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WORLD LAW BULLETIN

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James Madison Memorial Building; 101 Independence Avenue, SE; Rm. LM 240; Washington, DC 20540-3001
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WORLD LAW BULLETIN

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AFRICA

SOUTH AFRICA – Broad-Based Black Economic Empowerment

The Broad-Based Black Economic Empowerment Act No. 53 of 2003 was enacted, among other reasons, to establish a legislative framework for the promotion of black economic empowerment, to empower the Minister of Trade and Industry to issue codes of good practice and publish transformation charters, and to establish the Black Economic Empowerment Advisory Council.

The Act's specific objectives include promoting economic transformation in order to enable meaningful participation of black people in the economy; achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises; increasing the access of black women and rural and local communities to economic activities, infrastructure, and skills training as well as ownership and management of existing and new enterprises; and promoting access to finance for the purpose of black economic empowerment. The Act passed on January 9, 2004. (GOVERNMENT GAZETTE, Jan. 9, 2004, at <http://www.gov.za/gazette/acts/2003/a53-03.pdf>, accessed Apr. 13, 2004.) (Ruth Levush, 7-9847)

ZIMBABWE – Law Reform

The Criminal Penalties Amendment Act (Act No. 22, ZIMBABWE GAZETTE, May 20, 2002) appears to have been backdated to 2001. This instrument is important because it indexes all criminal law in Zimbabwe, including any laws with provisions on criminal penalties. The Amendment serves two functions. It acts as a guide to researchers on legislation in Zimbabwe that contains criminal penalties, and at the same time, it functions as an updating tool to indicate the current status of Zimbabwean law. The legislation is very detailed and affects the bulk of the laws of Zimbabwe contained in the compendium *Statute Law of Zimbabwe* (revised edition 1995). (Charles Mwalimu, 7-0637)

AMERICAS

BOLIVIA – New Hydrocarbons Bill

The administration of President Carlos Mesa has prepared a bill to amend the Hydrocarbons Law and will soon submit it to the National Congress, pending the legislature's passage of several other bills dealing with referenda and finances. The bill calls for giving a new role to a government agency that oversees oil deposits, restoring the principle of State ownership of hydrocarbons, and providing incentives for their industrialization. It would also provide opportunities for companies to invest in natural gas service lines or in petroleum sector projects.

Controversy has surrounded the current Hydrocarbons Law, which provides that companies must invest in drilling. Because of a shortage of markets for natural gas, companies asked the previous administration of Jorge Quiroga to amend the law and revoke this

obligation. In October 2001, Quiroga issued Decree No. 27414 that released oil companies from the compulsory investments. On March 26, 2004, the Mesa government annulled the decree on grounds that it violated article 30 of the Hydrocarbons Law and is detrimental to Bolivia. The annulment applies only to the future and the money that has not already been invested cannot be recovered. Under the new bill, the companies will again be obliged to fulfill the commitments they made in their contracts, either in exploration areas or in industrialization of natural gas. (*Bolivia: Administration's New Hydrocarbons Bill Compels Oil Investments*, LA RAZON, Mar. 31, 2004, and *Bolivia: Amendments to Hydrocarbons Law To Be Submitted After Other Pending Bills Are Passed*, EL DIARIO, Apr. 4, 2004, via FBIS.) (Sandra Sawicki, 7-9819)

CANADA – Ban on Baby Walkers

Canada became the first country to ban the sale, advertisement, and importation of baby walkers by amending the schedule to the Hazardous Products Act, R.S.C. ch. H-3 (1985), Schedule I, as amended, on April 7, 2004. The prohibitions extend to secondhand sales at such venues as garage sales and flea markets. The ban follows the release of a regulatory review and recommendation by Health Canada. In the course of this review, Health Canada considered the possibility of adopting the safety standard in force in the United States that was developed by the American Society for Testing and Materials (ASTM) in 1997. However, the department found that there were still reports of infants in ASTM-compliant baby walkers falling down stairs and being hurt by pulling down objects otherwise out of reach. For these reasons, the regulatory approach was rejected in favor of an outright ban on sales. (*Minister Pettigrew Announces a Ban on Baby Walkers*, HEALTH CANADA, Apr. 7, 2004, at http://www.hc-sc.gc.ca/english/media/releases/2004/2004_15.htm.) (Stephen F. Clarke, 7-7121)

CANADA – Government Amends Bill on Drugs for Poor Countries

On April 20, 2004, the Government of Canada tabled proposed amendments to the bill introduced in February that is designed to allow manufacturers of generic drugs to obtain compulsory licenses from patent holders to produce certain eligible drugs for export to the least-developed and developing countries. (Bill C-9, 37th Parl. 3d Sess., available at http://www.parl.gc.ca/37/3/parlbus/chambus/house/bills/government/C-9/C-9_2/C-9_cover-E.html.) Canada was reportedly the first country to announce its intentions in response to the World Trade Organization decision that allows member countries to authorize the manufacture under license of certain medicines for countries with an insufficient pharmaceutical industry (*Government of Canada Moving Forward with Legislation To Improve Access to Medicines in Developing Countries*, Canada NewsWire, Apr. 20, 2004). Bill C-9 is presently before the House of Commons Standing Committee on Industry, Science and Technology. The amendments expand the lists of eligible drugs and countries, change the royalty rate, and identify the eligible buyers to include non-governmental organizations.

One of the most controversial provisions of the original version of Bill C-9 was that it would have given patent holders “a right of first refusal” to supply eligible countries with drugs needed to fight AIDS, malaria, and certain other diseases. The amendments to the bill allow manufacturers of generic drugs to apply for compulsory licenses if they are unable to obtain a voluntary license from a patent holder on negotiated terms. Manufacturers of generic drugs will not be required to notify patentees prior to entering into a contract with an eligible

country. Royalty rates will be calculated according to established formulas. For the majority of the eligible countries, royalties are expected to be less than two percent of the cost of production.

Although holders of patented medicines lost the “right of first refusal,” they did gain the right to sue manufacturers of generic drugs for making profits considered to be “undue.” Some critics contend that this change could invite pharmaceutical companies to engage in “lengthy and vexatious” litigation to discourage manufacturers of generic drugs from exporting drugs under a compulsory license. (*Canada Amends Bill on Cheap AIDS Drugs for Poor Countries*, Apr. 20, 2004, Health-AFP, Yahoo!News, Apr. 22, 2004, at <http://story.news.yahoo.com/news?tmpl=story&cid=1508ncid=1508&e=6&u=/afp/2004>; *Canada First To Pass Law To Send Cheap AIDS Drugs to Poor Countries*, Health-AFP, May 17, 2004, via Yahoo! News, May 20, 2004, at <http://news.yahoo.com>.) (Stephen F. Clarke, 7-7121)

ASIA

CHINA – Foreign Trade Law Revised

On April 6, 2004, the National People’s Congress adopted amendments to the 1994 Foreign Trade Law, in accordance with the requirements of World Trade Organization (WTO) rules. The purpose of the revision, according to a Ministry of Commerce official, is three-fold: to create equal conditions for foreign trade managers so as to accelerate integration of foreign trade and make it freer and more convenient; to create a fair and predictable foreign environment for Chinese and foreign trade handlers; and to create a foreign trade operation monitoring system and an international payments precautionary mechanism so as to protect domestic industries and markets and safeguard the state’s economic security.

The revised Law has added clauses on the protection of intellectual property rights in trade, protecting the rights of both domestic and foreign property owners. It has provisions on the maintenance of fair trade and exercise of trade relief, to enable foreign traders in China to use anti-subsidy and anti-dumping measures under the WTO framework to protect their interests and to enable Chinese companies to receive subsidies from the government if their rights are infringed. In addition, the Law now provides that natural persons may also engage in foreign trade and that foreign traders need only go through record-keeping registration procedures for import and export of goods and technology, instead of having to obtain permission from the relevant State Council departments. There is added content on bringing the automatic permission system in line with WTO rules. Other added content has to do with the exercise of state management of barter trade and franchised import and export. There are also amended, improved, and new provisions on legal responsibilities to include criminal punishments, administrative punishments, and a ban on engagement in foreign trade operations and activities for a certain period. (*China’s Ministry of Commerce Outlines New Foreign Trade Law*, ASIA PULSE, Apr. 22, 2004, LEXIS, News Library, 90days File; *Foreign Trade Law Amendment Reflects WTO Rules*, BUSINESS DAILY UPDATE (Financial Times Information), Apr. 13, 2004, *id.*) (Wendy Zeldin, 7-9832)

CHINA – Measures on Merchandising Enterprises Announced

On April 16, 2004, China's Ministry of Commerce announced new "Measures on Foreign Invested Merchandising Enterprises." The new instrument is designed to be an amendment to measures promulgated in 1999, relying on the experience gained over the last few years with foreign invested merchandising companies. The Ministry will have a formal, public role in overseeing this type of enterprise, which now may be established even beyond the originally designated special economic zones and major cities. In addition, the proportion of foreign ownership permitted has been increased. Some administrative oversight has been moved from the central government to provincial authorities. For example, foreign invested merchandising enterprises with small financial reserves or that use Chinese brand names will now be inspected by provincial commerce offices. (*China Law Policy Foreign Investment*, China Business News On-Line, Apr. 19, 2004, LEXIS, Asiapc Library, China File.) (Constance A. Johnson, 7-9829)

INDIA – Ban on SIMI Upheld

By a notification of September 26, 2003, issued by the Union Government of India, the Students Islamic Movement of India (SIMI) was declared unlawful for conducting activities in violation of the provisions of the Unlawful Activities (Prevention) Act, 1967. The SIMI was suspected of fundamentalist activities, including incitement to violence for achievement of its objectives. The SIMI appealed to the Unlawful Activities (Prevention) Tribunal against this government decision.

