F L R

Føroyskt Lógar Rit – Vol. 1, No. 1, Jan 2001

Faroese Law Review – Vol. 1, No. 1, Jan 2001

Fólk og Fullveldi

F L R

Føroyskt Lógar Rit – Vol. 1, No. 1, Jan 2001
Faroese Law Review – Vol. 1, No. 1, Jan 2001

Fólk og Fullveldi

Føroyskt Lógar Rit (Faroese Law Review) vol. 1 no. 1 – 2001.

Ongin ábyrgdan fyri gerðir hjá persónum ella stovnum grundað á tilfar í hesum riti verður viðurkend.

ISSN 1601-0809

Prent: Estra Prent

Føroyskt Lógar Rit (Faroese Law Review) vol. 1 no. 1 – 2001.

ISSN 1601-0809

Printing: Estra Prent

Innihald / Content

Kári á Rógvi, ritstjóri

Nú er næst at hesir lutir eru landinum hentastir

Við áleið hesum orðalagi byrjaði lógteksturin í seyðabævinum frá árinum 1298. Seyðabrævið tykist vera ein rættarbót frá norska kongsyninum, Hákuni hertuga. Men helst býr ein annar veruleiki undir. Norrønu londini vesturi í havi høvdu leingi verið fyri ágangi frá størru grannunum. Longu í 1035 vita vit, at norskur kongur fyrstu ferð lætst at ráða í Føroyum og at meta Føroyar sum len. Men ikki fyrr enn í seinnu helvt av trettandu øld tykjast vestaru londini sjálvi at hava viðurkent fremmant ræði. Hebridurnar og Man viðurkenna yvirvaldið hjá skotskum harrum, meðan hini norðaru so við og við ganga undir norskar kongar.

Føroyar gjørdu helst sum síðsta landið eina realpolitiska semju í árinum 1271. Vit viðurkendu kongsins ræði, men treytaðu okkum eins og íslendingar í teirra 'gamla sáttmála' innlendis sjálvræði.

Til tess at gleða kong var hansara landslóg sett í gildi fyri gomlu lógarverkini, ið vit høvdu tikið úr Norra. Men seyðabrævið verður longu fráboðað í 1271 sum tær lógbøtur, 'sum lógbók teirra sjálvs váttar áður.'

Henda støða heldur fram til í dag. Fyrst norskir, so danskir kongar halda uppá persónligt fullveldi í oyggjunum. Nú hevur danska ríkið, skipað við fólkaræði og stjórnarrætti, tikið við kravinum at eiga fullveldi í Føroyum.

Við heimastýrislógini fingu vit eina støðu merkiliga líkari teirri frá 1298. At síggja til er talan um, at ríkið letur landinum vald. Men politisku samráðingarnar eins og viðtøkan, fyrst á tingi í Føroyum, so í Danmark, vitna um eina sáttmálastøðu.

Fyri føroyingar er spurningurin enn, hvat realpolitiskt er skilabesta loysnin. Skulu vit halda fast um skipanir, har vit yppa øksl at útlendingum, ið fyri yvirræði á pappírinum vilja lata okkum góðs og fæ, meðan vit, sum onki var hent, ráða okkum sjálvum? Ella skulu vit kasta av okkum tað vald, ið spillir land og lyndi okkara?

Tað er fyri ein og hvønn sjálvan at avgera, hvørja støðu at taka.

Fyri tann lógkøna stendur eftir, at hesir lutir eru landinum hentastir, at Føroyar fáa egið lógarrit at lýsa og viðgera ta lóg, ið her er galdandi.

Tørvurin á einum lógarriti kann neyvan undirmetast. Føroyar hava altíð verið egið løgdømi við egnum lógum og dómum. Talið av lógum, dómum og avgerðum, ið bert hava gildi í Føroyum er stórt. Við nýggju stýrisskipanarlógini eru nú lógir, ið bert eru skrivaðar á føroyskum.

FLR fer at hava fleiri sløg av tilfari. Teoretiskar viðgerðir, lýsingar av praksis hjá fyrisitingini og kærunevndum, umframt fastar tættir av ymsum slagi. Lógarritið kemur væntandi út á vetri, vári og heysti.

Fyrsta ritið er tó eitt evnisrit um fólk og fullveldi. Nógvir óloystir spurningar eru viðvíkjandi støðu Føroya. Gjørdust vit nakrantíð partur av Norra, ella Danmark? Eru Føroyar eitt land, føroyingar eitt fólk ella tjóð? Hava vit ræði á egnum landi, ella eiga vit rættin at fáa tað, ella er rætturin farin fyri bakka? Ber tað til at vera land og fólk og framvegis vera innanfyri ein størri valdskarm?

Vit byrja orðaskiftið við hesum trimum greinunum. Landsmaður okkara, Halgir Winther Poulsen, spyr, um føroyingar eru tjóð. Høvundurin lýsir, hvørji fyrilit í altjóða lóg gera av, hvør fólkabólkur kann metast vera tjóð. Mett eftir hesum fyrilitum eru føroyingar tjóð, og bert føroyingar sjálvir kunnu sløkkja støðu og rætt okkara sum tjóð. Íslendingurin, Guðmundur Alfreðsson, nemur við, hvat tað merkir í altjóða lóg at vera tjóð. Han vísur á, hvussu stóran týdning tað hevur, at vit kenna støðu okkara í samráðingum um at nýta sjálvræðisrættindi. Skotarnir, Alasdair Geater og Scott Crosby, viðgera sjálvsavgerðarrættin bæði í nútíðar og søguligum høpi. Serliga áhugavert er, tá tjóðir og lond í dag leita saman í felagskapir sum ES, hvønn týdning slíkir felagskapir hava fyri rættin og møguleikan hjá smálondum og smátjóðum at nýta rættin sjálvi at gera av støðu sína.

Kári á Rógvi, editor-in-chief

Now it follows that this is best for our land

With words to this effect the provisions of the Sheep Letter of 1298 commence. The Sheep Letter appears to be an amended regulation issued by the Norwegian heir to the throne, the Duke Hakon. Likely, however, a different reality lies hidden beneath. The Norse lands out at sea in the West had long been subject to pressure from their neighbours. Already in 1035 a Norwegian king first pretended to reign in the Faroes and consider the Faroes a fief. But not until late 13th century do the western lands themselves recognise foreign rule. The Hebrides and Man recognised Scots overlords, whilst the northern lands one by one acknowledged the Norwegian kings.

The Faroes were probably the last land to reach an agreement in 1271. We recognised the supremacy of the king, but reserved in the same manner as the Icelandic in their 'old treaty' the right to internal autonomy.

To please the king his code replaced the Norwegian codifications that had been used in the Faroes. But the Sheep Letter was anticipated in 1271, as amendments to the old codes 'that your own law-book already proves'.

With the Home Rule Act of 1948 the situation is remarkably like that of 1298. Seemingly the larger realm concedes power to the land. However, the underlying political negotiations and the enactment of the document first by the Faroese Løgting (parliament) then by the Danish bear witness of a treaty-based relationship. The constitutional democrasy of Denmark has succeded the Danish king, who in turn succeded the Norwegian monarch.

For the Faroese, the question still is what the best solution is. Should we maintain the arrangements whereby we shrug our shoulders at the foreigners

who in exchange for supremacy on paper are prepared to pay much Dane geld whilst we continue to rule ourselves? Or should we throw off the regime that spoils our land and mind?

It is for each and everyone to decide for themselves, which position to take.

For the lawyer, it remains that this is best for our land that the Faroes shall have their own law review to describe and analyse the law that applies here.

The need for a law review cannot be underestimated. The Faroes have always formed their own jurisdiction with their own laws and cases. The number of laws, judgements and decisions that apply only in the Faroes is huge. Following the new Faroese Constitution of 1994 there are now many statutes written in Faroese only.

The FLR will contain several kinds of material. Legal theory, comments on cases and administrative and tribunal decisions, in addition to other subject. The Faroese Law Review will probably be printed in winter, spring and fall.

The first issue, however, is a centered on the theme of people and sovereignty. Many unanswered questions remain. Did the Faroes ever become part of Norway, or Denmark? Are the Faroes a land, the Faroese a people or nation? Are already exercising the right to self-determination, or the right to obtain self-determination, or have we lost is somehow? Is it possible to be a land or state or people and still remain within a larger realm?

We hereby open that discussion with these three articles. Our compatriot, Halgir Winther Poulsen, asks whether the Faroese are a nation. The author examines which criteria at international law determine which groupings can be considered nations. By these criteria the Faroese do constitute a nation and only the Faroese themselves can extinguish our rights as such. The Icelandic, Guðmundur Alfreðsson, considers what it means to be a nation at international law. He points out the importance of understanding our own position in any negotiations regarding our right to self-determination. The two Scotsmen, Alasdair Geater and Scott Crosby, analyse the right of self-determination both in present and historical context. It is especially interesting when nations and states form such ever closer relationships as the EU what importance such inter-dependant realms have for the right and the ability of small lands and small nations to decide for themselves.

Lógin hjá Føroyskum Lógar Riti

§1. Føroyskt Lógar Rit (FLR) er óheft løgfrøðiligt tíðarrit.

§2. FLR skipar fyri at útgeva tilfar, ið lýsir og greinar mál av týdningi fyri føroyska løgdømið.

§3. FLR verður stýrt av eini Ritstjórn, sum er hægsti myndugleiki.

§4. Ritstjórnin verður vald á hvørjum ári. Allir limir í Føroyskum Jura Lesandi (FJL), tey ið lesa nóg lógartengd fak og øll yngri lógkøn kunnu møta á fundi at velja ritsjtórnina. Fráfarandi Ritstjórin skipar fyri valinum eftir vanligari mannagongd.

Hesir limir skulu veljast:

A. Ritstjórin
B. Tvey lesandi
C. Ein ungur lógkønur
D. Ein ungur stjórnarkønur

Hesir limir eru sjálvvaldir:

E. Forsetin í FJL
F. Eitt umboð fyri løgfrøði ella samfelagsdeildina á fróðskaparsetrinum.

Fyrsta Ritsjórnin verður tó vald á stovnandi fundinum.

§5. Ritið verður fíggjað við stuðli frá almennum myndugleikum og privatum stuðlum. Eftir samráðingar við nevndu stuðlar ger Ritsjórnin eina Fíggjarreglugerð at galda fyri umsitingini av øllum pengum og fæi hjá FLR.

Í ritstjórnini eru

A. Kári á Rógvi
B. Bárður Larsen
B. Brandur Ellingsgaard
C. Birta Biskopstø
D. Sigmundur Isfeld
E. Barbara Vang
F. Søgu og Samfelagsdeildin hevur ikki valt sítt umboð enn.

Alasdair Geater and Scott Crosby[1]

Self-determination and Sub-sovereign Statehood in the EU with particular reference to Scotland and passing reference to the Faroe Islands

---

[1] Partners respectively in **Geater and Co** and **Stanbrook & Hooper**, Brussels and founding partners of **Geater & Crosby**, a joint venture devoted to Scots constitutional law, also based in Brussels. The seeds for this discourse were sown in a lecture in 1975 by Professor Neil MacCormick, then a young Dean of the Faculty of Law at Edinburgh University, which the younger of the co-authors attended (and remembered).

"In a united Europe every small country can find its place alongside the former great powers" [2]

Føroyskt Úrtak

Heiti: Sjálvsavgerðarrættur og at vera statur í ES við partvísum fullveldi, við serligum atliti til Skotlands, men eisini við atliti til Føroya. Greinin viðger í heimspekiligum og politiskum høpi týdningin av, at tjóðir, sum nú eru í felagskapi við aðrar í ES, fáa fullveldi og egnan ES-limaskap. Høvundarnir halda uppá, at tað er ómissandi rættur í fullum samsvari við ES-Sáttmálan hjá hesum tjóðum at fáa egnan ES-limaskap. Tessvegna og til tess at tryggja framhald í løgskipanum eigur umskifti til fullan limaskap at vera mett sum innlendis markanbroyting, og tí er umsókn um nýggjan limaskap ikki neyðug. Serliga er tað Skotland, ið verður viðgjørt í mun til Bretlands, men evnið og niðurstøðurnar eru av týdningi fyri alt Europa.

Høvundarnir: Alasdair Geater og Scott Crosby eru advokatar í Brússel og virka serliga innan ES-rætt, men saman fáast teir eisini við skotskan stjórnarrætt.

English Summary

This is a discussion of the legal aspects in their philosophical and political context of separate statehood and full EU membership for current state-sharing nations in the EU. It postulates that the attainment by these nations of separate EU membership through the exercise of the right of self-determination is an inalienable basic right and is wholly compatible with the EU Treaty. For these reasons and also to ensure legislative continuity the transition to full membership status would comprise an internal re-adjustment within the EU, no application to join as a new member being necessary. The particular focus is on Scotland and its position within the United Kingdom, but the topic is, and the conclusions are, of pan-European significance.

I. Points of Departure

1. There are many more nations[3] than states in the EU and some of them have it within their power to claim statehood and become EU Member

[2] Cf. Norman Davies "*Europe, A History*", Pimlico 1997, ISBN 0-7126-6633-8 at page 944.

States in their own right. It is sometimes said, though, that to accord the smaller nations of the European Union separate statehood would contradict the very reason for creating the EU in the first place. This is a view with which we respectfully disagree.

2. First, as markets cease to be national in concept and scope, and become pan-European instead, the need for large national markets disappears. There is, therefore, no economic reason to oppose the emergence or re-emergence of smaller states.

3. Secondly, membership of the European Union is open to all European states provided they are democracies. Constitutionally, therefore, there is no impediment to nations, which currently share statehood with others, acquiring statehood in their own right within the EU.

4. Thirdly, the purpose of the founding Treaty, the Treaty of Rome, was not to coalesce the signatory states but to found "*an ever closer union between the peoples of Europe*". Heretical as it may seem to some, the creation of the European Union is not predicated on the maintenance of the national boundaries which obtained at the accession of each Member State, nor is EU membership in any way a guarantee of national territorial integrity. Indeed, integration would arguably advance more rapidly in the absence of dominant Member States.

5. Lastly, as the power of the EU grows and that of the Member States declines, a problem, not perhaps of identity, but certainly of voice arises for the state-sharing nations and especially for the smaller ones. Whereas the

[3] Some may instantly be inclined to object that before this discussion can advance a definition of the term nation or people is required. In the British context, for example, those of unionist persuasion might argue that each of the constituent parts of the present British State contains more than one people and conclude that the British State cannot be divided for that reason. This is, of course, a typical *divide et impera* argument and one which is therefore pernicious. For our purposes, the argument is also irrelevant, the definition of nation or people not being important. What is decisive is whether or not, as John Stuart Mill puts it, a *"sentiment of nationality exists in any force"*. One can assert British nationality despite the presence of several peoples on British territory. One can by like token also assert Scottish nationality despite the alleged presence of more than one people in Scotland. The right to self-determination is not reserved to the ethnically pure. How would those who now object to Scottish independence on the grounds of an insufficient definition of the term "people" have reacted to the emergence of the U.S.A.?

smaller nation was perhaps able to make itself heard sufficiently at domestic level, it finds that the Member State to which it belongs is increasingly unable to represent its views at EU level, precisely because the Member State itself has been weakened politically. In these circumstances the small state-sharing nation feels isolated and impotent. In order to contribute positively to the workings of the common endeavour, the EU, the smaller state-sharing nation must, it feels, speak with its own voice[4]. Granting such nations the right to speak with their own voice is therefore pro-European as it prevents isolation and promotes integration. This is one starting point.

6. The idea that Europe would be better governed without dominant states is not particularly new. It was put forward for example in 1703 by Andrew Fletcher of Saltoun, a most resolute opponent of the union between Scotland and England which of course did take place notwithstanding, in 1707 with all attendant and ensuing consequences. In a publication of 1703 entitled "*An Account of a Conversation Concerning a Right Regulation of Governments for the Common Good of Mankind*", Fletcher advanced the idea that governments should be rendered "*either incapable or unfit to make conquests*"[5] and should give up their habit of thinking that what is to the advantage of one country must be to the detriment of others and recognise that the interests of all countries are interdependent. Fletcher believed that Europe was best served by small states, each able to defend itself but not able to commit acts of aggression and argued that this system of "*divers small sovereignties*" represented the optimum,
"to preserve mankind, as well from great and destructive wars, as from corruption of manners, and most proper to give to every part of the world that just share in the government of themselves which is due to them."

7. These little known but rather prophetic words illustrate most clearly that the concept of "smaller sovereignties" is a humanistic one, and this humanistic aspect is another starting point for our discourse.

8. Another starting point is the possibility that Scotland - a notable state-sharing nation - may seek statehood and become an EU Member State in her own right. This is, after all, the policy of the SNP which is the second

[4] On the question of voice within the EU more generally see J.H.H. Weiler, *The Constitution of Europe*, Cambridge University Press, 1999, ISBN 0-521-58567-8, chapter 2.

[5] Quoted and discussed in "Andrew Fletcher and the Treaty of Union", Paul Henderson Scott, *Saltire Society*, Edinburgh, ISBN 0-85411-057-7, Chapter 10.

largest party in the Scottish Parliament. Fearing presumably a domino effect, it appears that this prospect is not really regarded with any particular favour by the dominant Member States, the United Kingdom included, and so an understanding of the arguments habitually deployed by way of discouragement is of no little importance. Myths abound and, in the interest of rational debate, it is not misplaced to scotch them, as it were.

9. A final starting point is that the current government of the Faroe Islands (or more accurately the Faroes[6]) has decided to champion Faroese statehood, albeit retaining close links to Denmark and subject to popular approval by referendum[7]. Should the Faroes decide to end their protectorate status they would achieve statehood outside the EU and if they can do it from without, then the Scots can, a fortiori, do it from within.

