



# WORLD LAW BULLETIN

## May 2005

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Respectfully submitted,

*Walter Gary Sharp, Sr.*

WALTER GARY SHARP, SR.  
Director of Legal Research



**Directorate of Legal Research for**  
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## AFRICA

### NIGERIA – Treason Charged

More than fifty Nigerians, some of them wearing soccer uniforms, have appeared before a federal High Court charged with treason. They are alleged to have represented a banned secessionist group from the southeastern part of Nigeria in a soccer tournament. The group has been incarcerated without trial for more than six months. Prosecutors were seeking the death penalty. Secession is taken seriously in Nigeria, particularly in view of the Biafran civil war of 1967-1970, which involved the southeastern part of the country and the federal government and in which more than one million people died. (*Nigeria: Stiff Penalties for Footballers*, THE ECONOMIST, Apr. 2, 2005, at 54.)  
(Charles Mwalimu, 7-0637, cmwa@loc.gov)

### SOUTH AFRICA – Foreign Resident Tax Guide

In March 2005, the South African Revenue Service published a guide to taxation for foreign residents. The guide clarifies the tax status of workers following the switch from a source-based tax system to a residence-based regime in 2002. Workers who reside in South Africa for more than 549 days in a three-year period will be taxed on their worldwide income. In addition, they will be liable for tax in South Africa if they resided in the country for more than ninety-one days in each of the three years.

The guide also provides that income derived by a foreigner as director's fees from a South African company will be taxed, and all foreigners earning more than R60,000 (about US\$10,300) a year must submit income tax returns to the South African Revenue Service. Foreign workers may claim tax deductions for contributions to retirement funds, medical and legal expenses, and insurance policy premiums. Relocation expenses are exempt from South African tax. (R. Lee, *SARS Releases Guide to Taxation for Foreign Workers*, TAX-NEWS.COM, Mar. 9, 2005, <http://www.lawandtax-news.com/asp/story.asp?storyname=19140>.)  
(Ruth Levush, 7-9847, rlev@loc.gov)

### SUDAN – Draft Constitution Required by Peace Agreement

A number of Sudanese politicians and jurists severely criticized the government and the Popular Front for the drafting of an interim constitution. The draft was required under the peace agreement between the government and the Sudan People's Liberation Army. The critics asked that the Peace Agreement be revised and the drafting of the constitution be open to the political forces and the organizations of civil society and not be limited to the parties to the Agreement (AL-SHARQ AL-AWSAT NEWSPAPER, Internet Edition, Apr. 19, 2005, at <http://www.asharqalawsat.com/sections.asp?section=4&issue=9639>.)  
(Issam Saliba, 7-9840, isal@loc.gov)



## EAST ASIA & PACIFIC

### AUSTRALIA – Federalism Issues Raised Again

Australia's 1901 Constitution establishes a federal structure, with powers allocated either to the federal (Commonwealth) government, to the states and territories, or to be shared by both levels of government. Political developments since 1901 have shifted the balance of power toward the federal government, which collects the major share of tax revenue and reallocates a portion to state and territory governments. Nevertheless, disputes over the balance of power and the demarcation of rights and responsibilities within the federal system have continued to the present. The year 2000 introduction of the Goods and Services Tax (GST), a broad-based federal value-added tax of ten percent on most transactions, was meant to be accompanied by abolition of a range of federal and state excise taxes and stamp duties. However, some state governments, arguing that the federal government's allocation of GST revenues is unfair, have retained some of their excise and business taxes.

On March 23, 2005, the federal Treasurer, Peter Costello, opened the latest round of the federalism dispute by demanding that the state governments eliminate their "inefficient" indirect taxes by July 1, 2006. Several state governments responded by threatening to cancel their previous voluntary cession of their constitutionally guaranteed powers to regulate corporations to the federal government, which they had agreed to in the interests of establishing a uniform system of business law and regulation for the entire country. The dispute generated much discussion of the principles of federalism and the Australian version of federalism, along with calls for compromise and negotiation. On April 20, 2005, the federal Treasurer announced that six of the eight states and territories had agreed to abolish their indirect taxes, leaving New South Wales, Australia's most populous state, and Western Australia at odds with the federal government. The New South Wales Premier was quoted as saying that he could not afford to reduce the state taxes without a fairer share of GST revenue. (*States and Territories Bid To End Tax Now*, ABC NEWS ONLINE [Australian Broadcasting Corporation], Apr. 20, 2005, at <http://www.abc.net.au>; Hon. Peter Costello, Treasurer of the Commonwealth of Australia, Press Releases 2005, Nos. 023, 029, & 033, at <http://www.treasurer.gov.au/>.) (Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

### AUSTRALIA – Passports and Pedophiles

Since 1994, it has been a criminal offense for an Australian citizen to engage in or benefit from sexual activity with children (persons under the age of sixteen) in any foreign country. Recent changes to the Passport Act (The Australian Passports Act 2005, No. 5, 2005) will empower Australian officials to deny passports to citizens considered likely to engage in criminal activity in foreign countries. The new law goes into effect on July 1, 2005, and the Department of Foreign Affairs and Trade is reported to be compiling a list of known pedophiles whose passports will be revoked. Australian state and federal police may submit names of citizens for addition to the list. (Police from various Australian jurisdictions are already cooperating in compiling a national register of convicted sex offenders, and persons on the register are required to inform the police of their plans to travel, whether within Australia or abroad.)

On April 20, 2005, an Australian newspaper reported that privacy concerns had prevented the Australian Federal Police from warning police in foreign countries of the arrival of Australians



suspected of intending to indulge in sexual activity with children. On the same day, the Minister for Justice and Customs, Senator Chris Ellison, described the report as “completely untrue,” saying that Australia’s Privacy Act did not prevent the Australian Federal Police from providing information to foreign law enforcement agencies. (Australian Passports Act 2005, at <http://www.comlaw.gov.au/>; THE AUSTRALIAN, Apr. 19, Apr. 20, & Apr. 21, 2005, at <http://www.theaustralian.news.com.au/>; Minister of Justice and Customs, Media Releases 2005, Apr. 20, 2005, at [http://www.ag.gov.au/www/justice\\_ministerHome.nsf](http://www.ag.gov.au/www/justice_ministerHome.nsf).)  
(Donald R. DeGlopper, 7-9831, ddeg@loc.gov)

### **CHINA – Experimental Public Trials of Discipline Violations**

It was reported in late October 2004, that Jinhua City in Zhejiang Province has pioneered a pilot project to hold public trials of cases involving violations of party and government discipline. The Central Commission for Discipline Inspection, the Chinese Communist Party organ in charge of monitoring and disciplining official misconduct at the national level, is reportedly closely observing the experiment. The project is being conducted in accordance with article 11 of the “Regulations on the Protection of Rights of Members of the Chinese Communist Party” (issued on September 22, 2004), which states that “party members are entitled to attend, with the right of self-defense, the discussions that are held by party organizations to decide on disciplinary measures to be taken against them; other party members may also bear witness or argue on their behalf.”

At the time of the newspaper report, Jinhua City’s discipline inspection and supervision departments at various levels (the respective party and government offices in charge) had publicly tried 203 cases of discipline violation, involving the participation of more than 4,000 persons. Of these cases, fourteen were overturned, penalties were increased in two, sentences were commuted in twelve, and no appeals had been made. The case handling office of the Jinhua City Commission for Discipline Inspection apparently planned to formulate relevant guiding opinions for consideration by the local people’s congress in order to further standardize the procedures for such public trials of disciplinary cases. (*Zhejiang Experiments with Public Trials of Cases of Party, Government Discipline Violations*, HSIANG KANG SHANG PAO (Hong Kong Commercial Daily), Oct. 29, 2004, as translated in *Highlights: PRC Legal Reform, Legislation 29 Oct 04 – 29 Mar 05*, FBIS Report, Mar. 29, 2005, Foreign Broadcast Information Service online subscription database.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **CHINA – Privacy Law Proposed**

A law on the protection of the privacy of personal information has been proposed by a member of China’s National People’s Congress. Drafted by the Institute of Law of the Chinese Academy of Social Sciences in Beijing, its purpose is to protect citizens by curbing infringement of privacy. The legislator, Chen Shu of Guangzhou (Canton) in southern China, has urged that work on the legislation be accelerated, stating that such infringements are now rampant in the country. The law will protect the privacy of cell phone numbers, family addresses, medical histories, and employment information. In addition, there will be provisions on the use of cameras in public areas and photography and video recording without consent of the subjects. The new legislation is likely to be implemented by an Office for Protection of Personal Data. Both civil and criminal penalties are contemplated.



Personal data is collected in China by a variety of institutions, including hospitals, realtors, and telecommunications and Internet service providers, and some of them have sold the information to businesses. The cases have ranged from a criminal enterprise stealing personal information and applying for credit cards in victims' names to companies contacting new mothers to try to sell them baby products and insurance. Some provinces have already enacted local legislation on the subject of data privacy. One southern Chinese region enacted regulations that came into force February 1, 2005, that outlawed the release of personal information by the local officials that issue various permits. (*Lawmaker Urges Legislation to Curb Rampant Privacy Infringement*, XINHUA, Mar. 6, 2005, [http://www.chinadaily.com.cn/english/doc/2005-03/06/content\\_422243.htm](http://www.chinadaily.com.cn/english/doc/2005-03/06/content_422243.htm), *China Contemplates Privacy Legislation*, Mar. 3, 2005, at [http://www.twobirds.com/english/publications/articles/China\\_contemplates\\_privacy\\_legislation.cfm](http://www.twobirds.com/english/publications/articles/China_contemplates_privacy_legislation.cfm).)

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

### CHINA – White Papers on Human Rights and Intellectual Property Rights

The Information Office of the State Council (Cabinet) issued two new white papers in April 2005 concerning human rights and protection of intellectual property. “China’s Progress in Human Rights in 2004,” which was published on April 13, 2005, is reportedly the eighth of its kind issued since 1991. Its seven chapters cover people’s rights to subsistence and development; civil and political rights; judicial guarantees of human rights; economic, social, and cultural rights; equal rights and special protection for ethnic minorities; rights and interests of the disabled; and international exchanges and cooperation in the field of human rights. (*‘Text’ of State Council White Paper on China’s Progress in Human Rights*, Apr. 13, 2005, FBIS online subscription database.)

On April 21, 2005, the Information Office published the white paper “New Progress in China’s Protection of Intellectual Property Rights,” the second of its kind issued since 1994. The document has separate chapters on patent, trademark, and copyright protection, as well as on protection of audio and video products and new plant varieties. Customs protection and judicial protection of intellectual property rights (IPR) are also covered, as are public security organs’ (police) actions to combat IPR infringement. Described among the latter is a one-year national crackdown on criminal infringement on exclusive rights of trademark ownership, launched in November 2004, which solved some major cases involving, for example, production of counterfeit Gillette razor blades, counterfeit Adidas and Nike sports shoes, and counterfeit Cisco electronic goods. (*‘Full Text’ of White Paper on China’s Protection of Intellectual Property Rights*, XINHUA, Apr. 21, 2005, FBIS.)

