



WORLD LAW BULLETIN

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Some highlights of this month's issue:

International Criminal Court-ICC Statute in Force, Australia
and Netherlands Ratification

Morning After Pill-United Kingdom

Punishing Computer Hackers-Israel

Telecommunications Laws-Hong Kong, Lithuania

Terrorism & Civil Liberties—Australia

EDITORIAL NOTE: The items presented in the World Law Bulletin have been selected for their special significance to the Congress of the United States, either as they relate to a particular or general legislative interest, or as they may have a bearing on issues affecting the United States 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.

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AMERICAS

BRAZIL--National Internet Law Conference

From August 14 to 17, 2002, Brazilian legal experts, judges, academicians, government officials, and the public will gather in the city of Maceio, in the State of Alagoas, for the National Congress on the Internet, Financial, and Telecommunications Law, the largest event ever planned in the nation on these topics. The meetings are being sponsored by a non-profit organization, the Biomedical Engineering Institute, two Brazilian foundations, the Alagoas State Public Prosecutor's Office and the State Superior Court, the Brazilian Attorneys' Association, and associations of magistrates and public prosecutors. Participants will discuss a pending bill on electronic documents and digital signatures, election propaganda on the Internet, electronic ballot-box security, and Internet crimes or Internet-assisted crimes, such as adultery, pedophilia, and crimes in the financial and telecommunications systems. ("Maceio To Host National Internet Law Congress," *InfoGuerra*, June 10, 2002, via FBIS.)
(Sandra Sawicki, 7-9819)

MEXICO–Freedom of Information Law Promulgated

The Federal Law on Transparency and Access to Public Government Information was promulgated and officially published on June 11, 2002 (see WLB, June 2002). It requires the federal government and all autonomous federal agencies covered by the statute to put at the public's disposition all information concerning their operations, budget, functions, results of audits of any subject compelled by the Law, salaries, concessions, internal reports, the awarding of contracts, and any other information that may be considered useful or relevant, in addition to information based on statistical surveys. The Federal Judicial Branch must make public all final judgments, but the interested parties may object to the publication of their personal information.

The Law creates the Federal Institute for Access to Public Information, which is charged with promoting and publicizing the exercise of the right to access to information, ruling on the denial of requests for access to information, and protecting personal information held by public agencies and entities. Any person or his/her representative may seek the release of information that is not already public and has the right to appeal when the access to information is denied. Any ruling by the Institute denying an appeal may be challenged in court. Information categorized as classified under the Law may retain this categorization for a period of up to twelve years. However, the information may be declassified when the causes that gave rise to its classification no longer exist. Public servants will be liable for not complying with the Law if they commit any of an extensive list of acts such as removing, destroying, concealing, or unduly altering information in their custody; acting negligently, fraudulently, or in bad faith when hearing requests for information; intentionally denying information that is not classified as confidential; intentionally providing information that is not complete; and not turning over information that has been ordered to be provided. (*Diario Oficial*, June 11, 2002).
(Norma Gutiérrez, 7-4314).

MEXICO--National Program on Labor Policy

A Decree signed on December 11, 2001, approved the Mexican government's National Program on Labor Policy for 2001 to 2006. The broad program calls for the generation of more jobs with adequate salaries and economic policies that will enhance the acquisitive power of workers. It reaffirms the rights

of workers to strike and to bargain collectively and encourages the institutions in the social sector of the economy to budget more fully for occupational training and technical assistance. The Program highlights and analyzes the current situation of the labor sector and draws attention to vulnerable groups such as women, migrant workers, the handicapped, Indian communities, children and adolescents, and older adults. Part of the new five-year program is to involve citizen participation in labor issues through public meetings and Internet surveys. It stresses the need for reform of current labor legislation to achieve justice and equilibrium in labor. A bill to reform the Federal Labor Law was introduced by the government this year and is pending (*see* WLB, May 2002). [GLIN] (*Diario Oficial*, Dec. 13 & 17, 2001). (Sandra Sawicki, 7-9819)

PANAMA– Economic Discrimination Bill Passed

The Legislative Assembly approved a bill on May 28, 2002, that will provide authorities with a new legal tool to defend the domestic economy against any discriminatory measures. The bill's sponsor, Marco Ameglio, said the law will allow the President and other government authorities to resolve through diplomacy any conflict on discriminatory measures. In its first article, the law provides that countries that use their laws, regulations, practices, resolutions, judgments, or sentences to discriminate against Panamanian individuals, companies, goods, services, public works, leasing, assets, deeds, or funds may be subject to reciprocal treatment from Panama. Besides the President, the Ministers of the economy and finance, foreign relations, and commerce and industry will have the authority to apply penalties which, according to the Deputy Minister of Foreign Trade, Meliton Arrocha, must be handled with restraint. ("Lawmakers Pass Bill To Defend Economy Against Discriminatory Measures," *La Prensa*, Panama City, May 29, 2002, via FBIS.) (Sandra Sawicki, 7-9819)

ASIA

CHINA–Death Sentence Overturned

In an unusual case that was handled in 2001 and reported on recently in the Chinese press, a death sentence handed down by a Chinese court in Hainan Province was revoked by a higher court and the case returned to the lower court for retrial, on grounds of unclear facts and insufficient evidence, creating reasonable doubt regarding the guilt of the robbery and murder case suspect. As Xinhua news agency stated, "the case has rocked law experts and ordinary people alike as it is very rare for a death sentence made by a Chinese court to be revoked...."

Liu Rongbin, while drinking, said that he had killed a woman named Qiu, whose had been beaten to death and from whom some money had been stolen. During interrogation by the local police after he had been reported and arrested, Liu admitted to committing the murder. However, he later withdrew the confession when the case was transferred to the Hainan branch procurators' office. That office concluded from its investigation that Liu was guilty and charged him with robbery and murder. Liu was set free when the Hainan Provincial Higher People's Court, which handled the case on appeal, ordered the retrial, and although local authorities apparently continue to investigate it, the Hainan branch procuratorate issued a formal decision in April 2002 not to prosecute the case for the time being.

