Climate Change, Colonialism and Human Rights in Greenland

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Climate Change, Colonialism, and Human Rights in Greenland
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Introduction
Greenland is a 2 million square kilometre island, with a population of approximately 57,000 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 Denmark and is 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 look like, and what it could mean for human rights in practice.

Questions about rights protection in Greenland are additionally relevant now because of the unique impacts of climate change on its territory, as distinct from those experienced on the Danish mainland, which is four hours away by direct commercial flight. Temperatures in Greenland are rising up to three times faster than in other parts of the world. Yet, while much attention has been paid to the manifestation of climate change in Greenland for the impacts it will have globally, far less research has examined the impacts of the changing climate on Greenlandic Inuit people themselves. In many respects, the unique climate characterises the Inuit way of life, meaning that changes to the natural environment are 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 opportunities 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 legally, and dependent upon it economically. The first

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1 James Crawford, The Creation of States in International Law (2nd edn, OUP 2007) 283.
3 Kelton Minor and others (eds), Greenlandic Perspectives on Climate Change 2018 - 2019: Results from a National Survey (Kraks Fond Byforskning 2019); James D Ford and Christina Goldhar, ‘Climate Change Vulnerability and Adaptation in Resource Dependent Communities: A Case Study from West Greenland’ (2012) 54(2) Clim Res 181, 183.
section of this chapter outlines the impacts of climate change in Greenland, which is 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 held by the Danish state are made more complex by the governance arrangements within which those obligations are situated. The final section poses 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 the population are Inuit, and the remainder mostly Danish. Roughly a quarter of Greenland’s residents reside in the capital, Nuuk, in the southwest of the territory. There are just two international airports and no roads between cities and towns, meaning that 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. 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 and density of snow make travel more difficult and dangerous. Sea ice is forming later and melting earlier, which reduces the period during which travel across the ice is possible. Indeed, the IPCC has found that, “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. 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 as a result of climate change, with 22 per cent saying it was much more dangerous.

These changes to the landscape inhibit local capacity to hunt and engage in subsistence activities, which are already impacted by other climate changes. 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. Climate change has already altered the abundance of species such as caribou and reindeer, available fish stocks and biodiversity. In addition, as the Greenlandic ice sheet melts, contaminants that are trapped in the snow and ice are transmitted into downstream ecosystems and can contaminate traditional food sources. That toxicity intensifies within the flesh of ocean

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5 Bolatta Vahl and Naduk Kleemann (eds), Greenland in Figures 2020 (17th edn, Statistics Greenland 2020) 4.
6 Ibid.
7 Although there are many more small domestic airports and landing strips. Nuuk airport is undergoing a significant upgrade which should be completed in 2024, including the installation of an Instrument Landing System which will advance the possibility of landing when there is low visibility (a regular cause of flight cancellations). Kalaallit Airports <https://kair.gl/da/Nuuk> accessed 16 February 2023.
8 Meredith and others (n 4) 259.
9 Ibid 260.
10 Ibid.
11 Minor and others (n 3) 82.
12 Minor and others (n 3) 10.
13 Meredith and others (n 4) 206, 259.
mammals, “as contaminants are biomagnified up the food chain”. People whose diets consist more heavily on these sources of food have been shown to have higher incidences of relevant pollutants in their bodies. There are also concerns that tons of waste, including radioactive material from US military activities in Greenland, pose significant health risks as the ice in which they are 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 stored. How food is produced, prepared, and consumed contributes to individual and community physical and mental health. Where people lose access to traditional foods, the alternative is supermarket bought food which is both expensive and often highly processed, and involves none of the practices that support Inuit food and family systems. For these reasons, the Greenlandic Board of Nutrition has advised that where the alternatives to eating traditional food is “is an increased consumption of imported food of poor nutritional quality, an advice of decreasing or discontinuing consumption of marine mammals would probably lead to decreased overall health.”

