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The impact of international law on natural resource governance in Greenland

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Research Article

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Abstract

The paper demonstrates how the evolution of international law on colonial and indigenous peoples, in particular evolving rights to sovereignty over natural resources, shaped the changing relationship between Greenland and the rest of the Danish Realm. Greenland today is in a unique position in international law, enjoying an extremely high degree of self-government. This paper explores the history, current status and future of Greenland through the lens of international law, to show how international obligations both colour its relationship with the Kingdom of Denmark and influence its approaches to resource development internally. It considers the invisibility of the Inuit population in the 1933 *Eastern Greenland* case that secured Danish sovereignty over the entire territory. It then turns to Denmark's registration of Greenland as a non-self-governing territory (colony) in 1946 before Greenland's-purported decolonisation in 1953 and the deficiencies of that process. In the second part of the 20th century, Denmark began to recognise the Greenland Inuit as an indigenous people before a gradual shift towards recognition of the Greenlanders as a people in international law, entitled to self-determination, including the right to permanent sovereignty over their natural resources. This peaked with the Self-Government Act of 2009. The paper will then go on to assess competing interpretations of the Self-Government Act of 2009 according to which the Greenland self-government is the relevant decision-making body for an increasing number of fields of competence including, since 1 January 2010, the governance of extractive industries. Some, including members of the Greenland self-government, argue that the Self-Government Act constitutes full implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP 2007), but this view is not universally shared. The paper also considers the status and rights of two Greenland minorities: the North Greenlanders (Inughuit) and the East Greenlanders, each of whom has distinct histories, experiences of colonisation, dialects (or languages) and cultural traditions. While the Kingdom of Denmark accepts the existence of only one indigenous people, namely, the Inuit of Greenland, this view is increasingly being challenged in international fora, including the UN human rights treaty bodies, as the two minorities are in some cases considered distinct indigenous peoples. Their current position in Greenland as well as in a future fully independent Greenland is examined, and the rights that they hold against the Greenland self-government as well as the Kingdom of Denmark explored. Greenland's domestic regime for governance of non-renewable natural resources (principally mining and hydrocarbons) is briefly analysed and compared with international standards, with a particular emphasis on public participation. The paper assesses the extent to which it complies with the standards in key international instruments.

Introduction

Greenland is in a unique position in international law. Considered at one time a salt-water colony of Denmark, it now enjoys a very high degree of self-government as a country within the Kingdom of Denmark (the Realm). As the international law on colonial peoples and indigenous peoples has evolved through the decades, so too have the rights of colonial and indigenous peoples to control and use their own resources. Meanwhile, the changing position of Denmark regarding Greenland's legal status and major constitutional reforms within the Realm impact the rights of Greenlanders both under domestic and under international law to govern extractive industries on their territory. This paper explores the history, current status and future of Greenland through the lens of international law, to show how international obligations both colour its relationship with the Kingdom of Denmark and influence its management of resource activities.

An early legal history of Greenland

The human history of Greenland goes back over 4000 years as different cultures (Saqqaq, Independence I and II, Dorset and finally Inuit) arrived in waves from the north. Between the 10th and 15th centuries, Norsemen from Iceland had settlements in the south

(Raghaven et al., 2014). It was in search of the Norse settlements that Danish-Norwegian missionary, Hans Egede, set out in 1721. His concern was that since the settlements had been isolated for so long, they would have missed the reformation – the transition from Roman Catholicism to Protestantism in the 16th century. They might even have lost their Christianity altogether.

On arrival in Greenland, Egede found only deserted Norse settlements but thriving Inuit communities. Undeterred, he, his family and a team of colonialists set about converting the Inuit to Lutheranism – a project with lasting success as today over 95% of the population identify as Christian, of whom the majority are Lutheran (Association of Religious Data Archives, n.d.; Pew Research Center, 2011).

The colonialists settled, converting the discovery into the necessary occupation to crystallise sovereignty over what was – in international law terms – considered a *terra nullius* – the indigenous inhabitants not being recognised as forming a state (Eastern Greenland case, 1933).

Nevertheless, the indigenous peoples of Greenland were, even then, a people, possibly multiple peoples. They did not know about European concepts of sovereignty but they knew their land and their seas and they knew it was their home. Prior to Hans Egede's arrival, they enjoyed sovereignty over their resources even if they did not conceptualise it in European terms and did not imagine it could be taken from them. (Indigenous scholars have critiqued elsewhere the European paradigm of sovereignty, the denial of its application to indigenous peoples and its abuse to further colonial expansion and domination (Burns, 2018; Newcomb, 2018; Watson, 2015).)

As a colony, self-serving European norms dictated that the territory – and its resources – were under the control of the colonial state. While there were increasing limitations on exploitation of persons, resources were another matter. As in European colonies all over the World, Denmark had established trading posts and held a monopoly on any international trade through the Royal Greenland Trading Department. The Royal Greenland Trading Department was responsible for administration in Greenland until 1908 (Strøm Tejsen, 1977). Exports were primarily train oil, sealskin, narwhal tusk, whale-bones and fox furs (Strøm Tejsen, 1977). The Royal Greenland Trading Department had the exclusive right to bring goods into Greenland and controlled sales to both the indigenous and the settler populations – with different price lists for Danes and Greenlanders. It limited trade of certain products, in particular foodstuffs, to native Greenlanders. This was justified on paternalistic grounds but was also commercially canny: if the Inuit started eating imported food, they would hunt less – meaning less whalebone, sealskin, fox-fur and narwhal tusk for trade. The monopoly was not lifted until 1950, nearly a century after the monopoly in the Faroe Islands (Strøm Tejsen, 1977) although during World War II (when Denmark was occupied), Greenland obtained goods from the United States (Rud, 2017).

