



## Passage through the Great Belt (Finland v. Denmark)

**ARGUED: 19 November 2023**

**DECIDED: 19 November 2023**

1 This dissenting opinion was signed and agreed to by Justice Avva of Venezuela, Justice Barnes of Malta,  
2 Justice Cox of Cyprus, Justice Gomez of Mozambique, and Justice Hakim of the Russian Federation.

3 The Court has jurisdiction over this case based on Article 36, paragraph 2, which states, “The states parties  
4 to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special  
5 agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal  
6 disputes concerning:

7 the interpretation of a treaty;

8 any question of international law;

9 the existence of any fact which, if established, would constitute a breach of an international obligation; and

10 the nature or extent of the reparation to be made for the breach of an international obligation.”

11 These jurisdictional justifications are also outlined within Article 38, paragraph 1, a-c of the Statute of the  
12 Court, stating: “The Court, whose function is to decide in accordance with international law such disputes as are  
13 submitted to it, shall apply:

14 international conventions, whether general or particular, establishing rules expressly recognized by the con-  
15 testing states;

16 international custom, as evidence of a general practice accepted as law;

17 the general principles of law recognized by civilized nations...”

18 The 65-meter, proposed bridge over the Great Belt will block the passage of “23 oil exploration rigs” manu-  
19 factured by Finnish company Rauma Repola Offshore Oy. Many of these ships have a height of 80.3 meters, although  
20 their jack-up rigs extend to 170 m. Furthermore, the semi-submersible ships that Rauma Repola Offshore Oy oper-  
21 ates and is building have a transit draught of up to 15 meters, meaning that the alternative routes that the Kingdom  
22 of Denmark proposed were inadequate to guarantee innocent passage. Therefore, per the Memorial of Denmark,  
23 the disassembly and reassembly of a single derrick passing through the Great Belt will cost \$2,518,666. It will also  
24 require the ship to stop for at least 24 days. There are bridges (the Italian Viaduct) being an example that have a  
25 deck height higher than 170m.

26 There are two relevant international statutes guiding our decision. First, the 1857 Treaty of Copenhagen on  
27 the Abolition of the Sound Dues, abolished duties on ships passing through the Great Belt and established that region  
28 as an international waterway. For that treaty, Austria, Belgium, France, the United Kingdom, Hanover, The Hansa  
29 Towns, Mecklenburg-Schwerin, The Netherlands, Oldenburg, Prussia, Russia, and the Kingdom of Sweden-Norway  
30 were signatories. The Republic of Finland is considered a 3rd-party beneficiary of the treaty.

31 The 1958 Convention on the Territorial Sea and the Contiguous Zone was ratified one-hundred-one years  
32 later. Section III, Article 14 of the treaty grants the right of innocent passage to all ships passing through the  
33 territorial sea. This passage is considered innocent as long as “it is not prejudicial to the coastal State’s peace, good  
34 order or security. Such passage shall take place in conformity with these articles and with other rules of international  
35 law.”

36 While the Kingdom of Denmark asserts that its proposed bridge will increase transportation times and ease  
37 of access within the Kingdom and foster greater economic prosperity, it still violates international law. The erection

38 of this bridge imposes upon the Republic of Finland's right to free passage, as outlined in the 1958 Convention on  
39 the Territorial Sea and the Contiguous Zone. In Article 16, the treaty states that a coastal State "may not hamper  
40 innocent passage through the territorial sea." The construction of this bridge hampers the innocent passage of  
41 twenty-three Finnish ships, and for reasons enumerated in the Facts section, alternative routes are inadequate.

