

# Oxford Reports on International Law

## **Legal Status of the South-Eastern Territory of Greenland, Norway v Denmark, Interim Measures of Protection, Order, (1932) PCIJ Series A/B no 48, ICGJ 298 (PCIJ 1932), 3rd August 1932, League of Nations (historical) [LoN]; Permanent Court of International Justice (historical) [PCIJ]**

**Date:** 03 August 1932

**Citation(s):** (1932) PCIJ Series A/B no 48 (Official Citation)  
ICGJ 298 (PCIJ 1932) (OUP reference)

**Content type:** International court decisions

**Product:** Oxford Reports on International Law [ORIL]

**Module:** International Courts of General Jurisdiction [ICGJ]

**Jurisdiction:** League of Nations (historical) [LoN]; Permanent Court of International Justice (historical) [PCIJ]

**Parties:** Norway  
Denmark

**Judges/Arbitrators:** MM Adatci (President); M Guerrero (Vice-President); Baron Rolin-Jaequemyns; Count Rostworowski; MM Fromageot; De Bustamante; Altamira; Anzilotti; Urrutia; Sir Cecil Hurst; Schücking; Negulesco; Jhr Van Eysinga; M Wang; MM Vogt (Judge ad hoc); Zahle (Judge ad hoc)

**Procedural Stage:** Interim Measures of Protection, Order

**Previous Procedural Stage(s):**

Order; *Legal Status of the South-Eastern Territory of Greenland, Norway v Denmark*, PCIJ Series A/B no 48; ICGJ 297 (PCIJ 1932), 2 August 1932

**Subsequent Development(s):**

Order; *Legal Status of the South-Eastern Territory of Greenland, Norway v Denmark*, PCIJ Series A/B no 55; ICGJ 305 (PCIJ 1933), 11 May 1933

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**Subject(s):**

Jurisdiction — International courts and tribunals, powers — Interim and provisional measures

**Core Issue(s):**

Whether the Court should accede to the Norwegian request to indicate interim measures of protection.  
Whether the Court should reserve itself the right to deal for such eventuality in the future.

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## **Decision - full text**

Paragraph numbers have been added to this decision by OUP

*Before* : MM. Adatci, *President* ; Guerrero, *Vice-President* ; Baron Rolin-Jaequemyns, Count Rostworowski, MM. Fromageot, De Bustamante, Altamira, Anzilotti, Urrutia, Sir Cecil Hurst, MM. Schücking, Negulesco, Jhr. Van Eysinga, M. Wang, *Judges* ; MM. Vogt and Zahle, *Judges ad hoc*.

The Court,

composed as above,

after deliberation,

having regard to Articles 31, 40 and 41 of the Statute,

having regard to Articles 35 and 57 of the Rules of Court,

*Makes the following Order* :

### **As Regards the Procedure and the Facts :**

**1** Whereas, by an application dated July 18th, 1932, transmitted to the Court by the Norwegian Chargé d'affaires at The Hague by a letter of the same date, the Norwegian Government has instituted proceedings against the Danish Government concerning the legal status of certain parts of the South-Eastern territory of Greenland ;

**2** Whereas it is stated in the application that, "by a Royal Decree of July 12th, 1932, the Royal Norwegian Government has placed the South-Eastern territory of Greenland situated between latitudes 63° 40' and 60° 30' North under the sovereignty of Norway" ; as "this step was taken to protect Norwegian interests, since the Danish Government had previously informed the Norwegian Government that it had invested the leader of a Danish expedition to these territories with police powers which were intended by the Danish Government to be exercised, not only over Danish subjects but also over Norwegian subjects" ; as "the Norwegian Government considers it necessary at the same time to ask the Court to order interim measures of protection in accordance with Article 41 of the Statute of the Court (see also Article 57 of the Rules)"; and as, in support of this opinion, which is based on certain statements which have appeared in the Danish Press, it is alleged that "there is serious reason to fear that the Danish Government may proceed to acts of violence against Norwegian nationals .... residing and exercising their calling in the territory" in question ;

**3** Whereas the application requests the Court, not only "to give judgment to the effect that the placing of the SouthEastern territory of Greenland between latitudes 63° 40' and 60° 30' North under the sovereignty of Norway—effected by the Royal Decree of July 12th, 1932—is legally valid, and that accordingly the said territory is subject to the sovereignty of Norway", but also "to decide forthwith to order the Danish Government, as an interim measure of protection, to abstain in the said territory from any coercive measure directed against Norwegian nationals" ;

