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Case No: **CO/3512/2007**

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2009

Before:

THE HONOURABLE MR JUSTICE WYN WILLIAMS

- -

Between :

THE QUEEN on the application of
KIBRIS TÜRK HAVA YOLLARI **Claimants**
CTA HOLIDAYS

- and -

SECRETARY OF STATE FOR TRANSPORT

Defendant

- and -

THE REPUBLIC OF CYPRUS **Interested Party**

- -
- -

Mr Charles Haddon-Cave QC, Mr Robert Lawson QC and Professor Stefan Talmon (instructed by Herbert Smith LLP) for the **Claimants**

Mr David Anderson QC, Mr Sam Wordsworth (instructed by The Treasury Solicitors) for the **Defendant**

Mr Richard Gordon QC, Professor Vaughan Lowe QC, Mr Akhil Shah and Ms Amy Sander (instructed by DLA Piper UK LLP**)** for the **Interested Party**

Hearing dates: 18th -21st May 2009

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE WYN WILLIAMS

Judgment Approved by the court for handing down.

Mr Justice Wyn Williams:

Introduction

1. The First Claimant is a company incorporated in Turkey. It holds an Air Operator Certificate issued by the Minister of Transport of the Republic of Turkey which permits it to operate a fleet of 5 aircraft from a hub at Ercan International Airport in Northern Cyprus. It has been operating for over 35 years.

2. Since 1999 the First Claimant has operated several scheduled flights each week between the United Kingdom and Turkey pursuant to an operating permit granted by the Defendant. Operating permits are currently granted under Article 138 of the Air Navigation Order 2005. Such operating permits are renewed every six months. The First Claimant has held an operating permit continuously since 1999.

3. Although the permit relates to flights between the United Kingdom and Turkey it is common ground that some of the flights operated by the First Claimant use Turkey as an intermediary stop between the airport at Ercan and the United Kingdom that is the case whether a flight originates in the United Kingdom or at Ercan.

4. The Second Claimant is a company registered in England. It was established in 1976. It is a wholly owned subsidiary of the First Claimant. The Second Claimant carries out most of the business activities normally associated with that of a travel agent save that the focus of its operation is the provision of holidays in Northern Cyprus. As part of its business it provides flights to Turkey and Northern Cyprus and when it does so it uses aircraft operated by the First Claimant. The Second Claimant holds an air travel organiser's licence from the Civil Aviation Authority and it is a member of the Association of British Travel Agents.

5. On 23 November 2006 Herbert Smith LLP, on behalf of the First Claimant, applied to the Defendant to vary the terms of its operating permit. As of 23 November 2006 the operating permit issued to the First Claimant permitted it to operate scheduled passenger services on routes *"Points in the Republic of Turkey – Intermediate Points – Points in the United Kingdom – Points beyond"* but prohibited the picking up of passengers at intermediate points or in the United Kingdom for setting down at intermediate points. The application made on behalf of the First Claimant was in the following terms:-

> *"[The First Claimant] hereby applies to vary operating permit IASD/KYV/18/W06-07 so as to permit it to take on board and discharge passengers, baggage and cargo at a point or points in the United Kingdom carried or to be carried on services from the United Kingdom to northern Cyprus and vice versa."*

6. The letter of 23 November 2006 contained a detailed justification for the grant of the proposed variation. On the same date, Herbert Smith LLP, on behalf of both Claimants made an application under Article 138 of the Air Navigation Order 2005 for an operating permit for specified charter flights. The flights for which permission was sought were specified in detail in the application.

7. The Defendant's response to both applications was contained in a letter dated 20 February 2007. The Defendant declined to grant the variation sought by the First Claimant to its operating permit; the Defendant also declined to grant to the Claimants the permit to operate the specified chartered flights.

8. In these proceedings both Claimants seek declaratory relief relating to the Defendant's refusal as contained in its letter of 20 February 2007. In their Claim Form the Claimants also seek a quashing order and a mandatory order. For reasons which I need not detail it is common ground that should I be minded to grant the Claimants relief in these proceedings, declaratory relief would be sufficient. It is also common ground that the precise form of such relief would need to be debated in the light of my judgment.

9. I should stress at the outset that the Defendant adopts the stance that the decisions contained within the letter of 20 February 2007 are lawful. In that stance he is supported by the Interested Party, the Republic of Cyprus. The position of the Defendant and the Interested Party can be conveniently summarised by reference to the Speaking Note produced by Mr Anderson QC and Mr Wordsworth on behalf of the Defendant (see paragraph 1). They assert that the challenged decisions of the Defendant were decisions he was obliged to make firstly by reason of the domestic law of England and Wales as it relates to the recognition of the acts of foreign authorities and secondly by reason of the obligation of the United Kingdom to respect the rights of the Republic of Cyprus under a Treaty known as the Chicago Convention to which both the United Kingdom and the Republic of Cyprus are signatories.

10. The two grounds identified by the Defendant raise detailed legal issues. It will be necessary to consider those issues in some detail. They cannot sensibly be understood, however, without first setting out factual material as it relates to the island of Cyprus.

The island of Cyprus

11. Cyprus was part of the Ottoman Empire for over three centuries until 1878. In that year the United Kingdom assumed de facto control of Cyprus by agreement with Turkey. After the outbreak of hostilities with Turkey in 1914, the United Kingdom annexed the island and, thereafter, Cyprus was a Crown Colony from 1925 to 1960.

12. In February 1959 the Greek and Turkish Foreign Ministers agreed the basic constitutional structure for an independent Republic of Cyprus. This was endorsed by the United Kingdom and by representatives of the Greek and Turkish Cypriot communities at a conference in London. Cyprus became an independent sovereign republic on 16 August 1960. Section 1 of the Cyprus Act 1960 provides-

> *"Her Majesty may by Order in Council (to be laid before Parliament after being made) declare that the constitution designated in the Order as the Constitution of the Republic of Cyprus shall come into force on such day as may be specified in the Order; and on that day there shall be established in the island of Cyprus an independent sovereign Republic of Cyprus, and Her Majesty shall have no sovereignty or jurisdiction over the Republic of Cyprus."*

By virtue of section 2 the Republic of Cyprus was declared to comprise the entirety of the island of Cyprus with the exception of two areas – known as the sovereign base areas. These areas have no relevance to the present dispute.

13. On the same date, 16 August 1960, the United Kingdom, Greece, Turkey and Cyprus were signatories to two Treaties, one of Guarantee and one of Establishment (numbered respectively 5475 and 5476). Under Article 1 of the Treaty of Guarantee the Republic of Cyprus undertook to ensure, inter alia, the maintenance of its independence, territorial integrity and security. Under Article 2 Greece, Turkey and the United Kingdom undertook to prohibit, so far as concerned them:

> *"Any activity aimed at promoting, directly or indirectly, either union of Cyprus with any other State or partition of the island."*

14. As of 1960 (and for many years previously) the population of the island of Cyprus was, in the main, split between Greek Cypriots (the majority) and Turkish Cypriots. Shortly after the creation of the Republic, hostilities began between the two communities. In 1964, following a bout of hostilities, Nicosia, one of the major cities upon the island, was split along a line separating the north and south of the city. The line, thereafter, was controlled by British troops and a United Nations peace, keeping force.

