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The *Global Legal Monitor,* an electronic publication of the Law Library of Congress, is intended for those who have an interest in legal developments from around the world.

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This online publication will be updated frequently, drawing upon information selected from the *Global Legal Information Network*, official national legal publications, and reliable press sources. Occasionally, a special section may be added to include lectures, conferences, symposia, and exhibits on timely legal topics sponsored by the Law Library of Congress.

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Sincerely,

Rubens Medina
Law Librarian of Congress

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Attorneys and Judges

IRAQ – Government Removes Chief Judge of Saddam's Anfal Trial

The spokesman for Nouri al-Maliki, the Iraqi Prime Minister, said that the Supreme Iraqi Criminal Tribunal had approved the government's request to replace Judge Abdullah al-Ameri, the chief judge presiding over the Anfal trial of Saddam Hussein. The spokesman accused the judge of having lost his impartiality, after the judge recently claimed that the former Iraqi president was not a dictator. (*Iraqi Government Forced Removal of the Chief Judge of the Anfal Court* [in Arabic], AL-JAZEERA, Sept. 19, 2006.)
(Issam Saliba)

MALAYSIA – Ad Hoc Foreign Advocates Must Have Skills Unavailable Among Local Lawyers

Malaysia's Federal Court ruled on September 18, 2006, that ad hoc admission of advocates and solicitors to practice in Malaysia in accordance with §18(1) of the Legal Profession Act 1976 (LPA) requires the foreign advocate or solicitor to have "special qualification or experience" in a particular field of law relevant to the case at hand (although not in every aspect of the case). Such expertise and experience must be of a "high degree of quality and type which cannot be found in local lawyers," the Court held. (*Cherie Booth QC v. Attorney General, Malaysia & Ors,* Federal Court, Civil Appeal No: 02-22-2006 (W), Sept18, 2006.)
(Lisa White)

SOMALIA – Ban on Unsanctioned Operations by Court Militia

On September 6, 2006, the Council of Somali Islamic Courts announced that henceforth the courts' soldiers must obtain permission from the judicial sections to which they belong before they conduct security operations in Mogadishu, the capital city of Somalia. The aim of the measure is to ensure that the forces are not engaged in operations without the courts' knowledge, according to Abdirahman Mahmud Fara (Janaqow), First Deputy Chairman of the Executive Committee of the Islamic Courts. Any soldiers who fail to obtain the prior authorization will be dealt with according to law, he added. Shaykh Janaqow delivered his remarks at the conclusion of a seminar to improve the knowledge of 123 Islamic judges about to be assigned to the judicial sections of Mogadishu's Islamic courts. (*Somalia: Islamists Ban Islamic Militias from Staging Unsanctioned Operations*, QAADISIYA, Sept. 7, 2006, Open Source Center No. AFP20060907301001.)
(Wendy Zeldin)

Communications and Electronic Information

CHINA – New Restrictions on Foreign News Agencies

On September 12, 2006, China's official news agency Xinhua released new rules that empower it to control the dissemination of information by its foreign counterparts in China. The Administrative Measures on Distribution by Foreign News Agencies of News and Information Within the Territory of China require foreign media to seek approval from Xinhua in order to distribute text, pictures, and graphics in China and to be represented by a Xinhua-designated agent with which they have signed an agreement; the media are prohibited from directly cultivating clients. The Measures also give Xinhua the right to censor the foreign news content and to delete content stipulated as forbidden under the Measures. There are ten types of prohibited content listed, including, for example, anything that might jeopardize China's security, national reputation, or interest; undermine state unity, sovereignty, or territorial integrity; be detrimental to public morality or China's cultural tradition; and the catch-all any other content prohibited by Chinese laws or regulations.

The Measures further stipulate that foreign media and their agents must each submit an annual report to Xinhua on their respective distribution or agency activities. Xinhua may conduct a review on the basis of the report; media and agents that are up to standard may continue to conduct their business. Media that violate the Measures may be subject to punishment ranging from a warning to revocation of their business license. Punishments are also stipulated for agents and clients that contravene the Measures. News agencies of Hong Kong, Macao, and Taiwan are also subject to the new provisions. (*China's Curbs on Foreign News Criticized*, REUTERS, Sept. 12, 2006; *Wai guo tongxunshe zai Zhongguo jingnei fabu xinwen xinxi guanli banfa* (*Administrative measures on distribution by foreign news agencies of news and information within the territory of China*), XINHUA, Sept. 10, 2006.)

The Measures take effect immediately, replacing the agency's 1996 measures controlling the distribution of financial information by foreign media in China. According to London's FINANCIAL TIMES, the Measures "appear to pose a serious threat to the China businesses of agencies such as Reuters, Dow Jones and Bloomberg, and could limit Chinese financial institutions' timely access to market-moving news and data." However, in the newspaper's view, whether Xinhua will be able to fully implement the new provisions is unclear, because domestic banks and other financial institutions, aside from the foreign media themselves, are likely to oppose them, with criticism focused on Xinhua's "dual role as regulator and powerful participant in the news and financial industry." (*China Puts Curbs on Foreign News Rivals*, FINANCIAL TIMES, Sept. 12, 2006.)
(Wendy Zeldin)

CHINA – Online Video Broadcasts May Be Censored

In mid-August 2006, China's Xinhua news agency reported that the State Administration of Radio, Film and Television (SARFT) planned to issue new regulations to more strictly control

Web sites that broadcast short films without state permission. SARFT has listed the Web sites Sina, Sohu, and Netease as the authorized providers of online video programs. It is unclear, however, whom the regulations would target (the service providers or the video creators) and how they would be implemented. The programs, which often parody classic Chinese Communist movies or everyday events, reportedly enjoy a rising popularity in China, while creating controversy over issues of intellectual property rights protection and morality. (*China to Issue New Regulations to Censor Online Video Broadcasts*, XINHUA, Aug. 16, 2006, Open Source Center No. CPP20060216150036; Geoffrey A. Fowler & Juying Qing, *Beijing Might Issue Regulations Aimed at Censoring Online Videos*, THE WALL STREET JOURNAL, Aug. 17, 2006, at A6.)

Regulations issued by SARFT in July 2004 already provide for the certification of audio and video programs on the Internet and other networks and for licensing of online short films, with violators to face a fine of up to 30,000 yuan (about US$3,750). Subsequently, only a few Web sites were granted official approval to offer online audio and video services. (SARFT, *Hulianwang deng xinxi wangluo chuanbo shiting jiemu guanli banfa*, July 6, 2004; *Measures for the Administration of Broadcasts of Audio-Visual Programs Through the Internet*, CHINA IT LAW. (Note: June 14, 2004, given as date of issuance and Oct. 10, 2004, as effective date seem to be incorrect.)
(Wendy Zeldin)

EUROPEAN UNION – Reform of Postal Services

Administration of the postal sector of the EU has been closely guarded by the Member States. The EU began its first reform efforts in 1997, followed by additional measures in 2002. The "Third Postal Services Directive" to be approved in November 2006 will attempt to fully liberalize this sector by 2009. The draft directive will eliminate the concept of "reservable areas" in which Member States have the right to limit access to certain postal operators. On the other hand, the proposal will preserve the "universal service obligation." This notion guarantees that certain services – including delivery of letters and parcels within a certain time frame, with a certain frequency and meeting a certain standard – will continue to be offered to citizens. The reform is likely to have a welcome economic impact on business correspondence because the prices are likely to fall. On the other hand, the cost of individual letters will be increased by up to fifty percent.

The proposal is expected to generate heated debate across the EU, because it places in jeopardy a number of jobs in several Member States. While Finland, Sweden, and the United Kingdom, which have already taken steps toward liberalization of the postal sector, might call for more drastic measures to be taken by the Commission, countries that fall behind in reform efforts may ask for extension of the 2009 deadline. (*EU Postal Reforms Set to Spark Heated Debate*, EUOBSERVER, Sept. 29, 2006.)
(Theresa Papademetriou)

SINGAPORE – *Far Eastern Economic Review* No Longer Permitted

In accordance with the Newspaper and Printing Presses Act (Cap 206), the Singapore Government has revoked its approval for the sale and distribution of the *Far Eastern Economic Review* effective September 28, 2006. The magazine is a declared foreign newspaper under the Act; that is, a declared "newspaper published outside Singapore … engaging in the domestic politics of Singapore" (§24) and thus it may not be reproduced or distributed in Singapore without government approval (§25). (Press Release, Minister for Information, Communication and the Arts, Revocation of Approval for Circulation of the Far Eastern Economic Review in Singapore (Sept. 28, 2006).)

Media sources claim that Singapore Prime Minister Lee Hsien Loong and his father Lee Kuan Yew have recently filed defamation suits against the *Far Eastern Economic Review*. (*Singapore Bans Far Eastern Economic Review Magazine*, Sept. 28, 2006, FORBES.COM.)
(Lisa White)

UNITED STATES – Ban on Internet Gambling

On October 13, the Unlawful Internet Gambling Enforcement Act of 2006 (UIEGA) became law as Title VIII of the SAFE Port Act, a law relating to port security. The UIEGA makes it illegal for gambling businesses to accept cash, checks, credit cards, or other forms of payment in connection with most forms of Internet gambling. The law covers transactions associated with bets or wagers transmitted over the Internet, including lotteries and gambling on sports events. The law directs federal regulators within nine months to establish regulations to require various financial institutions to block unlawful Internet gambling financial transactions. The law contains various enforcement mechanisms, including authorizing suit by federal and state attorneys general in federal court to enjoin prohibited transactions, as well as criminal penalties. Securities, commodities and derivatives transactions are excluded from the definition of "bet or wager" under the Act, and intrastate gambling authorized by state law is excluded from the law's coverage. (Unlawful Internet Gambling Enforcement Act of 2006, Title VIII of the *SAFE Port Act*, Public Law No. 109-347, 120 Stat. 1884 (2006).)
(Luis Acosta)

ZIMBABWE – Bill to Monitor Communications

It was reported on August 1, 2006, that the Government of Zimbabwe is drafting a bill that would allow government authorities to open post office mail and electronic mail and require Internet Service Providers to both provide details about users' communications without seeking a court warrant and install software to intercept e-mail messages for forwarding to the authorities. The Interception of Communications Bill would also permit the government to listen at will to all fixed and mobile phone conversations. The draft reportedly provides that the interception process should be such that "neither the interception target nor any other unauthorized person is aware of any changes made to fulfill the interception order." In addition, the bill would authorize the Minister of Transport and Communications to issue a warrant to state authorities to order the interception of information when there exist "reasonable grounds for the minister to

think that an offence has been committed or that there is a threat to safety or national security of the country."

Opponents of the bill contend that it is deeply flawed. In their view, it lacks basic protections against unwarranted invasion of privacy, allowing "unwarranted surveillance of democratic activities such as journalism, civic protests, trade unionism, and political opposition" and makes no provision for an independent oversight commission or for the publication of annual public reports on the interception activities. Reportedly, the proposed legislation also

> will fly in the face of past court rulings such as that of the Zimbabwe Supreme Court in 2004, which declared unconstitutional Sections 98 and 103 of the Posts and Telecommunications (PTC) Act because they violated Section 20 of the Constitution of Zimbabwe. Section 20 provides for freedom of expression, freedom to receive and impart ideas, and freedom from interference with one's correspondence.
>
> (Julius Dawu, *Freedom of Expression Under Attack*, WORLDPRESS.ORG, Aug. 1, 2006.)

