Neutral Citation Number: [2025] EWHC 483 (KB)

Case No: KB-2023-LIV-000027

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Liverpool Civil and Family Court
Vernon Street, Liverpool, L2 2BX

Date: 07/03/2025

Before :

THE HONOURABLE MR JUSTICE TURNER

- -

Between :

Sean Abram and Others	**Claimants**
- and -	
(1) Union des Associations Européens de Football (UEFA) **(2) UEFA Events SA**	**Defendants**

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Matthew Chapman KC and Alistair Mackenzie
(instructed by **Leigh Day**) for the **Claimants**
Shaheed Fatima KC and Tom Cleaver
(instructed by **Herbert Smith Freehills LLP**) for the **Defendants**

Hearing dates: 29 and 30 July 2024
Written submissions completed 21 October 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 7th March 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE TURNER

The Honourable Mr Justice Turner :

INTRODUCTION

1. The claims in this case are brought by or on behalf of over 800 supporters of Liverpool Football Club for damages in respect of injuries they are alleged to have sustained on 28 May 2022 at the UEFA Champions League final at the Stade de France in Paris ("the Stadium"). Unhappily, the event descended into chaos during the course of which it is alleged that the claimants sustained injuries as a result of being crushed in the melee, sprayed with tear gas and pepper spray by the French police, and assaulted by members of the French public.
2. The claimants allege that two defendants each had organisational responsibilities for the match and they owed, and were in breach of, contractual and/or tortious duties concerning the safety of the claimants.
3. The defendants deny liability and have raised a preliminary jurisdictional issue. By an application dated 30 November 2023, made under CPR Part 11.1, they invite the court to dismiss the claims on the grounds that it does not have jurisdiction over them or should decline jurisdiction or that the claims are non-justiciable. A witness statement of Cara Fotheringham dated 30 November 2023 is relied upon in support of the application.
4. On 7 May 2024, Mrs Justice Dias ordered that the defendants should clarify the grounds upon which jurisdiction was challenged.
5. By letter dated 10 May 2024, the defendants stated:

> *"6. The principal basis for UEFA's jurisdiction challenge is that the claims would require the English Court to adjudicate on the lawfulness or validity of acts of a foreign state (France) performed within its own territory, which would be impermissible under the Foreign Act of State Doctrine."*

6. A subsidiary issue was also referred to:

> *"11. In addition to the primary basis of the Jurisdiction Application identified above, UEFA also submits that the Court should decline jurisdiction because the claims involve non-justiciable issues concerning the interpretation and application of an international treaty (the Saint Denis Convention)…"*

7. In short, the central question arising is as to whether the defendants are entitled to rely, at this stage, upon the operation of the common law doctrine of foreign act of state ("the Doctrine") to deliver a forensic knockout blow the effect of which would be to defeat these claims before they can proceed any further. The appeal to the defendants of such a prompt and decisive outcome is self-evident.

8. Determining whether or not they are able to succeed in achieving this object will necessarily involve some analysis of the relevant authorities. However, for the purposes of this introduction, it will suffice to observe that in ***Belhaj v Straw*** [2017] A.C. 964 at para 122 Lord Neuberger PSC identified four possible rules which fall to be applied in determining the scope of operation of the Doctrine. It is the second of these rules which arises for consideration on this application:

> *"The second rule ("Rule 2") is that the courts of this country will recognise, and will not question, the effect of an act of a foreign state's executive in relation to any acts which take place or take effect within the territory of that state."*

9. There are a number of well-established exceptions or limitations to the operation of the Doctrine two of which are of potential relevance to this application (See ***Yukos Capital Sarl v OJSC Rosneft Oil Co*** [2014] Q.B. 458 paras 95-104 and 109). They arise in circumstances where:
   (i) the only issue is as to whether the acts relied upon have occurred without the need for the court to inquire into their legal effectiveness ("the first exception"); and
   (ii) the challenges to such foreign acts of state are merely ancillary or by way of collateral aspersion ("the second exception").

10. The defendants claim that any substantive hearing of these claims would inevitably involve an impermissible adjudication upon the lawfulness and validity of certain acts of organs of the French state.

11. The claimants contend in response that, certainly at this stage, the Doctrine cannot confidently be held to be engaged and that, even if it could be, the two exceptions or limitations are liable to apply.

THE PROCEDURAL FRAMEWORK

12. Before considering in greater detail the relevant issues of fact and substantive law it is convenient to examine the procedural framework within which this court must operate.

13. It is important to note, from the outset, that this judgment does not involve the determination of a preliminary issue. Still less does it have the character of a judgment following a substantive trial on all issues. Its parameters are circumscribed by the nature of any application under CPR Part 11 which is the procedural tool which the defendants have chosen, at this stage, to deploy.

14. CPR Part 11 provides, in so far as is material:

"**11.— Procedure for disputing the court's jurisdiction**

(1) A defendant who wishes to–

(a) dispute the court's jurisdiction to try the claim; or

(b) argue that the court should not exercise its jurisdiction, may apply to the court for an order declaring that it has no such jurisdiction or should not exercise any jurisdiction which it may have.

(2) A defendant who wishes to make such an application must first file an acknowledgment of service in accordance with Part 10.

(3) A defendant who files an acknowledgment of service does not, by doing so, lose any right that he may have to dispute the court's jurisdiction.

(4) An application under this rule must

(a) be made within 14 days after filing an acknowledgment of service; and

(b) be supported by evidence…

(6) An order containing a declaration that the court has no jurisdiction or will not exercise its jurisdiction may also make further provision including–

(a) setting aside the claim form;

(b) setting aside service of the claim form;

(c) discharging any order made before the claim was commenced or before the claim form was served; and

(d) staying the proceedings.

(7) If on an application under this rule the court does not make a declaration–

(a) the acknowledgment of service shall cease to have effect;

(b) the defendant may file a further acknowledgment of service within 14 days or such other period as the court may direct; and

(c) the court shall give directions as to the filing and service of the defence in a claim under Part 7 or the filing of evidence in a claim under Part 8 in the event that a further acknowledgment of service is filed.

(8) If the defendant files a further acknowledgment of service in accordance with paragraph (7)(b) he shall be treated as having accepted that the court has jurisdiction to try the claim.

(9) If a defendant makes an application under this rule, he must file and serve his written evidence in support with the application notice, but he need not before the hearing of the application file—

(a) in a Part 7 claim, a defence; or

(b) in a Part 8 claim, any other written evidence."

15. The following general points are to be noted:

(i) The scale of the exercise involved in resolving the relevant issues at this stage ought not to exceed the boundaries of what is proportionate (see ***Lungowe v Vedanta Resources plc*** [2020] A.C. 1045 and countless other authorities before and since).

