Climate Change in Greenland and the Complexity of Human Rights Protection in Practice

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Introduction
Greenland is a 2 million square kilometre island, with a population of approximately 56,000 people. Over 80 per cent of its land territory is covered in ice. It is not a state within the meaning put forth in Article 1 of the Montevideo Convention on the Rights and Duties of States, but rather a territorial entity of the Kingdom of Denmark and thus subject to divided competence. It nevertheless deserves independent attention in this volume for at least two reasons. First, its unique position in international law highlights the challenges associated with the application of human rights norms for people who live outside traditional forms of state authority. Second, it sits at the precipice of independence, which raises worthwhile questions about what the transition to statehood might be and what it could mean for human rights in practice.

Questions about rights protection in Greenland are additionally prescient now because of the unique impacts of climate change on its territory, as distinct from those experienced in Denmark, which is six hours away by direct commercial flight. Temperatures are rising up to three times faster in Greenland than in other parts of the world. Yet, while much attention is paid to the manifestation of climate change in Greenland for the impacts it will have globally, far less research has examined how the changing climate impacts Greenlandic people themselves. In many respects the island’s unique climate characterises its peoples’ way of life, meaning that changes to the natural environment can be felt particularly acutely. Reduced sea ice duration, thickness and coverage, warming coastal waters and unpredictable weather patterns restrict travel windows and inhibit local food security. At the same time warming temperatures bring new opportunities in tourism, agriculture, marine shipping and commercial fishing, which could lead to greater employment opportunity and economic benefits. The latter might even pave the path to independence from Denmark, on which Greenland is almost wholly economically reliant.

This chapter examines the impacts of climate change in Greenland, and the challenges for a human rights-based response, in the context of its colonial past and the complexity of its contemporary system of governance. Greenland at once enjoys a fairly high degree of independence from Denmark and at the same time remains subject to its oversight, both legally and economically. The first section outlines the impact of climate change in Greenland, which are perceived locally both as deleterious and as harbouring potential opportunities. It then describes the colonization of Greenland and the gradual shift towards its self-governance, if not (yet) independence. The chapter elaborates how the enforcement and implementation of human rights obligations of the Danish state are made more

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1 James Crawford, Dependent States and Other Dependent Entities (Oxford University Press) 283.
complex by the governance arrangements within which those obligations sit. The final sections pose
questions to consider in the transition to potential statehood and draws conclusions.

Climate change impacts for the people of Greenland
The population of Greenland is spread across small towns and isolated coastal communities, about 85
per cent of whom are Inuit, and the remainder mostly Danish.\(^5\) Roughly a quarter of Greenland’s
residents reside in the capital, Nuuk, in the south west of the island.\(^6\) There are just two airports and
few roads outside the capital city, thus travel across sea ice and by boat is an essential part of daily
life. As the Intergovernmental Panel on Climate Change (IPCC) has reported, climate impacts are more
severe in places where travel and subsistence practices are reliant on snow cover, permafrost and
freshwater or sea ice.\(^7\) Thawing permafrost contributes to land instability, which alongside changes to
water levels in rivers and streams, impacts potential land transport in summer. In winter, shorter snow
cover periods as well as changes to the quality of the snow and density make travel more difficult and
more dangerous. In addition, the sea ice is forming later and melting earlier, which reduces the period
of time for which travelling across the ice is possible. In a 2019 survey of people living in Greenland,
79 per cent of respondents said that travelling on sea ice had already become more dangerous, with
22 per cent saying it was much more dangerous, as a result of climate impacts.\(^8\)

These changes to the landscape inhibit local capacity to hunt and engage in subsistence activities,
which are already impacted by other climate impacts. This is important because roughly three-
quarters of all households in Greenland rely on wild food sources such as hunted game and fish for a
portion of their diets.\(^9\) Climate change has already altered the abundance of species such as caribou
and reindeer,\(^10\) available fish stocks and biodiversity. As the Greenlandic icesheet melts, contaminants
that are trapped in the snow and ice, are transmitted into downstream ecosystems and contaminate
traditional food sources.\(^11\) That toxicity intensifies within the flesh of ocean mammals, “as
contaminants are biomagnified up the food chain”.\(^12\) People whose diets consist more heavily on these
sources of food have been shown to have higher incidences of relevant pollutants in their bodies.\(^13\)
There are also concerns that tons of waste, including radioactive material, from the US military
activities in Greenland pose significant risk as the ice in which they were buried melts away. Warming
temperatures also reduce the reliability of permafrost for natural refrigeration which can diminish
access to locally resourced food, and lead to illness where food has not been properly frozen or

