



Law Library of Congress **GLOBAL LEGAL MONITOR**

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Greetings from the Acting Law Librarian of Congress

The Global Legal Monitor is the Law Library of Congress' on-line publication for the global community. Its intention is to provide a monthly chronicle of legal developments from around the world. Globalization is a fact, more today, than ever before, for the legal community. Far-reaching legal implications, including an increasing number of international transactions, make access to information in a publication, such as this one, vitally important. This document draws upon information from the *Global Legal Information Network*, official national



legal publications and reliable press sources. A special section may be added, occasionally, to include lectures, conferences, symposia and exhibits on timely legal topics sponsored by the Law Library of Congress. Requests for copies of materials found in the Law Library's Collections may be addressed to glm@loc.gov.

We hope that you find the information presented here useful, timely and relevant.

Sincerely,

Charles Doyle
Acting Law Librarian of Congress

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Abortion

ROMANIA – Abortion Permitted in Rape Case

It was recently reported that Romania is making an exception to its laws to permit an eleven-year-old girl to have an abortion. The girl became pregnant after being raped by her uncle. Romanian law permits abortions only up until the 14th week of a pregnancy. The exception was approved by a government committee, which had received a letter of appeal from the young victim, stating that she wished to “go to school and to play” and that without the termination of her pregnancy, her life would be a nightmare. Vlad Iliescu, a member of the government committee that approved her request, said that the exception was granted because the girl was a victim of sexual abuse and would face “major risks to her mental health” without the procedure. The committee involved will now focus on clarifying the exception circumstances in which late-term abortions will be permitted. Some Christian Orthodox groups opposed the abortion, favoring allowing the child to give birth and have the baby raised by the Church, but the Romanian Orthodox Church had said that the decision should be made by the family. (*Romanian Girl Permitted Abortion*, BBC NEWS, June 27, 2008, available at <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/europe/7477448.stm>.) (Constance A. Johnson)



Attorneys and Judges

BRAZIL – Violation of an Attorney’s Rights Will Soon Be Criminalized

On May 20, 2008, the Brazilian Chamber of Deputies approved a proposal for a law that defines the crime of infringement of an attorney’s rights and prerogatives. According to Marcus Vinícius, a member of the federal section of the Brazilian Bar Association (*Ordem dos Advogados do Brasil*), when the proposal is finally approved and becomes law, all types of violations against the legal profession foreseen in the Lawyer’s Statute, Law No. 8,906 of July 4, 1994 (*Estatuto da Advocacia e a Ordem dos Advogados do Brasil*), will become crimes. Vinícius gave as an example of infringement the situation in which the police deny an attorney the right to have access to a client’s criminal inquiry; heretofore there has been no punishment for the police officer or public servant who denies such access. (*Câmara Aprova Projeto que Criminaliza Violação das Prerrogativas*, JURID, May 21, 2008.)
(Eduardo Soares)



Budget

BANGLADESH - President Signs Fiscal Year 2008-09 Budget

The National Budget of Bangladesh for fiscal year 2008-09 has been signed by the President of Bangladesh. The Bangladesh Government expressed hope that the new budget will increase production and reduce inflation and the deficit. In the approved budget, the tax exemption limit for individual taxpayers has been raised, with special consideration for women, persons with disabilities, and older taxpayers. The allowance for insolvent war veterans has been increased by fifty percent. The budget increases government grants for the salaries of non-government teachers and employees of schools and colleges by twenty percent. The budget also adjusts duties on imports to help domestic industries. (Ministry of Finance, Bangladesh Government, Bangladesh National Budget 2008-2009, available at http://www.mof.gov.bd/mof2/index.php?option=com_content&task=view&id=58&Itemid=90.) (Shameema Rahman)



Capital Punishment

UNITED STATES – Supreme Court Rules Death Penalty for Child Rape Unconstitutional

On June 25, the Supreme Court ruled that the ban on cruel and unusual punishment in the U.S. Constitution bars the death penalty for child rape.

The case involved a man who was sentenced to death by a Louisiana court for raping his 8-year-old stepdaughter. A 1977 Supreme Court case declared that the death penalty for rape of an adult woman was unconstitutional, but left open whether there were other crimes other than homicide that can be punished by death consistent with the Constitution.

The Court considered the death penalty for child rape from the standpoint of both a national consensus, and its own independent judgment informed by the Court's precedents and understanding of the Constitution. With respect to a national consensus, the Court found that in most jurisdictions in the U.S., capital punishment is not available for child rape, and Louisiana is the only state since 1964 that has placed anyone on death row for a non-homicide offense. Exercising the Court's own independent judgment, it concluded that the death penalty is not a proportional punishment for child rape, and that capital punishment should be restricted, as to crimes against individuals, to those that take the victim's life. (*Kennedy v. Louisiana*, No. 07-343 (June 25, 2008), available at <http://www.supremecourtus.gov/opinions/07pdf/07-343.pdf>.) (Luis Acosta)



Child Pornography

BRAZIL – Child Pornography to Be Criminalized

On May 21, 2008, the Commission of the Constitution, Justice, and Citizenship of the Brazilian Federal Senate approved a proposal for a law that criminalizes the production, publication, and sale, including on the Internet, of images involving the sexual exploitation of children and adolescents. The proposal also criminalizes the possession of such material, as well as the corruption of minors through online chat rooms. In addition, the proposal includes a provision forcing Internet service providers to keep evidence of such crimes, instead of simply erasing them from their servers as is currently the case. The proposal will now be discussed by the Commission of Human Rights, before being voted on in a full plenary session. (*Projeto que Criminaliza a Pornografia Infantil via Internet é Aprovado na CCJ*, JURID, May 21, 2008.) (Eduardo Soares)



Children

ZAMBIA – Ineffective Law Enforcement Weakens Child Protection Enforcement

AFP reported on June 18, 2008, that Catherine Namugala, Zambia's Minister of Community Development and Social Services, has blamed the failure of child protection efforts in Zambia on "weak legislation." Namugala declared that the government intends to "review child-related" laws to make them more effective. (*Weak Legislation Hinders Child Protection Efforts*, AFP, June 18, 2008, Open Source Center No. AFP20080618567004.) The U.S. State Department's 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, in its section on Zambia, appears to put the blame on law enforcement. The report indicates that implementation of laws against prostitution, pornography, and sexual exploitation of children was ineffective. According to the report, the enforcement of laws against pornography and the sexual exploitation of children in the year 2007 was sporadic. (U.S. Department of State, *Zambia*, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2007), Mar. 11, 2008, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100511.htm>.)

(Hanibal M. Goitom)



Communications and Electronic Information

ISRAEL – Prohibition on Unsolicited Junk Mail

On May 27, 2008, the Knesset (parliament) passed an amendment to the Telecommunication Law, 5742-1982. The amendment has a direct impact on communications between companies and other organizations and their clients. The amendment prohibits advertisers from transmitting, via fax, automatic dialing and electronic messages like Multimedia Messaging Service (MMS) or Short Messaging Service (SMS,) messages, commercial messages that are designed to promote the sale of goods or services in the absence of prior expressed consent by the receiver. An advertiser, however, can utilize any of these transmission methods for one time, by requesting that the addressee consent to receipt of advertisements on the advertiser's behalf. An addressee may, at all times and with no charge, retract on his or her consent to receive advertisements by the transmission of a notice to that effect. Advertisements transmitted in accordance with the law should clearly state the name of the advertiser and his or her information, the right of the addressee to transmit a message for retraction of consent, and the methods available for transmission.

Violation of the law is punishable by fines and may give rise to no fault tort actions and compensation, as well as class actions against the advertiser. The new amendment will enter into force in November 2008. (The Telecommunications Law (Phone and Broadcasting) (amendment No. 40), 5768-2008, the Knesset official Web site (last visited June 20, 2008); The Telecommunications Law, 5742-1982, 36 LAWS OF THE STATE OF ISRAEL [official translation] 229 (5742-1981/82).)
(Ruth Levush)

SWEDEN – Wiretapping Bill Approved

On June 18, 2008, Sweden's Parliament passed a law authorizing warrantless wiretapping (draft text in Swedish, Mar. 8, 2007, *available at* <http://www.regeringen.se/sb/d/8670/a/78367>). The National Defense Radio Establishment has broad authority under the new legislation to monitor international telephone calls and other electronic communications. The bill had been rejected on June 17, but following last minute changes in the language, it passed by a vote of 143-138. The revision provided for independent oversight of the wiretapping program. Opposition party members and other critics are concerned about the impact of the law on privacy, fearing that it would be used to intercept domestic calls. The new law, which comes into effect next January, has also been commented on by the International Federation of Journalists, which argued it could have an impact on the anonymity of sources used by reporters. (Devin Montgomery, *Sweden Approves Wiretapping Bill Immediately Following Last-Minute Changes*, PAPER CHASE NEWS BURST, June 19, 2008, *available at* <http://jurist.law.pitt.edu/paperchase/2008/06/sweden-approves-wiretapping-bill.php>.)
(Constance A. Johnson)



Constitutional Law

BANGLADESH – Interim President May Not Promulgate Ordinances Unrelated to Election

The Bangladesh High Court has ruled that an ordinance promulgated by the President of the Interim Government that amended the law governing marriage and divorce registration exceeded his powers under the Constitution.

The Muslim Marriage and Divorce Registration Ordinance 2008, promulgated by the Interim Government in February, amended the Muslim Marriage and Divorce Registration Act 1974. It empowered deputy commissioners to appoint and dismiss marriage registrars and issue relevant licenses. The validity of this ordinance was challenged by a number of marriage registrars.

The High Court ruled that the promulgation of such an ordinance is outside the purview of the President of the Interim Government. The Court observed that the Interim Caretaker Government's main duty is to hold elections. It held the Interim Government is permitted only to carry out only routine functions, and can only make policy decisions that are necessary for the discharge of such routine functions. Because the Muslim Marriage and Divorce Registration Ordinance of 2008 is unrelated to elections, it is unconstitutional and illegal, the High Court ruled. (HC Declares Ordinance Amending Muslim Marriage Act Illegal: Caretaker Govt. Can Do Only Routine Work, The New Nation, July 14, 2008, available at <http://nation.ittefaq.com/issues/2008/07/14/news0479.htm>.) (Shameema Rahman)

COOK ISLANDS – Chiefs Seek to Dissolve Elected Parliament

Media reports stated recently that traditional Chiefs of the Cook Islands (members of the House of Ariki) are meeting in an attempt to resolve questions surrounding the previous dismissal by the Chiefs of the Queen of New Zealand's representative and government. The legality of the proclamation effecting the dismissal is also being investigated by the Cook Island police. The Cook Islands is a self-governing, parliamentary democracy associated with New Zealand. (*Cooks Chiefs to Meet Again Amid Dissent over Proclamation*, RADIO INTERNATIONAL NEW ZEALAND, June 20, 2008, available at <http://www.rnzi.com/pages/news.php?op=read&id=40471>; *Cooks Police Probe Chiefs' Proclamation to Dissolve Elected Government*, RADIO INTERNATIONAL NEW ZEALAND, June 17, 2008, available at <http://www.rnzi.com/pages/news.php?op=read&id=40395>.) (Lisa J. White)

KENYA – Proposed Bills to Stop Interference in Constitutional Review Process

Two new bills, the Constitution of Kenya Review bill 2008 and the Constitution of Kenya amendment bill 2008, seeking to deter the government, parliament, former commissioners of the Constitution of Kenya Review Commission, and civil servants from interfering in the



constitutional review process, were recently proposed in Kenya's Parliament. The bills mandate that the constitutional review process is to occur only through the committee of experts (*see next paragraph*), the parliamentary select committee, the National Assembly, and a referendum. The bills give the committee of experts the power to make decisions on which areas of a draft constitution should be amended or deleted, a mandate previously in the hands of the government and politicians. Members of the committee would be immune from arrest under the civil process while participating in any meeting of the committee in accordance with the provisions of the bills.

