

**Judgment 41/2006 President of the State of Equatorial Guinea et al v
Systems Designs Limited et al – Judicial Committee
of the Privy Council (JCA/59/2005) – 8th March 2006
and 13th July 2006**

- (i) **Norwich Pharmacal disclosure order – appeal from the Court of Appeal to the Judicial Committee – interveners’ grounds had been amended on the prompting of the Court of Appeal – not a legitimate exercise of appellate authority – principles governing grant of Norwich Pharmacal relief – decision of the Royal Court should not have been reversed – whether the Royal Court had jurisdiction to make its order on the ground that it could be regarded as enforcing the public law of a foreign state – this issue had not been addressed before the Royal Court or the Court of Appeal – appeal allowed and Royal Court Order reinstated with costs to the Appellants – however this order suspended pending similar question, in relation to English law, likely to come before the English Court of Appeal (Order in Council dated 8th March 2006)**
- (ii) **Respondent’s petition, to set aside the costs order, dismissed (Order by the Lords of the Judicial Committee dated 13th July 2006)
(See Judgments 53/2004 and 17/2006)**

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

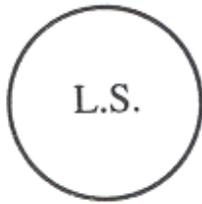
The 4th day of September, 2006 before Richard John Collas, Esquire, Deputy Bailiff; present:- David Charles Lowe, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray and David Osmond Le Conte Esquire, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 8th day of March, 2006 allowing an Appeal from the Court of Appeal of Guernsey, with costs, and reinstating the order of the Lieutenant Bailiff in proceedings between (1) President of the State of Equatorial Guinea and (2) The Procureur of the State of Equatorial Guinea (Appellants) and (1) Royal Bank of Scotland International (2) Logo Limited (First Intervener) and (3) Systems Design Limited (Second Intervener) (Respondents) THE

COURT, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ORDERED:-

1. That the said Order in Council be registered on the records of this Island,
and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively.

S.M.D.ROSS
Her Majesty's Deputy Greffier



AT THE COURT AT BUCKINGHAM PALACE

The 8th day of March 2006

PRESENT

**THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL**

THIS DAY a report dated 27 February 2006 from the Judicial Committee of the Privy Council was read as follows:-

“**BY VIRTUE** of His late Majesty King Edward the Seventh’s Order in Council of the 18 October 1909 an appeal from the Court of Appeal of Guernsey between (1) The President of the State of Equatorial Guinea and (2) The Procureur of the State of Equatorial Guinea (appellants) and (1) Royal Bank of Scotland International (2) Logo Limited (First Intervener) and (3) Systems Design Limited (Second Intervener) (respondents) (Privy Council Appeal No. 59 of 2005) was referred to this Committee. On 30 April 2004 the appellants were granted Norwich Pharmacal relief. The Lieutenant Bailiff made an order requiring the Royal Bank of Scotland International to provide information and documents to the appellants and gave the appellants leave to pursue others in Guernsey, Equatorial Guinea, Spain, Jersey and England and Wales in any civil action (excluding criminal proceedings). On 14 May 2004 the first intervener applied to discharge the order dated 30 April 2004; the application was adjourned for a substantive hearing whereby the Court ordered that no further disclosure be made to the appellants. On 3 November 2004 the Lieutenant Bailiff gave judgment that Norwich Pharmacal relief should be granted to the appellants but there should be a stay of the order of 30 April 2004, on an undertaking given by the second appellant not to make use of the material disclosed other than in connection with proceedings in England. On 10 December 2004 the order of 30 April 2004 was varied so as to permit the appellants to use the information supplied to them in connection with proceedings in England and for Norwich Pharmacal or similar applications for disclosure of information in other jurisdictions, as to the wrongdoing or identity of wrongdoers, relevant to the proceedings in England. On 15 December 2004 the Court of Appeal granted the second interveners’ application to re-impose the original stay of 3 November 2004 which was lifted by the order dated 10 December 2004. On 17 February 2005 the Court of Appeal granted leave to the interveners (System Design Limited and Logo Limited) to amend its Notice of Appeal to set out further objections to the decision of the Lieutenant Bailiff. On 5 April 2005 the Court of Appeal allowed the appeal. By Order in Council dated 22 June 2005 the appellants were granted final leave to appeal to Your Majesty in Council: And humbly praying