15. Despite the presence of the peace keeping force unrest continued. On 20 July 1974 Turkish troops landed on Cyprus and there followed a short military campaign. In his witness statement on behalf of the First Claimant, Mr Sümer Garip says that following the military campaign the Turkish troops *"established a Turkish Cypriot safe-haven"* in the north of the island. Thereafter the entire Island was divided along a *"green line"* patrolled by a peace-keeping force that separated the communities in the north from those in the south.

16. On 30 July 1974 Turkey, Greece, and the United Kingdom issued a joint declaration in Geneva. The declaration called for the restoration of peace and the re-establishment of the constitutional government in Cyprus. The declaration, however, also contained this passage:-

> *"The ministers noted the existence in practice in the Republic of Cyprus of two autonomous administrations, that of the Greek Cypriot community and that of the Turkish Cypriot community."*

17. On 13 February 1975 the Turkish Cypriots established the *"Turkish Federated State of Cyprus:"* Mr Garip says that they enacted a constitution on the model of a separate state with a legislature, an executive and a judiciary. Thereafter the island of Cyprus was governed by two autonomous administrations: a Greek Cypriot Government in the south and a Turkish Cypriot Administration in the north. On 15 November 1983 the Turkish Cypriot authority declared an independent state in Northern Cyprus called the *"Turkish Republic of Northern Cyprus"* (hereinafter referred to as the "TRNC").

18. Three days later the Security Council of the United Nations passed resolution 541 (1983) condemning the declaration by the Turkish Cypriot authorities of the TRNC. The material parts of the resolution are in the following terms:-

> *"The Security Council, ……*
>
> *1. **Deplores** the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus;*
>
> *2. **Considers** the declaration referred to above as legally invalid and calls for its withdrawal;*
>
> *3.……*
>
> *4. **Requests** the Secretary-General to pursue his mission of good offices, in order to achieve the earliest possible progress towards a just and lasting settlement in Cyprus;*
>
> *5. **Calls** upon the parties to cooperate fully with the Secretary General in his mission of good offices;*
>
> *6. **Calls** upon all States to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus;*
>
> *7. **Calls** upon all States not to recognise any Cypriot state other than the Republic of Cyprus;*
>
> *8.……*
>
> *9.……"*

19. On 11 May 1984 a further resolution was adopted by the Security Council (550(1984)). That resolution contained the following:-

> "*The Security Council ……*
>
> *3. **Reiterates** the call upon all States not to recognise the purported state of the "Turkish Republic of Northern Cyprus" set up by secessionist acts and calls upon them not to facilitate or in any way assist the aforesaid secessionist entity…… "*

20. In 1990 the Government of the Republic, on behalf of the whole island of Cyprus, applied to the European Union for membership of the Union. Accession negotiations began in March 1998 and were completed in December 2002. Contemporaneously, negotiations took place in relation to an internal settlement. In November 2002 the Secretary General of the United Nations tabled a draft comprehensive settlement with a view to its terms being put to separate referenda in the Turkish and Greek communities. Ultimately, settlement proposals were put to referenda on 24 April 2004. The proposals were approved by 64.9% of the voters in the Turkish Cypriot community but rejected by 75.8% of the voters in the Greek Cypriot community.

21. A divided Cyprus acceded to the European Union on 1 May 2004. Protocol 10 of the accession Treaty provides that *"the application of the Acquis shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control"*.

22. The TRNC has never been recognised by any state except Turkey since its inception. Conversely the Republic of Cyprus continues to enjoy international recognition. As I understand it, the Republic of Cyprus is recognised by all states or if not all, by the vast majority.

23. There is no doubt, as a matter of fact, that there exists in the TRNC an established government; it governs the area of Cyprus which is north of *"the green line"*; it has done so continuously since 1983. Indeed, in his witness statement, Mr Garip says that Northern Cyprus and its population has been under the de facto control of an autonomous and fully functioning administration operated by Turkish Cypriots since 1974. As I have said, there currently exists a constitution which provides for an executive, a judiciary and a democratically elected legislature. The legislature has passed and continues to pass a body of civil and criminal law covering most aspects of normal living and trade and movement of persons, goods and services. Laws are administered and enforced by relevant officials, the police and the courts. Mr Garip points out that the Government of the United Kingdom has from time to time made use of the legal system which subsists in the Northern part of the island. For example, authorities in the United Kingdom have ensured that evidence is available in trials before the courts in Northern Cyprus.

24. I should also record Mr Garip's evidence (which is uncontested) as it relates to aviation within the northern part of Cyprus. There currently exists a Civil Aviation Department within a Ministry of Communications and Public Works with responsibility for the administering of civil aviation in Northern Cyprus. Aircraft and their operators in Northern Cyprus are required to comply with the Aeronautical Information Publication ("AIP") published by the Civil Aviation Department from time to time. Extracts from the publication are set out in Mr Garip's witness statement (see paragraph. 45); the AIP clearly seeks to follow the model of documents issued by the International Civil Aviation Organisation ("ICAO"). The airport at Ercan has been designated as a customs airport for the purposes of the Customs and Excise Law (Law no. 37/1983) enacted by the legislature in Northern Cyprus. Ercan was modernised and upgraded in 2003. It is apparently designed to comply with applicable ICAO standards in relation to airports.

25. Those who govern the TRNC have no objection to direct scheduled and charter flights into the airport at Ercan. Quite the contrary, they positively support the provision of such flights. The government of the Interested Party does not agree. It positively opposes direct scheduled and charter flights from any country to and from Ercan and has done so consistently.

The position of the government of the United Kingdom in relation to recognition of the TRNC

26. It is not the policy of the Government of the United Kingdom to recognise governments. I will deal with this issue, more fully, below. The government of the United Kingdom does recognise states. Immediately following the declaration of the existence of the TRNC in 1983 a statement was issued on behalf of the Government which deplored the action of the Turkish Cypriots and it noted that:

> *"The British Government recognise only one Cypriot state: the Republic of Cyprus under the Government of President Kyprianou."*

27. The policy of the United Kingdom government on recognition of the TRNC has been unaltered since 1983. Successive governments have adopted the stance that the legal framework established in 1960 remains valid. The point is encapsulated in the last sentence of the witness statement of Mr Anthony Smith, the Director for European Political Affairs at the Foreign and Commonwealth Office:

> *"The UK view is that the Head of State duly elected by the Greek Cypriot community in accordance with the Constitution has remained in office and it therefore continues to recognise the existing State of the Republic of Cyprus."*

Government Policy in respect of direct flights between the UK and Northern Cyprus

28. It appears to be common ground that it is the policy of the government of the United Kingdom to permit direct flights between the United Kingdom and Northern Cyprus if it is lawful for it so to do. In the Skeleton Argument presented on behalf of the Claimants (paragraph 29) the following extract from a response made by the Secretary of State for Foreign and Commonwealth Affairs to the Foreign Affairs Committee of the House of Commons (dated April 2005) is set out:-

> *"We continue to believe that direct flights between the UK and North Cyprus would contribute materially to ending the isolation of the Turkish Cypriots and would contribute to the prospects of reunification. It therefore remains our position that we would in principle support the commencement of direct flights to northern Cyprus."*

29. The then Prime Minister, the Right Honourable Tony Blair, had been even more explicit in comments he made on 17 May 2004 during a visit to Turkey.

