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Sjálvræði og Sjómark

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Kári á Rógvi, ritstjóri

Og læra teir siðir og lógir

Sambært brestiskvæði ætlar Gøtutróndur fyrst at drepa høvdingasynirnar, Sigmund og Tórir. Men síðani gongur hann undir at ala teir upp 'og læra teir siðir og lógir'.

At læra føroyskar siðir og lógir, at ráða og greina reglur og ráð, ið einans galda í Føroyum ber ikki til í dag á nakran skipaðan hátt. Í øllum førum neyvan á sama støði sum í Gøtu á sinni, har vit kunnu ætla at tann mæti høvdingin á miðvísan hátt kundi greiða og greina føroyska lóg.

Í grannalandinum fyri vestan var siður, og kann vera enn, at fríbóndasynir dugdu brot úr lógbókunum uttanat og skuldu siga tey fram, áðrenn teir sluppu til borðs. Lesa vit íslendsku søgurnar, frætta vit um lógkunnleika á høgum støði. Vit kunnu ætla, at í Gøtu og í Skúvoy vóru høvdingarnir lógkønir, og teir bæði dugdu og noyddist at læra teir yngru siðir og lógir.

Meðan fortreytin fyri fólkinum, tjóðini eru felags kenslur og fatan, so man fortreytin fyri landinum, politisku eindini vera stjórnarskipan og lóg.

Hvat tilknýti hetta landið og hetta fólkið skuldu hava til onnur lond var ein stríðsspurningur, tá Sigmundur lærdi lóg hjá Tróndi. Og um sama spurning er mikið stríð enn.

Men tað, sum tóktist sjálvsagt hjá bæði samveldissinnaða Sigmundi og fullveldishugaða Tróndi var, at føroyingar høvdu egnar siðir og lógir. Rættir menn kendu hesar siðir og lógir. Teir frægastu sótu á tingi. Antin og rættaðu lóg ella lýddu á rættarmál hjá øðrum. Men bæði lógsøgusiðurin á tingi og lóglæra hjá høvdingunum hava tryggjað tað neyðugu greiningina og fatanina av dómunum.

At Gøtutróndur ferðaðist á ting í øðrum londum og tók orðið har, sigur okkum, at føroyingar helst høvdu eina fatan av løgdømum. Føroyar vóru land fyri seg, men føroyingar tóku við lógum og dómum úr øðrum londum. At vísa til útlendskan rætt er ikki sjálvsamt í tingbókunum úr miðøldini.

At Føroyar altíð hava verið og eru eitt løgdømi fyri seg merkir, at tørvurin er stórur á kunnleika til lóg, bæði samtykta lóg og lóg í siðvenju. Lógdátugrunnurin eins og dómsavn og avgerðasøvn er fortreytin fyri kunnleika til lóg. Lógarritið og ein lógskúli fortreytin fyri fatan og greiðnan av lóg.

Tíbetur er lógarritið nú skipað í fasta legu. Ætlan okkara er, at nýggjur blaðstjóri tekur við á hvørjum ári saman við eini blaðstjórn, har summi nýggj taka við, onnur roynd halda fram. Við lógarritinum fer at bera til at læra Føroya siðir og lógir aftur.

Føroyar hava í túsund ár verið egið rættarøkið men undir ávirkan uttaneftir. Føroysk lóg og útlendsk sleingjast hvør um aðra og ivi kann ofta vera um, hvør lóg er lóg á landi.

Fyrra greinin hesuferð er um sjálvstøðu og fullveldi. Sum framhald av greinunum í fyrsta ritinum viðger Bárður Larsen hesi bæði hugtøkini. Nú geva fólk sær ov lítið far um slík hugtøk, men nýta tey heldur at brigsla við. Tá er tað betri at skilja uppruna og týdning.

Næsta ritið fer væntandi at snúgva seg um olju og rætt. Vit royndarbora í tað temaið við eini grein hjá Ullu Svarrer Wang um Rockall-økið. Nú oljuleiting ber til langt frá landi skotin, kunnu vit spyrja hvar markið gongur millum landa á slíkum fjarðum leiðum.

Hesi bæði fyrstu ritini og tey, ið leggjast afturat, fara vónandi at vera støði undir lógskúla í Føroyum. Okkum tørvar ikki alla útbúgvingina, sjálvur Sigmundur lærdi eisini í øðrum landi. Uttan heldur tørvar okkum at teir gomlu og vísu her á landi undirvísa á einum meistaraskeiði. Hetta skeiðið kunnu so lærd og roynd fólk taka eftir einum ári ella tveimum.

Greinarnar í hesi riti og hinum verða tí vónandi grundarlagið undir fakum á einum lógskúla, har vit aftur kunnu læra siðir og lógir.

Kári á Rógvi, editor-in-chief

And teach them practice and law

It is told in Faroese songs that the chieftain Tróndur of Gøta intended to kill the sons of his two main rivals after their fathers had been slain in battle. When faced with strong opposition, the chieftain is said to have brought them home to raise 'and teach them practice and laws'.

To study Faroese legal practice and laws, to read law only applicable in the Faroes, in systematic way is not possible in our time. In any case not on the same level as in Gøta in ancient times, where the headman, probably, in a focused and determined way could teach and analyse law.

In our neighbour country to the west it was customary for young freeholders' sons to be taught to recite the old law books at the table before eating. Reading the Icelandic sagas gives the distinct impression of legal knowledge of a high standard. In all likelihood, the Faroese strongmen were just as knowledgeable and both could and had to teach the youngsters practice and law.

Just as a common sense of identity is the prerequisite for the sense of nationhood, the legal entity is dependant on constitution and law. What affiliation the Faroese as a nation and as a legal entity should have to other countries, was a contested question in ancient times and is still so today.

But, what united the battling chiefs of old, unionists as well as separatists, appeared to be an understanding that the Faroese have their own practices and laws. The best men of the land spent time sitting on the ting – partly assemblies, partly courts of law. Reading the statutes aloud and teaching law

at the chieftain's residence ensured both knowledge and understanding of the law as evident in practice.

As the Faroes always have and still do constitute a distinct jurisdiction, the need for knowledge and understanding of both practice and law cannot be underestimated. The need for knowledge will be met by the recently established Statute Database, available on the internet, and by the planned databases on judgements, administrative decisions and tribunal cases. The need for analysis and understanding will have to be met by scholarly writing and a law school of some sort.

Luckily, the Faroese law review is now well established, providing a forum for legal debate and analysis. What we now need is a Faroese law school. Plans have been hatchet to establish a Master degree in Faroese law. As a postgraduate program, Faroese law can be taught by practicing lawyers and visiting scholar alike without numerous full-time faculty.

The first article, by Bárður Larsen, in this issue is concerned with the concepts of independence and sovereignty. These are very fundamental concepts that have been misused somewhat in the political debate. Defining the meaning and origin of such concepts is vital for the academic debate as well as the political.

The second article, by Ulla Svarrer Wang, deals with delimitation of international borders on the Rockall Plateau. With the improvements of recent years in drilling techniques, hitherto undivided underground areas are now showing potential for exploitation. Our next issue will presumably be dedicated to oil and gas related issues. This interesting piece on the future prospects of Faroese hydrocarbon pursuits will be initial drilling exercise into the oil and gas issues.

Hopefully, the first two law reviews and those to come will provide the basis for at law school in the Faroes. We do not need the undergraduate teaching, even our chiefs of old acquired knowledge abroad. Rather, the old and wise in our land should teach their knowledge to others on a postgraduate basis.

The Faroese law review will, thus, contain the seeds for the Faroese to be taught the practice and law of land again.

Aðalfundur og nýggj ritstjórn

Árligi aðalfundurin hjá Føroyskum Lógar Riti var hildin 20 juli. Fundurin valdi nýggja ritstjórn eftir lóg felagsins.

Brot úr lógini:

§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.

Nýggja ritstjórnin tekur við ábyrgd frá riti 3 í fyrsta árgangi (vol. 1 no. 3).

Í ritstjórnini eru nú:

A. Birta Biskopstø
B. Bárður Larsen
B. Herborg Sloan
C. Kári á Rógvi
D. Sigmundur Isfeld
E. Súsanna Leo
F. Søgu og Samfelagsdeildin hevur ikki valt sítt umboð enn.

Bárður Larsen

Fullveldi sum ríkisrættarlig sjálvstøða

English summary
Title: Sovereignty as Constitutional Independence. The article is an effort to show how the term sovereignty is used to describe different political and legal phenomena. The author stresses the importance of differentiating between the concept of sovereignty and the concept of independence; those are not congruent terms, and much confusion arises from the mixing-up of the two. The author explains that sovereignty is a qualitative term, because a given political entity either is or is not sovereign, while independence is a quantitative term, as a given political entity may be more or less independent legally, politically, economically and so forth. He illustrates by concrete empirical examples how the term sovereignty, when used incorrectly, can be a useful tool in the hands of politicians carrying certain hidden agendas. The author points out that one meaning of the term sovereignty is more fundamental than others; i.e. sovereignty as constitutional independence. In conclusion the author repudiates, what he describes as "the fashionable notion" that sovereignty as a property of states

should have lost its importance as a cornerstone of the international community.

Føroyskt úrtak
Í greinini verður gjørd ein roynd at vísa á, hvussu orðið fullveldi verður nýtt um ymisk politisk og rættarlig fyribrigdi. Høvundin metir tað vera av stórum týdningi at halda hugtøkini fullveldi og sjálvstøðu hvør sær, skulu tey verða skilt rætt. Við ítøkiligum dømi verður víst á, at verður farið lætt um ymsar merkingar, kann fullveldi vera hent amboð í hondunum á fólki við onkrari ávísari politiskari dagsskrá. Gjøgnum greinina gongur eisini aftur, at ein týdningur av fullveldinum er meira grundleggjandi enn aðrir; tað er fullveldi, ið er ein fylgja av ríkisrættarligari sjálvstøðu. At enda verður nomið við mótan at siga fullveldi hava mist sín týdning sum grundarsteinur í altjóða samfelagnum.

Inngangur *

Í hesi grein skulu nakrar, eftir míni meining, serliga týdningarmiklar síður av fullveldishugtakinum verða lýstar. Ein orsøk til at eg havi mett hetta evni at vera áhugavert er, at tað er alt ov sjáldan, at ymsu týdningarnir verða útgreinaðir av einum so týdningarmiklum politiskum og løgfrøðiligum hugtaki sum fullveldi. Tá talan er um eitt ógvuliga víðfevnt evni, er øll orsøk at vera lítilætin. Summi evni, ið her verða viðgjørd, eru soleiðis so breið og so nógv viðgjørd í bókmentum gjøgnum tíðina, at ein bert fær komið stutt inn á tey á ein hátt, ið neyvan kann vera nøktandi. Eisini er talan um eitt so umstrítt evni, at ikki slepst undan, at onnur vilja halda heilt øðrvísi um nógv, ið her verður borið fram. Talan er serliga um eina løgfrøðiliga lýsing av fullveldishugtakinum, sum vísir á ymsar týdningar, men tó hevur fullveldi í merkingini ríkisrættarlig sjálvstøða sum miðdepil. Hartil verður eisini stutt komið inn á, hvussu fullveldishugtakið verður nýtt politiskt. At enda verður nomið við fyribrigdið at siga fullveldi hava mist sína støðu sum grundarsteinur í altjóðarætti og altjóða politikki.

Ríkis - og fullveldishugtakið

Nógv hevur verið skrivað um fullveldishugtakið gjøgnum tíðina og nógvar ósemjur hava verið. Men eitt tykist at standa rímiliga fast. Tað er, at fullveldi er nakað, ið fylgir av tí at vera ríki (statur) og at bert ríki kunnu

* Eg takki Sigmundi Isfeld fyri at hava skrivað enskan samandrátt og fyri góð ráð um ábøtur bæði til mál og innihald.

hava fullveldi.[1] Fullveldishugtakið og ríkishugtakið eru soleiðis óloysiliga samantvinnað, og tað ber ikki til at vita, hvat fullveldi er, uttan eisini at vita, hvat eitt ríki er. Tí verða fullveldishugtakið og ríkishugtakið í stóran mun viðgjørd undir einum í hesi grein.

Ríkishugtakið

Ofta verður tosað um ríki og fullveldi í altjóðarættarligum høpi. Hetta hevur, sum komið verður inn á seinni, sína partvísa orsøk í, at ávísir ástøðingar hava hildið, at tað er í altjóðarætti, at ríkini eru skapað, at tað er her, keldan til teirra tilveru liggur. Hetta er neyvan rætt. Altjóðarættur er ein rættarskipan, ið er uppstaðin sum svar uppá ein tørv fyri samveru og samstarvi millum ríki, sum longu vóru har frammanundan.[2] Støðan er sostatt tann øvugta. Tað er í ríkinum (ríkisrættinum) og fullveldinum, at altjóðarættur hevur sína keldu. Sum komið skal vera til seinni, er tað av stórum týdningi fyri at skilja munin millum fullveldi og sjálvstøðu *(independence)*, at ein ger sær greitt, at fullveldið hevur sína keldu í ríkinum (ríkisrættinum).

Hóast ríkishugtakið ikki kemur frá altjóðarætti, so hevur tað, sum ábent omanfyri, verið gjørd ein roynd so at siga at flyta tað yvir í altjóðarætt og greina tað har. Tí finna vit eisini kendastu lýsingina av ríkishugtakinum í einum altjóðarættarligum sáttmála, nevniliga Montevideosáttmálanum frá 1933 um rættindi og skyldur hjá ríkjum:

Montevideo Convention on Rights and Duties of states art. 1: "The State as a person of internationational law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states."

Her skal ikki vera gjørt so nógv við hesi einstøku krøvini. Tey trý fyrstu eru rættiliga sjálvsøgd. Tó skal sigast, at krøvini til (a) fastbúgvandi fólk og (b) definerað landaøki ikki eru strong. Heldur ikki kann ov nógv leggjast í kravið um eina stjórn eftir (c). Helst krevst bert eitt ella annað slag av einum stjórnarvaldi, ið ikki verður avmarkað til útinnandi vald, men skal skiljast

[1] Hurst Hannum, "Autonomy, Sovereignty, and Self-Determination," 1996 (Hannum 1996) s. 15.

[2] Ole Spiermann, "Moderne folkeret" 1999, (Spiermann 1999) kap. 1. Og s. 159, 171-172 og 205-206
og Alan James, "Sovereign Statehood – The Basis of International Society" 1986 (James 1986) s. 40 og 146.

sum stjórnarvald sum heild.[3] Av serligum áhuga her er at skilja millum ásetingarnar í Montevideosáttmálanum (a) - (c) ímóti (d). Mótvegis (d) eru (a) - (c) grundleggjandi krøv, ið leingi hevur verið semja um. Kendi týski løgfrøðingurin Georg Jellinek kallaði hetta læruna um tey trý elementini, *"Dreielementen Lehre"*.[4] Fyrr var vanligt at vísa til hesi trý krøvini, tá ríkið bleiv lýst. Hesi eru eisini nøktandi, tá hugsað verður um, at ein politisk eind skal kunna virka sum ríki heima hjá sær sjálvum, hava ríkisrættarligt fullveldi. Við tíðini fóru menn tó at tosa um eitt fjórða krav. Hetta var, at politiska eindin hartil skuldi vera sjálvstøðug ímóti umheiminum *(independent)*.[5] Ásetingin í grein 1, bókstavi (d) í Montevideosáttmálanum kann skiljast í ljósinum av hesum fjórða kravi.[6] Sum greitt frá niðanfyri, er hetta fjórða kravið tað, ið skal til um ein eind altjóðarættarliga (úteftir) skal vera mett sum eitt ríki, hava altjóðarættarligt fullveldi, um fullveldi yvirhøvur er rætta heitið fyri hesa støðuna.

Fullveldishugtakið

Í gomlum døgum bleiv fullveldi ofta sett í samband við ein ítøkiligan persón, ið sum valdsharri ella fúrsti hevði evsta og endaliga valdið í einu ríki. Framvegis hoyrist onkuntíð um fullveldi sum fólkafullveldi (fólkasuverenitetur) ella tingsfullveldi (parlamentssuverenitetur). Og framvegis gevur tað eisini meining at kjakast um, hjá hvørjum persóni ella stovni í einum ríki, fullveldi liggur.[7] Liggur t.d. mest grundleggjandi valdið í Danmark hjá fólkinum, stjórnini og fólkatinginum ella kanska grundlógargevaranum? Spurningurin um, hvar fullveldi meira ítøkiliga liggur hevur at gera við fullveldi ella endaligt vald *inni í* eini politiskari eind og er tí heilt øðrvísi enn spurningurin um, hvørt ein ávís politisk eind *í sær sjálvari* hevur endaligt vald. Hetta meira ítøkiliga fullveldishugtakið er av einum slagi, sum liggur heilt uttanfyri fullveldishugtakið í hesi grein. Her verður meint við ein í dag meira vanligan týdning av fullveldishugtakinum, sum er tann serligi kvalitetur av valdi, ið er ein fyritreyt fyri at vera ein

[3] Sí Spiermann 1999, s. 173-77.

[4] Sí Krystyna Marek " Identity and Continuity of States in Public International Law" 1968, (Marek 1968) s. 183 um læruna hjá Jellinek.

[5] Sí Alfred M. Kamanda, "A Study of The Legal Status of Protectorates in Public International Law" 1961, (Kamanda, 1961) s. 177.

[6] Sí t.d. Ian Brownlie, "Principles of Public International Law" 5 ed. 1998, s. 71.

