



Law Library of Congress **GLOBAL LEGAL MONITOR**

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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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Sincerely,

Rubens Medina
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Attorneys and Judges

VIETNAM – National Lawyers’ Organization

A prime ministerial decision of January 16, 2008, approved a plan for the establishment of a national lawyers’ organization in the Socialist Republic of Vietnam (SRV) and of a steering committee for the SRV’s first national lawyers’ congress. The Vietnam Lawyers Federation (VLF), which will have legal person status, is a member of the Vietnam Fatherland Front [a broad alliance of SRV socio-political organizations, headed at the central level by leaders of the Central Committee of the SRV Communist Party] and “a socio-professional organization” headquartered in Hanoi that represents lawyers and bar associations nationwide. It will be self-funded by means of membership fees, contributions, and “other lawful revenues,” and have its own bank account and seal. (*Decision No. 76/2008/QD-TTg: National Lawyers Group Formed*, VIETNAM LAW & LEGAL FORUM, Mar. 5, 2008, available at http://news.vnanet.vn/vietnamlaw/Reports.asp?CATEGORY_ID=3&SUBCATEGORY_ID=8&NEWS_ID=2552; *Third Sector Overview: Definitions and Forms*, PHILANTHROPY AND THE THIRD SECTOR IN ASIA AND THE PACIFIC.) The VLF work bodies include a National Lawyers Congress, National Lawyers Council, Standing Committee, and support apparatus. Both the Congress and the Council have three-year terms. The objectives of the VLF are to:

protect lawful rights and interests of lawyers and bar associations, promulgate and supervise the observance of a code of conduct by professionals, organize regular training courses in legal knowledge and professional skills for lawyers, take part in lawmaking, research and legal dissemination and education, and enter into international cooperation in the legal profession.

(Decision No. 76/2008/QD-TTg: National Lawyers Group Formed, supra.)

(Wendy Zeldin)



Boundaries

UNITED STATES – Supreme Court Rules for Delaware in Dispute with New Jersey

On March 31, the Supreme Court ruled that the State of Delaware has the authority to deny a permit for a liquefied natural gas (LNG) terminal that would have extended from the New Jersey shore of the Delaware River into Delaware territory.

The states of New Jersey and Delaware have long disagreed about aspects of their respective jurisdiction over the Delaware River. Under a 1905 compact between New Jersey and Delaware, they agreed that each state could exercise “riparian jurisdiction of every kind and nature” on its own side of the river, but that otherwise the compact would not “affect the territorial limits, rights or jurisdiction of either State of, in, or over the Delaware River . . . except as herein expressly set forth.” In 1934, the Supreme Court ruled that Delaware owns the river within a twelve-mile circle from New Castle, Delaware, up to the low water mark on the New Jersey side.

In 2004, British Petroleum (BP) sought permission from both New Jersey and Delaware to construct an LNG terminal on the New Jersey shore extending 2,000 feet inside the twelve-mile circle. Delaware denied the permit, ruling that the terminal was prohibited by Delaware environmental law. In response, New Jersey commenced an original action before the Supreme Court, seeking a declaration that the 1905 compact gave New Jersey exclusive regulatory authority over all projects appurtenant to its shores, including those extending into Delaware territory.

The Supreme Court ruled that New Jersey and Delaware have overlapping jurisdiction over “riparian structures and operations of extraordinary character” extending from the New Jersey shore into Delaware territory. The Court ruled that while the 1905 compact preserved to each state “riparian jurisdiction” over structures ordinarily and usually enjoyed by landowners at the shore, the LNG terminal project went beyond an ordinary or usual riparian use, and thus Delaware had authority to regulate it. The Court thus confirmed Delaware’s authority to deny BP permission to construct the proposed LNG terminal at this location. (New Jersey v. Delaware, No. 134 Orig. (March 31, 2008) *available at* <http://www.supremecourtus.gov/opinions/07pdf/134Orig.pdf>.)
(Luis Acosta)



Child Pornography

CANADA – Bill Introduced in Ontario to Require Reporting of Child Pornography

A member of the ruling Liberal party in Ontario who is not a member of the government has introduced a bill in the Legislative Assembly that would require anyone who suspects that they have seen child pornography to report it to the police, the child services agency, or another organization designated by regulation. (Child Pornography Reporting Act, 2008, Bill 37, 39th Leg. Ass. 1st Sess.) This bill would amend the Child and Family Services Act (R.S.O. c. C.11 (1990), as amended (official source)). It would require the reporting of sexual molestation and sexual exploitation of children, in addition to the discovery of images on the Internet and elsewhere. The sponsor of the bill has stated that the proposed law only requires persons who have a reasonable belief that material or images constitute child pornography to report what they have seen and that it contains provisions to protect the identity of informants and to prohibit retaliation against informants.

The proposed penalties for failing to comply with the bill if it is enacted are a fine of approximately US\$50,000 and two years of imprisonment. The two opposition parties in the Legislative Assembly have already indicated that they expect to support the bill. (Keith Leslie, *Liberal Wants Ontario Law to Require Reporting of Suspected Child Pornography*, CANADIAN PRESS, Mar. 18, 2008, available at http://ca.news.yahoo.com/s/capress/080318/national/child_porn_reporting.)

At present, the federal government prohibits the making, distributing, possessing, and accessing of child pornography under its Criminal Code. (R.S.C. c. C-46, s. 163 (1985), as amended, available at <http://laws.justice.gc.ca/en/C-46?noCookie>.) The proposed Ontario law would supplement the federal legislation by adding a reporting requirement. Since Canada's Constitution gives the federal government exclusive jurisdiction to enact criminal laws, questions may be raised about the legality of Ontario's addressing child pornography. However, Canada's provinces do have jurisdiction to pass laws to promote and protect child welfare, and the courts could find that the proposed law can legally coexist with the federal legislation. (Stephen Clarke)



Communications and Electronic Information

RUSSIAN FEDERATION – Import of Blackberry Phones Permitted

On February 26, 2008, the Federal Security Service (known as the FSB, successor to the former Soviet KGB) issued permits to two major Russian cellular telephone service providers allowing them to work with encrypted electronic communications. This means that Blackberry phones, whose use was previously prohibited in Russia, can now be imported and sold within the country. The original permit allows each company to import no more than 1,000 Blackberry devices. The ban was imposed because, contrary to Russian law, which provides for unrestricted access of Russian special services to electronic messages of individuals, the producer of Blackberry phones, the Canadian firm Research in Motion, refused to disclose the encryption keys for message decoding. A compromise was reached when Russian cell phone operators agreed in November 2007 to open access to their servers to the Federal Security Service. (*FSB Permitted Import of Blackberry Smartphones into Russia*, NEWSLINE, Feb. 26, 2008.)
(Peter Roudik)

RUSSIAN FEDERATION – Wiretapping Ordered for All Telephone Conversations

On March 4, 2008, the Russian Federation Information and Telecommunications Ministry published a regulation that obligates all telecommunications companies and Internet providers to guarantee to the Russian Federal Security Service (known as the FSB) unrestricted and uncontrolled wiretapping of and access to all information possessed by the providers. Although the Constitution allows such activities only on the basis of a court order, the providers recognize that the regulation reflects the relations already established between the telecom companies and the FSB, which were previously based on classified instructions.

The regulation was issued on January 16, 2008, and entered into force on February 1, 2008, but it remained secret until the publication date. The regulation states that Internet providers and telecom operators must secure for the domestic special service agents the means to read all electronic messages and overhear all telephone conversations without having to leave their offices. Information that will be intercepted includes the names and addresses of those who exchange messages or converse, the content of messages or conversations, the location of the individual subscriber, and billing information. Special equipment to facilitate these activities is to be purchased and installed by the service provider. (*Ministry of Information and Communications Opened Access to Telephone Conversations to the FSB*, NEWSRU.COM, Mar. 4, 2008.)
(Peter Roudik)

SOUTH AFRICA – Bill Suppressing Cable Theft Approved

South Africa's National Assembly approved the Second-Hand Goods Bill to crack down on cable theft and put an end to "losses in the form of power cuts, interruption of commuter trains and communications services." The bill requires dealers of second-hand goods to "register in associations and gives the police search and seizure powers." The bill has a broad range of



application that extends beyond used cable sellers to dealers of all sorts of stolen property, including cars and cell phones. (*National Assembly Approves Bill to Suppress Cable Theft*, AFP, Mar. 20, 2008, Open Source Center No. AFP20080320554012.)
(Hanibal Goitom)

UNITED STATES – Minnesota Video Game Law Struck Down

On March 17, 2008 the United States Court of Appeals for the Eighth Circuit upheld a permanent injunction of a Minnesota law which would have fined minors who purchased or rented video games labeled with a "mature" or "adult only" rating.

The court stated that under Eighth Circuit precedent, violent video games are protected free speech, their content protected in the same way that portrayals of violence in classical literature would be. As a result, a "strict scrutiny" analysis applied to determining whether the Minnesota law was constitutional, namely, whether the law "is necessary to serve a compelling state interest and . . . is narrowly tailored to achieve that end." The court agreed with the State of Minnesota that the state had a compelling interest in safeguarding the psychological well-being of minors. However, the court found that the state's evidence of the ill-effects of violent video games on minors did not meet the high standards required by the "strict scrutiny" test, quoting the United States Supreme Court: "Where first amendment rights are at stake, the Government must present more than anecdote and supposition." (*Entertainment Software Association v. Swanson* (8th Cir. March 17, 2008), available at <http://www.ca8.uscourts.gov/opndir/08/03/063217P.pdf>.)
(Gary Robinson)



Constitutional Law

INDIA – Minorities Commission to Have Constitutional Status

India's National Commission for Minorities, a statutory body since its creation in 1992, will shortly have constitutional status. As a statutory body, it was unable to investigate complaints or grievances; upon being conferred constitutional status, it will have the power to investigate such complaints *suo moto* and to pass verdicts that will be binding on organizations and agencies.

The constitutional status conferment bill for the Commission was introduced in the Parliament in 2004, but it subsequently lapsed. The amendment of the Constitution would make the status of the commission equal to that of the commission for scheduled castes and scheduled tribes (those which the Constitution declares to be backward classes). The bill will be introduced in the current budget session and is not likely to face any opposition. (*India: Government Plans to Confer Constitutional Status on Minorities Commission*, NOIDA ZEENEWS.COM, Feb. 20, 2008, Open Source Center No. SAP20080220384007.)
(Krishan Nehra)

KENYA – Lawmakers Amend the Constitution

The Kenyan President recently signed the Constitution of Kenya (Amendment) Bill and the National Accord and Reconciliation Bill into law. Before reaching the President's desk, the bills had been unanimously approved by the Kenyan Parliament.

The constitutional amendment will make a power-sharing deal reached between President Mwai Kibaki's ruling party and Raila Odinga's opposition Orange Democratic Movement a reality. Through the constitutional amendment, the posts of prime minister and two deputy prime ministers will be established. In addition, Cabinet seats will be evenly split between the two parties. (*Kenyan President Signs Laws Needed for Power-Sharing Deal*, AFP, Mar. 18, 2008, Open Source Center No. AFP20080319670001.)

