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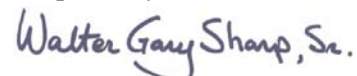
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Respectfully submitted,



WALTER GARY SHARP, SR.
Director of Legal Research



DIRECTORATE OF LEGAL RESEARCH

International, Comparative, and Foreign Law

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AFRICA

MAURITIUS – Computer Data Security

The Data Protection Act No. 13, 2004, contains new measures to secure and protect computerized data in the country (*Supp. to Mauritius Govt. Gazette*, June 26, 2004, at 92-140). Under its provisions, Mauritius has established a Data Protection Office administered by the Commissioner of Data Protection. The Commissioner must be an attorney with five years of practical experience. A data protection register has also been established. This is a permanent record of “data controllers,” defined as anyone who either alone or with others, manually or by electronic means, collects information, including personal records. The controllers can be users, vendors, merchants, or others, as long as they use computers for purposes of collecting or controlling information in the country. However, certain activities have been exempted from the parameters of the Act, such as information or data on national security, crime and taxation, and health and social services; information or data consistent with freedom of information; and the privileged matters of attorneys. Failure to abide by the Act will incur a penalty; a five-year jail term or a fine is prescribed for offenses under this law. (Charles Mwalimu, 7-0637, cmwa@loc.gov)

MAURITIUS – Genetically Modified Organisms

The Genetically Modified Organisms Act No. 3, 2004, defines a genetically modified organism (GMO) as “an organism, the genes or genetic material of which has been modified in a way that does not occur naturally through mating or natural recombination or both and includes any of its derivatives” (*Supp. to Mauritius Govt. Gazette*, Apr. 30, 2004, at 15-39, in § 2.). The Act regulates the responsible planning, production, use, marketing and application of GMOs. It applies to all activities, mechanisms, techniques, processes, and recombination of nucleic acid, molecules, and cell fusion to combine and form genetic materials. The Biosafety Commission is the monitoring agency. A person must apply for a permit to engage in any activity covered by this legislation. Anyone who fails to comply with the provisions of the Act is subject to criminal sanctions of a fine or incarceration for a term of up to four years. (Charles Mwalimu, 7-0637, cmwa@loc.gov)

EAST ASIA & PACIFIC

AUSTRALIA – New Maritime Security Zone

On December 15, 2004, Australian Prime Minister John Howard announced the establishment of a Maritime Identification Zone. This will extend up to 1,000 nautical miles from Australia’s coastline. On entering this zone, vessels proposing to enter Australian ports will be required to provide information on ship identity, crew, course, cargo, and intended port of arrival. Within Australia’s 200 nautical mile Exclusive Economic Zone (EEZ), further information may be required. The zone will be overseen by a new Joint Offshore Protection Command, which will be established by March 2005 and will combine elements of the Australian Defense Force and the Coastwatch Division of the Australian Customs Service. Ships within the zone will be boarded if the Command deems this necessary. The goal of the new Command is to protect offshore oil and gas installations and ensure that any possible terrorist threat can be quickly detected.



A 1,000 nautical mile zone would encompass much of eastern Indonesia as well as New Zealand's South Island. Don Rothwell, Professor of International Law at Sydney University, was quoted as saying that the plan, as announced, would appear to be a breach of international maritime law. "With the exception of pirate ships and ships that are not flying flags ... there is no real basis on which any country can just stop any ship on the high seas." New Zealand officials expressed some surprise at learning of the proposed zone from news reports, but on December 17 New Zealand Foreign Minister Goff said that he was satisfied the plan would not impinge on New Zealand's sovereignty. On December 17, Indonesian Foreign Minister Wirayuda stated that his country would not accept the proposed zone because it infringed on Indonesian waters, and would be a violation of international maritime law. A representative of Australia's Department of Foreign Affairs said that there had been a misunderstanding, and the zone would extend to a maximum of 1,000 nautical miles only in areas where there was no other border or jurisdiction. (John Howard, Prime Minister of Australia, Media Release, Dec. 15, 2004, at http://www.pm.gov.au/news/media_Releases/media_Release1173.html; Australian Broadcasting Corporation (ABC) ABC Online, Dec. 16 & 17, 2004, at <http://www.abc.net.au/news/>.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

AUSTRALIA – Privatization and Aboriginal Tenure

Australian Prime Minister John Howard is reported to be considering a radical new agenda for indigenous affairs that will include proposals for limited privatization of communal lands. The plan, which emerged from a two-day meeting of the Prime Minister, other Cabinet members and their secretaries, and the newly-established National Indigenous Council, would allow private ownership by aboriginal families but prohibit sale to non-aboriginals. The goal of the proposed new system would be to use property ownership to give economic power to individuals and families. The National Indigenous Council is a body of fourteen indigenous persons, appointed by the Minister for Indigenous Affairs and charged with providing expert advice to the government on improving the socio-economic status of indigenous Australians.

The new land tenure scheme, which has yet to take final form, would be based on the land system of Norfolk Island. Norfolk Island, located in the Pacific Ocean off the east coast of Australia, is inhabited largely by descendants of the Bounty mutineers and is an Australian External Territory. Individual Norfolk Islanders may own houses, establish businesses, and pass the property on to their families, but they cannot sell the property to anyone except other Norfolk Islanders. (Government of Australia, Indigenous Portal, at <http://www.indigenous.gov.au/>; *The Australian*, Dec. 11, 2004, at <http://www.theaustralian.news.com.au/>.)
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

CAMBODIA – Case Against Opposition Leader Ends

Charges against opposition leader Sam Rainsy were dropped on December 9, 2004, by the Municipal Court in Phnom Penh, Cambodia's capital. He had been charged with pressuring former king Norodom Sihanouk to resign. The charges had been brought after more than sixty legislators from two political parties complained to the Court that a letter from Sam Rainsy alleging that violent anti-monarchy protests would be held on his return to Phnom Penh led the king to give up the throne. The Court determined that there was no merit in the case against the opposition leader. Sam Rainsy stated that "[t]he court realized I had nothing to do with the king abdicating" and credited the king for not supporting the charges. King Sihanouk, aged 81 and not in good health, announced his resignation on



October 7, 2004. His youngest son, Norodom Sihamoni, was named his successor on October 14, 2004, by the Royal Council of the Throne. (*Opposition Leader Happy After Court Case Dropped*, DEUTSCHE PRESSE-AGENTUR, Dec. 10, 2004, LEXIS, Asiapc Library, Curnws File; *Monarchy Continues as King Steps Down*, THE CAMBODIA DAILY, Oct. 16-17, 2004, at http://www.camnet.com.kh/cambodia.daily/selected_features/cd-16-10-04.htm.)

(Constance A. Johnson, 7-9829, cojo@loc.gov)

CHINA – Anti-Corruption Pilot Pension Scheme

Authorities in Zhejiang Province plan to introduce the Guaranteed Money System for Clean Government in Xiacheng District of Hangzhou, the provincial capital, and in Cixi City. Under the plan, some government employees in those areas will be eligible for a 300,000 yuan (US\$36,000) pension after they retire, provided that during their tenure they are proven to have been incorrupt and honest.

For Xiacheng, the pension would comprise contributions paid by the employees and subsidies paid by the local government. Thus, a young public servant twenty-two years of age would pay 500 yuan (about US\$60) per annum and the local government would add 150 yuan (US\$18). The amounts of money increase based on length of service and the employee's position. Anyone punished during their tenure will not obtain the full 300,000 yuan; the amount of the deductions will vary depending on the severity of the punishment, with a twenty percent loss for those who have received warnings, a sixty percent loss in the case of dismissal, and loss of the entire amount for civil servants who are expelled. A draft of the new system has been given to the local Discipline Inspection Commission for final approval and is expected to enter into force as of January 1, 2005. The Cixi City plan, called the Public Clean Government Accumulation Fund, is to be financed entirely by the local government.

The pension scheme is not entirely novel. Earlier in 2004, the Huzhou Public Security Bureau (Huzhou is also in Zhejiang, north of Hangzhou) began to use a similar plan for police officers. However, it reportedly came under public criticism on the grounds that a clean record should not be treated as extraordinary behavior to be rewarded and that the scheme would entail substantial expenditures but not reduce corruption. (*Pension Scheme Carrot Held Out To Stem Corruption*, CHINA.ORG.CN, Dec. 14, 2004, <http://www.china.org.cn/english/2004/Dec/114895.htm>.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

CHINA – Anti-Secession Law

The Thirteenth Session of the Tenth National People's Congress Standing Committee, held from December 25 to 29, 2004, deliberated a draft anti-secession "reunification law" and unanimously decided that it be submitted to the third session of the National People's Congress, which will convene on March 5, 2005. According to Beijing Union University scholar Zhu Xianlong, "[t]he reunification law will define what is Taiwan independence and specify corresponding measures.... It will be legally binding. The use of force will be an important but our last resort." A member of the NPC's Legislative Affairs Commission stated that the law will not be applicable to the Hong Kong and Macao Special Administrative Regions. (*China's Top Legislature Concludes Ending Session of 2004*, XINHUA, Dec. 30, 2004, NEXIS, News Library, 90days File; Philip P. Pan, *China Planning To Enact Law Against Secession*, THE WASHINGTON POST, Dec. 18, 2004, at A24; *China To Enact Anti-Secession Law*, CRIENGLISH.COM, Dec. 18, 2004, <http://en1.chinabroadcast.cn/2002/2004-12-18/110@180960.htm>.)



Proposals to enact an anti-secession law have been put forward over the past year (*see* 6-7 W.L.B. 2004, at 11-12). The impetus for its being considered now by China's legislature may be to increase pressure on Taiwanese President Chen Shui-bian not to promote Taiwan independence in the aftermath of his party and program suffering a setback in Taiwan legislative elections held on December 11th. Enactment of the law may also be an attempt by the Chinese government to persuade Taiwan, which it considers part of China, to take more seriously the mainland's threat of taking military action against the self-governing entity if it formally declares independence or indefinitely delays reunification. (Pan, *id.*)
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

CHINA – Computer Game Banned

The British-made computer game Football Manager 2005 has been banned in China, although it has not been officially sold in the country. Counterfeit copies have found their way into the black market, and government departments have been ordered to search for and seize any pirated copies they can find at software markets or newsstands. Fines of up to £2,000 (about US\$3,800) may be imposed on those selling the game; Internet service providers are obliged to prevent subscribers from downloading the software and can be fined up to half of that amount and lose their licenses if they fail to do so.

