

Reflections on the Letter of Intent for Cooperation on the Pkialasorsuaq: What does it legally mean for the Inuit?

By: Apostolos Tsiouvalas (PhD Fellow at NCLOS, Faculty of Law, UiT-The Arctic University of Norway).

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Matter commented on: [Letter of Intent for Cooperation on the Pkialasorsuaq between the Department of Fisheries and Oceans of Canada and the Ministry of Agriculture, Self-sufficiency, Energy and Environment of the Government of Greenland](#)

Introduction:

The North Water Polynya Pkialasorsuaq (meaning Great Upwelling) is a [polynya](#) between Greenland and Nunavut in northern Baffin Bay that constitutes the most biologically productive region within the Arctic Circle. The area is characterized by impressive migratory patterns of birds and mammals tightly linked to the [Polynya's morphology](#), on which most of West Greenland's access to living resources is currently relied. Historically, the Pkialasorsuaq has been [vital](#) for the subsistence of the adjacent Inuit communities, providing sustenance to the entire marine ecosystem of Baffin Bay and associated communities of Qikiqtani (Nunavut) and Avanersuaq (Northwest Greenland), which directly depend on the Polynya's biological productivity ([Report of the Pkialasorsuaq Commission](#), p. A-5). Hunting routes across the Polynya and historic sites (e.g. food caches) are considered an [integral part](#) of Pkialasorsuaq's transboundary ecosystem. The literature further records that the Inuit of Pkialasorsuaq conceive of the frozen sea as an entity that extends beyond state-enforced maritime boundaries and they have traditionally been operating cross-border activities among the Greenlandic and Canadian coasts of the Polynya on the basis of customary utilization of the sea/sea-ice continuum. Throughout the 20th century, the Inughuit of Avanersuaq intensively practiced hunting trips to the opposite coast of the Polynya. After the repopulation of Ajuittuq (Grise Fiord) in Nunavut, Inughuit hunters visited Ajuittuq by dogsleds and more recently by planes landing on sea ice, developing strong cultural and spiritual bonds with the Inuit groups on the Canadian side of the Polynya ([Report of the Pkialasorsuaq Commission](#), p. A-6). As explained by the [Inuit Circumpolar Council \(ICC\)](#), the international body that represents all Inuit from Alaska, Canada, Greenland, and Chukotka, "*considering the intimate connections and interactions between Inuit, animals, and Pkialasorsuaq, the region that is affected by the polynya extends far past its physical boundaries.*" ([Report of the Pkialasorsuaq Commission](#), p. A-23). [In recent decades](#), the situation however has changed substantially with the Pkialasorsuaq ecosystem facing challenges posed by climate change and rising human activity in the region. In addition, navigating international borders within the Pkialasorsuaq region is currently more difficult for the Inuit, primarily due to heightened safety and security regulations linked to international travel.

On October 19, 2023, on the margins of the Arctic Circle Assembly, the Minister of Fisheries, Oceans and the Canadian Coast Guard and the Minister of Agriculture, Self-

Sufficiency, Energy and Environment of Greenland signed a [Letter of Intent for Cooperation on the Pikialasorsuaq](#), which seems to signify an important step towards the collaboration of Canada and Greenland with regards to the Pikialasorsuaq. This blog post explores the context behind this development and seeks to examine the potential legal implications of the Letter of Intent for the Inuit of the Pikialasorsuaq region.

1. Legal Background

The maritime boundary between the Kingdom of Denmark (in relation to Greenland) and Canada was established with the [1973 Delimitation Agreement](#), which deliberately left without a determined boundary the area between the geodetic points 122 and 123 where Hans Island is located. The latter was only delimited in [June 2022](#), creating a 3,962 km long maritime boundary which is currently the longest in the world. The boundary cuts through the Pikialasorsuaq Polynya and reduces Inuit activities on both sides to a certain geographical area determined by the respective states' maritime zones and hunting quotas based on domestic and international law. In addition, [increased securitization by Canadian authorities](#), who at times conceived of the Greenlandic Inuit presence in Ellesmere as a threat to Canadian sovereignty over its Arctic archipelago, imposed restrictions to the mobility patterns of the hunters since the middle of the 20th century – with the last organized exchange between the populations of both sides of the Polynya taking place in 1994 ([Report of the Pikialasorsuaq Commission](#), p. A-6). Since the 1990s, when the last formal travel exchanges between the two groups of Inuit located on the opposite sides of the Pikialasorsuaq took place, traveling has become much more difficult due to increased costs, taxation and intensified securitization in both sides of the Polynya (especially after the tragedy of 9/11), that eventually resulted to the [cessation of free transit](#) for Inuit families in both sides.

