

General List No.43
Judgment No. 20
5 September 1933

PERMANENT COURT OF INTERNATIONAL JUSTICE
Twenty-Sixth Session

Legal Status of Eastern Greenland

Denmark v. Norway
Judgment

BEFORE: President: Adatci
Vice-President: Guerrero
Judges: Baron Rolin-Jaequemyns, Count Rostworowski, Fromageot, Anzilotti, Urrutia, Sir Cecil Hurst, Schücking, Negulesco, Jhr. Van Eysinga, Wang,
Deputy Judge(s): Vogt, Zahle

REPRESENTED BY: Denmark: M. de Scavenius, Danish Minister at The Hague, M. K. Steglich-Petersen, Advocate at the Supreme Court of Denmark, as Agents
Norway: M. Jens Bull, Counsellor of Legation, as Agent, and by MM. Arne Sunde, Per Rygh, Advocates at the Supreme Court of Norway, as Agents and Counsel

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[p23] The Court,
composed as above,
delivers the following judgment:

[1] By an Application instituting proceedings, filed with the Registry of the Court on July 12th, 1931, in accordance with Article 40 of the Statute and Article 35 of the Rules of Court, the Royal Danish Government, relying on the optional clause of Article 36, paragraph 2, of the Statute, brought before the Permanent Court of International Justice a suit against the Royal Norwegian Government on the ground that the latter Government had, on July 10th, 1931, published a proclamation declaring that it had proceeded to occupy certain territories in Eastern Greenland, which, in the contention of the Danish Government, were subject to the sovereignty

of the Crown of Denmark. The Application, after thus indicating the subject of the dispute, proceeds, subject to the subsequent presentation of any cases, counter-cases and any other documents or evidence, to formulate the claim by asking the Court for 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 unlawful and invalid".

[7] Further, the Danish Government, in the Application, reserves the right, in the first place, to apply to the Court, should circumstances require it, for the indication of interim measures for the protection of its rights and, in the second place, to ask the Court to decide as to the nature of the reparation due to the Danish Government in consequence of the Norwegian Government's act of which it complains.

[8] On July 13th, 1931, notice of the Application was given to the Norwegian Government; on July 14th, the communications [p24] provided for in Article 40 of the Statute and Article 36 of the Rules of Court were despatched and were sent to all States entitled to appear before the Court, including the United States of America.

[9] As the Court included upon the Bench no judge of the nationality of the Parties, the Danish and Norwegian Governments availed themselves of their right, under Article 31 of the Statute, each to appoint a judge ad hoc.

[10] By an Order made on August 6th, 1931, the Court fixed the times for the presentation of the Case, Counter-Case, Reply and Rejoinder in the suit, in accordance with a proposal made jointly by the Parties' Agents on August 4th, 1931. By an Order made on June 18th, 1932, at the request of the Danish Government, the time-limit originally fixed for the presentation of the Reply was extended, and the Norwegian Government was given the right to ask for a corresponding extension of the time-limit fixed for the Rejoinder; the latter Government availed itself of this right, and accordingly the time-limit last mentioned expired on October 14th, 1932. The various documents of the written proceedings having been duly filed within the time-limits as finally fixed, the suit thus became ready for hearing on October 14th, 1932.

[11] In the Danish Case, the Danish Government, in conformity with Article 40 of the Rules of Court, asks, as stated in the Application, for judgment to the effect that

"the promulgation of the declaration of occupation above mentioned and any steps taken in this connection by the Norwegian Government constitute a violation of the existing legal situation and are accordingly unlawful and invalid".

[12] Under the same Article of the Rules of Court, the Norwegian Government, in its Counter-Case, asks for judgment to the effect that

"Denmark has no sovereignty over Eirik Raudes Land;
Norway has acquired the sovereignty over Eirik Raudes Land; The Danish Government should bear the costs incurred by the Norwegian Government in this case".

[7] The Danish Government, in its Reply, repeats the sub-missions made in its Case, but also prays the Court to reject the submission made in the Norwegian Counter-Case and to adjudge

"that the Norwegian. Government shall bear the costs incurred by the Danish Government in this case". [p25]

[8] The Norwegian Government repeats in its Rejoinder the submissions made in its Counter-Case.

[9] In the course of a series of public sittings held between November 21st, 1932, and February 7th, 1933, the Court heard the statements, replies, rejoinders and observations presented by:

MM. Bøeg, as Advocate, Gustav Rasmussen, as Deputy-Advocate, M. Steglich-Petersen, Agent, and by M. Charles de Visscher, as Advocate and Counsel, on behalf of Denmark, and MM. Per Rygh and Arne Sunde, Agents and Counsel, and by M. Gilbert Gidel, as Counsel and Advocate, on behalf of Norway.

[10] At the conclusion of the respective statements, the Parties Agents presented the submissions of the Governments represented by them as follows :

M. de Scavenius, on behalf of the Danish Government:

"May it please the Court,

To reject as unfounded the three submissions in the Norwegian Counter-Case of March 12th and 15th, 1932;

To give judgment to the effect that the declaration of occupation promulgated by the Norwegian Government on July 10th, 1931, and any steps taken in this connection by that Government, constitute a violation of the existing legal situation and are, accordingly, unlawful and invalid;

To decide that the Norwegian Government shall bear the costs incurred by the Danish Government in this case."

[11] M. Bull, on behalf of the Norwegian Government:

"May it please the Court,

To reject the submissions presented by the Danish Government;

To adjudge and declare that Denmark has no sovereignty over Eirik Raudes Land;

That Norway has acquired the sovereignty over Eirik Raudes Land;

That the Danish Government shall bear the costs incurred by the Norwegian Government in this case."

[12] A large number of documents, including memorials or opinions on special points, and maps were filed on behalf of each of the Parties, either as annexes to the documents of the written proceedings or in the course of the hearings.

[13] The Agent and Counsel for the Norwegian Government, in the course of his oral rejoinder, adduced certain new documents, whereupon the Agent for the Danish Government, invoking Articles 48 and 52 of the Statute, prayed the Court to refuse to accept "the fresh facts adduced in the rejoinder". The point having thus been raised, and having regard also to certain reservations made on behalf of Norway respecting fresh documents used in the Danish oral reply, the Court [p26] reserved the right to refuse the fresh documents produced on either side in the oral reply and rejoinder and to give the Danish Agent an opportunity of presenting observations on the fresh documents produced in the rejoinder. M. Steglich-Petersen was in fact permitted to comment on the documents in question and thereupon withdrew his Government's objection to this admission. Accordingly, the Court declares that, in so far as the terms of Article 52 of the Statute are applicable to the evidence produced by one of the Parties to the case, the consent of the other Party, which is required under that Article, may be regarded as having been obtained.

[14] The submission of the case being in all respects regular, these are the circumstances in which the Court is now called upon to give judgment.

[15] According to the royal Norwegian proclamation of July 10th, 1931, which gave rise to the present dispute, the "country" the "taking possession" of which "is officially confirmed" and which is "placed under Norwegian sovereignty" is "situated between Carlsberg Fjord on the South and Bessel Fjord on the North, in Eastern Greenland", and extends from latitude 71° 30' to 75° 40' N.

[16] By "Eastern Greenland" is meant the eastern coast of Greenland.

[17] It must have been intended that on the eastern side the sea and on the western side the "Inland Ice" should constitute the limits of the area occupied under the proclamation of July 10th, though the proclamation itself is silent on the subject. Indeed, Counsel for the Danish Government was disposed to criticize the validity of the proclamation because of the absence of any western limit of the occupation. This is a point, however, which in view of the conclusions reached by the Court need not be pursued.

[18] Greenland, which extends from latitude 59° 46' to 83° 39' N. and from longitude 73° to 10° 33' W., and the southernmost point of which is in about longitude 630 W. of Greenwich, has a total area of about 2,200,000 square kilometres; five sixths of this area are covered by the "Inland Ice", so that only a narrow strip of varying width along the coasts is free of permanent ice. It should be added that only in the last years of the XIXth century was it definitely established that Greenland is not connected by land with the other parts of the continent of America, i.e. that Greenland is an island. [p27]

[19] The climate and character of Greenland are those of an Arctic country. The "Inland Ice" is difficult to traverse, and parts of the coast - particularly of the East coast - are for months together difficult of access owing to the influence of the Polar current and the stormy winds on the icebergs and the floe ice and owing to the frequent spells of bad weather.

[20] According to the information supplied to the Court by the Parties, it was about the year 900 A. D. that Greenland was discovered. The country was colonized about a century later. The best known of the colonists was Eric the Red, who was an inhabitant of Iceland of Norwegian origin ; it was at that time that two settlements called Eystribygd and Vestribygd were founded towards the southern end of the western coast. These settlements appear to have existed as an independent State for some time, but became tributary to the kingdom of Norway in the XIIIth century. These settlements had disappeared before 1500.

[21] Information as to these early Nordic settlements and as to the extent to which the settlers dominated the remainder of the country is very scanty. It seems clear that the settlers made hunting journeys far to the North on the western coast, and records exist of at least one expedition to places on the East coast. The historian, or saga writer, Sturla Thordarson tells (about 1261) how the men of Greenland undertook to pay tribute, and how, for every man murdered, a fine should be payable to the King whether the dead man was a Norwegian or a Greenlander and whether killed in the settlements or in the districts to which people went for the summer even as far North as under the Pole Star.

[22] In 1380, the kingdoms of Norway and Denmark were united under the same Crown; the character of this union, which lasted until 1814, changed to some extent in the course of time, more particularly as a result of the centralization at Copenhagen of the administration of the various countries which were under the sovereignty of the Dano-Norwegian Crown. This evolution seems to have obliterated to some extent the separation which had existed between them from a constitutional standpoint. On the other hand, there is nothing to show that during this period Greenland, in so far as it constituted a dependency of the Crown, should not be regarded as a Norwegian possession.

[23] The disappearance of the Nordic colonies did not put an end to the King's pretensions to the sovereignty over Greenland.

[24] The Norwegian Counter-Case describes the succeeding period as an era of unsuccessful efforts on the part of the Catholic Church, of the Kings of Norway and Denmark and of their subjects, to renew relations with the Norwegian colonies of [p28] Western Greenland. The passports delivered by the King to the leader of two such expeditions - Godske Lindenow, a Danish subject - at the beginning of the XVIIth century indicate the voyage as "ad terram nostram Grunlandiam". Some Eskimos brought back from Greenland in 1605 are described by the King as "Our subjects". In 1635, in a letter addressed to the King of France, Christian IV describes Greenland as "a divis nostris antecessoribus Regibus Norvegice ad Nos devoluta". In 1636, the King gives a concession to the Burgomaster and certain citizens of Copenhagen for a monopoly of the navigation and trading in Greenland and gives directions as to their dealing with "Notre pauvre peuple, Nos sujets et habitants dudit pays [FN1]". In 1666, Frederick III is said to have added a bear to the arms of the Danish Monarchy as the emblem of Greenland.

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[FN1] Translation supplied by the Danish Government

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[25] Similarly, foreign countries appear to have acquiesced in the claims of the King of Denmark. Both the States-General of the United Provinces in 1631 and the King of France in 1636 intimated that they did not dispute the claims; and, by the Treaty of Lund of September 27th, 1679 (7th Secret Article), Sweden recognized the ancient rights and claims of the King of Denmark over Greenland and the adjacent seas and coasts.

[26] It is alleged on behalf of Norway that at this time the word "Greenland" was used to denote all the countries bordering on the seas to the North, including Spitzbergen and Nova Zembla, as well as what is now called Greenland. It appears that at this date there were in Spitzbergen no native inhabitants, so that when mention is made of Eskimos brought back from Greenland, as happened in 1605, it must be the Greenland in the narrower sense that is referred to.

[27] Though at this time no colonies or settlements existed in Greenland, contact with it was not entirely lost, because the waters surrounding it, especially on the East coast, were regularly visited by whalers, and the maps of the period show that the existence and the general configuration of Greenland, including the East coast, were by no means unknown.

[28] At the beginning of the XVIIIth century, closer relations were once more established between Greenland and the countries whence the former European settlements on its coasts had originated. In 1721, the pastor Hans Egede, of Bergen in Norway, formed a "Greenland

Company", went to Greenland as a missionary and founded a new colony there, which was soon followed by other settlements. In 1723, this Company was granted a concession placing at its disposal for twenty-five years "the whole country of Greenland" - the King simply reserving his "sovereignty, absolutum dominium and hereditary [p29] rights". The Company was, however, dissolved and, after an interval during which the State itself took over the conduct of Greenland affairs by means of a "Greenland Department" attached to the Royal Chancellory, a fresh concession was granted in 1734 to a certain Jacob Severin. In 1740, just before the renewal of this concession - which comprised a prohibition, applicable both to the King's subjects and to foreigners, of trading and navigation in Greenland contrary to the terms of the concession - the King formed a "Greenland Commission" to which he entrusted matters arising out of the concession. Furthermore, on the occasion of the renewal of the concession, the King issued an Ordinance on April 9th, 1740, prohibiting any person, whether a subject or a foreigner, from doing business in breach of Severin's concession in the colonies already established in Greenland or to be established thereafter, provided that the situation and limits of the colonies (which were in general to extend to fifteen miles on either side of each colony) were first published. The Ordinance also prohibited all persons from robbing the Greenlanders or committing any acts of violence against them in any place in Greenland, whether by land or sea.

[29] Severin's concession finally expired in 1750. In the following year, a concession was granted to the already existing "General Trading Company" of Copenhagen. The exclusive privileges to be enjoyed by the Company were enforced by an Ordinance of March 26th, 1751, enacting penalties against persons acting in breach of the concession in terms very similar to those of the Ordinance of 1740. Another Ordinance of April 22nd, 1758, confirmed the previous one, but extended its scope by including, in addition to the "Colonies and factories already established or subsequently to be established", "other ports and localities in general without differentiation or exception".

[30] In 1774, the State itself once more took over the Greenland trade, which it administered by means of an autonomous "Board", and the King, on March 18th, 1776, issued an Ordinance, which is still in force and which repeats the provisions of the previous instruments in very similar terms. The concessions previously granted to private persons were bestowed upon a privileged Trading Administration. Since then the Greenland trade has been a monopoly of the State of Denmark. In 1781, "Regulations" were made dividing "the country" into a northern and a southern district; the "inspectors" set over these districts were not only entrusted with the supervision of the monopoly's trade, but were also given powers of general administration.

[31] During this period, settlements were established described as colonies, factories or stations, along the West coast between [p30] latitude 60° 42' and 72° 47' N. ; according to the Ordinance of March 18th, 1776, the "Colonies and factories" then existing extended from latitude 60° to 73° N. Attempts to reach the East coast and effect a landing there were made from the West coast of the island, but led to no results.

[32] In the contention of Norway, the above-mentioned instruments, when they speak of Greenland in general, mean the colonized part of the West coast referred to above; Denmark, on the contrary, maintains that the expressions in question relate to Greenland in the geographical sense of the word, i.e. to the whole island of Greenland.

[33] The Napoleonic era profoundly affected the international status of the Scandinavian countries, and also that of Greenland. After Sweden had ceded Finland to Russia (1809), the policy of the Allies against France made it possible for Sweden to obtain the cession of the kingdom of Norway which until then had been united to Denmark, who had supported France.

By a series of conventions concluded in 1812 and 1813, Russia, Great Britain and Prussia supported Sweden's aspirations. After the Franco-Danish alliance had been renewed on July 10th, 1813, and war had broken out between Denmark, on the one hand, and Sweden and her allies, on the other, the battle of Leipzig (October 1813) led to the triumph of the Allied cause and the Swedish army compelled Denmark to sign the Peace Treaty of Kiel, dated January 14th, 1814, the fourth Article of which provided for the cession to Sweden of the kingdom of Norway, excluding however Greenland, the Færoe Isles and Iceland.

[34] The two relevant paragraphs of Article 4 of the Treaty of Kiel run as follows [FN1]:

"Article IV. - His Majesty the King of Denmark, for himself and his successors, renounces for ever and irrevocably all his rights and claims on the kingdom of Norway, together with possession of the Bishopricks and Dioceses of Christians and, Bergenhuus, Aggerhuus, and Drontheim, besides Nordland and Finmark, as far as the frontiers of the Russian empire.

These bishopricks, dioceses, and provinces, constituting the kingdom of Norway, with their inhabitants, towns, harbours, fortresses, villages, and islands, along the whole coast of that kingdom, together with their dependencies (Greenland, the Ferroe Isles, and Iceland, excepted) ; as well as all privileges, rights, and emoluments there belonging, shall belong in full and sovereign property to the King of Sweden, and make one with his united kingdom." [p31]

[FN1] Translation as printed in the "Annual Register" for 1814.

[35] At the end of 1814, the necessary steps were taken with a view to the complete liquidation of all matters arising out of the Union between Denmark and Norway. After protracted negotiations, this liquidation was effected by a Convention signed at Stockholm on September 1st, 1819, between Denmark of the one part and the United Kingdoms of Sweden and Norway of the other part. It will be necessary, in the later part of the present judgment, to revert to the events of 1814 to 1819, as they are of special importance in regard to the dispute concerning Greenland.

[36] In the course of the XIXth century and the early years of the XXth, the coasts of Greenland were entirely explored. For the purposes of the present case, it is only necessary to note two dates: first, in 1822 the Scottish whaler Scoresby made the first landing by a European in the territory covered by the Norwegian declaration of occupation; secondly, about 1900, thanks to the voyages of the American Peary, the insular character of Greenland was established. It is admitted by Norway that from the time of Scoresby's landing the East coast forms part of the known portion of Greenland.

[37] Several Danish expeditions explored portions of the non-colonized part of Greenland during the XIXth century; first in 1829-1830, the Graah expedition explored the East coast south of Angmagssalik. Approximately the same part of the East coast was again explored in 1883-1885 by the Holm expedition which led, after some years, to the colonization, in 1894, of Angmagssalik. The Ryder expedition in 1891-1892 explored Scoresby Sound and the coast to the north of this fjord, i.e. a part of the coast occupied by Norway in 1931. In 1898-1900, the Amdrup expedition explored the very inaccessible coast between Angmagssalik and a point near the southern limit of the territory occupied in 1931. In 1906-1908, the "Danmark Expedition"

explored the whole of the equally difficult East coast north of a point near the northern end of the territory occupied in 1931 and north-wards to the point reached by Peary when he explored the coast from the western side. In 1926-1927, the Lauge Koch expedition explored the coast between Scoresby Sound and Danmarkshavn comprising the whole of the territory occupied in 1931. It results from this short summary that the whole East coast has been explored by Danish expeditions. There were, in addition, many non-Danish expeditions.

[38] In 1863, the Danish Government granted to Mr. J. W. Tayler, an Englishman, an exclusive concession for thirty years to enable him to establish on the East coast of [p32] Greenland "stations for the purpose of trading with the natives, hunting, fishing, or working any metalliferous or other mineral-bearing mines there discovered, or engaging in any other business which he may consider to his advantage"; any station of this kind which might thus be established "to the north or south of the 65th degree of latitude North" was to be placed "under the sovereignty of the Danish Crown". All the papers with regard to the granting of the Tayler concession have been submitted to the Court at the request of the Norwegian Agent.

[39] The Tayler concession led to no practical result.; The concessionnaire was not able to establish any stations on the East coast.

[40] Between 1854 and 1886, applications were made to the Danish Government for the grant of several other concessions for the erection of telegraph-lines in or across Greenland, or for the grant of mining concessions. Some of these were granted, some were refused. They all use the term "Greenland" without qualification, and one at least provides for a survey for a telegraph-line across Greenland from the eastern to the western coast. These concessions also led to no practical result.

[41] In 1894, at Angmagssalik, in latitude 65° 36' N., the first Danish settlement on the East coast was established. In accordance with the provisions of the Ordinance of 1776, mention of which has already been made, the foundation of this "mission and trading station" was "made public" by a Decree of October 10th, 1894, notice of which was given to the Minister for Foreign Affairs of Sweden and Norway by a note from the Danish Minister at Stockholm; notice of the Decree was also given to the governments of some other States. The papers in connection with the establishment of this settlement have also been laid before the Court and are of some importance, as will subsequently appear.

[42] As regards the limits of the colonized territory on the West coast of Greenland, these were already in 1814 held to extend from latitude 60° to latitude 73° N. These limits, which had already been established by the Ordinance of March 18th, 1776, were confirmed by a Proclamation ("Notice to Mariners") of May 8th, 1884. On March 8th, 1905, however, a fresh Proclamation was published to the effect that "the Danish colonies on the West coast of Greenland extend from latitude 60° to latitude 74° 30' N.". Notice of the Proclamation was given on November 29th, 1905, to the Norwegian Minister [p33] for Foreign Affairs by the Danish Minister at Christiania [FN1]; it was observed, in the Danish note, that this involved an extension by a degree and a half of the limit fixed in the "Proclamation of 1884".

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[FN1] The name of the capital of Norway was altered to Oslo on January 1st, 1925. It is so described in the judgment in connection with events subsequent to that date.

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[43] In 1909, a private Danish society established a mission station on the Northwest coast of Greenland, at Cape York, in latitude 76° 32' N. ; in the following year, a trading and research station known as "Thule" was founded in the same locality by Danish explorers. Apparently, no notice of the foundation of these stations was given to the Powers. Finally, in 1925, another Danish trading and mission station was established on the East coast at Scoresby Sound, in about latitude 70° 30' N. No special notice was given of the establishment of this station.

[44] In 1905, a Decree was issued by the Danish Minister of the Interior, fixing the limits of the territorial waters round Greenland. The limits within which the fishing was stated to be reserved for Danish subjects were to be drawn at a distance of three marine miles along the whole coast of Greenland.

[45] In 1908, a law was promulgated by Denmark relating to the administration of Greenland. The colonies on the West coast were divided into two districts, a northern and a southern.

[46] In 1921, a Decree was issued, running as follows [FN2]:

"In pursuance of His Majesty's authority dated the 6th instant, and with reference to the Royal Ordinance of March 18th, 1776, know all men that Danish Trading, Mission and Hunting Stations have been established on the East and West coasts of Greenland, with the result that the whole of that country is henceforth linked up with Danish colonies and stations under the authority of the Danish Administration of Greenland.
Done at the Ministry of the Interior, May 10th, 1921."

[FN2] Translation from the French text supplied by the Danish Government. The translation supplied by the Norwegian Government reads as follows:

"In terms of His Majesty's authority dated the 6th instant, and with reference to the Royal Ordinance of March 18th, 1776, know all men that Danish Trading, Mission and Hunting stations have been established on the East and West coasts of Greenland, so that the whole of that country is henceforth linked up with Danish colonies and stations and with the Danish Administration of Greenland.
Done at the Ministry of the Interior, May 10th, 1921."

[p34]

[47] This Decree was notified to the Powers during June and July. It was followed on June 16th, 1921, by a Proclamation (Notice to Mariners) concerning navigation in the seas around Greenland, to the effect that the closing of the island to Danish and foreign ships extended to "the whole of the coasts and islands pertaining to Greenland".

[48] Reference to these Decrees must again be made later.

[49] Throughout this period and up to the present time, the practice of the Danish Government in concluding bilateral commercial conventions or when participating in multilateral conventions relating to economic questions - such as those concluded since 1921 under the auspices of the League of Nations - has been to secure the insertion of a stipulation excepting Greenland from

the operation of the convention. Only in one case - that of the conventions concluded with Japan on February 12th, 1912 - is the exception or the reservation otherwise than in favour of "Greenland" or the "territory of Greenland" without qualification; in the conventions with Japan, the exception is in favour of "the Danish colonies in Greenland".

[50] With particular regard to the territory covered by the Norwegian declaration of occupation of July 10th, 1931, certain circumstances invoked by the Parties concerning the exploitation of the country are to be noted.

[51] In 1919, the "Eastern Greenland Company" was founded at Copenhagen; this was a limited company with extensive resources at its disposal, and its aim was to conduct hunting operations in the zone between Scoresby Sound and Germaniahavn (latitude 70° 30' to 77° N.). The resources of this company, which built a number of houses and hunting cabins in the district in order that its hunters might winter there, were exhausted by 1924 and its operations ceased. The Danish Government, which had taken over the company's stations, conceded the use of them to a new hunting company founded in 1929, the Nanok Company, which carried on the operations of the former company. The Nanok Company's principal station is equipped with wireless.

[52] As regards Norwegian activities, in addition to visits to the East coast paid periodically during the summer from 1889 onwards, expeditions wintered in the territory in question in 1908 and 1909, and again in 1922 and in 1926 and the ensuing years. The expedition of 1922 established a provisional wireless station at Mygg-Bukta (Mackenzie Bay), but the Danish Government made a protest immediately against its erection. Owing to the loss of a ship, this station ceased [p35] working in the following year. It began to function again in 1926, and since then this Mygg-Bukta station has been working regularly. Since 1929 both hunting operations and the wireless service have been carried on by a Norwegian company, the Arktis nøeringsdrift. The various Norwegian expeditions also have built a large number of houses and cabins in the disputed territory.

[53] During the XIXth century, while the Danish Government made a practice of excluding "Greenland", without qualification, from the commercial conventions it concluded and in other ways acted upon the assumption that Danish sovereignty extended to the whole of Greenland, opinions were occasionally expressed by private persons in Denmark interested in Greenland to the effect that the absence of effective occupation of the uncolonized parts exposed the territory to the risk of permanent occupation by some foreign State. Thus, in 1823, after the landing of Scoresby on the East coast, a M. Wormskjöld - who was a naturalist and an expert in Greenland affairs - was consulted by the Danish Minister of State and addressed to him a letter indicating the weakness of the Danish position and the contentions which a foreign Power might adduce in favour of a right to occupy the eastern coast. It was, perhaps, as a result of this communication from M. Wormskjöld that in 1829 the expedition mentioned above under a naval officer named Graah was sent to visit the East coast; but no policy of colonization was then initiated.

[54] Interest in Greenland, however, was gradually increasing in Denmark, and in 1878 the Danish Government set up a Commission for the study of the natural and ethnographic phenomena of Greenland. This Commission has published a large number of volumes containing reports on many questions connected with Greenland, including the results of the scientific and exploring and cartographic expeditions to the country.

[55] At the beginning of the present century, opinion again began to be manifested in favour of the more effective occupation of the uncolonized areas in Greenland, in order that the risk of foreign settlement might be obviated.

[56] During the Great War of 1914 to 1918, Denmark by treaty ceded to the United States of America her West Indian Islands - the Danish Antilles - and, during the negotiations for the conclusion of the treaty, broached to the American Secretary of State - [p36] at first in conversation and subsequently, on December 27th, 1915, by a written communication - the question of the extension of Danish activities throughout all Greenland. As the result, the United States signed on August 4th, 1916, the same day as the treaty for the cession of the Antilles, a declaration to the effect that the United States would not object to the Danish Government extending their political and economic interests to the whole of Greenland.

[57] On July 12th, 1919, the Danish Minister for Foreign Affairs instructed the Danish Minister at Christiania that a Committee had just been constituted at the Peace Conference "for the purpose of considering the claims that may be put forward by different countries to Spitzbergen", and that the Danish Government would be prepared to renew before this Committee the unofficial assurance already given (on April 2nd, 1919) to the Norwegian Government, according to which Denmark, having no special interests at stake in Spitzbergen, would raise no objection to Norway's claims upon that archipelago. In making this statement to the Norwegian Minister for Foreign Affairs, the Danish Minister was to point out "that the Danish Government had been anxious for some years past to obtain the recognition by all the interested Powers of Denmark's sovereignty over the whole of Greenland, and that she intended to place that question before the above-mentioned Committee" ; and, further, that the Danish Government felt confident that the extension of its political and economic interests to the whole of Greenland "would not encounter any difficulties on the part of the Norwegian Government".

[58] On July 14th, 1919, the Danish Minister saw M. Ihlen, the Norwegian Minister for Foreign Affairs, who merely replied on this occasion "that the question would be considered". The Norwegian Minister recorded his conversation with the Danish representative in a minute, the accuracy of which has not been disputed by the Danish Government. On July 22nd following, M. Ihlen made a statement to the Danish Minister to the effect "that the Norwegian Government would not make any difficulties in the settlement of this question" (i.e. the question raised on July 14th by the Danish Government). These are the words recorded in the minute by M. Ihlen himself. According to the report made by the Danish Minister to his own Government, M. Ihlen's words were that "the plans of the Royal [Danish] Government respecting Danish sovereignty over the whole of Greenland would meet with no difficulties on the part of Norway". It is this [p37] statement by the Norwegian Minister for Foreign Affairs which is described in this judgment as the "Ihlen declaration".

[59] In 1920, the Danish Government approached the Governments in London, Paris, Rome and Tokyo with a view to obtaining assurances from these Governments on the subject of the recognition of Denmark's sovereignty over the whole of Greenland. Each of those Governments replied in terms which satisfied the Danish Government - which thereupon, in 1921, approached the Swedish and Norwegian Governments as the only other Governments interested. The communication to the Swedish Government was dated January 13th, and that to the Norwegian Government January 18th.

[60] The Swedish Government made no difficulty. The Norwegian Government was not prepared to adopt the same attitude unless it received an undertaking from the Danish Government that the liberty of hunting and fishing on the East coast (outside the limits of the colony of Angmagssalik), which Norwegians had hitherto enjoyed, should not be interfered with. This undertaking the Danish Government was unwilling to give, as it alleges that it would have involved a reversal of the policy which Denmark had hitherto followed of endeavouring to

shield the Eskimo people of Greenland on grounds of health from uncontrolled contact with white races; such a policy could not be maintained unless control could be exercised over those having access to the territory.

[61] The terms of the correspondence in which the Danish Government sought and received assurances from the interested Powers as to Denmark's position in Greenland, are so important that they will be discussed in detail later.

[62] As regards the discussion with the Norwegian Government: as soon as it became clear that the Norwegian Government was unwilling to give the desired assurances, the Danish Government, in May 1921, instructed its Minister at Christiania that no further application was to be made and said that it would rest content with the verbal undertaking given by M. Ihlen in 1919. The Decree of May 10th, 1921, referred to above, was then issued. The reason given for acting somewhat hastily was that May 12th was the 200th anniversary of the day when Hans Egede sailed from Bergen to found his colonies in Greenland and the occasion was to be marked by suitable solemnities.

[63] During the latter half of the year 1921 and during the two succeeding years, diplomatic correspondence continued [p38]." between the Danish and Norwegian Governments. This correspondence need not be described in detail. The general effect of it is to show the points on which the two Governments were at issue.

