

Artic Shipping and Indigenous Rights: Challenges and Opportunities

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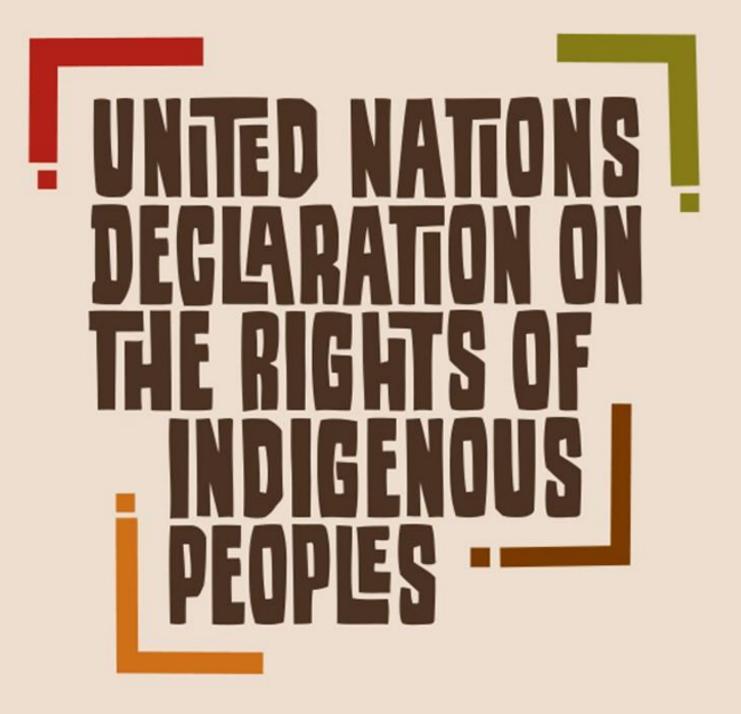
Polar Shipping Session – CMI Tokyo Conference, May 2025



Agenda

- Context the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Code for Ships Operating in Polar Waters (Polar Code)
- 2. Possible areas of interface between Arctic shipping and Indigenous rights
- 3. Indigenous engagement and next steps for the IWG subgroup

1. Context – UNDRIP and the Polar Code

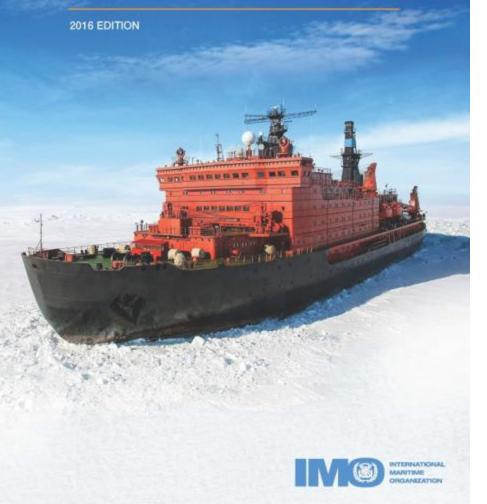


UNDRIP

- Emphasis on self-determination
- Also affirms, among other things, Indigenous Peoples' rights to their traditional lands and to resources and to the protection of their environment
- Sets out duties for States and the organs and specialized agencies of the UN system to ensure its realization

POLAR Code

INTERNATIONAL CODE FOR SHIPS OPERATING IN POLAR WATERS



The Polar Code

- International regulatory framework, rules and standards for navigation in the Polar regions
- Despite UNDRIP, no Indigenous government or organization participated in the development of the Polar Code
- Since 2021, the Inuit Circumpolar Council (ICC) has provisional consultative status at the IMO

- Focusing on commercial shipping as regulated by the Polar Code and using the rights affirmed in UNDRIP as a framework, the IWG subgroup on Arctic shipping and Indigenous rights sought to conduct a preliminary exercise to consider possible areas of interface between Arctic shipping and Indigenous rights
- <u>Critical need for Indigenous legal scholars and practitioners interested in</u> <u>taking on this project</u>

