

GREENLAND'S WITHDRAWAL FROM THE EUROPEAN COMMUNITIES

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I. Introduction

On 23 February 1982 the Greenlanders decided by referendum to leave the European Communities.¹ Complying with Greenland's subsequent request, the Danish Government proposed an amendment to the EC Treaties in May last year, to the effect that Greenland should cease to be part of the Communities from 1 January 1984. In accordance with Greenland's wishes, the Danish amendment also proposed that Greenland be given the status of an associated Overseas Country and Territory according to Part IV of the Treaty of Rome.

It is the purpose of the present article to explain the Greenland decision, and to examine a few of the problems this creates for the Communities. At first, it may perhaps be appropriate to insert a few informative remarks on Greenland's geographical and structural features.

Greenland is the largest island in the world², and also the world's northernmost land area, at only 750 kilometres from the North Pole.

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1. The referendum dealt with the question: "Do you want Greenland to remain a part of the European Communities?" 32,391 persons were entitled to vote. 12,615 voters (52% of the total poll) voted "No"; and 11,180 (46.1% of the poll) voted "Yes" to the referendum's question. 470 votes were invalid.

2. Greenland's total area covers 2,175,600 square kilometres. The distance from Cape Morris Jessup, which is the north point, to Cape Goodbye, which is the southernmost point, is 2,670 kilometres, corresponding to the distance from London to Tripoli.

The climate is arctic and sub-arctic³, and most of the island is covered by a permanent ice-cap, leaving only seventeen per cent of the area free of permanent ice. Greenland is inhabited by approximately 52.000 persons, 42.000 of which are eskimoes of the same origin and culture as the eskimoes of arctic Canada and Alaska. The working population mainly lives by fishing and hunting. There are no roads or railways along Greenland's coast; the only means of transport from one town or settlement to another is either by helicopter or plane, or by boat and ship when this is not made impossible by drift ice. Most of the harbours are closed by ice during the winter, but when the sea is frozen, dog-sledges are used for local transport in the northern part of Greenland. The U.S. military air base in Soender Stroemfjord is also used for civil air traffic, and is the only airport in Greenland with regular year-round flight connections directly to Copenhagen, 3.500 kilometres away. The enormous length of Greenland's coastline may be illustrated by the fact that the distance from Qaanaaq in Northern Greenland to Nanortalik in Southern Greenland is the same as from Copenhagen to Sicily. Besides the Greenland language, which is of the same linguistic family as the languages spoken in arctic Canada and Alaska, Danish is the main language of Greenland⁴. Geographically, Greenland belongs to the North American continent, and Greenland has traditionally been encompassed by the Monroe Doctrine.

2. Greenland's history and economy

Greenland has belonged to the Danish Crown since the fourteenth century, but was first properly colonized by Denmark in the beginning of the eighteenth century and administered by "the Royal Greenland Trade Department" in Copenhagen. Local advisory councils with

3. Average temperature in the warmest month of the year is less than 10°C. The Polar Circle cuts Greenland in the southern part; above this circle the sun shines 24 hours a day in the summer, and not at all in the winter. The permanent ice-cap exceeds 3 kilometres in depth at some points.

4. There is no resemblance or linguistic community between the Greenland and the Danish language: Danish is as different from Greenlandic, as English is from Chinese.

native representation were established in the second half of the nineteenth century, thus involving the Greenlanders directly in the management of the colony. During the Second World War, relations between German-occupied Denmark and Greenland were cut off, and the United States were permitted to take over the defence of Greenland and the supply of goods, thereby breaking the isolation of Greenland from the surrounding world. After the Second World War, Danish rule was re-established, and Greenland was adopted on the United Nations' list of non-self-governing territories, according to which Denmark was committed to report annually on the colony to the U.N. When the new Danish Constitution was passed in 1953, Greenland's colonial status was rescinded in accordance with a unanimous recommendation from the Greenland Provincial Council, and Greenland became an integral part of the Danish realm with equal rights.

The Greenlanders wanted to become Danes on equal terms with all other Danish citizens, and an ambitious development programme was therefore initiated by the Danish State in order to introduce Danish living standards in Greenland. Large amounts of financial aid were transmitted to Greenland under this programme for the development of its economy from hunting to fishing and processing with modern equipment. Unfortunately, the programme to some extent failed to absorb and integrate Greenland's particular social, cultural and structural conditions, and many Greenlanders who were bypassed and left in the wake of the modernization witnessed the rapid changes of their society carried out from across the Atlantic. A number of smaller hunters' settlements along the coast were closed down, and their inhabitants successively concentrated in the major towns on the southwest coast of Greenland, thus preparing the transition towards a more modern and industrial pattern of production. Throughout the 1960s the Danish State undertook enormous financial investments in Greenland, mostly within the field of building, construction, local industry, and services for health and education. The Greenland living standard improved considerably during this short period, and income from employment became the predominant source of individual revenue in the towns. Outside the towns, however, and in the scattered settlements along the coast, the Greenlanders were – and still are – to a large extent depen-

dent upon a complementary subsistence economy based on private hunting and fishing.