Two other bills on the Parliament floor awaiting deliberation and approval are a bill to establish a Truth and Reconciliation Commission and an ethnic relations bill. (*Kenyan Parliament Passes Power-Sharing Amendment*, VOANEWS.COM, Mar. 18, 2008, available at <http://www.voanews.com/english/2008-03-18-voa42.cfm>.)
(Hanibal Goitom)



Consumer Protection

GERMANY – Reform of Law on Insurance Contracts

A major reform of the German laws governing insurance contracts was enacted on November 23, 2007 (Gesetz zur Reform des Versicherungsvertragsrechts, BUNDESGESETZBLATT I at 2631). It aims primarily at increasing consumer rights and providing more transparency of the contractual terms. The reform affects virtually all branches of contractual insurance except for health insurance and long-term care insurance. Insurers and their agents are now being held to a higher standard of care in informing potential clients about the insurance products they are considering for purchase. Insurance policies must be easily understandable, and they must disclose various costs. In addition, the insured are given a two-week period during which they may rescind a newly entered-into insurance contract; for life insurance, the rescission period is four weeks. The reform also provides some statutory guidance on the exclusions or limitations of liability of an indemnity insurer when the damage in the insured event was caused by the contributory negligence of the insured. Most of the reform became effective on January 1, 2008, and the remaining provisions will be become effective on July 1, 2008.

(Edith Palmer)

JAPAN – Executives Responsible for Damage Caused by Concealing Use of Unauthorized Food Additive

Shareholders of a Japanese company recently sued the company's former president and directors, alleging that they caused damage to the company by concealing the use of an unauthorized food additive for pork buns and continuing to sell the inventory of buns containing the additive. The company was blackmailed by a person who found out that the bun ingredient containing the unauthorized food additive was used in one of the company's designated food factories in China and who demanded that the company sign a contract to make his own food factory one of the bun suppliers. When the media reported it, the company's sales declined significantly. The Osaka High Court found the former president and directors responsible and ordered two of them to pay approximately 5.3 billion yen (US\$53 million) and the others to pay approximately 565 million yen (US\$5.65 million).

The Supreme Court rejected the appeals from both sides on February 12, 2008. The unauthorized food additive is TBHQ (tertiary butylhydroquinone), which has been approved as a food preservative in the United States and other nations. The reason that TBHQ has not been approved in Japan is that no one has requested the approval, not because of health concerns. (*Dasukin kyū keiei jin 13 nin ni 53 oku en no baishō meirei kakutei [5.3 billion yen damages owed by former executives affirmed]*, YOMIURI ONLINE, Feb. 12, 2008 (on file with author).)

(Sayuri Umeda)



Courts

BRAZIL – New President of Federal Supreme Court

On March 12, 2008, Justice Gilmar Mendes was elected to preside over the Brazilian Federal Supreme Court for the next two years and Justice Cezar Peluso was elected vice-president. Justice Mendes will also preside over the National Council of Justice (*Conselho Nacional de Justiça*), a judicial agency responsible for the administrative and financial control of the judiciary and the supervision of judges. However, to take over this concurrent position, according to a 2004 constitutional amendment that reformed the judiciary (*Emenda Constitucional No. 45/2004*), Mendes still needs to be questioned by the Federal Senate. The requirement was criticized by Justice Marco Aurélio, who said that the questioning is a form of submission. The current President of the Federal Supreme Court, Justice Ellen Gracie, explained that a proposal for a constitutional amendment suppressing the requirement is under consideration by the legislative branch of the government. (Press Release, Supremo Tribunal Federal (STF), Eleito novo presidente do STF e do CNJ, ministro Gilmar Mendes quer fortalecer Estado constitucional (Mar. 12, 2008).) (Eduardo Soares)

CHINA – Supreme People’s Court 2008 Work Report Delivered

On March 10, 2008, Xiao Yang, President and Chief Justice of the Supreme People’s Court of China (SPC) delivered the 2008 SPC Work Report to the First Session of the 11th National People’s Congress (NPC). (*Zuigao Renmin Fayuan Gongzuo Baogao*, XINHUA, http://news.xinhuanet.com/newscenter/2008-03/22/content_7837838.htm (last visited Apr. 3, 2008).) According to the Work Report, the case load of Chinese courts has increased in the past five years compared with the previous five-year period. The SPC heard 20,451 cases, a 0.78% increase over the previous five years. The local courts heard 31.784 million cases, up 1.59%. In the past five years, moreover, the SPC circulated 85 judicial interpretations and another 180 judicial directive documents and published 169 model cases to direct the lower-level courts national wide.

On March 16, 2008, during the same NPC meeting, the new President and Chief Justice of the SPC, Wang Shengjun, was elected. (*Wang Shengjun Elected China’s Top Judge*, XINHUA, Mar. 16, 2008, available at http://news.xinhuanet.com/english/2008-03/16/content_7799387.htm.) Born in 1946, Wang graduated from college with a major in history. From 1993 to 2008, he worked in different positions on the Communist Party of China’s Central Politics and Law Committee. (*Wang Shengjun – President of Supreme People’s Court [a biography of Wang, in English]*, XINHUA, Mar. 16, 2008, available at http://news.xinhuanet.com/english/2008-03/16/content_7799704.htm.) (Laney Zhang)



MADAGASCAR – International Criminal Court Statute Ratified

On March 14, 2008, Madagascar deposited its instrument of ratification of the Rome Statute, the instrument that establishes the International Criminal Court, with that court in The Hague. It will enter into force for the country on June 1, 2008. On that date, there will be 106 nations that participate in the Court, an independent, permanent body designed to try persons accused of major crimes, such as genocide, war crimes, and crimes against humanity.

The Rome Statute was originally adopted in July 1998; Judge Philippe Kirsch, the President of the Court, has called on all countries to accede to the Statute and has described the Court as already having a positive impact by deterring crimes and improving the chances for sustainable peace. (*Madagascar Ratifies Statute Establishing International Criminal Court*, UN NEWS, Mar. 18, 2008, *available from unnews@un.org.*)
(Constance A. Johnson)



Criminal Law

PAKISTAN – Death Sentence for Cyber Crimes

The death sentence may be awarded under Pakistan's new Cyber Crimes Ordinance, 2007, which took effect on December 31, 2007. Crimes set forth in the Ordinance include serious cyber crimes, such as damaging nuclear assets by hacking; cyber terrorism; and swindling and commission of other offenses through cellular phones. A cyber crimes wing of the Federal Investigative Agency will register cases, hold investigations, and prosecute cases.

A seven-member tribunal will be set up to hear cases of cyber crimes. Criminals involved in such crimes can also be extradited to any country with which Pakistan has a mutual extradition treaty. The tribunal will hear cases on the gaining of unlawful access to another computer or to computer data; the infliction of damage on or hacking of data; the infliction of damage on a computer system; acts of online swindling and the drawing of money through ATM cards by using the codes of other persons' cards, etc. The Ordinance provides for 18 different types of cyber crime in all for which cases may be registered. The Ordinance also prescribes minimum deterrent punishments. The sentence upon conviction of tampering with computer information and records is a seven-year term and a fine.

An individual or a group that harasses others by sending messages or sends obscene and immoral messages will also be punishable under the new Ordinance. (*Pakistan Promulgates Ordinance on Cyber Crimes, Hacking Systems of Nukes, Jets*, RAWALPINDI JANG, Jan. 8, 2008, Open Source No. SAP2008112100005.)
(Krishan Nehra)

SWITZERLAND – Crime Victim Compensation

On April 8, 2008, Switzerland promulgated an Act on Crime Victim Compensation (Opferhilfegesetz, Mar. 23, 2007, AMTLICHE SAMMLUNG (AS) 1607 (2008)) that will become effective on January 1, 2009. The Act replaces the former Crime Victim Compensation Act of October 4, 1991 (AS 2465 (1992)) and contains some reforms. In particular, the new Act increases the amount of compensation that must be paid by the cantonal governments while it eliminates the formerly existing compensation of Swiss residents for crimes that were perpetrated outside of Switzerland.

Under the new Act, victims of violent crimes that were perpetrated in Switzerland obtain counseling and various forms immediate assistance that are, however, need-based and not granted to high-income earners. Compensation, on the other hand, is granted to all victims and their survivors irrespective of their financial situation, if the victims had suffered death, bodily harm, mental anguish, or sexual transgressions as the result of a violent crime. Compensation for death and personal injury is granted in accordance with the general torts law provisions of articles 45 and 46 of the Code of Obligations (SYSTEMATISCHE SAMMLUNG No. 220), but the overall damages are capped at Swiss Francs 120,000 (US\$ 119,000) per crime. In addition,



another form of damages can be awarded in serious cases, to grant satisfaction to the victim for the humiliation of the crime (*Genugtuung*, Code of Obligations, arts. 47 & 49), and these are capped at 70,000 Swiss Francs (about US\$69,560) for the victim and 35,000 Swiss Francs for survivors.

(Edith Palmer)



Criminal Procedure

BRAZIL – Federal Supreme Court Authorizes Extradition of Colombian Drug Trafficker to United States

On March 13, 2008, the Federal Supreme Court (FSC) of Brazil authorized the extradition of Colombian national Juan Carlos Ramirez Abadia, who is considered by the Brazilian Federal Police to be one of the biggest drug traffickers in the world. The request for Abadia's extradition was made by the Government of the United States. According to FSC documents, an arrest order has been issued against him by the State of New York for the crimes of continuous criminal enterprise, conspiracy for the import and international distribution of cocaine, and conspiracy for money laundering.

Justice Eros Grau justified the extradition by pointing out that the crimes are duly detailed in the extradition order and the requirement is met that the crimes Abadia is accused of are covered in the legislation of both countries. All the FSC Justices voted in favor of the extradition under the conditions that the United States government undertake the responsibility of changing a possible sentence of life in prison or the death penalty to a maximum sentence of 30 years in prison as prescribed by article 75 of the Brazilian Penal Code and that the amount of prison time Abadia has served in Brazil be deducted from his ultimate criminal sentence. (*STF Autoriza Extradicação de Juan Carlos Abadia*, JURID, Mar. 13, 2008.) (Eduardo Soares)

FRANCE – Security Measure Against Violent Offenders

A French law of February 25, 2008, provides, in exceptional cases, for keeping certain categories of violent offenders in specialized detention centers after the offenders have served their sentences if they are still deemed to pose a public threat and there is a high probability that they will relapse. The law applies to violent offenders sentenced to at least 15 years of imprisonment for the following crimes committed against a minor: premeditated murder, murder, torture or barbaric acts, rape, and kidnapping or unlawful restraint. It also applies to the following crimes committed against an adult: premeditated murder, aggravated murder, aggravated torture or barbaric acts, and aggravated kidnapping or unlawful restraint.

Application of the security measure may only be pronounced if the original court that sentenced the offender expressly authorized, at the time of the sentencing, a re-examination of the offender's situation upon completion of the sentence. Once such a pronouncement has been made, the offender is placed in the specialized detention center, where he/she will receive medical, social, and psychological care. The offender may be placed in the center for one year, renewable. The law does not provide any time limit. The measure is pronounced by the territorially competent court after consultation with a specialized commission.