42 Further, Article 16 outlines no exceptions to this right to innocent passage for specific vessels or sizes of  
43 ships. The Majority Opinion errs in their argument that because "there is nothing in the law claiming that the  
44 right to innocent passage cannot include inconvenient extra steps" to ensure the passage of a ship, there is no reason  
45 for Denmark's temporary imposition of Finland's right to innocent passage through the Great Belt to constitute  
46 as a violation of Article Sixteen of the Convention. This argument falls flat when it attempts to create rights for  
47 States from the 1958 Treaty's omission of particular exceptions to free passage. The Majority is essentially arguing  
48 that States have the right to do anything that only temporarily suspends a coastal States' access to free passage.  
49 This cannot be the correct way for the Court to understand Article 16 because this interpretation contradicts the  
50 very purpose of expressly defining free passage. We believe that the purpose of a treaty or convention is to outline  
51 definitions, restrictions, and particular provisions regarding a particular topic of international or domestic concern. In  
52 this case, the 1958 Convention on the Territorial Sea and the Contiguous Zone is expressly concerned with directing,  
53 defining, and outlining permissible uses and rights regarding territorial waters and relationships between coastal  
54 states regarding these waters. Thus, the authors and signatories of the Convention adopted it with the shared goal  
55 of defining international law regarding territorial waters and the contiguous zone. This means the contents of the  
56 Convention is what govern the desires and opinions of adopters. Anything not mentioned within the Convention,  
57 under our view, was omitted for a particular reason.

58 In addition, the Convention is expressly concerned with defining and outlining territorial sea relationships  
59 and actions between international bodies. It is not concerned with considering or quantifying any economic benefit  
60 or hardship caused by the imposition of innocent free passage. The only mention of economic considerations in the  
61 Convention deals with what destination countries are not allowed to charge on innocently passing vessels. Thus,  
62 any economic consideration in this case, while likely intriguing and important to the Kingdom of Denmark and  
63 the majority opinion, has no bearing on this Court's decision. Our job is to interpret the case to the utmost legal  
64 accuracy. If we determine that a case concerning the right to free passage should be interpreted with regard to  
65 the wholly irrelevant topic of possible economic losses of a projected profit. The Kingdom of Denmark argues that  
66 there is an impressive profit that Finland is imposing upon by requesting the bridge project be suspended, and that  
67 this imposition violates Article 14's definition of innocent passage. However, this argument is weakly-founded as we  
68 cannot reprimand a State for imposing on a *theoretical* profit. Theoretical economic gain is not the same as active  
69 prosperity. Thus, Denmark has no claim to the theoretical profits from the proposed project.

70 Following, the Majority Opinion also argues that Finland had ample time, specifically twelve years, to  
71 respond to Denmark's inquiries for suggestions and possible requests for changes or specific requirements for the  
72 proposed bridge. We find this argument baseless, as the 1958 Convention on the Territorial Sea and Contiguous  
73 Zones offers no time limit or end date for States' right to innocent passage. Considering the time Finland hasn't  
74 responded is irrelevant, as they still contend that their innocent passage has been infringed. We assert that this right  
75 does not expire by lack of communication.

76 The right to innocent passage exists freely of another States' right to sovereignty. The Majority argues that  
77 Denmark's right to sovereignty over their own land supersedes Finland's right to innocent passage. This argument  
78 is unsound as it attempts to create a hierarchy of rights under international law. We believe that it is crucial to  
79 assert and interpret these rights equally. If Denmark's actions as a sovereign state within their borders impose upon  
80 a right to innocent passage for Finland, the actions are still in violation of the 1958 Convention and subsequently  
81 international law.

82 In the final analysis, ultimately, the establishment of a fixed bridge connecting the Danish islands of Zealand  
83 and Funen violates the right to innocent passage that is guaranteed in Section 3, Article 14 of the 1958 Convention  
84 on the Territorial Sea and Contiguous Zones. In Article 14, passage is defined as "navigation through the territorial  
85 sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters,  
86 or of making for the high seas from internal waters." Subsequently, innocent passage is defined as follows, "passage  
87 is innocent as long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage  
88 shall take place in conformity with these articles and with other rules of international law." Finland meets both of  
89 these definitions of Innocent Passage, and their right to innocent passage shall not be infringed.

