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# WORLD LAW BULLETIN

## January 2004

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## **WORLD LAW BULLETIN**

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## AMERICAS

### **BRAZIL – Initiative To Protect Rainforest**

The lower house of the Brazilian Congress voted on December 3, 2003, for stronger protection of the nation's tropical Atlantic coast rainforest, one of the world's most endangered areas. The legislation is intended to control the plantation farming, logging, and settlement that have decimated this lush region for centuries. The region, called the Mata Atlantica, is the second most endangered rainforest in the world and is home to 1.6 million species of animals and insects. It is expected that the proposed law will win Senate approval and go into effect. ("Brazilian Lawmakers Back Bill To Protect Atlantic Coast Rain Forest," *Los Angeles Times*, Dec. 4, 2003, via

<http://www.latimes.com/news/nationworld/world/la-fg-brazil4dec04,1,4552300,print.story?coll=la-headlines-world>)

(Sandra Sawicki, 7-9819)

### **BRAZIL – Pension and Retirement Reform**

Recently the Brazilian Senate approved a controversial reform of the pension and retirement system. The reform, which provoked large protests at the start of 2003 and a strike in the public sector, includes increasing the age of retirement and limiting pensions for public servants. It also includes provisions to tax 11 percent of the pensions of public employees. The Brazilian government hopes these measures will reduce the existing deficit in its retirement system. The Senate approval represents a victory for President Luiz Inacio Lula da Silva at the end of his first year in office. Public opinion polls indicate that 75 to 80 percent of Brazilians support a reform of the pension system. ("Brazil: Retirement Reform Approved," *BBC Mundo.com*, Dec. 12, 2003, at

[http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin\\_america/newsid\\_3312000/3312237.stm](http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin_america/newsid_3312000/3312237.stm).)

(Sandra Sawicki, 7-9819)

### **CANADA – Métis Hunting Rights**

In recent years, aboriginal hunting and fishing rights have been recognized in a number of controversial judicial decisions. The Supreme Court of Canada recently expanded the concept of aboriginal hunting rights by holding that certain members of the Métis people are not required to obtain a provincial hunting license or comply with the existing provincial laws respecting the hunting of moose. The Court recognized that the province can still restrict hunting for purpose of conservation, but the onus would be on provincial authorities to show that Métis hunting endangers the moose population.

Canada has approximately 300,000 Métis who have mixed aboriginal and non-aboriginal ancestry. The ruling in *R. v. Powley* (2003 S.C.C.) only applies to those persons who live in communities that have a distinctive Métis culture. Nevertheless, the decision was greeted enthusiastically by Métis leaders who have argued that the Métis should have rights equal to those accorded to groups considered to be Indian. The government opposed the recognition of full aboriginal hunting rights for the Métis on the grounds that the Métis did not exist before European trappers and settlers came to Canada.

(Stephen F. Clarke, 7-7121)

### **CANADA – Ontario Bill on Government Advertising**

The new Liberal Government of Ontario has introduced a bill to ban partisan advertising by the Government. It is believed to be the first of its kind in North America. Under the proposed Government

Advertising Act (Bill 25, 38<sup>th</sup> Ont. Leg., 1<sup>st</sup> Sess.), the consent of the Provincial Auditor would be required before a Government agency could pay to have an advertisement broadcast, published, or displayed. Exempted from this provision would be notices required by law or advertisements about an urgent matter affecting public health or safety. The Provincial Auditor is an independent officer appointed by the Legislature, and his or her decisions as to what constitutes partisan or ineligible advertising would be final. To guide the Provincial Auditor in making these decisions, the bill would establish required standards. One of the proposed standards is that the advertising must be a reasonable means of informing the public of current government policies, programs, or services. Partisan advertising would be defined as advertising that has the primary objective of promoting the political interests of the governing party. Also prohibited would be advertisements that include the name, voice, or image of a member of the provincial legislature or the provincial cabinet.

The Government Advertising Bill is a Government bill that was introduced by the Chair of the Management Board of the Cabinet. In a Government release, the Chair stated that “every dollar spent on self-serving partisan advertising is a dollar less for our classrooms, our health care system and our water inspectors.” (<http://www.gov.on.ca/MBS/english/mbs/releases/general/dec1103.html>.) (Stephen F. Clarke, 7-7121)

#### **CHILE – Arrest in the Hornan Case**

A former Chilean military officer, Rafael Gonzalez, was arrested and detained recently in connection with the death of Charles Hornan, an American journalist, during the days following the overthrow of Salvador Allende’s government and the installation of the Augusto Pinochet dictatorship in September 1973. Hornan disappeared at that time, and his body was found days later on a street in the capital city of Santiago. A lawyer for the Hornan family stated that the family hopes this is the first of many arrests in the case. (“Chile: Arrest in Hornan Case,” *BBC Mundo.com*, Dec. 11, 2003, at [http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin\\_america/newsid\\_3311000/3311767.stm](http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin_america/newsid_3311000/3311767.stm).) (Sandra Sawicki, 7-9819)

#### **COLOMBIA – New Anti-Terrorism Statute**

Colombian military authorities will be able to intercept communications and make arrests without judicial orders according to a new anti-terrorism law that was approved recently in Congress through a constitutional reform. The new capabilities are considered by the Colombian government to be key to combating terrorism, but at the same time human rights groups, including Amnesty International, are questioning these new powers for the military. For the constitutional reform to go into effect, Congress will have to present a bill for a regulatory law by March 2004 and must approve the initiative by June. President Alvaro Uribe has the power to issue a temporary regulation in the meantime. The President has also indicated that he will support an increased military budget and creation of networks of civilian informants. (“Colombia: Reactions to the New Statute,” *BBC Mundo.com*, Dec. 11, 2003, at [http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin\\_america/newsid\\_3312000/3312041.stm](http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin_america/newsid_3312000/3312041.stm)), and “Colombian Congress Approves New Anti-Terrorist Statute,” *CNNenEspanol.com*, Dec. 11, 2003, at <http://www.cnnenespanol.com/2003/americas/12/11/colombia.reut/index.html>.) (Sandra Sawicki, 7-9819)

#### **MEXICO – Failures in Human Rights Cited by United Nations**

On December 8, 2003, the United Nations High Commissioner for Human Rights issued a long

report that diagnoses Mexico's lapses in upholding human rights because of discrimination, lack of guarantees, and poor standard of living of the population. The report also calls for a basic reform of the system of justice. The study recommends amending laws that promote decent employment and better salaries, increasing public expenditures in health, housing, and nutrition, improving the educational system, increasing citizen participation in government, and ending inequality of women. Another recommendation is reopening the reform movement for Indian communities. The report is the most comprehensive study of human rights problems in Mexico, from police torture to inadequate laws to abuses by the military. President Vicente Fox commissioned the study, which is available on the Internet, on the day after he took office in 2000. (<http://www.cinu.org.mx>; "Mexico Suffers Setbacks in the Area of Human Rights, according to the UN," *CNNenEspanol.com*, Dec. 9, 2003, at <http://www.cnnenespanol.com/2003/americas/12/09/onu.mexico.reut/index.html>; and "U.N. Report Gives Mexico a Plan To Remedy Rights Lapses," *The Washington Post*, Dec. 9, 2003, at A17.) (Sandra Sawicki, 7-9819)

### **MEXICO – Immigration Agreement with Spain**

On December 19, 2003, the International Migrants Day, President Vicente Fox announced an immigration agreement with Spain which benefits Mexican workers who will be able to emigrate to Spain and work there legally. Mexican Foreign Secretary Luis Ernesto Derbez met with Spanish Foreign Secretary Ana Palacio to formulate the basis for the agreement. The principal points on Mexico's agenda for the agreement are the granting of work permits for temporary workers and the legalization of undocumented Mexicans in Spain. The agreement, which was proposed by President Fox to Spanish President José María Aznar and King Juan Carlos during the Iberia-American Summit last November, could be signed during the second half of 2004. ("Fox Anunció Acuerdo Migratorio con España para Trabajadores Mexicanos," *Terra Networks*, Dec. 19, 2003, <http://www.terra.com>; Ariadna García, "Negocia México Acuerdo con España," *El Universal*, Dec. 16, 1993, <http://www.el-universal.com.mx/>.) (Norma C. Gutiérrez, 7-4314)

### **MEXICO – OAS Convention Against Terrorism**

Mexico recently adopted a comprehensive treaty to prevent and punish terrorism. The Inter-American Convention Against Terrorism, the first such treaty since the attacks of September 11, 2001, seeks to prevent the financing of terrorist activities, strengthen border controls, and increase cooperation among law enforcement authorities in different countries, among other measures. Thirty-three countries of the Western Hemisphere signed the treaty, under the auspices of the Organization of American States.

