

Una-Fjord-able: Why Trump cannot buy Greenland

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Many people thought it was a belated [April's Fools joke](#): US media reported that US President Donald Trump is considering to purchase Greenland, currently an autonomous region of the Kingdom of Denmark. Since Mr. Trump tweeted that given Denmark' Prime Minister "*would have no interest in discussing the purchase of Greenland, I will be postponing our meeting (...) for another time...*", we know that the idea was dead serious. "Make America Great again" –this time in territorial terms? What would International Law (IL) have to say about such an idea?

First, there is a long history of the US buying land from other States. Some important examples are the colony of Louisiana – a huge territory that today spreads over 14 US States – (purchased from France in 1803), Florida (purchased from Spain in 1819), parts of Mexico (purchased in 1854) and Alaska (US purchase from Russia in 1867). The US has also thought about purchasing Greenland before: once in 1867, after the Alaska-purchase with the goal to surround Canada with U.S. territory; 1917 as part of the purchase of the Danish overseas colonies and again after World War II, when President Truman offered 100 million Dollar for Greenland to build a military base there. Both offers were declined.

Many reasons come to mind why Mr. Trump wants to purchase Greenland this time: amongst them are its strategic location close to the Arctic, the proximity to Russia, and the valuable mineral resources that, given the melting ice, are becoming easier to mine. So, while it is not crazy for Mr. Trump to have an interest in buying Greenland – is it feasible under IL?

Acquiring territory through a treaty or other kind of consent between the "owner state" and the new sovereign falls under the notion of *cession*. This includes the sale of territory, the redistribution of territory after wars (often regulated in peace treaties) or even territory as part of the dowry of a (monarch) ruler, as in the case of Bombay (given away by Portugal to the British in 1661 as part of the dowry of Catherine of Braganza, who married Charles II).

Until today, land deals are not uncommon. The nation of Kiribati, for instance, whose physical existence is threatened by rising ocean levels, bought land in Fiji in 2014, as a last resort if their land becomes uninhabitable. Similarly, Tuvalu, another drowning island State and already a nation highly [endangered by natural disasters](#), has considered similar purchases. However, in these cases the purchased territory would remain Fijian, with the residents of Kiribati becoming (if they give their consent) citizens of Fiji. There is indeed nothing in classical IL to prevent nations from ceding and acquiring territory as they see fit as long as the two States are in agreement about such transfers (which, of course, Denmark and the US are currently not). The traditional view in international law is, in short: States are the subjects of international

law and they can negotiate and sign treaties to their liking, including treaties on territory. Our conviction, however, is that this is an outdated understanding of IL.

First, the above-mentioned previous attempted 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 IL. 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 IL. 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”](#).

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