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Disentangling the conundrum of self-determination and its implications in Greenland

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Research Article

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Abstract

In 2009, the Act on Greenland Self-Government was adopted. It recognises that "the people of Greenland is a people pursuant to international law with the right of self-determination". Within this framework, the people of Greenland have gained significant control over their own affairs and the right to access to independence. Yet, the extent to which this framework ensures the right of self-determination in accordance with fundamental human rights can still be questioned. From a human rights perspective, the right of self-determination is not a one-time right. It is fundamental human right that applies in different contexts beyond decolonisation and which has implications not only for colonial countries and peoples but also for the population of all territories, including indigenous and minority groups. From this perspective, this contribution seeks to disentangle and analyse the different facets of self-determination in Greenland while considering the implications of the right based on the multifarious identity of the peoples living in the country as colonial people, citizens, indigenous and minority groups, including their claim to control mining resources.

Introduction

The exercise of the right to self-determination in Greenland is an important but unsettled question under international law. Until 1954, Greenland was governed as a colony of Denmark and was listed as a non-self-governing territory in accordance with Chapter XI of the Charter of the United Nations. Subsequently, the colonial status of Greenland was dissolved as the territory was incorporated in the Kingdom of Denmark and the territory was withdrawn from the list of non-self-governing territories. Controversially, Denmark proclaims that Greenland had henceforth exercised its right to self-determination, a process that was nonetheless considered "entirely one-sided" (Alfredsson, 2013, p. 2). After several decades of Home Rule, the autonomous status of Greenland has been further consolidated with the adoption of the Act on Greenland Self-Government (Act on Self-Government) in 2009. The adoption of the Act was the outcome of a referendum organised in 2008, which validated the proposal of the joint Danish-Greenlandic Self-Governance Commission concerning the legal status of Greenland under both constitutional and international law. In its operative part, the Act recognises that "the people of Greenland are a people pursuant to international law with the right of self-determination". With this framework, the people of Greenland have gained significant control over their own affairs including the right to seek independence and to control their natural resources. In this regard, it is argued that the self-rule government represents a successful implementation of indigenous self-determination and that Greenland has become a "role model" for all indigenous peoples around the world (Kuokkanen, 2017b, p. 13; Thomsen, 2013, p. 254).

Despite the adoption of the Act on Self-Government and the prospect of independence, the extent to which the adoption of the Act on Self-Government fulfils the fundamental human rights to self-determination and the rights of indigenous peoples can still be questioned. Under human rights law, the right to self-determination is not considered to be a one-time right but as a process that carries specific ramifications for the population of the territory against the government (the right to internal self-determination). It also requires a government system that is infused with the rights of indigenous peoples. In this regard, it is important to consider the several facets of self-determination and their implications beyond the mere context of decolonisation in order to evaluate whether a model is suitable for the implementation of self-determination as a fundamental human right. In other words, focusing on the adoption of the Self-Government Act and the rights of the people of Greenland to self-determination may not provide a full account of the right of self-determination for the Inuit people in accordance with the human rights of indigenous peoples. To understand and explain this conundrum, this contribution disentangles and analyses the facets of self-determination in the Greenlandic context while considering the multifarious implications of the rights of the peoples living in the territory based on their distinct legal identity as a colonial people, citizens,

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indigenous people and minority groups, and including their claim to control mining resources. Furthermore, although this contribution makes a distinction between the different regimes of self-determination, it does not mean to suggest that these regimes are antithetic. Instead it argues that existing self-determination claims overlap and need to be addressed conjointly.

In this regard, four arguments have been developed. The first section demonstrates that the development of the right to self-determination has a broad scope of application under international law as a fundamental human right that expands beyond the decolonisation context. In this regard, the second section contends that the Act on Greenland Self-Government is a product of the application of the right of self-determination in the decolonisation context and shortly describes the historical process that lead to the adoption of the Self-Government Act. Then, it explores the implications of self-determination beyond this context while focusing on the rights of the people of Greenland to internal self-determination including their rights to dispose of natural resources in the mining context. Subsequently, the third section considers the right of the Inuit people to self-determination through the lens of indigenous peoples and their right to self-determination. While overlapping in practice, this section seeks to expose the difference between the rights to self-determination of the Inuit and Greenlandic peoples. Finally, the fourth section considers the rights of the Inughuit people as a separate indigenous Inuit group, who are evidence of the multifarious identity of the Inuit people as a colonised group and emphasises the need to accommodate their distinctive rights. In lieu of a conclusion, the analysis presents a summary of the argument and underlines the need to take into account the different aspects of the right of self-determination and the multifarious identity of the people living in Greenland. This is despite the tensions this may raise vis-à-vis the decolonisation process and the quest for independence in order to ensure that the human right of self-determination is adequately implemented in Greenland.

Self-determination under international law

Since the establishment of the UN system, the law on self-determination has evolved and it is now agreed that the right has a broad scope of application as a fundamental human right (International Court of Justice, 2019, p. 4).

At the outset, the right of self-determination was applied as the right for colonial countries and peoples to their independence in the context of decolonisation (Cassese, 1995, p. 110). This interpretation of the right to self-determination crystallised as a rule of customary international law throughout the 1950s until the 1970s, when the UN General Assembly passed a number of landmark resolutions announcing the decolonisation era. In the decolonisation context, self-determination has been interpreted as a right to decide on the international political status of the territory in which the people live, which usually takes the form of independent statehood. As a consequence, the application of the right of self-determination in this context is often referred to as "the external right of self-determination" (Cassese, 1995, p. 110). Although the right to self-determination, under customary international law, does not impose a specific mechanism for its implementation in all instances, the subject of the right has been narrowly defined by reference to the entirety of non-self-governing and trust territories, regardless of the ethnic background of the communities forming the colonial population. The International Court of Justice has confirmed this interpretation of the right on several occasions. Furthermore, the doctrine of the saltwater thesis, sustained by states' practice, has also constrained the application of the right of self-determination in the decolonisation context to the situation of territories separated by saltwater from the colonising country (UN Resolution 1952). Consequently, many indigenous groups who fail to meet these requirements have not been granted the status of non-self-governing territory and are therefore not allowed to exercise self-determination in accordance with international law applying in the decolonisation context.