A law professor at Hainan University hailed the judgment as reflecting "an essential change from 'presumed guilty' to 'presumed innocent'" and as representing "historical progress in China's judicial system." A Hainan procuratorial official stated that the procurators hoped to use the case as a vehicle for

education about the rule of law and as a means to gradually change their thinking regarding presumption of guilt and the manner in which they prosecute cases. (Hong Kong *Xinhua*, May 31, 2002, as translated in FBIS; *Xinhua*, June 2, 2002, via *BBC Worldwide Monitoring*, in LEXIS/NEXIS; “Death Sentence ‘Criminal’ Released,” *China News Digest*, at <http://www.cnd.org/Global/02/06/020602-9.htm>)

(W. Zeldin, 7-9832)

CHINA– Immigration Law Reform, Perks for Returned Students Planned

In order to create conditions that will attract skilled foreigners to live and work in China, the government will draft new rules for immigration and modify a wide range of other regulations. The plan is outlined in the professional personnel program developed for 2002-2005. Long-term and permanent residency will be permitted for overseas professionals working with new technologies. Expertise is especially sought in information technology, bio-technology, new materials and manufacturing, aviation, and space technology; professionals in finance, law, international trade, and science and technology management are also listed as desirable. A job vacancy website will be established to assist senior professionals from abroad seeking employment in China.

Preferential policies will also be introduced to prevent the “brain drain” that occurs when Chinese students abroad decide not to return at the end of their training. Government units, both local and centralized, will be directed to set up programs for these students to serve the country on their return, through cooperative projects, lectures, and professional consultancies to domestic enterprises. Scientists are to be encouraged to return through the offers of high pay, key laboratory positions, and good research facilities. Policies on improving the housing, medical care, and educational and employment opportunities for family members of returning students are to be developed, as well as favorable modifications of regulations on salaries, residency permits, and investments. (*Xinhua*, June 12, 2002, via *China News Digest*, Global Edition, <http://www.cnd.org/Global/02/06/12/020612-9.html>)

(Constance A. Johnson, 7-9829)

HONG KONG– Telecom Consumer Protection

On June 17, 2002, a Code of Practice on Protection of Customer Information for Fixed and Mobile Service Operations was issued for the first time by the Consumer Council, the Independent Commission Against Corruption, the Office of the Privacy Commission for Personal Data, and the Office of the Telecommunications Authority (OFTA). The Code, adherence to which is voluntary, provides general guidance for fixed and mobile operators on good practices to prevent unauthorized disclosure of customer information. It covers such issues as policy concerning ethics and data privacy, data classification, and access control; technical measures for protection of customer personal data; transfer of such data; and location and staff security. As an OFTA spokesman stated, service operators collect a large volume of customer personal data, including their telephone numbers, residential addresses, and details of call history, which “may be sensitive in certain circumstances and of value if used for illicit purposes. It is therefore necessary to ensure that data relating to customers are properly protected from misuse.” (“HK New Code To Protect Customer Information,” *Xinhua*, June 17, 2002, via FBIS.)

(W. Zeldin, 7-9832)

MALAYSIA– Immigration Act Amended

In April 2002 it was reported that Malaysia's parliament had passed amendments to the Immigration Act of 1963 which provide for heavier punishments for illegal immigrants. The current Act allows whipping only for second-time offenders who commit the crime of entering the country illegally; the amendments make whipping mandatory for first-time offenders and for those who employ or harbor them. The first offense will in future incur three lashes of the cane; the second, six lashes.

The amendments await royal assent and might not be gazetted for several months. Until then, Malaysia has extended indefinitely an amnesty period in which illegal immigrants may return home voluntarily without facing any punishment, even if they have overstayed or worked in the country illegally. According to one estimate, there are more than 600,000 illegal immigrants in Malaysia, about 70 percent of whom are Indonesians, in addition to some 750,000 legal foreign workers. ("Malaysia Extends Indefinitely Amnesty Period for Illegal Immigrants," *Deutsche Presse-Agentur*, May 23, 2002; "Malaysia To Whip First-Time Illegal Immigrants Under Amended Law," *Agence France Presse*, Apr. 24, 2002, both via LEXIS/NEXIS.)

(W. Zeldin, 7-9832)

MYANMAR (BURMA)–New Money Laundering Law

On June 17, 2002, the State Peace and Development Council, the military government of Myanmar, issued the "Control of Money Laundering Law" (Law No. 6/2002, text available from TV Myanmar, June 17, 2002, translated in FBIS, June 18, 2002.) The Law grants broad powers to seize assets believed to have been acquired through illegal activities and establishes a Central Control Board for oversight of implementation of its provisions. The Board will be chaired by the Minister of Home Affairs; the deputy chairman will be the Minister of Finances and Revenue.

In addition to outlining the offenses considered to be money laundering and listing the punishments of fines, terms of imprisonment or both that are applicable to the crimes, the Law establishes that the new Board will direct investigations of money laundering, establish policies for the control of money and property obtained by illegal means, and cooperate with other countries that are parties of United Nations conventions, with international and regional organizations, and with neighboring states. International organizations have been pressuring the country to take steps, including the adoption of a law, to cut into the transfer and conversion in the country of the vast amount of money generated by the drug trade. (*Irrawaddy– Internet version* (Bangkok), June 19, 2002, via FBIS, June 19, 2002.)

(Constance A. Johnson, 7-9829)

PAKISTAN--Regulation of Religious Seminaries

President Pervez Musharraf on June 18, 2002, approved promulgation of the Madrassah Registration Ordinance, 2002, to register and regulate religious schools, or madrassahs, thus bringing them into the educational system of the country. The Minister for Information and Media Development, Nisar Memon, announced that the Ordinance would come into force immediately and that it encourages the religious schools to register with the Pakistan Madrassah Education Board and the respective Provincial Madrassah Education Boards. The schools have been prohibited from receiving any financial assistance, grant, donation, or other benefit from the federal or provincial governments unless they are registered under the Ordinance. Further, any school official who wilfully contravenes any of the provisions of the

Ordinance will risk closure of the madrassah or a fine, or both.