[64] On the Danish side there was evinced willingness to make every effort to satisfy the desire of the Norwegian Government that Norwegians should be able to continue to fish and hunt on the East coast of Greenland but a determination not to give way on the claim to sovereignty. On the Norwegian side it was gradually made clear that, in the opinion of the Norwegian Government, the uncolonized part of the East coast of Greenland was a *terra nullius*, and that Denmark's political aspirations could only be met if it involved no sacrifice of Norwegian economic interests. This disagreement, however, on the point of principle as to the status of the territory did not exclude a mutual desire to find a practical solution of the fishing and hunting questions.

[65] On July 13th, 1923, the Norwegian Minister for Foreign Affairs informed the Danish Minister at Christiania that, on the 7th of that month, the Storting had passed a resolution calling on the Norwegian Government "to invite the Danish Government to enter into negotiations on the question of Greenland, the said negotiations to be conducted on a free basis between representatives specially appointed for that purpose by the two countries". The Danish Government accepted the invitation (note of July 30th, 1923); the two Governments agreed that the negotiations would have the effect of suspending the exchange of views through diplomatic channels, but that, in case they proved unsuccessful, the legal situation would remain unaffected.

[66] Negotiations began in September 1923. In their early stages, they covered the Greenland question generally, but as they progressed, points on which no agreement could be reached were eliminated. On January 28th, 1924, the negotiations resulted in the approval of a draft agreement, which the delegations recommended for adoption by their respective Governments. On July 9th, 1924, the latter signed a Convention applicable to the whole eastern coast of Greenland, excepting the district of Angmagssalik (and, in a certain eventuality, that of Scoresby Sound); the Convention was to come into force as from July 10th, 1924, for a first period of twenty years.

[67] Under Article 2, ships were to have free access to the East coast, and their crews and

persons on board were given the right to land, to winter in the territory and [p39] to hunt and fish. Under Article 5, the erection of meteorological, telegraphic and telephonic stations was authorized.

[68] Simultaneously with the Convention, notes were signed by each Government to the effect that it signed the Convention in order to avoid disputes and to strengthen friendly relations between the two Powers, and that it reserved its opinion on questions concerning Greenland not dealt with in the Convention, so that by the Convention nothing was prejudged, abandoned or lost.

[69] It is apparent from the documents filed with the Court, in particular from the Protocol signed at the twelfth and last meeting of the delegations held at Christiania on January 28th, 1924, that the chief points that these notes had in view were: the Danish contention that Denmark possessed full and entire sovereignty over the whole of Greenland and that Norway had recognized that sovereignty, and the Norwegian contention that all the parts of Greenland which had not been occupied in such a manner as to bring them effectively under the administration of the Danish Government were in the condition of terra nullius, and that if they ceased to be terra nullius they must pass under Norwegian sovereignty.

[70] On July 8th, 1924, the Danish Directorate of the Greenland Colonies issued a Decree dated July 5th, advertng to the Proclamation of June 16th, 1921, referred to above, and announcing that the Danish Government would permit Danish vessels and persons on board of them to navigate "until further notice" to the territory (which was subsequently specified in detail by the Convention of July 9th), subject to conditions which were identical with those laid down later in the Convention; the Decree added that the permission granted would be applicable also to nationals, vessels and companies of Iceland and of foreign nations with which the Danish Government should conclude an agreement. This act occasioned reservations on the part of the Norwegian Government.

[71] On April 1st, 1925, the Danish Government promulgated a law "on fishing and hunting in Greenland waters", etc.; this was followed, on April 18th, by a law "concerning the administration of Greenland". The former law - which served as the basis for a Proclamation ("Notice to Mariners") dated May 22nd, 1925, by the Greenland Directorate "on navigation in the seas around Greenland" - reserved this hunting and fishing in Greenland waters exclusively for Danish subjects (including Eskimos) settled in Greenland, and for persons obtaining special licences, subject to the terms of the above-mentioned Decree of July 5th, 1924 (which contains in substance the provisions of the Convention of the 9th of that [p40] month). The second law divided Greenland, from an administrative point of view, into three provinces, and laid down that "all commercial activities in Greenland are reserved to the Danish State under the direction of the Ministry of the Interior". On August 8th, 1925, Norway made "categorical reservations" against the latter law, "in so far as it applies to regions where the sovereignty of Denmark has not hitherto been demonstrated".

[72] During the year 1925, the British and French Governments requested the Danish Government to grant most-favoured-nation treatment i.e. the treatment accorded to Norwegian subjects by the Convention of July 9th, 1924 to their respective subjects in Eastern Greenland. Denmark granted these requests, and the arrangements concluded on the subject took the form of two exchanges of notes (notes of April 23rd and June 4th, 1925, and of October 12th and 19th, 1925). When Norway learned of these exchanges of notes, she drew the attention of Great Britain and France, on September 25th and November 2nd, 1925, to the fact that "she had not recognized Danish sovereignty over the whole of Greenland"; the Norwegian Government

caused the Danish Government to be informed of this step. Similar communications were also made by the Norwegian Government to all the other Powers whom it regarded as being interested.

[73] Subsequently, the question of Danish sovereignty over the eastern coast of Greenland appears not to have been raised for nearly five years. But, in the summer of 1930, the Norwegian Government conferred police powers on certain Norwegian nationals "for the inspection of the Norwegian hunting stations in Eastern Greenland". Denmark became uneasy at this action, and intimated to the Norwegian Government, at first verbally, and afterwards - on December 26th, 1930 - in writing, that she could not countenance the granting of regular police powers to Norwegian nationals in territories situated in Greenland, seeing that these territories were, in the Danish view, subject to Danish sovereignty. On January 6th, 1931, the Norwegian Government replied that, in accordance with the standpoint which it had reserved in its note of July 9th, 1924, Eastern Greenland constituted a *terra nullius*, and that, consequently, it was "fully entitled" to invest Norwegian nationals in this territory with police powers in respect of Norwegian nationals and other persons domiciled in Norway.

[74] The year 1930 also witnessed the inauguration by Denmark of a "three years plan" for scientific research in "the central part of Eastern Greenland, i.e. the district between Scoresby [p41] Sound and Danmarkshavn". In a note dated February 20th, 1931, from the Norwegian Minister at Copenhagen to the Danish Minister for Foreign Affairs, the Norwegian Government pointed out that "this important enterprise, whose object was not purely scientific but also had a practical aim of colonization, would be operating in the portion of Eastern Greenland which has been frequented for many years past by Norwegian hunters and where there are Norwegian interests of particular importance". The note further "strongly urged the Danish Government, in the interests of both countries, to do everything in its power to ensure that the Danish 'three years' plan should not be carried out in such a way as to conflict with the provisions of the Convention concerning Eastern Greenland, or with the legitimate interests of the Norwegian hunters in that country".

[75] It is in these events of 1930, and in the reactions which they provoked, that the immediate origin of the present dispute is to be sought.

[76] On March 11th, 1931, the Danish Government replied to the Norwegian observations on the "three years plan", and on March 14th it informed the Norwegian Government, linking the question of police powers to that of the "three years" expedition, "that it thought it necessary, in accordance with the point of view expressed by the Danish Government in its note of July 9th, 1924, in connection with this expedition to provide for police supervision, with powers extending to all persons in the territory in question in Eastern Greenland". A prolonged diplomatic discussion ensued, during which it seemed as if the Governments were inclining towards an agreement to refrain from raising during the life of the Convention of 1924 questions concerning the differences on matters of principle which had not been settled by that Convention, in order to ensure a peaceful development of the situation in Eastern Greenland. On June 30th, the Norwegian Government requested the Danish Minister at Oslo to confirm that the Danish Government was agreed that, during the life of the Convention, no police authority, whether Norwegian or Danish, should be established in Eastern Greenland, and that no other act of sovereignty should be accomplished therein by Norway or by Denmark.

[77] The Danish reply, which was given on July 3rd, was in the negative. The Danish Government held that the proposed arrangement would go beyond the limits of the Convention of 1924, and would moreover constitute a recognition of the contention upheld by Norway in

1924 (the terra nullius theory) and would be inconsistent with the fundamental standpoint maintained at that time by Denmark (theory of Danish [p42] sovereignty over the whole of Greenland). In these circumstances, the Danish Government preferred to seek a solution for the existing differences in conciliation or in judicial settlement by the Permanent Court of International Justice. The Norwegian Government consented to submit the question to the Court by a Special Agreement; it suggested, however, on July 7th, that the Court should be asked "to adjudicate on the basis of the situation, in fact and in law, as existing on July 1st, 1931", and that in case the Court should find that "Denmark had not acquired sovereignty over Greenland or over part thereof", the Danish Government would not oppose "the acquisition by Norway of sovereignty over the regions in question".

[78] The Danish Government replied to this suggestion by a note of July 10th, which contains the following passage:

"The Danish Government does not intend, in the course of the examination of the case, to take any surprise action, or any step calculated to modify the existing situation at law, provided always that Norway refrains from any step which would necessitate action on the part of Denmark. The Danish Government naturally presumes that the Norwegian Government, for its part, likewise intends to refrain from any such action. The Danish Government is, however, of opinion that the judgment should be given on the basis of the general situation, as it has evolved during a long period of time, and is unable to believe that action taken by either side, in the present preparatory stage of the case, or during its examination, could in any way influence the judgment. It regards the Norwegian Government's declaration, that the situation existing on July 1st should form the basis of the decision, as evidence that the said Government concurs that no action taken during the examination of the case could possess decisive importance. For the rest, the Danish Government holds that it must be left to the Court to decide what considerations of law or of fact must be taken into account for a decision of the case [FN1]."

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[FN1] Translation by the Registry from the French translation filed by the Danish Government

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[79] The Danish Government further proposed in the same note that the Special Agreement should be drawn up "by direct negotiations between representatives appointed for that purpose".

[80] In the meanwhile, on June 28th, 1931, certain Norwegian hunters had hoisted the flag of Norway in Mackenzie Bay in Eastern Greenland, and announced that they had occupied the territory lying between Carlsberg Fjord, to the South, and Bessel Fjord, to the North, in the name of the King of Norway. In reply to a Danish enquiry, occasioned by this [p43] news, the Norwegian Minister for Foreign Affairs stated, on July 1st, that more detailed information would be obtained from the persons who had carried out the occupation; that the Government would then decide on its future attitude; but that the occupation in question was "an entirely private act, which will not influence our policy". In its note of July 3rd, referred to above, the Danish Government observed that it had taken due note of this part of the Norwegian Minister's statement.

[81] The Danish note of July 10th, already mentioned, had been preceded on July 5th and 6th by an exchange of views between the Danish Minister at Oslo and the Norwegian Minister for Foreign Affairs in reference to a Danish suggestion that, during the negotiations for the proposed

Special Agreement, Denmark would not take any surprise action capable of modifying the existing situation at law, or resort to any tactical measures. It is argued, on behalf of Denmark, that this offer was manifestly made subject to reciprocity, and that an agreement was reached in that sense. On behalf of Norway, the opposite contention is maintained.

[82] Finally, on July 10th, 1931, in a note verbale addressed by the Norwegian Minister for Foreign Affairs to the Danish Minister at Oslo, the Norwegian Government stated that, "having regard to the legal position of Norway in the proceedings before the Court", it "had felt obliged to proceed, in virtue of a Royal Resolution of the same date, to the occupation of the territories in Eastern Greenland situated between latitude 71° 30' and 75° 40' N." The Royal Resolution in question was worded as follows:

"1. The occupation of the country in Eastern Greenland between Carlsberg Fjord on the south and Bessel Fjord on the north, carried out on June 27th, 1931, is officially confirmed, so far as concerns the territory extending from latitude 71° 30' to latitude 75° 40' N., and the said territory is placed under Norwegian sovereignty.

2. Messrs. Hallvard Devold and Herman Andresen are invested with police powers in the aforesaid territory, viz., M. Devold in respect of the district south of Clavering Fjord and M. Andresen in respect of the district to the north of the said fjord [FN1]."

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[FN1] Translation by the Registry from the French translation filed by the Norwegian Government

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[83] The territory covered by this Resolution was denominated by Norway "Eirik Raudes Land".

[84] The contents of the Resolution were notified to the Powers whom Norway regarded as being interested. [p44]

[85] On the following day - July 11th, 1931 - the Danish Government informed the Norwegian Government that it had "submitted the question" on the same day "to the Permanent Court of International Justice". The Danish Application instituting proceedings was filed with the Registry, as already stated, on July 12th, 1931.

[86] The Danish submission in the written pleading, that the Norwegian occupation of July 10th, 1931, is invalid, is founded upon the contention that the area occupied was at the time of the occupation subject to Danish sovereignty; that the area is part of Greenland, and at the time of the occupation Danish sovereignty existed over all Greenland; consequently it could not be occupied by another Power.

[87] In support of this contention, the Danish Government advances two propositions. The first is that the sovereignty which Denmark now enjoys over Greenland has existed for a long time, has been continuously and peacefully exercised and, until the present dispute, has not been contested by any Power. This proposition Denmark sets out to establish as a fact. The second proposition is that Norway has by treaty or otherwise herself recognized Danish sovereignty over Greenland as a whole and therefore cannot now dispute it.

[88] The Norwegian submissions are that Denmark possessed no sovereignty over the area which Norway occupied on July 10th, 1931, and that at the time of the occupation the area was terra nullius. Her contention is that the area lay outside the limits of the Danish colonies in Greenland and that Danish sovereignty extended no further than the limits of these colonies.

[89] Other contentions were also developed in the course of the proceedings.

[90] On the Danish side it was maintained that the promise which in 1919 the Norwegian Minister for Foreign Affairs, speaking on behalf of his Government, gave to the diplomatic representative of the Danish Government at Christiania debarred Norway from proceeding to any occupation of territory in Greenland, even if she had not by other acts recognized an existing Danish sovereignty there.

[91] In this connection Denmark has adduced certain other undertakings by Norway, e.g. the international undertakings entered into by that country for the pacific settlement of her disputes with other countries in general, and with Denmark in particular. [p45] On the Norwegian side it was maintained that the attitude which Denmark adopted between 1915 and 1921, when she addressed herself to various Powers in order to obtain a recognition of her position in Greenland, was inconsistent with a claim to be already in possession of the sovereignty-over all Greenland, and that in the circumstances she is now estopped from alleging a long established sovereignty over the whole country.

[92] The two principal propositions advanced by the Danish Government will each be considered in turn.

I

[93] The first Danish argument is that the Norwegian occupation of part of the East coast of Greenland is invalid because Denmark has claimed and exercised sovereign rights over Greenland as a whole for a long time and has obtained thereby a valid title to sovereignty. The date at which such Danish sovereignty must have existed in order to render the Norwegian occupation invalid is the date at which the occupation took place, viz., July 10th, 1931.

[94] The Danish claim is not founded upon any particular act of occupation but alleges - to use the phrase employed in the Palmas Island decision of the Permanent Court of Arbitration, April 4th, 1928 - a title "founded on the peaceful and continuous display of State authority over the island". It is based upon the view that Denmark now enjoys all the rights which the King of Denmark and Norway enjoyed over Greenland up till 1814. Both the existence and the extent of these rights must therefore be considered, as well as the Danish claim to sovereignty since that date.

[95] It must be borne in mind, however, that as the critical date is July 10th, 1931, it is not necessary that sovereignty over Greenland should have existed throughout the period during which the Danish Government maintains that it was in being. Even if the material submitted to the Court might be thought insufficient to establish the existence of that sovereignty during the earlier periods, this would not exclude a finding that it is sufficient to establish a valid title in the period immediately preceding the occupation.

[96] Before proceeding to consider in detail the evidence submitted to the Court, it may be well to state that a claim to sovereignty based not upon some particular act or title such as a treaty of

cession but merely upon continued display of authority, involves two elements each of which must be shown [p46] to exist: the intention and will to act as sovereign, and some actual exercise or display of such authority.

[97] Another circumstance which must be taken into account by any tribunal which has to adjudicate upon a claim to sovereignty over a particular territory, is the extent to which the sovereignty is also claimed by some other Power. In most of the cases involving claims to territorial sovereignty which have come before an international tribunal, there have been two competing claims to the sovereignty, and the tribunal has had to decide which of the two is the stronger. One of the peculiar features of the present case is that up to 1931 there was no claim by any Power other than Denmark to the sovereignty over Greenland. Indeed, up till 1921, no Power disputed the Danish claim to sovereignty.

[98] It is impossible to read the records of the decisions in cases as to territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual exercise of sovereign rights, provided that the other State could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries.

[99] In the period when the early Nordic colonies founded by Eric the Red in the Xth century in Greenland were in existence, the modern notions as to territorial sovereignty had not come into being. It is unlikely that either the chiefs or the settlers in these colonies drew any sharp distinction between territory which was and territory which was not subject to them. On the other hand, the undertaking (1261) recorded by Sturla Thordarson that fines should be paid to the King of Norway by the men of Greenland in respect of murders whether the dead man was a Norwegian or a Greenlander and whether killed in the settlement or even as far to the North as under the Pole Star, shows that the King of Norway's jurisdiction was not restricted to the confines of the two settlements of Eystribygd and Vestribygd. So far as it is possible to apply modern terminology to the rights and pretensions of the kings of Norway in Greenland in the XIIIth and XIVth centuries, the Court holds that at that date these rights amounted to sovereignty and that they were not limited to the two settlements.

[100] It has been argued on behalf of Norway that after the disappearance of the two Nordic settlements, Norwegian sovereignty was lost and Greenland became a terra nullius. [p47] Conquest and voluntary abandonment are the grounds on which this view is put forward.

[101] The word "conquest" is not an appropriate phrase, even if it is assumed that it was fighting with the Eskimos which led to the downfall of the settlements. Conquest only operates as a cause of loss of sovereignty when there is war between two States and by reason of the defeat of one of them sovereignty over territory passes from the loser to the victorious State. The principle does not apply in a case where a settlement has been established in a distant country and its inhabitants are massacred by the aboriginal population. Nor is the fact of "conquest" established. It is known now that the settlements must have disappeared at an early date, but at the time there seems to have been a belief that despite the loss of contact and the loss of knowledge of the whereabouts of the settlements one or both of them would again be discovered and found to contain the descendants of the early settlers.

[102] As regards voluntary abandonment, there is nothing to show any definite renunciation on the part of the kings of Norway or Denmark.

[103] During the first two centuries or so after the settlements perished, there seems to have been

no intercourse with Greenland, and knowledge of it diminished; but the tradition of the King's rights lived on, and in the early part of the XVIIth century a revival of interest in Greenland on the part both of the King and of his people took place.

[104] That period was an era of adventure and exploration. The example set by the navigators of foreign countries was inspiring, and a desire arose in Norway and Denmark to recover the territory which had been subject to the sovereignty of the King's ancestors in the past. The expeditions sent out in 1605 and 1606 under Lindenow to "Our Country of Greenland", the efforts to assure respect on the part of foreign Powers for the King's rights there and the claim to exclude foreigners from the Greenland trade all show that the King considered that in his dealings with Greenland he was dealing with a country with respect to which he had a special position superior to that of any other Power. This special position can only have been derived from the sovereign rights which accrued to the King of Norway from the submission made to him by the early Nordic settlers and which descended to the Danish-Norwegian kings. It must have covered the territory which is known as Greenland today, because the country was inhabited. The expedition in 1605 brought back some of the inhabitants, whereas Spitzbergen was admittedly uninhabited. Lastly, as there were at this date no colonies or [p48] settlements in Greenland, the King's claims cannot have been limited to any particular places in the country.

[105] That the King's claims amounted merely to pretensions is clear, for he had no permanent contact with the country, he was exercising no authority there. The claims, however, were not disputed. No other Power was putting forward any claim to territorial sovereignty in Greenland, and in the absence of any competing claim the King's pretensions to be the sovereign of Greenland subsisted.

[106] After the founding of Hans Egede's colonies in 1721, there is in part at least of Greenland a manifestation and exercise of sovereign rights. Consequently, both the elements necessary to establish a valid title to sovereignty - the intention and the exercise - were present, but the question arises as to how far the operation of these elements extended.

[107] The King's pretensions to sovereignty which existed at the time of the foundation of the colonies are sufficient to demonstrate the intention, and, as said above, these were not limited to any particular part of the country.

[108] Was the exercise of sovereign rights such as to confer a valid title to sovereignty over the whole country? The founding of the colonies was accompanied by the grant of a monopoly of the trade, and before long legislation was found to be necessary to protect and enforce the monopoly. In the earlier Ordinances of 1740-1751, issued at the time when Jacob Severin was the grantee of the monopoly, the prohibition of trading was restricted to the colonies, but those Ordinances also contained a prohibition of injurious treatment of the Greenlanders, and this was not limited to the colonies but operated in Greenland as a whole. Furthermore, the prohibition of trading was to apply not only in the existing colonies but in any future colonies which might be established. Legislation is one of the most obvious forms of the exercise of sovereign power, and it is clear that the operation of these enactments was not restricted to the limits of the colonies. It therefore follows that the sovereign right in virtue of which the enactments were issued cannot have been restricted to the limits of the colonies.

[109] The Ordinance of 1758 and that of 1776 (which is still in force) also operated beyond the limits of the colonies: under these Ordinances, the prohibition on trading is no longer restricted to the colonies but is to apply "in all places whatever". This extension in the area of the monopoly is reflected in the terms of the commercial treaties of the period. The [p49] treaties

before 1758 (those of 1742 between Denmark and France, of 1748 between Denmark and the Two Sicilies and of 1756 between Denmark and the Republic of Genoa) make an exception for the trade "with His Majesty's colonies in Greenland". The notes exchanged with Russia in 1782 relate to "Greenland" in general.

[110] Norway has argued that in the legislative and administrative acts of the XVIIIth century on which Denmark relies as proof of the exercise of her sovereignty, the word "Greenland" is not used in the geographical sense, but means only the colonies or the colonized area on the West coast.

[111] This is a point as to which the burden of proof lies on Norway. The geographical meaning of the word "Greenland", i.e. the name which is habitually used in the maps to denominate the whole island, must be regarded as the ordinary meaning of the word. If it is alleged by one of the Parties that some unusual or exceptional meaning is to be attributed to it, it lies on that Party to establish its contention. In the opinion of the Court, Norway has not succeeded in establishing her contention. It is not sufficient for her to show that in many of these legislative and administrative acts action was only to be taken in the colonies. Most of them dealt with things which only happened in the colonies and not in the rest of the country. The fact that most of these acts were concerned with what happened in the colonies and that the colonies were all situated on the West coast is not by itself sufficient ground for holding that the authority in virtue of which the act was taken - whether legislative or administrative - was also restricted to the colonized area. Unless it was so restricted, it affords no ground for interpreting the word "Greenland" in this restricted sense.

[112] The terms of some of these documents give no support to the Norwegian view. As shown above, the Ordinances of 1740, 1751, 1758 and 1776 purport to operate in Greenland generally. If the terms of these Ordinances are examined closely, they do not bear out the view that "Greenland" means only the colonized area. In the Ordinance of 1758, for instance, the word "Greenland" is used three times. First, the Ordinance recites the concession held by the Company "de naviguer et commercer seule dans les colonies par Nous etablies dans Notre pays de lllGroenland...." ; then it recites that the King has learned with great displeasure that certain foreigners repair annually to Greenland ".... où, par un commerce illicite auquel Us se livrent tant dans les ports qu'en dehors, Us exercent toutes sortes de violences contre [p50] les habitants....", and then the King, "comme souverain seigneur héréditaire du lllGroenland et des îles en dépendant....", proceeds to re-enact and to extend the prohibitions contained in the previous Ordinances [FN1].

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[FN1] The texts in question have been officially submitted to the Court in a French translation only

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[113] There is nothing to show that the word "Greenland" is not used all through the Ordinance in the same sense. The Ordinance is issued by the King as Hereditary Sovereign of Greenland. It has been shown above that the rights and pretensions which the King derived from his ancestors as kings of Norway were not limited to any particular part of Greenland, because no colonies existed at the time, but extended to the whole country. Again, the colonies are described as colonies established in Greenland, so that the colonies and Greenland cannot have coincided. Lastly, the trading prohibition which the Ordinance enacts is no longer, as in 1740 and 1751,

limited to the colonies, but extends to every place on land or sea within four miles of the coast, and is now grouped with the prohibition against violence to the Greenlanders which in the previous Ordinances operated throughout Greenland and was not limited to the colonies. An examination of this Ordinance alone is enough to disprove the contention that the word "Greenland" in these legislative and administrative acts of the XVIIIth century means only the colonized area.

[114] It has also been argued on behalf of Norway that "Greenland" as used in documents of this period cannot have been intended to include the East coast because at the time the East coast was unknown. An examination however of the maps of the XVIIth and XVIIIth centuries shows that the general features and configuration of the East coast of Greenland were known to the cartographers. Even if no evidence of any landings on the coast have been produced, the ships which hunted whales in the waters to the East of Greenland sighted the land at intervals and gave names to the prominent features which were observed. Indeed, "Greenland" as a geographical term was even more used in connection with the East coast than with the West coast, as the term "Straat Davis" was often used to describe the West coast, or colonized area, of Greenland.

[115] The conclusion to which the Court is led is that, bearing in mind the absence of any claim to sovereignty by another Power, and the Arctic and inaccessible character of the uncolonized [p51] parts of the country, the King of Denmark and Norway displayed during the period from the founding of the colonies by Hans Egede in 1721 up to 1814 his authority to an extent sufficient to give his country a valid claim to sovereignty, and that his rights over Greenland were not limited to the colonized area.

[116] Up to the date of the Treaty of Kiel of 1814, the rights which the King possessed over Greenland were enjoyed by him as King of Norway. It was as a Norwegian possession that Greenland was dealt with in Article 4 of that Treaty, whereby the King ceded to the King of Sweden the Kingdom of Norway, "la Groënlande non comprise....". The result of the Treaty was that what had been a Norwegian possession remained with the King of Denmark and became for the future a Danish possession. Except in this respect, the Treaty of Kiel did not affect or extend the King's rights over Greenland.

[117] In order to establish the Danish contention that Denmark has exercised in fact sovereignty over all Greenland for a long time, Counsel for Denmark have laid stress on the long series of conventions - mostly commercial in character - which have been concluded by Denmark and in which, with the concurrence of the other contracting Party, a stipulation has been inserted to the effect that the convention shall not apply to Greenland. In the case of multilateral treaties, the stipulation usually takes the form of a Danish reserve at the time of signature. In date, these conventions cover the period from 1782 onwards. As pointed out in the earlier part of the judgment, the exclusion of Greenland is, with one exception, made without qualification. In that case alone it is "the Danish colonies in Greenland" to which the treaty is not to apply. In many of these cases, the wording is quite specific; for instance, Article 6 of the Treaty of 1826 with the United States of America : "The present Convention shall not apply to the Northern possessions of His Majesty the King of Denmark, that is to say Iceland, the Færö Islands and Greenland...."

[118] The importance of these treaties is that they show a willingness on the part of the States with which Denmark has contracted to admit her right to exclude Greenland. To some of these treaties, Norway has herself been a Party, and these must be dealt with later because they are relied on by Denmark as constituting binding admissions by Norway that Greenland is subject to Danish sovereignty. For the purpose of the present argument, the importance of these

conventions, with whatever States they have been concluded, is due to the [p52] support which they lend to the Danish argument that Denmark possesses sovereignty over Greenland as a whole.

[119] It has been contended on behalf of Norway that no importance should be attached to these conventions because, when they were concluded, the Parties had no such question in mind as whether Danish sovereignty was limited or not to the colonies, and whether in consequence "Greenland" meant more than the colonized area. Both as to these conventions, and also as to the Treaty of Kiel, Counsel for Norway adhere to the contention that the word "Greenland" is used in the sense of the area comprised within the colonies.

[120] It is true that when they conclude a commercial convention, States are not dealing with such questions as the extent of their respective territories, but the usual object of a commercial convention is to give to each of the Parties facilities for trade and navigation in the territories of the other; consequently, the area within which such facilities are, or are not, accorded is a point of some importance. It is a question on which disputes may arise if there is any uncertainty. If the Parties were agreed that the treaty was not to apply in a particular area and the area is only designated by name, the natural conclusion is that no difference existed between them as to the extent of the area which that name covered. The Court is therefore once more led back to the question as to what the contracting Parties meant when they excluded "Greenland". The natural meaning of the term is its geographical meaning as shown in the maps. If it is argued on behalf of Norway that these treaties use the term "Greenland" in some special sense, it is for her to establish it, and it is not decisive in this respect that the northern part of Greenland was still unknown. She has not succeeded in showing that in these treaties the word "Greenland" means only the colonized area.

[121] To the extent that these treaties constitute evidence of recognition of her sovereignty over Greenland in general, Denmark is entitled to rely upon them.

[122] These treaties may also be regarded as demonstrating sufficiently Denmark's will and intention to exercise sovereignty over Greenland. There remains the question whether during this period, i.e. 1814 to 1915, she exercised authority in the uncolonized area sufficiently to give her a valid claim to sovereignty therein. In their arguments, Counsel for Denmark have relied chiefly on the concession granted in 1863 to Tayler of exclusive rights on the East coast for trading, hunting, [p53] mining, etc. The result of all the documents connected with the grant of the concession is to show that, on the one side, it was granted upon the footing that the King of Denmark was in a position to grant a valid monopoly on the East coast and that his sovereign rights entitled him to do so, and, on the other, that the concessionnaires in England regarded the grant of a monopoly as essential to the success of their projects and had no doubt as to the validity of the rights conferred.

[123] Among the documents connected with the grant of this concession which have been submitted to the Court is the report submitted to the King for his approval by the Minister of the Interior, and it is interesting to note that it states as a matter free from all doubt that Danish sovereignty exists over the East coast of Greenland:

"En tout cas, les résultats auxquels cette tentative pourrait conduire présenteraient un intérêt scientifique assez important, et, pourvu que Ton prenne les garanties nécessaires tant en ce qui concerne la souveraineté de Votre Majesté sur cette partie du Groënland - que personne ne conteste - et pour la protection des Groënlandais qui y habitent et qui, par suite, doivent être considérés comme les sujets de Votre Majesté, l'octroi d'une autorisation de ce genre à ceux qui

possèdent les qualités et l'énergie nécessaires pour tenter la réalisation d'une pareille entreprise pourra certainement être accordé sans aucune hésitation [FN1]."

[FN1] French translation supplied by the Danish Government.

