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WORLD LAW BULLETIN

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Anti-Sect Bill–France

Energy Efficient Cars to be Tax Exempt–The Netherlands

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WLB, No. 2001.06

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Table of Contents

AMERICAS
Brazil–Protection of Portuguese language
Canada–Parliamentary committee to study drug laws
Mexico–Administration of justice
–Indian rights bill approved

ASIA
China–Marriage law amended
Japan–Surrogate motherhood to be banned
Taiwan–Company law revisions proposed
–Poppy seed bagel ban (narcotic)

EUROPE
Estonia–Nationwide gene bank
–Ratification of the corruption convention
France–Anti-sect bill
Italy–Passive smoking
Liechtenstein–Financial intelligence unit
The Netherlands–Energy efficient cars promoted
Russia–Anonymous tips for the Federal Security Service
–Ratification of international convention on money laundering
United Kingdom–First high-tech courtroom operational
–"Rape shield" law held to violate right to a fair trial

SOUTH PACIFIC
Australia–Campaign expenses audit
–Passive smoking verdict

INTERNATIONAL LAW AND ORGANIZATIONS
Angola/Cape Verde/Guinea-Bissau/Mozambique/Sao Tome e Principe–Summit meeting & declaration
European Court of Human Rights/United Kingdom–Breach of the European Convention on Human Rights

PLUS: Law Library product listings & a bibliography of items from the United Kingdom available through the Law Library.

Features:

! World Trade Organization–update
! European Union Developments--update

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AMERICAS

BRAZIL--Protection of Portuguese Language

A bill was approved in the lower house of the Brazilian Congress on March 29, 2001, that would make it illegal to introduce and use foreign words in the Portuguese language. Sponsored by Congressman Aldo Rebelo, the bill is designed to boost the self-esteem of Brazilians in regard to their language. The Congressman said he is particularly alarmed by the use of English-language terms in business and technology when adequate Portuguese vocabulary exists. The bill's sponsor stressed he did not want to control the evolution of the language, but hoped to avoid abuses by punishing violators with fines and sending them to remedial Portuguese classes. The proposed law provides for the Brazilian Academy of Letters to determine which foreign words could be used legally and which could not.

The bill has many detractors, including the large computer and Internet industry that has adopted many English terms to describe computer functions; language professionals who maintain the proposed law is too extreme; and the Brazilian Academy of Letters itself, whose president, Tarcisio Padilha, stated that language is a complex cultural issue that is more suited for public debate than legal regulation.

The bill will go to the Senate and if passed will be sent to President Fernando Henrique Cardoso for his signature. *(The New York Times,* May 15, 2001, via http://www.nytimes.com/2001/05/15/world/15BRAZ.html?)
(Sandra Sawicki, 7-9819)

CANADA--Parliamentary Committee to Study Drug Laws

The five political parties represented in Canada's House of Commons have unanimously agreed to create a special committee to study Canada's drug laws. Many commentators believe that the drug that is likely to be most discussed and the subject of recommended changes is marijuana. In fact, headlines have claimed that this development may well portend the decriminalization of that drug. (Barry Brown, "Move to Decriminalize Pot Afoot in Canada," *Buffalo News*, May 20, 2001, at A2.

Canada's laws respecting marijuana have been the subject of considerable discussion and speculation ever since the Ontario Court of Appeal struck down the existing law on medical use of marijuana as being inconsistent with the principles of fundamental justice and gave the Government a year to reform those laws (R. v. Parker (Ont. C.A. 2001) http://www.ontariocourts.on.ca/decisions/2000/July/parker.htm). The law that was successfully attacked did allow for exemptions for medical necessity, and the Department of Justice had approved approximately 200 exemptions prior to the release of the decision. However, the Ontario Court of Appeal found that there were fatal flaws in the manner in which the program was structured and administered. The law was even characterized as leading to "medical imprisonment." The defendant in the case suffered from epilepsy and argued that he used the drug to treat seizures.

The Minister of Justice recently released draft regulations to give more structure to the exemption program. The Minister's stated intention is to review the feedback received on the proposals and make the changes it considers to be advisable or necessary in order to have new rules in place by the end of July 2001. This would just meet the court-imposed deadline. In the meantime, the Government has initiated clinical trials to study potential medical uses of marijuana. A contract to cultivate marijuana for these trials has been awarded to a firm in Saskatchewan.

The proposed new rules for care giver exemptions require applicants to pass an

inspection and background check. It appears that one aim of these regulations is to prevent persons who have been convicted of drug offenses from using the exemption procedure to circumvent the laws prohibiting use, possession, and trafficking in marijuana. Critics contend that the draft regulations are still too restrictive and argue that they would not be approved if judicially considered.

The motion calling for the establishment of the Parliamentary committee to study the country's drug laws requires an examination of "the factors underlying or relating to the non-medical use of drugs in Canada." The committee will have 18 months to study that and other issues before reporting back to the House of Commons.
(Stephen Clarke, 7-7121)

MEXICO--Administration of Justice

A special envoy of the United Nations, Dato Param Cumaraswamy, concluded a visit to Mexico on May 15, 2001, where he assessed the administration of judicial processes. He had been invited to Mexico by President Vicente Fox Quesada and met with officials of several ministries: government, foreign relations, national defense, the navy, public security, and the attorney general's office. He also consulted with the judges of the Supreme Court of Justice.

The special envoy stated to the press that the need for justice is a prevalent theme in the democratization of Mexico, that there is impunity, and that the judicial processes are prolonged. He also said that writs of amparo, a proceeding analogous to habeas corpus, are used to slow the course of justice; this has caused Mexicans to lose confidence in their institutions. He added that there should be greater transparency in the justice system.

