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WORLD LAW BULLETIN

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Special Supplement:

LEGAL RESPONSES TO TERRORISM:

TAIWAN– Draft Anti-Terrorism Bill and Other Related Measures

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LEGAL RESPONSES TO TERRORISM: TAIWAN—Draft Anti-Terrorism Bill and Other Related Measures

EDITORIAL NOTE: The items presented in the World Law Bulletin have been selected for their special significance to the U.S. Congress, either as they relate to a particular or general legislative interest, or as they may have a bearing on issues affecting the U. S. and its interaction with other nations. Selections should in no way be interpreted as an indication of support or preference for any legal or political stance.

AMERICAS

CUBA--New Cooperative Farming Law

Deputies to the National Assembly of People's Power ratified the new Agricultural Production and Credit and Services Cooperatives Act on November 5, 2002, after previous consultation with members of over 3,300 cooperative agricultural assemblies, where approximately 120 modifications were proposed. The debate and approval of the Law took place in the Ninth Ordinary Session of Parliament, opened on November 2. Replacing Law 36 on Agricultural Cooperatives of 1982, the new Act promotes agricultural diversification and more flexible forms of marketing by preserving basic production for the domestic economy. Cuban President Fidel Castro participated in the National Assembly debate and referred to the strengthening of cooperatives and programs underway, supporting food production and educational and social projects. It is estimated that agricultural cooperatives have nearly 253,000 members who play a fundamental role in Cuba's agricultural production for domestic consumption and export of coffee and tobacco. ("New Cooperative Farming Law Approved by ANPP," *Granma International (Internet version)*, Havana, Nov. 5, 2002, via FBIS.)

(Sandra Sawicki, 7-9819)

CUBA--Nuclear Weapons Treaty Signed

On November 8, 2002, Cuba signed the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean, known as the Treaty of Tlatelolco, after a 35-year delay. At the signing ceremony, Jorge Bolanos Suarez, the Cuban ambassador to Mexico, asserted that the adherence to the Treaty is consistent with a political resolve and commitment to the process of disarmament, peace, and international security. Bolanos commented that although Cuba has not developed nuclear weapons and has no interest in doing so, it did not previously sign the treaty because Cuba considered it a defective and discriminatory instrument, but has now decided to support regional efforts in arms limitation. ("Cuban Envoy on Signing of Tlatelolco Treaty,," *El Universal (Internet version)*, Mexico City, Nov. 9, 2002, via FBIS.)

(Sandra Sawicki, 7-9819)

ASIA

CHINA– New Internet Regulations

Effective November 15, 2002, new regulations limit the use of the Internet in China's 110,000 Internet cafés. The rules state that operators of the establishments must have mechanisms in place that block patrons from accessing certain types of information. The computers in the cafés must not be used to create, download, copy, browse, send, or spread content considered to be in conflict with the Constitution or that harms national unity, sovereignty, or territorial integrity. In addition, operators of the establishments and users of their computers may not do anything that would be considered to be revealing state secrets or harming the country's reputation. There is a specific prohibition on spreading material on "evil cults," superstition, rumors, or libel, as well as a ban on using the Internet for gambling, promotion of violence, or pornography.

A spokesman for the Ministry of Culture said that China's local culture departments will establish training for operators of Internet cafés and also set up hotlines and mailboxes to report infringements of the regulations by such businesses. The local departments will cancel operating licenses for establishments that do not follow operating rules, such as the provision forbidding entrance to those under 18 years of age. (*China News Digest Global Edition*, Oct. 13, 2002, via <http://www.cnd.org/Global/10/13/021012-2.html>; *Xinhua*, Oct. 15, 2002, via LEXIS/NEXIS.)

There has been a shutdown in effect for the more than 2,000 Internet cafés in the city of Beijing since a fire in one last June. However, at a meeting on November 6, authorities notified some of the owners that their businesses could reopen soon (*China News Digest* Global Edition, Nov. 8, 2002, via <http://www.cnd.org/Global//02/11/08/021108-1.html>) (Constance A. Johnson, 7-9829)

CHINA– Securities Measures for Foreign Investors

As of December 1, 2002, Qualified Foreign Institutional Investors (QFIIs) will be allowed to invest in *renminbi*-denominated “A” shares (shares heretofore reserved for domestic investors, in contrast to the “B” shares for foreign investors) and treasury and corporate bonds. The issuance of the “Provisional Measures on the Administration of Qualified Foreign Institutional Investors Investing in Domestic Securities” on November 5, 2002, is seen as another step forward, short of full *renminbi* convertibility, in the liberalization of China’s capital market. It follows the promulgation on June 1 of rules permitting foreign investment in fund management and securities companies and the issuance on November 1 of rules on the transfer to foreigners of listed companies’ unlisted shares. (“SCMP Cites Fund Managers on China Rules Restricting Foreign Access to Securities Markets,” *South China Morning Post* (Internet version), Oct. 31, 2002, via FBIS.)