Each registered madrassah, according to the Ordinance, will maintain accounts and submit annual reports to the appropriate education board. None is to receive any foreign financial assistance. According to news reports, in the past, some other Islamic countries have been suspected of funding madrassahs in Pakistan to promote their versions of Islam (*see, e.g., “AsiaSource Interview with Hina Jilani,”* www.asiasource.org/news/special_reports/jilani.cfm. Ms. Hilani is an Advocate of the Supreme Court of Pakistan and a human rights advocate.) No foreign teacher will be appointed or kept on the faculty, nor will any foreign student be allowed to study without a valid visa and a “No Objection Certificate” from the Interior Ministry.

The Minister stated that the curriculum of religious schools would be like that of other educational institutions. In order to be eligible for government funding, the school must have a curriculum that includes science, mathematics, English, and Urdu. The Minister stated that while the exact number of religious schools in the country is not known, the number probably runs into the thousands. Other sources place the number of such schools at around 10,000. (*The Dawn*, June 20, 2002; Islamabad, *The News*, June 20, 2002, via FBIS.)
(Krishan Nehra, 7-7103)

TAIWAN–Revisions to Law on Assembly and Demonstration

On June 4, 2002, the Legislative Yüan adopted revisions to the Law Governing Assembly and Demonstration, which was originally adopted on January 20, 1988. The revised Law adds the following to the list of sites where rallies and demonstrations are prohibited from being held, except with the approval of the authorities in charge: 1) the official residences of the President and Vice-President, and 2) foreign embassies and consulates, representative offices, the offices of international organizations, and the official residences of the heads of such institutions. The area of the periphery within which the rallies and demonstrations may not take place is to be determined by the Ministry of the Interior and the Ministry of Foreign Affairs, respectively.

The revised Law also eases current requirements that organizers file applications for approval six days before the activities take place by stipulating that in certain emergency situations, where the purpose of the rally or demonstration will be negated unless it is held immediately, the six-day restriction will be waived. (“Taiwan LY Bans Mass Rallies at Presidential, Diplomatic Offices,” *The China Post*, June 5, 2002, via FBIS.)
(W. Zeldin, 7-9832)

EUROPE

BULGARIA--Judicial Reform

In order to make the judicial system transparent and efficient, as is required by European Union standards, amendments to the Judiciary Act were adopted by the Bulgarian Parliament on May 31, 2002. The amendments affect mainly the procedures for appointment of judges and for crime reporting.

Junior prosecutors, district judges, district prosecutors, and examining magistrates now will be appointed on a competitive basis. The granting of job status to judges will depend on their performance

evaluation, and a procedure for the assessment of the magistrates' performance and their compulsory periodic evaluation has been established. The amendment introduces the principle of rotation, appointing judges and prosecutors to senior administrative positions throughout the judicial system for a definite period of time. It does not apply to the justices of the Supreme Court of Cassation and the Supreme Administrative Court or to the members of the Supreme Cassation Prosecution Office and the Supreme Administrative Prosecution Office. A procedure has been established for removal or demotion of judges and if they prove to lack the qualities required for the performance of their professional duties. The National Institute of Justice will be created as a public institution to train judges and other employees of the judicial administration. The authority of the Supreme Judicial Council, which is a representative body of the juridical community, will be extended.

To meet the goal of increased transparency, the new Law obligates the Prosecutor General to prepare a report on the activities of the prosecuting magistracy and submit it to the Justice Minister, who will incorporate it in his annual report on the performance of the judiciary as a whole. All judges are required to declare their property status to the National Audit Office upon taking office and update their reports annually. Prosecuting authorities at various levels must present information on the initiation and progress of cases every six months. A National Investigation Service will be created to provide assistance to the subordinated investigative units for their work in administrative and financial management. (The Sofia Echo radio station, June 18, 2002, at <http://www.echo.sof.bg>) (Peter Roudik, 7-9861)

BULGARIA--Law on Ombudsman

The Bulgarian Parliament adopted a legislative act that determines the role and status of the Ombudsman's Office, an institution required for Bulgaria's European integration. The Law provides for the election of an Ombudsman by Parliament for a five-year term of office. The Ombudsman can be nominated by the country's President, a group of at least 48 members of Parliament, the Supreme Judicial Council, and/or 20,000 citizens.

According to the Law, the Ombudsman will consider complaints from citizens, civil organizations, and legal entities about violations of rights and freedoms by public authorities. The Ombudsman will consider only complaints submitted by citizens. He has to hold a law degree and have at least 15 years of experience. The Ombudsman will have the immunity of a member of Parliament and is not allowed to be a member of a political party, trade union, or non-profit organization. The Law emphasizes that the Ombudsman will be knowledgeable in the fields of national and international law, have high moral qualities, and be dedicated to the ideas of humanism and democracy. (The Sofia Echo radio station, June 17, 2002, at <http://www.echo.sof.bg>.) (Peter Roudik, 7-9861)

CROATIA--New Punishments for Violations of Financial Regulations

The newly adopted Law on Violations of Financial Regulations combines provisions that previously were regulated by some 40 laws and categorizes them according to area, relationship, and gravity. It prescribes sanctions for certain violations, specifying penalties for individuals and legal entities. The Law allows the Ministry of Finance to set up a department for investigation of violations and provides for the creation of a separate financial court to deal with such violations. The Law relates to the violations of tax, customs, and foreign currency regulations, and regulations on contributions and insurance. Punishments include fines and such protective measures as restrictions on conducting business or other official duties.