[124] Counsel for Norway have pointed to Article 2 in the concession, which provides that the establishments created by the concessionnaires were to be placed under the sovereignty of the Crown of Denmark and to be subject to Danish law - and have argued that the grant of a concession in these terms is itself evidence that the Danish Government realized that Danish sovereignty did not extend to this part of Greenland. The explanation however is simple. Tayler was an Englishman. The Danish Government were aware that people in Denmark, such as M. Wormskjold, had been afraid that foreign Powers would attempt to make settlements on the East coast, and Article 2 was intended to make sure that the settlements established by Tayler should not be made the basis of a claim of occupation and sovereignty by the King of England.

[125] The concessions granted for the erection of telegraph lines and the legislation fixing the limits of territorial waters in [p54] 1905 are also manifestations of the exercise of sovereign authority.

[126] In view of the above facts, when taken in conjunction with the legislation she had enacted applicable to Greenland generally, the numerous treaties in which Denmark, with the concurrence of the other contracting Party, provided for the non-application of the treaty to Greenland in general, and the absence of all claim to sovereignty over Greenland by any other Power, Denmark must be regarded as having displayed during this period of 1814 to 1915 her authority over the uncolonized part of the country to a degree sufficient to confer a valid title to the sovereignty.

[127] The applications which the Danish Government addressed to foreign governments between 1915 and 1921, seeking the recognition of Denmark's position in Greenland, have played so large a part in the arguments addressed to the Court that it is necessary to deal with them in some detail. The point at issue between the Parties is whether Denmark was seeking a recognition of an existing sovereignty extending over all Greenland, as has been urged by her Counsel, or, as maintained by Counsel on behalf of Norway, whether she was trying to persuade the Powers to agree to an extension of her sovereignty to territory which did not as yet belong to her:

[128] The terms used in the correspondence between the Danish Government and the foreign governments concerned relating to these applications are not always clear; sometimes a particular phrase or expression seems to afford a strong argument in favour of the view held by one Party in the dispute and another phrase or expression, emanating from the same side and perhaps even in the same note, may be consistent only with the opposite view.

[129] The Court has come to the conclusion that in judging the effect of these notes too much importance must not be attached to particular expressions here and there. The correspondence must be judged as a whole. One reason for this is that in some cases the notes were written by individual Danish diplomatic representatives, and, though no doubt they were based on the instructions these Ministers received, some variation must be expected and allowed for in the

terms they used.

[130] There can be no doubt that an expression such as "extension of sovereignty", which figures in two or three of the most important documents on the Danish side, if taken by [p55] itself, is very difficult to reconcile with the view now upheld by the Danish Government, that what that Government was seeking in these applications was recognition of existing sovereignty and not consent to the acquisition of new sovereignty. Nevertheless, the conclusion which the Court has reached is that the view upheld by the Danish Government in the present case is right and that the object which that Government was endeavouring to secure was an assurance from each of the foreign governments concerned that it accepted the Danish point of view that all Greenland was already subject to Danish sovereignty and was therefore content to see an extension of Denmark's activities to the uncolonized parts of Greenland.

[131] Before analysing the important documents in this correspondence, it is well to repeat what has been said above as to the existence in Denmark of opinions held by well-qualified persons, such as M. Wormskjöld, that owing to the absence of any effective occupation on the eastern coast of Greenland, some foreign Power might attempt to establish a settlement and might thereby acquire the sovereignty over the territory for itself.

[132] While this was the opinion which had been expressed by private persons, the Government had, whenever it was necessary for it to express an opinion, enunciated the view that there was no doubt as to the existence of the Danish sovereignty over the East coast of Greenland.

[133] A sentence has already been quoted from the report to the King in 1863, asking for approval of the Tayler concession. Similarly, in the report submitted to the King in connection with the founding of the colony of Angmagssalik in 1894, the Minister of the Interior says:

"Bien que, jusqu'à présent, il n'ait été établi des colonies danoises que sur la côte occidentale du Groënland, la souveraineté de l'Etat danois n'est pas restreinte à cette partie du pays, et le Gouvernement danois a, lorsque l'occasion s'en est présentée, exercé et affirmé sa souveraineté sur la côte orientale du pays [FN1]."

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[FN1] French translation supplied by the Danish Government.

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[134] Given this divergence of view between the Government opinion on the one side, and the opinion of private persons on the other, it is quite natural that at a time such as that of the Great War and the Peace Conference which followed it, when many territorial changes were taking place, the Danish Government should think the moment favourable for endeavouring to [p56] secure general recognition of its sovereignty over all Greenland. If it took action for this purpose, however, it is most unlikely that on the eve of doing so it would completely change the point of view which it had previously enunciated and proceed upon the footing that it had no right to sovereignty over the uncolonized area and that it had now to acquire sovereignty there for the first time. The Danish Government stood to gain nothing by making any such change of opinion and would seriously prejudice its position if it failed to secure the acknowledgements it desired from foreign States.

[135] The first country to be approached was the United States of America, and the moment

chosen was that of the negotiation of the treaty for the cession of the Danish Antilles. It seems probable that the negotiations about Greenland were in part conducted verbally, but the memorandum addressed to the United States Government on December 27th, 1915, by the Danish Minister at Washington is not helpful to the Danish case. It is by no means clear, and it uses the phrase "extension of the care and suzerainty of Denmark to the whole of Greenland [FN1]". On the other hand, if what the Parties had in mind was consent by the United States Government to Denmark's acquiring sovereignty over parts of Greenland which had hitherto been *terroë nullius*, it seems incredible that any competent draughtsman would use so complicated a phrase as that proposed by the United States Government for insertion in the Antilles Treaty: "... The United States will not object to the claim of Denmark to take such measures of control and protection in Greenland as she may deem proper and necessary to safeguard and advance these interests" (i.e. the political and economic interests of Denmark in Greenland).

[FN1] English text supplied by the Danish Government.

[136] The phrase used in the American declaration as ultimately signed was that the United States Government "... will not object to the Danish Government extending their political and economic interests to the whole of Greenland", a phrase which is not inconsistent with either thesis. On the other hand, when submitting the Antilles Treaty, together with the above declaration as to Greenland, for the royal ratification, the Danish Minister for Foreign Affairs treats the declaration as involving American consent to an extension of sovereignty. [p57]

[137] The next government to be approached was the Norwegian. That Government had already manifested a desire to acquire Spitzbergen, and in April 1919 the Danish Government had given the Norwegian Government to understand that, as there were no Danish interests in Spitzbergen which ran counter to those of Norway, Denmark would not oppose the Norwegian aspirations.

[138] Early in July 1919, the Danish Minister for Foreign Affairs learned from the Danish Minister in Paris that the Spitzbergen question was to come before a Committee of the Peace Conference.

[139] Instructions were thereupon issued, on July 12th, 1919, to the Danish Minister at Christiania to make to the Norwegian Minister for Foreign Affairs a communication to the effect that a Committee had just been constituted at the Peace Conference "for the purpose of considering the claims that may be put forward by different countries to Spitzbergen", and that the Danish Government would be prepared to renew before this Committee the unofficial assurance already given to the Norwegian Government, according to which Denmark, having no special interests at stake in Spitzbergen, would raise no objection to Norway's claims upon that archipelago. In making this statement to the Norwegian Minister for Foreign Affairs, the Danish Minister was to point out "that the Danish Government had been anxious for some years past to obtain the recognition by all the interested Powers of Denmark's sovereignty over the whole of Greenland and that it intended to place that question before the above-mentioned Committee"; that the Government of the U.S.A. had made a declaration that that Government would not oppose the extension of Danish political and economic interests over all Greenland; and further that the Danish Government counted on the Norwegian Government not making any difficulties with regard to such an extension.

[140] When, on July 14th, 1919, the Danish Minister saw the Norwegian Minister for Foreign Affairs, M. Ihlen, the latter merely replied "that the question would be considered". The Norwegian Minister for Foreign Affairs recorded his conversation with the Danish representative in a minute, the accuracy of which has not been disputed by the Danish Government. On July 22nd following, the Minister for Foreign Affairs, after informing his colleagues of the Norwegian Cabinet, made a statement to the Danish Minister to the effect "that the Norwegian Government would not make any difficulties [p58] in the settlement of this question" (i.e. the question raised on July 14th by the Danish Government). These are the words recorded in the minute by M. Ihlen himself. According to the report made by the Danish Minister to his own Government, M. Ihlen's words were that "the plans of the Royal [Danish] Government respecting Danish sovereignty over the whole of Greenland would meet with no difficulties on the part of Norway".

[141] The Danish Government were not able to bring the question before the Peace Conference in 1919. The matter was therefore taken up with the governments individually, instructions being sent to the Danish Ministers in London, Paris, Rome and Tokyo on March 2nd, 1920, to address communications to the Governments to which they were accredited. These instructions described at length the work which Denmark had accomplished in Greenland and mentioned the colonies she had founded. Then follows an admission that no formal "prise de possession" had been taken of all Greenland and a statement is made that it is desirable that Denmark should extend its "sollicitude par sa souveraineté sur le Groënland tout entier". The text of the American declaration is set out and the instructions go on to say that, having got the American declaration, Denmark proposes also to obtain recognition by other Powers of Danish sovereignty over all Greenland, and the Minister concerned is therefore to ask for official recognition of Danish sovereignty over all Greenland. It is suggested that the form in which such recognition might be given would be a declaration corresponding to that made by the United States Government. It will be seen that, in these instructions, the Danish Minister for Foreign Affairs treats recognition of Danish sovereignty over all Greenland and a statement that there is no objection to the Danish Government extending its political and economic interests to the whole of Greenland as meaning the same thing.

[142] Each of the Ministers concerned thereupon addressed himself to the Government to which he was accredited, following in his own way the tenour of the instructions he had received.

[143] In reply, the French Government sent a note to the effect that it would make no objection to the Danish Government extending its sovereignty to all Greenland, as contemplated in the American declaration.

[144] The Italian Government says that they will have no difficulty in recognizing Danish sovereignty over Greenland. [p59]

[145] The Japanese Government says that they have no objection to the Danish Government extending their political and economic interests to the whole of Greenland.

[146] The British Government (after some preliminary correspondence with a view to securing a right of preemption over the country), recognizes Danish sovereignty over Greenland.

[147] These notes all appear to have been written upon the assumption that they were complying with what the Danish Government had asked for, despite the diversity of their contents.

[148] The British note, it is true, was written in slightly more favourable circumstances, because the Foreign Office had had the advantage of a further communication from the Danish Government in which the Danish view had been explained more clearly. The British Government had at first tried to secure a right of preemption over Greenland as a condition of its recognition of Danish sovereignty. This the Danish Government refused in a note on July 20th, 1920, in which it makes its point of view clear. The note says that the Danish occupation of Greenland dated back to 1721, since when Greenland had been treated uninterruptedly as a Danish colony, and that the Danish "suzerainty" had never been questioned by any other foreign Power. The note went on to say that the request which had been made by the Danish Government must therefore be regarded as dictated by a desire to obtain "formal recognition of an existing status sanctioned by prescriptive right".

[149] Thus it will be seen that as soon as one of the Powers to whom application had been made indicates a desire to obtain some return for the grant of what had been asked, the Danish Government replies with a note setting out the legal basis of its claim to sovereignty in Greenland on lines similar to those which it has followed in the present case. With the legal position thus made clear, the British Government gave the desired recognition to Danish sovereignty and only asked that, in view of the proximity of Greenland to Canada, the British Government should be consulted if the Danish Government ever contemplated the alienation of the territory.

[150] Early in 1921 the Danish Government approached the Swedish and Norwegian Governments with similar requests for recognition of Danish sovereignty.

[151] The note addressed to the Swedish Government on January 13th, 1921, follows the lines of those addressed to the four [p60] Powers in 1920, but adds that those Powers have recognized Danish sovereignty over all Greenland.

[152] The memorandum addressed to the Norwegian Government by the Danish Legation at Christiania on January 18th, 1921, was conceived on somewhat different lines. It repeats the Danish desire to obtain recognition by the Powers concerned of Danish sovereignty over the whole of that country, and the fact that it had not been possible to bring the question before the Peace Conference in Paris. The communication then refers to the declaration made by the United States Government, the successful applications to the four Powers and the Danish decision to address corresponding requests to the Norwegian and Swedish Governments. Mention is made of Spitzbergen and of how Denmark had said, in 1919, that she would not oppose the Norwegian claims there and that she reckoned on an extension of Danish sovereignty in Greenland not meeting with difficulties on the part of Norway. Reference is then made to the Ihlen declaration, and it is said that as this had only been verbal Denmark would now like to have a written confirmation of it. The memorandum concludes by asking for a written statement that the Norwegian Government recognized Danish sovereignty over all Greenland.

[153] This memorandum has been analysed in some detail because it is the document chiefly relied on by the Norwegian Counsel in maintaining that what Denmark sought to obtain was an extension of her sovereignty to the non-colonized part of Greenland in the sense that it implied that no such sovereignty existed at the moment. It is true that, as stated in the memorandum itself, the word "extension" is used, but it is used in connection with the attitude which Denmark had adopted in 1919. If however the communication made in 1919 to the Norwegian Government is examined, it will be found to be more consistent with the view that the Danish desire was to obtain the recognition of an existing sovereignty. As said above, too much importance must not be attached to some of these individual phrases and expressions when taken

apart from their context. Words such as "reconnaissance expresse de la souveraineté du Groënland dans son entier" are more applicable to an existing sovereignty than to describe an agreement to an extension. Nor must it be forgotten that the date of this communication was six months later than the note of July 20th, 1920, to the Foreign Office in London, which sets out the Danish position with reasonable precision. [p61]

[154] Nevertheless, it would seem that the Norwegian Government must have understood the Danish communication as implying an extension of sovereignty in the proper sense of the term, and it was just this "extension", i.e. agreement to something which did not yet exist, to which Norway was unwilling to agree except on terms which would safeguard the opportunities for hunting and fishing which Norwegians then enjoyed in Eastern Greenland. The Norwegian Government therefore felt unable to give the recognition which was asked for.

[155] After a certain time, during which the communication of January 18th remained unanswered officially, but during which some unofficial communications passed, a note from the Norwegian Government, dated November 2nd, 1921, dealing with the Decrees of May 10th and June 16th of that year, stated that the Norwegian Government had not recognized, and could not recognize, an extension of Danish sovereignty which would involve a corresponding extension of the monopoly and result in the suppression of the hunting and fishing activities of the Norwegians in the parts of Greenland in question.

[156] Confronted with an attitude which did not satisfy it, the Danish Government expounded - as it had done to the British Government in July 1920 - its view of the situation in law, and in its note of December 19th, 1921, affirms that Danish sovereignty has no need of any renewed recognition by the Norwegian Government and asserts that this sovereignty has for a long time found expression in a series of international documents and legislative enactments, of which the contents have been brought to the knowledge of the countries concerned and to which no objection has ever been made.

[157] The Danish Government thus enunciates once more the view expressed in 1863 and in 1894, and in the note to the Foreign Office in July 1920, that it already possessed sovereignty over all Greenland. If that was the view which the Danish Government held before, during and at the close of these applications to the Powers, its action in approaching them in the way it did must certainly have been intended to ensure that those Powers should accept the point of view maintained by the Danish Government, namely, that sovereignty already existed over all Greenland, and not to persuade them to agree that a part of Greenland not previously under Danish sovereignty should now be brought thereunder. Their object was to ensure that those Powers would not attempt themselves to take possession of any [p62] non-colonized part of Greenland. The method of achieving this object was to get the Powers to recognize an existing state of fact.

[158] In these circumstances, there can be no ground for holding that, by the attitude which the Danish Government adopted, it admitted that it possessed no sovereignty over the uncolonized part of Greenland, nor for holding that it is estopped from claiming, as it claims in the present case, that Denmark possesses an old established sovereignty over all Greenland.

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[159] The period subsequent to the date when the Danish Government issued the Decree of May 10th, 1921, referred to above, witnessed a considerable increase in the activity of the Danish Government on the eastern coast of Greenland.

[160] That Decree was followed by the Decree of June 16th of the same year concerning navigation in the seas round Greenland and declaring that the whole of the coasts and islands were closed to Danish and to foreign ships. Though the stringency of this measure was relaxed when the Convention of 1924 was concluded, the exclusion of all shipping remains the rule except in so far as access is authorized by treaty or decree or special authorization.

[161] In 1925, legislation was enacted regulating the hunting and fishing, and in the same year Greenland was divided into provinces by a law which declared that all commercial activity was reserved to the Danish State.

[162] This legislation with regard to hunting and fishing, and the law dividing the country into provinces, are noteworthy, as are also the admission of French and British nationals to most-favoured-nation treatment in Eastern Greenland, under notes exchanged between Denmark and the British and French Governments in 1925.

[163] These were all cases in which the Danish Government was exercising governmental functions in connection with the territory now under dispute.

[164] The character of these Danish acts is not altered by the protests or reserves which, from time to time, were made by the Norwegian Government.

[165] These acts, coupled with the activities of the Danish hunting expeditions which were supported by the Danish Government, the increase in the number of scientific expeditions [p63] engaged in mapping and exploring the country with the authorization and encouragement of the Government, even though the expeditions may have been organized by non-official institutions, the occasions on which the *Godthaab*, a vessel belonging to the State and placed at one time under the command of a naval officer, was sent to the East coast on inspection duty, the issue of permits by the Danish authorities, under regulations issued in 1930, to persons visiting the eastern coast of Greenland, show to a sufficient extent - even when separated from the history of the preceding periods - the two elements necessary to establish a valid title to sovereignty, namely : the intention and will to exercise such sovereignty and the manifestation of State activity.

[166] The conclusion of the 1924 Convention with Norway, to which reference must again be made later, though signed by that State on the footing that she maintained her point of view as to the territorial status of Eastern Greenland (*terra nullius*) and that the conclusion of the Convention did not prejudice her point of view, does not exclude the right of Denmark to maintain her point of view that she was entitled to and was in fact enjoying sovereignty over all Greenland, nor does it exclude her right to show that the elements which go to establish a valid claim to sovereignty were both present.

[167] Except for the verbal change that the phrase "*territoire de Groënland*" is more often employed than "*Groënland*", the commercial arrangements concluded by Denmark during this period continue to provide that, on the Danish side, the agreement is not to apply to Greenland, showing thereby that the States with which Denmark was concluding these agreements were not disposed to dispute her claim to be sovereign over the area which the agreement denominates as Greenland. As also is the case with regard to the previous periods, it lies on Norway to show that the word "*Greenland*" in these agreements is used in some special sense which does not include the uncolonized part of the East coast, and in the opinion of the Court Norway has not shown that this is so.

[168] Even if the period from 1921 to July 10th, 1931, is taken by itself and without reference to the preceding periods, the conclusion reached by the Court is that during this time Denmark regarded herself as possessing sovereignty over all Greenland and displayed and exercised her sovereign rights to an extent sufficient to constitute a valid title to sovereignty. When considered in conjunction with the facts of the [p64] preceding periods, the case in favour of Denmark is confirmed and strengthened.

[169] It follows from the above that the Court is satisfied that Denmark has succeeded in establishing her contention that at the critical date, namely, July 10th, 1931, she possessed a valid title to the sovereignty over all Greenland.

[170] This finding constitutes by itself sufficient reason for holding that the occupation of July 10th, 1931, and any steps taken in this connection by the Norwegian Government, were illegal and invalid.

II.

[171] The Court will now consider the second Danish proposition that Norway had given certain undertakings which recognized Danish sovereignty over all Greenland. These undertakings have been fully discussed by the two Parties, and in three cases the Court considers that undertakings were given.

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[172] 1. In the first place, the Court holds that, at the time of the termination of the Union between Denmark and Norway (1814 to 1819), Norway undertook not to dispute Danish sovereignty over Greenland.

[173] In the early part of this judgment, it has been recalled that when the King of Denmark was obliged to renounce, in favour of the King of Sweden, his kingdom of Norway, Article 4 of the Treaty of Kiel of January 14th, 1814, excepted from that renunciation Greenland, the Faroes and Iceland.

[174] In order to effect the settlement - which was mainly of a financial character - rendered necessary by the separation of Norway from Denmark, Norwegian commissioners were appointed at the end of 1814 to confer with Danish commissioners. The solution of the questions to which the separation of the two countries gave rise was not easy. When, as early as 1816, Denmark began to fear that the conferences held at Copenhagen between the Danish and Norwegian commissioners would prove fruitless, the Danish Cabinet approached the Allied Powers. This step led to a Conference between these Powers which held its first meetings in London in July and August 1818. On the basis of a report of this Conference, the Congress of Aix-la-Chapelle decided, on November 13th, 1818, to make representations to the King of Sweden and Norway in order to ensure that the terms of the Treaty of Kiel were [p65] complied with so far as regards the portion of the debt of the Danish-Norwegian monarchy for which Norway was to be responsible.

[175] It was then that the King of Sweden and Norway reverted to the question of the former Norwegian possessions of which Greenland was one.

[176] The Norwegian commissioner at Copenhagen - M. Hoist - was instructed on January 7th,

1819, formally to claim the restitution of the Faroes, Iceland and Greenland "as being possessions which had formerly belonged to the Kingdom of Norway". The instructions given to M. Hoist referred to the fact that the "extraordinary Storting of 1814 had, in a most humble address, petitioned His Majesty to take the necessary steps to secure the restitution to the Kingdom of Norway of the Faroe Islands, Iceland and Greenland, possessions which for centuries were an integral part of that kingdom". This claim was presented to the Conference at Copenhagen on February 5th, 1819, and met with a point blank refusal on the Danish side. On learning of this refusal, the Minister for Foreign Affairs of Sweden and Norway, on February 23rd, 1819, authorized the Norwegian commissioner at Copenhagen to withdraw the claim. M. Hoist did so in a declaration which he made on March 27th, 1819, and the original French text of which should be given here:

"Il est notoire que le Prince Chrétien Frédéric [FN1] a provoqué de la part de la Représentation Nationale de la Norvège assemblée à Eidsvold, une protestation formelle contre le. Traité de Kiel, qui assurait au Roi [FN2] la Souveraineté sur la Norvège. Une constitution des plus libérales étant intervenue, la Représentation Nationale ayant, par une élection libre et spontanée, offert au Roi la Couronne de Norvège sous la condition expresse d'accepter la nouvelle constitution; et le Roi y ayant donné Son assentiment, et étant par là devenu Roi constitutionnel, au lieu de Souverain absolu, comme Il devait l'être conformément au Traité de Kiel, il en est résulté pour S. M. l'obligation d'avoir égard aux adresses que Lui présente le Stor-Thing dans les formes prescrites par la Loi. Or, le Stor-Thing s'étant adressé au Roi mon Auguste Souverain - l'effet d'engager S. M. à faire les démarches nécessaires pour que les îles de Faeroe, l'Islande et la Groenlande fussent restituées par le Dannemarc pour être réunies au Royaume de Norvège: le Roi n'a pu Se dispenser de satisfaire, sur ce point, aux vœux exprimés par l'assemblée nationale. En remplissant ce devoir selon la teneur littérale de l'adresse du Stor-Thing, l'intention n'a jamais été de lier cette question à celle de la liquidation en général, ni d'entraver en aucune manière la marche régulière d'une négociation que S. M. désire sincèrement de voir terminée à la satisfaction commune des [p66] deux parties intéressées. Lorsqu'il est question de la séparation politique de deux Etats, dont les intérêts se sont trouvés amalgamés par une union de plusieurs siècles, il serait impossible d'éviter des sacrifices de part et d'autre, et le Roi Se borne, en cette occasion d'énoncer Sa conviction certaine que, dans le cours de cette liquidation et lorsqu'il s'agira de balancer les ressources respectives des deux Etats, on pourra facilement tomber d'accord sur les moyens de compenser la perte qu'a faite en cette occasion la Norvège de ses colonies dans la mer du Nord."

[FN1] The Governor of Norway.

[FN2] The King of Sweden.

[177] The last sentence of this declaration brings out not only the financial element in the claim for the restitution of the possessions in question but also, and above all, the fact that the claim was definitely withdrawn.

[178] Moreover, in March 1819, the Minister for Foreign Affairs of Sweden and Norway communicated to the British Minister at Stockholm a request for the mediation of the Prince Regent of Great Britain in the matter in regard to which the Cabinets of Stockholm and Copenhagen were still at variance, and said that the King of Sweden and Norway abandoned on behalf of Norway all claim to the Faroe Islands, Iceland and Greenland.

[179] In a note dated May 28th, 1819, the Minister for Foreign Affairs of Sweden and Norway once more wrote to the British Minister at Stockholm that the King of Sweden and Norway agreed to "renounce in favour of the Crown of Denmark the claims of this country [Norway] in respect of Iceland, Greenland and the Faroe Islands".

[180] This renunciation found expression in the conclusions reached by a conference at Stockholm. With the British Minister in that capital acting as mediator, the conference prepared for signature by the King of Denmark and by the King of Sweden and Norway, in his capacity as King of Norway, the Convention of September 1st, 1819, which finally settled the difficulties.

[181] Article 9 of this Convention [FN1] states that "everything in connection with the Treaty of Kiel in general and with its [p67] sixth article [FN1] [the financial article] in particular" is completely settled. There can be no doubt that the words "everything in connection with the Treaty of Kiel in general" cover also Article 4 of the Treaty which mentions Greenland and that they are incompatible with the Norwegian argument to the effect that the Convention of September 1st, 1819, only relates to the financial settlement between Denmark and Norway. In this connection, it may be observed that it is true that the first draft convention drawn up by the Danish Commissioners at Copenhagen on July 16th, 1819, including Article VI of that draft, which corresponds to Article 9 of the Convention of September 1st, 1819, only related to financial matters. Article VI of this draft ran as follows: "Everything in connection with the execution of Article 6 [the financial article] of the Treaty of Kiel being regarded as settled by the above points...." Article VI of the Danish draft was however amended on August 23rd, 1819, when a new draft was submitted to the Stockholm Conference by the Danish plenipotentiary and the British mediator. This second draft extended the scope of Article VI of the original Danish draft of July 16th, 1819, so that it now said that not only Article 6 of the Treaty of Kiel was to be regarded as completely settled, but "Everything in connection with the Treaty of Kiel in general and with its sixth article in particular". This change, which was maintained in Article 9 of the Convention, finally disposes not only of [p68] the financial questions dealt with in Article 6 of the Treaty of Kiel but of all questions mentioned in the Treaty, and therefore also of the territorial questions in Article 4, which leaves Greenland to Denmark. As has already been explained, "Greenland" in Article 4 of the Treaty of Kiel means the whole of Greenland.

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[FN1] This Article runs as follows :

"Article neuf. - Tout ce qui concerne le Traité de Kiel en général, et nommément Son Sixième Article, étant ainsi envisagé comme entière-ment réglé, Sa Majesté le Roi de Suède et de Norvège, et Sa Majesté le Roi de Dannemarc déclarent qu'aucun payment ultérieur, hormis ce qui est stipulé actuellement, ne sera soit à titre dudit Traité, soit pour cause de l'ancienne Union entre la Norvège et le Dannemarc, exigé de part et d'autre; ni par le Gouvernement Norvégien du Gouverne-ment Danois ou des Sujets Danois; ni par le Gouvernement Danois du Gouvernement Norvégien ou des Sujets Norvégiens; de même qu'au-cune prétention, qui, à ce titre, ou pour cette cause, a pu être avancée jusqu'à présent des deux côtés, ne sera désormais prise en considéra- . tion ou mise en discussion, qu'en tant qu'elle s'accorde avec les termes, et les principes de cette Convention, qui annule de fait et de droit toute redevance ultérieure de part et d'autre."

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[FN1] Translation as printed in the "Annual Register" for 1814:

"Article VI. As the whole debt of the Danish Monarchy is contracted, as well upon Norway as the other parts of the kingdom, so his Majesty the King of Sweden binds himself, as Sovereign of Norway, to be responsible for a part of that debt, proportioned to the population and revenue of Norway.

By public debt is to be understood that which has been contracted by the Danish Government, both at home and abroad. The latter consists of Royal and State obligations, bankbills, and paper money formerly issued under Royal authority, and now circulating in both kingdoms.

An exact account of this debt, such as it was on the 1st of January 1814, shall be taken by Commissioners appointed to that effect by both Crowns, and shall be calculated upon a just division of the population and revenues of the kingdoms of Norway and Denmark. These Commissioners shall meet at Copenhagen, within one month after the exchange of the ratification of this treaty, and shall bring this affair to a conclusion as speedily as possible, and at least before the expiration of the present year; with this understanding, however, that the King of Sweden, as Sovereign of Norway, shall be responsible for no other portion of the debt contracted by Denmark, than that for which Norway was liable before its separation."

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[182] The Court holds that, in consequence of the various undertakings resulting from the separation of Norway and Denmark and culminating in Article 9 of the Convention of September 1st, 1819, Norway has recognized Danish sovereignty over the whole of Greenland and consequently cannot proceed to the occupation of any part thereof.

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[183] 2. A second series of undertakings by Norway, recognizing Danish sovereignty over Greenland, is afforded by various bilateral agreements concluded by Norway with Denmark, and by various multilateral agreements to which both Denmark and Norway were contracting Parties, in which Greenland has been described as a Danish colony or as forming part of Denmark or in which Denmark has been allowed to exclude Greenland from the operation of the agreement.

[184] The first of these agreements is the Commercial Treaty concluded between Denmark and the United Kingdoms of Sweden and Norway on November 2nd, 1826, a Treaty for which provision was made in Article 23 of the Treaty of Kiel. Article 5 of that Treaty reads as follows: "The respective colonies of the two High Contracting Parties, including in the case of Denmark, Greenland, Iceland, and the Faroe Isles, shall be specially excepted from the provisions of the four preceding articles, which shall only be applicable to the Kingdom of Denmark, the Duchies of Slesvig, Holstein and Lauenbourg of the one part, and to the Kingdoms of Sweden and Norway, of the other part."

[185] Among more modern agreements may be quoted, as examples, the stipulations in the Universal Postal Conventions of 1920, 1924 and 1929, which say that : "The following shall be considered as belonging to the Universal Postal Union: (c) the Faroe Isles and Greenland, as being part of Denmark."

[186] It has already been said that when the Treaty of 1826 speaks of "Greenland", this can only denote Greenland in the sense, for example, of Article 4 of the Treaty of Kiel, i.e. the whole of Greenland. The same applies to the Danish-Norwegian Agreements, referred to above, which

followed the Treaty of 1826. In accepting these bilateral and multilateral agreements as binding upon herself, Norway reaffirmed [p69] that she recognized the whole of Greenland as Danish; and thereby she has debarred herself from contesting Danish sovereignty over the whole of Greenland, and, in consequence, from proceeding to occupy any part of it.

