



Law Library of Congress GLOBAL LEGAL MONITOR

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Greetings from the Law Librarian

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.



Globalization is a fact with far-reaching implications including an increasing number of international transactions.

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

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Law Librarian of Congress

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Abortions

ENGLAND AND WALES – Ruling of No Parental Right to Know on Under-Age Abortions

The High Court of England and Wales has ruled that parents do not have a right to be notified when girls under the age of sixteen have, or receive advice on, an abortion. The Court expressed concerns that establishing a duty to inform parents may lead the girl seeking advice into a decision she later regrets or force her to resort to “unofficial abortionists.” The government has stated that confidentiality in such circumstances is a cornerstone of the government’s policy to reduce pregnancies among teenagers and improve sexual health.

([Mother Loses ‘Right to Know’ Case](#), BBC News, Jan. 23, 2007.)

(Clare Feikert)

PORTUGAL – Referendum on Abortion Approved

On February 11, 2007, a second referendum was held on whether to make abortion legal in Portugal. The first referendum on the issue, held in 1998, was declared void due to the low turnout. In the second one, approximately sixty percent of those who cast ballots approved a government proposal that gives women the right to an abortion up to the tenth week of pregnancy. However, with a turnout of only 43.6% of the registered voters, the measure is not binding. For the results of a referendum to be valid and legally binding, the current legislation determines that more than fifty percent of registered voters must cast their ballots.

Portugal is a conservative Roman Catholic country and has one of the most restrictive abortion laws in Europe. The current law only allows a woman to have an abortion in the first twelve weeks of pregnancy and only if the pregnancy involves rape, fetus malformation, or risk to the mother’s health. A woman can be jailed for up to three years for having an illegal abortion; those convicted of performing abortions are subject to up to eight years’ imprisonment.

Based on the referendum’s result, Portugal’s Prime Minister, José Sócrates, vowed to legalize abortion, saying: “[t]he results of this referendum are clear, it proves that the Portuguese people want to turn the page on the question of abortion.” In another statement, Sócrates said that it was his sincere conviction that with the result of this referendum, Portugal has taken another step in the creation of a society that is more open, tolerant, and just. ([Portugal to Legalise Abortion After Referendum](#), ABC NEWS ONLINE, Feb. 12, 2007.)

(Eduardo Soares)



Attorneys and Judges

AUSTRALIA/UNITED STATES – Access to U.S. Market for Australian Lawyers

The United States Conference of Chief Justices has signed a resolution urging improved access for Australian lawyers to the U.S. legal services market. The resolution is aimed at convincing supreme courts of U.S. states and territories to permit Australian university law graduates who are admitted to practice in Australia to sit for U.S. bar exams for admission without having to undertake further study. This development is an initiative under the Australian-United States Free Trade Agreement (AUSFTA). (Press Release 040/2007, The Attorney-General, Philip Ruddock MP., [Better Access for Australian Lawyers in the U.S.](#) (Mar. 1, 2007).)

(Lisa White)

UNITED STATES – Federal Judicial Conference Requests New Federal Judgeships

The Judicial Conference of the United States has voted to request that Congress create 67 new federal judgeships at the district and appellate courts where they are most needed. The Judicial Conference voted to ask Congress to create 15 new judgeships at the appellate level, and 52 new judgeships at the district court level. The Judicial Conference cites the increase in court filings as the reason additional judgeships are needed. It indicates that at the appellate level, there has been a 57% increase in appellate filings since 1990, the last time Congress increased the number of judges. Similarly, at the district court level, while Congress has increased the number of judges by 4% since 1990, the number of filings has increased by 29%.

The Judicial Conference requested creation of most of these judgeships in March 2005, at the beginning of the 109th Congress. Several bills were introduced in the 109th Congress to implement these recommendations, but none were enacted.

The Judicial Conference, made up of the Chief Justice of the Supreme Court, the Chief Judges of the federal circuit courts, and one district judge from each judicial circuit, is the principle policy-making body concerned with the administration of the United States Courts. Congress has granted the Judicial Conference statutory authority to propose legislation affecting federal judicial administration. (Judicial Conference of the United States, [News Release: Federal Judiciary Says New Judgeships Needed](#) (March 13, 2007); [Additional Judgeships or Conversion of Existing Judgeships Recommended by the Judicial Conference 2007.](#))

(Luis Acosta)



Communications and Electronic Information

ANGOLA/GUINEA BISSAU – Cooperation Accord in Media Sector Signed

On February 2, 2007, in Bissau, the Angolan Deputy Minister of Social Communication, Manuel Miguel de Carvalho “Wadijimbi,” and the Guinea Bissau Secretary of State for Media, João de Barros, signed a technical-professional co-operation agreement aimed at information sharing between the two countries in the field of social communication. Barros was quoted as saying that he considered the accord as historic for his country. While visiting media facilities in Bissau, “Wadijimbi” expressed Angola’s desire to strengthen cooperation in this sector through the sharing of experiences and the updating of technology of the two nations. ([Angola and Guinea Bissau Sign Co-operation Accord in Media Sector](#), ALLAFRICA.COM, Feb. 5, 2007.)
(Eduardo Soares)

BELARUS – KGB Control over Internet Use

On February 14, 2007, the Government of the Republic of Belarus issued the Instruction on the Use of Electronic Communication Networks. This Instruction regulates services that provide access to the Internet and obligates owners of Internet cafes to register all visitors, create individual accounts for all Internet users and verify their personal information, and keep logs of all websites visited by the clients. These records must be kept for a period of no less than one year and must be available for KGB operatives upon their request, without a court or prosecutor’s authorization. Also, the employees of all institutions providing access to the Internet are charged with the duty to report to law enforcement authorities all Internet activities of the users that seem suspicious to them. According to the Instruction, all Belarus citizens are prohibited from accessing and distributing information deemed prohibited by the authorities and from accessing websites not approved by the government. (Irina Petrakova, *KGB Will Monitor Internet Cafes*, GAZETA.RU, Feb. 15, 2007.)
(Peter Roudik)

CHINA – Mobile Phones and Crosswalks

It was reported on February 13, 2007, that legal experts in China have urged the government to legislate against pedestrians’ use of mobile phones while crossing the road. The experts contend it is dangerous for the pedestrians, because they are not as alert to traffic when they are talking on a phone while crossing a street. According to Guangdong lawyer Cai Haining, China’s current traffic law is unbalanced because it only assigns culpability to the driver; pedestrians who commit potentially dangerous acts such as running across a street while shouting into a mobile phone are at present not liable for criminal prosecution. A China Radio International (CRI) news item on this issue referred to a New York senator’s [state senator Carl Kruger] plan to introduce legislation to make the use of electronic devices illegal while crossing New York City streets. ([Prohibition of Mobile Use While Crossing Road](#), CRIENGLISH.COM, Feb. 13, 2007; *see also for example*, Caroline McCarthy, [N.Y. Lawmaker Hopes to Ban iPod Use in Cross Walks](#), CNET NEWS.COM, Feb. 7, 2007.)
(Wendy Zeldin)



KOREA, SOUTH – Internet Portals Monopoly

Lee Dong-kyu, a Director General of South Korea's Fair Trade Commission (FTC), said during an interview on a local radio station that the antitrust agency will start its probe of Internet portals in March 2007. He indicated that some portals violated antitrust rules by abusing their monopolistic power. Among the illegal practices are delayed payments to subcontractors providing digital content and pressing subcontractors not to deal with other Internet portals, he added. (Kim Yon-se, [Major Internet Portals Face Antitrust Investigation](#), KOREA TIMES, Jan. 20, 2007.)

(Sayuri Umeda)

MALTA – 2005 Laws Digitized and Published on CD

For the third year running, the Maltese Department of Information has published the Laws of Malta in a digitized format on a CD that is available for LM 12 (about US\$36). The laws were previously published in printed format and cost LM 30 (about US\$90). This change in publishing format has not only decreased the costs, but also reduced by two months the time it takes to make the official annual version of the published laws available to the public. The Department of Information has stated that it anticipates completely ceasing publication of the annual laws in printed format. (Press Release, Department of Information, Last Year's Acts of Parliament, Legal Notices and Bye-Laws on CD (Jan. 4, 2007).)

(Clare Feikert)

UNITED STATES – Federal Judicial Conference Endorses Pilot Project Distributing Courtroom Audio Recordings

The Judicial Conference of the United States, the principle policy-making body concerned with the administration of the United States Courts, has endorsed a pilot project under which digital audio recordings, for six to twelve months, will be distributed through PACER, the federal judiciary's electronic information distribution system. The use of digital audio recording as a method of creating court records was approved in 1999. Several courts now routinely use digital audio recordings, and make such recordings available for purchase from clerk's offices. Under the pilot project, the federal judiciary will experiment with distributing such audio recordings from a limited number of participating courts via PACER, which makes court filings and decisions available to subscribers via the Internet for a modest fee. (Judicial Conference of the United States, [News Release: Federal Judiciary Says New Judgeships Needed](#) (March 13, 2007).)

(Luis Acosta)



Criminal Law

GERMANY – Administration of Justice

On December 22, 2006, Germany enacted a major reform of its laws dealing with the administration of justice that is designed to modernize court practices and improve due process rights for criminal defendants and crime victims (2 Justizmodernisierungsgesetz, BUNDESGESETZBLATT 2006 I at 3416). Among the newly enacted reforms are provisions that permit electronic payments for fees and penalties, streamline rules on the use of expert witnesses, create additional possibilities for the reopening of a proceeding after the European Court of Human Rights has ruled on the case, increase possibilities for compensating victims of crimes from monetary penalties imposed on the convicted criminal, and extend more control over pretrial detention decisions. The overall purpose of the reform is to make court proceedings more efficient and transparent. (Gesetzesentwurf der Bundesregierung, Oct. 19, 2006, DEUTSCHER BUNDESTAG DRUCKSACHE 16/3038.)
(Edith Palmer)

IRELAND – Journalist, Police Detective Arrested over Leaking a Government Report

A journalist and a member of the Garda (the Irish national police service) are facing a possible criminal prosecution in connection with the leak of a report in August 2006 from Ireland's Commission of Investigation, which addressed a police investigation that resulted in a person being wrongfully charged with murder. It is an offense to disclose the contents of a Commission report before its official publication. The Director of Public Prosecutions has been sent information on the two individuals and will determine whether or not to prosecute the cases. (Conor Lally, *Journalist and Garda Arrested over Murder Case Report Leak*, IRISH TIMES (Ireland), Feb. 22, 2007.)
(Clare Feikert)

RUSSIAN FEDERATION – Criminal Sentences May Be Served Far from Home

On February 14, 2007, the State Duma (legislature) of the Russian Federation amended the nation's Correctional Code. The amendment eliminates the previously existing provision of the Code that established that a criminal will serve his sentence in the territory of the constituent component of the Russian Federation where he resided before committing the crime. The Code further provided that if there were no appropriate correctional institution in that component, the sentence was to be served in the nearest appropriate institution determined by the correctional department of the Russian Ministry of Justice. This provision was aimed at the preservation of ties between the criminal and his family, in order to speed up the criminal's rehabilitation. The newly passed amendment allows the government to distribute the sentenced criminals all over the country.

