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The Razor's Edge: The Doctrine of *Forum non Conveniens* and the Union Carbide Methyl Isocyanate Gas Disaster at Bhopal, India

Over two thousand people died and two hundred thousand were injured when methyl isocyanate gas escaped from a Union Carbide pesticide factory in Bhopal, India on December 3, 1984.1 Representatives of the injured and deceased filed claims in several United States courts,2 seeking redress in what may become the largest tort action in American judicial history. The facts pose difficult questions of jurisdiction, *forum non conveniens*, comity, and conflict of laws. The doctrine of *forum non conveniens* is the crucible for the resolution of these issues as American courts consider whether to jettison the claims. Fundamentally at issue are the limits of American interests in providing an adequate forum for plaintiffs injured by the activities of multinational corporations.

*Forum non conveniens* is the power of courts to decline to exercise jurisdiction in certain exceptional circumstances.3 The doctrine appears to have originated in Scotland, where the essential question whether a court had a sufficient jurisdictional basis to hear a case developed into a discretionary question on the merits of hearing a case.4 The development of the doctrine is influenced by the deference accorded to the interests of the parties and the requirements of justice.5

In 1821 Chief Justice Marshall stated in dictum that the judiciary has “no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or other would be treason to the constitution.”6 As personal jurisdiction expanded, courts recognized the imprudence of compelling courts to exercise

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2 Suits were filed in various state courts and at least seven different federal district courts. See *In re Union Carbide Corporation Gas Plant Disaster at Bhopal, India in December 1984*, MDL No. 626, J. Pan. Mult. Lit. (Feb. 6, 1985).
jurisdiction in every case, though not specifically mandated to do so by the legislature.\textsuperscript{7} In Canada Malting Co. v. Paterson Steamships, Ltd.\textsuperscript{8} Justice Brandeis stated that, as in admiralty, "[c]ourts of equity and law [may] also occasionally [sic] decline, in the interest of justice, to exercise jurisdiction, where the suit is between aliens or non-residents or where for kindred reasons the litigation can more appropriately be conducted in a foreign tribunal."\textsuperscript{9} United States courts adopted the doctrine of \textit{forum non conveniens} to justify abdicating jurisdiction in these cases.\textsuperscript{10}

Divergences in the development and growth of the doctrine have stemmed not so much from objection to its core concept that courts are empowered to abdicate jurisdiction, as from a desire to delimit the circumstances under which the doctrine may be invoked. \textit{Gulf Oil Corp. v. Gilbert},\textsuperscript{11} the fountainhead of the modern doctrine of \textit{forum non conveniens}, extended the doctrine beyond admiralty and equity.\textsuperscript{12} In \textit{Gilbert} plaintiff sought to recover the value of his property destroyed by a warehouse fire in Virginia. The owner, a Virginia resident, brought a negligence action in the District Court for the Southern District of New York against Gulf, a Pennsylvania corporation authorized to do business in both Virginia and New York. The district court dismissed the case, finding that the witnesses and parties in interest resided in Virginia, and that New York corporation statutes do not require courts to assume jurisdiction in tort actions between nonresidents where the torts occur outside the state.\textsuperscript{13}

Reversing, the court of appeals took the restrictive view that \textit{forum non conveniens} applied only in extreme cases of harassment and where, because of the extraordinary or equitable nature of the remedy sought, a particular forum was better able to shape and execute that remedy.\textsuperscript{14} Thus, the court noted that in practice tort actions

\textsuperscript{7} Admiralty presented a problem to mandatory jurisdiction because if there were no discretion in the exercise of conferred jurisdiction, by the face of art. III, § 2, cl. 1 of the United States Constitution, admiralty courts could not decline jurisdiction between two foreigners, although the contacts might be tenous. Canada Malting Co. v. Paterson S.S., 285 U.S. 413, 421 n.2, 422 (1932); \textit{The Belgenland}, 114 U.S. 355 (1885). See also Bickel, \textit{The Doctrine of Forum non Conveniens as Applied in the Federal Courts in Matters of Admiralty}, 35 CORNELL L.Q. 12 (1949).

\textsuperscript{8} 285 U.S. 413, 423 (1932) (footnote omitted).

\textsuperscript{9} Id.


\textsuperscript{11} 330 U.S. 501 (1947).

\textsuperscript{12} Id. at 513 (Black, J., dissenting). \textit{Cf. id.} at 505 n.4 (no difference between law and equity).


between nonresidents are dismissed only on claims of personal injury and wrongful death.\textsuperscript{15}

Finding this view of \textit{forum non conveniens} too narrow, the Supreme Court ruled that the district court had not abused its discretion. The \textit{Gilbert} Court found that despite proper jurisdiction and venue in the Southern District of New York, and that the action was for money damages, the district court judge was empowered to refuse to entertain the case after finding that maintaining the case would be unduly burdensome. The Court reviewed the history and development of the \textit{forum non conveniens} doctrine, and without attempting to catalog all the circumstances under which dismissal is appropriate, identified some private\textsuperscript{16} and public\textsuperscript{17} interests that must be considered. The Court envisioned a flexible doctrine that would furnish criteria for choice between two forums in which the defendant is amenable to process.\textsuperscript{18}

