

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

B E T W E E N :

THE "GUAIDÓ" BOARD OF THE CENTRAL BANK OF VENEZUELA
Appellant

- and -

THE "MADURO BOARD" OF THE CENTRAL BANK OF VENEZUELA
Respondent

- and -

**THE SECRETARY OF STATE FOR FOREIGN,
COMMONWEALTH AND DEVELOPMENT AFFAIRS**
Intervener

- and -

BANCO CENTRAL DE VENEZUELA
Claimant in the BoE Proceedings

- and -

THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND
Defendant in the BoE Proceedings

- and -

DEUTSCHE BANK AG, LONDON BRANCH
Claimant in the DB Proceedings

- and -

RECEIVERS APPOINTED BY THE COURT
Receivers in the DB Proceedings

- and -

CENTRAL BANK OF VENEZUELA
Defendant in the DB Proceedings

SUPPLEMENTARY CASE FOR THE MADURO BOARD

1. We seek permission to lodge this supplement to the Maduro Board’s Statement of Case because the Foreign Secretary’s intervention of 18 June 2021 not only makes submissions on the issues of law, but also:
 - 1.1. makes, for the first time, a new albeit limited statement of “no longer recognising”: that from 4 February 2019 the UK no longer recognised Mr Maduro as the Venezuelan Head of State, whether de facto or de jure (para 41 of HMG’s Case – (**Hearing Bundle, p.2147**)); and
 - 1.2. Explains, for the first time the intended (and, we submit, limited) ambit and nature of his earlier statements of recognition.

HMG’S POSITION

2. The intended ambit and meaning of the recognition statement is put by HMG, variously, as follows:
 - 2.1. the “nature of the recognition” is of Mr Guaidó “as **having the authority** to perform the functions of Head of State of Venezuela” [#42 of HMG’s case]
 - 2.2. the recognition statement was not intended to and did not convey anything about the extent to which whether anything done by Mr Guaidó could or would be practically effective [#43]
 - 2.3. the recognition is of “**competence** to act as Head of State **representing Venezuela on the international plane**” [#44]
 - 2.4. recognition is (or can be, and is in this case) “an expression by HMG that it recognises (in the context of a Head of State) a person as **having the authority** to act as such” [#52].
 - 2.5. the effect of the non-recognition of Mr Maduro is that “HMG does not recognise him as the **valid** representative of the State of Venezuela **on the international plane**” [#45].
3. As a result of this clarification and narrowing of the ambit of the recognition statement/s four points can now be made.

4. **First, HMG's recognition is, on examination, exactly what the CA described as a de jure recognition.**
5. That is so, notwithstanding HMG's protestations to the contrary. The touchstone is meaning, not labels (whether Latin or not). The recognition says nothing at all about Mr Guaidó's actual capacity to act effectively as Head of State even on the international plane, still less domestically.¹ The recognition statement(s) say merely that HMG will deal with Mr Guaidó on the basis that he is *entitled* to be Head of State.
6. Even this novel and very constrained form of recognition statement might raise some eyebrows, in terms of stretching credulity. HMG has not in fact signed any treaties with Mr Guaidó. Were it to do so, Mr Guaidó would be wholly unable to cause any of the organs of the Venezuela State apparatus to do anything that might be necessary to comply with such treaty obligations. HMG has not in fact had any substantive dealings with Mr Guaidó that would depend on him actually being Head of State, and it is particularly striking that HMG declined to accredit Mr Guaidó's proffered ambassador notwithstanding that Art 16 of the alleged Transition Statute purports to empower him to appoint the heads of permanent diplomatic missions, and that the appointment of ambassadors is (see below) one of the few roles of a Head of State acting on the international plane.
7. **Second, it is now clear that the recognition is directed to Mr Guaidó's competence to represent Venezuela "on the international plane" as opposed to reflecting or evidencing any view by HMG of Mr Guaidó's power effectively to act domestically within Venezuela.**
8. This is important.
9. A Head of State's acts on the international plane are generally the ability to make war and peace, to enter into treaties, to appoint and receive diplomatic representatives and to act on the international plane on behalf of their State.²
10. The functions of the Head of State of Venezuela, qua Head of State, and in his relations with HMG, are limited to these functions.

¹ And nothing whatsoever about his position as Head of Government.

