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WORLD LAW BULLETIN

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6-7 W.L.B. 2004

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- [History of the Government of Iraq Under the Baath Regime \(1968-2003 CE\)](#)
- [Cloning and Human Embryo Protection in Japan](#)

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WORLD LAW BULLETIN

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SOUTH PACIFIC

Antarctica New Tourism Regulations
Australia Age Discrimination Law
Australia Children in Immigration Detention
Australia Minimum Wage Raised

**INTERNATIONAL LAW &
ORGANIZATIONS**

China/Nuclear Suppliers Group Membership
European Court of Human Rights Islamic Head
Scarves
European Court of Justice Maritime Safety
Ruling Against France
Mexico/China Negotiations on Investment,
Customs, Taxation Agreements
Mexico/U.N. Support for the Democratic
Process in Iraq
OECD New Corporate Governance Principles
U.N. Committee Drafting Treaty on Disabilities
UNESCAP Shanghai Declaration

Special Attachments:

- [History of the Government of Iraq Under the Baath Regime \(1968-2003 CE\)](#)
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AFRICA

KENYA – Constituencies Development Fund Act

The Kenyan Constituencies Development Fund Act, 2003 (*Kenya Gazette Supp. (Acts)*, Jan. 9, 2004) requires establishing a Constituency Development Fund. Constituencies are various segments of Kenya that are divided for purposes of national elections to Parliament and electing a President of Kenya. The Fund is a permanent remedy to developmental projects in each constituency, so that appropriated fiscal resources of Kenya are shared equally. The law mandates a 2.3% fiscal allocation of all government revenue in each year to constituent development.

(Charles Mwalimu, 7-0637)

KENYA – National Commission on Gender and Development

Kenya's National Commission on Gender and Development Act, 2003 (*Kenya Gazette Supp. (Acts)*, Jan. 9, 2004) has established a National Commission on Gender and Development. The Commission is developing policies and laws to ensure equitable distribution of resources, opportunities, and benefits for all in the country, irrespective of gender. However, emphasis is on addressing inequalities towards women and girls in Kenya.

(Charles Mwalimu, 7-0637)

KENYA – Persons with Disabilities Act

The Persons with Disabilities Act, 2003 (*Kenya Gazette Supp. (Acts)*, Jan. 9, 2004) is the new law regulating the rights of disabled persons in Kenya. Equality and fair treatment, as well as equal opportunity for all, underscoring the rights of disabled persons, are the primary objectives of this legislation.

(Charles Mwalimu, 7-0637)

SOUTH AFRICA – Education Laws Amendment Act, 2004

The Act amends certain education-related instruments. The South African Qualifications Authority Act, 1995 is amended to make provision for an increase in the number of members of the Authority nominated by the organized teaching profession and to extend their term in office. The South African Schools Act, 1966 is amended by an insertion of a prohibition of payment of unauthorized remuneration or benefits to state employees under certain conditions. The Act also amends the Employment of Educators Act, 1998, to provide for an appeal by the employer against the finding of the presiding officer of a disciplinary hearing. (Act No. 1 of 2004: Education Laws Amendment Act, 2004, 466 GOVERNMENT GAZETTE No. 26292, Apr. 2004, available at <http://www.gov.za>.)

(Ruth Levush, 7-9847)

SOUTH AFRICA – Anti-Corrupt Activities Act

The Prevention and Combating of Corrupt Activities Act, 2003 establishes the offense of corruption and offenses relating to corrupt activities, including those related to public officers, foreign public officials, agents, members of the legislative authority, judicial officers, and members of the prosecuting authority. The Act further provides for appropriate

investigative measures, reporting duties, and the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts. (Act No. 12 of 2004: Prevention and Combating of Corrupt Activities Act, 2003, 466 GOVERNMENT GAZETTE No. 26311, Apr. 28, 2004, *available at* <http://www.gov.za>.)
(Ruth Levush, 7-9847)

AMERICAS

BRAZIL – Regulation of Shootdown Law Expected

It was reported that the Brazilian government will issue a Federal Decree at the end of June to regulate the 1998 Shootdown Law. The Law allows the Brazilian Air Force to shoot down any aircraft operating illegally within the nation's airspace. While officials indicated that this measure is not a positive one, it is needed as a precaution, especially in the border areas with Colombia. In the past few months, Colombia has shot down several aircraft flying in from Brazil in an area where drug trafficking and guerrilla warfare are sources of concern for both countries. According to Jose Viegas, Brazilian Defense Minister, the two nations need to reconcile airspace control and exchange more information of interest to both countries.

According to the Minister, a number of precautions would be taken before shooting down an aircraft. A small aircraft would have to successfully and systematically ignore eight or nine security procedures before it could be shot down. Requirements for shooting down an aircraft include failure to identify itself, refusal to answer radio calls, and failure to respond to warning shots. If an aircraft were to fly outside standard commercial routes and far from populated areas and then ignore the above procedures, it would be considered hostile. Viegas insisted that it is Brazil's hope that the Law will be dissuasive enough to prevent hostile flights. ("Brazilian Administration to Regulate Shootdown Law Next Week," *Agencia Estado*, June 22, 2004, via FBIS).

(Sandra Sawicki, 7-9819)

CANADA – Ontario Reintroduces Health Care Premiums

Canada's provinces all maintain "single payer" health care systems under which physicians remain in private practice but bill government insurance programs for their services. In seven of the provinces, the government pays health care premiums out of general revenues and levies on employers. Alberta and British Columbia also require employees to pay extra fees. The imposition of health care premiums on individuals was ended in Ontario approximately fifteen years ago. However, the Government of Ontario recently decided to reintroduce those premiums in Canada's most populated province.

Under the plan announced in its latest budget, families with taxable income between approximately US\$15,000 and US\$30,000 will pay an extra US\$225 a year and families with taxable income over US\$150,000 will pay an extra US\$675 a year. The government agreed that the plan violated election commitments made during last fall's election campaign, but contended that it was needed if the province is to reach its goals of balancing the budget by the 2007-08 fiscal year while increasing spending on health care by close to \$US2 billion. (*Ontario Raises Taxes, Re-imposes Health-care Premiums*, CBC NEWS, May 19, 2004, at http://www.cbc.ca/stories/2004/05/18/canada/ont_bud040518.) During the federal election

campaign that ended on June 28, 2004, the re-imposition of health care premiums on individuals by a provincial Liberal government was thought to have hurt the federal Liberals' chances. In the end, the federal Liberals lost some seats, but not nearly as many as had been widely predicted.

(Stephen F. Clarke, 7-7121)

CANADA - Supreme Court Rules on Antiterrorism Law

The Supreme Court of Canada recently upheld a provision of Canada's new antiterrorism law that requires reluctant witnesses to testify in investigative hearings (Re Application under section 83.28 of the Criminal Code, 2004 S.C.C. 42). The case arose out of the ongoing trial in British Columbia of several persons accused in connection with the 1985 bombing that killed 329 people when an Air India plane exploded off the coast of Ireland. (Hayley Mick, *Supreme Court Rules That Witness Can Be Forced To Testify in Terror Hearings*, YAHOO NEWS CANADA, June 23, 2004, at <http://story.news.yahoo.com>.) The Government contended that the investigative hearings are constitutional because there is no protected right to refuse to assist the police. Lawyers for the reluctant witness contended that the impugned provision of the antiterrorism law violated their client's right to privacy and that it compromised the independence of the judiciary. The Supreme Court found that the law in question balanced the need for an effective response to terrorism with respect for life, liberty, and the rule of law. The Supreme Court also noted that the law in question did not violate the right against self-incrimination. The information sought in the case was not for the purpose of prosecuting the reluctant witness, but, at least in part, to assist in the prosecution of the persons accused of being behind the bombing. The argument that the law compromised the independence of the judiciary was rejected on the grounds that judges would be expected to protect the constitutional rights of persons questioned during an investigative hearing. For this reason, the Supreme Court found that a reasonable and informed person would conclude that the court is independent during investigative hearings under the antiterrorism laws.

(Stephen F. Clarke, 7-7121)

CHILE – Divorce

After almost ten years of pending legislative action, on May 7, 2004, President Lagos promulgated the Law on Civil Marriage, which for the first time allows termination of marriage in Chile by divorce. The new law allows a divorce after one year of actual separation, if it is requested with the agreement of both spouses. If the divorce is requested by only one of the spouses, it may only be granted by a judge after three years of actual separation. The Law also provides for the financial protection and support of the children and the economically weaker spouse.

The extremely long-awaited divorce law faced the strong opposition of the Catholic Church in Chile. In order to have it passed, they were granted the legislative civil recognition of the religious marriage. In this case, Catholic spouses have eight days after the religious ceremony to have their religious marriage formalized before the civil authorities. The Law will become effective in November 2004. (Law 19947 of May 7, 2004, DIARIO OFICIAL, May 17, 2004.)

(Graciela I. Rodriguez-Ferrand, 7-9818)

HONDURAS – Anti-Gang Law

It is illegal to belong to a gang in Honduras. A Decree enacted on August 13, 2003, amends the Criminal Code and penalizes heads of gangs with nine to twelve years of imprisonment and heavy fines. Members of gangs receive sentences of imprisonment reduced by a third. (LA GACETA, Aug. 15, 2003, *available at* Global Legal Information Network, <http://www.loc.gov/law/glin>). The new law has led to serious overcrowding of the country's prison system, which consists of twenty-seven old buildings housing 13,000 prisoners, twice their capacity. On May 17, 2004, a fire at the overcrowded prison in San Pedro Sula killed 103 gang members, all belonging to the Mara Salvatrucha gang, who were incarcerated in a cellblock. Press reports have cited the August law as contributing to the high death toll. (THE WASHINGTON POST, May 18, 2004, at A16, & *BBC Mundo*, May 18, 2004, at http://news.bbc.co.uk/hi/spanish/latin_america/newsid_3726000/3726129.stm.) (Sandra Sawicki, 7-9819)

MEXICO – Distance Learning Services

The Mexican Foreign Ministry and the *Colegio de Bachilleres* (a public upper secondary education institution, equivalent to the U.S. high school level) signed a cooperation agreement to implement, support, promote, and publicize distance learning and open-enrollment high school-level educational services for the Mexican communities in the United States and Canada. The agreement addresses a growing demand for educational services from these communities by incorporating a high school degree into the basic programs of the Community Centers through the *Colegio de Bachilleres'* system of open enrollment and distance learning.

Deputy Minister of Foreign Relations Gerónimo Gutiérrez Fernández stressed that Mexico faces the great challenge of addressing the needs of 25 million individuals living abroad. This includes the crucial task of protecting their rights and also involves offering services that contribute to improving the living standards of the Mexican communities outside the nation's borders .

The program began two years ago on an experimental basis in San Antonio, Texas, and is currently in place in San Antonio, Chicago, and the Canadian city Hamilton. The program has 737 students enrolled, 650 of whom are active. For 2004, more services will be offered and the program will be expanded to include fifteen more cities in the United States as well as five correctional centers. (Ministry of Foreign Relations, Press Release Number 100, May 10, 2004, at <http://www.sre.gob.mx/comunicados/comunicados.htm>.) (Gustavo Guerra, 7-7104)

MEXICO – Fines Imposed for Illicit Funding in Presidential Election Campaign

The Electoral Tribunal of the Judicial Branch of the Federation (TEPJF) held that during the year 2000 presidential elections campaign, the then presidential candidate Vicente Fox and the National Action Party (PAN) were at that time aware of the benefits gained from a “parallel and illegal campaign financing network.” The network is known as the Friends of Fox. The TEPJF found that the PAN knowingly participated actively in profiting from the illegal funding to promote the image of its candidate, Mr. Fox. Based on its finding, the TEPJF increased the originally imposed fine against the PAN from 360 million pesos to more than 399 million pesos. The TEPJF also concluded that the Mexican Green Ecological Party

(PVEM) was guilty of negligence because it did nothing to prevent or denounce the illegality. The TEPJF reduced the original fines imposed on PVEM from 184 million pesos to 98 million. President Fox stated that he does not agree with the TEPJF ruling but he will comply with it. (Arturo Zárate et al., *Tribunal: PAN Sabía de Dinero Ilegal en 2000*, EL UNIVERSAL, May 21, 2004, at <http://www.eluniversal.com.mx>.) (Norma Gutiérrez, 7-4314)

MEXICO – Political Parties Offer Support to Justice System Reform Bill

Mexican Congressmen from the Institutional Revolutionary Party (PRI) and the National Action Party (PAN) agreed to discuss a bill to reform Mexico's justice system, presented by President Vicente Fox last March 29, with the aim of approving it. The bill proposes changes in the public prosecution system and in law enforcement. Among the proposals included are: the transformation of the Office of the Attorney General of the Republic (PGR) into a Federal Prosecutor's Office with no political dimension; the transformation of the Public Security Secretariat into an Interior Secretariat; and the establishment of oral trials with specialized judges to conduct them. (Nayeli Cortés y Lilia Saúl, *Ofrecen PRI y PAN Aprobar Reforma a Sistema de Justicia*, EL UNIVERSAL, June 11, 2004, at <http://www.eluniversal.com.mx>.) (Norma C. Gutiérrez, 7-4314)

MEXICO – Voting Rights Abroad Bill Signed by President Fox

On June 16, 2004, President Vicente Fox signed a bill to regulate Mexican voting rights abroad. If approved by Congress, it would come into force in time for the 2006 presidential elections. The bill provides for different mechanisms to vote abroad, among them, voting by electronic means or by mail. It includes harsh sanctions against anyone who conducts electoral campaigns or purchases advertising in means of mass communication abroad.