The law does not apply to offenders currently serving their sentences or who were sentenced before the law was passed. (Loi No. 2008-174 du 25 février 2008 relative à la rétention



de sûreté et à la déclaration d'irresponsabilité pénale pour cause de trouble mental, JOURNAL OFFICIEL [France's Official Gazette], Feb. 26, 2008, at 3266.)
(Nicole Atwill)

JAPAN – Videotaping Questioning of Suspects

It has sometimes been argued in court proceedings that police officers or public prosecutors forced or led certain contents of written declarations of suspects. In Japan, police officers or public prosecutors draft written declarations of suspects while questioning them and suspects sign the declarations. To prove that a suspect voluntarily stated the contents of the declaration when it is disputed, in July 2006 prosecutors established a test program to videotape part of the interrogations. It was reported that videotaping was done in 170 cases until July 2007. Among these 170 cases, three were actually submitted as evidence to the courts. In two out of the three cases, the courts approved the eligibility or trustworthiness of the written declarations. In one case, the court found that the prosecutor lead the statement, so that the confession was not voluntarily made. (Kensatsu torisirabe no rokuon/rokuga, 1 nen han de 170 ken [170 videotapings of prosecutors' questioning during one-and-a-half-year period], YOMIURI ONLINE, Jan. 28, 2008 (on file with author).)
(Sayuri Umeda)

KAZAKHSTAN – Judicial Authorization of Arrests Required

On February 21, 2008, the legislature of Kazakhstan amended the nation's Code of Criminal Procedure and the Law on the Prosecutor's Office in regard to the application of preventive punishment in the form of arrest. According to the newly introduced procedure, when choosing arrest as a preventive measure, an investigator is supposed to petition the court for authorization of arrest. The petition will be transferred to the prosecutor, together with other case materials. The public prosecutor will make a decision to support or deny the petition and pronounce the verdict. The prosecutor's refusal to approve an arrest petition can be appealed by the institution of inquiry or the investigator in court or to a higher-level prosecutor. It appears that this procedure will correspond to the constitutional requirements of judicial oversight. (*Parliament – Senate Approved Amendment in Legislation*, 37-38, KAZAKHSTANSKAIA PRAVDA (daily newspaper), Feb. 22, 2008, at 3.)
(Peter Roudik)



Disability

UNITED NATIONS – Disability Rights Convention Entering into Force

On May 3, 2008, the U.N. Convention on the Rights of Persons with Disabilities will come into effect, 30 days following ratification by Ecuador, the 20th country to sign the agreement. The Convention asserts the rights of the disabled to education, health, work, adequate living conditions, freedom of movement, freedom from exploitation, and equal recognition before the law. (Text of the Convention available from the U.N. Web site, at <http://www.un.org/disabilities/convention/conventionfull.shtml>; list of ratifications available at <http://www.un.org/disabilities/default.asp?id=257> (both last visited Apr. 7, 2008).) The U.N. projects that the Convention will eventually be ratified by 70 nations and that its optional protocol, which grants individuals the right to petition a committee of experts for violations of the Convention after all national procedures have been exhausted and which has to date been ratified by 13 countries, will be accepted by 40.

U.N. Secretary-General Ban Ki-Moon welcomed the ratifications of the treaty, saying that it will combat “dehumanizing practices” against the estimated 650 million people worldwide living with disabilities. (*UN Disability Rights Treaty Entering into Force May 3*, JURIST, Apr. 4, 2008, available at http://jurist.law.pitt.edu/jurist_search.php?q=un+disability+treaty.) Louise Arbour, the U.N. High Commissioner for Human Rights, stated, “I cannot stress enough the importance of this ground-breaking Convention, which fills an important gap in international human rights legislation affecting millions of people around the world.” (*Fruition of Groundbreaking Treaty on Disability Rights Hailed by UN Officials*, UN NEWS, Apr. 4, 2008, unnews@un.org.)
(Constance A. Johnson)



Domestic Violence

ISRAEL – Prevention of Domestic Violence

On March 4, 2008, the Knesset (Parliament) passed an amendment to the Prevention of Violence in the Family Law 5751-1991. The 1991 Law authorizes the court to issue an order for the protection of an individual from a family member who has used violence or committed a sexual offense against that individual, or based on whose past behavior it is reasonable to assume that the family member poses a physical danger to the individual. The amendment provides that, except for unusual circumstances and for reasons that should be noted in writing, the court is not authorized to reject a request for a protection order in the absence of a hearing in which the requestor or her/his representative can argue the requestor's case. The requirement imposed by this amendment also applies to requests for protection orders under the Prevention of Harassment Law, 5762-2001. (Prevention of Violence in the Family (Amendment No. 11) Law, 5768-2008, the Knesset Web site (last visited Mar. 10, 2008).)
(Ruth Levush)



Elections and Politics

ISRAEL – Government Financing of Election Propaganda

On March 10, 2008, the Knesset (Parliament) passed the Election (Means of Propaganda) (Amendment No. 24) Law, 5768-2008. The amendment shortens by a third the duration of free broadcasts allocated for election propaganda by radio and television; it also shortens the total broadcast period allowed from three weeks to two. The broadcasts are to be allocated equally to the candidate lists, with additional time allotted to candidates already in the outgoing Knesset. Free broadcasting is a part of indirect government financing of national elections. The respective political parties are also entitled to receive direct governmental financing as well as non-governmental financing in connection with their candidate lists, subject to regulation prescribed by law.

According to the explanatory notes of the bill, the Law is based on the assumption that the efficacy of propaganda broadcasts in convincing voters does not justify the formerly allocated length of broadcast time and expense involved. (Election (Means of Propaganda) (Amendment No. 24) Law, 5768-2008, and the 2007 bill, Knesset Web site,(last visited Mar. 12, 2008).)
(Ruth Levush)

TAIWAN – Proposal to Amend Referendum Law

On March 10, 2008, Taiwan's Ministry of the Interior made public proposed amendments to the 2003 Referendum Act that would lower the bar for initiating and passing referenda and submitted them to the Interior Committee of the Legislative Yuan. Under the proposal, the required number of initiators for a referendum would be reduced from 0.5 percent to 0.03 percent of the number of eligible voters in the latest presidential election; the required number of sponsors for a referendum petition would be reduced from 5 percent to 1.5 percent of the number of eligible voters in the latest presidential election; and for passage of the referendum the number of voters who vote in favor of it would have to exceed the number of those against it and also reach 25 percent of the number of eligible voters, in contrast to the current requirement that the turnout rate reach 50 percent. For referenda on territorial changes or constitutional reform, however, the 50 percent threshold for passage would still apply. The proposed amendments would also eliminate the ban on holding two referenda on the same issue within a three-year period. A similar set of draft amendments had been submitted in July 2005, but the previous legislature, whose session ended in January 2008, had shelved them.

The opposition Kuomintang (KMT) legislators, comprising more than 70 percent of the legislature, immediately raised objections to the proposal on the grounds that if it is adopted, the hurdles for passage of referenda would become too low. Taiwan's third referendum, on a bid to join the United Nations, is expected to be held on March 22, 2008, in tandem with the presidential election. (*CNA: Interior Ministry Proposes Lowering Referendum Hurdles*, CENTRAL NEWS AGENCY, Mar. 11, 2008, Open Source Center No. CPP20080311968128;



Neijheng Bu ti gong tou fa menlan sioujheng Lan Ying li wei pi guo di [Ministry of Interior proposes revision of Referendum Act thresholds, Pan-Blue legislator criticizes them as too low], JHONG SHIH DIANZIH BAO, Mar. 10, 2008, available at <http://news.chinatimes.com/2007Cti/2007Cti-News/2007Cti-News-Content/0,4521,130502+132008031000903,00.html>.)
(Wendy Zeldin)

UNITED STATES – Supreme Court Upholds Indiana Photo ID Voting Requirement

On April 28, the Supreme Court ruled that an Indiana election law requiring voters to present a government issued photo identification card is not unconstitutional on its face.

Indiana enacted a law known as “SEA 483” requiring voters to present a government issued photo identification card. The law allows voters without such identification to vote provisionally and have their vote counted if they subsequently visit the circuit courthouse to file an affidavit. In Indiana, driver’s licenses or other photo identification can be obtained without charge, although one must present a birth certificate or other specified documentation. Several organizations and persons filed suits in federal court challenging SEA 483’s constitutionality. The lower courts ruled that the statute was not unconstitutional, and the Supreme Court affirmed.

Although no one opinion garnered a majority, six Justices concurred in upholding SEA 483 against the claim that it was facially unconstitutional. The controlling plurality opinion was written by Justice Stevens, joined by Chief Justice Roberts and Justice Kennedy. Justice Stevens wrote that while it is strictly unconstitutional under the Equal Protection Clause of the Fourteenth Amendment for a state to require payment of money to exercise one’s right to vote, evenhanded restrictions related to the integrity and reliability of the electoral process are evaluated by weighing the burden on voting against the interests identified by the state in imposing the regulation. The opinion found the state had legitimate interests in deterring and detecting voter fraud, modernizing election procedures, and safeguarding voter confidence. It weighed these interests against the burdens imposed by requiring photo identification. The opinion said that if the state required voters to pay for an identification card, the identification requirement would be unconstitutional, but that is not the case in Indiana. It found that for most voters, the burden imposed by the law is not substantial, but it is more severe on persons who lack ready access to their birth certificate or opportunity to obtain a photo identification card. Justice Stevens’ opinion found that this burden is mitigated by allowing voters to submit provisional ballots and having the ballots count after visiting the circuit court clerk’s office to sign an affidavit. The opinion said that on the existing record, the burden on this group of persons was not possible to quantify, and as a result there was insufficient evidence to warrant overturning the requirement as facially unconstitutional. Justice Stevens lastly noted the apparent partisan legislative motivation for the law, but concluded that valid neutral justifications for a nondiscriminatory law should not be disregarded simply because they were motivated by partisan interests.

A concurrent opinion by Justice Scalia, joined by Justices Thomas and Alito, argued that it was constitutionally irrelevant that the identification card requirement might have imposed a special burden on some voters.



Three Justices dissented. Justice Souter, joined by Justice Ginsburg, wrote that the law imposed significant burdens potentially on tens of thousands of Indiana voters, many of whom will be deterred from voting, and the state had failed to show the threats to the abstract interests they invoked outweighed these impediments. Justice Breyer separately dissented, writing that while the Constitution does not automatically forbid a state from requiring photo identification to vote, the difficulties of obtaining a photo identification card in Indiana are more restrictive than in other states, and the burden upon eligible voters lacking photo identification cards was disproportionate. (*Crawford v. Marion County Election Board*, No. 07-21 (April 28, 2008) available at <http://www.supremecourtus.gov/opinions/07pdf/07-21.pdf>.)

(Luis Acosta)

ZIMBABWE – Presidential Decree on Police at the Polls Challenged in Court

An opposition party in Zimbabwe is challenging a presidential decree that allows police presence in polling stations. The decree was issued two months after an electoral reform that bans police from coming closer than a 100-meter distance from a polling station was made in consultation with the opposition to ensure the privacy of voters as they cast their ballots. The justification given by the government for allowing a police presence in polling stations was to assist disabled voters. The concern is that the police could be used to intimidate voters. (*Zimbabwe Poll U-turn Challenged*, BBC NEWS, Mar. 20, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7307041.stm>.)

(Hanibal Goitom)



Employment

BANGLADESH - New Ordinance to Amend the Bangladesh Labor Act of 2006

The Bangladesh interim cabinet approved the Bangladesh Labor (amendment) Ordinance 2008 on March 31. The ordinance allows only one trade union organization to conduct activities at the ports of Chittagong and Mongla. Prior law allowed more than one organization at both ports. In addition to allowing only one trade union to conduct activities at the ports, the new law provides that the union may not establish an office within 200 meters of the ports. Violation of these provisions may subject a violator to a three months' jail term and a fine of Tk. 25,000 (over \$350).