Indeed, the impacts of climate change on the people of Greenland cannot be neatly categorized into simple dichotomies such as “positive” and “negative”. As much as climate change diminishes familiar aspects of everyday life, in other ways it also advances social and economic prospects. Perversely, 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 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 unique biodiversity as some high Arctic species of plant, animal and ocean life are outcompeted by more temperate ones. Changes in the availability, biodiversity and migratory patterns of ocean fish species directly impact commercial and local fishing, which accounts for 90 per cent of Greenland’s export income. A familiar tension arises between the desire to enhance economic development, improve local employment opportunities and provide a path to independence, and the associated risks of doing so to the environment, biodiversity and subsistence activities.

The Inuit people in Greenland “are acutely aware of climate change’s diverse human rights, cultural, health, and social and economic impacts”. Greenlandic Inuit people have always lived with a high

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15 Human Rights Council (n 14) 13 [57].
16 Human Rights Council (n 14) 14; see alsoLK Schæbel and others, ‘The Influence of Persistent Organic Pollutants in the Traditional Inuit Diet on Markers of Inflammation’ (2017) 12(5) PLoS ONE 0177781.
17 Meredith and others (n 4) 256, 259.
20 Meredith and others (n 4) 260; Minor and others (n 3).
21 Meredith and others (n 4) 260.
23 Meredith and others (n 4) 260.
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 traditional methods of adaptation to environmental change. Climate risks exists alongside and compound pre-existing challenges, as well as the unique impacts on indigenous peoples brought by climate change, such as climate-change-induced dislocation, attenuation of cultural attachment to place, and loss of agency. As one local resident put it, “as [the climate] changes, all knowledge throughout the generations about everything disappears”.

Climate change alters Inuit quality of life, local livelihoods, the economy, health, cultural practices and traditional knowledge, and magnifies pre-existing inequalities and situations in which people are marginalized and disadvantaged. For example, lack of housing is endemic in Greenland and compounded by a rural urban divide which largely reflects colonial resettlement policies. In the capital city, Nuuk, with a population of just over 18,000, the waiting time for housing can stretch over a decade, rendering urbanization largely unavailable as a climate adaptation strategy. While more land was allocated for residential purposes, lower socio-economic groups were not given priority. Construction in Greenland demands forward planning not necessarily required in other parts of the world. “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 construction contribute to a perpetual lack of investment, which only adds to housing fragility.

Aspects of colonialism both persist and continue to be revealed, and intensify local susceptibility to climate impacts. The next section examines how the Danish colonization of Greenland and contemporary governance arrangements inhibit the meaningful realization of human rights for Greenlandic Inuit People.

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

27 Minor and others (n 3) 55.
28 Sara Olsvig, ‘We Live in the Arctic: Inside Greenland Looking Out’ (2020) 15(4) Glob Asia 56; Meredith and others (n 4) 206–207.
32 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” Committee on the Elimination of Discrimination against Women, Concluding Observations on the Ninth Periodic Report of Denmark, UN Doc CEDAW/C/DNK/CO/9 (9 March 2021) 15.
those to which the Danish state has agreed. Yet such a simple assessment understates the practicalities of governance. Indeed, “a perennial problem in the law and practice of territorial status has been the various types of dependent entities”.\(^{33}\) Dependent entities 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.\(^{34}\) 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 instruments in the context of the particular circumstances.\(^{35}\) 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 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,\(^{36}\) 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.\(^{37}\) This not only curtailed the freedom with which Denmark could exercise sovereign control over Greenland as a matter of human rights law, but also as part of an “explicit recognition of the territorial rights of colonised peoples”.\(^{38}\)

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.\(^{39}\) At the same time, Denmark had an express obligation under the UN Charter to advance that independence as long as Greenland was a non-self-governing territory.\(^{40}\) 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,\(^{41}\) and sent a proposal to this end to the Provincial Council of Greenland. 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 population.\(^{42}\) This was contrary to the principle of self-determination, which includes a requirement that self-determination be “the expression of the free and genuine will of the people

\(^{33}\) Crawford (n 1) 282.