According to the Law, the fines can amount to between US\$60 and US\$60,000. In exceptional cases, e.g., for violations that result in a significant profit, they could be as much as US\$120,000. (*Croatian National News Agency*, HINA-English Language Service, June 12, 2002, at <http://www.securities.com>) (Peter Roudik, 7-9861)

LITHUANIA--New Law on Telecommunications

A new Law on Telecommunications was approved by the Lithuanian Parliament, the *Seimas*. The Law, which was submitted by the Government, provides for final de-monopolization of the Lithuanian telecommunications market, to be launched on January 1, 2003, and creation of better business opportunities for new operators and small market participants. The new Law offers more concise regulations for universal telecommunications services and creates conditions to make them available to the Lithuanian public. The Law regulates the functioning of large-scale economic agents within the national telecommunications market (with a market share of about 25%) and provides for detailed regulations for these major operators. Duties of State institutions and regulatory agencies are also outlined in the Law. (*ELTA Lithuanian News Agency*, June 17, 2002, at <http://www.securities.com>.) (Peter Roudik, 7-9861)

THE NETHERLANDS--International Criminal Court

On June 18, 2002, the Dutch Upper House of Parliament passed two bills regulating the cooperation between the Netherlands and the International Criminal Court, enabling the establishment of the International Criminal Court in the Netherlands. Both the International Criminal Court Implementation Act and the Statute of the International Criminal Court came into force on July 1, 2002, and from that date the Criminal Court has jurisdiction. At present, 68 countries, including the Netherlands, have ratified the Statute of the Criminal Court. The Court is expected to become operational in the spring of 2003, after the organizational preparations have been completed. (Press Release, Ministry of Justice, June 18, 2002, via <http://www.justitie.nl/>) (Karel Wennink, 7-9864)

RUSSIAN FEDERATION--Single-Candidate Elections Permitted

The Constitutional Court has considered a regional court's inquiry as to whether there is a contradiction between the constitutional principle of voluntary participation in elections and the provisions of the law guaranteeing electoral rights that ban a candidate from withdrawing from an election race later than three days prior to the day of voting. By law, if a candidate withdraws or is disqualified by a court ruling, then he or she is to be replaced by the candidate who came third in the first round. If the third-place candidate refuses to participate in the election or is barred from it, the fourth-place winner proceeds instead, and so on, because Russia's legislation prohibits single-candidate elections.

The Constitutional Court ruled that ballots in the second round of elections may contain only one candidacy in cases when all other opponents have withdrawn voluntarily or have been disqualified by court rulings. According to the ruling, electoral commissions of all levels (city, regional, and federal) cannot force a person who lost in the first round to replace a candidate in the run-off who withdrew or was disqualified by the courts. Electoral authorities are to satisfy the desires of such persons, even if the withdrawal was filed later than three days before the day of voting. However, the ruling states that such requests must be substantiated and may be satisfied only if there are some constraining circumstances, such as illness. If all the other candidates who took part in the first round of an election refuse to continue, it may happen that the

name of only one candidate will remain on the ballot. To win a single-candidate election, the candidate will have to get more than 50% of the votes.

The ruling can be interpreted as advantageous to local authorities, because it makes it possible for them to register several candidates who will later withdraw, leaving the incumbent unopposed. (*Rossiiskaia Gazeta* (Russian official newspaper), June 12, 2002, at <http://www.rg.ru>.) (Peter Roudik, 7-9861)

RUSSIAN FEDERATION--Unification of Language Use

The Law on Languages of the Peoples of the Russian Federation was recently amended by the Russian State Duma (the legislature). The amendment bans the use of any alphabet other than Cyrillic for state languages throughout the Russian territory. Regions wishing to use alphabets other than Cyrillic will be able to do so only after adoption of a separate federal law. According to unofficial reports, this document was prepared by federal authorities in response to the decision of Tatarstan's (one of the Russian Federation's constituent components) Government on the gradual restoration of the Latin alphabet in this state by 2010.

Proponents of the new Law hope that it will help to preserve a unitary cultural and educational space in Russia. However, Tatarstan authorities say that the Law's Cyrillic restriction may be easily ignored by changing the status of the Tatar language to that of a non-state language. (<http://www.gazeta.ru>, June 13, 2002.)

(Peter Roudik, 7-9861)

SLOVAKIA--Law on Foreigners

The Law on Foreigners of 1995 was replaced with a new law, effective April 1, 2002 (Law of Dec. 13, 2001, on Foreigners, No. 48/2002, *Collection of Laws*). A passport is required for entrance into the country, but, by intergovernmental agreement, travelers from certain countries do not need a visa for a stay of up to 30 days. Foreigners seeking entry have to carry proof of a medical insurance policy for payment of all costs for hospitalization and medical treatment in Slovakia. They also have to show evidence of ability to pay for the stay in Slovakia in the a minimum amount of \$50 per person per day, in any convertible currency. A short-term visa may be issued for stays of up to 90 days and a long term visa for stays exceeding 90 days. Visas cannot be obtained at the border, but rather must be obtained at Slovak embassies and consulates abroad. Both short-term and long-term visas are issued for doing business, employment, study, and other purposes.

A permit for a temporary stay for a fixed number of years may be issued for the same purposes as those cited above for visas and may be extended. A permit for permanent stay is issued first for three years and then extended for an unlimited time. The permit is either stamped into the passport or issued separately as an identification card. Foreigners who are guilty of offenses may be expelled, but not to a country where their lives would be endangered because of their nationality, race, religion, or political views.

(George E. Glos, 7-9849)

UKRAINE--Taxation

A draft law by the Cabinet of Ministers on income tax to be paid by natural persons has been expanded by a proposal by Ukraine's Finance Ministry to include a 10% tax on the income from bank deposits. The draft lowers the income tax rate in line with instructions from President Kuchma, who noted at a tax reform conference on June 7, 2002, that every fourth *hryvnia* in the budget coffers represents some tax on the incomes of Ukrainians. "In the President's opinion, the reason for this is the existing 400 benefits to Ukrainians that almost equal the budget revenue." He also noted that 60% of working Ukrainians earn less than US\$31 a month. Another proposal by a group of parliamentary deputies would set the income tax rate for natural persons at a flat rate of 13% of the amount of total monthly income that exceeds the minimum wage, but total monthly income that equals or is less than the minimum wage would not be taxed. (*Infobank News Agency*, via aas-list@ukrainianstudies.org) (Natalie Gawdiak, 7-9838)

UNITED KINGDOM--High Court Rejects Challenge Against "Morning After Pill"

Regulations issued in 2000 that allow the over-the-counter sale of the "morning after pill" were recently challenged in the High Court by the Society for the Protection of Unborn Children (SPUC). The SPUC claimed that the 2000 order was *ultra vires* as the pill is an abortifacient rather than a contraceptive and as a result is contrary to sections 58 and 59 of the Offences Against the Person Act 1861, when not administered in accordance with the requirements of the Abortion Act 1967, which specifies that two doctors certify that certain conditions are met.

