CHAPTER 13

'Eurarctic'

Colonialism and EU–Greenland Relations

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13.1 INTRODUCTION

The relationship and colonial ties between Greenland and the European Union (EU) Member State Denmark contain elements that are hardly ever told. The history of this relationship has led to a rather volatile set-up with possible implications for the EU's contemporary interests in the Arctic. Therefore, it is of importance to bring to the fore the long-standing histories that connect the Arctic and Europe, as those histories may help us understand the challenges of today, not least because of the EU's new Arctic policies. Severe – yet often overlooked – democratic flaws, connected to three significant events in the past century, will be highlighted and analysed in this chapter. The first of these events is related to the decisions made in 1952 leading to the formal decolonization of Greenland through its integration into the Kingdom of Denmark; the second is related to Denmark's accession in 1973 to the European Community (EC); and the third is related to Greenland's withdrawal therefrom in 1986.

The aim of this chapter is to shed further light on what will be referred to as Eurarctic, while being primarily limited to a focus on the colonial history of Greenland as well as present EU–Greenland relations. The overall approach is fundamentally legal in spirit, although it is combined with an interdisciplinary touch to enhance appropriate contextual understandings. Also of significance is the fact that the history of the Nordic/Arctic countries to which the history of Greenland is anchored, is long, complex, and at times controversial. For this reason, the intention of this chapter is to rather modestly take a bird's-eye view and focus on some of the most significant moments.

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The chapter will firstly introduce the EU's Arctic policy, as it has recently been stated, as well as the term Eurarctic and the importance of Greenland in that context (Section 13.2). It will then analyse the colonial history of Greenland (Section 13.3), which is then followed by an analysis of the links between the EU and Greenland with a specific focus on how Greenland went from being a Member State through Denmark to becoming an associated overseas country and territory (OCT) and the implications thereof (Section 13.4). The final section draws some overall conclusions about the key issues examined in the chapter (Section 13.5).

13.2 EURARCTIC

In 2021, with the following few, yet rather noteworthy, words, the EU introduced its new Arctic policy:

> The European Union (EU) is in the Arctic. As a geopolitical power, the EU has strategic and day-to-day interests, both in the European Arctic and the broader Arctic region. The EU also has a fundamental interest in supporting multilateral cooperation in the Arctic and in working to ensure that it remains safe, stable, sustainable, peaceful and prosperous. Being a major economic player, it shares the responsibility for global sustainable development, including in the Arctic regions, and for the livelihood of inhabitants, including Indigenous Peoples. The EU exerts a significant impact on the Arctic through its environmental footprint and demand for resources and products originating there.[1]

[1] High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A stronger EU engagement for a peaceful, sustainable and prosperous Arctic', Brussels, 13.10.2021, JOIN(2021) 27 final, p. 1. For an analysis of the Joint Communication, see e.g. A. Stępień and A. Raspotnik, *Continuity with Great Confidence* (Washington, DC: The Arctic Institute, 2021). Also see Danish Institute for International Studies, 'Nye sikkerhedspolitiske dynamikker i Arktis. Muligheder og udfordringer for Kongeriget Danmark' (2020). Regarding the definition of Europe's indigenous peoples, as referred to in the quotation, see explanation by S. Amiel, *Who Are Europe's Indigenous Peoples and What Are Their Struggles?* (Euronews, 9 August 2019). More generally, see R. L. Johnstone, 'Colonisation at the Poles, Incomplete Decolonisation and the Creation of Indigenous People' in Y. Tanaka, R. L. Johnstone and V. Ulfbeck (eds.), *The Routledge Handbook of Polar Law* (Oxfordshire:

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At the same time, the EU committed itself to 'increased engagement in and around the Arctic region, in response to the geopolitical, environmental, economic, security and social challenges they face, and to working with others to manage new opportunities there'.[2] Most recently, the president of the European Commission Ursula von der Leyen visited both the Faroe Islands and Greenland, in the latter case to inaugurate the EU Office in Nuuk with the aim of ensuring Europe's physical presence in Greenland and in the wider Arctic region.[3] At the same time, President von der Leyen has signed agreements (together with Greenlandic prime minister, Múte Bourup Egede, and Danish prime minister, Mette Frederiksen) in relation to the EU–Greenland partnership totalling almost 94 million euros under the EU Global Gateway investment plan: 71.25 million euros for education and skills and 22.5 million euros for green growth, including renewable energy, critical raw materials, and biodiversity conservation.[4]

The EU's recently intensified engagement in Arctic matters could suggest associations with another project, namely Eurafrica. The relationship between Eurafrica and European integration has been analysed in detail in a remarkably insightful book by Hansen and Jonsson.[5] Eurafrica, as Hansen and Jonsson set out, was a particular intellectual and political project, conceived and articulated in the interwar period.[6] It saw Europe's very survival as dependent upon its

Routledge Handbooks, 2024), p. 386 onwards; and Y. Tanaka, R. L. Johnstone and V. Ulfbeck, 'Polar Legal System' in Y. Tanaka, R. L. Johnstone and V. Ulfbeck (eds.), *The Routledge Handbook of Polar Law* (Oxfordshire: Routledge Handbooks, 2024), p. 29.

[2] 'Joint Communication: A stronger EU engagement for a peaceful, sustainable and prosperous Arctic', p. 16.

[3] See e.g. European Commission, *President von der Leyen inaugurates the EU Office in Nuuk and signs cooperation agreements to strengthen the EU–Greenland Partnership*, Press Release, 15 March 2024.

[4] Ibid. and European Commission, 'EU–Greenland Partnership', Factsheet, 15 March 2024.

[5] P. Hansen and S. Jonsson, *Eurafrica. The Untold History of European Integration and Colonialism* (London: Bloomsbury, 2014).

[6] G. K. Bhambra, 'Series Editor's Foreword' in Hansen and Jonsson, *Eurafrica*, p. xii. See further U. Neergaard, 'Shadows of Europe's Colonial Past as Interwoven in EU Law' in C. Barnard, D. Sarmiento and A. Łazowski (eds.), *The Pursuit of Legal Harmony in a Turbulent Europe: Essays in Honour of Eleanor Sharpston* (Oxford: Hart Publishing, 2024), pp. 91–102.

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ability to appropriate land and extract labour and resources from the African continent.[7]

Inspired by Hansen and Jonsson, the term Eurarctic is used here rather than the term European Arctic, which is used in the Joint Communication. This is done to embrace the possible colonial undertones connected with the EU's engagements in the Arctic area. These may be seen as in themselves constituting a new wave of neocolonialism or neo-imperial ambition in the sense of exportation of a large part of the EU's norms, values, and standards to the rest of the world – as demonstrated above so clearly including the Arctic area – and under all circumstances as being shaped by older, more traditional versions of colonialism. Indeed, the Arctic area, in parallel with Africa, has had a history heavily influenced by colonialism. In contrast to Africa, the Arctic area has only fairly recently truly become the centre of attention of strong and conflicting political forces.

Beyond any doubt, the Arctic area, although previously largely ignored by the big political players, has become extremely important for multiple reasons, including in particular climate change and support for sustainable development, security interests, and possible access to natural resources. Thus, it is both understandable and reasonable that the EU wishes to boost its presence. One may wonder, however, how the EU can justify its 'claim' to its presence and commitments. In that regard, it is on the one hand explained in the Joint Communication that the eight Arctic States – namely Canada, the Kingdom of Denmark, Finland, Iceland, Norway, Russia, Sweden, and the United States – themselves have the primary responsibility for tackling challenges and opportunities within their territories. On the other hand, it is stated that many challenges extend beyond national borders and the region's boundaries and therefore can be more effectively addressed through regional or multilateral cooperation.[8] Thus, the communication states that the EU sees its own role as legislator for part of Eurarctic as something that needs to be taken into account.[9]

[7] Bhambra, 'Series Editor's Foreword', p. xii.

[8] 'Joint Communication: A stronger EU engagement for a peaceful, sustainable and prosperous Arctic', p. 1.

[9] Ibid., p. 1.

