



# Law Library of Congress GLOBAL LEGAL MONITOR

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Rubens Medina  
Law Librarian of Congress

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## Arms Limitation

### MOZAMBIQUE – Government Ratifies Comprehensive Nuclear Test Ban Treaty

On April 8, 2008, the Mozambican Republic Assembly ratified the Comprehensive Nuclear Test Ban Treaty, becoming the 145<sup>th</sup> state to do so. According to the treaty, Mozambique cannot carry out any tests involving the explosion of nuclear weapons or any type of nuclear explosion; it is obligated to avoid such explosions in any place under its jurisdiction or control; and it must not encourage other nations to carry out nuclear explosions. (*Maputo Ratifica Tratado de Interdição de Testes Nucleares*, NOTÍCIAS LUSÓFONAS, Apr. 8, 2008.)  
(Eduardo Soares)



## Capital Punishment

### MALI – Proposal to End Death Penalty Meets Opposition

The government of Mali has proposed ending the use of capital punishment in the country, but opposition politicians have rallied to oppose the move and keep the death penalty. The Cabinet had passed a draft bill on abolition in October 2007. Although the 2001 Penal Code included the death penalty, it has not been imposed in Mali since 1980 (*see* 11 W.L.B. 2007).

As part of a demonstration against abolition, which was also devoted to criticizing the high cost of living in Mali, supporters of the National Union for Renaissance Party marched peacefully in the capital city, Bamako, and delivered a document on their views to the office of the Prime Minister. Modibo Sangare, the head of the Party, said of the supporters of the 2007 proposal to abolish the death penalty, “[i]t is a group of intellectuals manipulated by Westerners who wants to impose the abolition of the death sentence on our country, which is something we should not accept.” He went on to praise the government’s measures to avoid a rise in the prices of basic commodities, but said the pace of implementation of the measures was too slow. (*Malian Opposition Party Slams High Cost of Living, Death Penalty Draft Bill*, OSC SUMMARY, Apr. 23, 2008, Open Source Center No. AFP20080424950003.) (Constance A. Johnson)

### UNITED STATES – Supreme Court Rules Lethal Injection Cocktail is Constitutional

On April 16, the Supreme Court ruled that a state’s use of a three-drug lethal injection protocol for capital punishment does not violate the ban on cruel and unusual punishment in the United States Constitution.

Kentucky is one of at least 30 states that uses a three-drug lethal injection protocol for capital punishment. In the protocol, the first drug induces unconsciousness to prevent the prisoner from experiencing pain associated with the paralysis and cardiac arrest caused by the second and third drugs. Petitioners Ralph Baze and Thomas C. Bowling, convicted murders sentenced to death in Kentucky state court, filed suit asserting that this lethal injection protocol violates the Eighth Amendment because if improperly administered it can cause severe pain, and because there are superior alternative means available. The state trial court ruled that there was minimal risk of improper administration of the protocol, and upheld it as constitutional. The Kentucky Supreme Court affirmed, ruling that the protocol does not create a substantial risk of wanton and unnecessary infliction of pain, torture, or lingering death. The Supreme Court accepted the case for review.

A majority of justices concluded that Kentucky’s lethal injection protocol does not violate the Eighth Amendment. The controlling plurality opinion by Chief Justice Roberts, joined by two other Justices, stated that to constitute cruel and unusual punishment, an execution method must present a “substantial” or “objectively intolerable” risk of serious harm, and a state’s refusal to adopt alternative procedures may violate the Eighth Amendment only where the



alternative procedure is feasible, readily implemented, and in fact significantly reduces a substantial risk of severe pain. Chief Justice Roberts wrote that the practice of using the three-drug protocol could not be deemed “objectively intolerable” because there is a consensus that it is tolerable, evidenced by the fact that 30 states have adopted it. The opinion stated that in light of the safeguards Kentucky’s protocol puts in place to avoid improper administration of the protocol, the risks of administering an inadequate sodium thiopental dose are not so substantial or imminent as to amount to an Eighth Amendment violation. (*Baze v. Rees*, No. 07-5439 (April 16, 2008), available at <http://www.supremecourtus.gov/opinions/07pdf/07-5439.pdf>.) (Luis Acosta)



## Children

### **INTERNATIONAL CRIMINAL COURT/CONGO (Democratic Republic of) – Accusations Connected with Child Soldiers**

Thomas Lubanga Dyilo will be tried in June 2008 by the International Criminal Court (ICC). He is accused of recruiting child soldiers in the Democratic Republic of the Congo (DRC). The trial is seen by the United Nations Special Representative for Children and Armed Conflict, Radhika Coomaraswamy, as “a crucial step in the fight against impunity and [it] will have a decisive deterrent effect against perpetrators of this outrageous crime against humanity.” (*Trial of Congolese Defendant ‘Crucial Step’ to End Impunity – Senior UN Official*, UN NEWS, Apr. 28, 2008.)

Lubanga Dyilo was the leader of the Union of Congolese Patriots. He is on trial for conscripting children under the age of 15 and using them in active roles in armed conflict in the DRC. Coomaraswamy submitted a brief to the Court in The Hague defining the terms used in the indictment, including “conscripting and enlisting” children and “participation in hostilities.” (*Id.*)

In a related case, the ICC prosecutors have recently made public an arrest warrant issued in August 2006 for Bosco Ntaganda, a militia leader who has been accused of forcibly enlisting children as soldiers. His militia operated in the eastern part of the DRC from July 2002 through 2003. In a statement about Ntaganda, an associate of Lubanga Dyilo, the ICC said, “[h]e must be arrested. Like all the other indicted criminals in Uganda and the Sudan, he must be stopped if we want to break the system of violence. For such criminals, there must be no escape. Then peace will have a chance. Then victims will have hope.” (*International Criminal Court Calls for Arrest of Congolese Militia Leader*, UN NEWS, Apr. 29, 2008.)  
(Constance A. Johnson)

### **ISRAEL – Assistance to Minors Who Are Victims of Sexual or Other Violent Offenses**

On April 2, 2008, the Knesset (Israel’s Parliament) passed the Assistance to Minors Who Are Victims of Sexual or Other Violent Offenses Law, 5768-2008. The Law is designed to determine by legislation the rights of minors subjected to these offenses to receipt of primary assistance in centers that will be established specifically for this purpose. The centers will provide medical and psychological exams and treatment; handle the victims’ immediate needs including food and clothing; facilitate meetings with the child or with police investigators, welfare, or other authorized persons for the purpose of investigation of the case; and refer victims to governmental and non-governmental services for assistance, including legal consultation, emergency, and long-term care. (Assistance of Minors Who Are Victims of Sexual or Other Violent Offenses Law, 5768-2008, and bill, Knesset Web site (last visited Apr. 15, 2008).)  
(Ruth Levush)



## KOREA, SOUTH – Stricter Measures for Those Convicted of Sexual Violence Against Children

Ten- and eight-year-old girls (Hye-jin and Yae-seul) vanished in South Korea on Christmas day in 2007. A suspect was arrested in March 2008. He confessed that he raped and killed the girls. In the same month, a man tried to kidnap a ten-year-old girl from an elevator in her apartment building by pounding and kicking her. The videotape from a camera placed in the elevator was broadcast and created great public concern about the matter. Both suspects had records of sex crimes. In Korea, cases of rape of children under 13 years of age have been increasing, while the number of arrests in such cases is declining. Statistics of the Korean Institute of Criminology show 50 percent of those convicted of sexual offenses against children are repeat offenders.

Korean society is reacting against sex crimes against children. The Ministry of Justice released a plan to submit a bill to raise the punishment for sex crime offenders when their victims are children under 13 years of age. The bill states that an offender who rapes and kills such children will be punished either with death or penal servitude for an indefinite term. Punishment for rape of children will be raised from penal servitude for five years or more to seven years or more. The bill is named the “Hye-jin Yae-seul Act” bill, after the two recent victims. The government also established a new policy that no suspension of imprisonment will be granted for those convicted of sex crimes against children. Parole will not be granted for them, either, as a general rule. Convicts who the government assesses as possible repeat offenders will be obligated to wear a bracelet with a GPS tracking device.

Korea has the death penalty, but no convict has been executed since 1997. The general public has supported the death penalty. The government has not made a clear policy on abolishment of death penalty. After Hye-jin and Yae-seul and other cases involving rape and murder of women and children, public support for the death penalty is reported to be getting even stronger. (Wan-gyu Che, *Jidou sei hanzai: “hejin yesuru ho” seitei e [Sex Crimes against children: “Hye-jin · Yae-seul Act” to be enacted]*, CHOSUNILBO, Apr. 2, 2008, available at <http://www.chosunonline.com/article/20080402000068>; Gil-sang Yi & Jin-myong Kim, *Jido sei hanzai: kankoku de wa hanbun ga saihan (chu) [Sex crimes against children: in Korea half of them are repeat (part 2)]*, CHOSUNILBO, Apr. 2, 2008.) (Sayuri Umeda)

## SOUTH AFRICA – Child Law

The President of South African recently signed into law the Children’s Amendment Act No. 41 of 2007, which includes provisions on “partial care of children, early childhood development, prevention and early intervention, foster care, child and youth care centers, protection of children, children in alternative care, and creates new offences relating to children.” (Children’s Amendment Act, 513:30884 GOVERNMENT GAZETTE: REPUBLIC OF SOUTH AFRICA (Mar. 18, 2008), available at <http://www.info.gov.za/gazette/acts/2007/a41-07.pdf> (official source).) UNICEF country representative Macharia Kamau called the law, which amends the



Children's Act of 2005, "a comprehensive piece of legislation that is line with provisions of the UN Convention on the Rights of the Child."

Although the Act has received positive reviews, there is some concern about its implementation. Kamau expressed particular concern regarding funding for the programs that the Act envisages. She blamed the current ineffectiveness of programs designed to deliver services to children on "poor inter-sectoral cooperation and inefficiencies" and urged the appropriate ministries to cooperate more with one another. (*UNICEF Heralds New Children's Protection Laws in South Africa*, AFP, Apr. 10, 2008, Open Source Center No. AFP20080411543006.)

(Hanibal M. Goitom)

### **TAIWAN – Child and Juvenile Welfare Law Amended**

On April 22, 2008, Taiwan's Legislative Yuan approved amendments to the Child and Juvenile Welfare Law that impose fines on anyone who encourages the young to commit suicide. The revised Law stipulates that persons who "force, lure, allow, or act as a go-between for" a child or minor to end his or her life (art. 30, item 14) will face a fine of between NT\$60,000 and NT\$300,000 (about US\$1,944–\$9,720) and have their name publicized (art. 58, para. 1). This fine doubles the range of amounts that could previously be imposed and is applicable to the entire list of prohibited acts against children and minors (which number 15, including the new offense). Legislator Lai Shyh-bao (of the KMT, or Nationalist Party) stated that he had put forward the amendment "because of cases involving suicidal Internet users trying to attract others to end their lives together through online discussion boards and chatrooms." (Flora Wang, *Bill Targets Adult Role in Child Suicides*, THE TAIPEI TIMES, Apr. 23, 2008, at 3, available at <http://www.taipeitimes.com/News/taiwan/archives/2008/04/23/2003410030>; Amendment to Child and Teenage Welfare Law, 6797 THE GAZETTE OF THE OFFICE OF THE PRESIDENT 2-3 (May 7, 2008), GLIN Id No. 205132, available at <http://content.glin.gov/summary/205132>; Child and Juvenile Welfare Law, 6526 THE GAZETTE OF THE OFFICE OF THE PRESIDENT 45-66 (May 28, 2003), GLIN Id No. 88953, available at <http://content.glin.gov/summary/88953>.)

(Wendy Zeldin)



## Civil Code

### TAIWAN – Civil Law Amended

On April 22, 2008, Taiwan's legislature passed amendments to the parts of the Civil Code on General Principles and the Family, as well amendments to the two parts' enforcement laws. In addition, on May 7, the legislature adopted revisions to the Enforcement Law for Part V, Succession, of the Civil Code. The amendments to the General Principles greatly expand the former provisions on incompetence. The term "incompetence" (interdiction, *jinjih chan*) is no longer used. Instead, the law distinguishes between psychological or cognitive impairment that causes a person to be unable to make or receive declarations of will or distinguish the effect of such declarations, on the one hand, and such types of impairment that cause the person's capacity to perform those acts to be clearly inadequate, on the other. In the former case, stipulated parties may apply to have the court issue a declaration of guardianship, in the latter, they make seek a court declaration authorizing care-giving. Moreover, instead of stipulating that interdicted persons lack the capacity to act, the Code now states that persons subject to a declaration of guardianship lack the capacity to act. Another new provision also sets forth the types of activities for which a person subject to a care-giving declaration must seek the agreement of the caregiver. (*The Legislative Yuan at the Third Reading Adopts the Amended [General Principles Part of the Civil Code]* (in Chinese), LAWBank, May 5, 2008 (unofficial source).)

According to the Enforcement Law of the General Principles of the Civil Code, which was revised on May 2, 2008, the above provisions (found in articles 14 through 15-2) will enter into effect six months after the revised part's promulgation. In addition, the revised Code stipulates the circumstances in which a place of residence may be regarded as a domicile. (*The Legislative Yuan at the Third Reading Adopts the Amended [Enforcement Law of the General Principles of the Civil Code]* (in Chinese), LAWBank, May 5, 2008.)

Under amendments to Part IV, "Family," of the Civil Code, adopted by the legislature on May 2, 2008, almost all the provisions under Book 4, on guardianship (arts. 1091-1113), covering both guardianship of minors and guardianship of interdicted persons, were revised: 21 were amended (including two deletions) and 10 new provisions were added. As in the case of the revisions to the General Principles' provisions, the term "interdicted persons" has been replaced with the term "ward of the state" (persons under guardianship). In general, the revisions appear to enhance the role of the courts in the guardian selection process and also stress and elaborate on the court's obligation, in selecting guardians, to act in and protect the ward's best interest. According to the amended Enforcement Law, the revised provisions of Book 4 will take effect six months after their promulgation. (*The Legislative Yuan at the Third Reading Adopts the Amended [Part on the Family of the Civil Code]* (in Chinese), LAWBank, May 5, 2008; *The Legislative Yuan at the Third Reading Adopts the Amended [Enforcement Law of the Part on the Family of the Civil Code]* (in Chinese), LAWBank, May 5, 2008.)