Chinese authorities object to the game because it refers to Hong Kong, Macao, Taiwan, and Tibet as separate countries. The People's Republic of China (PRC) claims Taiwan is a part of the country, and Tibet has been under PRC rule since its occupation by Chinese troops in 1951. Hong Kong was returned to PRC control by the British in 1997, and Macao was returned from Portuguese rule in 1999. The company that developed the game has said it is working on a Chinese version that would be acceptable to PRC authorities for official import. (*Computer Game of Two Halves Riles China*, THE GUARDIAN, Dec. 10, 2004, NEXIS, Asiapc Library, Curnws File.)
(Constance A. Johnson, 7-9829, cojo@loc.gov)

CHINA – Foreign Investment in Radio and TV Program Production

On October 28, 2004, the Ministry of Commerce and the State Administration of Radio, Film and Television (SARFT) jointly issued the Interim Provisions on Administration of Chinese-Foreign Equity or Cooperative Joint Ventures of Radio and Television Production and Operation. Under the Provisions, as of November 28, 2004, foreign investment is allowed in radio and TV program production and operation in China in the form of joint ventures.

The Provisions stipulate that in such equity or cooperative joint ventures, foreign investors' shares may not exceed forty-nine percent; one of the Chinese parties must own at least fifty-one percent of the shares. The joint venture must apply for a program production business license, valid for ten years and renewable upon expiration, in addition to the generally required Certificate of Approval for Foreign-Invested Enterprise and Business License of an Enterprise with Legal Person Status. A separate license is required for the production of teleplays. The joint ventures are prohibited from producing certain types of programs, such as those whose content is political news. (*Door Opened for Foreigners To Invest into Radio and TV Program Production and Operation*, 31 ISINOLAW WEEKLY (Nov. 22-28, 2004), received from webmaster@isinolaw.com.)
(Wendy Zeldin, 7-9832, wzeld@loc.gov)



CHINA – Local Anti-Abortion Provisions

As of January 1, 2005, the capital city Guiyang of Guizhou Province will implement what are apparently China's first regulations to ban the abortion of fetuses that are more than fourteen weeks old. As in other localities in China, the Provisions also prohibit local hospitals and individual doctors from carrying out fetus gender appraisals. In addition, pharmaceutical companies may not sell abortion medications to hospitals or doctors that are not allowed to perform abortions. The Provisions stipulate that any illegal income obtained from carrying out illegal fetal gender assessments or abortions will be confiscated and fines of three to six times any income that exceeds 5,000 yuan (about US\$605) and from 5,000 to 30,000 yuan (about US\$605 to \$3,630) for income less than 5,000 yuan will be imposed.

According to Vice-Mayor Luo Zhuyun, since 1999 the gender ratio of newborns in Guiyang had deviated from the norm for five years in a row (e.g., in 1999 and 2003 the male/female ratio was 110:100; the norm is 103-108:100), and the city hopes to correct this imbalance with the entry into force of the new measures, the "Provisions of Guiyang Municipality on Banning Gender Selection Abortions."

Certain exceptions to the abortion ban are allowed. Artificially induced abortions for women who are more than fourteen weeks' pregnant are legal only if the fetus is believed to have contracted a serious hereditary disease, if it has serious physical defects, or if it has a serious disease that may endanger the life or health of the mother if the pregnancy continues. The draft of the Provisions also permitted abortions in special circumstances, such as divorce or widowhood, but it is unclear whether that exception has been incorporated into the final version. (*Abortion of 14-week Fetus Banned*, CHINA DAILY, Dec. 16, 2004, http://www.chinadaily.com.cn/english/doc/2004-12/16/content_400627.htm; *Guiyang: Da tai yao jinzhi lingshou, zuo renliu xu chu zhengming*, JIN QIAN ZAIXIAN, Dec. 12, 2004, <http://www.gog.com.cn/gzrb/g0405/ca730848.htm>; Guiyang government website, <http://www.gygov.gov.cn/jumpnews/ZXDT/dt04-09-22a.htm> (last visited Dec. 17, 2004).) (Wendy Zeldin, 7-9832, wzel@loc.gov)

CHINA – Provisions on Minority Shareholder Rights

On December 7, 2004, the China Securities Regulatory Commission issued Certain Provisions on Strengthening Protection of the Legitimate Rights of Minority [literally "public"] Shareholders. The Provisions stipulate that firms whose stock is traded on the Shanghai and Shenzhen stock markets and their majority stockholders are to establish and perfect a system allowing minority stockholders to vote on five major types of company matters: issuance of new shares, issuance of convertible corporate bonds, asset restructuring, overseas listing of a subsidiary, and related matters in a listed company's growth that have a major influence on minority stockholder rights. A company cannot implement or propose for approval any such measures unless they are adopted at a shareholders' meeting by at least half of the minority stockholders eligible to vote. The Provisions also require listed firms to implement greater transparency in various respects, to improve the functioning of independent directors and the accuracy of information they disclose, and to enhance the supervision of listed firms and their senior managers (*PRC: New Rules To Let Minority Stockholders Vote on Decisions by Listed Firms*, XINHUA, Dec. 8, 2004, Foreign Broadcast Information Service online subscription database; LAW-LIB.COM, http://lawbook.com.cn/law/law_view.asp?id=87450.) (Wendy Zeldin, 7-9832, wzel@loc.gov)



CHINA – Restriction of Freedom of Expression

On December 8, 2004, the *New Weekly News*, which had been deemed as likely to become “China’s most influential news weekly within a few years,” according to the *World Journal* (the largest Chinese-language newspaper in North America), was apparently ordered by the Chinese Government authorities in charge to cease publication for the next three issues and “rectify” itself. Although *New Weekly News* is not yet a very influential newspaper, it is edited by a group of reporters who had some influence and power, since most of them were talents originally with such media as Southern Weekend, the Twenty-First Century, and China Central Television, who had scattered to different places after those organs were “rectified.” (*New Weekly News Ceases Publication*, SHIH CHIEH JIH PAO, Dec. 9, 2004, at A8.)

According to the *World Journal*, there is speculation among industry insiders that the article that caught the authorities’ attention and caused the seventh issue of *New Weekly News* to be pulled from circulation had to do with the rock desertification of Guizhou Province. The article attributed the erosion to long-term mismanagement of the province and lax protection of the environment. From the point of view of officials of the Ministry of Propaganda, the reason for banning the article is that poor management as a cause of the rock desertification might be associated with President Hu Jintao, who was Chinese Communist Party secretary of Guizhou from 1985 to 1988, and would therefore be tantamount to an attack against the top leader. (SHIH CHIEH JIH PAO, *id.*) In 2002, scientists warned that rock desertification had become “the no. 1 ecological disaster in southwest China,” and according to an article on rock desertification in South China published on the website of the Karst Dynamics Laboratory of China’s Ministry of Land Resources, in Guizhou “the annual rate of rock desertification in karst areas was as high as 933 km² in the 1980s...” (*Scientists Appeal to Treatment of Rock Desertification*, CHINA.ORG.CN, <http://www.china.org.cn/english/environment/42390.htm>; Yuan Daoxian, *Rock Desertification in the Subtropical Karst of South China*, n.d., but circa 1997, <http://www.karst.edu.cn/desert/rockdesert.htm>.)

Other recent attacks against freedom of expression in China have also been reported. The Overseas Chinese Democracy Coalition (OCDC), headed by dissident-in-exile Wei Jingsheng, reported on December 13, 2004, that two members of the Independent Chinese PEN Center (ICPC), Mr. Liu Xiaobo and Mr. Yu Jie, had been taken away by police, and that the homes of their relatives had been surrounded by police and their phone service disrupted. The two men were subsequently released, however. Other members of ICPC have also reportedly undergone harassment and “investigation” by the police. (ICPC, an official affiliate of International PEN, is a non-political organization of writers founded in 2001 by a group of Chinese writers in exile and in China, whose avowed purpose is to protect the rights of Chinese-language writers worldwide.) According to OCDC, ICPC and five of its members were recently criticized by name by President Hu Jintao and their articles were banned in China. (*News from WJS Foundation*, news@weijingsheng.org, received Dec. 13, 2004.) (Wendy Zeldin, 7-9832, wzel@loc.gov)

JAPAN – Disapproval System for Sales of New Models of Automobile

The Ministry of Land, Infrastructure, and Transportation (MLIT) announced that it would introduce this fiscal year a new system to authorize it to prevent the sale of new models of automobiles for companies that hid defects in previously sold vehicles. There was a major scandal when one domestic automaker hid various defects of their vehicles and did not recall the vehicles, resulting in several accidents. The MLIT Ordinance under the Road Transportation Vehicle Law will be amended



to create such a system in the near future. (*Shingatasha hanbai ni joken* (Conditions on New Automobile Model Sales], ASAHI, Nov. 30, 2004, <http://www.asahi.com/national/update/1130/021.html>.)

(Sayuri Umeda, 7-0075, sume@loc.gov)

JAPAN – Scenery Protection Law

The Diet passed the Scenery Protection Law in June 2004, and it became effective on December 17, 2004. There has been concern that Japanese cities look ugly because each building was designed in its own way and there are numerous flashy advertisements. Under the new law, municipal governments can have a scenery plan, including restriction on the height of buildings. Municipal governments also have more authority to control advertisements on the street and on buildings. (Kazuyoshi Abe, *Keikan ho shiko to Kunitachi manshon sosho* [Enforcement of Scenery Protection Law and Kunitachi City Apartment Lawsuit], at <http://www.asahi.com/housing/column/TKY200412100146.html>.)

(Sayuri Umeda, 7-0075, sume@loc.gov)

NEW ZEALAND – Government Apology to Vietnam Vets

On December 14, 2004, the Government tabled its response to the recently released Report of the Health Select Committee Inquiry. In this response, the Government formally apologized to Vietnam veterans for the failure of previous governments to recognize that they had been exposed to a toxic environment caused by Agent Orange and other defoliants. The Government pledged to streamline its war pensions process and to reconsider pensions that were denied in light of new information. The Government also promised greater support for the care of children of Vietnam veterans, particularly those suffering from diseases thought to be related to Agent Orange. The Government also pledged to monitor international research and keep track of developments in other countries attempting to help veterans exposed to toxic chemicals. (*Government Responds to Select Committee Agent Orange Inquiry*, New Zealand government website, Dec. 14, 2004, <http://www.beehive.govt.nz/ViewDocument.cfm?DocumentID=21822>)

(Stephen F. Clarke, 7-7121, scla@loc.gov)

TAIWAN – Referendum Law Revision on Hold

On November 24, 2004, the Executive Yüan (Cabinet) was scheduled to pass a package of draft amendments to the Referendum Law before referring them to the Legislative Yüan for approval. On December 1, however, the Cabinet abruptly withdrew the revisions from its agenda, ostensibly to obtain more comments from the general public on them. According to some press reports, however, the retraction occurred in order to allay concerns of the US State Department over President Chen Shui-bian's call for a new constitution to be put to a public referendum in 2006. The Referendum Law was adopted on November 27, 2003, and promulgated on December 31, 2003 (*see* 1 W.L.B. 2004).