A similar result was reached in \textit{Koster v. Lumbermens Mutual Casualty Co.},\textsuperscript{19} decided the same day as \textit{Gilbert}. Although \textit{Koster} was a shareholders' derivative suit,\textsuperscript{20} courts have interpreted its standards consistently with those of \textit{Gilbert}.\textsuperscript{21} While a plaintiff ordinarily will not be deprived of his choice of a forum, "the ultimate inquiry is where trial will best serve the convenience of the parties and the ends of justice."\textsuperscript{22}

The analysis has become more structured as the doctrine has evolved.\textsuperscript{23} In \textit{Pain v. United Technologies Corp.}\textsuperscript{24} the United States

\begin{footnotes}
\textsuperscript{15} 153 F.2d at 884.
\textsuperscript{16} Personal interests to be considered include: the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious, and inexpensive. \textit{Gilbert}, 330 U.S. at 508.
\textsuperscript{17} Public interest factors include administrative difficulties of courts with congested dockets, the burden of jury duty on people of a community having no connection with the litigation, desirability of holding a trial near those most affected by it, and appropriateness of holding a trial in a diversity case in a court that is familiar with governing law. \textit{Id.} at 508-09.
\textsuperscript{18} \textit{Id.} at 507.
\textsuperscript{19} 330 U.S. 518 (1947).
\textsuperscript{20} \textit{Forum non conveniens} in shareholder derivative suits is influenced by considerations of shareholder oppression, the potential for strike suits, and the peculiar equitable remedies involved. \textit{Id.} at 521-33.
\textsuperscript{22} 330 U.S. at 527.
\textsuperscript{23} As the structure of a decision becomes more rigid, the scope of appellate review expands; thus, as the province of a district court judge's discretion is limited, \textit{forum non conveniens} becomes more a matter of law. Friendly, \textit{Indiscretion about Discretion}, 31 EMORY L.J. 747, 748-54 (1982). See also Overseas Nat'l Airways, Inc. v. Cargolux Airlines Int'l, S.A., 712 F.2d 11, 14 (2d Cir. 1983) (Oakes, J., concurring). For abuses in renouncing jurisdiction, see R. Bowers, \textit{Judicial Discretion of Trial Courts} (1931); Dainow, \textit{The Inappropriate Forum}, 29 ILL. L. REV. 867, 889 (1935).
\end{footnotes}
Court of Appeals for the District of Columbia outlined four steps to determine whether to dismiss the case on the ground of *forum non conveniens*.\(^{25}\) A court first must determine the existence of an adequate alternative forum with jurisdiction over the whole case because if none exists the court may not dismiss the case.\(^{26}\) Next, the court must balance the private interests,\(^{27}\) with the presumption favoring the plaintiff's choice.\(^{28}\) If these are equipose or near equipose, the court will consider factors of public interest.\(^{29}\) Finally, if the balance favors the foreign forum, the court must ensure that the plaintiff adequately can reinstate the suit in that forum.\(^{30}\)

*Piper Aircraft Co. v. Reyno*\(^{31}\) restored a measure of flexibility to the application of *forum non conveniens*.\(^{32}\) In *Piper* a light plane crashed in Scotland, killing the pilot and passengers. Representatives of the estates of the Scottish passengers brought wrongful death actions in the United States against two American manufacturers. The representatives sought to recover on the basis of strict liability, which is not recognized in Scotland, and negligence. The district court dismissed the action by *forum non conveniens*.\(^{33}\)

The court of appeals reversed on the ground that the district court abused its discretion in the conduct of the *Gilbert* analysis. Alternatively, the court held that dismissal automatically is barred when the law of the alternative forum will be less favorable to the plaintiff than the law of the forum chosen by the plaintiff.\(^{34}\) The Supreme Court rejected this formulation, holding that giving undue weight to any one factor, in particular the possibility of a change in law, deprives courts of the flexibility required in applying *forum non conveniens*.\(^{35}\)

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\(^{25}\) Id. at 784.

\(^{26}\) If there is no alternative forum the case may not be dismissed. Yeba-Chemie A.G. v. M/V Getafix, 711 F.2d 1243, 1248 (5th Cir. 1983); Vax Borralho v. Keydril Co., 696 F.2d 379, 393 (5th Cir. 1983). The tribunal need not exist at time of filing, only of dismissal. Schertenleib v. Traum, 589 F.2d 1156, 1164 (2d Cir. 1978).


\(^{28}\) See infra text accompanying note 36.

\(^{29}\) The *Pain* court's consideration of public interest factors only if the private interests are equipose appears to derive from an excessively literal reading of *Gilbert*.

\(^{30}\) Usually, this involves the parties stipulating to agree to waive the defense of statute of limitations and submitting themselves to the jurisdiction of the alternative forum. See infra note 70.


\(^{32}\) Requiring courts to make comparisons of laws imposed a burden that the doctrine was designed to alleviate. Id. at 251.


