

# INTERNATIONAL STATUS OF THE FAROE ISLANDS

By *Arni Olafsson*

Expert on Faroe matters in the Danish Ministry of Foreign Affairs

## I. *Introduction*

This lecture deals with the subject of self-governing communities. The case in question is the Faroe Islands, and in the following the international relations of this self-governing Island Community will be examined.

The following aspects will be dealt with:

1. Constitutional and legal basis of the present status of the Faroe Islands including the main principles of the Home Rule Act and its special provisions concerning international relations.
2. Factors affecting the relations between the Faroe Islands and the international community.
3. Some general remarks on the Faroe Islands and international treaties, including the question of application to the Faroe Islands of international treaties concluded by the Government of Denmark.
4. Some practical instances concerning the Faroe Islands and international organizations.
5. The conclusion of treaties of special interest to the Faroe Islands.
6. The Faroe Islands and Nordic cooperation.

## II. *An Inquiry into the International Relations of the Faroe Islands*

### 1. *Constitutional and legal basis*

#### 1.1. *Status of the Faroe Islands within the Kingdom of Denmark*

The Faroe Islands have the status of a self-governing community within the Kingdom of Denmark. According to the Danish Constitution, the Kingdom of Denmark is a unitary state. The special status of the Faroe Islands is defined in the so-called Home Rule Act.<sup>1</sup>

Within the framework of this Act the Faroese People, through its elected repre-

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1. Act No 137 of 23 March 1948, on Self-Government of the Faroe Islands, in the following abbreviated to HRA.

sentatives, the *Løgting*, and Executive established by the Latter, the *Landsstýrið*, takes over, within the Unity of the Realm, the administration and government of Faroese affairs as indicated in this Act.<sup>2</sup>

### *1.2. Main principles of the Home Rule Act*

The principle of the HRA is that competence is delegated to the Faroese authorities within those fields which are explicitly stated in Annex A or Annex B to the Act. The Faroese Home Government can decide that all or some of the matters and fields of administration mentioned in Annex A shall be transferred to the Home Government with the consequence that the latter will take over the expenses involved.<sup>3</sup> As regards Annex B, it is to be decided after negotiations between the Faroese Home Government and the Government of Denmark if and to what extent they can be transferred.<sup>4</sup> The Home Government holds the legislative and administrative authority over those fields of administration which come within its province.<sup>5</sup>

Matters which do not, according to the Act, come under the Faroese Home Government shall be handled as joint concerns by the national authorities of Denmark.<sup>6</sup>

In order to ensure for the *Løgting* the widest possible influence on the formulation of special provisions for the Faroes in Acts passed by Danish authorities, Danish Government Bills containing provisions relating exclusively to the Faroes shall be put before the Home Government for consideration before they are tabled in the Danish parliament. Other Danish legislation affecting local Faroese matters shall be put before the Faroese Home Government for consideration before they are put in force in the islands.<sup>7</sup>

Among the matters which can be taken over by the Home Government are matters regarding culture, education, health, social welfare, labour-relations, agriculture, fishery and industry.

Among the fields of administration which appear in Annex B are the Established Church, police, underground resources, radio, aviation, and import and export controls.

### *1.3. Special provisions of the Home Rule Act concerning international relations*

Among the matters which do not appear in Annex A or B and in consequence cannot be taken over by the Home Government are the judicial system and the monetary system, defence, and foreign policy.

According to Section 5 of the HRA, the competence of the Faroese authorities shall always be subject to the limitations following from treaty and other international rights and obligations. In matters affecting the relations of the Realm with foreign countries, the decision lies with the national authorities, i. e. the Danish Government.

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2. Section 1.

3. Section 2.

4. Section 3.

5. Section 4.

6. Section 6.

7. Section 7.

With regard to treaties and other international agreements which affect special Faroese interests, the same procedure shall be followed as in the case of Danish legislation.<sup>8</sup>

According to Section 8 of the HRA, however, the Home Government is granted the following guarantees of influence upon the international economic relations of the islands:

If and when the Faroese Home Government so requests, after negotiations with the *Landsstýrið*, an expert on Faroese matters shall be employed in the Ministry of Foreign Affairs to assist the Ministry in the handling of matters involving special Faroese economic interests. The expenses involved shall be paid by the Danish Government.

Likewise, upon request from the Faroses Home Government, attachés shall be assigned to Danish missions in countries where the Faroe Islands have special economic interests, to attend especially to such interests, the expenses involved being paid by the Faroe Islands.