The political parties have expressed different reactions to the bill. Deputies of the Party of the Democratic Revolution (PRD) stated that the project might not be implemented due to restraints imposed by the legislative agenda. In their view, the bill represents progress but has limitations. Legislators from the Democratic Convergence Party (PCD) stated that there was universal consensus on the bill, but that President Fox presented the bill as if it were his own. Leaders from the Institutional Revolutionary Party (PRI) criticized the heavy promotion of the bill due to President Fox's recent trip to the United States and its being presented before the voting abroad mechanism had been decided upon. (José Luis Ruiz, *Impulsa Fox Voto en el Exterior; Desata Debate*, EL UNIVERSAL, June 16, 2004, at <http://www.eluniversal.com.mx>.) (Norma C. Gutiérrez, 7-4314)

PANAMA - Anti-Terrorism Unit To Protect Panama Canal

Panama is creating an anti-terrorism unit whose primary mission will be to protect the Panama Canal from possible attack by militants seeking to disrupt the global economy. The unit will primarily collect intelligence on possible terror threats throughout the country, as well as investigate money laundering, arms trafficking, and the drug trade, the government said in a statement.

Panama's government, which has run the canal since U.S. forces handed over control in December 1999, has stepped up security since the September 11, 2001, attacks on the United States. Nearly 4.5 percent of global seagoing trade passes through the waterway linking the Atlantic and Pacific oceans.

Global security experts say the canal is probably a medium-risk site, not among the most vulnerable worldwide but still attractive as a target given its importance to world commerce. (CNN online, at <http://www.cnn.com/2004/WORLD/americas/06/22/panama.security.reut/index.html>.) (Gustavo Guerra, 7-7104)

ASIA

AZERBAIJAN – Shariah Banking

The Ministry of Finance issued a license for banking activities to the commercial bank Kevsarbank, which operates under *Shariah* (Islamic) laws. Because Islamic religious laws prohibit usury, the bank's customers will not receive dividends, but at the end of the fiscal year they will receive a share in the bank's annual profits. The bank announced the policy of zero finance-charge credit for local businesses. All purchases on behalf of the client are made by the bank, and then the bank transfers the purchased items to the client upon agreement on payment conditions. Instead of a financing rate, in each individual case the bank establishes the service fee paid by the client and concludes an agreement with the client specifying the duration of payments.

The bank was created upon restructuring of another Azerbaijani bank that was an agent bank for the EU programs in the country but was closed because of a US\$400,000 debt to the customers. The international Islamic Corporation for the Private Sector Development is one of the major founders of the new bank, with founding capital of US\$3.5 million. Because Azerbaijan is a secular state, the bank conducts double accounting, under Islamic standards and according to Basel Principles, which are recognized by Azerbaijani financial legislation. The National Bank of Azerbaijan issued a statement saying that such practice contradicts the national constitution and limits the possibilities for government control over financial institutions. The new bank's application for a permit to accept deposits from the public is pending. (NEWSRU, June 17, 2004, at <http://www.newsru.com>.) (Peter Roudik, 7-9861)

BANGLADESH – Parliamentary Reservation of Seats for Women

On May 16, 2004, in passing the controversial Constitution (14th Amendment) Bill, 2004, the Bangladesh Parliament, among other changes to the Constitution, made a reservation of forty-five parliamentary seats for women. The bill was passed with 225 votes in favor and one against, while the main opposition Awami League (AL) members were not present. The bill also made a number of other provisions of basic law, including raising the retirement age limit for judges of the superior courts and for members of constitutional bodies like the public service commission from 65 to 67 and mandating the hanging of the portraits of the President and the Prime Minister in government offices.

Before taking a vote in the Parliament, the ruling alliance of four parties led by Prime Minister Khaleda Begum issued a directive to its 219 members, in a House of 300 members, to be present to assure safe passage of the bill. The Awami League members of the opposition who strongly opposed the bill had termed raising the retirement age of judges and others as “politically-motivated” and said that the ruling alliance’s real objective in passing the amendment was to cling to power. The bill, originally placed in the House in March was subsequently withdrawn and later re-introduced after the incorporation of some additional provisions. (*Bangladesh Parliament Reserves 45 Seats for Women*, THE HINDU, International Section, May 17, 2004, available at <http://www.hindu.com>.) (Krishan Nehra, 7-7103)

CHINA – Draft Bankruptcy Law

On June 21, 2004, after ten years of preparation, a draft corporate bankruptcy law was submitted to China’s legislature for its first reading. It is reportedly likely to be passed by the National People’s Congress next year. The proposed legislation permits state-owned enterprises (SOEs) to initiate bankruptcy proceedings freely without government intervention and compels them to satisfy the demands of creditors, who will have a direct role in restructuring plans. Under the current 1986 trial law on bankruptcy, money recovered from insolvent SOEs first goes to settle the claims of the unemployed, with the remaining amounts used to pay creditors (state-owned banks). Since the banks are state-owned, in the end the government must cover the losses.

Moreover, according to Charles Booth, director of the Asian Institute of International Financial Law, the current trial bankruptcy law makes it difficult for ailing SOEs to fail, requiring government approval for bankruptcies and recovery of assets in order to go forward. The state-run banks have kept the faltering SOEs alive, which apparently prevents the banks from lending to more profitable businesses and results in a downward spiral of increased non-performing loans in the banking sector combined with a loss-making industrial sector. Booth noted that the proposed legislation seeks to break that cycle, so that large enterprises that go bankrupt sooner may be able to recover more quickly, thereby also saving jobs and enabling shareholder value to be rebuilt. The proposed law may also help curtail loss-making corporate lending among the state-owned banks, but personal bankruptcies will still not be uncovered. (Tim Lee Master, *New Laws Tough on SOEs*, THE STANDARD, June 26, 2004; *Corporate Bankruptcy Law Draft Submitted to Legislature After 10-Year Preparation*, XINHUA, June 22, 2004, Lexis/Nexis, News Library, 90days File.) (Wendy Zeldin, 7-9832)

CHINA – Draft Reunification Law

Media in the People’s Republic of China (PRC) have reported that the top leadership is considering enactment of a “national reunification law.” The move is apparently a tactical measure designed as a counterpoint to the efforts of President Chen Shui-bian of the Republic of China (on Taiwan) (ROC) to rewrite the ROC Constitution and possibly as a future legal basis for using military force against Taiwan. Such a law might also serve as a counterpoint to the Taiwan Relations Act of the United States. However, different authorities have made different statements about the status of the law. While legal experts from the Taiwan Affairs Office of the State Council and the National People’s Congress have stated that the reunification law is an “important means for safeguarding national sovereignty and territorial integrity” and

that relevant departments are actively studying its formulation, the Liaison Office of the PRC Central Government in Hong Kong stated that the legislature has yet to begin legislative procedures for formulating the law and so recent remarks about it in Hong Kong “are groundless.” (*Singapore Daily: PRC Official Organs Differ on Formulation of Reunification Law*, Singapore LIANHE ZAOBAO (Internet version), May 20, 2004, as translated in FBIS, May 27, 2004.)

High-level endorsement of the notion of a reunification law was reportedly signaled by Premier Wen Jiabao, who remarked during a state visit to Great Britain that the idea was “very important” and that the PRC would “seriously consider” it. The idea is not new, however. Law professor Yu Yuanzhou of Jiangnan University in Wuhan had drafted a reunification law and sent copies of it to government bodies and scholars in November 2002, but it was apparently largely ignored. On May 8, 2004, the Hong Kong publication *Phoenix Weekly (Fenghuang Zhoukan)* conducted an interview with Yu and published a copy of his draft “National Unification Promotion Law.” Among the proposed law’s eight sections are conditions for peaceful unification; economic, financial, and other measures to promote unification; two plans for peaceful unification; and conditions and methods for non-peaceful unification. The proposed two plans for the basis of bilateral negotiations on unification are the establishment of a Taiwan Special Political Area or the formation of a “Federated Republic of China.” Yu does not endorse another scholar’s draft “Law on Peaceful Unification”; he is quoted as saying that “one-sided emphasis on peaceful unification is actually unhelpful to the achievement of peaceful unification.” (*Phoenix Weekly of Hong Kong Profiles Drafter of PRC Reunification Law*, Hong Kong FENG HUANG WANG (Phoenix Weekly Website), May 17, 2004, translated in FBIS; Josephine Ma, *Professor Created ‘Unity Law’ Two Years Ago, But Wuhan Academic Says His Proposed Unification Legislation Sank into Obscurity*, Hong Kong SOUTH CHINA MORNING POST, May 27, 2004, LEXIS/NEXIS, News Library, 90days File.)

At the same time, the PRC is also intensifying its ideological campaign against Taiwan. Propaganda departments have recently issued notices to the mass media on upholding the “one China” principle in connection with Taiwan-related terminology. For example, the media must not directly use “national,” “central” or “nationwide” in titles of state organs or officials in Taiwan; instead, they should be referred to as “Taiwan departments in charge of xxxx.” The media are to avoid reporting on Taiwan independence social organizations or legislators; organizations or political terminology that reflect attributes of Taiwan independence are to be presented in quotation marks (e.g., “Taiwan independence,” “Taiwan status unsettled”). Instead of using “China-Taiwan” or “China-Hong Kong-Taiwan,” “two sides of the strait and Hong Kong” should be used. External propaganda, moreover, is to use mainland PRC terminology rather than that of international law. Thus, “Taiwan passports” should be changed to “travel documents,” “extradition” should be changed to “repatriation,” and so on. (*HK Daily: PRC Ideological Departments Order Language Changes in Taiwan Affairs – Table*, Hong Kong MING PAO (Internet version), May 20, 2004, as translated in FBIS.)

(Wendy Zeldin, 7-9832)

CHINA – Laboratory Rules

On May 28, 2004, China issued new regulations on mandatory safety requirements in laboratories, to enter into effect on October 1. The regulations were released ahead of schedule because of the recent outbreaks of cases of Severe Acute Respiratory Syndrome (SARS) in Beijing, Singapore, and Taiwan. They cover management of biological agents, pathogens,

hazardous waste, and laboratory equipment as well as detailed operating methods for staff. According to the Chairman of the National Accreditation and Certification Administration, the safety requirements are “relatively advanced” because other countries’ experience was borrowed and basic bio-safety requirements from the World Health Organization were incorporated as well. (*New Rules for Lab Safety*, CHINA DAILY, May 29, 2004, LEXIS/NEXIS, News Library, 90days File.)

It may be noted that draft regulations on laboratory animals have been prepared and submitted to the Ministry of Science and Technology. The proposed revision contains articles on animal welfare, encouraging the use of substitutes for animals in scientific research to avoid unnecessary pain and harm to animals where experimental results are not affected and stipulating that people conducting experiments should take care of animals and not abuse or harm them. (*China Revising Regulations on Laboratory Animal* [sic], LAWINFOCHINA, May 27, 2004, at <http://www.lawinfochina.com/dispecontent.asp?id=4450&DB=3>.) (Wendy Zeldin, 7-9832)

CHINA – New Agency To Oversee Conformity with Constitution

The Standing Committee of the National People’s Congress established a new agency in May 2004 to review whether legislation and government decisions conform to the constitution. The body has about fifty staff members and is a division under the Legal Affairs Commission of the Standing Committee. According to a Commission official, the agency will also be responsible for collecting information from the public on constitutional violations. (*China Set Up New Agency To See to Constitution Application*, XINHUA, June 21, 2004, Lexis/Nexis, News Library, 90days File.) (Wendy Zeldin, 7-9832)

JAPAN – Gang Countermeasures Law Amendment

The Diet passed a bill in April 2004 that amends the Law Concerning Prevention, Etc., of Unjust Acts by Gang Members (Law No. 77 of 1991, amended by Law No. 38 of 2004). When gangs have conflicts, it is the bottom-rung gang members who always commit the violence. If ordinary people happen to be injured by the gang violence or their property damaged, they heretofore have not been able to collect damages because bottom-rung gang members usually have no assets and are just put in prison. Under the relevant Civil Code provisions, it was difficult to make the gang leaders responsible for damages. The amendment makes it much easier to hold them responsible in such cases. (Shugiin [House of Representatives], *Gian ichiran* [List of Bills], No. 159 session, available at http://www.shugiin.go.jp/index.nsf/html/index_gian.htm.) (Sayuri Umeda, 7-0075)

JAPAN – Lay Judge Participation System

On May 21, 2004, the Diet passed a bill that will allow the general public to take part in criminal cases. The Law Concerning Criminal Trials Participated in by Lay Judges provides that any eligible voter over 20 years old can be appointed as a lay judge by lottery in cases where a defendant is charged with crimes punishable by the death penalty or life imprisonment. In such cases, three judges and six lay judges constitute a panel. They have equal power in deciding the facts, guilt, and penalty. The decision is made by majority vote

with at least one vote from both groups of judges. (*Saibanin seido hoan ga seiritsu* [Lay judge system law enacted], ASAHI SHIMBUN, May 21, 2004.)
(Sayuri Umeda, 7-0075)

KOREA, SOUTH – Constitutional Court Dismisses Impeachment of President Roh

The Constitutional Court of the Republic of Korea dismissed the impeachment motion that had been passed by the National Assembly against President Roh for violation of the Constitution and election laws. In South Korea, an impeachment motion against the President is proposed by at least two-thirds of the members of National Assembly, and the decision to impeach is made by the Constitutional Court.

In regard to the first charge, that Roh had made comments during news conferences in February 2004 urging the public to support the leading party, the Court acknowledged that Roh had violated the Constitution and election laws requiring public officials to maintain political neutrality in an election, a key reason cited for the impeachment. However, the Court said, the violation was not deliberate but was made incidentally during the course of the President's responding to questions and was not serious enough to warrant his dismissal from office.

Roh had also suggested that a national referendum on confidence in the government be held. The Court allowed that in so doing Roh had violated the Constitution and undermined the idea of the rule of law, as the Constitution limits the major policies that the president can put to referendum, but, the Court said, the violation was not serious because he had just made a suggestion and had not tried to enforce it.

The Court dismissed charges implicating Roh in corruption scandals involving his close aides, because, it held, either they had occurred before his inauguration or there was no evidence of his involvement. In addition, the court ruled that Roh's poor performance in economic affairs was not subject to judicial judgment.