Wilbert Mandinde, Legal Officer of the Zimbabwe Chapter of the Media Institute of Southern Africa (MISA), has stated that the bill has "immeasurable inadequacies" compared with laws in countries that respect the right to privacy and should be subjected to rigorous scrutiny before it is put before Parliament. Nevertheless, even though the bill remains in the draft stage, SW Radio Africa News reported that some government institutions such as the Reserve Bank of Zimbabwe have reportedly begun to block e-mails with political content. (Julius Dawu, *id*; Lance Guma, *Internet Service Providers Block E-Mails with Political Content*, SW RADIO AFRICA NEWS, June 22, 2006.)
(Wendy Zeldin)

Criminal Law

CHINA – Draft of New Anti-Drug Law

Chinese lawmakers have begun a debate on a draft of the Anti-Drug Law that would require entertainment venues to report drug users to the police. The draft is the first law that specifically aims to crack down on drug use, requiring owners of entertainment venues, such as pubs, karaoke bars, and nightclubs, to post anti-drug notices on their premises. The draft outlaws opium, heroin, marijuana, methamphetamines, morphine, and cocaine. Chen Qiang, the Head of the Anti-Drug Unit of the Beijing Public Security Bureau, said that a special crackdown will be launched soon and will target entertainment venues where drug trafficking and use are reported. The names of the venues where drugs are found will be disclosed to the public, and owners will be prohibited from running such businesses. The bill will also help build a drug-free entertainment environment for the 2008 Beijing Olympic Games, he added. (*Draft Law Orders Bars, Nightclubs Ordered to Report Drug Takers to Police*, Aug. 23, 2006.)
(Rui Geissler)

CHINA – Shandong Courts to Use Sentencing Software

A court in Zibo City, in China's Shandong Province, has used a pilot software program over the past two years to calculate standard prison terms for various offenses, and it was reported on September 12, 2006, that more Shandong courts would adopt the program by the end of the year. Court computers equipped with a legal database can reportedly determine punishments for 100 offenses, including murder, theft of state secrets, and rape, all of which can carry the death penalty. After a judge types in the details of a crime and any mitigating circumstances, a recommended sentence provided by a "penalty calculator" program flashes on the screen. The software manufacturer stressed, however, that judges retain the final say in sentencing. The software has been used in Zibo's Zichuan District Court since 2004 and has been used in more than 1,500 cases, according to news reports. The court's chief judge stated that it "can avoid abuse of the discretionary power of judges as a result of corruption or insufficient legal training." While some legal scholars have assessed the system and endorse it, others caution that it should be used with care because each criminal case is different. (He Huifeng, *More Courts Will Use "Penalty Calculator,'"* SOUTH CHINA MORNING POST, Sept. 13, 2006, & Simon Parry, *Computers That Hand Out Death Sentences*, DAILY MAIL (London), Sept. 14, 2006, LEXIS/NEXIS, News Library, 90days File.)
(Wendy Zeldin)

FINLAND – Penal Code Amended to Fight Human Trafficking and Pandering

The President of Finland is to confirm an amendment to the Penal Code that will make it illegal to abuse a person who is subject to the sex trade. The amendment will mean that a person will be found guilty of abuse if, by promising or giving compensation of economic value, he makes a person who is subject to pandering or human trafficking agree to sexual intercourse or a comparable sexual act. The punishment will be a fine or imprisonment for a term of up to six months. An attempt to abuse will also be punishable.

At present the selling or buying of sexual services in a public place is punishable as a violation of general order. The new provision will be applied irrespective of where that act is committed or how the contact between the parties was made.

The purpose of introducing the new prohibition is to protect persons who are subject to pandering or human trafficking and also to attempt to decrease the preconditions for such crimes. The provision will enter into force on October 1, 2006. (Press Release, Ministry of Justice, Abuse of a Person Subject to Sex Trade to Be Made Punishable (Aug. 24, 2006).)
(Linda Forslund)

FINLAND – Prison Access to Secret Court Documents

On August 24, 2006, the Finnish Government approved a bill proposing that prisons be given the right by courts to access secret trial materials. The material would only be released to the prisons if it were to be used in programs to prevent serious crimes of violence and sexual offenses. Only prison personnel who work directly with such programs, such as psychologists and social workers, would be permitted to handle the material, on the grounds that they need objective information regarding the criminal act committed and what led the perpetrator to commit the crime. The bill further stipulates that the secret information released must be destroyed immediately after use. The new provisions would take effect at the same time as the new Prison Act enters into force on October 1, 2006. (Press Release, Ministry of Justice, Fängelserna föreslås ha möjlighet att få uppgifter ur sekretessbelagda rättegångshandlingar (Aug. 24, 2006).)
(Linda Forslund)

GERMANY – European Arrest Warrant

On August 2, 2006, Germany enacted the Act on the European Arrest Warrant (BUNDESGESETZBLATT 2006 I at 1721), which transposes the European arrest warrant (Council Framework Decision of June 13, 2002, on the European Arrest Warrant and the Surrender Procedure Between Member States, OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES (L 190)) into German law. This is the second time that Germany attempts to comply with the European arrest warrant regime through national legislation. An earlier law on the same topic (Europäisches Haftbefehlsgesetz, July 21, 2004, BUNDESGESETZBLATT I at 1748) was invalidated by the German Constitutional Court on July 18, 2005 (Bundesverfassungsgericht decision, docket no. 2 BvR 2236/04, 113 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS 273 (2005)) on the grounds that it did not provide adequate protection to German citizens against unreasonable extradition requests. The new version of the law remedies this shortcoming by providing that German nationals can be extradited under a European arrest warrant only if the offense had a preponderant connection with the requesting country or involved a serious offense of an international character, such as international terrorism, and if the requesting state promised to allow the extradited fugitive to serve any imposed prison sentence in Germany, upon his request.
(Edith Palmer)

THE NETHERLANDS – Expanded Use of Intelligence in Criminal Proceedings

The Dutch Senate (the Upper House of Parliament) approved a legislative proposal on September 26, 2006, that expands the options for use of information from the Dutch General Intelligence and Security Service (AIVD) in criminal proceedings. Under the new law, AIVD officers may elaborate on the contents of their official reports before an examining magistrate, so that the magistrate may weigh the reports directly as evidence, and the protected hearing of witnesses is made possible. As a result of the new legislation, it is expected that better and clearer conditions will be created for using AIVD information in tracing and prosecuting terrorists. The new law will enter into force on November 1, 2006.

The Ministry of Justice points out that the regulation is of particular importance for judges, who must decide on the reliability of an official AIVD report in hearing the criminal cases. Since AIVD witnesses typically cannot say much at a public hearing due to national security reasons, the judge may call in the examining magistrate to do an investigation, check the reliability of an official report, and arrive at an opinion. The judge must then assess whether the magistrate's findings have evidential value.

The new procedure apparently provides a better fit with European case law, which states that limiting the rights of the defense is acceptable when national security is at risk; however, extra safeguards will be necessary. It also conforms with recent Dutch Supreme Court decisions on the use of AIVD information in criminal proceedings. On the question of how to examine the reliability of AIVD information, the Court held it was important "that the court must seek to compensate the rights of the defence by looking for other ways to test the reliability of the material." (Press Release, The Netherlands Ministry of Justice, Dutch Senate Supports Increased Options for Using AIVD Information (Sept. 26, 2006).)
(Wendy Zeldin)

NIGERIA – Shari'ah Court of Appeal Upholds Judgment

The Shari'ah court of appeal in Bauchi, Nigeria, has upheld a judgment by an upper Shari'ah (Islamic law) court that imposed a brutal punishment. This decision is the first affirmation of a conviction by the Shari'ah court of appeal since the legal system was revised in 2001. In the case in question, Malam Adamu Musa Darazo was convicted in August 2002 of inflicting grievous injury on his wife by cutting her right limb with a cutlass, and he was sentenced to have his right limb amputated. The three judges unanimously dismissed Darazo's appeal. *(Nigeria: Shari'ah Court of Appeal Upholds Judgment on First Amputation in Bauchi*, RADIO BAUCHI, Aug. 21, 2006, Open Source Center No. AFP20060829632016.)
(Constance A. Johnson)

RWANDA/UN – Singer Accused in Genocide Case

Simon Bikindi, a well-known Rwandan singer and composer, is on trial before the International Criminal Tribunal for Rwanda. He has pleaded not guilty to six charges related to the use of his songs to incite listeners to kill Tutsis during the genocide in 1994. The trial before

the United Nations war crimes court is being held in Arusha, Tanzania. Judges from Argentina, Cameroon, and the Czech Republic are hearing the case.

The formal charges include conspiracy to commit genocide, direct and public incitement to commit genocide, murder as a crime against humanity, and persecution as a crime against humanity. The prosecutor, Hassan Bubacar Jallow, told the Tribunal that Bikindi "consciously and deliberately" helped in the plan to kill Tutsis through the lyrics in his songs, which incited supporters to join the Interhamwe militia. The militia carried out massacres during the April 1994 genocide that resulted in the deaths of 800,000 people. Jallow further argued that Bikindi also took part directly in the planning for the crimes and recruited and trained members of the Interhamwe. (*Rwandan Singer Accused of Using Music to Incite Genocide Goes on Trial at UN Tribunal*, UN NEWS, Sept. 18, 2006.)
(Constance A. Johnson)

TAIWAN – Anti-Corruption Assessment by MOJ

Taiwan's Ministry of Justice announced on September 10, 2006, that over the last six years prosecutors throughout Taiwan had brought 3,341 corruption cases to court and 8,368 people had been indicted. Senior and elected officials constituted almost thirty percent of the indicted.

In 2001, the Democratic Progressive Party government established the Black Gold Investigation Center under the Taiwan High Court Prosecutor's Office, to combat "serious corruption and corruption involving high-level officials." The Nationalist Party (Kuomintang, or KMT) government reportedly rarely brought corruption charges against high-level officials during its tenure in power before 2000. (*Ministry of Justice Details Its Fight with Corruption*, TAIPEI TIMES, Sept. 11, 2006.)
(Wendy Zeldin)

VIETNAM – Anti-Corruption Police

A draft ordinance amending a 2004 ordinance on criminal investigations of the Socialist Republic of Vietnam was made public on September 19, 2006. If approved, the ordinance would reportedly allow police forces at the central and local levels to form special units dedicated solely to fighting corruption. Under the draft ordinance, another anti-corruption department would be instated in the Ministry of Public Security (MPS) and police agencies at the provincial level could establish a unit to combat corruption if they saw fit. The new provisions would also give more power to the MPS central investigative board in investigating crimes. In August, the government established a Central Steering Committee for Anti-Corruption headed by Prime Minister Nguyen Tan Dung. (*Vietnam to Have Anti-Corruption Police*, THANH NIEN DAILY, Sept. 20, 2006.)
(Wendy Zeldin)

Education

ARGENTINA – Sex Education

On October 4, 2006, Argentina's Senate passed a bill that introduces sex education in public and private primary and high schools. The new law establishes that all students have the right to receive s complete sex education, which includes biological, psychological, social, emotional, and ethical aspects of the subject.

The law creates the National Program of Comprehensive Sexual Education within the Ministry of Education, which will have 180 days to develop the curriculum to implement the program. The law will be applicable gradually, within a time limit of four years, in accordance with the development of teacher training and curriculum adjustments.

Some religious groups, especially Catholic organizations, have concerns about the law and have frequently opposed the inclusion of this subject in the academic curriculum. However, article 5 of the law asserts the right of each educational community to adapt the basic proposed curriculum on the subject to its socio-cultural reality in a manner that would respect its institutional principles and convictions. (*El Senado Convirtió en Ley el Proyecto de Educación Sexual en Todo el Pais*, CLARÍN, Oct. 5, 2006.)
(Graciela Rodríguez-Ferrand)

Elections and Politics

BANGLADESH – National Democratic Institute Will Observe 2007 Election

To help establish democracy through free and fair elections, a delegation of the U.S. National Democratic Institute (NDI) will observe the upcoming January 2007 election in Bangladesh. The NDI organized an international delegation to Bangladesh from September 8-11 to assess the current political environment and make recommendations on measures that can improve the electoral process. The delegation was comprised of former Majority and Minority Leader of the United States Senate, Tom Daschle; former Prime Minister of New Zealand and former Director-General of the World Trade Organization (WTO), Mike Moore; former Minister of Women's and Veteran's Affairs in Cambodia, Mu Sochua; NDI's Asia Deputy Director, Thomas Barry; NDI's Bangladesh Resident Director, Owen Lippert; and NDI's Senior Program Manager for Bangladesh, Deborah Healy. (*NDI Pre-Election Delegation Arrives in Bangladesh, All Headline News,* Sept. 6, 2006.)

Former Senator Tom Daschle has expressed concern about the voting process in Bangladesh, but he is hopeful that it will be conducted fairly in the 2007 election. According to the NDI Report, the delegation intends to monitor the electoral process through the post-election period without interfering in the actual outcome of the election. (National Democratic Institute, *Report of the National Democratic Institute (NDI) Pre-Election Delegation to Bangladesh's 2006/2007 Parliamentary Elections*, Sept. 11, 2006.)
(Shameema Rahman)

EUROPEAN UNION – Voluntary Register of Lobbyists

Recently, the European Commission announced plans to introduce a register for lobbyists, in an effort to improve the public's perception of European Union lobbyists as operating "in an atmosphere of shadows." In the Commission's view, the problem is not as acute as in the United States. The Commission envisioned the register as an online database containing information on all interest groups and supervised by the European Ombudsman. Those that sign the register will voluntarily submit to a code of conduct. The Commission has not made a decision on the issue of disclosing client fees.

