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**Self-Determination in the Context of the Faroe  
Islands**

**Graduate thesis in Public International Law  
within the curriculum of Master of Laws**

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# Abbreviations

ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
HRA	Home Rule Act of 1948
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILM	International Legal Materials
ILO	International Labour Organisation
UN	United Nations
UNTS	United Nations Treaty Series
YBUN	United Nations Yearbook

# 1 Introduction

## 1.1 Purpose and Background

The Faroe Islands, Greenland and Iceland were historically, and as to the first two mentioned territories, continue to be, connected with Denmark. Iceland, however, was declared a sovereign state in 1918 and became independent in 1944. Greenland was also recognized as a subject of international law, registered in 1946<sup>1</sup> as a non-self governing territory under the United Nations Charter article 73e, while the Faroe Islands have neither obtained independence, nor were they ever reported as colony to the UN. The thesis does not make comparative studies between these three entities, but their similar history and yet their different treatment would be of great interest. Concentrating on the Faroe Islands, I will consider them in the context of the right to self-determination. This concept in international law is very complex, having various meanings.<sup>2</sup> The question posed is the relevance and the implication of the right to external self-determination in the case of the Faroe Islands. I will also investigate the Faroese Home Rule arrangement as a form of internal self-determination.

Making the subject of current interest is today's political situation in the Faroe Islands. The new coalition government formed in May 1998 has established that "the Faroese are a nation, and that the Faroe Islands are a country, and that it will be the task of the coalition, to perform this politics in practice". The coalition has decided to initiate negotiations with the Danish Government about the Danish-Faroese concerns "with the goal, that the Faroe Islands will be an independent (sovereign) society".<sup>3</sup>

The background to the political development is partly to be found in the Faroese economic crisis which became evident in 1992. The crisis and the unpopular measures that followed strained the relations between the Faroese and the Danish political systems. The Faroese politicians saw their powers

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<sup>1</sup> Greenland was integrated with Denmark in 1953, and removed from the list of non-self governing territories with the approval of the General Assembly by resolution 849 (IX) of 22 November 1954. For the opinion that Greenland still has the right to exercise external self-determination, see Alfredsson, Gudmundur, "Greenland and the Law of Political Decolonization", *German Yearbook of International Law*, vol. 25, Berlin, 1982, pp. 290-308.

<sup>2</sup> See Alfredsson, Gudmundur, "Different Forms and Claims to the Right of Self Determination", in Donald Clark and Robert Williamsson (eds.), *Self-Determination: International Perspectives*, Houndmills, Basingtoke, Hampshire, London, New York, 1996, pp. 58-86.

<sup>3</sup> Quotations from the Coalition Agreement between the People's Party, the Republicans and the Home Rule Party.

eroded by the Danish Government in its role as creditor.<sup>4</sup> The prospect of finding oil in the continental shelf around the islands may also have encouraging influence, giving the economic possibility to independence.<sup>5</sup>

Geographically the Faroe Islands are situated in the northernmost part of the Atlantic, 430 km south-east of Iceland, 600 km west of Norway and 300 km north-west of Scotland. They form a cluster of 18 islands with a total surface area of 1,400 square kilometres. The population is about 44. 000 persons, of whom the native people form a great majority.

## 1.2 Material and Method

Chapter 2.1, which deals with the period in time until 1849, is based on various literature on the history of the Faroe Islands. The following chapter, 2.2, has principally Jakúp Thorsteinsson's *Et Færø som Færø* as reference.<sup>6</sup> His thesis investigates the constitutional position of the Faroe Islands in relation to Denmark from 1834 to 1852. Part 2.4, "the World War II period", and part 2.5, "the 1946 Plebiscite", result from the effort to find original texts on the issues. Lagtingstidende between 1944-1948 are their primary source. Fredrik Haroff has in the dissertation *Rigsfælleskabet*<sup>7</sup> also studied the political events referred to, as well as Kirsten Harder in *De dansk færøske forhold 1945-1948*.<sup>8</sup> The book by the latter is, however, written with the aim to present the views of the Danish politicians on the government of the Faroe Islands after the war.

The law regulating the competencies of the Faroese authorities since 1948, the Home Rule Act, and its development, is considered in chapter three. The fourth section of the thesis presents the international law on self-determination. The major international instruments are reviewed and customary law and doctrine of aspects of the principle. The central point of the composition is the position of the Faroe Islands under the rules, which is examined in the subsequent section.

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<sup>4</sup> Olafsson, Árni, *Færøerne, 18 øer i Nordatlanten*, pamphlet published by Færøernes Repræsentationskontor, 1995; Mørkøre, Jogvan, "The Faroese Home Rule Model - Theory and Reality", in Lise Lyck (ed.), *Constitutional and Economic Space of the Small Nordic Jurisdictions*, Denmark, 1997, pp. 179-189.

<sup>5</sup> See for instance Elkjær, Jacob, "Færøernes sorte guld", *Politiken*, May 27, 1998.

<sup>6</sup> Thorsteinsson, Jákup, *Et Færø som Færø*, Århus, 1990.

<sup>7</sup> Haroff, Fredrik, *Rigsfælleskabet*, Århus, 1993.

<sup>8</sup> Harder, Kirsten, *De dansk færøske forhold 1945-48*, Odense, 1979.

# 2 The Faroe Islands in Perspective of Time

## 2.1 Free State and Norwegian Tributary Country

About year 800 settlers who probably came from western Norway and from the Scottish islands began to arrive in the Faroe Islands. They replaced an earlier, small, Irish settlement.<sup>9</sup>

Before the late tenth century the Faroes formed a political unit with a council-meeting as legislative and executive body and high court. This parliament, named the Lagting, was in the beginning a popular assembly in which all free men might participate. Later the constitution of the Lagting changed, and it came to consist of 36 representatives elected from six law-districts.<sup>10</sup>

The Faroese society was independent until 1035. This year has been established as when the right of the Norwegian King to collect taxes therefrom was conceded.<sup>11</sup>

The Lagting retained however most of its original authority until the thirteenth century when the Faroes came under Norwegian law. After this reform in 1237 the Lagting ceased to be a legislature. Its judicial power was preserved but restricted since its judgements could be overturned upon appeal to the Norwegian King.<sup>12</sup>

In 1380 Norway was united with Denmark under the Danish Queen Margarethe the first. Via Norway also the Faroe Islands together with Iceland and Greenland, two other Norwegian tributary countries, came into relationship with the Danish realm.<sup>13</sup>

The Norwegian law remained the code in the Faroes, and they were considered a Norwegian country until 1814, but the islands became gradually more governed directly from Denmark. This was the case in relation to legal and administrative matters as well as ecclesiastical and commercial affairs.<sup>14</sup>

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<sup>9</sup> Wylie, Jonathan, *The Faroe Islands: Interpretations of History*, Lexington, Ky, 1987, p. 9.

<sup>10</sup> *Ibid.*, pp. 9-13; West, John F., *Faroe: The Emergence of a Nation*, London, New York, 1972, p. 7.

<sup>11</sup> West, p. 7.

<sup>12</sup> Wylie, pp. 11f.

<sup>13</sup> Haroff (1993), pp. 44f.

<sup>14</sup> West, pp. 8f, 22f; Waag Høgnesen, Róland, "Færøernes historie frem til den anden verdenskrig", in Anders Ølgaard (ed.), *Færingar- Frænder*, Copenhagen, 1968, pp. 44-53; Debes, Hans Jacob, "The Formation of a Nation", in Sven Tägil (ed.), *Ethnicity and Nation*

By 1620 the power was concentrated in Copenhagen. Danish was established as the official language of the Faroe Islands, and the clergy was predominantly Danish.<sup>15</sup>

The Lagting continued to function as a judicial and political organ. When the Danish absolute hereditary monarchy began in 1660 and the different estates of the realm resigned their privileges to the King, the Lagting represented the Faroe Islands independently.<sup>16</sup>

The Faroese trade monopoly commenced in 1535 and was for three centuries an institution of the islands. In 1709 the Danish Government itself took over the management which previously had been granted to various individuals and companies.<sup>17</sup> At the same time the Faroes were placed under the administrative province (amt) of Zealand.<sup>18</sup>

It was only in the widest sense of the designation the "Norwegian realm" that the tributary countries were included. They were under the Norwegian Crown, but as dependencies or colonies with looser connections to the realm than the provinces.<sup>19</sup> Under the autocracy, when Norway and Denmark had become one kingdom, the former Norwegian tributary countries were considered colonies also in the legal sense in the same way as the colonies in East- and West India and Africa.<sup>20</sup>

When by the Treaty of Kiel in 1814 Denmark had to cede Norway to Sweden, the Faroes, Iceland and Greenland remained with Denmark.

The Faroe Islands continued to be governed as a dependency, and the commerce monopoly, now directed from Copenhagen, was maintained.<sup>21</sup> In international agreements the Faroe Islands were mentioned as a Danish colony. A recurrent formulation in treaties was "the Danish Colonies Greenland, Iceland and the Faroe Islands therein included", or "the Danish Colonies on the other side of the Sea that includes the Faroe Islands, Iceland and Greenland".<sup>22</sup>

Faroese matters were from the end of the 17th century administered in the Danish Chancery, where they belonged to the Norwegian Office (Nordefjeldske renteskrivarkontor) until 1814 when they were placed under

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*Building in the Nordic World*, London, 1995, p. 66.

<sup>15</sup> Nauerby, Tom, *No Nation is an Island: language, culture and national identity in the Faroe Islands*, Århus, 1996, p. 31.

<sup>16</sup> Haroff (1993), p. 54; West, p. 84.

<sup>17</sup> West, pp. 9, 34-40. The royal trade monopoly in Faroes was abolished by the Free Trade Law in 1856.

<sup>18</sup> Haroff (1993), p. 45.

<sup>19</sup> Berlin, Knud, *Danmarks ret til Grønland*, Copenhagen, 1932, pp. 44-49.

<sup>20</sup> *Ibid.*, pp. 46-49.

<sup>21</sup> *Ibid.*, pp. 72, 99.

<sup>22</sup> *Ibid.*, pp. 131f.



the Icelandic and Bornholm Office.<sup>23</sup>

The Lagting was dissolved in 1816. The Faroes were the same year made a Danish amt.<sup>24</sup> The influence on the governing of the society was taken away from the Faroese as all matters were administered by Danish officials.<sup>25</sup>

The applicability of Danish laws in the Faroes was established in Royal Resolution of 6 June 1821. It expressed that the Faroe Islands were not in legislative union with Denmark but a special legislative area in the Danish realm. This meant that Danish laws were not directly valid in the Faroes. By direction of the Chancery, however, Danish laws could be especially put in force there.<sup>26</sup>

The highest local civil servant was the Provincial Governor (Amtmand). His responsibilities included administering local laws and deciding, on the Chancery's inquiry, if a particular Danish law was suited Faroese conditions.<sup>27</sup>

In 1835 four provincial assemblies with consultative functions to the Crown were constituted. They were elected according to a franchise based on ownership on land, an arrangement, however, that did not apply to the Faroese whose representatives were appointed by the King. The assembly for the Danish islands including Iceland and the Faroes was situated in Roskilde.<sup>28</sup> Danish legislation was nevertheless not automatically in force in the Faroe Islands. The Resolution of 6 June remained valid.<sup>29</sup>

From a legal, geographical and historical viewpoint Iceland and Faroe were anomalies in the Roskilde Assembly. The special position of Iceland was recognized when the Icelandic Althing, which had been abolished in 1800, was re-established in 1845 in the shape of a provincial advisory chamber.<sup>30</sup> Petitions for the establishment of a representative body in the Faroes were presented to the Roskilde Assembly in 1844 and 1846, but they did not lead to any result at the time.<sup>31</sup>

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<sup>23</sup> Haroff (1993), p. 45.

<sup>24</sup> Ibid., p. 45.

<sup>25</sup> Thorsteinsson, pp. 41f.

<sup>26</sup> Ibid., pp. 44, 84.

<sup>27</sup> West, pp. 76f; Wylie, p. 90; Thorsteinsson, pp. 43f, 84.

<sup>28</sup> West, pp. 84f; Wylie, p. 90.

<sup>29</sup> Thorsteinsson, p. 84.

<sup>30</sup> West, pp. 84f.

<sup>31</sup> Thorsteinsson, pp. 109-115.

## 2.2 Incorporation into the Realm of Denmark

### 2.2.1 The 1849 Constitution and the Electoral Law to the Rigsdag for the Faroe Islands

The Danish absolute monarchy ended in March 1848. A constituent assembly was formed to prepare a new constitution and an electoral law for the Parliament, the Rigsdag. It was mainly elected by universal suffrage, but again a crown nominee represented the Faroe Islands.<sup>32</sup>

The Icelanders were given the royal pledge that the constitutional status of Iceland within the Danish realm should not be conclusively decided before a convention in Iceland had expressed its opinion on the subject.<sup>33</sup> The majority of the Danish representatives had in contrast no intention to give the Faroese the same right, but meant that the Faroes without consideration could be incorporated in the area of constitution.<sup>34</sup>

The Constitution was adopted on 5 June 1849, titled the Constitution of the Realm of Denmark.<sup>35</sup> It did not contain any definition of the realm, and the Faroe Islands and Iceland were not mentioned. The idea was that it would only be valid in the provinces where it became registered.<sup>36</sup> The Act Concerning Election to the Rigsdag of June 16, 1849 made a reservation for the particulars concerning the provisions for Slesvig, Iceland and the Faroes.<sup>37</sup> The election regulations for these areas were to be arranged by special law.