² See eg Sir Arthur Watts - The Legal Position in International Law of Heads of States, Heads of Governments and Foreign Ministers (1994) Hague Academy of International Law at pp.26-32

11. *Even if* a valid domestic Venezuelan statute were to empower the person who is Head of State to appoint board members to an independent domestic body like the BCV, that is not an act “on the international plane” nor a matter of international law. It is a matter of domestic public law, turning on questions of the internal constitutional and governance arrangements of the BCV.
12. The point is made well in #44 of HMG’s Case (emphasis added): “The recognition is a recognition *of competence to act as Head of State, representing Venezuela on the international plane.* ... It follows that where Mr Guaidó can and does act *in that capacity*, HMG will treat him as entitled to do so” (**Hearing Bundle, p.2148**).
13. Note too that the Guaidó Board expressly accept³ that Mr Guaidó has no power to appoint BCV board members or a Special Attorney General (“SAG”) *other than* by virtue of the Transition Statute. Mr Guaidó does not contend that, simply by virtue of being Interim President, he has power to appoint BCV members or a SAG.
14. **Third, whatever the impact of the non-recognition of Mr Maduro, that too is directed only to Mr Maduro’s entitlement, in the eyes of HMG, to act on the international plane.**
15. **Fourth, HMG’s position highlights the paradox created by this new approach of recognising a Head of State who has no effective power within the State.**
16. The whole notion of a State in international law is dependent on sovereignty, which requires the effective exercise of power⁴. In Venezuela the President is Head of State and Head of Government. There is something profoundly uncomfortable about recognising the existence of the State of Venezuela – which brings with it an implicit acknowledgment that that territorial area is under the control of a government (here Mr Maduro’s government) whilst concurrently recognising someone else as the Head of State. It is only the *de jure/de facto* distinction that saves HMG’s position from absurdity.

THE MADURO BOARD’S POSITION

17. In the light of HMG’s submissions the Maduro Board will submit as follows:

³ Statement of Common Ground and Issues #22.2 at Appendix page 234 (**Hearing Bundle, p.234**) and see #90 of the Court of Appeal Judgment at Appendix p.60 (**Hearing Bundle, p.60**).

⁴ see the Maduro Board’s Case at #28-31 (**Hearing Bundle, pp.2073-2075**).

- (1) HMG is right to say that the making of recognition statements can be and should be capable of nuance and flexibility. It must be open to HMG to change its policy on the use of recognition statements. But that is why careful consideration needs to be given to what a recognition statement means and what its effect should be.
- (2) HMG is now using recognition statements for a different purpose, and in a profoundly different way, from the way it used them in the past. In the past HMG bound itself to recognise in accordance with the criteria of international law for the recognition of States and governments.⁵
- (3) In particular, in the absence of any express statement by HMG of the basis on which, or criteria by reference to which, the present recognition statement/s have been made,⁶ the Court is left to infer the basis and/or criteria used by HMG. The inescapable inference from what HMG has chosen to say, and from all the circumstances, is that what has been said reflects HMG's views of the validity of Mr Guaidó's claim under the Venezuelan Constitution to be Interim President of Venezuela and/or its political approval of Mr Guaidó and/or HMG's political disapproval of Mr Maduro. HMG's intervention has made crystal clear that its decision to recognise Mr Guaidó as entitled to act on behalf of the State of Venezuela on the international plane is not based on, and therefore says nothing about, HMG's views of the actual position in relation to what powers, if any Mr Guaidó effectively wields.
- (4) Happily, that approach permits the recognition statement/s to be construed and understood in a way which is consistent with the facts.
- (5) The only effect of the One Voice doctrine is to require the Courts here, in dealing with litigation of which they are properly seized, to follow the facts stated by the recognition statement, so as not to reach a conclusion inconsistent with HMG's recognition. The only "fact" which flows from or is entailed by the recognition

⁵ see the various policy statements from 1950, 1953 and 1980 identified in the Maduro Board case at FN 31 (**Hearing Bundle, p.2077**).

⁶ The closest we have is Sir Alan Duncan's 25 February 2019 response to Mr Tugendhat's letter, at (**Hearing Bundle, pp. 859-860**)

statement in this case is that Mr Guaidó is entitled to exercise the powers of Interim President of Venezuela on the international plane.