The Convention addresses crucial financial regulatory, as well as criminal law, aspects. In particular, the Convention mandates the establishment of financial intelligence units for the collection, analysis, and dissemination of terrorist financing information and the establishment and enhancement of channels of communication between law enforcement authorities for secure and rapid exchange of information concerning all aspects of terrorist offenses; the exchange of information to improve border and customs control measures to detect and prevent movement of terrorists and terrorist-related materials; and technical cooperation and training programs. (*Diario Oficial*, Nov. 4, 2003, at 1, [http://www.gobernacion.gob.mx/dof/2003/noviembre/dof\\_04-11-2003.pdf](http://www.gobernacion.gob.mx/dof/2003/noviembre/dof_04-11-2003.pdf).) (Gustavo E. Guerra, 7-7104)

### **MEXICO – PEMEX Signs Natural Gas Exploitation Multiple Service Contract with Consortium**

PEMEX, the Mexican state-owned oil company, awarded its fourth multiple-services contract for the production of natural gas to a consortium on November 19, 2003. The group is made up of Petrobras from Brazil, Teikoku Oil Co. Ltd. from Japan, and D & S Petroleum from Mexico. The Consortium won a \$260 million bid to develop the Cuervito block in the Burgos basin, near the border with Texas. The auction is part of a controversial \$10 billion plan to double the production of natural gas in Mexico from one billion cubic feet a day to two billion by 2006 and to reduce the cost of importation.

PEMEX rejected the technical bid presented by a consortium made up of three companies: Houston-based Amistad Energy, a unit of a subsidiary of state-owned China National Petroleum Corporation, and another Chinese company.

It is expected that the winning consortium will drill 100 wells in 15 years and raise production to 34 million of cubic feet per day. (Elizabeth Fullerton, "Grupo Petrobras Gana Licitación para Bloque de Gas en Mexico," *Reuters*, <http://mx.news.yahoo.com>, Nov. 19, 2003.) (Norma C. Gutiérrez, 7-4314)

### **NICARAGUA – Former President Found Guilty**

On December 7, 2003, the Chief Judge of the Managua District Criminal Court, Juana Mendez, issued a decision finding former Nicaraguan President Arnaldo Aleman guilty of money laundering, fraud, misappropriation of public funds, graft, electoral crimes, and other charges and sentenced him to 20 years in prison. Mendez also barred Aleman from seeking public office for 20 years and intends to impose a heavy fine, the amount of which will be determined later.

Aleman, the first former president of Nicaragua to be convicted of corruption, will serve out the initial phase of his incarceration at his ranch south of the capital city, Managua, and awaits a new health examination. The judge absolved all charges against the former Director of Revenue under Aleman, Byron Jerez, who was convicted in June by another judge of fraudulently issuing government checks and was sentenced to eight years in jail. The Attorney General's Office of Nicaragua had accused the former president, several of his family members, and a number of public officials of diverting US\$100 million. It is expected that the former chief executive will appeal this conviction. ("Nicaraguan Judge Condemns Ex-President Aleman to 20 Years in Prison," *CNNenEspanol*, Dec. 7, 2003, <http://www.cnnenespanol.com/2003/americas/12/07/delito.nicaragua.aleman.reut/index.html>; "Former President of Nicaragua Is Found Guilty," *The Washington Post*, Dec. 8, 2003, at A16.) (Sandra Sawicki, 7-9819)

### **URUGUAY – Referendum Rejects Privatization of Petroleum Company**

Eighty-three percent of eligible voters went to the polls on December 7, 2003, with 60 percent of them rejecting a two-year-old law that allows the Uruguayan petroleum company, known as ANCAP, to accept private capital for its operations. The law ended the State's monopoly right to import, export, and refine crude petroleum and export petroleum derivatives (Law No. 17,448). The vote is interpreted as a success for the leftist parties, while it is looked upon by the rest of the political parties as a setback for modernization of the industrial sector. ANCAP also produces alcohol and cement. ("Referendum Repeals Law in Uruguay," *BBC Mundo.com*, Dec. 8, 2003, [http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin\\_america/newsid\\_3299000/3299441.stm](http://news.bbc.co.uk/go/pr/fr/-/hi/spanish/latin_america/newsid_3299000/3299441.stm); "Uruguayan Petroleum Company Will Continue in the Hands of the State After Referendum," *CNNenEspanol.com*, Dec. 8, 2003, <http://www.cnnenespanol.com/2003/americas/12/08/referendo.petroleo.reut/index.html>.)

(Sandra Sawicki, 7-9819)

## ASIA

### ARMENIA – New Restrictions on Political Parties

The Parliament of Armenia adopted an amendment to the Law on Political Parties, under which parties that have been denied registration may reapply for registration once they have amended their statutes to comply with the legislation. The amendment also stipulates that those parties that either fail to apply for re-registration or are denied it twice must be dissolved. At present, out of 116 parties existing in Armenia, 50 did not apply for re-registration and are subject to the amendment. (Radio Free Europe/Radio Liberty, *Newsline*, Vol. 7, No. 264, Dec. 1, 2003, at [www.rferl.org](http://www.rferl.org).) (Peter Roudik, 7-9861)

### CHINA – Bank Laws Drafted

Three banking laws advanced to the third round review in the National People's Congress, beginning with discussions on the opening day of the legislative session on December 22, 2003. The drafts included an amendment of the law on the People's Bank of China (PBOC), an amendment of the Law on Commercial Banks, and a law on banking supervision. Under the proposed amendment, the law on the PBOC would be changed to include a coordination mechanism for the financial sector that would be established by the State Council. At present, supervision of the banking, securities, and insurance industries is done by three separate watchdog agencies; for banking it is the China Banking Regulatory Commission. The new mechanism would provide coordination between the agencies.

The proposals being considered for amending the Law on Commercial Banks would modify the current ban on banking institutions engaging in non-banking businesses such as securities, insurance, and trust services, without permitting the full integration of these services. ("Three Draft Bank Laws Submitted to Chinese Legislature," *Global News Wire*, Dec. 22, 2003, via LEXIS/NEXIS, Asiapc library, China file.) (Constance A. Johnson, 7-9829)

### CHINA – Constitutional Amendments Proposed

On December 22, 2003, during the sixth session of the 10<sup>th</sup> National People's Congress (NPC) Standing Committee, Wang Zhaoguo, a highly ranked member of the Chinese Communist Party (CCP), presented a report on revising the Constitution of the People's Republic of China. The 1982 Constitution has been revised three times, in 1988, 1993, and 1999. The NPC Standing Committee will present a constitutional amendment bill based on the CCP Central Committee's proposal to the NPC for examination.

Among the proposed changes put forward by the CCP Central Committee are the following: incorporation of former President (lit. chairman) Jiang Zemin's "Three Represents" thinking into the language of the Preamble, in addition to the Marxism-Leninism guidance, Mao Zedong thought, and Deng Xiaoping theory now cited there; placement of protection of citizens' private assets, which are not

to be violated, on an equal footing with that of public property; inclusion of a new clause on establishment of a social security system; and inclusion of a statement to the effect that “the state respects and safeguards human rights.” Some other suggested revisions are to change the terms of local deputies to five years as the standard, to replace phrasing involving “martial law” with “state of emergency,” and to expand presidential authority in foreign affairs. ([http://news.xinhuanet.com/english/2003-12/22/content\\_1243432.htm](http://news.xinhuanet.com/english/2003-12/22/content_1243432.htm); “Apparent Text of CPC Central Committee Proposal on Constitutional Amendments,” *Xinhua*, Dec. 22, 2003, as translated in FBIS.) (Wendy Zeldin, 7-9832)

### **CHINA – Terrorist Organization List and Criteria**

On December 15, 2003, China’s Ministry of Public Security (MPS) for the first time publicized a list of the “first batch” of four groups identified as “Eastern Turkestan” terrorist organizations (describing for each their alleged acts of terror, the chief leader, the major sources of funding and recruits, and relations with other terrorist organizations) and the names of 11 persons identified as members of these groups (including the four chief leaders) with an account of their activities. (“Text of Ministry of Public Security List on ‘Eastern Turkestan’ Terrorist Organizations,” *Xinhua*, Dec. 15, 2003, via FBIS.)

Zhao Yongchen, vice-chief of the Counter-Terrorism Bureau of the MPS, also set forth the criteria for identifying terrorist organizations and terrorists. A terrorist organization is characterized as one that: 1) engages in terrorist activities that endanger national security or social stability and harm life and property through violence and terror (whether based inside or outside China); 2) has some form of division for organization and leadership work; and 3) meets the above criteria and has been involved in activities such as organizing or taking part in terrorist activities, offering funding or support for terrorist activities, maintaining a base(s) for or recruiting and training terrorists, collaborating with other international terrorist organizations, and the like. The criteria for identifying a person as a terrorist include: 1) having contact with a terrorist organization and engaging in terrorist activities at home or abroad that endanger national security and the life and property of other people (whether or not the terrorist is a naturalized citizen of another nation), and 2) meeting the criteria in (1) and being involved in any of various other activities, e.g., taking part in a terrorist organization, providing funding and assistance to terrorist organizations or terrorists, accepting funding or training from such groups and other international organizations or taking part in their activities. (“China Sets Forth Criteria for Identifying Terrorists, Terrorist Groups,” *Xinhua*, Dec. 15, 2003, via FBIS.) (Wendy Zeldin, 7-9832)

### **INDIA – Anti-Terrorism Law Upheld**

The Supreme Court of India upheld the constitutional validity of the Prevention of Terrorism Act, 2002 (POTA), while observing that the Parliament of India alone, and not the state legislatures, was competent to enact such a law affecting the security and sovereignty of the nation. Petitions challenging the validity of the Act had contended that this was essentially a law and order problem in some but not all states, and thus only the affected states, if they so wished, could enact a law on the subject. In dismissing that argument, the Court stated that terrorism is not state-specific but transnational and that terrorism could not be equated to a usual law and order problem. Therefore, the Union Parliament could enact such a law.

