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WORLD LAW BULLETIN

MARCH 2004

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WORLD LAW BULLETIN

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AMERICAS

CANADA – Filling a Supreme Court Vacancy

The nomination of Supreme Court Justice Louise Arbour to the position of the United Nations Commissioner for Human Rights leaves a vacancy that will have to be filled before the Court begins a new session in October 2004. Such vacancies are filled through appointments made by the Governor General acting upon the advice of the Prime Minister. This process has always been quite secretive, as Canadian law does not require a nominated justice to answer questions before a parliamentary committee or to be approved by the Senate and House of Commons. However, prior to assuming office in January 2004, Prime Minister Paul Martin indicated that he favored a revamping of the process. Some members of the opposition parties favor an all-party process that would allow for public questioning. The Canadian Bar Association reportedly favors review by a private committee. Provincial governments have employed such committees for a number of years. Those governments have favored private reviews because of fears that a public process is too easily politicized. However, critics of the provincial approach argue that it does not give the public any information about a nominee's judicial opinions. (Canadian Press, "Martin Faces Pressure To Open Up High Court Appointments to Public," Feb. 22, 2004, via <http://story.news.yahoo.com>.) (Stephen F. Clarke, 7-7121)

CANADA – New Offense of Setting Traps

In recent years, the use of residential homes to grow marijuana in Canada has increased greatly. One of the reasons for this increase has been the development of potent plant varieties used to produce such types of cannabis as "BC Bud." Law enforcement has responded by trying to uncover illegal operations. However, on a number of occasions, law enforcement officials searching these premises have been injured by traps set by the growers.

To address this specific problem, the House of Commons has approved a bill to make it an offense to set or place a trap with intent to cause death or bodily harm (Bill C-14, 37th Parl. 3rd Sess.). This offense will be punishable with up to five years of imprisonment. However, in the event it is committed in a place used to commit another offense punishable with more than two years' imprisonment, it will be punishable with up to 10 years' imprisonment; if it causes death, the offense will be punishable with life imprisonment (sect. 6). Bill C-14 must be approved by Canada's appointed Senate before it can be given Royal Assent and brought into force. (Stephen Clarke, 7-7121)

MEXICO – Ban on Agricultural Imports

On February 24, 2004, the Mexican Secretariat of Agriculture, Livestock, Rural Development and Nutrition prohibited the touristic and commercial importation of live fowl, including live chickens, and all their products and by-products, innards, and eggs from the whole U.S. territory, due to the outbreak of avian flu. Two previous bans had been issued earlier in February. The first applied to imports from California, North Carolina, Connecticut, Delaware, Maine, Texas, Virginia, West Virginia, and Pennsylvania. The second banned imports from New Jersey. The Secretariat stated that the ban would remain in force until the U.S. authorities from the Department of Agriculture present satisfactory information on the measures taken to eradicate the virus. Mexico, the world's fourth-leading poultry producer, is strictly enforcing the appropriate technical regulatory standard, known as NOM-044-ZOO-1995, to preserve the healthy status of its fowl population. On February 20, 2004, the same Mexican Secretariat

announced that the ban had been imposed on imports from the Canadian province of British Columbia. (*Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación Boletines*, Nos. 055/04, 047/04, and 049/04 <http://www.sagarpa.gob.mx>.) (Norma Gutiérrez, 7-4314)

ASIA

CHINA – Communist Party Regulations on Internal Supervision, Discipline

The Chinese Communist Party (CCP), on December 31, 2003, issued two sets of party regulations that some Chinese experts believe may play a major role in China's fight against corruption and help balance the distribution of power within the CCP. The 47-article Regulations on Internal Supervision of the CCP (for Trial Implementation) are the first regulations of their kind to be issued since the founding of the People's Republic of China in 1949. To prevent absolute power and arbitrary actions, the Regulations contain detailed provisions on "collective leadership" and "division of power" in CCP organs at all levels. In addition, they explicitly state that leading officials are to be subject to supervision, and that the 25-member Politburo of the Central Committee must now regularly report on its work to the 198-member Central Committee; in the past, the Politburo was not obliged to submit any such reports. The Regulations also seek to tighten supervision of leading CCP officials throughout the country. In 2003, reportedly at least 13 Ministers or ministerial-level officials were prosecuted for corruption. According to a Xinhua commentator, "[t]he lack of supervision—and even the total loss of supervision—over the leading cadres of some regions and units is an important cause of the substantial rise of cases of corruption among high-ranking leading cadres in recent years." ("Party Enhances Internal Supervision," *PLA Daily*, Feb. 18, 2004, at http://english.pladaily.com.cn/english/pladaily/2004/02/18/20040218001009_TodayHeadlines.html); "Xinhua Commentator on Addressing 'Outstanding Problems' Within CPC," *Xinhua*, in Chinese, Feb. 20, 2004, as translated in FBIS.)

The 178-article CCP Regulations on Disciplinary Measures replace a set of earlier measures issued for trial implementation in 1997. They specify punishments for such activities as taking bribes, embezzling public funds, dereliction of duty, withholding or distorting information, or seeking profit by taking advantage of one's post. The internal disciplinary measures include warnings, severe warnings, removal from office, probation within the CCP, and expulsion. Those who receive a warning or severe warning will not be eligible for promotion within a year after receiving the punishment. ("Detailed Rules To Oversee Conduct of Party Members," *People's Daily*, Feb. 19, 2002, at http://fpeng.peopledaily.com.cn/200402/19/print20040219_135201.html.)