The conclusion of the IPR white paper admits “there are still IPR infringements in certain areas and fields in China, some of which are very serious.” At a press conference to publicize the white paper, Zhang Qin, deputy commissioner of the State Intellectual Property Office stated that the biggest challenge in protecting IPR was “weak public awareness,” and “to enable those people [who do not understand the concept] to understand IPR in a very short time is a difficult task.” A week earlier, however, U.S. Assistant Secretary of Commerce William Lash stated that piracy in China “is getting worse,” and that piracy of goods and lack of government enforcement of IPR protection was costing annual losses of sixty billion dollars to U.S., European, and Japanese manufacturers. Mr. Lash called for “more vigorous enforcement” and “more people going to jail.” (*AFP: China Says It Faces ‘Difficult Task’ in Improving IPR Protection*, Hong Kong AFP, Apr. 21, 2005, FBIS.)

(Wendy Zeldin, 7-9832, wzeld@loc.gov)



## HONG KONG – Interpretation by National People’s Congress of the Basic Law

After the resignation of Chief Executive (CE) Tung Chee-hwa of the Hong Kong Special Administrative Region (HKSAR) on March 10, 2005, the HKSAR government and opposition lawyers and politicians disagreed over how long the next CE should serve. The government, led by acting CE Donald Tsang, held that a new CE, who is to be selected on July 10, 2005, should serve the remaining two years of Tung’s term, and it proposed amending the HKSAR Chief Executive Election Ordinance to that effect. Article 53, paragraph 2, of the Basic Law, touches on vacancy of the CE position. It states, “In the event that the office of Chief Executive becomes vacant, a new Chief Executive shall be selected within six months in accordance with the provisions of Article 45 of this Law. During the period of vacancy, his or her duties shall be assumed according to the provisions of the proceeding paragraph” [that is, by the Administrative Secretary, the Financial Secretary or Secretary of Justice in this order of precedence; Donald Tsang is the administrative secretary under the Tung administration]. (HKSAR Government Information Centre, *Background Information on Interpretation of Basic Law* (Press Release), <http://www.info.gov.hk/gia/general/200504/06/04060238.htm>; 4 LAWS OF THE PEOPLE’S REPUBLIC OF CHINA (1990-1992) 29 (Beijing, 1993).)

After the opposition in Hong Kong initiated legal challenges to the HKSAR government ruling, contending that it violated the Basic Law (in particular article 46, stipulating a five-year term of office for the CE), the government, concerned about a crisis in leadership if the election were delayed because of a failure to resolve the tenure issue, sought an interpretation of article 53, paragraph 2, from the National People’s Congress Standing Committee (NPCSC) in Beijing. (*Hong Kong Lawyers March in Protest over China Intervention on Leader’s Term*, XINHUA, Apr. 20, 2005, & *Lawmakers To Discuss Basic Law Interpretation*, CHINA DAILY, Apr. 19, 2005, LEXIS/NEXIS, News Library, 90days File.)

The NPCSC issued its interpretation on April 27, 2005. On the basis of article 53, paragraph 2, article 45, paragraph 3, and relevant provisions of Annex I of the Basic Law, the NPCSC determined that

the tenure of the new Chief Executive should be the remaining period of the term of office left by the original Chief Executive. After 2007, if the above-mentioned method for selecting the Chief Executives is amended, and if at that time the office of the Chief Executive becomes vacant, the tenure of the new Chief Executive should be determined in accordance with the amended specific method for selecting the Chief Executive.

(*Xin Faui Su Di* section, [www.law-lib.com](http://www.law-lib.com) website, at <http://www.lawbook.com.cn/law/law/view.asp?id=91801>; *Apparent Text of NPC Interpretation of HKSAR Basic law Article 53, Clause 2*, XINHUA, Apr. 27, 2005, as translated in FBIS.)

While the interpretation ensures that the election of the CE will be carried out on schedule, some critics maintain that a new CE should have a fresh five-year term based on article 46, that an interpretation of the Basic Law was unnecessary, and even that nothing in the wording of the Basic Law would lead to the deduction that a two-year term is warranted. In their view, seeking the interpretation undermined the rule of law, judicial independence, and the autonomy granted to the HKSAR. It was posited that if the winner of the election of a new CE is only to serve the remainder of the CE’s term, the Basic Law should have been amended to that effect by the National People’s Congress. (*SCMP*:



*Commentator Views NPC Ruling on Chief Executive Term Misuse of Power*, Hong Kong SOUTH CHINA MORNING POST, May 3, 2005, FBIS.)

In the aftermath of issuance of the NPCSC interpretation, on April 29<sup>th</sup> the HKSAR legislature passed the Chief Executive Election Ordinance amendment bill and “reached an uneasy agreement” that it be put to a vote on May 25. Pro-democracy legislators wanted wording revised to ensure that the new term-remainder requirement could be changed after 2007 (the bill does not address whether the restriction would also apply to post-2007 mid-term elections), but the government would not make the change. (*SCMP: Legislators Complete Scrutiny of Amendment to CE Election Ordinance*, SOUTH CHINA MORNING POST, Apr. 5, 2005, & *China Daily: Chief Executive Election Ordinance Set for 2<sup>nd</sup> LegCo Reading*, CHINA DAILY, Apr. 30, 2005, both via FBIS.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### **JAPAN– Adoption Agencies Should Be Regulated**

Currently there is no effective regulation of adoption agencies in Japan. Under the Social Welfare Law (Law No. 45 of 1951), an adoption agency must report its establishment to the local government. Under the Child Welfare Law (Law No. 164 of 1947), an adoption agency is prohibited from being for profit. However, neither law provides sanctions against violations of these provisions. According to a recent article in a major Japanese newspaper, several dozen babies have been taken from Japan for adoption each year. On March 15, 2005, the Welfare and Labor Committee of the House of Councillors discussed the matter. Hidehisa Otsuji, Minister of Health, Labour, and Welfare, stated that his Ministry will consider tighter regulations and formulate guidelines for adoption agencies. (*Kosei rodo iin kaigiroku* [Welfare and Labor Committee, House of Councillors, Minutes], No. 3 of the 162d Diet session (Mar. 15, 2005).)  
(Sayuri Umeda, 7-0075, sume@loc.gov)

### **JAPAN – Constitutionality of Nationality Law**

Under the Japanese Nationality Law (Law No. 147 of 1950, as amended), Japanese nationality is acquired based on lineage. If a child’s parents are not married and the mother is not a Japanese national, a child cannot obtain Japanese nationality unless the father acknowledges the child before the child’s birth (art. 2, Nationality Law). However, such a child under twenty years of age who has acquired the status of a legitimate child by reason of the marriage of the father and mother and their acknowledgement of the child may acquire Japanese nationality by notifying the Minister of Justice instead of through naturalization procedures (art. 3, Nationality Law). Children legitimated by Japanese fathers who have not married non-Japanese mothers filed lawsuits against the Minister of Justice, claiming that article 3 is unconstitutional. On April 13, 2005, the Tokyo District Court stated that the purpose of article 3 was to require some nexus with Japan for children one of whose parents is not Japanese, in order to provide the child with a nationality. The court decided that article 3 treated illegitimate children unequally, compared with legitimate children. The April 13 ruling may have a significant impact on similar cases. (*Haha ga hijin no hichakushutsu 7saiji ni nihon kokuseki mitomeru* [Japan’s Nationality Was Awarded for Seven-Year-Old Child Whose Mother Is Filipino], YOMIURI SHIMBUN, Apr. 13, 2005, <http://www.yomiuri.co.jp/main/news/20050413i111.htm>.)  
(Sayuri Umeda, 7-0075, sume@loc.gov)



**KOREA, SOUTH – Parents Partly Responsible in Accidents Involving Infants**

The High Court of Seoul decided that parents are fifteen percent responsible if their child's death results from an auto accident that occurs while the child is being carried in the vehicle's backseat without being in an infant car seat. In its decision, the Court stated that under article 48-2, paragraphs 1 and 2, of the Road Traffic Law it is mandatory that an infant be in a car seat when seated in the front seat of a car. When an infant travels in the backseat, it is not mandatory that he or she be in an infant car seat. If, however, the parents are involved in an accident while driving with an infant in the backseat who is not in a car seat and if they could have reduced the severity of the injury sustained by the infant had a car seat been used, that fact could be a basis for offsetting damages payable by the insurance company. (*Yua yong pohojanggu öpsi tuitchwasök e taewuötamyön pumodo ilbu chaegim* [Parents Partly Responsible If They Put Their Baby in the Backseat Without an Infant Car Seat], POMNYUL SINMUN, Mar. 18, 2005, <http://www.lawtimes.co.kr/LawNews/News/NewsContents.aspx?kind=&serial=15649>.)

(Jung Hwa Lee & Sayuri Umeda, 7-0075, sume@loc.gov)

**KOREA, SOUTH – Retirement Allowance Included in Salary Not Effective**

The Supreme Court of Korea decided that an employment contract that allowed an employer to pay a retirement allowance to the employee by monthly installments included in the salary is invalid as of March 11, 2005. The Court stated that a retirement allowance, by definition, comes into existence when the employment relationship terminates. Even if the employer and employee enter into an agreement that allows such an allowance to be included in the salary and the employer actually paid out a certain amount of money with the salary as such an allowance, it is not an effective payment of retirement allowance pursuant to article 34, paragraph 1, of the Labor Standards Act, according to the Court's ruling. (*Imgum e pohamsikyu chigup han toejikum un muhyo* [Retirement Allowance Included and Paid with Salary Is Invalid], POMNYUL SINMUN, Mar. 18, 2005, <http://www.lawtimes.co.kr/LawNews/News/NewsContents.aspx?kind=&serial=15648>.)

(Jung Hwa Lee & Sayuri Umeda, 7-0075, sume@loc.gov)

**MALAYSIA – “Moral Policing” Guidelines Requested**

The Parliamentary Human Rights Caucus of Malaysia has expressed concern about the impact of the introduction of religious laws at the municipal level in the country. These local laws are designed to regulate behavior of Muslim and non-Muslim citizens, and the legislators contend that they have become too intrusive in people's private lives. The group stopped short of calling for a repeal of legislation, as most of the laws involved were under local jurisdiction, according to the chairman of the caucus, Datuk Seri Nazri Aziz. He requested that the Prime Minister's Department draft guidelines for religious enforcement officers on procedures to follow in enforcing religious law. The code of conduct for such officers must ensure that human rights and individual privacy are not infringed. Furthermore, he recommended that officers be “gender sensitive” and that female officers be included. The caucus had previously met with a non-governmental group, the Citizens Against Moral Policing, which hopes to abolish religious and other local statutes that regulate private morality and which is following a number of cases of abuses by enforcement officers. (*Caucus Against Moral Policing*, NEW STRAITS TIMES, Apr. 5, 2005, at 4, LEXIS/NEXIS, Asiapc Library, Curnws File.)