The revised draft would significantly lower the thresholds for initiating and establishing a referendum proposal. Thus, the threshold for filing a petition for a national referendum would be lowered from the current 0.5 percent of eligible voters in the most recent presidential and vice presidential election (at present 80,000-plus people) to 0.05 percent (about 8,000), and the percentage of signatures required to establish the proposal would be reduced from the current five percent of those eligible voters (at present about 825,000 signatures, to be collected within a period of six months) to



two percent (about 300,000 voters) for a national referendum and five percent for a constitutional amendment initiative.

The draft also proposes that the Cabinet be given the right to ask the CEC to initiate a referendum; the current Law prohibits government-proposed or commissioned referenda except on the statutory grounds stipulated in the law. Another proposed revision is the abolition of the Referendum Supervisory Committee (comprising members recommended by political parties in proportion to the number of seats they occupy in the Legislative Yuan), a body that, according to the Cabinet, “runs counter to the spirit of direct democracy.” Instead, the Central Election Commission (CEC) and its local offices would be empowered to handle referendum matters. (*Taiwan Cabinet Postpones Referendum Reform*, TAIPEI TIMES, Dec. 2, 2004; *CNA: Revised Draft of Referendum Law Seeks To Lower Threshold*, CENTRAL NEWS AGENCY, Nov. 26, 2004; and *CNA:DPP Hopes To Pass Draft Amendments to Referendum Law Soon*, CENTRAL NEWS AGENCY, Dec. 2, 2004, all via Foreign Broadcast Information System online subscription database; GLIN Summary ID 158545.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

THAILAND – Old Laws To Be Reviewed

Numerous old and obsolete laws that have remained on the books in Thailand but may not have been employed for years are to be reviewed. Speaking on December 9, 2004, the Prime Minister, Thaksin Shinwatra, urged over 400 legal experts gathered at a government-sponsored seminar to evaluate the legal instruments, called “sleeping laws,” and make other suggestions on how to improve the legal system. Economic legislation has been singled out for urgent attention, as the government wants foreign investors to have a transparent legal environment in which to work. Experts have pointed in particular to the laws controlling the Thai stock exchange as obsolete and ineffective in preventing infringements such as insider trading. (*Government To Review Obsolete Laws*, GLOBAL NEWS WIRE, Dec. 10, 2004, NEXIS, Asiapc Library, Curnws File.) (Constance A. Johnson, 7-9829, cojo@loc.gov)

EUROPE

BELGIUM – New Corporate Governance Code

In January 2004, a Corporate Governance Committee was entrusted with the drafting of a single code of best practice for all listed companies in Belgium. Several corporate collapses had underlined the need for companies to adhere to a good corporate governance model. The new Code was published on December 9, 2004, and will enter into force on January 1, 2005. It replaces the three Codes that have existed in Belgium since 1998.

The Code applies to companies incorporated in Belgium whose shares are traded on a regulated market. The Code has a high degree of flexibility, allowing it to be adapted to each company’s size, activities, and culture. It is based on a “comply or explain system,” which enables companies to deviate from the provisions of the Code, subject to providing adequate explanations and justifications.

The Code has a three level structure. It first sets forth nine principles that all listed companies, without exception, must apply. Second, each principle is then interpreted by provisions, which are recommendations on how to implement the principles. Finally, these provisions are



themselves explained by guidelines. (*Le Code belge de gouvernance d'entreprise*, Portail du droit en Belgique: actualités juridiques belges, répertoire et forum, at <http://www.droitbelge.be/news.asp>.) (Nicole Atwill, 7-2832, natw@loc.gov)

DENMARK – Restrictions on Smoking Proposed

On December 14, 2004 the Danish Parliament backed a proposal from the health minister on new regulations requiring restaurants and bars to put signs on their doors indicating whether they are smoking or non-smoking establishments and, if smoking is permitted, whether there is a non-smoking area. The new regulations will take effect on February 1, 2005. In the spring of 2005, an official debate regarding restrictions on tobacco smoking will open, and the Danish health minister hopes that a political decision on the matter can be reached by the end of 2005. He contends that such a debate may lead to a total ban on smoking in Denmark, which would break from the administration's present more cautious attitude towards a smoking ban. (*Administration Opening Debate on Smoking Ban*, DENMARK.DK THE OFFICIAL WINDOW, Dec. 15, 2004, available at http://www.denmark.dk/servlet/page?_pageid=80&_dad=portal30&_schema=PORTAL30&_fsiteid=175&_fid=95424&_page_id=1&_feditor=0&_folder.p_show_id=95424.)

(Linda Forslund, 7-9856, lifo@loc.gov)

FINLAND – Telephone Bugging Proposed To Fight Terrorism

On December 14, 2004, Government bill No. 266/2004 was presented to Finland's Parliament; it proposes that bugging should be allowed to prevent and expose terrorism and protect the public's lives and health. A recent report from the Council of the European Union directs criticism at the Finnish Police Act, claiming that it does not offer enough alternatives to the police to fight terrorism. The Police Act does at this time not allow the use of telephone bugging to uncover terrorist threats. Amending the Police Act would help ensure that Finland does not become a base for terrorist activities.

The decision to allow bugging must be made by a court. If a case is urgent, the leader of an investigation can make the decision, but he or she must get a permit from a judge within twenty-four hours. If the bill is adopted, the new rules will come into effect no later than May 2005. (*Effektivare bekämpning av terrorism och organiserad brottslighet föreslås*, Press Release 9.12.2004, Ministry of Interiors' home page, Dec. 9, 2004, available at <http://www.intermin.fi/sv>.)

(Linda Forslund, 7-9856, lifo@loc.gov)

FRANCE – Ban on Al-Manar Television Channel

On December 13, 2004, the Conseil d'Etat (Council of State), France's highest administrative court, ordered the Paris-based satellite operator Eutelsat to stop broadcasting Al-Manar, the television station of Lebanon's Hezbollah, within forty-eight hours or pay a fine of €5000 a day (approximately \$US6,700). The Council ruled that the broadcasting of programs inciting hate and violence was posing risks to public order. The Council cites the Law on Freedom of Communication of September 30, 1986, which provides that the exercise of the freedom of communication to the public via electronic means may be limited in order to "safeguard public order."

Last month, the Conseil Supérieur de l'Audiovisuel (High Audio-Visual Council – similar to the Federal Communication Commission) granted Al-Manar a license to operate in France as long as it



abides by French law. Al-Manar agreed not to incite hate, violence, or discrimination on the basis of race, sex, religion, or nationality. However, a few days later, the channel broadcast a program including commentary that for years Israel had spread the AIDS virus and other diseases throughout the Arab world and calling for war against the Jews and the destruction of Israel.

The Council left open the possibility that Al-Manar could keep operating if it shows itself ready to modify its programs to conform with French law. Al-Manar's management complained that the ban infringes upon the principle of freedom of speech. The French government is seeking to widen the debate at the level of the European Union. (Conseil d'Etat, Ordinance No. 274757, Dec. 13, 2004, at http://www.conseil-etat.fr/ce/jurispd/index_ac_ld0460.shtml; *France Seeks EU Debate After Banning Hezbollah-Linked Channel*, AGENCE FRANCE PRESSE, Dec 15, 2004, NEXIS, News & Business Library, News File.)

Nicole Atwill, 7-2832, natw@loc.gov)

FRANCE - Transposition of Directive on Legal Protection of Biotechnological Inventions

On December 9, 2004, the French Parliament adopted a law to implement the European Union Directive on the Legal Protection of Biotechnological Inventions of July 6, 1998 (Directive 98/44/EC). The Directive attempts to provide biotechnological inventions with an equal level of patent protection in all the Member States by specifying what is and what is not patentable in this area. The Directive should have been written into French law by July 30, 2000. France, with seven other EU members, had been referred to the European Court of Justice for failure to implement the Directive. This resulted in France's condemnation by that body last July. The Directive had been controversial, as it allows the patenting of processes involving DNA, genetically modified organisms, and materials derived from the human body. Some believe that such patenting may become too easy and be used without proper regard to ethical concerns.

The Law transposes the part of the Directive concerning the varieties of animals and plants; the part relative to the human body and its components have already been transposed by the new 2004 Bioethics Law (*see* 8 W.L.B. 2004). (Law 2004-1338, LEGIFRANCE at http://www.legifrance.gouv.fr/html/actualite/actualite_legislative/20041338/invention_biotechno.htm.)

(Nicole Atwill, 7-2832, natw@loc.gov)

GERMANY - More Stringent Visa Controls

The German Office of Foreign Affairs implemented a change in policy for the granting of entry visas to foreigners on October 26, 2004, through the routing of an internal circular to the German consulates. The new circular insists on stricter controls before visas can be issued and requires the entry of suspicious inviters of aliens in a database, to facilitate detection of smugglers of illegal aliens. (FRANKFURTER ALLGEMEINE ZEITUNG, Oct.29, 2004, at 5.)

The new circular also repealed a circular of March 3, 2000, that gave the consulates more discretion in the granting of visas and that allegedly had led to abuses. The new rules reflect the heightened importance of security issues as a result of the September 11, 2001 terrorist attacks in the United States. (STUTTGARTER ZEITUNG, Oct. 25, 2004, at 2.)

(Edith Palmer, 7-9860, epal@loc.gov)



GERMANY – Procedural Reforms

An Act on the Modernization of the Administration of Justice was enacted on July 1, 2004 (BUNDESGESETZBLATT I at 2198). The Act reforms all branches of the court system and aims at streamlining judicial proceedings; cost-cutting was imputed to be a motive for the legislation (FINANCIAL TIMES DEUTSCHLAND, July 1, 2004, at 30). The measures permit witness interrogations by telephone or e-mail under certain circumstances in civil proceedings, if the parties agree; recognize the validity of expert opinions in civil proceedings that had originally been given in a criminal or administrative proceeding dealing with the same facts; and allow for the possibility of continuing a criminal trial with the same judges and lay judges even if some of the evidence had been obtained in a trial session in which a judge or lay judge had been absent. Most of the reforms became effective on September 1, 2004.

