

The Role of Non-State Actors in the Enforcement of Environmental Laws

by

Chinwendu Chikaodinaka Nwanisobi
Bachelor of Laws, Nnamdi Azikiwe University, 2008

A Thesis Submitted in Partial Fulfillment of the
Requirements for the Degree of

MASTER OF LAWS

in the Faculty of Law

© Chinwendu Chikaodinaka Nwanisobi, 2021
University of Victoria

All rights reserved. This thesis may not be reproduced in whole or in part, by photocopy or other means, without the permission of the author.

We acknowledge with respect the Lekwungen peoples on whose traditional territory the university stands and the Songhees, Esquimalt and WSÁNEĆ peoples whose historical relationships with the land continue to this day.

SUPERVISORY COMMITTEE

The Role of Non-State Actors in the Enforcement of Environmental Laws

by

Chinwendu Chikaodinaka Nwanisobi
Bachelor of Laws, Nnamdi Azikiwe University, 2008

Supervisory Committee

Deborah Curran, Supervisor
(Faculty of Law and School of Environmental Studies)

Karena Shaw, Outside Member
(School of Environmental Studies)

ABSTRACT

Supervisory Committee

Deborah Curran, Supervisor
(Faculty of Law and School of Environmental Studies)

Karena Shaw, Outside Member
(School of Environmental Studies)

Weak enforcement of environmental laws is a global trend that worsens environmental threats, notwithstanding the prolific growth of environmental laws and organizations worldwide. A significant challenge to the enforcement of environmental laws is the state actor's lack of political will, which has motivated the involvement of Non-State Actors (NSAs). This study set out to determine whether NSAs influence the enforcement of environmental laws and the conditions under which non-state action has led to better enforcement. The study had three objectives. First, to identify the strategies used by NSAs in effecting the enforcement of environmental laws. Second, to explore the impacts of non-state action on Canadian environmental law enforcement. Third, to discuss the possible application of these findings to a different jurisdiction. I adopted a qualitative analytical approach using data collected from documentary analysis and interviews to answer the research questions. The focal point of this research is a case study analysis of the Wood Buffalo National Park (Canada), where NSAs frustrated by domestic setbacks to enforcing environmental laws chose transnational circumvention as the next best option. The thesis establishes that NSAs have assisted in efforts leading to the enforcement of environmental laws in Canada, and the conditions for success vary on a case-by-case basis.

Keywords: Environmental Law, Non-State Actors, Indigenous people, Transnational law, Transnational Advocacy Networks.

TABLE OF CONTENTS

SUPERVISORY COMMITTEE	ii
ABSTRACT	iii
TABLE OF CONTENTS	iv
LIST OF FIGURES	vii
LIST OF ABBREVIATIONS	viii
ACKNOWLEDGEMENTS	ix
DEDICATION	x
CHAPTER ONE	1
1.0 Introduction	1
1.1 The Problem	1
1.2 The Purpose	4
1.3 The Plan	7
CHAPTER TWO	11
2.0 Constructivism, Non-State Actors and Transnational Advocacy	11
2.1 Introduction	11
2.2 Constructivism as a lens	12
2.3 Definition of NSAs	15
2.4 NSAs and environmental enforcement	17
2.4.1 Direct Enforcement	20
2.4.1.1 Legal Suits	20
2.4.1.2 Sanctions	22
2.4.1.3 Direct Action	24
2.4.2 Indirect Enforcement	26
2.5 Transnational Tactics	29
2.5.1 The Boomerang Pattern	29
2.5.2 Critique of the Boomerang pattern	33
2.6 Conclusion	39
CHAPTER THREE	40
3.0 Research Methodology	40
3.1 Introduction	40

3.2	Research Questions and Objectives	41
3.2.1	Researcher’s Positionality	41
3.2.2	Study Participants	43
3.3	Methodology	43
3.3.1	Case Study Methodology	44
3.3.2	Analytical Framework	45
3.3.3	Data Collection	46
3.3.4	Data Analysis	48
3.4	Limitations of the study	49
3.5	Conclusion	49
CHAPTER FOUR		50
4.0	Wood Buffalo National Park	50
4.1	Introduction	50
4.2	Legal Overview of the structure of law in Canada	51
4.3	History and designation of the Wood Buffalo National Park	54
4.4	Infringement of Indigenous people’s rights and inadequate consultation	57
4.5	Historical Significance of WBNP to MCFN and Impacts from Industrial Development ...	61
4.6	UNESCO’s Involvement with WBNP	70
4.7	Conclusion	77
CHAPTER FIVE		79
5.0	Presentation of Data Results	79
5.1	The WBNP Boomerang pattern	80
5.2	Typology of Tactics	82
5.3	Stages of network influence	89
5.4	Summary of Data results	98
CHAPTER SIX		101
6.0	Data Analysis	101
6.1	Analysis of Typology of tactics	103
6.2	Analysis of Stages of Influence	108
6.3	Discussion of findings	114
7.0	Conclusion	121
7.1	Typology of Tactics	122
7.2	Stages of Influence	123

7.3	Contribution to Literature and limitations of the study	124
7.4	Future Research	124
	BIBLIOGRAPHY	126

LIST OF FIGURES

Figure 1: The Boomerang pattern diagram that links MCFN and CPAWS with UNESCO to pressure Canada	71
--	----

LIST OF ABBREVIATIONS

ACFN	Athabasca Chipewyan First Nation
BC HYDRO	British Columbia Hydroelectric Company
CPAWS	Canadian Parks and Wilderness Society
ENGO	Environmental Non-Governmental Organisation
EPI	Environmental Performance Index
IR	International Relations
IK	Indigenous Knowledge
ITK	Indigenous Traditional Knowledge
IUCN	International Union for Conservation of Nature
MCFN	Mikisew Cree First Nation
OECD	Organisation for Economic Co-operation and Development
OUV	Outstanding Universal Value
PAD	Peace Athabasca Delta
PAH	Polycyclic Aromatic Hydrocarbons
RMM	Reactive Monitoring Mission
SEA	Strategic Environmental Assessment
SOC	Statement of Conservation
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organization
WBNP	Wood Buffalo National Park
WHC	World Heritage Committee

ACKNOWLEDGEMENTS

My acknowledgements reflect my appreciation of persons who contributed in a myriad of ways to the completion of this thesis, but this list is not exhaustive.

First, I would like to thank my first supervisor, Professor Chris Tollefson, for the initial framing of my research ideas. Next, I thank Professor Deborah Curran, who assumed the role of my Thesis Supervisor for the better part of my program and contributed innumerable to my academic growth. Your invaluable supervision and constant support through pragmatic comments, challenging critiques and the graduate writing workshop enhanced my research and writing skills. Thank you for supporting my thesis by providing a graduate fellowship from the Real Estate Foundation of British Columbia Fellowship in Environmental Law and Policy. I appreciate Rebeca Marcias Gimenez, Songkrant Pongboonjun and Murray Ball, members of Professor Curran's graduate writing workshop, for their constructive feedback and excellent peer review. Thank you to Dr Karena Shaw, my outside member who always encouraged me. Thank you for your treasured support and astute critique, which was influential in shaping my methodology and reviewing my results.

Thank you to my external examiner, Stepan Wood, for reviewing my thesis and weighing in with your wealth of experience. Thank you to the University of Victoria, particularly the Faculty of Law. I have benefitted tremendously from the curricula, erudite faculty, and financial support. I must commend my interview participants, who graciously honoured my invitation at the start of the Covid-19 pandemic when the entire world had just shut down. Thank you for sharing your views candidly and providing valuable content for my thesis.

Thank you to my parents, Dr Andrew Ekpunobi and Dr Edith Ekpunobi, who set the standard and continuously encourage me to be all that I can be. Thank you to my family and friends for your constant love and support. To Ogochukwu, I am indebted to you. Thank you for your love and sacrifice. To my angels, Kaeto and Kaira, thank you for your hugs, prayers and patience. Finally, to my husband, Chinedu, thank you for constantly pushing me to accomplish my goals. I could never have finished this thesis without your unconditional love, inexhaustible patience and overwhelming support. You are my rock.

DEDICATION

To God Almighty in whom I live, move, and have my being.

(Acts 17:28)

CHAPTER ONE

1.0 Introduction

1.1 The Problem

Environmental laws are a key part of the global, legal, and ecological ecosystem. Weak enforcement of environmental laws is a global trend that worsens environmental threats, notwithstanding the prolific growth of environmental laws and organizations worldwide in the past four decades.¹ A significant challenge to the enforcement of environmental laws is a lack of political will on the part of the state actor. Thomas Carothers, a scholar of the rule of law, has observed that “[t]he primary obstacles to reform are not technical or financial, but political and human.”² Martin Olszynski notes that enforcement of environmental laws in Canada has remained challenging due to constitutionality, enforcement, and implementation issues.³ The scholar observed that the problem in implementation might not be so much a problem with the law as it is a problem of the absence of political will to achieve the lofty goals of important statutes.⁴

These perceived shortcomings in implementing or enforcing environmental laws are not limited strictly to low-income countries but also within the purview of high-income countries.⁵ A good number of these high-income countries may have embraced aggressive and comprehensive environmental laws but have floundered in their implementation.⁶ Canada, for instance, is a high-

¹ U N Environment, “Environmental Rule of Law: First Global Report”, (24 January 2019), online: *UNEP - UN Environment Programme* <<http://www.unenvironment.org/resources/assessment/environmental-rule-law-first-global-report>>.

² Thomas Carothers, “The Rule of Law Revival” (1998) 77:2 *Foreign Affairs* 95–106.

³ Martin ZP Olszynski, “Environmental Damages after the Federal Environmental Enforcement Act: Bringing Ecosystem Services to Canadian Environmental Law?” (2012) 50:1 *Osgoode Hall Law Journal* 129–176 at 174. Olszynski, *supra* note 3. The author notes that the courts can play a facilitative role in helping environmental statutes fulfill their “promise” as it will be much more difficult for them to play a constructive role in the face of broad discretionary powers.

⁵ Recent studies have suggested that economic inequality exacerbates environmental damage and higher income countries tend to have better funding, infrastructure and planning measures in place for environmental threats. See Stephane Hallegatte et al, *Shock Waves, Managing the Impact of Climate Change on Poverty* (Washington, DC: The World Bank Group, 2016) at 192; Bart Ostro, *The Health Effects of Industry Air Pollution Exposure in Developing Countries* (World Health Organisation, Protection of the Human Environment, Geneva, 2004).

⁶ Matthew A Cole, “Corruption, income and the environment: An empirical analysis” (2007) 62:3 *Ecological Economics* 637–647; Richard Damania, Per G Fredriksson & Muthukumara Mani, “The Persistence of Corruption and Regulatory Compliance Failures: Theory and Evidence” (2004) 121:3 *Public Choice* 363–390; Alexandra Leitão, “Corruption and the environmental Kuznets Curve: Empirical evidence for sulfur” (2010)

income country and is well known for its strong environmental ethic. However, 20 years ago, Canada's ranking for effective legislative and policy responses was among the worst in the Organisation for Economic Co-operation and Development (OECD), ranking 28th out of 29 countries.⁷ Subsequent evaluations between 2004 and 2005 found that Canada continued to rank low among OECD countries: 28th out of 30 and 24th out of 25 countries.⁸ These studies used 28 environmental indicators to assess Canada's environmental performance. Recently, the Fraser Institute critiqued the previous evaluations, faulting the use of flawed methodologies in the previous assessments. In the paper, the Environmental Ranking for Canada, the authors ranked Canada 10th out of 33 high-income OECD countries.⁹ While the latter report appears contradictory to the former ones, the report suggests that Canada still ranks below nine other high-income countries.

Furthermore, Canada suffered a decline in the Environmental Performance Index (EPI) for air quality recently, ranking 7th in 2020 compared to 4th in 2018.¹⁰ However, Canada's overall EPI ranking improved to 20th in 2020 from 25th in 2018.¹¹ The EPI, which compared and analyzed environmental performance across 180 countries, finds that air quality is the leading environmental threat to public health.¹² It is important to note that the air quality, linked as a significant factor in Covid-19 outcomes, may have somewhat deteriorated between the two periods (2018 and 2020) as the world overlooked the environment while rebuilding during the COVID-19 pandemic.¹³

69:11 Ecological Economics (Special Section - Payments for Ecosystem Services: From Local to Global) 2191–2201.

⁷ David R Boyd, *Canada vs. the OECD: an environmental comparison* (2001).

⁸ Thomas Gunton & KS Calbick, "The Maple Leaf in the OECD: Canada's Environmental Performance", (June 2010), online: *David Suzuki Foundation* <<https://davidsuzuki.org/science-learning-centre-article/maple-leaf-oecd-canadas-environmental-performance/>>.

⁹ Ross McKittrick, Elmira Aliakbari & Ashley Stedman, "Environmental Ranking for Canada and the OECD", (19 April 2018), online: *Fraser Institute* <<https://bit.ly/2HcwaTa>>.

¹⁰ Yale Center for Environmental Law & Policy, "Environmental Performance Index", (2018), online: <<https://epi.yale.edu/epi-country-report/CAN>>; Yale Center for Environmental Law & Policy, "Environmental Performance Index | Environmental Performance Index", (2020), online: <<https://epi.yale.edu/epi-results/2020/component/epi>>.

¹¹ Yale Center for Environmental Law & Policy, *supra* note 10; Yale Center for Environmental Law & Policy, *supra* note 10.

¹² *Environmental Performance Index 2020 Global metrics for the environment: Ranking country performance on sustainability issues*, by Yale Center for Environmental Law & Policy (Center for International Earth Science Information Network Earth Institute, Columbia University, 2020) at 14.

¹³ Edoardo Conticini, Bruno Frediani & Dario Caro, "Can atmospheric pollution be considered a co-factor in extremely high level of SARS-CoV-2 lethality in Northern Italy?" (2020) 261 *Environmental Pollution*; Yaron Ogen, "Assessing nitrogen dioxide (NO₂) levels as a contributing factor to coronavirus (COVID-19) fatality"

In comparative terms, Nigeria is a lower-middle-income country,¹⁴ with relatively poor environmental ethics. This status reflects in its recent rankings on several assessments such as the EPI. Nigeria ranked 152nd in 2018 but declined to 169th in 2020 out of 180 countries on the EPI index for air quality. Concurrently, Nigeria's overall EPI ranking declined to 151st in the recent 2020 data from 100th in 2018. Similarly, the World Health Organisation air pollution database reports that the air quality in several cities in Nigeria ranges from unhealthy to hazardous levels.¹⁵ Nigeria is one of the highest emitters of greenhouse gases in Africa.¹⁶ Gas flaring, one of the significant contributory causes of poor air quality in Nigeria, is illegal. Yet, multinational oil companies in Nigeria continue to flare gas despite the grave consequences it has on the people and the effects on climate change.¹⁷

Generally, the value of legal protection of the environment is understood and focused on the understanding that caring for the sustainability of our biosphere is a fundamental part of humanity's shared concern.¹⁸ Ideally, most governments aspire to promote economic growth alongside environmental, health, and cultural considerations. Government do not always realize these aspirations, as decades of non-enforcement of environmental laws have created severe environmental concerns in most countries. It is challenging for states to determine how to clean up environmental problems, restore natural resources, protect the health of humans and ecosystems, and design strategies to achieve future economic growth while protecting the environment, maintaining biodiversity, and preserving cultural and social values.

These challenges have motivated the involvement of Non-State Actors (NSAs) in different aspects of environmental protection. For the purpose of this study, NSAs refers to any group that is not a

(2020) 726 Science Total Environment 138605; Xiao Wu et al, "Exposure to air pollution and COVID-19 mortality in the United States: A nationwide cross-sectional study" (2020) medRxiv 2020.04.05.20054502.

¹⁴ The World Bank, "World Bank Country and Lending Groups – World Bank Data Help Desk", (2021), online: <<https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>>.

¹⁵ World Health Organisation, "WHO | WHO Global Urban Ambient Air Pollution Database (update 2016)", (2016), online: WHO <http://www.who.int/phe/health_topics/outdoorair/databases/cities/en/>.

¹⁶ E Uyigue & M Agho, *Coping with Climate Change and Environmental Degradation in the Niger Delta of Southern Nigeria* (Community Research and Development Centre (CREDC) Press, Benin, Nigeria, 2007).

¹⁷ Bemigho Victor Aghogin, "Gas flaring, government policies and regulations in Nigeria : 2008, a myth or reality", (2008), online: <paper/Gas-flaring%2C-government-policies-and-regulations-in-Aghogin/425dc596f9cfd5e7d6f60b0be6b135dafb6b1300>.

¹⁸ Preface written by Professor Alexandre Kiss President of the European Council on Environmental Law Member of the Permanent Court of Arbitration in Linda Malone & Scott Pasternack, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law* (Washington, United states: Island Press, 2006).

sovereign state but may exercise economic, political, or social power and influence at national or international levels and excludes armed groups.¹⁹ NSAs exist in a multifaceted structure that cuts across several themes and disciplines. These domestic NSAs may sometimes engage with other groups of larger international NSAs with similar interests and values to influence the enforcement of environmental laws. NSAs have helped to advance the international legal regime since its inception through various activities, including governance,²⁰ standard-setting,²¹ advocacy,²² facilitation,²³ and activism.²⁴ NSAs, such as international environmental organizations, business groups, and indigenous peoples' organizations, are gradually taking on roles and assuming responsibilities that have been mostly under national states' control since the creation of the international system of states.²⁵ NSAs also participate in transnational advocacy, situated in an ecology of organizations, networks, practices, and strategies.²⁶ A Transnational Advocacy Network (TAN) consists of groups of NSAs whose shared ideas and linkages reinforce their efforts to influence policy transnationally and domestically.²⁷

1.2 The Purpose

This thesis explores the influence of NSAs on the enforcement of environmental law in Canada and the shift towards transnational advocacy in the environmental law arena. The purpose of this study is to ascertain whether NSAs play any role in the enforcement of environmental laws, and if

¹⁹ Chapter two of this thesis contains a detailed definition of NSAs.

²⁰ Benjamin Cashore, "Legitimacy and the Privatization of Environmental Governance: How Non-State Market-Driven (NSMD) Governance Systems Gain Rule-Making Authority" (2002) 15:4 *Governance* 503–529.

²¹ Anne Peters et al, *Non-State Actors as Standard Setters* (Cambridge, United Kingdom: Cambridge University Press, 2009).

²² Mette Eilstrup-Sangiovanni & Teale N Phelps Bondaroff, "From Advocacy to Confrontation: Direct Enforcement by Environmental NGOs" (2014) 58:2 *Int Stud Q* 348–361, online: <<https://academic.oup.com/isq/article-lookup/doi/10.1111/isqu.12132>>.

²³ Jonathan W Kuyper, Björn-Ola Linnér & Heike Schroeder, "Non-state actors in hybrid global climate governance: justice, legitimacy, and effectiveness in a post-Paris era" (2018) 9:1 *Wiley Interdisciplinary Reviews: Climate Change* e497.

²⁴ Eric Dannenmaier, "The Role of NSAs in Climate Compliance" (2011) *Promoting Compliance in an Evolving Climate Regime*.

²⁵ Liliana B Andonova, Michele M Betsill & Harriet Bulkeley, "Transnational Climate Governance" (2009) 9:2 *Global Environmental Politics* 52–73.

²⁶ Peter Evans & César Rodríguez-Garavito, "Transnational Advocacy Networks; Twenty Years of Evolving Theory and Practice" in Peter Evans & César Rodríguez-Garavito, eds, *Introduction: Building and Sustaining the Ecosystem of Transnational Advocacy* (Bogotá, Colombia,: Ediciones Antropos Ltda., 2018) 189 at 10.

²⁷ Margaret E Keck & Kathryn Sikkink, *Activists beyond borders: Advocacy networks in international politics* (Ithaca and London: Cornell University Press, 1998) at 1.

they do, what are the conditions for better enforcement? I argue that NSAs play an essential part in implementing and reasonable enforcement of environmental laws.²⁸ However, evidence of the strategies used by NSAs to support the enforcement of environmental laws and the impact of these NSAs' initiatives remain scarce, and the potential of achieving their aims uncertain.²⁹ Therefore, it is vital to have a better understanding of these strategies and the resulting impacts. The scope of this thesis focuses on those strategies and the resultant impact of non-state action on the enforcement of environmental laws in Canada. It is imperative to note that generally, the enforcement of environmental law is part of a state's administrative function. However, for this research, the focus is on enforcement from the purview of the influence that NSAs exert while attempting to persuade state actors to enforce their environmental laws. Discussions on administrative enforcement or compliance mechanisms are beyond the scope of this research.

The main research question explored is whether NSAs influence the enforcement of domestic Canadian environmental laws and, if so, what conditions make this possible. This study adopts a theory widely applied to transnational advocacy – constructivism- in responding to these research questions. Constructivism offers a unique perspective on the analysis of non-state action. The constructivist framework challenges the emphasis on state power. It seeks to demonstrate that power is constrained, and state interests are re-shaped through international normative structures created by the multiple interactions of state and NSAs.³⁰ This approach highlights how national or sub-national NSAs work to advance their national and local interests by enlisting the aid of foreign and international parties through moral suasion. It also seeks to explain how transnational NSA activity impacts policymaking and law enforcement at the national level.

Furthermore, the research focuses on a single case study from Canada and one area significantly affected by the consequences of weak enforcement of environmental laws. The case study will provide a basis to evaluate the range of NSA strategies and their effect. Wood Buffalo National Park (WBNP or Park) is Canada's largest national park, the second-largest national park in the

²⁸ Environment, *supra* note 1.

²⁹ United Nations Environment Programme, "Dramatic growth in laws to protect environment, but widespread failure to enforce, finds report", online: *UNEP - UN Environment Programme* <<http://www.unenvironment.org/news-and-stories/press-release/dramatic-growth-laws-protect-environment-widespread-failure-enforce>>.

³⁰ David Chandler, "The Constructivist Thesis" in David Chandler, ed, *Constructing Global Civil Society: Morality and Power in International Relations* (London: Palgrave Macmillan UK, 2004) 25 at 25.

world, established in 1922 and located in Northeastern Alberta and the Northwest Territories.³¹ It is a United Nations Educational and Scientific and Cultural Organisation (UNESCO) World Heritage Site.³² In 1983, the World Heritage Committee (WHC) inscribed WBNP as the 256th World Heritage Site because of its Outstanding Universal Value (OUV), which passed the assessment criteria.³³ Some of the elements that constitute the OUV of WBNP include its extensive salt plains and gypsum karst topography, boreal grassland ecosystem, the only remaining nesting ground of the endangered Whooping Crane, the Wolf-Bison relationship, and the Peace-Athabasca Delta (PAD), one of the world's largest boreal, freshwater deltas.³⁴ WBNP is the ancestral home of Indigenous peoples, including the Mikisew Cree First Nation (MCFN), Athabasca Chipewyan First Nation (ACFN), Fort Chipewyan Metis, Little Red River Cree First Nation, Salt River First Nation, Fort Smith Metis Council, K'atl'Odeche First Nation, Hay River Metis Council, Deninu Kue First Nation, and Fort Resolution Metis Council.³⁵ PAD is an intrinsic part of the Indigenous people, and the attachment runs deep.³⁶

³¹ Government of Canada Parks Canada Agency, "About - Wood Buffalo National Park", (12 January 2018), online: <<https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/info>>.

³² *Wood Buffalo National Park*, by UNESCO World Heritage Centre. The World Heritage status is a title given to any place or landmark of cultural and natural heritage that UNESCO identifies and recognizes as being of OUV to humanity and therefore worthy of protection and preservation. UNESCO World Heritage Centre, "World Heritage", online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/about/>>.

³³ The WHC is the committee responsible for implementing the World Heritage Convention and is the coordinator of all World Heritage matters. UNESCO World Heritage Centre, "The World Heritage Committee", online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/committee/>>. OUV means cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. UNESCO World Heritage Centre, *The Operational Guidelines for the Implementation of the World Heritage Convention* (2019) at para 49.

³⁴ Centre, *supra* note 32.

³⁵ Government of Canada Parks Canada Agency, "Cultural History - Wood Buffalo National Park", (20 March 2018), online: <<https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/decouvrir-discover/natcul2>>. The term 'Indigenous people' used in this thesis refers to the collective name for the original peoples of North America and their descendants. Government of Canada; Indigenous and Northern Affairs Canada; Communications, "Indigenous peoples and communities", (12 January 2009), online: <<https://www.rcaanc-cirnac.gc.ca/eng/1100100013785/1529102490303>> Last Modified: 2017-12-04.

Section 35 of the Canadian Constitution, 1982 uses the term 'Aboriginal' in reference to the Indigenous people and provides for three groups of Aboriginals. The Indian also called the First Nations, the Inuit and the Metis. "The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11", online: <<https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html?searchUrlHash=AAAAAQAMY29uc3RpdHV0aW9uAAAAAAE&resultIndex=1>>.

³⁶ Mikisew Cree First Nation, *Water is Everything nipî tapîtum; An Indigenous understanding of the Outstanding Universal Value of the Wood Buffalo National Park* (2016).

Indigenous people worldwide, Canada inclusive, have been direct victims of environmental degradation resulting from climate change and various acts such as large-scale hydro-electric projects, unsustainable forestry practices, destructive extractive projects, contaminated drinking water, and lots more.³⁷ In WBNP, despite the reports that the Indigenous people are experiencing health challenges including increased rates of diabetes and rare cancers; significant quantities of fish with noticeable tumours, and recent studies that have linked these health challenges to ingestion of water and soil contaminated with toxic trace metals like mercury, arsenic, and cadmium, Canada took little or no action on these issues.³⁸ Local Indigenous communities and environmental groups such as the Canadian Parks and Wilderness Society (CPAWS) have attempted in the past to call Canada's attention to the threats facing the WBNP but achieved little success.³⁹ MCFN made direct requests, participated in several regulatory processes, and instituted several legal actions to compel the federal and provincial governments to take concrete steps to manage and address the threats to WBNP effectively. In December of 2014, MCFN submitted a Petition to the UNESCO WHC, requesting the inclusion of WBNP World Heritage Site on the List of World Heritage in Danger, having exhausted all domestic avenues available.⁴⁰ The Petition cited concerns related to impacts of industrial development and climate change on the ecology and hydrology of the Peace-Athabasca Delta that could negatively impact the Park's OUV.⁴¹

1.3 The Plan

The focal point of the analysis of this case study is the Petition and the activities of the NSAs involved in the Petition process. This study set out to determine whether NSAs influence the

³⁷ "Environment | United Nations For Indigenous Peoples", online:

<<https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/environment.html>>.

³⁸ *Cancer Incidence in Fort Chipewyan, Alberta 1995-2006*, by Alberta Cancer Board, Division of Population Health and Information, Surveillance, & Alberta Cancer Board (2009) at 7, 33; Kevin Timoney, *A study of water and sediment quality as related to public health issues, Fort Chipewyan, Alberta.* (2007).

³⁹ CPAWS is Canada's pre-eminent non-profit wilderness protection organisation that champions the protection of Canada's diverse natural heritage and ensuring the effective management of parks. "Mission & Vision – CPAWS", online: <<https://cpaws.org/about/about-cpaws/mission-vision/>>.

⁴⁰ Mikisew Cree First Nation, *Petition to the World Heritage Committee requesting Inclusion of Wood Buffalo National Park on the List of World Heritage in Danger* (Mikisew Cree First Nation, 2014). I will refer to the 2014 Petition as the Petition.

⁴¹ *Ibid.*

enforcement of environmental laws and the conditions under which non-state action has led to better enforcement. The study has three objectives: first, to identify the strategies used by NSAs in effecting the enforcement of environmental laws; second, to explore the impacts of non-state action on Canadian environmental law enforcement; and third, to discuss the possible application of these findings to a different jurisdiction. I adopted a qualitative analytical approach using data collected from case study documentary analysis and interviews to answer the research questions.

This thesis begins with an introduction, where I highlight the study's motivation: to address worsening environmental threats exacerbated by weak enforcement of environmental laws. These challenges inspire the involvement of NSAs in different aspects of environmental protection. They necessitate examining the roles these non-actors play and the strategies used to influence the enforcement of environmental laws. The chosen case study, WBNP, presents an excellent example of an area significantly affected by the consequences of weak enforcement of environmental laws. The World Heritage Status of the Park, the advocacy of local and international NSAs coupled with the attendant complex jurisdictional issues, pose an exciting academic challenge.

The analysis of this study takes a constructivist approach. The constructivist approach offers a unique lens for the analysis of non-state action. Furthermore, it treats NSAs as independent actors that can shape or be mutually constitutive with state interests. On this basis, the analytical framework for this research draws from the transnational advocacy literature, which speaks to transnational activism and networks between NSAs. It also examines the influence these NSAs have on target actors. More generally, the study follows the analytical framework laid out by Keck and Sikkink in their book, "Activists beyond borders," to tackle my research objectives.⁴²

The methods I use for this study influence the findings in this thesis. Chapter three provides greater detail about my methodological choices. I choose to undertake qualitative research because it is a way of learning about social reality. Researchers use qualitative analysis techniques to analyze a wide variety of subjects across disciplines. Its research methodology is unique partly because of its conceptual and analytical diversity and the value system guiding research practice.⁴³ The

⁴² Keck & Sikkink, *supra* note 27.

⁴³ Patricia Leavy, "Introduction" in Patricia Leavy, ed, *The Oxford Handbook of Qualitative Research* (Oxford University Press, 2014) 1 at 2.

individual interview is the primary technique used in this study because it provides researchers with access to the participant's memories of real experiences and perceptions. Individual interviews are also used extensively by qualitative researchers examining legal phenomena and perceptions of law and the legal profession.⁴⁴

The case study analysis I conducted in chapter four serves to ground the study's justification by describing the case's legal and historical underpinnings. The analysis reveals the distinctive characteristics of the WBNP, arising from its status as a National Park, a World Heritage Site, and, most significantly, MCFN's ancestral land.

It also highlights the interconnectivity of NSAs involved in advocating for protecting and preserving the Park's OUV and the circumstances that prompted the Petition. The case study analysis laid a foundation for the personal interviews reported in chapter five.

The interview method used in this thesis allows for a detailed analysis and review of the strategies utilized by the NSAs in the Petition process. The interview data analysis involves using codes allocated to pre-determined categories and themes based on Keck and Sikkink's analytical framework. Those categories set the reporting and analysis structure used in chapters five and six. Chapter six contained an analysis of the interview data and a summary of the research findings.

In the concluding chapter, I situate the findings into a broader discussion on NSAs' interactions and the resultant effects of their influence on the set target, which in this case is the state, Canada. I equally examine what the implication of this influence might mean for other jurisdictions and some of the conditions for better enforcement. Finally, I discuss the significance of these findings on the enforcement of environmental laws and future research ideas.

By drawing on current research and providing unique insights into the role NSAs play in the implementation of environmental law, this work contributes to the study of transnational activism and environmental law. It supports the work of Keck and Sikkink, who argue that the boomerang pattern should be applied to areas other than human rights. The use of the boomerang pattern in the WBNP case study also shows that, contrary to some constructivist arguments, high-income

⁴⁴ Lisa Webley, "Qualitative Approaches to Empirical Legal Research" in Peter Cane & Herbert M Kritzer, eds, *The Oxford Handbook of Empirical Legal Research* (2012) at 936.

countries such as Canada are neither immune to leverage nor insensitive to influence. This work further adds to the understanding of how domestic Indigenous organizations, domestic environmental organizations, and international organizations interact and synergize. Finally, this research reinforces the argument that NSAs can play an important role in enforcing environmental laws using transnational advocacy strategies.

CHAPTER TWO

2.0 Constructivism, Non-State Actors and Transnational Advocacy

2.1 Introduction

International Relations (IR) literature has increasingly focused on how NSAs use information to raise public awareness, persuade states to change policies, or track compliance with international treaties. For this literature review, I will restrict my discussion to the domain of environmental law. However, to properly unpack NSA strategies, I will draw from international law and use a constructivist understanding of NSAs to explain their impact on the enforcement of environmental laws. I found constructivism to be the most appropriate International Relations (IR) theory to examine the role and strategies of these NSAs, because of its unique approach to social constructs. Constructivism provides a specific lens for studying social constructs since it considers NSAs as autonomous actors capable of influencing or being mutually constitutive of state interests. Constructivism provides a valuable framework to examine the complex network of NSAs who advocate for environmental issues. I draw on Keck and Sikkink's analytical framework, the typology of tactics, which provides a useful set of tactics by NSAs: information politics, symbolic politics, leverage politics, and accountability politics. These tactics refer to strategies that NSAs use to persuade, pressure, and influence the target actor in a given campaign, and I discuss these strategies in more detail in section five of this chapter.

