

Middle Eastern Law

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I. Overview

In the Middle East the year 2005 will be remembered as a year of dramatic legal developments, from constitutional changes or proposed changes such as those in Egypt, Iraq, and Israel, to democratization efforts throughout the region, to WTO accession, to improvements in commercial law and intellectual property protections. In the materials that follow, individual country reporters highlight what, in their view, are some of the more dramatic developments in countries of the Middle East. Special reports are also provided on WTO accession and Islamic law in the Middle East.

A. WTO ACCESSION IN THE MIDDLE EAST*

The current members of the WTO in the Middle East are Bahrain, Egypt, Israel, Jordan, Kuwait, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Tunisia, Turkey, and the United Arab Emirates (U.A.E.). Upon accepting a country's application, the WTO establishes a working party comprised of its members to examine the application, and thereafter the WTO members and the applicant country enter into a series of negotiations to arrive at mutually acceptable terms of accession. The accession process on average takes five years, but may take over a decade.

The Kingdom of Saudi Arabia, for instance, has been in the process of accession since December 1995. But following years of complicated negotiations, the WTO formally ap-

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a. Nabil A. Issa and Farida Midani of Baker Botts LLP in, respectively, Dubai/Riyadh and Houston, Texas, prepared the report on WTO accession in the Middle East. Mr. Issa previously researched the WTO's impact on the financial services laws of the U.A.E. as a Fulbright Scholar.

proved Saudi Arabia's terms of accession on November 11, 2005. In order to improve foreign investment and to improve its prospect of joining the WTO, Saudi Arabia recently revamped many of its foreign investment, intellectual property, insurance, capital markets, tax, and insurance regulations. Pending some formalities, Saudi Arabia is expected to become the 149th member of the WTO in December 2005. Saudi Arabia will be the last of the six members of the Gulf Cooperation Council (GCC) to join the WTO. This is especially significant because the GCC will thereafter be able to negotiate as a group within the organization on issues that are of common importance, such as improving the terms of trade for petrochemical, aluminum, fertilizer, and other products that involve petroleum-based feedstock.

Other countries in the Middle East in the process of negotiating terms of accession are Algeria, the Lebanese Republic, Sudan, and Yemen. The WTO has also established working parties for Afghanistan, Iran, Iraq, and Libya, but these countries have not yet begun negotiations with current WTO members.

B. ISLAMIC LAW IN THE MIDDLE EAST^b

The role of Islamic law varies in each of the jurisdictions of the Middle East. For example, the Basic Law of Saudi Arabia, which essentially serves as the constitution of the Kingdom, provides that the *Shari'ah*, consisting of the Holy *Qur'an* and the *Hadiths* (traditions) of the Prophet Mohammed, is the fundamental law of Saudi Arabia. In the U.A.E., however, the constitution simply provides that the Islamic *Shari'ah* shall be a principal source of legislation rather than the only source of law in the U.A.E.

The countries in the Middle East that are self-declared Islamic States are: Afghanistan, Bahrain, Iran, Oman, Pakistan, Saudi Arabia, and Yemen. The following jurisdictions also have constitutions that provide that Islam is the state religion: Algeria, Bangladesh, Egypt, Iraq, Jordan, Kuwait, Libya, Morocco, Qatar, Tunisia, and the U.A.E. The only countries in the Middle East that do not fit into either category are Lebanon, Syria, and Sudan.

The growing interest in Islamic law, however, has less to do with the official religion of a particular jurisdiction than with the recent exponential growth of and interest in *Shari'ah*-compliant financing. In addition to the conversion of a number of GCC-based banks from conventional to Islamic financial institutions, U.S. and European banks such as Citibank, HSBC, and Credit Suisse First Boston, among others, have established Islamic financing divisions to provide Islamic banking services, and many boutique Islamic financial institutions are springing up worldwide. Almost every major recent financing in the GCC has involved at least one tranche of Islamic financing. In addition, retail Islamic banking is also experiencing tremendous growth as consumers seek *Shari'ah*-compliant financial products. To ensure compliance with the precepts of *Shari'ah*, banks providing Islamic services and products maintain in-house *Shari'ah* boards consisting of *Shari'ah* scholars who review transactions and products for compliance.

b. Nabil A. Issa, an attorney with Baker Botts LLP in Dubai, U.A.E., and Riyadh, Saudi Arabia, prepared the report on Islamic law in the Middle East. Mr. Issa expresses thanks to Mr. Robert Blitt of the U.S. Commission on International Religious Freedom in Washington, D.C., and to Patrick Campos of Baker Botts LLP, for their invaluable assistance with this report.

II. Algeria^c

The year 2005 was an eventful year for Algeria, dominated by the historic vote on September 30, 2005, in favor of a government backed Charter for Peace and Reconciliation. The Charter was aimed at securing peace in Algeria after a ten-year bloody civil war in the 1990s.¹ The Charter was presented by President Abdelaziz Bouteflika as a way of moving past the divisiveness of the civil war. The war was sparked in 1992 after a military-backed coup stopped national elections when it became clear that a fundamental Islamist group would win.² The ensuing war pitted Islamists against the military-backed government. Civilians, torn between supporting the government and supporting the rebels, bore the brunt of much of the hostilities. It is believed that more than 150,000 people died in the war and more than 6000 remain missing (referred to as the disappeared).³

Critics of Bouteflika's plan warned that approval of the Charter would permit the government to absolve itself of responsibility for the fate of disappeared persons. In response to such criticism, President Bouteflika had earlier offered compensation to families of disappeared persons. But this offer was rejected.⁴ Of particular concern for many people is a provision in the Charter absolving government-backed security forces of responsibility for disappeared persons. Thus, one critic has dubbed the Charter as a referendum permitting the government "to blot out past crimes."⁵ Other critics have noted that no official airtime was provided to opponents of the referendum on official state-run media sources.⁶

Most critics were silenced by the vote that approved the Charter by an overwhelming majority of voters. Although some described the mood of the people on the day of the election as excited, exit polls suggested others merely desired peace, were war-weary, and saw approval of the Charter as the best way to move past the pain of the recent war.⁷ Thus, supporters of the referendum focused on the desire for peace and moving forward as a reason why the referendum should be approved, stating that "[w]e want tomorrow to be better."⁸

The Charter itself is tailored to provide a partial amnesty for rebels and militants who fought the government during the war. The government is hoping that approval will end continued fighting with isolated militants, whose numbers are estimated to remain around one thousand, and who still carry out sporadic attacks, mostly against soldiers.⁹ Although

c. Bernadette M. Chala, an attorney with Lewis Brisbois Bisgaard & Smith LLP in Costa Mesa, California, prepared the report on developments in Algeria.

1. Elaine Ganley, *Algerians Overwhelmingly Vote for Peace*, ABC NEWS, Sept. 30, 2005, <http://abcnews.go.com/International/wireStory?id=1172766&CMP=OTC-RSSFeeds0312>.

2. BBC News, Country Profile: Algeria, http://news.bbc.co.uk/2/hi/middle_east/country_profiles/790556.stm (last updated Dec. 22, 2005); see also République Algérienne Démocratique et Populaire (People's Democratic Republic), <http://www.el-mouradia.dz/index.html> (last visited Mar. 13, 2006).

3. *Light Shed on Algeria Disappeared*, BBC NEWS, Mar. 31, 2005, <http://news.bbc.co.uk/2/hi/africa/4398575.stm>.

4. *Id.*

5. BBC News, Q&A: Algerian Referendum, <http://news.bbc.co.uk/2/hi/africa/4290826.stm> (last updated Sept. 29, 2005).

6. Human Rights Watch, Algeria: Impunity Should Not be Price of Reconciliation (Sept. 3, 2005), <http://hrw.org/english/docs/2005/09/01/algeri11679.htm>.

7. Ian Pannell, *We Want Tomorrow to Be Better*, BBC News, Sept. 28, 2005, <http://news.bbc.co.uk/2/hi/africa/4292206.stm>.

8. *Id.*

9. William Wallis, *Algeria Claims Large Turnout for Peace Vote*, FIN. TIMES, Sept. 30, 2005, at 11.

not specific as to how the provisions of the Charter will be implemented, the terms of the Charter call for re-establishing many rights for Islamists who lost their jobs as a result of the civil war.¹⁰ The Charter will also limit prison terms for rebels already jailed and will provide compensation to families of those killed in the conflict. The government made clear, however, that anyone fomenting the “policy of pseudo-jihad against the nation” would remain banned from entering politics.¹¹ The charter also exempts those who murdered, raped, or publicly bombed during the civil war. Again, it remains unclear exactly how the terms of the Charter will be implemented in light of these limits.¹² Originally, the Charter was intended to grant amnesty to all participants in the war, but the kidnap and subsequent murder of two Algerian diplomats in Iraq earlier in the year prompted a change after the lead Islamist group in Algeria, the Salafist Group, praised the killings, to the outrage of many Algerians.¹³

Although there are citizens who suffered during the war and are unhappy with the Charter and against the forgiving of killers, many others are prepared to “forget the past [in order to] build a future.”¹⁴

In 2005, Algeria continued to strive to improve relations with France, its former colonial occupier and with whom Algeria fought a brutal war for independence that ended in 1962. Thus, France and Algeria are scheduled to sign an informal friendship treaty by the end of this year.¹⁵

III. Bahrain^d

A. ECONOMIC AND SOCIAL LIBERALIZATION

The Kingdom of Bahrain continues to move toward economic and social liberalization. The key recent development in Bahraini economic policy was the September 14, 2004 bilateral Free Trade Agreement (FTA) with the United States.¹⁶ The FTA facilitated the removal of tariffs on virtually all of Bahrain’s products¹⁷ and strengthened the protection of intellectual property rights in Bahrain by providing that Bahrain ratify several intellectual property treaties.¹⁸

10. *Algeria to Vote on Amnesty Plan*, BBC NEWS, Aug. 14, 2005, <http://news.bbc.co.uk/2/hi/africa/4151710.stm>.

11. *Id.*

12. Ganley, *supra* note 1.

13. *Press Fury at Killing of Algerians*, BBC NEWS, July 28, 2005, <http://news.bbc.co.uk/2/hi/middle-east/4724323.stm>; see also *Algeria to Vote on Amnesty Plan*, *supra* note 10.

14. *Algerian Voters Back Peace Plan*, BBC NEWS, Sept. 30, 2005, <http://news.bbc.co.uk/2/hi/africa/4296474.stm>.

15. *France Orders Positive Spin on Colonialism*, ASSOCIATED PRESS, Oct. 21, 2005, <http://www.hartford-hwp.com/archives/61/148.html>.

d. Ariel B. Waldman and Jared C. Miller, attorneys respectively in the Washington, D.C. and Boston offices of Wilmer Cutler Pickering Hale and Dorr LLP, prepared the report on developments in Bahrain.

16. Press Release, Office of the U.S. Trade Representative, United States and Bahrain Sign Free Trade Agreement (Sept. 14, 2004), available at http://www.ustr.gov/Document_Library/Press_Releases/2004/September/United_States_Bahrain_Sign_Free_Trade_Agreement.html.

17. *Id.*; see also Press Release, Office of the U.S. Trade Representative, USTR Releases 2005 Inventory on Foreign Trade Barriers (Mar. 30, 2005), available at http://www.ustr.gov/Document_Library/Press_Releases/2005/March/USTR_Releases_2005_Inventory_of_Foreign_Trade_Barriers.html.

18. See Agreement on the Establishment of a Free Trade Area, U.S.-Bahrain, ch. 14, May 27, 2004, available at http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Bahrain_FTA/final_texts/asset_upload_file211_6293.pdf.

