



WORLD LAW BULLETIN

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Highlights of this month's issue:

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Terrorism--Nepal, OSCE, UK
Parliamentary Immunity-Israel
Criminal Justice Reform--Armenia, Israel

Special Attachment:

LEGAL RESPONSES TO TERRORISM: FRANCE
Temporary Anti-Terrorist Measures

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SPECIAL ATTACHMENT:

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AMERICAS

COLOMBIA–Narcotics Surveillance on Waterways

The National Narcotics Council issued a Resolution on July 30, 2001, that establishes methods to be followed by the national police for oversight and control of maritime and river activities in order to prevent and reduce illegal narcotics trafficking. The Resolution applies to all ships and boats, both national and foreign. It calls for the placing of tracking devices on board that will identify the craft. The Anti-narcotics Directorate of the national police will adopt procedures for inspecting the ships and boats and will create a database with information concerning boat registration. The police will also issue a written certificate, which must be kept on board, to the boat owners or operators. The police may withhold written certificates under certain circumstances, e.g., if they find narcotics, traces of narcotics, and/or chemicals used in processing illegal drugs inside craft or if the boat owner or operator facilitates the transportation of illegal chemical substances or drugs. In these cases, the individuals on board will be turned over to the competent authorities. The boat owner or operator must inform the Anti-narcotics Directorate when a boat is stolen, disappears, is destroyed, sinks, or breaks apart. (*Diario Oficial*, Aug. 1, 2001.)
[GLIN] (Sandra Sawicki, 7-9819)

COLOMBIA–Protection for Children

On August 3, 2001, President Andres Pastrana Arango signed a Law to prevent and control pornography and sexual tourism involving minors. The provisions apply to Colombian and foreign people or businesses domiciled in the country whose activity or objective is related to global information networks and the purveying of tourism services. A commission of legal and technical experts in the international information and telecommunications fields is empowered to develop a list of abusive acts involving exploitation of children and will present a written report with conclusions and recommendations to the national government within four months of its formation. (*Diario Oficial*, Aug. 4, 2001.)

The Law prohibits specific activities by purveyors or administrators of global information networks, such as placing on their sites images, texts, documents, or audiovisual files that imply direct or indirect sexual activities with minors and including links to other sites that contain or distribute pornographic materials involving children. Methods to prevent and check sexual tourism are aimed at persons or companies that generate national or international tourism who bear the responsibility to keep their workers or intermediaries from offering sexual contact with underage victims. The Law also allows the police to establish a telephone hotline for children who are being sexually mistreated and abused. Three articles are being added to the Criminal Code that will deal with the sexual exploitation of children.
[GLIN] (Sandra Sawicki, 7-9819)

MEXICO–Attorney General's Commitment

After nearly a year in office, Mexican Attorney General Rafael Macedo de la Concha spoke recently in an interview about his commitment to “the respect and intense promotion of human rights” in his country (*New York Times*, Nov. 18, 2001, at A10). The top law enforcement official of the nation reaffirmed his pledge to stamp out misconduct from every office of the government and to demonstrate that he has faith in Mexican institutions, especially the courts. “I want to restore the feeling among Mexicans that the attorney

general's office is an institution of good faith, an institution that investigates wrong doing and turns them over to the courts," he commented. He pointed out that hundreds of federal agents have been fired after being found guilty of corruption.

At present two major cases challenge the Attorney General. A human rights attorney, Digna Ochoa, who defended peasant farmers and suspected guerrillas, was assassinated in her office in October (*id.*). On November 11, 2001, two federal judges and the wife of one of the judges were shot down in Matzatlan; organized crime is suspected of carrying out the murders. (*Washington Post*, Nov. 19, 2001, at A16).

Macedo de la Concha also stated that he is against establishing an independent truth commission to investigate the worst government abuses in recent history. He supports Mexico's plans to submit to the jurisdiction of international courts only insofar as such plans do not infringe on the Constitution (*New York Times*, *supra.*)
(Sandra Sawicki, 7-9819)

ASIA

CHINA—Provisions on Judicial Malpractice

On November 6, 2001, the Supreme People's Court (SPC) issued Provisions on Resignation for Malpractice of Presidents and Vice-Presidents of People's Courts at All Levels and of Special People's Courts (for Trial Implementation). The document is based on the 1995 Law on Judges of the PRC (which was revised on June 30, 2001, effective January 1, 2002) and Chinese Communist Party Central Committee/State Council provisions on implementing a responsibility system for keeping Party work clean.