(Wendy Zeldin, 7-9832)

CHINA – Human Reproductive Cloning Research Banned

On January 15, 2004, the Ministry of Science and Technology and the Ministry of Health formally issued the "Ethical Guiding Principles on Human Embryonic Stem Cell Research." The Chinese Government has thereby set forth for the first time in written form official policy banning research on cloning for purposes of human reproduction. However, it permits research on embryonic stem cells and therapeutic cloning. The human embryonic stem cells are to be either residual gametes from external fertilization experiments, embryo cells from miscarriages or abortions, or blastulas from non-reproductive cell migration experiments. They may also be

obtained through donations. Test volunteers are to be informed of any results of and risks involved in their participation in cloning experiments.

The guidelines were reportedly announced pursuant to the request of the United Nations that each member state present its own policies on human cloning; a U.N. vote is planned for November 2004 on an international convention concerning the issue. (“China Outlaws Cloning Studies for Human Reproduction Research,” *China Metals Report Weekly*, Jan. 19, 2004, via LEXIS/NEXIS, News library; “Our Country’s Express Document Prohibiting Human Reproductive Cloning, ‘Ethical Guiding Principles on Human Embryonic Stem Cell Research,’ Appears,” in Chinese, at www.most.gov.cn/dtyyw/t20040115_11229.htm; “Ethical Guiding Principles on Human Embryonic Stem Cell Research,” in Chinese, at http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/st/2004-01/14/content_1274659.htm.) (Wendy Zeldin, 7-9832)

INDIA – Model Code of Conduct for Parties and Candidates

On March 1, 2004, the Election Commission of India issued the following guidelines for political parties and candidates contesting parliamentary and state assembly seats in the April and May 2004 elections. The Commission has warned that a breach of the code will be dealt with sternly.

1. No candidate or party may indulge in any activity that may create or aggravate religious, linguistic, or caste tensions.
2. Criticism of parties will be limited to their programs and policies, past or present. Candidates are to refrain from criticism of a leader’s private life that is not connected with the leader’s public activities. Unnecessary or unverified allegations must be avoided.
3. Religious places should not be used for election propaganda nor should there be an appeal to caste or communal feelings in order to secure votes.
4. All parties and candidates must scrupulously avoid committing “corrupt practices” and offenses as defined under the election law, and there is to be no canvassing of votes within 100 meters of a polling station or holding of public meetings during the 48 hours preceding the close of the polls.
5. An individual’s right to a peaceful life is to be respected. There should be no picketing or protests in front of private houses, nor should parties/candidates allow their followers to use private real estate for posting.
6. Parties must not disturb each other’s public meetings.

The code also has provisions about election-related meetings, stating, for example, that the party/candidate must give advance notice to the police of the venue of a meeting so as to avoid potential traffic or law and order problems and must be aware of any prohibitory orders affecting the meeting place and of whether exemption from such orders or permission to hold a meeting is required. (“Model Code: What It Means for Parties, Candidates,” *The Hindu*, Mar. 1, 2004.)

(Krishan Nehra, 7-7103)

JAPAN – Foreign Exchange and Foreign Trade Law Revision

A bill that revises the Foreign Exchange and Foreign Trade Law was passed by the Diet and promulgated on February 16, 2004. The revised Law is aimed at enabling Japan to impose economic sanctions on North Korea. The economic sanctions include a freeze on remittances and

import and export restrictions. Before the revision, the Law had required that a U.N. resolution or an agreement with other countries be adopted in order for Japan to impose the economic sanctions. (http://www.shugiin.go.jp/index.nsf/html/index_gian.htm.)
(Sayuri Umeda, 7-0075)

KOREA, SOUTH – Reproductive Cloning Banned

The Life Ethics and Safety Measures Act was promulgated in January 2004. The Act prohibits placing an embryo cloned by a body cell into a female human or animal uterus for reproductive purposes. Therapeutic cloning for treatment of hard-to-cure diseases is allowed, with restrictions. (<http://www.assembly.go.kr/>.)
(Sayuri Umeda, 7-0075)

KOREA, SOUTH – Residents Awarded Damages for Noise from U.S. Air Force Base

On January 27, 2004, the Seoul District Court ordered the Korean Government to pay 3.2 billion *won* (\$2.7 million) to 1,878 residents living near the U.S. Air Force base in Kunsan, North Cholla Province. The plaintiffs sought damages from acute noise pollution caused by military flights from the Kunsan airbase. This is the first time that a Korean court has ordered the Korean Government to pay compensation for noise damage caused by a U.S. military base. Under the Status of Forces Agreement (SOFA), the South Korean Government is obliged to compensate for damage incurred by residents as a result of living near U.S. military facilities and equipment. (“Government Ordered To Pay Compensation for Noise Damages from US Air Base,” *Korea Times*, Jan. 27, 2004.)
(Sayuri Umeda, 7-0075)

MACAU – Bill on Election of Chief Executive

On February 20, 2004, the Legislative Council of the Macau Special Administrative Region (MSAR) of the People’s Republic of China approved the general outline of a bill on the election of the MSAR’s Chief Executive. The bill provides that the election is to be held no later than 60 days before the expiration of the incumbent’s five-year term. The term of the current Chief Executive, Edmund Ho Hau Wah, will expire on December 19, 2004; Mr. Ho took office on December 20, 1999, upon Macau’s reversion to mainland Chinese rule.