[7] T.d. James 1986, s. 51 og Stanley I. Benn, "The Uses of Sovereignty", s. 68 í W. J. Stankiewicz (red) "In Defense of Sovereignty" 1969 (Stankiewicz 1969). Soleiðis er kjak um, hvar fullveldið meira ítøkiliga liggur framvegis vanligt innan politiska heimspeki og fólkaræðisástoði. Eitt nú er enn vanligt í USA at nýta fullveldi í hesi merking, tá gjørt verður vart við, at endaliga valdið liggur hjá fólkinum heldur enn tess umboðum.

javntsettur viðleikari (aktørur) í altjóða samfelagnum, sum bert ein serstøk óítøkilig (abstrakt) politisk eind, ríkið, hevur.[8]

Tað kundi verið hóskandi at byrja fullveldislýsingina við at endurtaka ein klassikara, nevniliga tað, dómarin í fasta altjóða dómstólinum PCIJ, Anzilotti segði í málinum um ta ætlaðu tollsamgonguna millum Týskland og Eysturríki í 1931. Týskland hevði í grein 80 í Versaillessáttmálanum bundið seg til at virða eysturríska sjálvstøðu, meðan Eysturríki sambært grein 88 í friðarsáttmálanum frá Saint-Germain hevði átikið sær ikki at koma sínari sjálvstøðu í vanda (*"compromise her independence"*) uttan loyvi frá Ráðnum í Fólkasamgonguni ella í stríð við frumskjal (*protokol*) nr. 1 (undirritað í Genéve í oktober 1922) *"to give any State a special régime or exclusive advantages calculated to threaten this independence"*. Anzilotti segði her um tað at hava sjálvstøðu: [9]

...the independence of Austria within the meaning of Article 88 is nothing else but the existence of Austria, within the frontiers laid down by the treaty of Saint-Germain, as a separate state and not subject to the authority of any other State or group of States. Independence as thus understood is really no more than the normal condition of States according to international law; it may also be described as sovereignty (suprema potestas), or external sovereignty by which is meant that the state has over it no other authority than that of international law.[10]

Henda lýsingin av sjálvstøðu hevur tvey lið. Fyrst má ríkið vera leyst *(separate)* av øðrum ríkjum. Hetta vil siga, at rættarskipanin (ríkisrætturin) stendur einsamøll og ikki er bundin í einum ríkisrættarligum felagsskapi, sum tað er kent frá samveldisstatum. Tað sum liggur í hesum er sostatt, at ríkið bert er bundið av altjóðarætti og ikki av ríkisrætti, *"has over it no other*

[8] Sí eisini viðmerkingarnar á síðu 7. Annars varð hendan broytingin, har fullveldishugtakið fer frá at verða sett í samband við einstakan persón ella stovn til heldur at verða tengt at ríkinum sum heild, fullført fyri umleið tveimum øldum síðani við heimspekinginum Hegel. Hon er vorðin nevnd "koperniska viðvendið", tí talan var um at venda gomlu fatanini á høvdið. Sí Ole Spiermann "Enten & Eller – Studier i suverænitetsbegreber" 1995 (Spiermann 1995) s. 87ff. Hetta merkir tó ikki, at fullveldisríkini bert hava um tveyhundrað ár á baki, men bert, at hugsanin um endaligt vald, fullveldi, áðrenn hetta mest snúið seg um meira ítøkiligt vald *í einum ríki*, meðan tað eftir hetta meira hevur verið vanligt at hugsa um *sjálvt ríkið* í hesum sambandi.

[9] Hóast hetta er ein lýsing av sjálvstøðu (independence), so er tað eisini ein lýsing av fullveldinum, tí síðstnevnda er ein treyt fyri fyrstnevnda.

[10] PCIJ Series A/B No. 41 (1931), s. 57.

authority than that of international law". At ríkið bert er bundið av altjóðarætti og ikki ríkisrætti kann eisini kallast *ríkissrættarlig sjálvstøða,* tí ríkið sum nevnt hevur eina sjálvstøðuga rættarskipan.[11] Í øðrum lagi má ríkið ikki vera undir valdinum hjá nøkrum øðrum ríki, "*not subject to the authority of any other State or group of States*". Hetta seinna sigur ikki í sær sjálvum so nógv um fullveldi sum um sjálvstøðu.

Hóast lýsingin hjá Anzilotti er heldur almenn og óítøkilig, so lýsa hesi bæði liðini, hvat ið skal til fyri at ein politisk eind løgfrøðiliga kann vera fult sjálvtøðug; tað vil siga at hava bæði fullveldi og vera sjálvstøðugt í altjóðarætti. Men tað hevur eisini verið havt at hesi lýsing, tí hon ikki ger mun ímillum (serliga útlendis) fullveldi og sjálvstøðu.[12]

Fullveldi og sjálvstøða

Tá tosað varð um fullveldi bleiv upprunaliga meint við innlendis fullveldi. Tað er inneftir at hava evsta vald yvir landi og fólki. Útinna myndugleikarnir hinvegin valdið yvir landi og fólki mótvegis umheiminum, er talan um útlendis fullveldi. Fullveldi, serliga útlendis fullveldi, hevur tætt samband við sjálvstøðu. Fullveldi og sjálvstøða verða soleiðis ofta nýtt hvørt um annað, sum talan var um sama fyribrigdi. Men tað er ein heilt prinsipiellur munur.

Ein greiður máti at lýsa munin millum fullveldi og sjálvstøðu er at ímynda sær, at bert eitt ríki var í øllum heiminum. Hetta ríki vildi havt fullveldi, tí myndugleikarnir høvdu fult vald á landøkinum og fólkinum. Men tað hevði ikki givið meining at sagt, at hetta ríki var sjálvstøðugt, tí onki annað ríki var til, ið tað kundi hoyrt undir. Tá støðan nú er tann, at fjøld av ríkjum eru til, sum mugu samstarva á onkran hátt, so uppstendur spurningurin, hvat vald hesi hava móti hvørjum øðrum. Her er tað vanliga so, at útlendis vald er ein náttúrlig leinging av fullveldinum (innlendis). Tað vald, myndugleikarnir hava inneftir, hava teir eisini náttúrliga úteftir. Hetta kann eisini sigast á tann hátt, at fullveldi er eitt *eindarhugtak*, tí keldan til bæði fullveldi úteftir og inneftir liggur á sama stað, sum er ríkissrætturin. Soleiðis skilt kann fullveldi ikki skiljast millum eina útlendis og eina innlendis síðu, tí hetta eru tvær síður av somu søk, júst sum tvær síður av eini mynt eru tað.[13]

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[11] James 1986, kallar hetta "Constitutional Independence". Sí t.d. s. 24-25 og annars gjøgnum alla bókina. Vert er at leggja til merkis, at ríkisrættarlig sjálvstøða ikki er tað sama sum sjálvstøða í altjóðarætti.

[12] Sí Kamanda 1961, s. 179.

[13] Sí James, 1986 s. 50-57.

Ofta verður eisini tosað um sjálvstøðu og útlendis fullveldi sum eitt og tað sama. Ein orsøk til hetta kann vera, at ikki verður skilt millum fullveldi sum kvalitativt og kvantitativt hugtak. Fullveldi, ið er avleiðing av ríkisrættarligari sjálvstøðu, er ein kvalitetur, eitt ríki antin hevur ella ikki. Her kunnu innara og ytra síðan av fullveldinum ikki skiljast sundur. Útlendis fullveldi kann ikki takast upp við rót, uttan at fullveldi verður burtur og ríkið missur sína støðu sum ríki við fullveldi. Øðrvísi við sjálvstøðuni í altjóðarætti. Hon er kvantitativ[14]. Av tí at fullveldi hevur sína keldu í ríkisrættinum og ikki altjóðarætti, so er tað ikki upp til altjóðarætt at avgera, hvat ríki hevur fullveldi. Tað stig av luttøku í altjóða samfelagnum, eitt ríki er á, eigur í prinsippinum ikki at ávirka fullveldið. Næstan øll ríki eru tó sjálvstøðug, og hetta verður tí roknað sum vanliga støðan fyri eitt ríki.

Men ongin sigur, at hetta noyðist at vera so. Eitt ríki kann velja at lata uttanríkisvald sítt upp í hendurnar á øðrum ríki. Hetta ríki vil tá í størri ella minni mun ikki luttaka í altjóða samfelagnum. Dømi um slík ríki eru ávís av teimum fyrr so væl kendu varðlondunum *(protected states)* t.d. Marokko, Tunis og Kambodja. Hóast hesi ríki høvdu lítið vald og í eygunum á umheiminum ofta vórðu sammett við verulig hjálond, sum vóru partar av umveldinum hjá "móðurríkinum", so høvdu tey sjálvstøðuga rættarskipan og tí fullveldi. Við sáttmála høvdu teir latið síni uttanríkismál upp í hendurnar á "móðurríkinum". Men tað er ikki tað sama sum at siga, at keldan til teirra tilveru lá hjá "móðurríkinum". Keldan til teirra vald lá hjá teimum sjálvum og ikki nakrari fremmandari politiskari eind, tí teirra rættarskipan var ikki avleidd, men upprunalig (originer). Henda fatan av muninum millum fullveldi og sjálvstøðu er eisini stuðlað av fasta altjóða dómstólinum PCIJ og altjóða dómstólinum ICJ.[15]

Ástøðiliga ber væl til at fata munin millum eitt ósjálvstøðugt ríki bert við fullveldi og eitt ríki eisini við sjálvstøðu sum ein bert stigvísan (kvantitativan) mun. Ósjálvstøðuga ríkið hevur tó eisini útlendis fullveldi. Hetta er tí, at fullveldi er kvalitativt. Antin er tað har ella ikki. Ríkið hevur við sáttmála avmarkað sítt útlendis vald, sum tað ríkisrættarliga altíð kann

[14] Øðrvísi t.d. J. A. Andrews "The Concept of Statehood and the Acquisition of Territory in the Nineteenth Century", í The Law Quarterly Review 1978 s. 424-425, har fullveldi verður sagt at vera relativt, meðan sjálvstøða hinvegin verður søgd at vera eitt absolutt hugtak, ið antin er hjá ella frá.
[15] Sí Kamanda 1961, s. 183.

endurreisa.[16] Men uppgevur eitt ríki størri part enn eitt ávíst - tað er ringt at siga neyvt hvussu nógv[17] - av sínum útlendis valdi, verður tað ikki longur mett at vera fullur limur í altjóða samfelagnum. Altjóðarættarliga verður tað tá ikki veruliga mett sum ríki, og hetta má í praksis sigast at merkja eina grundleggjandi øðrvísi støðu fyri ríkið. Hetta kemur eitt nú til sjóndar á tann hátt, at ST-stovningarsáttmálin ikki nevnir hesar eindir ósjálvstøðug ríki *(dependent states)*, men umveldi *(territory)*, ið høvdu sjálvsavgerðarrætt á sama hátt sum tey veruligu hjálondini. Heldur ikki verður hildið, at ósjálvstøðug ríki kunnu gerast limir í ST.

Tað skal verða gjørt vart við, at fleiri løgfrøðingar hava verið ósamdir við hesa fatan, at eitt ríki kann vera til og hava fullveldi, uttan eisini at vera sjálvstøðugt. Hans Kelsen var ein tann kendasti, men eisini hevur henda fatan verið vanlig í altjóðarættarligum verkum um ríkishugtakið. Meining Kelsens er í stuttum, at altjóðarættur er yvir ríkisrættinum, og at ríkisrætturin, og við honum fullveldið, hevur sína keldu í altjóðarætti. Tá so fullveldið kemur frá altjóðarætti kann ongin politisk eind, sum ikki er sjálvstøðug í altjóðarætti hava fullveldi, men bert vera partur av ríkisrættinum hjá einum sjálvstøðugum ríki.[18] Eftir hesu fatan hevur altjóðarættarsamfelagið eina sjálvstøðuga tilveru og er kelda til ríkini.[19]

Henda fatan Kelsens er í stríð við gomlu læruna sum t.d. Georg Jellinek hevði, og sum bæði altjóða- og fasti altjóða dómstólurin hava havt. Henda fatan, sum sigur, at ríkini eru kelda til altjóðarætt heldur enn øvugt er helst rættari.[20] Tí gevur tað eisinj meining at tosa um, at ríki eru til, hóast ikki sjálvstøðug í altjóðarætti. Hetta samsvarar eisini betri við tann søguliga veruleika, at ríkini vóru til upprunaliga, meðan altjóðarættur so líðandi er vaksin fram sum ein avleidd rættarskipan.

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[16] Soleiðis eisini Ivan Bernier "International Legal Aspects of Federalism", London 1973, (Bernier 1973) s. 129.

[17] Hetta viðger James Crawford í ljósinum av altjóðarættarpraksis í bókini "The Creation of States in International Law", Oxford 1979, (Crawford 1979) serliga s. 48-71.

[18] Sí Hans Kelsen "Principles of International Law" 1966, 2 útg. við Robert W. Tucker, s. 191ff., 575 og 580. Eisini Marek 1968, s. 184-186, sum er eitt av viðhaldsfólkum Kelsens og endurgevur hansara meining so væl.

[19] Tað er hesa fatan Spiermann kallar "folkeret bestemmer suverænitet", sí Spiermann 1999, s. 22, 159, 171-172 og 205-206.

[20] Hetta kallar Spiermann "suverænitet bestemmer folkeret", sí Spiermann 1999, s. 22.

Fyri støðu Føroya í løtuni hevur henda lýsing av muninum millum fullveldi og sjálvstøðu eisini praktiskan áhuga. Ein av teimum loysnum, ið víst hevur verið á í føroyska fullveldiskjakinum, er frælsur felagsskapur *(Assosiated Statehood)*. Henda skipan, sum er íkomin gjøgnum royndir frá ST at avtaka hjálandastøðuna hjá gomlu hjálondunum, kann skiljast sum ein roynd at tillaga skipanina við varðlondunum til politiskar eindir, sum av einhvørjari orsøk skuldu hava eina sjálvstýrisskipan, ið ikki rakk heilt til fulla sjálvstøðu. Henda skipan er sostatt ógvuliga lík støðuni, ávís av gomlu varðlondunum høvdu.[21] Hesi ríki hava eisini fullveldi, men eru ósjálvstøðug, tí altjóðarættarliga sjálvstøðan er latin upp í hendurnar á "móðurríkinum".[22] Einasti veruligi løgfrøðiligi munurin á varðlondunum og londum í frælsum felagsskapi er tann rættur, síðstnevndu hava eftir sáttmálanum til einvíst at uppsiga avtaluna og gerast sjálvstøðug. Nøkur av hesum londum í frælsum felagsskapi hava tó eisini sjálvstøðu. Tá Hvítabók sigur, at summi av hesum londum hava fullveldi og summi ikki, so má tað tulkast so, at Hvítabók, sum eisini er vanligt í altjóðarættarligum bókmentum, ikki skilir ímillum fullveldi og sjálvstøðu.[23]

Í seinastuni hevur verið tosað um, at føroyska grundlógin kann verða sett í gildi uttan at Føroyar hava fingið fullveldi. Hetta má tó ikki hava ta misskiljing við sær, at grundlóg og ríkisrættur ikki eru avgerandi rættarlig fyribrigdi í fullveldishøpi. Tey eru altavgerandi. Kemur føroyska grundlógin í gildi uttan fullveldi, verður tað á tann hátt, at Føroyar samstundis verða bundnar at donsku grundlógini ella donskum ríkisrætti á onkran hátt.[24] Tí skulu Føroyar hava sína sjálvstøðugu grundlóg og ríkisrætt, uttan eisini at vera bundnar at donskum ríkisrætti, so eru tær í hvussu er objektivt í eini fullveldisstøðu. Hetta kann eisini sigast á tann hátt, at eitt ríki ikki bert er eitt

[21] Sí Hannum 1996, s. 17 og James 1986, s. 104.

[22] Alan James kemur tó gjøgnum nakrar ógvuliga tekniskar grundgevingar á s. 104 - 105 til tað niðurstøðu, at lond í frælsum felagsskapi ikki hava ríkisrættarliga sjálvstøðu og tí ikki fullveldi. Grundgevingarnar eru serliga tær, at móðurríkið einvíst kann uppsiga sáttmálan og at undirríkið hinvegin ikki einvíst kann broyta, men bert uppsiga felagsskapin. Tá týdningarmikil viðurskifti í grundlógini hjá undirríkinum sostatt kunnu broytast av fremmandum valdi skal grundlógin ikki vera sjálvstøðug og fullveldi ikki til staðar. Hetta ávirkar tó ikki, at minna landið hevur egnan ríkisrætt og egið landøki og bert er bundið at størra landinum gjøgnum altjóðarættarligan sáttmála. Valdið hjá móðuríkinum (tað einsíðuga) gongur eisini bert út uppá at uppsiga sáttmálan og tí geva størri frælsi til varda landið. Tí kann ein slík grundgeving neyvan góðtakast.

[23] Hvítabók s. 70. Sí eisini s. 94 um sjálvstøðu í ríkishugtakinum.

[24] Tað má viðmerkjast, at tað her er líkamikið, hvørt ríkisrætturin er skrivaður ella á hægri stigi enn vanlig lóggáva.

rættarligt fyribrigdi, men eisini eitt sosialpolitiskt ella sosiologiskt fyribrigdi. Summi vilja halda, at eitt ríki fyrst og fremst er eitt sosiologiskt fyribrigdi, sum tó eisini altíð hevur eina rættarliga síðu.[25] Tá so er, at rættarliga og sosiologiska síðan av ríkishugtakinum fylgjast, so er eisini greitt, at ein eind, ið er partur av øðrum ríki eisini á onkran hátt er undir sama ríkisrætti sum hetta ríki. Eru vit sostatt saman um eitt ríki, so eru vit eisini saman um ríkisrætt. Hyggja vit okkum um í heiminum, síggja vit eisini, at deilríki í samveldisríkjum hava egnan ríkisrætt og grundlóg, meðan tey tó samstundis eisini eru í ríkisrættarligum felagsskapi við hini deilríkini og samveldismyndugleikarnar. Allar aðrar politiskar eindir í heiminum, sum hava egnan ríkisrætt, men ikki samstundis eru í ríkisrættarligum felagsskapi, eru í eini slíkari støðu, at tað kann grundgevast fyri, at tær hava fullveldi.

Fullveldi sum ríkisrættarlig sjálvstøða ella rættarligt frælsi

Longu ein av fedrunum at altjóðarætti, niðurlendingurin Hugo Grotius (1583-1645), skilti millum tveir løgfrøðiligar týdningar av fullveldinum. Hann skilti ímillum almenna, "generella", rættin at ráða (*imperium generale*) og serstaka, "partikulera", rættin at ráða (*imperium proprium*). Almenni rætturin at ráða leggur seg upp at veruliga fullveldinum (*majestas realis*), ið liggur hjá einum ríki ella fólki sum heild. Hinvegin leggur serstaki rætturin at ráða seg upp at persónliga fullveldinum, ið fólkið í einum ríkið ofta vil lána út til eitt nú ein kong ella aðal. Men hetta seinna er júst ikki eitt veruligt fullveldi, tí tað er ikki latið til ognar, men bert til láns.[26] Munurin millum hesi bæði kann eisini skiljast sum hetta at eiga fullveldi mótvegis, hvussu frítt ein kann nýta síni fullveldisrættindi, tí tey kanska eru latin øðrum til láns. Hóast hesir tankar hjá Grotius høvdu at gera við fullveldi inni í einum ríki, so kunnu teir eins væl nýtast um viðurskiftini millum eitt ríki og altjóðarætt. Á føroyskum kunnu vit kalla hetta ávíkavist "alment fullveldi" (*majestas realis* og *imperium generale*) og "serstakt fullveldi" (*majestas personalis* og *imperium proprium*).

