



ISSN 2754-5547

<https://doi.org/10.52230/JVON5553>

## **‘Canada’s Northwest Passage and the Potential for Co-Management’**

**Nicole Covey**

**To cite this article:** Nicole Covey, ‘Canada’s Northwest Passage and the Potential for Co-Management’, *Journal of Australian, Canadian, and Aotearoa New Zealand Studies* 2 (September 2022): 40-72, <https://doi.org/10.52230/ZQCQ4120>

CC BY-NC-ND 4.0

<http://creativecommons.org/licenses/by-nc-nd/4.0/>

## Canada's Northwest Passage and the Potential for Co-Management

Nicole Covey<sup>1</sup>

There is no body of water in the world today that is of more interest to nations around the world than the Northwest Passage of North America. [...] At different points in history, a particular piece of water has held nations' interest and activities enthralled and engaged. The Panama Canal, the Suez Canal, the Strait of Hormuz, and now, it is the arctic region and their waterways that are turning heads towards the North Star.<sup>2</sup>

The idea of the Northwest Passage (NWP) has managed to enthrall the collective Canadian imagination and become deeply rooted within the state's national identity. The contested status of the NWP is therefore more complex than a mere dispute over the level of control the state can wield over the waterway as the legal dispute evolves into an ideological challenge to Canada. It is also important to realize that the NWP is not a single waterway but is instead comprised of several waterways that go through the Canadian Arctic Archipelago that allows ships to transit from the Davis Strait to the Beaufort Sea,<sup>3</sup> or more generally to connect the Atlantic and Pacific Oceans. While there is agreement in the international community that the waters in the North American Arctic Archipelago are Canadian, disagreement occurs over the legal status of the passage.<sup>4</sup> The situation is complicated by the fact that the NWP 'is more than ice and water: it is a part of the Canadian identity',<sup>5</sup> making the passage an issue that Canada cannot avoid. Little progress has been made in

---

<sup>1</sup> I am extremely grateful to the editor of the journal as well as the two anonymous peer reviewers for their comments and suggestions.

<sup>2</sup> Peter F. K. Ittinuar, "The Northwest Passage and Kangiqtugaapik/Clyde River: Why Clyde River Represents All of the Northwest Passage," in *Nilliajut 2: Inuit Perspectives on the Northwest Passage Shipping and Marine Issues*, ed. Inuit Tapiriit Kanatami (Ottawa: Inuit Tapiriit Kanatami, 2017), 43.

<sup>3</sup> Donald R. Rothwell, "Arctic Sovereignty and Its Legal Significance to Canada," in *Handbook of the Politics of the Arctic*, eds. Leif Christian Jensen and Geir Hønneland (Cheltenham, UK: Edward Elgar Publishing, 2015), 251.

<sup>4</sup> Andrea Charron, "The Northwest Passage - Is Canada's Sovereignty Floating Away," *International Journal* 60, no. 3 (2005): 832, <https://doi.org/10.1177/002070200506000316>.

<sup>5</sup> Adam Lajeunesse, "The Northwest Passage in Canadian Policy: An Approach for the 21st Century," *International Journal* 63, no. 4 (2008): 1040.

gaining international support for Canada's claim over the NWP since the state officially declared straight baselines in 1985.

This article will begin by explaining the contested status of the NWP and demonstrating that Canada's Arctic sovereignty is supported by and grounded in Indigenous use and occupation of the Canadian Arctic, including the NWP. The article will then turn to the Aotearoa New Zealand case of the Whanganui River/Te Awa Tupua to illustrate an innovative example of Indigenous-state water management. Finally, this article will argue for the creation of a co-managed council, the Canadian Northwest Passage Maritime Council, to manage and strengthen Canada's claim over the NWP which would create a situation in which acquiescence to the Canadian position becomes more politically feasible for the international community.

### Contested Status of the NWP

The dispute over the status of Canada's NWP has captured the attention of both the mass media and academic scholarship. The debate over the status of the NWP reached new heights in 1985 when Canada announced its decision to utilize the straight baseline approach which allowed Canada to officially assert its claim that the NWP is historic internal waters, formalizing Canada's long-held position on the issue.<sup>6</sup> Canada's assertion that the NWP was sovereign Canadian internal waters was met with outrage, chiefly from the United States (US), which claimed that the NWP is an international strait and therefore subject to the right of innocent passage.

---

<sup>6</sup> Adam Lajeunesse, *Brief to the Standing Committee on Foreign Affairs and International Development: Canada's Sovereignty in the Arctic* (Mulroney Institute of Government, 2018), 2.

The government of Canada officially decided to apply straight baselines and claim the NWP as historic internal waters in response to the perceived sovereignty threat that the 1969 voyage of the *Manhattan* elicited in the Canadian populace.<sup>7</sup>

While the dispute over the status of the NWP existed between Canada and the US before the *Manhattan* Crisis, the *Manhattan* voyage and the 1985 transit of the *USCGC Polar Sea* made the issue of Canadian control over the passage increasingly salient

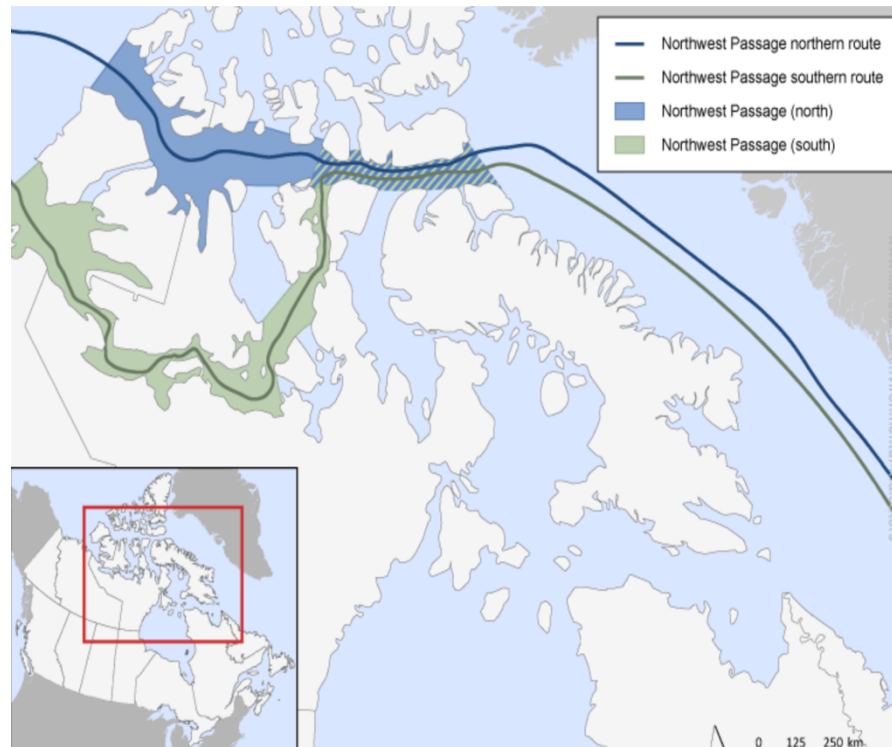


Fig.1: Environment and Climate Change Canada, *Canada's Northwest Passage*. (2018), <https://www.canada.ca/en/environment-climate-change/services/environmental-indicators/sea-ice.html>.

in both the domestic and international political spheres.<sup>8</sup> Interestingly, the Government of Canada did not expect either transit (1969 *Manhattan* or 1985 *Polar Sea*) to generate domestic panic, because both transits had been supported by the Canadian state. Nevertheless, domestic perception held that American ships were infringing on Canada's northern sovereignty. The perceived infringement was and

<sup>7</sup> James Krasha, "The Law of the Sea Convention and the Northwest Passage," *International Journal of Marine and Coastal Law* 22, no. 2 (2007): 263,

<sup>8</sup> Adam Lajeunesse and Rob Huebert, "Preparing for the next Arctic Sovereignty Crisis: The Northwest Passage in the Age of Donald Trump," *International Journal* 74, no. 2 (June 1, 2019): 227-8, <https://doi.org/10.1177/0020702019849641>.

continues to be an important issue to the Canadian public, due to the place that the NWP holds within the Canadian ethos.

