



Commonwealth Moot Competition 2011

Commonwealth Moot Court

Republic of Mainland

V

Kingdom of Cyborgs

The Compromis

1. Cisland is a small island off the coast of Mainland. Both Cisland and Mainland were parts of the Empire of the Kingdom of Cyborgs, the metropolitan territory of which was 7000 miles away. At the time that Cyborgs conquered Mainland it was ruled by a local king. In the year 1815, Cyborgs deposed the king and established their own rule. Cisland was at the time an uninhabited island which was used by passing fishing boats as a refuge during rough seas and strong winds.

2. Cyborgs took over Cisland and leased it in 1820 to a company registered in Cyborgs. The company converted the island into a banana plantation with labour recruited from the mainland. With the passage of time the plantation workers settled down there making it their permanent home. The population of Cisland in April 2006 was estimated at 25,500.

3. In 1985 Cyborgs granted independence to Mainland, which was admitted to the Commonwealth of which Cyborgs was a founding member. Under the constitution adopted at independence Mainland was declared a Republic.

4. Cisland however, continued to be ruled by Cyborgs as an overseas territory. From time to time after independence the Mainland government requested Cyborgs to hand over Cisland to the Republic of Mainland as it was (a) geographically linked to Mainland separated only by a narrow strait, (b) the inhabitants of the island are the descendants of Mainlanders, with whom they share the same language, culture and religion, (c) during Cyborg rule Cisland was administered from Mainland (d) Cislanders look upon the Mainland as their mother country, and (e) for their education and medical treatment the Cislanders come to Mainland.

5. These requests were ignored by Cyborgs. However, relations between the Mainland and Cyborgs remained cordial due to strong economic and historical ties between the two countries.

6. The situation began to change in January 2005 when a militant group bombed night clubs and liquor bars in Nodlon, the capital of Cyborgs. The militant group known as Saviours were followers of a religion called Purism adherents of which believed that night clubs and liquor bars corrupted the youth and eventually the entire human race.

7. Cyborgs believed, based on information from their secret services, that the Saviours were trained, and financed by the Republic of Puma whose main religion is Purism. Puma is situated 135 miles from Mainland. As all diplomatic efforts to stop Puma from encouraging violent activities by the Saviours failed, Cyborgs decided to use force against Puma.

8. As Puma was located thousands of miles away from Cyborgs, the government of Cyborgs decided to convert Cisland into a military base. In order to preserve the entire island for the use of their military, for security reasons Cyborgs decided to clear the island of all local inhabitants. By an

Order of the Foreign Minister of the Kingdom of Cyborgs, dated 21st April 2006 all islanders were ordered to leave the island within a week. Those who failed to do so were forcibly removed and deported to Mainland.

9. The Kingdom of Cyborgs offered a grant of Dollars (\$) 10 million to the government of the Republic of Mainland who in turn agreed to settle the evacuees in Mainland, to grant them citizenship of the Mainland, not to make any claims on Cisland and to acknowledge the sovereignty of Cyborgs over Cisland. The treaty embodying this agreement was signed by the Foreign Minister of the Kingdom of Cyborgs and the President of the Republic of Mainland on 20th December 2006.

10. As agreed Cyborgs paid the promised sum to the government of Mainland. However, the latter did nothing to resettle the Islanders who had to fend for them and live in squalid slums. Neither did Mainland grant the islanders citizenship of the Republic of Mainland.

11. The Cyborgs converted Cisland into a military base and used it as a transit camp for their troops on their way to Puma. Cyborg war planes on their bombing missions to Puma used the base in Cisland for refuelling. It was alleged that the Cisland was used by Cyborgs to detain suspected Saviour militants and torture them to obtain information.