The committee of experts is a seven-member committee composed of four Kenyans and three foreigners. Three committee members are nominated by the National Dialogue and Reconciliation Committee, a panel of eminent Africans selected by the African Union to assist Kenya in resolving the national crisis triggered by the December 2007 elections, and the rest are put forward by the parliamentary select committee. Members of the committee are then appointed by the President of Kenya. (*Kenya: New Bills to 'Deter' MPs from Interfering with Constitutional Review*, AFP, June 20, 2008, Open Source Center No. AFP20080620950033.) (Hanibal M. Goitom)

MEXICO – Judicial Reform Enacted

President Felipe Calderón of Mexico signed a decree on June 17, 2008, enacting constitutional amendments reforming the criminal justice and public security systems; the decree was published in the federal official gazette (DIARIO OFICIAL DE LA FEDERACIÓN) on June 18. The reform adopts the adversarial process, with oral trials and simplified trial procedures. The reform establishes the presumption of innocence until the accused is declared guilty by a court, and the accused is also guaranteed legal representation by a public defender when he/she does not appoint another attorney. The decree was enacted three months after the federal congress approved the reform and after it was approved by 19 of the 31 states. (*Va Reforma Judicial... ¡Por Fin!*, REFORMA, June 18, 2008; Decreto por el que se Reforman y Adicionan Diversas Disposiciones de la Constitución Política de los Estados Unidos Mexicanos, DIARIO OFICIAL DE LA FEDERACIÓN, June 18, 2008.) (Norma C. Gutiérrez)



Constitutional Rights

ALGERIA – Detention of Bin Haj for Describing Judge as Liar

On June 17, 2008, Ali Bin Haj, the second in command of the banned “Islamic Front for Rescue” in Algeria was temporarily arrested by members of the security force. His son speculated that his father was arrested as a result of describing the public prosecutor of the “Capital Judicial Council” as a liar. Bin Haj uttered the remark while following the prosecution of three individuals accused of being involved in the case of Ahmed Rassam, who is in detention in the United States. At the time, Bin Haj was arrested for a few hours and then released. (*Lebanese Government Defends Detention of Officers in Hariri Probe*, ASHARQ ALAWSAT, June 18, 2008.)
(Issam Saliba)

KYRGYZSTAN – Law on Public Demonstrations Approved

On June 12, 2008, the Kyrgyz Law on Peaceful Public Gatherings was amended with a provision that defines the procedure for applying to local authorities for permits to hold a public rally. According to the amendment, rally organizers should submit their notification to the local authorities 12 days in advance. The local authorities must provide a written reply no later than six days before the date on which the rally is scheduled. A refusal to permit a demonstration can be appealed by the organizers in a court. The Law prohibits rallies and public meetings within 100 feet of highways and railways and within 150 feet of the offices of the President and Prime Minister or the buildings of Parliament, the Government, courts, penitentiary institutions, and military units. Rallies may be conducted between 9:00 a.m. and 8:00 p.m. The erection of temporary dwellings, such as tents, is prohibited. (*Kyrgyz Parliament Approves Law on Peaceful Assemblies*, Office for Democratic Institutions and Human Rights official website, <http://www.legislationline.org> (last visited June 20, 2008).)
(Peter Roudik)

LITHUANIA – Ban on Nazi and Soviet Symbols

On June 17, 2008, the Lithuanian Parliament adopted amendments to several domestic laws that regulate the implementation of freedom of speech and freedom of assembly, to prohibit public display of Soviet and Nazi German flags, coats of arms, and national anthems. Under the amendments, during public rallies and other mass gatherings, the use of portraits of Soviet and Nazi leaders; uniforms and symbols of Nazi and communist organizations, such as swastikas and the Soviet hammer and sickle; and the red star is a misdemeanor subject to heavy fines and possible cancellation of a political organization’s registration. However, this ban is not applicable to political parties if they want to use some of these symbols as their party signs. (*Lithuanian Parliament Bans Nazi, Soviet Symbols in Gatherings, Not in Party Symbols*, BAL TIC NEWS SERVICE DAILY REPORT, June 17, 2008, available at the Emerging Markets Database, <http://www.securities.com>.)
(Peter Roudik)



Courts

NIGERIA – Bill on Establishment of Financial Crimes Court

It was reported on May 12, 2008, that Nigeria's Senate would approve the establishment of a special court for financial crimes, through the enactment of the "Financial Crimes Court 2008" bill. According to Senator Simeon Oduoye, Vice Chairman of the Senate Committee on Security and National Intelligence, the new body will have the powers of a High Court but exclusively handle offenses committed and triable under the Economic and Financial Act 2002, the Independent Corruption Practices and Other Related Offences Act 2002, and the Money Laundering Act 1995. He added that corruption is too widespread a problem to be adjudicated among "other matters such as land matters, marital issues, chieftaincy issues etc.," because it has had such a negative effect on the Nigerian economy. Oduoye stated that creation of the Financial Crimes Court would also enable the country to reduce the caseload of other courts and the number of detainees awaiting trial on related matters. (Laide Akinboade, *Nigeria: Senate Set to Create Anti-Corruption Court*, VANGUARD (Lagos), May 12, 2008, available at <http://allafrica.com/stories/200805120540.html>.)

(Wendy Zeldin)

UNITED ARAB EMIRATES – Refusal to Appoint Non-Muslims to Judiciary

On June 17, 2008, the Federal National Council of the United Arab Emirates, a consultative body, held a closed session that the media was not allowed to attend, in which a proposed amendment to the law of the judiciary was discussed. Sources revealed to the newspaper ASHARQ ALAWSAT that the Council did not approve the amendments proposed by the government. The majority of the members objected to the provision under which non-Muslims may be appointed to the judiciary. (*The National Council Rejects a Law Proposed by the Government to Appoint Non-Muslims to the Judiciary*, ASHARQ ALAWSAT, June 18, 2008.)

(Issam Saliba)



Criminal Law

ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT – Report on Identity Theft

In a report made public on June 13, 2008, the Organisation for Economic Co-Operation and Development (OECD) urged its 30 Member States to make identity theft a stand-alone crime and to adopt laws on notification of national data breaches as a means of better combating identity theft. While some of the Member States have made identity theft a specific stand-alone crime, the report noted, “others regard it as a preparatory step in the commission of other wrongs or crimes.” (BNA, *Identity Theft: OECD Urges Member States to Criminalize Identity Theft, Enact Breach Notice Laws*, PRIVACY LAW WATCH, June 16, 2008, available at <http://pubs.bna.com/ip/bna/prn.nsf/eh/A0B6Q7P2F9>.)

Consideration should be given to creating a common definition of identity theft, harmonizing treatment of the offense as a stand-alone crime, and stiffening penalties, the report argues, which would augment international cooperation in fighting ID theft. “The lack of criminal laws prohibiting ID theft and the limited resources of dedicated law enforcement authorities may mean that there is insufficient deterrence,” the OECD report contended. “Given the rapid evolution of theft techniques and methods, more resources and training for authorities and law enforcement agencies [are] vital,” it added. (*Id.*) The OECD report also recommended the establishment of national standards for private sector data protection requirements, imposition on companies and other customer data storage organizations of an obligation to disclose data security breaches, and creation of national centers dedicated to the investigation of identity theft. (*Id.*, with hyperlink to the report: OECD, Directorate for Science, Technology and Industry, Committee for Information, Computer and Security Policy, *Scoping Paper on Online Identity Theft: Ministerial Background Report* (DSTI/CP(2007)3/FINAL), OECD Ministerial Meeting on the Future of the Internet Economy, Seoul, Korea, June 17-18, 2008, available at <http://www.oecd.org/dataoecd/35/24/40644196.pdf>.)

(Wendy Zeldin)



Criminal Procedure

SOUTH AFRICA – Law to Expunge Criminal Records for Breaking Apartheid Laws

A new bill, the criminal procedure amendment bill, was recently proposed in the Parliament of South Africa. It seeks to expunge criminal records for violations of laws based on race or that created offenses with a view to promoting the policy of apartheid before the 1993 South African Constitution took effect. These include laws that prevented people from living in certain areas, using certain facilities, and having relations across the color line. Criminal records for violation of such laws, much like those for violations of other, legitimate laws, are said to have been obstacles for many people in obtaining travel visas and securing employment, for which a clean criminal record is a requirement.

The bill falls short of addressing similar problems that former liberation fighters face due to their involvement in the armed struggle against apartheid and their belonging to organizations that either opposed the truth and reconciliation process or that made a blanket submission to that process as did the African National Congress. (*RSA: Proposed New Law to Expunge Petty Apartheid-Era Offenses' Criminal Records*, AFP, June 18, 2008, Open Source Center No. AFP20080618509009.)
(Hanibal M. Goitom)



Defense

ROMANIA – Law on NATO Human Intelligence Center

On June 25, 2008, Romania's two parliamentary chambers approved a draft law establishing a NATO intelligence center. The bill, which was passed unanimously, paves the way for a center for human intelligence, which is the gathering of information through personal contacts. The move was encouraged by the President of Romania, Traian Basescu; the project will be given 17.8 million *lei* (about US\$7.5 million). NATO had held a summit in the Romanian capital, Bucharest, in April of 2008. (*Romania's Parliament Approves Draft Law on NATO Human Intelligence Center*, ROMPRES [Bucharest], June 25, 2008, Open Source Center No. EUP20080625187003.)

