THE GAIUS VOLCANO CASE

JUSTINIAN v. PEP0

MEMORIAL SUBMITTED ON BEHALF OF THE STATE OF JUSTINIAN

TEAM NUMBER 7 - APPLICANT
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<td>AOC</td>
<td>Air Operation Certificate</td>
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<td>Bilateral Air Services Agreement</td>
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<td>CAT</td>
<td>Clean Air Tax</td>
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<td>IATA</td>
<td>International Air Transport Association</td>
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<td>International Law Commission</td>
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Case Concerning Right of Passage over Indian Territory (Portugal v India) (Merits) [1960] ICJ Rep 6.


Aegean Sea Continental Shelf (Greece v Turkey) (Judgment) [1978] ICJ Rep 3.


2. Permanent Court of International Justice

The Case of the S.S. ‘Lotus’ (France v Turkey) PCIJ Rep Series A No 10.

3. International Arbitrations

Mixed Claims Commission (Germany v Venezuela) (1903) 10 Rep Intl Arbitral Awards 357.

Island of Palmas Case (Netherlands v United States of America) (1928) 2 Rep Intl Arbitral Awards 831.


Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair (1990) 20 Rep Intl Arbitral Awards 215.

4. National Decisions

(a) United States of America

British Caledonian Airways Ltd. v. Bond 665 F.2d 1153.

(b) Switzerland

International Air Transport Association v. the Government of the canton of Zurich ATF 125 I 182.

(c) England and Wales

Federation of Tour Operators & Ors, R (on the application of) v HM Revenue & Customs & Ors EWHC 2062.

D. DOCUMENTS OF INTERNATIONAL ORGANIZATIONS

1. International Civil Aviation Organization


2. General Assembly of the United Nations

UNGA Res 2849 (XXVI) (20 December 1971).

3. Organisation of Economic Cooperation and Development

OECD Recommendation of the council on guiding principles concerning international economic aspects of environmental policies (26th May 1972) C/M(72)15(Final), Item 129(a), (b) and (c) - Doc No C(72)128.

4. International Law Commission


E. ARTICLES AND BOOKS

1. Articles

PJM Valks and GJM Velders ‘The present-day and future impact of NOx emissions from subsonic aircraft on the atmosphere in relation to the impact of NOx surface sources’ (1999) 17 Annales Geophysicae 1064.

2. Books

B Cheng The Law of International Air Transport (Steven & Sons Ltd London 1962).


F. OTHER SOURCES

Institute of International Law 'Unlawful Diversion of Aircraft' (Session of Zagreb 1971).

United States General Accounting Office Aviation and the environment: strategic framework needed to address challenges posed by aircraft emission (Report to the Chairman, Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives February 2003).
Worldwide Air Transport Conference on Challenges and Opportunities of Liberalization
ATConf 5/31/3/03.
STATEMENT OF RELEVANT FACTS

A. INTRODUCTION

The present dispute arises from several issues between the State of Iustinian and the State of Pepo in the framework of their air transport relations as regulated by a Bilateral Air Services Agreement (BASA) concluded on January 1, 2000. Relevant to the present dispute is also the role of the State of Blackstone and the State of Holmes.

B. BACKGROUND FACTS

1. Air transportation between Iustinian and Pepo

   In order to support the development of air transportation between their territories, the State of Iustinian and the State of Pepo concluded a BASA (Iustinian-Pepo BASA). In accordance with the agreement, the State of Iustinian designated its 100% state-owned and controlled all-passenger carrier, Theodora Airways, while the State of Pepo designated Gratian Airlines, its 100% fully privately-owned and controlled carrier, providing passenger and cargo air services. Data from the last ten years illustrates that the majority of passengers travelling between the territories Iustinian and Pepo are Peponians. Nevertheless, due to similar cost structures, frequency, and pricing, each airline carries 50% of the passenger traffic between the two countries.

2. Air transportation between Pepo and Blackstone

   Air transportation between the territories of Pepo and Blackstone is also regulated by a BASA. The State of Blackstone designated Posner Air Cargo, an all-cargo airline, to operate air services to/from Pepo.

3. Economic cooperation between Pepo and Blackstone

   Blackstone’s economy is heavily dependant on the export of widgets to Pepo. Since it has never operated any air services between Blackstone and Iustinian, despite the existence of a
BASA (Iustinian-Blackstone BASA) between the two countries, Posner Air Cargo only transports widgets to Pepo and brings back to Blackstone industrial goods.

C. RESTRICTIONS ON THE USE OF IUSTINIAN’S AIRSPACE

1. The eruption of Gaius volcano

On June 1, 2010, the Gaius volcano, located in the territory of Iustinian and dormant for nearly three hundreds years, erupted, ejecting ashes that reached the altitude of nine kilometres in the airspace above Iustinian’s territory.

2. Closure of Iustinian’s airspace and Order THX-1138

Immediately after the volcanic eruption, the Iustinian Air Traffic Management Authority (IATMA) instituted a 48-hour shutdown of the Iustinian’s airspace. On June 2, 2010, the Iustinian Department of Transportation (IDOT) issued the Order THX-1138, prohibiting the use of airspace above Iustinian for a period of 14 days, with the option to later reinstitute the ban for public safety reasons. The Order also required that a copy be transmitted to ICAO and the Government of Pepo.

On June 16, 2010, upon the expiration of the 14-day ban, air transport services between the two countries resumed.

D. OPERATION OF DOMESTIC AIR SERVICES WITHIN PEPO’S TERRITORY

1. Grant of rights to Posner Air Cargo

On June 9, 2010, the Peponian Department of Transportation (PDOT) issued the Regulation 3.16 which unilaterally suspends Article 2(4) of the Pepo-Blackstone BASA, seen as an obstacle to the granting of rights to operate domestic air services between points in Pepo to Posner Air Cargo. In addition, Regulation 3.16 grants Posner Air Cargo rights to operate domestic air services in Pepo. On June 16, 2010, Posner Air Cargo began to operate air services in accordance with Regulation 3.16.
2. Refusal to grant rights to Theodora Airways

On June 16, 2010, Theodora Airways filed an application to the PDOT requesting an AOC to provide air services within Pepo’s territory. Such an action was followed by an immediate denial by the PDOT.