On the contrary, the American position is that the NWP is an international strait and therefore navigable by international traffic for uninterrupted transit passage. If the NWP is deemed to be an international strait by the International Court of Justice it would dramatically decrease the control that Canada has over navigation, and the state could then only enforce international standards.<sup>9</sup> The US' ongoing insistence that the NWP is an international strait speaks directly to the country's interest global interest in pursuing Freedom of Navigation. There is a serious concern expressed by the Americans that if the US cedes its position and acknowledges Canada's claim of historic internal waters, it would set a precedent that would impact the classification of other international straits.<sup>10</sup> Ergo, there is reason to believe that it does not matter what the legal basis for the Canadian claim actually is, the American problem is the claim against freedom of navigation.<sup>11</sup> As with the Canadian position, the American position is one based on ideology and principle, and thus it is not ideologically feasible for Canada to openly cede to the US' long-held position (and vice versa).<sup>12</sup>

The US is not the only party in opposition to Canada's claim of historic internal waters, but the US has historically been the most vocal and scholars have tended to frame the NWP dispute from the Canadian and American positions. Germany's 2013 Arctic policy called for and emphasized the idea of freedom of navigation in the

---

<sup>9</sup> Rob Huebert, "Canadian Arctic Sovereignty and Security in a Transforming Circumpolar World," in *Canada and the Changing Arctic: Sovereignty, Security, and Stewardship*, eds. Franklyn Griffiths, Rob Huebert, and P. Whitney Lackenbauer (Wilfrid Laurier University Press, 2011), 46.

<sup>10</sup> Suzanne Lalonde and Frédéric Lasserre, "The Position of the United States on the Northwest Passage: Is the Fear of Creating a Precedent Warranted?," *Ocean Development & International Law* 44, no. 1 (2013): 30, <https://doi.org/10.1080/00908320.2012.726832>.

<sup>11</sup> Donat Pharand, "The Arctic Waters and the Northwest Passage: A Final Revisit," *Ocean Development & International Law* 38, no. 1 (2007): 12.

<sup>12</sup> Adam Lajeunesse, "The Northwest Passage in Canadian Policy," 1040.

Arctic Ocean and in the NWP, and stated '[t]he Federal Government is committed to the protection of freedom of navigation in Arctic waters in accordance with the regulations of UNCLOS.'<sup>13</sup> A key facet of state sovereignty is international recognition and acknowledgement, and the fact that multiple actors view the passage as a strait means that Canada has an extremely high burden of proof to successfully affirm and gain recognition from the international audience. Although no state has tried to bring the case to the International Court of Justice, it is also true that no state has officially sided with Canada in the dispute.<sup>14</sup>

Once the Canadian government realized that the international community was not going to easily accept its claim to historic internal waters, the state decided to set 'sovereignty to the side to solve a more pressing, pedestrian issue'<sup>15</sup> - the issue of control - and pass the *Arctic Waters Pollution Prevention Act* (AWPPA) in 1970. The AWPPA sought to increase Canada's control over the waterway and manage the maritime pollution that an increase in maritime traffic through the region would create. The importance of the creation of the AWPPA cannot be overstated because as political scientist Rob Huebert argues, '[t]he core issue of Canadian Arctic sovereignty is control; the core issue of Canadian Arctic security is about responding to threats.'<sup>16</sup> It is also important to realize that inside the US there was a very public acceptance of the AWPPA and 'in an April 1970 phone conversation with Prime Minister Pierre Trudeau, Secretary of State William Rogers threatened to challenge the new law publicly, the prime minister warned Rogers that Canada would respond to any American challenge and would "have the world on our side."<sup>17</sup>

---

<sup>13</sup> Federal Government of Germany, *Germany's Arctic Policy Guidelines Assuming Responsibility, Creating Trust, Shaping the Future* (Federal Foreign Office, 2013), 25.

<sup>14</sup> Adam Lajeunesse, *Brief to the Standing Committee*, 4.

<sup>15</sup> Andrea Charron, "Is Canada's Sovereignty Floating Away," 840.

<sup>16</sup> Rob Huebert, "Canadian Arctic Sovereignty and Security", 21.

<sup>17</sup> Adam Lajeunesse and Rob Huebert, "Preparing for the next Arctic Sovereignty Crisis," 235.

The realization that Canada needed to set sovereignty aside and focus on expanding domestic control over the passage is extremely important because the Canadian legal position regarding the status of the passage comes down to recognition of historic internal waters by the international system.<sup>18</sup> The difference between the NWP being internal waters or an international strait speaks to the different levels of control the Canadian state has over the waterway. If the NWP ends up being classified as historic internal waters then the state would have complete sovereignty and control and be able to regulate any and all shipping, in addition to possessing the ability to deny transit by any foreign vessel the state sees fit.<sup>19</sup> In cases of territorial waters or an international strait the coastal state does not have the level of authority to deny transits, as the right of innocent passage exists under territorial seas and the right of transit passage exists for international straits.<sup>20</sup>

Canada and the US initiated negotiations to try to settle the disagreement over the NWP in 1985, and while neither side was willing to concede their position the two states signed the Agreement on Arctic Cooperation in 1988.<sup>21</sup> This agreement was crafted so that the two states could agree on how to use the NWP, while not hindering their respective legal positions.<sup>22</sup> The agreement states that '[t]he Government of the United States pledges that all navigation by U.S. icebreakers within waters claimed by Canada to be internal will be undertaken with the consent of the Government of Canada,'<sup>23</sup> in other words, the two countries agreed that the US would ask permission to transit the passage, and that Canada would grant the

---

<sup>18</sup> Adam Lajeunesse, "The Northwest Passage in Canadian Policy," 1049.

<sup>19</sup> Donald R. Rothwell, "Arctic Sovereignty and Its Legal Significance to Canada," 251.

<sup>20</sup> Michael Byers, *International Law and the Arctic* (Cambridge University Press, 2013), 130.

<sup>21</sup> Agreement Between the Government of Canada and the Government of the United States of America on Arctic Cooperation, 1988, <https://www.treaty-accord.gc.ca/text-texte.aspx?id=101701>.

<sup>22</sup> Christopher Kirkey, "Smoothing Troubled Waters: The 1988 Canada-United States Arctic Co-Operation Agreement," *International Journal* 50, no. 2 (1995): 417.

<sup>23</sup> Agreement Between the Government of Canada and the Government of the United States.

request. The agreement was based on the mutual trust and understanding between the two countries and solidified how they would treat the dispute: they would agree to disagree.<sup>24</sup> The 1988 Agreement importantly notes that:

[n]othing in this agreement of cooperative endeavour between Arctic neighbours and friends nor any practice thereunder affects the respective positions of the Governments of the United States and of Canada on the Law of the Sea in this or other maritime areas or their respective positions regarding third parties.<sup>25</sup>

Ergo, while the dispute is currently manageable, the question surrounding the legal status of the NWP has never been settled.

The positions articulated by Canada and the US in the 1980s have remained consistent to this day. The only time where there was a small chance that the US may have signalled that it may have been willing to reconsider its position occurred in 2006 when a former US ambassador to Canada, Paul Cellucci, said that '[i]t is in the security interests of the United States that [the Canadian Arctic] be under the control of Canada'.<sup>26</sup> The American position was immediately clarified by David Wilkins, the then-current ambassador who reaffirmed the established American position.<sup>27</sup> These positions were recently articulated in May 2019, when US Secretary of State Pompeo gave a speech in Rovaniemi in which he declared: '[w]e recognize that Russia is not the only nation making illegitimate claims. The US has a long-contested feud with Canada over sovereign claims through the Northwest Passage'.<sup>28</sup> In response, Chrystia Freeland, Canada's Minister of Foreign Affairs, remarked that 'Canada is very clear about the Northwest Passage being Canadian.