(Constance A. Johnson)



Education

ISRAEL – Preferential Treatment for Veterans in Dorms

On June 17, 2008, the Knesset (Parliament) passed an amendment to the Absorption of Veterans Law, 5754-1994. The amendment authorizes academic institutions, including universities, to give preference, when evaluating eligibility for residence in dorms and other economic benefits, to students who served in the army. The amendment was designed to “reflect the commitment of Israeli society to those serving in the Israel Defense Force and in the National Service, for their contribution to state security and the welfare of its citizens.” The bill’s explanatory notes further state that “the granting of economic benefits to veterans may provide economic assistance to those who sacrifice several years of their lives to the welfare of all and cannot work and earn a living during that period.” (Veterans Absorption Law and Bill, (Amendment No. 7) 5768-2008, the Knesset official Web site (last visited June 23, 2008).) (Ruth Levush)



Elections and Politics

AZERBAIJAN – Election Law Changed

On June 3, 2008, amendments to the Electoral Code of Azerbaijan were passed by the nation's legislature. The amendments, which were proposed by the Azerbaijani presidential administration on the eve of a new presidential election campaign, shorten the duration of the campaign, prohibit any electoral activities earlier than three months before the election, and remove provisions requiring that all campaign financial transactions be made using one main account for the candidate that is registered with the national electoral commission. Other amendments deal with the composition of the electoral commissions at the national and local levels, providing for the increased role of the ruling party and prohibiting participation of nongovernmental organizations and parties, which are not represented in the Parliament. (*Parliament of Azerbaijan Passes Changes to Election Law*. TURAN (Azeri State News Agency), Office for Democratic Institutions and Human Rights official website, <http://www.legislationline.org> (last visited June 20, 2008).) (Peter Roudik)

BULGARIA – Election Law Reform Proposed

On June 17, 2008, Bulgarian President Georgi Parvanov submitted to the Parliament a set of bills that would amend the existing election system and initiate political reform. The proposal, which was preliminarily approved by the legislature, affects laws on political parties, campaign financing, and election of the members of the national legislature. The amendments introduce a two-tier election system, with elements of both majoritarian and proportional models, whereby parties would initially compete among themselves and then the party that won in a particular district would designate a number of candidates, one of whom would be elected by the majority of the popular vote within the constituency. It is believed that this measure will contribute to better public recognition of the representatives. Special requirements are introduced in regard to party registration. In order to be able to participate in nationwide elections, a political party must have branches in at least two-thirds of the Bulgarian municipalities, evenly distributed among all the nation's regions. Only parties that received at least one percent of the vote in the previous election will be able to nominate their candidates for a new electoral cycle. Registration of a political party will be cancelled if a party does not receive more than one percent of voters' support during two consecutive elections.

In order to secure better financial transparency of political parties, state financing of parties participating in national elections will be increased, and financing of political campaigns by legal entities will be prohibited. A single public payment account subject to government monitoring will be established by each political party for the purpose of receiving donations and making payments during election campaigns. (*Bulgaria President Proposes New Political Model*, BULGARIA ECONOMIC FORUM DAILY NEWS, June 17, 2008, available at the Emerging Markets Database.) (Peter Roudik)



SUDAN – Parliament Passes Law on Elections

On July 1, 2008, Sudan's National Assembly passed a draft law on general elections. The bill had been recommended by the Committee on Legislation and Justice. It establishes a mixed electoral system, involving both majority rule and proportional representation, and it sets a standard for the rate of participation by women. Sixty percent of seats will be filled in geographical constituencies, 25 percent will be reserved for women, and 15 percent will be elected based on proportional representation and will be open to both men and women. In addition, expatriates will be permitted to vote in presidential elections and national referenda. (*Sudanese Parliament Passes Bill of Draft Law on General Election*, SUDAN TRIBUNE (Paris), July 1, 2008, Open Source Center No. AFP20080703562011.)

A national board of elections will be established and given the task of administering elections, including the authority to determine geographical constituencies and to investigate complaints of election irregularities and fraud. Sudan is scheduled to hold both presidential and parliamentary elections before July 2009. (*Id.*)
(Constance A. Johnson)



Energy

EUROPEAN UNION – Weekly Publication of Status of Oil Reserves

Amidst skyrocketing fuel prices across the European Union, with allegations that speculators are the cause of the high fuel costs and general uncertainty about the oil market, the EU has called for more transparency on oil stocks, in order to get a more “coherent picture” of the market in oil. On July 8, 2008, the EU finance ministers reached an agreement to publish reports of their oil reserves. By October 2008, the European Commission is required to prepare a report instructing the Members how to proceed with this requirement. This proposal is expected to lend some predictability to the fuel market in Europe. Recently the region has experienced protests organized by truckers and fishermen over the price of fuel. Meanwhile, France, which holds the EU Presidency for the next six months, suggested that the EU should put a cap on value-added tax levels on oil prices, in an effort to assist consumers. The European Commission opposed the idea on the grounds that consumers should focus on reducing the consumption of gas for environmental reasons, rather than saving money through lower taxes. (*EU Agrees to Publish Oil Stocks on a Weekly Basis*, EUOBSERVER, July 8, 2008, available at <http://euobserver.com/9/26462/?rk=1>.)
(Theresa Papademetriou)

TAIWAN – Sustainable Energy Plan

On June 5, 2008, Taiwan’s Executive Yuan (Cabinet) passed guidelines on policies to promote the sustainable use of energy. Under the new guidelines, the proportion of low-carbon energy used to generate power is to be increased by 2025 to 55 percent from the current 40 percent. Nuclear power is listed as an option among “no-carbon-emission” energy sources, without being in contravention of the Basic Environment Act’s goal of establishing a “nuclear-free homeland.” To carry out the policy, the government plans to raise the efficiency of energy use (through a 2 percent rise in efficiency every year for the next 8 years, creating energy intensity levels 20 percent lower in 2015, and 50 percent lower in 2025, than the 2005 levels), encourage “clean” energy (so that between 2016 and 2020 the nationwide emission volume is lowered to the 2008 level, and to the year 2000 level by 2025), and promote energy conservation.

President Ma Ying-jeou and Presidential Office staff also signed the World Environment Day carbon-reduction declaration on June 5 and inaugurated a carbon-reduction program for Taiwan. The goals of the program are to reduce power consumption by 10 percent, water use by 20 percent, and paper use by 30 percent. (*Cabinet Passes ‘Sustainable Energy Policy Guidelines’*, Taiwan National Science Council Web site, June 10, 2008, available at <http://web1.nsc.gov.tw/techwp.aspx?id=0970607001&ctunit=208&ctnode=287&mp=7>; Tso Lon-di, *Government Pushes Sustainable Energy*, [June 12, 2008] 25 TAIWAN JOURNAL (June 27, 2008), available at <http://taiwanjournal.nat.gov.tw/site/tj/ct.asp?CtNode=122&xItem=44054>.)
(Wendy Zeldin)



Environment

AUSTRALIA/INDONESIA – Carbon Trading Agreement

On June 13, 2008, Australia and Indonesia signed a new Indonesia - Australia Forest Carbon Partnership to support emerging forest-carbon trading initiatives. According to a press release, the Partnership is intended to assist in the areas of:

- policy development and capacity building to support participation in international negotiations and future carbon markets;
- technical support for Indonesia to develop its national forest carbon accounting and monitoring system; and
- the further development of demonstration activities, and the provision of related enabling assistance, to trial approaches to reducing emissions from deforestation and forest degradation.

(Press Release, Hon. Kevin Rudd, Australian Prime Minister, Australia – Indonesia Joint Leaders' Statement on Climate Change, with the President of the Republic of Indonesia (June 13, 2008), available at http://www.pm.gov.au/media/Release/2008/media_release_0315.cfm#carbon.)

(Lisa J. White)

CHILE – Bill Amending the Organic Law of the Environment

On June 5, 2008, Chile's President Michelle Bachelet sent Congress a bill amending the Organic Law of the Environment (Law 19,300 of 1994). The bill creates the Ministry of the Environment, the Environmental Evaluation Service, and the Superintendency of the Environment, and contains other provisions aimed at modernizing Chile's environmental legal framework.

The bill recognizes the difficulties presented by fragmented environmental powers and responsibilities held by a multitude of administrative agencies, and the lack of a clear definition concerning the legislative goal of coordination among them. The bill also takes note of the politicization of environmental decision-making procedures, the often confusing and contradictory decisions reached by ministries and other administrative agencies with environmental responsibilities, and weaknesses in the national and local enforcement systems. Furthermore, the bill acknowledges the frailty of local environmental authorities, the inconsistency in application of the Environmental Impact Evaluation System (EIES), and the myriad of unconnected, overlapping, and outdated environmental provisions.

To address these issues, the bill creates the Ministry of the Environment as an entity in charge of designing and implementing policies, plans, and programs related to environmental protection, the conservation of biological diversity and renewable natural resources, and the



promotion of sustainable development. The Environmental Evaluation Service, on the other hand, which represents the legal continuation of the current National Environmental Commission (NEC), is a decentralized organ with full jurisdiction over the EIES, and includes the implementation and promotion of public information and participation mechanisms within the EIES. Finally, the Superintendency of the Environment is conceived as a decentralized entity responsible for enforcing environmental qualification resolutions, prevention and decontamination plans, emission and quality provisions, and environmental management plans. The Superintendency possesses the power to issue “evaluation and conformity certification” resolutions with respect to projects subject to the EIES. The bill also enables citizens to file judicial claims and reports with governmental agencies for environmental violations within the jurisdiction of the EIES. The enforcement powers of the Superintendency reinforce the NEC’s existing powers.

At the local level, the bill extends the responsibilities of the municipal trash collection and hygiene directorates to include the planning and implementation of environmental programs and the enforcement of environmental legislation at the local level.

The bill establishes new instruments for achieving environmental objectives, including: (a) the Strategic Environmental Evaluation, aimed at addressing sustainable development goals within each ministry; (b) corrections and amendments to the EIES, i.e., the transformation of the current NEC into the Environmental Evaluation System; (c) efficiency-bound provisions relating to, among others, the electronic review of submissions and requests, the consequences of administrative inaction, and the creation of a public registry for Environmental Qualification Resolutions; (d) deepening of access to environmental information and public participation mechanisms within the EIES; (e) incorporation of a series of measures related to biodiversity conservation, and the creation of Wildlife Protected Areas within the context of the National Protected Areas System; and (f) amendments to the institutional powers of the National Forestry Corporation vis-à-vis the responsibilities of the new Ministry of the Environment. (Message 352-356 of 5 June 2008; 10 provisions; 7 transitory provisions) (Dante Figueroa)

EUROPEAN UNION – Emissions Trading Scheme and Airlines

A plan on emissions trading, known as the Emissions Trading Scheme (ETS), has been in force in the European Union since 1995. Based on Directive 2003/87/EC, ETS aims to reduce greenhouse gas emissions and is the biggest multi-country, multi-sector gas emission trading scheme not only in Europe, but also worldwide. The plan includes close to 10,500 installations in the 27 EU Member States as well as Iceland, Liechtenstein, and Norway. The Community Independent Transaction Log (CITL) registers the issuance, transfer, cancellation, retirement, and banking of allowances that occur in the registry. Each Member State also has its own national registry. (*Emission Trading Scheme (EU ETS)*, EUROPA [portal site of the EU] Environment Web site, <http://ec.europa.eu/environment/climat/emission.htm> (last visited July 8, 2008).)



Until recently, the aviation sector was outside the scope of the Directive. The EU, in an effort to meet its goals of reducing greenhouse gas emissions by 20 percent by 2020, drafted a new proposal requiring airlines to be included in the ETS as of 2012. Consequently, airlines must ensure compliance with the legal requirements set forth in the Directive, that is, emissions reduction of a three percent reduction by 2012 and of five percent from 2013 and beyond. The scope of the proposal extends to all airline carriers, including non-European ones, flying into and out of the European Union.