On March 23, 2004, the Tribunal upheld the ban, stating that there was "sufficient cause" for the Government's decision. Justice R.C. Chopra of the Delhi High Court declared that the notification "stands confirmed." The tribunal's order states that the activities of the SIMI were "detrimental to peace, communal harmony, internal security and maintenance of secular fabric of the country," according to a Home Ministry spokesman. (THE HINDU, National section, Mar. 25, 2004.) (Krishan Nehra, 7-7103)

INDIA – State Government Competence To Legislate on Mineral Oil Resources

The State Government of Gujarat enacted the Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001, which empowered it to regulate transmission/supply and distribution of gas in the State, including the laying of pipes, etc. The Union Government of India considered this Act constituted a usurpation of the Central Government powers because under Entry 53, List I (Union List of the Constitution), the Union Government alone had the legislative competence to enact such a law. Upon being advised by the Union Government, the President of India, in exercise of his powers under Article 143 (1) of the Constitution, referred the matter to the Supreme Court for its opinion on whether the State Government had the competence to legislate on all aspects relating to regulation of mineral resources, which include natural gas and liquefied natural gas (LNG).

On March 25, 2004, the Court, stating that States were not competent to legislate in this field, struck down the Gujarat enactment in so far as the provisions relating to the natural gas or LNG were concerned. The Court further observed that, lacking legislative competence to enact such a law, the Act was *ultra vires* the Constitution and that "Natural gas being a

petroleum product ... the Union Government alone had the legislative competence to enact such a law.” Rejecting the argument of the state government that the Union Government could legislate on oil, but not gas, the Court noted that the words “petroleum” and “petroleum products” include natural gas as well under Entry 53, List I. However, the state government, under Entry 25, List II, of the Seventh Schedule of the Constitution, is competent to make laws on gas and gas-works for industrial, medical or other similar purposes. (THE HINDU, National section, Mar. 26, 2004.)
(Krishan Nehra, 7-7103)

JAPAN – Marine Pollution Prevention Law Amendment

A bill to amend the Marine Pollution Prevention Law was passed by the Diet on April 14, 2004. Japan is planning to ratify the Protocol of 1997 (Annex VI - Regulations for the Prevention of Air Pollution from Ships) of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78). The amended law sets limits on sulphur oxide (SO_x) and nitrogen oxide (NO_x) emissions from ship exhausts and prohibits deliberate emissions of ozone depleting substances, in accordance with the Protocol. (Land and Transportation Committee, House of Representatives, Minutes No. 7, No. 159 Diet Session, 2004; for MARPOL information, *see* the International Maritime Organization website, at http://www.imo.org/Conventions/contents.asp?doc_id=678&topic_id=258.)
(Sayuri Umeda, 7-0075)

JAPAN – Oil Spill Compensation Law Amendment

The Diet passed a bill to amend the Oil Spill Compensation Law on April 14, 2004. The amended law obliges owners of ships that exceed 100 tons, other than tankers, to buy insurance that covers the costs of oil spill cleaning and the removal of stranded ships. The amended law prohibits ships without such insurance to dock in ports in Japan. Among the ships that stop by ports in Japan, majority of North Korean and Russian ships do not have such insurance. Regarding tankers, Japan has a different compensation scheme based on the International Oil Pollution Compensation Fund. (Land and Transportation Committee, House of Representatives, *Minutes No. 8*, No. 159 Diet Session, 2004.)
(Sayuri Umeda, 7-0075)

KOREA, SOUTH – Election Law Amendment

The Act on the Election of Public Officials and the Prevention of Election Malpractice was passed by the National Assembly on March 9, 2004, and became effective on March 12, 2004, the day President Roh Moo-hyun was impeached. The amendment made the law stricter against violations. Voters who received money or other benefits from the candidate sides may be fined up to fifty times of the amount they received. Persons who report any election law violation may receive up to fifty million *won* (US\$43,000). A restriction on election expenses was imposed. Under the newly amended election law, the election on April 15 was reportedly the cleanest election in Korea. (Min Seong-jae, *Korea's Cleanest Election Ever?*, JOONGANG DAILY, Apr. 16, 2004, available at <http://joongangdaily.joins.com>.)
(Sayuri Umeda, 7-0075)

KYRGYZSTAN – Criminal Law Amendments

Newly adopted amendments to the Criminal Code of the Kyrgyz Republic eliminate the death penalty for crimes committed against lives of state or public figures, including judges, and law enforcement officials; life imprisonment has been substituted as the punishment. The death penalty still remains as a punishment in this Central Asian state for three following crimes: genocide, murder committed by an organized group, and rape of an underage person with especially grave consequences. New amendments also introduce additional reasons for a criminal case to be closed by the court or during investigation. These reasons are: conciliation of the parties, the request of a victim if the inflicted damage was fully or partially compensated, and the request of a victim if the victim received some services or work from the accused person. The amendments allow authorities to close a criminal case at any stage if the accused person “frankly repents of” a committed crime. (Kyrgyzinfo, Mar. 29, 2004, at <http://www.gazeta.ru>.) (Peter Roudik, 7-9861)

TAIWAN – Computer Data Protection Plan

The computer data protection law would be revised under the plan suggested by two members of the Taiwan legislature. It would increase protection of personal data and help fight financial scams and extortion. The proposal comes from two representatives of the ruling Democratic Progressive Party, who cite the rise in fraud in recent years and the relatively light penalties for breaking existing regulations. There has been a growth in the market for name s lists and personal information, including birth dates, phone numbers, and email addresses, used by unscrupulous operators to offer fake contest prizes or demand payment of phony ransoms. In addition to proposing legal reform, the legislators called for better policing of improper disclosures and sales of personal data. The changes would include the establishment of a special unit in the executive branch of government to inspect the operations of government agencies that assemble personal information. (*DPP Seeks Tighter Rules on Personal Data*, THE CHINA POST, Apr. 24, 2004, via FBIS.) (Constance A. Johnson, 7-9829)

TAIWAN – Customs Duties Law Amended

The Legislative Yuan approved amendments to the Customs Duties Law on April 13, 2004, with the aim of broadening the scope of products eligible for tax-free and tax-rebate status. The changes were made in conjunction with rules that regulate the Taiwan-Panama Free Trade Agreement and the Kyoto Protocol in order to promote free trade pacts and customs cooperation between Taiwan and other countries.

Among the products that will now enjoy tax exemption or rebate are medicines, facilities for disease control, and emergency rescue equipment (for animals as well as humans), no matter whether they are imported by the government or donated by foreign countries. The revised Law extends for up to one year the re-entry tax exemption period enjoyed by products shipped abroad for repair, maintenance, or processing. However, it increases the daily surcharge for goods that overstay their permitted time at customs offices, from the current level of NT\$18 to NT\$200 (US\$6.09).

In addition, the amended Law allows customs officials to inspect goods transhipped in Taiwan, in an effort to cooperate with the global anti-terrorism campaign. Inspection costs are to be borne by the transporter. (Flor Wang, *Law Revisions in Taiwan Will Enhance Tax-Free, Tax Rebate Scope*, CENTRAL NEWS AGENCY, Apr. 14, 2004, LEXIS, Nexis Library, 90days File.)

(Wendy Zeldin, 7-9832)

TAIWAN – Official Document Format Revised

On May 4, 2004, the Legislative Yuan amended an act on official documents to stipulate that in one year all official Chinese documents and related paperwork should be changed from the current vertical right-to-left format, used in China for more than 2,000 years, to the standardized horizontal left-to-right format. The change in style is expected to make computerizing Chinese easier, especially since many documents have to be written in both Chinese and English, and enable Taiwan to conform to the international trend in writing format. A spokesman for the Cabinet-level Research, Development and Evaluation Commission, which drafted the plan for official document alteration in May 2003, stated that all government computer systems must be reprogrammed for the new format, a process that may take a year to complete. (*Chinese To Read Left to Right*, CHINA POST, May 5, 2004, LEXIS, News Library, 90days File; Deborah Kuo, *Legislation on Standardized Horizontal Chinese Writing Passed*, CENTRAL NEWS AGENCY, May 4, 2004, via FBIS.)

(Wendy Zeldin, 7-9832)

VIETNAM – National Reserves Ordinance

On April 24, 2004, the Standing Committee of the Vietnamese National Assembly approved an ordinance on national reserves. The purpose of the 41-article instrument is to prepare for the consequences of natural disasters, including fires and epidemics, and to ensure national security in emergency situations. The ordinance stipulates that national reserves equal to one percent of gross domestic production must be established. The reserves should be partly in cash; previously only strategic reserves in the form of commodities such as salt, kerosene, and rice were maintained. Any change in the composition of the new national reserve must be approved each year by the National Assembly. (*Vietnam Issues National Reserve Ordinance*, VIETNAM NEWS BRIEFS, Apr. 26, 2004, LEXIS, Asiapc library, Curnws file.)

(Constance A. Johnson, 7-9829)

EUROPE

BULGARIA – Law on Business Encouragement

The Law on Business Encouragement introduces new requirements for recognition of businesses as micro-, medium-, and macro-sized enterprises. It also creates a Government-founded Incentive Bank, designed to guarantee commercial financing for newly established companies, and provides for the establishment of a newly created Agency for Encouragement of Trade, an independent government body. In order to follow European standards, the Law establishes that the definition of an enterprise as a small or medium one will not be based solely on the number of employees; financial indicators will play a supplemental role. As of July 1, 2004, when the Law enters into force, the threshold for medium-sized enterprises will be annual turnover in the amount of thirteen to seventy-eight million Bulgarian *leva* (about

US\$7.8-47 million). Under the new Law, highly efficient small businesses with a high balance value of assets or annual turnover will be treated as large businesses. It is expected that the creation of an independent government agency, headed by someone holding a Cabinet-level position, will improve both the formulation of policy regarding small businesses and communication within the Cabinet. (BANKER WEEKLY [a Bulgarian weekly newspaper], Apr. 23, 2004, at <http://dlib.eastview.com>.)
(Peter Roudik, 7-9861)

ESTONIA – Simplification of Citizenship Exams

On March 29, 2004, amendments to the Citizenship Act that will simplify the procedure for attaining Estonian citizenship were adopted by the *Riigikogu* (legislature). Under the Act, an applicant must pass a language test and a civics test on knowledge of the Estonian Constitution and citizenship legislation in order to be eligible to apply for citizenship. At present, all applicants are obliged to attend classes at government examination centers. New amendments allow the State Migration Board to recognize examinations in Estonian and Social Studies passed by basic-level graduates of Estonian public schools (grade 9) as citizenship exams if their school grades are satisfactory. It is expected that the new procedure will affect more than a third of those who are eligible to apply for Estonian citizenship and will speed up the processing of other applications. (MOLODEZH ESTONII [Youth of Estonia, daily newspaper], No. 74, Mar. 30, 2004, available at <http://www.integrum.com>.)
(Peter Roudik, 7-9861)

ESTONIA – Restrictions for Learner Drivers

The Estonian legislature adopted a law entitled the Nerve Cells Preservation Act that is aimed at the creation of better traffic conditions for drivers. The Law prohibits driving by students and those who have learner's permits during rush hours in downtown and historic areas. Because of growing traffic congestion, driving lessons are prohibited between 7:00 and 11:00 a.m. and between 6:00 and 8:00 p.m. The Law requires local governments in all Estonian municipalities to identify streets where driving by students is prohibited. (Riigikogu Online, Apr. 7, 2004, at <http://www.Riigikogu.ee>.)
(Peter Roudik, 7-9861)

FRANCE – Human Rights Report

On April 1, 2004, the National Consultative Commission on Human Rights submitted its annual report to the Prime Minister. The report concludes that the number of racist acts dropped in 2003, to 817, compared to 1313 in 2002.

