



Bulletin of Legal Developments

HIGHLIGHTS

CHINA: Securities Law completes regulatory framework for stock market80

JAPAN: Diet revises law on Japanese participation in UN peacekeeping operations..81

INTERNATIONAL COURT OF JUSTICE:
Germany brings case against the US in relation to the Vienna Convention on Consular Relations83

Pages 73 - 84

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European Countries

FRANCE

European Agreement relating to Persons participating in Proceedings before the ECHR - ratification, publication and reservations:

Following France's ratification of the convention on 17 November 1998, Decree no. 99-60 of 25 January 1999 published the European Agreement relating to Persons participating in Proceedings before the European Court of Human Rights.

The Agreement was opened for signature by member States of the Council of Europe at Strasbourg on 5 March 1996. It sets out a regime of immunities from jurisdiction from which persons participating in applications before the Court (either as parties, counsel, witnesses, experts or person invited by the President of the Court to participate) can benefit. In particular, these immunities include: freedom of speech, the protection of one's correspondence, immunity from disciplinary measures by reason of having communicated with the Court, the right to correspond with one's counsel and freedom of movement in the territories of the Contracting States.

The French government has annexed to its publication of the Agreement a number of "declarations" setting out reservations to be made in relation to a number of provisions on its ratification of the Accord.

D. no. 99-60, 25 janv. 1999; JO 30 janv. 1999, p. 1557.

La Semaine Juridique, 17.2.99.

Sixth Protocol, General Agreement on the Privileges and Immunities of the Council of Europe - ratification, publication and reservations:

Decree no. 99-61 of 25 January 1999 publishes the Sixth Additional Protocol to the General Agreement on the Privileges and Immunities of the Council of Europe made in Strasbourg on 5 March 1996.

The Protocol extends the privileges and immunities accorded to diplomatic agents to the Council of Europe and to the judges and registrars of the European Court of Human Rights to their spouses and infant children. Freedom of speech is guaranteed to the judges even after their term of office has been completed. The principle of the inviolability of the Court's archives is affirmed and all interference with its correspondence and communications to it is prohibited.

The French government has annexed a "declaration" to the Protocol, setting out what interpretation it assigns, in its ratification of the Protocol, to the term "exemptions from taxation and customs dues".

D. no. 99-61, 25 janv. 1999; JO 30 janv. 199, p. 1559.

La Semaine Juridique, 17.2.99.

Stock exchange investigations - person cannot be both prosecutor and judge:

In a judgment dated 7 May 1997 the *Cour d'appel de Paris*, annulling a decision of the *Commission des opérations de bourse* against the chairman of the board of directors of a company holding that it had published financial information that was "neither accurate, nor precise, nor truthful", stated the necessity of separating the functions of prosecutor and judge.

One of the members of the commission had been nominated as rapporteur and charged with investigating the allegations. The court held that he should not have been permitted to participate in the commission's deliberations.

Cass. ass. plén., R., 5 févr. 1999; Commission des opérations de bourse (Juris-Data no. 00460).

La Semaine Juridique, 17.2.99.

Criminal law - prosecution of French nationals for crimes committed outside France:

The *Cour de cassation* has held that, under Article 113-8 of the *Code pénal*, a French national may be prosecuted for a crime committed outside of the territory of the French Republic at the request of the *Ministère public* even in the absence of a formal denunciation, providing that the request was preceded by a complaint by the victim.

The court further held that it was irrelevant whether the complaint had been made in France or abroad, providing that, in the latter case, it had been transmitted to the relevant French authorities.

Cass. crim., R., 24 nov. 1998; H. (Juris-Data no. 005106).

La Semaine Juridique, 17.2.99.

GERMANY

Defamation - right to personality - freedom of the press:

The German Federal Labour Court (*Bundesarbeitsgericht*) has held that the "laziest employee of Germany" was entitled to receive damages for non-pecuniary harm to the tune of £1,380 which she had suffered as a result of the defendant, her employer, publishing a note in its newspaper stating that the plaintiff, "Germany's laziest employee" ... "worked only three days in three months".

The plaintiff who was a member of the defendant newspaper's administrative staff had called in sick quite a few times and had on each occasion presented a doctor's certificate whose validity was however questioned by the defendant. The Court held that the publication of the said statements constituted a serious violation of the plaintiff's right to personality (*Persönlichkeitsrechtsverletzung*), in particular as the plaintiff's personal details had not been sufficiently disguised by the defendant so that it had been possible to draw inferences as to the plaintiff's true identity. On balance, according to the Court, the freedom of the press did not trump the plaintiff's right to personality.