12. In January October 2009 a revolution took place in the Republic of Mainland overthrowing the democratically elected government. The new revolutionary government was sympathetic to the regime in Puma and immediately demanded that Cyborgs vacate Cisland and hand it over to Mainland, claiming that Cisland belonged to Mainland and that the occupation of the island by Cyborgs was illegal under international law. Furthermore, they claimed that the occupation of Cisland by the Cyborgs was a grave threat to regional peace and security and to friendly relations with Mainland's neighbours. The revolutionary government also claimed that the deposed President of the Mainland did not have the authority to enter into the treaty with Cyborgs and that the treaty was *ultra vires* their constitution. Cyborgs

however, rejected Mainland's demands and claims, asserting that Cisland lawfully belonged to them and that they used the island to maintain international peace and security and rid the world of terrorism. Furthermore, Cyborgs claimed that the revolutionary regime in the Republic of Mainland was unconstitutional and established in violation of the fundamental principles of the Commonwealth and of the United Nations Charter. As such the regime had no legal standing to make any such claim against the Kingdom of Cyborgs concerning Cisland.

13. As negotiations between the Republic of Mainland and the Kingdom of Cyborgs ended in failure both parties agreed to refer their respective claims to the Commonwealth Moot Court by a Special Agreement (Compromis) dated 1 August, 2010. The Compromis asked the Court to resolve the issues set out in paragraph 12 above. Assume that the Statute of the Commonwealth Moot Court contains provisions identical to those contained in the Statute of the International Court of Justice.

(The Teams are to prepare arguments as applicant and respondent)

(List of cases / International Instruments/Documents

Please note that this list is not exhaustive and is for guidance only)

International Court of Justice

1. *Minquiers and Ecrrehos Island (France v U.K.) (1953) ICJ Rep 47*
2. *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v Nigeria) ICJ Rep. 2002*
3. *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v Malaysia) - Judgment 17 December 2002*
4. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory - Advisory Opinion - (7 July 2004)*
5. *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda) - Judgment 3 February 2006*
6. *Western Sahara (ICJ - Advisory Opinion –(1975) ICJ Rep, 12*
7. *Temple of Preah Vihear (Cambodia v. Thailand) (1962) ICJ Rep 6*
8. *Case Concerning the Territorial Dispute: (Libyan Arab Jamahiriya v Chad (1994) ICJ Rep. 6*
9. *East Timor (Portugal v. Australia) – 1 ICJ Rep. 1995*

10. Case Concerning Land, Island, and Maritime Frontier Disputes : El Salvador v Honduras, Nicaragua Intervening (1992) ICJ Rep 92
11. Legality of Use of Force (Serbia and Montenegro v. United Kingdom) - Preliminary Objections - Judgment - (15 December 2004)

International Arbitration

1. Clipperton Island Arbitration (France v Mexico) (1932) 26 AJIL 390
2. Island of Palmas Arbitration (Netherlands v USA) 1928) RIAA* 829
3. Tinoco Arbitration (Great Britain v Costa Rica) (1923) RIAA* 369

* Reports of International Arbitration Awards

U. K. House of Lords

R (on the application of Bancoult) (Respondent) v Secretary of State for Foreign and Commonwealth Affairs (Appellant) Session 2007-08 [2008] UKHL 61 on appeal from: [2007] EWCA Civ 498

Australia High Court

Mabo v Queensland (1992) 66 ALJR 408

The Inter-American Court of Human Rights

Saramaka People v Suriname the Inter-American Court of Human Rights Judgment of 28 November 2007,

.International Instruments

1. Charter of the United Nations (1945)
2. Statute of the International Court of Justice (1945)
3. Universal Declaration of Human Rights (1949)
4. The International Covenant on Civil and Political Rights (1966)
5. International Covenant on Economic Social and Cultural Rights (1966)
6. Vienna Convention on the Law of Treaties (1969)
7. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of United Nations (1970)
8. Convention Relating to the Status of Refugees (28 July 1951)
9. The Convention on the Rights of the Child 1989
10. UN Declaration on the Rights of Indigenous Peoples 2007
11. Forced Evictions and Human Rights, Vienna Declaration and Programme of Action (Part 1, para. 30), adopted by the World Conference on Human Rights, Vienna, 23 June 1993 (A/CONF.157/24 (Part 1), chap. III), <http://www.unhchr.ch/html/menu6/2/fs25.htm>.
12. Commonwealth Declarations <http://www.thecommonwealth.org/document/181889/34293/35468/35773/harare.htm>