II. Fear of Freedom

10. That said, many small state-sharing nations are afraid deep down of standing alone. Historically they may never have done so, or were driven in more violent or less tolerant times to seek the protection of a larger nation or overlord. The Faroese fit the first, Scotland the second category. This historical background does not, however, give an objective justification for the fear of freedom which is apparent in both nations even today. In fact no state, or at least no Western European state, need fear economic or any other kind of isolation, nor need they fear being ignored or abandoned if calamity ever befell them. If, then, there are no objective reasons to fear statehood, how is it that the fear persists?

11. The answer may reside in the fact that the smaller nations see as their own fear what is in reality the fear of the larger nation or of others. The case of the Faroes is illustrative. Statehood was almost achieved at the end of the Second World War and would arguably have been achieved if proper referendum techniques had been used. But Faroese statehood then would not, it seems, have pleased everyone. Evidence has apparently just come to light through the opening of Danish state archives that the USA was opposed to Faroese independence for fear of destabilising the North

[6] The term Faroe Islands is commonly used in English. Since "oe" already denotes island, we prefer the term Faroes. There are more than 45,000 Faroese on the islands, and a fairly large diaspora outside. As a linguistic group they count less than the Gaels in Scotland. And yet...

[7] Cf Jóhannus Egholm Hansen & Kári á Rógvi Olsen, *Faroese Busniess Law*, Dania Law Firm, 1998, ISBN 87-987134-8, page 39.

Atlantic at the beginning of and during the Cold War.[8] This opposition, it is said, led to a policy on the part of Denmark deliberately to create a culture of dependency in the Faroes, which if true, would go a long way to explaining the real reasons for the Danish block grant to the islands which is still being paid today, despite evidence that the Faroese economy may be perfectly viable without it.

12. The Cold War is, however, over. Yet Denmark continues to pay a heavy price to retain its dominion over the Faroes. Denmark could avoid this by negotiating reasonable terms permitting a gradual transition to Faroese statehood and thereby putting an end to the block grant. But this Denmark, in breach of an agreement struck with the Faroese Government in 1998, refuses to do. The reason is not oil, for any oil in Faroese waters is Faroese, not Danish according to a 1992 agreement between the Faroese and the Danish Governments[9]. In the absence of Cold War imperatives and in the absence of any prospect of oil revenues, Denmark, it must be concluded, simply does not want to let go and so, it seems, the real fear is not Faroese but Danish. The overlord is afraid of losing its vassal and is willing to pay a heavy price to maintain the status quo: the dependency culture is fostered as before, not so much because the Faroes need a subsidy but because it rather suits Denmark to give one.

13. So the Danish attitude may be motivated by nothing more than a reluctance to lose influence in the North Atlantic and to create a precedent which could lead to sovereignty claims from Greenland as well. In other words, the Danes probably do not want to see their sphere of influence cut back to the Kattegat. The Faroes, all eighteen islands and 45,000 people of them, inflate Denmark's importance. Hostility to Faroese statehood may therefore no more than a Danish fear of ego deflation.

14. Does not much of this apply by analogy to the relationship between dominant and dominated the world over, and between Scotland and England in particular? In terms of geo-politics, Scotland is much more important to England than the other may around, because Scotland has, in this regard at least, no ego problem. Yet Scotland refrains from seeking statehood. Scotland gives London influence far into the Atlantic - in fact

---

[8] See the report commissioned by the Faroese Government, Føroyar í Kalda Krígnum (The Faroes in the Cold War), Løgmansskrivstovan, September 1999, ISBN: 99918-53-40-5

[9] Cf *Faroese Business Law*, op.cit. supra at page 38

up to the maritime boundary with the Faroes – whereas English influence would without Scotland, stop halfway up the North Sea.

15. England claims that it subsidises Scotland. If so, why should it not welcome Scottish statehood (and its own) and pocket the money? Perhaps England likes having or thinking it has a dependency. Perhaps it, like Denmark, fears the deflation of its national ego, and has created a dependency culture to keep the Scots in their place. In any event, what all this is leading up to is the proposition that the fear the Scots and the Faroese perceive as their own, is really the fear of the dominant to lose the wherewithal of their domination. If that were recognised the status quo might not last for long.

16. What also has to be said in this context is that there is no need to fear the emergence of new sovereign states pursuing interests inimical to those of the former partners in the old shared state. An independent Scottish state, for example, would continue to enjoy intense cooperation and, in many aspects of day to day life, virtually unchanged integration with England; the difference would be one of voice. The Faroes for their part would do the same with Denmark, mutatis mutandis. This form of statehood obtains in the case of many small states – Monaco, San Marino, Lichtenstein, Andorra, Luxemburg and even Ireland – but it also obtains, although not all would admit it openly, in the case of each and every state of the European Union. In short, the mere fact that of all the small nations, the Faroes are seriously contemplating statehood is proof that statism is not inextricably linked to absolute sovereignty or that, and this we return to later, in the modern world modern statecraft and modern constitutional practice are, as MacCormick puts it, "*beyond the sovereign state*" [10]

Neither small or large have in short any reason to fear the evolution to statehood of small and previously state-sharing nations.

17. In the remaining sections of this discourse we examine the achievement of statehood within the EU and the variation in the "internal geometry" that this would entail. In particular we deal with

> (I) self-determination as a fundamental human right;
> (II) the arguments commonly used to discourage the exercise of this right and the rebuttal thereof; and

[10] Cf MacCormick, *Beyond the Sovereign State*, 1997 Modern Law Review, p.56

(III) the exercise of the right of self-determination under EU law.

In the closing sections we look at the question of sub-sovereign Scottish statehood in the EU from which some general and particular conclusions may be drawn.

III. Self-Determination as a Fundamental Human Right

18. The right of people to self-determination is now indisputable, but the importance of this right is often forgotten. This is one reason why the right may on occasion seem to be honoured more in the breach than in the observance. We examine first the existence of the right and then its importance.

19. Article 55 of the Charter of the United Nations (signed on 26 June 1945) is based on the notion that self-determination of peoples is a prerequisite for comity among nations. It provides that

> "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:
> a. ...;
> b. ...;
> c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion"

20. By 1960, when the U.N. General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples, self-determination was being placed squarely in the additional context of fundamental rights. Thus, the Declaration opens as follows:

> "Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom."

It then formally declares inter alia that

"1. he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. "

21. Six years later, on 16 December 1966 to be precise, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted by the U.N. General Assembly. The preamble and Article 1 of both these covenants are identical and they view self-determination unequivocally as a fundamental and as an individual right, i.e. as a right of the person. The recitals and Article 1 of these two covenants provide as follows:

"Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognising that these rights derive from the inherent dignity of the human person,

Recognising that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realising that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

22. In short, by 1960 and certainly by 1966, not only was the right of self-determination expressly and unequivocally recognised but it was clearly stated to be a fundamental right enjoyed by each individual person.

23. Individuals enjoy many rights, however, and many are sacrificed on the altar of some greater good or higher right. So it is necessary to assess how important self-determination is or where to rank it on a scale of rights. In our view, it is a right which cannot be defeated or outranked by any other right; it is a question of human dignity.

24. Human dignity has not always been recognised in these terms. Thus Mill, speaking presumably for the English establishment of the day, advanced the seemingly liberal propositions in 1861 that *"the question of government ought to be decided by the governed"* and *"where the sentiment of nationality exists in any force, there is a prima facie case for uniting all the members of the nationality under the same government, and a government to themselves apart."* This apparent case for self-determination was precisely that, apparent. It was a prima facie case, defeatable if and when convenient. As Mill went on to say:

> "Experience proves, that it is possible for one nationality to merge and be absorbed in another: and when it was originally an inferior

> and more backward portion of the human race, the absorption is greatly to its advantage. Nobody can suppose that it is not more beneficial to a Breton, or a Basque of French Navarre, to be brought into the current of the ideas and feelings of a highly civilised and cultivated people - to be a member of the French nationality, admitted on equal terms to all the privileges of French citizenship, sharing the advantages of French protection, and the dignity and prestige of French power - than to sulk on his own rocks, the half-savage relic of past times, revolving in his own little mental orbit, without participation or interest in the general movement of the world. The same remark applies to the Welshman or the Scottish Highlander, as members of the British nation."[11]

25. According to Mill, then, the "*backward*" nation may justly be absorbed into the "*civilised*" nation and the individual thus saved from the fate of "*revolving in his own little mental orbit*". Mill at least recognised that the individual's lot was inextricably tied to that of his national group and accepted in effect that denial of self-determination affected the individual. Presumably Mill would have accepted that respecting self-determination would also have affected the individual, so in his defence it can be said that Mill understood the relationship between the individual and the nation[12]. What, to his detriment, Mill seemingly did not understand or if he did chose deliberately to ignore, is the fact that individuals (and therefore the collectivity which makes up the nation) prefer to make up their own minds. Thus, if the Breton or Basque of French Navarre wants to "*sulk on his rock*", he must be free to do so. It is his temper and his rock, and no outsider has the right to prevent him from deploying both as he and he alone sees fit. Robert Burns put it this way: *"Alas, have I often said to myself, what are all the boasted advantages which my country reaps from a certain Union, that can counterbalance the annihilation of her*

---

[11] Cf. J. S. Mill, "Considerations on Representative Government", in *On Liberty and Other Essays,* Oxford University Press, 1991, ISBN 0-19-28208, pp. 428 and 431.

[12] As Weiler puts it (J.H.H. Weiler, *The Constitution of Europe*, op. cit. supra at page 92): "... the classical model of international law is a replication at the international level of the liberal theory of the state. The state is implicitly treated as the analogue, on the international level, to the individual within a domestic situation. In this conception, international legal notions such as self-determination, sovereignty, independence, and consent have their obvious analogy in theories of the individual within the state".

independence, and even her very name?"[13] For Burns, then, his country's loss of independence amounted, as his personal regret shows, to a diminishing of his individual being, or in short of his dignity. And this diminishing of dignity is no greater nor any less than that of the Breton ordered to participate "*in the general movement of the world*" by some presumptuous Parisian politician.

26. Self-determination is thus a matter of human dignity, individual and collective[14]. If one accepts that human dignity must at all times be respected by one and all and at the individual as well as at the collective level, then the right of self-determination cannot be outranked by any other right. It is, we presume, for this reason that the 1960 U.N. Declaration on the Granting of Independence was couched in terms of faith in the dignity and worth of the human person, and that the 1966 Rights Covenants expressly asserted the inalienable nature of human rights and for their part also recognised that *"these rights derive from the inherent dignity of the human person".*

For this reason also the parties to the Rights Covenants are expressly obliged under Article 1(3) of each to "*promote the realisation of the right to self-determination*" and, as stated in the last recital, the individual too "*is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant".*

IV. Arguments of Dissuasion and their Rebuttal

[13] Letter to Mrs. Dunlop, 1790, quoted in Paul Henderson Scott, "Scotland in Europe" 1992 Canongate Press, ISBN 0-86241-414-8.

[14] There is thus a strong humanistic element in accommodating the desire for self-determination. It is an improving phenomenon. It is for this humanistic reason for instance that Gandhi considered that Mazzini, not Garibaldi, was the real hero of the *Risorgimento*. Mazzini apparently believed that the individual had, in order to attain maturity, to learn how to govern himself, and was not free until he had done so. Mazzini thus sought to throw off the Austrian yoke to free Italy from foreign domination - certainly - but primarily to free the Italians from themselves. Gandhi himself believed that Svarâj (independence) compelled the individual to learn how to govern himself. See Giorgio Borsa, Gandhi, 1983, Bompiani, Milano, ISBN 88-452-2506-2 at page 185. Self-determination, seen in this light, is a necessary component of the development of the individual or of the realisation of individual potential, ideas taken up in the Preamble and Article 2(1) of the German Constitution *(Grundgesetz),* for instance.

27. There are three arguments commonly adduced by way of generally discouraging the exercise of the right of self-determination in the EU. They are

(i) that statehood is an expression of nationalism and nationalism is dangerous;
(ii) that statehood would lead to economic isolation;
(iii) that statehood in one case would lead claims for statehood from other state-sharing nations risking to unacceptable fragmentation and collapse of the established order.

On the perceived dangers of nationalism

28. One has to define one's terms. If by nationalism one means some form of aggressive expansion by one group at the expense of another or of others, then nationalism so defined is a dangerous concept, being of necessity based on a belief in the superiority of one group over another. In this sense nationalism is racially intolerant and has to be resisted and eradicated as a scourge.

29. If self-determination is a form of nationalism, it is not the same phenomenon as the racialist variety described in the preceding paragraph. Rather, it is a tolerant phenomenon based on mutual respect. This, the tolerant form of nationalist expression, is what MacCormick calls liberal nationalism[15]. His conclusions are as follows:

> "...what is then required is some form of universally stateable acceptance of diversity in human groupings with mutual respect and like rights to respect. So conceived, nationalism is absolutely incompatible with fascism, racism or majority discrimination against national (or other) minorities. The critique of nationalism in its virulent forms simply would not apply to nationalism defined as implying a right and duty of mutual respect among diverse national traditions, with appropriate political expression of national identities."

Or as Weiler puts it:

> "The nation, with its endlessly rich specificities, co-existing alongside other nations, is, in this view the vehicle for realizing

[15] Cf. MacCormick, "What Place for Nationalism in the Modern World?" from *Hume Papers on Public Policy*, Volume 2 N°1, Edinburgh University Press.

> human potentialities in original ways, ways which humanity as a whole would be poorer for not cultivating."[16]

30. In short, no form of nationalist expression, including self-determination, is dangerous if it is based on respect for the dignity and worth of each person. Sub-sovereign statehood in the EU is, of course, based on precisely these precepts.

On the perceived risk of economic isolation

31. The argument against statehood for nations not currently enjoying that status is that it would condemn the new state to economic isolation to its detriment. Whether or not this argument has substance in economic terms, it is politically and legally wholly irrelevant. Even if, in the case of the new state, isolation would occur, it would be a matter of exclusive concern to the nation itself, since no nation may be obliged to accept the protection (as Mill put it) of others.

32. In addition, the isolationist argument overlooks the fact that regaining decision making autonomy will in many cases act as a spur to economic activity and in the longer term arrest the slide into branch economy status [17]. The anticipated or at least possible decision of the Faroese to take decision making into their own hands, without the protection of Denmark and without the comfort of the Danish block subsidy, whilst also remaining outside the EU seems motivated, in part at least, by precisely this or by a similar consideration.

33. However, the main reason for rebutting the isolationist argument is that it is simply misplaced, in the sense that it fails to take into account the way the world in general and Europe in particular is moving. Statehood may alter the political and legal status of the group in question but it would not alter its geographical position, nor sever its links with the rest of Europe. Statehood would in other words deprive no European nation of access to and participation in the internal market. On the contrary, markets are no longer national in scope. No national or regional economy is impervious to external events and in particular the economies of the EU Member States are all mutually dependent, whether or not a given Member State is currently inside or outside the Euro zone. National governments no longer

[16] J.H.H. Weiler, *The Constitution of Europe*, op. cit. supra at page 248.

[17] For a description of the branch economy status of Scotland, see "Monopolies and Mergers Commission Report on the Royal Bank of Scotland", quoted in Steel, *Scotland's Story*, 1985, Fontana, Collins, ISBN 0-00-637003-9, at page 384.

have economic, monetary or even political sovereignty. They are without exception all sub-sovereign[18]. Consequently, the termination of certain state-sharing arrangements or, depending on one's standpoint, of one majority group's dominion over another, would not, in the grand pan-European scheme, operate to the detriment of a new state in the sense of causing economic isolation.

34. To round off this point, it is instructive to complete the quotation from Professor Davies [19] placed before the start of this discourse:

> "In 1923 one of the first offices of Count Coudenhove-Kalergi's Pan-European League was opened in the capital of Estonia, Tallinn. Outside the office door was a brass plate with the inscription PANEUROPA UNION ESTONIA. Seventeen years later when the Soviet Army invaded Estonia, the plate was hidden by members of the League. In 1992, during the visit to Estonia by the doyen of the European Parliament, Dr. Otto von Habsburg, it was brought out of hiding and presented to him. It was the symbol of Estonia's hidden aspirations, invisible to the outside world for half a century. "Don't forget the Estonians!", said Dr. von Habsburg; "they are the best of Europeans."
>
> At the time, admirers of the Soviet Union were saying that the Baltic States were too tiny to be viable, sovereign countries. Similar things were said about the new-born republics of Yugoslavia. The point is: Estonia, or Latvia, or Slovenia, or Croatia, would be extremely vulnerable if left in isolation. But as members of the European Community they would be every bit as viable as the Grand Duchy of Luxembourg or an independent Wales or Scotland. After all, Estonia is nearly twenty times larger than Luxembourg, and is four times as populous. In a united Europe, every small country can find its place alongside the former great powers."

The notion, then, that isolation would follow statehood is utter nonsense.

---

[18] This has been recognised for decades. Monnet, for example, wrote that *'The sovereign nations of the past are no longer the framework in which to solve the problems of the present';* see Jean Monnet, *Mémoires*, Fayard, 1976 at page 617; the translation is ours.

[19] Cf. Norman Davies, *Europe, A History*, op. cit. supra at footnote 2, page 944.

On the fear of fragmentation

35. We have observed that several peoples have what psychologists call a free-floating phobia about the loss of any part of national territory. If, for example, one mentions the possibility of Scottish statehood to Spaniards, Dutchmen, Italians or Frenchmen, even to those who have been living for years in an international environment such as Brussels, they automatically evince a marked lack of sympathy and respectively ask, what of Catalonia, Frisia, The South Tyrol (Padania being a different story[20]) and of course Corsica? Caught off guard and unprepared, their reactions seem irrational. Quite simply, if the Corsicans, who cost France a fair amount of money, wish separate statehood, why should it and how, legally (or morally) can it be denied them by Metropolitan France especially since they are entitled to statehood by virtue of the right of self-determination?

