



# QAQQALIAQ

“GOING TO THE HILLTOP TO SCAN”

PREPARED BY: MIGRATIONS & MOBILITIES SUBPROJECT

ICELAW PROJECT

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*Qaqqaliq – to go up on the hilltop and to observe the land... it's to take time to observe... Today, in a sense we are having a look from the hill top. We are trying to observe the landscape of Arctic shipping. We are trying to plan and prepare for the future and inform decision making and priorities moving forward. This is a start of a discussion and dialogue that Inuit will be involved in.*



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## EXECUTIVE SUMMARY

On April 20, 2017, the Company of Master Mariners of Canada and the Mobilities & Migrations Subproject of the ICELAW Project co-hosted the seminar *Rethinking Perspectives on Arctic Issues in 2017*. The purpose of the event was to gain a better understanding of the perspectives of Inuit and industry/regulators, so as to provide a platform upon which discussions could begin on topics of safety, preparedness and response, and community engagement in the Arctic. Through a series of presentations, the audience was introduced to the challenges facing the two groups, and through a panel discussion ideas for overcoming those challenges were explored. At the end of the day, four common features were identified and five key observations were made:

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### COMMON FEATURES OF THE INUIT AND INDUSTRY/REGULATOR PERSPECTIVES

- ◆ The challenges of climate change;
- ◆ The importance of prevention, planning and preparedness;
- ◆ The importance of experience and the role of observations and awareness; and
- ◆ The potential role of collaborative training programs and two-way knowledge sharing.

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### KEY OBSERVATIONS

- ◆ Rethink indigenous interests and perspectives in the North through the light of the *United Nations Declaration on the Rights of Indigenous Peoples* and the Truth and Reconciliation Commission of Canada;
- ◆ Rethink equitable development and create paid opportunities for Inuit to be involved in the marine safety system and industry, rather than simply volunteer positions;
- ◆ Improve awareness and understanding of the various marine-based activities in the Arctic and how they interact, and of language and the interpretation of terminology;
- ◆ Place time frames on actions and provide progress reports to provide accountability and demonstrate that efforts are being made to act upon agreements and the outcomes of consultations;
- ◆ Consider the Pikialasorsuaq Commission's model of Inuit-led governance and management as a model for partnering with Inuit.





## RETHINKING PERSPECTIVES ON ARCTIC ISSUES IN 2017

In collaboration with the Company of Master Mariners of Canada, the Migrations and Mobilities Subproject co-hosted a one-day seminar that explored key issues for polar shipping that are or can be anticipated to emerge from recent developments, and their significance for Canada's implementation of international responsibilities, the enhancement of maritime safety and environmental protection, and ensuring that the aspirations and interests of Indigenous Peoples in the region are highlighted in the governance of Arctic shipping. Such developments include:

- ◆ The entry into force of the *International Code for Ships Operating in Polar Waters* (Polar Code) on 1 January 2017;
- ◆ The United States-Canada Joint Arctic Leaders' Statement in December 2016;
- ◆ The renewed commitment by Canada to the *United Nations Declaration on the Rights of Indigenous Peoples*;
- ◆ The initiation of the Pikialaorsuaq (Northwater Polynya) Commission by the Inuit Circumpolar Council;
- ◆ Transport Canada's implementation of the Polar Code; and
- ◆ The Canadian Coast Guard's Northern Marine Transportation Corridors Initiative.

This unique event brought together representatives from the Canadian Government, the maritime industry, and Arctic indigenous organizations to provide updates on developments within the various realms, and to discuss ongoing questions of how to improve safety, preparedness and response, and how to better engage with Arctic communities on such topics.

After short welcoming and opening remarks, the seminar began with the Indigenous perspective, followed by the point of view of industry and regulators. An open panel discussion was held following presentations to conclude the day. The event was convened under Chatham House Rule.<sup>1</sup>

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<sup>1</sup> "When a meeting, or part thereof, is held under the **Chatham House Rule**, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed." Chatham House, online: < <https://www.chathamhouse.org/about/chatham-house-rule>>.