The north of Greenland was explored by Robert Peary at the turn of the 19th and 20th centuries but although Peary had extensive contact with the Inuit in the Avanersuaq (Thule) area, this hardly amounted to occupation in legal terms (Harper, 2017). In any case, the United States renounced any claim to Greenland in 1916 – as part of an agreement to buy the Danish West Indies from Denmark (Nonbo Andersen, 2018).

Around the same time as Peary was active in the north, the Norwegians were making hunting expeditions to East Greenland. This was tolerated by the Danes; the views of the Inuit were not recorded (*Eastern Greenland case*, 1933). However, in 1922, the Norwegians built a radio station and later a number of structures. The Danish government protested strongly this infringement of their declared sovereignty. On 10 July 1931, following the initiative of Hallvard Devold, a lone Norwegian whaler, Norway formally declared sovereignty over a large sector of East Greenland.

Denmark brought Norway to the Permanent Court of International Justice to settle the matter. In short, in 1933, the Court held that the entire of Greenland was under Danish sovereignty. In its judgment, the Court rejected Norway's claim to sovereignty over the eastern part of Greenland and held instead that sovereignty could be demonstrated by Denmark notwithstanding limited physical presence. The Court's reference to the indigenous Greenlanders was marginal, considering them only as objects in need of Danish protection. It considered their *welfare* but not their *wishes* (*Eastern Greenland case*, 1933).

Therefore, after Denmark joined the United Nations as a founding member in 1945, it listed Greenland as a non-self-governing territory under Part XI of the Charter and reported to the Secretary-General on the Greenlanders as a non-self-governing people.

Sovereignty was Danish but it now had constraints. A non-self-governing people *also* had certain sovereignty-related rights. Under the UN Charter, colonial states were obligated to recognise that

> "The interests of the inhabitants of these territories are paramount and accept as a sacred trust the obligation to promote to the utmost . . . the well-being of the inhabitants."

Furthermore, Denmark and all other colonial states undertook

> "To ensure . . . the political, economic, social and educational advancement, just treatment and protection against abuses [of the native population and] to develop self-government, to take due account of the political aspirations of the peoples and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement." (UN Charter, 1945, art. 73).

Therefore, in 1945, Greenland was already subject to multi-layered sovereignty. Sovereignty – in the sense of having the last word – is far from absolute. Denmark may not do as it wishes with this territory or its inhabitants. This is not just a matter of the general human rights law that emerged in the shadow of World War II and applied to all states and all peoples, but a specific limitation on colonial states and an explicit recognition of the *territorial* rights of colonised peoples.

The Danish West Indies (now US Virgin Islands) present an interesting counterpoint. In respect of Greenland, Denmark presents itself as a benevolent colonial power, protecting the Greenlanders and making efforts to improve living standards – albeit with some mistakes along the way – and championing indigenous rights and even accepting independence for Greenland in due course (DANIDA, 2011). The original inhabitants of what would become known variously as the Virgin Islands or the Danish West Indies had been decimated and forced out within 100 years of the first European arrivals under Columbus in 1493 (Frommer's, n.d.). The Norwegian-Danish Kingdom colonised the Virgin Islands in the late 17th century to where they shipped over one hundred thousand African slaves to work on the sugar plantations. Slavery was not abolished until 1848 though it was many decades before living conditions for the freed slaves significantly improved (Nonbo Andersen, 2017). Perhaps climate and terrain were as critical to the Greenlanders' history as the attitudes of their colonisers.

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The mining town of Qullissat

Greenland's massive non-renewable resource potential was recognised early on. Copper, cryolite and coal were early targets (Mortensen, 2014). Zinc, lead, precious metals and precious gems would follow (Mortensen, 2014; Sejersen, 2014).

Coal was mined already in the Disko area in the 1720s. However, 200 years later, it would be the site of a classic colonial extractive endeavour: the Qullissat coal mine.

Qullissat was not a natural settlement but was created in 1924 in order to service the new coal mine. The mine itself was owned by the Danish state and run by Danish and some other foreign experts. The pick and shovel miners were almost entirely Greenlanders (Priebe, 2018). Danish-born workers were paid higher salaries even for the same work and this continued after integration (Greenland Reconciliation Commission, 2017; Nonbo Andersen, 2019). When profitable, the Danish management was celebrated; when unprofitable, it was the fault of the Greenlandic workers (Priebe, 2018). Unsurprisingly, the Greenlandic workers had a rather different perspective – pointing to poor equipment, shortages of spare parts, lack of food during shifts and dangerous working conditions (Priebe, 2018).

The settlement grew rapidly, and the town revolved around the mine. When the decision was taken to close the mine in 1966, the inhabitants were encouraged to leave. The mine closed for good in October 1972, and the last inhabitants were relocated, mostly into large towns, including into the notorious "P-block" in Nuuk (Tejsner, 2014). Qullissat was a community that pivoted on the mine – without it, the community was not considered worth saving. One of the last residents was an adolescent Kuupik Kleist – who would later be the Premier of Greenland.

From this description, it is clear that the Qullissat mine followed classic colonial resource exploitation: the colonial state owns, controls and profits from the raw material, while the physical labour is conducted by the local population, whose territory is being dug up. This is quite in keeping with international law prior to WWII.

