Indigenous Self-Determination and Greenland

How the Inuit's Right to Self-Determination Constrains External Decisions on Greenland's Sovereignty

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Greenland's predominantly Inuit population is recognized as an Indigenous People with a corresponding right to self-determination under international law. Any external attempt to alter Greenland's sovereignty – including annexation by the United States – would violate that right and therefore cannot be lawful without the freely expressed will of the Greenlandic people.

Indigenous Peoples and self-determination

Greenland's status as the Indigenous land of the Inuit people is recognized both domestically within the Kingdom of Denmark and internationally. The preamble to the Greenland Self-Government Act of 2009 explicitly affirms that "the people of Greenland is a people under international law with the right of self-determination." This understanding is further reflected in Greenland's 2023 draft constitution, which states that "Inuit are the Indigenous People of our country." Denmark also underscored this position upon ratifying ILO Convention No. 169 on Indigenous and Tribal Peoples:

> *"In Denmark, there is only one Indigenous People within the meaning of Convention No. 169. This is the Indigenous population of Greenland, the Inuit."*

International law often has limited capacity to constrain the current US President's foreign policy choices (the current US President himself has stated that "his own morals" are the main limit on presidential power). Nevertheless, it remains a relevant legal exercise to assess what international law requires, and what it excludes, in relation to the rights of Indigenous Peoples and the potential annexation of Greenland. This is particularly so for idealistic (or hopeful, or naïve) international lawyers such as the author.

Recognition as an Indigenous People entails a range of collective and individual rights under international law, most notably under ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Denmark has ratified ILO Convention No. 169 and voted in favor of UNDRIP upon its adoption by the UN General Assembly in 2007. The United States has not ratified ILO Convention No. 169 but formally endorsed the objectives of UNDRIP – both in 2010 and 2014.

Both ILO Convention No. 169 and UNDRIP set out a wide range of Indigenous rights, encompassing cultural, religious, and social rights, as well as rights relating to land, participation, and self-determination. Any external decision concerning Greenland's sovereignty therefore engages not only general international law – such as the UN Charter's principle of self-determination (Art. 1(2)) – but also specific Indigenous rights protections.

In light of the current geopolitical context and challenges to Greenland's sovereignty, this contribution focuses specifically on the right of Indigenous Peoples to self-determination and asks how that right constrains external decisions – including the prospect of annexation – affecting Greenland.

Indigenous self-determination and sovereignty under international law

Self-determination is firmly established as a right of peoples under international law and has been affirmed by the International Court of Justice (ICJ) as a principle of customary international law. From the *Namibia* (1971) and *Western Sahara* (1975) to the *Wall* (2004)

and *Chagos*(2019) advisory opinions, as well as in the *East Timor*(1995) case, the Court has consistently emphasized that peoples are entitled to freely determine their political status and that this right is owed *erga omnes*.

At the same time, international law draws an important distinction between external self-determination – typically associated with decolonization or secession – and internal self-determination, which concerns autonomy, self-government, and effective participation within an existing state. This distinction is reflected in UN General Assembly Resolution 2625 (XXV), reinforced in the ICJ's Western Sahara and Wall Advisory Opinions, and further elaborated by the UN Human Rights Committee in General Comment No. 12. Indigenous Peoples' claims to self-determination have often been framed in this latter sense. This does not render them legally marginal. On the contrary, it situates Indigenous self-determination at the intersection between territorial sovereignty and the rights of peoples.

Greenland exemplifies this intersection. It is not a non-self-governing territory in the classical UN and colonial sense; that is, at least, how it has been officially and historically framed thanks to great diplomatic efforts by Denmark (for an interesting account, see the book "the Children of the Empire" (Danish: *Imperiets Børn*) by Anne Kirstine Herman). Nor is it merely an ordinary sub-state entity. Through the Self-Government Act, Denmark has explicitly recognized the Greenlandic people as a people under international law (preamble) and acknowledged their right ultimately to decide their own future status (art. 21). Any external decision concerning Greenland's sovereignty therefore necessarily implicates the right to self-determination of an Indigenous People.

Indigenous self-determination and external sovereignty claims under UNDRIP

UNDRIP constitutes the most comprehensive articulation of Indigenous Peoples' rights under international law and places self-determination at its (normative) core. Article 3 affirms that Indigenous Peoples have the right to self-determination, while Article 4 specifies that this includes autonomy or self-government in matters relating to their internal and local affairs.

UNDRIP recognizes Indigenous Peoples as collective political actors with authority over their own institutions, lands, and development priorities. Articles 26 and 32 further protect Indigenous Peoples' rights to their lands, territories, and resources and require states to obtain their free, prior and informed consent (FPIC) before approving projects that affect those lands.

UNDRIP's relevance to questions of sovereignty is reinforced by Article 46, which safeguards the territorial integrity of states. This provision is sometimes invoked to argue that UNDRIP excludes any implications for sovereignty. That reading is overly simplistic. Article 46 prevents UNDRIP from being interpreted as authorizing unilateral secession or the fragmentation of states. It does not, however, license the imposition of sovereignty by external actors over Indigenous Peoples or their territories.

