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03 - 07 August 2008

Preparation Paper

International Court of Justice (ICJ)

"Unsettled Border Disputes in the Arctic: The Hans Island - Case"

The International Court of Justice

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York (United States of America).

The Court's role is to settle, in accordance with international law, legal disputes submitted to it by states and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council. It is assisted by a Registry, its administrative organ. Its official languages are English and French.

For more information: <http://www.icj-cij.org>

The United Nations Convention on the Law of the Sea

According to article 76 of the United Nations Convention on the Law of the Sea, all of these states are entitled to an exclusive economic area of 200 nautical miles, no matter if their continental shelf exceeds so far or not. Their exclusive rights include the exploration and exploitation of all the resources, whether living or non-living, within this area.

None of the five states actually reaches the North Pole with its 200-mile zone. In the middle, there remains an ocean under ice which none of them can claim. But there is an additional regulation under international law which makes life a little bit more problematic. What if the continental shelf exceeds those 200 miles?

The continental shelf is defined in the United Nations Convention on the Law of the Sea, as "the seabed and subsoil of submarine areas which because of their geological characteristics, are considered as the natural prolongation of the continental or land mass beneath the oceans or seas to the outer edge of the continental margin". According to Art. 76 (4) a state with a large continental shelf can be entitled to an exclusive economic zone up to a maximum of 350 miles.

States have to make an official submission into the UN Commission on the Limits of the Continental Shelf in order to claim an exclusive economic area beyond the usual 200 miles, based upon their measurements of the continental shelf. The Commission will then establish the outer limits of the state's exclusive economic area. Nevertheless, areas exist where the final delineation has not been made, e.g. the case of Hans Island.

The Hans Island Dispute



The Arctic sea region has long been a subject of disputes. In this respect, Canada, Denmark, Russia and Norway share common interests because they regard parts of the Arctic seas as "national waters". In contrary, the United States and most EU countries, officially regard the region as international waters. A specific scenario can be found with regard to the Hans Island.

Hans Island, a 1.3 square-kilometer uninhabited island, lies about 1,100 kilometres south of the North Pole and can only be reached during summer because of pack ice. It has been claimed by both Denmark and

Canada since Arctic borders were drawn in 1973. The border lies through Nares Strait, halfway between Greenland, a semi-autonomous Danish territory and Canada's Ellesmere Island. However neither country could agree which one would have sovereignty over Hans Island and several other islands in the area, so a decision was made to sort out the question of ownership at a later stage.

The border between Greenland and Canada itself is established in the delimitation treaty about the Continental Shelf between Greenland and Canada, ratified by the United Nations on 17 December 1973, and in force since 13 March 1974. Both, Denmark and Canada, have ratified the United Nations Convention on the Law of the Sea of 1982 giving them the right to make claims beyond 200 nautical miles of new land and under water resources in that area (art. 57 of the Convention).

The dispute became popular when Danish flags were planted on Hans Island in 1984, 1988 and 2004. Furthermore, the issue gained importance in media and both, Canadian and Danish journalists, stated that the island would be part of their respective territory

On 31 March 2004, the Danish and Canadian governments stated that the dispute was a long-standing issue, and that nothing had changed in the matter.

A new development came to light after Canadian Defence Minister Bill Graham visited the island on 20 July 2005 and posted a Canadian flag there. In response, an official statement was released by Denmark in which Hans Island was considered as being part of Greenland, because it has traditionally been used by hunters from the former Danish colony. On 19 September 2005, Canada and Denmark decided to put the dispute over Hans Island on a diplomatic track, as stipulated in the Joint Statement of Foreign Ministers. Although Greenland's Home Rule government administers domestic affairs, Denmark continues to represent Greenland in its foreign affairs. This was the first time that the Danish government has officially claimed that the island is solely Danish territory and that it is not in dispute. The Danish government has also said that it would plan to return to Hans Island in the near future to re-erect its flag. In November 2005, Canadian soldiers captured two Danish flags during their recent mission to Hans Island as a demonstration of Canada's sovereignty over the barren Arctic rock.

Finally, in July, 2007, Canadian authorities admitted that the island is not solely in Canadian territory, but recognized that the international border lies roughly in the middle of the island.

There is speculation that the Island is of interest to both sides because of probable natural resources, e.g. oil which may be located on or near the Island. The argument on both sides is that the Inuit of Canada and Greenland have been using this Island for centuries as an area for polar bear hunt. Some Inuit in Nunavut state that Canada can claim the Island on the basis of historic use by Canadian Inuit of lands on the Queen Elizabeth Islands which include Hans Island.

On closer examination it is obvious that Hans Island itself is not the focus of the dispute itself. Oil reservoirs and the possibility of shipping of the northern route between the Atlantic and Pacific Oceans are on the agenda behind this dispute. Due to global warming and the melting of the Arctic ice cap, this scenario seems to be rather realistic. As global warming melts the passage which now is only navigable during a slim window in the summer the waters are exposing unexplored resources such as oil, fishing stocks and minerals, and becoming an attractive shipping route. Commercial ships can shave off some 2,480 miles from Europe to Asia compared with current routes through the Panama Canal. The disputed route runs from the Atlantic to the Pacific through the Arctic archipelago. It gained historical fame among European explorers who longed to find the shorter route to Asia, but found it rendered inhospitable by ice and weather.

