

EUROPEAN COMMUNITIES COMMISSION—GREENLAND—EC
COMMISSION DRAFT APPROVES WITHDRAWAL OF GREENLAND FROM
THE EUROPEAN COMMUNITY AND PROPOSES TERMS FOR ECONOMIC
REASSOCIATION

On February 22, 1983 the Commission of the European Community (Commission) issued a formal communication¹ approving the withdrawal of Greenland from the European Community (EC).² The formal communication was issued in response to a request from the EC Council,³ which had been considering the issue of Greenland's withdrawal from the EC since May 1982 when the Danish government on behalf of Greenland submitted a memorandum on the matter.⁴ The recently issued Commission Draft was favorable to Greenland's proposed withdrawal from the EC,⁵ but also included suggestions for the reassociation of Greenland with the EC in some new legal framework after termination of the pre-

¹ Commission of the European Communities, Status of Greenland (February 22, 1983) (Draft communication from the EC Commission to the EC Council) (public document available from the EEC Information Service, Washington, D.C.) [hereinafter cited as Commission Draft]. The Commission Draft is a 64-page report containing the Commission's non-binding recommendations on the future of Greenland in the European Community (EC). It is within the scope of the Commission's treaty-authorized powers to prepare such reports for the Council's use, upon request by the Council. The Council may then make binding decisions based upon the Commission report. See *infra* note 3.

² European economic cooperation was formalized in the Treaty Establishing the European Economic Community, done March 25, 1957, No. 4300, 298 U.N.T.S. 3 (unofficial English version) [hereinafter cited as EEC Treaty].

³ By letter dated June 8, 1982, the President of the EC Council asked the Commission for its opinion on Greenland's proposed withdrawal from the EC. Commission Draft, *supra* note 1, at 1. Power to make legally binding decisions for the Community is vested in the hands of the EC Council. EEC Treaty, *supra* note 2, art. 145. The Council makes decisions based upon reports or findings it has requested the Commission to prepare. The Commission's recommendations are issued pursuant to its treaty powers. *Id.* art. 155.

Now that the Commission's recommendations are before the Council in draft communication form, see *supra* note 1, it becomes a matter of the Council's exercising its binding prerogative powers in determining the future status of Greenland.

⁴ The Royal Danish government submitted a proposal for changing Greenland's status to the EC Council in memorandum form on May 19, 1982. Commission Draft, *supra* note 1, at 1. The EC Council took formal notice of the Danish memorandum on Greenland's behalf at its foreign affairs meeting on May 25, 1982. 15 BULL. EUR. COMM. (No. 5) 70 (1982). This memorandum prompted the Council to ask the Commission to make its recommendations on Greenland's withdrawal. See *supra* note 3. The Commission's resulting recommendations were issued in draft communication form. See Commission Draft, *supra* note 1.

⁵ See Commission Draft, *supra* note 1, at 6.

sent relationship is effected.⁶ Implementation of the Commission Draft suggestions both as to Greenland's present withdrawal and future reassociation is now subject to approval by the EC Council.⁷

The termination of the present relationship between Greenland and the EC⁸ would probably not have a substantial impact upon the Community's industrial economy.⁹ Politically, however, the island's withdrawal might be viewed by some interested political factions within the Community as a precedent for secession from the EC.¹⁰ Furthermore, a legal question arises as to which treaty formula within Community law will best serve the needs of Greenland and the EC in providing a legal framework for reassociation of Greenland.¹¹ This Recent Development will review the complica-

* The original Danish memorandum, see *supra* note 4, concerned not only the withdrawal of Greenland from the EC, but also Greenland's reassociation with the Community in some new form. Commission Draft, *supra* note 1, at 1. As to the latter concern, the Commission Draft states:

The Commission welcomes the fact that in opting for a new type of relation between the Community and Greenland the Danish Government, the local authorities, and the Greenland population wish to maintain close permanent structural links.

In view of all these factors, the Commission favours any new arrangements which would be the most likely to preserve close links between the Community and Greenland and to make allowance for the interests of both parties.

Id. at 3.

⁷ See *supra* note 3.

⁸ For an authoritative comment on the problems in international law and treaty law posed by Greenland's withdrawal, without specific consideration of the Commission's recently issued draft, see Harhoff, *Greenland's Withdrawal From The European Communities*, 20 C.M.L. Rev. 13 (1983).

