of new technologies in the field of communication, and it is appropriate that both international and national law keep up to date in this area. International lawyers will of course recall the very speedy development of custom in relation to the development of other technologies - the development of the aeroplane, and the technological and economic viability of the exploitation of the continental shelf. General Assembly Resolution 37/92 of 10 December, 1982 appears to proceed from the basis that the geostationary orbit, the orbit from which DBS service may be transmitted, is res communis. The resolution however also appears to proceed on the basis that the prior consent of receiving states must be obtained: 1983 22 ILM 451. This contrasts with the practice in relation to the electromagnetic spectrum, short wave radio. It seems hard to see technological or juristic reasons to make this distinction between the two systems, apart from the fact that control is more feasible. This resolution was adopted by a large majority 107 to 13 with 13 abstaining. The Western powers essentially either voted against the resolution or abstained. The traditional view is that such a resolution, in itself, would not be binding even if it purported to be the clarity of law. See the opinion of the arbitrator, Professor Dupuy in Texaco v. Libya 1978 53 ILR 389 at 483-495: for a contrasting Third World view see ICJ Judge Mohamed Bedjaoui in Towards a New International Economic Order, New York, 1979.

The UNESCO position on the NW10 is one of the reasons given by the U.S. for its recent notice of withdrawal from UNESCO. Newspaper reports have suggested that the Australian Ambassador to UNESCO, former Prime Minister Gough Whitlam may have an important role to play in seeking a compromise which will ensure the U.S. remains in the organisation.

INTERNATIONAL FNANCIAL LAW

Regulation of International Financial Matters - Non traditional sources of International Economic Law

Professor Carreau (D. Carreau et al., Droit International Economique, Paris, 1978 at 17, 18) categorises certain subjects of International Law as "non traditional". They can have an important impact on international affairs and international economic law, for example the famous Acnacarry Agreement, made in 1928 between what is now B.P. Exxon and Shell. This was the beginning of what was in effect a private international oil cartel having a major impact on the world and in many respects dominating the energy market down to the establishment of the public cartel, OPEC. In the field of international financial law, agreements entered into between the central banks of nation states may have a very substantial effect on the worlds' financial markets, although these are not treaties in the traditional sense. Indeed some central banks enjoy considerable autonomy from their governments. The most famous of these agreements is the so called Basle Concordat, made in 1975 and endorsed in December 1975 by the governors of the central banks of the Group of Ten. This attempted to establish guidelines for the supervision of multi national or transnational banks, after it was discovered that there was a potential for branches and subsidiaries of such banks to escape supervision. Its weakness was seen in the collapse of the Banco Ambrosiano - neither the Italian nor the Luxembourg authorities would accept responsibility for the liabilities of the bank's Luxembourg subsidiary. Neither country was in breach of the terms of the concordat - accordingly tighter guidelines have recently been endorsed by the central banks of the Groups of Ten, Luxembourg and Switzerland (International Financial Law Review, July 1983, p.26 (1983) 22 ILM 900). However, neither the 1975 nor the 1983 version provide a "lender of last resort" facility. Internally, of course, modern banking involves not only central bank supervision; the central bank is also a lender of last resort.

In the meantime, the U.S. Comptroller of the Currency and the U.S. Federal

Reserve Board have amended the minimum capital guidelines applicable to seventeen banks designated as multinationals. A five per cent minimum ratio of primary capital to total assets will apply and the definition of secondary capital will include unsecured long term debt of the parent company: (1983) 22 ILM 930.

It is reported that Banco Ambrosiano Holdings of Luxembourg, referred to above, has instructed London solicitors to advise on the possibility of legal action against Instituto per le opre di Religione, the Vatican bank. Banco Ambrosiao Holdings has defaulted on about US$450 million euromoney loans, and a large number of suits have been commenced against its Milan parent, Nuovo Banco Ambrosiano A joint Italian-Vatican commission is inquiring into the groups US$1.3 billion liabilities, and the extent of liability arising from the granting of "letters of comfort" by the Vatican Instituto per le opere di Religione to the late former head of the group, Roberto Calvi: Australian Financial Review 21 November 1983 p.28.

Promissory Notes

Brazil, itself in debt, has an unpaid US$1.8 billion trade debt due from Poland. Promissory notes had been accepted from Poland's Bank Handlowy. The due date was expressed as "only when Bank Handlowy will dispose at maturity of the appropriate funds" (sic). As The Economist observed (27 August 1983 p 51) "The financial principles implicitly accepted were as unconventional as the syntax".

Vail Conference

At a recent conference in Vail, Colorado, a number of prominent statesmen, no longer holding political office, had the opportunity of commenting on world conomic relations. The meetings were chaired by former U.S. President, Gerald Ford, and amongst those attending were James Callaghan, Giscard d'Estaing, Malcolm Fraser and Helmut Schmidt. Mr. Fraser's intervention related to the U.S. recovery, third world debt, exchange rates and protection.