It is expected that a final vote on the bill will take place in April. Election of a 300-member election committee will be held 15 days after the election law comes into effect. (“Macao Legislative Council Passes Outline of Bill on Election of Chief Executive,” *Xinhua*, Feb. 20, 2004, via FBIS.)
(Wendy Zeldin, 7-9832)

SINGAPORE – Corporate Tax Change

The Government of Singapore lowered the corporate tax rate from 22 percent to 20 percent in the FY2004 Budget announced on February 27. The new rate will take effect on April 1, 2004. In addition, tax exemptions will be offered for income earned outside Singapore and for income from investments in financial instruments within the country. The lower rate may help make Singapore--whose foreign reserves are approaching S\$200 billion (about US\$118.4 billion)--even more attractive to foreign multinational corporations, investors, and fund managers, according to the *New Straits Times-Management Times*.

However, the budget announcement brought a surprise delay in a plan to reduce the top personal income tax rate of 22%, which analysts had expected to mirror the corporate tax reduction. According to Finance Minister Lee Hsien Loong, the delay was necessary because Singapore's sluggish economic performance in 2003, due to the outbreak of Severe Acute Respiratory Syndrome, had resulted in smaller tax revenues. ("Be Alert To Singapore's Proposed Tax Changes," *New Straits Times-Management Times*, Feb. 23, 2004; John Burton, "Singapore Delays 2-Point Income Tax Cut," *Financial Times*, Feb. 28, 2004, p.10; Amit Chanda, "New Singaporean Budget Includes Corporate Tax Cuts," *World Markets Analysis*, Mar. 1, 2004, all via LEXIS/NEXIS, News Library.)
(Wendy Zeldin, 7-9832)

TAIWAN – Campaign Funding Regulation Considered

Legislation to regulate political donations, long stalled in Taiwan's legislature, now may be on a faster track for approval. Following recent public concern over campaign finances, the Democratic Progressive Party (DPP) has demanded that a law be adopted in the next few weeks. The move comes in the wake of a controversy over alleged illegal cash donations to DPP-member President Chen Shuibian's 2000 election campaign. Members of the opposition Kuomintang Party have also suggested they would support a new regulation to clean up the funding of election campaigns, fearing that failure to support such measures could be viewed as favoring corrupt practices. Several versions of bills on the subject have been submitted to the legislature, and negotiations between the parties have begun. (*China Post*, Feb. 8, 2004, via <http://www.chinapost.com.tw>.)
(Constance A. Johnson, 7-9829)

TAIWAN – Spam Legislation

The Government of the Republic of China (on Taiwan) has reportedly begun drafting legislation in order to deal with problems associated with "spam." The legislature has scheduled public hearings on the subject, the Council of Economic Planning and Development under the Executive *Yuan* (Cabinet) has commissioned a report on international government responses, and Taiwan sent a delegation to attend a conference in Brussels on spam held in early February 2004.

Most spam may already be considered illegal in Taiwan, given that there are provisions on fraudulent content found in the Civil Code and Criminal Code, a prohibition against false designation of origin under the Fair Trade Law (this might apply to spam that has false or misleading subject lines or routing information), and a ban under the Trademark Law against use of marks that are likely to confuse consumers as to the source of goods or services (this might apply if the routing information falsely indicated that a particular Internet Service Provider delivered the spam). Despite the existence of such provisions, they have apparently not been adequate to reduce spam volume, because, among other factors, monetary damages and other remedies are often too small, judges and other concerned parties may be unsure as to whether and how the laws in place apply to spam, and problems unique to spam are not addressed. That is why some officials and legal practitioners believe that spam-specific legislation is needed. ("Taiwan Regulations: Spam Legislation Under Consideration," *EIU ViewsWire*, Feb. 9, 2004, via LEXIS/NEXIS, News library.)
(Wendy Zeldin, 7-9832)

THAILAND – Stock Market Regulations

The Stock Exchange of Thailand (SET) will soon implement a new regulation requiring investors with cash accounts in brokerage houses to keep 10 percent of the total as collateral, either in cash and/or securities. However, the change does not affect investors who have margin-loan accounts with brokerage firms. (In a margin loan, the brokerage house gives a loan to a client to buy shares.) The regulation is expected to go into effect on April 1, 2004. The purpose is to enable the SET and the Thai Securities and Exchange Commission to better control financial risks faced by brokerages and to encourage investors to better plan their investments.

Other new measures, to be enforced as of March 8, 2004, are designed to curb speculation and increase stability in the stock market. They ban margin loans and net settlement in stocks that show excessively high turnover or price to earnings ratios of above 100 and in loss-making companies. In net settlement, the investor is permitted to make multiple transactions within a trading session and settle gains or losses at the end of the day. (“Warning, New Regulation,” *The Nation* (Thailand), Feb. 16, 2004; “Thai Regulators Order New Measures To Curb Stock Market Speculation,” *AFX-Asia*, Feb. 24, 2004, both via LEXIS/NEXIS, News library).
(Wendy Zeldin, 7-9832)

VIETNAM – Personal Income Tax Law Delayed

Despite pressure from some members of the Vietnamese National Assembly to pass it sooner, the personal income tax law is not likely to be finished before the end of 2006, according to the deputy head of the General Department of Tax. The reason for the delay is that tax policy, including the scope of eligibility for taxation, is considered a sensitive matter and thus time is necessary to determine the best procedures, according to the Department. In addition, Vietnam needs to train staff members and establish a tax control system to minimize tax dodging and fraud. The law drafted by the Department and submitted to the Assembly includes an amendment that would raise the threshold for taxation from the current level, equivalent to about \$192, to about \$255. The Assembly Standing Committee rejected the amendment, suggesting instead that the threshold be raised to \$319, and asked that a personal income tax law be developed by the end of this year. One reason for interest in the new law is that the current personal income tax ordinance has lapsed, and it seems likely that Vietnamese employees will be subject to much higher tax rates than foreigners. (*Financial Times Information*, Feb. 16, 2004, via LEXIS/NEXIS, Asiapc library.)
(Constance A. Johnson, 7-9829)

EUROPE

AUSTRIA – Privacy Legislation

Austrian privacy legislation was strengthened on October 28, 2003, through an amendment of the Civil Code (*Bundesgesetzblatt* I, No. 91/2003). The new section 1328 (a) of the Civil Code makes it a tort to wrongfully intrude into the private sphere of a human being or disclose or utilize private information. Damage caused by such conduct can now be compensated in a tort action, and damages for pain and suffering can also be awarded if such conduct caused a person to suffer public humiliation.

