Reflections of Changing Views of Canada's Arctic Sovereignty: Resilience and Change in the Liberal State

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Abstract: The principle of Indigenous sovereignty acknowledges the liberal imperative of state authority, and yet simultaneously transforms it. Fundamental principles of sovereignty embedded in Westphalian ideas of state and nation-state are counterpoised against in other rationalities—including concepts of cultural rights, human security and more localized sovereignties. Canada's experience in laying claim to both the internal waters of the Canadian Northwest Passage, and its more recent claim to the extended continental shelf in the Arctic Ocean, are a case in point. In both of these cases Indigenous sovereignty challenges the right of the Canadian state to make such claims without the explicit permission of Inuit peoples. Yet, gaining such permission supports conventional sovereign claims much the way is conventionally associated with the Peace of Westphalia, even if history was more complicated and less immediate in its compliance with what became conflated over time with Westphalian ideals. Meanwhile, land claims treaties in Canada's Arctic along with new understandings of climate change and human security support a reassessment of sovereignty in practice, and an expansion from the Westphalian ideal to a post-Westphalian synthesis of Indigenous and state sovereignties. Can we still call such arrangements "liberal", and is decolonization consistent within a framework of liberal views of state sovereignty? The Inuit experience at the nexus of Indigenous and state sovereignty suggests we can indeed, and that Canada's evolving conception of sovereignty re-introduces tribal sovereignty as a pillar of the new, post-Westphalian order. While similar processes are under way across the Indigenous world, whether in the Far North or Global South, the experience in Arctic North America sheds important light on the evolution of sovereignty in both theory and practice as Indigenous values and conceptions are increasingly recognized and embraced by the sovereign states that emerged in their homelands through colonial state expansion.

1. INTRODUCTION

An American Indigenous professor of law once pointed out that in her estimation, Indigenous Peoples in the United States had many more rights than in Canada. They were, she suggested, in a much stronger political position. The difference seemed to revolve around the concept of sovereignty and its application. In the US, many native peoples are considered to be sovereign nations, and tribes are considered to

be "domestic dependent sovereigns" meaning that their authority to govern "is preserved, the extent of that authority is defined by the U.S. Congress" (Kimmel 2009). In Canada, sovereignty reflects a new degree of self-determination nested within regional and federal land claims and inherent cultural rights (Nicol 2016, p. 6). But in both cases, in relation to Indigenous Peoples, the term itself is envisioned and valued differently today than it was when inscribed in Westphalian terms by the 'doctrine of discovery' (Philpott 1995). It is also worth noting that concepts of sovereignty as described by Northern Indigenous Peoples affected by land claims negotiation, differs yet again, and refers to relationships to the land rather than to political authority (Inuit Qaujisarvingat 2013). For indigenous Peoples, the construct of sovereignty has been redefined in relation to the concept of group or cultural rights inherent in the United Nations Declaration of the Rights of Indigenous Peoples (Weissner 2008). The latter sees the inherent right of Indigenous groups to utilization to traditional territories and cultural practice (Joeffe 2010, Nicol 2016, Shadian 2014,). This contrasts also contrasts with Northern state agencies that are engaged in defence and protection of territorial integrity. Still, while different cultural and political understandings of sovereignty exist, they are not mutually exclusive. And indeed, sovereignty is becoming much more intertwined with changing notions of human security and human/Indigenous rights.

In this paper we explore the notion of the evolution of sovereignty in northern Canada more closely. In addition to this introduction (section 1), this paper first examines considers what sovereignty is (section 2), the histories of Arctic Sovereignty (section 3), sovereignty re-conceptualized in Arctic North America: evolving beyond the unitary Westphalian state into state-tribe sovereign partnerships (section 4), international and transnational dimensions of Arctic sovereignty (section 5), and a concluding discussion (section 6). We explain why the opening comment that US Indigenous Peoples might have greater rights masks the degree to which Indigenous sovereignty has become equally embedded within the liberal state, albeit in different ways. Northern Canada is indeed a place where new understandings of Indigenous rights are contingent upon new ways of imagining sovereignty, less in absolute 'Westphalian' terms and more in collaborative, hybridization of tribal and state authorities. Here, territorial sovereignty is given new strength and resiliency through a new and emerging landscape of cultural rights, while decolonization proceeds in ways that inherently reinforce the liberal state at the same time that it simultaneously supports multiple sovereignty narratives.

2. WHAT IS SOVEREIGNTY?

The Westphalian concept of sovereignty, as its expansive body of literature suggests, invests sovereignty in polities with legitimate authority or final authority. Emerging from the Peace of Westphalia in 1648, it was a form of legitimizing power by placing it solely in the hands of nation-states, restoring order to war-torn Europe after decades of sectarian warfare, subordinating internal contests in faith and identity to the overarching authority of state. As with many important concepts, subsequent generations of scholars have at times greatly oversimplified the concept, and through casual usage transformed a nuanced historical concept into what Benno Teschke has called the "Myth of 1648" (Teschke 2003). And Philpott argues that concretizing such an enduring definition of sovereignty is at best a 'pipe dream' (1995). Indeed, as many have already argued, sovereignty can be seen as the ultimate 'simulacrum', a truth claim based upon a false and unattainable ideal (Nicol 2016, Lenzerini 2006, Pozorov 2007, Philpott 2001, Teschke 2003). In a 21st century world of transnational political, economic and cultural actors, the fleeting nature of legitimate authority is clear, especially within a pluralistic state. For Philpott (1995), sovereignty, has always been transitory, reflecting a dynamic landscape and endless struggle for self-determination, because: "The problem is obvious: enforcement of sovereignty and territorial integrity may deny the principle of equal rights and self-determination of peoples, and vice versa".

