



PHASE I

ANNOTATED OUTLINE

for

THE PIKIALASORSUAQ COMMISSION

December 31, 2016

CONTENTS

LIST OF ABBREVIATIONS

ANNOTATED OUTLINE

INTRODUCTION

I. ARCTIC INDIGENOUS KNOWLEDGE

- A. Arctic Indigenous peoples, specifically those of the coastal areas of Pikialasorsua
- B. Community based Indigenous authorities
 - 1. Local Indigenous Authorities in Canada
 - 2. Local Indigenous Authorities in Greenland

II. SUB-NATIONAL FRAMEWORK

- A. Nunavut Land Claims Agreement [May 25, 1993]
- B. Naalakkersuisut -- Act on Greenland Self-Government [June 12, 2009]

III. NATIONAL FRAMEWORK

- A. Canada
 - 1. Key policies
 - 2. Aboriginal Law
 - 3. Federal Legislation
 - 4. Institutions
 - 5. Services (e.g., NAVAREA, METAREA, SAR)
- B. Denmark
 - 1. Key policies
 - 2. Legislation
 - 3. Institutions
 - 4. Services
- C. Bilateral agreements
 - 1. Continental shelf boundary agreement
 - 2. Cooperation on Marine Environment

IV. REGIONAL FRAMEWORK

- A. Legal instruments
 - 1. Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic
 - 2. Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic Regional organizations
- B. Regional organizations
 - 1. Arctic Council
 - 2. Arctic Coast Guard Forum
- C. NAFO

V. GLOBAL FRAMEWORK

- A. Conventions and instruments
 1. United Nations Convention on the Law of the Sea
 2. ILO C169
 3. Convention on Biological Diversity
 4. United Nations Declaration on the Rights of Indigenous Peoples
 5. United Nations Education, Scientific and Cultural Organization
 6. Convention on the Rights of the Child
 7. Paris Agreement
 8. Inuit Circumpolar Council Declarations
- B. Intergovernmental organizations
 1. International Maritime Organization

VI. OTHER INTERNATIONAL ACTORS AND INITIATIVES

- A. Energy
- B. Mining
- C. Fisheries
- D. Shipping
- E. Tourism
- F. Environmental

VII. OTHER CONSTRUCTIVE ARRANGEMENTS

- A. Executive Order on Northern Bering Sea Climate Resilience
- B. Yukon River Inter-Tribal Watershed Council
- C. Inuit Polar Bear Agreement
- D. Laponian world Heritage Site
- E. North Atlantic marine Mammal Commission

VIII. CONCLUSION

BIOGRAPHIES

LIST OF ABBREVIATIONS

AC	Arctic Council
BWM Convention	International Convention for the Control and Management of Ships' Ballast Water and Sediments
CBD	Convention on Biological Diversity
CEPA	Canadian Environment Protection Act
CETA	Canada-European Union Comprehensive Economic and Trade Act
CLC	International Convention on Civil Liability for Oil Pollution Damage
CLO	Community Liaison Officer
COP	Conference of Contracting Parties (to a treaty)
CRC	Convention on the Rights of the Child
CSA 2001	Canada Shipping Act, 2001
EDT	Economic Development and Transportation (Government of Nunavut)
EEZ	Exclusive economic zone (under UNCLOS)
EU	European Union
GN	Government of Nunavut
GOC	Government of Canada
HTA	Hunters and Trappers Association
IEA	International Energy Agency
IFD	International Fisheries Division
ILO C169	International Labour Organization Convention on Indigenous and Tribal Peoples No. 69
IMO	International Maritime Organization
INAC	Indigenous and Northern Affairs Canada
IOPCF	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
ITOPF	Association of Independent Tanker Owners, and International Tanker Owners Pollution Federation
KNAPK	Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat
Kiruna Agreement	Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, 2013
MARPOL	International Convention for the Prevention of Pollution from Ships

MBCA	Migratory Birds Convention Act
MPA	Marine protected area
METAREAS	Meteorological reporting areas
NAMMCO	North Atlantic Marine Mammal Commission
NLCA	Nunavut Land Claim Agreement
NOAA	National Oceanic and Atmospheric Administration
NORDREG	Northern Canada Vessel Traffic Services Zone Regulations
NTI	Nunavut Tunngavik Inc.
Nuuk Agreement	Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic
Polar Code	International Code for Ships Operating in Polar Waters
Paris MOU	Memorandum of Understanding on Port State Control in Implementing Agreements on Maritime Safety and Protection of the Marine Environment
QIA	Qikiqtani Inuit Association
SAR	Search and rescue
SOLAS	International Convention for Safety of Life at Sea
TRC	Truth and Reconciliation Commission of Canada
UNCLOS	United Nations Convention on the Law of the Sea
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
YRITWC	Yukon River Inter-Tribal Watershed Council

ANNOTATED OUTLINE

INTRODUCTION

Consistent with the proposal transmitted to the Pikialasorsuaq Commission on 24 June 2016, the objective of this Annotated Outline is to identify, in a preliminary fashion, the current local, regional, sub-national, national and international legal, policy and institutional context applicable to the Pikialasorsuaq region to assist in the development of possible options for the advancement of Inuit rights, interests and shared aspirations for this region. This initial Annotated Outline and the full study projected for Phase II will be undertaken from Indigenous perspectives and with Indigenous rights and interests in mind. The ultimate purpose is to provide a knowledge base to assist with the identification of options for strategies, structures and policies responsive to safeguarding Pikialasorsuaq and its rich diversity as well as the harvesting rights and interests of present and future generations of Inuit.

I. ARCTIC INDIGENOUS KNOWLEDGE

A. Arctic Indigenous peoples, specifically those of the coastal areas of Pikialasorsuaq¹

The Inuit are the Indigenous peoples of the Arctic, whose territory transcends the boundaries of the Russia Federation, Alaska, Canada and Greenland. They survived and continue to thrive throughout their Arctic homelands and waters for generations. This document focuses upon the Inuit living in the vicinity of Pikialasorsuaq (North Water polynya), which is located in the northern Baffin Bay between Kalaallit Nunaat (Greenland) and Ellesmere Island near Smith Sound and Nares Strait.² Specifically, Ikpiarjuk (Arctic Bay)³, Kangiqtugaapik (Clyde River), Ausuituq (Grise Fiord), Mittimatalik (Pond Inlet), Qikiqtarjuaq and Qaujsuittuq (Resolute) in Canada and the four communities of Moriusaq, Qaanaaq⁴, Savissivik, Siorapaluk in Greenland are all linked by Pikialasorsuaq.⁵

Pikialasorsuaq is an area of open water surrounded by sea ice. It is the largest polynya in the Northern Hemisphere and the most biologically productive ecosystem north of the Arctic Circle. [...]. The polynya is situated approximately between “76°N and 79°N, and between 70°W and 80°W.”⁶ The North Water is an area vulnerable to climate change. Inuit in the region have expressed a desire to explore locally-driven management options in advance of increased shipping, tourism, fishing, and non-renewable resource exploration and development.⁷

¹ The Pikialasorsuaq Commission Work Plan 2016, The Pikialasorsuaq Commission Mandate; and the Pikialasorsuaq Commission Terms of Reference, 19 January 2016 <<http://inuit.org/our-work/projects/2016-the-pikialasorsuaq-commission/>> accessed on 31 December 2016.

² Inuit Circumpolar Council “Inuit led Pikialasorsuaq Commission to Study the Important North Water Polynya” Press Release January 19, 2016

³ Arctic Bay, Clyde River and Resolute community members invited to a consultation session held in Grise Fiord. <<http://www.cbc.ca/news>>

⁴ Savissivik, Qaanaaq and Siorapaluk indicated as communities visited by the Commission <<http://arcticjournal.ca>>

⁵ Inuit Heritage Trust, Place Names Program <<http://iht.ca/eng/place-names/pn-seri.html> accessed on December 31>, 2016.

⁶ Convention on Biological Diversity, ‘Report of the Arctic Regional Workshop to Facilitate the Description of Ecologically or Biologically Significant Marine Areas,’ 20 May 2014 UNEP/CBD/EBSA/WS/2014/1/5 <<https://www.cbd.int/doc/meetings/mar/ebsaws-2014-01/official/ebsaws-2014-01-05-en.pdf>> accessed on December 31, 2016, p 37 (CBD Report)

⁷ Ibid, specifically *Appendix to annex VI* Pikialasorsuaq; The North Water Polynya; and News Release January 19, 2016 Inuit Led Pikialasorsuaq Commission to Study the Important North Water Polynya.

The Inuit of the coastal areas of Pikialasorsuaq have distinct knowledge as local users of this region – a “sophisticated knowledge of the natural world”⁸ crucial to its balance and sustainability. Indeed, international environmental law is the first source of recognition of the rights and interests of Indigenous peoples and in particular, Arctic Indigenous peoples.⁹ On the basis of being first inhabitants, stewards, and traditional users intimately tied to the environment, the distinct status, rights and interests of Arctic Indigenous peoples, including Inuit, have been affirmed in a number of international, legally binding treaties as well as other international human rights instruments and domestic law.

In this context, the Inuit authorities, organizations, communities, elders and youth are central to considerations for, establishment of and sustained management of a mechanism to safeguard Pikialasorsuaq. The core of the Pikialasorsuaq project must be grounded in: Indigenous knowledge; Indigenous human rights; Aboriginal right and title to lands, territories and resources; customary and traditional use; interrelated, collective human rights to “subsistence”, food security, and overall cultural integrity. Precedent and mechanisms for such management and co-management¹⁰ have been operationalized in the North Atlantic Marine Mammal Commission, the Alaska Eskimo Whaling Commission,¹¹ the Eskimo Walrus Commission, the Alaska Nanuq Commission,¹² and other regimes.

B. Community based Indigenous authorities

1. Local Indigenous Authorities in Canada

The communities in Nunavut,¹³ Canada have several institutions or associations that exercise local authority over interests in the people, lands and waters. Each community has a municipality and a Hunters and Trappers Association (HTA). In addition, each settlement has a Community Liaison Officer (CLO) that serves as an employee of the Qikiqtani Inuit Association (QIA).¹⁴ QIA is an Inuit

⁸ D. Nakashima, L Prott, and P. Bridgewater, (2000) [Tapping into the world's wisdom](#), *UNESCO Sources*, 125, July-August, p. 12; UNESCO's 2003 Convention for the Safeguarding of the Intangible Cultural Heritage includes expressions, knowledge and cultural spaces and in the context of “cultural expressions” and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, the preamble makes explicit reference to “the importance of traditional knowledge, particularly *indigenous knowledge*”. Such knowledge and intellectual property is recognized as inter-generationally transmitted, a key cultural characteristic of collective Inuit rights.

⁹ Convention Between the United States, Great Britain, Russia and Japan for the Preservation and Protection of Fur Seals, 7 July 1911 (entered into force 14 December 1911) Article 4. See also International Convention for the Regulation of Whaling, 2 December 1946 (entered into force 10 November 1948, 161 UNTS 72); Convention on the Conservation of North Pacific Fur Seals, Art VII, 7 May 1976 (entered into force 12 October 1976, 314 UNTS 105); International Agreement for the Conservation of Polar Bears, Art 3(d), 15 November 1973 (entered into force 26 May 1976).

¹⁰ D. S. Case, *Subsistence and Self-Determination: Can Alaska Natives Have a More “Effective Voice”?* 60 U. COLO.L. REV. 1009, 1010 (1989).

¹¹ Cooperative Agreement Between the National Oceanic and Atmospheric Administration and the Alaska Eskimo Whaling Commission as amended 2008 (in management of the bowhead whale hunt) at < http://www.fisheries.noaa.gov/pr/pdfs/agreement_aewc.pdf > and the 2015 amendment at < http://www.nmfs.noaa.gov/ia/species/marine_mammals/inter_whaling/2015_aewc-noaa_coop_agreement_amendment.pdf >

¹² Inuvialuit - Inupiat Polar Bear Management Agreement in the Southern Beaufort Sea (2000) at < <https://www.fws.gov/alaska/fisheries/mmm/polarbear/pdf/I-I%20Agreement%20signed%20March%202000.pdf> >; and D. C. Baur, Reconciling Polar Bear Protection Under United States Laws and the International agreement for the Conservation of Polar Bears, 2 *Animal Law* 9, 43 (1996).

¹³ Nunavut Land Claims Agreement Act, SC 1993, c. 29, assented to 10 June 1993, Art 4.1.2 Nunavut Political Development (Nunavut Act).

¹⁴ Ibid art 39 recognition as a Designated Inuit Organization.

organization that protects and promotes Inuit rights and values in the region. The CLO also serves as a liaison between the Nunavut Tunngavik Inc. (NTI),¹⁵ which has overall authority for protecting the rights of Inuit throughout Nunavut. In this way, the role of QTI (within Nunavut) is to represent the rights and interests of the Inuit of the Qikiqtani region specifically.

Nunavut Territory

As a fundamental element of the Nunavut Land Claims Agreement¹⁶ (to be discussed below), Nunavut became a territory on 1 April 1999 and as such, is the largest territory in Canada, encompassing “2,093,190 sq. km,¹⁷ which is approximately 20% of Canada's land mass and 67% of its coastline. Major geographical features include the islands in Hudson Bay, James Bay and Ungava Bay, which do not belong to Manitoba, Ontario or Quebec.”¹⁸ The Government of Nunavut (GN)¹⁹ is responsible for the Territory through 10 departments: Community and Government Services; Culture and Heritage; Economic Development and Transportation (EDT); Environment; Education; Executive and Intergovernmental Affairs; Family Services; Finance; Health and Justice.

Nunavut Tunngavik Inc. (NTI)

NTI ensures that promises made under the NLCA are carried out. Inuit exchanged Aboriginal title to all their traditional land in the Nunavut Settlement Area for the rights and benefits set out in the NLCA.

Article 3.1.1: The Nunavut Settlement Area shall be composed of "Area A", being that portion of the Arctic Islands and mainland of the Eastern Arctic and adjacent marine areas as described in Part 2, and "Area B", being the Belcher Islands, associated islands and adjacent marine areas in Hudson Bay, described in Part 3.

Article 3.1.2: The parallels of latitude and meridians of longitude referred to in this description are derived from the 1:500,000 scale National Topographic Series maps, being North American Datum 1927²⁰.

The management of land, water and wildlife is very important to Inuit, including “marine areas.”²¹ NTI coordinates and manages Inuit responsibilities set out in the NLCA and ensures that the federal and territorial governments fulfill their obligations. NTI oversees several Institutes of Public Governance (IPGs).

¹⁵ Ibid. Established under NLCA and according to NTI web site: Nunavut Tunngavik Incorporated (NTI) ensures that promises made under the Nunavut Land Claims Agreement (NLCA) are carried out. Inuit exchanged Aboriginal title to all their traditional land in the Nunavut Settlement Area for the rights and benefits set out in the NLCA. The management of land, water and wildlife is very important to Inuit. NTI coordinates and manages Inuit responsibilities set out in the NLCA and ensures that the federal and territorial governments fulfill their obligations.

¹⁶ Ibid.

¹⁷ Ibid art 3 details the geographic coordinates of the Nunavut Settlement Area; and “equivalent to 808,185 sq. miles,” Natural Resources Canada, 2001.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Online: < http://www.tunngavik.com/documents/publications/LAND_CLAIMS_AGREEMENT_NUNAVUT.pdf >

²¹ NLCA, *supra* note 13, art 15 Marine Areas.