The provision, however, excludes privacy violations that are protected by more specific legislation. In particular, liability for privacy violations in the media continues to be governed by the detailed civil and criminal provisions of the Media Act (*Bundesgesetzblatt*, No. 1981/314, as amended, §§6-41). These aim at striking a balance between freedom of speech and the public's right to be informed on the one hand and the privacy rights of individuals on the other. (Edith Palmer, 7-9860)

BELGIUM – Law on Terrorist Offenses

The Law of December 19, 2003, on Terrorist Offenses (*Moniteur Belge*, Dec. 29, 2003) consolidates into one law offenses already punishable that are committed by terrorists. They are: homicide; taking of hostages; kidnapping; seizure of aircraft; seizure of vessels; fabrication, transport and use of explosives; endangering human life in the merchant marine and the fishing industry; carrying of arms and ammunition; manufacturing and stockpiling biological weapons; massive destruction endangering human life; seizure of means of transport; fabrication, possession and transportation of nuclear and chemical weapons; interference with electricity and other resources; and the threat to carry out these offenses. (Provisions are inserted in the Criminal Code, Book II, Title 1ter, arts. 137-141ter.)

A terrorist offense is defined as one committed intentionally against a country or an international organization with the object of terrorizing the population or forcing the authorities or an international organization to act or to abstain from acting or to destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or of an international organization.

Punishment for individual acts of terrorism ranges from imprisonment of six months to imprisonment for life. Membership in a terrorist organization, which includes giving information, financing, and supplying the organization, is punishable by imprisonment for a term of five to ten years and a fine of from €100 to 5,000 (about US\$100-6,333). The leaders of a terrorist organization are punishable by imprisonment for a term of 15 to 20 years and a fine of from €1,000 to 200,000 (about US\$1,266-253,300). (George E. Glos, 7-9849)

ESTONIA – Citizenship Procedures Simplified

On February 11, 2004, the Estonian Parliament adopted an amendment to national citizenship legislation that will make it easier for 12% of the country's 1.4 million people who are now stateless to receive citizenship. Most of these people are former Soviet citizens of Russian origin who were not born in Estonia. Legislation unanimously passed by the Parliament provides for reducing from one year to six months the time for the Citizenship and Migration Board to process applications. Under the new Law, the Government will have to decide whether to grant citizenship within three months after officials have found the applicant acceptable, whereas before it had had six months to decide. The amendment was passed in order to accommodate the requirement of the European Union, which Estonia is on course to join on May 1, 2004, to reduce the size of the stateless population. (*Agence France Presse Newswire*, Feb. 11, 2004, at <http://site.securities.com>.) (Peter Roudik, 7-9861)

ESTONIA – Government Corruption Program

An anti-corruption strategy aimed at reducing by 25% by the year 2007 the number of people who have encountered corruption was approved by the Estonian Government on February 19, 2004. The strategy calls for amending the Criminal Procedure Code to give prosecutors the right to grant immunity to persons involved in corruption who cooperate with the authorities to solve corruption-related crimes. The authorities will establish a special telephone number for tips from informants, to be promoted through a publicity campaign to make people aware of its existence. Simultaneously, the Government submitted a number of amendments to the Anti-Corruption Law to the Riikigoku (the legislature). These amendments provide for stronger auditing of local governments by the Justice Ministry, creation of a State Ethics Council at the State Chancellery, and establishment of a network of at least 50 specialized investigators and prosecutors under regional prosecutors for systematic investigation of possible cases of corruption. Another amendment proposed to give citizens the duty of reporting corruption in the organizations they work for. (*Baltic News Service Daily News*, Feb. 19, 2004, at <http://site.securities.com>.) (Peter Roudik, 7-9861)

FRANCE – Compensation for Victims of Spoliation

The Commission for the Compensation of Victims of Spoliation (CIVS) resulting from antisemitic legislation in force during the German occupation presented its third report to the Prime Minister's office. The Commission has recorded 19,482 files, including 6,621 bank-related claims, since its creation in 1999. CIVS made 9,717 recommendations for compensation of victims for a total of €123 million (about US\$154 million). Of this amount, payment of €110 million, covering material losses (professional equipment, apartments, etc.), is the responsibility of the French government, while financial establishments are responsible for payment of €13 million as compensation for bank-held assets not returned to their owners.

The report also discussed the treatment of files relating to art works, which represent a mere 0.7% of the total number of files logged in. To date, three works of art have been returned, including the "Head of a Woman" by Picasso. In May 2003, a delegation led by one of the Vice-Chairs of the Commission went to Israel to hold hearings at the French Embassy, so that the members could meet with claimants who were aged, ill, or otherwise unable to go to France.

