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# REPORT

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## **THE LEGAL PRINCIPLES GOVERNING THE CONTROL OF NATIONAL AIRSPACE AND FLIGHT INFORMATION REGIONS AND THEIR APPLICATION TO THE EASTERN MEDITERRANEAN**

### INTRODUCTION

It is a fundamental and universally recognised principle of international law that ‘every State has complete and exclusive sovereignty over the airspace above its territory’.<sup>1</sup> As Shawcross & Beaumont state, ‘the concept of sovereignty is the key stone upon which virtually all air law is built, since any flight in international aviation requires the prior consent of the State overflown, which is generally granted by treaty.’<sup>2</sup> The territory of a State consists of ‘the land areas and territorial waters adjacent thereto under the sovereignty... of such State’.<sup>3</sup>

The corollary of this principle, the international status of the airspace above the high seas, is equally well established. The airspace of the high seas, like the subjacent waters, is not subject to the territorial sovereignty of any State.<sup>4</sup> The airspace of the high seas is the airspace above ‘all parts of the sea that are

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<sup>1</sup> Art 1, Chicago Convention on International Civil Aviation 1944. The Convention has 190 parties, including Cyprus, Greece, Turkey and the UK. Art 1 was intended to be, and is, declaratory of customary international law. The upper limit of airspace is not yet defined. Various theories and proposals have been put forward, including the lowest altitude at which a satellite can remain in orbit (c 56 miles / 90 kms). In 1983 the USSR proposed 110 kms. The issue is still under discussion in the UN Committee on the Peaceful Uses of Outer Space. In practice, however, the highest altitude at which aircraft can fly is well below the lowest possible perigee of a satellite in orbit, so the lack of vertical delimitation has not posed problems.

<sup>2</sup> Shawcross & Beaumont, *Air Law* (4<sup>th</sup> revised edition, 2005), I-26.

<sup>3</sup> Art 2 of the Chicago Convention. Art 3 of the UN Convention on the Law of the Sea 1982 provides for a maximum territorial sea breadth of 12 miles.

<sup>4</sup> Art 89 of the UN Convention on the Law of the Sea provides: ‘No State may validly purport to subject any part of the high seas to its sovereignty.’

not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State'.<sup>5</sup> Since the high seas are open to all States, the legal regime is characterised by the principle of freedom. One element of the freedom of the high seas is the freedom of overflight.<sup>6</sup> The freedom of overflight is not absolute, however. It must be 'exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas'.<sup>7</sup>

The airspace of the high seas being an international space, aircraft flying there are generally subject to the exclusive jurisdiction of their State of registry. This corresponds to the legal status of ships on the high seas; where the rule of exclusive flag State jurisdiction applies<sup>8</sup> save in exceptional cases expressly provided for in international treaties (e.g. hot pursuit).<sup>9</sup> Like warships on the high seas, military aircraft in the airspace of the high seas have complete immunity from the jurisdiction of any State other than their State of registry.<sup>10</sup>

Since the legal status of airspace reflects that of the subjacent land or waters, the issues of delimitation and legal regime are inextricably linked. Territorial disputes between States can endanger civil aviation, as illustrated by the long-standing Aegean Sea airspace dispute. Turkey insists that Greek airspace extends only 10 km (6 miles) offshore, whereas Greece claims that it extends 16 km (10 miles). In May 2006 Greek and Turkish F-16 fighters collided at about 27,000 feet over the southern Aegean Sea, some 21 miles southeast of the island of Karpathos. Greece said that its planes had intercepted Turkish aircraft in Greek airspace, whereas Turkey claimed that the Greek planes had interfered with Turkish manoeuvres in international airspace. A Greek pilot was killed. An Olympic Airways pilot was quoted as saying: 'We obey the rules of the sky, but the fighter pilots do not.' And a Greek air investigator observed: 'There is very limited space over the Aegean Sea and its air corridors are very crowded. It is only a matter of time before a warplane crashes into a commercial plane.'<sup>11</sup>

## THE REGULATION OF FLIGHT OVER THE HIGH SEAS

The airspace in respect of which a State is responsible under the International Civil Aviation Organisation (ICAO) for operational control is called a Flight Information Region (FIR). The term 'FIR' is defined in Annex 2 to the Chicago Convention as: 'An airspace of defined dimensions within which flight information service and alerting services are provided'.