> *"……. It is important that we end the isolation of northern Cyprus ……. That means lifting the embargo in respect of trade, [and] in respect to air travel."*

30. As I have said, however, it is also common ground that the policy statements have been qualified by the acknowledgment that direct flights can only be authorised if such authorisation is lawful.

31. It is against this background that I turn to consider the legal issues which call for my determination. I propose to deal, first, with the points which arise in relation to the Chicago Convention.

The Chicago Convention

32. The Convention on International Civil Aviation (the Chicago Convention) was signed on behalf of a number of state governments at Chicago on 7 December 1944. The

Convention was expressed to come into force on 4 April 1947. The Preamble is in the following terms:-

> *"WHEREAS the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and*
>
> *WHEREAS it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends;*
>
> *THEREFORE, the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically;*
>
> *Have accordingly concluded this Convention to that end."*

33. A number of the articles of the Convention were the subject of debate during the course of the hearing before me and others are worthy of note in this judgment. For ease of reference, I set out below the relevant articles (or appropriate extracts). The articles (or extracts) are set out in the form that they appear in the copy of the Convention provided to me.

PART I

AIR NAVIGATION

CHAPTER I

GENERAL PRINCIPLES

AND APPLICATION OF THE CONVENTION

Article 1

Sovereignty over the airspace

The contracting States recognise that every State has complete and exclusive sovereignty above its territory.

Article 2

Territory

For the purposes of this Convention the territory of a State shall be deemed to be the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or mandate of such State.

Article 3

Civil and state aircraft

a) This Convention shall be applicable only to civil aircraft, and shall not be applicable to state aircraft.

b) Aircraft used in military, customs and police services shall be deemed to be state aircraft.

c) No state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorisation by special agreement or otherwise, and in accordance with the terms thereof.

Article 3 bis*

a) The contracting States recognise that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in case of interception, the lives of persons on board and the safety of aircraft must not be endangered. This provision shall not be interpreted as modifying in any way the rights and obligations of States set forth in the Charter of the United Nations.[1]

CHAPTER II

FLIGHT OVER TERRITORY OF CONTRACTING STATES

Article 5

Right of non-scheduled flight

Each contracting State agrees that all aircraft of the other contracting States, being aircraft not engaged in scheduled international air services shall have the right, subject to the observance of the terms of this Convention, to make flights into or in transit non-stop across its territory and to make stops for non-traffic purposes without the necessity of obtaining prior permission, and subject to the right of the State flown over to require landing. Each contracting State nevertheless reserves the right, for reasons of safety of flight, to require aircraft desiring to proceed over regions which are inaccessible or without

[1] This Article was introduced by amendment and came into force on 1 October 1998.

adequate air navigation facilities to follow prescribed routes, or to obtain special permission for such flights.

Such aircraft, if engaged in the carriage of passengers, cargo, or mail for remuneration or hire on other than scheduled international air services, shall also, subject to the provisions of Article 7, have the privilege of taking on or discharging passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable.

Article 6

Scheduled air services

No scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorisation of that State, and in accordance with the terms of such permission or authorisation.

Article 10

Landing at customs airport

Except in a case where, under the terms of this Convention or a special authorisation, aircraft are permitted to cross the territory of a contracting State without landing, every aircraft which enters the territory of a contracting State shall, if the regulations of that State so require, land at an airport designated by that State for the purpose of customs and other examination. On departure from the territory of a contracting State such aircraft shall depart from a similarly designated customs airport. Particulars of all designated customs airport shall be published by the State and transmitted to the International Civil Aviation Organisation established under Part II of this Convention for communication to all other contracting States.

PART II

THE INTERNATIONAL CIVIL

AVIATION ORGANIZATION

CHAPTER VII

THE ORGANIZATION

Article 43

Name and composition

An organisation to be named the International Civil Aviation Organization is formed by the Convention. It is made up of an Assembly, a Council, and such other bodies as may be necessary.

Article 44

Objectives

The aims and objectives of the Organization are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to:

a) Insure the safe and orderly growth of international civil aviation throughout the world;

b) Encourage the arts of aircraft design and operation for peaceful purposes;

c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation;

d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;

e) Prevent economic waste caused by unreasonable competition;

f) Insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;

g) Avoid discriminating between contracting States;

h) Promote safety of flight in international air navigation;

i) Promote generally the development of all aspects of international civil aeronautics.

CHAPTER VIII

THE ASSEMBLY

Article 48

Meetings of Assembly and voting

a) The Assembly shall meet not less than once in three years and shall be convened by the Council at a suitable time and place. An extraordinary meeting of the Assembly may be held at any time upon the call of the Council or at the request of not less than one-fifth of the total number of contracting States addressed to the Secretary General.

b) All contracting States shall have an equal right to be represented at the meetings of the Assembly and each contracting State shall be entitled to one vote. Delegates representing contracting States may be assisted by technical advisers who may participate in the meetings but shall have no vote.

(c) A majority of the contracting States is required to constitute a quorum for the meetings of the Assembly. Unless otherwise provided in this Convention, decisions of the Assembly shall be taken by a majority of the votes cast.

PART III

INTERNATIONAL AIR TRANSPORT

CHAPTER XV

AIRPORTS AND OTHER AIR NAVIGATION FACILITIES

Article 68

Designation of routes and airports

Each contracting State may, subject to the provisions of this Convention, designate the route to be followed within its territory by any international air service and the airports which any such service may use.

PART IV

CHAPTER XIX

WAR

Article 89

War and emergency conditions

In case of war, the provisions of this Convention shall not affect the freedom of action of any of the contracting States affected, whether as belligerents or as neutrals. The same principle shall apply in the case of any contracting State which declares a state of national emergency and notifies the fact to the Council.

34. The United Kingdom acceded to the Convention for itself and its Crown Colonies on 1 March 1947 so that it has been bound by the terms of the Convention since it came into force. The island of Cyprus, as a Crown Colony, was bound by the terms of the Convention between 4 April 1947 and 16 August 1960. On 16 February 1961 the Interested Party acceded to the Convention and it has remained a contracting State, without interruption, since that date.