Although the Court dismissed impeachment of President Roh it admonished him and reminded him of his duty to protect the Constitution and to respect the law. (THE KOREA TIMES, <http://times.hankooki.com/>; the Constitutional Court of Korea, at <http://www.ccourt.go.kr/>.)
(Francis Yang, 7-3525)

PAKISTAN – Constitutional Amendments

The Parliament passed on December 31, 2003, the Constitution (Seventeenth Amendment) Act, 2003, which immediately entered into force. It amends articles 41, 58, 112, 152A, 179, 195, 243, 268, and 270AA of the Constitution of the Islamic Republic of Pakistan.

The newly introduced clause 8 in article 41 allows a member or members of the Parliament, individually or jointly, to move a resolution for a vote of confidence to be regulated and conducted in a Special Session, in accordance with the prescribed rules of the Federal Government, by the Chief Election Commissioner, for affirmation of the President in office by a majority of the members present and voting. Upon passage of the vote of confidence, notwithstanding anything contained in the Constitution or judgment of any court, the President will be deemed elected to hold office for a term of five years under the Constitution. Such a

vote of affirmation will not be called into question in any court or forum on any ground whatsoever.

The Act provides that, since the takeover of the Government by General Musharraf, all proclamations, orders, ordinances, Chief Executive's Orders (including the Provisional Constitution), and all other laws, orders, amendments to the Constitution, etc., made by the Chief Executive between October 12, 1999, and entry into force of the 2003 amendment, as adopted and affirmed, are deemed to have been validly made by the competent authority. Notwithstanding anything contained in the Constitution, the same will not be called in question in any court or forum on any ground whatsoever. Also all orders made, proceedings taken, appointments made, and acts done by any authority or person in compliance with the powers derived from the Chief Executive during the stated periods, regardless of any judgment of any court, will be deemed to be and always to have been validly made, taken, or done and such acts, etc., will not be called in question in any court or forum on any ground whatsoever.

To meet a demand made by the opposition party, an amendment was included to lower the retirement age of supreme court judges to sixty-five and of provincial High Court judges to sixty-two.

The Act also declares that all proclamations, presidential orders, ordinances, Chief Executive's orders, laws, regulations, etc., in force immediately before the commencement of this Act will continue in force until altered, repealed, or amended by the competent authority. The "competent authority" is defined, in respect of the presidential orders, ordinances, and Chief Executive's orders (including constitutional amendments), as the appropriate legislature; and in respect of notifications, rules and orders, etc., as the authority in which the power to make, alter, repeal, or amend the same is vested under the law. Further, immunity is granted from prosecution, proceedings taken, or issuance of any writ in exercise of extraordinary jurisdiction of any court against any office holder for any act done in compliance with any order made or for sentences passed against them. (PAKISTANI.ORG, <http://www.pakistani.org/pakistan/constitution/amendments/17amendment.html>.) (Krishan Nehra, 7-7103)

PAKISTAN – Muslim Marriage Sans Guardians' Consent

In a judgment that is expected by observers to stir wide-ranging debate in Pakistani society, a court warned police against interference in love marriages between adult Muslims. (*Pak Court Tells Police Not to Interfere with Love Marriages*, HINDUSTAN TIMES, World Section, June 4, 2004, available at <http://www.hindustantimes.com>.) The High Court for the Province of Punjab at Lahore has directed the Inspector-General of Police (IGP) to ensure through his district police officers or through the Police Superintendents of the Districts that they should not interfere in marriages between consenting adults. Otherwise, the court further observed, it will take stern action against them.

The court passed the above order while validating a love marriage between Fakhira and Abid Ali that was solemnized by them in April 2003. The wife, Fakhira, informed the court that she married Abid Ali of her own free will without the consent of her parents and that the police, at the instigation of her parents, were interfering with her matrimonial life in pressing her to divorce the husband. Therefore, she sought protection from police harassment. The court admonished the police officials concerned for their illegal harassment and warned

that they would be sent to jail if they did not desist. The court further observed that police reports lodged in such cases seemed to flow from the malice and frustration of the parents and that the latter should not pressure the police nor usurp their children's rights.

According to the court order, marriage by choice is the legal and religious right of every individual, one that parents cannot deny their children, and such marriages are valid. When a court has no grounds to invalidate a love marriage, the police should act to protect and not sabotage such a bond.

(Krishan Nehra, 7-7103)

PAKISTAN – National Security Council

By a Gazette notification of April 20, 2004, the Government of Pakistan promulgated a controversial law that seeks to create a National Security Council, affording the military a permanent role in Pakistan's governance. The enactment, the National Security Council Act, No. 1 of 2004, seeks to create a thirteen-member council of the same name.

General Pervez Musharraf, the President of Pakistan, will head the Council. Other members of the council include the Prime Minister, the Chairman of the Senate, the Speaker of the National Assembly, the leader of the opposition in the National Assembly, the Chief Ministers of the four provinces, the Chairman of Joint Chiefs of Staff Committee, and the Chiefs of Staff of the Pakistan army, navy, and air force. The Act declares that the Council will serve as a forum for consultation on matters of national security, including the sovereignty, integrity, defense, and security of the State and crisis management. The Council will formulate and make recommendations to the President and the Government in accordance with the consultations on these matters. Any proposal on an issue of national importance will be referred by the Council to the Senate or the National Assembly for appropriate action.

The President, at his discretion or on the advice of the Prime Minister, may convene a meeting of the Council. However, a meeting once called may not be postponed due to the absence of one or more of its members. The Council may also extend a special invitation to any outside person to attend any of its meetings. In addition, the Council will have its own Secretariat.

The executive director the Human Rights Commission of Pakistan (HRCP), while criticizing the formation of the NSC, was of the view that it will be dominated by the military. He stated that "we don't accept that is to prevent military takeovers." Professor Rasul Baksh Rais of the prestigious Lahore University of Management Sciences (LUMS) said that "[F]or about 20 years, the Pakistani military has been saying that the affairs of the state cannot be left to elected representatives of the people and that they should share power with the military.... So they created an institution which will be overseeing everything that is happening in Pakistan. It amounts to giving a permanent place for the military in determination of policies." (<http://www.plusnews.org/report.asp?ReportID=40588&SelectRegion=Central Asia.>)

(Krishan Nehra, 7-7103)

SINGAPORE – Draft Anti-Spam Guidelines

Singapore, where over eighty percent of households reportedly have at least one personal computer, may outlaw spam and permit Internet Service Providers to pursue spammers

in court. Fines of up to SGD1 (US\$0.58) per each spam e-mail are being considered as penalties for those who violate the draft provisions. Under the proposed guidelines, marketers would have to clearly label their messages as advertisements and offer recipients a valid opt-out mechanisms should they choose not to receive the messages. Marketers would also have to send the messages from genuine e-mail addresses and not use false or misleading subject headers. Leong Keng Thai, Deputy Chief Executive and Director-General of the Infocomm Development Authority of Singapore, stated that “this is a joint effort between the public and private sectors to curb e-mail spam” and that it was necessary “to strike a balance between consumer and business interests.”

The measures are expected to be enacted early next year. However, the planned legislation will apply only to messages sent from within Singapore and so their impact may be limited, since almost 80 percent of the country’s spam originates from abroad. (*Singapore Unveils Draft Laws To Reduce E-Mail Spam, Marketers’ Interests Safe*, AFX-ASIA, May 25, 2004; *Singapore Mulls Spam Law*, ComputerWire, May 27, 2004; *Jake Lloyd-Smith, Singapore Vows To Fight E-Mail Spam*, ASSOCIATED PRESS ONLINE, May 25, 2004, all via LEXIS/NEXIS, News Library, 90days File.)
(Wendy Zeldin, 7-9832)

TAIWAN – Gender Equality Education Law

The Gender Equality Education Law was adopted on June 5, 2004, after a seven-year legislative process. The Law stipulates that teaching materials and courses must be reviewed for gender bias and that except for schools that have traditionally been male-only or female-only, institutions cannot discriminate against prospective students or employees because of gender or sexual preference. Institutions are also prohibited from allowing gender or sexual-identity issues to influence student or employee evaluations and awards or the availability of education and other opportunities. Schools are no longer permitted to force pregnant teenagers and unwed mothers from dropping out. The Law further provides that in order to improve gender equality within their institutions, each government department and school must establish a gender equality committee to review existing policies and implement new ones. The gender equality committee of the central government will set national standards, supervise the lower-level committees, and provide training for employees regarding the new Law. (Caroline Hong, *Gender Fairness Bill Is Made Law*, TAIPEI TIMES, June 5, 2004, *available at* <http://www.taipeitimes.com/News/taiwan/archives/2004/06/05/2003173804>.)
(Wendy Zeldin, 7-9832)

TAIWAN – Incentives for Foreign Investors

On May 17, 2004, Taiwan’s Premier announced financial measures to be implemented within two months that are designed to encourage investment of foreign capital. These steps include access to short-term financial aid for foreigners from Taiwan financial institutions under relaxed rules. In addition, new measures will make it easier for foreign investors to take part in the domestic futures market and to remit earnings from the domestic bond market as a way of reducing operating costs. Lin Chuan, the Finance Minister, stated that the new policies are intended to work toward the long-term globalization of Taiwan’s capital market competitive and are not merely a response to recent declines in the stock market. He stressed that the measures are needed to bolster the economy and make Taiwan competitive.

(*Premier Announces Moves To Lure Foreign Capital*, CENTRAL NEWS AGENCY, May 17, 2004, LEXIS, Asiapc Library, Taiwan File.)
(Constance A. Johnson, 7-9829)

TAJKISTAN – Moratorium on the Death Penalty

Tajikistan's legislature adopted a moratorium on the death penalty. The unanimously adopted decision took effect immediately upon being signed into law by the President. The law does not specify the duration of the moratorium, but states that courts must suspend this kind of punishment. That makes twenty-five years of imprisonment the stiffest criminal penalty under current Tajikistan law. However, since it is not completely abolished, the death penalty remains as a possible punishment for five types of crimes according to the Tajik Criminal Code. Women, minors, and elderly men cannot be sentenced to death.

It is unclear whether the moratorium will be followed by a moratorium on executions. The President has ordered a review of all pending death sentences for people on death row. Thirty-four individuals were sentenced to death by courts in 2003. (8:111 RADIO FREE EUROPE/RADIO LIBERTY NEWSLINE, June 14, 2003.)
(Peter Roudik, 7-9861)

VIETNAM – Draft Competition Law

On May 29, 2004, the Ministry of Trade presented Vietnam's first law on competition to the National Assembly. At present, the country has 5,000 state-owned enterprises, 120,000 non-state businesses, 3,000 foreign-invested companies, and 2.5 million private businesses, and current legislation deals only with the promotion of equitable competition. According to Trade Minister Truong Dinh Tuyen, the law will help create an equal competitive environment in which competitiveness among all sectors, but especially between domestic and foreign companies, can be increased, monopoly prevented, and businesses' legitimate rights protected. The impetus for enactment of the new law is not only domestic pressure but also more broadly the government's recognition that such legislation is necessary to help Vietnam become integrated into the global economy and be accepted by the World Trade Organization. (Elizabeth Mills, *Draft of Vietnam's First Competition Law Completed*, WORLD MARKETS ANALYSIS, May 31, 2004, LEXIS/NEXIS, News Library, 90days File.)
(Wendy Zeldin, 7-9832)

EUROPE

BULGARIA – Language Protection

Provisions on the protection of the Bulgarian language were included in the Law on the 2005 National Budget. This was achieved after five previous unsuccessful attempts to pass a separate law. It is aimed at regulating standards related to the mandatory use, protection, purity, enrichment, and development of Bulgarian. The Law requires foreigners to produce certificates proving their knowledge of Bulgarian language when applying for permanent residence in the country and makes Bulgarian the only official language of business contracts and negotiations. Under the Law, all business agreements, if one of the parties is a Bulgarian national or legal entity, are recognized if they were made in Bulgarian regardless of the place

where they were concluded. The Trade Inspectorate of the Economy Ministry is designated to oversee this provision. The provisions foresee the establishment of a state body for monitoring and regulating the implementation of this act. Fines equal to US\$30-2,000 can be imposed for violation of the provisions. (THE SOFIA ECHO, June 4, 2004, *available at* <http://dlib.eastview.com/>.)
(Peter Roudik, 7-9861)

ESTONIA – Criminalization of Sale of Alcohol to Minors

Amendments to the Criminal Code adopted by the Estonian legislature recognize the sale of alcohol to minors as a crime. The law provides for a fine for selling alcohol to minors and a jail sentence of up to three years for repeated violations. Simultaneously adopted amendments to the Surveillance Act allow police to use more effective surveillance techniques against liquor store keepers. The Criminal Code in effect treats inducing minors to drink as a crime, but the amendment, which will enter into force as of August 1, 2004, will make selling and buying alcohol for minors an equally criminal act. (BNS (Baltic News Service) DAILY NEWS, June 3, 2004, *available at* <http://www.securities.com>.)
(Peter Roudik, 7-9861)

ESTONIA – International Criminal Court Immunity

The Riigikogu, Estonia's legislature, ratified an agreement on privileges and immunities of the International Criminal Court, which ensures the Court the privileges and immunities of an international legal person. By ratifying the document, Estonia agreed to secure the immunity of the Court's funds and other assets, including a ban on searches and expropriations. The agreement exempts the Court from direct taxation in Estonia. The exemption does not cover public utility charges. Under the agreement, senior Court officials, judges, and prosecutors will enjoy privileges and immunities equal to those of diplomatic representatives. At present Estonia is conducting negotiations with the United States on providing immunity for U.S. citizens from International Criminal Court prosecution. (BNS (Baltic News Service) DAILY NEWS, June 1, 2004, *available at* <http://www.securities.com>.)
(Peter Roudik, 7-9861)

FRANCE – Life-Long Vocational Training

Law 2004-391 on Life-Long Vocational Training and Social Dialog was published in the official gazette on May 5, 2004, after being declared constitutional by the Constitutional Council on April 29, 2004. The Law is the result of two collective bargaining agreements negotiated between the unions and the state and approved on September 20, 2003, and July 16, 2001, respectively.