Applied to Greenland, UNDRIP supports a clear proposition: sovereignty over Greenland cannot lawfully be altered without the freely expressed will of the Greenlandic people. Any annexation or transfer of sovereignty imposed externally (the diplomatic way to say "US annexation") would sit uneasily with Articles 3 and 4, and would directly undermine Indigenous autonomy and political self-determination. The fact that the United States has formally endorsed UNDRIP, even if it disputes its binding force, does not guarantee compliance – particularly in light of the Trump administration's willingness to disregard international law. UNDRIP's significance in this context therefore lies less in its capacity to discipline state behavior through normative expectations than as a shared legal and political framework. Even in the face of a rogue American President, UNDRIP structures the terms of contestation, provides a vocabulary for Indigenous claims, and offers an internationally recognized platform against which the legality and legitimacy of external actions affecting Greenland may be assessed.

Binding constraints through Denmark through ILO Convention No. 169

While UNDRIP is formally a non-binding instrument, ILO Convention No. 169 imposes legally binding obligations on states parties – including Denmark. Although the Convention does not explicitly employ the language of self-determination, it gives that principle concrete legal expression.

Article 6 requires governments to consult Indigenous Peoples in good faith whenever legislative or administrative measures may affect them. Article 7 recognizes Indigenous Peoples' right to decide their own priorities for development and to exercise control over their economic, social, and cultural development. Articles 13 to 15 protect Indigenous Peoples' special relationship with their lands and natural resources, while Article 16 limits relocation without free and informed consent.

These provisions have direct implications for sovereignty decisions. A change in sovereignty would constitute the most far-reaching measure imaginable affecting Indigenous Peoples' political status, lands, and institutions. Under ILO Convention No. 169, Denmark cannot lawfully consent to or facilitate (or tolerate?) such a change without the "meaningful participation" – and, practically speaking, the consent – of the Greenlandic people.

Moreover, a basic principle of international law applies: a third state cannot acquire greater rights over a territory than the territorial state itself possesses ("*nemo dat quod non habet*" – see the Island of Palmas case). If Denmark's authority (under international law as well as national law and legal fiction) over Greenland is legally conditioned by Indigenous participation and consent, no external actor can lawfully bypass those conditions through bilateral arrangements.

Consent, consultation, and annexation

The question then arises whether consultation alone would suffice, or whether consent is required. FPIC remains one of the most contested elements of Indigenous rights law. It is not universally accepted as a rule of customary international law, and states (to no surprise!) continue to resist interpretations that would grant Indigenous Peoples a general veto over state action.

However, not all decisions are equal. Sovereignty is not comparable to infrastructure projects or resource extraction. Annexation would fundamentally alter the political status of the Greenlandic people and their relationship to the state. It would affect their capacity for self-government, their control over land and resources, and the very framework within which their Indigenous rights are exercised.

In such circumstances, the argument for requiring consent is considerably stronger. Even cautious interpretations of UNDRIP and ILO Convention No. 169 support the view that decisions affecting a people's political existence cannot be imposed unilaterally. If FPIC applies anywhere with full force, it applies to decisions that would redefine who governs an Indigenous People and under what constitutional order.

What the ICJ has - and has not - said

The ICJ has not adjudicated a case involving the annexation of Indigenous territory within an existing state. Nonetheless, its jurisprudence provides important guidance.

In *Western Sahara*, the Court rejected the notion of terra nullius and recognized that Indigenous tribes possessed social and political organization capable of generating legal rights (paras. 75-83). In *East Timor*, the Court characterized self-determination as an *erga omnes* obligation (para. 29). In the *Wall* advisory opinion, it held that all states have a duty to respect the Palestinian people's right to self-determination (paras. 155-156). Most recently, in *Chagos*, the Court invalidated a territorial arrangement imposed without the freely expressed will of the people concerned (paras. 157-160).

Taken together, these cases establish a clear principle: sovereignty cannot lawfully be imposed over a people without their consent. While developed primarily in decolonization contexts, this principle is not conceptually confined to them. Applied to the Greenland situation, it means that any annexation or other external decisions on sovereignty carried out without

the express and freely given consent of the Greenlandic people would be illegal.

The United States and the limits of legal constraint

None of this is to deny the limits of international law. The United States is not a party to ILO Convention No. 169, and UNDRIP lacks formal binding force. Enforcement mechanisms are weak, and power asymmetries are real.

Yet international law still matters. The right to self-determination is customary, *erga omnes*, and central to the international legal order. UNDRIP and ILO Convention No. 169 structure the legal and moral legitimacy of sovereignty claims and define what can plausibly be defended as lawful conduct. Even where compliance cannot be compelled, legal norms shape the costs of deviation – politically, diplomatically, and reputationally.

No decisions about sovereignty without Greenland

Indigenous Peoples' right to self-determination does not render Greenland immune from geopolitics or dictatorial tendencies. It does, however, impose clear legal constraints. UNDRIP and ILO Convention No. 169 exclude the possibility of imposed sovereignty and require that the Greenlandic people be placed at the centre of any lawful decision concerning their future.

Whatever the strategic interests (whether militarily, economically or pure territorial expansion) of external actors, international law leaves little room for sovereignty over Greenland to be decided without Greenland. In this sense, Indigenous self-determination does not make Greenland untouchable – but it does make Greenlandic approval indispensable.

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