Integration into the Danish Realm

Greenland had been of strategic importance to the Allies during WWII and was likely to become even more important as the Cold War deepened, the Arctic being the 'front-line' between the two superpowers. The US had military infrastructure in Greenland from 1941, including the Thule base at Pittufik from 1943 (Rasmussen, 2013).

The US offered to buy Greenland in 1946 but the offer was rebuffed. In any case, it would not have changed the status of the native Greenlanders, and it is rather unlikely anyone would have asked their opinion on the matter. In 1949, Denmark joined NATO and accepted the ongoing presence of the US military on its colonial territory and in 1951, the two states entered an agreement for the Greenland Defense Area and construction began on what is now the modern Thule base.

However, the international decolonisation movement was already beginning to rumble. Both Denmark and the US would benefit from a more secure sovereignty over Greenland and the minimisation of any risk of Greenlandic independence leading to the termination of the defence agreement under the clean slate principle (Vienna Convention on the Succession of States in Respect of Treaties, 1978). Although there was not much of an independence movement *in Greenland* at this time, both Denmark and the US were well aware of its potential. Furthermore, Denmark was obligated under the UN Charter to promote self-government and to help prepare the people to govern increasingly their own affairs according to their aspirations (see above, UN Charter, 1945).

Denmark's solution was to integrate Greenland: to make it fully a part of Denmark, pre-empt any independence claim and rid Denmark of its coloniser status and its increasingly negative connotations (Beukel, Jensen, & Rytter, 2010).

In August 1952, Denmark sent the Grønlands Landsråd – the provincial council of Greenland – a proposal for integration. The Landsråd was a body chaired by the Danish governor of Greenland but most members were elected by Greenlanders – though not those from the far north or east. It was mostly a consultative body without the power to implement law, let alone to address constitutional matters (Alfredsson, 1982).

Denmark offered the Landsråd the option of full integration into the Danish Realm as a 'county' of Denmark, with the right to elect two members to the Folketing (the Danish parliament). The Landsråd was not offered any alternative, for example, some kind of home rule agreement, similar to that already enjoyed in the Faroe Islands, and certainly was not offered independence. The Landsråd was also promised that integration would mean that Greenlanders would enjoy the same standard of living as the Danes – a promise that has yet to be fulfilled (Ngiviu, 2014).

The Landsråd debated for 2 days before accepting the proposal. The Council was not consulted regarding any of the other constitutional revisions being discussed and agreed to integration before the final text of the constitution was agreed – a constitutional text that the Greenlanders did not vote on precisely because they were a colony!

On 31 May 1953, the Inughuit population of Uummannaq – the location of the expanding US base – was forcibly relocated with 3-day-notice (Christensen & Sørensen, n.d.; Hingitaq 53 v the Danish Prime Minister's Office, 2003; SIK v Denmark, 2000). The rush can be explained by the fact that the revised Danish constitution would come into force 5 days later, granting the Greenlanders' constitutional rights as full citizens.

On the coming into force of the Danish constitution on 5 June 1953, the official position was that Greenland was no longer a colony and Greenlanders were full and equal Danish citizens with two seats in the Danish Parliament (Folketing). On 22 November 1954, the UN General Assembly voted to remove Greenland from the list of trust territories, concluding as follows: the General Assembly

> "takes note that when deciding on their new constitutional status, through their duly elected representatives, the people of Greenland have freely exercised their right to self-determination;
>
> expresses the opinion that, from the documentation and the explanations provided, Greenland freely decided on its integration within the Kingdom of Denmark on an equal constitutional and administrative basis with other parts of Denmark.
>
> Notes with satisfaction the achievement of self-government by the people of Greenland" (UN General Assembly, 1954, paras. 4, 5 and 6).

The sovereignty of the Greenlanders as a people was thus purportedly extinguished. Just as international law is evolving to grant colonial peoples more rights over their own territories and resource, the Greenlanders ostensibly *lose* their status as a people entitled to territory and resources. By the time, the UN General

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Assembly has agreed Resolutions 1514 and 1541 on decolonisation in 1960 and Resolution 1803 on permanent sovereignty over natural resources in 1962, Greenland is, according to the Danish constitution, a county of Denmark and the Greenlanders are Danes with no distinct rights over their distinct territory (UN General Assembly, 1960a, b, 1962). Denmark continued to appoint a cabinet minister for Greenland, and the various incumbents would visit and pronounce, for example, on the Qullissat mine's future (Priebe, 2018). The position of minister for Greenland would not be abolished until 1987.

Following incorporation, Denmark introduced a number of reforms in Greenland – plans to urbanise and educate the Greenlanders according to Danish standards as well as to introduce the welfare state. While for the most part well-intentioned, some of the measures had devastating consequences on many Greenlanders. As in many other Arctic countries, children were removed to be schooled in the colonial language and hence lost their native tongues – and their ability to communicate with their families (Friedberg, 2010). Villages were closed and families moved into residential housing blocks in larger towns, especially the capital Nuuk, breaking up strong communities and cutting people off from their traditional hunting pursuits as well as the nature that gave their lives meaning (Ngiviu, 2014).

Accession to the European Economic Community (EEC)

In the early 1970s, Denmark eyed a place in the growing European Economic Community (EEC), and in 1972, a referendum was held. The electorate voted 63% in favour of membership. Turnout was an impressive 90% (Miller, 2016). However, in Greenland, 70% of votes cast were against membership (Vestergaard, 2013). Denmark joined the EEC in 1973, alongside the United Kingdom and Ireland.