2. Possible areas of interface between Arctic shipping and Indigenous rights

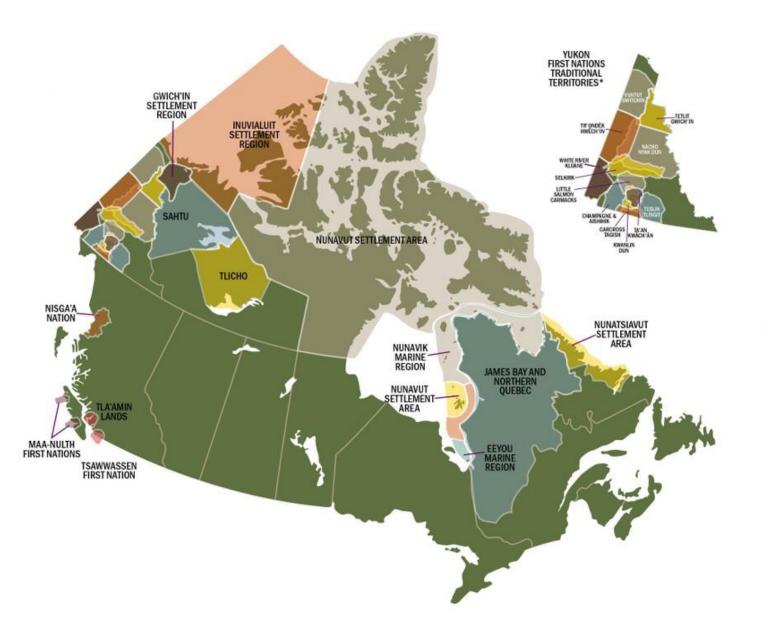
Governance rights (UNDRIP, art. 3, 4, 18, 32, 37-42)

- The Polar Code was adopted without the official input of any Indigenous government or organization
- Impact of ICC's consultative status at the IMO?
- What are the possible mechanisms and approaches to ensure that Indigenous Peoples potentially affected by Arctic shipping have a say in the development and implementation of the Polar Code? What other aspects of Polar shipping may trigger the need to consult Indigenous Peoples or obtain their FPIC?

What about Indigenous

peoples' territorial rights

in the Arctic?



Environmental rights (UNDRIP, art. 29)

- Risks posed by Arctic shipping to the environment: oil spills in a remote and sensitive ecosystem, accelerated loss of sea ice, underwater noise pollution, discharge of grey water, ship strikes to marine fauna, etc.
- Growing Arctic shipping may also have less direct consequences on the Arctic environment, such as increased resource extraction and carbon emissions from ships
- What aspects of Arctic shipping could be regulated to further Indigenous Peoples' right to a healthy environment in the Arctic? (e.g. designation of Emission Control Areas)

Cultural rights (see, inter alia, UNDRIP art. 5, 8, 11, 12, 15, 16, 34)

- Possible areas of interface include ship traffic near areas of cultural significance, loss of sea ice (which plays a key role in Inuit culture and livelihoods), impact of cruise ships and tourism on cultural heritage
- Should the Guidelines for the Designation of Special Areas under MARPOL and the Guidelines for the Identification and Designation of Particularly Sensitive Areas include cultural rights as a consideration to be taken into account? What about site- or community-specific guidelines?

Indigenous knowledge (UNDRIP, art. 13 and 31)

- Indigenous knowledge may be useful for Arctic shipping in many ways
- Sheila Watt-Cloutier, *The Right to Be Cold*:

"Science is a body of knowledge, and a way of knowing based on rigorous observation. By this definition, the hunters who criss-cross the ice and snow embody centuries of observation are scientists. When they describe what is happening to their landscape, the world needs to listen."

 How could Indigenous knowledge inform IMO policy and work on topics such as PWOMs, the training of seafarers for ice navigation, the designation of shipping corridors, oil spill response tactics and resources, marine safety, etc.?



Economic and development rights (UNDRIP, art. 20, 21, 23)

- Arctic shipping represents both an opportunity and a threat to Indigenous economies
- Conflicting interests bewteen different Indigenous Peoples?
- Fairness concern for the economic impacts of climate actions and who should bear the burden

3. Indigenous engagement and next steps for the IWG subgroup

Finding a way forward

- The right to self-determination of Indigenous Peoples is at the core of UNDRIP
- The subgroup understands that the questions it has identified cannot be answered or even meaningfully discussed without Indigenous Peoples
- The subgroup is therefore seeking to expand its membership to include more
 Indigenous legal scholars and practitioners from Arctic jurisdictions
- Current subgroup members hope that they will be able to engage with future Indigenous participants in a meaningful and mutually respectful manner to develop this project (and one day discuss substantive policy recommendations at the CMI!)

Thank you for your time!

Questions?