Your Majesty in Council to take this Appeal into consideration and that the judgment of the Court of Appeal of Guernsey dated 5 April 2005 may be reversed altered or varied and for further or other relief:

“**THE LORDS OF THE COMMITTEE** in obedience to His late Majesty's Order in Council have taken the Appeal and humble Petition into consideration. Having heard Counsel for both parties their Lordships do this day agree humbly to report to Your Majesty that the appeal should be allowed with costs and the order of the Lieutenant Bailiff reinstated. However, as the same questions in relation to English law are likely to come before the English Court of Appeal, their Lordships think that the order should be suspended until the court has decided whether the appellants have a cause of action enforceable in English law. If not, it will be open to the respondents to apply to the Royal Court for the Lieutenant Bailiff's order to be discharged.”

HER MAJESTY having taken the said report into consideration was pleased by and with the advice of Her Privy Council to approve that report and order that the same be punctually observed and obeyed.

AND the Lieutenant Governor or Officer administering the Government of the Bailiwick of Guernsey for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

A.K. Galloway

FROM
THE COURT OF APPEAL IN THE ISLAND OF
GUERNSEY

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL

Privy Council Appeal No 59 of 2005

(1) The President of the State of Equatorial Guinea
(2) The Procureur of the State of Equatorial Guinea
Appellants

v.

(1) The Royal Bank of Scotland International *Respondents*
(a company incorporated in Jersey)
(2) Logo Limited (Intervener)
(3) Systems Design Limited (Intervener)

Delivered the 27th February 2006

Present at the hearing:-

Lord Bingham of Cornhill
Lord Hoffmann
Lord Rodger of Earlsferry
Lord Walker of Gestingthorpe
Lord Brown of Eaton-under-Heywood

[Delivered by Lord Bingham of Cornhill and Lord Hoffmann]

1. The main issue in this appeal is whether the Court of Appeal of Guernsey (Sir de Vic Graham Carey, Bailiff, Southwell QC, JA, and Vaughan QC, JA) were correct to set aside and discharge an order for *Norwich Pharmacal* relief finally made by Lieutenant Bailiff Day against the Royal Bank of Scotland International (“the Bank”) in the Royal Court of Guernsey on 9 December 2004. The Bank has throughout played a passive part in these proceedings. The effective dispute is between the appellants and the interveners.

2. The first appellant is President of the Republic of Equatorial Guinea and the second appellant is attorney general of that state, a friendly foreign state with which the United Kingdom has normal

diplomatic relations. The second appellant sues on behalf of the Republic.

3. Logo Limited, the first intervener, is a company registered in the British Virgin Islands or in Nevis. The second intervener is registered in the Bahamas. Both have a place of business in Guernsey where their business is managed by a management company (“Hansard”). Both have an account with the Bank. Both are said to be beneficially owned, wholly or in part, by Mr Simon Mann.

4. On 7 March 2004, the authorities in Zimbabwe arrested various persons, including Mr Mann, at Harare Airport. On the following day a Mr Nicolaas du Toit and other persons were arrested in Equatorial Guinea. The appellants allege that the individuals arrested were involved in an attempt to overthrow the Government of Equatorial Guinea by means of a privately hired force of mercenaries armed with weapons (including machine guns, rocket grenade launchers, mortars, mortar bombs and hand grenades acquired in Zimbabwe) to seize control of the state and its assets, in particular its substantial oil and gas reserves, to kill, severely injure or abduct the first appellant, and to install Mr Severo Moto, an Equato-Guinean living in exile in Spain, as President. They allege that this was pursuant to a conspiracy plotted and financed in England and elsewhere.

5. The appellants applied for *Norwich Pharmacal* orders against the Bank in the Isle of Man and Jersey. In each of those jurisdictions orders were made, but proved fruitless. Accordingly, on 30 April 2004, the appellants applied without notice to the Royal Court of Guernsey for *Norwich Pharmacal* relief against the Bank, supported by an affidavit sworn on the same day by Mr Page (solicitor for the appellants, then a partner based in Paris in the London solicitors’ firm of Penningtons). The application sought an order requiring the Bank to disclose, amongst other things:

information and documents concerning the beneficial ownership of both the interveners (the name of one being then incorrectly stated); and

documents identifying incoming and outgoing transactions on bank accounts in the names of the interveners, Mr Mann and Mr Du Toit.