The Law is aimed at modernizing the continuing vocational training system and giving access to such a system to all employees. Article 2 of the Law provides that "life-long vocational training constitutes a national obligation." Employees have an individual right to twenty hours of vocational training a year. Part of this training may take place outside working hours; the employee is entitled to receive fifty percent of his salary in such cases. Access to vocational training has become easier and the financial contribution of employers to professional training programs has increased. Handicapped employees have access to all the programs set forth by the Law and may benefit from additional programs tailored to their

specific needs.

The state agrees to give priority to collective bargaining before any legislative reform on working relations is passed. (Law 2004-39, LegiFrance, at <http://legifrance.gouv.fr>.) (Nicole Atwill, 7-2832)

FRANCE – New Electronic Communications Bill

Law 2004-575 of June 21, 2004, on Confidence in the Digital Economy, was published in the French official gazette on June 22. The Law addresses a wide range of topics including e-commerce, online advertising, telemarketing contracts, cryptography, digital certification, digital signatures, and cybercrime.

In addition, the Law sets forth the conditions under which municipalities and groups of municipalities are entitled to provide telecommunications infrastructure to operators, to provide infrastructure below cost or to offer subsidies to operators to use various financing systems, and to become full service telecommunications infrastructure operators themselves and service providers to end-users.

The new Law transposes the European Union's Directives on the subject. It missed the transposition deadline by almost one year (the deadline was July 25, 2003). For the Law to be fully implemented, several decrees need to be adopted. This is expected to occur in the second half of 2004. (*French Law on Confidence in the Digital Economy (LCEN) Enters Into Force*, DMEUROPE, June 25, 2004, at <http://www.dmeurope.com> and LEGIFRANCE, at <http://www.legifrance.gouv.fr>.) (Nicole Atwill, 7-2832)

GERMANY – Design Protection

Germany enacted a new Design Protection Act on March 12, 2004 (*Bundesgesetzblatt I* at 390). This Act transposes into German law Directive 98/EC of the European Patent Office and of the Council of Europe of October 13, 1998 (*Official Journal of the European Communities* No. L 289 at 28). In addition, the Act reforms German design protection law and eliminates obsolete provisions. Nevertheless, the new Act is viewed as overly protective of the automobile industry by failing to exempt vehicle parts from design protection. Under the new Act, automobile manufacturers can exercise a monopoly over car parts that are a visible part of a car's exterior or interior by registering these as protected designs. (KFZ BETRIEB at 3 (Jan. 29, 2004), Lexis/Nexis, News Library.) (Edith Palmer, 7-9860)

GERMANY – Internet Service Providers

Providers of electronic information and communication services must list a telephone number in the contact page of their website. The Higher Regional Court of Cologne (Oberlandesgericht Köln) issued this ruling in a decision of February 13, 2004 (Docket No. 6 U 109/03). The Court found this requirement in section 6, paragraph 2, of the German Act on Internet Providers of July 22, 1997 (*Bundesgesetzblatt I* at 1870), which provides that Internet service providers must list in their website information that allows for speedy electronic contact as well as for direct communication and that this information must include an e-mail address.

In the interest of consumer protection, the Court interpreted this provision to the effect that a telephone number is required for “direct communication” and that it is not sufficient to provide an e-mail address through which the consumer could request to be called by the service. The decision did not clarify whether a fax number would be sufficient to allow for “direct communication.” (FRANKFURTER ALLGEMEINE ZEITUNG, May 26, 2004, at 25.) (Edith Palmer 7-9860)

IRELAND – Anti-Smoking Legislation

Ireland recently passed the European Union’s toughest anti-smoking legislation, banning smoking in public, effective at the end of March 2004 (Public Health (Tobacco) (Amendment) Act 2004 (No. 6 of 2004), Public Health (Tobacco) (Amendment) Act 2004 (Commencement) Order 2004 (S.I. No. 111 of 2004)). The Act banned smoking in all public places except hotel, guesthouse, and B&B bedrooms; prisons; Garda (police) station detention areas; nursing homes; hospices; religious order homes; psychiatric hospitals; and residential areas within third-level education institutions.

According to news sources, a taxicab driver is challenging that legislation in the High Court as a violation of his civil liberties and rights under article 40 of the Constitution. (*Corkman Lodges Legal Challenge Against Smoking Ban*, IRELANDON-LINE, June 16, 2004, at <http://212.2.162.45/news/story.asp?j=107701006&p=yx77xy7yz&n=107701766>; *Martin Vows To Fight Smoking Ban Challenge*, IRELANDON-LINE, June 16, 2004, at <http://212.2.162.45/news/story.asp?j=107730658&p=yx773y364&n=107731418>; *Ireland’s Wide-Ranging Smoking Ban Faces Court Challenge*, YAHOO NEWS, June 16, 2004, at http://news.yahoo.com/news?tmpl=story&u=/afp/20040616/hl_afp/ireland_smoking_04061613845.)

(Diana Frazier Miller, 7-0639)

IRELAND – Constitution Amended on Citizenship

On June 11, 2004, by referendum, the citizens of Ireland voted by a margin of nearly four to one to amend the Constitution so that those born in Ireland of non-Irish parents are not automatically citizens of Ireland (and thus gain rights as members of the European Union (EU)) (<http://www.referendum.ie/home/>). According to a Reuters report on the story, Ireland is the last nation in the EU to grant automatic citizenship to all children born on its soil. (*Citizenship Referendum Passed by 80% Majority*, REUTERS, June 12, 2004, at <http://breaking.examiner.ie/2004/06/13/story152057.html#>). The Irish parliament is expected to quickly pass new citizenship legislation consistent with the results of the referendum.

The government claimed that large numbers of non-EU nationals were coming to Ireland to give birth so they could claim residency as parents of Irish children (*Proposed Citizenship Referendum*, <http://www.justice.ie/80256E010039C5AF/vWeb/pcJUSQ5YBMRC-en> for government documentation, including its proposal). These claims were hotly debated during the campaign.

The language of the twenty-seventh Amendment of the Constitution Bill 2004, initiated in the Dáil Éireann (House of Representatives) on April 8, 2004, changes the previous language of Article 9.1.2. (adopted by the Nineteenth Amendment of the Constitution Act, effective from December 2, 1999) to:

Notwithstanding any other provision of this Constitution, a person born in the

island of Ireland, which includes its islands and its seas, who does not have, at the time of his or her birth, at least one parent who is an Irish citizen or entitled to be an Irish citizen is not entitled to Irish citizenship or nationality, unless otherwise provided for by law.

This section shall not apply to persons born before the date of the enactment of this section.
(Diana Frazier Miller, 7-0639)

THE NETHERLANDS – Immigration of “Knowledge Migrants” Liberalized

The Council of Ministers has approved a proposal of the Minister for Alien Affairs that will create in the future one single contact point, one single procedure, and one single permit for “knowledge migrants.” A knowledge migrant is a migrant who comes to the Netherlands in order to perform work in salaried employment and earns a gross income of at least €45,000 (approximately US\$54,000). The permit for knowledge migrants will be granted for a period of five years if the person concerned is in possession or to be granted possession of a contract for an indefinite period. In the case of a contract for a definite period, the permit will be granted for the duration of the contract, for a maximum of five years.

Corporations and institutions can enter into a covenant with the Immigration and Naturalization Service for the purpose of the admission of knowledge migrants, who will then qualify for an accelerated procedure for the acquisition of a temporary residence permit. The government will make every effort to deal with these applications in the shortest possible period of time, but in two weeks at the maximum. (Ministry of Justice, *Press Release*, Apr. 29, 2004, at <http://www.ministerievanjustitie.nl/>.)
(Karel Wennink, 7-9864)

THE NETHERLANDS – Mediation Instituted

According to a letter that the Minister for Justice submitted to the Second Chamber of Parliament on April 20, 2004, the Dutch courts and legal aid services will soon have facilities for mediation. Individuals seeking legal advice may request information and advice on mediation or they may be referred to mediators. The facilities to be created should be in operation by 2007. The legal advice services will have officials specialized in mediation to inform and advise individuals in an adequate manner or refer them to mediators. The courts will also invest in training: judges and court secretaries will be offered courses in referring the parties to mediators.

Mediation costs are to be borne by the parties, with the exception of persons of limited means. The latter will be given a financial allowance, which may take the form of a contribution. The amount of this contribution will be based on the current Law on Legal Assistance. In cases where there is a contribution for mediation, the mediator will work for the hourly rate of the legal aid lawyers. As a temporary incentive to stimulate the use of mediation, the Legal Aid Councils will pay an amount of €200 (approximately US\$240) for each mediation when the parties have followed the court’s advice to seek help from a mediator. The Minister wants to promote the application of mediation in all areas, except in the area of criminal law. (Ministry of Justice, *Press Release*, Apr. 20, 2004, at www.ministerievanjustitie.nl)
(Karel Wennink, 7-9864)

RUSSIAN FEDERATION – New Rules for Public Events

The new Federal Law on Meetings, Assemblies, Demonstrations, Rallies, and Pickets entered into force in June. The Law provides for a new procedure to obtain permits for conducting mass events. Under these rules, organizers must inform the regional agency of the Justice Ministry no later than ten days before the event, specifying the reasons for the event, and indicate the number of people participating and the measures undertaken to guarantee the safety of participants and public order. The responsibility for the implementation of safety requirements is imposed on the organizers of the event. Formally, all events can be conducted anywhere where public order can be secured, except for territories next to presidential residencies, foreign embassies, church buildings, enterprises using dangerous technologies, power lines, courts, correction facilities, and railroads. The Department of Justice and local administrators have the right to change the proposed place and offer an alternative location. The change of venue suggested by the government is final and obligatory. Organizers must inform the authorities whether they accept the suggested new place no later than three days before the event. Some restrictions affect the timing of the events. Round-the-clock actions are prohibited, and all events must end before 11 p.m. Minors under sixteen years of age are prohibited from participation in rallies and demonstrations. (ROSSIISKAIA GAZETA, June 9, 2004, at <http://www.rg.ru>.)
(Peter Roudik, 7-9861)

SERBIA – New Law on Energy Sources

A new Serbian law on energy sources provides for major principles of the operation of and competition in the market of energy sources and enables the implementation of large energy-saving projects. The restructuring of public utilities companies according to EU directives is foreseen. The law introduces special subsidies for the usage of restorable energy sources and creates particular incentives for building small hydroelectric and geothermal power plants. The law states that the government should elaborate provisions regarding the use of wind and sun energy and prescribes the government's obligation to establish new energy consumption standards and initiate programs related to the efficient consumption of energy in buildings, industry, and transportation. The law determines the role of regional and municipal authorities, scientific centers, and commercial organizations. A new coordinating government institution, the Serbian Energy Efficiency Agency, will be created. (22 PREGLED (June 2004), available at <http://dlib.eastview.com/>.)
(Peter Roudik, 7-9861)

SPAIN – Draft Law on Domestic Violence Against Women

A draft law on violence against women was approved by the Council of Ministers on June 4, 2004, and will be sent to the legislature for full debate. If approved, it will be the first comprehensive law on violence against women in Europe, since it includes not only criminal sanctions but preventive, educational, social, support, and health-related provisions.

The draft law creates special courts and a special section on the National Police to deal with cases of domestic violence and includes special training for judges, court staff, and police. It establishes a comprehensive support program for the victims through social services units at the national and regional levels. An intensive informational and educational campaign to prevent domestic violence and alert the population to this problem would also be

implemented. Before the draft is sent to the legislature, women's groups will have the opportunity to give their final comments on the proposed text. If approved, the law might become effective as early as January 2005. (*ElMundo.es*, June 25, 2004, <http://www.elmundo.es/documentos/2004/06/sociedad/malostratos/ley.html>.) (Graciela I. Rodriguez-Ferrand, 7-9818)

UNITED KINGDOM – Court Defeat for Government Asylum Seekers Law

In January 2004, the government implemented a controversial law that requires asylum seekers to apply for asylum “as soon as practicable” upon entry into the country. If the asylum seeker fails to do this, he can be denied financial support and housing (section 55). The law was introduced to deter immigrants who were entering the country and working illegally prior to filing a claim for asylum. This law was challenged by a number of asylum seekers who were denied support after delaying claiming asylum for a day after entry into the country.