(Edith Palmer, 7-9860, epal@loc.gov)

ICELAND – Historic Net Wealth Tax Abolished

In December 2004, the Icelandic Parliament, the Althingi, reached an historic decision to abolish the Net Wealth Tax. The tax is the oldest tax in Iceland, dating back to the years 1096/97, when the Tithe Statute of Bishop Gissur Ísleifsson was introduced as law. The proceeds from the tithe were divided into four parts: one part for the poor, one for the Bishop, one for the clergy, and one for the church. In 1556, the King took over the Bishop's tithe; the practice was unchanged until 1874, when Iceland got its own Constitution and got control of its own fiscal affairs. In 1877, the Royal tithe was replaced by a real property tax that was in force until 1921, when the first income and net wealth tax was introduced. The tithe for the church and clergy remained in force until 1909, and the tithe for the poor was abolished in 1921. (Weekly Web Release Dec. 16, 2004, Ministry of Finance's homepage, Dec. 16, 2004 available at <http://eng.fjarmalaraduneyti.is/weekly-web-release/nr/3235>.)

(Linda Forslund, 7-9856, lifo@loc.gov)

IRELAND – Nursing Home Costs

According to news sources, last week the Oireachtas, Ireland's parliament, passed the Health Amendment (No. 2) Bill, 2004, requiring elderly people pay up to eighty percent of their pensions towards their nursing home bills. The emergency legislation was passed in two days, following an Attorney General statement that deductions from pensions for nursing home care were illegal under current law. The President has summoned the Council of State to meet to discuss the legislation. The President now has the discretion to refer the legislation to the Supreme Court for a judgment on its constitutionality. (*Council Of State To Meet On Nursing Home Bill*, IRELAND.COM, Dec. 20, 2004, at <http://home.eircom.net/content/irelandcom/topstories/4689913?view=Eircomnet>; see also *Error in Extracting Nursing Home Fees Admitted*, IRELAND.COM, Dec. 16, 2004, at <http://home.eircom.net/content/irelandcom/topstories/4659275?view=Eircomnet>.)

(Diana Frazier Miller, 7-0639, dfra@loc.gov)

LATVIA - Ban on Smoking Extended

On December 17, 2004, the Parliament of Latvia adopted amendments to the Tobacco Sales Law, which was passed last year, and imposed restrictions on smokers and tobacco advertising. In addition to the ban on smoking in schools, cinemas, museums, and post offices introduced by the Tobacco Sales Law in 2003, these amendments prohibit smoking in the front of state and municipal



institutions, at public transit stops, in stairways of multi-apartment buildings, in common-use areas at work, in all types of transport, including taxis, and in stadiums during sports events. It will also be forbidden to smoke in cafes, restaurants, and places of public catering, except for specially designated, separated smoking areas. (BALTIC BUSINESS NEWS, Dec. 19, 2004, at http://site.securities.com/doc.html?pc=LV&doc_id=66438777&query=law&hlc=en.) (Peter Roudik, 7-9861, prou@loc.gov)

THE NETHERLANDS – Human Trafficking

As a result of a report on trafficking in human beings, the Government of the Netherlands has adopted an action plan to combat the trade. The Criminal Code will be amended to make all forms of human trafficking for the purpose of commercial exploitation a criminal offence. Besides introducing new offences, the action plan focuses mainly on preventing human trafficking and helping the victims. Agreements are to be made with other countries about the care and counseling of returning victims. Clients of prostitutes will be targeted with information to make them aware of their responsibility to report wrongdoing to the police. They will be able to do so anonymously, via a specially created hotline. (Government Press Release, Dec. 10, 2004, at <http://www.government.nl/>.) (Karel Wennink, 7-9864, kwen@loc.gov)

THE NETHERLANDS – Terrorists Lose Nationality

The government of the Netherlands has approved a plan whereby anyone convicted of terrorist activities stands to lose their Dutch nationality. The measure widens the scope for revoking Dutch citizenship, but it can be applied only to holders of dual nationality, so that no one will be rendered stateless. Any person who loses their Dutch nationality can subsequently be deported as an alien. The measure will apply to any person convicted of terrorist offences or offences that threaten the security of the state. Those convicted of conspiring to commit such offences also stand to lose their citizenship. (Government Press Release, Nov. 26, 2004, at <http://www.regering.nl/>.) (Karel Wennink, 7-9864, kwen@loc.gov)

NORWAY – Pension Reform

On December 10, 2004 the Government of Norway presented its Report No. 12 (2004-2005) on pension reform to the Parliament. The report sets up a number of principles on which the proposed pension reform should be based. The Government proposes that the National Insurance Scheme be modernized to clarify the relationship between income and pension, to stimulate people to work, and to improve the pension entitlement for unpaid care-work. The pension for unpaid care-work will be based on previous income with an upper limit equal to the basis for calculating maternity leave. Irrespective of earlier income, the minimum pension will be higher for unpaid care-work under the new system, and the Government is proposing retroactive entitlements for such work. A guaranteed minimum pension account will be created for all. Every year pension entitlements will be created corresponding to income and unpaid care-work and will be credited to the account. The guaranteed pension will be reduced against the income pension, thus targeting those who need it most. The introduction of a flexible retirement age from age 62 is also proposed. A person will be able to get a pension from that age while still working, without the income affecting the pension. A Government pension fund will be created based on the Government Petroleum Fund and the National Insurance Fund. The changes are proposed to take effect from 2010. (*Summary of Report No. 12 (2004-2005) to the Storting: Pension*



Reform – Safeguarding our Pensions, Ministry of Finance’s homepage, available at <http://www.pensjonsreform.no/english.asp>.)
(Linda Forslund, 7-9856, lifo@loc.gov)

RUSSIAN FEDERATION – New Composition of the Legislature

On December 15, 2004, amendments to the Law on Basic Guarantees of Electoral Rights of Russian Citizens entered into force. Until recently, half of the Russian State Duma’s 450 members were elected from single-mandate constituencies (225 electoral districts geographically covering all of Russia) and the other half were elected from among names of candidates placed on party lists (lists of candidates created by the political parties). According to the new amendments, single-mandate districts will be eliminated and all Russian legislators will be elected as candidates on party lists in the federal electoral district, which comprises the entire Russian territory. Parties may offer places on their lists to any Russian citizen or choose whether to accept petitions from non-party members to be included on the list. According to the Law, the right to apply for party nomination belongs to every Russian citizen. However, the procedure for nominating non-party members is very complex.

Party lists will consist of two parts. The federal part of the list will be limited to no more than three candidates, who will become members of the Duma if the party receives more than seven percent of the popular vote. These candidates will be included in all ballots for the national elections. The rest of the party delegation to the Duma will consist of those who were elected from regional groups of party candidates according to the share of the votes received by their party in the region. The party lists must have no less than seventy regional groups of candidates and include representatives from all eighty-nine components of the Russian Federation. Each regional group is to represent no more than ten million constituents. In order to be registered with the Central Election Commission and be eligible to participate in parliamentary elections, each party must collect no less than 200,000 signatures. No more than 10,000 of these signatures can come from any one of the constituent components of the Russian Federation. In regard to campaign financing, the Law established a maximum for electoral spending that is equal to US\$8 million. The next Duma elections, scheduled for December 2007, will be conducted under the new Law. (ROSSIISKAIA GAZETA (Russian government owned daily), Dec. 15, 2004, at <http://www.rg.ru>.)
(Peter Roudik, 7-9861, prou@loc.gov)

RUSSIAN FEDERATION – New Procedure for the Appointment of Governors

On December 11, 2004, President Vladimir Putin of Russia signed into law amendments to the Federal Law on the Composition of Regional Authorities. The amendments provide for the presidential appointment of Governors in the form of “endowing with authority of the highest administrative official of the Russian Federation constituent component.” The Law allows the president to “endow with authority” any Russian citizen who has reached age of thirty for a term not to exceed five years. The legislative assembly of the constituent component has two weeks to consider the presidential nomination and either agree with the President’s choice with a simple majority or reject it. In the latter case, the President must submit a new nomination or nominate the rejected candidate again. If the candidate is rejected a second time, the President will have three options: to nominate the candidate for the third time, to appoint an acting Governor (for a six-month period) or to dismiss the legislative assembly. After a third rejection, the President appoints an acting Governor and decides whether to dissolve the legislative assembly or to start a new nominating process after the six-month term of the acting Governor expires. No such difficulties are encountered in the dismissal of a



Governor, which can be done by a Decree of the President for one of two reasons: loss of trust or inappropriate fulfillment of duties. The component's legislature may vote no-confidence in the Governor; however, this vote requires confirmation by the President of Russia. President Putin stated that these changes will contribute to consolidation of power and will help to combat terrorism. (ROSSIISKAIA GAZETA, Dec. 15, 2004, at <http://www.rg.ru/>.) (Peter Roudik, 7-9861, prou@loc.gov)

SCOTLAND – Fox Hunter Cleared of Hunting With Hounds

The first hunter from Scotland to be charged with hunting foxes with hounds since Scotland's ban on this activity came into force was cleared of all charges against him. The Protection of Wild Mammals (Scotland) Act 2002 permits the use of hounds in "limited and defined" circumstances, such as to "flush" foxes out from hiding so that they can then be shot with a gun for the purposes of pest control. The judges hearing the case held that the defendants' actions were within the bounds of the law, as the dogs were under the defendants control at all times and used for flushing the fox from cover, as permitted by the legislation, rather than to hunt and kill the fox. (Procurator Fiscal v. Trevor Adams, Dec. 10, 2004, at <http://www.scotcourts.gov.uk/opinions/ADAMS.html> (last visited Dec. 20, 2004); Protection of Wild Mammals (Scotland) Act 2002, ASP 6 at <http://www.scotland-legislation.hms.gov.uk/legislation/scotland/acts2002/20020006.htm> (last visited Dec. 20, 2004). (Clare Feikert, 7-5262, cfei@loc.gov)

SPAIN – Stem Cell Research

On October 29, 2004, Royal Decree 2132/2004 approved new conditions for research with embryonic stem cells, allowing scientists to investigate using frozen embryos while seeking cures to diseases such as Parkinson's, Alzheimer's, and diabetes. By adopting this measure, the government intends to facilitate fertility treatments as much as possible.