According to a report submitted in 2000 by a fact-finding mission, the amount of spoliation suffered by the Jews during the occupation was estimated at €1.2 billion, of which 90% has already been compensated. The CIVS is addressing the remaining cases. While the number of claims filed has declined by 38% from the 2001 level, the CIVS has continued to receive about 150 claims a month. There is no deadline for filing a claim. (<http://www.civs.gouv.fr>.) (Nicole Atwill, 7-2832)

FRANCE – Decree Restricting Use of Biocidal Products

On February 25, 2004, the Council of Ministers adopted a decree restricting the use in France of biocidal products, in compliance with Directive 98/8/EC of the European Parliament and of the Council dated February 16, 1998. Biocidal products are used in disinfectants, non-agricultural pesticides, and chemicals used for preservation of woods and in the disinfection of drinking water.

These products, which may have some detrimental effects on humans, animals, and the environment, were heretofore largely unregulated in France. The decree restricts the products that can be placed on the market to those biocidal products causing the minimum adverse effects. (<http://www.premier-ministre.gouv.fr/>)

(Nicole Atwill, 7-2832)

GEORGIA – Constitutional Reform

Amendments to the Constitution of Georgia adopted by the legislature on February 6, 2004, significantly expand the authority of the President of the Republic and restrict the powers of the Parliament. Even though a separate office of the Prime Minister is established under a new Constitution, only the President has the right to appoint the Prime Minister and other Members of the Cabinet and to dismiss the Government. The Government can be dismissed by three-fifths of the Parliament, but such a decision will enter into force only if reconfirmed by the Parliament after three months. A new power of the President is the right to dissolve the Parliament, which can occur if the Parliament disapproves the State budget three times in a row or will not confirm the candidacy of the Presidential appointee for the Prime Minister's position. Other new powers of the President include the right to make individual decisions on citizenship issues, to declare government regulations null and void, and to assess the constitutional legality of legislation. An impeachment procedure is foreseen by the new Constitution, but legal analysts doubt that this procedure can be ever implemented because of the technical formalities required. (Electronic newspaper *Gazeta.ru*, Feb. 9, 2004, at www.gazeta.ru/2004/oa_11140.shtml.)

(Peter Roudik, 7-9861)

GERMANY – Paid Maternity Leave Unconstitutional

In a decision of November 18, 2004 (Docket No. 1 BvR 302/96), the Federal Constitutional Court held that German legislation requiring the employer to pay for maternity leave is unconstitutional because it makes it more difficult for women of child-bearing age to be hired and thereby discriminates against women. The legislature is required to change the existing legislation by the end of 2005.

The German Maternity Act (*Bundesgesetzblatt* 1968 I at 315, as amended) provides that women may not work for six weeks prior to giving birth and for eight weeks after. During this time, the female employee continues to receive full pay, which is provided in part as sick pay by the statutory health insurer and in part by the employer. In regard to the employer's payment, the law makes a distinction between large and small employers. For small businesses (those with less than 20 employees), the difference between sick pay and the employee's actual wage is contributed by a fund into which a group of employers pays contributions. Larger enterprises, however, pay for the wage supplement themselves. This requirement, as expressed in section 14, paragraph 1, of the Maternity Act, was found unconstitutional for violating the constitutionally guaranteed right to choose an occupation or profession.

(Edith Palmer, 7-9860)

LUXEMBOURG – Army Enlists Foreigners

In a ceremony held February 11, 2004, following four months of basic training, 86 new soldiers were incorporated into the Luxembourg army. Among them were 17 foreigners (12 Portuguese, 4 Italians, and 1 French citizen). The ceremony was presided over by Defense Minister Charles Goerens and Chief of Staff Colonel Nico Ries. Also present were Prime Minister Jean-Claude Juncker and the Ministers of Defense of Portugal, and of Italy, as well as

the French Ambassador to Luxembourg. All praised Luxembourg for taking the first step towards a future European Army. Prime Minister Juncker said that a small country like Luxembourg has demonstrated that it can achieve great things, and Defense Minister Goerens declared that the incorporation of citizens of countries of the European Union into Luxembourg's army was an important achievement for Luxembourg and the European Union. (*Luxemburg Wort*, Feb. 13, 2004, <http://web.saint-paul.lu>.) (George E. Glos, 7-9849)

THE NETHERLANDS – Meeting Outside of Parliament

For the first time in the history of the Second Chamber, in order to strengthen the ties between citizens and politicians, 16 members of Parliament and a Minister are conducting an agricultural committee meeting on location, outside the parliamentary buildings. (*De Telegraaf*, Feb. 12, 2004.) (Karel Wennink, 7-9864)

THE NETHERLANDS – Increased Penalty for Discrimination

Through an amendment of the Criminal Code that came into force on February 1, 2004, the maximum penalty for structural discrimination has been increased. The systematic and deliberate insulting of people because of their race, religion, beliefs, or sexual orientation and inciting to discrimination in a systematic manner may result in a maximum prison term of two years. Structural discrimination means the intended repetition of discriminatory statements by the same person or group(s), or making discriminatory statements while operating as an organization. (Ministry of Justice, *Press Release*, Jan. 29, 2004, at www.ministerievanjustitie.nl.) (Karel Wennink, 7-9864)

RUSSIA – Life Imprisonment for Terrorist Crimes

The Criminal Code of Russia was amended on February 16, 2004, in order to accommodate increased penalties for terrorism-related activities. The current term of 8 to 15 years' imprisonment for such activities is extended to a term of 15 to 20 years, depending on the severity of circumstances, and to imprisonment for life if the terrorist act was performed by an organized group or if the consequences of the act are extremely grave. Because of the death penalty moratorium in force since 1998, life imprisonment has been used as an alternative to capital punishment. The amendment makes life imprisonment an independent form of punishment for especially aggravated crimes threatening public security or the life of an individual. Life imprisonment cannot be applied to women, minors, or people older than 65 years of age. (Official website of the Russian State Duma (Parliament), <http://www.duma.gov.ru>, Feb. 16, 2004.) (Peter Roudik, 7-9861)

RUSSIA – Suing the Government Outlawed

The Constitutional Court of the Russian Federation ruled that provisions of the Civil Procedural Code allowing individuals to appeal decisions on cases involving executive regulations issued by the Government to the Supreme Court are unconstitutional. The Constitutional Court stated that the existing practice of the Russian Federation Supreme Court's judging the legality of acts passed by the Federal Government is out of the Court's competence.