According to the SPC document, heads or deputy heads of courts should resign if: 1) wrong judgments that abuse the law are issued in courts of their jurisdiction and such judgments result in serious damage to or a bad influence on the State's interests, the public interest, or people's life and property; 2) the court hides or refuses to investigate other cases that seriously violate discipline or the law, creating grave consequences or a bad influence; 3) in preparing or carrying out management work, the court's lack of proper administration causes major accidents or economic losses; and 4) there are other circumstances making it unsuitable for them to continue to bear their judicial responsibilities. The Provisions prescribe that if the court leaders fail to resign, courts at a higher level may propose to the people's congresses or their standing committees that the offenders be removed from their posts. ("China: New Regulation To Curtail Negligence of Judges," *Xinhua*, Nov. 6, 2001; "China's Court Introduces Disciplinary Measure To Weed Out Bad Judges," *China Daily* (Internet version), Nov. 7, 2001; both via FBIS.)
(W. Zeldin, 7-9832)

CHINA—Reform of Household Registration

China's eastern province of Shandong has decided to ease the strict control on residence of its citizens that has long been in place throughout the nation. The household registration or *hukou* system will be reformed to allow more free movement of citizens within the province. Governor Li Chunting announced at a recent conference on urbanization that there would be no restrictions preventing residents from moving from cities to smaller towns. In addition, those who have been living in cities, despite having their official *hukou* elsewhere, would be granted legal registration if they have stable incomes. No restrictions would be placed on investors and those with management or technical skills, while other migrant workers would be

granted temporary residence initially and formal residence after a set period.

The announcement from Shandong follows a State Development Planning Commission statement last August that over the next five years the *hukou* system that has governed access to residence-based social benefits for decades will be phased out nationally. Throughout the country, rural workers have been migrating to the cities to search for employment; the number of people unneeded for work in rural areas has been estimated at over 150 million. (*China News Digest*, Oct. 31, 2001, via <http://www.cnd.org/Global/01/10/31/011021-94.html>)

(Constance A. Johnson, 7-9829)

HONG KONG–Code of Banking Practice Revised

On November 15, 2001, the Hong Kong Monetary Authority (HKMA) announced the inauguration of its revised Code of Banking Practice, to take effect as of December 1, 2001. Authorized institutions have until June 1, 2002, to comply with the new provisions.

The purpose of revising the Code, originally issued in 1997, is reportedly “to make terms and conditions of banking services more transparent and consumer friendly.” The major revisions are in the areas of card services, debt collection, notification of changes to fees and charges, e-banking services, and stored value cards. With regard to card services, more protection and transparency is offered, and maximum liability for card loss is not to exceed HK\$500 (US\$64) except for fraud and negligence. Regarding debt collection, any collection expenses to be recovered from customers are to be of a reasonable amount and reasonably incurred. The Code will be continuously reviewed and developed by a new Code of Banking Practice Committee, comprised of representatives of the HKMA, the Hong Kong Association of Banks, and the DTC (Deposit-Taking Companies) Association. (“HK Announces Code of Banking Practice Revised for ‘More’ Transparency,” *Xinhua*, Nov. 15, 2001, via FBIS.)

(W. Zeldin, 7-9832)

JAPAN–Immigration Law Revised for Greater Security

On November 22, 2001, the House of Representatives unanimously passed a bill to revise the Immigration Control and Refugee Recognition Law; the House of Councillors, the other half of Japan’s Diet, had also passed the bill unanimously, on November 2. The changes will become effective in March 2002.

The revisions are designed to minimize disruption of the 2002 World Cup finals, which will be co-hosted by Japan and South Korea, beginning May 31. The Law will provide that foreigners who have been convicted or expelled from countries for obstructing international conferences and competitions can be refused entry into Japan. Those who engage in soccer hooliganism while in Japan can be expelled. In response to growing concerns over illegal aliens, new provisions will allow the deportation of those who have been involved in the forgery of passports and documents for illegal entry. In addition, foreigners who face prison sentences of up to one year for breaking and entering may be deported. This last provision was added following an increase in lock-picking and automobile theft in Japan by foreigners. (*Kyodo News*, Nov. 22, 2001, via FBIS.)

(Constance A. Johnson, 7-9829)

NEPAL--Anti-Terrorism Ordinance

Following the killing of over 300 people, including police and army officers, by the ultra-leftist guerrillas in the North and the imposition of a State of Emergency, the Government of Nepal has issued an Anti-Terrorism Ordinance. The objective of the Ordinance is to contain the escalating terrorist violence committed by the underground ultra-leftist guerrillas in the country. Since the beginning of the six-year long insurgency by the leftists in 1996, almost 2,000 lives have been lost in the Himalayan Kingdom.

The provisions of the Ordinance, which will be strictly enforced, empower the Government to put anyone involved in acts of terrorism or helping or harboring a terrorist in prison for life. The sentence will be imposed regardless of whether a life or lives are lost due to such acts of terror. The police and other authorities will be able to detain for 90 days, without bringing charges, anyone suspected of being involved in acts of terrorism. In addition, the authorities will be able to freeze the suspect's bank accounts and property, suspend the validity of his or her passport, and raid his or her house without notice or a court order.

(*Xinhua*, Nov. 28, 2001, via FBIS.)