The application was prompted by investigations which were being carried out by the appellants into the funding of the coup. The appellants believed that the interveners had been involved in that capacity, on the grounds given in Mr Page's affidavit. The interveners deny any involvement in the coup, whether by way of funding or otherwise.

6. On 30 April 2004, the application was granted and the Lieutenant Bailiff made an Order in the terms briefly summarised above. Paragraph 2 of the Order gave the appellants leave to use the information supplied to them to pursue others in Guernsey, Equatorial Guinea, Spain, Jersey, and England and Wales, in any civil actions but not in criminal proceedings. In Schedule II to the Order, the appellants gave various undertakings to the Royal Court, including an undertaking at paragraph 6 to use the information only for the purposes of civil legal action in the jurisdictions mentioned and specifically not to use it in any criminal proceedings.

7. The order was served on the same day (30 April 2004) on Hansard who accepted service on behalf of the second intervener but not on behalf of the first, because of the mis-description. But both interveners through Hansard knew of the order and neither moved then to set it aside. On 7 May 2004 the Bank disclosed a number of documents to the appellants. On 13 May 2004, the wording of the order was amended, and the appellants undertook to commence a civil action in one of the stated jurisdictions no later than 30 June 2004.

8. On 14 May 2004, the second intervener applied to discharge the order of 30 April 2004 and to prohibit the Bank from disclosing any further information to the appellants pending the hearing of that application. The application was adjourned for a substantive hearing, pending which the Royal Court ordered that no further disclosure be made to the appellants. On 7, 13 and 21 September 2004 the Royal Court heard the second intervener's application for a discharge or stay of the order of 30 April 2004. In the course of the hearing, the advocate for the second intervener confirmed that he was also instructed on behalf of the first intervener and that if the appellants wished to pursue an application to include the first intervener in the terms of the order, he was on the record as acting for that company. In due course the first intervener was joined and the application proceeded on that basis.

9. The interveners' primary submission of legal principle before the Lieutenant Bailiff was that the court had no jurisdiction to grant *Norwich Pharmacal* relief where no substantive proceedings were contemplated in Guernsey. He rejected this argument in a carefully considered judgment

of 3 November 2004. The interveners' second submission was directed to the exercise of the court's discretion to grant relief. The Lieutenant Bailiff acknowledged the interveners' denial of any attempted coup, but also recognised that the court could not resolve those factual issues. He recorded the interveners' acceptance, which he endorsed, that the wrongdoing alleged in the case appeared sufficient to support a *Norwich Pharmacal* application. He had earlier summarised the principles governing the grant of such relief in terms which, subject to one point considered below, are accepted as an accurate distillation of the law. In his judgment the Lieutenant Bailiff weighed the considerations for and against the grant of relief. By this time the appellants had issued proceedings in the High Court of England and Wales, and the Lieutenant Bailiff was somewhat bemused by the claims made, but regarded their validity as a matter for the High Court to decide. He expressed some sympathy for the view that the civil courts were not the proper forum for the resolution of matters which were properly the province of international diplomacy and co-operation, but thought it clear in principle that a state could seek assistance from the civil courts in another jurisdiction in the same way and subject to the same rules as any other litigant. He referred to evidence adduced by the interveners to discredit the Government and judiciary of Equatorial Guinea, relied on to throw doubt on the appellants' assertion that material obtained would be used for the purposes of civil proceedings only, but was unimpressed, not because he rejected the evidence, but because of authority which discouraged readiness to reject the undertakings of a friendly foreign state. He acknowledged that it might be premature to make an order, but was also concerned that the reputation of Guernsey as a financial centre might suffer if it were not willing to assist victims of wrongdoing to identify participants in it, so as to obtain redress. In conclusion, he found that the Bank might (although entirely innocent of wrongdoing itself) have information which would assist the appellants to identify the authors of that wrongdoing; that it was just and convenient in principle to grant a disclosure order in the terms sought; but that the interveners had justified concerns about the possible use to which disclosed material might be put; that there was need to consider possible control mechanisms; and that accordingly the order of 30 April should be stayed, with liberty to apply.

