Bombay, India, 531 F.Supp.1175 (W.D.Wash.1982). Suit was allowed in the United States, and was recently tried before a judge only. Most federal courts would not allow a jury trial under the Death On the High Seas Act, but the New York state courts do allow a jury trial! Ledet v. United Aircraft Corp., 10 N.Y.2d 258, 219 N.Y.S.2d 245 (1961).

Under American products law, there is strict liability, which is usually applied under the Death on the High Seas Act: Renner v. Rockwell Int'l. Corp. 403 F.Supp.849 (D.C.Cal.1975), vacated and remanded on other grounds, 587 F.2d 1030 (9th Cir.1978), Lindsay v. McDonnell Douglas Aircraft Corp., 460 F.2d 63 (8th Cir.1972).

111. If the case comes under the Death on the High Seas Act, damages are calculated according to the decision on June 15, 1983 of the U.S. Supreme Court in Jones & Laughlin Steel Corp. v. Pfeifer, 76 L.Ed.2d 768, a maritime case.

The basic wage rate is to be figured, plus fringe benefits, such as employer-provided insurance, pensions and retirement monies, non-monetary employer services, profit-sharing, etc. Future wage increases, based on non-inflation increases, are to be figured, such as promotions, merit raises, seniority raises, raises due to increased productivity and merit. Income taxes are deducted. A discount rate is to be fixed, based on an expert's calculation, which can be zero if the trier of fact believes it to be so, based on future expectations as to inflation. Generally speaking, a discount rate of one to three percent is acceptable, as this is the "real rate of interest", absent an inflation factor, which determines the market rate of interest.

American law, thus, has one big advantage over Korean damage law, in that under the Hoffmann formula used in Korea and Japan, there is apparently a five percent discount rate. Also, wage increases are apparently only allowed for the three years projected after the death.

There is much greater flexibility in figuring awards under U.S. law.

INTERNATIONAL BANKING CENTRES - AUSTRALIA AND THE U.S. EXPERIENCE

The floating of the dollar and the substantial relaxation of exchange control were decisions of considerable courage.

We should of course remember that what has happened is really a suspension, not an abolition, of exchange control. The law - the Act and the Regulations - will remain in the government's armoury. Indeed, even Sir Keith Campbell saw the need to keep the Variable Deposit Requirement, the VDR, in the governments' armoury during the dismantling of foreign exchange control. He, of course, envisaged a longer transition for dismantling than has in fact occurred.

The situation is the same in the U.K. Exchange control can easily be restored. That is why the doyen of international financial lawyers, Dr. F. Mann, in the fourth edition of his magisterial work, The Law of Money, sets out previous U.K. exchange control policy.

One of the results of the decision to float has been increased interest in the prospect of developing an international banking centre in Australia. The Premiers of New South Wales and Victoria have insisted on the importance of their capitals as such centres; other comment suggests that with modern communications, both these cities and others, such as Brisbane, would collectively constitute such a centre. The prospect of increased work in the financial field is of course of interest to the legal profession.

Notwithstanding the decision of 9 December, the development of an international banking centre in Australia will be inhibited by certain existing laws. Both state and federal legislation will be necessary to overcome these. These are, first, the effective prohibition of new foreign banks. This is presently under

review, and it is possible the government may take a decision which will be to blur the destruction between domestic banks and other institutions. For example, foreign banks, or all merchant banks, might be allowed access to the foreign exchange market in Australia without the need to grant foreign banks full trading licences. Campbell recommended that this access be limited to banks as such, but saw access by foreign banks (and domestic banks) as an embryonic stage in the development of offshore banking in Australia. However he was opposed to foreign banks being limited to a specific minimum range of services.