Antisemitic acts accounted for 72% of all racist acts recorded in 2003. The link between the international situation and these acts was confirmed, as their number sharply increased with the start of the Iraqi war. Most of them took place in the Paris suburbs (Ile de France). In addition, the report states that antisemitic violence has taken root in French society and is getting worse. Verbal abuse is on the rise in schools, where one-fifth of the recorded antisemitic acts occurred.

Hostility against Muslims was also higher than in the past. The report pointed out that this hostility has changed in focus. In the 1990's, immigrants from the Maghreb countries

(Algeria, Morocco, Tunisia) were the target of the hostility. Today Islam and Muslims in general are attacked, as some equate them with terrorism or fundamentalism. (Website of the National Consultative Commission on Human Rights, at <http://www.commission-droits-homme.fr>.)

(Nicole Atwill, 7-2832)

FRANCE – Same Sex Marriage

In response to the plan of a Green Party deputy, who is also the mayor of a town, to officiate at a homosexual wedding in June 2004, the President of the Republic and the Minister of Justice reaffirmed that marriages of homosexuals are against the law in France and that any such marriages would, therefore, be purely and simply null and void. The Justice Minister stated that the Civil Code specifically mentions “husband and wife” and warned the deputy that he risked sanctions.

In October 1999, after a year of virulent parliamentary debate, France adopted a law allowing any two people who live together, whether or not involved in a romantic relationship, to enjoy most of the social, inheritance, and fiscal rights that used to be reserved for married couples. Such unions can be legalized by the signature of a Civil Solidarity Pact (PACS), registered at the court of first instance of the couple’s domicile. The court, rather than the city hall, was chosen to serve as the registry organ in order to avoid any resemblance between the civil union and a traditional civil marriage. The law defines a PACS as a “contract between two persons, of the same sex or not, to organize their common life.” (Code Civil arts. 515-1 to 515-7; LE MONDE, Apr. 28 & 29, 2004, at <http://www.lemonde.fr>.)

(Nicole Atwill, 7-2832)

GERMANY – Electronic Surveillance

In a judgment of March 3, 2004 (docket number 1 BvR 2378/98), the Federal Constitutional Court held that the statutory provisions that permit law enforcement use of electronic surveillance to monitor private homes are largely unconstitutional and need to be reformed by June 30, 2005. However, the constitutional enabling provisions that allowed the legislature to enact such surveillance provisions were held to be in conformity with the basic tenets of the German Constitution.

In March, 1998, the German Constitution was amended by adopting article 13, paragraphs 3 through 6 (BUNDESGESETZBLATT 1998 I at 610), which make an exception from the basic right of the inviolability of the home by allowing for the electronic surveillance of private homes to investigate serious crimes or for preventive purposes. In October 1998, in the course of a major reform of the law in order to combat organized crime, the Code of Criminal Procedure was amended by the insertion of provisions describing the circumstances warranting the electronic purveyance of homes and the manner in which it had to be done (BUNDESGESETZBLATT 1998 I at 610).

The Criminal Code provisions were held to be mostly unconstitutional because they were not restrictive enough on law enforcement to allow for a suitable balance between combating crime and protecting the private sphere of individuals and thereby their human dignity.

(Edith Palmer, 7-9860)

LITHUANIA – Tax Deduction for Computers

The national legislature has adopted amendments to the Income Tax Law proposed by the Government of Lithuania. They introduce a tax break to encourage the digitization of Lithuanian households. Under the amendments, expenses incurred in purchasing a personal computer, software, and fees related to Internet connection are tax-deductible. The total exemption ceiling is established at LTL 4000 (about US\$1400). The tax break will apply to only one purchase every three years and will be implemented when the annual income declaration is filed, starting in 2005. The Ministry of Finance estimates that the budget could lose up to US\$5 million annually due to the introduction of the new measure. However, the measure was considered a necessity in order to boost computer sales because Lithuania, with its twenty-two percent of households with computers and eight percent of households with an Internet connection, is far behind its East European neighbors in terms of private digitization. (NORTHROUP NEWSLETTERS, Apr. 21, 2004, at <http://www.securities.com>.) (Peter Roudik, 7-9861)

THE NETHERLANDS – Conviction for Torture Committed Abroad

In October 2003, a new Law on International Crimes came into effect. Under this law, it became possible to try foreigners in a court in the Netherlands for genocide, crimes against humanity, and war crimes that are committed in another country. In April 2004, for the first time under the new law, the District Court in Rotterdam sentenced a former colonel from the Democratic Republic Congo to a prison term of two and a half years. The judge considered it proven that the colonel, who had the nickname “the King of the Beasts,” had committed torture as head of an army unit established by then President Mobutu in the former Zaire. The convicted man, who had escaped jail in Congo, had requested asylum in the Netherlands. (Owner-Nieuws-Ned@RNW.NL, Apr. 8, 2004.) (Karel Wennink, 7-9864)

THE NETHERLANDS – Measures Against Terrorism

In a joint press release by the Dutch Ministry of Justice and the Ministry of the Interior and Kingdom Relations, it was announced that the Netherlands is now developing an early warning system to inform government agencies, companies, and citizens about any increased risk of terrorist attacks. On the basis of recognizable codes, this new system should be able to provide such groups with information on the scope of any increased risk of attack within an extremely short period of time. Depending on the level of risk announced, those involved will know the required state of alertness. The early warning system will thereby presumably increase general alertness and give people time to take the necessary precautions. If necessary, the public will be informed by the Government of any increased risks and be asked to help prevent any attack. A list of “soft-targets,” such as train stations, will be drawn up and extra capacity will be created to increase tracing, monitoring, and disrupting those individuals who are internationally considered to be potential terrorists.

Since September 11, 2001, the Government has invested heavily in extending the capacity of the intelligence and security services and a significant amount of legislation has been developed to prevent terrorist attacks and to prosecute terrorists. (Government Press Release, Mar. 31, 2004, at <http://www.regering.nl>.) (Karel Wennink, 7-9864)

THE NETHERLANDS – Prosecuting Female Circumcision

Since female circumcision is punishable in the Netherlands but not, for example, in Sudan or Somalia, it is now impossible to prosecute parents in the Netherlands who take their daughters to those countries to have them circumcised. Through an amendment of the law, which would drop the dual criminality requirement for this type of crime, the Minister of Justice wants to ensure that parents who have a daughter circumcised abroad will receive punishment. Dutch nationals or Dutch residents who engage someone else to carry out female circumcision abroad, may therefore be prosecuted in the Netherlands in the future. (NRC-HANDELSBLAD, Mar. 3, 2005, at <http://www.nrc.nl>.)

(Karel Wennink, 7-9864)

RUSSIA – Land Sale for Foreigners Approved

Russia's Constitutional Court ruled that the Land Code adopted in 2001 does not contradict the Constitution, either in terms of its content or in the way it was approved. One of Russia's regional legislatures had appealed against the Code's provisions allowing foreigners to own land. The Constitutional Court said that Russia does not lose its sovereignty over parts of its territory under the Code and foreigners are allowed to own plots of land. It does not contradict the national interest, the Court ruled, and does not present a threat to the lives of Russian citizens, contrary to what the appellant sought to prove. The Court also noted that foreign citizens enjoy the same rights in Russia as Russian citizens, except in certain cases outlined by law. Thus, foreigners are not allowed to own plots of land near the state borders, but they can rent them. As for the procedure used to approve the Code, the Constitutional Court stated that rights of the regions were exercised in full when members of the Federation Council, the upper chamber of the Russian legislature representing Russia's constituent components, discussed the Code. (Russian Constitutional Court website, <http://ks.rfnet.ru>, visited Apr. 23, 2004.)

(Peter Roudik, 7-9861)

UKRAINE – Electoral Systems For Localities

The Law on Elections of Deputies of the Supreme Council (legislature) of the Autonomous Republic of Crimea, of Local Councils, and of Rural Community Councils and City Heads was adopted by the Ukrainian legislature on April 20, 2004. The Law introduces elections to city, district, and regional councils based on proportional representation and allows the election of local and regional legislators under different electoral systems. Elections of village and rural community council members and rural community and city heads will take place in electoral constituencies according to a majority voting system. Independent candidates are also allowed to run for elections. The Law allows all Ukrainian citizens who have reached the majority age of 18 to be elected as council members and village, rural community, or city heads, excluding only regular military personnel and detainees serving sentences in prisons from taking part in elections. The Law enters into effect as of December 1, 2005. (UKRAINIAN NEWS, Apr. 7, 2004, at <http://www.rada.ua>.)