An amendment to the Enforcement Law of Part V, “Succession,” of the Civil Code, promulgated on May 7, 2008, relieves the financial burden of adult inheritors of deceased family members’ debts. The new article 1-2 stipulates that in cases where succession commenced prior to January 4, 2008, and inheritors are responsible, by reason of a surety contract, for payment of debts after the succession begins and because continued performance of the obligation is “obviously unfair,” that debt payment obligation will be limited to the value of the inherited assets only. However, inheritors cannot retrieve payments already made to clear surety contract obligations in accordance with provisions amended and in force before April 22, 2008 [the date on which the legislature adopted article 1-2]. Nor does the new provision apply to those whose succession commenced after January 4, 2008. (Amendment to Enforcement Law for Part V, Succession of Civil Code, 6797 THE GAZETTE OF THE OFFICE OF THE PRESIDENT 11-12 (May 7, 2008), available at <http://content.glin.gov/summary/205137> (official source).)

The legislature passed a similar amendment to the Civil Code’s law of succession on December 14, 2007 (promulgated on January 2, 2008), that applies to minors who inherit debt from family members. The May 7 revision, according to legislator Shyu Jong-shyong, one of its sponsors, is a complement to the 2007 amendment. Shyu also commented, “[w]ith the bill’s passage, unjust debt cases that arose in the past can finally be resolved. This is a big step for Taiwan to leave behind barbarism and become a civilized society.” (*Bill Targets Adult Role in Child Suicides*, TAIPEI TIMES, Apr. 23, 2008, at 3, available at <http://www.taipeitimes.com/News/taiwan/archives/2008/04/23/2003410030>; Amendment to Part V, Succession of Civil Code, 6778 THE GAZETTE OF THE OFFICE OF THE PRESIDENT 24-27 (Jan. 2, 2008), available at <http://content.glin.gov/summary/201387>.)  
(Wendy Zeldin)



## Communications and Electronic Information

### CHINA – Added Restrictions on Television, Audiovisual Media

On February 14, 2008, China's State Administration of Radio, Film and Television (SARFT) issued a ten-point circular that tightens restrictions on foreign animated works. The purpose of the circular is to further standardize order in and to strengthen regulation and supervision of the broadcast of televised animated works, so as "to create a favorable market environment for our country's animation industry." (Guang Dian Zong Ju guanyu jiaqiang dianshi donghua pian bochu guanli de tongzhi, SARFT Web site, Feb. 14, 2008, <http://www.chinasarft.gov.cn/articles/2008/02/19/20080219171313160874.html>.) The circular extends by one hour the prime-time ban on such programs; as of May 1, 2008, local channels may not show them from 5 p.m. to 9.m. Joint Sino-foreign animated works must be approved by SARFT in order to be aired during prime time (item 2). The restrictions will affect such popular programs as Spongebob Squarepants and Japanese manga. Local television stations must obtain approval from SARFT to introduce a foreign animation show, and they are prohibited from broadcasting those that have not been approved for introduction, the circular states (item 4). In addition, channels with minors as the target audience must "strictly implement" a daily broadcast ratio of China-made animations to imported works of 7:3 (item 6). Domestic, Sino-foreign made, and imported cartoon works must go through examination and licensing procedures (item 5). The circular calls upon television broadcast institutions at every level to increase awareness of protection of intellectual property rights. It also encourages local television administrative organs and television stations to increase funding for the purchase and production of domestic cartoons (item 8). (*Id.*; Clifford Coonan, *China Extends Restrictions on Foreign Animation*, VARIETY ASIA, Feb. 21, 2008, available at <http://www.variety.com/content/view/5544/53/>.)

Yet another tightening of the media was imposed effective January 31, 2008, with the entry into force of the Provisions on Management of Online Audio and Video Services (Audiovisual Provisions), which were jointly issued by the SARFT and the Ministry of Information Industry on December 20, 2007. (Hulianwang shi ting jiemu fuwu guanli guiding [Provisions on Management of Online Audio and Video Services] <http://www.china-sarft.gov.cn/articles/2007/12/29/20071229131521450172.html> (last visited Apr. 22, 2008).) "Audio-visual program services" are defined as activities of providing services of production, aggregation, integration, and streaming of audiovisual programs to the public over the Internet, including both fixed-line and mobile access. Although SARFT has regulated online content for years, it reportedly has not actively enforced the rules. Under the new Provisions, service providers must be either state-owned or state-controlled, and now would-be providers must obtain a permit from the administration for radio, film, and television at the provincial level or above (with the exception of radio or TV stations at or above the municipal level and state news agencies).

However, based on a SARFT announcement of February 3, 2008, audiovisual service providers in operation before the Audiovisual Provisions' issuance may simply re-register



without becoming state-owned or controlled, as long as their activities are lawful. Article 16 of the Audiovisual Provisions lists ten prohibited types of broadcast content that essentially mirror those set forth in the 2002 Regulations and 2006 Screenplay Provisions discussed above, although item 7 on prohibiting violence, etc., is slightly different. It adds language prohibiting “the offense of leading minors to violate the law” and the “heightening of violence, sex, gambling, and terrorist activities.” A SARFT notice issued on December 28, 2007 (the Notice on Increased Monitoring of Online Audiovisual Services), confirmed “article 16 is intended to prohibit the broadcast of content that is ‘reactionary, vulgar or violent’” and elaborated on the permit system set forth in the Audiovisual Provisions. (*New SARFT Rules Tightens Online Audio-Video Regulations*, PRC TELECOMS, MEDIA & TECHNOLOGY LAW NEWSLETTER [TMTLN] (Jan. 11, 2008) available at <http://www.transasialawyers.com/publications/index.php?action=viewpub&id=&pub=10>; *SARFT Issues Notice Elaborating on Online Audiovisual Rules*, TMTLN, (Jan. 21, 2008), available at <http://www.transasialawyers.com/publications/index.php?action=viewpub&id=&pub=10>; *Newsflash: Existing Online AV Providers Exempted from SARFT Rules*, TMTLN (Feb. 4, 2008), available at <http://www.transasialawyers.com/publications/index.php?action=viewpub&id=&pub=10>.)  
(Wendy Zeldin)

### CHINA – Film Censorship

On March 3, 2008, China’s State Administration of Radio, Film and Television (SARFT) issued the Circular on Restating Film Censorship Standards, reiterating but elaborating upon the standards set forth in China’s Regulations on the Administration of Films (in force on Feb. 1, 2002; art. 25 lists ten types of forbidden content (*Dianying guanli tiaoli*, available at <http://www.chinasarft.gov.cn/articles/2007/02/16/20070913144431120333.html> (last visited Apr. 22, 2008)) and in the 2006 Provisions on Screenplay (Synopsis) Filing for the Record and Film Management (in force on June 22, 2006; art. 13 lists ten types of forbidden content, art. 14 lists 9 circumstances in which a film should be cut and revised) (*Dianying juben (genggai) bei’an, dianying pian guanli guiding*, available at <http://www.chinasarft.gov.cn/articles/2006/06/22/20070924091945340310.html> (last visited Apr. 22, 2008).)

Item 3 of the new circular lists nine types of circumstances in which film content should be cut and revised, reflecting those set forth in the 2006 Screenplay Provisions. These include the distortion of China’s civilization and history or that of other nations and depictions that would “tarnish the image of revolutionary leaders, heroes, and important historic characters, members of the armed forces, police, and judicial bodies.” The circular also forbids the depiction of hardcore sex, rape, prostitution, or use of “vulgar dialogue or music and sound effects” with a sexual connotation and the depiction of “murder, violence, horror, evil spirits, and devils.” It bans the detailed representation of crimes, disclosure of special investigatory techniques, or highly provocative depiction of homicide, blood, violence, drug use, or gambling; scenes of maltreatment of prisoners and of the extraction through torture of confessions from criminals or criminal suspects; and the use of “excessively terrifying scenes, conversations, background music and sound effects.” Advocacy of religious extremism and incitement of contention or conflict between different religions or sects or between believers and non-believers are also banned, as is film content advocating “nihilism, environmental damage, animal abuse



and the capture or killing of rare animals.” (Guang Dian Zong Ju guanyu chongshen dianying shencha biao zhun de tongzhi [SARFT Circular on Restating Film Censorship Standards], Mar. 3, 2008, available at <http://www.chinasarft.gov.cn/articles/2008/03/07/20080307155320180354.html>; Clifford Coonan, *SARFT Clarifies Censorship Rules on Sex, Drugs and Environment*, VARIETY ASIA, Mar. 9, 2008, available at <http://www.varietyasiaonline.com/content/view/5647/1/>.)

In addition to the above restrictions, on December 1, 2007, China imposed an unwritten ban of at least three months on the release of films from the United States. The order reportedly came from an agency higher than the SARFT or the Film Bureau, the units that typically handle movie industry policy and its application, and is speculated to have originated from the Propaganda Ministry. Reasons for the move appear to be a mixture of political and film-trade industry issues. From the industry perspective, the ban is viewed as possible retaliation for the role of the U.S. Motion Picture Association members in convincing the the Office of the U.S. Trade Representative (USTR) to file an action against China in the World Trade Organization (WTO) in April 2007 over intellectual property protection and market access; in September, the cases became full disputes. (Patrick Frater, *China Sets 3 Month Ban on U.S. Films*, VARIETY, Dec. 5, 2007, <http://www.variety.com/article/VR1117977089.html?categoryid=13&cs=1>.) The 2007 USTR report to the U.S. Congress on China’s WTO compliance stated:

China continues to interpret its audio-visual services commitments restrictively, despite the fact that this approach encourages the illegal copying and sale of foreign films in China. In particular, China continues to treat its commitment to allow the importation of 20 foreign films for theatrical release on a revenue sharing basis per year as a ceiling rather than a floor and further constrains the timely release of these films through distribution and marketing restrictions and lengthy film approval requirements. The United States has raised its concerns in this area with China at high levels since 2004, ... leading up to the filing of WTO dispute settlement proceedings in April 2007 on IPR enforcement and on China’s restrictions on the importation and distribution of copyright intensive products such as theatrical films, DVDs, music, books and journals. However, little progress has been made to date.

(USTR, 2007 REPORT TO CONGRESS ON CHINA’S WTO COMPLIANCE 103-104 (Dec. 11, 2007).  
(Wendy Zeldin)

## **INDONESIA – Introduction of New Cyber Law**

The People’s Representative Council of Indonesia has passed the new Law on Electronic Information and Transaction that bans pornographic Web sites and imposes prison sentences and fines on persons who produce, distribute, or transmit electronic content that violates decency; is related to gambling, insult, libel, or blackmail; or is threatening or creates hatred and enmity among different groups.



There are also fines and prison sentences for illegally accessing another's computer and impairing the security system, illegally accessing another person's electronic information or documentation, and for any person distributing or possessing hardware to do the above. (*Indonesia Passes Bill to Block Porn Sites*, Republic of Indonesia National Portal, Mar. 26, 2008.)

(Lisa J. White)

### **RUSSIAN FEDERATION – Ban on Wi-Fi Connections in Private Residences**

On March 19, 2008, the Russian Federation's Federal Agency on Telecommunications Supervision (analogous to the FCC in the United States) issued a regulation that restricts the use of personal computer routing devices and provides for mandatory registration of all Wi-Fi equipment according to the procedure established for radio broadcast systems with state distribution of frequencies available for Internet users. (Wi-Fi, from "wireless fidelity," is a popular wireless technology and standard for local area networks used in mobile phones, video games, home networks, and the like.) The restriction applies to all laptop computers, portable communications devices, and even mobile telephones if they can be used for wireless Internet reception. Refusal to register the equipment and obtain a permit for using the allocated radio frequency is punishable by a fine and confiscation of the equipment. The registration is to be conducted within ten days of submission of the application. The permit will be issued individually to the owner of the equipment. In the cities of Moscow and St. Petersburg, the registration is to be confirmed with local departments of the Federal Security Service. Special rules are introduced for installation of computer routers and Wi-Fi networks in residential quarters. (Regulation No. 62/4002 of Mar. 19, 2008, of the Federal Agency on Telecommunications Supervision, ST. PETERSBURG BUSINESS GUIDE (last visited Mar. 21, 2008).)

(Peter Roudik)



## Constitutional Law

### **AUSTRALIA – Summit Recommends Republic**

The Governance Session of the 2020 Summit (held April 19-20, 2008, in Canberra Australia) has recommended that Australia become a republic via a two-step process involving an initial plebiscite to ascertain whether or not Australia should relinquish ties to the United Kingdom and then a referendum to establish the model of the republic. The 2020 Summit also expressed support for a bill or charter of rights. (Australian Government, AUSTRALIA 2020 SUMMIT, INITIAL SUMMIT REPORT 32 (Apr. 2008), Australia 2020 Summit Web site, *available at* [http://www.australia2020.gov.au/docs/2020\\_Summit\\_initial\\_report.doc#\\_Toc196467945](http://www.australia2020.gov.au/docs/2020_Summit_initial_report.doc#_Toc196467945) (last visited Apr. 22, 2008).)

(Lisa J. White)

### **KOSOVO – Constitution Signed**

On April 9, 2008, the Parliament of Kosovo unanimously adopted the Constitution, which was signed by Kosovo's President Fatmir Sejdiu and Prime Minister Hashim Thaci. The Constitution declares Kosovo to be "an independent, sovereign, democratic, unified, and inseparable state" that guarantees freedom to all its citizens. The Constitution will enter into force on June 15, 2008, when the United Nations mission to the country will transfer its functions to the Kosovo leaders, European Union police, and observer missions. When it was still in draft form, the text of the Constitution was reviewed and approved by the Peter Feith, head of the International Civilian Office, a joint EU-United States body aimed at establishing the government. Feith checked the compliance of constitutional provisions with the EU requirements. (*Kosovo's First Constitution Signed*, LEGISLATIONLINE, Apr. 9, 2008.)