RUSSIA

Justices of the Peace - competence - appointment/election - terms of office:

A new Law on the Justices of the Peace in the Russian Federation was signed by the President of the Russian Federation on 17 December 1998.

Under the Law justices of the peace are the judges of the courts of general jurisdiction and are included in the unified judicial system of the Russian Federation (section 1). They are competent to deal with criminal cases for which the penalty does not exceed two years of imprisonment, divorce cases if there is no dispute in relation to children, other matrimonial matters with the exception of paternity cases, cases on the deprivation of parental rights, and adoption cases, minor property disputes (restricted by the amount of the claim), and some other disputes. A justice of the peace deals with the cases alone (section 3).

To become a justice of the peace a person must be a citizen of Russia who is at least 25 years old, who is a graduate of a law school, has practised as a lawyer for not less than five years, has not committed any actions which could blacken his reputation, and who has passed a qualification examination and been recommended for the position by a qualification collegium of judges (section 5).

The order of appointing (or electing) justices of the peace is to be determined by the legislation of the constituent parts of the Russian Federation (sections 1 and 6). A justice of the peace is appointed or elected for a period not exceeding five years.

The law came into force on the day of official publication.

Rossiiskaja Gazeta, 23.12.98, p.4. OK

United Kingdom

ENGLAND AND WALES

Family law - adoption - benefit of adoption to child - benefit of British nationality:

The House of Lords (Lord Nicholls of Birkenhead, Lord Hoffmann, Lord Hope of Craighead, Lord Hutton and Lord Millett) has held that on an application for an adoption order the first consideration for the court was the benefit which would accrue to the child throughout its childhood, including, in the case of a non-British child, the benefits to the child throughout its childhood from the acquisition of British nationality and a right of abode in the United Kingdom.

However, the court would be entitled to refuse the order if there were no such benefits and adoption was being used solely as a means of conferring citizenship prospectively upon an adult.

In re B (a Minor) (Adoption order: nationality).

Times, 15.3.99.

Employment law - racial discrimination - judicial office claim:

The Employment Appeal Tribunal (Morrison J, Mr M. Hack and Mrs T.A. Marsland) has held that an employment tribunal has no power to decide whether a person has been unlawfully discriminated against on the ground of his race by an advisory committee on justices of the peace which has failed to recommend his appointment as a lay magistrate.

Section 12 of the Race Relations Act 1976 provides "(1) It is unlawful for an authority or body which can confer an authorisation or qualification which is needed for, or facilitates, engagement in a particular profession or trade to discriminate against a person ... (b) by refusing or deliberately omitting to grant, his application for it". The EAT held that the advisory committee was not a qualifying body within the meaning of section 12.

Appointments to the lay magistracy were made by the Lord Chancellor on behalf of the Crown. To enable him to carry out that duty the Lord Chancellor had appointed a number of local advisory panels who interviewed candidates and then made recommendations as to their suitability for appointment. Section 12 required more

than that a body performed such a filtering function. The real target of the proceeding should have been the Lord Chancellor.

The EAT stated that there was a lacuna in the 1976 Act. It remained for Parliament to decide whether it would be appropriate for employment tribunals to be given jurisdiction over appointments to the lay magistracy.

Arthur v Attorney-General.
Times, 18.3.99.

Family law - adoption proceedings - appointment of guardian *ad litem*:

The Court of Appeal (Nourse and Ward LJ) has held that in contested adoption proceedings the appointment of a guardian *ad litem* is entirely a matter within the discretion of the judge. Accordingly, there was no reason to upset a decision to appoint a person who was independent and unbiased but who had long been involved in the case.

In re J (a Minor) (Adoption: Appointment of Guardian ad litem).
Times, 19.3.99.

Intellectual property - trade marks - whether name sufficiently distinctive:

The Court of Appeal (Simon Brown, Morritt and Robert Walker LJ) has held that the name of Elvis Presley is not a “distinctive mark” so as to be registrable under the Trade Marks Act 1938.

In re Elvis Presley Enterprises Inc.
Times, 22.3.99.