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Among the eight Arctic States, which are listed in the before-mentioned Joint Communication, only three are Member States of the EU; namely the Kingdom of Denmark, Finland, and Sweden.[10] Although Sweden, in principle, is also a kingdom, only Denmark is designated as such in the Joint Communication. The reasoning behind this choice is likely that the Kingdom of Denmark includes three entities, namely Denmark, the Faroe Islands, and Greenland. In the Joint Communication, this is touched upon to some degree in the following manner:

> The EU has important ties with Greenland and the Faroe Islands. Both are part of the Kingdom of Denmark, and both are seeking closer relations with the EU. In order to further consolidate and enhance the longstanding cooperation between the European Commission and Greenland, the European Commission will establish an office to be located in Nuuk. This office will manage EU support to Greenland as well as facilitating further strengthening and deepening of the partnership between the European Commission and the Government of Greenland, including through cooperation and dialogue in areas of common interest, in close cooperation with the Special Envoy for Arctic Matters.

Evidently, the EU's 'claim' to and interest in the Eurarctic is mainly directed towards Greenland. The Swedish and Finnish importance in the Arctic area currently appears to be considered as rather vague in comparison with Greenland.[11] Similarly, the Faroe Islands are often not considered, and it is at times contested whether these are truly situated in the Arctic area.

In this context, it is highly intriguing that Denmark has the status of a Member State of the EU, while the two autonomous entities of the realm of Denmark, namely Greenland and the Faroe Islands, have the status of an OCT and a third country, respectively. Unlike the Faroe Islands, Greenland has consistently and formally been considered a former colony of Denmark and has had relations with the EU since 1973. With that background, the EU's 'claim' to the Arctic, albeit limited to Greenland for the reasons indicated above, will be analysed.

[10] Ibid., p. 1. Norway and Iceland are European Free Trade Association Member States.

[11] According to J. Stavridis, *Sweden and Finland Give NATO an Arctic Opportunity* (The Washington Post, 13 July 2023), about '15 percent of Sweden and a third of Finland are within the Arctic Circle: the region known as Lapland'.

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13.3 THE COLONIAL HISTORY OF GREENLAND AND DENMARK

Geographically, Greenland is considered part of North America.[12] Yet, in most other respects its closest relations are with Denmark and therefore Europe. In what follows, the manner in which this relationship with Denmark originally came about is explained chronologically and by focusing mainly on aspects of colonization.[13] In that regard, it should be kept in mind that words like 'colonies' and 'colonization' today are viewed as unambiguously negatively charged words.[14] At the same time, historical events may be interpreted differently. Here, the classifications launched by the Greenlandic Constitutional Commission in a report from 2023, in which a Constitution for Greenland is proposed, are taken as the point of departure for the analysis, even though others might have viewed and presented the evolution differently.[15] On this basis, the following six different phases of development are presented: (1) 'initial colonization' (1721–1782); (2) 'parasitic colonialism' (1782–1830s) and 'classic colonialism' (1830s–1908); (3) 'intensive colonialism' (1908–1953); (4) 'hidden colonialism' (1953–1979); (5) 'early decolonization' (1979–2009); and (6) 'matured decolonization' (2009–).

13.3.1 'INITIAL COLONIZATION' (1721–1782). It is generally considered that the first Inuits came to Greenland about 4,500 years ago, but eventually vanished. Later on, sometime between the twelfth and fourteenth century, another group of people – the Thule people – arrived,

[12] See e.g. G. Alfredsson, 'Greenland and the Law of Political Decolonization' (1982) 25 *German Yearbook of International Law* 290. Greenland is separated from Canada by only thirty kilometres.

[13] R. L. Johnstone, 'Colonisation at the Poles', p. 385 defines colonization as the 'claim of a People to legitimised control over a territory which is not their homeland'.

[14] See in this respect N. Brimnes, H. C. Gulløv, E. Gøbel, P. O. Hernæs, P. E. Olsen and M. V. Pedersen, 'En ny dansk kolonihistorie' in N. Brimnes, H. C. Gulløv, E. Gøbel, P. O. Hernæs, P. E. Olsen and M. V. Pedersen (eds.), *Grønland. Den arktiske koloni* (Copenhagen: Gads Forlag, 2017), p. 4.

[15] Forfatningskommissionens Betænkning, Grønlandsudvalget 2022–2023 (2. samling) (Report from the Greenlandic Constitutional Commission). Also see e.g. Brimnes, Gulløv, Gøbel, Hernæs, Olsen and Pedersen, 'En ny dansk kolonihistorie', p. 6.

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replacing the very first group of Inuits. The Inuits of today are considered as descending from this later group.

The Norse, as the first non-Inuits, are believed to have first arrived in the tenth century, constituting the first time in history that Europeans had settled in Greenland. More exactly, approximately 450 years of Norse presence started with Erik the Red's 'landnam' in 985.[16] The settlement was at first organized as a free state based on a similar Icelandic model.[17] In 1261, the Norse farmers chose to join Norway, which in the following century became part of Denmark-Norway with the confirmation of the Kalmar Union in 1397.[18] From these Norse inhabitants, however, no news or signs of life had been received since 1408.[19] Thus, in principle, only Inuits inhabited Greenland as such. However, in the sixteenth and seventeenth centuries, Europeans returned, although not on a permanent basis. These would, for example, include the English, the Dutch, and even the Basques due to whaling and trade interests.[20]

With the increased level of international and economic interests in Greenland, it eventually – and apparently without regard to the presence of indigenous peoples – became an international issue whether Greenland was Danish-Norwegian or 'no man's land'.[21] In Danish literature, Greenland has been seen as belonging to the Danish Crown originally under the Kalmar Union since the fourteenth century. However, it was considered first 'properly' colonized by Denmark in 1721, when the Danish-Norwegian priest Egede arrived.[22] Egede is thereby widely narrated as having turned Greenland into a Danish colony. At the same time, he has been considered to have proselytized Christianity

[16] H. C. Gulløv (on behalf of the eds.), 'Forord' in Brimnes, Gulløv, Gøbel, Hernæs, Olsen and Pedersen (eds.), *Grønland. Den arktiske koloni*, p. 8.

[17] Ibid., p. 8.

[18] Ibid., p. 8.

[19] H. C. Gulløv and P. A. Toft, 'Den førkoloniale tid' in Brimnes, Gulløv, Gøbel, Hernæs, Olsen and Pedersen (eds.), *Grønland. Den arktiske koloni*, p. 24.

[20] Ibid., pp. 17–18.

[21] Gulløv (on behalf of the eds.), 'Forord', p. 8.

[22] F. Harhoff, 'Greenland's Withdrawal from the European Communities' (1983) 20 *CML Review* 13, at 14; and S. Thuesen, H. C. Gulløv, I. Seiding and P. A. Toft, 'Hans Egedes rejse til Grønland' in Brimnes, Gulløv, Gøbel, Hernæs, Olsen and Pedersen (eds.), *Grønland. Den arktiske koloni*, p. 49.

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among the indigenous Greenlandic population.[23] Thus, in the above-mentioned report from the Greenlandic Constitutional Commission, which distinguishes between six different constitutional phases, this first constitutional phase is called 'initial colonization', and is seen as beginning in 1721 and lasting until 1782.[24]

This phase was influenced by uncertainties, experiments, and improvisations.[25] An essential element of the colonization took place with the help of trading companies that were granted state monopolies.[26] Land was controlled through the establishment of colonies, that is small colonial towns, as the seat of the institutions of colonization.[27] These colonies functioned as local centres under the leadership of merchants and missionaries responsible to the trading company and the missionary college respectively, but without a Greenlandic central government.[28] Consequently, this was not colonization by European settlers, but rather a colonization managed by posted Europeans in fixed-term employment and financed by the Greenlandic population as producers of the goods.[29]

13.3.2 'PARASITIC COLONIALISM' (1782–1830S) AND 'CLASSIC COLONIALISM' (1830S–1908). The second constitutional phase – among those presented by the Greenlandic Constitutional Commission – is seen as consisting of two periods. The first period is characterized by the Greenlandic Constitutional Commission as 'parasitic colonialism'.[30] The period is seen as beginning on 19 April 1782 with the signing of so-called instructions (in Danish '*Instrux*') in Copenhagen, which bear a title that may be translated as: *Instructions according to which the merchants or those who*

[23] Danish Institute for International Studies, *Afvikling af Grønlands kolonistatus 1945–54. En historisk udredning* (2007), at 10. Also see e.g. E. Porsild, 'Greenland at the Crossroads' (1948) 1(1) *Arctic* 53; or F. A. J. Nielsen, 'Den ældste grønlandske Bibel – et sprogligt og kulturelt møde' in O. Høiris et al. (eds.), *Fra vild til verdensborger* (Århus: Universitetsforlag, 2011), p. 147.