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



## NEW ZEALAND – Energy Efficiency

Since signing the Kyoto Protocol dealing with greenhouse gases, New Zealand has enacted a Climate Change Response Act (2000 N.Z. STAT. No. 40.). Under this law and related enactments, a carbon tax will be introduced in New Zealand in 2007. To assist certain energy intensive businesses in adopting energy efficiency measures, the government has announced the creation of an aid package. Most of the money earmarked for this package will be spent on grants to target industries. These small- and medium-sized industries include wood processors, food processors, pulp and paper producers, fisheries, glasshouse operators, and irrigated dairies. It is estimated that about ten percent of the small- and medium-sized enterprises in New Zealand can be classified as energy intensive. In announcing the package, the government explained that it was addressing adjustment needs in anticipation of the imposition of the carbon tax. (Hon Pete Hodgson, *New Package To Drive Efficiency and Innovation*, Apr. 15, 2005, at [www.beehive.govt.nz](http://www.beehive.govt.nz), the official website of the New Zealand government, <http://www.beehive.govt.nz/ViewDocument.aspx?DocumentID=22724>.) (Stephen Clarke, 7-7121, [scla@loc.gov](mailto:scla@loc.gov))

## SINGAPORE – Bill on Biological Agents and Toxins

In order to promote safety in biomedical laboratories and ensure that Singapore continues to attract high-level investments for research, the Ministry of Health recently proposed a Biological Agents and Toxins Act. The Act would impose tough new penalties, including life imprisonment, for abuse of safety regulations governing biological agents and toxins. Failure to obtain government approval to possess or transfer such materials on the part of operators of laboratories that handle such material, for example, would entail fines and/or imprisonment. A fine of S\$1,000,000 (about US\$600,000) and/or life imprisonment, the harshest punishment, would be imposed on anyone found using or possessing a biological agent for biological warfare or “non-peaceful purposes” (article 5(2)a). According to the Ministry’s Director of Medical Services, Professor K. Satku, “there has been an increase in the number of institutions working with high-risk biological agents and toxins in Singapore.” Feedback on the draft bill is to be provided to the Ministry of Health by May 14, 2005. (*Stiff Penalties Ensure Lab Safety*, UPI, Apr. 12, 2005, LEXIS/NEXIS, News Library, 90days File; Singapore Ministry of Public Health, *Public Consultation on the Proposed Biological Agents and Toxins Act*, Press Release, Apr. 11, 2005, [http://www.moh.gov.sg/corp/about/newsroom/press\\_releases/details.do?id=31227973](http://www.moh.gov.sg/corp/about/newsroom/press_releases/details.do?id=31227973); *Biological Agents and Toxins Bill*, Singapore Ministry of Health website, [http://www.moh.gov.sg/cmaweb/attachments/press/36164co568N5/Draft\\_BATA.pdf](http://www.moh.gov.sg/cmaweb/attachments/press/36164co568N5/Draft_BATA.pdf).) (Wendy Zeldin, 7-9832, [wzel@loc.gov](mailto:wzel@loc.gov))

## TAIWAN – Amendments to Tobacco Laws Drafted

The Executive Yuan (Cabinet) passed draft amendments to the Tobacco Control Act and the Tobacco and Liquor Tax Act on March 2, 2005. The revisions are part of a renewed effort to counter and prevent the health risks associated with tobacco and will double the “health tax” on tobacco products. The tax income will help fund Taiwan’s cash-strapped national health insurance program. If approved by the Legislative Yuan, the price of a pack of cigarettes will increase by at least NT\$5 (about US\$0.16); cigarette taxes would rise from NT\$5 to NT\$10 per pack.

The tax increase would add an estimated NT\$6 billion to Taiwan’s annual tax revenues. There are an estimated 4.89 million smokers in Taiwan, which spends about NT\$30 billion a year on



smoking-related illnesses that cost the lives of an estimated 18,000 people annually. To show Taiwan's commitment to public health issues, on January 14, 2005, the legislature ratified the Framework Convention on Tobacco Control (whose entry into force was February 27, 2005), even though Taiwan is not a member of the World Health Organization, which implemented the Convention. (*Cabinet Decides on Higher Tax for Tobacco Products*, Mar. 3, 2005, at 10, TAIPEI TIMES, available at <http://www.taipeitimes.com/News/biz/archives/2005/03/03/2003225322>.) The United States signed the Convention on May 20, 2004. (World Health Organization, *Updated Status of the WHO Framework Convention on Tobacco Control*, at <http://www.who.int/tobacco/framework/countrylist/en> (last visited Apr. 26, 2005).)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### TAIWAN – Draft Technology Protection Legislation

On April 13, 2005, the Executive Yuan (Cabinet) of the Republic of China (on Taiwan) passed draft technology protection legislation that would require approval by the National Science Council, a Cabinet ministry, for the transfer or export of advanced technology by individuals or companies to mainland China. Violation of the law would incur fines of up to NT30,000,000 (about US\$955,262), three times the amount reportedly set in draft legislation proposed three years ago but never adopted. Sensitive technology might include production processes, data, designs, or systems in electronics, biotechnology, agriculture, or aeronautics. Under the new law, agricultural products unique to Taiwan could for the first time be subject to technology transfer limits. Passage of the bill is uncertain, however, because the opposition, which has a legislative majority, has been seeking to wrest the initiative from the government in re-establishing dialogue with the mainland, through visits to Beijing by some of its key leaders.

The bill is described as Taiwan's "latest response" to China's recently enacted anti-secession law; it would add another layer of bureaucracy to Taiwanese corporate activity in mainland China. At present Taiwan's Investment Commission under the Ministry of Economic Affairs approves investments of US\$50,000,000 or above and has the power to fine violators up to NT25,000,000 (about US\$796,052). (Kathrin Hille & Andrew Yeh, *Taipei Technology Bill Could Hit China Investment*, FINANCIAL TIMES, Apr. 14, 2005, at 11, NEXIS, News Library, 90days File.)  
(Wendy Zeldin, 7-9832, wzeld@loc.gov)

### VIETNAM – Thrift Bill To Go To Legislature

Vietnam's government is preparing to submit to the Standing Committee of the National Assembly a draft law on limiting wasteful government spending. The Thrift Practice and Anti-Waste Bill is designed to address the squandering of public assets. Recently the Finance Minister, Nguyen Sinh Hung, spoke out against excess use of state resources such as the use of hundreds of government vehicles to attend festivals. In addition, there are ministerial regulations defining the degree of luxuriousness of vehicles that officials at each level of the government are permitted to purchase for official use. The Finance Minister stated that many state vehicles exceed these luxury standards. Sanctions for those who waste public assets include criticism, fines, and criminal proceedings. (*Finance Minister Lambastes Squanderers*, VIETNAM-NET BRIDGE, Apr. 22, 2005, <http://english.vietnamnet.vn/politics/2005/04/413191/>.)  
(Constance A. Johnson, 7-9829, cojo@loc.gov)



## EUROPE

### AZERBAIJAN – Mortgage Law Adopted

On April 15, 2005, President Ilhom Aliev of Azerbaijan signed the nation's first Law on Mortgages. The very general Law allows private banks to issue individual loans secured by real estate. It provides for extra guarantees for banks and establishes mandatory forty-percent down payments and extra pledges to be made by the citizens applying for the loans. The Law does not define the institution responsible for registration of mortgage deeds and does not determine who will own the land on which the mortgaged property is located. It is expected that these issues will be regulated in the future by presidential decrees. (*President Signs the Mortgage Law*, TURAN –AZERI NEWS SERVICE, Apr. 15, 2005, at <http://www.turaninfo.com/>.)  
(Peter Roudik, 7-9861, [prou@loc.gov](mailto:prou@loc.gov))

### BELARUS – New Marking of Weapons Required

On April 19, 2005, the legislature of Belarus adopted amendments to the Law on Weapons that allow import to the territory of Belarus of only marked firearms. The new Law interprets the definition of “marking” as a combination of conventional signs put by a manufacturer on the weapon so that one can determine the country of origin and its individual number. The Law requires marking of all main parts of a firearm. The requirement applies to firearms that are manufactured, imported, or removed from the state reserve for civil use. These amendments will bring Belarus's legislation in line with the United Nations Protocol Against Illicit Manufacturing of and Trafficking in Firearms. (*Belarus Changes Weapons Legislation*, BELARUS TELEGRAPH AGENCY (BELTA), Apr. 19, 2004, <http://belta.press.net.by/>.)  
(Peter Roudik, 7-9861, [prou@loc.gov](mailto:prou@loc.gov))

### BELGIUM – Law on Protection of Journalists' Sources

On March 17, 2005, the Chamber of Representatives adopted the Law on the Protection of Journalists' Sources. Journalists and their professional organizations had been pressing for a legal framework to protect their sources for at least the last ten years.

The Law defines a journalist as anyone who is working independently or as an employee, as well as every legal entity, who regularly and directly contributes to the gathering, editing, production, or distribution of information for the public, regardless of the media used. Editorial staff also benefit from the Law's protection. Such staff comprise anyone who by the exercise of his function may be in a position to have knowledge of information that may lead to the identification of a source, regardless of whether this is through the gathering, editorial treatment, production, or distribution of this information.

Except in specific cases listed by the Law, journalists and editorial staff cannot be compelled to reveal their information sources or to communicate data, recordings, or documents that may reveal the identity of their informants, the nature or origin of their information, the identity of an author of a text or audiovisual production, the content of information, or the documents themselves if they may lead to the identification of the informant.



A disclosure order is only in accordance with the Law if there are no alternative means of access, and the information in the possession of the journalist or editorial staff is crucial in the prevention of crimes that constitute a serious threat to the physical integrity of one or more persons, including crimes of terrorism. Investigative measures such as search, seizure, and wiretapping cannot be used to determine journalists' information sources unless the information may prevent a crime as described above.

Finally, journalists and editorial staff cannot be prosecuted for illegal possession of documents that have been stolen or obtained by criminal means when they are exercising their right to keep silent about their sources. (Paul Van den Bulk, *Une nouvelle loi assurant la protection des sources des journalistes*, Mar. 29, 2005, available at DroitBelge.Net, [http://www.droitbelge.be/actualites\\_print.asp?id=230](http://www.droitbelge.be/actualites_print.asp?id=230); for the text of the law, see House of Representatives of Belgium website, at <http://www.lachambre.be/FLWB/pdf/51/0024/51K0024018.pdf>.) (Nicole Atwill, 7-2832, natw@loc.gov)

### **DENMARK – Court Rejects Claim Autism Developed From Vaccination**

The Supreme Court of Denmark ruled on April 19, 2005, that a fifteen-year-old girl did not develop an autistic disorder following injection with the measles-mumps-rubella vaccine at the age of two. The girl's parents decided to take the matter to the courts after Denmark's Medico-Legal Council found that the girl was healthy prior to her vaccination. (*Danish Court Denies Vaccine-Autism Link*, THE WASHINGTON POST, Apr. 19, 2005, available at <http://www.washingtonpost.com/wp-dyn/world/europe/westerneurope/denmark/>.) (Linda Forslund, 7-9856, lifo@loc.gov)

### **ENGLAND AND WALES – Wife Found Not Guilty of Manslaughter in Husband's Suicide**

A wife who failed to summon medical assistance or provide help for her husband when he took an overdose of pills that resulted in his death has been found not guilty of manslaughter. The husband suffered from the disease myalgic encephalomyelitis (also known as chronic fatigue syndrome) and had made two previous suicide attempts, for which the accused had summoned medical assistance. In the last instance, the accused waited until several hours after her husband was dead before calling an ambulance. The judge instructed the jury that if they found the husband to be of sound mind and with a settled and determined intention to end his own life, they must not find the accused guilty. (Ian Herbert, *Wife Acquitted of Failing To Prevent Husband's Suicide*, THE INDEPENDENT (London) Apr. 28, 2005, at <http://news.independent.co.uk/uk/legal/story.jsp?story=633712>.) (Clare Feikert, 7-5262, cfei@loc.gov)

### **FINLAND – Military Assistance in Event of Terrorist Attack**

On October 8, 2004, the Finnish government presented a government bill to Parliament proposing that the Ministry of the Interior be able to request military aid from the Department of Defense in case of a terrorist threat (11 W.L.B. 2004). The Constitutional Law Committee of the Parliament has been debating whether the proposed law should be enacted, and if so, whether it should be enacted as a normal law or if it needs to be enacted as part of the Constitution. The Left Alliance and the Green League believe that the proposed law would infringe too much on individual



constitutional and human rights to be enacted in the traditional manner and oppose the proposed law's being made part of the Constitution. They would rather have the government bill rejected in its entirety. A majority of the Committee's members support the government bill and the view that it should be enacted in the traditional manner with certain exceptions. The Administration Committee will now have to define, in more exact terms, what is meant by "military measures," when assistance from the military can be given and requested, and when it is reasonable to use it. (Jan-Anders Ekström, *RiksdagenTvistar om Militär Hjälp*, HUFVUDSTADSBLADET, Apr. 13, 2005, available at <http://www.hbl.fi/>.)