3. HISTORIES OF ARCTIC SOVEREIGNTY

Thus, far from being set is stone, sovereignty is inherently contestable if only because it seeks to establish 'legitimate' authority. But the question of legitimacy is itself slippery. In North America, for example, European powers drew upon the concept of *terra nullius*, although the territories they claimed as nobody's land were not. There is a complex literature on European colonization, and rather than repeat it here, it is enough to say that over time, America, British and French colonial powers in North America dispossessed original peoples of their land (Harris 2004). By the late 19th century, a system of reserves had been established that created a patchwork of Indigenous places in a non-Indigenous larger quilt of non-Indigenous territory (Hoy 2021). Indigenous territories were controlled by state government—often through a dislocating process that shifted the location of people to places with little saliency with traditional land. This is true of the 'Lower 48'United States and Canada south of the 60th line of north latitude.

In the North, however, the story proceeds in a slightly different way than it did in southern locations. The sequence of colonialism, and settlement was different (Zellen 2010a; 2018, 2020). While Alaska was first colonized by Russian traders and explorers in the 17th century, in both Canada and the US the modern "state" arrived only on the mid-19th century, and its presence was originally light (Zellen 2010a, 2020). The 1867 purchase of Alaska by the United States subsequently imposed American governance over Russia's former colonial territory and from this point forward, a small but sustained settlement of the region began which lasted well into the mid-20th century, accelerating during the gold rush years (Nicol and Chater 2021). After the Second World War a concerted effort was made to develop and settle the region, and Alaska achieved statehood in 1959. Before that, it was an 'organized incorporated territory 'of the United States, and the District of Alaska before that. (Nicol and Chater 2021).

While exploration began in the Canadian North as early as the 16th century, by the end of the nineteenth century the Canadian Arctic had been largely explored and mapped, and the establishment of colonial governance occurred later in that region as well: "In 1670, the British Crown granted a royal charter to the Hudson's Bay Company as well as a monopoly over all trade in the area known as "Rupert's Land," or nearly half of what is present-day Canada, although until the 1900s of the Company's activities remained confined to more southern and western parts of the continent " (Nicol and Chater 2021; Zellen 2020). By the late 20th century, a new form of modern land treaties had emerged in Canada, based on federal recognition of comprehensive native land claims (Bone 2016; Zellen 2008). The arrangements reflected new understandings of rights, governance, and indeed, sovereignty itself. Of these, two of these land accords were particularly important. First was the Alaskan Native Claims Settlement Act (ANCSA) in 1971, which transferred 44 million acres of Alaskan land (nearly 12% of Alaska) to be held by Alaska Native shareholders through regional and village corporations gaining 'corporate' ownership (Nicol and Chater 2021, Zellen 2008). This unprecedented land claim settlement set the stage for events to follow in the Canadian North,-serving as a model of possibility for the transfer of title from the state back to Indigenous peoples, facilitating the settlement of Indigenous claims across the region.

Another significant event came shortly after the end of World War II when the United Nations concerned itself with development of human rights to the point of passing the Universal Declaration of Human Rights in 1948 (Eide 2009). While a significant development, the UDHR and subsequent instruments and conventions, did not endorse cultural rights in a way consistent with self-determination for Indigenous Peoples. The subsequent United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP 2007) engaged with the concept of sovereignty in new ways, re-introducing Indigenous conceptions of sovereignty to the community of 'Westphalian' nation-states. While the right for Indigenous Peoples to a protected collective identity was not defined in the UN Convention on Human Rights, it is by the UNDRIP. The limitations of the UN Declaration on Human Rights in the area of collectivity and indigeneity spurred further discussions that specifically addressed the situation of Indigenous Peoples. In 2007, UNDRIP was passed by the UN General Assembly, and its principles of recognition of Indigenous status and corresponding rights

to consultation over territory, culture and autonomy were enshrined within declaratory international law (see for example, UNDRIP, Articles 3 through 18) (Nicol 2016). More than a minority rights or individual human rights declaration, the UNDRIP enshrines the collective unalienable rights of Indigenous Peoples, challenging over three centuries of normative practices of states and indeed, many of the customary practices of international law since 1648 (Nicol 2010; Normand and Zaidi 2008).

Articles 25-28, for example, speak explicitly to Indigenous self-determination over land and how resources must be accommodated by the state. For example, Article 26 of the UNDRIP states that:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the Indigenous Peoples concerned (UNDRIP 2007).

In the years since the UNDRIP was passed, Indigenous Peoples Organizations such as the Inuit Circumpolar Council (ICC), have successfully used the UNDRIP to frame their claims. The ICC states that "[o]ur rights as an indigenous people include the following rights recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), all of which are relevant to sovereignty and sovereign rights in the Arctic… (ICC 2009, Point 1.4)."

While an important and innovative agreement, however, UNDRIP has its limits. Most importantly, as noted by Cambou (2019), Article 3 "unambiguously stipulates that indigenous peoples, treated as a group of peoples rather than individual citizens, have the collective right to exercise the right to self-determination", and does not "stipulate any limitation for its exercise". Nonetheless, Indigenous Peoples' right to self-determination is not absolute or unqualified. Instead, Article 46 indicates that: "self-determination should be exercised in respect to the territorial integrity or political unity of sovereign and independent states" meaning that the UNDRIP does not recognize the right of Indigenous Peoples to create new states. For Cambou, this is a means of "dissociating the right of indigenous peoples from an end-state approach, as asserted during the decolonization period".