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[187] 3. In addition to the engagements dealt with above, the Ihlen declaration, viz. the reply given by M. Ihlen, the Norwegian Minister for Foreign Affairs, to the Danish Minister on July 22nd, 1919, must also be considered.

[188] This declaration by M. Ihlen has been relied on by Counsel for Denmark as a recognition of an existing Danish sovereignty in Greenland. The Court is unable to accept this point of view. A careful examination of the words used and of the circumstances in which they were used, as well as of the subsequent developments, shows that M. Ihlen cannot have meant to be giving then and there a definitive recognition of Danish sovereignty over Greenland, and shows also that he cannot have been understood by the Danish Government at the time as having done so. In the text of M. Ihlen's minute, submitted by the Norwegian Government, which has not been disputed by the Danish Government, the phrase used by M. Ihlen is couched in the future tense: "ne fera pas de difficultés" ; he had been informed that it was at the Peace Conference that the Danish Government intended to bring up the question: and two years later - when assurances had been received from the Principal Allied Powers - the Danish Government made a further application to the Norwegian Government to obtain the recognition which they desired of Danish sovereignty over all Greenland.

[189] Nevertheless, the point which must now be considered is whether the Ihlen declaration - even if not constituting a definitive recognition of Danish sovereignty - did not constitute an engagement obliging Norway to refrain from occupying any part of Greenland.

[190] The Danish request and M. Ihlen's reply were recorded by him in a minute, worded as follows [FN1]:

"I. The Danish Minister informed me today that his Government has heard from Paris that the question of Spitzbergen will be examined by a Commission of four members (American, British, French, Italian). If the Danish Government is questioned by this Commission, it is prepared to reply that Denmark has no interests in Spitzbergen, and that it has no reason to oppose the [p70] wishes of Norway in regard to the settlement of this question.

Furthermore, the Danish Minister made the following statement:

The Danish Government has for some years past been anxious to obtain the recognition of all the interested Powers of Denmark's sovereignty over the whole of Greenland, and it proposes to place this question before the above-mentioned Committee at the same time. During the negotiations with the U.S.A. over the cession of the Danish West Indies, the Danish Government raised this question in so far as concerns recognition by the Government of the U.S.A., and it succeeded in inducing the latter to agree that, concurrently with the conclusion of a convention regarding the cession of the said islands, it would make a declaration to the effect that the Government of the U.S.A. would not object to the Danish Government extending their political and economic interests to the whole of Greenland.

The Danish Government is confident (he added) that the Norwegian Government will not make any difficulties in the settlement of this question.

I replied that the question would be examined.

14/7 - 19 Ih."

"II. To-day I informed the Danish Minister that the Norwegian Government would not make any difficulties in the settlement of this question.
22/7 - 19 Ih."

[FN1] Translation from a French text supplied by Norway.

[191] The incident has, therefore, reference, first to the attitude to be observed by Denmark before the Committee of the Peace Conference at Paris in regard to Spitzbergen, this attitude being that Denmark would not "oppose the wishes of Norway in regard to the settlement of this question"; as is known, these wishes related to the sovereignty over Spitzbergen. Secondly, the request showed that "the Danish Government was confident that the Norwegian Government would not make any difficulty" in the settlement of the Greenland question; the aims that Denmark had in view in regard to the last-named island were to secure the "recognition by all the Powers concerned of Danish sovereignty over the whole of Greenland", and that there should be no opposition "to the Danish Government extending their political and economic interests to the whole of Greenland". It is clear from the relevant Danish documents which preceded the Danish Minister's demarche at Christiania on July 14th, 1919, that the Danish attitude in the Spitzbergen question and the Norwegian attitude in the Greenland question were regarded in Denmark as interdependent, and this interdependence appears to be reflected also in M. Ihlen's minute of the interview. Even if this interdependence-which, in view of the affirmative reply of the Norwegian Government, in whose name the Minister for Foreign Affairs was speaking, would have created a bilateral engagement - is not held to have been established, it can hardly [p71] be denied that what Denmark was asking of Norway ("not to make any difficulties in the settlement of the [Greenland] question") was equivalent to what she was indicating her readiness to concede in the Spitzbergen question (to refrain from opposing "the wishes of Norway in regard to the settlement of this question"). What Denmark desired to obtain from Norway was that the latter should do nothing to obstruct the Danish plans in regard to Greenland. The declaration which the Minister for Foreign Affairs gave on July 22nd, 1919, on behalf of the Norwegian Government, was definitely affirmative : "I told the Danish Minister today that the Norwegian Government would not make any difficulty in the settlement of this question."

[192] The Court considers it beyond all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs.

[193] Norway has objected that the Danish Government's intention to extend the monopoly régime to the whole of Greenland was not mentioned in the Danish request of July 14th, 1919, as is alleged to have been done at a later date in the communications addressed to the interested Powers in 1920 and 1921; and it is argued that if the Norwegian Government had been warned of this intention, the declaration of the Minister for Foreign Affairs would have been in the negative; and that, in consequence, the declaration, though unconditional and definitive in form, cannot be relied on against Norway.

[194] The Court cannot admit this objection. It seems difficult to believe that Norway could not have foreseen the extension of the monopoly, in view of the fact that the United States of

America, which had received in 1915 a request similar to that made to Norway on July 14th, 1919, had understood perfectly well that the Danish plans in regard to the uncolonized parts of Greenland involved an extension of the monopoly régime - although this was not mentioned in the Danish request at Washington - and had for that very reason at first demanded the maintenance of the "open door". It is all the more difficult for the Court to accept the Norwegian argument on this point because the monopoly, in Greenland, is an institution which traces its origin to the Dano-Norwegian administration in the XVIIIth century. It is also noteworthy that Norway has adduced a document of an official character, dated November 3rd, 1916 (viz., the letter from the Danish Minister of the Interior (Directorate of Greenland Colonies) to the Parliamentary Committee for the Danish West Indies), from which it appears that the Danish administration was at that time [p72] contemplating the application of the régime of exclusion to the whole area of Greenland. The word "exclusion" is more correct in this context than "monopoly", but this in no way affects the argument.

[195] From the foregoing, it results that the Court is unable to regard the Ihlen declaration of July 22nd, 1919, otherwise than as unconditional and definitive.

[196] The standpoint adopted by Norway led her in 1921 to refuse a written confirmation of the Ihlen declaration, when such confirmation was requested by Denmark in the note from her Minister at Christiania on January 18th, 1921.

[197] Thus, after the issue by Denmark of the Decree of May 10th, 1921, which introduced the régime of exclusion for the whole of Greenland, M. Ræstad, the Minister for Foreign Affairs, informed the Danish Minister at Christiania, unofficially, on July 20th, 1921, that "the Norwegian Government has not recognized and cannot consent to recognize an extension of Danish sovereignty over Greenland which would involve a corresponding extension of the Danish monopoly, since the result would be the extinction of the economic activities, and particularly the hunting and fishing operations hitherto pursued without hindrance by Norwegians in the parts of Greenland and in the Greenland waters in question"; this was confirmed in the official Norwegian note of November 2nd, 1921, which has been referred to earlier in this judgment. The régime of exclusion, which - according to the Norwegian Government's argument - could not have been foreseen by it, was sufficient to justify - according to such argument - the change in its attitude.

[198] It follows from what has already been said that the Court is unable to adopt this reasoning.

[199] The Court readily understands that Norway should feel concern for the interests of the Norwegian hunters and fishermen on the East coast of Greenland ; but it cannot forget, in this connection, that as early as December 1921, Denmark announced her willingness to do everything in her power to make arrangements to safeguard Norwegian subjects against any loss they might incur as a result of the Decree of May 10th, 1921 (letter from the Danish Minister at Christiania dated December 19th, 1921, to the Norwegian Minister for Foreign Affairs). The Convention of July 9th, 1924, was a confirmation of Denmark's friendly disposition in respect of these Norwegian hunting and fishing interests.

[200] What the Court cannot regard as being in accordance with the undertaking of July 22nd, 1919, is the endeavour to replace an unconditional and definitive undertaking by one which was subject to reservations : and what it is even more difficult for the Court to admit is that, notwithstanding the undertaking of July 22nd, 1919, by which she promised to refrain [p73] from making difficulties in the settlement of the Greenland question, Norway should have stipulated that "Eastern Greenland must be Norwegian". This pretension was already apparent at

the end of a letter of January 12th, 1923, from the Norwegian Minister at Copenhagen to the Danish Minister for Foreign Affairs; and it was enunciated very definitely on September 28th, 1923, in the minutes of the sixth meeting of the Conference which drew up the Convention of July 9th, 1924, and again in the Protocol signed on January 28th, 1924, referred to above.

[201] The Court is unable to read into the words of the Ihlen declaration "in the settlement of this question" (i.e. the Greenland question) a condition which would render the promise to refrain from making any difficulties inoperative should a settlement not be reached. The promise was unconditional and definitive. It was so understood by the Norwegian Minister for Foreign Affairs when he told the Danish Minister at Christiania - on November 7th, 1919, that "it was a pleasure to Norway to recognize Danish sovereignty over Greenland" (dispatch from the Danish Minister at Christiania to the Danish Minister for Foreign Affairs of November 8th, 1919). It was also in the same sense that the Danish Minister at Christiania had understood the Ihlen declaration, when he informed the Danish Minister for Foreign Affairs on July 22nd, 1919, that M. Ihlen had told him "that the plans of the Royal Government in regard to the sovereignty of Denmark over the whole of Greenland would not encounter any difficulties on the part of Norway".

[202] It follows that, as a result of the undertaking involved in the Ihlen declaration of July 22nd, 1919, Norway is under an obligation to refrain from contesting Danish sovereignty over Greenland as a whole, and a fortiori to refrain from occupying a part of Greenland.

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[203] Denmark has maintained that the Convention of July 9th, 1924, already referred to above, excludes any right on the part of Norway to occupy a part of Greenland.

[204] In this connection it should be noted that when Norway initiated negotiations in 1923, on the question of Greenland, the negotiations were intended to cover the whole problem of Greenland, and primarily the legal status of the eastern coast. But when it was found impossible to reconcile the Danish theory of sovereignty and the Norwegian theory of a terra nullius, it became necessary to confine the negotiations to an arrangement on certain matters which it was possible to regulate, while leaving the legal status of the uncolonized [p74] part of the island undefined. The matters in question were the right of sojourn, of taking possession of land for user, the right of hunting and fishing and of establishing telegraph stations and other installations in Eastern Greenland. These were interests which Norway was, as is known, much concerned to uphold. In order to make it quite clear that the Convention only covered a limited part of the whole question of Greenland, the Parties exchanged identic notes, on the same day as the signature of the Convention, declaring that each reserved its fundamental standpoint on questions concerning Greenland not dealt with in the Convention, so that nothing was prejudged, nothing abandoned or lost thereby. The question of the sovereignty and that of the terra nullius - to mention that point alone - were thus left entirely outside the Convention of July 9th, 1924, and the Court finds that neither Denmark nor Norway can derive support from the Convention for their fundamental standpoints on the legal status of the territory covered by the Convention: viz., Danish sovereignty, or terra nullius, respectively. And, in truth, Norway has never argued that she was entitled to derive any such argument from the Convention.

[205] Finally, Denmark has maintained that, under certain provisions of the Covenant of the League of Nations, of the General Act of conciliation, judicial settlement and arbitration of 1928 and of conventions between Denmark and Norway for the pacific settlement of disputes, Norway is likewise bound to abstain from occupying any part of Greenland; it is also maintained

that the same result ensues from two agreements said to have been arrived at by the two Parties at the beginning of July 1931, in the course of the exchange of views which preceded the occupation of July 10th, and of which an account has been given in the early part of this judgment.

[206] In view of the conclusion reached by the Court, there is no need for these questions to be considered.

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[207] Each Party has prayed the Court to order the other Party to pay the costs in the present case. The Court, however, holds that there is no need in the present case to deviate from the general rule laid down in Article 64 of the Statute, namely, that each Party will bear its own costs. [p75]

[208] FOR THESE REASONS,
The Court,
by twelve votes to two,

- (1) decides that the declaration of occupation promulgated by the Norwegian Government on July 10th, 1931, and any steps taken in this respect by that Government, constitute a violation of the existing legal situation and are accordingly unlawful and invalid;
- (2) rejects the opposing submissions of the Norwegian Government;
- (3) declares that there is no need to deviate from the general rule laid down in Article 64 of the Statute that each Party will bear its own costs.

[209] Done in French and English, the English text being authoritative, at the Peace Palace, The Hague, this fifth day of April, one thousand nine hundred and thirty-three, in three copies, one of which shall be placed in the archives of the Court and the others delivered to the Agents of the Government of His Majesty the King of Denmark and of the Government of His Majesty the King of Norway respectively.

(Signed) M. Adatci,
President.

(Signed) Å. Hammarskjöld,
Registrar.

[210] M. Anzilotti, Judge, and M. Vogt, Judge ad hoc, declare that they are unable to concur in the judgment given by the Court and, availing themselves of the right conferred on them by Article 57 of the Statute, append to the judgment the dissenting opinions which follow.

[211] MM. Schücking and Wang, Judges, whilst concurring in the judgment, have appended thereto the observations which follow.

(Initialed) M. A.
(Initialed) A. H. [p76]

Dissenting Opinion of M. Anzilotti.

[Translation.]

[212] Being unable wholly to concur in the present judgment, and having regard to the

importance of the case and of the principles of law involved, I feel it my duty to avail myself of my right under the Court's Statute and to indicate as briefly as possible my standpoint in regard to this dispute.

[213] 1.- In the first place, I dissent with regard to the manner in which the question referred to the Court has been approached.

[214] The dispute is one between Denmark and Norway regarding the sovereignty over a territory in Eastern Greenland. Denmark's position in Greenland formed the subject of a request addressed by the Danish Government to the Norwegian Government in July 1919, and of a declaration on the part of the latter Government accepted by the Danish Government. Accordingly, in my view, the first thing to be done was to decide whether this constituted a valid agreement between the two Governments; if so, the rule to be applied for the solution of the dispute should first and foremost have been sought in this agreement.

[215] I am quite aware that this was not the line taken by the Parties, one of whom desired to take advantage of the present proceedings in order to attempt to establish his sovereignty over all Greenland, and, accordingly, had every interest in presenting the request addressed to the Norwegian Government, and other similar overtures, in the light of a preconceived theory, whilst it was to the other's interest to show that the declaration made on his behalf in 1919 was devoid of any importance. That, however, should not have prevented the Court from rectifying the position in accordance with the principles of law and the rules of its own Statute.

[216] I speak only of the Danish request in 1919 and of the declaration made in response thereto because, in my view, that is the only agreement between the two countries - assuming, of course, that there was an agreement - which concerns the question submitted to the Court. As regards the Convention of July 9th, 1924, concerning Eastern Greenland, I hold, with the judgment, that the notes exchanged the same day between the Danish and Norwegian Governments render it impossible to adduce any argument from that Convention in support of the contentions of either Party. [p77]

[217] 2. - The important point in the present proceedings is, of course, the request made to the Norwegian Government by the Danish Government and the former's declaration.

[218] The request addressed to the Norwegian Government was, however, only one of several similar overtures on the part of the Danish Government addressed, from the end of 1915 onwards, to a number of States with a view to defining and securing its position in Greenland. It is scarcely possible rightly to appreciate the request with which we are concerned unless we consider it in conjunction with the whole series of overtures of which it formed part, more especially since, as we shall presently see, the request addressed to the Norwegian Government, as a result of which the declaration was made, reproduced the terms of a declaration obtained by the Danish Government from another State.

[219] This is the point of view from which I shall briefly consider the overtures in question, in regard to which I am definitely at variance with the Court. In order to avoid repetition, I shall leave aside for the moment the request addressed to the Norwegian Government : I shall devote special attention to that, after I have defined the meaning and effect of the overtures made by the Danish Government to other States.

[220] 3. - The best way of appreciating these overtures is, in my view, to allow the documents relating to them to speak for themselves. Though the attitude adopted by the Danish Government

is, in a sense, the most important factor, the answer given by the foreign governments must also be noted, either because it shows how the Danish request was understood, or because the Danish Government, in accepting these answers without observations or reservations, showed that it accepted the interpretation placed by the other Government upon its request.

[221] It seems that the Danish Government raised the question of its sovereignty over all Greenland for the first time in connection with the negotiations regarding the cession of the Danish West Indies to the United States of America. We do not know how the Danish Government first approached the American Government: a proposal was made by the latter Government (see Danish Government's Case) which was solely concerned with securing the principle of the open door and was not accepted by the Danish Government.

[222] But in the memorandum handed to the Secretary of State on December 27th, 1915, the Danish Minister in Washington, after stating that "it was desirable that the Danish Government should extend its care by the suzerainty of the State to include the whole of Greenland", added that he had been [p78] "instructed" by his Government "to say that the Danish Government would very much desire to receive the binding promise of the American Government that no objection would be raised to the said extension of the care and suzerainty of Denmark to the whole of Greenland" (Annexes to Norwegian Government's Counter-Case, No. 38).

[223] The American Government's declaration of August 4th, 1916, is to the effect that "the Government of the United States of America will not object to the Danish Government extending their political and economic interest to the whole of Greenland" (Annexes to the Danish Government's Reply, No. 170). The terms of this declaration deviate from those of the request; but it is certain that the declaration was construed by the Danish Government as a promise not to object to the extension of Danish sovereignty. This emerges from several documents; but the report of the Minister for Foreign Affairs to the King, dated August 1st, 1916 - reproduced under №.165 of the Annexes to the Danish Government's Reply - appears to me to be absolutely decisive in this respect. In his report, the Foreign Minister says:

"Finally, it appears to me most important that the United States of America have offered to make, simultaneously with the signature of a convention, an official declaration to the effect that the Government of the United States of America will not object to the Danish Government extending their sovereignty to include the whole of Greenland...."

[224] This is especially worthy of note because, in all the overtures successively undertaken by it, the Danish Government expressly referred to the request made to the United States of America; the American declaration was submitted to the other governments as a model for the declaration asked of them.

[225] The overtures to the other Powers - as I have said, I am leaving aside for the moment the request addressed to the Norwegian Government - were only made later and when it was no longer possible for the question to be brought before the Peace Conference. On March 2nd, 1920, the Danish Minister for Foreign Affairs sent to the Danish Ministers in London, Paris, Tokyo and Rome, instructions which were to serve as a basis for overtures to the respective governments.

[226] In these instructions (Annexes to the Danish Government's Reply, No. 170), after outlining Danish activities in Greenland since 1721, and after observing that several parts of that country had been effectively occupied on behalf of Denmark, but [p79] that "formal possession of Greenland as a whole had not been taken", the Minister for Foreign Affairs goes on to say that,

"having regard to Danish sentiment in this matter and in the interest of the Eskimos, it would be desirable that the Danish Government should be enabled to extend its care, by means of its sovereignty, over the whole of Greenland".

[227] The instructions next describe the request made to the United States of America and reproduce the terms of the declaration made by the American Government. They conclude by requesting the Danish representative "to endeavour to obtain the Government's official recognition of Danish sovereignty over all Greenland", and they add that "the best way of obtaining such recognition from would, in the Foreign Minister's opinion, be for the Government to make a declaration corresponding to that made by the American Government". The import attached to that declaration by the Danish Government has already been seen.

[228] In the note transmitted on March 16th, 1920, to the British Secretary of State for Foreign Affairs (Annexes to the Danish Government's Reply, No. 171), we read: "I have accordingly been instructed to submit to His Britannic Majesty's Government a request for the official recognition of His Danish Majesty's sovereignty over the whole of Greenland. In view of my Government's opinion, such recognition might be given in the same way as the Government of the United States of America recognized in 1916...."

[229] To this note was attached a memorandum which, pursuant to the instructions received, gave an account of the historical relations between Denmark and Greenland and set out the other considerations militating in favour of the request. The memorandum concluded with the following paragraph:

"Danish explorers have visited practically the whole of uninhabited Greenland and made maps of the country, but no formal occupation of the whole of Greenland has actually taken place. In view of Danish sentiments in this matter as well as the interest of the Esquimau population, it would be desirable if the Danish Government could extend its activity by proclaiming its sovereignty over the entire territory of Greenland."

[230] The notes to the Italian Government, on March 17th, 1920 (Annexes to the Danish Government's Reply, №. 173), to the French Government, on March 20th, 1920 (ib., №. 174), to the Japanese Government, on May 12th, 1920 (ib., №. 175), and to the Swedish Government, on January 13th, 1921 (ib., №. 177), together with the documents annexed to them, though containing some differences in wording, all reproduce the same essential ideas, that is to say that, ever since the beginning [p80] of the XVIIIth century, Denmark has been founding colonies in Greenland, but that formal possession has not been taken of the whole of Greenland in the name of the Crown of Denmark; that it is desirable that Denmark should be enabled to extend her sovereignty and, thereby, her care to the whole of Greenland; finally, that the recognition of Danish sovereignty might take the form of a declaration similar to that made by the United States of America, the terms of which are given in each case.

[231] On two occasions, however, the Danish Government deviated from this standpoint and contended that the recognition sought was in respect of a situation already existing and long since established: this it did, first, in the note which the Danish Minister in London, on the basis of the instructions received by him from the Foreign Minister (Annexes to the Danish Government's Reply, №. 176), addressed to the British Government on July 20th, 1920 (Danish Government's Case), and secondly, in the note addressed by the Danish Minister at Christiania to the Norwegian Government on December 19th, 1921 (Annexes to Danish Government's Case, №. 91). It is therefore necessary to see in what circumstances this attitude was adopted.

[232] The note of July 20th, 1920, to the British Government is a reply to that Government's note of May 19th (Danish Government's Case): in the latter note, the Foreign Office stated that they were prepared officially to recognize Danish sovereignty over Greenland, provided that Denmark gave the British Empire a right of preemption in the event of the sale of the island. It was to avoid this condition, which had met with determined opposition from the United States of America, that the Danish Government adopted the attitude expressed in the note in question.

[233] As regards the note of December 19th, 1921, that document was in reply to the note of November 2nd, in which the Norwegian Minister for Foreign Affairs informed the Danish Government that the Norwegian Government had not recognized, and could not consent to recognize, an extension of Danish sovereignty over Greenland, involving a corresponding extension of the Monopoly, and the resulting extinction of the fishing and hunting operations hitherto conducted by Norwegians in the parts of Greenland in question and in the adjacent waters.

[234] It should be observed that the Danish Government affirmed the preexistence of its sovereignty over all Greenland when it was necessary to do this in order to refute claims which it was unable or unwilling to admit; apart from such cases, it confined itself to asking for a recognition of an extension of its [p81] sovereignty. It is therefore difficult to consider the two notes of July 20th, 1920, and December 19th, 1921, as representing the standpoint adopted by the Danish Government in approaching foreign governments in regard to its position in Greenland ; to do so would indeed set these two documents in manifest contradiction with the direct, definite, and concordant statements which appear in all the other documents.

[235] The only conclusion which I find it possible to derive from the two notes in question is that, at that moment, the Danish Government was perfectly aware of the possibility of adopting either attitude: viz. that of affirming an already existing sovereignty, and requesting its recognition, or that of urging reasons in support of an extension of its sovereignty, and requesting the recognition of this extension. It elected to adopt the latter attitude and only resorted to the former in the course of a discussion and to avoid conditions or limitations which it felt unable to accept.

[236] The majority of the replies from the interested States show that it was, in truth, in that sense that the governments understood the request made to them by the Danish Government, and that what they agreed to recognize was the extension of Danish sovereignty over the whole of Greenland.

[237] Thus, the French reply, dated March 31st, 1920, says that "the Government of the Republic will not object to the Danish Government extending its sovereignty over the whole of Greenland in the manner indicated in the American note of August 4th, 1916" (Danish Case).

[238] The Japanese reply, dated June 24th, 1920, is worded as follows: "I have the further honour to declare herewith on behalf of the Imperial Government that they have no objection to the Danish Government extending their political and economic interests to the whole of Greenland." (ib.)

[239] The Italian Government's reply, dated June 29th, 1920, states that "the Royal Government will have no difficulty in recognizing the sovereignty of Denmark over Greenland" (ib.). In my opinion, it is beyond all doubt that what is contemplated here is a future recognition, i.e. a recognition which will not be refused whenever Danish sovereignty has been extended to the whole of Greenland.

[240] The British and Swedish replies alone - the former, no doubt, as a result of the Danish note of July 20th, 1920 - appear to contemplate a recognition independent of any future events : the British reply, dated September 6th, 1920, states that "His Majesty's Government recognize His Danish Majesty's [p82] sovereignty over Greenland" (Danish Case) ; and the Swedish reply, dated January 28th, 1921, declares that "... His Majesty's Government, as from this date, has recognized the sovereignty of Denmark over the whole of Greenland" (ib.). But there is nothing in these replies to indicate that these Governments believed that they were confirming an already existing sovereignty. The fact that the British Government felt justified in appending to its recognition a reservation in regard to its right to be consulted in case the Danish Government should contemplate alienating this territory, appears rather to point to an opposite conclusion.

[241] I am therefore of opinion that, if one reads the documents as they stand, giving the words the sense which they naturally bear in the context, one is inevitably led to the conclusion that the Danish Government was making a distinction between the colonized districts of Greenland and the other parts of the country, and that what it was requesting from the States whom it approached was, not the recognition of an already existing sovereignty, but the recognition of the right to extend its sovereignty to the whole of Greenland.

[242] 4. - Such, in my opinion, is the conclusion which emerges from the text of the documents.

[243] It remains to be seen whether this conclusion is inexplicable or inconsistent, having regard to the position of Denmark in Greenland at the moment when the overtures were made. It is in this connection that the historical question of Danish sovereignty in Greenland arises in the present suit; a literal interpretation fails where it would lead to absurd or inconsistent results.

[244] Two facts in particular merit attention.

[245] First, the existence of an ancient claim to sovereignty over the country known as Greenland, a claim unconnected either with the extent of the colonization of the country, or even with a more or less accurate geographical demarcation thereof.

[246] It is agreed that the origin of this claim resides in the authority which the ancient kings of Norway had acquired over the political organization which inhabitants of Iceland, of Norwegian origin, had founded at the end of the Xth century in South-West Greenland and which, at first independent, did homage to the King of Norway in 1261 and became tributary to the Kingdom of Norway. This species of suzerainty fitted in with the notion of an exclusive dominion of the kings of Norway over the seas and lands of the North and afforded the basis for a claim which was neither limited to the territory occupied by the tributary State nor subject to the condition that that State should continue to exist. [p83]

[247] It was, no doubt, as a consequence of this claim that, some two centuries after the political organization in Greenland had been destroyed by the Eskimos, and practically all communication with Greenland had ceased, the kings of the Danish-Norwegian Union announced the intention of re-establishing the old relations with "the Country of Greenland belonging to Our Kingdom of Norway"; or described themselves as "hereditary sovereigns of Greenland"; or spoke of "Our Country of Greenland", etc.

[248] Again, this historic claim manifests itself in legislation or in treaties relating to Greenland as a whole. The *animus possidendi*, of which so much has been said in these proceedings, is, at bottom, nothing else than the old claim on the basis of which, first the kings of Denmark and

Norway and later the kings of Denmark, did not hesitate to act as sovereigns of Greenland when opportunity offered itself.

[249] The other fact deserving of attention is the disproportion between the claim to sovereignty over all Greenland and the effective exercise of that sovereignty.

[250] I am prepared to admit that the Danish Government has proved that, on some occasions, laws have been promulgated which, according to their meaning and tenour, were not limited to the colonized parts of Greenland; I also concede that frequently the Danish-Norwegian Union or Denmark have acted, in relation to foreign States, as though their sovereignty covered all parts of Greenland alike.

[251] But that is all that can be conceded to the Danish stand-point. It is undeniable and it has not been denied - and that in my view is the essential point - that in this respect there was a profound difference between the colonized regions of Greenland and the remainder thereof; for, whereas in the colonies there was a regular administration and a judicial organization, in the remainder of Greenland there were perhaps laws in force but no authority to enforce them: in fact - and this is a circumstance as exceptional as it is significant - no officials had even been appointed competent to decide disputes or to apply and ensure respect for the law.

[252] For a long time, the disproportion to which I have referred was not of much importance. This was the case not merely because the requirements of international law were then smaller, but also, and above all, because the title to sovereignty existed independently of its exercise: the Danish-Norwegian or Danish kings did not claim to be sovereigns of Greenland because they exercised authority over that country; they exercised authority over it because they claimed to be the hereditary sovereigns of the country. From this point of view, and having regard to the natural conditions [p84] prevailing in Greenland, I unhesitatingly admit that Danish-Norwegian or Danish sovereignty was manifested in a manner satisfying to requirements of international law, in the sense that sovereignty over all Greenland was neither compromised nor lost. It is however obvious that this position is only tenable if one postulates the existence of a title to sovereignty antecedent to the so-called second colonization and if the validity of that title is established.

[253] The situation however evolved in an entirely contrary direction.

[254] Historic claims to dominion over whole regions - claims which had, formerly, played an important part in the allocation of territorial sovereignty: - lost weight and were gradually abandoned even by the States which had relied upon them. International law established an ever closer connection between the existence of sovereignty and the effective exercise thereof, and States successfully disputed any claim not accompanied by such exercise.

[255] Furthermore, the natural conditions prevailing in Greenland and their importance changed appreciably as a result of technical improvements in navigation which opened up to human activities a part of that country, especially the East coast, which previously, although known, had been practically inaccessible.

[256] Accordingly, the question of Danish sovereignty over Greenland presented itself in a new light.

[257] For, if the notion of a historical sovereignty arising from the old Norwegian claims be discarded, Denmark's title to sovereignty over Greenland must necessarily be sought in a taking

of possession effected since 1721. But in that case it is a question of the occupation of a terra nullius. To say that the title resides in possession and not in occupation is a verbal quibble, for possession of a territory which formerly belonged neither to the State possessing it nor to any other State is nothing else than occupation considered at a moment subsequent to the original act of occupying.

[258] In short, either the so-called second colonization is the manifestation of a preexisting sovereignty and the title to this sovereignty must be established and shown to be valid; or else Greenland, in 1721, was a terra nullius and we have before us an occupation which must be appraised in accordance with the rules governing occupation.