35. The Chicago Convention is an international treaty. The principles of interpretation relevant to it are codified by the Vienna Convention on the Law of Treaties 1969 (the Vienna Convention). Article 31.1 of the Vienna Convention provides:-

> *"The treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in the light of its object and purpose."*

As Lord Steyn points out in **Re Deep Vein Thrombosis and Air Travel Group Litigation [2006] 1 AC 495** at page 508:-

> "*Article 31 of the Vienna Convention on the Law of Treaties (1980) (Cmnd 7964) provides that a Treaty shall be interpreted "in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in the light of its object and purpose." This is the starting point of treaty interpretation to which other rules are supplementary: see articles 31(2), 31(3), 31(4), and 32. The primacy of the Treaty language, read in context and purposively, is therefore of critical importance."*

36. As will become apparent, the interpretation of the Chicago Convention is of critical importance to the resolution of this case. I say that for this reason. Although the Chicago Convention is not incorporated into English Law, it is common ground that Article 138 Air Navigation Order 2005 (which empowers the Defendant to grant the permits sought in this case) is to be interpreted, if it is possible, in such a way that its powers are to be exercised in accordance with the United Kingdom's obligations under the Convention. That proposition emerges from section 60(2) of the Civil Aviation Act 1982 and the judgment of Schiemann J (as he then was) in **R v Secretary of State for Transport ex parte Pegasus Holdings (London) Limited [1988] 1 WLR 990** – see pages 1002E to 1003A. I need not set out section 60(2) or the relevant extracts from the judgment of Schiemann J since the proposition is not in dispute. It seems to me to follow from this proposition, however, that if the grant of the permits requested by the Claimants in this case would place the United Kingdom in breach of one or more of its its obligations as a contracting State under the Chicago Convention the permits should not be granted.

37. I make it clear that my approach to the interpretation of the Chicago Convention is governed by the principles of international law codified by Article 31(1) of the Vienna Convention and the extract from the speech of Lord Steyn in **Re Deep Vein Thrombosis and Air Travel Group Litigation** set out above. However, it should be noted that one of the important words to be interpreted within the Convention is the word "sovereignty." Inevitably, my interpretation of that word within the Convention will be influenced by the meaning usually given to the word sovereignty in public international law. I say that since it is accepted by the parties that Article I of the Convention is declaratory of customary international law. If I am mistaken in my belief that this proposition is accepted by the parties it matters not; in **Military and Paramilitary activities in Nicaragua** [1986] ICJ REP.14 the International Court declared that this was so (see paragraph 212).

38. Mr Anderson QC on behalf of the Defendant submits that sovereignty is defined by reference to the independence, authority and rights of the state under consideration. While territorial integrity of the state is a key facet of sovereignty, sovereignty as a concept does not require that territorial integrity has been maintained and it does not require that the state is in a position to exercise all of the rights that form part of statehood. In support of this submission Mr Anderson relies upon extracts from leading authors on public international law – see paragraph 29 of the Defendant's Skeleton Argument. In the particular context of aviation Mr Anderson QC relies, in particular, upon the following extract from Shawcross & Beaumont, Air Law, 1-26.

> *"Sovereignty in international law is the right to exercise the functions of a state to the exclusion of all other states in regard to a certain area of the world. It is clear that complete sovereignty extends to the airspace above the territory of the state. In international aviation the concept of sovereignty is the key stone upon which virtually all air law is built, since any flight in international aviation requires the prior consent of the state overflown, which is generally granted by treaty."*

39. I do not understand Counsel for the Claimants and Interested Party to take issue with Mr Anderson's submission as to the meaning of sovereignty in customary public international law. Further, as I understand it, the Claimants accept that for the purposes of customary public international law the Interested Party retains exclusive sovereignty over the whole of the island of Cyprus. Mr Haddon-Cave QC accepted as much, expressly, during the course of his oral submissions.

40. Counsel for the Defendant and Interested Party submit that the word sovereignty within the Chicago Convention is to be given the same meaning as its meaning in customary public international law. Mr Haddon-Cave QC, on behalf of the Claimants, disagrees. He submits that sovereignty in the Chicago Convention means "territorial sovereignty" by which I take him to mean that for the purposes of the Convention a contracting state does not enjoy sovereignty over an area of land (and the airspace above it) unless it exercises effective control over the area in question.

41. I am not persuaded that the word sovereignty within the Chicago Convention is to be given a different meaning from its meaning in customary international law. There are a number of reasons why I reach that conclusion. First, nothing in the Treaty itself, its words, aims and objects, suggest that sovereignty is to be understood in any way differently from the way it is normally understood in public international law. Second, as I have said, Article 1 of the Chicago Convention was intended to be and is declaratory of customary international law. In those circumstances it seems very unlikely that the word sovereignty should be given a different meaning from that normally understood in international law. Third, Articles 1 and 2 are drafted in such a way that the meaning to be given to the word sovereignty therein is wholly consistent with the usual meaning attributed to the word sovereignty. It is telling, in my judgment, that the word sovereignty in Article 2 is linked with the words suzerainty, protection and mandate each of which have settled meanings in international law. No suggestion has been made that these words have a different meaning in the Chicago Convention from their normal meaning. It is hardly to be supposed that these three words are to be given the meaning normally attributable to those words in customary public international law in the context of the Convention, yet sovereignty in that context is to mean something different from its normal meaning. Fourth, it cannot be that the word sovereignty is to be interpreted differently in different Articles of the Convention. Fifth, the Convention is a treaty between contracting states. Most, if not all of the states of the world are signatories. It is acknowledged in public international law that a state may retain sovereignty over territory even though it does not control that territory effectively. Against that background, I can think of no compelling reason why the contracting states to the Chicago Convention should be taken to have intended a different meaning to the word sovereignty in the Convention to its normal meaning in the absence of very clear words to that effect.

42. I turn next to the meaning of the phrase "territory of a state". It is defined by Article 2 of the Convention. The phrase "territory of a state", in the Convention, is the land areas and territorial waters adjacent thereto under the sovereignty of the State.

43. It follows from this process of interpretation that the territory of the Interested Party is the land areas and territorial waters under its sovereignty. Given the interpretation I have given to the word sovereignty that means that the territory of the Interested Party for the purposes of the Chicago Convention is the whole of the island of Cyprus and the territorial waters adjacent thereto. It also follows that the Interested Party has exclusive sovereignty over the airspace above the whole of the island of Cyprus and the territorial waters adjacent thereto.

44. In the light of these conclusions would the grant of the permits sought by the Claimants cause the United Kingdom to be in breach of any of its obligations as a contracting state under the Convention? In answering this question I regard it as common ground (but if not indisputable in reality) that the United Kingdom is obliged to respect subsisting rights enjoyed by the Interested Party under the Convention.

45. I deal first with the application for a permit for scheduled flights. Under Article 6 no scheduled flight may be operated over or into the territory of a contracting state except with the permission of that state and in accordance with the terms of the permission. The territory of the Interested Party, in the context of Article 6, is the whole of the island of Cyprus and the territorial waters adjacent thereto. The Interested Party refuses to grant permission for scheduled flights operated by the First Claimant over or into its territory and it refuses to grant permission or authorisation for flights operated by the First Claimant to land at Ercan airport. In my judgment Article 6, properly interpreted, confers upon the Interested Party the right to refuse permission as it has done. In such circumstances it seems to me to follow that if the Defendant granted permission for scheduled flights between the United Kingdom and Ercan airport such permission would be in conflict with the rights of the Interested Party under Article 6. As I have said the contracting states to the Convention have an obligation to respect the rights conferred upon other contracting states by the Convention. If a permit was granted for scheduled flights, therefore, the United Kingdom would be in breach of that obligation.