In social policy, Bahrain's recent focus has been in the area of women's and children's rights. Two recently announced policies highlight this trend. First, children born to Bahraini mothers and foreign fathers will receive citizenship. Second, the government has approved the establishment of an alimony fund for women with children whose ex-husbands fail to pay alimony.¹⁹

B. CONSTITUTIONAL AND DEMOCRACY DEVELOPMENTS

A review of Bahrain's progress toward democratization in the past year reveals a mixed record. On the one hand, Bahrain continued the progress evident since February 2002 when Sheikh Hamad bin Isa Al-Khalifa declared Bahrain a constitutional monarchy.²⁰ Following a significant push toward democratization in 2002—including the adoption of a new constitution and the first municipal and parliamentary elections in Bahrain in nearly fifty and thirty years, respectively²¹—Bahrain has continued its internal push toward democratization. Political societies continue to mobilize in support of constitutional reform, highlighted by the organization of a conference entitled *Towards a Contractual Constitution for a Constitutional Monarchy*.²² On the other hand, three incidents indicate that democratic reform in Bahrain remains in its embryonic stage. First, the Bahraini government blocked international speakers from entering Bahrain to participate in the constitutional reform conference,²³ citing the avoidance of outside interference in domestic matters.²⁴ Second, the parliament rejected a law that would have legalized the existence of political parties.²⁵ Third, the government continued occasional censorship of expression supporting constitutional reform.²⁶

IV. Egypt

Egypt accomplished a noticeable step toward freedom and democracy in May 2005. Section 76 of the Egyptian Constitution was amended to allow multiple candidates and direct voting in presidential elections.²⁷ Although this amendment is restrictive in nature, it is, nonetheless, a good step toward freedom and liberal political governing. This amendment allows political parties to participate in presidential elections if they have been established for at least five years and receive at least 5 percent of the Shura and General Assembly seats.²⁸ Overly burdensome are the restrictions imposed on independent candidates, who

19. U.S. Dep't of State, Bahrain: Country Reports on Human Rights Practices—2004 (Feb. 28, 2005), <http://www.state.gov/g/drl/rls/hrrpt/2004/41719.htm> [hereinafter Bahrain Country Report].

20. Energy Information Administration, Country Analysis Briefs, Bahrain (Nov. 2004), <http://www.eia.doe.gov/emeu/cabs/bahrain.html>.

21. U.S. Dep't of State, Bureau of Near Eastern Affairs, Background Note: Bahrain (Jan. 2006), <http://www.state.gov/t/pa/ei/bgn/26414.htm>.

22. Bahrain Country Report, *supra* note 19.

23. *Id.*

24. *Charter Achievements Highlighted; Attempts to Stir Trouble Will Be Foiled*, BAHRAIN TRIBUNE, Feb. 15, 2004, <http://www.bahraintribune.com>.

25. Bahrain Country Report, *supra* note 19.

26. *Id.*

e. Hassan H. Elkhailil, managing partner of Elkhailil & Associates, LLC in Marietta, Georgia, prepared the report on developments in Egypt.

27. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT at art. 76.

28. *Id.*

must meet additional requirements, such as the endorsement by at least 300 elected officials, at least sixty-five of which must be MPs, twenty-five must be senators, and the rest may be local officials.²⁹ Despite these restrictions, in September 2005, Egypt witnessed for the first time a multi-candidate presidential race that resulted in the victory, as expected, of the incumbent Hosni Mubarak.

In other developments, the regional trade Partnership signed in December 2004 between Egypt, Israel, and the United States, began to have an impact in 2005 with the creation of an estimated 35,000 jobs.³⁰ Also, a controversial law that places restrictions on the activities of non-governmental organizations (NGOs) was widely protested. Under this law, the authority over NGOs was transferred from the courts to the Ministry of Social Affairs. Many NGOs believe that the motive behind this law is to weed out undesirable organizations, particularly those engaged in human rights activities.³¹

V. Iran^f

A. THE 2005 PRESIDENTIAL ELECTIONS

Economic concerns led the agenda for the June 2005 presidential election in Iran. Reformists argued that increasing political accountability and improving diplomatic relations were the best ways to battle economic troubles.³² Most candidates held the same view on the country's nuclear program—they stressed a readiness to negotiate, but scorn for the West's attempt to increase the pressure.³³ Frustration over the lack of economic reform led many students and intellectuals to urge a boycott of the vote.³⁴

Although former president from 1989-1997 Akbar Hashemi Rafsanjani seemed to lead the polls up to the election, ultra-conservative Mahmoud Ahmadinejad won in the runoffs with 62 percent of the vote.³⁵ Prior to the election he served as Tehran's mayor.³⁶ He has little or no experience in foreign policy matters and based his populist campaign platform on poverty, social justice, and the distribution of wealth inside Iran.³⁷ The United States voiced concern over the fairness of the vote both before and after the election.³⁸

29. *Id.*

30. Press Release, Office of the United States Representative, United States, Egypt and Israel to Launch Historic Trade Partnership USTR Zoellick to Participate in Signing in Cairo (Dec. 10, 2004), available at http://www.ustr.gov/Document_Library/Press_Releases/2004/December/United_States_Egypt_Israel_to_Launch_Historic_Trade_Partnership_USTR_Zoellick_to_Participate_in_Signing_in_Cairo.html?ht=.

31. Cam McGrath, *Rights-Egypt: Sword Hangs over Civil Society*, INTER PRESS SERVICE NEWS AGENCY, May 30, 2005, <http://www.ipsnews.net/interna.asp?idnews=18494>.

f. Anahita Ferasat, a third year student and member of the International Law Review at Loyola Law School in Los Angeles, prepared the report on developments in Iran.

32. BBC News, Q&A: Iran's Election Issues, http://news.bbc.co.uk/2/hi/middle_east/4087154.stm (last updated June 15, 2005).

33. *Id.*

34. *Id.*

35. *Iran Hardliner Hails Poll Victory*, BBC NEWS, June 25, 2005, http://news.bbc.co.uk/2/hi/middle_east/4622501.stm.

36. *Iran's Presidential Hopefuls*, BBC NEWS, June 18, 2005, http://news.bbc.co.uk/2/hi/middle_east/4087114.stm.

37. Jonathan Marcus, *Few Clues for West on Iran's Future*, BBC NEWS, June 15, 2005, http://news.bbc.co.uk/2/hi/middle_east/4622547.stm.

38. Daniela Relp, *US Concern over Iran Poll Result*, BBC NEWS, June 15, 2005, http://news.bbc.co.uk/2/hi/middle_east/4623195.stm.

B. THE ECONOMY

Iran's economy is dominated by the state. Iran's per capita income is a third of what it was before the 1979 revolution. The economic infrastructure is still recovering from the Iran-Iraq war and is in dire need of foreign investment. Former President Khatami (1997-2005) spent much of his two terms urging the Majles to adopt reforms designed to encourage privatization, foreign investment, and reduction of the country's reliance on oil revenues.³⁹ Conservative MPs were reluctant to release any of the government's power, even though economic realities such as inflation, high unemployment rates, and a bloated and inefficient public sector highlighted the need for increased economic liberalization.⁴⁰ In fact, some hardliners in the government view foreign investors as exploiters.⁴¹ These hardliners also fear that allowing foreign money into Iran would give outsiders control over their country.⁴²

C. THE NUCLEAR PROGRAM

President Ahmadinejad inherited a major foreign policy crisis over Iran's use of nuclear energy. Since early 2003, Iran's process of uranium enrichment has been the subject of international debate. The International Atomic Energy Agency has visited Iran regularly since then to inspect its nuclear facilities. The data collected has revealed evidence of determined efforts to enrich uranium, but no solid evidence of a nuclear weapons program.⁴³ The United States believes Iran's primary purpose is to develop nuclear weapons. The European Union (EU), Russia, and Japan (all of which have commercial relations with Iran) have pressured Iran to reveal the details of its nuclear program in an effort to prevent an escalation of tensions with the United States.⁴⁴ The crisis was exacerbated by Tehran's decision in August 2005, to resume the conversion of uranium and to cease nuclear negotiation talks.⁴⁵

VI. Iraq

A. GENERAL DEVELOPMENTS⁶

1. Elections

The year began momentarily in Iraq, with the first free election in decades occurring on January 30, 2005. Voters elected 275 members of Iraq's National Assembly. Much of

39. *Iranian MPs Back Investment Veto*, BBC News, Sept. 22, 2004, <http://news.bbc.co.uk/1/hi/business/3680056.stm>.

40. Miranda Eccles, *Iranian Entrepreneurs See Calm Future*, BBC News, May 24, 2004, <http://news.bbc.co.uk/1/hi/business/3741773.stm>.

41. Afshin Molavi, *Buying Time in Tebran: Iran and the China Model*, FOREIGN AFFAIRS, Oct. 26, 2004, at 15-16, available at <http://www.newamerica.net/index.cfm?pg=article&DocID=2031>.

42. *Id.* at 16.

43. Muhammad Sahimi, *Iran's Nuclear Energy Program, Part VI: The European Union's Proposal, Iran's Defiance, and the Emerging Crisis*, PAYVAND, Sept. 9, 2005, <http://www.payvand.com/news/05/sep/1070.html>.

44. *Id.*

45. *Iran Hardliner Becomes President*, BBC News, Aug. 3, 2005, http://news.bbc.co.uk/2/hi/middle_east/4740441.stm.

g. Derek Gilman, who prepared the report on general legal developments in Iraq, served as Deputy General Counsel (Commercial Law Reform) for the Coalition Provisional Authority and as principal U.S. advisor on the drafting of the Statute of the Iraqi Special Tribunal. Mr. Gilman is counsel with the firm of Day, Berry & Howard LLP in Stamford, Connecticut.

Iraq's Sunni population boycotted the election or stayed away due to security concerns. Shiite parties won a majority of the seats, with the Kurds winning the second largest block of seats.⁴⁶ On April 7, 2005, after much negotiating to ensure the new government represented Iraq's three major groups, Shiite leader Ibrahim al Jaafari became Prime Minister, Kurdish leader Jalal Talabani became President, and Sunni Ghazi al-Yawer became one of two Vice Presidents. The Interim Iraqi Government's most important task was drafting a new constitution that was approved in a national referendum held on October 15, 2005, despite attempts by many Sunnis to defeat it. The elections for the permanent government of Iraq that had to take place by December 15, 2005, had not yet occurred as of this writing.

2. *The Iraqi Special Tribunal*

On October 19, 2005, the first of an expected twelve to fourteen trials conducted by the Iraqi Special Tribunal began.⁴⁷ The Tribunal will try senior members of the Ba'ath Party for war crimes, crimes against humanity, genocide, and three specific offenses under Iraqi law.⁴⁸ The first trial involves Saddam Hussein and seven other defendants accused of orchestrating the massacre of nearly 150 individuals in the town of Dujail in 1982, following a failed assassination attempt.

3. *Commercial Law Reforms*

The Coalition Provisional Authority issued Orders reforming many areas of Iraq's economy. Article 26(C) of the Law of Administration for the State of Iraq for the Transitional Period provided that these Orders would remain in force until rescinded or amended. During 2005, Iraqi ministries further implemented these reforms, including by issuance of wage withholding instructions and commencement of internal investigations by the Commission on Public Integrity. Additionally, over 21,000 new Iraqi companies and over 2000 NGOs have been registered.

4. *Sovereign Debt Forgiveness*

In November 2004, Iraq concluded an agreement with the Paris Club to forgive 80 percent of Iraq's sovereign debt through a series of bilateral agreements. As of the date of this writing, Iraq has entered into bilateral agreements with the United States, Canada, Italy, Belgium, and Romania.⁴⁹ Iraq also began entering into settlements with commercial creditors discharging its debt at a discount.

46. The Shiite United Iraqi Alliance won 140 seats, the Democratic Patriotic Alliance of Kurdistan won seventy-five seats, Shiite former Prime Minister Iyad Allawi's Iraqi List won forty seats, Sunni former President Ghazi al-Yawer's The Iraqis Party won five seats, and the remaining fifteen seats were taken by members of eight different political parties.

47. On December 10, 2003, the Iraqi Governing Council issued the Statute of the Iraqi Special Tribunal. See Coalition Provisional Authority Order Number 48: Delegation of Authority Regarding an Iraqi Special Tribunal, available at www.loc.gov/law/public/saddam/document/20031210_CPAORD_48_IST_and_Appendix_A.pdf. Following elections, the National Assembly reissued a slightly amended version of the Statute. See Al-Waqa'i Al-Iraqiya [The Official Gazette of the Republic of Iraq], Law of the Iraqi Higher Criminal Court, Law No. (10) 2005 (Oct. 18, 2005), available at www.law.case.edu/saddamtrial/documents/IST-statute_official_english.pdf.

48. Wastage of national resources, tampering with the judiciary, and making war on an Arab neighbor. See Law of the Iraqi Higher Criminal Court, *supra* note 47, at arts.11-14.

49. The United States forgave 100% of the debt owed to it by Iraq. Romania is the first non-member of the Paris Club to conclude a debt forgiveness agreement with Iraq.