Company law - Part XIV, Companies Act 1985 - DTI inspectors cannot insist on confidentiality:

Sir Richard Scott VC has held that inspectors appointed under Part XIV of the Companies Act 1985 to investigate the affairs of a company have no legal obligation to those from whom they obtain information to insist on confidentiality undertakings being given by others before whom, for the purposes of their inquiry, they wish to put the information.

His Lordship held that, although inspectors were entitled as a matter of discretion to ask a witness to sign a confidentiality undertaking, refusal to comply, par-

ticularly in circumstances where the undertaking went further than was reasonable or necessary, did not represent a failure to give all reasonable assistance giving rise to contempt of court.

Thomas and Another v Maxwell, Secretary of State for Trade and Industry intervening.
Times, 23.3.99.

Defamation - criminal libel - section 8, Law of Libel (Amendment) Act 1888 - “person responsible for the publication of a newspaper”:

The Divisional Court of the Queen’s Bench Division of the High Court (Kennedy LJ and Blofeld J) has held that a newspaper reporter is not a “person responsible for the publication of a newspaper” within the meaning of section 8 of the Law of Libel (Amendment) Act 1888.

Accordingly, when criminal libel proceedings are commenced against a reporter, it is unnecessary for an order to be obtained from a judge in chambers as section 8 requires.

Gleaves and Others v Insall: Gleaves v Insall.
Times, 24.3.99.

Intellectual property - breach of copyright - whether public interest defence exists:

Jacob J, sitting in the Chancery Division of the High Court of Justice, dismissing an application for summary judgment, has held that there exists, in principle, a public interest defence to claims for breach of copyright.

Section 171(3) of the Copyrights Designs and Patents Act 1988 provided that nothing in Part I of the Act “affects any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise”. A public interest defence, albeit not of wide scope and unlikely to succeed unless the court could be reasonably certain that no right-thinking member of society would quarrel with the result, was available in principle.

Hyde Park Residence Ltd. v Yelland and Others.
Times, 24.3.99.

The Commonwealth

CANADA

Nunavut - Court of Justice:

On 11 March 1999 legislation establishing a court in the new territory of Nunavut received the Royal Assent. The Nunavut Court of Justice will begin operating when Nunavut becomes a territory on 1 April 1999.

The Nunavut Court of Justice will be a single level trial court handling matters normally dealt with by the territorial and supreme courts. Superior court judges will hear all criminal, family and civil matters.

Canadian Department of Justice, *News Release*, 12.3.99.

Criminal law - Omnibus bill - amendments to Criminal Code:

On 11 March 1999, Bill C-51, An Act to amend the Criminal Code, the Controlled Drugs and Substances Act and the Corrections and Conditional release Act, received the Royal Assent. The Act amends the criminal law in several areas and is to come into force in stages to permit the provinces and territories sufficient time to make administrative adjustments necessary to accommodate the changes.

Section 227 of the Criminal Code, the "year and a day" rule, came into force from 11 March 1999. The repeal affects any offence from which the Crown must prove that the accused caused death and is applicable to cases where the year and a day period is actually running when the repeal took effect, but not those where the period had already run out.

The Criminal Code has also been amended to exempt *bona fide* cruise ships from gambling offences when in Canadian waters. A definition of "international cruise ship" has been adopted, so that smaller ships cannot be set up as off-shore casinos, and gambling will not be permitted within five nautical miles from port or when the ship is in port. These amendments came into force on 15 March 1999, as did an amendment to permit the provinces to "conduct and manage" dice games in addition to other forms of gambling which they already operate.

In force from 18 March 1998 are amendments to the federal Competition Act (Bill C-20). These are complementary to other amendments to the Act creating new offences relating to "deceptive telemarketing". Bill C-51 defines those new offences as "enterprise crimes", bringing them within the Criminal Code scheme for the seizure and forfeiture of proceeds.

All other amendments in the Bill will come into force on 1 May 1999. These include amendments to the Criminal Code making it possible to use undercover officers posing as intermediaries offering the sexual services of others or posing as persons under 18 offering their own sexual services, and amendments to include a number of prostitution related offences within the existing electronic surveillance powers.

The electronic surveillance provisions of the Criminal Code are themselves amended to provide specific authority for officers to surreptitiously enter premises to remove surveillance devices once an investigation is concluded. Amendments also revise the provisions dealing with general search warrants, warrants to search for minerals, "dial number recorders" and tracking devices, standardising the wording which governs who may use these powers, and excluding persons other than peace officers or public officers with law enforcement duties from doing so.