As a mere county of Denmark without any distinct status, Greenland entered the EEC along with Denmark. Meanwhile, the Faroe Islands, who already enjoyed Home Rule, opted to remain outside.

Accession to the EEC – and, in particular, inclusion in the Common Fisheries Policy – spurred the Greenlanders to look to the Faroe Islands and beyond and seek greater powers to govern their own affairs. Accession to the EEC – and as time as passed, ratification of the Mastricht, Amsterdam, Nice and Lisbon treaties of the European Union (EU) – has increasingly eroded Danish sovereignty, yet it was the trigger, the Greenlanders needed to increase the demands for self-government.

Home Rule 1979 and leaving the EEC

As a response to the clamour for increased self-government, home rule was introduced in Greenland in 1979 (Greenland Home Rule Act, 1979). At this point, Greenland and the Greenlanders were recognised as having a special position within the realm – a society of people (folkesamfund) (Greenland Home Rule Act, 1979, Sec. 1; Ngiviu, 2014). With their new status, the Greenland Home Rule government immediately set about the process to leave the EEC. A referendum was held in Greenland in 1982 in which 52% voted to leave the EEC (Miller, 2016). The process was completed in 1985 through a bespoke treaty that retained access of the European fleet to certain fisheries in exchange for tariff-free access to the European market for Greenland-caught fish and EEC financial support, in particular, in the sphere of education (EU Council Decision 2014/137/EU; Greenland Treaty, 1985). Greenland became – and remains – an overseas country of the EU.

Home Rule was about government of internal affairs, but it did not give the Greenlanders rights to their mineral resources (Home Rule Act, 1979, Schedule). That would not happen for another 20 years.

ILO Convention 169

In the 1980s, the Danish position was that the Greenlanders are an indigenous people. In 1996, Denmark ratified the International Labour Organisation's Convention on Indigenous and Tribal Peoples (ILO Convention 169, 1989). The Convention contains the caveat that

> "The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law" (ILO Convention 169, 1989, article 1(3)).

Denmark's participation in ILO C169 is nevertheless constrained by its Declaration that "There is only one indigenous people in Denmark in the sense of Convention 169, viz. the original population of Greenland, the Inuit" (SIK v Denmark, 2000, para. 20). The Declaration is limiting in two respects. First of all, by identifying the Inuit of Greenland as an indigenous people – rather than a colonial people – they have *some* rights to self-government and consultation regarding the use of their land and territories – but they do not have rights to independence nor do they have the last word (or veto) regarding resource use. This is made clear in the aforementioned caveat in the convention itself. ILO Convention 169 requires states to *consult* with their indigenous peoples before exploiting their resources but does not require their *consent*, in contrast with the rights of (colonial) peoples to permanent sovereignty over their natural resources (UN General Assembly, 1962). Second, the statement is limiting by making it clear that Denmark recognises only one indigenous people – the two minorities in North and in East Greenland are not recognised as distinct indigenous groups. However, it should be noted that the incumbent Greenland home rule government also signed the Declaration (*SIK v Denmark*, 2000).

Notwithstanding the aforementioned limitations, ratification of ILO 169 is the first time that the Kingdom of Denmark recognises any mineral resource management rights of the Greenlanders.

The moves to self-government

The discourse began to shift around the turn of the century. Between 1999 and 2002, the Greenland Self-Government Commission – a body appointed by the Greenland home rule government to examine options for Greenland's constitutional status – held that the Greenlanders are a 'people' in international law with an inherent right of self-determination (Greenland Self-Government Commission, 2003).

They were followed by the Greenland-Danish Self-Government Commission in 2004 – a body of 16 parliamentarians, half from the Greenland home rule parliament and half from the Danish parliament. Their *starting point* was that the Greenlanders enjoyed the right to self-determination

> "The Commission shall, on the basis of Greenland's present constitutional position and in accordance with the right of self-determination of the people of Greenland under international law, deliberate and make proposals for how the Greenland authorities can assume further powers,

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where this is constitutionally possible" (Greenland-Danish Self-Government Commission, 2008, Terms of Reference).

The Commission's findings led to a draft act on Greenland Self-Government that was supported by 75.54% of voters on a 71.96% turnout (Kleist, 2010). The act, in force since 2009, begins

> "Recognising that the people of Greenland is a people pursuant to international law with the right of self-determination, the Act is based on a wish to foster equality and mutual respect in the partnership between Denmark and Greenland" (Act on Greenland Self-Government, 2009, Preamble).

The Self-Government Act does not only talk the talk – it allows the self-government in Nuuk to take over a very wide range of competences to the Nuuk self-government. The first competences the Self-Government repatriated in January 2010 were decision-making regarding extractive industries and regulation of the working environment offshore (Fields of Responsibility, n.d.).

Self-government and contemporary international law on indigenous peoples: competing interpretations and limited applications

In 2007, the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) was finally approved after a quarter-century of difficult negotiations (UNDRIP, 2007). Indigenous peoples worked closely with states on the drafting, though ultimately it was adopted by the state members of the General Assembly (Watson & Venne, 2012). The Greenland Home Rule government as it then was as well as the Inuit Circumpolar Council – representing Inuit from Greenland, Canada, the US and Russia – were very active in its development (Staur, 2012). Denmark has since championed the Declaration, both at home and abroad (DANIDA, 2011). For example, in 2009, the Danish representative pressed the Canadian government to support the Declaration during the Human Rights Council Periodic Review of Canada (UN Human Rights Council, 2009).

