even though a nexus was not established with the U.S., the vessel in question was arrested under the Marijuana on the High Seas Act, 1980.

JURISDICTION - RECIPROCITY

China National Technical Import Corporation Et At v. United States U.S. District Court SDNY, 3 December, 1982; 77 AJIL 315 (1983).

In 1981 a U.S. nuclear submarine and a Japanese merchant vessel collided in the South China Sea. The plaintiff, incorporated in the Peoples' Republic of China, sought recovery for the value of cargo lost Section 5 of the Public Vessels Act provides that no suit may be brought by a national of any foreign government unless the court is satisfied that the foreign government under similar circumstances will allow nationals of the U.S. to sue in its own courts. After reading evidence offered by Chinese legal counsel, as well as an affidavit by Professor R. Randle Edwards of Columbia Law School, the court found that the requirement in section 5 had been satisfied.

JURISDICTION

Re Israel Discount Bank v. Hadjipateras [1983] 3 All ER 1.

Under Order 14 of the Rules of the Supreme Court of England a plaintiff is entitled to a summary judgement to enforce a foreign judgement if it can be shown there is no defence to the claim. In this case, the Israel Discount Bank lent substantial sums to two Liberian shipping companies. The defendant then aged 20 and his father guaranteed the loans. Undue influence would have been a defence to the original action in New York, but it was not raised in that jurisdiction.

The Court of Appeal ruled that a defendant must raise all reasonable defences in a foreign court. If he failed to do, he could not raise a public policy defence in England.

TRANSNATIONAL INVESTMENT DISPUTES - GOVERNING LAW - DELOCALISATION - SOVEREIGN IMMUNITY

SPP (Middle East Limited) and Southern Pacific Properties Limited v. Arab Republic of Egypt and the Egyption General Company for Tourism and Hotels (EGOTH). ICC Court of Arbitration No. YD/AS No.3493. 11 March 1983. 22 ILM 752 (1983). Previously noted in [1983] Australian I.L. News 10.

The second claimant, the Ministry of Tourism and the second defendant entered into Heads of Agreement on 23 September 1974 to develop a series of tourist developments. On 12 December 1974, an agreement was entered into by the first claimant and the second defendant which was "approved agreed and ratified by the Minister of Tourism" whose signature also appeared on the agreement. This was to develop two projects including one at the Pyramids. Clause 20 provided "Any disputes relating to this Agreement shall be referred to the arbitration of the International Chamber of Commerce in Paris, France". The Minister of House and Reconstruction advised that the basic infrastructure would be provided by the Government. However opposition to the Pyramids project developed, especially in the Peoples' Assembly, on grounds both legal and environmental. After attempts to defend the project, the government eventually by executive action stopped work on the project. The claimants claimed damages for breach of the Agreements.

The Egyptian government disputed the jurisdiction of the Tribunal and that it was a party in any way to the December agreement.

The Arbitral Tribunal noted that special care was required where an independent sovereign was alleged to have made a submission to arbitration; the burden on

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