## THE INDIGENOUS PERSPECTIVE

To provide the basis for further discussion, the day began by addressing the importance and the role of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) for the seminar topic. It is important to note that the UNDRIP is not a set of aspirational objectives borne of altruism and morality, but rather is a set of substantive obligations for all members of the United Nations. Although the UNDRIP contains 46 articles, one stands out above the rest:

*Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

All other rights flow from the right to self-determination, including the following which were highlighted during the seminar:

- ◆ Article 18: The right to participate in decision-making, something that Senator Charlie Watt has put considerable effort towards with respect to the *United Nations Convention on the Law of the Sea* (UNCLOS);
- ◆ Article 19: The right to free, prior and informed consent, underlining the importance of a partnership that can provide important results for all involved;
- ◆ Article 20.1: The right to be secure in the enjoyment of their own means of subsistence and to engage freely in all traditional and economic activities;
- ◆ Article 25: The right to maintain and strengthen their distinctive spiritual relationship with their lands, territories, waters and coastal seas; and
- ◆ Article 29.1: The right to conservation and protection of the environment and the productive capacity of their lands, territories and resources.

To date, although many changes have occurred, a gap remains with respect to recognizing, discussing, and allowing Inuit to act upon their rights. Significant inequalities stemming from colonization still exist today and are evident in the socioeconomic reality of life in the North. The lives of Inuit are further aggravated by climate change, which is altering the environment upon which they depend. Although it has been recognized that the Arctic represents the 'barometer for the rest of the world', neither the Arctic or its Indigenous peoples have been included in international negotiations surrounding climate change; e.g., the Paris Agreement. The absence of Inuit and other Indigenous peoples in international decision-making circles is not a new issue; they were omitted from negotiations for the UNCLOS, the planning of the extension of Canada's continental shelf, and the development of the Polar Code.

With respect to developments in shipping, it is important that the location wherein vessels operate and plans are made is recognized as Inuit homeland. Inuit have maintained a close and respectful relationship with the land, ice, and ocean for thousands of years. This is supported through ethnographic studies that show Inuit mobility networks (systems of sled trails) that connect snow-covered land and sea ice; networks of well-defined boat routes during the summer months and in other seasons where open water is present; and the locations of historic and pre-Inuit settlements near the coast and floe edge. Although the western conception divides the land and the sea, Inuit cosmology does not apply such a sharp delineation, as the boundaries of the landfast ice are often far from the terrestrial shorelines.

Inuit have a right to be involved in making decisions about how their territory is used and activities within it are regulated. Such participation would benefit everyone, as Inuit have, as part of their culture and history, significant local knowledge that could support the safety and efficiency of navigation. Inuit are not opposed to shipping development, but rather advocate caution to ensure that waters are not polluted, that there is adequate emergency and response equipment, that migration routes are respected, that calving and breeding grounds are protected, and that benefits are brought to the Northern economy to address some of the inequalities. A key gap that is preventing development in such a manner is a comprehensive Arctic policy that addresses social, economic, and educational issues in the context of climate change, and that could guide the development of shipping in the Arctic.

Two examples were provided for how Canada should consider moving forward at this time. The first was the process employed for establishing the *Migratory Birds Convention*, which recognizes Inuit land treaties in Canada and is accompanied by an interpretive document that articulates the rights of Inuit under those treaties. The second is the approach taken for the Pikialasorsuaq – “the great upwelling” – which is the name given to the Northwater Polynya. The Pikialasorsuaq Commission, established by the Inuit Circumpolar Council, is leading the creation of an Inuit Strategy for the region and an Inuit-led monitoring plan. This approach positions Inuit as the lead in monitoring and management of the Pikialasorsuaq, and supports the inclusion of Inuit knowledge in the development of policy.

*Justin Trudeau made a commitment to adopt the UNDRIP without qualification and to see through its implementation. Wouldn't it be something if the Coast Guard, Department of Defence, Transport Canada, and anyone else begins to implement the Declaration in innovative and creative ways urging him and other departments to take on how they too can implement the Declaration. There's nothing holding anyone back to breathe real life into the words of the UNDRIP in favour of all of us.*

## THE INDUSTRY & REGULATORY PERSPECTIVE

When discussing Arctic shipping with industry and regulators, the conversation often quickly turns to the topic of safety, but it is important that it is not only understood in terms of the ship and operations, but also the environment and the people around which the vessels operate. The new Polar Code, although an excellent first edition to establishing global mandatory provisions for Polar navigation, leaves much room for improvement, particularly with respect to the requirements of training. Although training is addressed in the Polar Code, the text is vague and leaves space for a range of interpretations. Work is being done in this area at the Nautical Institute to develop a standard for training, which will include requirements for time at sea.

