

The Western Arctic–Tariuq (Offshore) Accord: A Long Time Coming

Anita Rayegani

University of Hamburg, Germany

Abstract

On 10 August 2023, representatives of the Inuvialuit Regional Corporation and the governments of the Northwest Territories, Yukon, and Canada signed the Western Arctic–Tariuq (Offshore) Accord.¹ The Accord establishes a system for the shared management and regulation of offshore petroleum resources north of the Arctic Circle, west of Nunavut to the limit of Canada’s jurisdiction in the Beaufort Sea and Arctic Ocean and the equitable sharing of benefits. Upon the consent of all Parties, implementing legislation will be introduced to establish the Accord and will, among other things, amend or replace relevant federal legislation. The Accord is a step towards Canada’s implementation of the United Nations Declaration on the Rights of Indigenous Peoples.² It is also part of a quest for meaningful participation dating back to the initial activities concerning oil and gas in the region that fuelled negotiations leading to the Inuvialuit Final Agreement. This contribution situates the Accord in the context of these developments to illuminate its potential significance.

Keywords: *offshore petroleum resources, meaningful participation, inclusive economic development, governance arrangements*

1 Negotiating the Inuvialuit Final Agreement

In 1973, six months after *Calder et al. v Attorney-General of British Columbia*,³ the Government of Canada released a policy statement inviting Indigenous groups who had never signed a treaty with the Crown to begin negotiating comprehensive land claims agreements. A few years later, the Committee for Original Peoples’ Entitlement (COPE), representing Inuvialuit, wrote a letter to then Prime Minister Pierre Trudeau and then Minister of Indian and Northern Affairs Warren Allmand introducing the proposal for a comprehensive land claims Agreement-in-Principle that would eventually lead to the Inuvialuit Final Agreement (IFA).⁴ The letter emphasized the importance of settling Inuvialuit rights before any other big

*Correspondence to: Anita Rayegani, e-mail: anita.rayegani@uni-hamburg.de

development project were to occur. It summarized the significance of the moment as follows:

First, there is no coherent policy for northern development in Canada, nor has there ever been one; second, the interests of non-renewable resource development have always been given priority; third, the planning of public policy relevant to northern Canada is woefully lacking as compared with every other circumpolar jurisdiction; and fourth, the situation is out of control.⁵

There was a sense of urgency. As geological studies in the mid-1900s revealed the possibility of significant oil and gas deposits beneath the Mackenzie Delta and Beaufort Sea, the Government of Canada provided oil companies with exploration permits without consulting Inuvialuit, leading to seismic surveys that “disrupted wildlife migration, harvesting and trap lines.”⁶ When Inuvialuit raised concerns, they were ignored by both industry and government.⁷ Then, in the early 1970s, the Mackenzie Valley Pipeline was proposed as a means to transport natural gas from the Beaufort Sea south through Indigenous peoples’ traditional territories.⁸ In its letter, the COPE expressed opposition to the Mackenzie Valley Pipeline but also acknowledged that if a pipeline or other oil and gas development project were to occur, settlement of rights could afford Inuvialuit some protection of cultural identity and values, equal and meaningful participation, and fair benefits. In 1984, after fourteen years of involvement, the COPE and the Government of Canada signed the IFA – a constitutionally protected comprehensive land claims agreement.⁹

Among the specific Inuvialuit rights reflected in the IFA are those concerning (non-renewable) resources. In order to support the implementation of these rights, an intricate and lasting co-management system was formed. The Inuvialuit Regional Corporation was established to represent Inuvialuit and their rights and benefits, while the Inuvialuit Game Council was established primarily to represent collective Inuvialuit interests regarding wildlife, including harvesting rights, renewable resource management, conservation, and enforcement.¹⁰ To support the organizations’ mandates, five co-management bodies were also established, each composed of representatives appointed by the federal and territorial governments and the Inuvialuit Game Council.¹¹ The co-management bodies have processes in place to examine, review, assess, and advise on various topics regarding development projects, fisheries management, and other activities concerning the Inuvialuit Settlement Region.

2 The Accord and UNDRIP Act

On 10 August 2023, representatives of the Inuvialuit Regional Corporation and the governments of the Northwest Territories, Yukon, and Canada signed the Western Arctic–Tariuq (Offshore) Accord, establishing a system for the shared management and regulation of offshore petroleum resources in the Accord Area, and the equitable sharing of revenues and benefits derived from exploration and development. Annex 2

of the Accord describes the Accord Area as including all submerged land north of the Arctic Circle, west of Nunavut, extending to the limit of Canada’s jurisdiction in the Beaufort Sea and Arctic Ocean. The objectives, listed under Part 2 of the Accord, centre on advancing the political development of Inuvialuit, the Northwest Territories, and Yukon and providing for cooperative participation between the Parties so that the management and regulation of offshore petroleum resources is done with particular regard for the rights of Inuvialuit and interests of other residents near the Accord Area.