Today, the annual average income of a Greenlander is approximately 5.000 U.S.dollars⁵. Greenland's total exports amounted to 195 million U.S.dollars in 1981, seventy per cent of which originated from Greenland's export of fish or fish products. (135 million U.S.dollars). The export of fish mainly consisted of cod, shrimps and salmon and approximately eighty per cent hereof was exported to the Member States.⁶ In addition to Greenland's export of fish and fish products lead and zinc are the most important export goods, constituting twenty per cent of the total exports. In comparison, Greenland's total imports in 1981 amounted to 280 million U.S.dollars, consisting mainly of food articles and fuel. The overall Danish Government net expenditures in 1981 to Greenland, including labour costs, construction costs, subsidies and loans, amounted to 260 million U.S.dollars⁷.

The economic and industrial activity in Greenland was originally initiated and controlled from Denmark, and even carried out by Danish skilled labour in general. The trend now, however, is that Greenlanders and notably the Greenland Home Rule authorities are playing an increasing role in the management and industrial activity of Greenland. Greenland's progress to its actual stage of development could definitely not have been attained without the exorbitant efforts of the Danish State during the past three decades. These efforts have on the other hand developed Greenland into a State-controlled society to such an extent that the same measures of public enterprise are probably unknown in any other part of the Western World. In this respect, Greenland certainly differs from the rest of the European Communities.

5. Denmark's *Statistical Review*, A 1981, no. 23, p. 668. The annual average income of Danish citizens residing in Greenland is – in comparison – \$ 10.500. The figures indicate the gross incomes. It should be taken into account that living expenditures are much higher in Greenland, due to the considerable costs of transport and energy.

6. The source of these figures is the *Greenland Official Annual Report*, 1981, published by the Danish Ministry for Greenland Affairs, tables 22 and 72.

The main import countries outside the EC of Greenland fish and fish products are the U.S.A., Japan and Portugal.

7. The Danish block grant to Greenland amounted to U.S. \$ 70 mill. in 1982, this figure being included in the stated Danish Government net expenditures.

3. Greenland's status in the Danish Kingdom and in the EC

Unlike the Faroe Islands, which have enjoyed home rule since 1948, Greenland joined the European Communities along with Denmark in 1973. The Treaty of Accession contains only few special exceptions for Greenland to the general Treaty regime.⁸ Greenland's Provincial Council originally approved of this approach unanimously, but later revised its recommendation and requested the right to determine Greenland's relation with the EC independently of Denmark. This request was rejected by the Government, partly because the Treaty of Accession had already been signed at the time, and partly because Greenland did not – as did the Faroe Islands – enjoy the local autonomy considered necessary to allow a separate Greenland decision in relation to the EC. In the Danish referendum on accession to the EC in October 1972, a majority in Greenland voted against joining the EC.⁹ These events are believed to be one of the main reasons behind the Greenland Provincial Council's subsequent proposal in the autumn of 1972 that Greenland authorities hence be given decisive influence upon, and joint responsibility for, the development of Greenland. This proposal initiated the establishment in 1975 of a Home Rule commission, whose final report contained a bill for a Home Rule Act. This act was adopted by the Danish Parliament in 1978, and subsequently approved of in a referendum in 1979. Finally, home rule was introduced in Greenland on 1 May 1979.¹⁰

8. Protocol No. 4 to the Treaty of Accession authorizes Denmark to retain national provisions, whereby a six months period of residence in Greenland is required to obtain a license for engaging in certain commercial activities in Greenland. Protocol No. 4 also provides a basis for exceptions to the common organization of the market in fishery products with regard to Greenland. Articles 100 – 101 in the Act of Accession establishes a 12 mile exclusive fishing zone for Greenland fishermen until 1 Jan. 1983.

9. 9.598 persons (70.3% of the poll) voted against the accession to the EC in 1972, while 4.062 (29.7% of the poll) voted for accession.

10. Professor Isi Foighel, University of Copenhagen, was appointed chairman of the Home Rule Commission in 1975, and has written a very informative article on the Home Rule's background and the content of the Home Rule Act in 17 CML Rev. 1980, 91 – 108, which I refer to for further and more detailed information about the Home Rule in Greenland.