<sup>24</sup> Adam Lajeunesse and Rob Huebert, "Preparing for the next Arctic Sovereignty Crisis," 231.

<sup>25</sup> Agreement Between the Government of Canada and the Government of the United States.

<sup>26</sup> James Krasha, "The Law of the Sea Convention," 268.

<sup>27</sup> *Ibid.*

<sup>28</sup> Michael Pompeo, "Looking North: Sharpening America's Arctic Focus" (Speech, Rovaniemi, Finland, May 6, 2019), <https://2017-2021.state.gov/looking-north-sharpening-americas-arctic-focus/index.html>.



There is both a very strong historic and geographic connection with Canada'.<sup>29</sup> Given the long-standing bilateral dispute over the status of the NWP, a definitive solution is unlikely to be found in the traditional legal case. Instead, the problem may be solved through innovation, once again setting sovereignty to the side. The concept of setting sovereignty to the side is an idea articulated by Andrea Charron, who explained that due to the strength of both arguments, the legal dispute should be set aside and attention should instead be spent on time sensitive issues regarding the management of the NWP.<sup>30</sup> This article posits that in increasing the level of management Canada has over the NWP via the sovereignty to the side thesis, it has the possibility of creating a scenario in which it is more politically advantageous for external actors to support the Canadian position.

### Understanding the Canadian Position

It has been well established in Canadian policy, that the country's sovereignty over its Arctic territory is based on Inuit use and occupation.<sup>31</sup> The Inuit Tapiriit Kanatami's (ITK) partner chapter to the 2019 Arctic and Northern Policy Framework focused on Inuit Nunangat notes that Canadian Arctic sovereignty continues to be 'contingent on full implementation of constructive arrangements with Inuit, as well as the strength and well-being of Inuit society'.<sup>32</sup> Joe Clark, a former foreign minister of Canada, has said that '[t]he Arctic islands, [...] 'are joined and not divided by the waters between them. From time immemorial Canada's Inuit peoples have used and

---

<sup>29</sup> Associated Press, "Canada Affirms Arctic Co-Operation with U.S. despite Climate Impasse," CBC News, 7 May 2019, <https://www.cbc.ca/news/world/climate-change-us-arctic-policy-1.5125715>.

<sup>30</sup> Andrea Charron, "Canada, the United States, and the Northwest Passage: Sovereignty to the Side," *Polar Geography* 29, no. 2 (2005): 139, <https://doi.org/10.1080/789610130>.

<sup>31</sup> Crown-Indigenous Relations and Northern Affairs Canada, *Canada's Arctic and Northern Policy Framework* (Ottawa: Government of Canada, 2019), <https://www.rcaanc-cimac.gc.ca/eng/1560523306861/1560523330587>.

<sup>32</sup> Inuit Tapiriit Kanatami, *Arctic and Northern Policy Framework: Inuit Nunangat* (Inuit Tapiriit Kanatami, 2019), 2.

occupied the ice as they have used and occupied the land.”<sup>33</sup> Therefore, while the presence of the Inuit’s use and occupation bolster Canada’s sovereignty claims in the North, it also means that the state has a duty to fulfill their obligations to the Inuit dwelling within Canadian borders both as Canadian citizens but also as Indigenous peoples. This multi-layered relationship is explicitly laid out in the Inuit Circumpolar Council’s (ICC) 2009 *Circumpolar Inuit Declaration on Sovereignty in the Arctic* <sup>34</sup> and is echoed further in Canadian government policy and speeches across administrations.

The relationship Inuit have with the NWP is crucial to understanding how Canada navigates its approach to the passage, and when the ITK wanted to explain the relationship between Canadian Inuit and the NWP they found that: ‘Residents want people to remember that “we are Canadians,” and we feel that “the rest of Canada overlooks...that we are attached [to the Northwest Passage] and we are a part of it.” “[I]t’s part of our land, it’s part of our lifestyle, it’s part of our culture.”’<sup>35</sup> In *Nilliajut 2*, ITK explains the view that Inuit have in relation to the NWP by explicitly declaring that ‘[t]he sea is no different to residents of this region than the land: “In our own mind, it’s our territory,” and the Northwest Passage itself is viewed as “Canadian territory.”’<sup>36</sup> Advancing the Inuit position on the NWP is a no-lose situation for the Canadian state. It affirms Canadian sovereignty over the passage, makes it more politically difficult for states to argue for an international strait, and upholds international law and precedent that protects historic Indigenous territory.

---

<sup>33</sup> John English, *Ice and Water: Politics, Peoples, and the Arctic Council* (Toronto, Canada: Penguin Canada, 2013), 147.

<sup>34</sup> Inuit Circumpolar Council, *A Circumpolar Inuit Declaration on Sovereignty in the Arctic*, 2009, <https://iccalaska.org/wp-icc/wp-content/uploads/2016/01/Signed-Inuit-Sovereignty-Declaration-11x17.pdf>.

<sup>35</sup> Inuit Tapiriit Kanatami, *Nilliajut 2: Inuit Perspectives on the Northwest Passage Shipping and Marine Issues*, ed. Inuit Tapiriit Kanatami (Ottawa: Inuit Tapiriit Kanatami, 2017), 61.

<sup>36</sup> *Ibid.*, 64.

Inuit individuals have been outspoken about their relationship to Canada's Northwest Passage. In the 2013 report, *Nilliajut: Inuit Perspectives on Security Patriotism and Sovereignty*, Rosemarie Kuptana states that: 'the position of the USA and the European countries that the Northwest Passage be designated as international waters is either ignorant of, or an exercise of, faulty judgement with respect to Inuit participation on sovereignty and security.'<sup>37</sup> She goes on to explain that the NWP is part of the Inuit Sea, and the survival of Inuit has been based on the use of the passage for millennia.<sup>38</sup> Inuit are a maritime people who have relied upon the use of Arctic land, sea, and ice since time immemorial. Thus, the exclusion of Inuit perspectives and knowledge in regard to international discussions surrounding the future of the NWP is a continuation of colonial practice and furthermore ignores the rights of Indigenous peoples that exist in international law.<sup>39</sup> The point is reiterated in the *Inuit Declaration on Sovereignty* when it declares that international relations, specifically in the Arctic, no longer fall solely under the state's purview but instead need to be providing space for the inclusion of Indigenous peoples.<sup>40</sup> There is a long history of Inuit asserting their relationship to the passage and raising concerns about the impact that pollution can have on the region. The ITK protested that the voyage of the *Polar Sea* that local communities had not been consulted over transits through the passage, but the local communities would be the ones primarily impacted by the increase of pollution and the heightened risk of oil spills.<sup>41</sup>

---

<sup>37</sup> Rosemarie Kuptana, "The Inuit Sea," in *Nilliajut: Inuit Perspectives on Security Patriotism and Sovereignty*, ed. Inuit Qaujisarvingat (Ottawa: Inuit Tapiriit Kanatam, 2013), 11.

<sup>38</sup> *Ibid.*, 10.

<sup>39</sup> *Ibid.*, 10-12.

<sup>40</sup> Inuit Circumpolar Council, *A Circumpolar Inuit Declaration on Sovereignty*.

<sup>41</sup> John English, *Ice and Water*, 146-7.

After Pompeo's incendiary Rovaniemi speech in 2019, the ICC also released a statement heavily quoting the president of the Canadian chapter of the ICC, Monica Ell-Kanayuk, who explained:

Canadian sovereignty is based on Inuit-Crown land claims agreements as well as more than four millennia of Inuit land use and occupancy throughout the region [...] Canada's sovereignty is based on treaties and constructive agreements which recognize both Inuit sovereignty and Canadian sovereignty over the Arctic, including the Northwest Passage.<sup>42</sup>

Ell-Kanayuk went on to bring up a statement made by Joe Clark in 1985 in which it said that

Canada's sovereignty in the Arctic is indivisible. It embraces land, sea and ice. It extends without interruption to the seaward facing coasts of the Arctic islands. These islands are joined, and not divided, by the waters between them. They are bridged for most of the year by ice. From time immemorial Canada's Inuit people have used and occupied the ice as they have used and occupied the land.<sup>43</sup>

The ICC press release ends with a reminder that the American understanding that the NWP qualifies for freedom of navigation is in violation of article 26 of UNDRIP that affirms the right of Indigenous peoples to their traditional territory.<sup>44</sup> All in all, the press release is intended to remind the US and those who side against the Canadian position that they are also siding against the local Indigenous population as well.