Following this introduction, the second section contains a discussion of constructivism as a lens through which I approach my research. Unlike traditional IR theories, constructivism accepts that there are no set interests and that NSAs can affect states and their interests in a mutually constitutive manner. Constructivism describes the exchange of knowledge as a tangible asset used to alter society's norms and practices. These aspects of constructivism pave the way for scholars to develop transnational concepts and analytical frameworks that aid in assessing non-state advocacy.

NSAs have demonstrated increased participation in advocacy issues, particularly in the development of environmental law. The third section contains a description of the term NSAs and its varied definitions. NSAs participate in various aspects of transnational politics; however, the

scope of this study is limited to environmental NSAs and their influence on the enforcement of environmental law.

Section four covers a detailed exploration of the involvement of NSAs in the enforcement of environmental laws. Here, I explain the nexus between international and domestic environmental law, distinguish between indirect and direct enforcement strategies and describe direct action strategies using relevant examples.

Next, I delve into transnational tactics and, using the constructivist approach, draw out the relevant analytical framework in section five. Here, I outline my analytical framework—the typology of tactics and stages of influence developed by Keck and Sikkink—and explore several criticisms of the framework. I conclude the chapter with a summary of the theoretical and analytical framework; I highlight the gaps in the literature and the need for further research.

2.2 Constructivism as a lens

Traditionally, IR, as a scholarly field, adopted a state-centric perspective. However, the discipline opened itself up towards NSAs, which paved the way for new theories for analysis. The entrance of new actors in IR's space has contributed to this deviation from a state-centric perspective.⁴⁵ Constructivism is a relatively new theory borrowed from Sociology and incorporated into international relations by Nicholas Onuf, the author of “World of our making: Rules and Rule in Social Theory and International Relations.”⁴⁶ International law scholar Martha Finnemore opines that constructivism developed from a criticism that the realist and liberal theories are preoccupied with a materialist understanding of international politics which emphasize economic or military conditions as the sole determinant of the impact of ideas in both international or domestic politics.⁴⁷ Constructivists argue that cognitive structures socially construct international reality, which gives meaning to the material world.⁴⁸ Social constructivists emphasize that these cognitive structures

⁴⁵ Matthias Hofferberth et al, “Multinational Enterprises as ‘Social Actors’—Constructivist Explanations for Corporate Social Responsibility” (2011) 25:2 *Global Society* 205–226 at 205.

⁴⁶ Martha Finnemore, *National interests in International society* (Ithaca, N.Y.: Cornell University Press, 1996) at 4.

⁴⁷ Finnemore, *supra* note 46.

⁴⁸ Emanuel Adler, “Seizing the Middle Ground:: Constructivism in World Politics” (1997) 3:3 *European Journal of International Relations* 319–363 at 319.

in the form of ideas and communicative processes first define which material factors are perceived as relevant and later how they influence understandings of interests, preferences, and political decisions.⁴⁹

On the other hand, some scholars say constructivism bears a resemblance to institutionalism, which views social institutions as the primary constraint on actors' behaviours with given identities and preferences.⁵⁰ Both constructivism and institutionalism emphasize a different logic of action that asserts that social institutions can no longer be regarded as “external” to actors. On the contrary, actors such as national governments, firms, or interest groups, are deeply ingrained in and influenced by the social institutions in which they act.⁵¹ In the light of the criticisms of realist and liberalist theories, constructivism has revised the traditional methods of doing and theorizing politics by emphasizing the roles NSAs play in shaping state interest.⁵²

Constructivist scholars further assert that global politics is a socially constructed event as social constructivism provides a distinct view on globalization processes, a lens that allows the interpretation of globalization in distinctive ways.⁵³ Although constructivism is a social theory as much as a political one, it applies to international relations because it provides a technique for analyzing the convoluted connections between agency and structure.⁵⁴ Kenneth Rutherford expands further on constructivist scholars' views by arguing that constructivism cannot be said to be a theory. Instead, it is an alternative ontology that should not compare to neo-realism and neo-liberalism's rationalist theories.⁵⁵ He further argues that constructivism is an alternative ontology that can explain the classification of specific behaviour as neo-realist, neo-liberalist, or even constructivist. Rutherford states that because neoliberalism and neorealism assume the state is the

⁴⁹ *Ibid*; David Chandler, “The Constructivist Thesis” in David Chandler, ed, *Constructing Global Civil Society: Morality and Power in International Relations* (London: Palgrave Macmillan UK, 2004) 25 at 30.

⁵⁰ Finnemore, *supra* note 46 at 3.

⁵¹ Thomas Risse, ““Social Constructivism Meets Globalization”” in David Held & Anthony G McGrew, eds, *Global Theory: Approaches and Controversies* (Cambridge: Polity Press, 2007) at 5.

⁵² Hofferberth et al, *supra* note 45.

⁵³ Risse, *supra* note 51 at 2.

⁵⁴ Finnemore, *supra* note 46 at 27.

⁵⁵ Kenneth R Rutherford, “The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Landmines” (2000) 53:1 *World Politics* 74–114 at 79.

preferred actor, they cannot allow non-material relationships among various actors or explain the role of NSAs like epistemic communities in shaping foreign policy.⁵⁶

Some other scholars like David Chandler disagree with Rutherford and describe constructivism as a theory of change. One of the arguments for constructivism as a theory of change is that the constructivist framework shifts the focus from power to norms and values, being the primary determinant of state behaviour.⁵⁷ Chandler further argues that constructivism de-emphasizes the notion that state identities derive domestically, devoid of international influence. Instead, proponents of constructivism believe that the process of international interaction constructs state identities.⁵⁸ Alexander Wendt's famous phrase, "anarchy is what states make of it," speaks to the focus shift from nation-states' identities and interests towards the sphere of interaction.⁵⁹ He argues that a significant tenet of constructivist theory is that people act toward objects, including other actors, based on the meanings that those objects have for them.⁶⁰ The rationality behind the focus shift from seeing the state as the primary subject to prioritizing norms created through interactions laid the foundation for constructing global civil society theories.⁶¹ As a result, considerable attention moved to transnational networks' role and their activities in creating and internalizing these new norms.⁶²

Margaret E. Keck and Kathryn Sikkink, renowned constructivist scholars, formalized the concept of TANs (TANs). The authors define TANs as "networks of activists, distinguishable largely by the centrality of principled ideas or values in motivating their formation".⁶³ The authors define networks as "forms of organization characterized by voluntary, reciprocal, and horizontal patterns of communication and exchange."⁶⁴ Advocacy is the act of defending a cause or pleading the cause

⁵⁶ Rutherford, "The Evolving Arms Control Agenda", *supra* note 55.

⁵⁷ Chandler, *supra* note 49 at 25.

⁵⁸ David Chandler, "The Constructivist Thesis" in David Chandler, ed, *Constructing Global Civil Society: Morality and Power in International Relations* (London: Palgrave Macmillan UK, 2004) 25. Risse, *supra* note 51 at 3.

⁵⁹ Alexander Wendt, "Anarchy is What States Make of it: The Social Construction of Power Politics (1992)" in James Der Derian, ed, *International Theory of Critical Investigation* (London: Palgrave Macmillan UK, 1995) 129 at 162.

⁶⁰ *Ibid* at 135.

⁶¹ Chandler, *supra* note 49.

⁶² *Ibid*.

⁶³ Keck & Sikkink, *supra* note 27 at 1.

⁶⁴ *Ibid* at 7.

of others.⁶⁵ Transnational connotes across or beyond borders. Put together; TANs are networks of actors located across the borders of states, organized to promote, defend, or plead others' cause.

A TAN refers to those relevant actors working internationally on an issue bound together by shared values, a common discourse, and dense exchanges of information and services.⁶⁶ TANs are actively involved in debates concerning a range of core issues, including human rights, environmental rights, women rights, infant health, and Indigenous peoples. Actors in a TAN are majorly NSAs; however, in some cases, state actors can also be a part of TANs.⁶⁷ Keck and Sikkink argue that the network theory provides a model for transnational change that does not just operate by “diffusion” of liberal institutions and practices but by actors' interactions. The authors posit that “because networks are voluntary and horizontal, actors participate in them to the degree that they anticipate mutual learning, respect, and benefits”. They also argue that “network theory links the constructivist belief that international identities are a construct of empirical research tracing the paths through which this process occurs, and identifying the material and ideological limits to such construction in particular historical and political settings.”⁶⁸

This research takes a constructivist view because the views of Wendt, Finnemore, Chandler, Keck and Sikkink ably assist in evaluating the behaviour of NSAs in environmental enforcement. They argue that the social construction of norms creates the opportunity for NSAs to play roles in educating, pressuring and influencing state actors in the international environmental sphere. Using a constructivist lens for my research allows me to assess whether, and if so, under what conditions, NSAs can influence and create a shift in the state actor's preferences.

2.3 Definition of NSAs

The term ‘NSAs’ has varied meanings across different disciplines. Nasiritousi defines NSAs as any group participating in global governance that is not a sovereign state while excluding armed

⁶⁵ *Ibid* at 7.

⁶⁶ *Ibid* at 2.

⁶⁷ *Ibid* at 8.

⁶⁸ *Ibid* at 234.

groups.⁶⁹ Clapham, examining the term from a legal perspective, defines it as all entities different from states.⁷⁰ Josselin describes NSAs as heroes and villains in different narratives of international politics.⁷¹ The International Network for Economic, Social & Cultural Rights defines NSAs as organizations “that are not affiliated with, directed by, or funded through the government”.⁷² The National Intelligence Council of the United States defines NSAs as “non-sovereign entities that exercise significant economic, political, or social power and influence at national and international levels”.⁷³ Several scholars define NSAs as civil society actors, non-governmental organizations, or transnational actors.⁷⁴

In contrast, other scholars define NSAs by using examples such as comprising a broad range of non-governmental actors, such as firms, civil society organizations, experts, and indigenous peoples.⁷⁵ Wagner perhaps gives the most thorough definition where he states that;

*[t]he term Non-State Actor, is a superordinate concept that encompasses all those actors in international relations that are not state [s]. It comprises individuals (Individuals in International Law) as well as entities, the latter spanning a large range of organizations and institutions on the global, regional, sub-regional as well as local levels. These entities cannot be identified by common sociological features as they include, inter alia, international organizations (International Organizations or Institutions, General Aspects), corporations (Corporations in International Law), non-governmental organizations ('NGOs'), de facto regime[s], trade associations, and transnational corporations, terrorist groups (Terrorism) and transnational criminal organizations (Transnational Organized Crime).*⁷⁶

From the above definitions, it appears that the broadest definition is that NSAs are all entities different from states that act at national and international levels. For this study and drawing from

⁶⁹ Naghme Nasiritousi, Mattias Hjerpe & Björn-Ola Linnér, “The roles of non-state actors in climate change governance: understanding agency through governance profiles” (2016) 16:1 Int Environ Agreements 109–126.

⁷⁰ Andrew Clapham, “‘Non-state Actors.’ In Post-Conflict Peacebuilding: A Lexicon” (2009).

⁷¹ Daphné Josselin, “Back to the Front line? Trade Unions in a Global Age” in Daphné Josselin & William Wallace, eds, *Non-State Actors World Politics* (London: Palgrave Macmillan UK, 2001) 169.

⁷² “Non-State Actors”, online: *ESCR-Net* <<https://www.escr-net.org/resources/non-state-actors>>.

⁷³ Teresa La Porte, *The Legitimacy and Effectiveness of Non-State Actors and the Public Diplomacy Concept* (2012).

⁷⁴ Roger Cotterrell, “What Is Transnational Law?: Transnational Law” (2012) 37:2 Law & Social Inquiry 500–524. Nasiritousi, Hjerpe & Linnér, “The roles of Non-State Actors in climate change governance”, *supra* note 25.

⁷⁵ Amandine Orsini, “Multi-Forum Non-State Actors : Navigating the Regime Complexes for Forestry and Genetic Resources” (2013) 13:3 Glob Environ Polit 34–55.

⁷⁶ Markus Wagner, “Non-State Actors” (2008) Research Gate, online: <https://www.researchgate.net/publication/308874846_Non-State_Actors>.

the various definitions above, I define NSAs as any group that is not a sovereign state but may exercise significant economic, political, or social power and influence at national or international levels and excludes armed groups. This definition includes civil society actors, non-governmental organizations, intergovernmental organizations, indigenous people. I chose this definition because the actors, in my case, are non-violent and include intergovernmental organizations, Indigenous groups and non-governmental organizations.

The United Nations Framework Convention on Climate Change (UNFCCC) further categorizes NSAs according to the following constituency groups:

Business and industry non-governmental organizations (BINGOs), environmental non-governmental organizations (ENGOS), Indigenous peoples' organizations (IPOs), local government and municipal authorities (LGMAs), research and independent non-governmental organizations (RINGOs), trade unions non-governmental organizations (TUNGOs), farmers and agricultural NGOs, women and gender, and youth (YOUNGO). Intergovernmental organizations (IGOs) constitute another group of observer organizations such as the United Nations, UNESCO, World Bank, the OECD, and the United Nations environment programme (UNEP).⁷⁷

This study focuses on environmental NSAs,⁷⁸ particularly the IPOs, ENGOS and IGOs and the possible interactions between these actors when seeking to enforce environmental laws.⁷⁹

2.4 NSAs and environmental enforcement

The focus of this study is the influence of NSAs on the enforcement of domestic environmental law, which is also called national environmental law. Nevertheless, it would be challenging to discuss domestic environmental law enforcement without mentioning international environmental

⁷⁷ The United Nations Framework Convention on Climate Change, "Constituencies", online: *UN Climate Change* <<https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/non-party-stakeholders/admitted-ngos>>. The UNFCCC provides general commitments and a structure for achieving more specific targets and timetables. Parties to the UNFCCC meet regularly in conferences under its auspices.

⁷⁸ For the purposes of this study, environmental NSAs refer to NSAs that operate within the environmental realm and this includes both domestic and international actors.

⁷⁹ Gregory Shaffer and Daniel Bodansky while emphasizing the breadth of the term 'transnational environmental law', suggested that it encompasses 'all environmental law norms that apply to transboundary activities or that have effects in more than one jurisdiction', including but not limited to 'national environmental regulation that has horizontal effects across jurisdictions' the development of standards by private actors that have effects across borders', and at times international law". Gregory Shaffer & Daniel Bodansky, "Transnationalism, Unilateralism and International Law" (2012) 1:1 *Transnational Environmental Law* 31-41.

law. There is a nexus between both subjects. International environmental law regulates relations and activities between nations. It has shaped and considerably contributed to the development of domestic environmental law.⁸⁰ In the same vein, international environmental law may reflect positive domestic experiences. The outcome is a complicated interaction where the two layers of environmental law mutually relate to each other and strengthen one another.⁸¹ States typically enact domestic laws to manage the environment. States may also enact laws to implement international environmental agreements (also called conventions or treaties), which they have agreed to enforce within their national legal system.⁸² States are the key drivers for the enforcement of international rules. States must implement international agreements into national legal structures if they are to have any chance of being successful.⁸³ The success of domestic enforcement of environmental law depends on several factors, such as the degree to which society recognizes the justification for environmental laws and the degree to which the state is prepared to implement the requisite national environmental legislation and the capacity to enforce such laws. Lastly, the degree to which players within both the international and national actors perceive compliance costs to outweigh the benefits of non-compliance.⁸⁴

Enforcement is a critical factor in the environmental field. Where defaulters of the environmental laws have a high degree of political influence, the state may find it challenging to ensure compliance.⁸⁵ Both the will and capacity of the state to comply can become compromised.⁸⁶ This reluctance of the state to enforce environmental laws has led to the mobilization and involvement of NSAs in domestic issues.⁸⁷ Abram Chayes and Antonio Handler Chayes conclude that NSAs “exert their major influence through the domestic political process”.⁸⁸ When there is an inadequate

⁸⁰ UNEP & CAEC, *Enforcement of Environmental Law: Good Practices from Africa, Central Asia, ASEAN Countries and China* (Publishing Services Section, UNON, Nairobi, Kenya, 2004) at 2.

⁸¹ *Ibid.*

⁸² *Ibid* at 3.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ Alexandre Charles Kiss & Dinah Shelton, *Guide to International Environmental Law* (Leiden, Netherlands: Brill, 2007) at 19.

⁸⁶ *Ibid.*

⁸⁷ Peter Spiro, “Non-Governmental Organizations and Civil Society” in Daniel Bodansky, Brunnée Jutta & Ellen Hey, eds, *Oxford Handbook of International Environmental Law* (Oxford University Press, 2012) at 776.

⁸⁸ Abram Chayes & Antonio Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge: Harvard University Press, 1995) at 252.

domestic response, NSAs further resort to the transnational sphere to advance their national, even local, agendas by enlisting foreign and international agents.⁸⁹

Typically, NSAs are in no position to enforce laws. They do not have the legitimate authority to enforce those laws; however, this position has gradually shifted. NSAs are occasionally described as watchdogs because they observe and scrutinize state actors' actions concerning multilateral agreements and domestic environmental laws. These NSAs draw attention to the possible breach of these environmental agreements and laws.⁹⁰ NSAs also participate in environmental law enforcement processes in varied forms. Andrea Bianchi concludes that NSAs directly or indirectly trigger compliance or enforcement mechanisms while participating in these processes.⁹¹ Some scholars go a step further to classify these mechanisms as strategies, while some refer to them as activism. They differentiate between indirect enforcement strategies such as the provision of technical information and policy advice, serving on committees or delegations to influence state decision-makers or public protests or campaigns which work through secondary channels such as the media and the public,⁹² and direct enforcement strategies such as prosecution, sanction and interdiction.⁹³ Direct enforcement strategies may utilize indirect strategies in the form of demonstration effects or by provoking government action.

A clear distinguishing feature of direct enforcement from indirect enforcement is that even if the state chooses not to react, direct enforcement strategies have some effect which may include

⁸⁹ Spiro, *supra* note 87 at 777. ⁸⁹ UNEP & CAEC, *supra* note 80 at 2.

⁸⁹ *Ibid.*

⁸⁹ *Ibid* at 3.

⁸⁹ *Ibid.*

⁸⁹ *Ibid.*

⁸⁹ Kiss & Shelton, *supra* note 85 at 19.

⁸⁹ *Ibid.*

⁸⁹ Peter Spiro, "Non-Governmental Organizations and Civil Society" in Daniel Bodansky, Brunnée Jutta & Ellen Hey, eds, *Oxford Handbook of International Environmental Law* (Oxford University Press, 2012) at 776.

⁸⁹ Chayes & Chayes, *supra* note 88 at 252.

⁹⁰ Andrea Bianchi, ed, "Globalization of Human Rights: The Role of Non-State Actors" in *Non-State Actors International Law* (Routledge, 2017) at xxii.

⁹¹ Bianchi, *supra* note 90.

⁹² Peter Newell, "Campaigning for Corporate change: Global Citizen Action on the Environment" in Michael Edwards & John Gaventa, eds, *Global Citizen Action* (Lynne Rienner Publishers, 2001) 180. Margaret E Keck & Kathryn Sikkink, "Transnational advocacy networks in international and regional politics" (1999) 51:159 *International Social Science Journal* 89–101.

⁹³ Mette Eilstrup-Sangiovanni & J C Sharman, "Enforcers beyond Borders: Transnational NGOs and the Enforcement of International Law" (2019) *Perspectives on Politics* 1–17 at 1.

stopping or interrupting a specific crime or prompting a judicial review. In contrast, indirect enforcement strategies depend on further government action for any effects whatsoever.⁹⁴ The next section describes these enforcement strategies in more detail.

2.4.1 Direct Enforcement

Direct enforcement implies the use of direct, confrontational strategies to prevent or halt illegal practices by states and private actors.⁹⁵ Another aspect of direct enforcement is using preventive and punitive actions against law-breakers, which scholars refer to as direct action.⁹⁶ Some scholars maintain that direct enforcement activism does not fit neatly into existing taxonomies of transnational advocacy (discussed in more detail below) because direct activism is not principally dedicated to collecting and strategically disseminating information or lobbying policymakers to change political mindsets.⁹⁷ Instead, direct enforcement activists employ direct and sometimes destructive methods to halt states and private actors' actions, which they claim violate international or domestic laws. More often than not, after exhausting indirect means of enforcement, these activists exert influence by attempting to compel states to enforce environmental laws through direct actions like legal suits, sanctions and eco-terrorism.⁹⁸

2.4.1.1 Legal Suits

NGOs may challenge in court new legislation or projects that are likely to harm the environment.⁹⁹ Environmental plaintiffs face domestic legal obstacles to enforcing environmental laws, rights, and interests that are not overcome by recourse to a supranational body.¹⁰⁰ Domestic

⁹⁴ Mette Eilstrup-Sangiovanni & Teale N Phelps Bondaroff, "From Advocacy to Confrontation: Direct Enforcement by Environmental NGOs" (2014) 58:2 *International Studies Quarterly* Q 348–361, online: <<https://academic.oup.com/isq/article-lookup/doi/10.1111/isqu.12132>> at 352.

⁹⁵ *Ibid* at 348.

⁹⁶ Eilstrup-Sangiovanni & Sharman, "Enforcers beyond Borders", *supra* note 93 at 5.

⁹⁷ Eilstrup-Sangiovanni & Bondaroff, "From Advocacy to Confrontation", *supra* note 22 at 348.

⁹⁸ *Ibid*.

⁹⁹ Eilstrup-Sangiovanni & Sharman, "Enforcers beyond Borders", *supra* note 93 at 7.

¹⁰⁰ Catherine Redgwell, "National Implementation" in Daniel Bodansky, Jutta Brunnée & Ellen Hey, eds, *Oxford Handbook of International Environmental Law* (Oxford University Press, 2008). There are some exceptions such as the complaint mechanism in Chapter 11 (Article 1106) of the North American Free Trade Agreement

courts play a supplemental role in the state's political organs, with which the principal duty of implementation remains. However, the success of this supplemental role depends on several considerations, the least of which is the effectiveness of the judiciary's ability to enforce the law against the state and private sector actors. Only a few states, such as New Zealand and Australia, have set up specially designated environmental courts.¹⁰¹ It is important to have specially designated environmental courts because the domestic courts have a defined jurisdiction over assets and persons, which is crucial for successful enforcement.¹⁰² Previously it was rare to see citizen suits seeking enforcement of environmental laws due to the lack of standing to bring such lawsuits and the restrictive interpretation of statutes leading to substantial barriers to enforcement. However, in recent times, it has been recognized that although states would be entitled to stipulate conditions under which ENGOs would be able to file suits, in some jurisdictions, ENGOs have the right to seek injunctive relief or join in existing legal proceedings against a defendant.¹⁰³

ENGOs such as Greenpeace, Friends of the Earth, CPAWS,¹⁰⁴ and other NSAs like MCFN and the ACFN,¹⁰⁵ have successfully instituted legal suits against international and domestic contraventions of environmental law.¹⁰⁶ Many cases illustrate the effects of NSAs instituting legal suits to put an end to perceived environmental degrading acts in their environment.¹⁰⁷ Changes in procedural laws in many jurisdictions and the recent convergence of environmental rights, human rights and indigenous rights have seen a remarkable increase in the number of legal suits filed

(NAFTA). Global Affairs Canada, "North American Free Trade Agreement – Investment", (10 February 2017), online: GAC <<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/11.aspx?lang=eng>> Last Modified: 2016-11-30.

¹⁰¹ Redgwell, *supra* note 100.

¹⁰² Mary Ellen O'Connell, "Enforcement and the Success of International Environmental Law" (1995) 3:1 *Indiana Journal of Global Legal Studies* 47–64 at 57.

¹⁰³ John Lowry & Rod Edmunds, *Environmental Protection and the Common Law* (Bloomsbury Publishing, 2000) at 223. For further reading see *The legal debate on access to justice for environmental NGOs*, by Prof Dr Alexander Schmidt, Karl Stracke & Prof Dr Bernhard Wegener, TEXTE 99/2017, Project No. (FKZ) 3714 18 1010 (Berlin: Independent Institute for Environmental Issues e.V. (UfU), 2017).

¹⁰⁴ CPAWS is a national ENGO.

¹⁰⁵ Both MCFN and the ACFN are Treaty rights holding Indigenous communities.

¹⁰⁶ *Association Greenpeace France and others v French State, Ministry of Agriculture and Fisheries, In the presence of Novartis Seeds SA and another*, 2000 European Court of Justice. *Stichting Greenpeace Council (Greenpeace International) and others v Commission of the European Communities*, 1998 European Court of Justice. *Association Greenpeace France*, 1998 Conseil d'Etat.

¹⁰⁷ "Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage) - SCC Cases (Lexum)", online: <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2251/index.do>>. *Canada (Governor General in Council) v Mikisew Cree First Nation*, [2017] 3 FCR 298, 2016 Federal Court of Appeal. *Tsleil-Waututh Nation v Canada (Attorney General)*, [2019] 2 FCR No 3, 2019 Federal Court of Appeal.

before the courts.¹⁰⁸ However, not all those suits have been successful or have yielded the desired outcomes. The consensus is that they have contributed towards increased awareness of states' environmental contraventions. Also, they encouraged state actors to improve on environmental enforcement, particularly for those who are mindful of their international reputation and environmental footprints.¹⁰⁹

2.4.1.2 Sanctions

There is sparse literature on international environmental sanctions because they are relatively new and, in line with the difficulties of enforcing international law, challenging to implement. Notwithstanding, there have been a few instances where IGOs have sanctioned states based on ENGOs complaints. The World Bank is a clear example of an IGO increasingly concerned about environmental sustainability. It has created a platform armed with frameworks and policies to guard against the flagrant disregard for environmental treaties and environmentally conscious behaviour by member states.

Previously, the World Bank mandate that favoured developmental projects and expressly forbade the consideration of any extraneous conditions apart from economic issues did not leave room for negotiation of the impacts of such developmental projects on the environment.¹¹⁰ However, its new mandate states that the interpretation of the Bank's original mandate must align with the development paradigm following the concept of sustainable development. In addition, although the Bank's Articles of Agreement are not a source of environmental standards applicable to lending

¹⁰⁸ Jennifer A Amriott, "Environment, Equality, and Indigenous Peoples' Land Rights in the Inter-American Human Rights System: *Mayagna (Sumo) Indigenous Community of Awas Tingni V. Nicaragua*" (2002) 32:4 *Environmental Law* 873–903. Cherie Metcalf, "Indigenous Rights and the Environment: Evolving International Law" (2003) 35:1 *Ottawa L Rev* 101–140.

¹⁰⁹ Harold Koh, "Why Do Nations Obey International Law?" (1997) 106:8 *Yale Law Journal*, online: <<https://digitalcommons.law.yale.edu/ylj/vol106/iss8/7>>. U N Environment, "Environmental Rule of Law: First Global Report", (24 January 2019), online: *UNEP - UN Environment Programme* <<http://www.unenvironment.org/resources/assessment/environmental-rule-law-first-global-report>>. Spiro, *supra* note 87.

¹¹⁰ Alix Gowlland Gualtieri, "The Environmental Accountability of the World Bank to Non-State Actors: Insights from the Inspection Panel" (2002) 72:1 *British Yearbook of International Law* 213–253 at 216.

operations, they have served to provide a framework for the expansion of the Bank’s mandate to include broad objectives that relate to environmental issues.¹¹¹

NGOs lobby IGOs such as the World Bank to improve environmental accountability, its members, other stakeholders, and member projects it finances. They do this by focusing on the World Bank Inspection Panel, which has a mandate to “promote accountability at the World Bank, give affected people a greater voice in activities supported by the World Bank that affect their rights and interests, and foster redress when warranted.”¹¹² The World Bank Inspection Panel is an independent accountability mechanism for people and communities who believe that they have been, or are likely to be, adversely affected by a World Bank-funded project.¹¹³ The Inspection Panel provides a forum for NSAs to hold the World Bank accountable for the way it conducts its lending activities, mainly as it concerns environmental conservation.¹¹⁴ NGOs may bring a petition before the Panel on behalf of people adversely affected by World Bank projects. The Panel, which has the mandate to review projects funded through its organs, the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA), investigates the petition to ensure that the borrower state has complied with its contractual obligation.¹¹⁵ Suppose it discovers that the borrower state has failed to comply. In that case, the Bank has the discretionary power to impose sanctions on the non-compliant borrower state. The World Bank’s Office of Suspension and Debarment carries out this punitive action. These sanctions may include suspending or cancelling the right of the borrower state to make withdrawals from the loan account or even suspend the member state’s membership with the Bank.¹¹⁶ These sanctions result primarily in debarment, which at times makes the borrower state ineligible to receive contracts financed by the World Bank either indefinitely or for a stated period¹¹⁷.

¹¹¹ John D Ciorciari, “The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretive Analysis of the IBRD and IDA Articles of Agreement” (2000) 33:2 Cornell Int’l LJ 331–372 at 355.

¹¹² The World Bank Group, “About the Inspection Panel | Inspection Panel”, online: <<https://www.inspectionpanel.org/about-us/about-inspection-panel>>.

¹¹³ *Ibid.*

¹¹⁴ Gualtieri, “The Environmental Accountability of the World Bank to Non-State Actors”, *supra* note 110 at 215.

¹¹⁵ The World Bank Group, *supra* note 112.

¹¹⁶ The World Bank Group, “World Bank Group Issues FY19 Sanctions System Annual Report”, online: *World Bank* <<https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board/brief/fy19-sanctions-system-annual-report>>.

¹¹⁷ World Bank Procedure - Sanctions Proceedings and Settlements in Bank-Financed Projects (June 28, 2016) Section 9.0.1

2.4.1.3 Direct Action

Direct action is a form of direct enforcement where NSAs use their physical or economic power to engage in activities that directly achieve set goals.¹¹⁸ These activities could be violent or non-violent, aimed at preventing the state or a private actor from carrying out some activities or solving perceived problems.¹¹⁹ When NSAs use confrontation, the aim is to put direct pressure on criminals instead of implicitly forcing states to change their policies by appealing to popular opinion.¹²⁰

Since the 1970s, environmental NSAs or groups campaigning to protect endangered marine life have increasingly used direct action strategies.¹²¹ Some of these strategies include the groups ramming into ships, dumping net-rippers into the ocean, throwing smoke flares at, and generally obstructing the passage of fishing vessels. The legality and legitimacy of these strategies or actions are subjects of debates. Although, there have been few reported cases of the successful apprehending or prosecution of these groups.¹²² On its face, the fact that these environmental non-state activists claim to uphold the spirit of international law while carrying out these acts seems to be a significant immunity against political and legal prosecution.¹²³ A prime example is the action of anti-whaling groups like the Sea Shepherd Conservation Society (SSCS), who claim that by monitoring and enforcing environmental laws within and beyond territorial borders of states who either lacked capacity or political will to do so, they contribute to the international public good.¹²⁴ They also believe that using direct action tactics to confront illegal activities on the high sea safeguards the ocean ecosystem's biodiversity and promotes environmental sustainability.¹²⁵

Some scholars equate direct enforcement strategies with eco-terrorism. Eco-terrorism is the term given to direct and mostly destructive methods utilized by environmental activists.¹²⁶ Conversely,

¹¹⁸ Eilstrup-Sangiovanni & Bondaroff, "From Advocacy to Confrontation", *supra* note 22 at 351.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ Eilstrup-Sangiovanni & Bondaroff, "From Advocacy to Confrontation", *supra* note 22.

¹²² *Ibid* at 348.

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ Sea Shepherd Conservation Society, "Our Story", (24 July 2019), online: <<https://seashepherd.org/our-story/>>.