Therefore, the tiny Hans Island is more a symbolic issue with a, nevertheless, severe impact on the border regime within the Arctic. The situation with the Hans Island represents what other Arctic nations are having in mind for Canada. If the island was lost to Denmark, it would surely be a loss of asset and resource on Canada's side, but it must be taken into account that other nations are aiming to take over parts of the Canadian Arctic as well. This debate over the ownership of Hans Island is a test, a general example of Canada's legislature power, as well as its ability to react to setbacks. U.S. and Russia in particular are keeping a close eye on every move that the Canadian government is taking. U.S. is looking forward to splitting the resources in the Beaufort Sea, and Russia is simply willing to set the proper boundary in the high Arctic. Therefore a solution of the Hans Island dispute will have tremendous effects on geopolitics in the Arctic as well.

Timetable

1300s - The Greenland Inuit likely used Hans Island as a vantage point both for hunting, and to monitor ice floes in the Kennedy Channel.

1850s- 1880s - British and American explorers lead expeditions in the general vicinity of Hans Island. Some were in pursuit of the elusive Northwest Passage, others the North Pole, while others searched for survivors of British explorer John Franklin's 1845 expedition.

1871 - American explorer Charles Francis Hall sets sail for North Pole, on the ill-fated *Polaris*. He hires a Greenlander by the name of Hans Hendrik as his hunter and guide. On their way through the Kennedy Channel, Hall notices a tiny island between Ellesmere Island and the Greenland Coast, unnamed on maps made by earlier American explorer Elisha Kent Kane. Hall names the island "Hans Island" after his guide, and this name appears on a map published in 1874.

1933 - The Permanent Court of International Justice declares Greenland to be part of the Kingdom of Denmark. The status of Hans Island is not addressed in the ruling. Today, Denmark claims that Hans is part of the same geological formation as Greenland, and therefore is Danish soil. Denmark also argues that Hans Island is closer to Greenland than it is to Ellesmere Island, Canadian soil.

1971 - Canada claims that Hans Island is part of its territory during negotiations with the Danes over the maritime boundary between Greenland and Canada. A treaty that delimits the Continental Shelf between the two countries is signed, but no boundary is drawn over or around Hans Island.

1980-1983 - Dome Petroleum, a Canadian-based company, conducts research on Hans Island without the knowledge of the Danes. The Canadian government says they had no knowledge of the company operating in the area.

28 July 1984 - Denmark's minister of Greenlandic affairs, Tom Høyem, flies by helicopter to Hans Island and plants a Danish flag on the island. The Canadian government protests.

1988 - HDMS *Tulugaq*, a fishing patrol vessel, transports a crew to Hans Island. They erect a flagpole and a Danish flag on the island.

1995 - A Danish crew stationed at the U.S. Thule Air Base erect another flagpole and flag on Hans Island.

2000 - Geologists with the Geological Survey of Canada fly to Hans Island as part of their survey of North Ellesmere island.

13 August 2002 - Danish ship HDMS *Vaeddere* stops at Hans Island and replaces the tattered 1995 flag.

1 August 2003 - The crew of Denmark's HDMS *Triton* lands on Hans Island and, again, the Danish flag is replaced.

13 July 2005 - Canadian soldiers land on Hans Island, erect a Canadian flag and an Inukshuk (a traditional Inuit stone figure) on the island.

20 July 2005 - Canadian Defence Minister Bill Graham visits Hans Island during his tour of Canada's arctic military outposts. Denmark issues a Letter of Protest to Canada.

28 July 2005 - The Danish ambassador to Canada, Poul E.D. Kristensen, publishes a letter in the *Ottawa Citizen* stating that Hans Island belongs to the Kingdom of Denmark.

4 August 2005 - Denmark again sends HDMS *Tulugaq* to Hans Island to assert Danish sovereignty.

8 August 2005 - Danish Prime Minister Anders Fogh Rasmussen says Canada has agreed to negotiate with Denmark over Hans Island. Foreign ministers from Canada, Denmark and Greenland will meet in New York in September during the UN General Assembly.

15 August 2005 - The Danish foreign ministry announces that HDMS *Tulugaq* will not visit Hans Island this year, in order to cool increasing diplomatic tensions between Canada and Denmark.

19 September 2005 - At the 60th anniversary summit of the United Nations, Canadian Foreign Affairs Minister Pierre Pettigrew says an agreement has been made with the Danish officials on a process to end the dispute over Hans Island.

9 November 2005 - Canadian soldiers captured two Danish flags during their recent mission to Hans Island

2007 - Canadian authorities admitted that the island is not solely in Canadian territory, but recognized that the international border lies roughly in the middle of the island.

2008 - The issue still remains unsettled...

Links

<http://www.canadiangeographic.ca/hansIsland>

<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/DNK-CAN1973CS.PDF>

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<http://www.energybulletin.net/12818.html>

<http://www.globelaw.com/LawSea/arctic%20claims%20and%20climate%20change.pdf>