E. INTRODUCTION OF THE CLEAN AIR TAX

On June 17, 2010, with the aim to maintain the natural beauty of its island territory and to offset the environmental damage caused by aircraft emissions, the Government of Iustinian established the Clean Air Tax (CAT), applicable to all flights departing from and landing in Iustinian’s territory.

F. REVOCATION OF THEODORA AIRWAYS’ OPERATING AUTHORISATION

1. Principles of Peponian International Air Transport Policy

On June 19, 2010, the PDOT issued a document entitled Principles of Peponian International Air Transport Policy, committing itself to interpret and enforce its BASAs so as to give airlines the freedom to complete commercial transactions in their best financial interests, including access to foreign capital.

2. Investment of Brandeis in Theodora Airways

On June 30, 2010, Iustinian Government and Brandeis representatives concluded a commercial transaction granting Brandeis, an airline owned and controlled by citizens of the State of Holmes, 33.3% of Theodora Airways voting equity. In addition, three of five members of Theodora Airways’ Board of Directors would be representatives of Brandeis. The parties also announced that Theodora Airways principal place of business will remain in Iustinian.
On July 1, 2010, PDOT announced that Theodora Airways was not longer authorised to operate air services to, from, or beyond points in Pepo’s territory, invoking the substantial ownership and effective control clause established by the Iustinian-Pepo BASA.

G. FURTHER TREND OF LIBERALISATION OF AIR SERVICES

Brandeis Airline is seeking a cooperative joint venture and/or merger with Theodora Airways of Iustinian, Posner Air Cargo of Blackstone and Gratian Airlines of Pepo.
ISSUES

The State of Iustinian will argue the following contentions:

a. Whether Order THX-1138 is consistent with rights and obligations of the State of Iustinian under international law?

b. Whether the State of Pepo must approve Theodora Airways’ application to provide domestic air services between points in the territory of Pepo so long as Regulation 3.16 is in effect?

c. Whether the CAT is consistent with rights and obligations of the State of Iustinian under international law?

d. Whether the State of Pepo must reauthorise Theodora Airways to provide air services to, from, or beyond points in its territory?
SUMMARY OF ARGUMENTS

The Government of Iustinian will demonstrate that the issuance of Order THX-1138 and the provisions of that order are consistent with the rights and obligations of the State of Iustinian under international law. In particular, it will illustrate that the principle of State sovereignty allows the State of Iustinian to establish its legislation at its own discretion and to regulate the use of airspace above its territory. In addition, the Government of Iustinian will show that the adoption of the Order THX-1138 was necessary to ensure the safety of international civil aviation, in the interest of the whole aviation community. Furthermore, the Government of Iustinian will demonstrate Order THX-1138 complies with the Convention on International Civil Aviation of 1944 (Chicago Convention), having been issued in a situation of emergency and without any distinction of nationality to aircraft of other States.

In the second part of the arguments, the Government of Iustinian will contend that the State of Pepo must approve Theodora Airways’ application for an AOC to provide domestic air services between points in its territory so long as Regulation 3.16 is in effect. The refusal of Theodora Airways’ application for an AOC to provide domestic air services between points within the territory of Pepo is inconsistent with the principle of non-discrimination of the Chicago Convention, considering that Regulation 3.16 grants Posner Air Cargo cabotage rights on an exclusive basis. This exclusivity is reflected with specific reference to Posner Air Cargo in the text of the Regulation 3.16 and in the way cabotage rights were granted, namely by unilateral suspension of Article 2(4) of the Pepo-Blackstone BASA.

In the third part of the arguments, the Government of Iustinian will demonstrate that the CAT is consistent with the rights and obligations of the State of Iustinian under international law. The principle of permanent sovereignty over natural resources within the territory of a State allows the State of Iustinian to take actions to protect its environment. Moreover, the Government of Iustinian will contend that the CAT enforces the well-established ‘polluter
pays principle', in line with State practices and judicial decisions confirming the legality of emission-based fees and passenger taxes.

Finally, the Government of the State of Iustinian will demonstrate that the revocation of Theodora Airways’ operating authorisation has no legitimate ground and therefore, Theodora Airways should be reauthorised to provide air services to, from and beyond the points in Pepo’s territory. Following the investments of Brandeis, Theodora Airways is still a Iustinian airline substantially owned by the Iustinian Government. Furthermore, by issuing the *Principles of Peponian International Air Transport Policy*, the State of Pepo has created, under international law, an obligation to act in a manner consistent with its unilateral statements, which shall preclude the invocation of the ownership and control clause as a ground for revoking Theodora Airways’ operating authorisation.
JURISDICTION OF THE COURT

The competence of the Court in respect to the present dispute is based on Article 36(2) of the Statute of the International Court of Justice, since both States have expressed their acceptance to the compulsory jurisdiction of the Court.

Due to the complexity of the issues, and after appearing before the Council of the International Civil Aviation Organization in accordance with Article 84 of the Chicago Convention, ICAO Council determined that it could not make a determination on the matter and authorised Iustinian and Pepo to join any parts of their dispute arising under the Chicago Convention to any arising under their BASA so long as the Case is brought before the International Court of Justice (ICJ).

Accordingly, the State of Iustinian and the State of Pepo agreed to invoke Article 15 of their BASA and to bring the case before the Court.
ARGUMENT

A. ORDER THX-1138 IS CONSISTENT WITH RIGHTS AND OBLIGATIONS OF IUSTINIAN UNDER INTERNATIONAL LAW

States should enjoy the freedom to establish their own laws at their own discretion,\(^1\) in accordance with the principle of State sovereignty. Therefore, before discussing the consistency of Order THX-1138 with the rights and obligations of the State of Iustinian under international law, it is necessary to analyse the principle of State sovereignty and the powers it gives to a State.

1. The concept of sovereignty in international law

The principle of sovereign equality of States is a well established principle of international law.\(^2\) Such a principle signifies that: (a) States are judicially equal; (b) each State enjoys the rights inherent in full sovereignty; (c) each State has the duty to respect the personality of other States.\(^3\) State sovereignty is an important ground for the establishment and development of international relations.\(^4\) The Permanent Court of International Justice (PCIJ) pointed out that ‘Sovereignty in the relations between States signifies independence,’\(^5\) which ‘gives the right to a State to exercise its State functions within certain territory.’\(^6\)

The concept of State sovereignty is intrinsically tied to the concept of domestic jurisdiction. International law precludes States from intervention 'in matters which are essentially within

\(^1\) The Case of the S.S. ‘Lotus’ (France v Turkey) PCIJ Rep Series A No 10.