Canada and Greenland currently share jurisdiction in the North Water Polynya, which has implications for the international conservation and management of marine mammals and seabirds. The importance of joint management of the marine environment between the two states was verified in the [1983 Agreement between the Government of Canada and the Government of the Kingdom of Denmark for Cooperation Relating to the Marine Environment](#), aiming to increase “*bilateral cooperation in respect of the protection of the marine environment*”. Regional collaboration between Greenland and Canada for management of shared marine mammal species has also been successful over the last few decades. First, Canada and Greenland signed a [Memorandum of Understanding \(MOU\) on the Conservation and Management of Narwhal and Beluga in Baffin Bay](#) in 1989. Second, the Government of Canada, the Government of Nunavut, and the Government of Greenland adopted a [MOU for the Conservation and Management of Polar Bear Populations](#) in 2009. The 2009 MOU established a joint commission largely consisted of Inuit representatives of both sides to provide recommendations on total allowable harvest and fair division of the shared harvest of the shared polar bear population in Kane Basin and Baffin Bay. Denmark is not party to any of these MOUs, as Greenland holds [exclusive jurisdiction](#) on natural resource management, judicial affairs and policing, while the Kingdom of Denmark maintains jurisdiction for foreign affairs and defense matters.

2. The 2016 Pikialasorsuaq Commission

To address the future of Pikialasorsuaq in light of a changing Arctic and to negotiate an Inuit-led co-management regime for the Polynya, the Inuit Circumpolar Council of Greenland (ICC Greenland) together with the respective department of Canada (ICC Canada) established in January 2016 the [Pikialasorsuaq Commission](#), through a project funded for three years. The Pikialasorsuaq Commission published in 2017 a [report](#) that addressed emerging issues pertinent to the region's peoples and ecosystem and concluded with three main recommendations for policymakers. The [recommendations](#) referred to: a) the establishment of an Inuit Management Authority (IMA) led by Inuit representatives from communities in the Pikialasorsuaq region to regulate various activities, including transportation, shipping, and off-shore industrial development; b) the establishment of a protected area comprised of the Polynya itself and including a larger management zone, monitored and managed by Inuit; and c) the establishment of a free travel zone for Inuit across the Pikialasorsuaq ([Report of the Pikialasorsuaq Commission](#), p. A-20).

In 2022, ICC Greenland entered into a cooperation agreement with Oceans North Kalaallit Nunaat and a task force was established to promote the work of the Pikialasorsuaq Commission. The task force aimed to ensure its recommendations are recognized and eventually implemented by the Greenlandic government. While the implementation phase of the Pikialasorsuaq Commission's work has started and negotiations on freedom of movement for Inuit to visit friends and family across the border are underway, cross-border hunting for the Inuit of both sides has not yet been established by state law and is nowadays limited to each state's EEZ and remains strictly controlled by domestic hunting legislations. The Pikialasorsuaq Commission's project is currently in the second phase, working on the development of an implementation plan, in consultation with the appropriate authorities and based on the recommendations and information gathered by the Pikialasorsuaq Commission in the first phase.

3. What does the Letter of Intent for Cooperation on the Pikialasorsuaq mean for the Inuit?

The 2023 [Letter of Intent for Cooperation on the Pikialasorsuaq](#) marked an important step for Canada and Greenland to join forces regarding Pikialasorsuaq. A Letter of Intent (LOI) is a written document prepared when two parties have reached a mutual understanding but have not fully detailed out all the specifics. This document is often presented before a final legal agreement, meaning a LOI lacks binding force. Nevertheless, it serves as an expression of political commitment between the parties and outlines the terms they intend to subsequently adhere to. Although lacking thus binding force, the LOI for Cooperation on the Pikialasorsuaq demonstrates political will from both Greenland and Canada to continue joint efforts to manage the Pikialasorsuaq ecosystem and adjacent Inuit communities.