For a landlocked country, the FIR consists only of the country's sovereign (territorial) airspace. The FIR of a large State may be divided up into a number of regional FIRs. For a coastal State, the FIR consists of the airspace above its land and sea territory plus any international airspace in respect of which ICAO has assigned responsibility to that State. For example, the UK FIRs / UIRs<sup>12</sup> (London / Scottish) consist of the

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<sup>5</sup> Ibid, Art 86. The Exclusive Economic Zone (EEZ) can extend up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. Within the EEZ, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the superjacent waters, sea-bed and subsoil. All States enjoy the freedom of overflight in the EEZ.

<sup>6</sup> Ibid, Art 87(1)(b). In Art 2(4) of the Geneva Convention on the High Seas 1958 it was called 'the freedom of aviation'.

<sup>7</sup> Ibid, Art 87(2).

<sup>8</sup> Ibid, Art 92(1).

<sup>9</sup> Ibid, Art 111.

<sup>10</sup> Ibid, Art 95.

<sup>11</sup> BBC News, 24 May 2006: <http://news.bbc.co.uk/1/hi/world/europe/5011646.stm>.

<sup>12</sup> 'UIR' means Upper (Flight) Information Region, at Flight Level 250 and above (i.e. 25,000 feet indicated on an altimeter set to 1013.2 mbs).

airspace above UK land and sea territory plus the international airspace assigned to the UK by ICAO.<sup>13</sup> The UK FIRs / UIRs borders the Stavanger, Amsterdam, Paris, Brest, Shannon FIRs and the Shanwick and Reykjavik Oceanic Control Areas (OCAs).

The North Atlantic Track (NAT) Region comprises seven FIRs / UIRs / OCAs including Reykjavik and Shanwick (based at Prestwick in Scotland but using radio facilities near Shannon in Ireland). Together, they operate an upper airspace track structure and provide an air traffic separation and information service for all aircraft crossing the North Atlantic. Flights above the eastern half of the North Atlantic, up to longitude 30° W, are controlled by Shanwick. West of that boundary they are controlled by Gander and New York. The Organised Track System consists of several approximately parallel tracks from points off the west coasts of the UK and Ireland to points on the Canadian coasts, with a similar number of tracks designated for eastbound traffic. The tracks are selected by computer, the main consideration being the weather. They also take account of preferred routes, danger areas and military airspace reservations.

Although the freedom of aviation applies over the high seas, it is not absolute. Freedom must be regulated in the interests of all who are entitled to enjoy it. In this regard, Article 12 of the Chicago Convention reflects the special legal regime of the airspace over the high seas. It requires each contracting State to ensure that all aircraft bearing its nationality mark, wherever they may be, comply with the rules of the air there in force (i.e. the rules of the air applicable to the particular airspace). Since the regulation of flight over the high seas is a matter of international competence, Article 12 provides that '[o]ver the high seas, the rules in force shall be those established under this Convention'. Thus, compliance with ICAO's rules of the air is mandatory in the airspace of the high seas. Those rules are found mainly in Annex 2 to the Chicago Convention. They include the rule that a flight plan must be submitted to the appropriate ATS unit<sup>14</sup> prior to operating any flight across international borders (i.e. FIR borders). As the Convention applies only to civil aircraft and is not applicable to State aircraft, including 'aircraft used in military services',<sup>15</sup> however, the rules of the air established under it apply only to civil aircraft. Nevertheless, the parties to the Convention have undertaken, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft.<sup>16</sup> In practice, most States ensure that their military aircraft comply with the rules of the air but, as discussed below, there have been many instances of non-compliance in the Nicosia FIR.

