

Practical exercise

Sovereignty over Penultimate & Ultimate Islands and Maritime Boundary Questions between Erewhon & Utopia



Introduction

This is a two-stage exercise designed to develop your skills in preparing for third-party boundary settlement. In the exercise you will be part of a team representing the government of one of the fictional states of Erewhon or Utopia. The first stage of the exercise (to be completed on Tuesday afternoon) involves the negotiation of an agreement referring a dispute between the two states for third-party adjudication; the second stage (Wednesday morning) focuses on the preparation of your country's case for submission to the relevant court or tribunal.

Background

Disagreement concerning sovereignty over Penultimate and Ultimate Islands first emerged when Erewhon and Utopia were colonies of France and Great Britain. However, the colonial powers never resolved the issue, and it has continued to generate friction between the two countries since independence. In 2016, the discovery of an area of high hydrocarbon prospectivity to the northeast of the disputed islands prompted an attempt to resolve the sovereignty dispute and delimit a maritime boundary through bilateral negotiations. However, the negotiations collapsed in 2021 without significant progress. Earlier this year, at a summit meeting of the heads of state of the two countries, it was agreed that the dispute should be submitted to a third party for adjudication.

In this context, your team has been assembled to manage the case for your government....

Tasks

1) *Negotiating and Drafting a Special Agreement or Compromis*

In this exercise you are charged with negotiating an agreement which will form the basis for the peaceful settlement of boundary and territorial issues between Erewhon and Utopia through third-party adjudication. The scope and format of the agreement is up to the parties but it should certainly include the following information:

- ◆ the questions that you wish to be settled;
- ◆ the court or tribunal that will hear the case;
- ◆ the legal framework;
- ◆ the procedure to be followed.

Ideally the parties should produce a full draft text of the agreement. If this is not possible in the time available, you should at least produce a series of bullet-points identifying the main elements of the agreement.

The tutors will circulate between the groups and offer advice on negotiation strategy and the drafting of the terms of the agreement. In addition, a number of 'real life' agreements have been included in

your folders for reference purposes; feel free to use these as templates where appropriate. It is recommended that you divide your team up into small subgroups to work on different sections of the agreement. Questions of fact or procedure should be referred to Martin Pratt.

The teams should feel free to meet as often as they like for as long as they like, but the following schedule may be useful in planning the exercise:

1500-1545	Team preparation (identify key issues and develop negotiation objectives)
1545-1600	First meeting
1600-1630	Team preparation (prepare initial drafts of agreement)
1630-1700	Second meeting / final drafting of agreement

2) Preparing and Presenting a Memorial

This exercise will take the form of a highly-condensed case involving the preparation of a 'memorial' and a brief oral pleading. Regardless of the nature of the agreement you reached earlier, in this exercise an *ad hoc* tribunal has been asked both to determine the sovereignty of the disputed islands and to make recommendations concerning the delimitation of an equitable boundary between the two countries.

As in real cases, a strict timetable will be imposed:

0900-0945	Preparation of memorial
(0900-0920	'Research phase')
0945-0955	Exchange of memorials
0955-1020	Preparation of oral presentations
1020-1100	Oral presentations, judgments and debrief

Your memorial should be a short written summary of your country's case, preferably in bullet-point format. Your case must be based exclusively on the known facts as outlined below plus the answers to up to two 'research questions' which may be submitted to Martin Pratt no later than 0920. These questions may take any form you wish, although it is not guaranteed that all questions will yield answers that will advance your case.... The results of your 'research' will be supplied by 0940 at the latest. You may also cite relevant case law, treaties, etc. from the real world to support your case.

When the two sides meet to exchange memorials, each side should briefly summarise the main points of its case and give the other side an opportunity to ask questions of clarification.

Each side will have a maximum of **five** minutes for its oral presentation. It is recommended that each side nominates two people to make the presentation, one to summarise its case, the other to rebut the other side's case. Following the oral presentations, the tutors will deliver their judgment based on the evidence presented.

Known facts

Geography

Erewhon is an island state about half the size of Madagascar (c. 300,000 km²). Utopia and Narnia share a similar-sized island but Utopia occupies around 18,000 km² in the northeast corner of the island. The vast majority of Erewhon's 2 million inhabitants live in the fertile northern third of the country. The southern half of Erewhon is densely forested and the southeastern coast is sparsely populated apart from the small port of Bicheno (approx. 1,000 inhabitants). Utopia is a poorly developed country and most of its interior is virgin rainforest. Most of its population of 300,000 are subsistence farmers or fishermen, the majority of whom live along the coastal plain in the southeast of the country. Port Arthur has a population of 5,000 people and there are several small fishing villages along the north coast of Utopia. Prison Island is 'home' to around 200 Utopian convicts.

The islands between Erewhon and Utopia are mainly low-lying coral cays, some of which sit on top of extensive reef systems (see map). Most of the islands, including Ultimate Island, are densely wooded and have their own water supply; four of the islands have small fishing villages on them but the two disputed islands have no permanent population. Penultimate Island has no fresh water supply and little vegetation.