Inevitably, there arises a tension between, on the one hand, a party's natural tactical inclination to deploy promptly and in detail every argument considered to be potentially advantageous and, on the other, the need to avoid a mini-trial. In the event, this application involved two full days of oral submissions supplemented by further detailed written submissions served over a period of a further three months thereafter. I make no criticism of the way in which the submissions of the parties were presented but must recognise the need for me to distil and focus my attention on the more salient points. This necessarily means that I will not attempt to resolve each and every issue which has arisen but can assure the parties that the outcome of this case would not have been any rendered any different by any such resolution;

(ii) The adjudication upon any application under CPR 11 is, as I have already noted, not the equivalent of the determination of a preliminary issue. No defence has been served, disclosure has not been given and the evidential material available to the court and to the parties is necessarily limited. The analytical focus should usually be on the Particulars of Claim save where the allegations of fact are demonstrably untrue or unsupportable (see the observations of Pepperall J in these proceedings ***Abram v UEFA*** [2024] EWHC 1518 at paragraph 23). I note, however, that in this case it is the defendants and not the claimants whose pleaded case is likely, if these claims are to proceed further, to define the specific allegations to be raised against the French authorities. The Particulars of Claim do not expressly plead or rely upon claims that such authorities acted unlawfully. I return to this factor later in this judgment;

(iii) It may be more appropriate, particularly in cases of some complexity, that the application of the Doctrine

should be considered not at the stage of initial jurisdictional challenge but only, for example, after the issues in the action have been properly defined on the pleadings (see ***Kuwait Airways Corporation v Iraqi Airways Co.*** [1995] 1 W.L.R. 1147 p. 1165F–G and ***Tajik Aluminium Plant v Ansol Limited*** [2006] EWHC 2374 at para 150);

(iv) Where the material available to the court on an application under CPR 11 and founded on the Doctrine is such that it remains arguable that it may not apply on one or more grounds then the issue may properly be left to be determined at trial (see ***Crane Bank Limited v DFCU Bank Limited*** [2023] EWCA Civ 886).

16. It follows that if I were to conclude on the material before me that the claimants have no arguable case against the application of the Doctrine then the defendants' application would succeed and the claims would be permitted to proceed no further. If, however, it were to remain arguable, on such material, that the application of the Doctrine would not defeat the claims then they may be permitted to proceed leaving open to the defendants the opportunity, if so advised, to revisit the Doctrine in the context of a substantive hearing duly equipped with full pleadings and evidence.

17. The defendants have suggested, in the alternative, that I should consider giving further case management directions before adjudicating on the jurisdiction application. However, I do not consider that this would be an appropriate course to take. There is sufficient material before me to adjudicate upon the viability at this stage of their reliance upon the Doctrine within the parameters of a Part 11 application without the need for further enquiry as to the way each individual claimant puts his or her case. The additional costs and delay involved would be disproportionate and the fruits of such enquiry are not liable to make any material difference to my analysis.

APPLICABLE LAW

18. Until very shortly before the hearing of the application before me, the claimants had been proceeding under the assumption that French law applied to the claims of all the claimants. Experts in French law were duly instructed to report on behalf of the claimants and defendants respectively.
19. However, it transpires that the position may have been less clear cut because only some of the claimants had purchased tickets from the UEFA online ticket portal. Others had bought them directly from Liverpool FC. Owing to the lateness of the realisation of the true position, the claimants' skeleton arguments deployed for the purposes of the hearing before me had been drafted on the premise that all of the claims were governed by French law.
20. The position of the claimants, as now articulated in a letter dated 2 October 2024, is that their claims in tort are subject to French law regardless of their provenance and so too is any contractual claim in respect of those tickets purchased from the UEFA online ticket portal. However, contractual claims brought by claimants who received their tickets from Liverpool FC involve the imposition of an English contractual duty to take reasonable skill and care to be considered in regard to French health and safety laws and regulations as applicable to the stadium. No purpose would here be served by articulating their reasons for reaching this view.
21. By letter dated 10 October 2024, the defendants raise issues as to whether the claimant's stance is adequately reflected in a recently served draft amended Particulars of Claim but expressly decline to make any substantive comment on the applicable law.
22. In my view, the relevance of the French law evidence comes into play only in the event that I am satisfied that the Doctrine is engaged and I have to go on to consider the potential exceptions or limitations to the scope of its application. The existence or otherwise of a foreign act of state is to be determined by the application of English domestic law and there would appear to be no material differences between the experts as to the constitutional status of the various French actors. Accordingly, I

will postpone my consideration of the potential impact of the application of French law until after I have addressed the issue of the scope of the Doctrine on the facts of this case as far as they can presently be discerned.

THE BROAD FACTUAL CONTEXT

23. It is not the function of this court to make findings of fact at this stage. Accordingly, the narrative which follows comprises a summary of the most salient material presently available and upon which I have proceeded for the purposes of determining this application. Whether or not the evidence eventually deployed in the event of this case reaching trial will be entirely consistent with the description which follows remains to be seen. Suffice it to say that it consistent with the way in which the claims are presently pleaded and is neither "demonstrably untrue" nor "insupportable".
24. The UEFA Champions League is an annual football competition in which top division European clubs compete to win the prestigious trophy commonly referred to as the European Cup. In 2022, the teams which reached the final were Liverpool FC and Real Madrid CF.
25. On 17 June 2020, the first defendant announced that the UEFA Champions League final in 2022 would take place in St Petersburg, Russia.
26. However, on 25 February 2022, in response to the Russian invasion of Ukraine, the first defendant made a further announcement that the match would instead be held at the Stade de France ("the Stadium") but with no change to its originally scheduled time and date.
27. The Stadium is the national stadium of France with a capacity of over 80,000 spectators. It is located in Saint-Denis, a northern suburb of Paris which is an area with very high levels of socio-economic deprivation. There are long-standing tensions between some sections of the local community and the police.
28. The first defendant's decision to relocate the match to the Stadium was made with the approval of the French Government.

29. The Stadium site is surrounded by a raised concourse which can be reached via a number of specified access points. Parking spaces are very limited so most spectators arrive there by public transport.
30. The south of the Stadium is served primarily by two Réseau Express Régional ("RER") railway stations. The Line B station ("RER B") is located to the south of the stadium and the Line D station ("RER D") is located to the southwest. Access to the Stadium from RER D is via a slope on Avenue du President Wilson. Such access is by a relatively narrow route which means that only a limited number of persons can travel through at any given time.
31. On 4 March 2022, a meeting took place at which representatives of the second defendant gave a presentation. At or by the time of that meeting:

    (i) It was determined that a security and mobility plan or concept was to be in place by 14 March 2022;
    (ii) It was noted that supporters arriving by RER D would be approaching via the slope on Avenue du President Wilson;
    (iii) It was expected that approximately 15,000 supporters might be approaching the Stadium from the direction of RER D;
    (iv) A decision was taken to employ an Additional Security Perimeter ("ASP"), with 12 numbered access points. These were to include the access point referred to as ASP3 which was also located on Avenue du President Wilson.

32. By 25 March 2022, the defendants had decided that numbers of Liverpool supporters would be directed towards the Stadium via RER D.
33. On 4 April 2022, a contingent from Football Supporters Europe ("FSE") attended a site visit, along with representatives of the defendants. At that visit, the attendees from FSE raised a number of concerns including the high risk of congestion between RER D and the Stadium and the potential consequences of police activity in the area.
34. At a meeting of 5 May 2022, the defendants presented their plan for safety and security at the match. This provided that supporters of Real Madrid CF would be seated in the north of the Stadium

and Liverpool FC supporters in the south of the Stadium. Liverpool FC supporters would, therefore, be encouraged to travel to the Stadium via RER B and RER D. At the same meeting, the defendants were informed that earlier planned closures of RER B would nevertheless be going ahead, at least in part, over the weekend of the match.

35. In the days prior to the match, the defendants were informed that Liverpool FC supporters would be directed towards RER D and onto Avenue du President Wilson where ASP3 was located.

36. The defendants' calculation of the expected flow rate of people through ASP3 was made on the basis that it would have fifteen lanes for security and ticketing checks. Calculations of flow rates at all ASPs had been carried out on the assumption that checks carried out by the police would not disrupt flow rates. This was despite the fact that the defendants had decided to implement a system of "double screening" or "double checking" in respect of tickets and security.