(Peter Roudik)

### **UKRAINE – New Procedure to Amend Constitution**

On April 18, 2008, the Constitutional Court of Ukraine ruled that the nation's Constitution can be amended following the results of a national referendum. This ruling was issued in response to the request submitted to the Court by the President of Ukraine, Viktor Yushchenko, for a ruling on the possibility of changing the basis of the country's constitutional system without the involvement of the legislature. The Constitutional Court ruled that the "people of Ukraine, being the bearer of sovereignty and the only source of power in Ukraine, may implement their exclusive right to change the nation's constitutional system and amend the Constitution following the procedures defined by the Constitution and existing legislation." (*Constitutional Court of Ukraine Permits Changing Constitution Without the Parliament*, Newsru.com information portal, Apr. 18, 2008.) The Court stated that a decision passed by referendum will be final and does not need parliamentary approval.

The Constitutional Court ruling is extremely important to the President, who reportedly intends to change the Constitution in order to extend his authority. However, according to the Court's decision, an amendment can be passed only according to the procedure prescribed by



legislation and the Constitution. At present no Ukrainian law provides for the possibility of amending the Constitution other than by the legislature, and so it appears that the passage of an implementing amendment by the legislature may be needed in order for the President to achieve his aim.

(Peter Roudik)



## Consumer Protection

### BHUTAN – Consumer Protection

It was reported on April 14, 2008, that Bhutan's Department of Trade (DOT) has drafted a consumer protection bill. Efforts to develop consumer awareness date back to 1999, when consumer education research officials from India had first conducted a workshop in Bhutan on consumer protection. According to DOT Director Sonam P Wangdi, "[t]he bill is an adaptation of best practices worldwide and it has UN guidelines of consumer protection. It's simple, user-friendly and will be able to address consumer grievances." Consumers reportedly have lacked much recourse and had "little choice in a market flooded with spurious products from neighbouring India." (Tashi Dendup, *Consumer Protection Bill to Be Tabled in Parliament*, KUENSEL ONLINE, Apr. 14, 2008, available at <http://www.kuenselonline.com/modules.php?name=News&file=article&sid=10205>.)

Under the bill, there is a mechanism to resolve consumer complaints through redress as well as the right to take action against unfair exploitation of stakeholders. The bill also addresses such issues as the handling of misleading and false representation of prices, guarantees for goods and services, consumer safety, and consumer rights vis à vis suppliers, manufacturers, and service providers. (*Id.*)  
(Wendy Zeldin)

### ISRAEL – Consumer Protection

On April 2, 2008, the Knesset (Israel's Parliament) passed an amendment to the Consumer Protection Law, 5741-1981. The amendment prevents an automatic extension of contractual relations between consumers and providers. It requires full awareness of the contractual time period and the expressed consent on the part of the consumer for its extension. The amendment further requires a provider to itemize bills sent to the consumer. In addition, a provider must send the consumer an itemized receipt reflecting all payments made by the consumer by a bank order or credit card once every six months, unless the payments are fixed and never changed and the consumer did not request such a receipt. Violation of the provisions entitles the consumer to damages. (The Consumer Protection (Amendment No. 22) Law, 5768-2008, Knesset Web site (last visited Apr. 16, 2008).)  
(Ruth Levush)

### TAIWAN – Consumer Insolvency Proceedings Law Takes Effect

On April 11, 2008, the Statute on Consumer Insolvency Proceedings took effect in Taiwan; the law was promulgated on July 11, 2007. Its four chapters, in 159 articles, cover general provisions, rebirth, liquidation, and supplementary provisions. The aim of the measures is to protect debtors who are unable to pay off their debts all at once. Under the Statute, two separate proceedings are available to debtors who are having trouble paying off their loans – debt re-organization or debt liquidation.



According to Spike Wu, Chairman of the Consumer Finance Unsecured Debt Restructuring Program Committee of the Bankers Association of the Republic of China (BAROC), the Statute “actually simplifies the debt negotiation process,” so that “debtors need only fill out forms such as a certificate of income to accomplish a repayment deal with the banks. The regulation ... makes the payment options flexible.” He added, “[a]fter negotiation, the bank will offer the debtor a tailor-made deal in which the amount of monthly payment and payment terms will vary according to each debtor's ability to pay.”

However, according to BAROC, “some debt agents, including attorneys, have posted advertisements exaggerating the complexity” of the proceedings, advertisements, which, in the view of BAROC, “could mislead debtors into believing that only with an agent’s help will they be able to obtain a better deal from the banks, which is far from the truth.” The association has asked the government to take action against these advertisements; the Ministry of Justice will determine if they contravene any law. (Yeh Fang-hsun, *Bankers Warn Against Consulting with Agents on Debt Payments*, CENTRAL NEWS AGENCY, Mar. 31, 2008, Open Source Center No. CPP20080331968229; The Statute for Settling Consumer’s Outstanding Debt, 6752 THE GAZETTE OF THE OFFICE OF THE PRESIDENT 138-176 (Nov. 7, 2007), GLIN ID 194570, available at <http://content.glin.gov/summary/194570>.)  
(Wendy Zeldin)



## Courts

### MEXICO – Congress Passes Judicial Reform Bill

The Mexican Senate recently passed a bill authorizing several judicial reforms, including the use of recorded telephone conversations as evidence with consent; the guarantee of the presumption of innocence; and the provision of public and oral trials. The bill also provides for the representation of suspects by qualified public defenders. Mexico's House of Representatives approved the bill in February 2008. To become law, it must be approved by at least 16 of Mexico's 31 states and be promulgated by Mexico's President. (Dictámenes de las Comisiones Unidas de Puntos Constitucionales, y de Justicia con Proyecto de Decreto Que Reforma y Adiciona Diversas Disposiciones de la Constitución Política de los Estados Unidos Mexicanos [text of the Judicial Reform Bill], official Web site of Mexico's House of Representatives (last visited Apr. 15, 2008); Katerina Ossenova, *Mexico Senate Passes Judicial Reform Bill*, JURIST, Mar. 6, 2008, available at <http://jurist.law.pitt.edu/paperchase/2008/03/mexico-senate-passes-judicial-reform.php>.)

(Gustavo Guerra)



## Criminal Law

### DENMARK – Elimination of Statute of Limitations on Torture

It was reported in the Danish press on May 10, 2008, that Minister of Justice Lene Espersen, bowing to pressure from outside the government, will remove the statute of limitations in the Criminal Code that currently applies not only to specified criminal acts under the code but also to torture, which is not mentioned. A new draft law will for the first time specifically refer to torture as a criminal act, and a provision is to be added to both the Criminal Code and the Military Criminal Code specifying “criminal liability for acts of torture will no longer be subject to the statute of limitations.” (*Danish Justice Minister Eliminates Statute of Limitations on Torture*, BERLINGSKE TIDENDE ONLINE, May 10, 2008, Open Source Center No. EUP20080510364006.)

Adoption of the amendments would conform with recommendations made to Denmark by the U.N. Committee Against Torture in May 2007, that the country

should review its rules and provisions on the statute of limitations and bring them fully in line with its obligations under the Convention so that acts of torture as well as attempts to commit torture and acts by any person which constitute complicity or participation in torture, can be investigated, prosecuted and punished without time limitations.

(*Committee on Torture Considers Denmark: Conclusions and Obligations*, Ministry of Foreign Affairs of Denmark, Permanent Mission of Denmark to the UN, Web site, <http://www.missionfngeneve.um.dk/en/servicemenu/News/CommitteeOnTortureConsidersDenmarkConclusionsAndRecommendations.htm> (last visited May 14, 2008).) Denmark ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on May 27, 1987 (*Participants* [in the Convention], Office of the High Commissioner for Human Rights Web site, <http://www.unhchr.ch/html/menu2/6/cat/treaties/conratification.htm> (last visited May 14, 2008)).

Manfred Nowak, U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, after completing a visit to Denmark on May 8, 2008, commented that the country “is the central player in mobilizing the international community by putting forth resolutions on combating torture every year,” and “without question, the international community has much to benefit from Denmark’s example,” even though he also expressed certain reservations about its record on torture. (*Denmark a Leader on Combating Torture, but UN Expert Has Some Concerns*, UN NEWS CENTRE, May 9, 2008, available at <http://www.un.org/apps/news/story.asp?NewsID=26622&Cr=torture&Cr1=>.) (Wendy Zeldin)



## UNITED STATES – Supreme Court Rules that an Arrest Illegal Under State Law Does Not Violate the U.S. Constitution

On April 23, the Supreme Court ruled that police officers did not violate the Fourth Amendment's prohibition against unreasonable searches and seizures when they made an arrest based on probable cause but prohibited by state law.

Two police officers of the City of Portsmouth, Virginia, stopped a car driven by David Lee Moore. They determined that Moore's license was suspended, and arrested him for the misdemeanor of driving on a suspended license. Under Virginia law, driving on a suspended license is subject to only a citation, rather than arrest. After making the illegal arrest, the police searched Moore and found he was carrying 16 grams of crack cocaine. Moore was charged with possessing cocaine with intent to distribute. Moore filed a pretrial motion to suppress the evidence from the search, arguing that suppression was required by the Fourth Amendment. The trial court denied the motion, and Moore was found guilty. The Virginia Supreme Court reversed the conviction, ruling that since the arrest was illegal under state law, the arrest and the ensuing search violated the Fourth Amendment. The Supreme Court decided to review the case.

The Supreme Court held that the arrest did not violate the Fourth Amendment, despite its being illegal under state law, because it was based on probable cause. The Court analyzed the question by weighing the degree to which the search or seizure intrudes upon an individual's privacy against the degree to which it is needed for the promotion of legitimate governmental interests. Under this standard, the Court stated, when an officer has probable cause to believe a person committed even a minor crime, an arrest is constitutionally reasonable. The Court said that if state arrest rules were incorporated into federal Fourth Amendment law, constitutional protections would become as complex as the underlying state law, and variable from place to place. The Court also ruled that the search following the arrest was not unconstitutional, because officers may perform searches incident to constitutionally permissible arrests. (Virginia v. Moore, No. 06-1082 (April 23, 2008), available at <http://www.supremecourtus.gov/opinions/07pdf/06-1082.pdf>.)  
(Luis Acosta)



## Criminal Procedure

### BRAZIL – New Law Would Implement Electronic Control of Felons on Parole

On April 15, 2008, the Legislative Assembly of the State of Rio de Janeiro, in Brazil, received a proposal for a law, prepared by State Deputy Dionío Lins, stipulating that convicted felons on parole must be monitored at all times by using an electronic device either on the wrist or on the ankle, which is capable of providing the exact location of the person. According to Lins, the idea is to better monitor the whereabouts of the convicted felon. To illustrate, Lins gave the example that if a convicted person exhibits good behavior while incarcerated, the law grants to that person the benefit of spending Easter at home. However, many of the beneficiaries of this legal provision never return to prison after the home visit.

A similar measure has already been approved by the legislature in the State of São Paulo, but some specialists in constitutional law argue that this issue can only be regulated at the federal level. To be enforced, the proposed law needs to be discussed, voted on, and approved by the Legislative Assembly and be signed by the Rio de Janeiro Governor. (*Projeto de Deputado Propõe que Presos em Liberdade Condicional Usem Chip de Localização*, O GLOBO (ONLINE), Apr. 16, 2008.)  
(Eduardo Soares)

### CHINA/France & AUSTRALIA – Extradition Treaties

On April 24, 2008, the Standing Committee of the National People's Congress of the People's Republic of China (PRC) ratified extradition treaties with France and Australia. Each treaty has 23 articles. The treaties cover, among other matters, extradition obligations, extraditable offenses, reasons that can be used and reasons that should be used to refuse extradition, property transfer, channels of contact, re-extradition, temporary custody, delayed transfer and temporary transfer, means of dispute settlement, and the treaty's entry into force and termination procedures. Neither Australia nor France has capital punishment, and so each of the treaties provides that the respective country can refuse to extradite a suspect who would face the death penalty in China. (*Quanguo Ren Da Chang weihui pizhun Zhong Ao yindu tiaoyue* [The National People's Congress Standing Committee [NPCSC] Ratifies China – Australia Extradition Treaty], XINHUA, Apr. 25, 2008; *Quanguo Ren Da Chang Weihui ni pizhun Zhongguo he Faguo yindu tiaoyue* [The NPCSC Plans to Ratify the Extradition Treaty between China and France], XINHUA, Apr. 22, 2008; *China Ratified Extradition Treaties with Australia and France*, BEIJING REVIEW, Apr. 25, 2008, available at [http://www.bjreview.com.cn/headline/txt/2008-04/25/content\\_112818.htm](http://www.bjreview.com.cn/headline/txt/2008-04/25/content_112818.htm).)

Spain was the first developed, Western country with which China signed an extradition treaty. The treaty was ratified on April 29, 2006. It was also the first among the PRC's extradition treaties to contain provisions touching on the death penalty issue. (*Zhongguo lifa jiguan pizhun yu fada guojia de shouge yindu tiaoyue* [China's Legislature Ratifies the First Extradition Treaty with a Developed Country], XINHUA, Apr. 29, 2006; Zhonghua Renmin



Gongheguo he Xibanya Wangguo yindu tiaoyue [Extradition Treaty of the PRC and the Kingdom of Spain] [Chinese text], PRC Ministry of Foreign Affairs Web site, Apr. 4, 2008.)

