

IN THE INTERNATIONAL COURT OF JUSTICE

REPUBLIC OF FINLAND,

APPLICANT

V.

KINGDOM OF DENMARK,

RESPONDENT

MEMORIAL OF THE REPUBLIC OF FINLAND

COMES NOW the Republic of Finland and for their Memorial to the Court states the following:

STATEMENT OF LAW

1. Under the 1858 Copenhagen Treaty on the Redemption of Sound Dues, ships of all nationalities are granted free passage through the Great Belt and are to be unhindered in their travel through the Great Belt. This treaty was established due to Denmark's requirement that all ships that passed through the Great Belt were to pay a duty on the value of the cargo to the King of Denmark.¹
2. In 1949, this Court ruled on the case *United Kingdom of Great Britain and Northern Ireland v. People's Republic of Albania*, or as it is more commonly known *Corfu Channel*. This case is the first case that this Court has ruled on in terms of the right of passage. As the Court wrote, "Having regard to these various considerations, the Court has arrived at the conclusion that the North Corfu Channel should be considered as belonging to the class of international highways through which passage cannot be prohibited by a coastal State in time of peace." Based on this ruling, Denmark cannot inhibit upon the passage of warships or any other types of vessels through an international waterway during a time of peace.²
3. Both the Republic of Finland and the Kingdom of Denmark ratified the 1958 Convention on the Territorial Sea and the Contiguous Zone. Article 16 §4 states "There shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State." The Kingdom of Denmark has an obligation under this Convention to allow for free passage of ships through the Great Belt without any hinderance.³

STATEMENT OF FACT

There are three straits that connect the Baltic and North Seas, and all are part of Danish territorial waters. These straits are the Sound, the Great Belt and the Little Belt. For Finland and other countries that rely on free passage through these straits, any sort of changes to the status of passage could have extraordinary effects. Despite only having coastline along the Baltic Sea, the Republic of Finland is a maritime nation. The economy of the Republic of Finland relies on access to the North Sea, and the Great Belt provides this access. The shipbuilding industry in Finland especially is dependent on this connection to the high seas. About 90 percent of Finnish

¹ *British and foreign state papers*. Vol.47, London, The Librarian and Keeper of the Papers-Foreign Office, 1866.

² *Corfu Channel case, Judgement of April 9th, 1949: I.C.J. Reports 1949 p.4.*

³ *Convention on the Territorial Sea and the Contiguous Zone 1958*, United Nations, *Treaty Series*, vol. 516, p.205.

exports and 80 percent of Finnish imports are carried by ships.⁴ In 1990, nearly 45 percent of all exports and imports were carried through the Danish Straits.

The Great Belt is situated between the Danish islands of Fyn-Langeland and Sjaelland-Lolland. The Belt is roughly 60 kilometers long and is between 18.5 and 28.2 kilometers. At the island called Sprogø, the strait splits into two different channels. The West Channel has a navigable route about 3.3 km wide with the East Channel's navigable route being only 1.7 km wide. The depth ranges between 20 and 25 meters, with tidal variations only being roughly .4 meters. While navigation during normal conditions through the Great Belt does not pose any challenges, The Danish Government established an internationally recognized navigation route called Route T due to weather and climate changes, as well as increasing ship sizes and an increase in ship traffic. Route T has a depth of 17 meters, but it is recommended to have at least a 2-meter under-keel clearance, meaning that the effective draught for ships is only 15 meters.⁵

It is important to compare the Great Belt to the other two straits. The Little Belt is enclosed within the territory of the Kingdom of Denmark and is part of Danish internal waterways. The Little Belt is 109 km long, has a depth of 11.8 meters, and has a width that ranges between 700 meters to 27.8 km. Furthermore, the currents are very strong through the Little Belt, as much three (3) meters per second, and dethatched shoals in the center make the Little Belt difficult to navigate. There is also a bridge that spans across it, but ships with a maximum of 33 meters can pass underneath it. The Sound is the shortest route between the Baltic Sea and the North Sea. However, the drought (depth) in the recognized route through the Sound is only 7.7 meters, making it almost impassable to many ships.⁶