37. From late afternoon on 28 May 2022, the day of the match, the number of people arriving at the Stadium by way of RER D began significantly to increase. They were directed (both by the police and by informal signage) into the Avenue des Fruitiers and on to Rue Jean-Philippe Rameau before accessing the Avenue du President Wilson (and ASP3) via a narrow underpass. An alternative route to the Stadium via ASP4 was blocked by the police.

38. ASP3 was narrow and provided between four and seven lanes (as opposed to the fifteen which had been factored into the defendants' calculations) which had been allocated for the undertaking of security and counter terrorism checks, paper ticket checks and electronic ticket activation. From approximately 5:00pm, stewards at ASP3 reported concerns that the pens used to check the validity of paper tickets were not working properly. This had led to their mistakenly suspecting that legitimate tickets were forgeries and it delayed the progress of supporters through the checkpoints. Furthermore, the stewards had not been properly instructed in how the electronic tickets worked which led to

further delays. Delays overall were lengthened by police body searches of significant numbers of individuals.

39. As a result of these factors, the movement of Liverpool supporters through ASP3 was severely restricted and slower than the defendants had anticipated. Thus it was that thousands of supporters began to accumulate in the confined space on the approach to ASP3 with no convenient means of escape.
40. It was not until about 7:20pm that supporters were being directed away from ASP3 by which time significant congestion had already developed.
41. At about 7:45pm, both police officers and stewards withdrew from ASP3.
42. In due course, the area beyond ASP3 had also become crowded, particularly in the vicinity of gates X, Y and Z. This was because of problems at turnstiles into the Stadium itself and the closure of some gates into the Stadium. The closure of those gates had exacerbated turnstile problems because certain tickets would not register for entry at certain gates. By this time, the influx of people had caused a level of congestion severe enough to give rise to the risk of injury.
43. Police were deployed onto the concourse surrounding the Stadium in an attempt to disperse, by force, a crowd of local residents without tickets who were trying to get into the Stadium. Those police officers used tear gas which was blown towards the crowd of Liverpool FC supporters which had formed on the concourse. Police officers also began to deploy tear gas and pepper spray on Liverpool FC ticket holders directly.
44. At approximately 8:45pm, fifteen minutes before the scheduled kick off, the defendants made an announcement that the match would be delayed. The kick off eventually took place at 9:37pm. The initial announcement inside the Stadium attributed the delay to security issues. That announcement was shortly replaced with one wrongly purporting to attribute the delay to “late arrival of fans”. This message had been pre-prepared by the defendants before the day of the match.

45. The announcements regarding the delay to the start of the match were not communicated to those on the concourse seeking entry into the Stadium.
46. Following the match, pursuant to a risk assessment made by the defendants, the police deployed their resources to prevent a perceived threat of pitch invasion. While the police were thus diverted, supporters were targeted by criminal activity from local residents when leaving the Stadium without police protection or intervention.
47. In the course of the events described above, each of the claimants are alleged to have suffered injury.
48. On the day of the match, the defendants issued a statement which said:

> *"In the lead-up to the game, the turnstiles at the Liverpool end became blocked by thousands [of] fans who had purchased fake tickets which did not work in the turnstiles. This created a build-up of fans trying to get in. As a result, the kick off was delayed by 35 minutes to allow as many fans as possible with genuine tickets to gain access. As numbers outside the stadium continued to build up after kick off, the police dispersed them with tear gas and forced them away from the stadium."*

49. On the claimants' case, this was an inaccurate and unfair summary.
50. On 3 June 2022, the first defendant published on its website a statement which included the following apology:

> *"UEFA wishes to sincerely apologise to all spectators who had to experience or witness frightening and distressing events in the build-up to the UEFA Champions League final at the Stade de France on 28 May 2022 in Paris, on a night which should have been a celebration of European club football. No football fan should be put in that situation, and it must not happen again."*

51. In the light of the disturbing events surrounding the match, the first defendant commissioned an independent review the conclusions of which were published in a report of February 2023. The defendants' stance with respect to the contents of this report is set out in the first witness statement of Cara Fotheringham:

> *"…the Defendants do not challenge the facts described in the Report. However, that does not mean that the Defendants accept*

> *that the Report refers to all relevant facts or matters; it does not. In this statement I refer, where appropriate and on a non-exhaustive basis, to some additional, relevant facts which are not in the Report. If this claim proceeds (in any form), the Defendants fully reserve all of their rights to respond to the matters raised in the Claim by their evidence, pleadings and submissions including to qualify or object to the factual findings in the Report as well as its analysis and conclusions."*

52. The Terms of Reference under which the review was established stated, as part of the "Objective of the Review", at paragraph 1(a) that:

> *"UEFA wishes – and needs – to understand what happened during the course of the day of the Final, and determine lessons learnt to ensure there is no repeat of the actions and events of that day."*

53. At paragraph 2(f), the Terms of Reference confirmed that the Scope of the Review included the aim:

> *"To establish the reasons that led to the incidents under scrutiny at the Stadium, identify any lessons to be learned and to make recommendations on best practices for the future."*

54. The report noted that:

> *"All the stakeholders interviewed by the Panel have agreed that this situation was a near-miss: a term used when an event almost turns into a mass fatality catastrophe."*

55. Furthermore, the report included an executive summary one section of which is entitled: *"What went wrong."*

It provided:

> *"1.3.1. The Panel has concluded that there were two overarching organisational failures that lie at the root of what went so disastrously wrong in Paris. Firstly, the UEFA 'model' for organising the UCLF22 was defective in that there was an absence of overall control or oversight of safety and security. Secondly, the safety, security and service model laid out in the Saint-Denis Convention, was ignored in favour of a securitized approach which was inappropriately based on incorrect assumptions that Liverpool FC supporters posed significant threats to public order. That inexplicable misconception resulted in a policing approach that lacked capacity for engagement, and which actively failed to integrate into a coherent multi-agency framework.*

1.3.2. The UEFA 'model'

1.3.2.1. UEFA, through its wholly owned subsidiary, UEFA Events SA, delegated private safety and security responsibility to the French Football Federation (FFF) and deferred to the Préfecture de Police on safety and security matters falling within its policing duties, as per UEFA's standard operating procedures when organizing Champions League Finals. This would have been an entirely reasonable approach with one crucial addition: UEFA should have retained a monitoring and oversight role, to ensure it all worked. It self-evidently did not. This 'delegation and deference' model led to a lacuna whereby mobility and access plans, and communication and interoperability were not properly monitored. Flaws were not identified, and consequently they were not rectified. The panel concluded this represented an unacceptable abdication of responsibility by UEFA.

1.3.2.2. The fact that UEFA failed to take this oversight responsibility must be viewed in the context that it had a mechanism to monitor, advise and assist with the safety of planning and operational measures: UEFA's own Safety and Security (S&S) Unit. On the evidence, the Panel has concluded that the senior management of UEFA Events SA marginalised the UEFA S&S Unit and thereby removed the mechanism through which the safety and security of the event could be ensured. The Panel's view is that UEFA Events SA's lack of oversight upon delegation of private safety and security matters, deference of all such matters in the public space to policing authorities, and simply not following its own safety, security and service requirements, was a recipe for the failures which in fact occurred. Senior officials at the top of UEFA allowed this to happen, even though the shortcomings of its model were widely known at senior management level, as acknowledged to the Panel.

1.3.2.3. The Panel notes that the UCLF is UEFA's annual flagship event. It can compel private partners to comply with its requirements, and it has considerable 'soft power' with which to encourage State authorities to fully engage with its project and comply with their Saint-Denis Convention obligations. At UCLF22 UEFA did neither.