\(^{5}\) Greenland in Figures 2020 (Statistics Greenland, 2020) 4
\(^{6}\) Ibid.
\(^{7}\) Meredith et al (n 4) 259.
\(^{8}\) ‘Greenlandic Perspectives on Climate Change 2018 - 2019’ (n 3) 82.
\(^{9}\) Ibid 10.
\(^{10}\) Meredith et al (n 4) 206, 259.
\(^{11}\) Aviaja L Hauptmann et al, ‘Contamination of the Arctic Reflected in Microbial Metagenomes from the
Greenland Ice Sheet’ (2017) 12(7) Environmental Research Letters 074019, 1, 8 read with UN Human Rights
Council, Report of the Special Rapporteur on the implications for human rights of the environmentally sound
management and disposal of hazardous substances and wastes on his mission to Denmark and Greenland, UN
\(^{12}\) UN Human Rights Council, Ibid 13 [57].
\(^{13}\) Ibid 14 read with LK Schæbel et al, ‘The Influence of Persistent Organic Pollutants in the Traditional Inuit Diet
stored. Collectively these changes fundamentally impact quality of life, local livelihoods, the economy, health, cultural practices and traditional knowledge.

The impacts of climate change on the people of Greenland are also complex. Climate change at once diminishes familiar aspects of everyday life and at the same time could advance social and economic prospects. Longer ice-free periods could expand shipping corridors and ease the exploitation of resources, leading to “increased opportunities for marine shipping, commercial fisheries, tourism and resource development.” Warmer average temperatures and associated ice melt also provide improved access to land and an associated potential for agricultural intensification, particularly in the south of the country where temperatures are expected to increase by three to six degrees over the next 100 years. At the same time, this means that there will be a loss of globally unique biodiversity as some high Arctic species of plant, animal and ocean life will be outcompeted by more temperate ones. Changes in the availability, biodiversity and migratory patterns of ocean fish species directly impacts commercial and local fishing which accounts for 90 per cent of Greenland’s export income. Thus, the very developments that could enhance economic development, improve local employment opportunities, and provide a path to independence, also pose risks to the environment, biodiversity and subsistence activities.

Lack of housing, which is endemic in Greenland, is complicated further by climate change. Homelessness continues to rise but has not been a prioritized socio-political issue. In Nuuk, with a population of just over 18,000, the waiting time for housing can stretch over a decade. While more land was recently allocated for residential purposes, lower socio-economic groups were not the priority. Greenland’s natural environment means that building demands forward planning in a way not necessarily required in other parts of the world, and these challenges too are amplified by the impacts of climate change. “It is prohibitively expensive to build in Greenland, all construction materials have to be imported and no attempt has been made to challenge or explore alternative ways of building. Granite is abundant but too brittle for construction purposes, so it is still cheaper to build in Denmark (or even China) and transport the end result to Greenland than to build locally.” These obstacles to building contribute to a perpetuating lack of investment which adds to the housing fragility.

Overall, climate change magnifies “existing societal, political, economic, legal, institutional and other challenges that face northern peoples.” That is, it compounds pre-existing vulnerabilities, inequalities and situations in which people are marginalized and disadvantaged. Moreover, we know

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14 Meredith et al (n 4) 256, 259.
16 Ibid 260; ‘Greenlandic Perspectives on Climate Change 2018 - 2019’ (n 3).
17 Meredith et al (n 4) 260.
19 Meredith et al (n 4) 260.
20 Julia Christensen et al, ‘Homelessness across Alaska, the Canadian North and Greenland: A Review of the Literature on a Developing Social Phenomenon in the Circumpolar North’ (2017) 70(4) Arctic 349, 358 (‘Homelessness across Alaska, the Canadian North and Greenland’).
21 Ibid.
that the cultural losses associated with climate change can be profound. Greenlandic people have always lived with a high degree of environmental variability, making the capacity to adapt an inherent part of life advanced by “extensive knowledge of the local environments and related skills; flexible harvesting strategies; mobility and flexibility of group size; and strong social networks.”