The ordinance will come into effect through gazette notification. When the ordinance goes into effect, the Dock Workers Management Board in both the ports will cease to exist. The new port authorities are expected to employ the staff of the previous Management Board. (*Government Toughens Labour Law*, INDEPENDENT BANGLADESH, March 31, 2008, available at <http://www.independent-bangladesh.com/200803313817/country/govt-toughens-labour-law.html>.)

(Shameema Rahman)

GHANA – Minimum Wage Increase

On March 5, 2008, Ghana's National Tripartite Committee (NTC) announced that the country's daily minimum wage would rise to GHC2.25 (1 cedi equals US\$1), an increase of over 18 percent from the previous GHC1.9. The new wage was implemented effective March 1.

The 15-member NTC, founded on October 24, 2007, comprises five representatives each from government, employers, and organized labor. In addition, the Minister for Manpower, Youth and Employment serves as its Chairman. The NTC was established under section 13 of the Labour Act 651, 2003. Aside from determining the national minimum wage, the NTC advises the government on employment and labor market issues, among other tasks. (Stephen Odoi-Larbi, *Ghana: Ghanaians Happy with New Minimum Wage*, GHANAIAN CHRONICLE, Mar. 10, 2008, available at <http://allafrica.com/stories/200803101346.html>; *Minister Inaugurates New National Tripartite Committee*, GHANA.GOV.GH (Government Online Portal), Oct. 25, 2007.)

(Wendy Zeldin)



Energy

CHINA – New Energy Management Structure

On March 11, 2008, Hua Jianmin, Secretary-General of the State Council (Cabinet), announced that China will establish a National Energy Commission. The high-level consultation and coordination body is to integrate “energy management supervision and policies, functions that are currently dispersed among many government agencies.” (*Further on Hua Jianmin Announces Overhaul of Energy Agencies, Management Policies*, XINHUA, Mar. 11, 2008, Open Source Center No. CPP20080311968225.) Among its tasks will be the drafting of an energy development strategy. To handle the Commission’s day-to-day work, a national energy bureau will be established as a standing body under the National Development and Reform Commission (NDRC). According to Hua, the new bureau will absorb the NDRC’s energy-related institutions and functions, the entire National Energy Leading Group (NELG) (which will be disbanded), and the nuclear power management work of the Commission of Science, Technology and Industry for National Defense. It is to draft and execute energy industry programs, policies, and standards; promote new and alternative forms of energy; and encourage conservation, Hua stated. The NDRC will supervise the new body “to ensure the close coordination of energy management with national economic and social development programs and macro-control policies.” (*Id.*)

China’s Ministry of Energy was dismantled in 1993, and since then China has lacked an authoritative agency responsible for effecting uniform energy policies and programs, even though the NELG was established in 2005 to help coordinate energy sector planning. According to Ye Rongsi, an NELG expert involved in the drafting of a new energy law, problems facing the energy sector include the need to reform the energy pricing mechanism; an imperfect legal system; an unreasonable energy structure ill-suited to sound and rapid economic development; and the burdensome task of reducing harmful emissions and coping with climate change. “These all need an integrated and authoritative organization to unify the management and promote reforms,” Ye stated. (*Id.*)

(Wendy Zeldin)

GERMANY – Coal Mining Subsidies

On December 12, 2007, the President of Germany promulgated the Act to Finance the Termination of Subsidized Coal Mining by 2018 (BUNDESGESETZBLATT I at 3086). The Act is the result of an agreement between the German Federal Government and the states of North Rhine-Westphalia and Saarland, where the German hard coal mines are located. German hard coal is of high quality, but it is located at depths of more than 4,000 feet, thus making its recovery non-competitive under current world market prices. Under the Act, the Federal Government will contribute annual subsidies ranging from €1,699 million in 2009 (about US\$2,675 million) to €794 million (about US\$1,250 million) in 2019, to help with the cost of phasing out coal mining operations. In particular, the funds will be used to assist displaced miners and to finance the environmentally responsible shut-down of the mines.



The law calls for an evaluation of coal mining in 2012 to allow for its continuation in Germany should world market conditions change significantly. In Saarland, however, coal mining is in jeopardy of being terminated even earlier than planned due to a mining-induced earthquake that shook the region on February 23, 2008 (*Small Earth Quake in Saarland*, THE ECONOMIST, Business Section, Mar. 1, 2008, LEXIS/NEXIS, News Library, Zeitng file).

(Edith Palmer)

MEXICO – Energy Reform Bill Submitted

President Felipe Calderón submitted an energy reform bill to the Mexican Congress on April 9, 2008. In a broadcast address to the nation, he pointed out that the object of the reform is to make the best possible use of the potential of the country's oil industry and to strengthen Petróleos Mexicanos (PEMEX). Recalling that 70 years ago Mexico nationalized the oil industry, he reiterated that petroleum will continue to belong exclusively to Mexicans and that PEMEX will not be privatized. He added that today, however, Mexicans should act “with true patriotism” and to make the best of the country's natural resources for the benefit of all Mexicans. Calderón stated that currently Mexico is losing ground in competition in the international energy market. PEMEX, after being one of the most important oil companies in the world, has dropped now to eleventh place. He explained that the causes are not only financial, but fundamentally technological and operational, and as a consequence of this, the oil reserves of the country are diminishing. He noted that even though Mexico is an oil rich country, four out of every 10 liters of the gasoline that are consumed in the country are imported, because PEMEX does not have the necessary capacity to refine petroleum. He added that although Mexico has important inland seams and also some very near the coasts, overall it is estimated that more than half of Mexico's potential oil reserves are in the deep waters of the Gulf of Mexico and that Mexico should take advantage of that wealth.

After observing that the bill does not seek to amend the Constitution, Calderón outlined the bill's seven principal points, as follows:

- to provide PEMEX the financial and managerial autonomy it needs to better face new challenges. In particular, the bill seeks to give PEMEX major freedom in managing its budget and its debt so that it could re-invest its profits in the improvement of the company. This would permit the company to spend major resources in new oil and gas exploration and production projects.
- to establish a new administrative structure for PEMEX and to provide the company with major powers of decision-making, administration, and hiring, so that it would have access to the latest technology and better capacity for implementing projects. In particular, the bill proposes establishing a special system for hiring, acquisitions, and public works that is different from the rest of the government and that is deemed likely to enable the company to be much more efficient.
- to allow PEMEX to hire specialized firms in the construction and operation of new refineries, so that in future Mexico will not have to import gasoline, diesel, and other oil products. The purpose of this measure is not only to completely eliminate oil



- importation and strengthen the national petrochemical industry, but also to create more jobs; generate regional development in the areas where refineries will be built; and produce cleaner, environmentally friendly gasoline.
- to improve the corporate governance of PEMEX in order to bring it to the level of the best companies of the world and to guarantee the company's accountability and absolute transparency.
 - in order to consolidate PEMEX as a company owned by all Mexicans, to create citizens' bonds; that is, broadly distributed credit instruments that would be available to all Mexicans. For the first time, Mexicans would not only be owners of the oil but would also directly benefit from part of the profits of the company. Each citizen's bond would have a 100-*peso* value. At the same time, the bill proposes strict limits to prevent the bonds from being concentrated in the hands of a few.
 - to strengthen guarantees on the part of the relevant authorities that all Mexicans will partake in the benefits derived from the oil sector.
 - to guarantee, via a series of measures, that at the same time more oil is produced and the reserves are replaced for future generations, PEMEX's commitment to the care of the environment is maintained.

(Mensaje Íntegro del Presidente Calderón, EL UNIVERSAL, Apr. 9, 2008, available at <http://www.eluniversal.com.mx/notas/496876.html>.)

(Norma C. Gutiérrez)



Environment

AUSTRIA – Environmental Automobile Tax

On February 29, 2008, Austria promulgated a law entitled Environmental Act 2007 (BUNDESGESETZBLATT (BGBl) I No. 46/2008). This law makes the tax burden on passenger cars and motorcycles dependent on the amount of carbon dioxide that they emit, and the tax on heating oil dependent on the amount of sulfur that it contains. The new tax rates will become effective on July 1, 2008.

The reform act amends the Act on the Average Use Tax of 1991 (BGBl No. 695/1991) that imposes a tax on the purchase of a new motor vehicle, which is measured according to the amount of fuel that the vehicle uses on average. As a rule, the tax is paid by the dealer and passed on to the buyer in the purchase price. From July 1, 2008, on, the average use tax will be reduced by up to €300 (about US\$469) if the carbon dioxide emissions of the car are lower than 120 grams per kilometer; for hybrid cars and those that use biofuels, a reduction of up to €500 (about US\$781) is available. The tax is increased, on the other hand, by up to €500 for cars that emit more than 180 grams of carbon dioxide per kilometer, and this threshold value will be reduced to 160 grams of carbon dioxide per kilometer on January 1, 2010.

In addition, the reform act amends the Act on the Mineral Oil Tax of 1995 (BGBl No. 630/94) by imposing a tax of €98 per 1,000 liters of heating oil that has a sulfur content of less than 10 milligrams per kilogram and by imposing a tax of €128 on heating oil containing a higher sulfur content.

(Edith Palmer)



Family

GREECE – Common Law Marriage

The Greek government's plan to introduce a bill that would grant more rights to unmarried couples recently met with strong opposition from the Greek Orthodox Church and from homosexuals. The bill would place "common law" relationships on the same footing as those based on a civil or a religious ceremony. Unmarried couples would have the right to make their relationship legal through the signing of a notarized contract. The Holy Synod, the Church's governing body, stated that common law relationships are similar to "prostitution" and that adoption of the bill would amount to placement of "a catastrophic bomb" threatening the underpinnings of the moral fabric of Greek society. Homosexuals also criticized the bill on grounds of discrimination, because it appears that it applies only to heterosexual couples. (*Row over Greek Unmarried Couples*, BBC NEWS, Mar. 18, 2008, available at <http://news.bbc.co.uk/2/hi/europe/7302433.stm>.)

(Theresa Papademetriou)



Freedom of the Press

BRAZIL – Federal Supreme Court Suspends Part of Press Law

The Brazilian Federal Supreme Court preliminarily suspended for six months 20 articles of the Brazilian Press Law. Within this period, the highest court of Brazil will analyze the merit of the lawsuit and discuss all 70 articles of the law. At the end of this period, the court may decide to completely revoke it, revoke only parts of it, or keep it as it is. The lawsuit was filed by the Democratic Labour Party (Partido Democrático Trabalhista) (PDT), which argued that the law does not comply with fundamental principles of the Constitution.