1.3.3. Policing

1.3.3.1. The police, unchallenged and accepted without question by other stakeholders, adopted a model aimed at a non-existent threat from football hooligans, together with a preoccupation that ticketless supporters required a public order policing approach rather than one based upon facilities and engagement. This was despite good information and intelligence from UEFA,

UEFA Events SA, the Clubs, and Merseyside and Spanish national police, which indicated that there had been no significant issues of football-related violence involving supporters of either finalist club in recent years and that the phenomenon of supporters without tickets travelling to a host city for the atmosphere had become commonplace.

1.3.3.2. There were multiple consequences of this defective policing model. The police and other stakeholders were deflected from playing an effective role in ensuring safe mobility of supporters to the vicinity of the stadium, or within the last kilometre; they failed to plan or operate safe access arrangements through the additional and turnstile perimeters; they did not have any effective contingency plans once access arrangements failed; and they did not have any effective plan to deal with anti-social behaviour or violence perpetrated by locals.

1.3.3.3. Furthermore, although the Préfecture de Seine-Saint-Denis chaired planning meetings relating to mobility, and although the French State was represented in some planning meetings through the DIGES, together with UEFA, UEFA Events SA, FFF and other stakeholders, no one appears to have identified and dealt with, or escalated to higher political levels the acknowledged and evidently poor interoperability.

1.3.3.4. Ultimately the failures of this approach culminated in a policing operation that deployed tear gas and pepper spray: weaponry which has no place at a festival of football.

1.3.3.5. The monitoring and oversight lacuna in the UEFA model, and the dominance of the public order approach adopted by the police, combined to aggravate the absence of joint working – or interoperability – between key stakeholders to an extent that the Panel found remarkable. The Panel has concluded that this was a major cause of the failure to prevent or deal with the problems arising in four key areas: changes in patterns of travel by supporters to the vicinity of the stadium, 'last kilometre' crowd management and routing, stadium access arrangements, and criminal attacks on supporters.

1.3.4. The failure of joint working, and the change of venue

1.3.4.1. There were in fact, multiple communication and interoperability failures between stakeholders. Important historical and real time information was not shared. Plans were not properly agreed, and there is the clearest evidence of an absence of stakeholders working together. Decisions were taken, without communication to other partners, in particular by the police.

1.3.4.2. The failures of joint working were compounded by a further factor. The UCLF22 was planned to take place in St Petersburg, however, following the invasion of Ukraine, UEFA moved the venue to the Stade de France, Paris. The late change of venue amplified the imperative for effective interoperability and communication between stakeholders, and the need to check all arrangements were robust and fit for purpose. Safety and security are binary. Hospitality and concessions can be compromised: safety and security cannot. The key stakeholders should have ensured all arrangements were joined-up and all agencies were working together, with UEFA at the centre, overseeing the whole project. The Panel has concluded that this simply did not happen.

1.3.4.3. Instead of applying a more vigilant approach as a result of the shorter timeframe, UEFA Events SA agreed with FFF to base its planning on the French Cup Final, which took place three weeks before the UCLF. Although there was some observation of the operation of the earlier match, problems were not identified, and relevant changes were not made. The Panel has concluded that the French Cup Final was not a proper comparator, and reliance on it constituted an inappropriate planning short cut, which contributed to the failures on match day."

56. In its overall conclusions, the report identified:

"…eight factors which caused or contributed to the conditions which almost led to disaster:

a. A substantially larger number of Liverpool supporters were directed to arrive via the 'Stade de France: Saint-Denis' station, on train line RER D, which was closest to the southwest of the stadium, compared to the volume of people attending other major events at the stadium by that route.

b. Defective route planning between RER D and the stadium, resulting in too many people being directed by police toward the stadium via the south-west ASP3 entrance.

c. Defective access arrangements at the ASPs. The effect of this was particularly acute at ASP3 because of the increased pressure created by the flawed routing, and that it was positioned on a restricted access ramp: a bottleneck.

d. Ticketing: the use of two different forms of tickets, without extra measures to maintain throughput rates, exacerbated access problems at ASPs.

e. Defective turnstile arrangements, which failed to ensure a sufficient throughput rate to guarantee safe entry.

> *f. The activities of large groups of locals, some of whom were involved in attacks on supporters and attempts to breach the perimeters and turnstiles to gain entry to the stadium, and a failure to police them.*
>
> *g. The use of tear gas and pepper spray in the confined space on the concourse.*
>
> *h. A lack of contingency plans relating to both additional perimeter and turnstile access: there was no Plan B when things went wrong."*
>
> And "*…two further matters which contributed to or exacerbated those factors: the late change of venue, and a remarkable failure of joint working or interoperability."*

57. The review concluded on the basis of its inquiry *"that the near miss experienced as UCLF22 was largely the result of poor planning, a lack of oversight of plans, poor interoperability between various stakeholders, and a lack of contingencies"…* and that *"the capacity of the Liverpool supporters to self organise"* within the context of the circumstances *"was a primary factor in preventing harm and ensuring our inquiry is investigating a 'near miss' than a stadium tragedy involving fatalities".* In an appendix to the report, two members of the independent review panel stated that whilst they *"fully endorse [the Report's] content"*, they specifically disputed its *"conclusions"* (including that UEFA bears *"primary responsibility"*), because the Report *"overstates and gives too much credit to UEFA's ability to exert its "soft power"" on "police and local authorities"* as *"there were no mechanisms to overturn police operations, or escalate the matter by any stakeholder that is not the Police".*

58. In a press report published on the day of the publication of the report, UEFA announced:

> *"The Independent Review Report and appendix – which was compiled based on interviews and testimonies of numerous witnesses and key stakeholders, including fans of the participating teams – reviewed the operational plans and sequence of events on 28 May. It highlights a number of important lessons about how the organisation of the Final could have been improved. The Report also makes a set of valuable recommendations to ensure better fan experience and safety at future events."*

59. On 5 May 2023, the first defendant published on its website a statement to the effect that it would be adopting an *"action plan"* drawing on the findings of the independent review and "*an internal working group"*. The first defendant's General Secretary stated that the measures introduced were intended to *"incorporate the recommendations of"* the independent review.

OTHER REPORTS

60. On 30 May 2022, the French Government (at the request of the French Minister for the Interior and Overseas and Minister for Sports and the Olympic and Paralympic Games) commissioned an urgent report on the factors which caused *"failures in the management of flows and safety on the public highway"*. The report stated that *"highly-publicized scenes of law enforcement operations [at the UCL Final] caused serious damage to the image of France"* and *"raised questions from external observers about [France's] ability to deliver and succeed in the major sporting events for which [France] will soon be responsible."*
61. The French Senate also conducted an investigation into the events, involving interviews with senior ministers and members of the French Police, which culminated in a report published on 13 July 2022. This report reached conclusions about the role of the French State in the events which unfolded, disputing certain findings of DIGES ("Délégué interministériel aux grands événements sportifs") contained in the French Government's report and presenting differing conclusions on the roles and responsibilities of the various stakeholders and the French State's actions. For example, the report stated that despite the shorter deadlines in place, *"the staging of the match at the Stade de France did not itself encounter any particular problems"*, and *"[t]here were no significant security incidents in the ground"*. However, it concluded that *"law enforcement personnel were insufficient in number and ill-equipped"*. It also criticised the French Minister of the Interior for attempting to *"divert attention from the State's inability to properly manage the crowd and counter the actions of several hundred coordinated, violent delinquents"* and included a statement from the head of the

French Police that he considered the use of tear gas *"to be the only means available to the security forces to push back the crowd, except for launching a charge"* and *"in the same situation, he would again advocate its use"*. The French Senate's report concludes with a series of recommendations for future major sporting events in France.