The concept of co-development was an integral part of the 2019 Arctic and Northern Policy Framework (ANPF), due to the understanding that northern problems require northern solutions, with the ANPF explaining that the 'made in Ottawa' approach has not been overly successful with respect to northern policy and governance.<sup>45</sup> The ANPF was co-developed with Indigenous peoples, provincial governments, and territorial governments alongside the federal government.<sup>46</sup> This

---

<sup>42</sup> "Inuit and Canada Share Northwest Passage Sovereignty - ICC Canada President," Inuit Circumpolar Council, 2019, <https://www.inuitcircumpolar.com/press-releases/inuit-and-canada-share-northwest-passage-sovereignty-icc-canada-president/>.

<sup>43</sup> "Inuit and Canada Share Northwest Passage Sovereignty".

<sup>44</sup> *Ibid.*

<sup>45</sup> Crown-Indigenous Relations and Northern Affairs Canada, *Canada's Arctic and Northern Policy Framework*.

<sup>46</sup> *Ibid.*

change of policy approach from 'made in Ottawa' to a co-developed framework demonstrates a shift in approach towards northern policy, and this is especially important considering that the ANPF is supposed to guide Canada's northern investment and action through 2030.<sup>47</sup> The co-development was designed to strengthen trust and relationships between the various partners, and the ANPF directly refers to a statement by Inuit activist and current Governor General of Canada Mary Simon in which she mentioned that,

there is a "long history of visions, action plans, strategies and initiatives being devised 'for the North' and not 'with the North'." Therefore, this framework has been co-developed for the North, in partnership with the North, to reflect the needs and priorities of the North.<sup>48</sup>

The ANPF acknowledges the 2019 framework is meant to create a 'long-term foundation for transformative change, benefiting our Arctic, its Indigenous peoples, northern residents and all Canadians.'<sup>49</sup> If the federal government is sincere with this statement and its goals for the future of a thriving northern region, then it makes sense to apply this co-development framework to an issue central to the Canadian imagination: Canada's Northwest Passage.

### The Case of Te Awa Tupua

The Aotearoa New Zealand case of the Whanganui River/Te Awa Tupua and its co-management solution provides clear inspiration on how to manage the dispute surrounding the status of Canada's NWP. The dispute between the Iwi and the state, centred around the Iwi's desire to bring the Whanganui River under their control and was the longest ongoing legal battle in Aotearoa New Zealand.<sup>50</sup> The Iwi felt that

---

<sup>47</sup> Crown-Indigenous Relations and Northern Affairs Canada, *Canada's Arctic and Northern Policy Framework*.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> Elaine Hsiao, "Whanganui River Agreement - Indigenous Rights and Rights of Nature," *Environmental Policy and Law* 42, no. 6 (2012): 372.

they were entitled to administration of the river because they understood that the river was a living entity and their ancestor (Te Awa Tupua) since time immemorial.<sup>51</sup> In order for the Whanganui Iwi to protect themselves and their culture it was vital that they protect their ancestor, Te Awa Tupua, from the state and outside influences.<sup>52</sup> The fight for the river was long standing and an early victory for the Iwi traces back to 1849 when eel fishing rights were preserved at specific spots along the river,<sup>53</sup> and the Iwi continued to actively campaign for the river since the 1840 Treaty of Waitangi was signed.<sup>54</sup>

The dispute was officially settled with the 2017 *Te Awa Tupua (Whanganui River Claims Settlement) Act*.<sup>55</sup> The Act recognized the relationship that the Iwi had to the River and granted the Whanganui River (which from this point forward will be referred to as Te Awa Tupua) legal personality, which was seen as a way to enshrine the special status of Te Awa Tupua under law.<sup>56</sup> The creation of the Act allowed Te Awa Tupua to be recognized, both politically and within the western legal system, as a living entity, with the protections that go alongside that claim, but also one in which allows the state to have a say in the management of the river.

The *Whanganui River Settlement Act* is a revolutionary step in environmental and Indigenous/Crown law, because it was the first case of granting legal personhood status to an environmental entity in the western legal system. The concept of legal personality is commonly granted to corporations, as it allows them the ability to sue and be sued, but it was seen to be a progressive decision in

---

<sup>51</sup> Hsiao, "Whanganui River Agreement", 371.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*, 372.

<sup>54</sup> *Ibid.*

<sup>55</sup> Government of New Zealand, "Te Awa Tupua (Whanganui River Claims Settlement) Act 2017" (New Zealand Parliamentary Counsel Office, 2017),

<https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>.

<sup>56</sup> *Ibid.*

environmental law, because it allowed Te Awa Tupua legal avenues to protect itself. The Act was able to give a river the ability to sue if the river was being harmed instead of having to prove harm to a person, which is the burden of proof under which non-human entities must demonstrate to pursue legal action. The decision is important in terms of Crown/Iwi relations because the Act legally enshrines the Whanganui Iwi's relationship with Te Awa Tupua. Māori do not share the western belief that natural resources can be possessed, but instead Māori understand natural resources to be non-human living entities and therefore cannot be owned under the western understanding of property.<sup>57</sup> The Act allows the enshrinement of the Whanganui Iwi perception of the river as their ancestor to which they have physical and spiritual ties<sup>58</sup> promoting the Iwi's 'belief that they are interconnected with the river – "I am the river. The river is me".'<sup>59</sup>

It is important to note that this article is not equating the case of Te Awa Tupua to the dispute over the status of Canada's Northwest Passage. The most important element in this case study is the arrangement of councils, and how they bring in a wide array of interested parties at varying levels of authority over the river. Te Awa Tupua is managed and represented by three offices with various levels of responsibility and authority. Te Pou Tupua is the trustee office or can be understood as the 'human face' of Te Awa Tupua. There are two members that comprise Te Pou Tupua one selected from the Whanganui Iwi and the other by the Aotearoa New Zealand Crown.<sup>60</sup> This office is expected to conduct itself through the Māori concept

---

<sup>57</sup> Abigail Hutchison, "The Whanganui River as a Legal Person," *Alternative Law Journal* 39, no. 3 (2014): 180.

<sup>58</sup> Christopher Rodgers, "A New Approach to Protecting Ecosystems: The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017," *Environmental Law Review* 19, no. 4 (2017): 269, <https://doi.org/10.1177/1461452917744909>.

<sup>59</sup> Abigail Hutchison, "The Whanganui River as a Legal Person," 181.

<sup>60</sup> Christopher Rodgers, "A New Approach to Protecting Ecosystems," 270.

of *Kaitakitanga*, which describes the concept of stewardship that comprises both the physical and metaphysical realms, that is predicated on the belief that humans and the land exist in an reciprocal arrangement in which neither is placed above the other.<sup>61</sup> In other words, Te Pou Tupua can be understood to be the legal guardian over its ward Te Awa Tupua.

The Act also created Te Karewao which was designed to serve as an advisory body to the Te Pou Tupua. Te Karewao is made up of three different members: the first two, one from the Iwi and one from the Crown, are appointed in a similar manners as Te Pou Tupua, but the third member is appointed by and is designed to represent the local authorities.<sup>62</sup> It is important to note that Te Pou Tupua has the authority to invite others to consult or help Te Karewao or Te Pou Tupua directly.<sup>63</sup> The final group that the 2017 Act created was Te Kopuka, the general oversight/strategy group, which deals with monitoring the status and implementation of the 2017 *Te Awa Tupua (Whanganui River Claims Settlement) Act*.<sup>64</sup> Te Kopuka is filled with a wider array of stakeholders, up to seventeen members, including but not limited to stakeholders representing conservation, tourism, energy, governmental (both local and state), and Iwi interests.<sup>65</sup>

While the case of Te Awa Tupua was selected to demonstrate a creative solution to natural resource co-management that highlights and affirms the relationship that the local Indigenous population has to the disputed area. Te Awa Tupua is not the only Aotearoa New Zealand example that employs a system of co-

---

<sup>61</sup> Rodgers, "A New Approach to Protecting Ecosystems," 270.