2. Local Indigenous Authorities in Greenland

At the community level, where the Inuit are a majority, the principal authorities relevant to Pikialasorsuaq consist of local municipal government, specific Greenland Government (to be discussed below) Committee representatives, and members of the Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK). As a holdover of Greenland Home Rule, Greenland assumed a range of legislative and executive powers from Denmark, committees to locally control various elements of self-government were established, including harvesting activities. These committees have members that include elected officials. The principle task of the committees is to review and make recommendations regarding the drafting of bills. Of interest for this project are the committees of:

- Fisheries, hunting and agriculture;
- Conservation and environment;
- Culture, Education, Research and the Church²²
- Sole jurisdiction along East Greenlandic by Greenland Government. For Kane Basin and Baffin Bay jurisdiction for subpopulations are shared under NLCA.
- Hunting and Game legislation provides the legal framework for wildlife management and sets out legal boundaries for the protection of wildlife.
- Executive Order on the Protection and Hunting of Polar Bear (2006) regulates the harvest of polar bears, limiting the harvest to single adult polar bears and sets boundaries of polar bear research.
- Management system – Division of Hunting Game within the Ministry of Fisheries, Hunting and Agriculture. Manages both marine and terrestrial species hunted in Greenlandic territory. Licenses to harvest polar bears are issued by the municipalities, within annual quotas. The Ministry sets an annual quota, initial draft based on scientific advice and harvest results to the Hunter’s National Association, the municipalities and based on resulting consultation prepares final proposal and presentation to Minister.
- National Action Plan – drafted at the time of publication.²³

(LOCAL NON-INDIGENOUS AUTHORITIE DISCUSSION TO BE INSERTED HERE)

II. SUB-NATIONAL FRAMEWORK

Existing sub-national frameworks are based on recognition of collective rights to lands, territories and resources as well as traditional and current users of wildlife and corresponding inter-generational rights and responsibilities, the sound management of lands, territories and resources by Inuit. As affirmed in the Nunavut Land Claims Agreement Act²⁴ and the Greenland Government Act²⁵, Indigenous political institutions constituted as the Nunavut Government and Greenland Government and significantly, the local governments (through their regional committee representatives) must have a direct, primary role in the Pikialasorsuaq project and resulting mechanism or structural regime. Their respective status, authority, collective rights, and responsibilities accord them legal and political capacity to cooperatively manage the area. Law in general, and indigenous law in particular, has an important role to play in the Pikialasorsuaq project.²⁶

²² Lori Idlout “An Assessment of Inuit Harvesting Rights in the Arctic: Discussion Document/Options Paper Prepared for the Inuit Circumpolar Council” May 2016 at para 35 (on file with author)

²³ Ibid at 7.

²⁴ NLCA, *supra* note 13.

²⁵ An Act on Greenland Self-Government Act no. 473 of 12 June 2009 (Greenland Self-Government Act)

²⁶ Natalia Loukacheva, Indigenous Inuit Law, “Western” Law and Northern Issues (2012) 2 *Arctic Review on Law and Politics* 3 at 200. “Responsibilities” are inclusive of not only authority and capacity to safeguard sustainability of the area, but also of the inter-generational dimension of Inuit human rights.

A. *Nunavut Land Claims Agreement (May 25, 1993)*²⁷

The Nunavut Land Claims Agreement (NLCA) was signed in 1993 and among a wide range of other matters, the Agreement affirms the right to harvest wildlife on lands and waters throughout the settlement area. The Agreement also enjoys constitutional protection under s. 35 of the Canadian Constitution.²⁸ Inuit and the Government are represented equally in matters concerning wildlife management, resource management and environmental boards. Inuit rights to harvest wildlife on lands and waters throughout the Nunavut settlement area were affirmed and secured. The various responsible institutions include: Nunavut Wildlife Management Board; Hunters and Trappers Organizations; Nunavut Water Board; Nunavut Impact Review Board; National Inuit Wildlife Secretariat. The Land and Resources regime includes: Water Use Licensing, Land Use Planning, Wildlife Management, Impact Assessments; Establishment of the Nunavut Impact Review Board to ensure the wellbeing of the environment and its residents through the impact assessment process and a Dispute Resolution process. In addition to entrenching Inuit harvesting rights into the NLCA, directly relevant to Pikialasorsuaq, Article 15 Marine Areas, Part 1 Principles of the NLCA states:

This Article recognizes and reflects the following principles:

- (a) *Inuit are traditional and current users of certain marine areas*, especially the land-fast ice zones;
- (b) the *legal rights of Inuit in marine areas* flowing from the Agreement are based on traditional and current use;
- (c) Canada's sovereignty over the waters of the Arctic Archipelago is supported by Inuit use and occupancy;
- (d) *Inuit harvest wildlife that might migrate beyond the marine areas*;
- (e) an Inuit economy based in part on marine resources is both viable and desirable;
- (f) there is a need to *develop and co-ordinate policies regarding the marine areas*; and
- (g) there is a *need for Inuit involvement in aspects of Arctic marine management*, including research. (emphasis added)

Canada has a patchwork of provincial and territorial legislation as it has no national framework or legislation. The Management System – a collaborative regime between federal and provincial/territorial and Wildlife Management Boards (established under various land claims agreements) address:

- Harvest and Trade – about 2% of Canada’s population is traded annually, providing a culturally significant way in which northern communities can sustain themselves. Harvest quotas by sub-population
- National Action Plan – established by National Polar Bear Conservation Strategy in 2011.

²⁷ NLCA, *supra* note 13.

²⁸ 9 Constitution Act 1982, section 35: (1). The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed; (2) in this Act, “Aboriginal Peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada; (3) for greater certainty, in subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired; and (4) notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Canada deals with 4 Inuit regions (Nunatsiavut, Nunavik, Nunavut and Inuvialuit), each with their own land claims agreements, and each with management or co-management arrangements. The following legislation that exists federally and territorially, that may be relevant to the Pikiyasorsuaq region:

- Canada National Parks Act, SC 2000
- Wildlife Act, RSY 2002, c229 includes Inuit or Eskimo beneficiaries
- Legislation in Nunavut including, Nunavut Wildlife Act, Nunavut Waters and Nunavut Surface Rights Tribunal Act, Nunavut Planning and Project Assessment Act
- Northern Jobs and Growth Act – An act to initiate the Nunavut Planning and Project Assessment Act and the Northwest Territories Surface Rights Board Act and to make related and consequential amendments to other Acts.²⁹

B. Naalakkersuisut -- Act on Greenland Self-Government (June 12, 2009)³⁰

The 1979 establishment of the Home Rule Government in Greenland was the first step towards local, Greenlandic administration of domestic affairs. The Act establishing home rule recognized rights to natural resources and incorporated the element of consent by both parties in the event of exploitation.³¹ Although foreign relations and national security were originally left to Denmark,³² consistent with the agreement, consultation with the Home Rule Government was required on matters of direct or indirect impact upon Greenland's interests, legislation of the Council of European Communities and ways for the Home Rule Government to advance its own interests within the European Community.³³ As noted above, the Schedule³⁴ included fishing and hunting "in the territory"; conservation; cultural affairs; and protection of the environment.

More recently, in 2009, by recognition of the Greenlandic people and their right to self-determination, the Greenland Government has incrementally assumed authority and responsibility for an even wider range of affairs. Though Greenland remains a part of the Danish realm, it is significant that the Act makes explicit reference to Greenlanders as a "people" as understood in international law.³⁵ The Act on Greenland Self-Government dramatically advanced the status of the public government of Greenland and makes specific

²⁹ Idlout, *supra* note 22

³⁰ Act no. 473 of 12 June 2009 Act on Greenland Self-Government at <http://naalakkersuisut.gl/~media/Nanoq/Files/Attached%20Files/Engelske-tekster/Act%20on%20Greenland.pdf>

³¹ Home Rule act of 1979 (Act. No. 577 of 29 November 1978) s. 8

³² *Ibid* Chapter 3 s. 11.

³³ *Ibid* Chapter 3 s. 15.

³⁴ *Ibid* Schedule.

³⁵ Act on Greenland Self-government, *supra* note 25, Preamble states "Recognising that the people of Greenland is a people pursuant to international law with the right of self-determination, the Act is based on a wish to foster equality and mutual respect in the partnership between Denmark and Greenland. Accordingly, the Act is based on an agreement between Naalakkersuisut (Greenland Government) and the Danish Government as equal partners." See also International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976, 999 UNTS 171); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976, 993 UNTS 3); UN General Assembly Resolution 61/295 'Declaration on the Rights of Indigenous Peoples' (13 September 2007, 144 states in favor; 4 against [United States, Canada, Australia and New Zealand], 11 abstaining) hereinafter UN Declaration; International Law Association, Report of Committee on Rights of Indigenous Peoples; James Anaya, *Indigenous Peoples in International Law* (Oxford: Oxford University Press, 2004); Mattias Ahrén, *Indigenous Peoples' Status in the International Legal System* (Oxford: Oxford University Press, 2016); and Natalia Loukacheva, *The Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut* (Toronto: University of Toronto Press, 2007).

reference to subsurface and offshore oil, gas and mineral rights as well as wide range of other key rights and responsibilities,³⁶ including some matters of an international nature.³⁷ Though there is an interrelated nature between its provisions, the schedule provided for in the 1979 Greenland Home Rule Act, the following items on the 2005 Act Schedule³⁸ are also of direct relevance to the Pikialasorsuaq project:

- Shipwreck, wreckage and degradation of depth;
- Security at sea;
- Ship registration and maritime matters;
- Charting;
- Buoyage, lighthouse and pilotage area; and
- Marine environment

III. NATIONAL FRAMEWORK

A. Canada

The governance framework for Pikialasorsuaq in Canada potentially consists of several complex interrelated layers of policies, federal legislation and public authorities. With the election of the Trudeau government, several policies and governance frameworks of relevance to Pikialasorsuaq are under review. The Phase II report will undertake in-depth analysis of the new directions in relevant policies, and identify the pertinent laws and institutions, including changing mandates, as described below.

1. Key policies

- On 20 December 2016, Canada and the United States issued a Joint Arctic Leaders' Statement³⁹ and in which Prime Minister Trudeau stated new Arctic policy initiatives and select actions, some of which appear potentially important for Pikialasorsuaq, including:
 - "A new process to build an Arctic Policy Framework co-developed with Indigenous, territorial and provincial partners, that will replace Canada's Northern Strategy⁴⁰ and Arctic Foreign Policy⁴¹";
 - "A 1-year project working with Northerners to build a vision and a plan to ensure abundant Arctic fisheries and jobs for Northerners;"

³⁶ Greenland Self-Government Act, *supra* note 25, Chapter 2 (3) (2) "Fields of responsibility that appear from List II of the Schedule shall be transferred to the Greenland Self-Government authorities at points of time fixed by the Self-Government authorities after negotiation with the central authorities of the Realm"; and 4. Naalakkersuisut and the Government may agree that fields of responsibility which exclusively concern Greenland affairs, and which are not referred to in the Schedule, may be assumed by the Greenland Self-Government authorities.

³⁷ Act no. 577 of June 24, 2005 "Concerning the conclusion of agreements under international law by the Government of Greenland." Some of Greenland's international engagement include the EU, the ICC, the WTO, Arctic cooperation within the Arctic Council and others. They currently have an office that undertakes diplomatic representation in Washington, DC.

³⁸ Greenland Self-Government Act, *supra* note 25, Schedule, List II, Items 19-24 respectively.

³⁹ Prime Minister of Canada, 20 December 2016 <<http://pm.gc.ca/eng/news/2016/12/20/united-states-canada-joint-arctic-leaders-statement>> accessed 28 December 2016.

⁴⁰ Canada's Northern Strategy: Our North, Our Heritage, Our Future: Canada's Northern Strategy <<http://www.northernstrategy.gc.ca/index-eng.asp>> accessed 28 December 2016.

⁴¹ Statement on Canada's Arctic Foreign Policy (Global Affairs Canada, 2013), 2 <http://www.international.gc.ca/arctic-arctique/assets/pdfs/canada_arctic_foreign_policy-eng.pdf> accessed 28 December 2016. Canada's current Arctic foreign policy is based on a "vision for the Arctic is a stable, rules-based region with clearly defined boundaries, dynamic economic growth and trade, vibrant Northern communities, and healthy and productive ecosystems."

- “The Government will engage Indigenous and Northern communities in developing a governance model for the Northern Marine Transportation Corridors and Arctic marine shipping, in a way that is environmentally and socially responsible, including respecting modern northern treaties;”
- “Improved coverage of modern hydrography, charting and navigational information in the Arctic;”
- “Launching a new process with Northern and Indigenous partners to explore options to protect the ‘last ice area’ within Canadian waters, in a way that benefits communities and ecosystems;”
- “Announcing all of the Canadian Arctic waters as indefinitely off limits to new offshore oil and gas licenses, to be tested every 5 years by a science-based review taking into account marine and climate change science.”
- Arctic policy: On 10 March 2016, Canada and the United States issued a Joint Statement on Climate, Energy and Arctic Leadership,⁴² which emphasized leadership in the implementation of the Paris Agreement, collaboration on energy development, and of significance for Pikialasorsuaq, the statement makes distinct references to the rights and interests of Arctic Indigenous peoples, including:
 - Identification of new approaches to strengthen the resilience of Arctic communities;
 - Respecting the rights and territory of Indigenous peoples;
 - Recognizing that Arctic Indigenous Peoples “are vital to strengthening and supporting U.S. and Canadian sovereignty claims”;
 - Working in partnership to “implement land claims agreements to realize the social, cultural and economic potential of all Indigenous and Northern communities”;
 - Work in partnership to identify alternative energy sources and “innovative options for housing”; and
 - “to address the serious challenges of mental wellness, education, Indigenous language, and skill development, particularly among Indigenous youth”.
- On 5 August 2016, Indigenous and Northern Affairs Canada (INAC) Minister Carolyn Bennett appointed Inuk, Mary Simon, as a Minister’s Special Representative (MSR) to implement the governments’ Shared Arctic Leadership Model as a proactive measure of the Joint Statement address immediately above.⁴³ According to the government announcement, the MSR will be responsible for engaging with all Indigenous governments, Inuit, First Nations and Métis representative organizations, territorial governments, and other key stakeholders in order to address:
 - a vision for a sustainable Arctic;
 - goals for Arctic conservation;
 - sustainable development;
 - implementation strategies;
 - northern benefits and jobs; and
 - implementation of terrestrial and marine conservation goals in a manner consistent with land claim agreements.

⁴² Leaders’ Statement on a North American Climate, Clean Energy, and Environment Partnership <http://pm.gc.ca/eng/news/2016/06/29/leaders-statement-north-american-climate-clean-energy-and-environment-partnership> and U.S.-Canada Joint Statement on Climate, Energy, and Arctic Leadership <https://www.whitehouse.gov/the-press-office/2016/03/10/us-canada-joint-statement-climate-energy-and-arctic-leadership> accessed 15 December 2016.

⁴³ Mary Simon to Lead Engagement on a New Shared Arctic Leadership Model as the Minister's Special Representative, News Release 5 August 2016 <http://news.gc.ca/web/article-en.do?nid=1107889> accessed on 28 December 2016.