The Royal Decree will allow research with stem cells after approval has been given by parents to use remaining embryos obtained through in-vitro fertilization and frozen for more than five years. Parents will also have to waive any possible financial benefit that might result from such research, including possible patent rights. Researchers will also need the approval of a commission that will study each case individually. (*Boletín Oficial del Estado*, Oct. 30, 2004.) (Graciela Rodriguez-Ferrand, 7-9818, grod@loc.gov)

UKRAINE – Constitutional Amendments

On December 8, 2004, President Leonid Kuchma of Ukraine signed into law constitutional amendments adopted by the Verkhovna Rada (the legislature) that institutionalize the idea of government by compromise and provide for political reform. The goal is to transform Ukraine from a presidential to a parliamentary-presidential republic. According to the amendments, the President will continue to be the head of state and will largely control the Foreign Ministry, the Ministry of Defense, and the national intelligence service. The Ministry of Internal Affairs, with its police force, will be transferred from the control of the presidency. As a measure to protect Ukraine from the danger of one-man rule, the Constitution provides that there is to be a Prime Minister who will be a counterweight to the authority of the President. The constitutional amendments provide that the Prime Minister will be elevated from a civil service official subordinated to the President, to being the leader of the domestic government, leading the Cabinet of Ministers, and setting Ukraine's legislative and



budgetary agendas. The amended Constitution will require the Parliament to form a majority coalition and then elect a Prime Minister and all of the other members of the Cabinet, as well as the leaders of state boards on insurance, securities, broadcast, and others.

In addition to expanding parliamentary authority and extending the *Rada*'s term to up to five years, the amendments significantly change the composition of the legislature. An imperative parliamentary mandate is introduced that requires each member of the *Verkhovna Rada* who is elected from a political party list to join the parliamentary faction of that party and to remain with it for the rest of the term. Otherwise, his credentials will be withdrawn and he will be expelled from the *Rada*. According to the newly amended Constitution, the coalition of factions in the *Verkhovna Rada* shall be created within one month of the opening of the first session of the *Rada* of a new convocation. If one of the factions has the majority of parliamentary seats, that faction will have the right to form a government. The inability of any party in the *Rada* to build a coalition is cause for the President to dissolve the legislature and call for new elections. Also, the *Verkhovna Rada* can be dissolved by the President if a new Cabinet of Ministers is not formed within a sixty-day period and if the *Rada* does not start its plenary meetings within thirty days of the constitutionally scheduled beginning of an ordinary session. (HOLOS UKRAINY, Dec. 10, 2004, no. 234, at <http://dlib.eastview.com/sources/article.jsp?id=7148927>.)

(Peter Roudik, 7-9861, prou@loc.gov)

UNITED KINGDOM – House of Lords Rules Against Anti-Terror Laws

The House of Lords, the highest court in the United Kingdom, has ruled that legislation allowing the indefinite detention of suspected foreign international terrorists is incompatible with the European Convention on Human Rights, which was incorporated into British law by the Human Rights Act 1998. The court stated that it was wrong for the law to distinguish between suspected foreign terrorists and suspected British terrorists. The anti-terror legislation under scrutiny was enacted as temporary emergency legislation immediately after the September 11, 2001 attacks. Despite the House of Lords' judgment, the detainees have not been released, resulting in resignations amongst top government lawyers. The current Home Secretary has stated that he is currently investigating modifying the legislation to take into account the concerns raised by the House of Lords judgment and has announced that he intends to ask for the law to be renewed in 2005. (*A (FC) and others v. Secretary of State for the Home Department*, [2004] UKHL 56 at <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd041216/a&oth-1.htm>, last visited Dec. 19, 2004).

(Clare Feikert, 7-5262, cfei@loc.gov)

UZBEKISTAN - New Law on Presidential Elections

On December 3, 2004, the Oliy Majlis (legislature) of Uzbekistan adopted a new version of the Presidential Elections Law. The new law extends the presidential term from five to seven years, allows the Central Election Commission to announce new elections and form local election commissions no later than seventy days before the election day, and gives to political parties and groups of at least 300 citizens the right to nominate a candidate. Elections are recognized as valid if no less than thirty-three percent of eligible voters cast their ballot. The Law prohibits the publication of the results of various surveys of public opinion, forecasts of election results, and other election-related research, including publication through the mass media and the Internet, during a period of five days before and on the day of elections. The procedure for filling out the election ballot has also been changed. Now a voter puts a cross (a plus sign) in the box next to the name of the candidate he or she wishes to select.



Previously the voters had to cross out the names of the candidates they did not select. Ballots with several crosses (pluses) are to be found invalid. (UZREPORTDAILY, Dec. 20, 2004, at http://site.securities.com/doc.html?pc=UZ&doc_id=66507243&query=law&hlc=ru.) (Peter Roudik, 7-9861, prou@loc.gov)

NEAR EAST

EGYPT – Ban on Prosecuting Civilians in Military Courts

A draft of a law prohibiting the prosecution of civilians before military courts in Egypt has been introduced in the Egyptian Parliament by one of its members, Adel Obeid. The proposed law provides that all cases pending before military courts shall be transferred to the civil felony and misdemeanor courts, in accordance with the Criminal Procedure Act, and that all judgments issued by the military courts that have not been satisfied shall be vacated and the cases retried before the courts of competent jurisdiction. The explanatory note of the proposed law confirms that the law is in full compliance with the constitution and the International Declaration of Human Rights. (ASHARQ AL-AWSAT, Dec. 15, 2004, at <http://www.asharqalawsat.com.>) (Issam Michael Saliba, 7-9840, isal@loc.gov)

IRAN – Court Convicts the Police, Orders Blood Money Payment

Riots over local government boundaries have been a common problem in Iran. On August 17, 2003, eight people were killed in the town of Semirom in the south of Iran when anger over a proposal to redraw local town boundaries led to major rioting. The crowd that gathered outside the office of the governor to protest the plan turned violent and began smashing the windows of shops and setting fire to tires, vehicles, and public buildings. Security forces intervened, and as a result six civilians and two police officers were killed and many others were injured.

. The local court, after a lengthy trial, issued an unusual decision by ordering the police (for the first time) to pay blood money to the families of four men killed in the riot. The amount of the *dia*, or blood money, under the Islamic Criminal Law of Iran is assessed annually by the Ministry of Justice. The blood money for a Muslim man is about 18 million Tomans (equal to almost US\$2,250); the amount for a Muslim woman is half of that. (IRAN TIMES, no. 1729, Dec. 31, 2004, at 11.) (Gholam Vafai, 7-9845, gvaf@loc.gov)

IRAN – Courts Award Compensation to Iranians in Suits Against U.S. Government

On December 31, 2000, the Iranian legislature enacted the Law, on Amending the Jurisdiction of the Judiciary of the Islamic Republic of Iran in Trying Civil Suits Brought Against Foreign Governments. The Law extended the jurisdiction of the Iranian courts with the purpose of “countering and preventing further encroachment of international principles and laws by the governments’ ignoring the judicial immunity of the government of the Islamic Republic of Iran. Based on the principle of retaliation, the assessment of the moral and physical damage to the victims shall be similar to the amounts assessed by the foreign courts.”

Based on the provisions of the Law, Iranian courts have ordered the United States Government to pay a total of US\$2.7 billion in reparations to Iranian citizens for the shooting down of an Iran Air Airbus over the Persian Gulf in 1988 by the cruiser *USS Vincennes*, killing 290 persons. A



spokesman for the Iranian judiciary stated last week in Tehran that nine lawsuits have thus far been completed and resulted in judgments against the United States. The US has paid compensation to Iran and the victims of the Airbus downing as part of a settlement. That settlement also includes a provision precluding further claims. (IRAN TIMES, No. 1730, Jan. 7, 2005, at 11.) (Gholam Vafai, 7-9845, gvaf@loc.gov)

ISRAEL – Constitutionality of the Nationality Law Amendment

In a December 16, 2004 decision before an extended thirteen-justice panel, the High Court of Justice called on the government to consider the constitutional implications of temporary legislation that prohibits the granting of Israeli nationality, or of a residency visa, to Palestinian residents of the West Bank or Gaza who have married Israeli citizens. Whereas petitioners argued that the law violates human rights, such as the right to family life, dignity, and equality, the government maintained that a dramatic decline in intervention of Arab Israelis in terrorism has been demonstrated since the law was first implemented in August 2003.

The Court decided to postpone a decision on the merits of the case because of the short time until the expiration of the law (less than two months) and because of the government's reported decision to prepare an amendment to the law that would recognize additional populations deemed to pose lesser security concerns. (H.C. 7052/03; 7082/03; 7102/03; 7642/03; 7643/03; 8099/03; 8263/03 *Adalla v. Minister of Interior*, available at <http://www.court.gov.il>; see also High Court, *The Nationality Law Raises Problems Regarding Constitutionality*, YEDIOT DAILY, Dec. 16, 2004, available at <http://www.ynet.co.il>; and High Court: *The Government Has to Consider the Impact of the Nationality Law Amendment on Human Rights*, HAARETZ DAILY, Dec. 16, 2004, available at <http://www.haaretz.co.il>.) (Ruth Levush, 7-9847, rlev@loc.gov)

SOUTH ASIA

INDIA – Doctors' Criminal Liability

On September 8, 2004, the Supreme Court referred to a larger bench its judgment that had defined "gross negligence" and "recklessness" of medical doctors and made doctors liable for negligence in treating patients. In making the referral of the judgment, the court observed that the words "gross negligence" and "reckless" act did not fall within the definition of section 304-A of the Indian Penal Code (IPC), which defines death due to an act of negligence as culpable homicide not amounting to murder (manslaughter).

Doctors will not know the extent of relief they may receive from the decision until the verdict of the larger bench becomes known. Another bench of the Supreme Court had ruled that the act of a doctor could be described as "criminal" if he had exhibited a "gross lack of competence or inaction and wanton indifference" to his patient's safety during treatment.

It had further observed, "where a patient's death results merely from error of judgment or an accident (during treatment), no criminal liability should be attached to it." Essentially, the Court had held that if a patient's death resulted from an error of judgment on the part of the physician, the physician would not be prosecuted for a criminal act but could be sued for pecuniary damages under



civil law statutes. (THE TRIBUNE, Sept. 10, 2004, at <http://www.tribuneindia.com/2004/20040910/main6.htm>.)
(Krishan Nehra, 7-7103, kneh@loc.gov)

INDIA – Right to Fly the National Flag

A three-judge bench of the Supreme Court of India ruled that the Flag Code, issued by the central government to regulate the flying of the national flag by the citizens of India, was an executive order and could be replaced by another executive order depriving citizens of their right to fly the national flag. The Code was not a law within the meaning of article 13 of the Constitution of India. Therefore, the court suggested that the government enact a suitable law to regulate the citizens' right to fly the flag.