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

### FRANCE – “End of Life” Law

Law 2005-370 of April 22, 2005, on Patients' Rights and End of Life, allows a doctor to either suspend or not undertake medical acts when “such acts appear useless, disproportionate or serve no other purpose than maintaining life artificially.” However, the Law does not allow doctors to actively end a patient's life, even at the patient's request.

In addition, a terminally ill patient has the right to die in dignity and to ask for treatment to be stopped. The doctor must respect the patient's wishes after following a procedure aimed at ensuring the certainty of such wishes, a procedure that includes the patient and a panel of doctors. A note of the wishes and a statement regarding the verification procedure must be entered in the patient's file. The Law also allows doctors to administer drugs to ease suffering even if they may shorten life, but requires them to first notify the patient, the patient's family, or in default of that a person close to the patient, and to make a note of the procedure in the patient's medical file.

Patients may express their wishes in a medical directive to be followed in case they become unconscious. The directive must have been established within three years of being implemented. The Law further provides that when a patient is unconscious, the limiting or stopping of a treatment, when such action may endanger his or her life, cannot take place without following a collegial procedure as defined by the Medical Ethics Code and without consulting the family, the representative named by the patient, if any, or in default of that a person close to the patient and the patient's medical directive, if any. The decision to limit or stop treatment and its grounds will be recorded in the patient's medical file. (Law 2005-370, Apr. 22, 2005, JOURNAL OFFICIEL (Official Gazette of France), Apr. 23, 2005, available at <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=SANX0407815L>.)

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

### FRANCE – Same-Sex Marriage Voided

On April 19, 2005, the Court of Appeal of Bordeaux declared null and void the marriage of two homosexuals celebrated on June 5, 2004. The Court referred to article 75 of the Civil Code, which provides that the civil status official in charge of celebrating the marriage “will receive from each party, one after the other, the declaration that they wish to take each other for husband and wife.” The Court found that the Civil Code requires, without any possible ambiguity, that the declarations be received from two persons of different sex. The Court further states that the sex difference constitutes, under French internal law, a condition of existence of a marriage.

The Court also referred to the European Convention on Human Rights, which guarantees that “men and women of marriageable age have the right to marry and found a family according to the



national laws governing the exercise of this right.” This article, according to the Court, does not impose a requirement that same-sex marriages must be accepted. The couple will appeal the judgment to the *Cour de Cassation* (France’s highest judicial court) and if necessary to the European Court of Human Rights. (*L’Annulation du Mariage Gay Célébré à Bègles Confirmée en Appel*, LEMONDE.FR, Apr. 19, 2005, at <http://www.lemonde.fr/web/article/0,1-0,36-640802,0.html>.) (Nicole Atwill, 7-2832, natw@loc.gov)

### FRANCE – Work Week Reform

On March 22, 2005, Parliament adopted Law 2005-296 reforming the thirty-five-hour legal work week. The reform allows greater flexibility with no change to the length of the legal work week, which remains thirty-five hours. It permits employers to negotiate agreements with their employees to increase the number of overtime hours as long as they respect the work hour limits established by European Union directives. The new law provides for:

- The creation of a “chosen working time” system enabling employees, in agreement with their employers, to work beyond the annual overtime limit, which has been increased to 220 hours;
- The modification of rules governing time-saving accounts, which allow employees to save up overtime and compensatory days accumulated beyond the standard thirty-five hours of the work week. Employees will be able to sell back these days or use them for improved pension rights.
- The extension for three additional years of a temporary measure enabling companies with fewer than twenty employees to pay overtime at just ten percent more than the basic salary rate.

The effect of the reform will be gradual, as many companies are already locked into agreements with unions and these agreements will have to be renegotiated. (Law 2005-296, Mar. 31, 2005, JOURNAL OFFICIEL, Apr. 1, 2005, at [http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?Numjo=MRTX0508\\_094L](http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?Numjo=MRTX0508_094L).) (Nicole Atwill, 7-2832, natw@loc.gov)

### GEORGIA – Business Grants to Government Allowed

On April 14, 2005, the Georgian legislature amended the Law on Grants and expanded the list of grant givers. In addition to foreign organizations and private foundations, new amendments make it possible for the state to receive funds from resident and non-resident corporations if they have a “transparent structure.” Opponents of this new provision expressed their concern that the amendment may be used by government bodies to demand payments from businesses. (*Daily Report*, STERKA NEWS AGENCY, Apr. 15, 2005, at <http://www.site.securities.co.uk/>.) (Peter Roudik, 7-9861, prou@loc.gov)

### GERMANY – International Broadcasting Service

The Act on the Deutsche Welle, the German international broadcasting service, was revised on December 15, 2004. An updated version of the Act was promulgated on January 11, 2005 (BUNDESGESETZBLATT 2005 I at 90). The Deutsche Welle is somewhat comparable to the Voice of



America, in that it is a multimedia service that broadcasts news and cultural programs in many foreign countries.

The main purpose of the reform of Deutsche Welle is to provide for more transparency in the decisions on programming. The Service must propose a four-year program that must be discussed in Parliament and that also must be disclosed to the public. Until now, the Service has broadcast mostly in German and English, but it is considering providing programs in Arabic, Spanish, and Chinese. (FRANKFURTER ALLGEMEINE ZEITUNG, Mar. 18, 2005, at 12.) (Edith Palmer, 7-9860, epal@loc.gov)

### **GREECE – Ratification of the European Constitution**

On April 19, 2005, the Greek Parliament ratified the Treaty Establishing a Constitution for Europe. Of the 285 Members who were present during the voting, 268 voted in favor and 17 against ratification. The Communist Party had called for holding a referendum on the issue rather than following regular parliamentary procedures. (Greek Parliament website, at <http://www.parliament.gr/home/details.asp?textID=9000842>.) The Constitution has been ratified thus far by the following Member States: Hungary, Ireland, Lithuania, Slovenia, and Spain. (*Europa: A Constitution for Europe*, EUROPA (portal to the European Union), at [http://www.europa.eu.int/constitution/ratification\\_en.htm](http://www.europa.eu.int/constitution/ratification_en.htm).) (Theresa Papademetriou, 7-9857, tpap@loc.gov).

### **LATVIA – Measures Against Money Laundering**

On April 13, 2005, the Government of Latvia adopted additional measures aimed at stepping up the fight against laundering proceeds from crime through Latvia's banks. Under these provisions, authorities will have the right to revoke a bank's license if the bank does not observe requirements of anti-money laundering laws and if the bank's conduct threatens its stability, solvency, or reputation. State security services and law enforcement institutions will have the right to gain access to bank account data on a prosecutor's orders, before a criminal investigation is opened. Clients will be obliged to submit information requested by banks, including information and documents about real recipients. Bank clients who provide false information will face criminal liability. (*Anti-Money Laundering Measures To Be Stepped Up*, BNS – BALTIC NEWS SERVICE, Apr. 13, 2005, at <http://www.securities.com/>.) (Peter Roudik, 7-9861, prou@loc.gov)

### **LATVIA – Voting by Mail Introduced**

In order to eliminate contradictions between European Union legislation and norms established by the Latvian Constitution regarding election procedures, on April 20, 2005, the Parliament of Latvia adopted amendments to the Parliament Election Law. The problem arose because the nation's Central Election Commission had concluded that the three-day preliminary voting planned for elections for the European Parliament and local councils was not possible, as it would contradict the Latvian Constitution, which states that the Latvian Parliament is to be elected on the first Saturday in October and does not foresee that elections will last more than one day. In order to resolve the issue without amending the Constitution, voting by mail was introduced. It is expected that this new procedure can be tested during the next parliamentary elections in 2006. (*Next Parliamentary Elections Will Be Conducted Under New Rules*, BNS – BALTIC NEWS SERVICE, Apr. 20, 2005, at <http://www.securities.com/>.) (Peter Roudik, 7-9861, prou@loc.gov)



### **RUSSIA – Cossacks To Be Recruited for Police and Army Service**

President Vladimir Putin issued a decree that will institutionalize and broaden the practice of recruiting Cossacks for service in the military and police. The decree recognizes Cossack organizations listed in the State Registry of Cossacks as noncommercial partnerships, from which the authorities are able to procure services. These services will include assistance in handling emergency situations, firefighting, patrolling the streets, fighting poaching, teaching basic military education in public schools and military training centers, and other peacetime activities. The decree allows Cossacks to carry arms if their group is listed in the State Registry, even if they are not necessarily serving in the armed forces. Cossack organizations will be able to select and send their members to serve in designated Cossack units in the Defense Ministry, Federal Border Service, and Interior Troops.

Current day Cossacks are descendants of warrior farmers that settled in Russia's South who have defended Russia's borders since the 16<sup>th</sup> century. At present, Cossack groups organize vigilante patrols to help police and volunteer for military and police service; however, these activities have been on an ad-hoc basis. Until a relevant law is adopted by the legislature, the decree will serve as the legal basis for the ongoing practice. (ROSSIISKAIA GAZETA, Apr. 18, 2005, at <http://www.rg.ru/>.) (Peter Roudik, 7-9861, [prou@loc.gov](mailto:prou@loc.gov))

### **RUSSIA – Court Awards Compensation to Policeman Wounded in Chechnya**

On April 14, 2005, the federal court in Russia's Far Eastern Khabarovsk territory established a legal precedent, awarding a retired police officer compensation for damage done to his health during his tour of duty in Chechnya. The compensation, in the amount of US\$10,000, will be paid by the Territorial Internal Affairs Directorate rather than the Chechen rebels who are deemed directly responsible for the officer's health problems. After the court of first jurisdiction upheld the officer's suit, the Territorial Internal Affairs Directorate appealed the decision, referring to the law that stipulates that the one who inflicts damage is the one who pays compensation. The Territorial Court judges, however, confirmed the initial ruling. The procedure for paying compensation by government agencies to former staff members is not yet determined, but other wounded Chechen war veterans, encouraged by this decision, are filing court cases against their former employers. (*Court Awards Compensation for Unprecedented Ruling*, BBC MONITORING, Apr. 14, 2005, at <http://site.securities.com/>.) (Peter Roudik, 7-9861, [prou@loc.gov](mailto:prou@loc.gov))

### **SWEDEN – Penal Code Updated To Protect Against Exploitation**

The Swedish legislation on "gross violation of a woman's integrity" (*kvinnofridslagen*) defines prostitution as a form of male violence against women and children. Since January 1999, it has been a criminal offense in Sweden to purchase, or attempt to purchase, sexual services. The women and children who are victims of prostitution and trafficking do not risk any criminal charges.