The Commission decided in favor of this approach, rather than introducing a Directive that would have covered public relations firms and NGOs, because the latter is a time-consuming process. It also decided against the U.S. model, which calls for mandatory registration, but expressed its intention to follow such a model in the future if the situation warrants. (*Brussels Sticks to Soft Touch on Lobbying*, EUOBSERVER.COM, Sept. 20, 2006.)
(Theresa Papademetriou)

PAKISTAN – Abolition of the Constitutional Concurrent List

In an unusual move of conciliation following the killing on August 26, 2006, of Balochistan leader Akbar Khan Bugti in a military operation, the Federal Government of

Pakistan has given its consent to the opposition to place for consideration by Members of Parliament a bill to amend the Constitution and allow more provincial autonomy by abolishing the Concurrent Legislative List of subjects on which both the provinces and the Federal Government can legislate. The Constitution (Amendment) Bill 2006, sponsored by nine opposition members, was therefore introduced in the National Assembly. The Parliamentary Affairs Minister consented to the immediate introduction of the bill on the insistence of the sponsors, while admitting that there was a fast deteriorating situation in Balochistan.

The Concurrent List of thirty-five subjects was originally to be abolished within ten years after the adoption of the 1973 Constitution. This did not occur, however, because of the intervention of the 1977 military coup by General Mohammad Zia-ul-Haq. Now, the Parliamentary Affairs Minister stated, while Balochistan and Sind were "in a state of war" because of government crackdowns and a sense of deprivation, it was necessary for the future of the federation to abolish the List and transfer the listed subjects to full provincial jurisdiction. (Raja Asghar, *Autonomy Bill Tabled in NA: Call to Abolish Concurrent List,* THE DAWN, Sept. 6, 2006.)
(Krishan Nehra)

SRI LANKA – ID Cards to Be Required for Voting

The administrative work necessary to implement a requirement that the Sri Lankan national identity card be shown by anyone wishing to vote will be completed by December 31, 2006, according to the country's Department of Registration of Persons. Under a 1968 law, the Persons Registration Act (Law No. 38), all citizens must be registered. Mobile service units were set up in locations across the country to receive national identity card applications. To date, however, many citizens, especially in the Tamil community, still do not have the cards. The rule making the showing of the card compulsory for voting had to be suspended for the November 2005 presidential election, due to the high number of potential voters who had not yet obtained cards. (*National Identity Cards Will Become Compulsory for Voting in Sri Lanka,* COLOMBO PAGE, Sept. 18, 2006.)
(Constance A. Johnson)

THAILAND – Martial Law, New Constitution Drafted

On September 19, 2006, Thai military forces staged a coup against Prime Minister Thaksin Shinawatra, declared martial law, and announced the formation of an interim regime. Reasons for the coup, according to its leaders, were divisiveness created in the country by the Thaksin government and rampant corruption. Thaksin, a multi-millionaire telecommunications tycoon, assumed power in 2001 and was reelected in 2005. Earlier in 2006, mass demonstrations took place protesting alleged corruption and tax avoidance by his family. Thaksin won a snap election held in April 2006, but opposition parties boycotted the poll and political deadlock ensued, ended only when the King Bhumibol Adulyadej called on the two sides to resolve their differences. Although Thaksin handed routine power over to his deputy, Chidchai Vanasatidya that same month, he reassumed it in May, citing a need to "get back to work on security and economic issues." New general elections are scheduled to occur in October.

Army Commander in Chief, Lieutenant General Sonthi Boonyaratglin, stated that martial law had been declared across Thailand and ordered all troops to report to their duty stations and not leave without permission from their commanders. He further stated that the Thai Constitution was being revoked, although he made assurances to the public that the military's action was only a temporary seizure of power and that a civilian government would soon be restored. The military forces responsible for the coup are loyal to King Bhumibol Adulyadej. The group in charge named itself the Council of Political Reform and indicated it was led by Boonyaratglin as well as by the head of the national police. According to Boonyaratglin's announcement, the Council will be headed by the King as head of state. The new military leaders also announced that a temporary constitution had been drafted, appointing them as advisers to an interim government through the formation of a National Security Council. After being reviewed by legal scholars, the document was to be submitted to the King for approval.

Since 1932, when absolute monarchy was deposed, Thailand has reportedly undergone seventeen military coups, the last one in 1991. (Peter Walker et al., *Thai Military Claims Control After Coup*, GUARDIAN UNLIMITED, Sept. 19, 2006; Holly Manges Jones, *New Thailand Constitution Gives Military Leaders 'Security' Role in Government*, JURIST, Sept. 26, 2006.)
(Wendy Zeldin)

Employment Law

BANGLADESH - New Labor Law

The parliament of Bangladesh has passed new labor legislation, the Bangladesh Labor Act, 2006, which amends and coordinates all the existing laws relating to the appointment of workers, employer-employee relations, fixation of minimum wages, payment of wages, formation of trade unions, settlement of industrial disputes, and health and security of laborers.

Labor leaders and the opposition party have criticized the new labor law. The opposition claims that several provisions of the law are against the interests of laborers, that the law does not benefit a substantial proportion of the labor force, and that it fails to address minimum wage issues comprehensively. It has also been criticized on the ground that it violates different provisions of the International Labor Organization (ILO), which Bangladesh ratified in 1972. (Tawfique Ali, *New Labour Law: By the owner, for the owner...*, The Daily Star, v. 5, n. 846, Oct. 11 2006.)
(Shameema Rahman)

BOTSWANA – Call for Protection of Employment Rights of Those with AIDS

An advocacy group, the Botswana Network on Ethics, Law, and HIV/AIDS (BONELA), has called on governmental and non-governmental organizations to draft regulations to protect persons with HIV/AIDS. At present, BONELA claims, there are no laws in Botswana on the rights of workers infected with the HIV virus that would prevent their being fired due to their health status. A recent case brought by a former employee of the Botswana Building Society, who claimed he was fired because he was HIV-positive, was dismissed for lack of appropriate legislation on health and employment.

The remarks by BONELA were made at a workshop for police officers and other public servants that was designed to encourage those public officials to promote cooperation between agencies on HIV/AIDS, create a conducive environment for individual information sharing on the disease in the hope of limiting its spread, and build institutional capacity to contribute effectively to the fight against it. (*BONELA Calls for Law to Protect HIV-Infected*, DAILY NEWS ONLINE, Sept. 6, 2006.)
(Constance A. Johnson)

GERMANY – Reform of Support Payments to Long-Term Unemployed

On July 20, 2006, Germany reformed its social laws on support payments for the long-term unemployed. The Act on the Further Development of Basic Support for Those in Search of Work (BUNDESGESETZBLATT 2006 I at 1706) fine tunes a system of assistance payments to the long-term unemployed that was enacted in 2004 (BUNDESGESETZBLATT 2004 I 3305) and that gives those who have been term unemployed for longer than one year assistance payments, but only if they pass an assets-based needs test and demonstrate their willingness to accept any kind of employment, including unpaid community projects. The 2006 reform of this system of

payments for the hard-core unemployed lowers benefits and also lowers the level of assets that recipients may own without jeopardizing their assistance entitlements. In addition, the reform introduces additional control measures to forestall abuse.
(Edith Palmer)

INDIA – Government Entitled to Withhold Pension for Employee Misconduct

On September 8, 2006, the Supreme Court of India overturned a judgment of the Calcutta High Court of Bengal when it allowed the appeal by the West Bengal Government. The Supreme Court stated that the Government can withhold an employee's pension for a specified period of time, by means of departmental or judicial proceedings, where the person is found guilty of misconduct that caused pecuniary loss to the government.

The Calcutta High Court, in regard to a petition from Haresh C. Banerjee and others, had upheld Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, providing for withholding a pension or part of it for certain reasons, ultra vires articles 19(1)(f) and 31 of the Constitution, on the grounds that pension was a property and its payment did not depend upon the Government's discretion. Setting aside the judgment, the Supreme Court bench observed:

> Pension is not a bounty payable at the sweet will and pleasure of the Government and [that] to receive pension is a valuable right of a government servant is a well-settled legal proposition. The question in the present case, however, is not about the deprivation of the right by the government by an executive order but is about the constitutional validity of Rule 10(1).

The bench further observed that when the Government suffers pecuniary loss on account of the misconduct or negligence of an employee, it may retrieve that loss – established in proceedings against him/her – out of the pension payable to the employee. (*Government Can Withhold Pension for Grave Misconduct*, THE HINDU, Sept. 8, 2006.)
(Krishan Nehra)

NEW ZEALAND – Kiwisaver Starts

The Kiwisaver Bill (2006) has recently been introduced and seeks to provide a voluntary, work-based savings scheme open to all New Zealand residents under the age of eligibility for New Zealand Superannuation. Kiwisaver will start on July 1, 2007. Contributions to the savings schemes are made via salary deduction at a pre-tax rate of four percent or eight percent each pay period. Contributions may not be removed from the savings scheme other than for specific circumstances (such as first home purchase or serious financial hardship). To assist the contributions, the government will provide an initial contribution of NZ$1,000 (about US$653) to each eligible resident and also contribute towards scheme fees. All new employees will be members of the scheme unless they choose to 'opt-out.' (Kiwisaver Bill 2006 (NZ).)
(Lisa White)

Family Law

JAPAN – Paternity of Biological Father Who Died Before In-Vitro Fertilization

The Supreme Court rejected a widow's appeal in which she requested legal recognition that her deceased husband is the father of her child, conceived by in-vitro fertilization using the husband's sperm but after he died. The husband had asked the mother to have his baby if she did not marry again after his death. He had asked his parents to treat such a baby as his child (their grandchild). Although the high court admitted his legal paternity, the Supreme Court overturned that decision. The Supreme Court stated that the current law does not provide for the paternity of a sperm provider after his death, even though the law does not prohibit it. The Court concluded that new legislation is needed to recognize legal paternity in such a situation. (60 Minshu, (S. Ct., Second Petit Bench, Sept. 4, 2006.)
(Sayuri Umeda)

UNITED STATES – New Jersey Supreme Court Upholds Rights of Same-Sex Partners

On October 25 the New Jersey Supreme Court ruled that under the equal protection provisions (Article I, Paragraph 1) of the *Constitution of New Jersey*, committed same-sex couples had a fundamental right to the legal rights and benefits conferred upon married, opposite-sex couples.

Justice Albin wrote the court's opinion. He noted that the statutory and case law of New Jersey protects individuals from discrimination based on sexual orientation, but that couples are not similarly protected, writing that "the unequal dispensation of rights and benefits to committed same-sex partners can no longer be tolerated." The court stopped short, however, of finding that same-sex couples had a fundamental right to "marriage" by that name.

The court gave the New Jersey state legislature 180 days to amend the state's statutes to comply with this constitutional mandate. The legislature was given the choice of either amending the state's marriage laws to include same-sex marriages, or creating a new, parallel statutory scheme for same-sex couples "which will provide for, on equal terms, the rights and benefits enjoyed and burdens and obligations borne by married couples," similar to the schemes adopted by Vermont and Connecticut. The court held that such a new statutory scheme need not be named "marriage" in order to comply with the state's equal protection requirements, and left the name of any new scheme "to the democratic process."

Presently Massachusetts is the only state which recognizes same-sex marriage, pursuant to a redefinition of civil marriage by the Massachusetts Supreme Judicial Court which became effective in 2004. (*Lewis v. Harris*, *No.* A-68-05 (N.J., October 25, 2006.))
(Gary Robinson)

Gender Equality

GUINEA-BISSAU – Female Genital Mutilation Soon to Be Banned

A new bill banning the practice of female genital mutilation, or *fanado*, a traditional initiation ceremony for young girls, is about to be presented to the Guinea-Bissau Parliament. The purpose of *fanado* is to control female sexuality, in which the vagina's clitoris and lips are removed, explains Bula Baldé, an eighty-year old woman who has been practicing *fanado* for the past forty years in exchange for money and food. *Fanado* is practiced by most of the population of thirty different ethnic groups, including all the Muslim communities, especially in the eastern regions of the country. UNICEF estimates at 2,000 the number of female circumcisions performed every year and that up to 500,000 women suffer its medical and psychological consequences.