## AIRSPACE SOVEREIGNTY AND AIR TRAFFIC CONTROL PROCEDURES IN THE NICOSIA FIR

The geographical location of Cyprus gives it a vital strategic position and makes it an important business and tourist destination for people all over the world. Not surprisingly, therefore, the Nicosia FIR is one of the busiest in the region. Inherited from British administration, it consists of the airspace over the land and sea territory of the Republic of Cyprus plus the international airspace over the Eastern Mediterranean in respect of which ICAO has assigned responsibility to Cyprus.<sup>17</sup>

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<sup>13</sup> See Eurocontrol chart 'FIR / UIR in the Lower Airspace' (Source: National AIPs, Effective: 12 March 2009).

<sup>14</sup> i.e. the appropriate ATC unit.

<sup>15</sup> Art 3(a) and (b) of the Chicago Convention.

<sup>16</sup> Ibid, Art 3(d).

<sup>17</sup> For the FIR boundaries, see ICAO Enroute Chart ENR 6.1, 'Nicosia FIR – ATS and RNAV Routes', edition 01, Date of Issue 23/10/2008. See also the Eurocontrol chart, above, note 13. Nicosia International Airport has not operated since 1974 as it is within the UN Buffer Zone.

According to Article 1 of the Treaty of Establishment, the Republic of Cyprus comprises the Island of Cyprus, together with the islands lying off its coast, with the exception of the two Sovereign Base Areas (SBAs) of Akrotiri and Dhekelia.<sup>18</sup> The Cyprus Act confirms that the establishment of the Republic of Cyprus as an independent country does not affect UK sovereignty or jurisdiction over those areas.<sup>19</sup> Under Appendix O to the Treaty of Establishment, Cypriots (and others resident in the Republic) have the freedom of navigation and fishing in the territorial waters of the SBAs, but the freedom of aviation in the superjacent airspace is not mentioned.<sup>20</sup> Since the SBAs are within the Nicosia FIR, there would appear to be areas of UK airspace within the Nicosia FIR. If so, this situation would seem to be similar to that of the Channel Islands (which are not Overseas Territories but Crown Dependencies under the sovereignty of the British Crown) being situated within the Brest FIR, one of France's regional FIRs.<sup>21</sup>

In *R (Kıbrıs Türk Hava Yolları CTA Holidays) v Secretary of State for Transport*,<sup>22</sup> however, concerning permits to fly between the UK and northern Cyprus, Mr Justice Wynn Williams observed that the Republic of Cyprus 'has exclusive sovereignty over the airspace above the whole of the island of Cyprus and territorial waters adjacent thereto.'<sup>23</sup> Although his Lordship had earlier noted that by virtue of s 2 of the Cyprus Act the Republic of Cyprus is declared to comprise the entirety of the island of Cyprus with the exception of the two Sovereign Base Areas,<sup>24</sup> his statement about the Republic's airspace sovereignty was not similarly qualified. Nevertheless, he correctly rejected the claimants' submission that the term 'sovereignty' in Art 1 of the Chicago Convention presupposes the exercise of effective control over the area in question.<sup>25</sup> In rejecting their application for judicial review of the Secretary of State's refusal to vary an existing operating permit<sup>26</sup> and to issue a permit to operate specified charter flights, the judge held that granting the permits sought would have violated the UK Government's legal duty not to recognise the 'TRNC' and would have placed the UK in breach of its obligations under the Chicago Convention.<sup>27</sup>

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<sup>18</sup> Treaty No 5476, Nicosia, 16 August 1960:

[http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/F207EF6146AA7AFEC22571BF0038DDC6/\\$file/Treaty%20of%20Establishment.pdf](http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/F207EF6146AA7AFEC22571BF0038DDC6/$file/Treaty%20of%20Establishment.pdf).

<sup>19</sup> s 2(1)(a) of the Cyprus Act 1960.

