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

that it was ultra vires for the Congress to grant Federal Court subject matter jurisdiction over civil actions between foreign plaintiffs against foreign sovereigns. The action related to a contract for purchase of cement by Nigeria, the parties agreeing that the contract be governed by the laws of the Netherlands and that disputes would be settled by arbitration before the ICC in Paris. When the Central Bank unilaterally directed its correspondent banks to adopt a series of amendments in relation to all letter of credit issued in relation to this and other cement contracts, Verlinden sued the bank alleging an anticipatory breach of the relevant letter of credit and alleging jurisdiction under Foreign Sovereign Immunities Act. While holding that a federal court might exercise subject matter jurisdiction the court which originally heard the matter had dismissed the complaint because none of the exceptions from the doctrine of sovereign immunity established in the Act applied. The Court of Appeals had confirmed the decision on the ground that to the extent that the Act purported to confer jurisdiction in disputes between foreign plaintiffs and foreign states it was ultra vires. The Supreme Court did not find it necessary to consider whether the case fell within one of the exceptions in the statute; accordingly the case was remanded to the Court of Appeals to consider whether jurisdiction existed under the Act itself.

SOVEREIGN IMMUNITY - WAIVER OF IMMUNITY

Maritime International Nominees Establishment v. Republic of Guinea 693 F.2d 1094; 22 ILM 86 (1982).

Under a contract the parties agreed that disputes should be resolved by arbitration conducted by arbitrators selected by the president of the International Centre for the Settlement of Investment Disputes, ICSID. No place was determined for the location of those proceedings, and no arbitration in fact took place. The plaintiff sought an order compelling arbitration before the American Arbitration Association. The U.S. Court of Appeals held that even though the agreed arbitration would probably have taken place in the United States, this did not consitute a waiver in terms of s.1605(a)(2) of the Foreign Sovereign Immunities Act by the Republic engaging in commercial activities in the United States or engaging in commercial activities elsewhere causing a "direct effect" in the United States.

SOVEREIGN IMMUNITY: IRANIAN HOSTAGES

In Persinger v. Islamic Republic of Iran 690 F.2d 1010 (1982) the United States Court of Appeals DDC, held that the Foreign Sovereign Immunities Act, 1976 did not confer immunity from suit on Iran in relation to the taking of the U.S. hostages. The issues were whether this act occurred in "the United States" and whether it was "discretionary". These were matters of statutory interpretation. Reference to "United States" included all territories under the jurisdiction of the U.S. which includes U.S. embassies. However, the seizure was a patently illegal act and therefore not discretionary.

The plaintiff was one of the hostages and his claim had been extinguished by the President in the general settlement with Iran. The issue was one of the separation of powers; the President might extinguish claims altogether when the imperatives of events made it necessary to resolve an international crisis.

JUDGEMENTS IN A FOREIGN CURRENCY

Re Lines Bros. Ltd. [1982] 2 All ER 183 (C of A)

The Miliangos principle [1975] 3 All ER 801 permitting judgement in a foreign currency and allowing conversion at the date of judgement was not applicable in a liquidation. Thus a debt payable in Swiss francs was convertible into sterling at the commencement of the liquidation in 1971. The value of the