The bill, drafted in 2001 by the Institute for Women and Children in partnership with human rights organizations, provides penalties and prison sentences for those who practice *fanado*. Adenina Na Temba, Minister of Social Solidarity, Family and the Fight Against Poverty, was quoted as saying, "[w]ithout wanting to offend the religion or the culture of one or another ethnic group, we have to involve all social and political players," and that Guinea-Bissau has signed international conventions on women and children's rights and that her government cannot allow practices that offend against these rights.

The campaign against the practice has been led by a local nongovernmental organization, Sinin Mira Nassique, which means Think of Tomorrow in the Mandinga language. However, the recent death of its chairwoman has weakened the campaign. The strategy adopted by the NGO to overcome cultural issues was, after conducting awareness sessions, to promote a symbolic *fanado*, with all the social and traditional features of the original one, except the cut. The strategy has proved successful in many countries, but many practitioners in Guinea-Bissau resist abandoning the practice because they would lose their source of income. (*Guinea-Bissau: Proposed Law to Ban Female Genital Mutilation*, IRINNEWS.ORG, Sept. 18, 2006.)
(Eduardo Soares)

JAPAN – Imperial Household Law Will Not Be Amended in Near Future

Before Japan's Princess Kiko became pregnant, former Prime Minister Junichiro Koizumi's advisory committee recommended the amendment of the Imperial Household Law in order to make a female Emperor possible. Currently, the Emperor's first son does not have a male heir. Princess Kiko'new-born baby is the only grandson of the current emperor. The birth of the boy in early September 2006 strengthened the opinions that either only a male heir of a male Emperor should be able to become an Emperor or that if there were to be a female Emperor, her children should not be able to succeed her. New Prime Minister Shinzo Abe told news reporters that he thinks more discussions and consensus are needed on this matter, implying no amendment of the Law during his term. (*Koshitsu tenpan, abe chokan "jibun no*

seiken de wa kaisei isogazu" [Imperial Household Law: "Amendment will not be rushed," Chief Abe said], YOMIURI NEWSPAPER, Sept. 15, 2006 (on file with author).)
(Sayuri Umeda)

PAKISTAN – Women's Freedom Bill Indefinitely on Hold

On July 3, 2006, the Government of Pakistan, under pressure from fundamentalist religious parties and the threat of an internal split, put a women's rights bill on hold indefinitely on the grounds that it lacked broader consensus. For the third time in a week, the draft was put on the National Assembly's agenda but was not taken up. The latest deferment of the Protection of Women (Criminal Laws Amendment) Bill came about due to a key ruling coalition ally refusing to support the bill. (Raja Asghar, *Hudood Bill Put on Hold…Indefinitely*, THE DAWN, Sept. 14, 2006.)

Muttahida Majlis-I-Amal (MMA), an alliance of six Islamic parties, walked out of the Assembly while chanting "American bill is unacceptable, bill canceling Hudood of Allah is unacceptable, whoever is friend of America is a traitor of the country." The bill, if it had passed, was meant to amend the Offense of Zina [rape] (Enforcement of Hudood) Ordinance and the Offense of Qazf (false allegation of Zina) (Enforcement of Hadd) Ordinance of 1979 as well as the Pakistan Penal Code, the Code of Criminal Procedure (CrPC), and the Dissolution of Muslim Marriages Act. (Raja Asghar, *Amended Bill on Women's Rights Presented to NA: Protest Walkout by MMA, PML-N*, THE DAWN, Sept. 5, 2006.)

One major relief envisaged by the bill was meant to spare a woman an automatic prosecution on the basis of assumed confession if she was unable to prove her charge of rape against a man by producing four eyewitnesses of the crime. To check abuse of the Zina and Qazf ordinances, which are often aimed at settling vendettas and denying women basic human freedoms, the new legislation was sought to amend the CrPC to provide that only a sessions court may take cognizance of such a case after receiving a complaint. (*Id.)*
(Krishan Nehra)

Health Law & Regulation

AUSTRIA – Food Safety Law

On January 20, 2006, Austria enacted a Food Safety and Consumer Protection Act (BUNDESGESETZBLATT I no. 13/2006) that creates a new framework for monitoring the safety of food, cosmetics, and articles for personal use. The law is the Austrian adaptation to the standards required by the European Union Regulation on Food Safety (Regulation (EC) No. 178/2002 of the European Parliament and the Council of 28 January 2002, Laying Down the General Principles and Requirements of Food Law, Establishing the European Food Safety Authority, and Laying Down Procedures in Matters of Food Safety, 2002 (OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES L 31). The Austrian Act applies to all types of food, including diet foods, supplements, additives, and any substances that are added to food during processing. The Act seeks to enhance food safety throughout the production chain by making each processor and handler responsible for recognizing safety flaws in the product and by allowing for the tracing of unsafe foods back to the primary producer. Violations are made punishable by criminal and administrative sanctions and coercive measures. The Act also establishes new organizational procedures for crisis management.
(Edith Palmer)

BRAZIL – Minors in Rio de Janeiro Not Allowed to Obtain Tattoos or Piercings

On August 28, 200, the Mayor of Rio de Janeiro City, Cesar Maia, enacted Municipal Law No. 4,388 forbidding minors to obtain tattoos or piercings on their bodies. The Law does not create any special permission or concession for those minors who have authorization to do so from their parents or guardians. The only exception is the insertion of earrings in the ear lobes, which is allowed for those less than eighteen years of age.

The author of the Law, Councilman Doctor Jairzinho, explained that, as a physician, he is aware of what has been happening in many tattoo parlors. On many occasions, he said, adolescents have been arriving at hospitals with infections caused by tattoos and piercings done at the parlors as well as broken teeth and many other problems. He added that the minors do not have a complete understanding of what they are doing, that the rate of regret of those who undergo tattooing is extremely high, and that it is important to work on prevention of these problems.

The Law also requires that professionals working in this area and the tattoo parlors create a record for each client served, including the full name, age, gender, address, and the date of the visit, as well as a mandatory register of all accidents that occur. In addition, all clients must be informed, before the execution of any work, of the difficulties involved in the removal of tattoos. (*Lei Proíbe Tatuagens e Piercings em Crianças e Adolescentes*, GLOBO ONLINE, Aug. 30, 2006.)
(Eduardo Soares)

KENYA – Pharmaceutical Regulations

Kenya's Ministry of Health has made public new rules that regulate the registration, licensing, and sale of pharmaceutical products in that country. Dr. James Nyikal, Director of Medical Services, stated that the measures would help discourage illegal practitioners, whose number had recently been on the increase. Nyikal, who spoke at a pharmacy and poisons board stakeholders' workshop in Nairobi, asserted that quality medication for Kenyans is a top priority of the government, and he urged providers of pharmaceuticals to ensure the safety of the medicine they sell to the public. He emphasized that the guidelines must be strictly followed and noted that the national drug policy currently under review is also aimed at ensuring that drugs sold to Kenyans meet the required standard. (*New Rules to Regulate Pharmaceutical Products*, KENYA BROADCASTING CORPORATION, Sept. 7, 2006.)
(Wendy Zeldin)

NEW ZEALAND – Smoking Room Not Permitted

The High Court of New Zealand has confirmed a decision of a lower court that maintaining a special smoking room for use by smokers for whom it would be impractical to leave their work premises due to food safety regulations was a breach of the Smokefree Environments Act 1990 (NZ). The smoking room, which was specially built and allowed workers at a meat works to enter and smoke without having to remove their work uniforms and safety gear, was still considered part of the workplace and therefore must comply with the legislation. While expressing sympathy for the company, Justice David Baragwanath ruled against the meat works, stating that to do otherwise would have permitted the wholesale opening of smoking rooms. (*Meat Works Loses Smoking Room Appeal*, NEW ZEALAND HERALD, Sept. 29, 2006.)
(Lisa White)

UNITED STATES – Lawsuit by 9/11 Cleanup Workers Allowed to Proceed

A federal judge ruled on October 17 that a lawsuit arising from injuries sustained by cleanup and emergency workers in the aftermath of the World Trade Center attacks would be allowed to proceed, at least against some of the defendants.

More than 3,000 plaintiffs filed a class action suit against the City of New York and its contractors; the Port Authority of New York and New Jersey ("Port Authority"); the power company Consolidated Edison; and a group of commercial entities holding leasehold interests in the World Trade Center known as the Silverstein Defendants. The lawsuit alleged that as a result of violations of state and federal safety laws, the emergency and recovery workers involved in the World Trade Center rescue and cleanup effort, which took ten months, suffered respiratory injuries.

The lawsuit was moved to federal court pursuant to Section 408(b)(3) of the Air Transportation Safety and System Stabilization Act ("the Act"), P.L. 107-42 (2001). The defendants moved to dismiss the lawsuit on a variety of grounds.

Judge Alvin K. Hellerstein wrote the district court's opinion. He granted the request of Consolidated Edison and the Silverstein Defendants to dismiss them from the lawsuit on the grounds that, due to governmental action, they lost all control over the locations where the rescue and cleanup efforts took place, and thus could not be held liable for injuries suffered by workers laboring there.

Judge Hellerstein allowed the lawsuit to proceed against the City of New York and its contractors, and against the Port Authority. He wrote that while these defendants might ultimately prevail on the grounds of governmental immunity under New York state law, there were still questions of fact regarding whether the defendants were acting in time of "emergency" and in "good faith," and as a result the lawsuit should proceed. (*In Re World Trade Center Disaster Site Litigation*, 21 MC 100, 03 Civ. 00007 (S.D.N.Y., October 17, 2006).)
(Gary Robinson)

Human Rights

EUROPEAN UNION – Parliament Intensifies Investigation of CIA's Secret Camps

The European Parliament Committee, which was tasked with looking into allegations of the operation of the CIA's rendition program in the territory of several EU Members and ascertaining the possible involvement of national governments, is traveling to Germany, Poland, Romania, and the United Kingdom to do on-site investigations. Thus far, the accused Member States have refused to admit any wrongdoing. The Committee has requested the European Commission to ask the United States about the location of such camps. The Commission refused to do so, but expressed its strong support for the Committee's work. (*MEPs' CIA Probe Gathering Momentum*, EUOBSERVER.COM, Sept. 12, 2006.)
(Theresa Papademetriou)

HONG KONG – Sodomy Law Declared Unconstitutional

Hong Kong's Court of Appeal has ruled that §118C of the Crimes Ordinance is unconstitutional and breaches the Basic Law and the Bill of Rights. While homosexual acts (e.g., buggery) are legal in Hong Kong between consenting adults, the age of consent for buggery is twenty-one for both men and women. As buggery is the only physical form of intercourse for homosexual men, this law necessarily discriminates against homosexual men, the Court held. (*Leung T C William Roy v. Secretary for Justice*, Court of Appeal, Civil Appeal No. 317 of 2005.)
(Lisa White)

MALDIVES – Accession to Human Rights Convention

The Republic of Maldives officially became a party to the International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the ICCPR, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) after President Maumoon Abdul Gayoom signed and handed the instruments of accession to the United Nations at a ceremony in New York held on September 19, 2006. The Maldivian human rights non-governmental organization (NGO) Hama Jamiyya welcomed the move, but also exhorted the government "to refrain from making any reservations that go against the object and purpose of these instruments, and to incorporate these instruments into domestic law without delay." Accession to the optional protocol will enable individuals in Maldives to lodge complaints with the U.N. Human Rights Committee.

The NGO further stated that although Maldives acceded to the Conventions on Elimination of All Forms of Racial Discrimination and the Prevention and Punishment of the Crime of Genocide in 1984, as well as the Convention on the Elimination of All Forms of Discrimination Against Women in 1993, these conventions remain inapplicable in Maldives domestic law, leaving citizens without the capacity to invoke the provisions of these instruments. (Taimour Lay, *Human Rights and Political Realities*, MINIVAN NEWS, Sept. 20, 2006.)
(Krishan Nehra)

NEPAL – Draft Child Act

It was reported on September 1, 2006, that Nepal's Ministry of Women, Children and Social Welfare and the Central Child Welfare Board (CCWB) had drafted the Child Act 2063. According to Deepak Raj Sapkota, Executive Director of the CCWB, the draft document, which amends Child Act 2048, "has broadened the concept of protection rights of children" and those rights "will prevent recruitment of children in security forces for various purposes." Not only will the Act be changed from being welfare-based to rights-based, but the CCWB will also become the Central Child Rights, rather than Welfare, Board.