¹²⁶ Eilstrup-Sangiovanni & Bondaroff, "From Advocacy to Confrontation", *supra* note 22.

some other scholars contend that direct enforcement is not eco-terrorism.¹²⁷ This latter set of scholars classify direct enforcement strategies by environmental NGOs as direct action tactics.¹²⁸ Greenpeace, one of the largest ENGOs with National and International organizations, pioneered the direct action initiatives in 1971 with a trip to Amchitka in the Aleutian Islands to stop a U.S. nuclear weapons test. The group could not prevent the bomb from going off, but five months after the trip, the U.S cancelled the planned tests and stopped the Amchitka nuclear test programme. The U.S later declared the Island a bird sanctuary. This trip was the first recorded direct action success.¹²⁹ In 1991, Greenpeace blocked the Albright & Wilson plant's outflow pipe in Cumbria following several months of scientific research and legal action, which sought to establish that the outflow from the pipe violated the 1989 Water Act.¹³⁰

Yet another example is that of Japan who insists that its scientific whaling program is prima facie legal. However, it has been widely seen to abuse a loophole in the International Convention for the Regulation of Whaling (ICRW), thus prompting IUCN, Greenpeace, and Friends of the Earth to join forces to protect against Japan's whaling activities by lobbying the International Whaling Scientific Committee with the provision of scientific data and records of violations of the International whaling quota.¹³¹ On February 4, 2011, SSCS sent ships into the high seas to engage in direct clashes with the Japanese whalers. These clashes took the form of throwing smoke flares into the Japanese whaling fleet, launching paint and stink bombs at the fleet, and hooking the fleet's bows and tying them to the sides. These interferences forced the Japanese fleet to abort its mission. A fortnight later, the Japanese government officially ended its whale hunt for that year.¹³² Japan has not stopped its whale hunt, but it has increasingly engaged extensive security measures to prevent its vessels from attacks. These are not cost-effective for the country. The actions of the SSCS attracted the attention of the global audience. They gave more credence to the anti-whaling group's claim that their actions propagate international good.

¹²⁷ Dibyendu Sarkar et al, *An Integrated Approach to Environmental Management* (John Wiley & Sons, 2015) at 315.

¹²⁸ Sarkar et al, *supra* note 127.

¹²⁹ "Amchitka: the founding voyage", online: *Greenpeace International* <<http://p3-raw.greenpeace.org/international/en/about/history/amchitka-hunter/>>.

¹³⁰ Eilstrup-Sangiovanni & Bondaroff, "From Advocacy to Confrontation", *supra* note 22.

¹³¹ *Ibid* at 355.

¹³² Sea Shepherd Conservation Society, *supra* note 125.

NGOs are also known to employ direct action strategies in both the national and international marketplace. These strategies may involve the use of consumer boycotts or threats thereof. Great examples of the use of these strategies are in the campaigns against the consumption of seal fur, ivory, and pangolin products.¹³³ Direct enforcement proponents argue that unlike indirect enforcement strategies of “naming and shaming,” which leverages on exposing government behaviour to public scrutiny or persuading policymakers to act in conformity with international values, NSAs achieve influence by a direct and immediate cost-effect analysis which force the government to either enforce the law or accept NSA enforcement.¹³⁴ It is worthy of note that direct enforcement is carried out independently of states, but it often has states as a primary target audience. Direct enforcement is one of the strategies that NGOs have access to and often use in combination with other indirect enforcement strategies, such as information politics.¹³⁵

2.4.2 Indirect Enforcement

NSAs play several roles in the indirect enforcement of environmental laws and regulations across various sectors. For example, in the maritime industry, they monitor, investigate, and report illegal, unreported, and unregulated fishing.¹³⁶ Data gathering and sharing are inclusive in these roles as NSAs supply evidence to the state authorities to facilitate arrests and prosecution of defaulters. A significant number of their monitoring activities are self-directed and independently funded outside of the state.¹³⁷ Harold Koh postulates that these NSAs have progressively become influential in international environmental law enforcement as they initiate international action to tackle environmental matters. He argues that these actors influence the negotiating process of treaties and other legal instruments and go further to monitor state compliance with international

¹³³ Keck & Sikkink, *supra* note 92. For further reading on this, see Maria S Tysiachniouk, *Transnational governance through private authority: The case of Forest Stewardship Council certification in Russia* (Wageningen Academic Publishers, 2012) at 139, Peter Newell, “Campaigning for Corporate change: Global Citizen Action on the Environment” in Michael Edwards & John Gaventa, eds, *Global Citizen Action* (Lynne Rienner Publishers, 2001) 180 at 189, Werner Antweiler, *Elements of Environmental Management* (University of Toronto Press, 2014).

¹³⁴ Eilstrup-Sangiovanni & Bondaroff, “From Advocacy to Confrontation”, *supra* note 22 at 359.

¹³⁵ *Ibid* at 352.

¹³⁶ Solène Guggisberg, “The roles of nongovernmental actors in improving compliance with fisheries regulations” (2019) 28:3 *Review of European, Comparative & International Environmental Law* 314–327.

¹³⁷ Eilstrup-Sangiovanni & Sharman, “Enforcers beyond Borders”, *supra* note 93 at 7.

norms.¹³⁸ An example of this is the role NGOs play in ensuring compliance with multilateral environmental agreements.¹³⁹

Catherine Redgwell classifies NGO participation as stakeholder involvement. She argues that their involvement in national implementation is actively encouraged in some international environmental law treaties.¹⁴⁰ Article 13 (7), the operation guidelines for the implementation, portrays an illustration of this where it states that “[t]he Committee shall co-operate with international and national governmental and non-governmental organizations having objectives similar to those of this Convention. For the implementation of its programmes and projects, the Committee may call on such organizations....”¹⁴¹

Furthermore, in Articles 6 (1) and 29, state parties to the Convention are urged to ensure stakeholders' participation in the identification, nomination, and protection of World Heritage Sites and report threats to these sites to the WHC. However, this is not always the case as the WHC commonly receives information concerning environmental threats to these sites from NGOs. An example of an instance where the WHC received information directly from the World Heritage Site is in China, where NGOs and other private actors have complained and organized protests raising awareness of the impact of the construction of a railway line on the site of the Summer Palace, which has been a world heritage site since 1998.¹⁴²

Likewise, in India, NGOs and cultural heritage activists passionately protested the Telangana government's decision to repeal Regulation 13. The regulation stipulates the Hyderabad Metropolitan Development Authority legislation that afforded protection to buildings of historical significance.¹⁴³ War-torn and conflict-ridden areas like Syria and Iraq equally have NGOs that transmit information about the state of heritage sites located there to the World Heritage

¹³⁸ Koh, *supra* note 109.

¹³⁹ Spiro, *supra* note 87 at 3.

¹⁴⁰ Redgwell, *supra* note 100 at 3.

¹⁴¹ UNESCO World Heritage Centre, “The Operational Guidelines for the Implementation of the World Heritage Convention”, online: *UNESCO World Heritage Centres* <<https://whc.unesco.org/en/guidelines/>>.

¹⁴² Alessandro Chechi, “Non-State Actors and the Implementation of the World Heritage Convention in Asia: Achievements, Problems, and Prospects” (2018) 8:2 *Asian J Int Law* 461–489.

¹⁴³ The Times of India, “Threat to Hyderabad heritage as govt scraps Regulation 13 | Hyderabad News - Times of India”, online: *The Times of India* <<https://timesofindia.indiatimes.com/city/hyderabad/Threat-to-Hyderabad-heritage-as-govt-scraps-Regulation-13/articleshow/50099705.cms>>.

Committee.¹⁴⁴ In Canada, Indigenous organizations like the MCFN have informed the WHC through a series of petitions about the threat to the WBNP, prompting the Committee to request Canada to invite the IUCN and WHC to conduct a reactive monitoring mission and to conduct a strategic environmental assessment of the site.¹⁴⁵

Non-state actors also frequently engage in activist efforts to indirectly leverage enforcement of environmental laws or drive some other environmental campaigns. This activism usually takes the form of rallies and actions, which achieve influence through media attention and by disrupting ‘politics as usual’ for the states involved.¹⁴⁶ These protests are frequently associated with climate governance. However, they are quite common in transnational politics. A prime example of this is the massive attendance of civil societies at the 2009 United Nations Climate Change Conference, also called the Copenhagen summit or the Conference of the Parties, to contest the exclusionary practices of negotiations. On December 12, 2009, some 100,000 participants publicly resisted the disenfranchisement of particular perspectives in negotiations and called for better enforcement of climate change initiatives.¹⁴⁷ These protests, also referred to as “Peoples Marches for Climate Change,” have continued several years after. More so, with the adoption of the Paris Agreement, the civil society groups at the annual climate change conferences are encouraged to play more integrated roles in different aspects of the multilateral processes such as monitoring of national action and liaisons regarding both local, regional and transnational mitigation and adaptation strategies.¹⁴⁸

¹⁴⁴ Cheikhmous Ali, “Syrian Heritage under Threat” 351–366.

¹⁴⁵ Government of Canada Parks Canada Agency, “Overview of Canada’s Responses to the World Heritage Committee Decisions regarding Wood Buffalo National Park World Heritage Site - Wood Buffalo National Park”, (3 September 2019), online: <https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/info/action/SEA_EES> Last Modified: 2019-09-11.

¹⁴⁶ Jonathan W Kuyper, Björn-Ola Linnér & Heike Schroeder, “Non-State Actors in hybrid global climate governance: justice, legitimacy, and effectiveness in a post-Paris era” (2018) 9:1 Wiley Interdiscip Rev Clim Change e497.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid* at 3.

2.5 Transnational Tactics

Transnational tactics refer to the strategies used by TANS to push their agenda during their advocacy campaigns. Keck and Sikkink argue that information-politics and moral advocacy are associated with NSAs in transnational advocacy literature. These actors use their power of information and knowledge to raise public awareness and influence state policymakers' decisions through moral suasion and socialization.¹⁴⁹ Generally, NSAs bypass their state and directly seek international allies to exert pressure on their states from the outside. Indirect action could also be in the form of ENGOs acting directly on IGOs to advance their agendas. These actions follow a constructivist script where NSAs utilize social constructs to effect change in political arenas. A key aspect of constructivist IR theory is the development of TANS comprised primarily of NGOs.¹⁵⁰ The transnational approach to non-state activism decries the emphasis on boundary-restricted activity. It highlights how national and subnational NGOs work to advance their local, national, or sub-national agendas by enlisting foreign and international agents. In this approach, NSAs experiencing obstructions securing the requisite reaction from their state actors create transnational networks that apply leverage on other states or international institutions, which in turn pressure the NSA's home state.

2.5.1 The Boomerang Pattern

Keck and Sikkink describe the process of recruiting international allies to exert pressure on the state as the “boomerang pattern.”¹⁵¹ This innovation recognizes transnational activism both below and beyond the state, where the target activity is to change the state’s behaviour. Campaigns, where the state actor is the target and channels of communication between the state actors and NSAs, are blocked or seen to be hindered predominantly use boomerang strategies. Here, domestic NSAs may bypass and directly seek international actors to pressure the state actor from outside. This boomerang strategy is a popular triangulation strategy used by human rights campaigns and, more recently, by indigenous rights and environmental campaigns.¹⁵² These coalitions and

¹⁴⁹ Keck & Sikkink, *supra* note 92.

¹⁵⁰ Spiro, *supra* note 87 at 777.

¹⁵¹ Keck & Sikkink, *supra* note 27 at 11.

¹⁵² *Ibid* at 11.

communication strategies are what Keck and Sikkink refer to as TANS. They also argue that political spaces in which differently situated actors negotiate either formally or informally through the social, cultural, and political meanings of their joint enterprise are TANS.¹⁵³

Keck and Sikkink define TAN as including “actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchange of information and services.”¹⁵⁴ The authors present the network theory as a model for transnational change where the interests and identities of actors engaged in transnational activities are occasionally mutually transformed through their interactions with each other.¹⁵⁵ The network's success depends to some extent on the density and flow of information between actors. However, some issue characteristics, such as identifying and assigning a direct causal agent to the problem and articulating a clear solution, are a few determinants of network formation around an issue. Nevertheless, the authors insist that issues involving bodily harm and issues involving legal equality of opportunity are the most compelling characteristics of the success of network advocacy issue framing.¹⁵⁶ They use different case studies within three broad dimensions (human rights, environmental movements, and women’s rights) to characterize networks, analyze how networks work, and identify conditions for the success of these networks. To aid their analysis, they create an analytical framework called a typology of network tactics and establish criteria for gauging success. The authors conclude that “networks challenge traditional notions of sovereignty” by instantiating new norms that states recognize later. They further describe four tactics that actors within networks can use to persuade and pressure.¹⁵⁷

The first tactic is information politics, where networks gather credible and politically acceptable information quickly.¹⁵⁸ Information exchanges could be either formal or informal and take the form of emails and fax communications, telephone calls, newsletters, pamphlets and bulletins. Networks strive to uncover and investigate problems, alert the press and policymakers. Keck and Sikkink insist that networks must generate credible and well-documented information for

¹⁵³ *Ibid* at 11.

¹⁵⁴ *Ibid* at 2.

¹⁵⁵ *Ibid* at 225.

¹⁵⁶ *Ibid* at 215.

¹⁵⁷ *Ibid* at 15.

¹⁵⁸ *Ibid*.

information to be credible. Also, the information must be timely and dramatic to achieve network influence.¹⁵⁹ The authors suggest that access to information is essential for network advocacy. In cases where the NSAs involved cannot afford to mobilize personnel for investigative or reporting missions, they forge links with both local and international organizations to receive information. In the case of the tropical deforestation of the Brazilian Amazon forest, the authors give the example of local ENGOs sending credible information to international ENGOs. The latter organized to start the Bank Information Center, a network service institution of sorts. Members of international ENGOs also cultivated relationships with World Bank personnel and United States government officials who could help gain access to information they used to leverage and hold the World Bank accountable to its policies.¹⁶⁰ A variant of information politics is monitoring. Here, networks use information tactically to ensure accountability with public statements, existing legislation and international standards.¹⁶¹ The advent of technology and technological devices has transformed local demands into transnational ones as NSAs have relied on information technology to project their campaign beyond national borders and acquire allies.¹⁶² Identity-based movements such as those of Indigenous peoples report significant success in using information politics and symbolic appeals.¹⁶³

The second tactic in Keck and Sikkink's typology of tactics is symbolic politics, where networks use symbols, actions, or stories to appeal to audiences in different locations. In the same case study of the Brazilian rainforest, the use of the highly publicized murder story of Chico Mendes by irate landowners symbolizes the complex issues relating to deforestation in the Amazon.¹⁶⁴

The third tactic is leverage politics, where networks appeal to powerful actors that can influence situations when weaker actors in the network may not be capable. The Brazilian rainforest network campaigners lobbied key congressional appropriation committees and Treasury Departments of the United States, seeking to influence the United States' executive directors of the multilateral banks. Congressional committee chairs had direct leverage over the Bank through their power of

¹⁵⁹ *Ibid.*

¹⁶⁰ *Ibid* at 153.

¹⁶¹ *Ibid* at 15.

¹⁶² Maria Guadalupe Moog Rodrigues, *Global Environmentalism and Local Politics: Transnational Advocacy Networks in Brazil, Ecuador, and India* (SUNY Press, 2003) at 8.

¹⁶³ *Ibid.*

¹⁶⁴ Keck & Sikkink, *supra* note 27 at 146.

appropriation and 40 per cent voting shares. This strategy granted the campaigners an audience before the congressional committees, who listened to several indicting testimonies, and the Polonoroeste case became a subject of inquiry. Subsequently, the United States congress adopted NGOs' recommendations to strengthen the Bank's environmental performance. These recommendations, coupled with ENGOs' unrelenting campaigns, made the World Bank temporarily suspended disbursements for Polonoroeste because the Brazilian government was violating loan conditions on protecting natural and Indigenous areas. All these developments prompted the World Bank to create a top-level environmental department in 1987.¹⁶⁵

Finally, Keck and Sikkink describe the fourth tactic as accountability politics. Here, networks use the policies and statements of powerful actors to hold them to their words. An example of accountability politics within the Brazilian case is the Planaflo project network's strategy to leverage the environmental, land, and indigenous rights policy by asking the World Bank to hold Brazilian government institutions accountable for the commitments they had made.¹⁶⁶

Information is the dominant theme of all four tactics, coupled with networks' ability to use it effectively.¹⁶⁷ The authors address the question, under what conditions can advocacy networks be effective - when are they most likely to achieve their goals? They evaluate non-state networks' success by isolating 'stages' in issue politics, including defining an issue and setting the agenda, influencing policymakers, influencing procedures, prescribing solutions, and monitoring their implementation.¹⁶⁸ These networks' demands might differ and span across several issues; however, they share several similarities, particularly issue projection.

According to Keck and Sikkink:

Where the powerful impose forgetfulness, networks can provide alternative channels of communication. Groups that find that their voices are suppressed in their own societies may find that networks can project and amplify their concerns into an international arena, which in turn can echo back into their own countries. Transnational networks multiply the voices that are heard in international and

¹⁶⁵ *Ibid* at 144.

¹⁶⁶ *Ibid* at 160.

¹⁶⁷ *Ibid* at 15.

¹⁶⁸ *Ibid* at 23.

*domestic policies. These voices argue, persuade, strategize, document, lobby, pressure, and complain.*¹⁶⁹

Keck and Sikkink draw from sociological traditions and acknowledge constructivists' concerns in international relations theory and social movement theorists in comparative politics, relating to the intersubjective interpretation given to issue framing, identities, and interests.¹⁷⁰ Some of these concerns are discussed below as critiques of the boomerang pattern.

2.5.2 Critique of the Boomerang pattern

Some scholars studying advocacy have engaged in several arguments concerning the requisite models and scope of transnational advocacy. Some scholars disagree over the most accurate model of successful transnational advocacy. Several relevant literature emphasize the importance of analyzing the communications strategies chosen by advocacy campaigns and determining how and why those strategies were ineffective. Some constructivist scholars question the appropriateness of the boomerang pattern and argue that the boomerang pattern can only work against non-Western states.¹⁷¹ These questions led to a refinement of the boomerang pattern and the development of the spiral model.

The spiral model builds upon the boomerang pattern in addressing the issue of power inequalities and communicative norms. The spiral model supports the notion that the power of ideas and the effective communication of information is essential as these ideas represent the genuine interests of concerned states by creating new identities from the processes of discussion, campaigning, and information distribution.¹⁷² Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, the proponents of the spiral model, describe the model as a five-stage process. The first stage is the “activation”

¹⁶⁹ *Ibid* at x.

¹⁷⁰ *Ibid* at 3.

¹⁷¹ Some of these questions were whether the human right group successfully persuaded the US to cut aid to some states and not others based solely on information and skillful lobbying? Another was why was assumed that the ‘less powerful’ members of transnational networks, the NGOs set the agenda for ‘more powerful’ members, states, and international institutions to act on? David Chandler, “The Constructivist Thesis” in David Chandler, ed, *Constructing Global Civil Society, Moral and Power in International Relations* (London: Palgrave Macmillan UK, 2004) 25 at 18. *Ibid* at 38.

¹⁷² Chandler, *supra* note 30 at 19.

of the network. Here the transnational networks raise the issue of the (in)actions of the domestic state. While in the second stage, the networks “lobby” international organizations and governments through moral calls and public shaming. The third stage is the “tactical concession” stage, where the target state begins to respond to the lobbying agenda of the networks by using instrumental and strategic reasoning. In the fourth stage, the target state accepts the ideas raised from the issues, which then acquires a “prescriptive state,” leading to the ratification of international treaties and institutionalization of new norms. The fifth stage, termed the “rule-consistent behaviour” stage, is the final stage of the socialization process, where the state internalizes international human rights norms.¹⁷³

Sikkink acknowledges that the original work on Risse and Ropp's spiral model on human rights had several weaknesses. First, the scholar admits that they understated the conditions surrounding states and private actors' movement from commitment to human rights norms to actual compliance with them. They acknowledge that there could be a better delineation of the processes and scope of the conditions. The second weakness was the assumption that the fully-functioning states' compliance with human rights norms was a matter of state commitment and willingness rather than institutional capacity. Finally, the authors admit that they did not look at compliance with human rights norms by powerful states like the United States or the People's Republic of China.¹⁷⁴

Some other scholars agree that the spiral model is still relevant and applicable to the type of cases it intends for, notwithstanding the passage of time. David Chandler argues that the spiral model synthesizes and develops the boomerang pattern based on the argument that “the exercise of international coercive power should not detract from the communicative emphasis, because even if coercion is used initially, it is never decisive”.¹⁷⁵ It can still claim to explain the process of human rights changes with the first three stages of the model.¹⁷⁶ They posit that this is so because

¹⁷³ Thomas Risse & Stephen C Ropp, “Introduction and overview” in Thomas Risse, Stephen C Ropp & Kathryn Sikkink, eds, *The Persistent Power of Human Rights from Commitment to Compliance* (New York, United States: Cambridge University Press, 2013) 3 at 4.

¹⁷⁴ Kathryn Sikkink, “The United States and torture: does the spiral model work?” in Thomas Risse, Stephen C Ropp & Kathryn Sikkink, eds, *The Persistent Power of Human Rights: From Commitment to Compliance* (New York, United States: Cambridge University Press, 2013) 145 at 4.

¹⁷⁵ Chandler, *supra* note 30 at 19.

¹⁷⁶ Anja Jetschke & Andrea Liese, “The Power of Human Rights a Decade After: From Euphoria to Contestation?” in Thomas Risse, Stephen C Ropp & Kathryn Sikkink, eds, *The Persistent Power of Human Rights: From Commitment to Compliance* (New York, United States: Cambridge University Press, 2013) 26 at 28.

these are the conditions for the probable effectiveness of transnational advocacy and framing strategies, in that states are perceived to be capable and can be made accountable for human rights violations.¹⁷⁷

Furthermore, the spiral model does not explain human rights advocacy's ineffectiveness, where states are incapable of adequately enforcing rule-consistent behaviour or the failure to mobilize against human rights violations in democratic states comprehensively. Also, it does not expect that non-compliant governments provide plausible reasons for human rights violations. It is particularly problematic that the model has not fully lived up to its general claim to be "generalizable" across cases irrespective of cultural, political, or economic differences among countries."¹⁷⁸ The spiral model incorporates force as a tool of enforcing human right norms, and the model can be complex to implement, unlike the boomerang pattern where the NSAs thrive on shared relationship and cooperation. The spiral model specifically details how states respond to international pressures favouring universal human rights norms, and its limited applicability across varied cases makes it less suitable for this study.

More recently, another constructivist scholar, Sabrina Zajak, argues that prominent theories such as the boomerang pattern, the spiral model or the concepts of transnational diffusion of scale shift tend to focus either on the transnational contribution to domestic change or on how transnational activism triggers global change. Zajak contends that these models do adequately explain the empirical reality where domestic and global change intersect.¹⁷⁹ Zajak develops a novel analytical framework to analyze and explore multilevel activism with current global governance architecture and its local effects. Zajak creates the "pathways of transnational influence" framework to gain a comprehensive understanding of the impacts of transnational activism. The pathway framework involves three concepts. The first is the concept of intra-pathway dynamics, which describes the relationship between mobilization and institutional change. The second is the inter-pathway dynamics that encompasses institutional interactions and interdependencies between activism across paths. The third concept is the global-link characteristics that depict activism between local

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ Sabrina Zajak, "Rethinking Pathways of Transnational Activism" (2017) 31:1 *Global Society* 125–143 at 141.

actors, the domestic context and the political regime. While Zajak's novel analytical framework intends to fill the analytical gap in the dynamic interplay between activism, transnational institutions and domestic contexts, it appears to be more applicable in global governance, which is not the focus of this study, therefore, less relevant here.

Despite the criticisms of the boomerang pattern, Peter Spiro asserts that the 'boomerang effect' supplies a model for transnational advocacy efforts.¹⁸⁰ He concurs with Keck and Sikkink that some direct action activities follow a constructivist script.¹⁸¹ Even though NSAs lack traditional forms of material power, constructivism recognizes information sharing as a tangible commodity for altering societal norms and traditions.¹⁸² He cites Keck and Sikkink's Brazilian Rainforest case study as an example of "venue shopping" where Brazilian NGOs shopped the global scene for the best venues to present their deforestation concerns and seek out vantage pressure points to apply leverage.¹⁸³ The Brazilian NGOs recognized that their collective voices to influence policy-making were not being heard at the domestic level and appealed to transnational NGOs who pressured the World Bank to acknowledge the environmental impacts of its projects.

Such reformatory achievements within the environmental arena are what Maria Guadalupe Moog Rodriguez refers to as "greening".¹⁸⁴ She notes that TANs have been instrumental in greening multilateral development banks and establishing international treaties to conserve biodiversity and ecosystems. In her opinion, such networks' significant assets are organizational flexibility, information production and dissemination, and transborder mobility. However, a critical challenge for the networks is creating an agreed working consensus about their objectives. Earlier research on TANs concluded that network members were motivated by shared principles and ideals. However, recent research has shown that NSAs may choose to participate in transnational advocacy activism for various reasons that may not be commonly agreed to whilst still having a common goal such as environmentally sustainable development.¹⁸⁵ Spiro agrees that the

¹⁸⁰ Spiro, *supra* note 87 at 777.

¹⁸¹ Peter J Spiro, "Non-Governmental Organisations in International Relation (Theory)" in Jeffrey L Dunoff & Mary A Pollack, eds, *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (New York, United States: Cambridge University Press, 2013) at 232.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ Rodrigues, *supra* note 162 at 44.

¹⁸⁵ *Ibid* at 25.

transnational model of network advocacy illustrates the recent trend of utilizing transnational networks to achieve domestic ends.

Sidney Tarrow, in his book, “The New Transnational Activism”, concurs with Keck and Sikkink and opines that TANs are influential in promoting change for three reasons:

*First, many of them are biographically and thematically in the debt of social movements. Second, given the undemocratic or semi-authoritarian conditions of many parts of the world today, they provide a safer alternative to social movements for millions of people. Third, their most important role may be to provide a mechanism for the diffusion of collective action frames to resource-poor domestic actors that can help them construct their own social movements.*¹⁸⁶

Although Tarrow acknowledges the effectiveness of advocacy networks, he insists that social movements rank higher than advocacy networks because they are not prone to dramatic events. Unlike advocacy networks, they do not have broad international events goals and are not overly dependent on external funding from the government and foundations. In analyzing domestic transnational impacts, Tarrow argues that new forms of activism do not magically appear; instead, it involves “diffusions” of different forms of activity adapted to varied national and social situations. Tarrow insists that “there is no guarantee of the adoption of the cause (s) being championed by activism unless it passes through the processes of “brokerage” between its innovators and adopters; successful “mobilization” by activists sympathetic to the cause; and its “certification” by authoritative actors before its local adaptation”.¹⁸⁷ Sidney Tarrow, however, does not attempt an in-depth causal analysis of the structural changes that produce transnational activism but focuses instead on the political processes that activists trigger while attempting to link their domestic causes to those of others across borders and international institutions, regimes, and procedures.¹⁸⁸ He argues that while globalization provides incentives and themes for transnational activism, it is internationalism that presents a framework, a set of focal points, and a structure of opportunities for transnational activists.¹⁸⁹

¹⁸⁶ Sidney Tarrow, *The New Transnational Activism*, Cambridge Studies in Contentious Politics (Cambridge: Cambridge University Press, 2005) at 186.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid* at 11.

¹⁸⁹ *Ibid* at 2.

From the preceding paragraph, it is apparent that constructivist scholars acknowledge that TANs are influential in promoting change. However, these constructivist scholars may have divergent opinions on the appropriate model to assess the influence and effectiveness of TANs. Keck and Sikkink's boomerang pattern and analytical framework are a common way of assessing TAN strategy when the advocacy target is a state's domestic policies or behaviour. The boomerang pattern is generally applicable to a wide range of interests. The boomerang pattern is also the bedrock of other models like the spiral model and transnational diffusion of scale shift.

Furthermore, constructivists attribute the boomerang pattern's success to the capability of the weaker groups with superior information skills in rallying more powerful groups to pressure states.¹⁹⁰ Furthermore, Keck and Sikkink's analytical framework presents an opportunity to study the dynamic relationships between domestic groups, NSAs and the state using a constructivist lens to speak to the enforcement of environmental laws. Keck and Sikkink suggest that increased attention and revisions in discursive positions make governments more vulnerable to these networks' claims, mainly where the government's claim of protecting indigenous areas or ecological reserves makes them more susceptible to charges that such areas are in danger than one that does not make such claims.

The boomerang pattern, the typology of tactics and stages of influence framework is appropriate for this study because the target in this instance is Canada's domestic policies and behaviour towards WBNP. The typology of tactics presents a well-grounded and time-tested analytical framework for discussing TAN strategies. In all, the concept of TANs as a methodological tool allows the researcher to observe the interplay of power relations at various levels of analysis and how they affect efforts to promote environmental sustainability.¹⁹¹

¹⁹⁰ Chandler, *supra* note 30 at 18.

¹⁹¹ Rodrigues, *supra* note 162 at 25.

2.6. Conclusion

In this chapter, I outlined the theoretical framework of this thesis, which builds on the constructivism theory and adds to constructivist debates by investigating the strategies used by NSAs to influence the Canadian state's enforcement of environmental laws and the resulting impact. I defined key concepts, including the term NSAs and described the two categories of enforcement: indirect and direct enforcement. I discussed the transnational network theory, which is incredibly useful as a valuable space for negotiation between the state and NSAs. These negotiations birth the possibility of change. The TAN approach provides a view of multiple pathways and agency to domestic NSAs, which is not obtainable under a state-centric approach.

Keck and Sikkink's analytical framework, especially the delineation of the four typologies of tactics, make it exceptionally useful to unbundle the practices and tactics of NSAs. The typology of tactics framework is encompassing, and its applicability cuts across diverse subjects. The primary analytical approach—the boomerang pattern—is particularly relevant to the Wood Buffalo National Park case. It replicates the situation where NSAs seek to influence their governments by mobilizing IGOs or NGO forces in their networks. Although Keck and Sikkink's work paid little attention to the impact of the media on the networks due to the existing digital divide and knowledge gap prevalent at the time, the first typology—information politics—offers the opportunity to explore how media has improved the long-distance interactions and communication typical of TANs.

Assessing the influence of advocacy networks involves looking at goal achievement across several stages of network influence, which is also referred to as the conditions under which network advocacy networks have influence. Issue characteristics, actor characteristics as well as the strength and density of the network and their ability to achieve leverage are salient determinants of the success of network advocacy. The next chapter provides details of the research methodology I used to undertake my research. The chapter contains a description of my methods, methodological tools of data collection and analysis in line with my research goals.

CHAPTER THREE

3.0 Research Methodology

3.1 Introduction

This methodology chapter aims to describe the methods and justification for the choice of this qualitative constructivist study. The approach provides a broad understanding of the influence and impact of NSAs in the enforcement of environmental laws, using a particular case study in Canada to discover some of the strategies used and the conditions precedent for better enforcement. The research used a case study analysis of WBNP. This case study's choice derives from its designation as a World Heritage site and the advocacy campaign by NSAs to preserve PAD and the broader landscape of WBNP. The Park is home to the Cree, Chipewyan, and Metis.¹⁹² I acknowledge the diversity of all the Indigenous groups that call the Park and PAD home and carry out traditional activities within these areas. For this research, I will be referring to MCFN and not the other First Nations for the following reasons. MCFN have been at the forefront of the advocacy campaign for the preservation of the Park. They are the authors of the 2014 Petition to UNESCO and are privy to vital information relevant to this research.¹⁹³ The NSAs, in this case—MCFN and CPAWS—present a classic example of a transnational advocacy network using a strategy that fits with the boomerang model described in the previous chapter. I discuss the case study's applicability and the constructivist approach utilized for this research in this chapter. The research plan includes the methodology, the study participants, the procedures, and the analysis method.

This methodology chapter has four sections. Following this introduction, I outline the research question and objectives in the second section. I also describe my positionality and study participants. In the third section, I sketch out the research methodology and delineate the case study methodology, analytical framework, data collection and analysis procedures. Section four contains a description of the limitations of the study and the conclusion.

¹⁹² Parks Canada Agency, *supra* note 35.

¹⁹³ A nation of indigenous people that reside in Northeastern Alberta of which PAD is at the centre of their traditional lands. Mikisew Cree First Nation, "Home | Mikisew Cree First Nation", online: <<http://mikisewcree.ca/>>.