Mr. Fraser stressed the link between third world debt and U.S. domestic economic policies. High interest rates in the U.S. significantly increases the cost of servicing third world debt. He doubted the veracity of the belief that a country cannot default and that the U.S. would not allow one of its institutions to fail. Mr. Fraser asked whether a third world country, faced with restraints imposed by the IMF, substantially increased unemployment with no social security safety net, might no longer be prepared to merely accept the disciplines presently imposed.

In relation to exchange rates, Mr. Fraser argued that a movement back to fixed, but under certain conditions, changeable parities is necessary for the continued rebirth of Western economies. The first move would have to be Britain joining the European Monetary System and then discussions between Europe, North America and Japan to establish parities.

Concerning protection, Mr. Fraser stressed that Australia is a country with quantitative restrictions on non-tariff barriers facing over fifty percent of our exports. He argued for a new GATT code on protection. As a first step, participants would be pledged not to increase protection against each other. Later steps would involve the winding down of protection, particularly illegal protection. He believed such a code or declaration would attract significant adherence.

Sharing Clauses

Sharing clauses in syndicated loan agreements first became prominent during the

Iranian hostages crisis, when set-offs were quickly for outstanding loans were made against Irans deposits when these were frozen by President Carter. Other banks sought to share in these set-offs. This again occurred during the Falklands Malvinas War, when Argentina refused to pay U.K. Banks, but paid other banks involved in syndicated loans: Christopher R. Brown, Sharing Strains on Euromarket syndicates [June 1982] International Financial Law Review 4; [October 1982] Ibid 3.

The British banks claimed the right to share in the amounts paid, and litigation seemed possible. In Euromoney, November 1983, at 107, R.G.A. Youard argues against the development of sharing clauses, which he says have become excessively complicated and are not helpful for good banking relations. He cites the example of the Argentine Refinancing Agreement which covers seven pages, against Argentina's guarantee which covers only two pages.

Interest and Currency Swaps

An extraordinary development in the international financial markets has been the use of swaps. Different borrowers can attract different terms from banks. By swapping obligations to pay interest on two similar principal sums, the borrowers can effectively convert from paying say, a fixed rate of interest to one which may be floating. To obtain this versatility, and balance the difference between the different rates, a premium is paid. The principal does not change hands. Obviously some guarantee of performance is necessary, especially in the event of insolvency. Hence banks will normally be involved, taking up the credit risk. In addition to a front end fee, banks fees normally vary between 0.125 per cent to 0.25 per cent.

Another form is the currency swap. For example, one corporation with a good U.S. credit rating lacking access to the Swiss franc market might agree to swap borrowings denominated in U.S. dollars to one denominated in Swiss francs. The parties take on the others obligations until the end of the swap, when the parties take up their original obligations including the principal. This may be at a predetermined exchange rate. The swap was used in the past not to benefit from the arbitrage between markets, but to bypass UK exchange controls when these were in force by matching loans between parent companies and subsidiaries: Euromoney, November 1983 at 60; David Bock, Swap Financing Techniques, Euromoney, London, 1983, Pounds sterling 85 or US$145.

For Australians an interesting question might be whether approval to a currency swap would need Reserve Bank approval under the Banking (Foreign Exchange) Regulations. The Reserve Bank has apparently no objection to trading in foreign currencies on the Sydney Futures Exchange provided non-residents are not involved and provided settlements take place in Australian dollars. After 9 December, 1983, it may well be that the latter proviso will no longer apply. At the time of going to press the question was not clear. By analogy currency swaps between Australian residents provided settlement takes place in Australian dollars. The Bundesbank, the Swiss National Bank and the Japanese Ministry of Finance attempt to regulate currency swaps.

European Monetary System and ECU's

The European Monetary System (EMS) will soon celebrate its fifth birthday. Its currency unit, the ECU is a basket of all EMS currencies together with the pound sterling The Economist (26 November 1983 at 55) notes that while its official use is stunted, its use in private markets is flourishing. At the middle of 1983, outstanding bank loans denominated in ECU's exceeded 1 billion ECU's (US$880) with several times that being but for trade credit. Five percent of all Eurobond issues have been domoninated in ECU's. The Economist points out the disadvantage - from the beginning of the EMS the ECU has depreciated by 8% against the deutschmark. Offset against this is the higher interest offered. However, the income tax implications of this would also have to be considered. The journal argues that European governments could encourage the use of ECU's in three ways: first, by borrowing short term in ECU's; second, by encouraging the West Germans to declare the ECU a legal currency. In France and Italy, exchange control prevents or limits for example, the use of ECU denominated accounts; third, by encouraging the UK to fully join the EMS. Because Britain has become the world's fifth largest oil produce the pound sterling is effectively a "petrocurrency" and thus considered too volatile for the rigidities of the EMS; however with the present oil glut the time may be appropriate for the UK to join. See Horst Ungerer et al, The European Monetary System; The Experience, 1979-82. Occassional Paper No.19, IMF, Washington 1983.