The President of the Supreme Court, Genaro Gongora Pimentel, expressed concern that the "procedural codes are very old and must be changed." He remarked that the federal judiciary is interested in designating justices and magistrates in a more transparent manner. He also announced that the Supreme Court has proposed a new Law of Amparo to the Congress to broaden protection to more sectors of society and avoid its use to slow the mechanisms of administering justice. *(El Universal,* Mexico City, May 15, 2001, via/http://www.eluniversal.com/version_imprimitir?p_id = 5755&p_seccion + 22)
(Sandra Sawicki, 7-9819)

MEXICO--Indian Rights Bill Approved

On April 28, 2001, the lower house of the Mexican Congress, the Chamber of Deputies, by a vote of 386-60, approved a rights bill that would grant new autonomy and protection from discrimination to Mexico's 10 million indigenous people. It followed by three days the bill's unanimous approval by the Senate. The compromise bill was scaled back from the original proposal of President Fox, who presented the bill on December 5, 2000, only four days after becoming president *(The Miami Herald,* Apr. 27 & 30, 2001, via http://cgi.miamiherald.com/cgi-b.content/news/americas/digdocs/057916.htm, and http://cgi.miamiherald.com/cgi-b.content/news/americas/digdocs/067397.htm). The bill must now be approved by 17 of the 31 state and federal district legislatures to become law.

In an interview after the Congressional passage, President Fox stated he believed that a "gigantic step forward had been taken by the Senate and Chamber of Deputies' approval." Responding to questions about the compromise nature of the bill, Fox said he sees "the glass half full and not the small part that is empty." He added: "I believe that here we will require national unity, solidarity; we have here a great expression of tolerance and it seems to me that all Mexicans must be joyful, to be equal with each Indian brother and sister." He said he hopes that

the process to reach peace accords with the Indians, or Zapatistas, will be quick. *(La Cronica de Hoy/Mexico,* Apr. 30, 2001, via http://www.cronica.com.mx/2001/abr30/pri01.html)

Another perspective was set forth by political analyst Lorenzo Meyer, who said: "What was enacted is mostly symbolic. It's a small step, but an unprecedented step. It reflects a compromise that won the support of the most conservative elements in Mexican public life." *(The Miami Herald,* Apr. 30, 2001, *id.*.)

The bill passed by adds paragraphs to article 1 of the Constitution that prohibit slavery in Mexico and discrimination according to "ethnic or national origin, gender, age, incapacitation, social condition, health, religion, opinions, preferences, civil state, or any form of discrimination against human dignity…" The bill amends article 2 completely to state that "the conscience of the Indian identity must be the fundamental criterion to determine upon whom are applied provisions about Indian peoples." Article 2 cites the areas where free determination and autonomy of Indian peoples and communities may be exercised and identifies the instruments made available to Indians to achieve equal opportunity. A clause is added to article 18 that allows Indian convicts to serve out their sentences in prisons closest to their homes. Under article 115, the right of Indian communities to coordinate their activities and associate with each other within municipalities according to the provisions of the proposed law is established. *(El Universal,* Mexico City, Apr. 30, 2001, via http://www.eluniversal.m.mx/graficos/leyindigena/documentos.htm).

On April 30, 2001, the Zapatistas announced that they reject the Law on Indian Rights and Culture as it stands because it weakens the effects of the San Andres Accords of 1996 that were negotiated between the government of former President Ernesto Zedillo and the Indian rebels that were set aside ultimately by President Zedillo. The rebels said that the proposed law does not "satisfy their expectations in regard to autonomy and free determination, the use and benefits of natural resources and the election of municipal authorities," all of which points were substantially addressed in the 1996 accords. *(CNNenEspanol,* Apr. 30, 2001, via http://www.cnnenespanol.com/2001/latin/MEX/04/30/zapatistas/index.html). The Indians are urging state legislators to reject the final version of the constitutional reforms for indigenous rights. *(The New York Times,* May 14, 2001, via http://www.nytimes.com/2001/05/14MEXI.html?). The National Indian Congress that unites the 56 Indian communities of Mexico has joined the Zapatistas in their criticism of the Indian rights bill and is calling for demonstrations and mobilizations to protest the document approved by the two houses of the Mexican federal legislature. *(BBC Mundo, America Latina,* Apr. 29, 2001, via http://news.bbc.co.uk/hi/spanish/latin_america/newsid_1302000/1302793.stm)
(Sandra Sawicki, 7-9819)

ASIA

CHINA–Marriage Law Amended

On April 28, 2001, the National People's Congress (NPC) passed amendments to the Marriage Law by a vote of 127 to 1, with 9 abstentions. The 39 changes include a ban on concubinage and provisions on domestic violence; they were effective immediately.

The amendments were passed following a long period of consideration of the draft, in which public comments were sought (*see* WLB2001-02). More than 4,000 letters were received by the Standing Committee of the NPC. Public comments focused mainly on such topics as keeping concubines, domestic violence, the validity of marriage, and protecting the rights and interests of children, wives, and the elderly when there is a divorce.

Although bigamy is illegal and punishable under the Criminal Code, a number of Chinese men of means have recently started keeping concubines, reviving an old tradition. In many cases the grounds for criminal prosecution are not clear, and thus some legislators had suggested that the Marriage Law ban bigamy and "other practices that threaten monogamy," while others felt that specific actions, such as adultery, wenching, extra marital affairs, and illegal cohabitation, should be listed. The view that prevailed was that including these things would blur the distinction between law and morality. The amendment states that cohabitation with anyone other than one's spouse makes the cheating spouse liable to pay compensation in the case of divorce, but does not mentioning other actions, such as extramarital love affairs.