**4** Whereas, nevertheless, in his letter of July 18th, 1932, transmitting the application to the Court, the Norwegian Chargé d'affaires at The Hague requested the Court, in pursuance of instructions from his Government, "to defer its decision upon the request for interim

measures of protection, should the Danish Government inform the Court that it will not adopt coercive measures” ;

**5** Whereas, on the other hand, by a letter also dated July 18th, 1932, the Danish Minister at The Hague transmitted to the Court an application submitting to the Court a dispute between the Danish Government and the Norwegian Government concerning Greenland ;

**6** Whereas the aforesaid application refers to the Royal Proclamation dated July 12th, 1932, by which “the Norwegian Government declared that it had proceeded to occupy the territory situated between latitudes 63° 40’ and 60° 30’ North on the East coast of Greenland” ; as the application requests the Court “to give judgment to the effect that the promulgation of the above-mentioned declaration of occupation and any steps taken in this respect by the Norwegian Government constitute a violation of the existing legal situation and are accordingly illegal and null and void” ; and as, finally, it is stated in the application that “the Danish Government reserves the right to apply to the Court, under Article 41 of the Statute and Article 57 of the Rules of Court, should circumstances require it, for the indication of interim measures for the protection of the Danish Government's rights” ;

**7** Whereas, by a note dated July 22nd, 1932, signed by the Danish Minister at The Hague, the Danish Government communicated to the Court its observations on the afore-mentioned letter of the Norwegian Chargé d'affaires at The Hague; as in its note the Danish Government declares that “the Norwegian application for interim measures of protection” “is without any justification” ; and as it is alleged in support of this opinion that “neither last year nor in the present year has anything whatever occurred which could justify the Norwegian action” and that “the Danish Government could not be held responsible” for the statements which had appeared in the Danish Press and which were adduced by the Norwegian Government ;

**8** Whereas, in consequence, the Danish Government asks the Court “to dismiss the Norwegian request for interim measures of protection as being purposeless and groundless” ; as, furthermore, in its note of July 22nd, the Danish Government “points out that it has reserved its right to apply to the Court for the indication of interim measures of protection in case the persons whom the Norwegian Government has invested with powers, which the Danish Government regards as entirely illegal and consequently as non-existent, or other individuals, should act in a manner prejudicial to the legislation for the protection of the Eskimos living in the territory covered by the latest declaration of occupation, or if other incidents should supervene” ; as, however, no application has been made in virtue of this reservation ;

**9** Whereas the said observations of the Danish Government were duly communicated to the Norwegian Government without giving rise to any action on the part of that Government ;

**10** Whereas, by the terms of Article 57 of its Rules, “the Court shall only indicate measures of protection after giving the Parties an opportunity of presenting their observations on the subject” ;

**11** Whereas the Court decided, after deliberation, on July 22nd, 1932,

(a) to hold a public hearing on July 28th, 1932, when an opportunity would be afforded to the Parties of submitting orally their observations to the Court, such observations to be briefly summarized in a document handed in at the hearing ;

(b) to admit, for the purposes of the proceedings on the Norwegian request for the indication of interim measures of protection, the judges *ad hoc* duly appointed by the Parties, “having regard to the fact that in this case the presence of judges *ad hoc* is not inconsistent with the urgent nature of interim measures of protection” ;

**12** Whereas the Parties, availing themselves of their right under Article 31 of the Statute—the applicability of which to this case had been recognized by the Court—had appointed judges *ad hoc* for the purposes of the proceedings instituted by the applications of July 18th, 1932 ; as the Norwegian Government had appointed for that purpose M. Benjamin Vogt, Norwegian Minister in London, and the Danish Government M. Herluf Zahle, Danish Minister at Berlin ;

**13** Whereas the Parties had chosen as their representatives before the Court for the purposes of the said proceedings,

the Norwegian Government :

Agent : M. Bull, Norwegian Chargé d'affaires at The Hague ; Agents and Advocates : MM. Arne Sunde, Advocate of the Norwegian Supreme Court, former Minister of Justice, and Per Rygh, Advocate of the Supreme Court ; Counsel and Advocate : M. Gilbert Charles Gidel, Professor at the Faculty of Law of the University of Paris and the *École libre des Sciences politiques* ; Expert: M. Adolf Hoel, Professor at the University of Oslo ;

and

the Danish Government :

Agent : M. de Scavenius, Danish Minister at The Hague ; Agent, Counsel and Advocate : M. K. Steglich-Petersen, Advocate of the Supreme Court of Denmark ; Counsel and Advocate : M. Gustav Rasmussen, Doctor of Law, of the Ministry for Foreign Affairs at Copenhagen ;