On April 1, 2005, Sweden amended the Penal Code to offer further protection against exploitation. A new section was added to chapter 6, section 9, criminalizing the purchase of a sexual act from a child. The crime is punishable by a fine or imprisonment for up to two years. Section 11 of chapter 6, which prohibits the purchase of sexual services, was amended at the same time to include cases where payment has been promised or made by a third party.



The Swedish government is working on a National Action Program for combating the trafficking of human beings. The program will be composed of two plans:

1. A National Action Plan to combat prostitution and trafficking in human beings for sexual exploitation, especially women and children.
2. A National Action Plan to combat trafficking in human beings for the purpose of forced labor, removal of organs, and other forms of exploitation.

The proposal will be completed by the government in the fall of 2005. (Ministry of Industry, Employment and Communications, *Prostitution and Trafficking in Human Beings*, Fact Sheet, Apr. 2005, available at <http://www.regeringen.se/>.)

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

### **UKRAINE – Authority of Postal Service Expanded**

On April 19, 2005, after strong government lobbying, the National Bank of Ukraine granted the right to perform international money transfer operations to the state-owned Ukrainian postal agency. This decision undermines the previously existing monopoly of Western Union on the transfer of hard currency resources to and from Ukraine, because the postal commissions for these operations are almost three times less than those of Western Union. Even though the government expects that this move will allow the postal service to increase profits and expand payments to the state budget, the financial plan of the postal agency recently approved by the government does not require the postal service to transfer its profits from money transfer operations into the state budget. Instead, this money will be used to double the wages of postal employees. Simultaneously, the Antimonopoly Committee of Ukraine has closed its case against the Western Union company, following the company's official announcement of implementation of the Committee's recommendation to lower its commissions on money transfers from West European countries. (*Ukrposhta Begins Electronic Money Transfer Exchanges*, UKRAINIAN NEWS ON-LINE, Apr. 20, 2005, at [http://site.securities.com.](http://site.securities.com/))

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

### **UNITED KINGDOM – Access to Children Granted to Same-Sex Partner**

In what is seen as a landmark case for the rights of same-sex couples, the Court of Appeal has reversed a ruling denying a shared residency order to the biological children of a woman's former same-sex partner. A joint residency order is currently the only way the non-biological parent of children raised by same-sex partners can be granted parental responsibility if the relationship ends. It essentially provides that both individuals share parental responsibility. In this instance, the children were conceived by artificial insemination when the two women were partners in a relationship. The women parted, the biological mother was granted sole custody of the children, and the former partner was denied access. The Court of Appeal reversed this ruling and allowed joint residency of the children because, while the applicant had considerable contact with the children, it was reported to the court that the biological mother was attempting to frustrate this and marginalize her former partner. The Court ruled that the logical way to prevent this marginalization was to grant the shared residence order. Lord Justice Thorpe stated in his judgment, "what has been said about the importance of fathers is of equal application in same-sex parents." (Re: G (children) (shared residence order: parental responsibility) [2005] All ER (D) 25 Apr. 2005.)

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



## NEAR EAST

### ISRAEL – Extradition to United States Approved

On April 19, 2005, the Jerusalem district court approved the Attorney General's request to declare Ze'ev Rosenstein "extraditable" in order to allow his extradition to the United States to stand trial for allegedly smuggling at least 850,000 Ecstasy pills into the United States. It has been reported that

[t]he 50-year-old- reputed crime boss and underworld kingpin, who had eluded Israeli law enforcement for decades was arrested in November following a joint Israeli-US investigation... The US formally submitted a request to extradite Rosenstein in December, after a grand jury in Florida issued an indictment against him on drug charges.

(Etgar Lefkovits, *Court Okays Extradition of Rosenstein*, THE JERUSALEM POST, Apr. 19, 2005, <http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/ShowFull&cid=1113877271307>.)

Under the Extradition Law, 5714-1954, as amended, a court declaration that a requested person is "extraditable" may be made when there is a conviction in the foreign country for an "extraditable offense" as defined by the Law, or where there is sufficient evidence to indict the person for the offense in Israel, as the court found in the case at hand. Under the 1999 and 2001 amendments to the Law following the Sheinbein extradition case, a person who committed an extraditable offense while an Israeli citizen can be extradited only for the purpose of adjudication in the requested country and only if that country has agreed, as the United States has in this case, to return the person to Israel for punishment. (Extradition Law, 5714-1954, Nevo legal database, <http://www.nevo.co.il/>.) (Ruth Levush, 7-9847, rlev@loc.gov)

### ISRAEL – Forfeiture of Profits Derived from Publications Dealing with Offenses

On March 23, 2005, the Knesset (Parliament) passed the Forfeiture of Profits Dealing with Offenses Law, 5765-2005. The Law authorizes district courts, based on a request by the Government Attorney's office, to order the forfeiture of monetary, non-monetary, and expected profits derived by a convicted felon or by other persons from certain publications. The works in question are those written largely about a criminal offense for which one may be convicted and punished with at least seven years of imprisonment. The Law provides a statute of limitations of five years from the day of conviction or three years from the termination of actual imprisonment, whichever is later, and of five years from the day of publication.

The Law recognizes the right of victims, including family members of deceased victims, to express their position to the court. Victims may be compensated by the State Treasury based on a decision rendered by a body appointed by the Minister of the Treasury for an amount not exceeding the amount forfeited. The Law excludes items that are reasonably needed by the property owner and his family from those that can be forfeited. (Forfeiture of Profits Dealing with Offenses Law, 5765-2005 and Explanatory Notes for the bill, <http://www.knesset.gov/> (last visited Apr. 18, 2005).) (Ruth Levush, 7-9847, rlev@loc.gov)



## IRAN – Abortion Bill

The Islamic House of Representatives passed a draft bill under the title “Medical Abortion,” with a vote of 127 out of a possible 217. None of the thirteen female representatives voted for the bill. The House measure has to be finally approved by the Council of Guardian. Currently, under the Islamic Criminal Law of Iran, abortion is punishable by *dia* (blood money), the amount of which is determined by the length of the pregnancy. The only exception is when the life of the pregnant woman is in danger, in which case there will be no punishment.

The draft bill provides that when three specialized physicians and the Forensic Office certify that the fetus is less than four months and- ten-day old, is malformed, and if allowed to be born would create intolerable hardship for the parents or the child, abortion will be allowed upon the consent of both wife and husband, with no punishment for the physician performing abortion. (HAMSHAHRI DAILY, Apr. 13, 2005, at 6, available at <http://www.hamshahri.org/hamnews/1384/840124/news/ejtem.htm>.)

(Gholam Vafai, 7-9845, gvaf@loc.gov)

## KUWAIT – Women’s Right To Vote

On April 19, 2005, the Kuwaiti Parliament passed in a first reading a law giving Kuwaiti women the right to vote and be candidates in the upcoming election for the Municipality Council, expected to be held later this year. The Kuwaiti News Agency reported that the Parliament approved the amendment of article 3 of the Kuwait Municipal Council Law, which had restricted participation in the election to men. A second reading of the law on May 3, 2005 was not favorable, but the law passed on May 16, with a clause attached that requires future female politicians and voters to abide by Islamic law. (AL-JAZEERA NETWORK, Internet Edition, Apr. 19, 2005, at <http://www.aljazeera.net/NR/exeres/2798469E-8290-4C1A-9560-51AEBFCB09BA.htm>, AL-SHARQ AL-AWSAT NEWSPAPER, Internet Edition, May 4, 2005, at <http://www.asharqalawsat.com/print/default.asp?did=id297203>; *World in Brief*, THE WASHINGTON POST, May 17, 2005, at [http://www.washingtonpost.com/wp-dyn/content/article/2005/05/16/AR2005051601426\\_2.html](http://www.washingtonpost.com/wp-dyn/content/article/2005/05/16/AR2005051601426_2.html).)

(Issam Saliba, 7-9840, isal@loc.gov)

## SOUTH ASIA

### INDIA – Ratification of Nuclear Safety Convention

On March 31, 2005, while stating that India was conscious of its responsibility arising from the possession of advanced and comprehensive capabilities in nuclear fuel cycle operation, India’s Ministry of External Affairs announced that the country had decided to ratify the Convention on Nuclear Safety. The instrument of ratification was submitted to the Director-General of the International Atomic Energy Agency, which is the Depository of the Convention.

The Convention on Nuclear Safety was adopted in Vienna on June 17, 1994, and entered into force on October 4, 1996. The Convention creates a legal obligation for the states that adopt it to establish certain safety principles for the purpose of constructing, operating, and regulating land-based civilian nuclear power plants in their jurisdictions. The Member States are required to report and



review procedures, while recognizing the basic principle that the safety of the nuclear power installations is a national responsibility.

The Ministry of External Affairs further stated that over the past five decades, India had established a multi-layered regulatory infrastructure, backed by long-standing legislation, for ensuring the safety of nuclear installations and that India is implementing measures based on general safety principles to meet the objectives of the Convention. (THE TRIBUNE, online edition, Apr. 1, 2005, at <http://www.tribuneindia.com/2005.20050401.naub7gtn.>) (Krishan Nehra, 7-7103, kneh@loc.gov)

### **INDIA – Supreme Court Quashes Anti-Dumping Probe Against Bangladesh**

The Supreme Court of India ordered the closing of an anti-dumping investigation against Bangladesh and also quashed the order that had imposed duty on imports of lead acid batteries from that country. The court observed that it was incumbent on the designated authority to close the investigation under Anti-Dumping Duty on Dumped Articles and for Determination of Injuries Rules, 1995, after it came to the conclusion that the dumped import was less than three percent of the total imports of the article. However, the authority had gone ahead with its investigation against Bangladesh and the importer, S&S Enterprise, which imported lead acid batteries from Bangladesh during February and September of 2001.

The court further observed that the rules clearly provided that all actions of the investigation must be dropped if the allegations of dumped articles related to less than three per cent of the total imports of such article and declared “unacceptable” the designated authority’s submission that the preliminary finding could not be considered conclusive of the investigation. (THE HINDUSTAN TIMES, Feb. 23, 2005, [http://www.hindustantimes.com/news/181\\_1254382,00080001.htm.](http://www.hindustantimes.com/news/181_1254382,00080001.htm)) (Krishan Nehra, 7-7103, kneh@loc.gov)

### **PAKISTAN – Constitutional Petitions Against President’s Assumption of Dual Office**

On April 4, 2005, a specially constituted bench of the Supreme Court of Pakistan began hearings in seven petitions challenging the validity of the 2002 Legal Framework Order (LFO), the vires of the 17<sup>th</sup> amendment of the Constitution, and the assumption of dual office by the President of Pakistan under Act 7 of 2004. The petitioners included the Pakistan Bar Council, the Supreme Court Bar Association, and the Pakistan Lawyers Forum.

In response to Supreme Court directions, the federal government of Pakistan had earlier submitted comments on these petitions and filed replies in the Court. Before hearing the petitions, the Supreme Court also summoned the Attorney General as well as the advocates-general of each province for arguments on the above petitions.

The petitioners’ pleas before the bench include holding President Pervez Musharraf guilty of high treason under article 6 of the Constitution for overthrowing a democratically elected government. In his opening arguments, advocate A.K. Dogar stated that he had no enmity with any general but pleaded that the Court must take a serious view of violations of the Constitution. He opposed the invocation of the doctrine of necessity in re: Syed Zafar Ali Shah v. Pervez Musharraf, Chief Executive of Pakistan (2000 ALL PAKISTAN LEGAL DECISIONS 52 SC 869), under which the October 12, 1999,



military takeover by Musharraf had been justified and a three-year extension of the presidential term had been given him. Dogar pointed out that only two military governments existed in the world – Pakistan and Burma.

