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Directorate of Legal Research for International, Comparative, and Foreign Law
James Madison Memorial Building; 101 Independence Avenue, SE; Rm. LM 240; Washington, DC 20540
Reception: (202) 707-5065 – FAX: (202) 315-3654
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Respectfully submitted,

Walter Gary Sharp, Sr.

WALTER GARY SHARP, SR.
Director of Legal Research

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

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AFRICA

BOTSWANA – Parliament Requests Employment Act Amendment

Botswana's Parliament adopted a motion on the protection of employees against unfair terminations of employment. The motion called on the government to amend section 27 of the Employment Act to insure that those who are unfairly fired before reaching the qualifying period of sixty months of continuous service receive a gratuity proportionate to their length of employment. The Minister of Labour and Home Affairs, Moeng Pheto, had criticized some businesses for ending workers' contracts without cause just before those workers would qualify for severance pay. A Ministry spokesman also stressed the need to educate both employers and employees on labor issues. A Member of Parliament from the Gaborone West South district, Robert Molefhabangwe, agreed, stating that there was a need to make sure that investors understand the labor laws before they begin operations in the country. (*Employees to Be Protected Against Unfair Dismissal,* DAILYNEWS ONLINE, Dec. 6, 2005, http://www.gov.bw/cgi-bin/news.cgi?d=20051206&i=Employees_to_be_protected_against_unfair_dismissal.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

CHAD – New Law Gives Greater Portion of Oil Revenue to Government

The Republic of Chad is a land-locked country in north central Africa with an area of 496,000 square miles, roughly three times the size of Texas. The country, which has a population of 8.4 million, became independent from France in 1960. The Doba oil fields in southern Chad were officially opened in October 2003 and thus far have accounted for some 300 million dollars in revenue for the government. Under an oil agreement with an international consortium operating in Chad comprised of Exxon Mobil and Chevron of the United States and Malaysia's Petronas, the fields provide the government with 12.5 percent of the oil income.

The cash-strapped government declared in October 2005 that it intended to change its current law, as it faced increasing financial difficulties that prevented it from paying government employees. On December 29, 2005, Chad's Parliament approved a law giving the government access to a ten percent revenue fund that had been reserved for future generations. The income flowing to the state has been doubled with no external checks. In addition, the judiciary and the security forces have been added to the priority sectors, such as health and education, eligible to receive the greatest part of the income. (*Parliament Approves Controversial Law to Divert Oil Earnings,* AFP, Dec. 29, 2005, FBIS No. AFP20051229632001.)
(G.H. Vafai, 79845, gvaf@loc.gov)

CÔTE D'IVOIRE – United Nations Bars Diamond Exports

On December 15, 2005, the United Nations Security Council renewed for another year the arms embargo and travel and financial restrictions applied to all parties deemed to threaten the peace in Côte d'Ivoire, which is split between two contending armies separated by United Nations and French peacekeeping forces. The Council also decided to ban the export of rough diamonds from Côte d'Ivoire. (*UN Security Council Renews Sanctions on Cote d'Ivoire, Bars Diamond Exports*, UN NEWS SERVICE, Dec. 15, 2005, http://allafrica.com/stories/printable/200512150411.html.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

ERITREA – Religious Persecution Alleged

On December 7, 2005, Amnesty International (AI) issued a report accusing Eritrea of denying some of its citizens their right to freedom of religion. The report mainly addresses "widespread detentions and other human rights violations of members of evangelical Christian churches in the past three years, intensifying in 2005," even though it notes that Jehovah's Witnesses have been severely persecuted for the past decade on the basis of their religious beliefs. According to AI, such churches have been shut down since 2002, when the government ordered all unregistered religions to close their houses of worship until they were registered, and "many members have been tortured" by the authorities in an attempt to make them abandon their faith. Even within the officially sanctioned Orthodox Church and Islam, members of new groups have reportedly been detained because of their beliefs. (The other two main religions recognized as official faiths are the Catholic and Lutheran churches.) Since the crackdown, reportedly no minority religion has been able to successfully register. The AI report also documents forty-four cases of religious persecution in Eritrea since 2003. Eritrea's acting Minister of Information, Ali Abdu, has rejected AI's claims. (*Eritrea Rejects Amnesty International's Report on Religious Persecution*, INTEGRATED REGIONAL INFORMATION NETWORK (IRIN), Dec. 7, 2005, FBIS No. AFP20051208950017; Amnesty International, *Eritrea: Religious Persecution*, Dec. 7, 2005, http://web.amnesty.org/library/index/engafr640132005.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

ETHIOPIA – Claim of Compensation from Eritrea

In awards made public on December 19, 2005, the Eritrea-Ethiopia Claims Commission found Eritrea responsible for the 1998-2000 war against Ethiopia. The Commission also held that Eritrea was responsible for intentionally killing, beating, and abducting Ethiopian civilians and for widespread looting and destruction of civilian property during attacks and occupation of Ethiopian territory in border regions. The Ethiopian Ministry of Foreign Affairs said that the awards were of monumental significance in exposing Eritrea as the aggressor and in revealing the belligerent nature of the regime in the current impasse in the peace process. The Ministry stated that the Ethiopian Government is content with the Commission's awards and is making preparations to claim compensation from Eritrea in January 2006 for the damage caused by its war of aggression. (*Ethiopia Under Preparation to Claim Compensation From Eritrea – Ministry*, THE ETHIOPIAN HERALD, Dec. 22, 2005, *at* http://allafrica.com/stories/ 200512220135.html.)
(Karla Walker, 7-4332, kdwa@loc.gov)

GHANA – Disability Bill

It was reported in early December 2005 that the President of Ghana, John Agyekum Kufuor, directed that the Persons with Disability Bill being considered by the Cabinet be sent to the parliament as soon as possible. The Minister of Manpower Development, Youth and Employment, Kofi Adda, indicated that while the Cabinet hoped to submit the bill to parliament by the end of the year, certain issues were still being reviewed, but, he stressed, the bill's passage into law was a constitutional requirement. Ghana's 1992 Constitution mandated that the government pass laws to protect the rights of the disabled (article 29), but successive regimes have failed to achieve passage of such legislation. Although the previous Ghanaian Government developed a national disability policy in 2000 to formulate legislation protecting disabled persons' rights and to provide for their full integration into the national economy and the furtherance of their economic well-being, the policy was never implemented.

(Vincent Adedze, *Disability Bill Must Go to the House Now – President*, DAILY GRAPHIC, Dec. 5, 2005, http://www.graphicghana.info/article.asp?artid=9397; *Ghanaians Campaign for Disability Law to Be Passed*, Feb. 18, 2005, Christian Aid website, http://www.christianaid.org.uk/world/where/wca/partners/0502ghana.htm; *Constitution of the Republic of Ghana*, http://confinder.richmond.edu/country.php.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

LIBERIA – Rape Law

On December 1, 2005, the Parliament of Liberia passed a rape bill into law. The legislation makes rape per se illegal in that country for the first time, even though gang rape has been considered an offense. Ellen Johnson Sirleaf, who became Liberia's (and Africa's) first female president when she assumed office in January 2006, stated in an interview that rapists will be punished during her tenure: "any law on rape especially the rape bill just passed into law will be totally implemented under our government." The Association of Female Lawyers of Liberia, along with other Liberian women's rights groups, drafted the bill in response to what they characterized as a growing number of cases of rape and sexual assault. Since the Liberian civil war ended two years ago, the local media have reported more of such cases. Under the new law, depending on the gravity of the offense, rapists can be sentenced to from seven years to life imprisonment, and those accused of rape will not be granted bail. (*Liberia: No Impunity for Rapists, Vows President Elect*, UN INTEGRATED REGIONAL INFORMATION NETWORKS, Dec. 5, 2005, http://allafrica.com/stories/200512050980.html.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

NAMIBIA – Implementation of New Labor Law

On November 30, 2005, the first sections of the new Labour Act were set to come into force. These sections are expected to enable the appointment and operation of the two committees of the Labor Advisory Council (LAC), the Committee on Dispute Prevention and Resolution and the Essential Services Committee. The former will deal with "the prevention and resolution of labour disputes and the active participation of trade unions and employers in achieving harmonious labour relations...." The latter will identify those jobs that potentially affect the health or safety of the public. The new act replaces the 1992 Labour Act and is expected to introduce new procedures for the prevention and resolution of labor disputes, while replacing the labor courts with a system of conciliation and arbitration. The Act will also authorize more general leave benefits and maternity leave benefits for female employees. (Lindsay Dentlinger, *First Sections of New Labour Law Come into Effect Today*, THE NAMIBIAN, Nov. 30, 2005, http://www.namibian.com.na/2005/November/national/05EF4F5923.html.)
(Ruth Levush, 7-9847, rlev@loc.gov)

NAMIBIA – No Law Requires ID Document

In early December 2005, a representative of Namibia's Ministry of Home Affairs told a newspaper reporter that all people traveling on the national roads must produce an identity document when requested to do so by a member of the police. Those who did not do so would be subject to arrest and detention until their identity could be determined. The statement was immediately disputed by the Director of Legal Assistance, Norman Tjombe, who claimed that any such arrest and detention would be illegal and unconstitutional.

> There is no law in this country that requires Namibian citizens, or anyone else, to carry their identity documents with them when they travel within the country … The Ministry of Home Affairs and Immigration is on record as stating that they are behind in issuing identity documents to each and everyone in Namibia.

He added that to effect an arrest, a police officer must have a reasonable suspicion that a crime has been committed. He referred to a court case in 2004 when the Government of Namibia had to pay a damages award of N$12,000 (about US$1,896) to a citizen who was arrested at her own home for inability to produce an identity document. Tjombe added that "[t]his is a constitutional democracy, not a police state." (*Not Carrying ID Is Not a Crime*, THE NAMIBIAN, Dec. 19, 2005, http://allafrica.com/stories/printable/200512190425.html.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

NIGERIA – Officials Suspended, Inspections Stepped Up Following Airline Crash

On December 13, 2005, the Government of Nigeria announced the suspension of two senior aviation officials following a disastrous crash on December 10 in which 107 people died at Port Harcourt. The Permanent Secretary of the Aviation Ministry and the Director of Planning, Research, and Statistics of that Ministry were placed on indefinite leave. In addition, two airlines have been grounded – Sosoliso, the company that operated the plane that crashed, and Chanchangi Airlines. Other passenger aircraft operating in the country will be subject to thorough inspections for airworthiness, under the supervision of two officials from the International Civil Aviation Organization. A new method of carrying out inspections will be put in place by early 2006, with the assistance of the International Air Transport Agency. A number of groups, including members of the Senate and non-governmental bodies, have called for the resignation of the Aviation Minister.

The Port Harcourt incident was the second major accident involving loss of life within a few months; on October 24, 2005, 117 people were killed in a crash of a Bellview Airlines plane. President Olusegun Obasanjo has said that corruption is a key factor impacting the safety of aviation in the country. Nigeria's air safety regulations had been tightened before the two recent accidents; the key now is said to be in enforcement. (*Nigeria Authorities Ground Airlines, Suspend Officials in Aftermath of Port Harcourt Crash*, WORLD MARKETS ANALYSIS, Dec. 14, 2005, LEXIS/NEXIS, World Library, Curnws File.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

RWANDA – Legal Reform Training

On December 14, 2005, in Butare Province, a group of sixty participants composed of members of the prosecution, the judicial police, and the military began training on new laws at the Rwandan Institute of Science, Research, and Technology. The training is designed to update law enforcers on legal issues. These include detention, domestic violence, categorization of crimes, and the judicial procedure in preparing files on suspect.

According to Boneventure Ruberwa, the chief prosecutor for Butare Province, the training is designed to assist prosecutors, policemen, and military officials in the development of proper forms of criminal investigation and evidence collection. Ruberwa noted in reference to the difference between

military and civil courts:

> In the military courts, there are cases of desertions and war crimes which are not stated in our civil laws. What is interesting however is that when, for instance, one soldier commits a crime with a hundred civilians, the Military Court is the one [to] prosecute the whole group, including the civilians.

In opening the workshop, Butare Province's Executive Secretary, Twagiramuta Aimable, said: "Butare residents are threatened by unprecedented increase of crimes such as defilement and other home-based violation of people's rights. We hope this workshop will equip you with tools to curb down such social injustices." He added that there is ignorance of the law in most parts of the province, specifically in cases of domestic abuse and violence. "There are husbands who beat their wives and upon interrogation, they claim that beating their wives was not regarded as a crime punishable by law," Twagiramuta said. (*Judicial Police, Prosecutors Train on Legal Reforms*, THE NEW TIMES, Dec. 16, 2005, *at* http://www.newtimes.co.rw/index.php?option=com_content&task=view&id=2647&Itemid=61.)
(Karla Walker, 74332, kdwa@loc.gov)

SÃO TOMÉ AND PRÍNCIPE – "Serious Flaws" in Award of Oil Exploration Contracts

The Attorney General's Office of São Tomé and Príncipe says it has found "serious flaws" in the way that contracts were awarded to oil companies to explore offshore waters shared with Nigeria. In a report published on December 9, 2005, the Attorney General stated that several of the companies chosen to explore the Joint Development Zone (JDZ) shared by São Tomé and Nigeria lacked the technical know-how and the financial muscle necessary to carry out the work.

Attorney General Adelino Pereira launched the probe following protests that many of the Nigerian-controlled companies that were awarded exploration rights were simply the investment vehicles of financial speculators with no track record of achievement in oil production or exploration. His investigation, which was backed by the World Bank and assisted by Dobie Langenkamp, a professor of energy law at the University of Tulsa in the United States, upheld these complaints. *SAO TOME AND PRINCIPE: Attorney General Finds "Serious Flaws" in the Award of Oil Exploration Contracts*," IRIN NEWS, Dec. 15, 2005, *at* http://www.irinnews.org/report.asp?ReportID=50699&SelectRegion=West_Africa&SelectCountry=SAO_TOME_AND_PRINCIPE.)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

SOUTH AFRICA – Gay Marriage Authorized

On December 1, 2005, South Africa's Constitutional Court held that it was unconstitutional to deny gay persons the right to marry. The Court further instructed parliament to amend South Africa's marriage law to include same-sex partners within a year. The Court held that if parliament did not amend the law accordingly, the legal definition of marriage would automatically be changed to include same-sex unions. (Gershwin Wanneburg, *Court Sets S. Africa on Course for Gay Marriage*, Dec. 1, 2005, BOSTON.COM, *at* http://www.boston.com/news/world/africa/articles/2005/12/01/safrica_top_court_sets_gay_marriage_within_year/.)
(Ruth Levush, 7-9847, rlev@loc.gov)

SOUTH AFRICA – Gun License Deadline Extended

South Africa's Safety and Security Minister announced on December 15, 2005, that the deadline for renewal of licenses for lawful firearms for gun owners whose birthdays fall between January and March had been extended from December 31, 2005, to March 31, 2006. He also announced that all licenses would be valid until June 30, 2009, which means there will be no legal action against gun owners who do not apply until that date. Associations of gun owners welcomed the decision, but claimed that it simply delays by three months the crisis created by the new Firearms Control Act. In 2005, about 500,000 gun owners were required to reapply for gun licenses, but thus far only about 60,000 have done so. Another 500,000 whose birthdays fall between March and June will be required to reapply in 2006, which raises the prospect of administrative paralysis of the gun-licensing process that the Firearms Control Act mandates. (*Gun Owners Welcome Respite*, BUSINESS DAY, Dec. 19, 2005, http://allafrica.com/stories/printable/200512190567.html.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

SWAZILAND – Guidelines on NGOs

The Government of Swaziland has issued guidelines for non-governmental organizations (NGOs) that cover the creation, registration, and operation of the groups. Observers believe that the rules leave room for legal activity by political parties, even though the new constitution, effective in January 2006, specifies that candidates for public office must run as individuals, not as party representatives. The constitution, which retains the current, royalist system, includes freedom of assembly in its bill of rights, but allows the king to suspend freedoms if there is a violation of the public interest. The Swaziland Federation of Trade Unions has announced that it will test the constitution in court; it is one of a number of NGOs that have formed the Swaziland Democratic Alliance and the Coalition of Concerned Civil Organizations. The leader of another group, the Ngwane National Liberatory [sic] Congress, has stated "[i]f parties were unbanned tomorrow, we would announce a membership of 10,000 the next day," indicating the strength of NGOs in the country. (*Tentative Hope for Parties Ahead of New Constitution*, ALLAFRICA.COM, Dec. 8, 2005, http://allafrica.com/stories/200512080559.html.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

UGANDA – Lawyers on Strike

On November 28, 2005, more than one hundred Ugandan lawyers went on strike to show displeasure with the Ugandan Attorney General and his involvement in possible military attempts to influence the trial of opposition leader Kizza Besigye. The Ugandan Law Society (ULS) staged the protest that paralyzed the country's High Court. Men in black shirts with sub-machine guns surrounded the court building in Kampala last week following a bail hearing to take Besigye into military custody. Besigye was subsequently charged with the commission of alleged military crimes as well, and the Ugandan Constitutional Court will rule on whether Ugandan law allows both state and military prosecutions against a single individual at the same time. The ULS President Moses Adriko said that the ULS wants to express disapproval of what they view as the undermining of the judiciary by the army and the attorney general's failure to discharge his constitutional duty as the chief legal advisor to the Government of Uganda. The ULS has also criticized aspects of the military legal process that Dr. Besigye is facing. "It is unacceptable in a free and democratic society for armed men to intimidate or otherwise interfere with the due process of the law," Adriko said. The Constitutional Court's decision

on the legality of Dr. Besigye's simultaneous trial at both the High Court and the military court is pending. (Bernard Hibbetts, *Uganda Opposition Leader Brought Before Military Court on Terror Charges,* PAPER CHASE NEWSBURST, Nov. 25, 2005, http://jurist.law.pitt.edu/paperchase/2005/11/uganda-opposition-leader-brought.php; Hillary Kiirya & Hillary Nsamba, *Lawyers Strike over Military*, NEW VISION, Nov. 29, 2005, *at* http://allafrica.com/stories/200511291030.html.)
(Karla Walker, 7-4332, kdwa@loc.gov)

EAST ASIA & PACIFIC

AUSTRALIA – Counter-Terror and Sedition Law

Australia's government brushed aside objections to its controversial anti-terrorism bill and passed the legislation on December 7, 2005, in the last week parliament would meet before February 7, 2006. The Anti-Terrorism Act (No. 2) 2005 (Act No. 144, 2005) went into force on December 15, 2005. It amends a number of existing laws, such as the Criminal Code, the Crimes Act 1914, and the Australian Security Intelligence Organisation Act 1979. It allows police to detain terror suspects for up to fourteen days without charging them and to place suspects under "control orders" for up to twelve months. It also imposes a seven-year prison term for sedition. The 151-page Act deals with definitions of terrorist organizations, financing of terrorism, preventive detention orders, power to obtain information and documents, sedition, and the powers of ASIO, the domestic intelligence organization. The government agreed to refer the sedition section of the Act, the most widely-opposed aspect of the package, to an inquiry by the Australian Law Reform Commission in 2006 and accepted a few last-minute amendments that gave businesses more time to respond to terrorist-financing checks and permitted greater access to lawyers by those facing preventive detention. (Anti-Terrorism Act (No. 2) 2005, ComLaw C2005A00144, *at* http://www.comlaw.gov.au/; *Terror Laws Edge Closer Despite Concerns,* SYDNEY MORNING HERALD, Dec. 5, 2005, *at* http://www.smh.com.au/.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

AUSTRALIA – Guest Workers Considered

Australia's government has generally been very cautious about permitting short-term entry of foreign workers to meet labor shortages, preferring to accept immigrants who intend to settle permanently and who have passed a rigorous assessment of their English proficiency, certification of professional skills, and good character. The Treasurer, Peter Costello, said of guest workers in a March 2, 2005, interview, "I don't think it's a part of the Australian ethos, I don't think it's consistent with our culture." However, changes to the Immigration Act in 1996 have permitted employers to sponsor workers with skills that are in short supply for special four-year visas. Until recently, most such workers were concentrated in the information technology sector. Late in 2004, the hiring of over thirty South African boilermakers, fitters, and welders became the center of a controversy in Western Australia, after it became known that the workers had been forced to agree to high-interest loans from their employer and to pay their own health insurance and workers' compensation costs.

The year 2005 saw a large increase in the number of what the Australian press is calling "guest workers by stealth." Between July and November, more than 28,000 skilled workers arrived on the temporary visas, with many welders and fabricators coming from the Philippines, China, and Vietnam.

They are paid considerably more than the Australian minimum wage of A$24,304 (about US$17,985) per year, but cannot change their employer and may have their visa cancelled if their employer no longer needs their services. Representatives of Australian trade unions have opposed the practice, claiming that foreign workers are vulnerable to exploitation and represent a short-term response to a problem that would be better solved by expanding training opportunities for young Australians. (Press Conference with Peter Costello, Treasurer of the Commonwealth of Australia, in Canberra (Mar. 2, 2005), *at* http://www.treasurer.gov.au/tsr/content/transcripts/2005/018.asp; *Workers Flown in from China*, THE AGE, Dec. 21, 2004, http://www.theage.com.au/news/National/Workers-flown-in-from-China/2004/12/ 20/1103391702017. html; *28,000 'Guest Workers' by Stealth*, THE AUSTRALIAN, Dec. 17, 2005, http://www.theaustralian.news.com.au/.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

CHINA – Administrative Cases Since 1989

A spokesperson for the Supreme People's Court said at a national forum on the judiciary on November 21, 2005, that over a million Chinese nationals have filed lawsuits against the Chinese Government since the Administrative Procedure Law was promulgated in 1989. About thirty percent of the cases were decided in favor of the plaintiffs. The lawsuits were filed in more than fifty categories, including land disputes and abuse of police power.

From January to October 2005, Chinese courts agreed to hear 77,781 administrative cases initiated by Chinese nationals, an increase of 3.78 percent over the same period of 2004. The courts have delivered verdicts on 64,548 cases, up 5.19 percent from the same period of 2004. (*Courts Accept 1 mln Administrative Cases Since 1989,* XINHUA NEWS, Nov. 28, 2005, *at* http://news.xinhuanet.com/english/ 2005-11/28/content_3848146.htm.)
(Rui Wei, 7-9864, rwei@loc.gov)

CHINA – Human Rights Violations in Disputes over Compensation for Land

On December 6, 2005, armed police in Dongzhou Village, Shanwei City, in Guangdong Province, opened fire with live ammunition on hundreds of villagers during a violent protest over what the farmers viewed as inadequate compensation for land being requisitioned by the government to build a power station. The number of villagers killed is unclear. The source of the conflict is reportedly also related to resistance to extortion; local Chinese Communist Party (CCP) officials had begun to demand exorbitant fees – as much as about US$1,325 – for the most auspicious hillside burial plots, traditionally sought after by the local people. Resentment increased when the government began to build a coal-fired power station in Dongzhou. Some 300 people lost use of land to the project and sixty graves may be uprooted. Compensation offered in June to the 30,000 villagers, a one-time lump sum payment of about US$74,320 was not quite US$2.50 per person. Villagers began to complain to the authorities in late 2004 about land being taken away and a local lake being sold, claiming that the sale was without notice, that the proffered compensation was at most thirty percent of that specified under the law, and that loss of the lake to pollution was too high a price to pay. Their submission of petitions to various levels of government protesting the project apparently met with little response. (Michael Sheridan, *Village Killings That China Concealed*, SUNDAY TIMES (London), Dec. 18, 2005, & *Dongzhou Woes Simmered for a Year Before Riot*, SOUTH CHINA MORNING POST, Dec. 17, 2005, LEXIS/NEXIS, News Library, 90days File.)

Under the Law on Land Management (as last amended on Aug. 28, 2004, Chinese & English texts available in Isinolaw, ID Nos. 291-11531 & 503-11531, respectively), compensation for requisition of land is to be paid on the basis of its original use. The compensation cost for cultivated land, for example, is to be from six to ten times the land's production value for the previous three years. Under the Law on State Compensation (adopted on May 12, 1994, Chinese and English texts available in Isinolaw ID Nos. 11358-2002098 and 503-2002098, respectively), citizens have the right to seek compensation if state institutions or personnel illegally exercise their powers and inflict harm by infringing on those citizens' lawful rights.

The official Shanwei City government account of the incident, released on December 17, 2005, deemed the riot a "serious violation of the law" that was begun by "a few instigators" who must bear legal responsibility for the violence. It stated that villagers fire-bombed a wind power station and that policemen fired tear gas and arrested two protest leaders, without mentioning any shooting by the police of the protesters. Only in a subsequent report published in official Guangdong media was it added: "[u]nder particularly urgent circumstances, the commander at the scene dealt with the situation improperly and brought about mistaken deaths and accidental injuries." The commander who ordered his men to fire, the deputy police chief of Shanwei, has been detained. (*Villagers 'Were Manipulated,'* SOUTH CHINA MORNING POST, Dec. 17, 2005, & Michael Sheridan, *Village Killings That China Concealed,* SUNDAY TIMES (London), Dec. 18, 2005, LEXIS/NEXIS, World Library, Allwld File.)

More than fifty mainland scholars, writers, and activists, many of them prominent dissidents, signed an open letter condemning the Dongzhou attack, protesting against the Chinese authorities "for not making any public explanation, clarification or investigation," and calling for harsh punishment of the officials involved. (*Chinese Scholars Sign Open Letter Condemning Attack on Villagers,* BBC WORLDWIDE MONITORING, Dec. 13, 2005, LEXIS/NEXIS, World Library, Allnews File) After the shooting, the government tried to bar broadcasters from reporting on it and ordered Internet sites to censor any reference to it. Nevertheless, news of the Dongzhou protest was spread through and discussed on the Internet. Some outside observers have deemed the government response "the most ignoble chapter" in China's human rights record since President Hu Jintao and Premier Wen Jiabao came to power. (Philip Pan, *Internet Shines Light Where China's Leaders Would Prefer Darkness: Web Sites Reveal Fatal Crackdown*, FORT-WAYNE JOURNAL-GAZETTE, Dec. 18, 2005, & Chua Chin Hon, *China's Rule of Law Problem in Villages: The Dongzhou Incident Is Seen As an Escalation of Its Rural Problems*, THE STRAITS TIMES, Dec. 17, 2005, LEXIS/NEXIS, News Library, 90days File; *Ming Pao Editorial: Shanwei Crackdown Setback in China's Human Rights Record*, MING PAO (Hong Kong), Dec. 13, 2005, FBIS No. CPP20051213510017.)