⁹ The harsh climate, geographical expanse, and low population density are major constraints of most economic activities in Greenland. Greenland's fishing industry is significant, but still highly subject to fluctuating weather conditions. There is lead and zinc mining, but only from one mine. Cattle farming is considered impractical. The entire population of Greenland is less than that of one small European city. See Commission Draft, *supra* note 1, at annex A, pt. 1.1 (geographic, demographic and economic data).

¹⁰ Political factions within the Community such as the British Labour Party and the Panhellenic Socialist Movement in Greece have indicated a desire to terminate their respective countries' membership in the EC, although none has been in a position to do so. See Note, *The European Economic Community: The Right of Member State Withdrawal*, 12 GA. J. INT'L & COMP. L. 335, 336-37 (1982).

¹¹ Three alternatives are provided within community treaty law. The first formula is called Overseas Countries and Territories Status (OCT) and applies to Member States' overseas dependencies, such as the Falkland Islands, which wish to maintain an economic customs union with the Community. The second formula is found in article 227 of the EEC Treaty and applies to overseas holdings of Member States, which holdings are considered to be politically indivisible with the Member State, such as Guadeloupe and France. The third formula is spelled out in the Yaoundé and Lomé treaties and covers former colonies that are now independent but wish to reassociate economically with the Community. See *infra* note 42.

tions of the withdrawal of Greenland from and its reassociation with the EC, in light of the recently issued proposals of the Commission Draft.

Greenland, the largest island in the world,¹² has been settled since at least Viking times.¹³ It lies in the North Atlantic between longitudes 11° 39' W. and 73° 08' W., mostly north of the Arctic Circle and generally closer to the North American continent than the European.¹⁴ These geographical factors account for the harsh climate,¹⁵ frozen terrain,¹⁶ and small population of Greenland.¹⁷ Greenland nevertheless occupies an important location in the northern hemisphere because it lies astride major shipping routes,¹⁸ athwart major air routes,¹⁹ and next to some of the world's most plentiful fishing grounds.²⁰ Greenland's military-strategic value to NATO should not be underestimated.²¹

¹² Greenland is the world's largest island, covering 840,000 square miles of territory. ROYAL DANISH MINISTRY OF FOREIGN AFFAIRS, DENMARK: AN OFFICIAL HANDBOOK 51 (1970) [hereinafter cited as HANDBOOK].

¹³ Southwest Greenland was populated by Norsemen about the year 1000 A.D., at the time when Eskimos moved in from the North. The Norse colony in southern Greenland perished about the year 1500. Danish colonization began in 1721. *Id.* at 53.

¹⁴ Geographically, Greenland belongs to the North American continent. Harhoff, *supra* note 8, at 14.

¹⁵ The July mean temperature at Ivigtut on Greenland's southwestern coast is 49.8° F. (9.9° C.). HANDBOOK, *supra* note 12, at 51.

¹⁶ Of Greenland's 840,000 square mile surface, 708,069 square miles is perpetually covered by ice. 10 ENCYCLOPEDIA BRITANNICA 895 (1969); HANDBOOK, *supra* note 12, at 51.

¹⁷ The total population of Greenland in 1981 was 50,643. Commission Draft, *supra* note 1, at annex O (demographic and economic situation). Approximately 40,000 of these are Eskimos, the remainder being Danes or other Europeans. *Id.* at annex A, pt. 1.2 (sociological, political and legal data).

¹⁸ For example, during World War II Nazi submarine interdiction of allied shipping lanes near Greenland precipitated the building of two United States airbases and a naval base on Greenland. See Bjol, *The Arctic in Danish Perspective*, in NEW STRATEGIC FACTORS IN THE NORTH ATLANTIC 86, 87 (C. Bertram & J. Holst ed. 1977).

¹⁹ A major airline "polar route" from Los Angeles to Europe flies over Greenland. 10 ENCYCLOPEDIA BRITANNICA 900 (1969). See also *infra* note 21.

²⁰ Greenland's waters are major migration routes for cod and prawns and feeding grounds for salmon. Commission Draft, *supra* note 2, at annex A, pt. 2.3.2.1(b). Greenland's catch of commercially valuable fish expanded from 35,000 tons in 1973 to about 90,000 tons in 1981. *Id.* at annex A, pt. 2.3.2.1(a).