However, the pace of climate change tests that resilience and destabilises the traditional methods for adaptation to environmental change. The IPCC found that in the polar regions, “climate-driven changes undermine confidence in indigenous knowledge holders in regards to traditional indicators used for safe travel and navigation”. For example, changes in wind speed, intensity and direction compromise the reliability of snow drifts as navigational indicators. As one local resident put it “as [the climate] changes, all knowledge throughout the generations about everything disappears”. Vulnerability in terms of biophysical climate risks, exists alongside pre-existing challenges as well as the unique impacts to indigenous peoples that climate change brings such as climate-change-induced dislocation, attenuation of cultural attachment to place, and loss of agency.

Despite an extensive and growing body of research on environmental changes in Greenland that arise as a result warming average temperatures, and the high degree of scientific agreement about the impacts of climate change on indigenous communities, there is a dearth of data on the specific human rights implications for Greenlandic people themselves. This research gap is important to address, because for Greenlandic people, and other indigenous communities, complex postcolonial realities and existing vulnerabilities intensify local vulnerability to climate impacts. The next section examines how the Danish colonization of Greenland and contemporary governance arrangements impacts the realization of human rights.

The colonization and governance of Greenland and human rights

Greenland is not a state under international law. Prima facie, then, the human rights standards with which it ought to conform, and against which any present state of affairs ought to be assessed, are those to which the Danish state has agreed. Yet such a simple assessment understates the practicalities of governance. For indeed, “a perennial problem in the law and practice of territorial status has been the various types of dependent entities”. Among the complications of which is that these places at once do not meet the criteria for statehood and at the same time appear to possess characteristics of independent legal personality. Their various contemporary forms differ one from another on a spectrum that ranges from “near independence to practical absorption” into the parent state. Accordingly, such legal arrangements cannot be understood through the application of a single rigid set of rules, but rather must be uncovered through an examination of all the relevant legal

25 Meredith et al (n 4) 260.
26 Ibid.
27 ‘Greenlandic Perspectives on Climate Change 2018 - 2019’ (n 3) 55.
28 With the exception of this report ‘Greenlandic Perspectives on Climate Change 2018 - 2019’ (n 3).
29 In its ninth periodic review of Denmark, concluded in March 2021, the Committee on the Elimination of Discrimination Against Women expressed concern “about the lack of data and research on the gender-specific impact of the climate crisis potentially affecting the indigenous population, including women, in Greenland”:
31 Ibid 284.
instruments in the context of the particular circumstances.\textsuperscript{32} This section of the chapter describes key aspects of those circumstances for Greenland.

The colonization of Greenland

Greenland has been populated for the better part of the last 4000 years. The colonization of Greenland began with the arrival of the Danish-Norwegian missionary Hans Egede in 1721, and after 1814 the Danish state increasingly expanded its influence over the territory over the course of the next two centuries. The East and the North of Greenland were colonised much later (1883), and as a result those in the western part of Greenland where the capital, Nuuk, is located dominate political life. In 1933, the Permanent Court of International Justice declared Greenland \textit{terra nullius} prior to 1814 and formally recognised it as part of the Danish state,\textsuperscript{33} notwithstanding centuries of human occupation before European arrivals.

When Denmark joined the UN in 1945, it listed Greenland as a non-self-governing territory under Part XI of the UN Charter. This meant, among other things, that Denmark was under an obligation to “promote to the utmost... the well-being of the inhabitants of these territories”, and to advance the development of self-governance.\textsuperscript{34} This curtailed the freedom with which Denmark could exercise sovereign control over Greenland not only as a matter of human rights law, but also as part of an “explicit recognition of the territorial rights of colonised peoples”.\textsuperscript{35}