Rejecting the contention that the Court should address the issue of the need for the enactment of the POTA, it observed that “it is a matter of policy. Once legislation is passed, the Government has an

obligation to exercise all available options to prevent terrorism within the bounds of the Constitution.” (*The Hindu*, Dec. 17, 2003, at 1.)  
(Krishan Nehra, 7-7103)

### **INDIA – Courts Must State Reasons For Judgments**

The Supreme Court of India has held that failure by courts to give reasons in their judgments amounts to denial of justice. In expressing serious concern over the manner in which some High Courts passed orders without giving reasons for their decisions, the Supreme Court observed that the “right to reason is an indispensable part of a sound judicial system.”

The Bench was disposing of an appeal preferred by the Punjab Government against a High Court order that had previously dismissed a government appeal in a drug case. In its order, the High Court had merely said “[H]eard. No merit. Dismissed.” The Punjab Government contended that it was imperative for the High Court to indicate the “reasons why its prayer [i.e., petition] was untenable” and should have appraised all the evidence.

Quoting the words of Lord Denning, “Giving of reasons is one of the fundamentals of good administration,” the Bench said the issue raised by the State was not “trivial.” The Bench also allowed the State of Punjab to move a fresh petition before the High Court and asked the latter to admit it and pass a reasoned judgment. (*The Hindu*, <http://www.hinduonnet.com/>, Dec. 24, 2003.)  
(Krishan Nehra, 7-7103)

### **INDIA – Death Penalty for Spurious Drugs**

Realizing that the producers of spurious (i.e. adulterated and/or counterfeit) drugs play with the lives of innocent people, who buy them in the belief that the drugs are effective, the Government has cleared a proposal to impose a death sentence on the manufacturers of spurious drugs and to make penalties more stringent for the sale of or other dealings in such drugs. The Cabinet also decided to make offenses relating to production and sale of the drugs cognizable (subject to arrest without warrant) and non-bailable.

The law to provide for the establishment of a special court for the speedy disposal of cases relating to spurious drugs will be changed. A bill to incorporate the proposed changes will be introduced in the current session of the Parliament. The stated modifications are based on the recommendations of the Mashelker Committee, which considered spurious drug manufacturers to be mass murderers who should not be spared. While announcing the above Cabinet decision, Union Minister for Health and Family Welfare Sushma Swaraj stated that dealing in spurious drugs was the most heinous of all crimes. For speedy arbitration and to permit product patents from January 1, 2005, the Cabinet also cleared an amendment to the Patents Act, 1970. (*The Hindu*, <http://www.hinduonnet.com/>, Dec. 19, 2003, at 1; Times News Network, Dec. 19, 2003.)  
(Krishan Nehra, 7-7103)

### **INDIA – Dual Citizenship**

On December 22, 2003, the Parliament of India passed a bill to grant dual citizenship to people of Indian origin, with the Deputy Prime Minister saying that the measure would go a long way to enable people to contribute to the cause of national development.

The Citizenship (Amendment) Bill, 2003, will allow both *Bharatvasis* (citizens of India) and *Bharatvanshis* (people of Indian origin) to participate in the cause of India's development. Citizenship will be applicable to foreign citizens of Indian descent in eight countries: Australia, Canada, Finland, Ireland, Italy, the Netherlands, the United Kingdom, and the United States. According to its Statement of Objects and Reasons, the bill will simplify the procedure to facilitate the reacquisition of Indian citizenship by persons of age who are the offspring of Indian citizens and former citizens. The bill also provides for the grant of overseas citizenship of India to persons of Indian origin who are citizens in any of 16 specified countries and to Indian citizens who chose to acquire citizenship of these countries at a later date. However, it makes the rules for the acquisition of Indian citizenship and naturalization more stringent and prevents illegal migrants from becoming eligible for Indian citizenship. (*The Hindustan Times*, <http://www.hindustantimes.com/>, Dec. 22, 2003.) (Krishan Nehra, 7-7103)

### **JAPAN – Draft Whistle- Blower Protection Act**

The Cabinet Office published its outline of the draft “Whistle-Blowers Protection Act” on December 10, 2003. Under the draft outline, companies and government departments cannot dismiss individuals who report illegal or questionable activities. Employers also cannot punish whistle-blowers by demoting them or cutting their salaries. Such legislation may change bad corporate and bureaucratic culture in which a priority is given to protecting an organization, not pursuing social good. Critics said that the draft offers no help to whistle-blowers who provide information to a government agency that then does nothing about it. Critics also said an individual who passes information to an outside party such as a mass media organization is protected only in certain cases. The Cabinet Office will solicit opinions from the public before the proposed legislation is submitted to the Diet by March 2004. (“Shasetsu: naibusha kokuhatsu hogo,” (Editorial: Whistle-Blower Protection), *Mainichi Shimbun*, Dec. 12, 2003.) (Sayuri Umeda, 7-0075)

### **KAZAKHSTAN – Oil Tax Introduced**

New tax legislation introducing an export tax on oil entered into force on January 1, 2004. From that date, the taxes are to be paid by all oil exporters except those working under production-sharing agreements and those whose contracts predate the new law. The tax rate is established at the level of 33 percent of the current market price per barrel of oil. Previously, oil exporters were untaxed. (Radio Free Europe/Radio Liberty, *Central Asia Newsline*, Dec. 3, 2003.) (Peter Roudik, 7-9861)

### **KOREA, NORTH – KEDO Engineers Said to Be Subject to North Korean Law**

At a November 10-11, 2003, meeting between North Korean officials and the staff of the Korean Peninsula Energy Development Organization (KEDO), the international organization established to implement the 1995 agreement between North Korea and the United States, the North Korean officials said that they would apply domestic laws on roads leading to the construction site for light-water reactors at Kumho, North Korea. The construction area is currently designated as a consular protection zone. The construction site is 7-8 kilometers (4.3 - 5 miles) away from the residential compound for South Korean workers who have been dispatched to the site. Currently, they can travel back and forth if they have a permit from North Korean authorities. The issue will be discussed again at a meeting between KEDO and North Korea in January 2004. (“NK Vows To Maintain Jurisdiction at KEDO Site,” Koreanet at <http://www.kois.go.kr/>, Dec. 19, 2003.) (Sayuri Umeda, 7-0075)

### PAKISTAN – Muslim Women’s Right To Marry

In a far-reaching decision, seen as a big step for women in Pakistan, the country’s Supreme Court has granted Muslim women the right to marry according to their “free will,” without a parent’s or guardian’s consent. A full-bench of the apex court, setting aside a Lahore High Court judgment of 1997, on December 21, 2003, stated that “Muslim girls can marry without their *wali*’s (guardian’s) consent and an admission by the couple was sufficient proof of marriage.”

In overturning on appeal a decision of the Lahore High Court, the Court observed that “a sane and adult Muslim female can enter into a valid *nikah* (marriage) of her own free will” and that after reaching puberty, a Muslim girl is competent to marry of her own free will; the father’s custody can be denied after the marriage. The father in the case that was overturned had challenged the legality of his daughter’s wedding of her own free will and filed an abduction charge against the human rights activist Asthma Jehangir, after the girl took refuge in her house. While exonerating Jehangir of any wrongdoing, the Supreme Court said that it was “inappropriate and undesirable, if not illegal” for the High Court to have determined the fate of the couple by adjudicating the validity of marriage on the basis of Islamic practice in proceedings under section 491 of the Code of Criminal Procedure of 1898. (*The Hindustan Times*, <http://www.hindustantimes.com/>, Dec. 20, 2003. (Krishan Nehra, 7-7103))

### TAIWAN – New SARS Units Planned

The Executive Yuan (Cabinet) plans to establish two new units under Taiwan’s Center for Disease Control in order to help combat SARS (Severe Acute Respiratory Syndrome) and other viruses. An information technology room, to be formed by reorganizing the existing information technology team, will devise an online epidemic prevention network and reporting system. The current division of laboratory research and development and the division of quarantine and intervention activities will be combined to form a new examination and research center. The premise for the restructuring is that the total number of CDC employees will not increase.

In addition, the Cabinet plans to have the Department of Health (DOH) add two new departments, one for international cooperation (to be reorganized from the international cooperation team) and another for medical development (to be formed by the Taichung office of the DOH). The latter will assume all service-oriented operations of the Department of Medical Affairs. (Ko Shu-ling, “Cabinet Plans To Set Up New SARS Units,” *Taipei Times*, Dec. 29, 2003, at 4, at <http://www.taipeitimes.com/News/taiwan/archives/2003/12/29/2003085577>.) (Wendy Zeldin, 7-9832)

### TAIWAN – Referendum Bill Becomes Law

On December 31, 2003, President Chen Shui-bian promulgated the Referendum Law, which entered into effect on January 2, 2004. Although Chen’s Democratic Progressive Party (DPP) initiated the legislation, opposition parties—the Kuomintang and the People First Party, which form the “pan-blue alliance”—have a controlling majority in the Legislative Yuan and filled the Cabinet-drafted bill with their own proposals, pushing it through the legislature on November 27. The Cabinet subsequently asked

the legislature to reconsider 12 of the 64 articles, but the request was rejected. The DPP legislative caucus has indicated that it plans to revisit the bill, which it has called flawed, by seeking amendments to it and asking the Council of Grand Justices for an interpretation of its constitutionality. (“CNA: Referendum Law To Take Effect Jan. 2,” Taipei *Central News Agency*, Dec. 31, 2003, via FBIS.)