36. In terms of public international law, the issue, i.e. the scope of the right of self-determination, may be stated as follows:

> "Who, though, is to be the beneficiary of this right? Were only the Algerian people entitled to claim self-determination from France or should this right be accorded to the Kabyles vis-à-vis the Republic of Algeria? Is there not a danger that every group of dissatisfied persons within a given area might suddenly discover its nationhood and claim this right? If applied in this way, this right, which has not yet been sufficiently defined could lead to an atomisation of states from which neither old states nor states created on the basis of this right would be immune."[21]

---

[20] cf. Cesare Pettinato, *Per l'Italia contro il secessionismo*, 1997, Edizioni Settimo Sigillo, Roma. Pettinato's message is in essence that the Northern League's separatist claims have no validity because they are based only on 'fiscal intolerance' (*insofferenze fiscali).* Fiscal intolerance may trigger separatist claims but is not, in our view, sufficient to demonstrate nationality for the simple reason that if the cause of the fiscal intolerance were removed, the separatist claim would presumably lapse. Nationality is a rather more constant concept and one which to sustain requires some real substance. As Himsworth and Munro state in their commentary on the Scotland Act 1998: "*Claims to nationhood, which may have a resonance in constitutional debates, may be based on various criteria, but a period of statehood may be relevant and is favourable rather than otherwise to the issue.";* 1999 *The Scotland Act,* W. Green & Son Ltd., ISBN 0-414-01278 x at page v.

[21] Seidl-Hohenveldern, *Völkerrecht,* Carl Heymanns Verlag KG 1984, ISBN 3-452-19690-9 at page 332; the translation is ours.

It seems, then, that fear of fragmentation (or atomisation as Seidl-Hohenveldern would put it), although not a legal impediment, is nonetheless a practical difficulty. In practice, however, it is a difficulty which has been overcome many times across the world.

37. If Seidl-Hohenveldern's fear is that every sizeable tribe could claim statehood, the answer is: "*yes, and they often do so successfully, without upsetting the world order - the Faroese are or may be - no disrespect intended - the latest example*". There is therefore a solution to Seidl-Hohenveldern's problem which may be termed the micro-state solution.

38. There are in the world currently twenty-eight states recognised in international law which have a population of less than 300.000. There will be twenty-nine such states if the Faroese opt for independence (see Table 1).

Table 1: Micro-states in the world with less than 300.000 inhabitants [22]

Country		**Population 1994**	**Area in km²**
Andorra	Europe	48.000	450
The Antilles and Barbuda	Caribbean/ Atlantic Ocean	67.000	440
The Bahamas	Atlantic Ocean	272.000	13.940
Barbados	Atlantic Ocean	260.000	430
Belize	Central America	206.000	22.960
Brunei	South China Sea on Borneo	282.000	5.770
Dominica	Caribbean / Atlantic Ocean	71.000	750
Granada	Caribbean / Atlantic Ocean	92.000	340
Iceland	North Atlantic	266.000	103.000
Kiribati	Pacific Ocean	77.000	717
Liechtenstein	Europe	28.000	160
The Maldives	Indian Ocean	241.000	300
Marshall Islands	Pacific Ocean	53.000	181
Micronesia	Pacific Ocean	118.000	702
Monaco	Europe	28.000	2
Nauru	Pacific Ocean	10.000	21
Palau	Pacific Ocean	16.000	458
St Kitts & Nevis	Caribbean	41.000	269

[22] Source: Division of the U.N. Secretariat, World Population Prospects/Statistics Division of the U.N. Secretariat and International Labour Office, *CIA World Fact Book*, 1998.

St. Lucia	Caribbean / Atlantic Ocean	141.000	620
St. Vincent & the Grenadines	Caribbean / Atlantic Ocean	111.000	340
San Marino	Europe / Italian Peninsula	23.000	60
Sao Tomé & Principe	Atlantic Ocean	130.000	960
Seychelles	Indian Ocean	73.000	455
Tonga	Pacific Ocean	98.000	748
Tuvalu	Pacific Ocean	13.000	26
Vanuatu	Pacific Ocean	165.000	14.760
The Vatican	Europe, Italian Peninsula	1.000	0,44
Western Samoa	Pacific Ocean	272.000	2.860
The Faroes (by comparison)	Europe / North Atlantic	45.000	1.399

Apart from the Vatican with a population of 1.000 and little chance of growth through natural reproduction, the smallest of these states is Nauru with a population of 10.000, closely followed by Tuvalu with 13.000 and Palau with 16.000. Closer to home, San Marino has a mere 23.000, Liechtenstein 28.000 and Andorra 48.000. Andorra is actually bigger than the Faroes by a mere 3.000 souls.

39. There are in addition fifteen states, recognised in international law with a population between 300.000 and 1.000.000. They include Cyprus, Malta and Luxembourg in Europe (see Table 2).

Table 2: Micro-states in the world with between 300.000 and 1.000.000 inhabitants [23]

Country		**Population 1994**	**Area in km^2**
Bahrain	Arabian Peninsula	563.000	620
Cape Verde	Atlantic Ocean	407.000	4.030
Equatorial Guinea	Atlantic Ocean + continental Africa	389.000	28.050
Fiji	Pacific Ocean	755.000	18.270
Gambia	Africa	956.000	11.300
Djibouti	Africa	496.000	22.000
Guyana	South America	825.000	214.970
Qatar	Arabian Peninsula	476.000	11.437
The Comoros	Indian Ocean	630.000	2.170
Cyprus	The Mediterranean	729.000	*9.250

[23] Source: see footnote 22, above.

Luxembourg	Europe	383.000	2.586
Malta	The Mediterranean	364.000	320
Salomon Islands	Pacific Ocean	366.000	28.450
Surinam	South America	455.000	163.270
Swaziland	Africa (1998 estimate)	966.000	17.360

* The Greek and the Turkish parts together.

40. All in all, there are therefore or soon will be 44 sovereign micro-states in the world, which amounts to almost one quarter of all the world's sovereign states, numbering as they do 190 in total. Seidl-Hohenveldern's fears do seem rather irrelevant in the face of these facts.

41. Of course, everything depends, as usual, on definition. The micro-states may be sovereign in international law but they are sub-sovereign in reality. Indeed, there are very few states of any description which are any different. We live in a "*post sovereign*" [24] world, i.e. one where absolute sovereignty is an obsolete concept. Seidl-Hohenveldern's error was not to see or not to foresee this.

42. In this system of sub-sovereign states, many of the functions, formerly associated with absolute sovereignty - trade regulation, customs rules (tariffs, classification), defence provision, economic management, currency management, fiscal policy, agriculture, industrial norms and standards, public transport infrastructure, airline ownership, dispute settlement and so on - are entrusted in whole or in part to supra-national institutions or shared with other states or both. The functions previously performed by the single state alone and indeed sovereignty itself are, to use MacCormick's term, dispersed [25].

---

[24] MacCormick "Liberalism, Nationalism and the Post Sovereign State", *Political Studies* (1996) XLIV.

[25] MacCormick, it must be stressed, is anything but a lone voice. Weiler says this: "*We have witnessed in recent years the emergence of a new academic discourse which attempts to rethink the very way in which classical constitutionalism was conceptualised. For me, the most powerful and influential voice is that of MacCormick in his trilogy,* 'Beyond the Sovereign State', 'Sovereignty, Democracy and Subsidiarity', *and* 'Liberalism, Nationalism and the Post-Sovereign State'. *Here is a discourse which understands the impossibilities of the old constitutional discourse, in a polity and a society in which the key social and political concepts on which classical constitutionalism was premised have lost their meaning"; cf.* J. H. H. Weiler, *The Constitution of Europe,* op. cit. supra at pages 233-234.

43. A few examples help illustrate this point. The micro-states of the South Pacific obtain technical assistance from the South Pacific Commission and several use the Australian or the US dollar. Likewise the Caribbean micro-states belong to a supra-national organisation, the OAS or Organisation of American States and a number of them share a common currency, the eastern Caribbean dollar. Most French-speaking West African states entrust currency management to France, so establishing a common currency (the CFA franc). The same French speaking West African states together with their English and Portuguese-speaking neighbours belong to the ECOWAS or the Economic Community of West African States, the long term objective of which is economic union and which in any event promotes cooperation between the members. None of Europe's micro-states (including, by way of anticipation, the Faroes) have their own currencies and in Andorra both the Spanish peseta and the French franc are legal tender. The Nordic countries have developed highly practical methods of cooperation and mutual assistance, including the sharing of diplomatic and consular services throughout the world, and this is largely co-ordinated and managed by the Nordic Union. The Faroes will therefore be rather cosseted by the support and co-operative systems long in place in the Nordic region. In the British Commonwealth, even the head of state is not infrequently shared, something likewise intended for the Faroes and Denmark.

44. These are all working examples of sovereignty dispersal. The largest and most successful example of sovereignty dispersal is of course the European Union. None of the Member States possesses sovereignty in the obsolete absolute sense of the term any more, especially since monetary union. Sovereignty, we repeat, has been dispersed, and dispersed irrevocably.

45. Fear of fragmentation is therefore also a misplaced emotion. There has long been fragmentation in terms of the number of states, and it is no paradox that this fragmentation leads to heightened bilateral and multilateral levels of co-operation and mutual assistance and dependency, not to mention a high degree of reliance on supra-national institutions. This is tangible proof that in a globalised world bigness is not necessary. Put differently, sovereignty in its modern non-absolute form is not predicated on any minimum size criteria, and on this note we can safely conclude that the issue of fragmentation need concern us no longer. It is simply a non-problem.

IV. The Exercise of the Right of Self-determination under EU Law

46. The right of self-determination is of course recognised by all EU Member States, all in any event being U.N. members and it is implicitly recognised by EU law. Article 6 of the Amsterdam version of the Treaty solemnly states that

> "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States".

It would be impossible to deny the right to self-determination in the face of that.

47. Besides, the EU in its various forms has given effect to self-determination on three occasions:

> (i) the independence of Algeria, before which it was part of France;
> (ii) the withdrawal of Greenland from the Community, after which it remained part of Denmark;
> (iii) the joining of the GDR to the FRG upon which the GDR also became part of the Community.

48. It is easy enough to minimise the precedential value of these events on the grounds that Community law is without prejudice to changes in national boundaries or to variations in the size of national territory. Nonetheless, one point is of fundamental importance.

Whatever the circumstances of each case were - decolonialisation, autonomous management of local resources (fish-stocks) and re-unification - , the principle prevailed. There is therefore no reason to suppose that the principle would not prevail in other circumstances such as in the event of a secession from or in the case of a dismemberment of a Member State. If the successor state concerned wanted to leave the EU, that would be negotiated although such negotiation would of necessity be protracted not least, as the Greenland case showed, because there is no mechanism for the withdrawal from the EU of Member States, in whole or in part. If, on the other hand, the successor state wanted to remain in, it would certainly be accommodated. The only question in the latter case would be a technical one as to how this goal would best be achieved within the law. It has to be

said, however, that it is easier by far to make adjustments from within than to negotiate one's way out.

49. It is our understanding of the law that should secession or dismemberment take place and the inhabitants of the new state(s) elect to remain in the EU, that choice would have to be respected, by dint of Article 6 of the Treaty in the first instance and would in any case have to be implemented without any interruption of membership, by virtue of the principles of public international law in regard to treaties and/or operation of the principle of legislative continuity in the second. In this respect, the law is relatively straightforward.

50. So far as it is relevant, Article 34 of the 1978 Vienna Convention on Succession of States provides as follows:

> "1. When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:
> (a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues to be in force in respect of each successor State so formed;
> (b) ...
>
> 2. Paragraph 1 does not apply if:
> (a) the States concerned agree otherwise;
> (b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation."

51. As to paragraph 1, it applies in the case of secession, i.e. where there is a predecessor state and in the case of dismemberment, i.e. where there is no predecessor state. It goes without saying that the EU Treaty and its attendant secondary legislation is a treaty within the purview of paragraph 1. As to paragraph 2, we assume that continued EU membership would be part of any independence package, so that fulfilling (a) would not pose any problem. As to (b), it is hard to imagine how the application of the EU Treaty to any successor state whose inhabitants wished to remain in could be "*incompatible with the object or purpose of the Treaty*". The Treaty strives for ever closer union of peoples, Article 6 requires human rights to be respected, self-determination being just such a right and all European

democratic states qualify for membership. Nor could the application of the Treaty to the successor states "*radically change the conditions for its operation*". They would scarcely change the conditions at all, or if so certainly not radically. How could it be argued that the operating conditions of a Community which has expanded from six to fifteen members in little more than 40 years and is on the verge of embracing a substantial number of new states in Eastern Europe would be radically changed or even changed at all if an existing Member State became two or even more new Member States? So we would conclude that self-determination or separate statehood would not require any successor state to apply for membership from without. The necessary adjustments would be made from within, whilst the EU Treaty would meanwhile continue to apply in full force [26].

52. It may of course be objected that the Vienna Convention has not yet been formally ratified by a sufficient number of States to have come into force or to have become effective as a matter of treaty law [27]. To this we reply that either
(i) the Vienna Convention is declaratory of customary law so that the principles stated therein would apply anyway, or
(ii) the EU Treaty must in any event continue to apply to successor states on the basis of the principle of legislative continuity.

Consequently, secession or dismemberment would not and could not abruptly terminate the application of the Treaty and its secondary

---

[26] The full institutional consequences of splitting a given Member State would have to be assessed on a case by case basis. That is not a topic for this discourse, which is concerned only with the question of membership *simpliciter* upon a split and not with the terms of continued membership.

[27] Entry into force of the Convention is governed by Article 49 thereof which provides that

"1. The present Convention shall enter into force on the thirtieth following the date of deposit of the fifteenth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the fifteenth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession".

On the last count only 32 states had ratified the Convention, enough to bring it into force in terms of Article 49(1) but not enough to give it much effect in terms of Article 49(2), at least for current purposes, since no EU Member State figures among the ratifying states.

legislation. Any withdrawal would have to be negotiated and the Treaty would continue to apply during the negotiating period. On the other hand, should the wish be to remain in, the negotiations on the adjustments required to accommodate the successor states would take place on the inside and result in uninterrupted and necessarily continued membership anyway.

53. In conclusion, EU law recognises the right of self-determination and if in exercise of that right a successor state wished to become a Member State in its own right, public international law in general and the principle of legislative continuity in particular ensure that the transition from state-sharing nation to full EU membership would be without interruption and in that regard be seamless.

VI. The Importance of History

54. To claim statehood one must first claim nationhood. The Faroese, for instance, have never enjoyed statehood in any formal sense, yet there are many historical facts on which the Faroese may base their claim for nationhood. History tells us for a start that the Faroese, not the Icelanders, had the first Parliament in Europe.[28] Past history also tells us that, generally speaking, the Faroes have always enjoyed a high degree of autonomy, first from Norway and later from Denmark. The best founded historical assessment would be to view the Faroese-Danish relationship as founded in treaty, not devolution. The Norse settlements in the North Atlantic all appear to have concluded Treaties with the Kings of Norway in the latter half of the 13th century, the Faroes being the last to do so in 1271. The gist of these treaties, often referred to as the 'Old Treaties', appears to have been an acceptance of allegiance to the Kings of Norway, with strong reservations regarding internal autonomy and the ultimate right to break the link with the Norwegian Crown[29]. This allegiance did not, however, signify incorporation into Norway nor into its successor, Denmark. It is consistent with this fact that it was the Faroes, not Denmark, that decided that the Faroes would not accede to the then EEC in 1973. Legal history shows us that all statutes and other regulatory instruments do not become part of

[28] Cf G.V.C. Young, *From the Vikings to the Reformation, a Chronicle of the Faroe Islands up to 1538*, Shearwater Press, Douglas, Isle of Man, 1979, ISBN 0 904980 20 0, page 79

[29] cf Professor Hans Jacob Debes, *The Faroese Islands History – an outline,* in Faroes Islands, The New Millennium Series, 1999, ISBN 9979-9404-3-3, page 42 and Chapter 1 of Føroya Søga 2, also by Professor Debes, ISBN 99918-0-060-3

Faroese law until promulgated by the Faroese Parliament.[30] Significantly the Home Rule Act of 1948 was voted on and ratified by the Faroese Parliament before the Danish Parliament adopted it. Consequently the bulk of recent legal opinion sees the Home Rule Act as an 'agreement' (Danish/Faroese aftale/avtala) or treaty between the Faroes and Denmark.[31] Present day Denmark can thus be viewed as the successor to the Norwegian and later Danish sovereign monarchs with whom the Faroese made their earlier treaties. The continued use of agreements between the two countries rather than unilateral Danish legislation regarding the Faroes would seem to reinforce this line of thought. Lastly, the history of the Faroese language reveals the will of a people to preserve their own identity and culture against many odds.

55. What in sum all this demonstrates is that history establishes status. In the case of the Faroes it allows them, in addition to their basic human right, to discuss their constitutional arrangements with the Danes as equals.

56. The following section attempts to explain why the same must be true in respect of Scotland and England.

VII. The Particular Case of Scotland

57. Much energy seems to have been expended on the question whether the restitution of Scottish statehood would be an act of secession from or an act of dismemberment of the UK. In light of the position under public international law, it might be thought that, since the result would apparently be the same, either way, the question is moot. What such an approach would overlook, however, is the fact that Scottish statehood would require adjustments to be made to the EU Treaty, albeit from within, and it would make a significant difference if Scotland and England were engaged in this process as equals on the same side of the table than perhaps as something less than equals on opposite sides of the table. So the historical and constitutional position must be examined briefly.