²¹ Greenland is bisected by the shortest line between the industrial heart of the United States and the industrial heart of the Soviet Union. The United States Air Force base at Thule is one of the three controlling posts of the ballistic missile early warning system (BMEW) of the North American Air Defense Command (NORAD). Bjol, *supra* note 18, at 87. Greenland is included in the Monroe Doctrine covering the defense of North America. Access to the Atlantic for Soviet warships, in particular nuclear submarines, is also covered by early warning systems in position on Greenland's icecap. Cooney, *Burke fights to keep Greenland in EEC*, *The Irish Times*, Oct. 11, 1982, at 43, col. 1.

The present relationship between Greenland and the EC is unique. Greenland has maintained political ties with its mother country, Denmark, since the eighteenth century.²² There was never a formal treaty of accession between Greenland and the EC, because Greenland has never been politically sovereign.²³ Still, Greenland was not simply absorbed into the Community as a Danish colony²⁴ when Denmark acceded to the EEC Treaty in 1973.²⁵

²² See HANDBOOK, *supra* note 12, at 66. While the discovery of Greenland dates back to Viking times, *see supra* note 13, the most extensive colonizing efforts were made by Denmark in the eighteenth century. Norway also laid claim to portions of Greenland. In 1933, this sovereignty dispute was submitted to the Permanent Court of International Justice. The Court ruled in favor of complete Danish sovereignty. *Legal Status of Eastern Greenland (Den. v. Nor.)*, 1933 P.C.I.J., ser. A/B., No. 53 (Judgment of April 5). Thereafter Greenland was administered from Copenhagen as a colony until 1953, when it was fully incorporated into the Danish realm by constitutional act. *See infra* note 24.

²³ See Harhoff, *supra* note 8, at 17. There are two ways for a European state to become an EC Member State. The first is by being one of the original six signatories to the EEC Treaty, *supra* note 2 (France, Italy, Federal Republic of Germany, Belgium, Luxembourg, and the Netherlands). The second way is for the European state to accede to the EC, as did Denmark, Ireland, and Great Britain in 1973. 15 O.J. EUR. COMM. (No. L 73) 5 (1972). Article 237 of the EEC Treaty, *supra* note 2, makes clear through its selective invitation to "any European" state to accede to the EC in the future, however, that there are two prerequisites to applying for Member State status. First, the state must be geographically European, e.g. Brazil could never be an EC Member State. Second, the European state must be politically sovereign. Thus, colonies and dependencies of European states have had to effectuate economic association with the Community through special legal formulae drawn up particularly for their circumstances, e.g. Greenland, Malta, and Algeria could never become "Member States." *See infra* notes 42 and 65.

The Kingdom of Denmark acceded to the EC in 1973. Act Concerning the Accession of the Kingdom of Denmark, Ireland, Kingdom of Norway, and the United Kingdom Communities, 15 O.J. EUR. COMM. (No. L 73) 1 (1972) [hereinafter cited as Act of Accession]. Greenland at this time was, and technically remains, an incorporated portion of Denmark. *See infra* note 24. The Act neither mentions nor clarifies Greenland's legal relationship with the Community, as distinguished from that of Denmark. The only mention of Greenland occurs in Protocol No. 4 of the Act, which covers Denmark's authority in Greenlandic fisheries questions. Act of Accession, *supra*, at 165; *See Harhoff, supra* note 8, at 17 n.8.

²⁴ Greenland was administered as a Danish colony from Copenhagen until 1953. In 1953, the Danish Constitution provided for Greenland's full political and legal incorporation into the Danish realm by reserving Greenland two seats in the Folketing (Parliament). GRUNDELØV 1953 Part IV, §28 (Den.). Greenland thus became, in the words of one Danish historian, "no longer a Danish colony, but quite simply a Danish county, a part of Denmark just like Jutland or Zealand." P. LAURING, A HISTORY OF THE KINGDOM OF DENMARK 255 (1960). In an era of decolonialization, Greenland has seemingly reversed the trend by moving politically *closer* to its mother country than it was as a colony, notwithstanding passage of the Home Rule Act, *infra* note 32. It is this unique political situation which makes the withdrawal of Greenland so complicated and potentially precedential. Rather than being, as it appears on its face, a case of a Member States' former colony now independent and seeking to leave the Community, it is legally and theoretically as though a "county" of Denmark were attempting to secede from the EC, with Copenhagen's blessing. *See P. LAURING, supra*, at 255.

²⁵ Act of Accession, *supra* note 23.