Síggja vit burtur frá serliga kjakinum um fullveldi í samveldisríkjum, kunnu vit siga, at hetta almenna fullveldi ikki kann býtast sundur.[27] Hetta fullveldi

[25] Sí Lech Antonowicz, "Definition of State in International Law Doctrine" í The Polish Yearbook of International Law I 1966/67, s. 196.

26 Sí Carl Joachim Friedrich, "The Philosophy of Law in Historical Perspective", 2.útg. Chicago 1963, s. 65 og Spiermann 1995, s. 59.

[27] Tað er tó eisini ivasamt, um fullveldið í samveldisríkjum veruliga er býtt sundur. Summi vilja halda, at bert politiski myndugleikin í samveldisríkjum er sundurbýttur, men ikki fullveldið. Í tí sambandi verður víst á, at fullveldi upprunaliga merkir endaligt vald, og at hvørki deilríki ella samveldismyndugleikar vanliga hava

er nakað, ein politisk eind antin hevur ella ikki. Hetta fullveldi er sostatt kvalitativt og er ein avleiðing av ríkisrættarligari sjálvstøðu. Harafturímóti kann serstakt fullveldi vera skilt sum rættarligt frælsi. Eftir hesum seinna týdningi vil ein og hvør altjóðarættarligur sáttmáli vera ein avmarking í fullveldinum. Hetta er sostatt eitt kvantitativt fullveldishugtak. Men tað er vert at leggja til merkis, at serstakt fullveldi, ella fullveldi sum rættarligt frælsi, ikki kann vera mist, men bert skert, tí ríkið hevur fullveldi í meira vanligu merkingini, nevniliga alment fullveldi.[28]

Kendi Wimbledon-dómurin verður ofta nýttur til at lýsa munin millum serstakt og alment fullveldi. Í hesum máli søgdu týskir myndugleikar frammanfyri PCIJ, at skyldan, ið Versaillessáttmálin legði á Týskland, at halda Kiel-kanalina opna fyri førum frá øllum tjóðum, ið høvdu frið við Týskland, ikki skuldi tulkast bókstavliga, tí ein slík tulking hevði við sær, at Týskland hevði mist ein avgerandi lut av sínum fullveldi. Dómstólurin var tó ikki samdur við týsku myndugleikarnar í hesum og segði, at hann ikki vildi:

"see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing in a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty."[29]

Dómstólurin noktaði ikki fyri, at frælsið hjá Týsklandi var skert á serstøkum øki. Hetta meinti dómstólurin tó ikki vera tað sama sum at uppgeva fullveldið, tí rætturin at gera altjóða avtalur er júst ein eginleiki, ið fylgir av fullveldinum. Í hugaheiminum hjá dómarunum í PCIJ, var fullveldi sostatt kvalitativt sum ríkisrættarlig sjálvstøða og ikki kvantitativt sum rættarligt frælsi.

At orðið fullveldi bæði verður nýtt um tann kvalitativa almenna rættin at ráða og tann serstaka rættin at ráða, sum er kvantitativur, er sjálvsagt ørkymlandi, serliga tá havt verður í huga, at hetta oftast verður gjørt, uttan at tilskila í hvørjum føri talan er um ta eini ella aðru merkingina. Serliga í ES-

sjálvstøðugt vald á grundlógargevandi myndugleikanum. Tí hava tey heldur ikki endaligt vald hvør sær. Um hetta, Bernier 1973, s. 17 - 33.

[28] Um fullveldi sum rættarligt frælsi, James 1986, s. 205ff.

[29] Case of the S. S. Wimbledon, frá 28 juni 1923, PCIJ Series A no. 1 s. 25.

høpi er tað vanligt, at avmarking í valdinum hjá limalondunum verður kallað at lata fullveldi frá sær. Soleiðis kallaði longu danska grundlógarnevndin frá 1946, í sínum álitið frá 1953 (responsum frá Max Sørensen), tað at lata fullveldi frá sær, at núverandi § 20 í grundlógini heimilar, at Danmark letur frá sær slíkt vald, sum annars hoyrir undir ríkisins myndugleikar.[30] Eisini í ES-rættarligum bókmentum verður vanliga tosað um at lata fullveldi frá sær, uttan at siga nakað um, hvat slag av valdi ella fullveldi talan er um.[31] Fullveldistosið í ES høpi knýtir seg tó ikki bert til fullveldi sum rættarligt frælsi, men eisini, og kanska serliga, til fullveldi sum løgdømi, ið verður viðgjørt í næsta parti. Hartil skal nevnast, at fullveldi sum rættarligt frælsi og fullveldi sum løgdømi ofta kunnu vera ring at skilja sundur.

Fullveldi sum løgdømi

Fullveldi sum ríkisrættarlig sjálvstøða, sum í hesi grein verður mett at vera avgerandi, verður eisini álopið av teimum, ið halda, at tað er meira avgerandi, at ríkið í øllum viðurskiftum hevur einarætt at ráða yvir landøki og borgarum. Hetta er eitt fullveldishugtak, sum leggur seg upp at, at ríkið eina skal hava løgdømi (eksklusiva jurisdiktión). Her verður tað ikki hildið at vera avgerandi at fara heilt í rótina í rættarskipanini at finna fullveldið, men heldur verður hugt at, hvussu tað verður útint í praksis.

Fullveldi sum einarættur til løgdømi kann býtast upp í fýra partar.[32] Fyri tað fyrsta má tað, fyri at fullveldið skal standa, ikki vera nøkur skylda móti útlendis valdi, tá ríkið útinnir sítt vald. Í øðrum lagi má ríkið veruliga (faktiskt) hava einarætt til løgdømi á sínum landøki. Ongir lummar av fremmandum løgdømi mugu vera. Sum tað triðja mugu allir rættarspurningar avgerast inni í landinum. Soleiðis mugu borgararnir ikki hava loyvi til at kæra avgerðir hjá einum ríkissvaldi til nakran fremmandan myndugleika. Ríkisdyrnar mugu so at siga vera afturlatnar fyri teimum innanfyri. Fjórði mátin at síggja sjálvstøðugt løgdømi sum avgerandi er, at tað ikki mugu vera partar av samfelagslívinum í einum stati, ið beinleiðis eru undir valdinum hjá fremmandum myndugleika.[33]

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[30] Betænkning nr. 66, 1953 s. 124ff. § 20 í donsku grundlógini knýtir seg serliga at tí niðanfyri lýsta fjórða mátanum at skilja fullveldi sum sjálvstøðugt løgdømi. Sí Jens Hartig Danielsen "Suverænitetsafgivelse" 1999, (Danielsen 1999) serliga kap. 2.

[31] T.d. Hjalte Rasmussen "EU-ret i kontekst", 2 útg. 1995, s. 91ff. og Danielsen 1999.

[32] Hesin parturin av greinini fylgir neyvt James 1986, s. 225-254.

[33] Sí t.d. Alf Ross, "Lærebog i folkeret" 6 udg. s. 15 um "højeste retsmagt" sum avgerandi.

Kjarnin í tí fyrsta mátanum at síggja fullveldi sum løgdømi er, at ríkið kann gera við síni innlendis mál júst sum tað vil uttan at hugsa um, hvat umheimurin heldur. Hetta fullveldi er sostatt eitt alvald. Hetta er rættiliga klassiskt og gongur t.d. heilt aftur til Jean Bodin, sum segði, at fullveldi er eitt varandi og fult vald innanfyri eitt ríki. Hetta fullveldishugtakið hevur neyvan nakrantíð verið serliga veruligt. Fleiri meginreglur í altjóða siðvenjurætti, sum t.d. diplomatrætturin og rættindini hjá fremmandum ríkissborgarum, bróta inn á hesa fullveldisfatanina. Eisini eru nógv dømi um, at lond við sáttmála binda seg sjálvi móti umheiminum til ikki at gera eitthvørt á egnum landøki. Eitt dømi er Parisarasáttmálin frá 1856, sum neutraliseraði Svarta Havið og pliktaði Russland at niðurleggja flotaherstøðir sínar við Svartahavsstrondina. Fleiri dømi kundu verið nevnd í hesum sambandi. Vanliga verða slíkar bindingar ikki mettar at broyta støðuna hjá ríkinum sum ein politisk eind við fullveldi, hóast tey rættindi, sum fylgja av fullveldinum eru avmarkaði.[34]

Næsta fatanin av fullveldinum sum løgdømissjálvstøðu snýr seg ikki bert um skyldur móti umheiminum, men at fremmant ríki ikki má kunna útinna sítt stjórnarvald á landøkinum hjá viðkomandi ríki. Hetta hevur við væl kendu grundregluna um landøkisyvirvaldið *(territorialhøjhedens grundsætning)* at gera. Eftir hesi grundreglu í altjóða siðvenjurætti má onki ríki útinna sítt stjórnarvald á fremmandum landøki. Kend dømi um brot á hesa grundreglu eru t.d., tá ísraelskir agentar fóru inn í Argentina eftir Eichmann, tá menn Stalins fóru inn í Meksiko at myrða Trotsky og tá franskir agentar søktu Rainbow Warrior í New Zealandi . Men tað eru ógviliga nógv dømi um, at henda grundregla verður sett til síðis við sáttmála millum lond. Eitt dømi er Svalbardsáttmálin, sum gevur øðrum londum rætt til námsvinnu á norskum landøki. Meira vanligt enn hetta er, at ríki hevur herstøðir í øðrum landi og á henda hátt útinnir eitt ávíst stjórnarvald í hesum fremmanda ríki. Dømi um hetta eru USA í Danmark (Grønlandi) og USA í Týsklandi.[35] Sáttmálar um løgsaknarundantøkni *(ekstraterritorialitet)* eru alt ov vanligir til, at hetta kann skiljast sum undantak til nakað, ið hevur við kjarnina í fullveldishugtakinum at gera.[36]

Ímóti fyrstu og aðru fatan av fullveldinum sum løgdømi, eru triðja og fjórða meira áhugaverdar. Triðja fatanin av fullveldinum sum løgdømi er, at allir rættarspurningar skulu avgerast av dómstólum í landinum. Ongin møguleiki má vera fyri kæru til fremmandan dómstól. Grotius segði longu tíðliga í 17

[34] Um hetta fullveldishugtakið James 1986, s. 228-232.
[35] Sí um hesar "jurisdiktionsaftaler", Danielsen 1999, s. 38ff.
[36] James 1986 viðger hetta á s. 232-240.

øld, at tað vald er fult (suverent), hvørs avgerðir ikki kunnu ógildast av øðrum mannavilja. Hetta fullveldishugtakið kann eisini hava konkretan áhuga fyri Føroyar. Í sambandi við føroysku fullveldisætlanina varð sum kunnugt eina tíðina tosað um sokallaðu íslendsku skipanina. Henda skipan hevði møguliga havt við sær, at danski hægstirættur eisini skuldi verið ovasti dómstólur í føroysku rættarskipanini. So kann verða spurgt, um tað hevði verið sambæriligt við føroyskt fullveldi, at fremmandur dómstólur hevði síðsta orðið at siga í mest grundleggjandi rættarspurningunum viðvíkjandi føroysku rættarskipanini. Frederik Harhoff hevur sáað iva um hetta. Í áliti til landstýrið um fullveldisætlanina sigur Harhoff m.a.:

"Det er imidlertid i relation til suverænitetsspørgsmålet ikke helt indlysende, når koalitionsaftalen lægger op til en "overenskomst" med Danmark om bl.a. udenrigs- og domstolsområderne, for netop disse områder må alt andet lige være blandt de første, der omfattes af den suveræne færøske stats *uindskrænkede* kompetence. Hvis tanken med denne overenskomst er, at dele af fx den danske Højesteret skal være fælles øverste dømmende myndighed i de to stater, må man sige at en sådan ordning principielt udelukker folkeretlig suverænitet for Færøerne;"[37]

Tá Harhoff tosar um altjóðarættarligt fullveldi, meinar hann helst sjálvstøðu. Og tá fullveldi er treyt fyri sjálvstøðu, meinar hann helst eisini við bæði fullveldi og sjálvstøðu, tí tað er ringt at síggja, hvat felags hægstirættur í sær sjálvum hevur við altjóðarættarliga sjálvstøðu at gera. Men er hetta nú rætt? Áðrenn nakra niðurstøðu má vera hugt at praksis og hvussu hetta fyribrigdi tá hevur verið mett í einum fullveldissambandi.

Hóast talið er minkandi, so hava fleiri av londunum í bretska Commonwealth varveitt kærurætt til sonevnda Privy Council, sum hevur verið eitt slag av felags ovasta dómstóli. Fleiri røddir hava viljað verið við, at kærurættur til hetta ráð ikki er sambæriligur við fullveldið hjá viðkomandi londum. Hóast hetta hava fyrrverandi og núverandi limirnir í Commonwealth við kærurætti til Privy Council altíð verið mett at vera ríki við fullveldi.[38] Hetta ávirkar ikki ríkisrættarligu sjálvstøðuna, og besti máti at skilja hetta fyribrigdi er helst, at fremmandi dómstólurin verður partur av rættarskipanini hjá viðkomandi ríki. Soleiðis hevði danski hægstirættur sum stovnur bert arbeitt fyri tvær ymiskar rættarskipanir, skuldi hann eisini verið føroyski hægstirættur. Vit kunnu tí siga, at talan funktiónelt hevði verið um

[37] Sí Frederik Harhoff "Arbejdsnotat om fremgangsmåden ved en eventuel færøsk udskillelse af rigsfællesskabet 9/6 – 1999, s. 2." Finst á fullveldisheimasíðuni.
[38] James 1986, s. 242 og Hannum 1996, s. 15.

tveir dómstólar, hóast organisatoriskt tann sami. Tað er tí ikki lætt at skilja, hvat Harhoff nærri grundar sína fatan á.[39]

Europeiski mannarættindadómstólurin í Strasbourg er ein dómstólur, sum hevur stóra ávirkan á rættarmentanina hjá teimum londum, ið hava góðtikið hansara løgdømi. Dómarnir, sum verða sagdir av hesum dómstóli verða næstan altíð virdir av limalondunum. Tað sjónarmiðið hevur eisini verið frammi, at tey ríki, sum hava lagt seg undir løgdømið hjá hesum dómstóli hava avmarkað sítt fullveldi. Men hetta er øðrvísi enn omanfyrinevnda dømi. Her er vanliga ikki talan um, at dómstólurin sum stovnur verður partur av rættarskipanini hjá einum limalandi. Her er ikki talan um ein ríkisrættarligan, men um ein altjóðarættarligan dómstól. Og tá ríkisrættur og altjóðarættur eru tvær heilt ymiskar rættarskipanir, er inntrivið móti fullveldinum í prinsippinum ikki størri við at leggja seg undir slíkan dómstól enn at lata seg binda av altjóðarætti sum heild.[40]

Sum fjórða og kanska mest umstríddа fullveldishugtakið í sambandi við løgdømissjálvstøðu, skal sokallaða omantjóða (supranationala) fyribrigdið verða umrøtt. Eitt av serligu eyðkennunum fyri hesa skipan er, at meðan vanligir altjóða felagsskapir bert binda ríkini uttan beinleiðis at kunna útinna sín myndugleika í limaríkjunum, fer omantjóða felagsskapurin harafturímóti beinleiðis inn í ríkið og bindir veruligar og løgfrøðiligar persónar. Hetta slag av felagsskapi er eisini blivið nevnt *funktiónell føderalisma*, tí skipanin í mongum líkist skipanini í einum samveldisríki. Felagsskapirnir, sum hava fingið heiti omantjóða felagsskapir eru teir felagsskapir, ið standa aftanfyri tað vestureuropeiska samstarvið, sum byrjaði tíðliga í 1950-árunum og í dag verður kallað ES. Innanfyri tey mál, sum serliga eru latin yvir til ES stovnarnar er ES soleiðis hægsta rættarvald yvir borgarunum. Hetta hevur sostatt við sær eina avmarking í tí løgdømis frælsi, ríkini høvdu. Spurningurin er so, um ein slík støða er sambærilig við fullveldi.

[39] Tað skal leggjast afturat, at tað eisini er við síðuna av, tá Harhoff meinar, at altjóðarættarlig sjálvstøða er ósambærilig við samstarv á uttanríkisøkinum. Tað avgerandi er, um hjálpar (ella móður) ríkið meira útinnir uttanríkisviðurskiftini eftir boðum (direktivum) frá tí veikara ríkinum enn sjálvstøðugt uttan at lurta eftir veikara ríkinum í hvørjum einstøkum føri. Men tá talan er um eina reina fulltrúaskipan (agentur) sum íslendska skipanin, ið landstýrið miðaði móti, er ongin ivi um, at hon er fult sambærilig við sjálvstøðu og harvið eisini fullveldi. Sí Crawford 1979, serliga s. 54.

[40] Um hetta James 1986, s. 240-245.

Hóast ES í ávísan mun minnir um eitt samveldisríki, so er talan grundleggjandi um eina altjóðarættarliga skipan, hóast hon er av øðrvísi slagi enn vanligt.[41] ES hevur soleiðis ikki nakra grundlóg, men byggir á eina sáttmálaskipan. Ríkini hava ongantíð uppgivið sítt fullveldi í týdninginum ríkisrættarlig sjálvstøða. Og tá kjarnin í fullveldinum meira melur um hetta hugtak enn einarætt til løgdømi, mugu limalondini í ES framvegis metast sum ríki við fullveldi.[42] Men tað kann tó væl hugsast, at økt integratión við tíðini hevur við sær, at ríkisrættarliga sjálvstøðan bert verður eitt tómt skal. Tað kann koma ein tíð, tá ein verður noyddur at góðtaka, at talan bert er um tóma formalismu, um hildið verður, at limalondini hava fullveldi, og at sáttmálaskipanin í veruleikanum meira er ein grundlóg enn nakað annað.

Hetta kann vera ein meira sníkjandi háttur, ið ríkini kunnu missa sína ríkisrættarligu sjálvstøðu uppá og verða innlimað í størri samveldisríki. Hin mátin kundi verið ein formlig avtøka av ríkissrættarligu sjálvstøðuni á eini felags ráðstevnu. Men sum støðan sær út í dag, so hava ES-limalondini framvegis sína formligu ríkisrættarligu sjálvstøðu, sum ikki er tóm, men framvegis fylgd av so nógvum veruligum valdi, at limalondini hvørt í sær á flestu økjum eru sum onnur ríki í heiminum. At ES so í ávísan mun er hægsta rættarvald kann ikki vera avgerandi.[43]

Samanumtikið er onki í vegin við at nýta orðið fullveldi um einarætt til løgdømi. Hetta fylgir longu av tí, at løgdømi, ella vald á egnum øki, er ein avleiðing av (innlendis) fullveldinum. Tað má bert vera gjørt greitt, at hetta fullveldishugtakið als ikki er eins grundleggjandi og ríkisrættarliga sjálvstøðan. Fullveldi sum ríkisrættarlig sjálvstøða er altavgerandi í skapanini og varveitsluni av einum ríki, meðan fullveldi sum einarættur til løgdømi ikki er tað.