After consultation with the Faroese Home Government, provisions shall be made for the latter to assert in each case the special interests of the Faroes in negotiations with foreign countries for agreements concerning trade and fishery.

Where special Faroese matters are concerned, the Minister for Foreign Affairs may, where it is not deemed incompatible with the national interests of the Kingdom as a whole, authorize representatives of the Home Government, if a wish to that effect has been expressed, to carry on direct negotiations with the assistance of the Foreign Service.

It may also be of some interest as to the international status of the Faroe Islands that the HRA prescribes<sup>9</sup> that, 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 the words "*Dansk*" and "*Danmark*". A Faroese shall be understood to mean a person who is a Danish citizen and a resident of the Faroe Islands.

According to the HRA a special Faroese flag is recognized.<sup>10</sup> However, the international recognition of the Faroese flag as merchant flag of Faroese vessels had taken place already in 1940.

## 2. *Factors affecting the relations between the Faroe Islands and the international community*

### 2.1. *Economic factors*

The Faroese economy is characterized by a very high degree of specialization and participation in the international division of labour, as most agricultural and industrial goods have to be imported, these imports being paid for by exports of fish and fish products. A large part of the people's food requirements, fuel, and raw materials for the industries have to be imported, and the main industry, fishing and fish pro-

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8. Section 7.

9. Section 10.

10. Section 12.

cessing, is geared exclusively towards exports, making the Faroese economy highly dependent upon finding markets for its exports.

Of the fishing conducted by Faroese vessels, a considerable part is carried out on the high seas or in waters within the fisheries jurisdiction of other countries. Likewise, there is a traditional fishing by fishermen from several foreign countries in Faroese waters.

These economic factors lead to a very high degree of interaction with the outside world.

### *2.2. Political factors*

The strategically important location of the Faroe Islands in the North East Atlantic is bound from time to time to attract geo-political attention.

### *2.3. Institutional factors*

Since the inception of Home Rule, international relations have to an increasing degree become institutionalized. Denmark is taking part in an increasing number of international organizations, such as the UN and its affiliated organizations, the NATO, in organizations for economic or commercial cooperation, such as the GATT, OECD, formerly EFTA and now the EEC, international commissions on fisheries, and last, but not least, Nordic cooperation. In each of these cases it has to be decided if, to what extent, and how the Faroe Islands shall take part.

## *3. Some general remarks on the Faroes Islands and international treaties*

### *3.1. Introduction*

As may be understood from section 1, the HRA does not create a new subject of international law. The competence to conclude treaties on behalf of the Danish Realm, including the Faroe Islands, rests according to the Danish Constitution with the King, i. e. the Danish Government.

The question is thereafter to what extent treaties concluded by the Government of Denmark apply in the Faroe Islands and how treaties especially concerning the Faroe Islands are concluded.

### *3.2. Application to the Faroe Islands of international treaties concluded by the Danish Government*

From the point of view of international law, cf. the Vienna Convention on the Law of Treaties, a treaty concluded by the Danish Government covers all the Danish Realm, including the Faroe Islands, unless the treaty itself or the Danish Government in concluding the treaty makes a statement to the contrary.

A number of international treaties are only binding for or require action from the national authorities of Denmark; other treaties may for other reasons be irrelevant to the Faroe Islands. In such cases no problem is considered to arise. A certain number of treaties may concern matters which have been taken over by the Faroese authorities as special matters or for other reasons have special significance for the

Faroe Islands. In these cases the question arises, whether Denmark should make a reservation as to the application of the treaty to the Faroe Islands or not. The problem for the Danish Government in these cases is to avoid entering into an international obligation which can be difficult to fulfill as far as the Faroe Islands are concerned.

Not being a jurist I do not intend to go into the legal problems involved in this matter. For those interested I may refer to the dissertation by Dr. Ole Espersen on the conclusion and implementation of treaties, which has a special chapter on the Faroe Islands.<sup>11</sup> Dr. Espersen arrives at the conclusion that the HRA is not completely clear in this respect. Whatever the strictly legal requirements, it is considered general practice by the Danish Ministry of Foreign Affairs that during the process of concluding an international agreement endeavours are made to identify whether the treaty is relevant to the Faroe Islands, and if this is the case contacts are made with the Prime Minister's Office and the Faroese Home Government as to acceptability of the treaty to the Faroe Islands. If the treaty is not considered acceptable, Denmark may either make use of a territorial clause in the treaty or make a declaration, at the latest at the time of signature or ratification, that the treaty does not apply to the Faroe Islands. This declaration may be worded in such a way that Denmark with a unilateral declaration at a later stage may notify that the scope of the treaty should be widened to cover the Faroe Islands.