4. SOVEREIGNTY RECONCEPTUALIZED IN ARCTIC NORTH AMERICA: EVOLVING BEYOND THE UNITARY WESTPHALIAN STATE INTO STATE-TRIBE SOVEREIGN PARTNERSHIPS

Can we still call such arrangements "liberal", and is decolonization consistent within a framework of liberal views of state sovereignty? With reference to the preceding, until very recently, discussion about sovereignty in the Canadian and American North was largely focused upon defense and territory. It was a story that focused upon the state, while sidelining Indigenous Peoples (Bauder et al 2021). Fears of Russian transgression, maritime boundaries and control of the Northwest Passage dominated the narrative, marginalizing the larger issue about longstanding control over, and use of coastal waters by Indigenous Peoples. In other words, traditional security and sovereignty concerns prevailed. But these understandings are changing over time. Indigenous peoples Organizations, such as the Inuit Circumpolar Council (ICC), have drawn up the UNDRIP to frame their claims, make headway into international fora. Inuit populations have sought to entrench not just the right to self-determination and collective rights, but their right to be seen as legitimate international actors within international decision-making. The ICC's Circumpolar Inuit Declaration of Sovereignty, for example, evoked the UNDRIP as the most important instrument in securing their absolute right to be directly inclusion in Arctic sovereignty deliberations (Nicol 2010, 2017). For ICC: "[o]ur rights as an indigenous people include the following rights recognized in the United Nations Declaration on

the Rights of Indigenous Peoples (UNDRIP), all of which are relevant to sovereignty and sovereign rights in the Arctic…" (ICC 2009, Point 1.4). Indeed, climate change has created the specter of new forms of security threat, and in doing so new forms of understanding challenges to what sovereignty is and what sovereignty "does". It has created more flexibility in understanding who holds sovereignty and how it is maintained.

Simply put, if sovereignty in Canada and the US has been exclusively defined by the interests of unitary federal states in the past, this is now changing, slowly and surely at first, and in more recent years with greater momentum, with the interests of Indigenous Peoples gaining widespread constitutional, judicial and executive recognition, and thereby becoming increasingly incorporated into conceptions of the national interest. Past issues of Arctic sovereignty were resolved by treaty and border installations, and in contemporary times by bilateral agreements and policy statements. Referencing state borders, protecting Arctic sovereignty has been an important pillar of numerous strategies and policy frameworks throughout the late 20th and early 21st centuries (Grant 2009; Zellen 2015). It has been both at the core of defense decision-making and bilateral treaties with the US, and serves as the basis for actions taken under the auspices of the United Nations Convention on the Law of the Sea. For example. In Canada, most sovereignty concerns have been in relation to US use, or potential unauthorized use of Canadian maritime and land territory as well as centered upon Russian activities which are perceived as increasingly aggressive and increasingly coming too close for comfort in Canada's Arctic region (Huebert 2019). Similarly, much activity has taken place to map Canada's coastal waters, in order to make scientifically-supported claims to an extensive continental shelf in the Arctic Ocean.

Sovereignty has also been a concern for US defense in the region—although not in the same way. US sovereignty concerns are focused on maintaining a context in which the US sovereignty is not constrained by international agreements, binding treaties or security arrangements (Nicol and Chater 2021; Zellen 2015).

Only recently has there been a shift in emphasis, aligned with the recognition of new non-conventional security threats in the region (Kee 2019). This has refocused attention on communities, civil society and transnational co-operation, as climate change transforms regional landscapes, maritime conditions and safety assessments. This has been accompanied by a new understanding of security focused on civil society and what has been called its 'human dimension' (Nicol 2020). There is a corresponding shift away from exclusively state-centered narratives of sovereignty and its parallel concern—military security and defence. Instead, communities and infrastructure are seen as demanding more protection within an Arctic that is rapidly changing due to climate instability, melting permafrost, and other unconventional changes. There is a new focus on Indigenous knowledge, particularly in relationship to this dynamic, and a new respect for Indigenous communities and their traditions.

In doing so, contrasts have been made between the general Westphalian idea of sovereignty, with the way in which sovereignty is understood from the perspective of Indigenous organizations and their ambitions (Bauder 2021, Inuit Qaujisarvingat 2013) and from the perspective of broad human security concerns that orient the place of 'sovereignty' in the hierarchy of state imperatives (see Hoogensen Gjørv Hoogensen, Lanteigne and Sam-Aggrey 2020).

We have thus far explored the definition and evolution of sovereignty from the point of view of the state and state organizations. But articulating the concept of sovereignty in relation to Indigenous precepts is foundational to understanding the shape of new norms. For Bauder et al. (2021) the Westphalian sovereignty represents a Eurocentric understanding of sovereignty as being "control over bounded territory" that was unfamiliar to Indigenous peoples. Indigenous sovereignty has been defined both in relation to the international state system (UN) through the work of Indigenous Peoples Organizations, as well as at the state level through non-state Indigenous actors, as reflected in land claims, constitutional texts and other arrangements. It has also been defined by Indigenous peoples and Organizations for themselves and for the purpose of advancement of self-determination. In the US, Indigenous sovereignty rests upon idea that Indigenous Peoples are sovereign nations, although sovereignty in practices remains unevenly applied (Wiessner 2008). In theory, in the US, tribes are seen as sovereign over their own territories, including the

right to self- governance, policing, health, education, resource development, infrastructure development and a host of other activities often associated with municipal, state or even federal governments (see Kalt and Singer 2004).

In practice, however, the landscape is uneven. Kimmel argues that sovereignty has been diminished in Alaska since the advent of the 1971 Alaskan Native Claims Settlement Act (ANCSA). Here, the inherent sovereign status of Indigenous Peoples does not, however, translate into total autonomy, since Alaskan tribes have no land base over which they can assert sovereign authority (Kimmel 2009, p. 2). Nor does it translate into comprehensive land claims with rights to land and resources. There are over 500 Indigenous nations or tribes in the US, almost half in Alaska where 12 corporations and 200 incorporate villages manage development and funding (Nicol and Chater 2021). The problem is, however, that "[d]espite tremendous economic gains made by Alaska Native owned for-profit corporations, the loss of local control over critical lands and resources has destabilized local governance and impeded resiliency in indigenous communities living on the edge of a dramatically changing environment" (Kimmell 2009, pp. 2-3). Indeed, unlike elsewhere in the US, Alaska tribes have limited ability to assert inherent sovereign powers compared to other in the lower 48. Land claims were instead settled in ways that had profound consequences for the ability of tribal governments in Alaska to exercise their potential rights of self-determination (Kimmel 2009, p. 6).