The court further observed that the hoisting of the national flag freely with respect and dignity was a fundamental right of the citizens within the meaning of article 19(1)(a) of the Constitution. It is an expression and manifestation of their allegiance and feelings of pride in the nation. However, the court noted, it is a qualified right and may be subject to reasonable restrictions under clause 2 of article 19 of the Constitution relating to freedom of speech and expression. Since the Parliament has not chosen to enact a statute that would confer a statutory right upon a citizen to fly the national flag, the court deemed it all the more imperative to have a regulatory statute. (THE HINDU, Jan. 29, 2004, at <http://www.hinduonnet.com/thehindu/holnus/00229170010.htm>; THE HINDUSTAN TIMES, Jan. 29, 2004, http://www.hindustantimes.com/news/181_552835,0008.htm.)
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PAKISTAN – Honor Killings

On December 7, 2004, the National Assembly of Pakistan passed a bill against honor killings (*karo-kari* or *siaj-kari*) of women, which were carried out for refusal to abide by the parents' choice of husband for them or for engagement in extramarital sexual relationships. The law, titled the Criminal Law (Amendment) Bill, amended Pakistan's Penal Code and Criminal Procedure Code. The second House of the Parliament had passed the same bill earlier, in October 2004. The bill prescribes the death penalty for honor killings. Members of the opposition and some treasury benches, too, had opposed the bill on the grounds that it contained several flaws and deficiencies. In response, the bill's supporters, while ensuring its passage through the Parliament, promised to make efforts to improve it and also stated that these flaws should have been addressed during the drafting process. A Member also stated that if the "absurdities" of the bill were not removed, it could meet the fate of the Juvenile Justice System Ordinance, 2002.

The serious shortcomings in the existing law on murder that permitted offenders in *karo-kari* to walk away without facing punishment included the right of the victim's relatives to waive *qisas* (the right to have the defendant executed) under section 309 of the Penal Code and the provision for payment of compensation by compromise under section 310, which makes the right to *qisas* "compoundable." Further, the punishment of *qisas* under section 310 cannot be awarded if the offender is a minor, when the offender causes the death of his child or grandchild, or when the heir of the victim is a direct descendant of the offender. (THE DAWN, Dec. 8, 2004, at <http://www.dawn.com/2004/12/08/top1.htm>.)
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PAKISTAN – Juvenile Justice System Ordinance Quashed

On December 6, 2004, a full bench of the Lahore High Court struck down the federal Juvenile Justice System Ordinance, 2000, as unconstitutional, unreasonable, and impracticable, “because it contained such downright absurdities as to create havoc in the country’s criminal justice system.” Simultaneously, the court ordered the abolition of juvenile courts and the transfer of all cases pending before these courts to the courts of competent jurisdiction. It also ordered that all defendants who had been tried as juveniles between the promulgation of the Ordinance (July 1, 2000) and the pronouncement of the recent judgment to prove their ages at the time of the commission of the offense in order to claim immunity from the death sentence.

The quashed fifteen-section Ordinance, which was extended to the whole of Pakistan, provided that a “child” below 18 years of age could not be awarded the death penalty and was entitled to a separate trial in a juvenile court. The introduction of the Ordinance, according to the High Court, was unnecessary in the presence of constitutional guarantees, a host of laws (including the Pakistan Penal Code and Criminal Procedure Code), and judgments of the superior court, which amply safeguarded the rights of children.

The judgment is the outcome of a writ petition of Farooq Ahmad of Gujranwala criticizing the trial court judgment that had ordered a separate trial for the defendant on the grounds of minority, for which the defendant had produced a certificate. The defendant was part of a group who allegedly sodomized the petitioner’s son and then burnt him alive. Later, an appeal in a similar decision and a host of similar petitioners joined the case, and the Lahore High Court called upon several attorneys to appear as *amicus curiae*. The Deputy Attorney General and the Provincial Assistant Advocate General appeared for the government.

In a scathing criticism of the Ordinance, the High Court held that it

encouraged and promoted corruption and falsehood in society on an alarming scale. Almost every day cases were coming up where fake school-absence certificates were obtained, incorrect medical opinions about age were procured, forgery and interpolation by union councils in birth registers were committed, and even false ‘Nikahname’ (marriage certificate) of the parents were prepared to show a younger age for the accused person.

The Ordinance had established eighteen as the age of majority, while other laws, including the Penal Code and the Code of Criminal Procedure had variously listed the cut-off as seven, twelve, fifteen, or eighteen.

The judgment also cited procedural difficulties that permeated the trial of a juvenile in subordinate courts. Further, the Ordinance was seen as discriminating against adult accused persons and creating a social imbalance by giving a free hand to a certain section of society in the name of age, resulting in rising incidences of young offenders who commit heinous crimes like murder and gang rape. In fact, there were instances when criminals used juveniles to settle scores with opponents, the judgment added. (THE DAWN, Dec. 7, 2004, at <http://www.dawn.com/2004/12/07/top5.htm>.) (Krishan Nehra, 7-7103, kneh@loc.gov)



WESTERN HEMISPHERE

BRAZIL – Regulation Permits Shooting Down Planes

On July 30, 2004, Decree 5144 adopted regulatory provisions to the Brazilian Code of Aeronautics to allow the Brazilian Air Force to shoot down unidentified planes that do not respond to warnings. This measure is intended to be an effective instrument to combat drug trafficking.

Although Brazil is not a major drug-producing nation, it shares borders with producers such as Colombia, Bolivia, and Peru and has become a major transshipment point for cocaine headed mostly to Europe. The government dismissed the possibility that the policy could lead to the killing of innocent people, since only after taking all the precautionary measures will an airplane be classified as hostile, allowing it to be destroyed.

Under the new regulation, a suspicious aircraft is defined as one that enters national territory without an approved flight plan and that originates from regions that are known as sources of production or distribution of illegal drugs or one that fails to furnish required information to the Brazilian Air Traffic authorities. The regulation entered into force on October 19, 2004. (Decree 5144, July 16, 2004, DIARIO OFICIAL, July 19, 2004, at 1.)
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CANADA – Same Sex Marriage

On December 9, 2004, the Supreme Court of Canada responded to four questions respecting the legality of same-sex marriages that had been referred to it by the Federal Government. In response to the first question, the Court ruled that Parliament can define marriage to be the union of two persons to the exclusion of others. This ruling paves the way for the Government to introduce legislation that will allow for same-sex marriages throughout the country. One question the Court declined to answer was whether the current common law rule limiting marriage to opposite-sex couples could also be constitutional. On this matter, the Court ruled that if the Federal Government wanted the Supreme Court to decide whether the common law definition violated the Canadian Charter of Rights and Freedoms, it should have appealed the decisions of the lower courts that have struck down the common law definition in the majority of the provinces.

In response to another question, the Supreme Court found that religious leaders cannot be compelled to marry same-sex couples. However, the Court did not consider such issues as whether a church that refuses to perform same-sex marriage ceremonies could lose its status as a charity. The Court did recognize that conflicts between the right to religious freedom and equality rights might have to be resolved in the future.

The Supreme Court's decision in the same-sex reference case was widely expected. At the present time, of the provincial governments, only that of Alberta is actively opposing same-sex marriages. The leader of the Opposition in Parliament has indicated that he will introduce legislation that preserves the common law definition of marriage, but extends full legal rights to same-sex couple who enter into civil unions. The vote on the Government's proposal to recognize same-sex marriage is expected to be close. (Reference re Same-sex Marriage, 2004 S.C.C. 79)
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MEXICO – National Security Law

The Chamber of Deputies approved the National Security Law bill, which originated in the Senate and consists of six titles and sixty-seven articles, on December 10, 2004. The Law regulates the activities of the National Security Center (Cisen), which will be an administrative agency independent of the Secretariat of Interior, with technical, operational, and spending autonomy. Cisen will perform intelligence activities; collect information; conduct political, economic, and social studies; and propose preventive and dissuasive measures against threats to national security.

The Law defines the concept of protection of national security as actions intended to maintain the integrity, stability, and continued existence of the Mexican state. This includes the protection of the Mexican nation from the new threats and risks that the country faces. The Law details what is understood as threats to the country's security. Among these threats are chemical, biological, and conventional weapons of mass destruction, as well as nuclear weapons. The Law also lists organized crime and drug trafficking as threats to national security due to their deleterious impact on individual institutions and on the nation as a whole. Other threats listed include: acts tending to destroy or disable infrastructure of a strategic or essential nature for the provision of public services and goods; acts resulting in espionage, sabotage, terrorism, rebellion, treason to the fatherland, or genocide; acts of foreign interference; and acts against aviation safety and diplomatic personnel. The Law also provides for the use of telephone wiretaps but not for more than 180 calendar days and, as required by the Federal Law Against Organized Crime, there must be a specific court order to do so.

Professor Javier Oliva, a specialist in national security, stated that the Law is limited in scope because it does not regulate the activities of military intelligence or other federal agencies, such as the Office of the Attorney General of the Republic or the Federal Preventive Police. He believes that it is more of a regulation of the operations of Cisen than a full-fledged national security law. Mr. Oliva added that the bill as approved provides for the creation of a national security council, but the council lacks representation from the judicial and legislative branches. (Sergio Jiménez, Jorge Teherán, & Alejandro Medellín, *Avanza en San Lázaro la Ley de Seguridad*, and Sergio Javier Jiménez & Jorge Teherán, *Ponen 'candados' a Trabajo del Cisen*, EL UNIVERSAL, <http://www.eluniversal.com> (Dec. 9, 2004 & Dec. 10, 2004, respectively).)
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MEXICO – Chamber of Deputies Endorses Jurisdiction of International Criminal Court

With a majority of 347 votes, twelve against, and five abstentions, the Chamber of Deputies approved the addition of a fifth paragraph to article 21 of the Mexican Constitution in order to recognize the authority and jurisdiction of the International Criminal Court to prosecute and punish crimes against humanity committed by Mexicans. The Senate had previously passed the bill. Deputy Francisco Frías Castro pointed out that Mexico has now become the 98th country to ratify the Rome Statute of the International Criminal Court. He added that the text of the amendment is in harmony with domestic individual rights of Mexicans. Due to the fact that the bill is an amendment to the Federal Constitution, it has to be sent to the legislatures of each of the states of the Union for approval. (Sergio Javier Jiménez & Jorge Teherán, *Avalan a Corte Internacional*, EL UNIVERSAL, Dec. 10, 2004, at <http://www.eluniversal.com/>.)
(Norma Gutiérrez, 7-4314, ngut@loc.gov)



NICARAGUA – Former President Released from Jail

A Managua court of appeals dismissed the case against former Nicaraguan President Arnoldo Alemán for misappropriation of US\$1.3 million from the state-owned TV station Channel 6. The unanimous ruling was issued by the criminal chamber of a three-judge court of appeals whose judges have a pro-Sandinista political orientation. The court decision appears to be part of a package of negotiations between the Liberal Constitutionalist Party (PLC), whose leader is Mr. Alemán, and the Sandinista National Liberation Front Party (FSLN).