China has reportedly signed 99 bilateral judicial assistance protocols with more than 50 countries and regions. That figure includes 58 treaties on civil and judicial assistance, 30 on extradition, five on the transfer of criminals, and six on “the crackdown on national separatist forces, religious extremists and international terrorist forces.” (BEIJING REVIEW, *supra*.) (Wendy Zeldin)

### **LEBANON – Government Justifies Detention of Officers**

On April 15, 2008, the Lebanese government asserted that the arrest of four high-ranking military officers in connection with the assassination of former Prime Minister Rafik Hariri is legal under Lebanese and international law. The assertion came in response to criticism of the government by the U.N. High Commissioner for Human Rights that called for the release of the detainees, describing their arrest without charge since August 2005 as “arbitrary” and “unjust.” (*Lebanese Government Defends Detention of Officers in Hariri Probe*, ASHARQ ALAWSAT, Apr. 15, 2008, available at <http://www.asharq-e.com/news.asp?section=1&id=12427>.) (Issam Saliba)

### **SAUDI ARABIA – Rights of the Accused**

The National Association for Human Rights in Saudi Arabia published a booklet in Arabic titled *Know Your Rights*, to inform people of their rights guaranteed under the Criminal Procedure Law issued by a royal decree on August 22, 2006. The booklet refers to 39 legal rights that an accused has in cases of arrest, investigation, inspection, and trial. An official of the Association told ASHARQ ALAWSAT that versions of the booklet will be published in other languages to benefit foreigners working in Saudi Arabia. (*Know Your Rights Campaign Launched in Saudi Arabia*, ASHARQ ALAWSAT, Apr. 16, 2008, available at <http://www.asharq-e.com/print.asp?artid=id12422>.) (Issam Saliba)



## Discrimination

### EUROPEAN UNION – Anti-Discrimination Legislation for Homosexuals Abandoned

It has recently been reported that the European Commission has given up its intention to introduce a directive to safeguard the rights of homosexuals, to the dismay of gay and lesbian activists. The Commission has the legal authority to proceed with such a horizontal instrument, based on article 13 of the Treaty on European Union, as amended to cover grounds of discrimination that have not previously been covered. The European Parliament has made numerous requests to the Commission to initiate legislation in this area. However, the Commission yielded to pressure to abandon the move, exerted mainly by Germany. There was also the likelihood that other conservative states would not provide the unanimity needed to adopt the proposal. Consequently, the Commission decided instead to proceed with the drafting of a directive on protection of people with disabilities, which is a less controversial issue. For discrimination on the basis of age, sexual orientation, religion, or belief, the Commission intends to adopt only guidelines, not binding legislation. (*Brussels Abandons Plans to Protect Gays and Lesbians*, EUOBSERVER, Apr. 22, 2008, available at <http://euobserver.com/9/26023/?rk=1>.) (Theresa Papademetriou)



## Drivers

### BRAZIL – Harsh Punishment for Bad Drivers

In Brazil, a driver who receives a certain number of negative points on his driver's license due to traffic violations may temporarily lose his license and be obligated to attend a driver's course in order to be able to retrieve the license drive again. In the near future, this may not be the case in the State of Rio de Janeiro, because the Legislative Assembly is discussing a proposed law which, besides stipulating the above-mentioned punitive measures, would also force drivers who have had too many traffic violations to attend a one-week internship at the coroner's office or at fire stations.

The author of the proposed law, State Deputy Jorge Babu, stated that the idea behind it is not to constrain bad drivers further, but to make them aware of the dangers to which they expose other people by being imprudent or negligent while driving. During one week, for two hours a day, the bad drivers will have to accompany medical rescue teams, helping the teams in responding to traffic accidents and thereby putting them in direct contact with all the pain and suffering a car accident can cause.

The proposed law, however, has little chance of being approved. The Legislative Assembly's Commission on Transportation has issued an opinion opposing the approval of the proposed law and the Commission on Constitution and Justice considers the law unconstitutional because it adjudicates a federal matter. (*Punição Radical para Infratores*, O DIA ONLINE, Apr. 9, 2008.)

(Eduardo Soares)



## Education

### INDIA – Supreme Court Upholds Constitutional Validity of OBC Reservation

In a unanimous 500-page judgment delivered on April 10, 2008, the Supreme Court of India upheld the validity of the Central Educational Institutions (Reservation in Admission) Act, 2006, which provides for a 27 percent quota reservation for Other Backward Classes (OBC) in higher educational institutions like the various Indian Institutes of Management (IIMs) and Indian Institutes of Technology (IITs). The bench also upheld the validity of the Constitutional (93<sup>rd</sup> Amendment) Act, 2005, which enables central and state governments to enact similar legislation to provide for set-asides in higher education institutions. The Court, however, left the door open to possible challenges to such reservations if mandated by the government in private, unaided educational institutions. Justice Dalveer Bhandari, in a separate judgment, stated that the quotas in private institutions would be illegal and would violate the basic structure of the Constitution.

Simultaneously, the Court observed that the reserved places would not be available to the “creamy layer” of OBC, who, because of their economic background, can no longer be classed as OBC. (*Supreme Court Clears OBC Quota Law*, THE HINDUSTAN TIMES, Apr. 10, 2008, <http://www.hindustantimes.com/StoryPage/StoryPage.aspx?id=2f0f6594-a244-4e73-8716-282a7a29bad8>.)  
(Krishan Nehra)



## Elections and Politics

### BRAZIL – Electoral Propaganda Restricted

The Brazilian Superior Electoral Tribunal (*Tribunal Superior Eleitoral - TSE*) will soon vote on an opinion (*parecer técnico*) in response to a consultation formulated by Federal Deputy José Aparecido de Oliveira questioning the legality of political candidates' using blogs, spam, telemarketing, cell phone messages, and Web site banners and links as well as participating in chat rooms for the purpose of engaging in political campaigns. According to the document, if these situations are not foreseen in the electoral legislation, their practice is forbidden. To be valid, the legal opinion needs to be approved by a plenary session of the Justices of the TSE.

A recent resolution issued by the TSE (an administrative act regulating a specific issue under the tribunal's jurisdiction) restricted the use of the Internet in the coming municipal elections of October 2008. According to the resolution, a political candidate may only make use of a Web site specifically designed for his political campaign and the public may only have access to the site until two days before election day. The resolution also punishes violations of the electoral law that occur on the Internet due to the improper or abusive use of means of communication, an offense which in the past was restricted to the written media. (*Técnicos do TSE Sugerem Restrição de Propaganda Eleitoral na Internet*, O GLOBO (O)NLINE, Mar. 31, 2008.)

(Eduardo Soares)

### JORDAN – Political Associations

On April 16, 2008, the Jordanian Ministry of the Interior declared that only 14 political parties have met the conditions imposed by Law No. 19 of 2007, which places the parties under the Ministry's control and increases the required number of founding members in a new party to 500. Among the parties that were able to adjust their status to conform to the new, controversial law is the Islamic Action Front, which is the political arm of the Muslim Brotherhood in Jordan. (*The New Political Parties Law Decreases the Number of Political Associations to 14*, ASHARQ ALAWSAT, Apr. 17, 2008.)

(Issam Saliba)



# Energy

## GERMANY – Biofuel Requirements

On April 4, 2008, Sigmar Gabriel, the Federal Environmental Minister of Germany, withdrew a controversial draft regulation that contained strict sustainability criteria for biofuels and that would have increased the required percentage of biofuel in gasoline for motor vehicles from the current five percent (Biokraftstoffquotengesetz, Dec. 18, 2006, BUNDESGESETZBLATT I at 3180) to ten percent (*Bundesumweltminister stoppt Biosprit-Verordnung*, Federal Ministry for the Environment, Nature Conservation and Nuclear Safety official Web site (last visited Apr. 30, 2008)).

Originally, the German regulation had been drafted to comply with the European Union goal of increasing to 10 percent by 2020 the percentage of biofuels in the motor vehicle fuels market (Commission of the European Communities, *Proposal for a Directive of the European Parliament and of the Council on the Promotion of the Use of Energy*, Jan. 23, 2008, available at the European Commission official Web site, [http://ec.europa.eu/commission\\_barroso/president/focus/energy-package-2008/index\\_en.htm#key](http://ec.europa.eu/commission_barroso/president/focus/energy-package-2008/index_en.htm#key)). The German rationale for abandoning the plans for speedy implementation of the proposed EU requirements is twofold. First, the larger amount of biofuel in gasoline would have required many consumers to buy new automobiles; second, there is growing apprehension in Germany over the sustainability of biofuel imports from third-world countries where biofuel production competes with the growing of food crops. According to the Ministry for the Environment, more research is needed to ensure that the only biofuels that will qualify are truly environmentally beneficial. (Edith Palmer)

## GERMANY – Energy-Using Products

On February 27, 2008, the German Parliament enacted the Act Concerning Energy-Using Products (BUNDESGESETZBLATT I at 258), which transposes into German law the European Union's Eco-Design Directive (Directive 2005/32/EC of the European Parliament and the Council of July 6, 2005, establishing a framework for the setting of ecodesign requirements for energy-using products, 2005 OFFICIAL JOURNAL OF THE EUROPEAN UNION (L191)). The German Act and the EU Directive aim at setting minimum requirements for all products that use energy (except for vehicles). The products should be designed to minimize the use of energy when they are being operated and also to minimize environmental damage through the production of the materials from which these products are made.

The Directive foresees that, beginning in 2009, products for which eco-design recommendations have been established may not be imported or produced unless they live up to these requirements. The German Act designates the Federal Institute for Materials Research and Testing (Bundesamt für Bundesanstalt für Materialforschung und –prüfung Web site, <http://www.bam.de/> (last visited Apr. 30, 2008)) as the coordinating agency that is to commission



the studies of groups of products, publish their results, and then discuss them with industry and other German agencies prior to the creation of national requirements.

(Edith Palmer)



## Environment

### CANADA – Carbon Sequestration Project Announced

Canada's western province of Saskatchewan is already the site of the world's largest demonstration or experimental project for injecting and storing carbon dioxide in underground oil fields. In the Weyburn and Apache fields, CO<sub>2</sub> from industrial emissions has been injected into nearly depleted reserves to revive oil production and then sealed to reduce Canada's greenhouse gas emissions. The Saskatchewan experiment has been an international one, as a pipeline from Dakota Gasification Companies Synfuels Plant in North Dakota is a major contributor of CO<sub>2</sub> for the project. (Petroleum Technology Research Centre, *Weyburn-Midale CO<sub>2</sub> Project*, [http://www.ptrc.ca/weyburn\\_overview.php](http://www.ptrc.ca/weyburn_overview.php) (last visited Apr. 16, 2008).)

On March 25, 2008, Prime Minister Stephen Harper of Canada and Premier Brad Wall of Saskatchewan announced that they would partner with industry in the creation of the world's first and largest commercial-scale carbon capture and storage project. The Prime Minister has stated that the proposed Boundary Dam project would "reduce Canada's greenhouse gas emissions by a million tonnes a year while generating up to 100 megawatts of clean power." (Office of the Prime Minister, *PM and Saskatchewan Premier Announce Major Carbon Capture and Storage Project*, Mar. 25, 2008, available at <http://www.pm.gc.ca/eng/media.asp?category=1&id=2036>.) Funding for the federal government's contribution of Can\$240 million (about US\$238 million) has been included in the as yet unapproved 2008 Budget. (Budget Implementation Act, 2008, s. 138, 39th Parl. 2d Sess., available at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3365116&Language=e&Mode=1&File=257>.) SaskPower, a provincial electric company, and other industries have agreed to contribute another Can\$758 (about US\$753) towards the cost of the project.

Since assuming power, Prime Minister Harper has indicated that Canada would not be able to achieve the reductions in greenhouse gases as had been agreed by the previous Liberal government when it ratified the Kyoto Protocol. (*Canada Says It Will Not Meet Kyoto Targets*, SIOUX CITY JOURNAL, Apr. 17, 2008, available at [http://www.siouxcityjournal.com/articles/2007/04/27/news/latest\\_news/29593b81bb7dec98862572ca0013b665.txt](http://www.siouxcityjournal.com/articles/2007/04/27/news/latest_news/29593b81bb7dec98862572ca0013b665.txt).) The Prime Minister has, instead, indicated that Canada would aim for a reduction of 20 percent in its greenhouse gas emissions by 2020. Carbon sequestration is a major part of the government's strategy. The Canada-Alberta Carbon Capture and Storage Task Force has estimated that Canada has the potential to store underground as much as 600 million tons of carbon dioxide a year. This would amount to approximately three-quarters of Canada's current emissions of greenhouse gases. (*PM and Saskatchewan Premier Announce Major Carbon Capture and Storage Project supra.*) (Stephen Clarke)



## Family

### INDIA – No Short-Cut Dissolution of Hindu Marriage

On April 1, 2008, the High Court of Bombay, India, ruled that a couple seeking divorce by mutual consent cannot dissolve the marriage within a few months, but must wait for a year after solemnization of the marriage, as prescribed by section 13(B) of the Hindu Marriage Act, 1955, before applying for the court's permission for the dissolution. The court issued the ruling in dismissing the petition of a city-based couple who challenged the constitutional validity of the above-cited provision, pleading for legal separation within six months of their marriage.

The court observed that “[I]n the age of IT, [the] tendency to take impulsive decisions are [sic] on the rise but the ability to act faster in a modernized age must not result in instant decisions relating to delicate human relationships.” (*Marriage Cannot Be Dissolved at the Drop of a Hat: HC*, THE INDIAN EXPRESS, April 1, 2008, [http://www.expressindia.com/latest-news/Marriage-cannot-be-dissolved-at-the-drop-of-a\\_hat--HC/291112/](http://www.expressindia.com/latest-news/Marriage-cannot-be-dissolved-at-the-drop-of-a_hat--HC/291112/).) In dismissing the petition, the court stated that the statutory period of one year is meant to be a healing time to ponder over mutual differences. The petitioners' attorney argued that the one-year period is unreasonable and bears no relationship to the objective behind the scheme of divorce by mutual consent. In rejecting this argument, the court stated that in such a case a petition by mutual consent of divorce would be filed just few days after the marriage and “there would be no attempt to even fairly understand each other and resolve minor differences....” (*Id.*) (Krishan Nehra)

### UNITED STATES – Maryland High Court Holds Islamic "Talaq" Divorce Unconstitutional

On May 6, 2008 the Maryland Court of Appeals declined to recognize a Pakistani "talaq" divorce, holding that the practice conflicted with Maryland public policy and the Maryland Constitution.

Farah and Irfan Aleem, citizens of Pakistan, were married in Pakistan in 1980, but have resided in Maryland for the past 20 years. Farah filed for divorce in Maryland. Her husband Irfan filed an answer in which he raised no jurisdictional objections. Before proceedings were complete, and without notifying his wife, he visited the Pakistani Embassy in Washington, D.C., and there performed talaq, an Islamic divorce practice which has been incorporated into Pakistan's secular law. Only a male is allowed to perform talaq unless he grants the right to his wife. Irfan claimed that under the law of Pakistan, talaq removed jurisdiction over the divorce proceedings from Maryland's courts.