3.2 Research Questions and Objectives

These questions convey the study's general outline and serve as the foundation for the research and field questions. The aim of these questions is to develop an accurate analysis of NSA involvement in the enforcement of environmental laws. The purpose of this research is to answer the following questions:

- a. Do NSAs influence the enforcement of environmental laws?
- b. Under what conditions have non-state actions led to better enforcement of environmental laws?

The objectives of the research are to:

- a. Identify the strategies used by NSAs in effecting enforcement of environmental laws.
- b. Explore the impacts of non-state action on Canadian environmental law enforcement.
- c. Discuss the possible application of these findings to a different jurisdiction.

3.2.1 Researcher's Positionality

Positionality refers to the stance of the researcher concerning the social or political context of the study.¹⁹⁴ A researcher's positionality is said to be an essential part of the research process.¹⁹⁵ Borrowing from Victoria Reyes' work, part of my "ethnographic tool kit" is my positionality comprising my origin and background, which I will try to explain in a few sentences.¹⁹⁶ I am aware that although I aim to conduct objective research, it is possible that my subjective reasoning - being a product of my origin, background, and experience – might have influenced how I conducted the research and interpreted the results.

I am a Nigerian concerned about Indigenous peoples' rights, environmental sustainability and conversant with the complexities surrounding the government's over-riding pecuniary interest in

¹⁹⁴ Wendy E Rowe, "Positionality" in *The SAGE Encyclopedia of Action Research* (2455 Teller Road, Thousand Oaks, California 91320: SAGE Publications Ltd, 2014).

¹⁹⁵ Deianira Ganga & Sam Scott, "Cultural 'Insiders' and the Issue of Positionality in Qualitative Migration Research: Moving 'Across' and Moving 'Along' Researcher-Participant Divides" (2006) 7:3 Forum Qualitative Sozialforschung / Forum: Qualitative Social Research, online: <<http://www.qualitative.research.net/index.php/fqs/article/view/134>>.

¹⁹⁶ Victoria Reyes, "Ethnographic toolkit: Strategic positionality and researchers' visible and invisible tools in field research" (2018) 0(0) *Ethnography* 1–21.

exploiting natural resources, particularly in the Niger Delta region of the country. I became conscious of the plight of the Indigenous people of Ogoniland during my childhood years. At the time, several repressive and corrupt military regimes governed the country.¹⁹⁷ The Ogoni people in the Niger Delta region of Nigeria have had long-standing grievances concerning the extent of environmental damage done to their land by oil exploration and production activities. Ken Saro Wiwa, an author and environmental activist, championed their cause then.¹⁹⁸ The execution of Ken Saro Wiwa and eight others in November 1995 by the military government awakened my curiosity concerning environmental sustainability and justice.¹⁹⁹ This curiosity and the persisting environmental degradation in the Niger Delta region led me to further questions, and the unsatisfying answers I received influenced my decision to study law. My legal experience, which spans various sectors, including the public and private sectors, has moulded some of the views I hold today. I have some first-hand experience of the difficulties involved in enforcing environmental laws, particularly in the fight against corruption. This experience helped me understand the intricacies of achieving future economic growth while protecting the environment, maintaining biodiversity, and preserving cultural and social values. Despite the transition to democracy from a military government, governance and environmental protection have not changed much. Unfortunately, Nigeria does not have good examples of effective non-state action, so it is imperative to ‘look elsewhere’ for good examples.

I undertook some directed reading courses and consulted with my supervisors, who guided me with my study's required research and literature. Being an academic researcher from a different country enabled me to understand the case study's complexities. My positionality presented a strength as I approached the study from an unbiased perspective. It also created a cordial atmosphere in the interviews and relieved any underlying tension associated with the case study concerns. The interview participants considered me a neutral party.

¹⁹⁷ Ike Okonta & Douglas Oronto, *Where vultures feast : shell, human rights, and oil in the Niger Delta* (Verso, 2003).

¹⁹⁸ Susan Carr, Oronto Douglas & Uche Onyeagucha, “The Ogoni people’s campaign over oil exploitation in the Niger Delta” in *Environmental Policies and NGO Influence; Land degradation and sustainable resource management in the sub-Saharan Africa* Routledge Research Global Environmental Change Series (Routledge, 2001) 201.

¹⁹⁹ Michael J Watts, “Chronicle of a future foretold: The complex legacies of Ken Saro-Wiwa” (2015) 2 *The Extractive Industries and Society* 635–644.

3.2.2 Study Participants

I conducted interviews with seven participants comprising staff of MCFN, CPAWS, UNESCO, Alberta Environment and Parks, and Parks Canada to carry out this research. This research's focal point is the 2014 Petition to UNESCO, and these participants were selected based on their proximity to and knowledge of the Petition process and the resulting actions by all actors involved. I recruited the participants using a combination of professional and official contacts and the snowball method. Every participant was required to sign an informed consent form before participating in the interview. These participants were chosen for specific reasons and categorized into four groups. Group 1 comprised government officials—provincial and federal government staff who are privy to Canada's responses to UNESCO's decisions regarding WBNP World Heritage Site and the development and implementation of the comprehensive Action Plan to ensure the ongoing protection of WBNP by the government. Group 2 consisted of First Nations government representatives who have taken action to request WBNP listing as a World Heritage Site in Danger and have engaged continually with all government levels on its protection. Group 3 included the international organization—staff of the UNESCO who possess in-depth knowledge of the Petition concerning WBNP, the deliberation on the Petition, the WHC's consideration of local groups' concerns, and Canada's response to this Petition. Group 4 involved non-governmental organizations—staff of the local organizations who know the strategies and activities used to secure state and non-state action on environmental laws to improve the situation in WBNP. These participants were integral to this research because they were key actors who were either directly involved in the Petition process or played some decision-making and implementation roles in the preservation activities concerning the WBNP.

3.3 Methodology

Qualitative research is suitable when the research goal is to explain a phenomenon by relying on the perception of a person's experience in each situation.²⁰⁰ John W. Creswell further states that a qualitative approach is appropriate when a researcher seeks to understand relationships between

²⁰⁰ Robert E Stake, *Qualitative Research: Studying How Things Work* (Guilford Press, 2010).

variables.²⁰¹ In answering the research questions, I opted to undertake a qualitative study as the research results represent the participants' views and perspectives. It also contributes insights from the purview of transnational activism, which helps explain the role and influence of NSAs in enforcing Canada's environmental laws.²⁰² This research takes a constructivist approach. I chose to use a constructivist approach because constructivism offers the best framework for assessing the potential influence of NSAs because it explicitly focuses on the roles of independent actors in shaping or being mutually constitutive with state interests.

3.3.1 Case Study Methodology

For this research, I adopted a single case study methodology. This methodology promotes the intensive study of a subject matter. I chose to use a case study situated in Canada, because of its strong environmental ethic, with its citizens ranking amongst the world's most staunchly pro-environment.²⁰³ Reports attribute this high ranking to the fact that a significant percentage of Canadians value environmental protection over economic growth.²⁰⁴ Despite its outstanding value to Canada and the world, the Park and, by extension, the PAD is under threat from hydro-electric developments, oil and gas activities and climate change.²⁰⁵ International organizations such as UNESCO, indigenous/local organizations like MCFN and CPAWS have actively participated in the calls for the preservation and protection of the Park. This Park is a rich case study due to the extensive advocacy activity by these NSAs. As the focus is on a single subject, WBNP, I conducted a detailed and in-depth exploration of non-state activism issues in protecting and preserving the Park. The case study method is also relatively less cumbersome and inexpensive than a comparative case study method that entails the detailed investigation of two cases that might be in different geopolitical regions.²⁰⁶ A case study methodology is also an excellent means for

²⁰¹ John W Creswell & Cheryl N Poth, *Qualitative inquiry & research design : choosing among five approaches*, 4th ed (Thousand Oaks, CA: SAGE Publications Ltd, 2018).

²⁰² Robert K Yin, *Qualitative Research from Start to Finish*, second ed (New York, United States: Guildford press, 2016).

²⁰³ David R Boyd, *Unnatural Law. Rethinking Canadian Environmental Law and Policy* (The University of British Columbia Press, 2014).

²⁰⁴ *Ibid.* This ranking was a result of public opinion polls carried out by Environics International, a research firm.

²⁰⁵ "Wood Buffalo National Park | CPAWS", online: <<http://cpaws.org/campaigns/wood-buffalo-national-park>>.

²⁰⁶ Robert K Yin, *Case study research: design and methods*, 5th ed (SAGE Publications, Inc, 2014).

developing new research and challenging established theories as it provides the means for translating the research questions into field questions that the participants will answer.²⁰⁷

Researchers have criticized case studies methodology for being too subjective, difficult to replicate, prone to errors and time-consuming. Notwithstanding, the benefits far exceed the drawbacks.²⁰⁸ In this instance, a case study analysis of a protected area with extensive NSA attention at the national and international scales provides a basis for extensive consideration and thorough analysis due to the long-standing engagement and results achieved. WBNP presents an excellent example of the robust involvement of NSAs. Furthermore, I chose to conduct personal interviews with representatives of some organizations that have participated in the protection and preservation of the Park to elicit answers to some research questions.

3.3.2 Analytical Framework

The analytical framework for this research draws from the transnational advocacy literature, which speaks to transnational activism, networks between NSAs, and the influence these NSAs have on target actors. It is advantageous to use this analytical framework because it combines comparative politics and IR and provides a basis to explore the link between Indigenous groups, TAN and state actors, isolating the boundary barriers.

I utilized the analytical framework laid out by Keck and Sikkink in their book, “Activists beyond borders” to tackle my research objectives.²⁰⁹ The framework presents an opportunity to study the dynamic relationships between Indigenous groups, NSAs and the state using a constructivist lens to address the concerns raised by network groups to preserve and protect WBNP. Keck and Sikkink suggest that increased attention and changes in discursive positions make governments more vulnerable to these networks’ claims. They further argued that the government’s claim of protecting Indigenous areas or ecological reserves makes them more susceptible to allegations that such areas are in danger than one that does not make such claims.²¹⁰ To address the first objective,

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

²⁰⁹ Keck & Sikkink, *supra* note 27.

²¹⁰ *Ibid.*

I applied their typology of tactics to analyze the strategies used by NSAs to influence state behaviour. These tactics are information politics, symbolic politics, leverage politics and accountability politics. Under information politics, I considered the ability of the NSAs in the case study to disseminate credible information quickly to the area of most impact. For symbolic politics, I investigated the use of symbols, stories, or action that these NSAs have used to garner attention from the intended audience. Next on leverage politics, I examined these NSAs' abilities to call upon powerful NSAs to influence a situation where weaker NSAs are unlikely to have influence or have been ignored. Finally, for accountability politics, I considered the attempts made by NSAs to hold the more powerful actors to the previously stated or formally endorsed policies or principles.

In addressing both my second question and objective, I followed Keck and Sikkink's evaluation of the stages of network influence to determine the conditions under which NSAs have influence. For this evaluation, I explored the impact of these NSAs from five angles.

- a. Issue creation and attention/agenda setting.
- b. Influence on discursive positions of states and international organizations.
- c. Influence on institutional procedures.
- d. Influence on policy change in target actors.
- e. Influence on state behaviour.

Finally, in speculative terms, I discussed the applications of my research results on a different geopolitical location to address the third objective.

3.3.3 Data Collection

I undertook qualitative research by carrying out documentary analysis and in-depth semi-structured interviews to investigate this case study. The documentary analysis helped me explore the critical issues relating to the Park's deterioration and the subsequent action to protect and

preserve its OUV.²¹¹ Moreover, the documentary research gave me a contextual background in setting out specific questions for the semi-structured interviews with the study participants.

Personal interviews are one of the tools of case study methodology. They are a way to obtain in-depth and comprehensive information. It involves one person interviewing another for personal or detailed information, and in-depth interviews with experts prove to be a valuable alternative to questionnaires. However, an advantage of the personal interview is that it provides flexibility, which is absent in questionnaires. Although flexible, it is more expensive to carry out personal interviews against the questionnaire method because of the conversations' one-on-one nature.²¹² I chose to use personal interviews for this research because of the complexity of the subject matter and the fact that very few individuals have in-depth knowledge of the case study. Besides, to obtain a detailed survey sufficient to access the relevant information I require, the questionnaire would need to be exceptionally long and repetitive. Additionally, the interviews helped me understand how the participants arrived at the decisions they made.²¹³ It is also doubtful that the participants would choose to disclose such information via questionnaires instead of personal interviews due to the issue's sensitivity, difficulty conveying feelings and emotions and the possibility of being misunderstood.

This study used an interview method with both the interviewer and the interview questions serving as the instruments. Before conducting the interviews, I sought approval from the University of Victoria Human Research Ethics Board. Once approval to conduct the interviews was granted, I contacted the participants via email. The interviews were a combination of in-person, Skype and telephone call sessions. All the participants consented to the interview, as evidenced by the signing of the informed consent forms. I recorded the interviews electronically using a Multifunction Voice Recorder. I also used memos to capture any research thoughts during the interviews. The interviews began with open-ended questions framed to invite more depth regarding NSAs' involvement in the case. At the end of the interviews, I extended an invitation to each participant

²¹¹ OUV refers to the cultural and natural significance of a place which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations. Centre, *supra* note 33.

²¹² Yin, *supra* note 206.

²¹³ John Gerring, *Case Study Research: Principles and Practices* (Cambridge, United Kingdom: Cambridge University Press, 2006).

to share any further thoughts. I chose to transcribe the interviews manually as the volume of participants was manageable.

3.3.4 Data Analysis

After the transcription, the coding of the transcripts began. Coding assisted me with the understanding of the perspectives of the participants and in analyzing their combined experiences. The coding was conducted both manually and using computer-assisted qualitative analysis software. Coding the interview transcriptions was a vital part of the data analysis as it deconstructed the data into meaningful and manageable chunks for more straightforward analysis.

For my analysis of the interview data, I commenced by setting out standardized categories. The categories comprise nine standardized concepts taken from Keck and Sikkink's analytical framework on advocacy networks, as explained in chapter two of this thesis. Four of these categories address the topology of tactics: information politics, symbolic politics, leverage politics and accountability politics. The remaining five were issue creation/agenda-setting, influence on discursive positions of states and international organizations, influence on institutional procedures, influence on policy change in target actors, and influence on state behaviour, speak to the stages of network influence. Then I extracted codes/themes from Keck and Sikkink's definitions of the categories in their text, as reviewed earlier in chapter two of this thesis. The next procedure entailed searching the data set for themes to develop into analytical codes, then filing according to the pre-determined categories, and then indexing the data accordingly. Next, I mapped these codes into the nine descriptive categories that logically examined the strategies used by the advocacy networks and the influence exerted upon the target actor and proceeded below to report the interview data according to these categories.

I used these codes and categories to index the transcripts, such that all aspects of any of the topics were easily retrievable. I assigned the categories to be consistent with the constructivist approach relevant to the research question. I used the R-based Qualitative Data Analysis (RQDA) package developed by Huang Ronggui²¹⁴ to do the actual coding and analysis. R is an open-source software

²¹⁴ Huang Ronggui, "RQDA: R-based Qualitative Data Analysis", (2016), online: <<http://rqda.r-forge.r-project.org/>>.

with highly quantitative capabilities. It also can perform a Qualitative Comparative Study. I chose to use RQDA because its capabilities meet most qualitative researchers' needs. Its capabilities are comparable to CAQDAS software such as ATLAS.ti and NVivo for coding, attributes addition and code abstraction.²¹⁵ In several instances, I presented the participant's exact words in written form to convey an accurate picture of their thoughts and opinions and avoid bias. I used charts, diagrams, and tables to explore the topics and themes across the dataset with the help of categories. The software proved to be quite useful for this purpose.

3.4 Limitations of the study

The first interview held days before the nation-wide lockdown occasioned by the Covid-19 pandemic. After that, there were some scheduling difficulties following delays in fixing subsequent interviews due to the general global uncertainty presented by Covid-19. Also, some contact persons were outside their geographical workstations, making it challenging to commit to interviewing dates. Another limitation of this study was conducting the interviews by phone or Skype as against in person. However, that was unavoidable as the proximities of most participants did not allow for in-person interviews. Using a multifunction digital audio recorder to capture the interviews permitted me to maintain consistency when transcribing and prevented the addition or subtraction from the participant's interviews.

3.5 Conclusion

The goal of this chapter was to outline the research method utilized to answer the research questions. I used a constructivist case study methodology for this research. All the study participants contributed to this body of work by sharing their perspectives on strategies used by NSAs and the associated impact of their influence on the state actor. The chapter detailed the research questions, study participants, data collection and analysis procedures. The next chapters provide the background of the study, results and demonstrate the methodology described above.

²¹⁵ Chandra Yanto & Shang Liang, "An RQDA-based constructivist methodology for qualitative research" (2016) 20:1 Qualitative Market Research: An International Journal 90–112.

CHAPTER FOUR

4.0 Wood Buffalo National Park

4.1 Introduction

This chapter centres on WBNP and PAD. The Park, a World Heritage Site located in northeastern Alberta and the southern Northwest Territories of Canada, is the traditional territory of the Indigenous peoples.²¹⁶ It has also been the subject of long-standing tension and conflicts between these Indigenous people and the Canadian government over management response to the adverse impacts of decades of massive industrial developments outside the Park, particularly along the Peace and Athabasca Rivers.²¹⁷ Indigenous people have protested and petitioned UNESCO, which, in turn, has intervened, requesting the Canadian government to take responsibility for the actions and inactions of the relevant provinces.²¹⁸ The campaign for preserving the OUV of PAD started as a local reaction to the declining ecology and perceived environmental damage to PAD by the developmental activities of Oil Sands mining and the construction of dams on the Peace River outside the Park. The petitioners have made several attempts to convince the Federal and Provincial Governments to effectively oversee and manage the Park threats. For their efforts, the petitioners have used all domestic avenues available, ranging from direct requests, participation in regulatory processes to litigation, with no success. As a last resort, the petitioners have had recourse to UNESCO, hoping that an external influence might result in positive action on Canada's part. The focal point of the UNESCO process covered in this chapter is the 2014 Petition MCFN submitted to UNESCO and the subsequent reactions.

This chapter has six sections. The first section- the introduction, contains an overview of the chapter's content and scope and serves as a navigation guide for the text. This part attempts to convey the problems surrounding the case study and illuminate the essence of this study. It outlines the concerns of the Indigenous people whose traditional territory encompasses WBNP and explains the necessity of UNESCO's involvement in the situation.

²¹⁶ Parks Canada Agency, *supra* note 31.

²¹⁷ The Report of the joint WHC/IUCN Reactive Monitoring mission to Wood Buffalo National Park, Canada, UNESCO, WHC 41st Session, 2017 at page 1.

²¹⁸ UNESCO World Heritage Centre, "UNESCO World Heritage Centre - Decision - 41 COM 7B.2", (2017), online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/decisions/6860>>.

Following this introduction, section two comprises a brief constitutional basis for environmental regulation in Canada, particularly relating to jurisdiction over the environment, natural resources, Indigenous peoples, and lands. Here, I outline the relevant distribution of powers structure and constitutional provisions that affect Indigenous territories.

The next section describes the circumstances surrounding the creation of the Park and the legal framework for protecting National Parks in Canada.

The fourth section contains an account of Indigenous peoples' rights and the issue of inadequate consultation. The crux of this section is to lay a foundation that helps to explain the legal issues and procedures surrounding the broader matters of Indigenous people's territories and treaty rights and infringement of same. The section includes an insight into exclusionary practices within some National Parks and some landmark court decisions concerning the protection of Indigenous peoples' land and rights.

Section five analyses the historical significance of the WBNP and PAD to MCFN. Understanding the importance of the WBNP to MCFN sheds light on the motivation that informs most of their actions to protect and preserve their ancestral land and waters. I outline some salient issues surrounding the perceived deterioration of PAD that have necessitated UNESCO's involvement by MCFN and CPAWS.

The sixth and final section focuses on the activities of MCFN and CPAWS and the 2014 Petition to UNESCO. In this section, I briefly describe the inscription process of the WBNP as a World Heritage Site, the monitoring and enforcement mechanisms available to UNESCO, and expound on UNESCO's involvement using a chronological narration of events from 2014 till date. This narration sets the stage for the data results presented in chapter five of this thesis.

4.2 Legal Overview of the structure of law in Canada

In Canada, following the separation of law doctrine, the Constitution divides legislative, executive, and judicial powers between the national (Federal) and regional (provincial and territorial

authorities. Sections 91, 93A, and 95 of the *Constitution Act, 1867*, confers jurisdiction to legislate on many subject areas to the Federal parliament.²¹⁹ Section 91 is the source of most Federal power and lists subject areas over which the parliament has exclusive jurisdiction. It also gives the Federal Government a general residuary power to make laws for the “Peace, Order and Good Government of Canada.”²²⁰ Section 91 (1A) gives the Federal Government the exclusive legislative authority to deal with public debt and property. Section 91 (24) empowers the Federal Government to legislate on matters concerning Indians and lands reserved for Indians.²²¹ The Federal Government has responsibility for matters relating to fisheries,²²² shipping and navigation,²²³ all aspects of rivers and lakes that occur on Federal land within the provinces, including within national parks, marine protected areas, wildlife within Federal land, migratory birds, and the Federal aspect of species at risk, toxic emissions, greenhouse gases, and climate change.²²⁴

Sections 92, 92A, 93, and 95 of the *Constitution Act, 1867* give the Provincial Governments the power to legislate exclusively in many subject areas, including non-renewable natural resources,²²⁵ forestry,²²⁶ electrical energy,²²⁷ and education.²²⁸ In line with the Constitution's provisions, provinces are responsible for decisions about land, natural resources management, and water resources.

²¹⁹ “The Constitution Act, 1867, 30 & 31, c 3”, online: <<https://www.canlii.org/en/ca/laws/stat/30---31-vict-c-3/latest/30---31-vict-c-3.html?autocompleteStr=const&autocompletePos=2>>.

²²⁰ *Ibid*, s 91. John Fairlie & Philip Sworden, “Law and the Canadian Constitution” in *Introduction to Law in Canada* (Toronto, Canada: Emond Montgomery Publications Limited, 2014) 103 at 112.

²²¹ note 219.

²²² *Ibid*, s 91(12).

²²³ *Ibid* at 91(10).

²²⁴ note 219; Penny Becklumb, *Federal and Provincial Jurisdiction to Regulate Environmental Issues* (Library of Parliament, Ottawa, Canada, 2019).

²²⁵ note 219, s 92A (1) (a).

²²⁶ *Ibid*, s 92A (1) (b).

²²⁷ *Ibid*, s 92A (1) (c).

²²⁸ *Ibid*, s 93.

Both the Federal and Provincial Governments share jurisdiction in environmental matters.²²⁹ The Canadian Constitution does not list the word “environment” as a subject matter; nevertheless, its usage can refer to numerous subject matters regarding the land, water, and air.²³⁰

There are also unresolved concerns about the treaty-making powers of the Federal Government. Although the Federal Government can sign an international treaty, when a treaty pertains to an area of provincial jurisdiction, only the provincial legislative assemblies have the power to enforce the treaty's provisions.²³¹ As a result, treaty implementation and compliance come under the jurisdiction of the federal, provincial, and territorial governments. However, despite Canada's constitutional structure, the Federal Government is accountable to the international community for implementing international treaties in Canada.²³² There is also a possibility that provinces will refuse to cooperate with the Federal Government. Individual provinces may even choose to enter into separate agreements with the Federal Government about the terms of implementation. These shared jurisdictional issues are sometimes complex, particularly regarding the environmental activities that affect Indigenous lands and Indigenous people's rights within a province, including a national park. In essence, the Federal Government is responsible for national Parks as they are on Federal land. Yet, activities outside the national parks, on provincial land or land regulated provincially, affect the parks fundamentally, as is the case with WBNP, where the Park is a National Park, on Federal land. However, the Oil Sands regulation and the BC Hydro project

²²⁹ Fairlie & Sworden, *supra* note 220; “Friends of the Oldman River Society v. Canada (Minister of Transport), [1992] 1 S.C.R. 3”, online: <https://advance.lexis.com/document/teaserdocument/?pdmfid=1505209&crd=fb49fbd4-d950-44bd-9fb5-1d4b8ccb708a&pdteaserkey=h1&pdicsfeatureid=1517129&pditab=allpods&pddocfullpath=%2Fshared%2Fdocument%2Fcases-ca%2Furn%3AcontentItem%3A5F8T-N3V1-JFKM-605H-00000-00&eomp=_x7nk&earg=sr0&prid=74aa1c9c-3962-4896-ade7-1df530ae2431>.

²³⁰ Becklumb, *supra* note 224. In note 9, the court held that;

The "environment" is not an independent matter of legislation under the Constitution Act, 1867. Understood in its generic sense, it encompasses the physical, economic and social environment and touches upon several of the heads of power assigned to the respective levels of government. While both levels may act in relation to the environment, the exercise of legislative power affecting environmental concerns must be linked to an appropriate head of power. Local projects will generally fall within provincial responsibility, but Federal participation will be required if, as in this case, the project impinges on an area of Federal jurisdiction.

²³¹ “The Attorney General of Canada v The Attorney General of Ontario and others (Canada) [1937] UKPC 6 (28 January 1937)”, online: <https://www.bailii.org/uk/cases/UKPC/1937/1937_6.html>. This case is also called the 1937 Labour Conventions case.

²³² United Nations High Commissioner for Refugees, “Vienna Convention on the Law of Treaties”, online: *Refworld* <<https://www.refworld.org/docid/3ae6b3a10.html>> Entry into force: 27 January 1980 United Nations, Treaty Series, vol. 1155, p. 331 23 May 1969.

affecting the Park stem from Alberta and British Columbia provincial lands. The next section details, in brief, the legal framework for the establishment of national parks.

4.3 History and designation of the Wood Buffalo National Park

National parks are a unique form of public property managed by the Federal Government under the provisions of the *Canada National Parks Act*.²³³ Parks Canada, a Federal Government agency within the Ministry of the Environment, establishes national parks. It manages these parks to leave them unimpaired for the enjoyment of future generations.²³⁴ National parks protect natural environments and preserve habitats that represent Canada's natural heritage for the benefit of present and future generations.²³⁵ The Federal Government pursuant to section 5 (1) of the *Canada National Parks Act*, may establish a park if the Governor in Council is satisfied that Canada has a clear title or unencumbered right of ownership of the lands to be included in the park and if the government of the province where those lands above are located agree to their use for park purposes.²³⁶ For the Canada National Parks Act to apply, national park lands must be Federal Government property.²³⁷ Potential park areas selected for the natural region may be on federal, provincial, or territorial land.²³⁸ Several processes are involved in selecting and establishing national parks, including conducting feasibility assessments and public consultations.²³⁹ According to Parks Canada, it engages in consultations with the provincial or territorial governments' direct involvement, the local communities, Indigenous peoples, nongovernmental organizations, relevant industries, other government departments, and the interested public.²⁴⁰ For

²³³ *Canada National Parks Act*, SC 2000, c 32, 2000.

²³⁴ *Ibid*, s 4 (1).

²³⁵ Government of Canada Parks Canada Agency, "Guiding Principles and Operational Policies - Parks Canada Guiding Principles and Operational Policies", (9 September 2008), online: <<https://www.pc.gc.ca/en/docs/pc/poli/princip/sec2/part2a/part2a1>> Last Modified: 2017-06-12.

²³⁶ *Canada National Parks Act*, SC 2000, c 32, *supra* note 233.

²³⁷ Canadian Heritage, Parks Canada, "National Park System Plan: Status of Planning for Natural Regions", online: <<https://webcache.googleusercontent.com/search?q=cache:moadzxRXlagJ:https://pccdn.azureedge.net/-/media/docs/v-g/pn-np/National-Park-System-Plan-Parks-Canada.pdf%3Fmodified%3D20090819113553%26la%3Den%26hash%3D9B799D7CC4B5F6C37CE21FC46DA6B6E88CA7DE67+%&cd=5&hl=en&ct=clnk&gl=ca>> at 4.

²³⁸ *Ibid*.

²³⁹ *Ibid*.

²⁴⁰ *Ibid* at 6.

the prospective park lands on either provincial or territorial property, the province or territory negotiates an agreement with the Federal Government.²⁴¹ Once the relevant parties agree to create a new park under the Federal Government's management, the Parliament of Canada will formally establish the proposed new national park.²⁴²

In 1922, the Federal Government designated the WBNP to protect the last remnant of the wood bison (*Bison bison athabascae*).²⁴³ WBNP is Canada's largest Park. It overlaps the boundary between the Province of Alberta and the Northwest Territories, covering four and a half million hectares of forest, wetland, and prairie, including most of PAD.²⁴⁴ The most outstanding topographic features of the Park are the major rivers, the Athabasca, Peace and Slave, and the biologically productive PAD.²⁴⁵ Indigenous peoples have depended upon PAD for centuries to sustain their cultures and lifeways.

The Park is home to the Cree, Chipewyan, and Metis.²⁴⁶ The Park contains the world's largest wood bison population; moose feed in the muskeg; black bears prowl spruce forests, and beavers dam myriad creeks and rivers.²⁴⁷ Archaeological evidence shows Indigenous people have lived in the WBNP for over 8000 years, long before the arrival of the European fur traders in the early 1700s.²⁴⁸ The Indigenous communities living within and around the Park have historically viewed

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ W A Fuller, "Behaviour and Social Organization of the Wild Bison of Wood Buffalo National Park, Canada" (1960) 13:1 ARCTIC 2–19.

²⁴⁴ The Peace-Athabasca Delta (PAD) is one of the world's largest freshwater deltas, a highly productive boreal oasis of biodiversity. It is recognized as a global treasure through its designation as a RAMSAR Wetland of International Importance and is one of the main features distinguishing Wood Buffalo National Park as a World Heritage Site. Indigenous people have depended upon it for centuries to sustain their culture and lifeways. Centre, *supra* note 32. Parks Canada Agency, *supra* note 31.

²⁴⁵ Government of Canada Parks Canada Agency, "Natural Heritage - Wood Buffalo National Park", (12 January 2018), online: <<https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/decouvrir-discover/natcul1>>.

²⁴⁶ Parks Canada Agency, *supra* note 35.

²⁴⁷ Parks Canada Agency, *supra* note 31.

²⁴⁸ These are distinct peoples with unique histories, languages, cultural practices and spiritual beliefs. More than one million people in Canada identify themselves as an Indigenous person, according to the 2006 Census. Government of Canada; Indigenous and Northern Affairs Canada, "History of Indigenous peoples, Aboriginal Affairs and Northern Development Canada and the treaty relationship", (5 June 2012), online: <<https://www.aadnc-aandc.gc.ca/eng/1338907166262/1338907208830>>. Parks Canada Agency, *supra* note 35.

the establishment and operation of the Park negatively.²⁴⁹ This negative view initially stemmed from confusion over harvesting rights and, more recently, from the perceived environmental degradation of PAD.

Traditional subsistence harvest has always been an integral part of the cultural and ecological identity of the lands now comprising the Park. However, the Federal Government purported to terminate all Indigenous rights to the land after establishing the Park.²⁵⁰ The Federal Government later amended this policy and issued permits allowing only Indigenous peoples who had hunted on Park land historically to continue hunting.²⁵¹ The Supreme Court of Canada eliminated this privilege-based system in 2005, where it recognized in the case of *Mikisew Cree First Nation v. Canada* that under Treaty 8, Indigenous people had an existing right to hunt, fish, and trap for personal use in the Park.²⁵²

The Canada National Parks Act contains a widely used non-derogation clause, confirming that no one shall interpret the statute in a manner that would abrogate or derogate from aboriginal and treaty rights that have been constitutionally recognized and affirmed in Canada.²⁵³ In addition, the Canada National Parks Act is said to provide “effective” legal protection for the Park. However, the term “effective” is a matter of long-standing dispute between the Indigenous people and the Federal Government for numerous reasons but particularly concerning the infringement of Indigenous peoples’ rights and inadequate consultation with the people. The section below details the provisions of the Canadian Constitution, acknowledging Indigenous peoples’ rights and the duty of the Crown to consult Indigenous peoples in Canada.

²⁴⁹ Parks Canada Agency, *supra* note 35.

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, [2005] [2005] 3 S.C.R. 388, 2005 SCC 69 [2005] 3 SCR 388, 2005 SCC 69 .