The SPUC claimed that the 1861 Act intended any interference with a fertilized egg resulting in its loss to be a miscarriage. The SPUC considered further that the supply of the morning after pill involves or facilitates the commission of a criminal offense under the 1861 Act.

The Court held that the term "miscarriage" refers to the termination of an established pregnancy, which can take place only when the egg has implanted. As the morning after pill acts to prevent implantation before it occurs, the pill cannot cause a miscarriage and is therefore a contraceptive rather than an abortifacient and does not fall within the scope of the 1861 Act. The application for judicial review was dismissed.

In a recent development, the SPUC put a renewed application for judicial review before the court on June 2, 2002, which was allowed since the Judge, despite coming to the same conclusion as the previous court in regard to the nature of the morning after pill, considered the question as crossing the threshold required to apply for judicial review. (*R (on the application of Smeaton on behalf of the SPUC) v. Secretary of State for Health CO/0928/2001 Q.B.*, 2nd May 2002; *R (John Smeaton on behalf of the Society for the Protection of Unborn Children) v. the Secretary of State for Health*, [2002] EWHC 610 (Admin); *Prescription Only Medicines (Human Use) Amendment (No. 3) Order 2000*, SI 2000/3231.) (Clare Feikert, 7-5262)

UNITED KINGDOM--Settlement in Internet "Friends Reunited" Libel Case

A retired teacher, Jim Murray, has successfully pursued a libel case against a former pupil, Jonathon Spencer, who posted libelous comments about him on one of England's most popular websites, Friendsreunited.co.uk, that serves to put old classmates back in touch with one another. Mr. Spencer posted

remarks on his former school’s message board alleging that Mr. Murray was fired for “making rude remarks about girls,” and for “strangling” a pupil, when in fact he had retired. Mr. Murray complained to the website, which removed the comments within a day of their being posted. Mr. Murray claims that the short time in which the comments were posted were sufficient to “besmirch” his reputation and assassinate his character. The Courts agreed that Mr. Murray’s professional character had been irreparably harmed and ordered Mr. Spencer to pay £1,250 damages plus costs.

The website, with approximately six million registered users, has prompted claims from teachers unions that it is being used to post derogatory and libelous remarks and is used to stalk and threaten teachers. In another development, a disgruntled wife posted graphic details of her husband’s alleged extra-marital affair on his school memories board with the name, address, and phone number of the accused mistress. The Friends Reunited team relies on members of the site to regulate the content and is now also reviewing all messages posted on the message boards within 48 hours of their being posted. (“Teacher Wins Damages in Friends Reunited Libel Case,” <http://www.guardian.co.uk/internetnews/story/0,7369,719498,00.html>, May 21, 2002; “Teacher Wins Friends Reunited Libel Case,” <http://news.independent.co.uk/uk/legal/story.jsp?story=297269>)
(Clare Feikert, 7-5262)

NEAR EAST

ISRAEL--Harsh Punishment for Computer Hacker

On June 17, 2002, the Supreme Court rejected an appeal of the decision of the Tel Aviv District Court to impose 18 months of imprisonment on a Mr. Tenenbaum, who became known as “the analyzer.”

In 1997-98, Mr. Tenenbaum, an Israeli who was a minor at the time, illegally penetrated, via the Internet, the computers of NASA, the United States Department of Defense, and an American company. He then disrupted the computers’ operations by changing files and modified the related websites by changing the homepages and inserting “Trojan horse” software, which allows the detection of users of the computers and their confidential information. In addition, Mr. Tenenbaum further penetrated the Knesset (Israel’s Parliament) and the President’s website, changed pages, and paralyzed the site for a few days. Mr. Tenenbaum was convicted by the circuit court of Kfar Saba and sentenced to six months in prison, to be fulfilled by performing public service outside the field of computers, a fine, and two years’ probation.

Tel Aviv District Court accepted the State’s appeal of the light sentence, which did not include any real imprisonment time. The Court described the respondent’s illegal activity as “electronic vandalism” and concluded that by paralyzing government sites, the respondent caused direct and immediate damage. In addition, the offense resulted in harm to Israel’s image with “a friendly Power, like the United States.” In its decision, which imposed a sentence of 18 months in prison, the Court seems to have chosen to ignore the personal circumstances of the respondent and rather put emphasis on the public interest in deterrence of “that particular section of society-- ... young people...who lead a normal life, and who in most cases, are of higher-than-average mental ability. A red light should come on any time the easy and available temptation to penetrate a computer crosses their mind...” The Supreme Court left the harsher punishment intact. (All court decisions are available at <http://www.takdinet.com.il> and <http://law.co.il>)
(Ruth Levush, 7-9847)

SOUTH PACIFIC

AUSTRALIA--International Criminal Court Treaty To Be Ratified

On June 20, 2002, Australia's Prime Minister announced that Australia would ratify the treaty establishing the International Criminal Court. After Parliament's Joint Standing Committee on Treaties recommended ratification in May, some Members of Parliament from the majority Liberal Party expressed strong opposition. This reflected concerns over potential threats to Australian sovereignty and to troops serving overseas. News reports claimed that the Parliamentary party caucus was split 50-50, but that most Cabinet members, such as the Attorney-General, the Foreign Minister, and the Defense Minister, supported ratification. After the newly appointed Commander-in Chief of the Australian Defense Force assured the Prime Minister that the terms of the Treaty posed no threat to Australian forces engaged in peace-keeping or anti-terrorist operations, the decision for ratification was announced.