Disputes over government requisition of land, which is state-owned in China, with powers of granting land-use rights vested in local officials, have escalated into a major social and legal issue as increasing numbers of both urban and rural residents have been evicted, sometimes with little or no compensation. There have been a number of reports of officials and developers colluding, often for private gain, to confiscate urban dwellings and rural land for building projects. (*Local Communist Party Chief on Trial in China for Land Grab*, YAHOO! SINGAPORE FINANCE, Dec. 16, 2005, http://sg.biz.yahoo.com/051216/1/3xbgz.html (last visited Dec. 16, 2005); *China's Former Land Minister on Trial for Accepting Bribes*, AGENCE FRANCE PRESSE, Dec. 14, 2005, LEXIS/NEXIS, World Library, Allwld File.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – "Lunar Embassy to China" Closed

The Beijing Municipal Administration of Industry and Commerce (BMAIC) decided to revoke the business license of Lunar Embassy to China, a Chinese company, and fine the company 50,000 yuan (about US$6,170) on November 23, 2005. The company appealed for a public hearing the day after it received the decision from BMAIC. Sources within BMAIC said that the decision was made on the grounds of speculation and profiteering with intent to sell land on the moon. BMAIC also urged the company to return the money paid by people for lunar land. The company for its part had previously filed a lawsuit against BMAIC. Haidian District Court has accepted the case, but did not inform Lunar Embassy when the case would be heard. (*Public Hearing to Be Held over Cancellation of "Lunar Embassy" License*, PEOPLE'S DAILY, Dec. 5, 2005, *at* http://english.people.com.cn/200512/05/eng20051205_225710.html.)
(Rui Wei, 7-9864, rwei@loc.gov)

CHINA – More Chinese Cities Open to Foreign Banks

On December 5, 2005, the China Banking Regulatory Commission (CBRC) released a statement listing more cities in China where foreign banks can do business denominated in yuan. As required under commitments made by China when it joined the World Trade Organization in 2001, the cities of Shantou and Ningbo are now open to foreign banks, offering yuan business to both Chinese and foreign companies and individuals, CBRC said.

CBRC reduced the minimum operational capital required for a foreign bank branch to conduct yuan business from 500 million yuan to 400 million yuan. CBRC also cut the minimum operational capital requirement for a branch of a wholly owned foreign bank or a joint venture from 300 million yuan to 200 million yuan. (*China Opens Door Wider to Foreign Banks*, CHINA DAILY, Dec 5, 2005, *at* http://www.chinadaily.com.cn/english/doc/2005-12/05/content_500609.htm.)
(Rui Wei, 7-9864, rwei@loc.gov)

CHINA – Special Anti-Terror Police Units, Vehicles

China's *Legal Daily* reported on December 16, 2005, that within the year public security special police units would be organized in thirty-six target cities in order to increase capabilities for anti-terrorist explosives' removal and handling of emergencies. An official of the Financial Affairs Office for Equipment under the Ministry of Public Security indicated that research on and production of new types of functional special policing equipment were being strengthened. The new equipment includes vehicles, defensive gear, anti-terrorist bomb removal apparatus, and weapons. Public security forces are already using some items; others are in the research or operational stages. One item of equipment that has already been produced is a counter-terrorist assault vehicle, which, according to the manufacturer, can be fitted and dismantled within ten minutes; is the "most advanced, most effective special equipment" in the war against terrorism, especially to combat kidnappings and hijackings; and is capable of transporting many combat personnel and of conducting both frontal and flank assaults. (*Police to Equip State-Produced Anti-Terrorist Assault Vehicles: 36 Key Cities Will Form Public Security Special Police Contingent Within the Year,* LEGAL DAILY, Dec. 16, 2005, http://www.legaldaily.com.cn/misc/200512/ 16/content_236853.htm (last visited Dec. 20, 2005).)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Toxic Spill Cover-Up by CCP

Instead of immediately informing nearby inhabitants, regional officials in China covered up the existence and the seriousness of a toxic spill into the Songhua River from a chemical explosion and benzene leak that occurred on November 13, 2005, at the Jilin Petrochemical Company in Jilin City, Jilin Province. Public acknowledgment of the spill occurred only ten days after the incident, on November 23. Almost a hundred tons of carcinogenic chemicals had poured into the river; downstream Harbin, a city of four million inhabitants, and other cities had to close down their drinking water supply for days. The chemical slick also flowed into the Heilong River, which becomes the Amur River in Russia. According to statistics available on the Jilin Provincial Occupational Safety Administration website, Jilin Petrochemical and Jilin Chemical Industrial Co., a sister company, have had three other major accidents in the last twenty months. (Shai Oster, *As China Booms, Accidents May Rise*, THE WALL STREET JOURNAL, Dec. 1, 2005; *China Tried to Keep Benzene Spill Secret*, THE INTERNATIONAL HERALD TRIBUNE, Nov. 25, 2005, http://www.iht.com/articles/2005/11/25/news/beijing.php; UNOSAT, *China: Songhua River – Jilin and Heilongjiang Provinces – Overview Map*, ReliefWeb, *at* http://www.reliefweb.int/rw/rwb.nsf/db900 SID/JOPA-6JZ9G4?OpenDocument&rc=3&emid=AC-2005-000197-CHN (last visited Dec. 19, 2005).)

The state-controlled press had also initially denied that any environmental damage occurred as a result of the explosion and left unmentioned the death of Wang Wei, deputy mayor of Jilin City, one of three officials sacked for bad management of the plant and responsibility for the blast. Despite a gag order on unofficial reports, some Chinese journalists reported on the official attempts to hide the disaster. (Jonathan Ansfield, *Damage Control: Chinese Press Leaks on the Big Spill*, CHINA DIGITAL TIMES, Dec. 12, 2005, http://chinadigitaltimes.net/2005/12/damage_control_chinese_press_leaks_on_the_big_spill_1. php.) The failure to make news of an environmental disaster public would seem not only to go against the Chinese Government's avowed policy to increase transparency and accountability, but also to contravene the law. For example, the Environmental Protection Law (adopted on Dec. 26, 1989) stipulates that a unit which, due to an accident or other exigency, has caused a pollution accident must not only take measures to prevent and control the pollution hazards, report the case to the competent local authorities, and accept their investigation and decision, but also make the situation known to any other units or inhabitants likely to be endangered by the hazards (art. 31) (Chinese and English texts available in Isinolaw, ID Nos. 258-131609 & 503-131609, respectively.)

Li Yizhong, head of the team investigating the spill and Director of the State Administration of Work Safety, has stated that anyone found guilty of dereliction of duty will be harshly dealt with and that any attempt "to cover up the cause of the accident and any passive attitude toward the probe are deemed deception and a defiance of law." The Criminal Law (last amended Feb. 28, 2005) provides that a state functionary convicted of dereliction of duty resulting in heavy losses to public property or the state's interests is subject to fixed-term imprisonment of up to three years; it may be three to seven years' imprisonment if the circumstances are "especially serious" (article 397, paragraph 1). Similar punishments apply to offenses involving the disposal of toxic materials into land, water, or air that result in serious environmental pollution and serious damage to public or private property or death or injury to human beings, except that a fine may also be imposed or be exclusively imposed (in exceptionally serious, cases, however, a fine may be only an additional, not an exclusive, penalty) (art. 338) (Chinese and English texts available in Isinolaw, ID Nos. 76611-10000764 & 75377-10000764, respectively.) However, as of mid-December, the highest-ranking official to be dismissed over the

incident, Xie Zhenhua, Director of the State Environmental Protection Administration, had nonetheless not lost his CCP position. As an AP news report noted, "[t]he handling of the aftermath of the spill highlights the status enjoyed by party officials who often cannot be investigated or prosecuted without the party's position," and while Mr. Xie lost his government position, "there was no sign that he might lose his seat on the party's Central Committee, the heart of Chinese power" (Joe McDonald, *China Probes Death of Official After Spill*, ASSOCIATED PRESS, Dec. 7, 2005, http://news.yahoo.com/s/ap/20051207/ap_on_re_as/china_poisoned_river; Joe McDonald, *China Starts Building Dam to Shield Russian City from Toxic River Slick*, ASSOCIATED PRESS WORLDSTREAM, Dec. 17, 2005, LEXIS/NEXIS, News Library, 90days File; Bebecca Blumenstein & Jason Dean, *Chemical Disaster in China Fuels Pollution Worries*, THE WALL STREET JOURNAL, Dec. 3, 2005, at 1.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Venture Capital Regulations

On November 15, 2005, on the basis of eight years of study, ten of China's ministerial institutions promulgated the Provisional Measures for Administration of Venture Capital. The State Council (Cabinet) approved the Measures on September 7, 2005; they enter into effect as of March 1, 2006. The Measures' six chapters cover, among other topics, venture capital enterprises' incorporation and recording, investment operations, policy support, and supervision. "Venture-capital enterprise," "venture capital investment" and "start-up enterprise" are all defined under the Measures. Provisions on the Administration of Foreign-Invested Venture Capital Enterprises were issued previously, in 2003. (*Basic Regulations on Venture Capital Being Promulgated*, 42 ISINOLAW WEEKLY 1-2 (Nov. 14-20, 2005), http://www.isinolaw.com (by subscription).)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

HONG KONG – Surveillance Law Planned

On December 12, 2005, at a presentation of his work plan for the new year before the Hong Kong Legislative Council's (Legco) panel on the administration of justice and legal services, Secretary for Justice Wong Yan-lung stated that work on formulating a law on the use of covert surveillance was going "full steam" ahead and indicated that Legco might see the results by early 2006, either as a bill or as a consultation paper. Mr. Wong's comment was in response to an interpellation concerning a timetable on the enactment of laws regulating secret spying tools used by law enforcement agencies such as the Independent Commission Against Corruption. (*SCMP: New Law on Surveillance Early Next Year, Says HK Legal Chief*, SOUTH CHINA MORNING POST, Dec. 13, 2005, FBIS No. CPP20051213517023.)

In the meantime, on December 8, 2005, Hong Kong's Office of the Privacy Commissioner for Personal Data issued a report ruling that the installation of six hidden pinhole cameras in a local post office was "unfair, unjustified and breached privacy laws." The Office issued an enforcement order to Hongkong Post requiring it to destroy all records from the cameras and to formulate a policy on video monitoring with measures to ensure compliance. The agency intervened when workers protested against the cameras, which were installed in work areas of the Cheung Sha Wan post office following several reports of theft. According to the watchdog office's report, the risk of loss did not justify the covert monitoring surveillance and contravened privacy ordinances. It termed the scope of the monitoring activity "out of proportion" and added that there was "no evidence showing that the use of

covert means was absolutely necessary and that use of other overt means would necessarily frustrate the purpose of collection." The report further said that using covert means to collect personal data "is a highly privacy-intrusive act and is not to be encouraged." (Martin Wong, *Post Office Ordered to Remove Spy Cameras*, SOUTH CHINA MORNING POST, Dec. 9, 2005, LEXIS/NEXIS, News Library, 90days File.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

JAPAN – Can Attorney Insist Client Is Guilty?

In a case recently adjudicated by Japan's Supreme Court, the accused admitted during the investigation of the crime that he and another person had murdered a third party, but he changed his mind during the trial and claimed that the other person alone had murdered the victim. His attorney, however, thought the new story was not believable, and so the attorney stated at the trial that the accused had murdered the victim but was forced to do so by the other person. The attorney thought this was the best defense, in order for his client to obtain lenient judgment. The Supreme Court decided that the attorney's act was not illegal. (*Hikoku itten muzai shuchō* (The Defendant Changed His Mind and Pleaded Not Guilty), YOMIURI SHINBUN, Nov. 30, 2005, *at* http://www.yomiuri.co.jp/national/news/2005 1130i111.htm.)
(Sayuri Umeda, 7-0075, sume@loc.gov)

JAPAN – No Cell Phone Use While Driving

Japan's 2004 Road Traffic Law amendment made the use of a cell phone while driving an automobile illegal. Statistics show that since the amended Law became effective in November 2004, the number of traffic accidents has declined almost by half. (*Untenchū no kētai kinshi* (Ban on Cell Phone While Driving), YOMIURI NEWSPAPER, Nov. 17, 2005 (on file with author).)
(Sayuri Umeda, 7-0075, sume@loc.gov)

KOREA, SOUTH – Biometric Data Protection Guidelines

South Korea is to strengthen its regulations on gathering such sensitive individual data as fingerprints, facial skeletal features, and iris scans by mandating that collectors gain prior agreement from donors. The Ministry of Information and Communications announced on December 4, 2005, that it has finalized its Biometric Data Protection Guidelines. According to the guidelines, donors must be informed as to why the information is being collected and how long it will be kept. Also, if the donors are under the age of eighteen, a legal guardian must approve the procedure. The donor must give his approval before the collected biometric information can to be offered to a third party or used for purposes other than those specifically agreed upon. The guidelines stipulate that all biometric information must be destroyed when the stated length of storage expires or when donors withdraw their consent. Moreover, the donors' personal information, such as their name and address, must be kept separately from the data. (Chang Chung-hoon, *Rules on Biometric Data Tightened*, DAILY JOONGANG, Dec. 4, 2005, *at* http://joon gangdaily.joins.com/200512/04/200512042227586439900090609062.html.)
(Seung Eun Lee & Sayuri Umeda, 7-0075, sume@loc.gov)

KOREA, SOUTH – Microsoft Fined

On December 7, 2005, the Korean Fair Trade Commission (KFTC), based on article 6 of the Korean Antitrust Law, imposed a fine of roughly US$31.9 million on Microsoft for its violation of the nation's fair trade rules. The KFTC said that Microsoft violated those rules by bundling its audio-visual program, Media Player, and instant messaging service, MSN Messenger, to its Windows operating system, which dominates the domestic market. Under this decision, Microsoft is required to offer two versions of Windows within six months: one stripped of programs that had previously been incorporated and one that includes most available programs, including those created by competitors and those by Microsoft. In response, Microsoft announced that it would appeal the verdict, which could harm its business in Korea, as well as negatively affect the firm's activities overseas. (Kim Tae-gyu, *Microsoft Fined $32 Million*, KOREA TIMES, Dec. 7, 2005, *at* http://times.hankooki.com/lpage/biz/200512/kt2005 120716393011910.htm.)
(Beom Chul Shin & Sayuri Umeda, 7-0075, sume@loc.gov)

NEW ZEALAND – Denials of Passports for National Security

As part of its anti-terrorism campaign, the New Zealand Government has enacted legislation to allow the Minister of Internal Affairs to deny passports to New Zealand citizens on the grounds of national security. One of the specified bases for so refusing to issue a passport is that there are reasonable grounds to believe that the person intends to engage in or facilitate the proliferation of weapons of mass destruction.

Another reason is that the person intends to engage in or facilitate a terrorist act within the meaning of the Terrorism Suppression Act 2002. (2002 N.Z. STAT. No. 34.) Decisions to deny passports are for a twelve-month period, and the reasons for them must be given in writing. A judge of the High Court can authorize extensions of denials. (Passports Amendment Act 2005 (2005 N.Z. STAT. No. 44, s. 7).)
(Stephen F. Clarke, 7-7121, scla@loc.gov)

TAIWAN – Counterfeit Medicine Ring Busted

On December 8, 2005, Taiwan's Criminal Investigation Bureau (CIB) busted the largest-ever underground drug-manufacturing ring and seized as many as 550,000 counterfeit pills worth about US$9 million in the market. The drugs included some of the most famous stomach, dietary, and sex-enhancement pharmaceuticals. The suspect in the case confessed that an average of seven out of ten pharmacies in northern Taiwan were partners of the ring. This means that consumers have already taken bogus drugs. (*Counterfeit Medicine Ring Busted by CIB*, CHINA POST, Dec 9, 2005, *at* http://www.chinapost.com.tw/taiwan/detail.asp?ID=73318&GRP=B.)
(Rui Wei, 7-9864, rwei@loc.gov)

TAIWAN – Draft Crime Scene Regulations

Taiwan's National Police Agency (NPA) and the Government Information Office met on December 8, 2005, at a special forum to draft regulations regarding media coverage at crime scenes, hoping to improve safety for victims, reporters, and the police force. Media behavior needs to be better regulated at crime scenes involving kidnappings, hostages, or any other kind of police work, as it

could end up endangering the lives of victims, police officers, reporters, or civilians, NPA officials said. However, the academics at the forum expressed concern that such regulations would restrict the freedom of the press. (*Crime Scene Regulations Revamped*, TAIPEI TIMES, Dec 9, 2005, *at* http://www.taipei times.com/News/taiwan/archives/2005/12/09/2003283612.)
(Rui Wei, 7-9864, rwei@loc.gov)

TAIWAN – Election and Recall Law Amended

Taiwan's Public Officials' Election and Recall Law was amended on November 30, 2005. The key changes include: punishment of the offense of attempted vote bribing, increased penalties and amounts of fines for vote bribing, and new provisions on punishment of the offense of vote bribing in elections for council speaker and deputy speaker of municipalities under the direct control of the central government and of counties (cities) and in elections for chairman and vice chairman of prefectural (town, city) assemblies. (Zong-tong fu gong-bao [The Gazette of the Office of the President], No. 6662, Nov. 30, 2005, p. 1, summarized in English and full text in Chinese, Global Legal Information Network, GLIN ID 172941, http://www.glin.gov/view.do?documentID=172941&showAll=true.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

TAIWAN – Industrial Explosives Statute

Taiwan President Chen Shui-bian promulgated the Statute on the Management of Industrial Explosives on November 30, 2005. The Statute's eight chapters cover, among other subjects, industrial explosives' manufacture and trade; export, import, and shipment; use, storage, and disposition; safety measures; supervision; and penalties. In regard to the latter, for example, a fixed prison term of from one to seven years may be imposed for causing public danger through the manufacture of explosives without having gone through the mandated registration and safety certification procedures; if such actions result in death, the punishment is from seven years' to life imprisonment; if in serious injury, from three to ten years' imprisonment. The same punishments apply to failure to comply with the Statute's provision on the disposal of unusable explosive substances. Other penalty provisions apply fines for failure to abide by the Statute; for example, if in the case of the above two types of offenses no harm has been caused, a fine of from NT200,000-1,000,000 (about US$5,980-29,900) may be imposed on violators. (Zong-tong fu gong-bao [The Gazette of the Office of the President], No. 6661, Nov. 30, 2005, p. 15, summarized in English and full text in Chinese, Global Legal Information Network, GLIN ID 172958, http://www.glin.gov/view.do?documentID=172958&showAll=true.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

TAIWAN – Organic Law on Immigration Administration

On November 30, 2005, Taiwan's President Chen Shui-bian promulgated the Organic Act for the Ministry of Interior (MOI) Immigration Administration. The legislature adopted the Act on November 8. The Immigration Administration will be in charge of all aspects of immigration and, according to the Vice Minister of the Interior Chien Tai-lang, it will take over and consolidate some of the operations and personnel of the MOI's Bureau of Immigration and Population Administration, the Overseas Chinese Affairs Commission, the airport and seaport police authorities, and the foreign affairs units of local governments. The proposal to set up such an agency reportedly dates as far back as 1989. (Overseas Chinese Affairs Commission, *Legislature Approves Setting Up of Immigration Administration,* Nov. 16, 2005, http://www.ocac.gov.tw/unit_data/unitmacro_pop.asp?no=14077.)

The eight-article law covers the organization, functions, duties, and personnel structure of the Immigration Administration. Among other matters, the Immigration Administration is to handle: the drafting and implementation of entry and exit policies; the drafting, coordination, and implementation of immigration policies; entry and exit documentation; residency permits; investigation of violations of the relevant provisions on entry and exit and immigration and detention, forced exit, and deportation; and entry and exit security and the investigation of gathering and certification of immigration materials. When national security intelligence matters are involved, the Immigration Administration is to accept guidance and support from and coordination with the National Security Bureau. (Zong-tong fu gong-bao [The Gazette of the Office of the President], No. 6661, Nov. 30, 2005, p.6, summarized in English and full text in Chinese, Global Legal Information Network, GLIN ID 172943, http://www.glin.gov/view. do?documentID=172943&summaryLang=en& fromSearch=true.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

TAIWAN – Proposed Limits on Credit Card Lending Rates

On December 6, 2005, members of Taiwan's Legislative Yuan decided to go forward with a proposed amendments to the Banking Law that would cap the interest rates for credit-payment tools. Thus, to help relieve the growing financial burdens of debt-ridden borrowers, the interest rate spread between credit/cash card loans and savings would be limited to ten percent (versus the current average of sixteen to seventeen percent). Borrowers, for their part, would have to repay a minimum of twenty percent of monthly payables (versus the current two to five percent). According to the *Taipei Times*, however, foreign investors and academics have criticized the measure as "a regressive move that would adversely affect Taiwan's banking sector and fee-market economy." In the wake of the strong opposition to the bill, the Democratic Progressive Party withdrew its support, resulting in the postponement of consideration of the amendments, which had been proposed by the Chinese Nationalist Party. A public hearing was scheduled for December 15 to seek consensus on the issue among the financial regulator, banks, and consumers. (*Banks, Experts Against Card Restrictions,* TAIPEI TIMES, Dec. 8, 2005, at 10, http://www.taipeitimes.com/News/biz/archives/2005/12/08/2003283531; *TAIEX Gains as Credit Bill Is Shelved,* TAIPEI TIMES, Dec. 10, 2005, at 10, http://www.taipeitimes.com/News/biz/archives/2005 /12/10/2003283835.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

THAILAND – Government Considering Banning Guidebook

Thailand's Ministry of Culture has criticized a well-known guide to the city of Bangkok for having content that tainted the image of the city. The book, entitled *Bangkok Inside Out,* has been popular since its publication early in 2005. The Ministry's Director of Cultural Monitoring, Ladda Tangsuphachai, said in late November that its descriptions of go-go bars, pirated music and DVDs, and scams should be reviewed to determine whether any laws were broken by the publication. She spoke to a Singapore newspaper, *The Straits Times,* stating:

> Right now the book is not officially banned. But because it is under a process of law the bookstores don't want to sell it because they might also be guilty if the book really taints the image of Thailand and its people.

The Director also said she was not authorized to accept any apology offered by the authors until the legal process is complete. A review will determine if the book may damage "internal security." Bookstores in the city have removed the publication; it is available now only to those who ask for it directly. (*Bangkok Guidebook "Giving Wrong Signals,"* THE STRAITS TIMES, Dec. 9, 2005, LEXIS/ NEXIS, World Library, Curnws File.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

EUROPE

BELARUS – Critical Statements About the Country Criminalized

On December 1, 2005, the Supreme Council (legislature) of the Republic of Belarus adopted amendments to the nation's Criminal Code that were proposed by the state secret police, the KGB. Under these amendments, individuals who publish or in any other form provide information that may discredit the state, the government, or authorities in power will be subject to imprisonment for up to two years. Requests for foreign or international assistance in the field of human rights or democracy promotion are punishable by three-years of imprisonment. Participation in activities of a political or religious organization that is not properly registered with the state authorities is a crime punishable by two years of deprivation of freedom. Simultaneously adopted amendments to the Criminal Procedural Code allow police to detain those who are suspected of committing acts of terrorism or hooliganism for up to ten days without bringing charges against them and defining their procedural status. (NEWSRU.COM, Dec. 2, 2005, http://www.newsru.com/world/02dec2005/zakonb.html.)
(Peter Roudik, 7-9861, prou@loc.gov)

BELGIUM – Adoption of Children by Same-Sex Couples

On December 1, 2005, the Belgian Chamber of Representatives voted seventy-seven to sixty-two in favor of giving same sex couples adoption rights. The proposed law will give them the same rights as heterosexual couples, allowing them to adopt children from anywhere in the world. Belgium legalized same-sex marriage in 2003. Proponents argued that many children are currently cared for by same-sex couples without adequate legal protection. Opponents felt that the proposed law undermines the traditional family at its core and also implies a complete disregard for the child's right to have a mother and a father.

The Senate will consider the text within the next sixty days. However, if the Senate amends it, it will be forwarded back to the Chamber of Representatives, which then will make the final decision. (Belgium Chamber of Representatives *at* http://www.lachambre.be/FLWB/PDF/51/0664/51K0664001.pdf (last viewed Jan. 5, 2005); *Le Parlement Belge se prononce pour le droit à l'adoption des couples homosexuels*, LE MONDE, Dec. 2, 2005, *at* http://lemonde.fr (archives).)
(Nicole Atwill, 7-2832, natw@loc.gov)

BOSNIA AND HERZEGOVINA – Government Regulation of Bar

On December 15, 2005, the federal parliament adopted amendments to the Law on Attorneys and Advocacy of the Federation of Bosnia and Herzegovina. The amendment, drafted by the Ministry of Justice, prohibits lawyers from charging contingency and retainer fees and establishes that the hourly rate

cannot exceed five times the minimum hourly wage. The Law also provides for a decrease in the attorney registration fee from the existing 10,000 Dinara (about US$6,000) to 2,000 Dinara (about US$1,200), stating that the registration fee and fee for admission to the bar cannot be higher than the minimum registration fee rate envisaged for legal entities with limited liability, which is currently 2,000 Dinara. The Law establishes the same fees in all five local and one federal bar associations in Bosnia. The Law undermines the financial stability of the bar associations in Bosnia, which are self-funded and for which the registration fees are the only source of income. (*Attorneys Against Restrictions of Registration Fee*, FEDERAL NEWS AGENCY, http://www.securities.com/ (last visited Dec. 20, 2005).)
(Peter Roudik, 7-9861, prou@loc.gov)

CZECH REPUBLIC – Church Law Amended

Despite considerable opposition, Czech President Václav Klaus has signed an amendment to the Church Law. The Ecumenical Council of Churches and the Catholic Church in particular had opposed the bill, claiming that it contained unconstitutional provisions similar to those struck down by the Constitutional Court two years ago. The Senate had vetoed the bill earlier, but the lower house of the Czech Parliament, the Chamber of Deputies, overturned that action.