\(^2\) Such principle is recognized by the Charter of the United Nations (adopted June 26 1945, entered into force October 24 1945) 1 UNTS 16, Article 2(1); furthermore this principle is reaffirmed in the UNGA Res 2625 (XXV) (24 October 1970), annex, preamble.

\(^3\) UNGA Res 2625 (XXV) (24 October 1970), Article 1.

\(^4\) Corfu Channel case (United Kingdom v Albania) (Judgement) [1949] ICJ Rep 35.

\(^5\) Island of Palmas Case (Netherlands v United States of America) (1928) 2 Rep Intl Arbitral Awards 831.

\(^6\) Ibid.
the domestic jurisdiction of any State\(^7\) and which, thus, are not generally regulated by international law.\(^8\) Considering this, the Government of Iustinian will further contend that the power to regulate the use of the airspace above its territory falls under its sovereignty and its domestic jurisdiction.

2. **The issuance of Order THX-1138 is an exercise of State sovereignty and domestic jurisdiction.**

   It is a well established principle in public international law that every State has complete and exclusive sovereignty over the airspace above its territory. This principle, first introduced in the Paris Convention,\(^9\) has been crystallised by Article 1 of the Chicago Convention, according to which “[t]he contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory.”\(^10\) The word ‘recognize’ clearly indicates, as confirmed by the ICJ,\(^11\) that State sovereignty over the airspace above its territory is a principle of customary law, reinforced in treaty law.

   According to the principle set forth in the case concerning the *Dispute Regarding Navigational and Related Rights*\(^12\) the State of Iustinian has the right to regulate operations of other States within and over the territory under its jurisdiction. Thus, the State of Iustinian has the right to regulate air navigation in its airspace.

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7 Charter of the United Nations (n 2) Article 2(7).
8 *Aegean Sea Continental Shelf (Greece v Turkey) (Judgement)* [1978] ICJ Rep 3, [59].
12 *Dispute Regarding Navigational and Related Rights (Costa Rica v Nicaragua) (Judgement)* [2009] 48 ILM 1180, [87]. The ICJ upheld that, being San Juan River a sovereign territory of Nicaragua, the latter has the power to regulate navigation in that part of San Juan River in which Costa Rica has the right of navigation.
Order THX-1138 is expression of the State of Iustinian regulatory power over the airspace above its territory. In particular, this Order prohibits air navigation in Iustinian’s airspace for a limited period of time, including, *inter alia*, the refusal of the right passage through Iustinian’s airspace. In accordance with the principle set out by the ICJ in the *Case concerning Right of Passage over Indian Territory*, the refusal of passage falls within Iustinian’s power to regulate and control the airspace above its territory.

Considering this, the State of Iustinian will further demonstrate that the provisions of Order THX-1138 are consistent with its rights and obligations under international law.

3. Order THX-1138 protects the safe development of international civil aviation

The most important principle underlying the Chicago Convention, as well as the general rules of international air law, is the development of international civil aviation ‘in a safe and orderly manner.’ The same provision is replicated by the preamble of the BASA between the State of Iustinian and the State of Pepo. Accordingly, the State of Iustinian, as a Party to the Chicago Convention and a Party to the Iustinian-Pepo BASA, has the duty to ensure the highest degree of safety of international air transport.

Safety concerns constitute a legitimate reason for the prohibition of use of airspace above the Iustinian’s territory. This principle was established by ICJ in the *Case Concerning the Dispute Regarding Navigational and Related Rights*. In addition, the right of a State to

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13 *Case Concerning Right of Passage over Indian Territory (Portugal v India) (Merits) [1960]* ICJ Rep 6, [45]. The ICJ upheld that India’s refusal of passage to certain delegation was ‘covered by its power of regulation and control of the right of passage of Portugal.’

14 Institute of International Law ‘Unlawful Diversion of Aircraft’ (Session of Zagreb 1971). In this resolution the Institute of International Law stated that ‘Under the general rules of international air law, as expressed especially in the Chicago Convention of 7 December 1944, States are required ensure the safety, regularity and efficiency of international air navigation and to collaborate with to this end.’

15 Convention on International Civil Aviation (n 10) preamble.

16 *Dispute Regarding Navigational and Related Rights* (n 12) [109]. The ICJ found that navigational safety, as the purpose invoked by Nicaragua in regulating the operation of Costa Rica within Nicaragua’s sovereign territory, was a legitimate ground.
refuse passage through its territory for public safety reasons was asserted by Commissioner Zulogaga in the *Mixed Claim Commission (Germany v Venezuela)* when he observed that the Government of Venezuela, which ‘by virtue of necessities of public safety and order…has issued a series of decrees regulating … transit[,] ha[d] clear right to do so.’\(^{17}\)

The importance of safety in the development of international civil aviation is confirmed by Article 9(b) of the Chicago Convention, which, ‘in exceptional circumstances or during a period of emergency, or in the interest of public safety’ grants contracting States the right ‘with immediate effect, temporarily to restrict or prohibit flying over the whole or any part of its territory,’ as long as such restriction is applied ‘without distinction of nationality to aircraft of all other States.’

The disruption caused by the eruption of the long-dormant Gaius volcano must clearly be seen as an emergency situation. It is recognised by ICAO that volcanic ash can damage aircraft: ‘Volcanic ash damages the jet turbine engines, abrades cockpit windows, airframe and flight surfaces, clogs the pitot-static system, penetrates into air conditioning and equipment cooling systems and contaminates electrical and avionics units, fuel and hydraulic systems and cargo-hold smoke-detection systems.’\(^{18}\) The safety of aircraft is, indeed, an important aspect of safety of international civil aviation since damages could pose a threat not only for passengers and crew on board, but also for people and property on ground.\(^{19}\)

Accordingly, Order THX-1138, being issued in a situation of emergency caused by an external threat to aircraft operations\(^{20}\) and applying without distinction to every aircraft flying

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\(^{17}\) *Mixed Claims Commission (Germany v Venezuela)* (1903) 10 Rep Intl Arbitral Awards 357.

\(^{18}\) ICAO ‘Manual on Volcanic Ash, Radioactive Material and Toxic Chemical Clouds’ ICAO Doc 9691, [4.1].


in Iustinian’s territory, certainly falls under the scope of Article 9(b) of the Chicago Convention.