B. THE PERMANENT CONSTITUTION OF IRAQ^b

On October 15, 2005, 79 percent of Iraqi voters cast ballots in favor of a new constitution⁵⁰ under a referendum mandated by the Transitional Administrative Law.⁵¹ The approved constitution, the draft of which did not reach the hands of most Iraqis until after October 4,⁵² continued to undergo changes up to October 11, when Iraqi political leaders approved several last-minute compromises designed to secure the endorsement of at least some Sunni political parties.⁵³

Iraq's new constitution contains a number of positive human rights provisions, including "the right . . . to educate . . . children in their mother tongues,"⁵⁴ equality before the law,⁵⁵ "the right to enjoy life, security and liberty,"⁵⁶ the right to health care and education,⁵⁷ and freedom of expression, press, and association.⁵⁸ But the effectiveness of these provisions may be hindered by overarching ambiguities and contradictions within the constitutional text.

In the first instance, the drafters have left undecided precisely what role will be ascribed to Islam within the country's constitutional framework. Article 2 acknowledges that Islam will be a "foundation source" of legislation, and further stipulates that no law shall contradict "the established provisions of Islam."⁵⁹ While this provision arguably may be balanced

h. Robert C. Blitt, International Law Specialist for the U.S. Commission on International Religious Freedom (USCIRF), prepared the report on the permanent constitution of Iraq. The views expressed by Mr. Blitt in this article are his alone, and do not represent the position or policy of the USCIRF.

50. Op-Ed, *The Road Ahead in Iraq*, N.Y. TIMES, Oct. 26, 2005, at A26. Despite this margin in favor of ratifying the constitution, all three provinces with Sunni majorities voted against the constitution. This opposition nearly forced new elections and a new drafting process, but for the fact that in one of the three provinces opposition fell short of the necessary two-thirds majority required by the Transitional Administrative Law.

51. Coalition Provisional Authority, Law of Administration for the State of Iraq for the Transitional Period (Mar. 8, 2004), available at <http://cpa-iraq.org/government/TAL.html>. The Iraqi Governing Council adopted this transitional law in March 2004, during the Coalition Provisional Authority's occupation of Iraq.

52. Associated Press, *Iraq's Constitution Distributed to Citizens*, MSNBC, Oct. 3, 2005, <http://www.msnbc.msn.com/id/9584857/>.

53. Foremost among these compromises, Iraq's new constitution calls for a constitutional amendment committee to be established following December 2005 elections. This committee will have four months to review the constitution and propose amendments to parliament, which shall in turn be voted on *en toto*, and if approved, put to another public referendum. According to article 142,

The Council of Representatives shall form, at the beginning of its work a committee from its members representing the principal components of the Iraqi society with the mission of presenting to the Council of Representatives, within a period not to exceed four months, a report that contains recommendations of the necessary amendments that could be made to the Constitution.

To be successful, the proposed amendments must be "approved by the majority of the voters, and . . . not rejected by two thirds of the voters in three or more governorates." CONSTITUTION OF IRAQ art. 142 (Oct. 15, 2005) (on file with author); see also Andrew Arato, A New Endgame in Iraq, FOREIGN POLICY IN FOCUS, Mar. 9, 2006, <http://www.fpif.org/fpifxt/3146>. For a fuller history of how constitutional negotiations unfolded between June-Sept. 2005, see USI Peace Briefing, U.S. Institute of Peace, Draft Constitution Gained, But An Important Opportunity Was Lost (Oct. 2005), http://www.usip.org/newsmedia/releases/2005/1011_draft.html; see also Middle East Briefing No. 19, International Crisis Group, Unmaking Iraq: A Constitutional Process Gone Awry (Sept. 26, 2005), <http://www.crisisgroup.org/home/index.cfm?id=3703>.

54. CONSTITUTION OF IRAQ art. 4, (Oct. 15, 2005) (on file with the author).

55. *Id.* at art. 14.

56. *Id.* at art. 15.

57. *Id.* at arts. 31, 34.

58. *Id.* at arts. 38, 39.

59. *Id.* at art. 2.

by parallel provisions forbidding any law from contradicting the “principles of democracy” or the “rights and basic freedoms stipulated in this Constitution,” the constitution fails to specify how a constitutional role for Islam will be reconciled with Iraq’s international human rights obligations.⁶⁰ This open-ended question has left many Iraqis, including women and religious minorities, concerned that their rights may be constrained under a system that favors Islamic religious law over individual human rights protections.⁶¹

This concern may be amplified by a constitutional provision allowing for the appointment of “experts in Islamic jurisprudence” to Iraq’s Federal Supreme Court.⁶² Opening the bench to individuals without any civil law training potentially heightens the possibility that principles of *Shari’ah*, or Islamic law, may be interpreted to limit application of international human rights standards, particularly with respect to the “rights of political and social reformers, those voicing criticism of prevailing policies, religious minorities, women, [and] others.”⁶³

Ultimately, Iraq’s new constitution remains undecided. In addition to the anticipated work of the parliamentary amendment committee, over fifty constitutional provisions rely on subsequent enabling legislation to shape the final content of rights and freedoms.⁶⁴ Thus, as many observers have pointed out, “much will depend upon the composition of Iraq’s next government and assembly, and the direction these bodies will take with respect to implementing legislation,” and any constitutional amendment that may be approved.⁶⁵

60. Of note, Iraq is a signatory to the *International Covenant on Civil and Political Rights* and the *Convention on the Elimination of All Forms of Discrimination Against Women*. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES (June 9, 2004), available at www.unhcr.ch/pdf/report.pdf.

61. For more perspective on concerns about the human rights guarantees in the new Iraqi Constitution, see Press Release, U.S. Commission on International Religious Freedom (USCIRF), USCIRF Analysis of Proposed Iraqi Constitution: Ambiguities in Text Threaten Human Rights Protections (Oct. 6, 2005), available at http://www.uscifr.gov/mediaroom/press/2005/october/10062005_iraq.html [hereinafter USCIRF Ambiguities Threaten]; Kathleen Ridolfo & Petr Kubalek, *Radio Free Iraq Polls Minorities On Draft Constitution*, RADIO-FREEEUROPE RADIO-LIBERTY, Sept. 2, 2005, <http://www.rferl.org/featuresarticle/2005/09/31cbb5b6-03ae-4763-a7ef-76ee1347083c.html>; Melissa Block, *Activists Urge Women’s Rights in Iraqi Constitution*, NPR, Aug. 12, 2005, <http://www.npr.org/templates/story/story.php?storyID=4798434>; *Baghdad Patriarch Wary of Draft Constitution*, ZENIT NEWS AGENCY, Sept. 2, 2005, <http://groups.yahoo.com/group/arbible/message/24276?viscount=100>; *Iraqi Bishops May Turn to Pope for Help on Constitution: Fear That Draft Document Would Lead to an Intolerant State*, ZENIT NEWS AGENCY, Oct. 18, 2005, <http://www.zenit.org/english/visualizza.phtml?sid=78494>.

62. Iraq’s Federal Supreme Court is responsible for, inter alia, “Overseeing the constitutionality of laws and regulations in effect” and “Interpreting the provisions of the Constitution.” Under article 94, the Court’s “Decisions . . . are final and binding for all authorities.” CONSTITUTION OF IRAQ arts. 92-94 (Oct. 15, 2005) (on file with the author).

63. USCIRF, *Iraq’s Draft Permanent Constitution: Analysis & Recommendations* (Sept. 28, 2005), available at http://www.uscifr.gov/countries/region/middleeast/iraq/09282005_iraq.html. According to the findings of another USCIRF study, the constitutions of only three other Muslim countries, Iran, Saudi Arabia, and Afghanistan, expressly require that experts in Islamic jurisprudence sit on the supreme court. Tad Stahnke & Robert C. Blitt, *The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominately Muslim Countries*, 36 GEO. J. INT’L L. 947-1078, available at http://www.uscifr.gov/countries/global/comparative_constitutions/03082005/Study0305.pdf.

64. Numerous constitutional provisions invoke language such as “This shall be regulated by law.” For examples, see CONSTITUTION OF IRAQ arts. 31, 32, 34, 38, 41, 43, 45 & 46, (Oct. 15, 2005) (on file with the author).

65. USCIRF Ambiguities Threaten, *supra* note 61; see also NATHAN J. BROWN, IS POLITICAL CONSENSUS POSSIBLE IN IRAQ? (Carnegie Endowment for International Peace, Nov. 2005), available at <http://www.carnegieendowment.org/files/PO23.Brown.FINAL.pdf> (concluding that the “meaning of the constitution will

VII. Israel

A. TAXATIONⁱ

The subject of taxation in Israel is very complex. The following describes a few aspects of taxation which are relevant to foreign investors.

Israel, in general, imposes tax on Israel source income, that is, income accruing in or derived from Israel (the territorial basis). This general principle is applicable to both resident and non-resident persons. Residents are also subject to tax on their world-wide income. Companies in Israel are generally subject to company tax on their profits, at the rate of 34 percent on taxable income (to be reduced to 31 percent in 2006, 29 percent in 2007, 27 percent in 2008, 26 percent in 2009, until it will reach 25 percent in 2010). Distributed profits after company tax are subject to dividend withholding tax at rates of up to 25 percent in the case of individual and non-resident shareholders. Interest and royalties are also generally liable to withholding tax of 25 percent unless reduced by a tax treaty (starting January 1, 2006, the rates will be 20 percent for a shareholder who is not considered a substantial shares holder). Lower tax rates and other benefits are applicable under Israel's investment incentive legislation.

On July 24, 2002, the Israeli Knesset (Parliament) passed the Law for the Amendment of the Income Tax Ordinance. Until the end of 2002, the Israeli tax system was based on the territorial principle (i.e., income liable for tax in Israel was income that was accrued or received in Israel). The new legislation set the principle of personal global taxation that determines tax liability for an Israeli resident, whether the income is accrued or received in Israel or abroad. The new tax rules became effective on January 1, 2003. In August 10, 2004, another minireform was legislated and will become effective in January 1, 2006. This minireform deals with taxation of trusts, underlying companies, pre-ruling, participation exemptions, exemption for foreign residents from tax on capital gains from the sell of shares, establishment of Real Estate Investment Trusts in Israel, and more. The minireform also decreases the tax rates on individuals and companies on various types of incomes.

B. A CONSTITUTION FOR ISRAEL^j

The year 2005 saw great progress toward a goal expressed in the nation's 1948 Declaration of Independence—a written constitution for a Jewish and Democratic State of Israel.

A draft of the proposed constitution, to be submitted to the Knesset for its consideration and debate, has now been virtually finalized by the Constitution, Law, and Justice Committee of the Knesset, chaired by MK Michael (Miki) Eitan.⁶⁶ After years of work by the

not become clear until the relevant legislation is written"); Press Release, Freedom House, Iraqi Constitution Could Threaten Human Rights (Oct. 16, 2005), available at <http://www.freedomhouse.org/template.cfm?page=70&release=301>.

i. Alon Kaplan, an Advocate in Tel Aviv, Israel and Shai Dover, C.P.A. (Isr.) in Rosh Pinna, Israel, prepared the report on tax law developments in Israel.

j. Robert L. Weinberg, President of the American Association of Jewish Lawyers and Jurists, retired founding partner of Williams Connolly and past President of the District of Columbia Bar, prepared this special report on Israel's constitution. Email address: bob.weinberg@aya.yale.edu. Phone: 703-534-3919.

66. This summary is based in part on conversations with committee members and staff, in May and November 2005; their assistance is gratefully acknowledged.