The second inhibition is the reserve requirements and panoply of controls to protect depositors. Unless an exception were to be made, these would apply to international banking, whether conducted by domestic or newly licensed foreign banks. Campbell recommended foreign banks be subject to the same prudential requirements as domestic banks. In proposing risk asset limits (RAL's) i.e. limits on the proportion of risky assets to capital, Campbell suggested that the Reserve Bank might consider the use of RAL's in relation to foreign exchange exposure. The point is that some relaxation, especially of reserve requirements will be necessary if an Australian international banking centre is to compete with overseas competitors. Incidentally, The Economist, 7 January 1983 at 14, and 65 is quite critical of some aspects of the regulation of the Singapore financial markets, which it sees as inhibiting their growth.

Finally, there are fiscal inhibitions to this development, especially in the form of the various state and federal taxes and duties which fall on financial transactions. The payment of these would not normally constitute a credit against tax in the home country. The witholding tax on interest is in a different category. As an income tax, foreign depositors may be able to credit this against their domestic income tax liability. It seems, however, that the difficulties of administering and recouping the witholding tax, the fact that it may not always constitute a credit, and even if it does, the time lag in recoupment, indicate that an exemption will probably need to be made. Indeed, U.S. witholding tax is seen as a major disincentive for foreigners not trading on the U.S. bond market.

Rather than impose this hidden subsidy through differential applications of witholding tax, it may be preferable to offer a general relaxation of interest witholding tax. With the new anti avoidance provisions, this tax may now be superfluous.

Another related question is the rate of income tax - 46 per cent on companies in Australia, and higher than some other international banking centres. Obviously, an Australian international banking centre would be much more attractive if its rates of income tax were equal to those of other centres in the region. Those investors in a position to credit offshore taxes would of course not necessarily be attracted to a new centre. Indeed, a special low rate of Australian income tax on offshore banking in such cases would benefit only the relevant American, European or Japanese treasury. Of course Australian banks are already here, but a lower rate of tax on offshore banking would perhaps be an incentive for them not to develop activities in overseas centres. Such a special rate would cause tax avoidance problems, and act as a subsidy, attracting resources away from other sectors.

Great care would therefore have to be exercised in offering a special rate, remembering that it would be difficult to raise it once a rate had been declared. The transactions covered, and the beneficiaries would have to be defined precisely to prevent tax avoidance. If it were thought appropriate, Australia owned and/or controlled entities trading in the market, as well as foreign entities who may claim a credit for Australian tax paid against home tax, could be excluded. Such a system would of course be very difficult and costly to administer, and discriminatory, both within the finance sector and between it and other sectors of the economy. This may well support the argument for increased dependence on a general tax on consumption, and a lessened overall dependance on income taxation.

The Unites States has had some experience of the problem of establishing international banking centres at home. This is especially pertinent to us, as it required complementary federal and state legislation. However, while the example may be of utility to us, there are important differences. These range from the historic limitations on U.S. inter state banking, the dominance of New York as a financial centre, and the size and importance of the United States economy. The United States was in fact essentially trying to bring foreign banking home to the U.S. The principal participants in offshore banking were U.S. banks - the U.S. authorities wanted them to do their offshore banking in the U.S. so that the U.S. could increase her share in the employment, taxation and other benefits of the Eurocurrency market. The Australian position is the opposite - we want to attract international banking from other offshore centres, especially Hong Kong. While wishing to develop Australian banks, Australia would want to attract foreign operators in those offshore centres to Australia. That is why foreign bank entry is inevitable, perhaps initially in some attenuated form, if the authorities wish to develop an international banking centre.

The United States experience has led to the creation of International Banking Facilities, IBF's (See B.M. Farber, International Banking Facilities: Defining a Greater U.S. Presence in the Eurodollar Market, 13 Law and Policy in International Business 997 [1981].

IBF's, it has been said, are similar to a bonded warehouse. Goods imported into a country and placed in a bonded warehouse are usually exempt from customs duties provided they are eventually exported to another country. Funds in an IBF are imported from foreign sources and if they are lent on to foreign entities, they escape the reserve requirements and local tax applicable. They are essentially an accounting device, and do not need a separate organization.