Beyond the decolonisation context, the determination of whether other forms of self-determination have been crystallised as rules of customary law has remained a more controversial issue. However, with the adoption of the International Covenant on Civil and Political Rights (ICCPR, 1966), as well as its counterpart, the International Covenant on Economic, Social, and Cultural Rights (ICESCR, 1966), it became increasingly clear that self-determination was not only a right for colonial peoples as defined under the regime of international law. The Human Rights Committee (HRC), charged with providing authoritative interpretations of the norms contained in the ICCPR, interpreted Article 1 as a right for all peoples. Contrary to the colonial variant of self-determination, this latter form of self-determination must be exercised within the confines of existing states, respecting the principle of territorial integrity of sovereign states. International doctrine has labelled this interpretation of the right as "internal self-determination" (Cassese, 1995, p. 102). Often associated with the right to democratic governance, this interpretation of self-determination focuses on the rights of the citizens to representation and participation in the governance of their states (Franck, 1992). On this basis, each state has the responsibility within its borders to have a representative government mechanism. Although it took some time for states to follow the HRC's interpretation, today a consensus exists on this complementary view of self-determination, which expands the scope of the right to self-determination beyond the decolonisation context (Cambou, 2019). However, the paradigm underlying self-determination that has been put into practice circumscribed the interpretation of the right of "all peoples" to the more restricted meaning of the right of "the population of all states", regardless of the indigenous, minority or ethnic background of the concerned population.

With the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, the development of the law on self-determination as a fundamental human right has taken a new step. The declaration represents the first legal instrument to recognise that indigenous peoples as groups rather than individual citizens have the collective right to exercise the right to self-determination. According to the UNDRIP, indigenous peoples "in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs". Beyond mere political self-government and autonomy, indigenous self-determination also provides the right for indigenous peoples to participate, if they so choose, in the political, economic and social cultural life of the state and to control their land and resources. It also includes their rights to maintain and develop contact with their own members and other peoples within and across state borders, particularly for those divided by international borders (Cambou, 2019). On this basis, the International Law Association argues that "indigenous peoples have an international legal right to a unique 'contemporary' form of self-determination, giving them the right to engage in 'belated nation-building', to negotiate with others within their states, to exercise control over their lands and resources, and to operate autonomously" (International Law Association, 2010, p. 11).

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This is also the view shared by Erica Irene A. Daes, the former chair of the Working Group on Indigenous Populations, who has commented that indigenous self-determination can be interpreted as a right that "stress(es) constitutional reform rather than secession" (Daes, 2000, p. 71). In effect, such an interpretation is based on article 46 of the UNDRIP which stipulates that the right of indigenous peoples to self-determination should be exercised in respect of the territorial integrity or political unity of sovereign and independent states. In this regard, the UNDRIP recognises a right to self-determination by indigenous peoples that differs from the right to self-determination held by non-self-governing peoples living under colonial domination but comes within the ambit of the development of the fundamental human rights to self-determination and is closely associated with the right to internal self-determination. It is a right that is predicated on the cultural integrity of indigenous peoples and which allows them to take part collectively in the decision-making processes that affect them.

However, the UNDRIP should not be interpreted as preventing indigenous peoples from creating their own states in cases when national or international law allows it. According to Scheinin and Åhren, such an approach would otherwise be discriminatory (Scheinin & Åhren, 2017). Pursuant to international law, indigenous peoples' claims for independent statehood can therefore be met in the case when they fulfil the definition of non-self-governing territory by reference to the decolonisation regime. Since the right to secession is not regulated by international law, indigenous peoples who fall under the scope of international law on decolonisation are today the only entity entitled to claim independence under international law. This is the case of non-self-governing territories such as New Caledonia, French Polynesia, Western Sahara and formerly Greenland or Puerto Rico. If the rights of indigenous peoples to self-determination include the right to independence in some cases, it must equally be emphasised that this right is not fulfilled by the achievement of self-government in the form of independence or any other political status of the territory in which they live alongside others (Anaya, 2011, p. 5). From a human rights perspective, self-determination is interpreted as an ongoing process of choice, which ensures that all peoples are able to meet their social, cultural and economic needs on an ongoing basis. For indigenous peoples, it also means that the governance system representing them must consider their rights as indigenous peoples and their cultural identity. From this perspective, it is therefore important to distinguish the exercise of the right of self-determination in the decolonisation context as a one-time right, from the right of indigenous peoples to self-determination, which focuses on the ongoing right of peoples to be represented by a governance apparatus that is respectful of their identity as indigenous. Similarly, even though they can overlap, indigenous self-determination can also be distinguished from internal self-determination in so far as internal self-determination is traditionally concerned with the democratic rights of citizens rather than the collective rights of indigenous peoples to maintain their traditional livelihoods. This multifaceted understanding of self-determination is used in the next few sections to explore the different applications of the right to self-determination in Greenland.