During the session, Justice Carlos Alberto Direito affirmed that there is a total incompatibility between the Press Law and the Constitution of 1988. Chamber of Deputies Member Miro Teixeira, who belongs to the PDT and participated in the Federal Supreme Court's oral arguments, was quoted as saying that there is no Press Law in developed countries and that with this decision Brazil had taken the first step to join this group. He further stated that the Federal Supreme Court is guaranteeing the Brazilian people the right to be informed. (Carolina Brígido, *STF Mantém Suspensa Parte da Lei de Imprensa. Processos em Andamento Continuum Ativos*, O GLOBO ONLINE, Feb. 27, 2008.)
(Eduardo Soares)



Government Ethics

PAKISTAN – Loans to Politicians Waived

On January 21, 2008, the Supreme Court of Pakistan issued a *suo moto* notice to the State Bank of Pakistan (SBP). The notice was in response to a press report stating that the SBP had approved a scheme in October 2002 (during the military regime of President General Pervez Musharraf) to quietly write off recovery of loans worth about 54 billion Pakistani *rupees* (about US\$861 million). The monies were owed to commercial banks by business concerns run by prominent politicians. The newspaper report, which was based on a report to the Public Accounts Committee of the Pakistan National Assembly, stated that about 50,000 people, including politicians, civilian and military business concerns, and business tycoons in Karachi, Lahore, and other cities benefited from the write-off scheme.

The report targeted two Chief Ministers of provinces as being beneficiaries of the scheme, because their families with large business concerns secured waivers on their outstanding loans. The scheme, prepared under pressure from some politicians, was approved by the then finance minister, Shaukat Aziz, and his financial team at the SBP. Aziz later became the Prime Minister.

Instead of taking steps to recover the non-performing loans (NPLs), the SBP issued an incentive scheme to the banks for waiving payment of NPLs of organizations showing a loss for three years or more by dividing them into three categories: Category A, NPLs of up to 500,000 *rupees* (about US\$7,825); Category B, NPLs ranging from 0.5 million to 2.5 million *rupees*; and Category C (which covered most politicians), NPLs of more than 2.5 million *rupees*. In order to clear the balance sheets, the banks were advised to recover loans from Categories B and C by the sale of assets. (*SC Takes Suo Motu Action on Massive Loan Write-Off*, THE DAWN, Jan. 22, 2008, available at <http://www.dawn.com/2008/01/22/top9.htm>.)
(Krishan Nehra)

UGANDA – Strict Anti-Corruption Law Drafted

The Government of Uganda recently introduced a harsh anti-corruption bill that has a broad definition of “corruption.” Among other provisions, the bill provides for a sentence of up to 14 years of imprisonment upon conviction of crimes of embezzlement and causing of financial loss; the confiscation of property acquired through corruption; amendment of the Penal Code Act and the Leadership Code; and the protection of informers. In addition, the bill gives special investigation powers to the Inspector General of Government and the Director of Public Prosecutions.

The bill also provides harsh sentences for abuse of office; possession of illegally acquired pecuniary resources; and false accounting. “Diversion of property, money or securities, fraudulent acquisition or concealment of property and any omission by a public officer in the discharge of his or her duties” are included under the broader definition of corruption set forth in



the bill. (*Govt Wants 14 Years in Jail for Corruption*, SUNDAY VISION, Mar. 8, 2008, available at <http://www.sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=123&newsId=615541>.)
(Hanibal Goitom)



Government Organization

CHINA – “Super Ministries” Plan

On March 15, 2008, the People’s Republic of China (PRC) National People’s Congress (NPC), China’s top legislative body, passed the State Council’s Institutional Reform Plan, under which five “super ministries” are created. (*Shiyi jie Ren Da yici huiyi xuanju chansheng xin yijie guojia lingdaoren pizhun Guowuyuan jigou gaige fang’an*, XINHUANET, Mar. 15, 2008.) The reshuffle involves 15 government departments and reduces the number of State Council ministries and commissions from 28 to 27. (*Guowuyuan Jigou Gaige Fang’an [The State Council Institutional Reform Plan]* (2008), available at <http://npc.people.com.cn/GB/28320/116286/116599/7004345.html>; *China to Set up Five New “Super Ministries,”* XINHUA NEWS, Mar. 11, 2008, available at http://news.xinhuanet.com/english/2008-03/11/content_7765408.htm.)

This is the latest of several rounds of the PRC government’s efforts at institutional reform since 1982. According to the Reform Plan, the five new “super ministries” are the Ministry of Industry and Information, the Ministry of Human Resources and Social Security, the Ministry of Environmental Protection, the Ministry of Housing and Urban-Rural Construction, and the Ministry of Transportation. Aside from setting up new ministries, some other adjustments include establishing a new National Energy Commission (*see* item on China in WLB “ENERGY” section above), and the Ministry of Health is empowered to oversee the State Food and Drug Administration as an effort to enhance food safety. (*Guowuyuan Jigou Gaige Fang’an, supra.*)

The theme of this round of institutional reform, according to researchers in the PRC government, is to integrate functions of government departments. Three of the five new ministries, the Ministry of Industry and Information, the Ministry of Transportation, and the Ministry of Human Resources and Social Security are the result of combining former ministries and administrations. The Ministry of Environmental Protection is upgraded from the former State Environmental Protection Administration. The new Ministry of Housing and Urban-Rural Construction is the former Ministry of Construction “with new clothes.” (Yang Zhongxu, *Dabuzhi Gaige: Zhineng Zhenghe Shi Zhudiao [Super Ministries Reform: Integration of Functions as Theme]*, ZHONGGUO XINWEN ZHOUKAN [China News Week], Apr. 1, 2008, available at <http://politics.people.com.cn/GB/1026/7070935.html>.)

Critics have pointed out that there are some flaws in the Reform Plan. The Ministry of Railroads is still separate from the new Ministry of Transportation. In addition, the functions of the State Council departments still overlap to a great extent. Additional rounds of reform are expected in the future. (Yi Shuihan, *Dabuzhi Rengxu Dabu Xiangqian [Super Ministries Need Big Steps Forward]*, YANZHOU CAIFU LUNTAN [Asia Fortune Forum], Apr. 2, 2008, available at <http://finance.jrj.com.cn/news/2008-04-02/000003484772.html>.) (Laney Zhang)



Health

ISRAEL – Prohibition on Smoking at Military Bases and Police Installations

On February 19, 2008, Israel's Knesset (Parliament) passed an amendment to the Prevention and Exposure to Smoking in Public Places Law, 5743-1983. Prior to the passage of the amendment, the prohibition imposed by the 1983 Law did not apply to security forces because no employee-employer relationship existed. Among those not covered by the Law were the Israeli Defense Forces (IDF), the Israel Police, the prisons authority, and security forces subordinate to the Prime Minister's Office and the Ministry of Defense.

The 2008 amendment extends the application of the Law to all security services facilities. Enforcement of the Law, however, will be determined by the security forces by directives to be issued within four months following the amendment's entry into force. (Prevention of Smoking and Exposure to Smoking in Public Places (Amendment No. 3) Law, 5768-2008, the Knesset Web site, (last visited Mar. 10, 2008).)

(Ruth Levush)



Human Rights

BELGIUM – Compensation of Holocaust Survivors

The Commission on Restitution for Holocaust Victims (*Commission pour le dédommagement des membres de la Communauté juive de Belgique*) issued its final report on February 4, 2008. The Commission reviewed 5,620 claims and awarded compensation in 5,210 cases, for a total amount of €35.2 million (about US\$55.4 million). One hundred sixty-two awards amounted to more than €20,000 each. The Commission had at its disposal €110.6 million contributed by the Belgian state (€45.6 million) and Belgian banks (€65 million). The remainder, €75.4 million, will go to the Jewish Foundation (*Fondation du judaïsme*) in Belgium to support its cultural, social, and religious activities on behalf of the Jewish community. (Commission pour le dédommagement des membres de la Communauté juive de Belgique, RAPPORT FINAL (Feb. 4, 2008), available at <http://combuysse.fgov.be/fr/index.html>.) (Nicole Atwill)

ISRAEL – Special Subsidies for Needy Elderly and Holocaust Survivors

On March 31, 2008, the Knesset (Parliament) passed the Program for Increase of Income Protection Benefits for Needy Elderly and Holocaust Survivors (Amendments) 5768-2008. The law is designed to improve the economic status of elderly persons and set arrangements for assistance to holocaust survivors.

The law provides for monthly pensions to be paid to holocaust survivors (survivors of concentration and hard labor camps) who were not entitled to a monthly stipend under other laws. Israeli citizens who reside in Israel and who are entitled to monthly stipends in accordance with the compensation agreement reached with Germany, who do not enjoy other benefits, are also entitled under this new law to payment for vacations, discounts in property taxes, and exemption from taxation on owning a television. The law provides additional benefits for needy holocaust survivors, including special grants, assistance in rent payments, and priority in public rental. (Program for Increase of Income Protection Benefits for Needy Elderly and Holocaust Survivors (Amendments) Law and Bill, 5768-2008, the Knesset Web site, (last visited Mar. 5, 2008).)

(Ruth Levush)

LIBERIA – UN Urges Human Rights Improvement

A new United Nations report, prepared by the U.N. mission in Liberia, discusses human rights conditions in the country and makes 12 major recommendations to improve the situation in the country. Covering the May to October 2007 period, the 24-page report concerns violations of economic, social, civil, and political rights, as well as sexual and gender-based violence and inadequate educational and detention facilities. The report states that Liberia needs to adopt legal prohibitions on all forms of violence against children, allot more resources for rural education, and provide better training in human rights issues for the police. The basic strategy



proposed in the report is to include human rights considerations in an integrated approach to reducing poverty.

The proposals on violence against children include repealing section 5.8 of the Penal Code, which had permitted the use of force against children by those entrusted with their care; prohibiting female genital mutilation; and amending the Revised Rules and Regulations for Governing the Hinterland of Liberia and sections of the Domestic Relations Law, to consistently define sexual intercourse with someone under the age of 18 by someone 18 years or older as rape. (*Liberia: UN Report Recommends Government Action to Bolster Human Rights*, UN NEWS, Apr. 2, 2008, available through unnews@un.org; *Report on the Human Rights Situation in Liberia: May to October 2007*, http://www.unmil.org/documents/humanrights/may_oct_2007_report.pdf (last visited Apr. 2, 2008).)
(Constance A. Johnson)

MOLDOVA – New Law on Freedom of Assembly

On February 29, 2008, the Parliament of Moldova adopted a new Law on Assembly, drafted in accordance with the Moldova–European Union Action Plan adopted by the European Union and aimed at developing democratic values in Moldova. The Law establishes that mass gatherings and assemblies in public places do not need to be authorized; the organizers need only inform the local public administration about the place and time of assembly. The Law does not give local authorities the right to decide on when an assembly may be conducted, either; they can only recommend a change in the place and time, with the final decision to be made by the organizers. To protect the society’s common interest, the Law provides for two options available to local administrations to limit the gatherings – they can request a court order banning the assembly beforehand if the administration has proof that the law will be violated during the gathering, or they can just cancel the assembly if it is conducted contrary to constitutional provisions. The Law does not define the terms of cancellation, and the procedure will probably be determined by implementing regulations. (*Moldovan Parliament Adopts New Provisions on Public Assemblies* [Report by the OSCE Mission to Moldova], Mar. 1, 2008, available at <http://www.legislationline.org>.)
(Peter Roudik)

RWANDA – Genocide Revisionism Law

On February 8, 2008, members of the Chamber of Deputies (Lower House) of the Rwandan Parliament voted in favor of a controversial new law aimed at stopping “genocide ideology,” a term for the outlook that perpetrators of genocide foster to fan divisive hate campaigns between different groups of Rwandans. The law comes in the wake of an increasing number of cases of this “genocide revisionism” in which school children were reportedly involved in ethnically motivated abuse. The draft law has yet to be approved by the Rwandan Senate. Before the genocide of Hutus and Tutsis that took place in Rwanda in 1994, under a scheme that had been instituted by the former Belgian rulers, people were classified into Hutu, Twa, and Tutsi, a classification that was used on national identity cards. A previous Rwandan law had halted the use of ethnicity in any form “to create a population that looks at ‘Rwandan’



first and superior to any other distinctions.” (*Rwanda: Parliament Passes Tough Law Against Genocide Revisionism*, RWANDA NEWS AGENCY, Feb. 8, 2008, available at <http://allafrica.com/stories/200802080914.html>.)