Under the draft Act, special protection rights are given to children and their families who come into contact with law enforcement agencies before a final verdict has been rendered by the juvenile court and investigating officers are proceeding with the handling of the case. The Act also provides for different categories of shelters, to include those for orphans and abandoned children, rehabilitation centers for disabled and HIV/AIDS-infected children, transitional centers for children rescued from sexual and other kinds of exploitation and from natural disasters, and rehabilitation centers for drug users, as well as residential homes. (*Draft of Child Act 2063 Presented*, LEGAL NEWS FROM NEPAL, Sept. 1, 2006.)
(Wendy Zeldin)

Immigration and Nationality Law

BRAZIL – Accord with Argentina on Residency Rights Ratified

On August 29, 2006, the Brazilian Ministries of External Affairs and Justice published a governmental decree, *Portaria Interministerial de 28 de Agosto de 2006*, in the OFFICIAL GAZETTE, ratifying an accord signed between Brazil and Argentina. The accord had previously been approved by the Brazilian Congress through Legislative Decree No. 210 of May 20, 2004, which grants to both Brazilians and Argentineans the same civil, social, cultural, and economic rights as the citizens of the country in which they live. In practice, Brazilians and Argentineans now have the right to live and work in each other's countries. Argentina ratified the accord in April 2006.

Legal residency is required and can be established by presenting the passport or ID card and a police report from the country of origin to the consulate or immigration service of the other country. The official in charge will then issue a provisory residency authorization, valid for two years, which may become a permanent authorization after that period. Individuals who enter the country in a clandestine fashion will have to return to their country of origin in order to have the right to establish legal residency in the country of destination.

Free transit of citizens is part of article 1 of the MERCOSUR Agreement and now that Brazil and Argentina have opened their doors to each other in conformity with that provision, according to Mariano Jordan, Argentinean Consul in Brasília. He further observed that the main objective of the bilateral accord is to legalize the situation of illegal immigrants in both countries and, except for legal problems that may apply to an individual, residency now cannot be denied. (*Brasileiros e Argentinos Com os Mesmos Direitos*, GLOBO ONLINE, Aug. 30, 2006.)
(Eduardo Soares)

CZECH REPUBLIC – Illegal Immigrants' Children Banned from School

The legislation governing education in the Czech Republic does not permit the children of illegal immigrants to attend school. According to the Organization for Help for Refugees and the Advisory Centre for Refugees, two advocacy groups, a 2005 law permits schools to require potential students to prove that they are in the country legally. The two groups argue that this rule violates the children's right to education and contradicts international conventions that the Czech Republic has signed. Before the current law came into force, elementary schools had been able to accept children without immigration documents. Since January 2005, only foreigners with permits for permanent residency or short-term or long-term visas, as well as those seeking asylum or temporary protection, are permitted to send their children to school. (*Illegal Immigrants' Children Can't Attend Czech Schools,* CTK (Prague), Aug. 29, 2006, Open Source Center No. EUP20060829950072.)
(Constance A. Johnson)

EUROPEAN UNION – Incompatibility of Switzerland's New Asylum Rules with EU Standards

Switzerland, a non-EU Member, is expected in the near future to join, along with the ten newest EU Members, the Schengen border-free zone. In doing so, Switzerland will be bound by EU norms and standards regarding visas, asylum, and immigration. Consequently, Switzerland must bring some of its domestic legislation in line with EU rules in these areas, particularly those rules that require fingerprinting of asylum seekers, so that their personal data can be inserted in the EU-wide database on such persons. However, Switzerland's recently adopted requirement that all asylum seekers present documents within forty-eight hours of making a claim or else be sent home prompted a negative reaction from the European Commission. The Commission clearly stated that the rule is incompatible with EU norms as well as international rules that bind the EU and its Members. (*European Commission Says New Swiss Rules Violate EU Norms*, AFP (Paris), Sept. 6, 2006, Open Source Center No. EUP20060925102001.) (*See also above*, under "Switzerland – Immigration.")
(Theresa Papademetriou)

KOREA, SOUTH – No Passports for Prostitutes

The Ministry of Gender Equality and Family announced its plan to amend laws for gender equality and the maintenance of public morals on September 20, 2006. Among the measures proposed is that the government confiscate the passports of persons who have committed prostitution abroad. (*Kankokujin ni yoru kaigaide no baishun, tekihatsu ji ni ha ryoken bosshu mo [Prostitution by Koreans abroad, confiscation of the passport planned*], CHOSUN NEWSPAPER, Sept. 21, 2006.)
(Sayuri Umeda)

NEPAL – Citizenship Bill Approved by Cabinet

Nepal's Council of Ministers approved a bill on September 6, 2006, to amend the Citizenship Act. The amendments reportedly are largely aimed at facilitating the acquisition of Nepali citizenship for persons who have had difficulty in obtaining it heretofore. Under the bill, citizenship will be accorded to those who had been residing in Nepal up to the second week of April 1990 and to those who have any written evidence of being a Nepali. The bill would enable the descendants born before 1990 of either a father or mother who is a Nepali citizen to have the opportunity to acquire citizenship. It also provides for persons who registered their names in the last national census to acquire citizenship. In addition, the bill adds some provisions to punish the illegal acquisition of citizenship. (*Citizenship Bill Passed*, LEGAL NEWS FROM NEPAL, Sept. 7, 2006.) According to Minister for Industry, Commerce and Supplies, Hridesh Tripathi, the parliament would immediately nullify articles 8 and 9 of the present Constitution that hinder passage of the bill, and the bill will allow citizenship by birth and by naturalization. (*Citizenship Bill Will Get House Approval: Tripathi*, THE RISING NEPAL, Sept. 8, 2006.)

The government decision may benefit in particular some three to four million people in the Terai region of Nepal, which spans the whole southern part of the country from east to west

and is described as its breadbasket. Terai districts are reported to be "on the brink of an upheaval," a situation due not only to in-fighting between different Maoist factions in the region but also to identity politics and the sense of discrimination felt by Madhesis, people of Indian origin who have resided in the Terai for decades. (*And Now Ethnic Separatism*, INTER PRESS SERVICE NEWS AGENCY, Aug. 21, 2006.)
(Wendy Zeldin)

PORTUGAL – Biometric Passport

On August 28, 2006, Portugal's President, Anibal Cavaco Silva, received the first new Portuguese biometric passport, which conforms to new European standards, is machine-readable, and carries a micro-chip containing the holder's personal data, digital photo, and fingerprints. Interior Minister Antonio Costa was quoted as saying that the new passport is more difficult to forge than the old one, and Cavaco Silva told the press during the ceremony in Lisbon where he was presented his new passport that the new biometric passport was a contribution to national and international security. (*IOL: Portugal Moves to Biometric Passports*, IOL, Aug. 29, 2006.)
(Eduardo Soares)

SWITZERLAND – Reforms of Immigration and Asylum Law

On September 24, 2006, an overwhelming majority of Swiss voters approved by referendum stringent reforms of immigration and asylum law (*Klares Ja zu Ausländer-Vorlagen*, NZZ Online, Sept. 24, 2006), thereby adopting an Act on Aliens of December 16, 2005 (AMTLICHE SAMMLUNG DES BUNDESRECHTS [AS] 7365 (2005)) and an Amending Act to the Act on Asylum (Asylgesetz Änderung, Dec. 16, 2005, AS 7425, amending Asylgesetz, June 26, 1998, SYSTEMATISCHE SAMMLUNG DES BUNDESRECHTS No. 142.31). Both acts were approved by close to seventy percent of the vote, with an overall voter participation of close to fifty percent.

The new Act on Aliens restricts the immigration of aliens from non-European Union countries to highly skilled workers and combats illegal entry and sojourn of aliens through increased criminal sanctions that apply to the alien, his employer, and anyone who aids and abets violations of immigration law. The Reform of the Asylum Act aims to ensure that asylum petitioners to whom asylum is not granted leave Switzerland. Among the newly enacted measures is the permissibility of searches and seizures of asylum petitioners to prevent them from concealing passports, drugs, and weapons. In addition, the reform law provides that asylum petitioners will be sent home unless they present a passport or other valid identification within forty-eight hours of entering Switzerland. This new requirement is directed against asylum petitioners who destroy their papers to make the searches of the claim more difficult, but will not be applied under excusable circumstances. (*Tilting at Windmills,* THE ECONOMIST, Sept. 30, 2006, LEXIS/NEXIS, NEWS Library, ZETING file.)

The new Swiss standards are among the toughest in Europe and they are incompatible with European Union laws, as was explained by Frisco Roscam Abbing, press speaker for the

European Commission (*Abstimmung,* DIE PRESSE, Sept. 25, 2006, LEXIS/NEXIS, NEWS Library, ZETING file). However, Mr. Abbing stated that the European Commission would not comment on the Swiss referendum because Switzerland, as a non-European Union country, is free to follow its own asylum policy. Although Switzerland soon will be a member of the Schengen/Dublin agreement that requires some coordination of the technical rules applicable in asylum proceedings, adherence to the overall European Union standards for asylum proceedings is not relevant for the observance of the Schengen/Dublin agreement. (*Eidg. Abstimmung – Asylgesetz Kein Harmonisierungsdruck aus Brüssel,* SDA – BASISDIENST DEUTSCH, Sept. 25, 2006, LEXIS/NEXIS, NEWS Library, ZETING file). (*See also below*, under "Recent Developments in the European Union.")
(Edith Palmer)

THAILAND – Stricter Visa-Free Regulations

Before the recent military coup, the Thai Government announced new visa-free regulations for tourists. The measures announced on September 15, 2006, scheduled to take effect on October 1, limit foreign visitors to a maximum ninety-day visa-free stay every six months. According to Immigration Bureau Chief, Lt. Gen. Suwat Thamrongsrisakul, the regulations are aimed at preventing the foreigners from committing crimes or creating social problems. Under the previous system, foreign tourists from about forty countries that have good relations with Thailand could enter the country visa-free and be granted thirty-day visas that could be extended twice. They were able to extend their stay, sometimes for months or years, by traveling to neighboring countries and then returning to Thailand on another thirty-day entry stamp. An increasing number of tourists reportedly stayed in the country for extended periods without paying the requisite taxes, which also helped them to avoid close scrutiny by authorities in Thailand and in their home countries.

Under the new system, those foreigners who enter Thailand will still be allowed to stay for thirty days, as before, but the total length of stay without a visa cannot exceed ninety-days in any six-month period. Tourists who wish to stay longer during such a period will apparently have to obtain a visa from a Thai Embassy or Consulate authorized to issue visas. (*Thailand Imposes New Visa Regulations for Tourists to Curb Social Problems, Crime,* THAI NEWS AGENCY, Sept. 16, 2006, Open Source Center No. SEP20060916042004; Jim Pollard, *Big Impact Expected from Tougher Visa-Free Entry Rules*, THE NATION, Sept. 16, 2006; *Change to Thailand's Visa Rules*.)
(Wendy Zeldin)

UNITED STATES – Secure Fence Act Signed Into Law

On October 26, legislation authorizing, among other measures, the construction of hundreds of miles of fences along the southern border of the United States was signed into law. The purpose of the legislation is to enable the Secretary of Homeland Security to "achieve and maintain operational control over the entire international land and maritime borders of the United States." Operational control is defined as meaning the prevention of all unlawful entries into the

United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

The Act instructs the Secretary to conduct systematic surveillance, utilizing such tools as unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras; it also authorizes physical infrastructure enhancements, such as additional checkpoints, all weather access roads, and vehicle barriers. Particular geographic areas are specified for fence construction, and some areas are prioritized, in amendments to Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (*Public Law 104–208*; 8 U.S.C. 1103 note). The Act requires the Secretary to submit an annual report to Congress detailing progress in achieving the aims of the legislation.

The Act also requires the Secretary to conduct two studies: first, regarding the necessity, feasibility, and economic impact of a "state of-the-art infrastructure security system along the northern international land and maritime border of the United States," and second, regarding the authority and capability of Customs and Border Protection personnel to stop fleeing vehicles which have entered the United States illegally. Reports detailing the results of these studies are to be submitted to Congress.