Hu Kangsheng, vice-director of the Legal Affairs Commission under the Standing Committee of the NPC, said that the new law is a good combination of the rule of law and ethics and that making a distinction between the realms of law and ethics was one of the difficult aspects of the amendment process. (*China Daily*, May 15, 2001, via LEXIS/NEXIS, Asiapc library; Xinhua, Apr. 28, 2001 & May 11, 2001, via LEXIS/NEXIS, Asiapc library.)
(Constance A. Johnson, 7-9829)

JAPAN–Surrogate Motherhood to be Banned

The Health, Labor, and Welfare Minister, Chikara Sakaguchi, stated on May 21, 2001, that he will work to have a law enacted to ban surrogate motherhood. The first such birth took place in Japan a few days before his announcement, but in the last decade more than ten Japanese babies have been born as a result of surrogacy in the United States, where it is legal. Germany, France, and China have banned the practice. Sakaguchi said, "We have had a panel compile a recommendation last year concluding that surrogate birth is by no means desirable and that it should be banned….We must swiftly have the legislation set up." However the doctor involved in the recent birth by surrogate mother argues that the technology is there that could help couples. "I don't know how you can stop such a self-sacrificing person like the sister [the recent surrogate]. If the Ministry insists on banning the practice, it should take away my medical license." ("Minister Calls for Law Banning Surrogate Child-Bearing," Kyodo, May 21, 2001, via FBIS, May 21, 2001; "First Surrogate Birth in Japan Likely to Stir Debate," Kyodo, May 19, 2001, via FBIS, May 19, 2001.)
(Constance A. Johnson, 7-9829)

TAIWAN–Company Law Revision Proposed

The Executive Yuan (Cabinet) has approved a revision of the Company Law and will send it on to the legislature for consideration. The new document would replace the current Law, enacted in 1928 and considered to be outdated. One attorney called the current law a "creature of the 19th century" and said that the new law will help facilitate Taiwan's continuing corporate and financial restructuring. (Lawrence Liu, quoted in "Taiwan Cabinet Passes New Company Law," *Taipei Times*, May 17, 2001, via FBIS, May 17, 2001.)

Passage of the revised Law may be difficult, as the 190-article draft is complex and technical, and the amendment process has already taken more than ten years. One difficulty has been that so many articles needed revisions that no consensus could be reached on all of them. The Executive Yuan therefore decided on a two-stage process. Initially only those articles on which agreement has been reached in the Cabinet will be revised in the draft sent to the legislature; other parts of the Law will be modified in a second stage for which no time line has been established.

Changes to the articles on establishment of sole proprietorships, on issuance of equities with no-par value, and on establishing a stock option and warrant system have been given priority. Cross-

shareholding between parent and subsidiary companies will be eliminated in the revised Law, and companies would be allowed more leeway in the titles and functions of managers, the use of video-conferencing for board meetings, the issuance of employee stock options, and other matters. (*Id*.)
(Constance A. Johnson, 7-9829)

TAIWAN–Poppy Seed Bagel Ban

Taiwan's High Court convicted the owner of Taipei's Marco Polo Bakery of possession of an illegal drug after she imported 22 kilograms of poppy seeds from the United States for preparation of poppy seed bagels. Reversing a District Court finding of not guilty, the High Court imposed a three-month suspended sentence of detention under the terms of the Drugs Hazard Prevention Act, which forbids possession of opium poppies and seeds. The imported seeds were from *Papaver sominiferum*, a species of opium poppy. The High Court rejected the defense claim of ignorance of which of the 500 species of poppy the seeds represented. The case nicely illustrates both the forces of globalization, as indicated by a demand for bagels in Taipei, and the countervailing force of historically conditioned laws, which in this case reflect the long struggle against opium addiction in Chinese societies. ("Court Convicts Bagel Shop Owner Over Poppy Seeds" *Taipei Times*, May 4, 2001, http://www.taipeitimes.com/)
(D. DeGlopper, 7-9831)

EUROPE

ESTONIA--Nationwide Gene Bank

The Estonian Parliament adopted the Human Genes Research Act, a law allowing the creation of a nationwide gene bank that will be the world's biggest. The law sets rules on how genetic material can be collected, processed, and stored in order to protect donors. The Act prescribes the creation of a bank, which will collect DNA from a million of Estonia's 1.4 million people over the next five years. The Act limits the use of the gene bank's data to scientific research sanctioned by a new non-profit foundation, to be established in the next few months, and imposes jail sentences for the misuse of genetic information. The Act requires that participation by gene donors must be voluntary and that their identity must be kept secret. It forbids the collection of genetic data on clients and workers by employers and insurance companies and bans use of the data as evidence in courts. (*Riigi Teataja* (Estonian official gazette), 2001, No. 31, art. 517.)
(Peter Roudik, 7-9861)

ESTONIA--Ratification of the Corruption Convention

The instrument of ratification of the Civil Law Convention on Corruption was handed by the Estonian Ambassador to the Secretary General of the Council of Europe. The Convention is intended to combat corruption by means of civil law measures and requires that the contracting parties provide in their domestic law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. The Convention prescribes measures needed at the national level, as well s those for international co-operation and for the monitoring of implementation. Estonia ratified the Convention after significant amendment of its national legislation regarding compensation for damage, validity of contracts, accounting and audit systems, and procedural law on issues of protection of employees who report corruption and acquisition of evidence.

The compliance of the States with the commitments entered into under the Convention is monitored by the Group of States Against Corruption (GRECO), an international body set up in the form of an enlarged partial agreement and

responsible for evaluating the measures put into effect by the States to combat corruption. It is open to both Council of Europe members and non-member States and is in charge of monitoring not only this Convention, but also the application of the Guiding Principles for the fight against corruption and other legal instruments drawn up by the Council of Europe. Twenty-six States, including the United States, are now members of the Group. The Convention is open to non-member States and will come into force after the fourteenth ratification. To date, in addition to Estonia, the Convention has been ratified by Albania and Bulgaria and has been signed by 23 other, mostly West European States. (BBC daily news monitoring, May 8, 2001, http://www.securities.uk.co)
(Peter Roudik, 7-9861)

FRANCE--Anti-Sect Bill

On May 3, 2001, after a second reading, the Senate adopted the "Draft Bill Towards Reinforcing the Prevention and the Deterrence of Sectarian Movements Infringing Human Rights and Fundamental Liberties." This modified text, presented by Senator Nicolas About (Center Party) is the result of lengthy negotiations between the Senate, the National Assembly, the government, and the *Mission Interministérielle De Lutte Contre Les Sectes* (Inter-Ministries Commission to Oppose Sects).