Self-determination and the rights of the people of Greenland

Since the beginning of the 20th century, the question of the right of self-determination in Greenland has been a matter under the scrutiny of international law. However, this question has been an issue focused on the sovereign status of the territory of Greenland as a colony rather than the human rights of peoples to self-determination for many decades (Permanent Court of International Justice, 1933).

Since the adoption of the treaty of Kiel in 1814, by which the Kingdom of Denmark ceded Norway to Sweden, it has been considered that the Norwegian dependencies of Greenland, the Faroe Islands and Iceland were not included in the cession. As a result, Denmark assumed sovereign control over Greenland that has extended over the whole territory ever since. However, Norway, which also occupied parts of Greenland at the beginning of the 20th century, claimed that Denmark had gained only those areas in Greenland which were effectively occupied by the Danish administration, with the rest of Greenland being considered *terra nullius* since it had no permanent inhabitants. In 1933, the dispute was brought to the Permanent Court of International Justice and the court ruled against Norway. Importantly, the issue raised in the case concerned the legal status of certain territories in Eastern Greenland but was not concerned with the rights of the Inuit people. In the case, the fact that the Inuit were inhabitants of the territory of Greenland was irrelevant. As summarised by Thornberry "in this great sovereignty debate, the Greenlandic Inuit were not considered as possessing *locus standi* in the case, still less was there any consideration of their views" (Thornberry, 2002, p. 97). During this period, the only entities that were capable of asserting territorial sovereignty under international law were people regarded as sufficiently civilised to exercise sovereign authority: in other words western nations. As a result, Greenland was regarded as a colonial possession of Denmark, which also meant that the Inuit people had no right to exercise the right to self-determination in the territory that they had occupied from time immemorial.

Greenland remained a colony of Denmark until 1953 (e.g. Loukacheva, 2007; Nuttall 1994). Subsequently, Greenland's colonial status formally ended as the territory was integrated into the Danish realm when Denmark amended its Constitution. As a result of these constitutional changes, the constitution of Denmark was expanded to cover Greenland and the Inuit population obtained the right to send two representatives to the Parliament in Copenhagen. In addition, Greenland was removed from the list of non-self-governing territories, and Denmark argued that the people of Greenland had exercised their right of self-determination, with Greenlanders obtaining the same rights as Danish citizens. This change deprived the people of Greenland of the opportunity to claim the right of independence from Denmark under the decolonisation regime of international law. However, despite this change of status, it can hardly be disputed that Greenland remained a *de facto* colony of Denmark. In fact, the people of Greenland were neither consulted during the amendment process of the Danish Constitution, not even in the parliamentary process that led to its adoption. In this respect, Alfredsson questioned whether the Danish authorities had lived up to their international obligations concerning the right of non-self-governing territories to self-determination as enshrined in the UN Charter and the multiple UN General Assemblies Resolutions adopted on the subject (Alfredsson, 1982, pp. 302–303).

Subsequently, as a consequence of the integration of Greenland into the Kingdom of Denmark, the political domination of Greenland intensified as the so-called "Danification" period began (Kleivan, 1984, p. 706; Sowa, 2013, p. 3). Between 1950 and 1970, the number of Danish inhabitants rose from 4.5% to 20% of the population and the state of Denmark increased its economic intervention and investment to modernise the economy of Greenland (Kuokkanen, 2017b, p. 3). For the purpose of modernisation, Inuit

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Greenlanders were also relocated from traditional settlements to the towns in which state-owned enterprises and schools were located. As such, it has been argued that "rather than becoming more independent from Danish conditions, they (the Inuit) became even more dependent with a colossal adaptation of Danish cultural items and institutions—in the name of equality" (Egede Lynge, 2006; Kuokkanen, 2017b, p. 4). Many Greenlanders increasingly felt that they were Northern Danes (Caulfield, 1997, p. 36; Sowa, 2013, p. 186). As such, the process of Danification consolidated the imprimatur of Danish authority over Greenland as the power of Denmark infiltrated through the contemporary political and economic governance structures of the country.

In the 1970s, a new development occurred as a new Greenlandic Elite "now demanded 'a more Greenlandic Greenland' or a Greenlandisation" (Larsen, 1992, p. 216; Nuttall, 1992, p. 1; Sowa, 2013, p. 186). This period was marked by two important political events that exemplify the Greenlandisation process: the Kingdom of Denmark joining the European Economic Community (EEC) and the referendum on Greenland Home Rule. As the result of the Kingdom joining the ECC in 1973, Greenland also joined the EEC, despite the important opposition of the Greenlanders. As negative attitudes towards European integration did not disappear, a second advisory opinion was organised in 1982 whereby the Greenlandic electorate endorsed withdrawal from the Community, a vote that was ultimately accepted by the Danish government and which evidenced the strong political dissociation between the two territories and the aspiration of Greenlanders to remain distinct. Subsequently, the most significant political event that contributed to the Greenlandisation process emerged as the result of the referendum on Home Rule and the adoption of the Greenland Home Rule Act in 1979. With the adoption of the Greenland Home Rule Act, a Greenlandic Parliament was founded, and Greenland gained authority in areas such as education, health, fisheries and the environment. Under the regime of Home Rule, Greenland was also integrated as an autonomous region. At the same time, Danish authorities continued to dominate the process (Alfredsson, 1982, p. 306) and Greenland remained economically dependent on Denmark (Sowa, 2013, p. 186). In this regard, it has been shown that the process leading towards the introduction of limited autonomy called Home Rule, could "in no way be described as an exercise of the right of self-determination" (Alfredsson, 1982, p. 306). Although the Home Rule arrangements provided more autonomy for the government to control its internal and local affairs, it did not accommodate self-determination demands from the Inuit people, especially as the territory remains largely dependent on the Danish State (Sowa, 2013, p. 186). Besides "Home Rule Affairs", there were also areas governed in "joint jurisdiction" (i.e. exploitation of sub-surface resources) or considered to be "common affairs" (i.e. foreign policy, military matters, monetary issues and the judicial system) that largely trunked the autonomy of the government of Greenland in practice.