It appears that the amendment was needed to justify the placement of Mikhail Khodorkovsky, a businessman who declared his opposition to President Vladimir Putin, in a labor camp 6,000 miles away from Moscow, where he was living and was tried. In January



2007, Khodorkovsky was indicted once again and has apparently been sentenced to a new prison term; the amended provision of the Correctional Code will therefore eliminate all remaining legal limits on keeping him in Siberia. (Leonid Nikitinskii, *Duma Changed the Correctional Code*, ROSSIISKAIA GAZETA, Feb. 16, 2007, at 3.)
(Peter Roudik)

SENEGAL – New Law Will Permit Trial of Former Leader of Chad

On January 31, 2007, Senegal's National Assembly adopted a law to enable a Senegalese court to try the former leader of Chad, Hissène Habré. The exiled leader was first arrested in Senegal in February 2000 and charged with committing crimes against humanity and torture during his years in control of Chad, 1982-1990. Although at first reluctant to prosecute Habré or to send him to Belgium for trial, in 2006 Senegal agreed to follow an African Union decision that stated he should be tried in Senegal. The new legislation permits Senegal to prosecute individuals for genocide, crimes against humanity, war crimes, and torture, even if the acts were committed outside Senegal's borders. According to Senegal's Foreign Minister, Cheikh Tidiane Gadio, who spoke the day before the new law was adopted, it may be three years before Habré is actually tried. (Human Rights Watch, [Senegal: New Law Will Permit Habré's Trial](#), ALLAFRICA.COM, Feb. 2, 2007.)
(Constance A. Johnson)



Cultural Property

JAPAN – Protection of Cultural Property Convention

Japan will ratify the Convention for the Protection of Cultural Property in the Event of Armed Conflict fifty-three years after it signed the Convention in 1954. Japan had not ratified the Convention because many historic buildings in Kyoto were excluded from protection under the Convention. (*Buryoku Hunsō ji no bunkazai hogo jōyaku, shomei 53 nen o hete hijun e [Convention for the Protection of Cultural Property in the Event of Armed Conflict, Japan Ratifies After 53 Years Since Signature]*, SANKEI NEWSPAPER, Feb. 20, 2007 (on file with author).)

(Sayuri Umeda)



Defense

CZECH REPUBLIC – Village Referendum on U.S. Radar Base

The Czech village of Trokavec, a town of about one hundred people, will be holding a referendum on aspects of the establishment of a radar base by the United States. The base is planned for an army training ground that is adjacent to the village. The vote, which under Czech law cannot directly determine whether the base will or will not be built, will deal with whether the villagers want their representatives to take all steps possible under the law to oppose construction of the base. The referendum is scheduled for March 17, 2007.

Trokayec is the first municipality in the Czech Republic to schedule a local referendum on this issue. Its mayor, Jan Neoral, said the village would be willing to help other local governments hold similar votes and would provide electronic forms and other documents needed for the referendum process. Villagers are concerned that being located near a radar system would make them a likely target of a military attack. The United States, for its part, wants the site to provide security against possible ballistic attacks from Iran or North Korea. The Prime Minister of the Czech Republic, Mirek Topolánek, has said his government would probably consent to the establishment of the base. (*Czech Village to Hold Referendum on Proposed US Radar Base*, CTK (Prague), Feb. 19, 2007, Open Source Center No. EUP 20070219950062.) (Constance A. Johnson)

ISRAEL – National Civil Service

In its meeting on February 18, 2007, the Israeli government approved partial implementation of the recommendations of the Ivri committee, which studied the issue of national civil service for those who are not drafted by the military (ultra orthodox Jews, Arabs, conscience objectors, etc). Accordingly, 250 additional persons (in addition to 270 already in the program) will be permitted to serve on a voluntary basis in areas such as education, health, etc. (*The Government Approved: The Tal Law Would Be Extended for Five Years*, YEDIOT ACHARONOT, YNET, Feb. 18, 2007.) (Ruth Levush)



Disability Law

CHINA – Draft Regulation on Employment Opportunities for Disabled

On February 14, 2007, the State Council of the People's Republic of China adopted a draft regulation on increasing employment opportunities for the disabled. It prescribes that all provinces and regions must consider the employment of disabled people when formulating their regional economic and social development policies, and government departments at all levels are required to provide training to the disabled, create more jobs for them, and better protect their legal rights. The regulation also stipulates that non-government organizations and individuals are encouraged to assist the handicapped in seeking employment. According to official figures, as of April 1, 2006, China had about eighty-three million disabled persons, constituting about six percent of the population. ([China Regulates to Help Disabled Find Jobs](#), WWW.CHINAVIEW.CN, Feb. 14, 2007.)

(Wendy Zeldin)



Elections and Politics

ALGERIA – Legislative Election in May

On February 15, 2007, the Ministry of the Interior of Algeria announced that parliamentary elections have been set for May 17, 2007, and that the voter lists would be ready for review starting on February 19 and ending on the last day of February. Algerian President Abd al-Aziz Bou-Taflikah has already issued a presidential decree calling for the election to take place. (*Legislative Election in May*, AL-SHARQ AL-AWSAT, Feb. 16, 2007.)
(Issam Saliba)

CAMBODIA – Proposal to Ban Royal Family from Politics

Retired King Norodom Sihanouk has proposed an initiative that would keep members of the royal family from participating in Cambodia's political life. Prime Minister Hun Sen recently announced that the ruling Cambodian People's Party and its coalition partner Funcinpec will support the proposal. Members of the royal family currently involved in politics, however, have said it would be irresponsible of them not to be involved, especially given the country's continued problems with corruption and lack of adequate law enforcement. Prince Sisowath Thomico, President of the Sangkum Jatiniyum Front Party, stated on February 7, 2007, that he would give up his position in the political party if the coalition government succeeds in ending land grabs, corruption, illegal logging, illegal immigration, and the improper sale of state assets. He added, "I want to see the leadership of the country respect the rule of law." In response to Thomico's and others' remarks, Hun Sen said that the royal family cannot even protect itself, let alone the whole country, and that his party is the real protector of the Cambodian monarchy. (Vong Sokheng, [Move to Ban Royals from Politics Gaining Momentum](#), PHNOM PENH POST.)
(Constance A. Johnson)

FIJI – Application to Declare Military Regime Unconstitutional

Media reports state that an application on behalf of deposed Prime Minister Laisenia Qarase has been made to Fiji's High Court. Qarase is seeking to have Fiji's current military regime declared unconstitutional. The military overthrew Fiji's government in a bloodless coup in December 2006. ([Qarase Files Suit to Declare Regime Illegal](#), NEW ZEALAND RADIO INTERNATIONAL, Feb. 15, 2007.)
(Lisa White)

MOROCCO – Authorities Bar Saddam Hussein Commemoration

On February 13, 2007, the Moroccan authorities barred a gathering called for by six non-governmental organizations to commemorate the passing of forty days after the execution of former Iraqi President Saddam Hussein. Leaders and members of these organizations, in addition to other citizens, gathered in front of the Mohammed V theatre in the capital, hoisting banners with slogans against the United States. (*Moroccan Authorities Bar a Saddam Hussein Commemoration*, AL-SHARQ AL-AWSAT, Feb. 15, 2007.)
(Issam Saliba)



NEPAL – Bill on Court for Constituent Assembly Elections

On February 25, 2007, the Government of Nepal tabled a bill in the House of Representatives on the establishment of a Court for Constituent Assembly Elections. The duties of the Court would be to investigate complaints regarding constituent assembly elections and, on the advice of the Judicial Council, to appoint three sitting judges of the Supreme Court. It would have the authority to decide on the ineligibility of a member contesting for the constituent assembly elections and to nullify an election based on the complaints it has received and crimes committed in connection with the election. The bill mandates that the Court is to render verdicts within a time period of three months, and its verdicts would be final. The House of Representatives unanimously approved the bill for discussion. ([*CA Court Bill Presented at House*](#), THE RISING NEPAL, Feb. 26, 2007.)

(Wendy Zeldin)

TAIWAN – Criminal Law Amendment on Illegal Balloting

An amendment to Taiwan's Criminal Law issued on January 24, 2007, affects article 146. The added stipulation provides that anyone who, with the intention of making a specific candidate be elected, acquires the right to vote by a false relocation of household registration and then votes in the election will be subject to up to five years' imprisonment. (6727 GAZETTE OF THE OFFICE OF THE PRESIDENT 18 (Jan. 24, 2007), Global Legal Information Network, GLIN ID No. 188218.)

(Wendy Zeldin)



Employment Law

ISRAEL – Right to Sit While Working

In order to improve working conditions for employees, including cashiers and bank tellers, among others, on February 14, 2007, the Knesset (Parliament) passed the Right to Work While Sitting Law, 5767-2007. The Law provides that an employer must afford an employee a seat and should not prevent the employee from sitting during work, unless he proves that the regular performance of the work does not allow sitting. The Law further imposes a duty on employers to provide chairs or suitable benches, with back support, for the workers at the work place, in sufficient numbers and proper condition, for sitting during breaks from work. Violations of these duties may result in financial compensation to the workers and in an injunction to correct the violation. (The Right to Work While Sitting Law, 5767-2007, Feb. 14, 2007, the Knesset Web site.)

(Ruth Levush)

MALAYSIA – Foreign Workers to Be Monitored

Media reports have reported Malaysia's Home Minister, Datuk Seri Radzi Sheikh Ahmad, as detailing a proposal for a Foreign Workers Bill under which employers will be responsible for monitoring their foreign workers' movements and for providing accommodation and paying wages. While Malaysia currently has regulations regarding foreign workers, Radzi is reported as saying that these were not strictly enforced and that the new provisions would be more strictly enforced. Radzi has indicated that the bill will be approved by the Cabinet and tabled in parliament during March 2007. ([Employers to Make Sure Foreign Workers Don't Go Astray](#), THE STAR, Feb. 18, 2007.)

(Lisa White)

NIUE – Government Workers' Hours Cut to Balance Budget

To assist in remaining financially solvent, the Niue government has proposed the temporary introduction of a four day working week for Niue public servants. Other options considered included a ten percent salary reduction for all public servants. (Cabinet Meeting February 2007, Meeting, *Fakatufono Niue*, 31 NIUE KI MUA, ONLINE, NKM (Feb. 13, 2007).)

(Lisa White)



Energy

AUSTRALIA – Ban on Incandescent Light Bulbs

In an effort to reduce greenhouse gases, Australia intends to phase out incandescent light bulbs and replace them with more energy efficient fluorescent bulbs. (Press Release, Australian Minister for the Environment and Water Resources, Malcolm Turnbull MP, [World First! Australia Slashes Greenhouse Gases from Inefficient Lighting](#) (Feb. 20, 2007).) (Lisa White)

BOTSWANA – Electrification Bills Approved

Botswana's Parliament approved two bills on February 7, 2007, that will lead to the electrification of a hundred rural villages in the nation. The legislation approved two loans, one from the Nordic Investment Bank of Finland and the other from the Nordea Bank of Sweden, each for approximately P276 million (about US\$46.1 million).

The project has been controversial since discussion began on it in December 2006. Approval was initially deferred, as Members of Parliament were dissatisfied with the proposal. The final passage was with the understanding that the whole transaction would be closely watched. One Member had complained that explanations of the terms of the loans were contradictory, while others expressed concern about the foreign company that won the bid to carry out the project. "I find it difficult to support a bill whose aim is to lock out citizen participation instead of maximizing it. Why would we approve a bill that says our people will be given second class treatment?" asked Gaborone Central MP Dumelang Saleshando. For its part, the government argued that the project will bring needed electrical energy to the village population and that the contract was awarded with due diligence. ([Electrification Bill Sails Through](#), DAILY NEWS (Gaborone), Feb. 8, 2007.) (Constance A. Johnson)

CHINA – Energy Law Being Drafted

China is drafting a Law on Energy in response to the country's increased demand for energy and its reliance on imports. The draft law reportedly will focus on fuel security by regulating commercial oil reserves at the corporate level. According to one of the law's core drafters, Wu Zhonghu, "[w]e are seriously weighing the option of constituting national oil reserves, at both the strategic and commercial level." (Wang Yu, [Law to Highlight Corporate Oil Reserves](#), CHINA DAILY, Feb. 15, 2007.) He added that the draft law, which he hoped the State Council would review by late 2007, would require large and medium-sized state-owned oil companies to establish corporate reserves in order to maintain an effective level of oil supplies. The oil wholesale sector is dominated by the state-owned companies Sinopec and China National Petroleum Corporation, which, some analysts argue, should be the ones to take the lead in shouldering the responsibility of setting up commercial oil reserves. Wu indicated that companies that build reserves may expect to receive government subsidies to cover their operating and management expenses.