(Peter Roudik, 7-9861)

UKRAINE – E-Government Program

The Electronic Ukraine Information Technology Program, drafted by the Cabinet of Ministers of Ukraine, was adopted as a law by the nation's legislature. The Program provides for the creation of electronic government (a government information and analytical portal with integrated systems for government organs at various levels), creation of a digital-signature infrastructure and electronic document processing, and provision of various types of services to citizens through the system. The Program is scheduled for implementation over the next ten years. A similar program, called Electronic Russia, is already in operation in the Russian Federation. (UKRAINIAN NEWS AGENCY, Apr. 18, 2004, at <http://www.securities.com>.) (Peter Roudik, 7-9861)

NEAR EAST**ARMENIA – Pensions for Justices**

Amendments to the Law on the Status of Judges that introduce a new retirement system for justices of all level courts in Armenia entered into force on April 20, 2004. Under the new amendments, government pensions are granted to judges who have worked more than ten years and retired, regardless of the reason for retirement. A special provision stipulates that the pension cannot be suspended because of the renouncement of Armenian citizenship after retirement or resignation. Pensions are equal to seventy-five percent of the official salary received by a judge during his last year in office. The Law applies to all former judges and state arbiters. (Arminfo News Wire, Apr. 22, 2004, ISI EMERGING MARKETS at <http://www.securities.com>.) (Peter Roudik, 7-9861)

ISRAEL – Genetic Intervention and Cloning

The Prohibition of Genetic Intervention (Human Cloning and Genetic Change in Reproductive Cells (Amendment) 5764-2004 was passed by the Knesset (Israel's Parliament) on March 22, 2004. The amendment extends the application of the original law for five years (until March 1, 2009) and introduces several changes, including a specific prohibition against every step of the process of human cloning, a toughening of the penalty for offenders to four years of imprisonment or a high fine, and an expansion of the authority of the Consultative Committee. (The Knesset website, <http://www.knesset.gov.il>; T. Traubman, *The Politics of Cloning*, HAARETZ, Friday special edition, Apr. 9, 2004, at 30.) (Ruth Levush, 7-9847)

KUWAIT – Women's Right To Vote

The Kuwaiti Government has approved a draft law giving women for the first time the political right to vote and be a candidate for Parliament. The draft law is to be sent to the Emir of Kuwait for submittal to the Parliament. In accordance with the Kuwaiti Constitution, the Parliament will examine the draft next October in preparation for writing a report about it and submitting it to a vote by the members of Parliament. (ASHARQ AL AWSAT NEWSPAPER, May 16, 2004, at <http://www.asharqalawsat.com>.) (Issam Michael Saliba, 7-9840)

SOUTH PACIFIC

AUSTRALIA – Anti-Spam Law in Force

On April 10, 2004, the major provisions of Australia's Spam Act 2003 went into force. The law and the regulations issued under it provide for fines of up to A\$1.1 million (about US\$804,000) per day for sending "unsolicited commercial electronic messages." The Act further requires all commercial electronic messages to contain information on the identity of the person or organization that sent the message and to include a functional unsubscribe feature. Address-harvesting software must not be used, and no list of electronic addresses produced with such software may be used. Penalties for offenses include fines and civil injunctions. The Act is to be enforced by the Australian Communications Authority (ACA), which regulates telecommunications. The practical effect of the Act is expected to be limited, as the ACA estimates that 98% of spam originates in foreign countries. (Spam Act 2003, No. 129, and Spam Regulations 2004, No. 56, *available at* <http://scaleplus.law.gov.au/>; SYDNEY MORNING HERALD, Apr. 11, 2004, *at* <http://www.smh.com.au/>.) (Donald DeGlopper, 7-9831)

AUSTRALIA – Attorney-General Calls for Regulation of Ammonium Nitrate

Australia's Attorney-General has called on State and Territory governments to act quickly to regulate the sale of ammonium nitrate, a fertilizer that can be used to make cheap and effective bombs, such as that used in Oklahoma City in 1995. The Prime Minister's office wrote to the heads of those governments in early April to seek agreement on a uniform national approach to regulation of sales. The April 21, 2004, Media Release by the Attorney-General says that: "[w]hile the Australian Government is not proposing an immediate ban on ammonium nitrate as a fertilizer, it is clear better controls are needed ... to ensure risks are minimized." On April 5, 2004, the company that supplied eighty percent of the agricultural market for ammonium nitrate announced that it had stopped all sales of the material. The president of the National Farmers' Federation said that the preoccupation of governments with ammonium nitrate overlooked many other hazardous substances that could be used by criminals. (Attorney-General Philip Ruddock, Media Release 047/2004, *available at* <http://www.ag.gov.au/www/MinisterRuddockHome.nsf/Web+Pages/3429C925255494A9CA256E7D001A60AA?OpenDocument>; THE AUSTRALIAN, Apr. 6, 2004, *available at* <http://www.theaustralian.news.com.au/>.) (Donald DeGlopper, 7-9831)

INTERNATIONAL LAW AND ORGANIZATIONS

BELARUS/KAZAKHSTAN/RUSSIA/UKRAINE – Unified Economic Space Agreement

The Parliaments of Belarus, Kazakhstan, Russia, and Ukraine, in a simultaneous move, ratified the Agreement on Unified Economic Space signed by the Presidents of these states in September 2003. The Agreement, viewed as a response to eastward expansion of the European Union, is aimed at the coordination of economic and legislative policies of the participating states, creation of a customs union, and establishment of a common free economic zone with a single currency for all participating states. The Commission will have its headquarters in Kyiv, Ukraine, and will be the highest executive authority of the new

organization. The Agreement provides for the conclusion of multilateral treaties to guarantee free transfer of goods, services, capital, and labor and the usage of the same technical standards. The creation of the Unified Economic Space is to be conducted gradually, in accordance with the WTO rules, and is to be based on principles of multilevel and multispeed integration, with the right of each state to decide on its level of participation in the integrating actions. This is not the first attempt to form an economic union among the former Soviet states, but earlier efforts did not attain significant results. (Newsru.com, Apr. 22, 2004, at <http://www.newsru.com>.) (Peter Roudik, 7-9861)

BOLIVIA/CHILE – Issues over Port Access

Because Bolivia has no outlet to the Pacific Ocean, it will ask Chile to grant it port access in the city of Iquique. The goal is to maintain competitive prices, since the Chilean port of Arica, where Bolivia has warehousing and free transit rights under a 1904 treaty, is now subject to being privatized. Deputy Foreign Minister of Bolivia Jorge Gumucio stated recently that privatization will end competition in Arica and have a negative impact upon bidding procedures. He said that while Bolivia does not oppose privatization of the harbor, it seeks guarantees that current regulations will continue and that Bolivia's connections with overseas markets will not be impeded. The issue has also compelled Bolivia to prepare a lawsuit against Chile before the Organization of American States; on the grounds that Chile has failed to guarantee free transit through Arica as provided for in the 1904 Treaty. (*Bolivia Readies OAS Case Against Chile over Arica*, LA RAZON, Apr. 19, 2004, via FBIS.) (Sandra Sawicki, 7-9819)

CHILE/TURKEY – Defense Pact

On April 20, 2004, in Ankara, Chile and Turkey signed a technical and scientific cooperation agreement on military training and the defense industry. It is hoped that the pact will contribute to improved military relations between the two countries and enhance their participation in global and regional peace endeavors. (*Turkey, Chile Sign Cooperation Accord in Defense Industry, Military Training*, ANATOLIA, Apr. 20, 2004, via FBIS.) (Sandra Sawicki, 7-9819)

CHINA/GERMANY – Joint Declaration on Economic and Political Ties

It was reported on May 4, 2004, that Chinese Premier Wen Jiabao and German Chancellor Gerhard Shroeder adopted a joint declaration, the "Partnership in Global Responsibility," which commits the two countries to even stronger trade and political ties. Under the Partnership document, the two pledge not only extensive economic cooperation, but also cooperation in environmental and anti-terrorism issues. The document states that "close economic relations are a central pillar of our bilateral relations" and that "the German government will encourage German companies to reinforce their engagement in developing western China and in further modernizing the northeast." Dialogue on human rights is also placed at the center of the relationship: "Germany and China underline the central importance of the rule of law and dialogue on human rights in their bilateral relations."

As to political aspects of the Partnership, Germany reaffirms its commitment to a one-China policy and opposition to Taiwan independence. Moreover, at the meeting between the

two leaders, Wen expressed his support for Germany's efforts to win a permanent seat on the UN Security Council and Schroeder stated that he would support lifting of the European embargo on arms sales to China, imposed after the 1989 Tiananmen Square crackdown, if the question were put to a vote in the European Council. (*Germany and China Adopt Declaration on Economic, Political Ties*, CHANNEL NEWSASIA, May 4, 2004, LEXIS, News Library, 90days File.)

(Wendy Zeldin, 7-9832)

COLOMBIA/VENEZUELA – Resolution on Venezuelan Opposition

In a very controversial move, the Colombian Senate passed a resolution on April 13, 2004, backing Venezuela's opposition parties and calling for a referendum against President Hugo Chavez of Venezuela. Venezuela has been embroiled for months in turmoil over a broad-based movement to drive Chavez from the presidency through a referendum. The Colombian Senate was divided over the resolution, with many lawmakers arguing that the measure amounted to interference in Venezuela's domestic affairs. The resolution favors a presidential referendum in Colombia's neighboring country and calls on political parties from other countries to support Venezuela's democracy in the face of continued threats by the Chavez government. The Senate also asked the Organization of American States to apply its Democratic Charter to prevent the installation of a dictatorship in Venezuela. The Venezuelan Foreign Minister Jesus Perez dismissed the resolution as "rude interference." (*Colombia: Senate Approves Controversial Resolution Backing Venezuelan Opposition*, ACAN-EFE, Apr. 14, 2004, via FBIS.)

(Sandra Sawicki, 7-9819)

EUROPEAN COURT OF HUMAN RIGHTS – Condemnation of France for Inhumane or Degrading Treatment

On April 1, 2004, the European Court of Human Rights unanimously held that France had violated article 3 (prohibition of inhumane or degrading treatment or punishment) of the European Convention on Human Rights. The victim, Giovanni Rivas, was arrested during an investigation into a burglary. At the time, he was seventeen years old. He suffered a blow during his interrogation and required emergency surgery. A policeman was later convicted of assault, but the verdict was overturned by the Court of Appeals, which accepted his self-defense plea.