The Court of Appeals examined both Maryland and federal precedent on the issue of comity with other nations' laws, finding that judgments of foreign states need not be recognized as valid if they are contrary to public policy. The court then noted the contrast between Pakistani and Maryland law regarding property division: in this case, under Pakistani law the wife would



get nothing, while under Maryland law, she might be entitled to up to one half of two million dollars. In addition, the Maryland Constitution contains a provision requiring equality of the sexes under the law, which is violated by the talaq procedure. The court noted a further constitutional problem: a wife could never be guaranteed access to due process of law during divorce proceedings if the husband could, without notice, terminate the proceedings by visiting the Pakistani embassy and performing talaq.

The court found the Pakistani statutes recognizing talaq divorce conflicted with the public policy of Maryland, and declined to afford comity to them. (*Aleem v. Aleem*, No. 108, Sept. Term 2007 (Md. May 6, 2008), available at <http://mdcourts.gov/opinions/coa/2008/108a07.pdf>). (Gary Robinson)

### **UNITED STATES – Same-Sex Marriage Ban Held Unconstitutional in California**

On May 15, 2008 the California Supreme Court ruled that provisions in the state's marriage statutes disallowing same-sex marriages violate the California Constitution.

The opinion arose from six consolidated proceedings involving the City of San Francisco's issuance of marriage licenses to gay couples during a period in 2004. The issuance of such licenses was enjoined in an earlier court decision in which the constitutional question was not raised. Various parties then brought actions raising the issue of the constitutionality of the California provisions barring same-sex marriage.

In its ruling, the court noted that, in contrast to other states which have considered the issue of same-sex marriage, California has enacted "comprehensive domestic partnership legislation under which a same-sex couple may enter into a legal relationship that affords the couple virtually all of the same substantive legal benefits and privileges, and imposes upon the couple virtually all of the same legal obligations and duties, that California law affords to and imposes upon a married couple." The question before the court was thus whether the failure to designate the official relationship of a same-sex couple as "marriage" violates the California Constitution.

The court found that the California Constitution guarantees a "right to marry" as an inherent part of the right to privacy, and that the provisions at issue impinge upon one of the core elements of this right: that each family be accorded the same dignity, stature and respect accorded other officially recognized families. The court also determined that sexual orientation was a "suspect classification" for discrimination under the state's constitutional equal protection clause. Applying a "strict scrutiny" test, the court found the statutes violate the right to equal protection, since the state has no compelling interest in reserving the designation of marriage only for opposite-sex couples.

The court ruled that the statutory language "limiting the designation of marriage to a union 'between a man and a woman' is unconstitutional and must be stricken from the statute,



and that the remaining statutory language must be understood as making the designation of marriage available both to opposite-sex and same-sex couples.” (In re Marriage Cases, No. S147999 (Cal. May 15, 2008), available at <http://www.courtinfo.ca.gov/opinions/documents/S147999.PDF>).

(Gary Robinson)



## Foreign Investment

### VIETNAM – Decree on Mergers and Acquisitions Being Drafted

It was reported on May 2, 2008, that Vietnam's Ministry of Planning and Investment (MPI) is drafting a decree on foreign-related mergers and acquisitions (M&A). The aim of the draft proposal is "to ensure effective M&A, build a strict legal corridor and improve local awareness about the issue," as well as "to improve the quality of foreign direct investment (FDI) and create favourable conditions for domestic and foreign enterprises to buy back shares." To that end, the legislation will prescribe the legal procedures for M&A as well as a ceiling for foreign ownership in business transactions, Ngo Cong Thanh, head of the MPI's Foreign Investment Department Service Section, was quoted as saying. Through share sales and purchases and mergers with domestic and foreign enterprises, Vietnamese businesses have adopted measures to increase capacity to deal with the competitive pressure generated by international economic integration. Nevertheless, Thanh noted, although it is a growing trend that may rise along with the increasing number of foreign enterprises in Vietnam, at present FDI from M&A only constitutes about five percent of the total FDI in the country. (*Decree on Foreign-related M&A in the Pipeline Drafted*, ASEM CONNECT, May 2, 2008, available at <http://asemconnectvietnam.gov.vn/NewsDetail.aspx?hoinhap=1&type=1&subId=50&Newsid=9117>.)

(Wendy Zeldin)



## Freedom of the Press

### CHINA – Classified Memo on Foreign Journalists

On March 30, 2008, the Paris-based media freedom organization Reports Without Borders (Reporters sans frontières) (RSF) issued a press release making public a purportedly classified memo dating from 2007, obtained from Chinese sources, advising provincial-level officials on the behavior they should adopt towards foreign journalists before and during the Beijing Olympic Games. The *Working Recommendations for Reinforcing Management Efficiency After the ‘Rules for Interviews by Foreign Journalists During the Beijing Olympic Games and Their Preparatory Period’ Take Effect* consists of the national authorities’ instructions, under six headings, on handling public relations and controlling press coverage. The six sections cover “creating an interview strategy, improving the news release system, building a propaganda system for foreign media, creating positive opinion online, controlling opinion in a crisis and training officials in public relations.” (Press Release, Reports Without Borders, Classified Memo Reveals Government Strategy for “Managing” Foreign Journalists (Mar. 30, 2008), available at [http://www.rsf.org/article.php3?id\\_article=26380](http://www.rsf.org/article.php3?id_article=26380).)

While RSF praises the plan’s “positive elements such as training officials and holding news conferences for foreign journalists,” it criticizes the obstructions to the free flow of news and information that the memo entails. The press release also points out that the memo “confirms that the authorities have an active policy towards online information content,” calling upon the officials “to ‘reinforce the work of commenting on the Internet and increase the level of opinion orientation on the Internet.’” In addition, in relation to public emergencies and crises, the memo tells officials to “have effective methods for disseminating news and for organizing and managing journalists” and to “[m]anage journalists doing on-the-spot interviews in an orderly and effective manner and influence their coverage of the event.” (*Id.*) (Wendy Zeldin)

### ZIMBABWE – Court Dismisses Government’s Case Against Foreign Journalists

A Zimbabwean court dismissed charges against a NEW YORK TIMES journalist and a British man for reporting Zimbabwe’s election “without proper accreditation.” The court cited the state’s failure to prove “reasonable suspicion of them practicing as journalists” as the reason for throwing out the case. (*Zimbabwe Court Clears 2 Foreign Journalists*, AP, Apr. 16, 2008.)

According to the Access to Information and Protection of Privacy Act, reporting without proper accreditation is a crime punishable by fine or up to two years of imprisonment (section 79 (8), Cap 10:27 (amended by 5/2003, 21/2004, 20/2007) (2002) available at <http://www.sokwanele.com/node/509> (unofficial source)). (Hanibal M. Goitom)



## Government Employees

### BANGLADESH - Ordinance on Marriage with Foreign Nationals

The Bangladesh Council of Advisers approved the Public Servant (Marriage with Foreign Nationals) Amendment of 2008 on May 11, 2008. The new law amends the Public Servant (Marriage with Foreign Nationals) Ordinance of 1976 to allow Bangladesh Foreign Service Officers to marry foreign nationals with the permission of the President of Bangladesh.

The 1976 ordinance permitted Bangladesh government employees other than employees of the Ministry of Foreign Affairs to marry foreign nationals. Under the new law, all employees of the Bangladesh Government will enjoy the same privilege. Under the former law, a Bangladesh foreign diplomat lost his job after marrying a Pakistani woman, but under the new law, Bangladesh's permanent representative to United Nations, who has expressed her desire to marry a Dutch national, may be allowed to do so. (*Ismat Jahan Allowed to Marry Foreigner*, THE NEW NATION, May 13, 2008, available at <http://nation.ittefaq.com/issues/2008/05/13/news0612.htm>.)  
(Shameema Rahman)



## Government Ethics

### BANGLADESH – Former Prime Minister’s Son Implicated in Corruption

In an effort to control corruption by the country’s politicians, on April 1, 2008, the Anti-Corruption Commission (ACC) of Bangladesh filed a charge sheet against Tarique Rahman, the elder son of former Prime Minister Khaleda Zia, for allegedly amassing wealth illegally and concealing information about his assets. The ACC has also charged his wife, Zobaida Rahman, and his mother-in-law, Syeda Iqbalmand Banu, with assisting him in the commission of these offenses. However, the magistrate overseeing the matter has thus far not passed orders on the ACC’s application for issuance of warrants of arrest against the two women. The amounts involved in the alleged acts of graft total over half a million dollars.

In addition, Rahman faces about a dozen corruption and criminal cases. He was arrested in March 2007 after a businessman filed an extortion case against him. He has since been lodged in the Dhaka Central Jail. A member of Zia’s Bangladesh Nationalist Party and the son of another prominent leader were sentenced on March 31, 2008, in different cases, to 13 years or more of imprisonment. The son of yet another politician and Zia loyalist, Akhter Hamid Paban, was sentenced to 17 years’ imprisonment on charges of possessing illegal arms and ammunition. (*First Chargesheet Filed Against Zia’s Detained Son*, THE HINDUSTAN TIMES, Apr. 1, 2008, available at <http://www.hindustantimes.com/StoryPage/StoryPage.aspx?id=bdaa3a2b-decd-40ed-bfc4-9e8f802102db&&Headline=First+chargesheet+filed+against+Zia's+son> .)

(Krishan Nehra)

### CZECH REPUBLIC – Presidential Veto of Amendment to Conflict-of-Interest Provision

Calling the proposed amendment to the law on conflict of interest unsystematic, ill-conceived, chaotic, and incomprehensible, Czech President Vaclav Klaus has vetoed it. Klaus was concerned that the amendment would pose a threat to privacy, according to Petr Hajek, a presidential office spokesman. (*Czech President Vetoes Amendment to Law on Conflict of Interests*, CZECH HAPPENINGS, May 9, 2008, Open Source Center No. EUP20080512035004.)

The amendment would have facilitated public access to statements on the property holdings of politicians and changed the punishment given to officials who violate conflict-of-interest provisions. Under the proposed revisions, judges and state attorneys would be exempted from the duty to submit property statements, but that duty would be extended to managers in state and municipal institutions, primary and secondary school directors, and certain other persons who are not traditionally considered to be civil servants. Senior officials at the university level would not have been required to submit statements. It would take at least 101 of the 200 votes in the lower house of the legislature to overturn the veto. (*Id.*)

(Constance A. Johnson)



## Health

### **MALAWI – Legislation to Ban Traditional AIDS “Healers”**

Malawi’s lawmakers are examining draft legislation designed to put an end to practices of traditional healers who “prescribe sex with albinos, the disabled or virgins as a cure for HIV and AIDS” and religious leaders who advise their flocks to “give up antiretroviral treatment for prayers.” Malawi, home to 12 million people, 14 % of whom are HIV-infected, has 30, 000 traditional healers and loses 78,000 people annually to AIDS-related diseases. (*Draft Legislation Seeks to Protect People in Malawi from Healers Claiming to Cure HIV/AIDS*, MEDICAL NEWS TODAY, Mar. 6, 2008, available at <http://www.medicalnewstoday.com/articles/99629.php>.) (Hanibal M. Goitom)



# Human Rights

## ANGOLA – U.N. Office Ordered to Shut Down

The United Nations Office for Human Rights has until May 31, 2008, to close its office in Angola by order of the Angolan government. According to Vegard Bye, Chief of the U.N. Office in Angola, on March 4, 2008, Manuel Aragão, Angolan Minister of Justice, officially communicated to the U.N. High Commission on Human Rights that the office should be closed. Bye was quoted as saying that the Angolan government believes “it is not pertinent” to have a U.N. Office for Human Rights in the country. Arcanjo do Nascimento, Chief of the Angolan mission to the United Nations, said that, legally, the office never existed and that it was a holdover from the previous U.N. Observer Mission (MONUA) in the country. In his opinion, for such an office to exist, it is necessary to follow a series of procedures implemented by the United Nations itself, e.g., the forging of a Memorandum of Understanding with Angola, which has thus far not been the case. (*Governo Manda Encerrar Escritório da ONU para Direitos Humanos*, NOTÍCIAS LUSÓFONAS, Apr. 3, 2008.)  
(Eduardo Soares)

## NEPAL – Government Ordered to Enact Law Against Excessive Use of Force

On May 12, 2008, the Supreme Court of Nepal ordered the government to enact a law that would address human rights violations resulting from excessive use of force, and also provide for compensation for the victims. In drafting the law, the order further states, the government is to seek the help of experts.

The impetus for the order was a writ petition filed by families of victims of the Kotwada (Kalikot) massacre of November 2001, in which the army reportedly gunned down 17 innocent workers. The families turned to seek relief from the courts in 2007, after the government failed to provide compensation, to prosecute the army personnel involved, or to heed the Nepal National Human Rights Commission’s recommendations to launch a probe into the incident and to compensate the victims’ families.

According to the private Nepal news publication KANTIPUR, the country has been subject to many human rights abuses over the last couple of decades, during the democratic movement in 1990, the government’s ten-year battle with insurgent Maoists, and the anti-monarchy democratic movement of April 2006, “due to excessive use of force by security personnel.” The government’s failure to compensate the victims on the one hand, and to bring the perpetrators to justice on the other, the publication asserts, have prompted “leading human rights activists to charge that it has promoted a culture of impunity in the country.” (*SC to Govt: Enact Law Against Excessive Force*, eKANTIPUR.COM, May 13, 2008, available at <http://www.kantipuronline.com/kolnews.php?&nid=146782>.)  
(Wendy Zeldin)



## **TURKEY – Controversial Criminal Code Provision Amended**

On April 30, 2008, Turkey's Grand National Parliament passed an amendment to a controversial provision of the Criminal Code. The Turkish legislature had adopted a new Criminal Code on September 26, 2004, that became effective on June 1, 2005. (Law No. 5237, Sept. 26, 2004, T.C. RESMI GAZETE [Official Gazette of the Republic of Turkey], Oct. 12, 2004.) Its article 301, punishing the denigration of "Turkishness" and of Turkish government authorities, has been controversial from the beginning, with human rights groups like Amnesty International criticizing its impact on free speech. (Amnesty International, *Turkey: Article 301 Is a Threat to Freedom of Expression and Must Be Repealed Now*, Dec. 1, 2005.)