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[41] Ein heldur óvanlig, men sera hugkveikjandi, lýsing av ES-rættinum sum altjóðarætti finst í Spiermann 1999, kap. 16 og s. 207-208. Og um at limalondini aldri hava uppgivið sítt fullveldi, Ole Spiermann, "i nærmere bestemt omfang" om Danmark, suveræniteten og Den Europeiske union. Juristen 1997, s. 205, og "Om staters suverænitet" Tidsskrift for Rettsvitenskab 1996, s. 603ff. og 612ff.

[42] Tó er tað so, at tað ikki er óvanligt fyri ES-rættarløgfrøðingar at pástanda, at ES ikki er eitt ríkissamveldi *(statsforbund)* av ríkjum við fullveldi, men meira er eitt samveldisríki *(forbundsstat)*. Sí t.d. Joseph Weiler, "The Transformation of Europe" í Yale Law Journal 1991, s. 2413. Sí tó kritisku viðmerkingarnar frá Spiermann í ávísingini omanfyri.

[43] James 1986 umrøðir omantjóða fyribrigdið á s. 245-254.

Fullveldi sum politisk sjálvstøða

Omanfyri er fullveldi viðgjørt í ymsum løgfrøðiligum merkingum. Hetta má tó ikki fáa okkum at gloyma, at sjálvstøða ella fullveldi í politiskum og búskaparligum høpi ofta hevur ein kanska meira tilvildarligan, men eisini ein heldur breiðari týdning enn tann reint løgfrøðiliga.

Eitt gott dømi um hetta er fyrrnevnda mál um tollsamgonguna millum Týskland og Eysturríki. Klassiska lýsingin av sjálvstøðu frá dómaranum Anzilotti var ein reint løgfrøðilig lýsing. Hetta forðaði tó ikki sama Anzilotti í at vera millum teir tilsamans átta dómararnar, sum ímóti sjey hildu, at tollsamgongan var í stríð við nevndu sáttmálar (ella annan teirra) og tískil ein hóttan móti eysturrískari sjálvstøðu sum skilt í hesum sáttmálum. Ósammælandi (dissentierandi) dómararnir skiltu sjálvstøðu og fullveldi á ein reint formligan hátt, soleiðis sum hetta hugtak vanliga hevur verið lýst í ríkis-og altjóðarættarligum bókmentum. Meirilutin tók hinvegin støðið í, at ásetingarnar um fullveldið/sjálvstøðuna hjá Eysturríki vóru skrivaðar av politikarum, sum eftir fyrra veraldarbardaga óttaðust fyri europeisku framtíðini. Hesir politikarar høvdu neyvan eitt smalt og formligt fullveldi fyri eyga, tá sáttmálarnir vórðu greiddir úr hondum. Meirilutin av dómarunum sóu seg tí noyddar at tulka fullveldi/sjálvstøðu í nevndu ásetingum øðrvísi og breiðari enn støðan hevði verið, høvdu politikararnir havt eitt vanlig løgfrøðiligt hugtak fyri eyga.[44]

Eitt annað dømi um munin millum eina politiska og løgfrøðiliga fatan av sjálvstøðu/fullveldi er kongssamveldið millum Danmark og Noreg 1380-1814. Upprunaliga bygdi hetta kongssamveldi á fulla sjálvstøðu og javnstøðu millum londini. Men í longdini varð Noreg við undirlutan, politiskt, búskaparliga og mentunarliga. Noreg bleiv stýrt úr Keypmannahavn, har kongur hevði sítt sæti. Henda stýring fór í praksis fram gjøgnum danskar embætismenn, sum í stóran mun ráddu fyri borgum í Noregi. Kjak hevur verið um, hvørja rættarliga støðu Noreg hevði sum tað veikara landið í hesum felagsskapi. Hóast ymsar fatanir, so hevur vanliga læran í norskum ríkisrætti verið, at Noreg altíð rættarliga varveitti støðuna sum sjálvstøðugt ríki.[45] Hetta kann vera løgfrøðiligi veruleikin, men fáur man ivast í, at Noreg politiskt var undir so sterkari ávirkan av Danmark, at tað ikki rættiliga gav meining politiskt at tosa um Noreg sum sjálvstøðugt ríki.

[44] Um dómin Spiermann 1999, s. 413-416.

[45] Soleiðis eisini Johs. Andenæs, "Statsforfatningen i Norge" 8 utg. 1998, s. 34.

Hesin munurin millum eitt løgfrøðiligt og eitt politiskt fullveldi, sum dómurin og dømið um Noreg lýsa, er framvegis líka aktuellur.[46] Støðan er nevniliga, at tað er rættiliga vanligt at politikarar nýta fullveldi/sjálvstøðu í eini breiðari merking enn teirri løgfrøðiligu. Orsøkin er kanska hon, at løgfrøðin ikki setir stórvegis krøv til veruliga (faktiska) innihaldið í fullveldinum/sjálvstøðuni útyvir tað reint formliga. James Crawford gevur við støði í altjóða praksis um varðlond eitt alment orðað boð uppá, hvat altjóðarættur krevur av veruligum innihaldi afturat tí formliga:

As a general rule it may be said that the exercise of delegated powers..... is not inconsistent with statehood if the derogations from independence are based on local consent, do not involve extensive powers of internal control, and do not leave the local entity without some degree of influence over the exercise of its foreign affairs.[47]

Sum skilst av hesum skal lítið til løgfrøðiliga fyri at ein politisk eind kann meta seg at hava fullveldi og sjálvstøðu.

Spurningurin er kortini, um tað er heppið at nýta orðið fullveldi um politiska sjálvstøðu. Í heiminum er fjøld av ríkjum, sum eru ógvuliga ymisk til støddar og í styrki. Hartil er styrkin hjá ríkjunum ikki einvís, tí ymisk ríki hava ymisk viðurskifti við hvørt annað innanfyri ólík lívsøki. Skal politisk sjálvstøða t.d. metast frá einum hernaðarligum, búskaparligum ella kanska mentunarligum sjónarmiði? Politisk sjálvstøða er eitt ógvuliga óítøkiligt fullveldishugtak. Í so máta minnir tað um tey fyrrnevndu løgfrøðiligu hugtøkini, fullveldi sum løgdømis frælsi og fullveldi sum rættarligt frælsi. Tey eru øll relativ og kvantitativ hugtøk, ið eru ov óneyv og margtýdd til, sum ríkisrættarlig sjálvstøða, at vera nýtiligur mátistøkkur fyri, hvørjar politiskar eindir hava - ella kunnu hava - ein sjálvstøðugan leiklut í altjóða samfelagnum og hvørjar ikki.[48]

Fullveldi nýtt politiskt

Eitt er at ymsar merkingar av fullveldinum av líkasælu ella vantandi vitan ikki verða hildnar hvør sær. Verri er tað ikki so sjáldsama fyribrigdi, at ymsar merkingar við vilja verða bendar og fløktar av politikarum og øðrum sum liður í politiskari agitatión.

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[46] Sí K.W.B. Middleton "Sovereignty in Theory and Pratice" s. 150, í Stankiewicz 1969.

[47] Crawford 1979, s. 189.

[48] Eisini James 1986, s. 166-167 og 188-193.

Í undanfarna parti var komið inn á, at eitt reint løgfrøðiligt fullveldishugtak er meira smalt enn tað politikarar og onnur ofta skilja við fullveldi og sjálvstøðu. Men líka so skeivt tað er ikki at skilja millum formliga fullveldishugtakið og veruliga innihaldið í tí, eins skeivt er tað at siga fullveldishugtakið í sær sjálvum bert vera eitt formligt fyribrigdi. Í føroyska fullveldiskjakinum kemur tað týðiliga til sjóndar, hvussu fullveldishugtakið verður nýtt politiskt. Mótstøðufólk av fullveldisætlanini siga fullveldi bert vera tóma formalismu, meðan fullveldisfólk siga, at tað er í fullveldinum, at okkara atgongumerki til eina betri framtíð sum tjóð liggur. Báðir partar eru eitt sindur við síðuna av. Fullveldi er ongin trygd í sær sjálvum fyri eini betri framtíð fyri føroysku tjóðina. Men hinvegin er fullveldi ein ófrávíkilig fyritreyt, um Føroyar vilja verða ein sjálvstøðugur leikari á altjóða pallinum. Fullveldi má tí sigast at vera neyðugt, um eitt fólk vil menna seg sum sjálvstøðug tjóð, men nóg mikið er tað neyvan.[49]

Framferðin hjá fyrrverandi danska uttanríkismálaráðharranum, Niels Helveg Petersen, er eitt meira ítøkuligt dømi um politiska missnýtslu av fullveldishugtakinum. Tá Niels Helveg Petersen var í Føroyum í oktober 1998 kom hann í samrøðu við Sosialin inn á føroyska fullveldismálið og segði sambært Sosialinum millum annað hetta:

"Eg havi ein trupuleika við orðinum suverenitetur. Eg havi ilt við at skilja, hvat hetta orðið merkir. Tað verður sagt, at Danmark er ein suverenur statur, men Danmark hevur pliktað seg til hópin av altjóða avtalum eitt nú í samband við ST, NATO og ES, sum gera, at suverenitetur er eitt hugtak sum ikki longur gevur nakra meining".[50]

Í maj mánaði ár 2000 segði ES-nevndarformaðurin Romani Prodi á eini Danmarkarvitjan, at Danmark ikki kundi melda seg út aftur, hevði tað fyrst avgjørt at fara uppí samstarvið um evruna. Hetta hevði við sær, at fleiri danir afturvístu Prodi. Ein av hesum dønum var Poul Nyrup Rasmussen. Í Berlingske Tidende varð hann endurgivin fyri at hava sagt hetta:

"Lige så klart som at Grønland kunne træde ud af EF-samarbejdet for nogle år tilbage, lige så klart er det, at Danmark som en suveræn stat kan træde ud"[51]

[49] Sí James 1986, s. 270 og 276.
[50] Sosialurin 29. Oktober 1998.
[51] Berlingske Tidende 15 maj. 2000.

Nyrup hevur sjálvandi rætt í, at Danmark sum eitt fullveldisland reint løgfrøðiliga (ríkisrættarliga) til eina og hvørja tíð kann melda seg út. Tað er tó ikki so áhugavert í hesum sambandi. Tað áhugaverda er, at Niels Helveg Petersen sum umboð fyri donsku stjórnina fyri føroyingum sigur tað øvugta. Hann metir ikki, at tað gevur meining at tosa um hugtakið fullveldi. Hetta byggir hann á, at lond í dag hava pligtað seg við so nógvum avtalum við m.a. ES og ST, at tey ikki longur skulu hava fullveldi. Hann vísir sostatt á avmarkingarnar hjá Danmark í tí serstaka rættinum at ráða og vil við hesum gera fullveldi óaktuelt og harvið eisini føroysku ætlanirnar óviðkomandi og óaktuellar. Yvirfyri føroyingum er fullveldi eitt kvantitativt hugtak sum t.d. rættarligt frælsi. Hinvegin tryggjar stjórnarleiðari hansara, Nyrup, donsku veljarunum danskt sjálvræði við at vísa á tann almenna rættin at ráða. Nú er fullveldi yvirfyri donsku veljarunum eitt kvalitativt fyribrigdi, sum ger, at Danmark hóast alt situr við endaliga valdinum.

Hetta er eitt gott dømi um, hvussu fullveldi verður bent ávísar vegir alt eftir hvørja politiska støðu ein vil styrkja. Tað skal tó gerast vart við, at hetta ítøkiliga dømi onki serligt hevur við danskar politikarar at gera. Hetta er bert eitt av nógvum dømum um, hvussu fullveldishugtakið verður missnýtt av politikarum.

Sum nomið við seinni, er tað neyvan rætt, tá Niels Helveg Petersen fær tað at ljóða so, at fullveldi ikki longur hevur stóran týdning. Men hóast fullveldi nú veruliga var viknað sum virði í altjóðarætti og altjóða politikki, so gevur tað ikki rættiliga meining, sum Niels Helveg Petersen og fleiri við honum, at brúka hetta sum amboð móti føroysku fullveldisætlanini. Teir føroyingar, ið stuðla fullveldisætlanini hugsa ikki um, hvørt fullveldi er sterkt, so ríkini standa sterk móti altjóðarætti og altjóða samfelagnum (hinum ríkjunum), ella um tað er veikari, so ríkini í størri mun mugu akta altjóðarætt og altjóða samfelagið. Ætlanin við fullveldisætlanini, hvørt einum dámar hana ella ikki, er, at Føroyar skulu verða síðusettar hinum viðspælarunum (aktørunum) í altjóða samfelagnum. Um slíkur sjálvstøðugur leiklutur í altjóða samfelagnum merkir eitt slag av alvaldi ella eitt vald, sum helst er veikari er rættiliga óviðkomandi fyri fullveldisætlanina. Føroyar mugu undir øllum umstøðum taka við teimum treytum, heimurin gevur.

Fullveldi sum grundarsteinur í altjóða samfelagnum

Alan James kallaði bók sína um ríkis-og fullveldishugtakið fyri "Sovereign Statehood -The Basis of International Society". Sum heitið á hesi bók sigur, eru tað ríkini við fullveldi og sjálvstøðu, sum eru grundarsteinarnir í altjóða samfelagnum. Hetta er heilt grundleggjandi og kemur eisini til sjóndar á

tann hátt, at ríkini verða kallaði tey upprunaligu (origineru) rættarsubjektini í altjóðarætti, meðan øll onnur altjóðarættarsubjekt verða nevnd avleidd rættarsubjekt. Tey eru stovnað av ríkjum og hava sína keldu har. Í hesum sambandi er eisini vert at leggja til merkis, at skipanin við ríkjunum sum grundvølli í altjóða samfelagnum hevur verið støðug í fleiri hundrað ár. Hálv fjórða øld er gingin síðan friðin í Westfahlen eftir 30-ára kríggið, tá henda skipan alment bleiv útrópt. Men í veruleikanum gongur hon enn longur aftur.

Gjøgnum miðøldina var tankin um sjálvstøðug ríki ikki sambæriligur við ráðandi samfelagshugsan. Pávin og keisarin kravdu valdið og vórðu hildnir at hava rætt til hetta vald, sum teir í veruleikanum eisini í stóran mun høvdu í kristna heiminum. Longu um ár 1300 gjørdust tað tó sjónligt, at ráðandi politisku eindirnar í Vestureuropa fóru at verða ríkini við fullveldi og sjálvstøðu. Næstu 200 árini ella so bleiv henda skipan so at siga fullførd. Síðan tá eru broytingar hendar í smálutunum, men grundleggjandi kann vera tosað um framhald (kontinuitet) frá 16. øld fram til 21. øld. Sagt øðrvísi, so hevur grundarlagið í altjóða samfelagnum eina søgu, ið gongur heilt aftur til upploysnina av miðaldarskipanini.[52]

Tá nú tosað verður um altjóða samfelagið má havast í huga, at talan bert er um samløguna (summin) av ríkjunum. Altjóða samfelagið er onki í sær sjálvum. Tað hevur onki lóggávuvald og ongan vilja, sum í seinasta enda kann gerast galdandi móti ríkjunum

Virðini í altjóða skipanini, sum tey eisini hava víst seg í altjóðarætti, hava verið virðini frá liberalu individualismuni flutt á millumtjóða støði. Skipanin hevur ikki vilja vitað av valdi, ið hevur havt gildi ímóti ríkisviljanum. Altjóðarættur hevur verið skipaður so, at hvørt ríki hevur kunnað framt tað, sum tað nú einaferð hevur hildið verið gott. Altjóða skipanin hevur soleiðis ikki virkað út frá eini hugsjón um felags virðir.[53] Henda klassiska heimsmyndin er sjálvandi broytt eitt sindur, m.a. í sambandi við tann altjóðarætt, ið er komin burturúr mannarættindarørsluni. Men spurningurin er, hvussu grundleggjandi broyting talan er um.

Í gjøgnum 20. øld bleiv tað eisini alt meira vanligt at leypa á fullveldið og siga, at fullveldi sum virði í altjóðarætti og altjóða politikki hevði mist sín

[52] Sí James 1986, s. 30.

[53] Sí Martti Koskenniemi, "The Future of Statehood" í Harvard International Law Journal, 1991 (Koskenniemi 1991) s. 404.

týdning. Kritikkurin kann grovliga býtast í tveir partar. Ein moralskan og ein empiriskan.

Moralski kritikkurin hevur m.a. snúð seg um, at skipanin við ríkjum við fullveldi er óheppin, tí hon er so væl er egnað til at styrkja sjálvgóðskuna hjá tjóðum, sum hevur verið orsøk til so nógva líðing gjøgnum søguna.[54] Hartil verður ofta ført fram, at skipanin við fullveldisríkjum ikki er fremjandi fyri mannarættindini. Tað kann vera nógv skilagott í slíkum sjónarmiðum, men fólk tykjast eisini at gloyma, at so leingi veruleikin er tann, at nógvar tjóðir eru í heiminum, sum framvegis hava grundleggjandi ymisk virðir, so ber tað neyvan til at skipa heimin nógv øðrvísi.[55]

Harafturímóti fær ein lættari havt eina meining um empiriska kritikkin. Her er støðan ikki bert, at fullveldi er av tí ringa, men eisini, at fullveldi er eitt hugtak á veg út. Hetta skuldi so á onkran hátt verið møguligt at sæð við at eygleiða støðuna í heiminum, sum hon er í dag.[56]

Frá politiskari síðu verður ofta ført fram, at heimurin, væl hjálptur á veg við m.a. nýggjari tøknifrøði, í dag er so samantvinnaður *(interdependent)*, at fullveldi sum grundarlag undir heiminum ikki longur er so veruligt. Ivaleyst er tað eisini satt, at ríki í dag hava verri við at liva einsamøll og sigla egnan sjógv enn nakrantíð fyrr. Men ríkishugtakið og fullveldishugtakið eru enn ikki býtt um við nakað alternativ. Ofta verður eisini tosað um økis (regionala) integratión, serliga hana í Vestureuropa, sum tekin um, at ríkini eru um at hvørva. Men skuldi tað hent, sum enn ikki er veruleiki, at ES verður eitt risaríki, so er hetta ikki ein hóttan móti ríkishugtakinum. Talan hevði bert verið um eitt nýtt ríki í Europa. Eisini kann verða víst á, at tjóðirnar í Vestureuropa, sum í nógvar mátar eru saman um mentan, trúgv og onnur virðir, kortini hava so ymisk áhugamál, at integratiónin møtir álvarsligari mótstøðu. Tá so er kann vera ringt at ímynda sær, hvussu tíðin kann vera farin frá ríkjunum í pørtum av heiminum, har áhugamálini ganga nógv meira ímóti hvørjum øðrum enn í (Vestur) Europa.