They result from the realisation that U.S. regulations of the banking industry became an inhibition to the development of international banking in the U.S. and on encouragement to the growth of the offshore Euromarkets. In particular, Regulation Q limited interest on deposits, and Regulation D imposed reserve requirements. Certain capital controls adopted in the sixties, for example the Interest Equalisation Tax, made it unnattractive for foreigners to borrow in the U.S.

In 1978, the New York State legislature adopted legislation exempting Eurocurrency business in New York city from state and city income taxes. By mid 1982, California, Connecticut, Florida, Georgia, Illinois, Maryland, New York, North Carolina and Washington had followed suit. A detailed proposal was made by the New York Clearing House to the FED to create free banking zones through the concept of the IBF. These would essentially be segregated accounts in the U.S. free from Regulations D and Q.

The arguments advanced at that time are not dissimilar to those now being presented in Australia. It was said it would enable New York to take its place as the financial centre of the world. There would be employment benefits one third in banking itself, one third in accounting, law etc. and initially predicted at 5000 or 6000 new jobs. One third as the immediate multiplier effect. However, by the line the FED approved the IBF proposal, it was generally thought there would be no major new employment. Again it was said that federal tax revenues would increase.

This was doubted, as most offshore branches in tax havens paid no tax, and as credits are usually granted for local taxes, these branches were already paying full taxes. Most business was in fact expected to come from those branches which are "shells" offering no or few banking services, rather than "true" financial centres, such as London. Another advantage was said to be overcoming

"country risk". While the U.S. on rare occasions dares to claim extraterritorial jurisdiction in other countries, it is clear that banking is very much subject to the law of the place where it is conducted. If rigid exchange control were suddenly imposed in, say, Hong Kong, there would not be much that bankers there could do. The U.S. was said to be safer from unilateral action than other countries - this was of course before the Soviet gas pipeline affair.

Opposition to the proposal came particularly from outside New York. It was thought that the IBF would increase New York's dominance of the U.S. financial market, to the detriment of outside bankers. It was also suggested that foreign banks paying tax at home and receiving credit for foreign tax would not move to New York because the benefit of the exemption of New York state and city taxes would go to their home governments. Another fear was that of "leakage" from the IBF's into the domestic money supply, thus limiting the power of the FED to control this most important arm of policy. For example U.S. companies could transfer money to a foreign subsidiary which would put those funds into an IBF, or foreign companies could borrow from an IBF for on-lending in the U.S. However after the FED afterwards played down the effect of such transactions.

The IBF came into effect on 16 June 1980. (International Banking Act, 1980, 18 International Legal Materials 167 (1979); Federal Reserve Rules covering IBF's, 21 International Legal Materials 872 (1982)). At that time, the reserve requirement on the positive net inflow of funds into the U.S. held by U.S. Bank, or the U.S. branch of a foreign bank, was 3 per cent. If the funds were retained in an IBF then there would be no reserve requirement. Thus the IBF has been described as a "bookeeping device" or "bonded warehouse" to substitute for offshore banking. The regulations governing IBF's attempt to limit the possibility of leakage into the U.S. money supply by the use of foreign subsidiaries. There is a minimum transaction size for non bank customers of US$100,000, except when closing an account; there is no similar limitation for inter-bank transactions. Because regulatory authorities had been disturbed by almost instant movements of funds, which has become attainable through electronic banking, minimum maturities were established - two days for non-banks and overnight for the inter bank market. Loans may only be made when the proceeds are to be used in international business or business outside the U.S. In particular foreign subsidiaries of U.S. corporations must acknowledge in writing the non U.S. use of such funds. This is, of course, to prevent leakages back into U.S. money supply. Similarly, instruments in negiotiable form or payable to bearer cannot be issued on an IBF. An anomalous decision was to require inclusion of IBF deposits in the insurance scheme which protects depositors in banks through the EDIC. This of course raises the costs of administering an IBF (In Australia, the Campbell Committee decided against a similar insurance scheme, preferring the status quo which provides some protection, but no absolute government guarantee, of bank deposits.)