In the Canadian North, the notion of Indigenous sovereignty is somewhat different—both in terms of the way in which it is understood and the way in which it is implemented through land claims and the reserve system. In the Canadian reserve system, established in the 19th century, Indigenous Peoples could not own their title to land. Instead, reserves lands were allocated to Indigenous groups and governed by the Indian Act, held in trust by the Crown. In recent years, however, the establishment of modern land claims in Northern Canada has begun to change this relationship, incorporating various different forms of self-governance that - in some cases - include the right to resources and consultation about development on Indigenous land. In this case, the concept of sovereignty has taken on various meanings, some cultural and related to access to land and traditional activities, and some political—related to political power and influence. Indigenous peoples make claim to the legitimacy of Indigenous governance structures within specific comprehensive land claims agreements and within co-management structures, via the force of their own agency and their cultural and traditional rights. In this way the doctrine of discovery and its corollary, terra nullius thus loses it historical agency and its monopoly over 'sovereignty'.

Among the new governance structures rooted in state recognition of Indigenous self-determination and a layered re-assessment of sovereignty that includes the restoration of autonomy over traditional Indigenous territories are the various co-management and self-governance bodies created across the Canadian North what some have called the "age of Arctic land claims" (Zellen 2008, 2010b)—from the James Bay and Northern Quebec Agreement of 1975 (augmented in 1978 by the Northeastern Quebec Agreement when the Naskapi joined the treaty) to the Inuvialuit Western Arctic land claims of 1984 (whose terms were agreed to with Ottawa in their 1978 Agreement-in-Principle), and on to 1993 Nunavut land claims (with its plebiscite-approved historic 1999 partitioning of the Northwest Territories from a multiethnic territory into a predominantly Inuit eastern territory corresponding to the settlement area of the Nunavut land claim), and on to the Labrador Inuit (Nunatsiavut) Land Claim of 2005. Each of these land claim accords pioneered new governing structures and expanded the powers of Indigenous claimants beyond the achievements of prior treaties, incrementally strengthening the foundations of Indigenous self-reliance and self-governance across the North with the federal government's support.

Once land claims became a predominant fixture in the political geography of the Canadian Arctic, they transformed from a rapid program of economic modernization and integration driven by time-sensitive energy development projects as originally conceived with the first of the Arctic claim settlements, the 1971 Alaska Native Claims Settlement Act (ANCSA), into an innovative program of mutual recognition by Indigenous Peoples and the state, strengthening the sovereign fabric of the both the U.S. and Canadian States in their northern, lightly settled, and largely undefended territories through the Indigenous consent to federal constitutional rule. In this transformation, achieved in part through bilateral (state-tribe) nego-

tiation, legislative action, executive will, and judicial review, sovereignty evolved beyond the Westphalian conception into something that can be understood as post-Westphalian (Shadian 2010).

A slightly different relationship and understanding of sovereignty and rights is reflected in the U.S. Arctic. In contrast to the Canadian model, the Alaskan model articulated by ANCSA defined Indigenous sovereignty more transactionally, through its institutional emphasis of corporate structures, much closer to Hansen and Steppurtut's assertion that "control over territory and bodies that marked the nation-state model of sovereignty is now supplemented by a powerful drive to control the 'legal contract'—the modern-day concession that empowers private companies to carry out state function" (Hansen and Steppurtut, p. 30). As such it is less invested, although not entirely so, in understanding sovereignty as involving territorial rights, and less cognizant of the importance of land as part of cultural rights. What ANCSA omitted in cultural rights was offset to some degree by the Alaska National Interest Land Conservation Act (ANILCA) of 1980, which re-introduced federal protections for, and recognition of, Native subsistence rights, but without diminishing the institutional power ANCSA established for the Alaska Native Corporations (ANCs), and without the full institutional balancing achieved by the Canadian land claim model that more successfully counterbalanced the institutional power of the native corporations with cultural protections and effective co-management of lands and resources. (Zellen 2008, 2010a) Nonetheless, in Northern Canada, sovereignty is considered to be formally transferred to the state upon 'alienation' of traditional territories, or the establishment of land claims where rights to use are negotiated, with the state gaining uncontested title to the vast majority of the land base (some 90%), and natives gaining fee simple title to the remaining 10%, along with increasing regional autonomy (subordinated to federal constitutional authority) over the entirety of their traditional homeland—called by some "nested federalism" (Wilson, Alcantara and Rodon 2020) and by others as a "sovereign duality" (Zellen 2008).

There are, therefore, mixed messages. On one level, sovereignty remains defined in state-centered ways. It would seem that despite the inroads, within the Nunavut settlement area (NCLA), the Inuvialuit settlement area, or indeed, any other claim, authority is still maintained in ways that reify colonial understandings of power, legitimacy and territory. The transfer of 'sovereignty'' from Indigenous Peoples to state oversight, although part and parcel of processes that enable self-governance, can be mustered as support for state-centered activities. In doing so, they imply the support of Indigenous groups for national interest, as well as a desire for embeddedness in state hierarchies of power and interest. Indigenous self-determination, in other words, is increasingly 'adjusted' to ensure a utility value and compliance to state-based purposes and to support state territorial claim.