The new version of article 301, which passed by a vote of 250 to 65, included the following changes:

- The offense is now insulting the "Turkish nation" rather than "Turkishness."
- The maximum sentence is now two years, down from the original three.
- First-time offenders will be eligible for suspended sentences.
- The Minister of Justice must now approve all investigations of these offenses.

(*Turkey's Parliament Softens Law Restricting Free Speech*, AP, Apr. 30, 2008; see also Jurist, *Turkish Parliament Amends State Slander Law*, PAPER CHASE NEWSBURST, Apr. 30, 2008, available at <http://jurist.law.pitt.edu/paperchase/2008/04/turkish-parliament-amends-state-slander.php>.)

(Constance A. Johnson)



## Immigration and Nationality

### AUSTRIA – Deportation of Illegal Aliens

On March 15, 2008, the Austrian Constitutional Court held that the deportation of an illegal alien is unconstitutional if it violates the guarantee of the family of article 8 of the European Human Rights Convention (Docket No. B 16/08 – 7, *available at* the Constitutional Court of Austria official Web site). In the case under consideration, the illegal alien was being deported for having committed a criminal offense, but she had been residing in Austria for ten years, part of the time legally and part of the time illegally, and she had three children and a divorced spouse who lived in Austria. Under these circumstances, the Court held that the immigration authorities had not adequately balanced the illegal alien's right to her family with the public interest in deporting illegal aliens.

This decision follows a landmark decision of the Constitutional Court of September 29, 2007 (Docket No. 383 Bundeskanzleramt [Federal Chancellery] Web site (last visited Apr. 18, 2008)) that had established that even a criminal conviction is not a sufficient reason to deport an illegal alien, if there are circumstances that make his family life protection-worthy. This Austrian decision quotes several recent cases of the European Court of Human Rights as having established a higher standard of protection of the family life of aliens. In Austria, the European Human Rights Convention (213 U.N.T.S. 221, official Web site of the Council of Europe (last visited Apr. 29, 2008)) ranks as a Constitutional law (Bundes-Verfassungsgesetznovelle, Mar. 4, 1964, Bundesgesetzblatt No. 164/59 (official source)).  
(Edith Palmer)

### BRAZIL/SPAIN – Protocol on Immigration

On April 1, 2008, in Madrid, Brazil and Spain signed a Protocol on Immigration designed to put an end to the recent diplomatic crisis involving tourists of both countries. According to the document, both countries agree, *inter alia*, that tourists not admitted into either country will be allowed to contact the local consulates in search of help; will have access to bathrooms and their luggage; and, to meet customs' requirements, will be able to withdraw cash from ATM machines installed in airports to facilitate such withdrawals to satisfy requirements of the customs offices. The two nations also decided to implement a special rapid communications system between their consular authorities regarding boarding issues and to reinforce police cooperation, including the exchange of police agents. Additionally, they reached a compromise on improving information campaigns on the legal requirements for admission to a foreign country. (*Paz é Selada no Papel*, O DIA ONLINE, Apr. 2, 2008.)  
(Eduardo Soares)

### CANADA – Immigration Reforms Proposed

A bill to create the Budget Implementation Act, 2008, currently in the House of Commons, contains provisions that are primarily aimed at reducing the backlog of almost one million applications for permanent residence that have been filed with Citizenship and



Immigration Canada (CIC) and speeding up the processing of workers skilled in occupations in demand. Canada already accepts a much higher percentage of skilled workers than the United States. In 2006, approximately 105,000 out of the total of approximately 250,000 new permanent residents were admitted to the country under this category. (CIC, *Facts and Figures 2006*, available at <http://www.cic.gc.ca/english/resources/statistics/facts2006/overview/01.asp> (last visited Apr. 17, 2008).) The family class, by contrast, accounted for only about 70,000 new immigrants.

Canada uses a points system in processing applications of skilled workers seeking immigrant visas. Prior to 2002, before he or she would qualify in the economic class an applicant usually needed a job offer for a position that no Canadian was willing and able to fill. However, Canada changed its policies to deemphasize this requirement, based upon studies that showed that persons with certain types of skills were most likely to become successfully settled in Canada regardless of whether they had arranged employment or not. The government has generally been pleased with the results, but recognizes that the change has created two problems. The first is that some skilled workers have not been able to find employment in their field of training and have ended up being underemployed in unskilled occupations. The second problem is that, by making more persons eligible, the new system has led to the creation of a large backlog of applicants.

In its budget bill, the government proposes to give the Minister for Citizenship and Immigration authority to fast-track applications from workers who have certain skills that are in demand rather than having to process applications in the order they are received. CIC would also no longer be required to process all new skilled-worker applications. (CIC, *About the Proposed Amendments to the Immigration System*, available at <http://www.cic.gc.ca/english/department/laws-policy/irpa-more.asp> (last visited Apr. 17, 2008).) The types of workers that could be fast-tracked and those whose applications would not have to be fully processed would be established in instructions issued by the Minister and published in the official CANADA GAZETTE.

The government's proposals have been severely criticized inside and outside of the House of Commons. Immigrant groups fear that family reunification will become even more difficult and time-consuming and that the changes will be used to "shut out immigrants of certain ethnic or religious backgrounds." The two largest opposition parties, the Liberals and the New Democrats, have charged the government with having an anti-immigrant agenda and seeking a "back-door way" to reducing immigration. (*Canada: Harper Sets Immigration Bill Straight*, NATIONAL POST (Toronto), Apr. 9, 2008, Open Source Center No. LAP20080410483002.) The government has denied these charges and has pointed out that record numbers of immigrants have entered the country over the past couple of years.

The opposition parties would like to separate the immigration reforms from the Budget Implementation Act, 2008 (Bill C-50, ss. 116-120, 39<sup>th</sup> Parl. 2d Sess.). However, the government has announced that it will oppose this measure. (Bruce Campion-Smith,



*Immigration Proposals to Stand; Amendments Won't Be Considered, Minister Says: Dion Declares Liberals Won't Support Bill 'As It Is,'* TORONTO STAR, Apr. 17, 2008, at A20.) This is significant because the Conservative government is a minority government that would be forced to call an election if its budget bill were defeated. If the immigration proposals were separated from the bill and defeated, the government would not be required to call an election. It therefore appears that the Prime Minister is either prepared to fight an election on the issue or is counting on one of the opposition parties deciding to side with the government to avoid an election at this time.

(Stephen Clarke)

### CHINA – New Visa Restrictions

On May 6, 2008, China's Ministry of Foreign Affairs (MOFA) admitted that more restrictive visa requirements had been introduced: “[w]e have made some arrangements according to usual international practice. That is, in the approval process we are more strict and more serious with the procedure,” spokesman Qin Gang told reporters at a regular press conference. (*China FM Spokesman Admits Changes to Visa Policy Ahead of Olympic Games*, AFP (Hong Kong), May 6, 2008, Open Source Center No. CPP20080506968167.)

Previously, the MOFA had denied any change in policy. No formal guidelines have been issued on the altered process, either, but it was reported in April 2008, in the ASSOCIATED PRESS and other news sources, that the Chinese authorities had tightened the visa rules, restricting many visitors to China to 30-day stays (instead of 90) and discontinuing the issuance of the flexible, multiple-entry visas that can be valid for a year. The Web site of Forever Bright Trading Limited, a China visa agency based in Hong Kong, states: “[we] are informed by the China visa office that effective from 15 Apr 2008 there will be no more multi entry (F) visas available.” It further states that those who still need visas can only apply for a single or double-entry visa (for which the duration of each stay is 30 days each) and “[a]ll this will stay in place until 17 Oct 2008.” (*Notice Board: Further Notice*, <http://www.fbt-chinavisa.com.hk/> (last visited May 6, 2008).)

According to Hong Kong travel agents, the shift in visa rules came in the aftermath of foreign attacks on China's human rights practices following the crackdown on anti-Chinese government riots in Tibet; one travel agency official speculated that the authorities want to “have a better control over the people coming in” as the Beijing Olympics near. (*Travel Agents Cite Shift in Chinese Visa Rules*, THE ASSOCIATED PRESS, Apr. 8, 2008, <http://www.msnbc.msn.com/id/24013515>.) The NEW YORK TIMES noted “[t]he new rules make it harder for foreigners to live and work in Beijing without applying for residency permits, which can be difficult to obtain” and complicate not only the lives of businesspeople in Hong Kong but also those in Taiwan, South Korea, and Singapore who are “used to crossing the border with ease.” (Andrew Jacobs, *Bracing for Games, China Sets Rules That Complicate Life for Foreigners*, Apr. 24, 2008, available at <http://www.nytimes.com/2008/04/24/world/asia/24china.html>.)



Qin Gang stated that China's recent visa policy had been duly arranged on the basis of past practice for the Olympics and international large-scale competitions as well as Chinese laws and regulations and that that this did not mean that multiple-entry visas had been completely suspended. According to Qin, "this policy may be carried out for a period of time, with the aim of ensuring that China has a safe environment." He stressed that the procedure for obtaining a China visa is more convenient than that of most other countries; for example, China does not require persons entering the country to be finger- or palm-printed or to have an iris or cornea scan. According to the MOFA Web site, "due arrangements" include requiring visa applicants to separately submit a letter of invitation, proof of family relationship, hotel reservation, and roundtrip airline tickets. China has not stopped issuing multiple-entry visas to applicants who meet the requirements, it adds, but officials will consider "the real need of the applicant" in granting them. (*Wai Jiao Bu: Zhongguo jinqi youguan qianzheng zhengce xi genju Aoyun guanli anpai [Ministry of Foreign Affairs: China's recent visa policy system accords with Olympics Practice]*, XINHUA, May 6, 2008; AFP, *supra*; see also *China Says It Tightens Visa Procedures Ahead of Olympics*, Newsfeed Researcher Web site, May 6, 2008.)  
(Wendy Zeldin)

### **SWEDEN – Labor Immigration**

It was reported in the Swedish press that on April 29, 2008, the Swedish government would present a bill on work-related immigration that would make it easier, beginning in mid-December, for people from countries outside the European Union to come to Sweden to work. Under the bill's provisions, persons who had found employment in Sweden would be allowed to stay in the country for an initial period of two years and then, if still employed, for an additional two years. After that time, they would be able to obtain a permanent residence permit and family members could join them. If the bill becomes law, rejected asylum-seekers may become labor immigrants instead, provided they have a job and the promise of future employment. It would be the responsibility of the Swedish Migration Board to ensure that there is no wage dumping.

According to Mikaela Valtersson, the group leader of the Environment Party, which supports the bill, its critics "are mainly worried because this eliminates today's bureaucratic review process. The major change will be that it us up to the employer to decide whether he needs manpower." The Environment Party had also wanted to have current illegal immigrants covered by the bill. The Social Democratic and Left parties as well as the LO (Swedish Trade Union confederation) oppose the legislation. (*Swedish Government to Propose Relaxed Regulations for Labor Immigration*, DAGENS NYHETER, Apr. 28, 2008, Open Source Center No. EUP20080429340009.)  
(Wendy Zeldin)



## Intellectual Property

### SÃO TOMÉ AND PRÍNCIPE – Accession to Patent Cooperation Treaty

On April 18, 2008, the United Nations Intellectual Property Agency announced that São Tomé and Príncipe acceded to the Patent Cooperation Treaty (PCT), a pact designed to stimulate innovation and promote economic activity worldwide. According to the World Intellectual Property Organization (WIPO), in the beginning of April, São Tomé and Príncipe deposited the instrument of accession; on July 3, 2008, the treaty will enter into force in the country. After that date, nationals and residents of São Tomé and Príncipe will be able to file patent applications. (Press Release, United Nations, São Tomé and Príncipe Joins Global Patent Act (Apr. 18, 2008), available at [http://www.un.org/apps/news/story.asp?NewsID=26378&Cr=wipo&Cr1=.](http://www.un.org/apps/news/story.asp?NewsID=26378&Cr=wipo&Cr1=))  
(Eduardo Soares)



## International Relations

### **GREATER MEKONG SUBREGION – Joint Declaration Endorses Ten-Year Strategic Framework**

On March 31, 2008, leaders of the Member States of the Greater Mekong Subregion (GMS) issued a Joint Summit Declaration on the third GMS summit, endorsing a Ten-Year Strategic Framework for GMS economic cooperation and providing “key directions to enhance connectivity, competitiveness and community.” (*Full Text of Joint Summit Declaration on 3<sup>rd</sup> GMS Summit (1)*, XINHUA, Mar. 31, 2008, Open Source Center No. CPP20080331968221.) The six GMS members are China, Cambodia, Laos, Myanmar (Burma), Thailand, and Vietnam.

The Declaration notes the progress made in GMS economic cooperation since 1992 and in particular “the significant reduction in in the incidence of poverty” and “the substantial improvement and expansion of transportation infrastructure” in the subregion. It also cites the GMS efforts in the energy sector to build new power generation and transmission facilities, to broaden cooperation in energy sub-sectors, and to establish a foundation for a future subregional power trade and energy market. The GMS has put in place a subregional telecommunications backbone and is in the advanced stages of developing the GMS Information Superhighway Network. In regard to tourism, it is seeking to formulate a five-year plan to promote the subregion as a single tourism destination and to foster tourism-related infrastructure development. The GMS is implementing a program in the agricultural sector “that will further promote cross-border agricultural trade, ensure food safety, and improve farmers' livelihoods.” Programs are already being implemented to prevent and control communicable diseases, the Declaration states.