The controversial provision concerns whether the Law infringes upon the churches' right to establish religious and other institutions, such as charities, schools, and health facilities. The Court deleted provisions allowing state supervision of the establishment of new church organizations from the then existing law on churches two years ago. Churches had found those provisions to be an unacceptable attempt to separate charities and religious schools from the churches themselves. The Ecumenical Council has also complained that the opinions of church leaders were not sought in the process of drafting the amendment. It is considered likely that the Court will rule on the new provisions. (*Czech President Signs Controversial Bill on Churches*, CTK, Dec. 6, 2005, FBIS No. EUP20051206950060.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

CZECH REPUBLIC – Same-Sex Partnerships Approved by One House

After five failed attempts at passage, on December 16, 2006, the Czech Chamber of Deputies passed a bill permitting homosexual couples to register their partnerships. The bill still faces a vote in the Senate, where the political composition is less favorable for passage. The proposed law is similar to statutes in eleven European countries. It defines the emergence and end of partnership unions and specifies that partnership status is to be recorded on identity cards. Partners would acquire the right to inherit from each other and to receive information on each other's health conditions. Partners would have the obligation of paying maintenance in the case of dissolution of the relationship. (*Czech Parliament Passes Registered Partnerships for Homosexuals,* PRAGUE CTK, Dec. 16, 2005, FBIS No. EUP20051216950058.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

DENMARK – Citizenship Test Proposed

The Liberal-Conservative Government, together with the Danish People's Party, proposed on December 8, 2005, that immigrants who wish to apply for Danish citizenship be required to pass a citizenship test, be able to demonstrate a certain level of skill in the Danish language, and prove that

they have supported themselves for four years out of five. The opposition parties have voiced concerns, protesting the requirement that those who apply for citizenship must be able to prove that they are self-sufficient. Furthermore, the question has been raised whether the parliament should and can define what it means to be Danish. (*Citizenship Test Instituted,* DENMARK.DK THE OFFICIAL WINDOW, Dec. 9, 2005, *available at* http://denmark.dk/portal/page?_pageid=374,610566&_dad=portal&_schema=PORTAL&ic_nextitemno=11&ic_itemid=901707.)
(Linda Forslund, 7-9856, lifo@loc.gov)

ENGLAND AND WALES – Amendments to Murder Law Based on U.S. System

The Law Commission has published proposals to amend the United Kingdom's criminal laws relating to murder that would provide judges with greater discretion and flexibility when sentencing offenders by no longer requiring that mandatory life sentences be given to individuals found guilty of murder. The proposal would provide for different degrees murder, based on the system in use in the United States, and would revise the definition of manslaughter. Additional crimes of mercy killings, infanticide, and death by dangerous driving would also be incorporated into the new law, to allow the punishment for each case to be considered on its facts. (LAW COMMISSION, A NEW HOMICIDE ACT FOR ENGLAND AND WALES, 2005, CP177; Robert Verkaik, *Mercy Killers May Be Spared Murder Trials,* THE INDEPENDENT (London), Dec. 21, 2005, at 4.)
(Clare Feikert, 7-5262, cfei@loc.gov)

FRANCE – Colonization Debate

A debate over France's colonial history was sparked, a month after the violent riots, by a Law of February 23, 2005, acknowledging the role and sacrifices of men and women who participated in "France's accomplishment in its former overseas *département* of North Africa and Indochina." Article 4 of the Law provides that "school programs recognize, in particular, the positive role of the French presence overseas."

Although the Law passed with no problem in February, in November the Socialist Party denounced article 4 as provocative and hurtful for France's ex-colonies and their descendants. They presented a parliamentary motion to overturn the part of the Law referring to the " positive role of colonization." The motion did not pass.

There were various results of the numerous protests, including, for example, the cancellation by Minister of Interior Nicolas Sarkozy of a trip to the French overseas territories of Martinique and Guadeloupe. In response, President Jacques Chirac ordered a review of the Law by a special commission. (*La polémique sur la loi relative au rôle positif de la colonisation enfle*, & *Mémoire coloniale: le scénario de sortie de crise* LE MONDE, Dec. 8, 2005, *at* http://www.lemonde.fr/ (archives).)
(Nicole Atwill, 7-2832, natw@loc.gov)

FRANCE – Electronic Bracelets

On December 8, 2005, the Constitutional Council ruled that judicial supervision of a convict upon his early release, which includes the wearing of an electronic monitoring bracelet, was neither a penalty nor a sanction, and, therefore, the constitutional principle of non-retroactivity of criminal

legislation did not apply. The Council validated a provision contained in a new law on recidivist sexual delinquents that authorizes their placement under electronic monitoring surveillance upon their conditional release or their release under judicial supervision. As a result, the provision will be applicable to delinquents who have committed sexual offenses prior to the promulgation of the law.

The Council found that judicial supervision, even when it includes electronic monitoring surveillance, is ordered by the judge in charge of the administration of sentences, that it only rests on the level of danger presented by the offender and not upon his guilt, and that its only aim is to prevent relapse. In addition, it is limited to the duration of the balance of the sentence. (CC Decision 2005-527DC, Dec. 8, 2005, LEGIFRANCE, *at* http://legifrance.gouv.fr/Waspad/UnTexteDeJorf?numjo=CSCL0 508906S.)
(Nicole Atwill, 7-2832, natw@loc.gov)

GERMANY – Military Reserve Forces

On April 22, 2005, Germany enacted the Act to Reform the Reserve Forces (BUNDESGESETZBLATT (BGBL) I at 1106I). The most important innovation of the Reform Act is the expansion of the circumstances under which reservists may be called to active duty. Whereas prior to the reform German soldiers who had served in the German military on the basis of conscription could be called for active duty up to the age of sixty if there was a "state of defense," since the reform these reservists can be called also if there is a "state of tension." Although the German Constitution mentions this latter concept, it does not define it (*Grundgesetz für die Bundesrepublik Deutschland*, May 23, 1949, BGBl 1, as amended, art. 80 a); yet there is agreement that "a state of tension" may exist more readily than a "state of defense" (*Altersfrage*, STUTTGARTER ZEITUNG 3 (Feb. 21, 2005), *available at* LEXIS/NEXIS, News Library, Zeitng file), even though opinions are divided as to whether terrorist attacks may amount to a "state of tension" (K. Lüderssen, *Krieg gegen den Terror*, FRANKFURTER ALLGEMEINE ZEITUNG, Jan. 18, 2005, *at* 37). Another innovation of the Reform Act is the option of calling up reservists for assistance in domestic emergencies.
(Edith Palmer, 7-9860, epal@loc.gov)

GERMANY – Service of Process

On November 9, 2005, the German Federal Constitutional Court renewed a preliminary injunction (BUNDESVERFASSUNGSGERICHT, docket no. 2 BvR 1198/03, JURIS), that prohibited service of process in Germany in a class action suit brought by music publishers in a Federal District Court in New York against the German music distributor Bertelsmann, a major investor in the now bankrupt music distributor Napster. In the action, the plaintiffs are claiming damages for alleged copyright infringements by Napster. (S. Butler, *Legal Matters*, BILLBOARD (Feb. 5, 2005), LEXIS/NEXIS, News Library, Curnws File.) However, on November 11, 2005, Bertelsmann withdrew the constitutional complaint for which the injunction had been granted, on the grounds that service of process in Germany had become irrelevant to the outcome of the lawsuit in the United States.

Bertelsmann had originally filed the constitutional complaint in 2003, when service of process was first requested through mutual assistance channels, arguing that the amount of the claimed damages (US$17 million) violated German public policy. When Bertelsmann withdrew the action in November 2005, the Federal Constitutional Court was almost ready to hold hearings on the case, which had been widely followed in Germany. However, it is possible that the issue of public policy reservations in the granting of mutual assistance to American courts may yet occupy the Federal Constitutional Court,

because several cases are pending in German appellate courts that deal with this issue (*Firmen kämpfen gegen Zugriff der US Gerichte*, FINANCIAL TIMES DEUTSCHLAND, Nov. 15, 2005, *at* 28, LEXIS/NEXIS, News Library, Zeitng File).
(Edith Palmer, 7-9860, epal@loc.gov)

GREECE – New Bill on Medical Ethics

It has long been a practice of physicians employed in state hospitals and social insurance funds in Greece to accept money, the notorious *fakelaki* (literally "little envelope"), from patients who think that by making the payments, they receive better and/or faster care. The practice continues despite the fact that it has been prohibited by law and criticized by the medical community and the public at large.

In August 2005, the government introduced a new code of ethics for medical practitioners. It imposes stiff penalties on those physicians who are employed in state hospitals or social insurance funds and who accept money from patients. Penalties include a two-year suspension of the license to practice and fines of from €50,000 to 200,000 (about US$60,650 to 242,610). Repeat offenders may have their licenses completely revoked. The bill also prohibits euthanasia and cloning. In addition, for the first time, it provides protection to physicians from unjustified complaints or reports and confers on them the right to be compensated for financial damage and pain and suffering. The bill has a special section on medical certificates and places those certificates issued by private and state doctors on the same footing. Thus, such certificates are equally valid, provided that they refer to the doctor's area of expertise. The issuance of false medical certificates is a criminal and disciplinary offense. (NEW AGENCY BULLETIN, Aug. 4, 2005, *available at* http://www.greekembassy.org/pressoffice.)
(Theresa Papademetriou, 202 707-9857, tpap@loc.gov)

ITALY – Emergency Measures for Prevention of Avian Flu

The Italian Government approved emergency measures for the prevention of avian flu, animal diseases, and related emergencies by amending and converting the Decree-Law No. 202 of October 1, 2005, into Law (Law No. 244, Nov. 30, 2005). The Law created a National Center (*Centro Nazionale*) to define and program the objectives and strategies of control and eradication of such diseases and, through the central crisis unit, to direct, coordinate, and verify inspections for the purpose of their international prevention. A Department for Public Veterinary Health, Nutrition, and Food Safety has also been established, under the jurisdiction of the Ministry of Health. The Law also calls for the creation of national reserves of anti-viral drugs and other preventive medications.

Article 5 of the Law is devoted to urgent intervention in the avian sector. Among the main features is an aid package for poultry companies, consisting of the suspension, as of January 1, 2006, of the payment of taxes, social security contributions, and installments for credit and financing operations. In addition, the Minister of the Economy and Finance, in agreement with the Minister of Agricultural and Forest Policies, is authorized to grant loans for the restructuring or conversion of the companies affected by falling consumption and prices of poultry. (GAZZETTA UFFICIALE, No. 279, Nov. 30, 2005, *available at* http://www.guritel.it/free-sum/ARTI/2005/11/30/sommario.html.)
(Dario Ferreira, 7-9817, dfer@loc.gov)

ITALY – International Terrorism and the Courts

Antonio Ingroia, a magistrate with the public prosecutor's office of the Anti-Terrorism Department of Palermo, Sicily, described in an interview with Giovanni Bianconi of the Milan daily *Corriere della Sera* the difficulty of proving crimes of aiding and abetting international terrorists. Ingroia explained that the difficulty arises from the fact that the courts must apply the law with prudence and only when they are in possession of solid evidence, just as in dealing with the mafia. To sentence someone for aiding and abetting the mafia, it must be proved first that the act actually took place and then that there was the intent of helping the mafia group; more specifically, the existence of the mafia association must first be established (e.g., the existence of *Cosa Nostra*, the Sicilian mafia) and then the participation in or aiding and abetting of that organization by the suspected persons must be proved. According to Mr. Ingroia, the courts have difficulty meeting these requirements in cases of international terrorism because the very existence of a terrorist organization must first be demonstrated, there is typically no indication of "requisites of the group that can be prosecuted," and their ultimate aims are not connected with the local area and become apparent only when an attack takes place.

Mr. Ingroia also mentioned that judges must show discretion when making decisions in this field, because the existing regulation "has a high degree of abstraction and indefinability." (*Il terrorismo e piu difficile da dimostrare della mafia*, CORRIERE DELLA SERA, Dec. 3, 2005, *at* 23.)
(Dario Ferreira, 7-9817, dfer@loc.gov)

ITALY – Proportional Representation Returns

On December 14, 2005, the Italian Senate gave final approval to a law on electoral reform, which will reintroduce the proportional representation system for the national parliament. This system was in force until 1993. The next general election is scheduled for April 9, 2006. (*Italian Upper House Approves Electoral Reform*, RAI UNO TELEVISION NETWORK, Dec. 14, 2005, FBIS No. EUP20051214950015.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

NETHERLANDS – Reorganization of Police to Combat Terrorism

A long-standing advisory committee established to improve the effectiveness of The Netherlands' police forces has called for drastic reorganization of the Ministries of Justice and the Interior and for the establishment of a new Security Ministry. The Committee, which included senior representatives of the Ministries of the Interior, Justice, and Defense, as well as the national coordinator for counter-terrorist measures, concluded that The Netherlands is unprepared for a large-scale terrorist incident. It stated that the Dutch police and intelligence organizations suffer from fragmentation of authority, poor coordination, and inadequate exchange of information. A leading academic criminologist has concluded that the Dutch police currently could not match the intelligence and investigative capabilities demonstrated by the London Metropolitan Police after the bombings in the London Underground.

The Committee's report sets out several alternative solutions to the problems. However, each demands such fundamental structural reform – abolishing existing ministries, establishing a single national police force, a new "Security Cabinet," etc. – that little action is expected until the next

government takes over after the next general election. (*Netherlands Report Calls for Reform of State's Antiterrorism Institutions,* NRC HANDELSBLAD, Nov. 22, 2005, FBIS No. EUP20051123024003.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

NORWAY – Petroleum Regulations Adopted

On December 20, 2005, the Norwegian Ministry of Petroleum and Energy adopted new regulations on the use of facilities by others in the petroleum sector. The purpose of the regulations is to "achieve efficient use of existing pipelines and platforms to ensure more exploration for and production of petroleum on the Norwegian continental shelf." The regulations constitute a framework for formulating tariffs and commercial terms, and as a result, they will contribute to a more efficient negotiating process. The regulations will enter into force on January 1, 2006. (Press Release No. 175 E/05, Ministry of Petroleum and Energy, Efficient Use of Existing Infrastructure on the Norwegian Continental Shelf (Dec. 20, 2005), *available at* http://www.odin.no/oed/english/news/press_releases/026031-070417/dok-bn.html.)
(Linda Forslund, 7-9856, lifo@loc.gov)

ROMANIA – Adoption Law to Stay in Place

Premier Calin Popescu Tariceanu of Romania announced in December 2005 that the current law discouraging foreign adoptions would not be modified. Foreign families who have applied to adopt Romanian children will be sent letters explaining the situation. Applications have been pending for approximately 1,100 children since international adoptions were suspended. These children have been adopted by Romanian families, re-integrated into their birth families, or adopted by other relatives. (*Prime Minister Tariceanu Says Romania Not to Modify Law on Adoptions*, BUCHAREST ROMPRESS, Dec. 15, 2005, FBIS No. EUP20051215087006.)

Of 101 cases of American families applying to adopt whose cases were considered to be "in the pipeline" in November 2005, ninety-four children were re-integrated into their families, two adoptions are going forward because the applicants are the biological grandparents of the children, and five others will be permitted to complete the adoption process because the American families involved reside in Romania. (*Romania*, Joint Council on International Children's Services, http://www.jcics.org/Romania.htm (last visited Dec. 15, 2005).)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

RUSSIAN FEDERATION – Firearms Issued as State Awards

On December 12, 2005, the Prime Minister of Russia approved a government decree on awarding Russian citizens with firearms. According to the decree, firearms can be given as a sign of governmental recognition of one's achievements in military or public service, defense of rule of law, public security, and human rights. Fourteen types of short-barrel military guns, together with swords, daggers, and knives, are defined as award weapons. The Decree sets the rules for registration and carrying of this kind of weapon; however it does not provide for a single nation-wide registry of firearms issued as awards. A list is provided of public officials and heads of military and para-military organizations with the right to award individuals, including civilians, with firearms.

The decree implements the provision of the federal Law on Weapons of 2003, which allows the distribution of weapons as state awards and legalizes the practice, which has existed for two years. At present there is no information on how many guns have been awarded to individuals; it appears that this legal provision is being used by high-ranking government officials and wealthy businessmen as a means to legally obtain military weapons. For example, the speaker of the upper house of the Russian legislature has three award pistols. Awarding the highest-ranking military leaders with guns was initiated by the former Soviet government and was carried out three times, in 1921, 1928, and 1968. (M. Khairullin, *Ognestrelnye Nagrady* [Firing Awards], GAZETA, Dec. 13, 2005, at 6.)
(Peter Roudik, 7-9861, prou@loc.gov)

RUSSIAN FEDERATION – Law on Parliamentary Investigations

On December 14, 2005, the Russian legislature approved the Law on Parliamentary Investigations. The Law limits the scope of parliamentary investigations to inquiries regarding the violation of rights and liberties of Russian citizens, actions of public officials, and circumstances linked to industrial disasters. The President of the Russian Federation, the judiciary, and law enforcement authorities are exempt from parliamentary investigations. A parliamentary inquiry will be stopped if a court of law makes a decision to initiate prosecution on related matters. Additionally, parliamentary panels cannot investigate evidence discovered within the framework of ongoing criminal investigations.

Parliamentary investigation panels will be established by both chambers of the legislature on a parity basis and will prepare a report that must be approved by both chambers. The panel will end the investigation if either house rejects the report or if the final version of the report cannot be prepared within one year from the creation of the investigation panel. If one of the chambers refuses to approve the panel's findings, the investigation will be invalidated. Approved reports must be submitted to the President of Russia. According to Russian legal commentators, this law is aimed at narrowing the grounds for conducting a parliamentary investigation and blocking its efficiency. (ROSSIISKAIA GAZETA, Dec. 17, 2005, at http://www.rg. ru/.)
(Peter Roudik, 7-9861, prou@loc.gov)

SWEDEN – Bill Proposes Reduced Sentences for Cooperation

The Swedish Minster of Justice is proposing that persons who help in the investigation of crimes be given reduced sentences. Plea bargains, like those arranged in the United States, do not exist in Sweden, and the government's proposal would not be as far reaching as the American system. According to the government's proposal, the court will give the reduction in sentence when it decides on the punishment. The government is hopeful that this proposal will be beneficial in investigating economic crime and will present a bill to Parliament on it in January 2006. (Peter Carlberg, *Tjallare får rabatt på straff,* SVENSKA DAGBLADET NÄRINGSLIV24, Dec. 21, 2005, *available at* http://www.n24.se/dynamiskt/ sverige/did_11363878.asp.)
(Linda Forslund, 7-9856, lifo@loc.gov)

SWEDEN – Supreme Court Acquits Pastor in Hate Speech Case

The Swedish Supreme Court has acquitted pastor Åke Green of agitation against a minority. The District Court of Kalmar had sentenced Green to thirty days in prison, but the Göta Court of Appeals overturned the district court decision earlier this year (*see* 3 WLB 2005). The background of the case is a sermon that Green delivered in 2003 in which he referred to homosexuality as a cancerous

tumor and compared it to pedophilia. The Supreme Court concluded in its decision that Green's sermon was not hate speech and cannot be seen as an encouragement for others to hate homosexuals. The Supreme Court's Chief Justice has stated that if the Court had only had to interpret Swedish law, Green would have been found guilty, but because the Court had to take into consideration the European Convention of Human Rights, it had no other choice but to acquit Green. The Court was convinced that the European Court of Human Rights would have overturned a guilty verdict. (*HD Friar Åke Green,* SVENSKA DAGBLADET, Nov. 29, 2005, *available at* http://www.svd.se/dynamiskt/inrikes/did_11146375.asp.)
(Linda Forslund, 7-9856, lifo@loc.gov)

SWITZERLAND – Legislative Consultations

On August 23, 2005, Switzerland enacted an Act on Legislative Consultations (AMTLICHE SAMMLUNG DES BUNDESRECHTS 40990). The Act codifies the longstanding Swiss practice of having national debates on proposed legislation (*Vernehmlassungsverfahren, Consultation)* that was guaranteed for the first time in the Swiss Constitution of 1999 (Bundesverfassung, Apr. 18, 1999, SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS 10, art. 147). In addition to implementing the constitutional mandate, the Act adapts the consultative proceeding to the requirements of the electronic age (Botschaft, Feb. 17, 2004, BUNDESBLATT 533).

A consultative proceeding is mandatory for amendments to the Constitution, for legislation that has an impact on the rights of individuals or of the cantons, and for ratifications of treaties that affect individuals or the cantons. The Federal Cabinet or a parliamentary commission initiates the consultative proceeding, and invitations to participate are issued to the cantons, to associations of industry, to national associations representing counties and municipalities, to political parties, and to any other affected interest groups. However, any individual or organization may participate and voice opinions and all submitted documents are publicly available.
(Edith Palmer, 7-9860, epal@loc.gov)

TURKMENISTAN – Mandatory Study of English for Cabinet Members

On December 16, 2005, the President of Turkmenistan issued a decree ordering all members of the government to study the English language within the next six months. The decree states that the minimum level of foreign language knowledge permitted for the members of the Cabinet will allow them to conduct negotiations with foreign representatives without the use of interpreters. The decree made all current and future top-level government appointments conditional on the ability of an appointee to master foreign language skills, stating that all ministers will be dismissed without the provision of another job if they do not meet the English-language requirement upon expiration of the probation term. The decree also amended job descriptions for the heads of the nation's ministries to include knowledge of English as a mandatory requirement. Additionally, the decree states that all interpreting services will be eliminated in the Turkmen Government as of July 1, 2006. (NEWSRU.COM, Dec. 16, 2005, http://www.newsru.com/world/16dec2005/english6.html (last visited Dec. 20, 2005).)
(Peter Roudik, 7-9861, prou@loc.gov)

UKRAINE – Implementation of ECHR Rulings

On December 20, 2005, the Verkhovna Rada (legislature) of Ukraine passed a law entitled "On Implementing Decisions of the European Court of Human Rights," aimed at ensuring prompt and complete implementation of the Court's decisions. The Law establishes procedures for payment of compensation to applicants in cases considered by the European Court of Human Rights (ECHR) and provides for a mechanism of government measures in order to make similar violations impossible in the future and ensure that Ukraine fulfils its obligations under the European Convention on Protection of Fundamental Human Rights and Freedoms. The Law states that all Ukraine-related decisions of the ECHR will be translated by the Ministry of Justice into two official languages, Ukrainian and Russian, and published in the Ukrainian official government gazette *Ofitsiinyi Visnik*. The Law incorporates a previously adopted parliamentary resolution under which since December 1, 2005, all correspondence between Ukrainian convicts and the ECHR is exempt from perlustration by prison administration officials. Since the beginning of 2005, ninety-eight rulings have been issued by the ECHR against Ukraine. (*Rada to Adjust Implementation of the ECHR Decision*, UNA, Dec. 20, 2005, http://www.securities.com/.)
(Peter Roudik, 7-9861, prou@loc.gov)

UNITED KINGDOM – Bereaved Parents Lose Bid for Public Inquiry into Legality of War in Iraq

The bereaved parents of British servicemen killed in Iraq have lost a court bid to force the government to conduct an independent public inquiry into the legality of the war in Iraq. The families argued that the European Convention on Human Rights requires the government to conduct a full and proper investigation when "lives are lost," but that this obligation can be waived if the war is lawful. Thus, an independent public inquiry is needed to ascertain the legality of the war. The judge disagreed and stated:

> The only purpose of the inquiry which is sought would be to seek to know whether or not the invasion of Iraq was contrary to international law. The only purpose would be to try to make a political point, or show the Prime Minister did not tell the truth …. This is not a proper reason for an inquiry into whether a member of the armed forces has been killed in circumstances such as this.

(Nigel Morris, *Bereaved Mother Told Inquiry Bid Has No Legal Basis*, THE INDEPENDENT (London), Dec. 21, 2005, at 2; Nigel Morris, *Families of Soldiers Killed in Iraq Lose Fight for Public Inquiry,* THE GUARDIAN (London), Dec. 21, 2005, at 2.)
(Clare Feikert, 7-5262, cfei@loc.gov)

UNITED KINGDOM – Evidence Obtained Through Torture Not Admissible

In a second blow to the British Government's approach to detaining suspected international terrorists, the House of Lords has ruled that information obtained in foreign states that may have involved torture should not be used in British courts. The Special Immigrations Appeal Court, the court responsible for hearing appeals from individuals detained under certain anti-terror provisions, had previously held that

> The fact that evidence had, or might have been, procured by torture inflicted by foreign officials without the complicity of the British authorities was relevant to the weight of the evidence but did not render it legally inadmissible.

The Law Lords considered that this was contrary to the

> principles of the common law, [which] standing alone, … compel the exclusion of third party torture evidence as unreliable, unfair, offensive to ordinary standards of humanity and decency and incompatible with the principles which should animate a tribunal seeking to administer justice.

The ruling has caused more political embarrassment to the government as the Law Lords stated that the detention of terror suspects in the United Kingdom should be re-examined in case torture had been involved in the evidence obtained against them. (A (FC) et al. v. Secretary of State for the Home Department [2005] UKHL 71; *Lords Rule Against Use of Torture Evidence*, THE INDEPENDENT (London), Dec. 8, 2005, at 2.)
(Clare Feikert, 7-5262, cfei@loc.gov)

NEAR EAST

BAHRAIN – Hearing of Family Law Cases Before *Shari'ah* Courts in Twenty-Four Hours

King Hamad bin Isa Al Khalifa of Bahrain issued Royal Decree No. 40 of December 14, 2005, amending provisions of the Law of Procedure Before Shari'ah Courts (Law No. 26, 1986, arts. 25 & 29) that give jurisdiction over hearing Shari'ah cases related to fosterage, filiation, maintenance, and custody to a judge assigned by the Supreme Judicial Council. The Decree further specifies that all cases will be heard before the court no later than twenty-four hours after receipt, and in compelling circumstances, the judge may order such cases to be heard within one hour. (*A Decree Issued by the King: Hearing of Shari'ah Cases in Twenty-Four Hours Max.*, AKHBAR AL-KHALEEG, Dec. 15, 2005, *at* http://www.akhbar-alkhaleej.com/arc_Articles.asp?Article=151953&Sn=BNEW&IssueID=10128.)
(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

ISRAEL – Extradition of Alleged Drug Dealer to United States

On November 30, 2005, Israel's Supreme Court rejected an appeal on a decision by the Jerusalem District Court and declared an Israeli national and resident extraditable to the United States. According to the extradition request, Mr. Ze'ev Rosenstein was involved in three major multinational drug transactions involving the purchase, export, and distribution of 1.5 million pills of Methylenedioxymethamphetamine (MDMA, known also as Ecstasy) from Europe to the United States by operating multiple agents in various countries, and in financing the purchase of large amounts of the pills.