10. The appellants applied to lift the stay, relying on a further affidavit by Mr Page sworn on 16 November 2004. In it he discussed certain leading authorities and offered undertakings on behalf of the appellants, later formally executed. The interveners submitted an affidavit sworn by Mr Kerman, their solicitor, on 8 December 2004. In this he deposed for the first time that a detailed and apparently circumstantial statement made

by Mr Mann to the Zimbabwean authorities on 11 March 2004 had been procured by torture. It was submitted that the appellants' undertakings should not be accepted. This affidavit was introduced at the contested hearing of the appellants' application on 9 December. After argument the Lieutenant Bailiff was persuaded that the appellants should be provided with any further information available locally for purposes of the English proceedings, subject to the terms of an order which was the subject of detailed submissions. Thus the stay was lifted.

11. The interveners gave notice of appeal against that decision, on two grounds only. The first, repeating their primary submission to the Lieutenant Bailiff, was that the court had no jurisdiction to grant *Norwich Pharmacal* relief in aid of foreign proceedings. It is unnecessary to say more of this argument since the Court of Appeal rejected it and it was not pursued before the Board. The second ground (interpolating the current description of the parties) was this:

“2. The learned Lieutenant Bailiff wrongly decided that the information sought could be provided to the [appellants] upon their undertaking only to use it in respect of certain English proceedings notwithstanding that the learned Lieutenant Bailiff had found on 3rd November 2004 that there was at least a possibility that the information provided might be disseminated and that concerns were justified as to the possible use of information which might be disclosed by [the Bank] and that therefore the order of 30th April be stayed to enable the [appellants] to provide specific proposals as to how the Royal Court could retain some effective control over the use of the information if it were to be disclosed. Notwithstanding that finding and order the learned Lieutenant Bailiff ordered on 9th and 10th December that the information could be disclosed even though the [appellants] had not provided any proposals as to how the Royal Court could retain such control.”

This, therefore, was the ground upon which the interveners sought to challenge the order.

12. The Court of Appeal was not, however, content that the interveners should challenge the order upon such a limited basis. It prompted submissions by them that the facts alleged by the appellants did not support the grant of relief since their allegations did not demonstrate the necessary level of involvement by the Bank, a matter expressly conceded

below; that the Lieutenant Bailiff ought not to have permitted disclosure given the gravity of the claims made by the interveners and the seriousness of the consequences of the disclosure of the identities of the parties affected, which was not a ground relied on by the interveners; that the order ought not to have been made *ex parte*, of which the interveners had never complained; and that there was insufficient evidence upon which the court could rely to grant relief, again a complaint never made. At the prompting of the Court of Appeal the interveners amended their notice of appeal to incorporate these grounds, which duly featured in the Court of Appeal's judgment in favour of the interveners.

13. This was not a legitimate exercise of appellate authority. The interveners were professionally advised and represented throughout. It was not for the Court of Appeal to advance, and then uphold, submissions which the interveners had not, for whatever reason, thought fit to advance for themselves. The Court of Appeal was hearing an appeal against the decision of the Lieutenant Bailiff, not exercising an original jurisdiction. And, once the jurisdiction point had been disposed of, it was hearing an appeal against his exercise of discretion.

14. The Court of Appeal held that it was entitled to exercise its discretion afresh because the Lieutenant Bailiff's exercise of discretion was, on two grounds, flawed. These grounds, relied on by the interveners before the Board were, first, that the Lieutenant Bailiff had wrongly ignored evidence adduced by the interveners gravely damaging to the integrity of the government of Equatorial Guinea and, secondly, that he had mistaken the threshold for the grant of *Norwich Pharmacal* relief.

15. As to the first of these points, the Lieutenant Bailiff was not unmindful of the criticisms levelled at the regime in Equatorial Guinea, but he recognised that he could not resolve whether those criticisms (which were disputed) were justified. Further, he treated those criticisms as largely relevant to the reliability of the appellants' undertakings. This was proper, since it was the basis upon which that material was introduced. That aspect is considered below.