**14** Whereas on July 28th, 1932, the Court heard statements, a reply and a rejoinder presented by MM. Rygh, Sunde, Steglich-Petersen and Rasmussen, and duly received from the Agents of the Parties the summaries of the said statements which it had called for ;

**15** Whereas, according to M. Rygh's statement, the object of the Norwegian request for the indication of interim measures of protection was to cause the Danish Government “to abstain from any measures of violence or force against Norwegian nationals” in the territory in question ;

**16** Whereas M. Sunde pointed out in his statement that the object of the Norwegian request was “to prevent regrettable events which it might be impossible to make good simply by the payment of an indemnity or by compensation or restitution in some other material form” ; as he added that in the view of the Norwegian Government “its action is justified morally, legally and also politically, and the interim measures which it asks the Court to indicate are in the circumstances the best means of preventing any regrettable incidents” ; and as, lastly, according to him, “there is no doubt that the Court can comply with this request, its jurisdiction not being limited by the Statute or by the Rules of Court” ;

**17** Whereas, at the conclusion of his speech, M. Sunde made a declaration on behalf of the Norwegian Government, the relevant portion of which reads as follows :

“...Norway is of opinion that the two Parties should, pending the Court's decision, mutually respect each other's point of view. Norway, animated by the feelings of respect which are due to the Court, declares herself entirely prepared for her part to observe the attitude defined above, and to abstain in the said territory from the use of any force against the other Party, its nationals, their property and their rights.

The Norwegian Government accordingly agrees that the request for the indication of interim measures of protection which it formulated in its application of July 18th, 1932, should be understood as referring equally to both Parties to the present proceedings.”

**18** Whereas, according to the statement by M. Steglich-Petersen, “the Norwegian request for provisional measures has no foundation in Article 41 of the Statute and Article 57 of the Rules”—which deal only with the preservation of the rights of one or other Party—seeing that, according to him, Norway possesses no right in the territory in question capable of forming the subject of a measure of protection ; as, according to this same statement, the Norwegian request contemplates rather the prevention of incidents “likely to aggravate or extend the dispute”, but as the obligation to avoid such incidents is an independent obligation for the Parties, both of whom have accepted the “General Act for Conciliation, Judicial Settlement and Arbitration” of September 20th, 1928 ; as, moreover, according to the statement of M. Steglich-Petersen, the Norwegian Government had not established that there was any real danger of incidents occurring ; as, lastly, the said statement concluded by requesting the Court to “dismiss the application of the Norwegian Government of July 18th, 1932, for provisional measures under Article 41 of the Statute and Article 57 of the Rules” ;

**19** Whereas M. Rasmussen concluded his statement by asking the Court “to declare the request for interim measures submitted by the Norwegian Government to be without justification” ;

**20** Whereas it is common ground

(1) that there are in the territory covered by the applications of July 18th, 1932, a few Norwegian nationals, the members of two hunting expeditions ; that one of these Norwegian nationals is invested by his Government with police powers ;

(2) that two Danish expeditions, consisting of a relatively large number of persons including some invested with police powers, are on their way to, or have already arrived in, the said territory ;

**21** Whereas Norway claims that there are in the territory in question no native inhabitants or nationals of countries other than Denmark or Norway ; as this fact is however disputed by Denmark ;

**22** Whereas, according to Norway, owing to the topographical conditions of the territory in question, it is inevitable that “the Norwegians and Danes residing or working on this coast should frequently meet one another” ; as however, according to Denmark, “it is a question of immense areas and very few persons, which will mean in practice that the Danish

authorities and the Norwegian subjects concerned will only meet each other very rarely and quite accidentally” ;

**23** Whereas Denmark has maintained and Norway has not denied that Danish and Norwegian nationals, respectively invested by their Governments with police powers, were simultaneously present in another part of Eastern Greenland in 1931, and that no incidents resulted therefrom ;

## **The Law,**

### ***As to Article 41 of the Statute :***

**24** Whereas, according to Article 41 of the Statute, “the Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to reserve the respective rights of either Party” ;

**25** Whereas it is in principle arguable that such a power on the part of the Court exists only in respect of a dispute already submitted to it ; but as the Court is not now called upon to decide this question concerning the interpretation of its powers, since there has already been regularly submitted to it—either by Denmark or by Norway, or by both— a dispute between Norway and Denmark concerning the legal status of the South-Eastern territory of Greenland ; as this dispute arises out of the above-mentioned Royal Norwegian Decree of July 12th, 1932 ; and as the subject of the dispute is the legal validity of the occupation proclaimed in the said Royal Decree, “Norway being of opinion that the occupation is valid and lawful, whilst Denmark holds the opposite view” ;