\(^{34}\) Crawford (n 1) 284.

\(^{35}\) Crawford (n 1) 284.

\(^{36}\) Eastern Greenland Case (Denmark v Norway) (1933) PCIJ Series A/B No 53, 37.

\(^{37}\) Charter of the United Nations, art 73.

\(^{38}\) Johnstone (n 2) 2.

\(^{39}\) Johnstone (n 2) 3.

\(^{40}\) Charter of the United Nations, art 73

\(^{41}\) Out of 179 total members anticipated in the constitutional reforms that were by then underway.

\(^{42}\) Johnstone (n 2) 3.
concerned”.43 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”.44 In November 1954, pursuant to Resolution 849(IX), the UN 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.45

While integration was a legitimate conclusion to non-self-governing-territory status under Chapter XI of the UN Charter,46 it was always “viewed with some suspicion by the General Assembly”.47 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 economic, social and educational conditions in the territory no longer applied, and accordingly such reports on Greenland were no longer transmitted. Thus a key mechanism for monitoring Danish efforts to ensure the 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 introduce Danish systems of education and welfare.48

Like many colonial interventions, the Danish conquest of Greenland was characterized by the introduction of policies transplanted from the mainland, without the input of the peoples on which they were imposed. The concerted urbanization of Greenland and the introduction of capitalism and the Danish system of compulsory education disrupted a way of life that had until then consisted of long periods of travel as family units for subsistence hunting. Compulsory education meant that the child, and usually one parent, had to remain in an urban centre to ensure school attendance, while the other parent and family members would be away for months at a time to secure food. The result of this was a weakening of the family unit and dilution of knowledge of and participation in traditions that were once an ordinary part of daily life.

Other Danish policies more directly interfered with the family and private lives of Greenlandic Inuit people, with grave social consequences. The coerced removal of 22 Inuit children from their families in 1951 for the purpose of improving their Danish language skills not only caused long-term trauma for the families involved, but also fear within the broader community. Investigative reporting in 202249 revealed that in the 1960s and 1970s, thousands of women of fertile age, some as young as 12, were inserted with an intrauterine contraceptive device, often without their knowledge or consent.50

The policy not only prevented an unknown number of pregnancies, but also compromised the mental and

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44 ‘List of Former Trust and Non-Self-Governing Territories’ (United Nations, 2021) fn 4
46 As much has since been expressly recognised by the UN General Assembly, as part of the UN’s “Principles which should guide members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter”: see the annexure to UNGA Res 1541(XV) (15 December 1960) UN Doc A/RES/1541(XV).
47 Crawford (n 1) 263.
48 Johnstone (n 2) 4.
49 Anne Pilegaard Petersen and Celine Klint, Spiralkampagnen (May 2022)
50 United Nations Special Rapporteur on the Rights of Indigenous Peoples, Francisco Cali-Tzay (n 26);
physical health of the women themselves, weakened cultural and social ties, and further entrenched distrust of public authorities and health professionals.\footnote{Petersen and Klint (n 58).}

**Contemporary governance arrangements and the challenges for human rights**

In 1989, Denmark ratified and accepted the International Labor Organization’s *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’ (2014) 6(1) YB Polar L 142.} 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{Johnstone (n 2) 6. The Thule Tribe of the northwest of Greenland, sought legal recognition as an independent indigenous people but failed before the Danish Supreme Court and the ILO Governing body. The case came before the European Court of Human Rights (ECtHR), but was deemed inadmissible in part because the relevant acts occurred before the ECtHR had temporal jurisdiction: *Hingitaq 53 v Denmark*, App No 18584/04 (ECtHR, 12 January 2006) 18.}