62. Unsurprisingly, there are inconsistencies and strong differences in emphasis between the conclusions of the authors of the respective reports with respect to where the balance of responsibility for the incident lay.

THE GUARANTEE

63. In addition, the defendants rely upon the terms of a staging agreement dated 27 May 2022 between UEFA and the Fédération Française de Football (and, in particular, appendix F thereto which comprises a guarantee provided by the French Minister of the Interior to UEFA's President on 21 March 2022 (the "Safety and Security Guarantee"). It states that:

> *1 "[T]he French Government, represented by the Minister of the Interior" was "duly authorized to act and provide these guarantees on behalf of France";*
>
> *2 "The French Government undertakes to implement all the security and safety measures required to guarantee the safety of the persons involved in the 2022 UEFA Champions League Final".*

THE PLEADED CASE

64. Against this background, the claimants' pleaded case against the defendants was summarised by Pepperall J following an earlier hearing in this case (***Abram v UEFA*** [2024] EWHC 1518) in the following terms at paragraph 2:

> *"By this claim, the fans allege that UEFA was in breach of duty. Their allegations can be conveniently grouped into eight broad categories.*
>
> *2.1 No proper planning for the Liverpool fans arriving from Saint Denis station and no proper assessment of the risks of the traffic route and, in particular, the likely bottlenecks on that route.*

> *2.2 No proper training of the stewards and the lack of an efficient and safe system of queue management, ticket verification and entry to the ground.*
>
> *2.3 A misplaced focus on the risk posed by the fans after the match rather than upon the risks to their safety.*
>
> *2.4 No proper joint working with other stakeholders including the Préfecture de Police, the Fédération Française de Football, the Consortium Stade de France, transport networks, local authorities responsible for the fan zones, the participating clubs, their supporter associations and their national football policing authorities.*
>
> *2.5 No proper contingency plans to alleviate congestion or effective multi-agency crisis management plan.*
>
> *2.6 The lack of effective communication to reassure and advise fans as the congestion built up.*
>
> *2.7 The failure to anticipate, prevent or control the use of tear gas and pepper spray or the use of force more generally.*
>
> *2.8 The failure to anticipate the activities of local residents and other third parties."*

65. As I have noted, the claimants make no direct allegations of unlawfulness in their Particulars of Claim in respect of the conduct of the French police or any other state entity. The defendants contend, however, that the issue of the lawfulness of such conduct is nevertheless bound to arise as an important issue in the proceedings if the case were to be permitted to proceed further.

THE SIGNIFICANCE OF THE DOCTRINE

66. But for the potential application of the Doctrine, it is clear from the matters set out in the various reports to which I have referred that the defendants would, at least, have a case to answer. Indeed, it formed no part of the defendants' application that there was otherwise no serious issue to be tried. It is neither necessary nor desirable for me go further and address the potential strength of any substantive defence not yet pleaded. Doubtless, any such defence would include allegations to the effect that the French authorities carried full legal responsibility for the claimants'

injuries and/or the chain of causation which may otherwise have implicated the defendants had been broken. However, in accordance with the terms of CPR 11, no defence has been served.

67. This position may be compared with that which arose in ***Buttes Gas and Oil Co. v Hammer*** [1982] A.C. 888. In that case, it was the defence and not the plaintiff's pleaded case which was found liable to engage the Doctrine. Lord Wilberforce recognised the potential unfairness to the defendant of allowing a libel claim to go forward whilst depriving the defendant of the opportunity to raise the defence of justification the deployment of which would engage the Doctrine. I agree therefore that it is arguable that an analysis of the position may involve a consideration of how the defendants would seek to defend the claims and may not be strictly limited to the precise terms of the Particulars of Claim. However, it is to be noted that, in contrast to this case, the defence in ***Buttes*** had already been fully pleaded and the details were, therefore, formally set out.

68. It is now therefore necessary, against this background, to examine more closely the nature and parameters of the Doctrine itself.

THE DOCTRINE OF FOREIGN ACT OF STATE

69. The task of delineating the precise scope of the application of the Doctrine has, over the years, proven to be notoriously elusive. It was once described as *"one of the most difficult and most perplexing topics which, in the field of foreign affairs, may face the municipal judge in England."* (F A Mann, Foreign Affairs in English Courts (1986), p 164).

70. The law has certainly moved on since 1986 but difficulties and challenges remain. Indeed, it is only within the last ten years that the very existence of the Doctrine has been put beyond question by the Supreme Court in ***Belhaj*** and, more recently, in ***Deutsche Bank AG London Branch v Receivers Appointed by the Court*** [2023] A.C. 156. For reasons of convenience, I will refer to the latter as "the ***Maduro*** case".

71. Following a detailed review of the relevant authorities in the ***Maduro*** case, Lord Lloyd-Jones concluded at paragraph 135:

> *"135. It appears therefore that a substantial body of authority, not all of which is obiter, lends powerful support for the existence of a rule that courts in this jurisdiction will not adjudicate or sit in judgment on the lawfulness or validity under its own law of an executive act of a foreign state, performed within the territory of that state. The rule also has a sound basis in principle. It is founded on the respect due to the sovereignty and independence of foreign states and is intended to promote comity in inter-state relations… it is an exclusionary rule, limiting the power of courts to decide certain issues as to the legality or validity of the conduct of foreign states within their proper jurisdiction."*

72. The Doctrine therefore continues to circumscribe the extent to which a court in this jurisdiction may legitimately intrude upon the determination of the legality or legitimacy of the conduct of foreign states within their own territory.
73. An important question, however, arises as to what act or acts are such as to qualify as acts of state in order to engage the Doctrine in the first place and before consideration is given to the operation of any exceptions or limitations thereto.
74. This issue has opened up a significant difference of approach between the parties in this case.

THE DEFENDANTS' SUBMISSIONS ON THE APPLICATION OF THE FOREIGN ACT OF STATE DOCTRINE

75. Although not thus framed by the defendants I will, for the sake of convenience, categorise their submissions as comprising their primary case and secondary case respectively.
76. Their primary case is that, both in the context of these claims and more generally, any act done in the exercise of state power or authority will suffice to engage the Doctrine regardless of the level of executive seniority of the instigators or of their constitutional or organisational proximity to central government.
77. In support of this proposition it is argued:
    (i) the various classic formulations of the Doctrine in English law make no reference to any such threshold of seniority or control;

(ii) the Doctrine has been applied in cases where the acts of state are not limited to those involving high-ranking officials or high matters of state;

(iii) there are no cases of the application of the Doctrine being rejected on the basis of the insufficiently senior status of the person carrying out the act in question or the insufficiently significant (albeit state/public) role they carried out; and

(iv) it would undermine the rationale of the Doctrine if there were a threshold requirement which involved the English court making a qualitative assessment of the significance of the alleged act.