The Parties referred to the Accord as “the first of its kind” for the way that it involves an Indigenous representative body as a full participant in decision-making and governance of offshore petroleum resources, and expressly recognizes Inuvialuit and residents of the Northwest Territories and Yukon as the principal beneficiaries of related economic activities in the region.¹² The Parties also held that in supporting “the meaningful participation by Indigenous peoples in decision-making over lands, territories, resources, and inclusive economic development,”¹³ the Accord is a step toward Canada’s implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Canada enacted the *UNDRIP Act*¹⁴ in June 2021 and, thereby, committed to taking measures to ensure that its federal laws are consistent with UNDRIP. While there are many relevant provisions in UNDRIP concerning current developments, for the immediate purpose it is particularly noteworthy to recall that the Preamble to the UNDRIP recognizes the urgent need to respect and promote Indigenous peoples’ rights affirmed in treaties, agreements, and other constructive arrangements with States. And that the rights affirmed in these arrangements “are, in some situations, matters of international concern, interest, responsibility and character.”¹⁵ Considering their geographic scopes and content, the rights affirmed in both the IFA and Accord fit this description.

The shared management and regulation system set out in the Accord will be implemented in three phases laid out in Part 7: pre-implementation (current phase until Accord implementation date), transition, and creation of the Independent Joint Board that will take over management and administrative functions and responsibilities. Legislation to implement the Accord is to be introduced only upon the consent of all Parties at the end of the first phase.¹⁶ Implementing legislation will amend or replace federal petroleum legislation in the Accord Area and may consequentially amend other federal legislation.¹⁷ It will also establish three joint decision-making zones on a geographic basis involving different constellations of the Parties: the Canada-Inuvialuit Zone, the Canada-Northwest Territories Zone, and the Canada-Yukon Zone.¹⁸ The Canada-Inuvialuit Zone consists of the part of the Accord Area that overlaps with the Inuvialuit Settlement Region as defined in Annex A of the IFA.

The IFA is not, however, only relevant within the Canada-Inuvialuit Zone. The IFA is at the very core of the Accord and prevails to the extent of any inconsistency or conflict (Article 4.1). Furthermore, its environmental regulatory regime and co-management system have direct effects on matters concerning the Accord.

Part 9 of the Accord, on the protection of the marine ecosystem and environment, clarifies that exploration and development of petroleum resources subject to the Accord “will be subject to environmental assessment obligations in accordance with the IFA and any applicable federal and territorial legislation.” Moreover, it includes that the proposed establishment of any federal marine protection and conservation area in the Accord Area will be subject to applicable review processes, consultation, and collaboration obligations under the IFA. Finally, implementing legislation will also provide for an oil and gas pollution regime, liability obligations, compensation terms, and accountability in a manner consistent with the IFA. These provisions reaffirm the understanding that developments occurring outside of the Inuvialuit Settlement Region may result in transboundary effects within it.

As for economic benefits, Article 12.2 of the Accord states that resource revenues from the Canada-Inuvialuit Zone “will be net of payments made to [the Inuvialuit Regional Corporation].” Payments are to amount to 50% of the first C\$ 2 million in resource revenues “and 5% of any further revenues generated in the Canada-Inuvialuit Zone,” with these amounts to be periodically reviewed and confirmed in an agreement accounting for and consistent with other agreements addressing Indigenous peoples’ rights and interests in offshore areas. Meanwhile, Article 12.6 affirms that revenues from resource exploitation occurring on the continental shelf beyond 200 nautical miles “will be net of Canada’s commitment under the United Nations Convention on the Law of the Sea, Article 82.”

3 From Constructive Arrangements to Equal and Meaningful Participation

Following a 1977 inquiry report¹⁹ on its environmental, cultural, social, and economic impacts, the Mackenzie Valley Pipeline was paused, revived in 2010, and cancelled in 2017, presumably due to a lack of profitability.²⁰ Meanwhile, the moratorium on offshore oil and gas licensing in the Canadian Arctic introduced in 2016 is still in place, as is the prohibition introduced in 2019 concerning any activity on frontier lands in the Canadian Arctic offshore waters authorized under the *Canada Oil and Gas Operations Act*.²¹

While from away, this may seem like good news, Inuvialuit and other northern residents express continued frustration at the federal government’s unliteral decisions.²² The government did, after all, state in its 2019 Arctic and Northern Policy Framework that it agrees “with the people of the Arctic and the North that they must play a greater part in governing the region – domestically and internationally.”²³ A lot has changed in the administrative and institutional structure of decision-making in the region since the entry into force of the IFA. It appears industry and government realize that Indigenous peoples are integral to development.²⁴ Nonetheless, the significance of the Accord and how it will contribute to equal and meaningful participation in decision-making and inclusive economic development remains to be seen as implementation proceeds.