The President has stated that he will hold Taiwan’s first referendum on March 20, 2004, the same day as the presidential polls, to call on mainland China to remove its ballistic missiles aimed at the island. The plan has been criticized by the United States, along with Japan and the European Union, even though Taiwan leaders have given assurances that the March referendum will not have anything to do with the issue of Taiwan independence. Mainland China has threatened to invade Taiwan should it declare formal independence. (“AFP: Taiwan’s President Chen Shui-bian Signs Bill Allowing Referendums,” Hong Kong *AFP*, Dec. 31, 2003, via FBIS.)  
(Wendy Zeldin, 7-9832)

## EUROPE

### **BELGIUM – Making Courts More Accessible to Indigent Litigants**

The Belgian Minister of Justice, Mrs. Laurette Onkelinx, presented a plan to the Council of Ministers to make courts more accessible. The plan was approved on November 21, 2003. It was found that only about 15 percent of the population benefits from free or partially free access to lawyers and courts, while some 75 percent of the population can barely afford a lawyer and the expense of litigation. The government plan seeks to improve the situation. The Belgian bar association will set up offices in court buildings to give free advice to all litigants. Heretofore lawyers could charge €12.39 (about US\$15.82) for the first session with the client in their offices. In the future, a greater percentage of the population will gain access to the courts since free or partially free litigation will be provided to persons whose income is below the minimum wage, calculated for single and married persons with or without children. The present average monthly minimum wage in Belgium is €1,163. To provide the funds for the increase in public expense, the budgeted amount of €25.6 million for 2003 will be increased by €2.5 million, an increase of some 10 percent. In 2004, the total amount will be €36.1 million (another 28.3 percent, so that the total budget increase will reach 41 percent). (Belgian Ministry of Justice, [http://www.just.fgov.be/fr\\_htm/politique/htm\\_communique/comm-21-11-03c.html](http://www.just.fgov.be/fr_htm/politique/htm_communique/comm-21-11-03c.html); and “The Voice of Small Business,” <http://www.sfa.ie>, Dec. 5, 2003.)  
(George E. Glos, 7-9849)

### **FRANCE – Debate on Islamic Scarves and Other Religious Matters**

On December 11, 2003, the special commission on secularism, the *Commission de réflexion sur la laïcité* gave its report to president Jacques Chirac after several months of consultation with religious leaders, teachers, politicians and sociologists (See 8 W.L.B. 2003). The commission recommended a ban on conspicuous religious signs in public schools, including Islamic scarves, Jewish skull-caps, and large crosses. Discreet signs such as small medals, crosses, stars of David, hands of Fatima, or Korans would be tolerated. A few days later, President Chirac decided to follow the Commission’s recommendations and, in a nationally televised speech, called for a law that would ban the headscarves and other overt religious symbols. In his speech, he reaffirmed that “secularism is not negotiable” and that “the schools will remain secular.” He went even further in saying that private businesses should be allowed to ban such symbols among employees “for reasons of security or client contact.”

At Chirac's request, the Ministry of Education prepared a very simple and short draft bill (3 articles) banning the wearing of conspicuous religious signs and clothing by students in public schools. Public school teachers who are civil servants already are required to abide by the principle of strict neutrality. The bill does not apply to private schools. If passed by Parliament, the prohibition would be incorporated into the Education Code and be applicable to Metropolitan France and France's overseas territories. The draft bill has been submitted to the Conseil d'Etat (France's highest advisory administrative authority and highest administrative court) for consultation. It will be reviewed by the Council of Ministers at the end of January and is expected to be before Parliament in February. (<http://www.education.gouv.fr/actu/actualite.php>.)

The Commission report had also suggested that Yom Kippur and Aïd el- Kebir become holidays for students and workers wishing to celebrate either one of these days, but the President rejected this recommendation, saying that there are already too many holidays in the school calendar. The Ministry of Education will give instructions to schools not to schedule examinations on those days. The report also recommended the establishment of a national school for Islamic studies, as well as the provision of alternate meals in public canteens for observant Jews and Muslims. Other topics included in the report were related to health issues, such as the refusal by some Muslim women to be treated by male doctors in public hospitals. ("M. Stasi prône l'interdiction des signes religieux et politiques à l'école" & "Le discours de Jacques Chirac sur la Laïcité," at <http://lemonde.fr>, Dec. 18, 2003.) (Nicole Atwill, 7-2832)

#### **FRANCE – Exclusion of Liability for Cigarette Manufacturers**

The Cour de Cassation (France's judicial supreme court) excluded in principle any liability of cigarette manufacturers for illnesses linked to tobacco. It would appear that the Court has given a final blow to lawsuits brought by smokers against the tobacco industry that might result in large awards for damages.

The Court, sitting in plenary form (with all five chambers), cleared the former (quasi-public) Seita Company, now known as Altadis, in the death of a 50-year-old smoker. Richard Gourlain died of cancer of the throat and tongue. His family was seeking €457,000 (about US\$568,325) in damages, claiming that Seita did not properly inform Mr. Gourlain of the risks he took in smoking. The Court held that Mr. Gourlain was the "only one able to take the decisions which were essential." It noted that he never reduced his smoking, even after a death due to lung cancer in his family in 1980 or after the diagnosis of his own cancer in 1998. The Court further held that the danger of cigarettes is due to the products they contain, but also to the behavior of the smoker who excessively consumes this product.

This case, however, may not be completely closed. The Court found that before the enactment of a July 10, 1976, law it was the responsibility of the successive governments, not of the manufacturers, to inform the public of the danger of tobacco. According to the evidence presented, in spite of repeated requests of the Ministry for Public Health, the Ministry of Finance refused to organize prevention campaigns and to impose warning labels. The Ministry attempted to justify its lack of action by pointing out the adverse impact it would have on Seita's profits and on the government revenue derived from the taxation of tobacco products. The attorney for the Gourlain family has therefore decided to sue the French State before the administrative courts. (Cour de Cassation, Chambre Civile 2, Audience publique du 20 Novembre 2003, No 01-17977, at <http://www.legifrance.gouv.fr/WAspad/visu?cid=119506&indice=1&table=Cass&ligne>, and "Les cigarettiers à l'abri des poursuites judiciaires," *Le Monde*, at <http://www.lemonde.fr>, Nov. 22, 2003.) (Nicole Atwill, 7-2832)

### **GERMANY – Translation of Correspondence of Detained Aliens**

The Federal Constitutional Court ruled that the equality principle of the German Constitution (Basic Law, May 23, 1949, *Bundesgesetzblatt* 1) was violated when a criminal judgment sentenced a convicted alien offender to pay the costs of translating correspondence received by him while he was being held in pretrial detention (Decision of 3<sup>rd</sup> Chamber of the Second Senate of the Federal Constitutional Court of Oct. 3, 2003, docket number 2 BvR 2118/01).

In Germany, the cost of criminal litigation is allocated to the losing party; this includes some of the costs incurred during the criminal investigation and pretrial phases (Code of Criminal Procedure, re-promulgated Apr. 7, 1987, *Bundesgesetzblatt* I 1074, §§464-465). In regard to translations, the statutory provisions only provide that the cost of an interpreter during the trial may not be imposed on the accused.

In the case at issue, a Czech citizen was convicted for a weapons law violation and was adjudged to pay approximately US\$5,000 in costs for translations of letters received by him while in pretrial detention. The Court held that this violated the Constitution, because German detainees do not incur such costs and furthermore the accused should have been warned that receiving the letters might make him liable for translation costs. Moreover, the Court held that it might have been excessive to have his entire correspondence translated. The Court let stand a decision of the lower court that adjudged the accused should pay some US\$7,000 for the cost of translating telephone surveillance carried out during the criminal investigation. The Court reasoned that German defendants could also incur such costs and the principle of equality therefore was not violated.  
(Edith Palmer, 7-9860)

### **ITALY – Alimony Reduced for Spouses Who Do Not Work**

From now on, separated spouses in Italy who rely on alimony rather than looking for a job in order to be economically independent may have to think again. The Italian Supreme Court, upholding a decision of the Court of Appeals of Bologna, ruled that a former spouse, still young and capable of working, who for 11 years had not made enough of an effort to find employment, deserved a cut in her alimony. The Court of Bologna had in fact reduced by 30 percent the alimony provided to the 39-year-old woman, who lived in a northern city in which, according to the Court, it is not at all impossible to find a job if one actually looks for one. The Supreme Court, however, rejected the request of the former husband to rescind the alimony altogether. (<http://www.Repubblica.it>)  
(Giovanni Salvo, 7-9856)

### **ITALY – Law on Medically Assisted Procreation**

The Italian Parliament recently passed a law on medically assisted procreation that has deeply divided political forces across party lines, elicited a negative response from a number of well respected scientists, and created the potential risk of a popular referendum being held to repeal it.