Mr. Rosenstein was declared extraditable even though he was an Israeli citizen and resident and was not present in the United States at the time he committed the alleged offenses. In determining his extradition status, the Court implemented the 2001 amendment of the Extradition Law that enables extradition in these circumstances, subject to the United States' commitment to return the suspect to Israel for the penalty phase if he is convicted and sentenced to imprisonment. (CrimA 4596/05

Rosenstein v. State of Israel (Supreme Court decision, Nov. 30, 2005), The State of Israel, The Judicial Authority, *available at* http://www.court.gov.il/; The Extradition Law, 5714-1954, as amended, http://www.nevo. co.il/.)
(Ruth Levush, 7-9847, rlev@loc.gov)

ISRAEL – Rights of Terminally Ill Patients

On December 6, 2005, the Knesset passed the Terminally Ill Patients Law, 5766-2005. The Law declares as its objective the regulation of medical treatment of terminally ill patients while balancing respect for the value of life and a person's will to live and the importance of the quality of life. The Law provides that in determining medical treatment, a person's medical status, his will, and the level of his suffering are the only considerations to be taken into account. The Law authorizes omission of medical treatment for a terminally ill patient who is legally competent and has made that request.

Such authorization is also granted in the case of a terminally ill patient who is not legally competent if it is determined that he is subject to significant suffering. The Law prohibits any action that may result in the death of the patient and any assistance for the commission of suicide. It further mandates that treatment for easing the pain of the terminally ill must be provided. Additional provisions regulate patients' advance medical instructions and treatment of minors and incapacitated persons. (The Terminally Ill Patients Law, 5766-2005, http://www.Knesset.gov.il.)
(Ruth Levush, 7-9847, rlev@loc.gov)

LEBANON – Signing of Chemical Convention

In its session of November 30, 2005, the Lebanese Parliament approved the law submitted to it under Decree 11781, which authorizes the government to sign the Chemical Convention, 1990, No. 170, concerning safety in the use of chemicals at work. (AN-NAHAR, Dec. 1, 2005, *at* http://www.annahar. com/.)
(Issam M. Saliba, 7-9840, isal@loc.gov)

SAUDI ARABIA – Formation of New Partially Elected Municipal Councils

On December 14, 2005, the Saudi Minister of Municipal and Rural Affairs, Prince Miteb Ibn Abdul-Aziz, announced the formation of 178 new partially elected municipal councils that represent all of the thirteen provinces across the Kingdom of Saudi Arabia. Voters in the Kingdom elected a total of 592 representatives, constituting half the 1,184 seats in the councils, elections for which were held early this year in three phases covering all cities and towns. The formation and election of the municipal councils are part of the Kingdom's political and democratic reform efforts and, according to the Saudi Ambassador to the United States, Prince Turki Al-Faisal, are viewed as important steps for greater participation by Saudi citizens in the decision-making process.

The Minister of Municipal and Rural Affairs also introduced the municipal councils' bylaws, which give the councils the authority to introduce budget proposals, monitor municipalities' activities and work, make decisions on municipal fees and future local investment projects, and hear residents' complaints and proposals, among other powers. (*Naming the Members and the Announcement of the*

Formation of Municipal Councils, AL-RIYADH, Dec., 15, 2005, *at* http://www.alriyadh.com/2005/12/13/article114957.html; P.K. Abdul Ghafour, *Miteb Announces Bylaws for Municipal Councils,* ARAB NEWS, Dec., 17, 2005, *at* http://www.arabnews.com/?page=1&section=0&article=74839&d=17& m=12&y=2005.)
(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

SAUDI ARABIA – Non-Renewal of Work Permits for Foreign Workers over Sixty

The General Director of the Labor Office in the western region of the Kingdom of Saudi Arabia revealed that all labor offices in the Kingdom have been instructed not to renew work permits, in all occupations without exception, to foreign workers who have attained age sixty. He explained that in the event an employer requests the renewal of a work permit for a foreign worker who had reached the age of sixty, the permit will be rescinded and the worker deported. (AS-SHARQ AL-AWSAT, Nov. 29, 2005, *at* http://www.asharqalawsat.com/.)
(Issam M. Saliba, 7-9840, isal@loc.gov)

UNITED ARAB EMIRATES – Plans to Hold First-Ever Elections

On December 1 2005, the United Arab Emirates (UAE) President, Sheik Khalifa bin Zayed Al Nahyan, announced plans for partial elections to choose half of the Federal National Council (FNC). The announcement, which was made on the eve of the UAE's thirty-fourth National Day, is a significant move in the history of the federation, since this will be the first election since the UAE was founded in 1971.

The FNC is currently composed of forty members from each of the seven emirates, appointed for terms of two years. The FNC renders only advisory opinions and has no legislative powers. However, under the proposed election procedure, the leader of each of the seven emirates will pick half his local representatives and that group of representatives will elect the other half of the representatives of each emirate to the FNC. Thus, half of the FNC will still be appointed. No date has been given for when the election would be held. The presidential court will later issue the rules and regulations that govern the election process. The announcement is viewed as a significant step towards democratic reform and is intended to allow citizens to participate directly in the administration and planning of country policies and in monitoring the performance of its agencies. This is also a first step towards the FNC having wider participation in the legislative authority of the state. (*Khalifa Opens the Door for the Election in Federal National Council*, AL-ITTIHADR, Dec. 2, 2005, *at* http://www.alittihad.co.ae; Eman Al Baik, Amira Agarib, & Mohsen Rashid, *President's FNC Move a Step in the Right Direction*, KHALEEJ TIMES ONLINE, Dec. 2, 2005, *at* http://www.khaleejtimes.com.)
(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

SOUTH ASIA

BANGLADESH – Law to Clamp Down on Terrorist Financing

Following a spate of terrorist bombings, including suicide attacks, the Government of Bangladesh is determined to clamp down on terrorist financing. According to the Executive Director of the Bangladesh Bank, a proposed law would empower the Bank to suspend or stop for thirty days, without notice, the operations of any account with suspicious transactions. The new law that is likely to be passed by the parliament will provide for imprisonment of owners of accounts used for terrorism for a term of up to seven years.

The outlawed organization Jamaat-ul-Mujahideen is suspected of being involved in these suspicious operations. According to the police sources, most of the 800 recently detained suspected militants belong to this group. The militants are fighting for the establishment of *sharia* law in the country; the government has vowed to crush them and to uphold the country's secular constitution. Intelligence reports suggest that a number of non-governmental Muslim organizations in the Middle East provide money to some groups in Bangladesh. Now the Bangladesh Bank will be able to detect and curb international as well as local financing of terrorist groups. In another attempt to fight terrorism, Madrassas (religious school) teachers have been instructed to monitor the activities and movements of their students. This had led to protests by student and teachers, who state that Islam is a religion of peace and is opposed to the killing of human beings. (*BD Crafts Law to Curb Terror Financing*, THE DAWN, Dec. 19, 2005, http://www.dawn.com/2005/12/19/int6.htm.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

BANGLADESH – Law to Curb Press Planned

The Press Council of Bangladesh has submitted a draft law to the Information Ministry that is designed to place some controls on the print media. It would replace the Press Council Act of 1974. The Ministry will review the proposal before sending it to the Cabinet. Where the existing law says that the Council has the authority to warn or censure a newspaper for violating journalistic ethics or printing news "against the public taste," the proposal would permit the Council to impose a fine of Tk 5,000-20,000 (about US$75-$300) on a newspaper, a news agency, an editor, or a reporter found guilty of those offenses. After a third offense, the Council could direct the authorities to cancel the publication of a newspaper for at least one day. Another proposed change is to the section that allows the Council to require a newspaper to publish, in a manner the Council determines, any report relating to any inquiry sent to the Council that complains about a member of the news media, including the publication of the name of such a newspaper, agency, editor, or journalist. The amendment would require that these reports be published within seven days of receipt.

The Chairman of the Council, Justice Abu Sayeed Ahammed, described the draft laws as necessary, stating: "[w]e need to strengthen the law to stop misuse of press freedom. We need to make it more effective." The proposal was opposed by the President of the Supreme Court Bar Association, Mahbubey Alam, who is also a member of the Council, who said: "I think such [a] move needs to be stopped at any cost." (*Press Curbing Law Planned,* NEWS FROM BANGLADESH, Dec. 17, 2005, http://bangladesh-web.com/view.php?hidDate=2005-12-16&hidType=TOP&hidRecord=00000000000 00000077911 (last visited Dec. 19, 2005).)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

BANGLADESH – Ordinance Allowing Phone Tapping

Tapping telephone conversations is a crime under the Bangladesh Telecommunications Act, 2001. However, the recent terrorist activity in Bangladesh has led the government to promulgate an ordinance allowing "intelligence and law-enforcement officials to tap the telephonic conversions of any individual." The President of Bangladesh, Iajuddin Ahmed, promulgated the ordinance on December 11, 2005. (Nadeem Qadir, *Bangladesh to Tap Phones to Fight Crime*, Dec.12, 2005, *at* http://web.mid-day. com/news/world/2005/december/125733.htm.)
(Shameema Rahman, 7-3812, srah@loc.gov)

INDIA – New Name for Bangalore

As of 2006, the Indian city of Bangalore will be renamed Bengaluru, to reflect the local Kanada language. The new name will mark the fiftieth anniversary of the State of Karnataka, of which Bangalore is the capital. The name, which means "town of boiled beans," is derived from a story of a medieval king who, exhausted after a hunt, was revived by a dish of boiled beans prepared by a local villager. Bangalore thus joins a number of other Indian cities that have replaced their colonial-era names, such as Bombay or Madras, with names more closely approximating local usage, such as Mumbai or Chennai. (*India's High-Tech Hub Bangalore to Be Renamed 'Town of Boiled Beans,'* AGENCE FRANCE PRESSE, Dec. 12, 2005, http://news.yahoo.com/s/afp/20051212/wl_sthasia_afp/indiatechnologybangaloreoffbeat_051212082624.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

INDIA – Petition to Stop Parallel Islamic Legal System

After receiving a public interest litigation (PIL) petition, the Supreme Court of India issued notices to the central government, the Islamic seminaries of Darul-ul-Uloom of Deoband, the All India Muslim Personal Law Board (AIMPLB), and several state governments. The petition accused the Muslim seminaries of trying to interfere with the country's secular legal system by introducing parallel Islamic laws, in violation of the Constitution. The States of Haryana, Madhya Pradesh, Assam, Rajasthan, Delhi, and West Bengal were named as respondents, because similar incidents of violations and the issuance of Islamic *fatwas* (verdicts) by clergymen allegedly had taken place in those states.

The cause of action in the petition arose when Imrana, a Muslim mother of five, was allegedly raped by her father-in-law, Ali Mohammed. Following the rape, the Darul-ul-Uloom banned her cohabitation with her husband, on the grounds that, after her assault by the father-in-law, she became ineligible to be her husband's wife under *Shariat* laws. The directive further stated that she should treat her ex-husband as her son and her father-in-law as her new husband. This verdict was later supported by the AIMPLB. Pointing out similar incidents in other states, the petitioner stated that the verdict against Imrana was not an isolated case. Such dictates are deemed tantamount to the introduction of an Islamic judicial system (Nizam-ul-Qazi), overriding the secular system under the Constitution of India.

In opposition to the above verdicts, Imrana registered at the police station a complaint of rape by her father-in-law. The petition raised the constitutional question of whether it was permissible to run "concurrent jurisdiction" in personal matrimonial matters by a "pseudo-judicial system" that was not subject to the supervisory jurisdiction of the Supreme Court and the state high courts, in violation of articles 32, 136, 226, and 227 of the Constitution. The petition requested the issuance of a directive to the

Islamic clergies, ordering them to refrain from establishing a parallel Muslim judicial system. (*SC Issues Notice on Fatwas PIL on Parallel Islamic Courts,* THE TRIBUNE, Aug. 17, 2005, http://www.tribuneindia.com/2005/20050817/main1.htm.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

NEPAL – Supreme Court Actions on Passports, Disability Law, Press Freedom, Elections

In a landmark ruling, on November 28, 2005, the Supreme Court of Nepal (SCN) ordered the government to issue passports to women under thirty-five years of age, without the consent of their guardians. Two female petitioners had challenged a 1995 Cabinet decision barring government authorities from issuing passports to women under such conditions. The two-justice bench further requested that the government not impose any restrictions of the kind against women seeking to obtain passports, noting that the restrictive provision "is against the right to freedom guaranteed by Article 12(2) of the constitution." The bench deemed the provision discriminatory and said that it contravened the spirit of the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966. (*Nepal Court Rules Passport Restrictions on Women "Discriminatory,"* NEPALNEWS.COM, Nov. 29, 2005, FBIS No. SAP20051129950028.)

On December 5, 2005, the SCN issued show cause notices to the Prime Minister's Office and Cabinet, two Vice-Chairmen of the Council of Ministers, as well as the Minister of Education of Sports and the Minister for Law, Justice and Parliamentary Affairs in response to a contempt of court case filed by officers of the Indigenous Human Rights Concern Centre for the officials' failure to implement a prior SC verdict. The single-justice bench ordered the defendants to furnish written replies within seven days as to why the action should not be initiated. The plaintiffs charged the defendants with not having implemented a 2004 SCN verdict concerning promulgation of a law to provide facilities to the disabled and to backward communities as of the 2004 fiscal year and to allocate budgetary funds for that purpose. (*Nepal Cabinet Summoned to Supreme Court over Social Policy*, THE HIMALAYAN TIMES, Dec. 5, 2005, FBIS No. SAP20051205950018.)

On December 7, 2005, the SCN lifted a royal government order that had banned retransmission of BBC Nepali Service programs on the local FM station Radio Sagarmatha. In November, Nepal police seized equipment from the station and arrested four journalists and a technician in order to block the BBC's planned broadcast of an interview with Prachanda, the rebel chief of the country's Maoist insurgents. Radio Sagarmatha was subsequently allowed to resume operating but the ban on the BBC service remained. Bhupendra Basnet, General-Secretary of the Nepal Forum of Environmental Journalists, which operates the station, had then filed a writ petition on December 2 against the government notice to the station to stop up-linking the BBC programs. (*Nepal Court Lifts Ban on BBC Broadcast*, AGENCE FRANCE PRESSE, Dec. 7, 2005, LEXIS/NEXIS, World Library, Allwld File; *Nepal Government Ordered to Defend BBC Ban I Supreme Court 7 Dec*, NEPALNEWS.COM, Dec. 5, 2005, FBIS No. SAP20051205950012.)

The SCN rejected on December 13, 2005, a plea that the government not hold proposed municipal elections on grounds of poor security, among other reasons. The SCN held that it is the government's responsibility to provide security for holding elections; that despite the domestic conflict, the court cannot mandate that the government stay elections based on the perception that the security situation is unfavorable to holding the polls. The petitioners had also argued that municipal polls should follow parliamentary polls, but the SCN ruled that the Election Commission could hold the polls

in any order it prefers. Municipal elections are scheduled to be held in all fifty-eight of Nepal's municipalities on February 8, 2006. (*SC Rejects Plea Against Municipal Polls*, THE HIMALAYAN TIMES, Dec. 13, 2005, http://www.thehimalayantimes.com/fullstory.asp?filename=6a2Ua6wa.9amal&folder=aHaoamW&Name=Home&dtSiteDate=20051213.)

It was reported on December 16, 2005, that the SCN ruled to formally ban underage recruitment for the armed forces. It mandated the removal of regulations on police and army recruitment of boys and terms of service because they contravened the Constitution of Nepal, regulations on children, and international treaties on children's rights. The Regulations had allowed the Nepal Police (NP) to recruit boys of thirteen to seventeen years of age and the Royal Nepal Army (RNA) to recruit those aged fifteen to eighteen, under regulations enforced since December 16, 1985, and August 8, 1971, respectively. However, the NP and the RNA stated in a written reply to the SCN through the Attorney General's Office that they had stopped recruitment of boys in 1995 and 2002, respectively. An advocate from the Forum for Women, Law and Development, a non-government organization, had filed the writ against the regulations. (*Xinhua: Supreme Court Bars Under Age Recruitment in Nepal*, XINHUA, Dec. 16, 2005, FBIS No. CPP20051216057050.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

NEPAL – Trafficking in Women

In an address to the inaugural session of the "U.N's Millenium Development Goal for Gender Equality and Women Empowerment," organized in Pokhara, Nepal, by the Legal Aid and Counseling Centre, Judge Mohan Prasad Ghimire of Pokhara's Appellate Court stated that about 7,000 women annually are being trafficked from Nepal. The judge said that the majority of the women are sold by their own relatives and that, even after their return, family members and society continue to disparage them. He further stated that there are "137 acts of Nepal that are discriminatory against women" and that although the country is a signatory to many international agreements "it is still a long way from implementing them." Other participants in the conference called for such measures as quotas for women in all sectors to guarantee their active participation, provision of education and property rights for daughters on a par with sons, and checks on the authenticity of organizations that work for women and children's welfare to ensure that their purpose is not merely to secure foreign funds. (*Judge Says Around 7,000 Nepalese Women Trafficked Abroad Each Year*, THE HIMALAYAN TIMES, Dec. 6, 2005, FBIS No. SAP20051206950026.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

PAKISTAN – Supreme Court Intervention Sought for Relief Work

The Islamic Centre for Research and Defence of Human Rights (ICRDHR) filed a petition in the Supreme Court of Pakistan requesting that the government be directed to constitute a council comprised of nominees of relief organizations in the country, in addition to the Prime Minister and the leader of the opposition in the National Assembly. The constitution of the council will ensure people's confidence in rehabilitation and reconstruction work in the earthquake-affected areas of the country.

In seeking the highest court's intervention, the petitioner contended that the task of relief and rehabilitation required that the nation should meet the challenge in a transparent manner, without politicization. Further stating that the Court had earlier applied the doctrine of state necessity to justify military takeover to save the nation from disaster, the petition argued that it is imperative that the relief

work connected to the national tragedy of October 8, 2005, be transparent. Moreover, it stated, the distribution of relief goods is not well organized at present and materials are not being distributed in an even-handed manner. The petitioner suggested that the government should act as a coordinator, so that relief goods are distributed effectively. (*SC Moved for Relief Work Transparency,* THE DAWN, Nov. 15, 2005, http://www.dawn.com/2005/11/15/top9.htm.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

WESTERN HEMISPHERE

ARGENTINA – Repayment of Outstanding IMF Debt

On December 15, 2005, in a move similar to that of the Brazilian Government, President Néstor Kirchner announced that Argentina would repay all its outstanding debt to the International Monetary Fund (IMF) by the end of the year, representing a disbursement of US$9.8 billion that will be drawn from its foreign reserves on December 30. The country reduced its need for accumulating funds for these short-term debt payments, continuing the debt-reduction strategy started in 2003 under former economic minister Roberto Lavagna's tenure. President Kirchner has gained political support to continue with his heterodox economic agenda, which, thanks to favorable external conditions, is generating both strong economic growth and rising inflation. Although the measure had caused great concern among the opposition parties, on December 22, the government succeeded in passing the needed amendment to the Law on Convertibility that will allow the repayment to the IMF in a lump sum with Central Bank reserves. In the short term, foreign reserves will be partially replenished thanks to surpluses in the current account, but the authorities still need to provide assurances to the financial community in order to attract foreign investment to compensate for weak domestic savings

IMF lending has conditionality aspects that the current administration does not want, among them a higher primary surplus, negotiation with bond holdouts, more flexibility of the exchange rate, and the negotiation of new tariffs for public utilities, which have been frozen since the devaluation of the Argentine peso. All of them contradict President Kirchner's economic and political ideology, which accounts for the authorities' desire to eliminate foreign interference in domestic policymaking.

The decision brings more political support to President Kirchner, since reducing the dependency on the IMF – frequently considered within Argentina to be responsible for the country's worst economic crisis – will be much welcomed by Argentines. In addition, it gives Kirchner greater economic power, as he is now free to pursue his economic agenda without foreign intervention and without considering the possible victims of such an agenda, including bond holdouts, public utilities, and even Argentine companies. Without IMF monitoring and coercion powers, these economic players are left to fend for themselves. (*Discuten en el Senado el Presupuesto 2006,* CLARIN.COM, Dec. 22, 2005, http://www.clarin.com.)
(Graciela Rodriguez-Ferrand, 7-9818, grod@loc.gov)

BOLIVIA – National Elections

On December 19, 2005, Bolivia held its national presidential and parliamentary elections. Evo Morales, a leftist candidate representing one of Bolivia's indigenous peoples, was elected President. Under Bolivian election law, if no candidate polls fifty percent of the vote, there is no run-off ballot. Instead, Congress makes the final choice. However, there was no need for this procedure as Mr.

Morales obtained more than fifty-one percent of the votes. The Electoral Code stipulates that the National Election Court has twenty-five days to issue its final, official report, which for this election means the deadline is January 13, 2006. The voter turnout, estimated at about seventy-two percent, is the highest ever experienced in the country.

Bolivia, South America's poorest country, has had five presidents in four years. Bolivia's indigenous people, who make up more than half the population, generally support Mr. Morales, who pledges to legalize the production of the coca leaf – which has traditional uses – although not the cocaine manufactured from it. He also promises to make foreign oil and gas investors pay what he says is a fairer share to Bolivians.

The U.S. government has said it expects any future Bolivian government to honor previous commitments to fight the production of illegal drugs. Mr Morales, an admirer of Fidel Castro, said on December 18, 2005, that he wanted ties with the United States but "not a relationship of submission." (*Leftist Claims Victory in Bolivia*, BBCNEWS, Dec. 19, 2005, http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/americas/4539454.stm; *Elections Break Voter Turnout Record,* ACAN-EFE, Dec. 19, 2005, FBIS No. LAP20051219071002.)
(Graciela Rodriguez-Ferrand, 7-9818, grod@loc.gov)

BRAZIL – Airline Seeking Protection Under New Bankruptcy Law

Brazil's leading international and domestic air carrier, VARIG Airlines, has sought protection from creditors under the new Bankruptcy Law, but may miss the December 2005 deadline for presenting its restructuring plan to creditors. In the last three months, the airline, in operation since 1927, has fought a threat from a group of creditors to repossess up to half of VARIG's fleet. Sources report that this struggle may threaten the firm's ability to restructure in time.

The new law (Law No. 11,101, Feb. 9, 2005) allows a company six months to restructure. If it has not presented a plan acceptable to shareholders in that time period, it must liquidate. Brazil's courts may grant an extension to this deadline. VARIG's collapse has thus far been prevented by BNDES, Brazil's development bank, which stepped in at the insistence of President Luiz Inacio Lula da Silva. It offered financing to any investor willing to buy two of VARIG's subsidiaries, involved in cargo, logistics, and maintenance.

On November 17, 2005, the airline announced losses of R$384 million (US$175 million) for the third quarter, compared with a profit of R$261 million (US$119 million) in the same period last year. (*Judgement* [sic] *Day Looms for VARIG,* LATINLAWYERONLINE, Dec. 1, 2005, http://www.latinlawyer.com/article.php?id=10343 (last visited Dec. 6, 2005).)
(Sandra Sawicki, 7-9819, sasa@loc.gov)

BRAZIL – Ending Nepotism in the Judiciary

The Brazilian National Council of Justice established its goal of ending nepotism in the judiciary through Resolution No. 7, dated October 18, 2005. The creation of the Council in December of 2004 by Constitutional Amendment No. 45, as part of a major judicial reform, was a response to so-called external control of the judiciary. The Council is to supervise and to expedite the operations of the judicial system, and one of its competencies is to receive complaints against members or organs of the Judiciary. In its short existence, it has already demonstrated the seriousness of its work, through efforts

aimed at enforcing the constitutional principle that mandates all direct or indirect public administration agencies (including affiliated foundations) of the federal government, the states, the Federal District, or the municipalities to observe principles of lawfulness, public interest, morality, transparency, and efficiency

The decision to fight nepotism in the judiciary caused great discomfort among a few magistrates, who reacted by filing three lawsuits against Resolution No. 7 with the Federal Supreme Court. There is a clear indication, however, that the Council will enforce the law, as the Supreme Court has recently rejected a direct action of unconstitutionality proposed by the Brazilian Magistrates Association challenging the existence of the Council. This lawsuit was the first reaction of a group of judges against the external control of the judiciary. In a survey conducted by the Magistrates' Association, 67.9 percent of the judges polled were in favor of the end of nepotism and supported the Resolution. According to Mr. Alexandre de Moraes, a member of the Council, a final Supreme Court decision on the issue will soon put an end to this controversial discussion. *(Resistência ao Controle Externo Ressurge com Fim do Nepotismo*, VALOR ONLINE, Nov. 29, 2005, *at* http://www.valoronline.com.br/veconomico/?show= imprimir&id=3402648.)
(Eduardo Soares, 7-3525, esoa@loc.gov)

BRAZIL -- Landmark High Court Decision

Brazil's Superior Court of Justice confirmed the arbitrability of disputes involving state companies in a landmark decision issued on October 25, 2005. The section of the court for non-constitutional matters found in favor of AES Uruguaiana in its case against the Companhia Estadual de Energia Elétrica (the State Company for Electric Energy, abbreviated as CEEE in Portuguese). The Court dismissed a suit filed by CEEE before state courts and referred the parties to arbitration.

Arnoldo Wald, who represented AES Uruguaiana, stated that

> This is the first decision of the Superior Court of Justice since the enactment of the 1996 Brazilian Arbitration Law that has ruled on the controversial issue of arbitrability of disputes involving state companies. Before this, only the lower courts had had the opportunity to consider the issue, and had not established a consolidated position about the validity of arbitration agreements signed with mixed-capital companies under Brazilian law.

