

MARITIME DELIMITATION DILEMMAS OVER HANS ISLAND BETWEEN CANADA AND DENMARK

A Hans-sziget kapcsán felmerülő delimitációs kérdések Kanada és Dánia között

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Abstract: Hans Island is situated in the Arctic region, in the centre of the Kennedy Channel of Nares Strait, which separates Canadian Ellesmere Island from Greenland and connects Baffin Bay with the Lincoln Sea. This tiny land has been causing long-lasting tensions between Canada and Greenland (an autonomous territory of the Kingdom of Denmark). The main problem is the sovereignty over the island. However, a number of other maritime law issues also arise due to the location of Hans Island.

Keywords: *sovereignty, law of the sea, continental shelf, maritime boundary, territorial dispute, international law, Canada, Greenland, Lincoln Sea*

Absztrakt: Hans-sziget az északi-sarki régióban található a Nares-szoros Kennedy-csatornájának közepén, amely elválasztja a kanadai Ellesmere-szigetet Grönlandtól, és összeköti a Baffin-öblöt a Lincoln-tengerrel. Ez az apró sziget hosszú ideje fennálló feszültséget szít Kanada és Grönland (Dán Királyság) között. Fő problémát a sziget feletti szuverenitás jelenti. Azonban további számos tengerjogi kérdés is felmerül a Hans-sziget elhelyezkedéséből adódóan.

Kulcsszavak: *szuverenitás, tengerjog, kontinentális talapzat, tengeri határ, területi vita, nemzetközi jog, Kanada, Grönland, Lincoln-tenger*

Introduction

As global warming continues to raise the temperature of the Arctic Seas, more of the Arctic will be free from ice on the long run. The possibilities for exploitation of natural resources and for control over Northern shipping lanes have renewed countries' interest in their completing claims to the region. Canada and Greenland –

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which is an autonomous part of the Kingdom of Denmark, just like the Faeroe Islands – have confronted their claims to a small rock known as Hans Island, which is situated in the Arctic region. No one can regard this tiny land as unimportant, it has been causing long-lasting tensions and disputes between Canada and Denmark.

The Hans Island itself is a bleak uninhabited and uninhabitable island measuring 1.3 km² in the centre of the Kennedy Channel of Nares Strait, which separates Canada's Ellesmere Island from northern Greenland and connects Baffin Bay with the Lincoln Sea.¹(*Annex I and II*) The Lincoln Sea is a body of water, which borders the Arctic Ocean, north of Ellesmere Island and Greenland, where there is also uncertainty around the maritime boundary.²

The aim of the current study is to examine the maritime dispute around Hans Island. Secondly, covering the 1973 Delimitation Treaty of the Continental Shelf, which established a boundary between Canada and Greenland – incompletely. It is needed to be highlighted that the treaty was signed before the United Nations of the Law of the Sea (UNCLOS) in 1982. Finally, the author would like to finish off by searching for the equitable solution of the Hans Island border dispute.



Annex I³
The location of Hans Island

- ¹ Christopher STEVENSON: Hans Off!: The Struggle for Hans Island and the Potential Ramifications for International Border Dispute Resolution. *Boston College International & Comparative Law Review* 30 (2007), 263.
- ² Jacques HARTMANN: *Canada and Denmark reach agreement on the Lincoln Sea Boundary*. <https://www.ejiltalk.org/canada-and-denmark-reach-agreement-on-the-lincoln-sea-boundary/>, 12 October 2020.
- ³ Source of Annex I: Jeremy LUEDI: *Hans Island – Property Of Canada Or Denmark?* <https://www.worldatlas.com/articles/hans-island-dispute.html>, 17 April 2021.



Annex II⁴
The extension of Lincoln Sea

1. Historical background

The history of possession of Hans Island is long and interesting. From the 13th century, the island was used for hunting and to monitor ice floes in the Kennedy Channel. In 1871, an American explorer Charles Francis Hall was on an expedition to the North Pole. He hired a Greenlander by the name of Hans Hendrik as his hunter and guide. Hall named the island 'Hans Island' after his guide.