Legislation on medically assisted procreation and related issues did not have an easy path in the Italian Parliament. The Social Affairs Committee of the Chamber of Deputies released a bill in January 1998 that was the result of a long and complex process of coordination and mediation of the opposing views of the supporters of various legislative proposals. It appeared at that time that on such delicate issues politics did not interfere with the personal ethical positions of both lay and Catholic Members. In the assembly, however, the disagreement among political groups exploded, many conflicting amendments

were added to the bill, and by the end of the legislative session the bill, the product of about 20 years of legislative effort, was abandoned.

The law adopted by the Parliament establishes that access to the procedures of medically assisted procreation is permitted only upon medical certification that infertility and sterility cannot be remedied. Only adult couples of different genders, who are married and not separated and are both alive and of potentially fertile age may have access to the procedure. Single persons, homosexual couples, and heterosexual unmarried couples are clearly excluded. Surrogate motherhood, insemination from deceased donors, and insemination by donor sperm are prohibited. The law protects the legal status of children born as a consequence of the procedure, contains provisions for the protection of the embryo, imposes strict limitations on experimental research, requires licensing of public and private facilities where the procedures may be performed, and provides ample civil, administrative, and penal sanctions in proportion to the severity of the violations. (<http://www.Repubblica.it>) (Giovanni Salvo, 7-9856)

### **LITHUANIA – One-Time Property Declarations Legalized**

According to the recently passed Law on One-Off Declaration of Property Ownership by Lithuania's Residents, all individuals residing in Lithuania must declare to the State the property they owned as of December 31, 2003. Declarations must be submitted by May 1, 2005.

According to the Law, the list of assets for declaration includes monetary funds in an amount exceeding US\$12,000; borrowed or credited funds in an amount exceeding US\$500; securities; construction in process and other real estate, the ownership of which has not been registered at the real estate registry; and any assets abroad if these assets are subject to legal registration. Any works of art, precious stones, jewelry, and precious metals with a unit value in excess of US\$2,500 have to be declared. An individual may declare any other assets that in his opinion carry a certain value.

Tax administrators will be granted the authority to ask the residents to substantiate the resources used for the purchase of declared assets, except for those assets for which the purchase sources were previously substantiated. Those who do not possess any of the above-mentioned types of assets do not need to submit a declaration. The declaration requirement will not cover real estate and vehicles. Individuals in default of the requirement of property declaration will not be able to substantiate the future purchase of new assets with the resources obtained from the sale of property that has not been declared. (*Valstubes Zinios* [Lithuanian official gazette], No. 91(1), 2003, Item 4104.) (Peter Roudik, 7-9861)

### **LITHUANIA – Wiretapping of the President Outlawed**

The Lithuanian Parliament's Operatives' Activities Control Commission accused the State Security Department of recording telephone conversations involving President Rolandas Paksas of Lithuania. The decision was made in response to the President's request to the Commission to find out whether the recording of presidential telephone conversations was made in accordance with the Law on Operatives' Activities, which prohibits the use of operative measures against the President. The wiretapping sanctioned by the court was conducted in line with a criminal investigation against some former business partners of Paksas whose phones were legally tapped; the President's voice was heard in some of the recorded conversations. The Supreme Court Chairman and Prosecutor General said that Lithuanian laws ban the tapping of the President's telephone conversations regardless of whose telephones are tapped.

The Prosecutor General therefore ordered the destruction of all recordings containing the President's voice. However, the Parliamentary commission probing suspected underworld connections of the presidential circle banned such action. (Baltic News Service, *Daily News*, at <http://www.securities.com/>, Dec. 19, 2003.)

(Peter Roudik, 7-9861)

### **THE NETHERLANDS – Electronic Reporting of Crimes**

As part of a safety program entitled "Towards a Safer Society," a bill was submitted to the Council of State under which it will be possible to report certain punishable offenses electronically to the police. Using this simplified method, a person can report an offense at any time, without having to wait. In addition, police capacity can be used more efficiently, with fewer personnel required for writing reports. The electronic reporting will legally have the same standing as a conventionally drawn up and signed document, provided that a number of requirements are met relating to the identifiability of the person reporting and the reliability of the content of the electronic statement. The requirements will be further elaborated by governmental decree. (Ministry of Justice, *Press Release*, <http://www.justitie.nl>, Nov. 28, 2003.)

(Karel Wennink, 7-9864)

### **THE NETHERLANDS – Food Supplements Control Mark**

The Netherlands will be the first country in the world where top athletes will be able to find out which vitamins or food supplements are safe to use. The Netherlands Center for Doping Affairs, which is the national knowledge center providing coordination and information for doping issues in sport, has established a special website indicating which vitamins and food supplements will have the official Control Mark and therefore will be safe to use and not result in a positive reading on a doping test. (*NRC-Handelsblad*, Nov. 21, 2003.)

(Karel Wennink, 7-9864)

### **RUSSIAN FEDERATION – Criminal Liability for Traffic Violations Abolished**

According to amendments to the Criminal Code that entered into force on January 1, 2004, criminal liability for violations of certain traffic rules has been abolished. The change affects transgressions under the rules of operation of an automobile or other mechanical means of transport that entail infliction of moderately grave harm to the health of a person. Previously, any infliction of harm to health or of bodily injury was punishable by imprisonment for up to five years; however, judges usually sentenced guilty drivers to two to three years of conditional imprisonment and deprivation of the right to operate a transport vehicle. The new version of the Code provides for criminal punishment for causing major health losses or death due to negligence. Under Russian law, the loss of ability to work for a period of 21 days or more is considered a grave harm to health. In all other cases, drivers will be punished by a fine; nonpayment of that fine is punishable by a two-week detention. (*Rossiiskaia gazeta*, at <http://www.rg.ru/>, Nov. 18, 2003.)

(Peter Roudik, 7-9861)

### **RUSSIAN FEDERATION – New Law on Currency Control**

On December 15, 2003, President Putin of Russia signed into law the Currency Regulation and Currency Control Act. Among other major new features, it permits Russian and foreign individuals to transfer cash amounts of up to US\$10,000 through the Russian border without a customs declaration and

acknowledges the right of Russian citizens to open accounts in banks located in foreign states, if these states are members of the Financial Action Task Force on money laundering. However, Russian tax authorities must be informed of actions by account holders. The Law provides for a definite list of currency operations subject to government regulation. The definition of “currency valuables” has also been changed. Only foreign hard currency and securities are considered “currency valuables”; precious metals and natural precious stones are now excluded from the list. Outdated restrictions for currency trades have been lifted.

As an anti-corruption measure, the Law repeals the requirement for residents and non-residents to obtain individual permission from regulators (the Government and Central Bank of Russia) for currency operations and provides for gradual cancellation of other restrictions, including the mandatory sale of the foreign currency portions of profits, to enter into force in 2007. The implementation of other provisions of the Law will also be postponed in order to smooth changes in the domestic banking system. (*BBC Russian Service* report, <http://newsvote.bbc.co.uk>, Dec. 16, 2003.) (Peter Roudik, 7-9861)

### **SWITZERLAND – Nationality of Corporate Directors**

Switzerland has quietly lifted a restriction against aliens in corporation law. Article 708 of the Swiss Code of Obligations (*Systematische Sammlung des Bundesrechts*, Number 220) provides that the majority of members of the board of directors of a Swiss corporation must be Swiss citizens who reside in Switzerland. Corporations that do not meet this requirement (except for certain authorized holding companies) must be dissolved by the clerk of the cantonal commercial register. According to newspaper reports, the Swiss Federal Office for Commercial Registers stated in a public letter that article 708 of the Code of Obligations will no longer be applied to citizens of the European Union who reside in Switzerland (*Frankfurter Allgemeine Zeitung*, Aug. 22, 2003, at 12).

Allegedly, this communication had the effect of allowing Swiss corporations to have a majority of directors who reside in Switzerland and are citizens of European Union member countries. A change in the law has not as yet been made. One reason for this informal solution to a discriminatory practice may have been the cumbersomeness of the Swiss legislative process. It takes many years to change a Swiss law, even if there is agreement on the bill. (Edith Palmer, 7-9860)

### **UKRAINE – Freedom of Movement Act**

On December 11, 2003, the Ukrainian legislature, the *Verkhovna Rada*, adopted the Law on Freedom of Movement, which provides for the right of Ukrainian citizens, foreigners, and stateless individuals who legally reside in the territory of Ukraine to choose their place of abode. A special section of the Law declares the abolishment of the notorious Soviet *propiska* (residence permit) system. However, because the Law introduces mandatory registration of physical persons with police authorities in places where they reside, the essence of the *propiska* institution did not change.