²⁵³ *Canada National Parks Act, SC 2000, c 32, supra* note 233, s 2 (2).

4.4 Infringement of Indigenous people's rights and inadequate consultation

Indigenous peoples' rights are of primary importance because they enjoy a unique relationship with their traditional territories.²⁵⁴ In these territories, Indigenous communities engage in subsistence activities such as farming, hunting, fishing, and trapping, making them directly dependent on the land and its resources.²⁵⁵

Section 35 of the Canadian Constitution, known as the *Constitution Act 1982*, recognizes and affirms existing Aboriginal and treaty rights of the Aboriginal peoples of Canada.²⁵⁶ In essence, section 35 is the source of the Crown's legal and constitutional obligations to Indigenous people, and courts have found that the purpose of section 35 is reconciliation between the state and Indigenous societies.²⁵⁷ The Supreme Court of Canada has further defined these obligations through various cases. The *Haida*,²⁵⁸ *Taku River*,²⁵⁹ and *Mikisew Cree* decisions,²⁶⁰ also called the trilogy of cases, are important cases related to the duty to consult. The duty to consult and, where appropriate, accommodate Indigenous people requires that federal and provincial governments have a dialogue with Indigenous groups on proposed government policies or decisions that may have a detrimental effect on the interests of Indigenous people and treaty rights.²⁶¹ The Court had earlier recognized the duty to consult in the case of *R. v. Sparrow*, where the Court mentioned the duty to consult as a potential protective measure.²⁶² However, the trilogy of cases radically changed the legal landscape relating to consultation because the Supreme Court of Canada recognized that the duty to consult extends to Aboriginal rights and title claimed but not yet proven.²⁶³ These cases define the overall framework for consultation and

²⁵⁴ Lynda M Collins & Meghan Murtha, "Indigenous Environmental Rights in Canada: The Right to Conservation Implicit in Treaty and Aboriginal Rights to Hunt, Fish, and Trap -" (2010) 959:47-4 *Alberta Law Review*, online: <[https://commentary.canlii.org/w/canlii/2010CanLIIDocs297?zoupio-debug#!fragment/zoupio-_Toc2Page1-Page10/\(hash:\(chunk:\(anchorText:zoupio-_Toc2Page1-Page10\),notesQuery:\"",scrollChunk:\n,searchQuery:'mikisew%20cree%20and%20wood%20buffalo%20road',searchSortBy:RELEVANCE,tab:search\)\)>](https://commentary.canlii.org/w/canlii/2010CanLIIDocs297?zoupio-debug#!fragment/zoupio-_Toc2Page1-Page10/(hash:(chunk:(anchorText:zoupio-_Toc2Page1-Page10),notesQuery:\) at 960.

²⁵⁵ *Ibid.*

²⁵⁶ note 35.

²⁵⁷ *Delgamuukw v British Columbia*, [1997] 3 SCR 1010.

²⁵⁸ *Haida Nation v British Columbia (Minister of Forests)*, [2004] 3 SCR 511.

²⁵⁹ *Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*, [2004] 3 SCR 550.

²⁶⁰ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, *supra* note 252.

²⁶¹ *Haida Nation v. British Columbia (Minister of Forests)*, *supra* note 258 at para 35.

²⁶² *R v Sparrow*, [1990] 1 SCR 1075.

²⁶³ *Haida Nation v. British Columbia (Minister of Forests)*, *supra* note 258.

accommodation.²⁶⁴ In *Haida Nation*, the Supreme Court of Canada clarified the bounds of the duty to consult and determined that “the Crown has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights”.²⁶⁵ This decision implies that the duty to consult will apply irrespective of whether Aboriginal rights or title have been formally proven through litigation or treaty agreements.²⁶⁶

The Supreme Court of Canada further held that consultation must be meaningful where there is a duty to consult.²⁶⁷ In the case of *Rio Tinto*, the Supreme Court of Canada held that strategic, higher-level decisions such as the approval of a multi-year forest management plan or the establishment of a review process for a major gas pipeline approval could trigger the duty to consult.²⁶⁸ However, in the recent case of *Mikisew Cree First Nation v. Canada (Governor-General in Council)*, where Mikisew brought an application for judicial review in Federal Court, arguing that the Crown had a duty to consult them on the development of legislation since it had the potential to affect their treaty rights to hunt, trap, and fish under Treaty 8, the Supreme Court of Canada held that the legislative action by state legislators does not trigger the duty to consult.²⁶⁹

The law acknowledges that Indigenous people have aboriginal or treaty rights, and if the government decides to make policies or take actions that will affect those rights, then the affected Indigenous people must first be consulted and accommodated. Indigenous people have constantly challenged diverse state decisions based on the infringement of their Aboriginal and treaty rights, and MCFN is no exception. In this context, notwithstanding the Crown’s duty to consult and accommodate, Canada has a poor record of treatment of Indigenous peoples when establishing national parks. In some cases, as mentioned in the previous section, the Federal Government applied exclusionary policies and forcibly removed Indigenous peoples from the park areas or

²⁶⁴ Minister of the Department of Aboriginal Affairs and Northern Development Canada, *Aboriginal Consultation and Accommodation, Updated guidelines for Federal officials to fulfill the duty to consult* (Government of Canada, 2011).

²⁶⁵ *Haida Nation v. British Columbia (Minister of Forests)*, *supra* note 258 at para 35.

²⁶⁶ Megan Youdelis, “‘They could take you out for coffee and call it consultation!’: The colonial antipolitics of Indigenous consultation in Jasper National Park” (2016) 48:7 *Environ Plan A* 1374–1392 at 1380.

²⁶⁷ *Haida Nation v. British Columbia (Minister of Forests)*, *supra* note 258.

²⁶⁸ *Rio Tinto Alcan Inc v Carrier Sekani Tribal Council*, [2010] 2 SCR 650.

²⁶⁹ *Mikisew Cree First Nation v Canada (Governor General in Council)*, [2018] 2 SCR 765.

encouraged the Indigenous people to sell or trade their reserves for lands outside the park.²⁷⁰ During the creation of Banff National Park and Jasper National Park, the Federal Government declared the Stoney Nakoda First Nation and Métis families squatters.²⁷¹ These exclusionary policies prevented the Indigenous peoples from exercising their rights over the land they depended on for existence. However, the landmark *Calder* case in which the Supreme Court of Canada acknowledged the possibility of Aboriginal rights heralded the development of the Federal Government's comprehensive land claim process, which influenced Parks Canada to enhance their relationship with Indigenous people in Canada.²⁷² Recent developments in the legal recognition of Indigenous title and rights in Canada have resulted in the inclusion of provisions extending the right of traditional harvesting within national park reserves.

In some cases, Parks Canada may agree to the joint management of the parks with Indigenous communities.²⁷³ Canada also has a duty to consult with Indigenous peoples whose traditional territories lie within or overlap with park boundaries. The duty to consult is not confined to park management; it applies to all territories in Canada where Indigenous peoples have land claims or may assert title.²⁷⁴

Canada has several federal and provincial environmental statutes, such as the *Canadian Environmental Protection Act (CEPA)*, *Federal Species at Risk Act (SARA)*, and *Fisheries Act*, which in theory, are intended to protect lands and water that are important to Indigenous peoples. However, the general perception is that those laws have, to a large extent, failed to live up to expectations both in substance and process.²⁷⁵ Some scholars' general perception is that, substantially, the Canadian environmental law regime has been unable to protect environmental

²⁷⁰ Theodore (Ted) Binnema & Melanie Niemi, "‘Let the Line Be Drawn Now’: Wilderness, Conservation, and the Exclusion of Aboriginal People from Banff National Park in Canada" (2006) 11:4 *Environmental History* 724–750 at 726.

²⁷¹ *Ibid*; Megan Youdelis, "‘They could take you out for coffee and call it consultation!’: The colonial antipolitics of Indigenous consultation in Jasper National Park" (2016) 48:7 *Environment and Planning A: Economy and Space* 1374–1392 at 1376.

²⁷² *Calder v British Columbia (Attorney-General)*, [1973] *SCR* 313, ; Christina Godlewska & Jeremy Webber, "The *Calder* Decision, Aboriginal Title, Treaties, and the Nisga'a" in Foster Hamar, Heather Raven & Jeremy Webber, eds, *Let Right Be Done: Aboriginal Title, the *Calder* Case, and the Future of Indigenous Rights* (University of British Columbia Press, 2008) at 6.

²⁷³ *Canada National Parks Act, SC 2000, c 32*, *supra* note 233, ss 40, 41 (1), (2).

²⁷⁴ Youdelis, "‘They could take you out for coffee and call it consultation!’", *supra* note 266 at 1379.

²⁷⁵ Lynda M Collins & Meghan Murtha, "2010 CanLII Docs 297", *supra* note 254 at 962.

integrity in some Indigenous territories.²⁷⁶ The scholars also argue that procedurally, Canadian environmental regulation has historically excluded Indigenous peoples from meaningful participation in decision-making processes as neither traditional knowledge policies nor environmental assessment statutes include Indigenous peoples in the final decision-making process.²⁷⁷ This disregard has been shown in several instances when the policy exercise or environmental assessment is complete; it is left to the government to decide whether the potential economic benefit outweighs any potential harm.²⁷⁸

Nevertheless, Collins and Murtha concede that there has been some improvement in the consultation process since the specific inclusion of Indigenous interests in environmental assessment legislation both provincially and at the federal level.²⁷⁹ On the other hand, Indigenous groups express concerns about the meaningfulness of consultation, particularly concerning federal policy, regulatory and legislative changes.²⁸⁰ For instance, critical decisions that involve balancing environmental harm with other interests are often reserved for governmental decision-makers, often to the detriment of Indigenous peoples.²⁸¹

Indigenous people are also recognized in the International realm and accorded a protected status.²⁸² Indigenous peoples have unique rights, detailed in international human rights documents. An example is Article 29(1) of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), which declares that:

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for

²⁷⁶ *Ibid.*

²⁷⁷ *Ibid* at 963.

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*

²⁸⁰ Fisheries and Oceans Canada Government of Canada, “Reponses from Indigenous groups and resource management boards”, (24 July 2017), online: <<https://www.dfo-mpo.gc.ca/pnw-ppe/summaries-sommaires/indigenous-autochtones-eng.htm>> Last Modified: 2017-07-24.

²⁸¹ *Federal Reforms and the Empty Shell of Environmental Assessment*, by Bruce Pardy (Fraser Institute, 2018) at 5.

²⁸² United Nations, *UN Declaration on the Rights of Indigenous Peoples (UNDRIP)* (2017).

*Indigenous peoples for such conservation and protection, without discrimination.*²⁸³

Under the UNDRIP, in Articles 41 and 42, the United Nations provides that the organs and specialized agencies of the United Nations system and other intergovernmental organizations shall play roles to promote and protect Indigenous peoples' rights.²⁸⁴ In 2016, Canada endorsed the Declaration without qualification and committed to its full and effective implementation and, most recently, table a bill committing to aligning federal law with the Declaration.²⁸⁵ Canada only became a signatory to the UNDRIP recently, so the actions related to WBNP are outside of a federal commitment to UNDRIP.

Indigenous people continue to complain about the infringement of their rights, and the MCFN is no exception. The following section details the specific challenges MCFN has levied related to the infringement of their Aboriginal rights due to environmental impacts in WBNP and the actions taken to protect the Park.

4.5 Historical Significance of WBNP to MCFN and Impacts from Industrial Development

MCFN are Indigenous people who have lived on the land surrounding the WBNP, including PAD, long before the establishment of the Park.²⁸⁶ They are descendants of the Woodland Cree, and in the 18th century, their economy depended on subsistence farming and commercial fur trapping.²⁸⁷

²⁸³ *United Nations Declaration on the Rights of Indigenous Peoples, UN GAOR, 61st Sess., UN Doc. A/RES/61/295* (United Nations, 2007). Ironically, Canada was one of a small minority of states (including Australia, New Zealand, and the United States) that voted against the Declaration.

²⁸⁴ United Nations, *supra* note 282.

²⁸⁵ “Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, 2nd Session, 43rd Parliament, 2020”, online: <<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=11007812>>.

²⁸⁶ Mikisew Cree First Nation, *supra* note 36 at 1.

²⁸⁷ Gabrielle Slowey, *Navigating Neoliberalism: Self Determination and the Mikisew Cree First Nation* (Vancouver, Canada: UBC Press) at 7.

MCFN signed Treaty 8 in 1899 at Fort Chipewyan on Lake Athabasca.²⁸⁸ This treaty signing is significant because it formed the basis for the legal relationship between MCFN and the Federal Government.²⁸⁹ MCFN's lands and rights depend on the PAD and surrounding waters.²⁹⁰ PAD is an intrinsic part of MCFN, and the attachment runs deep. In the introductory statement contained in the report prepared by MCFN for the 2016 UNESCO mission, MCFN describes the importance of PAD to them as a people;

*We are the Mikisew Cree First Nation. We are people of the Peace–Athabasca Delta, and since the 1920s, we have lived with Wood Buffalo National Park at the centre of our lands. We were there before it was a park. Our culture is from this area. Our culture is here. Ayapaskaw, in our Cree language, means a place where all the creeks and waterways join and wind together with grasses and green things to form a living delta. The delta, Ayapaskaw, is precious to us. It is our home, our grocery store, our classroom, our church, our highway, and our photo album. The delta informs our thinking. How we think and how we see the world — that comes from the delta. As Mikisew people, it is the place where our happiest memories live. The delta is what the animals love — muskrat, beaver, moose, bison, fish, birds, and other living things — and in the delta, water is everything. nipī tapitum.*²⁹¹

The above statement captures the essence of the significance of these sites to MCFN. The PAD is located where the waters of the Rocky Mountains flow through the lower Peace and Athabasca Rivers to join Lake Athabasca and then continue north as the Slave River.²⁹² It is said to be the heart of their traditional territory in North-Eastern Alberta. The ecological diversity and richness of PAD play a significant role in the cultural practices of MCFN, their knowledge, and way of life.²⁹³ It is essential to MCFN and the world in general.²⁹⁴ A unique feature of PAD is that it is

²⁸⁸ Mikisew Cree First Nation, *supra* note 36. Treaty 8 is the agreement that was signed by the Queen of England and the first nations people that inhabited what is now the northern half of Alberta, the northeast quarter of British Columbia, the northwest corner of Saskatchewan, and the area south of Hay River and Great Slave Lake in the Northwest Territories. Treaty rights include rights to areas used for hunting, fishing, cultural activities and burial grounds within all of Treaty 8. *Treaty Research Report - Treaty Eight (1899)*, report, by Government of Canada; Indigenous and Northern Affairs Canada; Communications Branch, www.aadnc-aandc.gc.ca, report (2009).

²⁸⁹ Slowey, *supra* note 51 at 7.

²⁹⁰ Mikisew Cree First Nation, *supra* note 36.

²⁹¹ *Ibid* at 4.

²⁹² *Ibid* at 5.

²⁹³ *Ibid* at 17.

²⁹⁴ *Ibid* at 25.

one of the largest inland freshwater deltas in the world, spans 3900 square kilometres, made up of rivers, lakes, channels, marshes, and grasslands, which provide habitat for various species of mammals, birds, and fish.²⁹⁵ Another unique feature of PAD is that it contains the last remaining natural nesting site of the Whooping Crane, which was previously considered an endangered species.²⁹⁶ Eighty per cent of PAD is within the WBNP, and it supplies essential ecosystem services such as water purification, floodwater attenuation, and support of migratory waterfowl and threatened or rare species.²⁹⁷ Despite its outstanding value to Canada and the world, the Indigenous communities and environmental organizations see the Park and PAD as under threat from hydroelectric developments and oil and gas activities.²⁹⁸

To MCFN, water is everything. *Sakaw pimacihwin*, otherwise known as Indigenous knowledge, literally means “bush way of life.”²⁹⁹ Indigenous Knowledge (IK) or Indigenous Traditional Knowledge (ITK) is cultural knowledge transmitted by knowledge holders of MCFN through oral tradition.³⁰⁰ These knowledge holders believe that regular flooding of the Peace and Athabasca Rivers maintain the health of PAD as these floods flush freshwater into PAD, dislodge old water and provide fertile ground for the habitat.³⁰¹ The magnitude and timing of the Rivers' flow are the two main factors that determine whether a flood will occur and the habitat will flourish.³⁰² When the Peace River is high, adjoining rivers flow into the PAD instead of flowing away.³⁰³ This effect is often aided by ice damming at particular places, and this process is called hydraulic damming.³⁰⁴ Hydraulic damming is a natural type of damming against the hydro dam, which is human-made or artificial and produces hydroelectricity.³⁰⁵

²⁹⁵ Parks Canada Agency, *supra* note 245.

²⁹⁶ Centre, *supra* note 32. The *Species at Risk Act*, protects endangered species and their critical habitat, including the breeding grounds of the whooping crane. “Species at Risk Act, SC 2002, c 29”, online: <<https://www.canlii.org/en/ca/laws/stat/sc-2002-c-29/latest/sc-2002-c-29.html>>.

²⁹⁷ Kevin P Timoney, “Three centuries of change in the Peace–Athabasca Delta, Canada” (2009) 93:3 *Climatic Change* 485–515.

²⁹⁸ note 205.

²⁹⁹ Mikisew Cree First Nation, *supra* note 36 at 12.

³⁰⁰ *Ibid.*

³⁰¹ *Ibid* at 13.

³⁰² *Ibid* at 14.

³⁰³ *Ibid.*

³⁰⁴ *Ibid* at 15.

³⁰⁵ *Ibid* at 16.

The British Columbia Hydro and Power (BC Hydro)³⁰⁶ has built two dams on the Peace River and is constructing a third dam, called Site C. In 1967, BC Hydro built the Site A Dam (the first in the series of dams and later named the W.A.C. Bennett Dam), kilometres west of Hudson's Hope in British Columbia.³⁰⁷ The Site A dam's construction and its reservoir were controversial because it flooded 350,000 acres of forested-land, causing loss of biodiversity and timber and mineral rights.³⁰⁸ The construction also resulted in the displacement of some residents, such as the Sekani First Nation, whose removal BC Hydro admitted in 1977 led to social isolation and significantly impacted Sekani culture.³⁰⁹ The Mikisew oral historians have memories of frequent large scale flooding that occurred before the dam's construction. They confirm that the frequency and magnitude of such floods have declined considerably after the dam's construction.³¹⁰ This decline has caused fluctuations in the water levels and the desiccation of land resulting in animals moving away, migratory birds losing their wetlands and feeding habitats, and MCFN's loss of boat access to some parts of their territory.³¹¹

In 1980, BC Hydro constructed the Site B dam, also called the Peace Canyon dam, approximately 23 kilometres away from the W.A.C. Bennett Dam. BC Hydro designed the Site B dam to re-use water already used to generate electricity from the Site A dam.³¹² There were plans in the 1950s to build the Site C dam at a site 83 kilometres away from the Peace Canyon Dam, about seven kilometres southwest of Fort St. John, but the Provincial Government shelved the plans at the time.³¹³ The Provincial Government vetoed the Site C dam proposal twice in 1982 and 1989 after several BC Utilities Commission hearings, deciding it did not need more electricity.³¹⁴ In April

³⁰⁶ BC Hydro, "British Columbia Hydro and Power (BC Hydro)", online: <<https://www.bchydro.com/toolbar/about.html>>. BC Hydro is a Provincial Crown corporation, owned solely by the government and people of British Columbia. BC Hydro provides electricity throughout the province.

³⁰⁷ Tina Loo, "Disturbing the Peace: Environmental Change and the Scales of Justice on a Northern River" (2007) 12:4 *Environmental History* 895–919 at 900.

³⁰⁸ *Ibid* at 901.

³⁰⁹ CBC News · Posted: Dec 16, 2014 12:24 PM PT | Last Updated: December 17, & 2014, "Site C dam: How we got here and what you need to know | CBC News", (16 December 2014), online: *CBC* <<https://www.cbc.ca/news/canada/british-columbia/site-c-dam-how-we-got-here-and-what-you-need-to-know-1.2874998>>.

³¹⁰ Mikisew Cree First Nation, *supra* note 36 at 13.

³¹¹ *Ibid* at 14.

³¹² Dec 16, December 17, & 2014, *supra* note 309.

³¹³ *Ibid*.

³¹⁴ *Ibid*.

2010, the BC government, under the then Premier, Gordon Campbell, resurrected the Site C proposal and moved it to the regulatory review phase.³¹⁵ In the proposal, the Site C dam would require the flooding of approximately 5,500 hectares of land and more than 83 kilometres of river valley along the Peace River and its tributaries.³¹⁶ This area would include over 3,000 hectares of wildlife habitats, heritage sites, and agricultural land. The affected First Nations insist that the destruction of the valley and the obliteration of several sacred sites would have a devastating impact. Local farmers are also opposed to the loss of land loss for agriculture, and environmentalists are concerned about the potential loss of wildlife habitat.³¹⁷ Consequently, members of the Treaty 8 First Nations boycotted the official announcement ceremony at the W.A.C. Bennett Dam in April 2010. The duo of MCFN and ACFN filed a lawsuit opposing the dam.³¹⁸

A recent study conducted by Craig Candler and the Firelight Group Research Cooperative with ACFN and MCFN shows that Indigenous knowledge holders expressed their frustration, disgust, and disappointment with the BC Provincial Government concerning the continued plans to build a third dam on the River.³¹⁹ These knowledge holders were unhappy that despite their complaints about decades of suffering and loss in PAD resulting from the continuous effects of the first and second dams and the unremitting efforts by ACFN and MCFN to articulate and present the resultant impacts to BC Hydro and the Provincial Government, BC Hydro had proposed a third dam on the Peace River.³²⁰

BC Hydro maintains that the Federal-Provincial Governments carried out an independent, rigorous, and comprehensive environmental assessment which included a Joint Review Panel Process over three years.³²¹ The Canadian Environmental Assessment Agency (CEA) and the British Columbia Environmental Assessment Office (BCEAO) carried out the environmental

³¹⁵ *Ibid.*

³¹⁶ *Ibid.*

³¹⁷ *Ibid.*

³¹⁸ *Ibid.*

³¹⁹ Craig Candler et al, *Athabasca Chipewyan First Nation and Mikisew Cree First Nation Initial Report on Peace River Knowledge and Use for BC Hydro's Proposed Site C Project* (2013) at 15.

³²⁰ Candler et al, *supra* note 319.

³²¹ "Environmental Assessment Process | Site C", online: <<https://www.sitecproject.com/environmental-assessment>>.

assessment process. This environmental assessment process began in August 2011 and provided multiple opportunities for participation and engagement by the public, Indigenous groups, all government levels, and other interested stakeholders, and concluded in 2014.³²² BC Hydro maintains that it carried out multi-year studies to assess potential project effects better and proposed comprehensive mitigation measures.³²³ As part of a harmonized environmental assessment process, the Independent Joint Review Panel reviewed the Environmental Impact Statement and subjected it to public hearings in several regional and Indigenous communities.³²⁴ The Joint review panel concluded that the project would significantly affect the current use of land and resources for Aboriginal peoples' traditional purposes but would not have any measurable effect on PAD. It concluded that BC Hydro's project design and planned project management would mitigate risks and associated environmental effects due to potential accidents and malfunctions.³²⁵ In December 2014, the Provincial Government approved the construction of the Site C project. Deep disapproval by Indigenous people trailed this approval. This position resulted in a series of appeals for judicial review, which the Supreme Court dismissed.³²⁶

There have been debates on changes in the water levels, vegetation, and wildlife in PAD. They have prompted a series of studies such as that conducted by Farley and Cheng in 1986.³²⁷ It is not in dispute that PAD's biotic composition has altered over the years.³²⁸ However, despite these studies, there is no consensus on the exact reason why the PAD's ecosystem has changed.³²⁹ Some researchers allude to the natural effects of climate change being the reason for the deterioration in PAD quality. Some argue that human activities such as over-flooding by dams, activities of pulp

³²² *Ibid.*

³²³ *Ibid.*

³²⁴ *Ibid.*

³²⁵ *Report of the Joint Review Panel; Site C Clean Energy Project; BCHydro and Power Authority, British Columbia*, by Canadian Environmental Assessment Agency & British Columbia Environmental Assessment Office (2014) at iv.

³²⁶ *Prophet River First Nation, et al v Minister of the Environment, et al*, 2017 CanLII 40513 (SCC), 2017 Indigenous people believe that the damming and management of the Peace River to create hydropower has changed the spring flood's timing and reduced the frequency and magnitude of flooding in the PAD. Without regular spring flooding, PAD stops functioning and water withdrawals from the Athabasca River for Oil Sands production and global warming compound the problem. note 35.

³²⁷ DW Farley & H Cheng, "Hydraulic Impact of Flow Regulation on the Peace-Athabasca Delta" (1986) 11:1 Canadian Water Resources Journal 26-42.

³²⁸ Timoney, *supra* note 297.

³²⁹ "Peace-Athabasca Delta Ecological Monitoring Program - (PADEMP)", online: <<http://www.pademp.com/>>.

mills, Oil Sands deposits, and hydraulic fracturing are the cause. In contrast, others believe it is a combination of both natural and unnatural factors.³³⁰

Oil Sands development poses grave environmental and social challenges,³³¹ including in the watershed of WBNP. Aside from the fact that the crude derived from Oil Sands is more carbon-intensive than conventional crude, due to the greenhouse gas emissions associated with its production techniques, it presents other environmental challenges, particularly with water use and disposal.³³² The extraction process utilizes large volumes of water, and a significant percentage of this water comes from freshwater sources.³³³ With the recent increase in Oil Sands production, ITK holders, Elders, and Mikisew land users have noted simultaneous negative changes to environmental quality.³³⁴ Also, a high number of rare types of cancer incidences and deaths have left community members wondering about the links between water quality, Oil Sands development, and health in the community.³³⁵ Several studies have attempted to determine the effects of Oil Sands on the Athabasca River and, by extension, on the area's inhabitants. A study reported the presence of arsenic and mercury in the water³³⁶. In 2009, the Alberta Cancer Board discovered that at Fort Chipewyan, cancer incidence was 29 per cent higher than the Alberta average, and there were elevated rates of diabetes, hypertension, renal failure, and lupus.³³⁷

³³⁰ Casey R Remmer et al, "Inconsequential effects of flooding in 2014 on lakes in the Peace-Athabasca Delta (Canada) due to long-term drying" (2018) 63:4 *Limnology and Oceanography* 1502–1518. Mikisew Cree First Nation, *Written Brief of the Mikisew Cree First Nation to the Standing Committee on Environment and Sustainable Development* (2016). Candler et al, *supra* note 319. Timoney, *supra* note 297.

³³¹ Timoney, *supra* note 297.

³³² *Ibid.*

³³³ Council of Canadian Academies, "Environmental Impacts of Shale Gas Extraction in Canada", online: <<https://www.scienceadvice.ca/reports/environmental-impacts-of-shale-gas-extraction-in-canada/>>.

³³⁴ Mikisew Cree First Nation, *supra* note 330.

³³⁵ Alberta Cancer Board, Division of Population Health and Information, Surveillance, & Alberta Cancer Board, *supra* note 38 at 7.

³³⁶ Timoney, *supra* note 38.

³³⁷ Alberta Cancer Board, Division of Population Health and Information, Surveillance, & Alberta Cancer Board, *supra* note 38 at 33. In Timoney, *supra* note 113, the author noted that arsenic is a known cause of bile duct, liver, urinary tract, and skin cancers, as well as vascular diseases and Type II diabetes. Mercury exposure is associated with a variety of neurological and organic disorders, including damage to immune and cardiovascular systems. Many PAHs are known human carcinogens, and exposure can lead to reproductive and congenital disabilities, decreased body weight, and harmful effects on skin and immunity. The study concluded that the increased prevalence of fish deformities over the past 30 years noted by local fishermen in Fort Chipewyan is consistent with known effects of PAH exposure.

Additionally, a 2014 study by researchers at the University of Manitoba has linked the declining health of community members to environmental contamination of their areas, particularly the Oil Sands development.³³⁸ According to researchers at the University of Manitoba, in collaboration with ACFN and MCFN, this study is based on three years of community-based participatory research that incorporated traditional knowledge of Fort Chipewyan communities and scientific observation practices.³³⁹ The study analyzed almost every aspect of the environment in the community and took into consideration their lifestyles. In the report, the researchers analyzed everything, ranging from water, vegetation, wildlife, animal health, heavy metals to Polycyclic Aromatic Hydrocarbons (PAHs) in traditional food. Their analyses showed that as a result of bitumen processing, which releases large amounts of various toxins, there were high concentrations of carcinogenic PAHs and heavy metals such as arsenic, mercury, cadmium selenium found in samples taken from animals like the moose, ducks, and muskrats.³⁴⁰ The study linked cancer occurrence to upstream Oil Sands development with a significantly higher incidence rate for people who have worked in the Oil Sands and those who frequently consume traditional foods and local fish.³⁴¹ It further detailed evidential decline in some species of the fish population and apparent symptoms of sickness, including lesions and tumours, and, in some cases, deformities in other species.³⁴² This University of Manitoba report concludes by acknowledging that there have been substantial declines in environmental quality over the last half a century.³⁴³ These environmental declines are mainly triggered by PAHs and Hydro development and cause changes in water and vegetation, which have, in turn, affected a wide diversity of animal species.³⁴⁴ Unfortunately, analysts project that these declines will only continue to escalate in the future if the Oil Sands industry continues to expand and if BC Hydro completes the construction of the Site C dam.³⁴⁵

³³⁸ “*Water is a living thing*” *Environmental and health implications of the Athabasca oil sand for the Mikisew Cree First Nation and the Athabasca Chipewyan First Nation in Northern Alberta. Phase 2 Report*, by Stéphane M McLachlan (University of Manitoba, 2014).

³³⁹ *Ibid.*

³⁴⁰ *Ibid* at 11.

³⁴¹ *Ibid* at 12.

³⁴² *Ibid.*

³⁴³ *Ibid* at 14.

³⁴⁴ *Ibid.*

³⁴⁵ *Ibid.* Timoney, *supra* note 297. The Narwhal, “Where is the action to save Wood Buffalo National Park?”, online: *The Narwhal* <<https://thenarwhal.ca/where-action-save-wood-buffalo-national-park/>>.

MCFN and CPAWS faced a series of blockages in the Canadian domestic legal system. Some examples include the 2003 Federal Court of Appeal decision dismissing an application brought by CPAWS for judicial review of the approval by the Minister of Canadian Heritage to establish a winter road in Wood Buffalo National Park.³⁴⁶ It was intended that the proposed winter road would be used principally to connect residents of existing and projected small communities of Indigenous peoples within and around the Park. MCFN were concerned that the road could adversely affect their traplines in the Park and damage their traditional way of life, so they also challenged the road approval based on failure to adequately consult with them about potential infringement of their treaty rights.³⁴⁷ The Supreme Court of Canada ruled in favour of MCFN and against the construction of the winter road because the Crown had failed to respect Indigenous treaty rights by adequate consultation with MCFN.³⁴⁸

MCFN concerns about the enactment of a new federal environmental assessment law in 2012 prompted MCFN to initiate another action in Court challenging the Crown's duty to consult regarding the development of legislation that has the potential to adversely affect MCFN's treaty rights.³⁴⁹ Furthermore, the recent Supreme Court of Canada decision in *Mikisew Cree First Nation v. Canada (Governor-General in Council)*,³⁵⁰ mentioned earlier, where the court held that the duty to consult doctrine is ill-suited for legislative action, could serve as another example of a blockage.

³⁴⁶ *Canadian Parks and Wilderness Society v Canada (Minister of Canadian Heritage)*, [2003] 4 FC 672.

³⁴⁷ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, *supra* note 252.

