campaign about the disease. Public health officials are particularly concerned about the possibility of an avian flu pandemic in Africa, where many health care facilities are already overtaxed. (*African Countries Act on Bird Flu*, BBC NEWS, Oct. 25, 2005, <http://news.bbc.co.uk/1/hi/world/africa/4363256.stm>.) (Constance A. Johnson, 7-9829, cojo@loc.gov)

### ASEAN – Cyber-Terrorism Seminar

The second ASEAN Regional Forum (ARF) Seminar on Cyber-Terrorism took place October 3-5, 2005, in Cebu City, Philippines. Cyber-security experts, policy-level officials, terrorism experts, and diplomats from sixteen ARF-participating countries attended.

Some of the recommendations agreed to by the delegates include 1) creating a directory of contact points on key cyber security areas; 2) establishing an ARF-wide network of computer emergency response teams; 3) collaborating in digital forensics; and 4) providing mutual legal assistance in prosecuting cyber-terrorists and hackers. (*Counter Cyber-Terrorism Measures Pushed for Inclusion in Anti-Terror Bill*, Philippines Information Agency, Press Release, Oct. 6, 2005, at <http://www.pia.gov.ph/news.asp?fi=p051006.htm&no=21>.) (Gustavo E. Guerra, 7-7104, ggue@loc.gov)

### AUSTRALIA/PHILIPPINES – Status of Forces Agreement

Speaking in Manila on October 17, 2005, Australian Defense Minister Robert Hill announced he was negotiating a status of forces agreement with the Government of the Philippines. This would permit Australian troops to join Philippine or Philippine and United States’ armed forces in counter-terrorist exercises in the Philippines. The Australian Government considers it likely that terrorist groups in Indonesia, such as those responsible for bombings in Bali that have killed Australians, have received training and sanctuary in Mindanao, in the southern Philippines. Australia already provides training for about sixty Philippine soldiers each year in Australia, and some Australian police are in the Philippines training their local counterparts in bomb investigation techniques. In the near future, an



Australian Air Force patrol plane will be sent to assist the Philippine forces in surveillance of the Sulu and Celebes seas. (*Diggers' Asian Terror Front*, THE AUSTRALIAN, Oct. 19, 2005, at <http://www.theaustralian.news.com.au/>; Media Release, Senator the Hon. Robert Hill, Minister for Defence, *Counter Terrorism Initiatives to Target Southern Philippines*, Oct. 17, 2005, at <http://www.minister.defence.gov.au/Hilltpl.cfm?CurrentId=5187>.) (Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

### **BELGIUM/CHAD/SENEGAL – Belgian Court Seeks Extradition of Former Chad President**

On September 19, 2005, investigating judge Daniel Fransen of the Brussels district court issued a warrant for the arrest and extradition of former Chad president Hissène Habré on charges of breaking “international humanitarian law,” in connection with alleged torture and other atrocities committed during his rule from 1982 to 1990. The order was issued under Belgium’s “universal jurisdiction law,” under which prosecution of crimes against humanity may be pursued regardless of their place of commission. Although the law was repealed two years ago under international pressure, the Habré case was allowed to continue because the investigation had already commenced before the law’s repeal and because three plaintiffs are Belgian citizens.

The Habré regime, in particular the intelligence service, is accused of “arbitrary and collective arrests, mass murders and systematic acts of torture, directed notably against members of certain ethnic groups in the country,” according to the warrant. Human Rights Watch deemed the issuance of the warrant a “groundbreaking move reminiscent of Spain’s arrest warrant for General Augusto Pinochet of Chile.” The Chadian Truth Commission, established in 1992 by the successor government, has accused Habré’s regime of committing an estimated 40,000 murders and stealing more than €1.1 million (about US\$11 million) from the Chadian treasury. Habré now lives in exile in Senegal; courts there apparently contend they cannot try him for crimes committed elsewhere. The Belgian request for extradition was expected to go to the indicting chamber of the Dakar appeals court in Senegal by around the end of October. Habré can challenge the extradition. If the court rules against him, it would be Senegal President Abdoulaye Wade’s decision whether to sign an extradition decree. (Stefania Bianchi, *Rights: Chad Dictator Faces Belgian Warrant*, INTER PRESS SERVICE (Johannesburg), Sept. 30, 2005, allAfrica.com, <http://allafrica.com/stories/printable/200510030211.html>; *Chad: Belgium Seeks Arrest of Ex-President Habre for Breaching Humanitarian Law*, AFP, Sept. 29, 2005, Foreign Broadcast Information Service online subscription database.)

In late August 2005, the Premier of the Chadian Government announced in a letter to HRW that the Government would remove all of Habré’s accomplices from their posts. He also reportedly stated “the government would quickly consider a draft law to compensate Habré’s victims and would construct a monument to honor the memory of the victims as soon as it had the funds to do so.” (Human Rights Watch, *Government Promises Justice for Victims of Ex-Dictator*, AFRICA NEWS, Aug. 23, 2005, LEXIS/NEXIS, News Library, 90days File.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **BURKINA FASO/TAIWAN – Aviation Agreement**

Vice Minister of Transportation and Communications Oliver F. L. Yu of Taiwan and his counterpart from Burkina Faso, Patrice Nikiema, signed an aviation agreement in Taipei on October 6, 2005. The pact states that each side can designate airline carriers to operate flights between the two



countries, even though at present civil aviation officials said that Taiwan carriers have no plans to start service to Burkina Faso. (*Taiwan, Burkina Faso Sign Aviation Pact*, YAHOO FINANCE SINGAPORE, Oct. 7, 2005, <http://sg.biz.yahoo.com/051007/16/3vh95.html>.)  
(Constance A. Johnson, 7-9829, cojo@loc.gov)

### **CENTRAL AMERICA – Negotiation of Free Trade Agreement with Canada**

According to Dean García, director of trade negotiation in the Ministry of Industry, Development and Trade of Nicaragua, the so-called CA-4 countries, Guatemala, El Salvador, Honduras, and Nicaragua, hope to reach an agreement with Canada in the coming weeks to re-initiate negotiations for a free trade agreement. The talks were halted in February 2004. (Mario José Moncada, *A Negociar con Canadá*, LA PRENSA, Oct. 11, 2005, <http://laprensa.com.ni>.)  
(Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

### **CHINA/UNITED NATIONS – Ratification of Anti-Corruption Convention**

On October 27, 2005, the Standing Committee of the National People's Congress ratified the U.N. Convention Against Corruption. At the same time, however, it declared that China would not be bound by article 66, paragraph 2, of the treaty. The Chinese Government had signed the Convention on December 10, 2003. As of September 15, 2005, thirty countries had approved the Convention. It will enter into effect on December 14, 2005. (*Xinhua 'Urgent': NPC Standing Committee Approves UN Convention Against Corruption*, XINHUA, Oct. 27, 2005, Foreign Broadcast Information Service online subscription database, ID No. CPP20051027057004; *Tenth National People's Congress Standing Committee Adopts 'United Nations Convention Against Corruption,'* CHINACOURT, Oct. 27, 2005, <http://www.chinacourt.org/public/detail.php?id=182918>.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **COUNCIL OF EUROPE – Three Important Conventions**

On May 16, 2005, at the Warsaw Summit of the Heads of State and Governments, the Council of Europe opened for signature two conventions on terrorism and money laundering and one against trafficking in human beings. To date Austria, Azerbaijan, Croatia, Cyprus, Denmark, Finland, Iceland, Luxembourg, Malta, Moldova, Poland, Portugal, Romania, Serbia and Montenegro, Spain, Sweden, Ukraine, and the United Kingdom have signed the Convention on the Prevention of Terrorism. The Convention on Laundering, Search, Seizure, and Confiscation of the proceeds from Crime and on the Financing of Terrorism replaces the 1990 Convention regulating the same subject. It has been signed by Austria, Belgium, Cyprus, Iceland, Luxembourg, Malta, Moldova, Poland, Portugal, Serbia and Montenegro, and Sweden. The third document, the Convention on Action Against Trafficking in Human Beings, has been signed by Armenia, Austria, Croatia, Cyprus, Iceland, Luxembourg, Malta, Moldova, Norway, Poland, Portugal, Romania, Serbia and Montenegro, and Sweden. (Press Release, Council of Europe, *Three Major Conventions by the Council of Europe Opened for Signature*, available at [http://press.coe.int/cp/2005/262a\(2005\).htm](http://press.coe.int/cp/2005/262a(2005).htm) (last visited Oct. 20, 2005).)  
(Theresa Papademetriou, 7-9857, tpap@loc.gov)





## CUSTOMARY LAW – Institute of Peace Report

The United States Institute of Peace has issued a report by Astrid S. Tuminez entitled *Ancestral Domain in Comparative Perspective* (Special Report No. 151, Sept. 2005, available at <http://www.usip.org/pubs/specialreports/sr151.html>.) According to Tuminez, in order to prevent or end civil wars, the existence of minority groups in any country with divided indigenous populations requires that these groups be integrated as full citizens in a unified nation. For example, notwithstanding a signed peace agreement in the Sudan between the north and the south, difficulties still remain in attempts to create a unified, cohesive nation. Tuminez offers the explanation that tensions and conflicts in divided societies continue because communities retain deep-seated prejudices against each other and feel threatened, and this naturally adversely affects the development of law and institutions of governance.

