

1. The TPP was signed as Annex to the Treaty of Peace between Portugal and Spain of 6 February 1715, on the same date.

2. Pg. 8 of the case study says "On 20 April 1790, Del Campo wrote to Leeds that:

‘Having communicated to his Court the Duke’s Answer of the 26th of February to his Memorial, concerning the Detention in the Port of Nootka of the English Vessel called the **Prince of Wales**...’”

Whereas pg. 10 mentions, "The **Prince of Wales**, having been chartered to load Teas for the East-India Company, soon afterwards returned to England..."

In light of this, should we factor into account this geographical inconsistency or is there a possibility of it being a typing error?

This is not a typo but an accurate reflection of the contemporaneous documents. Similar situations arise in many arbitrations. It is part of the job of the lawyers to work with such conflicting information.

3. Are there certain authorities/sources of law that the arguments should be based on beside the attached documents? Or are the teams free to research in different sources? And is there a specific hierarchy for these authorities for the purpose of this moot?

The record of the “arbitration” consists of the document posted on the website.

4. Should the skeleton arguments be based solely on the arguments already there in the dispute part of the case study or can more arguments be added?

For purposes of the skeleton arguments - as well as during the oral presentations - participants should only address the issues identified in the Case-Study. However, participants are free (and encouraged) to determine which legal arguments best support their case with regard to each issue and present accordingly.

5. Since the skeleton arguments will be based on the respondent statement of defense and the claimant's reply to it, does this mean that the respondent will go first in the oral rounds?

Teams should confer with their respective opponents before each round to determine which side presents first. If the teams are able to reach agreement, this agreement will determine the order of pleadings. If the teams are unable to reach agreement, the arbitrators will determine the order of pleadings.

6. Has Catherine the Great, Empress of Russia died?

Yes.

7. Will the UNCITRAL Arbitration Rules of 1776 (as provided on the official FIAMC website in the "Case Study" section) apply or will the UNCITRAL Arbitration Rules of 1689 apply (as provided on the official FIAMC website in the "Case Study" section)?

Please refer to the Case Study and the documents posted on the website.

8. How many members of the team are allowed to speak during one round, two or three?

Under the FIAMC rules (which can be found on the website) **at least** two team members have to present arguments in each pleading.

9. The problem states- "Although the facts of the case and the proceedings take place in the 18th century, for the purpose of the Moot participants will assume treaties, customary public international law and case law are those of the 21st century." However it is silent regarding the the timeline that domestic laws must adhere to if they are required to be referred to by the participants under questions of international law.

Participants should not rely on national laws to the extent that such laws are not part of the record.

10. At page 59 of the case study, Spain's response is that: "Pursuant to Annex 9-B (1) an action or a series of actions by a Party which interfered with a tangible or intangible property right or property interest in an investment can constitute an expropriation.

Facts do not qualify as expropriation ..."

In this context, it is unclear to us what "Facts do not qualify as expropriation" is intended to mean. Does Spain simply mean that the facts do not support a finding of expropriation?

The organizers cannot provide guidance as to the interpretation of the Parties' legal arguments.

11. On Page 7 of the Mear's Memorial, the 5th line mentions that Captain Douglas "sailed **for** Nootka Sound". However, the preceding paragraphs have stated that he was already in Nootka Sound. Is this a typographical error or a contradiction the Memorial?

This is an accurate reflection of the text in Lieutenant Mear's Memorial.

12. On Page 63 of the Case Study, the second last line of the last paragraph reads as "(ii) Respondent is invited to comment on the **Respondent's** challenge". Shouldn't it be Claimant's challenge instead?

This is a typographical error. The relevant part of this sentence should read: "(ii) Respondent is invited to comment on Claimant's challenge and de Cambacères' comments within 15 days from receipt of the message."

13. In the Third issue (Respondent side), does this part refer to page 5 of Meares' Memorial (as it's written down) or should it be page 7 instead?

This is a typographical error. The relevant part of this sentence should read: “(see p. 7 of Lieutenant Mear’s Memorial).”

14. Article 9.26 of the Trade and Prosperity Pact mentions "Measures set out in *Annexure I or II*". However, there are no Annexures Numbered I and II. Should we consider it to be referring to Annexures 9-A and 9-B instead?

Only the excerpts published on the website are part of the record and potentially relevant for the Moot.

15. Where is the seat of arbitration in the present case?

The seat of the arbitration is without relevance for the purposes of the Moot. Please also note clarification no. 9, which states that “Participants should not rely on national laws to the extent that such laws are not part of the record.”