<sup>62</sup> *Ibid.*, 271.

<sup>63</sup> *Ibid.*, 270.

<sup>64</sup> *Ibid.*

<sup>65</sup> Erin L. O'Donnell and Julia Talbot-Jones, "Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India," *Ecology and Society* 23, no. 1 (2018): 4, <https://doi.org/10.5751/ES-09854-230107>.



management as the framework has also been successfully applied in the cases of Te Urewera<sup>66</sup> and the Waikato River.<sup>67</sup> Linda Te Aho explains that while balancing competing interests and values may be difficult, the recognition of diversity also allows for the creation of new possibilities.<sup>68</sup> It is through the adaptation of new possibilities that a solution of co-management may help bolster the Canadian case over the NWP.

### Inuit Marine Management

The 1993 *Nunavut Act* not only established Canada's newest territory but also established the Nunavut Marine Council (NMC) via the *Nunavut Act's* article 15 Marine Areas. Article 15 does more than just establish the NMC, it also provides important insight as to how the Canadian state understands the relationship Inuit have with Arctic marine areas. Furthermore, 15.1.1 specifically states that 'there is a need for Inuit involvement in aspects of Arctic marine management' and that 'Canada's sovereignty over the waters of the Arctic Archipelago is supported by Inuit use and occupancy'.<sup>69</sup> This section also acknowledges that 'the legal rights of Inuit in marine areas flowing from the Agreement are based on traditional and current use'.<sup>70</sup> Thus, the Act continues to reiterate the Canadian position that Canada's northern territory, land, sea, and ice, is based on Indigenous use and occupation. Article 15 ends with Section 15.5.1 which asserts that '[t]his Article shall be interpreted in a manner consistent with Canada's sovereignty, sovereign rights and jurisdiction, and

<sup>66</sup> Jacinta Ruru, "Te Urewera Act 2014," *Māori Law Review*, (2014): 16–21.

<sup>67</sup> Linda Te Aho, "Te Mana o Te Wai: An Indigenous Perspective on Rivers and River Management," *River Research and Applications* 35, no. 10 (1 December 2019): 1619, <https://doi.org/10.1002/rra.3365>.

<sup>68</sup> Te Aho, "Te Mana o Te Wai", 1620.

<sup>69</sup> *Nunavut Act*, 1993, <https://nlca.tunnngavik.com>

<sup>70</sup> *Ibid.*, 130.

with Canada's international obligations,<sup>71</sup> reiterating that the creation of a Nunavut Marine Council (detailed in 15.4.1) is in line with the established position of the state and that its creation does not denote a radical change in policy.

The Nunavut Marine Council<sup>72</sup> was designed to be a way in which the Nunavut government could easily incorporate shared knowledge and experience into issues of marine governance.<sup>73</sup> The NMC has four key functions, increasing awareness of marine issues, consultations, monitoring marine developments and concerns, and reviewing policy, development, and research relating to marine areas.<sup>74</sup> The Nunavut Marine Council's *2018-2023 Strategic Plan* notes the relevance of their Council and that they are increasingly being relied upon by governmental officials to provide guidance on Arctic maritime issues.<sup>75</sup> In light of the Council being so relied upon by various government officials in the short time it has been operational directly speaks to the importance of including Indigenous voices and ideas. Since the key features of the Nunavut Marine Council are that it is guided by traditional knowledge and works to translate traditional knowledge into Arctic maritime policy.

Inuit engagement in terms of marine management goes beyond the Canadian domestic sphere. The 2016 Pikialasorsuaq Commission is an example of how Indigenous focused marine management can evolve. The Commission was created by the Inuit Circumpolar Council (ICC) and was designed to facilitate consultations

---

<sup>71</sup> *Nunavut Act*, 1993, 131.

<sup>72</sup> "15.4.1 The NIRB, the NWB, the NPC, and the NWMB may jointly, as a Nunavut Marine Council, or severally advise and make recommendations to other government agencies regarding the marine areas, and Government shall consider such advice and recommendations in making decisions which affect marine areas."; *Ibid*.

<sup>73</sup> Nunavut Marine Council, *NMC Strategic Plan 2018-2023* (Nunavut Marine Council, 2018): 12-16.

<sup>74</sup> "Nunavut Marine Council," Nunavut Wildlife Management Board, <https://www.nwmb.com/en/about-nwmb/working-groups-a-committees2/86-nunavut-marine-council>.

<sup>75</sup> Nunavut Marine Council, *NMC Strategic Plan*, 14.

with the communities located near the polynya in both Canada and Greenland.<sup>76</sup> The consultations were deemed necessary by the Inuit Circumpolar Council due to the threat that Pikialasorsuaq (one of the most bio-diverse areas in the entire circumpolar Arctic) has been and continues to be under due to climate change, increased traffic, pollution, and development.<sup>77</sup> Furthermore, based off the report created by the Pikialasorsuaq Commission, the government of Canada decided to work jointly with the Kingdom of Denmark and Inuit leaders with respect to the management and protection of the Pikialasorsuaq area.<sup>78</sup> It was vital for the ICC to create the Commission so that Inuit would oversee reporting the findings and advocating for the protection of this incredibly important part of Inuit heritage.<sup>79</sup>

### Co-Management Council for the Northwest Passage

Canada's claim to historic Arctic sovereignty is based on the use and occupation of the territory by Inuit, and understanding the fact that sovereignty is fundamentally about the ability of an entity to wield legitimate control; creates the argument that in the spirit of the ANPF the Canadian state should create a co-managed NWP focused council. The Canadian Northwest Passage Maritime Council (CNWPMC) would be structured similarly to the councils set up in the Aotearoa New Zealand case of Te Awa Tupua. Thus, the CNWPMC would be made up of three different groups: a decision-making committee, an advisory core, and an observatory body (see Fig. 2).

---

<sup>76</sup> Pikialasorsuaq Commission, *People of the Ice Bridge: The Future of the Pikialasorsuaq* (Pikialasorsuaq Commission, 2017): A-2.

<sup>77</sup> Pikialasorsuaq Commission, *People of the Ice Bridge*, viii.

<sup>78</sup> "Pikialasorsuaq Leaders Statement," Prime Minister of Canada Justin Trudeau, 2019, <https://pm.gc.ca/en/news/backgrounders/2019/04/04/pikialasorsuaq-leaders-statement>.

<sup>79</sup> Pikialasorsuaq Commission, *People of the Ice Bridge*, xii.