Disenfranchised groups in indigenous communities are often willing to fight for their rights, gain control of economic resources, and ensure that relevant governmental structures be established at the grass roots level to directly address indigenous exigencies. Examples include the Dinka in the southern part of Sudan; the Ogoni of Nigeria; the Bushman people in Botswana, Namibia, South Africa, and Zambia; the Masai of Kenya and Tanzania; and the Batwa in Burundi, the Democratic Republic of Congo, the Republic of Congo, and Rwanda. Other examples of indigenous communities around the world cited in the report are Native Americans, Maoris in New Zealand, Inuit in Canada, and Tamils in Sri Lanka. With conflict and tensions between these indigenous communities and the larger society, their legal structures and systems of law suffer and do not develop at the same pace as the legal system of the larger society. Nonetheless, a legal system is discernible whose classification by conventional means is not applicable, requiring the development of an alternative means of categorization that recognizes the availability of customary law norms in these communities. (Charles Mwalimu, 7-0637, [cmwa@loc.gov](mailto:cmwa@loc.gov))

## INDIA/UNITED STATES – Mutual Assistance in Criminal Matters

The bilateral Treaty on Mutual Legal Assistance in all criminal matters between India and the United States, signed in 2001, became effective on October 3, 2005, upon ratification by the two countries. The treaty represents an important step forward in India-United States law enforcement and counter-terrorism cooperation by putting in place a regularized channel for obtaining assistance. It will also simplify and expedite the process of obtaining responses to requests.

In addition to terrorism, the treaty will help the countries in the investigation of other criminal offenses, including those related to narcotics, trafficking, and economic and other organized crimes. The agreement also includes assistance in taking testimony or statements of persons; providing documents, records, and items of evidence; locating or identifying persons or items; serving documents; transferring persons in custody for testimony; executing requests for searches, etc. In each case, the requested state will bear the costs, except for fees of expert witnesses; the costs of translation, transcription, and interpretation; and expenses relating to travel. (*India, U.S. Ratify Treaty on Legal Aid*, THE HINDU, Oct. 4, 2005, <http://www.hindu.com/2005/10/04/stories/2005100406301100.htm>; *India, U.S. Sign Treaty on Criminal Matters*, THE TRIBUNE, Oct. 4, 2005, <http://www.tribuneindia.com/2005/20051004/main7.htm>.) (Krishan Nehra, 7-7103, [kneh@loc.gov](mailto:kneh@loc.gov))



### ITALY/EU – Lawyers Protest Money Laundering Directives

In Rome, Guido Alpa, Chair of Italy's National Bar Council, which enrolls 160,000 lawyers, protested two European Union directives that are expected to go into force in the near future. The first, the Third Anti-Money Laundering Directive, approved by the Council of Economic and Finance Ministers on June 7, 2005, requires lawyers throughout Europe to report their clients if the lawyers become aware of possible money laundering and funding of international terror. The second, if it enters into force, will forbid the lawyer to tell the client that he has been reported. Mr. Alpa is reported as ready to take his organization before any court to defend professional secrecy and has been quoted as saying that although Italian attorneys are ready to contribute to the battles against laundering and terrorism, "we firmly intend to abide by the rule of professional secrecy and preserve our clients' trust." (Press Release IP/05/682, European Commission, *Adoption of Anti-Money Laundering Directive Will Strike a Blow Against Crime and Terrorism*, June 7, 2005, <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/682&format=HTML&aged=1&language=EN&guiLanguage=en>; *Italian Legal Profession Protests at Upcoming EU Directive on Money Laundering*, LA STAMPA, Oct. 9, 2005, Foreign Broadcast Information Service online subscription database, ID No. EUP 20051009058007.) (Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

### MALAWI/UNITED STATES – Millennium Challenge Corporation Threshold Pact

On September 23, 2005, in Washington, D.C., the U.S. Government's Millennium Challenge Corporation (MCC) and the Government of Malawi announced agreement on awarding US\$20.92 million to Malawi for a "threshold country plan" aimed at fighting corruption and improving the country's fiscal policy, with a view to stimulating long-term economic growth and development. As part of the plan, among other measures, Malawi is to improve fiscal management by passing and implementing anti-money laundering and combating financing of terrorism legislation that conforms to international standards and establish an effective Financial Intelligence Unit; develop and pass a Declaration of Assets Law to ensure transparency among government officials; strengthen National Assembly oversight by empowering the committee system; train journalists and media professionals to report and analyze corruption; and build legal skills capacity among judges, police prosecutors, media and others. USAID actively worked with Malawi in developing its Threshold Plan and will oversee its implementation, and the MCC is working with the U.S. Departments of Treasury and Justice to assist the Malawians in achieving their goals. (*Millennium Challenge Threshold Pact with Malawi Summarized*, STATES NEWS SERVICE, Sept. 26, 2005, LEXIS/NEXIS, News Library, 90days File.)

The MCC is a new government corporation established with bipartisan support on January 23, 2004, to administer the Millennium Challenge Account (MCA). The MCA is a mechanism inaugurated by President George Bush whereby development assistance would be provided to countries that "rule justly, invest in their people, and encourage economic freedom." (Millennium Challenge Corporation, *The Millennium Challenge Account*, [http://www.mcc.gov/about\\_us/overview/index.shtml](http://www.mcc.gov/about_us/overview/index.shtml) (last visited Oct. 11, 2005).) (Wendy Zeldin, 7-9832, wzeld@loc.gov)



## MEXICO/UNITED STATES – Initiatives to Combat Narcotics-Related Violence on the Border

The United States' and Mexican Attorneys General met in San Antonio, Texas, on October 13, 2005, to discuss mutual concerns and to review a series of law enforcement initiatives to strengthen a coordinated attack on the narco-violence plaguing the communities on both sides of the border. The recommended and agreed-upon bilateral initiatives are as follows:

Tactical Law Enforcement Efforts: The federal and state criminal justice authorities of the two nations have committed to coordinating law enforcement efforts, using all available legal authorities, to counter and quell the extreme narco-violence in the border area and to disrupt the flow of illicit proceeds that fuel that violence.

Information and Intelligence Sharing: The United States and Mexico will improve the coordination and timeliness of law-enforcement information sharing between and among the appropriate U.S.-Mexican federal and state authorities and agencies on both sides of the border relating to narco-violence forces, forensics, prison security, victim/witness security, cross-border currency flows, and firearms trafficking. The nations will place special emphasis on the coordinated and prompt exchange of information about relevant events that occur on one side of the border that may have an impact on the other side, so that both countries may effectively determine the need for and initiate country-specific or coordinated law enforcement responses.

Training and Technical Assistance: The United States will provide Mexico with training and technical assistance in an array of criminal investigative areas, to include: 1) Port of Entry Security: The United States will offer training for Mexican customs officials on the utilization of truck-portal x-ray machines (previously provided by the United States) at strategically located ports of entry within Mexico; and 2) Forensics: The FBI will detail for the Government of Mexico (GOM) how they might best submit evidence to the United States for advanced forensic examination and analysis, explore opportunities to transfer U.S. lab equipment to the GOM (and provide necessary training) to assist Mexican forensic personnel in advancing their forensics capability, share forensics protocols to ensure full compatibility with international evidentiary databases (e.g., DNA databases), and consider mechanisms to permit the rapid exchange of forensic results.

(Press Release 1214/05, Mexican Department of Justice, Attorney General Alberto R. Gonzalez and Attorney General of Mexico Announce Initiatives to Combat Narcotics-Related Violence on the Border (Oct. 13, 2005), available at <http://www.pgr.gob.mx/cmsocial/bol05/oct/b121405.htm>.)  
(Gustavo Guerra, 7-7104, ggue@loc.gov)

## MONTREUX DECLARATION – Data Protection and Privacy

At the 27<sup>th</sup> Conference of Data Protection and Privacy that took place in Montreux, Switzerland, September 14-16, 2005, data protection officials from each of the participating nations confirmed that the right to data protection and privacy “is an essential condition in a democratic society in order to safeguard the respect for the rights of the people, a free flow of information and an open market economy.” They agreed to promote the recognition of the universal character of data protection principles and to collaborate with governments worldwide and international organizations in the development of a universal convention for the protection of individuals with regard to the processing of personal data.