The proposed law stipulates that children under 12 years of age found guilty of genocide ideology will be placed in a rehabilitation center for up to a year. Anyone who kills another person due to the influence of genocide ideology or who is involved in a plot to do so will be subject to the punishment of life imprisonment. First offenders against the genocide ideology law will be subject upon conviction to a prison term of 10 to 25 years and fine ranging from RWF200,000 (about US\$370) to RWF1 million (about US\$1,900). No review of the punishment will be permitted, providing no opportunity for a pardon or reduction of sentence. Repeat perpetrators of a genocide ideology offense will face a life term. (*Id.*)
(Wendy Zeldin)



Identification

BANGLADESH - National Identification Card

On March 30, 2008, the Council of Advisers of the caretaker government of Bangladesh approved the National Identity Registration Authority Ordinance 2008. The ordinance establishes that the Home Ministry will serve as the control ministry for providing national identification cards. It also states that voter identity cards being provided by the Election Commission will be considered national identification cards. The ordinance includes penal provisions for providing false information in obtaining a card, or for carrying more than one card. Forging a national identification card can be penalized by up to seven years imprisonment and a fine.

The main functions of the registration authority will include setting up a national information database center, maintaining the database, receiving information and issuing cards, and coordinating with the local government regarding registration of birth and death. The head office of the authority will be located in Dhaka. The new law authorizes the Home Ministry to formulate rules and regulations in consultation with the government, but they must be published in the official gazette. (*Home Ministry Gets the Job of Nat'l ID Cards*, THE DAILY STAR, March 31, 2008, available at http://www.thedailystar.net/pf_story.php?nid=30088.)
(Shameema Rahman)

EUROPEAN UNION – Data Protection Supervisor’s Opinion on Fingerprint Proposal

On March 26, 2008, the European Union Data Protection Supervisor (EDPS), Peter Hustinx - who is in charge of safeguarding the personal data and the right to privacy of EU citizens - issued an opinion expressing his concern and raising a red flag over the European Commission’s proposal on harmonization of security features on passports across the European Union. The proposal, which was introduced in October 2007, would require Member States to take measures to introduce biometric features, including fingerprinting, on passports and travel documents. The fingerprints would be stored in a centralized database.

The EDPS’s main argument against the proposal is that it fails to adequately safeguard the right to privacy of EU citizens. In particular, he criticized the lower and upper age limits for persons to be fingerprinted. The proposal exempts children who are less than six years old and the elderly who are older than 79 years of age. The EDPS contends that the age limit for children should be raised to 14 to be in line with international standards. As for the elderly, he points out that fingerprints of older people become less reliable with age. The storing of fingerprints in a database would eventually also raise problems, he argues, unless the Commission took measures to ensure adherence to the strict EU rules on privacy and personal data.

The EDPS further commented that the Commission failed to consult with his office prior to submitting the proposal, as required by EU law. (*EU Data Protection Chief Criticizes*



Fingerprint Plan, EUOBSERVER, Mar. 27, 2008, available at <http://euobserver.com/9/25878/?k=1>.)

(Theresa Papademetriou)



Immigration and Nationality

UNITED KINGDOM – Immigration Rules Unlawful

What was described as one of the biggest overhauls of the United Kingdom's immigration laws has been declared unlawful by the High Court. The new immigration rules provided for a tougher entry system based upon points for skilled migrants. Under the new laws, individuals who had entered the UK under the old system were required to reapply using the new point system, and a considerable number faced deportation as they did not meet the newer, stricter standards. The High Court ruled that the government acted unlawfully in changing the rules. (*Immigration Rule Change "Illegal,"* BBC NEWS, Apr. 8, 2008, available at http://news.bbc.co.uk/1/hi/uk_politics/7336360.stm; Christopher Hope, *New Highly Skilled Migrant Rules 'Unlawful,'* TELEGRAPH (London), available at Apr. 8, 2008, <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2008/04/08/nmigrant108.xml>.)
(Clare Feikert)



International Relations

BRAZIL/ARGENTINA – Broad Range of Cooperation Agreements Signed

In February 2008, in Buenos Aires, the President of Brazil, Luiz Inácio Lula da Silva, and the President of Argentina, Cristina Fernandez Kirchner, signed cooperation agreements to battle poverty and hunger and to promote social justice, social inclusion, and decent jobs. The agreements cover macroeconomic coordination and sectoral policies; consultations on World Trade Organization issues; bilateral trade integration consultations; payment systems for bilateral trade in local currencies; and cooperation between the Brazilian National Development Bank and the Argentine National Bank.

An agreement was also reached on technical and infrastructural projects, covering cooperation in space and in the development of the Argentine-Brazilian ocean-monitoring satellite, the Bi-National Nanotechnology Center, and a new and renewable energy program. The agreement also addresses cooperation in the Garabi and other hydroelectric projects; the Argentina-Brazil electric power grid; re-gasification; new bridges on the Uruguay River; the Paso de los Libres-Uruguayana bridges; railway integration; defense task forces; joint production of the "*Gaicho*" vehicle; and aeronautics.

The two countries forged agreements on the recognition of equality in civil and political rights and on the creation of a high-level group on freedom of movement and also agreed on a project to establish an Argentine-Brazilian biopharmaceutical technology company.

Both Presidents reaffirmed, *inter alia*, their firm commitment to improve and strengthen democracy in their countries and their conviction that democracy, pluralism, and respect for individual liberties are factors for progress, prosperity, and social peace. They also reiterated their governments' commitment to defend the principles of the universality, indivisibility, and interdependence of human rights and fundamental liberties. (*Argentine, Brazilian Presidents Sign Cooperation Agreements in Buenos Aires*, Executive Office of the President of Argentina, Feb. 22, 2008, Open Source Center, No. LAP20080223055002.)
(Eduardo Soares)

BULGARIA/EUROPEAN UNION – Ratification of Lisbon Treaty

On March 21, 2008, Bulgaria ratified the Lisbon Treaty; seven European Union Members that have endorsed the Treaty thus far. The other Members that have already done so include Austria, France, Hungary, Malta, Romania, and Slovenia. According to its advocates, the purpose of the Treaty, signed on December 13, 2007, by 27 Member States is to make EU institutions more efficient and improve decision-making procedures.

As to ratification of the Treaty, Poland remains uncertain, because the opposition party led by President Lech Kaczynski has threatened that it will veto the ratification unless Poland retains more sovereign power and the country's constitution remains the supreme law of the



land. Poles still have the right to decide on ratification by means of a referendum if the Parliament decides against it, however, and reportedly 70 percent of the population supports the Treaty. Ireland is also expected to hold a referendum on ratification of the Treaty sometime in June. (*Bulgarian Parliament Ratifies EU Treaty*, EUOBSERVER, Mar. 25, 2008; Treaty of Lisbon, EUROPA, http://europa.eu/lisbon_treaty/index_en.htm (last visited Mar. 31, 2008); see also *EUROPEAN UNION – Reform Treaty*, 11 W.L.B. 2007, at 11.)
(Theresa Papademetriou)

MEXICO/UNITED STATES – State Attorneys General Reach Agreements to Combat Organized Crime

On March 12, 2008, State Attorneys General from the United States and Mexico announced a series of agreements aimed at eliminating the U.S.-Mexican border as a refuge for criminals on either side. The agreements were reached during a forum of the Conference of Western Attorneys General (CWAG) of the United States and Mexico's National Conference of Attorneys General, held recently in Phoenix, Arizona.

The agreements call for information sharing and increased cooperation among law enforcement authorities in the two countries in four primary areas:

- **Arms Trafficking:** Agreements were reached to broaden joint U.S.-Mexican undercover operations targeting illegal arms sales; expand registration of multiple gun sales of weapons such as AK-47s; and close loopholes in the regulation of U.S. gun shows.
- **Money Laundering:** The Attorneys General of both countries agreed to hold regular meetings to analyze selected money transmissions from the United States to Mexico and other money-laundering-related evidence. They also will use legal procedures and investigative techniques developed in Arizona to help prosecute human traffickers in Mexico.
- **Drug Trafficking:** The two sides agreed to develop pilot projects and other joint efforts to investigate drug trafficking on both sides of the border and to prosecute drug traffickers caught in Mexico with amounts of drugs that fall under current U.S. federal thresholds for the crime of drug trafficking.
- **Human Trafficking:** The Attorneys General agreed to work together to plan and execute enforcement operations. They also agreed to systematize binational exchange of information on organized smuggling networks, witnesses' accounts, modes of operation, transmitters of funds, map routes, and other information.

(Press Release, Office of the Arizona Attorney General, U.S., Mexican Attorneys General Expand Agreements to Combat Border Crime, http://www.azag.gov/press_releases/march/2008/USMexicanAttorneysGeneralExpandAgreementsToCombatBorderCrime.pdf (last visited Mar. 14, 2008).)
(Gustavo Guerra)



UNITED STATES – Judgment by International Court of Justice Held Not Binding on State Courts

On March 25, the Supreme Court ruled that a decision by the International Court of Justice (ICJ) did not override state procedural requirements governing post-conviction proceedings for convicted criminals.

Ernesto Medellin, a Mexican national, was arrested in Texas for his participation in the rape and murder of two girls there. After his arrest, the local authorities did not inform him of his right under the Vienna Convention of Consular Relations to notify the Mexican consulate of his detention. Medellin was convicted of capital murder and sentenced to death. After his conviction and sentence were upheld on appeal, Medellin filed a series of petitions for habeas corpus relief, arguing his rights under the Vienna Convention were violated. While one such proceeding was pending, the ICJ issued a decision in the *Case Concerning Avena and Other Mexican Nationals, (Avena)*, finding that the United States had violated the Vienna Convention with respect to 51 named Mexican nationals, including Medellin, and that they were entitled to review and reconsideration of their U.S. state-court convictions and sentences, notwithstanding their failure to comply with state procedural requirements governing post-conviction relief. President George W. Bush then issued a memorandum stating that the U.S. would discharge its international obligations by having state courts give effect to the decision in cases filed by the Mexican nationals affected by the ICJ opinion. The Texas Court of Criminal Appeals rejected the memorandum as a basis for overriding state procedural requirements governing habeas proceedings. The Supreme Court decided to review Medellin's case.

The Supreme Court ruled that neither the ICJ's decision in *Avena*, nor the President's memorandum, created directly enforceable federal law that pre-empts state procedural requirements governing habeas petitions. The Court first stated that none of the relevant treaty sources relating to the U.S.'s participation in the ICJ are self-executing, and thus they do not create binding domestic law in the U.S. on their own. It then found that the ICJ's decision in *Avena* did not create binding domestic law. Lastly, the Court rejected Medellin's argument that the President's memorandum requires state courts to provide review and reconsideration of the claims of the Mexican nationals named in *Avena*. The Court ruled that the President lacks authority to create domestic law preempting contrary state law under these circumstances, because the responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress, not the Executive. (*Medellin v. Texas*, No. 06-984 (March 25, 2008) available at <http://www.supremecourtus.gov/opinions/07pdf/06-984.pdf>.)