16. The second ground rested on the Lieutenant Bailiff's ruling, when summarising the principles governing the grant of *Norwich Pharmacal* relief, that

“The power to order discovery is discretionary. The Court should not so order unless it is satisfied that it is just and

convenient to do so (on the basis of, or by analogy with, [the grant of an injunction].”

The Court of Appeal held this to be misdirection (para 63 of its judgment):

“No *Norwich Pharmacal* type order should be made by the Royal Court unless the plaintiff establishes that it is essential and necessary [to assist the plaintiff in achieving justice] for the order to be made.”

It is true that in some of the cases the word “necessary” has been used, echoing or employing the language of Order 24, rule 13 of the Rules of the Supreme Court. But, as Templeman LJ observed in *British Steel Corporation v Granada Television Limited* [1981] AC 1096, 1132, “The remedy of discovery is intended in the final analysis to enable justice to be done”. *Norwich Pharmacal* relief exists to assist those who have been wronged but do not know by whom. If they have straightforward and available means of finding out, it will not be reasonable to achieve that end by overriding a duty of confidentiality such as that owed by banker to customer. If, on the other hand, they have no straightforward or available, or any, means of finding out, *Norwich Pharmacal* relief is in principle available if the other conditions of obtaining relief are met. Whether it is said that it must be just and convenient in the interests of justice to grant relief, or that relief should only be granted if it is necessary in the interests of justice to grant it, makes little or no difference of substance. In the present case the appellants were concerned to identify those who had financed the abortive coup in March 2004. It is not suggested that there was any legal means of doing so open to the appellants other than that which they chose.

17. Neither of the grounds relied on entitled the Court of Appeal to exercise the trial judge’s discretion afresh. There is, however, a more persuasive ground for challenging his exercise of discretion. If, on 3 November, he was, although narrowly, inclined against the grant of relief, for the reasons which he gave, the interveners contend that he had no reason to reach a different conclusion on 9 December. It seems safe to infer from the reasons he gave that he was impressed by the additional authority to which he had been referred.

18. The first of those authorities, *R v Governor of Brixton Prison, Ex p Kotronis* [1971] AC 250 is, indeed, a strong one. The applicant had been

convicted in his absence in Athens in 1966 of obtaining money by false pretences. In 1969 he was in England, and the Greek Government sought to extradite him. He resisted, partly on grounds of natural justice and partly because he contended that, as a political opponent of the Government, he would be detained by the military authorities after, or in lieu of, serving his sentence. This was not a fanciful apprehension. Greece was then ruled by the Colonels to whom, as to earlier governments, he was “anathema” (per Lord Parker CJ, at p 255); and he had already served three periods of imprisonment, each time without trial, for political reasons (*ibid*). Yet to treat him in that way would be a breach by the Greek Government of the extradition treaty between Greece and the United Kingdom. Lord Parker in the Divisional Court (p 262) and the House of Lords (pp 278-279, 280, 281) were unwilling to accept that a foreign government with which Her Majesty’s Government has diplomatic relations might act in such a manner.

19. In *Republic of Haiti v Duvalier* [1990] 1 QB 202, to which the Lieutenant Bailiff made brief reference in his judgment of 3 November, it was argued that disclosure should not be ordered in favour of the Government because the English court could not control the use made of it. The Court of Appeal was not ready to assume that the Government would break an undertaking given to the court (pp 217, 219), adding that it had complied scrupulously with its undertaking in the past. That, the interveners contended, was not true of Equatorial Guinea. But the Lieutenant Bailiff did not so find, and he was mindful (3 November judgment, para 87) of the respect due to a sovereign state. A similar approach was adopted by Morritt J in *Arab Monetary Fund v Hashim* [1989] 1 WLR 565.

20. Taken together, these were compelling authorities. It is a serious thing to impugn the good faith of a friendly foreign sovereign. Nor was any plausible suggestion made as to how the appellants were likely to misuse the information disclosed by the Bank even if minded to do so. The appellants wished to ascertain who had financed the abortive coup. The interveners’ accounts held with the Bank were likely to identify some of those involved, and have done so. In the circumstances the Lieutenant Bailiff’s reservations expressed on 3 November were dispelled. That he exercised his discretion with such obvious deliberation cannot fairly be relied on as a reason for invalidating his ultimate conclusion.