On July 8, 2008, the European Parliament endorsed the proposed legislation by 640 votes in favor to 30 against. The endorsement was welcomed by the EU Environment Commissioner, Stavros Dimas, who stated that the approval “will enable the aviation sector to make a fair contribution to Europe’s climate change targets as many other sectors are already doing.” On the other hand, airlines were highly critical of the proposal, because of the negative impact it may have on their competitiveness. (*MEPS Give Final Blessing to Airline Emissions Deal*, EUOBSERVER, July 8, 2008, available at <http://euobserver.com/9/26461/?rk=1>.) (Theresa Papademetriou)

EUROPEAN UNION – Prohibitions on Use of Dangerous Pesticides

Environmentalists in the European Union have been working hard behind the scenes to promote their agenda to protect the environment and prohibit the use of many substances that may cause harm to humans, animals, and the earth. In June 2008, environmental groups in Europe published a report that ranks the producers and manufacturers of pesticides according to the threat posed by their products to human health and the environment. Following the release of this report, on June 23, 2008, the Agriculture Ministers of the European Union reached an agreement to replace the EU’s 1991 pesticide legislation. The new legislation will enforce “the high standards needed to prevent harmful effects of plant protection products on human and animal health or the environment.” It completely bans the marketing and use of substances that are dangerous to human health or reproduction and it imposes a requirement on producers of pesticides and on farmers to use safer products. In certain instances, when there are no safer alternatives, farmers may still be allowed to use dangerous products for a maximum period of five years provided that their use is strictly controlled.

The legislation, once approved, will authorize the use of pesticides on a regional basis. For this purpose, the EU territory will be divided into three zones: north, south, and center. The rationale of this approach is that EU countries situated close to each other geographically can decide on the best products to be used in their region.

The next step in the legislative process is for the draft legislation to be forwarded to the European Parliament. The latter will begin discussions on the pesticide legislation sometime in the fall of 2008. (*Farm Ministers Agree to Restrict Use of Dangerous Pesticides*, EU OBSERVER, June 26, 2008, <http://euobserver.com/9/26382/?rk=1>.) (Theresa Papademetriou)



Family

AUSTRALIA – Compulsory Dispute Resolution for All Parenting Orders

From July 1, 2008, all persons in Australia applying for a Parenting Order (Family Law Act 1975 (Cth) Pt VII) must attend family dispute resolution (other than in instances of violence, child abuse, or urgency). Parenting Orders are court directions regarding parental responsibilities. (Press Release, Attorney General of Australia, Family Dispute Resolution for All Parenting Orders (June 6, 2008), http://www.attorneygeneral.gov.au/www/ministers/robertmc.nsf/Page/MediaReleases_2008_Sec ondQuarter_6June2008-FamilyDisputeResolutionforallParentingOrders.)

(Lisa J. White)

BRAZIL – Shared Custody of Children Approved

On June 13, 2008, a proposed law amending the Brazilian Civil Code was sanctioned by President Luiz Inácio Lula da Silva, allowing parents to share the custody of their children in cases of separation or divorce. Under the previous legal regime, only unilateral custody of children was allowed. The new law regulates a position that judges were adopting in custody cases to allow parents to share the custody of their children, even though that type of arrangement had not been foreseen in the legislation. Now, judges have the necessary legal tool to grant shared custody whenever possible. It can be requested by both parents or by one of the parents or decreed by the judge.

In shared custody cases, parents have equal responsibilities and rights and duties, and the decisions regarding the child's well-being, such as which school to attend, extra-curricular activities, selection of a pediatrician and dentist, are made by both of them. Visitation now may not be limited to the days established by the judge, as in the past in cases of unilateral custody, when the non-custodial parent had to wait until visiting day to see the child. All relevant matters are to be negotiated, with the judge having the child's best interest in mind. In addition, in cases of disrespect of the shared custody arrangement, sanctions may be imposed by the judge. (*Lula Sanciona Projeto de Lei da Guarda Compartilhada de Filhos de Pais Separados*, O GLOBO (O)NLINE, June 13, 2008.)

(Eduardo Soares)

BURMA (Myanmar) – Cyclone Orphan Adoptions Must Follow Procedures

Cyclone Nargis, which devastated a large region of Burma, created a number of orphans. The Burmese Department of Social Welfare (DSW) has stressed, however, that they can be adopted only through the proper legal procedures. The 1939 Act of Registration of Adopting Children is the relevant legislation and will be enforced. Officials are concerned with protecting the welfare of the orphans and of children who may have been separated from their parents; they state they are acting to protect the children from human trafficking, abuse, and forced labor. Children who were orphaned or separated from their families in the storm in the Aveyarwady delta and in the capital city of Yangon are now being cared for in temporary orphanages and



monasteries, while the DSW and non-governmental organizations attempt to collect data about them. Adoption applications will be considered once the situation has stabilized; applicants will need to show letters of recommendation from local authorities or from a monk, if the child was being cared for in a monastery. U Aung Tun Khine, a DSW spokesman, said, “[p]eople think they can adopt a child if they have the monk's permission, but we're afraid they might use the children as domestic or general workers.” Action will be taken against anyone suspected of using the orphans as labor. Adoption applications will not be approved without a background check on the history of the applicants. (*Burma to Handle Adoption Applications Under Adopting Children Act of 1939*, THE MYANMAR TIMES, June 8, 2008, Open Source Center No. SEP20080618035009.)
(Constance A. Johnson)

NORWAY – Same-Sex Marriage Approved

On June 17, 2008, the Norwegian parliament, the Storting, approved legislation permitting same-sex marriage that will come into force on January 1, 2009. The bill had been proposed by the parliamentary Standing Committee on Family and Cultural Affairs and had previously been passed by the lower house on a vote of 84-41; the upper house passed the bill 32-17. Under a 1993 law that is replaced by the new text, same-sex couples in the country have had the right to form civil partnerships. Under the law, couples will be permitted but not required to have a church ceremony and churches do not necessarily have to agree to perform the weddings. Since the Lutheran Church of Norway, to which about 85 percent of the population belongs, is divided on the issue of same-sex marriages, it may be that each congregation will be able to decide whether to hold the ceremonies.

Norway is not alone in Europe in recognizing gay marriage; it joins Belgium, the Netherlands, and Spain in doing so. Civil unions or registered partnerships are recognized in Croatia, Denmark, France, Germany, and the United Kingdom. (Andrew Gilmore, *Norway Parliament Approves Same-Sex Marriage Law*, PAPER CHASE NEWSBURST, June 18, 2008, available at <http://jurist.law.pitt.edu/paperchase/2008/06/norway-parliament-approves-same-sex.php>; *Norway Passes Law Approving Gay Marriage*, AP, June 18, 2008, available at <http://www.msnbc.msn.com/id/25218048/>.)
(Constance A. Johnson)

UNITED KINGDOM – Unmarried Couples Allowed to Adopt in Northern Ireland

Northern Irish adoption law has been brought into line with that of the rest of the United Kingdom, after the House of Lords declared on June 18, 2008, that sections 14 and 15 of the Adoption (Northern Ireland) Order (SI 1987 No2203 (NI22)) contravened article 8 (the right to family life) and article 14 (preventing discrimination) of the European Convention on Human Rights. This now means that unmarried couples, and potentially gay couples, can apply to adopt children in Northern Ireland. (In Re P [2008] UKHL 38, available at <http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080618/inrep-1.htm>; *Irish Ban*



on Unmarried Adoption Unlawful, THE TIMES (London), June 23, 2008, available at <http://business.timesonline.co.uk/tol/business/law/reports/article4193256.ece>.)

(Laura McManus)



Freedom of Information

CHINA – Open Government Regulations Take Effect

China's new Regulations on Open Government Information took effect on May 1, 2008; they were issued by the State Council a year earlier, on April 5, 2007. As the U.S. Congressional-Executive Commission on China (CECC) points out, adoption of such provisions is not entirely new, as "over 30 provincial and city-level governments throughout China as well as central government agencies and departments have adopted OGI rules in the last several years," with Guangzhou being the first municipality to do so in 2002. (*China Commits to 'Open Government Information' Effective May 1, 2008*, CECC Web site, May 12, 2008, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingel=105351> [Note: the article contains a link to an English translation of the Regulations as well as the Chinese text].)

As CECC points out, two highlights of the Regulations are that "government agencies at all levels have an affirmative obligation to disclose certain information, generally within 20 business days," and "[c]itizens, legal persons, and other organizations (Requesting Parties) may request information and are entitled to receive a reply within 15 business days and no later than 30 business days." (*Id.*) The scope of disclosure is based on, among other criteria, "information that involves the vital interests of citizens, legal persons or other organizations" or that "needs to be extensively known or participated in by the general public" (art. 9, item 1). The Regulations set forth in separate articles the types of information that government agencies are to disclose at the county level and above, at the municipal level, and at the township level. For example, in the first category, county-level or above people's governments and their departments are to emphasize disclosure of information regarding plans for national economic and social development; budgets and accounts; items subject to administrative fees and the legal basis and standards therefore; matters subject to administrative licensing; information on the approval and implementation of major construction projects; policies and measures on poverty assistance, education, medical care, social security, and the like; emergency plans for "sudden public events"; and information on environmental protection, public health, safe production, and food, drug, and product quality. At the city and township level, among other types of information emphasized for disclosure is that on "requisition or land appropriation, household demolition and resettlement, and the distribution and use of compensation or subsidy funds relating thereto." (arts. 11 & 12.)

In the CECC's view, in the course of the Regulations' implementation, certain "areas to watch" include the following problematic issues: the Regulations have "no clear presumption of disclosure"; some provisions may discourage official disclosure; persons requesting information may be denied access to it on the grounds that the request does not have a recognized purpose; there may be insufficient funding and public awareness for adequate implementation; and the access to information might not apply to media. (*Id.*) In addition, article 8 of the Regulations contains the general prescription, "[t]he government information disclosed by administrative agencies may not endanger state security, public security, economic security and social stability."

(Wendy Zeldin)



Government Ethics

INDONESIA – Supreme Court Investigated for Corruption

Media reports have indicated that Indonesia's Corruption Eradication Commission has commenced an investigation into the embezzlement of administrative fees by the Supreme Court. It is reported that the Commission will review several Supreme Court bank accounts, including an account in the name of the Chief Justice of the Supreme Court, Bagir Manan. (*Supreme Court under Graft Probe*, THE JAKARTA POST, June 18, 2008, available at <http://www.thejakartapost.com/news/2008/06/18/supreme-court-under-graft-probe.html>.) (Lisa J. White)

ISRAEL – Whistleblowers' Protection

On June 17, 2008, the Knesset (Israel's Parliament) passed the Protection of Workers (Disclosure of Offenses and Harm to Integrity or to Proper Administration) Law (Amendment No. 2), 5768-2008. The amendment was designed to further protect workers who report violations of the law and ethics, by strengthening appropriate civil and criminal enforcement measures. The amendment authorizes the imposition of a no-fault statutory fine, up to a specified ceiling, on a person who violates the law; in addition, the Labor Court may also impose a punitive fine in an amount not exceeding 50 times the amount of the set ceiling, depending on the severity of the violation or the relevant circumstances, including the employer's behavior and its repetitiveness.