Under the Measures, QFIIs refer to overseas fund management institutions, insurance companies, securities companies, and other asset management institutions that conform to the conditions set forth in the Measures, that have been approved by the China Securities Regulatory Commission (CSRC) to invest in China’s securities market and that have been granted an investment quota by the State Administration of Foreign Exchange. Conditions to be met include, among others, the requirements of a sound credit rating, a certain asset size, a sound management structure and internal control system, and a catch-all “other criteria” stipulated by the CSRC. For example, insurance companies and securities companies must have been in the business for over 30 years, have paid-in capital of at least US\$1 billion, and managed securities assets of at least US\$10 billion in the most recent accounting year. The Measures stipulate that foreign investors must set up a special *renminbi* account in a domestic commercial bank, which will serve as custodian of the assets to be invested, and use a domestic securities broker for the securities trading. Each licensed foreign investor may only hold up to 10% of a listed company’s shares. Shares held by all the QFIIs in a single listed company may not exceed 20% of the total number of shares. As a transitional measure before full convertibility of the *renminbi*, foreign exchange quotas will be granted for the remittance of capital into and out of China. (*China News Digest* Global Edition, <http://www.cnd.org/Global/02/11/08/021108-93.html>; <http://www.csrc.org.cn/CSRCSite/eng/enews/efi20021114.htm>) (W. Zeldin, 7-9832)

JAPAN– Draft Revisions to Lawyers Law

As part of an effort at judicial reform, the Japanese government has proposed drastic revisions to the Lawyers Law. A draft bill that will apparently be submitted to the Diet next year would do away with a rule banning lawyers from concurrently holding public office and practicing law. In addition, the proposed legislation would abolish a system according to which lawyers must obtain permission from their bar associations to engage in profit-seeking activities as corporate businesses and, by replacing it with an *ex post facto* registration system, essentially “give lawyers free rein on such activities.” With the deregulation, companies could hire lawyers as executives and the government could employ them full-time for specified periods. To promote price competition, the bill would abolish standards on retainer fees, which are currently set by bar associations, but a guideline specifying the upper end of the remuneration

might be retained. The bill would require the disciplinary committees of bar associations, which have been criticized for meting out lenient punishments for member lawyers' infractions, to include non-legal experts, and a Japan Federation of Bar Associations disciplinary council comprised of non-legal experts would also be established to handle appeals by lawyers involved in irregular activities. ("Draft Law Would Grant Lawyers More Freedom," *The Daily Yomiuri*, Nov. 17, 2002, via LEXIS/NEXIS.) (W. Zeldin, 7-9832)

KOREA, SOUTH– Accounting Industry Reform Bill

On November 8, 2002, the Securities and Futures Commission (SFC) of the Financial Supervisory Service made public an accounting reform bill that it hopes to see enacted in early 2003. A key feature of the bill, which is modeled after the US Sarbanes-Oxley Act, is that chief executive officers and chief financial officers will have to personally certify the accuracy of their companies' financial statements. In addition, in business reports, certified public accountants will have to state and sign off on their audit opinions. Even for the information outside the official financial statements that a company releases in the form of disclosures, the company will be required to hire experts to sign off on the data's accuracy. Experts whose evaluations or analyses are false or groundless will face civil liability. The bill tightens the deadline for submitting consolidated financial statements from four months from the end of the fiscal year to three months and re-emphasizes the practice of releasing such statements. Quarterly and semi-annual business reports may also have to be filed with the statements.