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[54] Sí t.d. Alf Ross, "Lærebog i folkeret" 6 udg. s. 52.

[55] Soleiðis eisini Koskenniemi 1991, s. 403.

[56] Ein kendur krittikari leyp á frá báðum síðum, tá hann segði, *"it would be of lasting benefit to political science if the whole concept of sovereignty were surrendered"*. Hetta tí at, *"it is at least probable that it has dangerous moral consequences"* og *"is of dubious correctness in fact"*. Harold Laski í "The Grammar of Politics", 1941. Her tikið eftir F. H. Hinsley, "Sovereignty" 2 útg. Cambrigde 1986, s. 216.

Tá tosað verður um integratión, má eisini verða mint á, at øvugta fyribrigdið eisini er virkið. Soleiðis er talið av ríkjum økt munandi síðan sjálvsavgerðarrætturin mentist og gjørdust virkin eftir seinna heimsbarbaga. Og í seinastuni hevur heimurin aftur sæð fleiri nýggj ríki føðast sum avleiðing av, at størri ríki eru syndraði eftir endan á kalda krígnum.

At samanspælið er intensivari enn fyrr og inspiratiónin um landamørk størri enn nakrantíð sigur tó onki í sær sjálvum. Tað er sum við eini familju, ið hevur sterkt samanhald ímóti einari, har einstaklingarnir hava lítið við hvønn annan at gera. Í familjuni við tí sterka samanhaldinum eru persónarnir framvegis líka nógv serstøk menniskju við sjálvstøðugum samleika, sum persónarnir í familjuni við tí leysara sambandinum. Somuleiðis við altjóða samfelagnum. At ymsir partar av heiminum nú viðkoma hvørjum øðrum meira enn fyrr broytir ikki tann grundleggjandi bygnaðin.[57]

Ein kann eisini spyrja um ikki áhaldandi álopini á fullveldið og spádómarnir um, at dagarnir hjá fullveldisríkjunum eru um at vera taldir ikki júst eru prógv um tað øvugta. Er talan ikki um, at fullveldi framvegis er eitt so grundleggjandi virði í altjóða samfelagnum, at tað framvegis kann øsa tey, ið hava hugsjónir um ein annan heim?[58]

Heimurin er kanska meira samantvinnaður enn fyrr, men fullveldi er framvegis grundarsteinur í altjóða samfelagnum og fer ivaleyst at verða tað í eina langa framtíð.[59]

Tað kundi verið hóskandi at enda hesa grein um fullveldishugtakið við orðunum hjá Ian Brownlie, einum av fremstu núlivandi altjóðarættarløgfrøðingunum, har hann sigur, hvat hann heldur um henda mótan at burturvísa fullveldið:

"Seeking signs of the "rebirth of statehood" is more than a little premature: there is no evidence that the state has died. It is an intellectual fashion to preach the end of the State and to attack sovereignty. But such iconoclasm has no impact on the real world."[60]

[57] James 1986, s. 192.
[58] Sí W. J. Stankiewicz "A Critique and an Interpretation" s. 3-4, í Stankiewicz 1969.
[59] Koskenniemi 1991, s. 407.
[60] Ian Brownlie endurgivin í Spiermann 1999, s. 22-23.

Ulla Svarrer Wang*

Who'll get the Rockall Plateau?

- An analysis of the claims to the continental shelf in the North East Atlantic by the United Kingdom, Ireland, the Faroe Islands-Denmark, and Iceland.

English Summary
In the North East Atlantic the United Kingdom, Ireland, the Faroe Islands-Denmark, and Iceland have competing claims to the continental shelf on the

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Rockall Plateau. In 1974 the UK and Ireland made their first continental shelf designations on the Rockall Plateau west of the Scottish and Irish coasts, and have subsequently designated additional continental shelf areas extending to the western edge of the Rockall Plateau. These two States agreed in 1988 on their continental shelf delimitation in this area. Faroe-Denmark and Iceland designated their continental shelves in 1985, and their claims extend also to the Rockall Plateau and overlap with the UK's and Irish claims. There are now two main areas on the Rockall Plateau where there is a dispute on the rights to the continental shelf between (i) the UK, Faroe-Denmark, and Iceland and (ii) Ireland, Faroe-Denmark, and Iceland.

The dispute on the Rockall Plateau is a consequence of continental shelf claims extending beyond 200 nautical miles from the baselines of the four parties territorial sea. The claims are based on a natural prolongation of the coastal States land territory to the outer edge of the continental margin, as provided in Article 76 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

The four parties could possibly agree on the delimitation of the continental shelf. However, continental shelf delimitations have caused much litigation, and probably this dispute would also be submitted to the International Court of Justice or a Tribunal. This would require the parties to present geological evidence for the natural prolongation of their continental shelves extending beyond 200 nautical miles. The Commission on the Limits of the Continental Shelf established by UNCLOS shall also make recommendations to coastal States on continental shelf claims beyond 200 nautical miles. If none of the parties' claims were accepted, the area on the Rockall Plateau would be beyond the limits of national jurisdiction and declared deep sea-bed. The area and its resources would be the common heritage of mankind and fall to the International Sea-Bed Authority.

Introduction

Four States have laid claims to the continental shelf in the North East Atlantic in the area west of the British Isles on the Rockall Plateau. These are: the United Kingdom, Ireland, the Faroe Islands-Denmark, and Iceland.

The first continental shelf designations on the Rockall Plateau were made in 1974 by the UK and Ireland. After these States had claimed continental shelf in the area, Faroe-Denmark and Iceland made designations in 1985. This resulted in overlapping claims on the Rockall Plateau. In 1988 the UK and Ireland signed an agreement on the delimitation of the continental shelf in

this area, which divided the plateau between the two States. However, Faroe-Denmark and Iceland protested against this agreement, and there are still two main areas of dispute between (i) the UK, Faroe-Denmark, and Iceland and (ii) Ireland, Faroe-Denmark, and Iceland.

In 1985 when Faroe-Denmark and Iceland made their continental shelf designations the four parties had consultations on the dispute. Since then there has been no formal contact between the parties on this matter.

Whether the dispute resolution will be by negotiations to enter into a delimitation agreement or by litigation is uncertain. To achieve an agreement each party will have to give up a considerable part of its claims. If judicial settlement is chosen the parties will have difficulty predicting a possible outcome of a court or tribunal decision.

The Faroe Islands are situated in the North Atlantic, northwest of Scotland, about midway between the Shetland Islands and Iceland. The Faroe Islands are a self-governing part of the Kingdom of Denmark. The subsoil resources were following lengthy negotiations transferred to Faroese Authorities in 1992.

If the Faroe Islands become fully independent, agreements entered into by Denmark and the Faroe Islands on the one hand and third parties on the other hand, concerning delimitation of the continental shelf would bind the Faroe Islands.

Danish Sovereignty over the continental shelf extending from the Danish coastlines is proclaimed in Royal Decree No. 259 of 7 June 1963, and it comprises also the Faroese continental shelf. The boundary of the continental shelf between the Faroe Islands and Norway within 200 nautical miles was determined in a treaty concluded between Faroe-Denmark and Norway in 1979. Faroe-Denmark and the UK signed an agreement in 1999 on maritime delimitation in the area between the Faroe Islands and the UK. The parties agreed on the continental shelf boundary and fishery boundary within 200 nautical miles from the baselines from which the territorial sea of each Party is measured. The agreement is without prejudice to any claim of either of the Parties beyond 200 nautical miles, by implication the overlapping claims of Faroe-Denmark and the UK on the Rockall Plateau.

The continental shelf and fishery boundary in the area between the Faroe Islands and Iceland is not established. There is a disagreement between the

parties concerning the Icelandic offshore rock, Hvalbakur, which Faroe-Denmark does not recognise as a basepoint, while Iceland has applied the rock as a basepoint in its continental shelf designation.

Rockall is a small skerry situated about 200 nautical miles west of the Hebrides and was annexed by the British Crown in 1955. There has been a dispute between the UK and Ireland, Faroe-Denmark, and Iceland on UK's fishing zone reckoned from Rockall, and whether Rockall could generate continental shelf areas claimed by the UK. UNCLOS entered into force in 1994, and Article 121(3) of the Convention provides that uninhabitable rocks have no exclusive economic zone or continental shelf. The UK acceded to UNCLOS in 1997 and recognised that Rockall, as an uninhabitable rock, does not generate continental shelf or fishing zones.

The disputed area on the Rockall Plateau is on overlapping claims to the continental shelf extending beyond 200 nautical miles from the coasts of the four parties. The continental shelf extends throughout the natural prolongation of a States land territory to the outer edge of the continental margin (Article 76(1) of UNCLOS). The Commission on the Limits on the Continental Shelf was established in 1997 and has in 1999 adopted Guidelines aimed at assisting coastal States in establishing the outer limits of their continental shelf, where those limits extend beyond 200 nautical miles. The Commissions recommendations will be significant in evaluating the parties' continental shelf claims on the Rockall Plateau.

Continental Shelf Boundary Agreements

Faroe-Denmark – Norway
Faroe-Denmark and Norway agreed on the delimitation of the continental shelf and fishery zones between the Faroe Islands and Norway within 200 nautical miles in an agreement of 15 June 1979, and the boundary is the median line. Similarly, the UK and Norway agreed on a continental shelf boundary on 22 December 1978 where the boundary is an equidistant line. The UK – Norway agreement extends to the point that is equidistant from the nearest points of the baselines from which the territorial sea of the UK, Norway and Faroe Islands is measured.[1] The Faroe-Denmark – Norway

[1] Symmons, C.R., British Off-Shore Continental Shelf and Fishery Limit Boundaries: An Analysis of Overlapping Zones, (1979) 28 *International and Comparative Law Quarterly (ICLQ)*, pp. 703-33, at p. 705. For other sources on Continental Shelf delimitation see, *inter alia*, Evans, M.D., Maritime Delimitation and Expanding Categories of Relevant Circumstances, (1991) 40 *ICLQ*, pp. 1-33;

agreement extends from this equidistant tripoint north to the point, which is 200 nautical miles from both Faroe and Norway.[2] It seems like the parties in 1979 accepted that the continental shelf always extends to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, as articulated in Article 76 of UNCLOS. Even if the negotiations at UNCLOS III were still ongoing in 1979, this principle had become part of state practice. Neither of the parties has so far designated continental shelf areas beyond 200 nautical miles in the area north of Faroe. The reason for this is probably that this area is deep seabed and that the continental shelves of the states do not extend into this area.

Denmark, Norway and the UK were all parties to the 1958 Continental Shelf Convention when the agreements on delimitation of the continental shelf were negotiated. It does not appear from the literature, whether there was disagreement at any time between the parties as to where the boundary should be fixed, but as can be seen, all parties used the principle of equidistance in their agreements, as provided in Article 6 of this Convention.

Faroe-Denmark – Iceland

In the area west of the Faroe Islands, between the Faroe Islands and Iceland, the Faroese/Danish designation of continental shelf is a series of steps. The principle of median lines is used by Iceland, which has declared an exclusive economic zone and has designated the continental shelf. However, there is a dispute between the parties concerning the Icelandic rock Hvalbakur that lies 20 miles from Iceland. Faroe-Denmark does not recognise this rock as a basepoint, while Iceland considers the median line towards the Faroe Islands, reckoned from Hvalbakur, to be the boundary of its continental shelf. Faroe-Denmark have also used the median line when declaring the Faroese fishing zone, but have not taken Hvalbakur into consideration, and hence there is an area where the fishing zones of the parties overlap. The Faroese/Danish view is that the offshore rock Hvalbakur has the same status as Rockall, namely a rock that cannot sustain

Harris, D.J., Cases and Materials on International Law, 5th Edition, Sweet & Maxwell, London, 1998, at pp. 455-6; Highet, K., The Use of Geophysical Factors in the Delimitation of Maritime Boundaries. *In* Charney, J.I. and Alexander, L.M. (eds.), *International Maritime Boundaries*, 1993, pp. 163-202.

[2] *Report of the Faroese Hydrocarbon Planning Commission to the Faroese Government*, Tórshavn, Faroe Islands, 1993, at p. 51

human habitation and consequently does not generate an exclusive economic zone or continental shelf (Article 121(3) of UNCLOS).[3]

Faroe-Denmark – UK
The agreement on maritime delimitation between Faroe-Denmark and the UK of 18 May 1999 seems also to be based on the equidistance principle, and both States are parties to the 1958 Continental Shelf Convention. The negotiations on this agreement took place over more than 20 years. The parties had first declared their respective fishing zones, and although the parties agreed upon that the boundary should be the median line, they disagreed on how this equidistance line should be fixed. The UK used its outermost rocks and islets as basepoints and did not recognise the straight Faroese baselines. Faroe-Denmark did not recognise the small British rocks and islets, as Rockall, Sule Skerry, Sula Sgeir, North Rona, and Flannan Isles. Faroe-Denmark and the UK had designated their continental shelf areas and within 200 nautical miles the parties delineated the designation by step-lines so there was no overlap of designated areas.[4]

The negotiations were confidential so not much information is made public. But it appears that within 200 nautical miles Faroe-Denmark claimed the median line, and preferably the same boundary as the Faroes used for the fishing zone. It seems that the UK claimed a continental shelf boundary that was even nearer to the Faroes than the UK fishing zone boundary. These UK claims were apparently based upon differences in coastal length between the parties, as had been expressed in recent ICJ judgments as the Jan Mayen continental shelf delimitation case (1993). The same principle was used to reach an equitable solution in the Libya – Malta continental shelf case (1985) and in the Anglo – French arbitration (1978) on the continental shelf in the English Channel.

When the UK ratified UNCLOS in 1997 the British Government announced that its claim to a 200 nautical mile fishing zone around Rockall would be withdrawn, since it was not in accordance with the convention. Therefore the overlapping fishing zone in the area southwest of Faroe was considerably diminished.

The continental shelf and fishery boundaries in the 1999 maritime delimitation agreement to a great extent follow the equidistant line. In the

[3] *Ibid.*, at p. 53
[4] Olafsson, Á., The Continental Shelf Boundary. In *Annual Report 1999*, Ministry of Petroleum, Tórshavn, Faroe Islands, 1999, pp. 12-19, at p. 12

8,000 square km disputed area south of Faroe the continental shelf is delimited just south of the UK claimed median line. From carefully studies of the map it seems that the parties have agreed upon to use some of the British rocks and islets as basepoints, as Sule Skerry, North Rona, and partly Flannan Isles while Sula Sgeir is not used as a basepoint. As mentioned above, the UK had accepted that Rockall, as an uninhabitable rock, could not generate continental shelf and fishing zones. In the 1985 continental shelf designation Faroe-Denmark had recognised St. Kilda as a basepoint for the UK's 200 nautical mile zone.

In the Faroe-Denmark – UK agreement the parties agreed on the continental shelf boundary and fishery boundary within 200 nautical miles from the baselines, from which the territorial sea of each Party is measured (named "the Area" in the agreement). The agreement is not binding for the parties beyond 200 nautical miles and Article 10 of the agreement provides: 'This Agreement shall be without prejudice to any claim of either Party outside the Area'. By this is indicated the disagreement between the parties concerning the continental shelf designations on the Rockall Plateau.

UK – Ireland

The UK – Irish agreement of 1988 on the delimitation of the continental shelf appears also to use the principle of equidistance. In the area west of Ireland and Scotland the boundary is a step-line, beginning from a point close to the coast to a point about 560 miles west of the Irish coast and about 580 miles from the Outer Hebrides.[5] The parties had previously designated areas along this equidistance line without overlapping their claims. Ireland is not a party to the 1958 Continental Shelf Convention, while the UK is a party to this Convention.

In this agreement the parties agreed on the delimitation of their claims to the continental shelf on the Rockall Plateau. There is a geological discussion as to whether the UK and Ireland actually may claim continental shelf on the Plateau. The Rockall Plateau is delimited towards the UK and Ireland by the Rockall Trough. The UK may probably have a connection/natural prolongation to the Plateau via the Wyville-Thomson Ridge. This argument will be weaker for Ireland, and the Rockall Trough is even deeper west of the Irish coast. The UK could have alleged that Ireland has no right at all to the continental shelf in this area beyond 200 nautical miles and only

[5] Churchill, R.R., Current Developments, Law of the Sea, United Kingdom – Ireland Continental Shelf Boundary Agreement, (1989) 38 *ICLQ*, pp.413-7, at p. 415

delimited the continental shelf within 200 nautical miles. However, as this agreement has been concluded, the parties seem to have established their claims to the continental shelf in the North East Atlantic. Faroe-Denmark and Iceland have protested against this agreement and the delimitation of the continental shelf in areas designated by them.

The continental shelf

Geomorphologically, the seabed adjacent to the coast is usually comprised of three separate sections, which form the continental margin. The first section, the continental shelf proper, slopes down gradually from the low-water mark to an average depth of about 130 metres. The second section is the continental slope, which has a steeper slope, going down to about 1,200 to 3,500 metres. In the third section there is a gentler falling away of the seabed, composed mainly of sediments washed down from the continents; this is the continental rise, which descends to around 3,500 to 5,500 metres.[6]

The continental margin constitutes about one fifth of the global sea floor, and especially the continental shelf is rich in natural resources. Most important are the extensive oil and gas reserves. The legal status of the continental shelf has therefore become an important question.

The proclamation made by President Truman of the USA in 1945 is regarded as the first clear assertion that the continental shelf belongs to the coastal State. At the First United Nations Conference on the Law of the Sea (UNCLOS I) in Geneva in 1958 it was adopted in the Continental Shelf Convention that coastal States should enjoy sovereign rights for the purpose of exploring and exploiting the resources of the continental shelf (Article 2). The term "continental shelf" is defined in Article 1 of the 1958 Continental Shelf Convention[7] as being:

'... the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 metres or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas...'