The Supreme Court upheld the district court’s finding that the plaintiff’s choice of forum is given less weight when the plaintiff or the real parties in interest are foreign. Although ordinarily a plaintiff’s choice of forum carries a strong presumption of adequacy, when the plaintiff is foreign, it is less compelling to assume his choice is reasonable, particularly when he seeks to benefit from the more liberal American tort rules. Moreover, the determination of forum non conveniens is committed to the sound discretion of the district court. Thus, the standard of review is one of clear abuse of discretion. The Supreme Court held that a trial judge’s forum non conveniens determination is to be given substantial deference if the court has considered all relevant public and private interest factors, and the balancing is reasonable.

Surviving a motion to dismiss on the ground of forum non conveniens may be one of the most difficult obstacles the Bhopal plaintiffs must overcome in United States courts. On February 6, 1985, a Judicial Panel on Multidistrict Litigation consolidated eighteen of the injury, death, and property damage suits filed against Union Carbide in federal courts and assigned the litigation to Judge John F. Keenan of the Southern District of New York.

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35 The Piper Court presumably believed it was easier to determine whether the alternative law provides a clearly inadequate remedy than whether it is less favorable.
36 454 U.S. at 255.
37 479 F. Supp. at 751.
38 Paper Operations Consultants Int’l, Ltd. v. SS Hong Kong Amber, 513 F.2d 667 (9th Cir. 1975).
41 The factors considered in determining a location for consolidation are: (1) central location; (2) number of involved actions pending in the district; (3) caseload of the court and the average time to dispose of a case; (4) judge’s involvement in and experience with a particular litigation; (5) choice of substantial number of parties; (6) pretrial activity; (7) location of potential witnesses and documents in the district. 28 U.S.C. § 1407 (1982); Ward, Multidistrict Litigation Procedures in the United States, 1982 TRIAL LAW. GUIDE 249, 253-54.
On February 14, 1985, the Panel issued conditional transfer orders for an additional thirteen suits. The Panel found that though none of the seven proposed forums was the nexus of the litigation, on balance the Southern District of New York was the most appropriate forum because it is convenient to many parties, more actions are pending there, Union Carbide is a New York corporation, and witnesses and documents may be located at the corporation's headquarters in Danbury, Connecticut.

In a consolidated action the transfer should not alter the substantive rights of the parties; thus, the transferee district must apply the law that would have applied to each litigant in the transferor district. Moreover, *Erie Railroad Co. v. Tompkins* held that, except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in federal courts sitting in diversity is the law of the state. It appears settled that a federal court in diversity must employ a state standard to determine in personam jurisdiction over a foreign corporation.

Personal jurisdiction over Union Carbide exists because there is complete diversity of citizenship between all members of the plaintiff class who are foreigners, and Union Carbide, which is "doing business" in the various transfer districts. If required for plaintiffs' case, contacts with the United States necessary to assert jurisdiction over Union Carbide India, Ltd. (Carbide India), the Union Carbide subsidiary that owned and operated the plant, may be more difficult to establish. The parent-subsidiary relationship does not give the United States jurisdiction over Carbide India, but if the two entities share a sufficient "corporate intimacy" so that corporate autonomy

Connecticut, the company's headquarters, and in New York, the company's state of incorporation. In re Union Carbide Corp. Gas Plant Disaster at Bhopal, India on December 1984, MDL No. 626, J. Pan. Mult. Lit. (Feb. 6, 1985). Union Carbide should not be estopped by their argument that New York is convenient to the evidence. 479 F. Supp. at 738; 630 F.2d at 156.

Letter from Robert A. Butler, Law Dep't, Union Carbide Corp. to Charles T. Plambeck (Mar. 1, 1985).


304 U.S. at 78.

Arrowsmith v. United Press Int'l, 320 F.2d 219 (2d Cir. 1963).

One early determination will be whether plaintiffs may bring a class action. Fed. R. Civ. P. 23(b)(1)(B).


is a mere formality, the United States may have jurisdiction over the subsidiary. The degree of control by the parent over the internal business operations of the subsidiary must be greater than ordinarily associated with common ownership and directorship. Although there would not be diversity of citizenship between plaintiffs and Carbide India because both parties are foreigners, the court may admit Carbide India as a pendent party.

Erie has not clarified whether a federal court must apply state or federal forum non conveniens standards. The Supreme Court in both Gilbert and Piper refused to address this question, finding that for its purposes state and federal law were substantially the same. The district court in Gilbert noted the close proximity of forum non conveniens to jurisdiction and reasoned that state law should apply.

In its forum non conveniens determination, the court will be aided by substantial precedent from the Second Circuit on the issues likely to be raised. The court first must determine whether an alternative forum exists. Thus, if the foreign court lacks jurisdiction, the limitations period has expired, litigation of the subject matter is

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52 The court would have no diversity jurisdiction otherwise, because the action would be between two foreign litigants. ITT v. Vencap, Ltd., 519 F.2d 1001, 1015 (2d Cir. 1975). If the suit against Union Carbide is dismissed, whether a suit against Carbide India will be allowed to proceed is a matter of pendent jurisdiction.