46. Chartered flights are the subject of Article 5. Article 5 constitutes an acknowledgement by each contracting state to the Convention that the civil aircraft of all other contracting states (other than scheduled flights) shall have the right to make flights into or in transit non-stop across its territory. However, there are important qualifications to the rights enjoyed by each contracting state; these qualifications are spelt out in Article 5 itself. First, there is a qualification which comes into play in relation to the safety of flights. I need not address that qualification in this judgment. Second, there is a qualification in the following terms:-

> *"Such aircraft* [i.e. non-scheduled flights] *if engaged in the carriage of passengers, cargo, or mail for remuneration or hire……. shall also have the privilege of taking on or discharging passengers, cargo, or mail, subject to the right of any State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable."*

47. This qualification is very widely drawn. A contracting state upon whose territory passengers, cargo or mail may be discharged has the power to impose such limitations in respect of that discharge as it may consider desirable.

48. In the present context the Interested Party has laid down that chartered flights operated by the First Claimant shall not be permitted to land at Ercan airport. In my judgment that is a limitation which it was and is entitled to impose given the terms of Article 5. Consequently, as with Article 6, if the Defendant grants to the Claimants a permit to operate chartered flights between the United Kingdom and Ercan airport the United Kingdom will be in breach of its obligation to respect the Interested Party's rights under Article 5.

49. Article 10 is also relevant to the applications made by both Claimants. This Article empowers a contracting state to make regulations requiring aircraft to land within its territory at an airport designated by the state for the purposes of customs and other examinations. The Interested Party has not designated Ercan as a "customs airport" although it has designated a number of airports as "customs airports" within the territory which it controls in the southern part of the island of Cyprus.

50. In my judgment the Interested Party is entitled under the terms of Article 10 to designate airports as "customs airports" in that part of the island of Cyprus which it controls and, further, it is perfectly at liberty to refuse to designate an airport as a customs airport when that airport lies outside the area of the territory which it controls. As I interpret the Convention, each contracting state has a choice which it, and it alone, is entitled to exercise under Article 10. In my judgment, the grant of permits to the First and Second Claimant for direct flights between the United Kingdom and Ercan airport would place the United Kingdom in breach of its obligation to respect the Interested Party's rights under Article 10.

51. The same process of reasoning applies with equal force to Article 68.

52. In reaching these conclusions it is, of course, crucial to my reasoning that the rights conferred upon the Interested Party by virtue of Articles 5, 6, 10 and 68 are not dependent upon it exercising effective control over the whole of the territory over which it enjoys sovereignty. That, of course, follows from my interpretation of the word "sovereignty" and the "phrase territory of the state" as they are used in the Chicago Convention. I should also record, however, that I accept those parts of Mr Anderson QC's submissions which develop this point – see in particular paragraphs 56 to 62 of his Skeleton Argument.

53. Paragraph 60 and 61 of the Skeleton refers to and relies upon a paper written to by Professor Stefan Talmon entitled *"Air Traffic with Non-Recognised States: The case of Northern Cyprus"*. That paper was written in 2005 and Mr Anderson QC submits that the paper is clearly supportive of the Defendant's position as it relates to the Chicago Convention and its interpretation.

54. In my judgment there can be little doubt that read as a whole Professor Talmon's paper in 2005 does, indeed, support the Defendant's contentions in this case. After a detailed and thorough analysis of the legal and relevant factual issues that arise the Professor concludes, unequivocally, by asserting that states that start direct flights to Northern Cyprus against the express wishes of the Interested Party breach their

obligations under the Chicago Convention – see page 30 of the Article under the heading "*Conclusion*".

55. In these proceedings Professor Talmon appears as junior Counsel for the Claimants. He made submissions during the course of the hearing and sought to explain why the views he expressed in his paper of 2005 were erroneous. In developing his oral submissions he placed considerable significance upon the fact of direct flights between contracting states of the Chicago Convention and Taiwan. He pointed out that the territory which comprises Taiwan is under the sovereignty of the People's Republic of China. Despite that, the Government of the People's Republic of China does not exercise effective control over Taiwan. Professor Talmon further suggested that the Government of the People's Republic protests vigorously about direct flights from contracting states of the Chicago Convention to Taiwan. Nonetheless such flights take place. Further they take place to airports which have not been designated as customs airports by the Government of the People's Republic of China.

56. I will deal with the issue of Taiwan shortly since it seems to me that I am in no position to deal with whether each direct flight between a state which is a signatory to the Chicago Convention and Taiwan places that state in breach of one or more of its obligations under the Convention. I say that for these reasons. First, the evidence before me about flights to and from Taiwan from Convention states is necessarily very limited. It would be presumptuous of me at the very least, to make assumptions about the compatibility of flights between contracting states and Taiwan and the obligations of those states under the Chicago Convention. Second, there is reason to suppose that there is a crucial distinction between the facts relating to Taiwan (at least in relation to some flights between contracting states and Taiwan) and the facts as they relate to TRNC. The distinction is that the People's Republic of China has apparently designated at least one airport in Taiwan as a "customs airport" under Article 10 of the Convention (see the evidence of Mr. Tim Figures paragraph 28). Third, with respect to Professor Talmon it does seem to me to be rather surprising that he overlooked the significance of the issue of direct flights to Taiwan when he wrote his Article in 2005 if the fact of those flights was so important to reaching a conclusion about the legality of flights between contracting states and TRNC given that he says that direct flights have occurred between contracting states and Taiwan since about the 1980s.

57. A further point made by the Professor in the course of his oral submissions was that his 2005 Article had ignored the true ambit of Article 6 of the Convention. The Professor submitted that the right to permit the operation of scheduled international air flights over or into the territory of a contracting state under that Article necessarily required that the state giving consent enjoyed control over that territory. To use his words "any special permission or other authorisation granted by a Government not in effective control of the territory would be ineffective and would constitute nothing but an empty promise". It followed, submitted the Professor, that the rights of the sovereign Government should be considered suspended for as long as it did not exercise control over the territory in which the airports are situated.

58. This is a convenient moment at which to consider the submissions made by Professor Talmon and stressed by Mr Haddon-Cave QC which were to the effect that the rights conferred upon the Interested Party and the obligations imposed upon the other

contracting states in respect of those rights by virtue of the Chicago Convention were suspended once the TRNC took effective control of Northern Cyprus.

59. In my judgment, the starting point in considering this issue is Article 61(1) of the Vienna Convention on the Law of Treaties. That provides:-

> *"A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty."*

60. This provision enables a party to a treaty to invoke the impossibility of performing its terms as a ground for terminating the treaty or withdrawing from it. Alternatively, if the impossibility of performance is temporary the temporary impossibility may be invoked as a ground for suspending the operation of the treaty.