(Krishan Nehra, 7-7103)

TAIWAN–Rules for Investment in Mainland Eased

On November 7, 2001, Taiwan's Cabinet made a decision to relax restrictions on investment in Mainland China effective January 1, 2002, in a dramatic shift away from the five-year-old "no haste, be patient" policy to a new policy of "active opening, effective management." Highlights of the decision are:

- opening of direct investment in the Mainland, so that enterprises no longer need to set up subsidiary companies in a third location;
- lifting of the current US\$50 million limitation on individual investment projects;
- raising of the ceiling on investments that can be made without prior approval from US\$3 million to US\$20 million, through a simple screening process conducted within 30 days (projects in excess of that amount would be subject to a case-by-case review by a 17-member review board);
- relaxation of controls on the use of funds of locally listed companies;
- permission for direct dealings between financial institutions (making repatriation of profits back to Taiwan easier and potentially offsetting what has been a one-way flow of funds);
- simplification of the classification of industries for investment in the Mainland, from the current categories of "prohibited," "permitted," and "special case," to simply "prohibited" and "general." Taiwan is ready to free some 1,722 items for Mainland investment from the case review process and reduce the number of items prohibited for investment from 195 to less than 150.

Although the new rules will eliminate red tape and hasten the approval process, according to one news source "they merely legitimise what has been happening for years," and "will have only a limited impact" because restrictions and ambiguities remain (*EU Crossborder Monitor*, Nov. 19, 2001, via LEXIS/NEXIS; (*Renmin ribao*, Nov. 7, 2001, via FBIS, Nov. 8, 2001; Hong Kong *AFP*, Nov. 9, 2001, via FBIS; *Taipei Times*, Nov. 8 & 9, 2001, via FBIS.)

(W. Zeldin, 7-9832)

EUROPE

BELGIUM--Law Against Counterfeiting of the Euro

The Law of April 4, 2001, Against Counterfeiting of the Euro, inserted provisions for the protection of the *euro* in the Criminal Code. Counterfeiting or alteration of *euro* notes and coins is punishable by imprisonment for 5 to 10 years. Falsification of shares, debentures, bonds, checks, electronic transfers, bills of exchange and the like expressed in *euros* is punishable by a prison term of 15 to 20 years; an attempt is punishable by imprisonment for 15 days to 6 months and/or a fine of 26 to 500 francs. Counterfeiting or falsification of matrices and devices to print or coin *euro* currency may incur a sentence of 5 to 10 years' imprisonment; procurement or possession, including procurement or possession of genuine matrices and devices, is subject to imprisonment for 8 days to 1 year.

The punishments for counterfeiting of the *euro* are also applicable to the counterfeiting of Belgian currency and the currency of any state of the European Union, which are no longer legal tender after introduction of the *euro* or the issuance of which is not authorized after introduction of the *euro*. The *euro* will be introduced in Belgium on January 1, 2002, and the Belgian *franc* will cease to be legal tender as of July 1, 2002.

(George E. Glos, 7-9849)

ESTONIA--Language Proficiency Requirement for Candidates Abolished

According to the amendment to the Election Law passed by the Estonian Parliament, *Riigikogu*, on November 7, 2001, language proficiency requirements for candidates for Parliament and local government seats will be lifted. Until recently, all candidates for public office in Estonia had to pass a special language test. Despite the fear that abolition of language requirements will endanger the position of Estonian, the official language of the country, initiators of the law said that the language proficiency requirements passed by the previous Parliament in 1998 are inconsistent with the U.N. Convention on Civil and Political Rights and the Estonian Constitution, which bans discrimination on grounds of language. The adoption of this amendment was the final legislative action aimed at implementing recommendations of the Organization for Security and Cooperation in Europe Mission to Estonia. Previously, in accordance with the Mission's recommendations, an ombudsman's bureau was created in the Northeast region of the country, and language requirements for top business leaders were simplified. In order to reinforce the role of Estonian language in the legislature and local government bodies, amendments to house rules and to the law on local government organization that stipulate that Estonian is the working language of the legislature and local government councils have already been submitted to the Parliament. (*BNS Baltic Daily News Service*, Nov. 7, 2001, via <http://www.site.securities.com>)

(Peter Roudik, 7-9829)

GREECE--New Tax Measures to Improve Employment

The Greek Government recently announced the adoption of a number of tax measures designed to improve employment by introducing incentives, increasing the disposable income of employees, and boosting competitiveness among companies. In brief, the new measures include:

- a 20% rise in the tax-exempt bracket of wage earners and pensioners to 2,870,000 *drachmae* (about US\$7,450). The current tax-exempt base is 2,530,000 *drachmae* (about US\$6,570);
- a 20% rise in the tax-exempt bracket for self-employed and other categories of employed people to

2,530,000 *drachmae*;

- a reduction of corporate tax from the current 35% to 32.5% under the condition that companies increase their employment by 2.5%;
- the abolition of stamp duty on salaries and on promissory notes. Stamp duty on rents and contracts will be abolished in the second phase of tax amendments planned for 2003;
- a reduction of the tax on fuel used by companies by 25% to 50%.