Yet, as the Cold War evolved into the defining security challenge of the time, so too did Greenland’s strategic importance to the US and Russia. As Johnstone has described, leaders of the US and Denmark were acutely aware that Greenlandic independence could upset existing security arrangements.\textsuperscript{36} At the same time, Denmark was under an express obligation under the UN Charter to advance that independence as long as Greenland was a non-self-governing territory.\textsuperscript{37} In August 1952, the Danish Government proposed the legal integration of Greenland into the Danish Realm, including the election of two representatives of Greenland into the Danish Parliament,\textsuperscript{38} and sent to the Provincial Council of Greenland a proposal to this end. Although the Provincial Council possessed no authority to implement law or address constitutional change, it agreed to the Danish plan without any input from the broader Greenlandic population.\textsuperscript{39} This was contrary to the principle of self-determination, which includes the idea that self-determination must be “the expression of the free and genuine will of the people concerned”.\textsuperscript{40} Thereafter, in a letter dated 3 September 1953, Denmark informed the UN Secretary-General that Greenland had become a part of the Danish Realm “with constitutional status equal to that of other parts of Denmark”.\textsuperscript{41} In November 1954, pursuant to resolution 849 (IX), the UN

\begin{itemize}
\item \textsuperscript{32} Ibid.
\item \textsuperscript{34} \textit{Charter of the United Nations}, Art 73.
\item \textsuperscript{35} Johnstone (n 2) 2.
\item \textsuperscript{36} Ibid 3.
\item \textsuperscript{37} \textit{Charter of the United Nations}, Art 73
\item \textsuperscript{38} Out of 179 total members anticipated in the constitutional reforms that were by then underway.
\item \textsuperscript{39} Johnstone (n 2) 3.
\item \textsuperscript{40} \textit{Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion)} [2019] ICJ Rep 95, 134 [157].
\end{itemize}
General Assembly conferred official recognition that Greenland was no longer a trust territory, not because it had achieved independence but rather because it had been subsumed by the Danish state.\footnote{Full footnote to UN General Assembly Resolution 849 (IX) 22 November 1954.}

While integration was a legitimate conclusion to non-self-governing-territory status under Chapter XI of the UN Charter,\footnote{As much has since been expressly recognised by the UN General Assembly, as part of the “UN Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73(e) of the Charter”: Annex to UN General Assembly resolution 1541 (15 December 1960).} it was always “viewed with some suspicion by the General Assembly”.\footnote{Crawford (n 1) 623.}

The trust system, after all, was geared towards eventual independence, not least to avoid potential threats to international peace and security that arose from territorial disputes. The integration of a territory into the parent state absolved the latter from its responsibilities under Chapter XI of the UN Charter. Thus, the obligation contained in Article 73(e) of the UN Charter to submit regular reports to the UN Secretary General detailing statistical and other information relating to the economic, social and educational conditions no longer applied, and accordingly such reports on Greenland were no longer transmitted. Thus a key mechanism for monitoring Danish efforts to ensure the specific protection of economic, social and cultural rights was lost. Greenland became a county of the state of Denmark and Denmark proceeded with plans to urbanise Greenland, and to introduce Danish education and welfare.\footnote{Johnstone (n 2) 4.}

Like many colonial interventions, the Danish conquest of Greenland was characterized by the introduction of policies transplanted from the mainland, albeit well-intentioned, without the input of the peoples on which they were imposed.\footnote{Ibid.}

The concerted urbanization of Greenland and the introduction of compulsory education disrupted a way of life that had until then consisted of long periods of travel as family units for subsistence hunting. The introduction of the Danish system of compulsory education meant that the child, and usually one parent, had to remain in an urban centre to ensure school attendance. The other parent and family members would be away for months at a time to secure food, the result of which was to weaken the family unit and dilute knowledge and participation in traditions once an ordinary part of daily life.

In 1989, Denmark ratified and accepted the International Labor Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (hereafter ILO Convention). In ratifying the ILO Convention, Denmark declared that the original inhabitants of Greenland were the only indigenous people within the meaning of the Convention, but did so without acknowledgement of the three distinct Inuit settlements.\footnote{Johnstone (n 2); Terto Ngiviu, ‘The Inughuit of Northwest Greenland: An Unacknowledged Indigenous People’ (2015) VI The Yearbook of Polar Law.}

Each of which has separate cultural identities with languages that are usually described as dialects of the same, but in fact cannot be understood as between them.\footnote{Ngiviu (n 47).}

One of these, the Thule Tribe in the North-West of Greenland sought legal recognition as an independent indigenous people.\footnote{Danish High Court, judgment of November 28, 2003 (cases 489/1999 and 490/1999) referred to in Bent Ole Gram Mortensen and Ulrike Barten, ‘The Greenland Self-Government Act: The Pitfall for the Inuit in Greenland to Remain an Indigenous People?’ (2017) 8(1) The Yearbook of Polar Law Online 103, 117.}

In 2003, the Danish High Court ruled that these Inuit people are not indigenous people distinct from other Greenlandic Inuit for the purposes of the ILO Convention,\footnote{Ibid.} the
ILO's Governing Body concurred, although objections to that interpretation persist. When the case came before the ECHR, it was deemed inadmissible in part because the relevant acts occurred before the ECHR had temporal jurisdiction.