#### *4. Some practical instances concerning the relationship between the Faroe Islands and international organizations*

The membership of Denmark in the United Nations applies to the Faroe Islands. The same is the case of the Danish membership of NATO.

As regards organizations dealing with trade, commerce and other economic affairs reservations have often been made concerning the Faroe Islands.

The General Agreement on Tariffs and Trade (GATT), which Denmark adhered to in 1950, did not apply to the Faroe Islands until 1954. The Convention on the European Free Trade Association (EFTA) of 1959 was not made to apply to the Faroe Islands until 1967. Denmark, including the Faroe Islands, left EFTA when Denmark entered the European Communities on 1 January 1973.

However, the Danish accession to the EEC did not apply to the Faroe Islands. According to the Accession Treaty between Denmark and EC, art. 25, 26 and 27, the Treaty should not apply to the Faroe Islands. The Government of Denmark might, however, give notice by 31 December 1975, at the latest, that the Treaty should apply to the Faroe Islands.

On 25 January 1974, the Faroese *Løgting* unanimously declared that the above-mentioned declaration should not be made and asked the Danish Government to communicate this to the EEC. Following this, a trade arrangement was made in the form of unilateral acts of the EEC and the Faroese authorities respectively.

In order to avoid the reintroduction of customs barriers to Faroese exports to the

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11. Ole Espersen: *Indgåelse og opfyldelse af traktater*, Juristforbundets forlag, København 1970.

Nordic EFTA-countries, informal arrangements were made with these countries securing continued duty-free access to Faroese goods.

As far as the conventions on fisheries in the North Atlantic are concerned, the Faroe Islands were covered by the Danish membership of ICNAF<sup>12</sup> and NEAFC,<sup>13</sup> delegates from the Home Government taking part in the Danish delegation, which was headed by the Danish Ministry of Fisheries.

In connection with the extension of the fishery zones of the EEC-countries to 200 miles, the power to negotiate on fisheries with third countries was transferred from the member states to the Community.

As a consequence of this the Community began to act as spokesman for the member states with a view to eventually becoming a party to the conventions in question.

As far as NEAFC is concerned, the EEC-members, including Denmark, left the organization at the end of 1977. However, Denmark did not terminate its membership as far as the Faroe Islands were concerned. In recent meetings in NEAFC, the delegation of Denmark has consisted of officials of the Faroese Home Government speaking on behalf of the Faroe Islands.

As far as ICNAF is concerned, it was replaced by a new organization called NAFO (Northwest Atlantic Fisheries Organization). In this organization Denmark like the other EEC-member states is not a member in its own name, but is represented by the EEC, which is a member in its own right. In order to cover Faroese interests there is a membership of "Denmark in respect of the Faroe Islands". The convention was signed by the Ambassador of Denmark in Ottawa and a representative of the Faroese Home Government. As in NEAFC, Denmark under this heading is represented by the officials of the Faroese Home Government speaking for the Faroes.

From time to time the question has arisen whether the Faroe Islands could take part in their own name in international organizations.

Usually this option has been ruled out by the fact that the conventions concerned exclusively restricted membership to "sovereign states".

An example of this is the Universal Postal Union. In accordance with the Home Rule Act the postal service was taken over as a special matter on 1 April 1976. The Faroese authorities wanted the Faroes to become a member of the Universal Postal Union. This was found to be out of the question, as the Union was in principle only open for membership by "sovereign states".

In the new fisheries conventions membership is not limited to states. Instead they speak of "parties", including the EEC.

In the preparation of the new NEAFC convention it has been agreed that it shall be open for signature by the parties taking part in its preparation. In order to avoid ambiguity in the description of these parties, it was decided that they should be mentioned by name. From the Danish side two possibilities were considered, namely either "Denmark in respect of the Faroe Islands", in analogy with NAFO, or just "the Faroe Islands", but the legal experts of the Danish Government arrived at the conclusion that the wording "the Faroe Islands" would not be compatible with the

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12. International Convention for Northwest Atlantic Fisheries.

13. North East Atlantic Fisheries Convention.

HRA and the Danish Constitution. In consequence, the "NAFO-formula" will be used.

##### 5. Conclusion of treaties of special interest to the Faroe Islands

As an example of older treaties, the Convention concluded between Denmark and the United Kingdom in 1901 on fisheries in Faroese waters<sup>14</sup> can be mentioned.