Indeed, Alfred and Corntassel (2005, 603) remind us that contemporary forms of governance attempt to "confine the expression of Indigenous peoples' right of self-determination to a set of domestic authorities operating within the constitutional framework of the state (as opposed to the right of having and autonomous and global standing) and actively seek to sever Indigenous links to their ancestral homelands". Nadasdy (2012, p. 503) agrees, and also argues that in the Canadian Yukon, land claims and other self-government agreements" "are not simply formalizing jurisdictional boundaries among pre-existing First Nation polities; they are mechanisms for creating the legal and administrative systems that bring those polities into being". This means that these agreements are "conceived and written" in "the language of state sovereignty" as well as being "premised on the assumption that First Nation governments must be discrete politico-territorial entities if they are to qualify as governments at all". In the case of the Yukon agreements, for example, these documents do grant Indigenous groups some very real powers of governance, but that "those powers come in the peculiarly territorial currency of the modern state" (Ibid.). This territorial currency thus transforms First Nations society, and in doing so sees " the emergence among Yukon First Nation peoples of multiple ethno-territorial identities and corresponding nationalist sentiments".

A similar case is the way in which Canada's Inuit populations have been positioned vis-à-vis the rhetorical struggle for the 'internal waters status' of the Northwest Passage. Canada's historic claim to the continental shelf rests upon Inuit claim historic use, sovereignty to control over these offshore waters having been transferred to the Canadian state in the Nunavut land claims negotiations (Fenge 2008). Indeed, Byers

(2009) argues that Inuit historic use of the Arctic Ocean (generally frozen and used much as land) gives legitimacy to Canada's claim that the Northwest Passage are internal waters because they have been used for centuries by Canadian citizens - Inuit are Canadian citizens, their sovereignty is exerted with respect to the Canadian state itself. Along these same lines, Fenge has argued that "the Government of Canada [does not] yet appreciate the opportunity to use the 1993 Nunavut Land Claims Agreement (NLCA) — the only modern treaty to specifically mention Arctic sovereignty — to bolster Canada's Arctic sovereignty" (Fenge 2008, p. 85). Indeed, Fenge (2008) argues that the Nunavut (NCLA) land claim treaty is a watershed in the recognition of Inuit rights to land and sea, and is inherently synchronic with Canada's larger state-based claim to sovereignty in the North, although to date the "obvious sovereignty supporting provisions of the agreement remain unimplemented" (Ibid., p. 87). However, for Fenge and Byers, the issue was that while the NCLA includes articles "that support Canada's Arctic sovereignty" the government itself "effectively ignores or perhaps even forfeits the opportunity to use the agreement for sovereignty support purposes" (Fenge 2009, p. 88).

The relationship between Inuit use and Canadian appropriation of sovereign has not remained uncontested. Since 2015, challenge has been put to the notion that the state can appropriate Indigenous sovereignty for its own territorial claims, coming from Inuit legal and political leadership (Campbell 2015; P. Hutchins et al. 2016). Some Inuit legal advisors suggest that recognition of Inuit historic use means Inuit involvement in negotiation of new territorial limits within the Arctic Ocean in regard to Canada's claim to the continental shelf. To date, however, any substantive involvement in international legal for a is lacking, and the role of state is indeed pre-eminent.

5. INTERNATIONAL AND TRANSNATIONAL DIMENSIONS OF ARCTIC SOVEREIGNTY

We have thus far focused on the idea that sovereignty is a state-centered process. But Indigenous Peoples themselves have different understandings and definitions of sovereignty—both in relation to their own cultural lexicon and that of international relations. For example, in 2009, the Inuit Circumpolar Council (ICC) representing Inuit from across four Arctic nation-states issued a strongly worded declaration on Arctic sovereignty. This was in response to their exclusion from a series of meetings among five coastal Arctic states that culminated in the 2008 Ilulissat Declaration reaffirming the primacy of the United Nations Convention on the Law of the Sea (UNCLOS), and thereby reinforcing the unitary nature of Westphalian state sovereignty over their terrestrial and maritime territories. Referencing the UNDRIP and other similar documents, the ICC response noted that the Ilulissat Declaration on Arctic sovereignty was made by "ministers representing the five coastal Arctic states who *did not go far enough in affirming the rights Inuit have gained through international law, land claims, and self-government processes*" [emphasis added by authors]. Moreover, the ICC noted that: "international relations in the Arctic and the resolution of international disputes in the Arctic are not the sole preserve of Arctic states or other states; they are also within the purview of the Arctic's Indigenous peoples. The development of international institutions in the Arctic, such as multi-level governance systems and Indigenous Peoples' organizations, must transcend Arctic states' agendas on sovereignty and sovereign rights and the traditional monopoly claimed by states in the area of foreign affairs" (ICC 2009).

The ICC's sovereignty declaration cited the newly minted UNDRIP as a document which afforded legal and well as moral authority for the inclusion of Indigenous Peoples in international deliberations as counterparts to and partners of sovereign states wielding their own distinct Indigenous sovereignty over their homelands, located either within or across Westphalian state boundaries, and thus challenging the unitary nature of state sovereignty as encoded in other international accords like UNCLOS rooted in the Westphalian tradition of unitary sovereignty This even though Canada at that time had at that time declined to sign or ratify UNDRIP, joining the United States and a small handful of other states reluctant to recognize the endurance of Indigenous sovereignty in the modern world,. Indeed, in advocating interna-

tional consultation between Indigenous Peoples and Arctic states, the ICC forcefully argued for self-determination over their land and resources, as implicit in Articles 25 to 28 of the UNDRIP.