UNDRIP promises indigenous peoples the right to use, own, develop and control their land and resources. Going beyond ILO Convention 169, it also requires that states not only consult with indigenous peoples before conducting or permitting resource development on their lands, it requires states to seek, in good faith, the *free, prior and informed consent* of the indigenous peoples concerned.

The extent to which this provision is implemented in Greenland is contested as it depends on the extent to which the Greenland government (Naalakkersuisut or Selvstyre) can be considered to speak on behalf of the native Greenlanders as a whole. Furthermore, the status of Inuit Greenlanders as 'indigenous' – and thus entitled to the guarantees of UNDRIP – is also under challenge because of a history of salt-water colonialism on the one hand and a very high degree of self-government on the other.

The Naalakkersuisut is appointed by the Premier who in turn is appointed by the democratically elected Parliament of Greenland (Inatsisartut). The electorate is composed of all citizens of the Danish Realm who have been resident in Greenland for the past 6 months (Act on Greenland Self-Government, 2009). The majority of the electorate – around 88% – identify as Inuit but eligibility to vote or to stand for election is not based on ethnicity. Therefore, it is a public government rather than an indigenous government. However, both the self-government and the parliament are *de facto* composed entirely of persons who identify as Inuit. It is reasonable to conclude, therefore, that Greenlanders, principally Greenlanders who identify as Inuit, hold decision-making power over their own affairs, including natural resources.

However, this very fact of increased control has given rise to doubts that the Greenlandic Inuit continue to be indigenous. There is no single accepted definition of indigenous peoples, in part because indigenous peoples have refused to be defined by states and international organisations but insist on the right to define themselves. Nevertheless, all definitions rely on the principle of self-identification (that is, the indigenous people claims to be and seeks to continue to be indigenous) and there are various commonly accepted objective factors. The most widely cited definition in use is that of UN Special Rapporteur, José Martinez Cobo, which reads as follows:

> "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system." (Martinez Cobo, 1987, para. 379).

Another highly influential UN Special Rapporteur, James Anaya, considers that the term indigenous peoples "refers broadly to the living descendants of pre-invasion inhabitants of lands now dominated by others." (Anaya, 2004, p. 3). The working definition used by the UN Permanent Forum on Indigenous Issues likewise emphasises the importance of self-identification (UN Department of Economic and Social Affairs, 2004).

Given that the Greenlanders have exclusive competence over mineral and hydrocarbon developments under the Self-Government Act, can they still be said to constitute "non-dominant sectors of society"? *Within Greenland* and hence as far as extractive industries are concerned, the Inuit are both numerically and politically dominant by a considerable margin. The Danes no longer "prevail on those territories."

There are two potential arguments against viewing the Greenlanders as indigenous – though neither quite convinces. The first is that Greenland was never effectively decolonised in 1953–1954 given the inadequacy of the process (Alfredsson, 1982). According to this view, the Greenlanders were and continue to be a colonial people and indigenous rights were *never* applicable. This assumes that a colonial people cannot enjoy indigenous rights *as well as* their rights to self-determination as a colonial people. Colonial peoples have stronger rights than indigenous peoples, most notably, the right to independence, but without recognition, those rights are little more than theoretical. It is perhaps a better view that as long as a colonial people is not *recognised* as such by the colonial power they can claim indigenous rights. The alternative would deny them of any effective protection. The other potential argument is that the Greenlanders began as a colony but on integration became an indigenous people within the Realm. However, from 2009 onwards, they ceased to be an indigenous people because they ceased to be non-dominant in their political affairs. This latter view is increasingly supported by some members of the Naalakkersuisut. However, notwithstanding the unarguable increase in authority and control held by the Naalakkersuisut since the Self-Government Act in 2009, it still remains subject to the Danish Constitution and is under the jurisdiction of the Kingdom of Denmark's Supreme Court. The Naalakkersuisut does not have the last word – not even on mineral resource development as became apparent when it moved to

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permit mining of uranium in South Greenland (see below). Greenlanders are still a minority within the Realm – a tiny minority, constituting barely 1% of the total population. In the absence of full independence, the Greenlanders remain non-dominant in a number of important respects. Others take the view that indigeneity is more than political control (or lack thereof) but rather is about culture, tradition, ways of life and value systems. Many Greenlanders embrace their traditions, strongly identify with the Inuit across the Arctic and are proud to call themselves indigenous. This is the view of the Inuit Circumpolar Council, Greenland (ICC Greenland, n.d.).

Since at least 1989 – the ILO Convention 169 – there has been widespread agreement that self-identification is a fundamental criterion for recognising indigenous peoples (ILO Convention 169, 1989; Martinez-Cobo, 1987; UNDRIP, 2009). Therefore, if Greenlanders – or the majority of Greenlanders – no longer self-identify as indigenous, then the label cannot be thrust upon them. However, at the current time, there are still many Greenlanders who continue to identify as indigenous and are not willing to renounce this status – and the advantages that come with it, including the rights to control their own territories and natural resources.

The Greenland government's position on indigenous rights

The Kingdom of Denmark's position, *shared by the Government of Greenland*, is that the Self-Government Act itself constitutes full implementation of the UNDRIP – including the principle of free, prior and informed consent for natural resource activities (DANIDA, 2011). Kuupik Kleist, the Premier of Greenland who welcomed the Self-Government Act in 2009, declared that

> "this new development in Greenland and in the relationship between Denmark and Greenland should be seen as a *de facto* implementation of the Declaration and, in this regard, hopefully an inspiration to others (Kleist, 2009, 2)."