- Policy for engagement with Indigenous Peoples: The policy of the Trudeau Government with regard to its relationship with Indigenous peoples is based on recognition of rights, respect, co-operation and partnership, and the mobilization of a “whole-of-government approach to Nation-to-Nation and Inuit-to-Crown relationships.”⁴⁴ Following the release of the Truth and Reconciliation Commission’s Final Report, Prime Minister Trudeau pronounced his government’s acceptance of the Report and all its recommendations.⁴⁵
- Prime Minister Trudeau also publicly pronounced full support for and made substantial commitments to implement the UN Declaration on the Rights of Indigenous Peoples (to be discussed below).⁴⁶ Prime Minister Trudeau’s mandate letter to Carolyn Bennett, Minister of INAC states his expectation that she prioritize implementing the 94 Calls to Action of the Truth and Reconciliation Commission of Canada (TRC),⁴⁷ starting with the implementation of the UN Declaration through established legislative, regulatory, and Cabinet processes. The TRC Calls to Action invoke the UN Declaration in no less than 16 of its 94 Calls. The most significant are reflected in Calls 43 and 44 under the heading of reconciliation.⁴⁸ In May 2016, Minister Bennett announced in a speech to the UN Permanent Forum on Indigenous Issues that Canada is “now a full supporter of the Declaration without qualification” that intends “nothing less than to adopt and implement the Declaration.”⁴⁹
- Climate change and environmental policy: With the advent of the Trudeau government, Canada has recently revamped its policy on climate change and in the direction of strong support for COP 21, the resulting Paris Agreement⁵⁰ and more recently COP 22. Canada and the United States issued an important joint statement in this regard.⁵¹ Canada has taken difficult steps to implement the Paris Agreement and has consulted provinces. Its actions include commitment to support adaptation to climate change.⁵² Canada and United States issued a further joint declaration

⁴⁴ Minister of Indigenous and Northern Affairs Mandate Letter from the Prime Minister of Canada < <http://pm.gc.ca/eng/minister-indigenous-and-northern-affairs-mandate-letter>> accessed 28 December 2016.

⁴⁵ Statement by Prime Minister on release of the Final Report of the Truth and Reconciliation Commission, 15 December 2015 < <http://www.pm.gc.ca/eng/news/2015/12/15/statement-prime-minister-release-final-report-truth-and-reconciliation-commission> > accessed 28 December 2016.

⁴⁶ Prime Minister of Canada Justin Trudeau Minister of Indigenous and Northern Affairs Canada Mandate Letter, November 2015: “No relationship is more important to me and to Canada than the one with Indigenous Peoples. It is time for a renewed, nation-to-nation relationship with Indigenous Peoples, based on recognition of rights, respect, co-operation, and partnership... Undertake, with advice from the Minister of Justice, in full partnership and consultation with First Nations, Inuit, and the Métis Nation, a review of laws, policies, and operational practices to ensure that the Crown is fully executing its consultation and accommodation obligations, in accordance with its constitutional and international human rights obligations, including Aboriginal and Treaty rights.”

⁴⁷ Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Commission of Canada: Calls to Action* (Winnipeg, MN: 2015), 4, accessed October 13, 2016, < http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf. >

⁴⁸ Ibid, art 43. We call upon federal, provincial, territorial, and municipal governments to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* as the framework for reconciliation; and art 44. We call upon the Government of Canada to develop a national action plan, strategies, and other concrete measures to achieve the goals of the *United Nations Declaration on the Rights of Indigenous Peoples*

⁴⁹ Carolyn Bennett (Minister of Indigenous and Northern Affairs), “Speech delivered at the United Nations Permanent Forum on Indigenous Issues,” May 10, 2016, New York, NY, accessed October 5, 2016, < <http://news.gc.ca/web/article-en.do?nid=1064009> >.

⁵⁰ Paris Agreement to the United Nations Framework Convention on Climate Change, adopted 12 December 2015, UN Doc FCCC/CP/2015/L.9/Rev.1, 12 December 2015 (in force 4 November 2016).

⁵¹ US-Canada Joint Statement on Climate, Energy, and Arctic Leadership, 10 March 2016 <<https://www.whitehouse.gov/the-press-office/2016/03/10/us-canada-joint-statement-climate-energy-and-arctic-leadership> > accessed 28 December 2016.

⁵² Canada's Priorities for COP 22 < <http://www.climatechange.gc.ca/default.asp?lang=En&n=EF6CE373-1> > accessed 28 December 2016.

establishing a moratorium (permanently in the US; reviewable every five years in Canada) on offshore oil and gas in most Arctic waters.⁵³ The Canadian-United States Arctic Leadership initiatives also include reaffirmation of national goals to protect at least 17% of land areas and 10% of marine areas in the Arctic by 2020, and possibly to exceed these targets.⁵⁴ The significance of these commitments for the Canadian Arctic, and Pikiyasorsuaq in particular, need to be ascertained.

- Ocean policy: Canada's policy for its three oceans is formulated at a high level of generality in the Canada Oceans Strategy⁵⁵ formulated under the authority of the Oceans Act. The Strategy sets out the vision, principles and policy objectives for the management of estuarine, coastal and marine ecosystems and provides a framework for actions to promoting understanding and protection of the marine environment, development of sustainable economic opportunities and international leadership. The policy serves as general context for Pikiyasorsuaq. Over the last years, much of the emphasis has focused on surveying the continental shelf in the Arctic for the purposes of a submission to the Commission on the Limits of the Continental Shelf in accordance with UNCLOS.
- Marine transportation policy: Marine transportation policy in Canada is in transition.
 - Recently, the Department of Transport reviewed the Canada Transportation Act, which is the framework for transport policy in the country.⁵⁶ The review produced recommendations for future transportation policy directions and included recommendations for “a new federal policy vision and regulatory regime to strengthen the safety and reliability of marine transport in the Arctic.”⁵⁷
 - The Department also undertook⁵⁸ an independent Tanker Safety Expert Panel to review the safety tanker shipping and Canada capacity to respond to incidents and produced two important reports,⁵⁹ the second of which underscored the lack of preparedness and response capacity to respond to spills in Arctic waters. In concluding on the need to enhance capacity, the report observed that “Ship-source spill preparedness and response in the Arctic should involve northern communities, for example, through sharing of traditional knowledge, building of awareness and other opportunities for partnership.”⁶⁰

⁵³ Prime Minister of Canada (December 2016), above.

⁵⁴ US-Canada Statement (March 2016), above.

⁵⁵ Canada's Oceans Strategy < <http://www.dfo-mpo.gc.ca/oceans/publications/cos-soc/index-eng.html> > accessed 28 December 2016.

⁵⁶ Canada Transportation Act Review – Report 2 vols (2016) < <http://www.tc.gc.ca/eng/ctareview2014/canada-transportation-act-review.html> > accessed 28 December 2016.

⁵⁷ This would include: “a. stricter regulations requiring vessel operators in the Canadian Arctic to have more experience than is currently required; b. consultations on whether and how a coastal pilot requirement should be established in the North; c. compulsory reporting to NORDREG for all vessels and small crafts, regardless of size or purpose; d. establishment of an Arctic-wide governance model for port development, including an appropriate timetable for a Port authority to be established, and in consideration of the Marine recommendation on port governance; e. support for the Canadian Hydrographic Service, in consultation with government and Indigenous partners, to develop a program to engage, educate, and enable Northerners to undertake hydrographic surveying work in northern waters.” Ibid vol 1, 266 at 267.

⁵⁸ In response to concerns expressed in the Auditor General of Canada's 2010 Fall Report of the Commissioner of the Environment and Sustainable Development, Chapter 1 < http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201012_01_e_34424.html > accessed 28 December 2016.

⁵⁹ Phase I: A Review of Canada's Ship-source Oil Spill Preparedness and Response Regime — Setting the Course for the Future (2013) < www.tc.gc.ca/eng/tankersafetyexpertpanel/menu.ht > accessed 28 December 2016; Phase II: A Review of Canada's Ship-source Spill Preparedness and Response: Setting the Course for the Future, Phase II - Requirements for the Arctic and for Hazardous and Noxious Substances Nationally (2014) (Tanker Panel Phase II Report) < www.tc.gc.ca/eng/tankersafetyexpertpanel/menu.html > accessed 28 December 2016.

⁶⁰ Tanker Panel Phase II Report, at 1.

- Also in the North, and led by the Canadian Coast Guard operating under the Department of Fisheries and Oceans and in collaboration with the Canadian Hydrographic Service and the Department of Transport, the Coast Guard is developing a strategy for the Northern Marine Transportation Corridors initiative to enhance services to shipping in Canadian Arctic waters (more below under services). It is in the process of consulting northern communities.
- As noted under Arctic policy, Canada and the United States have committed to cooperation in the development of infrastructure and services for safe Arctic shipping.
- As a result of the above and other developments, recently the Government Canada announced a \$1.5 billion Oceans Protection Plan that will include goals for the Arctic, such as investments to enhance resupply of remote communities, creation of a Canadian Coast Guard Auxiliary for the Arctic to respond to emergencies and pollution, creation of a seasonal inshore rescue boat station for search and rescue, extension of the Canadian Coast Guard's icebreaker presence in the Arctic and improvement of the National Aerial Surveillance Program in Arctic waters.⁶¹

These policy developments are potentially significant for Pikiyasorsuaq because increased international shipping in the Jones Sound and Lancaster Sound areas, as well as domestic shipping in support of northern communities on Ellesmere Island, Greenland and through the Nares Strait and the Lincoln Sea may potentially affect the polynya as a result of enhanced infrastructure and services for possible shipping growth.

- Fisheries policy: Canadian fisheries policy has a domestic and international dimension. At the domestic level it is guided by a Sustainable Fisheries Framework based on ecosystem-based management the precautionary approach.⁶² Among the elements of relevance to Pikiyasorsuaq, the Department is currently conducting consultations for the development of an Integrated Fisheries Management Plan for Atlantic Walrus in the Nunavut Settlement Area.⁶³ The external dimension relevant to the Arctic regional includes Canada's participation in the Northwest Atlantic Fisheries Organization and the Canada-United States proposal for the establishment of a regional fisheries management organization for the Central Arctic Ocean to address unregulated fishing.⁶⁴

2. *Aboriginal law*

Aboriginal law in Canada is a unique body of law that concerns the relationship between Aboriginal peoples, the federal government and Canadian society, and the inherent rights of Aboriginal peoples. The content speaks to, among other, right to self-determination and government, aboriginal justice, treaty negotiations and rights, natural resources (including fishing) rights, land use rights, cultural and language rights, and residential school abuses. The sources include statutes,⁶⁵ historic treaties negotiated by the Crown with Aboriginal peoples,⁶⁶ status of Inuit,⁶⁷ and common law. Several cases may provide context

⁶¹ Prime Minister of Canada, 7 November 2016 <<http://pm.gc.ca/eng/news/2016/11/07/canadas-oceans-protection-plan-what-it-means-canadas-regions>> accessed 2 January 2017.

⁶² Fisheries and Oceans Canada, Sustainable Fisheries Framework <<http://www.dfo-mpo.gc.ca/fm-gp/peches-fisheries/fish-ren-peche/sff-cpd/overview-cadre-eng.htm>> accessed 28 December 2016.

⁶³ Fisheries and Oceans Canada, Integrated Fishery Management Plan for Walrus in the Nunavut Settlement Area <<http://www.dfo-mpo.gc.ca/regions/CENTRAL/ifmp-gmp/consult-eng.htm>> accessed 28 December 2016.

⁶⁴ US-Canada Statement (March 2016), above.

⁶⁵ For example and chronologically: George R, Proclamation, 7 October 1763 (3 Geo III); Constitution Act, 1982 (UK), Part II, s 35; Indian Act, RSC 1985, c 15.

⁶⁶ *R v Badger* [1996] 1 SCR 771 clarified the principles that should guide the interpretation of treaties between the Crown and Aboriginal peoples of Canada.

⁶⁷ *Re Eskimos* [1939] SCR 104.

for this report, in particular with regards to the fiduciary duty of the Crown towards Aboriginal peoples,⁶⁸ the Crown's duty to consult,⁶⁹ Aboriginal title,⁷⁰ test for the protection of Aboriginal practices,⁷¹ and resource rights and their extent.⁷² It is likely that Aboriginal rights may also rights concerning marine and ice spaces. Phase II of the report will explore the significance of this growing body of Aboriginal law and implications for Pikialasorsuaq.

3. Federal legislation

The survey of potentially pertinent legislation, both primary (Acts) and secondary (regulations) will be undertaken thematically under the following headings:

General

- Constitution Act:⁷³ A brief description of the distribution of powers between Parliament and legislatures will be set out. Federal powers of focus will be external affairs, navigation and shipping and fisheries. The Territory concerned is Nunavut and this is addressed elsewhere in the report.
- Oceans Act:⁷⁴ This statute is one of the most important for Pikialasorsuaq because it sets out the various maritime zones of Canada,⁷⁵ permitting of foreign marine scientific research, establishment of ocean strategy, management plans and marine protected areas. The Minister of Fisheries and Oceans has a duty to consult aboriginal peoples in leading the development of the ocean strategy and integrated management plans, and is empowered to enter into cooperation agreements with aboriginal peoples.

Navigation and shipping safety

- Canada Shipping Act, 2001 (CSA 2001):⁷⁶ This statute is the backbone of the general regulation of shipping in Canada. The provisions on maritime safety and marine environment protection will be of importance for Pikialasorsuaq. Various regulations under the Act will also be studied, in particular, the Collision Regulations,⁷⁷ Northern Canada Vessel Traffic Services Zone Regulations (NORDREG),⁷⁸ Small Vessel Regulations,⁷⁹ and Vessel Operation Restriction Regulations.⁸⁰ NORDREG will be of importance because of the mandatory ship reporting requirements.

⁶⁸ *Guerin v The Queen* [1984] 2 SCR 335.

⁶⁹ *Haida Nation v British Columbia (Minister of Forests)*, 2004 3 SCR 511, 2004 SCC 73.

⁷⁰ *Delgamuukw v British Columbia* [1997] 3 SCR 1010; *Guerin v The Queen* [1984] 2 SCR 335.

⁷¹ *R v Marshall (No 1)* [1999] 3 SCR 456 and *R v Marshall (No 2)* [1999] 3 SCR 53; *R v Bernard* 2005 SCC 43.

⁷² *R v Sparrow*, [1990] 1 SCR 1075; *R v Van der Peet* [1996] 2 SCR. 507; *R v Gladstone* [1996] 2 SCR 723.

⁷³ 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5.

⁷⁴ SC 1996, c 31.

⁷⁵ Supported by ministerial regulation. Of particular relevance for the area between Nunavut and Greenland are the Territorial Sea Geographical Coordinates (Area 7) Order SOR/85-872 and Fishing Zones of Canada (Zone 6) Order CRC, c 1549. Fishing zone Areas 2 and 3 concern Baffin Bay, Nares Strait and Lincoln Sea.

⁷⁶ SC 2001, c 26.

⁷⁷ CRC, c 1416.

⁷⁸ SOR/2010-12.

⁷⁹ SOR/2010-91.

⁸⁰ SOR/2008-120. For example, local authorities can request restrictions on the operation of vessels in specified areas.