Yet the ICC wrote to the international community, rather than the Canadian state and the other sovereign states whose boundaries include the Inuit homeland (Russia, the USA and Denmark/Greenland), suggesting that, as Hough (2013) suggests, Inuit have often sought to have sovereignty translate externally rather than remain internally defined. This is consistent with position as a transnational organization representing peoples whose traditional homelands transcend modern state boundaries (Shadian 2010; Zellen 2017)– one representative of a people rather than a political jurisdiction. It is also with the perspective of Inuit more generally as they pressure Canada to expand the role of Inuit agency in negotiations regarding the delimitation of Canada's continental shelf in the Arctic Ocean (Campbell 2015). In fact, Inuit in Canada have been notably successful in making a case for inclusion in negotiating international agreements, extending their influence beyond the national level where they have achieved representation in Parliament, as Cabinet Ministers, and even as Governor General, to include positions as Ambassadors as well, indicating that in Canada, Inuit sovereignty and Canadian sovereignty have become intertwined (Fenge 2008; Zellen 2009). Campbell (2015) writes: "In entering treaties with Inuit, Canada recognized that Inuit had rights to the Arctic lands and waters covered by the treaties." In addition to treaty rights, a number of international declarations and agreements increasingly provide support for Indigenous claims to self-governance and rights to territory and resources, such as the UNDRIP, discussed above (Dorough 2019; Campbell 2015). The Circumpolar Inuit Declaration on Sovereignty in the Arctic acknowledges that sovereignty and sovereign rights in the Arctic "have become inextricably linked to issues of self-determination in the Arctic. Inuit and Arctic states must, therefore, work together closely and constructively to chart the future of the Arctic" (ICC 2009).

6. DISCUSSION

The claim has been made that in today's context, sovereignty can be best understood as (Hansen and Stepputat 2006, p. 297), a precept that rejects "an ontological ground of power and order, expressed in law or in enduring ideas of legitimate rule, in favor of a view of sovereignty as a tentative and always emergent form of authority". Our discussion of the emergence of forms Indigenous self-governance nested in regional and federal frameworks of devolution can be best understood in this light. Although Blom Hansen and Steppurtut focus on modern corporations as 'instigators' of modern forms of sovereignty, we should not dismiss the role of an emerging rights and cultural rights narrative and parallel structures of territorial self-determination, such as those embedded in modern land claim arrangements like Nunavut. A growing legitimacy of Indigenous rights unpacks what Agnew (2003) has termed "the territorial trap", if only "because the nation-state is no longer the privileged locus of sovereignty…sovereignties are found in multiple and layered forms around the world" (Hansen and Steppurtut 2006, p. 97). One of these layers is clearly that embodied by Indigenous Peoples.

Cultural rights and Indigenous status matter now in ways previously unimagined. The framing of rights to indigenous land and culture in ways which are both legally compelling and internationally sanctioned, has created a space for contestation and for challenging state sovereignty. This process has contributed to the creation of a compelling discourse in support of an aspiration to what Lenzerini (2006) might even call building 'parallel sovereignties' to create space for advancement of collective interests through mandatory consultation leading to self-determination.

But a changing definition of security has also contributed to this evolution of sovereignty and its multiplicity. Indeed, the notion that sovereignty constantly threatened, and needing protection has been the *prima fascia* concern of states. Yet this is no longer true in Arctic North America, where existential crises threaten communities in the form of natural disasters, storm surges, permafrost melt, unstable ice conditions, coastal erosion and food insecurity, all leading to the potential implosion of communities. It is not just the expansion of the definition of security to include other types of security than traditional or military

security that's important, in other words, but the way in which the notion of traditional security itself has itself changed as a result. It now has multiple meanings and new and non-conventional people, places and situations to secure. Security and sovereignty are thus multi-faceted, and much more complex and layered than previously thought. They support each other and indeed are mutually constitutive.

Overall, the principle of Indigenous sovereignty acknowledges the liberal imperative of state authority, and yet simultaneously transforms it. Fundamental principles of sovereignty embedded in Westphalian ideas of state and nation-state are counterpoised against in other rationalities—including the concept of cultural rights and human security. Canada's experience in laying claim to both the internal waters of the Canadian Northwest Passage, and its recent claim to the continental shelf in the Arctic Ocean are a case in point. In both of these cases Indigenous sovereignty challenges the right of the Canadian state to make such claims without the explicit permission of Inuit peoples, but the state - and the state only is enabled to assert this sovereignty with regard to the broader international community and its norms of international law.

All of this now means that any way it is examined, in the Canadian North sovereignty is a problematic concept when used intentionally to represent an absolute authority. It is now both open-ended, and embedded within, or linked to, other political and societal discourse, and to agreements at different scales—from that of a United Nations global scale to that of Indigenous group rights and cultural traditions. If a "necessary ingredient" of sovereignty is "territoriality" (Philpott 1995), then Indigenous land claims in Canada, combined with more international assertions of a cultural rights discourse such as the UNDRIP, reflect an evolution beyond traditional hierarchies of historic "Westphalians" state sovereignty arrangements and encourage the emergence of new forms.

The principle of Indigenous sovereignty acknowledges the liberal imperative of state authority, and yet simultaneously transforms it. Fundamental principles of sovereignty embedded in Westphalian ideas of state and nation-state are counterpoised against in other rationalities—including concepts of cultural rights, human security and more localized sovereignties. Canada's experience in laying claim to both the internal waters of the Canadian Northwest Passage, and its more recent claim to the extended continental shelf in the Arctic Ocean, are a case in point. In both of these cases Indigenous sovereignty challenges the right of the Canadian state to make such claims without the explicit permission of Inuit peoples. Yet, gaining such permission supports conventional sovereign claims much the way is conventionally associated with the Peace of Westphalia, even if history was more complicated and less immediate in its compliance with what became conflated over time with Westphalian ideals. Meanwhile, land claims treaties in Canada's Arctic along with new understandings of climate change and human security support a reassessment of sovereignty in practice, and an expansion from the Westphalian ideal to a post-Westphalian synthesis of Indigenous and state sovereignties. Can we still call such arrangements "liberal", and is decolonization consistent within a framework of liberal views of state sovereignty? The Inuit experience at the nexus of Indigenous and state sovereignty suggests we can indeed, and that Canada's evolving conception of sovereignty re-introduces tribal sovereignty as a pillar of the new, post-Westphalian order.