The European Court found that in addition to inflicting "physical and mental pain and suffering," the treatment to which the applicant had been subjected was likely "in view of his age, to arouse in him feelings of fear, anguish and inferiority capable of humiliating him and debasing him and possibly breaking his physical and moral resistance."

France has already been condemned twice by the European Court of Human Rights for "inhumane and degrading treatment," first, in 1992, following a complaint by Felix Tomasini, victim of multiple blows while in police custody for terrorist acts in Corsica, and second, in 1999, for "torture" of Ahmed Selmouni, a drug dealer, who was assaulted by five police officers while in custody. (Website of the European Court of Human Rights, *available at* <http://www.echr.coe.int/> & LE MONDE, Apr. 4-5.2004, at 10.)

(Nicole Atwill, 7-2832)

INTERNATIONAL COURT OF JUSTICE – Legality of the Use of Force

On April 23, 2004, the International Court of Justice (ICJ) held the last of public hearings on the Preliminary Objections raised by the Respondent States in the eight cases concerning the legality of use of force; the Court is ready to commence its deliberations. The case was filed initially in 1999 and questions whether the use of force against the Former Republic of Yugoslavia (FRY), by the NATO allies (Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal and the United Kingdom) was legal. The air strikes occurred without NATO's authorization, with the objective of protecting ethnic Albanians in Kosovo from the Serbs. The country Serbia and Montenegro, which is the new name of the FRY, filed eight separate suits against the NATO members involved, on the grounds of violating the country's sovereignty in utter disregard of international obligations that prohibit the use of force against other states. The international treaties cited include the United Nations charter, the Genocide Convention, and the Geneva Convention on the protection of civilians during wartime. They requested that the ICJ award them compensation for any damage inflicted in their territory. The NATO countries requested that the ICJ dismiss the case on the grounds of lack of jurisdiction and/or inadmissibility of the application. (Press Com. No 2004/18, ICJ, at http://212.153.43.18/icjwww/ipresscom/ipress2004/ipresscom2004yall_20040503.htm.) (Theresa Papademetriou, 7-9857)

MALAYSIA/VIETNAM – Several Agreements Signed

Prime Ministers Phan Van Khai of Vietnam and Abdullah Ahmad Badawi of Malaysia signed three agreements during the Vietnamese leader's recent visit to Malaysia. A joint declaration established a new framework of cooperation between the two countries, and cooperation in education and telecommunications was established under memoranda of understanding. Specific implementing plans will be drafted in August, when the Vietnam-Malaysia Joint Committee meets in Hanoi.

Malaysia further offered assistance to Vietnam as it hosts the fifth Asian-Europe Meeting (ASEM) in October 2004. The first ASEM summit was held in Bangkok in March 1996 and provided a forum for exchange of ideas between a number of European and Asian nations. (*PM Signs Three Deals on First Day in Malaysia*, Global News Wire, Apr. 22, 2004, LEXIS, Asiapc library, Curnws file; *External Relations*, EU website, at http://europa.eu.int/comm/external_relations/asem/intro.) (Constance A. Johnson, 7-9829)

MEXICO/PERU/CUBA – Envoys to Cuba Recalled

Mexico has recalled its ambassador to Cuba, following a blistering May Day speech by President Fidel Castro. Castro's tirade followed a U.N. vote last week condemning Cuba's human rights record. Latin American neighbors Mexico, Peru and Chile supported the resolution. Castro railed against Mexico, stating it had lost its prestige in the world community, especially because of its support for the U.S.-backed resolution. According to its website, the Mexican Foreign Ministry reported that it had decided to modify the bilateral relationship with Cuba, maintaining it at the level of Chargé d'Affaires," but that "[t]his does not signify a break in the diplomatic relationship between Mexico and Cuba." Mexico also declared a Cuban diplomat "persona non grata" and Mexican Foreign Secretary Luis Ernesto Derbez ordered him to leave the country immediately. Despite the simmering tensions, Mexico

appeared to hold out hope for a reconciliation. "Mexico hopes to regain the level of friendship and trust which has always characterized our countries," Derbez said.

Peru has also pulled its ambassador from Havana, according to Peru's Exterior Minister Jose Manuel Rodriguez. Rodriguez stated that Castro's criticisms of Lima's foreign policy were offensive to the Peruvian government. (*Mexico, Peru Pull Cuba Envoys*, CNN, at <http://www.cnn.com/2004/WORLD/americas/05/03/mexico.cuba/index.html>.)
(Gustavo Guerra, 7-7104)

PANAMA/UNITED STATES – Proliferation Security Initiative Ship Boarding Agreement

On Wednesday, May 12, 2004, the United States and Panama signed a reciprocal maritime ship boarding agreement in support of the Proliferation Security Initiative (PSI). The Proliferation Security Initiative PSI was announced by President Bush on May 31, 2003. Its aim is to establish cooperative partnerships worldwide to prevent the flow of weapons of mass destruction (WMDs), their delivery systems, and related materials to and from states and non-state actors of proliferation concern. The U.S.-Panama PSI maritime ship boarding agreement, which is an amendment to a very successful existing maritime law enforcement assistance arrangement between the United States and Panama, will facilitate cooperation between two countries. It will facilitate the searching of vessels suspected of carrying such items in international waters.

If a U.S.- or Panamanian-flagged vessel is suspected of carrying proliferation-related cargo, either one of the Parties to this agreement can request the other to confirm the nationality of the ship in question and, if needed, authorize the boarding, search, and possible detention of the vessel and its cargo.

Panama is the world's largest ship registry and its signing of the boarding agreement demonstrates a commitment by Panama to engender greater confidence and security in its flag registry. Panama is the second state to sign a PSI ship boarding agreement; Liberia signed one on February 11, 2004. The combination of these agreements with Panama and Liberia and the PSI core partner commitments means that almost fifty percent of commercial shipping fleet dead weight tonnage is now subject to rapid action consent procedures for boarding, search, and seizure. (Department of State website, at <http://www.state.gov/r/pa/prs/ps/2004/32414.htm>.)
(Gustavo Guerra, 7-7104)

RECENT DEVELOPMENTS IN THE EUROPEAN UNION: Enlargement

By Theresa Papademetriou, Senior Legal Specialist, Western Law Division

May 1, 2004, marked an historic point in the evolution of the European Union, with the addition of ten new Members: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.¹ From the early 1950s, when six initial countries first established a coal and steel community, which developed into the European Community and then the European Union, it has continued to accept new members. Denmark, Ireland, and the United Kingdom joined in 1973, Greece in 1981, Spain and Portugal in 1986, and Austria, Finland, and Sweden in 1995. The expanded EU constitutes the largest internal market in the world, with approximately 450 million people and a Gross Domestic Product (GDP) growing by five percent per annum. In 2003, the annual inflation rate was two percent in both the acceding countries and the EU Member States. The accession adds four million farmers to the seven million already in the EU. The unemployment rate is one percent higher in the EU of twenty-five members than it had been in the EU of fifteen members. Hourly labor costs and labor productivity have decreased in the enlarged EU.

The recent enlargement, the largest ever, was set in motion in 1998 and initially included three additional candidate countries, Bulgaria, Romania, and Turkey. As part of its pre-accession strategy and in order to assist the candidate countries and facilitate the entry process, the EU had provided financial assistance to the candidate countries in the form of institution-building measures and measures to foster economic and political cohesion. On April 16, 2003, the Accession Treaty was signed for ten countries that had adopted into their domestic law the thirty-one chapters of the *acquis communautaire* (body of law) of the EU. Negotiations on the future accession of Bulgaria and Romania will most likely be finalized in 2004, with a projected accession date of 2007. For Turkey, the road to eventual membership is still long. The EU intends to consider whether to set a date for accession negotiations in December 2004. On May 7, the Turkish Parliament adopted a number of constitutional reforms that were favorably received by the European Enlargement Commissioner.

Membership for Cyprus presents a unique challenge. Cyprus joined the EU without having achieved reunification. A referendum on the plan to reunite the island, prepared by the General Secretary of the UN Kofi Annan, was held simultaneously in the northern (Turkish) and southern (Greek) parts of the island. It was rejected by the Greek Cypriots but accepted by the Turkish Cypriots. Because the island remains divided, the EU legislation will apply only to the southern part. The EU has plans underway to give financial assistance to the northern part of Cyprus, which is underdeveloped.

The enlargement has brought about numerous institutional changes. The number of European Commissioners will increase to thirty from the current twenty. The new Commissioners will be full participants of the College of the Commission and will assume the same duties and responsibilities as the existing Commissioners. The mandate of the new Commissioners will last only for six months; a new Commission will assume office as of November 1, 2004. Based on the Treaty of Nice,² as of November the new Commission will be composed of one Commissioner from each Member State, to a total of twenty-five.

¹ *Enlargement and Institutional Changes*, EUROPA, <http://europa.eu.int/rapid>.

² 1 THE TREATY OF NICE IN PERSPECTIVE 26 (July 2001).

The current fifteen Member States will retain their respective number of votes (for a total of 87) on the Council of the European Union from May 1 to October 31, 2004. Each new member will obtain a certain number of votes, to a total of 124. The qualified majority will be 88 votes. On November 1, 2004, when the Treaty of Nice comes into force, the total number of votes will be 321 and the qualified majority will be 232 votes. Any Member State has the right to request confirmation that the Member States constituting a qualified majority represent at least sixty-two percent of the EU population. Within the Council, the new Members will acquire the following weighted votes: Cyprus: 4; Czech Republic: 12; Estonia: 4; Hungary: 12; Latvia: 4; Lithuania: 7; Malta: 3; Poland: 27; Slovakia: 7; and Slovenia: 4. In comparison, France, Germany, Italy, and the United Kingdom each have 29 votes, Spain has 27, and Belgium, Greece, and Portugal each have 12.³ The current system of rotating the Council Presidency every six months will be in place until 2006. After that date, the European Council will be chaired by a President elected for a period of two and a half years.