The participants adopted two key documents, a Declaration on the Protection of Personal Data and Privacy and a Resolution on the Use of Biometrics in Passports, Identity Cards and Travel. While the Declaration recognizes the need in a democratic society to combat terrorism and organized crime effectively, it nevertheless stresses that collection, storage, and use of personal data must be done in a manner that respects human dignity. The Resolution stresses that it is possible for biometric data to be collected without the knowledge of the data subject and that the widespread use of biometrics will have serious consequences on individuals. Therefore, such data collection methods should be subject to worldwide debate. Finally, the Resolution called for making a clear distinction between biometric data collected and stored for public purposes such as border control and based on legal standards and data collected for private purposes, based on consent of the individual. (The American Society of International Law, *International Law in Brief*, Oct. 17, 2005, from [ilib@asil.org](mailto:ilib@asil.org).) (Theresa Papademetriou, 7-9857, [tpap@loc.gov](mailto:tpap@loc.gov))

### **NAFTA – Change in Place-of-Origin Regulation**

According to José Guadalupe Sáenz, general director of trade policy in the Mexican Secretariat of Economy (SE), the three NAFTA partners – the United States, Mexico, and Canada – agreed to make some changes to the place of origin regulations applicable under the Agreement. The changes will be implemented as of January 1, 2006, and will be applied to food products, electronic products, furs, textiles (*hilados*), and minerals. The changes would allow manufacturers in the NAFTA countries to import third-country-sourced inputs or raw materials without losing duty-free preferential treatment when they are traded within the NAFTA region. Mr. Sáenz added that this is the second group of products to which changes in the place-of-origin regulations have been applied. Similar changes were approved for other products earlier this year. He stated that these changes are needed because North America does not produce certain inputs that are indispensable in the manufacture of some merchandise and this creates limitations on the production of goods. To implement the changes, the three countries need to exchange letters of agreement, which has already been done between Canada and the United States. In addition, the Mexican Senate must approve the proposed changes. (Ivette Saldaña, *Cambio en Reglas de Origin a Partir de 2006*, EL FINANCIERO, Oct. 5, 2005, <http://www.elfinanciero.com.mx>.) (Norma C. Gutiérrez, 7-4314, [ngut@loc.gov](mailto:ngut@loc.gov))

### **NETHERLANDS/SOUTH AFRICA – Tax Treaty**

On October 10, 2005, in Pretoria, South Africa, the Netherlands and South Africa signed a Treaty on Avoidance of Double Taxation. The Netherlands adds another country to its network of bilateral tax treaties, and South Africa gains additional incentives for foreign investors, who may use holding companies incorporated in the Netherlands. Dutch Foreign Minister Rudolph Bot said that the treaty was signed after very long negotiations, and he hoped it would facilitate investment. (*SA and the Netherlands Sign Treaty on Avoidance of Double Taxation* ALLAFRICA.COM, Oct. 11, 2005, at <http://allafrica.com/stories/printable/200510110100.html>.) (Donald R. DeGlopper, 7-9831, [ddeg@loc.gov](mailto:ddeg@loc.gov))



## SAUDI ARABIA/WORLD TRADE ORGANIZATION – Saudi Arabia Joins WTO

In an historic and long-awaited decision, Saudi Arabia joined the World Trade Organization (WTO) on November 11, 2005, becoming the 149<sup>th</sup> member. Earlier, the WTO Governing Council officially approved Saudi accession to the WTO. The decision came after the “Official Working Team” of the WTO that supervised all the negotiations required to establish Saudi Arabia’s WTO accession requirements agreed on October 29, 2005, to the Kingdom’s accession. On October 24, 2005, the Kingdom’s Council of Ministers had approved the final package of Saudi entry terms. Hashim Yamani, the Saudi Commerce and Industry Minister who led the Saudi negotiating team, called this news “a victory for the principles and objectives of the multilateral trading system.” (Siraj Wahab, *WTO Opens Doors for Saudi-India Trade*, INADAILY.COM, Nov. 14, 2005, at <http://www.iht.com/getina/files/289293.html>; *Approval of the Final Package of Saudi WTO Entry Terms*, AL-RIYADH, Oct. 26, 2005, at <http://www.alriyadh.com/2005/10/25/section.main.html>; Saudi-US Relations Information Service (SUSRIS), *WTO Members Approve Saudi Accession*, Oct. 29, 2005, at <http://www.Saudi-US-Relations.org>.) (Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

## SENEGAL/ITALY – Passport Problems

Sources in Dakar, Senegal, claim that authentic Senegalese official passports are being sold to members of the Italian mafia and to Nigerian prostitutes who use them to enter Italy. It is also asserted that the source of some of the passports was an unnamed Senegalese religious leader who received several hundred such passports from accomplices in the Senegalese Government. Representatives of Senegalese living in Western Europe claim that they are penalized by the suspicion that their travel documents are suspect and that they may be involved in criminal activities. (*Senegalese Emigrants in Italy Denounce Traffic of Passports*, SUD QUOTIDIEN (Dakar), Sept. 27, 2005, Foreign Broadcast Information Service Online Database, ID No. AFP20051001626001.) (Donald R. DeGlopper, 7-9821, ddeg@loc.gov)

## SHANGHAI COOPERATION ORGANIZATION – Antiterrorist Moves

The fifth meeting of the Regional Anti-Terrorist Structure (RATS) Council of the Shanghai Cooperation Organization (SCO), held in Tashkent, Uzbekistan, adopted several decisions on September 24, 2005, aimed at resolving certain practical problems in the member countries’ collaboration in fighting terrorism. One of the decisions is to establish a database of terrorist and separatist organizations as well as a list of individuals placed on the international wanted list by the SCO member states’ special services and law enforcement agencies. The Council also decided to develop the legal basis for cooperation among SCO member states.

According to Sergey Simmov, Deputy Director of the Russian Federal Security Service, “representatives of the special services of the SCO member states were working out procedures for using operational information and databases so that the power-wielding agencies could work within a legal framework” and were also trying to harmonize anti-terrorist national legislation. In Mr. Simmov’s view, the recent election of a Chinese representative as the RATS Council chairman will make it possible to expand collaboration among the special services. The Council also discussed the possibility of holding a conference this year on counteracting terrorism, separatism, and extremism and of convening a meeting of representatives of relevant ministries and departments of SCO member states



to discuss measures to combat terrorist financing. (*Russian Official Says SCO Stepping Up Antiterrorist Efforts*, ITAR-TASS, Sept. 24, 2005, translated in Foreign Broadcast Information Service online subscription database, ID No. CEP20050924030060.)

China, Russia, Kazakhstan, Kyrgystan, Tajikistan, and Uzbekistan founded the SCO on June 15, 2001. The six-member intergovernmental international organization is the successor of the Shanghai Five, a mechanism begun in 1996 to strengthen confidence building and disarmament in the border regions of China, Russia, Kazakhstan, Kyrgystan, and Tajikistan. The RATS is an SCO permanent organ, comprising a Council and an Executive Committee. It was formally launched in January 2004 and is based in Tashkent (*Shanghai Cooperation Organization*, Jan. 7, 2004, Ministry of Foreign Affairs of the People's Republic of China website, <http://www.fmprc.gov.cn/eng/topics/sco/t57970.htm>; SCO website, <http://www.sectSCO.org>.)

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### **TAIWAN/CENTRAL AMERICA – Co-Prosperity Project**

On September 26, 2005, President Chen Shui-bian of the Republic of China (on Taiwan) (ROC) announced at the fifth ROC-Central America summit meeting, in Managua, Nicaragua, that his government would establish a fund of US\$250 million to fund a “co-prosperity project” between the ROC and its diplomatic allies in Central America and the Caribbean. The project is to be funded by the International Cooperation and Development Fund of the ROC's Ministry of Foreign Affairs (MOFA) and the Executive Yuan's Development Fund. It is aimed at encouraging Taiwan businessmen to invest in sectors with potential in the region (especially those in which Taiwan excels, such as information and textiles), with a ceiling for government investment set at forty-nine percent, at creating a new climate of investment cooperation, and at helping to develop the allies' economies. According to an MOFA spokesperson, the ROC Government will invite the allies to join in the investments, which “will help the allies develop economically and create job opportunities, and help [them] to boost trade with the United States through the Central America Free Trade Agreement and the expected formation of the Free Trade Area of the Americas.” (Lillian Wu, *Taiwan Foreign Ministry Hails Central America 'Co-Prosperity Project'*, BBC WORLDWIDE MONITORING, Sept. 27, 2005, LEXIS/NEXIS, News Library, 90days File; S.J. Tsai & P.C. Tang, *CNA: Taiwan President Announces 'Co-Prosperity Project' in Nicaragua*, CENTRAL NEWS AGENCY, Sept. 27, 2005, Foreign Broadcast Information Service online subscription database, ID No. CPP20050927968030.)

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### **UNESCO – Diversity of Cultural Expressions Convention**

On October 20, 2005, the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) approved (148 votes for, two against, four abstentions) the Convention on the Protection and Promotion of Diversity of Cultural Expressions. The Convention seeks to reaffirm the links between culture, development and dialogue and to create an innovative platform for international cultural cooperation; to this end, it reaffirms the sovereign right of States to elaborate cultural policies with a view “to protect and promote the diversity of cultural expressions” and “to create the conditions for cultures to freely interact in a mutually beneficial manner.” “Cultural expressions” include music, art, language, ideas, and cultural activities, goods, and services. The United States opposes the Convention on the grounds that it restricts diversity by controlling the international movement of goods, services, and ideas.