- Navigation Protection Act:⁸¹ This recently amended Act and its Navigation Safety Regulations⁸² (also under the Canada Shipping Act, 2001) regulate works in navigable waters and empower the Minister of Transport to remove obstacles to navigation in navigable waters.
- Pilotage Act:⁸³ The Act establishes rules and standards for pilotage and establishes pilotage authorities. Although there is no pilotage authority for Arctic waters at this time, the review of the Canadian Transportation Act considered pilotage in Arctic waters.⁸⁴

Environment protection and vessel-source pollution

- Canadian Environment Protection Act (CEPA):⁸⁵ This major statute provides the framework for environmental management in Canada. It is of potential relevance for Pikiyasorsuaq because of the regulation of pollution from land-based activities and disposal of wastes at sea. Land-based municipal, industrial and agricultural sources account for 80% of the source of pollution of the marine environment. Federal, provincial and territorial governments have developed a National Programme of Action for the Protection of the Marine Environment from Land-based Activities.⁸⁶ Regulations under the Act will be assessed with regard to their specific relevance for the governance of Pikiyasorsuaq.
- Arctic Waters Pollution Prevention Act:⁸⁷ This statute is the principal instrument for the dedicated regulation of shipping in polar waters and builds on the Canada Shipping Act, 2001. It applies to all Arctic waters defined as all waters of the Canadian archipelago, territorial sea and EEZ, located north of 60 degrees North up to the limits of maritime boundaries. It establishes construction and operational standards for shipping, regulates waste management, requirement of ice navigator and empowers pollution prevention officers with inspection and enforcement. At this time, it operates through two sets of regulations, namely the Arctic Waters Pollution Prevention Regulations⁸⁸ and Arctic Shipping Pollution Prevention Regulations.⁸⁹ The Department of Transport has developed draft Arctic Shipping Safety and Pollution Prevention Regulations to implement the Polar Code and will replace the shipping pollution regulations. Other relevant regulations include the Shipping Safety Control Zones Order⁹⁰ which establish a system of zones across Canadian Arctic waters with requirements for shipping per different classes.
- Canada Shipping Act, 2001:⁹¹ In addition to the maritime safety regulations identified earlier, the Act has important regulations and penalties for the prevention of pollution from ships. Among other, the Vessel Pollution and Dangerous Chemical Regulations⁹² implement the MARPOL Convention (IMO below). Similarly, the Ballast Water Control and Management Regulations⁹³ implement the BWM Convention (IMO below). The Act also establishes a system of certified response organizations tasked with responding to spills in their designated area. There is no

⁸¹ RSC 1985, c N-22.

⁸² SOR/2005-134.

⁸³ RSC 1985, c P-14.

⁸⁴ Pathways: Connecting Canada's Transportation System to the World vol 1 (Transport Canada, 2015), 60 <http://www.tc.gc.ca/eng/ctareview2014/CTAR_Vol1_EN.pdf> accessed 28 December 2016.

⁸⁵ SC 1999, c 33.

⁸⁶ Canada's National Programme of Action for the Protection of the Marine Environment from Land-based Activities, prepared by the Federal/Provincial/Territorial Advisory Committee, June 2000 <<http://publications.gc.ca/collections/Collection/En21-204-2000-1E.pdf>> accessed 28 December 2016.

⁸⁷ RSC 1985, c A-12.

⁸⁸ CRC, c 354.

⁸⁹ CRC, c 353.

⁹⁰ CRC, c 356.

⁹¹ CSA 2001, *supra*.

⁹² SOR/2012-69.

⁹³ SOR/2011-237.

response organization responsible for Arctic waters, leaving the task of responding to the Canadian Coast Guard.

- Fisheries Act: In addition to the functions described above, the Act establishes pollution offenses for the introduction of pollutants in areas inhabited by fish.
- Migratory Birds Convention Act (MBCA):⁹⁴ Among other, this Act establishes additional pollution offenses for ships for discharges where migratory birds are affected.
- Marine Liability Act:⁹⁵ This Act reproduces in one instrument the various civil liability regimes applicable to shipping in Canada. International conventions (see IMO below) on civil liability and compensation for oil pollution from cargo or bunkers carried on ships are implemented in this instrument. Of significance for the Canadian waters of Pikialasorsuaq is the Ship-source Oil Pollution Fund, a domestic compensation regimes that augments the international regime. Particular categories of claimants, e.g., individuals deriving income from fishing or who fish or hunt for food or animal skins for their own consumption or use may claim directly from this fund and be compensated on an administrative basis.

Fisheries management

- Fisheries Act:⁹⁶ This Act is the framework statute for the regulation, management, leasing and licensing of fishing activities. It also has provisions for the protection and pollution of fisheries habitats. Fishery officers and fishery guardian are provided with extensive enforcement powers, including inspection, search, arrest and seizure of vessel and catch. Several provisions expressly do not apply to aboriginal fisheries. Some of the regulations under the Act potentially apply to Pikialasorsuaq and need to be studied, including the Fishery (General) Regulations⁹⁷ and Marine Mammal Regulations⁹⁸ (which provide important rights and exemptions, e.g., for Inuk).
- Coastal Fisheries Protection Act:⁹⁹ This Act regulates foreign fishing in Canadian waters and implements the fishing zones of the Northwest Atlantic Fisheries Organization regulatory area, which extends to the waters of the Gulf of St. Lawrence, Davis Strait and Baffin Bay south of 78° 10' North. The focus is on straddling stocks (i.e., commercial species of fish that straddle national maritime zone boundaries and high seas areas). Zones 1A and 0A are of significance for Pikialasorsuaq because they respectively cover the polynya's waters on the Nunavut and Greenland sides respectively.

Protected areas and species

- Oceans Act:¹⁰⁰ Protected areas in the marine environment may be established under various legal instruments, including the Oceans Act. To date, two MPAs (Anguniaqvia Niqiqyuam and Tarium Niryutait) in Arctic waters have been established and regulated.¹⁰¹ These MPAs could provide useful lessons for Pikialasorsuaq.
- Canada National Marine Conservation Areas Act:¹⁰² Marine conservation areas and reserves are other forms of protected area. No such protected areas have yet been established in Arctic waters. The designation of such organizations anticipates the involvement of aboriginal governments and organizations.

⁹⁴ SC 1994, c 22 (MBCA).

⁹⁵ SC 2001, c 6.

⁹⁶ RSC 1985, c F-14.

⁹⁷ SOR/93-53.

⁹⁸ SOR/93-56.

⁹⁹ RSC 1985, c C-33.

¹⁰⁰ Oceans Act, *supra*.

¹⁰¹ Anguniaqvia Niqiqyuam Marine Protected Areas Regulations, SOR/2016-280; Tarium Niryutait Marine Protected Areas Regulations, SOR/2010-190

¹⁰² SC 2002, c 18.

- Canada Wildlife Act:¹⁰³ Marine wildlife areas, yet another form of protected area, may be established under this act and including for seabirds.
- Canada National Parks Act:¹⁰⁴ The Act provides for the establishment of national parks dedicated to “the people of Canada for their benefit, education and enjoyment, subject to this Act and the regulations, and the parks shall be maintained and made use of to leave them unimpaired for the enjoyment of future generations.” Parks have been established in Nunavut.¹⁰⁵
- Migratory Birds Convention Act:¹⁰⁶ This Act provides a framework for the conservation of migratory birds and has the Migratory Birds Regulations¹⁰⁷ for this purpose. Among other, and in addition to the pollution provisions mentioned above, this Act provides for the designation of migratory bird sanctuaries and their control and management through the Migratory Bird Sanctuary Regulations.¹⁰⁸
- Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act:¹⁰⁹ Although not concerned with protected areas, this statute provides protection of particular species under protection and implements the Convention on the International Trade in Endangered Species of Wild Fauna and Flora, 1973.¹¹⁰
- Species at Risk Act:¹¹¹ The purpose is “to prevent wildlife species from being extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to manage species of special concern to prevent them from becoming endangered or threatened.”¹¹² Aboriginal and Treaty rights are saved.¹¹³ The Act provides for the National Aboriginal Council on Species at Risk to advise the Minister on the administration of this Act and provide advice and recommendations to the Canadian Endangered Species Conservation Council.¹¹⁴ The Act also provides for a Public Registry of species.

Cultural heritage

- Historic Sites and Monuments Act:¹¹⁵ This statute has not yet concerned the conservation of marine areas, although coastal areas have. The coastal Arvia’juaq and Qikiqtaarjuk National

¹⁰³ RSC 1985, c W-9.

¹⁰⁴ SC 2000, c 32.

¹⁰⁵ The following parks in Nunavut are established under the Act, Schedule 1 and include coastal and marine areas: Quttinirpaaq National Park, which includes Ellesmere Island and areas of Arctic waters, bays, Discovery Harbour, and inlets, as well as rivers, lakes and islands; Ukkusiksalik National Park, which includes shoals, islands, sandbars and spits that may be periodically exposed at low tide; Qausuittuq National Park, which includes several islands at low tide.

¹⁰⁶ MBCA, above.

¹⁰⁷ CRC, c 1035.

¹⁰⁸ CRC, c 1036.

¹⁰⁹ SC 1992, c 52.

¹¹⁰ Adopted 3 March 1973, 993 UNTS 243 (in force 1 July 1975).

¹¹¹ SC 2002, c 29.

¹¹² *Ibid* s 6.

¹¹³ *Ibid* s 3.

¹¹⁴ *Ibid* s 8.

¹¹⁵ RSC 1985, c H-4. Recommendation 79 of the Truth and Reconciliation Commission called for amendment of this statute to include “First Nations, Inuit, and Métis representation” in the institutions established by the Act and revision of “policies, criteria, and practices of the National Program of Historical Commemoration to integrate Indigenous history, heritage values, and memory practices into Canada’s national heritage and history.” Truth and Reconciliation Commission of Canada: Calls to Action (Manitoba, 2015)

<http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf> accessed 28 December 2016.

Historic Site was designated as a heritage site because of its great cultural and educational significance for Inuit.¹¹⁶

Other

- Coasting Trade Act:¹¹⁷ Likely of marginal relevance, this statute concerns trade between Canadian ports (including to Northern destinations), which at this time is reserved for Canadian flagged ships. The Canada-European Union Comprehensive Economic and Trade Agreement (CETA), 2014, recently ratified by Canada, will open the coasting trade to vessels flagged in EU Member States.¹¹⁸

4. Institutions

There is a wide range of government departments, agencies and other institutions whose mandates, powers and relevance will be analysed with the governance of Pikiyasorsuaq in mind, including:

- Global Affairs Canada: The federal government is responsible for the external relations of Canada.¹¹⁹ Leadership on international Arctic issues is the responsibility of the Senior Arctic Official.¹²⁰ Given that Pikiyasorsuaq is transboundary and engages relations between Canada and Denmark, this department will play a role.
- Department of Indigenous and Northern Affairs:¹²¹ This department supports Indigenous peoples (First Nations, Inuit and Métis) and northern peoples based on several statutes, negotiated agreements (including land claims) and case law.¹²² The Department is responsible for overseeing implementation of land claims agreements. The powers of the Minister extend to Inuit affairs.¹²³
- Department of Fisheries, Oceans and the Coast Guard:¹²⁴ This department is responsible for “(a) sea coast and inland fisheries; (b) fishing and recreational harbours; (c) hydrography and marine sciences; and (d) the coordination of the policies and programs of the Government of Canada respecting oceans.”¹²⁵ These include a range of functions under the Oceans Act (above), including the development of integrated offshore and coastal management areas in consultation with other actors, fisheries management and conservation, marine protected areas, and marine scientific research. It is also the parent body for the Canadian Coast Guard, a special operating agency responsible for various safety of navigation and icebreaking functions in Arctic waters

¹¹⁶ Described as follows: “Inuit returned here each spring to camp and harvest the abundant marine resources. These gatherings also provided an opportunity to teach the young, celebrate life, and affirm and renew Inuit society. These sites continue to be centres to celebrate, practise, and rejuvenate Inuit culture in the Arviat area. The oral histories, traditional knowledge, and archaeological sites at Arvia’juaq and Qikiqtaarjuk provide a cultural and historical foundation for future generations.” Parks Canada <http://www.pc.gc.ca/apps/dfhd/page_nhs_eng.aspx?id=836> accessed 28 December 2016.

¹¹⁷ SC 1992, c 31.

¹¹⁸ Global Affairs Canada <www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/text-texte/toc-tdm.aspx?lang=eng>. The economic benefits for Nunavut are explained at <<http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/nu.aspx?lang=eng>> accessed 28 December 2016.

¹¹⁹ Department of Foreign Affairs, Trade and Development Act, SC 2013, c 33, s 174, at s 10.

¹²⁰ Global Affairs Canada, Canada and the Arctic <<http://www.international.gc.ca/arctic-arctique/index.aspx?lang=eng>> accessed 28 December 2016.

¹²¹ Department of Indian Affairs and Northern Development Act, RSC 1985, c I-6.

¹²² Indigenous and Northern Affairs Canada <<https://www.aadnc-aandc.gc.ca/eng/1100100010023/1100100010027>> accessed 28 December 2016.

¹²³ Ibid s 4.

¹²⁴ Fisheries and Oceans Canada <<http://www.dfo-mpo.gc.ca/index-eng.htm>> accessed 28 December 2016.

¹²⁵ Department of Fisheries and Oceans Act, RSC 1985, c F-15, s 4.

and search and rescue. The Canadian Hydrographic Service, also within the Department, is responsible for charting of Arctic waters. The Department operates in six regions, the largest of which the Central and Arctic Region.

- Department of Transport:¹²⁶ Established by a dedicated act,¹²⁷ this department is the “maritime administration” of Canada, i.e., the national institution designated as domestic lead for the purposes of the various IMO conventions and operates through various units. It plays a key role in Northern transportation and operates there through the Prairie and Northern Region. Major sections within the Department include Safety and Security, which is tasked with leading the implementation and enforcement of international rules and standards for shipping, among other. It is responsible for leading the implementation of the Polar Code in Canada. Its inspectors conduct spot checks on ships in Canadian ports. The Ship Source Oil Pollution Fund, although under the umbrella of the Department, is established under the Marine Liability Act and operates autonomously in handling claims for compensation for oil pollution damage, economic loss and clean-up. The Canadian Marine Advisory Council serves as a consultative body and convenes on a regional basis.
- Department of Environment and Climate Change: The Department’s functions include the preservation and enhancement of the quality of the natural environment (including water), renewable resources (including migratory birds and other non-domestic flora and fauna), water, meteorology and coordination of the environmental policies and programs.¹²⁸ Its weather office operates a marine weather information broadcast and the Canadian Ice service provides ice reports.¹²⁹ The Canadian Wildlife Service operates within the Department’s framework and has a Prairie and Northern Region office. The Department is also responsible for the Canadian Environmental Assessment Agency¹³⁰ and Parks Canada Agency.¹³¹
- Department of Natural Resources: The Department is responsible for natural resources and technical surveys not assigned to any other department for the purpose of sustainable resource development and integrated management.¹³² Geomatics Canada,¹³³ the National Energy Board¹³⁴ and Polar Knowledge Canada¹³⁵ operate within the framework of this department. Polar Knowledge Canada operates the Canadian High Arctic Research Station in Cambridge Bay, Nunavut.
- Department of Public Safety: Responsible for public safety and emergency preparedness,¹³⁶ this department is responsible for the National Search and Rescue Secretariat¹³⁷ and Canada’s National Disaster Mitigation Strategy.¹³⁸ The Royal Canadian Mounted Police, Canada’s federal police force, is also the responsibility of this department.