Under the new bill, auditors will have to meet higher qualification standards in order to be authorized to conduct audits. To prevent criminal activity resulting from overly close ties between accounting firms and companies, the SFC reportedly plans to establish firewalls between domestic accounting firms' consulting and auditing services. Unlike US firms, Korean accounting companies in Korea will not be banned from providing consulting services to firms they are auditing, because Korean auditors are apparently paid much less than US auditors and are therefore heavily dependent on consulting to make a profit. ("Financial Watchdog Unveils Accounting Industry Reform Bill," *The Korea Herald*, Nov. 8, 2002, via LEXIS/NEXIS.) (W. Zeldin, 7-9832)

KOREA, SOUTH– Unified Bankruptcy Law

On November 5, 2002, the Ministry of Justice proposed a unified Bankruptcy Law that would become effective early in 2003. It is designed to deal more effectively with both corporate and individual bankruptcies. The National Assembly has yet to approve the new law, which emphasizes having debtors pay their creditors to the extent possible, rather than simply declaring bankruptcy. The proposal would compel existing managers to use their experience to get their failing companies to become profitable, rather than having stewards, who may not understand the business, be appointed by the courts. The managers would be closely monitored; top executives considered likely to misuse and conceal funds would not be used, and creditors would have veto rights over retaining current managers. In addition, in cases in which debtors willfully misused loans for personal gain, criminal charges can be filed. The unified law would allow for cross-border cooperation to settle debts of multinational corporations.

For personal debt, the proposed law would introduce a system that defers bankruptcy for five years, to allow leeway for bills to be paid, so long as the total debt is under 300 million *won* (about US\$237,000). ("Unified Bankruptcy Law To Go into Effect Early Next Year," *Yonhap*, Nov. 5, 2002.) (Constance A. Johnson, 7-9829)

TAIWAN– Draft Bill on Economic Crimes

A draft bill designed to control persons accused of major economic crimes has been co-signed by 128 of the 224 lawmakers of the Legislative Yüan and is reportedly to be sent on for review by the full legislature. In order to prevent major offenders from hiding their assets and thereby blocking their victims from successfully seeking compensation, the bill states that prosecutors, during investigation of a case, and courts, during the trial, are to be required to immediately notify relevant government agencies to prevent the suspects from transferring their property and to inform relevant agencies so as to prevent suspects from leaving Taiwan. The bill further provides that after being indicted, the accused will not be permitted to lead an extravagant lifestyle during the period of the trial and that all fines and compensation owed by them must be paid. Prosecutors are empowered to ask for the arrest of the accused should they violate the regulations. (“CNA: Draft Bill on Economic Crimes To Be Sent for Review Soon,” *Taipei Central News Agency*, Nov. 6, 2002, via FBIS.)
(W. Zeldin, 7-9832)

TAIWAN– Draft Criminal Code Amendments on Computer Crimes

The Executive Yüan (Taiwan’s equivalent of a Cabinet) approved draft amendments to the Criminal Code defining new computer crimes on November 6, 2002. The draft will be submitted to the legislature for review and approval. The intention is to keep the Code up to date, to deal with the rapid development of computer technology.

Among the new provisions are stipulations that those who program or spread damaging computer viruses would be sentenced to up to seven years in prison and/or fined NT\$500,000 (about US\$14,500). Deliberately acquiring, deleting, or changing information stored on someone else’s computer would be punished with up to five years in jail and/or a fine of up to NT\$200,000 when the actions cause damage; if the target computer was a government one and national secrets were revealed or security endangered, the punishment would be more severe, with a potential sentence of ten years and a fine of NT\$400,000. Hacking into computer accounts for unlawful gain would be subject to up to three years in prison and a fine of NT\$100,000; the same punishments would be applied to those who use computer programs or other magnetic means to damage a computer system. Again, sentences are more severe if government computer systems are attacked. The amendments also outline increased prison terms for those using automatic teller machines for illegal transactions, up to five years from the current maximum of three, and increase the ceiling on the fines ten-fold, to NT\$100,000. (“Executive Yuan Approves Computer Crime Draft Law,” *Taipei Times*, Nov. 7, 2002, via <http://www.taipeitimes.com>)
(Constance A. Johnson, 7-9829)

EUROPE**BELGIUM--Work as Penalty**

Courts have been given the authority to impose the penalty of work rather than imprisonment in the case of misdemeanors and simple offenses under the Law of April 17, 2002, on the Penalty of Work (*Moniteur Belge*, May 7, 2002, at 19021). A work sentence of up to 45 hours may be imposed for simple offenses and of from 46 to 300 hours for misdemeanors. The minimum allowable sentence is 20 hours of work. Work penalty may be imposed only with the consent of the person involved and may not be used for crimes involving corruption of minors or pornography. The work will be performed in government

institutions, nonprofit organizations, or social, scientific or cultural organizations, Performance is monitored by probation officers. When imposing the work penalty, the court also sets a penalty of imprisonment or a fine to apply in case of nonperformance.
(George E. Glos, 7-9849)

ESTONIA--Artificial Fertilization

A Law on Artificial Fertilization and Embryo Protection was adopted by the Estonian Parliament. The law clarifies the legal status of in vitro fertilization and confirms the right of male and female donors to remain anonymous. People choosing the artificial fertilization procedure are entitled to know only the sex cell donor's nationality, color of skin, education, marital status, existence of children, height, build, and color of hair and eyes. The future identification of biological parents by children born through in vitro fertilization is prohibited.