3.1. Home rule

The Greenland home rule is very similar to that of the Faroe Islands. The unity of the realm is preserved under both home rule arrangements, and the Danish Constitution has remained in force in Greenland as well as on the Faroe Islands. The sovereign powers in international affairs, constitutional matters, defence, and central government finance, belong to the Danish central authorities and cannot be devolved. As for the judicial power, the Danish system of courts of law under the Danish Supreme Court is still common to all three parts of the realm.¹¹

The principal objective of home rule is the transfer of local legislative and executive power from Danish to Greenland authorities, within the specified fields of jurisdiction listed in the Schedule to the Home Rule Act.¹² The home rule has in principle taken over the financial responsibility along with the devolved functions, but the financing of some of these services is yet too heavy compared with the home rule's revenues. The home rule purse is therefore granted continuous government subsidies with regard to these services, for example social welfare and public health. For these subsidized services, funds are made available from the Danish Treasury in the form of annual block grants to the Greenland Exchequer, determined on the basis of previous government

11. All Danish courts of law are composed of legally educated judges. Greenland's system of courts differs from this, since legally educated judges and barristers can hardly establish themselves in the settlements and smaller towns along the coast. The district courts outside Greenland's capital are presided by one lay judge who is assisted by two sworn assessors. The Regional Court in the capital is presided by one ordinary legally educated judge, assisted by two lay judges. The Regional Court decides the cases appealed from the district courts, or hears major cases in first instance. Its judgments can be appealed to the High Court in Copenhagen.

12. The Schedule to the Home Rule Act lines up the following areas of regulation to be assumed by the Home Rule: organization of the Home Rule in Greenland; organization of local government; direct and indirect taxes; the established church and dissentient religious communities; fishing in the territory, hunting, and agriculture and reindeer breeding; wildlife conservation; country planning; legislation on trade and competition, including restaurant and hotel business, alcoholic beverages, and closing hours; social welfare; labour market affairs; educational and cultural affairs, including vocational education; other trade matters, including State-conducted fishing and production, support and development of economic activities; health services; rent legislation and housing administration; supply of goods; internal transport of passengers and goods; protection of the environment.

expenditures in Greenland, and index-linked to the gross domestic product in Denmark.

With regard to Greenland's mineral (natural, non-living) resources, the Home Rule Act institutes a system of joint Danish/Greenland decision-making. The underlying principle of this scheme is that of unity of the realm and mutual safeguarding of the nation's interests. It recognizes, however, "fundamental rights" of the resident population in Greenland to its natural resources. The joint system enables each party to refuse assent to a development or to specific resolutions concerning extraction of these resources. As for the distribution of possible public revenues derived from the exploitation of Greenland's mineral resources, it is agreed that such revenue shall primarily replace Denmark's transfers of capital to Greenland. Public revenues in excess of these transfers are to be allocated to the two parties according to a pattern of distribution to be agreed upon in future negotiations.

Danish bills or draft administrative orders applicable only to Greenland, or being of special importance to Greenland, shall be referred to the Home Rule authorities before they are enacted. Likewise, international treaties particularly affecting Greenland interests shall be referred to the Home Rule authorities before they are concluded by the Danish Government. *Vice versa*, the Home Rule Executive (the *Landsstyre*) presents its draft administrative regulations and the Home Rule Parliament's (the *Landsting*) bills in specified categories of cases to the Danish Government, prior to the enactment of such proposals in Greenland. As for Community legislation, the *Landsstyre* regularly receives summaries of the European Commission's proposals to the Council through the Danish Ministry of Foreign Affairs.

In practice, the *Landsstyre* has joined the Danish delegations in negotiating matters of particular interest to Greenland in international bodies. Thus, employees from the *Landsstyre*'s administrative staff have participated in negotiations covering conservation measures with regard to fish and whales under the NAFO Convention, the NEAFC Convention, the "Salmon Convention" and the International Whaling Convention; and with regard to threatened wildlife, the "Washington Convention" – to mention just a few cases. Members of the *Landsstyre* have also taken part directly in international or Community negotia-

tions of major importance, whenever considered appropriate for dealing with Greenland's particular interests. When allocating the quotas within the Total Allowable Catch (TAC) of the respective fish stocks, the European Commission has given the *Landsstyre* opportunity to present Greenland's wishes and arguments directly to the Commission. Prior to such international negotiations as mentioned above, the *Landsstyre* participates in determining the Danish Government's mandate from case to case through representation in a preparatory committee or through direct consultations with the Ministry of Foreign Affairs and the Ministry for Greenland.