In other words, in this Convention the seaward limit of the continental shelf is the 200 metre isobath or, as an alternative limit, the 'exploitability' criterion. However, by developing technology the exploitability test became

[6] Churchill, R.R. and Lowe, A.V., *The Law of the Sea*, 2nd Edition, Manchester University Press,
Manchester, 1988, at p. 120

[7] U.K.T.S. 39 (1964); (1958) 52 AJIL 858

very imprecise since most areas of the ocean bed could be exploited. Coastal claims to continental shelves could therefore eventually be extended to cover the entire ocean floor.[8]

In 1970 the General Assembly of the United Nations adopted the Declaration of Principles Governing the Seabed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (Resolution 2749 (XXV)). In this it is declared that 'the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, ... , as well as the resources of the area, are the common heritage of mankind.' Therefore there was a need to establish clear outer limits to the continental shelf jurisdiction, which were more precise than the 1958 Continental Shelf Convention.[9]

The 1982 United Nations Convention on the Law of the Sea[10] (UNCLOS) differs from the 1958 Continental Shelf Convention in its legal definition of the continental shelf. The continental shelf is defined in Article 76(1) of UNCLOS:
'The continental shelf of a coastal State comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance'.

In UNCLOS there is no longer a 200 metres depth criterion and the continental shelf is not defined in terms of exploitability. UNCLOS differs also from the 1958 Continental Shelf Convention in providing that the continental shelf extends to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, or to the outer edge of the continental margin, whichever is the longer. Therefore, in UNCLOS the continental shelf always extends 200 nautical miles from the coast whether the outer edge of the continental margin extends that far or not.

The continental shelf extends throughout the natural prolongation of the States land territory to the outer edge of the continental margin. The

[8] *Supra*, n. 6, Churchill & Lowe, at p. 125
[9] *The Law of the Sea. Definition of the Continental Shelf*, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, New York, 1993, at p. 1.
[10] (1982) 21 I.L.M. 1261

reference to natural prolongation in Article 76(1) of UNCLOS is important, as it requires a State to show that there is no discontinuity between the land territory and the continental margin claimed. The continental margin is defined in Article 76(3) of UNCLOS and comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise.

The continental shelf extends beyond 200 nautical miles to the outer edge of the continental margin if that point is more than 200 nautical miles out. However, this advantage for geologically favoured States is limited. The limit of the continental shelf can be extended up to a 1 per cent sediment thickness line (the Irish formula), or to a line delineated at a distance of 60 nautical miles from the foot of the continental slope (Article 76(4)). These lines have however to be within the maximum limit established in Article 76(5), which provides that the continental shelf cannot be extended beyond 350 nautical miles from the territorial sea baselines, or shall not exceed 100 nautical miles from the 2,500 metre isobath.

The outer edge of the continental margin is of fundamental significance with respect to the drawing of a boundary between coastal States and international jurisdictional regimes. Coastal States are obliged to submit information on the outer limits of their continental shelves where they extend beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf set up under Annex II to UNCLOS. The coastal State shall establish the outer limits of its continental shelf on the basis of recommendations from the Commission (Article 76(8)). Once a coastal State has established the outer limits of its continental shelf either beyond 200 nautical miles or the 200 nautical mile limit, it is required to deposit with the Secretary-General of the United Nations and with the Secretary-General of the International Sea-Bed Authority charts describing the outer limits (Articles 76(9) and 84(2) of UNCLOS).

Article 76(10) of UNCLOS has a saving clause concerning the delimitation of the continental shelf between States, stating that Article 76 does not prejudice the question of delimitation of the continental shelf between States with opposite or adjacent coasts. This is dealt with in Article 83 of UNCLOS

While the 1958 Continental Shelf Convention in Article 1(b) allows for continental shelf around islands there is no definition of islands in this convention. In UNCLOS an island is defined in Article 121(1), and Article

121(2) provides that islands also have a continental shelf determined in accordance with the Convention. However, islands that are just uninhabitable rocks have no continental shelf, and the exception is provided for in Article 121(3): 'Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.'

UNCLOS entered into force on 16 November 1994 following the deposition of the sixtieth instrument of ratification of accession. Of the four States that have laid claims to the continental shelf in the North East Atlantic three have ratified or acceded to UNCLOS – Iceland, Ireland and the UK. Iceland ratified the Convention in June 1985, and was a party when UNCLOS entered into force. Ireland ratified the Convention in June 1996 while the UK acceded to the Convention in July 1997. Denmark has signed UNCLOS but has not yet ratified it. The 1958 Continental Shelf Convention entered into force in 1964. Only Denmark (the Faroe Islands included) and the UK of the four States have ratified the 1958 Continental Shelf Convention but Ireland has signed this convention. Article 311 of UNCLOS provides that 'this convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958'. Consequently, the regulations in UNCLOS will govern the relations between Iceland, Ireland and the UK, while the 1958 Continental Shelf Convention will govern the relations between Faroe-Denmark and the UK. All four States will however be bound by customary international law.

The Commission on the Limits of the Continental Shelf

The Commission on the Limits of the Continental Shelf is set up under Annex II to UNCLOS and the Commission began its work in June 1997. The purpose of the Commission is to facilitate the implementation of UNCLOS in respect of the establishment of the outer limits of the continental shelf beyond 200 nautical miles. The Commission shall make recommendations to coastal States on matters related to the establishment of those limits based on data and other material included in submissions from coastal States. The limits of the continental shelf established by a coastal State on the basis of these recommendations shall be final and binding. The Commission does not establish the limits.[11]

[11] Commission on the Limits of the Continental Shelf, www.un.org/Depts/los/index.htm

In May 1999 the Commission adopted the Scientific and Technical Guidelines,[12] which are intended to provide assistance to coastal States to prepare their submission to the Commission regarding the outer limits of their continental shelf. The Guidelines are of a highly scientific nature. They deal with geodetic and other methodologies stipulated in Article 76 of the Convention for the establishment of the outer limits of the continental shelf, using such criteria as determination of the foot of the slope of the continental margin, sediment thickness and structure of submarine ridges and other underwater elevations.

The 1999 Guidelines provide a procedure for establishing the outer limits of the continental shelf. When a coastal State intends to establish the outer limits of the continental shelf beyond 200 nautical miles, the State has to demonstrate the fact that the outer edge of the continental margin extends beyond 200 nautical miles (Article 76(4)(a) of UNCLOS). The Commission has defined a "test of appurtenance" to examine this provision, and paragraph 2.2.8 of the Guidelines describes the test of appurtenance as follows:
'If either the line delineated at a distance of 60 nautical miles from the foot of the continental slope, or the line delineated at a distance where the thickness of sedimentary rocks is at least 1 per cent of the shortest distance from such point to the foot of the slope, or both, extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, then a coastal State is entitled to delineate the outer limits of the continental shelf as prescribed by the provisions contained in article 76, paragraphs 4 to 10.'[13]

The first procedure in the delineation of the outer limits of the continental shelf is to determine the foot of the continental slope. This is defined in Article 76(4)(b) of UNCLOS as: 'In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base'. The Commission defines the continental slope as 'the outer part of the continental margin that extends from the shelf edge to the upper part of the rise or to the deep ocean floor where a rise is not developed.'[14] The base of the continental slope is defined as 'a region, where the lower part of the slope merges into the top of the

[12] Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf,
CLCS/11, 1999, www.un.org/Depts/los/index.htm
[13] *Ibid.*, para. 2.2.8
[14] *Ibid.*, para. 5.4.4

continental rise, or into the top of the deep ocean floor where a continental rise does not exist.'[15] The point of maximum change in gradient at the base of the continental slope is determined on the basis of geomorphological and bathymetric evidence, and locates the foot of the continental slope.[16]

Secondly, the two formulae rules in Article 76(4)(a)(i) and (ii) of UNCLOS should be applied to delineate the outer limits of the continental shelf – the 1 per cent sediment thickness line, or the line delineated at a distance of 60 nautical miles from the foot of the slope. If either or both of the formulae line extend beyond 200 nautical miles from the baselines from which the territorial sea is measured the coastal State is entitled to delineate the outer limits of the continental shelf beyond 200 nautical miles. The 1 per cent sediment thickness line is determined in the way that for a point on this line to be for example 100 nautical miles from the foot of the slope the thickness of sedimentary rocks has to be 1 nautical mile or 1,852 m at that point.

Thirdly, the constraint rules in Article 76(5) of UNCLOS must be applied, where the outer limits of the continental shelf cannot extend beyond 350 nautical miles from the baselines from which the breadth of the territorial sea is measured or beyond 100 nautical miles from the 2,500 metre isobath. For the constraint line determined at a distance of 100 nautical miles from the 2,500 metre isobath to become effective, this isobath has to be located at a distance of 250 nautical miles or greater from the baselines from which the territorial sea is measured, otherwise the line 350 nautical miles from the baselines will apply.[17] The first 2,500 metre isobath from the baselines has to be used in the delineation of the 100 nautical miles limit.[18] These constraint rules set clear cut-off points for the outer limits of the continental shelf, so whichever of the two formulae in Article 76(4)(i) and (ii) are applied, the boundary cannot exceed both of the constraint rules. The inner envelope of the formulae and constraint lines determines the outer limits of the extended continental shelf.[19]

The actions of the Commission shall not prejudice matters relating to delimitation of continental shelf boundaries between States with opposite or

[15] *Ibid.*, para. 5.4.5
[16] *Ibid.*, paras. 5.4.6 and 5.4.7
[17] *Ibid.*, para. 4.4.1
[18] *Ibid.*, para. 4.4.2
[19] *Ibid.*, para. 2.3.3

adjacent coasts (Article 9 of Annex II to UNCLOS), and Rule 44 of the Rules of Procedure of the Commission[20] provides:
'1. In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States or in other cases of unresolved land or maritime disputes, submission may be made and considered in accordance with Annex I to these Rules.
2. The actions of the Commission shall not prejudice matters relating to the delimitation of boundaries between States.'[21]

Annex I to the Rules of Procedure provides that States may make joint submission to the Commission requesting the Commission to make recommendations without regard to the delineation of boundaries between the States (Article 4). The Commission shall not examine and qualify a submission made by any of the States concerned in a land or maritime dispute, except where all the States parties to the dispute give their consent (Article 5).

The Commission requested the eight Meeting of States Parties to UNCLOS, held in 1998, to clarify whether the terms "coastal States" and "States" used in the Convention, especially in Article 76(8) concerning submission of information on the outer limits of the continental shelf beyond 200 nautical miles, included States that were not parties to UNCLOS. The Meeting recommended that a legal opinion should be requested from the Legal Counsel of the United Nations only if the actual need arose. No such need has to yet arisen.[22]

Where a coastal State intends to establish the outer limits of its continental shelf beyond 200 nautical miles, it shall in accordance with Article 4 of Annex II to UNCLOS make such submission to the Commission within 10 years of the entry into force of the Convention for that State. The eleventh Meeting of States Parties to UNCLOS, held in 2001, decided that the ten-year time period shall be taken to have commenced when the Scientific and Technical Guidelines were adopted on 13 May 1999 for States that were Parties to UNCLOS before this date.[23] Of the four States claiming

[20] Rules of Procedure of the Commission on the Limits of the Continental Shelf, CLCS/3/Rev.2, 1998,
www.un.org/Depts/los/index.htm
[21] *Ibid.*, Rule 44
[22] *Supra*, n. 11
[23] Meeting of States Parties to UNCLOS, SPLOS/72, 2001, www.un.org/Depts/los/index.htm

continental shelves on the Rockall Plateau Iceland, Ireland and the UK were parties to UNCLOS before 13 May 1999.

Geography of the Rockall sector

By the geography of the Rockall sector is understood, apart from the physical geography of the area, its geomorphology (surface form), geology (the nature of the rocks) and bathymetry (the measurement of depth).

The Rockall Plateau is a shoal area some 300 miles west of the Scottish and Irish coasts. The south-western part of the Plateau consists of Hatton Bank, Rockall Bank where the rock Rockall is above water, and the intervening Hatton-Rockall Basin.[24] To the north-east the Rockall Plateau includes Lousy Bank, Bill Baileys Bank, Faroe Bank, and Rosemary Bank. The Faroe Bank Channel, about 750 metres deep, separates these from the Faroe Islands.[25]

The Rockall Plateau is bounded to the east by the 3,000 metres deep Rockall Trough. To the south and west the plateau is bounded by steep margins falling to depths of about 1,500 to 2,500 metres. To the north the western margin of the plateau merges with the footslopes of the Iceland-Faroe Rise. The Rockall Plateau is underlain by continental crust but the Iceland-Faroe Rise is underlain by anomalously thick oceanic crust of Icelandic type.[26]

The Faroe Islands and the northern part of the Rockall Plateau are characterised by a thick basalt cover formed by extensive volcanic activity, which took place about 60 million years ago. These lavas of the Faroe Islands are underlain by continental crust, and a continental margin separates the Iceland-Faroe Rise from the Faroe Block.[27] Brown states that there seems to be general agreement among geologists that the Rockall Plateau forms part of a microcontinent and that it probably extends northwards into the Faroe Block.[28]

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[24] Naylor, D. and Mounteney, S.N., *Geology of the North-West European Continental Shelf*, Volume 1, Graham Trotman Dudley Publishers Ltd., London, 1975, at pp. 77-8

[25] Brown, E.D., Rockall and the limits of national jurisdiction of the UK, Part 1 and 2, (1978) 2 *Marine Policy*, pp. 181-211 and 275-303, at p. 280

[26] *Ibid.*, at p. 281

[27] *Ibid.*

[28] *Ibid.*

The Rockall Trough separates the Irish and Scottish coasts from the Rockall Plateau. The composition of the crust beneath the Rockall Trough is unknown, but Brown citing Roberts states that geophysical evidence suggests that the Trough is underlain by oceanic crust.[29]

To the north the Faroe-Shetland Channel separates the Faroe-Rockall Plateau from the Shetland Islands. The Faroe-Shetland Channel seems, like the Rockall Trough, to have been formed by sea-floor spreading and to be underlain by oceanic crust. The Wyville-Thomson Ridge separates the Faroe-Shetland Channel from the Rockall Trough, and connects the Faroe-Rockall Plateau to the North Scottish continental shelf. The Wywille-Thomson Ridge seems to be composed of volcanic rocks formed 60 million years ago, at the same time as the Faroe Islands and the northern part of the Rockall Plateau were covered by basalt.[30] Whether there is a natural prolongation from the North Scottish continental shelf to the Faroe-Rockall Plateau will depend upon evidence to show that the Wywille-Thomson Ridge is composed of continental and not oceanic crust.[31]

The Faroe Bank Channel separates the Faroe Islands from the Rockall Plateau. It is unclear whether the Channel marks a discontinuity in the northwards extension of the microcontinent or whether the continental crust of the Faroe Bank extends beneath the Channel to link up with the continental crust underlying the Faroe Islands.[32]

As science would have it, rifting and sea-floor spreading caused the huge North American-European continent to break up into the three macro-continents of Europe, Greenland and North America plus the Faroe-Rockall micro-continent.

Analysis of the continental shelf claims

The claims to the continental shelf in the North East Atlantic made by the UK, Ireland, Faroe-Denmark, and Iceland have resulted in a disputed area on the Rockall Plateau. The dispute between the parties is on overlapping claims to continental shelves, which extend more than 200 nautical miles from the coasts of all four states. UNCLOS provides in Article 76(1) that a coastal State always has sovereignty over the continental shelf within 200 nautical miles from the baselines for the territorial sea, and that the

[29] *Ibid.*, at p. 284
[30] *Supra*, n. 2, Faroese Hydrocarbon Planning Commission, at pp. 67-8
[31] *Supra*, n. 25, Brown, at pp. 288-9
[32] *Ibid.*, at p. 289

continental shelf can extend beyond 200 nautical miles to the outer edge of the continental margin. Consequently, the claims of all four parties are based on the argument of natural prolongation of their land territory to the outer edge of the continental margin.

To analyse the claims it is, therefore, necessary to investigate if the continental shelves of the parties extend throughout the natural prolongation of their land territory to the outer edge of the continental margin, if the outer edge of the continental margin is indeed located as alleged by the parties, and if the claims otherwise are in compliance with Article 76 of UNCLOS.

According to the 1999 Guidelines of the Commission on the Limits of the Continental Shelf the coastal State shall first demonstrate to the Commission that the natural prolongation of its submerged land territory to the outer edge of its continental margin extends beyond the 200-nautical-mile distance criterion. This is the test of appurtenance, where the first step is to locate the foot of the continental slope. Secondly the outer edge of the continental margin shall be delineated in accordance with Article 76(4) of UNCLOS as either the one per cent sediment thickness line or the line 60 nautical miles from the foot of the continental slope.

Article 76(5) of UNCLOS provides the outer limits of the continental shelf. All four states' claims exceed 350 nautical miles from their respective territorial sea baselines. Therefore, assuming that a natural prolongation does exist beyond 200 nautical miles, to be in compliance with Article 76(5) of UNCLOS the claims cannot exceed 100 nautical miles from the 2,500 metre isobath.

The coastal State shall submit information on the limits of the continental shelf where it extends beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf (Article 76(8) of UNCLOS). The coastal State shall establish the outer limits of its continental shelf on the basis of recommendations of the Commission. Rule 44 and Annex I of the 1998 Rules of Procedure of the Commission provide that in case of a dispute in the delimitation of the continental shelf between opposite or adjacent States the actions of the Commission shall not prejudice matters relating to the delimitation.

The sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction ("the Area", Article 1 of UNCLOS) and its resources are the common heritage of mankind, on which behalf the International Sea-

Bed Authority shall act (Articles 136 and 137 of UNCLOS). It is therefore important to establish the outer limits of the coastal States sovereign rights over the continental shelf in accordance with Article 76 of UNCLOS.

The result of the analysis of the claims could be that the disputed area is a natural prolongation of the land territory of all four states, and in that case the parties have to agree on the delimitation of the continental shelf. Another hypothesis is that none of the parties has the right to claim the continental shelf on the Rockall Plateau. In that case the disputed area will be beyond national jurisdiction of all the States and will be managed by the International Sea-Bed Authority. However, with uncertainty about the geology of the area we have to consider different alternatives.