[24] 'Grønlandsudvalget 2022–2023', p. 10.

[25] Thuesen, Gulløv, Seiding and Toft, 'Hans Egedes rejse til Grønland', p. 105.

[26] Ibid., p. 106.

[27] Ibid., p. 106.

[28] Ibid., p. 106.

[29] Ibid., p. 107.

[30] 'Grønlandsudvalget 2022–2023', p. 11.

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either manage the trade or manage the whaling facilities in Greenland in particular, as well as all those who are at the bottom of the trade in general.[31] The instructions prescribe a form of minimal interaction and a formal separation between the Europeans and the local Inuits. Although not explained, by naming the period 'parasitic colonialism', it may be assumed that the Commission considers it as characterized by a parasitic relationship of mainly economic exploitation.[32] These principles of separation between the population groups were in practice valid for around fifty years.[33]

At the end of the first period of this second constitutional phase, the Peace Treaty of Kiel was signed (in 1814), and Greenland, together with Iceland and the Faroe Islands, became purely a Danish area of responsibility.[34] Until then, Greenland, Iceland, and the Faroe Islands had been a Danish-Norwegian joint matter.[35] With the treaty, the Danish-Norwegian Union, which had existed since 1380, was dissolved, and mainland Norway went to Sweden, in principle as compensation for Finland, which Russia had taken in 1809.[36]

In the report of the Greenlandic Constitutional Commission the second period of this second constitutional phase is referred to as 'classic colonialism' and is considered as beginning in the 1830s and ending in 1908.[37] It is explained that at the beginning of the 1830s, some major changes occurred in the Danish understanding of its presence in Greenland.[38] This led to the colonial government moving away from the principle of separation.[39] Among other things, it included involvement of the local Inuit population to a greater extent than before as well

[31] Ibid., p. 11. In original: '*Instrux, hvorefter kiøbmændene eller de som enten bestyrer handlen eller forestaae hvalfanger-anlæggene i Grønland i særdeleshed, saavel som og alle de der staae i handlens tieneste i almindelighed, sig for fremtiden have at rette og forholde.*'

[32] Ibid., p. 11.

[33] Ibid., p. 11.

[34] T. Kjærgaard, 'Freden i Kiel, Grønland og Nordatlanten 1814–2014' in *Digitalt særtryk af fund og forskning i det Kongelige Biblioteks Samlinger*, Bind 54 (Copenhagen: The Royal Library, 2015), p. 379.

[35] Ibid., p. 379.

[36] Ibid., p. 379.

[37] 'Grønlandsudvalget 2022–2023', p. 11.

[38] Ibid., p. 11.

[39] Ibid., p. 11.

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as initiating a more targeted assimilation strategy.[40] Furthermore, the school system was expanded.[41]

When the first Danish Constitution (in Danish '*Grundloven*') was adopted in 1849, Greenland kept its status as a colony, and was therefore not explicitly a separate part of the constitution.[42] The Faroe Islands (and Iceland), in contrast, had explicitly been part of the constitution and had never formally had the status of a colony.[43] Previously, in 1816, the Faroe Islands had been given the status of a region/county (in Danish an '*amt*').[44]

To these developments it may be added that from 1782 until the end of the 1850s, the only formal state organization consisted of two inspectorates (in Danish '*inspektorater*'), one for South Greenland and one for North Greenland.[45] Moreover, in the years 1857–1861, small steps towards establishing democratic political institutions were taken as local boards of trustees were established at the individual colonies.[46] However, only self-supporting local whalers (in Danish '*fangere*') had the right to vote.[47]

13.3.3 'INTENSIVE COLONIALISM' (1908–1953). The third constitutional phase is referred to as 'intensive colonialism' and is considered to have lasted from 1908 to 1953.[48] Since the 'instructions' of 1782, it was not until 1908 that a new basic legal framework was adopted in Denmark for how the Danish state should act in

[40] Ibid., p. 11.
[41] Ibid., p. 11.
[42] F. Harhoff, '§ 1' in H. Zahle (ed.), *Danmarks Riges Grundlov med kommentarer* (Copenhagen: DJØF Forlag, 1999), p. 29, p. 30.
[43] Ibid., p. 29.
[44] J. Hartmann, 'The Faroe Islands: Possible Lessons for Scotland in a Post-Brexit Devolution Settlement' (2019) 44(1) *EL Review* 111, at 113. Importantly, although not formally having had the status of a colony, as pointed out by A. Kočí and V. Baar, 'Greenland and the Faroe Islands: Denmark's Autonomous Territories from Postcolonial Perspectives' (2021) 75(4) *Norwegian Journal of Geography* 189, at 198, the differences between Greenland and the Faroe Islands may in actual fact only lie in terminology.
[45] 'Grønlandsudvalget 2022–2023', p. 11.
[46] Ibid., p. 11.
[47] Ibid., p. 11.
[48] Ibid., p. 12.

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Greenland.[49] This was entitled: 'Act on the Administration of the Colonies in Greenland etc.'.[50]

In 1911, the above-mentioned local boards of trustees were replaced by two regional councils, namely South Greenland's Council (in Danish '*Sydgrønlands Landsråd*') and North Greenland's Council (in Danish '*Nordgrønlands Landsråd*'), which were located in Nuuk (formerly in Danish '*Godthaab*') and Qeqertarsuaq (formerly in Danish '*Godhavn*') respectively.[51] On the economic level, the colonial administration initiated an economic transformation by intensifying fishing and initiating an industrial fishing industry.[52]

In 1905, Norway increasingly claimed parts of Greenland, and in 1931 it occupied Eastern Greenland.[53] This violation of Danish sovereignty was brought by Denmark before the Permanent Court of International Justice in The Hague, which in 1933 confirmed Denmark's sovereignty over all of Greenland.[54] During the German occupation of Denmark in 1940, Greenland remained under Danish rule despite many challenges.[55] In contrast, in 1944, in the middle of the Second World War, Iceland declared its independence from Denmark and proclaimed the Republic of Iceland.[56]

13.3.4 'HIDDEN COLONIALISM' (1953–1979). Soon after the Second World War came to an end, for colonial powers the world

[49] Ibid., p. 12.

[50] Author's translation. Ibid., p. 12. The Danish title is here said to be: '*Lov om Styrelsen af Kolonierne i Grønland m.m. (Lov nr. 139-1908)*'.

[51] Ibid., p. 12.

[52] Ibid., p. 12.

[53] K. Berlin, *Danmarks ret til Grønland. En udredning af Grønlands, Islands og Færøernes stilling til Norge og Danmark før og nu* (Copenhagen: Nyt Nordisk Forlag, 1932), p. 9 onwards.

[54] G. Alfredsson, 'Greenland and the Right to Self-Determination' (1982) 51 *Nordisk Tidsskrift for International Ret* 39, points out in this regard that the decision of the Permanent Court in the Danish-Norwegian dispute over portions of East Greenland related only to rival claims of two states, with the conclusion that Denmark's rights were superior to those of Norway. The Court neither received nor considered arguments of the native population.

[55] See in particular B. Lidegaard, *Uden mandat. En biografi om Henrik Kauffmann* (Copenhagen: Gyldendal, 2020); and J. Heinrich, 'Krig og afkolonisering 1939–53' in Brimnes, Gulløv, Gøbel, Hernæs, Olsen and Pedersen (eds.), *Grønland. Den arktiske koloni*, pp. 280–317.