Committee, submission of its draft constitution, along with alternative proposals and voluminous studies compiled by the Committee from experts worldwide, is tentatively set for February 13, 2006—the day of the joyous Jewish holiday of Tu B' Shevat (Arbor Day), and the anniversary of the date on which the Knesset first convened.⁶⁷

During the years since Independence, Israel has not lacked a constitution. But like the constitution of its Mandatory predecessor, Great Britain, Israel's constitution has not all been written in one place. Since 1950, the Knesset has adopted a series of eleven Basic Laws that define the basic structures of the government and the protections for the liberties and dignity of the citizens. These Basic Laws were held by the President of the Supreme Court of Israel, the internationally-renowned Chief Justice Aharon Barak, to comprise Israel's constitution.⁶⁸ But as Justice Barak has opined in the *Harvard Law Review*, a well drawn written constitution would be preferable.⁶⁹

The Committee's recommendations, and the ensuing debates in the Knesset and the Jewish community at large, will address such complex issues as guarantees of social and economic rights, protections for the civil rights of minorities, the relationship between religion and the State, the scope (if any) of judicial review of legislation enacted by the Knesset, the method of selecting the judges of the Supreme Court who would conduct that review, and even the possibility of placing responsibility for such review in the hands of a continental-style Constitutional Court. Proposals for electoral reform, designed to secure greater stability in Israel's form of parliamentary government, are also anticipated.⁷⁰

The Constitution Committee expects discussion and debate on the proposals for Israel's written constitution to extend over at least several years, both within and beyond the Knesset, and throughout the diaspora.⁷¹ The Constitution Committee will prepare successive revisions of its initial draft in response to the comments received; it is the Committee with exclusive jurisdiction to present constitutional proposals to the Knesset. The proposals are expected to undergo three readings by the Knesset. When the text commands at least an

67. The draft constitution was presented as scheduled on February 13, 2006.

68. Aharon Barak, *A Judge on Judging: The Role of a Supreme Court in a Democracy*, 116 HARV. L. REV. 16 (2002).

In C.A. 6821/93, *United Mizrahi Bank Ltd. v. Migdal Cooperative Village*, 49(4) P.D. 221, the Israeli Supreme Court unanimously held that the two "Basic Laws" passed in 1992, Basic Law: Human Dignity and Basic Law: Freedom of Occupation, together with existing Basic Laws on the structure of government, are the supreme law of the land and constitute Israel's constitution. *Mizrahi Bank* subjects any new statute to judicial review under these Basic Laws. I called this development a "constitutional revolution." Some Israeli scholars have criticized my approach.

Id. at 36 n.70. *Mizrahi Bank* was Israel's counterpart of our *Marbury v. Madison*. Chief Justice Marshall found the principle of judicial review implicit in the Constitution, whereas Chief Justice Barak found it implicit in the Basic Laws which, he held, must be read as a Constitution. The first nine of the Basic Laws had dealt primarily with government structure. The last two of the Basic Laws, both adopted in 1992, dealt with human rights, and contained an express provision that the Knesset cannot violate these prescribed rights. Thus the Knesset's enactment of these Basic Laws could be read to authorize judicial review for later statutes that were construed by the Supreme Court to conflict with the prescribed rights.

69. *Id.* at 39-40.

70. Under its parliamentary system, Israel has had twenty-nine governments to date in its fifty-seven year history, and elections for a thirtieth government are impending. Danny Grossman (director of the American Jewish Committee's Israel office), *The View From Israel*, Congress Monthly, Jan.-Feb. 2005, 3-4. The elections took place March 28, 2006.

71. To track the debate, both past and future, see Constitution for Israel, www.cfsrael.org.

absolute majority of the 120-member Knesset, it is likely that the Knesset will decide to submit the final document for a nationwide popular referendum to ratify the written Constitution of Israel.

VIII. Jordan^k

Until the bombings of November 9, 2005, Jordan was seen as the most stable of its surrounding Arab countries. It remains to be seen how much these bombings would impact the general atmosphere in the country and what legal and political changes would follow from these events.

For most of 2005, Jordan served as a safe haven for Iraqis leaving their country for a peaceful existence. The year 2005 has seen a boom in the real estate market and in construction in general. This is primarily due to Jordanian expatriate investment and a combination of Iraqi and Syrian investment, both instigated by instability of these countries and the political situation in Lebanon. The Jordanian stock exchange indicators continued to rise as is the case in most stock exchange markets in the region. A great deal remains to be done in corporate governance and transparency to ensure steady progress. The government has continued to liberalize procedures and reduce red tape. In the telecom sector the Ministry continued to seek the private sector partnership in formulating rules and procedures and has sent out letters soliciting input from the private sector on proposed rules for further liberalization.

On the legislative side, few laws were passed in 2005. Some have significant impact on international trade with Jordan. Law No. 12 of 2005 was passed to ratify the Singapore Jordan Free Trade Agreement (SJFTA). The SJFTA is Singapore's first FTA with a country in the Middle East and Jordan's first FTA with a country in Asia. It aims to provide an institutional platform for increasing economic engagement between Singapore and Jordan. According to the Ministerial Press release of August 22, 2005, 48 percent of Singapore goods enter Jordan duty-free. With the entry into force of the SJFTA, an additional 44.6 percent of Singapore goods will enjoy an immediate cost advantage over other countries without an FTA with Jordan. The remaining 7.4 percent of Singapore goods will reap the benefit of the FTA in six years. In return, Singapore will eliminate remaining tariffs, in that 100 percent of Jordanian imports to Singapore will enter duty-free with immediate effect.

Jordan has also ratified the Arab Mediterranean FTA between Egypt, Jordan, Morocco, and Tunisia. The Agreement establishes a free trade zone that includes Arab Mediterranean countries. It is anticipated that the Agreement will be extended to six other Arab countries (Algeria, Libya, Mauritania, Syria, Lebanon, and the Palestinian Authority).

Jordan passed a law establishing a Jordan Industry Chamber. Article 4 of the law provides that the Chamber objectives are to participate in formulating the general policies for Jordanian industry, to advocate its members' interests, and to establish ties with other Arab and non-Arab chambers.

Other laws were passed that would contribute to the enhancement of Jordan's position as a tourist destination. A law was passed to ensure the preservation of national architectural

k. Reema I. Ali, international managing partner of Ali & Partners in Washington, D.C., prepared the report on developments in Jordan.

heritage.⁷² Additionally, a law was passed forming the Petra Authority so as to oversee the development of the Petra region.⁷³

Several laws were passed in the field of education. A new Higher Education and Scientific Research Law was passed. The law stresses that higher education must strive to instill a culture of democracy.

IX. Kuwait

A. WOMEN'S SUFFRAGE

Kuwait's recently well-reported women's suffrage movement reached a long-awaited milestone in May 2005 with the approval by a majority of the Kuwait National Assembly of an amendment extending the right of participation in the political process to Kuwaiti women. Article 6 of the Kuwaiti Constitution, as adopted in 1962, provides for a system of government that is democratic in principal. In furtherance of this principal, Law No. 35 of 1962 Regarding the Elections of the National Assembly Members, as amended in 1986, provided in article 1 that every Kuwaiti male who had attained twenty-one years of age had the right to vote and, by extension, run for political office.

Recognizing an inherent conflict between the constitution and Law No. 35 of 1962, the National Assembly voted thirty-five to twenty-three to amend the relevant law to withdraw the male-only restriction, thus providing Kuwaiti women the right to vote and stand for national elections for the first time. The amendment, Law No. 17 of 2005, has been approved by the Amir of Kuwait, thereby making the amendment law.⁷⁴ In relatively rapid succession, the first Kuwaiti woman to hold a cabinet office was appointed in late June, also becoming the first female parliamentarian because all Kuwaiti Cabinet members are considered *ex-officio* members of the National Assembly who vote on all major bills and legislation. The first mass exercise of women's suffrage in Kuwait, however, will likely not take place until the next national elections in 2007 at the earliest.

B. RE-ACTIVATION OF THE COUNTER-TRADE OFFSET PROGRAM

The Kuwait Council of Ministers suspended the application of the Kuwait Counter-Trade Offset Program (the Program) for both military and civilian contracts in August 2004. The Council of Ministers also delegated to the Kuwait Minister of Finance the responsibility to undertake a comprehensive study as to why the Program did not achieve its objectives. By Decision No. 863 of 2005, the Council of Ministers has now ordered the re-activation of the Program with minor changes; by Ministerial Decision No. 13 of 2005, the Minister of Finance has implemented the Council's decision.⁷⁵ Since these events there has been considerable debate within the Kuwait Government regarding the possible privatization of the Program.

72. The Law for Preservation of National Heritage for the year 2005.

73. Law No. 15 of 2005.

1. David Pfeiffer, who is the Managing Partner of the Bryan Cave LLP office in Kuwait City, prepared the report on developments in Kuwait.

74. Law No. 17 of 2005.

75. Council of Ministers Decision No. 863 of 2005 (Kuwait), available at <http://www.mof.gov.kw/offset/decision/recnclenglish.htm>; Ministerial Order 13/2005 for the Reactivation of the Offset Program (Kuwait), available at <http://www.mof.gov.kw/offset/decision/remofenglish.htm>.

C. AMENDMENTS TO MANPOWER LAW KUWAITIZATION PERCENTAGES

Enacted to encourage greater participation by Kuwaiti nationals in the domestic private sector labor market, Law No. 19 of 2000, as amended by Law No. 32 of 2003, and Kuwait Council of Ministers Decision No. 904 of 2002 (together the Manpower Laws) were fully implemented in September 2003. Among other features, the Manpower Laws set industry-specific quotas for the employment of Kuwaiti nationals in Kuwait by non-governmental organizations. This practice is also known as Kuwaitization. If a non-governmental organization is found to be in violation of the Manpower Laws, it can be ordered to pay a set fine for every non-Kuwaiti national it employs beyond the permitted percentage.

The relevant Kuwaitization percentages have been under review for nearly two years. This process led to Decision No. 955 of 2005 of the Council of Ministers that dramatically increases the percentages and provides for additional classes of employment subject to mandatory Kuwaitization.⁷⁶ Several classes of employment are now subject to 50 percent mandatory Kuwaitization, while a few are even subject to 100 percent mandatory Kuwaitization, such that only Kuwaiti nationals may be employed in those positions.

X. Lebanon^m

Major legal developments included the implementation of U.N. Security Council Resolution 1559, calling for the withdrawal of all foreign forces from Lebanon, implementation of the Taif Agreement of October 22, 1989, and the institution of the International Independent Investigation Commission, established pursuant to U.N. Security Council Resolution 1595 to investigate the assassination of former Lebanese Prime Minister Rafik Hariri and others, in Beirut. Thus far a number of people have been arrested and charged with conspiracy to commit murder and other related crimes. The report submitted by the Commissioner Detlev Mehlis is at the core of ongoing legal and political developments.⁷⁷

The legislative activity was marked by the abrogation of Law No. 310 relating to military service,⁷⁸ the enactment of Laws No. 677 and No. 678 granting an armistice for certain crimes, and the amendment of article 68 of Law No. 171/2001 regarding electoral publicity and advertising campaigns.⁷⁹ On August 8, 2005, the Council of Ministers appointed a commission of 12 experts that was charged with reviewing the new electoral law governing future Lebanese parliamentary elections.⁸⁰

XI. Libyaⁿ

Libya remains in a state of flux. Libya has implemented measures to reform and open its economy, but progress in developing a market economy has been slow. Libya needs strong

76. Council of Ministers Decision No. 955 of 2005.

m. Paro Astourian, an attorney practicing in Lebanon and California, prepared the report on developments in Lebanon. He specializes in business law and cross-border transactions and can be contacted at paro@astourianlaw.com.

77. Report of the IIIC dated Oct. 19, 2005, Pursuant to SCR 1595, *available at* www.un.org/news/dh/docs/mehlisreport/.

78. Lebanese Official Journal issue no. 23/2005, *available at* www.annaharonline.com.

79. Lebanese Official Journal issue no. 37/2005, *available at* www.annaharonline.com.

80. Al-Nahar Daily, Aug. 9, 2005.

n. Reema I. Ali, international managing partner of Ali & Partners in Washington, D.C., prepared the report on developments in Libya.

and sustained economic growth to meet the demands of its rapidly growing labor force. This can only be achieved through implementation of a well sequenced and comprehensive market-oriented reform program that would enhance the role of the private sector and improve the business climate.

In 2005, Libya enacted four major laws: a Banking Law⁸¹ that regulates and provides powers and functions of the Central Bank of Libya, regulates commercial banks, and sets out the rules for foreign exchange transactions that relaxes restrictions on foreign exchange transactions; an Anti-Money laundering Law⁸² that makes it a crime to engage in any conduct that is defined as money laundering in the International treaties, protocols, and law; an Insurance Law⁸³ that regulates the licensing and registration of insurance and re-insurance companies, insurance actuaries, adjusters, brokers, and allows foreign participation in Libyan insurance companies of 49 percent; and a civil Aviation Law.⁸⁴

The Libyan government has also passed several significant laws implementing regulations in 2005 that have an impact on foreign companies wishing to enter the Libyan market. The most significant are: Decision Nos. 3 and 13 regarding the regulations for establishing a branch of a foreign entity in Libya and the activities a foreign branch in Libya is allowed to engage in respectively; GPC Decision No. 8 of 2005 regarding the establishment of liaison offices in Libya these can only act as a support office and may not engage in profit making or enter into contracts other than those necessary for its keeping; Decision No. 180 of 2005 regarding the establishment of the Tourism Development Agency; Decision No. 236 of 2005 regarding the dissolution of various state enterprises—significant in that it dissolves state entities that used to monopolize activities to the exclusion of the private sector; Decision No. 132 of 2005 regarding government procurement that replaces all previous regulations in this regard; and Decision No. 52 of 2005 regarding the privatization of state-owned entities.