The Convention is the first international treaty aimed at protecting movies, music, and other cultural treasures from foreign competition, reinforcing the concept set forth in UNESCO's Universal Declaration on Cultural Diversity of 2001 that cultural diversity must be viewed as the common heritage of mankind and its defense as an ethical imperative. A UNESCO media release stressed that since international promotion of and cooperation in regard to cultural expression, especially in the case of developing countries, is at its heart (articles 12 to 19), the Convention provides for the creation of an International Fund for Cultural Diversity. The Convention will enter into force three months after its ratification by thirty countries. (Press Release No. 2005-128, *General Conference Adopts Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, MEDIA SERVICES, Oct. 20, 2005, UNESCO website, [http://portal.unesco.org/en/ev.phpURL\\_ID=30298&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.phpURL_ID=30298&URL_DO=DO_TOPIC&URL_SECTION=201.html); Molly Moore, *U.N. Body Endorses Cultural Protection: U.S. Objections Are Turned Aside*, THE WASHINGTON POST, Oct. 21, 2005, at A14; see also "Explanation of UNESCO and National Commissions," remarks by Deputy Assistant Secretary of State for Economic and Global Issues Terry Miller at the U.S. National Commission for UNESCO Annual Conference, Georgetown University, Washington, D.C., June 6, 2005, U.S. Department of State website, at <http://www.state.gov/p/io/unesco/51295.htm> (last visited on Oct. 21, 2005).) (Gustavo Guerra, 7-7104, ggue@loc.gov, & Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **UNESCO – Universal Declaration on Bioethics and Human Rights**

On October 19, 2005, the United Nations Educational, Scientific and Cultural Organization (UNESCO) announced the adoption of a Universal Declaration on Bioethics and Human Rights. (*UNESCO's General Conference Adopts Universal Declaration on Bioethics and Human Rights*, UNESCO website, Oct. 19, 2005, [http://portal.unesco.org/en/ev.php-URL\\_ID=30274&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=30274&URL_DO=DO_TOPIC&URL_SECTION=201.html); link to full text of the draft of the Declaration as of June 2005 included.) Adopted at the thirty-third general UNESCO conference in Paris, France, the document stresses the principles of informed consent, confidentiality, and social responsibility.

The new text is the third declaration on bioethics adopted by UNESCO, following the Universal Declaration on the Human Genome and Human Rights, drafted in 1997 and adopted by the U.N. General Assembly in 1998, and the International Declaration on Human Genetic Data of 2003.

The new Declaration will have to be implemented through national legal instruments. However, according to a UNESCO statement, "the general framework proposed by the Declaration can help 'globalize' ethics in the face of the increasingly globalized sciences." UNESCO suggests that the growth of unregulated research practices, including biomedical research projects carried out simultaneously in different countries and involving the importing and exporting of embryos, stem cells, organs, tissue, and cells, makes it important that an ethical framework be developed. (*UNESCO Adopts Universal Declaration on Bioethics and Human Rights*, UN NEWS SERVICE, Oct. 20, 2005, from UNNews@un.org.) (Constance A. Johnson, 7-9829, cojo@loc.gov)



## UNITED NATIONS – Treaty on Forced Disappearances Drafted

A United Nations working group, a part of the U.N. Commission on Human Rights (UNCHR) in Geneva, announced on September 23, 2005, that it had completed the drafting of an international convention on the subject of the forced disappearance of persons after arrest, detention, or abduction. The document is the first treaty to define enforced disappearance, according to the Working Group on Enforced or Involuntary Disappearance. Care was taken to make the treaty definition consistent with the 1992 U.N. Declaration on the Protection of All Persons from Enforced Disappearance, an action of the General Assembly (Resolution 47/133, Dec. 18, 1992). That document states that enforced disappearance occurs when a person is deprived of liberty with the direct or indirect support or acquiescence of a government, which then refuses to disclose the fate or whereabouts of that person.

The draft convention will be submitted to the UNCHR and then must be approved by the General Assembly. The working group's press release stated that the document should be open for signature and ratification in 2006. (Press Release, *Working Group on Disappearances Welcomes Conclusion of Drafting of Convention on Enforced Disappearance*, Sept. 23, 2005, <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/3DF9EB6C9C90CB7AC1257087006E85A9?openDocument>; *UN-Backed Treaty on Forced Disappearance of Persons Drafted in Geneva*, UN NEWS SERVICE, Sept. 26, 2005, from UNNews@un.org.) (Constance A. Johnson, 7-9829, cojo@loc.gov)

## UNITED NATIONS/SYRIA – Security Council Resolution on Bombing in Lebanon

On April 7, 2005, the U.N. Security Council established an international independent investigation commission to assist the Lebanese Government in its investigation of the terrorist bombing of February 14, 2005, in Beirut that resulted in the deaths of former Lebanese Prime Minister Rafic Hariri and twenty-two others. (United Nations Security Council, *The Situation in the Middle East*, S/RES/1595 (2005), Apr. 7, 2005, [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm).)

The commission's report to the Security Council, dated October 19, 2005, concluded that "[g]iven the infiltration of Lebanese institutions and society by the Syrian and Lebanese intelligence services working in tandem, it would be difficult to envisage a scenario whereby such a complex assassination plot [of Hariri] could have been carried out without their knowledge." (*Report of the International Independent Investigation Commission Established Pursuant to Security Council Resolution 1595(2005)*, Oct. 19, 2005, TimesOnline website, <http://extras.timesonline.co.uk/pdfs/mehlisreport.pdf>). On October 31, 2005, the Security Council examined the report and unanimously adopted Resolution 1636, which focuses on pressuring Syria to cooperate with the investigation of the February 14, 2005, terrorist bombing in Beirut. (United Nations Security Council, *The Situation in the Middle East*, S/RES/1636(2005), [http://www.un.org/Docs/sc/unsc\\_resolutions05.htm](http://www.un.org/Docs/sc/unsc_resolutions05.htm)). The main points of the Resolution are as follows:

- The Security Council threatened to consider "further action" "if necessary" against Syria whenever the commission deems that Syrian cooperation does not meet the requirements of the Resolution (section IV, 13).
- While the Resolution did not specify the further actions that may be taken, it nevertheless invoked, in the last paragraph of its introduction, Chapter VII of the Charter of the United





Nations, which gives the Security Council the authority to use force if necessary (article 42 of Chapter VII, at <http://www.un.org/aboutun/charter/>).

- The Resolution requires all states to prevent entry and freeze financial assets of individuals designated by the commission or the Lebanese Government as suspects in involvement in planning, sponsoring, organizing, or perpetrating the terrorist act of February 14, 2005 (section I, 3).
- The Resolution decides that the Security Council will extend the mandate of the commission beyond the original authorized date of December 15, 2005, if recommended by the commission and requested by the Lebanese Government (section II, 8).
- The Resolution requires Syria to detain those individuals whom the commission considers as suspects of involvement in the terrorist act being investigated and gives the commission full authority to interview any Syrian officials and individuals it deems relevant to its inquiry at any location it deems fit (section III, 11).
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### **UNITED STATES/BENIN – Prohibition on U.S. Military Assistance Waived**

On September 9, 2005, U.S. President George Bush issued Presidential Determination No. 2005-34, Memorandum for the Secretary of State, on “Waiving Prohibition on United States Military Assistance with Respect to Benin.” The Memorandum states that the President, under the authority vested in him by section 2007 of the American Servicemembers’ Protection Act of 2002, title II of Public Law 107-206, determines that Benin has entered into an agreement with the United States pursuant to article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in that country and waives the prohibition of section 2007(a) of the Act with respect to Benin for as long as the agreement remains in force. The Memorandum was published in the Federal Register on September 19, 2005. (*Memorandum on Waiving Prohibition on United States Military Assistance with Respect to Benin*, PUBLIC PAPERS OF THE PRESIDENTS, Sept. 19, 2005, LEXIS/NEXIS, News Library, 90days File.)

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### **WEST AFRICAN JOINT OPERATIONS INITIATIVE – Fifth Annual Meeting**

It was reported in mid-September that the West African Joint Operations (WAJO) Initiative had recently held its fifth annual meeting in Cotonou, Benin. The sixteen-member body, whose formation was spearheaded by Nigeria’s National Drug Law Enforcement Agency in concert with the U.S. Drug Enforcement Administration (USDEA), was formed in order to combat the illegal drug trade. The regional enforcement project involves the exchange of intelligence and conducting of joint operations among the member states’ security organizations. The meeting carried a proposal sponsored by Ghana and Togo to seek assistance from the developed countries for communications equipment (computers and internet facilities in each country’s base of operations) to facilitate prompt interdiction; the USDEA pledged assistance. The meeting also adopted resolutions on strengthening cooperation and the need to facilitate prompt intelligence exchange and expedited information sharing to facilitate follow-up investigations and strengthen databases; on reinforcement and re-constitution of the WAJO secretariat to comprise an average of five operational officers; on conducting a joint operation focused on maritime drug trafficking and movement of sea freights across borders. Among other recommendations, members held that the secretariat should take steps to create the legal framework to make WAJO an institution of



Economic Community of West African States (ECOWAS), with efforts made in the meantime to affiliate WAJO with the ECOWAS drug unit. Members also recommended that member states should make their laws uniform and harmonize legislation to define specific punishments and fines for drug offenses, in order to eliminate the existence of safe havens for drug traffickers in the sub-region.