3.2. Membership of the European Communities

Within the EC, Greenland has received considerable financial grants from the Regional Fund, the Social Fund and the FEOGA.¹³ By far the largest part of these grants have been transmitted from the Regional Fund into infrastructure projects in Greenland (mainly small powerhouses in settlements, storehouses, quays, water-supply systems, etc.). Only the FEOGA grants, forming the smallest part of the total grants, have partly been invested in direct productive enterprises in Greenland (e.g. fishing vessels). The grants from the Social Fund have particularly covered expenditures for vocational training. These grants have all proved very useful to Greenland society. In case of withdrawal from the EC, they will be revoked or at least greatly diminished, depending on the character of the future arrangement. Should this happen, the lack of financial aid will in particular recoil upon the long-term improvement of Greenland's infrastructure, but it is hardly expected to

13. Until 1982, Greenland has received 386,4 mill. Dkr. (approx. 49 mill. ECU) from the Regional Fund; and 15,6 mill. Dkr. from the FEOGA (approx. 2 mill. ECU); and 228 mill. Dkr. from the Social Fund (approx. 28 mill. ECU). Furthermore, 52 mill. Dkr. (approx. 7 mill. ECU) have been granted for special purposes within the field of localizing energy sources, (water-power, uranium, and oil). The European Investment Bank has granted loans to Greenland at a total amount of 370,4 mill. Dkr. (approx. 47 mill. ECU). 64 mill. Dkr. (8 mill. ECU) have been granted for a sheep-breeding programme, and 79 mill. Dkr. (10 mill. ECU) for fisheries inspection in Greenland (source of the figures: the Ministry for Greenland).

provoke any acute need for immediate financial compensation.

Due to Greenland's exceptional social, ethnic, economic and structural conditions, a number of special enactments or exceptions have been found necessary to be adopted in Community legislation.¹⁴ Such special measures indicate the difficulties of an unlimited application of Community law in an overseas territory so vitally different from Europe.

4. Why is Greenland leaving the European Communities?

4.1. Greenland's exceptional conditions

It has already been mentioned that Greenland cannot be compared with any other European region. Greenland is an eskimo society with substantially different norms, culture, climate, ethnicity, social structure, economy, industrial pattern, infrastructure and basis of existence. For these reasons, Greenland does not fit well into the European integration which is based on a feeling of identity among the European peoples. Even if the Greenlanders gave up their own identity and way of life, the psychological preconditions common to Europeans could never be attained in Greenland. The Greenland *Landsstyre* has stressed the importance of this fact in its statement of 2 October 1981.¹⁵ The statement reads as follows in paragraph 2:

“The Landsstyre wishes to stress that in terms of language, culture, economy and social structure, Greenland is so disparate from Denmark that, despite its formal equality of status in the realm, Greenland can never be equated with Denmark. The particular regional problems of Greenland will therefore rule out equality of status *vis-à-vis* the Member States of the EC”.

14. For instance, Council Directive No. 77/805 on VAT is not applicable in Greenland, since VAT is not collected at all in Greenland.

15. The *Landsstyre*'s statement was transmitted to the Coreper by the Danish permanent representative in Brussels in October 1981.

Greenland's particular conditions hinder the *Landsstyre's* participation within the EC framework, even on a practical level. If, for instance, a representative from Greenland is to attend a meeting in Brussels lasting only one afternoon, the person in question may require more than a week just to get there and back again – let alone the costs of the travel. Thus, Brussels is not only far away in terms of life-style and common political background, but the exercise of Greenland's membership also causes considerable practical problems.

4.2. *The need of controlling Greenland's fishery*

It cannot be challenged that Greenland has asked for withdrawal from the EC in order to obtain full control of its fisheries policy.

Economically as well as in respect of employment, Greenland is totally dependent upon its fishery. Even though Greenland's fishery is still not fully developed, Greenland does not at present have any other industry capable of supporting the arctic society to the requisite extent. Furthermore, Greenland's fishermen fish exclusively within Greenland's own fishing territory, thus having no interest in fishing in foreign waters. Under these two circumstances, each qualifying the inadequacy of Greenland's EC membership, implementation of the Community fisheries policy radically infringes the very function of Greenland's home rule. At present, no exclusive fishing rights can be accorded under the common fisheries policy or under the so-called "Hague preferences".¹⁶ This fact seems to preclude the Greenland *Landsstyre* from controlling and developing Greenland's fishery and fishing industry on its own, and thereby draining the Home Rule's

16. A declaration was adopted by the European Council during the summit in The Hague on 3 Nov. 1976, in respect of problems of the common fisheries policy. It was declared, among other things, that regions in the Community particularly dependent on their fishery should be given preferential treatment to exploit the available fish stocks within their adjacent waters, in accordance with their fishing capacity. In answer to the *Landsstyre's* question as to whether Greenland fishermen are permitted to catch the whole of the TAC if their capacity makes this possible the European Commission clearly stated that no such exclusive rights could be accorded, it being contrary to the principle of a common fisheries territory in the Community.

power. In accordance herewith, the *Landsstyre* declared in its above-mentioned statement in paragraph 3:

“The Greenland community wishes to demonstrate its viability by developing its economy on the basis of locally generated values. Hence, it is imperative for the Home Rule to reserve all catch and processing of fish for local hands if a society with a viable economy is to become a reality”.

