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A STEP IN THE DECOLONISATION PROCESS: FREE ASSOCIATION

Seminar paper, Ilisimatusarfik and DIIS, Nuuk, 24 May 2023





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Main Sources of International Law

Principles VI and VII of UN General Assembly resolution 1541 of 1960 (XV), the 1960 UN Declaration on the Granting of Independence to Colonial Countries and Peoples, the earlier lists of factors, all drawing on article 73 of the UN Charter, and State practice.

Substance

The meaning of free association in international law is broad and flexible as reflected in State practice. Associated with the United States, the Marshall Islands, Micronesia and Palau are sovereign member States of the United Nations, with US contributions to defence and the national budget. Associated with New Zealand, the Cook Islands and Niue are so far without sovereignty while retaining the right of external self-determination.

The Status of Greenland

The Inuit and eventually other long-term residents of Greenland are a people entitled to exercise the right of external self-determination under both international law (by way of decolonisation after a seriously flawed and dishonest integration process) and Danish law (2009 self-governance legislation). The exercise by peoples of external self-determination in the context of decolonisation can lead to independence, free association or integration.

Preparations in Greenland

It is for the Inatsisartut to define the people (the nation), that is who can vote in elections to the Inatsisartut and in referenda involving constitutional questions; this is not a negotiating issue as this power already rests with the Inatsisartut. In this context, the Danish model is not unattractive, that is several years of residence for immigrants to Greenland plus knowledge of the local language, history and culture at a level determined by Inatsisartut. Prior to negotiations between the parties, it'd also be necessary to develop preferences as to Greenland's international status, membership of international organisations, common and separate institutions, the division of powers, shared costs and possible subsidies, the duration of the association, and so on.

Free Choice of a Partner State

A free association is to be concluded with an independent State according to principle VI of resolution 1541 - in other words a territory that is or has been colonised can enter into a free association with either the administering power or with any other State willing and able to assume the duties involved (for example the US).

Negotiations

A free association should be between equal parties where status, institutions, functions and costs would be determined. The result can be the creation of a sovereign State, albeit with certain ties and some shared functions, or expanded autonomy, or something in-between. A people is free to enter and exit a free association; accordingly, the duration of a free association agreement can be fixed; if not, it can be terminated at any time.

Financial Arrangements

In addition to costs of common institutions and functions, in light of today's block grant, financial contributions by the coloniser need to be negotiated. The label does not matter but the amount and duration do, be they called (in whole or in part) budgetary subsidies, compensation, reparations, return of direct and indirect profits, or development co-operation (with Danida paying the bill; after all, the leader of a Danish political party recently compared Greenland with Africa on ice - despite 70 years of so-called integration).

Self-Government Not an Obstacle

Article 21 of the 2009 self-governance legislation lists independence as an option for self-determination; there is no reference to free association, even though it was discussed in the Joint Commission (Fælleskommissionen), certainly in the corridors. Still, that legislation would not seem to prevent free association as long as a new arrangement is freely negotiated and accepted by Inatsisartut and in a referendum in Greenland. Likewise, a constitution for Greenland can enter into force, presumably with a temporary suspension of provisions, if any, that might contradict arrangements agreed upon for free association.

Free Association is One Possible Step

Offering and introducing free association alone is not enough and decolonisation is not completed until and unless a people has freely chosen between all the options that should be made available, including independence. In any case, as already pointed out, a people is free to both enter and exit a FREE association agreement.

Already done?

It has been suggested that the non-sovereign status of Puerto Rico with the US amounts to free association, as indicated by official statements and repeated future status referenda. Likewise, it could be argued, with reference to article 21 of the 2009 self-governance legislation, that Greenland is already sort of freely associated with Denmark, albeit without using the label and with limited status and powers- maybe rebranding with improved status and/or increase in powers is all that is needed?

Indigenous Peoples

A sovereign Greenland with membership and voting rights in international organisations could be of major benefit to other Inuit and indigenous peoples worldwide, giving them a voice and a vote in fora otherwise off limits. As to access to whaling and other hunting, indigenous groups engaged in traditional practices within an independent or a freely associated Greenland could as before maintain or obtain aboriginal exceptions.

A North-Atlantic Example

The personal union between Iceland and Denmark concluded in 1918 resembles what today is called free association. A freely negotiated agreement, accepted in a referendum in Iceland and adopted as law by both Parliaments, led to the creation of a sovereign State, the Kingdom of Iceland, with the Danish monarch as head of State and with Denmark initially in charge of such issues as foreign affairs and the coast guard. The agreement could be terminated after 25 years. First to recognise the Republic of Iceland when independence was declared in 1944 was the US in statements made by the President and the Secretary of State.

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