According to the Ministry of Commerce, crude oil imports rose 16.9 percent over 2005, to almost 139 million tons in 2006, and oil industry observers warn that “in just one or two years” more than fifty percent of the crude oil used by China will come from imports. The National Development and Reform Commission recently announced that China’s first strategic oil reserve base, in Ningbo, Zhejiang Province, had begun operations. The government had approved four national strategic oil reserve sites in 2004; the other three are in Daishan, also in Zhejiang Province; Huangdao, in Shandong Province; and Dalian, in Liaoning Province. (*Id.*) (Wendy Zeldin)



Environmental Law

CHINA – Maritime Resources Legislation

The State Oceanic Administration (SOA) announced on February 2, 2007, that it had drafted new legislation on the management and protection of China's maritime resources, to be presented to the National People's Congress (NPC) session in March. Reportedly, twenty-five percent of China's near-shore waters and almost fifty percent of its territorial seas are polluted.

The legislation addresses the financial management of maritime areas, fishery management, and sea reclamation and enclosure. The latter issue is particularly problematic. According to Jiang Zhenghua, a vice chairman of the NPC Standing Committee, reckless reclamation of coastal sea land by developers had "harmed aquatic resources and exacerbated sea disasters." (*China Fast-Tracking New Legislation on Management, Protection of Maritime Resources*, XINHUA, Feb. 1, 2007, Open Source Center No. CPP20070201968078.) Although laws were tightened in 2006 in an effort to prevent coastal area projects from further damaging the ocean environment, the new rules would seek to bring local practice into conformity with national policy on creating an environmentally friendly society. Other newly proposed rules, deemed to be "urgently required," according to SOA head Sun Zhihui, are on exploration and protection of and construction on the country's more than 6,500 islands. (*Id.*)
(Wendy Zeldin)



Family Law

FRANCE – Adoption of Partner’s Child by Same-Sex Partner Denied

On February 20, 2007, the Cour de Cassation (France’s highest judicial court) ruled against the adoption of a partner’s child by the other partner. The parties were in a same-sex relationship. In the case at hand, the court prohibited the partner of the child’s natural mother from adopting the child, ruling that such an adoption was contrary to the “highest interest” of the child. The court found that the natural mother would lose her parental rights as a result of the adoption.

Article 365 of the Civil Code provides: “[t]he adopting person alone is invested with regard to the adopted child with all the rights of parental authority (...), unless the adopting person is the spouse of the father or mother of the adopted child.” Homosexual marriages are at present unlawful in France, which only recognizes civil unions. This decision does not consider the more general issue of the adoption of children of third parties by same-sex couples, as these adoptions are prohibited by law. (*La Cour de cassation interdit l’adoption par des couples homosexuels*, LE MONDE.)

(Nicole Atwill)

ITALY – Unwed Couples to Get Rights

On February 8, 2007, Italy’s Cabinet approved legislation that gives unmarried couples a number of rights. If passed by the legislature, the law would extend those rights to same-sex couples as well as other couples, provided they had lived together for at least nine years. The legal protections would allow unmarried couples to have rights such as hospital visitation that now apply only to married spouses. Family Policy Minister Rosy Bindi stated that the legislation was not intended to create a new legal status, but to grant certain rights “without creating minor-league marriages.” The proposal has been opposed by a variety of groups, including the Catholic Church. According to Renato Schifani, a leader of the Forza Italia party, the law would be an attack on “the sensibilities of millions of Italians.” On the other side, supporters such as Piero Fassino, leader of the coalition Democrats of the Left, describe the proposed law as recognizing the basic rights of couples who choose to live together. (*Unwed Couples Get New Rights in Italy*, YAHOO NEWS, Feb. 9, 2007.)

(Constance A. Johnson)

KYRGYZSTAN – Children’s Code

On January 1, 2007, the Children’s Code of the Republic of Kyrgyzstan entered into force. For the first time in the country’s history, a law that comprises all national legal norms related to child protection has been passed. In addition to the unification of legislation on children, the Code provides for significant bureaucratic changes within the government system dealing with the affairs of families and children. The new law requires the creation of a government agency dealing with youths and children, the appointment of a children’s ombudsman by the government, the establishment of family and child support departments in



every local administration, and the formation of local commissions that will interfere in the affairs of children considered to be at risk. A series of government resolutions was passed to implement the Code's provisions and provide personnel training for the newly created institutions. ([News item], INFORMATION PORTAL AKIPRESS.)
(Peter Roudik)

MEXICO -- Enactment of Law to Prevent and Punish Violence Against Women

On February 1, 2007, Mexico's legislature enacted a law that directs federal and local authorities to prevent and punish violence against women. The General Law Providing Women Access to a Life Free of Violence aims to guarantee women's access to a life free of violence; that freedom will favor their development and well being, under the principles of equality and nondiscrimination. The Law calls on the states to modify their own laws in order to impose harsher punishment on those who perpetrate violence against women. It also spells out the authorities' obligations in issuing emergency protection orders to help victims of violence, including, for example, removing aggressors from homes in domestic violence cases, suspending attackers' visits to children, and freezing assets to guarantee alimony payments. (Ley General de Acceso de las Mujeres a una Vida Libre de Violencia (General Law Providing Access to Women to a Life Free of Violence), Mexico's House of Representatives Web site.)
(Gustavo Guerra)

NEW ZEALAND – No “Reasonable Force” Permitted in Disciplining Children

New Zealand's parliament is currently debating a bill that would limit parental use of force in the disciplining of children. The Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill seeks to repeal section 59 of the Crimes Act. Section 59 currently permits parents to use “reasonable force” to physically punish their children. (Justice and Electoral Committee, [*Crimes \(Abolition of Force as Justification of Child Discipline\) Amendment Bill, Commentary.*](#))
(Lisa White)



Freedom of the Press

FRANCE – Sentence Against Imam in Incitement Case Upheld

On February 20, 2007, the Cour de Cassation (France's highest judicial court) upheld the sentence handed down in the case of Abdelkader Bouziane, the former Imam of Venissieux (in southeastern France) for direct incitement, without consequences, to the offense of violence against a person. Bouziane received a suspended six-month sentence by the Court of Appeal of Lyon for his remarks on corporal punishment for unfaithful wives, published in a monthly magazine.

The 1881 Law on the Freedom of the Press, as subsequently amended, which governs offenses committed through the press or any other medium of publication, punishes any direct incitement to commit voluntary manslaughter, violence against a person, sexual offenses, terrorist acts, discrimination and hatred, or violence against persons based on their racial, religious, ethnic, or national origin, in cases where such incitement is not acted upon. The maximum penalty incurred is five years of imprisonment and a fine of €45,000 (approximately US\$61,000). When an incitement to commit one of the listed offenses is acted upon, the 1881 Law provides that the instigators will be charged as accomplices. (*French Court Rejects Imam's Appeal in Incitement Case*, AFP, Feb. 20, 2007, Open Source Center No. EUP20070220950022.) (Nicole Atwill)



Gender Equality

FRANCE – Equal Access for Women to Local Executive Elective Mandates

On January 31, 2007, France's Parliament adopted Law 2007-128 on Promoting Equal Access of Women and Men to Elective Mandates and Positions. The Law specifically addresses gender parity in local and regional elections for executive mandates or positions (mayors, deputy-mayors, treasurers, city council members). It applies to municipalities with at least 3,500 inhabitants. At the national level, the Law increases the financial sanctions that political parties may face if they fail to respect parity requirements for legislative elections.

The Law completes constitutional and legislative measures already in place. In 1999, France amended its Constitution to include a legal obligation to promote equal access of men and women to elective mandates and elective positions. Additional laws were passed in 2000 and 2003 to implement this principle. They established two mechanisms: in elections using the list system, only lists that systematically alternate between men and women are accepted, while in uninominal elections, the law imposes a financial penalty on parties and political groups that fail to present fifty percent of each sex (with a margin of one person) on their lists of candidates at the national level. (*Loi n° 2007-128 du 31 janvier 2007 tendant à promouvoir l'égal accès des femmes et des hommes aux mandats électoraux et fonctions électives*, LEGIFRANCE, Feb. 20, 2007.)

(Nicole Atwill)

IRAN – First Women's Bank Proposed

"The Women's Bank will make an effort to support women's activities in investment, economic and social fields," stated Seddigha Ghanatabadi, Chair of the Women's Association of the Islamic Councils of Iran, speaking at a press conference in November 2006. She added that a special bank for women will be established in the Iranian banking system to help women in their economic activities. Ghanatabadi said that one of the objectives of a bank is to promote women's interest in economic fields and create a source of income for all of them through a kind of share partnership with the bank, with special attention to the poor section of the society. She said that women have demonstrated greater responsibility than men in handling economic matters. The women's bank project was put before the High Economic Council for consideration. Women's non-interest-earning deposits with private institutions may become part of the shares of the women's bank. (*First Women's Bank to Begin Operations*, IRAN TIMES INTERNATIONAL, Nov. 10, 2006, at 2.)

(Gholam Vafai)



Government Ethics

BANGLADESH – Prominent Political Figure Arrested for Extortion

In recent weeks the security forces of the Interim Caretaker Government of Bangladesh have arrested more than 60 politicians, including 13 former ministers. On March 8, security forces arrested six politicians, including Tarique Rahman, the son of the former Prime Minister and the Senior Joint Secretary General of the Bangladesh Nationalist Party. He is alleged to have extorted money from a construction firm. If he is convicted, he could be sentenced to a maximum of five years or a minimum of two years in prison, in addition to a fine. During interrogation he reportedly admitted to having bank accounts in five countries outside of Bangladesh. The Malaysian government reportedly has frozen \$230 million in his accounts because he could not explain the source of the money. ([*Tarique Says He Has Bank Accounts in Five Countries*](#), The Daily Star (March 12, 2007).)

(Shameema Rahman)

RUSSIAN FEDERATION – Ban on Foreign Remuneration for Government Officials

On February 21, 2007, the upper chamber of the Russian legislature amended the Federal Law on Civil Service and prohibited government officials of all levels of federal, state, and civil service from receiving payments for teaching, research, and any other form of creative activity from foreign sources, including international organizations and foreign or stateless individuals. The measure was justified for reasons of state security and the implementation of constitutional provisions regarding the sovereignty of the Russian Federation. Also, the newly amended Civil Service Law bans government officials from participation in boards or other structures of foreign governments, commercial enterprises, and non-government organizations, including their branches or subsidiaries established in Russia. Only international treaties to which Russia is a party can provide for exemptions from this rule. (Legislative activity report, Council of Federation of the Federal Assembly Web site.)

(Peter Roudik)



Government Organization

BANGLADESH – Amendments to Emergency Power Ordinance

In January, the President of Bangladesh declared a state of emergency, empowering him to suspend various constitutional rights (see Global Legal Monitor, Feb. 2007, at 30). Pursuant to the powers granted him by the state of emergency declaration, the President promulgated the Emergency Power Ordinance of 2007, empowering governmental authorities to restrict activities deemed detrimental to security, law and order, and uninterrupted social and economic activities in the country. (Dhaka Bss, *Emergency Ordinance Promulgated*, DAILY STAR (Jan. 14, 2007).)

A number of provisions of this ordinance were amended on February 13, 2007. The amendments barred citizens convicted of corruption by a trial court from participating in any parliamentary or local government election, and from government employment. The amendments include provisions for the High Court Division of the Supreme Court to follow in corruption cases, under which the High Court may not accept any case until the final adjudication of the appeals filed in any lower court, and must adjudicate any such appeal within 90 days of filing.