Analysis of the UK claim

The UK implemented the 1958 Continental Shelf Convention by the Continental Shelf Act 1964, which vests in the Crown 'any rights exercisable by the United Kingdom outside territorial waters with respect to the sea bed and subsoil and their natural resources' (Section 1(1)). Empowered by section 1(7) of this Act the UK has by Order in Council made successive designations of areas within which the right to explore and exploit the natural resources is claimed.[33]

The first UK designation on the Rockall Plateau was made on 6 September 1974 when an area of 52,000 square miles was designated. The designation extends to 19°30' West and this is some 360 miles west of the nearest Scottish islands.[34] From this it seems that the UK view is that the British continental shelf extends a considerable distance west of Rockall.[35] It is not so clear what the foundation of the UK claim is in international law. In 1972 when Rockall by the Island of Rockall Act was incorporated in the UK, the claim was based on the 1958 Continental Shelf Convention and that Rockall, as an island, was entitled to an area of continental shelf under international law. At the time of the Designation Order 1974, as a reaction to growing support at the Third United Nations Conference on the Law of the Sea (UNCLOS III) to the Irish view that uninhabited rocks should not be permitted to generate their own area of continental shelf, the claim seems to be based on the argument that the area is a natural prolongation of the land

[33] *Supra*, n.1, Symmons, at p. 703

[34] Symmons, C.R., Legal Aspects of the Anglo-Irish Dispute over Rockall, (1975) 26 *Northern Ireland Legal Quarterly*, pp. 65-93, at p. 83

[35] *Supra*, n. 25, Brown, at p. 290

mass of the UK. However, still in 1977 the British view was that Rockall, as an island, generated areas of maritime jurisdiction.[36]

Brown states in 1978 that the British case rested on two arguments. (i) The island argument. The view is that international law does not distinguish different categories of islands. (ii) The natural prolongation argument. The view is that the continental shelf extends throughout the natural prolongation of the land territory to the edge of the continental margin. The exploitability criterion in the 1958 Continental Shelf Convention is no longer regarded as placing any restriction upon the seaward extension of the continental shelf.[37]

Since the entry into force of UNCLOS in 1994 in which Article 121(3) provides that uninhabitable rocks do not generate continental shelf the UK has only relied on the argument of natural prolongation. This is described in the statement from the Foreign and Commonwealth Office (FCO) in 1996: 'Measuring British fishing limits from Rockall is believed to be inconsistent with the provision in article 121(3) of UNCLOS that rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone'.[38] The UK has by this statement recognized that international law distinguishes different categories of islands, and that Rockall is an uninhabitable rock, which does not generate an exclusive economic zone and a continental shelf. In 1994 the Minister of State, Department of Trade and Industry stated: '... The rocks on Rockall are of the same geology as the rocks of Scotland. Therefore, we claim that there is a prolongation'.[39] From this is seen that the UK claim to continental shelf on the Rockall Plateau now only is based on the argument of natural prolongation of the land territory of the UK and not on the island argument.

The latest UK continental shelf designation on the Rockall Plateau was made in 1989 by Order in Council (SI 1989/2398) when the UK designated additional areas extending to the west on the Rockall Plateau to 23°57'W, some 500 nautical miles from the territorial sea baselines.[40]

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[36] *Ibid.*, at p. 292
[37] *Ibid.*, at pp. 292-4
[38] Minister of State, FCO, (1996) 67 *British Yearbook of International Law (BYIL),* pp. 797-8
[39] Minister of State, Department of Trade and Industry, (1994) 65 *BYIL*, pp. 654-5
[40] *Competing Claims to Sovereignty and Maritime Jurisdiction in the Rockall Plateau Area*, International Boundaries Research Unit, University of Durham, 1996, at p. 5

The UK has not defined its continental shelf claim with regard to the provisions of Article 76 of UNCLOS. Whether the outer limit is established as 60 nautical miles from the foot of the slope or by the one per cent sediment thickness formula is not clear (article 76(4)(i) and (ii) of UNCLOS), and information on how the foot of the continental slope is determined is not available. However, if the 2,500 metre isobath on the Rockall Plateau is applied the outer limit of the designation to the west on the Plateau appears to be within 100 nautical miles from the 2,500 metre isobath and therefore complies with Article 76(5) of UNCLOS.

In 1985 the Minister of State, Foreign and Commonwealth Office, stated that the UK's rights to continental shelf on the Rockall Plateau is based on geography, geology, and geomorphology.[41]

1. 'Geography, because UK is the largest and most populous country nearby.'
In the Libya-Malta continental shelf case the Court rejected the relevance of "landmass" as a special circumstance: 'Landmass has never been regarded as a basis of entitlement to continental shelf rights, and such a proposition finds no support in the practice of States, in the jurisprudence, in doctrine, or indeed in the work of the Third United Nations Conference of the Law of the Sea.'[42] The Court has also rejected the population of a country and other economic and social factors as relevant circumstances in maritime delimitation as being 'virtually extraneous factors'[43] in the Tunisia-Libya case and in the Libya-Malta case the Court rejected the relevance of comparative economic positions[44].
Consequently, the UK's geographical arguments have little or no importance.

2. 'Geology, because the rocks on the plateau are the same as in the UK, whereas they are quite different in Iceland and the Faroes.'
Before the sea-floor spreading the Rockall Plateau was a part of the European continent and, therefore, the rocks in the UK will naturally be the same as on the Rockall Plateau. Subsequently, about 60 million years ago the northern part of the Rockall Plateau was overlaid and intruded by igneous rocks of volcanic origin, and these areas, including the Faroe Islands, were covered by basalt. The underlying crust of the Faroe Islands is

[41] Minister of State, FCO, (1985) 56 *BYIL*, p. 494
[42] Libya-Malta case, ICJ Rep. 1985, p. 13, para. 49
[43] Tunisia-Libya case, ICJ Rep. 1982, p. 18, para. 107
[44] Libya-Malta case, ICJ Rep. 1985, p. 13, para. 50

continental, which means that the rocks are the same as on the Rockall Plateau. It is clear that the rocks in Iceland are different from the Rockall Plateau. Iceland is of volcanic origin and the rocks are oceanic while the Rockall Plateau is composed of continental crust.
Consequently, the rocks on the Rockall Plateau are the same as in both the UK and the Faroe Islands, but are different in Iceland.

3. 'Geomorphology, because the sea-bed of the Hatton-Rockall Plateau is an extension of the UK mainland.'
This argument is based on a natural prolongation of the UK's territory to the outer edge of the continental margin, and depends upon evidence to show whether or not a natural prolongation exists[45] on the ground of 1) the existence of a common continental crust in at least part of the Rockall Trough and/or Faroe-Shetland Channel, 2) the existence of a continental crust link in the shape of the Wyville-Thomson Ridge, and/or 3) acceptance of the proposition that sediments laid down in the Trough and Channel are predominantly of British provenance and that this is sufficient to constitute a natural prolongation.

Analysis of the Irish claim
The Irish Continental Shelf Act was passed in 1968. Empowered by section 2(3) of this Act by Order of 20 December 1974 (S.I. 371/1974) Ireland designated an area of 15,000 square miles west of Ireland, across the Rockall Trough and including a small part of the Rockall Plateau. This is seen as a countermove to the British continental shelf designation earlier in 1974, but the area did however not overlap with the UK's designated area.[46]

An even more extensive designation was made in 1976 (Order S.I. 64/1976), when Ireland designated an area of 85,000 square miles extending to the western edge of the Rockall Plateau and 520 miles from the Irish coastline. The designation commences at 56°20'N, only some 70 miles south of Rockall, but it does not overlap with British designated areas.[47] In 1976 Ireland therefore appears to have accepted that a rule of customary international law has developed by which a state may claim continental shelf to the outer edge of the continental margin, and an Irish Minister also announced this view in 1976. This customary rule goes beyond the 1958

[45] *Supra*, n. 25, Brown, at pp. 295-6
[46] *Supra*, n. 25, Brown, at p. 294
[47] *Supra*, n. 1, Symmons, at p. 726

Continental Shelf Convention where the 200-metre depth criterion or the exploitability criterion applies.[48]

Symmons states that it may be queried whether the designated area and the Rockall Plateau generally are a natural prolongation of Irish territory and geologically connected with Ireland. It is not clear whether Ireland in the 1976 designation has complied with the limitations in Article 76(5) of UNCLOS where the continental shelf cannot extend beyond either 350 nautical miles from the coast or 100 nautical miles from the 2,500 metre isobath.[49] The Irish claim may exceed these limitations because a 2,500 metre isobath also exists in the Rockall Trough, apart from on the Rockall Plateau.[50] The Irish designations of continental shelf that extend across the Rockall Trough to include part of the Rockall Plateau are based on natural prolongation of Irish territory to the edge of the continental margin.[51] Ireland has not stated its claim with reference to Article 76 of UNCLOS, and information on where the foot of the continental slope is located is not provided.

Ireland did not recognise that Rockall generated the right to British maritime jurisdiction and continental shelf. Consequently, from 1974 there was a dispute between Ireland and the UK over the boundary between their respective continental shelves in the area west of Ireland and Scotland, and Ireland denied that Rockall should be used as a British basepoint in the delimitation.[52]

This dispute was resolved in 1988, when Ireland and the UK signed an agreement on the delimitation of areas of the continental shelf between the two countries. In the UK-Irish agreement Rockall does not generate its own continental shelf, and Rockall has been disregarded as a basepoint for the purposes of continental shelf boundary delimitation. In the area west of Ireland and Scotland the agreement delimits the continental shelf on the Rockall Plateau, and the boundary extends west to the point 57°28'N, 25°31'W (point 132). This point is well beyond the areas previously designated by Ireland and the UK. The UK-Irish agreement provides in

[48] Symmons, C.R., Ireland and the Law of the Sea. *In* Treves, T. (ed.), *The Law of the Sea*, Kluwer Law International, Netherlands, 1997, pp. 261-325, at p. 288
[49] *Ibid.*
[50] Symmons, C.R., The Rockall Dispute Deepens: An Analysis of Recent Danish and Icelandic Actions, (1986) 35 *ICLQ*, pp. 344-73, at p. 365
[51] *Supra*, n. 25, Brown, at pp. 294-5
[52] *Supra*, n. 1, Symmons, at pp. 724-6

Article 4 on the continental margin that: 'Nothing in this Agreement affects the position of either Government concerning the location of the outer edge of its continental margin.'[53] Therefore, the agreement does not deal with any future extension of the parties' claim to continental shelf to the west on the Rockall Plateau, and the parties' continental margin could either be within or beyond 25°31'W.

In this area on the Rockall Plateau both Iceland and Faroe-Denmark have claimed continental shelf, but Ireland and the UK have rejected these claims.[54] In a Press Statement from the Foreign and Commonwealth Office, issued on the day of the signing of the agreement, it is stated: 'Claims made in 1985 by Denmark and Iceland, including areas off the north-west coast of Ireland appertaining to the UK and Ireland, were rejected by both Governments. The objections still stand'.[55] The UK-Irish agreement does not resolve the disputes between either Ireland or the UK and Faroe-Denmark and Iceland to the continental shelf on the Rockall Plateau, and does not bind Faroe-Denmark and Iceland, both of which also have protested.[56]

The Irish claim to the continental shelf on the Rockall Plateau is based on natural prolongation of Irish territory across the Rockall Trough to the outer edge of the continental margin.[57] Ireland must show that a natural prolongation does exist on the ground of 1) the existence of a common continental crust in at least part of the Rockall Trough, and/or 2) acceptance of the proposition that sediments laid down in the Trough are predominantly of Irish provenance and that this is sufficient to constitute a natural prolongation.

The Irish case that a natural prolongation does exist is weaker than the UK case, since there is no ridge like the Wyville-Thomson Ridge between Ireland and the Faroe-Rockall microcontinent. Furthermore, continental crust linking the British Isles with the microcontinent is more likely to be found in the northern part of the Rockall Trough and in the Faroe-Shetland

[53] UK-Irish Continental Shelf Delimitation Agreement, Cm. 535 (1988), Art. 4
[54] Churchill, R.R., Current Developments, Law of the Sea, United Kingdom – Ireland Continental Shelf Boundary Agreement, (1989) 38 *ICLQ*, pp.413-7, at p. 415
[55] Foreign and Commonwealth Office, Press Statement, 7 November 1988, (1988) 59 *BYIL*, pp. 531-2
[56] *Supra*, n. 4, Olafsson, at p. 17
[57] *Supra*, n. 25, Brown, at p. 296

Channel.[58] West of Ireland the Rockall Trough is very deep and wide. There appears to be a foot of the continental slope close to the Irish coast, and in the test of appurtenance this foot of the slope has to be applied in order to entitle Ireland to a continental shelf extending beyond 200 nautical miles to the Rockall Plateau. This weakens the Irish case further.

A 2,500 metre isobath exists in the southern part of the Rockall Trough west of Ireland. Consequently, if a natural prolongation does exist that extends the Irish continental shelf across the Rockall Trough, the outer limit cannot exceed 100 nautical miles from this 2,500 metre isobath. The continental shelf cannot extend further than to the eastern edge of the Rockall Plateau, and therefore the Irish claim extending to the western edge on the Rockall Plateau will not be in compliance with Article 76 of UNCLOS.[59]

Analysis of the Faroese-Danish Claim
Royal Decree No. 259 of 7 June 1963 proclaims Danish Sovereignty over the continental shelf extending from the Danish coastlines and it comprises also the Faroese continental shelf. The Decree is based on the 1958 Continental Shelf Convention as stated in the Preamble of the Royal Decree and in Articles 1 and 2.

On 7 May 1985, empowered by section 3 of this Royal Decree, Denmark designated the continental shelf around the Faroe Islands. The northern part of the designation follows approximately the 200 nautical mile fishery limit around Faroe. The south-western part of the designation on the Rockall Plateau is what Faroe-Denmark consider a natural extension/prolongation of the Faroese continental shelf. The designation is based on the assumption that Faroe are part of the micro-continent formed by the Faroe-Rockall plateau. The Faroese/Danish designated area on the Rockall Plateau is approximately 300,000 sq. km. At this point in time the UK had designated approximately 50,000 sq. km and Ireland approximately 180,000 sq. km on the Rockall Plateau.[60]

The Danish press statement that was released at the time of the Faroese/Danish designation states that 'the designation ... allows for a 200 mile zone of the UK and Iceland'. The designation in fact duly observes the 200 nautical miles limits of the other three neighbouring states in the area – Iceland, the UK and Ireland. Consequently, the designation complies with

[58] *Ibid.*
[59] *Supra*, n. 50, Symmons, at p. 365
[60] Danish Press Statement, Ministry of Foreign Affairs, Copenhagen, 7 May 1985

Article 76(1) of UNCLOS, where a coastal state is entitled to a 200 nautical mile continental shelf. In relation to the UK, the designation respects a 200 nautical mile zone appertaining to the UK from the Scottish Western Isles, possible from St. Kilda. The Danish press statement stresses that Rockall has no importance in the designation, but that in accordance with UNCLOS Rockall is only entitled to a 12 mile territorial sea, which is respected in the designation (Article 121(3) of UNCLOS).[61]

Denmark protested when the UK made its continental shelf designation on the Rockall Plateau in 1974 and delivered a note on the Danish reservations to the British Embassy in Copenhagen. Denmark maintained that the Rockall Plateau is geologically connected with the Faroes and not with Scotland.[62] However, no counterdesignations were made until the Faroese/Danish designation in 1985.

In the Danish press statement of 1985 Faroe-Denmark emphasise that the designation is provisional and that the 'delimitation of this area must be determined by agreement between Denmark and any other affected countries.' The press statement continues to state that 'Denmark has stressed its will to negotiate at any time on the delimitation of the continental shelf between the Faroes and the other countries'.[63] It is a principle in the law of the sea that 'delimitation of sea areas has always an international aspect', as stated by Lord McNair in the Anglo-Norwegian Fisheries case.[64] Faroe-Denmark complies in the press statement with article 6(1) of the 1958 Continental Shelf Convention, which provides that for states whose coasts are opposite each other, 'the boundary of the continental shelf appertaining to such states shall be determined by agreement between them'. Similarly, Faroe-Denmark complies with Article 83(1) of UNCLOS, which provides that 'the delimitation of the continental shelf between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law,..., in order to achieve an equitable solution'.

The legal basis of the Faroese/Danish designation is the assumption that the Faroe Islands are part of the microcontinent formed by the Faroe-Rockall Plateau – an elevated plain with its summits in Rockall and the Faroe Islands. The micro-continent is delimited by the Rockall Trough, approximately 2.5 km deep and up to a width of 250 km, towards the UK

[61] *Ibid.*
[62] *Supra*, n. 50, Symmons, at pp. 347-8
[63] *Supra*, n. 60, Danish Press Statement, at pp. 2-3
[64] ICJ Rep. 1951, p. 116, at 132

and Ireland. Towards Iceland a similar drop of the seafloor delimits the micro-continent. The UK and Ireland have designated continental shelf on the Rockall Plateau and claim that it is an extension of their respective territories, and as the Danish press statement states 'without taking the Rockall Trough and other factors into consideration'. Iceland claims that it, like Faroe-Denmark, has rights to the continental shelf on the Rockall Plateau. Based on the present knowledge of the geological conditions, which exist around the Faroe-Rockall Plateau, Denmark contests the claims made by the UK, Ireland and Iceland to parts of the micro-continent.[65]

To the southwest on the Faroe-Rockall Plateau the designation covers areas of 2,000 to 3,000 metres depth. Symmons states that the designation 'has arguably gone beyond the edge of any Faroese continental margin', but still complying with Article 76 of UNCLOS.[66] The Faroese/Danish claim is within 60 nautical miles from the foot of the continental slope (Article 76(4)(ii)) and within the limit of 100 nautical miles from the 2,500 metre isobath (Article 76(5)).[67] On the western edge of the Faroe-Rockall Plateau the latest British and Irish designations extend further to the west than the Faroese/Danish designation.

The British Embassy in Copenhagen protested on the Faroese/Danish designation in areas, which the 'British Government consider form integral parts of the continental shelf appertaining to the UK in accordance with international law' and reserved fully all the rights of the UK in accordance with international law.[68] Also Ireland protested on the designation.[69]

The Faroe Bank Channel separates the Faroe Islands from the Rockall Plateau. Faroe-Denmark claim that there is a geological connection of the continental shelf between the Faroes and the Rockall Plateau.[70] The Faroe-Danish claim will depend on proving that a natural prolongation does exist on the ground of 1) there being a continuation of the continental crust across the Faroe Bank Channel, and/or 2) the sediments in the Faroe Bank Channel are predominantly of Faroese provenance.

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[65] *Supra*, n. 60, Danish Press Statement, at p. 2
[66] *Supra*, n. 50, Symmons, at p. 354
[67] *Ibid.*
[68] British Press Statement, British Embassy, Copenhagen, 13 May 1985, (1985) 56 *BYIL*, p. 493
[69] *Supra*, n. 50, Symmons, at p. 356
[70] *Supra*, n. 25, Brown, at p. 296

The Faroese/Danish case for a natural prolongation appears to be stronger than the Irish case because of the greater likelihood that the Faroe Islands are continentally linked with the Faroe Bank and the Rockall Plateau.[71]

Faroe-Denmark claim that the Faroe-Rockall Plateau is a separate microcontinent, the Faroe-Rockall microcontinent, and contests the continental shelf claims of the UK, Ireland and Iceland to parts of the Rockall Plateau. The Faroe-Danish case rests upon evidence to prove that the microcontinent is delimited towards the UK, Ireland and Iceland. The claims of Faroe-Denmark on the one hand and of the UK and Ireland on the other hand are therefore complementary in such a way that Faroe-Denmark have to prove that a natural prolongation does not exist across the Rockall Trough and Faroe-Shetland Channel while the UK and Ireland have to prove that their continental shelves do extend across the Rockall Trough and Faroe-Shetland Channel. Similarly, the claims of Faroe-Denmark and Iceland are complementary, since Faroe-Denmark have to prove that there is a foot of the continental slope to the west on the Rockall Plateau, while Iceland has to prove that its continental shelf extends to the Plateau by a natural prolongation.