In fact the precise terms of Greenland's membership in the Community, in all cases keyed to the continuing political links between Greenland and Denmark, seem never to have been comprehensively addressed in Community law.²⁶

Furthermore, the EC Council has historically allowed treaty derogations for Greenland not granted to other EC Member States, underscoring the uniqueness of Greenland's position in the Community.²⁷ The predisposition of the Council toward special treatment of Greenland has come about in recognition of the markedly different geographic, social, and economic conditions in Greenland.²⁸ This predisposition has had the practical effect of exempting Greenland from Value Added Tax assessment (VAT),²⁹ sheltering its fisheries industries,³⁰ and favoring the island over other Community regions as a candidate for EC developmental aid.³¹

After passage of the Home Rule Act in Denmark in 1979,³² Greenlanders gained local autonomy over fisheries, trade, and tax-

²⁶ See *supra* note 23.

²⁷ Commission Draft, *supra* note 1, at annex XIV (Legal instruments containing derogation [sic] with respect to Greenland). The majority of these derogations from EC law concern economic matters, including: Council Regulations on price fixing in fisheries markets and Council Directives on Value Added Tax (VAT), tobacco taxes, labelling and presentation on foodstuffs, and public procurement contracts. See *infra* notes 29-31. Regarding Greenland's unique situation, see *infra* note 66.

²⁸ The Commission stated in its report that "[t]he Commission is well aware of the territory's special situation—its remoteness from the rest of the Community, the climatic conditions influencing its economic structure, and the sociological and cultural peculiarities of its non-European population." Commission Draft, *supra* note 1, at 2.

²⁹ Council Directive 77/388/EEC of 17 May 1977 specifically excludes Greenland from Value Added Taxation (VAT). 20 O.J. EUR. COMM. (No. L 145) 1 (1977). VAT is a national tax on goods and services paid by consumers in the respective Member State. The equivalent of a 1% rate of VAT is earmarked for the EC authorities. Thus if VAT stands at 18% in one particular Member State, that nation takes 17% and the EC may claim the other 1%. This revenue is used to balance the Community's budget. A. KERR, *THE COMMON MARKET AND HOW IT WORKS* 29 (1977).

³⁰ The common organization of Greenland's fisheries is precluded by Community legislation. See *infra* note 49; EEC Treaty, *supra* note 2, art. 40.

³¹ In the case of main Community developmental funds, Greenland is regarded as a priority region. In 1981, the amount of EC aid was nine times the *per capita* Community average. See Commission Draft, *supra* note 1, at annex A, pt. 2.2.1 (overall appraisal of Community aid).

³² Within the framework of Greenland's continuing political links with Denmark, the (Greenlandic) Home Rule Act was passed in Copenhagen in 1979 and entered into force in May of that year. See Harhoff, *supra* note 8, at 17-19. The Home Rule Act divides responsibilities between Greenland and Denmark. Thus taxation, fisheries, hunting, employment, and social affairs are administered locally, while external affairs and defense matters are controlled by Denmark. *Id.* at 18-19.

ation matters, as well as over other internal affairs.³³ In the ensuing domestic elections on Greenland, the anti-EC Socialist Siumut Party won 13 of 21 seats in the Parliament and called a consultative referendum to determine whether Community membership should be maintained.³⁴ The majority voted in favor of withdrawal.³⁵ One authority maintains that the reasons for this vote lie in cultural differences which exist between Greenland and Europe, rather than in economic aspirations of Greenlanders.³⁶ Following the referendum, steps were taken to transmit the wishes of Greenland's electorate through the Danish government to the responsible institutions of the Community.³⁷

Concluding its opinion on the proposal for Greenland's withdrawal submitted to the Council, the Commission Draft states that "[t]he Commission hereby delivers a favorable opinion on the change of Greenland's status in relation to the Community involving the termination of its membership of this Community and the establishment of a new regime. . . ."³⁸ The desire of most Greenlanders to terminate their present political and economic relationship with the Community, however, does not foreclose limited economic relations between a post-Home Rule Act Greenland and the EC in the future. The government of Greenland has expressed its wish to maintain free access to the European market for its fish products.³⁹ It is also important to note that termination of Greenland's present relationship with the Community would not affect the abiding political links between Greenland and Denmark.⁴⁰

In seeking to lay the foundation for a new Greenland-EC relationship at some future date, the memorandum submitted by the Danish government proposed that Greenland reassociate itself economically with the EC through the overseas countries and territo-

³³ *Id.*

³⁴ Watson, *Why did Greenland Say No to Europe?*, EUROPE 82 (No. 5/6) 9, 10 (June 1982).