After more than 30 years of Home Rule, a Danish-Greenlandic Commission was established to evaluate whether the Greenlandic authorities could assume further powers, including the option for Greenland to become independent. The Commission concluded its work in April 2008, and a non-binding referendum on Greenland's autonomy was held on 25 November 2008. With 75% of the Greenlandic people voting in favour of further autonomy, it was then decided that Greenlandic Self-Government would be established on 21 June 2009. In effect, the Self-Government Greenland Act recognises "that the people of Greenland are a people pursuant to international law with the right of self-determination". Although the Act does not solve the question of independence, Chapter 8 of the Self-Government Act provides that the people of Greenland now have the right to decide on its independence and creates its own state. Furthermore, with the Self-Government Act, the Government of Greenland has successfully increased its autonomy from Denmark in several areas, including the right to dispose of mineral resources. For the population of Greenland, it has been stated that the right to dispose of mineral natural resources constitutes "the most undeniably significant aspect of the Self-Government Act" (Kuokkanen, 2017a, p. 47). This right is critical more specifically because it grants the revenue from mineral resource activities in Greenland to the Greenland Self-Government authorities (Act on Greenland Self-Government, 2009, para. 7.1). By gaining control over mineral resources, Greenland has thus acquired the opportunity to overcome its overwhelming reliance on annual subsidies from Denmark in the situation in which mineral extraction would generate an adequate income that ensures economic self-sufficiency. With the adoption of the Self-Governing Act in 2009, Greenland has therefore taken control over a wide range of competencies paving the way for achieving political and economic independence from Denmark and completing the decolonisation process.

Yet, as several critics have argued, "formal independence for colonised countries has rarely meant the end of First World hegemony" and global hegemony "can persist in other forms than overt colonial rule" (Shohat, 1992, p. 105). In this regard, it is also important to consider the implications of self-determination beyond the decolonisation context. In accordance with the contemporary development of international human rights law, questioning self-determination beyond the decolonisation context is intertwined with the question of democratic governance, which is traditionally labelled internal self-determination. It is also linked with the right of people to dispose of their natural wealth and resources freely, which constitutes the resources dimension of the right to self-determination. Both aspects of the right to self-determination have been recognised under the developing interpretations of the HRCs and entail corresponding duties for all states to guarantee this right for their population. Through this lens, it is possible to question how self-determination is implemented within Greenland, especially in relation to the right of the population to control natural resources. Since the Greenland Self-Government Act came into force, economic development and the right to utilise natural resources, such as uranium, is in the hands of the Government of Greenland. In this context, the government has adopted new regulations to govern the development of natural resources and has taken steps towards getting the public more involved in the process. However, it has even been argued that "in some circumstances the role of Naalakkersuisut (the Government of Greenland) in the decision-making process for uranium mining appears to have disproportionate weight with regards democracy", which in fact "can be explained by the Greenlandic political agenda of reaching full sovereignty" (Pelaudeix, Basse, & Loukacheva, 2017, pp. 611–612). Others have similarly contended that the regulation concerning the right of the public to take part in the decision-making concerning mining activities remains weak. According to Ackrén, the Mining Act might not cover all aspects of the deliberative democratic process (Ackrén, 2016). Similarly, the UN Special rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste has reported that "challenges remain regarding ensuring wide access

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to information and meaningful participation" in the development of mining activities in Greenland (UN Report, 2018, para. 74). Following his mission to Denmark and Greenland in 2018, the rapporteur indicated the following:

> The Special Rapporteur was informed that the time allotted for pre-consultations was unrealistic, considering the complexity of ensuring the meaningful participation of communities living in remote locations. Difficulties also reportedly exist in the translation into Greenlandic of documents containing complex technical information and in informing all communities concerned. Recent assessments have also revealed issues such as a lack of systematic evaluation of the former and present extractive projects and the challenges of creating spaces for participation in an atmosphere where people feel comfortable talking about issues that may be sensitive to them, because mining projects can often divide communities. In another assessment, it was indicated that public participation in the decision-making process is still impaired by a lack of public access to the draft environmental impact assessment. A comparison of two different mining licensing processes has revealed that capacity-related concerns in particular affect projects of greater scale (UN Report, 2018, para. 74).

Thus, this report calls into question the adequacy of the decision-making process concerning the governance of natural resources and the need to take into account the right of the population of Greenland to participate in the governance of mining activities. Although it is not the purpose of this contribution to present an exhaustive analysis of this issue, this section is evidence of the importance of taking into account the right of peoples to dispose of natural resources beyond decolonisation in order to ensure the fulfilment of right to self-determination for the people of Greenland in accordance with human rights.