[56] Kjærgaard, 'Freden i Kiel', pp. 386–387.

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entirely changed. During that period, and after the United Nations (UN) was established in 1945, it became clear that new winds were blowing with regard to the European countries' colonial arrangements, which were seen as more and more unacceptable.[57] For obvious reasons, these developments, among others, also had an impact on Denmark–Greenland relations.

On the basis of decisions made in 1952, Greenland was formally decolonized in 1953 by integration into the Kingdom of Denmark.[58] In contrast to most other decolonizations, an integration with the metropole – rather than independence therefrom – took place.[59] The chosen 'solution' was thus only one among several possible solutions, and the road thereto was not without obstacles.[60] Most importantly, a constitutional right for Greenlandic self-determination, although suggested at some stage in the process, was not inserted.[61]

Greenland's status then became, along with the Faroe Islands, what in Danish constitutional theory is commonly viewed as part of '*Rigsfællesskabet*', which might be translated as the 'community of the

[57] 'Grønlandsudvalget 2022–2023', p. 12; and generally Danish Institute for International Studies, *Afvikling af Grønlands kolonistatus*.

[58] O. Spiermann, *Danmarks Rige i forfatningsretlig belysning* (Copenhagen: DJØF Forlag, 2007), p. 62. Also see more generally Danish Institute for International Studies, *Afvikling af Grønlands kolonistatus*, in particular chapter 9.

[59] Alfredsson, 'Greenland and the Right to Self-Determination', 40 points out in this regard that: 'The choice available to the Greenlanders was only between *status quo* or integration. There was no mentioning of independence and there were no negotiations between the parties about other forms of ties linking Greenland to Denmark.'

[60] Danish Institute for International Studies, *Afvikling af Grønlands kolonistatus*, chapter 9.

[61] These events are further described in Danish Institute for International Studies, *Afvikling af Grønlands kolonistatus*, chapter 9. In particular, (from p. 201 onwards) two prominent Danish law professors, Poul Andersen and Alf Ross, had been associated with the Constitutional Commission as consultants and in that capacity had been asked to elaborate a joint legal opinion regarding constitutional issues concerning the potential integration of Greenland. They did submit such a joint legal opinion, but also individual legal opinions. In that regard, the one submitted by Ross turned out to be controversial, and it was decided not to publish it at the time because it gave rise to concerns (it is now published e.g. at p. 314 onwards). Importantly, Ross expressed that he was in favour of the insertion of an individual provision in the future Constitution designating that Greenland constitutes a self-governing people's society within the kingdom, the details of which were to be determined by law. This thinking, however, did not become part of the political debate.

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realm' or 'the commonwealth of the Danish State'.[62] Against that background, Paragraph 1 of the Danish Constitution was (with effect from 1953) amended to read: 'This Constitutional Act shall apply to all parts of the Kingdom of Denmark.' None of the previous constitutional acts had contained any equivalent provision regarding the geographical extent of the constitution.[63] The provision is commonly understood as implying that the constitutional Act applies to all three 'members' or 'entities' of the realm, in other words Denmark, the Faroe Islands, and Greenland. Formally, Greenland and the Greenlandic population were now an equal part of the Kingdom of Denmark.[64] Importantly, in 1953 Greenland was allocated two members in the Danish Parliament. Moreover, Denmark intensified its financial investments in Greenland.[65]

In the Greenlandic Constitutional Commission's report, this fourth constitutional phase is described as a phase of 'hidden colonialism', as large parts of the colonial structure and logic are seen to have continued unaltered.[66] The commission also highlights that the real decision-making authority for the overall framework for the control of Greenland remained with the Danish authorities in Copenhagen, and that examples of discrimination, at times severe, between Danes and Greenlanders could still be found.[67]

[62] J. H. Danielsen, 'Self-Government and the Constitution: Greenland within the Danish State' (2013) 19(4) *European Public Law* 619; and U. P. Gad, *National Identity Politics and Postcolonial Sovereignty Games – Greenland, Denmark, and the European Union* (Copenhagen: Museum Tusculanum Forlag, 2017), p. 11.

[63] Harhoff, '§ 1', p. 29. Until the amendment only a minor part of the Constitution has been considered as applicable to Greenland, see Grønlandskommissionen (Greenlandic Constitutional Commission), 'Betænkning 2. Politiske og Administrative Forhold i Retsplejen', Copenhagen (1950), at 8. Also see e.g. F. Harhoff, *Rigsfællesskabet* (Århus: Klim, 1993), p. 205.

[64] 'Grønlandsudvalget 2022–2023', p. 12.

[65] Ibid., p. 13.

[66] Ibid., p. 13.

[67] Ibid., p. 13. Currently, most disputed is the so-called intrauterine device (IUD) case, see e.g. Indenrigs- og Sundhedsministeriet (Ministry of Health and the Interior), *Danmark og Grønland sætter uvildig udredning af spiralsagen i gang*, Pressemeddelelse maj 2023 (Press release, May 2023), according to which a team of researchers is now starting to uncover what happened when Greenlandic girls and women in the 1960s were fitted with IUDs to prevent pregnancy. The researchers will investigate the extent of the case, the decision-making process behind it, and uncover the experiences of the women involved. In addition, 143 Greenlandic women are suing the Danish state for violation of human rights and demanding a total of 42.9 million Danish krone in compensation.

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Significantly, it is highlighted in the report that the Greenlandic population did not have the right to vote in the referendum on the new Danish Constitution, and that the incorporation process generally was characterized by major democratic shortcomings.[68] In that regard, Alfredsson explains that:

> The concrete proposals for integration were worked out by a special Constitutional Commission in the summer of 1952, submitted to the Greenlandic Provincial Council in August and decided upon by this Council in September of that same year, i.e. within a month of receiving the proposed text. The Constitutional Commission was composed of Danes only, the expertise was Danish and, to the best of my knowledge, Greenlandic authorities had no expert advice on the implications, f. ex. the finality, of the enactment of the proposals. It also appears that the initiative for integration was Danish. In an essay (*Grønlandssagen i FN 1946–54*, Odense Universitetsforlag 1975) by historian Finn Petersen, who had access to public and private archives concerning the case, it was disclosed that suggestions to this effect were made by Danish officials as early as the late forties for the very purpose of avoiding unfortunate UN influence.[69]

The Danish author Lidegaard explains in his book about Greenland's history that delegates in the UN queried why the Greenlandic people had not been asked through a referendum.[70] According to Lidegaard, the Danish delegates could not come up with an explanation.[71] He further states that he cannot explain it himself either, because the result thereof would in his opinion undoubtedly have been in the positive, not preventing the decision-makers from going in that direction.[72] He then suggests

[68] 'Grønlandsudvalget 2022–2023', p. 12. Also see Danish Institute for International Studies, *Afvikling af Grønlands kolonistatus*; Spiermann, *Danmarks Rige i forfatningsretlig belysning*, p. 64 onwards; and Alfredsson, 'Greenland and the Right to Self-Determination', 39 onwards.

[69] Alfredsson, 'Greenland and the Right to Self-Determination', 40. Similarly, see Alfredsson, 'Greenland and the Law of Political Decolonization', 290–308.

[70] M. Lidegaard, *Grønlands Historie* (Denmark: Nyt Nordisk Forlag Arnold Busck, 1991), p. 199.

[71] Ibid., p. 199.

[72] Ibid., p. 199. Alfredsson, 'Greenland and the Right to Self-Determination', 40–41, however, emphasizes that: 'No referendum was held in Greenland about integration. Elections were, however, held in Denmark in connection with the constitutional

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that one explanation may be that a referendum seemed superfluous, as it all appeared straightforward, supported by the fact that the Greenlandic council ('landsråd') – as the above-mentioned two councils were merged into one around 1950 – had been involved in the process leading up to the referendum in Denmark itself.[73] However, other explanations may also be considered, for example perceived hindrances due to interpretations of the Danish Constitution; that Greenlandic representatives to some degree had been involved in the process beforehand;[74] or a lack of sincere respect for the importance of taking into consideration the opinions of Greenlanders.