Historical

---

[30] cf Jóhannus Egholm Hansen and Kári á Rógvi Olsen, *Faroese Business Law*, op. cit. supra at chapter 2; see also Preface to the Faroese Statute Series, Lógbók fyr Føroyar 1. Bind, Føroya Landsstýri 1992

[31] cf Jákup Thorsteinsson and Sjúrdur Rasmussen: Rigsfællesskabet mellem Danmark og Færøerne in Folketingets Festskrift Grundloven 150 år, page 491 at 505, ISBN 87-00-39106-9

58. To regard the restitution of Scottish statehood as an act of secession would imply that Scotland belonged to what would be left of the current British state. What would be left would be England and Wales on the one hand and Northern Ireland on the other. Scotland has never belonged to or been part of Northern Ireland or England and Wales. Proponents of the secessionist theory reason therefore on the basis of ignorance of historical fact or of the very bad English habit of regarding the terms UK and GB as synonyms for England. Professor Davies, an Englishman certainly not ignorant of historical fact, describes the phenomenon thus:

> "In modern times, almost every European country has devoted greater energy and resources to the study of its own national history than to the study of Europe as a whole. ...
>
> The problem is particularly acute in Great Britain, where the old routines have never been overturned by political collapse or national defeat. Until recently, British history has generally been taken to be a separate subject from European history - requiring a separate sort of expertise, separate courses, separate teachers, and separate textbooks. Traditional insularity is a fitting partner to the other widespread convention that equates British History with English History. (Only the most mischievous of historians would bother to point out that his *English History* referred only to England.) Politicians have accepted the misplaced equation without a thought. In 1962, when opposing British entry to the European Economic Community, the leader of HM Opposition felt able to declare quite wrongly that such a step would spell 'the end of a thousand years of British history'. The English are not only insular; most of them have never been taught the basic history of their own islands." [32]

What is worse is that the English have transferred their view of British history to the outside world so that all but the Celtic nations of Britain have an entirely misconceived view of the basic history. It is thus a matter of some international necessity to set the record straight.

59. King Edward I of England (1272-1307) had ambitions to rule all of the British Isles and set out to gain control by military conquest and/or

[32] Cf. Norman Davies, *Europe, A History*, op. cit. supra at page 32.

exploitation of the feudal system[33] to gain control over Ireland, Scotland and Wales.

In military terms, he had his major success in Wales. In terms of constitutional law, the process of incorporation of Wales into England was completed by an Act of the Parliament of England, the Union of Wales and England Act of 1536. Wales therefore has been part of England since that date and so England and Wales were one entity at the time of the Treaty creating the union between Scotland and England. As a slight digression it is worth stating at this juncture that Welsh statehood would be an act of secession, in sharp contrast to the correct classification of Scottish statehood because in the former case the core would remain but in the latter the core would cease to exist.

60. The history of English intervention in Ireland is rather more complicated. For present purposes, though, it suffices to refer to three pieces of legislation:

(i) The Act of Union of 1800, an Act of the Parliament of Great Britain terminating the Irish Parliament;
(ii) The Government of Ireland Act of 1920, an Act of the United Kingdom Parliament, recognising the Parliament of the Irish Free State and setting up a Parliament of Northern Ireland;
(iii) The Ireland Act 1949, which some authorities describe as purely declaratory in nature faced with Ireland's becoming a republic outside the British Commonwealth.

61. Unlike Ireland and Wales, Scotland was a recognised independent sovereign state before the military incursions of Edward I [34]. After the

[33] The scope of the feudal system for subjective interpretation when medieval magnates owned land in more than one kingdom is clearly and in the present context aptly brought out by the positions Edward I himself assumed towards Scottish monarchs owning land in England on the one hand, and French monarchs in whose kingdom he himself owned land on the other. In the former case he expected homage not just for the land in England, but also for the entire Kingdom of Scotland; in the latter case he refused to pay homage to the King of France other than for his lands in France. See Norman Davies, *The Isles – A History*, Macmillan 1999, ISBN 0-333-76-370 x, Chapter 6; Fiona Watson, *Under the Hammer – Edward I and Scotland 1286-1307*, Tuckwell Press 1998, ISBN 862320209, Chapter I.

successful conclusion of the War of Independence by the Treaty of Northampton in 1328, Scotland's status as an independent country was never challenged in law [35]. In 1603, King James VI of Scotland inherited the throne of England ("*The Union of the Crowns*") and thus added the Kingdom of England to his Crown. In 1707, "*The Union of the Parliaments*" dissolved the Scottish and the English Parliaments, created Great Britain and thus set up the constitutional arrangements which governed Scotland and England until the Scotland Act 1998. This act restored the Scottish (but not the English) Parliament [36].

62. In 1920, Professor A. V. Dicey, Professor of English Law at the University of Oxford, the "father" of English Constitutional Law and the author of Introduction to the Study of the Law of the Constitution, the standard textbook for generations of British students of constitutional law, published a joint work with Professor R. S. Rait, Professor of Scottish History and Literature in the University of Glasgow and Historiographer-Royal for Scotland, "*Thoughts on the Union between England and Scotland*" (hereinafter "*Thoughts on the Union*") [37].

63. Part I of "*Thoughts on the Union*" is entitled "*The Parliamentary Government of Scotland 1603-1707*", thereby demonstrating again the continued existence of two separate sovereign states (albeit even then sub-sovereign states since the head of state was shared). Part II deals with "*the War between the Parliament of Scotland and the Parliament of England*", and the eventual passing of the Act of Union. Two events are worth

---

[34] Inter alia by Edward I himself as in the Treaty of Birgham 1290, discussed in Watson, *Under the Hammer*, op. cit. supra at page 11.

[35] During the Cromwellian inter-regnum the Scottish Parliament was suspended (1651-1661) and thirty MPs from Scotland were returned to Westminster. However, no steps were taken constitutionally to bring about a parliamentary union or to create a new single state. The arrangements whereby MPs from Scotland (one half of whom were English army officers) went to London simply lapsed on the restoration of the monarchy and Scottish parliamentary business resumed in 1661. If this was an interruption of statehood, it was so de facto but not de jure, the Scottish Parliament never having been formally dissolved nor any new parliament put in its place. For a fuller account see Lynch, *Scotland, A New History,* Century, 1991, ISBN 0-7126-3413-4 at pages 283-286.

[36] The restored Scottish Parliament lacks the powers of the old one which was dissolved along with the English Parliament in 1707.

[37] A. V. Dicey and R. S. Rait, *Thoughts on the Union between England and Scotland*, Greenwood Press (USA), 1971, SBN 8371-4785-9.

mentioning so as to demonstrate yet again the sovereign nature of the two kingdoms:

First, on 16 September 1703 the royal assent, by Queen Anne, was given to the Scottish Act Anent (relating to) Peace and War. The purpose of this Act was to ensure that

> "even should the Union of Crowns continue after Anne's death:
> (a) no King or Queen of Scotland should have power to make war on any State without consent of the Scottish Parliament;
> (b) no declaration of war made without such consent should be binding on the subjects of the Kingdom of Scotland;
> (c)treaties of peace, commerce and alliance must be negotiated by the sovereign with the consent of the Estates of Parliament." [38]

Secondly, in response to this Scottish Act and certain other events, the royal assent was given on 14 March 1705, again by Queen Anne, to the English Alien Act. This measure has two names other than the "popular" name, the Aliens Act. In the Statutes at Large, the title is *"An Act for the effectual securing the Kingdom of England which may arise from several Acts lately passed by the Parliament of Scotland"*. In the chronological table of Statutes, the measure is entitled *"An Act for the Union of England and Scotland"*.

The English Alien Act offered the Scottish Parliament the opportunity of negotiating with the English Parliament for a union between the two countries and empowered the Queen to nominate commissioners to negotiate a treaty whenever the Scottish Parliament should pass an act empowering the Queen to appoint Scottish commissioners for the same purpose.

Constitutional

64. In due course both countries did of course appoint commissioners and negotiations took place leading to the Act of Union. Dicey and Rait describe the nature of the Act as follows:

> "The Act was itself a piece of legislation quite unlike any statute which had been passed before 1707 by any Parliament either of England or Scotland, ... It was of necessity both a bona fide treaty

[38] A. V. Dicey and R. S. Rait, *Thoughts on the Union*, op. cit. supra at page 165.

> or agreement between the two countries, and it had also to be an Act or statute regularly and peaceably passed by each of the separate Parliaments of England and of Scotland." [39]

65. The Act of Union was passed on 16 January 1707 by the Scottish Parliament and on 6 March 1707 by the English Parliament. That the Act of Union was by its nature an international treaty is evidenced by its opening article which provides,

> "That the two Kingdoms of Scotland and England shall upon the first day of May next ensuing the date thereof, and forever after be united into one Kingdom by the name of Great Britain."

Thus, a new state, Great Britain, came into existence as a result of this Act of Union made up, in terms of legal instruments, of:

> (i) the Treaty (or Articles) of Union signed in triplicate by the Commissioners of the two countries;
> (ii) the Act of Union adopted by the Scottish Parliament (Acts of the Parliament of Scotland, xi, 406, c. 7);
> (iii) the Act of Union adopted by the Parliament of England (6 Anne, c. 11).

Consequences of Scottish Statehood

66. Great Britain was thus created by an international treaty between two states, each sovereign in law. If either of these formerly sovereign states regained statehood, so too would the other and the union would simply be dissolved. That seems an unassailable proposition in both law and logic. The Constitutional Unit in London states, however, that "*the process of Scottish independence as implied in the Claim of Right - whereby only Scots are to have a vote - is evidence that it is Scotland that is seceding from the UK*" [40]. This assertion, which is based, it has to be said, on no cited authority, simply does not survive scrutiny. If the union was created by an international treaty between two sovereign states, how could the process involved in a splitting of the ways alter in any way the result in law and fact that the union would no longer exist and would be replaced by a return to the status quo ante?

---

[39] A. V. Dicey and R. S. Rait, *Thoughts on the Union,* op. cit. supra at page 206.

[40] Cf. The Constitution Unit: Issues Around Scottish Independence, September 1999, page 10.

67. There is a joker in the pack, though, and this may be a source of confusion. In the event of a dissolution of Great Britain, where would Northern Ireland go? There are four potential possibilities[41], but none of them alter the legal nature of the restoration of Scottish and English statehood. The reason is that the core of the British state is constituted by the union of Scotland and England (Great Britain), not by the augment to Great Britain of Northern Ireland. The existence of the augment could not save the core from dissolution if either of the constituent parts of the core wanted statehood. Similarly, if Northern Ireland wished to split from Great Britain, the core would remain intact. Consequently, although the fate of Northern Ireland is important and would have to be properly regulated it does not alter the constitutional position as between Scotland and England.

68. It is not known whether the EU Institutions would regard the restoration of Scottish statehood as an act of secession or dismemberment.

However, in "*Scotland on Sunday*" of 5 March 1989 and in "*The Scotsman*" of 12 June 1989 Emile Noël, then Secretary General of the Commission of the European Communities and subsequently Professor at the European University Institution at Florence, is quoted as saying:

> "There is no precedent and no provision for the expulsion of a member state, therefore Scottish independence would create two new member states out of one. They would have equal status with each other and the other 11 states. The remainder of the United Kingdom would not be in a more powerful position than Scotland... . Anyone who is attacking the claim in respect of one country is attacking it in respect of the other. It is not possible to divide the cases."

And, in "*Scotland on Sunday*" of 8 March 1992, Lord MacKenzie Stuart, former President of the European Court of Justice, is quoted as opining that

> "Independence would leave Scotland and 'something called the rest' in the same legal boat. If Scotland had to re-apply, so would the rest... I am puzzled at the suggestion that there would be a difference in the status of Scotland and the rest of the United

[41] Independence, incorporation into the Republic of Ireland, attachment to England or Scotland.

> Kingdom in terms of Community law if the Act of Union was dissolved."

Scotland and England would thus, in the view of these two eminent gentlemen, be successor states of equal standing and the authors are aware of no authoritative attempt to refute these two views.

The Process

69. One final point seems to confirm the fact that Scottish statehood would constitute dismemberment of the United Kingdom rather than an act of secession. It is that unilateral withdrawal from the union is constitutionally not possible. Statehood would have to be granted by the current UK Parliament. In granting statehood, this Parliament would, however, automatically dissolve itself: it could not grant statehood to Scotland (and consequently to England) and thereafter claim to be the Parliament of the United Kingdom of Great Britain and Northern Ireland.[42] On the dissolution of the current British Parliament the British state would simply expire, and in these circumstances it is clear that neither Scotland nor England would be seceding.

---

[42] It is worth spelling this out once again. The British Parliament is the result of the fusion of the old Scottish and the old English Parliaments, both of which were the legislatures of sovereign states, and which were dissolved in 1707. An act granting independence to Scotland would endow the Scottish Parliament with plenary power and recreate at the same time a sovereign English Parliament. The British Parliament would cease to have any basis and would therefore disappear. Whether or not either new Parliament acquired the responsibility for Northern Ireland would not alter this process. The question arises of course whether or not the British Parliament could refuse to grant statehood to Scotland. Ultimately, the answer is in the negative for legal and political reasons. Legally speaking, the British Parliament could not resist an unequivocal demand for Scottish statehood without denying the right of self-determination. The sanction for the denial of that right would be political - a total loss of legitimacy in Scotland with the ultimate threat of civil disorder. The British Parliament would not, in our view, let things go that far. The legitimacy point is, finally, of relevance for the EU. The EU clearly has no power to prevent Scotland's return to statehood. Yet, were it to require Scotland to apply for separate membership from without it too would lose legitimacy, and it might be some time before Scottish faith in the EU were restored, if ever. Thus whatever the law might be deemed to be, the political reality is that Scotland would become a Member State in her own right without having to submit an application for admission and the same would apply for England.

The benefits of statehood ?

70. We offer no view on the benefits of Scottish statehood. In general terms, there seem to be advantages, though. Thus Weiler says this: *"It is worth remembering at the outset that national existence and even national vibrancy do not in and of themselves require statehood, though statehood can offer the nation advantages, both intrinsic as well as resulting from the current organization of international life, which gives such huge benefits to statehood"* [43].

71. There is also some authority for the view that Scottish statehood would benefit European integration in particular. Thus, in "*The International Importance of Scottish Nationalism*", Douglas Young (a Scotsman) wrote in 1932 that

> "Any European federalist association must have a nucleus, and what is that nucleus to consist of? The notorious insularity and the imperialist tradition of England - dying, but dying hard - renders England a reluctant and a suspected participant... Now Scotland, as the *auld ally* of France against English dynastic accession in the Middle Ages, has retained a constant popularity in France which is an international factor of some account. And Scotland has old cultural ties of many kinds with Scandinavia and the Low Countries, and much further afield with Europe. Accordingly, Scotland can act as a link between insular and suspected England, and the nations of Europe. The development of a federal nucleus in what is now Great Britain by the free and equal participation of Scotland, Wales, and an unpartitioned Ireland, would encourage cohesion in Western Europe which would spread elsewhere." [44]

72. The last word we leave, though, with an Englishman, Professor Davies, who writing in 1996, says that the Scots "*possess the power to destroy the United Kingdom, and thereby to deflate the English, as no one in Brussels could ever do. They may make Europeans of us yet.*"[45]

On that note we rest our case.

---

[43] Cf. J.H.H. Weiler, *The Constitution of Europe*, op. cit. supra at page 248.

[44] Quoted by Dewar Gibb in *Scotland Resurgent* 1950, Eneas Mackay, Stirling at page 280.

[45] Cf. Norman Davies, *Europe, A History*, op. cit. supra at page 1134.

Guðmundur Alfreðsson[1]

The Faroese People as a Subject of Public International Law

Føroyskt Úrtak
Heiti: Føroyska fólkið sum partur í altjóða lóg. Í hesi greinini hjá tí íslendska lógkøna Guðmundi Alfreðssyni verður ført fram, at føroyingar eru fólk í altjóða lóg, og at teir eiga sjálvsavgerðarrætt úteftir. Hesin rættur er væl og virðiliga staðfestur í røð av altjóða lógtekstum og í atferð hjá londum og millumlanda stovnum.

Sjálvsavgerðarrætturin loyvir einum fólki sjálvum at avgera tess egnu altjóða støðu. Valið stendur millum sjálvstøðu, frælsan felagskap, og

[1] An Icelandic lawyer, with M.C.J. from New York University School of Law in 1976 and S.J.D. from Harvard Law School in 1982. He was Legal Officer and Human Rights Officer with the UN Secretariat in New York and Geneva 1983-95. He is Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Lund since 1999 and Professor of International Law at the Law Faculty of Lund University since 1995.

innliman. Framferðarhættir í lóg eru politisk avriggan av hjálandaveldi, frælsistøka, brot við ikki-umboðandi stjórn og loysing sambært sáttmála.

Fólk merkir íbúgvarnir í einum øki ella umveldi við egnum mørkum. Fólk merkir sostatt ikki tað sama sum minniluti, sum er lýstur grundað á tjóðskaparliga ella etniska samanseting. Rættindi hjá minnilutum viðvíkja verju innlendis uttan at nerta fullveldi ella umveldi.

Føroyingar lúka øll fyrilit fyri sjálvsavgerðarrætti, herundir landøki handan hav, tjóðskaparlig eyðkenni, tilvildarliga útilokan frá ST-listanum yvir hjálond, meðan Grønland var skrásett, væntandi virðing fyri fólkaatkvøðuni í 1946, serliga støðu í donskum rætti, siðvenju og orðingum, ið viðurkenna føroyskan rætt til samleika og sjálvstøðu. Danmark hevur viðurkent føroyingar sum fólk heldur enn minniluta. At gera slíkan skilnað hevur løgfrøðiligar avleiðingar.

Partur í altjóða lóg hevur avmarkaði rættindi eins og skyldur. Sjálvsavgerðarrætturin er knýttur at eini skyldu at samráðast eins og rættindum at venda sær til altjóða stovnar og onnur ríki. Til tess at slætta leikvøllin kann eitt fólk, ið vil brúka sjálvsavgerðarrættin, bjóða altjóða serfrøðingum uppí samráðingarlið sítt.