[259] The historical development of Denmark's position in Greenland in the XIXth century was bound to give rise to this problem. Accordingly, it is easy to understand the anxiety which became evident with respect to parts of Greenland which [p85] had not yet been effectively occupied. The attention of the Danish Government was repeatedly drawn from different sides to the possibility of disputes and to the danger of uncolonized territories in Greenland being occupied by other States. Of course these were private opinions, though in some cases they emanated from particularly competent sources ; it is not to be expected that the Government itself should cast doubt upon its sovereignty before having decided what it ought to do. It should however be noted that the Government itself was not altogether free from anxiety on the point. I find a striking proof of this in Article 2 of the concession granted to Mr. J. W. Tayler on June 7th, 1863, in which it is expressly stipulated that any settlement - colony, post, mine, or similar establishment - which the concessionnaire might create north or south of latitude 65°, is to come under the sovereignty of the Danish Crown and to be subject to the Danish laws; it is difficult to understand that in granting a concession to a foreigner in a territory which it regards as indisputably subject to its sovereignty, a State should concern itself with the possibility of the concessionaire taking possession of the territory in the name of his own sovereign.

[260] Again, the fact that the Danish Government had doubts as to the soundness of its claim to sovereignty over certain parts of Greenland is proved by the very overtures which it made. A proceeding of this kind is explicable only when the government which resorts to it thinks it necessary to safeguard a doubtful or unsettled position. Accordingly it is a proceeding which, so far as I am aware, has not been often resorted to. A single precedent has been cited: the recognition of Swiss neutrality by Article 435 of the Treaty of Versailles. But it has been forgotten that the purpose of that Article was not to recognize Switzerland's neutrality which no one disputed, but something quite different: the intention was on the one hand to secure approval of the abrogation of certain provisions affecting Swiss neutrality, and on the other hand to place on record that the guarantees stipulated in favour of Switzerland in 1815 constituted "international obligations for the maintenance of peace", in order to make it possible for that country to enter the League of Nations.

[261] Denmark's historical position in Greenland had thus been reconsidered in the light of the principles of international law now in force and of the new situation existing in fact, and there was a demand for action which would eliminate any danger by means of the taking of effective possession of the territories not yet occupied.

[262] Accordingly, when, in 1915, the Danish Government considered that the time had come to settle the question, it definitely took up the attitude suggested to it by the present [p86] state of international law. Historical claims were abandoned; all the documents point to the year 1721 as the commencement of Danish dominion in Greenland. A definite distinction is made between the parts of Greenland of which effective possession has been taken - in regard to which no question

arises - and the other parts of which possession has not been formally taken but over which it would nevertheless be just and desirable that Denmark should be enabled to extend her sovereignty. And it was in order to obtain recognition of this extension that the Danish Government approached the governments of the States which it regarded as specially interested.

[263] Everything fits and forms a coherent whole in the overtures made by the Danish Government; and the conclusion which emerges from the text of the documents, far from being inexplicable or inconsistent with the historical development of Denmark's position in Greenland, is the clear and natural outcome thereof.

[264] 5. - Of all the overtures made by the Danish Government, the only one which directly concerns us and with which I intend to deal hereafter is that made in July 1919 to the Norwegian Government.

[265] First and foremost, this overture differs from the others by reason of the circumstances in which it was made. The request to the United States of America was made in connection with the cession of the Danish West Indies, and its aim was to obtain a declaration which would accompany the signature of the Convention. The overtures to the other Powers were made when it was impossible for the Greenland question to be settled by the Peace Conference; their object was to secure declarations which would take the place of a settlement by the Conference and would close the question as between Denmark and the State approached.

[266] On the other hand, it was precisely with a view to submitting this question to the Peace Conference, and having it settled by the Committee which was dealing with Spitzbergen, that the Danish Government approached the Norwegian Government .

[267] In a letter dated at Copenhagen July 12th, 1919 (see Annexes to the Danish Case, No. 84), the Minister for Foreign Affairs instructed the Danish Minister at Christiania to inform the Norwegian Minister for Foreign Affairs that the question of Spitzbergen was shortly to be examined by a Committee of the Peace Conference, composed of one American, one British, one French and one Italian delegate, and that there was every reason to believe that the Danish Government would in the near future receive an invitation to bring its point of view on [p87] this question to the notice of the Committee. "The Danish Government" - says the letter - "will be prepared to renew before this Committee the unofficial assurance already given to the Norwegian Government regarding the attitude of Denmark in the question of Spitzbergen, namely, that Denmark, having no special interests at stake in Spitzbergen, would raise no objection to the claims of Norway."

[268] Then come two paragraphs in which the object of the request to be made to the Norwegian Minister for Foreign Affairs is set forth in the following terms:

"Nevertheless, I would ask you in the course of the conversation to bring out clearly that the Danish Government has, for a certain number of years, been anxious to obtain the recognition by all the interested Powers of Denmark's sovereignty over the whole of Greenland, and that it intends to place that question before the above-mentioned Committee. In the course of the negotiations with the United States of America concerning the cession of the Danish West Indies, the Danish Government has already raised the question of such a recognition by the United States, and had succeeded in obtaining from the latter, simultaneously with the conclusion of the Convention for the cession of the islands in question, a declaration to the effect that the United States of America would not object to the Danish Government extending its political and economic interests to the whole of Greenland.

I would ask you to explain to the Norwegian Minister for Foreign Affairs that the Danish Government is confident that it will meet with no difficulties on the part of the Norwegian Government with regard to such an extension."

[269] Two days later, the Danish Minister at Christiania had the conversation, which he had been instructed to seek, with the Norwegian Minister for Foreign Affairs, M. Ihlen. The subject of this conversation was recorded by M. Ihlen in a minute, a French translation of which is given under No. 205 of the Annexes to the Norwegian Government's Rejoinder: neither the accuracy of the minute, nor that of the translation, has been challenged.

[270] The minute was to the following effect:

"The Danish Minister today informed me that his Government had heard from Paris that the Spitzbergen question would be dealt with by a Committee of four members (American, British, French, and Italian). Should this Committee question the Danish Government, the latter would be prepared to answer that Denmark had no interests in Spitzbergen and that Denmark had no reason to oppose Norway's wishes in regard to the settlement of the question.

Further, the Danish Minister informed me of the following:

The Danish Government has for several years been concerned with the question of obtaining recognition of Danish sovereignty over all Greenland from all the Powers concerned, and they intend [p88] simultaneously to submit this question to the Committee. In the course of the negotiations with the United States of America concerning the cession of the Danish West Indies, the Danish Government raised this question in so far as concerned recognition by the United States Government, and it obtained from the latter, simultaneously with the conclusion of the Convention regarding the cession of the islands referred to, a declaration to the effect that the United States would not raise any objection to the extension by the Danish Government of its political and economic interests to the whole of Greenland.

The Danish Government confidently expected that the Norwegian Government would make no difficulty in connection with the settlement of this matter. I replied that the question would be considered."

[271] The reply was given on July 22nd, eight days later; it is recorded as follows in a further minute by M. Ihlen:

"I today informed the Danish Minister that the Norwegian Government would make no difficulty in connection with the settlement of this matter."

[272] The Danish Minister informed his Government of the reply in a despatch, of the same date, in which he stated that M. Ihlen, Minister for Foreign Affairs, had informed him on that day that "the plans of the Royal Government concerning Danish sovereignty over the whole of Greenland - mentioned in your despatch of 12th instant - will meet with no difficulty on the part of Norway" (Annexes to the Danish Case, №. 85).

[273] The above are the principal documents relating to the Danish Government's request to the Norwegian Government, and to the latter's reply.

[274] In this connection two questions arise:

- (a) Did the two Governments agree upon anything ? and upon what?
- (b) If so, was the agreement valid ?

[275] 6. - There appears no doubt that, in the opinion of the Danish Government, there was a connection between the attitude which that Government was prepared to adopt in the Spitzbergen question, and that which it was asking the Norwegian Government to adopt in the Greenland question.

[276] I do not, however, think one can go so far as to say - as is now contended by the Danish Government - that there was a regular reciprocal *do ut des* contract, in which the declaration that the last-named Government was prepared to make-and which it actually made before the Committee of the Peace Conference - was to constitute the counter-part of the undertaking which it was asking Norway to give. [p89]

[277] That was it is true, the idea suggested by the Danish Minister at Paris, in his note of July 11th, 1919 (Danish Case). But the instructions which the Danish Minister for Foreign Affairs sent on July 12th to the Danish Minister at Christiania (see above), and which resulted in his conversation with the Norwegian Minister for Foreign Affairs, appear to have been conceived and drawn up in rather a different spirit. The reason probably lies in the fact - which was recalled in the instructions - that the Danish Government had already given the Norwegian Government an unofficial assurance that, as Denmark had no interests contrary to those of Norway in the Spitzbergen question, she would raise no objection to the latter's demands. There is nothing in these instructions that suggests the idea of asking the Norwegian Government for a counter-concession; the declaration concerning Spitzbergen, which the Danish Government was proposing to "repeat" before the Committee, is indicated rather as an opportunity for making an equivalent request to the Norwegian Government. The words "nevertheless, I would ask you, in the course of the conversation, to bring out...." convey just that idea.

[278] Everything points to the conclusion that it was in that sense that the Danish Minister at Christiania interpreted his instructions. The minute drawn up by M. Ihlen certainly does not convey the idea of an alleged *do ut des* contract; on the other hand, if one compares this minute with the Danish instructions of July 12th, the two documents are seen to be in complete accord with one another. I have little doubt that the word "further" which, in M. Ihlen's minute, separates the part of the conversation concerning Spitzbergen from the part concerning Greenland, represents exactly what took place; for what the Danish Minister had been instructed to do was "to bring out, in the course of the conversation", the aspirations which his Government entertained with regard to Greenland.

[279] I therefore hold that no *do ut des* contract was proposed by the Danish Government. But even were it otherwise, there is nothing to show that M. Ihlen realized that the statement which the Norwegian Government was being asked to give was to be the counter-part of the declaration which the Danish Government was promising to make in regard to Spitzbergen. The request made to the Norwegian Government is therefore, in this respect, on the same plane as those addressed to the other Powers.

[280] This request was that the Norwegian Government should not make any difficulties in the settlement of the Greenland question - which the Danish Government was proposing to submit, together with that of Spitzbergen, to the Committee of the [p90] Peace Conference. The settlement contemplated by the Danish Government was clearly not just any settlement: it was a settlement on the lines indicated in the Danish Minister's communication, namely, that no opposition would be made "to the Danish Government extending its political and economic interests to the whole of Greenland".

[281] It follows that when the Norwegian Minister for Foreign Affairs informed the Danish

Minister, on July 22nd, that "the Norwegian Government would make no difficulty in the settlement of this matter", that signified that the Norwegian Government would not object to the Danish Government extending its political and economic interests to the whole of Greenland. It has already been shown (see No. 3 above) that, in the eyes of the Danish Government, "the extension of political and economic interests" signified, at any rate in the first place, "the extension of sovereignty". There is no reason to doubt that this was also the sense in which the Norwegian Minister for Foreign Affairs understood the Danish request. That view is, indeed, confirmed by the subsequent documents, which show that the Norwegian objections were not aimed at the extension of Danish sovereignty, but at an extension of sovereignty involving a corresponding extension of the monopoly; the extension of sovereignty was, therefore, common ground: I would refer in particular to the private letter from M. Ræstad, Norwegian Minister for Foreign Affairs, to M. Kruse, Danish Minister at Christiania, dated July 20th, 1921 (Annexes to the Norwegian Government's Rejoinder, №. 209), and to the Norwegian note of November 2nd of the same year (Annexes to the Danish Government's Case, №. 89).

[282] The question whether the so-called Ihlen declaration was merely a provisional indication (Norwegian contention) or a definitive undertaking (Danish contention) has been debated at length. In my view there has been a good deal of exaggeration on both sides.

[283] There is no doubt that the declaration was requested, and granted, with a future settlement in view. The Norwegian Government could, therefore, well be under the impression that the possibility of upholding its interests, and ensuring adequate safeguards for them, still remained open to it. It would be going beyond the intention of the Parties - or, at any rate, of one of them - if the agreement resulting from the Ihlen declaration were to be regarded as a complete and final settlement of the Greenland question between Denmark and Norway. In this respect, the Norwegian declaration differs unmistakably from those which the Danish Government obtained from other Powers, and which are complete in themselves. [p91]

[284] There was nevertheless, one point on which agreement had been reached between the Parties, and which may definitively be regarded as common ground for the future settlement. That point was not the recognition of an already-existing Danish sovereignty: that contention of the Danish Government is refuted by all the documents. The point on which the Danish Government's request and the Norwegian Government's reply are in accord is that the latter Government shall not make any difficulties in a settlement of the question which would enable the Danish Government to extend its political and economic interests, that is to say, its sovereignty, to the whole of Greenland. In regard to this point, the Norwegian declaration is of the same nature as those of the other Powers. Norway doubtless retained the possibility of upholding her interests, provided always that . she refrained from opposing the extension of Danish sovereignty to the whole of Greenland.

[285] 7. - The outcome of all this is therefore an agreement, concluded between the Danish Minister at Christiania, on behalf of the Danish Government, and the Norwegian Minister for Foreign Affairs, on behalf of the Norwegian Government, by means of purely verbal declarations.

[286] The validity of this agreement has been questioned, having regard, in the first place, to its verbal form, and to the competence of the Minister for Foreign Affairs.

[287] As regards the form, it should be noted, to begin with, that as both Parties are agreed as to the existence and tenor of these declarations, the question of proof does not arise. Moreover, there does not seem to be any rule of international law requiring that agreements of this kind

must necessarily be in writing, in order to be valid.

[288] The question of the competence of the Minister for Foreign Affairs is closely connected with the contents of the agreement in question; and these have already been determined.

[289] No arbitral or judicial decision relating to the international competence of a Minister for Foreign Affairs has been brought to the knowledge of the Court; nor has this question been exhaustively treated by legal authorities. In my opinion, it must be recognized that the constant and general practice of States has been to invest the Minister for Foreign Affairs-the direct agent of the chief of the State - with authority to make statements on current affairs to foreign diplomatic representatives, and in particular to inform them as to the attitude which the government, in whose name he speaks, will adopt in a given question. Declarations of this kind are binding upon the State.

[290] As regards the question whether Norwegian constitutional law authorized the Minister for Foreign Affairs to make the [p92] declaration, that is a point which, in my opinion, does not concern the Danish Government: it was M. Ihlen's duty to refrain from giving his reply until he had obtained any assent that might be requisite under the Norwegian laws.

[291] A question of a totally different kind is whether the declaration of the Norwegian Minister for Foreign Affairs was vitiated, owing to a mistake on a material point, i.e. because it was made in ignorance of the fact that the extension of Danish sovereignty would involve a corresponding extension of the monopoly and of the régime of exclusion.

[292] It is manifest that the régime of exclusion, by rendering hunting and fishing operations impossible in the territorial waters and on the coasts of Greenland, might be gravely detrimental to Norwegian interests. The documents submitted to the Court clearly show that the difficulties raised by the Norwegian Government in 1921 - when the Danish Government requested it to repeat in writing the verbal declaration it had given in 1919 - were not aimed at the extension of sovereignty itself, but at the regime of exclusion which would result from the extension of sovereignty.

[293] It should also be noted that this point - which was expressly mentioned in the communications made to the other Powers - was not referred to in the verbal communication made by the Danish Minister at Christiania to the Norwegian Minister for Foreign Affairs. The allusion to economic interests, in conjunction with political interests, could not be considered as a sufficient indication of something so specific as the régime of exclusion.

[294] My own opinion is that there was no mistake at all, and that the Danish Government's silence on the so-called monopoly question, and the absence of any observation or reservation in regard to it in M. Ihlen's reply, are easily accounted for by the character of this overture, which was made with a future settlement in view. But even accepting, for a moment, the supposition that M. Ihlen was mistaken as to the results which might ensue from an extension of Danish sovereignty, it must be admitted that this mistake was not such as to entail the nullity of the agreement. If a mistake is pleaded it must be of an excusable character; and one can scarcely believe that a government could be ignorant of the legitimate consequences following upon an extension of sovereignty; I would add that, of all the governments in the world, that of Norway was the least likely to be ignorant of the Danish methods of administration in Greenland, or of the part played therein by the monopoly system and the régime of exclusion.

[295] The foregoing is merely by way of supposition, because, as I have said, I am strongly

inclined to think that there [p93] was no mistake, and that the silence observed on this point, both by the Danish and Norwegian Governments, is attributable to the very nature of the declarations made by the two Parties. In regard to the other Powers, the situation of the Danish Government was different, as it was asking them for declarations which would definitively settle the question. On the other hand, it is easy to understand that the Norwegian Government should have thought it unnecessary to dwell particularly on this point, since the whole question was going to be brought up and examined on a later occasion.

[296] This leads me to the last question which arises in connection with the binding character of the agreement of 1919; viz. whether the breaking off of the negotiations by the Danish Government in 1921 entitled the Norwegian Government to consider itself released from its undertaking.

[297] The agreement was concluded with a view to the settlement of the Greenland question by the Peace Conference. This method of dealing with the question, which was suggested by the Danish Government for reasons of expediency, does not, however, appear to have been an essential condition of the Norwegian Government's assent to the Danish request. The Norwegian Government has never contended that the declaration made on its behalf to the Danish Government had lost its value because that Government did not submit the question to the Peace Conference but, instead of doing so, made overtures to individual Powers.

[298] On the other hand, it was essential that there should be a settlement. Norway had only given her assent to the Danish Government's desire to extend its sovereignty to the whole of Greenland with a view to a future settlement of the question, when she would have an opportunity of urging her interests and demanding that they should be equitably safeguarded. I am, accordingly, of opinion that, if the Danish Government had really claimed to abide by the agreement of 1919 and to consider it as a final and complete settlement of the question, and if it had refused to negotiate or to take the Norwegian demands into consideration, it would have been acting in a sense contrary to the agreement itself and the Norwegian Government would have been entitled to declare itself released from its engagement.

[299] This was not, however, what occurred. The impression which, I think, emerges from a perusal of the diplomatic correspondence between the two Governments, from 1921 onwards, is rather that the Danish Government was prepared - saving its right of sovereignty - to do its utmost to safeguard the Norwegian hunting and fishing interests on the eastern coast of Greenland. It is true that it was the Danish Government [p94] that broke off the negotiations - perhaps somewhat abruptly - in 1921; but it is equally true that these negotiations were resumed, and it is admitted that the Convention of 1924 went a long way to meet the wishes of the Norwegian Government.

[300] In these circumstances, I consider that the agreement, which was validly concluded in 1919, has retained its force.

[301] 8.- It is consequently on the basis of that agreement which, as between the Parties, has precedence over general law, that the dispute ought to have been decided.

[302] The results which flow from this agreement may be summarized as follows:

(a) As Denmark admitted to Norway in 1919 that there were parts of Greenland which were not yet subject to her sovereignty, she could not now adduce a sovereignty over the whole of Greenland, existing prior to that date. As the territory affected by the Norwegian declaration of occupation of July 10th, 1931, is indubitably one of the parts of Greenland which - according to

the Danish Government's position in 1919 - were not subject to Danish sovereignty, that territory must be considered as a terra nullius, unless Denmark could be shown to have extended her sovereignty to it by acts subsequent to 1919, and in conformity with international law; but no such fact has been adduced by the Danish Government.

(b) As Norway had undertaken not to oppose the extension of Danish sovereignty over the whole of Greenland, she was, before everything else, bound not to occupy any part of this region herself, thereby making it impossible for Danish sovereignty to be extended to it.

[303] All that now remains is to apply the consequences of the agreement of 1919 to the submissions of the two Parties.

[304] The Danish Government asks the Court to give judgment to the effect "that the promulgation by the Norwegian Government of the declaration of occupation of July 10th, 1931, and any steps taken in this respect by the Norwegian Government, constitute a violation of the existing legal situation and are consequently unlawful and invalid".

[305] As the Norwegian occupation was effected in violation of an undertaking validly assumed, it constitutes a violation of the existing legal situation, and it is therefore unlawful: within those limits the Court should, therefore, have acceded to the Danish Government's submission.

[306] On the other hand, regarding the question from the stand-point that I have taken, and apart from certain other questions [p95] which I do not propose to examine, the Court could not have declared the occupation invalid, if the term "invalid" signifies "null and void". A legal act is only non-existent if it lacks certain elements which are essential to its existence. Such would be the occupation of territory belonging to another State, because the status of a terra nullius is an essential factor to enable the occupation to serve as a means of acquiring territorial sovereignty. But this does not hold good in the case of the occupation of a terra nullius by a sovereign State in conformity with international law, merely because the occupying State had undertaken not to occupy it. Accordingly, it would have been for the Norwegian Government to revoke the occupation unlawfully carried out, without prejudice to the Danish Government's right to apply to the Court, as reparation for the unlawful act, to place this obligation on record (Judgment No. 13, p. 47).

[307] The Norwegian Government, in its turn, has submitted the following counter-claim:

"that Denmark does not possess sovereignty over Eirik Raudes Land;
that Norway has acquired sovereignty over Eirik Raudes Land".

[308] In my view, it follows from the whole of the written and oral proceedings that the first paragraph is designed to supply the ground for the second and that, accordingly, there is only one claim the aim of which is to obtain a declaration from the Court that the occupation effected by the Norwegian Government is lawful and valid. This claim should, in my view, be rejected, for an unlawful act cannot serve as the basis of an action at law.

(Signed) D. Anzilotti. [p96]

Observations by M. Schücking and M. Wang

[Translation.]

[309] While fully concurring in the Court's conclusions, we nevertheless find it necessary to

make some reservations regarding some of the reasons which are given in support of them. The Court has definitely adopted the view that there was a historic Danish sovereignty, extending over the whole of Greenland, and exercised, in particular, as early as the XVIIIth century. We are prepared to admit that there were indeed claims to that effect, which had been put forward by Denmark in earlier centuries, and had not been seriously disputed by other States. But the exact significance of the documents which should demonstrate the exercise of this sovereignty remains somewhat uncertain; moreover, the documents in question are legislative acts, the effective application of which, elsewhere than on the western coast - though it would have been an indispensable requirement under the international law even of that period - has not been sufficiently established. Even if all the circumstances, taken together, conferred a presumptive title upon Denmark, the history of the diplomatic overtures undertaken by Denmark between 1915 and 1921 in order to obtain recognition of her sovereignty over the whole of Greenland, proves, in our opinion, that, at that time, Denmark herself did not maintain towards the other interested Powers the theory of an already existing Danish sovereignty over the whole country. Regarding this point, having in view more especially the report of the Danish Minister for Foreign Affairs to the King of Denmark on August 1st, 1916, we are compelled to place a different construction upon the Danish overtures to the Powers, namely, that Denmark was desirous of extending her sovereignty to the whole of Greenland, with the assent of the States chiefly interested.

[310] This view does not however prevent us from considering that, owing to some of the other reasons which are set forth in the judgment, the Norwegian occupation is unlawful and invalid.

(Signed) Walther Schücking.
(,) Wang Chung-Hui. [p97]

Dissenting Opinion by M. Vogt.

[Translation]

[311] According to the Saga, Gunnbjörn Ulvsson, who left Norway for Iceland, about the year 900, was driven westwards by a storm. He saw a large country and some islands to the West and subsequently succeeded in reaching Iceland. Later, two inhabitants of Iceland set out to search for the islands seen by Gunnbjörn and, according to the Saga, they reached Greenland and passed the winter there.

[312] Eirik Raude (Eric the Red) is, however, generally regarded as the discoverer of Greenland; he was born in Norway about 950 and left for Iceland about 970. About 980 he went to Greenland. He reached the habitable region on the South-West, spent three winters there and visited the West coast from Cape Farvel to a point far to the North. He it was who named the country "Greenland".

[313] In 984, Eirik Raude began the colonization of the South-West coast. The inhabitants of Iceland who accompanied him were of recent Norwegian origin, the colonization of Iceland by Norwegians having begun in 870. It is not easy to fix the precise date from which it may be said that Iceland became a distinct State. During the ensuing period, immigration to Greenland continued from Iceland and Norway.

[314] As regards communications between Greenland and other countries, these were directed partly towards Iceland, but mainly towards Norway, whence came the goods which the settlers needed.

[315] In 1261, the Greenlanders submitted themselves of their own free will to the King of Norway, who promised to maintain regular navigation to the colonies in Greenland.

[316] This regular navigation, which was essential to the Greenlanders, ceased in 1410 and thus isolated, the settlers succumbed in the course of the XVth century to the rigours of the climate and the attacks of native Eskimos from the North who destroyed the colonies.

[317] In the following centuries, some expeditions set out for Greenland, but no regular communications were established and no colonization undertaken.

[318] Only at the beginning of the XVIIIth century were regular communications with Greenland reestablished, after the Norwegian Pastor Hans Egede had succeeded in forming the Greenland Company of Bergen. In 1723, the King of Norway and Denmark, in the concession granted to this company, [p98] expressed his intention of reestablishing the old commercial intercourse between Norway and "the country of Greenland belonging to Our Kingdom of Norway". Hans Egede left for Greenland in 1721 and, in the same year, founded the first colony there. This marked the beginning of the second Norwegian colonization of Greenland, which gradually extended in the course of the XVIIIth century. The colonies thus established remained Norwegian possessions until 1814, when the King of Denmark and Norway, by the Treaty of Kiel, ceded the kingdom of Norway to the King of Sweden - "Greenland, the Ferroe Isles and Iceland excepted".

[319] The Treaty of Kiel was concluded on January 14th, 1814, and ratifications were exchanged on February 9th, 1814. In an open letter, dated January 18th, 1814, King Frederick VI released his Norwegian subjects from their oath of allegiance. Norway maintained that her union with Denmark was dissolved by this letter. The Norwegian nation did not recognize the Treaty of Kiel as binding upon them; they held that it was not within the power of a king to cede a nation, against its will, to another king. Accordingly, the Norwegian nation assumed for itself full sovereignty. A union between Norway and Sweden was concluded on November 4th, 1814. On the 10th of the same month, the Swedish Minister for Foreign Affairs wrote as follows in instructions addressed to Swedish diplomatic representatives abroad: "We owe the union of Norway to Sweden not to the provisions of the Treaty of Kiel but to the trust of the Norwegian nation."

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[320] The main question in the case before the Court is that of Danish sovereignty over the disputed territory, and this question has generally been presented in the course of the proceedings as the question of Danish sovereignty over Greenland as a whole.

[321] In approaching this question, we must in the first place consider the legal consequences of the overtures made by the Danish Government to various Powers between 1915 and 1921.

[322] The standpoint of the Danish Government in the question of Danish sovereignty was defined in a report made on August 1st, 1916, to His Majesty the King of Denmark by his Minister for Foreign Affairs. This report contains the following: "Finally, it appears to me most important that the United States of America have offered to make, simultaneously with the signature of a convention [concerning the Danish West Indies], an official declaration to the effect that the Government of the United States of America would not object to the Danish Government extending their sovereignty to include the whole of [p99] Greenland; such a step

would afford valuable support to the future development and maintenance of Danish interests in the possession in question...."

[323] In the documents submitted, we find the expressions used by Denmark in her representations to foreign governments with a view to securing the extension of Danish sovereignty to all Greenland. These expressions vary. The instructions of March 2nd, 1920, given by the Danish Minister for Foreign Affairs, contain the following: "It is desirable that the Danish Government should extend its care, by means of its sovereignty, to the whole of Greenland." By this expression the Danish Government indicated what may be called the substantial motive of its overtures. The ostensible reason is stated as follows: "Having got this declaration [that of the United States of America], it [the Danish Government] proposes also to obtain recognition by other Powers of Danish sovereignty over Greenland", and again: "I request you therefore to endeavour to obtain from the Italian [British, etc.] Government official recognition of Danish sovereignty over all Greenland." In the same instructions, the Danish Government informed its Ministers abroad that "effective possession" has been taken "in the name of Denmark" of a certain district in Greenland which had been "outside the districts hitherto under the Danish administration", and again "that formal possession of Greenland as a whole has not been taken". An instruction of July 12th, 1919, issued by the Danish Minister for Foreign Affairs to the Danish Minister at Oslo contains the following sentence: "I will, on the other hand, ask you [FN1] to bring out in the course of the conversation that the Danish Government has for some years past been anxious to obtain the recognition by all the interested Powers of Denmark's sovereignty over the whole of Greenland and that it intends to place that question before the above-mentioned Committee" (at Paris).

[FN1] The Danish text reads as follows : " De bedes imidlertid under samtalen fremhæve...'

[324] All these expressions convey the same idea, namely, that Denmark had not hitherto possessed sovereignty over all Greenland. The parts of Greenland which have not been brought under the Danish Greenland Administration and of which possession has not been effectively or even formally taken, cannot be regarded as under Danish sovereignty. For this reason the notes despatched by the Danish Ministers, who had received these instructions, all contain expressions such as "extend her sovereignty to all Greenland"; "extend her care, by means of her sovereignty, to all Greenland"; or, "extension of Danish [p100] sovereignty to the whole of Greenland". There is no trace of the despatch of any rebuke or correction to the Danish Ministers abroad who, in carrying out their instructions, used the expressions "extend", or "extension of", "Danish sovereignty". In point of fact, these Ministers merely gave accurate expression to the idea embodied in the instructions themselves. The last note is that of January, 1921, to the Norwegian Government. In this we read: "The Danish Government also reckoned on an extension of Danish sovereignty to all Greenland not meeting with difficulties on the part of Norway." This reference to the request made verbally in 1919 makes no qualification as regards the expression "extension of sovereignty".

[325] Already in December 1915, the Danish Minister in Washington, in a note to the United States Secretary of State, had spoken of "the extension of the care and suzerainty of Denmark to the whole of Greenland", and the Danish Minister in Paris, in his note to the French Government in 1920, used the words: "extend her sovereignty to all Greenland".

[326] If the Danish Government had believed that such expressions were not correct, it would no doubt have taken every care to warn its Ministers abroad to avoid making use of the words which have been quoted above.

[327] The replies of the governments whom Denmark had approached also show, for the most part, that these governments considered that what was desired was a future extension of Danish sovereignty. I would also refer in this connection to the history of the Danish-American negotiations concerning the sale of the Antilles, as related by Charles Callan Tansill in a recent work: *The Purchase of the Danish West Indies*.

[328] It is true that on various occasions, in the XIXth century, the Danish Government had expressed its conviction, in Denmark, that the sovereignty over the whole of Greenland belonged to Denmark.

[329] On the other hand, during the same century, there had been no small number of official acts and declarations which revealed an opposite conviction. Thus, the expedition of Graah (1829-1830), which acted "under instructions from the King", and the expeditions of Holm (1883-1885) and Ryder (1891-1892) organized by the Danish State, were all commanded by officers of the Royal Danish Navy; and all three of them took possession of lands on the East coast in the name [p101] of the King. These formal acts of occupation did not produce any legal effects; but they are clear evidence that the Danish Government was not convinced that it possessed sovereignty over the whole of Greenland. This attitude was also expressed by the Danish Minister of Marine at a meeting of the Folketing, in the session of 1880-1881, in a speech which he made on the exploration of the East coast of Greenland. On that occasion the Minister said : "It is in every way natural that a part of the coast lying so near to the colonies belonging to the Danish Crown should be explored at the initiative of Denmark...."