The lack of a referendum in Greenland was in fact not only questioned, but also criticized during the negotiations in the UN, but at the end of the day the criticism had no effect.[75] Thus, the UN ended up acknowledging the requested change of status by adopting a resolution on 9 September 1954 in which Denmark was removed from the list of colonial powers.[76]

amendment according to the rules of the 1915 Constitution which prior to integration was not valid in Greenland. I have heard Danes maintain that if a referendum had been held in Greenland it would have come out in favour of integration. This may be true, but then again Danish authorities had neither lived up to the requirements of the UN Charter for developing free political institutions in this non-self-governing territory nor had they provided sufficient information about other options available under international law.' Similarly, see Alfredsson, 'Greenland and the Law of Political Decolonization', 290–308.

[73] See about the landsråds' limited democratic legitimacy and competences, Grønlandsk-dansk selvstyrekommission (Greenlandic-Danish Self-Government Commission), 'Betænkning om selvstyre i Grønland' (2008), at 7–8; and further Lidegaard, *Grønlands Historie*, p. 199.

[74] See for a criticism of this point Alfredsson, 'Greenland and the Right to Self-Determination', 40: 'Art. 73e of the UN Charter states that it is the obligation of administering powers "to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their political institutions …" Was the Provincial Council, which unanimously approved of integration, such a free political institution? My reply is in the negative. […] It is therefore almost paradoxical when this Council, to which the Danish authorities had delegated only minor functions, was given the immense task of deciding permanently on the constitutional future of Greenland.' Similarly, see Alfredsson, 'Greenland and the Law of Political Decolonization', 290–308. Also see Forfatningskommission (Constitutional Commission), 'Betænkning afgivet af Forfatningskommissionen af 1946' (Copenhagen, 1953), in particular 89–100.

[75] Danish Institute for International Studies, *Afvikling af Grønlands kolonistatus*, 253.

[76] 'Grønlandsudvalget 2022–2023', p. 12. Also see Danish Institute for International Studies, *Afvikling af Grønlands kolonistatus*, chapters 10 and 11.

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13.3.5 'EARLY DECOLONIZATION' (1979–2009). Despite the above steps, it is not until the fifth constitutional phase that the Greenlandic Constitutional Commission refers in its report to 'early decolonization' as such, as a 'home rule' (in Danish '*hjemmestyre*') construction for Greenland became a reality in 1979.[77] Beforehand, there had been a referendum in Greenland, where a majority voted in favour of the introduction of home rule.[78] In Danish, the term 'home rule' is applied as an equivalent to 'self-governance' (to some degree).[79]

On 1 January 1980 Greenland's home rule began to take over administrative tasks from the Danish state.[80] The arrangement may originally have been considered as conferring a limited autonomy in certain administrative matters within the realm, and as drawing its inspiration from the arrangement already established for the Faroe Islands.[81] More precisely, as summed up by Weiss, home rule established limited decentralization by the transfer of certain legislative and executive powers and concomitant financial responsibility in a number of specifically listed areas to Greenlandic authorities. However, matters such as foreign relations, the constitution, defence, and the court system remained the responsibility of the Danish government.[82] The home rule administration was essentially responsible for the development of Greenland's society and had legislative powers concerning areas such as fishing, hunting, labour market affairs, social affairs, education and culture, health services, environmental protection, and municipal structures.[83] In April 1979, the new '*Landsting*', which is the

[77] 'Grønlandsudvalget 2022–2023', p. 13. Also see Lov om Grønlands hjemmestyre – nr. 577 af 29. november 1978 (Law on Home Rule in Greenland).

[78] 'Grønlandsudvalget 2022–2023', p. 13. Also see e.g. Gad, *National Identity Politics*, p. 9.

[79] I. Foighel, 'A Framework for Local Autonomy: The Greenland Case' (1979) *Israel Yearbook of Human Rights* 82–105; I. Foighel, 'Home Rule in Greenland: A Framework for Local Autonomy' (1980) *Common Market Law Review* 91–108; I. Foighel, 'Grønlands hjemmestyre', U1979B.99; and F. Harhoff, 'Det grønlandske Hjemmestyres grund og grænser', U1982B.101.

[80] 'Grønlandsudvalget 2022–2023', p. 14.

[81] F. Weiss, 'Greenland's Withdrawal from the European Communities' (1985) *European Law Review* 175.

[82] Weiss, 'Greenland's Withdrawal', 175.

[83] P. Walsøe, 'The Judicial System in Greenland' in B. Dahl et al. (eds.), *Danish Law in a European Perspective* (Copenhagen: Forlaget Thomson, 2002), p. 493.

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Danish name for Greenland's regional Parliament, was elected on the basis of these new rules.[84]

13.3.6 'MATURED DECOLONIZATION' (2009–). The final constitutional phase, so far, is termed 'matured decolonization' in the report by the Greenlandic Constitutional Commission.[85] This phase is seen as beginning on 21 June 2009, where instead of the home rule arrangement, a new arrangement, now termed 'self-rule', entered into force.[86] In a prior referendum, a 75 per cent majority of the population had confirmed acceptance of this model in a vote on an enhanced version of home rule.[87] The background to the Danish Parliament's passing of the Act on Greenland's Self-Governance is stated in its preamble to be a recognition that the people of Greenland are a people pursuant to international law with the right of self-determination, where the Act is based on a wish to foster equality and mutual respect in the partnership between Denmark and Greenland.

Pursuant to Paragraph 1 of the Act on Greenland's Self-Governance, the Greenlandic self-government authorities shall exercise legislative and executive power in the fields of responsibility taken over. In addition, the Act includes provisions regarding, for example, the economic relations between the Greenlandic self-government and the Danish government, provisions as to foreign relations, and cooperation between the Greenlandic self-government authorities and the Danish authorities of the realm regarding statutes and administrative orders. Although foreign affairs are formally still the responsibility of Denmark, in practice Greenland's involvement has gradually increased in that

[84] Weiss, 'Greenland's Withdrawal', 175. Greenland's regional government is called '*Landsstyre*' in Danish.

[85] 'Grønlandsudvalget 2022–2023', p. 13.

[86] Lov om Grønlands Selvstyre (Act on Greenland's Self-Governance), Lov nr 473 af 12/06/2009. See for an analysis of its constitutional dimensions, e.g. J. H. Danielsen, 'Grønlands Selvstyre og Danmarks Riges Grundlov' (2011) *Juristen* 9–18; and J. H. Danielsen, 'Self-Government and the Constitution: Greenland within the Danish State' (2013) 19 *European Public Law* 619–642. Also see Grønlandsk-dansk selvstyrekommission (Greenlandic-Danish Self-Government Commission), 'Betænkning om selvstyre i Grønland' (2008).

[87] Gad, *National Identity Politics*, p. 10.

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regard.[88] Also, Greenland's self-government took over responsibility for Greenland's underground on 1 January 2010.[89] Ultimately, it is generally acknowledged that there are limits as to which areas can be transferred to Greenland.[90] Seemingly, the interpretation of self-government is dynamic.

Importantly, the Act on Greenland's Self-Governance also stipulates how a decision regarding Greenland's independence can be taken by the people of Greenland. However, there is a condition requiring the consent of the Danish Parliament.[91] Some forces, including the Greenlandic Constitutional Commission as demonstrated, envision full independence from Denmark. Thereby a final phase possibly designated as 'final decolonization' or 'full sovereignty' may be envisaged.[92]

All in all, the colonial history of Greenland and Denmark is long and, from the perspective of today, widely considered not acceptable. Yet, many different narratives exist side-by-side.[93]

13.4 EU–GREENLAND RELATIONS

As it has been explained above, the Greenlandic population was not invited to vote in the referendum on the new Danish Constitution of

[88] S. Blockmans, 'Between the Devil and the Deep Blue Sea? Conflicts in External Action Pursued by OCTs and the EU' in D. Kochenov (ed.), *EU Law of the Overseas. Outermost Regions, Associated Overseas Countries and Territories, Territories Sui Generis* (The Netherlands: Kluwer, 2011), p. 313.