³⁴⁸ *Ibid.*

³⁴⁹ *Mikisew Cree First Nation v. Canada (Governor General in Council)* *supra* note 60. At the time, the Federal Government introduced two omnibus bills to repeal the *Canadian Environmental Assessment Act*. The new legislation would allow oil companies and other organisations to build structures on or near waterways without government approval and failed to include protection mechanisms for fish and wildlife. The Federal Government did not consult with MCFN on either of the bills at any stage of their development before they were passed into legislation. MCFN claimed that the Crown had a legal duty, founded in the doctrine of the 'honour of the Crown', to consult on the potential adverse impact on Treaty rights during the legislative development stage. MCFN sought declarations to that effect. The Federal Court agreed with MCFN and declared that the proposed enactment of those omnibus bills triggered a duty to consult and that MCFN were entitled to notice of the relevant legislative provisions, in addition to an opportunity to make submissions. On appeal, a majority of the Federal Court of Appeal found that the Federal Courts Act precluded judicial review of the legislative process- *Canada (Governor General in Council) v. Mikisew Cree First Nation*, 2016 FCA 311 (CanLII), [2017] 3 FCR 298. Per "J.D. Denis Pelletier" in para 100, the Court found that the development of policy is a legislative function immune from judicial review. MCFN appealed to the Supreme Court. The Supreme Court unanimously dismissed the appeal for want of jurisdiction - *Mikisew Cree First Nation v. Canada (Governor General in Council)*, 2018 SCC 40 (CanLII), [2018] 2 SCR 765. In addition, in para two, Karakatsanis J, writing for Wagner CJ and Gascon J found that the law-making process – comprising the development, passage and enactment of legislation – does not trigger the duty to consult.

³⁵⁰ *Ibid.*

MCFN and CPAWS were so frustrated by domestic setbacks that transnational circumvention became attractive, and they pursued the UNESCO avenue as a supplement.

The international redress option became necessary as MCFN believed that they had used all domestic avenues (including participation in regulatory processes and legal action) at their disposal to persuade the Federal and Provincial Governments to take steps to manage and address the threats to the WBNP effectively.³⁵¹

Although the law protects the Park from general development and acknowledges treaty rights, the degree of industrial development outside of WBNP results in adverse impacts to Indigenous communities, including the MCFN. The MCFN thus decided to appeal to international arenas to influence Canada to protect the Park better. MCFN chose UNESCO as the preferred ally and, in 2014, submitted a petition requesting the listing of WBNP as a World Heritage in Danger.

4.6 UNESCO's Involvement with WBNP

The WBNP is a World Heritage Site. A World Heritage Site is an area or a landmark accorded some form of legal protection by an International Treaty called '*The Convention Concerning the Protection of the World Cultural and Natural Heritage*' (the World Heritage Convention or Convention), which UNESCO adopted in 1972.³⁵² The World Heritage status is a title given to any place or landmark of cultural and natural heritage that UNESCO identifies and recognizes as being of OUV to humanity and therefore worthy of protection and preservation.³⁵³ The World Heritage Centre is the body within UNESCO charged with coordinating all matters related to World Heritage.³⁵⁴ The World Heritage General Assembly is one of the governing bodies of the World Heritage Convention. It consists of representatives of all State Parties (Countries that have ratified the Convention).³⁵⁵ The other governing body is the WHC, which consists of representatives from

³⁵¹ Mikisew Cree First Nation, *supra* note 40 at 9.

³⁵² UNESCO World Heritage Centre, "Convention Concerning the Protection of the World Cultural and Natural Heritage", online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/conventiontext/>>.

³⁵³ Centre, *supra* note 32.

³⁵⁴ *Ibid.*

³⁵⁵ *Ibid.*

21 of the State Parties to the Convention elected by the General Assembly.³⁵⁶ The WHC is responsible for implementing the Convention and is the coordinator of all World Heritage matters such as providing advice and assistance to State Parties,³⁵⁷ as well as having the final say on the decision to inscribe a property on the World Heritage List. It examines reports on the State of Conservation of inscribed properties and asks State Parties to act when it receives reports of ineffective site management.³⁵⁸ It also decides on the inscription or deletion of properties on the List of World Heritage in Danger.³⁵⁹ WHC adopted the definition of OUV as contained in paragraph 49 of the Operational Guidelines for the implementation of the World Heritage Convention.³⁶⁰

*OUV means cultural and natural significance, which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.*³⁶¹

The most important feature of the World Heritage Convention is that it links the principles of protecting nature and preserving cultural properties together in a single text. The Convention acknowledges how people communicate with nature and the basic need for harmony between the two to be maintained.³⁶² Articles 1 and 2 of the Convention describe the various definitions of cultural and natural heritage, and the term OUV mentioned above is embodied in the Convention.³⁶³

In 1982, the International Union for the Conservation of Nature (IUCN) acknowledged that Wood Buffalo protected two wetland areas of international significance — the Peace-Athabasca Delta and the Whooping Crane nesting area.³⁶⁴ This recognition resulted in the IUCN designating of the areas as Ramsar sites — a designation pursuant to the Ramsar Convention that focuses on

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*

³⁵⁸ *Ibid.*

³⁵⁹ Centre, *supra* note 354. Article 11.4 of the Convention provides that the WHC may compile a list of World Heritage Sites for the conservation of which major operations are necessary and for which assistance is requested under this Convention. These sites are those considered as under threats by serious and specific dangers including large-scale public or private projects and changes in water level, floods, and tidal waves.

³⁶⁰ Centre, *supra* note 33.

³⁶¹ *Ibid.*

³⁶² Centre, *supra* note 354.

³⁶³ *Ibid.*

³⁶⁴ International Union for Conservation of Nature and Natural Resources, *World Heritage Nomination* (IUCN Technical Review, 1983).

identifying and protecting critical habitat for migratory birds.³⁶⁵ The Ramsar Convention classifies wetlands as all lakes and rivers, underground aquifers, swamps and marshes, wet grasslands, peatlands, oases, estuaries, deltas, and tidal flats, mangroves and other coastal areas, coral reefs, and all human-made sites such as fish ponds, rice paddies, reservoirs, and salt pans. Wetlands are part of the most diverse and productive ecosystems.³⁶⁶ They are, in fact, essential services as they supply all the freshwater in the world.³⁶⁷

Later that year, the Federal Government brought WBNP to UNESCO's attention and requested its inclusion on the World Heritage List because of the biological diversity of the PAD and the wild bison population.³⁶⁸ After due consultation to ensure that it met all the criteria for inclusion, the WHC recommended the Park's listing. In 1983, UNESCO granted the WBNP World Heritage status, and it was the eighth Site with that status in Canada at the time and the 256th in the world.³⁶⁹ UNESCO expects State Parties to protect and preserve the OUV of their inscribed properties and give periodic reports on the properties' condition.³⁷⁰ Since the inscription of WBNP, UNESCO, through the WHC, has monitored the Site through periodic State of Conservation reports, as the WHC is tasked with the duty, among others, to scrutinize the periodic state of conservation reports submitted to it by the state parties.³⁷¹ MCFN, disappointed with the Canadian government's failure to address impacts of hydroelectric regulation on the Peace River, the industrial development of Alberta's oils sands region, which threaten the integrity of WBNP, the effects of climate change, and the absence of definite steps to increase the resilience of PAD, submitted a Petition to UNESCO.³⁷² The Petition relied on Article 11.4 of the Convention and requested UNESCO to inscribe the WBNP on the World Heritage in Danger list.³⁷³ MCFN insisted that placement of

³⁶⁵ Parks Canada Agency, *supra* note 245. "The Ramsar Convention and its mission | Ramsar", online: <<https://www.ramsar.org/about/the-ramsar-convention-and-its-mission/>>.

³⁶⁶ note 367.

³⁶⁷ *Ibid.* The Convention's mission is, "the conservation and wide use of all wetlands through local and national actions and International cooperation, as a contribution towards achieving sustainable development throughout the world." The International Union for Conservation of Nature (IUCN) provides administrative services to the Ramsar Convention.

³⁶⁸ Parks Canada Agency, *supra* note 245.

³⁶⁹ *Ibid.*

³⁷⁰ UNESCO World Heritage Centre, "States Parties", online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/statesparties/>>.

³⁷¹ Centre, *supra* note 32.

³⁷² Mikisew Cree First Nation, *supra* note 40 at 7–8.

³⁷³ *Ibid* at 13.

WBNP on the List of World Heritage in Danger was necessary to highlight the threats of existing and proposed hydroelectric flow regulation, further Oil Sands development, and climate change to the sensitive ecosystems of PAD. In addition, MCFN reiterated that the designation is important to provide a catalyst for British Columbia, Alberta, the Northwest Territories, and Canada to better manage this unique environment in cooperation with the local Indigenous communities that rely on it.³⁷⁴

Several reactions trailed the receipt of the Petition, including a joint WHC/IUCN RMM.³⁷⁵ The WHC urged the Government of Canada to review the cumulative impacts of all the hydroelectric dam projects, Oil Sands development, and open-pit mining on the Park's OUV, taking the effect of climate change into full consideration, and to complete a Strategic Environmental Assessment (SEA), in line with IUCN's World Heritage Advice Note on Environmental Assessment.³⁷⁶ WHC further requested that the State Party not take any decision related to any of the development projects that would be difficult to reverse and submit the SEA to the WHC for review by IUCN.³⁷⁷ Finally, the WHC requested Canada to invite a joint WHC/IUCN RMM to WBNP to review the impacts of the Site's developments and evaluate its SOC.³⁷⁸ In responding to the request for a reactive monitoring mission in 2016, the WHC and IUCN visited Canada to assess the state of the WBNP. The RMM determined that the pace and scale of development pressures outside the Park's boundaries (specifically hydroelectric and Oil Sands development) and climate change posed threats to its world heritage values.³⁷⁹ Part of the RMM included a SEA prepared by Independent

³⁷⁴ *Ibid* at 9.

³⁷⁵ A Reactive Monitoring Mission is part of the statutory reporting by the Secretariat and the Advisory Bodies to the WHC on the state of conservation of specific properties that are under threat. They are requested by the WHC to ascertain, in consultation with the State Party concerned, the condition of the property, the dangers to the property and the feasibility of adequately restoring the property or to assess progress made in implementing such corrective measures, and include a reporting back to the Committee on the findings of the mission. Centre, *supra* note 33 at para 169.

³⁷⁶ UNESCO World Heritage Centre, "UNESCO World Heritage Centre - Decision - 39 COM 7B.18", (2015), online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/decisions/6275>>.

³⁷⁷ *Ibid*.

³⁷⁸ UNESCO World Heritage Centre, "UNESCO World Heritage Centre - State of Conservation (SOC 2015) Wood Buffalo National Park (Canada)", (2015), online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/SOC/3318/>>.

³⁷⁹ *Report of the joint WHC/IUCN Reactive Monitoring mission to Wood Buffalo National Park, Canada*, by World Heritage Centre/IUCN (2016) at 46.

Environmental Consultants. The SEA relied on existing information and materials provided by experts and knowledge holders but did not undertake any studies itself.³⁸⁰

In July 2017, UNESCO WHC requested that Canada develop an Action Plan for WBNP by December 1, 2018 (later amended to February 1, 2019).³⁸¹ Canada complied with the decision of the WHC and drew up an Action Plan, which it submitted on February 1 2019.³⁸² Parks Canada coordinated the creation of the Action Plan with the cooperation of the governments of Alberta, the Northwest Territories, and British Columbia (through a Federal-Provincial-Territorial Coordinating Committee) and in collaboration with the 11 Indigenous communities of WBNP. The Action Plan contains 142 actions, organized across seven thematic areas, that are required to protect the world heritage values of WBNP.³⁸³ The scope of these 142 actions ranges in approach from strengthening relationships with Indigenous partners to enhancing research, monitoring, and management of the PAD, to using both science-based and Indigenous knowledge, to increasing protection of ecosystems within and beyond WBNP, to supporting the recovery of the Whooping Crane and the Wood Bison.³⁸⁴ The Action Plan, developed by Parks Canada, is to address the WHC's recommendations and show commitment to conserving the OUVs.³⁸⁵ In furtherance of the Action Plan's implementation, the Federal Government committed \$27.5 million to the development and early implementation of the Action Plan in the 2018 Budget.³⁸⁶

Responding to Canada's submissions of the progress report and updated Action Plan, WHC requested that Canada provide a detailed update on the progress towards undertaking an environmental flow and hydrology assessment as recommended in the 2016 mission. WHC requested that Canada fully consider SEA's recommendations in future environmental impact

³⁸⁰ Government of Canada Parks Canada Agency, "Strategic Environmental Assessment - Wood Buffalo National Park", (10 August 2018), online: <https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/info/SEA_EES/bulletin> at EX-2.

³⁸¹ Government of Canada Parks Canada Agency, "Development of the Action Plan - Wood Buffalo National Park", (7 November 2018), online: <https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/info/SEA_EES/action>.

³⁸² *Ibid.*

³⁸³ *Ibid.*

³⁸⁴ *Ibid.*

³⁸⁵ *Ibid.*

³⁸⁶ *Ibid.*

assessments and decision-making for relevant developments.³⁸⁷ WHC also requested that Canada implement the Action Plan in a timely manner with adequate funding to prevent the continued deterioration of the Park's OUV.³⁸⁸

Finally, WHC requested the State Party to submit to the WHC, by December 1 2020, an updated report on the state of conservation of WBNP and the implementation of the above, including detailed information on the outcomes of continued assessments, mitigation, and compliance measures, concerning potential impacts of the Site C hydropower project and other major dams on the Peace River on the OUV of the property, for examination by the WHC at its 45th session in 2021. On December 21 2020, Canada submitted a late response to WHC dated December 1 2020, detailing the milestones achieved by implementing some Action Plan aspects.³⁸⁹ Canada reports a strengthened collaboration between WBNP and its Indigenous partners, resulting in improved cooperative management, increased scientific capacity for park management, and specific policies to provide enhanced economic opportunities for Indigenous peoples at WBNP.³⁹⁰ The report indicates that intensive collaborative work on the Action Plan themes has resulted in improved impact assessment processes, the establishment of extensive protected areas adjacent to, and buffering, the Park, and research, monitoring, and management activities that support the recovery of species at risk, including the threatened Wood Bison and endangered Whooping Crane.³⁹¹ Canada insists that over half of the actions detailed in the Action Plan are completed or underway at this early stage of implementation.³⁹² Finally, the report concludes that “[t]he Government of Canada recognizes the scale and complexity of issues facing the property and remains committed to continuing the collaborative efforts with Provincial, Territorial and Indigenous government partners required to ensure the ongoing protection of the property's OUV for future

³⁸⁷ UNESCO World Heritage Centre, “UNESCO World Heritage Centre - State of Conservation (SOC 2019) Wood Buffalo National Park (Canada)”, online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/soc/3905/>>.

³⁸⁸ *Ibid.*

³⁸⁹ The Narwhal, “Canada finally has a plan to protect Wood Buffalo’s UNESCO world heritage status. Will it be enough?”, online: *The Narwhal* <<https://thenarwhal.ca/wood-buffalo-national-park-plan/>>. *Report on the State of Conservation of Wood Buffalo National Park World Heritage Site (Canada) in response to World Heritage Committee Decision 43 COM 7B.15*, by Government of Canada (2020) at 2.

³⁹⁰ Government of Canada, *supra* note 391 at 2.

³⁹¹ *Ibid.*

³⁹² *Ibid.*

generations.”³⁹³ The WHC will examine Canada’s report at its 45th session in 2021 and decide whether Canada has implemented the Action Plan in a timely manner with adequate funding to prevent further deterioration of the Park’s OUV. If the WHC finds otherwise, it may recommend the Park’s inclusion on the List of World Heritage in Danger.³⁹⁴

The Petition process generated several reactions from all the parties involved, particularly MCFN and CPAWS. Canada’s decision not to conduct another environmental impact assessment on the Site C Dam stirred up feelings of disappointment in several quarters. These organizations believe that this omission fails to address underlying issues, and the construction of another dam conflicts with the protection of the PAD.³⁹⁵ Both MCFN and CPAWS assert that this omission is crucial because the Action Plan overlooked strong water resource management both within and outside the Park, which is key to protecting the species that depend on the Park and maintaining the traditional uses of the Park for future generations.³⁹⁶

Canada missed the December 1, 2020, deadline for submission of the WBNP SOC report. This late submission prompted some concerns from concerned parties regarding Canada’s commitment to the Action Plan.³⁹⁷ The delay in the submission was interpreted as the Federal Government not taking conservation and Indigenous issues seriously. These concerns informed the decision by MCFN, CPAWS, some ENGOs, and a coalition of leaders from the Northwest Territories to submit a letter to WHC, detailing their on-the-ground perspective of crucial steps that they feel are not fully addressed from the Action Plan, with many actions stalled despite their importance.³⁹⁸ CPAWS had earlier expressed its approval of the \$27.5 million Canada budgeted in 2018 to protect the Park while hoping to see a significant increase in funding to support the Action Plan

³⁹³ *Ibid.*

³⁹⁴ Centre, *supra* note 389.

³⁹⁵ “CPAWS’ Response to the Wood Buffalo National Park Action Plan | Alberta Environmental Network”, online: <<https://www.aenweb.ca/media/cpaws-response-wood-buffalo-national-park-action-plan>>.

³⁹⁶ *Ibid.*

³⁹⁷ Anna Desmarais · CBC News · Posted: Dec 15, 2020 6:00 AM CT | Last Updated: December 15, & 2020, “‘We’re just frustrated’: Missed UNESCO deadline a setback for Wood Buffalo National Park, advocates say | CBC News”, (15 December 2020), online: *CBC* <<https://www.cbc.ca/news/canada/north/missed-unesco-deadline-wood-buffalo-1.5841504>>.

³⁹⁸ “Conservation of Wood Buffalo National Park of ‘significant concern’, Indigenous communities call for more decisive action – CPAWS Northern Alberta”, online: <<https://cpawsnab.org/wood-buffalo-conservation-outlook-of-significant-concern/>>.

adequately.³⁹⁹ In December 2020, Canada’s Minister of Environment and Climate Change announced a \$59.9 million funding commitment to implement Action Plan over the next three years. In response, MCFN acknowledges that the government’s new funding commitment is substantial, especially in addition to the 2018 funding package of \$27.5 million to support the park over a five-year period. However, it is sceptical of the Action Plan's success without transparency about the allocation of these funds.⁴⁰⁰ CPAWS, on its part, expressed optimism that the additional funding allocation indicates Canada’s willingness to ensure that the restoration of WBNP remains a priority for the Government of Canada.⁴⁰¹ The Federal Government’s most recent funding announcement brings the state of WBNP up-to-date.

4.7 Conclusion

In Canada, each level of government has unique powers applicable to the environment. A good number of regulatory powers applicable to the environment lie with the Provincial Governments. The challenges of effectively formulating coherent national policies and enforcing both domestic and international commitments within the constraints dictated by the federal-provincial separation of powers in Canada emerge in the sense of a wide range of issues, including protected areas like WBNP. The Federal Government's inability to enforce provincial environmental laws or international treaties due to a lack of jurisdiction may be a contributory factor to the issues surrounding the protection and preservation of the Park. Canada’s perceived inadequacy caused MCFN and CPAWS to seek out an international ally in UNESCO to pressure Canada and influence enforcement from outside. This case study is unique in a global context because of its ecological importance and Indigenous community guardians, as well as how the attendant issues are ongoing, and measure to address them will keep unfolding with time. Interactions between all parties concerned are ongoing, and new developments continue to emerge. These interactions are the focus of the next chapter.

³⁹⁹ “Wood Buffalo National Park receives \$27.5 million investment in its future | CPAWS”, online: <<http://cpaws.org/news/wood-buffalo-national-park-receives-27.5-million-investment-in-its-future>> at 5.

⁴⁰⁰ Narwhal, *supra* note 391.

⁴⁰¹ “CPAWS celebrates Canada’s nearly \$60 million commitment to Wood Buffalo National Park – CPAWS Northern Alberta”, online: <<https://cpawsnab.org/canada-commits-60-million-to-wood-buffalo-national-park/>>.

In this chapter, I described the case study commencing from the attendant problems plaguing the WBNP, the need for solutions, and the quest for same in the international space, the involvement of both local and international actors to the reactions emanating from the Petition. I laid out the relevant legal frameworks and legal issues surrounding the creation of National Parks, the infringement of Indigenous peoples' land treaty rights, and the resultant effect on the integrity of PAD and the quality of life for the Indigenous people. Lastly, I described the extent of UNESCO's involvement in the case study. The next two chapters provide detailed descriptions of the advocacy processes of MCFN and CPAWS and the resultant impacts of the advocacy. The subsequent chapter reports the interview data and presents detailed descriptions of the interview data of the study participants.

CHAPTER FIVE

5.0 Presentation of Data Results

In Chapter two of this thesis, I reviewed the literature on transnational advocacy networks, the different models, the typology of tactics, and the types or stages of network influence as introduced by Keck and Sikkink. They refer to the typology of tactics as tactics or strategies that advocacy networks use in their efforts at persuasion, socialization, and pressure. They categorized the typology of tactics as information politics, symbolic politics, leverage politics, and accountability politics. Likewise, to assess the influence of advocacy networks and determine the conditions under which advocacy networks have influence, Keck and Sikkink examine goal achievement at several different levels, labelled stages of influence. They further categorize these stages of influence as issue creation and agenda-setting, influence on discursive positions of state and international organizations, influence on institutional procedures and influence on policy change in target actors. I considered the advantages of using the boomerang pattern in contrast to the spiral model, the concepts of transnational diffusion of scale shift and the pathways of transnational influence framework. I concluded that the boomerang pattern is better suited for this study considering its wide application beyond the human rights realm and fewer complexities. In chapter four, an analysis of WBNP described the circumstances surrounding the perceived deterioration of the PAD and the initiation of the Petition that MCFN and CPAWS sent to UNESCO. Chapter five details the findings of the participant interviews and throws more light on the genesis of the Petition, the amount of collaboration employed among the organizations involved with the Petition, the strategies utilized by the network of non-state actors and the impact of non-state action on Canada. The chapter also highlights the contributions of ENGOs like Sierra Club BC, the University of Victoria Environmental Law Centre, Yellowstone to Yukon towards the conception of the Petition.

This chapter contains a description of the data results from interviews conducted with staff of MCFN, CPAWS, UNESCO, Alberta Environment and Parks, and Parks Canada, who possess in-depth knowledge about the case study and the Petition. The interviews revolved around the 2014 Petition submitted by MCFN to UNESCO, requesting the listing of WBNP as a World Heritage Site in Danger. For this study, I interviewed seven participants comprising of staff of MCFN, CPAWS, UNESCO, Alberta Environment and Parks, and Parks Canada and organized the

interview data according to the pre-determined categories in Keck and Sikkink. The categories comprise nine standardized themes taken from Keck and Sikkink's analytical framework on advocacy networks. Four of these categories address the topology of tactics: information politics, symbolic politics, leverage politics and accountability politics. While the remaining five, issue creation/agenda-setting, influence on discursive positions of states and international organizations, influence on institutional procedures influence on policy change in "target actors", and influence on state behaviour, speak to the stages of network influence. I extracted codes/themes from Keck and Sikkink's definitions of the categories in their text, as reviewed in chapter 2. As explained in chapter 3, I mapped these codes into the nine descriptive categories that logically examined the strategies used by the advocacy networks and the influence exerted upon the target actor and proceeded below to report the interview data according to these categories. The data presented below shows the details of these NSAs' tactics to persuade and pressure the state actor and the perceived effect or influence achieved.

This chapter has four sections, with the interview data results categorized according to the two broad labels used by Keck and Sikkink in the analysis of transnational advocacy- typology of tactics and stages of influence. The first section gives an overview of the literature that informs this interview data. It sets out the core underpinnings of the case study, the need for action and the analytical framework used in studying the NSAs' actions in this research.

The layout and presentation of the second and third sections are similar. In these two sections, I present the data results delineated according to the categories -typology of tactics and stages of influence. Each category portrays the opinions of the interview participants frequently described with the use of quotations. The last section of the chapter summarises the data results extracted from a review of the participants' interviews.

5.1 The WBNP Boomerang pattern

The analysis of the case study and review of the behaviour and activities undertaken by these NSAs concerning WBNP indicate that the petitioners' action closely resembles Keck and Sikkink's boomerang pattern in transnational advocacy. The boomerang pattern illustrates how the

international arena may be the only avenue for domestic activists to gain attention to their campaigns when states do not respond to internal pressure tactics. In the present case, the petitioners made several attempts to convince the federal and provincial governments to oversee and manage the threats to the Park effectively with little or no success. As a last resort, the petitioners took recourse to UNESCO hoping that external influence might result in positive action on Canada's part. Keck and Sikkink refer to this external linkage as a boomerang pattern. See Figure (Fig) 1 below for a diagrammatic presentation of the WBNP boomerang pattern.

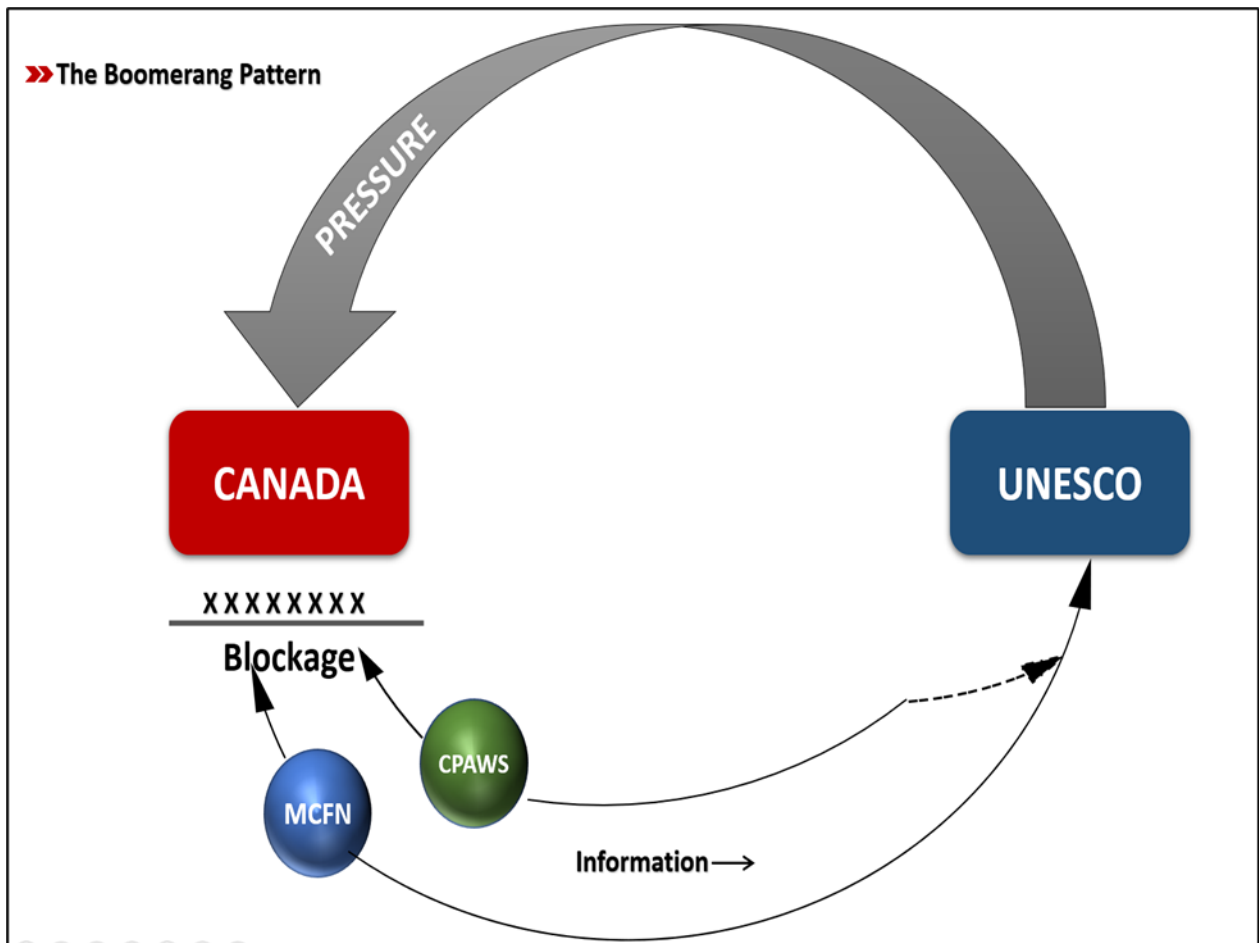


Figure 1: The Boomerang pattern diagram that links MCFN and CPAWS with UNESCO to pressure Canada

The above diagram illustrates how the duo of MCFN and CPAWS encountered a blockage when attempting to get the Canadian government to take concrete actions to address the worsening threats to the OUV of WBNP. They subsequently resorted to utilizing information to access the international space -UNESCO- who then applied pressure on Canada. The next section describes

the strategies employed by MCFN, CPAWS and UNESCO use in their efforts at persuasion, socialization, and pressure directed at Canada. The data obtained from the participants are categorized according to Keck and Sikkink's analytical framework of the typology of tactics and stages of network influence.

5.2 Typology of Tactics

The typology of tactics refers to the strategies that advocacy networks use in persuading and pressuring their targets. A lone campaign may contain all four tactics or not, depending on the peculiarities of each specific case. In the next sub-section, I detail the interviews' results delineated according to each tactic present in the case study.

i. Information politics

There must be a network of members who share information among themselves to initiate a transnational advocacy network campaign. Information is crucial and binds network members, allowing them to utilize information politics.⁴⁰² Keck and Sikkink describe information politics as the ability to produce politically useful knowledge easily and credibly and transfer it to where it will have the most impact.⁴⁰³ Network members share similar values and often exchange information and even services. These information exchanges could take the form of emails, telephone calls, teleconferencing tools and in-person communication. Members also create categories or frames within which they organize and situate their campaign. They may combine similar issues and shop for venues to present their campaign. The testimonies of some interviewees allude to the use of information strategies such as collaboration between MCFN and other NSAs. One participant revealed: "...that has been our primary contact with UNESCO; we did send them a joint letter; it was a letter from 14 organizations. It was from environmental groups and different First Nations that we submitted to a UNESCO well specifically to WHC it was right before their meeting in Baku, and it was providing context for why we felt the listing was still necessary" (INT003). When asked about the genesis of the Petition and possible collaborations with other

⁴⁰² See Chapter 2 for a full description of advocacy networks and their typology of tactics.

⁴⁰³ Keck & Sikkink, *supra* note 27 at 15.

organizations, a participant stated that CPAWS, Sierra Club BC and the Environmental Law Centre played key roles in the Petition process:

CPAWS, Sierra Club BC, and it is actually Sierra Club BC that has the history of connecting with the Environmental Law Centre to do initial work around whether a petition around Wood Buffalo was feasible what it would look like, and then they (CPAWS, Sierra Club BC, Environmental Law Centre) were the ones who actually brought the idea forward to Mikisew because Mikisew hadn't identified the UNESCO process as an option. And it took that UVIC- NGO collaboration to bring the idea forward to Mikisew, and then we jointly decided that it would make more sense to advance the Petition as an Indigenous-led petition rather than a formal coalition approach than Sierra Club BC, CPAWS, Yellowstone to Yukon. (INT001)

Importantly, through their collaborative process, they made a strategic decision to advance the Petition as Indigenous-led rather than exclusively as an environmental NGO initiative.