The amendment further imposes a criminal penalty of imprisonment or a fine on an employer who harms the conditions of employment or fires an employee in violation of the law. (Protection of Workers (Disclosure of Offenses and Harm to Integrity or Proper Administration) Law and Bill (Amendment No. 2), 5768-2008, the Knesset Web site (last visited June 23, 2008).) (Ruth Levush)



Gun Control

UNITED STATES – Supreme Court Holds That Constitution Protects an Individual Right to Own Firearms for Self-Defense

On June 26, the Supreme Court ruled that the Second Amendment to the U.S. Constitution confers an individual right to possess a firearm for traditionally lawful purposes such as self-defense. It further ruled that District of Columbia laws that banned handguns and required firearms in the home to be disassembled or locked violates this right.

The Second Amendment provides that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” When a D.C. resident’s application to register a handgun he wished to keep at home was denied, he filed suit under the Second Amendment. The suit ultimately reached the Supreme Court.

The Supreme Court found that the operative clause of the Second Amendment, “the right of the people to keep and bear Arms, shall not be infringed,” guarantees an individual right to possess and carry weapons in case of confrontation, and the Amendment’s prefatory clause, “[a] well regulated Militia, being necessary to the security of a free State,” does not limit the operative clause.

While the Court stated that the right to keep and bear arms is subject to regulation, it found that the D.C. ban on handgun possession violated the right because it prohibited an entire class of arms favored for the lawful purpose of self-defense in the home. It similarly found that the requirement that lawful firearms be disassembled or bound by a trigger lock made it impossible for citizens to effectively use arms for the core lawful purpose of self-defense, and therefore also violated the right. (District of Columbia v. Heller, No. 07-290 (June 26, 2008), available at <http://www.supremecourtus.gov/opinions/07pdf/07-290.pdf>.)
(Luis Acosta)



Health

BRAZIL – Stem Cell Research Approved

On May 29, 2008, following a close vote, the Brazilian Federal Supreme Court approved the use of embryonic stem cells to conduct research for finding cures for new diseases. The ruling was in response to a petition filed in 2005 by Claudio Fontelles, the Attorney General at the time, arguing the constitutionality of Law No. 11,105 of March 24, 2005, that allows the use of stem cells for research.

Many ethics groups and the Catholic Church opposed the measure, arguing that it violates the right to life, while other groups in favor of the research, including the government, defended the research, as it will enable the regeneration of damaged organs and the treatment of many diseases. In the end, six Justices voted in favor of the use of stem cells, while the remaining five voted against it. Researchers now are allowed to conduct research on human embryos that have been kept frozen for at least three years, are considered unsuitable for human reproduction, and were going to be discarded. (*Por Seis Votos a Cinco, STF Aprova Pesquisas com Células-Tronco Embrionárias*, O GLOBO (O)NLINE, May 30, 2008.) (Eduardo Soares)

CANADA – Judge Orders Safe Injection Site Open in Vancouver

In 2003, the Canadian federal government granted the Vancouver Coastal Health and PHS Community Services Society temporary permission to operate a supervised narcotic injection site in the city of Vancouver. (Press Release, Health Canada, Health Canada Approves Vancouver Supervised Injection Site Pilot Research Project (June 24, 2003).) The center was named Insite and has been advertised as the first of its type in North America. (Vancouver Coastal Health, *Insite-Supervised Injection Site*, <http://www.vch.ca/sis> (last visited June 20, 2008).)

The federal government initially authorized Insite to operate for a period of three years and later extended its exemption first for an additional year and then to the end of June 2008. Authority to grant exemptions to Canada's narcotics laws is found in section 56 of the Controlled Drugs and Substances Act. This section states as follows:

The Minister may, on such terms and conditions as the Minister deems necessary, exempt any person or class of persons or any controlled substance or precursor or any class thereof from the application of all or any of the provisions of this Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

(Controlled Drugs and Substances Act, 1996 S.C. c. 19, as amended (official source); unofficial version available at http://laws.justice.gc.ca/en/showdoc/cs/C-38.8//20080620/en?command=HOME&caller=SI&search_type=all&shorttitle=controlled%20drugs%20and%20substances%2



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hannual=50&length=50&noCookie* (last visited June 20, 2008).)

With its approval to operate Insite about to expire, PHS Community Services Society applied to the Supreme Court of British Columbia for an order that would give it authority to operate without having to continue seeking temporary exemptions. On May 27, 2008, a judge of the Court allowed this application by finding that the absolute prohibitions on the possession of controlled substances violated the right to life and security of the person guaranteed by section 7 of the Canadian Charter of Rights and Freedoms. (Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982, c. 11 (U.K.)) The judge's primary objection to the extant law is that it treated addicts and non-addicts equally and was inconsistent with the state's interest in fostering individual and community health and in preventing death and disease. Based on these findings, the judge declared that Insite could continue operating legally without obtaining another extension of its exemption, and he gave the government until June 30, 2009, to amend the impugned sections of the Controlled Drugs and Substances Act to bring them into line with the requirements of the Charter of Rights and Freedoms. The government can appeal the decision in *PHS Community Services Society v. Canada (Attorney General)* (2008 B.C.J. No. 951) to the Court of Appeal for British Columbia and leave to appeal from a decision by that court could be filed with the Supreme Court of Canada. (Stephen Clarke)

TAIWAN – Foodstuffs More Tightly Regulated

Amendments to Taiwan's Food Sanitation Management Law were promulgated on June 11, 2008. Among other measures, the revisions:

- provide a definition of “special nutritional supplement, ” in addition to the definition of “foodstuff” found in article 2 of the Law;
- stipulate that persons who enter Taiwan bearing foreign foods or food additives designated by the central competent authority (the Department of Health) (DOH) as likely to cause harm to human health are to declare the foodstuff and present a certificate for it issued by the health authority of the country of origin. The authority may publicly announce a ban prohibiting travelers from bringing a foodstuff into Taiwan's territory if it poses a serious threat to the human body or health (new art. 14-1);
- provide that the DOH may restrict the sites and methods for sale of specially designated foods in bulk or demand that particulars such as the country of origin be labeled in Chinese (new art. 17-1);
- specify that the DOH may publicize restrictions on the scope, methods, and sites of advertisements for special nutritional supplements (art. 19, new para. 3); and
- alter the penalties for various violations of the law (arts. 29, 31, 32, 33, and 36).

(Amendment to the Food Sanitation Management Law 6805 THE GAZETTE OF THE OFFICE OF THE PRESIDENT 4-11 (June 11, 2008), available at <http://content.glin.gov/summary/206112>.)



It may be noted that packaged eggs are not covered by the Food Sanitation Management Law. The Taiwan Consumers' Foundation, in a survey of 25 brands of eggs, found in a majority of cases that product information was not clearly stated; it also pointed out that "no real" organic eggs are on the local market. On May 3, 2008, it called upon the government to place eggs under the regulation of the Health Food Control Act. The failure to identify the eggs' nutritional contents, according to Foundation Chairman Chen Jen-hung, was "partly because the Food Sanitation and Management Law does not include packaged eggs as packaged food, thus freeing companies from labeling the ingredients," whereas the "Health Food Control Act bans product information that misleads consumers." (*Foundation Calls for Regulation on Eggs Sold in Markets*, TAIPEI TIMES, May 3, 2008, available at <http://www.taipeitimes.com/News/taiwan/archives/2008/05/03/2003410945>.)

(Wendy Zeldin)



Human Rights

EUROPEAN COURT OF HUMAN RIGHTS – Rulings Against Turkey

On June 24, 2008, the European Court of Human Rights (ECHR) issued two judgments against Turkey. The judgments involve two cases, *Isaak v. Turkey* and *Solomou v. Turkey*. The facts of the case of *Isaak v. Turkey* involve the 1996 death of a 25-year-old Greek Cypriot who participated in a demonstration against the Turkish occupation of the northern part of Cyprus. According to his family's accounts and eyewitnesses' statements, the victim was repeatedly kicked and beaten by Turkish and Turkish-Cypriot policemen. The Government of Turkey argued that Isaak died because of a clash between Greek-Cypriot and Turkish-Cypriot demonstrators.

The second case involved the death of another Greek Cypriot, Solomos Solomou, who was also killed by Turkish-Cypriot authorities. Solomou, after participating in the funeral of the first victim, entered the buffer zone where Isaak was beaten to death and climbed a flagpole that bore the Turkish flag. Turkish policemen shot Solomou immediately. The Turkish government argued, however, that the victim was hit in cross-fire between the two communities.

The ECHR, based on the facts of the two cases and the evidence submitted by the parties, noted that the victims had voluntarily entered the buffer zone but they were unarmed and had not attacked anyone. Therefore, the ECHR determined, the victims' deaths were not necessary in order to defend "any person from unlawful violence." The ECHR did not accept the argument that the deaths were necessary measures to suppress violence due to the demonstrations. The ECHR noted that the first victim, Isaak, was beaten severely and there was no attempt to capture him. In the case of Solomou, the ECHR emphasized that he was the only protester who crossed the cease-fire line and he did not carry any weapons.

Therefore, the ECHR concluded that both victims had been killed by agents of the Turkish government and their use of force was incompatible with article 2 of the European Convention on Human Rights and Fundamental Freedoms. This article provides for the right to life. The Court also noted that the Turkish government failed to investigate the circumstances of the incidents and has not brought to justice the perpetrators of these acts, in violation of article 2.

Based on article 41 of the Convention on just satisfaction, the Court awarded €80,000 (about US\$126,000) to Isaak's widow in pecuniary damages and €35,000 in non-pecuniary damages to his widow and parents. It also awarded €15,000 to Isaak's children. Solomou's father received €35,000 and the victim's children €15,000. The applicants also received €12,000 for costs and expenses. (Judgment of *Isaak v. Turkey* (application no. 44587/98) and judgment of *Solomou v. Turkey* (application no. 36832/97), in Press Release, European Court of Human Rights Press and Information Office, Two Chamber Judgments Concerning Turkey (June 26, 2008), available at <http://www.moa.gov.cy/MOI/pio/pio.nsf/all/8D32488C9CA5FEC4C2257473001D46FF?opendocument&print.>)

(Theresa Papademetriou)



FRANCE – Measures to Combat Discrimination

Law 2008-496 of May 27, 2008, transposes into national law various measures to combat discrimination to comply with three European Union directives: Directive 2000/43/EU of June 29, 2000 (equal treatment between persons irrespective of racial or ethnic origin); Directive 2000/78/EU of November 27, 2000 (general legal framework on equal treatment in employment); and Directive 2002/73/EU of September 23, 2002 (equal treatment for men and women in access to employment, vocational training, promotion and working conditions). France had not entirely complied with the directives and the European Commission had started three procedures against France for failure to fully transpose the directives within the prescribed time.

The European Commission noted that French law only defined direct discrimination in its Criminal Code. There was no definition in relation to civil matters. Indirect discrimination was not defined in either criminal or civil law. The new Law adds the definitions in compliance with the directives. In addition, community law considers harassment a form of discrimination, “where an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.” The 2008 Law also complies with this concept.

The Law states the conditions under which differences of treatment are authorized without constituting discrimination, in principle, “when they respond to an essential and determining occupational requirement, provided that the objective is legitimate and the requirement proportionate.” It further provides that

The differences of treatment on grounds of age are not discriminatory if they are objectively and reasonably justified by a legitimate aim, notably, to ensure the health or security of workers, to promote their vocational integration, to ensure their employment or their compensation in case of the loss of their employment, and when the means to realize this aim are necessary and appropriate.