Furthermore, the Government of Iustinian contends that, even without invoking the provision of Article 9(b), the prohibition established by the Order THS-1138 was in effect for a reasonable extent of time and did not interfere unnecessarily with air navigation, as required by Article 9(a), considering the fact that (i) ICAO policies regard any ash density level above zero as unsafe, and (ii) a volcanic eruption may 'last for a few weeks or even months until the molten rock reaches the surface.'

IDOT acted in accordance with the principle of cooperation established by the Chicago Convention. Such an assumption is reflected in the item (d) of the Order THX-1138, which stipulates that the order 'shall be transmitted to the International Civil Aviation Organization (ICAO) and the Government of Pepo.' Such a provision serves as a basis for a proper communication to international aviation community of an emergency situation affecting the airspace above Iustinian’s territory. Moreover, it is important to mention that acting in the interest of public safety, the Government of Iustinian also protected the interest of the State of Pepo, since the majority of passengers travelling between the two States are Peponians. Therefore, mitigating the threat to the aircraft posed by volcanic ash, the State of Iustinian also protected Peponian passengers who could have been affected by such a threat.

In the light of the foregoing arguments, the Government of Iustinian contends that Order THX-1138 is consistent with Iustinian’s rights and obligations under international law.

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\[21\] ICAO (n 18) [1.3].
B. PEPO MUST APPROVE THEODORA AIRWAYS’ APPLICATION TO PROVIDE DOMESTIC AIR SERVICES BETWEEN POINTS IN ITS TERRITORY AS LONG AS REGULATION 3.16 IS IN EFFECT

One of the most important principles established by the Chicago Convention is the principle of non-discrimination.\(^\text{22}\) This principle is reaffirmed in the Declaration of Global Principles for the Liberalization of International Air Transport.\(^\text{23}\) In particular, the Declaration states that the principle of non-discrimination continues to provide ‘the basis for future development of international civil aviation.’\(^\text{24}\)

The Government of Iustinian contends that, in order to comply with the principle of non-discrimination set forth in the Chicago Convention, the Government of Pepo must approve Theodora Airways’ application for an AOC to provide domestic air services between points in its territory. Before discussing the need for granting the mentioned rights to Theodora Airways, it is necessary to briefly outline the concept of cabotage\(^\text{25}\) in international air law.

1. The concept of cabotage in air law

Cabotage was incorporated in international air law by the Paris Convention of 1919, according to which ‘[e]ach contracting State shall have the right to establish reservation and

\(^\text{22}\) The preamble of the Chicago Convention stipulates that Contracting Parties ‘agreed on certain principles and arrangements in order…that international air transport services may be established on the basis of equality of opportunity’. In addition the principle of non-discrimination is provided \textit{inter alia} by articles 11 (establishes non-discrimination of laws and regulations concerning the aircraft engaged in international civil aviation) and article 15 (establishes non-discrimination regarding airport and similar charges) of the Chicago Convention.


\(^\text{24}\) Ibid preamble.

\(^\text{25}\) B Cheng \textit{The Law of International Air Transport} (Steven & Sons Ltd London 1962) 314: cabotage is defined as the ‘air transport between any two points in the same political unit, that is to say, in the territory of a State as the term is used in air law’.
restrictions in favour of its national aircraft in connection with the carriage of persons and
goods for hire between two points on its territory.\textsuperscript{26}

Later, cabotage has been further included in Article 7 of the Chicago Convention\textsuperscript{27} which, in
the first paragraph, provides that:

Each contracting State shall have the right to refuse permission to the aircraft of
other contracting States to take on in its territory passengers, mail and cargo
carried for remuneration or hire and destined for another point within its territory.

The first part of Article 7 can be interpreted as recognizing the right of a State to ‘reserve
for its national aircraft all carriage of passengers, mail or cargo transported for the
compensation between two points within areas under its sovereignty….\textsuperscript{28}

The second part of Article 7 (hereinafter ‘Article 7(2)’) of the Chicago Convention reads as
follows:

Each contracting State undertakes not to enter into any arrangements which
specifically grant any such privilege on an exclusive basis to any other State or
an airline of any other State, and not to obtain any such exclusive privilege from
any other State.

Professor Mendes de Leon points out that the expression ‘on an exclusive basis’, provided
in Article 7(2) of the Chicago Convention, should be regarded as an elaboration of the equal
opportunity objective declared in the preamble of the Convention.\textsuperscript{29}

\textsuperscript{26} Convention Relating to the Regulation of Aerial Navigation (adopted 13 October 1919,
entered into force 29 March 1922) 11 LNTS 173, Article 16.

\textsuperscript{27} Convention on International Civil Aviation (adopted 7 December 1944, entered into force 4
April 1947) 15 UNTS 295.

\textsuperscript{28} H Wassenergh \textit{Principles and Practices in Air Transport Regulation} (Paris Institut du
Transport Aerien 1993) 110.

\textsuperscript{29} P Mendes de Leon \textit{Cabotage in Air Transport Regulation} (Martinus Nijhoff Publishers
Dordrecht 1992) 41.
Accordingly, in the view of the Government of Iustinian, by denying cabotage rights to Theodora Airways, PDOT has violated the principles of non-discrimination and non-exclusivity laid down in the mentioned Article.

2. Article 7(2) of the Chicago Convention and Regulation 3.16

Article 7(2) refers to ‘arrangements which specifically grant’ cabotage rights ‘on an exclusive basis.’ The arrangements within the context of Article 7(2) of the Chicago Convention may include bilateral air transport agreements concluded between States as well as annexes and amendments to such agreements.\(^{30}\) The Government of Iustinian will further illustrate that the issuance of Regulation 3.16 represents an arrangement that specifically grants cabotage rights to Posner Air Cargo on an exclusive basis.

The Government of Iustinian considers the Regulation 3.16 as an amendment to the Pepo-Blackstone BASA, thus falling within the notion of ‘arrangement’ as provided by Article 7(2) of the Chicago Convention. Indeed, Regulation 3.16 unilaterally suspends Article 2(4) of that BASA, which prevents the State of Pepo from granting cabotage rights to Posner Air Cargo. The international law of treaties stipulates that a treaty can be amended ‘by agreement between parties’.\(^{31}\) In addition the rules regarding the conclusion of treaties also apply to their amendments.\(^{32}\) Therefore the consent to be bound by a treaty amendment can be expressed by ‘any other means if so agreed’.\(^{33}\)

The Vienna Convention allows the suspension of the operation of a treaty ‘at any time by consent of all the parties after consultation with the other contracting States’.\(^{34}\) According to

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\(^{30}\) Ibid 60.