[330] The Holm expedition had been organized by the Commission for the Exploration of Greenland. This Commission wrote to the Ministry of Marine concerning the explorations which it behoved Denmark to undertake "in regard to territories, which are in part subject to the Danish State, and in part adjacent to the territories that are subject". The Government followed the advice of the Commission. There is nothing to show that it did not accept the argument mentioned above.

[331] In a report submitted to the King of Denmark by the Minister of the Interior, in connection with the Tayler concession, granted in 1863, the Minister points out that no one disputed Danish sovereignty on the East coast of Greenland. In the same report it is also emphasized that Mr. Tayler "undertakes to take possession in Your Majesty's name of any new part of the coast which may be reached by the expedition....". The actual concession stipulates that "any station shall come under the sovereignty of the Danish Crown....".

[332] Such contradictions cannot be regarded as evidence of a definite attitude, or of a firm conviction.

[333] At the beginning of the present century, we have to note the law of May 27th, 1908, which lays down, *inter alia*:

".... Southern Greenland comprises the country situated between Cape Farewell and the Nordre-Strøm-Fiord, including the latter; Northern Greenland includes the remainder of the Danish territory on the western coast...."

[334] In a note to the British Government, dated July 20th, 1920, the Danish Government maintains that Danish sovereignty over all Greenland was acquired "by prescriptive right". This note was occasioned by the fear lest a dispute might arise on the question of preemption between two of the Great Powers whom Denmark had approached. In a despatch dated December 21st, 1921, the Norwegian Minister at Copenhagen had reported, as a result of overtures made by him to the Danish Government, that the last-named Government "has refused, out of deference for America, to [p102] accept the demand of Great Britain for a right of preemption, in case Denmark should desire, in the future, to alienate Greenland. The British Government then contented itself with reserving its right to be informed in case Denmark should ever contemplate thus alienating Greenland. And if I have rightly understood, Denmark must be regarded as having accepted that reservation." The argument put forward in the note of July 20th, 1920, by Denmark, finding herself in a difficult diplomatic position, to the effect that she possessed an ancient sovereignty, acquired by prescriptive right, cannot be allowed very much weight.

[335] The most eminent Danish jurists of recent times have maintained that the Danish possessions in Greenland were limited, and they have spoken of an effective occupation, or taking into possession, in such a way as to be valid in international law, as being a necessary basis for Danish sovereignty.

[336] The declarations of 1915 to 1921 were declarations freely made, so to speak, to the community of nations. In thus officially declaring to a certain number of Powers that it did not yet possess sovereignty over the whole of Greenland, the Danish Government debarred itself from claiming to possess an ancient sovereignty over the whole of Greenland. To concede the right of a government to put forward claims to an ancient sovereignty, only a few years after that very government has solemnly proclaimed that it did not possess that sovereignty, would be to open the door to instability in international affairs.

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[337] It is next necessary to consider whether Denmark acquired sovereignty over the territory in dispute, subsequently to 1921.

[338] It is clear that Denmark had the animus possidendi during that period; but did she have the corpus possessionis? The region in question is one where the citizens of another nation have engaged in fairly regular activities, certainly since, and probably long before, 1889 - "a favourite resort of the Norwegian hunters" - without Denmark having attempted to exercise sovereignty over those foreigners. And these activities continued, even after the proclamation of June 16th, 1921, under which the whole of the coasts and adjoining islands of Greenland were closed to ships of foreign nationality. It is a territory, the sovereignty over which is disputed, a territory which was visited in 1930 by a Danish official expedition under the command of a Danish naval officer, without any action whatever being taken by him in regard to the serious [p103] accusations brought by a Danish company against the Norwegian hunters in the district. He did not even interrogate the accused persons. It is a territory, forming part of the areas which M. Christensen, the former Danish Prime Minister, in a speech in defence of the Convention of 1924, referred to in the following words:

"As we have no warships in Greenland waters, nor any police-force capable of expelling them [i.e. the Norwegian hunters], we have no means of intervening."

[339] That statement still held good in July 1931.

[340] It has been argued on behalf of the Danish Government that the administrators of Angmagssalik and Scoresby Sound, whose jurisdiction has not been delimited by any geographical boundaries, have been since 1894 (?), and are still, the local representatives of the Danish State in Eastern Greenland. This assertion has been contested on behalf of Norway: it has been pointed out that the officials in those two stations are in no way entitled to exercise official authority, and that in fact they never have attempted to exercise any kind of authority, outside the very limited districts entrusted to their administration.

[341] The Danish Government has not produced any document conferring the alleged authority, outside the two stations in question, upon the above-mentioned officials. Two facts should be noted: (1) the officials mentioned by the Danish Government are employees of the Monopoly, pastors, and telegraphists; (2) Denmark undertook, in the Protocol signed on January 28th, 1924, at the closure of the negotiations for the Convention of July 9th, 1924, to trace the boundaries of the two above-mentioned colonies according to the customary rules (cf. the Ordinance of March 26th, 1751). The said Protocol, in making an express reference to the Ordinance of March 26th, 1751, indicates that the boundaries of the stations are situated, speaking generally, at a distance of fifteen miles on either hand. Considering these circumstances and the geographical situation, it is difficult to understand what governmental authority the employees of the Monopoly, the pastors and telegraphists of Angmagssalik and Scoresby Sound can possibly possess in Eirik Raudes Land.

[342] My conclusion is that Denmark has not proved the *corpus possessionis* in respect of the territory in question, nor has she proved an "inchoate title". [p104]

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[343] I am led by the circumstances to examine the question of the extent of Danish sovereignty over Greenland from another point of view.

[344] What is the origin of that sovereignty?

[345] Until 1814, Greenland was a Norwegian dependency; it is therefore necessary to determine what was that Greenland which Denmark retained for herself at the dissolution of the union between the two kingdoms.

[346] The instructions sent to some of the Danish Ministers abroad by the Minister for Foreign Affairs at Copenhagen, on March 2nd, 1920, begin with the words: "Danish enterprise in Greenland had its origin in 1721." In pursuance of those instructions, these Ministers presented memoranda to the different governments, in such terms as: "Danish enterprise in Greenland was initiated in 1721"; "l'uvre danoise au Gronland a été initiée depuis déjà 1721"; "l'activité civilisatrice des Danois dans le Groenland a commencé en 1721"; "the beginning of Denmark's penetration into Greenland took place in the year 1721". Especially clear is the following declaration: "The taking into possession of Greenland by Denmark dates from a period as far distant as 1721." The latter passage is quoted from the instructions issued by the Minister for Foreign Affairs on July 7th, 1920, and the information was transmitted to the British Government in the following form: "The occupation of Greenland by Denmark took place as far back as 1721." This decisive statement is contained in the instructions, and in a diplomatic note, written with the express object of emphasizing the fact that Danish sovereignty went back to an ancient date. A letter, dated April 29th, 1921, from the Danish Minister at Oslo to the Norwegian Minister for Foreign Affairs, contains the words: "The Danish Government being about to celebrate the 200th anniversary of the attachment of Greenland to Denmark...."

[347] When these documents speak of Denmark, this must really be understood to mean Norway, or - if it is preferred - the King of the two United Kingdoms, in his capacity as King of Norway. In any case, for the present purpose, it suffices to note that the sovereignty which Denmark invokes only goes back - according to the solemn declarations made by the Danish Government to foreign Powers - as far as the year 1721. During the proceedings, the Danish Government has used expressions such as: "the Danish Government is entitled to adduce an uninterrupted occupation of two hundred years", and "the Danish State has exercised sovereignty over all Greenland for two hundred years". These expressions are not [p105] without importance, although the Danish Government has, in other passages, sought to base its sovereignty on a more ancient historical foundation.

[348] Christian IV was the most remarkable of the kings of Denmark and Norway and took more interest than any of them in the countries in the northern seas. In his "Fiscal Letter" of April 1st, 1606, he writes as follows: "Greenland, which is a member [of Norway], which belongs by right to the Crown of Norway and which in the days of some of Our beloved ancestors, Kings of Denmark and Norway, by abandonment or other unfortunate circumstances, was separated and cut off, with the rights and profits attaching thereto, from the Crown of Norway." It was, however, the avowed intention of the King to restore this country to the Norwegian Crown.

[349] When, in 1616, the Dutch captains took possession of the western coast between the 60th and 66th degree of north latitude on behalf of the States-General, Christian IV maintained a passive attitude. His successor, Frederick III, granted a concession in 1652, "seeing that the aforesaid country of Greenland was a dependency of our Kingdom of Norway". In a despatch dated January 13th, 1844, the Danish Ministry for Foreign Affairs wrote: "After 'old Greenland' [in other words, the East coast], which had been discovered by Norwegians and Icelanders at the end of the Xth century, had been entirely abandoned at the beginning of the XVth century, all relations with that country ceased, until King Christian IV decided to send ships to endeavour to rediscover the eastern coast...."

[350] The somewhat vague claims of the Danish-Norwegian kings found expression in terms such as "hereditary sovereign of Greenland" and "Our country of Greenland", etc. Thus, in the charter granted to the Greenland Company of Bergen on February 5th, 1723, the King declared his intention of reestablishing the ancient commercial relations between Norway and "the country of Greenland belonging to our Kingdom of Norway....". But no very great importance can be attached to claims of such a nature.

[351] Even admitting that an ancient sovereignty is not forfeited by dereliction, unless the animus is abandoned as well as the corpus possessionis, it must be conceded that the sovereignty could not be still in being some centuries after the extermination of the ancient colonists and the cessation of communications.

[352] The second colonization of Greenland, under the direction of the Pastor Hans Egede, was a Norwegian enterprise. In his numerous petitions Hans Egede recalled the fact that Greenland had been a dependency of the Kingdom of Norway. The Bergen Company, which sent Egede to Greenland, declared [p106] its object to be that "this country which has been so long deserted and has been left in the hands of savages may, in course of time be restored to Your Majesty....". In connection with the petitions of the Bergen Company, the Principal Secretary of the Danish Chancellory stated, in an opinion presented about the end of 1722, that ".... the country [that is Greenland] has for a great number of years been res derelicta....".

[353] It accordingly follows that the sovereignty which Denmark now possesses in Greenland is based upon the Norwegian colonization at the beginning of the XVIIIth century.

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[354] From a purely historical standpoint, it was sought to base the claim for sovereignty on the fact that Greenland had, in ancient times, been a country belonging to Norway. But, according to the custom then prevalent in matters of colonization, the sovereignty was in reality restricted, after the second colonization, to certain areas surrounding the factories or stations successively established. The same system was also employed by the Monarch of the two kingdoms in dealing with possessions in the Indies and Africa. In regard to possessions in those parts of the world, the King also granted charters for colonies which might hereafter be established.

[355] The system which it was sought to apply in Greenland consisted, from 1721 onwards, in successively extending the colonized territory, with a consequent extension of the territory under governmental administration, thus again, in turn, extending the sovereignty of Denmark. This system has been described on various occasions by the Danish Government. I will content myself with two examples.

[356] The Danish Ministry of the Interior (Directorate of Greenland Colonies) in a letter, dated November 3rd, 1916, to the Parliamentary Commission for the Danish West Indies, refers to the establishment of the Angmagssalik station in 1894 and explains how, by a Proclamation dated March 8th, 1905, it had been "announced that the Danish establishments henceforward extended as far as latitude 74° 30' N.; that is to say that the sovereignty of Denmark and the regime of exclusion have accordingly been extended over a fresh zone, one degree and a half of latitude in width". The Ministry's letter continues in the following terms: "These two regions, which have been incorporated at a relatively recent date, are universally recognized as being subject to Danish sovereignty; in any case, no objection has ever been raised in any quarter against this view; and it would perhaps be possible to maintain that Danish sovereignty could always continue [p107] to be extended to all places where there are Danish establishments, that is to say - since a trading and mission station has now been founded by private initiative at Cape York - to every inhabited part of Greenland."

[357] In the instructions issued on March 2nd, 1920, by the Ministry for Foreign Affairs at Copenhagen to a number of Danish Ministers in foreign countries, the following passage occurs:

"As has been mentioned above, Denmark established colonies in Greenland as early as the beginning of the XVIIIth century. Later on, when it was found that Eskimos were also living outside the districts hitherto subject to the Danish administration, namely, at Cape York, Denmark extended her missionary enterprise and commercial activities to those regions and, by reason of that fact, these territories of Greenland have also been effectively taken into possession on behalf of Denmark."

[358] A study of the Ordinances, etc., of the XVIIIth century relating to Greenland, confirms the accuracy of the description, thus given by the Danish Government, of the system of colonization and administration.

[359] Denmark has endeavoured, during the proceedings, to draw a distinction between the sovereignty itself, and the exercise of sovereignty by the Danish administration. But, if Denmark believed that she possessed a sovereignty, valid in international law, over the whole of Greenland, she ought to have prohibited trading with Greenland to all other nations; she ought to

have taken steps to combat the foreign trade which she said was prohibited. But the history of the colonization shows that Denmark did not believe herself entitled to proceed in this way.

[360] The Department of Police and Trade had stated in a proposal to the King, dated February 28th, 1721 : "... for we humbly submit that it would be imprudent to enact such a prohibition before Your Majesty's subjects have really taken the country into possession....".

[361] In regard to a concession for trading with Greenland, the Principal Secretary of the Royal Danish Chancellory wrote on February 20th, 1740: "...the last article should, moreover, be drawn in such a way as to show that His Majesty authorizes Severin alone to trade with the Greenland colonies, whether already established or hereafter to be established, and that neither His Majesty's subjects nor foreigners may engage in trade within a given distance from the said colonies, seeing that it is evidently impossible to prohibit foreigners or others from trading in the Davis Strait so long as they do not approach nearer to the colonies than may be declared permissible for them". The concession was modified and restricted in conformity with this proposal. [p108]

[362] The documents filed with the Court show that the Danish Government did not know any legal method of preventing trade with foreigners other than the establishment of a chain of colonies.

[363] The Ordinance of April 9th, 1740, provides that if any person venture "to trade in the colonies already established or hereafter to be established, in Our Country of Greenland" as also within the boundaries fixed for them, "and similarly if any person venture, in any part of Greenland whatsoever, by sea or by land, to despoil the Greenlanders or to do them violence the offenders" shall be "punished by seizure and confiscation". This Ordinance, which provides for the protection of the Eskimos, even outside the boundaries of the colonies, has been relied on as proof of the existence of a corpus possessions. As a fact, however, this Ordinance is based upon a memorial of Severin, in which the latter proposes measures to prevent the Greenlanders from being despoiled or molested, offenders being liable "according to the nature of the offence [to be] duly punished as pirates".

[364] The punishment of acts of piracy by the crews of ships did not require the existence of sovereignty in the places where such acts had been perpetrated. And piracy might take place either by sea or by land. (Pradier-Fodéré: "It matters little whether the act of brigandage is perpetrated on the high seas or on the coasts, in order to determine its character [FN1].")

[FN1] This subject has been fully dealt with by Paul Stiel in his book *Der Tatbestand der Piraterie*, etc. (Leipzig, 1905). Reference may also be made to the report to the Council of the League of Nations, C. 196. M. 70. 1927. V., page 204.

[365] It is interesting to cite the following paragraph in the proposal submitted to the King on April 1st, 1740 : "In Severin's project it is stated that no person may, under pain of confiscation of his ship and its cargo, do any wrong or prejudice to the Greenlanders; but as the word wrong is of a rather general character, and might be construed in too wide a sense, the Commissioners have contented themselves with proclaiming that if anyone should despoil the Greenlanders or use any flagrant violence against them, his vessel shall be seized for confiscation." Here again it

is clearly a question of piracy.

[366] The Danish Government has adduced an instruction drawn up in 1737, in the following terms:

"He must warn all foreign merchants and all whalers, to refrain, from depriving the Greenlanders at any point either of blubber or fish...., this being contrary not only to our Absolutum Dominium, but also to the law of Nations; and, furthermore, Dutch subjects who act in this way are violating the attached Ordinance made in 1720 by the States-General." [p109]

[367] In acting in the manner described in the colonies, the Dutch were doubtless infringing "our Absolutum Dominium". But the fact that the instructions make reference to the law of nations and also to a Dutch Ordinance seems to prove that the Copenhagen Government was not founding itself on the idea of a Danish sovereignty extending to the whole of Greenland.

[368] In 1753, the General Greenland Trading Company wrote: "Although the place [on the coast of Greenland] where these vessels are said to have been abandoned (so far as is known to us) is not subject to Your Majesty's sovereign dominium...." The King ordered that no steps should be taken to seize the ships in question.

[369] The Ordinance of April 22nd, 1758, has been adduced by the Danish Government as evidence that, since that date, foreigners were prohibited from trading anywhere in Greenland. But if this Ordinance is compared with that of 1751, the text of which it was desired to modify, it is seen that no substantial modification was intended; and a memorial of the Trading Company, dated March 30th, 1759, describes the Ordinance of 1758 as "concerning the prohibition of trading in Davis Strait", in other words, on the colonized western coast.

[370] The Ordinance of March 18th, 1776, maintains the principle that the establishment of stations must be effective, and must be published, as in the past. The first article speaks of the Trading Monopoly and of navigation "in the colonies and factories established, or hereafter to be established, in Greenland and the islands appertaining thereto, in Davis Strait and Disco Bay, as also in other ports and places in that region...." The article declares that the colonies and factories "extend at present between lat. 60 and 73 N.", and it prohibits trade and navigation "in the aforesaid country".

[371] In 1921, the Danish Government informed a certain number of foreign governments that the Ordinance of 1776 prohibited access to the Greenland coast "both as regards colonies and factories already established and those which may hereafter be created". This interpretation of the Ordinance in the sense that the prohibition of access only applied to the colonies has been maintained by the Danish Government during the present proceedings. But in that case the conclusion follows that "the aforesaid country" in that Ordinance only signified the colonized western coast; and a study of the Ordinance of 1776 gives the impression that it is based on the notion of a sovereignty only extending to the colonized territory. [p110]

[372] The Rescript of April 17th, 1782, refers in the introduction to "two royal inspectors designated for Greenland....". It begins with the following words: "As it has been humbly pointed out in your letter of March 6th last to our Danish Chancellory that there is no judicial authority in Our country of Greenland....". And further on: "We have graciously deigned to appoint two covenanted officials in this country as inspectors of trade and fisheries, one for the Northern colonies and one for the Southern colonies"; and again further: "the aforesaid two inspectors, each one in respect of the part of the country entrusted to him...."

[373] A report of November 1787 from the Royal Greenland Trade mentions that His Majesty has been pleased "to divide the country into two inspectorates". A report of the Royal Greenland Trade Commission of 1790 speaks of "two inspectors who are to be regarded as the only public authorities in the country", and in the same year another report of the said Commission mentions that the two inspectors have to "watch over the territorial rights of Your Majesty".

[374] Lastly, by a Royal Resolution of March 23rd, 1803, the King appointed MM. Motzfeldt and Myhlemphort "Inspectors of Colonies and Whaling, the former in Northern Greenland and the latter in Southern Greenland".

[375] The administration of these two inspectors, who were the only representatives of the State in Greenland, continued to be definitely limited to the colonized districts, the boundaries of which were fixed.

[376] The system of gradual extension of sovereignty by means of the extension of colonization and administration was consistently followed, and, in 1921, it again found expression in the Decree of May 10th which lays down "that the whole country is henceforward attached to the Danish colonies and stations and to the Danish administration of Greenland [FN1]" (".... que tout le pays est désormais rattaché aux colonies et stations danoises et à l'administration danoise du Groënland").

[FN1] The (French) translation given above was filed by the Norwegian Government. The translation submitted by the Danish Government was as follows : ".... l'ensemble du pays est désormais rattaché aux colonies et stations danoises sous l'autorité de l'administration danoise du Groenland" (".... the whole of the country is henceforth attached to the Danish colonies and stations under the authority of the Danish administration of Greenland"). In view of these two different translations, it seems advisable to give the original Danish text: ".... at hele Landet herefter er inddraget under de danske Kolonier og Stationer og den danske Styrelse af Grønland".

[377] What happened in 1921, it is contended on behalf of Denmark, was merely that "the whole country was attached to the special organization, the office at Copenhagen which deals [p111] effect by several of the contracting Parties to such treaties with Greenland affairs, in other words: it was merely a question of domestic administration". Nevertheless, the Decree of May 10th, 1921, was notified to foreign Powers. Even accepting the construction now placed on this text by Denmark, it seems difficult to admit that a State can have had effective possession of vast territories - even in the Arctic regions - which were subject neither to the central administration nor to the local administration instituted for the colony, of which these vast territories are alleged to form part; territories of this kind, elsewhere, are expressly subject to the different organs of the competent administration, sometimes to several authorities (civil, military, judicial); even if there are parts of the territory which have never been visited by the authorities, there exists however a competent authority for these territories who can act, if circumstances require it.

[378] It follows from the foregoing that the Greenland which up to 1814 was a possession of Norway, and which in 1814 became a Danish possession - that is to say the Greenland referred to in the Treaty of Kiel and during the Norwegian-Danish negotiations concerning the financial

settlement - was not the whole of Greenland in the geographical sense of the present day. It could only be, and it was only, the Greenland over which the Monarch of the two united kingdoms had exercised - and over which he consequently possessed - effective sovereignty, in other words, the colonized districts subject to the administration of the Sovereign. That being so, it is unnecessary to dwell further on the scope of the Treaty of Kiel and of the subsequent financial settlement.

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[379] In regard to the numerous treaties in which the Danish Government inserted an exception in regard to Greenland, the following considerations call for attention:

[380] If these treaties can be adduced as evidence that the respective contracting States recognized Danish sovereignty over the whole of Greenland, in virtue of the exception thus inserted by Denmark, how can one account for the fact that the Danish Government itself, in the years 1915-1921, approached a certain number of these very same States with an express request for their recognition ? And how can one account for the fact that these States did not then reply that they had already granted this recognition by the conclusion of one or other of these treaties ? The true explanation is, perhaps, that at the same time when the treaties of commerce, etc., were concluded, none of these foreign Powers was thinking-owing to the nature of the case-of the area which might be covered by the term "Greenland". Statements to that [p112] effect by several of the contracting Parties to such treaties concluded with Denmark were indeed produced to the Court.

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[381] As regards the conversations which took place on July 14th and 22nd, 1919, between M. Krag, the Danish Minister at Oslo, and M. Ihlen, the Norwegian Minister for Foreign Affairs, there is in existence a record, accepted by both Parties, in the form of notes bearing the initials of M. Ihlen.

[382] The notes are in the following terms, according to the Norwegian Government's translation:

"I. Le ministre de Danemark m'a communiqué aujourd'hui que son Gouvernement a été avisé de Paris que la question du Spitzberg sera examinée, par une commission de quatre membres (américain, britannique, français et italien). Au cas où le Gouvernement danois serait interrogé par cette commission, il est prêt à répondre que le Danemark n'a pas d'intérêts au Spitzberg et qu'il n'a aucune raison de s'opposer aux désirs de la Norvège touchant le règlement de cette question.

En outre, le ministre de Danemark a communiqué ce qui suit:

Le Gouvernement danois s'est pendant plusieurs années occupé de la question d'obtenir la reconnaissance, par toutes les Puissances intéressées, de la souveraineté du Danemark sur l'ensemble du Greenland, et il se propose de soumettre cette question, simultanément, à ladite commission. Au cours des négociations avec les Etats-Unis d'Amérique concernant la cession des Antilles danoises, le Gouvernement danois a soulevé cette question en ce qui concernait la reconnaissance par le Gouvernement des Etats-Unis, et il a obtenu que celui-ci, concurremment avec la conclusion de la convention relative à la cession desdites îles, donnât une déclaration dans laquelle il est dit que les Etats-Unis ne s'opposeraient pas à ce que le Gouvernement danois étendît à l'ensemble du Groenland ses intérêts politiques et économiques.

Le Gouvernement danois compte (a-t-il dit) que le Gouvernement norvégien ne fera pas de difficultés au règlement de cette affaire. J'ai répondu que la question sera examinée.

14/7 — 19 Ih."

"II. J'ai dit aujourd'hui au ministre de Danemark que le Gouvernement norvégien ne ferait pas de difficultés au règlement de cette affaire.

22/7 — 19 Ih. [FN1]" [p113]

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[FN1] Translation from the French text supplied by Norway:

"I. The Danish Minister today informed me that his Government had heard from Paris that the Spitzbergen question would be dealt with by a Committee of four members (American, British, French and Italian). Should this Committee question the Danish Government, the latter would be prepared to answer that Denmark had no interests in Spitzbergen and that Denmark had no reason to oppose Norway's wishes in regard to the settlement of the question.

"Further, the Danish Minister informed me of the following:

"The Danish Government has for several years been concerned with the question of obtaining recognition of Danish sovereignty over all Greenland [113] from all the Powers concerned, and they intend simultaneously to submit this question to the Committee. In the course of the negotiations with the United States of America concerning the cession of the Danish West Indies, the Danish Government raised this question in so far as concerned recognition by the United States Government, and it obtained from the latter, simultaneously with the conclusion of the convention regarding the cession of the islands referred to, a declaration to the effect that the United States would not raise any objection to the extension by the Danish Government of its political and economic interests to the whole of Greenland.

"The Danish Government confidently expected (he said) that the Norwegian Government would make no difficulty in connection with the settlement of this matter. I replied that the question would be considered.

14/7 - 19 Ih."

"II. I to-day informed the Danish Minister that the Norwegian Government would make no difficulty in the settlement of this matter.

22/7 - 19 Ih."

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[383] The translation filed by the Danish Government does not differ substantially, or in any essential particular, from the above. In place of the words "au règlement de cette affaire" ("in the settlement of this matter"), the Danish translation has: "au sujet du règlement de cette affaire" ("in connection with the settlement of this matter"). It should be noted that the word "simultanément" (à ladite commission) ("simultaneously..... to the Committee) does not appear in the instructions sent to M. Krag.

[384] On July 22nd, the Danish Minister reported to his Minister for Foreign Affairs in the following terms:

"I have the honour to report that M. Ihlen, the Minister for Foreign Affairs, informed me today that the plans of the Royal Government respecting Danish sovereignty over the whole of Greenland - mentioned in your despatch of the 12th instant - would meet with no difficulties on the part of Norway."

[385] To appreciate the nature and scope of these conversations, it is necessary to consider the following facts which emerge from the evidence produced:

[386] The Danish Government's overtures to the various other Powers, during the years 1915 to 1921, were in writing, whereas it approached the Norwegian Government in 1919 orally.

[387] In the negotiations with the United States of America in 1916, Denmark expressly reserved her right to the continuance of the monopoly. There is no proof that this was mentioned to M. Ihlen.

[388] In the overtures in writing to the other Powers, the monopoly system is expressly described; in the brief request addressed verbally to Norway in 1919, the extension of this [p114] system was not mentioned. M. Krag spoke of the Danish Government's anxiety to obtain recognition by all interested Powers "of Denmark's sovereignty" over all Greenland; he described how "this question" had been raised with the United States and he gave the American reply to the effect that the United States would not oppose the extension of Danish political and economic interests over all Greenland. M. Ihlen could not, from these general expressions, and without any explanation or special knowledge, draw the inference that this meant the extension of the monopoly.

[389] On Denmark's side, it has been maintained, in the course of the proceedings, that the overtures to certain Powers between 1915 and 1921 were designed to obtain recognition of sovereignty and also of future measures for the welfare of the Eskimos, i.e. the monopoly system; so far as can be observed, nothing was said regarding the extension of the monopoly in the conversation with M. Ihlen; on the contrary, M. Ihlen's minutes and the instructions given to M. Krag and the latter's despatch to his Government after M. Ihlen's answer, all alike only refer to the question of sovereignty.

[390] The important Greenland Society of Copenhagen, in a letter to the Danish Government on November 2nd, 1916, had said with regard to the coastal area between Germanialand and Cape Dalton (an area which includes Eirik Raudes Land) that "it is a favourite resort of Norwegian hunters who almost every year engage in hunting there both at sea and on land"; and the Society emphasized that "the State of Denmark must exercise sufficient foresight to secure these regions as soon as possible".

[391] The brief minutes kept by M. Ihlen are the only record made in the Norwegian Ministry for Foreign Affairs of the Danish demarche of 1919 and of M. Ihlen's reply.

[392] During the Dano-Norwegian negotiations for the settlement of this matter, the Danish Government closed the coasts of Greenland which had hitherto been open, a measure directed particularly against Norwegians; by this measure the Danish Government broke off the negotiations.

[393] Thus, in 1919, the Danish Government was fully aware of the Norwegian interests in Eastern Greenland. At the same time, the aim of the demarches undertaken by it was an extension of the monopoly the consequences of which were bound to be most serious for Norwegian interests.

[394] The Danish Minister in Paris, on July nth, 1919, had suggested to his Government that Denmark's attitude in the [p115] Spitzbergen question should be based on that of the Norwegian Government in regard to Denmark's request for recognition of Danish sovereignty over Greenland. Nothing was said to M. Ihlen regarding any such linking together of the two questions, nor did the instructions to M. Krag contain anything on the point. In these instructions

we read : "I will, on the other hand, ask you to bring out in the course of the conversation", etc. If what was desired was an arrangement on the principle of *do ut des* in regard to the questions of sovereignty, it should have been expressly stated. The Danish Minister at Oslo begins, on the contrary, by stating unreservedly that the Danish Government, should it be questioned on the point, would be "willing to reply that Denmark has no interests in Spitzbergen and has no reason for opposing Norway's aspirations regarding the settlement of this question".