Meðan undirtøka á fólkaatkvøðu er avgerðandi, so eru lógarspurningarnir viðkomandi fyri støðu og verandi samráðingar Føroya. Verða samráðingarnar úrslitaleysar ella órímiliga seinkaðar, kann tað gerast rætt og rímiligt at lýsa sjálvstøðu einsíðugt. Í teirri støðuni verður viðurkenning frá øðrum londum týðandi, og eisini tá er altjóða lóg grundarlagið fyri tilgongdini.

English Summary

The article considers the Faroese right to self-determination and its implications. It is argued that the Faroese are a people under international law. This follows from the criteria established at international law, including overseas territory, national identity, arbitrary exclusion from the UN list of colonies, non-respect of the 1946 referendum, separate treatment in Danish law and practice, and frequent Danish statements accepting a Faroese right to identity and possible independence. As a people the Faroese are a subject of international law and have limited rights and duties, including a duty to negotiate and access to third parties. If the right to self-determination is pursued for the purpose of obtaining independence, unilateral action may be possible if negotiations are unsuccessful or

unreasonably delayed. In any event, international law reasoning is obviously relevant.

Introduction

By negotiating with the Home Rule Government about the legal status of the Faroe Islands, including possible transitional arrangements and future bilateral relations, the Danish Government has acknowledged that the Faroese are a people and not a minority. Such issues are not placed on the table out of generousity or kindness of the heart, since a people has the right of (external) self-determination.

The continued consideration of the Faroese as a national, ethnic or linguistic minority in Denmark is not under discussion, not even in the view of the Danish Government (at least not expressly). International instruments and the practice of States and international organizations do not foresee that minorities have the self-determination options; the rights of minorities are about protection within a State, without the interruption of the sovereignty and territorial integrity of that State.

After describing the contents and beneficiaries of the right of self-determination, it is argued in this article that the Faroe Islanders are a people under international law and that they are entitled to the exercise of this right. As a consequence, they are a subject of international law. That designation carries with it certain albeit limited rights and privileges as well as duties.

The Right of Self-Determination[2]

[2] In the external sense. A right of self-determination in the so-called internal sense, mainly with regard to autonomy or self-government, is not dealt with in this article. James Crawford concludes that the relevant developments in this sense "are still tentative (de lege ferenda), and they do not affect the established rules and practices with respect to self-determination and the territorial integrity of States." See "State Practice and International Law in Relation to Secession" in The British Yearbook of International Law 1998, Oxford: Clarendon Press, 1999, pp. 85-117, at p. 114. In the Lund Recommendations on the Effective Participation of National Minorities in Public Life, adopted by an expert meeting convened in Lund in May 1999 and published with Explanatory Notes in June 1999 by the Foundation on Inter-Ethnic Relations in the Hague and on the home page of the Organization for Security and Cooperation in Europe at "www.osce.org", the use of self-determination language in presenting standards on non-territorial and territorial autonomy is intentionally avoided. For an

In addition to general references in the UN Charter, a right of self-determination has been established in a series of international law instruments. These include the two International Covenants on Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, and the Vienna Declaration and Programme of Action. A more or less consistent practice of States and international organizations confirms the existence of this right in certain circumstances.[3]

A people is entitled to exercise the right of self-determination. A people in this context means the population of a distinct territorial or administrative entity with its own external, internal or natural boundaries. The emphasis on the geographical entity (the colony, the occupied territory) rather than the popular entity (the nation, the people, the ethnic group) is repeated in many international law texts[4] and confirmed in intergovernmental practice. This emphasis in the definition makes the term 'people' quite distinct from minorities and indigenous peoples which are defined as groups within metropolitan States on the basis of national or ethnic composition without the necessity of boundaries or a geographical base.

Through the exercise of the right of self-determination, a people determines its international juridical status. The usual situations which a people confronts are political decolonization, liberation of territories occupied in modern times (upcoming Palestinian Statehood, restoration of independence of the three Baltic States),[5] separation from a State with non-

attempt to sort out the multiple external and internal claims placed under the self-determination umbrella, see Guðmundur Alfreðsson, "Different Forms of and Claims to the Right of Self-Determination" in Self-Determination. International Perspectives, Donald Clark and Robert Williamson (editors), London & New York: MacMillan Press & St. Martin's Press, 1996, pp. 58-86.

3 There is plenty of literature on the subject. For a recent treatise, see Antonio Cassese, Self-Determination of Peoples. A Legal Appraisal, Cambridge: Cambridge University Press, 1995.

4 This trend emerges clearly from the decolonization and other self-determination processes, as evidenced, for example, by provisions in the UN Charter on trust and non-self-governing territories (rather than non-self-governing peoples) and by the title and text of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

5 Not applicable in the case of the Faroe Islands.

representative government practicing massive discrimination,[6] and separation by agreement (agreed national divorces in the Soviet Union, Czechoslovakia and Ethiopia/Eritrea).[7] These processes are to different degrees set forth in treaties or other international instruments and in relatively consistent practices of States and intergovernmental organizations, including case-law of the International Court of Justice.[8]

Relying on decolonization or other separation by agreement certainly establishes the strongest available self-determination claims, and they are most likely to succeed in relation to third States and in international forums. A presentation of a colonial situation, albeit mild and modern,[9] is therefore one avenue which the Faroe Islands ought to seriously consider. It squarely corresponds to the reality on the ground, namely long history of control

6 Stipulations to this effect are contained in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, in General Assembly resolution 2625 (XXV) of 1970, and the Vienna Declaration and Programme of Action as adopted by the 1993 World Conference on Human Rights. In democratic Denmark, taking into account the existence and broad functions of the Faroese Home Rule and with Faroese members seated in the Danish Parliament, this line of argument is hardly available to the Faroese.

7 For key literature which covers non-colonial situations, see James Crawford, "State Practice and International Law in Relation to Secession" in The British Yearbook of International Law 1998, Oxford: Clarendon Press, 1999, pp. 85-117; and Thomas. M Franck, Fairness in International Law and Institutions, Oxford: Clarendon Press, 1995, in particular the chapter "Fairness to 'Peoples' and their Right to Self-Determination" at pp. 140-169.

8 In a judgement of 3o June 1995 in a case between Australia and Portugal about East Timor, the International Court of Justice in the Hague stated that, as far as the two parties were concerned, East Timor remained a non-self-governing territory and that her people had the right of self-determination. The case is available on the Court's site at "www.icj-cij.org". In the meantime, this conclusion is being realized in practice, see "www.un.org/peace/etimor/etimor.html".

9 Notwithstanding favourable human rights reputations, the Nordic countries do not have particularly good records when it comes to various population groups under their jurisdiction. See Lauri Hannikainen, "The Status of Minorities, Indigenous Peoples and Immigrant and Refugee Groups in Four Nordic States" in Nordic Journal of International Law, vol. 65, 1996, no.1, pp. 1-71; and Guðmundur Alfreðsson, "The Rights of Indigenous Peoples with a Focus on the National Performance and Foreign Policies of the Nordic Countries" in Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV), vol. 59, 1999, no. 2, pp. 529-542.

from overseas of a distinct people and Danish insistence on the final word in most aspects of the relationship. The decolonization avenue is especially relevant if the Danish agreement on self-determination is wavering.[10]

For the purposes of decolonization, the available options are independence, free association and integration.[11] These options also apply to other claims to (external) self-determination. The right of self-determination is not to be mixed with democracy as carried out in elections for governments. In the Faroe Islands, the self-determination option is being pursued by a democratically elected body of the people concerned, the Home Rule Government.

Popular support for the outcome of the self-determination exercise is required, but that democratic decision can be carried out properly in a referendum when the terms of a possible separation have been laid down. By negotiating the terms, it is obviously agreed or understood that the conditions for such an exercise exist, including the existence of a people.

The Faroese as a People

The Faroese people meets all the possible criteria which have been laid down in the course of the decolonization process as conditions for entitlement to the right of self-determination. In general, these criteria are also applicable or relevant to other situations involving the exercise of the right of self-determination:

- The Faroe Islands are a distinct overseas territory, far away from Denmark. In other words, the so-called salt water theory is applicable. In this respect, the situation of the Faroe Islands is quite different from groups which live within the metropolitan boundaries of States, as for example Quebec.[12]

10 As indicated, for example, by recent Danish denials of Faroese Home Rule access to the United Nations and NATO. For information, see the site "www.fullveldi.fo".

11 General Assembly resolution 1541 (XV) which adds selection criteria and procedural formulations to resolution 1514 (XV) of 1960 entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples".

12 In the case "Reference re Secession of Quebec" from 1998, the Supreme Court of Canada found that "Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural

- The Faroese people possesses subjective and objective national identity and characteristics in abundance. The identity, history, culture, language and other characteristics are unique to the Faroese situation.

- In addition to centuries of remote control, the historical part encompasses discriminatory exclusion from (or non-inclusion on) the list of non-self-governing territories under Chapter XI of the UN Charter, while Greenland was so listed by Denmark after the War.[13] The historical part also includes the manipulation and non-respect of the results of a 1946 referendum on Faroese independence which received majority support. With reference to geography, identity and the history, the Faroese situation is strikingly similar to that of Iceland which did break away from Denmark and obtained international recognition.

- The Faroese people is called "det færøske folk"[14] and "et selvstyrende folkesamfund"[15] in article 1 of the Danish Home Rule Legislation for the

---

and social development. In the circumstances, the National Assembly, the legislature or the government of Quebec do not enjoy a right at international law to effect the secession of Quebec from Canada unilaterally." The Court also observed that "Although there is no right, under the Constitution or at international law, to unilateral secession, that is secession without negotiation ..., this does not rule out the possibility of an unconstitutional declaration of secession leading to a de facto secession. The ultimate sucess of such a secession would be dependent on recognition by the international community, which is likely to consider the legality and legitimacy of secession ...". On general aspects, the Court stated that "a right to secession only arises under the principle of self-determination where 'a people' is governed as part of a colonial empire; where 'a people' is subject to alien subjugation, domination or exploitation; and possibly where 'a people' is denied any meaningful exercise of its right to self-determination within the state of which it forms a part." The case is accessible at the site "www.lexum.umontreal.ca"; the first two quotations are from para. 154 and the third quotation is from para. 155.

13 Guðmundur Alfreðsson, "Greenland and the Law of Political Decolonization" in German Yearbook of International Law, vol. 25, 1982, pp. 290-308, and "Greenland" in Encyclopedia of Public International Law, Amsterdam: North Holland, published under the auspices of the Max Planck Institute for Comparative Public Law and International Law in Heidelberg with Rudolf Bernhardt, vol. 2, 1995, pp. 623-625.

14 "The Faroese people". This term is not used in the Core Document forming Part of the Reports of the States Parties under international human rights instruments, see in particular paras. 12-13 and 37-38. Interestingly enough, in para. 23, the phrase 'Denmark proper' is used to distinguish Denmark from the

Faroe Islands, a choice of words which very closely reflects the international law terminology with regard to self-determination. In addition, in the Preamble to the same Legislation, reference is made to the special national, historical and geographical circumstances of the Faroe Islands.

- The Faroe Islands are frequently treated separately in Danish laws, administrative practices and foreign affairs. This is true for large things like non-membership in the European Union, Faroese membership in sub-regional organizations and their own international agreements, exclusion in some Danish treaty ratifications, etc., and for small or symbolic things like a flag, passport identification, postage stamps, etc..

- And finally, in addition to the Danish acknowledgement which flows from the ongoing negotiations on legal status, the Faroese right to separate existence and possible independence has been accepted over the years in a series of statements by leading Danish officials and politicians, including Prime Ministers.

Not a Minority

The Faroe Islanders are obviously different from the Danes as far as national and ethnic origins, language and culture are concerned. If Danish arguments to the effect that the Faroese are part and parcel of Denmark and that they do not constitute a people were to prevail, then the Faroese would have to be considered a minority within Denmark. When recently ratifying the European Framework Convention for the Protection of National Minorities, however, Denmark did not list the Faroese as a minority.[16]

Faroe Islands and Greenland. See also below on Danish reporting under article 1 of the International Covenant on Civil and Political Rights.

15 "A self-governing people's society" or something in that direction. In the above-mentioned Core Document forming Part of the Reports of the States Parties, it looks that the Danish Government has translated this term with repect to the Faroe Islands and Greenland as "each self-governing community", see UN document HRI/CORE/1/Add.58 of 29 June 1995, para. 38. This seems to be less than accurate translation which misses or deliberately drops the 'people' component in the said expression.

16 According to a declaration submitted on 22 September 1997, the Framework Convention "shall apply to the German minority in South Jutland of the Kingdom of Denmark", see Framework Convention for the Protection of National Minorities. Collected Texts, Strasbourg: Council of Europe Publishing, 1999, p. 74. See also a Danish State report under article 27 of the International Covenant on Civil and Political Rights in UN document CCPR/C/DNK/99/4 of 22 February 1999, paras. 241-242.

Likewise, when Denmark ratified the ILO Convention on Indigenous and Tribal Peoples in Independent Countries (Convention No. 169 from 1989), all the relevant references were to the Inuit in Greenland.[17]

If the Faroese are not a minority in official Danish parlance, the people classification is the only human rights opening left to them. Indeed, in State reports under the International Covenant on Civil and Political Rights, Denmark has informed the Human Rights Committee about human rights in the Faroe Islands under article 1 concerning peoples and the right of self-determination[18] rather than under article 27 concerning minority rights.

Most importantly, through ongoing negotiations on the legal status of the Faroe Islands, including the possibility of separation, Denmark is acknowledging that the Faroese constitute a people. Negotiations of this type would not have been available to a minority; neither Denmark nor other countries will lightly extend such treatment to minorities or for that matter to indigenous peoples.[19] Making the distinction carries legal consequences.

---

17 See, for example, the opening statement by Development Minister Poul Nielson to a 1996 seminar as published in Støtte til oprindelige folk. Seminar om erfaringer og perspektiver (Support to Indigenous Peoples. Seminar about Experiences and Perspectives), Copenhagen: Udenrigsministeriet (Ministry of Foreign Affairs) and Danida, 1996, pp. 4-7.

18 See for example UN document CCPR/C/DNK/99/4 of 22 February 1999, para. 6. In Concluding Observations, also under article 1, the Human Rights Committee has stated its desire to have more information concerning the implementation of the Covenant in the Faroe Islands, see UN document CCPR/CO/70/DNK of 31 October 2000, para. 11. In an earlier set of Concluding Observations in UN document CCPR/C/79/Add.68 of 18 November 1996, para. 16, the Committee has expressed regrets about "the paucity of information about the Covenant and its implementation in the Faroe Islands". These observations fall in line with General Comment no. 12 of the Human Rights Committee from 1984, paragraph 4, see Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies in UN document HRI/GEN/1/Rev.3 (15 August 1997), p. 13: "With regard to paragraph 1 of article 1, States parties should describe the constitutional and political processes which in practice allow the exercise of this right."

19 James Crawford in "State Practice and International Law in Relation to Secession", The British Yearbook of International Law 1998, Oxford: Clarendon Press, 1999, pp. 85-117, very much emphazises the reluctance of the international community in accepting claims to the right of self-determination and the need for agreement between the parties for the successful exercise of the right. As compared with other claims, he is somewhat more generous with

An argument relying on supposed Faroese acquiescence of Danish sovereignty, if it were to be brought up, cannot be taken seriously. At no point following the 1946 referendum on and vote in favour of independence has the Faroese people or their chosen representatives, directly or indirectly, agreed to give up their status as a people and to become an underling through incorporation into Denmark.[20]

The Negotiations

The choice of the negotiation avenue is praiseworthy as compared with the use of violence. Indeed, it can be argued that there is today a duty for both the people and the State to negotiate claims to the right of self-determination, while the use of violence is generally not accepted.

As a subject of international law, a people in the pursuit of the right of self-determination should be entitled to levelling the playing field with the aim of establishing equal footing in negotiations concerning the people's future international status. The controlling or colonizing State should not set the rules alone. After all, as expressed in the Vienna Declaration adopted at the 1993 World Conference on Human Rights, the promotion and protection of all human rights, including the right of self-determination, should not merely be seen as an internal or domestic affair, but as "a legitimate concern of the international community".[21]

One method for establishing equal footing in self-determination negotiations would be for the Faroese side to call on international lawyers and other advisers to join the Faroese delegations to meetings with the Danish Government. If these are not forthcoming from the United Nations or other international organizations, they can be recruited individually. The presence of leading experts would cause a shift in tone and might change

---

regard to decolonization, but also there he underlines the general practice of consensual secession. In comments on the Faroe Islands (pp. 108-109), after a brief historical account which expressly removes the decolonization context, he concludes that the "matter was throughout treated as internal to Denmark".

20 The mini-State argument will not work either. In Europe, the Faroe Islands as a State would be larger in both population and territory than Andorra, Liechtenstein, Monaco and San Marino. For a review of arguments for and against the creation of very small States, see Jorri C. Duursma, Fragmentation and the International Relations of Micro-States. Self-Determination and Statehood, Cambridge: Cambridge University Press, 1996.

21 Para. 4 of the Vienna Declaration, in UN document A/CONF.157/23 at p. 4.

the substantive emphasis. Not able to understand Danish, these experts would lead to a more neutral linguistic ground, either through the use by all of English or through simultaneous interpretation from Danish and Faroese into a third language.

If the negotiations are unsuccessful or unreasonably delayed, the possibility of a unilateral declaration of independence will arise. In those circumstances, it is important that the legality and legitimacy[22] of the Faroese claim and conduct be well-argued and well-founded in law and fact.[23]

Access to International Organizations

As a subject of international law holding the right of self-determination and bearing the duty to negotiate the claim, good arguments can be brought forward to the effect that the Faroese people ought to be able to gain access to and a hearing from international organizations and third States. There is nothing automatic about that, however, as States are the dominant players in intergovernmental forums and the States, for understandable reasons of self-preservation, continue to be reluctant towards self-determination claims.[24]

Under international law, States and not peoples have access to the International Court of Justice in the Hague. On decolonization issues, access to and resolutions in the Fourth Committee of the General Assembly and the Committee of Twenty-Four are decided upon by States. In human rights law, under the International Covenant on Civil and Political Rights and its First Optional Protocol, the Human Rights Committee has not been authorized to receive complaints by peoples relating to article 1 of the Covenant on the right of self-determination; the Protocol only allows individuals and not peoples to file petitions. The European Convention on Human Rights, which forms the basis for access to the European Court of Human Rights in Strasbourg, does not refer to peoples and it is silent on the right of self-determination.