The introduction of the Polar Code meant that Canada needed to revisit their regulations pertaining to Arctic navigation to ensure that they meet the minimum requirements of the Code. Given that Canada has long been a leader in Arctic regulations, the existing provisions do not need to be dramatically changed. They will, however, be replaced by the *Arctic Shipping Safety and Pollution Prevention Regulations*, which updates the current requirements to modern standards, some of which go beyond those of the Polar Code. Transport Canada is working to introduce the new regulations quickly because, although traffic remains low, there is growing interest in the Northwest Passage. It is expected that transits of the Passage may increase, weather conditions permitting, including by foreign vessels if exploration and research continue. It is anticipated that domestic traffic will continue to dominate, with transits by commercial vessels depending largely on market locations and conditions.

The challenges that come with such development include the lack of response organizations, limited charting, infrastructure, and places of refuge, and the realities of response times to incidents. Developments that will work to improve upon these challenges include:

- ◆ Investing in the installation of multi-sonar beams on Coast Guard ships;
- ◆ Exploring crowd-sourcing hydrographic data by installing technologies on community vessels;
- ◆ Doubling auxiliaries in response to community consultations; and
- ◆ Introducing basic oil spill response equipment and empowering communities with knowledge, training, etc., to respond to an incident.

Collaborative initiatives are also contributing to improvements in the operating conditions of the Arctic. For example, the Arctic Coast Guard Forum is providing a platform for diplomacy, cooperation, joint preparedness, joint information sharing, and shared exercises.

Of interest for future collaboration are reconciliatory partnerships with Indigenous peoples to redefine co-management and co-governance. Examples of joint management are already coming to fruition, such as through the development of new guidelines for cruise ships in the Arctic: a working group made of federal and territorial governments, land claims organizations, industry associations, operators, and academic institutions combined efforts to create over-arching guidelines for the cruise industry. Consultations were also held with Arctic communities to ensure their concerns, ideas, and opportunities of interest were incorporated.

Another mechanism through which a new shared vision of traffic management can be created is through Proactive Vessel Management pursuant to the Oceans Protection Plan. Although only in conception, Proactive Vessel Management could<sup>2</sup> incorporate the following elements:

1. Education and communication: having two-way knowledge sharing between Indigenous communities, mariners, and the government;
2. Measures: establishing rules for addressing local concerns;
3. Regulatory tools: be it voluntary guidelines, regulations, or a new innovative way that can allow rules to be implemented more quickly;
4. Monitoring: allowing Indigenous communities, the people on the ground, to contribute could greatly improve monitoring capabilities;
5. Compliance: rather than enforcement, compliance should be the focus;
6. Stewardship: creating a model where government and Indigenous communities collaboratively manage a waterway, providing Indigenous communities more involvement in the decision-making process; and
7. International support: if successful, Proactive Vessel Management could be used as an international example of how waterways can be co-managed.

*We are entering waters that have thousands of years of experience in the Indigenous peoples there. We should all take the messages to heart as we as mariners enter into their traditional homelands and proceed to get ships from A to B safely. It's about safety with respect to the ship, the operation, and the environment and people around which we steam our ships.*

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<sup>2</sup> The Proactive Vessel Management concept described is not the position of Transport Canada or any agency of the federal government.

## DISCUSSION

While the seminar presented two major perspectives on Arctic shipping (indigenous and industry/regulatory), common messages emerged. These can be grouped under four pillars: the challenges of climate change; the importance of prevention, planning and preparedness; the importance of experience and the role of observations and awareness; and the potential role of collaborative training programs and two-way knowledge sharing.

### PILLAR 1: CLIMATE CHANGE

Challenges and opportunities from climate change impacts was a major contextual theme. As a result of climate change, weather and the environment are becoming more unpredictable and unreliable. For Inuit, it relates to a loss of routes, new species, changing migratory patterns of animals, and instable, unpredictable, and unreliable sea ice, which has contributed to more accidents. From the regulator's perspective, the increasing annual variability of conditions poses a challenge for planning as maritime traffic requires support and services depending on the conditions of the given year. Industry and regulators are exploring ways to respond and adapt to the changes. Of particular importance is to recognize the pragmatism and resilience of Inuit, and their intent and right to remain in their Arctic homeland.