The Criminal and Corrections Act is amended to exclude those convicted of a "criminal organisation offence" under the Criminal Code from eligibility for accelerated parole review.

The sentencing provisions of the Bill are to come into force on 1 July 1999. These include amendments making it clear that police officers can arrest offenders with or without warrants for alleged breaches of the conditions attached to conditional sentences.

Canadian Department of Justice, *News Release*, 15.3.99.

TRINIDAD & TOBAGO

Constitution - death penalty - right not to be deprived of life save by due process of law - applications to international bodies:

The Judicial Committee of the Privy Council (Lord Browne-Wilkinson, Lord Goff of Chieveley, Lord Steyn, Lord Hobhouse of Woodborough and Lord Millett), sitting as the final court of appeal for Trinidad and Tobago, has held that persons under sentence of death who had lodged petitions with international bodies (in this instance the Inter-American Commission on Human Rights) had a constitutional right not to be executed until final determination of their appeals. However, delay caused by the slowness of such bodies in dealing with the petitions would not prevent the death sentence from being carried out.

Lord Millett, delivering the majority judgment to which Lord Browne-Wilkinson and Lord Steyn were parties, held that the right for which the appellants contended was the general right not to have the outcome of any pending appellate or other legal process pre-empted by executive action. That general right was not created by the American Convention on Human Rights; it was accorded by the common law and affirmed by section 4(a) affirming the right not to be deprived of life "except by due process of law" of the Constitution of Trinidad and Tobago.

His Lordship further held that, in allowing only 18 months to complete any applications to the Inter-American Commission on Human Rights or the United Nations Human Rights Committee, the Board could be seen to have been unduly optimistic in *Pratt & Morgan v Attorney-General of Jamaica* [1994] 2 AC 1. However, where more than 18 months elapsed before the date on which a condemned man lodged a petition to an international body and its final determination, it would be appropriate to add the excess to the period of 18 months allowed in *Pratt*.

Lord Goff and Lord Hobhouse delivered a dissenting judgment.

Thomas and Another v Baptiste and Others.

Times, 23.3.99.

SOUTH AFRICA

Taxation:

Double taxation agreements have been concluded between the Republic of South

Africa and the Islamic Republic of Iran, the Republic of Indonesia and Namibia.

Government Gazette 19637 of 22.12.98; *Government Gazette* 19766 of 16.2.99; and *Government Gazette* 19780 of 19.2.99.

Police services:

The South African Police Services Act provides for the establishment and control of municipal police services by the Executive Council of a municipality (section 64A).

The service must operate under civilian supervision (section 64j), on a 24-hour basis, not interfere with existing traffic policing, and must improve effective policing in that part of the province. Approval depends upon consultation with the National Commissioner of Police and all expenses incurred must come out of the account of the municipality concerned.

With due regard to the South African Constitution and the fundamental rights of every person, municipal police may perform the functions conferred on them by the Minister of Safety and Security. They will be peace officers within their own areas of jurisdiction, although they may "cross jurisdictions" in pursuit of persons reasonably suspected of having committed an offence within their jurisdiction or by agreement with other municipalities.

Act 83 of 1998, the Police Services Amendment Act.

Competition:

The Competition Act was enacted on 30 October 1998. The Act will come into force on a date (or dates) to be determined by the President.

The legislation is aimed at providing equal opportunities for all South Africans, promoting economic efficiency, providing open markets and creating an environment in which South Africa can compete effectively in international markets. It also establishes bodies to ensure adequate monitoring of economic competition and to give effect to South Africa's international obligations.

The Act applies to all economic activity in, or having an effect in, the Republic.

Specifically excluded are collective bargaining, a collective agreement, the rules of a professional association, acts subject to or authorised by public regulation, or concerned action aimed at a non-commercial socio-economic objective or similar purpose (section 3).

Chapter 2, Part A of the Act deals with restrictive practices, distinguishing between horizontal and vertical practices (sections 4 and 5 respectively). Part B covers the abuse of a dominant position, while Part C lists the instances in which exemption from the chapter may be obtained.

Mergers, which are defined in section 12 as “direct or indirect acquisition or indirect establishment of control, by one or more persons, over all significant interests in the whole or part of a business of a competitor, supplier, customer or other person ...” are addressed in Chapter 3. Chapter 4 provides for the establishment of a Competition Commission, Tribunal and Appeal Court, while Chapter 5 lays down procedures for their operation. Chapters 6 and 7 provide respectively for remedies and enforcement and offences. Act 89 of 1998, the Competition Act.