The amendments also include provisions on illegally possessed real and personal property. If any such property is identified by the government, the person in possession is required to disclose a statement of ownership with proper documentation within a prescribed time period. Failure to comply with the provision will result in confiscation and subsequent sale by the government through a public auction.

The amendments became effective through a gazette notification of the home ministry on February 13, 2007. (Julfikar Ali Manik and Shamim Ashraf, *New Rule To Bar the Corrupt From Polls*, DAILY STAR (Feb. 15, 2007).)
(Shameema Rahman)

BRAZIL – Growth Acceleration Program Launched

On January 22, 2007, Brazilian President Luiz Inácio Lula da Silva launched the nationwide Growth Acceleration Program (*Programa de Aceleração do Crescimento – PAC*), which is designed to unlock the country's economy and boost its growth rate to five percent. The program includes, inter alia, implementing regulations for article 23 of the Brazilian Constitution; regulation of the administration, organization, and social control of federal agencies; improvement of the current law on natural gas; restructuring of the Brazilian System of Protection of Competition; approval of the regulation of the sanitation sector; opening of the re-insurance market; creation of a Federal Internal Revenue Service, which will unify the structure of collection of federal taxes; and encouragement of debate on tax reform aimed at improving the national tax system and achieving unification of federal, state and municipal taxes with shared participation in revenues. (Press Release, Radiobrás, Agência Brasil (Jan. 22, 2007).)
(Eduardo Soares)



NEPAL – Amendment of Interim Constitution

On February 18, 2007, after consensus had been reached among the country's eight political parties, the Government of Nepal registered a bill on amending the interim constitution at the Parliament Secretariat. Registration came thirty-five days after the promulgation of the constitution on January 15. The three major provisions proposed for amendment concern assurances to establish a federal system by means of constituent assembly elections (article 138), the addition of electoral constituencies based on population (articles 63 and 154), and the proportional inclusion of indigenous groups in all state organs (article 33).

In order to determine the number of the electoral constituencies, a five-member commission will be formed. It will be comprised of a former Supreme Court justice as chairman; a geographer, a sociologist or population expert, and an administration or management expert as members; and a special officer of the Nepal government as secretary-member. The groups specified for inclusion in state organs on the basis of proportional representation include the Madhesi (people from the southern, non-mountainous portion of Nepal), *dalits* (also known as "untouchables"), indigenous ethnic groups, woman, workers, peasants, handicapped, and underprivileged groups and sectors. The bill was to be tabled in the House meeting scheduled for February 21 and then sent to the committee of the House for finalization. ([Bill to Amend Statute Registered at House; Federal System, More Constituencies, Agreed](#), THE RISING NEPAL, Feb. 19, 2007.)
(Wendy Zeldin)

SRI LANKA – Emergency Extended

On February 7, 2007, the Parliament of Sri Lanka extended emergency regulations for another month. The vote was 121 to 17, with only Members from the Tamil National Alliance and the Western People's Front opposing. An advocate for the extension, Health Minister Nimal Siripala de Silva, called a stable government necessary for the resolution of the ethnic divides in the nation. ([Emergency Extended for Another Month in Sri Lanka](#), COLOMBO PAGE, Feb. 7, 2007.)

The emergency rules give extensive power to the police and the Sri Lankan army. They require periodic renewals to remain in force. When invoked, the regulations provide wide powers of censorship, provisions for prohibiting public meetings and processions, and the ability to ban organizations considered by the President to be prejudicial to national security, public order, or the maintenance of essential services in the country. (*LTTE Alleges: Sri Lankan Army Killed 45 Civilians*, HINDUSTAN TIMES, Nov. 8, 2006, LEXIS/NEXIS, Asiapc Library, Curnws File; [Sri Lanka New Emergency Regulations - Erosion of Human Rights Protection](#), AMNESTY INTERNATIONAL, July 1, 2000.)
(Constance A. Johnson)



Gun Control

BAHAMAS – Firearms Penalties Increased

In an effort to curb gun violence, much of which is related to drug trafficking, the Bahamas has increased the maximum penalties under its Firearms Act. (BAH. REV. LAWS, c. 213 (2000), as amended.) The Firearms Act currently requires persons to have a firearms certificate in order to purchase, acquire, or possess any type of firearm or ammunition except a revolver, which requires a special permit, or a weapon that is prohibited (sections 4 and 9). Prior to 2006, a person who violated this law could only be charged with a summary offense and be sentenced to up to five years' imprisonment. The recent amendments provide that a person can now be tried following the laying of information (the procedure used for more serious types of crimes) by the Crown, the procedure used in the most serious types of criminal cases, and be imprisoned for up to ten years. (Criminal Law (Miscellaneous Amendments) Act, 2006 BAH. LAWS, No. 21, s. 2.) The Firearms Act also requires the types of guns covered by firearms certificates to be licensed. The new penalties for failure to license a covered weapon are the same as for failure to have a firearms certificate.

The Firearms Act does contain exemptions for non-residents who carry weapons aboard their foreign vessels for protection outside of Bahamian waters. Such weapons may be brought into Bahamian waters as long as they are not brought ashore, not used in Bahamian territorial waters, and are declared upon arrival. (Firearms Act, BAH. REV. LAWS, c. 213, s. 6 (2000).) (Stephen Clarke)

UNITED STATES – District of Columbia Gun Restrictions Struck Down

A federal circuit court on March 9 ruled that several District of Columbia laws regarding private gun ownership violated the Second Amendment to the United States Constitution.

The laws at issue included a ban on the registration of handguns; a prohibition on carrying a pistol without a license, and a requirement that all lawfully owned firearms be kept unloaded and disassembled or bound by a trigger lock or similar device. The laws had been upheld at the trial court level by the U.S. District Court for the District of Columbia.

The Second Amendment states: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The primary question in the case was whether the Second Amendment was intended to confer a right upon individual citizens to own and use guns (an “individual right”) or whether it was intended to confer a right upon the states to maintain militias independent of the federal army (a “collective right”). Most federal circuit courts have adopted the “collective right” interpretation, while state supreme courts have been divided on the issue. Also at issue was whether the District of Columbia is a “state” for Second Amendment purposes.



Circuit Judge Laurence H. Silberman wrote the majority opinion for the U.S. Court of Appeals for the D.C. Circuit. Judge Silberman's opinion maintained that the U.S. Supreme Court has never ruled directly on whether the Second Amendment grants an individual or a collective right. Examining a variety of sources from the time the Second Amendment was drafted and ratified, the court concluded that the Second Amendment was intended to recognize an individual right to gun ownership and the use of guns for self-defense, including handguns. After finding such a right, the court also concluded that the District's political status as a non-state was not relevant, since the right granted was an individual one. Circuit Judge Karen LeCraft Henderson dissented. The District of Columbia is likely to seek either a rehearing before the full circuit court or an appeal to the U.S. Supreme Court. ([*Shelly Parker v. District of Columbia*](#), No. 04-7041 (D.C. Cir. 2007).)

(Gary Robinson)



Health Law & Regulation

EUROPEAN UNION – Proposals to Enforce Better Rules for Monitoring Safety of Medicines

On February 26, 2007, the European Commission announced two proposals aimed at fostering better implementation of the existing system for safety monitoring of medicines (pharmacovigilance) and also to introduce some changes. For better implementation, the proposals include more funding of studies of the safety of medicines and collaboration with Member States to resolve implementation issues, especially reporting rules for the industry.

The proposals also introduce measures to improve the rules on transparency and establish clear standards (good vigilance practice) for safety monitoring applied by the pharmaceutical industry. Additional measures include simplification of reporting rules on suspected adverse drug reactions through the use of available current information technology and the establishment of clear legal requirements to conduct post-authorization safety studies. (Press Release IP/07/240, RAPID, [Strengthening Medicines Safety Monitoring](#) (Feb. 26, 2007).) (Theresa Papademetriou)

JAPAN – Regulating Camouflaged Hot Spring Baths

The Ministry of Environment of Japan has drafted a bill to mandate that hot springs bath providers have a water ingredient examination every ten years and report the result to the governor. Hot springs bath providers are required to have an examination of their hot springs water only at the time they open for business under the current Hot Springs Law. Some hot springs bath providers are using heated tap water, once the source of the springs dries out, and pretending that the water is from the springs. (*Onsen gisō o haijo* [Exclude Camouflaged Hot Springs Bath], SANKEI NEWSPAPER, Feb. 11, 2007 (on file with author).) (Sayuri Umeda)

KOREA, SOUTH – Plaintiffs Lose Tobacco Suits

The Seoul District Court rejected civil suits filed by a group of lung cancer patients against South Korea's tobacco maker, KT&G, on January 25, 2007. The plaintiffs claimed that over thirty years of smoking had caused cancer, and KT&G had not properly informed smokers of the danger of smoking. The Court said it recognized a causal relationship between smoking and cancer, but there was no evidence that the cancer was the direct result of smoking of KT&G cigarettes. It also said there was no evidence to prove the plaintiffs' claim that KT&G has not fully warned consumers of the dangers of smoking. The cancer victims claimed cigarettes are addictive, so that they could not quit smoking. The court, however, said there was no evidence that they caught the disease inevitably from dependence on nicotine. (Kim Rahn, [Smokers Lose in Tobacco Suit](#), KOREA TIMES, Jan, 26, 2007.) (Sayuri Umeda)



MALAWI – Law Against Deliberate HIV Infection to Be Formulated

Senior government officials of Malawi stated on February 2, 2007, that the country has begun the process of formulating a law to protect people from deliberate and malicious HIV infection. However, it is unclear how soon a new law will be in place. Among Malawi's population of about twelve million, the total number of HIV-infected persons is reported to be about one million, roughly 170,000 of whom require HIV/AIDS drugs.

The government has established a special law commission to draft an HIV/AIDS law after holding consultations with Malawians throughout the country. Mary Shawa, principal secretary for HIV/AIDS and nutrition in the President's Office, noted that such a law was needed to protect people from malicious HIV infection, particularly in cases of rape or other sexual abuse, and that Malawi's current legal framework had "huge loopholes" in regard to such matters. She further stated: "[w]e need to protect people from such infections that are happening in hospitals, homes and everywhere in the country so that no one gets away with infecting another person deliberately." (*Malawi to Formulate Law to Protect People from Deliberate HIV Infection*, XINHUA, Feb. 2, 2007, Open Source Center No. CPP20070202968129.)
(Wendy Zeldin)

NIGERIA – Convict Discharged to Avoid AIDS Spread in Prison

In order to prevent a convicted man from infecting prison inmates with HIV/AIDS, a High Court judge in Abuja, Nigeria, cautioned and discharged the man after finding him guilty of commission of an unnatural offense under section 284 of the Penal Code. Defendant Abdullahi Mohammed had pleaded guilty to the charge and, according to prosecutor Francis Irabor, had spent about nine months in detention. (Benjamin Auta, [Nigeria: Judge Dismisses Convict to Avoid Aids \[sic\] Spread in Prison](#), DAILY TRUST (Abuja), Feb. 5, 2007.)
(Wendy Zeldin)

UNITED STATES – Cigarette Punitive Damages Award Vacated

On February 20, the United States Supreme Court vacated an order upholding a \$79.5 million punitive damages award against cigarette manufacturer Philip Morris USA, ruling that the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution prohibits a state court from imposing a punitive damages award based partly on harm to persons who are not parties to the case.