XII. Oman^o

The government of Oman is gradually moving in the direction of and developing liberalism.⁸⁵ The Sultanate's continuing economic growth, the increase of investment opportunities for the private sector, and the FTA Oman signed with the United States accelerate its vision of liberal economy and promise a prosperous future for the Omanis.⁸⁶ In accordance with the Royal Decree No. 1/2001, the Omani government is in its last year of implementing its sixth five-year plan, a development plan to diversify its economy and

81. Law No. 1 of 2005.

82. Law No. 2 of 2005.

83. Law No. 3 of 2005.

84. Law No. 6 of 2005.

o. Hassan H. Elkhail, managing partner of Elkhail & Associates, LLC in Marietta, Georgia, prepared the report on developments in Oman.

85. U.S. Dep't of State, Oman: Country Reports on Human Rights Practices—2004 (Feb. 28, 2005), <http://www.state.gov/g/drl/rls/hrrpt/2004/41729.htm>.

86. Press Release, Office of the U.S. Trade Representative, United States and Oman Conclude Free Trade Agreement (Oct. 3, 2005), *available at* http://ustr.gov/Document_Library/Press_Releases/2005/October/United_States_Oman_Conclude_Free_Trade_Agreement.html?ht=.

stimulate the private sector.⁸⁷ The goal of the Sultanate is to be less reliant on oil by 2020.⁸⁸ The 2005 budget is based on average price of \$23 per barrel;⁸⁹ with the increase of oil revenue, the Omani government may increase expenditure and or invest in the private sector and other creative industries to reach its vision, earlier than anticipated, of less reliance on oil by 2020.⁹⁰

In the tourism sector the Sultanate is planting its signature on the world map of tourist destinations by continuing to build the gigantic resort development the Wave.⁹¹ Growth and massive projects are not the only development; there has also been development of the Judiciary. Legal professionals received training workshops to enhance the legal profession and the judicial system.⁹² With the exception of the incommunicado detention of two prominent figures—a playwright, Mohamed Harthi, and human rights activist, Abdullah Ryami⁹³—there were no noticeable civil rights violations in the Sultanate. To the contrary, Sultan Kaboos allowed for the first time an open trial of a secret group that had the intention to overthrow the current government by violence.⁹⁴ On July 9, 2005, the Sultan issued an amnesty decree for thirty-one of those who were convicted of conspiring to overthrow the government by violence.⁹⁵

XIII. Pakistan^P

Pakistan has undergone significant developments through the enactment of regulations and newly-created programs in the areas of tax, Islamic law, and public finance. In early 2005, in response to the need to curtail inefficiency and corruption,⁹⁶ the World Bank approved \$100 million in support of the Tax Administration Reform Project that is designed to increase revenues and benefit foreign investors.⁹⁷

87. Royal Decree No.(1/2001), Ratification of the Sixth Five year Development Plan (2001-2005), available at <http://www.moneoman.gov.om/developmentplan.htm>.

88. *Vision Conference: Oman 2020, National Economy, An Overview*, TIMES OF OMAN, Sept. 19, 2005, <http://www.timesofoman.com/omaneeconomy.asp>.

89. *The Sultanate of Oman's Budget for 2005 Covers the Essential Commitments and Developments in the Fields of Science, Health Services, Roads, Sewage Networks and Water Network Extension. Providing Decent Homes Through the Implementation of More Housing Projects*, AIN-AL-YAQEEN, Jan. 7, 2005, <http://www.ain-al-yaqeen.com/issues/20050107/feat9en.htm>.

90. U.S. Dep't of State, 2005 Investment Climate Statement—Oman, <http://www.state.gov/e/eb/ifa/2005/42098.htm> (last visited Mar. 13, 2006).

91. *Oman Launches 'The Wave'- a premium resort development*, AME INFO, Mar. 6, 2004, <http://www.ameinfo.com/35763.html>.

92. International Development Law Organization, *Law Reform in Oman*, <http://www.idli.org/documents/africa.pdf> (last visited Mar. 13, 2006).

93. Human Rights Watch, *Oman: Critics Subjected to Injustice They Had Exposed* (July 18, 2005), <http://hrw.org/english/docs/2005/07/18/oman11343.htm>.

94. Nasr Al Majally, *Kaboos to try Conspirators in an Open Court*, ELAPH.COM, Apr., 20, 2005, <http://www.elaph.com/elaphweb/Politics/2005/4/56632.htm>.

95. A.F.B., *Sultan Kaboos Pardons 31 of the Conspirators*, ELAPH.COM, June 9, 2005, <http://www.elaph.com/elaphweb/Politics/2005/6/68108.htm>.

p. Anas A. Akel, an attorney with Handal & Associates in San Diego, California, prepared the report on developments in Pakistan. He specializes in corporate law and cross-border transactions and can be contacted at aakel@handal-law.com.

96. Press Release, World Bank, *Pakistan's Tax Reform Receives US \$100 Million Boost from World Bank* (Dec. 7, 2004), available at <http://www.worldbank.org.pk>.

97. U.S. Dep't of State, 2005 Investment Climate Statement—Pakistan, <http://www.state.gov/e/eb/ifa/2005/42099.htm> (last visited Mar. 13, 2006).

The growing trend is to facilitate Islamization of Pakistan's economy. To further this objective, the Securities and Exchange Commission of Pakistan created a set of rules regulating the insurance business' compliance with Islamic laws.⁹⁸ The regulations, referred to as Takaful Rules 2005, provide insurance coverage to institutions undertaking Islamic financing.⁹⁹

In an effort to achieve economic stability and reduce public debt, Pakistan's Senate passed the Fiscal Responsibility and Debt Limitation Bill 2005.¹⁰⁰ Under the bill, the government can abandon the proposed guidelines when there are unforeseen circumstances, such as the recent earthquake that affected the region.¹⁰¹

In 2005, the government drafted a National Commission for Human Rights Bill, 2005, a preliminary step toward human rights protections.¹⁰²

XIV. Palestine^q

On June 18, 2005, the Palestinian Parliament passed a new Election Law by a vote of forty-three to fourteen, creating an electoral system that aims to reconcile the regional and national voting interests.¹⁰³ It provides for half of the 132 lawmakers (an increase from the current eighty-eight) to be elected from the sixteen local districts, while the remaining half is chosen from a national list of party candidates.¹⁰⁴ This is believed to reflect the tension between the support for Hamas that is very strong in the regional districts and the support for President Mahmoud Abbas' Fateh party.¹⁰⁵ Abbas declined to sign the last election law passed by parliament that would have provided for two-thirds of the legislators to be voted in by the local districts.¹⁰⁶ The last parliamentary elections occurred in 1996, and this present law is to regulate the parliamentary elections scheduled for January 2006.¹⁰⁷ On a related note, Abbas also recently issued a presidential decree regarding the primary elections, declaring that police officers in the Palestinian security services are ineligible to stand as candidates, thereby eliminating the potential participation of many leaders in the Al-Aqsa Martyr's Brigade.¹⁰⁸

98. Securities and Exchange Commission of Pakistan, Final Takaful Rules 2005 (Sept. 3, 2005), available at www.secp.gov.pk/corporatelaws/pdf/Takaful_Rules_2005.pdf.

99. *Id.*

100. Staff Report, *NA Passes Fiscal Responsibility, Debt Limitation Bill*, DAILY TIMES, Mar. 4, 2005, at 7, available at http://www.dailytimes.com.pk/default.asp?page=story_4-3-2005_pg7_28.

101. Press Release, Pakistan Ministry of Finance, Law and Economics, Fiscal Responsibility and Debt Limitation Law, available at <http://www.finance.gov.pk/law/summary.pdf> (last visited Mar. 13, 2006).

102. Human Rights Initiative, The National Commission for Human Rights Bill, 2005: Pakistan's Defining Moments for Human Rights, Commonwealth Human Rights Initiative Newsletter, Vol.12, Number 2, New Delhi, Summer 2005, available at http://www.humanrightsinitiative.org/publications/nl/newsletter_summer_2005/newsletter_summer_2005.pdf.

q. Ava Sadripour, a third year law student, and Editor-in-Chief of the Southwestern Journal of Law and Trade in the Americas, at Southwestern University School of Law in Los Angeles, California, prepared the report on developments in Palestine.

103. Mohammed Daraghmeh, *Palestinians: New Law Paves Way For a Vote*, THE MIAMI HERALD, Jun. 19, 2005.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. Arnon Regular, *Abbas Panel to Choose Fatah List for PLC Vote*, HAARETZ.COM, Sept. 11, 2005, <http://www.haaretz.com/hasen/pages/ShArt.jhtml?itemNo=643166>.

XV. Qatar^r

The most important development in Qatar in 2005 is the endorsement of its first permanent constitution in its entire history. This historical development in Qatar graduated from one phase to another. The first provisional constitution called Amended Provisional Basic Statute was issued in 1970 before independence in 1971 and the Provisional Basic Statute was amended in 1972 after independence. Since that time the objectives and features of the State policy and its regional and international affiliations were determined. The State's authorities and apparatus acquired their experience from actually exercising their authority in the internal and external domains. Amendments were made to some provisions of the provisional basic statute in regard to the executive authority and hereditary rule, in order to complete the constitutional arrangements in the country. But on July 13, 1999, the State of Qatar embarked on a new phase of its modern history when the Emir of Qatar issued the Emiri Decree No. (11) to form a high level committee to draft a new, permanent constitution for the country. On July 2, 2002, the Emir received the permanent draft of the constitution. After it received overwhelming support in a referendum on April 29, 2003, the first written permanent constitution for the state of Qatar was issued on June 8, 2004, and came into force on June 8, 2005.

The constitution is composed of five chapters and 150 articles. It envisages numerous civil and political rights including the guarantees of freedom of expression, assembly, and religion. It provides for an elected parliament to be called the Advisory Council, composed of forty-five seats, two-thirds of whose members are elected by direct ballot while the remaining one-third will be appointed by the Emir. The Council shall have legislative powers, the authority to ratify the general budget, question the cabinet ministers and the executive authorities, and notify international treaties. The constitution reinforces the principle of the separation of Powers.

XVI. Saudi Arabia^s

In a continuing effort to attract additional foreign investment, to create employment, and to attain membership in the WTO, considerable emphasis was placed on economic reform and market-opening measures in the Shoura Council, Council of Ministers, and Supreme Economic Council. Nevertheless, despite the often-cited headlines, few new major pieces of legislation (regulations) have been fully implemented. As noted below, the Capital Markets, Insurance, and Labor Law are the best examples. It has been stated that as many as forty-two new laws have been enacted to comply with WTO membership requirements, but no such list has been published to date. Approval of Saudi membership in the WTO is expected in mid-November, culminating a fifteen-year effort. As in the past, concern remains that with record oil revenues pressure for reform will slacken.

A. NEW REGULATIONS ISSUED IN SAUDI ARABIA DURING 2005

Noteworthy regulations issued in Saudi Arabia in 2005 include: the Implementing Rules for Protection of Trade Secrets that forbid disclosure of trade secrets and permit any in-

r. Dr. Mutlaq Al-Qahtani, a Legal Expert in Qatar, prepared the report on developments in Qatar.

s. Ronald E. Pump of The Law Firm of Mohamed Al-Sharif, in Association with Johnson & Pump, in Riyadh, Saudi Arabia, prepared the report on developments in the Kingdom of Saudi Arabia.

terested party to initiate legal proceedings against any person who discloses his trade secrets;¹⁰⁹ an Installment Sales Law that regulates and codifies the practice of selling by installments and provides some technicalities for entering into agreements governing these types of sales;¹¹⁰ and Conditions for Conducting Consultancy Profession in Communication and IT Field that limit, with few exceptions, provision of such consultancy services only to Saudi qualified persons and impose some responsibilities on them in course of their services.¹¹¹

The Capital Market Authority issued the following regulation pursuant to the powers vested to it by article 5(a) of the Capital Market Law:¹¹²

- a. Securities Business Regulation limiting the types of securities business to dealing, arranging, managing, advising and custody;
- b. Authorized Persons Regulations regulating authorized and registered persons, specifying the procedures and conditions for obtaining a license, and providing for the rules of conduct that authorized persons must comply with when conducting their business;
- c. Market Conduct Regulation prohibiting any person to engage in or participate in any manipulative or deceptive acts or practices in connection with an order or transaction in a security, if the person knows or has reasonable grounds to know the nature of the act or practice;
- d. Offers of securities regulations defining the offer of securities very broadly to cover issuing securities, inviting the public to subscribe therefore or the direct or indirect marketing thereof, or making any statement, announcement or communication that has the effect of selling, issuing, or offering securities (but not including preliminary negotiations or contracts entered into with or among underwriters).