In order to avoid administrative punishment in the form of a fine or detention for up to 15 days, an individual must register with local police within ten days of arriving in the new locality. In order to register, the applicant must submit to the local police station a petition, identification documents, State fee payment receipts, a statement from the owner of the residence, the conclusion of medical authorities on the sanitary conditions of the residence, and two items of evidence indicating registration cancellation in the previous place of residence. The Law restricts selection of the place of abode in State border areas, on

the territory of military bases, and in areas where a state of emergency or martial law has been introduced. (*Interfax News Report*, Dec. 12, 2003, <http://www.interfax.ru>, Dec. 12, 2003.) (Peter Roudik, 7-9861)

### **UKRAINE – Presidential Immunity Defended**

The Constitutional Court has established that the Constitution of Ukraine does not make it possible to launch a criminal case against the President. Acting upon the request of 47 members of the national legislature, the Court interpreted provisions of the Constitution, which provides for the president's right of immunity while in office and the possibility of removing him from office via impeachment should he commit State treason or other crimes. The Court's ruling stated that the President of Ukraine does not bear criminal responsibility while carrying out his or her duties, and a criminal case cannot be instituted. The Constitutional Court established that the Constitution allows for beginning the procedure for removing the president from office by means of impeachment in cases of State treason or other crimes, without launching a criminal case. According to the judgment, the institution of the presidency requires proper legal protection. The Constitutional Court noted that a criminal case can never be opened against the President; otherwise it will deprive the president of immunity and impede execution of presidential powers. The Court stated that the President's right to immunity is limited in time and is effective only during the term of office.

This ruling was an answer to the two criminal cases against President Leonid Kuchma of Ukraine opened by a judge of the City of Kyiv Appeal Court in 2002, based upon applications of a group of legislators. Later, the Supreme Court cancelled the decree of the lower court judge on instituting these cases and established that the judge committed a breach of the requirements of the Constitution and criminal procedural law and exceeded the bounds of the powers delegated him. The Ukrainian Ministry of Justice disciplined the judge. (*Ukrainian News-Political Week*, Dec. 14, 2003; *Ukrainian News Agency*, via <http://www.securities.com>.) (Peter Roudik, 7-9861)

### **UNITED KINGDOM – New Measures for Pedophiles Being Considered by Police**

The British police are considering a computer hard-drive amnesty to try to prevent the abuse of children by encouraging people with pornographic images of children to hand in their computers to be destroyed or wiped clean. Individuals who participate in this process would be assessed by a psychiatrist and if deemed to be no risk to children, given a warning and placed on the sex offenders register. The police believe that the scheme will attract individuals who possess low-grade pedophilia and prevent them from abusing children in the future. (Brian Wheeler, "An Amnesty for Internet Paedophiles?" at <http://news.bbc.co.uk/1/hi/magazine/3254382.stm>, Dec. 9, 2003.) (Clare Feikert, 7-5262)

### **UNITED KINGDOM – Queen's Speech Sets Out New Legislative Agenda**

The Queen made her annual speech to both Houses of Parliament on November 26, 2003, stating the government's legislative agenda for the upcoming year. Included among the 23 bills and 7 draft bills mentioned was a Domestic Violence Bill, which will give victims stronger legal rights and allow police to arrest individuals who are suspected of hitting their partners or children. The bill will also establish a national register of domestic violence offenders along the lines of the United Kingdom's sex offenders register. Victims will be able to obtain restraining orders, even if the alleged offender has been found not guilty of domestic violence in the courts. A breach of the order will be a criminal offense punishable by

up to five years' imprisonment. Additional family rights were also included on the agenda, with a bill providing partners in same-sex relationships the same legal rights as married couples. A child trust fund is also being considered, in which the government will provide a £250 (about US\$425) contribution to be held in trust for each child born after September 2002, to be accessible when the child reaches the age of 18.

The legislative agenda also includes two bills directed at increasing responsibility and oversight in the UK corporate world. A bill will be introduced to make it easier to prosecute and imprison managers and directors of private companies for manslaughter. To prevent corporate abuse, the government is introducing a Companies (Audit, Investigations and Community Enterprise) Bill.

To increase security in the United Kingdom, a Civil Contingencies Bill will be introduced that will provide ministers and police with more powers to deal with terrorism and other emergency incidents. The government also proposed further reform of the immigration and asylum system, to establish a single tier of appeals against asylum decisions. The controversial subject of identity cards, the reform of the Lord Chancellor's office, and creation of a Supreme Court were also mentioned in the speech. ("Her Majesty's Most Gracious Speech to Both Houses of Parliament," Nov. 26, 2003.) (Clare Feikert, 7-5262)

## NEAR EAST

### ISRAEL – Copyright of Data Posted on the Internet

On September 25, 2003, the Tel Aviv-Yafo district court rejected a request to permanently prohibit the publication of data copied from the requester's guide on alternative medicine to the respondent's Internet site "Teva Life" (nature life). Judge Yehudah Zaft held that copyright protection is extended to an expression that is a product of both investment and creativity and that enriches the public. The judge stated that information that includes facts and data in and of itself is not subject to copyright protection even if the plaintiff proves that there was an investment of effort in the gathering of the information, because such information does not have any creativity that enriches the public and the public has no interest in restricting the use of such information. The requester in the case did not claim that the respondent copied the guide but that the respondent copied data included in the guide. According to the ruling, classification names included in the guide are not original and the majority of them are either generic or descriptive in that they describe a profession or an occupation and are available to the public at large. (*Haim Acherim Communication & Distribution Ltd. v. Kriboshai* <http://www.law.co.il>.) (Ruth Levush, 7-9847)

### ISRAEL – Handcuffing Detainees in Public (Legislative Amendments) 5764-2003

The Knesset (Israel's Parliament) adopted a law on handcuffing detainees or prisoners in public on December 8, 2003 (Legislative Amendments 5764-2003). It generally authorizes a policeman or a jailor to handcuff a person arrested or jailed in a public place only in limited circumstances. However, persons accused of the most serious offenses specified by law may be handcuffed in public. In addition, handcuffing in public will be permitted if there is a reasonable suspicion that the detainee may escape or receive assistance to escape, inflict physical harm or harm to property, damage or remove evidence, or receive or deliver an item designed to be used in the perpetration of an offense or to disturb conditions of arrest or detention. A judge is authorized to order that a person will not be handcuffed in the courtroom even if authorization was granted under the above conditions. The bill's explanatory notes state that handcuffing a person in public has an impact on the dignity of a person, especially in an era of mass

communication. (The text of the law and the explanatory notes are available at <http://www.knesset.gov.il/>.)

(Ruth Levush, 7-9847)

### **ISRAEL – Testimony Via Video Conferencing**

A request to permit testimony via video conferencing has been approved by the Jerusalem district court. In its decision of November 26, 2003, the court recognized that although at the time—when the relevant provision of the Evidence Ordinance (New Version), 5731-1971 was enacted there was no video conferencing available, the provision must be interpreted in a way that fits the new reality brought about by the tremendous technological developments that have since taken place. Judge Yoseph Shapira held that even though the participants are not present in the same room, a video conference allows online contact with excellent visual quality, which enables the judge to ask questions while watching the witness. (*William Spier v. S.J.R Associate et al.*, <http://www.law.co.il/>.)

(Ruth Levush, 7-9847)

### **KUWAIT – Textbook Revision**

The Kuwaiti Secretary of Education announced on December 28, 2003, that Kuwait is revising the contents of its schoolbooks to eliminate any portions that may encourage religious extremism. The Kuwaiti decision came after an agreement among the Gulf States to combat the roots of Islamic extremism following the several terrorist attacks thought to be the work of the “Al-Kaeda” organization headed by Ousama Bin Laden. (*Asharqalawsat*, Dec. 29, 2003.)

(Issam Saliba, 7-9840)

### **SAUDI ARABIA – Appeal for Constitutional Reforms**

A group of 116 Saudi university professors, scholars, and businessmen submitted to Saudi Crown Prince Abdullah Bin Abd Al-Aziz a petition dated December 16, 2003, asking him to take as quickly as possible whatever steps necessary for the implementation of constitutional reforms that might best protect the society from disasters and catastrophes of which violence is but one of the consequences. (*Al-Safir*, Dec. 19, 2003.)

(Issam Saliba, 7-9840)

## **SOUTH PACIFIC**

### **AUSTRALIA – Better Access to Delegated Legislation**

On December 9, 2003, Australia’s Commonwealth (federal) Parliament passed the Legislative Instruments Bill. This will establish an electronic federal register of legislative instruments, which include regulations, ordinances, determinations, and other written instruments. This is intended to provide the public with quick and easy access to the law, via the Internet. It will provide texts of laws as they have been amended. The legislation also requires Commonwealth rule-making agencies to consult appropriately before making a legislative instrument and provides that all such instruments will “sunset” after ten years. The new law is expected to come into effect in 2005, to allow time for development of the necessary information technology systems. (Parliament of Australia, Parliamentary Library, Bills Digest No. 26 2003-04, Legislative Instruments Bill 2003 at <http://www.aph.gov.au/library/pubs/bd/index.htm>;

Attorney-General Philip Ruddock, Media Release RO44/2003 *Better Public Access to Delegated Legislation on the Way*, Dec. 9, 2003 at <http://www.ag.gov.au/www/MinisterRuddockHome.nsf>.)  
(Donald DeGlopper, 7-9831)

### **AUSTRALIA – Tort Reform Cuts Lawyers’ Jobs**

The Premier of New South Wales, the head of the State government, has taken credit for major reforms to the State’s laws governing liability and compensation. Premier Carr described the Civil Liability Act of 2002 and other legislation as an assault on “the culture of litigation.” The legislation introduced caps and thresholds for compensation claims and was intended to reduce the financial burden on insurance companies. The consequence of the laws has been a sharp drop in the number of personal injury and workers’ compensation cases coming before the courts.