It is expected that the simplification of the rules for artificial fertilization will bring Western patients to Estonian fertilization clinics. In Estonia, the artificial fertilization procedure costs about 23,000 kroons (US\$1,300). (*BBC Monitoring*, Nov. 20, 2002.)
(Peter Roudik, 7-9861)

ESTONIA--Doctor-Patient Relations

A new Law on Doctor-Patient Relations established rules for solving medical disputes and obliges doctors to give patients detailed information about their condition. The Law, which was initiated by the Ministry of Social Affairs, introduces non-judicial methods of dispute resolution in the health care area and limits the possibilities for a patient to file a malpractice suit.

The Law specifies the documents that have to be kept by a physician and provides for the doctor's obligation to inform the patient properly about all medical procedures and the dangers that they may contain. Under the Law, the patient has to express his or her consent, because no one may be treated against his/ her own will. A special chapter of the Law regulates the procedure for informing the patient about terminal illnesses and preparation for death. Medically assisted suicide is prohibited. The Law also provides instructions in extraordinary cases, such as those involving individuals who refuse to have medical procedures because of their religious beliefs. The Law states that doctors must treat a child regardless of the parents' opposition if there is a danger to the child's life. (*Estonian Telegraph Agency*, Tallinn, Nov. 18, 2002.)
(Peter Roudik, 7-9861)

FRANCE– Status of French Nationals Detained at the Guantanamo Bay Base

On October 31, 2002, the *Tribunal de Grande Instance* of Paris found that it did not have jurisdiction to rule on the status of the French nationals Nizar Sassi and Mourad Benchellali, who are among the six French detainees at Guantanamo Bay. Their families had asked the tribunal to classify the two men as prisoners of war and thereby grant them the protection of the applicable international conventions. The Public Prosecutor had argued that such a decision was beyond the tribunal's jurisdiction, stating that "if one can understand and sympathize with the paradoxical, not to say unbearable, situation of the plaintiffs, one has to ask oneself what would be the value of a decision taken by a French judge in reference to a foreign state?" The plaintiffs' lawyers will appeal the decision and will file a civil lawsuit claiming arbitrary detention. ("La justice se déclare incompétente quant au statut de prisonniers de guerre

des Français de Guantanamo,” *Le Monde*, Nov 2, 2002, via LEXIS/NEXIS.)
(Nicole Atwill, 7-2832)

GERMANY--Eavesdropping and Inadmissability of Evidence

In a decision of October 9, 2002, the German Federal Constitutional Court held that the content of a telephone conversation is inadmissible as evidence in a civil proceeding, if, unbeknownst to the parties engaged in the telephone conversation, the entire conversation had been made audible to other individuals (docket number 1 BvR 161). In the case at issue, the purchaser of a used car had used the speaker feature of his telephone while negotiating the purchase, and thus the seller’s voice could be heard by those in the presence of the purchaser.

The Court justified its decision in terms of several fundamental rights guaranteed by the Constitution (Grundgesetz für die Bundesrepublik Deutschland, May 23, 1949, *Bundesgesetzblatt* (BGBl.) 1). Foremost among these was the inviolability of telecommunications (Constitution, art. 10, ¶1), which, according to the Court, protects the privacy of those communicating regardless of whether the telephone installation is publicly or privately owned. In addition, the Court held that privacy violations of the spoken word are irreconcilable with the guarantee of the free development of personality that is expressed in article 2, paragraph 2, of the Constitution.