A new labor law was published on October 28, 2005.¹¹³ The law provides new rules that it is hoped will introduce radical changes to the employment environment. The most significant changes include article 26(2) that permits women to work in all fields that suit their nature and raising the rates of Saudization to 75 percent. The law, however, allows the labor minister to reduce this rate temporarily if there is a shortage of qualified nationals required by companies. In article 8, the law expressly states that any provision or condition that contradicts this law shall be null and void unless it is in favor of the employee and the law thus solves cases where there are disagreements between the law and the employment contract. But the law also contains some exceptions from this rule. For example, the parties, agreement may provide that bonuses and other benefits are not included when calculating the end-of-service benefit. In this context, it should be noted that the old law did not address these cases, which resulted in legal uncertainty.

109. See Implementing Rules for Protection of Trade Secrets, art. 8, available at <http://www.commerce.gov.sa/circular/46-3.asp>.

110. See Installment Sales Law promulgated by Royal Decree # M/13 dated 4/3/1426H, available at <http://www.commerce.gov.sa/circular/45-3.asp>.

111. See Conditions for Conducting of Consultancy Profession in Communication and IT Field issued by the Ministerial Resolution # 6667 dated 1/7/1426H, available at <http://www.commerce.gov.sa/circular/47-1.asp>.

112. The Capital Market Law states that "the Authority shall be the agency responsible for issuing regulations, rules and instructions and for applying the provisions of this Law." Capital Market Law, art 5, available at <http://www.cma.org.sa/cma%5Far/115>.

113. Um Al-Qura, the official Saudi newspaper, issue # 1853. The new law shall come into force on April 21, 2006. 116.

The National Security Council Law¹¹⁴ establishes the Saudi National Security Council for the purpose of protecting the political, economic, and social interests of the country. The Council is presided over by the King and includes as members the Crown Prince, Ministry of the Interior, Ministry of Foreign Affairs, Chief of General Intelligence, and the Deputy of the National Guard.

B. CONSTITUTIONAL AND DEMOCRACY DEVELOPMENTS

The most significant development in the reporting period occurred with the long-anticipated death of King Fahd, who had been incapacitated for several years as a result of a stroke. The swift, orderly accession of Crown Prince Abdullah was greeted positively by many, as the new King is believed to be strongly committed to further reforms, albeit at a more modest pace than some critics believe necessary. Municipal elections took place throughout the Kingdom under intense scrutiny by the international press. Although there is litigation in court over the procedures and results, the elections were generally fair and the majority of seats were won by pro-Islamist candidates. Women were not allowed to participate. The trial and imprisonment of public dissenters was criticized internationally, and one of the new King's first official acts was to release them from prison. While debate continues within the royal family and the public at large about the need and pace of reform, there is a new sense of optimism that the Kingdom has embarked on a path of greater liberalization, transparency in government, accountability, and respect for individual rights. A series of National Dialogue forums have stressed national unity as an antidote to terrorism and intolerance.

XVII. Sudan^t

On January 9, 2005, the Sudanese Government signed a Comprehensive Peace Agreement with the Sudanese People's Liberation Movement/Southern People's Liberation Army (SPLM/SPLA) to end the country's twenty-one-year civil war.¹¹⁵ The Comprehensive Peace Agreement was the culmination of a long period of negotiation during which a series of agreements were signed between the government and the SPLM/SPLA.¹¹⁶ The cornerstone of the Comprehensive Peace Agreement was a national constitution that came into effect on July 9, 2005. The constitution established a National Unity Government with Sudanese President Umar Hassan Ahmad al-Bashir retaining his position and SPLM/SPLA leader John Garang taking over as First Vice President. The constitution also granted

114. *Id.*

t. Thomas R. Snider, an attorney with Hunton & Williams LLP, in Washington, D.C., prepared the report on developments in The Sudan.

115. See Comprehensive Peace Agreement Between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, Jan. 9, 2005, available at <http://www.iss.co.za/AF/profiles/Sudan/darfur/compax/>.

116. The Comprehensive Peace Agreement is comprised of several previously signed agreements, which include the Protocol of Machakos, in which the parties agree on a broad framework setting forth principles of governance, structures of government, a transitional process, and the right to self-determination for southern Sudan, as well as protocols on security arrangements, wealth sharing, power sharing, and resolution of the conflicts in southern Kordofan/Nuba Mountains, Blue Nile States, and Abyie. See *id.*

autonomy to southern Sudan¹¹⁷ and provided for a referendum on independence to be held for the south in 2011.¹¹⁸

The National Unity Government demonstrated a high level of stability on July 31, 2005, when First Vice President Garang was killed in a helicopter crash while returning from a visit to Uganda just three weeks after his inauguration.¹¹⁹ Garang's deputy, Salva Kiir, promptly took over as First Vice President of the national government.¹²⁰

Although substantial progress was made in north-south relations, problems in Darfur continued to complicate Sudan's relations with the international community. On January 25, 2005, the United Nations International Commission of Inquiry on Darfur issued a report to U.N. Secretary General Kofi Annan finding that the Sudanese Government had not pursued a policy of genocide but concluding that violations of human rights law and international humanitarian law had occurred in Darfur.¹²¹ On March 31, 2005, with the United States abstaining, the U.N. Security Council voted to refer the Darfur situation to the International Criminal Court.¹²²

XVIII. Syria^a

The year 2005 was a tumultuous year for Syria. Syria's government is ruled by the relatively youthful Bashar al-Assad, who inherited the presidency in 2000 upon the death of his father. Initially, Assad's accession to power at the age of thirty-five raised hope that he would usher in a new era of reforms and tolerance, especially because he was educated in the West and was a practicing doctor at the time he returned to Syria.¹²³ Since then, such hopes have given way to fears of increasing isolation by the international community, as the Assad regime is widely viewed to have bungled attempts at reform and squandered opportunities for change.¹²⁴

117. This autonomy includes, among other things, the setting up of a Government of Southern Sudan with specifically defined exclusive powers and powers concurrent with the national government. See SUDANESE CONSTITUTION arts. 25(a), 161, schedules B-C, E-F. Pursuant to the new Constitution, Garang was also named President of the Government of Southern Sudan. See *id.* at art. 176.

118. See *id.* at art. 222.

119. See Marc Lacey, *Death of Sudan Rebel Leader Imperils Fragile Hope for Peace*, N.Y. TIMES, Aug. 2, 2005, at A1.

120. See Emily Wax, *In Sudan, Deputy Rises To Tend a Fragile Peace; Garang's Successor Confronts a Heavy Burden*, WASH. POST, Aug. 14, 2005, at A14; see also SUDANESE CONSTITUTION art. 68 (setting forth procedure for replacement of the First Vice President prior to national elections).

121. See REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY ON DARFUR TO THE UNITED NATIONS SECRETARY-GENERAL (Jan. 25, 2005).

122. See S.C. Res. 1593, U.N. Doc. S/RES/1593 (Mar. 31, 2005). ICC Prosecutor Luis Moreno Ocampo opened an investigation into the matter on June 6, 2005, and reported to the U.N. Security Council on June 29, 2005, and on December 19, 2005. See Press Release, International Criminal Court, *The Prosecutor of the ICC Opens Investigation in Darfur* (June 6, 2005), available at <http://www.icc-cpi.int/press/pressreleases/107.html>; SECOND REPORT OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT TO THE UN SECURITY COUNCIL PURSUANT TO UNSCR 1593 (2005) (December 19, 2005). Sudan set up a national special court to probe war crimes in the Darfur region as an alternative to ICC prosecutions. See *Sudan Sets up War Crimes Tribunal*, BBC NEWS, June 14, 2005, <http://news.bbc.co.uk/2/hi/africa/4091146.stm>.

u. Bernadette M. Chala, an attorney with Lewis Brisbois Bisgaard & Smith LLP in Costa Mesa, California, prepared the report on developments in Syria.

123. BBC News, *Country Profile: Syria*, http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/801669.stm (last update Jan. 31, 2006).

124. *Id.*

Syria gained its independence from France in 1946 and, since 1963, has been dominated by the ruling Ba'ath party.¹²⁵ But periods of instability have followed due largely to infighting between factions within the government, which is still dominated by the military and the Ba'ath political party.¹²⁶ Taking advantage of civil war in neighboring Lebanon, Syrian military forces have occupied Lebanon since 1976.¹²⁷ The government is still dominated by ruling Ba'ath party insiders from Assad's father's regime and the military. Assad himself is said to rely heavily on two key figures, his brother and his brother-in-law, and the political and economic elite of the country are often individuals directly or indirectly related to Assad or his family.¹²⁸

Frequent threats of war, international isolation, political uncertainty and an authoritarian regime continue to contribute to instability in Syria.¹²⁹ With the imposition of sanctions by the United States in late 2004, U.S. businesses are currently restricted from conducting business in Syria.¹³⁰

Problems in Syria's economy are reflected in the fact that Syria's total public debt currently amounts to roughly 39 percent of its gross domestic product (GDP).¹³¹ Syria's economy is also dependent on being powered by oil exports that account for 20 percent of the GDP and over half of government revenues.¹³² But continued problems with outdated infrastructure, financing, and other technological problems have lead to a decline in oil production and Syria's current reserve of oil is not expected to last ten years. There are also fears that Syria's inability to modernize may force it to be a net importer of oil within the next ten years, despite what is believed to be large, untapped oil reserves within Syria's borders.¹³³

Concerned about allegations that Syria has harbored Islamists and permitted weapons and militants to move freely into neighboring Iraq, the United States toughened its stance against Syria after the September 11, 2001 attacks, accusing it of state-sponsored terrorism.¹³⁴ Syria was also accused of using its military domination of neighboring Lebanon for the purpose of extracting wealth from the lively Lebanese economy to supplement Syria's own faltering economy.¹³⁵

Tensions increased in late 2004 between the Syrian regime, pro-Syrian officials in Lebanon, and Lebanese officials, especially after the passage of a U.N. resolution calling for the withdrawal of foreign troops from Lebanese soil and the imposition of sanctions by the United States against Syria in May 2004.¹³⁶ Events in Syria came to a head in early 2005

125. *Id.*

126. *Id.*

127. *Id.*; BBC News, Q&A: Syria and Lebanon, http://news.bbc.co.uk/2/hi/world/middle_east/4308823.stm (last update April 25, 2005).

128. Q&A: Syria and Lebanon, *supra* note 126; *Syria at Reform Crossroads*, BBC News, Apr. 1, 2005, http://news.bbc.co.uk/1/hi/world/middle_east/4400295.stm.

129. See CQ Press, Electronic Library, Supreme Court Collection, Syria, www.library.cqpress.com.

130. *Syria at Reform Crossroads*, *supra* note 127.

131. Country Watch, Economic Overview: Syria, <http://www.countrywatch.com>.

132. *Id.*; see also Roula Khalaf, *Hariri Report Threatens to Isolate Syria Further*, FIN. TIMES, Oct. 22, 2005, at 8.

133. *Id.*

134. *Moment of Truth- Damascus Must Face Consequences of the Hariri Probe*, FIN. TIMES, Oct. 25, 2005, at 18.; Mark Turner et al., *US and France Press Syria Over Hariri*, FIN. TIMES, Oct. 25, 2005, www.ft.com.