The ruling was made in response to the request of the Cabinet of Ministers of the Russian Federation to defend it from numerous suits initiated by Russian citizens. Citizens who disagreed with Government legislation implementing federal laws were able to lodge an appeal against them with the Supreme Court, which typically accepted about 30 such cases every year and resolved 6 or 7 of them. As a result of the new ruling, only constituent components of the Russian Federation, not individuals, now have the right to argue the legality of Government regulations. Russian legal scholars view the decision as a restriction of the individual's right to a court defense. (Voice of America, Russian Service, Jan. 27, 2004, <http://www.voanews.com>.) (Peter Roudik, 7-9861)

SERBIA – Law on Presidential Elections

The Serbian Parliament on February 23, 2004, adopted amendments to the Law on Election of the President of Serbia. The most significant amendment abolishes the requirement that a threshold of 50 percent participation by the electorate must be achieved in the first election round to allow the candidate supported by the majority of those who turned out to become President. If none of the candidates wins the majority, elections will be repeated within 15 days and the candidate who wins the majority of votes at the repeated ballot will become president. The amendments were passed despite the opposition of the Socialists, who stated that the abolishment of the threshold is not compatible with Constitutional provisions on presidential recall, which require that more than half of the electorate vote for the recall. (*BBC Monitoring*, Feb. 23, 2004, reported via <http://www.securities.com/>.) (Peter Roudik, 7-9861)

UKRAINE – Tax Inspectors Excluded from Political Parties

The Ukrainian Parliament (*Verkhovna Rada*) amended the 2001 Law on Political Parties. The amendments significantly simplify registration procedures and the activities of local branches of national political organizations and provide for legalization of activities of regional chapters of political parties by the filing of written notifications with local justice departments and relevant departments of local governments. The amended Law prohibits officers of the State Tax Administration from being members of any political party. Ukrainian legislation already prohibits political party affiliation for civil servants, military employees, and law enforcement personnel. (*Ukrainian News Agency*, Feb. 22, 1994, reported via <http://www.securities.com/>.) (Peter Roudik, 7-9861)

UKRAINE – Government Is Domain Manager

The Ukrainian Supreme Court of Arbitration, the nation's highest court for commercial disputes, decided to leave without resolution an appeal by the plaintiff of the ruling of the Arbitration Court for the Kyiv District in the case *Hostmaster Ltd. v. Government of Ukraine*. The Court refused all claims against the Government and requests to annul Government Regulation No. 447 of July 22, 2003, on Administering the “.UA” Domain. This Regulation was adopted at the initiative of the Ukrainian Security Service (former KGB) and State Communications Committee. It assigned these organizations the duty to establish the Ukrainian Network Information Center, to manage the Ukrainian segment of the Internet and to service and administer the system registry and the system of domain names ending in the extension “.UA”. The Regulation violates the established order under which the international domain name body Iann has accredited PSI-USA Inc. to register website addresses ending in extension “.UA” and allowed it and its Ukrainian subsidiary Hostmaster Ltd. to act as a registrar for the domain name extension “.UA”. The plaintiff claims that the Regulation undermines freedom of speech in

Ukraine and is aimed at establishing government control over the Internet in Ukraine. (*Delovaia Nedelia* (Business Week) newspaper, Feb. 25, 2004.)
(Peter Roudik, 7-9861)

UNITED KINGDOM – Anti-Terrorism Measures Examined

The British Government has recently issued a paper that attempts to balance anti-terrorist measures and national security against individuals' liberties in advance of the 2006 expiration of the Anti-Terror, Crime and Security Act 2001 (the Act). The paper sets out the Government response to a report reviewing the Act that was headed by Lord Newton (the Newton Report). The paper aims to promote discussion of these issues to provide the Government with a more informed sense of judgment of how to proceed in this area. The Newton Report was particularly critical of Part IV of the Act, which grants the Home Secretary the power to indefinitely detain international terrorists. While taking into account a number of the recommendations made in the paper, the Government has defended many of its positions in the Act and has stated the wish to "continue to build on the foundation whilst recognizing the need for appropriate safeguards." The Australian Government has expressed an interest in the contents of the paper, and the Attorney General has stated that the response to the paper will be watched with interest. (The Privy Counsellor [sic] Review Committee, *Anti-Terrorism, Crime and Security Act Review: Report*, Dec. 2003 (HC100); Home Department, *Counter-Terrorism Powers: Reconciling Security and Liberty in an Open Society: A Discussion Paper 2004* (Cm. 6147); Home Office, *Response to the Report of the Anti-Terrorism, Crime and Security Act 2001 Review*, Dec. 2003, at http://www.homeoffice.gov.uk/n_story.asp?item_id=743.)
(Clare Feikert, 7-5262)

UNITED KINGDOM – Official Secrets Case Dropped

The prosecution for the Crown dropped a case against a former Government Communications Headquarters translator. The translator was to be prosecuted under the Official Secrets Act 1989 (OSA) for leaking a memorandum to the press concerning government actions in the lead up to the war in Iraq. The OSA prohibits government workers from disclosing security and intelligence information without authorization. The prosecution had offered no evidence in the case.