Status of marriages:

The Recognition of Customary Marriages Act was adopted on 2 December 1998 and will come into operation on a date to be determined by the President. Under the previous dispensation, a customary marriage was not recognised as a valid marriage, with detrimental effects for the parties concerned.

The Act defines customary marriage as a marriage concluded in accordance with customary law. Customary law, in turn, is defined as “the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples” (section 1(iii) and (ii) respectively). The Act provides that any marriage valid at customary law, either when the Act comes into operation or concluded thereafter, is recognised as a valid marriage “for all purposes”. Where a person is a spouse in more than one customary marriage, all such valid customary marriages are valid

marriages for all purposes - so validating the principles of polygamy and polyandry in South African law.

Validity requirements are set out in section 3 and the parties are obliged to register their marriage (section 4). An important principle is introduced in section 6 which provides for the equal status and capacity of spouses, so ending the subordinate status of the wife in a customary union and attempting to meet the requirements of the Bill of Rights embodied in the South African Constitution Act 108 of 1996. The propriety consequences of a customary marriage are set out in section 7.

Act 120 of 1998, the Recognition of Customary Marriages Act.

Maintenance - rights of the child:

The Maintenance Act was adopted on 27 November 1998 to give effect to South Africa’s obligations under the Convention on the Rights of the Child, to which the Republic had acceded on 16 July 1995.

Article 27 of the Convention provides that the State parties to the Convention recognise the right of all children to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. It further specifically provides that “all appropriate measures” should be taken to secure the recovery of maintenance for the child from its parents.

In a somewhat unusual move, the preamble to the Maintenance Act recognises that the Republic has fallen short in its fulfilment of its international obligations, particularly with regard to maintenance. The Act aims at redressing this shortcoming pending the implementation of a far-reaching revision of the entire maintenance system on the basis of a yet to be completed Law Commission investigation. Act 99 of 1998, the Maintenance Act. NB

Asia and the Pacific

CHINA

Legislation - commercial - regulation of stock market:

The PRC Securities Law was passed at the Standing Committee of the 9th National People’s Congress on 29 December 1998.

This is a long-awaited piece of legislation which completes the regulatory framework for the regulation of the stock market, following the promulgation of the PRC Company Law a few years ago. It has 12 chapters and 214 provisions. Article 214 provides that it will come into force on 1 July 1999.

The law applies to shares, corporate debentures and other securities defined by the State Council. Regulation is done under the principle of centralised regulation by a body appointed by the State Council. The various chapters deal with the regulation of issuance and trading of securities, intermediaries, the exchanges, the clearing houses, the functions and limitations of the regulator, and the provision of legal liabilities for contravention of the law.

On the share issuance aspect, the provisions complement the requirements of the Company Law. Article 10 states that no public offer is allowed unless it is approved by the State Council regulatory body or other ministries authorised by the State Council. The appointment of an issuance committee consisting of external and internal experts from the regulatory body is a step forward in promoting transparency and accountability of the approval process.

In accordance with the principle of centralisation, the law recognises trading through a stock exchange as the chief means of trading, although it also provides that the State Council may authorize other means. Article 95 defines an exchange as a place for trading in securities at which price is fixed centrally by competitive bid. Margin-trading and stock-borrowing are specifically prohibited with a view, no doubt, to providing a more stable environment for the growth of the market. The law also provides extensively against trading malpractices which are fraudulent or disadvantageous to clients, such as mis-statements, insider dealing and market manipulation. There is a chapter on company acquisitions, which recognises “acquisitions by tender offer” and “acquisitions by private agreement”. Only Chinese nationals and legal persons are allowed to open accounts for participating in the domestic market.

Only limited liability companies or companies limited by shares are allowed to apply to be intermediary firms. The minimum registered capital for a general firm that can conduct a range of business, including proprietary trading, is RmB 500m. The minimum capital for an agency firm is RmB 50m. Persons engaged in the management and operation of the firm are to have the requisite standard and be fit and proper. The new Law requires firms to deposit clients’ assets used for settlement of trades into an independent account in a designated commercial bank and to keep separate cash and securities accounts for each client. A measure of self-regulation is envisaged with the establishment of a national securities’ association comprised of member firms.