21. The Court of Appeal devoted several paragraphs of its judgment to disparaging and deriding the appellants’ claims as then formulated in the English proceedings. This was not an appropriate exercise. It is now

known, although the Lieutenant Bailiff could not have known, that after three days of argument in the High Court Davis J, for reasons given in a lengthy judgment of 21 September 2005, struck out the appellants' substantive claims. But he did not strike out their claim for an injunction, and he struck out their claim in conspiracy only because he felt bound by authority to do so. Leave to challenge that ruling has been given.

22. In the present instance the Lieutenant Bailiff addressed the submissions made to him in a comprehensive, fair and accurate manner. He is not shown to have erred in any significant respect. The Court of Appeal of Guernsey should not have reversed his decision, largely on grounds of its own. Nor should this Board.

23. Their Lordships cannot however part with this appeal without expressing disquiet at the fact that no argument was addressed, whether to the courts in Guernsey or to the Board, on the question of whether the Lieutenant Bailiff lacked jurisdiction to make the order which he did on the ground that it could be regarded as the enforcement, direct or indirect, of the public law of a foreign state. (Dicey and Morris, *Conflict of Laws* (13th ed) Rule 3(1) at vol 1, p. 89). As Lord Denning MR said in *Attorney-General of New Zealand v Ortiz* [1984] AC 1, 21 (a passage approved by Lord Goff of Chieveley in *Re Norway's Application (Nos 1 and 2)* [1990] 1 AC 723, 807-808):

“By international law every sovereign state has no sovereignty beyond its own frontiers. The courts of other countries will not allow it to go beyond the bounds. They will not enforce any of its laws which purport to exercise sovereignty beyond the limits of its authority.”

24. It appears to their Lordships well arguable that the claims which the appellants say they wish to make in the English proceedings represent an exercise of sovereign authority, namely the preservation of the security of the state and its ruler. The apprehension and trial of suspects, the imposition of security measures, obtaining diplomatic assistance: these heads of damage alleged by the appellants in the English proceedings can all be regarded as aspects of sovereign authority. And if a claim for damages will not lie, neither will a claim for an injunction: see *Associated Newspapers Group Plc v Insert Media Ltd* [1988] 1 W.L.R. 509. As the High Court of Australia said in *Attorney-General (United Kingdom) v Heinemann Publishers Australia Pty Ltd* (1988) 165 CLR 30, 46, the application of the rule depends upon whether the “central interest” of the state bringing the action is governmental in nature. In that case, which

concerned the *Spycatcher* book, the court held that notwithstanding the private law character of the cause of action (confidentiality) and the relief sought (an injunction), the claim arose out of “an exercise of the prerogative of the Crown, that exercise being the maintenance of the national security”.

25. Some discussion of the same principle is to be found in *Emperor of Austria v Day and Kossuth* (1861) 3 De G & F & J 217, where Lord Campbell LC (at p. 232) regarded it as axiomatic that a court of equity would not grant an injunction to restrain someone from doing acts “to effect a revolution” in another country. Lord Justice Turner likewise said (at p. 250) that an English court had no jurisdiction to interfere with acts intended “for the purpose of promoting revolution and disorder in the Kingdom of Hungary”. The appellants argue that their claims are personal and proprietary: threats to the safety of the President and the property of the state as well as the expense of suppressing a coup. But there can be few revolutions which are guaranteed not to cause any injury or damage or that can be suppressed without putting the ruling power to expense. It may therefore be that the question is not whether the claim is framed by reference to personal injury or damage to property but whether, as the Australian High Court said, the “central interest” of the state in bringing the action is governmental in nature.

