

BOFAXE

Una“Fjord”able (Part 2)

WHY TRUMP CANNOT BUY GREENLAND

— This second Bofax in a two-part series explores why purchasing Greenland would be incompatible with international law. It provides two main strands of argument to assess Trump’s proposal, first on the right to self-determination and, second, on developments in international human rights law.

First, previous attempted territorial purchases by the US go back rather long in history. Notably they all happened before the establishment of the UN in 1945. In the meantime, the international legal order has moved on: from the exclusively State-centric Westphalian system to one that serves also, if not foremost, the interest of people and individuals. The right to self-determination (as recognized in Art 1 (2) UN Charter and in various other human rights treaties, and spelled out inter alia in the [ICJ’s Advisory Opinion on Kosovo](#)) has become one of the cornerstones of today’s international law. By virtue of this right, people can freely determine their political status and freely pursue their economic, social and cultural development. In a famous quote, President Wilson declared, “*no right anywhere exists to hand peoples from sovereignty to sovereignty as if they were property*”. Selling or exchanging inhabited territory, therefore, needs to be in alignment with this principle of international law. In the case at hand, Greenlanders undoubtedly constitute a people with the right to self-determination; a treaty on purchasing the territory of Greenland without their consent would be a blatant violation of their right to self-determination. This is also reflected in Danish law: Since 1978, under the [Greenland Home Rule Act](#), Denmark has provided Greenland with substantial powers of self-government. Following a 2008 referendum, Denmark significantly widened this autonomy through the 2009 [Act on Greenland Self-Government](#). The Act expressly recognises the people of Greenland as “a people pursuant to international law with the right to self-determination”. The 2009 Act also gives Greenland the right to enter into international agreements on matters that only affect Greenland’s affairs and establishes a process towards possible independence. This enhanced autonomy with a window for independence, strengthening within national law the international right to self-determination, would be rendered null and void if Denmark were to sell Greenland off to a different state without the consent of the Greenlandic people.

Second, the change would mean a great loss for the Greenlandic people in terms of their human and indigenous rights. While the people living on the purchased territory will not *ipso facto* become citizens of the successor state, generally, they will be granted citizenship (see Art. 5 1999 Draft Articles on Nationality of Natural Persons in relation to the Succession of States by the ILC). So a purchase of Greenland by the US will most likely lead to the population becoming either full US citizens or citizens with partial rights (as in the case of Puerto Rico) – at least, they will not fall under the jurisdiction of Denmark anymore.

Denmark, like many Scandinavian countries, has an excellent human rights record, both in terms of ratifying treaties and in respecting their agreed standards. For instance, while Denmark ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1972, – including rights important to the Greenlandic way of life such as the right to take part in cultural life (Art. 15 ICESCR) and the right to enjoy and utilize fully and freely their natural wealth and resources (Art. 25 ICESCR)–, the US has always opposed the ICESCR. When voting on the rights of indigenous people in the UN General Assembly in 2007, Denmark voted in favour (alongside 142 other States), while the US voted against (alongside only three other States). Denmark ratified the ILO 169 Convention on Indigenous and Tribal People in 1996 – the USA never did. Currently the people of Greenland have access to the (very effective) European Court of Human Rights system as the territorial scope of the European Convention on Human Rights (and most of its protocols) extends to Greenland. All of these human and indigenous rights protections would be lost for the people of Greenland were they to become part of the US territory. Arguably upholding the existing human rights framework is a very strong normative argument against Denmark being even allowed to sell Greenland to the US – at least not without a positive vote of the Greenland population in favour of being transferred to US jurisdiction.

As we know from the Rolling Stones, „*You can’t always get what you want*” – a lesson Mr Trump still struggles to learn. However, as Jagger continues, “*if you try some time, you ‘ll get what you need*”. And Trump will certainly continue to try. What the US needs more than ownership, is the right to use Greenland – both militarily (on top of the already existing US Air Force base) and economically (in terms of drilling rights) (an unexpected revival of Palin’s famous “*drill, baby, drill*” motto if you like). Though Trump might not be able to buy Greenland – he will certainly exert pressure on Denmark to grant him further rights. More pressure than was previously imaginable in US foreign politics and in an international system that still believes itself to be based on “[the friendly relations between nations](#)”.