The first version was adopted by the Senate on December 16, 1999, then significantly modified by the National Assembly on June 22, 2000. At the request of one of its members, Catherine Picard (Socialist Party), the National Assembly added a new offense of "mental manipulation." This provision was strongly opposed by groups labeled as sects by the *Mission*, the leaders of the four main religions in France (Roman Catholicism, Islam, Protestantism, and Judaism), the United States, and many other authorities. The religious leaders testified before the Senate in November 2000. They declared that there was no need to pass "anti-sect" legislation and that the notion of "mental manipulation" was vague and dangerous. The Senators agreed to redraft the bill and to take into account the concerns of the religious leaders and of the French National Advisory Committee on Human Rights, which also was opposed to making "mental manipulation" a criminal offense.

The modified bill adopted by the Senate replaces the offense of "mental manipulation" with another criminal offense "fraudulently abusing the state of ignorance or weakness." It provides:

> Fraudulently abusing the state of ignorance or weakness either of a minor, or a person whose special vulnerability, due to age, sickness, infirmity, physical or psychological deficiency, or pregnancy is apparent or known to the perpetrator, or a person in a state of psychological or psychic dependency resulting from grave and repeated pressure or from techniques aimed at altering his/her judgement, to drive that minor or that person to act or to fail to act in a way which is highly damaging to her/him is punishable by three years in prison and a maximum fine of 2,500,000 *francs*. [about US$335,000.]

The penalty is increased to five years in prison and to a maximum fine of 5,000,000 *francs* when the perpetrator is the leader of a group whose aim is to create, maintain, or exploit its members' psychological or physical state of dependency.

This modification, in the eyes of groups such as the Church of Scientology, is only a "conjuring trick" aimed at keeping the "mental manipulation" offense under another name. This interpretation is strongly contested by Senator About, who stated that "it is the fraudulent abuse of the state of weakness which is punishable, not the state of dependency....This state is only one of the conditions which may invite the fraudulent abuse."

The bill would also allow judges to dissolve legal entities whose aim is to create, maintain, or exploit their members's psychological or physical state of dependency, when such entities or their leaders have been convicted on charges such as endangering lives, endangering the physical or psychological integrity of a person, torture, rape, sexual assaults, illegal practice of medicine, illegal practice of the profession of pharmacist, or false advertising. Continuance or resumption, overtly or covertly, of a legal entity dissolved under the provisions described above would fall under article 434-43 of the Penal Code, which provides for a maximum prison term of two years and a maximum fine of 200,000 *francs*.

As a general rule, before it is finally adopted by Parliament , a bill must be passed in identical terms by both chambers. A new reading in the National Assembly is expected to take place before the end of June. The Ministry of Justice intends to support the text. (*Le Monde*, May 3, 2001, http://www.lemonde.fr; Draft bill, Senate website, http://www.senat.fr; for background information see the report on France in *Religious Liberty: The Legal Framework in Selected OSCE Countries* (Commission on Security & Cooperation in Europe, May 2000).) (Nicole Atwill, 7-2832)

ITALY--Passive Smoking

The controversy over passive smoking (see WLB Feb.1998; July & Aug. 2000) and its serious implications for the health of those exposed to it has finally gone to jail. That is, it has been raised for the first time in the world of Italian prisons. A man serving his sentence in the small penitentiary of Rovereto in northern Italy has just started a hunger strike to protest against the conditions in which he is forced to live, exposed, against his will, to the smoke of the other inmates sharing a cell with him, who are unwilling to create a smoke-free zone for him.

The case may have a constitutional dimension. The prisoner intends to exercise his right to health, as he stated in a letter to the prison authorities. He intends to go back to freedom, when the time comes, with his lungs in good working order, not affected by the smoke that he perceives as an unjustified additional pain inflicted on him, even though the right to health guaranteed by the Constitution should also be enjoyed by those in jail.

Whether or when the man will succeed in his quest for health, which he claims is shared by some prison guards, remains to be seen. In 1996, a decision of the Italian Constitutional Court recognized passive smoke as a very serious danger in the work environment and ruled that the responsibility to guarantee the quality of the air in the work environment falls on the employer, who must take all appropriate measures to protect the health of non-smokers. Italian legislation on the health and safety of workers conforms to that ruling. Article 32 of the Italian Constitution states that the Republic will protect health as a fundamental individual right; it would seem discriminatory to hold Italian inmates to a lower standard of constitutional protection.

Furthermore, it would appear unreasonable to force anyone to undergo passive smoking exposure in jail for years, when the Constitution guarantees that no one may be forced to undergo any particular medical treatment, other than in cases provided by law. There appear to be no laws granting Italian prison officials the authority to impose such a regimen.

Aside from the fact that punishments cannot involve inhumane treatment (Constitution, art.27), one might argue that in light of the possible fatal consequences of smoke inhalation,, a forced passive smoking exposure in jail could be construed as a delayed form of the death penalty, which is totally banned in the Italian legal system. (*La Repubblica*, May 16, 2001.)
(Giovanni Salvo, 7-9856)

LIECHTENSTEIN--Financial Intelligence Unit

A Financial Intelligence Unit has been established to work as an independent center for the collection of both public and classified information on money laundering, suspicion of money laundering, and organized crime (Regulation of Dec. 19, 2000, *Liechtensteinisches Landesgesetzblatt* [LGB1] 2000, No. 283). The Unit is directed to prepare reports for the government and inform the prosecutors of any suspicions concerning such criminal activities. The Unit is authorized to keep a databank and cooperate with concerned government departments, as well as with foreign governments. The regulation was enacted on the strength of the Law of May 22, 1996, on Duty of Diligence in Financial Matters ((LGBl. 1996, No.116), as amended by the Law of September 14, 2000 (LGBl. 2000, No. 213).