Finally, the Law reinforces the protection of plaintiffs and witnesses against reprisals. (Loi 2008-496 du 27 mai 2008 portant diverses dispositions d’adaptation au droit communautaire dans le domaine de la lutte contre les discriminations, JOURNAL OFFICIEL [France’s official Gazette], May 28, 2008, at 8801.)
(Nicole Atwill)

RUSSIAN FEDERATION – Public Control over Penitentiaries Introduced

On June 10, 2008, Russian President Dmitri Medvedev signed into law the bill on public control for the implementation of human rights in penal institutions and legal aid to the incarcerated. The Law allows members of non-government organizations to visit penitentiaries, review the living conditions there, and meet the prisoners. For this purpose, special commissions consisting of from five to twenty members of different public organizations will be created in



Russia's constituent components. The members of the commissions will be permitted to visit jails and prisons located in their territory and enter all rooms or offices on the prison grounds while escorted by members of the prison administration. The membership of the commissions will be renewed every two years, and the final composition of each territorial commission will be approved by the administration of the Russian Federation President. Monitoring of each institution will be conducted according to rules developed by the government agency in charge of specific types of prisons. In Russia, these are the police, the Department of Justice, and the Ministry of Defense. (Mike Gabrielian, *President Helped the Prisoners*, GAZETA.RU, June 10, 2008.)

(Peter Roudik)

U.N. HUMAN RIGHTS COUNCIL – Milestone Optional Protocol Adopted

On June 18, 2008, the U.N. Human Rights Council (HRC), by consensus rather than a vote, adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which “would allow persons to petition an international human rights body about the violation of their rights under the Covenant.” (*Optional Protocol to ESC Covenant Adopted by Human Rights Council*, 5:8 IJCSL NEWSLETTER 14 (July 2008), available at http://www.iccsl.org/pubs/08-07_IJCSL-N.pdf.) It was reported that “[s]ome States [UK, Germany, Switzerland, China, Japan, Turkey] voiced concerns about amendments made outside of the Working Group to Articles 2 and 11, ... which, in the latest version of the text, effectively expanded the scope of the optional protocol to cover the right to self-determination (Part I of ICESCR),” and “[s]everal States [The United Kingdom, Turkey, Canada, Australia, Switzerland] placed on record their interpretation that the right to self-determination could not be invoked to trigger a complaint under a future complaints mechanism.” (International Service for Human Rights, COUNCIL MONITOR DAILY UPDATE 3 (June 18, 2008), available at <http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=3231>.)

Aside from permitting the UN Committee on Economic, Social and Cultural Rights to receive and consider communications alleging violations of the rights set forth in the Covenant, the Protocol:

- allows for the possibility of requesting a State Party to take ‘interim measures’ to preclude ‘possible irreparable damage to the victims of the alleged violations’;
- creates an inquiry procedure for handling ‘reliable information indicating grave or systematic violations of the Covenant,’ whereby the Committee will invite the State Party concerned to engage in a cooperative examination of the information through submission of its observations on the information and a visit to the State Party’s territory may be included as part of the inquiry; and
- requires that all appropriate measures be taken by a state ‘to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the Protocol.’



(NGO Coalition Welcomes Historic Decision: Economic, Social and Cultural Rights on Track to Have Equal Footing with Other International Human Rights Law, FIDH [International Federation for Human Rights], June 19, 2008, available at <http://www.fidh.org/spip.php?article5660>.)

Portugal introduced the draft resolution putting forward the Optional Protocol, but its formulation dates back to the 1993 Vienna World Conference on Human Rights and a first draft prepared in 1996, with intergovernmental negotiations commencing in 2004. (COUNCIL MONITOR DAILY UPDATE, *id.*) The HRC recommended, in the resolution to which the new instrument is annexed (A/HRC/8/L.2/Rev.1/Corr.1), that the U.N. General Assembly adopt and open the Optional Protocol for signature, ratification, and accession at a signing ceremony in Geneva in March 2009. (Press Release, HRC, Human Rights Council Adopts 13 Resolutions, Appoints 13 New Mandate Holders and Extends Eight Mandates (June 18, 2008, available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/F862D09328BA5EACC125746C006CB1D?opendocument>.)

(Wendy Zeldin)



Immigration and Nationality

EUROPEAN UNION – Return of Illegal Immigrants Directive

There are approximately eight million illegal immigrants in the European Union. These immigrants can be held for a certain period of time until their final status is determined by the immigration authorities of the EU Member States. Thousands of illegal immigrants have reached the southern region of the EU by boat. A year ago, several countries, including Greece, Italy, Malta, and Spain experienced a tremendous influx of illegal immigrants from northern Africa. Currently, EU Members apply their own rules to govern detention. Consequently, there is great disparity in the duration of detention, with limits ranging from 32 days in France, to 20 months in Latvia, and up to a year in Hungary. Some EU Members do not even impose a limit on detention. (*New EU Plan for Illegal Migrants*, BBC NEWS, June 17, 2008, available at <http://news.bbc.co.uk/1/hi/world/europe/7460007.stm>.)

On June 5, 2008, the Council and the Parliament of the European Union approved the European Commission's proposed directive on return of illegal immigrants. The directive is designed to harmonize the standards on detention of illegal immigrants across the European Community.

The Directive provides that the maximum detention period is six months, which can be extended for an additional 12-month period. . It also contains provisions on voluntary departure prior to expulsion and a prohibition on re-entry into EU territory prior to the elapse of a five-year period.

The Directive drew criticism from human rights groups and from the Socialist, and Green parties. In particular, Amnesty International's secretary general Irene Khan stated that the directive was "unacceptable," because it does not prohibit detention of unaccompanied children. (*Id.*)
(Theresa Papademetriou)

THE NETHERLANDS – Asylum Procedures to Be Revised

On June 24, 2008, the government of the Netherlands announced a large-scale revision of procedures for asylum seekers. They will no longer be interrogated immediately, as they are under current procedures; instead, they will be allowed to prepare for the asylum interview for six days. Without adequate preparation time, refugee support organizations argue, asylum seekers who are asked about their identity and the reason they fled their homes and who are confused and afraid often hesitate and give incorrect information. Unsatisfactory initial interviews lead to uncertainty and delay in the overall procedure. The new proposal, which would be the first revision of the 2000 Aliens Law, replaces this initial interview and the second hearing with a single interview after the six-day preparation period. Thus, in addition to easing the process for the refugees, the government hopes the reform will streamline the procedures and



reduce the backlog of cases. (*Netherlands Revises Asylum Procedures*, NRC HANDELSBLAD ONLINE, June 25, 2008, Open Source Center No. EUP20080625366004.)
(Constance A. Johnson)

NICARAGUA – Refugee Legislation Approved

Twenty-eight years after acceding to the United Nations Convention on Refugees, on June 5, 2008, Nicaragua approved the Law on Protection of Refugees. The legislature passed the Law by a nearly unanimous vote. The Law mandates the creation of a National Commission for Refugees (CONAR), which will be in charge of studying each application and granting the status of “refugee” to those persons it considers meet the legal requirements. The representative of the United Nations High Commissioner for Refugees for Mexico, Central America, and the Caribbean, Kevin Allen, stated that the new Nicaraguan statute is one of the most modern in the region. He pointed out the importance for the country to finally have a legal framework regulating the status of refugees. (Ary Pantoja, *Aprueban Ley de Protección a Refugiados*, EL NUEVO DIARIO, June 3, 2008.)
(Norma C. Gutiérrez)



Insurance

JAPAN – New Insurance Law

The Diet (Japan's Parliament) passed the new Insurance Law on May 30, 2008. The old law was enacted in 1911. At that time, the legislature did not foresee the spread of injury and illness insurance, and so there have not been specific provisions for such insurance. The life insurance part of the old law has been applied correspondingly. One of the changes in the law is that the obligation to notify the insurance company of an existing illness and condition of an insurant was changed to the obligation to answer questions asked by the insurance company. There were cases under the old law in which insurance companies unfairly denied the payment of an insurance claim to a beneficiary on grounds of the insurant's violation of the existing illness disclosure obligation. (*Iseiki buri kaisei, sin hokenho ga seiritsu [New Insurance Law passed, amendment after a century]*, YOMIURI ONLINE, May 30, 2008 (on file with author).) (Sayuri Umeda)



International Relations

BENELUX – New Treaty

Belgium, The Netherlands, and Luxembourg signed a new Benelux Treaty on June 17, 2008, in The Hague. The new treaty revises the present treaty, signed in 1958, which will come to an end on October 31, 2010. Article 2 of the new treaty provides its main objectives: to protect the Benelux countries' pioneering role in the European Union and extend cross-border cooperation in the areas of the internal market and economic union, sustainable development, and justice and home affairs. (*Nouveau Traité Benelux – 17/06/2008*, Benelux Secretariat-General Web site, June 17, 2008.)

(Nicole Atwill)

CHINA/SUDAN – Eight Agreements Signed

It was reported on June 13, 2008, that, according to Sudan's Finance Minister Dr. Awad al-Jaz, China and Sudan have pledged to develop their partnership. To that end, the two sides signed eight agreements and preferential loans worth 160 million *yuan* (about US\$23.2 million), as well as an agricultural cooperation protocol that provides for the establishment of an agricultural development center in the state of Gedaref. Al-Jaz made the remarks in an interview conducted at the conclusion of a visit by the Vice President of Sudan, heading a high-level delegation, to China. Al-Jaz further stated that the Sudanese officials "had met with a large number of Chinese businessmen, who were given a full explanation of investment opportunities and their assets, and Sudan's flexible investment law," and he noted "this approach has found acceptance and enthusiasm from the Chinese side; it will provide more opportunities for partnership between the two countries, in addition to what was agreed upon previously and what is currently being implemented in Sudan. (*Sudan: Finance Minister Says Sudan, PRC Agree to Develop Partnership*, SUNA NEWS AGENCY (Khartoum), June 13, 2008, Open Source Center No. AFP20080613410007.)

(Wendy Zeldin)

CHINA/TAIWAN – Reunification Talks Resume After Almost a Decade

The Chairman of the Association for Relations Across the Taiwan Strait (ARATS) of the People's Republic of China (PRC) and the Chairman of the Straits Exchange Foundation (SEF) of the Republic of China (on Taiwan, ROC) resumed talks on cross-strait relations on June 12, 2008, in Beijing, nearly a decade after their last meeting in Shanghai in October 1998. The semi-official talks were suspended by the PRC after then ROC President Lee Teng-hui proposed a "special state-to-state" model for PRC-ROC ties, which was unacceptable to Beijing. (*China, Taiwan Hold First Talks in 9 Years*, XINHUA, June 12, 2008, Open Source Center No. FEA20080612712789; *TIMELINE – Milestones in China-Taiwan Relations Since 1949*, REUTERS, Mar. 20, 2008, available at <http://uk.reuters.com/article/worldNews/idUKSP28519120080320?sp=true>.)