- (6) HMG's limited recognition of Mr Guaidó does not purport to extend to a statement that Mr Guaidó's purported domestic acts are as "*President*" within Venezuela's domestic legal order – such acts *not* involving him acting in a representative capacity *vis-à-vis* HMG – nor that they must somehow be treated as valid and effective acts. The domestic legal authorities (the STJ) have ruled Mr Guaidó's acts to be illegal, and it would be a highly uncomfortable result if HMG's recognition statements were to have the effect that the Courts here must ignore what the Courts in Venezuela have said on issues clearly within their competence.
- (7) If, contrary to the Maduro Board position, it *were* the case that the recognition statement constituted a recognition of facts (in the true sense) which were plainly and unarguably false,⁷ it would be an unconstitutional and unacceptable extension of the One Voice principle to allow that principle to compel the Courts here to treat a manifestly false fact as true.⁸ See in that regard Annex A to this Supplementary Case.
- (8) So for instance if a recognition statement were made the true meaning of which was that Mr Guaidó is recognised as effectively controlling the State of Venezuela, or its government, or recognised as effectively discharging the functions of Head of State, whether domestically or on the international plane, then it would be an impermissible and unconstitutional extension of the One Voice Principle were the Court to be bound by such manifestly false facts. The One Voice principle has in the past been applied when HMG made recognition statements on a principled basis which prevented HMG recognising facts that were manifestly false. So: if (but only if) we are wrong on our interpretation of the meaning of the present recognition

⁷ In other words, irrational. Note that it is *not* necessary, in order to reach the conclusion that the One Voice doctrine does not bite on an irrational recognition statement, to contend that it is not open to HMG to make an irrational recognition statement.

⁸ This is not an abstract argument. The Court is reminded that the urgency of this matter arises out of the need to sell some of the gold held in the Bank of England to fund COVID-19 and food relief in Venezuela. The practical implementation of that relief could only be carried out by the government exercising power in Venezuela. An irrational or perverse recognition of a "government" with no actual power on the ground would effectively prevent any use of Venezuela's gold reserves for humanitarian ends. The Maduro Board has previously offered a solution whereby the Bank of England sells gold itself and sends the proceeds direct to the UNDP for the UNDP to purchase food and medical necessities, but this has been refused.

statements, then the present, essentially political, method of use of recognition statements, and threats to use recognition statements, is so different to past practice that it does not engage the One Voice Principle as properly understood.

- (9) It is appropriate for the Court to defer to the executive on matters peculiarly within the executive's knowledge, but the Court cannot properly abrogate its task of determining facts when the executive purports to make a factual determination which is perverse.
- (10) The new statement by HMG that from 4 February 2019 it no longer recognised Mr Maduro as Head of State in any sense prevents the Maduro Board from arguing that there is an implied parallel *recognition* of Mr Maduro as being (as a matter of fact) the Head of State of Venezuela.
- (11) However, the statement that HMG no longer *recognises* Mr Maduro as Head of State in any capacity does not bind the Courts here to find that Mr Maduro *does not in fact* exercise the powers of Head of State of Venezuela in Venezuela, nor does it prevent the Court from finding that *in fact he does* exercise those powers. In the absence of any binding statement of fact by HMG as to those questions of fact the Court must decide them. The ending (or withdrawal) of recognition means that the position is the same as it was before there was any statement of recognition, and when there is no statement of recognition the role of the Courts is to decide. An absence of a statement of recognition of fact X does not amount to a recognition of "not X".

PRACTICALITIES

18. The Court will see that the Maduro Board now wishes to run two arguments that it has not hitherto run. Those two arguments are:
 - 18.1. that the One Voice Principle does not apply where HMG chooses to exercise its prerogative power to recognise in a way which is irrational in the sense that the facts that HMG purports to certify by its recognition are obviously false; and
 - 18.2. that where HMG chooses to exercise its prerogative power in this way, that exercise of prerogative is reviewable, and if as here it is exercised irrationally, that should result in the recognition statement being declared unlawful and so being null and void and of no effect.

19. It seems to us that it is feasible for the first of those arguments to be dealt with at the hearing. Alternatively, since the point does not arise if the Maduro Board is correct, another way to deal with it would be to reconvene to deal with it at a later date if it were to prove necessary to do so (bearing in mind always the food and medical emergency in Venezuela which gives rise to the need for expedition in this case).