The Icelanders wished not to come under the Constitution or participate in the Rigsdag, which was respected by Denmark.<sup>38</sup>

The Constitution and the Act Concerning Election to the Rigsdag were registered on the Faroes' different islands between December 1849 and March 1850. This was made without consultation of the Faroese people or any representative body on their behalf.<sup>39</sup>

In October 1850, the Government presented in the Rigsdag a draft for an

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<sup>32</sup> Ibid., pp. 148f.

<sup>33</sup> Ibid., p. 149.

<sup>34</sup> Ibid., p. 152.

<sup>35</sup> Danmarks Riges Grundlov af 5 Juni 1849, Samling av endnu gjældende Love og Anordninger 1849-1859, Copenhagen, 1861.

<sup>36</sup> Thorsteinsson, p. 429.

<sup>37</sup> Lov angaaende Valgene til Rigsdagen af 16 Juni 1849, Samling av endnu gjældende Love og Anordninger, 1849-1859, Copenhagen, 1861, see §18.

<sup>38</sup> Thorsteinsson, pp. 152-154.

<sup>39</sup> Ibid., p. 161.

Electoral Law to the Rigsdag for the Faroe Islands, according to which the Faroese were to elect one member to the Landsting and one member to the Folketing.<sup>40</sup> A debate followed in the Rigsdag whether the Faroe Islands were encompassed by the Constitution, and if the line of action chosen was correct vis-à-vis the Faroese.

The majority in the Landsting agreed to the bill. A.S. Ørsted was in minority, not believing in the ministerial solution, or rather, the procedure in which it was going to be realized. He meant that the Faroese must have had the opportunity of expressing their view on their future legal position before the Rigsdag made a decision. Ørsted argued that the Faroes had a special status in the realm because Danish legislation had never automatically been applicable there, and the nature and the development of the islands were so different from Denmark proper. The Constitution was not immediately in force in the Faroes, he said, as they were not mentioned in it, and as no regard had been taken to them when the law was made.<sup>41</sup>

In the Folketing the opposition was divided in two categories. One group stressed the cultural difference between the Faroese and the Danes. For example F. Barfod saw the Faroese as a separate people with their own language, traditions and history. He feared that the representation in the Rigsdag and the closer connection with Denmark that it implied would destroy that culture.<sup>42</sup>

The wing of opposition led by A.F. Tschering favoured a closer association between the Faroes and Denmark, but it was important that the historical characteristics of the islands were not destroyed and the natural individuality should remain. The way to attain this was establish a Faroese institution with a rather high degree of independence before the Faroese became represented in the Rigsdag. Tschering defined the Faroe Islands' political status as colonial as Denmark controlled the islands via commerce for the benefit of the merchandisers. The Faroes should be freed from the colonial situation and develop into an independent part of the Danish realm. Without the existence of a local institution in the islands, the parliamentary representation would be without meaning.<sup>43</sup>

The members of the Folketing voting for the ministerial bill, who were in majority, meant that the Government was not obliged to obtain the Faroese view on the representation question. The Faroes were included in the Danish realm, and they rejected the idea of an independent position for them.<sup>44</sup> The Electoral Law to the Rigsdag for the Faroe Islands was thus adopted in

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<sup>40</sup> Ibid., p. 161,191.

<sup>41</sup> Ibid., pp. 214-218; Steining, Jørgen, *Den danske rigsdag 1849-1949*, Bind IV, Copenhagen 1953, p. 109.

<sup>42</sup> Thorsteinsson, pp. 222-230.

<sup>43</sup> Ibid., pp. 235-244.

<sup>44</sup> Ibid., pp. 203-213.

December 1850.<sup>45</sup> The Faroese did not protest against the Constitution or the parliamentary representation, nor did they express their consent. It lasted a couple of decades after 1850 till a Faroese national movement woke.<sup>46</sup>

A special department for Faroese affairs together with Icelandic and Greenlandic affairs was created in 1848. From the beginning it lay under the Ministry of Interior but was moved in 1855 to the Ministry of Justice. In 1935 the Ministry of State assumed the management of the Faroese matters, where the responsibility remains today.<sup>47</sup>

## 2.2.2 Re-establishment of a Lagting

In the election 1851 the Faroese voted for two men from the islands as their first representatives in the Rigsdag. The Faroese members in the Folketing presented in November the same year a Draft of a Local Government Act for the Faroes. It proposed the establishment of a democratically organized institution that would give the Faroese greatest possible influence on the legislation and the administration of the islands, and ensure the interest of the inhabitants against the officials. Too radical for most of the members of the Folketing, the draft was withdrawn. The Danish Minister of Interior introduced in response the Bill Concerning a Municipal Council for the Faroes, which with some adjustments was adopted as the Lagting Law of 26 March 1852.<sup>48</sup>

The new Lagting had limited powers. It was given the right to administer certain municipal affairs of the islands, such as the poor-law fund, the economic fund and church means.<sup>49</sup> Politically it could exercise an advisory role in the preparation and execution of legislation. The task concerning legal affairs was, closer defined, that it should report on bills concerning the Faroes that were submitted to it by the Government, and could introduce drafts to the Rigsdag for new laws and initiatives.<sup>50</sup> The executive power was with the Amtmand. The Lagting was composed of 16 popularly elected members. The Amtmand was chairman and the Dean had permanent membership.<sup>51</sup> Among other competencies the Amtmand possessed the right to suspend decisions made by the Lagting if he found them illegal. The King had authority to dissolve the Lagting.<sup>52</sup>

In 1923 the Lagting Law underwent reformation.<sup>53</sup> The permanency of the

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<sup>45</sup> Lov angående Rigsdagsvalgene på Færøerne af 29 December 1850, Departementstiderne nr. 33, 22/5 1851, pp. 498-511.

<sup>46</sup> Thorsteinsson, p. 262.

<sup>47</sup> Haroff (1993), pp. 47f.

<sup>48</sup> Thorsteinsson, pp. 301-321; Lov om Færøernes Lagting af 26 Marts 1852, Departementstiderne nr. 22, 10/4 1852, pp. 335-339.

<sup>49</sup> §11.

<sup>50</sup> §10.

<sup>51</sup> §1.

<sup>52</sup> §13.

<sup>53</sup> Law no. 124 of 28 March 1923, Dansk Lovsamling aargang 1923.

Amtmand's and Dean's membership was removed. The Amtmand could still present bills and request permission to speak, but he was no longer permitted to vote. To the form of the Lagting the number of members were increased to between 20 and 23.<sup>54</sup> The political function of the Lagting was strengthened as drafts that concerned the Faroe Islands exclusively should "if possible" be considered by the Lagting before they were put in force in the islands. Other laws concerning the Faroe Islands should "generally" be considered by the Lagting before they were made applicable there.<sup>55</sup> The legislated competence of the Lagting over local affairs was not extended.<sup>56</sup> The passage: "Otherwise those Affairs belong to the Lagting, which by Law or other valid Provisions are laid to it", was however added.<sup>57</sup>

In a writ from the Justice Department of 5 July 1855, it was decided that Danish laws were as a rule applicable to the Faroe Islands. Laws that the Faroes were to be exempted from had to explicitly say this in the text.<sup>58</sup>

## 2.3 Development of Political Consciousness

During the second half of the 19th century Faroese nationalism began to rise. It started as a cultural movement but acquired political dimensions around 1900.

An increasing public interest in the language and the oral literary heritage of the Faroes gave the initial impulse. The nationalist movement was organized in the Føringefelag (Association of the Faroese) in 1889. The association had as one goal to bring the Faroese language pride. The expectation was that Faroese would be used for all public purposes and that a literature

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<sup>54</sup> § 1.

<sup>55</sup> § 17.

<sup>56</sup> § 18 which reads: "The Lagting decides, how big Amount that annually shall be debited the Repayment fond of the amt, and makes Decision on the Use of this Fund as well as the economic Fund.

It decides annually, which permanent Benefits for the following year can be given by the Poor-law fund of the Amt, and Supervises the granted temporary Benefits of the previous year.

It Supervises, how Benefits from the Fund for the fortune left behind of mortally wounded have been distributed during the previous year.

It makes Decisions on the Use of the Church Means.

It attends to the Security and the Utilization of the Capital, which belongs to Funds under its Management, after the Provisions in force for public Means, choses Accountants and Auditors for these Funds, decides Accounts, if Responsibility for the Keeping of accounts is concerned, and attends to, that Extracts of all of these Accounts are brought to public Knowledge [...]

It Supervises the Security service and the building and maintenance of public Roads, Streets, Bridges and Runways.

Otherwise those Affairs belong to the Lagting, which by Law or other valid Provisions are laid to it."

<sup>57</sup> § 18.

<sup>58</sup> Thorsteinsson, p. 341.

would come into being. It also worked for the unity, progress, and self-sufficiency of the Faroese people.<sup>59</sup>

In the period 1901-1906, the Faroes' representative in the Folketing, Jóannes Patursson, formulated the Faroese home rule policy. He presented his program before the Lagting in 1906. Devoted to the idea of a higher degree of self-government in the islands he wanted to give the Lagting legislative powers in Faroese matters and financial responsibility. The proposal was met with resistance and it were the opponents of Patursson's proposal that won the 1906 elections for the Rigsdag and the Lagting. After this election unionist and separatist opinions were institutionalized in a more formal way.<sup>60</sup>

Two political parties were thus created in 1906: Sambandsflokkurin (Unionist Party) and Sjálvstýrisflokkurin (Home Rule Party). The Unionist Party wanted a close relationship with Denmark and defended the existing constitutional link. Its supporters were of the conception that a continuation of the near Danish-Faroese connection was a prerequisite for the economic progress. The Home Rule Party, formed by Patursson and his adherents, worked for additional political responsibility for the Faroes.<sup>61</sup>

Essentially these two parties were the result of the political debate over the home rule issue. The following two decades, the question of language rights came in the fore. Not until 1938 was Faroese recognized by the Danish authorities as language of education beside Danish, and one year later it was permitted to be used in church services. The question of home rule became the important political issue again in the thirties.<sup>62</sup>

A third party, Javnadarflokkurin (Social Democrat Party), was founded in 1925. It was, and continues to be, unionist regarding the relationship with Denmark.<sup>63</sup>

The Unionist Party dominated the Faroese political life until 1928. It had the majority in the Lagting except from 1918 to 1920, when the Home Rule Party had two more seats, and 1920 to 1924 when it was even between the two parties.<sup>64</sup> Thorsteinsson presumes that the period 1918 to 1920 did not lead to any consequences because "the party had no other position of power in the society, and when the [L]agting did not control any administrative apparatus".<sup>65</sup>

In 1928 the Home Rule Party and the Social Democrats won more than half of the mandates in the Lagting. During the period 1932-1936 the Unionist Party had absolute majority again, but thereafter the opinion was against it.

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<sup>59</sup> West, pp. 106, 116.

<sup>60</sup> West, pp. 122f; Wylie, pp. 156f.

<sup>61</sup> Wylie, pp. 157f; Debes, p. 78.

<sup>62</sup> West, pp. 164-171; Debes, p. 78; Mørkøre, p. 165.

<sup>63</sup> Debes, p. 78.

<sup>64</sup> Wylie, p. 157.

<sup>65</sup> Thorsteinsson, p. 345.

In 1940 the mandates were allocated in the following way: the Home Rule Party 4, the Unionist Party 8, the Social Democrat Party 6 and the People's Party 6.<sup>66</sup> The latter party was organized in 1939 and favours the separatist ideas on national issues.<sup>67</sup>

The Danish Government announced in 1930 that it wished to have the Faroese view on their position in the realm, and that it could be brought about by a plebiscite. Thorsteinsson writes that the proposal can be considered as an intimidation of the movement working for self-government. But it is possible to regard it instead as an indirect recognition of the Faroese as a people, and as if the Government intended to let them give their opinion on their political situation. A distinction between the Faroe Islands and other provinces are made since the same question would never have been posed to for example the Zealanders. The Home Rule Party rejected the proposition, and for that reason the Government let the question rest.<sup>68</sup>

## 2.4 The World War II Period

On 9 April 1940 Denmark was occupied by Germany, and two days later British forces occupied the Faroes. Consequently the connections between Denmark and the Faroe Islands were interrupted, which was to bring a decisive modification of the Faroe Islands' governmental organization and relationship to Denmark.

The People's Party suggested on 3 May 1940 that the Faroe Islands should decree sovereignty and the Lagting resume the responsibility over the islands.<sup>69</sup> The majority of the Lagting rejected however the proposal. An agreement between the Amtmand and the Lagting (Unionist Party, Home Rule Party, Social Democrat Party) was drawn up. The result was a temporary form of constitution adopted as Preliminary Act No.1 of 9 May 1940.<sup>70</sup>

The agreement stipulated that existing laws and regulations remained in force as far as it was possible under the prevailing circumstances.<sup>71</sup> Where authority to issue administrative directions according to law was vested in

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<sup>66</sup> Wang, Zakarias, "Færøsk politik i nyere tid", in Anders Ølgaard (ed.), *Færinger-Frænder*, Copenhagen, 1968, pp. 76-78; Thorsteinsson, p. 348.

<sup>67</sup> Wylie, p. 170.

<sup>68</sup> Thorsteinsson, p. 347.

<sup>69</sup> For the People's Party's proposal see Lagtingstidende 1946, "Udskrift af Forhandlingsprotokol" (hereinafter "Forhandlingsprotokol"), suppl. 2, p. 11.

<sup>70</sup> Ibid., suppl. 2, p. 11f.

<sup>71</sup> Section 1.