On June 10-13, 2004, elections for a new Parliament will take place in all twenty-five Member States. The total number of seats is 732. The Treaty of Nice establishes the number of seats allocated for each country based on the population and the Gross Domestic Product (GDP) of each. The population, GDP, and number of seats for the new Members are listed in the following chart:

Country	Population (in millions)	GDP (in billions of <i>euro</i>)	Seats
Czech Republic	10.3	56.1	20
Cyprus	0.7	7.2	6
Estonia	1.5	2.3	6
Hungary	10.2	47.8	20
Latvia	2.7	3.0	8
Lithuania	3.7	4.2	12
Malta	0.3	2.7	5
Poland	38.6	149.8	50
Slovakia	5.4	20.4	13
Slovenia	2.0	14.0	7

In comparison, Germany with a population of 82.2 million and GDP of €2,137.7 billion, has 99 seats, and the United Kingdom, with a population of 58.1 and GDP of €1,387.4 billion, has 72 seats, as do France and Italy, whose populations and GDP are close to those of the U.K.⁴

Other changes include the nomination of ten new judges at the European Court of Justice, to a total of twenty-five, as well as the nomination of new members of the European Court of Auditors. The new Member States have also become members of the European Investment Bank.

The Commission has stated that the benefits of the enlargement include peace, stability, and prosperity throughout the region. The citizens of the ten countries will enjoy the rights and obligations of being part of the EU. While acquisition of EU citizenship is immediate, other privileges will not be immediately available to the new citizens. For instance, the right to

³ *Id.*

⁴ *Id.*

travel will be restricted for a transitional period of up to seven years. The restrictions will vary depending on the Member State. The ten new members are currently being included within the EU framework of economic and budgetary policy cooperation and surveillance and are expected to pay their contributions to the EU budget. Since the EU budget experienced a surplus in 2003, the financial burden for each Member will be less than was anticipated.

CHINA DELAYS UNIVERSAL SUFFRAGE IN HONG KONG

by Wendy Zeldin, Senior Legal Research Analyst*

In April 2004, through a Decision taken by the Standing Committee of the National People's Congress (NPCSC) of the People's Republic of China (PRC), the Chinese Communist Party and the central government ruled out implementation of universal suffrage in Hong Kong for the Chief Executive (CE) in 2007 and the members of the Legislative Council (Legco) in 2008.

The Decision was issued on the basis of an Interpretation made by the NPCSC of two provisions in Annexes to the Basic Law of the Hong Kong Special Administrative Region. The Interpretation provides that the NPCSC has the sole power to decide whether Hong Kong's CE selection or Legco formation methods need to be amended, a new procedure not found in the relevant Annex clauses. The Interpretation and the Decision may not only significantly delay democratic reforms but may also affect other aspects of implementation of the Basic Law and the "one country, two systems" principle it embodies.

Background

Since the reversion of Hong Kong to mainland Chinese sovereignty in 1997, the situation of a non-authoritarian local government under the rule of an authoritarian central government has created the fundamental tension in the relationship between the Hong Kong Special Administrative Region (HKSAR) and the People's Republic of China (PRC). Debate over political reform has increased in Hong Kong since July 1, 2003, when a demonstration of an estimated half a million people protested the imminent enactment of a controversial anti-subversion bill. While the PRC leadership allowed the bill to be withdrawn, it established a high-level committee, headed by Vice-President Zeng Qinghong, to oversee Hong Kong affairs.¹

Among groups in Hong Kong, views on the nature and pace of political change vary widely. The Tung government, its political supporters, and the business community claim they advocate a slow and cautious approach to political reform in order to preserve stability and protect economic development. At the other end of the spectrum are pro-democracy activists who advocate the earliest possible institution of political reform, including universal suffrage.²

* Ph.D., Harvard University.

¹ Zeng, the protege of Jiang Zemin, former Chinese Communist Party General Secretary and current Chairman of the Central Military Commission who advocates a tougher stance towards Hong Kong, also led the information-gathering group. David Lague & Susan V. Lawrence, *Tung in Trouble*, FAR EASTERN ECONOMIC REVIEW 14-18 (July 17, 2003); Wu Zhong, *HK Daily: Beijing Takes 'Hard Line' in Interpretation of HK Basic Law*, THE STANDARD (Internet version), Apr. 7, 2004, Foreign Broadcast Information Service online subscription database (FBIS); and posting of Joseph Wang, joe@confucius.gnacedemy.org to haitingzhang@yahoo.com, cc to clnet@u.washington.edu, (Apr. 7, 2004, 9:50 p.m., Re: *Top Legislature Interprets Hong Kong Basic Law*).

² Philip P. Pan, *China Rejects Wider Elections for Hong Kong*, THE WASHINGTON POST, Apr. 27, 2004, LEXIS, News Library, 90days File. A May 2004 poll indicated that 55% of residents supported direct election of the CE in 2007, but only 13% expected it might be realized, and that 66% favored universal suffrage for the entire legislature in 2008, but only 20% believed it could be realized. *Shi Min dui Shixian Shuang Puxuan Xinxin Xiajiang* (Hong Kong Residents Lose Faith in Realizing Dual Universal Suffrage), YAHOO! XINWEN, May 20, 2004, at <http://hk.news.yahoo.com/040520/12/109ku.html>.

In early 2004 Jiang Zemin called for a hard-line response to the Hong Kong public's growing demands for direct elections. The Chinese Communist Party-controlled state media published a rash of front-page articles, stressing the primacy of "one country" in the "one country, two systems" principle (the one country of the PRC and the two systems of socialism in the PRC and capitalism in Hong Kong, Macau, and Taiwan). Attacks against the "patriotism" of pro-reform activists, as well as against U.S. and British support for them, as "interference in China's internal affairs," also appeared.³

On March 26, the National People's Congress Standing Committee (NPCSC) surprised the Hong Kong public and the Tung government by announcing that it would rule on the future of Hong Kong's elections by issuing an Interpretation of the relevant sections of the Basic Law, Hong Kong's quasi-Constitution.⁴

April 6th NPCSC Interpretation of the Basic Law Regarding 2007/2008 Elections

Specific provisions in Annexes I and II of the Basic Law allow for changes that would give the Hong Kong public a greater role in their own governance, in selecting the CE and in forming the legislature and its voting procedures.⁵

On April 6, 2004, the NPCSC issued a major ruling on these provisions, entitled "Interpretation of Clause 7 of Annex I and Clause 3 of Annex II to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress."⁶ It is the NPCSC's first formal binding legal interpretation of the Basic Law done on its own initiative, without a request from the HKSAR Government.⁷

³ See for example Tang Hua, *Qieshi Baozheng yi Aiguozhe Wei Zhuti de Gang Ren Lai Zhili Xiang Gang* (Thoroughly Guarantee Patriots as the Main Body of Hong Kong People To Rule Hong Kong), Beijing XINHUA SHE (New China News Agency), Feb. 24, 2004, available at Renmin Wang People website, Feb. 25, 2004, www.people.com; Xia Wenhui, 'Aiguozhe Zhi Gang' Neihan Shenke (The Connotation of 'Patriots Ruling Hong Kong' Is Profound), Hong Kong XINHUA SHE, Feb. 24, 2004, available at Renmin Wang People website, Feb. 25, 2004, www.people.com; Professor Xia Yong on 'One Country' Being Prerequisite, Basis for 'Two Systems', XINHUA, Feb. 22, 2004, translated in FBIS; Philip P. Pan, *Jiang Puts Hard Line to the Test in China*, THE WASHINGTON POST, May 31, 2004, at A1. The instructions to issue the reports were delivered by Zeng Qinghong to a central propaganda department meeting.

⁴ Stephanie Hoo, *China Claims Right To Amend Hong Kong Law*, ASSOCIATED PRESS, Apr. 6, 2004, YAHOO! NEWS, available at <http://news.yahoo.com>.

⁵ For the Chinese text of the Basic Law, which was adopted by a Decision of the National People's Congress on Apr. 4, 1990, see 7 ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO (Gazette of the State Council of the PRC) 230-258 (May 26, 1990); Annexes I and II are at 255-257. For an English translation, see 4 THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA (1990-1992) 15-52 (Beijing, Science Press, 1993), with Annexes I and II at 49-52; Constitutional Development of the HKSAR Government webpage, at <http://www.info.gov.hk/cab/cab-review/eng/index.html>.

⁶ For the Chinese text of the Interpretation, see XIN FA GUI SU DI (Rapid Transmission of New Laws and Regulations), at http://www.law-lib.com/law/law_view.asp?id=82638; for an English translation, see for example *Comparative Version – Full Text of NPC Interpretations on HK Basic Law Annexes*, XINHUA, Apr. 6, 2004, as translated in FBIS.

⁷ A 1999 Interpretation by the NPCSC concerning the right of abode was initiated at the request of the HKSAR Government. In a comment in the HKSAR Court of Final Appeal decision on the case, Chief Justice Li Guoneng stated that "the HKSAR Court, on the basis of provisions of the Basic Law, may determine whether the acts of the National People's Congress or its Standing Committee conform to the Basic Law." Some commentators view the 1999 right of abode decision as the ultimate source of the PRC actions of April-May 2004. See for example *Ju quan panjue liuyu bo* (The Backwash of the Right of Abode Ruling), XINGDAO RIBAO (Singtao Daily), May 13, 2004, at 11. For a discussion of the Chinese government's view of the nature of the Basic Law, see for example Guiguo Wang and Priscilla M.F. Leung, *One Country, Two Systems: Theory into Practice*, 7 PAC. RIM L. & POLICY 296-300 (Mar. 1998), LEXIS/NEXIS, Lawrev Library, Allrev File.

While the power to interpret the Basic Law is vested in the NPCSC by virtue of article 67 (subparagraph 4) of the PRC Constitution as well as by a provision in the Basic Law itself (article 158, paragraph 1), it has rarely been exercised.⁸ Ultimately, power in the PRC rests with the Chinese Communist Party; neither the NPC nor the NPCSC acts without its imprimatur.