Since the 1880's the Kingdom of Denmark has tried to link their two islands of Zealand and Funen. Transportation between these islands has traditionally been a ferry service. Many attempts had been made since the 1930's to build a bridge between Zealand and Funen. In 1986, a political agreement was reached, and the first laws were passed to green light the construction of the bridge. The bridge connected the cities of Halsskov in Zealand and Knudshoved on Funen by a four-lane motorway and a two-track railway. There are two sections to this bridge. The West portion of the bridge was started in 1988 and will connect Knudshoved and the small island of Sprogø. The portion of this project that is at the focus of this case is the East portion. The plan is for the bridge to connect Sprogø with Halsskov.⁷ The issue with this section is that the height of the section will only be 65 meters.

STATEMENT OF JURISDICTION

1. This application is brought under Article 36, ¶1 of the Statute of the Court: "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters

⁴ Passage Through the Great Belt (Finland v. Denmark), 20 December 1991, Memorial of the Government of the Republic of Finland.

⁵ Passage Through the Great Belt (Finland v. Denmark), 20 December 1991, Memorial of the Government of the Republic of Finland.

⁶ Passage Through the Great Belt (Finland v. Denmark), 20 December 1991, Memorial of the Government of the Republic of Finland.

⁷ "Facts and History of Great Belt Bridge." *Bridges DB*, www.bridgesdb.com/bridge-list/great-belt-bridge/.

specially provided for in the Charter of the United Nations or in treaties and conventions in force.”⁸

2. In addition, this application is brought under Article 36, ¶2 of the Statute of the Court: “The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: (a)the interpretation of a treaty; (b)any question of international law; (c)the existence of any fact which, if established, would constitute a breach of an international obligation; (d)the nature or extent of the reparation to be made for the breach of an international obligation.”⁹
3. Furthermore, this application is brought under Article 38, ¶1, §a-c of the Statute of the Court: “The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a)international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b)international custom, as evidence of a general practice accepted as law; (c)the general principles of law recognized by civilized nations;...”¹⁰

ARGUMENTS

1. The Republic of Finland does not contest that the Kingdom of Denmark has the ability to build a bridge connecting two islands that are Danish territory. However, the passing height of the bridge (65 meters), combined with the depth of Route T (15 meters with the 2-meter under-keel clearance factored in) will cause irreparable economic harm to the Republic of Finland due to the inability of certain oil tankers and oil rigs to pass underneath the bridge.
2. The Republic of Finland contends that the “alternative” route that has been proposed by the Kingdom of Denmark, the Sound, is not a legitimate alternative for Finnish ships due to the Sound’s shallow depth of 7.7 meters.
3. The construction of the bridge over the Great Belt is a violation of the right of free passage of ships arriving and leaving Finnish ports and shipyards through the Great Belt, which is in violation of the conventions and laws stated previously in this application. Furthermore, this right of free passage applies to all ships, including oil tankers, and to drill ships, oil rigs and other foreseeable ships.

SUMMARY AND REQUESTS

Reiterating the fact that the Kingdom of Denmark has an obligation to observe and respect the right of free passage of the Republic of Finland, the Republic of Finland prays the Court to adjudge and declare that: (a)there is a right of free passage through the Great Belt which applies to all ships entering and leaving Finnish ports and shipyards; (b)that this right extends to drill ships, oil rigs and reasonably foreseeable ships; (c) that the construction of a fixed bridge over the Great Belt as currently planned by Denmark would be incompatible with the right of passage mentioned in (a) and (b) above and; (d)that Denmark and Finland ought to start

⁸ U.N. Charter, Statute of the International Court of Justice, Chapter II, Article 36, ¶1.

⁹ U.N. Charter, Statute of the International Court of Justice, Chapter II, Article 36, ¶2.

¹⁰ U.N. Charter, Statute of the International Court of Justice, Chapter II, Article 38, ¶1, §a-c.

negotiations, in good faith, on how the right of free passage, as set out in (a) through (c) above, should be guaranteed.