78. In the event that their primary case were found to be insufficiently persuasive, the defendants contend, by way of their secondary case, that the circumstances of these claims involve decisions relating to a major sporting event that were made at the highest levels with respect to which the Doctrine can, with confidence, be held to apply. They rely, in particular, upon:

(i) The French Government's commitment to the safety guarantee and the involvement of the Paris Préfecture de Police and the Ministry of the Interior;

(ii) The fact that the incident was the subject of investigation and a report dated 10 June 2022 by the Interministerial Delegation for Major Sporting Events, the French Senate (report dated 13 July 2022) and the French Defender of Rights (report dated 13 June 2022);

(iii) The comment in the report of 10 June that: *"some highly-publicized scenes of law enforcement operations caused serious damage to the image of France. They have raised questions from external observers about our country's ability to deliver and succeed in the major sporting events for which we will soon be responsible, firstly in 2023 and 2024, the Rugby World Cup, and then the Olympic and Paralympic Games"*; and,

(iv) The acknowledgement of the member states of the Council of Europe, as evidenced by the existence and contents of the Saint-Denis Convention, that matters such as the policing of

major sporting events are ones for which the state itself is and should be responsible.

79. The defendants have identified from such information as is presently available a long list of public bodies each of whom is alleged to have had a health and safety role in the staging of the match. They include:
    (i) the Prefecture de Police;
    (ii) the Prefet responsible for health and safety under the French Constitution;
    (iii) the DIGES;
    (iv) the territorial authorities of Paris and Saint-Denis;
    (v) the Prefecture de Seine-Saint-Denis; and
    (vi) various transport operators.

80. The defendants acknowledge that there is little guidance in the authorities as to what types of act should qualify as engaging with the Doctrine but argue that the matters listed above are more than sufficient to demonstrate its applicability to the circumstances of these claims.
81. The claimants reject both the primary and secondary cases presented by the defendants and refute the suggestion that the threshold of engagement has been passed on either basis in the circumstances of these claims.

WHAT AMOUNTS TO A FOREIGN ACT OF STATE?

82. The competing approaches of the parties thus engage directly the question of what is an act of state.
83. The challenge of identifying the scope of application of the Doctrine in any given case was explicitly acknowledged by Lord Neuberger in ***Belhaj*** at para 118 in the following terms:

> *"In so far as it is relied on in these proceedings, the Doctrine is purely one of domestic common law, and it has all the advantages and disadvantages of a principle that has been developed on a case by case basis by judges over the centuries. Thus, while it is pragmatic and adaptable to changing norms…it is a principle whose precise scope is not always easy to identify."*

84. Some of the challenges of determining which acts fall within the purview of the Doctrine have also been identified in the article Deciphering the Act of State Doctrine 35 Vill. L. Rev. 1 (1990) by Professor Dellapenna. It must immediately be acknowledged that this article is now 35 years old and that its analysis focusses on the application of the Doctrine in the jurisdiction of the United States. Its broad conclusion, however, at least arguably, mirrors the present position in English law:

> *"Given that the designation plays a central role in the act of state Doctrine, it is more than a little strange that courts have never developed meaningful criteria for deciding when an act qualifies as an act of a foreign state."*

85. Furthermore, in the ***Maduro*** case, the submissions raised before the Supreme Court on behalf of the Maduro Board included the following at page 197:

> *"A weakness of the Doctrine is that there is no clear definition in the case law of what constitutes an "act of state" in the first place."*

86. I note at this stage that one notable feature of the development of the Doctrine has been the extent to which the courts have often focussed upon the exceptions or limitations to its scope rather than upon the nature and quality of the acts or conduct which have had the potential to engage the Doctrine in the first place.
87. In some cases, both in this jurisdiction and that of the United States, the approach of the court has therefore been to adjudicate on the issue not so much by a detailed analysis of whether the act or acts relied upon have the character of acts of state but by proceeding on the basis that they do before promptly moving on to the question as to whether any exceptions or limitations to the rule have been made out.
88. As Rix LJ observed in ***Yukos Capital (No. 2)*** at paragraph 115:

> *"… The important thing is to recognise that increasingly in the modern world the Doctrine is being defined, like a silhouette, by its limitations, rather than to regard it as occupying the whole ground save to the extent that an exception can be imposed."*

89. It is against this background that the defendants advance their primary case.

90. It may well be claimed that if the only qualifying condition for the engagement of the Doctrine were that the act or conduct concerned had been performed on behalf of a foreign public body, then the threshold for engagement of the Doctrine would, at least, have the advantage of being easily stated; albeit thereby leaving the focus of analysis to be upon the consideration of any exceptions and limitations.
91. However, such an approach has not been thus explicitly endorsed in any of the authorities to which I have been referred and the virtue of simplicity would carry with it several potential disadvantages not the least of which would, arguably, be the extension of the application of the Doctrine beyond the natural bounds required to fulfil the aims which it is intended to achieve.
92. The defendants rely upon the absence of any reference to the concepts of "seniority or control" in the decided cases by way of support for their primary case. However, none of the cases they rely upon in this context have involved any direct consideration of the issue as to where, if at all, the boundaries of what is to be classified as an act of state are to be drawn.
93. In this context, they identify two cases in particular in which acts by low level officials are said to have engaged the operation of the Doctrine.
94. The first is ***Underhill v. Hernandez***, 168 U.S. 250 (1897), a United States authority of considerable antiquity. It involved a decision by a General of the Revolutionary Army of Venezuela to detain for several weeks the plaintiff, who was under contract to the old regime to build and repair the municipal waterworks in the city of Bolivar. The purpose of the detention was to coerce the plaintiff into continuing to operate and repair the local waterworks in order to benefit the revolutionary forces and the local community. Chief Justice Fuller held at para 2:

> *"The immunity of individuals from suits brought in foreign tribunals for acts done within their own states, in the exercise of governmental authority, whether as civil officers or as military commanders, must necessarily extend to the agents of governments ruling by paramount force as matter of fact."*

95. However, in that case it was the alleged unlawfulness of the decision of the General to detain him which was the foundation

upon which the plaintiff's claim was based. The judgment is not, in my view, to be construed as suggesting that, but for the imprimatur of the General, the actions of individual soldiers would necessarily have fallen within the scope of the Doctrine.

96. Furthermore, caution may have to be exercised in attempting to import decisions of United States law directly, and the reasoning in ***Underhill*** in particular, into the jurisprudence of England. Lord Neuberger warned in ***Belhaj*** at paragraph 134:

> *"While they were cited with approval in this jurisdiction… decisions of courts of the United States, which have purported to adopt the Doctrine as initially developed in this jurisdiction, appear to me to be of very limited assistance. This is for three reasons. First, the constitutional arrangements and conventions in the USA are very different from those in the UK. Secondly, much of the reasoning in the cases where act of state was first referred to as a principle (Hatch v Baez (1876) 7 Hun 596 and Underhill v Hernandez (1897) 168 US 250) was really directed to the different doctrine of state immunity…"*

97. The second case relied upon by the defendants in support of their primary case is ***Belhaj*** in which it was alleged that the defendants were complicit in providing assistance in a covert renditions programme operated by the US government and a network of 'black sites' at which detainees were held incommunicado and tortured. Again, the court was not looking in a vacuum at the acts of individuals but in the context of such individuals allegedly acting in the execution of sovereign power.

98. Of course, all acts of state must necessarily be performed by agents of the state. Even policy decisions at the highest level may often be put into practical effect by those whose personal authority or autonomy is very limited. For example, those who physically remove confiscated goods are likely to be employees or contractors acting entirely under instruction. It is arguable that in such cases it is the high level decision to confiscate in the name of the state which operates so as to imbue their acts with the character of the exercise of sovereign executive power. There may well, therefore, be limited value in focussing too closely upon the status of those who actually executed the acts complained of rather than upon the nature of any state initiative which lay behind them.