Self-determination and the rights of the Inuit people

The adoption of the Self-Government Act has been praised as a leading example to "Indigenous peoples everywhere" (Kleist, 2009, p. 1). In his celebration speech on the inauguration of Greenland self-government in June 2009, former premier Kleist indicated in this respect that the "new development in Greenland in the relationship between Denmark [sic] should be seen as a de facto implementation of the Declaration (UNDRIP) and, in this regard, hopefully an inspiration for others" (Kleist, 2010, p. 249). This claim is based on the fact that the Self-Government Act provides de facto Inuit self-government, since 88% of the population of Greenland is Inuit. However, this claim has been questioned. As remarked by Kuokkanen, the Greenlandisation process and the quest of the people of Greenland for independence are neither in accordance with the aspirations of most indigenous peoples around the world nor with the majority of the Inuit people living across the Arctic:

> *The Greenland SGA* provides a benchmark and represents an example of successful self-government negotiations between Indigenous peoples and states. However, the fact that the final agreement remains silent on Indigenous or Inuit rights and governance may be seen as a considerable shortcoming and thus, the precedent it sets has a limited utility. Greenland's arrangement of a parliamentary system run by an Indigenous people is neither attainable nor attractive for the large majority of the world's Indigenous peoples, who are numerical minorities in the countries in which they live. Greenland's aspiration for modern nationhood and independence is not widely shared by most Indigenous peoples, for whom self-determination implies internal decision-making and autonomy, control of their own affairs and participation within sovereign states. Greenland's *SGA* has great symbolic significance by establishing a new norm of Indigenous self-determination, but little value as a model for negotiating or implementing Indigenous self-government arrangements elsewhere (Kuokkanen, 2017b, p. 14).

Furthermore, in the same manner as it has been argued for Home Rule (Nuttall, 2008, p. 65), it is arguable that the Act on Self-Government qualifies more as a model for non-self-governing territories and stateless nations than as an example of self-determination by indigenous peoples. Whereas, the Self-Government Act recognises "that the people of Greenland are a people pursuant to international law with the right of self-determination", the Act does not mention the rights of the Inuit or their identity as an indigenous people. Instead, the Self-Government Act recognises the right of the Greenlandic people to self-determination. Thus, the Self-Government Act supports the process of decolonisation, regardless of the Inuit identity. As for the Home Rule Act, no emphasis has been placed on the rights of the Inuit as indigenous peoples, which indicates that the Self-Government Act establishes a public rather than an indigenous government (Göcke, 2009, p. 287). Although it may be argued that it makes little sense to distinguish Greenlandic self-determination from Inuit self-determination because most of the population of Greenland is of Inuit descent, there are legal and practical differences between the two. Whereas internal self-determination focuses on the individual rights of the population, its citizens, the rights of indigenous people emphasise their collective indigenous identity and cultural values (UNDRIP). Similarly, when the right to self-determination of the people of Greenland focuses on democratic governance and the rights of all citizens, the rights of the Inuit people to self-determination emphasise the cultural and indigenous identity of the Inuit. In this regard, it is important to ensure that a governance process is not only democratic but also in accordance with indigenous Inuit values.

In practice, it is therefore possible to question whether the right of the Inuit people to self-determination is guaranteed in Greenland. Without developing an extensive analysis, several points of contentious can be raised. First, the adoption of the Self-Government Act in 2009 has not seen the end of Danish domination in Greenland. As argued by Kuokkanen, whereas the Self-Government Act "has granted Greenlanders the resources, power and freedom to make decisions about the management and direction of their government", "Greenlanders, however, have not made real or substantial changes to the existing colonial structures and policy frameworks" (2017b, p. 14). In this context, the fact that the Greenlandic administration includes a large number of Danish civil servants also continues to raise suspicion about the representativeness of the Government of Greenland and its capacity to promote and respect the interests and value systems of the Inuit people. Despite the increasing number of Inuit in the administrative apparatus, the fact remains that "many key positions continue to be occupied by Danish professionals" (Kuokkanen, 2017b, p. 12). Based on interviews with Greenlanders, Kuokkanen therefore concluded that the success of the Self-Government Act in providing self-determination must be tempered by the fact that "indirect, subtle colonial control continues in the presence of a large number of Danish civil servants who come with mainstream, Western institutional and cultural practices and priorities" (Kuokkanen, 2017b, p. 13). In this regard, it can be questioned whether the self-rule arrangements under the Self-Government Act guarantee the rights of the Inuit people to have a representative government in accordance with their Inuit identity.

Second, the rights of the Inuit people as an indigenous people also raise interesting questions in relation to the resource

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dimension of the right to self-determination. From an international perspective, it is interesting to note that Greenland has obtained special rights at the international level over natural resources based on the rights of the Inuit as an indigenous people. For instance, the International Commission for Whaling has set catch limits for aboriginal subsistence whaling that grant the right for Greenland to catch certain species of whale. In this regard, it remains instrumental for the Government of Greenland to stress the right of the Inuit as an indigenous people in so far as it upholds the right of the Inuit people at the international level to claim the benefit of indigenous peoples' rights in order to maintain their cultural livelihoods.

At the internal level, the right of the Inuit people as an indigenous group also carries specific ramifications concerning the right to participate in the development of their traditional lands and the duty of the government to obtain their free and informed consent prior to the approval of any project affecting their lands in connection with the development of mineral and other resources, as recognised by Article 32 of the UNDRIP. In fact, the relevance of the UNDRIP as a benchmark to ensure the application of the rights of indigenous peoples in Greenland has been specifically recognised by the parliament in Greenland and endorsed by the Government, which has developed criteria for public hearings to ensure its commitment to the prior and informed consent of those affected by mining activities. In 2015, specific "Guidelines on the process and preparation of the Social Impact Assessment (SIA) report for mineral projects" were established in order to "involve in a meaningful manner affected towns, settlements and communities (individuals) that may be directly or indirectly impacted throughout the project by utilising and respecting local knowledge, experience, culture and values" (SIA Guidelines, 2016, p. 6). However, it is questionable whether the guidelines reflect adequate standards concerning the rights of indigenous peoples (Gunter, 2015). For instance, while the consultation process is mentioned as a cornerstone of the guidelines, the principle of Free Prior and Informed Consent is nowhere acknowledged despite its elemental significance for the rights of indigenous peoples to self-determination. On this basis, the bottom line of this analysis is therefore to stress the importance of the rights of the Inuit as indigenous people, which although intertwined with the right of the people of Greenland, carries specific legal ramifications rooted in the right of the Inuit to maintain and pursue their traditional livelihoods.