The Act does not provide funding for these activities, although Title II of the appropriations act funding the Department of Homeland Security, *Public Law 109-295*, provided approximately $1.2 billion for "for customs and border protection fencing, infrastructure, and technology." (Secure Fence Act of 2006, Public Law 109-397, 120 Stat. 2638 (2006).)
(Gary Robinson)

VIETNAM – Decree on Expulsion of Foreigners

Vietnam's newly issued Decree No. 97/2006/ND-CP of September 15, 2006, governs the expulsion of foreigners who violate Vietnamese law or regulations. It covers the violations carrying the penalty of expulsion, procedures for detention and expulsion, the rights of persons subject to expulsion, and the duties and responsibilities of administrative agencies. The Decree stipulates that foreigners who intentionally or unintentionally break the law are subject to expulsion from Vietnam in accordance with regulations on penalties for administrative violations. It further provides that, where international treaties that Vietnam has signed or acceded to have stipulations differing from those in the Decree, the treaty provisions will apply. Foreigners who have committed crimes for which they are expelled based on a court decision will not be subject to the Decree.

The Decree takes effect fifteen days after its publication in the OFFICIAL GAZETTE. Foreigners will also continue to be subject to the penalty of expulsion under Decree No 54/2001/ND-CP guiding the execution of the expulsion penalty (36 OFFICIAL GAZETTE 13-16 (Sept. 30, 2001)). (*New Decree Governs Expulsion of Foreigners*, VIET NAM NEWS, Sept. 25, 2006; *Decree on Expelling Law-Breakers Issued*, COMMUNIST PARTY OF VIETNAM ONLINE

NEWSPAPER, Sept. 19, 2006; Decree Guiding the Execution of Expulsion Penalty (No. 54/2001/ND-CP), NATLEX No. VNM-2001-R-60187, Aug. 23, 2001.)
(Wendy Zeldin)

Intellectual Property

CHINA – Dell Loses Trademark Infringement Suit

It was reported on August 30, 2006, that Dell Computer Company (*Dai-er diannao gongsi*) lost its trademark violation suit against Xingchan High Technology Applications Research Institute of Foshan City, Guangdong Province. In 1997, the institute had registered a trademark for "De-er," another Chinese transliteration of the name Dell, to refer to products that were "computers, electronic games, etc." (Dell considered this action an infringement of its former corporate name (it reportedly long since replaced the former transliteration with a different one, Dai-er, as indicted above), and on November 29, 2000, it submitted a request to China's trademark evaluation commission for revocation of the mark. but Dell has long since that time used a different transliteration, "Dai-er."

Dell argued that as early as 1991 it had successively begun to apply in China to register the trademarks "DELL," "DELL" (with a slanted E), and the graphic of the slanted E. "DELL" was not only the company's well-known corporate name, it held, but also a well-known trademark with distinctive characteristics. Before its products entered China on a large scale, Dell claimed, it had selected the term "De-er" to serve as the Chinese transliteration of its well-known trademark name "DELL"; at the same time, "Dell Computer Company Ltd." (*De-er diannao gufen youxian gongsi*) was the corporate name it had formally used when it had first entered the Chinese market. The trademark evaluation commission upheld the "De-er" trademark, however. Dell did not accept the decision and instituted administrative litigation in Beijing's First Intermediate Court, seeking to have the court rescind the commission's ruling and also order the commission to reissue a ruling rescinding the registration of the disputed mark.

The court held that Dell had no means of proving before the application was made for the disputed "De-er" trademark that "De-er" or "DELL" had become the plaintiff's well-known trademark; that it had already used "De-er" or "DELL" as its business name in commercial activities; or that such a commercial application had the legal effect of causing consumers to regard "De-er" or "DELL" as its business symbol. Accordingly, the court stated, the commission's decision number 3060 upholding the disputed trademark was correct, the evaluation procedures also were in conformity with legal provisions, and therefore the Dell Company's claim was dismissed. (Guo Jingxia, *"De-er" bu shi "DELL" Dai-er shangbiao an bai su ["De-er" is not "DELL," the Dai-er trademark case is lost],* BEIJING COURT NET, Aug. 30, 2006, *Dell* [the 1997 trademark registration of the Foshan hi-tech institute], China Trademark Database; *DELL*, CHINA TRADEMARK DATABASE 1997 trademark registration by the Xingchan institute].)
(Wendy Zeldin)

VIETNAM – Copyright

Prime Minister Nguyen Tan Dung issued Decree No. 100/2006/ND-CP of September 21, 2006, regulating and directing the implementation of several provisions on copyright and related

rights (e.g., the rights of performers and rights to recordings and images produced by recording studios) in the Socialist Republic of Vietnam (SRV)'s Civil Code and the Intellectual Property Law. The Decree replaces Decree 76/CP of November 29, 1996, on executing copyright-related provisions in the Civil Code.

The new Decree applies to SRV and foreign organizations and individuals. It defines the scope of protection of authors' rights in media, music, cinema, photography, performance, design, and architecture and sets forth state policies and the powers of People's Committees in this area. In addition, it provides for public rights of fair use for quotations, temporary copies, and tape recordings. The Decree states that the SRV Government has a mandate to manage copyright and related rights, and that the responsible management organ is the Ministry of Culture and Information. According to the Decree, the Ministry must take the necessary measures to protect the legitimate rights of the state, as well as those of organizations and individuals, concerning copyright and related rights; it is also responsible for supervising, examining, and handling legal violations involving those rights. (*Rights of Authors Detailed in New Regulation*, VIET NAM NEWS, Sept. 25, 2006; *Vietnamese PM Signs Decree to Amend Civil Code, Intellectual Property Law*, VNA, Sept. 24, 2006, Open Source Center No. SEP20060925003004.)
(Wendy Zeldin)

International Relations

ASEAN – Parliamentarians Approve 30 Resolutions

On September 14, 2006, the eight member-countries of the ASEAN (Association of Southeast Asian Nations) Inter-Parliamentary Organization (AIPO) signed a joint communiqué approving thirty resolutions aimed at promoting political, economic, and socio-cultural cooperation in Southeast Asia. Among the resolutions were those on building energy security; cooperating in fighting cyber-terrorism; transforming the AIPO into a more effective institution and one more closely integrated with ASEAN, and changing its name to the ASEAN Inter-Parliamentary Assembly in preparation for its becoming the ASEAN Parliament; urging "developed nations" to take their responsibility for "environmental protection" seriously because they are the primary actors in causing "environmental degradation"; and expressing support for ending the hostilities between Israel and Hizbollah in connection with the recent crisis in Lebanon. The AIPO General Assembly also approved committee-level agreements on combating terrorism through inter-faith dialogues and on engaging in bio-fuel production. (*Philippines: ASEAN Parliamentarians Enact 30 Resolutions on Cooperation*, CEBU CITY SUN.STAR, Sept. 15, 2006, Open Source Center No. SEP20060915093002; *Manila: ASEAN Legislators Issue Resolution on Environmental Protection*, PILIPINO STAR NGAYON, Sept. 18, 2006, at 3, Open Source Center SEP20060919093007.)
(Wendy Zeldin)

AUSTRALIA/SOLOMON ISLANDS – Arrest and Extradition of Solomon Islands Attorney-General Sought

The Solomon Islands Attorney-General Julian Moti has been arrested in Papua New Guinea at the request of the Australian Government, which is seeking to extradite him to Australia to face charges in connection with an alleged child sex offense. The Solomon Islands' Prime Minister has claimed the arrest is a clear breach of Solomon Islands' sovereignty. (*Arrest of Solomons A-G 'Violates Sovereignty*,' ABC [AUSTRALIAN BROADCASTING CORPORATION] NEWS ONLINE, Sept. 29, 2006.)
(Lisa White)

BOTSWANA/CHINA – Several Agreements Signed

Botswana and China have recently signed several economic and social agreements, including a loan agreement for the second phase of construction on a major road in Botswana and the Approved Destination Status Agreement, which will facilitate travel to Botswana by tourists from China. Speaking about the agreements, Botswana's Minister for Foreign Affairs and International Cooperation said that these agreements illustrate the growing relationship between the two countries. Botswana has received aid from China in a variety of fields, including human resource development, defense, sports and culture, agriculture, and infrastructure development, as well as a number of loans. (*Botswana, China Sign Accords*, DAILY NEWS ONLINE, Sept. 7, 2006.)
(Constance A. Johnson)

EUROPEAN UNION – EU Members Retain Veto Power on Justice and Home Affairs

Legislative measures on terrorism, crime, immigration, and other issues that fall under the Justice and Home Affairs sector of the European Union institutional framework require unanimity in order to be adopted. At a meeting in Tampere on September 22, 2006, Finland, which holds the EU presidency, and the European Commission failed to convince the twenty-five EU justice and home affairs ministers to relinquish their right to veto. While the Commission argued that the veto power is a major impediment to reaching decisions on important issues relating to justice and home affairs, some EU Members, including Germany support the idea of reviving the relevant provision of the draft EU Constitution, which provides for the rule of the majority in matters covered by the Justice and Home Affairs sector. Germany, which will take over the EU presidency in January 2007, intends to push for adoption of the Constitution in its entirety. (*National Justice Veto Survives EU Tampere Meeting*, EUOBSERVER, Sept. 22, 2006.)
(Theresa Papademetriou)

EUROPEAN UNION –Improved Ties Between European Commission and National Parliaments

Currently, the national parliaments of the twenty-five Members of the EU have the right to express their opinion on legislative proposals at an advanced stage of the legislative process. The draft Constitution, which has been on hold indefinitely, provides for review of a proposal by the European Commission if one third of EU Members request the Commission to do so.

Recently, the European Commission unveiled its plan to directly forward its legislative proposals and consultation papers to national parliaments for comments. Apparently, however, the Commission has no plans to review the proposals based on the comments submitted. The measure was adopted at the initiative of EU leaders in June 2006. (*Brussels to Keep National Parliaments on Short Leash*, EUOBSERVER, Sept. 4, 2006.)
(Theresa Papademetriou)

SHANGHAI COOPERATION ORGANIZATION – Fifth Heads of Government Meeting

On September 15, 2006, in Dushanbe, Tajikistan, the Council of Heads of Government/Prime Ministers of the Member States of the Shanghai Cooperation Organization (SCO) held their fifth regular meeting and issued a joint communiqué. The six Member States are China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan. Representatives from SCO observer states – India, Iran, Mongolia, and Pakistan – also attended. In fulfillment of an SCO action plan for implementing trade and economic cooperation among the Member States, near-term priorities of the SCO, according to the communiqué, will be cooperation in the areas of energy, communications, and telecommunications.

One of the key outcomes of the meeting was the decision to inaugurate an Asian (or SCO) Energy Club, an initiative proposed by Russian President Vladimir Putin at the SCO summit in June 2006, by setting up a special working group to study the proposal. While the

Member States already have a number of bilateral and multilateral energy projects, the Club would serve as an additional coordinating mechanism to bring together energy producers, consumers, and transit countries. According to one observer, the as yet to be established Club "is already perceived in the West as a prototype of Oriental gas OPEC. There are grounds to believe so. SCO oil reserves are not too great …" but "[t]he situation with gas is different. Aggregate gas reserves of Russia, Central Asia and Iran exceed 50% of the world's known reserves, according to some estimates." (Igor Tomberg, *Energy Outcome of SCO Meeting in Dushanbe*, RIA NOVOSTI, Sept. 20, 2006.)

In addition to emphasizing the importance of launching a special working group in the energy technology sector, the joint communiqué stressed the need to establish special working groups in the fields of information technology and telecommunications. Among other matters addressed in the communiqué, the heads of government urged cooperative projects to improve the transportation infrastructure and acceleration of work on a draft intergovernmental agreement on road transportation and called for simplified customs procedures and stepped-up preparations for an intergovernmental agreement on cooperation and assistance in customs affairs. (*Further on SCO Nations Agree on Measures to Strengthen Economic Cooperation*, XINHUA, Sept. 15, 2006, Open Source Center No. CPP20060915150059; *SCO Heads of Government Council Meets in Dushanbe*, SCO Web Site.)
(Wendy Zeldin)

SUDAN – U.N. Warns Against Collapse of Peace Agreement

A recent report by United Nations Secretary General, Kofi Annan described the peace agreement that ended a twenty-one-year civil war in southern Sudan as being on its way to collapsing. The report submitted to the Security Council explained that some of the basic terms, such as those related to elections and oil revenue sharing, had not been implemented as provided for in the comprehensive peace agreement between the Government in Khartoum and the southern Sudan People's Liberation Movement. (*United Nations Warns Against the Collapse of the Peace Agreement*, AL-JAZEERA, Sept. 13, 2006.)
(Issam Saliba)

TIMOR-LESTE – UN Takes Over Policing

On August 25, 2006, the Security Council of the United Nations approved an expanded mission in Timor-Leste (also called East Timor), designed to last for a period of six months and consist of up to 1,608 civilian police personnel and 34 military liaison and staff officers. Resolution 1704 (2006)) takes note of the "existence of challenges to the short- and long-term security and stability of an independent Timor-Leste" and goes on to characterize that stability as important for the "maintenance of peace and security in the region."

