

# Kluwer Arbitration Blog

## Alice in the World of Oral Argument

Inna Uchkunova (International Moot Court Competition Association (IMCCA)) · Monday, February 18th, 2013

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With the finals of the Philip C. Jessup and Willem C. Vis Moot approaching it is a good time to spend a few words on oral advocacy and persuasion which are indispensable to moot-courting and real life career as well.

A judge from the International Court of Justice once said that he sometimes gets so bored during actual hearings that he starts drawing battle ships on a piece of paper. We use as a reference the records of the International Court of Justice (being among the few international tribunals whose records are available online) to show calling-the-judges'-attention phrases used by some of the most renowned governmental lawyers. It is always a good idea to be armed with such ice-breakers when facing a cold bench. Besides, even the most authority-backed argument may miss making the right impact when vaguely presented.

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“Nonetheless, whether one speaks of estoppel, or good faith, or the prohibition against **a State blowing hot and cold at the same time**, the position is the same.” – Mr. Rodman Bundy arguing for Singapore in the case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Public sitting held 29 June 2001, Doc. CR 2001/4 (2001). Probably the first usage of the phrase that “a State cannot blow hot and cold at the same time” appears in an article written by Lord McNair in the year 1924. (See Arnold McNair, *The Legality of the Occupation of the Ruhr*, 5 Brit. Y.B. Int'l L. 17 (1924), p. 35).

“Was it because, to adapt the story of Hans Christian Andersen, **the Emperor would be revealed as having no clothes?** The questions are no doubt rhetorical...” – Sir Ian Sinclair arguing for the Libyan Arab Jamahiriya in the *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Public sitting held 15 June 1993, Doc. CR 93/15 (1993)

To make it even more emphatic this may be paraphrased to: “Like in the famous tale, Your Excellencies, **there is an emperor, a naked emperor, in this court-room** and this is the Respondent’s argument that...”

“In support of this argument, the Respondent is required to adopt **an approach that ignores a parade of elephants** trampling through this Great Hall.” – Mr. Philippe Sands arguing for the former Yugoslav Republic of Macedonia in the case concerning *Application of the Interim accord*

of 13 September 1995 (*The former Yugoslav Republic of Macedonia v. Greece*), Public sitting held 28 March 2011, CR 2011/11 (2011)

“As you know, in ancient Greek mythology Procrustes was a robber who kept a house by the side of the road where he offered passing strangers a pleasant meal and a night’s rest in a special bed which he said would magically fit them all, whatever their height. In fact, he achieved this ‘*one size fits all*’ solution by cutting off the extremities of those who were too long for the bed, and by stretching those who were too short for it. The **Procrustean bed** has become the byword for the brutality and inequity, indeed, the iniquity, of Qing to force all, regardless of their physical, or other characteristics, into the same frame. Yet this is exactly what Nigeria is proposing for Cameroon. For its Procrustean bed, its one-size-fits-all solution, is equidistance.” – Mr. Maurice Mendelson arguing for Cameroon in the case concerning *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Public sitting held 25 February 2002, CR 2002/6 (2002)

“**Caligula’s horse**”: “The use of force on the high seas against vessels flying the flag of another State is an unlawful act and cannot, on any pretext, be considered as a measure of fisheries management or of execution of a measure of fisheries management or conservation. Caligula may have appointed his horse Incitatus consul of Rome, but he could not make the animal rule the city in reality. You cannot use language to change the nature of reality...” – Mr. Remiro Brotons arguing for Spain in the *Fisheries Jurisdiction case (Spain v. Canada)*, Public sitting held 9 June 1998, CR 98/9 (1998)

“There is a strong presumption in international law against the incidental loss of sovereignty, but it is a rebuttable presumption, and whilst the case of the Kings and Chiefs of Old Calabar was not weakened by the treaty itself, their subsequent behaviour certainly has had that effect. It is said that **the God of sovereignty is a jealous God** but apparently not in Bakassi...” – *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Reports 2002, Separate Opinion of Judge Al-Khasawneh at para. 22.