The Court indicated that the admissibility of evidence obtained in violation of the Constitution is subject to a balancing of the interests involved. Generally, it is incumbent upon the judge to uphold the constitutionally guaranteed fundamental rights. However, in criminal proceedings there may be an overriding public interest in resolving a serious crime. Even in civil proceedings, evidence gained by eavesdropping on a telephone conversation may be admissible, if circumstances akin to duress are involved. Thus, the Court concurred with a decision of the Federal Court of Justice of 1981 (docket number VI ZR 164/79), in which a secret recording of a telephone conversation that served to identify an anonymous caller was admissible, and with another decision of the Federal Court of Justice of 1959 (docket number VI ZR 104/57), in which the Court had admitted as evidence a recorded conversation that amounted to blackmail. (E. Palmer, 7-9860)

IRELAND– Environmental Tax

As an island nation with a growing economy, Ireland is acutely aware of the amount of waste generated and the cost of its disposal. In much of continental Europe, waste production has increased almost 10 percent from 1990 to 1995, and waste removal has assumed an increasingly significant segment of overall transport activity. One innovative step taken by the Irish was to levy a tax last March on the estimated 1.2 billion free plastic bags hitherto given out by stores each year. In addition to the bags’ direct environmental impact—a dead 10-ton whale found on a Normandy beach apparently mistook plastic bags for squid—the bags are a blight on the landscape, and thus a potential concern for Ireland’s tourist industry. The tax resulted in shoppers being charged 10 *pence* per bag and in £2.25 million being collected for government coffers over a five-month period. With the bags now disappearing, Ireland’s Environment Minister observed that “[t]he reduction has been immediate and the positive visual impact on the environment is plain to see.” (Waste Management (Amendment) Act 2001, No. 36, § 9, [wysiwyg://2/http://www.sky.com/skynews/article/0,30200-12093273,00.htm](http://www.sky.com/skynews/article/0,30200-12093273,00.htm), visited Nov. 14, 2002. For more on the Irish government’s waste management strategies, *see* <http://www.cif.ie/news/magazine/Aug02/waste.htm>)
(Natalie Gawdiak, 7-9838)

LITHUANIA--New Advertising Rules

Newly adopted amendments to the Law on Advertisement provide for stricter liability for prohibited comparative or misleading advertising. The amendments introduce new fine limits for such advertising. First-time violations are punishable by administrative penalties and a warning may be issued to the violator. Violators are obligated to recant the information previously presented in a subsequent advertisement. Repeated use of such advertising would be subject to a fine ranging from 1,000 *litas* to 30,000 *litas* (up to US\$7,500). Violations with aggravating circumstances are punishable with a heavier fine of up to 3 percent of a company's annual revenues. "Aggravating circumstances" include when the advertiser or ad agency hinders the investigation, ignores the obligation to cease, or over the course of a year commits the same type of violation for which a fine had already been imposed. Under previous legislation, fines for misleading or comparative advertisement could be imposed only for systematic violations. (*Lietuvos Rytas* (Lithuanian daily), Nov. 19, 2002, at <http://www.site.securities.com>) (Peter Roudik, 7-9861)

THE NETHERLANDS--Tobacco Advertising

As of November 7, 2002, according to the new Tobacco Law, virtually all advertising of tobacco products will be banned. The aim of the new law is to discourage young people from starting to smoke. Therefore the legislation completely bans images of cigarettes from places where youth gather and from the street scene. Almost all forms of advertising of tobacco products will be prohibited, including such advertising on ashtrays in restaurants and cafes and in bus shelters. Sponsorship of events by tobacco companies is also prohibited. Until January 1, 2003, the advertising of tobacco products in newspapers and magazines is still permitted. From this date on, the advertising will be permitted only inside specialty tobacco stores; however, it may not be aimed at young people. (*Staatsblad* [official law gazette of the Netherlands], No. 201, Apr. 18, 2002.) (Karel Wennink, 7-9864)

RUSSIA--Barbie Doll Ban Proposed

In order to rebuild a system of stringent control over the quality of toys, a special agency has been created under the auspices of the Russian Ministry of Education with the duty to test all toys and computer games for their social, psychological, and pedagogical effects on children and ban those that fail the test. The first recommendation issued by this agency was to prohibit the import of Barbie dolls into Russia. A statement issued by the Ministry of Education states that Barbie affects the psychology of small girls, making them "pretentious, indifferent and sexually aware." This decision needs to be approved by the Federal Government in order to enter into force. (*ITAR-TASS* (Russian State News Agency), Nov. 12, 2002, at <http://www.newsru.com>) (Peter Roudik, 7-9861)

RUSSIA--New Rules for Presidential Elections

Amendments to the Law on Presidential Elections submitted by the President of Russia were adopted by the Russian Federation Legislature. Under the amendments, only parties that have won parliamentary seats with at least 7 percent of the vote will have the right to nominate their candidates for the presidency without collecting signatures. Each party is allowed to submit only one nomination. The

parties that have failed in the election for the State Duma or that did not participate in the parliamentary elections will have to collect 2 million signatures in more than a half of the Russian Federation constituent components in order to field a presidential candidate. Individuals seeking the presidential office will now have to be nominated at a meeting of no less than 500 voters. The meeting's initiative then needs to be registered with the Central Electoral Commission, and 2 million signatures must be collected in support of the candidate's registration.