When the now-dismissed arrest warrant was initially issued against Mr. Alemán, he had already been condemned to twenty years in prison for corruption, money laundering, and other crimes against the state in a case known as “*la huaca*” (“the stash”). After the court’s ruling, Mr. Alemán was transferred to his El Chile Ranch, where he remains under house arrest for the twenty-year conviction. Mr. Alemán’s attorney Mauricio Martinez stated that he is waiting for a similar dismissal in “the stash” case to be issued sometime in the middle of January 2005. (*Abogado de Alemán Espera Libertad Definitiva en Enero*, LA PRENSA LIBRE, Dec. 7, 2004, at <http://www.prensalibre.co.cr/>; Mirna Velásquez Sevilla, *Daniel Ortega Saca a Alemán* LA PRENSA, Dec. 4, 2004, at <http://www.laprensa.com.ni/>.)

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INTERNATIONAL LAW AND ORGANIZATIONS

CENTRAL AMERICAN INTEGRATION SYSTEM (CAIS) – Leaders Discuss Integration

On December 15, 2004, the Presidents of Mexico, Guatemala, El Salvador, Honduras, Nicaragua, and Costa Rica met in El Salvador in order to plan a strategy to gradually tear down border and customs restrictions in Central America. The meeting focused on a regional integration plan designed to unite economies from Mexico to Panama and open the borders from Guatemala to Nicaragua, allowing the relatively free movement of people and goods. (Official website of the Mexico’s Presidential Office, at <http://envivo.presidencia.gob.mx/?P=2&Orden=Leer&Tipo=Pe&Art=9123>; see also “Central American Leaders Discuss Security, Integration,” CNN ONLINE, at <http://www.cnn.com/2004/WORLD/americas/12/15/security.meeting.ap/index.html>.)

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ISRAEL/EGYPT/U.S. – Free Trade Agreement

Israel, Egypt, and the United States signed a free trade agreement similar to the one already in existence between Israel, Jordan, and the United States. The new agreement is designed to create business cooperation between Egypt and Israel, cooperation that was almost completely suspended in the last five years. According to the agreement, factories in Egypt will enjoy special tax exemptions on products exported to the United States, as long as a certain portion of the materials, equipment, and know-how originate in Israel. The agreement is expected to increase cooperation between Israeli and Egyptian companies and apply to areas such as textiles, leather and household products, as well as processed food. (*Olmert & Mubarak Met, Trade Agreement Signed*, YEDIOT DAILY, Dec. 14, 2004, at <http://www.ynet.co.il/articles/0,7340,L-3018293.html>; Ora Koren et al., *An Israeli-Egyptian Agreement Singed for Establishment of Joint Industrial Areas*, HAARETZ DAILY online, Dec. 14, 2004, at <http://www.haaretz.co.il>.)

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MEXICO/UNITED STATES – Mexicans on Death Row Win Review

On December 10, 2004, the United States Supreme Court agreed to decide whether the federal courts must give a hearing to a Mexican inmate on Texas's death row who says the state violated international law by trying him on murder charges without first notifying Mexican diplomats who might have helped him.

The case accepted for review, *Medellin v. Dretke*, No. 04-5928, marks the Supreme Court's first opportunity to respond to a March 31, 2004, decision by the International Court of Justice (ICJ) in The Hague, which ruled that the United States violated the Vienna Convention on consular relations in the case of the Texas inmate, Jose Ernesto Medellin, and forty-eight other Mexican nationals on death row. In its March ruling, the ICJ did not attempt to overturn the men's death sentences. It said only that the treaty, which both the United States and Mexico have ratified, gives Medellin and the other Mexicans an individual right to claim in a federal court that their cases might have turned out differently if they had had consular access. United States rules requiring that such claims be raised in state court first do not apply, the ICJ ruled.

The United States Supreme Court received friend-of-the-court briefs from the European Union, Argentina, Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru, Uruguay, Venezuela and Mexico, all urging it to hear the case. (Official website of Mexico's Department for Foreign Affairs, at <http://www.sre.gob.mx/comunicados/comunicados/2004/dici/b-271.htm>; *Mexicans on Death Row Win Review*, THE WASHINGTON POST, Dec. 10, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A55262-2004Dec10.html?sub=AR>.) (Gustavo E. Guerra, 7-7104, ggue@loc.gov)

SWEDEN/EGYPT – Torture Case

In December 2001, the Swedish Government allegedly allowed the deportation of two Egyptian men back to Egypt. American agents picked the two men up at a Swedish airport and escorted them to Egypt. According to a report from Sweden's ambassador to Egypt, the two men claim to have been tortured after their arrival in Egypt. This information was given to the ambassador at a meeting held in January 2003. Prior to the deportation, Sweden had required guarantees from the Egyptian Government that the two men would not be tortured. The information provided in the ambassador's report was never forwarded from the Swedish Government to the United Nation's Committee Against Torture. The Swedish State Department's Director-General for Legal Affairs explained at a press conference that releasing such information could have made the situation worse for one of the Egyptian men and also affected Sweden's relations with Egypt. This statement has caused a strong reaction in Sweden. The government has been called upon to officially explain how the two men could have been deported if there was a threat that they could be tortured and why American agents were assisting in the deportation.

The Swedish Government has requested that the Egyptian Foreign Ministry appoint an independent investigation consisting of international experts to investigate whether the torture in fact took place. As of December 10, 2004, the Egyptian authorities had not responded to the request. One of the Egyptian men has been sentenced to fifteen years in prison for terrorism and the other has been acquitted. (Mats Carlbom, *Regeringen ställs till svars för utvisning av egyptierna*, DAGENS NYHETER,



Dec. 10, 2004, available at <http://www.dn.se/>; *Säpo lämnade männen till amerikanska agenter*, DAGENS NYHETER, Dec. 15, 2004, available at <http://www.dn.se/>.)
(Linda Forslund, 7-9856, lifo@loc.gov)

UNITED NATIONS – Report on UN Reform Released

On December 1, 2004, the U.N. Secretary-General's High-Level Panel on Threats, Challenges and Change submitted the report, "A More Secure World, Our Shared Responsibility," to Secretary-General Kofi Annan. The High-Level Panel was comprised of sixteen members including Brent Scowcroft from the United States. The report put forth numerous suggested reforms for the United Nations. Two of the most significant reforms addressed by the panel were defining terrorism and expanding the Security Council. The report defined terrorism as:

any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

There were two proposed models for expanding the Security Council. Model A would add six permanent seats without veto power and three two-year term non-permanent seats. Model B would not add any permanent seats but would add a new term of a four-year renewable seat that eight countries would fill. Model B would also add another two-year non-permanent, but non-renewable, seat.

For either model to be implemented, the Charter would have to be amended. Under article 108, to amend the Charter, two thirds of the General Assembly members must vote for and two thirds of the Members of the United Nations must ratify the amendments through their constitutional processes. All permanent members of the Security Council must ratify the amendment. (*A More Secure World: Our Shared Responsibility: Report of the High-level Panel on Threats, Challenges and Change*, U.N. GAOR, 59th Sess., Agenda Item 55, U.N. Doc. A/59/565 (2004), <http://www.un.org/secureworld/report.pdf>; U.N. CHARTER art. 108, <http://www.un.org/aboutun/charter/chapt18.htm>.)

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WTO – Membership Applications From Afghanistan and Iraq

On December 13, 2004, the General Council of the World Trade Organization (WTO) established working parties to examine the membership applications of Afghanistan and Iraq. Both countries were invited to attend as observers meetings of the General Council, and as appropriate, meetings of other WTO bodies. Mohammed Mustafa Al-Jibouri, Iraq's trade minister, said his country viewed the decision as "yet another contribution on the part of the WTO to Iraq's efforts to reform its economy." (*Accession Working Parties Established for Afghanistan, Iraq*, WTO NEWS, Dec. 13, 2004, http://www.wto.org/english/news_e/news04_e/gc_afghanistan_iraq_13dec04_e.htm.)

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WTO/CHILE – Authorization To Retaliate in Byrd Amendment Case

On December 17, 2004, the Dispute Settlement Body (DSB) of the WTO adopted the Appellate Body and panel reports concerning anti-dumping measures applied by the United States to oil country tubular goods exported from Argentina (*Sunset Review of AD Measures on Oil Country Tubular Goods*, WTO DISPUTE SETTLEMENT, Jan. 5, 2005, <http://trade-info.cec.eu.int/wtodispute/print.cfm?id=208&code=3>).

In the meantime, on December 6, 2004, in the dispute *United States – Continued Dumping and Subsidy Offset Act of 2000*, Chile requested authorization from the DSB to suspend the application of concessions or other obligations to the United States. Chile said that the United States should have implemented the decision made by the DSB a year ago that the Continued Dumping and Subsidy Offset Act (CDSOA) is inconsistent with certain provisions of the GATT IV Anti-Dumping Agreement and the Subsidies and Countervailing Measures Agreement and that consequently the United States had failed to comply with those provisions. Instead, a majority of United States Senators had rejected the decision, and one had introduced a bill to require a direct transfer of Federal funds to a single industry. Under the CDSOA, commonly known as the Byrd Amendment, anti-dumping and countervailing duties are distributed to the U.S. companies that had requested or supported the imposition of such duties. (*United States – Continued Dumping and Subsidy Offset Act of 2000: Recourse by Chile to Article 22.7 of the DSU*, WT/DS217/43, Dec. 7, 2004, at EUROPA website, at http://trade-info.cec.eu.int/doclib/docs/2004/december/tradoc_120610.pdf; *US Byrd Amendment – WTO Says Eight WTO Members May Retaliate Against the US – Joint Press Statement by Brazil, Canada, Chile, the EU, India, Japan, Korea, and Mexico*, Aug. 31, 2004, EUROPA website, at http://trade-info.cec.eu.int/doclib/docs/2004/september/tradoc_118727.pdf.)

The United States responded by stating its intention to comply with the DSB rulings and emphasized that it would not be necessary for complainants to exercise that authorization. The DSB agreed to grant authorization to suspend the application to the United States of tariff concessions or other obligations, consistent with the arbitrator's decision, in response to the request by Chile in document WT/DS217/43. (WTO website, at http://www.wto.org/english/news_e/news04_e/dsb_17dec04_e.htm.)