4.3. The introduction of home rule

All former colonies have felt the need and have fought for self-determination. Otherwise, they would never have become independent. However, introduction of home rule in Greenland does not necessarily imply national sovereignty and independence from Denmark. Greenland's home rule rather aims at strengthening and expanding Greenland's identity through increased independent responsibility. In this respect, it is important to note that Greenland's withdrawal from the EC is not directed towards the Community for any hostile reasons. It only reflects the simple need of preserving and concentrating the political and legislative powers within a new system which is still in the making. Through its home rule, Greenland has seized power in a number of fields where the Community was already competent due to the formerly concluded Treaty of Accession. Having superseded Danish legal power within the assumed fields of legislation, the Home Rule's wish to elude the Community's influence in the same fields is comprehensible.

5. Why is Greenland opting for OCT association?

The association of the Overseas Countries and Territories of the Member States is provided for in Part IV of the Treaty of Rome which contains Articles 131 to 136. The association has become practically similar to the Lomé Convention, associating sixty developing countries

in Africa, the Caribbean and the Pacific Ocean with the EC. The Lomé Convention runs for five years and expires on 28 March 1985; this is also the case for the OCT association, which is now contained in Council Decision No. 80/1186 of 16 December 1980. Most of the countries associated through the Lomé Convention are former colonies of the Member States, and a great deal of them were originally dependent OCTs and associated to the EC through the previous periodic OCT arrangements before they became independent and joined the Lomé Convention (or one of its preceding conventions).¹⁷ The main objectives of the OCT arrangement are the exemption of duties and quantitative restrictions between the EEC and the OCTs;¹⁸ the transfer of financial aid for development and stabilization of receipts from exports of certain essential raw materials; the transfer of know-how and technology to the OCTs; and non-discriminatory treatment of the EC countries on no less-favourable conditions than for third countries.

5.1. Greenland is a former colony

Like all the Overseas Countries and Territories, Greenland is a former colony of a Member State which enjoyed its right of self-determination through extensive home rule, as do some of the OCTs. Moreover, Greenland is still a developing area, even though it cannot be characterized as a developing country in the traditional sense of the term. Greenland is totally dependent on a mono-production; it is heavily burdened by a defective infrastructure, and receives considerable financial grants from its mother State – thus showing some of the same characteristic features as other developing areas.

17. The Lomé Convention is ratified and put into force by Council Reg. No. 3225/80 of 25 Nov. 1980. The Convention is annexed to this Regulation, and is preceded by three earlier 5-year conventions of association.

18. The OCTs may impose duties on goods from the EC if considered necessary for *fiscal* reasons, and the EC may impose import levies on goods imported from the OCTs and covered by any of the EC common market organizations, if disturbances are encountered within the EC market. At present, no such levies are imposed on the EC import of fish (tuna and sardines in small scale) from OCTs.

5.2. Greenland is an overseas territory

Greenland is the only overseas territory with full legal membership of the EC.¹⁹ Having decided to withdraw from the EC, Greenland preferred to join the arrangement created particularly for the association of the overseas territories of the other Member States.

5.3. Greenland's GNP per capita is comparable to that of the OCTs

It has been maintained that Greenland's GNP per capita is too high compared with that of the OCTs, and that Greenland thus does not fit into the OCT association. However, this is not correct. Greenland's GNP per capita in 1980 was 8.290 U.S.dollars, which is even less than that of the British OCT Brunei, whose GNP per capita amounted to 11.890 U.S.dollars in the same year. Several of the other OCTs present GNP levels are comparable to Greenland's.²⁰ Moreover, Greenland's relatively high level of GNP per capita does not reflect an equally high standard of development and productivity because it is artificially increased by the large transfers of capital from Denmark. If these transfers were revoked, Greenland's GNP per capita would drop below half of its present level. The exceedingly high living costs in Greenland, due to expensive transport and energy, also reduce the significance of the GNP level considerably. Thus, Greenland's living standard cannot be considered vitally different from that of the OCTs.

19. The French Overseas Departments are also members of the EC, but within a limited scope according to Article 227(2) of the Treaty of Rome. However, they have gradually achieved rights and obligations within the EC practically similar to Greenland's full member status. However, they have not developed the same level of independence as Greenland.