Another significant amendment is that the requirement for a nominee for president to submit information about the income of his/her family members has been lifted. The amended Law requires the submission of information about only the candidate's income. It states that the submission of false income information can no longer be the reason for denying a candidate's registration. (Information channel of the RF State Duma, Oct. 28, 2002, at <http://www.duma.ru>) (Peter Roudik, 7-9861)

UNITED KINGDOM--Legislative Agenda of New Parliament

The Queen made her annual speech to Parliament in mid-November, setting out the legislative agenda for the upcoming year. Among the 19 bills presented were ones intending to reform the House of Lords, streamline extradition procedures, consolidate corruption laws, increase measures against parents whose children repeatedly miss school, ban hunting with dogs, permit public houses to open 24 hours a day, and, most prominently, reform the criminal justice system. The opposition criticized the government as "offering the same failed policies as before."

The current government has already introduced 12 Acts reforming the criminal justice system since it came to power in 1997, with the leader of the opposition claiming they have not been significantly implemented. The current proposals of reform of the criminal justice system are considered to be the biggest overhaul to date and have already received criticism from civil liberties groups and the legal profession. If passed, the bills would remove some of the foundations of the criminal justice system, such as the right to trial by jury and the double jeopardy rule, which prohibits defendants from being tried twice for the same offense. The definitions of sexual offenses are also to be vastly updated to bring them into line with current social and moral values. In a move to increase the number of rapes reported and convictions obtained, the circumstances in which a defendant can claim that the woman consented will be restricted. Laws relating solely to homosexual behavior in public will be removed. Notably absent from the speech was a contentious bill to reform the Mental Health Act 1983, which would permit the detention of certain mentally ill people even in cases in which no crime has been committed. ("The Queen's Speech: Justice--Anger as Crime Plans Sweep Away Safeguards," *The Independent* (London), Nov. 14, 2002, at 6; "From War on Yobs to Open-all-Hours Pubs, Blair's Much-Leaked Plans are Announced," *The Daily Telegraph* (London), Nov. 14, 2002, at 12; *Duncan Smith's Response in Full*, http://news.bbc.co.uk/1/hi/uk_politics/2465007.stm) (Clare Feikert, 7-5262)

UNITED KINGDOM--Possible Extradition for Computer Hacker

Gary McKinnon, an unemployed computer programmer from Britain, has been indicted in the US for allegedly accessing 92 US military and National Aeronautics and Space Administration computer networks, as well as the networks of some private companies. While Mr. McKinnon did not gain access to classified information, his actions are alleged to have caused around \$900,000 worth of damage. Mr.

McKinnon was arrested by the United Kingdom's National Crime Squad's Hi-Tech Crime Unit after NASA suspected him of hacking into their system. Although the UK has the jurisdiction to investigate and prosecute such activities under the Computer Misuse Act 1990, they are cooperating with the US in the extradition proceedings. Mr. McKinnon is fighting any attempt at extradition, and his attorney believes that the Crown Prosecution's decision to allow the prosecution in the US rather than the UK is to use him as an example and is politically motivated. ("Hacker Says Attempt To Extradite Him is Political," *The Independent* (London), Nov. 14, 2002, at 13; "British Hacker Fights Extradition to US," *The Guardian* (London), Nov. 14, 2002, at 9.)

(Clare Feikert, 7-5262)

NEAR EAST

ARMENIA--Charity Foundations

The Law on Charity Foundations was recently adopted by the Armenian Parliament. The Law determines the legal status of foundations and regulates their establishment, operation, and reorganization. A foundation is a non-commercial organization, set up voluntarily on the basis of personal property of physical and legal entities and pursuing social, humanitarian, and cultural ends. A foundation may have potential and actual creditors, both physical and legal, who, however, cannot be part of the foundation or manage it and must have their own names and legal addresses. A foundation's property is based on donations by physical and legal entities and states and grants. State funds can be obtained only through open competition. Administrative spending must not exceed 20% of annual expenses, and foundations can have businesses of their own if they serve the program goals. Foundations must be managed by the board of trustees and appointed executives. (ARKA-Armenian State Information Agency, Yerevan, Nov. 20, 2002.) (Peter Roudik, 7-9861)

