

## **Draft Outline of Argument – Respondent, Kingdom of Cyborgs**

The following is respectfully submitted:

### *Standing*

It is the position of Cyborg that the present administration of Mainland is unconstitutional and illegitimate. However, even if this Court holds that they are entitled to standing, they inherit the international obligations incurred by the previous government. Therefore, they are bound by the terms of Treaty of 20 December 2006. The Treaty of 20 December 2006 between Cyborg and Mainland clearly and definitively establishes Cyborg's title to Cisland and extinguishes any claim Mainland may have to the island. Further, the Treaty requires that Mainland make no claim of title to Cisland. Therefore, this action and the remedy sought by Mainland are prohibited by the terms of the Treaty. Treaties have primacy over all other forms of determining title and effectivities are no substitute for title or a treaty. Treaties must be interpreted in good faith and in accord with their plain sense meaning.

In respect of claims by Mainland that the Treaty is invalid because it violates a preemptory norm of international law, Cyborg denies this claim and puts the Applicant to strict proof thereof. Further, it should be noted that Mainland does not come before the Court with clean hands, having been complicit in the bargaining for and enactment of any rights violations they allege. The Court must refuse to grant relief to a party whose hands are at least as dirty, if not more so, than the respondent.

### *Title*

Cyborg has established original title to Cisland. Although the island had been used intermittently by fisherman from 1815, there was no permanent settlement or inhabitants until Cyborg claimed sovereignty and established ordinary local administration through its grant to a Cyborg banana plantation in 1820. Continuously from 1820 until the present day, Cisland has been governed, settled and administered by the Cyborg government as an overseas dependant territory. At no time has the government of Mainland ever exercised state function or ordinary administrative control. It is submitted that not only does Cyborg have the better claim to effectivities of control, but that Mainland has never maintained any effective control over the island. Notwithstanding that during the colonial administration Cisland was governed from Mainland, that governance was subject to ultimate authority exercised by and through the government of Cyborg.

At the time Mainland was granted independence, Cyborg reserved Cisland to itself and has continuously asserted title and never acquiesced its title. The prerogative to delimit post-colonial boundaries belongs to the colonizing power and there is no principle of international law requiring Cyborg to group geographically contiguous land masses together when drawing such boundaries. Cyborg originated title to Cisland, has continuously held and asserted that title, the title has been affirmed through Treaty and even if it weren't, the effectivities overwhelmingly favor Cyborg. Furthermore, at present, the island is depopulated and there is no practical or effective way to effect the remedy requested by the Applicant.

## *Rights of Cislanders*

### Self Determination

Cisland was uninhabited at the time of colonization; it was *terra nullius*. There is no right of self-determination via referendum for the territory by those who settled post colonization.

### Right to Relocate a Civilian Population

Cyborgs have the right to relocate a civilian population in time of armed conflict. Civilians were relocated so that Cyborgs could establish a military base on the island in its fight against the Republic of Puma and the terrorist organization protected by Puma, which was responsible for the bombings in the capital of Cyborgs. Cyborgs have the right to derogate from their obligations. This includes derogating from the liberty of movement and freedom to choose residence. There are two conditions under which civilian populations can be displaced: security of civilians and imperative military reasons. The relocation was required for imperative military reasons; the protection of the Cyborgs nation from terrorist attacks. It is the security of Cyborgs civilians globally that it was necessary to establish a military base, which could not function effectively if surrounded by a civilian population. It was necessary also necessary to relocate the civilian population in order to ensure that they were free from harm of attack on Cisland.

### Ex Turpi Causa...

Based on the 'unclean hands' doctrine, Mainland is not entitled to obtain an equitable remedy on account of the fact that they were a participant in the wrongful act of which they complain (the deportation of the Cislanders). They were party to the treaty, the terms of which they now cite as being in violation of Cislanders' rights. In addition, they did not fulfill their own commitments under the treaty to settle the Cislanders and grant them citizenship. Under the 'unclean hands' doctrine, they cannot now argue that the terms of the treaty were illegal, in order to extract benefit from that argument.

All of which is respectfully submitted, this 15<sup>th</sup> day of January, 2011.

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