20. French OCTs New Caledonia and French Polynesia show a GNP per capita in 1980 of U.S.\$ 7.830 and U.S.\$ 6.780.

5.4. Preservation of trade relations

It seems obvious that Greenland holds a vital interest in preserving the existing terms of trade and commerce with the EC after withdrawal. Disturbance or even abolishment of these relations could complicate not only Greenland's vulnerable economy, but also the unity of the Danish realm and the Community's security interests. Thus there are mutual interests connected with continuous good links and trade relations between Greenland and Europe, and these considerations are thought to be optimally safeguarded within the OCT association.

Furthermore, the *Landesstyre* anticipated that opting for a third-country status would imply a much more radical break with the EC, which Greenland neither *wished* nor *needed* to incur. In other words, the application for OCT association after withdrawal is the most obvious solution, and reduces the negotiations to discussion of a framework well known to the Community.

5.5. Alternatives to the OCT association

Prior to the *Landsstyre's* choice to opt for OCT status, it was informed by the Danish Government and by the Community that Greenland – if it should withdraw – would have to choose between one of the existing arrangements which the EC has established with different third parties. This premise implied that Greenland should not expect any new or selective arrangement to be established, and in practice reduced the possibilities to either OCT association; a Faroe-like trade and fishing arrangement;²¹ or a status such as that of the Isle of Man and the Channel Islands²² which are partly members of the EC. Since the latter solution would be unable to meet Greenland's wishes, and as the Faroe

21. The arrangement between the Community and the Faroe Islands is contained in the Council Reg. No. 2051/74 of 1 August 1974 on a customs arrangement for certain goods, and in Council Reg. No. 2211/70 of 27 June 1980 on the conclusion of a fishing arrangement between the EC and the Faroe Islands.

22. See Article 227(5)(c) of the EEC Treaty.

Islands' third-country status could prove to be inexpedient due to the above-mentioned reasons, the *Landsstyre* finally decided to opt for the first solution.

6. What problems does Greenland's withdrawal create for the EC?

6.1. Is it lawful to withdraw?

The question to be asked prior to the determination of Greenland's future alternative regime with the EC is whether Greenland is legally entitled to withdraw from the Community.

The Treaty of Rome does not contain any provision for withdrawal of a Member State or of a part of a Member State. On the contrary, Article 240 of the EEC Treaty lays down that the Treaty is concluded for an unlimited period, thereby implying that unilateral denunciation is illegal. Despite this, Greenland's possibility of leaving the Community has never been seriously contested, even though some impeachments have been raised against the legal compatibility of Greenland's secession. Furthermore, the Danish Government has occasionally drawn the Council's attention to Greenland's possible withdrawal,²³ and several members of the European Commission have officially confirmed that Greenland is free to leave the Community if decided accordingly by the competent authorities. Thus it seems clear that all parties concerned have accepted at least the *possibility* of Greenland's withdrawal. Yet a few remarks should be added in respect of the legal side of this matter.

From the point of view of the Danish constitutional law, powers may be transferred from Danish central authorities to international organizations in accordance with Article 20 of the Danish Constitution

23. On 15 July 1975, the Danish Minister for Foreign Economic Affairs presented a declaration on the Greenland subject in the Council. On 22 Nov. 1977, the Danish Minister for Foreign Affairs again presented a declaration in the Council informing about the possible outcome of the Home Rule commissions work. On 21 May 1981, the Danish permanent representative in Brussels presented a declaration to his colleagues in the Coreper informing about the coming referendum. None of these declarations have provoked any reactions or objections against the Home Rule's decision to withdraw from the EC.

on the condition that withdrawal of such transferred powers is not excluded.²⁴ Thus the Danish legislature is constitutionally free to repeal the domestic Act of Accession whereby the powers in question were transferred, regardless of any impact this may have in international law. It is for the same reason, that the obligation to abstain from unilateral denunciation from a treaty lacking provisions for withdrawal is not secured in the Constitution. The incompatibility of Article 240 of the EEC Treaty with Section 20 of the Danish Constitution was discussed prior to Denmark's accession to the EC, but a strictly legal solution to this problem was never presented. It was assumed, and generally accepted, that the legislature voluntarily could abstain from legislating against Community law, and that amendment of the Constitution in order to secure this omission would thus be needless.²⁵ A clearer position was taken in the United Kingdom prior to accession, assuming that the United Kingdom could withdraw from the EC after a new referendum. However, the procedure to be followed in this case was never decided upon.

In respect of Greenland, it follows from the Home Rule Act that the Home Rule authorities are not entitled to apply on their own for withdrawal. As has been the case, it rests with the Danish Government to move the necessary amendments of the Treaties.