Danish government ministers, the Amtmand exercised this authority after consultation with a committee of the Lagting, the Landsnævn.<sup>72</sup> The Lagting adopted future legislation concerning the Faroe Islands, and shared the right to propose legislation with the amt.<sup>73</sup> The Amtmand confirmed and promulgated laws and, after consultation with the Lagting, enacted laws concerning government assets.<sup>74</sup>

Rules that provided the Faroes with substitute for appeal courts and judicial bodies that used to be in Denmark were also made, and together with British authorities financial affairs independent of Denmark were settled.<sup>75</sup>

The coalition behind the Preliminary Act stayed in power during the period of occupation that lasted until September 1945, but the People's Party grew much stronger than before in the last years of war. In the November election 1945 it lacked one seat in the Lagting from having absolute majority.<sup>76</sup> When the war came to an end in May 1945, the return to the political situation before 1939 never seemed to be an option.<sup>77</sup>

The Government invited a delegation of the Lagting to Copenhagen for negotiations on the future arrangements for the Danish-Faroese relation, which took place from January to March 1946.

The deliberations were held under the acknowledgement of the right to self-determination for the Faroe Islands.<sup>78</sup>

On the first meeting the Prime Minister expressed his view that "the two Parties are Factors of equal standing, that are completely free in relation to each other, and which independently can Decide, without the one or the other Part is exposed to Coercion to take another Position than itself wishes",[...] and "that an eventual future Order should be substantiated by a Plebiscite in the Faroe Islands".<sup>79</sup>

The Faroese delegation was not unanimous in its aim. The Unionist Party wanted to continue the alliance with Denmark with only minor changes from the pre-war period.<sup>80</sup> The Social Democrats' suggestion resembled the wartime administration: self-government, but within the Constitution, which

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<sup>72</sup> Section 2.

<sup>73</sup> Section 3.

<sup>74</sup> Section 3, 4.

<sup>75</sup> West, pp. 179f.

<sup>76</sup> Ibid., p. 185.

<sup>77</sup> See Haroff (1993), pp. 53-55.

<sup>78</sup> "Forhandlingsprotokol", suppl. 4 pp. 22, 42; Lagtingstidende 1946, "Uppritt av munnliga ordaskiftinum i donsk-föroyksu sendinevndi i Keypmannahavn januar-mars 1946"(hereinafter "Uppritt") p. 48, where the Prime Minister says "The Faroese have as we know [translation of the Danish word *jo*] right to self-determination in Advance and can make Decision, on that they want to be an independent Country".

<sup>79</sup> "Uppritt", p. 3.

<sup>80</sup> Ibid., pp. 4, 10f.



had to be revised if incompatible with the arrangement to be formed. The Lagting together with the King should have the legislative authority in Faroese affairs for which the islands had the economic responsibility. The Lagting should also, when there was a basis for it in the Faroese economy, have the right to overtake the full authority in affairs that were for the present to be shared by the Danish state and the Faroe Islands.<sup>81</sup> Opting for the most radical solution was the People's Party. They wished legislative and administrative powers for the Lagting in Faroese affairs as the main principle, and demanded a revision of the Danish Constitution and adoption of a law of constitutional character for creating a stable foundation for these powers.<sup>82</sup>

A structure for negotiation presented by the Danish Government, dated the 25 February 1946, read that if the Faroese wished total independence, the ministerial delegation was going to respect that wish completely. It continued to say that provided the Faroese shared the Danish hope, the preservation of the alliance, the delegation would, as far as consistent with the alliance, meet the Faroese wish for consent to "make decisions on and administer" their own affairs by their own popularly elected representation and governing organs.<sup>83</sup> On several instances the Government delegation made it clear that they did not negotiate on an order that would demand constitutional change, and that the principle of the Rigsdag's legislative powers had to be maintained.<sup>84</sup>

The Government made different propositions with varying degrees of autonomous functions transferred, but none of them were acceptable to the Faroese delegation.<sup>85</sup> The Prime Minister declared the proposal of 27 March its final offer. The March proposition preserved the constitutional union and allotted the Faroe Islands the same position in the realm as before 1940. It did not give the Lagting legislative power but authority to make directions and provisions over strictly Faroese matters, and the right to pronounce on Danish laws other than constitutional.<sup>86</sup> This was the proposal voted about in the plebiscite in 1946.

Fredrik Haroff describes the Faroese representatives as lacking common understanding of their situation and their possibilities and therefore had no initial position to negotiate from. He draws the conclusion that the Faroese could not relate to the option to secede from Denmark if the greater number supported it because of the vagueness of the consequences the alternative

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<sup>81</sup> Ibid., pp. 9, 13.

<sup>82</sup> Ibid., pp. 8, 11f, 26.

<sup>83</sup> "Forhandlingsprotokol," suppl. 4, p. 22.

<sup>84</sup> Ibid., suppl. 9, p. 37; "Uppritt", pp. 8f, 50.

<sup>85</sup> For the Government's proposition of 25/2 see "Forhandlingsprotokol", suppl. 4, pp. 22ff, and for the revised proposition of 21/3, suppl. 10, pp. 40f.

<sup>86</sup> Ibid., suppl. 11, pp. 41ff.

would involve.<sup>87</sup>

## 2.5 The 1946 Plebiscite

Between April and May 1946 the Lagting debated the idea of a plebiscite on the future status of the Faroe Islands. The People's Party advocated a plebiscite in which the electors could choose between four possibilities: (i) the Danish government proposal, (ii) a solution more similar to the pre-war arrangement, (iii) a looser link with Denmark than in the governmental proposal, or, (iv) secession.<sup>88</sup> The majority in the Lagting, composed of the Unionist Party and the Social Democrats, rejected this scheme for referendum and the alternatives were reduced to two, the government proposal or secession.<sup>89</sup>

The referendum was held on 14 September 1946, and resulted in a narrow majority for secession. Two-thirds of the electorate participated. 5660 votes (48.7 percent) were in favour of secession, compared with 5499 votes (47.2 percent) for the government proposal. 481 votes (4.1 per cent) were blank or said "no" to the government proposal and were considered invalid in accordance with an earlier decision of the Lagting.<sup>90</sup> The "no" votes were due to that persons that wanted to vote for sovereignty without complete secession followed the advice of the People's Party to vote this way.<sup>91</sup>

The Prime Minister found secession as the consequence of the voting and that it should be materialized. "When there is a Majority for Secession, we must part; we have promised the Faroese this, and we cannot reinterpret or omit to Pay regard to a Plebiscite, if it does not suit us [...] and we have to respect the Majority for secession."<sup>92</sup> But the Rigsdag insisted on further negotiations with reference to that the narrow majority in conjunction with the invalid votes could not be an unequivocal expression of the Faroese view, and the minority government agreed to resume negotiations.<sup>93</sup>

Faroese and Danish politicians discussed whether it had been a facultative or a consultative referendum. Hans Jacob Debes believes that from an objective point of view everybody undoubtedly regarded the result as binding. He gives as reason "the political agitation before the referendum and the Prime Minister's first reaction", and says that the interpretation

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<sup>87</sup> Haroff (1993), p. 58.

<sup>88</sup> Lagtingstidende 1946, "Nevndarálit i lögtingsmáli nr. 1/1946" (hereinafter "Nevndarálit"), p. 11.

<sup>89</sup> Ibid., p. 13.

<sup>90</sup> Lagtingstidende 1946, agenda item 13, pp. 49, 55; "Nevndarálit" p. 13.

<sup>91</sup> Harder, p. 95.

<sup>92</sup> "Statsministeren om Afstemningen", *Politiken*, September 16, 1946.

<sup>93</sup> Harder, pp. 102ff.

debate arose only because of the result was not expected.<sup>94</sup>

In the Lagting the Unionist Party and the Social Democrat Party, which both had presented the plebiscite as decisive, asked for continued negotiations with the Government. They substantiated their plea with the argument that the decision to secede might be determined by less than one third of the registered voters.<sup>95</sup>

The People's Party, which had a small majority in the Lagting, declared that sovereignty had passed into the Faroese people via the result of the referendum. Conducted by Thorstein Petersen, the Lagting decided that it would put forward drafts for creating a representation that temporarily should take over the government authority.<sup>96</sup> The idea seems to have been that this government should negotiate with Denmark on future constitutional arrangements between the parties.<sup>97</sup>

The Lagting did not want to announce the changes without having informed the Danish Government which answer was first brought in the form of instructions to the Amtmand.<sup>98</sup> In accordance with these the Amtmand protested against the decision of the Lagting as being illegal and against the Constitution, and required that the decision should rest upon submission to the higher authorities as prescribed in the Law of the Lagting §20.<sup>99</sup>

The Danish Government pronounced that the plebiscite did not give rise to a new status for the Faroe Islands constitutionally or in the light of public international law. It did not either give the Lagting competence to establish such rearrangement on its own, no matter how the referendum was interpreted. The Lagting acting by itself in this question would be illegal and would not be accepted by the Government. Organs that might be created by the decision would not receive any acknowledgement. Nothing in the existing order could be changed without negotiations with the Lagting and

the Danish authorities. The Government insisted on new elections to the Lagting and the negotiations to be hold with the newly formed representation.<sup>100</sup>

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<sup>94</sup> Debes, p. 79.

<sup>95</sup> Lagtingstidende 1946, agenda item 13, pp. 48f.

<sup>96</sup> Ibid., p. 44ff, see particularly the letter from the Lagting to the Danish Government from 21/9 pp. 50-52.

<sup>97</sup> Ibid., Letter from the chairman to the Ministry of State, p. 54.

<sup>98</sup> Telegram from the Ministry of State to the Amtmand 20/9, Statsministeriets telegram kopier til Rigsombudsmanden i Torshavn 1945-1955, F 43/46, no. 59, Danish National Archives.

<sup>99</sup> Lagtingstidende 1946, agenda item 13, Letter from the Amtmand to the chairman of the Lagting 22/9, p. 52.

<sup>100</sup> Ibid., Letters from the Ministry of State 20/9 and 23/9, pp. 49f, 53.

The urging group in the Lagting did not, however, take impression from the exhortations. A proposal on a committee that should create the provisional organs and produce drafts for a temporary Faroese constitution was adopted in the Lagting on 23 September. The day after, a committee report for this system of governing, in which the Lagting and a Landsstyre held exclusive legislative and executive powers, was communicated the Ministry of State.<sup>101</sup>

In this situation the Government saw dissolution of the Lagting and giving notice of new elections as expedient. On 25 September the King, on the advice of the Government, dissolved the Lagting, and instructed the Amtmand to arrange for elections according to the Law of the Lagting.<sup>102</sup>

The argument that the Danish reaction to the referendum was due to the absence of a definite answer to the shape of the constitutional framework can be questioned.

Lise Lyck finds it most likely that "the Danish reaction was caused by the problem to retain Greenland as a part of Danish Realm and at the same time voluntarily to allow the Faroe Islands to leave the Danish Realm. In other words, the Danish-Faroese events can probably be more convincingly explained by keeping the entire North Atlantic situation and the beginning East-West tensions in mind".<sup>103</sup>

Fredrik Haroff is of the same opinion as Lyck, that the Government's outspoken motive was not what mainly guided it. He says "the dissolving of the Lagting first was motivated by superior, national political grounds".<sup>104</sup>

The election to the Lagting was held on 8 November 1946 and gave the opponents of independence majority. The Social Democrats together with

the Home Rule Party and the Union Party won 12 seats in the Lagting, while the People's Party got 8.<sup>105</sup>

The Government initiated new negotiations on the situation of the Faroes, which lasted from May to July 1947. In March, before the Faroese delegates

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<sup>101</sup> Ibid., pp. 54-58.

<sup>102</sup> Ibid., p. 58.

<sup>103</sup> Lyck, Lise, "The Danish Home Rule Model. Principles, History and Characteristics", in Lise Lyck (ed.), *Constitutional and Economic Space of the Small Nordic Jurisdictions*, Denmark, 1997, pp. 132f. Lyck writes, "I cannot prove my thesis but it is based on the tendency in all the new material made public free today 50 years after the end of the war and especially related to the Greenland/Thule question. The interdependence between the Faroe Islands-Greenland post war problematic in relation to the Danish Realm has not been studied before, but my postulate is that it is likely to be the most appropriate approach to study".

Lyck does not make any references to sources, and I have not made any research upon the unarticulated motivations behind the unwillingness to let the Faroe Islands secede.

<sup>104</sup> Haroff (1993), p. 70.

<sup>105</sup> Harder, p. 123.

arrived in Copenhagen, the Lagting adopted guidelines for the negotiations. These divided matters in special Faroese and common affairs. The Lagting should have complete legislative power in special affairs, defined as matters in which the Faroe Islands paid the expenses themselves including tax issues. Danish laws that concerned the Faroes would need the approval of the Lagting. Further the parties agreed to make demands as to administration and foreign affairs.<sup>106</sup>

A number of proposals for future system of governing were made from the Danish Government and the Faroese delegates.<sup>107</sup>

The Danish authorities' claim, that any autonomous arrangement was to be within the Constitution, was undoubtedly an ultimatum, and this was accepted by the Faroese negotiators except for the representatives of the People's Party.<sup>108</sup> The Government's proposal from 16 of July was commented upon by the Prime Minister as the most generous the Danish side could be, and it became the proposal adopted.<sup>109</sup>

It was accepted by the Lagting with 12 votes against 7, where the votes rejecting the proposal came from the People's Party insisting on a solution outside the Danish Constitution.<sup>110</sup>

The text was finalized and approved as the Home Rule Act by the Lagting on 5 December 1947 and by the Rigsdag on 19 March 1948.<sup>111</sup> On 1 April the same year it came into force.

During the discussions in the Rigsdag preceding the adoption of the Home Rule Act it was reiterated that the Faroese was a particular people, with the right to self-determination.<sup>112</sup> What differed in the argumentation between

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<sup>106</sup> Lagtingstidende 1946, agenda item 23, pp. 257ff; Haroff (1993), p. 71.

<sup>107</sup> Lagtingstidende 1947, agenda item 10, pp. 167ff.

