

COMMONWEALTH MOOT COURT COMPETITION (INTERNATIONAL ROUNDS)
2010/2011

On Submission to the Commonwealth Court

Hyderabad, India

CASE CONCERNING THE ISLAND OF *CISLAND* AND CERTAIN OTHER MATTERS

REPUBLIC OF MAINLAND
(CLAIMANT)
VS
KINGDOM OF CYBORGS
(RESPONDENT)

DRAFT LIST OF AUTHORITIES *for* CLAIMANT

PAYOSHI ROY (SENIOR COUNSEL)
NAYANATARA RANGANATHAN (JUNIOR COUNSEL)
PUNEETH GANAPATHY (RESERVE COUNSEL)

JANUARY 14TH, 2011

THE NATIONAL UNIVERSITY OF JURIDICAL SCIENCES, KOLKATA (SOUTH ASIA - INDIA)

DRAFT OUTLINE OF ARGUMENTS FOR THE CLAIMANT

I. THE CLAIMS MADE BY THE REVOLUTIONARY GOVERNMENT ARE ADMISSIBLE.

The act of recognition of governments is a purely political prerogative of States. It has no bearing on the legal rights of the State. [Hersch Lauterpacht, *RECOGNITION IN INTERNATIONAL LAW*, (University Press, 1947). Democracy is not a mandatory form of governmental system and International Law recognises different political orientations of States. [Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), UNGAOR, 25th Sess., Supp.18, U.N. Doc. A/8018]

A de facto status gives sufficient legal standing to represent the rights of the Republic of Mainland. [Tinoco Concessions Arbitration (1923), R.I.A.A. 396] The Revolutionary government is the de facto government exercising authority over Mainland.

II. MAINLAND HAS LEGAL TITLE OVER CISLAND AND CYBORGS' OCCUPATION IS ILLEGAL.

The administrative boundaries before 1980, treating Mainland and Cisland as a single unit, are a manifestation of Cyborgs' animus to treat the territories as an indivisible entity. Thus, upon Mainland's independence, Cisland necessarily devolves to Mainland by the principle of *uti possidetis*. [Case Concerning the Frontier Dispute (Burkina Faso v. Mali), [1986] I.C.J. Rep. 554, 565] Further, Mainland's persistent protests corroborate the evidence of its animus to have legal title over Cisland. [Mexico v. U. S. (Chamizal Arbitration), (1911), 11 R.I.A.A. 309]

Also, cultural, ethnic and contiguous ties are relevant since the fate of the principal territory commands that of the rest. [The Minquiers and Ecrehos Case (France v. United Kingdom), [1953] I.C.J. Rep. 47, 69]. Healthcare and education are essential and indispensable State functions and the state is duty-bound to provide these services.[Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, [2004] I.C.J. Rep. 136]. Cyborgs has allowed Mainland to carry on these functions even after the latter gained independence in 1980.

Alternatively, Cyborgs has denied the population of Cisland, a Non-Self-Governing Territory, the right to self determination. [Western Sahara, Advisory Opinion, [1975] I.C.J. Rep. 12]. Hence, its continued occupation of Cisland is unlawful.

III. THE TREATY CONCLUDED BETWEEN CYBORGS AND MAINLAND IS DEVOID OF LEGALITY AND MAINLAND HAS NOT SURRENDERED ANY CLAIMS OVER CISLAND.

The treaty of 20th December 2006 is ultra vires the Mainland Constitution and the President of Mainland acted outside of his competence in concluding the treaty. The constitution is a law of fundamental importance and the violation was manifest and States could be assumed to have notice of it. [Vienna Convention on Law of Treaties, UN Doc. A/Conf.39/27; 1155 U.N.T.S. 331]. Further, the treaty violates jus cogens norms of self determination and is thus, void ab initio. [Hector Gros-Espiel, Special Rapporteur of the Sub-Commission on Prevention o

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Discrimination on the Protection of Minorities, Implementation of United Nations Resolutions relating to the Right of Peoples under Colonial and Alien Domination to Self Determination E/CN.4/Sub.2/405(Vol I) 20 June 1978].

IV. THE MILITARY ACTIVITIES OF CYBORGS IN THE REGION CONSTITUTE A THREAT TO REGIONAL PEACE AND SECURITY.

The prohibition of the use of force is a jus cogens norm in International Law. [Case concerning Military and Paramilitary Activities in and against Nicaragua (Merits), I.C.J. Rep. (1986) 14, ¶ 190].

Use of Cisland as a military base, the bombing of Puma and the torture of suspect terrorists is a blatant violation of this norm and a grave to regional peace and security.

For an act of Self Defense to be lawful, it has to be Proportionate and Necessary. [The Oil Platforms Case, I.C.J. Rep. 2003 161, ¶ 43]. There was no imminent threat of an attack by the Saviours and considerable time had elapsed since the first attack. Cyborgs did not exhaust all other alternatives such as approaching the Security Council. Since there was no sign of an imminent attack, Cyborgs' actions were not absolutely necessary. The indiscriminate bombing of an entire State is not proportional to a single terrorist attack on night clubs and liquor bars in a city. Cyborgs' actions do not constitute a valid form of self defense.

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TREATISES AND INTERNATIONAL CONVENTIONS

Hersch Lauterpacht, *RECOGNITION IN INTERNATIONAL LAW*, (University Press, 1947)

Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), UNGAOR, 25th Sess., Supp.18, U.N. Doc. A/8018

Hector Gros-Espiel, Special Rapporteur of the Sub-Commission on Prevention of Discrimination on the Protection of Minorities, Implementation of United Nations Resolutions relating to the Right of Peoples under Colonial and Alien Domination to Self Determination E/CN.4/Sub.2/405(Vol I) 20 June 1978

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DISPUTES AND JUDICIAL DECISIONS

Tinoco Concessions Arbitration (1923), R.I.A.A. 396

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The Minquiers and Ecrehos Case (France v. United Kingdom), [1953] I.C.J. Rep. 47

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, [2004] I.C.J. Rep. 136

Western Sahara, Advisory Opinion, [1975] I.C.J. Rep. 12

Case concerning Military and Paramilitary Activities in and against Nicaragua (Merits), I.C.J. Rep. (1986) 14, ¶ 190

The Oil Platforms Case, I.C.J. Rep. 2003 161