In a lawsuit against Philip Morris in Oregon state court, a jury found that Jesse D. Williams' death was caused by cigarette smoking, and that Philip Morris's fraudulent marketing practices led him to believe smoking was safe. The jury awarded Williams' estate \$821,000 in compensatory damages and \$79.5 million in punitive damages. Philip Morris argued that its rights under the Due Process Clause were violated because it was likely that some of the jury's \$79.5 million punitive damages award represented punishment for harm to others not before the Court. The Supreme Court, in a five-to-four decision, ruled in favor of Philip Morris, holding that where a jury's punitive damages award is based in part upon its desire to punish the



defendant for harming persons who are not before the court, the defendant is deprived of property without due process. The Court explained that it is permissible for a jury, in setting punitive damages, to consider harm to nonparties as evidence of the reprehensibility of the defendant's conduct, but the jury may not use punitive damages to directly punish defendants for harms to nonparties. The Court vacated the opinion upholding the jury award and remanded the case for further proceedings. ([Philip Morris USA v. Williams](#), No. 04-1152 (February 20, 2007).)

(Luis Acosta)



Human Rights

CANADA – Supreme Court Strikes Down Law on Security Certificates

In a long-awaited decision reversing the findings of lower courts, Canada's Supreme Court has struck down provisions of the Immigration and Refugee Protection Act (IRPA) respecting security certificates on the grounds that they infringe the Canadian Charter of Rights and Freedoms' guarantee in section 7 that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." (Part I of the Constitution Act, Being Schedule B to the Canada Act, 1982, c. 11 (U.K.)) The Court further found that this law was not saved by section 1 of the Charter, which states it is subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The result is a rejection of the government's contention that the law, although only used in a handful of cases, is necessary in the fight against terrorism. However, the Supreme Court did give the Parliament a year to rewrite the law to incorporate the protections required by the Constitution.

The IRPA allows the government to issue certificates stating that foreigners and permanent residents are inadmissible to Canada for reasons of national security. Persons against whom certificates have been issued can leave the country, but if they decide to stay, they can be detained indefinitely. The three cases reviewed by the Court all involved permanent residents or recognized refugees who contended that they feared persecution if they returned to their countries of origin. Certificates must be reviewed by a judge, but a decision that it is reasonable is not reviewable. In the cases decided, one person was in detention and the other two had been released with conditions. The relevant provisions of the IRPA did not guarantee the persons named in the certificates a right to see the evidence against them or a right to challenge the government's case. The Supreme Court found that this infringed their right to a fair hearing. The Court suggested that security concerns could be addressed through such measures as having special counsel act on behalf of the named persons. The Court also found that a provision denying foreign nationals a right to have their case reviewed for 120 days was arbitrary and that indefinite detention could constitute cruel and unusual punishment.

Parliament could effectively overrule the Supreme Court's decision by reenacting the IRPA and declaring that it will be in effect notwithstanding the provisions of the Charter. However, Parliament has not exercised this power since the Charter was created in 1982. Therefore, it is expected that the government will draft legislation to preserve security certificates while addressing the Supreme Court's objections to the current law. ([Charkaoui v. Canada \(Citizenship and Immigration\) 2007 SCC 9.](#))
(Stephen Clarke)

EUROPEAN UNION - Amnesty International and EU Legislation on Torture

On February 27, 2007, Amnesty International (AI), in its report "European Union: Stopping the Trade in the Tools of Torture," urged the EU to take measures to prevent



circumvention and exploitation of legal gaps in the existing EU legislation. This refers to Regulation No. 1236/2005, as amended, concerning trade in certain goods that could be used for capital punishment; torture; or other cruel, inhuman, or degrading treatment or punishment. ([Regulation No. 1236/2005](#) as amended.)

The AI report pointed out that EU companies and individuals are still able to make deals in torture equipment outside the EU and that the Regulation does not preclude import of such products within the EU. AI urged the Commission and the twenty-seven EU Members to enforce better controls on handcuffs, electric shock equipment, whips, and other products that could be used to torture prisoners. (*EU Torture Law Has Loopholes, Human Rights NGO Says*, EUOBSERVER, Feb. 27, 2007; Press Release, Amnesty International, [EU: Flawed Regulations Not Enough to Stop Trade in Tools of Torture](#) (Feb. 27, 2007).) (Theresa Papademetriou)

EUROPEAN UNION – Establishment of the European Agency for Fundamental Rights

On February 15, 2007, the Council of the European Union adopted a regulation establishing a European Agency for Fundamental Rights. A 2003 regulation had ordered that the European Monitoring Center on Racism and Xenophobia be transformed into the EU Agency for Fundamental Rights. Its seat will remain in Vienna, Austria. The Agency's mandate is to provide the EU institutions, its agencies, and the Member States with assistance in implementing fundamental rights. It will also be entrusted with providing advisory opinions to EU bodies and the Members when they apply Community law, either on its own initiative or at the request of one of the EU institutions. Finally, it will prepare annual reports on various issues involving fundamental rights. (Press Release PRES/07/30, RAPID, [The Council Establishes the European Union Agency for Fundamental Rights](#) (Feb. 15, 2007).) (Theresa Papademetriou)

MEXICO – Supreme Court Confirms Violations of Individual Rights in Atenco

The Nation's Supreme Court of Justice, sitting in banc, unanimously declared that the police committed grave violations of individual guarantees and fundamental rights of dozens of persons who were arrested at the time of violent police operations against a popular protest in San Salvador Atenco and Texcoco in May 2006. The Supreme Court appointed an investigative commission, which, starting from the premise that violations occurred, will now investigate the causes of the violations, who ordered the methods used, and whether they reflected a state strategy or were the result of a lack of capacity of the police to handle the situation. (Fernando Ramírez de Aguilar, *Acredita la Corte Violación de Garantías en Atenco*, EL FINANCIERO, Feb. 20, 2007.) (Norma C. Gutiérrez)

PHILIPPINES – Military Blamed by U.N. Investigator for Killings

On February 21, 2007, a United Nations expert investigator directed attention to extrajudicial killings in the Philippines and said that the military appeared to be responsible for a



number of them. Philip Alston, a U.N. special rapporteur on extra-judicial executions, delivered this information at a news conference after a ten-day investigation in the Southeast Asian nation. Alston stated that he did not know how many had died, but added: “I am certain the number is high enough to be distressing.” In response to these findings, Philippines President Gloria Macapagal-Arroyo has called for the creation of special courts to deal with the killings and asked the armed forces to update its rules on command responsibility.

Filipino rights group Karapatan has claimed that more than 800 people, mostly left-wing activists, have been murdered or reported missing since President Arroyo came to power in 2001. The military contends that most of the deaths can be attributed to internal fighting in the communist New People's Army (NPA). The Philippines, also fighting Muslim insurgencies, has been battling the NPA since 1969 in a conflict that has killed more than 40,000 people. ([*UN Expert Says Extrajudicial Killings in Philippines Have a Corrosive Effect on Civil Society and Political Discourse*](#), UNOG (the United Nations Office at Geneva), Feb. 22, 2007; *U.N.: Philippines Military Responsible for Killings*, CNN.COM, Feb. 21, 2007.)
(Gustavo Guerra)



Immigration and Nationality Law

AUSTRALIA – Protection for Diplomat Refugees

Three former Iraqi diplomats have refused to return to Iraq and have made initial moves towards seeking asylum in Australia. Some legal opinions have suggested that Brigadier-General Sabah al-Kareem Zebon Fureje, who has been in Australia less than a year, Colonel Kamal J. Askander, and Ala' al-Amiri (all part of the office of the Iraqi Defense Attaché) may be eligible for protection on the basis of territorial asylum. Territorial asylum is a rarely used provision that provides protection on the basis of having been granted “political asylum” by the Foreign Minister (currently Alexander Downer). (C. Hart, [Special Visa Open to Iraq Diplomats](#), THE AUSTRALIAN, Feb. 9, 2007.)

(Lisa White)

CANADA – “Border Babies” Shocked to Discover They Are Not Citizens

Since the United States began requiring persons flying into this country to produce a passport, the number of passport applications filed in Canada has risen dramatically. An estimated 450 applicants have thus far been shocked to discover that they are not legally Canadian citizens. These persons are referred to as “border babies” because they were born in U.S. hospitals to Canadian citizens. Prior to 1977, these children were required to register prior to their twenty-fourth or twenty-eighth birthday in order to retain their Canadian citizenship. Since 1977, this requirement has only applied to persons born to Canadian citizens who were also born outside the country. (Citizenship Act, R.S.C. c. C-29, s. 8 (1985).) The rejected applicants did not register in time and, thus, automatically lost their Canadian citizenship even though they continued to live in Canada.

The Department of Citizenship and Immigration has tried to address this problem by speeding up the processing of applications for resumption of citizenship. However, it has been reported that the process still takes a number of months. One alternative for border babies is to obtain a U.S. passport, since they were born in this country and have not lost their U.S. citizenship through a registration requirement. However, some border babies are afraid that they may have difficulty reentering Canada to resume permanent residence with a U.S. passport. ([‘Border Babies’ Face Trouble over Passports](#), FORT FRANCES TIMES ONLINE, Jan. 26, 2007.)

(Stephen Clarke)

CANADA – Government Welcomes WHTI Exemption for Juveniles

Under the U.S. Western Hemisphere Travel Initiative, persons crossing the land border to enter the United States from Canada will have to show a passport or special identity card after June of 2009. This requirement, which recently went into effect for persons flying into the United States from Canada, has been of great concern to the federal and provincial governments of Canada, which fear that it will discourage tourism and cross-border shopping. On February 21, 2007, it was reported that the U.S. Department of Homeland Security (DHS) had agreed to exempt persons sixteen and under from the passport requirement. The Canadian Department of



Public Safety and Emergency Preparedness confirmed that it had been advocating this exemption to make it easier for sports teams, school groups, and youth organizations to visit Canada. It has also been reported that the DHS is considering an exemption for seniors. One reason Canadian governments are particularly concerned about how the Western Hemisphere Travel Initiative will affect land crossing traffic is that only about twenty-seven percent of Americans have a passport. In Canada, it is estimated that about forty percent of all citizens hold passports. ([Young Canadians to Get Free Pass at U.S. Land Borders](#), CBC NEWS, Feb. 22, 2007.)
(Stephen Clarke)



Intellectual Property

CHINA – Major Revision of Patent Law Underway

According to a spokesman with China's State Intellectual Property Office, Yin Xintian, about half of the current sixty-nine articles of the country's Patent Law, promulgated in 1985, have been revised in draft legislation submitted on December 27, 2006, to the State Council (Cabinet) for deliberation. The Law was previously amended in 1992 and 2000. The amendments reportedly change the novelty standard and design patent, incorporate standards for infringement determination, strengthen patent protection, extend the scope of patent infringement exemptions, and clarify provisions on compulsory licenses. For example, the draft legislation broadens prior art to include public use or other means of disclosure outside China. Under the current patent system, a blended novelty standard is used; prior art includes publication inside or outside China, but public use or other means of disclosure covers publication only inside China. According to Yin, the amendments "are expected to better balance the interests of patent holders and the public, and to safeguard national interests and economic security." (Li Jing, *Third Revision Drafted for Patent Law*, CHINA DAILY, Jan. 31, 2007, Open Source Center No. CPP20070131042002.)

(Wendy Zeldin)

HONG KONG – Imprisonment for Copyright Infringement

Mr. Chan Nai-ming has been sentenced to three months of imprisonment by a magistrates' court in Hong Kong for distributing copyrighted movies on the Internet with BitTorrent technology. ([Hong Kong Special Administrative Region, In The Magistrates' Court at Tuen Mun v Chan Nai Ming](#), Nov. 7 2005, TMCC 1268/2005.)