¹²⁶ Transport Canada < <https://www.tc.gc.ca/eng/menu.htm> > accessed 28 December 2016.

¹²⁷ Department of Transport Act, RSC 1985, c T-18.

¹²⁸ Department of the Environment Act, RSC 1985, c E-10, s 4.

¹²⁹ Canadian Ice Service < <https://www.ec.gc.ca/glaces-ice/> > accessed 28 December 2016.

¹³⁰ Canadian Environmental Assessment Act, 2012, SC 2012, c 19, s 52, at s 114.

¹³¹ Parks Canada Agency Act, SC 1998, c 31, s 4.

¹³² Department of Natural Resources Act, SC 1994, c 41, ss 5-6.

¹³³ Natural Resources Canada – Geomatics <<https://www.nrcan.gc.ca/earth-sciences/geomatics/10776>> accessed 28 December 2016.

¹³⁴ National Energy Board < <https://www.neb-one.gc.ca/index-eng.html> > accessed 28 December 2016.

¹³⁵ Polar Knowledge Canada < <https://www.canada.ca/en/polar-knowledge.html> > accessed 28 December 2016.

¹³⁶ Department of Public Safety and Emergency Preparedness Act, SC 2005, c 10, ss 5-6.

¹³⁷ Public Safety Canada – National Search and Rescue Secretariat <<https://www.publicsafety.gc.ca/cnt/mrgnc-mngmnt/rspndng-mrgnc-vnts/nss/index-en.aspx>> accessed 28 December 2016.

¹³⁸ Public Safety Canada – Canada’s National Disaster Mitigation Strategy <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/mgtgn-strtg/index-eng.aspx>> accessed 28 December 2016.

- Department of National Defence: Established under the National Defence Act,¹³⁹ this Department has limited direct relevance for Pikialasorsuaq, but assists with search and rescue.

5. Services

The federal government provides several essential services in Arctic waters that potentially are of relevance to Pikialasorsuaq, including, among other:

- Department of Environment and Climate Change:
 - Marine weather information broadcast for METAREAS XVII and XVIII (meteorological reporting areas) in the Arctic and cover Nunavut and Western Greenland within the World Meteorological Organization's Marine Broadcast System for the Global Maritime Distress and Safety System.¹⁴⁰
 - Canadian Ice Service: timely and accurate reports on ice in navigable waters.
 - Canadian Wildlife Service.
 - Enforcement of environmental offences (with Public Prosecutions, Department of Justice).
- Department of Fisheries and Oceans:
 - Fisheries:
 - Fisheries licensing, inspection and enforcement.
 - Canadian Coast Guard:
 - Northern Marine Transportation Corridors, planned and will include a range of services, including icebreaking.
 - Marine Communications and Traffic Services.
 - Northern Canada Vessel Traffic Services (NORDREG) Zone.
 - Navigation aids.
 - Icebreaking.
 - Search and rescue (Canadian Coast Guard; Department of National Defence).
 - Spill response.
- Department of Transport:
 - Maritime administration.
 - Port state ship inspection.
 - Enforcement of maritime safety and vessel-source pollution.
 - Compensation for oil pollution damage (Ship-source Oil Pollution Fund).
- Department of National Defence:
 - Search and rescue.
- Department of Public Safety:
 - Search and rescue coordination.

B. Denmark—NEEDS TO BE COMPLETED IN COLLABORATION W/ GREENLANDER

1. Key policies

2. Legislation

3. Institutions

4. Services

¹³⁹ RSC 1985, c N-5, s 3.

¹⁴⁰ WMO/OMM < <http://weather.gmdss.org/index.html> > accessed 28 December 2016.

C. Bilateral agreements

1. Continental shelf boundary agreement

In 1973 Canada and Denmark delimited the continental shelf boundary¹⁴¹ to determine the respective areas for the exploration and exploitation of natural resources. The boundary does not extend to all waters between the two countries. The boundary in the northernmost area in the Lincoln Sea and the southernmost in the Northwest Atlantic was left for future negotiation.¹⁴² In 2013 it was reported that the two countries had reached agreement on the maritime boundary in the Lincoln Sea, but to date this has not been finalized.¹⁴³ When the agreement was negotiated it was understood that adjustments may be necessary as a result of new surveys, and adjustments were in fact made to the boundary in 2004.¹⁴⁴ The dispute over Hans Island, located in the Nares Strait, has not affected the course of the boundary. This agreement is important for Pikialasorsuaq, as follows:

- The boundary in the Pikialasorsuaq area is fully delimited with a median equidistant line.¹⁴⁵
- Technically, because the boundary concerns the seabed and subsoil, the boundary of the water column is not included. Both countries claim EEZs, and because this maritime zone also includes the seabed and subsoil, they can be expected to consider the agreement as defining the maritime boundary.
- The agreement provides for potential further bilateral agreement for the exploitation of single geological structures straddling the continental shelf boundary that may be exploitable from one side of the boundary,¹⁴⁶ but makes no reference to other transboundary resources.
- The effect of the agreement is that Pikialasorsuaq is a transboundary ecosystem, producing consequences in law and for management, and which will be studied in the Phase II report.

2. Agreement Between the Government of Canada and the Government of the Kingdom of Denmark for Cooperation Relating to the Marine Environment¹⁴⁷

In 1983 Canada and Denmark, entered into an Agreement for the area “of Nares Strait, Baffin Bay and Davis Strait” west and east respectively of the dividing line of the Canada and Denmark delimitation of the continental shelf.¹⁴⁸ Significantly, the second preambular paragraph states that the parties are

¹⁴¹ Agreement between the Government of the Kingdom of Denmark and the Government of Canada relating to the Delimitation of the Continental Shelf between Greenland and Canada, adopted 17 December 1973, 950 UNTS 147 (in force 13 March 1974) (Canada-Greenland Boundary Agreement).

¹⁴² Ibid art 2(4).

¹⁴³ Government of Canada (Global Affairs Canada), Departmental Performance Report 2012-2013 <http://www.international.gc.ca/gac-amc/publications/plans/dpr-rmr/dpr-rmr_1213.aspx?lang=eng&wbdisable=true&_ga=1.70751120.1094720888.1482789680> accessed 26 December 2016.

¹⁴⁴ Art 4(2) of Canada-Greenland Boundary Agreement anticipated that adjustments may be necessary. Adjustments were made by Exchange of Notes Constituting an Agreement to Amend the Agreement Between the Government of Canada and the Government of the Kingdom of Denmark Relating to the Delimitation of the Continental Shelf Between Greenland and Canada Done at Ottawa on 17 December 1973, 5 April 2004 <<http://www.treaty-accord.gc.ca/print-imprimer.aspx>> (in force 16 December 2009).

¹⁴⁵ Canada-Greenland Boundary Agreement art 1, subject to adjustments in the 2004 exchange of notes.

¹⁴⁶ Ibid art 5.

¹⁴⁷ Agreement Between the Government of Canada and the Government of the Kingdom of Denmark for Cooperation Relating to the Marine Environment, 122 UNTS 22693 (adopted and came into force 26 August 1983 by signature) accessed on 28 December 2016 at

<https://treaties.un.org/doc/Publication/UNTS/Volume%201348/volume-1348-I-22693-English.pdf>

¹⁴⁸ Ibid art 1.

“Conscious of their responsibility to protect and enhance this unique marine environment for the benefit of their peoples.”

- The agreement further acknowledges UNCLOS and “in particular the text on ice-covered areas”¹⁴⁹ as well as the probability of increased economic activity in the area.¹⁵⁰
- The essence is to protect the marine environment from pollution by “harmful substances,”¹⁵¹ emphasizing prevention, reduction and control of hydrocarbons and it further outlines contingency plans in the event of pollution incidents.
- Provisions on installations,¹⁵² exchange of scientific and other information,¹⁵³ and vessel traffic¹⁵⁴ are also included.
- The contingency plans are outlined in Annex A Joint Contingency Plan Concerning Pollution Incidents Resulting from Offshore Hydrocarbon Exploration or Exploitation and Annex B Joint Contingency Plan Concerning Pollution Incidents Resulting from Shipping Activities.
- Though subsequent global and Arctic region specific agreements for oil pollution preparedness and response have been adopted, this agreement makes distinct reference to “peoples” of both Canada and Greenland and the specific region of concern to the Pikialasorsuaq project.

IV. REGIONAL FRAMEWORK

A. Legal instruments

1. Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, 2013¹⁵⁵

Known as the Kiruna Agreement, this treaty is a mirror agreement to the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990,¹⁵⁶ a global instrument adopted under the auspices of the IMO. State parties committed to maintaining a national system for prompt response, including contingency plans for preparedness and response to such incidents,¹⁵⁷ capacity to respond¹⁵⁸ and notification of incidents to other parties.¹⁵⁹ Bearing in mind the risk and in the event of an oil spill, the Kiruna Agreement is important for the Pikialasorsuaq because:

- Canada and Denmark are parties and the agreement applies to oil pollution incidents in the marine areas within their jurisdiction, including internal waters, territorial sea, EEZ, and continental shelf.¹⁶⁰ Specifically, it applies to all Canadian Arctic waters north of 60 degrees North and to Danish waters above the southern limit of Greenland’s EEZ.¹⁶¹

¹⁴⁹ Ibid third preambular para.

¹⁵⁰ Ibid fourth preambular para.

¹⁵¹ Ibid art III.

¹⁵² Ibid art V.

¹⁵³ Ibid art VI.

¹⁵⁴ Ibid art VII.

¹⁵⁵ Adopted 15 May 2013, <<https://oarchive.arctic-council.org/handle/11374/529>> (in force 25 March 2016).

¹⁵⁶ Adopted 30 November 1990, 30 ILM 733 (in force 13 May 1995).

¹⁵⁷ Ibid art 4(1).

¹⁵⁸ Ibid art 4(2).

¹⁵⁹ Ibid art 6.

¹⁶⁰ Ibid art 3(1).

¹⁶¹ Ibid.

- In the event of a pollution incident, parties are required to monitor the situation to facilitate efficient and timely response,¹⁶² ensure movement and removal of response resources,¹⁶³ and if needed request assistance from each other.¹⁶⁴

2. Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, 2011¹⁶⁵

Known as the Nuuk Agreement, this treaty is a binding agreement to strengthen aeronautical and maritime search and rescue (SAR) cooperation and coordination in the Arctic region based on the global SAR¹⁶⁶ and Chicago¹⁶⁷ conventions, and using international guidelines.¹⁶⁸ The latter conventions provide a global system for SAR, respectively for marine and aeronautical incidents. In remote regions, such as Arctic waters, SAR resources are frequently stretched and insufficient, challenging timely provision of assistance. Hence the importance of cooperation at the regional level to optimize the use of scarce resources, personnel and facilities. The relevance for the transboundary Pikialasorsuaq is two-fold:

- Canada and Denmark are parties to the agreement which provides a framework for cooperation between them in the provision of SAR services in the polynya's area.
- The boundary of the respective Canadian and Danish SAR regions is delimited across Pikialasorsuaq in the Baffin Bay area.¹⁶⁹

B. Regional organizations

1. Arctic Council¹⁷⁰

Established in 1996, the Arctic Council's emphasis on sustainable development and environmental protection, in their broadest terms, are in alignment with the objectives of the Pikialasorsuaq Commission. Arctic Council activities, including the role of the Inuit Circumpolar Council as a Permanent Participant, are important to monitor and influence in relation to the Pikialasorsuaq area. In addition, the Indigenous Peoples' Secretariat may offer financial and technical support through the ICC to the Pikialasorsuaq objectives. The work and ongoing initiatives of the following working groups, task forces and expert groups are directly relevant and self-explanatory:

- Task Force on Arctic Marine Cooperation (TFAMC)
- Protection of the Arctic Marine Environment (PAME)
- Conservation of Arctic Flora and Fauna (CAFF)
- Sustainable Development Working Group (SDWG)

¹⁶² Ibid art 7.

¹⁶³ Ibid art 9.

¹⁶⁴ Ibid art 8.

¹⁶⁵ Adopted 12 May 2011 <<https://oaarchive.arctic-council.org/handle/11374/531>> (in force 19 January 2013) (Nuuk Agreement).

¹⁶⁶ International Convention on Maritime Search and Rescue, adopted 27 April 1979, 1405 UNTS 97 (in force 22 June 1985).

¹⁶⁷ Chicago Convention on International Civil Aviation, adopted 7 December 1944, 15 UNTS 295 (in force 4 April 1947).

¹⁶⁸ *International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual*, 3 vols jointly published by the International Maritime Organization and the International Civil Aviation Organization (IMO, 2013).

¹⁶⁹ Nuuk Agreement Annex.

¹⁷⁰ Declaration on the Establishment of the Arctic Council, Joint Communique of the Governments of the Arctic Countries on the Establishment of the Arctic Council, Ottawa, Canada, 19 September 1996 (Ottawa Declaration)

- Emergency Prevention, Preparedness and Response Working Group (EPPR)
- Arctic Monitoring and Assessment Program (AMAP)

2. Arctic Coast Guard Forum¹⁷¹

Established in 2015, the Forum seeks “to foster safe, secure and environmentally responsible maritime activity in the Arctic” and to “to build the multilateral cooperation mechanism in the Arctic region” consisting of the Coast Guards of Canada, Denmark, Finland, Iceland, Norway, Russian Federation, Sweden, and the United States. The Forum is relevant to Pikialasorsuaq due to lack of defense and security authority and capacity of the Greenland Government in the context of foreign affairs as well as the objectives of the Forum and the potential role of respective Coast Guards of Canada and Denmark and their actions within the area. Furthermore, like the collaboration between Alaskan Inuit and the US Coast Guard, identification of shipping routes that may impact Pikialasorsuaq and Inuit rights and interests in the area may be an important initiative.

C. Northwest Atlantic Fisheries Organization (NAFO)¹⁷²

Originating as far back as 1949, the current governance structure of NAFO was constituted in 1978 for the purpose of “optimum utilization, rational management and conservation of the fishery resources” in the NAFO Convention area (which extends above Baffin Bay at 78°10’ North). In 2007, an Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries was adopted, but has not entered into force.¹⁷³ Fisheries are a dynamic economic stream for both Canada and Greenland. In this way, NAFO is important to the Pikialasorsuaq area. Furthermore, the NAFO is important because:

- Canada and Denmark (in respect of the Faroe Islands and Greenland) are Contracting Parties
- Regulation of fisheries through a Fisheries Commission,¹⁷⁴ informed by a Scientific Council¹⁷⁵
- Active monitoring, control and surveillance, including vessel requirements, inspections and compliance¹⁷⁶
- Engaged in identification of vulnerable marine areas, fisheries conservation and enforcement measures¹⁷⁷

¹⁷¹ Joint Statement establishing Arctic Coast Guard Forum, 30 October 2015 accessed at

<https://assets.documentcloud.org/documents/2497060/joint-statement-draft-25-march-no-track-changes.pdf>

¹⁷² Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, adopted 24 October 1978 (entered into force 1 January 1979) 370 UNTS 17799 (NAFO Convention)

¹⁷³ Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, Serial No. N5453 NAFO/GC Doc. 07/4, 29th Annual Meeting, September 2007 accessed at

<https://www.nafo.int/Portals/0/PDFs/gc/2007/gcdoc07-04.pdf?ver=2016-02-19-065006-393> Note that both Canada and Denmark have deposited ratification instruments.