135. Q&A: Syria and Lebanon, *supra* note 126.

136. BBC News, Syria: Timeline (Oct 12, 2005), http://news.bbc.co.uk/1/hi/world/middle_east/827580.stm; S.C. Res. 1559, U.N. Doc. S/RES/1559 (Sept. 2, 2004).

when the former Lebanese Prime Minister, Rafiq Hariri, was killed in a car bomb attack in Lebanon. Hariri was an outspoken critic of the Syrian regime and its presence in Lebanon. As a result of the attack, Syria faced increased international scrutiny and pressure to withdraw its military from Lebanon, a pressure to which it acceded in April 2005.¹³⁷

Since then, international pressure has intensified against Syria, especially with the publication of a long-awaited report by a U.N. appointed special investigator, Detlev Mehlis, in late October 2005.¹³⁸ The Mehlis Report implicated top level Syrian officials in the assassination of Hariri. Although choosing not to name specific individuals, the Report did find that, “[g]iven the infiltration of Lebanese institutions and society by the Syrian and Lebanese intelligence services working in tandem, it would be difficult to envisage a scenario whereby such a complex assassination plot could have been carried out without their knowledge.”¹³⁹

Focusing on the causes of the attack, the Mehlis Report also determined that “fraud, corruption, and money-laundering” could have provided motivation for the attack, as well as political reasons.¹⁴⁰ Of particular concern for Syria, the Mehlis Report concluded by stating that “many leads point directly” at senior Syrian security officials as being involved in the attack, and the Report called on Syria to cooperate fully in the investigation. The Report also expressed concern that some individuals attempted to “mislead the investigation,” and that a letter sent by the Foreign Minister of Syria “proved to contain false information.”¹⁴¹

The tenuous international position of the Syrian regime was highlighted earlier in the year with the signing of the Damascus Declaration by opposition groups traditionally at odds with each other in Syria, such as left wing and secular parties and the Muslim Brotherhood, an Islamist hard-line group long banned in Syria. Perhaps sensing the weak position of the current regime, the groups agreed to publicly air their dissatisfaction with the Assad government by signing the declaration.¹⁴²

As a result of the Mehlis Report, the U.N. Security Council agreed to Mehlis’s request to extend his investigation into at least mid-December 2005, and ultimately issued a resolution demanding that Syria cooperate with the investigation and detain suspects involved in the murder. The resolution also expanded the powers of the U.N. investigator to impose an international travel ban on suspects as well as freeze international assets of suspected individuals.¹⁴³

137. Turner et al., *supra* note 133; *Russia Opposes UN Action on Syria*, BBC NEWS, Oct. 26, 2005, http://news.bbc.co.uk/1/hi/world/middle_east/4377148.stm.

138. Ferry Biederman & Roula Khalaf, *Serious for Syria: the World is Lining Up Against Bashar Assad’s Reckless Regime*, FIN. TIMES, Nov. 2, 2005, at 19.

139. REPORT OF THE INTERNATIONAL INDEPENDENT INVESTIGATION COMMISSION ESTABLISHED PURSUANT TO SECURITY COUNCIL RESOLUTION 1595 (2005) ¶ 203, available at <http://www.un.org/News/dh/docs/mehlisreport/> [hereinafter Mehlis Report]; *Hariri Investigation: Key Figures*, BBC NEWS, Oct. 21, 2005, http://news.bbc.co.uk/1/hi/world/middle_east/4363130.stm.

140. Mehlis Report, *supra* note 138, at ¶ 204.

141. *Id.* ¶ 209.

142. Ferry Biedermann, *Syrian Opposition Groups Unite to Demand Reform*, FIN. TIMES, Oct. 18, 2005, www.ft.com.

143. Financial Times, *UN Hariri Move Threatens Core of Syria’s Regime*, Nov. 1, 2005, www.ft.com.

Compounding tensions was the suicide of a top ranked Syrian official, Interior Minister Ghazi Kanaan, in October 2005, less than a month after meeting with U.N. investigators regarding the assassination of Hariri. An official investigation lead by Syrian authorities proclaimed his death a suicide, but the current political climate and increased international tension have left some believing that Kanaan's death is being used by the Assad regime to point suspicion for the Hariri death away from regime insiders. Others have outright accused the Assad regime of assassinating Kanaan and covering it up by calling it a suicide.¹⁴⁴

XIX. Tunisia^v

A. COMMERCIAL AND TRADE LAW

Driven by the looming 2008 deadline to remove all trade barriers under its 1996 Association Agreement with the EU,¹⁴⁵ during 2005 Tunisia continued its plodding but promising move toward opening itself to foreign investors while also preparing its economy for the corresponding increase in global competition.¹⁴⁶

Toward this end, the government's privatization¹⁴⁷ efforts this year targeted the banking,¹⁴⁸ telecommunications,¹⁴⁹ insurance,¹⁵⁰ and cement industries.¹⁵¹ Also of significance, new laws simplify procedures for forming corporations,¹⁵² allow the creation of exclusive

144. *Syrian Minister 'Commits Suicide'*, BBC News, Oct. 12, 2005, http://news.bbc.co.uk/1/hi/world/middle_east/4334442.stm; *Syria Probe Backs Suicide Theory*, BBC News, Oct. 13, 2005, available at http://news.bbc.co.uk/1/hi/world/middle_east/4336810.stm.

v. Vonda K. Vandaveer, an attorney in Washington, D.C., prepared the report on developments in Tunisia.

145. See Euro-Mediterranean Agreement, available at http://europa.eu.int/eur-lex/pri/en/oj/dat/1998/1_097/1_09719980330en00020174.pdf. Tunisia ratified this agreement with Law No. 96-49, June 20, 1996. See Republic of Tunisia, Ministry of Trade and Craft Industry, International Cooperation, Association Tunisia EU, http://www.infocommerce.gov.tn/eng/coop_3.htm. For more information on Tunisia's economic relations with the EU, see The European Union On Line, External Relations—The EU's Relations with Tunisia, http://europa.eu.int/comm/external_relations/tunisia/intro/index.htm.

146. Law No. 94-127 of Dec. 26, 1994 pertaining to the law of finances for the 1995 administration, as modified by Law No. 2005-44, May 30, 2005, creating the Industrial Competition Development Fund [FODEC]. See Agence Francaise de Developpement, Les Programmes de Mis a Niveau des Entreprises—Tunisie, Maroc, Senegal, 50-54, available at <http://www.afd.fr/jahia/webdav/site/myjahiasite/users/administrateur/public/publications/notesetdocuments/ND-18.pdf>.

147. Law No. 89-9 of Feb. 1, 1989 relating to privatization, modified and completed by Law No. 94-102, April 1, 1994, Law No. 96-74 of July 29, 1996, Law 99-38 of May 3, 1999 and Law No. 2001-33, March 29, 2001, available at <http://www.tunisieinfo.com/privatisation/juridique.html>.

148. See Banque du Sud, Communiqués de Presse, Une Nouvelle Era Commence Pour La Banque du Sud, available at http://www.banksud.com.tn/banksud/site/fr/communique_141205.pdf and Tunisia Online News, Banque du Sud Completes Its Privatization (Dec. 16, 2005), <http://www.tunisiaonlinenews.com/dec05/161205-1.html>.

149. See Tunisie Info, La Privatisation en Tunisie, Programme De Privatisation et Des Concessions (Etat arrêté au 20 février 2006), available at <http://www.tunisieinfo.com/privatisation/programme.html>.

150. *Id.*

151. See Tunisie Info, Appels d'Offres en Cours, available at <http://www.tunisieinfo.com/privatisation/appels-offres.html>.

152. See Loi 2005-12 du 26 Janvier 2005, Portant Modification de Quelques Dispositions du Code des Sociétés Commerciales, available at <http://www.jurisitetunisie.com/tunisie/codes/cs/L2005-0012.htm>. This law makes it easier to form corporations by reducing the capital requirements.

agencies and distributorships,¹⁵³ and enable foreigners in limited circumstances to buy property¹⁵⁴ and to more easily assign their company shares.¹⁵⁵

Also, this year marked the end of the Multi Fibre Agreement, thereby removing preferences for Tunisia's textile products in the EU market.¹⁵⁶ To respond to the new competition in this sector, Tunisia teamed up with other North African countries to discuss ways to help local producers move from being mere subcontractors to being the supplier of the finished product.¹⁵⁷

Tunisia also continued to pursue trade agreements with other countries. The United States attended talks in Tunis in June as part of their Trade and Investment Framework Agreement.¹⁵⁸

B. CONSTITUTIONAL AND DEMOCRACY DEVELOPMENTS

Although the Tunisian government has made overtures toward democratic reform in recent years,¹⁵⁹ in practice it continues to violate international human rights standards. The conduct was highlighted in connection with the United Nations' sponsored World Summit on the Information Society that Tunisia hosted in November.¹⁶⁰ In particular, Tunisia was criticized for denying freedom of expression and association by thwarting civil society participation in the conference through acts of harassment and intimidation. Among other

153. See Loi no 2005-60 du 18 Juillet 2005, Modifiant et Completant la Loi no 91-64 du 29 Juillet 1991 Relative a la Concurrence et aux Prix, available at <http://www.onparle.detunisie.com/index.php/Tunisie-lois>. This law eases restrictions in the Competition Law by allowing exclusive agencies. For the full text of the Competition Law, Law 91-64 before the 2005 modification, see International Bar Association, Global Competition Forum, Tunisia, at <http://www.globalcompetitionforum.org/regions/africa/Tunisia/Loi%2091-64.pdf>.

154. See Loi no 2005-40 du 11 Mai 2005, Complétant le Décret du 4 Juin 1957, Relatif aux Opérations Immobilières, available at http://www.bourseimmo.com.tn/argus_juridiques.asp?ATJID=17. This law enables foreigners to buy property for industrial use. This law enables foreigners to buy property for industrial use.

155. See Decret No 77-608 Du 27 Juillet 1977, Fixant Les Conditions D'application De La Loi No 76-18 Du 21 Janvier 1976, Portant Refonte Et Codification De La Legislation Des Changes Et Du Commerce Extérieur Regissant Les Relations Entre La Tunisie Et Les Pays Etrangers, available at <http://www.bct.gov.tn/francais/textes/decrets/de77608.pdf>. This regulation, as modified by Decree No. 2005-793, March 14, 2005 eases restrictions on foreign shareholders by allowing them to assign shares to another foreigner without having to obtain Central Bank approval.

156. Textiles Monitoring Body (TMB), The Agreement on Textiles and Clothing, available at http://www.wto.org/english/tratop_e/textile_e/textintro_e.htm#MFA. Textiles are a key industry supporting the Tunisian economy and Europe is Tunisia's main trading partner. See Oxford Business Group, *Testing Times*, EMERGING TUNISIA 2004, at 129-130 (on file with author).

157. Resolutions were made during a seminar organized by the Arab Maghreb Union and the Economic Commission for Africa on *The Termination of the Multifibre Agreement and the Consequences Relating to the Arab Maghreb Union* held February 14th, 2005.

158. U.S. Dep't of State Bureau of Near Eastern Affairs, Background Note: Tunisia (Sept. 2005), <http://www.state.gov/r/pa/ei/bgn/5439.htm>.

159. Of significance, in 2002 Tunisia amended its constitution to ease eligibility requirements for opposition candidates and added a second chamber to parliament with seats designated for representative of labor. See TUNISIA CONSTITUTION arts. 18-36, modified by Law No. 2002-51, June 1, 2002; see also Oxford Business Group, *The Form of Reform*, EMERGING TUNISIA 2004, at 10-11 (on file with author).

160. United Nations, International Telecommunications Union, World Summit on the Information Society (WSIS), <http://www.itu.int/wsis/>. The WSIS is a U.N.-sponsored program promoting global access to technology. Tunisia itself has been slow to grant this access due to its policy of strictly controlling information flow in the name of national security. See Oxford Business Group, *Choice at Last*, EMERGING TUNISIA 2004, at 143-144 (on file with author).

tactics, Tunisian authorities banned or disrupted meetings of NGOs, blocked access to the offices of a local human rights NGO participant,¹⁶¹ and prohibited distribution of materials critical of the Tunisian government.¹⁶²

XX. Turkey^w

Different from other countries in the region, Turkey is currently undergoing a rapid and drastic transformation toward a modern, secular, and democratic nation with a strong market economy. The driving forces behind this process are twofold. On the one hand, there is the vision of becoming a full member of the EU—a long march that began in 1959, when Turkey applied for associate membership of the European Economic Community, and culminated in the decision to open the accession talks between the EU and Turkey on October 3, 2005.¹⁶³ On the other hand, there are the lending arrangements with the International Monetary Fund.¹⁶⁴ While the number of legislative changes due to the ongoing transformation process are enormous, the following pieces of legislation are some of the most significant that have passed the parliament as a result of this continuing reform process: the Law on Associations;¹⁶⁵ the Code of Criminal Procedure;¹⁶⁶ and the Banks Act No. 4389,¹⁶⁷ that was repealed and replaced in its entirety by the new Banks Act No. 5411.¹⁶⁸

Moreover, one should bear in mind that other major bills are currently pending enactment: (1) to replace the Turkish Commercial Code adopted in 1956, the relevant Commission of the Ministry of Justice presented the Turkish Commercial Code Draft for public opinion in late February 2005¹⁶⁹; (2) in August 2005, the Capital Markets Board has made available to the public its draft of proposed amendments to the Capital Markets Law No. 2499 for the purposes of integration with the EU legislation;¹⁷⁰ and (3) to develop a fully-

161. Heinrich Boll Foundation, *World Summit on the Information Society*, <http://www.worldsummit2005.org>.

162. Comunica-ch, *WSIS Restricts Distribution of Tunisian Report* (Mar. 1, 2005), http://www.comunica-ch.net/sommaire.php3?id_rubrique=16.

w. Hakki Gedik, a partner at Hergüner Bilgen Özeke in Istanbul, Turkey prepared the report on developments in Turkey.