This is not quite the same as claiming that Greenlanders are not indigenous; but rather is claiming that they *are* indigenous but that indigenous rights are not opposable against the Self-Government. In effect, the elected self-government is the *only* representative voice of the Greenlanders. Many in the administration of government (the civil service) believe that indigenous rights are only relevant when an indigenous group is underrepresented – which is not the case in the elected parliament and government of Greenland. They also hold that if the decision-makers are Inuit that is of itself adequate guarantee that Inuit values are integrated into decision-making (Hansen, Vanclay, Croal, & Skjervedal, 2016). Consequently, they believe that Greenlanders do not enjoy indigenous rights *against the self-government*. The civil service of Greenland is relatively immature, staffed primarily by non-Greenlanders trained in Denmark, often newly qualified, with limited experience or knowledge of the Greenland context (Pelaudeix, Basse, & Loukacheva, 2017).

Kleist's use of *de facto* also merits attention. UNDRIP is not implemented in law, as happened in, for example, Bolivia (Rice, 2014). The Greenland government is not an indigenous government as such. It happens to have indigenous leaders today because that is what the electorate has chosen, but the electorate is not restricted to indigenous Greenlanders and they can vote for any Danish citizen who is resident in Greenland.

Increasingly in international affairs, the Greenland Self-Government is rejecting the indigenous label altogether at least in cases where the extent the Greenland Self-Government represents *itself* (rather than being represented by the Kingdom of Denmark), preferring, for example, to use the term 'traditional knowledge' rather than 'indigenous knowledge.'

One area in which indigenous rights are highly relevant is in decision-making on land use and extractive industries. While Greenland requires social impact assessments, these do not refer to indigenous rights at all but instead only ask developers to consider traditional knowledge and land use. As a consequence, the social impact assessments compiled by extractive firms rarely reference indigenous rights (Strandsbjerg, 2014).

The government of Greenland appears to take the view that the government and parliament are the only representative bodies of the Greenlanders. When it comes to free, prior and informed consent, the body that must give consent is the government (Mineral Resources Act, 2009). The argument is that the government is the democratic representation of *all Greenlanders*. Their consent is the consent of the Greenlanders, indigenous and non-indigenous. This is a pretty thin form of consent. In fact, it is a very western representative democracy kind of consent.

Unsurprisingly, not all Greenlander's accept the government's position. Among others, Sara Olsvig, the former leader of Greenland political party *Inuit Ataqatigiit*, argues that while the Self-Government Act implements *many* of the principles of the UNDRIP, particularly, the provisions on self-government, it does not implement them all. The Greenlanders have fought for decades for indigenous rights both at home and in the international arena (Lightfoot, 2016; Staur, 2012). Olsvig expresses frustration that now they are finally in a position to be able to implement them because of self-government, they do not do so but instead claim that they no longer apply (S. Olsvig, Personal Communication, 7 November 2018). Having the *power* to require free, prior and informed consent is used as the very justification not to need it.

The result of the government's position is that the people of Greenland now enjoy *fewer* rights against their decision-makers than they did against the Danish government.

Greenland's minorities – or indigenous peoples within Greenland

Greenland is further complicated by the existence of two minorities within the country. The East and North Greenlanders were colonised much later, and some people in these areas feel themselves as much colonised by the West Greenlanders as they were by the Danes. American Peary's expeditions to northern Greenland were referred to above. The Americans recognised Danish sovereignty over the Avanersuaq area in 1916 (Nonbo Andersen, 2018). As regards East Greenland, although their settlements were known about by other Inuit, the first Europeans to reach the Ammassalik area arrived in 1883. Gustav Holm's expedition included a number of Inuit guides from South Greenland (Thalbitzer, Andrup, & Holm, 1914).

The North and East Greenlanders identify as Inuit, and the position of the ICC is that *all* Inuit from Chukotka to Ittoqqortoormiit are one people (ICC, 2009). However, the East Greenlanders and the North Greenlanders are – at the very least, linguistic minorities, with quite distinct dialects/languages – Tunumiit Oraasiat in the East (with around 3000 speakers) and Inuktun in the North (with around 1000 speakers). Tukumminnguaq Nykjær Olsen, a graduate student at Ilisimatusarfik (University of Greenland), asks why they are considered dialects when Norwegian, Danish and Swedish all have the privileged status of languages? Unlike so-called 'Scandinavian,' Tunumiit Oraasiat,

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Inuktun and Kalaallisut (or West Greenlandic) are not mutually comprehensible (T.N. Olsen, personal communication, 20 April 2016).

The North and East Greenlanders are also culturally distinct with different traditions of clothing, hunting and spiritual belief systems (Harper, 2017; Ngiviu, 2014; Thalbitzer et al., 1914). The Kingdom of Denmark pointedly rejected any possibility that these groups might be indigenous peoples in their own right when they ratified the ILO Convention. The Greenland government also does not acknowledge the legal distinctiveness of these two groups (Ngiviu, 2014). The Kingdom of Denmark, possibly now following the lead from the Greenland Self-Government, reiterated this position in 2012 (Staur, 2012). Nevertheless, the existence of an indigenous people is a question of fact and law that has not yet been conclusively settled and Denmark's position has been challenged by the UN human rights treaty bodies (UN Committee on Economic, Social and Cultural Rights, 2013; UN Committee on the Elimination of Racial Discrimination, 2010; UN Human Rights Committee, 2008).