Chan appealed his sentence and conviction, but his appeals were dismissed by the High Court. Any further appeal by Chan (to the Court of Final Appeal) will require that he be granted leave on the grounds that "a point of law of great and general importance is involved in the decision or it is shown that substantial and grave injustice has been done." (§ 32 Hong Kong Court of Final Appeal Ordinance (Cap 484); HCMA 1221/2005, [In the High Court of the Hong Kong Special Administrative Region Court of First Instance Magistracy Appeal No. HCMA 1221 of 2005 \(on appeal from TMCC 1268/2005\)](#), HKSAR v Chan Nai Ming, Dec. 12, 2006.)

(Lisa White)

INDIA – Drug Company Contests Denial of Patent Application

Novartis India Ltd., the Indian subsidiary of the Swiss pharmaceutical company Novartis AG, has appealed the denial of a patent application in India for a cancer drug known as Glivec. The Indian Patent Office rejected Novartis's patent application in January 2006, ruling that this drug was a new formulation of an already existing drug and was thus not patentable in India. Novartis filed a legal petition in the Chennai High Court in May 2006, challenging the denial of the patent application. The challenge centers on whether India's patent laws comply with World Trade Organization standards. (Novartis India Ltd., [Press Release: Novartis](#)



[Seeking Clarity in Indian Patent Laws, a Critical Incentive for Long-Term R&D Investments into Better Medicines for Patients](#) , Business Wire India (Feb. 15, 2007).)

Some nongovernmental organizations have urged Novartis to withdraw its appeal, arguing that the case could set a precedent that would allow pharmaceutical companies to obtain patents in India for drugs that are manufactured in India for the generic drug market, including antiretrovirals used to treat HIV/AIDS in poor countries. ([Novartis CEO Says Company Will Continue Case Against India's Drug Patents Act](#), Kaiser Daily HIV/AIDS Report (March 8, 2007).)
(Shameema Rahman)



International Relations

GERMANY – Diplomatic Immunity

On December 6, 2006, the Federal Constitutional Court of Germany had occasion to rule on an important aspect of diplomatic immunity (docket no. 2 BvM 9/03). The District Court of Berlin-Mitte raised the question before the Federal Constitutional Court of whether a foreign country's contractual waiver of sovereign immunity permitted the attachment of bank accounts of a diplomatic mission in the receiving country or whether such accounts were immune from attachment on the basis of customary international law or general principles of international law. The Federal Constitutional Court ruled, relying on its previous decisions and on the case law of other countries, that there was no general principle of international law that allowed for the attachment of assets needed by the sending state of a diplomatic mission to maintain that mission in the receiving state, even if the sending state had contractually waived immunity over its assets in advance.

The question arose in the context of the attachment of a bank account of Argentina that was maintained in Germany, allegedly to sustain Argentina's diplomatic missions in Germany. A German creditor tried to attach the account on the basis of a loan agreement between Argentina and the German creditor in which Argentina had waived sovereign immunity over its assets in case of default on the loan. The Federal Constitutional Court was competent to answer the question because article 25 of the German Constitution (Grundgesetz, May 23, 1949, BUNDESGESETZBLATT 1) makes the general principles of international law an integral part of German law that have precedence over domestic law and directly applicable in Germany. The Court also found that customary international law protects diplomatic missions and anything that is necessary for their functioning through strong protections of diplomatic immunity. (Edith Palmer)

LIBERIA/CHINA – Agreements Inked

On February 1, 2007, President Ellen Johnson Sirleaf of Liberia and President Hu Jintao of the People's Republic of China (PRC) signed seven agreements on the provision of Chinese assistance to Liberia. In addition, the PRC pledged to make available, over a two-year period, RMB200 million (about US\$25 million) in cash assistance. It is the first visit to Liberia by a Chinese leader since the two countries reestablished diplomatic relations in 2003. Hu visited Cameroon before going to Liberia; the rest of his Africa tour includes Sudan, Namibia, South Africa, Seychelles, Zambia, and Mozambique.

The seven agreements cover economic and technical cooperation, a protocol on cancellation of Liberia's debt to China (roughly US\$10 million), an exchange of letters on implementation of a China-aided project involving a school building at the University of Liberia Fendell Campus (a project in which the United States is also involved), provision of anti-malarial drugs, the building of three schools in rural Liberia, and an exchange of letters granting special preference in tariff treatment to Liberian goods for export to the Chinese market. ([Liberia:](#)



[China Promises US\\$25m for 2 Years](#), THE INQUIRER (Monrovia), Feb. 2, 2007; Alphonso Toweh, [Chinese President Brings Aid to Liberia](#), THE BOSTON GLOBE, Feb. 2, 2007.)
(Wendy Zeldin)



Justice

INDIA – Plan for Setting Up Courts in Rural Areas

Inaugurating a conference of Law Ministers and Law Secretaries from more than twenty states on January 17, 2007, the Law Minister of India stated, “I am starting a new tier of the judiciary dedicated to the common man.” The Minister disclosed that the government planned to recruit 7,000 judges as part of a new system of judicial bodies to take legal services “to the doorstep” of the village poor. Elaborating further on the overburdened and congested dockets of the courts in the country, the Minister stated that more than 25 million cases are pending and the cases in arrears are mounting as new laws are added.

The Minister explained that the new judges would be given special training and would travel to the villages. They could settle cases either through alternative dispute resolution route or by adjudication and adopt a summary procedure for trying cases in three months. The Commerce Minister, who was present at the conference, stated that in the State of Andhra Pradesh, the local village community had been involved in resolving land disputes and the government planned to follow this practice in other states as well. According to him, the objective of the government is to deliver justice to villagers expeditiously and without much cost to them. ([*A New Tier of Judiciary Soon: Bharadwaj*](#), THE HINDU, Jan. 18, 2007.)
(Krishan Nehra)



Poverty Welfare

INDIA – Government Must Withdraw Security Provided to Students and Politicians

The State of Uttar Pradesh filed an appeal in the Supreme Court of India against an order of the state High Court requiring it to withdraw within twenty-four hours security in the form of police gunners that had been provided to student leaders after Lucknow University was closed indefinitely due to student unrest. Under a policy decision made in 2001, the state government had framed rules for providing this form of personal security to student leaders, political workers, contractors, and persons with a criminal background in the state, which has elections due shortly.

While hearing the appeal on January 25, 2007, the Supreme Court inquired into the legal basis for the issuance by the state of the 2001 rules. When the State Advocate General pointed out that they were based on a policy decision of the government, the bench retorted that the police force is not the personal property of the chief minister of Uttar Pradesh, and the Court wished to know under what provision of law such rules were framed. When counsel failed to provide the relevant law, the Court pointed out that, under article 162 of the Constitution, the exercise of all executive power must be referable to some statute, and the Court required to see the relevant statute in this case that might serve as the basis for the validity of the rules. The Court gave counsel two weeks to produce the legal basis of the state policy and also sought the presence of the state Interior Secretary at the next hearing. ([SC Raps Mulayam on Security Issue](#), THE HINDUSTAN TIMES, Jan. 25, 2007.)
(Krishan Nehra)



Public Welfare

BAHRAIN – Law to Employ Beggars

On February 5, 2007, the Consultative Council of Bahrain discussed a draft law to combat homelessness and beggary. According to the proposed draft, any one found wandering or begging will be taken to a special house of care, to be named “the Caring House for Beggars,” in order to evaluate his social situation and give him a physical and psychiatric examination. The special house will also prepare a detailed report about the person that includes a stipulation about a monthly financial allocation for him. The proposed law also requires the caring house to find the person employment within ten days from the date on which they receive him. (*Law to Employ Beggars*, AL-SHARQ AL-AWSAT, Feb. 6, 2007.)
(Issam Saliba)

TAIWAN – Law on Senior Citizens’ Welfare Amended

On January 12, 2007, the Legislative Yuan of the Republic of China (ROC) (on Taiwan) passed extensive amendments to the Welfare Law for the Elderly, which was first promulgated in January 1980. The amended Law has provisions that prohibit employers from discriminating against elderly employees and that allow the government to file an interdiction on behalf of the elderly to ensure the safety of their property. The revised legislation mandates the government to conduct a census on the living conditions of the elderly at least every five years and to set up service facilities for the elderly. It stipulates that private nursing homes must sign written contracts with the elderly resident or their family members to clearly define the institution’s obligations in order to prevent future disputes. Institutions that abuse the residents in their care, withhold information about the abuse, or provide unsanitary food or an unsafe environment, will be subject to fines of between NT\$60,000-\$300,000 (about US\$1,830-\$9,150), which will be continuously imposed if the situation is not improved. The amended Law further stipulates that nursing homes that harm or abandon the elderly will be fined from NT\$30,000-\$150,000 (about US\$907-\$4,534), and their names will be published.

As of the end of December 2006, according to Ministry of Interior statistics, the number of senior citizens in Taiwan had reached almost 2.3 million, about ten percent of the total population. It is estimated that by 2026, the ratio will be twenty percent, a speed of graying of the population that, according to officials, would be second only to Japan, making amendment of the Welfare Law for the Elderly necessary. (6729 GAZETTE OF THE OFFICE OF THE PRESIDENT 2-19 (Jan. 29, 2007), Global Legal Information Network, GLIN ID No. 188420; Lilian Wu, *Amended Law to Provide Better Care for Elderly: MOI, TAIWAN HEADLINES* [published by the Government Information Office of the ROC].)
(Wendy Zeldin)



Religion

INDIA – Subsidy to Muslims for Haj Pilgrimage Challenged

The Supreme Court of India admitted for final hearing a petition challenging the constitutional validity of the Haj Committee Act, 1959 and issued a notice to the Central Government of India. The petition impugned the provision of a central government subsidy (approximately US \$64 million) made available to Muslims who undertake the annual Haj pilgrimage to Mecca in Saudi Arabia.

The petitioner contended that the funding of Haj pilgrimages by the state at the expense of taxpayers runs contrary to the secular and socialist character of the Constitution of India and he requested that the government be directed to refund his share of income tax spent on such pilgrimages. The petitioner further argued that the special subsidy for Muslim pilgrimages, to the exclusion of Hindus, Sikhs, Buddhists, and Christians, is tantamount to discrimination by the state, under article 27 of the Constitution, against other communities who do not enjoy a similar privilege.

In an earlier petition on the same issue, the state had controverted the legal challenge by stating “it is not within the province of the courts to interfere with the policy decision unless it is contrary to any statute or any provision of the Constitution.” In this previous case, the Supreme Court, questioning the provision of the subsidy for Haj pilgrims, had observed that there was no objection to the central government making arrangements for Haj pilgrimages that do not involve payment of a subsidy. In regard to the current petition, the Court ordered that it be tagged for a hearing along with the Central Government’s appeal in a case against an order of the Allahabad High Court, which had restrained the Central Government from giving a subsidy to Haj pilgrims. ([*SC Seeks Govt’s Explanation on Rs 280 cr Haj Subsidy*](#), THE HINDUSTAN TIMES, Jan. 18, 2007.) (Krishan Nehra)

ISRAEL – Military Draft Deferment for Yeshiva Students Extended

On February 18, 2007, the Government of Israel approved an extension of the deferment from the military draft that could be authorized for students of schools for religious studies (*yeshivas*). Israel maintains a general draft for all persons seventeen years of age and older. Under a 2002 law, however, full time *yeshiva* students who do not engage in any other occupation are entitled to a deferment that can be renewed on an annual basis. Such students must attend *yeshivas* that are approved by the Minister of Defense for this purpose. The law further permits a combination of military service with *yeshiva* studies. The extension of the application of the 2002 law for five additional years was supported by twenty-one ministers. The newly appointed Minister of Justice, however, abstained, explaining that “there exists an intolerable discrimination between those who serve and those who do not.” (The Extension of Deferment of Yeshiva Students Who Solely Engage in Studying Law, 5762-2002, SEFER HA-HUKIM [Official Gazette] No. 1862 p. 521 (Aug. 1, 2002), Nevo legal database (by subscription);



see also *The Government Approved: The Tal Law Would Be Extended for Five Years*, YEDIOT ACHARONOT, YNET, Feb. 18, 2007.)
(Ruth Levush)



Taxation

GHANA – VAT Exemptions for Poor

In discussing the new Value-Added Tax (VAT) Flat Rate Scheme currently being considered by the parliament, Ghana's Commissioner of the VAT Service, Anthony Minlah, stated that in order to make the related services affordable, his agency would exempt taxes on education, health, and agricultural equipment for the poor. He contended that "[t]he effect of the exemptions therefore is to narrow the tax base and make its social effects positive," and that "the exemptions were to facilitate business processes and reduce the cost of compliance on the Small and Micro Enterprises." (Daniel Nonor, [Ghana: VAT Exemptions for the Poor](#), GHANAIAN CHRONICLE, Feb. 5, 2007.) Registered persons in Ghana must charge 12½% VAT and 2½% NHIL (National Health Insurance Levy) on all taxable sales; keep records of sales and purchases, invoices, and VAT/NHIL charged and paid; and submit on a certain VAT form monthly returns of sales and purchases made.