90 The Danish Great Belt Strait became an international waterway after the 1857 Copenhagen Convention.  
91 The 1857 Copenhagen Convention effectively abolished the Sound Dunes and established the Danish Straits as

92 international waterways. In exchange for a capital sum payment to Denmark, Denmark then relinquished the  
93 dues for all countries. Thus opening up free passage through the straits, therefore deeming the Great belts and  
94 International waterway.

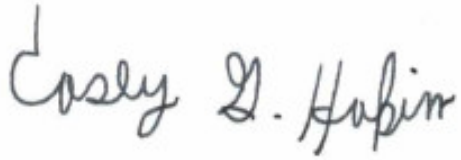
95 The argument that the Republic of Finland is a “third party” beneficiary holds no standing or weight.  
96 During the ratification of the Copenhagen Convention, Finland was in fact not an independent but an autonomous  
97 state within the Russian Empire. Russia, as claimed by Denmark, and the majority opinion was a signature of the  
98 1857 Copenhagen Convention. To simply claim that the Republic of Finland does not have a right to challenge the  
99 Kingdom of Denmark’s compliance with the Treaty lacks coherence. At the treaty’s signing, Finland would have  
100 reaped the benefits of this treaty due to being a territory of the Russian Empire until 1917 when Finland gained  
101 independence.

102 Accordingly, Denmark does not have the right to construct a fixed bridge over the Great Belt that would  
103 impede Finland’s right to innocent passage. As discussed previously, the Convention on the Territorial Sea and  
104 the Contiguous Zone in Section 3 Article 15 says that coastal states may not hamper innocent passage of territorial  
105 waters. While Denmark has sovereignty over their territory, it does not apply to the right to impede innocent passage.

106 In light of these considerations, we conclude that Finland’s argument finds support in international law.  
107 The construction of a bridge across the Great Belt with Denmark’s proposed height limitation of 65m *infringes* on  
108 the innocent passage of ships, particularly for Finnish oil rigs and tankers. The height of these vessels is limited  
109 through this international strait, which is governed by international law because, as alluded to, it specifically provides  
110 shipping access between two different high seas (Baltic Sea and Northern Sea) outside of the Kingdom of Denmark’s  
111 territorial waters. Moreover, the right to innocent passage applies to all ships that meet the necessary criteria to  
112 fall under this protection, not just ships of a certain size. To suggest otherwise, as the Majority does, obfuscates the  
113 spirit of the freedom of navigation, a pillar of international maritime law. Allowing such a discriminatory practice,  
114 the Majority sends a dangerous message to other nations looking for what is now, at least in this case, a legal avenue  
115 of hindering innocent passage through an international strait of the same character as the Great Belt. Therefore,  
116 given the broader principles of international law governing international straits, we find that the bridge’s construction  
117 would violate Finland’s right to innocent passage through the Great Belt.

118 This, however, does not forbid Denmark from building a bridge over the Great Belt. It is, after all, within  
119 the country’s right as a sovereign nation to do so on its land. We simply recommend that Denmark reconsider its  
120 construction plans to accommodate ships that exceed 65m and take into account the international law that safeguards  
121 the right to innocent passage for all ships. These accommodations are not unreasonable. For example, the Italia  
122 Viaduct opened in 1974, has a deck height of 216m, well above the 170m height of the tallest Rauma Repola Offshore  
123 Oy ships. Likewise, a bridge taller than 170m would still confer all of the economic benefits Denmark seeks for  
124 themselves and the EEC without violating a right to innocent passage. Conversely, both parties could and should  
125 engage in good faith negotiations to find a settlement outside of this Court. Until such action is taken, with an eye  
126 to international cooperation and placing great importance on diplomatic efforts, we would further urge Denmark to  
127 refrain from moving forward with building their bridge.

Signed By



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Justice Casey Hakim



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Justice Emma Barnes



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Justice Jadon Cox



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Justice Samuel Gomez



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Justice Vishnu Avva