53 Hargrave v. Fibreboard Corp., 710 F.2d 1154, 1160 (5th Cir. 1983).


55 See Piper, 630 F.2d at 157 n.17, 158; Verlag, 536 F.2d at 436; Annot., 159 A.L.R. 662 (1945). Cf. Thomson, 355 F.2d at 66.

56 330 U.S. at 509.

57 454 U.S. at 248 n.13.


60 The Second Circuit is particularly qualified to hear this case because of its long experience with international disputes. It has tended to reject foreign torts and give greater weight to public rather than private interests. Note, The Convenient Forum Abroad, 20 Stan. L. Rev. 57, 66 (1967).

Forum non conveniens is a proper subject for directed discovery. Cheng, 708 F.2d at 1412. Section 1404(a) does not govern this action, because the alternative forum is foreign. Traum, 589 F.2d at 1156.

61 The doctrine of forum non conveniens presupposes the existence of two competent forums. Gilbert, 330 U.S. at 506-07.


not permitted,\textsuperscript{64} or the court will dismiss the case on the merits,\textsuperscript{65} \textit{forum non conveniens} dismissal is inappropriate.

The Indian Republic has a federalistic structure in that governmental functions are divided with states.\textsuperscript{66} Section 9 of the Indian Civil Procedure Code, 1980 provides that the courts shall have jurisdiction to try "all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred."\textsuperscript{67} Actions for strict liability or negligence are not among the statutory judicial remedies excluded from the Indian court system.\textsuperscript{68} Thus, the courts of Madhya Pradesh, the state where the plant is located, would be empowered to hear the tort claims against Carbide India.\textsuperscript{69} Whether an Indian court could assert jurisdiction over Union Carbide is less certain.\textsuperscript{70} It is likely, however, that Union Carbide would consent to jurisdiction if the United States action were dismissed, and would agree to accept service of process in any action brought in India, make witnesses and documents available there, and pay any judgment rendered there.\textsuperscript{71}

The limitations period applicable to the Fatal Accidents Act, 1855, is two years from the date of death.\textsuperscript{72} The accident occurred on December 3, 1984. Thus, unlike \textit{In re Aircrash Disaster Near Bombay, India, on January 1, 1978},\textsuperscript{73} the limitations period should not bar dismissal. Merely filing an action in a United States court, however, would not toll the Limitations Act of 1963.\textsuperscript{74} Furthermore, according to the \textit{Bombay} court, Indian courts may not entertain a waiver of

\begin{footnotesize}
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\item[66] INDIA CODE part II § 9 (1970).
\item[67] \textit{See} M. JAIN & P. JAIN, PRINCIPLES OF ADMINISTRATIVE LAW 436 (2d ed. 1979). For the scope of review of these quasi-judicial authorities, see Jain, Judicial Response to Privative Clauses in India, 22 J. INDIAN L. INST. 1 (1980).
\item[68] INDIA CODE CIV. PROC. §§ 16(e), 19 (1970). The suit must be instituted in the lowest grade court competent to hear it. INDIA CODE CIV. PROC. § 15.
\item[71] The Indian Fatal Accidents Act, 1855, 2 INDIA CODE part II, p. 5. The Limitations Act, 1963, 2 INDIA CODE part II, Schedule, part VII, no. 82, p. 60.
\item[72] 531 F. Supp. 1175 (W.D. Wash. 1982). \textit{See also Petroleum Helicopters}, 15 Avi. 18,113 (barred by Colombian statute of limitations).
\item[73] The Limitations Act, 1963, 2 INDIA CODE part II. Moreover, the pendency of a suit in a foreign court does not preclude the courts in India from trying a suit founded on the same cause of action. INDIA CODE CIV. PROC. § 9.
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the statute of limitations.\textsuperscript{75}

The unclear distinction between availability and adequacy of an alternative forum affords defendants the opportunity to argue inconvenience at this level.\textsuperscript{76} *Lake v. Richardson-Merrell, Inc.*\textsuperscript{77} considered whether to factor the adequacy of the remedy in the alternative forum at this preliminary stage or when balancing interests. The court believed that the remedy should be considered at the preliminary stage alone, but interpreted *Piper* as requiring the factor to be considered twice — initially and in the balancing of interests.\textsuperscript{78}

Though this interpretation plainly is justified by *Piper*, a third view is perhaps the most sound. Where the bar is not absolute, legal and financial obstacles should not be considered in determining whether an alternative forum exists, but instead should be weighted when balancing interests. This view is supported by *Piper*’s directive to avoid giving undue weight to any single factor, because proof of these factors at the preliminary stage is dispositive, and not merely indicative. Defendants nevertheless will attempt to prove that various obstacles disqualify Indian courts. These obstacles include tremendous delays in reaching a verdict and the system of court fees, which makes litigation of this size prohibitive.

