

12th Commonwealth Moot Competition, 2011

IN THE COMMONWEALTH MOOT COURT

Republic of Mainland

Applicant

v.

Kingdom of Cyborgs

Respondent

Draft Outline of Arguments for the Respondent

Kingdom of Cyborgs

Team: Sri Lanka Law College

Country: Sri Lanka

Region: South Asia

Senior Counsel: Ajanthan Sivathas

Junior Counsel: Dhananga Pathirana

Reserve Counsel: Poornima Wijemanne

Date of Submission: 15.01.2011

ARGUMENT 1: Kingdom of Cyborgs has always maintained sovereignty over Cisland

Kingdom of Cyborgs in unequivocal terms possesses title for the following three reasons,

- I. Cyborgs maintained effective occupation and administration since 1820
- II. Cyborgs never showed intention to relinquish title when Mainland was granted independence
- III. Mainland has acquiesced and acknowledged Cyborgs' sovereignty over Cisland

Cisland though being *terra nullius* was a part of Cyborgs even before 1820, and was not a part of Mainland when Mainland was under monarchical rule prior to 1815. It is Cyborgs who perfected its inchoate title by effective occupation over Cisland by leasing it to a company which was registered in Cyborgs, for a banana plantation. Mainland never occupied Cisland, but rather people of Mainland were recruited by the company into Cisland. The ICJ in has looked into the establishment of settlements, exercising criminal jurisdiction etc. as acts of effective occupation. These acts are referred to as acts consistent with sovereignty or *à titre de souverain* as in the *Malaysia v. Singapore* case. Effective occupation as stated in the *Island of Palmas case* is what is necessary to establish sovereignty over territory that is *terra nullius*. And it is Cyborgs who always maintained the administration of Cisland. Private acts which are ratified by the State are attributable to the State as provided in the *Draft Articles on States Responsibility*, the *Sedudu Island* and *Anglo-Norwegian Fisheries* cases.

The United Nations has refused to allow a colonial power to invoke the wishes of an imported settler population to defeat a pre-colonial territorial claim. The principle of territorial integrity facilitates the integration of Cyborgs and Cisland. A State establishes sovereignty over previously unoccupied territory when it demonstrates a continuous and peaceful display of authority over the territory (*corpus occupandi*), reflecting its intention and will to act as sovereign (*animus occupandi*). Whether or not the consequent acts or *effectivités* of Mainland in Cisland can be considered *à titre de souverain* is immaterial since Cyborgs possessed a pre-existing title over Cisland, as expressed by the ICJ in the *Cameroon v. Nigeria, Burkina Faso v. Republic of Mali* and *Libyan Arab Jamahiriya v. Chad* cases.

Mainland derived no title under *uti possidetis juris* from Cyborgs because it is not applicable given the circumstances. Hence, the only way Mainland can claim title is through a prescriptive claim or by intention of Cyborgs to concede the title over Cisland to Mainland. However, neither of these would succeed since Cyborgs never abandoned sovereignty over Cisland. As the *Eastern Greenland case* stated, the abandonment of sovereignty required the intent to abandon sovereignty. Cisland continued to be administered by Cyborgs as an overseas territory even after granting independence to Mainland in 1965. In addition Cyborgs has always rejected all claims by Mainland over Cisland.

In any event, Mainland also has acknowledged and expressly as well as impliedly shown acquiescence of Cyborgs' sovereignty over Cisland. The signing of the treaty by the former president of Mainland prevented any claims over Cisland, and Mainland showed lack of protest by merely making requests that were not in any way persistent. These provide the necessary acquiescence even after 1965. Following the establishment of the Permanent Court of International Justice in 1919, diplomatic protest was no longer the sole means of asserting sovereignty as stated in the *Chamizal Arbitration*. In any event, a protest will only preserve the pre-existing title of a protesting state. As Mainland never effectively occupied the Islands, it had no title upon which a protest could be based.

ARGUMENT 2: Mainland has a duty to comply with the terms of the treaty and Cyborgs' military activities in Cisland are justified

Cyborgs is justified in their activities in Cisland, for which Mainland must honour the treaty for the following three reasons,

- I. Mainland has a duty to resettle the evacuees under the treaty signed by the states
- II. Cyborgs' actions are in pursuance to ensure International peace and to rid the region of terrorism
- III. Mainland's claims are tainted with ulterior motives and by effect aids the terrorist activities in Puma

The treaty signed by the Foreign Minister of Cyborgs and the President of Mainland is *pacta sunt servanda* and it is the obligation of the parties to the treaty to comply with its terms. Under Article 7 of the *Vienna Convention*, the head of state is deemed to have full powers in signing the treaty. As the ICJ noted in the *Bosnia Case* that 'According to International Law, there is no doubt that every head is presumed to be able to act on behalf of the state in its international relations.' Article 46 of the Convention takes the view that a state cannot plead a breach of its constitutional provisions as an excuse to invalidate an agreement. In the case of *Cameroon V. Nigeria* the ICJ noted that a limitation of the capacity of a head of state would not be manifest unless properly publicised, as heads of states are deemed to represent their states for the purpose of performing acts relating to the conclusion of treaties. Also a state may not invoke a provision of its internal law as a justification for its failure to carry out an international obligation.

In this respect, Mainland, having received due consideration from Cyborgs, has a duty to resettle the evacuees from Cisland, by not performing which Mainland had violated the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*. Furthermore, Mainland's callous and inhuman treatment of the Cisland evacuees seems to defeat their own claim of Cislanders being culturally and administratively an extension of their sovereignty.

The bombings in Nodlon amount to acts of terrorism as per the International Convention for the Suppression of Terrorist Bombing; and the failure of diplomacy between Cyborgs and the government of Puma show that Puma showed no commitment to bring 'The Saviours' before justice, failing in its duty under the *International Convention for the Suppression for the Financing of Terrorism*. This justifies the subsequent measures taken by Cyborgs to establish a military base in Cisland as acts of preemptive self defence recognised under Article 51 in the Charter of the United Nations and as held by the House of Lords in *R (On the Application of Bancoult) V Secretary of State For Foreign and Commonwealth Affairs*. Cyborgs' actions to protect international peace and security are justifiable under the present policy focus on international terrorism in the post 9/11 context.

The sudden claims of the new revolutionary government in Mainland appears to be tainted with sympathy towards Puma, which in turn aids and encourages terrorist activities in Puma as in the *Diplomatic and consular staff in Teheran case*. Moreover, Mainland's actions reject the cooperation which it owes under General Assembly Resolution 2625 (XXV).