As mentioned formerly, fisheries matters have to an increasing extent become subject to international regulation. This development has created a need for international treaties of special interest to the Faroe Islands.

In 1972 a bilateral treaty was concluded between Denmark and Canada concerning traditional rights of Faroese fishermen in waters which had recently come under Canadian fisheries jurisdiction.<sup>15</sup> This agreement was negotiated by a Danish delegation with Faroese participation and was formalized by means of an exchange of notes between the Canadian Secretary of State for External Affairs and the Ambassador of Denmark in Ottawa on 27 March 1972.

On 18 December 1973, an agreement was concluded with the most important fishery nations having traditional fisheries in the waters outside the Faroese fishery limit.<sup>16</sup> This agreement was negotiated by the Danish Ministry of Foreign Affairs with the participation of representatives of the Faroese Home Government. It was signed in Copenhagen on 18 December 1973, for the Government of Denmark by the Danish Minister for Foreign Affairs and by the Head of the Faroese Home Government.

After the extension of the Icelandic fishery limit to 12 miles in 1959, an agreement securing traditional rights for Faroese vessels inside the extended limits<sup>17</sup> was negotiated by a Faroese delegation and formalized by an exchange of notes on 1 August 1961, between the Icelandic Minister for Foreign Affairs and the Ambassador of Denmark in Reykjavik. After the extension of the Icelandic fishery limit to 50 miles in 1973 and to 200 miles in 1975, further agreements have been reached by direct negotiations between representatives of the Icelandic Government and the Faroese Home Government. Instead of making formal agreements between the Governments of Denmark and Iceland it was decided that the heads of delegation should sign an agreed record of the meeting in Icelandic and in Faroese and that this record should be regarded as a binding obligation on both sides. Considering the agreed record a co-called "administrative agreement" (as distinct from a diplo-

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14. Convention between His Majesty the King of Denmark and His Majesty the King of the United Kingdom of Great Britain and Ireland for Regulating the Fisheries of their Respective Subjects outside Territorial Waters in the Ocean Surrounding the Faroe Islands and Iceland, of 24 June 1901.

15. Treaty of 27 March 1972, between Denmark and Canada concerning Danish fishing off the Atlantic coast of Canada. (*Lovtidende C*, bekendtgørelse nr. 28 af 26. april 1972).

16. Arrangement relating to fisheries in waters surrounding the Faroe Islands. (*Lovtidende C*, bekendtgørelse nr. 20 af 14. februar 1974). This agreement was terminated on 1 March 1977 (*Lovtidende C*, bekendtgørelse nr. 85 af 13. september 1976).

17. *Lovtidende C*, bekendtgørelse nr. 14 af 28. februar 1962. This arrangement was terminated by an exchange of notes on 22 April 1975, cf. *Lovtidende C*, bekendtgørelse nr. 65 af 27. juni 1975.

matic agreement) the Danish Government has had no objection to this procedure.<sup>18</sup>

Already in 1964, however, an agreement was negotiated by the Home Government with authorities of the Federal Republic of Germany concerning direct landings of Faroese fish in the Federal Republic. The result of these negotiations was formalized in a "*Kurzprotokoll*", which was then signed by the German and the Faroes heads of delegation respectively.<sup>19</sup>

An example of a treaty concerning the Faroe Islands, but not covering a special matter in the sense of the HRA, is the treaty between Denmark and Norway on the delimitation of the fishery limit between the Faroe Islands and Norway.<sup>20</sup>

This treaty was negotiated by the Danish Ministry of Foreign Affairs, the Home Government being represented in the Danish delegation, and it was signed in Copenhagen on 15 June 1979 by the Danish Minister for Foreign Affairs and the Norwegian Ambassador to Denmark.

The extension of the Faroese fishery limit to 200 miles on 1 January 1977 meant a dramatic increase of the area under Faroese fisheries legislation. Since then a number of bilateral treaties on mutual fishing rights have been concluded.

One of the most important of these agreements is the agreement with Norway. In the same way as with Iceland, the Danish Government has given its consent to direct negotiations between the Faroese Home Government and the Norwegian Government.

A "framework agreement" was negotiated in 1977, having the form of an agreed record of negotiations. According to the framework agreement, annual agreements are worked out on quotas, number of licences, etc., in each calendar year.<sup>21</sup>

In the case of Sweden, too, negotiations have been conducted by the Home Government, and in years without direct negotiations, fishing licences have been granted to Swedish vessels by verbal notes from the Danish Ministry of Foreign Affairs at the request of the Home Government.