Under the Law, all information on money laundering, suspicion of money laundering, and organized crime is gathered by the Department of Financial Services, which passes it to the Unit for detailed study. On the basis of the study, he Department may issue instructions for dealing with the criminal activity, with a view to its prevention. Cooperation with the pertinent departments of foreign governments is effected by the Department of Financial Services on the basis of reciprocity within the provisions and objectives of the above Law. The information supplied may not adversely affect Liechtenstein state interests, public order, confidentiality, and taxation. Foreign governments may use such information only for combating money laundering and organized crime, and the staff of the pertinent foreign government departments must be sworn to secrecy.
(George E. Glos, 7-9849)

THE NETHERLANDS--Energy Efficient Cars Promoted

In order to further stimulate the purchase of energy efficient, clean cars, in its tax plan for 2002 the Government has agreed to reduce the sales tax on certain vehicles. Since January 2001, all cars have had to have an energy label. Those cars that are most efficient are given an A or B label, A being the most energy efficient and clean. After January 1, 2002, the consumer will be able to save up to $900 if he or she buys a vehicle from category A. Electronic and hybrid cars will be totally exempt from the sales tax. *(De Telegraaf*, May 9, 2001.)
(Karel Wennink,7-9864).

RUSSIA–Anonymous Tips for the Federal Security Service

The Director of the Federal Security Service (FSB) –successor to the KGB–issued an order that regulated the "procedure of consideration of suggestions, applications, and complaints filed by the citizens to the FSB." This order lifts the ban on considering anonymous tips and introduces a new set of rules for accepting and processing complaints and tips from Russian citizens and foreigners. Under the rules, anonymous letters will be used without preliminary evaluation for the initiation of criminal investigations if they contain allegations of a crime either committed or planned. The document repeals a parliamentary decree of 1988 that banned security services from using information received from unidentified sources and reintroduces the Soviet-era practice of welcoming anonymous tips that led to citizens informing on one another. The FSB now encourages anonymous tips by setting up hotlines and received about 65,000 reports from the public in the year 2000. (*Rossiiskaia Gazeta* [newspaper published by the Russian government], Mar. 3, 2001.)
(Peter Roudik, 7-9861)

RUSSIA--Ratification of International Convention on Money Laundering

President Putin of Russia signed into the law the Parliamentary resolution on ratification of a global treaty on money laundering aimed at combating the flow of illegally gained money through an increasingly integrated world banking system. This move comes a decade after the creation of the Convention and at a time when Russia is under Western pressure to clean up its banking sector, in order to avoid being blacklisted as a financially murky nation and suffer international sanctions. Joining the Convention gives Russia the ability to confiscate funds that were acquired in Russia in criminal ways and bring them back from abroad. It is estimated that Russia lost at least $20 billion in the year 2000 as a result of money laundering operations. Following the ratification, the administration submitted to the parliament a bill which will implement provisions of the Convention and establish Russian national money laundering legislation. The bill provides for the liberalization of the economy and banks, an increased transparency, and improvement of the business climate. The legislation was prepared by the experts of the influential Financial Action Task Force, which is an arm of the G-7 group of industrial nations. (Reuters, Apr. 29, 2001.)
(Peter Roudik, 7-9861)

UNITED KINGDOM--First High-Tech Courtroom Operational

To help bring British courts into the 21st century, a new, state-of-the-art, high-tech courtroom costing £500,000 (about US$720,00) has been launched at the Kingston Crown Court (a criminal court with both trial and appellate jurisdiction). If successful, all 78 Crown Courts in England and Wales will be modernized by 2005 as part of a £94 million (about US$135 million) program to speed up justice, improve efficiency and provide better treatment for victims, witnesses and jurors.

The Kingston Crown Court center, launched fully in March 2001, offers the following high-tech features:

• electronic information screens outside each courtroom and in the main foyer to keep all court users up-to-date with proceedings, for example, showing when a jury is being sworn in or legal argument is to begin; later, this information may also be made available on the Internet;

• the instant e-mailing of information by the court clerk, such as the court's decision, to other criminal justice agencies and setting the date for the next hearing by electronic means;

• an electronic link between the court and the local prison, to allow the speedy and efficient movement of people between the prison and the court;

• allowing jurors and witnesses to access general information about the court, via public kiosks placed in public buildings and via the Internet;

• a Web site of the court to allow jurors, in time, to respond to summons forms electronically;

• the electronic presentation of evidence (EPE), allowing photographs, maps, witness statements and video and Internet pages to be displayed on electronic screens in the courtroom (expected to save as much as 20 percent of court time);

• allowing defendants' to enter pleas via e-mail in less serious cases, such as minor driving offenses, when a court appearance is not necessary;

• new digital audio recording systems to improve the quality of recordings and to make it easier to replay in the courtroom and produce transcripts; and

• case progression officers, working directly with the judiciary, to monitor the progress of cases to ensure that there is no unnecessary delay.

The Kingston experiment will run for four years and test the new technology with the unique court environment. An additional 20 court centers will also be involved in the pilot scheme. Studies have shown that the cost of running a courtroom is approximately £9,000 a day, so the 20 percent reduction in judicial time by the use of EPE will provide significant savings in the long run. (Lord Chancellors Dept., Press Release 124/01; "First Hi-Tech Crown Court Unveiled," 5 *Business Credit News* (Apr. 1, 2001); Frances Vaughn, "A Crown Court For The 21st Century," *The Source, Public Management Journal*, http://www.thesource publishing.co.uk)
(Kersi B. Shroff, 7-7850)

UNITED KINGDOM–"Rape Shield" Law Held to Violate Fair Trial

A "rape shield" law enacted in the Youth Justice and Criminal Evidence Act 1999, section 41, has been ruled by the House of Lords in a landmark judgment to violate a defendant's right to a fair trial. The law bans juries in rape trials from hearing evidence that the accused had a previous sexual relationship with the victim, with the intention of sparing her a humiliating cross-examination.