If the North and East Greenlanders are *indigenous peoples* within Greenland, then the self-government must guarantee for them the same rights that the West Greenlanders used to demand against the Kingdom of Denmark. However, well-intentioned, an insistence on the unity of the Greenlandic people risks the very assimilationist practices that have scarred Inuit throughout the Arctic for generations. As indigenous peoples, the East and North Greenlanders have the right to continue to exist and to remain in some respects *distinct from* the West Greenlandic majority.

The uranium controversy

The most famous – or infamous – extractive project in Greenland is the mine at Kuannersuit (Kvanefjeld), by Narsaq in South Greenland. It is known almost universally as 'the uranium mine' but the company behind it, Greenland Minerals and Energy (GME) make a point to emphasise that the bulk of the intended production consists of non-radioactive rare earth elements. Uranium is a by-product, albeit one that is essential to the commercial viability of the project (Greenland Minerals and Energy A/S, n.d.).

In the 1950s, Denmark was bullish about the potential of nuclear power to supply its domestic market. In keeping with its pro-nuclear policy, Denmark sponsored exploration of the uranium potential of Kuannersuit from the 1960s through the 1980s (Kalvig, 1983; Vestergaard & Thomasen, 2016a). However, when the Danish Parliament resolved to renounce nuclear power as a domestic energy source in 1985, explorations paused (Vestergaard & Thomasen, 2016a).

The resolution – along with some other factors – led to a commonly held view that there was a 'zero-tolerance' policy towards mining of radioactive minerals that could be used for either nuclear power or weapons. A recent study has found no *legal* basis for this assertion but it was common practice not to award licences for extraction of radioactive elements such as uranium and thorium (Vestergaard & Thomasen, 2016a).

GME restarted exploratory drilling in the mid-2000s – this was at the time of Home Rule but before Self-Government (Government of Greenland, 2012). It was known that uranium was present in the mountain but the licence allowed only for exploration, not extraction, so it was not immediately necessary to clarify the legal position on uranium.

The uranium question proved divisive in two ways: first of all, the Greenlanders themselves were divided about whether or not it should be mined at all. Demonstrations were held around the country, led by the grassroots anti-uranium pressure group, Urani *Naamik* (Uranium No Thanks).

The uranium question also created divisions with Copenhagen. Having transferred the authority of mineral activities to the Self-Government, the Greenland government insisted that any decisions about what to mine were entirely in its hands. The Danish government, however, retains responsibility both under the domestic constitution and under international law for security issues, and it saw the extraction of uranium as a security matter (Vestergaard & Thomasen, 2016a).

In 2013, the Inatsisartut (Parliament of Greenland) voted with a majority of a single vote in favour of overturning the (supposed) zero-tolerance policy on mining of radioactive materials (Vestergaard & Thomasen, 2016a). This increased the stakes and intensified the divisions within Greenland and between the Greenland and Danish governments. Many Greenlanders questioned the right of the Parliament to make such a weighty decision and called for a referendum – calls that have not yet gone away (Chemnitz Larsen et al., 2016; George, 2016). It is hard to argue that a simple majority in Parliament is an acceptable expression of *free, prior and informed consent*. Only the elected members have the opportunity to consent – or withhold consent. It is also not necessarily 'free', given the political party disciplinary system.

Meanwhile, the Danish and Greenland governments had to settle competence over the management and export of a mineral that has the potential to be diverted to weapons of mass destruction.

When Greenland left the European Economic Community, it also left Euratom so European provisions on radioactive materials did not apply anymore. The Kingdom of Denmark, including Greenland, is an original member of the International Atomic Energy Authority (IAEA) and a founding party to the Non-Proliferation Treaty (NPT) (Treaty on the Non-Proliferation of Nuclear Weapons, 1968). Article 3 of the NPT requires states to implement 'safeguards' to prevent the diversion of fissionable material to non-peaceful purposes. This responsibility remains with Denmark under international law. However, Denmark's agreement with the IAEA – through the EU – did not apply to Greenland (IAEA, 1973, 1977). An additional protocol for Greenland was agreed in 2013 (IAEA, 2013; Vestergaard, 2015). Among other things, the protocol requires the Kingdom of Denmark – being the *state party* – to provide information on the location, operational status and annual production capacity of any uranium mines as well as the destination countries for exports (IAEA, 2013). The state must allow inspectors from the IAEA, including access to the mining sites themselves (IAEA, 2013). The IAEA made its first visit to Kuannersuit, as well as to Nuuk and Copenhagen, in 2017, and a formal inspection of the Kuannersuit site was conducted in 2018 (IAEA, 2017; Greenland Minerals and Energy A/S, 2018).

Notwithstanding the posturing of some Greenland politicians, a practical compromise was reached in 2016. The agreement between Denmark and Greenland allows for Greenland to maintain decision-making power over extraction of uranium but the Kingdom of Denmark – as the state party to the international treaties and maintaining competence under constitutional law for 'security' issues – has oversight over exports. The Danish Ministry for Foreign Affairs is the contact point for the IAEA. Exports may only go to states that are parties to the NPT and members of the IAEA. Exporters seek permission through the Greenland government but it is the Danish Business Authority in co-operation with the Danish Ministry of Foreign Affairs and the Greenland government

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that evaluates applications and grants or withholds permits (Vestergaard & Thomasen, 2016b). The Danish Ministry works together with what is now the Greenland Department of Mineral Resources and Labour on implementation, including organisation of inspections. Greenland bears sole responsibility for licensing, environmental protection and health and safety (Vestergaard & Thomasen, 2016b). The system is to be based on existing Danish legislation which is turn implements EU regulations – Greenland, although outside of the EU, is therefore following European law in this area.