The Government has denied claims that the prosecution was dropped due its potential to cause political embarrassment, as reports and the defense had claimed that the case would put the legality of the war in Iraq on trial. The prosecution stated that its reason was that there was "not sufficient evidence for a realistic prospect of conviction." ("US Plan To Bug Security Council: the Text," *The Observer*, at <http://observer.guardian.co.uk/iraq/story/0,12239,905954,00.html>; "GCHQ Decision Was Not Political," *BBC News*, Feb. 26, 2004, at http://news.bbc.co.uk/1/hi/uk_politics/3489254.stm.)
(Clare Feikert, 7-5262)

NEAR EAST

ISRAEL – Liability for Compensation for Oil Pollution Damages

The Liability for Compensation for Oil Pollution Law, 5764-2004 was passed by the Knesset (Parliament) in January 2004. The Law applies to pollution damage caused in Israel and its territorial waters and to pollution damage caused in countries signatory to the International

Convention on Civil Liability for Oil Pollution Damage (1969, as amended by the 1992 Protocol) in their sovereign territory and territorial waters as well as in their exclusive economic zones. The Law imposes the obligation to hold a valid insurance policy or warranty on owners of all vessels carrying a cargo of over 2,000 tons of oil. Such an insurance policy or warranty is a precondition for the granting of a confirmation certificate to the Israeli vessels concerned by the authorized officer in the Ministry of Transportation. The confirmation certificate is required for sailing from or to Israeli ports. The Law also prescribes the scope of liability of vessel owners and of insurers for pollution damage.

A special procedure for the establishment of a fund for limitation of liability for both owners and insurers is provided. Establishment of such funds requires court approval. The Law also establishes an international fund for compensation and includes special provisions on suits for compensation and a statute of limitation. (<http://www.knesset.gov.il/>)
(Ruth Levush, 7-9847)

ISRAEL – Sexual Harassment Prevention

As a rule, unwelcome repeated advances and statements of a sexual nature constitute sexual harassment under the Prevention of Sexual Harassment Law, 5758-1998. In addition, the Law provided a list of types of instances in which the targeted person is not required to have shown a lack of interest in such advances and statements. These include situations involving supervisor-employee relationships, minors and incapacitated persons, as well as personnel in the defense forces, such as soldiers, policemen, and jailors.

A recently passed amendment to the Law equates the status of national service personnel to that of personnel in the defense forces, so that they, too, will not have to show that they were not interested in the sexual advances or statements made in the context of a supervisory or dependent relationship in order to prove sexual harassment. (<http://www.knesset.gov.il/>)
(Ruth Levush, 7-9847)

SOUTH PACIFIC

AUSTRALIA – Recognition of Marriage

A Western Australian man and woman who are the parents of three children have been unable to marry because they are legally, though not biologically, siblings. The man's father and the woman's mother, each with children from a previous marriage, wed, and the husband adopted his new wife's daughters. His son and her daughter thus became brother and sister by adoption. They had grown up in separate homes and first met as adolescents. When the woman became pregnant with their first child, they attempted to marry and were told at the marriage registry that they could have as many children as they pleased, but that the Commonwealth Marriage Act 1961 prohibited siblings from marrying. Observing that first cousins can legally marry, they have written to the Commonwealth Attorney-General asking for special consideration. (*The Australian*, Feb. 20, 2004, at <http://www.theaustralian.news.com.au/>.)
(Donald DeGlopper, 7-9831)

INTERNATIONAL LAW AND ORGANIZATIONS

AUSTRALIA/UNITED STATES – Preferential Trade Agreement

On February 10, 2004, Australia and the United States signed a “free trade agreement.” Australian commentary noted that it was better described as a preferential trade agreement, as it had little to do with free trade. Although the complete text was not available, the major points of the deal, described by Australian Prime Minister John Howard as “the best we could get in current circumstances,” included access to U.S. markets for Australian manufactured goods and services and elimination of U.S. tariffs on imports of Australian wheat, other cereal crops, and minerals. Australia would maintain its local content rules in broadcasting and film and maintain the Pharmaceutical Benefits Scheme, which subsidizes certain selected drugs and was a target of U. S. pharmaceutical industry pressure. However, the United States will maintain its full tariffs on imports of Australian sugar, as well as partial tariffs on imports of Australian beef and dairy products.

Prime Minister Howard, apparently concerned over an electoral backlash in several marginal federal Parliamentary districts in Queensland, immediately promised further government assistance to the struggling sugar industry. Australian commentators opined that there was less to the agreement than government claims suggested, arguing that variations in the currency exchange rates were likely to have a greater impact on levels of trade than reductions in already very low tariff rates. (“PM Defends ‘Imperfect’ Trade Deal,” *ABC (Australian Broadcasting Corporation) Online*, Feb. 10, 2004, at <http://www.abc.net.au/news/newsitems/s1041089.htm>; *Sydney Morning Herald*, Feb. 11, 2004, at <http://www.smh.com.au>.) (Donald DeGlopper, 7-9831)

CHINA/France – Anti-Organized Crime Effort

China and France have agreed to exchange police officers as part of a joint effort to combat organized crime. The agreement would entail deployment of a Chinese liaison officer in the French judicial police and the creation of two French police teams, specializing in organized and economic crime, for deployment in Beijing and Hong Kong. (“France and China Agree on Joint Action Against Organized Crime,” *Deutsche Presse-Agentur*, Jan. 8, 2004, via LEXIS/NEXIS, News library.) (Wendy Zeldin, 7-9832)