[89] 'Grønlandsudvalget 2022–2023', p. 14.

[90] Danielsen, 'Grønlands Selvstyre', 9–18; and Danielsen, 'Self-Government and the Constitution', 619–642. Also see Betænkning 1497/2008, Selvstyre i Grønland (2008), pp. 24–27.

[91] Spiermann, *Danmarks Rige i forfatningsretlig belysning*, p. 90, who points out that it is generally assumed that this would not require a change of the Danish Constitution.

[92] 'Grønlandsudvalget 2022–2023', p. 14.

[93] See e.g. J. Heinrich, 'Statusændringen i 1953. Grønlændernes forhold til Danmark i perioden 1945–1954' in Danish Institute for International Studies, *Afvikling af Grønlands kolonistatus*, 352. Heinrich is a historian, with an upbringing and life in both Greenland and Denmark. From his assessments, it becomes evident that the Danish–Greenlandic relationship is in contrast to most other colonial relationships. Relatedly, it is of some interest that Greenland since 1736 until the middle of the twentieth century was largely closed so that neither Danes nor other nationalities could get access without permission; see Grønlandskommissionen (Greenlandic Constitutional Commission), 'Betænkning 2. Politiske og Administrative Forhold i Retsplejen', Copenhagen (1950), at 8.

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1953, according to which Greenland was formally decolonized by integration with the Kingdom of Denmark. It was also mentioned that the incorporation process has been characterized by other democratic shortcomings.[94] In relation to EU–Greenland relations, certain democratic shortcomings may similarly be claimed to have been present. In that light, two central events will be examined in what follows: firstly, the original Danish accession to the EC in 1973 with particular focus on Greenland; and, secondly, Greenland's withdrawal from the EC in 1986.

13.4.1 THE ACCESSION IN 1973. In the 1972 Danish referendum on Danish membership of the EC, Greenland was not given the opportunity to have a separate referendum, although this was desired.[95] Certain initiatives to inform the Greenlandic population about the EC were undertaken.[96] Resistance in Greenland to EC accession appears

[94] 'Grønlandsudvalget 2022–2023', p. 12. Also see Danish Institute for International Studies, *Afvikling af Grønlands kolonistatus*.

[95] According to E. L. Jensen, 'Nyordning og modernisering 1950–79' in Brimnes, Gulløv, Gøbel, Hernæs, Olsen and Pedersen (eds.), *Grønland. Den arktiske koloni*, p. 361, this had actually been sought, but without any luck. Jensen furthermore explains that in the Danish Parliament there was an inquiry about a separate vote for Greenland, as well as during the spring session of the Greenlandic National Council in 1972. It was further proposed that the National Council should demand a postponement of the referendum, i.e. in effect a demand for a separate vote for Greenland. The answer to both initiatives was, however, that it would require changes in the state legal relations between Denmark and Greenland, and the time had passed for that.

[96] Jensen, 'Nyordning og modernisering 1950–79', p. 361, explains (author's translation): 'Up to the referendum, an information campaign was organized to give the Greenlandic population a greater knowledge of the EC and thus give the voters a real opportunity to take a stand. The campaign was very short, and the material was only sent out to the recipients very late. There was also a short and relatively intensive debate about the advantages and disadvantages of EC membership. The supporters were primarily of the conviction that future development should take place in close association with Denmark, and then membership of the EC had to be included in the bargain. Opponents of EC membership questioned whether the way forward led to the formation of larger entities such as the EC, and highlighted Greenland's desire to be able to decide on its own affairs. Why should one sign up for centralized European cooperation, when one advocated a decentralization of the decision-making process? Or as the South Greenland newspaper *Kujatâmio* put it in an editorial: "Our National Council's influence on things will probably resemble that of a class council at a children's school." And a few days before the referendum, the editorial writer in *Atuagagdliutit Grønlandsposten* very clearly summarized what the opponents saw as

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to have been substantial as a majority of Greenlanders voted against accession. The votes for Denmark in isolation were 1,954,053 ('Yes') and 1,126,097 ('No').[97] The votes for Greenland in isolation were: 4,062 ('Yes') and 9,594 ('No').[98] Nevertheless, unlike the Faroe Islands, in 1973, Greenland – which at the time did not have a home rule arrangement – had to accede as an integral part of Denmark due to an interpretation made by the Danish government.[99] This has been 'used as a basis for Greenlandic complaints that the island had been forced into the European Community by a majority of Danes'.[100] The referendum may thus have to be understood in light of having taken place during the so-called fourth constitutional phase, which in the Greenlandic Constitutional Commission report is described as a phase of 'hidden colonialism', as large parts of the colonial structure and logic were seen to continue in unaltered terms.[101]

The referendum result has been seen as a catalyst for important subsequent political efforts. Greenlandic politicians and commentators had concluded that the fact that Greenland was subjected to an unwanted foreign policy situation could not simply be ignored and had to have

the central issue. Greenland was in every respect so different from Denmark and thus also from the EC that it was a utopia to want to link the two countries together in an unbreakable unit. Thus, the EC issue was also clearly linked to the demand for a more Greenlandic Greenland. The sceptical attitude was strengthened by the fact that the chairmen of both Greenland's Workers' Association and the fishermen's and trappers' organization KNAPK spoke against membership.'

[97] Danmarks Statistik (Denmark Statistics), *Statistiske efterretninger – Folkeafstemningen den 2. oktober 1972 om Danmarks tiltrædelse af De europæiske Fællesskaber* (1972).

[98] Danmarks Statistik (Denmark Statistics), *Statistiske efterretninger*.

[99] See Commission of the European Communities, 'Greenland's referendum on the European Community (Note from Mr Dalsager)', SEC (81) 1818 Brussels, 18 November 1981, 1 (available in the Historical Archives of the Commission at the European University Institute), where it is stated: 'When voting on Danish membership of the European Community in October 1972, there was a considerable majority in Greenland for Greenland to remain outside. However, the Danish Government's interpretation of the results of the vote throughout Denmark (including Greenland) was that Denmark as a whole had agreed to becoming a member of the European Community and this covered Greenland as well. It should be noted that the proportion of people voting in Greenland was relatively low compared with the rest of Denmark.'

[100] H. Krämer, 'Greenland's European Community (EC)-Referendum, Background and Consequences' (1982) 25 *German Yearbook of International Law* 273.

[101] 'Grønlandsudvalget 2022–2023', p. 13.

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consequences of a political nature.[102] Accordingly, attention first turned towards the future relationship between Greenland and Denmark as a necessary precondition for steps eventually being taken with regard to the relationship with the EC.[103]

13.4.2 THE WITHDRAWAL IN 1986 AND INCLUSION AS OCT.

Only a few years after the establishment of the home rule arrangement in 1979 a consultative and non-binding referendum was held in Greenland on 23 February 1982 on whether the EC Treaties should continue to apply in Greenland. The referendum was not concerned with the possibility of a transformation into an OCT status, but simply with the question: 'Do you want Greenland to remain a part of the European Communities?'[104] Also, the title of the Greenlandic Act on the referendum itself indicates that it was all about the continued application of the Treaties on the European Communities in Greenland.[105] It should be noted that an

[102] See 'Greenland's referendum on the European Community (Note from Mr Dalsager)', where it is more precisely stated: 'Since Greenland's entry to the European Community there has been considerable political pressure for reviewing its membership. This view has been put forward in particular by the Siumut party (socialist), backed by the Greenland trade union movement and some small parties […] At the Greenland parliamentary elections of 1979, the Siumut party obtained 12 of the 20 seats. The opposition Atassut party (liberal-conservative), which wants Greenland to remain in the European Community, obtained 8 seats. One of the main reasons for Siumut's election victory was its election promise to take Greenland out of the European Community as soon as possible.'