Indeed, in April 2022, Ottawa formally recognized the Inuit homeland, *Inuit Nunangat*, as a "distinct region" of Canada defined by its unique culture, geography and historic bilateral relationship between Inuit and the Crown—one that's external to, and historically disconnected from, the experience of First Nations south of the tree line whose sovereign relationship to the Crown has been both defined by and subordinated via the Indian Act. In *Inuit Nunangat*, Ottawa has recommitted to a governing relationship with Inuit based on partnership and consultation; this follows Canada's 2019 Arctic and Northern Policy Framework, which was similarly rooted in collaboration with Indigenous northerners and described by Inuit Circumpolar Council chair Dr. Dalee Sambo Dorough in her speech to the 2019 Arctic Circle Assembly as the "gold standard" of Arctic policy development.

While similar processes are under way across the Indigenous world, whether in the Far North or Global South, the experience in Arctic North America sheds important light on the evolution of sovereignty in both theory and practice as Indigenous values and conceptions are increasingly recognized and embraced by the sovereign states that emerged in their homelands through colonial state expansion (Zellen 2018).

It is in here that we can potentially find new understandings of sovereignty related to the changing weight of state governance and authority as states embrace Indigenous concepts and negotiate new sovereign partnerships with their respective First Peoples, from Baffin Island all the way to the island of Borneo (Zellen 2018). This involves in the Canadian Arctic both co-management traditions and the insertion of Inuit voices in international governance (Zellen, 2009). On the other hand, there is a fine line between appropriation and devolution: while Indigenous arrangements in Northern Canada have thus far seemed to invest a significant degree of cultural sovereignty, this too is as fragile as it is resilient, and in need of ongoing, collaborative efforts between Indigenous peoples and the state to endure.

REFERENCES

Agnew, John A. 2003. *Geopolitics: Re-Visioning World Politics*. New York/London, Routledge.

Alfred, T. and J. Corntassel. 2012. Being indigenous: Resurgences against contemporary colonialism. *Government and Opposition* 40(4): 597-614.

Bauder, Harald and Rebecca Mueller. 2021. Westphalian Vs. Indigenous Sovereignty: Challenging Colonial Territorial Governance. *Geopolitics.* 5 May. https://doi.org/10.1080/14650045.2021.1920577

Blom Hansen, Thomas and Finn Stepputat. 2006. Sovereignty Revisited Annu. *Rev. Anthropol*. 35: 295-315.

Byers, Michael. 2009. *Who Owns the Arctic? Understanding Sovereignty Disputes in the North*. Vancouver: Douglas and McIntyre.

Campbell, R. 2015. An Introduction to Inuit Rights and Arctic Sovereignty. *Law Now*, 7 May, http://www.lawnow.org/introduction-inuit-rights-arcticsovereignty/

Cambou, Dorothee. 2019. The UNDRIP and the legal significance of the right of indigenous peoples to self-determination: a human rights approach with a multidimensional perspective. *The International Journal of Human Rights* 23(1-2): 34-50. https://www-tandfonline-com.proxy1.lib.trentu.ca/toc/fjhr20/current

Dorough, Dalee Sambo. 2019. A Land Without Borders—Inuit Cultural Integrity. In: D. Menezes and H. Nicol eds., *The North American Arctic Themes in Regional Security*, pp. 67-92. London: UCL Press.

Eide, A. 2009. The Indigenous Peoples, the Working Group on Indigenous Populations, and the Adoption of the UN Declaration on the Rights of Indigenous Peoples. In: Claire Charters and Rodolfo Stavenhagen (eds.), *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples*, pp. 44–45. Copenhagen: International Work Group for Indigenous Affairs.

Fenge, Terry. 2008. Inuit and the Nunavut Land Claims Agreement: Supporting Canada's Arctic Sovereignty. *Policy Options*, December 2007-January 2008. http://www.irpp.org/po/archive/dec07/fenge.pdf.

Gjørv, Gunhild Hoogensen, Marc, Lanteigne and Horatio Sam-Aggrey. 2020. *Routledge Handbook of Arctic Security*. Routledge: London and New York.

Grant, Shelagh. 2010. *Polar Imperative. A History of Arctic Sovereignty in North America*. Toronto: Douglas & McIntyre.

Hansen, Thomas Blom and Finn Stepputat, eds, 2006. *Sovereign Bodies: Citizens, Migrants and States in the Postcolonial World. Oxford*: Princeton: Princeton University Press.

Harris, R. Cole. 2004. How Did Colonialism Dispossess? Comments from an Edge of Empire. *Annals of the Association of American Geographers* Vol. 94 (1): 165-182.

Hough, Michael. 2013. *International Politics of the Arctic: Coming in from the Cold*. New York/London: Routledge.

Hoy, Benjamin. 2021. *A Line of Blood and Dirt: Creating the Canada-US Border Across Indigenous Lands*. New York: Oxford University Press.

Huebert, Rob. 2019. The New Arctic Strategic Triangle Environment (NASTE). In: P. Whitney Lackenbauer and Suzanne Lalonde eds., *Breaking the Ice Curtain: Russian, Canada and Arctic Security in a Changing Circumpolar World*, pp. 75-92.Ottawa: Canada Global Affairs Institute.

Hutchins Legal. 2014. Canada's Submission to the Commission on the Limits of the Continental Shelf and the Legal Protections for Inuit Rights to the Arctic Ocean. Paper commissioned by Senator Charlie Watt. March. http://liberalsenateforum.ca/wp-content/uploads/2014/07/Watt_Canadas-Claim-to-the-Continental-Shelf-2014.pdf. Accessed May 28 2016.

Hutchins, P. M. Caron, B. Suciu and R. Campbell. 2016. Setting Out Canada's Obligations to Inuit in Respect of the Extended Continental Shelf in the Arctic Ocean. Paper commissioned by Senator Charlie Watt, 20 Oct. 2015. http://liberalsenateforum.ca/wp-content/uploads/2014/07/Watt_Canadas-Claim-to-the -Continental-Shelf-2014.pdf, accessed 16 June 2016.