22 Language borrowed from the Supreme Court of Canada in the Quebec case, see note 12 above.

23 On the question of recognition in such a situation, in particular collective recognition, see John Dugard, Recognition and the United Nations, Cambridge: Grotius Publications Limited, 1987.

24 See quotation to James Crawford in note 19 above.

Despite the State reluctance towards self-determination claims, international law considerations will nevertheless have an impact at the international level. Bodies of the United Nations, such as the Secretary-General, will not ignore solid legal arguments. The same holds true for other international organizations. This applies not least to decolonization claims where the solidarity of decolonized States and peoples will enter the picture, also if and when the question of collective recognition arises following a unilateral declaration of independence.

In addition, as to policy considerations, for Denmark which likes to see herself as a model of democracy and an exporter of human rights to other parts of the world, the outright denial of a Faroese claim to the right of self-determination and the blocking of their access to international organizations is a potential source of embarrassment. Relating to both human rights protection and conflict prevention, Denmark's ability to criticize other countries for refusing to accept an international role with regard to other human rights situations and self-determination claims would be seriously hampered.

Concluding Remarks

The international law arguments are obviously relevant to the current negotiations between the Faroe Islands and Denmark and to their outcome. The law can be a useful tool for the Faroese negotiators. The Faroese side can and should strengthen their position, in both law and politics, by making use of the right of self-determination in general and decolonization and agreed negotiations leading to a possible separation in particular.

Peoples entitled to the right of self-determination are subjects of public international law, albeit with more limited capacities than States which constitute the primary subjects. Peoples have rights, duties and international standing in terms of access to international organizations, at least as far as decolonization is concerned. On repeated occasions, the United Nations and regional organizations like the Organization for African Unity have officially dealt with peoples' representative organs for the purposes of self-determination and granted access to 'liberation movements', even before the peoples concerned have democratically elected their leadership or decided on the choice of the prescribed options.

Through the ongoing negotiations and on the basis of several sound legal arguments, the Faroese can legitimately be seen as a people and Denmark has actually acknowledged them as such. The question in the current

negotiations is therefore about how and when, not whether, the Faroese will exercise the right of self-determination. The available options are independence, free association and integration, and it is for the Faroese people to choose between them in a referendum.

Halgir Winther Poulsen

Eru Føroyingar Tjóð?

English Summary
Title: Are the Faroese a Nation? Recently the question of the status of the Faroese as a Nation has resurfaced. It is argued that answer is rather self-evident: of course, the Faroese constitute a Nation, and only the Faroese themselves can alter their own status as such. However, the article seeks to clarify some of the terms used. Terms like People, Nation, State and Nation-State are examined, first, as defined in dictionaries, then, in the context of international law. The use of there terms is analysed as they appear in legal and political context after the American and French revolutions, following World War I, and World War II, in UN Treaties and, ultimately, in the workings of the Organisation for Security and Peace in Europe. In conclusion, the Faroese are said, beyond all doubt, to constitute a Nation with the right to self-determination. How this right can and shall be used, however, is another matter entirely.

The Author, Halgir Winther Poulsen, holds a degree in Human Rights and is practising law in the Faroes. Has held several positions as member of important Faroese policy committees.

Føroyskt Úrtak
Spurningurin, um føroyingar eru tjóð, hevur verið nógv frammi seinastu tíðina. Í greinini verður sagt, at svarið er sjálvsagt, sjálvandi eru føroyingar serstøk tjóð, og bert føroyingar sjálvir kunnu broyta tann veruleikan. Høvundin roynir tó at greina nøkur av viðkomandi hugtøkunum sum fólk, tjóð og land, bæði málsliga og í altjóða lóg. Týðandi hugtøk verða viðgjørd í politiskum og lógar høpi eftir amerikansku og fronsku kolveltingarnar, eftir fyrra og seinna heimskríggj, í ST-viðtøkum og at enda innan europeiska felagskapin fyri trygd og trivna (OSCE). Í niðurstøðuni metir høvundin, føroyingar uttan iva lúka krøvini í altjóðarætti at vera nevndir tjóð og at hava sjálvsavgerðarrætt sum tjóð. Hvat liggur í hesum sjálvsavgerðarrættinum er tó ein heilt annar spurningur.

Inngangur

Hesin spurningurin, sum ikki var at hoyra manna millum í nógv ártíggju, ja, neyvan havdur á lofti síðan okkara stóru skøld yrktu teir vøkru fosturlandssangirnar, ið enn verða sungnir, er aftur vorðin aktuellur. Vit fáa javnan at vita, hvat hann ella hon nú hava sagt um hetta vandamál, og oftast eru tað skakandi tíðindi, ið verða borin okkum. Ja, tað er so galið, at vit als ikki eru hvørki fólk ella tjóð, skulu vit trúgva teimum, ið vanliga vera hildin at hava skil fyri tílíkum málum, ella sum hava somikið vald, at lurtað verður eftir teimum.

Hvat er so svarið? Ja, tað er tað, eg eri biðin um at greina til nýstovnaða løgfrøðiblaðið, ið nakrir djarvir unglingar hava sett sær fyri at stovna. Man ikki tílíkt dirvi og áræði, ið er so at siga dagligur kostur millum okkara vælútbúnað ungfólk, longu vera ein týðandi partur av svarinum? Við tann lesaran, ið annaðhvørt ikki hevur tíð ella tímir at lesa meira, kann eg beinanvegin siga, at fyri mær hevur ongantíð nakar ivi verið um svarið: Sjálvandi eru vit føroyingar serstøk tjóð. Tað kann eingin taka frá okkum uttan vit sjálv.

Men kanska er tørvur kortini á at greina ymiskar spurningar, ið standast av ógreiðum málbrúki og ikki minni ymiskum og viðhvørt ógreiðum innihaldi, ið lagt verður í hugtøkini fólk og tjóð, ofta orsakað av ymiskum politiskum

áhugamálum hjá teimum, ið mynda tað altjóða samfelagið, har spurningurin hevur størsta týdningin. Tað skal verða roynt í hesi greinini.

Hugtøkini fólk og tjóð. Eitt málsligt slank

Málið setir mark fyri tankanum og møguleikunum fyri samrøðu, tess meira tess minni ítøkilig umrøðuevnini eru. Hyggja vit at, hvussu ymiskt hugtøkini fólk og tjóð verða lýst á føroyskum, donskum og enskum, síggja vit, hvussu lætt tað er at spyrja í eystan og fáa svar úr vestri, tá tílík evni verða umrødd.

Sambært nýggju móðurmálsorðabókini[1] merkir *fólk* "mannaflokkur ið hoyrir saman (í ætt, søgu, mentan o.tíl.)", meðan *fólkaslag* er lýst soleiðis: "stórur hópur av fólki ofta við felags mentan og uppruna, sum talar sama ella nærskyld tungumál". Bæði orðini eru søgd at merkja tað sama sum *tjóð*, ið er lýst á hendan hátt: "stórur flokkur av fólki av somu rót og við felags máli, mentan, søgu o. tíl. (kennir seg sum eina eind og býr vanl. í sama landi), samnevni fólk".

Her kundi verið skoytt uppí, at tað ger ikki viðurskiftini greiðari, at framstandandi luttakarar í tjakinum herfyri við stórari sannføring løgdu áherðslu á, at Føroyar eru ein tjóð. Tað eru føroyingar, ið eru tjóð, meðan Føroyar eru eitt land.

Á donskum er *folk* lýst soleiðis í teirra stóru orðabók[2]: "samling mennesker, som bebor samme land, har fælles regering, sprog, historie, kultur osv." og lagt verður afturat: "i al alm.: nation". *Nation* hevur hesa merking: "den enhed, som et lands indbyggere danner, for så vidt de har fælles regering, sprog, historie, kultur osv. (med noget skiftende bet., således at man til visse tider har lagt mest vægt på den sproglige, til andre tider på den politiske enhed)". Orðið *nationalstat* er lýst á hendan hátt: "en stat, hvis befolkning (næsten) udelukkende har samme nationalitet".

Týdningurin hevur skift nakað frá 1923 til 1999. Sambært Politikens Nudansk Ordbog [3] eru merkingarnar lýstar soleiðis. *Folk:* " de mennesker, der bor i et land = folkeslag, befolkning" og *nation*: "et folk som lever i, tilhører og tilsammen udgør en enkelt stat = folk, stat, land, rige". Dømi: "Danmark er en nation med ca. fem millioner indbyggere". Nationalstat

[1] Føroysk orðabók, Føroya Fróðskaparfelag, 1998.
[2] Ordbog over det danske Sprog, 1923.
[3] Politikens Nudansk Ordbog, Politikens forlag, 1999.

hevur nú fingið hesa merking: "en stat hvis befolkning tilhører samme nation". Dømi: "Danmark er en udpræget nationalstat" og "de stater der er dannet efter afkolonialiseringen i Afrika, er sjældent nationalstater".

Á enskum eru tilsvarandi orðini lýst soleiðis[4], *people*: "1. A body of persons composing a community, tribe, race, or nation; = folk ... 2. The persons belonging to a place, or constituting a particular concourse, congregation, company, or class. 5. .. Politics. The whole body of enfranchised or qualified citizens, considered as the source of power; esp. in a democratic state, the electorate". *Nation* hevur m.a. hesar merkingar: "1. An extensive aggregate of persons, so closely associated with each other by common descent, language, or history, as to form a distinct race or people, usually organized as a separate political state and occupying a definite territory. In early examples the racial idea is usually stronger than the political; in recent use the notion of political unity and independence is more prominent. ... 4. the nation, the whole people of a country, freq. in contrast to some smaller or narrower body within it". *Nation-state*: "a sovereign state the members of which are also united by those ties such as language, common descent, etc., which constitute a nation". *National minority*: "a minority group, belonging historically to another nationality, which feels itself or is felt to be culturally or racially separate from the majority in a country".

Orðabókalýsingar siga sjálvandi ikki allan sannleikan um vanliga málbrúkið, men tær geva ið hvussu er eina lýsing av almennu fatanini av viðkomandi orðum, soleiðis sum málbrúkið er skrásett og broytt gjøgnum tíðirnar. Í føroyskum málbrúki tykist størri dentur at vera lagdur á tað søguliga og mentunarliga innihaldið í orðunum fólk og tjóð, meðan hini bæði málini tykjast at leggja størri dent á tað politiska, og hendan broyting í týdninginum tykist at vera hend seinnu árini.

Lat okkum enda hesa stuttu málsligu útferðina við tveimum skaldsligum lýsingum av, hvat eitt fólk er. Eg hugsi um tey bæði tjóðskaparskøldini N.F.S. Grundtvig og Jóannes Patursson, ið hvør á sínum máli og hvør í einum tíðarskeiði, har tjóðir teirra royndu at fóta sær og finna tryggari støði at standa á, yrktu um fólk og tjóð.

[4] The Oxford English Dictionary, 1989.

Grundtvig[5] setir í 1848 hendan spurningin: "Folk! hvad er vel folk i grunden? hvad betyder "folkeligt"? er det næsen eller munden, hvorpå man opdager sligt?" og svarar: "Til et folk de alle høre, som sig regne selv dertil, har for modersmålet øre, og for fædrelandet ild" og leggur afturat: "Får vi ægte danske love, danske skoler splinterny, danske tanker, danske plove, rinder op vort gamle ry, ... da er folkets dåd og digt, da er alting folkeligt".

Í tignarliga sálminum "Boðar tú til allar tjóðir"[6], lýsir Jóannes Patursson hugtøkini fólk og tjóð á hendan hátt: "Føroya mál á manna tungu, merkir: her býr Føroya fólk. Slektir fornu og tær ungu eyðkendu seg sum ein bólk, ið helt fast við fedra mál, virdu tað av hug og sál, gloymdu ikki ættarbandið; byggja tí enn hetta landið". Sálmurin er sambært viðmerkingunum í Føroya fólks yrktur til ein fólkafund um málspurningin í barnaskúlanum, sum varð hildin tann 9. juli 1905, árið fyri, sum tjóðskaparhugsjónin gjørdist politisk í Føroyum.

Altjóða tilgongdin

Søguliga og politiskt fingu hugtøkini "fólk" og "tjóð"[7] avgerandi týdning í amerikonsku og fronsku kollveltingunum[8], tá fólkið varð sett í staðin fyri kongsveldið sum berari av ríkisvaldinum. Tað radikala franska tjóðskaparhugtakið, ið gjørdist eitt týðandi politiskt vápn í stríðnum móti framíhjárættindunum hjá aðalsmannastættini, og tann romantiska týska tjóðskaparfatanin virkaðu viðhvørt í felag og viðhvørt í sínámillum andsøgn til grundleggjandi broytingar í evropeisku samfelagsskipanunum.

Tað hevur verið ført fram, at hugsanin um tjóðskaparligan samleika varð sett fram av týska heimsspekinginum Johan G. Herder í einum søguligum verki, ið kom út í 1774[9]. Herder leggur serliga dent á málið sum ímyndin av tjóðskapi (das Volk) og hansara tjóðskaparmynd var bygd á mentan í størri

[5] Folkehøjskolens sangbog, 16. udg., 1981, s. 212.

[6] Songbók Føroya fólks, 9. útg., 1997, nr. 43.

[7] Í hesum partinum verða hugtøkini fólk og tjóð nýtt hvørt um annað og í bæði politiskum og mentunarligum týdningi.

[8] Amerikanska grundlógin byrjaði við hesum orðunum: "We the People of the United States, ... do ordain and establish this Constitution for the United States of America", og franska yvirlýsingin um mannarættindi bar heitið Déclaration des Droits de l´Homme et du Citoyen. At hugtakið "fólk" í hesum sambandi var eitt annað og munandi trengri, enn vit høvdu góðkent í dag, er ein onnur søga.

[9] Elie Kedourie: Nationalism, 4. útg., 1993, og John Breuilly: The Sources of Nationalist Ideology í John Hutchinson og Anthony D. Smith (ed.): Nationalism, 1994.

mun enn politikk, men kravið um at tey, ið tosa og skriva eitt felags mál, eisini eiga at liva í sama ríki, gjørdist ein týðandi ideologisk prógrund fyri savnanina av týska ríkinum, ið ikki altíð gekk so friðarliga fyri seg.

Vestan fyri Týskland lá eitt annað komandi stórveldi, ið eisini hevði sítt at stríðast við. Á innara mótinum var stríðið at savna og samansjóða ein hóp av fólki, ið hevði lítið annað til felags enn at tey av tilvild búðu á teimum økjum, ið skuldu gerast franska ríkið. Eisini her var málið ein týdningarmikil partur av starvinum "at gera bøndur til franskmenn"[10]. Mett verður, at í 1789 tosaði minni enn helmingurin av fólkinum í Fraklandi franskt.

Hvat er eitt fólk?
Hóast eingin semja er millum altjóða løgfrøðingar og onnur serkøn um, hvussu hugtakið fólk skal skilmarkast, og hóast fatanin tykist at vera ymisk frá máli til mál sum vit sóu omanfyri, er tað kortini í høvuðsheitum semja um hvørjar fortreytir mugu vera til staðar, fyri at ein ávísur hópur av einstaklingum kann metast at vera eitt fólk.

Í einari grein frá 1981 um etniskar og politiskar tjóðir í Evropa[11] eru fortreytirnar lýstar soleiðis: Neyðugt er við einum ávísum landaøki, at fólkið býr í einum ávísum ríki (ella hevur eina ávísa serliga politiska serstøðu), hevur egið mál, mentan og søgu. Hesar fortreytir, ið kunnu vera tilstaðar í størri og minni mun, og ikki neyðturviliga mugu vera loknar til fulnar, verða vanliga nevndar objektivar. Afturat hesum krevst ein felags vilji til at vera eitt fólk. Hendan sonevnda subjektiva treytin er avgerandi, og er hon lokin, ger minni, hvat grannatjóðir ella heimsamfelagið halda. Hendan lýsingin svarar væl til vanligu fatanina millum tey flestu, sum gjøgnum tíðina hava fingist við at granska og skriva um evnið.

Ein ógviliga víttgangandi subjektiv skilmarking varð sett fram av franska søgumanninum Joseph Ernest Renan í 1882[12], helst ávirkað av fronskum

[10] Eugene Weber: Peasants into Frenchmen: The Modernization of Rural France, 1870 – 1914, 1976.

[11] Jaroslav Krejci & Vitezslav Velimsky: Etnic and Political Nations in Europe í John Hutchinson & Anthony D. Smith (ed): Ethnicity, Oxford University Press, 1996.

[12] Joseph Ernest Renan: Quést-ce qu´´une nation? Her endurgivið eftir Uffe Østergård: Nationale og etniske mindretal í Nils Vollertsen ofl (ed.): Nation og mindretal, Forlaget Historia, 1993.

hevndarhuga eftir missin av Alsace-Lorraine til Týskland í krígnum við Preussen í 1870.

Eftir at hava sett spurnartekin við, hví eitt nú Sveits við sínum trimum málum, tveimum religiónum og trimum ella fýra fólkasløgum verður viðurkent sum ein tjóð (her at skilja sum "politisk tjóð" ella ríki), meðan Toscana, hóast ikki fongt við tílíkum syndrandi eginleikum, ikki verður viðurkent sum ein tjóð, setir hann fram hesa skilmarking av, hvat ein tjóð er: "Eitt tollsamband er einki fedraland. Ein tjóð er ein sál, ein andalig frumregla. Ein tjóð er ein altfevnandi samhugur, myndaður av teimum royndum og ofrum, ið fortíðin hevur borið við sær, og sum tjóðin er fús at bera í komandi tíðum. Tilveran sum tjóð er ein daglig fólkaatkvøða".