16. P56 of the case study, 4th paragraph. It says that Manuel Pereira is fascinated by the idea of suing Britain and that he recalls the TPP. However, Carvalho is not suing Britain he is submitting his claims to arbitration against Spain and the TPP is between Spain and Portugal. Could this be an error or did Pereira assume that Britain would be involved?

This is not an error. This is what Mr. Pereira’s employee understood from Mr. Carvalho’s drunken tirade in the bar. Mr. Pereira was under the wrong impression that Britain was a member state to TPP. It is only a guarantor under the Treaty of Peace of 1715.

17. First defense of the respondent, stating that “Many of the alleged actions giving rise to the purported claim took place well before the three and a half year time period referred to in Chapter 9 Article 9.21.1 of TPP expired”. Does this argument seem to be of no import because in any event the actions would have happened before the period expired, or even started? For the sake of clarification, does it mean that Spain claims that the period should start from the date on which the alleged actions happened?

The organizers cannot provide guidance as to the interpretation of the Parties’ legal arguments.

18. Regarding the sentence on the 56. page of the case study " What about his claims, his entitlements, his damage?", on what calims Juan Carvalho is referring to?

Please refer to the Case-Study.

19. On pg.58 on point two Jurisdiction Ratione Consensus [sic!], Respondent stated on "Letter of 16 May". While it is stated on the pg.56 that letter received on 18 September. Should these two dates interpreted as the period time when the letter was delivered and send, or it is simply let open for interpretation.

Please refer to the Case-Study.

20. Was the Treaty of Peace between Britain and Spain a Bilateral Investment Treaty? If the Treaty of Peace between Britain and Spain was a Bilateral Investment Treaty, what standards of protection did it provide for?

Please refer to the Case-Study and the documents published on the Moot's website.

21. TPP in para. 3 Article 9.24: Transparency of Arbitral Proceedings refers to "... Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information)". These Articles are not within Chapter 9 of TPP. Shall we treat those Articles as "not reproduced" for the purposes of the moot?

Only the excerpts published on the website are part of the record and potentially relevant for the Moot.

22. Is it necessary to draw a distinction between British nationality (as respondent alleges in point 6 ne bis in idem) and British subject (as the respondent alleges in point 3 ratione personae)?

The organizers cannot provide guidance as to the interpretation of the Parties' legal arguments.

23. In the fifth paragraph of page 57 of the case study, "In the Notice of Arbitration, Braga appoints Jean Jacques Régis de Cambacérès as arbitrator (a formidable lawyer and is not Spain at war with France ?)." What does it mean "is not Spain at war with France ?"

Please refer to the Case-Study.

24. What was the treaty of 1670 that was subsisting between Britain and Spain?

Please refer to the Case-Study. Only the documents published on the website are relevant for the Moot.

25. At page 64 of the Nootka Fact Sheet, the third paragraph from the bottom of the page states that: "Claimant receives Respondent's comments when he is about to embark for Europe for the hearing. He, his counsel and his letter all arrive in London on 10 March 1798 when the letter is hand-delivered by a messenger on the same day to the President as well as to Respondent's embassy." Could we clarify what this "letter" is? Is this the claimant's response to the respondent's comments on the challenge of Cambaceres?

Please refer to the Case-Study.

26. Do the “[d]ocuments stemming from the secret bilateral negotiations between Their Catholic and Britannic Majesties” (p 59 of the case study) refer to the collection of letters between British government officials as reflected on pp 46 to 52 of the case study?

Please refer to the Case-Study.

27. Was there any arrangement made for the transfer of title from Carvalho to the partnership?

Please refer to the Case-Study.

28. Was Carvalho born in Bombay? If not, did his family reside in Bombay?

Please refer to the Case-Study.

29. Does England recognise Carvalho as its citizen?

Please refer to the Case-Study.

30. Mr de Cambacérès was “closely involved with the peace negotiations...” (p 63). Did he play a specific role in these negotiations (e.g., brokered the deal, acted as counsel for France)?

Please refer to the Case-Study.

31. Did Mr de Cambacérès submit a comment on his challenge?

Please refer to the Case-Study. No further information is available.

32. In the oral rounds should the teams depend only on what is written in the memorials or can they include new arguments and sources in their pleadings?

During the oral presentations participants should only address those three issues from the Case-Study which are identified at the beginning of the preparation period. In doing so, participants are free (and encouraged) to determine which legal arguments best support their case with regard to each issue and present accordingly.

Please note that skeleton arguments serve as an outline. They do not need to include the arguments in all depths. A sample is available on the website. During the oral rounds teams can adapt arguments where necessary.