On September 13, 2006, following a ceremony in the capital city of Dili, the United Nations Police (UNPOL) assumed command of national policing in the country. According to Sukehiro Hasegawa, the Special Representative of the U.N. Secretary-General, the mission of

UNPOL is "to protect the Timorese people against acts of violence and to help rebuild their houses and institutions of governance, while fully respecting the sovereign state of Timor-Leste." Among UNPOL's duties will be reconstituting the Timorese National Police, training officers in human rights issues, conducting community policing, and carrying out incident management. Timor-Leste became independent of Indonesia in 2002. (*UN Takes Over Policing Activities in Timor-Leste,* UNNEWS, Sept. 14, 2006.)
(Constance A. Johnson)

Property Law

AUSTRALIA – Native Claim of Title over Western Australia Successful

A claim by the Noongar people of native title over a significant portion of Western Australia has been successful. The Federal Court found that native title exists in relation to the whole of the land and waters in the area identified in the proceedings, but not over offshore islands and land and waters below low-water mark. The area claimed is from a point north of Jurien Bay, easterly to a point north of Moora and then southeast to a point on the southern coast between Bremer Bay and Esperance.

To establish native title, applicants must prove:

1.the identity of the community whose laws and customs governed the use and occupation of the land within the claim area at the relevant date of settlement, in this case 1829

2. that this community continues to exist today, and continues to acknowledge and observe those laws and customs, albeit perhaps in an attenuated or somewhat changed form.

Native title does not affect freehold nor does it affect most lease-hold land. Therefore, the majority of private landholders are not affected by native title claims. (*Bennell v State of Western Australia* [2006] FCA 1243 (Sept. 19, 2006).)
(Lisa White)

Religion

RUSSIAN FEDERATION – Teaching Orthodox Religion in Schools

On September 1, 2006, when a new school year started in Russia, the Basics of the Orthodox Culture became a compulsory subject in the country's public schools. The measure was implemented because children apparently did not regularly attend religious classes, which for many years have been optional. In addition to the general curriculum approved by the federal Ministry of Education, each region may add its own specific lessons to the courses. The class will in general be taught one hour per week to students in the second to eleventh grades. Grades will be reflected in the students' transcripts and will affect their grade point averages.

The innovation contradicts the Russian Federation Constitution and the Federal Law on Public Education. However, education officials say that the subject is being introduced in school programs as a regional component and do not see it as controversial because, they contend, it is not about teaching religion but about studying Orthodoxy as an aspect of traditional national culture, despite the fact that the class is taught by representatives of the Orthodox clergy. Representatives of other religions claim that the innovation may complicate community harmony in multi-ethnic and multi-religious regions of Russia, where it is viewed as Christian indoctrination. (A. Lebedev, *Schools Told to Give Orthodox Lessons*, THE MOSCOW TIMES, Aug. 30, 2006.)
(Peter Roudik)

Research and Technology

SPAIN – Draft Therapeutic Cloning Legislation

On September 15, 2006, the Spanish Government approved a draft for a new law on therapeutic cloning, a bill that now moves to the legislature for further consideration and debate. If passed, the bill will be known as the Biomedical Investigation Law and will ban specific cloning of embryos for research, but allow scientists to transfer nuclear material to oocytes, unfertilized human eggs.

The Spanish Health Minister said that in order to encourage the research, the law has the most possible legal guarantees for the rights of the people who could be affected. The government also agreed to set up a supervisory body, the Bioethics Committee, with eleven experts chosen by different ministries and the Autonomous Communities, Spain's regional governments. The Committee will oversee the work and guarantee that the research is conducted according to the standards of the law on the protection of personal data.

Britain, Sweden, and Belgium are among the European Union nations that have already approved this kind of research on cloning for therapeutic reasons. (*El Consejo de Ministros Aprueba el proyecto de Ley de Investigacion Biomedica,* EL MUNDO, Sept. 15, 2006.)
(Graciela Rodriguez-Ferrand)

TAIWAN – Funds Pledged for Biofuel R&D

To help lower Taiwan's consumption of fossil fuels, the Government of the Republic of China (on Taiwan) has earmarked NT$300 million (about US$9.15 million) for research and development of biofuels such as gasohol and biodiesel, National Science Council Chairman Chen Chien-jen stated in an interview reported on September 9, 2006. The research project of the Council of Agriculture is focused on converting soybeans, rapeseed, and sunflowers into biodiesel; its laboratories will begin R&D on using sweet potatoes to produce gasohol, according to Chen. Results of a government analysis of rice straw, sweet potatoes, and sugar cane to determine the best material for making biofuel indicated that sweet potatoes were the best alternative, because they are easy to grow and the least expensive. The results also suggested that in order to increase production efficiency, the focus should be on developing a specific strain of sweet potato that contains more starch. The Executive Yuan (Cabinet) estimates that the biofuel project will require about 220,000 hectares of land (one hectare equals roughly 2.5 acres) for experimental production of gasohol and create some 170,000 jobs. (*Authorities Pledge Funds for Biofuel*, TAIPEI TIMES, Sept. 9, 2006.)
(Wendy Zeldin)

TAIWAN – R&D as Alternative to Military Service

A draft bill currently before Taiwan's Legislative Yuan would allow Taiwan men studying abroad to serve in research and development (R&D) institutions as an alternative to military service if they wish to return to Taiwan upon completion of their studies. If the

legislature approves the legislation, it would enter into force in 2008. According to Shen Che-fang, a section chief of the Ministry of the Interior's Conscription Department, the bill would entitle conscripts specialized in R&D to conduct their work in public and private research institutions, local universities and colleges, and industrial R&D centers. The aim of the bill, Shen stated, is to help meet the growing demand for R&D talent among domestic enterprises and upgrade Taiwan's R&D capabilities. (*Male Students May Be Allowed to Serve in R&D Institutions*, TAIPEI TIMES, Sept. 16, 2006.)
(Wendy Zeldin)

UNITED STATES –New National Space Policy Unveiled

On October 6, a new National Space Policy, the first comprehensive revision to U.S. space policy in a decade, was released to the public by the Bush Administration. The policy states in its introduction that "those who effectively utilize space will enjoy added prosperity and security and will hold a substantial advantage over those who do not," and rates "freedom of action in space" as equal in importance to air and sea power. Among the guiding principles of the policy are a commitment to the commercial use of space; rejection of legal regimes, such as arms control agreements, that could restrict U.S. activities in space; and a resolve to "deny, if necessary, adversaries the use of space capabilities hostile to U.S. national interests."

The goals of the policy include cooperation with other nations on projects of mutual benefit; growth of a robust science and technology base to support space activities; and increased exploration, with the goal of extending the human presence across the solar system.

National security and homeland security also feature prominently in the policy. It directs the Secretary of Defense to provide space-based "multi-layered and integrated missile defenses" as well as "capabilities, plans, and options to ensure freedom of action in space, and, if directed, deny such freedom of action to adversaries."

In addition, the policy sets forth guidelines for civil and commercial use of space, and also addresses such areas as space nuclear power systems, radio spectrum and orbit management, orbital debris, and national export policies. In regard to international cooperation, the policy directs the Secretary of State to carry out diplomatic efforts to "build an understanding of and support for U.S. national space policies and programs and to encourage the use of U.S. space capabilities and systems by friends and allies." (*U.S. National Space Policy* (unclassified portions released by the Executive Office of the President's Office of Science and Technology Policy).)
(Gary Robinson)

Terrorism

ISRAEL – 2006 Amendment of Law on Detention of Terrorism Suspects

On June 29, 2006, the Knesset (Parliament) passed the Criminal Procedure Law (Detainee Suspected of a Security Offense) (Temporary Provision), 5766-2006. The Law amends certain provisions of the Criminal Procedure Law (Implementation Authorities - Arrests), 5756-1996 and provides the military and law enforcement authorities broader powers to detain security suspects, including those suspected of terrorism offenses.

The 2006 Law facilitates longer periods of detention before a suspect is brought to court and judicially authorized pre-indictment detention. It also authorizes, under limited circumstances, hearings not in the presence of the security suspect. The Law subjects its provisions' implementation by the executive to parliamentary oversight. The Law is valid for eighteen months after its entry into force, that is, until December 29, 2007. (Criminal Procedure Law (Detainee Suspected of a Security Offense) (Temporary Provision), 5766-2006, SEFER HAHUKIM (SH) [BOOK OF LAWS] (the official gazette) 2059, at 364 (5766-2006); the Criminal Procedure Law (Implementation Authorities - Arrests), 5756-1996, SH 1592, at 338 (5756-1996).)
(Ruth Levush)

ISRAEL – Compensation for Damages Caused by Violent Acts Deriving from the Arab-Israeli Conflict

On July 19, 2006, the Knesset (Parliament) passed the Compensation for Damages Caused by Violence Deriving from the Arab-Israeli Conflict (Legislative Amendments) Law, 5766-2006. The Law is designed to provide coverage for injuries not already covered by the Victims of Hostile Action (Pensions) Law, 5730-1970. Such injuries include those inflicted by terrorist acts that, although derived from the Arab-Israeli conflict, were not perpetrated by an army, an organization, or individuals hostile to the State. The 2006 Law adds to the 1970 Law a definition of "hostile action" any harm caused by an act of violence, the main purpose of which is to harm a person because of his affiliation with a national or ethnic group, as long as the act derives from the Arab-Israeli conflict. The 2006 Law also adds to the definition: harm derived from the Arab-Israeli conflict that was perpetrated by or in the name of an organization declared by the government to be terrorist. Injuries caused under these circumstances qualify for compensation under the Property Tax and Compensation Fund Law, 5721-1961.

The need to amend the 1970 Law to cover violent acts designed to harm individuals only because of their affiliation with a national or ethnic group arose following the murder based on such circumstances of four Arab-Israeli citizens by a Jew. (Compensation for Damages Caused by Violence Deriving from the Arab-Israeli Conflict (Legislative Amendments) Law, 5766-2006; Compensation for Damages Caused by Violence Deriving from the Arab-Israeli Conflict (Legislative Amendments) Bill, 5766-2005, HATSAOT HOK HAMEMSHALA [GOVERNMENT BILLS] 138 (Nov. 9, 2005); Victims of Hostile Action (Pensions) Law, 5730-1970, 24 LAWS OF THE

STATE OF ISRAEL (LSI) 131 (5730-1969/70, as amended); Property Tax and Compensation Fund Law, 5721-1961, 15 LSI 101 (5721-1961, as amended).)
(Ruth Levush)

JORDAN – Prison Term for Four Who Planned to Kill Americans

The Court of State Security sentenced four Jordanian citizens to between ten and twenty years' imprisonment for conspiring to commit terrorist acts through carrying out military operations against Americans in charge of training Iraqi forces in Jordan. According to the indictment, the accused, late in 2004, conspired and planned to assassinate a number of the Americans working at the Iraqi police training center located in the area of al-Mouakkar, Jordan. (*Prison Term for Four Who Planned to Kill Americans,* AL-SHARQ AL-AWSAT, Sept. 14, 2006.)
(Issam Saliba)

TURKEY – Specialized Criminal Courts for Journalists, Youths

On July 17, 2006, President Necdet Sezer approved amendments to Turkey's Anti-Terrorism Law, widening the scope of terrorist offenses and introducing a new offense of creating propaganda for purposes of a terrorist organization. The revised Law entered into force on July 18 with its publication in Turkey's *Official Gazette*. Under one of its most controversial provisions, cases of journalists charged with "propaganda" and prosecuted in Courts of First Instance for interviews conducted with leaders of armed organizations are being transferred to Specialized High Criminal Courts. The journalists whose cases are being transferred to these recently formed courts, which are described by an editor of a Turkish media-freedom network as "reminiscent of the abolished State Security Courts of [a] repressive past," include Sebati Karakurt (and two editors as co-defendants) of the *Hurriyet* and Namik Durukan of the *Milliye.* The State Security Courts had been abolished in 2004 under reforms carried out in connection with pursuit of European Union membership. An Istanbul Court of First Instance issued the decisions on the case transfers on September 21, 2006. In separate hearings on the two cases, the court claimed lack of jurisdiction under the Anti-Terrorism Law amendments. The relevant clause is under amended article 9 of the Law, which also reportedly states that children over fifteen years of age who commit offenses set forth in the Law will also be prosecuted in the specialized courts.