<sup>108</sup> Winther Poulsen, Halgir, "Faroese Home Rule: some considerations regarding its place in constitutional and international law", in Gudmundur Alfredsson and Peter Macalister-Smith (eds.), *The living law of nations: essays on refugees, minorities, indigenous peoples, and the human rights of other vulnerable groups, in memory of Althe Grahl-Madsen*, Kehl am Rhein, Strasbourg, Arlington Va, 1996, p 292.

<sup>109</sup> Lagtingstidende 1947, agenda item 10, p. 166.

<sup>110</sup> Ibid., pp., 182ff.

<sup>111</sup> Rigsdagstidende 1947-48: Folketingstidende column 3020, 3313, 3343;

Landstingstidende column 824, 845, 868; Supplement A, column 4587; Supplement B column 1049; Supplement C column 1187, 1311.

<sup>112</sup> Rigsdagstidende 1947-48, inter alia: column 3088, P. M. Dam: "Jeg ved, det vil glæde Færingerne at høre, at man i Danmark med saa stor Styrke, som den højtærende Statsminister gjorde det erkender Færingerne som et særligt Folk med den for et Folk, en Nations selvfølgelige Selvbestemmelseret."; column 3110, Alsing Andersen: "Forholdet var jo det, at Færøene var et Led af det danske Rige, men paa den andre Side intog Færøene til Trods herfor en anerkendt Særstilling inden for det danske Rige.[...] Samtidigt har jeg ogsaa Lov til at sige at, der ikke kan være Tvivl om, at den overvejende Del av det Danske Folk stod bag ved den Erklæring, som den tidligere højtærede Statsminister [...]avgav, og som gik ud paa, at Danmark vilde respektere det Færøske Folks Beslutning, dersom et virkeligt Flertal udtalte sig for en Fulstændig Adskillelse." See also column 3124, the statement by Aksel Larsen: "[...] vi anerkender at det her drejer sig om et særligt færøskt Folk og ikke

those who were in favour of the 16 July proposal and those who were against it was how the referendum and the subsequent election was to be conceived.<sup>113</sup>

## 2.6 The 1953 Constitution

The Home Rule arrangement was by law no. 137 of 23 March introduced without any explicit provision in the Danish Constitution of 1849. Before the Constitution underwent revision in 1953 the question rose whether amendments were necessary because of the Faroese Home Rule Act. The legal experts guiding the Danish authorities were of the opinion that amendment of the Constitution was unnecessary. The Home Rule Act ” was passed under the assumption that the arrangement is compatible with the Constitution, and we can see no reason to abandon this assumption”. The statement was considered authoritative, thus no provision relating to it was inserted in the 1953 Constitution, and the Act was regarded constitutional.<sup>114</sup>

The Constitution states in §1 that ”it is valid in all parts of the Danish Realm”. The paragraph is the foundation of the theory about the realm as a unitary state.<sup>115</sup>

According to §3 the legislative power lies with the King and the Folketing together. In the same paragraph the executive power is attributed to the King (the Government) and the judicial power to the courts. The Danish kingdom has thus only one set of legislative, executive and judicial authorities.

The Faroe Islands are mentioned in §28 that says: ”The Folketing compose one convention consisting of at most 179 members, of which 2 members are chosen in the Faroe Islands”. Paragraphs 42 p. 8 and 86 deal with plebiscite

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om befolkningen i en eller anden Landsdel. Vi anerkender Færingernes Ret til Selvbestemmelse over deres nationale Tilhørsforhold, deres Ret til Selvstyre, og vi anerkender denne Ret ogsaa vis Færingerne skulde ønske att benytte den til Løsrivelse fra det Danske Rige, [...]”

<sup>113</sup> Rigsdagstidende 1947-1948: column 3111, Alsing Andersen: ” Forholdet er [...] at der ikke ved Folkeavstemningen blev givet et virkeligt klart Udtryck for, at der var et Flertal i det færøske Folk for Adskillelse. Forholdet er endvidere det, at der ikke ved de Valg, der har været afholdt, har viset sig at være et Flertal for det ærede Medlem Hr. Thorstein Petersens Standpunkt. Forholdet er desuden det, at det Lovforslag, der her foreligger, er tiltraadt at et Flertal i det Færøske Lagting paa Grundlag af de Valg; der er afholdt.” ; column 3103-3104, Thorstein Petersen: ”[...] vi paa Færøerne mener [...] at man ved en Folkeavstemning kommer til den allerfineste og allerstærkeste Afgørelse, som man kan faa af et Folk. [...] det foreliggende forslag maa forkastes, for det gaar ikke længere, end Forslaget fra 1946 gik. Forslaget fra 1946 blev sendt til Færøerne som yderste Grænse inden for Grundlovens Rammer. Det var paa den Maade, det blev fremstillet, og alligevel sagde det færøske Folk: Nej, vi kan ikke,[...]”

<sup>114</sup> Sørensen, Max, *Statsforfatningsret*, Copenhagen, 1969, pp. 52f.

<sup>115</sup> Zahle, Henrik, *Regering, forvaltning og dom: Dansk forfatningsret 2* (2nd edn.), Copenhagen, 1996, p. 87.

in the Faroes respectively the voting age for the municipal boards. Both paragraphs refer to determination by law in the issue.

# 3 The Home Rule Act of 1948

## 3.1 Structure of the Autonomy

In this section the Home Rule Act (HRA) is presented. Its developments in practice are included in order to give the present day picture.

### 3.1.1 Main Principles

The preamble of the Act reads: "In recognition of the special position which the Faroe Islands occupy nationally, historically and geographically within the Kingdom, the Rigsdag in agreement with a resolution of the Lagting of the Faroe Islands has passed, and We do signify Our consent to, the following Act on the constitutional position of the Faroe Islands within the Kingdom".

The Faroe Islands are defined as "a self-governing national community within the Kingdom of Denmark".<sup>116</sup>

It is expressed that the Faroese people through their popularly elected representatives, the Lagting, and an executive established by the latter, the Landsstyre, within the unity of the realm, takes over the administration and government of Faroese affairs as indicated in the Act.<sup>117</sup>

### 3.1.2 Legislative Powers

#### *a) Special Affairs*

The legislative body is the Lagting. It is composed of between 27 and 33 members elected by the inhabitants of the Faroese Islands every fourth years.<sup>118</sup>

The different fields of state affairs are divided in two groups. Items enumerated in what is called List A can be transferred to matters of special Faroese concern by decision of either the Faroese authorities<sup>119</sup> or the Danish Government.<sup>120</sup> Items specified on a second schedule, List B, can also be transferred to the Faroese local administration, but negotiations between the Home Rule and the Danish Government must decide if, and to

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<sup>116</sup> §1(1).

<sup>117</sup> §1(2).

<sup>118</sup> §1; Lagtingslov 1994 103 §2, §6.

<sup>119</sup> The terms Home Rule, Home Government and Faroese authorities are used to signify what in the Home Rule Act is called "Hjemmestyret".

<sup>120</sup> §2.



what extent, that can be realized.<sup>121</sup> In neither list B or list A matters the transfer is to be approved by the Folketing.<sup>122</sup>

The Home Rule holds the legislative and administrative authority over matters that come within its competence.<sup>123</sup> As consequence it takes over the expenditures involved.<sup>124</sup> The central authorities have no right of veto on its decisions. The laws the Lagting enacts are termed Lagting laws.<sup>125</sup>

Most of the subjects on list A were taken over by the Home Rule immediately after its establishment in 1948. In 1997 the following areas had been transferred, see also the appendix.

- 1 Local government structure.
- 2 Communal affairs.
- 3 Construction- housing- and letting regulations.
- 4 Pharmacists, public health act. The rest of the health service is still a common affair.
- 5 Compulsory accident insurance, workers, working conditions, apprentices, assistants and holidays. Public welfare is still a common affair.
- 6 Direct and indirect taxes.
- 7 Finance
- 8 Harbour dues.
- 9 Education (folk high school, navigation schools, "gymnasium", HF-courses and the Faroese academy). The rest of the educational system continues to be common affairs.
- 10 Archives, libraries, museums.
- 11 Preservation of buildings and the countryside.
- 12 Communications etc. All areas in the paragraph are transferred.
- 13 Agriculture, fisheries etc. All areas transferred.
- 14 Entertainment etc. All areas transferred.
- 15 Supply, production, distribution etc. All areas transferred.
- 16 Public trustee's office, publication of laws, tourism etc. All areas transferred.

List B contains national church, police, radio, aviation, raw materials in the subsoil, land funds and import and export controls. The reason for this list was that these questions had been discussed during the negotiations, but in the absence of unanimity their eventual transformation to special status were postponed.<sup>126</sup> Import and export control were transferred in 1848, radio and land funds in 1956. Not until 1992 were subsoil resources assigned the Faroese competence.<sup>127</sup> Police, national church and aviation continue to be under Danish jurisdiction.<sup>128</sup>

#### *b) Common Affairs*

Matters that are not transferred to the Home Rule are dealt with by the

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<sup>121</sup> §3.

<sup>122</sup> The Danish Parliament is unicameral since 1953.

<sup>123</sup> §4.

<sup>124</sup> §2.

<sup>125</sup> §4.

<sup>126</sup> Haroff (1993), p. 77.

<sup>127</sup> Ibid., p. 78.

<sup>128</sup> Rigsombudsmanden på Færøerne, Beretning 1997, Copenhagen 1997, p. 18.

central authorities as affairs common to the realm.<sup>129</sup> The Danish Parliament has the authority and determines how the expenses shall be shared between Denmark and the Faroes. The expenses of the Danish state are since 1988 mainly paid in the form of a lump sum.<sup>130</sup>

#### *c) Union Affairs*

Union affairs are not mentioned in the Home Rule Act and are excluded from the Faroese jurisdiction. The judiciary, the monetary system, defence and foreign policy are thus areas reserved the Danish authorities. Matters relating to general civil legislation as family law and law of property as well as the penal code are union affairs,<sup>131</sup> but specific legislation for the Faroe Islands may be enacted.<sup>132</sup>

#### *d) Participation in Danish Legislation*

In order to ensure for the Lagting the widest possible influence on the formulation of special provisions for the Faroe Islands in acts passed by Danish authorities, as the HRA phrases it, Danish government bills containing provisions exclusively applicable to the Faroes must be considered by the Home Rule before they are proposed the Danish Parliament. Other Danish legislation, concerning local Faroese matters, shall be submitted the Home Rule before they are put in force in the islands.<sup>133</sup> However the Faroese authorities' pronouncements are not binding on the Government or the Folketing. They have no veto or other power.<sup>134</sup>

The Faroe Islands send two representatives to the Folketing.<sup>135</sup> Together with Greenland they are special representation areas.

### **3.1.3 Executive Powers**

The Landsstyre is the executive body appointed by the Lagting.<sup>136</sup>

The Landsstyre administers on the basis of laws of the Lagting the majority of the transferred areas, but separate areas are administered by the central Government on behalf of the Landsstyre. Danish legislation regulates the administration of common affairs.<sup>137</sup> However, §9 HRA allows that the Home Rule after negotiations is given the administrative regulation of common affairs. The social service system, hospitals and education have

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<sup>129</sup> §6.

<sup>130</sup> Rigsombudsmanden på Færøerne, p. 19.

<sup>131</sup> Sørensen, p. 48.

<sup>132</sup> Olafsson, Árni, "Relationship between Political and Economic Self-Determination. The Faeroese Case.", *Nordic Journal of International Law*, vol. 64, 1995, p. 472.

<sup>133</sup> § 7.

<sup>134</sup> Zahle, p. 91.

<sup>135</sup> § 14.

<sup>136</sup> §1.

<sup>137</sup> §4; §6.

been delegated in this manner.<sup>138</sup>

The supreme representative of the national Government in the Faroe Islands is the High Commissioner (Rigsombudsmand). He can be seen as replacement of the former Amtmand. His task is to lead the administrative work of the realm and to be a link between the Faroes and the central authorities.<sup>139</sup>

*a) International Relations*<sup>140</sup>

The HRA states that in matters affecting the relations of the realm with foreign countries, decision-making powers rest with the Danish Government.<sup>141</sup> Danish ratification of international treaties implies obligations under international law for the realm as a whole. But the central Government can make a reservation for the participation of the Faroe Islands. The same consultative procedure as in the case of Danish legislation shall be followed regarding treaties and other international agreements which affects special Faroese interests.<sup>142</sup>

Danish treaty obligations that include the Faroe Islands follow inter alia from UN, NATO, ILO, GATT. However, the Faroe Islands did not become members of the EEC together with Denmark,<sup>143</sup> and the Lagting decided in 1974 that the Faroe Islands should remain outside the EEC.<sup>144</sup> The Faroe Islands have a delegation of its own in the Nordic Council as a part of the Danish delegation.

The Home Government is given certain influence on international relations of the islands, which is formulated in paragraph 8 HRA. On its request, an expert on Faroese matters shall take place in the Ministry of Foreign affairs to assist the Ministry in handling matters involving special Faroese economic interests.<sup>145</sup> It can likewise ask for having attachés signed to Danish missions in countries where the Faroe Islands have special economic interests.<sup>146</sup> The paragraph opens for that, after consultation with the Home Government, permission shall be made for it to assert in each case the special interests of the Faroes in negotiations with foreign countries for agreements on trade and fisheries.<sup>147</sup> Additionally, where special Faroese

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<sup>138</sup> Rigsombudsmanden på Færøerne, p. 20.

<sup>139</sup> §15.

<sup>140</sup> For a detailed description of the international relations of the Faroe Islands see Olafsson, Árni, "International status of the Faroe Islands", *Nordic Journal of International Law*, vol. 51, 1982, pp. 29-38.

<sup>141</sup> §5. Compare with §19 in the 1953 Constitution.

<sup>142</sup> §7 fine.