Contemporary governance arrangements and the challenges for human rights

The Parliament of Greenland (Inatsisartut) is made up entirely of Inuit people. That is not a matter of design per se (any Danish citizen who is resident in Greenland for at least six months can stand for election and vote). Rather, it is incidental to the fact that most people permanently resident in Greenland are Greenlandic Inuit. Although there have been moves to curtail the rights of Danish citizens who move to Greenland from elsewhere, such attempts have failed partly on human rights grounds. In particular, to extend the period of time for which a Danish citizen must be resident in Greenland before they are eligible to vote has been found to unduly and disproportionately limit their right to take part in public affairs.

The Greenlandic Government (Naalakkersuisut) has expressed the view that if decision-makers are Inuit, then that is guarantee enough that Inuit values are integrated into decision-making. Thus for the purpose of obtaining the free and informed consent of indigenous peoples prior to approving any project affecting their lands, territories or resources, the Greenlandic and Danish Governments agree that the consent of the Greenlandic Government is enough. There are obvious problems with this interpretation. The concept of free, prior and informed consent is expressed in Article 32 of the Declaration on the Rights of the Indigenous Peoples, but is best understood as a manifestation of binding extant human rights to self determination and freedom from racial discrimination applied in the context of indigenous peoples. As Cambou has written, self-determination in the postcolonial context is concerned with the relationship between the Government of Denmark and the Government of Greenland, internal self-determination is about the relationship of the Government of Greenland with its residents, and self-determination as a matter of indigenous rights is concerned here with the right of Inuit people to determine their future.

That the present Government happens to be majority Inuit does not in itself satisfy the free and informed consent required to undertake activities that impact upon the territory or activities of indigenous peoples. In particular, prior and informed consent demands advance consultation with

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52 Ngiviu (n 47).
55 Johnstone (n 2) 6.
57 Dorothée Cambou, ‘Disentangling the Conundrum of Self-Determination and Its Implications in Greenland’ (2020) 56(e3) The Polar Record 1, 8.
the specific community impacted by the relevant activity, undertaken in good faith, with full participation.\textsuperscript{58}

It has been argued elsewhere that the independence of Greenland could diminish indigenous rights insofar as its population will no longer meet the definition of “indigenous” under international law because they will no longer constitute a minority.\textsuperscript{59} However, this oversimplifies the Greenlandic indigenous landscape and is probably a misstatement of law. It is true enough that if Greenland became a state, the indigenous people of Greenland might no longer constitute a minority within the new state of Greenland,\textsuperscript{60} but their status as indigenous would remain unchanged.\textsuperscript{61} Indeed, “an indigenous people would not cease to have rights as such just because it became a majority in the territory in question, any more than it would lose such rights if it became a minority.”\textsuperscript{62} Such an interpretation arguably also contradicts the direction of recent developments in indigenous rights in international law, not least in the context of climate change.\textsuperscript{63}

Leading scholars describe indigenous peoples’ rights as having “transformed international law”, shifting it from an exclusive state-centric paradigm to one which has the capacity to encompass broader conceptualizations, participants and approaches to its implementation.\textsuperscript{64} Such legal developments are in part the result of increased scholarly recognition that non-economic losses from climate change in fact harm physical and mental health, identity and dignity, which “correlate with loss of social cohesion and a decreasing resilience to climate change, indicating the instrumental value of these losses.” The IPCC itself has even acknowledged its own failure to assess the roles played by law and indigenous decision-making practices, notwithstanding their relevance.\textsuperscript{65} These matters are important. Adaptation is complex, and failure to manage it well and sensitively “can often result in deadlocks, delays or even failure”.\textsuperscript{66}

