the claimant was lightened by the fact that Egyptian Foreign Investment Law (Law No.43) made reference to arbitration as a means of settling international disputes and the government undoubtedly agreed to EGOTH entering into the agreement. The Tribunal then found that the government was a party to the agreement.

The agreements were silent as to the appropriate governing law. The Tribunal held that the governing law was the law of the Egypt, the agreement being made in Egypt, the place of performance being there and there being numerous references to Egyptian law. A related question was whether the law of Egypt should be deemed to include the general principles of international law. After reference to the literature, and Article 42 of ICSID Convention, the Tribunal held that international law principles, such as pacta sunt servanda and that just compensation be paid for expropriatory measures should be deemed to be part of the Egyptian law.

The Tribunal then came, to the somewhat surprising conclusion that the governing law should be construed so as to include such principals as international law as may be applicable and that the national laws of Egypt could be relied upon only in as much as they do not contravene those principles. Thus, the measures taken by the government which prevented further performance of the Pyramids project, notwithstanding that they were measures of legislative and executive character amounting to an Act of State, were held to be a breach of contract. Support for this proposition was found in the Liamco, B.P. and Texaco awards (20 ILM 35, 53 ILR 329, 17 ILM 3).

Further, the submission to arbitration was treated as a waiver of the sovereign immunity of Egypt.

The Tribunal rejected the claimants claim for damages in an amount of US$42.5 million but awarded US$12.5 million as damages to the first claimant against the first defendant. Interest at the rate of 5 per cent from the day of the commencement of the arbitral proceedings until the date of payment was also ordered. The counterclaims of the defendant were rejected. Costs of 80 per cent of the cost of the arbitration and the normal legal costs of the claimants were awarded. This resulted in an assessment of US$730,704 on account of legal costs. One member of the Tribunal, Mr. Aly H. Elghatit dissented and refused to sign the award. The other members of the Tribunal were Professor Giorgio Bernini, Chairman, and Mr. Mark Littman Q.C.

The award has considerable implications in relation to the economic development agreements, or franchise agreements entered into by government and private corporations. It develops a controversial proposition, that international law may partially or wholly govern such an agreement. This award perhaps goes one step further; here there was no express choice of international law or something analogous as portion of the governing law. The case of course contradicts the usual doctrine in common law countries that the sovereignty of parliament may in the absence of consitutional provisions override contracts entered into by the executive. At [1983] Australian I.L. News 11 we noted that an appeal had been lodged against the arbitration. On this point, the ILM editor observes that the claimants had received a notice of appeal to the Paris Court of Appeal in April, and that "there has been no follow up. Technically, an appeal is still apending".

UNITARY TAXATION

Container Corporation of America v. Franchise Tax Board 22 ILM 855 (1983)

In the July issue we reported the decision of the U.S. Supreme Court upholding the validity of California's unitary tax system. Other States are already following or are expected now to follow the Californian example. The calculation is made as to how much of a company's payroll, sales and property

is located in the State, the simple average is made of the three and the company is taxed on the corresponding fraction of its world wide profits including those of overseas subsidiaries. This, of course, is arbitrary, particularly when regard is had to the high salaries paid in California and high property values. Australian investors in the United States may well suffer from this system. Three of the eight judges in the Supreme Court, including the Chief Justice, argued that unitary taxation should apply only to profits within the United States. The majority decision concerned a Deleware corporation doing business in California, and elsewhere with overseas subsidiaries. To the extent that it may be applicable to foreign companies is certainly against the spirit if not the letter of international taxation agreements, and is not necessary to prevent transfer pricing as there is sufficient provision against this in most conventions and certainly in the OECD Model. (The Economist 23 July 1983, p.77). Diplomatic protests have been made by the U.K., other powers, and, in November, Australia. This decision related to a U.S. company with headquarters outside of the relevant state. The applicability of unitary taxation to foreign companies is still to be decided in a pending test case concerning Alcan of Canada. In such a case, the terms of the relevant double taxation agreement would of course be pertinent.

SOVEREIGN IMMUNITY

Alcom v. Republic of Columbia, [1983] 3 WLR 906.

Plaintiff claimed that he had supplied more than forty thousand dollars worth of equipment to the republic. Now the defence was filed and the plaintiff obtained judgement at first instance, a high court judge had held that a garnishee order nisi against two of the defendants bank accounts in London should be vacated because those accounts were immune from execution. On appeal, the defendant argued that its main bank account was not used for commercial purposes but merely for the needs of the diplomatic mission and associated activities including assistance to Columbians stranded in Britain. The second account has a balance of only eight pounds. The Court of Appeal held that the bank account was being used for commercial purposes for example a provision of food etc. to the mission, the acquisition of air line tickets for stranded columbians etc. It is believed that the defendants will appeal to the House of Lords (The Economist 29 October 1983, p.91).

SOVEREIGN IMMUNITY AND ACT OF STATE:

In Allied Bank International v. Banco Credito de Contago 566 F.Supp 1440 (US DC SDNY 8 July 1983) the court observed that even where sovereign immunity did apply, Act of State may still bar the action. Because of the economic crisis, payment of certain foreign currency monetary obligations was stopped by the Costa Rican government. The Act of state doctrine was applicable. However, the Court in Libra Bank Limited v. Banco Nacional de Costa Rica 570 F.Supp. 870 (SDNY 1983) has come to a contrary decision.

SOVEREIGN IMMUNITY - COMMERCIAL ACTIVITY EXCEPTION

In Ministry of Supply, Cairo v. Universe Tankships Inc. 708 F.2d 8 (U.S. Court of Appeal, 2nd circuit 23 May 1983). The court found the foreign state had carried on a commercial activity in the U.S. - the "first exception" to sovereign immunity: Foreign Sovereign Immunity Act, 1976, sec.1605(a)2. The court extended the lifting of immunity to acts outside of the U.S. which constitute an integral part of the states commercial conduct on transaction having substantial contact with the U.S.

SOVEREIGN IMMUNITY - RECOURSE OF FOREIGN NATIONALS TO U.S. COURTS

In Verlinden B.V. v. Central Bank of Nigeria 22 ILM 647 (1983) the Supreme Court reversed the decision of the Court of Appeals (Second Circuit) in holding