⁴ Source of Annex II: Jonathan AMOS: *Climate change: Weakened 'ice arches' speed loss of Arctic floes*. <https://www.bbc.com/news/science-environment-55594585>, 17 April 2021.

In a 1933 decision of the Permanent Court of International Justice (*PCIJ*)⁵ declared Greenland to be part of the Kingdom of Denmark⁶ and has maintained it as a semi-autonomous possession ever since.⁷ The status of Hans Island, however, was not addressed in the ruling. Denmark claimed that Hans was part of the same geological formation as Greenland, therefore it was Danish soil.

Moreover, Denmark also argued that the island is closer to Greenland than it is to the Canadian Ellesmere Island. Canada first claimed sovereignty over Hans Island in 1971 during negotiations with the Danes over the maritime boundary between the two countries. A treaty that delimits the Continental Shelf between the two States was signed in 1973, but no boundary was drawn over or around Hans Island.

2. The 1973 delimitation treaty

The boundary negotiations peak was, when the two States signed an agreement⁸ on the delimitation of the Continental Shelf on 17 December 1973.⁹ The treaty bordered the continental shelf, covering:

*“The dividing line in the area between Greenland and the Canadian Arctic Islands, established for the purpose of each Party’s exploration and exploitation of the natural resources of that part of the continental shelf...”*¹⁰

The treaty draws the borderline between Canada and Greenland by connecting the midpoints of 127 straight baselines assessed between the coasts of the two States by the Canadian Hydrographic Service in 1964 and 1972.¹¹

The line is unbroken except for a circa one kilometre gap between point 122 and 123 in Nares Strait¹² (*Annex III*). The reason for the gap is Hans Island. Sover-

⁵ The establishment of the Permanent Court of International Justice (*abbreviation: PCIJ*), was provided for in the Covenant of the League of Nations. It held its first sitting in 1922 and was dissolved in 1946. It was the predecessor of the International Court of Justice.

⁶ See *Legal Status of the South-Eastern Territory of Greenland (Norway. v. Denmark)*, Judgement No. 55, 11 May 1933 P.C.I.J. (ser. A/B), https://www.icj-cij.org/public/files/permanent-court-of-international-justice/serie_AB/AB_55/Sud-Est_Groenland_Ordonnance_19330511.pdf, 25 May 2021.

⁷ STEVENSON: op. cit. 265.

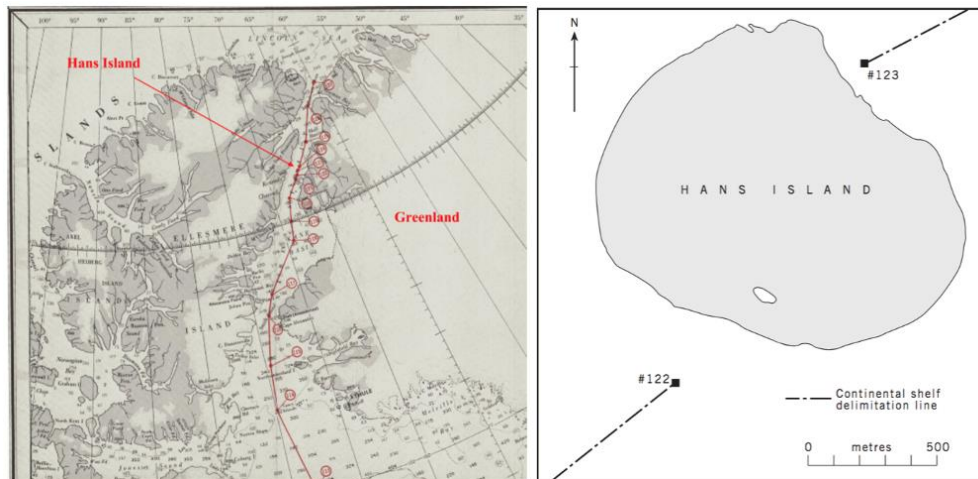
⁸ STEVENSON: op. cit. 266.