The Parliament of Greenland (Inatsisartut) is made up entirely of people who identify as Greenlandic Inuit. 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 identify as 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, efforts to extend the period of time for which a Danish citizen must be resident in Greenland before they are eligible to vote have been found to unduly and disproportionately limit their right to take part in public affairs.\footnote{As enshrined in the Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217 A(III)) art 21; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 25; Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, Preamble and art 1; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, art 1; Convention on the Rights of Persons with Disabilities (adopted 27 January 2007, UNGA Res 61/106) art 29. See further: Kevin McGwin, ‘Danes’ Voting Rights in Greenland to Remain Unchanged Despite Concerns of “Disproportional Influence”’ (*Arctic Today*, 5 November 2020) <https://www.arctictoday.com/danes-voting-rights-in-greenland-to-remain-unchanged-despite-concerns-of-disproportional-influence/> accessed 14 October 2021.}

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 land, territories or resources, the Greenlandic and Danish governments agree that the consent of the Greenlandic government is enough.\footnote{Johnstone (n 2) 6.} 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 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.\footnote{Human Rights Council, *Free, Prior and Informed Consent: A Human Rights-Based Approach – Study of the Expert Mechanism on the Rights of Indigenous Peoples*, 39th sess, Agenda Items 3 and 5, UN Doc A/HRC/39/62 (10 August 2019) [3].} 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. Politicians represent the entirety of their electorate, and are concerned with a breadth of matters that may or may not align with the interests of the Indigenous Peoples specifically affected by a decision. Prior and informed consent demands advance consultation with the specific community impacted by the relevant activity, undertaken in good faith, with full participation.\footnote{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) IJHR 1.}

It has been argued elsewhere that the independence of Greenland could diminish indigenous rights because Greenlandic Inuit people would no longer meet the definition of “indigenous” under international law.\footnote{Mortensen and Barten (n 58).} 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 state of Greenland,\footnote{International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 27.} but their status as indigenous would remain unchanged.\footnote{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: see Human Rights Council of Greenland, ‘Stakeholder Submission to the Universal Periodic Review of Denmark, 24th session of the UN Human Rights Council 2016’ (22 June 2015) 3-4 <https://menneskeret.dk/files/media/dokumenter/monitoring/upr/2015_06_22_dk_greenland_upr_report.pdf> accessed 10 July 2021.} 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.”\footnote{Crawford (n 1) 279.} 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.\footnote{See, for example, Human Rights Committee, \textit{General Comment No 36 on the Right to Life}, UN Doc CCPR/C/GC/36 (3 September 2019) 6 [26]; Human Rights Council, \textit{The Human Right to a Clean, Healthy and Sustainable Environment}, 48th sess, Agenda Item 3, UN Doc A/HRC/RES/48/13 (18 October 2021).}

Such legal developments are in part the result of increased scholarly recognition that climate change harms 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.”\footnote{Olivia Maria Serdeczny and others, ‘Non-economic Losses from Climate Change: Opportunities for Policy Oriented Research’ (2018) 10(2) Clim Dev 97, 97.} The IPCC itself has even acknowledged its own failure to assess the roles played by law and indigenous decision-making practices, notwithstanding their relevance.\footnote{Michael Oppenheimer and others, ‘Low-Lying Islands, Coasts and Communities’ in \textit{IPCC Special Report on the Oceans and Cryosphere in a Changing Climate} (Intergovernmental Panel on Climate Change 2019) 400.} These matters are important. Adaptation to climate change is multifaceted, and failure to manage it well and sensitively “can often result in deadlocks, delays or even failure”.\footnote{Ibid.}
In 2009, the Act on Greenland Self-Government was passed by the Danish parliament. The consequence of the Act is, among other things, 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 passed by the Danish parliament, and thus as a matter of domestic law could be overturned by a simple majority, even if that might be politically unlikely. The Act on Greenland Self-Government also expanded the legislative and administrative authority of the 1979 Home Rule Act to extend the fields of responsibility over which the Greenlandic government has exclusive control, and restored Greenlandic as the official language of Greenland.