(Luis Acosta)



Investments

ZIMBABWE – Indigenization and Empowerment Act

President Robert Mugabe of Zimbabwe signed into law the Indigenization and Empowerment Act on March 7, 2008. The Act requires foreign-owned companies to offer at least 51 percent of their shares to indigenous Zimbabweans, according to news reports. It is unclear whether the mining industry is covered by the Act, Joseph Malaba, the country's head of the Chamber of Mines, has stated. Although Parliament passed amendments to the Mines and Minerals Act, allowing the government "to take over a 25 percent stake in foreign-owned mining companies for free in part fulfillment of the 51 percent indigenisation quota," the revised law lapsed on February 16 because Mugabe failed to sign it. (Brian Latham, *Zimbabwe's Mining Industry Seek State Clarification on New Law*, BLOOMBERG.COM, Mar. 10, 2008, available at <http://www.bloomberg.com/apps/news?pid=20601116&sid=af38pzYHjnm4&refer=africa>; Dumisani Ndlela, *Zimbabwe: Stakeholders Cautious on New Law*, FINANCIAL GAZETTE (Harare), Mar. 13, 2008, available at <http://allafrica.com/stories/200803130628.html>.)

The Indigenization and Empowerment Act also provides for the creation of an empowerment fund to finance the acquisition of working capital, shares, and other forms of finance for indigenous people, with the National Investment Trust (NIT) to be constituted as a special account for the fund. The NIT previously failed to raise capital for the purchase of a 15-percent share reserved for indigenous Zimbabweans in the platinum-producing company Zimplats, however. (Dumisani Ndlela, *supra*.)

Market analysts have been quoted as saying that the Act will "effectively seal Zimbabwe's fate as a pariah to international capital" (*Id.*). Marian Tupy, a Cato Institute policy analyst, condemned the Act even more strongly, as "yet another step on Zimbabwe's road to economic suicide" that will "expropriate non-black owners, while providing the ZANU-PF [ruling party] elite with a new source of income. The biggest victims of the Orwellian measure ... will be the black majority." (*Cato Scholar Comments on Zimbabwe's Indigenization and Economic Empowerment*, Cato Institute Web site, Mar. 10, 2008, available at <http://www.cato.org/pressroom.php?display=comments&id=859>.) (Wendy Zeldin)



Maritime Law

VIETNAM – Piracy at Sea

On January 17, 2008, the Prime Minister of the Socialist Republic of Vietnam (SRV) promulgated Decision No. 12/2008/QD-TTg, along with the Regulation on Coordination in Implementation of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP). Under the Regulation, Vietnamese authorities will exchange information and documents with other parties to the ReCAAP and provide reports in accordance with the scope of the agreement; publicize provisions of the ReCAAP and of the Regulation; and carry out ReCAAP-related extradition and legal assistance activities. The SRV Coast Guard is the standing and coordinating body charged with representing Vietnam in cooperating with the Information Exchange Center (ISC) of ReCAAP. Its tasks are “to collect, receive and analyze information reported by contracting parties and other information on piracy and armed robbery against ships”; handle the timely circulation of that information among contracting parties; and issue piracy warnings to ocean liners and fishing ships of the SRV and other contracting parties operating in the maritime areas under SRV jurisdiction. (*DECISION No. 12/2008/QD-TTg: Region Joins Forces Against Piracy at Sea*, VIETNAM LAW & LEGAL FORUM, Mar. 5, 2008, available at http://news.vnanet.vn/vietnamlaw/Reports.asp?CATEGORY_ID=3&SUBCATEGORY_ID=8&NEWS_ID=2553.)

The ReCAAP was concluded in November 11, 2004, and came into force on September 4, 2006; there are currently 14 contracting State Parties, including the SRV. Its aim is to increase multilateral cooperation on piracy and armed robbery issues among 16 countries in the region (Malaysia and Indonesia are not yet contracting states). (*About ReCAAP ISC*, ReCAAP ISC Web site, http://www.recaap.org/index_home.html (last visited Mar. 13, 2008).) In December 2007, the ReCAAP ISC and the International Maritime Organization (IMO) signed an agreement of co-operation. At the Second Annual Meeting of the ReCAAP ISC Governing Council held on February 26-28, 2008, external participants were for the first time invited to take part in some of the Council’s deliberations. (Press Release, ReCAAP Information Sharing Center, The ReCAAP Information Sharing Centre Establishes Itself as an Authority on Piracy and Armed Robbery Against Ships, and Develops as the Focus of Anti-Piracy Co-Operation in Asia (Feb. 28, 2008), available at [http://www.recaap.org/news/pdf/press/2nd%20GC%20Press%20release%20-%20revised%20\(28-2-08\).pdf](http://www.recaap.org/news/pdf/press/2nd%20GC%20Press%20release%20-%20revised%20(28-2-08).pdf); see also IMO Library Services External Relations Office, Information Resources on Piracy and Armed Robbery at Sea (Information Sheet No. 28), updated Feb. 20, 2008, available at http://www.imo.org/includes/blastDataOnly.asp/data_id%3D21578/Piracy_12May2008_.pdf; ReCAAP Agreement, <http://www.recaap.org/about/pdf/ReCAAP%20Agreement.pdf> (last visited Mar. 13, 2008).)

(Wendy Zeldin)



Police

IRELAND – Proposal to Arm Police Stirs Debate

In Ireland, uniformed members of the national police force, the Garda Siochana, have traditionally not carried firearms. In emergency situations, special plainclothes officers who have been issued firearms have been called to the scene. However, recent increases in the overall level of violence and several well-publicized incidents of shootings at police officers have led the government and the chief of the Garda to reconsider the country's policies on the arming of officers. On March 19, 2008, the head of the Garda delivered a major speech on the subject. Commissioner Fachtina Murphy began by reiterating that he was committed to traditionally uniformed officers remaining unarmed, but that he intended to go forward with a Regional Support Unit plan that would give designated police units firearms to carry in their police cars. Before using their firearms, gardaí officers would change out of their uniforms and put on either plain clothes or special uniforms issued for emergency situations. The Commissioner rejected the idea of creating more specialized units on the grounds that the force does not have the resources to have officers sitting around waiting for what are still isolated incidents. (Press Release, Garda Siochana, Commissioner's Speech to AGSI Conference 19th March 2008 (Mar. 19, 2008), available at http://www.garda.ie/press_story6.html.)

The proposal to issue firearms to members of the Garda has generally been strongly opposed by senior members of the force. The plan for uniformed officers to change their clothes before retrieving their weapons has been ridiculed as a "Wonder Woman" idea. (Gary Anderson, *It's Never Gunna Happen: Garda Annual Conference Chief Vows Cops Will Not Carry Guns*, THE MIRROR, Mar. 20, 2008, at 8). Many members of the Garda believe that the plan will put more officers in danger and would prefer the creation of more specialized units. Nevertheless, the Commissioner has stated that the plan will be implemented on at least a trial basis. The first area where the plan is scheduled to be implemented is in the southern part of the country, which includes the capital city of Dublin.
(Stephen Clarke)



Property

UKRAINE – New Law on Land Market

On March 4, 2008, the Verkhovna Rada (Parliament) of Ukraine adopted the Law on the Land Market. The Law determines legal and economic principles for the organization and functioning of the land market and regulates the protection of the legal interests of the state and other entities in regard to the conditions for the implementation of land property rights guaranteed by the Constitution. The Law confirms that land sales will be conducted according to the procedure prescribed by the Land Code and gives the right to sell land plots currently under state or municipal ownership to the Cabinet of Ministers, provincial government bodies, local state administrations, state privatization authorities, and the central authority for land resources. Agricultural land and lands on which buildings and other structures are located will be sold only at auction by the central authority. (*Cabinet Submits Draft Law on Land Market to Parliament*, INTERFAX UKRAINE BUSINESS EXPRESS, Mar. 4, 2008, available at <http://www.site.securities.com>.)
(Peter Roudik)



Taxation

TAIWAN – Business Tax Law Amended

On March 10, 2008, an amendment to Taiwan's Value-Added Business Tax and Non-Value-Added Business Tax Law was promulgated. The new article 9-1 stipulates that "to meet special circumstances of the economy," the Executive Yuan (Cabinet) may flexibly adjust the business tax for imported wheat, barley, corn, and soybeans, without the limits prescribed under article 10 of the Law (on business tax rates). The Ministry of Finance, in consultation with the relevant agencies, will submit a report to the Executive Yuan on the commodity type whose tax rate is to be adjusted, the scope of the adjustment, and the period of its implementation as well as the actual beginning and end dates. The Executive Yuan will make an appraisal and announce its decision on the matter. (Amendment to the Value-Added Business Tax and Non-Value-Added Business Tax Law, 6788 THE GAZETTE OF THE OFFICE OF THE PRESIDENT 1-2 (Mar. 10, 2008), available at <http://content.glin.gov/summary/203310>.) This amendment comes on the heels of an amendment to articles 8 and 9 of the Law, promulgated on January 16, 2008, and effective on March 1, revising the types of goods, labor service, and imported goods that will be exempt from business tax. (Amendment to the Value-Added Business Tax and Non-Value-Added Business Tax Law, 6780 THE GAZETTE OF THE OFFICE OF THE PRESIDENT 63-66 (Mar. 10, 2008), available at <http://content.glin.gov/summary/201789>.)

(Wendy Zeldin)

VIETNAM – Law on Personal Income Tax

The National Assembly of the Socialist Republic of Vietnam approved the country's first Personal Income Tax Law on November 21, 2007 (Law No. 04/2007/QH12). It was promulgated by Decree No. 13/2007/L-CTN on December 5, 2007, and published in the OFFICIAL GAZETTE on January 13, 2008. It is scheduled to take effect on September 1, 2009. The Law is in 35 articles divided among four chapters, covering general provisions, the basis for calculation of resident individuals' tax, the basis for calculation of non-resident individuals' tax, and implementing provisions. (Agency for SME Development, SRV Ministry of Planning and Investment, *Personal Income Tax Law*, <http://www.business.gov.vn/newsevents.aspx?id=6010&LangType=1033> (last visited Mar. 24, 2008).)

As under the current ordinance on personal income tax, any form of employment income is taxable. "However, the language appears to be drafted in a more 'catch all' style, so that those benefits in kind, which hitherto have not been taxable in practice, will now clearly be taxable under the law" (PriceWaterhouseCoopers, *Vietnam: New Law on Personal Income Tax ('PIT')*, Nov. 2007, available at http://www.pwcias.com/home/eng/vn_pit_law_nov2007.html). Personal income subject to taxation under the Law includes income from salary, wages, investments and capital transfers, real estate transfers, lottery proceeds, copyright, commercial concessions, inheritance, and doing business. The latter encompasses income from production activities, trading in goods and services, and independent professional activities as permitted by law. The lowest rate of taxation is 2%, applicable to income from real estate transfers; the highest is 30%,



on income above VND624 million (about US\$40,350) up to 960 million (about US\$61,100) per year. (*Personal Income Tax Law, supra*).