\(^{32}\) Ibid.

\(^{33}\) Ibid Article 11.

\(^{34}\) Ibid Article 57(b).
the *Rainbow Warrior Affair* case, the absence of immediate and formal denial of a unilateral act of one State and certain conduct of the State affected may constitute the acceptance of such an act by the State affected.\(^{35}\) It is noteworthy that, although the State of Pepo suspended certain treaty provision unilaterally, such a suspension has not been challenged by the State of Blackstone. Moreover, the State of Blackstone expressed its consent to the suspension by operating cabotage air services. Therefore, there is consent between the parties in respect of the suspension of Article 2(4) of the Pepo-Blackstone BASA, as it is provided by Regulation 3.16.

In order to constitute the ‘exclusive basis’ stated in Article 7(2) of the Chicago Convention, there should be a strong bond between two State parties ‘as to create a sphere of influence, in the territorial or political sense, or both.’\(^{36}\) The Government of Iustinian points out that such bond between the State of Pepo and the State of Blackstone exists. Blackstone’s economy is heavily dependent on the export of widgets to, and import of industrial goods from, the State of Pepo. Indeed, the operation of all-cargo services by Posner Air Cargo to the State of Pepo supports the export of widgets, which is crucial for the Blackstone’s economy and similarly and important for Pepo’s economy.

The Regulation 3.16 is the legal instrument that establishes the exclusive bond\(^{37}\) between the State of Pepo and the State of Blackstone since it amends their BASA specifically in order to grant cabotage rights to one single foreign airline. Although the purpose of the Regulation 3.16 is ‘to ensure that there is no disruption in domestic air-cargo services’, only Posner Air Cargo was granted cabotage rights to domestic air-cargo services. Accordingly,

\(^{35}\) *Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements concluded on 9 July 1986 between the two States and which related to the problems arising from the Rainbow Warrior Affair* (1990) 20 Rep Intl Arbitral Awards 215, [81].

\(^{36}\) P Mendes de Leon (n 29) 62.

\(^{37}\) The bond, the sphere of influence ‘must be specifically established by a legal instrument, indicating that the bond is exclusive, that an exclusive circle is established’ Ibid.
the required exclusive circle is established. Remarkably, the grant of cabotage rights was introduced through the national legislation of the State of Pepo and not by the mere issuance of an operating permit or by an amendment to the bilateral agreement through a bilateral legal instrument. Such a form of granting of cabotage rights, in the view of the Government of Lustinian, also demonstrates its exclusivity.

Overall, considering that the denial of cabotage rights contradicts the principles of non-discrimination and non-exclusivity expressed by Article 7 of the Chicago Convention, the Government of Lustinian insists that PDOT must approve Theodora Airways' application to provide domestic air services between points in Pepo’s territory so long as Regulation 3.16 is in effect.

C. CAT IS CONSISTENT WITH JUSTINIAN’S RIGHTS AND OBLIGATIONS UNDER INTERNATIONAL LAW

International law allows States to establish policies over the environment within their sovereign territory. This principle is confirmed by the UNGA Resolution on ‘Permanent Sovereignty over Natural Resources’ which provides that '[t]he right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.' The customary law character of this resolution was affirmed by the ICJ in the case of Armed Activities on the Territory of the Congo.

38 Ibid.

39 As it was, for example, in case of Switzerland that has granted ad hoc licenses for the seasonal period to Tunis Air to operate air services between Zurich and Geneva. Ibid 59.

40 As it was, for instance, in the case of the granting of cabotage rights to a Danish air carrier by the Netherlands in which the granting was set forth in a Memorandum of Understanding added to the BASA between Denmark and the Netherlands. Ibid.


42 Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Judgement) [2005] ICJ Rep 168, [244].
Moreover, UNGA Resolution on ‘Development and Environment’ states that ‘each country has the right to formulate, in accordance with its own particular situation and in full enjoyment of its national sovereignty, its own national policies on the human environment.’\textsuperscript{43} The right of a State to exercise sovereignty over its natural resources is also supported by scholars’ opinions. For instance, Professor Sands argues that ‘[t]he principle of State sovereignty allows States within limits established by international law to conduct or authorise such activities as they choose within their territories, including activities which may have adverse effects on their own environment.’\textsuperscript{44} Accordingly, the Government of Iustinian contends that the introduction of the CAT is consistent with the foregoing principles.

1. Aircraft emissions and their impact on environment

Aircraft eject a number of chemical substances that affect atmosphere, such as carbon dioxide and water vapour,\textsuperscript{45} which are caused by the combustion of jet fuel.\textsuperscript{46} The carbon dioxide may affect stratospheric cooling which in its turn may cause atmospheric thermal stratification, increase of polar stratospheric cloud formation, and reduce of ozone concentrations.\textsuperscript{47} In addition, nitric oxide and nitrogen dioxide constitute one of the most abundant aircraft emissions.\textsuperscript{48} The nitrogen dioxide has has a strong impact on the environment, considering that (i) it soaks up visible solar radiation and unbalances atmospheric visibility; (ii) it absorbs visible radiation and potentially directly affects global climate change; (iii) it is, along with nitric dioxide, the main regulator of the oxidizing capacity

\textsuperscript{43} UNGA Res 2849 (XXVI) (20 December 1971).


\textsuperscript{46} Ibid.

\textsuperscript{47} Ibid.

\textsuperscript{48} Ibid.
of the free troposphere as it controls the composition and fate of radical species; (iv) it is crucial for determining of ozone concentrations.\textsuperscript{49}

In addition, some studies demonstrate that ozone changes occurred due to aircraft emissions cause radioactive forcing.\textsuperscript{50} Emission of nitric oxide and nitrogen dioxide contributes to the formation of photochemical smog and associated oxidant, deteriorating air quality and posing threat to human and ecosystem health.\textsuperscript{51} Aircraft also emits sulphur dioxide and hydrocarbon. These emissions contribute to formation of sulphate and carbonaceous aerosols.\textsuperscript{52}

Overall, aircraft emissions have a significant impact on air quality.