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RECENT DEVELOPMENTS IN THE EUROPEAN UNION

Prepared by Theresa Papademetriou, Senior Legal Specialist, Western Law Division

Brussels European Council

The European Council, which convened in Brussels on December 16–17, 2004, discussed many issues: enlargement; terrorism; the financial framework for the period 2007–2013; freedom, security, and justice; and external affairs, among others.

The Council expressed the will to continue discussions on enlargement and welcomed the reports and recommendations presented by the European Commission on the new candidate countries, Bulgaria, Croatia, Romania, and Turkey. It noted that Bulgaria and Romania have made tremendous progress towards becoming members as of January 2007. Croatia has also moved closer to opening accession negotiations. With regard to Turkey, the European Council granted a specific date, October 3, 2005, for the opening of negotiations. The membership process may take from ten to fifteen years, depending on Turkey's determination to continue its current efforts for reform. Turkey also agreed to sign a protocol to extend the EU-Turkey customs agreement to the ten new Members, including Cyprus. This must take place prior to the opening of negotiations next October.

In the field of terrorism, the Council held that it must fight the roots of the problem in order for the EU to successfully combat it in the long run. The Council welcomed the revised EU Action Plan on terrorism and urged further reinforcement of practical and operational cooperation through the European Police Force (Europol) and the Police Chiefs Task Force. It also called on Member States to improve the cooperation among Member States, Europol, and Eurojust (a judicial network in charge of criminal matters), including the exchange of information from criminal records. It urged Members to improve the security of EU passports through the inclusion of biometric data and the establishment of a European Border Agency. The continuation of the fight against terrorist financing was also mentioned. Finally, the European Council welcomed the progress made on external policies through the inclusion of counter-terrorism clauses in agreements with third countries.

The Council stressed that it must be able to address future challenges that impact the financial framework, especially those that result from developmental disparities among its Members and must exercise fiscal discipline in all policy areas. In the area of freedom, security, and justice, the Council welcomed the establishment of common basic principles for immigrant integration policy, taking into consideration, the political, social, legal, and economic situation of individual Member States. In external affairs, the Council endorsed a report on the implementation of the EU Strategy on Proliferation of Weapons of Mass Destruction (WMD) and welcomed the accord reached with Iran on nuclear issues and future cooperation. It also reaffirmed its goal of a democratic, secure, and prosperous Iraq.

Other issues that were discussed include the plan to establish an EU Human Rights Agency to improve the consistency and the record of EU human rights policy. The Council also welcomed the agreement to gather consular resources and improve cooperation in times of crises. (COUNCIL OF THE EUROPEAN UNION: PRESIDENCY CONCLUSIONS, Dec. 17, 2004, at http://europa.eu.int/comm/councils/bx20041216/index_en.htm.)



Progress on the Aarhus Convention

The EU signed the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters in 1998. In 2003, two directives concerning access to environmental information and public participation in environmental decision-making in the Member States were adopted. Members are required to transpose these Directives into national law by February and June 2005, respectively. A third Directive on access to justice in environmental issues, which was introduced in 2003, is still under negotiations within the EU Council.

On December 20, 2004, the EU moved closer to ratifying the Aarhus Convention upon receiving a positive sign from the Environmental Council. The latter also adopted a Regulation that will apply the provisions of the Convention to European Community institutions. (*Aarhus Convention: Commission Welcomes Agreements to Strengthen Citizens' Involvement in Environmental Matters* (Press Release, IP/04/1516).)

EU-China Summit

The Seventh Annual EU-China Summit took place in The Hague on December 8, 2004. The two parties signed eight cooperation agreements. However, the arms embargo that was imposed immediately after the Tiananmen Square massacre remains in effect, in spite of proposals from some EU Member to lift it. The issue of human rights in China was also discussed during the meeting, but not in connection with lifting the arms embargo. The cooperation agreements include: a common declaration on non-proliferation and arms control, a customs agreement on trade and the fight against counterfeiting and pirating of intellectual property, four financing agreements, and two sectoral agreements on the peaceful use of nuclear research and on scientific research and new technology development. (EUROPA NEWSLETTER, Dec. 16, 2004, available at http://europa.eu.int/newsletter/index_en.htm.)

Adoption of Transparency Directive

The Directive on Minimum Transparency Requirements for listed companies was adopted in December 2004. This is the last legislative measure in a series adopted within the previous two years, including the Market Abuse and the Prospectus Directives. One of the major aspects of this Directive is the increased level of quality of information that must be made available to investors regarding performance of companies, overall financial status, and changes in major shareholders. Implementation by EU Members is required within two years of its publication in the Official Gazette. (*Financial Services: Final Adoption of Transparency Directive Will Help Investors and Boost Trust in Markets* (Press Release, IP/04/1508).)

Lifting of Textile Quotas

On December 17, 2004, the EU Council adopted a Regulation that introduces the lifting of all quotas on imports of textile and clothing from World Trade Organization countries as of January 1, 2005. For the first four months of 2005, the products will be subject to the same quotas as in 2004. (*The EU to Lift Textiles Quotas from 1 January 2005* (Press Release, IP/04/1470).)



Further Action on “Open Skies”

Despite an earlier European Court of Justice decision that bilateral aviation agreements between the EU Members and the United States are discriminatory and violate EU competition rules by reserving traffic rights to national carriers, Finland, Germany, Italy, and Portugal still have such agreements in place. On December 14, 2004, the European Commission sent reasoned opinions to the four recalcitrant Members for their failure to comply with EU law and respect the EU’s exclusive external competence concerning certain aspects of air services agreements by EU Members and third countries. (*The Commission Defends the “Open Skies” Rulings* (Press Release, IP/04/1478).)

Appointment of First Director of New EU Health Agency

On December 14, 2004, the Management Board of the European Center for Disease Prevention and Control selected a senior public health official as the first Director of that Center. The new agency, which is similar to the United States Center for Disease Control and Prevention in Atlanta, is designed to coordinate and strengthen the EU defense mechanisms to control infectious diseases. (*Protecting Europe From Epidemics: Director Named for New EU Health Agency* (Press Release, IP/04/1472).)

New EU Website for Taxation and Customs

A new comprehensive website on taxation and customs issues was recently established. It is designed to provide a wealth of practical information on tax policies, including company taxation, personal taxes, passenger car taxation, and customs rules and tariffs for products destined for import into the EU. Additional information included covers rules of origin and import, export, and transit procedures. The website is at http://europa.eu.int/comm/taxation_customs/index_en.htm. (*Taxation and Customs: Commission Launches New Website* (Press Release, IP/04/1439).)



ISRAEL: ADOPTION BY GAY PARTNERS

Prepared by Ruth Levush, Senior Legal Specialist, Eastern Law Division

In a lengthy decision,¹ an extended panel of nine justices of Israel's Supreme Court analyzed the legality of an adoption requested by two unmarried women (the appellants) who live together and maintain a joint household. Both women agreed to be impregnated by an unknown donor's sperm. As a consequence, one woman gave birth to two children and the other to one. They later signed an agreement arranging their life together, jointly sharing their property and undertaking full mutual responsibility for the financial needs and care of the children born to either one. In addition, they signed a will guaranteeing protection of all financial and other needs of the three children. The appellants have raised the children jointly since birth, without distinguishing among them based on their biological relationship to either appellant. In turn, the children relate to the appellants equally as their mothers. Each appellant requested a grant of adoption with regard to the children of the other. Following rejection of the adoption requests by both the family court and the district court, the appellants appealed to the Supreme Court.

In a majority opinion, Chief Justice Barak returned the case to the family court for re-evaluation of the specific circumstances of the case. Although the Adoption of Children Law, 5741-1981,² as amended, requires that an adoption be made "by a man and his wife jointly," it authorizes courts to disregard certain competency requirements and grant an adoption to a single adopter under two conditions: (1) the court is satisfied that the adoption is in the interest of the adoptee, and (2) under special circumstances.

According to the majority opinion, in determining whether an adoption is "in the interest of the adoptee," numerous factors should be considered, including financial, spiritual, social, ethical, and moral. Some considerations reflect the relationship between the minor and his parents (biological and adoptive) and some reflect the relationship between the minor and the society in which he lives and will continue to live. The question that needs to be answered, the opinion states, is not whether it is preferable for the minors in this case to be adopted by a male living with their mothers as a husband or a common law husband, but rather whether each of the minors will continue to live in this gay family with or without a legal adoption. Likewise, in examining whether "special circumstances" exist, the opinion contends that it is not necessary for the Court to choose a general moral position on the status of unmarried spouses such as gay or heterosexual common law couples; all that is required is an examination of the specific circumstances of an individual minor. The nature of the relationship of the adopter and the biological parent is one of the facts that should be considered, but is not the only one. In the absence of an expressed statutory exclusion of adoption by same-sex couples, the opinion concludes, the Court should not make a general determination recognizing or nullifying the competence of the appellants to adopt each other's children as single adopters.

In a dissenting opinion, Deputy Chief Justice Matsa held that although the adoption of each of the minors by the biological mother's gay partner might benefit the children's financial interests (in regard to any potential alimony payments and inheritance rights), it has not been proved that it would be in their best interest otherwise. In the Deputy Chief Justice's view, it has not been proved that the

¹ C/A 10280/01 Dr. Tal Yaros-Hakak & Dr. Avital Yaros-Hakak v. Attorney General, The State of Israel, Israel Judicial Authority website, at <http://www.court.gov.il> (decision of Jan. 10, 2005).

² 35 LAWS OF THE STATE OF ISRAEL 360 (5741-1980/81).



change of personal status from a child of a single mother to a child of two single mothers is a positive change under accepted norms of Israeli society. The Justice argued that such a conclusion would have to be based on an examination of the impact of the child's unusual status on his understanding of his situation, his acceptance by society, and his interaction with others.

In rejecting the appeal, Deputy Chief Justice Matsa warned that granting the requested adoptions would result in recognition of the civil status of same-sex families without any basis and in contradiction of the objective purpose of the Adoption of Children Law. A judicial interpretation that would recognize, even indirectly, the status of same-sex couples would establish an arrangement in the area of personal status that has legal consequences beyond the relationship of the litigants themselves. As evidenced by the rejection at the first reading of several bills to allow adoption by same-sex couples, the Justice contended, the issue is very controversial in the eyes of the Israeli public, and the Court should not replace the legislature in determining the legal status of same-sex couples.

In accordance with the majority decision, the case was remanded to the family court.

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