99. A review, by way of example only, taken from the list of authorities in the bundle prepared by the parties or otherwise relied upon in argument, reveals the role characteristically played by acts of high executive authority which lie behind the application of the Doctrine:

    (i) In ***Hernandez*** the act was that of the revolutionary general in ordering the detention of the plaintiff;
    (ii) In ***Yukos Capital***, the act relied upon (albeit unsuccessfully) was the decision of the Russian courts to set aside an arbitration award made in favour of the claimants;
    (iii) In ***Belhaj***, the act alleged was the detention of the claimants procured by common design between (amongst others) the Foreign Office and the Home Office on the one hand and the Libyan and US authorities on the other;
    (iv) In ***Reliance Industries Ltd & Anor v Union of India*** [2018] EWHC 822 the act comprised the withholding by government nominees of the price of oil and gas pursuant to notices to do so issued on the authority of an Office Memorandum issued by the Ministry of Petroleum and Natural Gas;
    (v) In ***Mars Capital Finance Limited v Hussein*** [2021] EWHC 2416 (Ch) the challenge was to the validity and effectiveness of a Direction issued by the Resolution Authority established under an Act of the Cyprus parliament;
    (vi) In ***Maduro*** the act was the appointment of the board of the Bank by the exercise of presidential authority.

100. Doubtless the exercise of powers through the police service is capable, in some circumstances, of engaging the Doctrine. This does not mean, however, that every decision of any police officer within the scope of his or her public duty has such effect. Otherwise, a claim against an English coach company arising out of injuries sustained by passengers in a collision with a French police car in France would be vulnerable to a plea of foreign act of state where the driving of both the coach and the police car were open to criticism.

101. Passing reference may also be made to the case of ***Kalma & Others v African Minerals Ltd & Others*** [2018] EWHC 3506 (QB) and [2020] EWCA Civ 144 in which multiple claimants brought an action against three mining companies operating in Sierra Leone who were alleged to have been liable in respect of torts committed by the Sierra Leone Police ("SLP") during the course of two violent clashes. Some of the claimants sought compensation for physical injury but others sued solely in respect of the loss of property taken by the police. In respect of none of these claims did the defendants rely upon the Doctrine.

102. It may be speculated that the defendants may simply have overlooked or chosen not to rely upon the Doctrine but as Henderson J observed in ***The High Commissioner for Pakistan in the United Kingdom v Prince Mukkaram Jah*** [2016] EWHC 1465 (Ch) at para 89:

> *"If the court lacks jurisdiction to determine an issue, such jurisdiction cannot be conferred upon it by the parties, and the court is in principle obliged to investigate the question itself even if the parties do not wish to do so, or even if it would otherwise be an abuse of process for a party to ask the court to do so."*

103. In this regard it is to be noted that in ***Kalma*** none of the appellate judges raised the issue despite the fact that Sharp LJ had earlier contributed to the judgment of the Court of Appeal in ***Belhaj*** in which the Doctrine had been closely examined.

104. ***Kalma*** and related authorities such as ***AAA v Unilever Plc*** [2017] EWHC 37 may tend to suggest that the defendants' strong case as presently formulated is significantly too broadly stated. However, I must emphasise that this is a conclusion which I would have reached in any event regardless of these cases.

105. In summary, in the context of this case, I have not been persuaded, on the materials presently before me, that the conduct of the French police at every level has engaged the Doctrine and I reject the defendants' primary contention that the court should conclude, at least at this stage, that *every* act by an agent acting with state authority must fall within the purview of the Doctrine.

106. I am, however, prepared to accept, at least for the sake of argument for the purposes of this application, that *some* aspects

of the conduct of the French government and the other listed public bodies through its higher officials *may* (and I stress *may*) amount to acts of state. A difficulty with the defendants' secondary case, however, is that the task of determining which, if any, of these acts do engage the Doctrine cannot be confidently carried out on the present incomplete state of the pleadings and evidence.

107. This state of affairs would be sufficient in itself to render unnecessary any further investigation, at this stage, into the operation of the potential exceptions and exclusions to the Doctrine. However, since I have heard detailed argument on the topic, it may be appropriate to make some observations in the hope that they may be of assistance in the event that the issue were to be revisited later in these proceedings.

THE FIRST EXCEPTION

108. The first of the two potentially relevant exceptions in this case is that which applies where the only issue is as to whether the acts relied upon have occurred without the need for the court to inquire into their legal effectiveness. It is sometimes referred to as the Kirkpatrick exception after the decision of the United State Supreme Court in ***W S Kirkpatrick & Co Inc v Environmental Tectonics Corpn*** (1990) 493 US 400.

109. In ***Yukos Capital*** Rix LJ noted at para 110:

> *"What the Kirkpatrick case is ultimately about, however, is the distinction between referring to acts of state (or proving them if their occurrence is disputed) as an existential matter, and on the other hand asking the court to inquire into them for the purpose of adjudicating upon their legal effectiveness, including for these purposes their legal effectiveness as recognised in the country of the forum. It is the difference between citing a foreign statute (an act of state) for what it says (or even for what it is disputed as saying) on the one hand, something which of course happens all the time, and on the other hand challenging the effectiveness of that statute on the ground, for instance, that it was not properly enacted, or had been procured by corruption, or should not be recognised because it was unfair or expropriatory or discriminatory."*

110. He had earlier observed at para 110:

> *"Thus we would again emphasise: the teaching of the Kirkpatrick case (and the cases which follow it) is not to do with any difference, were there to be any, between concepts of validity, legality, effectiveness, unlawfulness, wrongfulness and so on. Validity (or invalidity) is just a useful label with which to refer to a congeries of legal concepts, which can be found spread around the cases. Similarly, the word "challenge" is not sacrosanct: the cases refer to the prohibition on adjudication, sitting in judgment on, investigation, examination, and so on."*

111. Accordingly, where in this judgment I refer to concepts such as challenge or invalidity, they are to be taken as convenient shorthand for the more nuanced spectrum of meanings identified by Rix LJ.
112. In this context, it is arguable that none of the acts relied upon or likely to be relied upon by the defendants as constituting acts of state under their secondary case are liable to be challenged on the basis that they are invalid.
113. For example, if the "Safety and Security Guarantee" were to be categorised as an act of state it may be argued that the issues likely to be raised by the defendants in any pleaded defence will not seek to challenge the validity of the guarantee in the ***Yukos*** sense. On the contrary, it is the effectiveness of the guarantee which is liable to be relied upon.
114. The defendants' reliance upon the fact that the incident was the subject of investigation by the Interministerial Delegation for Major Sporting Events (report dated 10 June 2022), the French Senate (report dated 13 July 2022) and the French Defender of Rights (report dated 13 June 2022) arguably takes their case no further. Even if the processes which led to the investigations and the publication of the reports are to be characterised as acts of state (which is by no means clear) it nevertheless remains arguable that this case is unlikely to involve allegations that they were not validly investigated or reported upon. Their conclusions do not purport to determine the rights of those involved and so a dispute relating to their accuracy falls short of being a challenge to the legality or validity of the process by which they came into being.
115. In so far as the defendants rely upon the comment in the report of 10 June that: *"some highly-publicized scenes of law enforcement*

operations caused serious damage to the image of France" it may be worth repeating the observations of Lord Lloyd-Jones in the ***Maduro*** case at paragraph 131 endorsing the approach of Scalia J in ***Kirkpatrick***:

> *"The act of state doctrine does not establish an exception for cases and controversies that may embarrass foreign governments…"*