While in 2004 the WAJO Initiative resulted in the seizure of some 1,390 kilos of cocaine in Benin, Ghana, Togo, and Cape Verde, an American drug enforcement official in West Africa stated “That’s a start—but a drop in the bucket.” In the summer of 2005, Spanish authorities seized 3,000 kilos of Colombian cocaine found in a Ghana-registered trawler intercepted off Cape Verde; in December 2004, they had stopped a Togo-flagged ship bearing 4.5 tons of cocaine. According to Thomas Pietschmann of the U.N. office of drug control, in order for drug dealers to penetrate the southern underbelly of Europe, “[y]ou look for the weakest point. That’s West Africa.” The next WAJO meeting is to be held in Abidjan, Cote d’Ivoire, in 2006. (*Nigeria: Using Collaboration to Confront the Drug Menace*, AFRICA NEWS, Sept. 18, 2005, LEXIS/NEXIS, News Library, 90days File; Eric Pape, *West Africa: The New ‘Drug Triangle,’* NEWSWEEK INTERNATIONAL, Aug. 29, 2005, MSNBC.com, <http://www.msnbc.msn.com/id/9025207/site/newsweek/>.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)



## RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

### EU Initiates Membership Negotiations with Turkey

Turkey has been striving towards its goal of becoming a full member of the European Union since its initial step in 1963, when it signed a customs agreement with the then European Community. In 1999, the Community accepted Turkey's application for membership. On October 3, 2005, the EU foreign ministers, after long and contested deliberations, came to an agreement to open membership negotiations with Turkey. (*EU Opens Membership Talks with Turkey*, EUROPA NEWSLETTER, Oct. 6, 2005, available at [http://europa.eu.int/newsletter/index\\_en.htm](http://europa.eu.int/newsletter/index_en.htm).)

### Ban on Imports of Captive Live Birds from Third Countries

On October 25, 2005, in response to the emerging threat of an avian influenza pandemic, the Council of the EU urgently adopted a Commission decision to prohibit the importation of captive live birds from third countries. Poultry destined for commercial purposes is still allowed. A second Commission decision governs the transport of birds that travel with their owners. Member States have the discretion to permit the importation of up to five owner-accompanied live birds, under the condition that they have been under quarantine for at least thirty days in certain third countries that satisfy EU criteria. Otherwise, live birds have to be placed under quarantine in the place of destination within the EU. Both decisions are expected to be effective shortly. (Press Release, IP/05/1351, *Avian Influenza: EU Bans Imports of Captive Live Birds from Third Countries*, Oct. 25, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1351&format=HTML&aged=0&language=EN&guiLanguage=en>.)

### Proposed Rules on Retention of Communication Data

Following the investigations of the terrorist events in Madrid in March 2004 and the London bombings in July 2005, it became clear that access to traffic communication data by law enforcement authorities during the investigation of terrorist events is critical.

On September 21, 2005, the European Commission put forward a proposal for a directive governing retention of communication data. The draft directive is fully consistent with the legal rules on protection of personal data provided for in Directives 95/46/EC and 2002/58/EC and stipulates that data protection authorities will exercise supervisory powers over the processing of such data. However, one of the draft directive's provisions, requiring telecom providers to retain records for at least a year, has proven to be very controversial among the EU institutions. In mid-October 2005, a power struggle began over the key question of whether the EU Parliament will have a say on this issue or the EU Members will decide it alone. An earlier proposal for a framework decision adopted in 2004 dealt with the same issue, but it did not involve the European Parliament at all, due to its different legal basis. However, adoption of directives falls under the so-called Community method, under which the Commission initiates, and the Council and the Parliament are involved in, the adoption process. The issue has not yet been resolved. (Press Release, IP/05/1167, *Commission Proposes Rules on Communication Data Retention Which Are Both Effective for Law Enforcement and Respectful of Rights and Business Interests*, Sept. 21, 2005), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1167&format=HTML> (last visited Oct. 20, 2005).)



### **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism**

The new Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism was adopted in Warsaw on May 16 –17, 2005. Eleven Members of the Council of Europe, including eight EU Members (Austria, Belgium, Cyprus, Luxembourg, Malta, Poland, Portugal, and Sweden), signed the Convention. During the drafting, the Council of Europe considered two proposals submitted by the European Commission; the draft third directive on the prevention of the use of the financial system for the purpose of money laundering and the proposal for a Parliament and Council Regulation on the prevention of money laundering by means of customs cooperation. Under article 52, paragraph 4, of the Convention, parties to the Convention that are EU Members are allowed to apply the Community rules on money laundering and financing of terrorism, rather than the rules included in the Convention. The European Commission was authorized by the Council of the European Union to participate in the negotiations. As a result, the Community will sign the Convention and also will be a member of the Conference of the Parties, as provided for in the Convention. Thus it will undertake the responsibility, along with the other members of the Conference, of overseeing the implementation of the provisions of the Convention. (Press Release MEMO/05/331, *The Council of Europe New Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* (#198), Sept. 21, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/331&format=HTML&aged=0&language=EN&guiLanguage=en> (last visited Oct. 20, 2005).)

### **Communication Against Trafficking in Human Beings**

On October 18, 2005, the European Commission published the *Communication on Fighting Trafficking in Human Beings – An Integrated Approach and Proposals for an Action Plan*. The Communication comprehensively addresses the critical issue of trafficking, covering external relations, employment, gender equality, and non-discrimination. It also recommends the establishment of a plan to prevent and fight trafficking based on common standards and best practices and mechanisms. Mr. Frattini, the Vice-President of the Commission, presented the Communication in a Conference on Tackling Human Trafficking: Policy and Best Practices in Europe, which took place on October 19, 2005. (Press Release IP/05/1298, *Commission Pushes the EU's Fight Against Trafficking in Human Beings*, (Oct. 18, 2005), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1298&format=HTML> (last visited Oct. 20, 2005).)

### **EU and Canada Sign Agreement on Air Passenger Data**

On October 3, 2005, the EU and Canada, sharing common goals in their efforts to combat terrorism, signed an agreement on the transfer of air passenger data. Based on its provisions, airlines flying from the EU to Canada are required to transfer certain passenger data to the Canadian authorities to assist them in identifying passengers posing a security threat. The agreement meets the EU and Canadian legal standards on protection of personal data and privacy. The EU and the United States have signed a similar agreement. (Press Release IP/05/1216, *EU and Canada Sign Agreement on the Transfer of Air Passenger Data* (Oct. 3, 2005), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1216&format=HTML&aged=0&language=EN&guiLanguage=en> (last visited Oct. 20, 2005).)



## EU and Russia Sign Two Agreements

On October 12, 2005, the EU and Russia, after five years of negotiations, signed two bilateral agreements, one on the facilitation of visas and one on readmission. The former eases the procedures for issuing short-stay visas. Such visas must be issued within ten days, upon proof of much simpler documents than previously required. The fee for issuance of a visa is reduced to thirty-five euros (about US\$42). Visa fees may be waived for some categories of applicants, including close relatives, the disabled, and students. The readmission agreement establishes obligations and procedures for both parties as to when they will take back persons who reside illegally in the other party's territory, including nationals from Russia, third-country nationals, and stateless people. Those apprehended at the common borders will be sent back to their respective areas based on an expedited procedure. (Press Release, IP/05/1263, EU-Russia Relations: Next Steps Towards Visa Facilitation and Readmission Agreement, (Oct. 12, 2005), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1263&format=HTML> (last visited Oct. 20, 2005).)

## EU Adopts a Single Emergency Number

The EU recently adopted a single emergency number, 112. It will be effective throughout the EU region. One of the basic reasons for doing so is the fact that EU citizens have been extremely mobile, and as they travel, it will be much easier for them to remember one emergency number rather than multiple ones. In case of emergency, individuals (citizens or visitors) may call this number from a fixed or mobile phone. Member States are required to inform everyone within the EU about this number and to ensure that emergencies are treated with the same speed and standards as those emergencies reported on the national emergency number. (Press Release, MEMO/05/363, 112, the Single European Emergency Number: Frequently Asked Questions (Oct. 11, 2005), available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/363&format=HTML> (last visited Oct. 20, 2005).)



## HIGHLIGHTS OF THE NEW IRAQI PERMANENT CONSTITUTION<sup>1</sup>

Prepared by Issam Saliba, Foreign Law Specialist, Eastern Law Division

A new permanent Constitution of Iraq was approved through a referendum conducted on October 15, 2005. The document consists of a preamble and six sections whose main contents can be summarized as follows.

### Section I

Articles 1 to 13 deal with general, basic principles. They provide that:

- Iraq is an independent sovereign state and the form of its government is republican, parliamentary, democratic, and federal (article 1);
- Islam is the official religion of the state and a fundamental source of legislation. No law is to be issued that contravenes the dicta of Islam or the democratic principles or basic rights and liberties provided for in the Constitution (article 2);<sup>2</sup>
- The Constitution guarantees the Islamic identity of the majority of the Iraqi people, as well as the full religious rights of all individuals (article 3); and
- Both Arabic and Kurdish are official languages of Iraq (article 4).

### Section II

Articles 14 to 44 deal with the rights and liberties that are characteristically protected under Western democracies. The following provisions, however, deserve to be emphasized:

- Article 29 provides that the family is the basic foundation of society and the state will preserve its essence and its religious, moral, and patriotic values.
- Article 36 provides that the state protects the freedoms of speech, of the press, and of assembly and demonstration, as long as these freedoms do not infringe on the public order or mores.
- Article 43 provides that the state will be committed to the advancement of Iraqi tribes and clans and take care of their affairs in a manner consistent with law and religion, promote their human values that contribute to societal development, and prohibit tribal customary practices that contravene human rights.

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<sup>1</sup> This summary is based on the Arabic copy of the Iraqi Constitution posted on the Iraqi Government website, at [http://www.iraqigovernment.org/constitution\\_arabic.htm](http://www.iraqigovernment.org/constitution_arabic.htm) (last visited on Nov. 1, 2005). It is worth noting that this version is different from the English one posted on the same website, at [http://www.iraqigovernment.org/index\\_en.htm](http://www.iraqigovernment.org/index_en.htm). Another English version, translated from the Arabic by the United Nations' Office for Constitutional Support and approved by the Iraqi Government, is available on the MSNBC website, at <http://msnbc.msn.com/id/9719734/>.