³⁵ The vote was 12,615 in favor of withdrawal and 11,180 against. *Id.* at 10.

³⁶ See Dalsager, *Why did Greenland Say No to Europe?*, EUROPE 82 (No. 5/6) 9 (June 1982). See also Watson, *supra* note 34, at 10.11.

³⁷ Following the results of the advisory referendum on Greenland, the Danish government submitted a memorandum, *see supra* note 4, to the EC Council on Greenland's behalf, since under the Home Rule Act Denmark acts for Greenland in external affairs. *See supra* note 32 and accompanying text.

³⁸ Commission Draft, *supra* note 1, at 6.

³⁹ See Dalsager, *supra* note 36, at 9.

⁴⁰ Greenland's attempt to terminate its present relationship within the EC in no way implies any corresponding attempt to end either its political and economic ties to Denmark or its military links with NATO. Watson, *supra* note 34, at 10-11.

ries formula (OCT) in Part IV of the EEC Treaty.⁴¹ OCT status is one formula for economic association devised by the Community⁴²

⁴¹ Part IV of the EEC Treaty, *supra* note 2, is entitled *The Association of Overseas Countries and Territories* and is comprised of articles 131-36 of the EEC Treaty. *Id.* at 65-67. These articles set forth the framework of OCT status. *See infra* notes 42 and 45. OCT status is one of many legal formulae devised by the Community to associate Member States' colonies and dependencies which cannot themselves become Member States. *See supra* note 23.

⁴² At the inception of the EEC Treaty in the mid-1950's, four of the original six signatories, France, Italy, Belgium, and Holland, maintained extensive colonial holdings on several continents. These colonial territories and dependencies varied widely in their geographies, economies, and political relationships with their respective mother countries. Their importance to Community trade dictated that the EC find some way to accommodate them economically into the Community, even though they could never become Member States. *See supra* note 23. In response to this need, the Community has developed three legal formulae. Two are codified in the EEC Treaty and provide for the different kinds of colonies and territories of EC Member States, while the third provides for those colonies which have become independent countries and which deal with the Community as sovereign states.

The first formula is set forth in Part IV of the EEC Treaty and is known as OCT status. *See supra* note 41. OCT status is intended for overseas countries and territories of EC Member States maintaining political and economic ties with their mother countries. The purpose of OCT status is to advance the principle of duty free entry of goods from the OCT into the Community and to eliminate quantitative restrictions, with an obligation of only partial reciprocity on the part of the OCT toward goods imported from the Community. In essence, Part IV creates a free trade zone between the Community and the OCT. *See* 3 H. SMIT & P. HERZOG, *THE LAW OF THE EUROPEAN ECONOMIC COMMUNITY: A COMMENTARY ON THE EEC TREATY* 4-7 (1976). Article 132 of the EEC Treaty, *supra* note 2, states:

Association shall have the following objectives:(1) Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to this Treaty.(2) Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.(3) The Member States shall contribute to the investments required for the progressive development of these countries and territories.(4) For investments financed by the Community, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.(5) In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the Chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 136.

The second formula covers overseas colonies and dependencies that could have OCT status but for their exceptionally close political ties to their mother countries. Article 227 of the EEC Treaty, *supra* note 2, states that the general and specific (economic) provisions that apply to the Member States shall apply affirmatively to Algeria and French overseas *départements*. Paragraph 4 of article 227 provides that any European territory "for whose external relations a Member State is responsible" also may come in under the article 227 formula, rather than under the OCT formula of Part IV. Such indeed is the case in Greenland, since Denmark handles the island's external affairs. While Greenland arguably fits within the framework of article 227 better than within Part IV, neither article 227 nor the amending Act of Accession, *supra* note 23, mentioned Greenland's legal status within the

for accomodating Member States' overseas (non-European) colonies, which cannot themselves become full Member States due to the geographic restriction of article 237 of the EEC Treaty.⁴³

The Commission agreed with the Danish suggestion of utilizing the OCT formula as a general legal framework for Greenland's future relationship with the Community.⁴⁴ Its determination was based on the Commission's feeling that Greenland substantially fulfilled the treaty requirements for OCT status.⁴⁵ These requirements are first, that the country or territory concerned have special relations with a Member State;⁴⁶ second, that it be non-European;⁴⁷ and third, that it display the characteristics of a developing country.⁴⁸ The Commission Draft suggested, however, that certain modifications of the OCT status would be necessary in order to accomodate Greenland's economic and geographic peculiarities, particularly in the area of Greenland's one significant industry, fisheries.⁴⁹