⁹ Agreement relating to the delimitation of the continental shelf between Greenland and Canada, Ottawa, 17 December 1973, <https://treaties.un.org/doc/Publication/UNTS/Volume%20950/volume-950-I-13550-English.pdf> (*hereinafter: Delimitation Treaty*) 25 May 2021.

¹⁰ Article I Delimitation Treaty, 1973.

¹¹ Article II Delimitation Treaty, 1973.

eighty over the island has long been disputed and the two countries simply decided to stop the delimitation line on one side of the low-water mark of the island and restart it again at the low-water mark on the opposite side.



Annex III¹³

The Continental shelf borderline between Canada and Greenland by connecting the midpoints of 127 straight baselines (left) – Gap between point 122 and 123 of the Continental shelf delimitation line in Nares Strait around Hans Island (right)

I have to notice that while Hans Island has no known deposits of oil, natural gas, gold, or other minerals, there are other reasons why it is so important for the countries to own the island.

There is speculation that the seafloor under the surrounding waters could contain such natural resources. As global warming has melted the Arctic seas, the waterways between Canada and Greenland, the Northwest Passage¹⁴ have become navigable throughout more of the year.¹⁵

This could happen as the Arctic has started to melt drastically in recent years, with average temperatures here rising twice as fast as anywhere else on Earth. Fur-

¹² Yoshifumi TANAKA: Reflections on Arctic Maritime Delimitations: A Comparative Analysis between the Case Law and State Practice. *Nordic Journal of International Law* 80 (2011), 461.

¹³ *Source of Annex III*: Raphaël ROMAN: *Settling Sovereignty Claims over the Hans Island*. <https://www.pubpoli.com/posts/arctic-sovereignty>, 17 April 2021.

¹⁴ Pete EVANS: Arctic thaw heats up Northwest Passage dreams. *CBC News* 13 September 2012. <https://www.cbc.ca/news/business/arctic-thaw-heats-up-north-west-passage-dreams-1.1230437>, 5 November 2020.

¹⁵ Anna MCLLROY: *Hans off my island*. <https://www.theguardian.com/world/2005/aug/30/arctic>, 13 November 2020.

thermore, the snow-covered ice sheet reflects 85–90% of the sun's radiation, while the open water surface reflects only 10%. Thus, more and more water, the absorbed solar radiation, further enhances the melting of the ice, which raises the water surface. Consequently, climate change means more than just weather change in this area.¹⁶

If the waterways between the two states, the Northwest Passage will become navigable for a longer period of time, the amount of shipping through the Arctic would increase dramatically and could mean a lucrative revenue source for whichever State regulates passage.¹⁷ Hans Island is situated right in the middle of a potentially important sea route, which is known as the gate to the Northwest Passage.¹⁸ However, there are other aspects. According to Hartmann *“as the agreed delimitation line seemingly leaves the island without any territorial waters, sovereignty over the island has no effect on the legal control of navigation in the strait. Thus it is difficult to find a rational explanation for the longstanding dispute over the island, other than national pride.”*¹⁹

As the Delimitation Treaty left the issue of Hans' unclear, both Canada and Denmark started their own expeditions to the island in the following years. On 28 July 1984, *Tom Høyem*, Denmark's minister of Greenlandic Affairs, visited Hans. The minister reportedly planted a Danish flag on the island. The Canadian government started to protest. The Danish military returned to the island in 1988, 1995, 2002, and 2003. Each time, they planted a new Danish flag.²⁰

Except for these occasional expeditions, the island was largely unheard until July 20, 2005, when Bill Graham the Canadian Minister of Defence, set the Canadian flag on the island. This resulted in also as an official protest²¹ from the Danish Government and the expeditions continued²². These expeditions are often referred to as the *'battle of the bottles'* as Canadian and Danish visitors left bottles of their traditional alcohol²³ when they removed the other sides' flag and raised their own flag with the same text *'Welcome'* on the island. These activities were carried out by the national forces of both parties.²⁴

¹⁶ CSATLÓS Erzsébet: *Az Arktisz nemzetközi jogi helyzete*. PhD-értekezés, Szegedi Tudományegyetem, Állam- és Jogtudományi Doktori Iskola, Szeged, 2011, 23.