The LOI acknowledges all previous bilateral agreements and joint efforts (including single-species management) with respect to the Pikialasorsuaq area and provides for the establishment of a “*joint Pikialasorsuaq steering committee*” across Canada and Greenland, with representation from Inuit and national governments on both sides. As of the LOI, the mandate of the Steering Committee would be to “*develop instruments and common foundations for management of the area*”. While further details about the actual scope of the wording of this objective are not provided in the LOI, it seems that this objective resonates with the first [recommendation](#) of the 2017 Pikialasorsuaq Commission report that suggested the establishment of a common Inuit-led management authority for the area ([Report of the Pikialasorsuaq Commission](#), p. A-20). In the LOI, the two parties further express their intention to share relevant existing scientific information among the Inuit Qaujimagatuqangit in Canada, and hunter and user knowledge in Greenland. They also intend to commit to cooperation on research and monitoring of the Pikialasorsuaq ecosystem, exchange information from consultations with local representatives of both sides of the Polynya and refer questions that fall wholly or partially outside of their areas of competence or outside the terms of the LOI for separate discussion with relevant authorities.

Thus, a joint Pikialasorsuaq Steering Committee may have only limited mandate in relation to the management of the area, and mainly focus on carrying out consultations, providing scientific advising, and increasing engagement between local hunters and public authorities. That said, the second and third recommendations of the 2017 Pikialasorsuaq Commission report on establishing a protected area led by Inuit and allowing Inuit cross-border activities to travel or hunt seem to not be reflected in the LOI. The right of Indigenous peoples to transboundary activities in the sea is yet recognized under international law. For example, article 14(1) of the [ILO Convention 169](#) to which Denmark is a party recognizes the rights of nomadic Indigenous communities ‘*to use lands [and marine areas] not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities*’. Article 32 of the ILO Convention 169 further provides that governments ‘*shall take appropriate measures, including by means of international agreements, to facilitate contacts and cooperation between Indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields*’. Similarly, Article 25 of the [UNDRIP](#), which is endorsed both by Canada and Denmark, obliges states to recognize the rights of Indigenous peoples to ‘*maintain and strengthen their distinctive spiritual [and cultural] relationship with their traditionally... used lands, territories, waters and coastal seas and other resources*’. Article 36(1) of the [UNDRIP](#) further stipulates that: ‘*Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders*’. Legal protection of Inuit traditional fishing and hunting rights in a transboundary context is also provided in international law of the sea litigation, *inter alia*, under the [doctrine of vested rights](#) [e.g. South China Sea Arbitration, para 808].

Allowance of transboundary activities for the Inuit of Pikialasorsuaq could, however, not find any legal resonance with the existing development in place, as the LOI’s scope is generally

broad and does not touch upon any such issues. This is further manifested through Denmark's lack of participation in the LOI. Considering that for any question dealing with sovereignty, security, delimitation or border issues the Kingdom holds jurisdiction, Denmark should also have been involved in signing the LOI, should such a development be aimed at regulating cross-border Inuit activities.

4. Conclusions

It has been approximately seven years since the Pikialasorsuaq Commission was first established, with the region surrounding the North Water Polynya increasingly experiencing paramount socio-ecological changes. Given the LOI's limited scope and non-binding character, it is difficult to assess what the establishment of a joint Pikialasorsuaq Steering Committee may mean in practice for the Inuit of Pikialasorsuaq. Yet, it demonstrates another step of political will expressed from both sides to acknowledge the Inuit peoples' relationship to the Pikialasorsuaq and consider the 2017 proposals made by the Pikialasorsuaq Commission. Just about a year before the LOI was signed, the 2022 Hans Island agreement was adopted. The latter [explicitly](#) ensured rights for the Inuit of both Nunavut and Greenland to freedom of movement throughout the tiny limestone Hans Island (Tartupaluk) for "*hunting, fishing and other related cultural, traditional, historic and future activities*". While the agreement over the uninhabited island may have a more [symbolic rather than pragmatic value](#) for traditional activities, the adoption of the 2023 LOI shows a second significant intention by public authorities to acknowledge the integrity of Inuit territories. Thus, whereas the recent LOI could be seen as a point of departure for future transboundary legal developments in the Arctic, time will show what the *intention* may mean in *practice*.

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