The Act on Greenland Self-Government expressly recognises, in section 21(1), that any decision regarding future Greenlandic independence “shall be taken by the people of Greenland”, an expression of existing 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 any mineral resource extraction (tax and licenses), but half of any revenue over 75 million Danish kroner that Greenland earns is offset against the amount it receives from Denmark. Moreover, the Act on Greenland Self-Government additionally provides that any decision in favour of independence must not only be endorsed by a referendum in Greenland, but also 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, and natural resources, but only to the extent that these matters do 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 economic independence from Denmark, and potential statehood writ large. As the Greenlandic ice sheet melts, the potential for further exploration grows, notwithstanding the obvious paradox of using

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68 Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion) [2019] ICJ Rep 95, 131 [144].
70 Ibid Ch 8.
71 Ibid Ch 8(3).
72 Mortensen (n 66) 17.
the effects of climate change as an opportunity to contribute more to the problem itself. Focusing for the time being on the legal challenges which arise, the precise division of authority between Greenland and Denmark as shipping and minerals sectors grow will likely prove challenging.74

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.75 In 2010 the Greenlandic government amended licensing terms to allow an Australian-domiciled company — spuriously named “Greenland Minerals Ltd”76 — to “explore (but not exploit)”77 a mineral deposit in Kvanefjeld, south of Nuuk. The grant of the license caused a stir in Copenhagen. 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.78 There were other pressures at play too. Denmark was the fourth country to sign the Nuclear Non-Proliferation Treaty (NPT) 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).79 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.80 Yet as the global demand for mineral resources intensifies, new deposits are sought 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 Olsvig and Gad 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.”81 It is notable in the present context that climate change as a security issue is often framed as a matter of national and international security,82 especially in the Arctic.83

74 Johnstone (n 2) 7–8.
75 Manning (n 73) 932–933.
76 It was at the time “Greenland Minerals and Energy” and is now “Greenland Minerals Ltd”.
78 Johnstone (n 2) 7–8.
79 Vestergaard and Thomsen (n 77) 14–19; Johnstone (n 2) 7.
80 Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 729 UNTS 161, art III.
This version is an accepted draft and could be subject to minor editorial changes before publication.

Thus where human rights protection is advanced through climate change mitigation or adaptation measures in Greenland, to the extent that they are relevant to security, the Danish state can arguably intervene.

Responsibility and enforcement of human rights obligations in Greenland
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.”

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. That indeed may – 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, and 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.

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 instruments in Greenland. Some of these have since been withdrawn, others remain in force. On the one hand, declarations excluding the application of international legal instruments permit greater autonomy to Greenland, in 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

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85 Statutes of Hans Egede in both Copenhagen and Nuuk were desecrated with the words “decolonize” in 2020, which led to a public vote on whether remove the figure from the Greenlandic capital, which was marginally defeated: ‘Hans Egede: Greenland Votes on Colonial Danish Statue’ (BBC News (online), 16 July 2020) <https://www.bbc.com/news/world-europe-53429950>.


87 Crawford (n 1) 353–354.

88 See, for instance, Committee on the Elimination of Discrimination Against Women (n Error! Bookmark not defined.).

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interpretation” of the relevant instrument, but “have no legal effect in international law”.90 In contrast, the European Convention on Human Rights (ECHR) expressly permits state parties to limit the territorial application of the Convention by declaration – which Denmark did in respect of the ECHR, although Greenland subsequently acceded to it in any case.