(Press Office of the Embassy of Greece, at <http://www.greekembassy.org/press>)
(Theresa Papademetriou, 7-9857)

RUSSIA–Committee for Financial Monitoring

The President of Russia signed a Decree on the creation of the Committee for Financial Monitoring, a new financial watchdog, to operate under the auspices of the Finance Ministry and perform duties specified in the recently adopted Law on Combating the Legalization of Criminally Derived Revenues. The Committee will be an independent federal agency headed by the First Deputy Finance Minister and will employ 200 officials at its main office and 100 in the regional branches. The Committee will control all transactions of US\$20,000 or more, registered in any national financial institution, and has the right to request information about any other suspicious transaction. Information about suspicious financial activities will be transferred by the Committee to the law enforcement authorities for investigation. The Committee can exchange its information with similar services in foreign countries through protected channels of information according to mutual agreements. As the newly appointed Chairman of the Committee stated, the Committee will not recognize the institution of banking secrecy; however, information about private transactions will not leave the Committee. It is expected that the Committee for Financial Monitoring will start its activities in February 2002, when the Law on Combating Money Laundering enters into force. (*Rossiiskaia Gazeta*, official newspaper of the Russian Government, Nov. 5, 2001.)
(Peter Roudik, 7-9861)

RUSSIA--Restrictions on Commercials

The Federal Assembly (legislature) of the Russian Federation adopted amendments to the Federal Law on Advertisement. The new provisions prohibit interruption of religious, educational, and children's programs with commercials. Commercials cannot be present in live broadcasts of State events or in programs that run shorter than fifteen minutes. According to the amendment, radio performances can be interrupted by commercials with the consent of the copyright owner.

All other programs may have commercial breaks only once in fifteen minutes. The sound volume during commercial breaks must remain the same as during the regular broadcast. The amendment imposes a ban on playing the same commercial more than twice per hour. Advertisements will not exceed 20% of the air time unless the program is registered as specialized in the airing of commercials. Due to strong lobbying by the film industry, permission to interrupt television movies with commercial breaks remains in force. (*Rossiiskaia Gazeta*, Nov. 16, 2001, at <http://www.rg.ru>)
(Peter Roudik, 7-9861)

UKRAINE--HIV Legislation Amended

The Ukrainian legislature (Verkhovna Rada) has discussed and, following the second reading, approved amendments to the Law on Prevention of AIDS and the Social Protection of the Population. According

to the Verkhovna Rada rules, each bill has to be approved in three readings in order to become a law. However, because the third reading is mostly formal and just finalizes the language of the bill, the version approved in the second reading usually enters into force without substantial changes. The amendments provide for the possibility of blood transfusion in emergency cases without the preliminary testing of the donor for HIV. In such cases, the recipient of the blood or his representatives will be informed of the possibility of contracting the infection. The bill foresees compensatory measures for those infected by HIV as a result of medical procedures. (*Ukrainian News Agency*, On-line News, via ISI Emergency Markets at <http://site.securities.com>, visited Oct 2, 2001.) (Peter Roudik, 7-9861)

UKRAINE–New Land Code

Land ownership in Ukraine had been in the hands of the state—a legacy of Soviet times—until very recently. Even when private ownership of homes and enterprises was allowed, the land underneath had been state-owned. On November 13, 2001, Ukraine’s new Land Code was signed into law by President Kuchma, having been passed by the Verkhovna Rada in October over the strenuous objections of Communist Party deputies. The law will allow for land sales “within five years,” as officials need a “waiting period to finalize the actual privatization.” According to President Kuchma, the Rada will need to pass some 30 legislative acts by 2005, to bring Ukrainian law in line with the Code (Kyiv Ukrainian Television UT1, 1900 GMT, Nov. 15, 2001, via FBIS). To protect small farmers, the sale of agricultural land will be limited to 100 hectares (247 acres) per person between 2005 and 2010, and a 20-year moratorium will be in effect on the sale of agriculturally important land to foreigners, non-citizens, foreign legal entities, or other states (*Fakty* as cited by Irina Sandul, “President Signs Land Code in Ukraine,” Transitions Online, <http://www.tol.cz>, visited Nov. 23, 2001). (Natalie Gawdiak, 7-9838)

UNITED KINGDOM–New Anti-Terrorism Statute Debated

In response to the terrorist attacks in the United States, the British government has drafted an Anti-Terrorism, Crime and Security Bill 2001, to ensure that it has the necessary powers to counter the increased threat to the country (<http://www.parliament.the-stationery-office.co.uk/pa/pabills>). The massive Bill, in 14 Parts containing 125 sections and six schedules, is intended to:

- cut off terrorist funding;
- ensure that government departments and agencies can collect and share information;
- streamline relevant immigration procedures;
- restrain those who seek to stir up religious and racial hatred or violence;
- ensure the security of the nuclear and aviation industries;
- improve the security of dangerous substances that may be targeted or used by terrorists;
- extend police powers;
- ensure that the UK can meet its European obligations concerning police and judicial cooperation and its international obligations to counter bribery and corruption; and
- update the UK’s anti-terrorist powers.

The Bill passed its second reading in the House of Commons on November 18, 2001, and is now under scrutiny at the committee stage. Under the timetable issued by the Government Whips’ Office, the Bill was

to be sent to the House of Lords on November 26, and to be returned to the Commons for consideration of amendments, if any, on December 13, 2001.