ARMENIA--Reproductive Health

The Parliament of Armenia recently passed a Law on Reproductive Health and Human Rights. The Law regulates issues pertaining to protection of reproductive health, reproductive rights, and conditions for the use of related technology. Adoption of the Law proceeds from international documents on biotechnology and human cloning passed by Armenia. The Law determines that a woman is entitled to use free public medical aid during pregnancy and childbirth. (ARKA- Armenian State Information Agency, Yerevan, Nov. 18, 2002.) (Peter Roudik, 7-9861)

SOUTH PACIFIC

AUSTRALIA--Estimating a Widow's Marriageability

Australia's High Court has ruled that judges' estimates of a widow's attractiveness and prospects of remarriage should no longer be a factor in awards of monetary damages for the wrongful death of their husbands. Under Western Australia's Fatal Accidents Act, a court found the owner of a property liable for the accidental death of a man and ordered the owner to pay the man's 27-year old widow A\$600,000 (about US\$335,400) to compensate for her loss of her husband's financial support. The property owner appealed to Western Australia's highest court, which reduced the award by 20 percent to reflect the judges' estimates of the probability that so young and attractive a woman would remarry. The

widow, in turn, appealed to Australia’s federal High Court, which reinstated the original award. Chief Justice Gleeson noted that Courts have sometimes “cited a plaintiff’s attractive physical appearance or pleasant demeanor in the witness box” as grounds for discounting an award to allow for the possibility of remarriage. However, the majority of the High Court judges agreed that the practice of discounting awards for the contingency of remarriage reflected 19th century assumptions about the role of women and their assumed dependence on the earnings of a husband, and did not take into account changes in society and the economy. Not only might remarriage be detrimental to the finances of a widow; the entire practice of estimating chances of marriage was, in the words of Justice Kirby, “unjust, unpredictable, anomalous and discriminatory.” (*De Sales v Ingrilli* [2002] HCA 52 (Nov. 14, 2002), at http://www.austlii.edu.au/au/cases/cth/high_ct/2002/52.html) (D. DeGlopper, 7-9831)

INTERNATIONAL LAW AND ORGANIZATIONS

ASEAN/CHINA–Spratly Islands Accord

On November 4, 2002, China and the Association of Southeast Asian Nations (ASEAN) agreed on a code of conduct governing the disputed areas of the South China Sea. The agreement was called a “Philippine success” as, following three years of negotiations, the Declaration on the Conduct of Parties in the South China Sea was substantially based on a Philippine draft. The Declaration states that none of the various nations that have been claimants to the Spratly Islands would further occupy the disputed territory or undertake activities in the area. The islands involved are small and largely uninhabited, but positioned in busy sea lanes and reported to be rich in oil, mineral, and marine resources. The Declaration is designed in part to reduce the tension in the region that has resulted from the claims of sovereignty by ASEAN members Brunei, Malaysia, the Philippines, and Vietnam, as well as China and Taiwan, and it states that “The parties concerned undertake to resolve their territorial and jurisdictional disputes by peaceful means, without resorting to the threat or use of force.”

The Declaration calls on signatory states to exchange views on issues relating to the defense of the area, give each other advance warning of any military exercises undertaken there, and assist those in distress in the region. The assurance of freedom of navigation in the South China Sea is of importance to the parties to the non-binding accord and to other nations with maritime interests in the area. (“Official Calls Signing of Spratlys Code of Conduct ‘Philippine Success,’” *Philippine Daily Inquirer*, Nov. 5, 2002, via FBIS, Nov. 5, 2002; Hong Kong AFP, Nov. 4, 2002, via FBIS, Nov. 5, 2002.) (Constance A. Johnson, 7-9829)

AUSTRALIA/SINGAPORE/UNITED STATES--Free Trade Agreements

Australia, having concluded a free trade agreement with Singapore on November 1, 2002, is beginning negotiations with the United States for a free trade agreement. The Singapore agreement is Australia’s first such agreement since it concluded the Australia-New Zealand Closer Economic Relations Agreement nearly 20 years ago. It is expected to benefit Australian firms in the legal, financial, educational, and professional services sector and provides for mutual recognition of technical standards and professional qualifications.