2. Preliminary considerations on aviation industry and protection of environment

The international community expressed its concerns in respect of environmental protection \textit{inter alia} in the Rio Declaration on Environment and Development, the UN Framework Convention on Climate Change, and the Kyoto Protocol to the UN Framework Convention on Climate Change. These documents, in particular, call States to take measures on the protection of the environment.

ICAO pays a lot of attention to the impact of civil aviation on the environment. Indeed, the ICAO Assembly adopted environment-related resolutions on many occasions. For instance, during its 33\textsuperscript{rd} session, the ICAO Assembly requested the Council `to promote the use of operational measures as a means of limiting or reducing the environmental impact of aircraft

\textsuperscript{49} F Forastiere and others ‘Nitrogen Dioxide’ in World Health Organization \textit{Air quality guidelines: global update 2005: particulate matter, ozone, nitrogen dioxide and sulphur dioxide} (WHO Regional Office for Europe Copenhagen 2006) 331.

\textsuperscript{50} PJM Valks and GJM Velders ‘The Present-day and Future Impact of NOx Emissions from Subsonic Aircraft on the Atmosphere in Relation to the Impact of NOx Surface Sources’ (1999) 17 Annales geophysicae 1064.

\textsuperscript{51} BR Gurjar LT Molina and CSP Ojha (eds) \textit{Air Pollution: Health and Environmental Impacts} (CRC Press Boca Raton 2008) 497.

\textsuperscript{52} Intergovernmental Panel on Climate Change (n 45) 34.
engine emissions.53 In addition, during this session the Assembly of ICAO recognised that negative impact of civil aviation on the environment can be reduced inter alia by application of market-based measures,54 defined as ‘means of limiting or reducing the environmental impact of aircraft engine emissions’ and as ‘policy tools that are designed to achieve environmental goals at a lower cost and in a more flexible manner than traditional regulatory measures.’55 During its 37th session, ICAO Assembly requested States inter alia to ‘accelerate investments on research and development to bring to market even more efficient technology by 2020’56 and to ‘accelerate the development and implementation of ...procedures to reduce aviation emissions.’57 Thus, ICAO encourages States to take measures directed at aircraft emissions reduction.

3. CAT and ‘polluter pays’ principle

With the introduction of the CAT, Iustinian Government sought to enforce the firmly established ‘polluter pays’ principle,58 formulated in the Rio Declaration on Environment and Development as follows: ‘National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into

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54 Ibid preamble.

55 Ibid Appendix I, preamble recital 1 and 2.


57 Ibid 23(d).

58 According to this principle ‘the costs of pollution should be borne by the person responsible for causing the pollution’: See P Sands Principles of International Environmental Law (n 44) 279. The purpose of such a principle is ‘allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources’: See OECD Recommendation of the Council on Guiding Principles Concerning International Economic Aspects of Environmental Policies (26th May 1972) Cf. C/M(72)15(Final), Item 129(a), (b) and (c) - Doc. No. C(72)128 sec A (a)(4).

The ‘polluter pays’ principle is considered as ‘a general principle of international environmental law’ in several international legal instruments such as the International Convention on Oil Pollution Preparedness, Response and Cooperation\footnote{60 International Convention on Oil Pollution Preparedness, Response and Cooperation (adopted 30 November 1990, entered in force 13 May 1995) 1891 UNTS 51, preamble.} and the Convention on the Transboundary Effects of Industrial Accidents.\footnote{61 Convention on the Transboundary Effects of Industrial Accidents (adopted 17 March 1992 entered in force 19 April 2000) 2105 UNTS 457, preamble.}

This principle has also been reflected in the Trail Smelter case. In this case the Tribunal prescribed the smelter company to reduce its activity to the level at which fume emissions do not cause injury any more and obliged this company to pay compensation to the United States for causing harm to the interests of the United States in respect of fume emissions.\footnote{62 

\textit{Trail Smelter Arbitration (USA v Canada)} (1941) 3 Rep Intl Arbitral Awards 1980.}

In the case of Legality of Use of Nuclear Weapon, Judge Weeramantry, analysing the ‘polluter pays’ principle among others principles of environmental law, described this principle as ‘not depend[ent] for [its] validity on treaty provisions’, as a ‘part of customary international law’ and of ‘the \textit{sine qua non} for human survival’.\footnote{63 \textit{Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)} [1996] ICJ Rep 226, dissenting opinion of Judge Weeramantry.}

The principle under question was also discussed by the ILC, observing that there is a variety of economic tools used by the States in their national laws and regulations to implement the ‘polluter pays’ principle. Such tools vary from imposition of pollution charges to
imposition of fines and liabilities. Accordingly, it is reasonable to conclude that the introduction of the CAT with the purpose of maintaining the natural beauty of Iustinian and offsetting the cost of damages caused by aircraft emissions is compatible with existing State practices regarding the implementation of the ‘polluter pays principle’.

The ‘polluter pays’ principle should be considered together with the concept of sustainable development. This concept was reaffirmed by the ICJ in the Gabčíkovo–Nagymaros Project case. In particular, the court recognised that the ‘need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.’

4. State practices on imposition of emission-based fees

Sweden and Switzerland are among the first countries that introduced emission-based landing fees. In 1995 Swiss government adopted a law that allowed airports to levy emission charges on aircraft. The practice was introduced first at the Zurich airport and then at the Geneva airport, further expanding to other Swiss airports. In 1998, upon approval of the Swedish Civil Aviation Authority, several Swedish airports implemented a similar scheme.

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67 United States General Accounting Office: Aviation and the environment: strategic framework needed to address challenges posed by aircraft emission (Report to the Chairman, Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives February 2003) 18.
The legality of emission-based charges was confirmed by the Swiss Federal Court. Currently, emission-based charges are also imposed in United Kingdom and France. There is also an extensive practice of introducing so called ‘passenger taxes’ in order to address environmental concerns. For instance, in 1994, Norway enacted a law establishing a passenger tax on international and domestic flights in order to encourage the public to use other modes of transport. It noteworthy to mention that revenues generated by such tax is placed to general treasury. In the same year an air passenger duty was introduced in UK. The duty ‘becomes due when the aircraft first takes off on the passenger’s flight and shall be paid by the operator of the aircraft.’ The High Court of England and Wales has reached the conclusion that the air passenger duty does not violate Chicago Convention and thus, upheld the legality of such a duty. The same approach was confirmed by the Dutch Supreme Court with regard to the Dutch ticket tax, levied for environmental purposes. Therefore, current State practices and court decisions demonstrate that taxation of air transportation for environmental purposes can be regarded as legal.