20. We suggest that if and insofar as it is or might turn out to be necessary to deal with the second point in order to resolve the issues in these proceedings, then that question be resolved if and when it becomes clear that it is necessary to do so. In other words the question of whether and if so how it is open to the Maduro Board to challenge the exercise of prerogative, and whether that challenge should succeed, be left over for later determination.

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6 July 2021

ANNEX A: ONE VOICE ARGUMENTS

1. In the light of the above submissions, and the fact that Mr Guaidó is in no way effectively discharging the functions of Head of State domestically, we submit that the courts are not constrained from reviewing the scope or content of the recognition statement in the event it is considered to assert to the contrary.
2. This is for two reasons.
 - (1) First, the One Voice doctrine, which in the normal case quite properly seeks to prevent the Courts from reviewing factual determinations made on a rational basis by HMG, is contingent upon the recognition decision being based upon a rational foundation of fact. The doctrine cannot properly be extended so as to apply in circumstances where a factual determination by HMG is clearly and manifestly false, for this impermissibly ousts the Court's decision making role and unjustifiably gives up the Court's fact finding role to the executive.
 - (2) Secondly, the exercise of the power of recognition, like all other powers, must not be exercised on the basis of facts which are plainly and unarguably false. Such an exercise of power is irrational and can and should be declared to be null and void by the Court as guardian of the rule of law in accordance with normal principles of public law.
3. Each of these reasons rest on a fundamental principle of our public law that all decisions by public officials, even those based on broad policy considerations, must have a rational basis. Any other assumption permits the exercise of arbitrary power without access to the courts which offends the rule of law as a constitutional principle: *R (UNISON) v Lord Chancellor* [2020] AC 869, at §66; *R (Privacy International) v Investigatory Powers Tribunal* [2020] AC 491 at §§119-126.
4. The making of a recognition statement, albeit an exercise of prerogative power of the Crown in foreign affairs, is amenable in some cases to review by the courts:

Council of Civil Service Unions v Minister for Civil Service [1985] AC 374. Such a review may not only be direct, but also by way of collateral attack: *Boddington v British Transport Police* [1999] 2 AC 143, 172G-H.

5. Although the courts will always provide a wide margin of discretion to decisions in the area of foreign policy, there is no longer any blanket prohibition on the justiciability of the exercise of the prerogative power. *R (Miller) v Prime Minister* [2020] AC 373 (“*Miller 2*”) at §§33; 35; 38; 52. Both the extent of a prerogative power and its exercise are potentially amenable to judicial review. The question of reviewability depends not on the source of the relevant power, but on its subject matter and capacity of the court to impose principled standards in a particular case. : see *Council of Civil Service Unions v Minister for Civil Service* [1985] AC 374, 407B at 418A-C and F, cited in *Mohamed (Serdar) and Others v Ministry of Defence* [2017] AC 649 (“*Mohamed*”) at §15; §56; see also *R (Abbasi) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1598 (“*Abbasi*”) at §§83-86 and as cited in *R (Youssef) v SSFCA* [2016] AC 1457 (“*Youssef*”) at §24. That a prerogative power is exercised in the area of foreign affairs is no longer reason, in and of itself, for such a power to be non-justiciable: see, e.g., *Abbasi* [2002] EWCA Civ 1598 at §106(iii); and *Youssef* at §§24-27.
6. It is of course true that the subject matter of foreign affairs normally involves high policy which the court may not be equipped to assess or review. But there are matters in which the court may properly intervene, particularly where the exercise of the prerogative has legal consequences for a person’s rights or duties. This case is in the category of an exercise of prerogative power which clearly has legal consequences for a person’s rights and duties, since HMG’s recognition decision is said by the “Guaidó Board” to extinguish the rights of the “Maduro Board” (as the Board of Directors of the BCV, which they indisputably continue to be) to control the BCV’s assets in this jurisdiction, which on any view the Maduro Board possessed prior to the Hunt Statement.

7. To the extent that the recognition statement recognises Mr Guaidó as effectively controlling the State of Venezuela, or its government, or recognises him as effectively discharging the functions of Head of State domestically, and to the extent that the statement denies this to Mr Maduro, then the statement is justiciable since it goes beyond the conduct of foreign relations between States and has direct legal consequences on the control of assets within England & Wales, providing the Court with a ‘domestic foothold’: see, e.g., *Khaira v Shergill* [2015] AC 359 at §43.