**26** Whereas, moreover, the Court is satisfied that it may proceed to indicate interim measures of protection both at the request of the Parties (or of one of them) and *proprio motu* ; but as the Norwegian request for interim measures of protection must first be examined, leaving the question whether measures should if necessary be indicated *proprio motu* to be determined subsequently ;

### ***As to the Norwegian request for interim measures of protection :***

**27** Whereas, with reference to the Norwegian request, the Court has ruled that “the Object of the measures of interim protection contemplated by the Statute of the Court is to preserve the respective rights of the Parties pending the decision of the Court”, in so far, that is, as the damage threatening these rights would be irreparable in fact or in law ;

**28** Whereas, however, it has been argued that, under Article 41 of the Statute, the Court is also competent to indicate interim measures of protection for the sole purpose of preventing regrettable events and unfortunate incidents ;

**29** Whereas, in the present case, there is no occasion for the Court to take a final stand upon this controversy as to interpretation, seeing that, from either point of view, it arrives at the same result ;

**30** Whereas, in fact, from the standpoint previously adopted by the Court it is to be observed that the Norwegian request for the indication of interim measures of protection as formulated both in the application of July 18th and at the hearing of July 28th, 1932, is not based on the plea that the action which the Norwegian Government asks the Court to prevent would prejudice some recognized or alleged Norwegian right ;

**31** Whereas, moreover, the incidents which the Norwegian Government aims at preventing cannot in any event, or to any degree, affect the existence or value of the sovereign rights claimed by Norway over the territory in question, were these rights to be duly recognized by the Court in its future judgment on the merits of the dispute ; and as these are the only rights which might enter into account ;

**32** Whereas, accordingly, so far as concerns the Norwegian request for the indication of interim measures of protection, no Norwegian rights the protection of which might require the indication of such measures, are in issue ;

**33** Whereas, even adopting the broader interpretation of Article 41 of the Statute, there would seem to be no occasion to fear that the incidents contemplated by the Norwegian request will actually occur ;

**34** Whereas, in its note of July 22nd, 1932, the Danish Government has in fact declared that it will "maintain .... as it has hitherto done" its attitude of "allowing Norwegian subjects every freedom to engage in their callings on the East coast of Greenland afforded them by this Convention" (*scil.* the Danish-Norwegian Convention of July 9th, 1924, concerning Eastern Greenland) ; as, according to the statement made in Court by M. Steglich-Petersen, this attitude also covers Norwegians formally invested with police powers ; as, according to the same statement, the Danish Prime Minister has publicly stated "that he dissociates himself from all kinds of retaliatory measures" ; finally, as, according to M. Rasmussen's statement, "so long as Norwegian nationals sojourning in the zone contemplated by the Norwegian request, under the terms of the 1924 Convention, do not themselves provoke incidents, there is no reason to suppose that such incidents will arise" ;

**35** Whereas, on the other hand, according to the announcement made by M. Rygh at the hearing on July 28th, the Norwegian Government has given the Norwegian national invested with police powers in the territory in question instructions to the following effect :

"After having conferred with the Ministry of Justice, you are informed that your police powers which extend also to foreigners must be exercised with the utmost tact. Particular consideration must be shown to Danish nationals. No obstacle must be placed in the way of Danish expeditions which keep within the terms of the Convention of 1924 concerning Eastern Greenland, a Convention which remains in force. The Ministry reminds you of the importance, from the point of view of the international position of Norway, of avoiding complications. In case any special difficulties arise you will ask for instructions by telegraph. You are requested to acknowledge the receipt of these instructions by telegram."

**36** Similarly, whereas the declaration made on behalf of the Norwegian Government by M. Sunde at the same hearing and reproduced above contains the following passage :

"Norway, animated by the feelings of respect which are due to the Court, declares herself entirely prepared for her part to .... abstain in the said territory from the use of any force against the other Party, its nationals, their property and their rights" ;

**37** Whereas, doubtless, on the one hand, the Danish declarations reproduced above have always been accompanied by reservations regarding the taking by the Danish authorities of action designed to ensure the maintenance of order in the territory in question, in regard both to the native population and to foreigners, as also the observance of the legislation for the protection of the Eskimos ; and as, on the other hand, the Norwegian declaration of July



28th, which was made on the assumption that the Court would comply with the Norwegian request for the indication of measures of protection, presupposes reciprocity ;

**38** Whereas, however, even in this form, these declarations, taken together, are indicative of the existence in responsible circles in both countries of a state of mind and of intentions which are eminently reassuring ;

**39** Whereas, moreover, these intentions having been officially proclaimed before the Court, the latter must not and cannot presume that the two Governments concerned might act otherwise than in conformity with the intentions thus expressed ;