26. There are sound reasons of policy for the rule that the courts should not become involved in providing remedies, whether by way of injunction or compensation, for foreign governments faced with revolutionary activities. As their Lordships have said, the Lieutenant Bailiff rightly declared himself unable to resolve the questions of whether the government of Equatorial Guinea was an oppressive tyranny or not and whether it could be trusted to honour its undertakings. To refuse to provide assistance on such grounds to the government of a state with which Her Majesty has friendly diplomatic relations would be invidious. For this very reason, the principle is to refuse to assist in enforcing the public law of any foreign state. As Kingsmill Moore J said in *Buchanan Ltd v McVey (Note)* [1955] AC 516, 529, “safety lies only in universal rejection”. Likewise in *Moore v Mitchell* (1929) 30 F. (2d) 600, 604, Learned Hand J said:

“To pass upon the provisions for the public order of another State is, or at any rate should be, beyond the powers of the court; it involves the relations between the States themselves, with which courts are incompetent to deal, and which are intrusted to other authorities. It may commit the domestic State to a position which would seriously

embarrass its neighbour. Revenue laws fall within the same reasoning; they affect a State in matters as vital to its existence as its criminal laws. No court ought to undertake an inquiry which it cannot prosecute without determining whether those laws are consonant with its own notions of what is proper."

27. That is not to say that there should not be international co-operation in dealing with violence against the state or the financing of terrorism. On the contrary, the need for such co-operation has become more evident in recent years. It is however arguable that the proper branches of government to make decisions of this kind are the legislature and the executive. The United Kingdom is a party to international conventions which provide for mutual co-operation in such cases and the government of Equatorial Guinea has in fact requested assistance under the *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons* (1035 UNTS 167, entered into force Feb 20, 1977) and the *Convention for the Suppression of the Financing of Terrorism* (UN Doc A/54/49 (Vol 1) (1999), entered into force 10 April 2002). Their Lordships do not know how productive this request has been.

28. Their Lordships have recorded these arguments in order to make it clear that, despite not having been presented, they have not been overlooked. But they consider that it is not open to them, any more than it was to the Court of Appeal, to decide the case upon a point which has not been raised by the parties. They will accordingly humbly advise Her Majesty that the appeal should be allowed with costs and the order of the Lieutenant Bailiff reinstated. Since, however, the same questions in relation to English law are likely to come before the English Court of Appeal, their Lordships think that the order should be suspended until that court has decided whether the appellants have a cause of action enforceable in English law. If it appears that they do not, it will be open to the respondents to apply to the Royal Court for the Lieutenant Bailiff's order to be discharged.

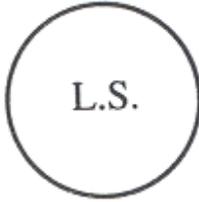
IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 4th day of September, 2006 before Richard John Collas, Esquire, Deputy Bailiff; present:- David Charles Lowe, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray and David Osmond Le Conte Esquire, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of the Judicial Committee of the Privy Council dated the 13th July 2006, dismissing the petition of Logo Limited and Systems Design Limited to set aside the costs order made on 8th March 2006 in those proceedings between (1) President of the State of Equatorial Guinea and (2) The Procurer of the State of Equatorial Guinea and (1) The Royal Bank of Scotland International (2) Logo Limited (First Intervener) and (3) Systems Design Limited (Second Intervener) (Respondents). THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ORDERED:-

1. That the said Order in Council be registered on the records of this Island, and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively.

S.M.D.ROSS
Her Majesty's Deputy Greffier



AT THE COUNCIL CHAMBER WHITEHALL

The 13th day of July 2006

BY THE RIGHT HONOURABLE THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

WHEREAS by an Order in Council dated 8th March 2006 it was ordered that an Appeal from the Court of Appeal of Guernsey between (1) President of the State of Equatorial Guinea and (2) The Procurer of the State of Equatorial Guinea (Appellants) and (1) Royal Bank of Scotland International (2) Logo Limited (First Intervener) and (3) Systems Design Limited (Second Intervener) (Respondents) (Privy Council Appeal No. 59 of 2005) should be allowed with costs and the order of the Lieutenant Bailiff reinstated. However, as the same questions in relation to English law are likely to come before the English Court of Appeal, their Lordships think that the order should be suspended until the court has decided whether the appellants have a cause of action enforceable in English law. If not, it will be open to the respondents to apply to the Royal Court for the Lieutenant Bailiff's order to be discharged.

THE LORDS OF THE COMMITTEE having taken the question of the costs of the Appeal into consideration and having considered a Petition from the second and third Respondents to set aside the costs order, and the response of the Appellants, direct that the Petition should be dismissed.

M.E. Macdonald,
Registrar of the Privy Council