<sup>20</sup> Appendix O, Art 3(1).

<sup>21</sup> On 1 March 2002, the Republic of Cyprus took over from the SBAs the responsibility of providing Search and Rescue (SAR) Services for aeronautical and maritime accidents in the international area under its jurisdiction, which is identical to the Nicosia FIR. The UK had provided SAR Services in the Nicosia FIR since 1960, under Annex B, Part V, Section 9 of the 1960 Treaty of Establishment which provides: 'In so far as the services established for their own use make this possible, the United Kingdom authorities shall make available search and rescue facilities for all civil aircraft within the flight information region administered from Nicosia.' The UK continues to meet its treaty commitment by making military helicopters available to assist as required in SAR operations in the Nicosia FIR. See Hansard, HL, 27 March 2002: Col WA55.

<sup>22</sup> [2009] EWHC 1918 (Admin). The Republic of Cyprus intervened in the proceedings as an Interested Party.

<sup>23</sup> Para 43.

<sup>24</sup> Para 12.

<sup>25</sup> Paras 40-41. In Case C-420/07 *Apostolides v Orams* (28 April 2009), the European Court of Justice similarly found that the Republic of Cyprus continues to have sovereignty over the northern part of the Island despite not exercising effective control there.

<sup>26</sup> The existing permit allowed the first claimant, a Turkish airline, to operate scheduled passenger services on routes 'Points in the Republic of Turkey – Intermediate Points – Points in the United Kingdom – Points beyond' but prohibited the picking up of passengers at intermediate points (e.g. Ercan) or in the UK for setting down at intermediate points. The variation, if granted, would have allowed the airline to 'to take on board and discharge passengers, baggage and cargo at a point or points in the United Kingdom carried or to be carried on services from the United Kingdom to northern Cyprus and vice versa'.

<sup>27</sup> Paras 90-91. The court held that the UK would have been in breach of its obligation to respect and uphold the rights conferred upon Cyprus by Arts 5, 6, 10 and 68 of the Convention.

ICAO's enroute chart for the Nicosia FIR, showing airways, control zones, reporting points and navigation aids,<sup>28</sup> warns that '[t]he entire airspace over the territory of the Republic including its territorial waters' is a prohibited area and that '[o]verflying aircraft are restricted within the established airways and, as instructed by Air Traffic Control, within the Control Zones.'<sup>29</sup> Given that this prohibition/restriction applies only to the Republic's territorial airspace and not to the international airspace within the Nicosia FIR, it is consistent with Article 9 of the Chicago Convention as long as certain other conditions are fulfilled. Article 9(a) provides:

Each contracting State may, for reasons of military necessity or public safety, restrict or prohibit uniformly the aircraft of other States from flying over certain areas of its territory, provided that no distinction in this respect is made between the aircraft of the State whose territory is involved, engaged in international scheduled airline services, and the aircraft of the other contracting States likewise engaged. Such prohibited areas shall be of reasonable extent and location so as not to interfere unnecessarily with air navigation. Descriptions of such prohibited areas in the territory of a contracting State, as well as any subsequent alterations therein, shall be communicated as soon as possible to the other contracting States and to the International Civil Aviation Organisation.

Similarly, under Article 9(b) of the Convention each contracting State reserves the right,

in exceptional circumstances or during a period of emergency, or in the interest of public safety, and with immediate effect, temporarily to restrict or prohibit flying over the whole or part of its territory, on condition that such restriction or prohibition shall be applicable without distinction of nationality to aircraft of all other States.<sup>30</sup>

Article 9(c) provides that each contracting State, under such regulations as it may prescribe, may require any aircraft entering the areas contemplated in subparagraphs (a) or (b) to land as soon as practicable at a designated airport within its territory.<sup>31</sup>

According to ICAO, the authority for Air Traffic Control (ATC) within the Nicosia FIR rests solely with Nicosia Area Control Centre (ACC). ATC instructions must only be accepted from Nicosia ACC,<sup>32</sup> which is

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<sup>28</sup> See note 17.