**40** Whereas, furthermore, the Convention concerning Eastern Greenland concluded between Denmark and Norway on July 9th, 1924, which remains in force, constitutes the law between the Parties in so far as concerns the territory in question ; as, according to the final protocol signed at Christiania on January 28th, 1924, by the Danish and Norwegian delegations entrusted with the drawing up of the said Convention, the object of the latter is precisely to “prevent a dispute arising in regard to points likely to give rise to a dispute” ; this Convention, which deals mainly with questions regarding hunting, fishing, “taking possession of land for some useful purpose”, and scientific and humanitarian work, presupposes (Art. 3, para. 2) that Danish and Norwegian nationals in the territories covered by the Convention (including the territory covered by the Royal Norwegian Decree of July 12th, 1932) are, as regards hunting and fishing, subject to the legislation of their respective countries ;

**41** Whereas, finally, the dispute respecting the legal status of the South-Eastern territory or Greenland has been specifically submitted to the Court by the applications of July 18th, 1932, so that no act on the part of the said Governments in the territory in question can have any effect whatever as regards the legal situation which the Court is called upon to define ; as, accordingly, the Parties can have no interest in causing acts to be performed likely to give rise to incidents ;

**42** Whereas, under these conditions, and apart from the question whether any Norwegian rights the preservation of which would require the indication of interim measures of protection are or are not in issue, the circumstances mentioned in the Norwegian request and in the oral statements subsequently made do not require such measures to be taken ;

***As to indication by the Court proprio motu of interim measures of protection :***

**43** Whereas, on the other hand, the Court must consider whether or not there is ground for proceeding, *proprio motu*, to indicate interim measures of protection in connection with the two applications of July 18th, 1932, independently of the Norwegian request to that effect ;

**44** Whereas the Court intends now to deal simply and solely with the dispute concerning the sovereignty over the portions of South-Eastern Greenland covered by the Royal Norwegian Decree of July 12th, 1932, and arising out of that Decree ;

**45** Whereas the rights which it might be necessary to protect in connection with the proceedings instituted on July 18th, 1932, concerning South-Eastern Greenland are, accordingly, solely such sovereign rights as the Court might, in giving judgment on the merits, recognize as appertaining to one or other of the Parties ;

**46** Whereas, at the hearing on July 28th, 1932, M. Steglich-Petersen stated, on behalf of the Danish Government, “that in accordance with the natural regard” due to the Court, his Government does “not intend, as long as the case is pending before the Court, to take any

measures that are calculated to change the legal status of the territory which is the subject of the case— ;

**47** Whereas, on the same occasion, M. Sunde stated, on behalf of the Norwegian Government, that, in the view of this Government, “the two Parties should, pending the Court's decision, mutually respect each other's point of view” ;

**48** Whereas, having regard to the character of the alleged rights in question, considered in relation to the natural characteristics of the territory in issue, even “measures calculated to change the legal status of the territory” could not, according to the [information now at the Court's disposal, affect the value of such alleged rights, once the Court in its judgment on the merits had recognized them as appertaining to one or other of the Parties, and as, in any case, the consequences of such measures would not, in point of fact, be irreparable ;

**49** Whereas, moreover, both Parties are bound by the “General Act for Conciliation, Judicial Settlement and Arbitration” signed at Geneva on September 20th, 1928 ; as by the terms of paragraph 3 of Article 33 of the said Act “the Parties undertake” in particular “to abstain from measures likely to aggravate or extend the dispute” ; as the interpretation and application of that clause are subject to the compulsory jurisdiction of the Court ; and as, in consequence, in the event of any infringement of these alleged rights, a legal remedy would be available, even independently of the acceptance by the Parties of the optional clause referred to in Article 36, paragraph 2, of the Statute ;

**50** Whereas, in these circumstances, the safeguarding of the alleged rights in question does not at present require that the Court should, *proprio motu*, indicate any provisional measures of protection,

**51** The Court

(1) dismisses the request of the Norwegian Government, dated July 18th, 1932, for the indication of interim measures of protection ;

(2) reserves its right subsequently to consider whether circumstances have arisen requiring the indication of provisional measures in accordance with Article 41 of the Statute.

Done in French and English, the French text being authoritative, at the Peace Palace, The Hague, this third day of August, one thousand nine hundred and thirty-two, in four copies, one of which shall be deposited in the archives of the Court and the others transmitted to the Royal Norwegian Government, to the Royal Danish Government and to the Council of the League of Nations respectively.

(Signed) M. Adatci,

President of the Court.

(Signed) A. Hammarskjöld,

Registrar of the Court.