116. Simply because the conclusions of any investigation into the causes of the near miss event at the Stadium may have had the potential to embarrass the French government does not therefore mean that they should, without more, be taken to amount to a challenge to the validity of acts of executive power.
117. I am equally unpersuaded that the conduct of any of the various other public bodies relied upon by the defendant, even *if* they are to be characterised as acts of state, are such that I must conclude at this stage that the first exception does not apply.
118. The defendants also rely upon the existence and contents of the Saint-Denis Convention which is referred to in one of the particulars of breach of duty in the Particulars of Claim in the following terms:

> *"The first and/or second defendants, their employees, or agents were negligent in that they:*
>
> *Failed to comply with or have regard to the requirements, recommendations and principles of the Saint-Dennis Convention 2016…"*

119. The Convention is intended to establish an integrated approach to safety, security and service at football matches and other sports events. It is to be noted in passing that on 31 October 2023 (after the events at the Stadium) the UK became the 28th state to ratify the Convention.
120. I accept that it is at least arguable that each nation's ratification of the Convention was an act of state. Again, however, it is not clear how the determination of the issues in the instant case would involve any challenge to the validity of such act of ratification. The terms reflect a broad international consensus on the proper approach to safety and security at football matches. The determination of whether or not the defendants complied with

them does not obviously involve a contention that they are invalid in the ***Yukos*** sense. The process of the interpretation and application of the terms of the Convention is the very antithesis of any challenge to their validity. It is to be noted that to hold otherwise would be to be to afford the defendants virtual immunity from suit in any claim brought by UK supporters in which the defendants were able even arguably to lay part of the blame upon the shoulders of the national public actors.

121. Accordingly, I conclude that the defendants are unable to establish, at this stage, that the first exception will not apply to any and all conduct which may otherwise be held to have been performed in the furtherance of or under the authority of acts of state under their secondary case.

THE SECOND EXCEPTION

122. The second exception applies where the challenges to foreign acts of state are merely ancillary or by way of collateral aspersion.

123. As Lord Sumption held in ***Belhaj*** at para 240:

> *"The act of state doctrine does not apply, in either form, simply by reason of the fact that the subject matter may incidentally disclose that a state has acted unlawfully. It applies only where the invalidity or unlawfulness of the state's sovereign acts is part of the very subject matter of the action in the sense that the issue cannot be resolved without determining it."*

And at para 241:

> *"There are many circumstances in which an English court may have occasion to express critical views about the public institutions of another country, without offending against the foreign act of state doctrine or any analogous rule of law. In deportation and extradition cases, for example, it may be necessary to review the evidence disclosing that the person concerned would be tortured or otherwise ill-treated by the authorities in the country to which he would be sent…The foreign act of state doctrine has never been directed to the avoidance of embarrassment, either to foreign states or to the United Kingdom government in its dealings with them. But neither is it concerned with incidental illegality."*

124. However, I have already concluded that, as a matter of English law, it is arguable that the combination of the limits of the scope of the application of the Doctrine to the facts of this case as I have

found them to be and the further constraints imposed by the operation of the first exception are sufficient in themselves fatally to undermine the defendants' jurisdiction application.

125. Nevertheless, if I have too narrowly circumscribed the scope of the application of the doctrine by, for example, rejecting the defendants' primary case then the concept of incidental illegality is the more apt to cover the actions of the French police. Nevertheless, it remains arguable that any illegality on their part is incidental, subject to the application of French law to which I now turn.

FRENCH LAW

126. Having reached the conclusions above on the basis of the application of English law, I will now turn to the issue as to whether the expert evidence concerning French law is such as to have a material impact upon them.
127. Such evidence, in the context of this application, is to be found in the form of reports from Professor Stoffel-Munck and Dr Malan relied upon by the claimants and defendants respectively. Neither expert gave oral evidence. No challenge is raised as to their qualifications or competence as experts in their field.
128. In this context, I am satisfied that it would be inappropriate for me to attempt to resolve, at this stage, any differences between their respective opinions. French law is a matter of fact for the English court which, in the circumstances of this application, is best resolved as a substantive issue and not on an application under CPR 11. It would have been a different matter if I had concluded that the approach of the claimants' expert were unarguably wrong but I do not.
129. The defendants seek to persuade me that I should resolve any disputes of expert evidence at this stage. In support of this proposition they refer to ***Dynasty Co for Oil and Gas Trading Limited v Kurdistan Regional Government of Iraq*** [2022] QB 246. That, however, was a very different case. The court heard oral evidence from four experts on a well-defined and discrete issue. In contrast, I must rely upon written reports the conclusions of which have neither been articulated in oral evidence nor challenged in cross examination.

130. Against this background, the defendants' case is that the expert evidence, taken as a whole, shows that a defence to the claims must necessarily involve a consideration of the foreseeability of the actions of the organs of the French state (in particular, the police) and the lawfulness of those actions.
131. There is no dispute between the experts that, in the case of the organisation of a sporting event, the organisers owe an implied duty of safety to those who bought tickets from them.
132. Such duty may be characterised as an obligation of result or of means. An obligation of result gives rise to liability for harm caused by safety deficits save only for "force majeure" which requires proof that the organiser could do nothing to prevent the occurrence of the risk or to mitigate its effects. An obligation of means is more broadly tempered by an objective concept of foreseeability. An obligation of means is relied upon in the Particulars of Claim.
133. The extent of legal obligations arising in tort where personal injury arises is, in substance, subject to the same analysis as that which applies to claims in breach of contract.
134. The claimants contend that it is arguable that, even by the application of the less stringent obligation of means, the defendants cannot demonstrate at this stage that they would win on the issue of foreseeability as a matter of French law.
135. Of greater importance in the context of this application, however, is whether, in seeking to defend the claim under French law, the defendants would thereby raise issues which would engage the Doctrine.
136. In my view, as I have already noted, the application of French law does not affect my assessment of the scope of the common law Doctrine when determining whether there exists any act of state to which either of the exceptions may apply. The issue is most likely to be consideration of the two exceptions in the event that my conclusions as to the very application of the Doctrine in the first instance are wrong.
137. On Dr Malan's evidence, the defendants may argue that their legal liability to the claimants depends upon whether the conduct of the French actors can be categorised as being illegal. Thus a

consideration of what may have been foreseeable on the part of the defendants involves the freestanding assessment of whether the acts of third parties were illegal.

138. The problem facing the defendants in this context, however, is that by pursuing allegations of illegality on the part of the French police or any other public actors, it is arguable that they are not challenging the validity of a foreign act and so the first exception would apply in any event.

139. Furthermore, it remains arguable that allegations of unlawfulness on the part of the police when pleaded would properly be categorised as being merely ancillary or by way of collateral aspersion within the scope of the second exception. At the risk of repetition, I note that it is not the function of the Doctrine to save the blushes of the French authorities in the hypothetical event that those acting on their behalf may be found to have done so with collateral illegality.

140. I summarise the position on the issues of applicable law as follows:

    (i) It would be inappropriate for me to attempt to resolve the differences between the experts in French law at this stage and so the persisting chance that the claimants' expert's view will prevail must preclude the court from proceeding on the assumption that the defendants' expert's opinion must apply to the determination of this application;

    (ii) In any event, whichever expert view were to prevail, neither would affect my adjudication upon the first issue as to the scope of the Doctrine on the material presently available to the court;

    (iii) Even if (contrary to my findings in (i) above) the evidence of the defendants' expert were to prevail at this stage, its implications would not preclude the possible application of either of the exceptions to the Doctrine.

CONCLUSION

141. For the reasons given, this application fails and I invite the parties to consider what further orders and directions are to be made

including the service of a further acknowledgement of service and the filing and service of a defence and costs.