A further consequence has been a drop in the workload and income of the lawyers of New South Wales. The president of the New South Wales Law Society said that 30 to 40 percent of the state’s 18,000 solicitors were doing personal injury and compensation work, and would be “hit hard” by the changes to the laws. The President of the Bar Association predicted in December 2003 that a quarter to a third of all barristers would close their practices or have them adversely affected. In a newspaper interview, Premier Carr claimed that the previous system was about to destroy the workers’ compensation system, and that the result of the reforms was that money was going to the workers rather than to lawyers. He said, “The fact is there will be fewer jobs for lawyers, but with their education they are well placed to go into retraining. ... Lawyers are not a protected species, and their habits of over-litigation were adding to the cost of doing business in NSW.” (New South Wales, Civil Liability Act, No. 161 of 2002 at [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/cla2002161/](http://www.austlii.edu.au/au/legis/nsw/consol_act/cla2002161/); “Get Over It, Carr Tells Jobless Lawyers,” *The Sun Herald (Sydney)*, at <http://www.smh.com.au>, Dec. 7, 2003.)  
(Donald DeGlopper, 7-9831)

## **INTERNATIONAL LAW AND ORGANIZATIONS**

### **ANGOLA/CHINA – Move To Strengthen Judicial Ties**

On November 27, 2003, the General Director for Policy of the Supreme People’s Procuratorate of the People’s Republic of China, Zhang Changren, announced on a visit to Luanda, Angola, that his nation wishes to strengthen relations with Angola in the judicial sector, because the two countries have similar judicial systems. He was joined at a meeting by the Chief Judge of the Provincial Tribunal of Luanda, Antonio Cicero, provincial judges of the Public Ministry of Angola, and other interested parties. Angolan judicial experts informed the Chinese visitors about the organization and operations of the Angolan courts. Mr. Zhang traveled with six other Chinese officials, and they concluded their visit in Angola by consulting with members of the Supreme Court, the Justice Ministry, the National Criminal Investigation Department, and representatives from one of the prisons. Angola and China signed a cooperative agreement in 2000 that calls for an exchange program of court staff members. (“China Desires To Strengthen Judicial Relations with Angola,” *allAfrica.com*, <http://allafrica.com/stories/printable/200312010384.html>, Nov. 28, 2003.)  
(Sandra Sawicki, 7-9819)

**BELGIUM/CZECH REPUBLIC – Comments on the Summit on the European Constitution**

Belgian Foreign Minister Louis Michel and the President of the Czech Republic Vaclav Klaus commented publicly on the unsuccessful conclusion of the summit on the European Constitution on December 15, 2003. Minister Michel indirectly blamed both Spain and Poland for the event and said that these two countries desired further negotiations, but the summit president, Silvio Berlusconi, concluded the summit with the support of Germany and France. France and Germany announced that they will allow more time for further negotiations and will not pursue the creation of a core group to move forward faster than the rest of the Union in drafting the Constitution. The Czech President Klaus, by contrast, gave high marks to Spain and Poland for fighting for the rights of the smaller countries and for protecting their interests against the big powers. (*Le Soir en ligne*, <http://www.lesoir.be>; MF Dnes, at <http://www.mfdnes.cz>, Dec. 16, 2003.)  
(George E. Glos, 7-9849)

**UNITED NATIONS/CAMBODIA – Steps Toward Special Court**

The United Nations and the Government of Cambodia have reached an agreement on the steps to be taken to establish a special court to try the former leaders of the Khmer Rouge. The agreement was worked out with a UN Technical Assessment Mission to the Cambodian capital, Phnom Penh, sent after the General Assembly had authorized UN assistance to Cambodia for establishing the court. It covers the basic concept of operations for the court, an outline of a plan for the timeline of implementation, a plan to staff the judicial and administrative parts of the court, and the location for the trials. There will be two Extraordinary Chambers, one a trial court and the other a Supreme Court in the Cambodian judicial system. Although it was assumed for budget planning that there would be five to ten persons indicted, a UN spokesman said that it would have been improper for the international body to create a list of potential defendants. That will be the responsibility of the investigative judges and the prosecutors attached to the new court.

The next steps will be for the Cambodian National Assembly to ratify the June 2003 agreement between the Government and the UN and for contributions to be solicited to cover the cost of running the tribunal for the first year. After that, judges and prosecutors will be appointed. (*UN News Service*, via e-mail from [UNNEWS@UN.org](mailto:UNNEWS@UN.org), Dec. 17, 2003.)  
(Constance A. Johnson, 7-9829)

**UNITED NATIONS/MEXICO – Plan To Remedy Rights Lapses**

The United Nations recently delivered a report calling for a fundamental overhaul of Mexico's justice system and detailing the country's systemic failures to protect human rights. The report is the most comprehensive study of human rights problems in Mexico, and Mexican President Fox commissioned it on the day after his inauguration in 2000. This is the first time a government has invited the United Nations to do such an assessment. The report contains scores of specific recommendations, including:

- Abandonment of a judicial system rooted in 19<sup>th</sup>-century Napoleonic law, in which judges decide cases based on reading documentary evidence. The report proposes creating an adversarial system in which a judge would hear oral arguments by prosecutors and defense attorneys.
- Rejection of confessions obtained by torture as evidence in criminal trials.
- Overhaul of the military system in which soldiers accused of human rights violations are tried in secret and the outcomes of their trials are rarely made public.
- Modernization of labor laws to give workers more freedom from oppressive unions.

(*Washington Post*, at <http://www.washingtonpost.com/wp-dyn/articles/A47336-2003Dec8.html>, Dec. 8, 2003.)

(Gustavo E. Guerra, 7-7104)

## EUROPEAN UNION

### Association Agreement Between EU and Syria

Recently, the EU and Syria made significant progress in their negotiations on concluding an association agreement. The agreement provides for the eventual creation of a free trade area between the two partners by 2010. In addition to economic issues, it covers political, social, and cultural relations. It also includes clauses that have recently become standard language in such agreements, covering respect for human rights, non-proliferation of weapons of mass destruction, and the fight against terrorism. (<http://europa.eu.int/rapid/start/welcome.htm>.)

(Theresa Papademetriou, 7-9857)

### Green Paper on Preferential Rules of Origin

The EU has been using special trade arrangements to give preferential treatment to imports from certain countries, through the creation of free trade areas or customs unions or through unilateral action. The European Commission, in its recently adopted Green Paper (consultation document) regarding the preferential rules of origin, has launched a debate on the future of such rules. In the document, the Commission assesses the current situation and identifies three key areas where future action is needed: a) definition of the criteria for acquiring originating status and the legal framework; b) supervision to ensure proper application of the rules; and c) establishment of procedures to ensure separation of tasks and obligations between the authorities and traders. Based on the responses received, the European Commission will prepare new guidelines by March 1, 2004. (<http://europa.eu.int/rapid/start/welcome.htm>.)

(Theresa Papademetriou, 7-9857)

### Hague Securities Convention

The Member States and the European Commission have called for the signing of the Hague Securities Convention, which covers the establishment of ownership of securities in electronic form. The Internal Market Commissioner stated that “a world-wide agreement on a common legal formula to determine proprietary rights will stimulate cross-border activity, not only at the EU level but on a global scale, and will become an important factor in promoting the internationalization of financial markets.” The Convention is a “mixed” type of agreement, necessitating signing by the EU and its individual members separately. (<http://europa.eu.int/rapid/start/welcome.htm>.)

(Theresa Papademetriou, 7-9857)

### New Guidelines on Merger Control

New guidelines adopted by the European Commission on December 16, 2003, are part of its efforts to reform control of corporate mergers. The guidelines complement the new Merger Regulation, which will enter into force on May 1, 2004. They also clarify the general approach to be taken by the

European Commission in assessing the potential impact of mergers between competing firms. (<http://europa.eu.int/rapid/start/welcome.htm>.)  
(Theresa Papademetriou, 7-9857)

### **Proposed Directive on Human Tissues and Cells**

On December 16, 2003, the European Parliament adopted a resolution on the Draft Directive on Human Tissues and Cells. The directive lays down rules regarding the donation, procurement, processing, storage, and distribution of human tissues and cells. At the Parliament's insistence, special language was inserted in the directive regarding two key issues, remuneration of donors and time limits for data preservation. The document stipulates that donation of tissues and cells must take place without payment in return. Any compensation given to donors is limited to expenses accrued due to donation. Data related to tracing tissues and cells must be kept for a minimum of 30 years after clinical use by tissue establishments. The Parliament and Council agreed to leave the issue of cloning human embryos to the Member States for final decision. Thus, Members are free to decide on the use or non-use of any specific type of human cells, i.e., germ cells and embryonic stem cells. (<http://europa.eu.int/rapid/start/welcome.htm>.)  
(Theresa Papademetriou, 7-9857)

**FIGHT AGAINST ANTISEMITISM: FRENCH RESPONSE \*****Background**

Since October 2000, the onset of the second Intifada, the Palestinian resistance movement against Israel, France has witnessed a sharp rise in the number of antisemitic acts. Report 452, published in December 2002 by the French Parliament, painted a fairly grim picture of the situation.<sup>1</sup> In addition to providing statistics on attacks on synagogues, Jewish schools, private property, and cemeteries and assaults on individuals, the report stressed the growing and “alarming” verbal antisemitic violence taking place in schools that further led to physical violence, driving Jewish children to leave public schools.