Courts that, at this preliminary stage, have disqualified the alternative forum for having inadequate procedures have been presented with compelling facts. In *Canadian Overseas Ores Ltd. v. Compania de Acero del Pacifico, S.A.*\textsuperscript{79} the court did not grant dismissal when defendants failed to prove that the Chilean judiciary was independent of the ruling junta and capable of conducting a fair trial. Similarly, the judge in *Rasoulzadeh v. Associated Press*\textsuperscript{80} was not convinced of the impartiality of the Iranian Mullahs and rather feared that plaintiff would be shot should he return to Iran.

If the court finds that India affords an alternative forum, it next must balance the interests involved and decide whether dismissal is in the interests of justice. Balancing the private interests of the litigants, the court must weigh various legal and economic conditions attendant to each forum. Although the Supreme Court in *Piper* admonished that the change in laws should not be given much weight, the procedural and substantive difficulties the litigants face if the case is tried in India are substantial and may rise to *Piper*’s standard.

For instance, the court in *In re Aircrash Disaster near Bombay, Inc.*

\textsuperscript{75} *Bombay*, 531 F. Supp. at 1181.
\textsuperscript{77} 538 F. Supp. 262 (N.D. Ohio 1982).
\textsuperscript{78} *Id.* at 268.
\textsuperscript{79} 528 F. Supp. 1337, 1341 (S.D.N.Y. 1982).
\textsuperscript{80} 574 F. Supp. 854, 861 (S.D.N.Y. 1983).
dia\textsuperscript{81} took judicial note of the extensive delays in the Indian judicial system. Indian commentators long have advocated reform.\textsuperscript{82} Furthermore, there appears to be no procedure for speedy disposal of matters of public importance by the Indian Supreme Court.\textsuperscript{83} The court in Bombay did not find this fact dispositive, however, basing its decision to retain the case and not hold the action in abeyance on defendant’s inability to prove that India would accept defendant’s submission to jurisdiction, and that India itself could not determine within a reasonable time whether it could accept jurisdiction.\textsuperscript{84}

The system of court fees in the Madhya Pradesh presents another obstacle to plaintiffs. The Court Fees Act, 1933 requires a nonrefundable fee of an amount of \textit{ad valorem} of the damages claimed.\textsuperscript{85} Indian commentators have pleaded for reform of the system of court fees.\textsuperscript{86} Indian courts have responded with the opposite—increasing fees, levying percentage duties without ceiling, and requiring special stamps for the filing of most documents.\textsuperscript{87} In Madhya Pradesh these levies have been held valid against a constitutional challenge. The high court held that they are valid because they fairly meet the expenses of maintaining the court without making a profit and because Order 33 provides for an appeal as an indigent litigant.\textsuperscript{88}

The United States district court in \textit{Nai-Chao v. Boeing Co.}\textsuperscript{89} was presented with a similar argument. Plaintiff argued that Taiwan’s re-

\textsuperscript{81} 551 F. Supp. at 1181 n.7.
\textsuperscript{83} INDIAN CODE CIV. PROC., First Schedule, Order XLV. See also Vaze, \textit{Problem of Speedy Disposal of Matters Coming Before the Supreme Court and the High Court}, 162 MADRAS L.J. 11 (1982). The central government may establish a tribunal for inquiring into matters of urgent public importance under the Commissions of Inquiry Act, 1952, which is based on the British Tribunals of Inquiry (Evidence) Act, 1921, 11 & 12 Geo. 5, ch. 7. A Commission of Inquiry under the Act is purely a fact finding body to inform government and has no power to pronounce a binding judgment or order of a judicial nature. Kapur, \textit{supra} note 66, at 246-47.
\textsuperscript{84} Cf. Schertenleib v. Traum, 589 F.2d 1165 (2d Cir. 1978) (use of \textit{forum non conveniens} permissible even where there was no alternative forum in which plaintiff originally could have commenced action). Tokio Marine and Fire Ins. Co. v. Bell Helicopter Textron, 17 Avi. 17,321, 17,324-25 (S.D. Tex. 1982), would consider the length of time before a trial could be held a public interest favoring retention of the suit in an American forum. The \textit{Haddad} court found as ground to retain the case the fact that the court had gained a familiarity with the facts and the law and would not burden another court with duplicating the work required to learn the case. \textit{Haddad}, 588 F. Supp. at 1164.
\textsuperscript{87} \textit{Id.} at 15.
\textsuperscript{88} D & H. Secheron Electrodes (Put.) Ltd. v. Madhya Pradesh, [1982] MADHYA PRADESH L.J. 653, 661. See INDIAN CODE CIV. PROC., First Schedule, Order XXXIII.
\textsuperscript{89} 555 F. Supp. 9 (N.D. Cal. 1982).
quirement of a filing fee of one percent of the damages claimed made Taiwan an inadequate forum. The court was not persuaded, however, and found that it was not impossible to prosecute the action, because procedural relief from payment of the fee was available. The court noted that the fees system was the way Taiwan financed its courts, and it would be unfair for United States taxpayers to subsidize this action merely on this ground. The court rejected the contention that advancement of funds not necessary in the United States renders a court system inadequate.90