Among other significant changes are the following:

- There are now common progressive tax rates for both foreign and Vietnamese resident individuals;
- The top income tax rate for tax residents has been reduced from 40% to 35% and for non-tax residents, from 25% to 20%;
- The definition of tax residents is broadened to include those having a permanent residence in Vietnam and Vietnamese nationality is removed as a criterion for determination of tax residency.
- For the first time non-employment income, such as gains from the sale of securities or real estate, interest (except bank interest), and dividends will be taxable.

(Oliver Massman, *Vietnam - The Year's Milestones Summary - Firms Sharpen Pencils to Draw Out New Tax Strategies*, VIETNAM TRADE – INVESTMENT – LAW, <http://www.vietnam-trade-investment-law.sino.net/news/2008/2/607.php> (last visited Mar. 25, 2008).)

(Wendy Zeldin)



Terrorism

UNITED KINGDOM – Bill to Extend Pre-Charge Detention of Terrorists Challenged

A counter-terrorism bill that would extend from 28 days to 42 the period that suspected terrorists can be detained without charge is currently before the Parliament of the United Kingdom. The government's recently established Equality and Human Rights Commission has indicated that it will launch a legal challenge to the provisions of the Bill, as it considers them contrary to provisions of the Human Rights Act 1998 and possibly also in breach of the Race Relations Act 1976. The bill also requires individuals who have been convicted of a terrorist offense to report their address to the police and to notify the police if they move. In addition, it allows for enhanced sentences to be passed if offenders commit an offense that has a terrorist element. (Counter-Terrorism Bill 2007-08, Bill 63, 07-08, <http://services.parliament.uk/bills/2007-08/counterterrorism.html> (last visited Apr. 10, 2008); and Alan Travis, *Watchdog's Threat to 42-Day Terror Law*, THE GUARDIAN (London), Mar. 31, 2008, available at <http://www.guardian.co.uk/politics/2008/mar/31/terrorism.uksecurity>.) (Clare Feikert)



Trade and Commerce

ESTONIA – Sale of Alcohol at Night Prohibited

On February 26, 2008, the Parliament of Estonia approved amendments to the nation's Alcohol Act that introduce time restrictions on the sale of alcoholic beverages. According to the new law, alcohol can be purchased only between 10 a.m. and 10 p.m. New restrictions are also introduced in regard to minors. The previous provision, which allowed juveniles to carry alcohol in closed containers, has been repealed, and a ban on carrying alcohol by those who are under 18 years of age is imposed. The law obligates a guardian or custodian of a minor to ensure that he has no alcoholic beverages in his immediate possession. However, the handling of alcohol by minors within the course of their employment is allowed. Additionally, the law has new provisions that permit the display of moonshine equipment in state and municipal museums, and private museums may exhibit such equipment in accordance with police permits. (*Alcohol Sale Ban from 22 to 10 Hours Becomes Law in Estonia*, BNS BALTIC NEWS SERVICE, Feb. 26, 2008, available at <http://www.site.securities.com>.)

(Peter Roudik)

KOREA, SOUTH – Court Bans Executives from Switching to Rival Company for Certain Period

The Seoul Central District Court banned 13 former executives of Doosan Heavy Industries and Construction Company from working for the rival company, STX Heavy Industries Company, for from one to three years. Six of the executives were criminally charged with industrial espionage for divulging classified information they acquired from Doosan in November 2007. The court found they took secret data from Doosan that they then utilized to participate in a competitive bid on behalf of STX for a seawater desalination project in Saudi Arabia worth US\$2 billion. The court stated that the use of such information to offer a lower bid on overseas projects also results in harm to Korea as a nation. (*Raibaru sha dōshi no sukauto gassen, saibansho ga burēki [The court stopped scouting war between rivals]*, CHOSUNILBO, Mar. 20, 2008; Park Si-soo, *6 STX Executives Indicted for Stealing Technology*, KOREA TIMES, Nov. 20, 2007, available at http://www.koreatimes.co.kr/www/news/nation/2007/11/117_14082.html.)

(Sayuri Umeda)

MAURITANIA/SENEGAL – Fishery Agreement Signed

Mauritania and Senegal signed a one-year fishery agreement, under which 300 permits will be issued to Senegalese fishermen working in Mauritanian waters. The agreement was concluded in the Mauritanian capital Noakchott by Mauritanian Fishing Minister Assane Soumaré and the Senegalese State Minister and Maritime Transport Economy, Fishing and Apiculture Minister Souleymane Ndéné NDiaye. The permits will go to traditional fishing boats. Fifteen percent of the fish caught by the Senegalese is to be unloaded in Mauritania. In addition, ten industrial fishing permits will be issued for Senegalese tuna boats, on the expectation that they will each give 40 permanent jobs to Mauritians. The positions to be filled will include



three wholesale fish merchant slots and one inspector per boat. The Senegalese boats will pay taxes to Mauritania and will issue five permits for coastal fishing of bottom-feeding fish in Senegalese waters.

This accord replaces an earlier one that had expired. The previous agreement had allowed fewer permits for traditional boats from Senegal and had required a larger percentage of fish to be unloaded in Mauritania, but had not permitted fishing in Senegalese waters or required the payment of taxes. (*Senegal, Mauritania Sign New Fishery Agreement*, AFRICAN PRESS AGENCY, Mar. 26, 2008, available at http://www.apanews.net/apa.php?page=show_article_eng&id_article=58913.)

(Constance A. Johnson)



Transportation

CHINA – Aviation Security

On March 14, 2008, the General Administration of Civil Aviation of China (CAAC) issued an announcement on measures to tighten passenger airline security. Under the new measures, passengers may no longer carry liquid products on board domestic scheduled flights; the items may be shipped as long as they are packed in conformity with the relevant civil aviation provisions. Passengers may carry a small amount of cosmetics for their own use, limited to one item of each type of cosmetic, with each container weighing no more than 100 milliliters and placed in a separate bag so that the bottles can be opened for inspection. Travelers from abroad who have to transfer to domestic airlines at Chinese airports should have the duty-free liquid goods that they are bringing into China placed in a sealed, clear plastic bag that is in good condition. They must also show a proof of purchase for the items and they will only be permitted to carry the items with them after a passing security inspection. When purchasing their tickets, passengers with children may request the airline company to provide them with in-flight liquid dairy products without charge; indispensable liquid medicines carried by diabetics or persons suffering from other diseases, after being cleared by a security check, are to be handed over to the flight crew for storage.

According to the announcement, the relevant provisions of the CAAC's March 17, 2007, "Announcement on Restrictions on Liquid Goods Carried Aboard Domestic Airplanes" still apply to the liquid goods carried by international and domestic airline passengers. The announcement also points out that passengers themselves will bear responsibility for any harm to the aircraft or other consequences resulting from a violation of the new provisions. (Guanyu jinzhi lüke suizhen xiedai yetai wupin chengzuo guonei hang ban de gonggao, General Administration of Civil Aviation of China Web Site, Mar. 14, 2008, available at http://www.caac.gov.cn/A1/200803/t20080318_12978.html; *Min Hang Zong Ju chutai an jian xin guiding: guonei hang ban lüke jinzhi xiedai yetai wupin* [CAAC presents new provisions on security inspections: passengers on domestic scheduled flights forbidden to carry liquid goods], XINHUANET, Mar. 13, 2008, available at http://news.xinhuanet.com/newscenter/2008-03/13/content_7784334.htm.)

(Wendy Zeldin)



War

UNITED NATIONS – Mercenaries Not Regulated

A United Nations working group on the use of mercenaries reported to the U.N. Human Rights Council in Geneva on March 10, 2008. According to the report, the number of private security and military companies, which operate domestically and internationally, is increasing and they are without proper oversight and accountability. These private enterprises are operating in countries with ongoing conflicts, such as Afghanistan, Colombia, and Iraq. They recruit former policemen and soldiers from developing countries. Although they may refer to their employees as “security guards,” the report characterizes them as “militarily armed private soldiers” or mercenaries. The working group expressed concern that these mercenaries are responsible for serious human rights abuses. The working group, international in nature, was established in 2005 and consists of José Luis Gómez del Prado of Spain (Chairperson-Rapporteur), Najat al-Hajjaji of Libya, Amada Benavides de Pérez of Colombia, Alexander Nikitin of Russia, and Shaista Shameem of Fiji. (*Private Security Companies Lack Oversight and Regulation – UN Working Group*, UNNEWS, Mar. 10, 2008, available from unnews@un.org.)

Countries experiencing internal conflict may lack the capacity to control and regulate the private security companies and in some cases have passed national legislation granting immunity. The security guards then are accountable only to their corporate bosses, and the immunity can become impunity, according to the five-member working group. The report calls for wider ratification of the Convention Against the Recruitment, Use, Financing, and Training of Mercenaries. (*Id.*; Convention text was adopted by the U.N. General Assembly Resolution A/RES/44/34, Dec. 4, 1989, available at <http://www.un.org/documents/ga/res/44/a44r034.htm> (UN Web site).) According to the International Committee of the Red Cross, there are 30 parties to the agreement. (*International Humanitarian Law – Treaties and Documents*, <http://www.icrc.org/ihl.nsf/INTRO/530?OpenDocument> (last visited Mar. 13, 2008).) (Constance A. Johnson)



Weapons

CHINA – Provisions on Permits for Weapons Research and Manufacture

On March 6, 2008, the State Council and the Central Military Commission issued the Regulations on Administration of Licensing for Weapons Research and Manufacture (Wuqi zhuangbei keyan shengchan xuke guanli tiaoli), which became effective on April 1, 2008. The Regulations' five chapters include general provisions, licensing procedures, administration of preservation of secrets, legal responsibility, and supplementary provisions.

The Regulations stipulate that the state will exercise licensing control over weapons research and manufacturing activities listed in a catalog on licenses for such activities, with the exception of certain specialized activities. The catalog will be formulated and adjusted by the departments in charge of national defense science and technology industry of the State Council in consultation with the General Preparedness Department of the People's Liberation Army and the departments in charge of the military industry electronics trade; in carrying out this task, they should seek the views of the relevant departments of the State Council and of the armed forces. Control is to be exercised according to principles of "unified planning with due consideration of all factors concerned, rational distribution, encouragement of competition, and secure protection of secrets." Work units that obtained a weapons research and manufacturing license should sign a statement of responsibility for job confidentiality with state secrets personnel who bear weapons research and manufacturing duties, making explicit their responsibility for confidentiality on the job and also addressing their carrying out of regular secrets' protection education and training.

The Regulations provide that those who counterfeit or alter weapons research and production licenses will be ordered to cease the illegal acts and be fined 100,000 yuan (about US\$14,200); those who have made illegal proceeds will have them confiscated (art. 31). Those who obtain a license by improper means such as deceit or bribery will be subject to a fine of from 50,000 to 200,000 yuan as well as prescribed punishment under the relevant provisions of the Administrative Licensing Law of the PRC (art. 32). (Guowuyaun Ling di 521 hao: Wuqi zhuangbei keyan shengchan xuke guanli tiaoli [State Council Decree no. 521: Regulations on administration of licensing of weapons research and manufacture], XINHUANET, Mar. 13, 2008; *Xinhua she shouquan fabu <Wuqi zhuangbei keyan shengchan xuke guanli tiaoli > [Xinhua News Agency authorized to issue <The Regulations on administration of licensing of weapons research and manufacture>]*, XINHUANET, Mar. 13, 2008.)

(Wendy Zeldin)



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