In a unanimous decision, the Superior Court confirmed that mixed-capital companies are governed by the same rules applicable to private companies and are fully capable of making valid arbitration agreements. (*Brazil Issues Landmark Arbitration Decision,* LATINLAWYERONLINE, Nov. 24, 2005, http://www.latinlawyer.com/article.php?id=10336 (last visited Dec. 6, 2005).)
(Sandra Sawicki, 7-9819, sasa@loc.gov)

BRAZIL – Thirty-Eight-Year-Old Lawsuit to Be Decided in Sixty Days

In an unprecedented decision, the Brazilian National Council of Justice (*see also* item on nepotism above) ordered the lower court of Iaciara, a city located in the State of Goiás, to enter a judgment on a lawsuit that has been pending there for thirty-eight years, granting the lower court sixty days to decide the case. The decision was motivated by a representation made by the attorney working on the case complaining of the excess time taken by the lower court to judge a land dispute that started in 1967. In his complaint, the attorney indicated that no judge has analyzed the case and that there is no

judge assigned to the court where the lawsuit is pending. As a justification, the Justice Tribunal of the State of Goiás said that there was no judge available to work at the lower court in Iaciara. The decision made by the National Council of Justice in the Iaciara case may be viewed as another step in its goal of expediting judicial operations and addressing complaints against the judiciary.

According to the President of the Brazilian Magistrates Association, Mr. Rodrigo Collaço, reform of the legal procedures of the Brazilian judicial system is also necessary in order to make the administration of justice simpler and faster. In a survey made by the Association, almost half of the judges interviewed agreed with complaints that the system is too slow; according to them, the delay is the result of too many lawsuits filed and the excessive number of appeals available. *(CNJ Dá 60 Dias Para Julgamento de Ação de 1967*, O GLOBO, Nov. 30, 2005, http://arquivooglobo.globo.com/pesquisa/texto_gratis.asp?codigo=24399247.)
(Eduardo Soares, 7-3525, esoa@loc.gov)

CANADA – Ontario May Appeal "Sexsomnia" Case

One of the major differences between the American and Canadian systems for criminal justice is that the latter allows for appeals against decisions of judges and the retrial of acquitted persons in far broader circumstances than the former does. In Canada, the Criminal Code generally allows provincial Attorneys General to appeal acquittals on questions of law. (Criminal Code, R.S.C. c. C-46, s. 676 (1985), as amended.) The Government of Ontario is now reportedly considering whether it should appeal a "sexsomnia" case that has attracted considerable attention. In this case, the accused was acquitted of sexual assault after arguing that he suffered from a disorder that caused him to engage in sexual conduct while asleep. The victim in the case had testified that she had been attacked after she fell asleep at a party. (*Ontario Mulls Appeal in Sexsomnia Case,* REUTERS, Dec. 1, 2005, http://news.yahoo.com/s/nm/20051201/wl_canada_nm/canada_crime_canada_sexso.)

Persons ordered to be retried in Canada cannot argue that they are protected by the general prohibition on double jeopardy. The Government cannot appeal an acquittal on the grounds that it simply disagrees with a judge or jury's findings of fact.
(Stephen Clarke, 7-7121, scla@loc.gov)

COSTA RICA – Code of Administrative Procedure Under Consideration

A bill to streamline judicial procedures in Costa Rica passed its first round in the Legislative Assembly on November 1, 2005. The Code of Administrative Procedure will facilitate private sector suits against the government and will make judicial processes more efficient. Currently, suits can take as long as eight years. The changes, if they pass a second round in the Assembly, would simplify procedures so that they could consume seventy-five percent less time.

The private sector has long complained about the difficulty in making claims against the government and has asked for stronger means with which to enforce public procurement contracts. At present companies need to exhaust every avenue within the government before they can file suit. These administrative investigations within agencies can take as long as a year. Current rules on administrative procedures date back to 1961 and are largely obsolete; the new law would allow companies to file suit immediately.

Comptroller general and public services regulator decisions cannot be challenged at the present time using alternative dispute resolution (ADR), and this has deterred the contracting process. The Code would allow such decisions to be contested using ADR. (*Costa Rican Bill Promotes Efficient Justice,* LATINLAWYERONLINE, Nov. 24, 2005, http://www.latinlawyer.com/article.php?id=10332 (last visited Dec. 6, 2005).)
(Sandra Sawicki, 7-9819, sasa@loc.gov)

DOMINICAN REPUBLIC – Children of Illegal Aliens Not Entitled to Citizenship

On December 14, 2005, the Supreme Court of the Dominican Republic ruled that children born in this country to illegal aliens are not entitled to Dominican citizenship. The ruling was issued in a case brought by several human rights groups that claim that Immigration Law 258/04 is unconstitutional because it denies citizenship to children born in the Dominican Republic to illegal aliens. (*Sentencia que Declara Constitucional la Ley General de Migración 285-04* (Ruling That Declares That Migration Law 285-04 Is Valid Under the Dominican Constitution), Dominican Republic Supreme Court website, *at* http://www.suprema.gov.do/novedades/sentencias/inconstitucionalleydemigracioncertificada.htm (last visited Dec. 19, 2005).)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

HAITI – Government Retires Five Supreme Court Justices

On December 9, 2005, the Haitian interim government retired five judges from the Supreme Court. The decision came a day after the Court reaffirmed an earlier ruling allowing Dumarsais Simeus, a Haitian-born millionaire who lived in the United States for more than forty years, to run for president in Haiti. The Constitution does not allow dual citizenship, and as a result, Mr. Simeus would have lost his Haitian citizenship if he became a naturalized citizen of the United States. The Court found that the authorities had not proved that Simeus was a citizen of the United States, and therefore he should be allowed to run.

The government claimed that the retirements were a purely administrative measure, motivated by the poor performance of the Court. United Nations High Commissioner for Human Rights Louise Arbour stated that "unless proven otherwise, the Haitian authorities appear to have infringed upon the independence of the judicial power." After two failed attempts to install new judges because protesters have tried to prevent their investiture, the new judges were sworn in on December 15. (*Mise à la retraite de cinq juges haïtien: Louise Arbour inquiète*, & *Les nouveaux juges nommés a la Cour de cassation haïtienne prêtent serment*, AGENCE FRANCE PRESSE-FRANÇAIS (FR), Dec. 15 & 16, 2005, respectively, both from LEXIS/NEXIS, WORLD Library, AFPFR File.)
(Nicole Atwill, 7-2832, natw@loc.gov)

MEXICO – Supreme Court Loosens Extradition Rules

On November 29, 2005, Mexico's Supreme Court ruled that criminal suspects who face life in prison abroad could be extradited. This ruling ends a four-year contentious discussion between Mexico and the United States over criminal suspects who have been protected by Mexico's ban on life sentences.

A 1978 treaty with the United States allows Mexico to deny extradition if a person faces the death penalty. The Mexican Supreme Court extended the extradition ban in 2001 to Mexican nationals who face life in prison abroad on the basis that such a penalty is unconstitutional under Mexican law. The 2001 ban kept many top drug lords and other notorious suspects in Mexico, out of reach of U.S. law enforcement authorities. (*Califican en EU de positiva decision de Suprema Corte*, EL UNIVERSAL, Dec. 01, 2005, *at* http://www.eluniversal.com.mx/nacion/132663.html.)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

PARAGUAY – Controversial Court Decision on Logging

An appeals court decision striking down a 1994 Law intended to slow deforestation along Paraguay's northeastern border with Brazil provoked a condemnation by Paraguay's Minister of the Environment, Alfredo Molinas. The Minister said on November 29, 2005, that the ruling effectively guts the environmental law that targeted illegal logging operations in the northeastern provinces of San Pedro, Concepción, and Amambay. Acting on a motion brought by lumber firms, the appeals court ordered the National Forest Service to issue permits for the transport of felled trees to sawmills along Paraguay's border with Brazil. The 1994 Law had made it illegal to sell wood from the region locally. The head of the National Forest Service said the court decision would allow the felled trees to be delivered to sawmills in the border towns of Salto del Guaira, Ypehu, Capitán Bado, and Pedro Juan Caballero. Despite the court decision, the environment minister stated that Paraguay has managed to reduce the rate of forest loss and has initiated talks with Brazilian authorities on cooperation against illegal logging. (*Paraguayan Court Blasted for Striking Down Forest-Protection Law,* AGENCIA CENTROAMERICANA DE NOTICIAS EFE, Nov. 29, 2005, FBIS No. LAP2005112904900.)
(Sandra Sawicki, 7-9819, sasa@loc.gov)

PERU – Lawsuit Would Involve Cultural Treasures

The Foreign Minister of Peru, Oscar Maúrtua de Romaña, announced on December 1, 2005, that the President of Yale University, Richard Levin, has been informed that the University may be the subject of a lawsuit if archaeological artifacts in the its possession that were taken from the ruins of Machu Picchu are not returned to Peru. If the university does not reply and indicate that it will return the cultural treasures, Peru is prepared to go to court to assert its rights to the cultural property, Yale was informed through a letter from the Ambassador of Peru in the United States, Eduardo Ferrero.

Maúrtua de Romaña explained that this situation has a long history, dating back to 1916 when the expeditions of Hiram Bingham removed from the Incan ruins many human and artistic artifacts that were then transported to Yale. Despite many amicable attempts to recover the items, Peru has been unsuccessful in encouraging the university to return the treasures voluntarily. The Foreign Minister stated that Peru is "convinced we have sufficient proof to pursue a lawsuit successfully; but since the process could be lengthy and costly, we will also pursue an out of court solution." (Press Release 640-05, Ministerio de Relaciones Exteriores del Perú, *El Perú recuperará patrimonio cultural que permanece en Universidad de Yale incluso utilizando via judicial* (Dec. 1, 2005), http://www.rree.gob.pe/ portal/boletinInf.nsf/mrealdia/86BF1195F83C33DD052570CB0008FC52?OpenDocument.)
(Sandra Sawicki, 7-9819, sasa@loc.gov)

INTERNATIONAL LAW AND ORGANIZATIONS

ASSOCIATION OF SOUTHEAST ASIAN NATIONS – Charter Declaration, Other Documents Signed

On December 12, 2005, at the Eleventh Association of Southeast Asian Nations (ASEAN) Summit held in Kuala Lumpur, Malaysia, leaders of the ten member countries of ASEAN signed the Kuala Lumpur Declaration on the Establishment of the ASEAN Charter. The Declaration states that the charter will "serve as a legal and institutional framework of ASEAN," "codify all ASEAN norms, rules, and values," "reaffirm principles, goals and ideals contained in ASEAN's milestone agreements," and confer a legal personality on ASEAN. On the basis of the Declaration, an Eminent Persons Group (EPG) is to be established, "comprising highly distinguished and well respected citizens from ASEAN Member Countries." Their mandate is "to examine and provide practical recommendations on the directions and nature of the ASEAN Charter." In addition, ASEAN Ministers are tasked with establishing, as necessary, a high-level task force to draft the charter based on the Declaration and the recommendations of the EPG. (ASEAN Secretariat, *Kuala Lumpur Declaration on the Establishment of the ASEAN Charter*, Dec. 12, 2005, http://www.aseansec.org/18030.htm; Huang Haimin Bui Minhlong, *Yearender: ASEAN Fosters Intra, Outer-Cooperation (1)*, XINHUA, Dec. 23, 2005, LEXIS/NEXIS, News Library, 90days File.)

On December 9, 2005, ASEAN economic ministers at the summit signed three documents: the Agreement to Establish and Implement the ASEAN Single Window, the Agreement on the ASEAN Harmonized Electrical and Electronic Equipment (EEE) Regulatory Regime, and the Mutual Recognition Arrangement on Engineering. The ASEAN Single Window (ASW) is a customs initiative aimed at accelerating imports of goods and services at the national and regional levels through electronic processing of trade documents, harmonized product standards and technical regulations, and mutual recognition of test reports and certification. ASEAN hopes to cut the current average clearance time of three-four days for any single transaction to thirty minutes. At present, each ASEAN member country has a different system and documentation requirements for customs clearance. Before the ASW is established, every member must first create its own National Single Window. Full implementation for the "ASEAN 6" (Malaysia, Brunei, Singapore, Thailand, the Philippines, Indonesia) is expected by 2008 at the latest, and by 2012 for Cambodia, Laos, Myanmar, and Vietnam. (Nor Baizura Basri, *Move to Establish Legal Framework for ASEAN Single Window*, MALAYSIA GENERAL NEWS, Dec. 12, 2005, & *ASEAN Ministers Sign Three Key Economic Documents,* XINHUA, Dec. 9, 2005, LEXIS/NEXIS, World Library, Allwld File; ASEAN Secretariat, *Agreement to Establish and Implement the ASEAN Single Window*, Dec. 12, 2005, FBIS No. SEP20051212031009.)

The objectives of the Agreement on the ASEAN Harmonized EEE Regulatory Regime are to enhance member countries' cooperation in ensuring the protection of human health and safety and property and the preservation of the environment insofar as they are affected by EEE trade in ASEAN; to eliminate restrictions on that trade through harmonization of technical requirements and registration; and to facilitate negotiations for Mutual Recognition Agreements on Conformity Assessment between ASEAN and other countries or blocs. (ASEAN Secretariat, *Members Sign ASEAN Harmonized Electrical, Electronic Equipment Regulatory Regime,* Dec. 12, 2005, FBIS No. SEP20051212031011.) (Wendy Zeldin, 7-9832, wzel@loc.gov)

ASIA-EUROPE MEETING – Prosecutors-General Conference Anti-Organized Crime Pledge

The first Asia-Europe Meeting (ASEM) conference of prosecutors-general was held in Shenzhen, China, from December 9-12, 2005. Delegates from more than forty countries and several international organizations took part. On December 12, prosecutors and delegates from thirty-eight of the countries and regions endorsed the Declaration of Asia-Europe Meeting (ASEM) Prosecutors-General Conference, aimed at jointly combating transnational organized crime.

The Declaration states that ASEM partners' prosecutors-general, attorneys-general, ministers of justice, and their representatives share the view that it is necessary to enhance legal and mutual judicial cooperation, including the implementation of relevant conventions and other legal instruments, through expanding close cooperation in combating corruption, money laundering, terrorism, trafficking in arms and in drugs, and other transnational organized crimes. They will still, however, further cooperation in implementing bilateral legal and judicial assistance treaties, extradition treaties, and other regional, inter-regional legal and judicial cooperation agreements. Conference delegates also held that ASEM members should improve efficiency in cooperation between their prosecution services and establish efficient mechanisms for exchanging judicial information. (*China Daily: ASEM Prosecutors General to Meet to Combat Transnational Crimes,* CHINA DAILY, Dec. 12, 2005, FBIS No. CPP20051212055010; *Asian, European Top Prosecutors in China Vow to Fight Transnational Crime*, BBC WORLDWIDE MONITORING, Dec. 12, 2005, LEXIS/NEXIS, World Library, Allwld File.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

BRAZIL/UNITED STATES – Climate Change Brings California and São Paulo Together

On December 5, 2005, the Secretary of the California Environmental Protection Agency, Mr. Alan Lloyd, and the State Secretary for the Environment of the State of São Paulo, Brazil, Prof. José Goldemberg, signed in Montreal, Canada, a Memorandum of Understanding for Technical Cooperation in the Areas of Renewable Energy Sources, Environmental Improvement, Climate Change, and Biodiversity. The plan for cooperation started in July 2005, when the governor of São Paulo, Mr. Geraldo Alckmin, wrote a letter to Mr. Arnold Schwarzenegger, the Governor of California, congratulating him on the signature of Executive Order No. S-3-05, dealing with the reduction of greenhouse gas emissions. The letter mentioned policies adopted by the state of São Paulo aimed at the reduction of greenhouse gas emissions without compromising economic growth and development and suggested a cooperative agreement between the two states.

After a few months of negotiations, the Memorandum was signed. It seeks to reduce the detrimental effects of air pollution in both California and São Paulo; to mitigate the threat global warming represents to the economies, people, and ecosystems of the two states; and to obtain the economic benefits of cleaner and pro-active anti-pollution policies. (Press Release, California Environmental Protection Agency, *California and São Paulo Environmental Protection Agency Secretaries Sign Climate Change Agreement* (Dec. 6, 2005), *at* http://www.calepa.ca.gov/PressRoom/Releases/2005/PR19-120605. pdf.)
(Eduardo Soares, 7-3525, esoa@loc.gov)

CHILE/CHINA – Free Trade Agreement

On November 18, 2005, Chile's President Ricardo Lagos and China's President Hu Jintao signed an agreement ending duties on most agricultural and manufactured products. The agreement, the first such pact between China and a Latin American nation, will provide significant benefits to an already robust trade between the two nations. In 2003, the trade balance between Chile and China reached a surplus for Chile of US$575 million. As China's economy expands, it is turning increasingly to Latin America to supply the products it needs, including copper, iron ore, and soybeans. Chile is the world's largest exporter of copper, and China is the largest importer. The pact opens doors for Chinese investment in Chile with a number of joint ventures and trade opportunities to benefit both nations. (*Chilean Bar Welcomes Chinese FTA,* LATINLAWYERONLINE, Dec. 1, 2005, http://www.latinlawyer. com/article.php?id=10344 (last visited Dec. 6, 2005).)
(Sandra Sawicki, 7-9819, sasa@loc.gov)

COUNCIL OF EUROPE – Investigation of Allegations of CIA Prisoner Flights

On November 23, 2005, the Council of Europe announced its intention to begin investigating press reports alleging that the U.S. Central Intelligence Agency (CIA) detained suspected terrorists in covert camps in European cities and that it transferred them secretly through European airports. U.S. planes reportedly operated by the CIA have been seen in airports in Germany, Hungary, Iceland, Italy, Poland, Portugal, Romania, Spain, and Sweden. The Council of Europe, whose membership includes forty-six European states, is the organization responsible for the implementation of human rights in Europe. In this capacity, it will review compliance of members with human rights obligations and whether officials have been involved in such secret operations, "including at the instigation of any foreign agency." (*Council of Europe Opens Formal Inquiry Into Reports of CIA Prisoner Flights*, AFP, Nov. 28, 2005, FBIS No. FEA20051123013790.)
(Theresa Papademetriou, 7-9857, tpap@loc.gov)

EAST ASIA SUMMIT – Inaugural Session

On December 14, 2005, the first East Asia Summit (EAS) meeting convened in Kuala Lumpur, with representatives from sixteen nations – the ten ASEAN members + 3 (China, Japan, Korea) and Australia, New Zealand, and India – in attendance. The EAS was held immediately after the eleventh ASEAN meeting, which also took place in Kuala Lumpur.

The "Kuala Lumpur Declaration on the East Asia Summit," which was signed on December 14, states, first, that the participating heads of state/government established the EAS as "a forum for dialogue on broad strategic, political and economic issues of common interest and concern with the aim of promoting peace, stability and economic prosperity in East Asia." Second, its efforts to promote community building are to be "consistent with and reinforce the realization of the ASEAN Community." Third, the Declaration states that the EAS "will be an open, inclusive, transparent and outward-looking forum." Fourth, it addresses the matters the EAS will focus on, e.g., promotion of development, financial stability, energy security, economic integration and growth, eradication of poverty, and narrowing of the development gap in East Asia. Fifth, participation in the EAS will be based on the criteria for participation established by ASEAN. It will be convened regularly, by the ASEAN member country that assumes the ASEAN chairmanship, back-to-back with the annual ASEAN

summit, and ASEAN and all other EAS participant countries will review its modalities. (Barry Desker, *Why the East Asian Summit Matters*, ASIA TIMES, Dec. 13, 2005, http://www.atimes.com/atimes/Southeast_Asia/GL13Ae02.html; *Kuala Lumpur Declaration on the East Asia Summit*, Dec. 14, 2005, ASEAN website, http://www.aseansec.org/18098.htm.)
(Wendy Zeldin, 7-9832, wzel@loc.gov)

EUROPE/MIDDLE EAST – Anti Terror Announcement

After long hours of negotiations, the thirty-five countries participating in the EU-Mediterranean Summit held in Barcelona, Spain, reached an agreement about what is called the anti-terrorism code of conduct and about a five-year action program. According to diplomatic sources, the participants failed, however, to issue a common statement about "terrorism" that satisfies both Israel and the Arab states. (Article title, AL-JAZEERA Nov. 28, 2005, *at* http://www.aljazeera.net/NR/exeres/2798469E-8290-4C1A-9560-51AEBFCB09BA.htmat.)
(Issam M. Saliba, 7-9840, isal@loc.gov)

INDIA/GREAT BRITAIN – Asylum Appeals Dismissed

The Immigration Minister of Great Britain, Tom McNulty, in the course of an interview with an Indian newspaper, *Navbharat Times*, stated that pleas for asylum from Indian nationals trying to enter Great Britain on the grounds of political or religious persecution would no longer be favorably considered. India's image is that of a democratic country where there is the free exercise of all religious beliefs and political opinions. Based on this image of the country, Britain has rejected 1,400 such appeals in the last four years. A 1951 British law requires that all appeals for asylum be scrutinized. However, no deserving cases from India were found during the last four years. Consequently, asylum applications are no longer entertained, and all persons are sent back to India.

Sixty percent of those seeking asylum on political and religious grounds are from the States of Punjab and Gujarat. The Minister further stated that the new immigration law helps an increasing number of Indians live in Britain legally, which, in fact, swelled their number to more than 40,000 annually in the last four years. (*Report: Britain Finds Little Justification of Asylum Application from India,* THE NAVBHARAT TIMES, Nov. 9, 2005, FBIS No. SAP20051109006002.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

KOREA, NORTH/UNITED NATIONS – Human Rights Abuses Denounced

On December 16, 2005, the United Nations General Assembly adopted a resolution on human rights violations in the Democratic People's Republic of Korea (DPRK – North Korea). It was the first such resolution concerning that nation ever passed by the organization and focused on a large number of issues including torture, public executions, arbitrary detention, the lack of due process, forced labor, high rates of infant malnutrition, restrictions on the operations of humanitarian organizations, trafficking of women for sexual exploitation, forced marriages, and forced abortions, as well as the lack of freedoms of religion, expression, assembly, and movement within the country and abroad. The DPRK Government was urged to allow the World Food Program and other humanitarian bodies to have safe access to all parts of the country. (*UN General Assembly Adopts Resolution on Human Rights Abuse in DPR Korea*, Dec. 16, 2005, from UNNews@un.org.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

LEAGUE OF ARAB STATES – Proposal for Convention on Money Laundering, Financing of Terrorism

The Arab States' Ministers of Justice ended their twenty-first summit on November 30, 2005, held in the Arab League headquarters in Cairo, Egypt. The Ministers agreed to form a joint-commission of representatives from the Arabian Ministries of Interior and Ministries of Justice in order to prepare a proposal for a Convention on Money Laundering and the Financing of Terrorism. The Agreement is part of a chain of initiatives by the Arab States to crack down on money laundering and terrorist financing. On December 1, 2004, fourteen of the Arab States (the Gulf Cooperative Council States (GCC), Syria, Lebanon, Tunisia, Jordan, Algeria, Morocco, Egypt, and Yemen) had agreed to form the Middle East and North Africa Financial Action Task Force (MENA), responsible for fighting terrorist financing. It is a regional version of the Financial Action Task Force (FATF) based in Paris. Recently, members of MENA decided to set up a system for reviewing measures against money laundering and terrorist financing adopted by each member state. Thus far, the member states have made significant progress in regulating money transfers, charities' informal *Hawala* system (informal systems of transferring money internationally), charities, and cash couriers. (*Arabian Convention on Money Laundering and the Financing of Terrorism*, AL-RAYAH, Dec. 1, 2005, *at* http://www.raya.com/site/topics/index.asp?cu_no_=2&temp_type=44; *Arab States Launch Money Laundering & Terror Financing Action Task Force,* UAE INTERACT, Dec, 2, 2004, *at* http://www.uaeinteract.com/news/default.asp?ID=220.)
(Dr. Abdullah F. Ansary, 7-6303, aans@loc.gov)

MEXICO/CENTRAL AMERICA/COLOMBIA/DOMINICAN REPUBLIC – Energy Integration Accord Signed

Mexico, the Central American nations, Colombia, and the Dominican Republic signed the Mesoamerican Energy Integration Accord, at Cancun on December 13, 2005. The Accord consists of the launching of an ambitious program of regional energy integration with an initial fund of US$400 million. The program involves the study and development of seven energy infrastructural projects. These projects include the construction of a refinery that is expected to process 230,000 barrels of Mexican heavy crude oil each day, a gas pipeline, a thermoelectric plant, and a gas processing facility and the establishment of franchises of Mexican Petroleum (PEMEX). The regional gas pipeline will cost approximately two billion dollars; the refinery is projected to cost four billion dollars, of which PEMEX will provide US$250 million and private investors the remainder. The Inter-American Development Bank will spend US$750 million dollars to build the refinery in a Central American country. The total program is expected to require an investment of between seven to nine billion U.S. dollars. (*Centroamérica Aplaude la Integración Energética*, EL UNIVERSAL, Dec. 15, 2005, http://www.eluniversal.com.mx.)
(Norma C. Gutiérrez, 7-4314, ngut@loc.gov)

NORTH AMERICAN FREE TRADE AGREEMENT – Canadian Exports of Garbage

Although shipments have been reduced, the Toronto region of Canada still exports approximately 105 truckloads of solid waste to the State of Michigan daily. Michigan has approved legislation to prohibit imports of solid waste, but Congressional legislation is still needed to give states the right to restrict the importation of foreign trash. Canada's International Trade Minister has announced that Canada would view any such ban as a contravention of the guarantees contained in the

North American Free Trade Agreement, which require garbage to be regarded as a good. The Canadian position is that garbage is a "good" and states generally cannot treat "goods" from Canada any differently goods from other states. The United States could argue that a ban would be allowable if required to protect health and safety, but a binational review panel has not tested this issue.