¹⁷ STEVENSON: op. cit. 268.

¹⁸ CSATLÓS: *Az Arktisz*...42.

¹⁹ HARTMANN: op. cit.

²⁰ See Timeline of Hans Island: <https://web.archive.org/web/20130105210943/http://www.canadiangeographic.ca/hansIsland/time.asp>, 10 December 2020.

²¹ See Canada island visit angers Danes: <http://news.bbc.co.uk/2/hi/europe/4715245.stm>, 10 December 2020.

²² See Timeline of Hans Island.

²³ According to the sources Canadians left whisky (Canadian Club), Danish left Schnapps on the island.

²⁴ HARTMANN: op. cit.

3. How would the ICJ analyze Hans Island's situation?

Stevenson share and display a relatively predictable pattern about how the International Court of Justice (ICJ)²⁵ would analyse the case of Hans Island. The above noted activities will make sense and significance.

The ICJ would first look for treaty evidence establishing the border between Canada and Denmark. The court attaches the greatest weight to territorial claims that are supported by a contract. The only treaty, which the ICJ could rely is the 1973 Delimitation Treaty. However, this treaty is not established border around Hans Island. Thus, the agreement would not be viewed as dispositive or applicable by the court. The next opportunity or rationale would be the adaption of the *uti possidetis* principle.²⁶ This is an international law principle, which most often played a role in connection with the border issues of the newly independent states, first in the case of Brazil, which excelled from the Spanish colonies, in the 19th century but have now become a general principle. Its application does not mean that inherited borders will prevail, only that they should be treated as a starting point that can only be changed in accordance with international law,²⁷ as stated by the ICJ in the *El Salvador v. Honduras case*²⁸. The principle of *uti possidetis* is closely connected with the principle of historical delimitation, which in the course of history means the delimitation of boundaries in accordance with the established custom.²⁹ The *uti possidetis* would require from one party or the other to show that the area including Northern Greenland, Hans Island, and Ellesmere Island was once controlled by a single state and that state employed administrative boundaries that could translate into current international borders.

The Canadian Arctic islands were British possessions that were transferred to Canada in 1880 on the basis of the British Adjacent Territories Order.³⁰ It is unclear whether Hans Island was part of that transfer. Greenland, however, was clearly not part of the British possession at that time because its Southern areas were controlled by Denmark and the Northern area around Hans Island was claimed by the United States until 1917, when the US relinquished these claims as part of a

²⁵ International Court of Justice (*abbreviation: ICJ*) was established in June 1945 by the Charter of the United Nations and began work in April 1946.

²⁶ STEVENSON: op. cit. 269.

²⁷ CSATLÓS Erzsébet: Térség és terület a nemzetközi jogban. In: Jakab András – Fekete Balázs (szerk.): *Internetes Jogtudományi Enciklopédia*. Nemzetközi jog rovat, 2017, [9], <https://ijoten.hu/szocikk/terseg-es-terulet-a-nemzetkozi-jogban>, 26. May 2021.

²⁸ See: *Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening.)*. Judgement of 11 September 1992, I.C.J.

²⁹ CSATLÓS: Térség... [9]

³⁰ See Adjacent Territories Order (July 31st, 1880), (U.K.), reprinted in R.S.C. 1985, App. II, No. 14.

transfer agreement to purchase the Danish West Indies³¹ from Denmark.³² Hence, the entire area was never under a single country's control and therefore, no colonial boundaries exist. Thus, the *uti possidetis* is not applicable.

When there is no basis for decision under either treaty or the principle of *uti possidetis*, the ICJ's examination would turn to effective control. The question here is how much effective control will be found to be sufficient to base a claim of sovereignty over an Arctic island. The ICJ may well find that periodic military visits and siting of stone markers are sufficient exercises of control for an uninhabited and largely inaccessible rock in the middle of the Arctic.³³ Such a decision would have disastrous consequences for both countries, Canada and Denmark and for their attempts to assert sovereignty in other parts of the Arctic.³⁴

4. Lincoln Sea boundary resolution

In the following I will analyse the 1973 Delimitation Treaty established most of the boundary between Canada and Greenland. Although the treaty officially concerned the continental shelf, both states have used the delimitation line to define fishing zones. Thus it has become a maritime boundary by usage.