Inuit Qaujisarvingat. 2013. *Nilliajut: Inuit perspectives on security, patriotism and sovereignty*. Report from Inuit Qaujisarvingat: Inuit Knowledge Centre.

Inuit Circumpolar Council. 2009. A Circumpolar Inuit Declaration on Sovereignty in the Arctic. http://www.iccalaska.org/servlet/download?id=15

Kalt, Joseph P. and Joseph William Singer. 2040. *Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule*. Faculty Research Working Papers Series. John F. Kennedy School of Government. Harvard University.

Kee, R. 2019. Key Issues to Arctic Security. D. Menezes and H. Nicol eds., *The North American Arctic Themes in Regional Security*, pp. 93-115.London: UCL Press.

Kimmel, Mara. 2009. Revisiting Governance in a Changing Arctic Environment: An Alaskan Case Study. Amsterdam Conference on the Human Dimensions of Global Environmental Change. http://www.earthsystemgovernance.org/ac2009/papers/AC2009-0116.pdf

Lenzerini, F. 2006. Sovereignty Revisited: International Law and Parallel Sovereignty of and Parallel Sovereignty of Indigenous Peoples. *Texas International Law Journal* 42.

MacFarlane, Neil and Natalie Sabanadze. 2013. Sovereignty and self-determination: where are we? *International Journal* 68 (4).

Nadasdy. Paul. 2012. Boundaries Among Kin: Sovereignty, the Modern Treaty Process, and the Rise of Ethno-Territorial Nationalism Among Yukon First Nations. *Comparative Studies in Society and History*, 54(3): 499-532.

Nicol, Heather N. 2010. Reframing sovereignty: Indigenous peoples and Arctic states. *Political Geography* 29: 78-80.

_____. 2016 From Territory to Rights: New Foundations for Conceptualising Indigenous Sovereignty. *Geopolitics*, 22:4: 794-814.

_____. 2020. The Evolving North American Arctic Security Context: Can Security Be Traditional? In: Coates, Kenneth P. and Carin Holroyd, eds. *The Palgrave Handbook of Arctic Policy and Politics*, 1st ed. Cham, Switzerland: Palgrave Macmillan.

Nicol, Heather N. and Andy Chater. 2021. *North America's Arctic Borders: A World of Change?* Ottawa: University of Ottawa Press.

Normand, R. and S., Zaidi. 2008. *Human rights at the UN: The political history of universal justice. United Nations Intellectual History Project Series*. Bloomington: Indiana University Press.

Philpott, Daniel. 1995. Sovereignty: an introduction and brief history. *Journal of International Affairs*, 48(2). Columbia University School of International Public Affairs.

_____. 2001. *Revolutions in Sovereignty.* Princeton: Princeton University Press. http://press.princeton.edu/chapters/s7094.pdf

Prozorov, Sergei. 2007. *Foucault, Freedom and Sovereignty*. Aldershot: Ashgate Press.

Shadian, Jessica M. 2010. From States to Polities: Reconceptualizing Sovereignty through Inuit Governance. *European Journal of International Relations* 16(3): 485-510.

_____. 2014. *The Politics of Arctic Sovereignty: Oil, Ice and Inuit Governance*. New York/London: Routledge.

Teschke, Benno. 2003. *The Myth of 1648: Class, Geopolitics and the Making of Modern International Relations.* London/New York: Verso.

United Nations, Declaration on the Rights of Indigenous Peoples. Adopted by the General Assembly 13 September 2007. http://www.un.org/esa/socdev/unpfii/en/declaration.html.

Wiessner, Siegfried. 2008. Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous People. *Vanderbilt Journal of Transnational Law*, (41)1141.

Wilson, Gary N., Christopher Alcantara and Thierry Rodon. 2020. *Nested Federalism and Inuit Governance in the Canadian Arctic*. Vancouver: UBC Press.

Zellen, Barry Scott. 2008. *Breaking the Ice: From Land Claims to Tribal Sovereignty in the Arctic*. Lanham: Lexington Books.

_____. 2009. *On Thin Ice: The Inuit, the State and the Challenge of Arctic Sovereignty*. Lanham: Lexington Books.

_____. 2010a. Clan, the State, and War: Lessons from the Far North, *Joint Forces Quarterly* 58 (July): 20-21.

_____. 2010b. The Inuit, the State, and the Battle for the Arctic. *Georgetown Journal of International Affairs*, Vol. 11, No. 1 (Winter/Spring).

_____. 2015. Where East and West Converge: The US embrace of Collaborative Security for the Arctic. Chapter 28, *Handbook of the Politics of the Arctic*. Eds. Leif Christian Jensen and Geir Hønneland. Cheltenham/Northampton, MA: Edward Elgar Publishing.

_____. 2017. Crossborder Indigenous Collaboration and the Western Arctic Borderland. Chapter 3, The Networked North: Borders and Borderlands in the Canadian Arctic Region, eds. Heather Nicol and P. Whitney Lackenbauer. Waterloo: Centre on Foreign Policy and Federalism/Victoria, BC: Borders in Globalization.

_____. 2018. A 'Fourth Image' at the Interface of Tribe and State: Tribal Homelands, Expanding States, and the Foundation of International Order from the Western Arctic to Borneo, Presentation to the 14th International Borneo Research Council Conference, August 6.

_____. 2020. Multinational Corporations in the Arctic: From Colonial-Era Chartered Companies to Contemporary Co-management and Collaborative Governance, Chapter 11 in Coates, Ken and Holroyd, Carin, eds. *The Palgrave Handbook of Arctic Policy and Politics*, pp. 157-173. Cham, Switzerland: Palgrave Macmillan.