The Government of Ontario has stated that while it has contingency plans, the use of Canadian waste disposal sites would be much more expensive at present. Nevertheless, officials in Toronto have indicated that they hope to end their dependence on Michigan landfills by 2010. (Beth Gorham, *Canada Promises to Fight Move to Ban Garbage Trucked to United States,* CANADIAN PRESS, Nov. 29, 2005, http://news.yahoo.com/s/cpress/20051129/ca_pr_on_wo/us_cda_trash&printer=1;_ylt=Aql_wmsqtF.MitEHbfXd1mklkMEF;_ylu=X3oDMTA3MXN1bHE0BHNlYwN0bWE-.)
(Stephen F. Clarke, 7-7121, scla@loc.gov)

THE PHILIPPINES/AUSTRALIA – Migration Management and Border Control Cooperation

The Australian and Philippine Governments have signed a Memorandum of Understanding (MOU) in a bid to improve migration management and security in the region. The MOU aims to strengthen operational cooperation in migration and border management between the two countries. Australian Ambassador Tony Hely and Philippines Bureau of Immigration Commissioner Alipio Fernandez signed the MOU. (*RP, Australia Forge Pact vs. Illegal Immigrants,* THE MANILA TIMES, Nov. 23, 2005, *at* http://www.manilatimes.net/national/2005/nov/23/yehey/prov/20051123pro1.html.)
(Gustavo E. Guerra, 7-7104, ggue@loc.gov)

UGANDA/CONGO (DRC)/ICJ – Violations of International Law

The International Court of Justice, located in The Hague, ruled on December 19, 2005, that Uganda had dishonored international law by occupying parts of its neighbor, the Democratic Republic of the Congo. The Court, which is the United Nations' judicial organ dedicated to settling disputes between countries, stated that Uganda had committed offenses against the principle of non-intervention and against human rights laws due to the brutal acts committed by its military. In addition, Congo was found to have violated the Vienna Convention on Diplomatic Relations for having attacked Uganda's embassy in the capital, Kinshasa, and for its treatment of Ugandan diplomats. Congo will be liable for reparations. If the two nations cannot settle the reparations issues between themselves, the Court will make a decision on the amount.

The case against Uganda stemmed from the 1998-2002 occupation of Ituri Province by the Ugandan army and included crimes such as the killing and torture of civilians, the use of child soldiers, inciting ethnic conflict, and stealing natural resources. The Court rejected the argument offered by Uganda that its actions were justifiable as self-defense. The ruling stated:

> The unlawful military intervention by Uganda was of such magnitude and duration that the Court considers it to be a grave violation of the prohibition of the use of force …. [Uganda is] internationally responsible for violations of international human rights law and international humanitarian law ….

Although the Court did not have credible evidence that looting of natural resources in Ituri Province was a government or military plot, it concluded that the government could be held responsible

for such acts committed by the troops. (*Uganda Violated International Law by Occupying Eastern Dr of Congo – UN Court*, Dec. 19, 2005, from UNNews@un.org.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

WORLD HEALTH ORGANIZATION – Cancer Prevention and Control

The fifty-eighth World Health Assembly adopted a resolution on cancer prevention and control (May 25, 2005, WHA58.22, *available at* http://www.who.int) that urges member states to develop national cancer programs and recommends that these include increased prevention measures, such as early detection and screening, as well as improved treatment and palliative care. The resolution addresses developing and developed countries and refers to increased cancer risk factors such as tobacco use, inadequate diet, lack of physical activity, infections, and carcinogens.

The Assembly also resolved that an advisory committee to the Director-General begin work on a WHO cancer control strategy, to be developed in cooperation with the International Agency for Research on Cancer, the World Health Organization's cancer research agency. The strategy on cancer prevention is one of the efforts resulting from resolutions WHA51.18 and WHA53.17 on the prevention and control of non-communicable diseases. The cancer program is to be linked to the World Health Organization's Global Strategy on Diet, Physical Activity and Health (WHA56.1) and the Resolution on Tobacco Control (WHA 56.1).
(Edith Palmer, 7-9860, epal@loc.gov)

WORLD TRADE ORGANIZATION -- Farm Exports Deal

On December 18, 2005, at the Sixth World Trade Organization (WTO) Ministerial Conference in Hong Kong, ministers from 149 states saved long-running global trade talks from collapse with an interim deal to end farm export subsidies by 2013 and open up markets in wealthier countries to the world's poorest nations. The timeline was an issue left unresolved as the WTO negotiations headed into the last day. The European Union had suggested 2013 as a possible date to end the subsidies, but Brazil, the United States, and other countries were pushing for 2010. The agreement finally came after six round-the-clock days of fractious talks among the ministers, which took place amid the often violent anti-globalization protests that were going on outside the forum.

While the draft, which appears to be a compromise, called for subsidies to be progressively ceased, ministers said it would keep alive plans for the wider, final pact freeing up global trade (which would conclude the Doha round of talks that began in 2001), that could boost the world economy and lift millions out of poverty. In addition, the final draft proposes ending all export subsidies on cotton by 2006, seen as a win for West African nations, which viewed the subsidies as unfair. Additionally, there is more detail on duty-free, quota-free market access for the least-developed countries. Under the agreement, the access to the wealthier nations' markets would be for ninety-seven percent of all goods from the poorest nations by 2008. The agreement proposes an April 30, 2006, deadline for the agreement to be finished and a full draft deal formed. (World Trade Organization Ministerial Declaration, *at* http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm; *WTO Negotiators Agree on Farm Subsidies*, ASSOCIATED PRESS, Dec. 18, 2005, *at* http://www.washingtonpost.com/wp-dyn/content/article/2005/12/18/AR2005121800925.html.)
(Karla Walker, 7-4332, kdwa@loc.gov)

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

New Developments on Transfer to the United States of Personal Information Concerning Air Passengers

Pursuant to the U.S. legislation requiring airlines carrying passengers to and from the United States to give American authorities access to the personal data of passengers, the European Commission began negotiations with the United States in order to ensure that such a procedure would not violate EU rules on privacy and protection of personal data. On May 14, 2004, the Commission adopted a decision stating that the U. S. Bureau of Customs and Border Protection met the adequacy standards for protection of personal data to be transferred from the Community. Following this decision, on May 17, 2004, the Council adopted a decision and approved the agreement between the EU and the United States on the transfer of data by airlines established in the EU. Meanwhile, the European Parliament requested that the Court of Justice annul the decisions issued by both institutions.

On November 22, 2005, the Advocate General of the Court, whose opinions are not binding but are very influential, stated that the Court should annul both decisions. With regard to the Commission's decision, the Advocate held that the Privacy Directive does not cover processing of personal data for public security reasons or the activities of the state in the criminal field. Consequently, the Commission acted without legal authority in adopting a decision on the level of security accorded by the U.S. Bureau of Customs and Border Protection to personal data transferred from the EU. With regard to the Council's decision that approved the agreement, the Advocate General held that the agreement, whose main objectives are the fight against terrorism and protection of personal data, is grounded on the wrong legal basis. He therefore concluded that the decision also should be annulled. (Press Release, CJE/05/98, Advocate General Leger Proposes Annulment of the Commission and Council Decisions on Transfer to the American Authorities of Personal Information Concerning Air Passengers (Nov. 22, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=CJE/05/98&format=HTML&aged=0&language=EN&guiLanguage=en.)

Draft Regulation on Child Support Obligations

The existing European Community rules on jurisdiction, recognition, and enforcement of judgments do not provide an adequate legal framework concerning claims for child support, because such rules are not enforced uniformly among EU Members and too many formalities are imposed in connection with obtaining an enforcement order. A recent proposal on the subject contains measures that will make it easier for EU citizens to obtain and enforce a judgment in all Member States. It explicitly provides that all support judgments will automatically be enforceable and thus will eliminate the intermediate measures that until now were needed in order to enforce a judgment in another Member State. There are also provisions that govern cooperation and exchange of information between authorities. The proposal will harmonize the applicable law but not the substantive law, which will remain the individual Member's prerogative. (Press Release, MEMO/05/484, Maintenance Obligations (Dec. 15, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/484&format=HTML&aged=0&language=EN&guiLanguage=en.)

European Court of Justice and Recalcitrant Member States: Financial Penalties

A new communication from the European Commission clarifies the policy the Commission follows when it asks the European Court of Justice (ECJ) to impose a periodic penalty judgment and a lump sum fine when a Member fails to comply with the Court's judgment. In 2004, based on the Commission's initiative, the Court issued 144 judgments in which it held that EU Members had failed to comply with its judgments. Pursuant to the EC Treaty, when the Commission brings a case to the Court, it has the right to specify the amount of the lump sum or penalty payment to be paid by the Member State. However, the Court of Justice, in a judgment issued on July 12, 2005 (Case C-304/02, *Commission v. French Republic*), for the first time imposed the obligation on a Member State to pay both a periodic penalty payment and a lump sum fine due to serious and persistent failure to comply with Community law. The Court noted that the imposition of a periodic penalty payment serves to induce a Member State to discontinue the breach of obligations. On the other hand, the imposition of a lump sum fine is based on the fact that the breach has persisted for a long time to the detriment of public and private interests. Consequently, the ECJ held that it is possible to impose both at the same time, "in particular where the breach of Community law obligations has both continued for a long period and is inclined to persist." (Press Release, MEMO/05/482, Financial Penalties for Member States who Fail to Comply with Judgments of the European Court of Justice: European Commission Clarifies Rules (Dec. 14, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/482&format=HTML&aged=0&language=EN&guiLanguage=en.)

Improved Rules on Access to Files in Merger and Antitrust Procedures

In an effort to increase transparency in competition procedures, the European Commission recently updated its rules for access to Commission files by parties involved in merger and antitrust cases. The new provisions elucidate the extent and the exercise of the right of access to the file. They are also more efficient, since access to the file can be obtained either electronically or on paper. (Press Release, IP/05/1581, Competition: Commission improves Rules for Access to the File in Merger and Antitrust Procedures (Dec. 13, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1581&format=HTML&aged=0&language=EN&guiLanguage=en.)

Update of the 1989 Directive on TV Without Frontiers

On December 13, 2005, the European Commission introduced a new, modernized directive governing digital era TV and TV-like services. The main objective of the draft directive is to alleviate the regulatory burden on providers of TV and TV-like services. It also includes new provisions on the protection of minors, against incitement to racial hated, and against secret advertising. The Information Society and Media Commissioner, Vivian Reding, stated, "the new rules should open up multimedia opportunities, boosting competition and consumer choice, while promoting public interest objectives such as protection of minors and cultural diversity." (Press Release, IP/05/1573, TV Without Frontiers: Commission Proposes Modernized Rules for Digital Era TV and TV-Like Services (Dec. 13, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1573&format=HTML&aged=0&language=EN&guiLanguage=en.)

Declaration Issued by the Presidency on the 1000th Execution in the United States

The Presidency of the Council of the European Union adopted a Declaration on the occasion of the execution that took place in North Carolina on December 2, 2005. That execution was the 1000th carried out in the United States since the re-institution of the death penalty in that country in 1976. The

Declaration reiterated the Union's opposition to the death penalty in all cases and called for its universal abolition. The EU considers the death penalty a cruel and inhuman punishment that does not act as a deterrent. The document also welcomed the rulings of the U.S. Supreme Court in June 2002 and March 2005 that declared the execution of persons with mental retardation and the execution of juveniles to be unconstitutional. The Declaration also noted with regret the withdrawal of the United States from the Optional Protocol of the Vienna Convention on Consular Relations (VCCR), which provides consular assistance in death penalty cases, and urged the United States to re-adhere to the Protocol. (Press Release, PESC/05/137, Declaration by the Presidency on Behalf of the European Union on the 1000th Execution in the US (Dec. 2, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=PESC/05/137&format=HTML&aged=0&language=EN&guiLanguage=en.)

Adoption of Compulsory Licensing Regulation on Export of Patented Medicines to Poor Countries

Adoption by the European Parliament of a regulation on compulsory licensing for export of patented medicines to countries in need means that pharmaceutical companies in the EU can apply for a license to manufacture, pharmaceutical products without the authorization of the patent holder, for export to poor countries that are in dire need of medicines. The regulation does not restrict the types of medications produced, as long as they are intended to assist those nations in tackling their public health crises. The provisions of the regulation, which are consistent with the World Trade Organization General Council Decision of August 2003 that allows signatory states to impose compulsory licenses on pharmaceutical companies in order to benefit developing countries, will enter into force twenty days following its publication in the *Official Journal*. (Press Release, IP/05/1523, Access to Medicines: Commission Welcomes Agreement on Compulsory Licensing for Export of Patented Medicine to Countries in Need (Dec. 1, 2005), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/1523&format=HTML&aged=0&language=EN&guiLanguage=en.)

JAPAN AND THE RENUNCIATION OF WAR: PROPOSED AMENDMENT TO THE CONSTITUTION

Prepared by Sayuri Umeda, Foreign Law Specialist, Eastern Law Division

Executive Summary

Japan's post-World War II Constitution was originally drafted in the English language by foreigners, officers of the General Headquarters of the Supreme Commander of the Allied Forces. It was not amended even after Japan fully recovered sovereignty. The focus of efforts to amend the Constitution has been on its article 9, which renounces war. The ruling party, the Liberal Democratic Party, plans to bring a Constitutional amendment proposal to the Diet within the next few years.

I. Japan's Post-Second World War Constitution

The current Constitution of Japan was promulgated on November 3, 1946, and came into effect on May 3, 1947. It was enacted under unusual circumstances. It was originally drafted in the English language by foreigners, mainly Americans, while Japan was under occupation. The Constitution was not legislated at the Japanese people's initiative.

After the Second World War, the Allied Powers occupied Japan, which accepted the terms of the Potsdam Declaration upon its surrender to the Allies in August 1945.[1] In September 1945, General Douglas MacArthur, the Supreme Commander for the Allied Powers (SCAP), urged the Japanese Government to amend the Imperial Constitution of 1889 (known as the Meiji Constitution).[2] In October 1945, the new Prime Minister, Kijūrō Shidehara, appointed Dr. Jōji Matsumoto as the chairman of the Constitution Research Committee (hereinafter "Matsumoto committee").[3] Although the Matsumoto committee kept its arguments and two drafts secret even from the General Headquarters of SCAP (GHQ), one of the major newspapers in Japan, *Mainichi*, scooped the story and published one of the tentative drafts on February 1, 1946.[4] The scooped draft was viewed by SCAP as very unsatisfactory under the terms of the Potsdam Declaration.[5] It still retained the basic framework of the Meiji Constitution. General MacArthur directed his staff to draft a new Japanese constitution on February 3, 1946.[6]

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[1] Potsdam Declaration (July 26, 1945), East Asian Studies Documents, UCLA Asia Institute, http://www.isop.ucla.edu/eas/documents/potsdam.htm. The Potsdam Declaration was issued on July 26, 1945, by Harry S. Truman, Winston Churchill, and Chiang Kai-Shek, outlining the terms of surrender for Japan.

[2] Supreme Commander for the Allied Powers, Government Section, Political Reorientation of Japan 91 (1968).

[3] Kenzo Takayanagi et al., II Nihon-koku kenpō seitei no katei [Process of Enactment of Japanese Constitution] 13 (1972).

[4] *Id*. at 23.

[5] Supreme Commander for the Allied Powers, *supra* note 2, at 99-101.

[6] *Id.* at 102.

On February 13, 1946, the draft that the Japanese Government submitted was simply rejected, and the GHQ draft was handed over to the Japanese for consideration.[7] After some negotiation and discussion, on February 22, 1946, Matsumoto, then Minister of State, started to draft a constitution based on the GHQ draft.[8] Although GHQ agreed to the translation of the final draft being submitted to it by March 11, 1946, it demanded that Matsumoto's draft (the "March second draft"), which had not been discussed in the Cabinet and had not been translated, be provided to GHQ by March 4.[9] Most of the changes to the GHQ draft made by Matsumoto were reversed by GHQ by the next day, March 5, 1946. Therefore, this draft (the "March fifth draft"), which GHQ approved, was very close to the original GHQ draft.[10] GHQ strongly pressured the Cabinet to adopt the March fifth draft as an autonomously decided one. Thus, the Cabinet did so.[11] After some adjustments in Japanese language,[12] the draft was finalized on April 17, 1946.

No matter who actually drafted the Constitution, the Diet discussed it, changed some parts, and passed it. Still, some call the Constitution the "forced-to-adopt (*oshitsuke*)" Constitution,[13] and there have been people who think that Japan must draft its own constitution. After the Allied Forces' occupation ended, there was a movement to review and amend the Constitution without foreign interference.[14] The Cabinet established the *Kenpo chosakai* (Constitution Research Committee) in 1956.[15] *Kenpo chosakai* examined the process of enactment of the Constitution, how the Constitution is actually applied, and problems with the Constitution. *Kenpo chosakai* released its report in July 1964. It provided information and views regarding the Constitution. However, after the report was released, no bill to amend the Constitution was submitted to the Diet. From the late 1950s to the 1980s, public opinion polls showed that a clear majority of the public was against amendment of the Constitution.[16] There was thus no chance to amend the Constitution at that time.

II. Article 9 (Renunciation of War Provision)

Among other important issues, article 9 has been the center of attention whenever Japanese have thought about the amendment of the Constitution. Paragraph 1 of article 9 of the Constitution

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[7] TAKAYANAGI, *supra* note 3, at 55.

[8] *Id.* at 77-100.

[9] *Id*. at 101.

[10] *Id*. at 102.

[11] *Id*. at 102; 3 Kenpō seitei keika [Legislative Process of the Constitution] 255-256 (Jun Eto et al. eds., 1982).

[12] The English version was kept intact. Nishi Osamu, Nihonkoku kenpō no tanjo wo kensho suru [Examining the Birth of the Constitution of Japan] 135 (1986).

[13] Takao Sasaki, *Oshitsuke kenpō ron* [*Forced-to-Adopt Constitution Theory]*, *in* GENDAI HŌRITSU HYAKKA JITEN [MODERN LAW ENCYCLOPEDIA] (2000).

[14] Kenpō chōsakai, Kenpō chōsakai hōkokusho [Constitution Research Committee Report] 1-8 (July 1964).

[15] *Id*. at 10.

[16] Susumu Wada, Kenpo kaisei zenin ishiki zodai to watashitachi no kadai [Increase of People's Acceptance of Amendment of the Constitution and Our Task], 473 KOKKO RORENCHOSA JIHO (May 2002), http://www.jca.apc.org/~kenpoweb/articles/wada041202b.html.

renounces war. Paragraph 2 of the same article prohibits maintenance of war potential. Interpretation of this article has varied, broadly, from absolute pacifism to admission of the need for utilization of a collective self-defense right. The Cabinet's current official interpretation of the Constitution is as follows. The Constitution does not deny the self-defense right; Japan renounced war, but did not renounce the right to struggle in order to defend itself; establishment of Self Defense Forces (SDF) is not against the Constitution, since the SDF's mission is self defense and its capability is limited to a necessary and adequate level for self defense.[17] The government defines "war potential" as forces much greater than those forces minimally required for self-defense.[18] Therefore, the establishment of SDF is not "war" potential, but "self-defense" potential. This is the reason why Japan uses the names Air SDF, Maritime SDF, and Ground SDF, instead of air, sea, and land forces (*gun*). This government interpretation of article 9 did not emerge overnight. It changed as the international situation surrounding Japan changed and as U.S. policy toward Japan changed.

On the same day Japan signed the instrument of surrender, September 2, 1945, General MacArthur issued General Order No. 1, which ordered all Japanese military officers to disarm completely.[19] In 1946, when Japan did not have any military, not even self-defense forces, the Constitution was enacted. Therefore, article 9 could fit in comfortably with reality. However, the communist threat over Far East Asia changed the situation regarding the security of Japan. After the Korean War broke out in 1950, General MacArthur instructed the Japanese Government to establish a National Police Reserve of 75,000 men and add 8,000 men to the Japanese Coast Guard.[20] By 1950, the United States wanted Japan to rearm and "assume at least part of the burden of its own defense."[21] However, the Japanese Government was reluctant to rearm Japan.[22] During the negotiations on a United States – Japan treaty of peace, Japan was pressured by the United States to rearm once the treaty was concluded.[23] Due to a strong desire to terminate the occupation, the Japanese Government finally agreed that "with the coming into effect of the proposed peace and security treaties it would be necessary for Japan to undertake a program of rearmament."[24] The treaty of peace with Japan was

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[17] Director General of the Defense Agency Seiichi Ohmura's answer before the Budget Committee of the House of Representatives, YOSAN IIN KAIGIROKU [Budget Committee Minutes, House of Representatives], 21st Diet Session, No. 2 (Dec. 22, 1954).

[18] Ichiro Yoshikuni's answer before the Budget Committee of the House of Councilors on November 13, 1972, SANGIIN YOSAN IIN KAIGIROKU [BUDGET COMMITTEE OF HOUSE OF COUNCILORS MINUTES], 70th Diet Session, No. 5 (Nov. 13, 1972).

[19] KENPŌ CHŌSAKAI JIMUKYOKU, KENPŌ UNYŌ NO JISSAI NI TUITE NO DAISAN IINKAI HŌKOKUSHO [Number Three Committee Report Regarding Administration of the Constitution] 117 (1961).

[20] GENDAI HŌSEI SHIRYŌ HENSANKAI, SENGO SENRYŌKA HŌREISHU [Post-War Laws and Regulations Under Occupation] 938 (1984).

[21] *The Deputy to the Consultant (Allison) to the United States Political Advisor to SCAP (Sebald)* (Jan. 19, 1951) *in* DEPARTMENT OF STATE, VI FOREIGN RELATIONS OF THE UNITED STATES, 1951, 807 (1977).

[22] Undated Memorandum by the Prime Minister of Japan (Yoshida) (Tokyo – 1951,) *id*. at 833-4.

[23] *See* Memorandum of Conversation by the Deputy to the Consultant (Allison) (Jan. 29, 1951) *in* DEPARTMENT OF STATE, *supra* note 21, at 829.

[24] Editorial Note, in id. at 849. See Shoichi Kozeki, Amerika ni yoru gunkaku yokyu no rekishiteki keiken [Historical Experience of Demand for Armament Expansion by the United States] in HOGAKU SEMINA ZOKAN, SOGO TOKUSHU SIRIZU 15, NIHON NO BOEI TO KENPŌ [DEFENSE OF JAPAN AND CONSTITUTION] 170, 171 (1981).

signed in San Francisco on September 8, 1951, by Japan, the United States, and forty-seven other nations.[25]

The Security Treaty between the United States and Japan was signed later on the same day.[26] In the Security Treaty, the United States agreed to maintain its armed forces in and about Japan so as to deter an armed attack against Japan, "in the expectation, however, that Japan will itself increasingly assume responsibility for its own defense against direct and indirect aggression…."[27] To meet this U.S. expectation, the Japanese Government increased Japan's defense capability.[28] In 1952, the Security Agency (*hoanchō*) was established. The National Police Reserve was then reorganized as the National Safety Force (*hoantai*). The government explained to the Diet that both forces were still police-like in nature.[29]

When the United States and Japan Mutual Defense Assistance Agreement (MSA Agreement) was signed on March 8, 1954, Japan was obliged to strengthen its defense capacities. In 1954, a bill to reorganize the Security Forces in order to establish the SDF and a bill to establish a Defense Agency were discussed in the Diet. During the discussion in the Diet, the ruling party for the first time stated that Japan had the right to maintain some sort of force to defend herself.[30] After the bills were passed by the Diet, the Security Agency was reorganized as the Self-Defense Agency (*bōeichō*).[31] The Security Forces were also reorganized as the SDF.[32] Although the government maintains the SDF, Japan's self-defense right must be limited because of the constitutional restriction. The government has stated that there are three requirements to use the self-defense right: (1) There is a present and unjust threat of invasion of Japan; (2) No other appropriate measures exist to defend Japan (3) Use of force to defend Japan is minimally necessary.[33] Japan thus has adopted an exclusively defense-oriented policy. The Cabinet has changed its members frequently, but it has not changed these interpretations of article 9.

The view of the majority of scholars is that although Japan does not renounce a right to self-defense under the first paragraph of article 9, the denial of the right to belligerency and to maintain war

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[25] Treaty of Peace with Japan, Sept. 8, 1951, 3 UST 3169, TIAS 2490 (1951). The Treaty is available at various websites, for example, UCLA Center for East Asian Studies, http://www.isop.ucla.edu/eas/documents/peace1951.htm.

[26] Security Treaty Between the United States and Japan, U.S.-Japan, Sept. 8, 1951, 3 UST 3329, TIAS 2491. The Treaty is available at various websites, for example, the Avalon Project at Yale Law School, http://www.yale.edu/lawweb/avalon/diplomacy/japan/japan001.htm#b1.

[27] *Id*. preamble, ¶ 5.

[28] KENPŌ CHŌSAKAI JIMUKYOKU, Third Committee, *supra* note 19, at 122.

[29] Tokutaro Kimura's statement at House of Representatives, SHUGIIN KAIGIROKU [HOUSE OF REPRESENTATIVES PLENARY SESSION MINUTES], 15TH Diet Session, No. 24 (Feb. 2, 1953).

[30] *See* SHUGIIN KAIGIROKU [House of Representatives Plenary Session Minutes], 19th Diet Session, No. 45 (May 7, 1954).

[31] B◠eichō secchihō [Self Defense Agency Establishment Law], Law No. 164 of 1954.

[32] Jieitaihō [Self Defense Forces Law], Law No. 165 of 1954.