Among controversial proposals in the Bill is a provision allowing the indefinite detention of terrorist suspects who are not British citizens and whose lives would be endangered if they were deported. The European Convention on Human Rights, now incorporated into United Kingdom law, bars member countries from detaining people indefinitely and the government is proposing to opt out of the provision citing a “state of emergency.” The detention order would be subject to periodic judicial review by a special immigration appeals tribunal, and the provision would expire after five years under a sunset clause. However, the evidence provided by the intelligence agencies would be heard *in camera* by the tribunal. (“Lawmakers Vote in Favor of New Anti-Terrorism Proposals,” *AP Worldstream*, Nov. 19, 2001; “Government MPs Join Outcry over Terror Laws,” *Financial Times*, Nov. 20, 2001.) (Kersi B. Shroff, 7-7850)

UNITED KINGDOM--Parliament To Rush Through Ban on Human Cloning

In the face of a decision by the High Court that a 1990 statute supposed to ban human cloning does not cover cloned embryos, the government has quickly introduced emergency legislation “to stop people coming in Britain in order to exploit a loophole that has been blown open by the court’s decision.” The Court had ruled that the relevant provision of the Human Fertilisation and Embryology Act 1990, §1(1), which defines an “embryo” to mean a “live human embryo where fertilisation is complete,” does not cover cloned embryos because fertilization is not involved; a cloned embryo is created by inserting a cell nucleus into an emptied unfertilized egg. Following the ruling, it was reported that a controversial fertility doctor was making plans to come to Britain to start cloning human babies. The Human Reproductive Cloning Bill, published on November 22, 2001 (www.parliament.the-stationery-office.co.uk/pa/pabills.htm), will make it an offense to “place in a woman a human embryo which has been created otherwise than by fertilisation.” The Bill is expected to go through all the legislative stages before the end of November.

In January 2001 Parliament voted in regulations to allow the cloning of human embryos for medical research, but at the time the government underlined its stand that the 1990 Act and the regulations did not permit reproductive cloning (see WLB 2001.03). (*Bruno Quintavalle on behalf of Pro-Life Alliance v. Secretary of Health*, CO/4095/2000 <http://www.courtservice.uk>; Andrew Sparrow, “Jail Sentence of 10 Years Is Penalty For Baby Cloning,” *Daily Telegraph*, Nov. 23, 2001; “‘Cloning Doctor’ Heading for Britain,” *Ananova.com*, Nov. 16, 2001.) (Kersi B. Shroff, 7-7850)

NEAR EAST

ARMENIA--Prison Reform

Armenian parliamentarians have adopted the Law on Keeping Detained and Arrested Persons, submitted to the National Assembly (Parliament) by the Justice Ministry and designed to fulfill the obligation undertaken by Armenia in joining the Council of Europe to begin reform of its criminal-executive system within the next six months.

The Law consists of 8 chapters and 49 sections, and its main task is to demilitarize the corrections system through transferring it from the jurisdiction of the Ministry of Internal Affairs to the jurisdiction of the Justice Ministry. It is expected that the reform of the penitentiary system will take one year. The Law establishes

the rights of prisoners and defines procedures for their reception and transfer; it prohibits physical violence against prisoners. (*Armeninform News Agency*, Nov. 8, 2001, via <http://www.site.securities.com>) (Peter Roudik, 7-9861)

ISRAEL–Parliamentary Immunity Removed from a Member Expressing Support for Terrorism

The Knesset (Israel’s Parliament) approved a Committee’s decision to remove Member Bishara’s immunity for the purpose of an indictment on two counts: an offense under the Prevention of Terrorism Ordinance 5708-1948, and an offense under the Prevention of Infiltration (Offenses and Jurisdiction) Law, 5714-1954. The first and main charge is based on Mr. Bishara’s speech last June in a memorial ceremony for former Syrian leader Hafez Assad and a similar speech in an Israeli town. In both speeches, he is said to have expressed identification with Hezbollah, an organization on the terrorist organizations lists of both Israel and the United States, and to have called for broadening “the path of resistance” to Israel. The second charge is based on Mr. Bishara’s arrangement of visits to Syria by some 800 Israeli Arabs.

The case will test the limits of free speech in a democracy, in particular in regard to the first charge. The issue to be adjudicated is whether the use of words in support and encouragement of “the violence of a terror group” is “going far beyond a mere political opinion,” as Attorney-General Elyakim Rubinstein claims, or whether such language should be protected under the principle of freedom of speech. (J. Greenberg, *World Briefing*, Nov. 8, 2001; G. Hoffman, “Rubinstein, Bishara Face Off on Immunity,” *The Jerusalem Post*, Sept. 26, 2001.) (Ruth Levush, 7-9847)

ISRAEL--Release from Prison on Probation

A new law regulating the release of prisoners on probation passed on June 11, 2001. The law provides that a prisoner who has served at least two-thirds of a prison term for a period of three to six months may be released on probation by a decision of the superintendent of prisons, if the superintendent is satisfied that the prisoner deserves to be released and the release does not endanger public safety. For prisoners serving longer terms of imprisonment, except for those under life sentences, release on probation depends on a decision of the release committee, after it has been similarly satisfied that the prisoner’s release does not endanger public safety. Probation may be authorized by the committee at any time, after evaluating a doctor’s opinion that concludes that the prisoner is dying of a disease or that states that because of a disease, the continuation of the prisoners’ incarceration will likely endanger his or her life. The release on probation of a lifetime prisoner requires a decision of a special release committee.