<sup>143</sup> See the Accession Treaty of 1972 between Denmark and EEC and the supplementing Act, articles 25-27.

<sup>144</sup> For the Faroe Islands' special status with the European Union see Fagerlund, Niklas, "Autonomous European Island Regions Enjoying a Special Relationship with the European Union", in Lise Lyck (ed.), *Constitutional and Economic Space of the Small Nordic Jurisdictions*, Denmark, 1997, p. 90-99, 114-118.

<sup>145</sup> Section 1.

<sup>146</sup> Section 2.

<sup>147</sup> Section 3.

matters are concerned the Minister of Foreign Affairs may, when it is not incompatible with the national interests of the kingdom as a whole, authorize representatives of the Home Government to engage in direct negotiations with foreign countries assisted by the Danish Foreign Service.<sup>148</sup>

All of these possibilities enumerated are used.<sup>149</sup>

The right to participate in negotiations with foreign countries in matters of special concern to the Faroe Islands has increasingly been taken advantage of by the Faroese authorities.<sup>150</sup> In some instances the Landsstyre, with the Danish Government's consent, has also independently negotiated and entered into fishing agreements with other Nordic countries.<sup>151</sup>

### 3.1.4 Judicial Powers

As mentioned, judicial powers have not been transferred, thus the courts are under national authority. The Danish Government appoints the judges, but they are mostly local residents.<sup>152</sup> The ordinary courts, with the Supreme Court in Copenhagen as the final instance, have jurisdiction also in cases belonging to areas that are special affairs.<sup>153</sup>

### 3.1.5 Other Specific Issues

#### *a) Citizenship*

In a passport and a certificate of nationality issued in the Faroe Islands to a Faroese, the words "Føroyingur" and "Føroyar" shall be inserted as well as "Danish" and "Denmark". No particular Faroese citizenship is introduced, a Faroese shall be understood as a person who is a Danish citizen and a resident of the Faroe Islands. Discrimination between Faroese and other Danish citizens is prohibited, but exception is made for the right to vote and eligibility to institutions under the Home Rule.<sup>154</sup>

#### *b) Language*

Faroese is recognized as the principal language in the islands, but it is decided that Danish shall be learned "well and carefully" and both languages

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<sup>148</sup> Section 4.

<sup>149</sup> A Faroese expert assists the Ministry of Foreign Affairs since 1968 and an attaché is appointed on trade and fisheries under the Danish Embassy in London. In negotiations Denmark has held in which Faroese interests have been considered of signification the Home Rule have normally been represented, either as members of the Danish delegation or connected with it as experts.

<sup>150</sup> See Winther Poulsen, pp. 296f.

<sup>151</sup> The fishing agreements were made with Iceland in 1975 and Norway in 1977.

<sup>152</sup> Haroff, Fredrik, "Institutions of Autonomy", *Nordic Journal of International Law*, vol. 55, 1986, p 36.

<sup>153</sup> Zahle, p. 93.

<sup>154</sup> §10.

can be used for official purposes.<sup>155</sup>

*c) Flag*

A special Faroese flag is recognized.<sup>156</sup>

*d) Dispute Settlement*

In the event of a dispute as to the respective competence of the Faroese and central authorities the question shall be laid before a specially appointed arbitration board. It shall consist of two members chosen by the Danish Government, two persons decided upon by the Landsstyre, and three Supreme Court judges. Do the four members that represent the Danish Government and the Landsstyre come to an agreement the issue is considered resolved. If no such agreement is made, the Supreme Court judges decide.<sup>157</sup>

## 3.2 Constitutional Protection

The constitutional status of the Faroese Home Rule has been much debated. The question whether it is a local government or a more stable construction than follows directly from the Home Rule Act has been in the centre of the attention.

The Faroe Islands appear as a special area in the Danish Constitution in the context of providing specific regulations for it in certain fields, but the Home Rule is not substantiated in the Constitution. The position of the Faroe Islands is regulated in legislation enacted in the order prescribed for ordinary laws. From the strictly constitutional legal point of view then the autonomy is not protected.<sup>158</sup>

The Home Rule Act may accordingly be seen as mere delegation of certain state authority and legislative powers to the Faroese institutions. For this opinion see Alf Ross<sup>159</sup> and Poul Andersen.<sup>160</sup> Alf Ross writes "Legally the [L]agting laws do not differ from arrangements with derogatory power, and legally must the [F]aroese home rule be characterized as a local government of extraordinary far-reaching scope. There is no reason for considering the law unconstitutional".

According to this perception the Home Rule Act can at any time unilaterally be changed or withdrawn by the Folketing.

This is also the official Danish point of view. However, politically and morally, it is considered an agreement which cannot be changed without

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<sup>155</sup> §11.

<sup>156</sup> §12.

<sup>157</sup> §6 section 2.

<sup>158</sup> Suksi, Markku, *Frames of Autonomy and the Åland Islands*, Åbo 1995. pp. 28f.

<sup>159</sup> Ross, Alf, *Dansk Statsforfatningsret II*, Copenhagen, 1966, p. 493.

<sup>160</sup> Andersen, Poul, *Dansk Statsforfatningsret*, Copenhagen, 1954, p. 86.

consent by the Faroese authorities.<sup>161</sup>

Max Sørensen's interpretation of the Home Rule arrangement departs from the delegation model theory. He is of the opinion that the Danish legislature has limited its competence and accepted a constitutional obligation not to deviate from or alter the law without the wish of the Faroese authorities. He supports his view on the wording and the purpose of the Home Rule Act, together with the fact that the negotiations preceding it were held under the recognition of the principle of self-determination.<sup>162</sup>

Henrik Zahle is much on the same line as Sørensen.<sup>163</sup> He puts forward as argument against the delegation model that the legislative competence given the Home Rule is on several points not consistent with the Constitution, and means that its competence is founded on customary constitutional law. Any change in the Home Rule would thus demand the procedure for constitutional revision.<sup>164</sup> He also characterizes the Home Rule Act as a contract, following from negotiations between Danish and Faroese representatives, and says that the powers therefore cannot be taken back without mutual consent. Focusing on the right to self-determination in international law, Zahle describes the Home Rule Act as being thereby protected.

Fredrik Haroff's analyze of the status of the Faroe Islands is an elaboration of the former presented arguments against reversibility of the autonomy, made with the outspoken emphasize on politics and moral as being even more important dimensions in the assessment than the legal dogmatic.<sup>165</sup> "[D]elegation seems inconsistent with the fact that the Home Rule's powers are both understood and applied in a manner which leaves no doubt of the permanence and irrevocability of the transferred powers."<sup>166</sup> He is of the opinion that the Home Rule Act is holding a position in constitutional law on the level between law and constitution. Placed above ordinary laws it cannot be changed or revoked by the usual legislative procedure.<sup>167</sup> Negotiations between the Landsstyre and the Government, followed by consent of the Lagting and the Folketing, are prerequisites for

changes in the Act. Further a referendum in the Faroe Islands would be necessary, and the change materialized in law form by the Folketing.<sup>168</sup>

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<sup>161</sup> See Germer, Peter, *Statsforfatningsret* (2nd edn.), Copenhagen, 1995, p. 78.

<sup>162</sup> Sørensen, pp. 51f.

<sup>163</sup> Zahle, pp. 94-96.

<sup>164</sup> For the procedure of constitutional revision see §88 in the Constitution.

<sup>165</sup> Haroff (1993), pp. 243f.

<sup>166</sup> *Ibid.*, p. 503.

<sup>167</sup> *Ibid.*, p. 262.

<sup>168</sup> *Ibid.*, pp. 271-273.

Haroff presents several reasons for the new constitutional status:<sup>169</sup>

- The preamble of the Faroese Home Rule Act, together with the preamble in the Greenlandic Home Rule Act, are unique in Danish legislative practice, which speaks for that special status in Danish constitutional law was intended.
- The legislative competence and the organs with functions corresponding to government and parliament leads Haroff to say that the Home Rule have emancipated from the "quasi-communal" self-government model and developed into something similar the structure of a state.
- The scope and the authority of the powers taken over are more comprehensive than the normal frames for delegation.
- The Landsstyre operates independently on the international arena in relation to countries culturally and geographically close.
- The Home Rule has authority to collect taxes which according to the Danish Constitution is exclusively to be directed by Danish law.
- The natural resources regime with special rights for the Faroese to resources in the subsoil and the continental shelf .<sup>170</sup>
- The existence of an arbitration court would be incomprehensible if the arrangement was a delegation model.
- Haroff presumes that public international law provides a duty to promote the right of indigenous peoples to self-government and to protect it, which would mean that self-determination arrangements cannot be dealt with arbitrarily by the responsible states.
- The arrangement was negotiated between the parties, which must have been understood as autonomous and equal counterparts. As it is based on agreement, it can only be changed after new agreement.

Considering the powers of the Home Rule institutions irrevocable by unilateral Danish legislative action Haroff concludes "the constitutional structure of the Danish Realm has been changed as a consequence of the establishment of Home Rule in the two overseas territories."<sup>171</sup> Denmark is no longer a unitary state, as it is spelled out in the Constitution, but a tripartite community of separate and autonomous parts, each with their own original powers, but with continental Denmark as the hegemonial part with residual authority".<sup>172</sup>

Due to lack of convincing and qualified strength to prove custom, Haroff leaves the question open if constitutional practice has given rise to the status of the Home Rule arrangement. Instead he prefers to describe it as an order sui-generis.<sup>173</sup>

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<sup>169</sup> Ibid., pp. 245-260. For a summary in English pp. 511-513.

<sup>170</sup> The natural resources regime for the Faroe Islands is described by Haroff at pp. 77-86.

<sup>171</sup> Greenland which got Home Rule in 1979 is the other territory referred to.

<sup>172</sup> Haroff (1993), p. 515.

<sup>173</sup> Ibid., pp. 273-277.

# 4 Self-Determination in International Law

The principle of self-determination is laid down in conventional and customary international law. In conventional law the principle is formulated *inter alia* in the Charter of United Nations,<sup>174</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>175</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>176</sup> Numerous resolutions on the subject have been adopted by the General Assembly and the Security Council. These can be regarded as interpretations of the UN Charter and as rules of customary law.<sup>177</sup> In chapter 4.1 and 4.2 the most relevant parts for this study of the mentioned conventions will be presented and in chapter 4.3 some of the principle resolutions. The subsequent chapter 4.5 examines the beneficiaries and the content of self-determination as well as different aspects of the principle.

## 4.1 The Charter of United Nations

The principle of self-determination is referred to in the Charter of United Nations in articles 1(2) and 55. Article 1(2) declares that one of the purposes of the United Nations is: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace". In article 55 "the principle of equal rights and self-determination of peoples" is recognized as one of the bases for friendly relations and co-operation among states.

Under articles 2 and 56 the member states are obligated to implement the provisions of articles 1 and 55.

The inscription of self-determination in the UN Charter was the recognition of the principle in contemporary positive international law. Although framed

as *lex imperfecta*, and further interpretation and elaboration were to follow,

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<sup>174</sup> Charter of United Nations, June 26, 1945, 1976 YBUN 1043. Denmark was "original" member of the United Nations as participant in the San Francisco Conference.

<sup>175</sup> International Covenant on Economic Social and Cultural Rights, Dec 16, 1966, 993 UNTS 3 (entered into force Jan. 3, 1976). Denmark ratified it on Jan. 6, 1972.

<sup>176</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 UNTS 171 (entered into force March 23, 1976). Ratified by Denmark on Jan. 6, 1972.

<sup>177</sup> Cristescu, Aureliu ( Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), *The Right to Self-Determination, Historical and Current Development on the Basis of United Nations Instruments*, UN Doc. E/CN/Sub. 2/404/Rev. 1, New York, 1981, para. 141-151.



the legal foundation for the principle was established.<sup>178</sup>

The issue of non-self-governing and trust territories is specifically dealt with in chapters XI, XII, XIII of the Charter.

Article 73 (chapter XI. Declaration regarding non-self governing territories) reads: Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end: [...] (b) 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 free political institutions, according to their particular circumstances of each territory and its peoples and their varying stages of advancement[...] [my italics]

Article 73e obliges administering states to transmit regularly to the Secretary-General information relating to economic, social, and educational conditions in the territories they are responsible for other than trust territories.

Although there is no provision for international supervisory machinery in chapter XI it applies to all non-self governing territories from the time the Charter entered into force.<sup>179</sup>

What the concept "self-government" was to mean, if independence was therein comprised, was discussed at the San Francisco Conference preceding the adoption of the Declaration. The text was accepted with the interpretation that "self government", depending on the circumstances, was not intended to exclude the possibility of independence.<sup>180</sup>

The objectives of the trusteeship system are set out in article 76 (chapter XII): [...] to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement[...]

The three chapters do not contain any explicit reference to self-determination. Article 76 provides as an indirect reference that the objectives of the trusteeship system are "in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter".<sup>181</sup> The applicability of the right to self-determination under the Charter to trust territories and non-self governing territories is, however, stated in several

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<sup>178</sup> Gayim, Eyassu, "The United Nations Law on Self-Determination and Indigenous Peoples", *Nordic Journal of International Law*, vol. 51, 1982, p. 55.

<sup>179</sup> GA res. 9 (I), Feb. 9, 1946.

<sup>180</sup> Simma, Bruno (ed.), *The Charter of the United Nations, a Commentary*, München, 1994, pp. 924f; Russel, Ruth B., *A History of The United Nations Charter*, Washington D.C., 1958, pp. 813-824.

<sup>181</sup> Musgrave, Thomas D., *Self-Determination and National Minorities*, Oxford, 1997, pp. 65f.

resolutions and other instruments adopted by the General Assembly.<sup>182</sup>

I will not enter more deeply into the trusteeship system, not being applicable to the situation of the Faroe Islands, but in the subsequent text concentrate on the chapter on non-self-governing territories.