[395] Moreover, the Danish Minister for Foreign Affairs had already stated unreservedly on April 1st, 1919, to the Norwegian Minister at Copenhagen, that Denmark had no interest conflicting with those of Norway in Spitzbergen; in view of this unofficial statement, it would have been difficult for M. Ihlen to conceive, in July of the same year, that there was any question of an agreement of some sort on the principle of *do ut des*. It has in no way been proved that M. Ihlen knew - as has been alleged - that Denmark, when intending to adopt an attitude favourable to Norway in the Spitzbergen question at the Peace Conference, was relying upon his declaration. M. Ihlen expressly denied it in a statement made by him on July 4th, 1923, protesting against certain assertions made in Denmark. In this statement, M. Ihlen expresses himself as follows:

"On one of the last days of March, 1919, the Norwegian Minister for Foreign Affairs telegraphed to the Norwegian Minister at Copenhagen asking him to explain to the Danish Foreign Minister the reasons militating in favour of the attachment of Spitzbergen to Norway, and to express the hope that Denmark would take a favourable view of the matter. In conformity with these telegraphic instructions, the Norwegian Minister had a conversation with M. Scavenius, Foreign Minister, on the subject of Spitzbergen, on April 1st, 1919. In a despatch of April 2nd regarding this conversation, the Norwegian Minister reported that M. Scavenius had at once declared that the Danish Government would be altogether favourable to the union of Spitzbergen with Norway. Denmark herself had no interest in that region conflicting with those of Norway, and the Danish Government fully recognized the weight of the geographical and economic arguments in favour of uniting these islands with Norway, and considered this as the most practical settlement. Not a word was said about Greenland in this conversation. [p116] The démarche made to me by the Danish Minister at Oslo and alluded to by M. Scavenius did not take place until some months later, on July 14th, 1919. During this conversation, the questions of Spitzbergen and Greenland were both discussed, but I can say with certainty that Monsieur Krag, the Danish Minister, did not on this occasion place any conditions upon the Danish Government's favourable attitude in the question of Spitzbergen. There is therefore no justification for speaking of the conclusion of a contract."

[396] In view of the undeniable fact that Denmark had no interest in Spitzbergen, I should not have considered it equitable to attribute to the Danish Government an intention of proposing, in July 1919, any such bargain on the *do ut des* principle. In point of fact, the Spitzbergen Treaty guaranteed all rights to every Power, including Denmark, whereas Norway, by recognizing Danish sovereignty, would have run the risk of sacrificing all her rights in Greenland.

[397] It is very probable that M. Ihlen was, generally speaking, well disposed owing to the Spitzbergen question, and doubtless he favourably regarded Denmark's desire to approach the Committee of four members at Paris. M. Ihlen also gave evidence of his favourable attitude at a visit paid to him by the new Danish Minister at Oslo in November of the same year; in the course of this visit, M. Ihlen - according to a report of the Danish Minister - said that "it was a pleasure for Norway to recognize Denmark's sovereignty over Greenland". This was an official courtesy visit and too much importance must not be attached to the way in which the remark quoted is worded in the report; but in any case it proves M. Ihlen's attitude.

[398] It has not been proved that the Krag-Ihlen conversations linked together the Greenland and Spitzbergen questions in a manner possessing any real legal significance ; and the facts above mentioned militate against the theory that M. Ihlen must have realized the existence of a close connection of this kind. During the year 1921, the Danish Government mentioned to the Norwegian Government the benevolent attitude shown by Denmark in the Spitzbergen question. But only in a note at the beginning of 1923, was the theory that the two questions were interdependent - as maintained before the Court - put forward to Norway. Nevertheless, it is to be observed that this interdependence was not referred to in the Protocol of Closure of the Dano-Norwegian negotiations of January 28th, 1924, in which the Danish delegation expressly referred to the Ihlen declaration as binding upon Norway. [p117]

[399] The correspondence with the Danish Minister in Paris was known to the Danish Government and the Danish Minister at Oslo, but unknown to M. Ihlen. The Danish authorities, having this correspondence in mind, gradually conceived an idea of the import of the brief conversations with M. Ihlen, differing from the idea which M. Ihlen himself could have had, as he was unaware of the suggestions put forward regarding the interdependence of the two questions of sovereignty.

[400] It appears from the information supplied during the proceedings that the conversation of July 14th, 1919, was the first notice that the Norwegian Government had of Denmark's aspirations. Thus, M. Ihlen was unprepared for the question; he mentioned the matter verbally and unofficially to his colleagues, but no decision was taken by the Government. It also appears from the information produced that M. Ihlen made no enquiries into the question of Norwegian interests in Eastern Greenland; he was not thinking of them when he gave his verbal answer on July 22nd, 1919.

[401] Norwegian hunters and fishermen had for a considerable period engaged in their pursuits in Eastern Greenland, unquestioned and unhindered by Denmark. Accordingly, it is to be supposed that the Norwegian authorities had no knowledge of any grievance on the part of these Norwegian nationals. Moreover, the Danish Government for its part had never taken exception to these Norwegian activities and, in these circumstances, it is easy to understand that these activities should not at once have occurred to the minds of members of the Norwegian Government ; this also explains how it was that the fundamental interests of Norwegians, the questions of law here in issue, the possible extension of the monopoly and of the régime of exclusion to a region where no Eskimos existed, had not at this time been examined by the Norwegian Government. Norway had had no administrative connection with Greenland for more than a century; and the traditions of this connection were no longer familiar to the Norwegian administration in 1919.

[402] M. Ihlen gave his verbal answer a week after he had been approached, whereas the declaration of the United States of America on August 4th, 1916, was made after lengthy negotiations. The United States were directly interested in Davis Strait, and there can be no doubt that there had been intercourse between Americans and the Eskimos living along the West coast of Greenland.

[403] It is true that the Norwegian Government, in the course of the proceedings, produced a document dating from 1916 from which it appears that the Danish administration was then contemplating the application of the régime of exclusion [p118] to the whole of Greenland. Nevertheless, the dispute between the two Parties began some years after M. Ihlen's declaration, and it seems very unlikely that, prior to M. Ihlen's reply, there was any knowledge in Norway of

documents relating to the administration of Greenland and still less likely that such documents had been studied.

[404] If the Danish Government had approached Norway in writing as she did the other Powers, the documents would have been submitted to the competent authorities in Norway and the matter would in all probability have taken a different turn.

[405] It might be said that M. Ihlen was guilty of negligence on this occasion; but this criticism applies more strongly to the Danish Government in the same connection. When it is remembered that the action of the Danish Government was, at all events in part, the outcome of Norwegian activity in Eastern Greenland and that the attention of the Danish Government had been specially drawn, shortly before, to these Norwegian interests, and again when it is remembered that the question concerned aspirations and plans conceived by Denmark, it is reasonable to say that there was more serious negligence on the part of the Danish Government than on that of the Norwegian Government, which was unprepared for the Danish *démarche* and did not regard its reply as a definitive settlement of the matter.

[406] It appears that the object of the conversations of July 14th and 22nd, 1919, between M. Ihlen and M. Krag was, so far as Denmark was concerned, to obtain a final and binding promise; but, in that case, the form of the Danish *démarche* leaves much to be desired. The outcome was a verbal answer given by the Norwegian Minister for Foreign Affairs, without any discussion between the two Governments upon the substance of the question and without the question having been examined in Norway. The responsibility for this fatal omission rests first and foremost upon Denmark.

[407] M. Ihlen, it is true, when making his declaration of July 22nd, was speaking on behalf of the Norwegian Government and promised that Norway would raise no difficulty in the future settlement of this matter. Such a promise made by the Minister for Foreign Affairs is, in principle, valid and binding. But in the present case there are special circumstances. M. Ihlen, when making his declaration, was labouring under a fundamental and excusable misapprehension. I would refer to M. Raestad's letter of July 20th, 1921, to the Danish Minister at Oslo : "... I have now received a communication from Ihlen, whence it appears - as I thought - that, in his conversation with M. Krag, he did not give it to be understood that Norway would agree to the new territory [p119] being placed under the Danish Monopoly." This misapprehension on the part of M. Ihlen was, in the first place, due to the fact that the Danish request had been made verbally and was not accompanied by the information given to the other Powers regarding the extension of the monopoly and regime of exclusion, which was, as subsequently explained by Denmark, the real object of the *démarche*. This object was explained in a note addressed on December 19th, 1921, by the Danish Minister at Oslo to the Norwegian Ministry for Foreign Affairs. In that note it is explained that the words used in the American reply and quoted by M. Krag to M. Ihlen: "... to the Danish Government extending their political and economic interests to the whole of Greenland", contemplated precisely the extension to the whole of Greenland of the special regulations in question, i.e. the regulations of the monopoly and régime of exclusion.

[408] A promise given under such conditions has not the same value as a promise which is not tainted by an error or defect.

[409] M. Ihlen's declaration clearly related to a future settlement of the matter between the two Governments. Obviously, the Danish Government, which was well aware of the Norwegian interests on the East coast of Greenland, realized that the future settlement must necessarily

cover these interests; it would be contrary to common sense to contend that the Norwegian interests could be put on one side during the settlement in regard to which the Norwegian Minister for Foreign Affairs had promised not to place difficulties in the way of the Danish aspirations. The undertaking thus given was, in the nature of things, based on the idea of reciprocity. The two Parties were bound, after the Ihlen-Krag conversations, mutually to refrain from making difficulties when the time came to effect a settlement between them.

[410] Norway was honouring M. Ihlen's promise when Denmark suddenly broke off the negotiations for a mutual settlement.

[411] On May 6th, 1921, the Danish Government obtained a royal decision by virtue of which it attached all Greenland to the Danish colonies and factories and to the Danish administration of Greenland. Even at this date, when the Danish Government had thus decided to break off all negotiations, the Norwegian Government still preserved its conciliatory attitude. On May 7th, the Norwegian Minister for Foreign Affairs, who was entirely ignorant of the Danish decision of May 6th, suggested to the Danish Minister at Oslo the following arrangement: the Norwegian Government was to make a declaration corresponding approximately to that of the American Government and would, at the same time, in a separate note, point out that [p120] this declaration was made subject to the reservation that Norway did not abandon the rights above mentioned (namely, the fishing and hunting rights of Norwegians). He added that the Norwegian Government would doubtless favourably consider any method which would lead to a settlement such as has been indicated above ; he did not attach so much importance to the question of form.

[412] On May 10th, the Danish Government formally broke off the negotiations in progress with the Norwegian Government by means of the following note sent by the Danish Minister at Oslo:

"With regard to the Greenland question, I have received from the Ministry for Foreign Affairs a telegram, the terms of which I venture to transmit to you:

"The Ministry for Foreign Affairs does not desire any further démarche to be made with a view to obtaining from the Norwegian Government a written declaration, but desires to rest content with the promise already made verbally on behalf of Norway."

[413] The reason for this unexpected action was that the Norwegian Government, which was fully within its rights, wished to settle the matter of Norwegian economic interests at the same time as the question of sovereignty.

[414] By a letter of July 2nd, the Danish Minister at Oslo informed the Norwegian Minister for Foreign Affairs that the whole of Greenland was closed.

[415] By this rupture of the Dano-Norwegian negotiations, Denmark abolished the arrangement made with M. Ihlen, and the promise of the Norwegian Minister for Foreign Affairs thereby ceased to be binding. Denmark's failure to fulfil the implicit obligation resulting for her from the Krag-Ihlen agreement, gave the other Party the right to declare himself released from his undertaking.

[416] This was what happened.

[417] Eighteen days after the notification of the closing of the whole of Greenland, M. Ræstad, the Norwegian Minister for Foreign Affairs, wrote to the Danish Minister in the following terms:

"You will no doubt have to reckon with the fact that the present Norwegian Government, like its

predecessor, in agreement with the opinion of other responsible circles, is unable to accept an extension of Danish sovereignty over Greenland involving a corresponding extension of the monopoly, to the detriment of Norwegian interests."

[418] The Danish Government has argued before the Court that, by this letter, Norway was not contesting the sovereignty of Denmark over the whole of Greenland. The accuracy of this allegation cannot be admitted. The Danish Government, in its overtures to foreign Powers, had linked the question of [p121] sovereignty and that of the monopoly so closely together that it is impossible to treat them as separate in this connection. The Danish Government had spoken of an extension of sovereignty, while - according to its own statement - it had in mind, from beginning to end, the extension of the monopoly system. In a memorandum, dated January 18th, 1921, from the Danish Legation at Oslo to the Norwegian Minister for Foreign Affairs, a description is given of the overtures made to the Great Powers; it contains the following passage: "The Ministry accordingly sent instructions, at the beginning of last March, to its Ministers in London, Paris, Rome and Tokyo, to endeavour to obtain official recognition by the Governments in question of Danish sovereignty over the whole of Greenland urging, in support of the request, the actual position of Denmark in relation to Greenland; the best method of according this recognition would, in the opinion of the Danish Government, be for the said Governments to make declarations corresponding to that already given by the United States." But during the present proceedings, the Danish Government has laid considerable stress on the fact that the American reply contained a definite and specific reference to the system of monopoly, which Denmark was proposing to continue and to develop. In the instructions sent to the Danish Ministers abroad, this inseparable interconnection, this unity in dualism, was brought out by the words: "it is desirable that the Danish Government should extend its care [for the Eskimos, by means of the monopoly] by means of its sovereignty over the whole of Greenland."

[419] The first overture, which was made verbally to the Norwegian Government in July 1919, only touched on the question of the recognition of sovereignty; and the second overture, which was made in writing on January 18th, 1921, was also concerned with the question of sovereignty, "an extension of Danish sovereignty to the whole of Greenland". But, as has been already said, a later Danish note of December 19th, 1921, revealed that what was actually aimed at was the extension of the monopoly system as well.

[420] M. Ihlen gave his reply without realizing this inseparable inter-connection, and indeed without being able to suspect its existence. However, when this connection became clear to M. Ræstad, the latter stated that Norway could not accept such a request for recognition by Denmark. The request sought indeed to obtain everything: sovereignty plus monopoly, monopoly plus sovereignty, "[an extension of its] care by means of its sovereignty", That was indeed the object which the Danish request had throughout had in view, and it was this request that Norway refused to accede to. M. Ræstad's [p122] no was a rejection of the request for recognition of Danish sovereignty, in the form in which it appeared when all its aspects had been fully revealed. M. Ræstad's letter of July 20th, 1921, contains, for that reason, a refusal to recognize this sovereignty over the whole of Greenland, the recognition of which Denmark had endeavoured by her overtures to obtain.

[421] In this connection, some importance attaches to the fact that in both the overtures made to the Norwegian Government in 1919 and 1921 - and not least in the latter of these overtures—the Danish Government had shown that it did not regard itself as possessing sovereignty over the whole of Greenland. The conviction thus implanted in the mind of the Norwegian Government led to certain consequences.

[422] When one considers in succession the incomplete form of the request made to M. Ihlen, the light which was subsequently thrown on the plan for the extension of the monopoly and the regime of exclusion, the not very conciliatory attitude of the Danish Government, when the Norwegian Government desired to have a settlement of Norwegian economic interests in conjunction with the recognition of Danish sovereignty, and lastly, the Danish decision to close Eastern Greenland on the ground, as was alleged, that Norway had recognized the extension of Danish sovereignty, one is driven to the conclusion that it would be contrary to all justice that, after the rupture of the negotiations by Denmark in 1921, Norway should still be regarded as bound by M. Ihlen's promise, and obliged to refrain from making difficulties in a future settlement between the two countries.

[423] It is necessary here to mention another fact which is of some importance in this connection. By a declaration made to the Danish Government on September 6th, 1920, the British Government had reserved its right to be consulted, in case Denmark should contemplate selling Greenland. This British reservation, which was not rejected by the Danish Government, was not communicated to the Norwegian Government, to whom it presented, without doubt, considerable importance.

[424] Keeping in view the realities of the case, I am thus led to the conclusion that the Krag-Ihlen arrangement had lost its binding force in 1921.

[425] Since that time, the Norwegian Government has unceasingly maintained that Denmark only possesses sovereignty over a part of Greenland, and that Norway has not recognized a Danish sovereignty extending to the whole country.

[426] Nevertheless, in a note dated July 13th, 1923, the Norwegian Government declared that it was prepared to enter into [p123] fresh negotiations on "an entirely free basis". The Norwegian conception was given very definite expression in the Protocol of Closure of the Danish-Norwegian negotiations, dated January 28th, 1924. The Norwegian delegation declared therein that all parts of Greenland, which were not effectively under Danish administration, were *terra nullius*.

[427] Accordingly, the Norwegian Government has consistently maintained, ever since the breaking off of the negotiations by the Danish Government in 1921, that it is not bound by the Krag-Ihlen arrangement.

[428] The reasons which I have set forth above lead me to accept the submissions presented by the Norwegian Government in regard to sovereignty, and for these reasons consequently prevent me, to my regret, from signing the judgment which the Court has delivered. I am, however, in agreement with the conclusion of the judgment which deals with the costs of the proceedings.

(Signed) Benjamin Vogt.

Annex.

Documents Submitted to the Court.

I. - Documents Filed in the Course of the Written Proceedings.

A. - On behalf of the Danish Government:

- (a) Pamphlet by M. Knud Rasmussen, entitled: "Greenland, its exploration and development by Denmark", Copenhagen, 1931.
- (b) Danish Commercial Review, No. 32, June 1931.
- (c) Eight maps and diagrams (Greenland; Eastern Greenland; scientific work in Greenland). (These maps, etc., were also filed during the oral proceedings, assembled together in an atlas.)
- (d) Annexes to the Danish Government's Case. One volume.

- A. Letter of the Royal Danish Geographical Society (Oct. 16th, 1931).
- B. Statements by foreign experts concerning the Danish Greenland Administration.
- C. The cartography and scientific exploration of Greenland.
- D. List of voyages of exploration and scientific expeditions undertaken on the East coast of Greenland.

- E. Extracts from legislation promulgated by Denmark with regard to Greenland.
 - 1. Ordinance of April 9th, 1740, concerning navigation to Greenland.
 - 2. Ordinance of April 10th, 1744 (*idem*).
 - 3. Ordinance of March 26th, 1751 (*idem*).
 - 4. Ordinance of April 22nd, 1758 (*idem*).
 - 5. Ordinance of March 18th, 1776, renewing the proclamation and prohibition in respect of any unlawful trading in Greenland and its dependencies.
 - 6. The Eastern Greenland (Tayler) concession of June 7th, 1863.
 - 7. Decree of October 10th, 1894, concerning the mission and tradingstation founded on the East coast of Greenland.
 - 8. Article I of the proclamation of March 8th, 1905, concerningnavigation in Davis Strait.
 - 9. Decree of May 10th, 1921, regarding the establishment of trading, mission and hunting stations in Greenland.
 - 10. Article I of the proclamation of June 16th, 1921, concerningnavigation in the seas surrounding Greenland.
 - 11. Decree of the Department for the Colonies in Greenland of July 5th, 1924, concerning access to Eastern Greenland.
 - 12. Law of April 1st, 1925, concerning hunting and fishing in Greenland waters.
 - 13. Extract from the law of April 18th, 1925, concerning the administration of Greenland.
 - 14. Proclamation of May 22nd, 1925, concerning navigation in the seas surrounding Greenland.

- F. Extracts from conventions and treaties concluded by Denmark in the XIXth and XXth centuries concerning Greenland.
 - 15. Treaty of commerce between Denmark and Prussia (June 17th, 1818).
 - 16. Convention of commerce and navigation between Denmark and Great Britain (June 16th, 1824).
 - 17. Convention of friendship, commerce and navigation between Denmark and the United States of America (Apr. 26th, 1826). [p125]
 - 18. Treaty of commerce between Denmark and Norway and Sweden (Nov. 2nd, 1826).
 - 19. Convention of commerce and navigation between Denmark and Austria (Feb. 12th, 1834).
 - 20. Declaration between Denmark and the Free City of Bremen (Nov. 5th, 1835).
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 - 27. Convention of commerce and navigation between Denmark and Mecklenburg-Schwerin

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28. Treaty of commerce and navigation between Denmark and the Two Sicilies (Jan. 13th, 1846).

29. Convention of commerce between Denmark and Prussia (May 26th, 1846).

30. Treaty of commerce and navigation between Denmark and Greece (Oct. 31st, 1846).

31. Treaty of friendship, commerce and navigation between Denmark and the Dominican Republic (July 26th, 1852).

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34. Declaration concerning the coasting trade between Denmark and Mecklenburg-Schwerin (Sept. 7th and 14th, 1867).

35. Declaration concerning the coasting trade between Denmark and the North German Confederation (Feb. 17th-23rd, 1868).

36. Postal Convention between Denmark and the North German Confederation (Apr. 7th and 9th, 1868).

37. Postal Convention between Denmark and Russia (June 25th -July 7th, 1872).

38. Treaty of friendship, commerce and establishment between Denmark and Switzerland (Feb. 10th, 1875).

39. Detailed regulations for the execution of the Universal Postal Convention (Paris, June 1st, 1878).

40. Convention of commerce and navigation between Denmark and Austria-Hungary (March 14th, 1887).

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42. Treaty of commerce and navigation between Denmark and Belgium (June 18th, 1895).

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50 a. Treaty of commerce and navigation between Denmark and Japan (Feb. 12th, 1912).

50 b. Customs Convention between Denmark and Japan (Feb. 12th, 1912).

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52. Extradition Convention between Denmark and Finland (Feb. 12th, 1923).

53. Exchange of notes between Denmark and Lithuania concerning commercial and maritime relations (July 18th, 1923).

54. Treaty of commerce and navigation between Denmark and Finland (Aug. 3rd, 1923).

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56. Exchange of notes concerning commercial and maritime relations between Czechoslovakia and Denmark (Jan. 31st, 1924).

57. Treaty of commerce and navigation between Denmark and Poland (March 22nd, 1924).

58. Universal Postal Convention (Stockholm, Aug. 28th, 1924).

59. Treaty of commerce and navigation between Denmark and Latvia (Nov. 3rd, 1924).

60. Convention for the suppression of the contraband traffic in alcoholic liquors between Germany, Denmark, Estonia, Finland, Latvia, Lithuania, Norway, Poland and the Free City of

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63. International Convention for the abolition of import and export prohibitions and restrictions, signed by Denmark on November 8th, 1927.

64. Convention of commerce and navigation between Denmark and Spain (Jan. 2nd, 1928).

65. Treaty of commerce between Denmark and Austria (Apr. 6th, 1928).

66. International Agreement relating to the exportation of hides and skins (Geneva, July nth, 1928).

67. International Agreement relating to the exportation of bones (Geneva, July 11th, 1928).

68. Convention of commerce and navigation between Denmark and Greece (Aug. 22nd, 1928).

69. International Convention concerning economic statistics, signed by Denmark on December 14th, 1928.

70. Exchange of notes between Denmark and Spain (Jan. 8th-31st, 1929), concerning treatment of Danish (and Greenland) merchandise upon entry into the Spanish possessions in the Gulf of Guinea and vice-versa.

71. Treaty of commerce and navigation between Denmark and Columbia (June 21st, 1929).

72. Universal Postal Convention (London, June 28th, 1929).

73. Exchange of notes between Denmark and Czechoslovakia concerning treatment of Greenland merchandise in Czechoslovakia and Czechoslovak merchandise in Greenland (Aug. 26th, 1929).

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76. Extradition Convention between Denmark and Estonia (May 13th, 1930).

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83. Note of November 29th, 1905, from M. Henrik Grevenkop-Castenschiold, Danish Minister at Christiania, to M. Løvland, Norwegian Minister for For. Aff.

84. Letter of July 12th, 1919, from M. Erik Scavenius, Minister for For. Aff., to M. O. Krag, Danish Minister at Christiania.

85. Report sent on July 22nd, 1919, by M. O. Krag, Danish Minister at Christiania, to M. Erik Scavenius, Minister for For. Aff.

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118. Memorandum of December 20th, 1930, from M. Oldenburg, Danish Minister at Oslo, to M. Mowinckel, Norwegian Prime Minister and Minister for For. Aff.

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165. Extract from a report made to His Majesty on August 1st, 1916, upon the treaty between Denmark and the United States of North America concerning the cession of the Danish West Indies.

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173. Note of March 17th, 1920, from M. A. Oldenburg, Danish Minister at Rome, to H.E. Senator Scialoja, Italian Minister for For. Aff.

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176. Instructions of July 7th, 1920, given by M. Harald de Scavenius, Danish Minister for For. Aff., to M. Grevenkop-Castenschiold, Danish Minister at London.

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186. Note of July 1st, 1921, from M. O. Krag, Danish Minister at Brussels, to H.E. M. Jean Jaspar, Belgian Minister for For. Aff.

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190. Note of April 2nd, 1925, from the Danish Minister for For. Aff. to Earl Granville, His Britannic Majesty's Minister at Copenhagen. [p132]

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(b) 1925. M. H. R. E. Krullger, a German national: permission to visit Cape York (North-West of Greenland):

192. Verbal note of May 25th, 1925, from the German Legation at Copenhagen to the Danish Ministry for For. Aff.

193. Verbal note of July 6th, 1925, from the Danish Ministry for For. Aff. to the German Legation at Copenhagen.

(c) 1926. Commander Byrd, an American citizen : permission to land with an aeroplane at Cape Morris M. Jesup (the northern point of Greenland):

194. Note of March 24th, 1926, from M. John Dyneley Prince, United States Minister at Copenhagen, to the Danish Minister for For. Aff.

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196. Note of March 24th, 1926, from M. John Dyneley Prince, United States Minister at

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197. Verbal note of April 6th, 1926, with annex, from the United States Legation at Copenhagen to the Danish Ministry for For. Aff.

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199. Note of April 27th, 1926, from the Danish Minister for For. Aff. to Mr. Oliver B. Harriman, United States Charge d'affaires at Copenhagen.

(e) 1928. Miss Louise A. Boyd, an American citizen: permission to land and to hunt to the North of the district of Scoresby Sound (in the territory covered by the Norwegian Government's declaration of occupation of 1931):

200. Verbal note of March 1st, 1928, from the United States Legation at Copenhagen to the Danish Ministry for For. Aff.

201. Telegram of March 12th, 1928, from M. Brun, Danish Minister at Washington, to the Danish Ministry for For. Aff.

202. Verbal note of March 14th, 1928, from the Danish Ministry for For. Aff. to the United States Legation at Copenhagen.

(f) 1931. Miss Louise A. Boyd, an American citizen: permission to land and to hunt to the North of the district of Scoresby Sound (in the territory covered by the Norwegian Government's declaration of occupation of 1931):

203. Verbal note of April 22nd, 1931, from the United States Legation at Copenhagen to the Danish Ministry for For. Aff.

204. Verbal note of May 4th, 1931, from the Danish Ministry for For. Aff. to the United States Legation at Copenhagen. [p133]

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(g) 1930. Captain Bartlett, an American citizen : permission to undertake archaeological research to the North of the district of Scoresby Sound (in the territory covered by the Norwegian Government's declaration of occupation of 1931):

206. Verbal note of February 27th, 1930, from the United States Legation at Copenhagen to the Danish Ministry for For. Aff.

207. Verbal note of April 9th, 1930, from the Danish Ministry for For. Aff. to the United States Legation at Copenhagen.

(h) 1930. M. C. Dumbrava, a Roumanian subject: permission to undertake scientific research at certain points in Eastern Greenland situated outside the trading stations:

208. Verbal note of March 14th, 1930, from the Royal Roumanian Legation to the Danish Ministry for For. Aff.

209. Verbal note of April 26th, 1930, from the Danish Ministry for For. Aff. to the Royal Roumanian Legation at Stockholm.

(i) 1930. German Polar Expedition, organized on the initiative of Professor Wegener: permission to establish a station in Western Greenland, one on the Indlandsis and one in Eastern Greenland,, at the upper end of the fjord of Scoresby Sound, about 150 km. from the headquarters of the district of that name:

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32. Despatch, dated November 12th, 1925, from the Norwegian Ministry for F'or. Aff. to the Norwegian Legation at Copenhagen.

33. Telegram, dated July nth, 1931, from the Norwegian Ministry for F'or. Aff. to M. Devoid, at Mygg-Bukta.

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38. Memorandum, dated December 27th, 1915, from the Danish Minister at Washington to the Secretary of State of the United States of America.

39. Danish memorandum, dated April 22nd, 1916, to the Minister of the United States of America at Copenhagen.

40. I. Letter, dated November 3rd, 1916, from the Danish Ministry of the Interior (Directorate of Greenland Colonies) to the Parliamentary Commission of the Danish West Indies.

II. Letter, dated November 2nd, 1916, from the Greenland Society to the Danish Ministry of the Interior.

III. Extract from a letter, dated August 9th, 1913, from M. Knud Rasmussen to the Danish Ministry of the Interior.

41. Extract from the instructions given on January 28th, 1919, to the Danish Minister at Paris.

42. Danish Decree of May 10th, 1921, concerning the establishment of trading, mission and hunting stations in Greenland (I : Danish text ; II : French transl.). [p136]

43. Norwegian law of May 1st, 1925, implementing certain provisions of the Convention of July 9th, 1924, concerning Eastern Greenland.

X. Extracts from recent works of international law.

44. Extracts from authors referred to in Chapter VII of Part II.

45. Extracts from authors referred to in Chapter V of Part II.

46. Article by M. Redslob: The Greenland Dispute before the Hague Court (Journal des Nations, issue of September 13th, 1931).

XI. 47. Atlas, containing 27 maps. [Annex in separate cover.]

(b) An illustrated volume entitled: "Description of the Norwegian Hunting Stations in Eirik Raudes Land."

(c) Annexes to the Norwegian Government's Rejoinder. One volume.

XII. Annexes to Chapter I of Part I.

48. The union between Norway and Denmark (1380-1814).

49. I. Partition of the Kingdom of Norway between Denmark and Sweden on January 14th, 1814. Additional data.

II. Letter, dated January 7th, 1814, from Niels Rosenkrantz, Minister for For. Aff. of Norway and Denmark, to Baron Wetterstedt, Swedish Plenipotentiary at Kiel.

III. Instructions given on January 7th, 1814, by Niels Rosenkrantz, Minister for For. Aff. of Denmark and Norway, to Edmund Bourke, Danish Plenipotentiary at Kiel.

IV. Supplement to the instructions given by Niels Rosenkrantz to Edmund Bourke.

V. Questions addressed to Niels Rosenkrantz by Edmund Bourke, on January 8th, 1814, concerning his instructions.

VI. Letter, dated January nth, 1814, by Edmund Bourke, Danish Plenipotentiary at Kiel, to

Baron Wetterstedt, Plenipotentiary of Sweden.

VII. Proclamation by the King of Denmark concerning the cession of Norway to Sweden (Middelfart, Jan. 18th, 1814).

VIII. Open letter from the King of Denmark concerning the cession of Norway to Sweden (Middelfart, Jan. 18th, 1814s).

XIII. Annexes to Chapters II, III and IV of Part I.

50. Danish declarations concerning the Illstgrllnlandsk FangstKompagni Nanok A/S (Nanok Compagny Ltd. for Hunting in East Greenland), constituted in June 1929.

51. I. The Nanok Company and the Danish Government tend to make the Norwegian trappers responsible for the poor results of the Company's hunting.