GUATEMALA/MEXICO – Migration Problems Discussed

On February 16, 2004, the Binational Guatemala-Mexico Commission opened its eighth meeting in Guatemala City to discuss such critical issues of mutual interest as safe repatriation of undocumented Central Americans who cross the Guatemalan-Mexican border in transit to the United States, protection of underage victims of forced prostitution, and smuggling of illegal aliens across the border between the neighboring countries. An agreement was drafted on humane, safe, and orderly repatriation of Central American foreign nationals across the Mexican border. Guatemalan migration authorities reported that in 2003 they received from their Mexican counterparts more than 175,000 undocumented repatriates, chiefly from Guatemala, El Salvador, and Honduras. The Mexican and Guatemalan foreign ministers also participated in the meeting. (“Guatemala, Mexico Working on Illegal Aliens Repatriation Agreement,” *NOTIMEX*, Feb. 16, 2004, via FBIS.) (Sandra Sawicki, 7-9819)

MEXICO/UNITED STATES – Migration Accords

On February 20, 2004, Mexico and the United States signed two migration accords after a bilateral meeting between Secretary of Homeland Security Tom Ridge and Mexican Interior Secretary Santiago Creel, in Mexico City. The 2004 U.S.-Mexico Action Plan for Cooperation and Border Safety aims to strengthen the measures of both countries to prevent the occurrence of life-threatening situations for Mexican migrants at the U.S.-Mexico border and to combat human smugglers and traffickers. The Memorandum of Understanding on the Safe, Orderly, Dignified and Human Repatriation of Mexican Nationals seeks to ensure the repatriation of undocumented Mexican nationals from the United States to their place of origin and of third country nationals to their home country. (*Versión Estenográfica de la Conferencia del Secretario de Gobernación, Santiago Creel Miranda, y la Traducción del Secretario de Seguridad Interior de Estados Unidos, Thomas Ridge, Celebrada en el Salón Revolución de la Secretaría de Gobernación, México, D.F. Secretaría de Gobernación*), <http://www.gobernacion.gob.mx>.) (Norma Gutiérrez, 7-4314).

ORGANIZATION OF AMERICAN STATES – Panel Backs D.C. Vote

A human rights commission affiliated with the Organization of American States (OAS) has ruled that the United States violates the rights of residents of the District of Columbia by denying them representation in Congress. The OAS has 35 member states, including Mexico, Brazil, Canada and the United States. The December ruling, which was announced in February 2004, has little immediate practical effect but was hailed by voting rights activists as an important step forward in their struggle. The Inter-American Commission on Human Rights ruled, after nearly a decade of proceedings, that Washington's 572,000 residents are denied full access to the democratic process because of where they live.

The suit was filed by voting rights activist Timothy Cooper, representing the Statehood Solidarity Committee. He argued that the denial of congressional representation to D.C. residents was a violation of their fundamental human rights. The U.S. State Department countered with several arguments, including that Cooper had failed to exhaust appropriate domestic legal avenues. Federal attorneys also contended that the founding fathers legitimately feared that D.C. residents would exert disproportionate influence over national affairs by virtue of their proximity to decision-makers. (<http://www.washingtonpost.com/wp-dyn/articles/A35216-2004Feb12.html>.) (Gustavo E. Guerra, 7-7104)

UNITED NATIONS – Tribunal Sentences Rwandan Commander

On February 25, 2004, the three judges of the International Criminal Tribunal for Rwanda sentenced a military commander, Samuel Imanishimwe, to 27 years of imprisonment for his actions during the April 1994 genocide. He was charged and convicted for six offenses, including genocide, murder, and torture. Sitting in Tanzania, the war crimes tribunal acquitted the former Minister of Transport and Communications and a former regional official of charges resulting from the same massacre, which took place in Cyangugu prefecture and involved the killings of predominantly Tutsi civilians in the region. It could not be proven beyond a reasonable doubt that either of these two officials had criminal responsibility in the matter, either by encouraging the killings or supplying weapons to those directly culpable. (*UN News Service, UNNEWS@un.org, Feb. 25, 2004.*) (Constance A. Johnson, 7-9829)

EUROPEAN UNION

Agreement on Marine Equipment Signed with the United States

On February 24, 2004, a mutual recognition agreement (MRA) on marine equipment was signed by the trade representatives of the EU and the United States. The agreement was initially negotiated between the two trading partners in 1999 as part of the Transatlantic Economic Partnership. Pascal Lamy, the EU Trade Commissioner, welcomed the signing of the agreement, noting that the sector represents €1 billion in EU-U.S. trade. The U.S. Trade Representative remarked that “the agreement saves US manufacturers the time and expense of redundant product testing for the EU market and also promotes our efforts to improve the quality of international marine safety regulations.” (http://europa.eu.int/comm/trade/issues/bilateral/countries/usa/pr270204_en.htm.) (Theresa Papademetriou 7-9857)

Passports To Carry Biometric Identifiers

The European Council, which convened in Thessalonika, Greece, had asked the Commission to introduce proposals regarding incorporation of biometric data in travel documents for third-country nationals, passports for EU citizens, and information systems, including the Schengen Information System (SIS II). The Commission complied in September 2003 through the adoption of two regulations calling for biometric identifiers in visas and residence permits of third-country nations. Two mandatory biometric identifiers were proposed for visas and permits: fingerprints and a facial image. On February 18, 2004, the Commission came up with a proposal for a regulation that calls for the inclusion of a facial image as the biometric marker of choice for the passports of EU citizens. Member States are allowed to include fingerprinting in passports, if they wish. The proposal will follow the usual legislative channels through the European Parliament and the Council of Ministers. (<http://europa.eu.int/rapid/start/welcome.htm>.) (Theresa Papademetriou 7-9857)