The law lists the factors for consideration for release that must be weighed by the committee. These include the type of offense for which the prisoner is serving time, the content of existing additional indictments against the prisoner, former convictions, past clemency provided by the President for imprisonment sentences, the prisoner’s behavior in jail, opinions by various authorities, participation in a rehabilitation program, etc. The committee may also consider the impact of the release on public trust in the legal system and in law enforcement. The law regulates the conditions for release, for voiding a release, and for shortening a life sentence. It also regulates the composition of the release committee and the special release committee. (Release on Probation Law, 5761-2001, *Sefer HaChukim* [Book of Laws, Official Gazette] No. 1795, at 410 (June 20, 2001).) (Ruth Levush 7-9847)

SOUTH PACIFIC

AUSTRALIA--Chief Justice on Limits to Judicial Review

Illustrating the continued salience of the question of limits to judicial review, Chief Justice Murray Gleeson used a speech at Melbourne University on November 7, 2001, to argue that the rule of law applies to courts and judges as much as to other branches of government. Speaking in the Rule of Law series, he began by noting that the rule of law is “such a powerful rhetorical weapon, both in legal and political argument, that care is needed in its deployment.” Without explicitly referring to current efforts to limit appeals from the decisions of the Refugee Review Tribunal, he noted that, subject to the limits on legislative power imposed by the Constitution, “it is for Parliament to define the power and jurisdiction of administrators and tribunals.” He then argued that it is for parliaments to decide which controversies are justiciable (subject to decision by a court) and that the rule of law does not require all possible disputes to be justiciable. “The rule of law does not mean rule by lawyers.” (Murray Gleeson, “Courts and the Rule of Law,” http://www.hcourt.gov.au/speeches/cj/cj_ruleoflaw.htm) (D. DeGlopper, 7-9831)

AUSTRALIA--Effectiveness of Refugee Appeals Limits Questioned

Among the amendments to Australia’s Migration Act, which were intended to deter asylum claims by boat people and which Parliament passed on September 26, 2001, was a Judicial Review Bill. This was designed to stop appeals of decisions of the Refugee Review Tribunal to the Federal Court or on to the High Court. Migration matters before the Federal Court have increased by over 300% since 1995, and there are claims that the court system is being swamped by refugee appeals. In the last fiscal year (July 2000-July 2001), appeals under the Migration Act made up 46% of the workload of the full Federal Court and 15% of the cases before the High Court.

Many specialists in migration law and constitutional law have criticized the Judicial Review Bill as confusing, possibly unconstitutional, and containing grounds for even more appeals to the courts. Former Federal Court Judge Einfeld is quoted as saying, “No one has the faintest idea how these laws will work.” The constitutional issue revolves around attempts to limit the scope of decisions subject to review by the High Court. Laws doing this are themselves subject to review by the High Court, which interprets Australia’s Constitution. The Judicial Review Bill invokes a 1945 High Court case, *The King v Hickman*, in which the High Court said it was unconstitutional for Parliament to refuse the Court’s right to hear appeals, but compromised by limiting the grounds of appeal. Jurisdictional error, which includes an unconstitutional decision, remains a ground of appeal. Academic jurists expect the Judicial Review Bill to be challenged as unconstitutional, which will put the matter back in the hands of the High Court. (Migration Legislation Amendment (Judicial Review) Bill 2001, Senate, 3d Reading, at <http://scaleplus.law.gov.au/html/>; “Law to Stop Asylum Seeker Appeals May Fail,” *The Age*, Nov. 9, 2001, <http://www/theage.com.au/>; *The King v Hickman* (1945) 70 CLR 598.) (D. DeGlopper, 7-9831)

INTERNATIONAL LAW & ORGANIZATIONS

ASEAN/CHINA–Free Trade Area

Leaders of the 10-member Association of Southeast Asian Nations (ASEAN) and Chinese Premier Zhu Rongji reached an agreement on November 6, 2001, to set up a Free Trade Area. The target deadline for creation of what will be the world's largest free trade zone, covering a market of about 1.8 billion people, is 10 years. ASEAN leaders also endorsed a proposal for a Framework on Economic Cooperation with China, covering the five areas (suggested by China) of agriculture, information technology, human resources development, investment, and Mekong River basin development. (*Xinhua* and Hong Kong *AFP*, Nov. 6, 2001, via FBIS.)
(W. Zeldin, 7-9832)

ISRAEL/VARIOUS NATIONS--Agreements with European Nations

Israel has entered into bilateral agreements with Latvia, Lithuania, Ukraine, and Uzbekistan. A convention between the Government of the State of Israel and the Government of the Republic of Uzbekistan "for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital" went into effect in January 2000. An agreement "on Cooperation in the Field of Education Between the Government of the State of Israel and the Cabinet of Ministers of Ukraine" became effective on April 2000. Additionally, agreements on the "Abolition of Visa Requirements for Holders of Regular National Passports" were signed by the Government of the State of Israel and the Governments of the Republics of Latvia and Lithuania. Both agreements entered into effect on May 2001. (*See 43 Kitve Amana* (Treaties, Official Gazette), Issue Nos. 1283-85 & 1287, July 2001.)
(Ruth Levush 7-9847)