8. There is evidence before the Court that it is President Maduro alone who discharges the functions of Head of State and Head of Government within Venezuela. The starting point when considering the exercise of powers by the President of Venezuela within the territory is Art. 226 which stipulates that the “*President of the Republic is the Head of State and of the National Executive, in which latter capacity he directs the action of the government*” (Hearing Bundle (“**HB**”), 817); and Art. 236 goes on to repeat that the President “*directs the activity of the Government*” and further stipulates a number of “*attributions and duties of the President of the Republic*” (HB, 817). Within Venezuela, it is President Maduro alone – and not Mr Guaidó – who exercises, as a matter of fact, the following powers:
 - (1) President Maduro (not Mr Guaidó) in fact directs the activity of the Government (activity contemplated by the Constitution, Art. 236.2 – HB, 817) and appoints and removes Cabinet Ministers (activity contemplated the Constitution, Art. 236.3 – HB, 817). President Maduro governs through 34 Ministries and Agencies, which exercise the functions of government within the territory of Venezuela (HB, 745). These Ministries include (HB, 907-909):
 - (a) The Ministry of the People’s Power for Foreign Relations, led by Mr Jorge Arreaza.
 - (b) The Ministry of the People’s Power for Defence.
 - (c) The Ministry of the People’s Power for Health, which is in charge of the government response to the Covid-19 pandemic in Venezuela (HB, 808).
 - (d) The Ministry of the People’s Power for Economy and Finances.

- (e) The Ministry of the People’s Power for Internal Relations, Justice and Peace.

These Ministries and related State entities attend to all aspects of the economic and social life of Venezuela that are typically administered by a government (HB 745-746). There is not one shred of evidence that Mr Guaidó as President within Venezuela directs the Government: indeed, the Guaidó Board has not advanced any case that Mr Guaidó has a Government or Ministers who exercise executive functions within Venezuela. Even Mr Guaidó’s former Special Attorney General, Mr Hernandez, admitted that Mr Guaidó does not have a Government (HB, 745). Moreover, the Transition Statute – relied on in terms by the Guaidó Board in this litigation – admits that Mr Maduro leads a “*de facto government*”. (HB, 837)

- (2) **HMG continues to acknowledge that President Maduro and his Ministers control all entry into, and residence in, Venezuela, for foreign nationals and goods**, including for HMG’s diplomatic staff or other employees of the UK Embassy in Caracas:

- (a) The UK Embassy asked an office of the Ministry of Foreign Affairs for its good offices to permit and authorize the re-entry into Venezuelan territory of Ambassador Soper (HB, 358, 993). Also, to authorise his departure (HB, 1834).
- (b) The UK Embassy sought from a directorate of the Ministry of Foreign Affairs its good offices to process the authorization of Mr Duncan Hill to leave the territory of Venezuela (HB, 358). Also for the entry into Venezuelan territory (HB, 1831).
- (c) The UK Embassy informed the Ministry of Foreign Affairs that Mr Hill would be visiting the State of Nueva Esparta (HB, 802) and to two regions of Venezuela (HB, 803).
- (d) The UK Embassy requested the good offices of a directorate of the Ministry of Foreign Affairs to authorize the entry of Mr Anicatt (HB, 358) and another officer Nolan Villasmil Garcia (HB, 985).