Ratification will be accompanied by a declaration asserting the primacy of Australian law and that the offenses of genocide, crimes against humanity, and war crimes will be interpreted in accordance with Australian law. Ratification, said the Prime Minister, would give Australia the opportunity to participate in the ICC process which "is going to happen anyway." A professor of international law at the Australian National University was quoted as saying that the declarations only repeat what is already in the Treaty, and that while they may be politically necessary, they are not legally necessary. ("PM Says ICC No Threat to Sovereignty," Australian Broadcasting Corporation, June 20, 2002, at <http://www.abc.net.au>; "PM Ratifies International Court," June 20, 2002, at <http://www.news.com.au>) (D. DeGlopper 7-9831)

AUSTRALIA--Terrorism and Civil Liberties

A set of six bills which was introduced in Parliament in March 2002 to strengthen Australia's counter-terrorism capabilities has generated an intense and wide-ranging discussion of the balance between security and liberty. Proposals to permit the government to ban organizations and to detain and question citizens who are charged with no offense but may have information on potential terrorist activities have been at the center of the discourse, both in Parliament and in other fora. The proposed bills have already been amended in response to objections voiced by, among others, Members of Parliament from the governing Liberal Party.

A June 18 "Report on the Australian Security Intelligence Organisation Legislation Amendment Bill" by the Senate Legal and Constitutional Legislation Committee concluded unanimously that the bill, which would apparently permit the secret detention of citizens for an indefinite number of 48-hour periods and deny such detainees legal representation, "in its original form, would undermine key legal rights and erode the civil liberties that make Australia a leading democracy." The report concurred with the recommendations of the prior report of the Parliamentary Joint Committee on Australia's intelligence organizations that the bill not proceed until detailed protocols governing custody, detention, and the interview process are developed and made available for Parliamentary scrutiny. (Parliament of the Commonwealth of Australia, Senate Legal and Constitutional Legislation Committee, Report on Provisions of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, June

18, 2002, at http://www.aph.gov.au/Senate/committee/legcon_ctte/reports; Department of the Attorney-General, News Release, Counter-Terrorism Package, June 4, 2002, at <http://law.gov.au/aghome/agnews/2002newsag/>; “Legal Overkill Puts Liberty at Risk “ *The Australian*, June 17, 2002, at <http://www.theaustralian.news.com.au>)
(D. DeGlopper, 7-9831)

INTERNATIONAL LAW & ORGANIZATIONS

ASIAN COOPERATION DIALOG– New Forum

At an inaugural meeting held at a Thai resort on June 18 and 19, 2002, Thailand initiated the formation of a new forum for cooperation, the Asian Cooperation Dialogue (ACD), among 17 East Asian, South Asian, and Middle Eastern countries. Participants included the foreign ministers of Bahrain, Bangladesh, Cambodia, China, Japan, South Korea, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam and other ministers representing Brunei, India, Indonesia, Pakistan, and Qatar.

Thai Prime Minister Thaksin Shinawatra declared that “the ACD aims to provide a non-institutionalized arrangement for the exchange of ideas and experiences” that will complement existing cooperative frameworks and “create synergy among bilateral, multilateral, sub-regional and regional strategic partnerships in the areas of common interests.” He contends that it is not intended to be a trade bloc, even though the major focus will be economic cooperation.. During the meeting, the 17 ministers reportedly endorsed the idea that the ACD can serve as a “missing link” to bring together all the existing regional and sub-regional groupings in Asia such as ASEAN plus three (Association of Southeast Asian Nations and China, Japan, and Korea) and APEC (Asia-Pacific Economic Cooperation). (“17 Member Asian Cooperation Forum Ends 1st Meeting,” *Kyodo*, June 19, 2002; “Xinhua: First Asian Cooperation Dialogue Meeting Concludes in Thailand,” *Xinhua*, June 19, 2002, both via FBIS.)
(W. Zeldin, 7-9832)

BRAZIL/MEXICO/MERCOSUR--Agreements To Reduce Tariffs, Export Automobiles

On June 12, 2002, representatives of Brazil and Mexico meeting in Brasilia agreed to decrease tariffs on 815 industrial and agricultural products, including such sensitive products as chemicals and agro-industrial machinery and equipment. Besides reducing tariffs, the agreement covers technical and sanitation (especially phytosanitation) standards, unfair trade practices and safeguards, and solution of conflicts. The representatives traveled to Buenos Aires, Argentina, on June 13 to negotiate with the nations of the MERCOSUR trade bloc concerning the expansion of trade in automobiles with reduced tariffs that would expire in two years, eliminating duties in the sector until 2006. The agreements will be signed on July 3, 2002, during a visit of Mexican President Vicente Fox to the Brazilian capital city. Press reports stressed that these agreements represent a major step for Mexico in achieving integration with markets in the MERCOSUR countries of Argentina, Brazil, Paraguay, and Uruguay. (*BBC Mundo.com*, June 13, 2002, via http://www.news.bbc.co.uk/hi/latin_america/newsid_2041000/2041876.html; *El Universal*, Mexico City, via http://e-universal.com.mx/pls/impreso.version_imprimir?id_notas=71335&tabla=nota)
(Sandra Sawicki, 7-9819)

INTERNATIONAL CRIMINAL COURT--Entry Into Force

The Statute of the International Criminal Court (ICC) will enter into force on July 1, 2002. The establishment of this permanent international body marks a historic moment, occurring as it does almost half a century after the Nuremberg and Tokyo war crimes tribunals and the two more recent ad hoc tribunals established to bring to justice individuals who committed atrocities in Rwanda and the Former Yugoslavia. The Statute has been signed by 139 nations and ratified by 69 (*cf.* WLB entries above for The Netherlands and Australia). During the ratification process, a number of constitutional issues arose in some countries, including those concerning prohibition of extradition of citizens to other nations, immunity of heads of state, and imposition of sentences of life imprisonment. These countries proceeded by amending their constitutions and/or criminal laws in order to ensure compatibility of domestic law with the provisions of the ICC Statute. Three of the seven States voting against the Statute—China, the United States, and Israel—listed their reasons for doing so. The United States raised jurisdictional issues and the application of ICC jurisdiction over non-State parties. It also demanded that its troops that serve on UN peacekeeping missions be exempted from prosecution by the ICC. This position is creating tension between the US and its major allies, especially the European Union. Formal statements on these issues by the Council and the European Commission are to be announced on July 3.