Although the laws of India might be less liberal, plaintiffs would be deprived of few substantive theories. Rights of action survive the death of plaintiffs under the Fatal Accidents Act, 1855.91 Although the case law is nonextensive, actions to pierce the corporate veil have been sustained.92 For a number of reasons there is a paucity of tort precedent in India.93 Nevertheless, in addition to negligence, the strict liability rule in Rylands v. Fletcher94 is recognized.95 Damage awards are small, and compensation is based on the decedent’s occupation and life expectancy alone,96 without considering pain and suffering.97 Though perhaps minimal by United States standards, the awards are not so insufficient as to amount to no remedy at all.98

Other factors that might make trying the case in India difficult,

90 Id. at 16; Boskoff v. Transporters Aereos Portugueses, 17 Avi. 18,613 (N.D. Ill. 1983) (considering financial burden on plaintiffs).
91 2 INDIA CODE, part II, pp. 5, 17. See also Bakshi, supra note 82, at 11; Bakshi, Law of Torts, 16 ANNUAL SURVEY OF INDIAN LAW 339 (1980); Ramamoorthy, Difficulties of Tort Litigants in India, 12 J. INDIAN L. INST. 312 (1970).
93 See Bakshi, supra note 82, at 1.
94 L.R. 2 H.L. 330 (1868).
95 Ibrahim v. Sahib, 69 Madras L.J.R. 218 (1935); J. GUPTA, THE PRINCIPLES OF THE LAW OF TORTS 772 (1965); R. ANAND & L. SASTRI’S THE LAW OF TORTS 41, 309, 785 (3d ed. 1967). Defendants may have a defense of governmental sanction for their actions. R. ATCHUTHER PILA, PRINCIPLES OF THE LAW OF TORT 606, 608 (4th ed. 1966). This defense may be similar to force majeure if they were constrained by government requirements of Indianization of the operation. For the vicarious liability of Madhya Pradesh, see Pandy v. Madhya Pradesh, [1981] INDIAN L. REP., Madhya Pradesh Series 466.
98 See Needham v. Phillips Petroleum Co. of Norway, 719 F.2d 1481, 1485 (10th Cir. 1983) (lack of wrongful death or pain and suffering awards insufficient to disqualify); Chirinos de Alvarez v. Creole Petroleum Corp., 613 F.2d 1240, 1247 (3d Cir. 1980); In re Geophysical Serv., Inc., 590 F. Supp. 1546, 1559 (S.D. Tex. 1984); Orion Ins. Co. v. United Technologies Corp., 15 Avi. 18,061 (lack of a strict liability claim insufficient).
such as discovery provisions, provisions for compulsory attendance of witnesses, expenses, unavailability of contingent fees, interpleader, and inferior trial procedures have not been given great weight by previous courts in other contexts. Many problems relating to access to sources of proof may be dismissed by the court if defendants stipulate to make the proof available.

After considering the private interests of the litigants the court must enter factors of public interest into the balance. The policy interests previous courts have considered may be grouped broadly into three areas: those affecting the administration of courts, those affecting the quality of justice dispensed, and those involving strong national interests. The first relates to the ministerial functioning of courts and was one of the earliest influences on dismissal. In the development of international activity, American contacts with foreign activities expanded. Personal jurisdiction based on such contacts expanded accordingly, allowing increasing numbers of foreign litigants access to United States courts. As the court in Pain recognized, courts validly may protect their dockets from cases that arise within their jurisdiction but lack significant connection to them. The resulting burdens on the community from such actions tend to suggest their dismissal.

99 Discovery and Inspection, INDIA CODE CIV. PROC., First Schedule, Order XI. See Canadian Overseas Ores, 528 F. Supp. at 1342 (discovery and procedural differences do not disqualify forum); Macedo v. Boeing Co., 693 F.2d 683, 692 (7th Cir. 1982) (discovery must be considered in weighing process).
100 Summoning and Attendance of Witnesses, INDIA CODE CIV. PROC., First Schedule, Order XVI.
102 Legal Practitioners (Fees) Act, 5 INDIA CODE, part IX, p. 25. See Boskoff, 17 Avi. at 18,613, 18,617 (contingent fees and expenses).
103 Interpleader, INDIA CODE CIV. PROC., First Schedule, Order XXXV. Olympic Corp. v. Societe Generale, Als, 462 F.2d 376, 379 (2d Cir. 1972) (benefits of impleader might be taken into account in close cases).
105 Piper, 454 U.S. at 257 n.25.
106 For alternative categorization, see Pain, 637 F.2d at 791-92; Note, supra note 27, at 1269.
107 Pain, 637 F.2d at 791.
108 The fact that the issue of damages ultimately may be settled out of court would favor trying the liability portion in the United States because this is less burdensome than a full trial. Maines, Offensive Collateral Estoppel in Mass Tort or Products Liability Cases, 1983 TRIAL LAW. GUIDE 173. Cf. Friends for All Children, Inc. v. Lockheed Aircraft Corp., 717 F.2d 602, 610 (D.C. Cir. 1983) (strong national interests in the litigation).
A concern with the quality of justice dispensed arises partly from the problem of congested courts and partly from experience with the difficulties of correctly interpreting foreign law. While unfamiliarity with foreign law sometimes is not a valid consideration, the Gilbert court recognized the difficulties. Judge Friendly said in Conte v. Flota Mercante del Estado: "Try as we may to apply the foreign law as it comes to us through the lips of the experts, there is an inevitable hazard that, in those areas, perhaps interstitial but far from inconsequential, where we have no clear guides, our labors, moulded by our own habits of mind as they necessarily must be, may produce a result whose conformity with that of the foreign court may be greater in theory than it is in fact." National interests give rise to and are evidenced by legislative and judicial policies. As stated in Cuevas v. Reading & Bates Corp., "[a] primary interest reflected in every nation's tort laws is compensation for those who are injured." The lesser interest in deterrence has its reason not in retribution, but in preventing infliction of damages to persons of that nation at a later time. Courts have not found that conduct that victimizes citizens of another nation is likely to injure subsequently other citizens of the nation. Piper held that the interest of the United States in deterring the production of defective products is not sufficient to justify retaining the litigation.