163. The basis for the accession negotiations are laid down in a document called *Negotiation Framework for Turkey* dated October 2005. See *Negotiating Framework for Turkey, Principles Governing the Negotiations*, http://europa.eu.int/comm/enlargement/docs/pdf/st20002_en05_TR_framedoc.pdf (last visited Mar. 13, 2006). On October 3, 2005, the negotiations were symbolically launched and on October 20, 2005, the screening was opened for some of the thirty-five chapter headings.

164. The most recent financial arrangement between the IMF and the Republic of Turkey is the Standby Arrangement dated May 11, 2005. See *Press Release, IMF, IMF Executive Board Approves US\$10 Billion Stand-By Agreement for Turkey* (May 11, 2005), available at <http://www.imf.org/external/np/sec/pr/2005/pr05104.htm>.

165. Published in the Official Gazette No. 25649 on Nov. 23, 2004 (on file with author).

166. Published in the Official Gazette No. 25673 on Dec. 17, 2004 (on file with author).

167. Published in the Official Gazette No. 23734 on June 23, 1999, as amended from time to time (on file with author).

168. Published in the Official Gazette No. 25983 (1st Repeated) on Nov. 1, 2005 (on file with author). For an unofficial translation of the Banks Act into the English language, see the Turkish Banks Association, <http://www.tbb.org.tr/english/5411.doc>. Per a press release of the Office of Presidency, the President plans to file an appeal with the Constitutional Court, requesting the cancellation of certain provisions of this law. The President had until January 2, 2006 to file its appeal.

169. See <http://www.kgm.adalet.gov.tr/turkticaretkanunutasarisi.htm> (in the Turkish language, on file with author).

170. See http://www.spk.gov.tr/HaberDuyuru/duyurular/SPKn/SPKn_tasarisi_taslagi.pdf (in the Turkish language, on file with author).

fledged mortgage banking system comparable to European standards, the Capital Markets Board prepared a revised Draft Law Related to the Housing Finance System in Turkey,¹⁷¹ proposing amendments to various pieces of legislation. Throughout the past year, Turkey has, again, made fundamental progress toward meeting the Copenhagen criteria¹⁷² for accession to the EU.

XXI. United Arab Emirates

A. COMMERCIAL LAW DEVELOPMENTS^x

The year 2005 will be marked as a significant one in the legal history of the U.A.E. During this year, many significant laws relating to the Dubai International Financial Centre, a 110-acre, constitutionally-defined, financial free zone, came into effect.¹⁷³ At least as noteworthy as the laws themselves is the open and transparent process by which the regulatory authority, the Dubai Financial Services Authority, develops the laws. The Authority publishes draft versions of laws on its web site and seeks public comment on them prior to adoption.¹⁷⁴

In the area of real property, the Ruler of the Emirate of Abu Dhabi (one of the seven Emirates comprising the U.A.E.)¹⁷⁵ passed Law No. 19 of 2005 regarding real estate property in the Emirate. At present, there remains no Federal U.A.E.-wide law either permitting or prohibiting the ownership of land by non-U.A.E. nationals; the matter is, therefore, left to the jurisdiction of each Emirate to decide for itself. Since 2002, when the Crown Prince of Dubai announced that freehold property ownership would be allowed in Dubai, there has been a tremendous amount of speculation and development in this sector of the economy in the Emirate of Dubai. While the Abu Dhabi property law allows non-U.A.E. nationals ninety-nine-year leasehold ownership, the long-anticipated Dubai property law is expected to allow for full freehold ownership within certain developments. Many significant issues, including the legal rights and responsibilities of co-ownership in condominium-style developments, remain unaddressed at present by U.A.E. law.

The U.A.E. Government is busy negotiating FTAs with the governments of the United States, Australia, and the EU, each of which will require significant changes to be made to major laws of the U.A.E. The U.A.E. is preparing for the effect of these agreements by,

171. See http://www.cmb.gov.tr/housingfinance/mortgage_draft_law.pdf (unofficial translation from Turkish into English, on file with author).

172. In June 1993, the Copenhagen European Council recognized the right of the countries of central and eastern Europe to join the EU when they have fulfilled three criteria: (1) political—stable institutions guaranteeing democracy, the rule of law, human rights and respect for minorities; (2) economic—a functioning market economy; and (3) incorporation of the *acquis communautaire*—adherence to the various political, economic and monetary aims of the European Union. The Madrid European Council confirmed these accession criteria in December 1995.

x. Justin A. Connor, a senior lawyer with the U.A.E. law firm of Al Tamimi & Company, Advocates and Legal Consultants, in Dubai, U.A.E., prepared the report on commercial law developments in the U.A.E.

173. For further information on the Dubai International Financial Centre (DIFC), see <http://www.difc.ae> (last visited Mar. 13, 2006).

174. To review the laws of the DIFC and the legislative process used by the Dubai Financial Services Authority, see <http://www.dfsa.ae> (last visited Mar. 13, 2006).

175. The seven Emirates comprising the U.A.E. are: Abu Dhabi, Dubai, Sharjah, Ras al Khaimah, Ajman, Fujairah, and Umm al Qawain.

among other things, revising its labor regulation, which is a major focus of the free trade talks. To this end, in 2005, the U.A.E. announced more liberal rules allowing expatriate workers in the country to transfer from one employer to another and ended the practice of employing under-age children as camel jockeys. The Government of Abu Dhabi also issued a new law extending health insurance coverage to all foreign residents of the Emirate. The negotiations for the United States-U.A.E. FTA are expected to conclude soon and other significant changes to the U.A.E. laws are expected to ensure consistency with the Agreement, including amendments to the Commercial Companies Law.

B. THE BIRTH OF A MIDDLE EASTERN BIOTECH INDUSTRY^y

The Dubai Biotechnology and Research Park (DuBiotech) was launched in February 2005 as part of Dubai's 2010 vision to establish an oil-independent knowledge economy. During the last few years, the Government of Dubai has established a successful track record in catalyzing targeted industries such as information technology, media, finance, and health-care by developing business clusters in a free zone setting. DuBiotech's task of becoming the catalyst in the creation of the biotechnology industry in the U.A.E. and Middle East region will be Dubai's greatest challenge yet.

DuBiotech has identified the critical ingredients to create a flourishing cluster, which include establishing venture capital financing vehicles to attract innovative biotechnology companies and attracting world-class education and research institutions to set up facilities.

From a legal perspective, establishing the biotechnology industry in Dubai will require the development and adoption of a world-class legal and regulatory framework, including revising the intellectual property laws, especially patent law, and attracting a legal services provider base with experience in patents/intellectual property law and venture capital related corporate finance.

XXII. Yemen^z

A. COMMERCIAL LAW DEVELOPMENTS

Four recent developments in Yemen's commercial law are notable. First, in February 2004, Yemen signed a Trade and Investment Framework Agreement with the United States.¹⁷⁶ That agreement establishes a Council on Trade and Investment responsible for identifying potential reforms in intellectual property, labor, and the environment, and also creates a dispute resolution system for disputes relating to trade or investment.¹⁷⁷ Second, Yemen continued movement toward its accession to the WTO, holding a series of working

y. Hassan Basil Hassan, counsel to the Legal and Regulatory Affairs Department at Dubai Biotechnology and Research Park, prepared the report on the birth of a biotech industry in the Middle East.

z. Ariel B. Waldman and Li Yu, attorneys in, respectively, the Washington, D.C. and New York City offices of Wilmer Cutler Pickering Hale and Dorr LLP, prepared the report on developments in Yemen.

176. See Agreement concerning the Development of the Trade and Investment Relationships, U.S.-Yem., Feb. 6, 2004, at art. 1, available at http://www.ustr.gov/assets/Trade_Agreements/Regional/MEFTA/asset_upload_file638_3529.pdf [hereinafter U.S.-Yem. Agreement]; see also Press Release, Office of the U.S. Trade Representative, United States and Yemen Sign Trade and Investment Framework Agreement (Feb. 7, 2004), available at http://www.ustr.gov/Document_Library/Press_Releases/2004/February/United_States_Yemen_Sign_Trade_Investment_Framework_Agreement.html.

177. U.S.-Yem. Agreement, *supra* note 175, at arts. 3(1), 4.

group meetings toward that end.¹⁷⁸ Third, Yemen reformed its investment laws by removing restrictions on foreign investment and recasting the government's authority from a regulator of foreign investments to a promoter.¹⁷⁹ Finally, Yemen moved towards strengthening the protection of intellectual property rights. The government announced a commitment to strengthening the protection of intellectual property rights and approved the Berne Convention for the Protection of Literary and Artistic Works.¹⁸⁰

B. CONSTITUTIONAL AND DEMOCRACY DEVELOPMENTS

Yemen's recent record with respect to constitutional democracy has been mixed. The chief area of progress has been judicial reform. In late 2004, more than twenty Yemeni judges were dismissed for corruption as part of an ongoing judicial reform program aimed at ensuring judicial independence. In contrast, human rights problems in Yemen appear to be worsening. In 2005, the government sponsored the killing of hundreds of followers of Hussain Badr al-Din al Huthi and the mass arrests and detentions of hundreds more in the Sa'dar province.¹⁸¹ Hussain al-Huthi's followers had been detained for shouting anti-United States and anti-Israeli slogans following the 2003 invasion of Iraq.¹⁸² Although many of those arrested were released in 2005, it is estimated that up to 200 have remained in detention without charge or trial.¹⁸³ Further, Amnesty International reported that in 2005 there were in Yemen, "increased punitive measures against journalists, including imprisonment, detentions, [and] fines."¹⁸⁴ "Torture and ill-treatment continued to be reported. Flogging continued to be imposed and carried out in public for a number of [offenses], including for the consumption of alcohol, for slander and for sexual [offenses]."¹⁸⁵

178. See World Trade Organization, Accessions, Yemen, http://www.wto.org/english/thewto_e/acc_e/a1_yemen_e.htm (last viewed Mar. 13, 2006); see also World Trade Organization, Yemen Accession Negotiations 3rd October 2005 (Oct. 3, 2005), http://www.wto.org/english/news_e/news05_e/acc_yemen_oct05_e.htm.

179. See U.S. Dep't of State, 2005 Investment Climate Statement—Yemen, <http://www.state.gov/e/eb/ift/2005/42199.htm> (last visited Mar. 13, 2006) (discussing reform of Invest Law No. 22, Yemen's principal law governing investment activities); see also The General Investment Authority, <http://www.gia.ye.org/index.htm> (last visited Mar. 13, 2006) (setting forth the text of the revised investment laws).

180. See *Yemen 'Ready to Suppress Piracy with a Firm Hand'*, GULF News, July 25, 2004, Going forward, as part of Yemen's WTO accession negotiations, it is expected to amend intellectual property rights regulations and to enhance their enforcement.

181. See Amnesty International 2005 Annual Report on Yemen, <http://www.amnestyusa.org/countries/yemen/document.do?id=ar&yr=2005> (last viewed Mar. 13, 2006).

182. See Amnesty International, Yemen: Chief Editor Imprisoned because of his Beliefs, <http://web.amnesty.org/appeals/index/yem-010205-wwa-eng> (last updated May 2005).

183. See *id.*

184. Amnesty International 2005 Annual Report on Yemen, *supra* note 180.

185. *Id.*