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

when international law may be contrary to national law. (see SSP (Middle East) Limited v. Egypt, casenotes, below). Such an arbitration, at least with the Commonwealth government, would of course require government consent. Agreements between state and territory governments do not as a matter of practice provide for international arbitration, and Australia has not ratified the ICSID Convention, which provides an international facility for the settlement of investment disputes. Article 42 provides that in the absence of agreement on the governing law, the arbitral tribunal shall apply the law of the host state including its conflict of law rules and such rules of international law as may be applicable. It was reported that the opposition of the former West Australian government influenced the former Federal government in delaying ratification.

One matter of interest in SSP (Middle East) Limited v. Egypt was the ease with which the tribunal found the government a party to the agreement. Of course in Australia it is usually a state or territory which is the party to a resource agreement - could the participation of the Australian government in FIRB and exchange control approvals be sufficient to find a contractual relationship? Even without a contractual relationship, Australia could of course still be responsible in international law for the mistreatment of aliens.

Were a breach of contract or responsibility found in arbitral or ICJ proceedings, the question of damages would raise difficulties. The appropriate level of damages to be awarded would be one such difficulty - there is a tendency to award less than damages for lucrum cessans, loss of future profits. The exact standard is not clear - there have been different approaches in the arbitrations. The second difficulty would be that the amount of damages would no doubt be influenced by the unhealthy state of the uranium market, characterized by considerable oversupply at the present time.

D.F