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109 Olympic Corp., 462 F.2d at 379; D'Angelo, 398 F. Supp. at 85.
110 330 U.S. at 509. In admiralty, the choice of law influences the forum non conveniens inquiry because if U.S. law applies, the court normally will hear the suit; otherwise it may dismiss if another forum is more convenient. Manusamy v. McClelland Eng'rs, Inc., 579 F. Supp. 149, 153 (E.D. Tex. 1984). Thus, many courts require choice of law to be considered before the appropriateness of the forum. Zaludek v. Atwood Oceanics Int'l, 553 F. Supp. 955, 957 (S.D. Tex. 1982).

Although Piper's intent was to prevent complicated choice of law exercises, this approach is not as burdensome as in nonmaritime contexts, because the Lauritzen v. Larsen, 345 U.S. 571 (1953), interest analysis considers the same interests involved in considering forum non conveniens public interests. Dahl v. United Technologies Corp., 472 F. Supp. 696, 701 (D. Del. 1979), aff'd, 632 F.2d 1027 (3d Cir. 1980); Haddad, 588 F. Supp. at 1160-61.

111 277 F.2d 664 (2d Cir. 1960).
112 Id. at 667.
115 Id. at 467.
116 Id. Though these observations were made pursuant to an admiralty choice of law interest analysis, they are equally pertinent to forum non conveniens. Id. (quoting Lauritzen, 345 U.S. at 582). See also Abraham v. Universal Glow, Inc., 681 F.2d 451 (5th Cir. 1982).
117 Cuevas, 577 F. Supp. at 467.
118 454 U.S. at 260-61.
Similarly, the court in *De Mateos v. Texaco, Inc.* labeled "social jingoism" the argument that the liberal purposes of United States law should be exported to wherever multinational corporations are permitted to do business. The court believed that extreme application of such efforts would result in foreign countries barring American multinationals to the disadvantage of the foreign country and to the United States.

Courts have bolstered their aversion to finding general extraterritorial national interests by noting Congress' failure to enact regulatory schemes to further such interests. The complement to this argument is equally unfavorable to the Bhopal plaintiffs: India has enacted various measures to regulate the activities of corporations. Business activities are governed by the Companies Act, 1956, under which Carbide India is incorporated. The process of industrialization is implemented by The Industries (Development and Regulation) Act, 1951, which confers on the Central Government broad powers to investigate, manage, and control licensed industries. The New Delhi Government's Ministry of Industry

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121 *Dowling*, 727 F.2d at 616.
122 Indian policy traditionally has been to encourage foreign investment "on terms and conditions that are mutually advantageous." *Jaygovinda, Regulation of Foreign Enterprises in India: An Inquiry into Foreign Exchange Regulation Act, 1973*, 17 INDIAN J. INT'L L. 325, 326 (1977) (quoting a speech to Parliament on Apr. 6, 1948 by Prime Minister Jawaharlal Nehru).

Regulation by India also may indicate that U.S. courts should refuse to hear the action, because if defenses of government compulsion are raised at trial, courts would be compelled to investigate into the motives of the Indian government—action by courts that contravenes the policy of the Act of State doctrine. Federal courts have relinquished jurisdiction where they would be called to look into the administrative policy of a state. *Gilbert*, 330 U.S. at 505; *Railroad Comm'n v. Rowan & Nichols Oil Co.*, 311 U.S. 570, 577 (1941) (state's interest in conservation and exploration of primary resources). The Act of State doctrine does not prevent a court from interpreting a foreign act or statute. *Vanity Fair Mills, Inc. v. T. Eaton Co.*, 234 F.2d 633 (2d Cir. 1956); *Phoenix*, 78 F.R.D. at 458; *D'Angelo*, 398 F. Supp. at 76-78. Whether courts can look to the substantive law of the country to anticipate defenses that may be raised has not been raised in *forum non conveniens*. By analogy, a federal question by way of a defense does not confer federal jurisdiction.

granted such a license to produce methyl isocyanate on October 31, 1975. All major regulatory enactments apply to foreign enterprises, including the Factories Act, 1948, the Insecticides Act, 1968, the Water Act, 1974, and the Air Act, 1982.