“Had Italy perhaps not noticed the **Achilles’ heel** of France’s legal position?” – Mr. Alain Pellet arguing for Chad in *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Public sitting held 13 July 1993, Doc. CR 93/31 (1993)

“Attributability is not a **philosopher’s stone**, serving to transform any act by an individual into a wrongful act of the State. Nor is it a **magic wand** that can be used to change the way in which we characterize an internationally wrongful act.” – Mr. Eric Suy arguing for Uganda in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Public sitting held 20 April 2005, Doc. CR 2005/9 (2005)

“A State cannot be allowed, as we say, **to have its cake and eat it.**” – Mr. Christopher Greenwood arguing for the United Kingdom of Great Britain and Northern Ireland in the case concerning *Legality of Use of Force (Serbia and Montenegro v. United Kingdom)*, Public sitting held 22 April 2004, Doc. CR 2004/19 (2004)

“In particular, we shall demonstrate to the Court that the picture which Cambodia is seeking to paint of the **big bad wolf** threatening the little lamb is entirely false. Thailand was all too familiar with the situation of the lamb during the nineteenth century.” – Mr. Virachai Plasai arguing for the Kingdom of Thailand in the *Request for interpretation of the Judgment of 15 June 1962 in the case*

concerning the *Temple of Preah Vihear (Cambodia v. Thailand)*, Public sitting held 30 May 2011, Doc. CR 2011/14 (2011)

“Evidently Liechtenstein has been asleep these 50 years, deeply, **like Sleeping Beauty**. We’ve had Grimm’s stories, I think we’ll introduce Sleeping Beauty. For 50 years Liechtenstein has been asleep, deeply comatose. Liechtenstein has failed to notice the fact or situation concerning Germany until, in a new variation on the fairy tale, it is the Prince who is brought back to life, not by a kiss but by a decision of the civil court of Cologne!..” – Mr. James Crawford arguing for Liechtenstein in the case concerning *Certain Property (Liechtenstein v. Germany)*, Public sitting held 16 June 2004, Doc. CR 2004/25 (2004)

“Mr. President, **if it walks like a duck, quacks like a duck, and looks like a duck, then I prefer to say that it is a duck**, whatever my learned friend likes to call it. And no amount of citation of academic support for the general concept of historical consolidation is going to save Nigeria from having its conduct judged by the standards which international law...” – Mr. Maurice Mendelson arguing for Cameroon in the case concerning *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Public sitting held 11 March 2002, Doc. CR 2002/16 (2002)

“The Court may recall the following dialogue from the Mad Hatter’s tea party in Lewis Carroll’s **Alice in Wonderland**:

– ‘Then you should say what you mean’, the March Hare went on.

– ‘I do’, Alice hastily replied; ‘at least — at least I mean what I say — that’s the same thing you know.’

– ‘Not the same thing a bit!’ said the Hatter. ‘Why, you might just as well say that ‘I see what I eat’ is the same thing as ‘I eat what I see’.’

Mr. President, Libya would submit that there can be no room here for the kind of verbal pyrotechnics represented by that dialogue.” – Sir Ian Sinclair arguing for the Libyan Arab Jamahiriya in the case *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Public sitting held 15 June 1993, Doc. CR 93/15 (1993)

“Like the fox in **Aesop’s fable**, once it found that the grapes were beyond its grasp, Qatar began to say that they are sour.” – Mr. Jan Paulsson arguing for Bahrain in the case concerning *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Public sitting held 27 June 2000, Doc. CR 2000/21 (2000)

“But not this case, not *Nicaragua/Colombia*. **The lad who repeatedly cried ‘wolf’** keeps crying ‘enclave’, and with as little foundation in our case, though he has twice the vocabulary.” – Mr. James Crawford arguing for Colombia in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Public sitting held 4 May 2012, Doc. CR 2012/17 (2012)

“In these **slices of ‘legal salami’** which supposedly constitute Variant C...” – *Gab?tkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, Separate Opinion of Judge Bedjaoui at para. 41.

There might be used other metaphors such as “**The Applicant is hiding a skeleton in the closet!**” or “**This argument must fall like the famous English Humpty Dumpty!**”

This would all depend on the imagination of the speaker.

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Philip C. Jessup and Willem C. Vis Moot are deemed the two most prestigious moot courts bringing together hundreds of law students from every corner of the world each year. The finals are an event which puts an end to a whole year of preparation, but marks the beginning of new friendships, new skills, more knowledge, formal victory notwithstanding. The lesson we all derive from participation is that success depends on enthusiasm and common effort. Stay challenged.

*The authors wish to express their gratitude to IMCCA and America for Bulgaria Foundation which have contributed tremendously to the development of generations of young lawyers in Bulgaria by helping us learn from the best.*

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