*Although the sea ice is changing [Inuit] are still and will maintain their culture. Inuit have not stopped hunting despite all odds. Instead, they travel closer or further and at different times.*

### PILLAR 2: PREVENTION, PLANNING, AND PREPAREDNESS

Regardless of the perspective, the importance of prevention, planning and preparedness in the Arctic is evident with respect to traveling on sea ice, navigating through waters, or managing risks of the industry. In the context of shipping development for the Canadian Arctic, the fragility of the environment, the rights of Inuit, and the potential hazards to mariners demands that planning prevents harm to the environment, Inuit, and mariners. Extensive preventative measures are in place, but further efforts must be made to prepare for the growing activities and potential casualties.

*There is no room for risk; we must employ the precautionary principle.*

### **PILLAR 3: EXPERIENCE, OBSERVATION, AND AWARENESS**

Particularly important in the Arctic is the garnering of experience; of taking time to observe the conditions and to become aware of the complexity of the region. Inuit take time to observe the land before hunting or traveling; they take time to observe the winds, tides, clouds, etc., to determine the safety of the sea ice and whether there is an incoming storm. Mariners must also take the time to come to know the environment in which they plan to operate, particularly through *in situ* experience in the Arctic. These processes improve individual awareness of self and the environment, but efforts must also be made to become aware of others and of their perspectives and rights.

*Observation is the platform of planning and preparedness.*

### **PILLAR 4: COLLABORATIVE TRAINING AND TWO-WAY KNOWLEDGE SHARING**

Given the importance of being aware of others and of rethinking how we perceive the Arctic, there is a necessity and an opportunity to improve knowledge sharing, both from ship-to-shore and vice versa. A suggested approach to facilitate this process is to collaboratively train Inuit to work onboard ships, and to train mariners to understand and respect the Arctic as a homeland. This topic was heavily discussed during the panel, with particular interest in training of local Inuit to be polar seafarers. Examples were drawn from Indonesia where schools are opening to train local people, and from South Africa where all senior staff are now locally trained and experienced. Stemming from this discussion came the need to develop a recruitment strategy for Inuit to increase their participation in the shipping industry and in the Canadian Coast Guard. Suggested approaches included bringing Inuit on board vessels to introduce them to shipping; to bring crew ashore to train them to see their operations from the perspective of Inuit; and to explore the potential for virtual two-way communications between communities and the industry/Coast Guard.

*The knowledge [the industry and regulators] can gain and the experience [they] can gain and bring is vital and necessary... If we don't include Indigenous peoples in gathering that knowledge [the industry and regulators] are not doing [their] job of keeping things safe.*

## CONCLUSIONS

The seminar *Rethinking Perspectives on Arctic Issues in 2017* represented an important dialogue between key players of progressing improvements in safety, preparedness, and response, and engaging with Arctic communities on such topics. A strong message that emanates from this event is that it is not appropriate for the Government or industry to lead developments, engaging with Inuit as they deem necessary. Rather, the initiative needs to be based on a partnership, and such a partnership needs to be formalized so that roles are clearly defined and the partnership is built on mutual understanding and agreement.

*If you're going to have true partnerships with Indigenous peoples and in particular Inuit, what has to happen is that first we have to negotiate the principles upon which the partnership will be built upon, then we can negotiate the details.*

Building on the concept of a partnered approach, a number of key observations were made:

- ◆ Rethink indigenous interests and perspectives in the North through the light of the *United Nations Declaration on the Rights of Indigenous Peoples* and the Truth and Reconciliation Commission of Canada;
- ◆ Rethink equitable development and create paid opportunities for Inuit to be involved in the marine safety system and industry, rather than simply volunteer positions;
- ◆ Improve awareness and understanding of the various marine-based activities in the Arctic and how they interact, and of language and the interpretation of terminology;
- ◆ Place time frames on actions and provide progress reports to provide accountability and demonstrate that efforts are being made to act upon agreements and the outcomes of consultations;
- ◆ Consider the Pikialasorsuaq Commission's model of Inuit-led governance and management as a model for partnering with Inuit.

*Inuit have a lot to offer and are very open to negotiations and dialogue. We're not steadfast to say 'this is the only way this is going to happen'. We are known as nation builders. We are known as cooperative human beings and I think that is what we have to take away from today – Inuit and other Indigenous peoples are not second-class citizens.*



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*It is essential for the enhancement of the governance of shipping in Canadian waters to really have principled respectful relationships with concrete outcomes and deliverables.*

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