The treaty lists 127 points from the Davis Strait in the south to the Nares Strait in the north. The latter is a narrow strait of water between the northernmost part of Ellesmere Island and Greenland. That treaty established a boundary of nearly 1,500 nautical miles. At the time, it was the longest shelf boundary ever negotiated. The new agreement extends the boundary to more than 1,600 nautical miles.

Most of the boundary follows a median line extending 200 nautical miles from the respective coasts. This was not possible in the Nares Strait, at the northernmost part of the boundary, due to the nearness of Ellesmere Island to Greenland. In fact, when Canada extended its territorial sea from 3 to 12 nautical miles in 1972, the two islands are so close to each other, that territorial sea boundary went beyond the median line with Greenland. Therefore, the northernmost part of the delimitation line was settled by negotiation.

³¹ Now the United States Virgin Islands. See: *Purchase of the United States Virgin Islands*. 1917, <https://2001-2009.state.gov/r/pa/ho/time/wwi/107293.htm>, 25 May 2021.

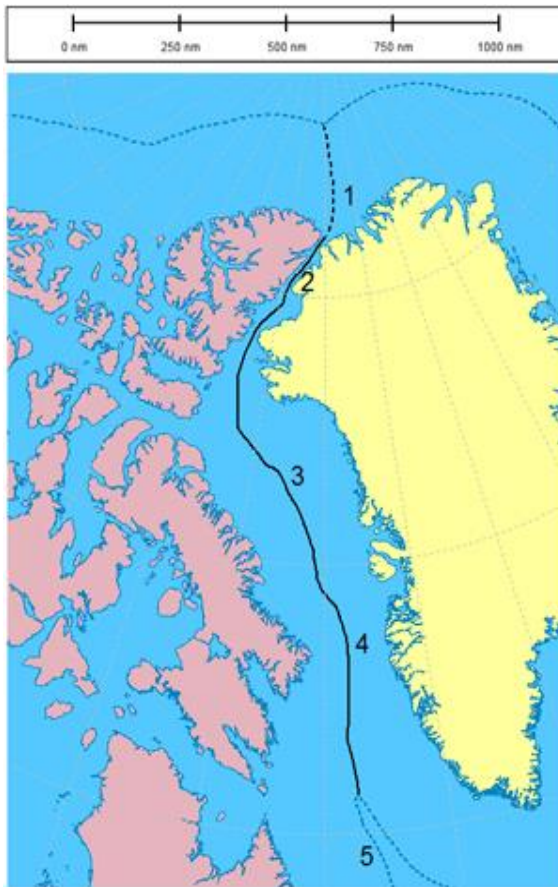
³² *Treaty on Cession of Danish West Indies (United States-Denmark)*. New York, August 4 1916, 39 Stat. 1706. <https://www.doi.gov/sites/doi.gov/files/uploads/vitreaty.pdf>, 10 December 2020.

³³ See e.g., *Case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*, Judgement of 17 December 2002, 2002 I.C.J. 625, 684, <https://www.icj-cij.org/public/files/case-related/102/102-20021217-JUD-01-00-EN.pdf>, 30 October 2020.

³⁴ STEVENSON: op. cit. 268., 269., 272., 273.

However, no agreement was reached with regard to the Lincoln Sea. Instead, the 1973 Delimitation Treaty stated that³⁵ *‘for the time being the Parties have not deemed it necessary to draw the dividing line further north than point No. 127’*³⁶. It was later agreed that an equidistance line should be the boundary in the Lincoln Sea, but there was disagreement on technical aspects of how the line should be drawn. Amendments were already made in 2004³⁷ and in 2009 further technical adjustments occurred to the southern part of the boundary in Baffin Bay and Davis Strait.

More recently, experts have completed work on the Nares Strait. Experts from both countries have also been working together on data collection to extend the continental shelf boundary beyond 200 nautical miles.