In 2009, the Act on Greenland Self-Government was passed by the Danish Parliament, the consequence of which, among other things, was that Greenland at once enjoys an extremely high degree of self-government and at the same time remains formally a part of the Danish Realm. The structure of this freedom is notable. The self-government arrangements exist as a matter of legislation

\begin{footnotesize}
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\item \textsuperscript{58} Mauro Barelli, ‘Free, Prior and Informed Consent in the Aftermath of the UN Declaration on the Rights of Indigenous Peoples: Developments and Challenges Ahead’ (2012) 16(1) The International Journal of Human Rights 1.
\item \textsuperscript{59} Mortensen and Barten (n 49).
\item \textsuperscript{60} International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) Art 27.
\item \textsuperscript{61} Notably, when the Danish Government ratified the Council of Europe Framework Convention for the Protection of National Minorities it, with the consent of the then Greenland Home Rule Government, did not declare Greenlandic Inuit as a minority within Denmark, recognizing only the German minority in southern Denmark: Submission by the Human Rights Council of Greenland to the 2016 Universal Periodic Review of Denmark (22 June 2015) 3-4 https://menneskeret.dk/files/media/dokumenter/monitorering/upr/2015_06_22_dk_greenland_upr_report.pdf accessed 10 July 2021.
\item \textsuperscript{62} Crawford (n 30) 279.
\item \textsuperscript{63} See, for example, UN Human Rights Committee, General Comment on the Right to Life, UN Doc CCPR/C/GC/36 (30 October 2018) 6 [26]; The Human Right to a Healthy Environment, UN Human Rights Council, 48\textsuperscript{th} sess, Agenda Item 3, UN Doc A/HRC/RES/48/13 (18 October 2021);
\item \textsuperscript{65} Michael Oppenheimer et al, ‘Low-Lying Islands, Coasts and Communities’ in IPCC Special Report on the Oceans and Cryosphere in a Changing Climate (2019), 400.
\item \textsuperscript{66} Ibid.
\end{itemize}
\end{footnotesize}
passed by the Danish Parliament, and thus as a matter of domestic law could be overturned by a simple majority, even if to do so is politically unlikely. The Act on Greenland Self-Government expanded the legislative and administrative authority of the 1979 Home Rule Act to extend the fields of responsibility over which the Greenlandic Government would have exclusive control and restored Greenlandic as the official language of Greenland.

The Act on Greenland Self-Government expressly recognised that any decision regarding future Greenlandic independence “shall be taken by the people of Greenland” (section 21(1), an expression of extant international law. Greenland’s exercise of a right of self-determination through independence from Denmark while legally possible is practically fraught. Greenland remains highly dependent on Denmark which provides 3.9 billion Danish kroner to Greenland per year. Under the terms of the Act on Greenland Self-Government, Greenland may now retain revenue from mineral resource extraction (tax and licenses) but half of any mineral revenue that Greenland earns over 75 million Danish kroner is offset against the amount it receives from Denmark. Moreover, the Act on Greenland Self-Government additionally provides that any such decision in favour of independence must not only be endorsed by a referendum in Greenland, but also be concluded with the consent of the Danish Parliament.

Unlike other constitutional federalist states, in Danish-Greenlandic legal relations, the Danish Constitution is not supreme. Thus, the delegation of authority purports to provide exclusive autonomy to Greenland over the matters within its competence. While Denmark retains control over foreign and security policy, Greenland enjoys exclusive control over hunting, fishing, taxes, expropriation, schools, the labour market, electricity and water, natural resources, but only to the extent that to do so does not conflict with areas under the control of the Danish Government. What this means for human rights in the context of climate change is important because of the ambiguity that arises in the actual division of national and Greenlandic responsibility.

For example, the exploitation of mineral reserves has long been touted as paving the path towards greater prosperity for Greenland and the potential exercise of self-determination through facilitating its economic independence from Denmark, and potential statehood writ large. As the ice cap melts, the potential for further exploration grows, notwithstanding the obvious paradox associated with using climate change to contribute more to it. Focusing for the time being on the legal challenges which arise, the precise division of authority between Greenland and Denmark as shipping and

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69 Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion) [2019] ICJ Rep 95, 131 [144].
72 Self-Government Act 2009 (DK) Ch 8 (3).
73 Mortensen (n 66) 17.
minerals sectors grow will likely prove challenging. For instance, a dispute over mining arose in the early 2010s due to the extraction of uranium as a by-product of mineral exploration in Greenland. Greenland possesses significant deposits of gold, nickel, zinc, and among the world’s largest deposits of rare earth elements and uranium.