## 4.2 The 1966 Covenants on Human Rights

Article 1 of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights provides:

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

State parties to the ICCPR undertakes to "respect and ensure" the rights in the Covenant, while the obligation in ICESCR is "to take steps [...] with a view to achieving progressively the full realization of the rights".<sup>183</sup>

## 4.3 General Assembly Resolutions

### 4.3.1 The Territories to which the Declaration Regarding Non-Self-Governing Territories Apply

Article 73 of the UN Charter refers to "territories whose peoples have not yet attained a full measure of self-government". A duty is laid on the "Members of the United Nations which have or assume responsibilities for the administration" of these territories to follow the declared obligations. In article 74, a distinction is made between "the territories to which this Chapter applies" and "their metropolitan areas". One can from this conclude that the chapter only applies to defined territories whose peoples as a whole are not fully self-governing.<sup>184</sup> The assumption can be made that a territory

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<sup>182</sup> Cristescu, p. 3.

<sup>183</sup> Article 2 (1) in both Conventions.

<sup>184</sup> Crawford, James, *The Creation of States in International Law*, Oxford, 1979, p. 359.

is not encompassed by chapter XI if it is metropolitan, no matter the actual status of the territory. But the classification of territories that are part of the metropolitan state, and territories not forming such part, is not clear. James Crawford interprets "metropolitan" as referring "to the history of the area concerned as a part of a State (and perhaps to its geographical contiguity with the rest of the State)", and writes "'Non-self-governing' appears to refer not to history or geography but to the present political situation. It would seem to be quite possible that 'metropolitan areas' should be at the same time 'non-self-governing' ones". The last sentence follows from a viewpoint that the two expressions "metropolitan" and "non-self-governing" are not mutually exclusive.<sup>185</sup>

In General Assembly resolution 1541 (XV) of 15 December 1960, a more restrictive stand is assumed: "The authors of the Charter of the United Nations had in mind that Chapter XI should be applicable to territories which were known to be of the colonial type. An obligation exists to transmit information under Article 73e of the Charter in respect of such territories whose peoples have not yet attained a full measure of self-government".<sup>186</sup> The word "type" after colonial opens for application of the chapter also to territories not colonial in the absolute sense.<sup>187</sup> The resolution establishes the salt-water criteria, see under 4.3.2.

### **4.3.2 The Definition of Non-Self-Governing Territory**

As the UN Charter does not define when a territory is to be considered non-self governing, the determination was originally left to the member states themselves.<sup>188</sup> Seventy-four territories were enumerated in 1946 as falling within the scope of article 73e in accordance with the declarations of the responsible governments.<sup>189</sup>

However, the General Assembly declared in 1949 that it was "within the responsibility of the General Assembly to express its opinion on the principles which have guided or may in the future guide the members concerned in enumerating territories for which the obligation exists to transmit information under Article 73(e) of the Charter."<sup>190</sup>

In several General Assembly resolutions, see 567 (VI) of 18 January 1952, 648 (VI) of 10 December 1952, 742 (VIII) of 27 November 1953 and 1541 (XV) of 15 December 1960, lists of factors were laid down that established guidelines upon which states and the UN may recognize if an obligation to transmit information exists, and to evaluate if the obligation have been

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<sup>185</sup> Ibid., p. 359.

<sup>186</sup> Principle I.

<sup>187</sup> Compare with the reasoning by Cassese about "special territories" in chapter 4.5.1.

<sup>188</sup> Musgrave, p. 70.

<sup>189</sup> See for the enumeration GA res. 66 (I), Dec. 14, 1946.

<sup>190</sup> GA res. 334 (IV), Dec. 2, 1949.

discharged.<sup>191</sup>

Resolution 1541 (XV) is considered the definite list of principles defining a non-self-governing territory. For the purpose of this thesis however, it is also relevant to find an approved list corresponding as much as possible in time with the Faroese-Danish after-war negotiations. The lists of factors annexed to the mentioned resolutions from 1952 were termed provisional, and described as in need of more complex studies.<sup>192</sup> Resolution 742 (VII), adopted the year after, does not contain the same reservations and concludes in a more illustrative way the criteria to be observed. Yet, the content in the three resolutions is almost identical. They were the result of successive studies authorized by the General Assembly, studies that were to a great extent based on the practice of states.

Giving a short account of resolution 742 (VII) it declares "that the manner in which the Territories referred to in Chapter XI of the Charter can become fully self-governing is primarily through the attainment of independence, although it is recognized that self-government can also be achieved by association with another State or group of States if it is done freely and on the basis of absolute equality".<sup>193</sup> The list is divided in three groups of factors indicating: I. independence, II. other separate system of self-government, III. free association of a territory on equal basis with the metropolitan or other country as an integral part of that country or in any other form. As general factors concerning both separate system of self-government and free association are: opinion of the population, freedom of choice, geographical considerations, ethnic and cultural considerations, and political advancement.

In resolution 1541 (XV), these factors are recurring in the salt-water theory. A territory is presumed to be non-self-governing if it is "geographically separate and is distinct ethnically and/or culturally from the country administering it".<sup>194</sup> Completing criterion are to be read in principle V: "Once it has been established that such a *prima facie* case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then *inter alia* be of an administrative, political, juridical, economic or historic nature. If they affect the relationship between the metropolitan state and the territory concerned which places the latter in a position of subordination, they support the presumption that there is an obligation to transmit information under Article 73e of the Charter".

The means through which self-determination can be achieved are identified in the resolution as: (a) emergence as a sovereign independent state, (b) free association with an independent state, or (c) integration with an independent

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<sup>191</sup> In GA res. 742 (VII), para. 3 fine, the General Assembly claimed the competence to decide on the continuation or cessation of information required by chapter XI.

<sup>192</sup> GA res. 567 (VI), the preamble; GA Res. 648 (VII), para. 1 and 5.

<sup>193</sup> Para. 6. The term self-government is thus used to include independence, compare with the San Francisco Conference.

<sup>194</sup> Principle IV.

state.<sup>195</sup>

The preference for independence as the normal option can be seen from the requirements in principles VII-IX on free and informed consent by the people concerned if free association or integration is chosen.<sup>196</sup>

### 4.3.3 Other Principal Resolutions

The agreement within the United Nations that non-self-governing territories should have the opportunity to choose their international status and the manner in which to implement their right to self-determination led to adoption of a number of resolutions on the issue, two of them with general importance will be reviewed.

One of the most influential is resolution 1514 (XV), the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted in 1960.<sup>197</sup> Paragraph 1 declares: "The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of United Nations and is an impediment to the promotions of world peace and co-operation". The resolution proclaims that: "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".<sup>198</sup> It further says: "Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence",<sup>199</sup> and "[i]mmediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions and reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom."<sup>200</sup> The principle of territorial integrity is formulated in paragraph 6: "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations".

In resolution 2625 (XXV) from 1970, entitled the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of United Nations ( Declaration on Friendly Relations),<sup>201</sup> the words in ICCPR and ICESCR paragraph 1 are

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<sup>195</sup> Principle VI.

<sup>196</sup> Hannum, Hurst, *Autonomy, sovereignty, and self-determination: The accommodation of conflicting rights*, Philadelphia, 1996, p. 40.

<sup>197</sup> GA res. 1514 (XV), Dec. 14, 1960.

<sup>198</sup> Para. 2.

<sup>199</sup> Para. 3.

<sup>200</sup> Para. 5.

<sup>201</sup> GA res. 2626 (XXV), Oct. 24, 1970.

reiterated: "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions in the Charter". Colonialism is condemned, and it is said that "[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle [the principle of equal rights and self-determination of peoples], as well as a denial of fundamental human rights, and is contrary to the Charter". The modes of implementing the right to self-determination are extended in the Declaration on Friendly Relations which adds "the emergence into any other political status freely determined by a people" to the procedures mentioned in resolution 1541(XV). The declaration explains that a colony or other non-self governing territory has a separate status from the state that administers it, which lasts until the people have exercised their right to self-determination. The principle of territorial integrity and political unity is reaffirmed, but is valid only as long as states conduct themselves "in compliance with the principle of equal rights and self-determination as described above and thus possessed of a government representing the whole people belonging to the territory without distinctions as to race, creed or colour".

## 4.4 The Meaning of Self-Determination; Aspects, Holders and Content

The principle of self-determination recognizes of the right of all peoples to freely determine their political status and freely pursue their economic, social and cultural development.<sup>202</sup> The content of self-determination is further clarified by the Declaration on Friendly Relations as a right that protects peoples from being subjugated, dominated and exploited.<sup>203</sup> Different views exist on the scope of the right and on who the beneficiaries are. "The discourse of national self-determination contains little that is self-evident or on which everyone can agree."<sup>204</sup> Yet, some applications of the right are uncontroversial. The right to self-determination in relation to non-self-governing territories and peoples under alien occupation are rules of international law.<sup>205</sup> The possibility for a

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<sup>202</sup> Art. 1(1) ICCPR and ICESCR; GA res. 1514 (XV) para. 2, GA res. 2625 (XXV).

<sup>203</sup> McCorquodale, Robert, "Self-Determination: A Human Rights Approach", *International and Comparative Law Quarterly*, vol. 43, 1994, pp. 858f.

The wording of the Declaration on Friendly Relations is a reiteration of para. 1 of GA res. 1514 (XV).

<sup>204</sup> Koskenniemi, Martti, "National Self-Determination today: Problems of Legal Theory and Practice", *International and Comparative Law Quarterly*, vol. 43, 1994, p. 244.

<sup>205</sup> Alfredsson (1996), pp. 59-62.

people to peaceful divorce, that is a bilateral arrangement between groups within a state to change the political structure, is considered as a right in the same way.<sup>206</sup>

Democratic government and group autonomy can be referred to as internal aspects of self-determination.<sup>207</sup> While the right of political participation is established in international law, autonomy is probably not a binding rule.

#### 4.4.1 External Self-Determination

Behind the applicability of the right to self-determination to peoples in colonial situations is a practically uniform state practice, numerous resolutions, and the position taken by the International Court of Justice in its advisory opinions in the Namibia case and the Western Sahara case.

The definition of colonies in the UN resolutions has already been described. Cassese separates between colonial territories proper and entities he calls "special" territories. He means that the latter are "unique in that they exhibit two features". "First they do not fall neatly into the category of colonial territories, either because it was not a result of colonial conquest that they were subjected to the sovereignty of the state currently wielding authority over them [...] or because for historical reasons they are not inhabited by an indigenous population but exclusively by settlers.[...] The second feature is that these territories, although they cannot be regarded as 'colonial' in the classic sense, are nevertheless situated far away from the State holding the sovereign rights and have consequently been regarded by this State itself as different from its territory proper, so much that they have been included, in the UN, in the list of 'non-self governing territories'."<sup>208</sup>

The last phrase, the necessity of the territory to be listed in the UN for being a special territory, is doubtful. The criteria would render the action of the mother state, the registering, a constitutive act, which is not in line with the purpose of the principle of self-determination.

The main content of the right is to determine the international juridical status of the territory as a whole. The methods available are mentioned in inter alia resolution 1541(XV) principle VI.

People who have chosen free association retain the possibility to choose independence or integration. Gudmundur Alfredsson is of the opinion that "[p]rovided all the prior and subsequent conditions are met, a people which opts for integration with a state becomes a group within the state and is

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<sup>206</sup> Ibid., p. 62; Eide, Asbjørn (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), *Protection of Minorities: Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities*, UN Doc. E/CN. 4/Sub. 2/1992/37 para. 169.

<sup>207</sup> Alfredsson, Gudmundur, "The Right of Self-Determination and Indigenous Peoples", in Christian Tomuschat (ed.), *Modern Law of Self-Determination*, Dordrecht, 1993, pp. 50-52.

<sup>208</sup> Cassese, Antonio, *Self-Determination of Peoples: Legal Reappraisal*, Cambridge, 1995, p. 187.

supposedly reduced to group rights rather than peoples rights”.<sup>209</sup> For another opinion see Douglas Sanders.<sup>210</sup>

External self-determination is a right belonging also to peoples under foreign domination or occupation outside a colonial system. It follows from state practice and United Nations resolutions. The concept is apprehended to be limited to situations in which a power dominates the people of a foreign territory by recourse to force.<sup>211</sup>

Apart from peoples under colonial or alien occupation, and cases where the right to secession might arise from domestic law as in federations in which the respective constitutions of the republics say that they have the right to withdraw from the federation, a unilateral right to self-determination is very doubtful. In other cases, if a state acts in accordance with the principle of equal rights and self-determination and has a government that represents the whole people without discrimination as to race, creed or colour, the principle of territorial integrity prevails. ”National and ethnic groups, living compactly together on a territory inside a sovereign State, will therefore have the onus of proving, in all cases other than those mentioned above, that they have a right under international law to secede.”<sup>212</sup>

Yet, by agreement, peoples have the right to separate or unite. The international community has always recognized secession when it is realized by an amicable agreement between the seceding and the remaining parties. In most cases the separation has followed the internal borders of the state.<sup>213</sup>

#### **4.4.2 Democracy and Representative Government.**

Self-determination may be understood as a right to popular sovereignty and representative government where the beneficiary is the entire population of an independent state, and members of different ethnic, religious, linguistic and other groups must be allowed to participate without discrimination in the government.<sup>214</sup>

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<sup>209</sup> Alfredsson (1996), p. 60.

<sup>210</sup> Sanders, Douglas, *The Right to Self-Determination*, (Michael R. Hudson, Law-3) at pp. 55f: ” there should not be any limit to a people’s exercise of the right because of the fact that at some earlier time they chose one form over another. If a people choose to integrate into an independent state, it cannot be said that their right to self-determination becomes submerged into the majority’s general right. So long as a group sees themselves as a coherent unit, they are able to claim the right to self-determination. Because of this, they should be entitled to later renounce the integration and seek some new arrangement. It must be their right as a people.”