It is worth pointing out that while Greenland has no experience in the export of fissionable materials, neither does Denmark and it must build its institutional competences in this area from scratch – albeit based on an EU legal framework (Vestergaard & Thomasen, 2016a). In 2016, Greenland accepted the Convention on Nuclear Safety and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency and Denmark correspondingly withdrew its territorial reservations in respect of Greenland for these treaties (Gioia & Fournier, 2016).

Public participation and the certification of diamonds

Before this paper draws to a close, it is useful to consider two other international systems of direct relevance for Greenland's extractive industries. The first of these is the Aarhus Convention that provides for the rights of the public to information and participation regarding resource developments (Aarhus Convention, 1998). All members of the public have the right to environmental information. The 'public concerned' by a project, including environmental NGOs, have the right to review the details of planned activities, comment on any plans and have their comments taken into consideration in the planning process. They also have the right to an independent review of the decision if the standards are not upheld. The rights of indigenous peoples under ILO 169 and under UNDRIP already go further than this – *for indigenous peoples*. But if the Greenland government does not consider that indigenous rights apply against them, then general human rights to participation such as those under the Aarhus Convention become more important. However, although Denmark is a party to the Aarhus Convention, it has a territorial exemption for Greenland. This is at the request of the Greenland administration. Their reluctance is justified by pointing to Greenland's small population spread over an enormous territory (UN Treaty Collection: Depositary, 2019). Greenland and Denmark argue that the Aarhus Convention is designed by and for countries with large populations and complex administrative systems and that the Greenland government is too small to be able to implement it efficiently. In Denmark's reservation, it suggests that application to Greenland – or the Faroe Islands – might "imply needless and inadequate bureaucratisation" (UN Treaty Collection Depositary, 2019).

One would think that in a country with a small population and close personal connections between individuals that it would be fairly easy to be heard. In reality, there are many problems with participation in Greenland. In fieldwork conducted by Anne Merrild Hansen and the present author, we have heard that people are frustrated with lengthy delays in obtaining information, lack of confidence in the quality of information, lack of opportunities to communicate one's own views and a belief that individual views are not taken into account (Hansen & Johnstone, 2019).

The other system of note is the Kimberley process for certification of rough diamonds (UN General Assembly, 2000; UN Security Council, 2003). The purpose of the Kimberley process is to certify that diamonds are not exploited to fund armed conflict – in other words, they are not 'blood diamonds'. States that accept the Kimberley process must only trade in diamonds with other countries that are also parties. Not being a state, Greenland could not join the Kimberley process in its own name. Denmark was a member through the EU but since Greenland is not in the EU, the Kimberley process did not apply to Greenland.

Recognising the risk that any diamonds mined in peaceful Greenland would be caught in the blood-diamond prevention scheme, the EU agreed to admit Greenland into its certification scheme in 2015 (EU Parliament & Council, 2014). In the future, Greenland might also look to inclusion in the EU's regulatory process for conflict minerals (EU Parliament & Council, 2017).

Conclusions

Greenland is one of the most state-like entities in international law without actually being a state. Changes in its position within the Kingdom of Denmark lead to swings in the distribution of competences regarding extractive industries. Furthermore, over the last century, the evolution of the rights of colonial and indigenous peoples, the increasing emphasis on indigenous sovereignty and the rejection of self-serving colonial attitudes and norms have led to shifts in power over natural resources.

Incorporating Greenland as a county of Denmark in 1953 – after a referendum in which only Danes but not Greenlanders were invited to vote – meant that Greenlanders were denied the rights of colonial peoples to permanent sovereignty over their own resources just as these were begin to be recognised elsewhere in the world. The recognition of the Greenlanders as an indigenous population and the ratification of ILO Convention 169 brought stronger rights to territory and resources but still no right to *prevent* extractive industries but only rights to be *consulted* about them. The Self-Government Act in 2009 that recognises Greenlanders as a *people* with all the rights that attach to that status under international law gave the Greenland Inuit political self-determination. Some – including the current governments of Greenland and Denmark – see this as full implementation of the UNDRIP. However, others see the realisation of political self-determination being used by the Greenland government to undermine the principles of UNDRIP regarding inclusive and participatory decision-making on extractives while at the same time keeping Greenland outside of the Aarhus Convention that guarantees the rights to information, public participation and remedies. Questions regarding the linguistic minorities in North and East Greenland are yet to be resolved. It suits the government in Nuuk just as much as it did the government of Copenhagen to see these communities as all part of a single Inuit people and to speak of 'dialects' rather than 'languages.' On security issues, the responsible party under the constitution as well as under the various international treaties is the Kingdom of Denmark. This brings a need for creative solutions to ensure that international obligations are met without either side losing face or reneging on promises. Finally, the EEC, later EU, has had its own role to play. Accession against the majority of the Greenlanders' wishes spurred demands for self-government and in turn, Greenland's departure from the EEC. In important areas of exclusive EU competence – such as international trade, fisheries and agriculture – the government of Greenland enjoys considerably more sovereignty than Denmark. However, as an overseas country of the EU, Greenland can sometimes use EU processes to ease trade in sensitive resources such as uranium and diamonds.

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