The court held that the provision contravened article 3 of the European Convention of Human Rights, which requires that “no one be subjected ... to inhumane or degrading treatment.” It stated that the section was “abhorrent, illogical and very expensive.” The government is appealing to the House of Lords, the highest court in England and Wales, as it “is not the welfare system of the world.” It has recently announced, however, that it will manage section 55 in accordance with the judgment. (Secretary of State for the Home Department v Limbuela, et al. [2004] EWCA Civ 540 (Eng.), available at <http://www.bailii.org/ew/cases/EWCA/Civ/2004/540.html>, last accessed June 19, 2004; Dominic Casciani, *Asylum Seekers To Be Housed*, June 25, 2004, available at http://news.bbc.co.uk/2/hi/uk_news/politics/3840439.stm, last accessed June 25, 2004.) (Clare Feikert, 7-5262)

UNITED KINGDOM – Gambling Laws Revised

As part of its current legislative program, the government has introduced a draft gambling bill to consolidate and reform the “unnecessarily complex and rigid regime that has failed to keep pace with changes in technology and public expectations.” While the government has stated that Britain does not have a high rate of problem gambling, the reforms are preventive and aimed at protecting children and vulnerable people from “new and old temptations.” The reforms will establish a single new regulator, known as the Gambling Commission, which will be responsible for regulation and licensing of the industry. Some of the main aspects of the bill include: a limit on the number of gaming machines in casinos; prohibition of bingo in small casinos; removal of gaming machines from unlicensed premises; limitation of unlimited prize gaming machines; the granting to local authorities of the power to issue licenses for new casinos in their area. (DEPARTMENT FOR CULTURE, MEDIA AND SPORT, DRAFT GAMBLING BILL, Cm. 6014-I (Nov. 2003), available at <http://www.culture.gov.uk/NR/rdonlyres/eosky5be5h5jxki7yt3qppulh4sk2k3u5uiu5p4xafr52vln d2lmr2b3dirmqkvxdkzowrjna3awvygkzztqxbzlb/26444GambBillDraft.pdf>, last accessed June 25, 2004; DEPARTMENT FOR CULTURE, MEDIA AND SPORT, DRAFT GAMBLING BILL, GOVERNMENT RESPONSE TO THE FIRST REPORT OF THE JOINT COMMITTEE ON THE DRAFT GAMING BILL; cm 6253 (June 2004), available at <http://www.culture.gov.uk/NR/rdonlyres/elv3jiejqr2oi5jhobvslt4dvkq3h2c5n2la3gry5tvbxc6bw5c2v4pr3oh2aavc6ankuclvurupeth2cguaflixig/grjointcommitteedgambillCm6253.pdf>, last accessed June 25, 2004.) (Clare Feikert, 7-5262)

UNITED KINGDOM – Gay Rights Bill “Scuppered” in the House of Lords

The government, in an effort to get its Civil Partnership Bill through both Houses of Parliament, has suffered a setback through the introduction of an amendment by the opposition Conservative Party. The bill aims to extend the same legal rights that married couples receive, such as exemption from inheritance tax and pension benefits, to same-sex couples through a civil partnership registration scheme. The amendment extends the rights in the bill to other family relationships, such as siblings, grandparents, etc. The aim of this move is to grant those who provide long-term care to family members the same tax benefits and rights as those that are intended to benefit same-sex couples, to ensure that the bill is not solely a “gay marriage” bill but one to remove injustice, as the government has proposed.

The opposition on both sides of the bill and the amendment has been highly critical. One Member of Parliament has stated that the amendment “deals with couples who want to indulge in a relationship which most likely involves unnatural sexual practices.” Proponents of the bill have stated that the amendment is unworkable and that “opening up such a formal legal relationship to family members could lead to questions about the nature of the family unit, blurring the integrity of laws prohibiting sexual relationships within families.” (Civil Partnership Bill [HL53] 2003/2004, available at <http://www.publications.parliament.uk/pa/ld200304/ldbills/079/2004079i.pdf>, last accessed June 28, 2004; see also Bills Index, available at <http://bills.ais.co.uk/AC.asp#HL53>, last accessed June 28, 2004.) (Clare Feikert, 7-5262)

NEAR EAST

IRAN – Consumer Protection Law

Recently the Iranian House of Representatives approved the country’s first consumer protection law, which must be ratified by the Guardian Council before it can enter into effect. It provides for liability of persons (juridical or natural) who offer any commodity for sale. The commodity offered must be in conformity with the standards stated in the laws or terms of the contract or common usage. The seller is liable for any defect and must compensate the buyer accordingly. If it is proved that the seller had knowledge of the defect, he will be sentenced to a criminal punishment plus compensation of the victim. The law emphasizes the need for creation of a board to supervise the implementation of the consumer protection law. (HAMSHAHRI, June 28, 2004, <http://www.hamshahri.org>.) (GholamVafai, 7-9845)

IRAN – Respecting Legitimate Freedoms and Protection of Civil Rights

The Law on Respecting Legitimate Freedoms and Protection of Civil Rights was passed on May 4, 2004, by the *Majlis* (House of Representatives of the Islamic Republic of Iran) and ratified by the Guardian Council. Under the new law, all the courts of general jurisdiction, including both revolutionary and military courts, public prosecution offices, and the law enforcement authorities working under the Judiciary Power are required to observe the following points:

- Investigation and prosecution of crimes and writs of arrest must be in accordance with the laws or an order of a judicial authority in an open manner.

No personal preference or prejudice should be applied. Any kind of rough treatment or unlawful detention must be avoided.

- Sentences must be in conformity with legal procedure and must be applied only to the perpetrator and others directly involved in committing the crime. Court decisions must be based on standards of proof established under Islamic law and existing statutes.
- The right of defense of accused persons must be respected and the opportunity to have a lawyer must be provided.
- Islamic principles must be observed with respect to the petitioners and the alleged wrongdoers.
- Transparency in criminal investigation must be observed.
- Closing the eyes of accused persons or any other contemptuous treatment is not allowed.
- Any kind of torture for the purpose of extracting a confession is not allowed, and confessions thus extracted will be of no value.
- Investigations and inspections should be carried out without causing any inconvenience.
- Invasion of privacy and extending the investigation to private documents are not allowed.
- Courts and prosecution offices must supervise the operations of prisons.
- The Head of the Judiciary is required to assign a board to supervise performance of the law. (OFFICIAL GAZETTE OF THE ISLAMIC REPUBLIC OF IRAN 3-4 (May 22, 2004)).

(GholamVafai, 7-9845)

ISRAEL – Employment of Women Law Amendment

The Employment of Women Law, 5734-1964 (8 *Laws of the State of Israel* 128 (5714-1953/54)), as amended, provides that a female worker is entitled to twelve weeks of maternity leave, part of which can be taken by her husband, starting after the first six weeks of childbirth and upon the mother's written consent. The period may be extended in cases where the mother or the newborn was hospitalized during the maternity leave for a period of more than two weeks, or in cases of multiple births.

Amendment Number 25, passed on March 24, 2004, provides that when a newborn is hospitalized for a period of at least twelve weeks, the maternity leave will be extended for four additional weeks. Pay during parental leave is covered by the Institute of Social Security. (Employment of Women Law (Amendment No. 25), 5764-2004, available at <http://www.knesset.gov.il> last accessed May 10, 2004.)

(Ruth Levush, 7-9847)

ISRAEL – Minimum Vote Increase for Parliamentary Membership

The Knesset Elections (Amendment No. 51) 5764-2004, adopted on May 17, 2004, raises the minimum vote required for representation in Parliament from 1.5% to 2%. There are 120 members in the Knesset who are elected from party candidate lists based on countrywide single constituency proportional representation. The increase in the required

minimum vote is intended to limit the number of parties in the Knesset and the disproportional influence minor parties have on coalition governments. (www.knesset.gov.il.)
(Ruth Levush, 7-9847)

ISRAEL – Unlimited Direct Access to Population Registry Database Denied

The Supreme Court of Israel granted a petition to prohibit the State from providing direct access to the general population registry database by connecting computers of the Ministry of Interior to those of the Income Tax Agency, the Institute of Social Security, the Broadcasting Authority, the Bank of Israel and commercial banks. Access to the database by public officials is permitted under the Population Registry Law, 5725 1965.

The Court held that in order to minimize the harm to privacy, the number of public officials who have access to the data should be limited. The data provided must be limited to the information requested and to the extent needed for the purpose for which it is requested. The Ministry of Interior is required to publish procedures and criteria regarding the type of data that can be transmitted and those who are entitled to receive it. (Ministry of Interior, *The Association for Civil Rights in Israel v. State of Israel*, H.C. 8070/98, Ministry of Interior decision rendered on May 10, 2004, available at <http://www.nevo.co.il> by subscription, last accessed May 10, 2004.)
(Ruth Levush, 7-9847)

SOUTH PACIFIC

ANTARCTICA – New Tourism Regulations

Antarctic Treaty nations are taking steps to regulate tour operations in the continent, where about 20,000 tourists are expected to visit in 2004. The 27th Antarctic Treaty Consultative Meeting, held in Cape Town, South Africa, from May 24 to June 4, 2004, considered proposals from a number of member nations for procedures to regulate the growing Antarctic tourism business. Australia proposed that tourists be required to post a bond to cover any emergencies and comply with quarantine rules. It also proposed shipping regulations and a system for accrediting tour operators. A representative of Australia's Department of Environment cited the litter problem at the Everest Base Camp as an example of the consequences of unregulated tourism in extreme environments. (*Australia Urges Regulation as Tourism to Antarctica Escalates*, June 4, 2004, in Antarctica News Archives, at <http://www.antarcticconnection.com/antarctic/news/2004/040604-tourism.shtml>; *Australia - Accreditation Scheme for Antarctic Tour Operators*, Working Paper 38, 27th Antarctic Treaty Consultative Meeting, at <http://www.ats.org.ar/27atcm/e/index.htm>.)
(Donald DeGlopper, 7-9831)

AUSTRALIA – Age Discrimination Law

On June 15, 2004, the Federal Parliament passed the Age Discrimination Bill. It prohibits discrimination on the basis of age in employment, education, and access to goods, services and facilities. Previous laws prohibit discrimination on grounds of race, sex, and disabilities. The Attorney-General noted that a series of recent reports by parliamentary committees and the Human Rights and Equal Opportunity Commission had indicated the need for such legislation, and that the new law will serve as a component of the government's

strategy for managing Australia's aging population. ("Age Discrimination Bill To Become Law," Media Release 094/2004, at <http://www.law.gov.au>.) (Donald DeGlopper, 7-9831)

AUSTRALIA – Children in Immigration Detention

On May 13, 2004, a 900-page report summarizing the results of a two-year inquiry into the effects on children of Australia's practice of mandatory detention of asylum-seekers was presented to Federal Parliament by the federal Human Rights and Equal Opportunity Commission. The report concludes that the practice is harmful to children and is a breach of Australia's obligations under the United Nations Convention on the Rights of the Child. The Human Rights Commissioner noted that there have been over 2,000 children in immigration detention over the past few years and that there were still a significant number held, stating "Children are still behind barbed wire now." He called on the government to release all remaining children within four weeks and for Parliament to change the law so that detention is no longer the first and only resort. The Minister for Immigration denied there had been breaches of human rights, saying the Convention does allow children to be detained lawfully. She went on to claim that implementing the Commission's recommendations would send "a very dangerous message to people-smugglers" that they "should put more children on these very dangerous boats." (Government of Australia, Human Rights and Equal Opportunity Commission, available at <http://www.humanrights.gov.au/>; *The Australian*, May 14, 2004, available at <http://www.theaustralian.news.com.au/>.) (Donald DeGlopper, 7-9831)

AUSTRALIA – Minimum Wage Raised

On May 5, 2004, the Australian Industrial Relations Commission, a statutory body empowered to effect compulsory arbitration of labor disputes, made its annual determination of the federal minimum wage. After reviewing submissions by trade unions, various employers' associations, and the Commonwealth (federal) government, the Commission set the minimum wage for a full time worker at A\$467.40 per week (about US\$327), a 4.2% increase. For a 40-hour week, this equates to A\$11.69 (US\$8.16) per hour. In Australia, the minimum wage is set by administrative, rather than a legislative, action, and neither the federal government nor the Parliament may change the amount. The Commission, which is headed by former judges and operates in the mode of a court, justified its determination with a 100-page decision. (Australian Industrial Relations Commission, *Safety Net Review 2004, Full Bench Decision PR 002004*, available at <http://www.airc.gov.au/index.html>; SYDNEY MORNING HERALD, May 6, 2004, available at <http://www.smh.com.au>.) (Donald DeGlopper, 7-9831)

INTERNATIONAL LAW AND ORGANIZATIONS

CHINA/NUCLEAR SUPPLIERS GROUP – Membership

At its annual conference held May 27-28, 2004, the forty-member Nuclear Suppliers Group (NSG) agreed to accept the People's Republic of China (PRC) as a member. The NSG, an unofficial organization of countries with nuclear capability that exercise control of nuclear exports by implementation of agreed-upon Guidelines, was founded in 1975. China applied to

join the NSG on January 26, 2004; its acceptance into the organization, along with Estonia, Lithuania, and Malta at the same meeting, brings NSG membership to forty-four countries. The new memberships were to take effect by an exchange of notes on June 10. PRC officials have also declared an interest in joining the Missile Technology Control Regime, whose aim is to limit the spread of technology that enables the delivery of weapons of mass destruction through ballistic missiles and unmanned aerial vehicles.

At the NSG meeting, the PRC stated that it intended to apply the NSG's "grandfather clause" to its nuclear trade with Pakistan. This would permit the PRC to continue trade in nuclear equipment, technology, and material covered under NSG Guidelines with non-safeguard countries like Pakistan under agreements that predate China's NSG entry. The PRC will therefore continue to cooperate with Pakistan in supplying two nuclear power plants at Chasma and Karachi as well as a research reactor; it also recently signed a formal agreement to furnish a second reactor at Chasma. (*China Joins Nuclear Suppliers Group*, ASIA PULSE, May 31, 2004; *Assessing China's Nonproliferation Vow*, DEFENSE NEWS, June 21, 2004; & Ann MacLachlan, *As New NSG Member, China Will Grandfather Pakistani Trade*, NUCLEAR FUEL, June 7, 2004, all via Lexis/Nexis, News Library, 90days File; *NSG Plenary Meeting Göteborg, Sweden, 27-28 May, 2004*, NSG-GOT/Press/Final, at <http://www.nuclearsuppliersgroup.org/PRESS/2004-05-goteborg.pdf>.)

(Wendy Zeldin, 7-9832)

EUROPEAN COURT OF HUMAN RIGHTS – Islamic Head Scarves

On June 29, 2004, the European Court of Human Rights ruled that Turkey has the right to prohibit the wearing of head scarves at its universities. In the case considered by the court, the University of Istanbul had issued a circular providing that students wearing the Islamic head scarf would be refused admission to lectures, courses, and tutorials. Subsequently, the complainant was denied access to a written examination and was also refused enrollment in a course and admission to various lectures at the university. After exhausting her administrative appeals in Turkey, she brought her case before the European Court of Human Rights, which held unanimously that there had been no violation of article 9 of the European Convention on Human Rights, which protects freedom of thought, conscience, and religion, and that Turkey may ban the wearing of head scarves at state institutions in order to protect the secular character of these institutions. The wearing of head scarves is also not permitted in the Turkish parliament. (*NRC-Handelsblad*, June 29, 2004, at <http://www.nrc.nl>.)