Subsequently, Taiwan adopted a number of new measures to expand ties with mainland China. On June 13, 2008, landmark agreements were inked between ARATS and SEF on weekend cross-strait charter flights, to be made initially via Hong Kong but ultimately through direct routes, and on Mainland residents touring Taiwan, stipulating a quota of 3,000 people per day with at least 10 but not more than 40 people per group, and a length of stay not to exceed 10 days from the second day of arrival. (*Full Text of ARATS-SEF Agreement on Cross-Strait Charter Flights*, XINHUA, June 13, 2008, Open Source Center No. CPP20080613704002; *Full Text of ARATS-SEF Agreement on Mainland Residents Touring Taiwan*, XINHUA, June 13, 2008, Open Source Center No. CPP20080613704003.)

On June 25, amendments to the ROC Statute for Relations Between the People of the Taiwan Area and the People of the Mainland Area (issued on July 31, 1992) were promulgated in Taiwan's official gazette. One of the amendments stipulates that the Financial Supervisory Commission under the Executive Yuan (Cabinet) may jointly enact regulations with Taiwan's Central Bank on granting permission for Mainland-issued currency to enter and exit the Taiwan area; formerly, permission was to be granted only "when necessary" by the unspecified "authorities in charge" (art. 38, para. 2). Two other provisions, added to article 92, stipulate penalties for violating provisions on the exchange, sale, and other transactions involving Mainland-issued currency that are set forth in article 38.

On June 26, the Executive Yuan "approved a raft of measures," to be implemented over a month, "aimed at liberalizing cross-strait securities investments and transforming Taiwan into an asset-management and capital-raising hub." The five measures comprising the financial initiative include: abolition of the requirement that foreign institutional investors, when registering with the Taiwan Stock Exchange, declare that their capital is not from mainland China; open mutual listings of exchange-traded funds on the Taiwan and Hong Kong stock markets; granting of permission to companies listed on the Hong Kong Stock Exchange to obtain a second listing on Taiwan's stock market and issue Taiwan Depository Receipts; loosening of restrictions on investment in mutual funds with Mainland capital; and permissibility of Taiwan institutional investors to buy into the Mainland's securities and futures market. In regard to the government's plan to lift the ban on Taiwan securities, futures, and investment-funds management firms investing in their Mainland counterparts, it was reported that the Financial Supervisory Commission would revise the relevant rules to allow the investments to total as much as 20 percent of the dealers' net worth, doubling the previous limit. (Edwin Hsiao, *ROC Eases Investment Rules*, 25:26 TAIWAN JOURNAL (July 4, 2008), available at <http://taiwanjournal.nat.gov.tw/site/tj/ct.asp?CtNode=122&xItem=44487>.)

In addition, on June 30, the Government Information Office announced that regulations on permits for Mainland correspondents would be eased; two of the Mainland's official news organizations (XINHUA NEWS AGENCY and PEOPLE'S DAILY) would be able to resume posting correspondents in Taiwan; and the journalists' permissible length of stay would be extended to 90 days from the current maximum of 30. With GIO and National Immigration Agency approval, the authorization is renewable on a one-time basis for a maximum period of up to six months. Taiwan correspondents who work on the Mainland "were offered identical permit



conditions, according to Vanessa Yea-ping Shih, the GIO Minister. Although the PRC approved the basing of Taiwan correspondents on the Mainland in 1993, “it continues to block the Web sites of Taiwan's two major Chinese-language news organizations, the China Times and the United Daily” and “[r]eporters from Taiwan's Liberty Times and the Hong Kong-based Apple Daily occasionally face difficulties when attempting to obtain permits for mainland China.” (June Tsai, *Government Readmits Banned Media Outlets*, 25:26 TAIWAN JOURNAL (July 4, 2008), available at <http://taiwanjournal.nat.gov.tw/site/tj/ct.asp?CtNode=122&xItem=44473>.)

According to one analysis, however, reporting from both the PRC and Taiwan “suggests future talks may face challenges, in part due to ongoing debates in Taiwan over areas of authority in cross-Strait dialogue.” (*OSC Analysis: China-Taiwan – Leaders Hail Resumption of Talks; Challenges Remain*, OSC ANALYSIS, June 16, 2008, Open Source Center No. CPF20080617554001.) In this connection, both ruling party and opposition politicians in Taiwan have stated that SEF-ARATS agreements require the legislature’s approval (even though existing law does not mandate ratification by the legislature of the agreements), “suggesting the Legislative Yuan is attempting to ensure a role for itself in cross-Strait negotiations,” and, according to Legislative Yuan President Wang Jin-pyng, the legislature plans to establish a task force to monitor the negotiations in order to protect Taiwan’s security and the interests of its people. (*Id.*)
(Wendy Zeldin)

CYPRUS/EUROPEAN UNION – Ratification of the Lisbon Treaty

On July 4, 2008, the Republic of Cyprus became the twentieth European Union Member State to ratify the Lisbon Treaty (whose formal title is the Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community), which was signed on December 13, 2007 (2007 Official Journal of the European Union (C306) 1, available at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>). Thirty-one Members of the Cyprus House of Representatives, the country’s unicameral parliament, voted in favor of ratification, 18 against, and 1 abstained.

The President of the European Commission, Jose Manuel Barosso, congratulated the Cyprus government and parliament on the overwhelming support they showed for the Treaty. Barosso said in a written statement, “approval of the Treaty is a strong signal of how important it is that all Member States are heard during the ratification process.” The President of the European Parliament, Hans-Gert Pottering, also welcomed Cyprus’s ratification of the Lisbon Treaty, stating: “coming after the Irish Referendum, the approval by a big majority of the Members of the Cyprus House of Representatives is a very positive signal that the Lisbon Treaty is in Europe’s vital interest.” (*Cypriot Parliament Ratifies Lisbon Treaty*, ANA-MPA DAILY NEWS BULLETIN, July 4, 2008, at 11, available through Embassy of Greece, Washington, DC.)
(Theresa Papademetriou)



ISRAEL/EUROPEAN UNION – Agreement to Upgrade Relations

An upgrade in Israel-European Union relations was announced in Luxembourg on June 16, 2008, during the eighth annual EU-Israel Association Council meeting, headed by Tzipi Livni, Israel's Minister of Foreign Affairs, and Dr. Dimitrij Rupel, President of the EU General Affairs and External Relations Council and Slovenian Foreign Minister. The relationship will be upgraded in the area of diplomatic cooperation by "institutionalization of the diplomatic dialogue between the Israeli and EU leadership, by means of regular annual meetings at a senior level. In addition, there will be increased meetings between government ministers, senior officials and parliamentarians from both sides." (Herb Keinon, *Israel Wins Significant EU Upgrade*, THE JERUSALEM POST ONLINE, June 16 & 17, 2008; Press Release, Slovenian Presidency of the EU 2008, Minister Rupel Heads the EU-Israel Association Council (June 16, 2008), available at http://www.eu2008.si/en/News_and_Documents/Press_Releases/June/0616GAERC_Izrael.html.)

According to the announcement, there will also be an upgrade in relations through Israeli participation in European plans and agencies. Such participation is expected to bring Israel's economy and society closer to EU norms and standards and increase Israeli companies' competitiveness in the European market, primarily in the field of high technology. In addition, a joint working group will be established for the examination of areas in which Israel has the capacity of integration into the European single market. (Herb Keinon, *id.* & Press Release, *id.*) (Ruth Levush)



Investment

AUSTRALIA/NEW ZEALAND – Mutual Recognition of Securities

From July 2008, New Zealand and Australia will implement a Mutual Recognition of Securities Offerings (MRSO) that will permit issuers to use a single prospectus to offer shares, debentures, or managed or collective investment schemes to investors in both New Zealand and Australia. (Securities Commission New Zealand & Australian Securities and Investments Commission, OFFERING SECURITIES IN NEW ZEALAND AND AUSTRALIA UNDER MUTUAL RECOGNITION GUIDE (June 2008), available at <http://www.seccom.govt.nz/publications/documents/nz-aus/>.)

(Lisa J. White)



Maritime Law

JAPAN – Foreign Ship Navigation Within the Territorial Waters Law

The Diet (Japan's Parliament) passed a new law on June 5, 2008, to regulate foreign ships' navigation within Japan's territorial waters. Japan did not previously have a law to control the movements of suspect foreign ships within its territorial sea, and so Japanese maritime officials could not conduct on-the-spot inspection of suspicious North Korean fishing vessels masquerading as cargo ships. The Fishery Law permitted on-the-spot inspection only of fishing vessels. (Nihon ryōkai nai no gaikoku hushin sen kisei e [Foreign fishing vessels within Japan's territorial sea to be controlled], YOMIURI ONLINE, June 5, 2008 (on file with author).) (Sayuri Umeda)



Money Laundering

TAIWAN – Money Laundering Law Amended

According to the U.S. Department of State, “Taiwan's modern financial sector and its role as a hub for international trade make it susceptible to money laundering.” (*Volume II: Money Laundering and Financial Crimes, Country Reports, INTERNATIONAL NARCOTICS CONTROL STRATEGY REPORT – 2008*, Mar. 2008, available at http://hongkong.usconsulate.gov/ustw/narcos_2008022903.html.) On June 11, 2008, an amendment to Taiwan’s Money Laundering Prevention and Control Law was promulgated. The revised article 3 lists seven additional crimes deemed to be serious crimes (*chung ta fan tsui*) under the Law and also lowers the threshold – from NT20 million (about US\$658,000) to NT5 million (about US\$165,000) – above which the derivation of criminal proceeds from certain crimes will constitute a serious crime. The seven additional serious crimes include relevant offenses found in provisions of the Agricultural Finance Law, the Bills Finance Management Law, the Insurance Law, the Financial Holding Company Law, the Trust Companies Law, the Credit Cooperative Societies Law, and the Money Laundering Law itself (in connection with art. 11, para. 3, on the crime of materially aiding terrorist organizations or activists of those organizations, recognized or being investigated as such by international money laundering prevention and control organizations). (Amendment to Money Laundering and Prevention Control Law, 6805 THE GAZETTE OF THE OFFICE OF THE PRESIDENT 2-4 (June 11, 2008), GLIN ID 206111, <http://content.glin.gov/summary/206111>; Hsi ch’ien fang chih fa, TSUI HSIN SHIH YUNG LIU FA CH’ÜAN SHU 577 (Taipei, Tawei Press, 2007).)

The Taiwan Ministry of Justice’s Bureau of Investigation, using the designation “Money Laundering Prevention Center, Taiwan,” joined the informal, international anti-money laundering and anti-terrorist financing organization, the Egmont Group of Financial Intelligence Units, in 1998. (*Drafts to Money-Laundering Law Pass Reading*, THE CHINA POST, June 5, 2007 [re the 2007 amendments], available at <http://www.chinapost.com.tw/taiwan/111484.htm>.) (Wendy Zeldin)



Terrorism

BELGIUM – Terrorism Risk Insurance

The Belgian Law of April 1, 2007, on insurance against damages caused by terrorism went into effect on May 1, 2008. It applies to insurance of terrorism risks in Belgium. It was already mandatory for insurers to include terrorism coverage in certain types of insurance contracts, including workers' compensation, motor vehicle liability, liability for fire or explosion in buildings accessible to the public, and simple fires. The new Law extends the requirement to accident, health, and life insurance. The new regime, however, is not applicable to the following types of insurance: property and liability insurance of nuclear plants, railway trains, aircraft, and ships, and contracts covering only terrorism.