Although this wave of antisemitic attacks and verbal violence has been mostly attributed by the French authorities to youths originally from the Maghreb (Algeria, Morocco, and Tunisia), the report stated that this “resurgence is facilitated by an almost complete lack of criminal prosecution undertaken by the judicial authorities and by the indifference of public opinion and the media, with certain members of the extreme left elite even approving of it.”<sup>2</sup>

A report entitled “Manifestations of Antisemitism in the European Union” prepared by the Center for Research on Antisemitism at Berlin’s Technical University<sup>3</sup> shows that in addition to France, other EU Member States have experienced such a wave of antisemitic incidents. It also concluded that the increase in antisemitic attacks was linked to the events in the Middle East and that the attacks were committed by either right-wing extremists or radical Islamists or young Muslims mostly of Arab descent. This report was commissioned by the European Monitoring Center on Racism and Xenophobia (EUMC) and was completed in December 2003.<sup>4</sup>

This paper addresses the steps taken by the French Parliament and government since the presidential and parliamentary elections of May 2002 to curb these antisemitic attacks. In addition, it briefly reviews the main recommendations of the Center for Research on Antisemitism to combat this violence.

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\* Prepared by Nicole Atwill, Senior Legal Specialist, Western Law Division.

<sup>1</sup> ASSEMBLEE NATIONALE, RAPPORT 452 (Dec. 4, 2002), at <http://www.assemblee-nationale.fr>. In its introduction, the author of the report, M. Pierre Lellouche, states:

In spite of a notable diminution these last months, France has been confronted in the last two years with a wave of racist attacks without precedent, reminiscent of certain somber hours of the Republic.... These attacks, reported in foreign newspapers, tarnish France’s image in the world, portraying the French people as racist, xenophobic, and antisemitic, even though these acts are committed by a minority that does not recognize the values of the Republic.

<sup>2</sup> *Id.* at 9.

<sup>3</sup> <http://eumc.eu.int/eumc/FT.htm>.

<sup>4</sup> The EUMC’s primary task is to provide the EU with objective, reliable, and comparative information on racism, xenophobia, Islamophobia, and antisemitism. The report was shelved for nine months after its completion and released by the EUMC, after it was leaked, with a disclaimer stating that the report in its present form is not fit for publication. The decision to shelve the report was interpreted by some as the refusal of the EUMC to come to terms with the findings of the report, which contradict the European perception that antisemitism belongs solely to the extreme right. The EUMC has responded that the data considered were “neither reliable nor objective nor sufficiently robust to enable an authoritative comparative analysis of the manifestations of antisemitism in the EU.” EUMC is planning to publish a fuller and more authoritative report in the first quarter of 2004. *Id.*

## Steps Taken by the French Parliament and Government

### Legislation

Report 452 mentioned above concluded that the gravity of the situation made it imperative to add a new legal tool to fight offenses committed with racist motivation. As a result, Parliament passed Law 2003-88 of February 3, 2003, on Increasing the Penalties for Certain Offenses with Racist, Antisemitic or Xenophobic Characteristics.<sup>5</sup>

The Law adds article 132-76 to the Penal Code under the section defining “circumstances bringing about the aggravation of penalties.”<sup>6</sup> It provides as follows:

Penalties incurred for a crime or a *délit*<sup>7</sup> are increased when the perpetrator of the offense bases his motive on the real or erroneous supposition that the victim belongs or does not belong to a specific ethnicity, nation, race or religion.

The aggravating circumstance defined above is constituted when the commission of the offense is preceded, accompanied, or followed by remarks, writings, images, objects, or acts of any nature defaming the honor or the regard for the victim or of a group that the victim belongs to, [and when the offense is motivated] by reason of their belonging or not belonging to a specific ethnic group, nation, race or religion, whether this membership is real or supposed.

The maximum prison terms for the offenses specified in the Law are increased as follows:

- (1) murder: from 30 years to life imprisonment;
- (2) torture and barbarous acts: from 15 years to 20 years;
- (3) violence unintentionally causing death: from 15 years to 20 years;
- (4) violence resulting in mutilation or permanent infirmity: from 10 to 15 years;
- (5) violence resulting in a total incapacity to work for more than eight days: from three years to five years (violence resulting in an incapacity to work for less than or equal to eight days or not resulting in incapacity to work will be punished by three years’ imprisonment); and
- (6) destruction, defacement, or impairment of private property: from two years to three years, with a €45,000 fine (about US\$48,861).<sup>8</sup> In addition, destruction, defacement, or impairment of religious buildings, schools, educational or recreational buildings, and vehicles transporting children will be punished by five years’ imprisonment and a €75,000 fine (about US\$81,435).<sup>9</sup>

### Governmental Measures

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<sup>5</sup> JOURNAL OFFICIEL (Official Gazette of France), J.O. Feb.4, 2003 at 2104.

<sup>6</sup> *Id.* art. 1.

<sup>7</sup> There are three grades of criminal offense under French Law: *crimes*, *délits*, and *contraventions*. *Crimes* (the gravest offenses) include, for example, murder, armed robbery, rape, and serious drug offenses. *Délits* are the largest group of offenses and include sexual violence, theft, fraud, and assault, among others. *Contraventions* are punishable only by a fine.

<sup>8</sup> *Supra* note 5, arts. 2-8.

<sup>9</sup> *Id.* art. 9.

French Interior Minister Nicolas Sarkozy first launched a “zero tolerance for antisemitism” policy in May 2002 and is pursuing a hard line on crime and North African juvenile gangs. This policy seems to be working. The first figures on antisemitic acts available for 2003 show a marked decrease in their numbers (72 antisemitic acts from January to August 2003; 172 for the corresponding period in 2002).<sup>10</sup> President Chirac, in a national speech, also solemnly condemned all acts of antisemitism stating that “when a Jew is attacked in France, it is an attack against the whole [of] France.”<sup>11</sup>

The French authorities in liaison with organizations representing the Jewish community set forth a very effective data and monitoring system for all antisemitic attacks. A preventive /protection squad of 13 mobile forces units (1200 police officers or gendarmes) was organized. These units have been deployed specifically to protect synagogues, local associations, and schools, in consultation with representatives of the Jewish community.<sup>12</sup>

The Ministry of Education presented a ten-point program of action to deal with antisemitism and racism in schools. It includes special teams in schools to identify and track incidents, with the aid of mediators, tougher penalties, and handbooks for teachers. The Education Minister gave instructions to intervene at the slightest incident, even verbal, and to let nothing pass without punishment and explanation. To promote tolerance a "Holocaust Memorial Day" is now observed in French schools for the remembrance of the Holocaust and the prevention of crimes against humanity. France chose January 27 for this day, the anniversary of the 1945 liberation of Auschwitz.<sup>13</sup>

On November 17, 2003, President Chirac summoned an emergency Cabinet meeting following a weekend arson attack that caused serious damage to a Jewish school in the Paris suburbs. The Cabinet approved several additional measures.<sup>14</sup> They include “precise instructions” to the police to increase protection of Jewish religious and educational sites, accelerated trials and harsher penalties for those connected to antisemitic acts, and civics courses in public schools to educate children on respecting others. In addition, the Prime Minister will chair an inter-ministerial Committee on the Fight Against Antisemitism,<sup>15</sup> which is scheduled to meet monthly. This committee will define policy in the fight against antisemitism and supervise the implementation and efficiency of the measures taken by the various ministries involved.

As the perpetrators of the attacks frequently come from immigrant-populated suburbs where they live in low-income housing projects, the Government will also earmark approximately \$8 billion for urban renewal of areas with heavy Muslim populations.<sup>16</sup>

### **Main Recommendations of the Center for Research on Antisemitism**

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<sup>10</sup> Lutte contre l'antisémitisme at <http://www.elysee.fr>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Decree 2003-1164 of Dec 8, 2003, J.O. Dec 9, 2003 at 20960.

<sup>16</sup> *Supra* note 10.

Despite the fact that the EUMC did not endorse the explanation of the development and causes of the wave of antisemitism in Europe offered by the Center for Research on Antisemitism, it has welcomed other aspects of the report, in particular the Center's recommendations on how to combat antisemitism. These suggestions are similar to the EUMC Annual Report 2002 conclusions.<sup>17</sup> In particular, the Center advocated the following measures:

- Adoption of the proposed framework decision on combating racism and xenophobia.<sup>18</sup> The purpose of this framework decision is to establish a common criminal law with regard to racist and xenophobic behaviors, punishable in the same way in all Member States, and to improve and encourage judicial cooperation.
- Establishment in each Member State of a clear, consistent, and accessible reporting and monitoring system of all antisemitic incidents or attacks. Establishing common guidelines for categorizing antisemitic incidents, which would increase the usability of the data for comparative research, should be a prerequisite.
- Greater police cooperation, involving Europol and Eurojust.
- Adoption of effective regulation of the Internet concerning racist propaganda, in particular detailed provisions on the responsibility of Internet service providers.

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<sup>17</sup> See EUMC's Statement on the Draft Study at <http://eumc.eu.int/eumc/FT.htm>.

<sup>18</sup> COM2001/664(final) at <http://europa.eu.int/scadplus/leg/en/lvb/l33178.htm>.