61. I simply do not see how this provision assists the Claimants in their assertion that the rights created by the Chicago Convention have become suspended. The Interested Party has not sought to assert that it regards the Convention as suspended. No other contracting state to the Chicago Convention makes such an assertion (save for all I know Turkey). Suspension does not occur automatically under Article 61(1). The words of the Article make it clear that the suspension must be invoked. Neither the Claimants nor the government in the TRNC can, conceivably, be entitled to assert that the Chicago Convention or Articles thereof are suspended when none of the contracting states to the Convention make that assertion or seek to rely on temporary impossibility of performance to justify a suspension.

62. There is this further and, in my judgment, insurmountable difficulty for the Claimants. Upon my interpretation of the relevant Articles of the Convention it has not become impossible, even on a temporary basis, for the Interested Party to exercise its rights under the Convention or for the other contracting states to comply with their obligation not to infringe those rights. At the risk of repetition, the rights conferred by Articles 5, 6, 10 and 68 of the Convention are capable of being exercised by the Interested Party for the reasons explained above notwithstanding that it does not have effective control over the TRNC.

63. This same line of reasoning is fatal to the submissions made on behalf of the Claimants to the effect that the rights conferred upon the Interested Party under Articles 5, 6, 10 and 68 of the Convention have become suspended by virtue of other doctrines of law which permit the suspension of rights (or obligations) in defined circumstances. Each of these doctrines has at its heart the notion that events have occurred which prevent the exercise of the rights in question or that events have occurred whereby the legal person subject to an obligation can treat the occurrence of the events as a reason why, at his election, he is absolved from compliance with an obligation. I am not persuaded that any doctrine of public international law exists whereby rights conferred by a treaty are treated as suspended against the will of the legal person upon whom those rights are conferred and in circumstances when the rights can be enjoyed.

64. In reaching that conclusion I have also considered with care the submissions made by Mr Haddon-Cave QC between paragraphs 55 and 58 of the Claimant's Skeleton Argument. Mr Haddon-Cave QC submits that there is a long standing rule of customary international law that an internationally recognised government of a state cannot, by legislative decree or executive decision, declare closed the seaports in those parts of its territory that are removed from its control. This submission is undoubtedly well-founded. Leading Counsel goes on to submit that there is no reason of principle to distinguish between seaports and airports as in both cases the right to close is based upon territorial sovereignty. Accordingly, submits Mr Haddon-Cave QC, the sovereign right of the Interested Party to regulate by legislative decree air services within airports in Northern Cyprus is suspended as long as it does not exercise control over that territory.

65. It seems to me that this submission ignores the fact that the Interested Party has rights under the Convention (Articles 5, 6, 10 and 68) which it was capable of exercising regardless of whether it controlled the territory in the north of the island of Cyprus. In my judgment it cannot be that treaty rights relating to international aviation and which are capable of being performed (as I have found them to be) are nonetheless suspended by virtue of a principle of customary international law which has evolved and has been strictly confined hitherto in its application to the closure of seaports.

66. I have reached the conclusion that the Defendant and the Interested Party are correct when they assert that the United Kingdom would be in breach of its obligation to respect and uphold the rights conferred upon the Interested Party by virtue of its status as a contracting state to the Convention if the Defendant had granted to the Claimants the permits which they seek. In consequence, this claim for judicial review is doomed to failure on that ground alone.

67. I am conscious, of course, that the Defendant and Interested Party resist the claim on other grounds, the chief of which I have summarised at paragraph 9 above. I heard full argument on all aspects of the case during the hearing. Accordingly, it seems to me to be appropriate to state my conclusions on the other main issues raised in argument and the principal reasons for my conclusions on these issues. I do not pretend, however, that this section of my judgment deals as comprehensively with the other issues as would have been necessary had my conclusions about the interpretation and effect of the Chicago Convention been as contended for by the Claimants.

Recognition of the TRNC

68. The United Kingdom does not recognise governments; it recognises states. That position has been maintained, consistently, since April 1980 at the latest. In a Parliamentary session of 25 April 1980 a question was put to the Lord Privy Seal about whether the Government of the day had completed its examination of British policy and practice concerning the recognition of governments and, if so, what was the result of such re-examination. The Lord Privy Seal (Sir Ian Gilmour) answered in the following way:-

> *"We have conducted a re-examination of British policy and practice concerning the recognition of Governments. This has included a comparison of the practice of our partners and*

> *allies. On the basis of this review we have decided that we should no longer accord recognition to Governments.*
>
> *The British Government recognises States in accordance with common international doctrine.*
>
> *Where an unconstitutional change of regime takes place in a recognised State, Governments of other States must necessarily consider what dealings, if any, they should have with the new regime, and whether and to what extent it qualifies to be treated as the Government of the State concerned. Many of our partners and allies take the position that they do not recognise Governments and that therefore no question of recognition arises in such cases. By contrast, the policy of successive British Governments has been that we should make and announce a decision formally "recognising" the new Government.*
>
> *This practice has sometimes been misunderstood, and, despite explanations to the contrary, our 'recognition' interpreted as implying approval. For example, in circumstances where there may be legitimate public concern about the violation of human rights by the new regime, or the manner in which it achieved power, it has not sufficed to say that an announcement of 'recognition' is simply a neutral formality.*
>
> *We have therefore concluded that there are practical advantages in following the policy of many other countries in not according recognition to Governments. Like them, we shall continue to decide the nature of our dealings with regimes which come to power unconstitutionally in the light of our assessment of whether they are able of themselves to exercise effective control of the territory of the State concerned, and seem likely to continue to do so."*

69. As this parliamentary answer implies, before April 1980 it had been the practice of the Government of the United Kingdom to recognise governments as well as states. If the issue of recognition of a foreign government arose in legal proceedings in the courts of the United Kingdom what I will call a "certificate" would be provided to the court by the Government of the United Kingdom of the day specifying whether or not the foreign government was recognised. If a certificate specifying that the government was recognised was provided, that was treated by the court as conclusive upon the issue of recognition - see **Luther v James Sagor** [1921] 3 KB 532; **Bank of Ethiopia v National Bank of Egypt** [1937] Ch 513; **Banco de Balbao v Sancha** [1938] 2 KB 176; **Haile Selassie v Cable and Wireless Limited** (no.2) [1939] 1 Ch 182 and **The Arantzazu Mendi** [1939] AC 256.

70. The speeches of their Lordships in **The Arantzazu Mendi** also made it clear that in cases before 1980 the court should seek and obtain a certificate in order to ascertain whether or not a foreign government was recognised (see, in particular, the speech of Lord Atkin at page 264).