The Flat Rate Scheme, viewed as an alternative to the invoice credit method of VAT accounting, will be a collection of accounting mechanisms that applies a marginal tax percentage (three percent) representing net VAT payable on the value of taxable goods supplied. It is designed to address compliance problems encountered with retailers under the other method and is likely "to be restricted to a specified sub-sector within the retail distribution trade sector defined by levels of business turnover," according to Minlah. Under the VAT Law (Act 546) 1998, Minlah pointed out, VAT is to be imposed and charged on every supply of goods and services made in Ghana and imported. (GHANAIAN CHRONICLE, *id.*; Ama Achiaa Amankwah, [VAT Woos Retailers to Pay Taxes](#), PUBLIC AGENDA (Accra), Feb. 5, 2007.) (Wendy Zeldin)



Terrorism

AUSTRALIA – French National on Trial for Australian Islamic Terror

Media reports have stated that Willie Brigitte, who was arrested in Australia in 2003, is on trial in Paris. Brigitte is accused of setting up an Islamic terror cell in Australia and plotting to attack a nuclear power station in Sydney, Australia. ([Sydney 'Terror' Plotter in Court](#), BBC NEWS, Feb. 7, 2007.)

(Lisa White)

AUSTRALIA – Government Re-lists al-Qa'ida as Terrorist Organization

Al-Zarqawi (*tanzim qa'idat al-jihad fi bilad al-rafidayn*) (also known as al-Qa'ida in Iraq) has been re-listed as a terrorist organization under Australian anti-terror and criminal laws. Thus, in accordance with the Criminal Code Act 1995 (Cth) it is an offense to be a member of, associate with, train with, provide training to, receive or make funds available to, or direct or recruit for, *tanzim qa'idat al-jihad fi bilad al-rafidayn*. The group was initially listed as a terrorist organization on March 2, 2005, and was re-listed on February 17, 2007. (Press Release, Attorney-General Philip Ruddock, [Re-Listing of Al-Zarqawi \(Tanzim Qa'idat Al-Jihad Fi Bilad Al-Rafidayn\) as a Terrorist Organisation](#) (Feb. 19, 2007).)

(Lisa White)

ENGLAND AND WALES – Alleged Terrorist Loses Court Battle for Compensation for False Imprisonment

A man suspected of involvement in the September 11, 2001, attacks against the World Trade Center and other U.S. sites, who was imprisoned for five months after being arrested in response to an extradition request by the United States, has lost his bid to seek compensation from a Home Office ex gratia compensation scheme for victims of miscarriages of justice. The courts found that as the man had been held under proceedings related to extradition, they did not fall within the “domestic criminal purposes” that is required by the compensation scheme. (John Aston, [Pilot Loses '9/11' Damages Battle](#), INDEPENDENT (London), Feb. 22, 2007.)

(Clare Feikert)

ENGLAND AND WALES – Control Order Quashed by High Court

The High Court of England and Wales has quashed a control order against an individual, declaring that the cumulative effect of the curfew and the other obligations contained in the control order breaches the individual's right to liberty contained in article 5 of the European Convention on Human Rights. The system of control orders has been controversial since its inception. It allows the Home Secretary to subject individuals suspected to be terrorists to stringent requirements that many critics say amount to a virtual house arrest. (Secretary of State for the Home Department v E, [2007] EWHC 233 (Admin).)

(Clare Feikert)



EUROPEAN UNION – Decision on Prevention, Preparedness, and Consequence Management of Terrorism

On February 27, 2007, the Council of the European Union adopted a Specific Program “Prevention, Preparedness and Consequence Management of Terrorism and Other Security Related Risks.” The Program, which is part of the General Program on Security and Safeguarding Liberties, replaces the 2004 EU Plan of Action on Combating Terrorism. It aims to assist and support the efforts of the EU Members to prevent terrorism, prepare for its effects, and safeguard people and critical infrastructure. Specifically, it is designed to provide financial support to projects initiated and managed by the Commission that have a European dimension, or to national projects that involve several Member States. The financial support will be in the form of grants or public procurement contracts. The Commission will monitor effective implementation of the Program, which will run during the period of January 1, 2007, to December 31, 2013. ([Council Decision](#), 2007/124/EC, 2007 OJ L58/1.)
(Theresa Papademetriou)

GERMANY – Counterterrorism Database

On December 22, 2007, Germany enacted another law to combat terrorism. The Act on the Creation of a Joint Database of Police and Intelligence Agencies of the Federation and the States, with the short title of Joint Database Act (BUNDESGESETZBLATT 2006 I at 3409), lives up to its name by creating a central nationwide counterterrorism database to be supplied to and used by all the German law enforcement and intelligence agencies in the federation and in the states. The database is kept by the Federal Criminal Investigative Office, and it stores personal data on anyone who is suspected of having substantial contact with terrorists or other advocates of hate crimes or political violence. Also stored are data on associations related to such purposes, as well as data on bank accounts, internet addresses, and other related information. The database provides a new level of cooperation between police and intelligence agencies. However, not all data are directly available to the requesting agency. For some data, the requesting agency must contact the storing agency, which in turn will evaluate whether there is a need for disclosure.
(Edith Palmer)

GERMANY – Counterterrorism Legislation

On January 5, 2007, the Bundestag (German Parliament) adopted the Act Supplementing the Counter-Terrorism Act of 2002 (Gesetz zur Ergänzung des Terrorismusbekämpfungsgesetzes, Jan. 5, 2007, BUNDESGESETZBLATT I at 2), which prolongs and expands counter-terrorism-related investigative powers of German intelligence and law enforcement agencies for a five-year period, until January 2012. Among the expanded powers are those over banking, postal, and telecommunications data of individuals, not only for purposes of counter-terrorism, but also for the investigation and prevention of domestic hate crimes, including hate preaching. The investigative powers that are being granted or renewed allow the German intelligence services to obtain data on the customers of airlines and telecommunications services.
(Edith Palmer)



MEXICO – Chamber of Deputies Approves Antiterrorism Bill

The Chamber of Deputies of Mexico recently approved a legal reform that imposes punishments of up to forty years of imprisonment on persons who fund or plan, within the national territory, acts of international terrorism. The bill states that

[t]he aim is to proscribe terrorist acts that have been prepared or committed in our country, and whose purpose is not to affect the security of our nation, but the international security or to attempt the undermining of a foreign state's authority, or the operations and resolutions of international organizations.

The bill adds:

[t]he Penal Code does not provide for funding of terrorism as a crime and that is why this bill corrects this omission and adds article 148bis, which prohibits the contribution and collection of economic funds or resources of any nature to commit terrorist acts, either national or international, or to support terrorist persons or organizations that operate at the national or international level.

In addition, the bill “outlaws a conspiracy made within the national territory [to commit terrorist acts] even though the commission or the effects of the crime of terrorism may take effect or takes effect abroad.” The bill grants to the Secretary of the Treasury and to the Attorney General of the Republic the power to track bank accounts related to the financing of terrorism.

The bill was finally approved by the Chamber of Deputies after having been received from the federal Executive three years ago. Subsequent to the Chamber's recent approval, the bill was sent on to the Senate. (Daniel Pensamiento & Claudia Salazar, *Avalan Ley Antiterrorismo*, REFORMA, Feb. 21, 2007.)
(Norma C. Gutiérrez)

THE NETHERLANDS – Retrial Ordered for Terrorist Suspect

The Dutch Supreme Court ruled on February 20, 2007, that Samir A. [Azzouz], who was charged in 2004 with making preparations to carry out a terrorist attack, was wrongly acquitted of the offense and referred his case back to the lower court. On April 6, 2005, Samir A. was acquitted by the Rotterdam court, even though a search of his home by police investigators revealed items “clearly intended” for use in such an attack: plans of the Dutch Parliament, of a nuclear plant, and of the General Information and Security Service building in Schiphol, as well as information on the buildings' security and diagrams on how weapons and explosives work. A bulletproof vest, night-glasses, a walkie-talkie, weapons, fertilizer, chemicals, and electrical circuits were also found.

On November 18, 2005, the Appeals Court in the Hague upheld the decision of the Rotterdam court and also acquitted Samir A., ruling that there was “no doubt about the full



extent of the terrorist intentions,” but that Samir would never have succeeded in making an explosive with the materials found at his home and that even those materials were not themselves of an “acute, dangerous nature.” It held that the suspect “was in fact empty-handed” and that if he were found guilty, despite the fact that no objective threat was posed by the materials, “it would be condemning him for his thoughts and intentions, and that is something the legislator has expressly sought to exclude.” (*Dutch Supreme Court Rules to Retry Terrorist Suspect*, NRC HANDELSBLAD, Feb. 20, 2007, Open Source Center No. EUP20070221024001.)

However, the Supreme Court deemed that the Appeals Court interpretation of the concept of preparations was too limited and that it is an offense under the law to handle objects that “are clearly intended for” carrying out a crime. It further held that “on the basis of their external appearance” the objects in Samir A.’s possession could have been used for the criminal purpose he had in mind. (NRC HANDELSBLAD, *id.*; [Samir A. Case Reopened](#), EXPATICA, Feb. 21, 2007; [Emerson Vermaat: Exclusive Hofstadgroep Trial Report: Samir Azzouz - A Terrorist in the Making or a Real Terrorist?](#) MILITANT ISLAM MONITOR, Nov. 23, 2005.)
(Wendy Zeldin)

OMAN – Death Penalty for Establishing Terrorist Organization

On February 4, 2007, the Sultan of Oman, Qabos bin Said, issued a decree approving a law on combating terrorism in the Sultanate. The law, which was published in the official gazette, stipulates that anyone who establishes, organizes, manages, or assumes leadership of a terrorist organization will be punished by death or life imprisonment. The penalty for anyone who participates in or joins such organizations will be no more than ten, but no less than five, years’ imprisonment. (*Death Penalty for Establishing Terrorist Organization*, AL-SHARQ AL-AWSAT, Feb. 5, 2007.)
(Issam Saliba)

UGANDA – Justification of Arrest of Innocent Civilians for Terrorism

It was reported on February 5, 2007, that Ugandan security authorities have acknowledged that innocent civilians have been illegally arrested and detained on charges of terrorism. In justifying such actions, Colonel Leopold Kyanda, the head of Uganda’s military intelligence, stated during a press conference: “... a terrorist does not have any boundary. So, operations against a terrorist are complicated. A terrorist does not wear a uniform; a terrorist does not demarcate boundaries but is amongst everybody.” (Charles Kazooba, [Uganda: Country Admits Arrest of Innocent Civilians for Terrorism](#), THE NEW TIMES (Kigali) Feb. 5, 2007.)