<sup>29</sup> See also AIP Cyprus, ENR 5.1-1, 23 Oct 08, Department of Civil Aviation, ENR 5: 'Navigation Warnings', ENR 5.1: 'Prohibited, Restricted and Danger Areas'. This indicates that the prohibition / restriction applies 'H24' and without upper limit.

<sup>30</sup> Cf Section 7(2) of Annex B to the Treaty of Establishment, which provides: 'Without prejudice to the provisions of paragraph 4 of this Section, in the interests of the security of air navigation, the authorities of the Republic of Cyprus shall take steps to limit or prohibit aircraft, other than United Kingdom military aircraft, from flying in the airspaces and during the periods specified from time to time by the United Kingdom authorities over such parts of the training areas, ranges, range areas and localities used in accordance with this Part of this Annex as are within the territory of the Republic. This prohibition shall extend to – (a)...(b)...(c)...(d)...' See further note 42 below.

<sup>31</sup> See further AIP Cyprus, ENR 1.12-1, 25 Jul 07, Department of Civil Aviation, ENR 1.12: 'Interception of Civil Aircraft'. This sets out the procedures and visual signals applicable over the land territory and territorial waters of the Republic of Cyprus in the event of interception of an aircraft. Under Art 3 *bis* (a) of the Chicago Convention, the contracting States recognise that every State must refrain from resorting to the use of weapons against civil aircraft in flight and that, in the case of interception, the lives of persons on board and the safety of aircraft must not be endangered.

<sup>32</sup> The boundary between Ankara and Nicosia FIRs / UIRs, as described in ICAO Doc 7754, runs from N3605 E03000 to N3558 E03230 to N3555 E03333 to N3555 to E03540.



also the sole authority for the allocation of SSR codes.<sup>33</sup> Nicosia ACC is thus responsible for the provision of Air Traffic Services for all flights within the Nicosia FIR, whether to or from Larnaca / Paphos airports or overflying Cyprus. A network of airways links the adjacent FIRs / UIRs (Athens, Cairo, Tel-Aviv, Beirut, Damascus and Ankara).

A contributor to an aviation blog has highlighted the importance of good coordination between adjacent ACCs and the problems associated with the lack of direct contact between Ankara ACC and Nicosia ACC:

Air Traffic Control relies heavily on coordination between adjacent ACCs. For example, when an aircraft flies from Athens to Cyprus the Greek controller will call his colleague at Nicosia ACC and give him details of the flight, such as the level at which the aircraft flies and the time it estimates to reach Cyprus. This information will enable the Cypriot controller to plan ahead as to what to instruct the pilot of the aircraft in order to reach its destination safely and quickly. As a result of the Turkish invasion of 1974 this communication has been lost between Turkey and Cyprus. The effect of this is that aircraft can enter the Cyprus FIR at its Northern boundaries with Turkey, without allowing the Cypriot controller the time to decide how to handle the aircraft. In order to minimize the problem, the Cyprus Civil Aviation Authority has issued instructions to aircraft operators so that when an aircraft is flying over Turkey on a route that will bring it over Cyprus then the pilot must call Nicosia ACC 10 minutes prior to entering Cyprus FIR, giving details of its flight (level, route etc.) The entry points to the FIR that are affected by this situation are TOMBI and VESAR.

Ankara ACC, in its effort to change the status quo, instructs aircraft on a southbound course towards Cyprus, on passing points well before the Ankara FIR boundary, to contact Ercan Control, an ATC unit in the occupied part of the island which is not recognised by ICAO. ICAO only recognises the legal government of Cyprus and has issued instructions to aircraft operators to obey only Nicosia ACC when in the Cyprus FIR.<sup>34</sup>

The accuracy of that blog entry is confirmed by the following Briefing Bulletin concerning IATA Communications / Control Procedures in the Nicosia FIR/UIR.<sup>35</sup>

#### A. General

Authority for Air Traffic Control within Nicosia FIR/UIR rests solely with Nicosia ACC.... ATC instructions must **ONLY** be accepted from Nicosia ACC, including allocation of SSR codes.