<sup>2</sup> It is not clear how a conflict, real or perceived, between the dicta of Islam and democratic principles or basic rights and liberties may be resolved.



### Section III

Articles 45 to 105 deal with the organization of the three branches of the Federal Government, legislative, executive, and judicial, which are to operate in accordance with the principle of separation of powers.

A. The legislative power will consist of a House of Representatives (Parliament) and a Union Council (article 46).

- The members of the House of Representatives will be elected directly by the people, through secret ballot, on the basis of one representative for each 100,000 Iraqi individuals. The electoral law should be designed to ensure the representation of women at a ratio of not less than one fourth of the total number of members of the House of Representatives (article 47).
- Article 62 provides for the creation of a legislative council, called the Union Council, which includes representatives of regions and of provinces that are not part of a region. The composition and authority of, requirements for membership in, and anything related to the Council will be regulated by a law to be issued by a two-thirds majority of the members of the House of Representatives.

B. The executive power consists of the President of the Republic and the Council of Ministers (article 63).

- The President is elected by the House of Representatives from among the candidates for president. Requirements for office will be spelled out by law (article 67). The President's term in office is four years; he may be reelected only for one additional term (article 69). The President names as Prime Minister the candidate of the parliamentary block that has the most votes, issues special pardons, represents the unity of the country, signs and promulgates the laws issued by the House of Representatives, and conducts other functions that are mostly ceremonial (articles 70 and 73). However, if the office of Prime Minister is vacated for any reason, the President will act as Prime Minister until he names a new one within a fifteen-day period (article 78).
- Executive power is vested in the Council of Ministers. The Prime Minister nominates the members of his Cabinet and submits their names and his ministerial program to the House of Representatives for confirmation (article 73). The Prime Minister is directly responsible for the general policy of the state and is the commander in chief of the armed forces. He administers and presides over the business of the Council of Ministers and has the legal power, subject to the approval of the House of Representatives, to remove the ministers from office (article 75).

C. The Federal Judiciary consists of the Supreme Judicial Council, the High Federal Court, the Federal Court of Cassation, the Department of Public Prosecution, the Commission of Judicial Oversight, and other federal courts that are created by law (article 86).



- The Supreme Judicial Council is charged with the administration of the affairs of all judicial entities, the nomination and submission to the House of Representatives for approval of the names of the president and members of the Federal Cassation Court, the Chief General Prosecutor, and the Chairman of the Commission of Judicial Supervision. The Supreme Judicial Council also submits the annual budget of the federal judiciary to the House of Representatives for approval. The composition, jurisdiction, and functioning of the Supreme Judicial Council is to be decided by law (article 87 and 88).
- The High Federal Court is a financially and administratively independent judicial entity charged primarily with resolving constitutional questions, disputes between any two or more of the federal and regional governments, and with the prosecution of the President of the Republic, the Prime Minister, and the Ministers. This high court will include a number of judges, experts in Islamic law and legal scholars, whose number and manner of selection will be decided by a law to be issued by a two-thirds majority of the members of the House of Representatives (articles 89 and 90).

The Constitution also creates a number of autonomous entities within the executive branch, the most important of which is the entity charged with supervising the allocation of federal financial revenues (including revenues from the sale of oil) to the various regional governments and provinces (article 103).

#### **Section IV**

Articles 106 to 111 deal with the powers granted to the Federal Government.

- Any power that has not been specifically granted to the Federal Government remains with the regional governments and the provinces that are not part of a region (article 111).
- The Federal Government has exclusive powers regarding foreign policy, national security, financial policy, issues of weights and measurements, citizenship and residency, broadcasting and postal service, adoption of general and investment policies, policies relating to water resources originating outside Iraq, and the national census (article 107).
- Other powers are shared with the regional governments, the most important of which is that dealing with the administration, exploitation, and sharing of revenues of oil and gas extracted from existing oilfields (article 109).<sup>3</sup>

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<sup>3</sup> The Constitution is silent on the status of any future oil and gas fields that may be discovered after its promulgation.





## Section V

Articles 112 to 121 deal with the creation and powers of the constituent parts of the federal system of Iraq, comprised of a capital (Baghdad), regions, decentralized provinces (*Muhafazat*), and local administrations (article 112).

### A. Regions

- The Constitution recognizes Kurdistan in its present status as a federal region and will recognize any region that may be created in the future in accordance with its provisions (article 113).
- A law will be issued within six months of the date of the first session of Parliament setting out the procedural mechanism by which the regions are created (article 114).
- Any one or more of the provinces may opt to create a region through a petition submitted either by one third of the members of the provincial council(s) involved or by one tenth of the number of their respective voting constituency (article 115).

### B. Provinces

Provinces that are not organized into regions will be given the widest financial and administrative authority to conduct their affairs in accordance with the principle of decentralization. Each province will have a provincial council and a governor who exercises executive power as granted to him by the provincial council. The election and authority of the provincial councils and governors will be regulated by law (article 118).

### C. The Capital

Baghdad within its present municipal boundaries is the capital of Iraq, constitutes the province of Baghdad, and cannot be a part of any region. Its status will be regulated by law (article 120).

### D. Local Administration

Article 121 provides that the Constitution guarantees the administrative, political, cultural, and educational rights of the various ethnicities, such as Turkmen, Caldeans, Assyrians, and all other constituents, as will be provided for by law (article 121).<sup>4</sup>

## Section VI

Articles 122 to 139 consist of final and transitional provisions. The final provisions deal mainly with the mechanism of amending the Constitution and the restrictions on certain dealings between the government and a number of its high officials. The transitional provisions deal with a

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<sup>4</sup> It is not clear, however, how such ethnic groups would be given local administrative privileges and whether such privileges would be tied to certain geographical areas or not.



number of issues, such as the de-Baathification process, the continuation of the special court in charge of conducting the trials of members of the previous regime, and the establishment for a limited period of time of a Presidential Council to assume the functions of the President of the Republic and other specified functions.

### **Conclusion**

Now that the Constitution has been approved, the next major step in Iraq is the election of a new parliament and the formation of a new government under the terms of this permanent constitution.



## THE PUNISHMENT OF ESPIONAGE UNDER ISLAMIC LAW

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

### Executive Summary

*Under Islamic Law, the punishment for espionage differs according to a person's status. The crime of espionage is part of Al-Tazir crimes in Islamic law. Such crimes are a class of criminal acts punished at the discretion of the ruler as a right given to him by Islamic law. Although the Sunni Islamic schools of law usually do not interpret Tazir crimes, the relevant literature in Islamic law nevertheless reflects a variety of opinions of scholars who have widely consulted scriptural Islamic sources to make their interpretations. In some cases, Muslim scholars' disagreement over the punishment that should be applied has played a central role in limiting the scope of Tazir punishment.*

### I. Introduction

In Islamic Law, there are three types of crimes: *Hudud*, *Qisas*, and *Tazir*. *Hudud* and *Qisas* are those crimes defined in the *Qur'an* and *Sunnah* (the sayings and deeds of the Prophet Mohammad). *Hudud* in Islamic law means a crime for which there is a fixed punishment due as a right belonging to God. Examples include *Sariqah* (theft) and *Qadhif* (false accusation of illicit sexual intercourse). *Qisas* is also a category of crimes subject to a fixed punishment. The term is applicable to such actions as intentional killing or amputation, but the right to execute the punishment for such crimes belongs to a man or to a woman because he or she can forgive the deed or call for reconciliation.

*Tazir* crimes are subject to “equitable punishment not specified in the *Qur'an* or the *Sunnah* but left to the judicious discretion of the legitimate authority.”<sup>1</sup> Under *Tazir*, crimes can also be classified as non-codified crimes, for which precedents for rulings can be found dating back to the time of the Prophet or for which the precedents have been determined by the *Ijtihad*<sup>2</sup> of religious-legal scholars (*Ulama*). Espionage falls into the latter category. However, some crimes, such as drug trafficking or several types of terrorist offenses, may not be regulated at all by Islamic law. If a crime is considered political (as espionage would be) and the punishment is not clearly defined in the texts of the *Qur'an* and *Sunnah*, then the ruling will also be based on the opinions of the Islamic schools of legal scholarship.

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<sup>1</sup> MUHAMMAD ATA ALSID SIDAHMAD, *THE HUDUD* 432 (Kuala Lumpur, 1995). See also WAHBAH AL-ZUHAILI, 6 *AL-FIQH AL-ISLAMI WA ADILLATAHU* [Islamic Law and Its Evidence] 12-22, 213-215 (Beirut, Dar Al-Fikr 1984).

<sup>2</sup> *Ijtihad* is a term of Islamic law that describes the process of making a legal opinion by independent interpretation of the sources of Islamic Law, the *Qur'an* and the *Sunnah*. *Ijtihad* was instituted as an intellectual effort to anticipate solutions to new situations. The most direct authority institutionalizing the legitimacy of *Ijtihad* is the most influential *Hadith* narrating the famous conversation between the Prophet and his emissary to Yemen, *Mu'adh Ibn Jabal*. See AHMAD IBN HANBAL, 5 *AL MUSNAD* [Primary Source of the Prophet's Conduct] 230 (Beirut, Dar Al-Fikr 1991); 3 SUNAN ABI DAUD [Primary Source of the Prophet's Conduct], Bk. *Al-Aqdiyah*, No. 3539, at 303.