[103] According to Jensen, 'Nyordning og modernisering 1950–79', p. 365 (author's translation): 'The voting result served as a catalyst for subsequent political efforts. […] Where until then the question had revolved around a Greenlandic for or against membership of the EC, the focus was now turned towards the future relationship between Greenland and Denmark.'

[104] See 'Landstingslov nr. 2 af 3. april 1981 om afholdelse af en folkeafstemning om fortsat anvendelse af traktaterne om De Europæiske Fællesskaber i Grønland' (Act No. 2 of 3 April 1981 on a referendum on the continued application of the Treaties of the European Communities in Greenland), Section 2(1) and 2(2). Author's translation: 'If a majority of the voters participating in the referendum answer no to this question, the national government is authorized to enter into negotiations with the national authorities on the timing and conditions for Greenland's withdrawal.' According to Section 6 it is understood that the question was to be phrased both in Danish and Greenlandic. Also see Harhoff, 'Greenland's Withdrawal from the European Communities', 13.

[105] 'Landstingslov nr. 2 af 3. april 1981 om afholdelse af en folkeafstemning om fortsat anvendelse af traktaterne om De Europæiske Fællesskaber i Grønland'.

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OCT status would signify that at least some elements of the treaties would still be in force in Greenland.

In the referendum 32,391 persons were entitled to vote among whom 12,615 voters (52 per cent of the total poll) voted 'No' and 11,180 (46.1 per cent of the poll) voted 'Yes' to the referendum's question.[106] In other words, a fairly small anti-EC majority emerged. Although the Danish government was in support of Greenland remaining in the EC, it had announced prior to the referendum that it would respect the result.[107] Following the outcome, the '*Landsstyre*' requested the Danish government, in which this competence was vested, to initiate the negotiations with the EC.[108] In other words, Greenland was not entitled to carry through the negotiations on its own. On 19 May 1982, the Danish government, with reference to Article 96 of the European Coal and Steel Community Treaty, Article 236 of the EEC Treaty, and Article 204 of the Euratom Treaty, then submitted its proposal in that regard.[109]

Against this background, the Council of Foreign Ministers of the EU decided at its meeting on 29 November 1983 to negotiate expediently on the terms and conditions for the withdrawal and the transformation to a future association.[110] The Council reached agreement in February 1984, which was signed in Brussels in March of the same year.[111] There was a minor delay caused by the fact that the necessary ratification had not been completed in all the Member States before the deadline of 1 January 1985.[112] Greenland's exit from the EC eventually took effect on 1 February 1985.

[106] Harhoff, 'Greenland's Withdrawal from the European Communities', 13.

[107] S. Skovmand, 'Grønland gik imod strømmen', *Notat* (30 March 2007); and T. Høyem, 'Minister for Greenlandic Affairs Addressing the Conference at the Opening' in H. Rasmussen (ed.), *Greenland in the Process of Leaving the European Communities* (Copenhagen: Forlaget Europa, 1983), pp. 9–10.

[108] Harhoff, '§ 1', p. 28 and Jensen, 'Nyordning og modernisering 1950–79', pp. 393–394.

[109] 'Danish Government memorandum of 19 May 1982/Danish Government proposal for the amendment of the Treaties establishing the European Communities with a view to Greenland's withdrawal from the Communities and the application to Greenland of the special association arrangements in Part Four of the EEC Treaty' in Commission, *Status of Greenland, Commission opinion*, Commission communication presented to the Council on 2 February 1983, Bulletin of the European Communities, Supplement 1/83, p. 6.

[110] Weiss, 'Greenland's Withdrawal', 173.

[111] Ibid., 173.

[112] Ibid., 173.

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As mentioned above, the foregoing referendum in Greenland was concerned with whether Greenland should remain a part of the EC.[113] It was not asked whether Greenland should have the status of an OCT.[114] This may give rise to some surprise, because the possibility of OCT status was on the table beforehand. For instance, in a *Statement Issued by the Greenland Government on Greenland's Future Relationship with the European Community*, directed to the EC and dated 2 October 1981, the following was said:

> The Government is aware that many people will consider a third-country arrangement like that enjoyed by the Faroes as the most obvious course, but it wishes to confirm its interest in continued links with the European Communities if the referendum turns out in favour of Greenland's withdrawal. As a result, the Government would like Greenland to be associated with the European Community as an overseas country or territory on the same basis as the EEC's other overseas countries and territories. The Government would like to point out that many of these overseas countries and territories have an average per capita income similar to Greenland and that these areas' historical and constitutional ties to a Member State of the European Community are the same as Greenland's. The Government therefore finds it natural for Greenland to be associated with the European Community on the same conditions as the other overseas countries and territories and hopes that the Governments of the other Member States display the same sympathetic understanding as the Danish Government.[115]

[113] Harhoff, 'Greenland's Withdrawal from the European Communities', 13.

[114] For an account of the reasons behind that choice, see e.g. M. Olsen, 'Minister for Social Affairs in Greenland's Home Rule. Perspectives beyond Greenland Secession from the EEC' in H. Rasmussen (ed.), *Greenland in the Process of Leaving the European Communities* (Copenhagen: Forlaget Europa, 1983), p. 26. It may be understood from the commentary on the Act in question, i.e. Landstingslov nr. 2 af 3. april 1981 (Act No. 2 of 3 April 1981), that the theme of the referendum was considered as well thought through. Thus, it is about the crucial Section 2 stating (author's translation): 'The theme is set out in the legal text deliberately clearly and unambiguously as an indicative vote on the question in order to avoid later interpretational doubts about results, which is an imminent risk when setting up several alternative questions. The positive wording of the question is partly due to the desire to avoid linguistic misunderstandings and partly due to consideration of the already existing slogans; "NO to EC" and "YES to EC".'

[115] Attached to 'Greenland's referendum on the European Community (Note from Mr Dalsager)'. Also see the discussion by F. Harhoff in Grønlands Hjemmestyre, *Redegørelse for forholdet mellem Grønland og EF* (September 1981), p. 13 onwards.

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It may give rise to concern that the choice ultimately made was not necessarily in conformity with the theme of the referendum. On the surface, the term OCT refers to territories that are situated outside the EU but that, for historical, social, cultural, and/or political reasons, have a relationship to a Member State of the EU. In fact, the term constitutes an example of coded language for colonialism.[116] Thus, OCTs are in reality former colonies. OCTs of today are referred to in Annex II to the Treaty on the Functioning of the European Union (TFEU).[117] They are not sovereign states with an international legal personality and can be viewed as situated in a grey area, as neither Member States nor third countries.[118]

The fact that Greenland was given such status was a product of negotiations.[119] Thereby, Greenland actually did to some degree remain related to the EC and subject to the applicability of some EC law (including some treaty provisions).[120] At the same time, a likely implication is that Greenlanders are to be considered Union citizens.[121] In some contrast, it should be noted that the psychological factor, understood as the Greenlanders not wanting Brussels to take over Copenhagen's previous

[116] H. Eklund, 'Peoples, Inhabitants and Workers: Colonialism in the Treaty of Rome' (2023) *European Journal of International Law* 836.

[117] As a result of Brexit, those OCTs that had special relations with the United Kingdom are no longer associated with the EU, and the number of OCTs has been reduced from twenty-five to thirteen.

[118] P. H. Madsen et al., 'Højt oppe mod Nord – der hvor EU-retten ikke (helt) gælder' (2016) 9 *Advokaten* 28–31.

[119] It may be understood from 'Greenland's referendum on the European Community (Note from Mr Dalsager)', that: 'As an alternative to EEC membership, the Greenland Government (the Siumut party) has expressed its wish for an association agreement with the Community similar to that which the Community has with the overseas countries and territories. In his speech to the Parliament, Mr Dalsager stated that the question of Greenland gaining OCT status could not be settled at present and when considering this, it must be borne in mind that Greenland has a relatively high gross national product per inhabitant compared with most of the present OCT areas. Another decisive factor was Greenland's considerable exports of fish products to the Community.'