Dogar stated that the concept of the doctrine of necessity was also contrary to article 2-A of the Constitution, which provides that the people only be governed by their chosen representatives. According to him, the April 9, 2002, referendum was contrary to the Zafar Ali Shah holding of the Court, which enjoined the military government not to change the parliamentary form of government. Thus, in Dogar's view, the referendum was a clear "subversion" and the Pervez Musharraf referendum would not have the effect of amending the Constitution, which in effect the August 21, 2002, LFO did. In response to the inquiry of the Chief Justice on whether the judiciary can consider itself wiser than the elected representatives if the latter failed to follow the dictates of the Constitution, Dogar stated that the parliamentarians were driven by personal motives to support an unelected president who provided them benefits and that the number of ministers in the Pakistan Cabinet was greater than that of the Cabinet of the largest democracy in the world. He added that even the Pakistan National Assembly speaker had asked for a car worth eleven million Pakistani rupees (approximately US\$185,000). Moreover, the President violated constitutional provisions by continuing to keep a military position in addition to his civilian post beyond December 31, 2004.

In opposing the petitioners' challenge against the President's holding of another office of profit simultaneously, the attorney-general cautioned the Court against reopening matters that are already settled. He stated that accepting the petitioners' arguments against duality of office would lead to a complete paralysis of government, and the Parliament would be unable to legislate without the President being in office. He submitted that article 63 (1-d) of the Constitution specifically provides that holding an additional office of profit, as declared by law, will not be a bar to the holder of any single such office. He also argued that the Supreme Court has consistently held in the past that it was a creature of the Constitution and that it had no power to strike down any constitutional provision, except on grounds that it was not made in accordance with the constitutionally provided procedure. The Court contradicted counsel's impression that the judiciary "always took a lenient view on matters relating to military." (THE DAWN, Apr. 5-7, 2005, *respectively*, at <http://www.dawn.com/2005/04/05/top7.htm>, <http://www.dawn.com/2005/04/06/top4.htm>, & <http://www.dawn.com/2005/04/08/top2.htm>.)

On April 13, 2005, the Court, without pronouncing full judgment, dismissed all petitions challenging the vires of the 17<sup>th</sup> constitutional amendment and the Dual Office Act. This enables President Musharraf to retain the office of Chief of Army Staff. (NAWAIWAQT, May 4, 2005, at <http://www.nation.com.pk/daily/may-2005/4columns3.php> (last visited May 5, 2005).) (Krishan Nehra, 7-7103, [kneh@loc.gov](mailto:kneh@loc.gov))

## WESTERN HEMISPHERE

### CANADA – Passport Security Found Inadequate

Canada's Auditor General has issued a report that describes how security controls for the issuance of Canadian passports are inadequate. One major problem uncovered during the investigation is that too many office staff members have access to the system and the ability to issue passports, even though some of these persons do not have the necessary security clearances. Other problems described



in the report are that watch lists for suspected terrorists are inadequate, examiners do not have tools they need to detect fraudulent documents, and the government has unduly pressured officials to speed up the document issuance process.

Concern about persons illegally obtaining Canadian passports was heightened in 1999 when a terrorist who planned to attack Los Angeles airport was arrested at the U.S. border. Ahmed Ressam was carrying a Canadian passport he had obtained under a false name. Prior to that, evidence that agents of Israel's Mossad had used fake Canadian passports abroad created a diplomatic incident that resulted in the Israeli government promising that it would ensure that Canadian passports would not be so used again.

Security analysts believe that Canadian passports are highly sought after by international criminals because, due to Canada's large and diverse immigrant population, persons from Third World countries can more easily pose as Canadians than they can as citizens of most other developed countries. Persons entering the United States with Canadian passports are generally less likely to be searched than citizens of other countries due, in part, to the high amount of traffic between Canada and the United States. (Auditor General of Canada, *Passport Services* (2005), available at <http://www.oag.gc.ca/omino/reports.nsf/html/20050403ce.htm>.) (Stephen Clarke, 7-7121, [scla@loc.gov](mailto:scla@loc.gov))

#### **CUBA – Rejection of U.N. Rights Resolution**

Cuba has said it will not cooperate in any form with a resolution passed against it by the United Nations Human Rights Commission in Geneva. Moments after the vote was passed on April 14, 2005, Cuba's foreign minister described it as completely illegitimate. The resolution, brought by the United States, calls for the renewal of the mandate of a U.N. envoy to investigate alleged human rights abuses on the communist island. The envoy was appointed in 2003, but Cuba has never allowed her to visit.

Despite routinely ignoring the resolutions passed against it, Cuba does on one level pay a great deal of attention to the U.N. Human Rights Commission. (*Cuba Rejects UN Rights Resolution*, BBC NEWS, Apr. 15, 2005, at <http://news.bbc.co.uk/1/hi/world/americas/4446933.stm>.) (Gustavo E. Guerra, 7-7104, [ggue@loc.gov](mailto:ggue@loc.gov))

#### **MEXICO – Supreme Court Agrees To Review Elections Case**

The Mexican Supreme Court unanimously agreed to review a case submitted by former foreign secretary Jorge G. CastaZeda who is challenging the Federal Electoral Institute's (IFE) refusal to register him as an independent candidate in the presidential election. The IFE based its refusal on the Federal Code of Electoral Institutions and Procedures (COFIPE), which states that only political parties may present candidates for elected positions. Mr. CataZeda argues that this limitation violates his constitutional prerogative granted by article 35 of the Mexican Constitution, whereby a person may be elected to any office subject to popular election provided that he or she has the qualifications required by law as well as several international treaties. (*Supreme Court Agrees to Study Castañeda's Independent Candidacy Case*, REFORMA (Mexico City), Apr. 8, 2005, Foreign Broadcast Information Service online subscription database.) (Norma Gutiérrez, 7-4314, [ngut@loc.gov](mailto:ngut@loc.gov))



## MEXICO – Two U.S. Border Patrol Agents Held

Two U.S. Border Patrol agents are being held in a Mexican jail facing charges that they illegally imported about 1,300 bullets during an off-duty trip south of the border. Mexican customs officials arrested the agents, David Allen Navarro and German Verdugo, on April 29, 2005, as they crossed into Mexicali, in Baja California state, from Calexico in California. A random search of their car turned up 1,286 .40 caliber hollow-point bullets and ten .223 caliber rounds, in violation of Mexico's laws banning the importation and possession of ammunition, police said.

The two officers, who serve in the Border Patrol's El Centro sector in southern California, are being held in jail in Mexicali as prosecutors consider charges, police said. A spokesman for the U.S. Border Patrol in El Centro confirmed the arrests. Signs posted on the United States side of the border warn that it is illegal to take firearms and ammunition into Mexico. (Reuters website, at <http://www.reuters.com/newsArticle.jhtml?type=domesticNews&storyID=8377699> (last visited May 4, 2005).)

(Gustavo E. Guerra, 7-7104, [ggue@loc.gov](mailto:ggue@loc.gov))

## INTERNATIONAL LAW AND ORGANIZATIONS

### CAMBODIA/U.N. – Khmer Rouge Trial Agreement Effective

An agreement on trials of former Khmer Rouge leaders first approved by the United Nations General Assembly in 2003 is now in force. Secretary General Kofi Annan notified Prime Minister Hun Sen on April 28, 2004, that the U.N. has fulfilled its legal requirements under the agreement. Cambodia had sent its notification to the U.N. in November 2004. This notification makes it possible for the trials on charges of abuses to begin. Funding at the level of \$56.3 million, \$43 million from the U.N. and the balance from the Cambodian government, is now available to staff and operate two Extraordinary Chambers. The first will conduct the trials of those accused of killing thousands of civilians during the 1970s, while the second will hear appeals within the existing justice system. The Secretary-General expressed the hope that the organizational work of setting up the tribunals will be done as soon as possible. (*Agreement Between UN and Cambodia on Khmer Rouge Trials Takes Effect*, UN NEWS SERVICE, Apr. 29, 2005, received via email, from [UNNews@UN.org](mailto:UNNews@UN.org).)

(Constance A. Johnson, 7-9829, [cojo@loc.gov](mailto:cojo@loc.gov))

### CENTRAL AMERICA – Standardized Legislation To Combat Youth Gangs

The Central American presidents agreed on April 15, 2005, to standardize regional criminal legislation to jointly combat criminal activities by youth gangs, known as *maras*, which terrorize Guatemala, El Salvador, and Honduras. The countries will also intensify regional cooperation to prevent social violence and to defend private citizens. This regional effort is being undertaken in the framework of a regional plan known as the Plan for a Secure Central America Plan (*Plan Centroamérica Segura*). (*Presidentes de Centroamérica Acuerdan Plan Regional Contra las Pandillas*, LA PRENSA GRÁFICA, Apr. 20, 2005, <http://www.laprensa.com.sv>.)

(Norma Gutiérrez, 7-4314, [ngut@loc.gov](mailto:ngut@loc.gov))



## CENTRAL ASIA – Tightening Laws To Prevent Revolutions

In the wake of the popular revolt in Kyrgyzstan in March 2005 that ousted Kyrgyz president Askar Akaev from power, neighboring states adopted legislation aimed at preventing presidential overthrows.

In **Kazakhstan**, on April 11, 2005, the legislature passed a law banning mass gatherings, public assemblies, and demonstrations during the period between the end of voting and official announcement of the election results.

In **Tajikistan**, a new law was passed on April 14, 2005, that obligates foreign embassies and non-government organizations (domestic, foreign, and international) to report to authorities on any contacts they had with media or political and civil activists.

In **Turkmenistan**, President Saparmurat Niyazov, who was made president for life in 1999, announced that he is going to hold new presidential elections in 2009 and issued a decree that prohibits foreign postal services from making deliveries to Turkmenistan. Since April 18, 2005, all mail coming to Turkmenistan has been handled by the state postal agency. DHL, FedEx, and other foreign delivery firms that had operated in Turkmenistan before are now barred. The decree affects the delivery of foreign periodicals and newspapers, distribution of which is prohibited in the country.