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68 *International Air Transport Association v the Government of the canton of Zurich* (1999) ATF 125 I 182. Swiss Federal Court reached the conclusion that the introduction of emission-based landing fee violates nor federal aviation law, nor Chicago Convention. In particular, the Court pointed out that as the contested legislation treats all airlines equally there is no violation of the non-discrimination principle in respect of airport charges set forth in article 15 of the Chicago Convention.


71 Ibid.

72 *Federation of Tour Operators & Ors, R (on the application of) v HM Revenue & Customs & Ors* (2007) EWHC 2062, [8].

73 Ibid.

74 Ibid [84].

According to the foregoing arguments, the Government of Iustinian insists that the CAT is consistent with its rights and obligations under international law.

**D. PEPO MUST REAUTHORISE THEODORA AIRWAYS TO PROVIDE AIR SERVICES TO, FROM, OR BEYOND POINTS IN ITS TERRITORY**

The State of Iustinian will demonstrate that, by revoking Theodora Airways’ authorisation to provide air services to, from, or beyond points in Pepo, the State of Pepo has breached its obligations under international law.

1. **Revocation of authorisation under Article 4 of the Iustinian and Pepo BASA**

   Article 4 of the Iustinian-Pepo BASA grants either Party the right to revoke, suspend or limit the operating authorisation of an airline where this airline (a) is not an airline of the other Party, according to Article 1(4) of the BASA, or (b) is not substantially owned and effectively controlled by the other Party or by other Party’s nationals, or (c) has failed to comply with laws and regulations referred to in Article 5 of the BASA. This right may be ‘exercised only after consultations with the other Party’.

   The wording of Article 4, namely that either Party ‘may’ (emphasis added) revoke the operating authorisation, clearly shows that the fulfilment of one of the three mentioned conditions does not automatically lead to the revocation of the authorisation. On the contrary, room for discretion is left to each Party in deciding whether and to what extent to avail themselves of such provision. Thus, they are not obliged to do so.

   The investment by certain nationals of Holmes in Theodora Airways does not have any implication in assessing whether or not Theodora Airways must be considered a Iustinian

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76 This Article reads as follows: “‘Airline of a Party’ means an airline that is licensed by and has its principal place of business in the territory of that Party”.

77 Iustinian and Pepo BASA, Article 4(2).
Article 1(4) of the BASA, in defining ‘Airline of a Party’, only refers to an airline’s principal place of business and to the place where it is licensed. Theodora Airways is licensed by the State of Lustinian and its principal place of business is and will remain in Lustinian; thus, according to the BASA, Theodora Airways is an ‘Airline of the State of Lustinian’.

The State of Pepo contends that the new ownership and control structure of Theodora Airways would justify the right to invoke Article 4(1)(b) of the Lustinian-Pepo BASA. However, it should be pointed out that (i) Theodora Airways is still a Lustinian airline and still substantially owned by the Lustinian Government; (ii) in any case, Pepo has the right, not the duty, to revoke Theodora Airways’ operating authorisation; (iii) this right has to be interpreted and enforced in accordance with the Principles of Peponian International Air Transport Policy.

Moreover, the State of Pepo failed to comply with Article 4(2) establishing that this right could have been exercised only after consultations with the Lustinian Government, which never took place.

2. Substantial ownership is vested in Lustinian

The Lustinian-Pepo BASA does not provide a definition of ‘substantial ownership’. In principle, the ownership of an airline means the ownership of voting shares of an airline stock. Substantial ownership generally refers to ownership of more than 50% of voting shares. For instance, the European Commission, defining the concept of Community Air Carrier, states that ‘the majority ownership requirement is complied with if at least 50% plus one share of the capital of the air carrier concerned is owned by Member States and/or

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79 Ibid.
national of Member States. Furthermore, the Commission points out that the rest of the shares can be owned by third parties and such shareholding should not be regarded as incompatible with the ownership and control concept established in the European Union. In addition, a study conducted by the IATA reveals that in most countries the minimal requirement for minimal national ownership constitutes 50% of the shares.

Accordingly, the acquisition of 33,3% of voting shares by Brandeis does not make Theodora Airways substantially owned by nationals of another State as 66,7% of the shares are still owned by the Iustinian Government.

The considerable share of ownership still remaining in the hands of the Government of Iustinian allows it to strongly influence Theodora Airways policies and business plans, thus maintaining effective control on its carrier.

3. The legal status of the ‘Principles of Peponian International Air Transport Policy’

On June 19, 2010, PDOT issued a document entitled ‘Principles of Peponian International Air Transport Policy’, according to which the State of Pepo has committed itself to interpret and enforce its BASAs so as to grant airlines the ‘freedom and flexibility to complete commercial transactions which they believe are in their best financial interests,’ including ‘greater access to foreign capital.’

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81 Ibid; the concept to which the Commission refers means that ‘[w]ithout prejudice to agreements and conventions to which the Community is a contracting party, the undertaking shall be owned and continue to be owned directly or through majority ownership by Member States and/or nationals of Member States. It shall at all times be effectively controlled by such States or such nationals’. See Council Regulation (EEC) No 2407/92 of 23 July 1992 On Licensing of Air Carriers [1992] OLL 240/1, Article 4(2).

The application of these Principles to Article 4 of the Iustinian-Pepo BASA would have the consequence of excluding, or at least limiting, Pepo’s right to invoke the substantial ownership and control requirements as a ground for revoking Iustinian airlines’ operating authorisation.

In order to properly assess the validity and legality of this assumption, the question should be answered of whether the PDOT’s unilateral statement has created, under international law, any legal obligation for the State of Pepo vis-à-vis the State of Iustinian.

The Government of Iustinian will demonstrate that unilateral declarations do create legal obligations for the declaring States and that the State of Pepo is therefore legally required to act in a manner consistent with its Principles of International Air Transport Policy.