Another participant responding to the question on the choice of venue for the Petition indicated that:

[S]ince the Petition, Mikisew seems to have some more inside tracks being an Indigenous group than a traditional NGO. The World Heritage Center and IUCN folks at the outset were pretty helpful being on Skype calls for a couple of hours here and there to help Mikisew understand how the system works. In my sense, [it] was Mikisew's position as an Indigenous group [that] probably prompted IUCN and World Heritage Center staff to spend that time with Mikisew. (INT001)

Some of the participants revealed frequent information exchanges and brainstorming on the best way to get information out. One participant explained:

We are an advocacy organization, and so we just have a suite of tools that we normally go to, and that does include things like crafting petitions, asking for email or letter campaigns, you know, kind of like grassroots organizing type actions. We also were on monthly phone calls with Mikisew Cree First Nation, sometimes with their legal counsel as well and with other NGOs and we would we brainstorm together what we felt would be... a strategic way to get the word out there, that Wood Buffalo is at risk. (INT004)

Regarding credible information, it is evident that the networks rely on expert information for their campaign. A participant disclosed that:

[T]here are documents that are developed either by academics or Mikisew experts around the current state of the health of the Park, because Mikisew tries to ensure that IUCN and

World Heritage Center have access to those...and I think the thing that has helped Mikisew a lot is having lots of expert reports any time the state party says the water quality issues are under control because this reports, we've got a process that is working on this issues, Mikisew is there to say look here's a document that explains why that's not right. (INT001)

MCFN and CPAWS also utilized technology and the media for their campaign. A participant spoke about how MCFN and CPAWS strived to attract press attention: “We supported the communications. We wrote the press release with them. We put ads out to national media; they had some beautiful photos available. We coordinated with them; you know the chief would be able to talk about their Petition. So that was very successful, and I'd say the second most successful thing is we did a press conference in Edmonton right before the reactive monitoring mission”. (INT004)

Some participants also disclosed that there were specific challenges to producing credible information and passing it to the place of most significant impact. These challenges included cost and access to the WHC members. One participant commented that, “... it's not often that communities can go to those [WHC] meetings and present because you know it was across the world and like capacity issues, and it's super expensive to get those members out there, which is, I think, a barrier, but it has the biggest impact”. (INT003). Yet another participant revealed that. “... It's costly. It's also hard to get into the delegate building and get through security”. (INT001)

In this subsection, I detailed the interview results about the first typology of tactics: information politics. The research participants explained how they produced, used and shared information for their campaign. They described how they framed the issues and the deliberation while choosing the appropriate venue for the Petition. They also discussed the use of credible expert reports and media partnership while citing costs and the lack of laid-down procedures to access the WHC to submit the Petition as limitations to the effective use of information politics. In particular, the participants emphasized the importance of collaboration, an aspect of information politics, for the campaign. Information connects network members and is essential for network effectiveness. The result of my study is consistent with the notion that information is critical for advocacy networks. The data reveals that collaboration, technology/media, technical information, and issue-framing, which are features of information politics, are dominant in the network's advocacy. Similarly, moral leverage, an aspect of leverage politics, played a central role in this campaign.

ii. *Symbolic politics*

This strategy refers to using symbols, imagination, stories, or actions that explain or interpret an issue in a way targeted to sway the intended audience, which is usually far away. In campaigns, activists use symbolism to frame an issue as an indirect way of information sharing.

A majority of the participants interviewed described the Petition requesting UNESCO to declare the Park a World Heritage Site in Danger, as a catalyst to spur Canada into increased protection of the Park. One participant explained that “Mikisew’s formal position is that the Park should be designated as a World Heritage Site in Danger to ensure there’s a greater level of oversight by WHC and its technical advisors but also to prompt the federal government to put more resources and effort into protection and restoration of the Park”. (INT001).

In the interviews, several participants mentioned using videos containing testimonies of the inhabitants of WBNP to further the campaign. Another participant commenting on the use of the World Heritage Site in Danger designation said, “Wood Buffalo National Park is about to get that same designation because of the impacts that are felt there. From, you know the industrial activity, climate change, all of these other impacts, is like the same level requires the same amount of attention as a place that has been struck by a tsunami. That’s great storytelling”. (INT003)

Yet another participant expounded the campaign’s motivation to use symbolism:

Put together the materials, create a video. You have to bring Wood Buffalo National Park to them on a computer screen so they could see it. Nobody knows about Wood Buffalo National Park; nobody is going to care about Wood Buffalo National Park unless you make them care about it. Until you bring them there, you show them why it’s important to Mikisew and how they could help you ... they’re making a decision about Wood Buffalo National Park; it’s on the agenda,[and when] they’re making a decision about it, he remembers that video I showed him. He remembers talking to me about why Wood Buffalo is important, and now he’s asking questions; now he wants to see it protected. (INT002)

A participant described the immediate impact of symbolism: “[w]hen we meet with Committee members, having a video has been really helpful. Because you can just see in their eyes, okay, non-state party but Indigenous group coming to talk to me, I am really busy, got lots of sites to manage, they’ve got some colourful papers, but once they see a video, you can sort of see in their eyes, this is serious, this is real”. (INT001)

The interview results indicate that MCFN and CPAWS used symbolism when they decided to petition that the listing of WBNP as a World Heritage Site in Danger. They expressed this symbol using videos to portray the effects of the environmental degradation of WBNP on the inhabitants. They aimed to evoke sentiments in the delegates' minds at the WTC and trigger a positive reaction.

iii. Leverage Politics

NSAs may not always have the ability to make decisions impacting policy directly. Instead, they use information politics and symbolic politics to appeal to powerful actors who can influence the target audience. One can assess an advocacy network's effectiveness by its influence on policymakers to bring about resultant policy changes. Leverage could be either moral or material or a combination of both. Leverage manifests in several forms such as money, trade, prestige, access to loans, economic aid and mobilization of shame.

Most of the participants identified mobilization of shame—a form of moral leverage—as the predominant form they used. In contrast, others tilted towards prestige—a form of material leverage. A few, however, suggested that it was a combination of both. Therefore, I concluded that they engaged in leverage politics. Interestingly, one participant commented, “[w]e brought forward a petition to UNESCO to sort of force Canada to respond to an international form, under international commitment under the World Heritage Convention to protect World Heritage sites which is Wood Buffalo as well”. (INT002). Another participant expressed the opinion that, “I think bringing the Petition forward to the WHC was likely the most important thing that was done as far as the NSAs go. The reason for that is that it elevated the visibilities of the issues within that World Heritage forum and required that the Federal Government respond to that”. (INT001).

Responding to the question of whether the World Heritage status of the Park made a difference in the way the government reacted, a participant noted that:

Yes, very much. Canada's sensitivities to its standing within UNESCO and just the recommendations coming out of UNESCO, from the very first recommendation after the Petition was made, the recommendations and decisions along the way have, I am very certain those are the only things that have triggered government response around protecting Wood Buffalo. There is at least now a direction change with resourcing behind it. Canada wasn't responding to Indigenous concerns before the Petition. They've

responded more to the international reputational issues than they did to the Indigenous issues or the issues when Mikisew brought them directly. Having UNESCO as the voice essentially for the Park has been more important than having Mikisew be the voice of the Park. (INT001)

Another participant described how the mobilization of shame was framed and paired with prestige:

I think that it has to be a very tactical decision to go through a UN body. I think that it is really good pressure on the federal government. I think when we frame it as international eyes are watching, you know, this should be motivation for Canada as a leading country to be able to tackle this issue and what an embarrassment it would be to Canada if we got a World Heritage site listed as in danger when we see ourselves as a nation that values the environment. (INT003)

Another participant gave more credence to the view above by revealing; “I don’t think we would have gotten that without the push from UNESCO. I think one of the really important things here was, we stressed for Canada that if Wood Buffalo was downgraded to ‘at-risk’, it would be the second natural World Heritage site in North America to receive that designation, the other one is the Everglades in Florida, and it would be a major black mark on Canada”. (INT004)

A representative of the provincial government admitted that “certainly the status within UNESCO and the World Heritage status and the potential of having it been declared endangered Park or you know increased status is something that we are aware of, and we certainly didn’t want to see happen from a provincial point of view”. (INT006)

Finally, a representative of the World Heritage Centre, while explaining the leverage UNESCO has over Canada, revealed that:

Canada has always been a very prominent state party in the convention, has also often played a very leading role in the discussion of convention, and has given us the chairperson of the convention I think twice, so has been in the committee many times, so definitely we appreciate very much, Canada’s engagement in the convention and we are sure that it will take the measures necessary to ensure its commitment to conserve this site as it has taken on this commitment under the convention. (INT007)

From the review above, key findings emerge. Principally, most interviewees’ descriptions of their activities suggest that sending the Petition to UNESCO presents the qualities of leverage politics. They also suggest that the petitions impacted Canada’s reputation both as an environmentally

conscious country and as a critical state party to the World Heritage Convention. Furthermore, these results provide important insights for the rationale behind the boomerang model used in this case. The result for the leverage politics is somewhat similar to the outcome of the information politics. It revealed that most of the participants indicated that sending the Petition to UNESCO was instrumental in forcing Canada's reaction.

iv. Accountability politics

Gaining the support of policymakers and translating that support into policy change is not the end of advocacy. Network members must continue to exert pressure to ensure that states follow through on their promised commitments. When speaking about holding Canada accountable to its policies, a participant said, “it’s involved advancing some of the co-management rights that Mikisew has in Wood Buffalo under a 1983 agreement with the federal government”. (INT001)

The participant further disclosed that:

Mikisew has an agreement with the Federal Government from 1986 that requires the government to correct man-induced changes to the water levels in the Delta. So, we’re now 34yrs into the life of that agreement; no action has been taken to deal with that. Within a few months of UNESCO saying, “we think there’s problems with water levels in the OUV for Wood Buffalo”. Canada went into high gear, invited the Reactive Monitoring Mission, got the SEA started and worked on the Action Plan...(INT001)

Additionally, the results lead to a similar conclusion where another participant gave an insight into why they have high expectations from the Federal Government:

...this current government touts a lot of how much they care about nature...how much money they do put into conserving the environment, and you know that’s kind of one of the aspects that they ran on. They did commit some funding to Wood Buffalo National Park. We would say it’s definitely not enough and there needs to be more, and that’s one of the things we’ve been pushing for...” (INT003)

While clarifying UNESCO’s views on Canada’s commitment to the Park, a UNESCO representative explained that “... it has to be clear that protection of this site is a commitment that Canada made towards the international community and that it is something that cannot be negotiated, because this is what Canada signed up to on a voluntary basis”. (INT007)

This subsection addressed the last typology of tactics- accountability politics. A recurrent theme in the interviews was that holding the government accountable to its policies has not been overly successful until recent times with UNESCO's help. The extract from the UNESCO representative's interview strongly indicates that UNESCO is committed to holding Canada accountable to its promises. However, some interviewees consider the traction achieved as inadequate and disclosed that they would continue to exert pressure on the government to achieve the desired result. The data results show the participants' inferences that MCFN and CPAWS frequently used collaboration, technical information, technology media, and negotiations, which are all characteristics of information politics, to provide information and engage the set target. Also, moral leverage and symbolic interactions helped push the desired agenda to the fore. In the next section, I describe the results of network influence stages as distilled from the participant interviews. The stages of network influence is a framework for assessing goal achievement at several different levels. It is used in this study to ascertain the impact of MCFN, CPAWS and UNESCO's advocacy on the Canadian state.

5.3 Stages of network influence

Advocacy networks influence discursive positions when they help convince states and international organizations to endorse international declarations or modify stated domestic policy positions. A determinant of a campaign's success is the impact of influence and goal achievement. Goal achievement can occur at different levels ranging from issue creation and agenda; influence on discursive positions of states and international organizations; influence on institutional procedures; influence on policy change in target actors. The stages of influence speak to the conditions under which the advocacy network exert influence over the target actor. Advocacy networks strive to achieve desired outcomes using the typology of tactics discussed in the section above. In this section, I present the participants' views on the influence of the strategies used in their advocacy.

i. Issue creation/Agenda-setting

Advocacy networks campaign and bring attention to the issues raised. They generate awareness for the issues and seek to influence the target actor to set agendas. Networks generate attention in

various forms such as media publicity, public hearings, debates and meetings on various levels. NSAs form advocacy networks around issues; they usually have a set agenda and present their agenda at a pre-determined venue. Organizing a network advocacy campaign usually requires that the issues involve bodily harm to vulnerable persons and involve legal equalities of opportunity. This analysis focused on recurrent themes of issue creation, agenda-setting, generation of new ideas and increased awareness.

A long-standing issue in WBNP is the perceived degradation of the PAD, and over time, MCFN and CPAWS campaigned and generated public awareness about this issue, using the Petition process, media publicity and more avenues to push for the goal of preserving the Park. The interview transcripts below show the network's engagement with issue creation and agenda-setting.

On the campaign issue, a participant explained that:

...the major concern is the declining ecology of the Park. So Parks Canada is responsible for managing the Park, and we don't think that they're doing a good enough job in managing the ecological and the cultural integrity of PAD. So because it's our own, our home, and for example, the Peace Athabasca Delta means everything to us, it means our way of life, it means our culture, it means our language, that we don't think the government is doing an adequate job in protecting the Delta. (INT002)

In their accounts of the events surrounding the Petition to list WBNP as a World Heritage Site in Danger, some participants mentioned that generating international publicity about the Park brought attention to the issues raised. A participant explained how they contributed to setting the Petition agenda, "...we supported the communications. We wrote the press release with them; we put advertisements out to national media; they had some beautiful photos available. We coordinated with them; the chief would be able to talk about their Petition. So that was very successful, and I'd say the second most successful thing is we did a press conference in Edmonton right before the reactive monitoring mission..." (INT004)

A government representative agreed that "I guess for us in Alberta, you know, raising issues on the world stage...the strategy of using UNESCO, certainly again, raised international awareness and certainly caught our attention". (INT006)

This section summarizes the participants' views on issue creation and agenda-setting. The network members highlighted the issues raised: declining ecological integrity of the Park; agenda: to get the Park listed as a world heritage on danger; chosen venue: UNESCO. The participants also mentioned creating awareness for these issues using media publicity and seeking to influence Canada.

ii. Influence on discursive positions of states and international organizations

Advocacy networks influence discursive positions when they exert pressure on states or international organizations to change existing domestic policy positions or support international declarations or conventions. Networks may also influence states to sign conventions and codes. These target states or international organizations often respond to these policy change demands by effecting changes in policies or procedures. It can also lead to the establishment of departments or institutions. Some participants divulged that they place a high emphasis on influencing discursive positions by seeking in policy changes. A participant revealed that:

Another strategy is political involvement. We made several trips to Ottawa to meet with ministers, and we just continue to put that political pressure. My chief meeting with minister McKenna several times about Wood Buffalo National Park issues, about our Petition and so we gotta keep this at high level on the radar of the ministers who bring forward important decisions to the cabinet, and we do that at the provincial level as well. So that's another strategy. (INT002)

A UNESCO interviewee affirmed that since the petitioners filed the Petition, UNESCO has increased pressuring Canada to implement policies, "...since then we have been following up with, so this mission made a number of recommendations which were approved by WHC and which Canada has been requested to implement". (INT007)

When asked about the perceived impact of UNESCO on Canada, an Indigenous participant commented that "so now I think the fact that they want to engage, they want to talk about the concerns, I think is a positive change whereas before really we would raise concerns and there would be no response". (INT002)

In this sub-section, I explored how participants explained how the network sought to influence on discursive positions of Canada and UNESCO. A consensus across participants is an increased

engagement on the part of the state stemming from UNESCO's intervention; however, they await the corresponding result on policies and procedures.

iii. Influence on institutional procedures

When network actors generate attention and exert pressure on the target actors, it could result in changes in institutional procedures. More often than not, when network actors pressure and demand for a policy change, the target actor responds with a procedural change; however, the policy change may manifest in the future. According to Keck and Sikkink, recurrent themes in this stage of influence include the opening up of restricted information, creating an independent inspection panel, new committees or procedural change.⁴⁰⁴

When asked about the impact of UNESCO'S involvement on Canada, some participants referred to the outcome of the joint IUCN/WHC reactive monitoring mission and the subsequent recommendations. An Indigenous participant explained that “[t]hose recommendations help form the Action Plan that Canada must now implement in and take action on ...and it was because of UNESCO'S involvement that we had a strong mission, we had a strong report so I would say that has been the biggest positive advantage coming out of UNESCO'S involvement. (INT002)

Speaking further on the outcome of the Action Plan, another participant disclosed that, “there’s this Federal Provincial Territorial (FPT) environmental flow hydrology committee created now around the Action Plan”. The participant thought that the creation of the committee provided avenues for unity. Yet, it seemed that only the Indigenous groups were taking advantage of the procedures. This same participant said. “[e]very time they meet, all the Indigenous groups debrief afterwards and have a shared view. The government’s inability to talk to themselves in other levels of government is the challenge that is facing the Park”. (INT001)

When asked about the impacts of the Petition, a CPAWS representative commenting on the report of the reactive monitoring mission had this to say, “[N]o, they didn’t incorporate all the recommendations. One of the big recommendations was to do the environmental assessment of

⁴⁰⁴ *Ibid* at 24.

Site C and include the impacts on the Delta and Canada simply said they would not do that. When you read the action plan that is really, disappointing”. (INT003)

Another participant commenting on the institutional processes brought about by the Petition had this to say:

...so those are pretty giant steps forward compared to where PAD was before the Petition. There is now at least, a process for the different jurisdictions that all make decisions that impact the integrity of the Delta to talk together. It is still fairly broken; it is not where it needs to go. But prior to the Petition there really wasn't any or at least functional engagement between British Columbia, Alberta, Canada or around the integrity of PAD also within the federal system perhaps Canada wasn't talking to Environment Canada around the integrity of PAD, so it was quite a dysfunctional system. (INT001)

The influence on institutional procedures may not always be limited to the state; it could also impact the network members. Talking about this, a participant commented that:

WHC has tried in the last I guess six or so years ago to fix some of those in the operational guidelines, so now if there is a nomination that goes forward the state party is supposed to show how it has engaged with local Indigenous communities and other stakeholders in advance of making that application, so there's formal requirements now in the rules that govern the committee, and govern state parties involvement in the process to do a check-in there. But when it comes to ongoing management maintenance properties, the operational guidelines haven't included any mechanisms in that document around engagement with whether it's Indigenous groups or other stakeholders. (INT001)

Another participant revealed that the campaign also influenced some WHC procedures affecting Canada. The participant said, “...Canada has been requested to implement and to submit their report on a regular basis, so we are on a 2-year reporting cycle now”. (INT007)

This sub-section outlined participants' views on the influence on institutional procedures. In their accounts of the campaign impacts, some participants contrasted engagement levels before and after the Petition. They also identified some institutional procedures credited to the Petition. Yet, they expressed some misgivings concerning the absence of shared views on the part of the state, evidenced by the non-implementation of an environmental assessment of Site C as recommended by WHC and the failure of the different levels of government to actually talk to each other as required by the new mechanisms of the Action Plan.

iv. Influence on policy change in “target actors.”

Network pressures may yield outright policy changes in target actors or may arise from procedural changes. New fund allocation, aid cut-off and curtailment also classify as an influence on policy changes.

On the issue of network influence on the state, an Indigenous participant asserted that:

So one of the things that we did with the province and with the federal government and with multiple oil companies is we created a protected area conservation area buffering the southern portion of Wood Buffalo National Park. So we use TEK and we use the opportunity through that process to bring Wood Buffalo National Park issues forward about creating a buffer area and so we often do that in regulatory processes. (INT002)

Another participant also revealed that; “[i]n the last couple of years the Feds (federal government) have updated their federal environmental assessment legislation and Mikisew participated heavily there, and I helped them to try and ensure that concerns around Wood Buffalo are reflected in how the federal assessment regime will look”. (INT001). A provincial government staff speaking on the impact of the Action Plan on explained further:

I think the Park would be working on that right now and would be looking to deliver an updated Management Plan in 2020. But with the Action Plan, having emerged over the last year or so certainly and because many of the key management issues are related to what’s described in the Action Plan, there’s been a need to have a management planning process that is consistent with the Action Plan and [ensures] that the Action Plan and the Management Plan are mutually supported. (INT005)

In response to the question on the influence of the network’s influence on policy change, the provincial government staff disputed any policy change and insisted that:

Like I mean we’ve had a long relationship with Mikisew Cree and Athabasca Chipewyan and Fort Chipewyan Metis, and we have been working collaboratively with them for the entire ten years that I’ve been with government. I think you know whether we’re working with federal government and other agencies I think we’ve always understood the issues in the Park and the issues as they relate to the Peace Athabasca Delta. I wouldn’t say that it’s necessary to change that approach. I mean it’s brought some focus for sure; it hasn’t changed our legislation or enforcement. (INT005)

When discussing the proposed Management Plan of the Park, an Indigenous interviewee said, “We want to manage it”. (INT002) Another CPAWS staff agreeing with the Indigenous interviewee, remarked:

I think that Indigenous community would be excellent managers of the land. They have been for millennia. They are stewards of their traditional territory. I think you know our organization does a lot of work on their Indigenous Protected and Conserved Areas (IPCAs). You know one of the mandates of CPAWS is to create protected areas. That’s primarily what we focus on, and especially we see IPCAs. As you know Indigenous led conservation is meaningful, and would I think getting our management frameworks and structures to a place where Indigenous communities can be leaders in the management would be great. You know, moving beyond consultation to actual partnerships and collaborations and supporting that leadership. (INT003)

Indigenous management of the WBNP is a trajectory some network actors want to move towards, and they are hopeful that this campaign will bring them closer to the goal. The above section outlined the participants’ views on network influence on state actors. Most of the participants agree that the Petition led to the development of the Action Plan, which in turn has yielded some policy changes. Some of the changes are the creation of buffer zones, participation in the amendment of the federal environmental assessment legislation, and the proposed Management Plan consistent with the Action Plan. There was however, a dissenting opinion countering the majority view on the network impact on policy change.

v. *Influence on state behaviour*

Network members often misconstrue the last stage of network influence as a policy change; however, it is different. Here, the influence on state behaviour speaks to the stand a state takes on the campaign subject due to the network influence. The state demonstrates this stand by its compliance to laws, adherence to agreements, compliance negotiations, acceptable norms and shared understanding. The state’s compliance to laws and agreements is called a behavioural change which contrasts with policy change where the state may introduce policies but fail to implement them. Keck and Sikkink posit that after the first three stages or phases of effect have occurred, significant policy changes and behavioral changes are more likely.

On the issue of the influence of the Petition on Canada's behaviour, an Indigenous participant commented, "I think Canada is willing today. So, what has changed is that now they're willing to talk about these issues whereas before they were not willing". (INT002)

A government representative commenting on the stand Canada has taken with the Action Plan, said, "the government has taken decisions to invest more in those issues, taken the decisions to engage more with, with others with other governments with Indigenous groups and with other stakeholders on these issues. Certainly, it is expected, I think it's just through the process of developing the Action Plan". (INT005)

Another government staff reiterated the above view by stating that:

I would say that UNESCO's Petition has certainly brought a focus for us and a better awareness of Mikisew Cree's concerns, other Indigenous communities concerns that have participated in the process as they relate to the Delta, as they relate to Wood Buffalo National Park. It has brought focus for us around conservation in relation to the Park or our role in potentially helping with buffering at the Park. In relation to conservation, it certainly heightened our work with the federal government around the wood buffalo National Park Bison herd and our role in the management of the Bison outside of the Park. (INT006)

Additionally, a provincial government staff offered more insight into the government's stand on the Park:

To be quite frank, I think the government should focus on the OUVs. I mean we have a clearly defined UNESCO World Heritage site, with clearly defined OUVs. I mean, my argument all along is been that we have strayed outside of that, and we've broadened scope far too broadly. I mean, so what we should be doing is managing for those OUVs, doing what we can to ensure the preservation or longevity of those and that should continue...hand in hand with all these goes, anything in terms of this management or governance needs to include meaningful Indigenous participation and process so that there is the influence of the Indigenous groups in those decisions and put forward from that then is trust in the process and buy-in the process, that will really lead to improved outcomes for PAD. (INT005)

While most of the participants refer to the Petition as the catalyst, a few are skeptical about Canada's commitment to implementing the recommendations that emerged from the UNESCO process. A participant explained that:

The concerns are still the same, same concerns. There is now the Action Plan, but from Mikisew's perspective, well, the Action Plan is a helpful step, it hasn't led to on the ground changes in the state of the environment. So, the water quality concerns remain, the water quantity concerns remain. All those concerns are still in play, and from Mikisew's perspective, there haven't been credible corrective actions yet. There's now a process but with no change in terms of improving environmental indicators yet. (INT001)

Explaining why MCFN are skeptical about Canada's commitment to the cause, a participant shared an incident where the various government agencies could not agree on responsibilities and kept passing the buck:

And then, it gets extra complicated when ... you have these back and forth between Parks and Environment Canada around who's responsible for the outside of the park issues. So, there is still an element of pointing the fingers at each other. We did this hilarious thought exercise at one of the water meetings about a year ago where one of the proposals is to build some temporary control restrictions to hold more water into the Delta. Okay, that's a good idea, committee members have been asking for that forever so let's just walk through how you would take that from an idea to get it in the ground. Then we have Parks say, "are you going to pay for it Environment Canada or are we going to pay for it? No one can figure that out. Who asked for it or do I have to ask for it, do you have to ask for it? And in Alberta there's no one, we went through half an hour, and no one could actually figure out between the jurisdictions who to fund it, who to lead it, how to get it done. Yeah, it is just a mess. (INT001)

When asked about their perception of Canada's willingness and capacity to implement the Action Plan, some participants mentioned a lack of trust and goodwill around the Action Plan implementation because the government's capacity was divided into many compartments and posed some difficulties. The participant stated:

Parks Canada has limited legal capacity to fix the Delta because they have no jurisdiction to affect decisions that impact water outside of park boundary. Environment Canada has a fair bit of technical capacity, but they also view themselves as constrained on the legal front despite strong analysis around Canada water...the provincial governments have been a struggle both on the capacity side and the willingness side. BC Hydro is to some extent participating in the Action Plan, but it's not, we haven't had to really cross the hardest decision with them of whether they're willing to change their behavior around the management of dams or not—flow regime. Alberta really could not care less about the Action Plan, they haven't injected very much capacity into the process from a resourcing point of view ...they haven't expressed any willingness to deal with water quantity issues,

some willingness to further research water quality issues but that will likely run up against their unwillingness to take management charge. (INT001)

The same participant acknowledged that “[a]s much as the Action Plan is frustrating, given its limited scope and the limited funding, it is only because of the UNESCO process that there is an Action Plan that Canada has allocated money directly towards, at least talking about the resolution of problems”. (INT001)

Most of the participants responded in the affirmative when asked if they thought Canada's response would be different and less optimistic if WBNP was not a UNESCO World Heritage Site. The UNESCO staff stated that they would have no business requesting Canada to protect the Park.

Consequently, these participant opinions provide important insights into network influence on state behaviour and suggest an association between the Petition and the resultant state behaviour, albeit with some important limitations. Most of the participants agree that the Petition changed the state's attitude towards the Park and influenced the production of the Action Plan, the establishment of committees, the participatory process for the amendment of the federal environmental assessment legislation and the Action Plan. However, there is considerable skepticism about whether these changes will result in improvements on the ground.

5.4 Summary of Data results

This chapter described the data results from interviews conducted with staff of MCFN, CPAWS, UNESCO, Alberta Environment and Parks, and Parks Canada, who are knowledgeable about the case study and the Petition. The interviews centred around the 2014 Petition submitted by MCFN to UNESCO, requesting to list WBNP as a World Heritage Site in Danger. To analyze the interviews, I organized the data first into four categories according to the advocacy network typology of tactics to determine whether NSAs influence enforcement of environmental laws and later into five categories according to the stages of network influence to determine the impact of NSA influence on the state actor. In the section on the typology of tactics, the data revealed that MCFN, CPAWS and UNESCO formed an advocacy network, utilized all four components of the

typology of tactics while campaigning against the declining ecology of PAD and demanding better management of WBNP.

Under information politics, Indigenous participants spoke on the Petition's origin. They disclosed how they coupled environmental issues with Indigenous issues, shopped for a receptive venue, and settled on UNESCO. They observed that presenting as an Indigenous group rather than an environmental group seems to weigh more with UNESCO and caused more traction with Canada. Both MCFN and CPAWS interviewees spoke about using credible information from experts, media jingles, advertisements and conferences to spread awareness of the campaign issues. They further discussed barriers to the cause, such as accessibility to WHC at UNESCO and high production and transportation costs. The network members also discussed using the World Heritage Site in Danger designation as a symbol of grave danger to the Park. All participants agreed that the UNESCO process served as a form of leverage that influenced the state to listen to the network members' complaints. Finally, some of the participants disclosed that holding Canada accountable for its policies concerning the preservation of PAD was previously unsuccessful. However, the recent UNESCO process created some positive traction. A majority of the participants expressed reservations concerning Canada's commitment to preserving PAD and proper management of the Park.

Commenting on the stages of influence, MCFN and CPAWS staffs highlighted how they framed the declining ecology of PAD and how they created and sustained international awareness of the issue using media publicity. On the matter of influence on discursive positions, all the participants agreed that there had been an increased engagement level on Canada's part. However, the network members raised concerns about the corresponding increase in policy changes and procedures. The participants shed some light on a few procedural changes within UNESCO and Canada, such as the change in WHC's operational guidelines concerning the nomination process, the reactive monitoring mission, and the joint committees created around the Action Plan. Several participants referenced the creation of buffer zones, participation in the environmental assessment legislation amendment process as part of the network's influence on the State. However, the Park's proper management is still a matter of contention as the Indigenous participants argue that the Park would fare better if managed by the Indigenous governments. Finally, most interviewees believe that the Petition to UNESCO changed the state's attitude towards the Park and catalyzed some actions.

They agreed that the Petition caused Canada to have a better awareness of Mikisew Cree's concerns and made Canada more willing to discuss these issues. Three divergent and often conflicting discourses emerged on Canada's stand to preserve the OUV of PAD. First, MCFN and CPAWS are insistent that the efforts made by both the federal and provincial governments are inadequate and fall far short of the anticipated goal. Second, contrary to the previous views of MCFN and CPAWS, the Federal Government is optimistic that the measures they have put in place through the Action Plan will be adequate. Finally, the Provincial Government maintains that the PAD's OUV is the focus of preservation and management and that the scope should not be broadened. The next chapter contains an analysis of the data presented in this chapter and examines the NSAs' tactics and the consequential effects on the target state actor.

CHAPTER SIX

6.0 Data Analysis

The focus of this research is to determine whether NSAs influence the enforcement of environmental laws and the conditions under which non-state action has led to better enforcement. More specifically, the goals of this investigation are to identify the strategies used by NSAs in effecting the enforcement of environmental laws, to explore the impacts of non-state action on Canadian environmental law enforcement, and to discuss the possible application of these findings to a different jurisdiction. In this chapter, I apply the constructivist analytical framework of this thesis derived from Keck and Sikkink's work to analyze how NSAs sought to influence the enforcement of environmental laws in this case and the extent to which they were successful. While the typology of tactics seeks to explain the strategies network actors in the WBNP case use for their advocacy, the stages of impact provide the conditions under which the network actors exert influence leading to better enforcement of environmental laws. The success of an advocacy campaign depends on various factors that are peculiar to the case study. They include but are not limited to the campaign issue and the domestic structure of the state. In the last section, I described the results of the interviews conducted with staff of MCFN, CPAWS, UNESCO, Alberta Environment and Parks, and Parks Canada.

This section focuses on analyzing the interview data results centered on the typology of tactics used by the network members and the network's influence on the enforcement of environmental laws to determine the strategies MCFN, CPAWS and UNESCO used in the WBNP campaign. This analysis follows the format in chapter five with the delineation of the two broad facets of network advocacy: typology of tactics and influence of network advocacy. I analyse the strategies NSAs use to influence the state and discuss the network's impact on the various stages of influence. The findings from this study indicate that the MCFN and CPAWS utilized strategies consistent with Keck and Sikkink's typology of tactics in their campaign to protect and preserve the Park. The network actors employed some aspects of the typology more than others. Collaboration and accountability are examples of some aspects of the information politics typology the network actors employed in the WBNP case. MCFN may have sent in the Petition; however, numerous Indigenous leaders, several ENGOs, some former Park staff, and some experts supported the

Petition. The Petition resulted from the constant collaboration among ENGOs and with MCFN. They yielded shared ideas, including the concept to couple Indigenous rights and environmental issues and present as an Indigenous body for a more significant impact. This approach is a strategic venue shift to a more receptive arena - UNESCO WHC- for a more significant impact. The network predicated the strategic venue shift on the assumption that UNESCO values the protection of Indigenous peoples and their rights under the UNDRIP. UNESCO used the leverage tactics to hold Canada accountable to its pledge as a country that has publicly committed itself through its constitution and its endorsement of the UNDRIP to the protection of Indigenous people and their rights. The venue shift scenario is consistent with Keck and Sikkink's concepts of issue framing and coupling, venue shopping, information politics, leverage politics and accountability politics.

According to participant interviews, the tactics the NSAs utilized were partially successful across the five stages of influence identified by Keck and Sikkink. Canada is a signatory to the Convention, so it was convenient for UNESCO to leverage that commitment and hold Canada accountable. Canada's eco-credentials and a desire to enhance prestige contributed to making it amenable to leverage. Also, listing the Park on the World Heritage Site in Danger List would have negatively influenced Canada's reputation, which meant that the petition garnered the federal government's attention. Finally, the part-implementation of the Action Plan and the recently increased funding for the Park are a few indicators of the influence of network activism. However, there is insufficient data to determine the long-term impact of the strategies utilized by NSAs.