Most of the northern part of Nicosia FIR/UIR, inclusive of a wide area of the high seas, has been identified by Ercan Control, a station based in northern Cyprus, falling under the Turkish Cypriot administration, as a zone under its control. The authority of Ercan Control over this zone for Air traffic Control purposes is **NOT** recognized by ICAO

Contrary to ICAO requirements, no contact is effected between Ankara and Nicosia ACCs. Nicosia ACC requires that aircraft approaching Nicosia FIR/UIR from Ankara FIR make pre-entry contact **at least 10 minutes before the FIR boundary**. It is essential that crews comply with this requirement: **only then will Nicosia ACC be in a position to assume control and provide appropriate traffic separation.**

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<sup>33</sup> 'SSR' means Secondary Surveillance Radar. An SSR Transponder on board an aircraft identifies that aircraft on ATC radar screens by responding to signals transmitted from a ground station.

<sup>34</sup> The Professional Pilots Rumour Network (PPRuNe), <http://www.pprune.org/archive/index.php/t-285080.html>, 26 July 2007. The entry appears to have been made by someone from the Cyprus ATC association.

<sup>35</sup> Jeppesen Briefing Bulletin, 12 Mar 99, attached to IFALPA Safety Bulletin, 2 August 2006: <http://www.ifalpa.org/downloads/Level1/Safety%20Bulletins/2006/07SAB07-Ankara%20and%20Nicosia%20FIR%20procedures.pdf>. Emphasis in the original. 'IATA' is the International Air Transport Association.

## B. Southbound Procedures

While in Ankara FIR comply with control instructions issued by Ankara ACC (either directly or by relay through any other station designated by Ankara, e.g. **Ercan Control**....) up to point VESAR...or point TOMBI ...

Establish contact with Nicosia ACC **at least 10 minutes before FIR BDY**. Once contact established and flight details including Flight Level (FL) information passed, **avoid making requests to Ankara ACC for FL changes for the rest of the flight through Ankara FIR**, unless climbing from or descending to aerodromes in the immediate vicinity of the FIR boundary. If for any reason it becomes absolutely necessary to make such level changes after the initial contact with Nicosia while still in Ankara FIR, it is important for safety reasons that Nicosia ACC be advised at once of the change.

At VESAR or TOMBI, flights will come under the sole control of Nicosia, change automatically to Nicosia ACC. Although no formal transfer of control procedures is effected between Ankara and Nicosia ACCs and no changeover instructions are issued on crossing the FIR boundary, flights should thereafter **ONLY** accept control instructions issued by Nicosia ACC until handover to the next ATC unit or FIR / UIR. Any invitation to change to another station (e.g. Ercan Control) should be politely acknowledged but disregarded. In case of insistence a check should be made with Nicosia ACC.

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Similarly, due to the lack of contact between the two ACCs, when northbound in the Nicosia FIR, flight information must be provided to Ankara ACC at least 10 minutes before crossing the Nicosia / Ankara FIR boundary. IATA procedures emphasise that Nicosia ACC's control authority remains absolute up to the point of entry into Ankara FIR, however.

In August 2006, against the background of the conflict in Lebanon, combined with the expectation of an increase in air traffic in the region as humanitarian and relief flights increased, ICAO reminded operators of the procedures to be followed in the Nicosia and Ankara FIRs. It reminded them 'as a matter of urgency' to strictly adhere to the specific procedural requirements at the interface between the two FIRs (especially the '10 minutes' requirement) and, to ease the handling of traffic and coordination procedures, requested all transit traffic through Nicosia FIR (and not operating to or from airports in the area) 'to avoid changing Flight Level to the maximum extent possible'.<sup>36</sup>

In terms of eastbound traffic, the blog contributor reports that Ercan Control's attitude sometimes causes problems:

For example, although Ercan has no direct communication with neighbouring airports such as Beirut and Damascus, it often issues descent clearances to aircraft proceeding to those destinations. Obviously Cypriot controllers must work extra hard to ensure that safety is not impaired at the area of FIR transition and so far we have managed to carry out this task admirably well.<sup>37</sup>

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<sup>36</sup> <http://www.caa.co.uk/docs/33/fod200612.pdf>.