33. Does the 2500 word limit of the skeleton arguments exclude footnotes or include it?

Footnotes are included in the 2.500 words maximum. Variations in the total word count of approximately 5% will be tolerated. The head page does not count.

34. Should we depend on more facts from outside documents in writing the arguments or should we just depend on the facts in the memorial and the case?

The record of the “arbitration” only consists of the document posted on the website. Teams are not allowed to add new issues, raise new objections or add new facts.

35. The case study in p3 states that “Although the facts of the case and the proceedings take place in the 18th century, for the purpose of the Moot participants will assume treaties, customary public international law and case law are those of the 21st century” which implies that teams can research from outside documents, for example because there is no case law in the published documents.

Treaties, customary public international law and case law are those of the 21st century. Accordingly, modern treaties or case law may be referred to by participants.

36. There are treaties and another instruments referred to inside of the published documents. Should all of these be ignored?

No, they should not be ignored.

37. Is "Challenging of Arbitrators" going to be subject of the point we are going to argue during the moot in Frankfurt, or just the issues included in "The Dispute" part?

Teams will be asked to present arguments on three issues in each oral hearing for either the Claimant or the Respondent. The selection of these issues is not at the discretion of the teams but is predetermined by the organizers. Issues will vary from round to round and participants should anticipate that all issues will be covered during the various rounds.

38. Will all the 9 issues be covered in the general rounds or there will be any one issue be covered twice or three times in the general rounds?

At the moot court, teams will be asked to present arguments on three issues in each oral hearing for either the Claimant or the Respondent. The selection of these issues is not at the discretion of the teams but is predetermined by the organizers and will be communicated to the teams 1 hour before each oral hearing. Issues will vary from round to round and participants should anticipate that all issues will be covered during the various rounds. Teams are free (and encouraged) to determine which legal arguments best support their case with regard to each issue and present accordingly. However, they are not allowed to add new issues, raise new objections or to add new facts.

39. The Case Study on page 64 when establishing: "Spain receives the procedural order concerning Cambacérès on 12 June 1797, Claimant on 3 October 1797." Did it mean the notification of the procedural order to Cambreceres instead of the Claimant?

Please refer to the Case-Study.

40. On what day exactly was Lorenzana removed from his office, the case study does not specify the date of March 1797?

Please refer to the Case-Study. No further information is available.

41. On page 62, para 3, line 15, it says that "Lorenzana died in Rome after...". Is Lorenzana really dead? If yes, what is the stance of the Respondent as regards the challenge of its party appointed arbitrator? Has a substitute arbitrator been appointed?

The excerpt on page 62 is taken from a historical document. As such, it is obvious that it is not in chronological order with the Case-Study, but must be put into context. De Lorenzana died in Rome in 1804.

42. On the matter of the "Strike Out" issue, could you kindly clarify if we should only refer to the documents in page 46, or should we refer also to the other pages that contain information on negotiations.

The organizers cannot provide guidance as to the interpretation of the Parties' legal arguments.

43. I'm interested in when Claimant acquired about the fact, that de Cambacérès had been involved in peace negotiations.

The point at which Claimant acquired knowledge of this fact is irrelevant and should not be discussed by participants in the moot.

44. In the Record of page 64, it is stated that "Claimant objects to Respondent's comments on the ground that they were filed out of time." However, according to the record, Respondent received the procedural order regarding the challenge of de Cambacérès on 1797.6.12 (R. p64), and Respondent received the procedural order regarding the challenge of de Cambacérès on 1797.6.27 (R. p64), which satisfies the requirement that "Respondent is invited to comment on claimant's challenge and de Cambacérès's comments within 15 days from receipt of the message"(R. p63). So can we simply argue that the claimant's objection on the ground that Respondent's comments were filed out of time is a wrong argument.

The organizers cannot provide guidance as to the interpretation of the Parties' legal arguments.

45. We wanted to clarify whether the skeleton arguments have to be submitted for all issues combined? What is the breakup of points for the skeleton arguments?

For purposes of the skeleton arguments, participants should address each issue separately. For the convenience of the organizers we ask that this be done in the order in which issues are presented in the case study (i.e. 1-9). However, participants are free (and encouraged) to determine which legal arguments best support their case with regard to each issue and present accordingly. Please note that skeleton arguments serve as an outline. They do not need to include the arguments in all depths. A sample is available on the website.

46. Are the teams allowed to submit a compendium of cases to the tribunal?

No hearing bundles are allowed other than the documents published on the website.