¹⁷⁴ Ibid art II(2)(c) and art XI

¹⁷⁵ Ibid art II(2)(b) and art VI

¹⁷⁶ Ibid art XIX

¹⁷⁷ NAFO Convention, *supra* note 50__.

V. GLOBAL FRAMEWORK

A. Conventions and instruments

*1. United Nations Convention on the Law of the Sea, 1982*¹⁷⁸

Also, known by its acronym, UNCLOS, this treaty is generally considered as the “constitution” for the world’s oceans and one of the most important international instruments for the governance of Píkialasorsuaq. Canada and Denmark are parties. The waters of Píkialasorsuaq are affected by several legal regimes in UNCLOS concerning rights and responsibilities of coastal and flag States and international cooperation, such as:

- Territorial sea baseline delineation: these are rules concerning the coastal frontage that may be used to determine the breadth of the territorial sea and other maritime zones.¹⁷⁹ Waters enclosed on the landward side of baselines are internal waters and are subject to full territorial sovereignty with no international right of navigation.¹⁸⁰ Canada delineated straight baselines around the Arctic archipelago, effectively enclosing its portion of Píkialasorsuaq waters as internal waters and subject to its exclusive sovereignty.¹⁸¹
- Territorial sea: Both Canada and Denmark have claimed territorial seas, although Canada claims the full 12 nautical mile entitlement, whereas Denmark on behalf of Greenland has claimed only a four-nautical mile territorial sea.¹⁸² The significance of this difference will be studied. Sovereignty is exercised over the territorial sea, but subject to the international right of innocent passage (navigation) for ships.¹⁸³ Parts of Píkialasorsuaq waters are within the territorial sea.
- Straits used for international navigation: It is possible that the Nares Strait leading into Píkialasorsuaq may be considered by some States as having the status of a strait used for international navigation, triggering the regime of transit passage.¹⁸⁴ Canada’s and Denmark’s position on this point is unclear and will need to be studied.
- 200 nm exclusive economic zone (EEZ): Both Canada and Denmark (on behalf of Greenland) claim EEZs.¹⁸⁵ This means they have exclusive sovereign rights (not sovereignty) to explore and exploit the living and non-living resources of such waters and the seabed and subsoil, and jurisdiction for marine environment protection, marine scientific research and artificial islands, installations and structures.¹⁸⁶ Parts of Píkialasorsuaq will fall under this legal regime.
- Continental shelf: This zone allocates exclusive sovereign rights to explore and exploit the non-living resources and sedentary species (e.g., crab, lobster, scallops) of the seabed and subsoil

¹⁷⁸ Adopted 10 December 1982, in force 16 November 1994, 1833 UNTS 3 (UNCLOS).

¹⁷⁹ *Ibid* Part II Section 2.

¹⁸⁰ *Ibid* art 8.

¹⁸¹ Statement in the House of Commons by the Secretary of State for External Affairs, the Right Honourable Joe Clark, on Canadian Sovereignty, Statement No. 85/49, House of Commons, *Debates*, 1st Session, 33rd Parliament, 10 September 1985, 6462–4. Territorial Sea Geographical Coordinates (Area 7) Order, SOR/85-872.

¹⁸² Oceans Act, SC 1996 c 31, s 4; Royal Decree on Amendment of Royal Decree on Delimitation of the Territorial Waters of Greenland, 15 October 2004, Law of the Sea Bulletin no 56 (2005). The extent of the territorial sea in Píkialasorsuaq will need to be studied in Phase II of this report.

¹⁸³ UNCLOS art 17.

¹⁸⁴ *Ibid* Part III.

¹⁸⁵ Canada: Oceans Act s 13. Denmark (Greenland): Royal Decree on the Entry into Force of Act on Exclusive Economic Zones for Greenland, 15 October 2004, Law of the Sea Bulletin 56 (2005): 126 and Executive Order on the Exclusive Economic Zone of Greenland, 20 October 2004, Law of the Sea Bulletin 56 (2005): 133. Adjustments were made following adjustments to the continental shelf boundary with Canada. See Executive Order on the Exclusive Economic Zone of Greenland, 20 October 2004, Law of the Sea Bulletin 66 (2008): 63.

¹⁸⁶ UNCLOS art 56.

only.¹⁸⁷ It is possible this zone may hold some relevance for Pikialasorsuaq with regard to the respective rights and responsibilities of coastal States and because of the continental shelf boundary between Canada and Denmark cutting across the polynya.

- Maritime boundary delimitation rules: the rules for the delimitation of territorial sea, EEZ and continental shelf boundaries¹⁸⁸ may be of some interest, although it is not expected they will affect the existing continental shelf boundary cutting across Pikialasorsuaq. The status of EEZ and territorial sea limits and boundaries, as they affect Pikialasorsuaq, will be studied.
- Freedom of navigation: Parts of the waters of Pikialasorsuaq are subject to the freedom of navigation on the high seas, whose application extends to the water column above the continental shelf and in the EEZ.¹⁸⁹
- Enclosed and semi-enclosed seas: there is the possibility that Avanaata Imaa (Baffin Bay) may be considered as falling under the regime of enclosed and semi-enclosed seas,¹⁹⁰ with consequences for cooperation between Canada and Denmark.
- Marine environment protection: there are important rules concerning rights and responsibilities and cooperation at the global, regional and sub-regional levels¹⁹¹ that will impact on Pikialasorsuaq.
- Marine scientific research: This regime is significant for research on Pikialasorsuaq as it regulates the rights and responsibilities of Canada and Denmark in regulating foreign research and the rights and responsibilities of researching States, such as sharing of data.¹⁹²

The relevance of other UNCLOS regimes (e.g., contiguous zone¹⁹³) for Pikialasorsuaq is uncertain at this stage, but will be considered if their relevance is ascertained in Phase II of this project.

2. *International Labour Organization Convention No. 169 (ILO C169)*¹⁹⁴

ILO C169 on Indigenous and Tribal Peoples is the only legally-binding international instrument that exclusively deals with the rights and protection of indigenous and tribal peoples'.¹⁹⁵ It is relevant to Pikialasorsuaq due to Denmark's 1996 ratification of the Convention¹⁹⁶ and the fact that it is now regarded by the ILO and others as a necessary interpretive document in the framework of Indigenous human rights. Specifically, the ILO has pronounced that

With the adoption of the UN Declaration, the international normative framework regulating the protection of the rights of indigenous peoples has been firmly strengthened. The ILO Convention No. 169 on the rights of indigenous and tribal peoples, adopted by the ILO in 1989, is fully compatible with the UN Declaration on the Rights of Indigenous Peoples and *the two instruments are mutually reinforcing*. The two instruments provide the solid framework for promoting

¹⁸⁷ Ibid art 77.

¹⁸⁸ Ibid arts 15, 74 and 83.

¹⁸⁹ Ibid arts 58 and 78.

¹⁹⁰ Ibid art 123.

¹⁹¹ Ibid Part XII.

¹⁹² Ibid Part XIII.

¹⁹³ Ibid art 33.

¹⁹⁴ International Labor Organization *Convention concerning Indigenous and Tribal Peoples in Independent Countries* adopted 27 June 1989 Geneva, 76th ILC session (entered into force 05 September 1991) (ILO C169).

¹⁹⁵ Sedfrey M. Candelaria, 'Comparative analysis on the ILO Indigenous and Tribal Peoples Convention No. 169, UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the Indigenous Peoples' Rights Act (IPRA) of the Philippines' (2012) 14.08 International Labour Organization

¹⁹⁶ Ratification documents deposited 22 February 1996 followed by Declarations for Greenland 30 November 1999.

indigenous peoples' rights and addressing the existing implementation gaps at all levels.
[emphasis added]¹⁹⁷

ILO C169 affirms, inter alia, land rights,¹⁹⁸ access to natural resources, health, education, conditions of employment and crossing borders, right to determine priorities for development,¹⁹⁹ and control of Indigenous institutions. Importantly, the ILO as an institution provides a recourse mechanism if the norms affirmed are violated.²⁰⁰

3. *Convention on Biological Diversity (CBD)*

For reasons addressed above, Indigenous rights and interests were specifically referenced in the CBD. Signed by 150 government leaders at the 1992 Rio Earth Summit, the Convention on Biological Diversity²⁰¹ recognizes Indigenous peoples' use and knowledge of biological resources and maintenance of biological diversity. Article 8(j) states:

respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices²⁰²

Views on the term "Indigenous peoples"²⁰³ within the CBD as well as "benefits" are dramatically different.²⁰⁴ However, to date, emphasis has been put on the former elements of the article concerned as well as the other relevant articles of importance for Pikialasorsuaq.²⁰⁵ It must be noted that the government of Finland in collaboration with the Conservation of Arctic Flora and Fauna (CAFF) working group of the Arctic Council and the CBD hosted an Arctic regional workshop²⁰⁶ to discuss application of the Convention to ecologically and biologically sensitive marine areas, wherein Pikialasorsuaq²⁰⁷ is specifically addressed in the context of Ecologically or Biologically Significant Marine Areas (EBSAs). At this workshop, both Canada and Denmark agreed that "great value of adopting a transboundary instead of national approach and including Inuit communities from each side of Baffin Bay"²⁰⁸ is worth pursuing.

¹⁹⁷ See UN-Indigenous Peoples' Partnership (UNIPP), "For democratic governance, human rights and equality", Multi-Donor Trust Fund, Terms of Reference ILO, OHCHR, UNDP, Framework Document, (Geneva: UNIPP, 2010) 4.

¹⁹⁸ ILO C169, *supra* note 194, arts 13-19

¹⁹⁹ *Ibid* art 7

²⁰⁰ *Indigenous and Tribal Peoples Rights in Practice: A Guide to ILO Convention No. 169* (ILO, Geneva, 2009).

²⁰¹ Convention on Biological Diversity, 5 June 1992 (entered into force 29 December 1993, 1760 UNTS 79) accessed 1 November 2015 at <https://www.cbd.int/convention/>.

²⁰² *Ibid* art 8(j).

²⁰³ Edward John and Dalee Sambo Dorough, 'Study on how States exploit weak procedural rules in international organizations to devalue the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights law' E/C.19/2016/4 pp 7-9.

²⁰⁴ International Expert Group Meeting on the Convention on Biological Diversity's International Regime on Access and Benefit-sharing and Indigenous Peoples' Human Rights, in paper 'Potential threats to Indigenous Peoples' Rights by the Convention on Biological Diversity's proposed International Regime on Access and Benefit Sharing,' 17-19 January 2007, PFII/2007/WS.4/9.

²⁰⁵ For example, Art 10 Sustainable Use of Components of Biological Diversity; Art 14, Impact Assessment and Minimizing Adverse Impacts; Art 18 Technical and Scientific Cooperation; and Art 20 Financial Resources.

²⁰⁶ CBD Report, *supra* note 201 p 37.

²⁰⁷ *Ibid* pp 34-42.

²⁰⁸ *Ibid* p 35.

Clearly, the report is directly relevant to the work of the Commission and specifically those sections and annexes addressing the North Water Polynya.

4. United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration)

One of the most important results of Inuit engagement at the UN was adoption of the Declaration on the Rights of Indigenous Peoples.²⁰⁹ The UN Declaration is a comprehensive international human rights instrument that affirms the distinct status and human rights of the world's Indigenous peoples, including those within the Arctic circumpolar region. Due to its comprehensive nature and interrelated norms as well as its emphasis upon promotion and protection of the human rights of Indigenous peoples, it is directly relevant to Pikialasorsuaq. Article 43 affirms that the interrelated, interdependent and indivisible norms embraced by the UN Declaration constitute "the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world."

Among other inter-related human rights, the operative provisions of the UN Declaration recognize and affirms:

- The right to self-determination;²¹⁰
- Collective rights or group rights, such as the right to maintain and develop their distinct political, economic, social and cultural identities and characteristics as well as their legal systems and to participate fully, "if they so choose," in the political, economic, social and cultural life of the State;²¹¹
- The right not to be subjected to genocide or ethnocide, i.e., action aimed at or affecting their integrity as distinct peoples, their cultural values and identities, including the dispossession of land, forced relocation, assimilation or integration, the imposition of foreign lifestyles and propaganda;²¹²
- The rights of both Indigenous peoples and individual Indigenous persons to observe, teach and practice tribal spiritual and religious traditions; the right to maintain and protect manifestations of their cultures, archaeological-historical sites and artifacts; the right to restitution of spiritual property taken without their free and informed consent, including the right to repatriate human remains; and the right to protection of sacred places and burial sites;²¹³
- The rights to maintain and use languages, to transmit their oral histories and traditions, to education in their language and to control over their own educational systems;²¹⁴
- The right to maintain and develop their political, economic and social systems, and to determine and develop priorities and strategies for exercising their right to development;²¹⁵
- The right to be secure in their own means of subsistence²¹⁶
- The right to ensure that their treaties with States should be recognized, observed and enforced, e.g. comprehensive land claims agreements of Canada and Act on Self-Government for Greenland;²¹⁷
- The right of indigenous people to own, develop, control, and use the lands and territories which they have traditionally owned or otherwise occupied and used, including the right to restitution of

²⁰⁹ UN Declaration, *supra* note 209.

²¹⁰ Ibid art 3

²¹¹ Ibid art 5

²¹² Ibid art 8

²¹³ Ibid arts 12

²¹⁴ Ibid arts 13-14

²¹⁵ Ibid arts 23 and 32

²¹⁶ Ibid art 20

²¹⁷ Ibid art 37

lands confiscated, occupied or otherwise taken without their free and informed consent, with the option of providing just and fair compensation wherever such return is not possible;²¹⁸ and finally

- The document goes well beyond ILO C169 in its statements on self-determination, land and resource rights, self-government and political autonomy.

Furthermore, UN member state support for this human rights instrument was recently reiterated in the September 2014 Outcome Document adopted through a high-level plenary session of the General Assembly.²¹⁹ The governments of Canada and Denmark were major protagonists of the Outcome Document and recently, the Canadian government through its Prime Minister and Ministers have made public declarations about its full adoption, without qualification and commitments to fully implement the UN Declaration. For Inuit, a critical element is the need to recognize the profound relationship that they have with the Arctic Ocean coastal areas and their respective lands, territories and resources. In this context, the term “territories” should be regarded as comprehensive and inclusive of the coastal land areas, shore fast sea ice as well as the off-shore areas or the ocean itself, which have been traditionally used for millennia as the source of sustenance in the way of whales, seals, walrus, migratory birds and other marine life.

5. United Nations Educational, Scientific and Cultural Organization (UNESCO)

There are a few UNESCO’s legally binding instruments relevant to Pikialasorsuaq and the protection of the cultural integrity and Indigenous knowledge of its coastal communities, in particular:

- The Convention for the Safeguarding of the Intangible Cultural Heritage²²⁰ preamble recognizes that “communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity[.]”
- The Convention on the Protection and Promotion of the Diversity of Cultural Expressions²²¹ contains an operative paragraph explicitly referencing “equal respect” for all cultures, including Indigenous peoples.²²²
- Although the Convention on the Protection of the World Cultural and Natural Heritage²²³ has been criticized for not being responsive to Indigenous peoples status, rights and interests, it may be directly relevant to a regime to safeguard the unique characteristics of Pikialasorsuaq in the future.
- Furthermore, UNESCO may be useful in accessing international assistance for the safeguarding of the people and the region of Pikialasorsuaq.