<sup>37</sup> See note 34.

In November 2006, ICAO's European Air Navigation Planning Group 'agreed that the communication difficulties and confusing coordination experienced by flights operating in the northern part of the Nicosia FIR should be included in the list of deficiencies in the European Region'. An Appendix to the Report described the problem in the following way:

Long lasting issue. Any envisaged solution requires the intervention of the two involved States in order to find suitable solution.<sup>38</sup>

## AERIAL INCIDENTS IN THE NICOSIA FIR

Although ICAO's rules of the air do not apply to military aircraft, in practice most States ensure that their military aircraft comply with them in the airspace over the high seas. Indeed, Art 3(d) of the Chicago Convention provides:

The contracting States undertake, when issuing regulations for their state aircraft, that they will have due regard for the safety of navigation of civil aircraft.

That obligation is reflected in Section 4(2) of Part II of Annex B to the Treaty of Establishment, which provides:

The United Kingdom authorities shall have the right for United Kingdom military aircraft to fly in the airspace over the territory of the Republic of Cyprus without restriction other than to have due regard for the safety of other aircraft and the safety of life and property in the Republic of Cyprus.<sup>39</sup>

On 27 February 2003, a few weeks before the start of military action against Iraq, the US Embassy in Nicosia issued a release concerning US military aircraft flights in Nicosia FIR:

The United States Embassy notes that all US military flights operating in international airspace within Nicosia Flight Information Region follow or exceed all applicable international procedures to ensure that air safety in the region is maintained. The United States government is committed to ensuring US military flights in international air space near Cyprus operate with due regard for the safety of civilian aircraft in the area.<sup>40</sup>

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<sup>38</sup> ICAO, Doc EANPG/48 – Report of the Forty-Eighth Meeting of the European Air Navigation Planning Group, Paris, 28-30 November 2006, Para 6.2 and Appendix O. The Appendix states 'Priority for action A' and 'Date of Completion ASAP'.

<sup>39</sup> Annex B, Part IV, Section 1 states that in addition to the other rights conferred by the Treaty of Establishment, and, in particular, the right of overflight under Section 4(2) of Part II, the UK authorities shall have the right from time to time to engage in training within the territory of the Republic of Cyprus and the airspace over it. The areas to be used, the periods during which training shall take place, and other special arrangements in connexion with training are set out in the following Sections of Part IV of the Annex.

<sup>40</sup> <http://nicosia.usembassy.gov/uspolicy/pr-fir.htm>.



The relevant international procedures are not always followed, however. The Government of Cyprus has frequently drawn the UN Secretary-General's attention to violations of the Nicosia FIR by Turkish military aircraft. For example, a letter dated 25 June 2005 from the Permanent Representative of Cyprus to the United Nations stated:<sup>41</sup>

Moreover, it should also be mentioned that on 13 October 2005, two F-16 and two RF-4 Turkish military aircraft flying in a single formation violated three times international air traffic regulations, and once the national airspace of the Republic of Cyprus. Initially they entered the flight information region (FIR) of Nicosia from an easterly direction (FIR of Ankara) without prior notice, and then flew perimetrically along the south coast of Cyprus at a distance of 17 nautical miles; the distance was reduced to 10 nautical miles over the Akrotiri area. The four aircraft violated the national airspace of the Republic of Cyprus, flying over the occupied area of Karpasia before exiting towards the FIR of Ankara. It is also noted that while in the south-east part of the FIR of Nicosia the formation entered an activated dangerous zone (LCD3) where five British aircraft were involved in a military exercise.