Leading Financial Lawyers

In a number of articles, the International Financial Law Review discusses the leading firms in a number of jurisdictions. Those articles include:

October 1982 - The Top Euromarket Law Firms and Lawyers.

March 1983 - The Top Euromarket Law Firms in New York.

June 1983 - The Leading Euromarket Law Firms in Hong Kong and Singapore.

September 1983 - The Leading Law Firms in Sovereign Restructuring.

October 1983 - Europe's Top Lawyers and Law Firms.

In Australia, not so long ago, the Australian Financial Review caused quite a stir in its rating of leading lawyers. More recently, the Business Review Weekly, 10 December, 1983, 55, detailed the opening of an office in Melbourne by the leading Wall Street firm, Sullivan and Cromwell. It noted that the practice is "being run by expatriate Australian lawyer Jeffrey Browne who, after taking a law degree (his third) at Harvard, was admitted to the New York Bar and made a partner in Sullivan Cromwell, the only Australian in the firm's 250 lawyers".

Mr Browne is also co-author of a recent publication of the leading London financial publishers, Euromoney Publications Ltd. The title is United States Law of Sovereign Immunity Relating to Internaional Financial Transactions, London, 1983.

Undoubtedly the recovery, the floating of the dollar, the probable development of an international financial market and the probable entry of foreign banks to at least participate in the currencies markets suggests that international law firms may seek to establish a presence here. On the one hand, there will be in the Australian profession a fear of competition from foreign firms. On the other hand, the expertise of the firms, and the potential for partnership, employment and other relationships will suggest some benefits to local lawyers.

The banks and financial houses are already facing up to the likelihood of increased foreign representation; it may well be the turn of the lawyers soon.

Proposed Uniform Rules for Bank Foreign Exchange Contracts

At the request of the Basle Committee on Banking Regulations and supervisory contracts, the International Chamber of Commerce is presently in the process of drafting uniform rules for foreign exchange contracts, termed FOREXCOS, between banks including banks in different countries, and extending to third parties who take over or guarantee such contracts. Banks adhering to the rules will do so by the use of the abbreviation "IFEX" (International Chamber of Commerce Foreign Exchange Rules). Lists of banks adhering to the rules will be published. Of particular interest will be draft Article 8, which provides for liability on default "for any reason whatsoever, including force majeure or its inability to provide agreed currency funds as a consquence of local mandatory restrictions, but excluding insolvency ..." (Editor's emphasis). This draft article might overcome the decision in Allied Bank International v. Banco Credito Agricola de Cartago 566. F.Supp.1440 (SDNY 1983) where newly imposed exchange control restrictions were held to be an Act of State and the defendant thereby escaped liability. Note, however, the contrary decision in Libra Bank Limited v. Banco Nacional de Costa Rica 570 F.Supp 870 (SDNY 1983). See casenotes.

Liability extends to the net loss of interest and net cost of covering the FOREXCO. Claims must be made "not later than three months after the relevant value dates: ICC, 38 Courts Albert Premir 75008 Paris, Commission on Banking Technique and Practice, Document No. 470/414.

Exchange Control Trial

On 5 December, the trial of 57 clients and five former executives of Paribas began in Paris. It is alleged that they were involved in a scheme to avoid exchange control. Among those on trial is M. Pierre Moussa, who took action to ensure that Paribas Swiss company would legally ecape French nationalisation measures: The Economist 10 December, 1983, 81.

D.P

SHIPPING

The UNCTAD code for liner conferences came into force in October, 1983: The Economist, 26 November, 1983 at 84. The most controversial provision is for governments to have the right to reserve for their national lines a proportion of conference cargo on bilateral routes. Although not express, the proportions are generally taken to be 40 per cent for each of the two national lines leaving only 20 per cent for other lines. However because of opposition to the code, the Economist predicts the code's provisions will only affect 7 per cent of world liner trade. Because of a restructuring of the industry and technological advances, the journal argues that the conference system which will emerge "... will bear little resemblence to the one which provided the UNCTAD liner code".

D P

TRADE BOYCOTTS

In November 1949; a group of Western powers established a co-ordinating committee, called COCOM, to co-ordinate the deprival of the Soviet Union and her allies of strategic imports from the west. COCOM has no formal charter, and is not part of NATO, although all NATO members and Japan are associated. What disturbed the major European allies of the U.S. in 1982 was that the attempted U.S. imposed boycott of Western exports for the Soviet European gas