Hetta sjónarmiðið, ið leggur allan dentin á tann subjektiva tjóðarviljan, varð tó ikki alment viðurkent. Krøvini til at viðurkenna ein einstaklingahóp sum eitt fólk, eru framvegis, at ávísir objektivir veruleikar eru tilstaðar saman við tjóðarviljanum, hóast ymiskt er, hvussu nógvur dentur verður lagdur á hesar veruleikar hvør sær.

Fyrri heimsbardagi og Fólkasamgongan

Hugmyndin um fólk, tjóð og tjóðarrættindi stóð sína sveinaroynd á altjóða pallinum eftir fyrra heimsbardaga, tá amerikanski forsetin Woodrow Wilson, umboðandi máttmiklastu vinnaratjóðina, fekk møguleika at royna sínar hugsjónir um sjálvsavgerðarrætt tjóðanna í verki. Hetta var, tá evropakortið skuldi teknast av nýggjum, og tey tapandi stórveldini Eysturríki-Ungarn, Týskland og Ottomanska ríkið vórðu sundurlimað í eindir, ið vinnararnir hildu vera meiri hóskandi og minni vandamiklar.

Her skal spurningurin um sjálvsavgerðarrættin ikki verða viðgjørdur útum tað, sum neyðugt er til tess at lýsa støðuna hjá sigurharrunum til tey mongu fólkini og bólkarnar, ið mettu seg sum egin fólk, og sum nú sóu ein møguleika vera fyri at vinna sær rættindi samsvarandi[13].

[13] Innihaldið í hugtakinum sjálvsavgerðarrætti tjóðanna er lýst soleiðis í teirri felags grein 1 í teimum báðum mannarættindasemingunum frá 1966, ið er soljóðandi: "Allar tjóðir hava sjálvsavgerðarrætt. Við heimild í hesum rætti hava tær frítt at taka avgerð um stjórnarligu støðu sína og frælst at fremja búskapar-, almanna- og mentanarmenning sína". Tó er ósemjan stór um veruliga innihaldið í hesum rætti, og hvussu langt hann røkkur, og í hesi greinini er ikki høvi at greiða gjøllari frá hesum.

Aðalmálið hjá Wilson við læruni um sjálvsavgerðarrættin var í størst møguligan mun at skapa samsvar millum tjóð og ríki[14]. Á altjóða mótinum bar hetta við sær fýra avleiðingar. Í fyrsta lagi skuldi hvørt fólk hava rætt at kjósa sær sítt egna stjórnarlag. Í øðrum lagi skuldi Evropa umskipast við tjóðskaparligum krøvum sum grundarlag. Harnæst skuldu landamørk bert broytast við fyriliti fyri tjóðskaparkrøvum, og endiliga skuldu hjálandakrøv loysast á tjóðskaparligum grundarlagi.

Tá hesi sjónarmiðini skuldu førast út í lívið vísti tað seg, at undirtøkan frá hinum sigursharrunum gjørdist so sum so, og tær sømdir, ið vórðu givnar ynskjunum hjá fjøldini av umboðum fyri tey nógvu fólkasløgini í Evropa, ið mettu seg at hava verið fyri kúgan, og sum nú sóu ein møguleika at fáa uppreisn, vóru sera ymiskar[15]. Tað, sum hevur serligan áhuga í okkara sambandi, er hvussu hugtøkini fólk og tjóð kundu fáast at sampakka við lyftið um sjálvsavgerðarrættin. Hvør skuldi hava hendan rætt, og hvussu skuldu tey fólkini, ið fingu hendan rættin, skilmarkast? Skuldi høvuðsdenturin leggjast á tey objektivu eyðkennini, ið vórðu nevnd omanfyri, landaøki, mál, mentan og søgu, og hvørji av hesum eyðkennum skuldu hava mest at siga? Ella skuldi viljin hjá viðkomandi einstaklingabólki til at vera eitt egið fólk vera avgerandi?

Tað vísti seg eisini, tá heimurin, og tað vil í hesum sambandi siga Evropa, skuldi umskipast eftir fyrra heimsbardaga, at "fólkakrøvini" í flestu førum máttu víkja fyri stórveldapolitikkinum. Tey einastu "fólkini", ið fingu egin ríki, vóru Póland, Chekkoslovakia og tey trý Baltalondini Estland, Lettland og Litavia. Hini "fólkini" máttu lata sær lynda við serligum minnilutaskipanum, ætlaðum at verja tey móti yvirgangi frá stjórnunum í teimum ríkjum, tey endaðu í. Hendan minnilutaverja varð staðfest í teimum ymisku friðaravtalunum, ið Fólkasamgongan skuldi hava eftirlit við. Í hesum avtalum varð dentur lagdur á verju av máli og øðrum mentunareyðkennum hjá hesum fólkum, ið nú endaðu sum minnilutar. At hesi nýstovnaðu ríkini í roynd og veru høvdu fleiri fólk innan síni

[14] Michla Pomerance: Self-Determination in Law and Practice, Martinus Nijhoff Publishers, 1982. Antonio Cassese: Self-Determination of Peoples, Cambridge University Press, 1995.

[15] Hansara egni uttanríkisráðharri, Robert Lansing, hevði ikki nógv gott at siga um ætlanirnar hjá Wilson, sum hann skýrdi "dangerous to peace and stability" og legði afturat: "The phrase is simply loaded with dynamite. It will raise hopes which can never be realized", R. Lansing: The Peace Negotiations – A Personal Narrative, 1921. Her tikið eftir Cassese, nota 14.

landamørk, og at tað ikki gekk so væl við minnilutaverjunum av hinum fólkunum, ið endaðu sum minnilutar, er eitt annað mál.

Víst hevur verið á[16], at í tíðarskeiðinum 1919 – 1945 varð hugtakið fólk brúkt í fimm ymiskum týdningum í sambandi við politisku grundregluna um sjálvsavgerðarrætt: eitt fólk, ið burturav búði í einum ríki, har eitt annað fólk hevði valdið (dømi: írar fyri 1920); fólk, ið búleikaðust sum minnilutar í fleiri londum, uttan at hava nakað land fyri seg sjálvan (dømi: pólakkar í Russlandi fyri 1919); fólk, sum búði sum minniluti í einum landi, men sum metti seg sum partur av fólkinum í einum grannalandi (dømi: ungarar í Rumenia); fólk, ið var spjatt millum fleiri ríki (dømi: týskarar í fleiri evropeiskum ríkjum), og fólk, ið vóru meiriluti í einum landaøki undir fremmandum yvirræði (dømi: hjálandafólk).

Seinni heimsbardagi og Sameindu tjóðirnar

Longu meðan seinni heimsbardagi leikaði sum harðast, kunngjørdu Stórabretland og USA, at fremjan av sjálvsavgerðarrættinum skuldi vera eitt av endamálunum, tá skil skuldi fáast á eftir loknan bardaga. Hendan stevnan varð avrádd av Roosevelt og Churchill í Atlantsyvirlýsingini tann 14. august 1941[17]. Hvat var tað fyri fólk, ið nú skuldu sleppa framat og fáa sín sjálvsavgerðarrætt útintan? Churchill ivaðist ið hvussu er ikki. Í einari talu í undirhúsinum tann 9. september 1941 boðaði hann frá, at grundreglan um sjálvsavgerðarrætt einans miðaði ímóti at endurreisa fullveldið, sjálvsavgerðarrættin og tjóðskaparlívið hjá teimum statum og tjóðum í Evropa, sum nú vóru undir "the Nazi yoke"[18].

Fyrireikingarnar til tann nýggja heimsstovnin, ið skuldi avloysa Fólkasamgonguna eftir bardagalok, byrjaðu í Dumbarton Oaks í 1944, og

---

[16] Karl Josef Partsch: "Fundamental Principles of Human Rights: Self-Determination, Equality and Non-Discrimination", her tikið eftir Hurst Hannum: Autonomy, Sovereignty, and Self-Determination. The Accomodation of Conflicting Rights, University of Pennsylvania Press, 1990.

[17] Joint Statement by President Roosevelt and Prime Minister Churchill, August 14, 1941, har átta grundreglur verða settar fram við tí endamáli at skapa heiminum eina betri framtíð. Regla eitt sigur, at "they desire to see no territorial changes that do not accord with the freely expressed wishes of the peoples concerned" og regla tvey, at "they respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self government restored to those who have been forcibly deprived of them".

[18] Her tikið eftir Cassese, nota 14.

endaligu reglurnar vórðu samtyktar í San Francisco í apríl – juni 1945. Stovningarsáttmáli Sameindu tjóða, sum varð undirskrivaður tann 26. juni 1945, og kom í gildi tann 24. oktober sama ár, er tann fyrsti altjóða sáttmáli, ið staðfestir sjálvsavgerðarrætt fólkanna.

Aðalendamál ST eru sambært 1. grein í stovningarsáttmálanum at uppihalda altjóða friði og trygd, at menna vinarligt samskifti tjóða millum við grundarlagi í virðing fyri javnrætti fólka millum og sjálvsavgerðarrætti teirra,[19] umframt at taka onnur hóskandi stig at tryggja heimsfriðin og fáa í lag altjóða samstarv um loysn av altjóða trupulleikum.

Undir fyrireikingunum av sáttmálanum varð gjørt vart við, at tað kundi vera vandamikið at byggja vinarlag tjóða millum á sjálvsavgerðarrætt hjá fólkum, sum eisini týðir uppá, at vanlig fatan var, at hugtøkini fólk og tjóð ikki høvdu somu merking[20]. Nevndin, ið arbeiddi við orðingunum av sáttmálanum, fekk til vega eina frágreiðing um merkingina av ávísum orðum, ið vóru mett av stórum týdningi, m.a. orðunum "state", "nation" og "people". Tey vórðu lýst á hendan hátt.[21]

State: The word "state" is used .... to indicate a definite political entity.

Nation: The word "nation" is used ... for the most part in a broad and non-political sense. In this non-political usage "nation" would seem preferable to "state" since the word "nation" is broad and general enough to include colonies, mandates, protectorates, and quasi-states as well as states. It also has a poetical flavour that is lacking in the word "state".

People(s): No difficulty appears to arise from the use of the word "peoples" .... whenever the idea of "all mankind" or "all human beings" is to be emphasized. The word "peoples" thus occurs only in the Preamble, in Article 1, paragraph 2, and in the old Article 58, outlining the purposes of the Economic and Social Council[22]. .... The question was raised in the Co-ordination Committee as to whether the juxtaposition of "friendly relations

[19] Á enskum: "To develop friendly relations among *nations* based on respect for the principle of equal rights and self-determination of *peoples*..." (tant her).

[20] Ein lýsing av forarbeiðunum til grein 1 í ST sáttmálanum er at finna í The Right to Self-Determination, Study prepared by Aureliu Cristescu, United Nations, 1981.

[21] Cristescu, nota 20.

[22] Grein 55 í endaliga sáttmálanum, har eisini hugtakið "self-determination of peoples" kemur fyri.

among nations" and "self-determination of peoples" is proper. There appears to be no difficulty in this juxtaposition since "nations" is used in the sense of all political entities, states and non-states, whereas "peoples" refers to groups of human beings who may, or may not, comprise states or nations.

Cristescu leggur dent á at finna fram til eina skilmarking av hugtakinum "people(s)", ið hevur so stóran týdning í ST stovningarsáttmálanum og seinni ST sáttmálum og samtyktum. Hann heldur tað kortini vera nyttuleyst, og enntá skeivt, at rokna við, at semja skal kunna verða fingin um eina skilmarking, ið fær almenna undirtøku og kann verða nýtt í øllum altjóða viðurskiftum. Hann heldur, at nøkur avgerandi eyðkenni eiga at verða havd í huga í hvørjum serstøkum føri, tá tað er neyðugt at gera av, um ein ávís fólkaeind kann sigast at vera eitt fólk, ið er ført fyri at njóta og útinna rættin til sjálvsavgerðar. Cristescu kemur til hesa niðurstøðu:

(a) The term "people" denotes a social entity possessing a clear identity and its own characteristics;
(b) It implies a relationship with a territory, even if the people in question has been wrongfully expelled from it and artificially replaced by another population;
(c) A people should not be confused with ethnic, religious or linguistic minorities, whose existence and rights are recognized in article 27 of the International Covenant on Civil and Political Rights[23].

Avriggingin av hjálandaveldinum
Hvørji vóru nú tey fólk, ið komu at njóta ágóðarnar av virksemi Sameindu tjóða? Ta stuttu tíð, tað eydnaðist Fólkasamgonguni at virka nøkulunda til munar, vóru tað fyrst og fremst tjóðskaparligir og aðrir minnilutar í Evropa, ið roynt varð at verja við trygdarreglum í teimum friðaravtalunum, ið gjørdir vórðu undir yvirumsjón av Fólkasamgonguni.

[23] Grein 27 er soljóðandi: "Í ríkjum, har sum tjóðskaparligir, átrúnaðarligir og málsligir minnilutar eru, má teimum, ið hoyra slíkum minnilutum til, ikki verða noktaður rættur til í felag við aðrar limir í bólki sínum at njóta mentan sína, at játta og inna trúgv sína ella at nýta sítt egið tungumál". Teir báðir ST semingarnir frá 1966 um ávikavist borgaralig og stjórnmálalig rættindi og búskapar-, almanna- og mentanarrættindi eru til skjals á enskum og í føroyskari týðing í Heimsyvirlýsing Sameindu tjóða um mannarættindi fimti ár, Amnesty International, Føroya deild, 1998.

Gongdin í Sameindu tjóðunum gjørdist heilt øðrvísi enn ið hvussu er tey stóru vestanveldini høvdu roknað við. Trý politisk sjónarmið gjørdu seg sum frá leið galdandi um tulkingina og útinningina í verki av teimum tveimum grundreglunum í grein 1, stk. 2 í ST sáttmálanum um ávikavist vinarlig viðurskifti tjóðanna millum og sjálvsavgerðarrætti fólkanna.

Sosialistisku londini løgdu áherðslu á avkolonisering, og í hesum fingu tey sum vera man undirtøku frá londunum í triðja heiminum. Vestanveldini hinumegin, sum ímillum sín taldu fremstu koloniveldini, førdu fram, at grein 1 í ST stovningarsáttmálanum einans var at skilja sum eitt óbindandi stevnumið fyri virkið hjá ST. Sum kunnugt sigraði fyrra sjónarmiðið, men tað vísti seg skjótt, at tey fólk, ið sambært sjálvsavgerðarrættinum skuldu havt krav um tjóðarfrælsi, fingu ógviliga ymiskar sømdir.

Tað vóru einans 51 lond, ið gjørdust stovnandi limir í ST. Tá sekstiárini vóru at enda, vóru limalondini uml. 130, og av hesum vóru eini 40 fyrrverandi hjálond[24]. Men fá, fyri ikki at siga eingi, av hesum "nýlondum" vórðu stovnað við atliti at fólksins ynskjum, skilt á tann hátt, at hvørt fólk fekk sítt ríki. Tey meira ella minni tilvildarligu hjálandamørk, ið vóru sett av gomlu hjálandaveldunum í Evropa, gjørdust eisini mørk millum nýggju londini, hóast úrslitið í flestu førum varð, at londini gjørdust fleirtjóðaríki, ella at fólk meira og minni tilvildarliga vórðu lutað sundur millum fleiri ríki. Hetta sæst eina best við at hyggja at teimum mongu snórabeinu landamørkunum í Afrika[25].

Tey fólkini, ið ikki vóru so "heppin" at kunna grunda síni tjóðarkrøv á hjálandastøðu, fingu lítla og onga undirtøku frá Sameindu tjóðunum. Sovjettsamveldið og vestanveldini høvdu ongan áhuga í at stuðla uppundir fólkakrøv um frælsi, tá tað ráddi um fólk innan teirra egnu ríkismørk, og tað sama gjørdi seg galdandi fyri USA, ið hevði ein hóp av indianskum fólkum á sínum landaøki. Ein roynd at verja hendan sjónska ójavna millum hjálandafólk og onnur fólk var tann sonevnda "salt-water theory", ið setti

[24] Peter Malanczuk: Akehurst´s Modern Introduction to International Law, Routledge, 1997.

[25] Tey nýstovnaðu ríkini í Afrika tóku undir við at varðveita hesi landamørk, sí Charter of the Organization of African Unity samtykt í 1963, Art. II(1), ið m.a. staðfesti "the territorial integrity" hjá limalondunum.

fram tað sjónarmiðið, at sjógvur mátti vera millum miðveldið og tað fólkið, ið kravdi sjálvræði[26].

Gongdin í ST
Sum frá leið gjørdist munurin millum hjálandafólk og onnur fólk alt sjónskari í verki, hóast tær samtyktir, ið aðalfundur Sameindu tjóða gjørdi, og teir altjóða sáttmálar, ið samtyktir vórðu undir fyriskipan Sameindu tjóða, ikki altíð gjørdu mun í orðum.

Tann 14. og 15. desember 1960 samtykti aðalfundurin tvær týdningarmiklar yvirlýsingar um ávikavist frælsi til hjálond og fólk teirra og um fráboðanarskyldu sambært grein 73(e) í ST stovningarsáttmálanum[27].

Hóast samtykt 1514(XV) í yvirskriftini einans nevnir frælsi til hjálond og hjálandafólk, staðfestir hon sjálvsavgerðarrættin hjá øllum fólkum, men leggur sum flestu aðrar ST samtyktir dent á, at tað er í stríð við ST sáttmálan at syndra landaøkið hjá einum ríki. Her verður sostatt óbeinleiðis gjørdur munur á teimum fólkum, ið búgva samantvinnað við onnur fólk í sama ríki, og fólk, ið hava egið, vælavmarkað landaøki fyri seg sjálv.