In other cases agreements have been negotiated and concluded by Danish authorities with the participation of Faroese representatives.

As regards the European Community, it was decided that the agreement should be made between the Government of Denmark and the Home Government of the Faroe Islands on the one hand and the European Community on the other hand. This agreement was signed on 15 March 1977 by Denmark's Deputy Ambassador to the EEC and by the Head of the Faroese Home Government.<sup>22</sup> The same formula has been used in a framework agreement with the Soviet Union, which was signed in November 1977 in Tórshavn by the Danish High Commissioner in the Faroe Islands and the Head of the Faroe Home Government for Denmark and the Faroe Islands and by the Soviet Minister of Fisheries for the Soviet Union.<sup>23</sup> The same formula was applied in the agreement with the United States signed on the 4 September 1979

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18. The wording of these protocols can be found in the minutes of the Faroese Løgting (*Løgtingsiðindi*).

19. *Føroya Kunngerðasavn* 1964, kunngerð nr. 66 av 24. november 1964.

20. Not yet ratified.

21. Not yet ratified.

22. Not yet ratified.

23. *Lovtidende C*, bekendtgørelse nr. 87 af 26. oktober 1978.



in Washington.<sup>24</sup> This formula has been acceptable to the abovementioned parties.<sup>25</sup> However, in the agreement concerning Faroese fishing in Canadian waters, concluded with Canada on 3 June 1980, such a formula could not be used. This agreement is concluded between Canada and the Kingdom of Denmark and refers in the preamble to the special status of the Faroe Islands.<sup>26</sup>

#### 6. *The Faroe Islands in Nordic cooperation*

The Faroese are very conscious of being a Nordic people and have several times expressed their wish to obtain full membership in the Nordic Council and its subsidiary organs. Prior to 1970, Faroese members of the Danish *Folketing* occasionally were elected to the Danish delegation by the *Folketing*. In 1969 the status of the Council was changed, and starting with the 1970 session, the *Løgting* elects 2 representatives among its own members and the *Landsstýrið* appoints one of its members, all three forming a part of the delegation of the Danish Realm. Representatives of the *Landsstýrið* may also attend the Nordic Council of Ministers, when matters of special interest to them are discussed.

The Faroese have appreciated the access to the Nordic Council created by this construction, and this Faroese participation in the Nordic Council has without doubt served to strengthen the ties between the Faroe Islands and the other Nordic countries. However, the present situation is not regarded as satisfactory from a Faroese point of view, and proposals for a direct and independent membership of the Faroe Islands in the Council have been debated from time to time and were discussed in the Council as late as in its latest session in Reykjavik in the spring of 1980. It is the hope of the Faroese that rigid demands of international law which seem to bar the Faroe Islands from direct membership in international organizations in general may be overcome in the Nordic context, providing a new proof of the often proclaimed Nordic pragmatism.

### III. *Conclusion*

The foregoing may be summarized as follows:

The Home Rule status of the Faroe Islands has not created a new subject of international law. On the other hand, the powers of the Home Government to regulate special matters, especially as far as fisheries are concerned, have created a need for special solutions in order to regulate the international aspects of these matters. This need has been increased in the last few years by the non-adherence by the Faroe Islands to the European Communities, especially since the powers of EEC member states to negotiate international fishery agreements were conferred to the EEC.

The Danish Government and the Faroese Home Government have tried in a cooperative spirit to find workable arrangements concerning the economic relations between the Faroe Islands and the international community. During this process the

24. Not yet ratified.

25. The bilateral arrangements mentioned above (including yearly quota arrangements) have been dealt with by the *Løgting* and are mentioned or cited in the minutes of the Faroese *Løgting* (*Løgtingstíðing*).

26. Not yet ratified.

Faroese Home Government has been allowed to negotiate fishery arrangements on its own with its Nordic neighbours. Fishing treaties with other countries are negotiated by the Danish Ministry of Foreign Affairs with the very active participation of the Home Government, assisted as need may be by the Foreign Service. Likewise, it has been considered natural to mention the Home Government as a party in treaties on matters where the Faroese Home Government has a political responsibility.

Formal Faroese membership in international organizations has not been considered compatible with the constitutional status of the Faroe Islands. If any breakthrough is to be made in this field, it will be most natural to look forward to the Columbi egg which may be produced by the Nordic Council when finding a new formula for the representation of the smaller nations of the North.