The mandate of the ICC, in contrast to that of the International Court of Justice, is to try individuals rather than States for the commission of war crimes, crimes against humanity, genocide, and the crime of aggression. A crime of aggression can be defined only after the Security Council issues an opinion that an act of aggression has in fact occurred. The ICC Statute has no retroactive force, and individuals who commit the above crimes will come under the ICC's jurisdiction only after a national court is either unable or unwilling to try these individuals in domestic courts. The ICC's jurisdiction thus complements domestic jurisdiction. Once a country becomes a party to the Statute through ratification, it automatically accepts the jurisdiction of the Court. No additional consent is needed. The ICC will exercise its jurisdiction provided that one of the following criteria is met: a) one or more of the parties involved is a State party; b) the accused is a national of a State party; c) the crime was committed in the territory of a State party; and d) a State that is not party to the Statute accepts the court's jurisdiction regarding a specific crime that was committed by one of its nationals or within its territory. ([Http://www.un.org/News/facts/iccfact.htm](http://www.un.org/News/facts/iccfact.htm)) (Theresa Papademetriou, 7-9857)

ORGANIZATION OF AMERICAN STATES--Inter-American Convention Against Terrorism

Thirty of the 34 member states of the Organization of American States, including the United States, signed the Inter-American Convention Against Terrorism on June 3, 2002, during a meeting of the OAS General Assembly in Bridgetown, Barbados. Canada, Trinidad and Tobago, Dominica, and the Dominican Republic abstained, citing the need to first comply with internal legal requirements of a political nature. The agreement is the first international pact with anti-terrorism measures approved by a large region since the September 11 attacks against the United States. U.S. Secretary of State Colin Powell praised the foreign ministers of the Americas for adopting the convention to prevent, punish, and eliminate terrorism.

The agreement sets into place measures with which the signatory nations will prevent, combat, and eradicate the financing of terrorism; seize and confiscate terrorist funds or assets; enforce or reinforce money-laundering legislation; cooperate on border controls and in law enforcement; offer each other mutual legal assistance; and transfer persons in custody. Articles of the Convention cover the principle of inapplicability of the political offense exception; the denial of refugee status and asylum to terrorists; the observance of

human rights while processing alleged terrorists; and the non-discriminatory character of the pact. The Member States agree to promote technical cooperation and training programs at the national, bilateral, sub-regional, and regional levels to combat terrorism. The Convention enters into force on the thirtieth day following the date of deposit of the sixth instrument of its ratification with the OAS General Secretariat. (*BBC Mundo.com*, June 3, 2002, via http://news.bbc.co.uk/hi/latin_america/newsid_2023000/2023834.html; *Organization of American States*, June 3, 2002, via <http://www.oas.org>) (Sandra Sawicki, 7-9819)

SHANGHAI COOPERATIVE ORGANIZATION– Charter Signed

Holding their second summit meeting in St. Petersburg, Russia, on June 6, 2002, leaders of the six nations known as the Shanghai Group signed a charter of a Shanghai Cooperative Organization. It calls for multilateral cooperation in trade and investment, together with a political declaration on the legal framework of the international alliance. In addition, the agreement on a regional anti-terrorist agency was signed; the agency will be established in Kyrgyzstan's capital city, Bishkek. The countries involved are China, Kazakhstan, Kyrgyzstan, Tajikistan, Russia, and Uzbekistan. (*CND-Global Edition*, June 7 & 8, 2002.) (Constance A. Johnson, 7-9829)

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FOREIGN LAW BRIEFS –current titles

Compensation For Victims of Terrorist Actions: Israel as a Case Study, by Ruth Levush, May 2002. No. LL-FLB2002.01

The Netherlands: Same Sex Couples--Registered Partnership, Marriage and Adoption, by Karel Wennink
Oct. 2001. No. LL-FLB2001.04

The New Russian Code of Criminal Procedure, by Peter Roudik, Sept. 2001. No. LL-FLB 2001.03

Japan: Recent Legal Developments in Health Care, by Sayuri Umeda, July 2001. LL-FLB 2001.02

Capital Punishment in Foreign and International Law, by Constance Johnson, June 2001. LL-FLB 2001.01

Recent Publications from Great Britain Obtainable from the Law Library

Home Office. REVIEW OF FAMILY VISITOR APPEALS. London: Oct. 2001. 32 pp.

This consultation paper is part of a review of immigration and asylum policy. It covers the law relating to the refusal of visas and entry into the United Kingdom for family visitors. Statistics are provided on the current number of refusals. Details of the tribunal, appeals procedure, and funding of the system are documented. Reform measures include the reduction of fees currently payable by family visitors who wish to appeal against decisions to refuse them visas. The fee for an oral appeal has been reduced from £500 to £125. Written appeals have been reduced from £150 to £50. Anyone from a country that requires a visa to visit a family member living in the UK as well as asylum seekers may use the appeals process. The review also includes a re-examination of the definition of “family visitor” and a reconsideration of the question of to whom the fees are to be paid.

House of Commons. INDEPENDENT INVESTIGATION OF PRISONERS’ COMPLAINTS. Cm. 5170. London: July 2001. 84 pp.

The Prisoners’ Ombudsman investigates complaints on behalf of citizens in prison. During 2000-2001, more than 2,100 complaints were received, investigated, and resolved. This represents a 12% increase from the previous year. The increase is largely due to the success of the Prison Service in clearing its backlog of delayed cases and making new appointments to the Ombudsman’s staff. The report also contains the principal subjects of the complaints and the office’s success in meeting response deadlines, examples of replies given in anonymous form, recommendations and responses made, and issues of more general significance arising from individual complaints in regard to which the Ombudsman has approached the Prison Service.