<sup>211</sup> Cassese, pp. 90-99.

<sup>212</sup> Eide, UN Doc. E/CN. 4/Sub. 2/1992/37, para. 165-166.

<sup>213</sup> Alfredsson (1996), p. 62; Duursma, Jorri, *Self-Determination, Statehood and International Relations of States: The Cases of Liechtenstein, San Marino, Monaco, Andorra and the Vatican City*, University of Leiden, 1994, pp. 92f.

<sup>214</sup> Eide, Asbjørn, ”Peaceful Group Accommodation as an Alternative to Secession in Sovereign States”, in Donald Clark and Robert Williamsson (eds.), *Self Determination: International Perspectives*, Houndmills, Basingtoke, Hampshire, London, New York, 1996,



This interpretation of self-determination has consistently been affirmed by the practice of Western states, and for instance the Final Act of the Conference on Security and Co-operation in Europe and the follow up instruments, the 1990 Copenhagen Document and the Charter of Paris for a new Europe, reflect the view.<sup>215</sup> Third World states have endorsed the representative government theory as far as it ensures that the Government is non-racist in composition.<sup>216</sup>

Cassese consider that the right to have a representative and democratic government exists under treaty law by virtue of article 1 in ICCPR and ICESCR, and that a customary rule on the matter, coinciding with the treaty law, is in the process of formation.<sup>217</sup>

”Internal self-determination presupposes that all members of a population be [sic!] allowed to exercise those rights and freedoms which permit the expression of the popular will. Thus, internal self-determination is best explained as a manifestation of the totality of rights embodied in the Covenant [ICCPR], with particular reference to: freedom of expression (Article 19); the right of peaceful assembly (Article 21); the right to freedom of association (Article 22); the right to vote (Article 25b); and, more generally, the right to take part in in the conduct of public affairs, directly or through freely chosen representatives (Article 25a).”<sup>218</sup>

The concern of minorities is not enough safeguarded by democracy and representative government alone. Differences within a given population based on factors as ethnicity, language, culture and religion must be taken into consideration in order not for a majority to be able to ignore the interests of minorities. This means that some protection for minority groups is also needed.<sup>219</sup> Next chapter treats the subject of groups within a state.

#### **4.4.3 Minorities and Indigenous Peoples**

Members of minority groups have the right not to be discriminated against in the enjoyment of human rights. ICCPR and ICESCR article 2, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) article 14,<sup>220</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>221</sup> are

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pp. 88f.

<sup>215</sup> Final Act, Aug. 1, 1975, 14 ILM 1292 (1975); Charter of Paris for a New Europe, Nov. 21, 1990, 30 ILM 190 (1990); Document of the Copenhagen Meeting of the Conference on the Human Dimension, June 29, 1990, 29 ILM 1305 (1990).

<sup>216</sup> Musgrave, pp. 99-101.

<sup>217</sup> Cassese, pp. 52-55, 102f, 337f, 346-348. See also Rosas, Allan, ”Internal Self-Determination”, in Cristian Tomuschat (ed.), *Modern Law of Self-Determination*, Dordrecht, 1993, pp. 225-252.

<sup>218</sup> Cassese, p. 53.

<sup>219</sup> Eide, Asbjørn, ”In Search of Constructive Alternatives to Secession”, in Cristian Tomuschat (ed.), *Modern Law of Self-Determination*, Dordrecht, 1993, p. 155.

<sup>220</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 UNTS 222 (entered into force Sept. 3, 1953). Denmark ratified the Convention on April 13, 1953.

<sup>221</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Dec.

conventions with provisions to this end. To realize equal treatment, provisions for special measures or special rights are laid down in some human rights instruments as in ICCPR article 27, ICERD, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities ( the 1992 Declaration on Minorities)<sup>222</sup> and the Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169).<sup>223</sup>

Article 27 ICCPR prescribes minimum rights for the preservation of the identity of minorities. It is concerned with minorities characterized by their ethnic origin, religion or language. A frequently cited definition of minority in the context of the article is: "A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language".<sup>224</sup>

Persons belonging to a minority are protected from being denied the right "to enjoy their own culture, to profess and practice their own religion, or to use their own language".

The Human Rights Committee has interpreted article 27 in 1994 as it "does recognize the existence of a `right´ and requires that it shall not be denied.[...] positive measures by States may also be necessary to protect the identity of a minority and the right of its members".<sup>225</sup>

Article 27 does not confer the right on a minority to determine its own political status.

The 1992 UN Declaration on Minorities deals more comprehensively with minority rights than article 27, and includes rights of participation. As a declaration it is formally a recommendation, but it reflects the consensus opinion of the UN members.<sup>226</sup> The Declaration affirms in the first article: "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and shall encourage conditions for the promotion of their

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21, 1969, 5 ILM 350 (1966) (entered into force Sept. 3 1953). Denmark signed it on June 21, 1966.

<sup>222</sup> Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, GA res. 47/135, Dec. 18, 1992, reprinted in 32 ILM 911 (1993).

<sup>223</sup> Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 28 ILM 1382 (1989) (entered into force Sept. 5, 1991). Denmark ratified it on Feb. 22. It was only made applicable to the Inuit in Greenland.

<sup>224</sup> Capotorti, Francesco (Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, UN Sales No. E. 91. XIV. 2, New York, 1991, para. 568.

<sup>225</sup> Human Rights Committee, General Comment No. 23 (50), April 6, 1994, para. 6.1-6.2.

<sup>226</sup> Hannikainen, Lauri, "The Status of Minorities, Indigenous Peoples and Immigrant and Refugee Groups in Four Nordic States", *Nordic Journal of International Law*, vol. 65, 1996, pp. 8f.

identity”, and they ”shall adopt appropriate legislative and other measures to achieve those ends”. Article 4(2) lay down an obligation to ”take measure to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs”. The positive duties of states is to be read together with article 8(4), which declares: ”Nothing in this Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States”. The reservation contributes to define minority rights in a manner which excludes external self-determination.<sup>227</sup>

Indigenous populations have been recognized as peoples by the International Labour Conference. They are defined as peoples in article 1(1) in ILO Convention No. 169.<sup>228</sup> However, article 1(3) says that ” The use of the term ”peoples” in this Convention shall not be construed as having any implications as regards the right which may attach to the term under international law”. The Draft Declaration on the Right of Indigenous Peoples do designate a right self-determination to indigenous peoples, but in the limited form of autonomy or self-government: ” Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, environment, and entry by non-members, as well as ways and means for financing these autonomous functions”.<sup>229</sup>

Many states have developed special measures to ensure group participation and group protection in political decision-making.<sup>230</sup> The devices used vary. Asbjørn Eide refers generically to them as ”consociational democracy”. To exemplify approaches used in Europe one can enumerate:

- Advisory and decision-making bodies in which minorities are represented, in particular with regard to education, culture and religion;
- Elected bodies and assemblies of national minorities affairs;
- Local and autonomous administration, as well as autonomy on a territorial basis, including the existence of consultative, legislative and executive bodies chosen through free and periodic elections;

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<sup>227</sup> Musgrave, p. 147.

<sup>228</sup> Article 1 declares: ”1. This Convention applies to: [...] (b) peoples in independent countries who are regarded as indigenous on account on their descent from the populations which inhabited the country or a geographical region to which the country belongs, at the time of the conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. 2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.”

<sup>229</sup> Draft Declaration as Agreed upon by the Members of the Working Group at its eleventh session (The Working Group of Indigenous Populations), UN Doc. E/CN. 4/Sub. 2/1993/29, article 31.

<sup>230</sup> Alfredsson, Gudmundur, ”Autonomy and Human Rights”, in Lise Lyck (ed.), *Constitutional and Economic Space of the Small Nordic Jurisdictions*, Denmark, 1997, pp. 37-39.

- Self-administration by a national minority on aspects concerning its identity in situations where autonomy on a territorial basis do not apply;
- De-centralized or local forms of government;
- Encouragement of the establishment of permanent mixed commissions, either inter-State or regional, to facilitate continuing dialogue between the border regions concerned.<sup>231</sup>

Autonomies will be dealt with more closely as the Faroese Home Rule can be categorized as such arrangement.

#### 4.4.4 Autonomy

Autonomy involves some degree of self-government for a group of the population within a state. It may be established on either territorial or personal basis.<sup>232</sup>

Autonomy can be considered as a form of internal self-determination in international law.

”The recognition of group rights, more especially when this is related to territorial rights and regional autonomy, represents the practical and internal working out of the concept of self-determination. Such recognition is therefore the internal application of the concept of self-determination.”<sup>233</sup>

Different opinions exist as to whether autonomy is just a possibility, or has emerged as a right.

Hurst Hannum suggests that ”a new principle of international law can be discerned in the interstices of contemporary definitions of sovereignty, self-determination, and the human rights of individuals and groups,[...]. This right to autonomy recognizes the right of minority and indigenous communities to exercise meaningful internal self-determination and control over their own affairs in a manner that is not inconsistent with the ultimate sovereignty - as that term is properly understood - of the state”. The right ”may be assessed more aggressively in situations where regional, ethnic, or economic disparities are shown to exist; where there is discrimination against minority groups as such; or where the marginalization of certain groups prevents their effective participation in society”. In a democratic state where human rights are protected, Hannum designates autonomy as permissive, and not as a right. But opposition by the central government to demands for devolved or federal political structure ”should be founded on a demonstration that the regional or minority demands are unreasonable or are being met in practice”.<sup>234</sup>

Asbjørn Eide speaks as well about autonomy as a right but in more restrictive words. He concludes that during the last years it has emerged ”some support for the right of ethnic, religious or linguistic groups under some circumstances to obtain a degree of autonomy if that is required for

<sup>231</sup> Eide, UN Doc E/CN. 4/Sub. 2/1992/37, para. 124-127.

<sup>232</sup> Musgrave, p. 207.

<sup>233</sup> Brownlie, Ian, ”The Rights of Peoples in Modern International Law”, in James Crawford (ed.), *The Rights of Peoples*, Oxford, 1988, p. 6.

<sup>234</sup> Hannum, Hurst, *Autonomy, sovereignty, and self-determination*, Philadelphia, 1996, pp. 473f.

them to be able to preserve their identity and ensure effective political participation within the national society as a whole”.<sup>235</sup> The conception is shared by Douglas Sanders who consider it possible that at least territorial minorities have the rights of autonomy within the existing structures of states, and argues that there is a developing international consensus that political autonomy is the proper response to them.<sup>236</sup>

Haroff claims that ” the International Right of Self-Determination for Indigenous Peoples includes an obligation for States to provide, in good faith, for adequate political autonomy for its Indigenous Peoples and not to subvert such arrangements once granted. Peoples who identify themselves as indigenous are entitled to this right, but which provides for immediate secession only in the case of overseas territories.”<sup>237</sup>

Yet, the common conception among scholars probably remain that international law does not establish any explicit right to autonomy. ”Apart from situations of an *ad hoc* character, international law does not, however, establish any direct right to autonomy, but only indicates the possibility of autonomy arrangements by allowing them to be conceived on the continuum as some kind of half-way houses short of secession.”<sup>238</sup> Alfredsson points out the lack of express provisions in human rights instruments for such right, but writes that autonomy is ”recognised as a useful tool for realising the rights of minorities and indigenous peoples”.<sup>239</sup>

As to the content of the autonomy concept, it is not fixed. The term has no generally accepted definition in international law.<sup>240</sup> ”Autonomy and self-government are determined primarily by degree of actual as well as formal independence enjoyed by the autonomous entity in its political decision making process. Generally, autonomy is understood to refer to independence of action on the internal or domestic level, as foreign affairs and defence normally are in the hands of the central or national government.” Autonomy does not necessarily mean political or governmental autonomy though, also more restrictive forms as cultural or religious autonomy exist and are of relevance.<sup>241</sup>

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<sup>235</sup> Eide (1996), p. 89.

<sup>236</sup> Sanders, Douglas, ”Is Autonomy a Principle of International Law”, *Nordic Journal of International Law*, vol. 55, 1986, pp. 17-21.

<sup>237</sup> Haroff (1993), p. 515.

<sup>238</sup> Suksi, p. 7.

<sup>239</sup> Alfredsson (1997), p. 34.

<sup>240</sup> Hannum, Hurst and Lillich, Richard B., ”The Concept of Autonomy in International Law”, *American Journal of International Law*, vol. 74, 1980, p. 858.

<sup>241</sup> *Ibid.*, p. 860.

# 5 Self-Determination in the Faroese Context

## 5.1 Home Rule as Internal Self-Determination

The content of the Home Rule model has been described in chapter 3.1. Here it is considered in relation to the international law on self-determination as democratic participation and autonomy. The conclusion is that the Faroese have internal self-determination in these terms.

If one looks at the entire kingdom of Denmark, the Faroese can be regarded as a minority. However, the Faroese are "the overwhelmingly majority within their geographically well-defined territory".<sup>242</sup> If the Faroese also are a people in the United Nations context is dealt with in chapter 5.2.

Are the Faroese an indigenous people? Authors as Fredrik Haroff and Lise Lyck are of this opinion.<sup>243</sup> Certainly, the objective criteria used in ILO Convention no. 169 article 1b may correspond with the Faroe Islanders. On the other hand, they do not participate in international conferences or other organizations for indigenous peoples. This implies that the Faroese probably not consider themselves as an indigenous society.

The Danish point of view is that the Faroese not are an indigenous people. Denmark has ratified ILO Convention no. 169 but made it applicable only to the Inuit in Greenland.