OSCE–Anti-Terrorism Declaration

On December 4, 2001, the Ministerial Council of the Organization for Security and Co-operation in Europe (OSCE), meeting in Bucharest, issued a Decision condemning all forms of terrorism. The 55-nation organization also adopted an anti-terror action plan that U.S. Secretary of State Colin Powell described as "a resolute expression of our collective will." (Reuters, Dec. 4, 2001.) The Plan refers to United Nations conventions and Security Council resolutions as the global legal framework for the fight against terrorism and calls on participating states to become parties to the ones related to terrorism by the end of 2002. The OSCE will also devote efforts to building democratic institutions, strengthening the rule of law, and promoting human rights, tolerance, and multi-culturalism, among other actions, as long-term strategies to combat conditions that give rise to extremism in society. Participating states will take a number of steps, including working to prevent illegal actions in their territories that facilitate or finance the activities of terrorists. (Declaration and Action Plan available at <http://www.osce.org>.)
(Constance A. Johnson, 7-9829)

TAIWAN/US—Bilateral Agreements

On November 14, 2001, a preliminary agreement on judicial cooperation was signed by officials of the United States and Taiwan to help fight cross-border crime. Areas of cooperation between their

respective judiciaries and law enforcement agencies include: questioning of witnesses; exchange of documents, records, and evidence; mutual assistance in searches, seizures, and confiscations; identifying criminal suspects and their whereabouts; and all forms of cooperation that do not violate the laws of either jurisdiction. Formal signing will take place after ratification of the agreement by the respective legislatures. (*Taipei Times*, Nov. 15, 2001, via FBIS.)

On August 24, 2001, Taiwan and the United States signed a memorandum of understanding (MOU) on government procurement policy in line with commitments required for Taiwan's entry into the World Trade Organization (WTO). The MOU expands upon on a bilateral agreement reached in 1998, in which Taiwan agreed to open up its markets to the U.S. ahead of WTO entry in exchange for U.S. support for its entry bid. The MOU clarifies Taiwan's commitment to lift barriers against U.S. companies in the government procurement market, thereby effectively opening up "US\$15 billion in infrastructure projects and procurement of a wide range of other goods and services," according to the American Institute on Taiwan. Some of the commitments in the MOU must be implemented immediately; others will be implemented after Taiwan's entry into the WTO (Taiwan ratified the WTO agreements on Nov. 22, 2001; membership will take effect as of Jan. 1, 2002). (*Taipei Times*, Aug. 25, 2001, via FBIS, Aug. 28, 2001; *Taipei Central News Agency*, Nov. 22, 2001, via FBIS.)
(W. Zeldin, 7-9832)

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RECENT DEVELOPMENTS IN THE EUROPEAN UNION
by Theresa Papademetriou, Senior Legal Specialist, Western Law Division*

Code Establishing Administrative Behavior Standards¹

On September 6, 2001, the European Parliament approved the European Code of Good Administrative Behavior, which states the fundamental right to good administration and establishes the basic standards that citizens should expect when they deal with the European Union institutions. The Code was modeled after the best administrative laws and practices in the Member States and the judgments of the European Court of Justice.

Access to Documents Adopted by the EU Institutions²

As of December 3, 2001, every citizen or legal person of the Union who resides in or has a registered office in a Member State will have the right of access to documents of the Parliament, the Council, and the Commission. Restrictions on access may be imposed based on the grounds of public or private interest.

Data Privacy and Junk Mail³

On the issue of unsolicited commercial advertisements through e-mail, the European Parliament recently voted that it should be left to the discretion of the 15 Member States to decide whether or not marketing companies must have the consent of the recipient before sending such commercial messages. This vote was contrary to the European Commission's proposal to ban junk e-mail without securing the recipient's consent. On direct marketing via the use of fax or mobile phones, the European Parliament voted in favor of securing the subscriber's prior consent.

Data Privacy and "Cookies"⁴

During the amendment process of the Directive on Privacy in the Telecommunications Sector, which was adopted in 1997, the European Parliament voted against the use of "cookies" without the user's knowledge. Consequently, websites that use "cookies," devices that gather information on persons visiting those websites, have to have the "prior and explicit" consent of the user.

* LL.B. University of Athens Law School, LL.M. George Washington University, International and Comparative Law.

¹ [Http://www.euro-ombudsman.eu.int/code/en/default.htm](http://www.euro-ombudsman.eu.int/code/en/default.htm)

² [Http://europa.eu.int/comm/secr etariat_general/sgc/acc_doc/en/index.htm](http://europa.eu.int/comm/secr etariat_general/sgc/acc_doc/en/index.htm)

³ [Http://www.europarl.org.uk](http://www.europarl.org.uk)

⁴ *Id.*

A European Coordinator on Civil Protection⁵

The European Commission, in a Communication approved on November 28, 2001, decided on a course of action to be followed in order to respond immediately and efficiently to terrorist attacks, including bio-terrorist threats. The Commission has created a 24-hour “one-stop service” that will offer teams of specialists and equipment for deployment in any of the 15 Members that faces a crisis. The Commission also intends to nominate a high profile European Coordinator for Civil Protection.