**Uzbekistan** remains the only Central Asian state that did not pass special laws after the Kyrgyz events. (RADIO FREE EUROPE/RADIO LIBERTY NEWSLINE, Vol. 9, No. 74, Part I, Apr. 20, 2005, <http://www.referl.org/newsline/2005/04/2-TCA/tca200-406.asp>.) (Peter Roudik, 7-9861, prou@loc.gov)

## CHINA/AUSTRALIA – Improved Parliamentary Exchanges Proposed

On April 13, 2005, China and Australia agreed to improve parliamentary exchanges. In the course of talks with David Hawker, speaker of the House of Representatives of the Australian Federal Parliament, National People's Congress Standing Committee Chairman Wu Bangguo suggested that a working mechanism be established between the two countries' parliaments to ensure that their respective parliamentary leaders maintain a regular exchange of visits and contacts to share views on key issues in a timely manner. He further stated, "it is imperative to enhance exchanges and cooperation between the special committees, friendship groups and operational bodies of the two parliaments." (*China, Australia Agree To Improve Parliamentary Exchanges*, BBC MONITORING INTERNATIONAL REPORTS, Apr. 13, 2005, LEXIS/NEXIS, News Library, 90days File.) (Wendy Zeldin, 7-9832, wzeld@loc.gov)

## CYPRUS/ UNITED STATES – Memorandum of Understanding

As part of its efforts to contribute to the fight against terrorism, on April 9, 2005, Cyprus signed a Memorandum of Understanding with the United States covering financing of terrorism, money laundering, and other related criminal matters. By signing the Memorandum, the parties aim to facilitate the flow of information relating to these activities. The Memorandum was signed by the Cyprus Unit for Combating Money Laundering (MOKAS) and the United States Department of Treasury Financial Crimes Enforcement Network (FinCEN). In 2001, Cyprus ratified the United



Nations International Convention for the Suppression of the Financing of Terrorism. Thus far, Cyprus has ratified all twelve U.N. Conventions dealing with international terrorism and is also among the original signatories of the U.N. Convention on Corruption. (*Cyprus And The United States Join Forces To Combat Money Laundering, Terrorism Financing*, CYPRUS EMBASSY NEWS, Apr. 4, 2005, <http://www.cyprusembassy.net/home/index.php?module=article&id=2394>.) (Theresa Papademetriou, 7-9857, tpa@loc.gov)

### **MEXICO/HONDURAS – Territorial Sea Boundary Treaty**

The Foreign Relations Secretaries of Mexico and Honduras signed a bilateral treaty on the territorial sea boundary between the two countries. The treaty establishes the exclusive economic zones of both countries in accordance with the United Nations Convention on the Law of the Sea of 1982. The treaty is the result of technical work and extensive negotiations carried out last year between the two countries. (Carolina Gómez, *Firman México y Honduras Tratado de Delimitación del Mar*, LA JORNADA, Apr. 19, 2005, <http://www.lajornada.unam.mx>.) (Norma Gutiérrez, 7-4314, ngut@loc.gov)

### **SUDAN/U.N. – Arms Embargo, Other Measures**

The Security Council of the United Nations voted on March 29, 2005, to strengthen its arms embargo against the government of Sudan. The Council also decided that before the government can send any more weapons to Darfur, it has to inform the United Nations. In addition, the Council has frozen the assets of officials in the government, while imposing a travel ban on these and other individuals. The Council also considered whether to try the worst killers in Darfur. A majority of the Security Council, however, was of the view that such trials should be left to the International Criminal Court. The U.S. government prefers an ad-hoc African tribunal, while the Sudanese want to try those accused of the killings in Darfur in Sudanese courts. (*Mild Rebukes for Darfur's Killers*, THE ECONOMIST, Apr. 2, 2005, at 53-54.) (Charles Mwalimu, 7-0637, cmwa@loc.gov)

### **UNITED NATIONS – Nuclear Terrorism Convention**

On April 13, 2005, the United Nations General Assembly approved the Convention on the Suppression of Acts of Nuclear Terrorism. The Convention is designed to stop clandestine networks from using or possessing nuclear devices or radioactive materials by requiring governments to prosecute or extradite individuals who either possess or threaten others with such weapons. The Convention further calls for the exchange of information and assistance among governments. (*The U.N. Approved an International Convention for War on Nuclear Terror*, YNET UPDATES, Apr. 13, 2005, <http://www.ynet.co.il/>; E. Leopold, *UN Assembly Expected To Pass Nuclear Terror Treaty*, SWISSINFO, Apr. 13, 2005, <http://www.swissinfo.org/>.) (Ruth Levush, 7-9847, rlev@loc.gov)



## RECENT DEVELOPMENTS IN THE EUROPEAN UNION

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

### Terrorism: One Year After the Events in Madrid

A year after the terrorist incident in Madrid, the European Council took stock of the measures taken by the European Union (EU) and issued a declaration pledging to do everything within the powers of the EU and its Members to fight terrorism. The declaration updates the initial plan of action that was adopted after the events of September 11, 2001, in the United States, in light of the Madrid experience. The European Commission has published five communications on combating terrorism. These include:

- Towards Enhancing Access to Information by Law Enforcement Agencies;
- Prevention, Preparedness and Response to Terrorist Attacks;
- Prevention and the Fight against Terrorist Financing through Measures To Improve the Exchange of Information, To Strengthen Transparency and Enhance the Traceability of Financial Transactions;
- Preparedness and the Consequence Management in the Fight Against Terrorism; and
- Critical Infrastructure Protection in the Fight Against Terrorism.

*(Combating Terrorism: What Has Been Done After Madrid, Memo/05/85, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/05/85&format=HTML&aged=0&language=EN&guiLanguage=en>.)*

### Agreement on Passenger Name Records with the United States Pending Before the European Court of Justice

A new development took place in the cases pending before the European Court of Justice with regard to the request by the European Parliament for annulment of decisions of the European Commission and the European Council on the transfer and processing of Passenger Name Record (PNR) data by airlines to the Department of Homeland Security, Bureau of Customs and Border Protection. On March 31, 2005, the Court decided to allow the European Data Processing Supervisor (EDPS), whose task is to safeguard the fundamental privacy rights of European citizens, to intervene and support the Parliament's case. The decision is perceived as reinforcement of the role and the mission of the EDPS to ensure a high level of protection of privacy and data of individuals in all policies of Community institutions. *(EDPS Will Support Parliament in PNR Cases Before the European Court of Justice, Press Release, EDPS/05/2, Mar. 31, 2005, available at [http://www.edps.eu.int/14\\_en\\_press.htm](http://www.edps.eu.int/14_en_press.htm).)*

### Directive on Environmentally Friendly Design of Energy-Using Products

On April 13, 2005, the European Parliament approved a new directive establishing that certain characteristics have to be taken into consideration at the initial stage of designing a product. Eco-design may include a variety of features, such as energy and water consumption, quantity of waste, extension of human life, and other factors. The directive does not cover any specific product or group of products. It simply aims to improve the environmental performance of products in general. It is anticipated that environmentally friendly products will benefit consumers and businesses by improving product quality,



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protecting the environment, and facilitating free movement of products throughout the Community. (*Commission Welcomes the Adoption of the Directive for Environmentally Friendly Design of Energy-Using Products*, Press Release: IP/05427, Apr. 13, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/427&format=HTML&aged=0&language=EN&guiLanguage=en>.)

### **Impact of Biometrics on the Daily Life of Citizens**

Beginning in 2006, biometric technologies, such as face and iris recognition and fingerprinting, will be introduced in visas, passports, and residence permits. On March 30, 2005, the European Commission published a study on the effect of biometrics on peoples' everyday lives and the variety of challenges that application of biometrics will pose. From the legal stand point, the Member States, in compliance with privacy rules, will have to ensure the protection of data and prevent abuses of data obtained through the use of biometrics. On the economic side, the report indicates the beneficial effects in the development of a new industry based on biometrics. From the technological point of view, noting the lack of independent empirical data on the use of biometrics, the report recommends large-scale trials to ensure the successful application of biometrics. The report supports the idea of publicity campaigns to make citizens aware of the specific purpose and limitations of applications of biometrics. (*New Report Identifies Challenges on Biometrics*, Press Release: IP/05/368, Mar. 30, 2005, available at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/368&format=HTML&aged=0&language=EN&guiLanguage=en>.)

### **European Commission Initiates Investigation of Chinese Textile Imports**

On April 24, 2005, the Trade Commissioner, Peter Mandelson, announced his decision to request that the European Commission initiate an investigation into nine kinds of textile exports from China. Based on the statistics forwarded to the Commission by the Member States, there was a large increase in imports from China in the first trimester of 2005. The products include clothing items such as T-shirts, sweaters, blouses, stockings and socks, women's coats, and men's trousers. The Trade Commissioner was of the opinion that the rise was serious enough to create disruption in the European markets and that the situation may warrant safeguard measures. Under the Textile Specific Safeguard Clause in China's WTO Accession Protocol signed in 2001, WTO Members are allowed to take safeguard measures in order to protect their domestic textile industry from any sudden increase in Chinese textile exports resulting from the trade liberalization in textiles that was effective on January 1, 2005. WTO members are allowed to introduce temporary safeguard measures until the end of 2008. (*Trade Issues, Textile Sector: European Commission Launches Investigation Into Sharp Surge in Chinese Textile Imports*, Apr. 24, 2005, available at [http://europa.eu.int/comm/trade/issues/sectoral/industry/textile/pr240405\\_en.htm](http://europa.eu.int/comm/trade/issues/sectoral/industry/textile/pr240405_en.htm).)



**SRI LANKA: FREEDOM OF RELIGION**

Prepared by Krishan Nehra, Senior Foreign Law Specialist, Western Law Division

*Executive Summary*

*Buddhists and Christians have generally lived in harmony in Sri Lanka. Tension has arisen recently due to Buddhist allegations that an apparent increase in the Christian population and the number of churches in rural areas during the last two decades is due to unethical conversions. This has led to a demand for the enactment of an anti-conversion law. Now private and government bills seeking to ban religious conversions and providing stringent penalties for violations are coming before the Sri Lankan Parliament.*

**Background**

Sri Lanka, a small island almost contiguous to the southern tip of India, has a population of about nineteen million, of which about seventy percent are Buddhist, fifteen percent are Hindu, eight percent are Christian, and seven percent are Muslim. The Constitution accords Buddhism the “foremost place”<sup>1</sup> but does not recognize it as the state religion. It also provides for the rights of members of other faiths to practice their religions.<sup>2</sup> Despite this constitutional preference for Buddhism, Buddhists and Christians have lived in harmony, and Christian holidays are celebrated on the island. Historically, the Buddhist temple was at the center of Sri Lankan village life and Buddhist monks provided education, acted as guardians of morality, and settled disputes.

However, Buddhist clergymen have of late been troubled by the decline of Buddhism in Sri Lanka. In fact, “in recent years the evangelical church has been growing, as more Buddhists are turning to Christ... While government statistics don’t reflect the dramatic growth of Christianity in their country, the reality is the church is expanding in Sri Lanka. It is not only expanding in numbers, it’s becoming more visible.”<sup>3</sup>

The Buddhists placed the blame for the decline on “unethical conversions” by Christian missionaries and began a campaign to outlaw conversions. The appointment of a Buddha Sasana [religion] Commission by the government in 2002 was an attempt to address this issue; the Commission recommended the introduction of anti-conversion laws and the creation of an informal court system (*Sanghadhirarana*), presided over by Buddhist monks, for resolving village-level disputes without reference to the police or courts of law.<sup>4</sup>

Another factor leading to the demand for anti-conversion laws was the mysterious death in

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<sup>1</sup> SRI LANKA CONST. art. 9.

<sup>2</sup> *Id.* art. 10.

<sup>3</sup> *Sri Lanka’s Buddhist Target Christians*, CHRISTIAN WORLD NEWS, Nov. 5, 2004, at <http://www.cbn.com/CBNNews/CWN/110504SriLankaBuddhist.asp>.

<sup>4</sup> *Sri Lanka Cabinet Approves Anti-Conversion Law: Let’s Pray*, June 27, 2004, in “News Archives” of “In the News” section of Jeffrey Gaffney Ministries website, <http://www.annointed.net/> (last visited Apr. 27, 2005).