II. Danish campaign against the Norwegian hunters. Hunting methods of Danes and Greenlanders.

52. Scientific work carried out by different nations in Eirik Raudes Land.

53. Short observations on the Annex to the Reply entitled L'illuvre colonisatrice du Danemark an Grollnland.

XIV. Annexes to Chapter VI of Part I, etc.

54. I. Extracts from declarations made in the Danish Rigsdag.

II. Other Danish declarations.

III. Danish geographical, statistical and other works.

IV. Non-Danish works.

55. I. Observations on Annexes 149 and 150 to the Danish Reply.

II. Article in the Berlingske Tidende of May 27th, 1889.

56. Statements in the Rigsdag concerning the Danish Decree of May 10th, 1921. [p137]

XV. Various documents.

57. Comparison between Greenland (in particular Eirik Ramies Land) and the Antarctic regions.

58. Administration of certain Arctic regions.

59. The Arctic regions : climatological designation.

60. Information on the conformation and situation of "Greenland", derived from maps subsequent to the year 1600.

61 A. History of the exploration of the East coast of Greenland. 61

B. Observations by W. Werenskiold on Annex 138 to the Danish Reply.

62. Economic resources of Western Greenland.

63. Norwegian and Danish trappers and their hunting grounds in Eirik Raudes Land from the occupation till the summer of 1932.

64. Extracts from the Convention concluded between Norway and Denmark on January 15th, 1926, for the pacific settlement of disputes.

65. British and French laws of the XVIIIth century affecting territories which may hereafter be colonized or placed under the sovereignty of the State.

66. Some legal opinions on the scope of Article 10 of the Covenant of the League of Nations.

XVI. Administrative, legislative and diplomatic documents.

67. Extract from the diplomatic instructions of King Christian IV (Apr. 5th, 1624).

68. Extract from the diplomatic instructions of King Christian IV (July 28th, 1631).

69. Extracts from the instructions drawn up on September 7th, 1691, by the Burgomaster and Council of Hamburg.

70. Extracts from the Concession granted on September 28th, 1697, to the West Indies and Guinea Company.

71. Extracts from the Concession granted on October 29th, 1698, to the East Indies Company.

72. Extracts from the petition, dated June 4th, 1720, from the Greenland Company of Bergen to

the King.

73. Extract from the proposal submitted to the King by the Board of Police and Trade (Feb. 28th, 1721).

74. Extract from the Norwegian Revenue Department's Register of extracts for the year 1721 (Nos. 7 and 8).

75. Opinion submitted about the end of the year 1722 by the Principal Secretary of the Danish Chancellory.

76. Extract from the proposal submitted to the King by the Board of Police and Trade (Jan. 11th, 1723).

77. § 5 of the Concession granted to the Greenland Company of Bergen on February 5th, 1723.

78. Points 1 and 2 of the Instructions drawn up for the "Governor", Major C. E. Paars, on May 7th, 1728.

79. Extract from a draft by F. Holmsted and G. Klouman, merchants of Copenhagen (Nov. 22nd, 1731).

80. Extract from a draft by Jacob Severin, merchant (Nov. 26th, 1731).

81. Extracts from the Concession granted to the Asiatic Company on April 12th, 1732.

82. Extracts from the Concession granted to the West Indies and Guinea Company on February 5th, 1734.

83. Extracts from the Concession granted to Jacob Severin, merchant, on March 15th, 1734, for "navigation to Greenland".

84. Extract from the petition submitted to the King on November 11th, 1735, by Jacob Severin, merchant. [p138]

85. Rescript of January 27th, 1736.

86. Extract from the proposal submitted to the King by the Board of Police and Trade (Jan. 16th, 1737).

87. Extracts from the petition submitted to the King on January 21st, 1737, by Jacob Severin, merchant.

88. Extract from the Royal Resolution of March 4th, 1737.

89. Extracts from the letter addressed to the Danish Board of Trade on March 6th, 1737, by Count Holstein, Principal Secretary of the Danish Chancellory.

90. Point 1 of the Instructions issued by the King to the Officer commanding the frigate Blaa Heyre (March 15th, 1737).

91. Despatch, dated April 13th, 1737, from M. von Schulin, Secretary of the German Chancellory at Copenhagen, to M. Griis, Norwegian-Danish Envoy at The Hague.

92. Note delivered on February 10th, 1738, to the Norwegian-Danish Government, by the Dutch Minister at Copenhagen.

93. Points 2 and 3 of the Rescript of February 21st, 1738, to Jacob Severin, merchant.

94. Note delivered on February 22nd, 1738, by the Dutch Minister at Copenhagen to the Norwegian-Danish Government.

95. Draft letters patent presented on October 7th, 1738, by Jacob Severin, merchant, concerning traffic with Greenland.

96. Extract from the Rescript of November 21st, 1738, concerning a Dutch vessel seized in Disco Bay.

97. Extracts from a proposal made by the Advisory Committee on Greenland to the King (Jan. 8th, 1739).

98. Rescript of February 27th, 1739, to the Advisory Committee on Greenland.

99. Extracts from the proposal of the Advisory Committee on Greenland, to the King (Dec. 24th, 1739).

100. Extract from the Rescript of January 8th, 1740.

101. Extract from the note sent in January 1740 to the States-General by the Norwegian-Danish

Envoy at The Hague.

102. Extract from the memorial dated February 24th, 1740, from Jacob Severin, merchant, to the Advisory Committee on Greenland.

103. Letter, dated February 25th, 1740, from the Advisory Committee on Greenland to the Principal Secretary of the Danish Chancellory.

104. Extracts from the Concession granted to Jacob Severin, merchant, on March 4th, 1740.

105. Extract from the proposal of the Board of the Chancellory to the King (Apr. 1st, 1740).

106. Extract from the petition dated January 30th, 1741, submitted to the King by Jacob Severin, merchant.

107. Rescript of April 1st, 1741.

108. "Extract from the Register of Resolutions of the States-General of the United Provinces of the Netherlands. Dated Wednesday, December 6th, 1741."

109. Extract from the Rescript of January 12th, 1742.

110. Memorial, dated March 2nd, 1744, from Jacob Severin, merchant, to the Principal Secretary of the Danish Chancellory.

111. Extract from the proposal of the Advisory Committee on Greenland to the King (March 25th, 1744).

112. Letter, dated March 8th, 1749, from Count Holstein, Principal Secretary of the Danish Chancellory, to the General Trading Company.

113. Letter, dated March 27th, 1749, from the General Trading Company to Count Holstein.

114. Extract from the General Trading Company's petition to the King, dated November 5th, 1749. [p139]

115. Extract from the petition dated November 27th, 1749, from Jacob Severin, merchant, to the King.

116. Extract from the Minute-Book of the general meetings of the General Trading Company-General meeting of December 10th, 1749 : proposals by the Board.

117. Extract from the General Trading Company's petition to the King, dated December 13th, 1749.

118. Extract from the Rescript of December 19th, 1749.

119. Letter, dated December 30th, 1749, from the General Trading Company to Jacob Severin, merchant.

120. Extract from the General Trading Company's petition to the King, dated March 16th, 1750.

121. Rescript of March 20th, 1750, addressed to Jacob Severin, merchant.

122. Letter, dated March 24th, 1750, from Count Holstein, Principal Secretary of the Danish Chancellory, to the Deputies and Assistants of the Board of the Finance Department.

123. General Trading Company's petition to the King, dated May 30th, 1750.

124. General Trading Company's petition to the King, dated October 28th, 1750.

125. General Trading Company's memorial, dated November 17th, 1750, to the Missions Council.

126. Extract from the General Trading Company's memorial, dated February 9th, 1751, to the Revenue Board.

127. Extract from the General Trading Company's letter, dated February 12th, 1751, to Hans Egede.

128. Extract from the General Trading Company's memorial, dated February 15th, 1751, to the Missions Council.

129. Petition, dated March 11th, 1751, from the General Trading Company to the King.

130. Extract from the General Trading Company's instructions to Niels Christian Geelmuyden, dated April 17th, 1751.

131. Extract from the General Trading Company's instructions, dated April 17th, 1751, to Chief Clerk Jonas Lilienskiold, of Svanenhielm.

132. Extract from the General Trading Company's instructions to Bendt Jacobsen Lund,

merchant, of Christianshaab Colony dated April 17th, 1751.

133. Extract from the Minute-Book of the general meetings of the General Trading Company. General meeting of March 22nd, 1752: proposals by the Board.

134. Extract from the General Trading Company's instructions to Niels Christian Geelmuyden, dated April 8th, 1752.

135. Extract from the General Trading Company's instructions, dated April 21st, 1752, to Poul Moltzau, merchant, of Godthaab.

136. Extract from the opinion given to the Danish Chancellory on January 19th, 1753, by the General Trading Company.

137. Extract from the Rescript of February 2nd, 1753, to the Chairman and Directors of the General Trading Company.

138. Extract from the Minute-Book of the Board of the General Trading Company. General meeting of February 25th, 1754.

139. Memorial, dated April 20th, 1754, from the General Trading Company to the Board of the Department.

140. Extract from the Register of copies of "customs-free consignments", Sub-Head B, of the Revenue Department Civil Status Office, at Copenhagen.

141. Extract from the Minute-Book of the general meetings of the General Trading Company. General meeting of April 22nd, 1754 : proposals by the Board. [p140]

142. Rescript of March nth, 1755.

143. Extract from the Minute-Book of the general meetings of the General Trading Company. General meeting of December 6th, 1755: proposals by the Board.

144. Extract from the letter, dated January 8th, 1756, from the General Trading Company to the Principal Secretary of the German Chancellory, at Copenhagen.

145. Extract from the Treaty of friendship, commerce and navigation between Denmark and the Republic of Genoa (Paris, March 13th, 1756).

146. Extract from the petition addressed to the King on August 12th, 1756, by the General Trading Company.

147. Rescript of October 18th, 1756.

148. Extract from the Minute-Book of the general meetings of the General Trading Company. General meeting of March 29th, 1757: proposals by the Board.

149. Extract from the proposal submitted to the King by the Revenue Department (August 13th, 1757).

150. Extract from the petition addressed to the King, in September 1757 by the General Trading Company.

151. Memorial transmitted on December 8th, 1757, by the General Trading Company to the Principal Secretary of the German Chancellory, at Copenhagen.

152. Proposal submitted to the King by the Council of the Chancellory (April 14th, 1758).

153. Extract from the despatch sent on February 17th, 1759, by the Norwego-Danish Envoy at The Hague to the Principal Secretary of the German Chancellory, at Copenhagen.

154. Extract from the memorial addressed on March 30th, 1759, by the General Trading Company to the Principal Secretary of the German Chancellory, at Copenhagen.

155. Extract from the letter sent on May 22nd, 1760, by the General Trading Company to Anders Olsen, merchant in the colony of Sukkertoppen.

156. Proposal submitted to the King by the Revenue Department (June 5th, 1761).

157. Rescript of June 8th, 1761.

158. Extract from the Minute-Book of the general meetings of the General Trading Company. General meeting of March 30th, 1763.

159. Extract from the proposal submitted to the King by the Revenue Department (June 3rd, 1763).

160. Extracts from the Minute-Book of the general meetings of the General Trading Company.

Proposals by the Board.

161. Despatch sent on March 31st, 1770, by the German Chancellory, at Copenhagen, to M. de la Potterie, Charge d'affaires for Norway and Denmark at The Hague.
162. Extracts from the charter granted on July 23rd, 1772, to the Asiatic Company.
163. Memorial addressed by the General Trading Company on December 7th, 1773, to the Department of Customs.
164. Draft proclamation attached to the memorial of December 7th, 1773, in the French translation made by the General Trading Company.
165. Memorial addressed by the Royal Board of Trade and Fisheries in Greenland to the Chief Taxation Office, on January 22nd, 1776.
166. Extract from the letter sent on February 5th, 1776, by the Chief Taxation Office to the Revenue Department. [p141]
167. Letter sent on April 1st, 1776, by the Chief Taxation Office to the Board of Trade and Fisheries in Greenland.
168. Letter sent on August 21st, 1776, by the Chief Taxation Office to M. Bang, Legal Adviser and Counsel to the Department.
169. Extract from the proposal submitted to the King by the Department of Customs (Sept. 18th, 1776).
170. "Extract from the Register of the Resolutions of the States-General of the United Provinces of the Netherlands, for Wednesday, September 25th, 1776."
171. Extract from the despatch sent by Count Suffolk to the British Minister at Copenhagen on November 12th, 1776.
172. Memorial sent on March 22nd, 1777, by the Danish Chancellory to the Board of Trade and Fisheries in Greenland, and note sent to the Missions Council concerning the Moravian Brothers in Greenland.
173. Despatch sent on April 12th, 1777, by Count Bernstorff, Minister for For. Aff. of Norway and Denmark, to M. Juel, Minister for Norway and Denmark at The Hague.
174. Extract from the instructions drawn up on August 28th, 1779, by the General Trade Board for Johan Friederich Schwabe and Bendt Olrick.
175. Letter addressed on August 28th, 1779, by the Greenland Trade Board to "all merchants and writers of the King's colonies, factories and establishments in Davis Strait".
176. Extracts from the regulations of July 2nd, 1781, concerning the Royal Trade in Greenland, Iceland, Finnmark and the Faroe Islands.
177. Rescript of April 17th, 1782.
178. Extract from the instructions of April 19th, 1782.
179. Royal letters patent of May 13th, 1782.
180. Extracts from the regulations of July 27th, 1782.
181. Extract from the report transmitted on November 13th, 1787, by the Royal Greenland Trade Board, etc., to the Danish Chancellory.
182. Extract from the letter addressed on November 28th, 1787, by the Royal Greenland Trade Board, etc., to the Department for For. Aff. at Copenhagen.
183. Extract from the proposal submitted to the King by the Council of Finance (Jan. 8th, 1788).
184. Extract from the report made on May 18th, 1790, by the Royal Commission for the Greenland Trade.
185. Extract from the report submitted to the King on June 22nd, 1790, by the Royal Commission for the Greenland Trade.
186. Rescript of July 9th, 1790.
187. Letters patent of June 3rd, 1791, concerning the administration of successions in Greenland.
188. Letters patent of February 10th, 1792, determining the method and time-limit for succession notices in Greenland.

189. Extract from the memorial of the Royal Commission for the Greenland. Trade (March 20th, 1794).
190. Royal Resolution of April. 16th, 1794.
191. Extract from the Royal Resolution of March 23rd, 1803.
192. Extracts from the letter sent on April 21st, 1823, to Count Schimmelmann, Danish Minister of State, by M. Wormskjold, Danish naturalist and expert on Greenland questions.
193. Note sent on February 10th, 1840, by the Danish Minister for For. Aff. to the Belgian Chargé d'affaires at Copenhagen. [p142]
194. Letter sent on June 7th, 1842, by the Danish Chancellory to the Prefect and Bishop of Zeeland.
195. Despatch sent on November 24th, 1843, by the Danish Minister at London to the Danish Ministry for For. Aff.
196. Despatch sent on January 13th, 1844, by the Ministry for For. Aff. to the Danish Minister at London.
197. Extract from the letter sent on November 15th, 1845, by the Danish Revenue Department to the Danish Ministry for For. Aff.
198. Letter sent on December 30th, 1845, by the Danish Revenue Department to the Danish Ministry for For. Aff.
199. Despatch sent on March 14th, 1846, by the Danish Ministry for For. Aff. to the Danish Minister at London.
200. Despatch sent on January 30th, 1847, by the Danish Ministry for For. Aff. to the Danish Minister at London.
201. Despatch sent on February 9th, 1847, by the Danish Minister at London to the Danish Ministry for For. Aff.
202. Annex to the letter sent on March nth, 1847, by the British Secretary of State for For. Aff. to the Danish Minister at London.
203. Letter sent on July 4th, 1860, by I. W. Tayler to the Danish Minister of Finance.
204. Letter sent on March 29th, 1862, by I. W. Tayler to the Danish Ministry of the Interior.
205. Notes made by M. Ihlen, Norwegian Minister for For. Aff., of his conversations on July 14th and 22nd, 1919, with M. Krag, Danish Minister at Oslo.
206. Verbal note transmitted on October 30th, 1919, by the Danish Legation at London to the British Foreign Office.
207. Memorandum transmitted on December 3rd, 1919, by the Danish Minister at London to the British Foreign Office.
208. Note sent on December nth, 1919, by Lord Curzon, British Secretary of State for For. Aff., to M. de Grevenkop Castenskiold, Danish Minister at London.
209. Extract from a private letter sent on July 20th, 1921, by M. Rillstad, Norwegian Minister for For. Aff., to M. Kruse, Danish Minister at Oslo.
210. Proposal of the Danish Government concerning the ratification of the Treaty of Spitzbergen.
211. Minute of the deposit of Denmark's ratification of the Treaty regarding Spitzbergen (Paris, Feb. 9th, 1920).
212. Royal Norwegian Resolution (Dec. 19th, 1930).
213. I. Verbal note sent on March 16th, 1932, by the Norwegian Ministry for For. Aff. to the Czechoslovak Legation at Oslo.
- II. Verbal note sent on April 4th, 1932, by the Czechoslovak Legation at Oslo to the Norwegian Ministry for For. Aff.
- III. Verbal note sent on September 6th, 1932, by the Norwegian Legation at Madrid to the Spanish Ministry of State.
- IV. Verbal note sent on September 10th, 1932, by the Spanish Ministry of State to the Norwegian Legation at Madrid.

- V. Verbal note sent on September 14th, 1932, by the Finnish Ministry for For. Aff. to the Norwegian Legation at Helsingfors.
- VI. Verbal note sent on September 20th, 1932, by the Belgian Ministry for For. Aff. to the Norwegian Legation at Brussels.
- VII. Verbal note sent on September 21st, 1932, by the Austrian Ministry for For. Aff. to the Norwegian Legation at Vienna. [p143]
- VIII. Verbal note sent on September 29th, 1932, by the For. Aff. Division of the Swiss Federal Political Department to the Norwegian Legation at Berne.
- XVII. Various documents.
- 214. Articles 28 and 30, paragraph 1, of the Constitutional Law of Norway.
- 215. Extract from the *Lørebog i den norske Statsforfatningsret* (Treatise on Norwegian constitutional law), by Bredo Morgenstierne.
- 216. Extract from proposal №. XLVI, for the year 1910, laid before the Storting.
- 217. Extract from : "Documents respecting Captain L. C. F. Lütken's stay in Berlin in 1902 and 1903, and the missions of the same officer to Berlin in 1906 and 1907 when he was Director in the Ministry ; together with the minutes of the discussions on this subject held by the Commission appointed to study the future organization of the Army and Navy."
- 218. Extract from a report of the enlarged Commission for the Constitution and Foreign Affairs (proposal №. LXVI, for the year 1923, to the Storting).
- 219. Statements made in the Danish Folketing by M. Munch, Danish Minister for For. Aff.
- 220. Letter sent on August 19th, 1932, by Mr. Rudmose Brown, Professor at the University of Sheffield, to M. Adolf Hoel, Professor at the University of Oslo.
- 221. Letter sent on September 15th, 1932, by M. E. Wolgast, Professor at the University of Rostock, to the Norwegian Ministry for For. Aff.
- 222. Letter sent on September 18th, 1932, by M. R. Redslob, Professor at the University of Strasburg, to M. Colban, Norwegian Minister at Paris.
- 223. Article published by M. Herman Gummerus in the Finnish Review *Valvoja Aika*.
- 224. [See letter (d) below.]
- 225. Texts and memorials relating to Greenland and the Eskimos. [See letter (e) below.]
- 226. [See letter (f) below.]

Appendix.

- 227 Despatch dated May 24th, 1857, from the Danish Minister For. Aff. to the Danish Charge d'affaires at Philadelphia.
- 228. Despatch, dated May 25th, 1857, from the Danish Minister for For. Aff. to the Danish Charge d'affaires at London.
- 229. Letter, dated August 6th, 1857, from the Danish Ministry for For. Aft. to the Ministry for the Interior.
- (d) A volume entitled: "Liquidation of the Norwegian share of the Common Public Debt of the formerly united Kingdoms of Norway and Denmark (1814-1821)." (№. 224.)
- (e) A pamphlet entitled: "Documents and memoranda relating to Greenland and the Eskimos." (№. 225.)
- (f) Atlas containing thirteen maps. (№. 226.)

II. - Documents Filed During the Oral Proceedings :

A. - On behalf of the Danish Government.

- (a) Map of Eastern Greenland, scale 1 : 1,000,000.
- (b) Five maps entitled:
 - (1) Wovdie Gletscher und Umgebungen.

- (2) Moschusochs-Fjords (Innere Teile des -).
- (3) Caving Insel (Östlicher Teil der -). [p144]
- (4) Eirik Raudes Land from Snftasund to Youngsund.
- (5) East Greenland between 700 - 770

- (c) Map of the "Department of State (Map Series №. 1, Publication №. 275)" - "The new world and the European colonial system in 1823 – The new world and the European colonial system in 1931."
- (d) An atlas entitled : "Maps annexed to the Danish Government's Case." (See above, c.)
- (e) Memorial by Gudmund Hatt, Professor of Geography at the University of Copenhagen.
- (f) Instructions given by King Frederic IV to Governor C. E. Paars, etc. (May 7th, 1728).
- (g) Instructions given by King Christian VI to Jacob Severin (Feb. 21st, 1738).
- (h) Letter addressed to the King by Jacob Severin (Jan. 21st, 1737).
- (i) Letter from M. Wormskjold to Count Schimmelmann (April 21st, 1823).
- (j) Letter addressed to the King by Flans Egede (June 4th, 1720).
- (k) Extract from the minutes of the general meetings of the General Trading Company (Nov. 26th, 1772).
- (l) Letter from the Danish Legation at Washington to the Secretary of State of the United States of America (March 22nd, 1921).
- (m) Extracts from the itinerary arranged by the Ministry of Marine at Copenhagen for the Godthaab (the 1930 cruise).
- (n) Extract from the Godthaab's register of judicial acts (1930), with annex.
- (o) Note from the Dutch Government to the Norwegian Government (July 24th, 1931)
- (p) Report by M. Knud Rasmussen on the murder of an Eskimo (Jan. 6th, 1921).
- (q) Note from the Danish Minister at Paris to the French Prime Minister (May 6th, 1920).
- (r) Proposal regarding the ratification by Denmark of the Treaty of Spitzbergen, submitted to the King by the Danish Minister for For. Aff. and approved on December 5th, 1923.

B. - On behalf of the Norwegian Government.

- (a) A map entitled "Eirik Raudes Land", scale 1 : 1,000,000, of the Norwegian Service for the exploration of the Arctic regions.
- (b) Extracts, with a French translation, from the work entitled: Descriptio statuum cultiorum in tabulis, by J. P. Anchersen (Copenhagen and Leipzig, Otto Christoffer Wenzell, 1741).
- (c) Statements by various authors and politicians (1729-1931) to the effect that the part of Greenland colonized in the XVIIIth century belonged to the Kingdom of Norway.
- (d) Note addressed on September 26th, 1932, by the Turkish Minister for For. Aff. to the Norwegian Minister at Ankara.
- (e) Note verbale addressed on October 4th, 1932, by the Polish Ministry for For. Aff. to the Norwegian Legation at Warsaw.
- (f) Telegram sent on October 4th, 1932, by the Roumanian Minister for For. Aff. to the Norwegian Minister at Sofia.
- (g) Note verbale addressed on November 24th, 1932, by the Estonian Minister for For. Aff. to the Norwegian Legation at Helsingfors.
- (h) Letter addressed on November 29th, 1932, by the Yugoslav Minister for For. Aff. to the Norwegian Minister for For. Aff.
- (i) (1) Telegram of January 19th, 1933, from M. Hoel to M. Peter S. Brandal.
- (2) Telegram of January 20th, 1933, from M. Peter S. Brandal and M. V. Landmark to M. Hoel. [p145]
- (3) Telegram of January 20th, 1933, from M. Hallvard Devold to M. Hoel.
- (4) Extract from the instructions given on June 27th, 1930, by the Norwegian Ministry of Justice

and Police to M. Adolf Hoel.

(5) Communiqué to the Norwegian Press concerning the police powers granted to M. Hoel.

(6) Cutting from the Danish paper Politiken (June 13th, 1930).

(7) Cutting from the Danish paper Socialdemokraten (Feb. 9th, 1930).

(8) Cutting from the Danish paper Kristeligt Dagblad (Apr. 4th, 1930).

(9) Cutting from the Danish paper Nationaltidende (May 10th, 1930).

(10) Extract from a wireless talk by Vilhelm Bjerknes: "Weather forecasting", Oslo, 1933.

(11) Extract from the report of Commandant Baugé printed in the Revue, des travaux de l'Office des pêches maritimes, Paris, Volume II.

(12) Extract from an article by Knud Rasmussen in Atlanlen (Vol. IV, 1915-1917, p. 34).

(13) Extract from the Yearbook of the Greenland Society for 1914, pages 5 to 21.

(14) Extract from Reports and Decrees relating to the administration of Greenland, №. 1, 1932.

(15) Extract from the Treaty of commerce of August 23rd, 1742, between Norway and Denmark and France.

(16) Extract from the Treaty of commerce of April 6th/16th, 1748, between Norway and Denmark and the Two Sicilies.

(17) Extract from the declaration made on October 8th/19th, 1782, by the plenipotentiaries of the Empress of Russia in connection with the Treaty of commerce between Norway and Denmark and Russia (Oct. 8th/19th 1782).

(18) Extract from the "Most Humble Proposal of the Royal Department of Finance" of March 15th, 1803.

(19) Memorandum of the Department for the administration of the Fund ad usus publicos to the Department for the Royal Trade with Greenland, Iceland, Finmark and the Faroes (Dec. 29th, 1785).

(20) Circular letter of the Royal Ministry for For. Aff. to the King's Ministers at Saint-Petersburg, London, Paris, Berlin, Madrid and Vienna (Nov. 11th, 1786).

III. - The Court Has Had Before it the Complete Text of the following Documents :

(a) Arbitral award made in the Clipperton Island case (1929).

(b) English and French versions of the arbitral award made in the Palmas Island (Miangas) case (1928).

(c) Translation into French (prepared by the Registry) of the first part of a pamphlet published in 1923 by A. Rillstad and entitled Grønland og Spitsbergen.

(d) Volume entitled : "Aktstykker frill oppgjjerda millom Noreg og Danmark etter 1814" (Oslo, 1925), cited in Annex 224 of the Norwegian Government.

(e) Volume entitled : "Diplomatiske Aktstykker vedkommende Norges: Oppgjör med Danmark" - 1814-1819 (Christiania, 1890) (cited in Annex 224 of the Norwegian Government).

IV. - Texts, in the Original Language, of Certain Documents Enumerated Above, Filed at the Court's Request :

A. - Documents transmitted by the Agent for the Danish Government:

(1) Original text, in Danish, of certain documents of later date than March 18th, 1776. [p146]

(2) Photographic reproduction of a despatch dated September 4th, 1818, from Baron de Humboldt, Prussian Minister at London, to the King of Prussia, together with:

a photographic reproduction of a draft note to Baron de Stierneld, Minister of Sweden and Norway at London;

a photographic reproduction of a draft report of the pleni-potentiaries of the Four Powers to their respective Courts.

- (3) Photographic reproduction of Protocol №.3 of London (Apr. 24th, 1819), with annexes. (Cf. B, 2-7, hereafter.)
- (4) Extract from Lord Strangford's note to Lord Castlereagh (March 12th, 1819). (English text.)
- (5) Five telegrams exchanged at the end of 1915 between the Danish Legation at Washington and the Danish Minister for For. Aff. (Danish text.)
- (6) Memorandum handed by the Danish Minister at Washington to the United States Secretary of State (Dec. 27th, 1915) (English text.)
- (7) *Idem* (Apr. 22nd, 1916). (English text.)
- (8) Instructions from the Danish Ministry for For. Aff. to the Danish Minister at Paris (Jan. 28th, 1919). (Danish text.)
- (9) Instructions from the Danish Minister for For. Aff. to the Danish Ministers at Paris (with annex), London, Rome and Tokyo (March 2nd, 1919). (Danish text.)
- (10) Extract from the original French text of the memorandum transmitted by the Norwegian Minister at Copenhagen to the Danish Government on May 9th, 1919.
- (11) Instructions given by the Danish Minister for For. Aff. to the Danish Minister at Stockholm (Jan. 8th, 1921). (Danish text.)
- (12) Note from the Danish Minister at Stockholm to the Swedish Minister for For. Aff. (Jan. 13th, 1921). (Danish text.)
- (13) Reply from the Swedish Minister for For. Aff. to the Danish Minister at Stockholm (Jan. 28th, 1921). (Swedish text.)
- (14) Confidential collection (Aktstykker vedrørende Grønland og de med den Norske Regering indtil 1. September 1923 fllrte Forhandlinger-Copenhagen, 1923) of documents made by the Danish Ministry for For. Aff. in view of the Danish-Norwegian negotiations of 1923-1924 (this Collection contains, inter alia, the original Danish text of the relevant legislative instruments of 1740, 1751, 1758, 1776, and of the instructions given by the Danish Minister for For. Aff. to the Danish Minister at Christiania on July 12th, 1919, as also the original Danish or Norwegian text of a part of the diplomatic correspondence between Denmark and Norway from 1921 to 1923).
- (15) Protocol of the twelfth and last meeting held at Christiania on January 28th, 1924 (Convention of July 9th, 1924).
- (16) Original text in Danish or Norwegian of a part of the diplomatic correspondence between Denmark and Norway in 1930 and 1931.
- (17) Work entitled Grønlands historiske Mindesmllrker, Copenhagen, 1838, Volume II (which reproduces, on pp. 776 and 779, an extract in Icelandic or Danish of the Haakonarsaga by Sturla Thordarson).
- (18) Protocol of the exchange of ratifications of February 9th, 1814 (Treaty of Kiel). [p147]

B. - Documents transmitted by the Agent for the Norwegian Government:

- (1) M. Ihlen's minute of July 14th and 22nd, 1919. (Norwegian text.)
- (2) Note sent by Lord Strangford to Count Engestrom (Jan. 5th, 1819).
- (3) Four notes sent by Count Engestrom to the Ministers of the Allied Courts at Stockholm (Jan. 7th, 1819).
- (4) Report from the Norwegian Government (Nov. 20th, 1818).
- (5) Declaration by the "Swedish-Norwegian" Commissioner (Jan. 16th, 1819).
- (6) Declaration by the Danish Commissioners (Feb. 5th, 1819).
- (7) Declaration by the "Swedish" Commissioner (March 27th, 1819).

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