²¹⁸ Ibid arts 25-31

²¹⁹ United Nations A/RES/69/2, 25 September 2014, Sixty-ninth session, Agenda item 65, Resolution adopted by the General Assembly on 22 September 2014 [without reference to a Main Committee (A/69/L.1)] 69/2. Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples.

²²⁰ Convention for the Safeguarding of the Intangible Cultural Heritage, adopted 17 October 2003 (entered into force 20 April 2006) 2368 UNTS 1. Denmark is a State Party. However, Denmark withdrew its Declaration with respect to Greenland in 2013.

²²¹ Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted 20 October 2005 (entered into force 18 March 2007) 2440 UNTS 311. Denmark is a State Party.

²²² Ibid art 2(3)

²²³ Convention on the Protection of the World Cultural and Natural Heritage, adopted 16 November 1972 (entered into force 17 December 1975) 1037 UNTS 151 (World Heritage Convention)

6. Convention on the Rights of the Child (CRC)²²⁴

The CRC concerns itself with protections for the child and is the only international human rights treaty that specifically refers to the rights of Indigenous peoples as they relate to children in the context of media and language,²²⁵ preparation for life,²²⁶ and education and respect for the natural environment,²²⁷ and culture.²²⁸ Both Canada and Denmark are State Parties to the CRC.²²⁹ And, given the important dimension of inter-generational rights to ongoing cultural integrity of Inuit (addressed above), the CRC is relevant to the Pikialasorsuaq objectives.

7. Paris Agreement²³⁰

It is significant that the Office of the United Nations High Commissioner for Human Rights (OHCHR) made the important linkage between human rights and the impacts of climate change²³¹ and made efforts to ensure that distinct reference was made in the Agreement. Despite his efforts and the fact that the following preambular paragraph is the only one specifically invoking this crucial linkage, the text is compelling substance for Pikialasorsuaq and the interrelated impacts of climate change on the Indigenous peoples of the area, especially in light of the legally binding commitments of Denmark and Canada given this important contextual preambular language: :

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of *indigenous peoples*, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity[.] (emphasis added)

8. Inuit Circumpolar Council Declarations

In light of the proponents of this important initiative and their political relationships with the international Non-governmental organization representing Inuit of the Russian Far East, Alaska, Canada and Greenland, it is important to reference their various resolutions and more significantly the Declarations drafted and adopted by consensus at their recent General Assemblies. Each of the following documents are relevant to the objectives of the Pikialasorsuaq Commission:

- A Circumpolar Inuit Declaration on Resource Development Principles in Inuit Nunaat
- A Circumpolar Inuit Declaration on Sovereignty in the Arctic

²²⁴ Convention on the Rights of the Child, adopted 20 November 1989 (entered into force 2 September 1990) 1577 UNTS 3

²²⁵ Ibid art 17(d)

²²⁶ Ibid art 29 (d)

²²⁷ Ibid art 29 (e)

²²⁸ Ibid art 30

²²⁹ Canada ratified CRC in 1991 and Denmark in 1993.

²³⁰ Paris Agreement, *supra* note 34, preamble.

²³¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), “Understanding human rights and climate change: submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change”, 26 November 2015, p. 6: “It is now beyond dispute that climate change caused by human activity has negative impacts on the full enjoyment of human rights. Climate change has profound impacts on a wide variety of human rights, including the rights to life, self-determination, development, food, health, water and sanitation and housing.” OHCHR further added, “climate change is a human rights problem and the human rights framework must be part of the solution”

- The Use of the Word "Inuit" in Scientific and Other Circles

As well as the following Inuit Circumpolar Council General Assembly Declarations:

- 2014- Inuvik, Canada - Kitigaaryuit Declaration
- 2010 - Nuuk, Greenland Declaration
- 2006 - Barrow, Alaska Declaration
- 2002 - Kuujjuaq, Canada Declaration
- 1998 - Nuuk, Greenland Declaration

B. Intergovernmental organizations

1. International Maritime Organization (IMO)

The IMO was established in 1948 by a multilateral treaty as a specialized agency of the United Nations.²³² Canada and Denmark are members. The IMO is the competent organization regarding international shipping matters and for this purpose UNCLOS allocates to it important functions for the development of international rules, regulations and procedure for navigation and shipping.²³³ In regulating international shipping, coastal, flag and port States are required to comply with international rules and standards adopted by the Organization. The IMO is responsible for more than 60 international conventions, protocols and codes, most of which it amends on a frequent basis in response to changing needs. These instruments cover the entire life cycle of ships, including certification, construction, equipping, crewing, safety of life at sea, operations, load lines, cargo carriage, passenger carriage, emissions, ballasting, antifouling, pollution prevention, salvage, casualty investigation, civil liability and ship recycling standards, among other. Many maritime safety standards applicable to international shipping are extended to apply to domestic shipping in Canadian and Greenland Arctic waters. Several IMO conventions to which Canada and Denmark are parties (unless otherwise indicated below) apply to Pikiyasorsuaq waters or are relevant for its governance, including the following, in thematic and chronological order:

- Safety conventions:
 - International Convention on Load Lines, 1966:²³⁴ This instrument establishes rules for the safe loading and stability of ships in winter and summer navigation and in different regions. Although it does not have dedicated polar load lines, it provides for the application of the North Atlantic Winter Seasonal Zone II for the waters of Baffin Bay.
 - Convention on the International Regulations for Preventing Collisions at Sea, 1972:²³⁵ This convention contains the international rules of the road to prevent collisions at sea.
 - International Convention for Safety of Life at Sea, 1974 (SOLAS):²³⁶ This instrument is the backbone of maritime safety and it has rules specific to or relevant for Arctic shipping in Chapters II (intact stability of ships), V (navigation safety, including navigational, meteorological warnings and services, ships routing and reporting, North Atlantic ice patrol, etc.), VII (carriage of dangerous goods) and XIV (safety measures for ships operating in Arctic waters). In particular, rules under Chapter V would be a basis for

²³² Convention on the Inter-Governmental Maritime Consultative Organization, adopted 6 March 1948, ATS 1958 No 5 (in force 17 March 1958).

²³³ UNCLOS arts Articles 21(2), (4); 22(3); 23; 39(2); 54; 60(3), (5), (6); 80; 94(3), (4), (5); 210(4), (6); 211(1), (2), (5), (7); 216(1); 217(1), (2), (3), (4); 218(1); 219; 220(1), (2), (3), (7); 226(1); 228.

²³⁴ Adopted 5 April 1966, 640 UNTS 133 (in force 21 July 1968).

²³⁵ Adopted: 20 October 1972, 1050 UNTS 16 (in force 15 July 1977).

²³⁶ Adopted 1 November 1974, 1184 UNTS 2 (in force 15 May 1980).

requesting the adoption of routing and reporting measures for ships navigating near Pikialasorsuaq. SOLAS is also a parent convention for the Polar Code (below).

- Environmental conventions (ship impacts):
 - International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969:²³⁷ This instrument is relevant with regard to the exceptional power provided to coastal States in relation to foreign vessels on the high seas to prevent, mitigate or eliminate dangers posed by actual or threatened oil pollution resulting from a maritime casualty. A 1973 Protocol expanded the list of harmful substances to other than oil.²³⁸
 - Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972²³⁹ (London Convention) and Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (1996 Protocol):²⁴⁰ These two instruments provide a framework for the regulation of the discharge of wastes into the marine environment.
 - International Convention for the Prevention of Pollution from Ships, 1973, as amended by and incorporated in the Protocol of 1978 (MARPOL):²⁴¹ This is the most important convention concerning the prevention of pollution from ships through rules in six annexes (oil, noxious liquid substances in bulk, harmful substances in packaged form, sewage, garbage, emissions). MARPOL also contains new rules concerning the discharge of wastes from ships in Arctic waters and, together with SOLAS, is a parent instrument of the Polar Code (below).
 - International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990:²⁴² This instrument was referred to above in the context of the Kiruna Agreement and concerns the infrastructure and capacity to respond to oil spills and provides for cooperation. A protocol adopted in 2000 extended the agreement to hazardous and noxious substances other than oil.²⁴³
 - International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001:²⁴⁴ This convention concerns the regulation of harmful anti-fouling systems, such as paints that contain tributyltin (TBT) which is toxic to marine life.
 - International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004:²⁴⁵ This convention provides for regulated control of ballast water operations to prevent the unintended introduction of exotic species from one environment to another with harmful consequences for the host ecosystems.

²³⁷ Adopted 29 November 1969, 970 UNTS 211 (in force 6 May 1975).

²³⁸ Protocol of 1973, adopted 2 November 1973, 1313 UNTS 3 (in force 30 March 1983).

²³⁹ Adopted 13 November 1972, 1046 UNTS 120 (in force 30 August 1975).

²⁴⁰ Adopted 7 November 1996, Can TS 2006 No 5 (in force 24 March 2006).

²⁴¹ Adopted 2 November 1973) 1340 UNTS 184 as amended by the Protocol Relating to the International Convention for the Prevention of Pollution from Ships of 1973, adopted 17 February 1978, 1340 UNTS 61 (in force 2 October 1983).

²⁴² Adopted 30 November 1990, 30 ILM 733 (in force 13 May 1995).

²⁴³ Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, adopted 15 March 2000, ATS 2007 4 (in force 14 June 2007).

²⁴⁴ Adopted 5 October 2001, Can TS 2010 No 15 (in force 17 September 2008).

²⁴⁵ Adopted 13 February 2004, IMO Doc BWM/CONF/36, 16 February 2004 (, in force 8 September 2017).

- Civil liability conventions:
 - International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC):²⁴⁶ This instrument makes the shipowner and its insurer strictly liable for damage from oil pollution carried by tankers and provides for compensation for economic and environmental damage, including costs of clean up, reasonable measures of reinstatement and preventive measures, on the basis of limited liability per ship tonnage and compulsory insurance. The oil concerned must be persistent and environmental damage is defined restrictively and could be significant for Pikialasorsuaq.
 - International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (IOPCF):²⁴⁷ This convention consists of the cargo owners' share of oil pollution damage and operates when the CLC Convention does not apply or the shipowner's strict liability is exceeded. It operates on the same rules as the CLC and the two function as an integrated system for compensation.
 - Convention on Limitation of Liability for Maritime Claims, 1976:²⁴⁸ This instrument provides the shipowner, insurer and other designated persons with the right to limit liability for maritime claims, which could include pollution damage claims not covered by the CLC and IOPCF Conventions.
 - International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001:²⁴⁹ This instrument provides for shipowner liability for pollution damage and preventative measures in a similar manner to the CLC Convention, including direct action against the insurer, but specifically with regard to pollution from bunker fuel. The definition of pollution damage is of concern to Pikialasorsuaq.
 - International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 and 2010 Protocol:²⁵⁰ These instruments are not in force and neither Canada, nor Denmark, are parties at this time. The instruments provide for a system for compensation for pollution damage from hazardous and noxious substances, such as chemicals, risks of fire and explosion, death and personal injury and property damage in a similar manner to the CLC and IOPCF conventions.
 - Nairobi International Convention on the Removal of Wrecks, 2007:²⁵¹ This convention empowers coastal States to take measures for the removal of shipwrecks that pose danger to safety of life at sea and the marine environment, making shipowners liable and under requirement to procure insurance cover for the removal costs. While Denmark is a party, Canada is not presently a party to this convention.

In addition to the above conventions, the Phase II report will also consider the relevance of several other instruments within or outside the framework of the conventions, and which are relevant for the governance of shipping in Pikialasorsuaq, such as the following:

²⁴⁶ Adopted 29 November 1969, 973 UNTS 3 (in force 19 June 1975). It was amended most recently by the Protocol of 1992, adopted 27 November 1992, 1956 UNTS 255 (in force 30 May 1996)

²⁴⁷ Adopted 18 December 1971, 1110 UNTS 57 ((in force 16 October 1978). The liability limits were amended most recently by the 1992 Fund Protocol, adopted 27 November 1992, 1953 UNTS 330 (in force 30 May 1996) and 2003 Supplementary Fund Protocol, adopted 16 May 2003, Can TS 2010 No 4 (in force 3 March 2005).

²⁴⁸ Adopted 19 November 1976, 1456 UNTS 221 (in force 1 December 1986).

²⁴⁹ Adopted 23 March 2001, Can TS 2010 No 3 (in force 21 November 2008).

²⁵⁰ Adopted 2 May 1996, 35 ILM 1406 (not expected to enter into force), and Protocol of 2010 to Amend the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, adopted 30 April 2010, IMO Doc LEG/CONF.17/10, 4 May 2010 (not in force). When the Protocol receives the required support and enters into force, it will bring into force the amended convention.

²⁵¹ Adopted 18 May 2007, 46 ILM 694 (in force 14 April 2015).

- Codes:
 - International Code for Ships Operating in Polar Waters (Polar Code):²⁵² With effect as of 1 January 2017, this instrument contains the most comprehensive mandatory and non-mandatory regulations for the construction, equipping, operation, crewing and waste management on board of ships in Arctic and Antarctic waters. The Code operates under SOLAS and MARPOL, both of which were amended to address the unique navigational concerns of polar shipping.
 - International Management Code for the Safe Operation of Ships and for Pollution Prevention:²⁵³ This Code operates under SOLAS and sets out a system for responsible shipowning and focuses on lines of authority, oversight, reporting, maintenance and certification for maritime safety and pollution prevention.
 - IMO Instruments Implementation Code (III Code):²⁵⁴ Adopted in the wake of the voluntary flag State audit system, this code now applies to flag, coastal and port States and provides a system for the effective implementation of IMO instruments.

- Guidelines:
 - General Provisions on Ships' Routing²⁵⁵ and Recommendation on Weather Routing:²⁵⁶ The former set out details for routing under SOLAS Chapter V and list the available measures, such as traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas and deep water routes. IMO is the only organization responsible for the adoption of routing measures for international shipping. The latter assist the identification of optimal course based on weather forecasts and sea and ice conditions, considering the ship's class and characteristics. Routing measures, such as areas to be avoided and precautionary areas may be of particular relevance for Pikialasorsuaq.
 - Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas (PSSA Guidelines):²⁵⁷ These guidelines are frequently used by coastal States that seek additional protection for specially sensitive marine areas by requesting the IMO to designate PSSAs and approve appropriate routing, reporting and other measures for the area in need for protection. Measures adopted may be mandatory or voluntary. They are potentially of special interest for the protection of Pikialasorsuaq from international shipping.

²⁵² The Polar Code involved amendments to SOLAS and MAPOL: MSC Resolution 385(94), 21 November 2014; MSC Resolution 386(94), 21 November 2014; MEPC Resolution 265(68), 15 May 2015; MEPC Resolution 266(68), 15 May 2015. For a consolidated online edition of the Polar Code, see International Code for Ships Operating in Polar Waters, <<http://www.imo.org/en/MediaCentre/HotTopics/polar/Documents/POLAR%20CODE%20TEXT%20AS%20ADOPTED.pdf>> accessed 26 December 2016.

²⁵³ Adopted by Assembly resolution A.741(18), 17 November 1993, with effect on 1 July 1998. The SOLAS was amended in 1994 with the introduction of part XI concerning the ISM Code and which entered into force in 1998

²⁵⁴ Res A.1070(28), 4 December 2013.