Turkey's Initiative to Structure the Children's Justice System has sought abolition of the revised Law on grounds that it violates children's rights, in particular articles 1, 2, and 40 of the U.N. Convention on the Rights of the Child, article 6 of the European Convention on Human Rights, and article 37 of the Turkish Constitution (on special legislation for the trial of minors). The Initiative consists of children's rights activists and is supported by several Turkish non-government organizations. (Erol Onderoglu, *Security Courts Relaunched for Journalists!,* BIA·NET (News in English), Sept. 26, 2006; *Turkey Adopts New Anti-Terrorism Law Despite Criticism*, LEGISLATIONONLINE, June 29, 2006 (in right-hand column); Initiative for Freedom of Expression, *Draft Law Amending the Anti-Terror Law*; *TURKEY: Children May Be Tried Under New Anti-Terror Law*, CRIN, July 31, 2006.)
(Wendy Zeldin)

UNITED STATES – Terrorist Designation for Militant Jewish Group Upheld

On October 17 a federal appellate court upheld the designation of the Jewish organization Kahane Chai as a Foreign Terrorist Organization ("FTO") by the Secretary of State. In addition, the designation of the website Kahane.org, along with other entities, as aliases of Kahane Chai was upheld. These designations were made pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), *8 USC Sec. 1189*.

Chief Judge Ginsburg wrote the court's opinion. He stated that the Secretary of State's designation of Kahane Chai as a FTO was reasonable and had substantial support in the record. The court rejected Kahane Chai's argument that designating Kahane.org as a FTO violated the First Amendment, reasoning that such a designation did not act to suppress speech so much as to restrain nonexpressive conduct, which has significantly less protection than speech under the First Amendment.

The court also rejected Kahane Chai's argument that designating Kahane.org as a FTO was religious discrimination since the State Department did not so designate any websites used by other FTOs that year. The court stated that the complete list of designated FTOs, not just website designations, was the proper "universe" to use for claims of religious discrimination, and that this complete list contained many non-Jewish FTOs. (*Kahane Chai v. Dept. of State*, No. 03-1392 (D.C. Cir. October 17, 2006).)
(Gary Robinson)

YEMEN – Date of Verdict Against al-Qaeda Leader Set

On September 12, 2006, the Court of Appeal of Yemen, which has jurisdiction over terrorist and state security cases, decided to issue its verdict on November 18, 2006, in the case brought against the leader of al-Qaeda in Yemen, Mohammed Hamdi al-Ahdal. In its closing argument, the prosecution had asked the court to increase the defendant's sentence pronounced by the lower court of three years and one month of imprisonment. The defendant had denied the charges of involvement in terrorist activities. (*Date of Verdict Against al-Qaeda Leader Set,* AL-SHARQ AL-AWSAT, Sept. 13, 2006.)
(Issam Saliba)

Trade and Commerce

BELGIUM – Law Governing Liquidation of Commercial Companies

On June 2, 2006, the Belgian Parliament adopted a Law Modifying the Company Code in Order to Improve the Liquidation Procedure. The Law establishes judicial supervision over the liquidation procedure, aimed at protecting the interests of creditors. The Law was published in the *Moniteur Belge* (Belgium's official gazette) of June 26, 2006, and entered into force on July 6, 2006.

The Law replaces the existing article 184 of the Company Code. Under the new provision, the competent commercial court must confirm the appointment of a liquidator chosen by the general assembly of shareholders. The court must verify that the liquidator meets all the integrity requirements and also must review all acts taken by the liquidator between the date of his appointment by the general assembly and the validation of that appointment by the court. The new article further provides that individuals convicted of theft, fraud, misappropriation of funds, or other similar offenses cannot be appointed liquidator for ten years from the date the judgment became final. The court may appoint a liquidator itself, if it refuses to confirm an appointment made by the general assembly.

The Law adds several new provisions to the Code as well. Article 189bis, for example, requires that "liquidators file a detailed report of the state of the liquidation procedure with the clerk of the commercial court in the sixth and twelfth month of the first year of liquidation" and once a year in the subsequent years, while article 190§1 states that "before closing the liquidation procedure, liquidators must submit a plan for the distribution of assets to the court for approval." (Loi modifiant le Code des sociétés en vue d'améliorer la procédure de liquidation (No. 2006009479), LE MONITEUR BELGE, June 26, 2006.)
(Nicole Atwill)

BELGIUM – Laws on Protection of Economic Competition

The Belgian Parliament adopted two laws on the protection of economic competition to replace the current competition law, which dates back to 1991 and was completely redrafted in 1999. Both laws were published in the *Moniteur Belge* (Belgium's official gazette) of June 29, 2006, and will enter into force on October 1, 2006.

The new provisions bring Belgian competition law further in line with European Union law, in particular with the requirements of EC Regulation 1/2003 of December 16, 2002, referred to as the Modernization Regulation. This Regulation expands the powers of national competition authorities and courts in the enforcement of competition law. In conformity with the Regulation, for example, the new legislation adopts the principle of self-assessment, that is to say, it is up to companies to assess whether or not an agreement is restrictive of competition. In the area of merger control, the new legislation adopts the "substantial lessening of competition" test

contained in EC Regulation 139/2004 of January 20, 2004, referred to as the Merger Regulation, instead of the standard based on creation or reinforcement of a dominant position.

One of the laws solely addresses the Competition Council (decision-making body), which is strengthened. A Board of Auditors replaces the "Corps of Rapporteurs," whose main tasks were to lead, organize, and report to the Competition Council on investigations into anticompetitive practices. This Board is now attached to the Council and accorded additional investigative and some decision-making powers, such as the power to dismiss complaints and to decide whether the information provided by the parties should be confidential.

The new legislation also includes provisions on the protection of business secrets and an important number of procedural changes. (Loi instituant un Conseil de la concurrence (No. 2006011270) & Loi sur la protection de la concurrence économique (No. 2006011269), LE MONITEUR BELGE, June 29, 2006.)
(Nicole Atwill)

CHINA – New Measures on Foreign Investment in Securities

On August 24, 2006, the China Securities Regulatory Commission (CSRC), the People's Bank of China, and the State Administration of Foreign Exchange jointly issued the Measures on the Administration of Qualified Foreign Institutional Investors Investing in Domestic Securities. Qualified Foreign Institutional Investors (QFIIs) include securities companies, overseas funds management companies, insurance companies, and other asset management institutions approved by the CSRC to invest in China-listed company shares denominated and traded in renminbi ("A" shares).

The Measures entered into effect on September 1, 2006. They replace provisional measures promulgated in November 2002. Among other changes, the new Measures halve the minimum investment requirements for all types of QFIIs (from US$10 billion to US$5 billion); allow up to three brokers, instead of only one, in each market; and permit the QFII to apply to open multiple securities accounts for various types of funds (e.g., pension funds, insurance funds, public funds, charity funds) and to open a securities account in its own name, a nominee's name, or the name of the QFII fund. (*The Three Departments Jointly Promulgated the Measures to Promote the Inflow of Foreign Capital into Domestic Securities Capital Market,* 32 ISINOLAW WEEKLY (Aug. 28-Sept. 3, 2006); *China – September 1, 2006 – New QFII Rules*, National Australia Bank Web site.)
(Wendy Zeldin)

RUSSIAN FEDERATION – New Law on the Protection of Competition

On October 26, 2006, a new Federal Law on the Protection of Competition will enter into force. The Law replaces the outdated Law on Competition and Limiting of Monopolistic Activities on the Commodities Market and overrides the 1999 Federal Law on the Protection of Competition in the Financial Services Market.

The new Law expands the definition of commodities market, eliminating the restriction that previously limited the market to the territory of Russia. The amendment allows Russian anti-monopoly authorities to assess any player in the domestic market in the context of the global market and alongside producers of analogous products abroad. A new definition of a dominant position has been provided. A company that accounts for more than fifty percent of the market for any particular good is considered to be in a dominant position. Additionally, the law provides for recognizing a juridical entity in a dominant position if a company is deemed to be among a group of three players that accounts for over fifty percent of the market or a group of five players that accounts for over seventy percent of the market.

The Law lowers the level of control of anti-monopoly authorities over the purchase of shares in companies. Now approval will only be required where a blocking stake is being acquired. The Law also minimizes control of the anti-monopoly authorities over financial institutions. Prior government approval for the creation of a financial organization is no longer required, nor does an increase in the amount of a financial organization's charter capital have to be approved by the anti-monopoly authorities.

However, the authorities' role is increased in regard to the establishment of the value of assets. Under the new Law, in addition to a company's assets, the total value of the assets of associated groups must also be taken into account. Government intervention and approval is required if the total revenue from goods for the past calendar year exceeds six billion rubles (about US$200 million).

The Law also deals with various procedural issues, which were overlooked by the previous legislation and had been regulated by separate decrees. Thus, the Law defines the procedure for providing notifications and petitions to the anti-monopoly authorities and the procedure for their review and the making of decisions by those authorities. (S. Archypova, *On the Protection of Competition*, THE ST. PETERSBURG TIMES, Sept. 5, 2006.)
(Peter Roudik)

TANZANIA – 2002 Company Law Now in Force

On March 1, 2006, Tanzania's Companies Act 2002 (CA 202) entered into effect. It replaces the 1929 Companies Act Cap. 212, in force for more than seventy-seven years, which spanned the end of the country's colonial period, the era of a centrally planned economy, and liberalization of the market that began in the 1990s. According to one legal analyst, "the new legislation introduces substantial changes but is intended primarily to clarify existing legislation regarded by many as unclear." Still, "they do offer additional protection for those dealing with Tanzanian companies, and for the company itself (and indeed for its creditors) in the event it finds itself in financial difficulty." (Krista van Winkelhof, *Company Law Reforms in Tanzania: The Companies Act 2002*, LAW & POLICY INSTITUTIONS GUIDE, Apr. 26, 2006.)

Under CA 2002, common law duties of directors, such as the duty to act in good faith and in the best interests of the company, have become statutory duties. Although the impact on

directors of this change may be minimal, the new Act apparently gives courts more guidance for determining whether directors have breached any of their duties. Directors must also now have regard to the interests of employees, exercise their powers for proper purposes, and be at least twenty-one years of age (and disclose their age) to be appointed as a director. If a director becomes disqualified for the position, he or she may be held personally liable for the company's debt. The Act imposes prohibitions against certain actions involving directors, e.g., making tax-free payments to them, and also introduces a statutory procedure for a director's removal and a requirement that directors' service contracts be made available for inspection at the company's registered office.

Other reforms involve the capacity of the company to act; the power of a company registrar or a court to conduct investigations into a company's affairs; a new concept of arrangements and reconstruction that allows a company and its creditors, or the company and its members, to apply to the court for an arrangement, compromise, or reconstruction and amalgamation; and additional protections for minority shareholders. The Act has fewer (two, versus formerly three) grounds for a winding-up order (voluntary and by the court) and new protective provisions to shelter companies that become insolvent. (*Id.*)
(Wendy Zeldin)

UNITED STATES – Law Enhancing Regulation of Credit Rating Agencies Enacted

On September 29, President Bush signed into law the Credit Rating Agency Reform Act of 2006, which provides the Securities and Exchange Commission (SEC) with enhanced authority to regulate credit rating agencies, such as Standard & Poor's and Moody's Investors Service, that evaluate the creditworthiness of publicly traded corporations, municipalities, insurance companies, and the like. The law provides for such organizations to apply to the SEC for treatment as a "nationally recognized statistical rating organization," by disclosing to the SEC various information concerning their operations, such as performance measurement statistics, procedures and methodologies used in determining credit ratings, policies used to prevent the misuse of nonpublic information, organizational structure, whether a code of ethics has been adopted, the presence of conflicts of interest, and a list of the largest issuers and subscribers that use their services. The law is intended to provide the investing public with information relating to the likely accuracy of credit ratings. (*Credit Rating Agency Reform Act of 2006*, Public Law No. 109-291, 120 Stat. 1327 (2006).)
(Luis Acosta)

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