## II. Punishment of Espionage Committed by Non-Muslims Under Islamic Law

Punishment of espionage under Islamic law depends on whether the suspect is Muslim or non-Muslim. If he is a non-Muslim, the punishment depends on the subcategory of non-Muslims to which the suspect belongs:

1. those who are non-Muslim non-resident aliens who were granted a pledge of safe conduct or security for the duration of their stay in a Muslim nation (*Mustaman*);
2. those who are non-Muslim but are permanent residents in a Muslim nation who have a security treaty or agreement with Muslims or are from a nation that has a security treaty or agreement with the Muslim nation of residence and who pay the *Jizya* or capitation tax (*Zimmi*); or
3. those who are belligerents from a hostile territory (*Muharib*).<sup>3</sup>

Imam Al-Sarkhasi, from the school of Abu Hanifah, and members of the school of Al-Shafi further explain that if spying is conducted by an inhabitant of a hostile territory who has been given or granted a pledge of safe conduct or security (i.e., the protection of the Islamic state) (*Zimmi*), the person is not in breach of his covenant with Muslims.<sup>4</sup> The school of Abu Hanifah treats the *Mustaman* as a *Zimmi* in such cases, according to Ibn Abideen in his book *Rad Al-Muhtar*.<sup>5</sup> Some scholars in the Abu Hanifah school of law differentiate between a *Zimmi* who enters and lives among Muslims in an Islamic country with the intention of spying and a *Zimmi* who enters and lives among Muslims in an Islamic country with no intention of spying at the time of entry, but who later did so intentionally. The school of Abu Hanifah is of the opinion that the *Zimmi* who enters the Muslim nation without the intent to spy is not in breach of his covenant, but the *Zimmi* who enters with the intent to spy breaks that covenant.<sup>6</sup> However, the Al-Shafi and Al-Hanbali schools are of the opinion that any *Zimmi* who spies for non-Muslims against Muslims is in breach of his covenant with Muslims.<sup>7</sup>

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<sup>3</sup> See, e.g., MUHAMMAD IBN ABI BAKR (IBN QAYYIM AL-JAWZIYAH), AL-TURUQ AL-HUKMIYAH FI AL-SIYASAT AL-SHARIYAH [Primary Source on Islam and Politics] 107 (1<sup>st</sup> ed. Beirut, Dar Al-Jeel 1998); MUHAMMAD IBN AHMAD IBN ARAFAB AL-DASUQI, 2 HASHIYAT AL-DASUQI ALA AL-SHARH AL-KABIR [Primary Source of the Maliki School of Law] 205 (Cairo, Dar Ihya Al-Kutob Al-Arabiyyah 1983); MUWAFFAQ AL-DIN ABD ALLAH IBN AHMAD (IBN QUDAMAH AL-MAQDISI), 10 AL-MUGHNI [Primary Source of the Hanbali School of Law] 53 (1<sup>st</sup> ed. Cairo, Dar Al-Hadith 1996); MUHIUDIN ABU ZAKARIAH IBN SHARAF AL-NAWAWI, 6 RAWDAT AL-TALIBIN WA UMDAT AL-MUFTIYIN [Primary Source of the Shafi School of Law] 329 (3<sup>rd</sup> ed. Beirut, Al-Maktab al-Islami 1991); SHAMS AL-DIN AL-SARAKHSI, 10 KITAB AL-MABSOOT [Primary Source of the Hanafi School of Law] 8 (Beirut, Dar Al-Marifah, 1989); ABU AL-HASAN ALI IBN MUHAMMAD AL-MAWARDI, AL-AHKAM AL-SULTANIYAH WA AL-WILAYAT AL-DINIYAH [Primary Source on Islam and Politics] 147-184 (Beirut, Dar Al-Kutob Al-Elmiyyah 1978); TARIQ M. AL-KHOWATIR, OQOBAT AL-TAJASSUS FI AL-SARI'AH AL-ISLAMIAH [Punishment of Spies in Islamic Law] 31-57. (1<sup>st</sup> ed. Riyadh, Dar Muslim 1994).

<sup>4</sup> In this case, some Muslim scholars treat the “*Zimmi*” as Muslim, stating: “[T]he *Zimmi* is like the Muslim when it comes to a pledge of safe conduct or security; their acts of espionage do not breach the [pledge of] security.” See AL-SARKHASI, 8 SHARH AL-SIYAR AL-KABEER [Primary Source of the Hanafi School of Law], Ch. *Ma Yahsul Bihi Al-Aman* (1<sup>st</sup> ed. Beirut, Dar Al-Kutob Al-Elmiyyah 1996).

<sup>5</sup> IBN ABIDEEN, RAD AL-MUHTAR ALA AL-DUR AL-MUKHTAR [Primary Source of the Hanafi School of Law], Bk. *Al-Jihad*, Ch. *Al-Mustaman*, No. 170-171 (Beirut, Dar Al-Kutob Al-Elmyah 1992).

<sup>6</sup> *Id.* Ch. *Al-Jihad*, No. 212-213.

<sup>7</sup> ZAKARIYYA AL-ANSARI. ASNA AL-MATALIB SHARH RAWD AL-TALIB WA-MA'AHU HASHIYA AL-RAMLI [Primary Source of the Shafi School of Law] Bk. *Aqd Al-Jiziah*, Ch. *Ahal Al-Zimmah* (Muhammad Muhammad Tamir ed. Beirut, Dar Al-Kutob Al-Elmiyyah 2001); MANSUR IBN YUNUS IBN IDRIS AL-BAHUTI, SHARH MUNTAHA AL-IRADAT [Primary Source of the



As for the type of punishment for spying, Muslim scholars such as Abu Yusuf (from the school of Abu Hanifah) and Ibn Taymiah are of the opinion that *Muharib* and *Zimmi* who spy against Muslims should be executed. This is the opinion of all schools in the case of a *Muharib*.<sup>8</sup> *Ulama* differ in their views on the penalty that should be applied to *Zimmi*. One opinion states that if a *Zimmi* were to spy on Muslims, his oath would be violated and the ruler then chooses between the *Zimmi's* execution or crucifixion. This is the view of Imam Malik,<sup>9</sup> Abu Yusuf,<sup>10</sup> and of Imam Ahmed Ibn Hanbal's most learned student.<sup>11</sup> What bolsters the opinion of those who have said that *Zimmi* or *Mustaman* who spy against Muslims should be executed is the Prophet's conduct as narrated by Salama Ibn Al-Akwa:

A spy who was traveling came to the Prophet and sat with some of his companions; then he sneaked away. The Prophet ordered his companions to seek and to kill him .... Salama Ibn Al-Akwa said: 'I reached him before them and killed him ....'<sup>12</sup>

Imam Muhammad Ibn Al-Hasan (of the Abu Hanifah school) treated a *Zimmi* as equivalent to a Muslim who decides to spy after entering another Muslim country. He is of the opinion that the *Zimmi* who spies on Muslims should not be executed, but should be punished by *Jald* (flogging), imprisonment, or both, until he offers his *Tawbah* (repentance) for the act. Imam Muhammad Ibn Al-Hasan rendered the same opinion regarding *Mustaman*. However, if the *Zimmi* or the *Mustaman* has been granted a pledge of safe conduct or security on the condition that he not commit the crime of espionage and he later commits that crime, Muhammad Ibn Al-Hassan is of the opinion that the perpetrator should be executed. No differentiation between men and women has been made in these cases.<sup>13</sup>

The killing of messengers who deliver royal messages from state to state is forbidden, even if the messengers are from a state that is at war with Muslims. However, if the messenger entered a Muslim country and spied on Muslims in behalf of a non-Muslim state, some of the Muslim scholars of the Al-Shafi school hold the opinion that he should be executed.<sup>14</sup>

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Hanbali School of Law] 1:671 (Beirut, Alam Al-Kutob 1990); MUHAMMAD IBN MUFLIH, 6 AL-FOROO [Primary Source of the Hanbali School of Law] 285–286 (4<sup>th</sup> ed. Beirut, Alam Al-Kutob 1985).

<sup>8</sup> 28 IBN TAYMIAH, MAJMU FATAWA IBN TAYMIAH [Collection of Ibn Taymiah Fatwas], Bk. *Jihad*, Ch. *Aqd Al-Zimimah wa Akhithu Al-Jiziah* 330+ (Riyadh, Mujamma Al-Malik Fahad, 1995). Imam Al-Sarkhasi stated that even if spying by an inhabitant of a hostile territory who has been given a pledge of safe conduct or security does not breach his covenant with Muslims, the spy should still be punished. See AL-SARKHASI, *supra* note 4, Ch. *Ma Yahsul Bihi Al-Aman*.

<sup>9</sup> AL-DASUQI, *supra* note 3, at 205.

<sup>10</sup> AL-SARKHASI, *supra* note 4, at 10.

<sup>11</sup> IBN QUDAMAH AL-MAQDISI, *supra* note 3, at 608.

<sup>12</sup> MUHAMMAD IBN ALI AL-SHAWKANI, 7 NAIL AL-AWTAR SHARH MUNTAHA AL-AKHBAR [Primary Source of the Prophet's Conduct and Comparative Islamic Law] 7 (Cairo, Dar Al-Hadeeth 1989).