The Decision-Making Committee would be comprised of a representative from the federal government, a representative from the ITK, as well as a representative from each of the three territorial governments (Yukon, Northwest Territories, Nunavut). The committee would focus on management and control over the passage and be organized in the

true spirit of co-development and co-management. The Advisory Core of the CNWPMC would be comprised of a federal representative, a representative from each of the territories, a representative from ITK, and the last three places would include a representative from the

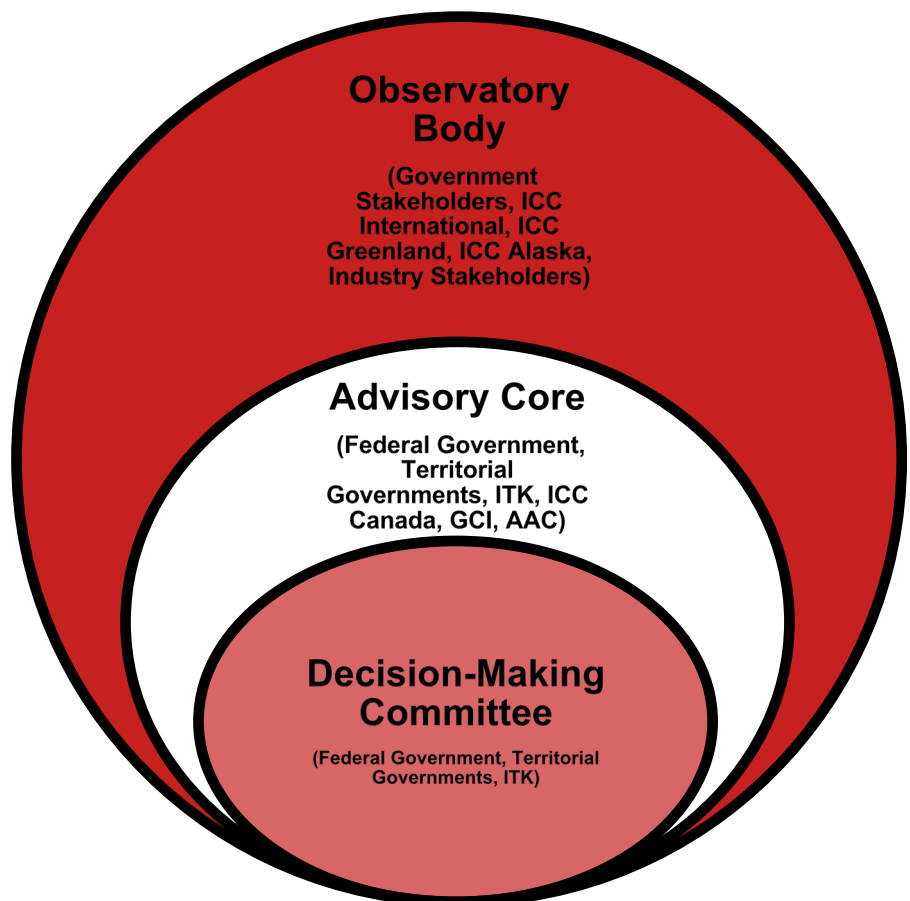


Fig. 2: Composition of the CNWPMC

Gwitch'in Council International (GCI), the Canadian chapter of the Inuit Circumpolar Council (ICC Canada), and the Arctic Athabaskan Council (AAC). The Observatory Body would allow government and industry stakeholders to get involved, but it would also have representatives from ICC International, ICC Greenland, and ICC Alaska.

The Observatory Body would be a research and data collecting body that would be comprised of a large array of perspectives and interests. Observers would be able to provide research and data for the Advisory Core, which would then be

filtered forward for the Decision-Making Committee. While it is not surprising to have government and industry representatives in the Observatory Body, it is the inclusion of the other chapters of the ICC (Greenland, Alaska, International) that warrant further explanation.

The international chapters of the ICC are included in the Observatory Body for two main reasons. First and foremost, it acknowledges that Inuit are a single people and Inuit individuals have a multi-layered identity. As stated in *A Circumpolar Inuit Declaration on Sovereignty in the Arctic*, '[f]rom time immemorial, Inuit have been living in the Arctic. Our home in the circumpolar world, Inuit Nunaat, stretches from Greenland to Canada, Alaska and the coastal regions of Chukotka, Russia. Our use and occupation of Arctic lands and waters pre-dates recorded history'.<sup>80</sup>

Furthermore, 'Inuit live across a far-reaching circumpolar region, we are united as a single people. Our sense of unity is fostered and celebrated by the Inuit Circumpolar Council (ICC), which represents the Inuit of Denmark/Greenland, Canada, USA and Russia.'<sup>81</sup> If the state truly values including Canadian Inuit in the development of the Canadian North and is committed to having 'a renewed nation-to-nation relationship with Indigenous peoples based on recognition of rights, respect, co-operation and partnership'<sup>82</sup> then the richness and complexity of Inuit identities need to be recognized.

An additional benefit of including the international chapters of the ICC in the Observatory Body is that it gives Inuit communities outside of Canada a reason to side with the Canadian state on the NWP dispute. The element of the NWP's historic internal waters legal status that remains the most elusive for Canada is international

---

<sup>80</sup> Inuit Circumpolar Council, *A Circumpolar Inuit Declaration on Sovereignty*.

<sup>81</sup> *Ibid.*

<sup>82</sup> Crown-Indigenous Relations and Northern Affairs Canada, *Canada's Arctic and Northern Policy Framework*.

recognition by external states. While the acquiescence to the Canadian position by the ICC does not hold the same weight as an external state, the resiliency and impact of northern Indigenous peoples should not be underestimated. The level of influence that the Permanent Participants (particularly the ICC) have in the Arctic Council has proven that northern Indigenous peoples have a strong influencing power, especially in relation to Arctic affairs. If all chapters of the ICC came out in support of the Canadian position, Denmark (by way of Greenland), the US, and Russia (even though Russia does not have a national chapter of the ICC) would either side against the wishes of the Inuit communities living within their respective national borders, or they could acquiesce to the Canadian position.

The Advisory Core would function as the primary advisory body for the Committee. This Advisory Core would synthesize research and findings from the Body and provide assistance to the Committee. The Core is expanded from the composition of the Decision-Making Committee with the inclusion of the GCI, the ICC Canada, and the AAC. The reason why the GCI and the AAC are included in the Core is because of two factors; firstly, the recognition of their status as Arctic Indigenous peoples dwelling within Canadian borders. Neither the Gwich'in nor the Athabaskan peoples have the same history of use and occupation of the NWP like Inuit do, they are northern Indigenous peoples and thus should each be a representative (if they so desire) on the Advisory Core, which acknowledges and affirms the right of self-determination of northern Indigenous peoples and values their traditional knowledge.

The second reason for their inclusion is that what happens in the Arctic does not stay in the Arctic. If the NWP does become a site of major maritime transportation, then the ramifications of pollution, tourism, industry, infrastructure

investment, and the influx of people would impact the entire Canadian Arctic. By including the GCI and AAC from the beginning and having them to serve as advisors to the Decision-Making Committee it would acknowledge that there is a strong possibility that these peoples will be impacted in the future. The very structure of the CNWPMC invokes proactive, adaptive, and resilient work that reinforces Indigenous self-determination.

The Decision-Making Committee is the level of the CNWPMC in which decisions are made. The Committee would receive data from the Advisory Core, and the members of the Committee would work based on consensus to ensure all members are being equally considered. The fact that the three territorial governments will be represented alongside ICC Canada and the federal government demonstrates the commitment made by the federal government to continue the territorial devolution process. The inclusion of ITK in the Committee instead of in the Core speaks to the federal government's priority to Indigenous self-governance, the use and occupation of the NWP by Inuit since time immemorial, and the fact that Canadian Arctic sovereignty is strengthened by Indigenous sovereignty.

The representation of the Territorial governments within the Committee is essential to advancing Canada's claim that the passage is historic internal waters through section 9(1) of the 1996 Oceans Act which states:

9 (1) Subject to this section and to any other Act of Parliament, the laws of a province apply in any area of the sea

(a) that forms part of the internal waters of Canada or the territorial sea of Canada.<sup>83</sup>

Within the context that the Trudeau government has stressed the continued importance of territorial devolution, including representatives from the territorial

---

<sup>83</sup> Canada, *Oceans Act*, 1996, <https://laws-lois.justice.gc.ca/eng/acts/O-2.4/page-1.html?txthl=internal+waters#s-6>.



governments is a way for the federal government to bolster its claim of internal waters if they are held to the same standard as other internal waters in Canada. In addition, it is also a way for the federal government to demonstrate its commitment to the territorial governments, allowing representatives of the territories to have a prominent seat at the table and an advocating voice for the NWP which runs through their territories.