The law was challenged by a defendant accused of rape who claimed he could not have a fair trial if he was not allowed to tell the jury that he and the accuser had had consensual sex on several occasions in the previous month. The challenge was brought under the Human Rights Act 1998, which incorporates the provisions of the European Convention on Human Rights into domestic law. The Act allows courts to declare laws to be incompatible with the Convention.

The five Law Lords (Justices) who heard the appeal from the Court of Appeal accepted that the "rape shield" law must not be allowed to stifle a defendant's claim that the accuser consented to sex and held that relevant evidence and cross-examination about a previous sexual relationship with the defendant should be admitted. The Law Lords, however, declined to declare the legislation incompatible with the European Convention and held that it should be read so as to make it compatible with the Convention. In the future, a trial judge will decide if the proposed evidence is relevant to the issue of whether or not the woman consented to sex at the time of the alleged rape.

A senior lawyer advising women's groups said of the decision: 'We're back to the discretion of a lot of male judges. We will try to draft an amendment to go into the next criminal justice bill." (R v. A [2001] UKHL 25, http://www. parliament.the-stationery-office.co.uk ;
Claire Dyer,"Lords Rule Rape Shield Law Unfair,"
The Guardian, May 18, 2001.)
(Kersi B. Shroff, 7-7850)

SOUTH PACIFIC

AUSTRALIA--Campaign Expenses Audit

The Office of the Auditor-General will conduct an audit of the activities and costs of Parliamentary staff during the federal election to be held by December 2001. The audit will cover the travel and staff expenses of all Members of Parliament, including the Prime Minister and the leader of the opposition. Independent MP Peter Andren has claimed that the lack of definition of party political matters has resulted in up to A$30 million (about US$15.6 million) in taxpayers' money being used for partisan campaign spending

in each three-year parliamentary term. He advocates the adoption of the British practice under which ministerial advisors are removed from the publicly funded payroll as soon as an election is called. The Australian National Audit Office, which operates under the authority of the Auditor-General Act 1997, has conducted audits of Parliamentary entitlements, but has not included election periods or electoral activity. ("MPs Face Election Expenses Audit" *The Australian*, May 17, 2001, http://www.the australian.com.au; Australian National Audit Office, http://www.anao.gov.au/)
(D. DeGlopper, 7-9831)

AUSTRALIA-Passive Smoking Verdict

In what is reported to be a world first, a New South Wales Supreme Court jury awarded a barmaid A$450,000 (about US$234,000) in compensation for cancer of the larynx she developed after working for 23 years in smoke-filled barrooms. The court attributed the cancer to the cigarette smoke the non-smoking worker was exposed to in the course of her employment and found her former employer, the Port Kembla RSL (Returned Servicemen's League) Club to have been negligent and in breach of its duty of care by exposing her to an unnecessary risk. The legal fees for the Club's defense, reportedly more than A$1 million, were met by the New South Wales worker's compensation authority, which was said to be willing to fund an appeal of the verdict. The verdict brought renewed calls for prohibiting smoking in bars as well as dining areas throughout New South Wales and criticism of the compensation board's role in opposing the claim of the ill worker. "WorkCover exists solely for the benefit of injured workers, not to support the apologists of the tobacco industry," said the chairman of the consumer law committee of the Law Council of Australia. ("Cigarette Verdict a Warning to Clubs," http://news.com.au, May 3, 2001; "WorkCover To be Grilled over Tobacco Lobby's Role," *Sydney Morning Herald*, May 4, 2001 at http://www.smh.com.au)
(D. DeGlopper, 7-9831)

INTERNATIONAL LAW & ORGANIZATIONS

ANGOLA/CAPE VERDE/GUINEA-BISSAU/MOZAMBIQUE/SAO TOME E PRINCIPE–Summit Meeting and Declaration

On April 10, 2001, the Presidents of the five Portuguese-speaking countries of Africa signed a 35-point declaration, promising to increase political, economic, and cultural cooperation, at the close of a one-day summit in Luanda, Angola. The chiefs of state endorsed Angola's bid for non-permanent membership on the UN Security Council in 2003. The summit also approved Angola's proposal to establish an archive in memory of those citizens who had fought against colonialism in the five nations that won independence from Portugal in 1975. Angola's President, Jose Eduardo dos Santos, asked the other chief executives to cooperate in promoting peace and stability. Mozambican President Joaquim Chissano expressed support for Angolan efforts to end the war with UNITA, a rebel group, and called for reviving the principles of political negotiation. The five leaders agreed to hold their next summit meeting in Mozambique in 2003. *(Angola News Index*, Apr. 30, 2001, via http://www.angola.org/
news/NewsDetail.cfm?NID = 3160)
(Sandra Sawicki, 7-9819)

EUROPEAN COURT OF HUMAN RIGHTS/UNITED KINGDOM–Breach of the European Convention on Human Rights

The European Court of Human Rights, based in Strasbourg, France, has found the United Kingdom to be in breach of Article 2 of the European Convention on Human Rights, arising from the killing of ten Irish Republican Army men

by security forces in Northern Ireland between 1982 and 1992. Article 2 of the Convention safeguards the right to life and sets out the circumstances when deprivation of life may be justified. The families of the men killed, many of whom were senior IRA operatives, claimed that the men had been shot to death unjustifiably, without any attempt being made to bring them before a court. In a 300-page ruling, the European Court found that the investigations of the use of lethal force by security authorities showed a lack of independence of investigating police officers from the security forces involved in the incidents and from public scrutiny. The Convention obliges governments in cases of unlawful killings to conduct investigations capable of leading to the identification and punishment of those responsible, the Court noted. The killings had been investigated by the Royal Ulster Constabulary, but the Director of Public Prosecutions in Northern Ireland had concluded that the evidence did not warrant any prosecutions.

The European Court, however, did not accuse the security forces in Northern Ireland of unlawful killing, nor was the Court prepared to analyze 30 years of "troubles" in Northern Ireland in an attempt to establish whether the security forces had adopted a practice of using "disproportionate" force.