²⁵⁵ Res A.572(14), 20 November 1985. See also Adoption of Amendments to the General Provisions on Ships' Routing (A.572(14) as amended), IMO Doc MSC.71(69), 19 May 1998. US Coast Guard initiative to work with Inuit coastal communities

²⁵⁶ Res A.528(13), 17 November 1983.

²⁵⁷ Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas, Assembly resolution A.982(24), 1 December 2005, Res A 24/Res.982, 6 February 2006, as amended by MEPC resolution, Amendments to the Revised Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas (Res A.982(24)), MEPC.267(68), 15 May 2015.

- IMO Guidelines on Places of Refuge for Ships in Need of Assistance, 2003:²⁵⁸ These voluntary guidelines are applied by Canada and Denmark and serve to guide decisions to provide places of refuge for ships in distress on the basis of a risk assessment framework for the master, salvor and coastal State authorities.
 - Guidelines for the Reduction of Underwater Noise from Commercial Shipping to Address Adverse Impacts on Marine Life, 2014:²⁵⁹ These recent guidelines are a first attempt at providing guidance for the reduction of noise that disrupts marine life.
 - Guidelines for the Control and Management of Ships' Biofouling to Minimize the Transfer of Invasive Aquatic Species, 2011:²⁶⁰ These voluntary guidelines are valuable to address the possible the transfer of invasive exotic organisms that attach to hull areas underwater from one marine environment to another.
 - Guidelines on Voyage Planning for Passenger Ships Operating in Remote Areas:²⁶¹ This instrument is particularly important for passenger vessels (especially cruise ships) planning voyages in remote regions where there is little infrastructure or services as are usually available for shipping elsewhere. The guidelines concern appraisal, planning and execution of a list of measures for the voyage and passage plan.
- Other:
 - Memorandum of Understanding on Port State Control in Implementing Agreements on Maritime Safety and Protection of the Marine Environment, 1982 (Paris MoU):²⁶² This instrument is an agreement among maritime administrations (not States) of Europe and North America establishing a system of spot checks of ships in ports to ensure their compliance with international rules and standards for safety and environment protection. The Paris MoU can be expected to play a role in the enforcement of the Polar Code, among other polar shipping regulation.

While the principal focus on IMO instruments in this report is on the above conventions, codes and guidelines, other instruments will also be considered to determine their relevance for the governance of Píkiálasorsuaq.

VI. OTHER INTERNATIONAL ACTORS

There is no question that other international actors are or will be active in the Arctic region, including within or in the vicinity of Píkiálasorsuaq. Therefore, it is necessary to be mindful of the potential for intersecting rights and interests to be addressed in relation to external and third party actors such as industry, environmental organizations and other associations. This brief section identifies such entities in a preliminary fashion and is in need of additional information from local, regional, national and international authorities from both Canada and Greenland to be certain that Phase II work includes all relevant and active entities.

A. Energy

International Energy Agency (IEA),²⁶³ founded in 1974, an autonomous organization, examines the full spectrum of energy issues and advocates policies that will enhance the reliability, affordability and

²⁵⁸ Res A.949(23), 5 March 2004.

²⁵⁹ MEPC.1/Circ.833, 7 April 2014.

²⁶⁰ Res MEPC 207(62), 15 July 2011.

²⁶¹ IMO Doc A25/Res.999, 3 January 2008.

²⁶² Adopted 26 January 1982, 21 ILM 1 (1 July 1982).

²⁶³ Online: <[International Energy Agency](http://www.iea.org)>

sustainability of energy in its 29 members States (including Canada and Denmark) and beyond. The four main areas of IEA focus are: Energy Security: promoting diversity, efficiency and flexibility within all energy sectors; Economic Development: supporting free markets to foster economic growth and eliminate energy poverty; Environmental Awareness: analysing policy options to offset the impact of energy production and use on the environment, especially for tackling climate change; and Engagement Worldwide: working closely with partner countries, especially major economies, to find solutions to shared energy and environmental concerns. Importantly, an IEA document entitled Resources to Reserves 2013: Oil, Gas and Coal Technologies for the Energy Markets of the Future Report includes sections respectively entitled: Technologies for meeting the Arctic Challenge and Protecting the Arctic Environment.

B. Mining

Clearly, the mapping and identification of non-renewable resources in the Arctic has consumed substantial time, energy and funding by both government and industry. And, mining is not exception. Ongoing developments range from diamonds to uranium to nickel. Future developments are certain and it is imperative that the Pikialasorsuaq project take this potentially devastating onshore activity into consideration.

C. Fisheries

To some extent, this matter has been addressed above in relation to NAFO. However, this section intends to address the concerns that may be triggered by non-Arctic state actors keen to be active in the natural resources of Pikialasorsuaq as a commodity.

D. Shipping

The shipping industry is a highly globalized industry. It consists of a very diverse group of actors represented by associations which are active at the IMO, the principal regulatory forum for shipping. Among the most significant associations are the International Chamber of Shipping, the Baltic and International Maritime Council, International Group of P&I Clubs, Association of Independent Tanker Owners, and International Tanker Owners Pollution Federation (ITOPF). There are also Canadian and Danish shipping companies and related associations operating the Arctic. They must be fully apprised of the rights and interests of the Pikialasorsuaq coastal communities. They must also be in full compliance with the IMO Polar Code and all other relevant local, regional, national and international instruments to ensure safety, security and protection of the marine environment.

E. Tourism

Too often, the tourism industry does not take into account the adverse impacts that they have on the environment. The Crystal Serenity's recent cruise through the Northwest Passage caused alarm for nearly every Inuit coastal community along its route. Though they safely and successfully managed this cruise, concerns about increased transits remain. In addition, other elements of tourism in the Pikialasorsuaq region must be on the radar screen of all. For example, whale watching, birding and other such eco-tourism ventures may appear benign. However, they too may provide welcome income, but be accompanied by adverse impacts. The Cruise Lines International Association will need to be informed.

F. Environmental Organizations

As climate change threats to the Arctic intensify so too does the work of environmental organizations throughout North America and elsewhere. Some of these organizations may be helpful to cooperate and

collaborate with and others many not be. The Pikialasorsuaq Commissioners will no doubt consider this question and self-determine the extent of outreach that they want to pursue in this regard. To date, we can confirm that the following organization are directly or indirectly engaged in this specific project:

Pew Charitable Trusts
World Wildlife Fund
Others?

VII. OTHER CONSTRUCTIVE ARRANGEMENTS

For purposes of illustrating elements that may be useful to consider in the context of Pikialasorsuaq, this brief section summarizes Arctic initiatives that emphasize Indigenous place, rights and roles at the core of their respective structures or regimes. The future design of Pikialasorsuaq may benefit from all or some of the characteristics of these projects developed either in direct collaboration with Indigenous peoples or purely established and driven by and for Indigenous peoples.

A. Executive Order on Northern Bering Sea Climate Resilience²⁶⁴

In the context of the US initiative entitled Enhancing Coordination of National Efforts in the Arctic, this Executive Order has several constructive elements for consideration by the Pikialasorsuaq Commission, including intended to

- Intention to confront the challenges of a changing Arctic by working to conserve Arctic biodiversity;
- Support and engage Alaska Native tribes;
- Incorporate traditional knowledge into decision making;
- Build a sustainable Arctic economy that relies on the highest safety and environmental standards, including adherence to national climate goals;
- Designates a geographic area of the “Northern Bering Sea Climate Resilience Area”
- Withdraws oil and gas leasing activities within the area for an indefinite period;
- Establishes a multi-agency Task Force and a Bering Intergovernmental Tribal Advisory Council to coordinate management and co management of the area. Further urges the state of Alaska to collaborate with all concerned consistent with spirit of the Executive Order; and
- Addresses traditional knowledge, vessel pollution and invokes the IMO Polar Code

B. Yukon River Inter-Tribal Watershed Council (YRITWC)²⁶⁵

Intertribal, Indigenous initiated project that transcends the border between Canada and the United States with the objective of safeguard the nearly 2,000 mile Yukon River from the headwaters to the mouth. The YRITWC originated in 1997 under an inter-tribal treaty in order to “initiate and continue the cleanup and preservation of the Yukon River for the protection of our own and future generations of our Tribes/First Nations and for the continuation of our traditional Native way of life.” YRITWC is composed of 73 Tribal Governments and First Nations and supported by a staff based in Alaska.

²⁶⁴ US President Barack Obama, Executive Order -- Northern Bering Sea Climate Resilience, 9 December 2016 <https://www.whitehouse.gov/the-press-office/2016/12/09/executive-order-northern-bering-sea-climate-resilience> accessed on 31 December 2016.

²⁶⁵ Inter-Tribal Accord, Yukon River Inter-Tribal Watershed Council, adopted 1997 <<http://www.yritwc.org/>> accessed 31 December 2016.

C. Inuit Polar Bear Agreement (NSB and IGM Agreement)²⁶⁶

This Agreement is another example of an Indigenous specie management system that transcends a national border. The agreement is implemented through the Inuvialuit-Inupiat Polar Bear Commission and supported by both Indigenous and non-Indigenous scientists engaged by the North Slope Borough and the Inuvialuit Regional Corporation.

D. Laponian World Heritage Site²⁶⁷

The Laponian area is a mixed World Heritage Site in northern Sweden with a formal regime established to ensure a direct role for the Sami peoples in the conservation and management of 9,400 sq. km of national parks and nature reserves. The Sami have both management and co-management roles (with local, regional and national Swedish authorities) of this UNESCO site where both the natural features and the Sami reindeer herding culture are protected. Potentially useful to Pikialasorsuaq because

- Indigenous traditional economy shapes the landscape and maintaining biological diversity has been underscored and is based on Sami values as well as sustainable and equitable development. Cultural and spiritual connections to the land are reinforced by Sami role in the overall management of the World Heritage Site and help to ensure protection of Sami cultural values, associated historical sites and the reindeer herding industry.
- Consensus decision-making is the common working method, stressing importance of respect, open communication and ongoing dialogue among all the actors as well as all other communications with the broader local community.

E. North Atlantic Marine Mammal Commission (NAMMCO)²⁶⁸

The NAMMCO agreement was adopted in 9 April 1992 in order to establish an international regional organization composed of governments of Faroe Island, Greenland, Iceland and Norway and is focused upon “sustainable and responsible use of all living marine resources, including marine mammals.” The organization is comprised of a Council; Finance and Administration Committee; a Management Committees comprised of respective member state representatives; a Scientific Committee; a Committee on Hunting Methods; a Committee on Inspection and Observation; and all are supported by a Secretariat based in Tromsø, Norway. Directly relevant to Pikialasorsuaq is the fact that

- NAMMCO is also actively engaged in the International Whaling Commission²⁶⁹ and many of its activities related to the taking and conservation of those marine mammals controlled by the International Convention for the Regulation of Whaling are managed by NAMMCO in Greenland, engaged and reporting through the Kingdom of Denmark to the Aboriginal Subsistence Whaling Sub-Committee and Aboriginal Subsistence Whaling Working Group; and

²⁶⁶ Inuvialuit - Inupiat Polar Bear Management Agreement detailing NSB-IGM Polar Bear Agreement, *supra* note 12.

²⁶⁷ The official 1996 Committee determination stated among other matters that: “The site has been occupied continuously by the Sami people since prehistoric times, is of the last and unquestionably largest and best preserved examples of an area of transhumance” E/C.19/2012/10 12-25014 15

²⁶⁸ Agreement on Cooperation in Research, Conservation and Management of Marine Mammals in the North Atlantic, adopted 9 April 1992 (entered into force 8 July 1992) (NAMMCO Agreement) <http://www.nammco.no/about-nammco/nammco-agreement/> accessed 31 December 2016.

²⁶⁹ International Convention for the Regulation of Whaling adopted 2 December 1946 (entered into force 10 November 1948) 364 UNTS 1953.

- Their key constituents are the members of the Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK), Greenland's national association of fishers and hunters, including marine mammals and land animals.

VIII. CONCLUSION

This Annotated Outline provides a preliminary survey of the key elements of a more comprehensive Legal Scoping. We have endeavored to underscore and in a preliminary fashion, to elaborate upon the relevant legal and policy contours of the area and to consider the importance of such material from an Indigenous perspective. The Inuit perspective and the central objective of continued Inuit use and Indigenous management of area should be organized and informed by Indigenous knowledge, the local knowledge of the area. And, complemented by some or all of the materials described herein.

We acknowledge that like Pikialasorsuaq and the people of Pikialasorsuaq, laws, policies and initiatives are in constant motion. This movement and the people intimately familiar with this living ecosystem must be understood as central characteristics of Pikialasorsuaq. In regard to our future work throughout Phase II, we genuinely hope to have direct engagement with the Pikialasorsuaq Commissioners in order to ascertain whether or not we are fully responsive to the aspirations of Inuit and the Pikialasorsuaq proponents.

BIOGRAPHIES

DALEE SAMBO DOROUGH – Principal Team Leader

Specializing in public international law, international relations, Indigenous human rights standards, political and legal relations between nation-states and Indigenous peoples, and the status and human rights of Alaska Natives, Dr. Dalee Sambo Dorough (Inuit-Alaska) holds a Ph.D. from the University of British Columbia, Faculty of Law (2002) and a Master of Arts in Law & Diplomacy from The Fletcher School at Tufts University (1991). She is an Associate Professor of Political Science at University of Alaska Anchorage [UAA], responsible for the sub-field of International Relations. She is also an Expert Member of the United Nations Permanent Forum on Indigenous Issues and holds the portfolio on human rights. In the coming year, she will be engaged with the UAA Institute for Social and Economic Research in order to focus on Arctic affairs. Dr. Dorough has published work at the local, national and international level. Further information about Dr. Dorough can be found at:

<https://www.uaa.alaska.edu/politicalscience/faculty/dorough.cfm>

<https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2/current-members-of-the-permanent-forum-2014-2016.html>

ALDO CHIRCOP – Team Leader

Aldo Chircop, JSD, Professor of Law, Canada Research Chair (Tier 1) in Maritime Law and Policy, Schulich School of Law, Dalhousie University. Dr. Chircop's principal areas of research are in Canadian maritime law, international maritime law and international law of the sea. In particular, his maritime research focuses on the international regulation of shipping in polar regions. He is Chair of the Comité Maritime International's International Working Group on Polar Shipping. His previous positions included directorships of the Marine & Environmental Law Institute (MELAW), Marine Affairs Program (MAP), International Ocean Institute (IOI) and the Mediterranean Institute at the University of Malta. Dr. Chircop was also Canadian Chair in Marine Environment Protection at the IMO's World Maritime University in Malmö, Sweden. Dr. Chircop has published extensively in Canada and overseas. Further information about Dr. Chircop can be found at: <http://www.dal.ca/faculty/law/faculty-staff/our-faculty/aldo-chircop.html>

LORI IDLOUT – Law Student

Lori Idlout is an established Nunavut entrepreneur, a successful Nunavut retailer, and a leader in establishment of programs, services and organizations to promote the well-being of Inuit and the protection of those most at risk. Engaged with NVision Insight Group, Inc., an Ottawa-based consulting firm, Lori is their most skilled Inuktitut-speaking consultant and facilitator, Lori is also completing her Law Degree at Ottawa University. Further information about Lori Idlout and NVision can be found at:

<http://nvisiongroup.ca/what-we-are/>