Harmonization of Criminal Law on Racist Offenses Throughout European Union⁶

The European Commission recently introduced a Framework Decision on establishing the same criminal standards in the 15 Member States of the Union applicable to people who commit offenses because of race or xenophobia. The scope of the Decision extends to public incitement to violence or hatred, as well as the participation in and support of activities of a racist or xenophobic group. It also covers the dissemination of racist material by any means, including via the Internet. The maximum penalty proposed is two years. Aggravating circumstances include racist intent on the part of the perpetrator and in the exercise of one’s professional capacity. Member States have the discretion to punish offenders with more severe penalties, since the aim of this Decision is to lay down minimum standards.

Proposal on Aircraft Noise: End of Dispute Between United States and EU⁷

On November 28, 2001, a new Directive was proposed to control aircraft noise in airports and the surrounding areas. The proposal repeals the “Hushkits” Regulation, which became a contentious issue between the United States and the European Union, because it required older aircraft to be fitted with “hushkit” devices to reduce the noise. The Directive introduces a number of measures to reduce the noise in a cost effective manner. Those airports that face an especially serious noise problem have the choice of introducing operating restrictions, including withdrawal of the aircraft that generate the worst noise.

Communication on Financing of Civilian Crisis Management Operations⁸

The European Commission adopted a Communication on ways to fund civilian crisis responses in countries outside of the Union. Civil crisis management includes a number of instruments, such as economic aid, civilian emergency assistance, reconstruction, rehabilitation, and diplomatic action, under the umbrella of the common foreign and security policy. The Commission believes that civilian crises must be funded from the EC budget, in contrast to military operations to which the Member States also contribute financially.

⁵ [Http://europa.eu.int/rapid/start/cgi/guesten.ksh?reslist](http://europa.eu.int/rapid/start/cgi/guesten.ksh?reslist)

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

LEGAL RESPONSES TO TERRORISM: France*
Temporary Anti-Terrorist Measures

On October 31, 2001, the National Assembly approved several temporary anti-terrorist measures that are part of a wide-ranging bill on security. The Senate adopted similar legislation on October 16.¹ These measures will be in force until December 31, 2003, when they will be subject to review. The main provisions are:

- On the instructions of a public prosecutor, the police will be allowed to search cars that are circulating, stopped, or parked on public roads or in areas accessible to the public in preliminary inquiries relating to terrorist acts, drug offenses and/or infringement of firearms and explosives regulations.
- The authority of judges to order preliminary searches, domiciliary visits, and seizures of evidence without the consent of the person on whose property they take place has been extended to preliminary inquiries relating to drug offenses and violations of firearms and explosives regulations. Such searches were already authorized in preliminary inquiries relating to terrorist acts. The police will also be able to carry out nighttime searches in spaces other than living spaces, such as storage areas, garages, etc.
- To ensure the security of international and national flights, police officers and customs agents are allowed to search bags, parcels, airplanes, and any other vehicles found in areas of the airport not accessible to the public and to conduct body searches. They have also been given the same powers to protect ships and ports.
- Private security agents, approved by the competent administrative authority or the prosecutor, are authorized to search bags and conduct body searches in airports, ports, and other public areas when there are grave threats to public security.
- Telecommunication companies may be required to keep records of connections identifying users for a year, at the request of the judicial authorities.
- The definition of acts of terrorism has been expanded to include money laundering and insider trading when they are intentionally connected to an individual or collective enterprise having the purpose of seriously disturbing public order by intimidation or terror. In addition, a new article has been inserted in the section on terrorism in the New Penal Code (NPC). Article 421-2-2 provides that “financing a terrorist enterprise by providing, collecting, or managing funds, stocks or any other types of goods or giving advice to that end, with the intent to see these funds, stocks or goods used or knowing that they will be

* Prepared by Nicole Atwill, Senior Legal Specialist, Western Law Division. For full reports on terrorism-related legislation in France and several other foreign countries, call the Law Library at 7-LAWS and request *Terrorism: Foreign Legal Responses*, or copies of individual country reports contained therein. Abstracts of the reports were attached to WLB 2001.10.

¹ Text available at <http://www.assemblee-nationale.fr>

used to commit one of the terrorist acts [as defined in the NPC], independently of an actual commission of such act, is an act of terrorism.”

- The law authorizes, under certain conditions, access to police files to ensure that persons in charge of security or having access to sensitive areas such as nuclear plants, airports, etc., meet all the necessary security requirements.
- Judicial authorities may ask any competent individual or legal entity to decipher any coded messages obtained during an investigation. Code-making companies will be obliged to supply to such authorities the means necessary to decode encrypted data. When the sentence incurred is more than two years of imprisonment, judicial authorities may request the use of State classified means to decipher coded messages.

Civil rights groups oppose the new measures, but the Interior Minister strongly defended them before the National Assembly. He stated that “the security of our citizens surpasses any other consideration...collective security is not the enemy of individual liberty, it is one of the conditions for exercising it.”²

² *Le Monde*, Nov. 2, 2001, via LEXIS/NEXIS, Presse Library, Monde File.