Community. 5 H. SMIT & P. HERZOG, *supra* note 42, at 6-212 to 6-213. In summary, the non self-governing colonies and dependencies of EC Member States fit into one of two EEC Treaty formulae. First, if they are specifically named in the text of article 227, or if their mother country is responsible for their external affairs, they may participate directly in the Community economy because of their close integration with their mother country. Otherwise, if they are a non-European territory listed in Annex IV of the EEC Treaty, *supra* note 2, they may associate economically with the Community in a free trade zone framework set out by the Part IV OCT formula. (The Falkland Islands, recently the focus of world attention, is an OCT.) See EEC Treaty, *supra* note 2, at 118, Annex IV.

The third legal formula is used for former colonies which are now independent and with which the Community must deal as sovereign, "third world" countries. The Community carries on economic relations by means of treaties with such countries, viz., the first and second Yaoundé conventions, and the first and second Lomé treaties. See 3 H. SMIT & P. HERZOG, *supra* note 42, at 4-7 to 4-9. An analysis of these treaties is beyond the scope of this Recent Development, as the provisions of the treaties are inapplicable to Greenland.

⁴³ See *supra* note 23.

⁴⁴ Commission Draft, *supra* note 1, at 3.

⁴⁵ The Commission Draft reports that the three conditions for OCT status—namely, that the country or territory concerned have special relations with a Member State; that the country or territory be non-European; and that the country or territory display the characteristics of a developing country—are fulfilled by Greenland. Commission Draft, *supra* note 1, at annex A, pt. 3.2. These prerequisites are set out in the EEC Treaty, *supra* note 2, art. 131.

⁴⁶ EEC Treaty, *supra* note 2, art. 131.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Unlike the rest of Greenland's underdeveloped economy, see *supra* note 9, the Greenlandic fisheries industry is highly developed and competitive with EC Member States. Fisheries exports account for 40% of Greenland's GNP. Community Member States import 80% of Greenland's exports. See Commission Draft, *supra* note 1, at annex A, pt. 2.3.2.1,2 (Fisheries). The Commission felt that the strength of Greenland's fisheries export would be further increased by the "no duty" principle of the OCT formula, *supra* note 42, thus resulting

Greenland exports the bulk of its sizeable annual fish catch to Europe.⁵⁰ Additionally, Greenland's waters have long provided plentiful fishing grounds for EC Member States' fishing fleets.⁵¹ The termination of the present membership of Greenland in the Community would mean an end to the EC Council's powers to regulate Greenlandic export or to adjust other Member States' total allowable catch tonnages in Greenlandic waters, as the Council has done previously.⁵² In its draft the Commission felt that this impending loss of the regulatory powers of the Council,⁵³ coupled with the free trade benefits that Greenland would obtain if it received OCT status,⁵⁴ would create an inherent imbalance⁵⁵ in

in an even greater "inherent imbalance" in Greenland's favor. Commission Draft, *supra* note 1, at annex A, pt. 4.2.1(c). This prompted the Commission to observe that "OCT status does not automatically provide for non-reciprocal tariff-free access to the Community. The question of what practical arrangements should apply to Greenlandic exports to the Community, after Greenland's withdrawal, is to be decided in light of all relevant considerations." *Id.* at annex A, pt. 4.2.1(d).

The Commission Draft in fact makes clear which "practical arrangements" should be implemented, namely, the Commission's proposed Protocol on special arrangements for Greenland, which modifies the Act of Accession. The Protocol provides that:

[t]he treatment of Greenlandic fishing products . . . shall comply with the mechanism of common market organization, particularly the protection clauses, and shall reflect the possibilities for access to Greenland fishing zones and the conditions granted to the Community fishing vessels by an agreement to be concluded between the Community and the authority responsible for Greenland before the entry into force of this Protocol.

Id. at annex C(1).

In summary, the Commission has recommended the OCT status as a basis for Greenland's reassociation with the EC, except in the important area of fisheries. There, the Commission proposes to retain some control to set import quotas and to guarantee EC Member States access to Greenlandic waters, even though Greenland would no longer be under an obligation to answer to the EC for its actions. *See infra* note 53. The Commission's proposed powers to regulate Greenland fishery exports would be akin to its power to set agricultural production quotas known as "common organisation." EEC Treaty, *supra* note 7, art. 40. If approved by the Council, this would be a substantial modification of the OCT formula. *See infra* note 56.