Article 2 of the Law defines terrorism for the purpose of compensation as:

A clandestinely organized action or threat of action for ideological, political, ethnic or religious purposes, carried out by an individual or a group and perpetrated on individuals or destroying wholly or partially the economic value of goods, either to impress the public, to create a climate of insecurity, or to pressure the authorities or to hinder the movement or normal functioning of a service or enterprise.

A committee comprised of representatives of various ministries and insurers decides whether an event meets this definition.

The Law creates a new legal entity, the Terrorism Reinsurance & Insurance Pool (TRIP) and spreads the risks between the state and the insurance industry. Coverage will be available up to €1 billion (about US\$1.6 billion). This figure will be adjusted annually in line with the Consumer Price Index. Participating insurers in the Pool will pay the first €700 million (about US\$1.1 billion), with the state paying the remainder. (Loi relative à l'assurance contre les dommages causés par le terrorisme, Apr.1, 2007, MONITEUR BELGE [Belgium's Official Gazette], May 15, 2007.)

(Nicole Atwill)

IRAQ – Maliki Statement on Ending Terrorism

In June 2008, the Iraqi Prime Minister, Nouri al-Maliki, said that a deep understanding of the Islamic religion and law will lead to ending terrorism and that religious leaders are at the forefront of this endeavor. If they properly assume their duties, Maliki stated, they will be a support to the government in combating terrorism and "the outlaws." (*Al-Maliki: The Understanding of Religion and Law Is What Will End Terrorism*, ASHARQ ALAWSAT, June 7, 2008.)

(Issam Saliba)



NETHERLANDS ANTILLES – Criminal Provisions on Terrorist Activities

On June 2, 2008, the Parliament of the Netherlands Antilles approved amendments to the Penal Code, despite criticism from international organizations. The amendments provide for punishment of terrorist activities, funding of terrorism, and money laundering, in conformity with the International Convention for the Suppression of the Financing of Terrorism (New York, Dec. 9, 1999, available at <http://www.un.org/law/cod/finterr.htm>) and the implementation of the 40 Recommendations of the Financial Action Task Force (*The 40 Recommendations*, http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html) (last visited June 16, 2008). The maximum penalty for participation in and financing of terrorist activities and organizations under the revised Code is 24 years' imprisonment or life.

Several Members of Parliament – in particular Curaçao-based parties' political factions – had heavily criticized the government's pressure on the legislature for speedy approval of the amendments. They questioned "why the Netherlands Antilles had to approve such a law amendment if, according to the baseline study 'Crime and Upholding the Law in Curaçao and Bonaire,' there were no signs of terrorist activities taking place on the islands." However, MPs gave their approval to the revisions based on the amendments' perceived importance for the financial sector. (*Terrorist Activities Punishable by Law*, THE DAILY HERALD (Sint Maarten), June 4, 2008, available at http://news.caribseek.com/Sint_Maarten/The_Daily_Herald/article_66196.shtml.)

(Wendy Zeldin)

UNITED KINGDOM – Commons Passes Pre-Charge Detention Bill

On June 11, 2008, a bill to extend the time period that terrorist suspects can be held without charge to gather evidence for criminal cases was passed by a narrow majority in the House of Commons. The counter-terrorism bill extends the period of pre-charge detention from 28 days to 42. The extension must be approved by a judicial authority and renewed every seven days, up to a maximum of forty two. The bill must now pass through the House of Lords. (Counter-Terrorism Bill, HL 65, 2007-8, available at <http://www.publications.parliament.uk/pa/ld200708/ldbills/065/08065.i-v.html>; Counter-Terrorism Bill, <http://services.parliament.uk/bills/2007-08/counterterrorism.html>) (last visited July 3, 2008); see also 4 W.L.B. 2008.)

(Clare Feikert)

UNITED KINGDOM – Terrorist Loses US Extradition Appeal

A controversial Muslim cleric, Abu Hamza, currently imprisoned in the United Kingdom for stirring up racial hatred, recently had his appeal against extradition to the United States rejected by the English High Court. Hamza was the first person to be arrested under the Anglo-American extradition treaty and is sought in the United States on a number of terrorist charges. (John Aston & Mike Taylor, *Abu Hamza Loses Extradition Fight*, THE INDEPENDENT (London), June 21, 2008, available at <http://www.independent.co.uk/news/uk/crime/abu-hamza-loses-extradition-fight-851593.html>; see also 3 W.L.B. 2008.)

(Clare Feikert)



YEMEN – Death Penalty in Terrorism Case

On June 9, 2008, a Yemeni court with jurisdiction over terrorist activities and national security cases convicted the leader and members of a terrorist cell related to the Hawthi group. The court sentenced the leader of the cell to death and the members to different imprisonment terms ranging from one to ten years. The presiding judge said that it was proven that the leader of the cell, Jaafar Mohammed Ahmed al-Marhabi, was involved in the murder of two police officers, brigadiers Mohammed Raweh and Abd al-Ghani Hussein. (*Sanna: The Death Penalty to the Leader of a “Hawthi Cell” and Imprisonment of Between One and Ten Years to 12 Others*, ASHARQ ALAWSAT, June 10, 2008.)
(Issam Saliba)



Trafficking in Persons

GHANA – Human Trafficking

Despite significant efforts, Ghana falls short of complying with minimum, international standards against human trafficking, a U.S. State Department report released on June 8, 2008, stated. The report, which depicts Ghana as “a source, transit, and destination country for children and women trafficked for the purposes of forced labor and commercial sexual exploitation,” says that “trafficking within Ghana is more prevalent than across international borders.” The report also states that Ghana has been given the middle ranking of a “tier 2 country” by the State Department mainly because of “limited assistance programs available for victims, trouble with prosecutions, and bribing of law enforcement into complacency and the fact that no convictions had occurred.” The report praises the Ghanaian government, however, for establishing a board that is in the process of introducing a national action plan to control trafficking.

The report makes eight recommendations aimed at further combating human trafficking in Ghana:

- strengthen overall efforts to prosecute and convict traffickers;
- investigate and close down brothels selling children into prostitution and prosecute brothel operators;
- suspend government officials accused of complicity from their official duties until they can be prosecuted or cleared of allegations;
- develop a system for providing secure care for rescued sex-trafficking victims;
- increase shelter space for trafficking victims;
- train government social workers to identify trafficking victims among girls and women in prostitution;
- increase coordination between police and government social workers in conducting trafficking raids and rescues; and
- fulfill commitments to the international community to work with private cocoa-producing regions to measure the incidence of the worst forms of child labor and forced adult labor by July 2008.

(US Report Says Ghana Not Following Global Standards Against Human Trafficking, AFP, June 9, 2008, Open Source Center No. AFP20080610565006.)
(Hanibal M. Goitom)



Weapons

KOREA, SOUTH – New Rule to Sell Old Munitions

The Ministry of National Defense of South Korea has sold to the Philippines, Bangladesh, and Kazakhstan, at an extremely low price, old munitions that had been used for 30 to 40 years, including the F-5A/B Freedom Fighter. The unit price was typically US\$100. With the number of countries requesting to purchase the Korean munitions increasing and the items requested becoming more varied, the Ministry has decided to establish the Rules Concerning Transfer Abroad of Unneeded Munitions. Currently, Korea is planning to sell coastal patrol boats to Cambodia, engines and parts of T-37 airplanes to Pakistan, A-37 light airplanes to Peru, T-41 training airplanes to the Philippines, and radio communication devices to Mongolia. (Yong-won Yu, *Kankoku gun: cho onsoku sentoki, I man en de “dai bagen”* [Korean Military: Supersonic fighter, “Grand Sale” for 10,000 yen], CHOSUNILBO, May 18, 2008.) (Sayuri Umeda)

MEXICO/UNITED STATES – Plans to Identify and Disrupt Trans-Border Weapons-Smuggling Networks

On June 9, 2008, the U.S. Immigration and Customs Enforcement (ICE) and Mexico Customs announced Operation *Armas Cruzadas*, “a major effort to identify and disrupt trans-border weapons smuggling networks between the two countries’ borders through the Homeland Security Information Network (HSN) virtual weapons task force.” (News Release, ICE, ICE and Mexican Officials Announce Plans to Identify and Disrupt Trans-Border Weapons Smuggling Networks: *Armas Cruzadas Is a Bi-Lateral Law Enforcement and Intelligence-Sharing Operation to Thwart Export of Arms from U.S. into Mexico* (June 9, 2008), available at <http://www.ice.gov/pi/news/newsreleases/articles/080609houston.htm>.) “Through coordinated operations based on developed intelligence of arms trafficking networks in North America,” Operation *Armas Cruzadas* “aims to stop the illegal export of weapons from the U.S. and into the hands of drug cartel organizations inside Mexico,” according to the ICE news release on the new plan. (*Id.*) “U.S. and Mexican agencies will synchronize key law enforcement and intelligence elements to accomplish” the operation, the news release states, and the new effort “will help strengthen interagency cooperation between U.S. and Mexican federal, state and local law enforcement agencies and promote the exchange of intelligence through multiple points of contact.” (*Id.*)

The operation is led by ICE, in conjunction with the U.S. Customs and Border Protection, the Bureau of Alcohol, Tobacco, Firearms and Explosives, and the Drug Enforcement Administration. (News Release, ICE, ICE and Mexican Officials Announce Plans to Identify and Disrupt Trans-Border Weapons Smuggling Networks: *Armas Cruzadas Is a Bi-Lateral Law Enforcement and Intelligence-Sharing Operation to Thwart Export of Arms from U.S. into Mexico* (June 9, 2008), available at <http://www.ice.gov/pi/news/newsreleases/articles/080609houston.htm>.) (Gustavo Guerra)



Women

UNITED KINGDOM – Enforcement of Female Circumcision Laws

The British police are reportedly increasing checks on flights leaving for nations that are known to continue the practice of female circumcision. This practice was made unlawful in the United Kingdom in 1985, through the Prohibition of Female Circumcision Act. There were no prosecutions under this Act, and in response to concerns that the law was not being enforced and to close certain loopholes, a new law was passed, the Female Genital Mutilation Act 2003. This Act expanded the scope of the 1985 Act and enables the prosecution of individuals who perform, aid, abet, counsel, or procure a person to perform female circumcision outside of the United Kingdom on UK nationals or residents. The law has reportedly had no prosecutions since it came into force, and the checks on the departing flights are intended to raise the profile of the law and prevent girls from being taken out of the country for the procedure. (Female Genital Mutilation Act 2003, c. 31, available at http://www.opsi.gov.uk/ACTS/acts2003/ukpga_20030031_en_1 (official source); Brian Brady, *Female Circumcision*, THE INDEPENDENT (London), June 22, 2008, available at <http://www.independent.co.uk/news/uk/crime/female-circumcision-a-tradition-steeped-in-blood-852028.html>.)

(Clare Feikert)



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