The functions of the regulator set out in Article 167 are similar to those found in major markets. To strengthen its ability to enforce the law, specific powers of investigation are also provided. The regulator has power to impose administrative penalties, particulars of which are set out in Chapter 11. However, to ensure that checks and balances are in place, the Law provides for disclosure of its decisions on misconduct and recognises avenues for review and appeal. Suspected criminal activities may be referred to the appropriate judicial authorities. The law also makes provision for civil liability.

This Law is aimed at regulation of the domestic market. It specifically states that the topic of issuance and trading of securities by overseas investors is reserved for further rules to be enacted by the State Council. AL

JAPAN

Antipersonnel land mines:

On 1 October 1998 the Japanese Diet endorsed ratification of the 1997 Ottawa Convention on the Prohibition, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction. The Diet also approved bills to enact a new domestic law, the Law Concerning the Prohibition of the production and the Regulation of the Possession of Anti-Personnel Landmines, and to revise relevant legislation in line with the treaty.

Under the new law, those who produce or possess anti-personnel landmines in Japan are liable to be fined a maximum of \$3 million or to be detained for up to seven years. However, it is unclear whether the law extends to United States forces stationed in Japan (the US is not a signatory to the Ottawa Convention). The Japanese government has taken the view that whilst the US is prohibited from using landmines in Japan, its forces are permitted to continue to possess antipersonnel landmines on their bases in Japan because those bases are not under the jurisdiction of the Japanese government.

Peacekeeping operations:

On 5 June 1998, the Diet passed a bill (Law No. 102) revising the Law Concerning Co-operation with United Nations' Peacekeeping Operations and Other Operations.

The revised law consists of three main provisions. Firstly, the revised law permits Japanese Self-Defence Force commanders taking part in United Nations' peacekeeping operations to order defensive fire if they deem it necessary. Under the unrevised law, the decision to use force fell to the individual members of a peacekeeping unit if they, in their discretion, deemed a situation to be life threatening. The revision was stated to be justified by the experience of Japanese peacekeeping forces in Cambodia and Rwanda.

The revised law also permits civil servants and persons not employed by the government to participate in international election monitoring activities sponsored by non-UN organisations, such as the OAS or the OSCE.

Finally, the law aims to enable Japan to co-operate with designated international organisations in extending supplies for humanitarian purposes, even in areas where there has not yet been a ceasefire.

Fishing agreement:

In 1965 the governments of Japan and of the Republic of Korea concluded an Agreement on Fishing. In May 1996 the two governments started negotiations on a new agreement, to be compatible with the 1982 UN Convention on the Law of the

Sea (ratified by the two States in 1997) and permitting them to set 200 mile exclusive economic zones around their shores.

Under Article 10(2) of the 1965 Agreement either party was entitled to unilaterally terminate the agreement on a year's notice. Following a deadlock in the negotiations, Japan notified South Korea that it wished to terminate the Agreement as of 23 January 1998. Although lawful, this was seen as an unfriendly act by South Korea.

Within a year of Japan's notification, the two States concluded a new fishing agreement, which entered into force on 23 January 1999.

Jurisdiction - interplay between international law and municipal law - violation of regulations governing fishing activities:

The Nagasaki District Court has held three South Korean fisherman guilty of illegally fishing in Japanese territorial waters.

The major issue was the legal status of the area in which the seizure had taken place. The 1965 Agreement on Fisheries between Japan and the Republic of Korea established fishery zones to a limit of 12 miles measured from each party's "coastal baselines". It also provided for joint regulation zones outside of the 12 mile limit. In these joint regulation zones, Japan and South Korea exercised exclusive control and jurisdiction over their own fishing vessels. The area in question was located within a joint regulation zone.

During the trial, the defendants argued that Japan had no jurisdiction over them. Behaviour in the area was regulated by the Agreement which, as an international treaty, should be given priority over the municipal fisheries laws. The District Court, however, held that there was nothing in the Agreement that limited Japan's authority over the area.

In 1997, the Hamada Branch of the Matsue District Court dismissed identical charges against a South Korean fisherman, leaving the courts divided on the issue.

Mainichi Daily News, no. 27016, 25.6.98.
TS

European Union COMMISSION OF THE EURO- PEAN COMMUNITIES

Accession to EU - Malta - Commission opinion:

Following Malta's decision to reactivate its application for membership of the European Union, on which the European Commission gave an opinion in 1993, on 17 February 1999 the Commission adopted an updated opinion on Malta's application.