In 2010 the Greenlandic Government amended licensing terms to allow an Australian-domiciled company—spuriously named “Greenland Minerals Ltd” —to “explore (but not exploit)”, a mineral deposit in Kvanefjeld, south of the Greenlandic capital, Nuuk. While the Act on Greenland Self-Government allocated exclusive control of mineral extraction to Greenland, Denmark viewed extraction of uranium, even as a by-product, as a security issue, the governance of which properly resided with them. There were other pressures at play too. Denmark was the fourth country to sign the Nuclear Non-Proliferation Agreement in 1969 and there was for many years, as a matter of political understanding, a “zero tolerance policy” with regard to uranium exploration or exploitation within the Danish Realm (albeit without the underpinning of law). The international legal obligations of the Danish state under the NPT include to implement safeguards to prevent fissionable material being diverted from peaceful uses to nuclear weapons, and applies to all fissionable material within the territory of the State, or under its jurisdiction or control. Yet, as the global demand for mineral resources intensifies, new deposits are sought out through processes which themselves contribute to climate change, but also give rise to opportunity. A compromise was reached in 2016, which prima facie honoured the Greenlandic authority over extractive mining and licensing but relinquished control of exports to Denmark, given the security implications. However it is not difficult to imagine that other challenges might arise.

The arrangements are silent on the issue of human rights, and what might constitute a matter of foreign and security policy is undefined and thus open to interpretation. As Gad and Olsvig have written, “A precise demarcation of what constitutes security policy is politically impossible: if the line is drawn wide, the autonomy of Greenland will be rolled back while a tightly drawn line is unsustainable within the official constitutional interpretation, which insists that Copenhagen has a monopoly on conducting security policy.” It is notable in the present context that climate change itself is often framed as a matter of national and international security, especially in the Arctic. Thus where human rights protection is advanced through climate change mitigation or adaptation measures in Greenland, to the extent that they are security relevant, the Danish state can, arguably, intervene.

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75 Johnstone (n 2) 7–8.
76 Manning (n 74) 932–933.
77 It was at the time “Greenland Minerals and Energy” and is now “Greenland Minerals Ltd”.
79 Johnstone (n 2) 7–8.
80 Vestergaard and Thomasen (n 77) 14–19; Johnstone (n 2) 7.
81 Nuclear NPT Art III.
Responsibility and enforcement of human rights obligations in Greenland

While the international human rights system does not permit a state to absolve itself of human rights responsibility, there is ample scope for a state to determine how it will implement human rights law within its domestic framework, and that may indeed, and probably should, involve delegation to authorities subordinate to the state. But the repository of responsibility in international law remains the parent state. As much is not particularly controversial, as a matter of course Denmark includes input from the territories of Greenland and the Faroe Islands as part of its national reporting obligations to human rights monitoring bodies, thereby acting on its role as state and repository of responsibility.  

Each state party to an international human rights treaty is under an obligation to ensure that the relevant rights accrue to all individuals subject to their jurisdiction or on their territory. Although rumblings of independence are ever present, Greenland remains part of the Danish state and so is prima facie bound by Danish treaty commitments. However, as the previous section has illustrated, such a purist interpretation does not adequately explain the reality in which colonial territories function as a matter of international standing. Indeed, “whether a territorial unit has separate international standing, or is merely a subordinate constitutional unit of a metropolitan State, is not a matter of domestic jurisdiction of the latter State, nor is it determined conclusively by the municipal law of that State.”

It is accepted practice that “Greenland can act alone in international affairs concerning fields of law completely taken over by Greenland.” Denmark has accompanied its ratification of several international human rights instruments with express declarations excluding the application of those Conventions in Greenland. Declarations excluding the application of international legal instruments permit greater autonomy to Greenland such that it may opt-in or opt-out. On the other hand, that flexibility could diminish the perceived (not actual) responsibility of Denmark to uphold those obligations. Strictly speaking, in the UN system of human rights, declarations, unlike reservations, “give notice of a state’s interpretation” of the relevant Convention, but “have no legal effect in international law.” Whereas, the European Convention on Human Rights expressly permits states

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87 Statutes of Hans Egede were in 2020 desecrated with the words “decolonize” in both Copenhagen and Nuuk, and led to a public vote on whether remove the figure from the Greenlandic capital, which was marginally defeated: https://www.bbc.com/news/world-europe-53429950
89 Crawford (n 30) 353–354.
parties to limit the territorial application of the Convention by declaration, which Denmark did, Greenland subsequently acceded to the ECHR in any case.