Fig. 3: Simplified Map Inuit Nunangat, Inuit Tapiriit Kanatami. (2019) <https://www.itk.ca/wp-content/uploads/2019/04/ITK-Map-20190429-digital-simplified.jpggz>

Since the ITK represents Inuit citizens living in Canada, the act of making the ITK partners in the co-management process illustrates that Canada affirms the use and occupation of Inuit in relation to the NWP since time immemorial. It is also important to recognize that Canada has recognized the existence of the Inuit Nunangat and the NWP is enclosed within the territorial dimensions of that region (see Fig. 3).<sup>84</sup> The use of the term Nunangat is also important in this context

<sup>84</sup> Inuit Tapiriit Kanatami, *Arctic and Northern Policy Framework: Inuit Nunangat*, 8.



because it is an Inuktitut term that is inclusive of ice, water, and land.<sup>85</sup> The report, *Nilliajut 2: Inuit Perspectives on the Northwest Passage Shipping and Marine Issues*, produced by the ITK states that Inuit understand “[t]he Northwest Passage, and the ocean itself, [to be] “an extension of the land””<sup>86</sup> and therefore, ignoring the interconnection between land, sea, and ice is an example of a continued colonial relationship between the state and Indigenous peoples, instead of the nation-to-nation relationship that Prime Minister Justin Trudeau claims to value. Despite the fact that the established relationship between the Inuit and the NWP is expected to strengthen Canada’s claim over the passage,<sup>87</sup> it is also important to remember that the Inuit communities located along the NWP are going to be among the first impacted by decisions made regarding the future of the passage.

The establishment of the CNWPMC would fulfill a variety of state priorities for the government of Canada. In the spirit of the ANPF the Council rejects the colonial southern-focused way of governing the North and patrimonial decision-making practices. By including Canada’s Northern Indigenous peoples in all levels of the Council it creates an inherent consultation element to the CNWPMC that affirms and promotes Indigenous interests in the future of the NWP. It also allows the federal government to recognize and respect Inuit sovereignty which strengthens the claim that the NWP is *historic* internal waters. Finally, the CNWPMC follows the ‘sovereignty to the side’ style of managing the passage that Canada has historically favoured to gain a greater degree of control over the NWP.

---

<sup>85</sup> “Maps of Inuit Nunangat (Inuit Regions of Canada),” Inuit Tapiriit Kanatami, <https://www.itk.ca/maps-of-inuit-nunangat/>.

<sup>86</sup> Inuit Tapiriit Kanatami, *Nilliajut 2: Inuit Perspectives on the Northwest Passage*, 60-1.

<sup>87</sup> Mary Simon, “More than the Climate Is Changing - We Too Have Changed,” in *Nilliajut 2: Inuit Perspectives on the Northwest Passage Shipping and Marine Issues*, ed. Inuit Tapiriit Kanatami (Ottawa: Inuit Tapiriit Kanatami, 2017), 27.

While the NCWPMC contains similarities to the NMC the two would be considered separate and distinct councils. The NCWPMC is only focused on the NWP which stretches across all three Canadian territories, while the NMC is concerned with all marine areas in Nunavut. A second significant difference between the councils is the size and internal composition of the two groups. The NCWPMC also has a strong international scope by nature of its members and the fact that the passage is still subject to the ongoing international dispute over the legal classification of the passage.

The creation of the proposed Council is unlikely to have serious international ramifications, especially if the Council itself is framed to promote and protect the Inuit relationship to water and ice. If there was an external question brought up regarding Canada overstepping its authority with the Council, a case can easily be made that the Council follows the established method of managing Canadian Arctic territory. The creation of the AWPPA allowed the state to monitor and manage the passage under the semblance of environmental protection. This proposed Council can be justified in the same way, but not only does it just protect the environment it also enables local decision making and promotes Indigenous agency.

The creation of a co-management council for the NWP is aligned with both the federal government's vision for northern development and conservation but also being consistent with existing Inuit focused water management bodies. Thereby the creation of the proposed CNWPMC would not result in a major policy shift for Canada but rather it would be consistent with the ideas articulated in the ANPF. It would also be in line with the 'sovereignty to the side' management approach, the promotion and inclusion of Indigenous traditional knowledge and recognition of traditional territory, the continuation of territorial devolution, in addition to providing

effective control over the NWP. The inclusion of the international chapters of the ICC makes it harder for external states to dismiss the Canadian position over the passage and furthermore it provides justification for states to switch sides in the dispute. Through the CNWPMC, Canada can declare that it is acting in the interests of the Canadian Inuit when they are simultaneously increasing the level of control that the state is able to wield over the NWP.

### Promoting the *Use in Use and Occupation*

If the traditional way of resolving the dispute has not been able to find success over the decades, then a Canadian victory may require an innovative solution. Respect for Indigenous rights and sovereignty is rising across different countries around the world. Thus, when looking for innovative solutions to the problem of the NWP dispute Canada should pursue co-management of the passage alongside the northern Indigenous populations. The promotion of northern Indigenous interests and Indigenous use and occupation of the North being the foundation of Canada's Arctic sovereignty is the established Canadian position that has been continually articulated by the Canadian government regarding the state's Arctic policy. A recent example of this rearticulation is in the 2009 ANPF when the government of Canada acknowledged that the state's northern citizens 'must play a greater part in governing the region — domestically and internationally.'<sup>88</sup> The framework also goes on to note that the relationship between the state and its Indigenous peoples is a top priority and that the Canadian state is dedicated to:

- improving the lives of Indigenous peoples and Northerners

---

<sup>88</sup> Crown-Indigenous Relations and Northern Affairs Canada, *Canada's Arctic and Northern Policy Framework*.

- protecting the region's fragile environment
- strengthening the voices of Northerners, especially Indigenous peoples.<sup>89</sup>

To find an innovative solution that addresses these priorities, this article looked at the Aotearoa New Zealand example of Te Awa Tupua and how it was settled through the creation of a co-management regime with the Whanganui Iwi. The Te Awa Tupua exemplifies a way to build a co-managed marine council that places Indigenous interest and environmental protection at the forefront while continuing to work within the Western political and legal framework.

The days in which the Arctic existed on the periphery of global politics is over, as are the days in which Canada can take a passive approach to protecting its claim of historic internal waters over the NWP. The Canadian government needs to find a solution to the long-standing dispute, and it has to be one that allows the Canadian position to be in the external states' national interests.<sup>90</sup> The creation of the proposed Council has the possibility of creating a scenario in which it is more politically fraught for the international actors to oppose the Canadian position, as the international actors would have to side against Indigenous interests; thereby creating a scenario in which it is plausible to see more actors openly supporting Canada's claim of historic internal waters over the NWP. As the NWP becomes more navigable due to global climate change, there is an increased possibility of the NWP being used as an international strait. This, however, does not mean that Canada has no agency over the future status of its historic passage.<sup>91</sup>

---

<sup>89</sup> Crown-Indigenous Relations and Northern Affairs Canada, *Canada's Arctic and Northern Policy Framework*.

<sup>90</sup> Adam Lajeunesse, "The Northwest Passage in Canadian Policy," 1038.

<sup>91</sup> Andrea Charron, "The Northwest Passage - Is Canada's Sovereignty Floating Away," 847.

This article argues that the Canadian state should increase its efforts to celebrate and promote the use and occupation of the NWP by Canadian Inuit. The proposed Council places the fact that the NWP is historic internal Canadian waters as the keystone in the creation of such a Council and allows Canada to create a scenario in which it is politically fraught to dismiss the Canadian position on the NWP. Indigenous peoples have been able to make a significant impact on decisions related to Arctic politics and governance in the Arctic Council, and the CNWPMC builds on this precedence. Global climate change is making the passage more accessible than ever before, making the days in which Canada could bury its head in the sand and agree-to-disagree over. Canada needs to take a proactive approach if the state wants to continue to argue that the NWP is historic internal waters. If not, then increased traffic and international Arctic interest may make the Canadian position increasingly untenable.

### Bibliography

Agreement Between the Government of Canada and the Government of the United States of America on Arctic Cooperation, 1988. <https://www.treaty-accord.gc.ca/text-texte.aspx?id=101701>.