----- POLICY DEVELOPMENT: IMPROVING AIR QUALITY. HC 232. London: Oct. 18, 2001. 51 pp.
This report responds to the recent emphasis on modern policy development in the government and focuses on the processes of the Department for Environment, Food and Rural Affairs for developing the Air Quality Strategy for England, Scotland, Wales and Northern Ireland. A known health risk, poor air quality is the result of pollution from several sources including automobiles, industry, domestic heating, and the generation of electricity. The report examines how to best implement the most efficient protections for human health against the risks of air pollution and the costs and benefits of improving air quality.

RECENT DEVELOPMENTS IN THE EUROPEAN UNION

Prepared by Theresa Papademetriou, Senior Legal Specialist, Western Law Division*

Seville European Council Meeting Concludes¹

The European Council convened in Seville on June 21-22, 2002, and addressed a number of critical issues including the future of the Union, enlargement, asylum and immigration, employment growth, and external relations. On the question of the future of the Union, the Council dealt with a number of sub-issues. It adopted procedural rules pertaining to the proceedings of its work and fully supported the existing system of rotating the presidency every six months, to maintain equality among the Member States. It called on the three institutions involved in the law-making process (the Commission, Parliament, and Council) to adopt an inter-institutional agreement by the end of the year 2002, in order to improve the quality of Community legislation as well as the conditions related to its transposition into domestic law. The Council adopted a declaration related to security, foreign policy, and defense concerning the capabilities required to combat terrorism. The Council also observed that the Union has substantial civilian and military capabilities and decided to take over from NATO in the former Yugoslav Republic of Macedonia.

The Council stated that the negotiations on enlargement will enter their final phase and stressed that the candidate states must continue to implement the *acquis communautaire*. It expressed the determination of the European Union to conclude the negotiations with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia by the end of 2002, provided that the candidates are ready. It foresees that the Treaty of Accession could be signed in the spring of 2003, so that the new members will have the opportunity to participate in the European elections scheduled for 2004. Cyprus and Turkey were mentioned specifically. The Council called upon the leaders of the Greek Cypriot and Turkish Cypriot communities to expedite their talks, “in order to seize this unique window of opportunity for a comprehensive settlement, consistent with the relevant UN Security Council resolutions, hopefully before conclusion of the negotiations.” In the case of Turkey, the Council welcomed the recent reform measures that country had taken toward meeting the priorities established in its Accession Partnership.

The Council approved a plan to combat illegal immigration, a plan for the management of external borders, and a Directive that establishes the minimum standards for the reception of those seeking asylum. On the question of illegal immigration, the Council gave high priority to the following issues: a) review before the end of 2002 of the list of third countries whose nationals require visas, b) introduction of a common identification system for visa data, and c) formal adoption of the Framework Decision on combating trafficking in human beings and the Framework Decision on the prevention of unauthorized entry, transit, and residence.

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¹ [Http://europa.eu.int/rapid](http://europa.eu.int/rapid)

On the issue of competitiveness and attainment of full employment, the Council welcomed the Broad Economic Policy Guidelines, which are focused on macroeconomic stability and growth. In the area of financial services and in light of events indicating that reform is needed in the area of corporate governance, the Council welcomed the adoption of the International Accounting Standards Regulation, the political agreements on Financial Conglomerates, and the Directives on Market Abuse and Occupational Pension Funds.

After consideration of the issue of external relations, the Council adopted a Declaration on the Middle East in which it strongly condemned all terrorist attacks against Israeli civilians and stressed that a just settlement can be achieved only through negotiation, with a view to ending Israeli occupation and establishing a democratic and viable Palestinian state based on the 1967 borders. It also called for the reform of the Palestinian Authority, early elections, and administrative reform. In addition, it adopted a declaration on India and Pakistan, approving the steps taken by Pakistan in its effort to crack down on cross-border terrorism and the measures announced by India in its attempt to lessen the tension. It furthermore noted the significance of free and fair elections in Kashmir and Jammu.

Ratification of the Cartagena Protocol on Biosafety²

The European Union ratified the Cartagena Protocol on Biosafety in June 2002. The Protocol, a legally binding instrument, was adopted by the Conference of the Parties to the Convention on Biological Diversity on January 29, 2000. It aims to safeguard the environment, specifically biological diversity, and human health. It includes provisions for the cross-border movement of genetically modified organisms (GMOs) based on the “precautionary principle.” It also establishes the Advanced Informed Agreement (AIA) procedure, under which states must be given all the pertinent information to enable them to decide whether or not to permit the import of GMOs that will be released into the environment.

Draft Directive Pertaining to Donation, Procurement, Processing, Storage, and Distribution of Human Tissues and Cells³

The proposal is designed to achieve the following aims: a) establishment of European Community standards for the quality and safety of tissues and cells of human origin that are used in the human body; b) regulation of the requirements regarding the suitability of donors of tissues and cells as well as the screening of donated substances of human origin across the European Union Member States; c) creation at the Community level of a register of accredited establishments involved in procurement testing and processing in the Member States; d) establishment of rules to ensure the traceability of tissues and cells of human origin from donor to patient and vice versa; and e) regulation of importation of human tissues and cells from third countries.

² [Http://europa.eu.int/rapid](http://europa.eu.int/rapid)

³ COM(2002) 319 final (Brussels, 6/19/2002).

The proposal does not cover decisions made by Member States with regard to the use or non-use of any specific type of human cells, including germ cells and embryonic stem cells. It also excludes human organs, blood and blood products, and organs, tissues and cells of animal origin.

The Directive stresses that tissue and cell transplantation programs must be based on the principle of anonymity of both donor and recipient, voluntary and free donation, and encouragement of nonprofit status for establishments dealing with tissue and transplantation services. Member States are required to provide appropriate penalties for infringement of the provisions of the Directive.

Food Labeling Directive⁴

The European Parliament gave its approval to amending the Food Labeling Directive proposed by the European Commission. The draft Directive aims to protect consumers, especially those suffering from food allergies, by providing a complete list of all ingredients in foods. Until now, compound ingredients that are less than 25 percent of the final product did not have to be listed on the label. The proposal will abolish this rule and will also establish a list of ingredients that may cause an allergic or intolerance reaction, such as cereals containing gluten, eggs, peanuts, soybeans, milk and dairy products, and others.

⁴ *Id.*