Furthermore, on 14 October 2005, two F-16 and four RF-4 Turkish military aircraft, flying in a single formation, twice violated international air traffic regulations and twice the national airspace of the Republic of Cyprus. Initially they entered the FIR of Nicosia from the FIR of Ankara without prior notice and then overflew perimetrically along the south coast of Cyprus at a distance of 14 nautical miles and at 10 nautical miles while approaching the Akrotiri area. The formation violated the national airspace of the Republic of Cyprus flying near the Akrotiri area and over the occupied area of Karpasia before exiting towards the FIR of Ankara.

In both of these incidents, the Turkish military aircrafts did not make contact with the Nicosia flight control nor did they submit flights plans to the competent authorities or request the appropriate clearance permission, thus posing a serious threat to civil aviation in the area.

By way of contrast, in May 2000 Israel apologised to Cyprus for repeated violations of the Nicosia FIR by its military aircraft. The Government of Cyprus had complained that on over 100 occasions Israeli military aircraft had entered the Nicosia FIR without first submitting flight plans to the local aviation authorities. It was reported that the Israeli ambassador had conveyed the apologies of the Israeli air force for the problem caused.<sup>42</sup>

Unauthorised entry into a State's territorial airspace (i.e. the airspace over which the State enjoys complete and exclusive sovereignty) by the military aircraft of another State violates Article 3(c) of the Chicago Convention, which provides that '[n]o state aircraft of a contracting State shall fly over the territory of another State or land thereon without authorisation by special agreement or otherwise, and in accordance with the terms thereof.' In certain circumstances it could also violate Article 2(4) of the UN Charter, which prohibits the threat or use of force against the territorial integrity or political independence of any State.

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<sup>41</sup> Embassy of Cyprus in Sweden: [http://www.cyprusemb.se/dbase/cypemb/archive\\_378.asp](http://www.cyprusemb.se/dbase/cypemb/archive_378.asp). For the details of other protests, see the following UN documents: A/55/527-S/2000/1041, 27 October 2000; A/55/776-S/2001/119, 8 February 2001; A/55/990-S/2001/599, 18 June 2001; A/56/785-S/2002/100, 22 January 2002; A/56/925-S/2002/441, 18 April 2002; and UN General Assembly, Fifty-seventh session, Agenda item 31 of the preliminary list, 3 July 2003.

<sup>42</sup> Jerusalem Post, 26 May 2000: <http://www.encyclopedia.com/doc/1P1-26975380.html>.

## CONCLUSION

As the aerial incidents and the various communications / control issues referred to above demonstrate, most of the problems experienced in the Nicosia FIR cannot be separated from the wider and deep-rooted geo-political issues. In the interests of the safety of civil aviation in the region, and of international peace and security, it is to be hoped that a lasting solution may be found to those underlying issues. More particularly, there would seem to be at least three main challenges with regard to national airspace and FIRs in the Eastern Mediterranean. First, the risk that civil aircraft may be hijacked and/or transformed into guided missiles as on 11 September 2001. Secondly, the risk of civil aircraft being brought down like Pan Am flight 103 over Lockerbie or Iran Air flight 655 over the Strait of Hormuz.<sup>43</sup> And thirdly, it is conceivable that the Eastern Mediterranean may have a part to play in the ballistic missile defence calculations of the US, the UK and other States.<sup>44</sup>

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<sup>43</sup> Both incidents occurred in 1988. The Iranian airliner had been flying from Iran to Dubai when it was shot down by a US warship. An ICAO report was highly critical of the USA. In particular, there had been no coordination between US warships in the Gulf and local ATC units. See *Destruction of Iran Air Airbus A300 in the vicinity of Qeshm Island, Republic of Iran on 3 July 1988*, Report of ICAO Fact-Finding Investigation, 28 ILM (1989), p 843.

<sup>44</sup> See e.g. Hansard, HL, 28 February 2007: Cols 1598-9.