<sup>13</sup> THE FIQH ENCYCLOPEDIA, No. 6-163 (Ministry of Awqaf and Islamic Affairs, Kuwait 1999). *Fiqh* is Islamic law.

<sup>14</sup> SHIHAB AL-DEEN AHMAD IBN HAJAR AL-HAYTHAMI, 9 TUHFAT AL-MUHTAJ LI SHARH AL-MINHAJ [Primary Source of the Shafi School of Law] 237 (Beirut, Dar Ihyaa Al-Turath Al-Arabi 1996).

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### III. Espionage Committed by a Muslim

All of the most famous schools of Islamic law are of the opinion that the act of espionage by a Muslim does not rise to the level of *Riddah* (apostasy).<sup>15</sup> Nevertheless, spying by a Muslim for non-Muslims is one among certain specified crimes that on special textual grounds are subject to the death penalty. One of the relevant scholarly opinions is that if a Muslim spies against other Muslims, he must be executed. This position is attributed to Imam Malik and some of his followers.<sup>16</sup> It is also held as being one of the views of the school of Imam Ahmed Ibn Hanbal as well as of other scholars of his school such as Ibn Akeel and Abi Yala.<sup>17</sup>

However, there is a difference of opinion among scholars belonging to the school of Imam Malik as to whether a Muslim spy should be offered *Istitabah* (the opportunity to declare repentance for the act) before the decision to execute him or not is made. Sahnoun, a famous scholar of the school, is of the opinion that a Muslim spy for an enemy should be executed without *Istitabah*. Other scholars from the same school are of the opinion that a Muslim spy for an enemy should first be offered *Istitabah* as a requirement before imposition of the punishment. If the spy declares repentance for his act, he should not be executed, they argue, but should be punished. However, if the spy is reluctant to express repentance and insists on the correctness of his act, he should be executed.<sup>18</sup>

The trend among early *Ulama* is to give the ruler wide discretion in punishing *Tazir* crimes. Espionage is a good example. Imam Malik himself was asked about a spy among the Muslims who was captured after writing to the Romans and telling them of Muslim plans. He said, “I never heard of such a person. I see it as better to have the Ruler’s opinion (*Ijtihad*) [whether to execute him or not].”<sup>19</sup> Furthermore, early Muslim scholars held that the ruler gives such a *Tazir* penalty as he considers appropriate, whether it be a *Jald* (flogging), imprisonment, or both, until the convicted spy offers *Tawbah* (repentance) for his act. This is the position of the Hanafi School, especially of its two most learned students, Imam Abu Yusuf and Imam Muhammad Ibn Al-Hasan,<sup>20</sup> and also of the Shafi school.<sup>21</sup> This position is also an opinion of Imam Ahmed Ibn Hanbal’s school.<sup>22</sup> Imam Al-Awzaei, an early independent Muslim jurist, said that if the accused is Muslim, the ruler punishes him with a severe punishment and exiles him to a remote place, away from other Muslims.<sup>23</sup> Those scholars who

<sup>15</sup> ABU ABDULLAH, MUHAMMAD IBN AHMAD AL-ANSARI, AL-JAMI LI AHKAM AL-QUR’AN [Primary Source of the Qur’an Fiqh], ch. 60 (*Al-Mumtahinah*), verse 1 (Beirut, Dar Ihya’ Al-Turath Al-Arabi 1986). See also THE FIQH ENCYCLOPEDIA, *supra* note 13, at Nos. 6-163, 6-166.

<sup>16</sup> AL-DASUQI, *supra* note 3, at 205.

<sup>17</sup> IBN QAYYIM AL-JAWZIYAH, *supra* note 3, at 107.

<sup>18</sup> AL-DASUQI, *supra* note 3, at 205; THE FIQH ENCYCLOPEDIA, *supra* note 13, at No. 6-165.

<sup>19</sup> AL-KHOWATIR, *supra* note 3, at 32.

<sup>20</sup> AL-SARKHASI, *supra* note 4, at 10.

<sup>21</sup> AL-MAWARDI, *supra* note 3, at 262.

<sup>22</sup> AL-KHOWATIR, *supra* note 3, at 34-35. See also IMAM MAHDI AHMAD IBN YAHIYA AL-MORTADA, AL-BAHR AL-ZAKHAR [Primary Source in Comparative Islamic Law], Bk. *Al-Siyar*, Ch. *Dar Al-Harb Dar Ibahah*. No. 409 (1<sup>st</sup> ed. Muassasat Al-Risalah 1988).

<sup>23</sup> *Id.*



are of the opinion that Muslim spies should not be executed rely on the conduct of the Prophet Muhammad in two famous incidents related to two of his companions, Hatib Ibn Abi Balta'ah and Abu Lubabah Al-Ansari.<sup>24</sup> Both transferred information, or intended to do so, to the enemies of the Prophet; however, the Prophet did not execute them.<sup>25</sup>

The early Muslim scholars recognized the basic rights of the defendant in these types of cases. They acknowledged the right to the presumption of innocence until proven guilty, the right not to be subjected to ill treatment or to torture in order to obtain a confession, the right to challenge evidence, the right to appear before a judge, and other similar rights.<sup>26</sup>

#### IV. Dispute over the Limits of Punishment for *Tazir*

The medieval Islamic schools of law may interpret *Tazir* crimes, but the ruler is not bound by their interpretations. The ruler can fix the punishment for any crime that violates the government's norms, because he is responsible for the protection of society's welfare.<sup>27</sup> However, there are *Fiqh* disputes on the limits of *Tazir* penalties. One view is that they should not be as severe as those for *Hudud*. Another is that *Tazir* penalties should not reach the minimum level of *Hudud* punishments, such as forty or eighty lashes. Yet another opinion, one of the Hanbali school, is that the penalties for *Tazir* crimes should not be more than ten lashes.<sup>28</sup>

Every school discusses the possibility of punishments for *Tazir* crimes extending to the death penalty if the ruler sees the grounds for it.<sup>29</sup> This kind of authority may also be exercised over particular crimes or situations such as spying, as discussed above. Imam Al-Shafi explained this when he was asked, “[d]o you view the ruler, if he imposes a penalty similar to the death penalty, as departing from the Sunnah of the Prophet?” Imam Al-Shafi said, “*Tazir* are different from *Hudud*. *Hudud* are not to be substituted for by *Tazir*; the *Imam* can disregard *Tazir* and opt for *Ijtihad*.”<sup>30</sup>

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<sup>24</sup> SAHIH MUSLIM [Primary Source of the Prophet's Conduct], Hadith No. 4550 (Cairo, Dar Ihya Al-Kutob Al-Arabiya 1956); AHMAD IBN HANBAL *supra* note 2, Hadith No. 23945.

<sup>25</sup> Ali Ibn Abi-Talib narrated that

The companions brought to the Prophet a spy for the infidels whose name was Furat Ibn Hayan, and the Prophet ordered him to be executed. The spy yielded [and said]: ‘Oh Ansar tribe, why are you executing me when I believe that there is no God but Allah and Muhammad is the Messenger of Allah!’ The Prophet then released him ....

Some scholars within the school of Al-Shafii are of the opinion that if the spy is a Muslim who is well known for his service to the religion of Islam, he should be released. See AWN AL-MABOOD SHAR SUNAN ABI DAWOOD [Primary Source of the Prophet's Conduct], Hadith No. 2280 (Beirut, Dar Al Fikr 1985).

<sup>26</sup> THE FIQH ENCYCLOPEDIA, *supra* note 13, at No. 6-164.

<sup>27</sup> FRANK E. VOGEL. ISLAMIC LAW AND LEGAL SYSTEM: STUDIES OF SAUDI ARABIA 145-146 (Boston, Brill Leiden 2000). See also IBN QAYYIM AL-JAWZIYAH, *supra* note 3, at 13.

<sup>28</sup> IBN QAYYIM AL-JAWZIYAH, *supra* note 3, at 114.

<sup>29</sup> *Id.* at 107-108.

<sup>30</sup> MUHAMMAD IBN IDRIS AL-SHAFII, 4 AL-UMM [Primary Source of the Shafi School of Law] 266 (1<sup>st</sup> ed. Beirut, Dar al-Kutob Al-Elmiyah 1993).



Thus, an Al-Shafi scholar is of the opinion that a Muslim spy should not be executed but he should be subject to *Tazir*.<sup>31</sup>

## V. Conclusion

Islamic Law contains several doctrines dealing with the punishment of espionage. The reason for the differences of opinion about execution of Muslim spies is disagreement among the *Ulama* regarding the limits of *Tazir* penalties. Since there is no standard response that may be expected from the ruler in prescribing punishment for the crime of espionage, a *Qadi* (judge) will use his own discretion in determining the punishment for this crime. This leaves the judge, in those countries that apply Islamic Law and in which the crime of espionage is not codified, with broad authority to choose from among the various scholarly opinions on the subject.

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<sup>31</sup> TAQI AL-DEEN IBN TAYMIAH, *AL-SIYASAH AL-SHARI'AH FI ISLAH AL-RAII WA AL-RAYIAH* [Primary Source in Islam and Politics] 152 -157 (Cairo, Maktabat Ibn Taymiah 1986).