Thus, the bulk of public interest factors favors dismissing the action, should the facts unfold as described. The Bhopal plaintiffs' saving argument may be an appeal to comity, the "recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation." "The laws of one [civilized country] will, by the comity of nations, be recognized and executed in another, where the rights of individuals are concerned . . . . [Comity] contributes so largely to promote justice between individuals, and to produce a friendly intercourse between the sovereignties to which they belong, that courts of justice have continually acted upon it, as part of the voluntary law of nations."

Like forum non conveniens, international comity, albeit on a larger scope, calls into question the desirability of exercising jurisdiction. Both are founded on convenience and utility, and a forum non conveniens determination must consider comity because comity considerations may render the forum inappropriate. Just as comity has suggested dismissal when vital national interests of a foreign sovereign are involved, comity may suggest retaining an action when vital national interests of another country are sought to be given effect. The actions of the Indian Government evidence that country's wish that the actions be heard in the United States.

Perhaps the best result would be for a United States court to decide the liability of Union Carbide, and an Indian court decide the issue of damages. The India Code of Civil Procedure contains several provisions that would facilitate the disposition of a trial in the

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130 India Code (updated version unavailable).
132 Id. at 165.
134 The Belgeland, 114 U.S. at 363; J. Story, supra note 133, at 39.
United States, including a provision allowing foreign courts to refer questions to the High Courts\textsuperscript{137} and a provision for establishing commissions to inquire into certain matters.\textsuperscript{138} United States courts can adjudge the rights of individuals under Indian law because of a shared common law heritage. Once the rights of the plaintiffs are defined by an American court, that judgment may be given effect by Indian courts,\textsuperscript{139} and the remedy to redress the rights may be fashioned by Indian courts. Trying the issue of damages in India obviates the problem of attempting to divine the value a foreign culture attaches to a right.

Securing as many social interests as possible by maintaining a balance and harmony among them that is compatible with the securing of all of them is the jurist's task.\textsuperscript{140} Understanding, recognizing, and satisfying the claims and wants of a society produces a continually more efficacious social ordering. Zones of national interests no longer are coterminous with territorial boundaries. American political and economic interests encompass the perpetuation of international principles in matters of private right and duty.\textsuperscript{141} Nations ought to adhere to Huberus' maxim that all laws in force within a nation carry the same force everywhere, insofar as those laws do not prejudice the powers or rights of other nations, or of their citizens.\textsuperscript{142} Necessary to international commerce and security, this maxim captures a truth and simplicity that commends it to the thoughtful jurist.\textsuperscript{143}

Equity favors trying the action in the United States, for the Bhopal suits likely will be mired down for years in Indian courts, and justice may never be done.\textsuperscript{144} Special significance must be accorded to the staggering multiplicity of injuries, which has prompted the Indian Government itself to seek relief in United States courts and has led an Indian Supreme Court justice to remark that the only hope for the victims lies in the American judicial system.\textsuperscript{145} Concern with just results rather than formalistic legal analysis is consistent with the equitable origins of the doctrine of \textit{forum non conveniens}. Observing precedent without assessing the propriety of result is specious. Though

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\bibitem{137} Commissions, \textit{India Code Civ. Proc.}, First Schedule, Order XXVI, §§ 19-22.
\bibitem{138} Reference, \textit{India Code Civ. Proc.}, First Schedule, Order XLVI.
\bibitem{140} R. Pound, \textit{An Introduction to the Philosophy of Law} 46 (2d ed. 1954).
\bibitem{141} J. Story, \textit{supra note 133}, at xi, 7.
\bibitem{142} \textit{Id.} at 29.
\bibitem{143} \textit{Id.} at 36.
\bibitem{144} It is possible to argue that this is by choice, however. "The laws . . . represent that country's decision how best to compensate its citizens who may become victimized by tort and prevent injury to its other citizens." \textit{Cuervas}, 577 F. Supp. at 468. This argument assumes, however, that the resulting functioning of justice is the exact intent of the country and does not allow that the decision may go awry in implementation.
\bibitem{145} Wall St. J., Jan. 23, 1985, at 1, col. 1; \textit{id.}, Feb. 8, 1985, at 8, col. 1.
\end{thebibliography}
categorization is useful, it should not constrain thought.\textsuperscript{146} The principle that the interests of justice are best served when every individual is assured of as prompt protection of his legitimate interests as possible\textsuperscript{147} directs American courts to hear the claims of the Indian plaintiffs.

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\textsuperscript{146} "The width and flexibility of equity are not to be undermined by categorization." Siskina (Cargo Owners) v. Distos Compania Naviera, S.A., [1979] A.C. 210, 256 (opinion by Lord Scarman).

\textsuperscript{147} Pillet, \textit{supra} note 9, at 333; R. POUND, \textit{supra} note 140, at 12.