The summit also endorsed the Vientiane Plan of Action for GMS Development for 2008-2012 (appended to the Declaration). The Declaration underscored, in connection with the Plan, “the importance of making substantial and early progress” in nine areas, covering transportation, energy, telecommunications, agriculture, environment, tourism, human resource development, trade facilitation, and investment. In the field of transportation, for example, the Plan calls for acceleration of construction and improvement of the remaining sections of GMS corridors and expansion of the corridor network, including the Singapore-Kunming Rail Link; in the agricultural sector, it calls for implementation of the GMS initiative on biofuel and rural renewable energy development, expansion of trans-boundary animal disease control programs, and access to agricultural information in rural areas. (*Id.*)  
(Wendy Zeldin)

### **HONG KONG/INDONESIA – Mutual Legal Assistance Agreement**

The Hong Kong Special Administrative Region (HKSAR) Government and the Republic of Indonesia signed the Agreement Concerning Mutual Legal Assistance in Criminal Matters (MLA) on April 3, 2008. The agreement will facilitate international co-operation to combat



serious crimes by providing for reciprocal assistance in relation to investigations, proceedings, and prosecutions of criminal offenses. Assistance includes:

- service of documents;
- taking evidence;
- temporary transfer of persons and voluntary appearances;
- executing search warrants; and
- identifying, tracing, restraining, seizing, forfeiting, and confiscating proceeds of crime.

(Press Release, Mutual Legal Assistance in Criminal Matters Agreement Signed with Indonesia (Apr. 3, 2008), available at <http://www.info.gov.hk/gia/general/200804/03/P200804030220.htm>.)

(Lisa J. White)



## Investment

### ISRAEL – Boycott of Corporations Conducting Business with Iran

On April 2, 2008, the Knesset (Israel's Parliament) passed a law to prohibit investments by Israeli financial institutions in corporations that maintain substantive business contacts with the Islamic Republic of Iran. Such contacts are defined as trade, financial, or other economic contacts with the Iranian government, for its benefit or in Iranian territory, generally or in a transaction worth US\$20 million or other amounts as determined by law, in transactions related to energy or in a corporation connected to development of non-conventional weapons by Iran.

The law establishes an implementation committee composed of representatives from the Prime Minister's office, the Ministries of the Treasury, Foreign Affairs, Defense, Industry, Trade and Employment, Money Laundering and Terrorism Financing Prevention, the Stock Market Authority, and the Bank of Israel. The committee will compile a list of corporations that maintain substantive business relations with Iran. The law regulates the procedures to be implemented by the committee prior to inclusion of a corporation on that list, including the rights of injured parties to object. The law prescribes criminal penalties for financial institutions and their general directors, active directors, or other senior employees responsible for operations in violation of the law.

Explanatory notes on the bill state that Iran constitutes a real danger to world peace and to the existence of the State of Israel; that the President of Iran has expressly called for Israel's destruction; and that the Iranian regime is developing non-conventional weapons for mass extermination. They further contend that preliminary sanctions against Iran by Western countries have already led to a decrease of investments in Iranian oil fields and a decrease in Iranian oil production, resulting in harm to the Iranian economy and giving rise to expressions of discontent by the Iranian public in the current regime. (Prohibition of Investment in Corporations That Maintain Business Contact with Iran Law and Bill, 5768-2008, the Knesset Website.)

(Ruth Levush)



## Military Law

### BAHRAIN – Military Personnel Allowed to Grow Beards

Ending a prohibition going back 70 years, the Bahraini army has allowed military personnel to grow beards. According to the decision issued by the General Command Officer of the Bahraini Defense Force, Sheikh Khalifa bin Ahmed Al Khalifa, members of the armed forces will be allowed to grow beards starting the first of the month of May. According to news sources, the command of the Defense Force is in the process of issuing a directive repealing the ban on growing beards, with some restriction as to their length. (*Bahrain Ends 70 Years Prohibition Against Growing Beards by Military Personnel*, ASHARQ ALAWSAT, Apr. 17, 2008.) (Issam Saliba)

### BULGARIA – Foreign Military Operations Allowed

On April 11, 2008, the Parliament of Bulgaria revised the Law on Defense and Armed Forces of Bulgaria. The amendment repeals a provision that stated that military service will be carried out within the territory of Bulgaria and inserts a new provision according to which a refusal to carry out military service abroad qualifies as dereliction of military duties, punishable by disciplinary sanctions or discharge, thereby legalizing participation of Bulgarian personnel in military missions outside of the country. This provision will also apply to physicians, logistic officers, and other civilians who will be eligible for assignment to operations and missions in foreign states. These civilians will be awarded the military rank required for the period of their participation in the armed forces. They will also enjoy the status of members of the permanent reserve. (*Military Service May Be Carried Out Outside Bulgaria's Territory*, BULGARIAN TELEGRAPH AGENCY DAILY NEWS, Apr. 11, 2008, Emerging Markets Database.) (Peter Roudik)

### ISRAEL – Regulation of Military Reserve Service

On April 2, 2008, the Knesset (Israel's Parliament) passed a law that defines the structure of the Israel Defense Forces (IDF) reserve force and its capability and objectives. The law provides the framework for a call for reserve service and the rights and duties of reserve soldiers. The law declares that the reserves are an inseparable part of IDF and constitute a central pillar on which IDF relies for purposes of State security. According to the law, a soldier may be called to reserve service for specific objectives, including training for a state of emergency, organization of manpower and discipline, operational tasks, and, in the absence of an alternative, for service in jobs and professions determined by a decree. The law further regulates the duration of service in the reserves. Accordingly, in a period of three consecutive years, officers may serve up to 84 days; non-officers who serve in supervisory roles, up to 70 days; and others, up to 54 days. These periods may be extended in a period of emergency or in other special situations, as determined by a government decision. The law further authorizes the Minister of Defense, in consultation with the Minister of Foreign Affairs, to determine a list of countries into which the entry of reserve soldiers is prohibited, limited, or conditional.



According to the explanatory notes of the bill, the law constitutes a major change in the constitution of the reserve force and reserve service. It reflects the situation in which only part of formerly drafted soldiers serve in the reserves, while guaranteeing them adequate pay and limiting the tasks for which they can be called up for service to situations that are absolutely necessary. (Reserve Service Law and Bill, 5768-2008, the Knesset Website.)

(Ruth Levush)

### **RUSSIAN FEDERATION – Supreme Court Rules to Acquit Military Deserters**

On April 3, 2008, the plenary session of the Russian Federation Supreme Court reviewed the lower courts' practice in resolving cases related to draft dodging and ruled that a conscript who left the place of his military service will not be held criminally responsible if his first-time desertion was committed because of violence applied to him by his fellow soldiers or commanding officers or if he left because of extreme personal hardship, such as sickness or death of immediate relatives, which require his presence at home. The inability to receive proper medical assistance at the place of military service is considered one such circumstance that justifies the desertion. The Court specified that if a military person does not return to his post when the circumstances that required his absence are removed, e.g., there is no further need to provide care for a relative, he will be held criminally liable under existing legislation because desertion remains a crime and a criminal investigation will be initiated in each case such a crime is committed. (Ruling No. 3 of April 3, 2008, of the Russian Federation Supreme Court, Russian Federation Supreme Court official Web site, Apr. 7, 2008.)

(Peter Roudik)



# Money Laundering

## FINLAND – Draft Anti-Money Laundering and Terrorism Financing Legislation

The Government of Finland has recently drafted new legislation to more effectively combat money laundering and the terrorist activities financed by it, thereby bringing Finnish law more in line with a European Union directive on the subject. The Finnish bill extends a requirement to report suspected money laundering activities – already in place for banks, insurance companies, pawn shops, and real estate brokers – to companies that offer tax advisory and financial management services, distrainers, and bankruptcy ombudsmen. All merchants who accept more than €15,000 (about US\$23,544) in cash payment from customers would also be subject to the reporting requirement. The Government plans to relax taxation confidentiality rules to allow tax officials, if necessary, to report on the financial transactions of persons suspected of money laundering. (*Finland — Government Considers New Legislation to Prevent Money Laundering and Terrorism Financing*, 5:5 IJCSL NEWSLETTER (Apr. 2008), citing to *Finland Upgrading Anti-Terrorism and Anti-Money Laundering Law*, YLE NEWS, Mar. 13, 2008, available at <http://www.yle.fi/news/id85245.html>.)

(Wendy Zeldin)



# Police

## **BOSNIA AND HERZEGOVINA – Police Reform Adopted**

On April 10, 2008, the Parliament of the Republic of Bosnia and Herzegovina adopted two laws on police reform, which regulate the independence and supervision of the Bosnian police force and provide for coordination between local police bodies and federal police support agencies. Adoption of the laws is a requirement established by the European Union for the commencement of negotiations on the signing of a Stabilization and Association Agreement, a document that begins the EU admission process for Bosnia. According to the new laws, which were debated for four years, the future police force is to reflect the country's constitutional structure and ethnic division. The laws do not foresee the unification of regional police forces; the supervision law states that state/ethnic bodies will control the work of various agencies performing some of the policing activities at the local level. Federal agencies will be eligible to coordinate police work but not interfere with the work of regional police forces. Federal control may be introduced later, after new state structures are organized according to the changes in the country's constitutional system. (*Bosnian Parliament Adopted Reform Laws*, BETA NEWS AGENCY, Apr. 14, 2008, Emerging Markets Database.)  
(Peter Roudik)

## **EUROPEAN UNION – Europol Will Attain New Status by 2010**

On April 18, 2008, after protracted negotiations, the Council of the European Union approved a decision to upgrade the status of the European Police Office (Europol), located in The Hague, to an EU Agency, as of January 1, 2010. The decision is designed to achieve two objectives: a) to replace the Europol Convention that established this body, with the Council's Decision; and b) to replace intergovernmental financing with EU funding. Upon gaining the status of an EU agency, Europol will be subject to the financial and staff regulations of EU officials. (Press Release, European Union, Europol to Become EU Agency in 2010, IP/08/610 (Apr. 18, 2008), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/610&format=HTML&aged=0&language=EN&guiLanguage=el>.)  
(Theresa Papademetriou)

## **FRANCE – Protection Against Police Abuses and Video Surveillance**

France's National Commission on Ethics and Security (Commission Nationale de Déontologie de la Sécurité), an independent administrative authority that has the power to investigate cases of abuses by police officers and others in charge of public security, released its annual activities report to the President of the Republic on April 8, 2008. The report notes the excessive use of preliminary detentions, cases of unjustified body searches, and inappropriate use of handcuffs. The commission is also concerned about a new trend, the filing of complaints by police officers against witnesses who come forward to report police violence.

The Commission cites the case of a witness who reported violence committed by two police officers against a man under a removal order whom they were escorting to the airport.



The police officers filed a complaint of “calumnious denunciation” two days after being called before the Commission. The court found the witness guilty, and he was ordered to write a letter of apology and to give each police officer €100 (about US\$156). The Commission was outraged by these proceedings that may result in “inadmissible pressures against witnesses of police violence.”

The report also addresses access to medical care by individuals placed in police custody, detention centers, or jails during the period from 2001 to 2007. The Commission noted recurrent failures, including absence of medical assistance at night or during the weekend, long waits, and lack of respect for patient confidentiality during medical exams.

On the same day, the National Commission on Data and Liberties (Commission Nationale de l’Informatique et des Libertés, CNIL), France’s independent authority on data protection, made public a study on the use of video surveillance in France. It concludes that the current legal framework on video surveillance is difficult to comprehend and that an independent agency, more specifically the CNIL itself, should supervise the use of video surveillance to protect the public against any abuses.

The report and study are available in French on the Web sites of the Commissions, at <http://www.cnds.fr/> and <http://www.cnil.fr>, respectively. (Isabelle Mandraud, *Les abus “sécuritaires sous surveillance,”* LE MONDE, Apr. 8, 2008, available at <http://www.leMonde.fr> (Archives).)  
(Nicole Atwill)



# Property

## **BELARUS – New Rules for Property Registration**

On April 16, 2008, the Parliament of Belarus passed amendments to the Law on State Registration of Real Estate. The amendments deal with the transfer of ownership rights and other transactions involving real estate. Aimed at simplification of the registration procedure, the amendments introduce a new registration agency that will be an independent commercial entity entitled to register all types of transactions according to the adopted detailed list of transactions covering property, proprietary rights, and limitations on rights subject to state registration. Such newly defined transactions as mergers, division of property, and isolation of separate premises from a building were added to the list. The procedure for managing preparation of the uniform state register of real estate is also defined in the amendments. (*Belarus' Parliament OKs Amendments to Law on Property Registration*, PRIMETASS BELARUS NEWswire, Apr. 16, 2008, Emerging Markets Database.)  
(Peter Roudik)



## Religion

### UNITED STATES – Native American Ordered To Stand Trial For Shooting Bald Eagle

On May 8, 2008, the U.S. Court of Appeals for the Tenth Circuit ruled that notwithstanding the Religious Freedom Restoration Act (“RFRA”), a member of the Northern Arapaho Tribe of Wyoming can be criminally charged for shooting a bald eagle without a permit.

An individual named Winslow Friday shot an eagle in preparation for the Sun Dance, an annual ritual event for his tribe. He was charged with violating the Bald and Golden Eagle Protection Act (“Eagle Act”). The Eagle Act allows persons to obtain a permit for taking an eagle for Native American religious uses, but Friday did not attempt to obtain a permit. Friday moved to dismiss the charge under the RFRA, which states that the government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability. A federal district court dismissed the charge on this basis. The Tenth Circuit reversed. It noted that under RFRA, the government can impose a burden on religion “only if it demonstrates that application of the burden . . . is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest.” The court found that in the Eagle Act the government has tried to accommodate Native American religions while still achieving its compelling interest in protecting eagles. The Tenth Circuit remanded the case to allow the prosecution to proceed to trial. (United States v. Friday (10<sup>th</sup> Cir. May 8, 2008), available at <http://www.ca10.uscourts.gov/opinions/06/06-8093.pdf>). (Gary Robinson)



# Taxation

## SWITZERLAND – Heavy Vehicle Tax

On March 26, 2008, Switzerland promulgated amendments to the Heavy Vehicle Tax Act that enhance enforcement of the user fees imposed on heavy passenger cars and trucks and to the Heavy Vehicle Tax Regulation (Bundesgesetz, Oct. 5, 2007, AMTLICHE SAMMLUNG DES BUNDESRECHTS (AS) 765 (2008) & Verordnung, Mar. 7, 2008, AS 769 (2008), respectively, Federal Authorities of the Swiss Confederation official Web site). The Heavy Vehicle Tax Act (SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS (SR) No. 641.81, Federal Authorities of the Swiss Confederation official Web site) was originally enacted in 1997 and is part of the Swiss transport policy that aims at shifting heavy traffic from roads to rail and that is mandated by article 84 of the Swiss Federal Constitution (Bundesverfassung, SR No. 101). The fees, imposed on vehicles that are permanently or temporarily in Switzerland, are in proportion to the amount of pollutants they emit; these fees were last increased by ten percent on January 1, 2008 (Verordnung, Sept. 12, 2007, AS 4695 (2007), Federal Authorities of the Swiss Confederation official Web site). This increase in the fee has decreased truck traffic in Switzerland and increased it in Austria. Both countries serve as transit routes for freight within Europe, and both countries have fragile ecologies in the alpine regions (L. Ungerbeck, *Tunnelblick*, DER STANDARD, Apr. 20, 2008, at 24, LEXIS/NEXIS, NEWS Library, ZEITUNG File). (Edith Palmer)



# Terrorism

## EUROPEAN UNION – Amendment to the Framework Decision on Combating Terrorism

In the aftermath of the September 11, 2001, terrorist attacks in the United States, the European Union expedited the adoption of the Framework Decision on Combating Terrorism, which was finally approved on June 13, 2002. The Decision represents the cornerstone of the European Union's struggle to combat terrorism. It harmonizes the definition of terrorist offenses in all Member States; and requires all EU Members to provide for serious penalties for natural and legal persons engaging in terrorist activities.