Turning to international law, it is the general position that unilateral denunciation from treaties not providing for withdrawal is contrary to the principle of *pacta sunt servanda*. However, international law does not preserve treaties regardless of the effects produced.²⁶

Part V of the Vienna Convention on the Law of Treaties deals with, *inter alia*, termination of the operation of treaties; and Article 42 under

24. The Report of the Ministry of Justice of July 1972, pp. 102 – 105; and Professor Holger S. Sørensen in *Juristen* 1972, pp. 261 – 272. Section 20 of the Danish Constitution reads in para. 1:

Powers vested in the authorities of the Realm under this Constitution Act may, to such extent as shall be provided by Statute, be delegated to international authorities set up by mutual agreement with other states for the promotion of international rules of law and co-operation.

25. The Report of the Ministry of Justice, July 1972, pp. 115 – 116.

26. I.M. Sinclair, *The Vienna Convention on the Law of Treaties*, Manchester 1973, p. 101; and J.L. Brierly, *The Law of Nations*, 6th Ed., Oxford 1963, p. 328.

Part V of the Vienna Convention decides that withdrawal of a party may take place only as a result of application of the provisions of the Convention, when the treaty (*in casu* the Treaty of Rome) does not itself contain the requisite provisions. With regard to Greenland, the Vienna Convention appears to contain three provisions which could be examined for the purpose of Greenland's withdrawal from the EC.

(i) Article 54 has incorporated the self-evident rule that a party may withdraw with the consent of all implied parties. It seems clear that when the parties to a treaty can agree to conclude the treaty, they can also in common agree to allow one party to withdraw. This is exactly the line of procedure taken by the Danish Government in this case.

(ii) Article 56 deals with the more controversial issue of a member's withdrawal in case consent cannot be reached. If it can be established that the parties intended to admit the possibility of denunciation, or if the right of denunciation may be implied by the "nature of the treaty", a party shall be entitled to resign unilaterally. The expressions under this article appear somewhat ambiguous. As for the first possibility, there is generally a certain reluctance to allow for any examination of the hypothetical will of the parties.²⁷ As far as the EC Treaties are concerned, they aim towards a political and constitutional European entity, and it is likely to assume that the possibility of a Member State's withdrawal was originally not intended. It is, however, difficult to say what may have been considered with regard to non-European Greenland. Probably nothing. But on the other hand Denmark was allowed to let the Faroe Islands decide on their own. Thus it may not for certain be excluded that the parties of the EC Treaties *would have intended* the same solution for Greenland *if* home rule had been foreseen at the time of accession. As for the second exception, the right of unilateral denunciation from the EC can hardly be implied from the nature of the EC Treaties. The European Community is a supranational organization providing for extraterritoriality, own receipts, *etc.* It is obvious²⁸ that a

27. Ingrid Detter, *Essays on the Law of Treaties*, Stockholm 1967, p. 97.

28. Henry Schermers, *International Institutional Law*, Alphen aan de Rijn, the Netherlands, 1980, pp. 60–69.

Member State's withdrawal is particularly harmful in the case of the EC, due to the close unity and interdependence between the Member States. But again, Greenland does not really belong to the group of European countries forming the core of the Community. Its withdrawal will neither weaken the EC as the representative of this group of European countries, nor will it affect the Community in terms of economic or administrative disturbance. It falls within the nature of the EC Treaties to establish a European common market; on the other hand, Greenland's performance of its right to self-determination by establishing home rule and subsequently withdrawing from the EC can certainly not be considered contrary to this very nature of the EC Treaties. For these reasons the Greenland *Landsstyre* has taken the position that an analagous application of the principles under Article 56 of the Vienna Convention duly entitles Denmark to denounce Greenland's EC membership unilaterally if consent is not reached under the provisions of Article 54 in this matter.

(iii) Finally, Article 62 may also be examined. This article sets out the doctrine commonly known as the *clausula rebus sic stantibus*, according to which a party may withdraw from a treaty in case of a fundamental change of circumstances, *when* these circumstances constituted an essential basis of the consent of the other parties, and *if* the change of these circumstances may radically transform the extent of the withdrawing party's obligations under the treaty. Only a few words need be devoted to the application of this article in the present case, it being obvious that a party should not be entitled to invoke its own acts (*in casu* the establishment of home rule) amounting to such a fundamental change of circumstances that Article 62 may be invoked.²⁹

Dealing with the legality of Greenland's withdrawal, a few observations could be added regarding the French overseas departments St. Pierre and Miquelon – a group of small islands off the south coast of Newfoundland, east of Canada. These islands were formerly French OCTs until 1976 when France changed their constitutional status to overseas