This was the first time that the court ruled on the head scarf issue. It found that "the issues at stake" included "the protection of the rights and freedoms of others" and the "maintenance of public order" in a country where the majority of the population, while professing a strong attachment to the rights of women and a secular way of life, adhered to the Islamic faith. Therefore, the court further ruled "imposing limitations on freedom to wear the Islamic head scarf could be regarded as meeting a pressing social need by seeking to achieve those two legitimate aims." This judgment could set a legal precedent on a very controversial issue that has appeared elsewhere in Europe, most notably in France, whose Parliament banned the wearing of conspicuous religious signs or clothing in public schools on March 15, 2004, (LEGI-FRANCE, <http://www.legifrance.gouv.fr>, & European Court of Human Rights website, at <http://www.echr.coe.int/Eng/Press/2004/June/ChamberjudgmentsSahinandTekin.htm>.) (Nicole Atwill, 7-2832, and Karel Wennink, 7-9864)

EUROPEAN COURT OF JUSTICE – Maritime Safety Ruling Against France

The European Court of Justice declared on June 22, 2004, that France has failed to fulfill its obligation under community law in respect of maritime safety. Council Directive 95/21/EC of June 19, 1995, requires that each Member State carry out an annual total number of inspections of foreign vessels corresponding to at least twenty-five percent of the number of ships that entered its ports during a representative calendar year.

France only inspected between ten and fourteen percent of the vessels, depending on the year. It claimed a lack of staff to justify its failure. In the Court opinion, such failure increased the risk of maritime accidents and coastal pollution. (European Court of Justice, *Press Release 48/04*, at <http://curia.eu.int/en/actu/communiqués/index.htm>.) (Nicole Atwill, 7-2832)

MEXICO/CHINA – Negotiations on Investment, Customs, Taxation Agreements

Mexico aims to substitute fear of its stronger competitor, China, with major cooperation between the two countries designed to result in more investments and bilateral projects. Thus, the two countries are negotiating three bilateral agreements: a Reciprocal Investment Promotion Agreement (APRI), a Customs Mutual Assistance Agreement, and a Taxation Agreement. Gerardo Traslosheros, general director of Multilateral Trade Affairs in the Secretary of Economy, stated that with the APRI, Mexico seeks to create an environment that will instill more confidence in potential Chinese investors. The customs agreement is aimed not only at achieving more cooperation in general in regard to customs issues between the two countries but also to combat merchandise smuggling in particular. The aim of the taxation agreement is to prevent double taxation. Mr. Traslosheros added that the negotiations are at the stage of exchanging of proposals. (Ivette Saldana, *Acercamiento Comercial entre México y China*, EL FINANCIERO, May 21, 2004, at <http://www.elfinanciero.com.mx>.) (Norma Gutiérrez, 7-4314)

MEXICO/UNITED NATIONS – Support for the Democratic Process in Iraq

The Foreign Ministry of Mexico reported that Alonso Lujambo and Jacqueline Peschard, both formerly with the Federal Electoral Institute in Mexico (the IFE in Spanish), have been invited by the United Nations Electoral Assistance Division to join the U.N. team that will assist the Iraqi people in holding democratic elections for a representative and internationally recognized government. Ms. Peschard and Mr. Lujambo were contacted directly by the United Nations and have joined the U.N. team. They have the status of U.N. mission experts and will report to the U.N. Mr. Lujambo is already in Baghdad and Ms. Peschard will arrive there soon. (Ministry of Foreign Relations, *Press Release No. 108*, May 17, 2004, at <http://www.sre.gob.mx/comunicados/comunicados.htm>.) (Gustavo Guerra, 7-7104)

OECD – New Corporate Governance Principles

On April 22, 2004, the Organization for Economic Co-Operation and Development (OECD) released a revised version of its Principles of Corporate Governance, approved by the governments of its thirty member countries. The Principles were first published in 1999. New recommendations for good practice in corporate behavior have been added, in order to help

rebuild and maintain public trust in companies and stock markets.

The Principles urge governments to ensure truly effective regulatory frameworks and companies to be accountable, call for increased awareness among institutional investors and an effective role for shareholders in executive compensation, and advocate increased transparency and disclosure to avoid conflicts of interest. They advocate the strengthening of shareholders' rights in general; introduce a new principle calling for rating agencies and analysts to avoid conflicts of interest that could compromise their advice; and support the strengthening of auditors' duties, to include accountability to shareholders. In addition, the Principles clarify the duties and responsibilities of the board as being fiduciary in nature and extend the principle that covers board independence and objectivity; make reference to stakeholder rights, whether established by law or mutual agreement; and introduce a new principle advocating protection for whistleblowers. (*OECD Countries Agree New Corporate Governance Principles*, OECD website, Apr. 22, 2004, at http://www.oecd.org/document/22/0,2340,en_2649_201185_31558102_1_1_1_1,00.html.)
(Wendy Zeldin, 7-9832)

UNITED NATIONS – Committee Drafting Treaty on Disabilities

A United Nations drafting committee has met for the third time to negotiate a treaty to protect the rights of people with disabilities. About 600 million individuals around the world are estimated to have some form of disability. The Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities convened in New York from May 24 to June 4, 2004.

The treaty will be designed to go beyond mandating physical accessibility of public places to cover issues such as equal access, social opportunities, and political, economic, and social development. Once a country ratified the treaty, it would be required to treat those with disabilities as having enforceable rights. The Committee will be working from a 25-article draft text created by its Ad Hoc Working Group in January 2004. The text covers non-discrimination in all areas of life, including employment, education, and independent living. The treaty drafting process has been open, and consultations have been made with individuals with disabilities and their organizations. (“UN Committee Drafting Treaty To Protect Persons With Disabilities To Open Session,” May 19, 2004, at <http://www.un.org/apps/news/story.asp?NewsID=10789&Cr=disability&Cr1>.)
(Constance A. Johnson, 7-9829)

UNESCAP – Shanghai Declaration

The sixtieth session of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), attended by fifty-five members and associate members, ended in Shanghai on April 28, 2004, with the unanimous adoption of the “Shanghai Declaration.” The Declaration emphasizes UNESCAP’s role as “the most representative body” for the Asia-Pacific region and its mandate as the main center within the U.N. system for the region’s general economic and social development, especially in regard to poverty reduction, globalization, and emerging social issues. The Declaration consists of a number of future-oriented strategies aimed at strengthening and sustaining progress in the region. It calls for the highest priority to be given to poverty reduction and stresses the primacy of the multilateral

trading system. Another six resolutions cover: a call for action to enhance capacity building in public health, implementation of ESCAP technical projects, the Intergovernmental Agreement of the Asian Highway Network, the Centre for Alleviating Poverty through Secondary Crops Development, Revitalization of the UNESCAP Pacific Operation Centre, and the Pacific Urban Agenda. Twenty-five countries signed the landmark Asian Highway Agreement, a U.N. treaty. The highway is a multi-pronged 140,000 kilometer corridor that connects thirty-two countries, linking Europe to Asia.

Other new initiatives of the session were inaugural meetings of the Asia Business Forum and the UNESCAP Business Advisory Group. The aim of the meetings, in which some 250 business leaders participated, was to discuss emerging trade and investment opportunities in the region and establish mechanisms to engage the private sector at the institutional level so as to enhance the impact of UNESCAP's work in Asia and the Pacific. ("Ministers Give Full Support to UN's Work in the Region," Press Release No. G/12/2004, *UNESCAP News Services*, Apr. 28, 2004, at <http://www.unescap.org/unis/press/2004/apr/g12.asp>.) (Wendy Zeldin, 7-9832)

IRAQ'S LEGAL SYSTEM UNDER THE BAAATH REGIME (1968-2003 CE)

Prepared by Constance A. Johnson, Senior Legal Research Analyst

This report is an excerpt of a longer piece, Iraq: Legal History and Traditions. For a copy contact the Director of Legal Research, wsharp@loc.gov. It is a political history, based on consensus views in the international community, including writings by historians and political scientists as well as lawyers. It should be read with the caveat in mind that a legal system as formally described may be quite different from the same system in actual operation. In addition, our knowledge of Iraq in these years is circumscribed by the closed nature of the regime that was in power.

The Baath Party came to power in Iraq in 1968, following a military coup. The Party itself had a militia and an intelligence service. Shortly after taking control, the Party launched a campaign against its opponents, using purges, pro-forma trials, executions, and assassinations. The government was run by the Revolutionary Command Council (RCC), under a constitution issued provisionally in 1968. Two years later a second constitution was promulgated that confirmed the role of the RCC as the ultimate authority. The judicial system was modeled on the French system. In addition to the Constitution, there were five major codes: the Civil Code, the Code of Civil Procedure, the Commercial Code, the Penal Code, and the Code of Criminal Procedure.

In 1974, following years of conflict and a 1970 agreement with Kurdish leaders, a nominal autonomy was granted to the Kurdish region in northern Iraq. It proved insufficient to prevent continued rebellions in the area. Saddam Hussein became the second President of the Baath regime in 1979. War with Iran and with an international coalition following Iraq's invasion of Kuwait had high costs for the country, in people and material. The regime was considered extremely repressive by all human rights measures and undertook a policy of destroying many of its Kurdish citizens in the late 1980s. The regime fell following an invasion by United States and other forces in the spring of 2003.

By 1968, the Iraqi government had lost support among the general populace, as well as with the military. The fact that Iraq did not have a large role in the 1967 Arab/Israeli war played a part in the loss of legitimacy, as did the factional, ethnic, and sectarian conflicts within the regime. Military officers with no organizational or popular support coordinated a coup in July 1968, and the Baath party took power from them within a few weeks. The Baath Party had developed into a highly organized political body, with a focus on Iraqi domestic issues. In 1967, a militia and an intelligence service had been added, and local branches of the party had been established. Within two months of the formation of the government, there was an attempted coup by a different faction in the military. This attempt led the Baath party to undertake a series of purges over the next five years, with pro-forma trials, executions, and assassinations, to eliminate opposition.¹ Charges were leveled against the small Jewish community in the country; some were accused of spying for Israel

¹ MARK LEWIS, *Historical Setting, IRAQ: A COUNTRY STUDY* 57-58 (1990).

and others of working for Iran. Televised trials and public hangings were used as a means of intimidation.² Thus the formal legal system was used for public, political purposes.

In September 1968, the Revolutionary Command Council (RCC) promulgated a provisional constitution that established it as the highest authority, with legislative functions. A little over a year later, in November 1969, the Council announced that the positions of Premier, Chief of Staff, and President of the Council would be consolidated with that of President and that the Council would be enlarged to include the entire leadership of the Baath Party. Amhad Hassan al Bakr was the president and Saddam Hussein, a relative of Bakr, became vice-president.³ Bakr was respected by the public as a nationalist and brought prestige to the regime, while Hussein had worked on organizing the party structure.⁴

About two years later, the RCC promulgated a new, interim Constitution.⁵ It stated that Iraq was a “sovereign People’s Democratic Republic” with a goal of creating one Arab state (art. 1). Islam was declared as the state religion (art. 4), and Arabic was the official language, with Kurdish being also official in the Kurdish region (art. 7). The rights of the Kurdish and other minority peoples were acknowledged (art. 5). The economic system was based on state planning in the context of a socialist system and Arab economic unity (art. 12). Private ownership of property was guaranteed, so long as individual economic actions were taken in a manner compatible with the centralized plan. As in the previous, 1964 constitution, private property was protected from expropriation except for considerations of public interest and with just compensation (art. 16).

The RCC was again confirmed as the highest authority of the state (art. 37), with a president, vice-president, and other members who enjoyed full immunity (art. 40). The RCC ratified all laws and also had the ability to issue laws, decrees, and implementing decisions (art. 42). There was a Council of Ministers in the executive branch that discussed policy matters and developed specific programs to implement those policies. Its work was supervised by the secretariat of the presidency, whose head was a member of the cabinet and whose members were not subject to the civil service regulations. The cabinet itself generally was at least one-third Baath Party members; by the late 1980s there were forty-one positions in it.⁶ The cabinet worked to carry out the RCC’s policies. There was no true separation of powers.⁷ The full structure of the executive branch was outlined in a law from 1964, the Law of the Executive Power, which has been amended several times. Each Ministry was also established through a law on its organization.⁸

² CHARLES TRIPP, *A HISTORY OF IRAQ 196* (2000).

³ Gisbert H. Flanz & Fouad Fahmy-Shafik, *Iraq, in 10A CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: HISTORIC CONSTITUTIONS* 13 (Feb. 1974).

⁴ LEWIS, *supra* note 1, at 58-59.

⁵ Issued July 16, 1970. Full text at Flanz & Fahmy-Shafik, *supra* note 3.

⁶ LEWIS, *supra* note 1, at 183-184.

⁷ OFRA BENGIO, *SADDAM’S WORD* 58 (1998).

⁸ Law no. 50, 1964, Sabah Al Mukhtar, *The Rule of Law in Iraq: Does It Exist?* in *THE RULE OF LAW IN THE MIDDLE EAST AND THE ISLAMIC WORLD* 76 (Eugene Cotran & Mai Yamani eds., 2000).

A National Council of People's Representatives was described in the Constitution and authorized to meet twice a year, with the possibility of extraordinary sessions being called by the RCC (art. 47). The National Council considered draft laws proposed by the RCC or the President, and if a draft was approved, it was sent to the President for promulgation. If not approved or if modified, it was returned to the RCC. When differences remained after a second reading, the draft was to be reviewed by the two Councils jointly and could be approved only with a two-thirds vote (arts. 51 & 52). The National Council could also consider its own draft laws if presented by one-fourth of the representatives, provided those drafts did not concern military, financial, or public security issues (art. 53).