The families, who were each awarded £10,000 compensation (about US$14,400), consider the judgment to confirm that security forces in Northern Ireland had operated a shoot-to-kill policy in the 1980s and 1990s. According to human rights experts, the decision could lead to many similar claims being brought. The Northern Ireland Secretary, noting that the court had not found the deaths amounted to unlawful killing, said, "The criticisms are of procedures and the investigations, not the deaths themselves." (Hugh Jordan v. the United Kingdom; Mckerr v. the United Kingdom; Kelly and Others v. the United Kingdom; Shanaghan v. the United Kingdom, http://www.echr.coe.int; Michael Evans, "Payouts of £10,000 'May Open the Floodgates'," *The Times* (London), May 5, 2001).
(Kersi B. Shroff, 7-7850)

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Recent Publications from Great Britain Obtainable from the Law Library

House of Commons. Defence Committee. DRAFT EXPORT CONTROL AND NON-PROLIFERATION BILL. HC445. London: The Stationery Office, May 2001. xlix, 48 pp.

This report of the Defence, Foreign Affairs, International Development, and Trade and Industry Committees, was printed together with minutes of the proceedings of the Committees. It concludes with the statement that the Bill is an effort to end the anachronism that many strategic export controls are based on World War II-era legislation. New legislation will be required to handle issues such as the intangible transfers of the technology of weapons of mass destruction, brokering and trafficking, end-use, and licensed production overseas. There are 25 specific recommendations in the report, keyed to different aspects of the Bill.

_____. Environmental Audit Committee. RENEWABLE ENERGY. HC334. London: The Stationery Office, May 2001. 115 pp.

This report consists of 32 memoranda submitted by a wide variety of bodies on the subject of renewable energy. Included are non-governmental nonprofit organizations such as Greenpeace, companies in the field of energy production such as Powergen, a purchaser and developer of renewable sources of energy, and government offices, including the Ministry of Defence.

_____. Science and Technology Committee. WAVE AND TIDAL ENERGY. HC291. London: The Stationery Office, Apr. 2001. 175 pp.

This report, published together with proceedings of the committee and evidence submitted, opens with a list of 23 recommendations. The conclusion states that wave and tidal technologies have enormous potential advantages as sources of energy. They have less negative environmental impact than other technologies, are predictable, natural resources, and are abundantly available in the U.K. The report thus recommends significant increases in public support for development of these technologies.

House of Lords. Select Committee on the European Union. A COMMUNITY IMMIGRATION POLICY. HL Paper 64. London: The Stationery Office, Apr. 2001. 123 pp.

In November 2000, the Commission to the European Council and the European Parliament issued two Communications, outlining the possible EC policies on issues of asylum and migration. This House of Lords report discusses the second Communication, focusing on issues of economic migration. It considers policy in the light of labor and skills shortages in the Member States and of the long-term changes in the demographic structure of Western Europe. The report includes evidence submitted on a wide range of issues by witnesses. The inquiry was conducted by the Members of the House of Lords Sub-Committee F (Social Affairs, Education and House Affairs).

Lemos, Gerard. RACIAL HARASSMENT: ACTION ON THE GROUND. York: Lemos& Crane, 2000. 60 pp

Parliamentary Resources Unit, TO ASK HMG WHAT IS THEIR RESPONSE TO RACIAL HARASSMENT: ACTION ON THE GROUND, A REPORT BY GERARD LEMOS FOR THE JOSEPH ROWNTREE FOUNDATION AND TO THE PROPOSALS FOR IMPROVING SERVICES FOR TACKLING RACIST INCIDENTS AND HARASSMENT IN THE UNITED KINGDOM. Apr. 24, 2001. 15 pp.

Gerard Lemos' report, based on research sponsored by the Joseph Rowntree Foundation, covers the nature and extent of racial harassment, current actions being taken against it, findings of surveys and case studies, and examples of innovative practices. It includes a section on policy implications, including the suggestions that the usefulness of a national helpline for reporting racial harassment be studied; that research is needed into the long-term impact for victims; that places of safety that are temporary refuges need to be established; that existing legal remedies are not being used frequently and the reasons for this--including perhaps the lack of general knowledge of the available remedies–should be further researched; that innovative work with perpetrators should be encouraged; and that a national framework for dealing with racial harassment would be of value. The Parliament Resources Unit's report summarizes existing legislation and the Lemos report, discusses the Race Relations (Amendment) Act 2000, and reviews recommendations for police training.

National Audit Office. HANDLING CLINICAL NEGLIGENCE CLAIMS IN ENGLAND. HC403. London: The Stationery Office, May 2001. 41 pp.

After examining the number of claims filed against the National Health Service (NHS) for negligence and the cost of their settlement, the Comptroller and Auditor General made a number of recommendations to the Department of Health, the Lord Chancellor's Department, and the Legal Services Commission, which were accepted by those agencies. These include the recommendation that the Litigation Authority and the Legal Services Commission should meet regularly to discuss the handling of cases that have remained unresolved for more than five years, as well as working separately to bring these cases to conclusion. The two organizations should each develop quantified measures of performance for the solicitors they instruct or fund. The Department of Health should give clear guidance to the NHS Trusts on what information may be given to patients who have suffered adverse incidents, including those who may have suffered due to negligence. Alternative methods of resolving small and medium-sized claims should be investigated. The Department of Health should further consider how to provide financial and other incentives to reduce incidents that lead to claims.

Parliamentary Resources Unit. UK-USA RELATIONS. Brief prepared for debate, House of Lords, May 2, 2001. 23 pp.

This brief discusses issues that have an impact on relations with the United States: the refusal of the U.S. to adhere to the Kyoto Protocol on global warming, the U.S. National Missile Defence system, which would involve the use of facilities in the U.K., and the European Strategic Defence Initiative. The positions of the Conservative Party, as opposition to the current government, are described.