29. Sinclair, *op. cit.*, p. 107.

departments, whereby they became members of the EC according to Article 227, para. 2 of the Treaty of Rome. They were subsequently removed from the list of territories annexed to the OCT arrangement adopted by the Council, but remained on the similar list of overseas territories in Annex IV to the Treaty of Rome. Yet the islands are known to have expressed recently their wish to return to their original OCT status which France eventually will be able to accomplish without any amendment of the Treaties. It is only due to formal and historical reasons that the Treaties now have to be amended in order to transform Greenland into an OCT, since Denmark was not originally adopted in Article 131 of the EEC Treaty and Greenland was not given any particular status under Article 227 of the Treaty. France, however, is entitled to transform some of its OCTs to overseas departments and back again to OCT status without any such amendment. This fact produces the pragmatic but simple argument that Denmark of course should be supported in carrying through the same manoeuvre by amending the Treaties that France can perform without such amendments.

6.2. The precedent impact

It need not be argued that all the Member States share a common and vital interest in the inviolability of the Treaties. It could be maintained that Greenland's withdrawal would lead to a dissolution of the Community and thus create a fatal precedent for other marginal regions in the EC. However, this is not possible. Being (a) an overseas, non-European territory; (b) a former colony affiliated to a Member State; and (c) a developing area, Greenland's withdrawal only creates a precedent for territories in the same position. Only the French overseas departments qualify at present for these conditions, and – as we may expect in the St. Pierre and Miquelon case – France will presumably not be unwilling to comply with a request of this character.

Granting OCT status to Greenland is also an important part of the Danish endeavour to limit the precedent impact of Greenland's withdrawal. A refusal to comply with this request and to create instead some sort of special arrangement for Greenland would, contrary to the

intentions, probably result in a greater inexpedient precedent for the Community. It could either invite other regions to claim various special arrangements, or compel Greenland to withdraw completely. Both outcomes would be unfortunate. Granting OCT status to Greenland merely represents a removal from one end of the Treaty system to another, thereby constituting the most favourable precedent.

6.3. The fisheries issue

As already mentioned above, Greenland's main reason to leave the Community is the need to obtain full and autonomous control over fishery in its waters. The Faroe Islands and Norway hesitated to join the Community for partly the same reason. The Community's interest, on the other hand, is to preserve its disposal of fishing quotas in Greenland.

The Community's returning of the power to control Greenland's fishery to the Home Rule is so essential that Greenland is willing to waive the substantial Community financial grants for this purpose. Consequently it is hardly to be avoided. It may imply a reduction of the Community's fishing quotas, but the simplest way of achieving the largest possible quotas for Community fishermen in Greenland waters is to pay for such fishing quotas. It is likely that Greenland will consider resigning totally from the EC if the Community is not ready to let the Greenlanders exploit the available stocks in correspondence with their maximum fishing capacity, and thus to limit itself to quantities in excess thereof. In this case, the Community would lose its preferential position in Greenland waters, whereas Greenland on the other hand would have to rearrange its fishing production and pattern of export if a favourable customs arrangement could not be negotiated with the Community. In other words, Greenland and the Community seem to share common interests in a fair arrangement. However, if the Community tightens the conditions in the separate fishing agreement in order to preserve its rights, this will most likely prove counter-productive.

6.4. *Security interests*

Greenland's geographical location halfway between the U.S.A. and the U.S.S.R. also implies certain security problems. This is perhaps the most important aspect of Greenland's withdrawal from the EC. Greenland's relation to NATO is not contested by the denunciation of the EC Treaties, nor is the relation between Greenland and Denmark. But if the Community fails to conclude a proper fishing agreement with Greenland, and rejects the request for OCT status, the Home Rule *may* be forced to endeavour mutual co-operation with State trading countries offering optimal terms for investments and trade, *etc.* This is, of course, most uncertain. But if this should happen, the security interests of not only the U.S.A. but also of Europe could be infringed. This creates an additional reason for the Community to keep good and close relations with Greenland after withdrawal.

7. **Conclusion**

It has been the guideline in the present article to prove that Greenland as well as the Community really share common interests in a fair and mutual co-operation after Greenland's withdrawal.³⁰ Each of the parties can, of course, obstruct the negotiations by requesting concessions from the other which would either delay or abolish further negotiations on the matter. However, in both cases it would be to the disadvantage of the party in the middle, namely Denmark. The question as to whether Greenland *will* withdraw from the EC was in reality determined when Denmark presented its memorandum and the proposal for the Treaty of Amendment to the Council. Neither of the political parties in Greenland will hence be in a position to subjugate the decision taken on the basis of the referendum, or to change the line of withdrawal commonly agreed upon between the Home Rule authorities and the Danish Government.

30. In the first week of February 1983, the Commission has declared itself in favour of the adoption of OCT status in Greenland.