[33] Director General of CLB Tatsuo Satō's answer before Cabinet Committee of the House of Representatives, NAIKAKU IIN KAIGIROKU [CABINET COMMITTEE MINUTES, HOUSE OF REPRESENTATIVES], 19th Diet Session, No. 20 (Apr. 6, 1954).

potential under the second paragraph denies Japan's right to self-defense through either a standing military or quasi-military force.[34] This was also the view the government adopted during its legislative debates in 1946. The Supreme Court has not yet decided directly whether the SDF are constitutional, even though many lawsuits have been filed regarding the SDF and the Constitution. Article 81 of the Constitution states that the Supreme Court has the "power to determine the constitutionality of any law, order, regulation or official act." Therefore, it is legally possible for the Supreme Court to examine the legislation relating to article 9. However, it seems that the Supreme Court is determined not to make a judgment on article 9. Japanese courts have established the so-called "judicial negativism" custom, influenced by the Ashwander rules,[35] set forth in Justice Brandeis' concurring opinion in Ashwander v. TVA in the United States.[36]

III. Collective Defense and Recent Legislation

As Japan and the United States cooperate in the area of security, Japan's ability to participate in a collective defense system is becoming a more important issue. Collective defense had not been discussed when the Japanese Constitution was enacted, but it was debated when the Peace Treaty and the Japan-United States Security Agreement were submitted to the Diet for ratification.[37] The Peace Treaty admitted Japan's right of collective self-defense, as referred to in article 51 of the Charter of the United Nations.[38] During the discussion of the Peace Treaty and the Security Agreement in the Diet, the government officials stated that Japan had a collective defense right, but decided not to include war potential under article 9 of the Constitution.[39] In another meeting, the nature of United States-Japan joint defense activities during an attack on a U.S. base in Japan was questioned, and the Cabinet explained that the U.S. activities could be labeled as a kind of act of collective self-defense, while Japan's defense activities could be explained as Japan's individual right to self defense, because Japanese territory would be under attack.[40] As such, although everything Japan does for defense purposes has been explained by the individual self-defense right, the government has kept its basic position: Japan possesses the collective self-defense right, but cannot act based on it because of the constitutional restriction.[41] It appears that the individual self-defense right that Japan has does not have concrete boundaries. Japan has enacted a lot of legislation since 1992 that would seem to indicate that the country has been acting based on the right to collective defense. Since the Gulf War in 1990, the

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[34] Nobuyoshi Ashibe, Kenpōgaku I [Constitution Study] 259 & 266 (1992).

[35] Miyoko Tsujimura, Kenpō [Constitution] 511-2 (2000).

[36] 297 U.S. 288, 346 (1936). The seven "Ashwander rules" cover when a case is qualified to be heard by the Supreme Court.

[37] Kiyofuku Chūma, Saigunbi no seijigaku [Politics on Rearmament] 129-131 (1985).

[38] Peace Treaty with Japan, *supra* note 25, art. 5 (c).

[39] Kumao Nishimura's answer before House of Councilors, PEACE TREATY AND JAPAN-US SECURITY AGREEMENT SPECIAL COMMITTEE MINUTES, HOUSE OF COUNCILORS, 12th Diet Session, No. 12 (Nov. 7, 1951).

[40] Shūzō Hayashi's statement, FOREIGN AFFAIRS COMMITTEE MINUTES, HOUSE OF COUNCILORS, No. 32nd Diet Session, Hei No. 3, at 15 (Sept. 2, 1959).

[41] The government clarified its opinion in writing *in* Inaba Seiichi giin ni taisuru tobensho [Written Answer from Prime Minister Zenko Suzuki to House Member Seiichi Inaba] (May 29, 1981).

security policy climate in Japan has changed more rapidly.[42] There was a bitter feeling that, even though Japan provided huge amounts of money to the war effort, the United States and Kuwait did not appreciate it very much.[43] Conservatives gained the support of public opinion by emphasizing Japan's international contribution and the importance of the U.N. decisions.[44] Furthermore, the suspicion that North Korea possessed nuclear weapons and North Korea's missile test over mainland Japan in 1993 drove the Japanese to seek concrete security measures against North Korea.[45]

In 1992, the Law Concerning Cooperation in United Nations Peace-Keeping Operations and Other Operations (PKO Law) was enacted.[46] The Law enabled the government to dispatch SDF troops overseas. The SDF may conduct only those activities in which use of force is not expected, e.g., medical care and delivery of support goods in non-combat areas and in non-combat (post-conflict) roles, e.g., constructing roads and helping run refugee camps and hospitals. In mid-1990, the United States and Japan had reviewed the Japan-United States security agreement and the guidelines in order to strengthen them. On September 23, 1997, the Japan-U.S. Security Consultative Committee approved the new "Guidelines for U.S.-Japan Defense Cooperation."[47] To implement Part V of the new Guidelines (Cooperation in Situations in Areas Surrounding Japan that Will Have an Important Influence on Japan's Peace and Security), the Law Concerning Measures in Order to Secure the Peace and Safety of Japan in Situations in Areas Surrounding Japan (hereinafter "Situations in Areas Surrounding Japan Law") was enacted in 1999.[48] The Law allows the SDF to support operations for the U.S. forces in the "rear area."[49] The "rear area" is defined as Japan's territory and the public sea around Japan, where no act of hostility is and will not be throughout the term in which the operations are expected, and the air space above that territory.[50]

After the terrorist attacks on September 11, 2001, in the United States, Japan enacted the Anti-Terrorism Special Measures Law.[51] Under the law, the SDF were allowed to operate on foreign soil

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[42] Motofumi Asai, Shudanteki jieiken to nihonkoku kenpō [The Collective Defense Right and the Constitution of Japan] 184-90 (2002).

[43] Akira Nakamura, Sengo seiji ni yureta kenpō 9 jo [Article 9 of the Constitution Trembled by Post-War Politics] 325 (2d ed. 2001).

[44] ASAI, *supra* note 42, at 187.

[45] *Id*. at 191.

[46] Kokusai rengo heiwa iji katsudo to ni kansuru kyoryoku ni kansuru horitsu (PKO Law), Law No. 79 of 1992, as amended.

[47] U.S.-Japan Security Consultative Committee, Completion of the Review of the Guidelines for U.S.-Japan Defense Cooperation (Sept. 23, 1997), http://www.jda.go.jp/e/policy/f_work/sisin4_.htm.

[48] Shen jitai ni saishite wagakuni no heiwa oyobi anzen o kakuho suru tame no sochi ni kansuru horitsu [Situations in Areas Surrounding Japan Law], Law No. 60 of 1999.

[49] *Id*. art. 1, ¶ 1.

[50] *Id*. art. 3, ¶ 1, item 3.

[51] Heisei jsan nen ku gatsu jichi nichi no amerika gasshkoku ni oite hassei shita terorisuro ni yoru kogeki to ni taio shite okonawareru kokusai rengo kensho no mokuteki tassei no tame no shogaikoku no katsudo ni taishite wagakuni ga jisshi suru sochi oyobi kanren suru kokusai rengo ketsugi to ni motoduku jindo teki sochi ni kansuru tokubetsu sochi ho [Special Measures Law Concerning Measures Taken by Japan in Support of the Activities of Foreign Countries Aiming to Achieve the Purposes of the Charter of the United Nations in Response to the Terrorist Attacks Which Took Place on September 11, 2001 in

for the first time. The SDF troops are authorized to provide non-combat and humanitarian support,[52] including the transport of weapons and ammunition, to the U.S.-led coalition of forces in the Indian Ocean. After the United States attacked Iraq in 2003, the Iraq Special Measures Law was enacted, [53] which enabled Japan to send SDF troops to an occupied country where small-scale fighting continues. The Law calls for assistance in two areas: humanitarian relief for the Iraqi people and logistical support for security-maintenance efforts by U.S.-led coalition forces.[54] The SDF troops can be dispatched to an area where there is no "act of hostility" and no such act is expected during the planned activities.[55] "Act of hostility" means acts of killing or injuring persons or destroying buildings and material in the course of an international armed conflict.[56] Although many questioned whether there is such an area where there is no "act of hostility" in Iraq, the Cabinet has insisted that Samawah has been such place. There are restrictions on the use of weapons. Unless it is a case of self-defense under the Japanese Criminal Code, SDF members must not hurt other people.[57] Up to 600 ground SDF troops have been stationed in Samawah in southern Iraq since early 2004 to repair schools and roads and provide clean water and medical aid. About 200 air SDF troops stationed in Kuwait are transporting goods and U.S. military personnel to and from Iraq.[58]

IV. Other Issues for Constitution Amendment

There are other issues that could be considered for amendment of the Constitution. More basic rights could be added or clarified in the Constitution. Based on major political parties' drafts or declarations,[59] clauses on the right to the environment, the right to access information, and elimination of all kinds of discrimination may be added to the Constitution. In the field of government organization, clarification and enhancement of the power of the prime minister and enhancement of local autonomy have been discussed. The emperor system will remain intact.

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the United States of America as well as Concerning Humanitarian Measures Based on the Relevant Resolutions of the United Nations] (hereinafter Anti-Terrorism Special Measures Law), Law No. 113 of 2001. Summary in English is available at Embassy of Japan, *Diet of Japan Passed the Anti-Terrorism Special Measures Law*, Oct. 29, 2001, *at* http://www.embjapan.org/english/html/pressreleases/2001/102901.htm.

[52] Anti-Terrorism Special Measures Law, as amended, arts. 3, 4, 6 & 7.

[53] Iraku ni okeru jindo fukko shien katsudo oyobi anzan kakuho shien katsudo no jisshi ni kansuru tokubetsu sochi ho [Special Measures Law Concerning Humanitarian Relief Support Activities and Security Maintenance Support Activities in Iraq] (Iraq Special Measures Law), Law No. 137 of 2003.

[54] *Id*. art. 1.

[55] *Id*. art. 2, ¶ 3.

[56] *Id*.

[57] *Id*. art. 17, ¶ 4.

[58] *Japan to Pull Troops from Iraq by Dec. 14,* JAPAN TIMES, May 5, 2005, http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20050505a1.htm.

[59] *See* LIBERAL DEMOCRATIC PARTY (LDP), SHIN KENPŌ SŌAN [NEW DRAFT CONSTITUTION] (Nov. 22, 2005), http://www.jimin.jp/jimin/shin_kenpou/shiryou/pdf/051122_a.pdf; MINSHUTŌ [Democratic Party], KENPŌ TEIGEN [PLAN TOWARD NEW CONSTITUTION] (Oct. 31, 2005), http://www.dpj.or.jp/faxnews/pdf/20051031181802.pdf; KŌMEITŌ, KENPŌ KINENBI APĪRU [CONSTITUTION DAY APPEAL] (May 3, 2005), http://www.komei.or.jp/news/daily/2005/0503_02.html.

V. Efforts to Amend the Constitution

As the world political and security issues surrounding Japan have changed, the Japanese people's views have also changed. Now, public sentiment is more favorable to amendment of the Constitution. Although the result of public opinion polls varies depending on who conducts the poll, all major Japanese newspapers' polls show that more people have been for the amendment of the Constitution than against it since 1993.[60] Many Japanese people think the Constitution needs to be updated to keep up with the changes in the world. However, resistance to changing article 9 is still significantly strong.[61] The biggest business organization in Japan, *Keidanren* (Japan Business Federation), released a report dated January 18, 2005, which states that article 9, which prohibited having war potential, does not recognize reality.[62] It also states that Japan must have a clear constitutional basis for SDF. The report proposes that the Constitution clarify that Japan has the collective defense right and may take actions based on it.[63]

Lead by the initiative of the major ruling party, the Liberal Democratic Party (LDP), the two houses of the Diet each established a *Kenpō chōsakai* (Constitution Research Committee) on January 20, 2000.[64] The Committees researched various aspects of the Constitution and submitted reports to the Diet. The Committees were not supposed to prepare any bills to amend the Constitution,[65] because the House Operation Committee Directors' meeting decided so in July 1999. Komeitō, which is one of the ruling parties, did not want a bill to amend the Constitution to be submitted to the Diet soon.[66] Debates at the Committee meetings were not heated and the attendance rate was low,[67] the final report of the House of Representatives' Constitution Research Committee was submitted to the House on April 15, 2005.[68] The final report of the House of Councilors Committee was submitted to that House on April

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[60] Susumu Wada, *Shinbunsha no seron chosa o yomu* [*Reading Public Opinion Polls by Newspapers*], KENPO MONDAI WEB, Oct. 30, 2000, http://www.jca.apc.org/~kenpoweb/articles/wada103000.html.

[61] Osamu Nishi, *Kenpo kaisei rongi no genjo to kongo no kadai* [*Current Situation of Discussion on Amendment of the Constitution and Next Tasks*], FOREIGN PRESS CENTER JAPAN, Mar. 25, 2005, http://www.fpcj.jp/j/mres/briefing report/bfr_197.html.

[62] Keidanren, Waga kuni no kihon mondai o kangaeru [Thinking About Our Country's Basic Issues] (Jan. 18, 2005), http://www.keidanren.or.jp/japanese/policy/2005/002/honbun.html.

[63] *Id*. ch. IV, 2(2).

[64] House of Representatives, *Shgiin no secchi no keii* [Circumstances of Establishment of Constitution Research Committee], http://www.shugiin.go.jp/index.nsf/html/index_kenpou.htm.

[65] *Id.*

[66] Katsumi Kawakami, Kenpo chosakai: Jimin nado 5 to ni kuwae Shaminto mo giron ni sanka no hoshin [Constitution Research Committee: Social Democratic Party, in Addition to Five Parties Including LDP, Plans to Participate in the Discussion], MAINICHI NEWSPAPER, Jan. 8, 2000 (on file with author).

[67] KEN TAKADA, KAIKEN·GOKEN NANI GA MONDAI KA [WHAT IS THE PROBLEM OF AMENDING CONSTITUTION/KEEPING CONSTITUTION] 78-9 (2002); *"Kenpo no hakaba" to kashita Kenpo chosakai (sono 1)* [Constitution Research Committee Became a "Tomb of the Constitution" (part 1)], Kenpo shimin foramu, http://members.jcom.home.ne.jp/web-kenpou/paper/kaiken71.html (last visited on Jan. 10, 2005).

[68] HOUSE OF REPRESENTATIVES CONSTITUTION RESEARCH COMMITTEE, HOUSE OF REPRESENTATIVES CONSTITUTION RESEARCH COMMITTEE REPORT (Apr. 15, 2005), *available at* http://www.shugiin.go.jp/index.nsf/html/index_kenpou.htm.

20, 2005.[69] Regarding article 9, the House of Representatives Committee report stated that most members and witnesses said paragraph 1 of the article should be maintained.[70] However, regarding paragraph 2, opinions were divided over two issues: whether the Constitution must recognize SDF and whether Japan must take actions based on the collective defense right. The House of Councilors Committee report also showed different views.

Junichirō Koizumi, the leader of the LDP, became Japan's fifty-sixth Prime Minister on April 26, 2001.[71] In his first press conference as the Prime Minister, he stated that it is preferable to amend the Constitution to enable Japan to act based on the collective defense right.[72] The LDP completed the first draft of a new constitution and released it on November 22, 2005, the party's fiftieth anniversary.[73] The draft changes the title of chapter 2 from "Renunciation of War" to "Security."[74] The pacifism of the current article 9, paragraph 1, is kept. As a means of settling international disputes, Japan renounces war and the threat or use of force.[75] The current paragraph 2 is deleted, and a new article 9-2 clarifies the existence of the SDF and encourages Japan's participation in international peacekeeping activities.[76] The collective defense right is not explicitly written into the text, but is obviously included in the right of defense, according to the deputy secretary of the LDP Constitution Draft Committee.[77] However, Kōmeitō, another party in the ruling coalition, is opposing the use of the collective defense right and has not decided its position on other issues of article 9.[78]

The Constitution contains articles stipulating the procedure for its amendment. Article 96 provides that an amendment to the Constitution can only be made by a two-thirds affirmative vote in both houses of the Diet and with ratification by a majority of the electorate. A law to establish the procedure for the national referendum has not been enacted. There was no need for the legislation because no concrete proposal to amend the Constitution had been drafted until recently. In 2005, the ruling coalition and the major opposition party, the Democratic Party, agreed to enact such a law

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[69] HOUSE OF COUNCILORS, KENPŌ CHŌSA KAIGIROKU [CONSTITUTION RESEARCH COMMITTEE MINUTES], 162d Diet Session, No. 7 (Apr. 20, 2005), *available at* http://www.sangiin.go.jp/japanese/kenpou/houkokusyo/pdf/honhoukoku.pdf.

[70] House of Representatives Constitution Research Committee, *supra* note 68, at 301.

[71] *Koizumi Names New Cabinet*, JAPAN TIMES, Apr. 27, 2001, *at* http://www.japantimes.co.jp/cgi-bin/getarticle.pl5?nn20010427a1.htm.

[72] Koizumi naikaku soridaijin kisha kaiken [Prime Minister Koizumi Press Conference] (Apr. 27, 2001), http://www.kantei.go.jp/jp/koizumispeech/2001/0427kisyakaiken.html.

[73] LDP, *Konohi konotoki konoba kara* [*From This Day, This Moment, and This Place*], Nov. 22, 2005, *at* http://www.jimin.jp/jimin/daily/05_11/22/171122a.shtml.

[74] LDP, *supra* note 59.

[75] *Id*. art. 9.

[76] *Id*. art. 9-2.

[77] Jimintō ga shin kenpō sōan no jōbun-an kōhyō [New Draft Constitution Was Released by LDP], ASAHI SHINBUN, Aug. 1. 2005 (on file with author).

[78] New Kōmeitō, *Shūdanteki jieiken no kōshi mitomerubekidenai* [*We Should Not Admit Use of Collective Defense Right*], NEW KŌMEITŌ, Dec. 21, 2005, http://www.komei.or.jp/news/daily/2005/1221_04.html?kw=%B7%FB%CB%A1%B2%FE% C0%B5.

soon.[79] Under their initiative, a special committee for such legislation was established in September 2005 in the House of Representatives.[80]

VI. Conclusion

The LDP won the latest election and has a strong position in the Diet.[81] It is willing to amend the Constitution. The general public is also for the amendment of the Constitution. To maintain the Constitution's supremacy, the strong doubts about the government's interpretation of article 9 and the constitutionality of SDF must be removed. Although those who support the current article 9 do not want any attempts at amendment, it looks likely that, sooner or later, the Constitution, including article 9, will be amended.

[79] *Kokumin tohyo hoan, soki seiritsu mezasu* [National Referendum Bill, Early Enactment Sought], YOMIURI NEWSPAPER, Apr. 15, 2005 (on file with author).

[80] *Nihonkoku kenpō ni kansuru tokubetsu chōsa tokubetsu iinkai* [Special Research Committee Regarding Constitution of Japan], HOUSE OF REPRESENTATIVES, http://www.shugiin.go.jp/index.nsf/html/index_kenpou.htm (last visited Jan. 3, 2006).

[81] S*ōsenkyo* 2005, ASAHI.COM, http://www2.asahi.com/senkyo2005/, (last viewed Jan. 5, 2005).

THE SUCCESSION PROCESS IN KUWAIT: A BRIEF OVERVIEW OF THE RECENT CRISIS FROM A LEGAL PERSPECTIVE

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

Executive Summary

On January 15, 2005, the ruler of Kuwait, Sheikh Jaber al-Ahmad al-Sabah, died and his Heir Sheikh Saad al-Abdullah al-Sabah was announced as his successor. However, the health problems of the new ruler created a heated debate over his ability to exercise his constitutional powers to lead the country, and even his ability to take the constitutional oath before the Kuwaiti National Assembly. A majority of the members of the ruling family and some National Assembly members urged Sheikh Sabah, who currently serves as Prime Minister, to assume power instead, calling on the new Amir to retire. However, Sheikh Saad expressed his readiness to lead the country and to fulfill the constitutional requirements.

The Council of Ministers initiated constitutional procedures to replace Sheikh Saad for health reasons. The situation created debate over the succession process and the succession was thrown into confusion, constituting a challenge to the democratic process in Kuwait. This state of affairs could have compromised the political and economic future of the state and created instability in the Gulf region. The ruling family has successfully reached an agreement on the current succession challenge and the new Amir has agreed to abdicate his position. However, the National Assembly voted to remove the Amir, a historical step in the history of Kuwait's political life. Later, the Council of Ministers nominated Prime Minister Sheik Sabah as the new Amir. On January 29, 2006 Sheikh Sabah took the oath of the office as the new Amir of the state, ending an unprecedented leadership crisis in the history of Kuwait.

I. Historical Background

The State of Kuwait is a small oil-rich country located on the coast of the Persian Gulf. The State was created in the sixteenth century. In 1899, Kuwait became a British protectorate. On June 19, 1961, Kuwait became the first independent state among the Persian Gulf Arab states. Kuwait was invaded by Iraq (under Saddam Hussein) on August 2, 1990, but Iraq was forced to withdraw its troops from Kuwait on February 26, 1991, due to military intervention by a coalition of countries led by the United States.[1]

Kuwait is a hereditary State, ruled by succession from the descendants of Mubarak al-Sabah.[2] The head of state is called the Amir. According to the 1962 Constitution, the government system is

[1] *See* ABDUL REDA ASSIRI, THE GOVERNMENT AND POLITICS OF KUWAIT: PRINCIPLES AND PRACTICES 14-16, 19, (1996).

[2] *See* Constitution of the State of Kuwait, approved and promulgated on November. 11 1962, art. 4(1); Amirate Succession Law, Law No. 4 of January 30, 1964, art. 1. The Law was signed by the Crown Prince at that time, Sheikh Sabah al-Salem, while the Amir, Sheikh Abdullah Al-Salim, was in India. The Law was also signed by Sheikh Jaber al-Ahmad as the acting Prime Minister.

"democratic, under which sovereignty resides in the people, the source of all powers."[3] The Amir appoints the Prime Minister, who until recently was also the Crown Prince.[4] A council of ministers aids the Prime Minister in his task as head of government. The National Assembly, known as the *Majlis Al-Ummah*, consists of fifty members. Members are chosen in elections held every four years.[5] According to the Constitution, government ministers (now fifteen), are given automatic membership in the National Assembly.[6]

As an old tradition, the two main al-Sabah family branches, the Jabers and the Salem, share power. The previous Amir, Sheikh Jaber al-Ahmed al-Sabah, belonged to the Jaber branch. His successor, Sheikh Saad al-Abdullah al-Sabah, belongs to the Salem branch. The Prime Minister, Sheikh Sabah Al Ahmed Al Jaber, belongs to the Jaber branch. Succession arrangements are always discussed and settled by the ruling family. However, succession is a state matter that is regulated by the Constitution and the 1964 Amirate Succession Law that regulates the succession process.[7]

II. Transition of Power

Sheikh Jaber al-Ahmed al-Sabah, the Amir of Kuwait, died on January 15, 2005.[8] The Sheikh had been ill since suffering a brain hemorrhage five years previous.[9] Directly after Sheikh Jaber's death, the Kuwaiti Council of Ministers issued an official statement proclaiming the Crown Prince, Sheikh Saad al-Abdullah al-Sabah, then seventy-six years old, as the successor.[10] The Council of Ministers' declaration helped to dismiss fears of a succession crisis and there appeared to be a smooth transition of power.[11] Dr. Abdul-Rhida Asiri, the head of Kuwait University's political science department, expressed the view that political power will be distributed as follows:

> [T]here will be a "smooth transition" to Sheikh Saad, and the Prime Minister [Sheikh Sabah al-Ahmed al-Jaber] will be chosen Crown Prince and most probably keep his present job. "The de

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[3] *Id.* art. 6.

[4] *Id.* art. 56.

[5] *Id.* art.80.

[6] *Id.* art. 56.

[7] The Amirate Succession Law, *supra* note 2. *See also* Dr. Ahmad Al-Khateeb, *A Constitution Other Than the 1962 Constitution Is Governing Kuwait: A Lecture Given by Dr. Al-Khateeb on the Attempts to Destroy the Constitution on November 25, 2001, to the Association of Graduates*, AL-TALEAA NEWSPAPER, Dec.7, 2001, *at* http://local.taleea.com/archive/index.php?ISSUENO=1505.

[8] Designated Crown Prince and Prime Minister in 1965, Sheikh Jaber succeeded his uncle, Sheikh Sabah al-Salem al-Sabah, as Amir on December 31, 1977. *See* Diana Elias, *Sheik Jaber, Emir of Kuwait, Dies at 79,* ABC NEWS INTERNATIONAL, Jan. 15, 2006, *at* http://abcnews.go.com/International/wireStory?id=1507345.

[9] Sheikh Jaber had suffered several years of ill health following a minor stroke in 2001. *Id.*; *Country Profile: Kuwait,* BBC News, *at* http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/791053.stm (last visited Jan. 20, 2006).

[10] *See Kuwait Ruler Passes Away*, AL-JAZEERAH NET, Jan.15, 2006, *at* http://english.aljazeera.net/NR/exeres/C8E8568F-1BA7-499C-9700-0FB1629867BD.htm.

[11] *Smooth Constitutional Transition of Power*, AL-QABAS NEWSPAPER, Jan. 16, 2006, *at* http://www.alqabas.com.kw/index.php?browsedate=2006-01-16&imageField3.x=12&imageField3.y=23.

> facto ruler will be Sheikh Sabah," he told The Associated Press, and the family could make further leadership decisions after the mourning period.[12]

In light of the new Amir's ill health, Kuwaitis awaited the naming of the next Heir with the expectation that Sheikh Sabah al-Ahmed al-Jaber, the Prime Minister and half brother of the late Amir, would be the strongest candidate for this position.[13] According to article 4 of the 1962 Constitution and article 6 of the Amirate Succession Law of 1964:

> (2) The Heir Apparent shall be designated within one year, at the latest, from the date of accession of the Amir.
> (3) His designation shall be effected by an Amiri Order upon the nomination of the Amir and the approval of the National Assembly, which shall be signified by a majority vote of its members in a special sitting.
> (4) In case no designation is achieved in accordance with the foregoing procedure, the Amir shall nominate at least three of the descendants of the late Mubarak al-Sabah of whom the National Assembly shall pledge allegiance to one as Heir Apparent.[14]

In addition, concerns remained over the serious health problems of the state's new Amir, Sheikh Saad. The new Amir had colon surgery in 1997 and in 2000 he suffered a brain clot that required him to travel to the United States several times for treatment. These health problems kept him from appearing in public.[15] In recent public appearances, he has been in a wheelchair and has not spoken.[16] Sheikh Saad has been the Crown Prince since 1978. He also served as the Prime Minister from February 1978 until July 2003. However, he delegated his extensive authority to Sheikh Sabah for several years until 2003, when the positions of Crown Prince and Prime Minister were separated for the first time (breaking with a political tradition that Heirs also serve as heads of government),[17] and Sheikh Sabah was appointed as the new Prime Minister replacing Sheikh Saad in this position after his health continued to deteriorate.[18] Thus, the new Prime Minister has in fact been running day-to-day affairs in Kuwait for years due to the poor health of both the late Amir and the new Amir.[19]

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[12] Elias, *supra* note 8.

[13] *Kuwait Awaits Naming of Crown Prince*, THE DAILY STAR, Jan. 17, 2006, *at* http://www.dailystar.com.lb/article.asp?edition_id=10&categ_id=2&article_id=21489.