⁵⁰ *See* Commission Draft, *supra* note 1, at annex A, pt. 2.3.2.2(b).

⁵¹ For example, in 1982 the EC Commission allocated to West Germany (as it did to other EC Member States in various tonnages) a 10,000 ton total allowable catch (TAC) of cod in Greenlandic waters. West Germany is heavily dependent on Greenland's fishing grounds for its fishing fleet. *See* Cooney, *supra* note 21, at 43, col. 3.

⁵² *See* Commission Draft, *supra* note 1, at annexes XI to XIII.

⁵³ For example, in the area of setting TAC quotas, the usual line of authority has been for the Commission after negotiations to assign the allotment to Denmark which in turn passed it on to Greenland. But the Home Rule Act, *supra* note 32, in effect transfers the mother country's prerogative in dealing with the Commission directly to Greenland, a situation unique among other colonies and OCT's associated with the Community.

⁵⁴ *See supra* note 49.

⁵⁵ Commission Draft, *supra* note 1, at annex A, pt. 4.2.1(c).

fisheries exports in favor of Greenland. Thus, the most significant modification of OCT status proposed by the Commission for Greenland seeks to disallow the OCT free trade zone principles in the case of Greenland's fisheries industries.⁵⁶

In formulating these and other recommendations, the Commission has demonstrated a pragmatic approach toward solving the legal problems of Greenland's pending departure from the Community. Its approach has been one of adapting EC legal theory to the economic and geographic realities of Greenland, rather than rigidly applying various treaty provisions.⁵⁷ This has resulted in the selection of a legal formula, OCT status, which was originally created for colonies or dependencies of Member States,⁵⁸ but which is now being tailored to Greenland's specific circumstances.⁵⁹

There are some sound reasons for the Commission's selection of the modified OCT formula for Greenland's future reassociation. First, it is unlikely that any available EC legal formula would precisely fit the unique political, economic, and geographic situation of Greenland.⁶⁰ Second, appeal to the OCT status, even with the proposed modifications, obviates the necessity for the Commission to invent new law.⁶¹

There are, however, problems involved in the utilization of a

⁵⁶ See *supra* note 49.

⁵⁷ The Commission's main proposal for modifying OCT status for Greenland's circumstances is set out *supra* note 49. If approved by the Council, see *supra* note 3, the OCT formula will be legally implemented for Greenland in two steps. First, article 131 of the EEC Treaty would have to be amended to include Denmark in its first sentence. See EEC Treaty, *supra* note 2, art. 131. Second, Greenland would be added to the list of OCT's in Annex IV of the EEC Treaty. These and other relevant legal amendments are set out in the proposed Protocol on special arrangements for Greenland, in the Commission Draft, *supra* note 1, at annex C.

⁵⁸ The OCT is discussed *supra* notes 41 and 42.

⁵⁹ The Commission's proposed modifications are outlined *supra* note 49.

⁶⁰ There are at least two sound considerations for the Commission's proposal of OCT status for Greenland in the future. First, due to the unique economic, geographic, and political conditions in Greenland, it is unlikely that any EC legal formula, *supra* note 49, would precisely fit Greenland's circumstances. See *supra* notes 24 and 27 and *infra* note 66. Second, the Commission Draft points out that:

[t]his line of thought coincides with considerations of a more political nature which tend to minimize the "precedent" which the solution adopted for Greenland might constitute; the OCT formula, applied in conjunction with strictly limited special provisions, rules out its use for a European territory and restricts the possibility—which is in theory infinite if *ad hoc* formulae are used—for specific application which a Member State might claim for a non-European territory with which it has special relations.

Commission Draft, *supra* note 1, at annex C, pt. 2 n.1 (Institutional and legal analysis).