Annex IV³⁸

Geographical main points between Canada and Greenland

*‘This graphic is for illustrative purposes only. The solid black line is the boundary agreed in the 1973 treaty. The broken black line is the boundary agreed ad referendum. The broken blue lines indicate 200-nautical-mile zones. 1) Lincoln Sea; 2) Nares Strait; 3) Baffin Bay 4) Davis Strait; 5) Labrador Sea’*³⁹

³⁵ HARTMANN: op. cit.

³⁶ Article IV Delimitation Treaty, 1973.

³⁷ Exchange of Notes Constituting an Agreement to Amend the Agreement Between the Government of Canada and the Government of the Kingdom of Denmark Relating to the Delimitation of the Continental Shelf Between Greenland and Canada. Done at Ottawa on 17 December 1973, View Treaty – Canada.ca (treaty-accord.gc.ca) 25 May 2021.

³⁸ *Source of Annex IV*: HARTMANN: op. cit.

³⁹ HARTMANN: op. cit.

On 28 November last year Canada and the Kingdom of Denmark announced that they had reached a tentative agreement on the maritime boundary in the Lincoln Sea. The new agreement settles these technical aspects and solves a disagreement that has existed since the 1973 relating to a small area of about 65 square nautical miles. According to the information provided, the new agreement will provide an opportunity to modernize the provisions in the 1973 treaty and to complete a process of technical adjustments to the coordinates of the existing boundary.

Although neither Canada nor Denmark has yet made a submission to the Commission on the Limits of the Continental Shelf related to the Arctic Ocean. It is likely that they will do so in the near future—for Canada the deadline is November 2013 and Denmark November 2014. Assuming that the Commission accepts that each has a continental shelf beyond 200 nautical miles in the Arctic, the delimitation of a boundary between the continental shelves will be necessary.⁴⁰

Closing remarks

The author's research encompassed the recent history of Hans Island and the origins of the competing sea law claims between Canada and Denmark. The relevant 1973 Delimitation Treaty and its missing rules was examined. After drawing up Stevenson's pattern according to which the ICJ may decide maritime border disputes like Hans Island, and which can be applied to the case.

A decision granting either party sovereignty over Hans Island would hide a dangerous message itself for other countries, whose seeking to gain possession of remote territories. Essentially, it would send the message that uninhabited areas are available for that country, which can make the most visits there. The following land rush will be particularly noticeable in the Arctic. As a number of countries with competing claims in the region have become increasingly interested in enforcing those claims while global warming has made the area more accessible. If ever there were a case for the ICJ to decide in equity, it would be this one.

In 2005, Canada and Denmark seemed to realize that the best result may be working together when they announced that they would be cooperating in a new geographical study of the area.⁴¹ Negotiations in 2012 between Canada and Denmark, have not yet concluded, call for either a condominium or splitting the disputed island's sovereignty in half.⁴² If the island was split by a boundary, it would create a second land neighbour for Canada and Denmark. On 23 May 2018, Canada and Denmark have announced the creation of a Joint Task Force to determine the

⁴⁰ HARTMANN: op. cit.

⁴¹ STEVENSON: op. cit. 275.

⁴² Bob WEBER: *Canada, Denmark should turn Hans Island into a condominium: academics*. <https://www.cbc.ca/news/canada/north/canada-denmark-should-turn-hans-island-into-a-condominium-academics-1.3315640>, 20 December 2020.

boundary between Canada and Greenland, including the fate of Hans Island.⁴³ The author shares Stevenson's thoughts that "[h]opefully cooperation will prevail and lead to an agreeable solution and settle international tensions in this increasingly important part of the world".⁴⁴

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⁴³ This article is from the page of Global Affairs Canada with following the title: *Canada and the Kingdom of Denmark (with Greenland) announce the establishment of a Joint Task Force on Boundary Issues*. <https://www.canada.ca/en/global-affairs/news/2018/05/canada-and-the-kingdom-of-denmark-with-greenland-announce-the-establishment-of-a-joint-task-force-on-boundary-issues.html>, 21 December 2020.

⁴⁴ STEVENSON: op. cit. 275.

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