The major issues to be addressed in the negotiations with the United States include access to US markets for Australian agricultural products; the role of Australia’s Foreign Investment Review Board, which can block investments on “national security” grounds; and limits on foreign ownership in the media and real

estate sectors. (Hon. Mark Vaile, MP, Minister for Trade, *Media Releases*, Nov. 1, 2002, and Nov. 14, 2002, at <http://www.trademinister.gov.au/releases/2002>)

(D. DeGlopper, 7-9831)

CHILE/UNITED STATES--Free Trade Talks

The Chilean press is reporting that industrial property rights are prominent in the negotiations between Chile and the United States to fashion a Free Trade Agreement, overshadowing the traditional focus on access to agricultural products. According to numerous sources close to the negotiators of both countries, the United States is trying to impose its position of increasing the exclusivity of pharmaceutical patents by another ten years, on top of the 20 years that pharmaceutical patents currently last under Chilean law. This is included in the so-called “non-divulged information,” a technical term that refers to details included in a pharmaceutical company’s record showing the tests on which a particular drug is sustained. Chilean law prohibits divulging this information as long as the 20-year patent is in effect.

The head of Chile’s Association of Industrial Pharmaceutical Laboratories, Maria Angelica Sanchez, warned that eventual application of this measure would bring a 75 percent increase in the cost of medicines, according to a University of Chile study. She added that any Chilean laboratory can submit an application with the Institute for Public Health (IPH) to process the marketing of a medicine with the same chemical components as one whose patent is about to expire. Under the US approach, a Chilean laboratory would have to wait an additional ten years to sell the generic product, because the information would not only be “not divulged,” but would be “exclusive”; the company would not be able to access the foreign firm’s trial record, as the IPH would not recognize it as a known document on which to base its decisions. A Chilean senator, Jaime Orpis, suggested to the Chilean press that the United States is granting agricultural and other concessions to Chile in exchange for demands in the area of industrial property. (“US-Chile FTA Talks Reportedly Focused on Pharmaceutical Patents,” *El Mercurio (Internet version)*, Santiago, Nov. 4, 2002, via FBIS.)

(Sandra Sawicki, 7-9819)

CUBA/ECUADOR--Series of Cooperation Agreements

The President of Cuba, Fidel Castro, and the President of Ecuador, Gustavo Noboa Bejarano, meeting in the Palace of the Revolution in Havana on November 14, 2002, signed several agreements to strengthen bilateral cooperation. One of the pacts focuses on the production of generic drugs and pharmaceutical-agricultural products through joint projects and on the permanent sharing of information and foresees the establishment of a factory in Ecuador with joint participation. Other agreements were also signed for cooperation and mutual recognition of professional degrees and higher education studies and for mutual technical assistance in the environmental field. An additional agreement is intended to protect and recover specific stolen cultural and national treasures and other illegally imported or exported items. Officials signed a Memorandum of Understanding on technical, economic, and scientific cooperation and forged an institutional bond between the Cuban Ministry of Science, Technology, and Environment and the National Office of Science and Technology of Ecuador. (“Cuba and Ecuador Sign Six Cooperation Agreements,” *Havana AIN (Internet version)*, Nov. 14, 2002, via FBIS.)

(Sandra Sawicki, 7-9819)

IBERO-AMERICAN STATES--Declaration of Bavaro

Heads of state of 21 governments, including the Latin American nations, Spain, and Portugal, concluded deliberations in Bavaro, Dominican Republic, on November 16, 2002, by signing a declaration that establishes the following priorities for their governments: combating poverty, increasing agricultural production, providing access for their citizens to education and technology, and creating conditions to assure respect for the human rights of migrants while trying to control their influx into other nations.

In his closing remarks, Dominican president Hipolito Mejia stressed the importance of marketing agricultural products within the dynamics of globalization. The topic of subsidies proved to be delicate for the participating nations; Latin American governments consider that the agricultural subsidies imposed by the developed nations of Spain and Portugal impede their access to the global marketplace.

The signers of the declaration reaffirmed their commitment to the preservation of democracy and the self-determination of peoples and emphasized the importance of regionalism as a mechanism for Ibero-American dialogue and cooperation. They also urged financial institutions and governments to develop strategies to alleviate the burdens of debt, keeping in mind the needs and realities of each country. Support for the Statute of Rome creating the International Criminal Court and the international fight against terrorism also were deemed important legal goals by the heads of state for their respective legislatures. (“Jefes de estado de Iberoamerica firman la Declaracion de Bavaro,” *CNNenEspanol*, Nov. 16, 2002, via <http://www.cnnenespanol.com/2002/americas/11/16/dominican.summitwrap.ap/index.html>) (Sandra Sawicki, 7-9819)

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