⁶¹ *Id.*

Commission-modified formula in Greenland's case. For example, there is a legal problem concerning the propriety of using OCT status under the present circumstances. Since OCT status is typically reserved for colonies of Member States,⁶² conferring OCT status upon Greenland at some time in the future would retroactively impute a colonial characterization to Greenland's present relationship with its mother country.⁶³ The constitutional-legal distinction exists, however, that Greenland entered the Community in 1973 as an incorporated portion of the Danish realm, not as a Danish colony, and has retained the former status to the present.⁶⁴ The continuing political ties between Denmark and Greenland make the island arguably either more suited to the article 227 formula, which treats certain territories as political units of their mother country, than the OCT formula, because of the closeness of those ties,⁶⁵ or unsuited to either formula, because of the effects of the Home Rule Act of 1979.⁶⁶ Furthermore, to the extent a distinction can be drawn between the secession from the EC of a "county" of an EC Member State and the withdrawal of a Member State's former colony, Greenland's situation is more closely analogous to the former; the present situation is theoretically as though a portion of a Member State (Denmark) were attempting to withdraw from the Community.⁶⁷

There is also an economic problem stemming from the Commission's proposed utilization of modified OCT status for Greenland. By the terms of the Commission Draft, it appears that in the one

⁶² The EEC Treaty uses the phrase "non-European countries and territories which have special relations with [EC Member States]." EEC Treaty, *supra* note 2, art. 131.

⁶³ For a brief narrative of how OCT status came to be reserved for the colonies of Member States and not for their assimilated *départements* or for newly-independent territories, see 3 H. SMIT & P. HERZOG, *supra* note 42, at 4-3 to 4-9.

⁶⁴ See *supra* note 24.

⁶⁵ Certain overseas territories are so highly economically and politically integrated into their mother country that they may be considered an extension or a "metropolitan area" of that country. See 3 H. SMIT & P. HERZOG, *supra* note 42, at 4-5. The Lesser Antilles French island possession of Guadeloupe is an example. Such closely integrated possessions are covered in EC law under the provisions of article 227 of the EEC Treaty. *Id.*

⁶⁶ Greenland is arguably more like an article 227 possession because of its close political integration with Denmark. See *supra* note 24. Conversely, the ramifications of the Home Rule Act, *supra* note 32, leave Greenland with a high degree of local economic autonomy, more befitting OCT status. See *supra* notes 41 and 42. This paradox of conditions constitutes the cause of Greenland's uniqueness and suggests why Greenland may be best described as being neither wholly integrated like an article 227 dependency nor wholly like an OCT. For the argument that Greenland is simply a former colony now well-fitted to OCT status, see Harhoff, *supra* note 9, at 24-25.

⁶⁷ See *supra* note 24 ("county" of Denmark analogy).

industry in which Greenland could profitably capitalize on the free trade zone principles offered by OCT status,⁶⁸ Greenlandic fisheries, the Commission proposes modifications which will in effect deny full advantage to these industries.⁶⁹ Leaving the EC and its present relationship could therefore prove to be an empty gain for Greenland.⁷⁰

The legal contours of the OCT formula have been reshaped in the Commission's Draft in order to fit Greenland's request for withdrawal from and reassociation with the European Community. Both of these events may be considered precedential by some observers.⁷¹ The Commission's focus on the problems of adapting the OCT status to Greenland's conditions demonstrates the pragmatic approach it is taking, but unfortunately draws attention away from the theoretical but important problem of how a political entity such as Greenland, which entered the Community as something less than a Member State but as something more than a colony, goes about leaving the Community.⁷²

If the proposals of the Commission are adopted by the Council, the question of whether these proposals begin a process of erosion of the OCT formula as other territories seek modified terms or whether the very uniqueness of Greenland's circumstances justify the Commission's proposals in this case, thus negating the setting of a precedent for secession from the EC, may remain unanswered for some time. These considerations may indeed be only symptomatic of the more subtle problem of addressing Greenland's legal status in the Community, a problem subordinated in the Commission Draft to the more practical, economic problems of Greenland's withdrawal and future reassociation with the Community.

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⁶⁸ EEC Treaty, *supra* note 2, arts. 132 and 133.

⁶⁹ See *supra* note 49.

⁷⁰ According to one analyst, this result may indeed be the intention of the Community. Some Member States would not want to make it more attractive to leave the Community than to stay in. The implications of this for France *vis-a-vis* Corsica, for example, are clear. See Cooney, *supra* note 21, at 43, col. 2.

⁷¹ The results of the referendum indicating the Greenland electorate's desire to withdraw constitutes an "unprecedented event" in the history of what previously had been an ever-expanding Community. *Id.* at col. 1.

⁷² Compare admission requirements for incipient Member States, *supra* note 23, with the history of Greenland's political links with Denmark, *supra* note 24.