Ultimately, demarking the right of the Inuit people from the right of the people of Greenland is also linked with the criticism that the focus of the Self-Government Act on autonomy and independence validates western-dominated Westphalian political structures as a governance system. On this basis, it has been argued that the Greenlandic approach which is based on "the adoption of the Western political-spatial ontology on which the marriage between sovereignty and territory are based, only serves to further cement Western power structures and dominance" (Boldt & Long, 1984; Gerhardt, 2011, p. 11). The difference between Inuit and Greenlandic claims for self-determination also becomes clear when considering the Inuit claims to self-determination as a transnational people. At the regional level, the Inuit Circumpolar Council (ICC) claims that the Inuit people are an indigenous people living across the Arctic with a unique ancestry, culture and homeland, and which includes the Inupiat, Yupik (Alaska), Inuit, Inuvialuit (Canada), Kalaallit (Greenland) and Yupik (Russia). In this regard, the ICC claims the right for the Inuit to exercise self-determination as an indigenous people across nation states boundaries. In this context, when the organisation adopted the "Circumpolar Inuit Declaration on Sovereignty in the Arctic" in 2009, it also underscored the importance to consider the Inuit as a united and single people living across a far-reaching circumpolar region. Accordingly, the model of self-determination for the Inuit people is not predicated on territorial autonomy or independence but is based on a more nuanced conceptualisation of the right to self-determination. As explained by Sowa, from the perspective of the ICC, "self-determination is largely presented as the rights to cultural integrity and empowerment" that "exist over and beyond what they indirectly present as the synthetic construct of sovereignty", which is "embracing a form of governance that supersedes the Westphalian state-centred approach" (Sowa, 2013, pp. 8–9). As such, whereas the Self-Government Act of Greenland supports a process targeting nation-state building, the ICC argues for a model of self-determination that is broader and relies on the human rights of indigenous peoples and their cultural identity within and beyond the borders that separate them.

Even though the indigenous model of self-determination promoted by the ICC transcends the state-centred model of self-determination supported by the Act on Self-Government, these models do not necessarily need to conflict with each other. In its declaration, the ICC indicates that the recognition and respect for the right of the Inuit to self-determination "is developing at varying paces and in various forms in the Arctic states" including the self-government arrangement in Greenland that will expand greatly the areas of self-government in the country (Inuit Circumpolar Council, 2009, para. 2.2). The ICC also recognises that the Inuit are indigenous citizens of Arctic states, with rights and responsibilities afforded by their states, but which "do not diminish the rights and responsibilities of Inuit as a people under international law" (Inuit Circumpolar Council, 2009, para. 1.6; 1.7). As underlined in its declaration, these rights should be interpreted in accordance with their status as an indigenous people with the right to self-determination as proclaimed under the UN Human Rights Covenants and the UNDRIP. As such, it can be concluded that the model of self-determination envisioned by the ICC correlates the right of self-determination of the people of Greenland as citizens with their rights as an indigenous people. It acknowledges the value of the self-government arrangements in Greenland in so far as it promotes the cultural integrity of the Inuit within and across the border that separate them.

Self-determination and the rights of the Inughuit

As well as the question of the right of the Inuit people to self-determination, another issue that must be addressed concerns the protection of the rights of minority indigenous groups. Under the Act on Self-Government, the right to self-determination of the people of Greenland does not make any distinction between the rights of Inuit and Danish inhabitants. Similarly, the Act does not recognise different ethnic groups among the Inuit native people. Accordingly, the rights of the people of Greenland to self-determination do not apply to the different groups of people living in Greenland. As already mentioned, this interpretation is in accordance with international law in the decolonisation context, which recognises the rights of colonial countries and peoples to self-determination regardless of ethnic division at the internal level (UN General Assembly, 1960). It is also in accordance with the right of internal self-determination and the rights of indigenous

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peoples in so far as it is accepted that there is only one indigenous group in the Kingdom of Denmark: the Inuit people of Greenland.

However, the issue of whether there is only one indigenous group of people in Greenland is increasingly contested and has been an emerging matter of international scrutiny. In 2001, the Inughuit represented by *the National Confederation of Trade Unions of Greenland* placed a complaint before the International Labour Organisation (ILO) against the Danish government. The Inughuit were the former inhabitants of the Thule District in Greenland before the establishment of the US Air base in 1953. In their petition, they claimed compensation for the forced relocation and land demarcation from the area they inhabited up until May 1953. In its response, the Danish delegation commented that they awarded monetary compensation for the forced relocation and the "significant injustice" committed in 1996 (International Labour Organisation, 2001, para. 13). In addition, when presenting their arguments to deny the demand for land demarcation, Denmark also argued that "there is only one indigenous people in Denmark in the sense of Convention 169 [,] the original population of Greenland, the Inuit" (International Labour Organisation, 2001, para. 14). In effect, the claim of the Government stood in contrast to the High Court's judgement, which had previously stated that: "(T)he population in the District, at the time that the Thule Air Base was established (. . .) may be considered to have been a people within the meaning of the concept as set out in the ILO Convention" (International Labour Organisation, 2001, para.13). Nevertheless, the argument of Denmark that the Inuit people only constitute one indigenous people was ultimately accepted by the Danish Supreme Court and upheld by the ILO Committee. In its response published in 2001, the ILO committee argued the following:

> The Committee notes that the parties to this case do not dispute that the Inuit residing in Uummannaq at the time of the relocation are of the same origin as the Inuit in other areas of Greenland, that they speak the same language (Greenlandic), engage in the same traditional hunting, trapping and fishing activities as other inhabitants of Greenland and identify themselves as Greenlanders (Kalaalit). The Committee notes that, prior to 1953, the residents of the Uummannaq community were at times isolated from other settlements in Greenland due to their remote location; however, with the development of modern communications and transportation technology, the Thule District is no longer cut off from other settlements in Greenland. The Committee notes that these persons share the same social, economic, cultural and political conditions as the rest of the inhabitants of Greenland (see Article 1(1) of the Convention), conditions which do not distinguish the people of the Uummannaq community from other Greenlanders, but which do distinguish Greenlanders as a group from the inhabitants of Denmark and the Faroe Islands. As concerns Article 1(2) of the Convention, while self-identification is a fundamental criterion for defining the groups to which the Convention shall apply, this relates specifically to self-identification as indigenous or tribal, and not necessarily to a feeling that those concerned are a people; different from other members of the indigenous or tribal population of the country, which together may form a people. The Committee considers there to be no basis for considering the inhabitants of the Uummannaq community to be a people; separate and apart from other Greenlanders. This does not necessarily appear relevant to the determination of this representation, however, for there is nothing in the Convention that would indicate that only distinct peoples may make land claims, especially as between different indigenous or tribal groups. (International Labour Organisation, 2001, para. 33)

Yet, criticism is also being raised today because the concept of Inuit is "utilized for the purposes of drawing divergent populations into one homogenized people" at the cost of the preservation of culture and the ability of communities to continue their traditions (Cultural Survival, 2015). According to Cultural Survival, under the umbrella term of Inuit, "there exist multiple subcultures that vary by communities. These communities differ culturally and linguistically, maintaining distinct, autochthonous practices unique to their specific identities" (2015). Beyond their unity as a colonised people, there is thus a cultural diversity among the Inuit people that is called into question.

Furthermore, it is interesting that the claim of the Inughuit group has received increasing support over the years, stemming both from anthropological studies and human rights considerations. With a population of approximately 800 inhabitants, the majority of Inughuit live in Qaanaaq, north of the Arctic Circle on the west coast of Greenland and are thus geographically distinct from other Inuit. In addition, even though most Inughuit today speak standard west Greenlandic, they have their own language Inukun, which is closely connected to the Greenlandic Kalaallisut and the Canadian Inuktitut. Based on her research, Ngiviu has also convincingly argued that "their identity, culture and language are very different from those of the rest of Greenland" and that "they have more cultural commonalities with the Inuit in Canada than with the Greenlandic Kalaallit" (Ngiviu, 2014, p. 148), which therefore challenges the findings of the Supreme Court decision refusing to recognise Inughuit's distinct culture. Furthermore, it is also stated that today "the Inughuit have a much lower living standard than the rest of Greenland" (Ngiviu, 2014, p. 52), with an income relying on subsistence activities. This situation places them in a marginalised position in comparison with other inhabitants living in the more urbanised areas (Ngiviu, 2014, p. 160). Without having their distinct cultural background acknowledged, Ngiviu finally also argues that "the Inughuit are facing the potential of being removed from their homeland to be scattered around concentrated settlements in West Greenland within a few years, unless a political structure for the protection of indigenous groups can be realistically put in place" (Ngiviu, 2014, p. 149). Even though the Greenlandic government has not yet recognised the Inughuit as a separate minority or indigenous group in Greenland, it is important to note that the Inughuit also claim that they constitute a different indigenous group in the country.

The self-identification of the Inughuit as a separate group and the presence of objective factors characterising their distinct cultural background and current position in Greenland society clearly raise the question of whether they can be considered to be a separate indigenous people in Greenland. Although there is no international definition of the term "indigenous peoples", a modern understanding of the term has been developed over the years, which is usually based on objective features including the linkages between peoples, their land, and culture and the fact that such a group expresses its will to be identified as a people. Among the objective features listed to identify indigenous peoples, the UN consider the following elements or characteristics:

> Historical continuity with pre-colonial and/or pre-settler societies • Strong link to territories and surrounding natural resources • Distinct social, economic or political systems • Distinct language, culture and beliefs • Form non-dominant groups of society • Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities (UN Permanent Forum on Indigenous Issues, 2006).

Although it is accepted that no single definition of indigenous peoples can capture the diversity of indigenous cultures, histories and current circumstances, the African Commission nonetheless notes "that there is a common thread that runs through all the

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various criteria that attempts to describe indigenous peoples – that indigenous peoples have an unambiguous relationship to a distinct territory and that all attempts to define the concept recognise the linkages between people, their land, and culture" (African Commission for Human and Peoples' Rights, 2009, para. 154). Such an approach also allows to go beyond the case of indigenous peoples subjected to western forms of colonialism and to include communities living in former colonial countries. In the African context, indigenous peoples are often identified "as marginalized and vulnerable groups" which "have not been accommodated by dominating development paradigms" and in many cases "are being victimised by mainstream development policies and thinking" (African Commission for Human and Peoples' Rights, 2009, para 148; 156–157). Against this backdrop, it is arguable that the Inughuit therefore constitute a separate indigenous group, which deserves specific protection, without necessarily calling into question their unity with the rest of the Inuit people in the quest for decolonisation.