By contrast, under Hong Kong's common law system, the power of interpreting the law rests with the judiciary and the legislature may make clarifications through amendment of laws. The Basic Law provides that the NPCSC authorizes HKSAR courts, in adjudicating cases, to interpret on their own those Basic Law provisions that are "within the limits of the autonomy of the Region."⁹

NPCSC's Interpretation of 'Subsequent to' and 'After' 2007

The Interpretation states that "[t]he period defined as 'subsequent to the year 2007' and 'after 2007' in the two Annexes mentioned above shall include the year 2007" (Item 1). This section of the Interpretation is not controversial. Tung's second (and final) five-year term ends in July 2007; elections for Legco's fourth term are to be held in September 2008.

NPCSC's Interpretation of the "Need To Amend"

In Items 2-4, the Interpretation essentially addresses different aspects of the meaning of the phrase "if there is a need to amend" the CE selection method and the method of forming Legco and bill-voting procedures. Item 2 states that the phrase "if there is a need to amend" means that such methods and procedures "may be amended or may not be amended."

The most controversial section of the Interpretation seems to be Item 3. It addresses the questions of "who will decide whether or not the methods need amendments and who shall submit bills for amendments?"¹⁰ It first characterizes the requirements in Annex I, clause 7, and Annex II, clause 3 – endorsement of a two-thirds majority of all the Legco members, consent of the CE, and reporting to the NPCSC for approval or for the record – as "prerequisite legal procedures" for amending the methods of selecting the CE and forming the Legco as well as for the procedures for voting on bills and motions in the Legco. It further states that the amendments will only take effect after the prerequisite legal procedures have been completed. Most significantly, it then goes on to declare that the CE will submit a report to the NPCSC if there is a need to amend the methods or voting procedures, which will be

⁸ The NPCSC also has the power to interpret the PRC Constitution (art. 67, sub¶1). The Constitution was adopted on Dec. 4, 1982, and last amended on Mar. 15, 2004. For an integrated Chinese text with the latest amendments, see China Legislative Information Network System, at <http://www.chinalaw.gov.cn/jsp/contentpub/browser/contentpro.jsp?contentid=co1449487503>; for an English translation, see Bern University, Institut für Öffentliches Recht-Aktuell, International Constitutional Law, at <http://www.oefre.unibe.ch/law/icl/ch00000.html#A010>.

⁹ Art. 158, ¶¶1&2, Basic Law, *supra* note 5.

¹⁰ NPCSC Legislative Affairs Commission, *Explanations on 'Interpretations of Clause 7 of Annex I and Clause 3 of Annex II to the Basic Law of the HKSAR of the PRC by the Standing Committee of the National People's Congress' (Draft)*, Apr. 2, 2004 (hereinafter *Explanations*). For the Chinese text, see FAZHI RIBAO (Legal Daily), Apr. 7, 2004, at http://www.legaldaily.com.cn/bm/2004-04/07/content_89404.htm; for an English translation, see *Explanations on Draft Interpretations of Hong Kong Basic Law Annexes*, CHINA VIEW, Apr. 6, 2004, at http://news.xinhuanet.com/english/2004-04/06/content_1404383.htm.

decided upon by the NPCSC in accordance with the provisions of articles 45¹¹ and 68¹² of the Basic Law “and on the basis of the actual situation” in Hong Kong “and the principle of gradual and orderly progress” (phrasing found in articles 45 and 68 as well). By contrast, in the relevant clauses of the Basic Law Annexes I and II there is no mention that the CE is to submit a report, much less a report *beforehand*, to the NPCSC for decision by that body as to whether there is a need of amendment.

Furthermore, Item 3 states that bills and draft amendments on the revision of the methods for selecting the CE and forming the Legco as well as of the procedures for voting on bills and motions in the Legco are to be proposed to Legco by the HKSAR Government. This seems to be in conformity with article 62 of the Basic Law, whereby the HKSAR Government has the power to draft and introduce bills, motions, and subordinate legislation (item 5), and with article 74, which precludes bills relating to public expenditure or political structure or the operation of the government from being introduced by Legco members. The NPC Legislative Affairs Commission’s “Explanation” of the draft Interpretation states that the article 74 stipulation “means that draft laws relating to the constitutional system shall not be proposed individually or jointly by members of Legco” and that therefore such bills and draft amendments are to be proposed to Legco by the HKSAR Government.¹³

According to Item 4, if there is no amendment to the method for selecting the CE and the method for forming the Legco or to the Legco procedures for voting on bills and motions, the method for selecting the CE is to follow the provisions on the subject in Annex I. The method of forming Legco and the procedures for voting on bills and motions are to follow the Annex II provisions on the method for forming the third Legco in September 2004 and the procedures for voting on bills and motions.¹⁴

Assessment of the NPCSC’s Interpretation

The overall effect of the Interpretation is that the PRC Central Government has vested itself with the sole power to determine the pace of political reform in the HKSAR.¹⁵ Such a move may erode the rule of law in Hong Kong by setting a precedent for Beijing’s future

¹¹ Article 45 stipulates that the CE is to be selected by election or through consultations held locally and to be appointed by the central government. The selection method is to be specified “in the light of the actual situation” in Hong Kong “and in accordance with the principle of gradual and orderly progress,” with the ultimate aim of “universal suffrage upon nomination by a broadly representative nominating committee.” The term of office is five years; no more than two consecutive terms may be served (art. 46).

¹² Article 68 prescribes that the Legco is to be constituted by election, with the “ultimate aim” of election of all the members “by universal suffrage.”

¹³ *Explanations*, *supra* note 10.

¹⁴ Annex I, items 1-5, provide, *inter alia*, for a “broadly representative” Election Committee of 800 members appointed by the PRC central government to nominate candidates and then elect the CE by secret ballot on the basis of the list of nominees. Annex II, item 1, calls for the third Legco to be comprised of 30 directly elected members and 30 returned by functional constituencies. It does not prescribe how the fourth-term Legco in 2008 is to be formed. Item 2 states that the voting procedures are a simple majority vote of members present for passage of bills introduced by the government, and a simple majority vote of each of the two groups of members present (geographical and functional) for passage of motions, bills, or amendments to government bills introduced by individual members.

¹⁵ Mark Magnier, *China Baffles Reforms in Hong Kong: Beijing Rules That Proposals Must Come From Its Handpicked Leaser of the Territory Rather Than Lawmakers or the Public*, LOS ANGELES TIMES, Apr. 7, 2004, LEXIS/NEXIS, News Library, 90days File.

interpretation of the Basic Law concerning the HKSAR's political process, a matter that heretofore had generally been considered as being within the local government's purview. The adoption and the content of the Interpretation have political as well as legal ramifications.

The Interpretation in effect formally prohibits Hong Kong from initiating political change without prior approval from Beijing. While the Basic Law clearly indicates in Annex I that amending the CE selection method requires NPCSC approval, it gives more scope to the HKSAR in regard to amending the method for forming Legco and its procedures for voting on bills and motions, requiring only reporting for the record.¹⁶ The NPCSC Interpretation introduces a new step in the process, a further element of PRC control, by requiring that there be an NPCSC decision in advance on the need to amend. In stipulating this new requirement, the Interpretation, unlike the Annexes it interprets, does not differentiate the procedures for selection of the CE from the procedures for forming Legco or voting on amendment bills and motions. The NPCSC asserted for itself the sole power to determine not only when there is a "need to amend" the methods of CE selection but also those of Legco formation, has essentially blocked the Legco from controlling its own electoral reform method.¹⁷

The Interpretation might arguably be viewed as more of an amendment of the Basic Law than an interpretation of it, an action that goes beyond the NPCSC's powers. Viewed more broadly, since there are limitations on the power to amend the Basic Law ("no amendment to this Law shall contravene the established basic policies of the PRC regarding Hong Kong," article 159-4), the argument might be made that similar restrictions should apply to the power to interpret it.¹⁸

Even if the question of who has the power to decide whether amendment is needed might be ambiguous from the Annexes' wording, there seemed to be an understanding that that need was to be determined by local conditions on the basis of the expressed preference of the majority. Even a former director of the PRC's Hong Kong and Macau Affairs Office under the State Council had stated in 1993 that Hong Kong's future development of democracy was within the autonomy of Hong Kong. The Interpretation overturns that understanding by imposing the new requirement of central government acceptance before the HKSAR can initiate the amendment process.¹⁹ This may contravene the spirit, if not the letter, of the "one, country, two systems" principle invoked in the Basic Law's Preamble and the authority conferred on the HKSAR by the NPC "to exercise a high degree of autonomy" (article 2).²⁰

¹⁶ *One Country, One System: China and Hong Kong*, THE ECONOMIST (Apr. 10, 2004), LEXIS/NEXIS, News Library, 90days File.

¹⁷ Frank Ching, *SCMP Urges Consistency in PRC Interpretation of Basic Law on HK Legco Reform*, HONG KONG SOUTH CHINA MORNING POST, Mar. 30, 2004, via FBIS. See also posting of Bing Ling, lwbing00@yahoo.com to clnet@u.washington.edu (Apr. 8, 2004, Re: *Top Legislature Interprets Hong Kong Basic Law* (copy on file with author)).

¹⁸ See Bing Ling, *id.*

¹⁹ Anthony B. L. Cheung, *Bulletin No. 28 – NPC Interpretation of Basic Law: How To Interpret This?*, available at http://www.synergynet.org.hk/en_m3_63.htm. Prof. Cheung is Chairman of a Hong Kong policy think tank. *The Economist*, *supra* note 19, also notes that ten years ago a PRC foreign ministry spokesman said that the possibility of filling all Legco seats by means of direct elections was "a question to be decided by [Hong Kong] itself and it needs no guarantee by the Chinese government."

²⁰ Item 3 (2) of the *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong* (Dec. 19, 1984), moreover, states that the enjoyment of a high degree of autonomy, except in foreign and defense affairs, is one of the basic policies of the PRC Government towards Hong Kong. For Chinese and English texts of the Joint Declaration, see ZHONGHUA RENMIN GONGHEGUO XIANGGANG TEBIE XINGZHENG QU JIBEN FA (The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China) 75-98, 186-212 (Beijing, Foreign Languages Press, 1991).