71. A foreign government may be a government "de jure" or "de facto". In simplistic terms, a Government which is "de jure" derives its authority from sovereignty; a government which is "de facto" derives its authority from the fact that it exerts effective control over the territory in question. The line of cases to which I have just referred made it clear that the obtaining of a certificate relating to recognition was the appropriate procedure whether or not the government in question was "de jure" or "de facto". In his speech in the **Arantzazu Mendi** Lord Atkin explained the status of a "de facto" government. He said:-

> *"…….. By 'exercising de facto administrative control' or 'exercising effective administrative control', I understand exercising all the functions of a sovereign government, in maintaining law and order, instituting and maintaining courts of justice, adopting or imposing laws regulating the relations of the inhabitants of the territory to one another and to the government. It necessarily implies the ownership and control of property whether for military or civil purposes, including vessels whether war ships or merchants ships. In those circumstances it seems to me that the recognition of a Government as possessing all those attributes in a territory while not subordinate to any other Government in that territory is to recognise it as sovereign, and for the purposes of international law as a foreign sovereign State……."*

72. The fact that the Government of the United Kingdom decided against recognising Governments as from April 1980 obviously had implications for what might occur in future legal proceedings in which it might be necessary to ascertain whether a regime was the Government of a particular state or territory within a state. On 23 May 1980 Sir Anthony Meyer asked the Lord Privy Seal:-

> *"……..…...how in future, for the purposes of legal proceedings, it may be ascertained whether, on a particular date, Her Majesty's Government regarded a new regime as the Government of the State concerned."*

Sir Ian Gilmore replied:-

> *"In future cases where a new regime comes to power unconstitutionally our attitude on the question of whether it qualifies to be treated as a Government will be left to be inferred from the nature of the dealings, if any, which we may have with it, and in particular on whether we are dealing with it on a normal Government to Government basis."*

73. As I have said, the Government of the United Kingdom does recognise states. In the event that an issue arises in domestic proceedings about whether or not the Government of the United Kingdom recognises an area as a state the Government will still provide a statement setting out its position.

74. The Government of the United Kingdom has made it clear, consistently, that it does not recognise the area of Cyprus over which the Government of the TRNC exercises

effective control as a state. There can be no doubt upon the matter. In accordance with its practice since 1980, the Government of the United Kingdom has said nothing which could be interpreted as an acknowledgement that it recognises the Government of the TRNC. In these circumstances why should it be that the grant of the permits sought in this case should be treated as acts which are consistent only with recognition on the part of the United Kingdom Government of either the TRNC or its Government?

75. Recognition can be express or implied. Express recognition takes place by virtue of a notification or declaration clearly announcing the intention of recognition. As I have said, nothing has been said by or on behalf of the United Kingdom Government which could lead to the conclusion that it recognises the TRNC or its Government.

76. The concept of implied recognition is discussed in Oppenheim's International Law [9th Edition] at pages 169-175. The concept of implied recognition is described in this way:-

> *"Implied recognition takes place through acts which, although not referring expressly to recognition, leave no doubt as to the intention to grant it."*

77. The learned authors of Oppenheim suggest that implied recognition has taken on greater significance than hitherto since several states, including the United Kingdom, have adopted a policy of no longer expressly recognising a new Government, but instead leaving the answer to the question whether it qualifies to be treated as a Government to be inferred from the nature of their dealings with it (see page 169 of the current Edition). Oppenheim also suggests that care must be taken not to imply recognition from actions which, although amounting to a limited measure of intercourse, do not necessarily reveal an intention to recognise. In pages 170 to 175 examples are provided of cases and situations in which under the principles of public international law recognition has or has not been implied.

78. Mr Haddon-Cave QC submits that the approval of direct air services to airports in Northern Cyprus by the grant of the permits sought by the Claimants would not constitute acts which necessarily imply recognition of the TRNC as a sovereign state. He submits that such actions amount to no more than acknowledgment of the undisputed fact that the Government of TRNC is in effective control of the area in question and should be seen as no more than an expression of the legitimate aim of ending the isolation of the Turkish Cypriots in Northern Cyprus.

79. The Defendant's decision letter of 20 February 2007 does not, at least expressly, assert that the grant of permits to the Claimants would amount to acts which are consistent only with recognition on the part of the United Kingdom Government of the TRNC. Despite that omission I have reached the clear conclusion that the grant of permits would amount to implied recognition that the Government in control of the TRNC was sovereign over the territory which it effectively controls. The grant of permits would, in my judgment, completely undermine the express statements from the United Kingdom Government to the effect that it does not recognise the TRNC.

80. I reach that conclusion for the following principal reason. The Government of the TRNC is, obviously, in effective control of the northern part of Cyprus. It has created

the organs of a State. In relation to international aviation, in particular, I accept the submission of Mr Anderson QC that the TRNC is purporting to exercise the rights of the Interested Party under a Treaty i.e. the Chicago Convention. This can be illustrated by the following as set out in paragraph 15 of the Defendant's Skeleton Argument:-

a) The "TRNC" has established a Civil Aviation Department to "ensure the secure, regular and speedy navigation of those aeroplanes flying, landing and taking off within the airspace of the Turkish Republic of Northern Cyprus within the rules of the International Civil Aviation Organisation (ICAO) legislation ……." (Civil Aviation Department Law 41/1989, Section Two, 5(1)(a)).

b) The Civil Aviation Department of the "TRNC" issues Aeronautical Information Publications (AIPs), "prepared in accordance with the Standards and Recommended Practices (SARPs) of Annex 15 to the Convention on International Civil Aviation [CC] and the Aeronautical Information Services Manual (ICAO Doc 8126)". The "TRNC" AIP is replete with reference to ICAO documents and procedures. The AIP designates Ercan as an international aerodrome, stating "Aircraft flying into or departing from the TRNC shall make their first landing at, or final departure from, an international aerodrome"

c) Ercan is designated as a customs airport for the purposes the Customs and Excise law of the TRNC. Ercan is depicted in the AIP on purported ICAO en-route and standard departure charts. So far as concerns the approach route to Ercan, known as route A28, and the Ercan terminal control area, the Claimant asserts in their evidence:

> "All of the TMA and the airway to the south of the Ankara FIR boundary is the territory of the TRNC" (see statement of Mr Nihad, the Director of the Department of Civil Aviation of the "TRNC" at paragraph 11)."

81. It seems to me that the Interested Party is correct when it asserts in its Skeleton Argument (paragraph 112) that the Claimants are inviting the Defendant to treat the aviation authority established in the TRNC as equivalent to an aviation authority under the Chicago Convention.

82. The Claimants are caught on the horns of a dilemma. They have adduced evidence before me which clearly demonstrates that the Government of the TRNC is in effective control of Northern Cyprus and, further, in so far as it can, it behaves as if it is a sovereign state and a signatory to the Chicago Convention; yet the United Kingdom has repeatedly said that it does not recognise the TRNC. I do not see how it would be open to this Court to view the grant of permits as anything other than a complete contradiction of the United Kingdom's Government's stated position on recognition.

83. In the Claimants' Skeleton Argument the suggestion is made that there is no legally binding obligation upon the Government of the United Kingdom not to recognise the TRNC. That submission is formulated upon the basis that the resolutions of the

Security Council of the United Nations (to which reference is made in paragraphs 18 and 19 above) did not create any legally binding duty not to recognise or assist the TRNC. I do not propose to discuss that issue in any detail since Mr Anderson QC accepts that such a duty has not arisen by virtue of the Security Council resolutions. Mr Anderson QC submits, however, that the duty of non-recognition arises by virtue of the Treaties of Establishment and the Treaty of Guarantee (referred to in paragraph 13 above) and also by virtue of established principles or customary international law.