Details of the organization of this legislature were enacted by a law issued by the RCC in March 1980. It stated that there would be 250 representatives and voting was based on single member districts, with roughly 250,000 people living in each district. Although the ballots were secret and all citizens over 18 were eligible to vote, the candidates had to have their qualifications approved in advance by the appointed election commission. This gave the Baath Party sufficient control over the electoral process in practice to be able to control the legislature. The formal requirements for office were that the person be at least 25 years old, be an Iraqi by birth, not be married to a foreigner, and have an Iraqi father. The candidate could have a foreign mother however, so long as she was of Arab origin and from another Arab country. Those who had lost property, whether land or in other forms, under the land reform measures or the business nationalizations were not eligible to serve. Finally, all candidates had to establish their belief in the principles of the 1968 revolution, the Baath Party goals. Under these conditions it is not surprising that Baath candidates tended to win over 70% of the seats.⁹

The Constitution also established a judicial system, described as independent and open to all (art. 60). However, there were no detailed provisions on the structure of the judiciary. The court system was based on laws promulgated by the RCC and modeled after the French judiciary, as it had been since the days of Ottoman rule.¹⁰ There were separate courts for civil, criminal, administrative, religious, and other matters, under the supervision of the Ministry of Justice. All judges were appointed by the president. The religious courts largely handled personal status matters, such as marriage, divorce, and inheritance, and followed various schools of Islamic jurisprudence, the Hanafi for the Sunni Arabs, the Shafii for the Sunni Kurds, and the Jafari among Shia Arabs. Separate courts handled similar issues for the Christian and Jewish communities.¹¹

There were five appellate districts, in Baghdad, Basra, Al Hillah, Kirkuk, and Mosul. The courts of first instance were divided into two types, 18 with unlimited powers, located in the provincial capital cities, and 150 with limited powers in smaller towns. There were also six peace courts handling the most minor matters. Decisions of all courts of first instance could be appealed to the district courts. Criminal cases were adjudicated by magistrates, located wherever there were civil courts. Their decisions could be appealed to six sessions courts. Litigation against government entities was handled by the Administrative Court, established under a special law

⁹ LEWIS, *supra* note 1, at 181.

¹⁰ Law no. 160, 1979, Al Mukhtar *supra* note 8, at 76.

¹¹ LEWIS, *supra* note 1, at 184.

promulgated in November 1977, and on appeal by the Court of Cassation. The Court of Cassation was itself divided into general, civil, criminal, administrative, and personal status benches. Should there be disputes over jurisdiction between the Administrative Court and other courts, the Court of Cassation determined the proper venue. There was also a Revolutionary Court, separate from the appellate court system, to handle offenses against the internal or external security of the state, including economic and political cases. The RCC also could establish special security courts, to handle cases of espionage, treason, and “anti-state” actions. Proceedings in these special security courts were closed to the public. Appeals from the security courts were handled by the Court of Cassation, which also was the court of first instance for cases involving high government officials.¹²

Only the RCC could modify the constitution, by a two-thirds vote (art. 63). A presidential decree, issued October 24, 1970, supplemented the interim Constitution and ended the state of emergency, which had in theory been in effect since 1958.¹³ The Constitution was the highest legal instrument in the country, followed by five major codes: the Civil Code (Law no. 40, 1951), the Code of Civil Procedure (Law no. 83, 1969), the Commercial Code (Law no. 30, 1984), the Penal Code (Law no. 111, 1969), and the Code of Criminal Procedure (Law no. 23, 1971). These codes are written in general language, leaving much up to the interpretation of the courts. There were also 2,000 specific laws, covering 700 subjects, including legislation dating from the monarchy period.¹⁴

Another important development of 1970 was the conclusion of talks between the Iraqi government and Kurdish leaders. Throughout 1968 and the first half of 1969 there had been fighting in the northern, Kurdish area, a region that had never been truly integrated into the Iraqi state. An agreement was worked out, and the Kurdish leaders cut off the relations that had been developed with the Iranians and implemented a cease-fire. The agreement, written into a manifesto in March 1970, gave more recognition than previously promised to a separate Kurdish identity, with a special, unified administrative region that would implement special measures. The details were to be worked out by a joint committee and the new arrangement would start by 1974. The committee began its work by planning a Kurdish legislature and Kurdish language programs in the schools. However, the rapprochement began to fall apart in the face of assassination attempts on the key Kurdish general that were blamed on the Iraqi government. The government also instituted a policy of moving Arab settlers into the Kurdish areas, particularly near the Kirkuk oil fields. In addition, in May 1971 Saddam Hussein became the chairman of the joint committee and made it clear that the planned Kurdish legislature would not be able to handle matters related to defense, finance, and the oil holdings.¹⁵ However, on March 11, 1974, in keeping with the March 1970 agreement, the interim Constitution was amended by a resolution of the RCC that stated the Kurdish region would have autonomy.¹⁶ On the same day the Law of Autonomy for the Kurdistan Region was issued, followed later in the month by a Law of the Legislative Council for the

¹² *Id.*, at 184-185.

¹³ Flanz & Fahmy-Shafik, *supra* note 3, at 14.

¹⁴ Al Mukhtar, *supra* note 8, at 77.

¹⁵ TRIPP, *supra* note 2, at 200-201.

¹⁶ Resolution no. 247, amending art. 8, *translated in* LAW OF AUTONOMY FOR KURDISH REGION 5-6 (1974).

Kurdistan Region.¹⁷ These legislative moves were insufficient to prevent further rebellion. In 1974, a major rebellion of the Kurds broke out that was successfully put down the next year, in part due to a 1975 agreement with Iran.¹⁸

In 1976, having consolidated power, the Baath government instituted a successful economic reform program, including state-sponsored, modernized industry. The result of the efforts was a wider distribution of wealth, greater social mobility, increased access to services like education and health care, and further redistribution of land. Increased income from the oil price rises of the late 1970s helped the government greatly. The policies, sponsored by Saddam Hussein, gave a greater portion of the population a stake in the success of the government.¹⁹

On July 16, 1979, President Bakr, who was seriously ill, resigned, and Saddam Hussein succeeded him. Hussein had already been chairman of the RCC.²⁰ In the twenty-four years he was in office, Iraq went through several major military conflicts, United Nations sanctions that had a major economic and social impact, and a number of internal plots by rivals for power.

The 1975 agreement that had settled relations with Iran had been concluded with the shah; in 1979 the Islamic revolution overthrew the shah and brought aggressive Shia leaders to power. Iraq became concerned that the power balance between Sunnis and Shias in the country, which still favored the minority Sunnis, would be threatened. In July 1979, Shia Iraqis rioted in several cities, following a snub to the new Iranian leader, Ayatollah Khomeini, and a secret group of Shia leaders advocating Islamic rule was discovered to have ties to Iran. With these tensions in the background, in 1980 a Shia Islamist group in Iraq attempted to assassinate the Iraqi foreign minister, Tariq Aziz, and was suspected of trying to kill the Minister of Culture and Information as well. The government responded by deporting thousands of Shias of Iranian origin to Iran and by arresting members of the group in question. Hussein ordered the execution of the leader in the summer of 1980. By the fall, with border clashes having already taken place, Hussein announced the abrogation of the 1975 treaty. The Iran-Iraq war broke out on September 23, 1980, with an invasion of Iran by Iraq. While the proximate causes of the war were recent events, the underlying hostility and distrust between the people of Mesopotamia and the people of Persia has existed for thousands of years.²¹

The war lasted until the August 20, 1988, cease-fire following Iran's acceptance of United Nations Security Council Resolution 598. It was costly to both sides; casualties were

¹⁷ Law no. 33 & Law no. 36, 1974, *translated in id.*, at 9-29 & 30-37.

¹⁸ The agreement established a boundary in an area that had been disputed and Iraq dropped claims to the Khuzestan region of Iran, while the shah agreed to stop supporting subversive elements in Iraq; LEWIS, *supra* note 1, at 62. Treaty of June 13, 1975, Iran-Iraq, 1017 U.N.T.S. 215.

¹⁹ LEWIS, *id.*, at 62.

²⁰ WILLIAM SPENCER, IRAQ: OLD LAND, NEW NATION IN CONFLICT 99 (2000).

²¹ LEWIS, *supra* note 1, at 63-65.

high, with estimates of the death total at over a million.²² The political and economic costs of failing to win a swift victory were also high in Iraq. In response, Hussein instituted a campaign of suppression using his security forces and built up a personality cult through the popular press.²³

By 1988, there was a Kurdish Autonomous Region, governed under the provisions of the old agreement. The region had an Executive Council and a Legislative Assembly, which merely advised the Executive Council. The chair of the Executive Council was appointed by Saddam Hussein and was a part of the national cabinet. The Baghdad regime maintained strict control over the Autonomous Region, in part through a special review by the Court of Cassation of all local enactments and administrative decisions.²⁴

During the Iran-Iraq war, Kurdish fighters that had either taken refuge in remote mountainous regions of the country or in Turkey began to return to Iraq. The attention of the Iraqi army was on the conflict with Iraq, and the vacuum was filled by Kurdish forces, who controlled the countryside in the north and sometimes assisted the Iranians in battle. In response, Hussein set a policy of destruction of the Kurds, to be accomplished gradually in 1987 and 1988 under the direction of his cousin, Minister of Defense Ali Hassan al-Majid. Adult male Kurds were subject to arrest and execution without trial, on the presumption that they participated in the rebellions; families were relocated to settlement camps; villages were razed without compensation; and the use of chemical weapons was authorized. In all about 50,000 Kurds were killed in the actions, which have been condemned as genocide, and 60,000 left the country and entered Turkey.²⁵

In 1990, the Interim Constitution was re-issued, though never formally ratified due to the interruptions of the Gulf War.²⁶ It was identical to the 1970 document, containing the same number of articles and the same government structure, with the Revolutionary Command Council at the top. Five years later, the document was amended to confirm Saddam Hussein as president. That amendment was also never formally ratified, although there were elections in October 1995 to confirm Hussein's position. The constitution included extensive provisions on human rights, but in practice the regime was known to commit serious violations of those rights on a regular basis, including the use of torture, arbitrary and unlawful detentions, summary executions, and denials of fair trial.²⁷

²² Federation of American Scientists, Military Analysis Network, *Iran-Iraq War 1980-1988*, at <http://www.fas.org/man/dod-101/ops/war/iran-iraq.htm>.

²³ MARION FAROUK-SLUGLETT & PETER SLUGLETT, *IRAQ SINCE 1958: FROM REVOLUTION TO DICTATORSHIP* 262-263 (1987).

²⁴ LEWIS, *supra* note 1, at 186-187.

²⁵ SPENCER, *supra* note 20, at 114-115.

²⁶ *Iraq Background*, INTERNATIONAL CONSTITUTIONAL LAW, at http://www.oefre.unibe.ch/law/icl/iz_indx.html.

²⁷ U.S. Department of State, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2003*, at <http://www.state.gov/g/drl/rls/hrrpt/2003/27928.htm>.

The second major war under Saddam Hussein's rule resulted from the invasion of Kuwait on August 2, 1990. The action was seen around the world as a case of unvarnished aggression, but for the Iraqi leaders, it was a step toward reestablishing control of a territory they had long viewed as rightfully theirs, based at a minimum on the provincial structure that had been in place under the Ottoman Empire.²⁸ In fact, as early as 1930, then King Ghazi had declared that Kuwait was part of Iraq.²⁹ The United Nations reacted by passing Resolution 660, calling for the removal of Iraqi troops from Kuwait, and Resolution 661, which imposed sanctions on trade to and from Iraq, including oil exports. There were twelve UN resolutions on the subject of Iraq's invasion of Kuwait, with the last approving of the use of force if needed to accomplish the withdrawal of the Iraqis.³⁰

Twenty-six nations cooperated in defeating Iraq and forcing withdrawal from Kuwait. By the time of the cease-fire on February 27, 1991, 15% of the territory of Iraq was occupied by American and other coalition troops. The end of the war was followed by a revolt among the Kurds and by rebellions of Shia Iraqis in the southern part of the country. Hussein used his Republican Guard troops to stop both uprisings. The aftermath of these skirmishes and the war itself was further world condemnation through Security Council resolutions, extended sanctions, and the establishment of UNSCOM, the UN Special Commission on Iraq's Weapons of Mass Destruction.³¹ The United States established air exclusion zones in the north and the south to prevent further attacks by Hussein on the inhabitants of those regions. The Iraqi National Assembly formally recognized Kuwait's borders and independence on November 10, 1994.³²

Within the northern, Kurdish region, there was a split between supporters of two different political parties, the Patriotic Union of Kurdistan (PUK) and the Kurdish Democratic Party (KDP). In May 1994, their disputes over land rights and political leadership evolved into military clashes. By 1996, the KDP asked the Iraqi government to intervene and troops were sent to install that party in power. Since this action occurred in a United States-protected region, the United States responded with missile strikes.

Throughout the 1990s, Saddam Hussein consolidated his own power, promoting his sons as *de facto* vice-presidents in 1995.³³ The UN economic sanctions had created hardship conditions in the country. In April 1995, Security Council Resolution 986 permitted the partial resumption of oil exports so that food and medicine could be purchased. Cooperation with UNSCOM ended in October 1998, and Security Council Resolution 1284 of December 17,

²⁸ SPENCER, *supra* note 20, at 117-119.

²⁹ Al Mukhtar, *supra* note 8, at 73.

³⁰ S/Res/660, U.N. SCOR, 2932nd Sess. (Aug. 2, 1990) & S/Res/661, U.N. SCOR, 2933th Sess. (Aug. 6, 1990), both available at <http://www.un.org/Docs/scres/1990/scres90.htm>.

³¹ SPENCER, *supra* note 20, at 122-123; 125-127.S/Res/687, U.N. SCOR, 2981st Sess. (1991), available at *id.*

³² BBC News, *Timeline: Iraq*, at http://news.bbc.co.uk/1/hi/world/middle_east/737483.stm.

³³ *The Cradle of Civilization*, IRAQ HISTORY, at http://arabic-media.com/iraq_history.htm.