Associated Press. "Canada Affirms Arctic Co-Operation with U.S. despite Climate Impasse." CBC News, 7 May 2019. <https://www.cbc.ca/news/world/climate-change-us-arctic-policy-1.5125715>.

Byers, Michael. *International Law and the Arctic*. Cambridge University Press, 2013.

Canada. *Oceans Act*, 1996. <https://laws-lois.justice.gc.ca/eng/acts/O-2.4/page-1.html?txthl=internal+waters#s-6>.

Charron, Andrea. "Canada, the United States, and the Northwest Passage: Sovereignty to the Side." *Polar Geography* 29, no. 2 (2005): 139–55.

<https://doi.org/10.1080/789610130>.

———. "The Northwest Passage - Is Canada's Sovereignty Floating Away." *International Journal* 60, no. 3 (2005): 831–48.

<https://doi.org/10.1177/002070200506000316>.

Crown-Indigenous Relations and Northern Affairs Canada. *Canada's Arctic and Northern Policy Framework*. Ottawa: Government of Canada, 2019.

<https://www.rcaanc-cirnac.gc.ca/eng/1560523306861/1560523330587>.

English, John. *Ice and Water: Politics, Peoples, and the Arctic Council*. Toronto, Canada: Penguin Canada, 2013.

Federal Government of Germany. *Germany's Arctic Policy Guidelines Assuming Responsibility, Creating Trust, Shaping the Future*. Federal Foreign Office, 2013.

Government of New Zealand. "Te Awa Tupua (Whanganui River Claims Settlement) Act 2017." New Zealand Parliamentary Counsel Office, 2017.

<https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>.

Hsiao, Elaine. "Whanganui River Agreement - Indigenous Rights and Rights of Nature." *Environmental Policy and Law* 42, no. 6 (2012): 371–75.

Huebert, Rob. "Canadian Arctic Sovereignty and Security in a Transforming Circumpolar World." In *Canada and the Changing Arctic: Sovereignty, Security, and Stewardship*, edited by Franklyn Griffiths, Rob Huebert, and P. Whitney Lackenbauer, 13–68. Wilfrid Laurier University Press, 2011.

Hutchison, Abigail. "The Whanganui River as a Legal Person." *Alternative Law Journal* 39, no. 3 (2014): 179–82.

“Inuit and Canada Share Northwest Passage Sovereignty - ICC Canada President.” Inuit Circumpolar Council, 2019. <https://www.inuitcircumpolar.com/press-releases/inuit-and-canada-share-northwest-passage-sovereignty-icc-canada-president/>.

Inuit Circumpolar Council. *A Circumpolar Inuit Declaration on Sovereignty in the Arctic*, 2009. <https://iccalaska.org/wp-icc/wp-content/uploads/2016/01/Signed-Inuit-Sovereignty-Declaration-11x17.pdf>.

Inuit Tapiriit Kanatami. *Arctic and Northern Policy Framework: Inuit Nunangat*. Inuit Tapiriit Kanatami, 2019.

———. *Nilliajut 2: Inuit Perspectives on the Northwest Passage Shipping and Marine Issues*. Edited by Inuit Tapiriit Kanatami. Ottawa: Inuit Tapiriit Kanatami, 2017.

———. “Maps of Inuit Nunangat (Inuit Regions of Canada),” 2019. <https://www.itk.ca/maps-of-inuit-nunangat/>.

Ittinuar, Peter F. K. “The Northwest Passage and Kangiqtugaapik/Clyde River: Why Clyde River Represents All of the Northwest Passage.” In *Nilliajut 2: Inuit Perspectives on the Northwest Passage Shipping and Marine Issues*, edited by Inuit Tapiriit Kanatami, 43–47. Ottawa: Inuit Tapiriit Kanatami, 2017.

Kirkey, Christopher. “Smoothing Troubled Waters: The 1988 Canada-United States Arctic Co-Operation Agreement.” *International Journal* 50, no. 2 (1995): 401–26.

Krasha, James. “The Law of the Sea Convention and the Northwest Passage.” *International Journal of Marine and Coastal Law* 22, no. 2 (2007): 257–82.

Kuptana, Rosemarie. "The Inuit Sea." In *Nilliajut: Inuit Perspectives on Security Patriotism and Sovereignty*, edited by Inuit Qaujisarvingat, 10–13. Ottawa: Inuit Tapiriit Kanatam, 2013.

Lajeunesse, Adam. *Brief to the Standing Committee on Foreign Affairs and International Development: Canada's Sovereignty in the Arctic*. Mulroney Institute of Government, 2018.

———. "The Northwest Passage in Canadian Policy: An Approach for the 21st Century." *International Journal* 63, no. 4 (2008): 1037–52.

Lajeunesse, Adam, and Rob Huebert. "Preparing for the next Arctic Sovereignty Crisis: The Northwest Passage in the Age of Donald Trump." *International Journal* 74, no. 2 (1 June 2019): 225–39.  
<https://doi.org/10.1177/0020702019849641>.

Lalonde, Suzanne, and Frédéric Lasserre. "The Position of the United States on the Northwest Passage: Is the Fear of Creating a Precedent Warranted?" *Ocean Development & International Law* 44, no. 1 (2013): 28–72.  
<https://doi.org/10.1080/00908320.2012.726832>.

Nunavut Act, 1993.  
[https://www.tunngavik.com/documents/publications/LAND CLAIMS AGREEMENT\\_NUNAVUT.pdf](https://www.tunngavik.com/documents/publications/LAND_CLAIMS_AGREEMENT_NUNAVUT.pdf).

Nunavut Marine Council. *NMC Strategic Plan 2018-2023*. Nunavut Marine Council, 2018.

"Nunavut Marine Council," Nunavut Wildlife Management Board,  
<https://www.nwmb.com/en/about-nwmb/working-groups-a-committees2/86-nunavut-marine-council>.



O'Donnell, Erin L., and Julia Talbot-Jones. "Creating Legal Rights for Rivers: Lessons from Australia, New Zealand, and India." *Ecology and Society* 23, no. 1 (2018): 1–10. <https://doi.org/10.5751/ES-09854-230107>.

Pharand, Donat. "The Arctic Waters and the Northwest Passage: A Final Revisit." *Ocean Development & International Law* 38, no. 1 (2007): 3–69. <https://doi.org/10.1080/00908320601071314>.

Pikialasorsuaq Commission. *People of the Ice Bridge: The Future of the Pikialasorsuaq*. Pikialasorsuaq Commission, 2017.

Prime Minister of Canada Justin Trudeau. "Pikialasorsuaq Leaders Statement," 2019. <https://pm.gc.ca/en/news/backgrounders/2019/04/04/pikialasorsuaq-leaders-statement>.

Pompeo, Michael. "Looking North: Sharpening America's Arctic Focus." Speech, Rovaniemi, Finland, 6 May 2019. <https://2017-2021.state.gov/looking-north-sharpening-americas-arctic-focus/index.html>.

Rodgers, Christopher. "A New Approach to Protecting Ecosystems: The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017." *Environmental Law Review* 19, no. 4 (2017): 266–79. <https://doi.org/10.1177/1461452917744909>.

Rothwell, Donald R. "Arctic Sovereignty and Its Legal Significance to Canada." In *Handbook of the Politics of the Arctic*, edited by Leif Christian Jensen and Geir Hønneland, 247–61. Cheltenham, UK: Edward Elgar Publishing, 2015.

Ruru, Jacinta. "Te Urewera Act 2014." *Māori Law Review*, (2014): 16–21.

Simon, Mary. "More than the Climate Is Changing - We Too Have Changed." In *Nilliajut 2: Inuit Perspectives on the Northwest Passage Shipping and Marine Issues*, edited by Inuit Tapiriit Kanatami, 26–28. Ottawa: Inuit Tapiriit Kanatami, 2017.

Te Aho, Linda. "Te Mana o Te Wai: An Indigenous Perspective on Rivers and River Management." *River Research and Applications* 35, no. 10 (1 December 2019): 1615–21. <https://doi.org/10.1002/rra.3365>.