- (e) The UK Embassy requested a directorate of the Ministry of Foreign Affairs to process authorization for Ambassador Soper to leave the territory of Venezuela (HB, 359).
 - (f) The UK Embassy requested a directorate of the Ministry of Foreign Affairs to authorise re-entry of Mr Hill, and for renewal of his diplomatic visa and updating of his diplomatic card (HB, 359).
 - (g) The UK Embassy requested a directorate of the Ministry of Foreign Affairs its good offices to authorize the entry of First Secretary Simon Gore (HB, 1816).
 - (h) The “Embassy of Her British Majesty” in Caracas sent a note to a directorate of the Ministry of Foreign Affairs requesting its authorisation for the importation of 50 vaccines against Covid-19 for the internal use of HMG’s Diplomatic Mission in Venezuela. The Embassy asked for the Ministry of Foreign Affairs’ good offices to send this petition to the Ministry of Health or the corresponding health authority in order to obtain the permits and authorisations required for the importation of vaccines (HB, 1826).
- (3) **President Maduro (not Mr Guaidó) directs the National Armed Forces in his capacity as Commander in Chief and exercises supreme command over the National Armed Forces** (Constitution Arts. 236.5-236.6 – HB, 817): see HB, 805. The Ministry of Popular Power for the Defence is the administrative body in charge of the integral defence of the country, working together with the Bolivarian National Armed Forces to protect the territory of Venezuela, and the only Minister of Defence in Venezuela is Vladimir Padrino Lopez who was appointed by President Maduro (**Zaiwalla 3, #40**) HB, 805). There is cooperation and sharing of intelligence between the Coastguard Command of the Armed Forces of Venezuela and the UK Royal Navy in the Caribbean Sea (**Zaiwalla 3, #19**: HB, 800). It is because of President Maduro’s control over the Armed Forces of Venezuela that they are included in s. 30 of the The Venezuela (Sanctions) (EU Exit) Regulations 2019 SI 2019/135 (HB, 1170); and the note of Venezuela’s Ministry of Foreign Affairs regarding the arrest of Guyanese

vessels in Venezuelan territorial waters demonstrates President Maduro's control over the military and/or police (HB, 1819-1821).

- (4) **President Maduro administers the National Public Treasury** (Constitution, Art. 236.11 – HB 818): President Maduro's Government, through the Office of National Budget (ONAPRE), affiliated to the Ministry of Economy and Finance, prepares the draft national budget and related reports. His Government controls the "public purse" (HB, 805). President Maduro's Government has **led the country's response against Covid-19, including health, economic and tax measures** to deal with the pandemic (**Zaiwalla 3, ##38; 48-52; HB, 805, 808-809**). This has included dealing with the United Nations and obtaining its support (**Zaiwalla 3, #50(b); HB, 809**).
- (5) **President Maduro appointed the Attorney General and the Heads of Venezuela's Permanent Diplomatic Missions** (Constitution, Art. 236.15 – HB, 818): President Maduro appointed Mr Reinaldo Munoz as permanent Attorney General on 5 February 2021. This was published in the Official Gazette (HB, 1265-1268). President Maduro has appointed the Heads of Venezuela's Permanent Diplomatic Missions, including in the case of the Venezuela's Ambassador to the UK (see Maduro Board's Case at [2] (HB, 2065) and HB, 992).
- (6) **President Maduro in accordance with the Decree with the Rank, Value and Force of Law of the Central Bank of Venezuela of 30 December 2015** (the "2015 BCV Law") (HB, 767) **appointed Calixto Ortega as President of the BCV, appointed five directors of the BCV and re-confirmed the appointment of one other member** (HB, 6420). They fulfil, in practice, all of the functions of the BCV and exercise effective control over the BCV within Venezuela:
 - (a) President Ortega and his Board of Directors have effective control over the BCV's headquarters and facilities, remain in control of its

operations, and have access to the international banking system on behalf of the BCV (HB 721, 807).

- (b) They manage the money supply and credit in Venezuela, and carry out all the usual functions of a central bank (HB, 716-717, 720). The thousands of BCV staff continue to operate under Mr Ortega and his team's directions (HB, 721-725). Mr Ortega's signature appears on all banknotes issued in Venezuela (HB, 721). Mr Ortega, as President of the BCV, continues to deal with other central banks and international organisations (App, 727-729).
- (c) The General Comptroller supervises the functioning of the BCV as a public entity (budget and operation). The financial statements of the BCV are published every month on its website. In contrast, it is not apparent that the Guaidó Board is accountable to anyone (HB, 768).
- (d) Independently of the result of this case, the Maduro Board will continue to be the entity which actually carries out the role of the Central Bank and in physical and effective control of its facilities and personnel. There is no-one else to do this task (HB, 767).
- (e) Mr Hernandez and the Guaidó Board are not a rival or alternative Central Bank, they have no practical influence or control over the daily operations of the BCV (HB, 726). Hernandez is an individual expatriate residing in Washington (HB, 766).
- (f) Even the National Assembly lead by Mr Guaidó, sent a letter to President Ortega addressed to "Citizen Calixto José Ortega Sánchez, President of the Central Bank of Venezuela" (HB, 6423).
- (g) UBS and Banque de France have continued to deal and authorise payments made by President Ortega during the Covid-19 pandemic, despite the alleged recognition of Mr Guaidó (HB, 1786-1787, 1791-1811).