Faroe-Denmark claim that the Rockall Trough and the Faroe-Shetland Channel separate the European continent from the Faroe-Rockall microcontinent by a rift between the continents, where oceanic crust appears. The UK and Ireland claim that the continents are not separated, only stretched, and that the Rockall Trough and Faroe-Shetland Channel are underlain by continental crust. The Wyville-Thomson Ridge is possibly a connection between the Faroe-Rockall microcontinent and the North Scottish continental shelf. Faroe-Denmark claim that this is not the case since the Ridge consists of oceanic crust. An evaluation of these theories will depend upon geological research in the area, and sufficiently extensive data sampling has not yet been carried out.

Analysis of the Icelandic Claim

Iceland designated its continental shelf to the west, south and east of Iceland on 9 May 1985 empowered by Law No. 41 of 1 June 1979 concerning the territorial sea, the exclusive economic zone and the continental shelf. Article 5 of this Law of 1979 defines the Icelandic continental shelf in the same way as Article 76(1) of UNCLOS as being a 'natural prolongation to the outer edge of the continental margin, or to a distance of 200 nautical miles

[71] *Ibid.*

from Iceland's baselines where the outer edge of the margin does not extend that far'.

In the 1985 designation Iceland claims a continental shelf area, which to the south extends beyond 200 nautical miles. In this area the Icelandic designation encompasses the Rockall Plateau, while respecting the 200 nautical mile zones of Faroe, the UK and Ireland. Both Iceland and Faroe-Denmark have ignored the UK's 200 nautical mile zone around Rockall in their designations. Furthermore, the Icelandic designation takes no account of St. Kilda, which the UK uses as a basepoint for its 200 nautical mile zone. On the Rockall Plateau the Icelandic designation overlaps completely with the Faroe/Danish, UK and Irish designations on the Plateau, and also extends further towards the deep ocean floor in the south and south-west to areas none of the other three states have laid claim.

In the Press Statement from the Icelandic Ministry for Foreign Affairs released at the same time as Iceland's designation, there is reference to a memorandum on Iceland's continental shelf claims handed over to Faroe-Denmark, the UK and Ireland in July 1984. Also a meeting between Iceland and Faroe-Denmark concerning their common interest in the Rockall Plateau in April 1985 is mentioned. The Press Statement does however not clarify what the Icelandic continental shelf claim is based on. Article 5 in the designation order provides that an agreement will be sought between Iceland and the other affected parties on the final delimitation of the continental shelf in accordance with the procedures of international law. The Press Statement states that Iceland is prepared to negotiate and that its will is to reach a solution by agreement.[72]

Iceland claims that the Rockall Plateau is a natural prolongation from Iceland itself. The basis of the claim relies on a geomorphological connection from the seabed south of Iceland to the Rockall Plateau and on the argument that parts of the Rockall Plateau have rocks of oceanic origin – a basaltic crust – similar to those found on the Iceland shelf itself. The Icelandic view is, like Faroe-Denmark's view, that the Rockall Trough is a break in the continental shelf of both the UK and Ireland, both geologically and geomorphologically.[73] Iceland is alleging that its claim is stronger than the Faroese/Danish on the basis that the Faroe Bank Channel weakens the

[72] Icelandic Press Statement, Ministry for Foreign Affairs, Reykjavík, 9 May 1985
[73] *Supra*, n. 50, Symmons, at p. 360

Faroese/Danish claim to a geological link with the Plateau and constitutes a geomorphological break with the Faroes.[74]

Whether there is a geological connection from Iceland to the Rockall Plateau via the Iceland-Faroe Rise may be queried. Brown, citing Bott, states that the Iceland-Faroe Rise is underlain by thick oceanic crust of Icelandic type, while the Rockall Plateau, including the Faroe Islands, is underlain by continental crust.[75]

On the Rockall Plateau the designation is marked by the line 60 nautical miles from the foot of the continental slope. This is in compliance with Article 76(4)(ii) of UNCLOS. Symmons states however that this delineation appears to be very 'approximate' since the southernmost point (point E at 49°48'N, 19°00'W) appears to be 100 miles from the foot of the continental slope. Furthermore, this line may not exceed 100 nautical miles from the 2,500 metres isobath (Article 76(5) of UNCLOS), and the extreme parts of the designation contravene this requirement.[76]

To the south-west of Iceland on the Reykjanes submarine ridge the continental shelf is limited to 350 miles from Icelandic baselines in accordance with Article 76(6) of UNCLOS, which sets this outer limit for the continental shelf on submarine ridges. This part of the designation implies that Iceland views a natural prolongation link to the Plateau directly to the south, including the Rockall Plateau, and not by the Iceland-Faroe Rise to the east of Iceland.[77]

On 19 June 1985 the British Embassy in Iceland protested on the Icelandic action in claiming an extensive area of continental shelf to the west of the British Isles, and reserved all the rights of the UK in accordance with international law. The UK view is that the Icelandic claim is based on a misinterpretation of UNCLOS and of existing international law and the British Embassy stated that there is no link between Iceland and the Hatton/Rockall Plateau.[78] The Irish Government on 20 June 1985 also protested on the Icelandic designation.[79] Denmark had already in its press

[74] *Ibid.*, at pp. 361-3
[75] *Supra*, n. 25, Brown, at p. 281
[76] *Supra*, n. 50, Symmons, at p. 364
[77] *Ibid.*, at p. 365-8
[78] British Press Statement, British Embassy, Reykjavík, 19 June 1985, (1985) 56 *BYIL*, pp. 493-4
[79] *Supra*, n. 50, Symmons, at p. 367

statement of 7 May 1985 contested claims made by the UK, Ireland and Iceland to parts of the microcontinent.[80]

Iceland has to demonstrate the fact that its continental shelf extends beyond 200 nautical miles. First, the foot of the continental slope has to be located. Symmons states that the foot of the slope is close to Iceland's south coast,[81] and given this the continental shelf cannot extend beyond 200 nautical miles. Iceland has however located and applied the foot of the slope on the Rockall Plateau, and has delineated its continental shelf 60 nautical miles from this "foot of the slope".

Iceland claims that the continental shelf extends to the Rockall Plateau and that it is a natural prolongation of the land territory of Iceland. The claim is partly based on geomorphology/bathymetry in alleging a geomorphological connection from the seabed south of Iceland to the Rockall Plateau. The UK rejects this since there is a sharp edge of the land territory to the south of Iceland, beyond which the seabed has the characteristic of deep ocean floor. There is a clear line for the foot of the continental slope close to Iceland's south coast.[82]

Furthermore the claim is based on geology in that Iceland claims that parts of the Rockall Plateau consists of rocks of oceanic origin, a basaltic crust, similar to rocks found on Iceland. This argument can be rejected since Iceland is of volcanic origin and has no continental crust, while the Rockall Plateau is underlain by continental crust. Parts of the Rockall-Faroe Plateau are covered by volcanic lava, as Iceland, but this is the result of volcanic activity along the Reykjanes Ridge after the separation of the microcontinent from East Greenland, and when Iceland subsequently was created.

It is not clear whether Iceland claims that there is a geological connection to the Rockall Plateau via the Iceland-Faroe Rise. This will, however, be a weak claim, since geological evidence seems to state that the Iceland-Faroe Rise is underlain by oceanic crust of Icelandic type, while the Rockall Plateau and Faroe are underlain by continental crust.

The UK has further alleged, that there is no geographical link between Iceland and the Rockall Plateau, since Iceland lies further away from the

[80] *Supra*, n. 60, Danish Press Statement
[81] *Supra*, n. 50, Symmons, at p. 367
[82] *Supra*, n. 78, British Press Statement

plateau than UK.[83] This UK argument can be rejected, since the distance from the centre of the Rockall Plateau to both Iceland and the UK is the same.

Faroe-Denmark have stated, that the western edge of the Faroe-Rockall microcontinent is delimited towards Iceland by a steep drop of the sea floor.[84] There is a clear "foot of the slope", where the geology changes from continental crust on the Plateau to oceanic crust on the ocean floor. Therefore, there is no geomorphological connection from Iceland to the Plateau.

Discussion

The claims of the parties concerning the natural prolongation of their respective continental shelves across the Faroe Bank Channel, the Rockall Trough, and the Faroe-Shetland Channel, or by the connections via the Wyville-Thomson Ridge and the Faroe-Iceland Rise will depend upon geological evidence to show that the underlying crust is of either continental or oceanic origin. This extensive data sampling in the Rockall Plateau area has not yet been carried out, and the parties must be prepared to perform this geological research to support their claims. Similarly, to support the geomorphological connection from Iceland to the Rockall Plateau bathymetric analysis has to be performed. At present it is not known whether the four parties intend to initiate research in this area.

To delineate the outer limits of the continental shelf the parties must carry out bathymetric analysis to establish where the 'foot of the slope', defined in Article 76(4)(b) as the point of maximum change in the gradient at its base, is located. Additionally, the 2,500 metre isobath in the Rockall Trough and on the Rockall Plateau must be determined, since the outer limits of the continental shelf cannot exceed 100 nautical miles from this isobath.

There have not been consultations between the parties since 1985 when Faroe-Denmark and Iceland made their designations. The UK protested against the Faroe/Danish designation in 1985 and expressed that it would return to the matter later. In 1990 during the negotiations between the UK and Faroe-Denmark on the delimitation of the continental shelf the parties discussed the dispute on the Rockall Plateau. However, the parties decided that this dispute was so complex, with claims of four states, that even an agreement between the UK and Faroe-Denmark would not make the area

[83] *Ibid.*

[84] *Supra*, n. 60, Danish Press Statement, at p. 2

undisputed. Consequently, the parties restricted themselves to boundary negotiations in the area within 200 nautical miles. It is not clear whether the Icelandic claim has been further discussed between the parties, but it appears that the other three claimants disregard the Icelandic claim.

In 1988 the UK and Ireland agreed on their continental shelf boundary on the Rockall Plateau. Both Faroe-Denmark and Iceland protested, and this agreement only solved the dispute between the UK and Ireland. Since Faroe-Denmark and Iceland both claim the entire Rockall Plateau there are still two main areas of overlapping claims, one area claimed by Faroe-Denmark, Iceland and the UK, and the other area claimed by Faroe-Denmark, Iceland and Ireland.

The continental shelf designations on the Rockall Plateau have resulted in a very complicated situation. The four parties have asserted their claims to the continental shelf and these are very far from matching together. The UK and Irish claims extend to the western edge of the Rockall Plateau; the Faroese/Danish claim defines the Faroe-Rockall microcontinent extending from the Faroes to include the entire Rockall Plateau; and the Icelandic claim overlaps the claims of the three other parties on the Rockall Plateau and extends further to the south.

Both Faroe-Denmark and Iceland have in their designations stated that the designation is provisional, pending an agreement on the delimitation of the continental shelf with other affected countries in accordance with international law. These parties have also stated their willingness to negotiate at any time in order to reach a delimitation agreement.

Since 1985 there has not been negotiations between the parties. In 1988 the UK and Ireland agreed on their continental shelf delimitation, and divided the Rockall Plateau between each other. These parties will probably be reluctant to enter into agreements with Faroe-Denmark and Iceland that will diminish their designated continental shelf. For Faroe-Denmark and Iceland any possible boundary agreement will also imply a significant reduction in their designated areas. Delimitation agreements between the four parties will be difficult to achieve, since this will require the parties to abandon the basis of their claims and the parties will be very disinclined to make such agreements.

An agreement between Faroe-Denmark and the UK on the continental shelf delimitation would probably result in an equidistant line, since the parties

applied this principle in their boundary agreement within 200 nautical miles. In that case Faroe-Denmark would only achieve a small triangle in the northern part of the Rockall Plateau and indeed a negligible part of its claim. Faroe-Denmark would also have difficulties in maintaining its claim to the southern part of the Rockall Plateau if such an agreement was signed, since the Faroe/Danish claim is based on the Faroe-Rockall microcontinent and an extension from the Faroe Islands to the southern edge of the Rockall Plateau.

For Iceland a boundary agreement with the UK and Ireland could probably also result in an equidistant line, since each of the parties have used this principle in other delimitation agreements. The boundary in the UK/Irish agreement of 1988 appears to be an equidistance line, and the Icelandic continental shelf designation applies the median line as the boundary towards Greenland and the Faroe Islands. Iceland would by such an agreement achieve approximately the western half of the Rockall Plateau, which is an acceptable result. However, the UK and Ireland would lose a significant part of their continental shelf claims and an agreement would be less favourable for these countries. A solution like this would result in actually excluding Faroe-Denmark from gaining part of the continental shelf on the Rockall Plateau.

Attention should be drawn to Article 83 of UNCLOS, which provides that the delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law in order to achieve an equitable solution. If none of the four States' continental shelf claims on the Rockall Plateau can be excluded on the ground that it does not comply with Article 76 of UNCLOS, the parties should seek to achieve an equitable solution. The relevant factors that can be taken into account are numerous, as is seen in the jurisprudence of the continental shelf cases. It would though never be an equitable solution for one country only to gain a negligible share of the Rockall Plateau, especially when there is uncertainty about the geological conditions of the area.

Growing interest of oil companies to commence oil exploration in the area and the possible discovery of oil would probably encourage the four parties to find a solution on their overlapping claims. Even if the parties do not agree on the delimitation of the continental shelf they would probably agree on the outer limits of all the continental shelf claims on the Rockall Plateau. This area would be under national jurisdiction of one or more of the four States, and the deep sea-bed beyond the outer limits would be under the

jurisdiction of the International Sea-Bed Authority. The Icelandic claim could represent the delineation towards the deep sea-bed.

The Commission on the Limits of the Continental Shelf shall not examine and qualify submissions on the outer limits of the continental shelf, where the area is disputed. In accordance with Annex I of the Rules of Procedure of the Commission, the four parties can by agreement make a joint submission on the outer limits of the continental shelf for the disputed area. The Commission can make recommendations with respect to the delineation, and these would not prejudice matters relating to delimitation of boundaries between the states.

The parties could then probably agree on a joint development of the natural resources of the disputed area. This could be a preliminary solution, which would enable oil exploration. The income from possible oil exploitation could be divided between the parties on a mutually agreed basis.

As the dispute is so complex one way of progress would be to submit the case to the International Court of Justice or to an arbitral tribunal. If one of the States party to the dispute submits the case to the ICJ or a tribunal the questions of the jurisdiction of the Court or tribunal and acceptance of this jurisdiction by the other parties will arise.

The parties will also be in a situation where it is not possible to predict the Courts or tribunals decision, since there are no other cases concerning delimitation of the continental shelf beyond the 200 nautical mile limit. From the definition of the continental shelf in Article 76(1) of UNCLOS as the "natural prolongation" to the outer edge of the continental margin the parties will without doubt present geological evidence for the natural prolongation of their territory. In the Libya/Malta case the relevance of geological and geomorphological factors in cases concerning areas beyond 200 nautical miles is indirectly recognised.[85] However, the Court has in the Tunisia/Libya case dismissed the 'confident assertions of the geologists on both sides'[86] that evidenced a natural prolongation. The geologists representing the four parties to the dispute on the Rockall Plateau will assumingly also give "confident assertions" on the natural prolongation of the continental shelf of each of the parties, and the Court or tribunal will have difficulties in deciding on this basis.

[85] ICJ Rep. 1985, p. 13, para. 40
[86] ICJ Rep. 1982, p. 18, para. 61

Conclusion

The parties to the dispute on the Rockall Plateau must submit information on the outer limits of their continental shelf to the Commission on the Limits of the Continental Shelf within 10 years of the entry into force of UNCLOS for that State. Iceland, Ireland and the UK are parties to UNCLOS and have to submit information to the Commission before 13 May 2009.

Faroe-Denmark have not ratified UNCLOS yet, so for this party the deadline for submitting information on the outer limits of the continental shelf will at the earliest be in 2011, if it ratifies the Convention in 2001. Faroe-Denmark could possibly submit a claim while not being a party to UNCLOS. The Commission will then be required to request the Legal Counsel of the United Nations on a legal opinion whether the term "coastal State" includes a non-party State to the Convention. The outcome could be that the Commission could hear a claim from a non-party State and that Faroe-Denmark is not debarred from lodging a claim on the continental shelf beyond 200 nautical miles to the Commission.

Since the area on the Rockall Plateau is a disputed area the Commission cannot examine or qualify any submissions from these four States. The Commission may only examine submissions with prior consent given by all four States who are parties to the dispute.

The evolution of technology and growing interest by oil companies in starting oil exploitation in the area may drive the four States to come to an agreement on the delimitation of the continental shelf between the parties. Then the Commission may consider the claims made by the parties and make recommendations on the outer limits of the continental shelf. If the Commission and the coastal States agree on the Commission's recommendation, the coastal States can establish the final outer limits of their continental shelf. However, if the coastal States do not agree with the Commission's recommendation a revised or new submission may be made, and the outer limits of the States continental shelf established.

The deep sea-bed in the areas beyond national jurisdiction (the Area) and its resources are the common heritage of mankind. The International Sea-Bed Authority has the responsibility for the deep sea-bed regime. All activities connected with exploration and exploitation of mineral resources in the Area shall be organised, carried out and controlled by the International Sea-Bed Authority (Part XI of UNCLOS).

If the Commission does not accept the claims of the four parties on the outer limits of their continental shelf, the area on the Rockall Plateau will fall under the jurisdiction of the International Sea-Bed Authority, and the resources will be vested in mankind as a whole. This will depend on how the Commission applies and evaluates the information submitted by the coastal States and what recommendations it makes on the outer limits of their continental shelf. The Commission will have to assess the extensive geological and bathymetric information on the Rockall Plateau and how the Plateau is connected to the four parties: the UK, Ireland, Faroe-Denmark, and Iceland, and then eventually it will be established which of the parties, if any, will have sovereignty over the continental shelf on the Rockall Plateau.

As time for the deadlines for submitting claims runs out this may concentrate the minds of the four parties to reach an "equitable" agreement on the division of the Rockall Plateau continental shelf, thus enabling the Commission to establish the outer limits of the continental shelf based on the claims of the four parties and pre-empting the area being declared deep sea bed.