The Home Rule arrangement is an act of integration of the Faroe Islands with Denmark. Of another opinion is Halgir Winther Poulsen who means that it probably not can be characterized as integration because of the "drafting history and the contents of the Home Rule Act". He believes that the Faroese arrangement is a model of free association, but admits that the Home Rule may "fall short of the supposedly unilateral right to modify the status of the association".<sup>244</sup> Classifying the Faroese self-government as free association is presumably ill considered. The essence of free association must be the right to modification of the status by decision of the peoples of the territory. This is what separates integration from the association form.

The Home Rule model accords specific rights and powers to the population of the Faroe Islands. It is thus based on territorial jurisdiction.

The arrangement protects the right of the Faroese to participate in national affairs. This is ensured by the two members in the Rigsdag and the right to be consulted in national questions. This right to be consulted arise when

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<sup>242</sup> Olafsson (1995) supra note 132, p. 464.

<sup>243</sup> Haroff (1993); Lyck, p. 125.

<sup>244</sup> Winther Poulsen, p. 300.

national legislation concern Faroese matters, and when treaties and other international agreements affect special Faroese interests. It is also provided for special participation in foreign affairs.

The Faroese institutions have legislative and administrative powers over a wide range of local matters. Most of the issues on List A have been transferred. For the rest of the matters there enumerated to come under its competence is needed a decision by either the Faroese authorities or the Danish Government.

Hurst Hannum has identified some minimum governmental powers that supposedly a territory should possess most of if to be considered as "fully autonomous".<sup>245</sup> His analysis will be presented here, as it is useful for comparison with the Faroese Home Rule:

(1) There is a locally elected legislative body with some independent legislative authority, limited by a constituent document. Unless the exercise of this authority exceeds the local legislature's competence as defined in the constituent document, it should not be subject to veto by the principal/sovereign government. Local competence should generally include control or influence over primary and secondary education, the use of language, the structure of local government, and land use and planning.

(2) There is a locally chosen chief executive, who may be subject to approval by the principal government; the executive may have responsibility for the administration and enforcement of state (national) as well as local laws. While the executive may be jointly responsible to the local and central authorities, this structural confusion is probably best avoided in circumstances where strong local identity is asserted.

(3) There is an independent local judiciary with full responsibility for interpreting local laws. Disputes over the extent of local authority or the relationship between the autonomous and central governments may be within the original jurisdiction of local courts, but final decisions are commonly within the competence of either the state judiciary or a joint dispute-settling body.

(4) Areas of joint concern may be the subject of power-sharing arrangements between the autonomous and central governments, in which local flexibility is permitted within the broad policy parameters set by the central government. In addition to local implementation and administration of state norms, joint authority is frequently exercised over such matters as ports and communication facilities, police, and exploitation of natural resources.

The Faroese autonomy follows this pattern with exception for the judiciary.

The granting procedure of the autonomy is also of importance. Normally the concern is that it shall secure permanent transfer of rights and powers.<sup>246</sup>

The Faroese autonomy is neither established by international treaty nor by constitution, but in ordinary law. The Danish Government may in principle abrogate it. However, this is probably not an actual political option anymore.

## 5.2 The Right to External Self-Determination in

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<sup>245</sup> Hannum (1996), pp. 466-468.

## the Faroe Islands

The internal self-determination notwithstanding, has the Faroe Islands the right to external self-determination under international law?

To be able to form an opinion of this it is necessary to know if behind the Danish-Faroese negotiations and the referendum rested a right to self-determination or just Danish good will.

The matter if the Faroe Islands were integrated with Denmark in 1946 is then of importance. If they were not integrated it is difficult to deny that they had the right to freely determine their future, as a colonial status then easily would follow. Formally the Faroe Islands were integrated. The 1849 Constitution was regarded to include the Faroe Islands. But this was, however, not expressed in the Constitution itself, or even decided when it was adopted. The relation was established by a particular election law for the Faroe Islands in 1850. This is what made it possible for the Danish Government delegation in 1946 to take the ironic stand of admitting secession or a solution that did not lend to a change of the Constitution. The opinion of the Faroese had neither been heard. The arbitrary incorporation of a territory was not illegal, in the 19th century international law did not prohibit this action. The fact is, however, relevant in the late 1940s when international law said that the opinion of the population was of outmost importance in deciding the political status of a non-metropolitan territory. Inter alia resolutions 567 (VI), 648 (VII), 742 (VIII) emphasize as a factor in determining whether an entity is integrated "[t]he opinion of the population of the Territory, freely expressed by informed and democratic processes, *as to their status or change in the status they desire*".<sup>247</sup> [my italics]

Despite the absence of explicit consent by the Faroese on their status, would it perhaps be possible to say that they had been giving an indirect consent? Certainly they were cooperating with Denmark and submitted to the Danish sovereignty for a long period. However, the Faroese objected to many of the Danish precepts, as for instance the dominance of the Danish officials and the renunciation of the Faroese language. The demand for more political influence on their own affairs was prominent. These are circumstances that speak against an implicit confirmation.

Would it be bold to claim that the Faroe Islands were a non self-governing territory? The Faroe Islands are geographically separate and overseas from metropolitan Denmark. The Faroese were, and are, both culturally and ethnically distinct from the Danes. As to administration and politics the Faroe Islands had a special position compared with Denmark proper, and the legislation were to a considerable extent not the same. The history of the Faroe Islands was similar to the other island territories of Denmark,

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<sup>246</sup> Lyck, p. 123.

<sup>247</sup> Not ignorant of the inter-temporal aspect, the resolutions from 1952-1953 are being used with the awareness of that the factors enumerated were not documented in the period 1945-1952.



Greenland and Iceland, which differed from the experiences on the Danish mainland.

Showing the characteristics of a non-self-governing territory, why were the Faroes not registered in the UN together with Greenland in 1946? It has not been possible to find the motive formulated anywhere. This can imply two things: the discussion to register the Faroe Islands as non-self-governing was never held, or, documentation of the discussion is lacking.

The last option, the lack of textual evidence, will be considered first. The issue whether Greenland was a non-self-governing territory in respect of article 73 was discussed in the Ministry of Foreign Affairs in 1946. The Ministry of Foreign Affairs would then have been the forum of the matter also with regard to the Faroe Islands. Unfortunately the protocols from the ministerial meetings under Prime Minister Knud Christensen 7/11 1945-13/11 1947 are missing. They are not to be found in the Danish National Archives.<sup>248</sup> One page of a protocol bearing witness of the talk about Greenland is preserved in the private archives of Hermod Lannung.<sup>249</sup>

Whether discussions about the Faroe Islands in connection with the UN Charter were held or not become for this reason hypothetical. In case they were held, the outcome was that the Faroe Islands not needed to be registered under article 73e. It is probable, however, that the Faroe Islands never were regarded in the context of non-self-governing territory by the Danish authorities. There are a number of causes as possible explanations thereto, one will be close to justifying the Danish viewpoint another will blame the Danish Government for being racist.

Race can perhaps be interpreted as having been a divide for not placing the Faroe Islands in the same category as Greenland.

The speech made by Hermod Lannung in the Fourth Committee on 10 November 1954, which was made in order to get Greenland off the UN list over non-self-governing territories, makes it understood that the matter of race, the Inuit not being European, contributed to the decision to register Greenland. To serve the Danish purposes the Inuit are in the speech claimed to have "mixed with European blood mainly through countless marriages with Scandinavians, so that the population today is Eskimo-Scandinavian".<sup>250</sup>

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<sup>248</sup> Rigsarkivet informer no. 20, Publikumsavdelningen, 1997.

<sup>249</sup> Hermod Lannungs archives, file concerning Victor Hoo, Wilfred Benson.

"Those present were of the opinion that they could not follow the viewpoint of dr. Cohn, according to which 'Greenland in all respects with good reason can be regarded as a completely self-governing area', from which follows, that there was no obligation to send information about Greenland in conformity with art. 73 e. In any case it must, which particularly was given prominence to by Lannung, be considered as impossible to push this viewpoint through in the article 73e-committee. The participants agreed on the contrary to Minister Bruns apprehension, which was in line with the conclusion, that Greenland at present is a non-self-governing territory in the meaning of the Charter."

<sup>250</sup> Statement by Hermod Lannung in the Fourth Committee, 10 November, 1954, Hermod

Taking other conditions into consideration, the argument on race is however rather needless.

A reason, and actually rationale, for that the Government did not register the Faroes can be that there was no presumption, not even from the Danish side, that they after 1945 were again to be governed by Denmark as in the pre-war period. The Faroese were promised influence over their own affairs, and even the right to secede, which might have been enough for excluding the Faroes from the context of non-self-governing territory. In the autumn 1946, when Greenland was registered, negotiations between the Faroese and Danish parties to this end were already in progress.

The propriety of the argumentation followed in this chapter is confirmed by the Danish Government's acknowledgement of the Faroe Islands' special status in 1946.

It recognized the Faroese as a people entitled to choose their future political status including secession, a recognition that was made explicitly during the negotiations and by approving the plebiscite. Denmark admitted, accordingly, that the Faroe Islands were non-self-governing.

One can maintain that the outcome of the referendum was not convincingly clear as it opened up for interpretations in different directions, but it must be considered as a wish for a solution outside the Danish Constitution. The Home Rule Act adopted was on the other hand an integration of the Faroe Islands, and thus not in accordance with the result of the plebiscite.

The election that was held after the plebiscite can be used to answer the argument that the Home Rule Act was not preferred by the Faroese. Its outcome can be explained as a swift in opinion, maybe due to that the consequences of secession were very unclear to the Faroese.<sup>251</sup> However, the plebiscite was an instrument especially adapted to this one question, which the ordinary election was not.

The integration of the Faroe Islands in 1948 can thus be exposed to criticism, and as ex-colonies improperly incorporated retains the right to exercise self-determination, the question is if this is the case with the Faroe Islands. The assertion that the Faroese still have the right is problematic because of the time that has passed since the Home Rule Act entered into force. During 50 years, the Faroese have lived under the precepts of the Act, integrated with Denmark, not showing any discontent. This is a circumstance that in all probability amounts to consent. It would then not be correct to classify the Faroe Islands as a non-self-governing territory today. The allegation that the Faroe Islands are under foreign occupation is not tenable, and its rejection does not need explanation.

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Lannungs archives, file Greenland III.

<sup>251</sup> Haroff (1993), p. 70.

The inference is that the Faroese do not qualify as a people with an automatic right to external self-determination according to the UN practice. However, the Faroese are "in a rather unique position".<sup>252</sup> They live in a well-defined territory distant from metropolitan Denmark, and constitute a very big and homogenous majority in that territory. Consequently, "[t]he reluctance of the international community to accept claims that can lead to the disruption of territorial integrity and national unity does not apply to the Faroese situation."<sup>253</sup> This implies that "the Faroe Islands [...] if they could and would - presumably promptly would obtain international sympathy and support for a demand on secession".<sup>254</sup>

The Faroe Islands may become independent by bilateral agreement. The question of their independence was addressed in a statement by the Danish Prime Minister at the Nordic Council meeting on February 26, 1991. He recognized the right of the Faroese to opt for full independence if this wish was clearly expressed by the population of the Faroe Islands.<sup>255</sup> The Government seems also at present to be benevolent to take up negotiations with the Faroe Islands on the sovereignty issue. Nothing indicates that Denmark would deny the Faroes the possibility to exercise the right of self-determination in its full sense. As yet, no proceedings have been initiated. In September 1998, when this thesis is written, the Faroese Lagting has still to decide on the Faroese proposal for negotiations.

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<sup>252</sup> Winther Poulsen, p. 299.

<sup>253</sup> Ibid., p. 299.

<sup>254</sup> Haroff (1993), p. 470.

<sup>255</sup> Rehof, Lars Adam, "Human Rights and Self-Government for Indigenous Peoples, *Nordic Journal of International Law*, vol. 61/62, 1994, p. 29.

## 6 Conclusion

There were two versions of the Home Rule Act in 1948; the conception of it as a misery for the Faroe Islands, and the notion of the same as one of the most honourable parts in the history of Denmark.<sup>256</sup> The value given the Act depended on who the speaker was. Rules of law are placed on the level above individual opinions, and in the composition the viewpoints are related to the norms of self-determination. In the period 1945-1948 the meaning of the UN Charter provisions on self-determination was not entirely established. Customary law on the right was beginning to take form, and in the beginning of the 1950s, General Assembly resolutions contributed to its crystalization. Nevertheless, Denmark recognized in 1946 that the Faroese were a people and had the right to decide on their constitutional status. A crucial issue for a present right to external self-determination is the interpretation of the referendum. The divided attitude to the Danish connection has constantly been present in the Faroes since the adoption of the Home Rule system. But the population as an entity has been approving it. Not until the end of this decade the majority in the Faroe Islands favours their more independent position. Despite this, international support for external self-determination of the Faroe Islands due to the particular circumstances of inter alia geography, history and the recognition of ethnic differences is very likely, as the territorial unity of Denmark is not threatened. Most important is, however, the Danish outlook. It seems like there is no reason to believe that Denmark will not agree to the desire of the Faroese.

While the topical discussion about the governing of the Faroe Islands is about increased independence has the legal theorization mostly treated the Home Rule from the opposite angle, i.e. whether it can be recalled by Denmark, and the procedure to be observed for such withdrawal. The apprehension of the Faroese self-government as delegation of powers with just a singular law protecting it has been succeeded by the assessment that the consent of the Faroese is compulsory. The gradual change of view on the Home Rule's formal framework is partially interconnected with the development of its material content. Steadily and pragmatically have the competencies of the Home Rule been extending since it was established. The autonomy attained provides for internal self-determination in the Faroe Islands.

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<sup>256</sup> As worded in the Folketing by Thorstein Petersen and P. M. Dam respectively. Rigsdagstidende 1947-1948, column 3316.

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