The channels between the islands are generally shallow and only navigable by small vessels. The only deep-water channel is Shark Strait between King Island and Penultimate Island.

History

Year Event

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| 1852 | The Sultan of Erewhon cedes Erewhon "including Babel Island and dependent islands" to France. |
| 1880 | Britain establishes a trading post at Port Arthur. |
| 1885 | British forces defeat the King of Utopia and the territory is declared a British colony. |
| 1888 | Britain and the independent Kingdom of Narnia exchange notes confirming sovereignty over islands east (British) and west (Narnian) of a meridian passing through the midpoint of a line across the mouth of the river Styx. |
| 1890 | France and Narnia sign a treaty in which Narnian sovereignty over Albatross Island is confirmed in return for Narnia renouncing any claim to territory north of the 24° 7' south parallel. |
| 1901 | Britain establishes lighting beacons on King Island and Penultimate Island. |
| 1904 | Pirates, believed to be from Babel Island, attack Port Arthur, killing three British officials and two Utopian natives. The British government sends an official letter of protest to France. |
| 1906 | The French naval vessel ' <i>Madeleine</i> ' undertakes hydrographic surveys in the area between the two countries. Crew from the vessel land on the northern shore of Ultimate island and are attacked by a group of pirates. The pirates are overpowered, arrested and handed over to the French authorities in Bicheno. Before leaving the island, the crew hoist a French flag. |
| 1908 | In the wake of increased pirate activity throughout the archipelago, Britain, France and Narnia agree on the need to ensure the safety of navigation in the waters between the two mainland coasts. An agreement is signed under which France will patrol the waters north of 24° 7'N, and Britain and Narnia will patrol the waters south of this line, with the 1888 |

- meridian delimiting their respective zones of responsibility. It is further agreed that freedom of navigation shall be maintained in Shark Strait and that France and Narnia will contribute financially towards the maintenance of the lights on either side of the strait.
- 1935 The British authorities in Utopia declare Ultimate Island to be a bird sanctuary; fishermen may not land on the island except in an emergency.
- 1941 Narnia invades Erewhon. British forces occupy the Three Sisters, King Island and Penultimate Island, ostensibly to protect shipping passing through Shark Strait, but also to assist the Erewhon resistance movement, which uses islands throughout the archipelago as bases for raids against the occupying Narnian forces on mainland Erewhon.
- 1945 Erewhon is liberated. British forces withdraw from the occupied islands but the British administration in Utopia states in the Official Gazette that Penultimate and Ultimate Islands will “remain under British sovereignty”. Paris sends a diplomatic note to London challenging this claim and asserting that the islands were part of the territory ceded to France by the Sultan of Erewhon in 1852.
- 1948 Following lengthy but fruitless correspondence over the status of Penultimate and Ultimate Islands, Britain abandons the lighthouse on King Island, but continues to maintain the light on Penultimate Island. France assumes responsibility for the light on King Island.
- 1961 British archaeologists working on Ultimate Island discover a burial ground which they estimate to be at least 300 years old. Artefacts found at the burial site suggest that it was used primarily by villagers from Babel Island and Maria Island.
- 1963 France publishes a map showing all the islands between Erewhon and Utopia as a ‘zone of special archaeological interest’. The islands are all shaded in the same colour as Erewhon; Narnia and Utopia are shaded in different colours.
- 1966 Utopia declares independence from Britain.
- 1968 Utopia publishes an official map of the state territory, with Ultimate and Penultimate Islands shaded the same colour as the mainland.
- 1967-74 Civil war seizes Erewhon. The lighthouse on King Island falls into disuse, but in 1971 it is repaired by Utopia.
- 1975 Erewhon declares independence from France.
- 1977 Erewhon claims a 12nm territorial sea and a 200 nm EEZ.
- 1980 Erewhon issues oil exploration licences for blocks extending south of Ultimate Island, and demands that Utopia returns the lighthouses to Erewhon.
- 1981 Utopia claims a 12nm territorial sea and a 200 nm EEZ, and issues oil exploration licences for blocks up to a line running due northeast through the middle of Shark Strait. The Utopian government agrees to hand over the lighthouse on King Island but insists that Penultimate Island is Utopian territory.
- 1982 Erewhonese forces attempt to seize Penultimate Island but are repulsed by the Utopian Navy. Utopia establishes garrisons on both islands.
- 2013 The discovery of a highly prospective basin to the northeast of the disputed islands prompts an attempt to resolve the dispute and delimit maritime boundaries through bilateral negotiations.
- 2018 Negotiations are terminated. Both sides continue to claim sovereignty over both islands, precluding meaningful discussion of the boundary issue.

Legal notes

Erewhon and Utopia are both Member States of the United Nations.

Neither has signed any treaty or made any declaration which recognises the compulsory jurisdiction of the ICJ or other judicial body in disputes with other States.

Erewhon is a party to the 1982 United Nations Convention on the Law of the Sea. Utopia has signed but not ratified the 1982 Convention; however, it is party to the 1958 Geneva Conventions on the Territorial Sea and Continental Shelf.