Samtykt 1541(XV) umrøður beinleiðis umveldi, hvørs fólk ikki hava fingið fult sjálvræði, og setir upp vegleiðandi reglur fyri fráboðanir til ST sambært grein 73(e) í ST sáttmálanum. Grein 73 áleggur avvarðandi limalondum, ið hava ábyrgdina av hesum umveldum, at hjálpa teimum at fáa sjálvræði. Samtyktin leggur m.a. dent á, í hvønn mun hesi umveldi eru landafrøðiliga, etniskt og mentunarliga ymisk frá miðveldinum, júst nøkur av teimum eyðkennum, ið mynda eitt egið fólk.

Í 1966 vórðu teir báðir ST semingarnir um ávikavist borgaralig og stjórnmálalig rættindi og um búskapar-, almanna- og mentanarrættindi samtyktir av ST aðalfundinum[28]. Semingarnir hava eina einsljóðandi grein 1, hvørs 1. petti er soljóðandi: "Allar tjóðir hava sjálvsavgerðarrætt. Við

[26] Sí Wm. Roger Louis: Imperialism at Bay, The United States and the Decolonization of the British Empire, 1941-1945, har sjónarmiðið verður skýrt "the salt-water fallacy".

[27] GA Res. 1514(XV): Declaration on Granting of Independence to Colonial Countries and Peoples, 14. desember 1960, og GA Res. 1541(XV): Principles which should guide Members in determining whether or not an Obligation exists to transmit the Information called for in Article 73(e) of the Charter of the United Nations, 15. desember 1960.

[28] Sí notu 23. Semimgarnir komu í gildi í 1976.

heimild í hesum rætti hava tær frítt at taka avgerð um stjórnarligu støðu sína og frælst at fremja búskapar-, almanna- og mentanarmenning sína".

Fyrireikingarnar til sáttmálarnar byrjaðu longu í 1950, og ósemjan var stór millum luttakaralondini um, hvørt nøkur regla um sjálvsavgerðarrætt skuldi við í sáttmálarnar. Tað var aftur Sovjettsamveldið, ið heitast talaði fyri, men tó við tí fyrivarni, at rætturin bert skuldi galda fyri hjálandafólk. Vestanveldini, og tá serliga Stórabretland, Frakland og Belgia, ið høvdu mest at missa í hjálandahøpi, vóru ímóti. Endin var, at Sovjett, stuðlað av "triðjaheimslondum" vann, men tó uttan at rætturin skuldi avmarkast til hjálond.

Grundað á forarbeiðini og orðalagið í grein 1 í ST stovningarsáttmálanum kemur Cassese til ta niðurstøðu, at greinin fevnir um (1) alt fólkið í sjálvstøðugum ríkjum við fullveldi, (2) alt fólkið í umveldum, ið ikki hava vunnið fult sjálvræði og (3) fólk, ið liva undir fremmandum hertøkuvaldi[29].

ST aðalfundurin samtykti í 1970 eina yvirlýsing um vinarlig viðurskifti og samstarv ríkja millum[30]. Meðan samtykt 1541(XV) leggur høvuðsdentin á hjálandafólk, fevnir samtykt 2625(XXV) nógv víðari og setir upp ávísar grundreglur fyri samskifti ríkja millum við tí høvuðsendamáli at styrkja og varðveita altjóða frið[31]. Hesar grundreglur eru (a) grundreglan um, at øll ríki skulu halda seg frá at seta fram hóttanir ella brúka vald til skaða fyri landaøkið ella frælsið hjá nøkrum ríki, (b) grundreglan um skyldu til ikki at leggja seg útí innanhýsisviðurskiftini hjá nøkrum ríki, (c) grundreglan um javnrættindi og sjálvsavgerðarrætt tjóðanna og (d) grundreglan um javnstøðu fullveldisríkja.

Samtyktin endurtekur rættin hjá øllum fólkum at taka avgerð um síni viðurskifti og áleggur øllum ríkjum skyldu at virka fyri, at rætturin verður framdur í verki. Samtyktin leggur somuleiðis dent á, at landaøkið hjá einum hjálandi og einum ósjálvstøðugum umveldi hevur serliga støðu samanborið við økið hjá miðveldinum og skal varðveita hesa støðu, inntil sjálvsavgerðarrætturin er framdur.

---

[29] Cassese, nota 14.

[30] Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation among States in Accordance with the Charter of the United Nations. GA Res. 2625(XXV), 24. oktober 1970.

[31] Sí Pomerance notu 14 og Patrick Thornberry: International Law and the Rights of Minorities, Clarendon Press, 1991.

Felagsskapurin fyri trygd og samstarvi í Evropa OSCE
Gongdin í Sameindu tjóðunum gjørdist tann, at tað serstakliga vóru hjálandafólkini, ið vórðu stuðlað í stríðnum at vinna sær frælsi frá miðveldunum og at stovna egin ríki, meðan einki varð gjørt fyri tey fólk, ið búleikaðust á sama øki sum meirilutafólkið. So hvørt sum hjálondini gjørdust egin ríki, varð so at siga bundið fyri krøvunum hjá teimum mongu minnilutafólkunum í teimum nýstovnaðu ríkjunum. Hendan gongdin setti í roynd og veru mark millum tvey "sløg" av fólkum, hjálandafólkini og øll hini.

Tann 1. august 1975 samtyktu umboð fyri 35 lond í Evropa umframt USA og Kanada Helsingforsskjalið um samstarv og trygd millum londini[32]. Ein partur av Helsingforsskjalinum er ein yvirlýsing um tær grundreglur, ið skulu galda fyri viðurskiftini landanna millum.

Grundregla VIII er soljóðandi:
"Tey luttakandi ríkini fara at virða javnrættindi tjóðanna og sjálvsavgerðarrætt teirra, fara altíð at bera seg at samsvarandi endamálunum og grundreglunum í stovningarsáttmála Sameindu tjóða og viðkomandi reglum í altjóðarætti, teimum íroknaðum, sum viðvíkja verju av landaøkjum ríkjanna.

Við heimild í grundregluni um javnrættindi tjóðanna og sjálvsavgerðarrætti teirra hava allar tjóðir altíð rætt til, í fullum frælsi, tá tær vilja og sum tær ynskja tað, at taka avgerð um sína innaru og ytru politisku støðu, uttan uppílegging uttaneftir og eftir egnum ynski at fremja politisku, búskapar-, almanna- og mentanarmenning sína.

Luttakandi ríkini endurvátta alheimstýdningin tað hevur fyri menningina av vinarligum viðurskiftum teirra millum og millum øll lond, at javnrættindi tjóðanna og sjálvsavgerðarrættur teirra verða vird og útint til muns."

Her hava vit eina samtykt, har øll evropeisk ríki vátta, at "...allar tjóðir altíð hava rætt til ... tá tær vilja tað ... at taka avgerð um sína ... politisku støðu".

[32] Final Act of the Conference on Security and Co-Operation in Europe. Felagsskapurin OSCE (upprunaliga CSCE) byrjaði sum ein røð av meira og minni óformligum fundum um trygdarspurningar og onnur mál av týdningi fyri frið og samstarv, heruppí sínámillum vápnaeftirlit. Í 1996 vóru limalondini 55, teirra millum øll evropeisk lond, USA, Kanada og fimm fyrrverandi sovjettisk lýðveldi.

Her skuldi eingin munur verið á fólkum, og samtyktin kann ið hvussu er ikki vera ætlað til verju av hjálandafólkum. At tílík funnust í Evropa í 1979, høvdu stjórnirnar í Evropa neyvan váttað. Men hesin eftir orðaljóðinum at døma óavmarkaði og ævigi rættur, verður kortini reiðiliga skerdur, tá tann tronga skilmarkingin av hugtakinum fólk, ið OSCE londini tykjast samd um, verður havd í huga. Sambært Cassese sæst av forarbeiðunum til samtyktina, at semja var um, at tjóðskaparligir minnilutar skuldu ikki njóta nakran sjálvsavgerðarrætt, og at einans alt fólkið í fullveldisríkjum skuldu hava hendan rættin[33].

At hetta eisini tykist at vera almenni politikkurin hjá Evropeiska Samveldinum sæst av støðuni hjá hesum londunum til gongdina í Jugoslavia. Í september 1991 samtyktu ES londini at seta eina gerðarnevnd av framstandandi altjóða løgfrøðingum at taka avgerðir í ósemjum, ið vórðu lagdar fyri nevndina og at ráðgeva felagsskapinum í løgfrøðiligum ivamálum[34].

Í januar 1992 svaraði nevndin soljóðandi spurningi frá serbisku stjórnini: "Hevur serbiska fólkið í Kroatia og Bosnia-Hersegovina sum eitt av fólkunum í Jugoslavia sjálvsavgerðarrætt?". Nevndin svaraði, at hetta fólkið hevði øll rættindi, ið altjóðarættur heimilaði minnilutum og etniskum bólkum, og at einstaklingar, ið hoyrdu til hesar minnilutar, høvdu rætt til at kjósa sær sín tjóðskap[35]. Hetta svarið tykist meira enn løgið, tá havt verður í huga, at nevndin í grundgevingunum m.a. vísti til grein 1 í semingunum frá 1966, ið sum nevnt omanfyri júst er um rættindi hjá fólkum, men leggur afturat, at "við heimild í hesum rætti kann einhvør einstaklingur velja at hoyra til einvønn etniskan, átrúnaðarligan ella málsligan bólk, sum hann ella hon ynskir"[36].

Eru føroyingar tjóð?

Hetta var spurningurin, ið svarast skuldi, og sum longu varð givið játtandi svar til í innganginum. Var tað tá neyðugt við øllum síðunum ímillum, og teimum fløkjum, ið roynt hevur verið at greiða, vónandi ikki heilt til fánýtis?

---

[33] Cassese, nota 14.

[34] Matthew C.R. Craven: The European Community Arbitration Commission on Yugoslavia, 1996.

[35] Opinion No. 2, 11. januar 1992.

[36] Sí grein 27 í 1966 seminginum, nota 23.

Hertil er at siga, at vit ofta hava lyndi at gloyma, at heimurin og teir trupulleikar, mong av heimsins fólkum hava at dragast við, mangan eru nógv fløktari, enn vit geva okkum far um. Harafturat kemur, at tað sjáldan ber til at finna einfald svør og einfaldar loysnir á grundleggjandi ósemjum tjóða og ríkja millum. Tað, sum júst nú hendir í støðum sum Jugoslavia, Tetjenia og Ísrael fyri bert at nevna hesi dømi av mongum, átti at mint okkum á hetta.

Tað er eisini ein álvarslig misskiljing at halda, at allar súðir eru syftar, av tí at tað stendur í fjøld av altjóða sáttmálum og skjølum, at "allar tjóðir hava sjálvsavgerðarrætt". Tílíkar orðingar mugu altíð lesast og skiljast í tí samanhangi, tær eru orðaðar í, og við fyriliti fyri søguligu og politisku gongdini, tær eru vorðnar til í.

Grundin til at tað hevur so stóran áhuga at gera av um ein ávísur einstaklingahópur er eitt fólk (tjóð) ella ein minniluti, er sjálvsagt tann, at altjóðarættur veitir fólkinum ávís rættindi, sum minnilutarnir ikki hava. Tað er serliga sjálvsavgerðarrætturin, ið ger munin. Og tá havt verður í huga, hvussu umstríddur hesin rætturin er, er ikki ilt at skilja, at nógvir minnilutabólkar vilja gera galdandi, at teir standa mát sum fólk.

Tá spurningurin um føroyingar eru egin tjóð skal verða svaraður, mugu hesi viðurskifti verða havd í huga. Tey grundleggjandi tjóðareyðkennini sambært altjóðarætti eru, sum nevnt omanfyri, serstakt landaøki, egið mál og egin mentan eins og serstøk søga. Harafturat kemur tað subjektiva kravið um ein felags vilja til at vera eitt egið fólk.

Hyggja vit við hesum krøvum í huga at føroyska veruleikanum, verður støðan hendan:

- Føroyingar búgva á vælavmarkaðum landaøki, fjart frá restini av tí ríki, vit eru partur av.
- Løgfrøðiliga hava Føroyar fyrndargamla serstøðu og hava ongantíð havt fulla lógareind við Danmark.
- Umsitingarliga hava Føroyar altíð havt serstøðu í norska og seinni danska ríkinum.
- Politiskt er munurin Føroya og Danmarkar millum eyðsýndur, bæði hvat politiskum stovnum og floksbýti viðvíkur. Hóast føroyingar í hálvtannaðhundrað ár hava verið umboðaðir í danska lóggávutinginum, hava hesi umboð altíð verið vald annaðhvørt sum einstaklingar ella

sum umboð fyri føroyskar politiskar flokkar og ikki fyri danskar flokkar.
- Búskaparliga hevur allar tíðir verið, og er framvegis, alstórur munur Føroya og Danmarkar millum.
- Søguliga hava Føroyar heilt fram til byrjan av 19. øld havt meira til felags við Noregi enn við Danmark, og eisini í nýggjari tíð hevur søgugongdin verið ólík í londunum báðum.
- Málsligi og mentunarligi skilnaðurin er eyðsýndur við ymiskum tungumálum og øðrum tjóðareyðkennum.
- At føroyingar harumframt allar tíðir hava kent seg sum egið fólk og framvegis gera tað er ein sannroynd, sum eingin man ivast í.

Samanumtikið kann niðurstøðan tí ikki vera onnur, enn at føroyingar í fult mát lúka krøvini sambært altjóðarætti til at bera tjóðarheiti.

At føroyingar eru so hepnir at búgva fyri seg á so vælavmarkaðum landaøki er helst størsti fyrimunurin samanborið við mong onnur fólk, ið óivað lúka flestu av hinum treytunum eins væl og vit[37]. Eitt nú kurdar, ið uttan iva eru eitt egið fólk, men búgva spjaddir millum fleiri ríki, hava neyvan stórar møguleikar at fáa síni krøv um egið ríki lokin. Sama er galdandi fyri mong fólk, ið búgva tætt saman við meirilutafólkinum í einum ríki og einki serstakt, avmarkað øki hava fyri seg sjálv.

Fortreytirnar um egið mál, mentan og søgu er neyvan neyðugt at viðgera. At tær eru loknar man tykjast eyðsæð. Tó skulu nøkur orð verða søgd um viljan til at vera og framvegis verða verandi eitt egið fólk. Renan legði sum nevnt omanfyri einans dent á hesa subjektivu treytina, sum vit kanska kunnu nevna tjóðarviljan[38], og sum Renan sammetti við eina dagliga fólkaatkvøðu. At føroyingar eins og flestøll fólk eru ósamdir um mangt og hvat er einki at siga til, men av og á kunnu kanska grundir vera at halda, at vit framvegis eru oyggjabúgvar heldur enn landsmenn.

Søguliga man tað vera nærum eindømi millum tjóðir, at so stór ósemja var millum føroyingar um eitt nú málið og tess frama, eins og flaggið fekk somu

[37] Føroyingar lúka enntá treytina um, at sjógvur skal vera millum seg og miðveldið (the salt-water theory), ein treyt, ið varð uppfunnin fyri at royna at grundgeva munin millum hjálandafólk handan hav og onnur fólk, men sum kortini ongantíð fekk serliga undirtøku.

[38] Her verður ikki hugsað um fólkaviljan í teirri politisku, fólkaræðisligu merkingini, at meirilutin ræður, men heldur um ein samfeldan vilja til at vera ein tjóð, hóast alt sum skilir, og at gjalda tann prísin tað kann kosta.

lagnu. At bygdir og oyggjar hava hug at draga til sín sum mest er bara nattúrligt, men tá tað bar til í nógv ár hjá vælkendum politikara at halda uppá, at okkara landssjúkrahús var í Keypmannahavn og ikki í Tórshavn, og tá borgmeistari í meðalstórum býi uttan mótmæli fyri fáum árum síðani kundi siga alment, at hann heldur hevði farið til Danmarkar at søkja sær arbeiði enn koyrt tann hálva tíman til grannabýin, er tað ein spurningur, um vit í nóg stóran mun hava skilt, at tað kann kosta eitt sindur at vera tjóð. Her verður ikki hugsað um stríðið millum bý og bygd ella miðstaðarøki og útjaðara, tað er vælkent fyribrigdi í øllum londum og heilt nattúrligt, men hinvegin hava vit neyvan ráð at gloyma, at prísurin fyri samfelagið er størri í dag av ov stórum klandri, tí uppgávurnar eru mangan so stórar og dýrar, at neyðugt er við størri samstarvshuga enn fyrr, tá hvør bygd kláraði tað mesta sjálv.

Hóast tað kanska hevur meira ímyndarligan týdning at tað eydnaðist at fáa egið pass fyri hálvthundrað árum síðani, eiga vit ikki heilt at gloyma at ímyndirnar eisini hava sín týdning sum tjóðareyðkenni. Tað er tí ikki heilt samsvarandi við viljan at verða verandi egin tjóð, at ein støðugt størri partur av fólkinum, og tá helst enntá ungfólkinum, sigst at kjósa sær annað pass, heldur enn at tola teir smámunarligu trupulleikarnar, ið sigast at standast av okkara egna passi.

At føroyingar eru egin tjóð merkir í altjóða høpi, at vit hava tjóðarrættindi, heruppí fyrst og fremst sjálvsavgerðarrætt. Hvat liggur í hesum og hvussu langt hesin rætturin røkkur er eitt annað mál, ið ikki verður viðgjørt á hesum sinni. Tað er nógv sagt og skrivað um hetta evnið, og helst er líka ilt at siga nógv við avgjørdari vissu um hendan spurningin eins og um so mangar aðrar spurningar, tá ræður um altjóðarætt.