The Commission's opinion states that Maltese enterprises, particularly those in the public sector, will need to be restructured, the budget deficit reduced and the introduction in January 1999 of a VAT system followed by supplementary measures to bring it into alignment with the EC *acquis* on that subject. Malta will also have to align on the Common Customs Tariff and abolish taxes on the import of certain products.

The Commission recommended that the Council of the European Union give the go-ahead to the screening of Malta's legislation with a view to enabling negotiations to start at the end of the year. The Commission will work with Malta to put together a comprehensive national plan for EU accession.

European Commission, *The Week in Europe*, 25.2.99.

Competition law - joint venture - Commission approval:

The European Commission has approved a joint venture which will combine the UK package holiday operations of the Thomas Cook Group and Carlson Leisure Group Ltd. (UK). The Commission held that the joint venture had a market share which did not cause competition concerns and which was smaller than those of some of its competitors.

The new company, Thomas Cook Holdings Ltd., will be jointly controlled by Westdeutsche Landesbank, Preussag and Carlson. It will be vertically inte-

grated, supplying package holidays to UK consumers through its own chain of travel agents and using its own charter airline capacity.

The European Commission, *The Week in Europe*, 11.3.99.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

VAT - insurance transactions - whether procurer of insurance for customers exempt:

The European Court of Justice, ruling on a reference under Article 177 of the EC Treaty from the House of Lords for a preliminary ruling on questions relating to the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the law of the Member States relating to turnover taxes, has held that insurance transactions which are exempt from valued added tax included the activities of a person who, not being himself an insurer, procured cover for his customers through a block policy with an insurer who assumed the risks insured.

The Court held that it was contrary to Community law for Member States to restrict the scope of the exemption for insurance transactions to persons authorised under national law to carry out the activity of insurer.

Card Protection Plan Ltd. v Commissioner of Customs and Excise (Case C-2349/96).
Times, 18.3.99.

International

INTERNATIONAL COURT OF JUSTICE

Vienna Convention on Consular Relations - Germany brings case against USA - request for provisional measures:

On 2 March 1999 Germany brought a case against the United States of America to the International Court of Justice in a dispute concerning alleged violations of the 1963 Vienna Convention on Consular Relations with respect to the case of Karl and Walter LeGrand, two German nationals convicted of murder in Arizona.

Karl LeGrand was executed on 24 February 1999. His brother Walter was scheduled to be executed on 3 March .

In its application, Germany maintained that Karl and Walter LeGrand were tried and sentenced to death without being advised of their rights to consular assistance as required by the Vienna Convention. It asked the Court to adjudge and declare that the US has violated its international legal obligations under the Vienna Convention, that the criminal liability imposed on Karl and Walter LeGrand in violation of international legal obligations is void and should be recognised as void by the legal authorities of the US, that the US should provide reparation in the form of compensation and satisfaction for the execution of Karl LeGrand and that it should restore the *status quo ante* in the case of Walter LeGrand, that is to re-establish the situation that existed before the detention of, proceedings against and conviction and sentencing of that German national.

As a basis of the Court's jurisdiction, Germany invoked Article 1 of the Optional Protocol to the Vienna Convention Concerning the Compulsory Settlement of Disputes, to which both Germany and the US are parties. Germany also filed an urgent request for interim measures of protection asking the Court to indicate that the US should take all measures at its disposal to ensure that Walter LeGrand was not executed pending the final decision in the proceedings.

On 3 March the Court gave its decision on Germany's request. The Court unanimously called on the US to take all measures at its disposal to ensure that Walter LeGrand was not executed pending a final decision in the proceedings, requested the government of the US to inform it of all measures taken in implementation of the order and instructed it to transmit the order to the Governor of Arizona. It was the first time that the Court has indicated provisional measures *proprio motu* and without any other proceedings, pursuant to Article 71(1) of its Rules. Walter LeGrand was executed as scheduled.

International Court of Justice, *Communiqués Nos. 99/7, 99/8 & 99/9*, 2/3.3.99.

LAND MINES CONVENTION

Entry into force:

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction entered into force on 1 March 1999.

The Convention was opened for signature in Ottawa on 3 December 1997. As of 3 March, 134 States had signed and 65 had ratified the Convention, the most recent being Ukraine, on 24 February 1999. Canadian Department of Foreign Affairs and International Trade, *News Release No. 46 of 1999*, 1.3.99.