NOTES

1. Crown-Indigenous Relations and Northern Affairs Canada, Accord Between the Government of Canada, the Inuvialuit Regional Corporation, the Government of the Northwest Territories, and the Government of Yukon for the Shared Management and Regulation of Petroleum Resources in the Western Arctic–Tariuq (Offshore) (10 August 2023), <https://www.rcaanc-cirnac.gc.ca/eng/1691671328097/1691671355311> [Accord].
2. United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples (13 September 2007), http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.
3. *Calder et al v Attorney-General of British Columbia* [1973] S.C.R. 313.
4. Inuvialuit Final Agreement (5 June 1984), https://publications.gc.ca/collections/collection_2017/aanc-inac/R74-34-1985-eng.pdf [IFA].
5. The Committee for Original Peoples' Entitlement, *Inuvialuit Nunangat: The Proposal for an Agreement-in-Principle to Achieve the Settlement of Inuvialuit Land Rights in the Western Arctic Region of the Northwest and Yukon Territories Between the Government of Canada and the Committee for Original Peoples' Entitlement* (1977), <https://www.ifa101.com/content/inuvialuit-nunungat>, 3.
6. "COPE: An Original Voice for Inuvialuit Rights: Inuvialuit Final Agreement 25th Anniversary," Inuvialuit Regional Corporation, 2009, <https://irc.inuvialuit.com/sites/default/files/COPE-Original%20Voice%20for%20Inuvialuit%20Rights.pdf>, 23.
7. "Taimani – At That Time: Inuvialuit Timeline Visual Guide," Inuvialuit Regional Corporation, <https://irc.inuvialuit.com/system/files/Taimani%20-%20At%20That%20Time.pdf>, 126.
8. Lauren Nelis, "Mackenzie Valley Pipeline, Canada," Environmental Justice Atlas, accessed 16 October 2023, <https://ejatlas.org/conflict/mackenzie-valley-pipeline>.
9. Letitia Pokiak, "Meaningful Consultation, Meaningful Participants and Meaning Making: Inuvialuit Perspectives on the Mackenzie Valley Pipeline and the Climate Crisis" (MA thesis, University of Victoria, 2020), <https://dspace.library.uvic.ca/handle/1828/12138>.
10. IFA, Art. 6(1)(a) and Arts. 14.(73)–14.(74).
11. The co-management bodies established under the IFA are the Environmental Impact Screening Committee, the Environmental Impact Review Board, the Wildlife Management Advisory Council (North Slope), Wildlife Management Advisory Council (Northwest Territories), the Fisheries Joint Management Committee. Inuvialuit Regional Corporation, "Co-Management," <https://irc.inuvialuit.com/lands/co-management>.
12. Inuvialuit Regional Corporation, Government of Yukon, Government of the Northwest Territories and Government of Canada., "Inuvialuit Regional Corporation, Canada, Northwest Territories and Yukon Sign the Western Arctic – Tariuq (Offshore) Accord," news release, 10 August 2023, <https://www.canada.ca/en/crown-indigenous-relations-northern-affairs/news/2023/08/inuvialuit-regional-corporation-canada-northwest-territories-and-yukon-sign-historic-western-arctic--tariuq-offshore-accord0.html> (accessed 16 October 2023).
13. Ibid.
14. *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14.
15. UNDRIP, Preamble.
16. Accord, Art. 8.3.
17. Accord, Art. 4.4. Art. 3 specifies that federal petroleum legislation means the *Canada Petroleum Resources Act*, R.S.C. 1985, c. 36 (2nd Supp.); *Canada Oil and Gas Operations Act*, R.S.C., 1985, c. O-7; *Canada Oil and Gas Land Regulations*, C.R.C., c. 1518 and regulations thereunder.
18. Accord, Art. 7.1.

19. Thomas R. Berger, “Northern Frontier, Northern Homeland: The Report of the Mackenzie Valley Pipeline Inquiry” (Supply and Services Canada, Ottawa, 1977), <https://publications.gc.ca/site/eng/9.700299/publication.html>.
20. Nelis, note 8.
21. Michael Wenger, “Discussion about oil along Canadian Arctic coast,” *Polar Journal*, 9 January 2023, <https://polarjournal.ch/en/2023/01/09/discussion-about-oil-along-canadian-arctic-coast/> (accessed 16 October 2023).
22. Ibid.
23. Government of Canada, “Arctic and Northern Policy Framework—Our Present,” <https://www.rcaanc-cirnac.gc.ca/eng/1560523306861/1560523330587#s3>.
24. Nellie Cournoyea as interviewed in Leo-Paul Dana, Aldene Meis-Mason, and Robert B. Anderson, “Oil and Gas and the Inuvialuit People of the Western Arctic,” *Journal of Enterprising Communities* 2, no. 2 (2008), 166. <https://doi.org/10.1108/17506200810879970>.