Russia of one of Sri Lanka's most widely respected Buddhist monks – Venerable Gangodawila Soma Thera – who had gone there to accept an honorary doctorate. Some Buddhists blamed Christians for his death.<sup>5</sup>

### Entry of Christian Organizations

Some Christian denominations are not happy with government involvement in matters of religion. Therefore, they have chosen not to register in Sri Lanka as charitable organizations, but rather as individual corporations through enactments of the Parliament. This provides them standing for treatment as corporate entities in their financial and real estate transactions, without any tax relief. Individual churches and temples may still register as charitable organizations to be entitled to some tax exemptions.<sup>6</sup>

During 2002-2003, three petitions were filed in the Supreme Court challenging bills then pending in the legislature to allow incorporation of Christian organizations. In two judgments, against Sahanaye Doratuwa ministry in 2002 and against New Harvest Wine Ministries in 2003, the Chief Justice ruled that incorporation of a Christian organization that proposes to proselytize is unconstitutional.<sup>7</sup> The third petition was scheduled for a hearing before the Supreme Court in August 2003. The Court again denied incorporation, in this case, of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis.<sup>8</sup> The Court ruled that although it is permissible under articles 10 and 14(1) (e) of the Constitution to manifest, observe, and practice one's religion, there is no guarantee of a right to propagate religion. The Court further stated that since Buddhism is the foremost state religion, it is unconstitutional for Christian organizations that propose to proselytize to be incorporated under an act of Parliament. In conclusion, the Court stated that clauses 3 (the right to observe and practice a religion) and 5 (the right to hold property) of the incorporation bill are unconstitutional, because if a Christian organization owns property, that fact might induce others to convert, thus violating their freedom of religion.

The Court's view was that a constitutional duty is cast upon the state to protect and foster Buddhism. It held that the purposes of the Christian ministry, described in clauses 3 and 5 of the bill as to promote "the spread of knowledge of the Catholic religion and to impart religious, education and vocational training to youth," are inconsistent with article 9 of the Constitution. Thus, Christian denominations have no right of incorporation. This holding disturbed the Christian minority. In their view, the ruling in effect restricts the Christians' ability to provide services to the citizens of the country. They have therefore appealed for assistance to the United Nations High Commissioner on Human Rights.

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<sup>5</sup> *Id.*

<sup>6</sup> U.S. Department of State, International Religious Freedom Report 2004, Sept. 15, 2004, <http://www.state.gov/g/drl/rls/irf/2004/35520.htm>.

<sup>7</sup> *Sri Lanka – The Church's Darkest Hour*, John Mark Ministries website, at <http://jmm.aaa.net.au/articles/1170.htm> (last visited May 3, 2005).

<sup>8</sup> *Id.*



On the day following the above pronouncement, Minister of Justice W. J. M. Lokubandara, in a press conference, stated that the judgment gives a clear backing to efforts to stop what he termed unethical conversion activity carried out in the name of religion. Constant use of the expression “unethical conversion” has made it now synonymous with any conversion. The accusation is that conversion is carried out by duping the poor to embrace a foreign religion by tempting them with material benefits, including money.<sup>9</sup>

### Private Anti-Conversion Bills

#### *Prohibition of Forcible Conversion of Religion Bill of May 2004*

In January 2004, Buddhist monks launched a “fast unto death,” demanding enactment of an anti-conversion law within sixty days. The Parliament agreed in principle to the demand when the fast was called off.<sup>10</sup> In the following month, however, the Parliament was dissolved and snap elections were ordered. The Buddhist clergy immediately formed a political party, Jathika Hela Urumaya (JHU), to participate in the April 2004 elections. They won nine seats and eventually formed an alliance with the President of Sri Lanka that effectively gave them considerable power in government.<sup>11</sup>

The draft bill, known as the “Prohibition of Forcible Conversion of Religion Bill” and proposed by the JHU, was released in late May 2004. The bill was scheduled for introduction in the Parliament on June 8, 2004. However, a scuffle broke out between the opposition and the JHU members in the Parliament, leading to the suspension of the Parliament. After notification of a bill appears in a government gazette, a party is allowed only seven days to impugn its constitutionality. After enactment of a parliamentary law, there is no power of judicial review. If the bill had been introduced on June 8, 2004, Christians would have had only seven days to challenge its constitutionality. Eventually, the JHU introduced it in July 2004.<sup>12</sup>

The opponents of the bill filed twenty-two petitions in the Supreme Court that came up for a joint hearing on August 6-9, 2004. The main objective of the proposed law being to ban conversions, the bill provided that no person shall convert or attempt to convert any other person to another religion by force, by allurement, or by any fraudulent means, nor shall any person aid or abet such a conversion (§ 2). Moreover, information as to conversion must be delivered within a prescribed period to the Divisional Secretary, a public official of the area (§ 3). Violation of section 2 carried a punishment of imprisonment for five years and a fine of 150,000 Sri Lankan rupees (about US\$1,500). When a woman or a minor is converted, the sentence is seven years and a fine of 500,000 Sri Lankan rupees (about US\$5,000). For failure to inform the authorities of a conversion in contravention of section 3, a person could be imprisoned for five years and be liable for a fine of 150,000 rupees (§ 4). The expression “allurement” has a broad definition, including any gift, cash or in kind, grant of employment, or promotion, given or promised (§ 8(a)). In addition to government officials, proceedings for violations under section 5 may be initiated by a relative of the convert or by any person

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

<sup>10</sup> *Sri Lankan Cabinet Approves Anti-Conversion Law: Let's Pray*, *supra* note 4.

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

<sup>12</sup> The Gazette of the Democratic Socialist Republic of Sri Lanka, Part II, May 28, 2004, Supplement.



Christians in Sri Lanka impugned the bill on the grounds that it constituted a violation of freedom of religion and that it also was inconsistent with obligations of the Sri Lankan government under the International Covenant on Civil and Political Rights, to which it is a party.<sup>13</sup> Article 18 of the Covenant guarantees freedom of religion, including the right to adopt and hold a belief as well as to practice it publicly. Article 19 guarantees freedom of expression and the right to impart and receive information.

*Supreme Court Judgment of August 23, 2004, on the Constitutionality of the Private Bill*<sup>14</sup>

The Court found clauses 3(a) and (b) of the proposed bill to be in violation of article 10 of the Constitution, as they would place a restraint on individual freedom of thought, conscience, and religion. Clause 4 of the bill, providing enhanced punishment in the case of conversion of women and children, was held to be in violation of article 76(1) of the Constitution. Clause 5 of the bill was also found to be unconstitutional; it was considered to be arbitrary and irrational and in violation of article 12(1) of the Constitution. Clause 6 of the bill, which authorizes the Minister of Religion (Buddhism) to make rules, was found to be overly broad and ambiguous and was held to be in violation of article 76(1) of the Constitution.

In view of the holding in respect of clauses 3 and 4, the Court recommended that the bill in the present form be passed by not less than two-thirds of the full complement of members of Parliament (including those not present) and approved by the people in a referendum, under article 83(a) of the Constitution. However, if the two clauses were to be deleted, the bill would then not be in violation of the Constitution, the Court stated.

Although the main provisions of the bill contained in clauses 3 and 4 were held to be unconstitutional, the Court did not overturn the bill. Under the circumstances, Christians are apprehensive that it may still be presented to the Parliament, and there is a likelihood that it will be passed.<sup>15</sup>

*Nineteenth Amendment to the Constitution Bill of October 2004*

Disappointed by the court ruling that two clauses of the bill are unconstitutional, on September 23, 2004, the JHU, according to Sri Lanka's *The Daily Mirror*, announced the withdrawal of its bill and promised to bring in a new bill within six months.<sup>16</sup> On October 29, 2004, the JHU published a

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<sup>13</sup> International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc.A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, available at <http://www1.umn.edu/humanrts/instrtree/b3ccpr.htm>.

<sup>14</sup> S.C. Determination Nos. 2/2004-22/2004.

<sup>15</sup> Sri Lanka – Anti Conversion Bill, Sept. 2, 2004, available at <http://www.evangelicalfellowship.ca/pch/alerts.asp> (last visited Apr. 27, 2005).

<sup>16</sup> IDOP Canada, *Updates: Sri Lanka: Recent Chronology of Anti-Conversion Legislation*, Faith on the Frontline, Nov. 21, 2004, at <http://www.idop.ca/updates/srilanka.html>.



new bill, known as the “Nineteenth Amendment to the Constitution,” in the government gazette.<sup>17</sup> The preamble describes the objective as

to amend the Constitution of the Democratic Republic of Sri Lanka; to provide for declaration of Buddhism as the official religion of the Republic; to provide for binding the persons practicing Buddhism to bring up their offspring in the same; to provide for prohibiting conversion of Buddhist; to provide for establishing a council to advise the President on such matters; and for matters connected therewith or incidental thereto.

If the bill is enacted into law, Buddhism would become the state religion and the inhabitants of the Republic professing Buddhism would be bound to bring up their children in the same religion. The bill has not been passed by the Parliament so far.

### **Sri Lankan Government Anti Conversion Bill**

On June 15, 2004, the Sri Lankan Cabinet also gave approval to a draft bill of its own similarly designed law to prevent religious conversions. The new draft, titled “Protection of Religious Freedom” bill, seeks to introduce stringent laws against unethical conversions.<sup>18</sup> The bill, with input from religious dignitaries of all denominations, was drafted by a special multi-religious committee appointed by Prime Minister Wickremesinghe in agreement with President Bandaranayake. Although, the Cabinet has not formally approved it, the bill was sent to the Attorney General for review, which presumably is still ongoing.<sup>19</sup> The Minister for Justice, W.J.M. Lokubandara, explained that after the bill is enacted into law, no person could convert or attempt to convert any person or assist such conversion, and no person could accost any person for the purpose of converting any person. The preamble to the bill describes one of its objects as “to strengthen the mutual trust/unity that exists among religions and with a view to protecting the religious freedom.”

Regarding penalties, notwithstanding anything contained in the Code of Criminal Procedure, the government bill provides that any person contravening its substantive provisions (in sections 2 to 7) would be guilty of an offense and, on conviction before a magistrate, the person would be liable for imprisonment for a term not exceeding five years and to a fine not exceeding 100,000 Sri Lankan rupees (about US\$1,000). Where the offense is committed against a minor, the convicted person would on conviction be liable for imprisonment for a term not exceeding seven years and a fine not exceeding 500,000 Sri Lankan rupees (about US\$5,000). The Minister also emphasized that under the proposed law, any foreigner entering Sri Lanka on a visa and convicted for any offense would be deported by the minister in charge of emigration and immigration. Upon conviction, the minister would further order such person/s to be “prohibited visitor/s” under section 12 of the bill.

Although Sri Lanka’s cabinet has approved the bill, the government seems to have postponed its introduction into Parliament until the fate of the JHU bill is known.<sup>20</sup>

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<sup>17</sup> The Gazette of the Democratic Socialist Republic of Sri Lanka, Part II of Oct., 29, 2004, Supplement, issued on Nov. 1, 2004.

<sup>18</sup> Bill drafted by the Honorable Ratnasiri Wickramanayake, Minister of Buddha Sasana. (author’s copy)

<sup>19</sup> International Religious Freedom Report 2004, *supra* note 6.

<sup>20</sup> Sri Lanka Anti-Conversion Bill on Review, THE CHRISTIAN POST, May 4, 2005,



**Conclusion**

It appears that the private bill and the government bill are substantially similar. The private member bill limits the prohibition to “forcible conversions” only, while the ministerial bill attempts to make any religious conversion illegal. Both bills carry penalties, including fines or jail sentences, for anyone convicted of conversion or assisting in conversion. The private bill is scheduled for a second reading by the Parliament on May 23, 2005.

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