On November 6, 2008, the European Commission adopted a proposal to amend the Decision. The amendment introduces two new offenses: a) public provocation to commit a terrorist offense; b) recruitment and training for terrorism offenses committed through the Internet. Thus, individuals who make available through the Internet information on bomb-making and also distribute terrorist propaganda can now be held liable for committing terrorist offenses. Moreover, law enforcement authorities will be enabled to obtain cooperation more easily from Internet service providers in their efforts to prevent terrorist crime and identify criminals, and, based on court orders or administrative decisions, national authorities have the right to request that the providers eliminate the terrorism-related data.

On April 18, 2008, the Council of the European Union reached a common agreement on the proposal to amend the Framework Decision on Combating Terrorism (Press Release, European Union, Amendment of the framework Decision on Combating Terrorism, MEMO/08/255 (Apr. 18, 2008), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/255&format=HTML&aged=0&language=EN&guiLanguage=en>.) (Theresa Papademetriou)

## THE GAMBIA – Application of Anti-Terrorism Law Expanded

It was reported that The Gambia's National Assembly recently ratified an Anti-terrorism bill that expands the scope of application of the Anti-Terrorism Act of 2002. According to The Gambia's Attorney General and Secretary of State for Justice, Marie Saine Firdaus, although the 2002 Act made it an offence for a person to recruit in The Gambia, any person in to the Armed Forces of a Foreign State, it fell short of establishing that such type of recruitment results in the commission of a crime by both the recruiter and the recruited.

The new law expands "the scope of application of the Anti-Terrorism Act of 2002 to include all persons involved in the illegal act of recruiting or being recruited in an armed force of a foreign state or otherwise. It also stipulates the category of persons who come under the purview of "recruited persons" who can be guilty of the offence created." (*Gambia: Govt Ratifies Anti-Terrorism Bill, The Daily Observer* (BANJUL), Apr. 4, 2008, available at <http://allafrica.com/stories/200804040918.html>.) (Hanibal M. Goitom)



### UNITED KINGDOM – Terrorism Laws Continue to Be Implemented

The terrorism laws of the United Kingdom are continuing to be implemented in the courts, with individuals prosecuted frequently being jailed under these provisions. Most recently, a male, British-born Muslim convert has been jailed for four and a half years for terrorism-related offenses that occurred during an inflammatory speech in a London mosque, after which he requested funds to finance insurgents overseas. A man was jailed for 16 months after admitting to possessing a CD version of an al Qaeda training manual found during a police raid on his home, which occurred after he came forward as a friend or acquaintance of the London July bombers. (Cahal Milmo, *Muslim Activist Who Heckled Minister Is Jailed*, THE INDEPENDENT (London) Apr. 19, 2008, available at <http://www.independent.co.uk/news/uk/crime/muslim-activist-who-heckled-minister-is-jailed-811772.html>; *Man Jailed for Possessing Terror Manual*, THE INDEPENDENT (London), Mar. 11 2008, available at <http://www.independent.co.uk/news/uk/crime/man-jailed-for-possessing-terror-manual-794130.html>.)

(Clare Feikert)

### UNITED KINGDOM – Terrorist Freezing Orders Declared Unlawful

Orders made to implement United Nations Security Council regulations designed to prevent the financing of terrorism by freezing terrorist assets have been quashed by the High Court of the United Kingdom. The Terrorism (United Nations Measures) Order 2006 and the al-Qaeda and Taliban (United Nations Measures) Order 2006, both made under the United Nations Act 1946, were ruled unlawful by the courts, but the government has been given leave to appeal, effectively delaying the quashing of the Orders until the appeal has been heard. (*A and others v HM Treasury* [2008] EWHC 869 (Admin); *The Al-Qaida and Taliban (United Nations Measures) Order 2006*, SI 2006/2952, available at <http://www.opsi.gov.uk/SI/si2006/20062952.htm#1> (official source); and *The Terrorism (United Nations Measures) Order 2006* SI 2006/2657, available at <http://www.opsi.gov.uk/SI/si2006/20062657.htm> (official source).)

(Clare Feikert)



## Trade and Commerce

### NEW ZEALAND/CHINA – Free Trade Agreement

On April 7, 2008, New Zealand and China signed a free trade agreement (FTA). The FTA covers:

- staggered removal of tariffs on 96% of New Zealand exports;
- rules to determine products that qualify for tariff cuts, to counter unfair trade or unexpected surges in imported products;
- provisions to facilitate the travel of business people to China and skilled workers from China;
- enhanced protections for investments established in China, including access to binding third-party arbitration procedures;
- provisions on sanitary and phytosanitary procedures; technical barriers to trade, and intellectual property;
- a Mutual Recognition Agreement on Electrical and Electronic Equipment ;
- robust dispute settlement mechanisms; and
- an Environment Cooperation Agreement and a binding Memorandum of Understanding on Labour Cooperation.

(New Zealand Government, NEW ZEALAND – CHINA FREE TRADE AGREEMENT Web site, <http://chinafta.govt.nz/index.php> (last visited Apr. 15, 2008).)

(Lisa J. White)



## Trafficking in Persons

### MOZAMBIQUE – New Law Punishes Trafficking in Persons

In April 2008, the Mozambican Parliament approved a law specifically criminalizing trafficking in persons. According to the new law, trafficking in persons is defined as the recruiting, transporting, or harboring of a person, by any means, under the pretext of domestic or foreign employment, education, or apprenticeship. The use of individuals for the purpose of prostitution, pornography, sexual exploitation, forced labor, or involuntary slavery or servitude to pay off debts is also considered to constitute trafficking in persons. The application of the law does not depend on the complaint of the victim and punishes with up to 12 years in prison anyone who traffics in persons, especially in women and children. (*Parlamento Aprova Lei que Pune Tráfico Pessoas com Prisão Até 12 Anos*, NOTÍCIAS LUSÓFONAS, Apr. 10, 2008.) (Eduardo Soares)



## War

### JAPAN – High Court Calls Air Self-Defense Force Activities in Iraq Unconstitutional

Article 9 of the Japanese Constitution renounces war and states: “land, sea, and air forces, as well as other war potential, will never be maintained.” The constitutionality of Japan’s Self Defense Force (SDF) has been a legal, political, and social issue since the creation of the SDF.

Japan has supported the United States’ operation in Iraq. Between March 2004 and July 2006, the Air SDF transported goods and U.S. and other countries’ soldiers between the Ali Al Salem Air Base, in Kuwait, and the Tallil airbase, near An Nasiriyah, Iraq. After July 2006, the Air SDF transported goods and armed soldiers between the Ali Al Salem Air Base and the airport in Baghdad. Plaintiffs in the case demanded the suspension of the airlift on the basis that their right to live in a peaceful environment, which they claim the Constitution guarantees as a concrete right, has been violated by the Air SDF airlifts. They also claimed that the airlifts violated article 9 of the Constitution. The Nagoya High Court dismissed the case. Nonetheless, in its analysis of the case, the court said that the airlifts violated article 9 of the Constitution. It did not, however, say whether or not the special law that enabled the Japanese government to send troops to Iraq while limiting their activities to non-combat regions is against article 9. It stated that even if the law itself is constitutional, the Iraq airlifts violated the Constitution because Air SDF has been operating in a combat region, Baghdad airport, where airplanes have often been subject to attack by militants and the Air SDF activities are in too close proximity to combat activities, so that they are regarded as a part of them.

The plaintiffs are one of the groups that have organized similar lawsuits in various areas in Japan. They filed lawsuits of the same type in different areas, with a view to increasing their chances of obtaining a favorable judgment. To win the cases and change the government policy through an enforceable judgment is not their realistic goal; if they can obtain one judgment that suggests the SDF activities have been unconstitutional, they will be satisfied. In fact, most of the judgments have simply dismissed the claims, based on the plaintiffs’ lack of concrete rights and standing to bring suit, without commenting on the constitutionality of the airlifts.

A lawyer for the plaintiffs said that while the court’s comments on the Constitution were non-binding, the lawyers planned to work with lawmakers to pursue the issue in the Parliament. On the other hand, the government was indifferent. Chief Cabinet Secretary Nobutaka Machimura, Defense Minister Shigeru Ishiba, and other government leaders said that the government was not convinced by the High Court’s decision and the ruling would not influence the current activities of the air force. In the legal community, there have been criticisms regarding this kind of expression of opinions by judges in judgments when they are not necessary to decide the case. (Judgment of H18 (ne) No. 499 (Nagoya High Ct., Apr. 17, 2008, available at [http://www.haheisashidome.jp/hanketsu\\_kouso/p1\\_12.pdf](http://www.haheisashidome.jp/hanketsu_kouso/p1_12.pdf) & [http://www.haheisashidome.jp/hanketsu\\_kouso/p13\\_26.pdf](http://www.haheisashidome.jp/hanketsu_kouso/p13_26.pdf); “Kū-ji iraku haken wa kenpō 9 jō ni ihan” Nagoya kōsai handan [Dispatch of Air SDF against Article 9 of the Constitution ...], ASAHL.COM, Apr. 17, 2008 (on file with author); *Iken hanketsu ni kanbō chōkan ra, iraku shien keizoku* “mondai nai”



*de icchi* [Chief Cabinet Secretary and Others Agreed “No Problem” on Iraq Support], YOMIURI ONLINE, Apr. 18, 2008 (on file with author).  
(Sayuri Umeda)



# Weapons

## UNITED NATIONS – Committee on Spread of Weapons Extended

On April 25, 2008, the United Nations Security Council renewed the mandate of a U.N. committee originally established by Security Council resolution in 2004. The term of the committee, which works to end the spread of nuclear, chemical, and biological weapons, has now been extended for three more years.

The committee is part of a regime that makes all countries establish their own controls on weapons of mass destruction and systems for delivering those weapons, forbids them from supporting non-state actors from doing the same, and requires them to enact laws to prevent anyone from developing, acquiring, manufacturing, or transporting such weapons, especially for terrorist purposes.

The committee's functions include promoting better cooperation between nations on measures to block the spread of weapons of mass destruction and better compliance with existing non-proliferation treaties, as well as compiling data on steps countries are taking for the physical protection of their weapons and borders. (*Renewed UN Mandate Aims to Stop Spread of Weapons of Mass Destruction*, UN NEWS SERVICE, Apr. 25, 2008, available at <http://www.un.org/apps/news/story.asp?NewsID=26469&Cr=nuclear&Cr1=>.)  
(Constance A. Johnson)



## Women

### BANGLADESH - National Women Development Policy 2008

The National Women Development Policy 2008 (NWDP) is a statement of government policy issued by the Caretaker Government intended to create an appropriate political and socioeconomic structure to ensure the overall development of women. It provides for setting aside one-third of parliamentary seats for women and arranging direct election to the reserved seats, and appointing women to the government's Cabinet Division and other policy-making positions. The policy also provides for adoption of a law for five months of maternity leave to working women.

The NWDP created confusion among the Islamic scholars in Bangladesh regarding its impact on inheritance laws, which in Bangladesh are based on Sharia law. In responding to the controversy, the Chief Adviser explained that the NWDP is not legislation and does not affect the inheritance laws. The Chief Adviser added that the NWDP is just a platform for discussions on how to protect women from repression and deception and to improve their social condition in Bangladesh. The Law and Religious Affairs Adviser said that the government had not enacted or amended any legislation dealing with the Muslim inheritance law. (*No Change in Inheritance Law: Law Adviser*, INDEPENDENT BANGLADESH, March 13, 2008, available at <http://www.independent-bangladesh.com/200803133092/country/no-change-in-inheritance-law-law-adviser.html>)

(Shameema Rahman)

### ISRAEL – Encouragement of Incorporation and Advancement of Women in the Labor Force

On April 2, 2008, the Knesset (Israel's Parliament) passed the Encouragement of Incorporation and Advancement of Women at Work and of Adjustment of the Labor Environment to Women Law, 5768-2008. The Law is designed to bring about a change in the business culture and enhance public awareness to encourage the incorporation and advancement of women in the labor force.

The Law establishes a public Committee for Incorporation and Advancement of Women in the Labor Force. The Committee will advise the Minister of Industry, Trade and Employment (MITE) on issues related to grants and recognition awards to employers; provide consultation on research and experimental programs for finding ways to achieve the Law's objective; and give advice and support to employers regarding these ways. The Committee will be composed of a retired female judge; representatives of the authority for equal opportunity at work and of the authority for promoting the status of women; representatives of the Ministry of the Treasury, the MITE, a labor organization, and an employers organization; two representatives of women rights organizations; and two members of academia who are experts in the subject of the Committee. (Encouragement of Incorporation and Advancement of Women at Work and of Adjustment of



the Labor Environment to Women Law, 5768-2008, the Knesset Web site (last visited Apr. 15, 2008).)

(Ruth Levush)



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