The recognition of the binding force of unilateral declarations is not a new development of the international law doctrine. In 1957 Sir Fitzmaurice G stated as follows:

[a unilateral] Declaration may or may not create binding legal obligations for the declaring party, according to its wording and intent, and the circumstances of its making; but it seems fairly well settled that it can and will do so if clearly intended to have that effect, and held out, so to speak, as an instrument on which others may rely and under which the declarant purports to assume such obligations. Particularly will this be so where other countries have, on the faith of the Declaration, changed their position or taken action on the basis of it.

Moreover, this conclusion seems to be supported even by the same authors who deny any legally binding character, when they admit that, especially when the recipient of a declaration relied on its contents and took action on its basis, the non compliance, by the author a

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declaration, with the announced attitude could be regarded as a breach of the principle of good faith and, thus, be considered as an unlawful act.\textsuperscript{85}

Although the ICJ has previously recognised, to a certain extent, the binding effects of unilateral declarations,\textsuperscript{86} this principle has been ultimately crystallised in the \textit{Nuclear Tests} case, where the Court, addressing the legal status of the unilateral declaration made by the French Foreign Minister not to hold any further atmospheric tests in the South Pacific, concluded as follows:

\begin{quote}
It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations...When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind...even though not made within the context of international negotiations, is binding...[N]othing in the nature of a \textit{quid pro quo} nor any subsequent acceptance of the declaration, not even any reply or reaction from other States is required for the declaration to take effect, since such a requirement would be inconsistent with the strictly unilateral nature of the juridical act by which the pronouncement by the State was made.\textsuperscript{87}
\end{quote}

Having regard to the unilateral nature of such declarations, problems may arise when it comes to interpreting the intention of the State to be bound according to their terms. Although, in bilateral or multilateral agreements, a discrepancy may arise between the real will and the text of the agreement, States are usually aware of their common intention and, moreover, reference could be made to the preparatory works. On the contrary, since recipients of unilateral declarations are not aware of the real will of their authors, they could


\textsuperscript{87} \textit{Nuclear Tests (Australia v France) (Judgement)} [1974] ICJ Rep 253, [43].
only rely on the expressed will, interpreted according to the ordinary meaning given to the
terms of the declaration in the light of their context.\textsuperscript{88}

This approach would, indeed, be in line with the fundamental principle of good faith, which,
according to the ICJ judgment in the \textit{Nuclear Tests} case, unequivocally supports the binding
character of unilateral declarations:

One of the basic principles governing the creation and performance of legal
obligations, whatever their source, is the principle of good faith. Trust and
certainty are inherent in international co-operation...Just as the very rule of \textit{pacta sunt servanda} in the law of treaties is based on good faith, so also is the
binding character of an international obligation assumed by unilateral declaration.
Thus interested State may take cognizance of unilateral declarations and place
confidence in them, and are entitled to require that the obligation thus created be
respected.\textsuperscript{89}

Accordingly, denying any binding effects to unilateral declarations, only because of the lack
of a common will, is an expression of a narrow formalism, which does not take into account
the needed certainty and harmonisation in international relations.\textsuperscript{90} The principle of good faith
‘permits the States to rely on the unilateral act which creates corresponding rights for them’
and to ‘claim for the fulfilment of the obligations unilaterally undertaken.’\textsuperscript{91}

In the light of the above, it is necessary to discuss whether the Principles of Air Transport
Policy must be interpreted as a clear intention of the State of Pepo to be bound by its terms
and whether the revocation of Theodora Airways’ operating authorisation must be seen as a

\textsuperscript{88} \textsuperscript{88} Sicault (n 83) 648.

\textsuperscript{89} \textit{Nuclear Tests} (n 87) [46].

\textsuperscript{90} E Suy \textit{Les Actes Juridiques Unilatéraux en Droit International Public} (Librairie Générale de
Droit et de Jurisprudence Paris 1962), 271: ‘Considérer les conventions ou traités comme
obligatoires, pour l’unique raison qu’ils se fondent sur la volonté concordante de certains
sujets de droit, en refusant de reconnaître quelque valeur obligatoire aux engagements
unilatéraux, parce que la volonté ne serait pas soutenue par une volonté concordante, c’est
témoigner d’un formalisme trop rigide qui perd de vue l’essence même de toute
réglementation, à savoir la sécurité et l’harmonie des rapports entre les sujets.’

\textsuperscript{91} K Skubiszewski ‘Unilateral Acts of States’ in M Bedjaoui \textit{International Law: Achievements
breach of the principle of good faith. The State of Iustinian is firmly convinced that both answers should be affirmative.

The terms ‘interpret’ and, more important, the term ‘enforce’ (emphasis added) must be seen as a clear commitment to act thenceforth according to the Policy’s principles and thus as a unequivocal intention of the State of Pepo to become bound by them. Such conclusion would be confirmed by two more considerations: first of all, it would be consistent with Article 4(1)(b) of the Iustinian-Pepo BASA, which gives both Parties only the right, and not the duty, to revoke the operating authorisation when substantial ownership and effective control are not vested in other Party’s nationals and thus, it would not have any consequences on the principle of *pacta sunt servanda*; secondly, it would be in line with the real essence of an agreement aimed to the promotion and the expansion of international civil aviation with minimum government interference and regulation.

Accordingly, the Iustinian Government, on the faith of the new Peponian Air Transport Policy and acting on its basis, concluded the commercial transaction with Brandeis representatives. Without the assurances given by the Peponian unilateral declaration, it is logical that the Iustinian Government, aware of the provision of Article 4(1)(b) of the Iustinian-Pepo BASA, would have never authorised the investment of Holmes’ nationals in Theodora Airways.

In conclusion, the Government of Iustinian submits that, by revoking Theodora Airways’ operating authorisation on the basis of Article 4(1)(b) of the Iustinian-Pepo BASA, the State of Pepo has breached its obligations assumed by its public statements and has violated the principle of good faith, which requires the obligations thus created to be respected.
SUBMISSIONS

May it please the Court, for the foregoing reasons, the State of Iustinian, Applicant, respectfully requests the Court to adjudge and declare that:

- Order THX-1138 is consistent with Iustinian’s rights and obligations under international law;

- the State of Pepo must approve Theodora Airways’ application to provide domestic air services between points in its territory as long as Regulation 3.16 is in effect;

- the CAT is consistent with Iustinian’s rights and obligations under international law;

- the State of Pepo must reauthorise Theodora Airways to provide air services to, from, or beyond points in its territory.

The Honourable Court is further requested to declare such guidelines as it deems fit and essential in the present case.