The declarations that remain in force are not to be overlooked. These declarations have consequences for the application of the Optional Protocol to the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of Persons with Disabilities to Greenland.91 Effectively, these declarations remove the possibility of accessing UN complaints procedures for violations of the Convention on the Rights of the Child or the Convention on the Rights of Persons with Disabilities committed in Greenland. In contrast, these complaints mechanisms are accessible to mainland Danish citizens (subject to the relevant rules of procedure, standing and admissibility). That distinction is particularly notable given that among the worst historical wrongs committed by the Danish state against Greenlandic Inuit people were against or in relation to children.92

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 law 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.93 Indeed, these issues are sufficiently prevalent as to have been raised before the UN Human Rights Council as part of its 2016 Universal Periodic Review of Denmark.94

Conclusion
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 can occur over time, Greenland has not reached the conclusion of either. Even if it had, legal questions about the ongoing legal relationship with Denmark would remain. As James Crawford has written, “[a]fter independence, which may not be any clearly defined point in time, the problem is rather how to reconcile the fact of independence with the history of dependence, aspects of which may well survive.”95 The legacy of colonialism and what that entails

91 A list of declarations made by Denmark in respect of the core human rights instruments is available on the website of the Office of the High Commissioner for Human Rights: <https://indicators.ohchr.org/>.
92 As described above in relation to children removed from their families and the prevention of pregnancy. On 15 February 2023, proceedings were filed against the Danish state in the Copenhagen City Court seeking compensatory damages for the discriminatory treatment of Greenlandic Inuit children born out of wedlock in the 1960s and 1970s: <https://knr.gl/da/nyheder/juridisk-faderl%C3%B8se-st%C3%A6vner-den-danske-stat-110-procent-sikre-p%C3%A5-vi-vinder> accessed 16 February 2023.
93 Human Rights Council of Greenland (n 60).
94 Ibid.
95 Crawford (n 1) 350.
in terms of Danish responsibility for contemporary human rights protections is both unclear and important.

In Greenland, as in other colonial territories, adaptation to climate change is shaped and inhibited by the colonial encounter. For Greenlandic Inuit people, examples of dispossession, forced relocation, and intrusions into private and family life, are still within living memory. The realization of human rights protections, including indigenous rights and access to justice, remain hindered by systemic failings. As the IPCC has recognised, social vulnerability and equity must be prioritised to ensure fair and just climate resilience and sustainable development, and 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. Contrary to the views expressed by the Danish and Greenlandic governments alike, the consent of the Greenlandic government is not enough to constitute free, prior and informed consent of the Greenlandic Inuit people within the meaning espoused within article 32 of the UN Declaration on the Rights of Indigenous Peoples.

The investment and security potential of climate change impacts in Greenland, in particular the opening of the northwest passage and increased access to mineral deposits for extractive industries, mean 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 fully aware of that interest and the associated opportunities it brings. Yet, there are obvious tensions between international best practice in rights mechanisms, such as free, prior and informed consent, and the approach taken within Greenland.

What is required is a governance framework that underpins and supports, not dictates, community agency as climate change shifts personal and environmental thresholds. Approaches centred in human rights offer that path. Leading scholars contend that indigenous peoples’ rights have “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. The integration of indigenous knowledge and leadership, complemented by physical science, would chart the course for an approach to climate adaptation in line with human rights obligations. This is important less because of some normative desire for state compliance but because disaster risk reduction and climate adaptation which adopt human rights protection as a central premise lead to not only improved local resilience and empowerment, but also better

97 Oppenheimer and others (n 64) 300.
98 Meredith and others (n 4) 208.
99 For an example of which in the context of community relocation see: Robin Bronen, ‘Climigration: Creating a National Governance Framework for Climate-Forced Community Relocation’ (2022) 45(4) Rev Law Social Change 574.
101 Robin Bronen and others, ‘Usteq: Integrating Indigenous Knowledge and Social and Physical Sciences to Coproduce Knowledge and Support Community-Based Adaptation’ (2020) 43(2–3) Polar Geogr 188.
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potential to preserve culture, identity, mental and physical health, as well as the natural environment itself.\textsuperscript{103}

\textsuperscript{103} Dave Griggs and others, \textit{Learning from Indigenous Knowledge for Improved Natural Resource Management in the Barmah-Millewa in a Changing and Variable Climate} (Victorian Centre for Climate Change Adaptation Research, 15 February 2014) 22.