[14] Constitution, *supra* note 2, art. 4 (2-4).

[15] *Kuwait's Prime Minister to Lead,* BBC NEWS, Jan. 20, 2006, *at* http://news.bbc.co.uk/1/hi/world/middle_east/4632060.stm.

[16] *Id.; Kuwait's Ruling Family Asks PM to Lead Country,* KHALEEJ TIMES ONLINE, Jan. 20, 2006, *at* http://www.khaleejtimes.com/DisplayArticle.asp?xfile=data/middleeast/2006/January/middleeast_January531.xml&section=middleeast&col=.

[17] Reformers prefer the separation between the position of the Crown Prince and the position of the Prime Minister to facilitate the Prime Minister's accountability before the National Assembly, since the Crown Prince has constitutional immunity. *See* Usaf Alawneh, *al-Khorafi Said That Saad al-Abdullah May Perform the Oath of Office Tomorrow*, AL-ITTIHAD NEWSPAPER, Jan. 17, 2006, *at* http://www.alittihad.ae/myitems.asp.

[18] *Shaikh Saad Is the New Kuwait Ruler*, AL-JAZEERAH NET, Jan. 15, 2006, *at* http://english.aljazeera.net/NR/exeres/1C8D4E75-7E66-4611-9DFF-38335AE38629.htm.

[19] *Kuwait's Prime Minister to Lead, supra* note 15; *Kuwait's Ruling Family Asks PM to Lead Country, supra* note 16; *Kuwait PM to Be de Facto Ruler*, AL-JAZEERAH NET, Jan. 16, 2006, *at* http://english.aljazeera.net/NR/exeres/4D2F68E0-AA1B-4EC2-937D-11C57470B2CB.htm.

The new Amir's poor state of health gave rise to concern over the political succession in Kuwait, and it was not clear whether the ruling family would come to a decision about it in the near term.[20] A heated debate occurred in the Kuwaiti National Assembly on January 17, 2006, when some members called upon the new Amir to retire in the interest of the state because his "poor health will keep him from governing properly."[21] Other members held that their peers "had no right to discuss issues relating to the ruling family."[22] Members of the ruling family and National Assembly members have held numerous meetings since Sheikh Jaber's death to discuss the leadership of the country in light of the new Amir's poor health.[23]

The debate took another turn on January 20, however, when *al-Qabas*, a leading Kuwaiti newspaper, called on Amir Sheikh Saad to step down in the interest of Kuwait.[24] *Al-Anbaa*, another leading newspaper, expressed its trust and confidence in the Prime Minister's ability to rule.[25] On the same day, a majority of the al-Sabah family members met with the Prime Minister Sheikh Sabah. The meeting concluded with a consensus among the majority of the family members that Sheikh Sabah be the next leader of the county. Their carefully worded official statement said: "The members of the family renew the trust bestowed on Sheikh Sabah by the late Amir and appeal to him to continue leading [the country]."[26] Sheikh Sabah accepted the responsibility to run the country in light of this development, stating that Sheikh Saad's serious health problems prevent him from exercising his constitutional responsibilities as Amir and that the current circumstances require unity and solidarity in the interest of the country. He commended the new Amir for his great contributions to the state that had helped form the basis of the country's advancement in all fields.[27]

In response to these developments, Sheikh Saad sent a letter to the National Assembly requesting that it hold a session for him, in line with article 60 of the Constitution, to take the oath of office to assume his responsibilities as ruler.[28] A key member of the Sheikh's family and Chief of the National Guard, Sheikh Salem al-Ali al-Sabah, announced on January 20 that he and members of his

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[20] *Id.*

[21] Hassan M. Fattah, *Kuwait Moves to Strip Power from Ill Emir*, THE NEW YOUR TIMES, Jan. 22, 2006, *at* http://www.nytimes.com/2006/01/22/international/middleeast/22kuwait.html.

[22] *Kuwaiti MPs Make Rare Call on Crown Prince to Retire*, MIDDLE EAST ONLINE, Dec. 2, 2005, *at* http://www.meo.tv/english/kuwait/?id=11757.

[23] *Kuwait's Ruling Family Asks PM to Lead Country, supra* note 16; *Kuwait PM to Be de Facto Ruler, supra* note 19.

[24] *Difficult Decision Before a Great Man of Kuwait*, AL-QABAS NEWSPAPER, Jan. 20, 2006, *at* http://www.alqabas.com.kw/news_details.php?cat=1&id=141307.

[25] *Confidence on Amir Sheikh Sbah,* Jan. 20, 2006*, at* http://www.alanbaa.press.ma/ (last visited Jan. 20, 2006).

[26] *Kuwait's Prime Minister to Lead, supra* note 15.

[27] *Kuwait's Ruling Family Reaffirms Trust in PM*, AL-WATAN NEWSPAPER, Jan. 21, 2006, *at* http://www.alwatan.com.kw/Default.aspx?MgDid=388623&pageId=26; *Why Sabah al-Ahmad?,* AL-RAIE AL-AAM NEWSPAPER, Jan. 21, 2006, http://www.alraialaam.com/21-01-2006/ie5/homepage.htm; *Kuwait's Ruling Family Reaffirms Trust in PM*, ANGOLA PRESS, Jan. 20, 2006, http://www.angolapress-angop.ao/noticia-e.asp?ID=409670.

[28] *Kuwait Emir to Take Oath of Office*, IBDGROUP.COM, Jan. 20, 2006, *at* http://www.einnews.com/kuwait/newsfeed-Sheikh-Saad.

family support Sheikh Saad as Amir.[29] It has been argued that one of the reasons for the dispute among the family members is that appointing Sheikh Sabah as Amir would break the traditional agreement between the Jabers and the Salems to alternate in sharing power.[30] The division in the al-Sabah family has raised the fear of external powers interfering in the internal affairs of the State of Kuwait. Many Kuwaitis fear that the crisis could lead to polarization among citizens and politicians and adversely affect the country's economy.[31]

The Amir's serious health problems created speculation about whether he would even be able to perform the oath of office. It has been argued that the majority of the al-Sabah family had reached a decision to prevent such an embarrassing situation from occurring,[32] and then key figures of the al-Sabah family went further and urged Sheikh Sabah "to initiate constitutional procedures to assume leadership of the country."[33] Under the Constitution, the Amir must meet certain requirements in order to be able to fulfill his duties. According to the Amirate Succession Law, if the Amir fails to meet these requirements or is incapable of carrying out the duties of the new position for health reasons, the Council of Ministers may initiate procedures set forth under the law to replace him (*see* discussion below).[34]

In the past, the debate over succession was viewed from two perspectives: as a family matter that should be regulated by decree, and as a state matter that should be regulated by law. The latter view is based on a 1921 document establishing the constitutional system of the state. Its articles 1, 2, and 3 regulate the manner of ruling the state; articles 4 and 5 explain how governance should be conducted. The perspective of regulation by law prevailed and succession became a state matter.[35] However, members of the National Assembly have always preferred not to take this matter up and have always left it to the ruling family to settle their differences over succession arrangements.

III. Constitutional Arguments

Despite the first smooth phase of the transition, proclaiming Sheikh Saad the Amir, the second phase, involving implementation of article 60 of the Constitution on taking the oath of office as Amir, created a major constitutional debate. In accordance with article 4 of the Amirate Succession Law, Sheikh Saad succeeded to the Kuwaiti throne automatically following the death of the late Amir Sheikh Jaber. The protocol of the procedure for declaration of a successor mentioned briefly in article 4 of the Law calls for the Amir's successor and Crown Prince to become Amir. A proclamation by the

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[29] *Division in the Ruling Family over Kuwait Amir,* AL-JAZEERAH NET, Jan. 21, 2006, *at* http://www.aljazeera.net/NR/exeres/F5DE04DF-652C-48A2-A0CE-6A924F8729F1.htm.

[30] *Kuwait Showdown over Sick Emir,* BBC NEWS, Jan. 23, 2006, *at* http://news.bbc.co.uk/2/hi/middle_east/4638596.stm.

[31] *Division in the Ruling Family over Kuwait Amir, supra* note 29.

[32] *Majority of the Ruling Family Members Reaffirms Trust in the Prime Minister,* KUWAIT NEWS AGENCY, Jan. 20, 2006, *at* http://www.kuna.net.kw/home/Story.aspx?Language=ar&DSNO=806744.

[33] *Kuwait PM to Be de Facto Ruler, supra* note 19.

[34] Amirate Succession Law, *supra* note 2, art. 3.

[35] Muzaffar Abdullah& Saud al-Onaizi, *Two Different Opinions on the Oath of Office,* AL-TALEAA NEWSPAPER, Jan. 18, 2006, *at* http://www.taleea.com/newsdetails.php?id=6796&ISSUENO=1711.

Council of Ministers is not a requirement in order for the Heir to become Amir, because the automatic transfer of his position or status from an Heir to Amir is constitutionally settled.[36] Thus Sheikh Saad clearly assumed the title of Amir after the death of Sheikh Jaber. Under any circumstances, the Council of Ministers took the appropriate constitutional step in declaring Sheikh Saad as the head of state.

However, the ongoing ill health of Sheikh Saad has led to severe doubts about whether he will even be able to take the oath of office in the National Assembly. The requirement under article 60 of the Constitution that the new Kuwaiti Amir take an oath of office is considered to be one of the real challenges of the current succession process. Article 60 (Oath of the Amir's Office) of the Constitution provides:

> Before assuming his powers, the Amir takes the following oath at a special sitting of the National Assembly: "I swear by Almighty God to respect the Constitution and the laws of the State, to defend the liberties, interests, and properties of the people, and to safeguard the independence and territorial integrity of the Country."[37]

Traditionally for the swearing-in, the Amir takes the podium in the National Assembly, whose ceremonial sessions are usually televised, and recites the two-line oath.[38] The constitutional requirement under article 60 is one that the new State Amir must fulfill in order to provide him with the authority to exercise his constitutional powers. Failure to meet the requirement does not in itself prevent the new Amir from assuming office, because his new status as the head of state is not tied to fulfilling this condition. However, Sheikh Saad's possible physical inability to take the oath of office[39] provoked debate over the requirement. Constitutional experts such as Dr. Muhammad al-Feli argued that taking the oath of office according to article 60 is required in order for the Amir to exercise his constitutional powers.[40] However, according to another constitutional expert, Dr. Muhammad al-Muqati has asserted that article 60 does not prevent the new Amir from exercising some of his powers in the period between becoming head of state and performing the oath of office.[41]

It has been suggested that recent precedents provide that the Amir can in fact exercise his constitutional powers even before taking the oath of office. Dr. al-Muqati claims that when the Constitution of 1962 was implemented Sheikh Abdullah al-Salim, the Amir at the time, never took the oath of the office. Similarly, when Sheikh Jaber became Amir he never took the oath because he assumed office during a period when the National Assembly had been dissolved. Even after the new Assembly came into existence, the Amir did not go through the oath-taking process. However, despite what Dr. al-Muqati has posited, Sheikh Abdullah Al-Salim did take a partial oath before the National Assembly in 1963.[42] Thus the two precedents cited by Dr. al-Muqati are weak due to the

[36] Amirate Succession Law, *supra* note 2, art. 3. *See also id.*

[37] Constitution, *supra* note 2, art. 60.

[38] *Kuwait's Prime Minister to Lead, supra* note 15.

[39] Abdullah & al-Onaizi, *supra* note 35.

[40] *Id.*

[41] *Id.*

[42] Al-Khateeb, *supra* note 7.

circumstances surrounding them and cannot stand alone in face of the constitutional requirement under article 60. It may further be argued that it is unrealistic that the new Amir be viewed as lacking any kind of authority until the National Assembly holds the oath of office session because unexpected urgent matters might emerge that require his immediate action.

On January 21, 2006, the Chairman of the National Assembly received a letter from Sheikh Saad's office asking for the National Assembly to hold a session to conduct the oath of the office. The National Assembly has not been able to agree whether to hold the ceremony in private or to shorten the oath for the ailing Amir to read.[43] It had been permissible for a new Amir to declare only part of the oath, based on the precedent of the previous Amir of Kuwait, Sheikh Abdullah al-Salim, the father of the new Amir. However, the 1962 Constitution was instituted during Sheikh Abdullah's tenure as Amir, not afterwards, and so the precedent he set might be considered inapplicable.[44] Some lawmakers proposed a shorter version of the two-line oath due to the illness of the Amir. Others, however, insisted that the oath must be read in full.[45] On January 22, the National Assembly Speaker Jassem al-Khorafi stated, after a meeting with Sheikh Saad, that a special swearing-in session for the new Amir would be held on January 24, 2006.[46]

Another constitutional debate arose over the new Amir's ability to fulfill the requirements for the exercise of his constitutional authority. Under article 4(5) of the Constitution and article 6 of the Amirate Succession Law, "[T]he [Amir or his] Heir Apparent shall have attained his majority, be of sound mind, and be a legitimate son of Muslim parents and his age shall not be less than thirty years on the day of his designation."[47] In addition, according to article 3 of the Amirate Succession Law, for the Amir to exercise his constitutional powers, he may not lack any of the qualifications or conditions laid down previously. If the Amir lacks any of these conditions or loses the physical ability to perform his duties, the Council of Ministers – after verification thereof – will refer the matter to the National Assembly immediately in a special session held in secret. If it is unmistakably proven to the National Assembly that the Amir lacks one of the requisite conditions or has lost the necessary physical ability to exercise his powers, the National Assembly may, upon confirmation by two-thirds of its members, decide to transfer the Amir's powers to his successor temporarily or permanently.[48]

Article 3 must be read in conjunction with article 8 of the Law, which provides that if the Heir Apparent lacks one of the conditions that must be met by him or has lost the physical ability to perform his duties, the Amir will refer the matter to the Council of Ministers. The Council of Ministers, after verification thereof, will refer the matter to the National Assembly immediately in a special session held

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[43] *Questions Linger after Smooth Succession in Kuwait: Appointment of Kuwait's Crown Prince and Other Succession Issues Remain to Be Sorted Out*, MIDDLE EAST ONLINE, Jan. 16, 2006, at http://www.middle-east-online.com/english/iraq/?id=15484.

[44] *Law Makers: Taking the Oath of Office Is a Requirement for Exercising Ruling Power*, ARAB RENEWAL, Jan. 18, 2006, *at* http://www.arabrenewal.com/index.php?rd=AI&AI0=12050.

[45] *Id.*

[46] *Two Parallel Lines: Activating Article 3 and Opining the Door for Settlement*, AL-QABAS NEWSPAPER, Jan. 23, 2006, *at* http://www.alqabas.com.kw/news_details.php?cat=1&id=141413.

[47] Constitution, *supra* note 2, art. 4(5); Amirate Succession Law, *supra* note 2, art. 6.

[48] Amirate Succession Law, *supra* note 2, art. 3.

in secret. If it is unmistakably proven to the National Assembly that he lacks one of the conditions or the physical ability required for his status, the National Assembly, upon the confirmation of a special majority (half) of its members, may decide to transfer the Heir Apparent's powers temporarily or permanently to another person according to the terms and conditions specified in article 4 of the Law.[49]

Although Prime Minister Sheikh Sabah, the late Amir's (Sheikh Jaber's) brother, has been de facto ruler for the past few years due to the late Amir's and his successor's (Sheikh Saad's) poor health, the seriousness of Sheikh Saad's condition has never been discussed officially (in accordance with article 8 of the Amirate Succession Law) during the period of his tenure as a Crown Prince.[50] However, this does not preclude the Council of Ministers from raising the issue now based on article 3 of the Law, given that Sheikh Saad is currently the Amir. It may be noted that because both the Amir and his Heir suffered from poor health for several years, it would have been unrealistic for the Council of Ministers to invoke articles 3 and 8 for one or both leaders because such a move might have led to dissension among the ruling family members and state instability.

The National Assembly may go along with the new Amir's request to hold a National Assembly session for the oath-taking ceremony. However, it cannot ignore the measures under article 3 of the Amirate Succession Law and must address the Council of Ministers' request if asked to implement the article's provisions. It has been argued that according to the Constitution, only the Council of Ministers has the authority to call for the activation of article 3. It can be done, for example, by directing a question from the National Assembly to the Council of Ministers to reveal the health conditions of the new Amir and thus his ability to rule the country.[51]

On January 21, 2006, there were clear indications that Kuwait's Council of Ministers may ask the National Assembly to invoke the succession law provisions that could lead to the removal of the new ailing Amir nearly a week after he was proclaimed ruler. In a press release, the Council of Ministers stated:

> The Council of Ministers expresses its deepest sorrow and sadness about the health condition of His Highness Amir Sheikh Saad al-Abdullah al-Salem al-Sabah …. So it has decided to start the constitutional procedures … pertaining to the bylaws of succession of rule.[52]

Under Kuwaiti law, the Council of Ministers is permitted to ask for a medical team to examine Sheikh Saad and report to the National Assembly on his ability to rule.[53] On January 23, 2006, the Council of Ministers formally asked the National Assembly to hold a special session to debate and vote on the removal of the new Amir based on his health condition.[54] In a counter move, the new Amir

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[49] *Id.* art. 8.

[50] Abdullah & al-Onaizi, *supra* note 35.

[51] *Id.*

[52] *Kuwait to Examine New Emir's Ability to Govern*, TIMES OF OMAN, Jan. 22, 2006, *at* http://www.timesofoman.com/newsdetails.asp?newsid=24716.

[53] ASSIRI, *supra* note 1, at 47-48.

[54] *Kuwait Cabinet Moves Against Emir*, THE JOURNAL OF TURKISH WEEKLY, Jan. 23, 2006, *at* http://www.turkishweekly.net/news.php?id=24961.

requested to bring forward his oath-taking ceremony to January 23 from January 24, but the National Assembly speaker rejected his request.[55]

The National Assembly was scheduled to debate the new Amir's ability to govern just hours before the oath-of-office ceremony.[56] However, on January 23 the ruling family reached an agreement on the succession and Sheikh Saad agreed to abdicate in favor of Prime Minsiter Sheikh Sabah, putting an end to the leadership crisis in Kuwait.[57] The agreement could ease the concerns over the political future of the state and simplify and accelerate the current succession process. However, on January 24, 2006, the National Assembly, after twice postponing a debate on removing the new Amir, decided not to wait for Sheikh Saad's abdication letter and voted for the removal of the new Amir in a special secret session, making him the first Amir to be voted out of office by an act of the National Assembly. This decision came after the members of the National Assembly agreed that the Amir's poor health and diminished mental abilities would prevent him from running Kuwait's day-to-day affairs.[58]

This historical vote allowed the Kuwaiti legislature (National Assembly) to play a major role in the succession process that had been left for the ruling family for hundreds of years. Analysts stated that the National Assembly vote "was a rare assertion of parliamentary muscle against a hereditary ruler in the Arab world, even though Kuwait's ruling family had agreed Sheikh Saad should step down."[59] Former member of the National Assembly Abdullah al-Naibari stated that what "happened today is positive, and goes beyond resolving a crisis. Everybody felt the importance of the constitution and parliament, including the ruling family."[60] Analyst Muhammad al-Jassem added that "Kuwait has rid itself of tribal and social constraints" and noted that the "constitution alone now governs the politics of Kuwait."[61]

Because of these developments, Article 4 of the Amirate Succession Law came into play in this situation. It provides that if, for any reason, the Amir's position becomes vacant, the Heir Apparent will become the Amir. If the Amir's position becomes vacant before the designation of an Heir Apparent, the Council of Ministers will exercise all the powers of the head of state until a new Amir is designated in accordance with the procedure followed when designating an Heir Apparent before the

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[55] *Assembly Rejects Kuwait Emir Early Swearing-in Bid,* THE STAR, Jan. 23, 2006, *at* http://thestar.com.my/news/story.asp?file=/2006/1/23/worldupdates/2006-01-23T162620Z_01_NOOTR_RTRJONC_0_-233270-3&sec=Worldupdates.

[56] I*t Got Complicated: Two Sessions Tomorrow and Removal Session Before the Oath of Office Session*, AL-SEYASSAH, Jan. 23, 2006, *at* http://www.alseyassah.com/alseyassah/; *Kuwait Cabinet Moves Against Emir, supra* note 54.

[57] *See* Diana Elias, *Kuwait's Ailing Emir Agrees to Abdicate*, SEATTLE POST-INTELLIGENCER, Jan. 23, 2006, *at* http://seattlepi.nwsource.com/national/1107AP_Kuwait_Leadership_Crisis.html; *Ailing Kuwait Emir to Abdicate After Deal,* CNN.COM, Jan. 23, 2006, *at* http://www.cnn.com/2006/WORLD/meast/01/23/kuwait.ap/index.html.

[58] *The National Assembly Unanimously Removed Sheikh Saad from Office*, AL-JAZEERAH NET, Jan.24, 2006, *at* http://www.aljazeera.net/NR/exeres/E8D3E03C-7C14-4CDA-8D4A-833DA62C7D3B.htm.

[59] *Kuwait PM to Replace Emir*, TIMES OF OMAN, Jan. 25, 2006, *at* http://www.timesofoman.com/newsdetails.asp?newsid=24852.

[60] Haitham Haddadin, *Kuwait Cabinet Nominates PM to Replace Ailing Emir,* THE STAR NEWS, Jan. 25, 2006, *at* http://thestar.com.my/news/story.asp?file=/2006/1/25/worldupdates/2006-01-25T005226Z_01_NOOTR_RTRJONC_0_-233403-6&sec=Worldupdates.

[61] *Id.*

National Assembly, as stated under article 4 of the Constitution. The new Amir is to be designated within eight days of the date that the Amir's position becomes vacant.[62] In accordance with article 4 of the Amirate Succession Law, the National Assembly speaker announced that the Council of Ministers would run state affairs in the interim period before a new Amir takes office. According to the state constitution, the Council of Ministers should meet within the prescribed eight days to proclaim a new Amir in place of Sheikh Saad.[63] It was widely expected that Prime Minister Sheikh Sabah will be the next Amir of Kuwait.

The Council of Ministers nominated Prime Minister Sheikh Sabah as the new Amir on Tuesday January 24, 2006.[64] According to regulation, the Council of Ministers' nomination would be sent to the National Assembly to hold a voting session on the confirmation of the new nomination. On Sunday, January 29, 2006, all Members of the National Assembly along with members of the Council of Ministers (excluding the Prim Minister Sheikh Sabah) voted unanimously to confirmed Sheikh Sabah al-Ahmad al-Sabah as the new Kuwait Amir.[65] Later in the same day and according to Article 60 of the Constitution, Sheik Sabah took the oath of the office as the fifth Amir of Kuwait since its independence.[66]

It appears that the unprecedented political crisis of leadership in the history of Kuwait has ended. The new Amir has a big challenge before him to choose his Heir according to the constitutional process mentioned earlier. Mohammed al-Saqr, member of the National Assembly, "called on the new emir to appoint an Heir-apparent quickly to prevent a repeat of the succession crisis."[67] Number of the ruling family has surfaced as potential candidates to this office such as the Minister of the Interior Sheikh Nawaf al-Ahmad al-Jaber al-Sabah, the Deputy Prime Minister and Minister of Defense Sheikh Jaber al-Mubarak al-Hamad al-Sabah, and the Minister of Foreign Affairs Sheikh Muhammad Sabah al-Salem al-Sabah. It's yet to be seen whether the new Amir upcoming choice will return the power balance between the two branches of the al-Sabah ruling family in a way that satisfies the nation's prosperity and its stability.

IV. Conclusion

The Kuwait ruling family is a close ally of the United States. U.S. forces helped to free Kuwait from Iraqi aggression and bring about the safe return of the ruling family to power. The ruling family is also loyal to U.S. policies in the Middle East, especially in regard to Iraq, and this close alliance and strategic relationship is likely to continue under Sheikh Saad or any other member of the ruling family. Based on the relevant provisions of the Constitution of Kuwait, Sheikh Saad al-Abdullah al-Sabah

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[62] Amirate Succession Law, *supra* note 2, art. 4.

[63] It has been stated that the Council of Ministers will meet Tuesday night to choose a new Amir for the State. *See The National Assembly Unanimously Removed Sheikh Saad from Office*, *supra* note 58.

[64] *See* Haitham Haddadin, *supra* note 60.

[65] *See Kuwait Approves New Emir*, CNN.COM Jan. 29, 2006, *at* http://www.cnn.com/2006/WORLD/meast/01/29/kuwait/.

[66] Diana Elias, *Kuwait Swears in New Emir*, ABC NEWS, Jan. 29, 2006, *at* http://abcnews.go.com/International/wireStory?id=1553813

[67] *Id.*

became the new Amir. However, his ill health raised doubts about his ability to rule and even meet the requirements of article 60 of the Constitution on taking the oath of the office. The call for implementation of the provisions of the 1964 Amirate Succession Law regarding incapacity of an Amir to carry out his constitutional duties for health reasons constituted a challenge for both the ruling family and the National Assembly. The National Assembly acted upon this Law and voted to remove the new Amir from power. Thus, Sheikh Saad became the first Amir to be voted out of office by an act of the National Assembly.[68] Analysts hailed the vote as "a victory for the rule of law in a region dominated by autocratic governments."[69]

The political crisis ended when Sheikh Sabah took the oath of the office on January 28, 2006 following the Council of Ministers' nomination and the National Assembly unanimous approval. The new Amir's challenge is to now choose his Heir within the next year. The recent developments in the Kuwaiti succession process may also be viewed as having created an opportunity for the ruling family "to settle its differences over succession arrangements, which have in recent months surfaced in public."[70] The Kuwaitis' hope that the crisis would be resolved within the framework of the Kuwaiti Constitution and the Amirate Succession Law and within the framework of Kuwait's broader political reforms, in a way that safeguards the state and preserves the power balance in the ruling family, seems to have been met.

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[68] *Supra* note 56.

[69] *All Laud Rule of Law ... Call for Power-Sharing; 'Pressing Need to Enact More Reforms'*, ARAB TIMES, Jan. 28, 2006, at http://www.arabtimesonline.com/arabtimes/kuwait/Viewdet.asp?ID=6658&cat=a.

[70] *Questions Linger after Smooth Succession in Kuwait, supra* note 43.