The FED is vigilant in ensuring that banks do not, in its eyes, circumvent its rules. Professor Liechenstein (99 Banking Law Journal 484 (1982)) observes that in 1981 the Bank of California offered a new facility to domestic customers. This was the "Money - Market Plus" accounts. U.S. customers could deposit money in the bank's London branch and on one day's notice to a U.S. branch, or by telephone, transfer those funds. The advantage was the higher interest then available in London. The FED said that the purpose of foreign branches was to conduct international and foreign business, and not to be a substitute for domestic banking. The "Money Market Plus" account was, it said, a device to evade Regulations D and Q. The Regulations were then tightened. With many changes of course, the concept of a local variation of the IBF, crated by the federal authorities and any of the states, may be the appropriate device to further an Australian international banking centre.

There remain three other major issues. First, the extent to which offshore banking will attract the extraterritorial reach of U.S. law. In the litigation surrounding the freezing by President Carter of Iranian accounts in U.S. banks in London and Paris, jurisdiction was said to be supported on a number of grounds, including the fact that the banks were U.S. controlled and the accounts denominated in the U.S. currency. The Foreign Proceedings (Excess of Jurisdiction) Bill, introduced by Senator Evans in December should, if passed, sufficiently block such action. Legislation of this type was in fact recommended by the Joint Committee on Foreign Affairs and Defence (Sub Committee on the Pacific Basin) in its majority report on extraterritoriality tabled in December.

The second issue is the appropriate prudential safeguards applicable to an international banking centre, and the extent to which a lender of last resort facility should be available. Even in the latest version this year of the Basle Concordat (see below, International Financial Law) between the world's leading central banks, which tries to establish a demarcation between the responsibilities of home and host governments of international banks, these questions have not been resolved. One thing is certain. The development of an international banking centre in Australia will neither exacerbate nor cure this problem. It might however give us the price of a seat at the table in future negotiations.

The third issue is the possibility that the U.S. Congress may abolish U.S. witholding tax on interest. This is presently seen by many observers as a disincentive to non-residents of the U.S. from acquiring bonds on the U.S. market. In other words, it is said to be an incentive for transactions on the Eurobound markets outside of the U.S. Some observers estimate that abolition of U.S. witholding tax might cause the Eurobond market to shrink by as much as 50 per cent. This would of course weaken all foreign international banking centres. However, there are other disincentives to trading on U.S. markets apart from the witholding tax - the cost and delay of compliance with SEC requirements, and the proscription on the issue of bearer paper. All U.S. bonds must be registered in the names of the holders, although the anonymity attainable through the use of bearer bonds might be also attainable through the use of nominee accounts. In addition, those investors who now have U.S. tax liabilities can offset U.S. witholding tax against those liabilities notwithstanding this many of them still trade on the Eurobond markets: Euromoney December 1983, 84.

D.F.

URANIUM

The effective blocking announced in November 1983 of the mining of uranium (except for the fulfilment of certain contracts) in the Northern Territory raises interesting legal issues both in Australian and under international law. From the international viewpoint it is somewhat reminiscent of the Fraser Island controversy, where though the use of the export control powers, mining on the island was effectively stopped for environmental reasons.

Outside of Australian legal considerations, the home government of any foreign investor affected by the decision could espouse its claims. But local remedies would first have to be exhuasted, which was not the case in the Fraser Island affair. However there Australia indicated to the U.S. that she would waive reliance on this rule, and on another potential barrier to jurisdiction, should the U.S. wish to take the case to the ICJ (see (1979) 53 ALJ 674). The U.S. indicated a preference for arbitration. Neither form of settlement was in fact chosen. Arbitral tribunals have increasingly been ready to find that international law applies in relation to foreign investment agreements, even