THE WORLD TRADE ORGANIZATION: RECENT DEVELOPMENTS

by Giovanni Salvo, Senior Legal Specialist, Directorate of Legal Research*

DISPUTE SETTLEMENT[1]

1. Iron or non-alloy steel
2. Asbetos and asbestos products
3. Lamb
4. Hot-rolled steel products
5. Sardines
6. Sugar
7. Jute Bags
8. Intellectual property rights in Greece

Appellate and Panel Reports Adopted

1. On April 5, 2001 the Dispute Settlement Body (DSB) adopted the Panel report as modified by the Appellate Body in the dispute initiated by Poland concerning **anti-dumping duties on angles, shapes and sections of iron or non-alloy steel H-beams** imposed by Thailand on these products.[2] The Appellate body, whose report was circulated on March 12, 2001, upheld most of the findings of the Panel.

2. On March 12, 2001, the Appellate Body circulated its report in the dispute between the European Communities (EC) and Canada over measures imposed by France affecting **the prohibition of asbestos and asbestos products**, including a ban on imports of such products.[3] The Panel report as modified by the Appellate Body report was adopted by the DSB on April 5, 2001.

Appellate Body Reports Issued

3. The Appellate Body, on May 1, 2001, circulated its report in the dispute over United States safeguard measures on **imports of fresh, chilled, or frozen lamb** from New Zealand and on lamb from Australia. One Panel had examined both complaints.[4] The Appellate Body upheld the findings of the Panel.

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* Dottore in Giurisprudenza, University of Naples.

[1] Http://www.wto.org/wto/dispute/bulletin.htm

[2] See WLB WTO Update, WLB01.05, May 2001, at 23.

[3] *Id.*

[4] See WLB WTO Update, WLB01.04, April 2001,at 25.

Panel Reports Appealed

4. On April 25, 2001 the United States appealed the decision of the Panel in the dispute concerning anti-dumping measures on certain **hot-rolled steel products** from Japan.[5] The Panel found against the United States. Its report was circulated on February 28, 2001.

Pending Consultations

The following requests for consultation were filed:

5. Peru against the European Communities, concerning **trade description of sardines**. According to Peru, the EC legislation at issue constitutes an unjustifiable barrier to trade and is inconsistent with the principle of non-discrimination (Mar. 20, 2001);

6. Colombia against Chile concerning definitive safeguard measures for a number of **agricultural products, including sugar**, and modification of concessions regarding, *inter alia*, refined sugar. The measures, Colombia maintains, are inconsistent with Chile's obligations under the provisions of various agreements, and appear to nullify and impair benefits accruing to Colombia under those agreements. Colombia indicated that this new request replaces in its totality a similar previous one (Apr. 17, 2001);

7. India against Brazil concerning anti-dumping duties on **jute bags** (Apr. 9, 2001).

Completed Case

8. On March 20, 2001, the United States, the EC, and Greece, parties in a dispute concerning the lack of enforcement of **intellectual property rights** in Greece, informed the DSB of a mutually satisfactory solution to the matter.

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[5] See WLB WTO Update, WLB00.05, May 2000, at 26.

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

by Theresa Papademetriou, Senior Legal Specialist, Western Law Division*

Tobacco Directive[1]

On May 15, 2001, the European Parliament gave its approval to the draft tobacco directive. The directive must also be approved by the Council. Some of the salient features of the Directive include:

a) Health warnings: all packets of tobacco products would have to bear the following general warnings: "Smoking kills/Smoking can kill" or "Smoking seriously harms you and others around you." The packets must carry an additional health warning on the association of smoking and lung cancer or heart disease. At the Parliament's recommendation, the general warning must cover 30% of the front of the packet. In countries with two official languages, it must cover 32%, and the proportion is 35% in those countries with three official languages. The additional warning must cover 40% of the back of the packet, or 45% if there are two languages and 50% if there are three languages. The Commission will adopt rules on the use of photos and graphics on top of the warning no later than December 2002;

b) Prohibition of misleading advertising: as of September 2003, the use of terms such as "low tar," "ultra light," and "mild" would be prohibited;

c) List of ingredients: tobacco companies are obliged to divulge the list of ingredients to the authorities of the Member States, who would then disseminate this information to the public. By the end of 2004, the Commission undertook the task of submitting a list of common ingredients for all tobacco products; and

d) Exportation of tobacco products: after 2007, any tobacco products for export must comply with the same standards that apply to EU products, that is ceilings for tar (10 mg), nicotine (1mg) and carbon monoxide (10mg).

New Directive to Protect EU Money from Fraud[2]

The first measures for the protection of the Community's financial interests against fraud, corruption, and money laundering were the 1995 Convention on Protection of the Community's Financial Interests and the additional protocols signed in 1996 and 1997. However, because a number of Member States have not yet ratified these documents, the Commission decided to take additional measures in the form of a Directive. The draft Directive's objective is to harmonize the criminal laws of the Member States in the areas of definition of criminal practices, criminal liability, and penalties.

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[1] Http://wwwdb.eeuroparl.eu.int/oeil

[2] Http://europa.eu.int/rapid/cgi/rapcgi.ksh?p_action.gettxt = gt&doc = IP/01/741/0/RAPID&lg = EN

European Union Signs Convention on Toxic Chemicals[3]

On May 22, 2001, the EU signed the Convention on Persistent Organic Pollutants (POPs) in Sweden. The Treaty establishes measures on the production, import, export, disposal, and the use of some very toxic chemicals, such as DDT, dioxins, furans and others. The current list includes 12 chemicals that are prohibited. A Review Committee established under the Convention will regularly update the list and include additional chemicals if needed.

EU and US Sign Energy Research Cooperation Agreement[4]

On May 14, 2001, the European Commission and the Energy Department of the United States signed an implementing arrangement on scientific cooperation in the field of non-nuclear energy and a Cooperation Agreement on nuclear fusion.

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[3] Http://europa.eu.in/rapid/cgi/rapcgi.ksh?p_action.gettxt = gt&doc = IP/01/730/0/RAPID&lg = EN

[4] Http://www.eurunion.org/news/press/2001/2001035.htm