The deliberation process leading to the issuance of the Interpretation lacked transparency. This may have gone against provisions of the PRC Law on Legislation that call for public consultation, upon a decision of the Chairman's Committee, for major bills put on the agenda of an NPCSC session.²¹ Moreover, one immediate impact of the Interpretation seems to be even tighter control of the central government over the Hong Kong public consultation process on constitutional reform. Tung's report to the NPCSC after the Interpretation's issuance, containing the second Constitutional Development Task Force report appended to it, sets forth "nine principles" for constitutional development.²² These conditions for change were apparently discussed beforehand with the PRC government.²³

While it is within the NPCSC's power to interpret the Basic Law, the Interpretation of the two Annex clauses may have been unnecessary. The Basic Law can be viewed as already having adequate mechanisms for the central government to control electoral changes – the two pre-requisites for reform of the legislature (agreement of two-thirds of Legco and endorsement by the CE, who is appointed by the Central Government) and a third, NPCSC approval, for selection of the CE. Moreover, the Basic Law prescribes in articles 62 and 74 who may submit bills on amendments involving the political structure and other matters. There also may have already been a general understanding in Hong Kong that "after" or "subsequent to" 2007 includes 2007; that the Basic Law prescribes the methods of selection of the CE and forming Legco for the first ten years after reversion to mainland Chinese rule (1997-2007), inclusive.²⁴ Thus, except for paving the way for an NPCSC Decision delaying universal suffrage, the Interpretation can be viewed as serving primarily the political purpose of reinforcing Beijing's control over CE selection and Legco formation procedures.

Beijing's motivation for undertaking the Interpretation of the Basic Law at this time appears to be primarily political rather than legal. One reason for the PRC's hardened approach seems to be the fear that early adoption of universal suffrage in Hong Kong would create pressure for an accelerated pace of democratization on the mainland. Another reason behind the issuance of the Interpretation is that the PRC may have wanted to avoid a potential political crisis after the September 2004 Legco elections. If a majority of pro-reform candidates were elected and succeeded in having the HKSAR government adopt reforms

²¹ Art. 35; *see also* art. 58, on the drafting of administrative regulations. The Legislation Law was adopted by the NPC on Mar. 15, 2000, and entered into force on July 1, 2000. For the Chinese text, *see* 2 ZHONGHUA RENMIN GONGHEGUO QUANGUO RENMIN DAIBIAO DAHUI CHANGWU WEIYUANHUI GONGBAO (Gazette of the Standing Committee of the NPC of the PRC) 112-127 (Mar. 30, 2000); for an English translation, *see for example* *The Legislation Law of the People's Republic of China*, NovexCn.com, available at http://www.novexcn.com/legislat_law_00.html. *See also* Bing Ling, *supra* note 17.

²² *Report on Whether There Is a Need To Amend the Methods for Selecting the Chief Executive of the Hong Kong Special Administrative Region in 2007 and for Forming the Legislative Council of the Hong Kong Special Administrative Region in 2008*, submitted to the NPCSC on Apr. 15, 2004, and endorsed by it at a special meeting held on Apr. 25-26. Available at <http://www.info.gov.hk/cab/cab-review/eng/executive/pdf/cereport.pdf>.

²³ Jimmy Cheung, *SCMP: HK NPC Delegate Says Reform 'Conditions' Resulted from Talks with PRC*, Hong Kong SOUTH CHINA MORNING POST (Internet version), Apr. 26, 2004, via FBIS. The Tung government is in close contact with the PRC leadership, but it seems rare for the degree of collaboration to be openly revealed. Apparently Tsang Hin-chi (Zeng Xianzi), Hong Kong's only member of the NPCSC, publicly described Beijing's role in formulating the nine conditions, an act that under PRC law might be considered leaking a state secret. *See Zeng Xianzi Leaks a Secret, Discloses the Mysterious Truth Behind Tung Chee Hwa's Report*, SHIH CHIEH JIH PAO (World Journal) ("the largest Chinese newspaper in North America"), Apr. 27, 2004. The article points out that in 1989 former CCP General Secretary Zhao Ziyang, while meeting with former Soviet leader Gorbachev, disclosed that Deng Xiaoping was the true power holder of the CCP. Shortly afterwards Zhao was accused of leaking state secrets and was forced to step down.

²⁴ Cheung, *supra* note 19. Margaret Ng (a Legco member), *An Elaboration of the Opinion and Views of the Article 45 Concern Group*, available at HKSAR Constitutional Affairs Bureau website, <http://www.info.gov.hk>.

unacceptable to Beijing, the central government would have been faced with the two politically unacceptable options of either cracking down on the HKSAR or giving in. The Interpretation may serve to prevent this dilemma from occurring.²⁵

April 26th NPCSC Decision on the HK Election Process

While the NPCSC's Interpretation of the Basic Law expanded its control over the process of political reform in Hong Kong, it did not explicitly rule out universal suffrage in 2007 and 2008. This was effected by a Decision of the NPCSC of April 26, 2004, which unequivocally declared that there would be no introduction of full direct elections for the CE in 2007 or for all of Legco in 2008.²⁶ Instead, the 50:50 ratio of functional constituencies and geographical constituencies would continue to apply to elections for the fourth Legco and procedures for voting on bills and motions would remain unchanged. The Decision further states that, based on the premise that this stipulation is not violated, the specific methods of CE selection and Legco formation "could be appropriately modified" in conformity with the principle of "gradual progress" and in accordance with Basic Law provisions 45 and 68 and the relevant clauses of Annexes I and II.

The PRC official line is that implementation of universal suffrage in Hong Kong is premature, for the following reasons: Hong Kong people have a poor understanding of the Basic Law and the "one country, two systems" concept; that the constitutional status of the Basic Law has not yet gained a firm foothold; that there needs to be the "balanced participation" of industrial and commercial sectors in order to maintain capitalism in Hong Kong; that Hong Kong cannot afford the economic instability that radical political reform would bring about; that the operation of the political system has not fully met the Basic Law's requirements; and that there is a great divergence of public opinion over the implementation of universal suffrage in 2007 and 2008.²⁷

The Hong Kong legal community seems to be divided in its appraisal of the Decision. Some support it as a judgment by the highest organ of state power with the authority to deliberate Hong Kong's "actual conditions."²⁸ Others contend that in delivering the Decision the NPCSC went far beyond the legal power it mandated for itself in the Interpretation, since the latter stated that the NPCSC would only judge whether there is a need to amend, not decide whether or not there should be universal suffrage or what the Legco ratio should be.²⁹

²⁵ Pan, *supra* note 2; posting of Joseph Wang, joe@confucius.gnacademy.org to haitingzhang@yahoo.com, cc to clnet@u.washington.edu (Apr. 7, 2004, 1:25 p.m., *Re: Top Legislature Interprets Hong Kong Basic Law*); posting of Fu Hualing, hlfu@hku.hk to lwbing00@yahoo.com, cc to clnet@u.washington.edu (Apr. 7, 2004, *Re: Top Legislature Interprets Hong Kong Basic Law*); posting of Joseph Wang, joe@confucius.gnacademy.org to hlfu@hku.hk, cc to clnet@u.washington.edu (Apr. 8, 2004, 3:40 a.m., *Re: Top Legislature Interprets Hong Kong Basic Law*).

²⁶ *Decision of the NPCSC on Relevant Issued Concerning Methods for Selecting the HKSAR Chief Executive in 2007 and for Forming the Legislative Council in 2008*, at XIN FA GUI SU DI (Rapid Transmission of New Laws and Regulations), http://www.law-lib.com/law/law_view.asp?id=82748. For an English translation, see *NPC Guides HK Election Plan*, CHINA DAILY, Apr. 27, 2004, at http://www.chinadaily.com.cn/english/doc/2004-04/27/content_326592.htm.

²⁷ *TKP: NPC Official Expounds Six Reasons Against Universal Suffrage in HK*, Hong Kong TA KUNG PAO (Internet version), Apr. 28, 2004, translated in FBIS.

²⁸ *Xinhua: HK Legal Sector Supports NPC's Decision on Constitutional Development*, XINHUA, Apr. 28, 2004, FBIS.

²⁹ Michael Ng, *HK Daily: HK Lawmaker Warns Increasing Legco Seats Could Be Roadblock for Reform*, THE STANDARD (Internet version), Apr. 28, 2004, FBIS.

Pro-democracy activists vowed to continue the fight for full democracy in 2007/2008, but HKSAR Chief Secretary Donald Tsang warned that constitutional reform, however limited given the Decision, would come to a complete halt “if one-sided victory is sought, or if time is being spent [in] endless hostility and [on] fighting problems outside the Basic Law and the [NPCSC] decision.” In his view, there is room for improving the system by increasing seats in Legco and enlarging the CE Election Committee. One lawmaker warned, however, that a proposal to increase the number of Legco’s seats without changing the 50:50 ratio would instead create another barrier to universal suffrage, by extending government control of Legco and creating more functional constituencies focused only on protecting their sector’s interests.³⁰

Recent Developments To Limit Hong Kong Debate

In a warning issued on May 8, 2004, in response to attempts by Democratic Party members to have Legco formally condemn the NPCSC for abusing its power, an official PRC spokesman indicated that Hong Kong lawmakers have no right to criticize the NPCSC. He stated that “any move by Legislative Councilors in Hong Kong to advance motions to voice ‘discontent’ or ‘condemn’ the April 26 decision by the [NPCSC] over Hong Kong’s constitutional development is against the law as well as the constitution” and that “the moves do not accord with the Legislative Council’s constitutional status as a local legislature and go beyond the limit of its duty and authority.”³¹ On May 20, 2004, Legco debated a milder, non-binding motion submitted by Democratic Party member Albert Ho, calling for expression of regret and dissatisfaction with the mainland’s decision against implementation of full universal suffrage in Hong Kong in the near term, but it was defeated by pro-Beijing legislators.³²

³⁰ *Id.*

³¹ Edward Cody, *China Warns Hong Kong Legislators To Halt Debate on Elections*, WASHINGTON POST FOREIGN SERVICE, May 9, 2004, at A15, available at www.washingtonpost.com.

³² Margaret Wong, *Pro-Beijing Lawmakers Foil Hong Kong Bill*, AP, May 20, 2004, available at YAHOO! NEWS, May 20, 2004, <http://news.yahoo.com>. The vote was 32 to 21, with 7 legislators not participating.