[120] See e.g. U. Neergaard, 'Free Movement of Persons and the Autonomous Territories in the Danish Kingdom: Greenland and the Faroe Islands' in K. Hyltén-Cavallius and J. Paju (eds.), *Free Movement of Persons in the Nordic States: EU Law, EEA Law, and Regional Cooperation* (Oxford: Hart Publishing, 2023), pp. 225–246.

[121] As this has been analysed in e.g. U. Neergaard, 'Shadows of Europe's Colonial Past', pp. 91–102.

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'psychological' role after having achieved home rule in 1979, has been taken as among the reasons for Greenland's leaving.[122] In combination, this points to an exceptionally paradoxical situation for Greenlanders.

The legal contours of the OCT formula were at the time reshaped to fit the future re-association of Greenland.[123] Thus, when Greenland in principle withdrew from the EC, a provision was inserted in what is now Article 204 TFEU. Here, it is stated that the provisions regarding the OCTs are applicable in Greenland. Article 198 TFEU highlights the basic purpose of association as being to promote the economic and social development of the countries and territories, and to establish close economic relations between them and the Union as a whole, as well as to serve primarily to further the interests and prosperity of the inhabitants of these countries and territories to lead them to the economic, social, and cultural development to which they aspire. Attention should also be given to Article 200 TFEU, which stipulates that customs duties on imports into the Member States of goods originating in the OCTs shall be prohibited in conformity with the prohibition of customs duties between Member States, and that customs duties on imports into each OCT from Member States or from the other OCTs shall be prohibited in accordance with the provisions of Article 30 TFEU.

Council Decision on the Overseas Association, including Greenland, is also of significance.[124] The essence of the interrelationship is stipulated in its preamble in the following manner:

> The TFEU and the secondary legislation adopted on the basis of it do not automatically apply to the OCTs, with the exception of a number of

[122] See 'Greenland's referendum on the European Community (Note from Mr Dalsager)', pp. 1–2.

[123] K. Mason, 'European Communities Commission – Greenland – EC Commission Draft Approves Withdrawal of Greenland from European Community and Proposes Terms for Economic Reassociation' (1983) 13 *Georgia Journal of International and Comparative Law* 865.

[124] Council Decision 2021/1764 of 5 October 2021 on the association of the Overseas Countries and Territories with the European Union including relations between the European Union on the one hand, and Greenland and the Kingdom of Denmark on the other, OJ 2021 355/6. The Decision establishes the rules and the procedure for the association of the Union with the OCTs, including Greenland, and replaces Council Decision 2013/755/EU and Council Decision 2014/137/EU.

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> provisions which explicitly provide for their application. Although not third countries, the OCTs do not form part of the single market and must nevertheless comply with the obligations imposed on third countries in respect of trade, particularly rules of origin, health and plant health standards and safeguard measures.

This means that with respect to trade, OCTs must meet, for example, the obligations laid down in relations with third countries, in particular with regard to rules of origin, unless provision is made to the contrary. The decision contains several provisions that have the consequence that Greenland (and other OCTs), in many respects, is in a more privileged position than third countries and in several areas even equates to Member States.[125] Accordingly, pursuant to Article 44 of the decision, products originating in Greenland (and other OCTs) shall be imported into the Union free of import duty, and the Member States shall, according to Article 45 of the Decision, not apply to imports of products originating in Greenland any quantitative restrictions or measures having equivalent effect. Also, pursuant to Article 47 of the Decision, the Union shall not discriminate between OCTs and the OCTs shall not discriminate between Member States. As an OCT, Greenland therefore has direct access to the internal market without import restrictions; and, at the same time, the OCTs are not prevented from maintaining or introducing customs or quantitative restrictions on imports of products originating in the Union within the meaning of Article 45 of the Decision.[126]

In the above-mentioned new Arctic policy of the EU, there is a fairly brief reference to the OCT status of Greenland.[127] In particular, it is explained that under the Overseas Association Decision, Greenland has a wide-ranging political and policy dialogue with the EU, preferential trade arrangements to access the EU market, and is one of the largest OCT recipients of EU support per capita (225 million euros foreseen between 2021 and 2027).[128]

[125] Ibid.
[126] Ibid.
[127] 'Joint Communication: A stronger EU engagement for a peaceful, sustainable and prosperous Arctic', pp. 4–5.
[128] Ibid.

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13.5 CONCLUSIONS

This chapter has been concerned with showing how the present increase of the EU's interest in the Arctic area is to some degree justified due to its ties with Greenland through the Member State Denmark. The ties between Denmark and Greenland, however, are built on a heavy heritage of colonialism. Thereby, Danish colonialism is at the core of the EU's 'passage' to the Arctic. The ties in question may thus be considered as rather volatile, and the entire set-up may thereby harbour a looming backlash.

As to the heritage of colonialism, Greenland's relationship with Denmark has by now been very long, although this relationship has at times also been challenged by other countries. It has, however, in the most recent decades been one moving towards greater independence, and as a clear manifestation thereof a home rule arrangement was established in Greenland in 1979. Replacing this home rule arrangement, a self-rule arrangement entered into force in 2009. There are now strong forces working to achieve full sovereignty, most recently culminating with the launch of the proposal for a Greenlandic Constitution.[129]

Related thereto, the existence of democratic shortcomings in connection with significant referenda (or omission thereof) in the past century should be highlighted. Some of these democratic shortcomings in relation to Greenland are connected to the EU. As explained earlier, besides the flaws related to the decolonization of Greenland in 1953, there are flaws related to the EU accession in 1973 and subsequently to the withdrawal in 1985. Most significantly, the Greenlandic population did not have a separate vote and thus had to accede in 1973. In the same vein,

[129] 'Grønlandsudvalget 2022–2023'. In the same vein, also see the recently launched Greenlandic Arctic strategy, namely Naalakkersuisut/Departementet for Selvstændighed og Udenrigsanliggender (Government of Greenland/Department for Independence and Foreign Affairs), 'Grønland i verden. Intet om os, uden os. Grønlands udenrigs-, sikkerheds- og forsvarspolititiske strategi for 2024–2033 – en Arktisk Strategi' (February 2024); and the launching of a grand investigation of the history of the relationship between Greenland and Denmark, namely Naalakkersuisut (Government of Greenland) and Uddannelses- og Forskningsministeriet (Ministry of Education and Research), 'Kommissorium. Historisk udredning af forholdet mellem Grønland og Danmark' (June 2023).

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the Greenlandic population had not been asked explicitly at the referendum concerning the withdrawal, whether it wanted to get an OCT status, as the question asked may rather be understood as a third-country status – like the Faroe Islands – being at stake. Moreover, it was not the Greenlandic '*Landsstyre*', but rather the Danish government, in which this competence to carry through the negotiations of withdrawal was vested. Thus, Greenland's ties – through Denmark – to the EU are first and foremost based on its OCT status, used in relation to former colonies. Greenland entered into this status without being a party as such to the negotiations that followed its voting to withdraw from the EC.

If Greenland were to end up completely leaving the Danish realm, which is constantly up for discussion not least due to the colonial history as explained earlier, to become a sovereign state no longer subject to the Danish Constitution, such a step would evidently also affect Greenland's relationship with the EU. In that case this relationship would have to be redefined and renegotiated, since it at present is mainly defined through Greenland's connection with Denmark as an EU Member State. The consequences might in fact be quite significant, as Greenland would then as a likely point of departure assume the status of a third country unless it could and would wish to become a Member State in its own right or some other construction could be designed.

All in all, the findings of this chapter cannot and should not be ignored in relation to the EU's new, crucial Arctic policy, according to which the EU wishes to increase its engagement in and around the Arctic region, in response in particular to climate change and in support of sustainable development, security interests, and possible access to natural resources. All parties, the EU, Denmark, and Greenland, will soon have to face the complicated colonial history through improved dialogue and, even more importantly, through increased orientation towards finding solutions for a more stable, constitutional and/or international interrelationship. The interrelational platform, although currently volatile as the simmering conflicts in the Arctic are manifold, also contains positive elements, which however can only be realized through increased self-reflexivity.

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