Furthermore, it should be noted that human rights bodies have increasingly stressed emphasis on the need to recognise the Thule Group as a separate indigenous group. In 2010, the Committee on the Elimination of Racial Discrimination (CERD) has urged Denmark to recognise the Inuighuit as a separate group and to protect their rights accordingly:

> The Committee reiterates that, pursuant to its general recommendation No. 8 1990) and other United Nations instruments, the State party is urged to pay particular attention to self-identification as a critical factor in the identification and conceptualization of a people as indigenous. The Committee therefore recommends that, notwithstanding the decision of the Supreme Court, the State party adopt measures to ensure that self-identification is the primary means for determining whether a people are indigenous or not. In this regard, the Committee recommends that the State party adopt concrete measures to ensure that the status of the Thule Tribe reflects established international norms on indigenous peoples' identification (CERD, 2010, para. 17).

Subsequently, the CERD expressed its concerns against Denmark in 2015 for its failure to consult the Thule Tribe on the matter of their self-identification as a separate group:

> The Committee notes that the State party maintains its view that there is only one indigenous people in the Kingdom of Denmark, the Inuit in Greenland, according to the 2003 Supreme Court ruling that the Thule Tribe is not a distinct indigenous people coexisting with the Greenlandic people. However, the Committee regrets that, despite its previous recommendations, there has been no consultation with the Thule Tribe of Greenland on this issue (art. 5). In view of its general recommendations No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention and No. 23 (1997) on rights of indigenous peoples, the Committee recommends that the State party engage in consultations with those concerned on matters of importance to them, keeping in CERD/C/DNK/CO/20-21 8 mind the principle of self-identification as a fundamental criterion in the identification of people as a distinct indigenous people (CERD, 2015, para. 21).

Similarly, in 2008, the HRC also indicated that Denmark "should pay special attention to self-identification of the individuals concerned in the determination of their status as persons belonging to minorities or indigenous peoples" (HRC, 2008, para. 13). More recently, in 2018, the Committee on Economic, Social and Cultural Rights (CESCR) concurred with the other human rights bodies as it asked Denmark to provide "information on the measures taken to recognise the Thule Tribe of Greenland as a distinct indigenous community with traditional rights, including the right to maintain its cultural identity and use its own language" (CESCR, 2018, para. 30). This issue was raised as part of the obligation of the Government of Denmark to respect and protect cultural rights as enshrined under article 15 of the ICESCR. In its comments, the CESCR additionally commanded Denmark to "provide information on the measures taken to actively recognise subgroups of the Inuit in order to ensure the continuation of their distinct cultures" (CESCR, 2018).

With these statements, the UN human rights bodies strengthen the position that the Inughuit constitutes a distinct group among the people living in Greenland, whose cultural rights should be recognised and protected by the government. Whether their recognition as a separate indigenous people or community does not challenge the right of the people in Greenland to self-determination in the decolonisation context, it stresses emphasis on their rights as a separate group from the Inuit people whose cultural specificities must be respected.

Conclusion

In 2009, the Act on Greenland Self-Government was adopted and recognises the right of the people of Greenland to self-determination, including their right to control natural resources and to access to independence. The purpose of this contribution was to explore the several facets of self-determination that applies in Greenland including its implication beyond the decolonisation context. This analysis was based on the fundamental human right to self-determination, which includes the right to decolonisation, the right to internal self-determination and the right of indigenous peoples to self-determination. As evidenced in this contribution, all three contextual applications of self-determination overlap in Greenland but have different legal ramifications. Whereas self-determination in the decolonisation context interrogates the relationship between the Government of Denmark and that of the people of Greenland, the right to internal self-determination focuses on the relationship between the Government of Greenland and its population. In contrast, the right of indigenous peoples to self-determination infuses the right to internal self-determination of the people of Greenland with indigenous values, as it focuses on the right of the Inuit people as a collective group to maintain their culture rather than their rights as Greenlandic citizens. Although the right to internal self-determination and the right of the Inuit people as an indigenous people to self-determination substantially overlap in Greenland, the recognition of the right of the Inuit also has a special value to protect the maintenance of their rights over their traditional land and natural resources, both domestically and internationally. Furthermore, the indigenous aspect of self-determination also finds relevance for questioning the plurality of identity of the Inuit people within the state of Greenland and across its borders, as it provides the opportunity to account for the rights of the Inughuit minority within the borders of Greenland and to address the question of self-determination in relation to the claim of the Inuit people as a transnational Arctic indigenous group.

Thus, the following analysis demonstrates that the application of self-determination is multifarious in Greenland. It is not a one-time right that has been solved by the adoption of the Self-Government Act but a process that comprises multiple facets. However, one important challenge raised with this understanding is that it may enhance tensions with the right of the people of Greenland to achieve further autonomy and independence from Denmark. This situation may particularly occur as the result of a conflict between the purpose of the Government of Greenland to develop mining activities in order to further the decolonisation

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of Greenland, and the right of the Inuit people to control their land and resources as a basis of maintaining their traditional indigenous livelihoods.

Similarly, the recognition of the multifarious identity of the Inuit people, which stems from the recognition of the Inughuit claim as a separate indigenous group, may deflect from the nationalisation process of Greenland. Yet, the different applications of the right to self-determination do not necessarily need to stand in opposition with each other. In this regard, the crucial challenge for the Government of Greenland remains to balance the promotion of the decolonisation process with the application of self-determination in other contexts. Although the current governance framework may not provide all the tools to achieve this objective, the Self-Government Act provides a baseline to work on the establishment of a governance system that may ensure the realisation of the human right of self-determination in its multiples facets and provides a model of inspiration for other peoples around the world.

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