Under Uganda’s 2003 Suppression of Terrorism Act (adopted in March 2002), terrorist offenses can incur the maximum sentence of death. Moreover, the Act’s provisions are “a little amorphous” and apply to persons in contact with terrorist suspects as well as to terrorist suspects themselves. Some opponents of President Yoweri Museveni’s administration have accused it of using the Act as a means of frustrating their attempts to compete for state power. The Uganda press has also expressed opposition to the law. However, the government reportedly gained



international sympathy recently when it placed Joseph Kony and other senior leaders of the Lord's Resistance Army on its list of most wanted terrorists. (*Id.*)
(Wendy Zeldin)

UNITED KINGDOM – Government Accused of Participation in Extraordinary Renditions

A leaked memo was reported in the British press in January 2007 renewing allegations that the British government has been involved in extraordinary rendition. Extraordinary rendition involves the sending of prisoners captured by British forces in Iraq and Afghanistan to interrogation centers in other countries that use interrogation methods that are typically illegal in the United Kingdom and United States. Government ministers are accused of hindering investigations into the use of flights carrying these prisoners into the United Kingdom and over its airspace. In December 2006, the Foreign Secretary publicly denied that the United States had requested the use of British airspace to transport these prisoners, yet in the leaked memo, dated five days prior to the denial, the Foreign Office stated it was unable to undertake the necessary research to ascertain any figures. (Oliver Duff, [Leaked Memo Reveals Torture Flights Cover-up](#), Jan. 19, 2007, INDEPENDENT (London); Alan Cowell, *British Role in U.S. Policy on Detainees Raises Storm*, Jan. 6, 2006, NEW YORK TIMES.)
(Clare Feikert)

UNITED KINGDOM – Individual Prosecuted for Terrorist Crimes

The controversial and outspoken Abu Hamza al-Masri, a radical Muslim cleric whom the United States has accused of recruiting al-Qaeda terrorists, is currently standing trial for a number of offenses relating to terrorism at the Old Bailey in London. The charges against him include nine counts of soliciting murder; four counts of “threatening, abusive or insulting words or behaviour with the intention of stirring up racial hatred”; and possessing the Encyclopedia of Afghani Jihad, which contains information “of a kind likely to be useful to a person committing or preparing an act of terrorism.” The prosecution recently told the court that Hamza al-Masri preached “intolerance, hatred and bigotry.” The Government of the United Kingdom has continually sought to deport Hamza al-Masri and remove his British citizenship, with little luck thus far. ([Hamza Urged Followers to Murder](#), BBC News, Jan. 11, 2007.)
(Clare Feikert)



Trade and Commerce

EUROPEAN UNION – EU and Doha Round Negotiations

Every two years, the World Trade Organization (WTO) evaluates the contributions of the major trading powers to the multilateral trading system and the continuing Doha Round of negotiations. On February 26, 2007, the WTO issued its report on the European Union's trade policy and highlighted the EU's significant efforts to integrate developing countries into this system through a variety of measures, including the negotiating of Economic Partnership Agreements with the African, Caribbean, and Pacific (ACP) countries, development assistance, and aid for trade.

The EU has also recently proposed a new generation of bilateral trade agreements with ASEAN, India, and South Korea, dealing with areas not covered by the WTO, such as investment, intellectual property rights, and public procurement. The report acknowledges that despite the liberalization of the agricultural sector in 2003, additional steps need to be taken in order to further liberalize it. (Press Release IP/07/243, [WTO Acknowledges Crucial EU Role in the Multilateral Trading System](#) (Feb. 26, 2007).)

(Theresa Papademetriou)

EUROPEAN UNION – WTO Pharma-GATT Agreement and EU Members

The first WTO-Pharma-GATT agreement, signed in 1994, did not include numerous pharmaceuticals and chemical intermediaries that have evolved since due to recent developments in the biotechnology industry. In February 2007, the EU Members signed the third revision of the 1994 Agreement, which will eliminate customs duties among the main pharmaceutical trading nations and territories and foster the competitiveness of the EU pharmaceutical industry. The revised agreement adds 1,290 new pharmaceuticals and chemical products to the existing list of 7,329 products. The European Union, the United States, and Switzerland have also signed the Agreement. Japan will apply the revisions some time later. (Press Release IP/07/177, [RAPID, Commission Welcomes International Agreement to Boost Trade in New Pharmaceuticals](#) (Feb. 12, 2007).)

(Theresa Papademetriou)

NICARAGUA – President Signs ALBA Agreement

President Daniel Ortega, on the first day of his administration, signed an agreement joining Nicaragua to the Bolivarian Alternative of the Americas (ALBA), an integration project based on the principles of cooperation, solidarity, and harmony. President Ortega joined ALBA as an alternative to the Free Trade Agreement of the Americas (FTAA) promoted by the U.S. Government. (Ricardo Guerrero y Wilder Pérez, *El Alba ya es Oficial*, LA PRENSA, Jan. 12, 2007.)

(Norma C. Gutiérrez)



KAZAKHSTAN – Security-Related Investment Restrictions

On February 6, 2007, the government-proposed amendments to the nation's foreign investment legislation were approved by the Kazakh legislature. They restrict off-shore operations in the Kazakh sector of the Caspian Sea and give the government the right to ban activities of a foreign company or prohibit a company from participation in a bid for the development of a deposit field on grounds of national security. This provision will be elaborated further in forthcoming government regulations. Also, in order to prevent speculative operations with natural resources, the adopted amendments do not allow foreign investors to sell stakes in Kazakh fuel assets during the first two years after they obtain the assets. (*New Tougher Oil Law for Foreign Investors*, ISI-INTELLINEWS, Feb. 6, 2007.)

(Peter Roudik)

UNITED STATES/MEXICO – Customs Cooperation Agreement to Favor CAFTA Countries

The United States and Mexico signed a Customs Cooperation Agreement that will allow textile products in Central America that use Mexican supplies to enter the U.S. tariff-free. The Agreement favors the Mexican textile business sector, which will be able to take advantage of Central American exports to reach the United States and thereby create competition for the Asian nations. The signing, which was done in the framework of the World Economic Forum, is included in the Free Trade Agreement between the U.S., Central America, and the Dominican Republic (CAFTA-DR) and provides that a garment that is manufactured in Central America may include Mexican materials. Such a garment will be considered as having originated from the CAFTA-DR countries and be able to enter the United States tariff-free. Reciprocally, Mexico will grant preferential treatment to merchandise from Central America that incorporates U.S. textiles. (Verónica Galán, *Crean Bloque Textil Contra los Asiáticos*, EL NORTE, Jan. 27, 2007.)

(Norma C. Gutiérrez)

URUGUAY/UNITED STATES – Trade and Investment Framework Agreement

On January 25, 2007, after internal controversy and strong opposition from the rest of the members of the Southern Common Market (Mercosur) trade bloc, Uruguay has agreed to a trade pact with the United States. The Trade and Investment Framework Agreement (TIFA) drew harsh criticism from the more radical sectors in the leftwing Broad Front governing coalition, which has historically condemned Washington's trade and foreign policies. This is the first such agreement signed with a South American country. The Tabaré Vázquez Uruguayan administration chose a solitary path towards a bilateral agreement, in spite of the displeasure expressed by Uruguay's partners in Mercosur, Argentina, Brazil, and Venezuela, which prefer trade integration with the rest of the world to be channeled through the regional bloc.

According to the Uruguayan government, Uruguay needs to diversify its opportunities for integration into world markets. Uruguay's disenchantment with Mercosur has been fuelled by its dispute with Argentina over roadblocks on border bridges put up by demonstrators opposed to the construction of a paper pulp mill on a border river, the lack of support from other Mercosur



partners when seeking resolution of this conflict, and the economic asymmetries that have characterized the bloc since its inception. (See also *INTERNATIONAL COURT OF JUSTICE – Roadblock Dispute Between Argentina and Uruguay*, 2 W.L.B. 2007.)

TIFAs are often seen as important steps towards establishing free trade agreements (FTAs), because they promote a healthy investment climate and boost the promotion and diversification of trade in goods and services. The purpose of the framework agreement is to evaluate trade and investment relations and to identify opportunities to liberalize bilateral trade and investments. A Trade and Investment Council, made up of delegates from both countries, will start work in April 2007, probably in the United States. It will meet at least twice a year for discussions of each separate point. The agreement stresses the importance of cooperating to ensure the success of the World Trade Organization Doha Round of talks, which include key negotiations on market access and the elimination of tariff barriers for agricultural products and export subsidies. Washington has signed FTAs with Chile, Central America, and the Dominican Republic, and more recently with Colombia, Panama, and Peru. The last three agreements are still awaiting approval by the U.S. Congress. In an attempt to defuse the controversy, the Uruguayan government drew a distinction between the agreement signed in Montevideo on Thursday and the pacts between the United States and Colombia, Panama, and Peru, and tried to calm fears that the TIFA would lead to an FTA. (*Acuerdan Mayor Comercio con EEUU*, DIARIO EL PAIS (Montevideo), Jan. 26, 2007.)
(Graciela Rodriguez-Ferrand)



Transportation

INDIA – Compensation for Air Travelers

On January 18, 2007, the Government of India approved an amendment to the Carriage by Air Act, 1972. The amendment will be introduced in the next session of the Parliament. The objective of the amendment is to ensure swift payment of compensation, in line with amounts awarded at the international level, for death or injury incurred by airline travelers flying in and out of India. The bill would also raise the amount of compensation due to such passengers in case of loss of baggage.

A socio-economic study carried out by the International Civil Aviation Organization based in Montreal found that a large number of flights operate between India and foreign countries and that, under the current law, payment of compensation to passengers for injuries or loss could result in higher amounts being paid to passengers whose journey started in foreign countries that are signatories to the Montreal Convention. India not having acceded to the Convention, Indian passengers could be discriminated against in matters of obtaining such payment because the compensation due them would be less than that of passengers whose journey had originated in signatory countries. In the interest of Indian air passengers' rights, therefore, the Government decided to put forward the amendment. (*Bill on Damages to Air Travelers Soon*, THE HINDU, Jan. 19, 2007.)
(Krishan Nehra)



War

GREECE/EUROPEAN COURT OF JUSTICE – Compensation of Victims for Acts Committed by Armed Forces during War

On February 15, 2007, the European Court of Justice (ECJ) issued an important ruling in a legal action that originated in 1995 in a Greek court. The plaintiff and other descendants of civilians killed by Germans in the Greek village of Kalavryta on December 13, 1943, brought a legal action in a Greek court asking for compensation by Germany for financial damage, non-pecuniary damage, and mental anguish caused to them by the acts perpetrated by the German armed forces. The Greek court dismissed the case on jurisdictional grounds that the defendant country, as a sovereign state, enjoyed immunity before the courts.

The plaintiffs appealed the case, relying on the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. Specifically, they claimed that the Convention provides an exception to the rule that states are immune in respect to all acts that have been committed during war except those that have affected civilians not involved in the fighting. The appeals court asked the ECJ for a preliminary ruling as to whether or not a suit on awarding compensation for loss and damages for acts of warfare falls within the ambit of the Brussels Convention.

The ECJ stated that even though the Convention does not define the meaning of “civil and commercial matters,” certain lawsuits and judicial decisions are excluded from the scope of civil matters, either because of the legal relationship between the parties to the action or the subject matter of that action. Therefore, when plaintiffs act in legal proceedings based on a claim that arises from an act in the exercise of public powers, the legal action falls outside the scope of the Convention.

The ECJ concluded that the present case involves operations conducted by armed forces, which are deemed to be an emanation of state sovereignty, and therefore their actions fall outside the Convention. (Press Release, CJE/0715, RAPID, [The Court Rules on Compensation for Victims of Acts Perpetrated by Armed Forces in the Course of Warfare](#) (Feb. 15, 2007).) (Theresa Papademetriou)



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