84. Again, it seems unnecessary for me to deal with those submissions in detail since, as I understand it, Mr Haddon-Cave QC accepts that there is a duty, as a matter of customary international law, not to recognise the TRNC as legal or lawful. The upshot is, of course, that the United Kingdom Government is under a legal duty not to recognise the TRNC. I have found that the grant of the permits sought by the Claimant would constitute acts of recognition. It follows that the grant of the permits sought would render the United Kingdom Government in breach of its duty not to recognise the TRNC.

85. In any event, Mr Anderson QC submits that the Defendant was obliged as a matter of domestic law to refuse the permits since the grant of such permits would necessarily attribute validity to the acts of the Government of the TRNC (such as designating air routes and designating Ercan Airport as a customs airport). For this Court to rule to the contrary, would be to ignore the long line of domestic authority which is to the effect that the court cannot take cognizance of a foreign juridical person if to do so would involve the court in acting inconsistently with the foreign policy or diplomatic stance of the Government of this Country in relation to that person; (see **Carl Zeiss Stiftung v Rainer and Keeler** [1967] 1 AC 853 and **Gur Corporation v Trust Bank of Africa Limited** [1987] 1 QB 599. I do not understand the decision of Hobhouse J in **Republic of Somalia v Woodhouse Drake & Carey (Suisse) SA and others** [1993] QB 54 to be to contrary effect. In that case the Court was obliged to consider whether or not a particular regime was exercising effective administrative control in Somalia. As Hobhouse J indicates expressly during the course of his judgment (see page 66B) no question of recognition of a state was involved in his decision.

86. Mr Anderson QC accepts that there are limited exceptions to the bald proposition that the court cannot take cognizance of a foreign juridical person, if to do so would involve the court in acting inconsistently with the foreign policy or diplomatic stance of the United Kingdom. He accepts that this court may give effect to what he describes as certain routine acts of administration, if they are unobjectionable.

87. I need not deal with the genesis or evolution of this principle in any detail. It is sufficient to refer to two decisions to explain what it entails namely **Hesperides Hotels Limited v Aegean Turkish Holidays Limited** [1978] 1 QB 205 and **Emin v Yeldag** [2002] 1 FLR 956. In **Hesperides Hotels Limited** two companies registered under the law of the Republic of Cyprus owned hotels in Kyrenia when it was occupied by troops from Turkey invading the North of the Island in 1974. The companies issued a writ in 1977 against an English Travel company and an individual as "London representatives" of the "Turkish Federated State of Cyprus", claiming damages and an injunction to restrain the Defendants from conspiring to procure, encourage, or assist trespass to the hotels by circulating brochures and inviting tourists to book holidays in the hotels. They sought an interim injunction in the terms of the writ. May J, at first instance, after applying for and receiving a foreign office

certificate which stated that Her Majesty's Government did not recognise the administration established under the name "Turkish Federated State of Cyprus" de facto or de jure, granted an interim injunction in the terms sought. The Court of Appeal allowed an appeal against the order and discharged the injunction. One of the issues which arose related to the effect of the certificate which had been issued by the foreign office. In his judgment, Lord Denning MR said:-

> *"……..I would unhesitatingly hold that the courts of this country can recognise the law or acts of a body which is in effective control of a territory even though it has not been recognised by Her Majesty's Government de jure or de facto: at any rate, in regard to the laws which regulates the day to day affairs of the people, such as their marriages, their divorces, their leases, their occupation and so forth; and furthermore that the courts can receive evidence of the state of affairs so as to see whether the body is in effective control or not."*

88. In **Emin** the issue arose as to whether the English Court should recognise a decree of divorce validly granted in TRNC under its local law. Sumner J reviewed the line of authorities which lays down that the courts of the United Kingdom cannot give effect to the acts of an unrecognised State. He accepted, however, that an exception arose where those acts affected private rights. He reached the conclusion that he was not precluded from giving validity to a divorce granted in accordance with the law in the TRNC despite the fact that it was not recognised as a state by the United Kingdom Government. This line of domestic authority is consistent with principles of international law. In an Advisory Opinion issued by the International Court of Justice in relation to the legal consequences for states of the continued presence of South Africa in Namibia (**the Namibia case**) the following paragraph appears:-

> "*In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance the registration of births, deaths and marriages the effects of which can be ignored only to the detriment of the inhabitants of the Territory.*"

The European Court of Human Rights has expressed similar sentiments in two decisions relating to the island of Cyprus namely **Loizidou v Turkey** [1997] 23 EHRR 513 and **Cyprus v Turkey** [2002] 35 EHRR 731.

89. I cannot accept that I am entitled to give validity to the Acts of the TRNC (as they relate to international aviation) by virtue of the principles set out in the preceding paragraphs. I accept without hesitation that many of the acts of the Government of the TRNC as they relate to aviation are public and international in character. They are not properly described as laws which regulate the day to day affairs of the people who reside in the TRNC either as described by Lord Denning MR, or Sumner J or in the

Namibia case. Further, it seems to me that the rationale of the exception to the general principle is the avoidance of serious prejudice to the inhabitants of the area affected. While I do not underestimate the feeling of isolation which the inhabitants of the TRNC may feel and the will which exists in the international community to seek to bring to an end that isolation, I cannot ignore the fact that the population of the TRNC is served by international airports on the island of Cyprus. The evidence seems clear that thousands of people cross the demarcation line between the area controlled by the Government of the TRNC and that controlled by the Interested Party on a daily basis. Distances on the island are sufficiently small that the use of airports situated in those areas controlled by the Interested Party is perfectly practicable.

90. In summary, I have reached the conclusion that a legal duty exists whereby the Government of the United Kingdom is obliged not to recognise the TRNC or its Government. Further the Government of the United Kingdom has consistently refused to recognise the TRNC. This court is obliged to refuse to give effect to the validity of acts carried out in a territory which is unrecognised unless the acts in question can properly be regarded as regulating the day to day affairs of the people within the territory in question and can properly be regarded as essentially private in character. I have reached the conclusion that the grant of the permits in this case would be a breach of the United Kingdom Government's duty not to recognise the TRNC. I cannot categorise the acts of the TRNC which are relevant to international aviation as acts which regulate the day to day affairs of the people who live within the area controlled by the Government of the TRNC; the acts in question are essentially public in nature.

91. It follows that I consider that the Defendant was bound to refuse the application for the permits not just on the basis that to grant the application would place the United Kingdom in breach of its obligations under the Chicago Convention but also upon the other grounds advanced by the Defendant and Interested Party in these proceedings.

92. I am conscious that this judgment has been composed without reference to many of the academic articles contained within the Bundles and referred to at least in the footnotes to Skeleton Arguments. Essentially, little would be gained from a detailed discussion of academic writings since, in the main if not exclusively, my task in this judgment has been to identify principles which are binding upon me and apply such principles to facts which are largely undisputed.

93. During the course of oral submissions Mr. Gordon QC raised the issue of whether this claim was justiciable. I do not propose to say anything other than the Defendant accepts expressly that his decisions to refuse permits are properly the subject of judicial review and I have proceeded on that basis.

94. The claim must be dismissed.