9. A recognition statement has been described as *"a statement of fact, the contents of which are not open to be discussed by the Court on grounds of law"*: Lord Wright in

The Arantzazu Mendi [1939] AC 256 at 267-8 (cited in *Mohamed v Breish* [2020] EWCA Civ 637 at §61) (emphasis added).

10. Accordingly, insofar as a recognition statement recognises a de facto situation, that recognition should rest on actual sovereign exercise of power in respect of the role and matter that is recognised. see *Bank of Ethiopia v National Bank of Egypt* [1937] Ch 513 at p.522 (per Clauson J), and more recently the CA in *Breish* at §43, the latter as follows:

*“First, it is well-established by authority that the one voice principle is engaged by recognition of foreign governments as de facto governments, and that such recognition says nothing about the de jure status or constitutional lawfulness of the government under local law. **Such recognition of a de facto government is a recognition of its sovereignty. Accordingly what the one voice principle requires of the Court is that it should give effect to the sovereignty notwithstanding any constitutional unlawfulness of the government so recognised. Four cases illustrate the point.**”*

11. Accordingly, a de facto recognition triggers the One Voice principle not despite the factual reality, but because of it. In the context of the de facto recognition of a Government (or Head of State), the One Voice principle requires the Courts to be guided by HMG as to whom as a matter of fact exercises the functions of sovereignty: see, e.g., *The Arantzazu Mendi* at pp. 264-265 (per Lord Atkin).
12. But in any event, it is not the case that the One Voice principle has been held to apply as an unwavering rule of law incapable of being questioned in any circumstances. See for example: *Duff Development v Kelantan* [1924] AC 797;¹ *Re Al Fin Corporation’s Patent* [1970] Ch 160;² and *Hesperides v Aegean Turkish Holidays* [1978] QB 205.³

¹ Lord Sumner expressly recognised at 824-825 that there may be scope to go beyond HMG’s recognition statement where it was “*temporary if not temporising*”, and in such cases sovereignty as used in the statement would have to be adjudged against actual sovereignty.

² Graham J stated at 180F: “*Whether or not the state in question satisfies these conditions is a matter primarily of fact in each case and no doubt there will be difficult cases for decision from time to time, but difficult cases of fact do not prevent the court from coming to a conclusion when the relevant facts are proved before it*”.

³ Per Lord Denning MR – discussing views against the One Voice doctrine at 218F-H: “[i]f it were necessary to make a choice between these conflicting doctrines, I would unhesitatingly hold that the courts of this country can recognise the laws or acts of a body which is in effective control of a territory even though it has not been

13. In the present case the Court should not be bound by the One Voice doctrine to treat as conclusive a statement by HMG that Mr Guaidó is recognised as effectively controlling the State of Venezuela, or its government, or as effectively discharging the functions of Head of State and Head of Government domestically. This is the case for any one of the following reasons:
- (1) The Once Voice principle presupposes a rational connection between the content of the statement insofar as it recognises a de facto exercise of sovereignty or control and the actual existence of the sovereignty so recognised. There is no such rational connection in this case.
 - (2) Although the review by the courts of the exercise of the prerogative power in foreign affairs will confer a broad margin of discretion to the decision-maker, the power is open to being reviewed by the courts, particularly when it has legal consequences for private rights, as is the case here.
 - (3) The decision in this case to afford recognition to Mr Guido as Interim President of Venezuela (unless it is a mere de jure recognition), contravenes that part of the constitutional principle of the rule of law which requires decisions of all public officials not to be arbitrary, irrational, or based upon, or asserting, a set of facts which are manifestly false.
14. Alternatively, to the extent that the Court considers that it would be bound by the statement by which HMG recognises Mr Guaidó as effectively controlling the State of Venezuela, or its government, or as effectively discharging the functions of Head of State and Head of Government domestically, the Court should declare that statement to be unlawful and null and void: *Miller 2*, §69.

recognised by Her Majesty's Government de jure or de facto: at any rate, in regard to the laws which regulate the day to day affairs of the people, such as their marriages, their divorces, their leases, their occupations, and so forth: and furthermore that the courts can receive evidence of the state of affairs so as to see whether the body is in effective control or not."