Most such declarations excluding the application of human rights instruments to Greenland have since been withdrawn, but a few remain in force. These include the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the Optional Protocol to the Convention on the Rights of Persons with Disabilities to Greenland. This renders inaccessible the possibility of accessing UN complaints procedures for violations committed in Greenland of the Convention on the Rights of the Child or the Convention of the Rights of People with Disabilities. Whereas, they are accessible to mainland Danish citizens (subject to the relevant rules of procedure, standing and admissibility).

This is not to say that the UN complaints procedures would be, or could be, determinative in any particular case. UN complaints procedures are forums of last resort: domestic remedies must first be exhausted, and the decisions, while highly persuasive, are not binding. However, domestic remedies in Greenland are not always readily accessible. The Human Rights Council of Greenland has reported that there is no public, systematised database of Greenlandic case law, nor any searchable database of Danish law applicable in Greenland. The mechanism for administrative appeals is unclear, and in Greenlandic courts, it is for the judge to decide whether Greenlandic or Danish will be applied in court proceedings. Public authorities tend to produce legal filings and materials almost exclusively in Danish. These factors impede the capacity of indigenous people to access the legal system. Indeed these issues are sufficiently prevalent so as to have been raised before the UN Human Rights Council as part of its Universal Periodic Review of Denmark.

Conclusion: governance challenges and the path forward

The investment and security potential of climate change impacts in Greenland, in particular the opening of the northwest passage and ease of access to mineral deposits for extractive industries, means that there are plenty of people, states and legal entities, vying to position themselves both in case of Greenlandic independence and for present day strategic advantage. The Greenlandic Government is not naïve to this but since the Act on Greenland Self-Government there have been obvious tensions between international best practice in rights mechanisms such as free prior and informed consent, and the approach taken within Greenland. At the same time, climate change, as well as the perceived opportunities it brings, also have seriously harmful consequences which need to be both mitigated and adapted to.

There is no doubt that Greenland is not yet itself a state under international law, notwithstanding the debates about whether, when and how that could come about. Whether one adopts a unitarian approach that demarcates a clear dividing line between statehood and not, or an approach which acknowledges that devolution into statehood that can occur over time, Greenland has not reached the conclusion of either, and even if it had, legal questions about the ongoing legal relationship with Denmark will remain. As James Crawford has written “After independence, which may not be any clearly defined point in time, the problem is rather how to reconcile the fact of independence with

93 See “Denmark” “declarations” https://indicators.ohchr.org/
95 Ibid.
the history of dependence, aspects of which may well survive.” The legacy of colonialism, and what that entails in terms of Danish responsibility for contemporary human rights protections is both unclear and potentially important.

In Greenland, as in other colonial territories, adaptation to climate change in Greenland is shaped and inhibited by the colonial encounter. For Greenlandic people, examples of dispossession and forced relocation are still within living memory. The realization of human rights protections, including indigenous rights and access to justice continue to meet with systemic challenges, and climate change compounds those. As the IPCC has recognised, social vulnerability and equity must be prioritised to ensure fair and just climate resilience and sustainable development.

In its 2019 Report, the IPCC recognized that existing legal and policy in the Arctic are in general not sufficiently equipped to address cascading risks and uncertainty in an integrated and precautionary way. What is required is a governance framework that underpins and supports, not dictates, community agency as climate change shifts personal and environmental thresholds. The integration of indigenous knowledge and leadership, as complemented by physical science, would chart the course for an approach to climate adaptation in line with the human rights obligations. This is important less because of some normative desire for state compliance but because disaster risk reduction and climate adaptation that adopt human rights protection as a central premise leads to not only improved local resilience and empowerment, and also better potential to preserve culture, identity, mental and physical health as well as the natural environment itself.

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96 Crawford (n 30) 350.
98 Oppenheimer et al (n 64) 300.
99 Meredith et al (n 4) 208.
100 Robin Bronen et al, ‘Usteq: Integrating Indigenous Knowledge and Social and Physical Sciences to Coproduce Knowledge and Support Community-Based Adaptation’ (2020) 43(2–3) Polar Geography 188.