1999, rejected by Iraq, created a replacement agency, the UN Monitoring, Verification and Inspection Commission.³⁴ However, in November 2002, weapons inspectors from the United Nations were permitted to return to Iraq, following an additional UN resolution. By March 2003, the United States, unhappy with the progress on the diplomatic front toward disarmament and convinced that the Iraqis had weapons of mass destruction not yet found by UN inspectors, launched an attack on the country that resulted in the downfall of Saddam Hussein's government.³⁵

³⁴ S/Res/986, U.N. SCOR, 3519th Sess. (Apr. 14, 1995), at <http://www.un.org/Depts/dhl/resguide/scact1995.htm>; S/Res/1284, U.N. SCOR, 4084th Sess. (Dec. 17, 1999), at <http://www.un.org/Depts/dhl/resguide/scact1999.htm>.

³⁵ BBC News, *supra* note 32.

CLONING AND HUMAN EMBRYO PROTECTION IN JAPAN

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Reproductive human cloning is prohibited with criminal sanction in Japan. Most of therapeutic cloning is currently also prohibited, except for the cloning of animal-human chimeric embryos for specific research purposes. Stem cell research is regulated by government guidelines. Only embryos that have been created for fertility treatment purposes and are no longer used for fertility treatment can be used for derivation of stem cells. The Life Ethics Special Research Committee of the Council for Science and Technology Policy is continuing its deliberations on life ethics and will release its final report in 2004. As technology advances, the boundaries of cloning and stem cell research will be reviewed and discussed.

I. Background

After the famous cloned sheep “Dolly” was born in February 1997, the Ministry of Education, Culture, Sports, Science and Technology (MEXT) decided not to grant public money to research on human cloning.¹ The Life Ethics Committee was established under the Council for Science and Technology Policy, which was under the cabinet office in September 1997.² The government started preparing legislation on cloning. The Cloning Small Committee, which was established under the Life Ethics Committee in January 1998, discussed various aspects of cloning and concluded in November 1999, that reproductive cloning by the nucleus transfer of body cells should be banned and violation of this ban should carry a penalty.³ Based on this, the Law Concerning Restrictions on Cloning Technology Relating to Humans (Cloning Regulation Law) was proposed and enacted in December of 2000, and went into effect on June 6, 2001.⁴ The Human Embryo Research Small Committee, which was established in January 1999 under the Life Ethics Committee, published a report on human embryo research in March 2000.⁵

There was not enough time to discuss comprehensive life ethics standards, such as how human embryos should be treated, before the legislation that banned cloning was enacted. The Cloning Regulation Law delegated detail regulations of cloning by using specified embryos to the government guidelines. In addition, the Cloning Regulation Law is supposed to be reviewed within three years of its enforcement. In order to present the basic policy on these

¹ *Hito hai notoriatsukai ni kansuru kihonteki kangaekata (chukan hokokusho)* (Basic Ideas on Treatment of Human Embryos (Interim report)), Life Ethics Special Research Committee, Council for Science and Technology Policy, 69 (Dec. 26, 2003), available at <http://www8.cao.go.jp/cstp/tyousakai/life/pubcom/chukan.pdf>.

² *Id.*

³ *Id.*

⁴ *Hito ni kansuru kuro^n gijutsu tou no kisei ni kansuru horitsu*, Law No. 146 of 2000.

⁵ Interim report, *supra* note 1, at 70.

agenda, the Life Ethics Special Research Committee was established under the Council for Science and Technology Policy in January 2001.⁶ The MEXT consulted with the Life Ethics Special Research Committee on the drafts of the Stem Cells Research Guidelines and the Specified Embryos Guidelines, and the Committee recommended some modifications to both. The Specified Embryos Guidelines under the Cloning Regulation Law was issued in December 2001.⁷ The MEXT issued the Stem Cells Research Guidelines based on the report in September 2001.⁸

The Committee discussed life ethics standards and released its interim report, Basic Ideas on Treatment of Human Embryos, in December 2003.⁹ This report summarizes the situation and shows various opinions. Public comments were sought in February to March 2004. The Committee is supposed to release its final report during 2004. Then, the government will decide how to regulate or not regulate research on human embryos and review existing regulations.

II. Reproductive Human Cloning

Reproductive human cloning is prohibited in Japan. The Clone Regulation Law prohibits the transfer of human somatic clone embryos, human-animal amphimictic embryos, human-animal hybrid embryos, and human-animal chimeric embryos into human or animal uteruses.¹⁰ The Clone Regulation Law says that the reproductive cloning “could have a severe influence on preservation of human dignity, safety for human life and body, and maintenance of social order.” The Clone Regulation Law makes these acts a crime, punishable by up to ten years in prison and/or a fine of ten million *yen* (US\$ 83,000).¹¹

Transfer of cloned human embryos made by splitting embryonic cells in human uteruses is not prohibited by the Law, but it is prohibited by administrative guidelines described below. This type of cloning is different. It does not copy an existing human, nor reproduce a baby without both a sperm and an egg, rather it produces multiple identical babies.¹² This technology has been used for animals.

⁶ See Science and Technology in Japan, Cabinet Office, available at <http://www8.cao.go.jp/cstp/english/administration.pdf>.

⁷ Guidelines for Handling of a Specified Embryo, MEXT Notification No. 173 of 2001. English translation of the Guidelines, available at http://www.mext.go.jp/a_menu/shinkou/seimei/2001/hai3/31_shishin_e.pdf.

⁸ Guidelines for Derivation and Utilization of Human Embryonic Stem Cell, MEXT Notification No. 155 of 2001.

⁹ Interim report, *supra* note 1, at 70.

¹⁰ The Clone Regulation Law, *supra*.note 4, art. 3.

¹¹ *Id.* art. 16.

¹² Ryuma Oh-hara, *Hito ni kansuru kuron gijutsu no kisei ni kansuru horitsu ni tsuite* (Regarding the Law Concerning Restrictions on Cloning Technology Relating to Human), 1197 JURISUTO 44, 45 (2001).

III. Reproductive Animal Cloning

Multiple identical cow babies have been produced by a technology that splits an early stage embryonic cell and transfers the nucleus of them into the ova in Japan since 1990.¹³ Beef made of cows born in this technology has been on the market since 1993.

After the famous sheep “Dolly” was born in 1997 in England, many Japanese groups began to experiment with cattle reproduction through body cell cloning. The Ministry of Agriculture, Forestry and Fisheries organized programs to train researchers at prefecture livestock research centers in the latest biotechnological techniques. Their success in the area of cattle replication has been phenomenal.¹⁴ The first cow cloned from a body cell was born in 1998.¹⁵ No restriction on animal cloning has been imposed; however, the Ministry of Agriculture, Forestry and Fisheries requested that beef producers keep cloned beef off the market.¹⁶

IV. Cloning for Non-Reproductive Purposes

The Cloning Regulation Law does not ban therapeutic cloning by itself. The Law delegates the regulation concerning “specified embryos” to administrative guidelines. MEXT issued Guidelines for Handling of a Specified Embryo (the Specified Embryo Guideline) in December of 2001.¹⁷ The specified embryos are: human split embryos, human embryonic clone embryos, human somatic clone embryos, human-human chimeric embryos, human-animal amphimictic embryos, human-animal hybrid embryos, human-animal chimeric embryos, animal-human hybrid embryos, and animal-human chimeric embryos.¹⁸

If administrative guidelines are based on a law, they can be enforced with a penalty, if there are any penalties provided for in the law. If administrative guidelines are not based on a law, but based on the general administrative power of a government agency, they are not legally enforceable.¹⁹ The Specified Embryo Guidelines are based on the law. Legislators did not provide specific embryo regulations in the Cloning Regulation Law to maintain flexibility with the boundary of the regulation and to account for the rapid changes that occur in scientific study. There was no time for debate among professionals regarding therapeutic cloning and

¹³ Norin suisa gijutu kaigi (Agriculture, Forestry and Fisheries Research Council), *Q5: kuron ushi no kenkyu ha dokode okonawarete iru nodesuka* (Question 5: where is research on a cloned cow conducted?) in CLONE USHI PANHURETTO (Cloned Cow Pamphlet), available at <http://www.s.affrc.go.jp/docs/animal/intro/cloneQA.htm#Q16>.

¹⁴ *Animal Cloning in Japan: Double Trouble?* DAIRYBIZ (Jan. 1999), at http://www.dairybiz.com/archive/tech_28.htm.

¹⁵ *Taisaibo kuron gyu* (cow cloned by body cell), Mainichi Shimbun, *Kotoba* (Words), available at http://www.mainichi.co.jp/news/kotoba/ta/20030411_01.html.

¹⁶ Stock Breeding Bureau Director, Notification 11 chiku A No. 2590 (Nov. 11, 1999).

¹⁷ *Supra* note 7.

¹⁸ The Clone Regulation Law, *supra* note 4, art. 4.

¹⁹ See JIRO TANAKA, *GYOSEIHO SORON* (General Administrative Law) 373-374 (1957).

treatment from embryos before the Cloning Regulation Law was legislated.²⁰ However, the Guidelines are easy to modify if the situation changes.

The Guidelines state that creation of a specified embryo is permitted if it is for scientific research that could not be obtained from animal embryos or cells and if the person who produces the embryo has a sufficient scientific background.²¹ Of all the specified embryos, the Guidelines currently only allow the production of animal-human chimeric embryos,²² and animal-human chimeric embryos can only be produced for research on organs derived from human cells that can be transplanted into humans.²³ Furthermore, human embryos or a human ovum should not be used for the production of animal-human chimeric embryos,²⁴ and written consent must be obtained from the donors of the cells required to create animal-human chimeric embryos.²⁵ There must be no payment for the cell donation, except for necessary expenses associated with the procedure.²⁶ The import and export of specified embryos are prohibited.²⁷ Research on these specified embryos is allowed for 14 days from its production;²⁸ the period during which the embryo is frozen is excluded from the calculation of the 14 days. Researchers are also required to obtain opinions from their institutions' ethics review board before reporting the research to MEXT.²⁹ The transfer of specified embryos into human or animal uteruses is currently prohibited.

V. Stem Cell Research

The Law does not cover human embryonic stem cell research. MEXT issued the Guidelines for the Derivation and Utilization of Human Embryonic Stem Cells (Stem Cell Guidelines) in September of 2001.³⁰ These Guidelines are not based on a law. When a private organization does not follow the Stem Cell Guidelines, there is no penalty against it.

²⁰ Ryuma Ohora, *Hito ni kansuru kuron gijutsu no kisei ni kansuru horitsu ni tsuite* (Concerning the Law Concerning Restrictions on Cloning Technology Relating to Humans), 1197 JURISUTO 44, 46 (2001).

²¹ MEXT Notification, *supra* note 8, art. 1.

²² *Id.* art. 2, ¶ 1.

²³ *Id.*

²⁴ *Id.* art. 2, ¶ 2.

²⁵ *Id.* art. 3.

²⁶ *Id.* art. 4.

²⁷ *Id.* arts. 6 and 8.

²⁸ *Id.* art. 7.

²⁹ *Id.* art. 10.

³⁰ *Supra* note 8.

The Stem Cell Guidelines currently only allow the derivation and utilization of stem cells for basic research. Clinical research applying stem cells, or cells that originated from stem cells, to a human body and utilizing them for medical procedures is prohibited until other specific criteria for such research is established.³¹

The Stem Cell Guidelines provide that the institute that derives stem cells must have sufficient staff, equipment, financing, and technical ability. The institute must establish rules on ethical and technical matters pertaining to stem cells and establish an institutional ethics review board.³² A director of stem cell derivation must prepare a derivation plan and obtain approval from the president of the institute. Use of the stem cells, satisfying the criteria described below, must be planned in advance. The president must consult with the institutional ethics review board and obtain confirmation of legitimacy of the plan from the Minister of MEXT.³³ A human embryo used for derivation of stem cells must be a human fertilized embryo, which has been created for the purpose of fertility treatment and which is no longer being used for that purpose. The embryo must have been stored frozen, and it must be used within fourteen days after fertilization, excluding the time when it was frozen.³⁴ A medical facility that donates an embryo must obtain written consent from the donor couple.³⁵ The institute studying the stem cells must explain to the donors that the embryo will be destroyed and how the stem cells will be used. There must be no payment for the donation, and the institute must not obtain more embryos than would be reasonably needed for the research and must use them without delay.³⁶

The stem cells must be used for basic research clarifying the function of human development, differentiation, and regeneration; developing new methods to diagnose, prevent, or treat diseases; and creating new medicines.³⁷ Only stem cells that were derived in accordance with the Stem Cells Guidelines can be used. The Minister of MEXT may authorize the use of stem cells that came from abroad if the derivation of stem cells has been completed in accordance with the Guidelines.³⁸ An institute that conducts stem cell research must meet criteria that are similar to the criteria of the deriving institute. The director of the institute must prepare a plan for stem cell use, and the president of the institute must consult with its institutional ethics review board and obtain a confirmation from the Minister of MEXT.³⁹ The

³¹ *Id.* art. 2.

³² *Id.* art. 9.

³³ *Id.* arts. 15 and 16.

³⁴ *Id.* art. 6, ¶ 1.

³⁵ *Id.* art. 22.

³⁶ *Id.* art. 6, ¶¶ 2 and 3.

³⁷ *Id.* art. 26, ¶ 1.

³⁸ *Id.* art. 26, ¶¶ 2 and 3.

³⁹ *Id.* arts. 35 and 36.

person who handles stem cells must not:

- create an individual from stem cells by implanting an embryo created using stem cells into a uterus of a human or an animal;
- introduce stem cells into a human embryo;
- introduce stem cells into a human fetus; or
- produce germ cells from stem cells.⁴⁰

There are strict restrictions on when the institute that obtained the stem cells for the research transfers them or cells derived from them.⁴¹

⁴⁰ *Id.* art. 27.

⁴¹ *Id.* arts. 28 and 29.