One of the objectives of this study is to identify the strategies used by NSAs in effecting the enforcement of environmental laws. In the next section, to answer the research questions above, I examine the data results first according to the four typology of tactics. Then, I used the five stages of influence to ascertain the network's strategies and their effect on Canada.⁴⁰⁵

⁴⁰⁵ See chapter two for a detailed description of the typology of tactics and the stages of influence.

6.1 Analysis of Typology of tactics

NSAs in network advocacy typically deploy a variety of tactics to advance their campaign. According to Keck and Sikkink, these strategies aim at persuasion, socialization, and pressure.⁴⁰⁶ In Keck and Sikkink's analysis, they organize these into two broad headings, typology of tactics- the focused on identifying the tactics used, and stages of network impact- focused on identifying the kinds of impacts these tactics can have. In the typology of tactics, information politics refers to the ability to rapidly generate credible, politically usable information and transfer it to where it will have the most impact.⁴⁰⁷ Symbolic politics refers to the ability to use symbols, action, or stories to convince a distant audience.⁴⁰⁸ Leverage politics refers to efforts to call in influential players to control a situation where it is impossible for weaker members of a network will have influence.⁴⁰⁹ Lastly, accountability politics refers to the effort to hold powerful actors to their previously stated policies or principles.⁴¹⁰

My analysis below identifies the various strategies that the network of MCFN, CPAWS and UNESCO used in the WBNP advocacy campaign, which commenced with the Petition. A preliminary evaluation of the interview data below indicates that the network used all four kinds of tactics in their campaign to get the Canadian government to recognize, acknowledge and combat the threat to the ecology of the Park. They relied on technology and technological tools such as the internet, applications like Skype, telephones, aeroplanes, and hosted press conferences to dispense vital information. The Petition represented the symbolism of a World Heritage Site in Danger, accompanied by videos containing oral testimonies of MCFN elders. Once a government has committed itself to a principle or policy, networks can use those positions, and their command of information, to expose the distance between discourse and practice.⁴¹¹ The Convention provided a perfect opportunity to hold Canada accountable to international law and its domestic laws. Also, UNESCO used its supervisory position over the WBNP as leverage to ensure that Canada produced an Action Plan and increased reportage.

⁴⁰⁶ Keck & Sikkink, *supra* note 27 at 15.

⁴⁰⁷ *Ibid.*

⁴⁰⁸ *Ibid.*

⁴⁰⁹ *Ibid* at 5.

⁴¹⁰ Keck & Sikkink, *supra* note 27.

⁴¹¹ *Ibid* at 22.

i. Information politics

Data obtained from the accounts of some of the participants revealed a boomerang pattern of influence comprising MCFN, CPAWS, UNESCO and Canada. MCFN and CPAWS, in coalition with other non-governmental organizations, shopped for a receptive venue in their quest to convince Canada to seriously consider the matters concerning the preservation of the OUV of PAD and the threats to the Park. They sought an ally in UNESCO after having exhausted all domestic avenues available to them.

During the discussions about venue and strategy, issue coupling was a theme common amongst the network members. They suggest that channelling their grievances to UNESCO as an Indigenous group would likely yield better results instead of doing so exclusively in an ENGO coalition. This view was not far-fetched, considering that the UN adopted UNDRIP in 2007 and reaffirmed their commitment in 2014.⁴¹²

More so, under the operational guidelines of the WHC, once a World Heritage site is listed, it must be managed and protected to maintain its OUV. The guidelines stipulate that it is the State Party's responsibility (or State Parties in the case of transboundary/transnational sites) in whose territory the site is located. State Parties are obligated to prepare and submit regular reports about the state of the conservation of the World Heritage sites in their territories and the protection measures to safeguard the site.⁴¹³ In requesting the Park to be listed as a World Heritage site in danger, MCFN was optimistic that UNESCO would require additional information from the Indigenous people and probably request the WHC's advisors and the WHC to conduct Reactive Monitoring.⁴¹⁴

The analysis indicates that as a build-up towards the submission of the 2014 Petition, MCFN and CPAWS exchanged a vast amount of information. MCFN enlisted technical experts' help and expertise to prepare observation reports, organized a Press conference, distributed fliers and pamphlets, ran several advertisements in the media, and created awareness about the threats to

⁴¹² Under the UNDRIP, in Articles 41 and 42, the United Nations provide that the organs and specialized agencies of the United Nations system and other intergovernmental organizations shall play roles to promote and protect the rights of Indigenous peoples. United Nations, *supra* note 282.

⁴¹³ Centre, *supra* note 33 at Para 15.

⁴¹⁴ *Ibid* at Chapter V.

WBNP. MCFN submitted the Petition along with a supporting letter signed by 14 organizations, including different First Nations.

The networks made great use of information politics after the submission of the Petition. The vast exchange of information heightened and included frequent trips to the WHC meetings, occasional Skype calls with WHC and IUCN staff, as well as monthly Skype brainstorming calls between MCFN and CPAWS. It is evident from the data that MCFN ensured that the WHC and IUCN received credible information concerning the Park as MCFN relied on expert data developed by academics and MCFN experts. Although most of the participants credited information politics as an excellent strategy for creating awareness about an issue, they also highlighted some challenges. These include the high cost of procuring expert information, frequent trip logistics, and difficulties accessing the WHC members. The data demonstrates a significant amount of collaboration between network members. The data further indicates that the network made ample use of information strategies, tools and techniques in their campaign to protect the Park.

ii. Symbolic politics

The participants described the use of the Petition requesting the inscription of the WBNP as a World Heritage Site in Danger site as highly symbolic. A participant describes classifying the Park on the same level as an area struck by a tsunami as great storytelling. The network members describe using dramatic videos depicting the environmental degradation on the land and the narrations of the First Nation elders recounting how the actions stemming from the developments upstream on the Athabasca and Peace Rivers, hydro-electric constructions, leaking tailings from oil sands, climate change, have impacted on the water quantity and quality in PAD resulting in polluted water, diseased livestock, fish with signs of growing tumours and dried- up parts of the rivers.⁴¹⁵ Some participants believe that the use of dramatic videos helped evoke positive responses from the members of the WHC during decision-making sessions, helping the members to visualize the current state of the Park.

⁴¹⁵ Some of those videos used by MCFN for symbolic politics include; Carol Linnit, “*The Narwal: Wood Buffalo at Risk*” (Mikisew Cree First Nation); Michael Tyas, *In danger- A call to save Wood Buffalo National Park* (Mikisew Cree First Nation, 2014).

Activists use important symbolic events and conferences to publicize issues and build networks.⁴¹⁶ Symbolism makes a vivid connection between the symbol and what it represents. The available data pinpoints the Petition as the symbol of a World Heritage Site in Danger. A participant likened the visual images it connotes to that of an area ravaged by a tsunami. The network intended to evoke concern for the Park and publicity using the Petition as a symbol.

iii. Leverage politics

According to Keck and Sikkink, material leverage comes from linking the issue of concern to money, trade, or prestige, as pressure is applied to more powerful institutions or governments, while moral leverage pushes actors to change their practices by holding their behaviour up to international scrutiny or holding governments or institutions accountable to previous commitments and principles they have endorsed.⁴¹⁷

The common theme that emerged from the interviews was the conviction that leverage politics was highly instrumental to the UNESCO process. All the participants concurred that Canada's sensitivities to its international standing with UNESCO played a huge role in triggering the government's response to protecting the Park. The leverage politics at play, in this case, is a combination of both material and moral leverage. The participants often paired prestige and shame when they described the influence UNESCO could exert over Canada. Canada prides itself as an environmentally-conscious country. The present government heavily referenced environmental concerns and promised specific solutions in their campaigns.

Furthermore, one of the participants pointed out that Canada has been a major state party to the World Heritage Convention and plays leading roles in the Convention. As one of the Indigenous participants mentioned, Canada responded better to the reputational issues than they did to the Indigenous issues brought up by MCFN in the past. The data results show UNESCO's voice as a form of leverage made Canada respond to domestic indigenous concerns, which they had previously not done. Canada has responded to UNESCO's queries in several ways, including producing an action plan for protecting the WBNP, injecting funds for the management of the Park

⁴¹⁶ Keck & Sikkink, *supra* note 27 at 211.

⁴¹⁷ *Ibid.*

and establishing collaborative committees. However, MCFN wants the WHC to hold Canada to its promises.

iv. Accountability politics

Networks frequently attempt to convince states and other actors to change their stance on topics publicly, but the state often dismisses or ignores the attempts of network actors. However, once a state has publicly committed itself to a principle, then networks can use that public stance to hold the state accountable to its policies to avoid embarrassment.⁴¹⁸

The WBNP strategy is primarily an accountability strategy. MCFN is leveraging on the World Heritage Convention by asking UNESCO to hold the Canadian government accountable to its commitments. It is capitalizing on the stand Canada has taken on environmental issues. A participant observed that MCFN had been taking steps to advance some co-management rights concerning the Park, which was under a 1983 agreement with the federal government yet with little progress. However, once MCFN initiated the UNESCO process, Canada began to acknowledge their water concerns and initiate measures to address them, such as the SEA, working on the action plan and management plan. MCFN acknowledged that Canada injected funds into the WBNP to address the protection concerns. However, they insist that the budgeted amount is inadequate, and Canada needs to allocate more funds to the protection and preservation of the Park. UNESCO is certainly not planning on relaxing its pressure on Canada. Instead, it intends to hold Canada fully accountable to the extent of its commitments to the World Heritage Convention. This position was buttressed by a WHC staff who stated that Canada's commitment to protecting the WBNP is non-negotiable as Canada was a willing participant and signatory to the Convention. This view is consistent with the World Heritage Convention provisions, particularly in Article 6 of the Convention.⁴¹⁹ The study demonstrates that Canada's position as a signatory to the Convention made it considerably easier for UNESCO to hold Canada accountable to its agreements and more inclined to implement UNESCO's requirements.

⁴¹⁸ *Ibid* at 22.

⁴¹⁹ Centre, *supra* note 354.

In this section, I highlighted the strategies the network actors utilized in WBNP advocacy campaign. The Keck and Sikkink typology of tactics served to tease out these strategies and show network formation, issue creation, framing and coupling, among others. The network actors, in this case, utilized all four tactics of information politics, symbolic politics, leverage politics and accountability politics. They used these tactics in the strategic coupling of the existing WBNP Indigenous rights and environmental protection and management issues, presenting as an Indigenous body rather than a coalition of ENGOs. The network actors collaborated with ENGOs, generated attention through public conferences, and reported credible information. MCFN and CPAWS used information to enlist UNESCO's support as they realised they could not leverage on their own. The use of the Petition to list the Park as a World Heritage Site in Danger, coupled with the dramatization of facts using testimonies aligned with symbolic politics. The network actors presented the Petition before UNESCO WHC, a strategic venue shift that proved receptive to their claims. UNESCO possesses the ability to leverage Canada's commitments to both the UNDRIP and the Convention using a combination of material and moral leverage to hold Canada accountable to its commitments. In the next section, I analyze the network impact on the stages of influence in line with the results of the interview data.

6.2 Analysis of Stages of Influence

In determining whether NSAs influence the enforcement of environmental laws, there is a need to explore non-state action impacts on various stages of influence. Keck and Sikkink talk about stages of impact and not types of impact, so they conclude that expanded focus accompanied by shifts in discursive positions renders policymakers more vulnerable to networks' arguments.⁴²⁰ From a review of the interview data, the findings suggest that perceptions on impact and goal achievement differ across the participants' different perspectives. The reason for this is not far-fetched from the definition of a network. As earlier stated in chapter two, "TAN includes those relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services".⁴²¹ Some actors may be economic

⁴²⁰ Keck & Sikkink, *supra* note 27 at 24.

⁴²¹ *Ibid* at 2.

actors, firms, network of scientists who share common ideas in their quest to achieve a common goal.⁴²² MCFN, CPAWS and UNESCO might have come together to form a network with a common goal of protecting the Park; however, the interview data showed that UNESCO and CPAWS would consider Canada's effective management of the Park as goal achievement. In contrast, MCFN's goal achievement would be effective management of the Park by Indigenous people. However, this does not take away from the common goal: to ensure the preservation and protection of the Park.

The findings suggest that the network influence impact across the five stages of influence and yielded some results, including procedural change, increased funding, creation of more committees, access to previously restricted information and more. While the goal is still in sight, some participants conceded that it would be wise to count little victories while expecting bigger ones.

In the section below, I analyze these impacts under the relevant categories.

i. Issue creation/agenda setting

Some of the critical aspects of network influence at this stage are issue creation, issue framing, agenda-setting, generation of new ideas and increased awareness.⁴²³ This stage involves identifying the concern, determining what kind of frame works best, and creating awareness for that issue. In the present case, the Indigenous participants disclosed that MCFN identified the issue years ago as the declining ecology of the Park. They sought ways of making Canada better manage the ecological and cultural integrity of the Park. The infringement of Indigenous rights has also been at the forefront of the concerns about the Park. MCFN combined these as both Indigenous and environmental issues.

Furthermore, MCFN took proactive steps to obtain expert reports to buttress the issue of the declining ecology of the WBNP, and collaborated with other ENGOs to seek out Canada's attention. In seeking the most suitable frame for the issue, MCFN took the advice of the

⁴²² *Ibid* at 1.

⁴²³ *Ibid* at 16.

Environmental Law Centre of the University of Victoria and resolved to present the issues to UNESCO as an Indigenous cause rather than just an environmental one. There was also a consensus that the agenda be to request for the Park's listing as a World Heritage Site in Danger.

The coalition of MCFN and CPAWS did quite a lot to create and sustain awareness of the issues. As discussed above, in the section on information politics, they wrote press releases, held a press conference, circulated fliers and photos. They also made videos and travelled several times to the WHC meetings' venues to plead their cause.

The study's findings indicate that creating awareness of the declining ecology of PAD, not just on a domestic level but on an international scale, caused a positive change in Canada's response to the issues. All the participants agreed that raising the issues on a world stage made a substantial difference.

ii. Influence on discursive positions of states and international organizations.

A government that claims to be protecting Indigenous areas or ecological reserves such as a World Heritage Site is potentially more vulnerable to charges that such areas are in danger than one that makes no such claim.⁴²⁴ Given that Canada had already made this claim when it requested that it lists WBNP as a WHC, the TAN's effort was not to change governments' stance but to hold them to their word. According to Keck and Sikkink, meaningful policy change is more likely to occur when the first three types or stages of impact have occurred.⁴²⁵ Networks influence discursive positions when they help persuade states and international organizations to support international declaration or change stated domestic policy positions.⁴²⁶ Network members believe that one of the strategies to influence discursive positions and seek policy changes is political involvement. The participants, in this case, agreed that there had been increasing engagement from both the federal and provincial governments since UNESCO's intervention. They think that this improved engagement may be due to UNESCO's increased pressure on Canada to implement the recommendations of the WHC after the submission of the Reactive Monitoring Mission report. As

⁴²⁴ *Ibid* at 25.

⁴²⁵ *Ibid*.

⁴²⁶ *Ibid* at 24.

a UNESCO staff mentioned, the WHC has requested Canada to implement the recommendations, and the Committee is following up on those updates. According to the WHC's operational guidelines, Canada has an obligation to report to the Committee on the SOC of the WBNP.⁴²⁷ Canada submits periodic reports to the Committee on the SOC, its December 2020 report submitted late contained assurances of its commitment to the implementation of the Action Plan.

iii. Influence on institutional procedures

The influence on discursive positions by network actors may result in changes in institutional procedures. The combination of shifting international norms, convincing information, institutional procedures for action, and targeted lobbying create awareness and cause states to modify their practices.⁴²⁸ There was a consensus among all the participants that the UNESCO process has brought about institutional procedures changes. These institutional procedures include Canada hosting the Reactive Monitoring Mission, which necessitated the involvement of the federal, provincial and Indigenous governments, the creation of several committees such as the FPT Environmental Flows Hydrology Working Group, and the Joint Review Panel geared towards the production of the action plan. Canada also invited comments on the action plan from relevant partners and stakeholders specific to thematic areas. The level of engagement witnessed to produce the action plan can be classified as unprecedented in the Park history. However, it would be remiss not to mention that this was probably a direct result of the recommendation of the WHC on increased engagement and participation of Indigenous people and all relevant stakeholders.⁴²⁹

Notwithstanding the increased levels of engagement, participation and procedures, the network members are disappointed that Canada did not incorporate all the recommendations of the WHC into the action plan. Most importantly, Canada omitted to conduct the requested impact assessment of the Site C hydro-power project on the OUV of PAD. MCFN is also disappointed that despite the several avenues created for the unification of ideas and goals; particularly the joint committees for the establishment of the action plan, it appears that it is only the Indigenous nations that have

⁴²⁷ Centre, *supra* note 33 at 15 (n).

⁴²⁸ Keck & Sikkink, *supra* note 27 at 34.

⁴²⁹ Centre, *supra* note 389.

taken advantage of these venues to foster unity, while the federal, provincial and territorial governments keep passing the buck of responsibility to each other. As one of the participants said, the Park's challenge is the government's inability to talk to themselves across the different government levels. UNESCO, although an ally, is not left out of the pressure pit. They have also had to review some aspects of their operational guidelines with particular reference to the requirement that is going forward; a state party has to prove that it has engaged with local Indigenous peoples and other stakeholders in advance of making an application to list a site on the World Heritage list.⁴³⁰ The network influence made UNESCO modify its standard reporting cycles for state parties from a six-year reporting cycle to a two-year reporting cycle. However, this is only specific to Canada.⁴³¹ The Petition to UNESCO kickstarted the advocacy process with UNESCO, which has produced a noticeable change in Canada's attitude towards the WBNP. However, the process of submission was not devoid of hitches as there are no laid-down procedures for non-state parties to submit petitions to WHC. There are also no requirements for disclosing state party's reports to the WHC regarding management and maintenance issues. The broad implication is a lack of transparency and limited accessibility to the detriment of affected Indigenous peoples. Given that there might be disputes concerning the state of conservation of natural heritage sites, there ought to be structured channels or operation mechanisms for reportage and consultation from both the state and local Indigenous communities. It would significantly enhance a disaster-prevention approach compared to a disaster-response approach

iv. Influence of policy change on target actors

Policy changes in target actors come in different forms. These could be, change in policies, new fund allocation, aid cut-off and curtailment.⁴³² In response to network influence, the federal

⁴³⁰ Centre, *supra* note 33 at para 123. The World Heritage Committee operational guidelines expressly provide that; *Participation in the nomination process of local communities, indigenous peoples, governmental, non-governmental and private organizations and other stakeholders is essential to enable them to have a shared responsibility with the State Party in the maintenance of the property. States Parties are encouraged to prepare nominations with the widest possible participation of stakeholders and to demonstrate, as appropriate, that the free, prior and informed consent of indigenous peoples has been obtained, through, inter alia making the nominations publicly available in appropriate languages and public consultations and hearings.*

⁴³¹ *Ibid* at para 203; Centre, *supra* note 389.

⁴³² Keck & Sikkink, *supra* note 27 at 24.

government budgeted 27.5 million Canadian dollars over five years to support the Action Plan for protecting the Park. Nevertheless, MCFN and CPAWS are of the view that the amount is grossly inadequate. UNESCO has also observed that considering the size of the Park and the complexities of the attendant issues; more funding is required to address the issues. Some participants described the creation of new buffer zones, wildlife parks and protected areas around the WBNP as a welcome change.

Since the UNESCO process and the complaints of the lack of engagement with Indigenous peoples in consultation and monitoring processes, the federal government has updated the federal environmental assessment legislation, the Canada Impact Assessment Act, 2019.⁴³³ It is important to observe that while the amended legislation was not a direct result of the Petition process, the MCFN participated in the amendment process. The new amendment seeks to remedy some of the issues surrounding impact assessment processes, such as Indigenous government jurisdiction, participation in development proposals, and lack of Indigenous-led impact assessments. In 2012, the federal government replaced the original *Canadian Environmental Assessment Act* (CEAA) with CEAA 2012. This Act had some significant criticisms, such as its scope of applicability, subject matter restrictions, near impossible deadlines and exclusionary practices.⁴³⁴

The findings indicate that network influence has impacted policy changes in line with the literature, first with changes in the environmental assessment legislation and new fund allocation.

v. *Influence on state behaviour*

This influence on state behaviour speaks to the stand a state actor takes on the network issues. In Canada's case, all the participants agree that due to UNESCO'S involvement, Canada seems to be a willing participant in discussions to preserve the Park against what was obtainable in the past. A federal government staff affirmed that the federal government had decided to invest more, engage more and collaborate more with all stakeholders on all levels. The provincial government is not left out. A staff concurs that UNESCO petition brought about a renewed focus and awareness of MCFN concerns. It also improved collaborations with the federal government on WBNP issues.

⁴³³ *Impact Assessment Act, 2019*, (28 August 2019).

⁴³⁴ *Canada's Track Record on Environmental Laws 2011-2015*, by Anna Johnston (2015) at 5.

However, there are suggestions that the strategic environmental assessment scope may have been beyond that required. This view suggests that the preservation of the OUV is not dependent on external factors beyond the Park's boundaries.

The conduct of the SEA, production of the Action Plan, budgetary allocation, creation of buffer zones and proposed management plan are a few indicators of Canada's willingness to protect and preserve WBNP better. However, MCFN is sceptical because while there has been no credible corrective action, jurisdictions upstream of WBNP continue to approve new hydro-electric and oil sands projects on the Peace and Athabasca rivers leading to the water quality and quantity issues and overall deterioration of the Park. This position is despite the 2018 SEA report, which confirmed hydro-power projects, oil sands projects, and climate change are all causes for the declining state of all ecological indicators for PAD. That report concluded that: "Without immediate intervention, this trend will likely continue, and the World Heritage values of the Peace Athabasca Delta will be lost." This statement surely portends some cause for alarm. Findings suggest that the Park's World Heritage Status is one of the motivating factors for Canada's responsiveness post-Petition, without which WBNP would be worse off.

The results of the study suggest some improvement in Canada's behaviour towards Park issues since the Petition. However, it appears inadequate to meet the shared goal of Park preservation and effective management. The next section details the summary of the findings and the overall conclusions emanating from the data.

6.3 Discussion of findings

This study set out to determine whether NSAs influence the enforcement of environmental laws and the conditions that lead to better enforcement of environmental laws. WBNP presented an interesting case study to unravel the answers to the research questions. The case study analysis applies the data findings to the research questions and draws out salient theoretical contributions to the transnational network advocacy literature.

The WBNP campaign is consistent with the Keck and Sikkink literature on network advocacy and clearly fits the boomerang pattern described in their 1998 book, *Activists without borders*:

Advocacy Network in International Politics. MCFN and CPAWS used all four network tactics—information politics, symbolic politics, leverage politics, and accountability politics—in their campaign to get the Canadian government to recognize, acknowledge and combat the threats to the ecology of the Park in the WBNP case study, having exhausted all other domestic ways to pressure the Canadian government to protect the Park better. WBNP campaign is clearly a case where strategy moved from the domestic to the international arena. MCFN and CPAWS had exhausted all legal means of effectively influencing Canada and decided to apply pressure at an international level by enlisting UNESCO’s help.

The network actors strategically coupled environmental issues and Indigenous rights, which they presented as an Indigenous organisation rather than a coalition of ENGOs. They employed this approach because they believed the Indigenous venue to be more receptive to their claims. The venue shift in WBNP case is a direct contrast to that of the Brazilian Planaflo case study in Keck and Sikkink’s book, where the venue shift was from Indigenous rights to environmental issues. MCFN used the Indigenous venue to provide alternate sources of information and “provide not only facts but testimony-stories told by people whose lives have been affected.”⁴³⁵ The symbolic presentation of the Park as a World Heritage Site in Danger through dramatic videos helped elicit positive responses from the members of the WHC during decision-making sessions. MCFN dramatized facts using video testimonies of Mikisew elders to evoke commitment and a broader understanding of the campaign. The symbolic representation of the Park as a World Heritage Site in Danger illustrates the use of symbolism to reshape understanding in the process of persuasion at the WHC level.

Keck and Sikkink note that activists see the benefit of exchanging information and promoting their cause by collaborating with other like-minded organizations.⁴³⁶ However, owing to the current digital divide and awareness gap prevailing at the time, Keck and Sikkink's work paid little attention to the media's effect on the networks. In examining information politics, interview data revealed the immense technological advancement over time. It showed how technology and media improved long-distance communication and communication typical of transnational advocacy

⁴³⁵ Keck & Sikkink, *supra* note 27 at 19.

⁴³⁶ *Ibid* at 128.

networks, significantly aiding MCFN's access to WHC. WBNP interview data establishes that significant collaboration between network members exists. The network members made great use of information politics before and after the submission of the Petition. MCFN relied on credible expert reports to convince UNESCO of the severity of WBNP's environmental issues. Notwithstanding the use of information politics as an excellent strategy for creating awareness about an issue, the network members experienced some setbacks with this tactic. These setbacks include the high cost of procuring expert information, frequent trip logistics, and difficulties accessing the WHC members.

The MCFN strategy is primarily an accountability strategy, which attempts to leverage environmental and Indigenous rights policy by Petitioning the WHC to hold the Canadian government accountable to its previous commitments. UNESCO's leverage on Canada is a direct consequence of Canada's commitment to the World Heritage Convention, UNDRIP and its position on environmental issues. Undoubtedly, UNESCO's use as a form of leverage is the salient point of the transnational advocacy network of MCFN, CPAWS and UNESCO. The interview data consensus is that Canada has responded better to the reputational issues than they ever did to the Indigenous issues brought up by MCFN in the past.

The involvement of these NSAs in the enforcement of Canadian environmental laws underscores that creating awareness of the declining ecology of PAD, not just on a domestic level but on an international scale, caused a positive change in Canada's response to the issues. Keck and Sikkink investigated the conditions for advocacy networks influence and suggested an assessment of goal achievement across several stages of influence. These are pointers to the success or failure of a network advocacy campaign. In the WBNP case, there are indications of increased engagement from both the federal and provincial governments since UNESCO's intervention, a direct result of the influence of NSAs on discursive positions. This increased attention results from UNESCO's heightened pressure on Canada to implement the recommendations of the WHC after the submission of the Reactive Monitoring Mission report. Notably, the UNESCO process has brought about changes in institutional procedures. Notably, Canada hosting the Reactive Monitoring Mission necessitated the federal, provincial, and Indigenous governments' involvement. Also, the creation of several committees such as the FPT Environmental Flows Hydrology Working Group,

Joint Review Panel geared towards the production of the action plan is consistent with the influence on institutional procedures.

Similarly, the influence on policy change on the surface appears to have impacted a crucial aspect of MCFN complaints- the lack of engagement with Indigenous peoples in consultation and monitoring processes. According to Keck and Sikkink, success in influencing policy depends on the strength and density of the network and its ability to achieve leverage. While it is apparent that the WBNP network consists of MCFN and CPAWS, they have an immense amount of supporters, evidenced by the numerous letters of support that accompanied the 2014 Petition. Also, they have a formidable ally in UNESCO who can exert leverage on Canada because of Canada's sensitivity to public perception of its eco-credentials and commitment to the international agreements. Finally, the network members appear to have some influence on state behaviour. The data suggests that due to UNESCO'S involvement, Canada seems to be more willing to participate in discussions to preserve the Park against what was obtainable in the past. Reflecting on scepticism echoed by MCFN and borrowing from the words of David Boyd, is Canada walking the walk or merely talking the talk?⁴³⁷

The Petition to list the Park as a World Heritage Site in Danger served a critical symbolic purpose, emphasizing the severity of the Park's threats. MCFN and MCFN's collaboration using the UNESCO venue and the World Heritage Status of the Park is particularly noteworthy. These NSAs continually pushed from within, locally, until they accessed an international platform that amplified their voices and boomeranged to the state. In this case, UNESCO utilized both material and moral leverage while exerting pressure on Canada. More generally, these primary findings are consistent with the theoretical underpinning of transnational advocacy. MCFN and CPAWS may not have accomplished their set goal of registering the Park on the World Heritage Site in Danger List, requiring tighter protection and preservation. However, they acknowledge that their advocacy has yielded incremental progress in the campaign to enforce environmental laws better as Canada has taken some positive steps in the right direction. The establishment of Federal-Provincial-Territorial joint committees and working groups geared towards the creation of the Action Plan, the partial implementation of the Action Plan, increased reportage to UNESCO, and increased funding for the protection of the Park are some of the positive results that have emanated from the

⁴³⁷ Boyd, *supra* note 203 at 21.

influence of network's advocacy on Canada. In December 2020, and towards the end of writing this thesis, Canada announced additional funding for the implementation of the Action plan. This is a direct result of UNESCO's leverage. Notwithstanding, MCFN and CPAWS are hopeful that Canada's consistent positive action and its influence on the provinces will guarantee lasting progress.

I have demonstrated that NSAs influence the enforcement of laws by applying several strategies that align with the typology of tactics and the assessment of network influence on the stages of impact. The analysis of the conditions under which non-state action has led to better enforcement depends on the consideration of several factors. These factors include but are not limited to actor characteristics, issue characteristics, specifically, the strength and density of the network, the strategies employed, the ability to achieve leverage and the impact on stages of influence, among others. Actor characteristics is an all-encompassing term that refers to the capability of actors to transmit messages and targets to be vulnerable to leverage. Generally, issues concerning physical harm to vulnerable or innocent individuals appear particularly compelling.⁴³⁸ Environmental campaigns that have had the most significant transnational impact have stressed the connection between protecting environments and protecting the often-vulnerable people who live in them.⁴³⁹ In the WBNP case, the campaign for the preservation and protection of the Park is an issue involving bodily harm to vulnerable individuals- Indigenous people - with a short, clear causal chain about who bears responsibility - Canada. The compelling nature of the WBNP issue coupled with the Petition presented by the affected Indigenous peoples were strong points that swayed the WHC in favour of the network actors.

Networks perform best when they are dense,⁴⁴⁰ comprise of many actors, have strong connections with the network and reliable information flows.⁴⁴¹ The WBNP network may not have many actors, but they are undoubtedly dense with strong connections. MCFN and CPAWS maintain constant communication within the network. They scheduled monthly Skype calls, credible expert information sending monitoring reports and attending WHC meetings as often as possible. The

⁴³⁸ Keck & Sikkink, *supra* note 27 at 26.

⁴³⁹ *Ibid.*

⁴⁴⁰ Density implies the frequency and transmission of information exchange within networks and to target areas.

⁴⁴¹ Keck & Sikkink, *supra* note 27 at 27.

strategies network actors use in their advocacy campaign may determine the success of the campaign. An advocacy campaign may not utilize all four tactics and still be successful. However, it would be strange to see network advocacy succeed without utilizing information politics or some form of leverage politics.

The availability to leverage is equally as important as the target actor's sensitivity to leverage. The absence of either one may result in the failure of a campaign. A target state like Canada is most susceptible to leverage when it is conscious of its status in the international system and may be sensitive to pressure when there are disparities between its stated commitments and practices, particularly when it relates to Indigenous peoples and the furtherance of the Crown's duty of reconciliation. Network influence on the stages of impact speaks to the goal achievement, and it is the culmination of all the network's efforts. MCFN and CPAWS may not have achieved their short-term goals of listing the Park as a World Heritage Site in Danger. Nevertheless, given the improved feedback from Canada, these NSAs may be well on the way to achieving their long term goal of preserving the PAD and effective management of the Park.

Having demonstrated that NSAs can influence the enforcement of environmental laws by utilising some or all the typology of tactics, I discussed some conditions under which non-state action can lead to better enforcement by exploring the impacts of NSA action. Finally, I consider the possible application of these findings to a different jurisdiction. The factors that contribute to goal achievement examined above might be recipes for probable success. However, Keck and Sikkink warn that strong and dense linkages between domestic and foreign actors alone do not guarantee success.⁴⁴² Instead, they advise consideration of the domestic structures of each case, nature of the issues, networks and other factors as some transnational networks operate within the same context but have varied results.⁴⁴³ The authors suggest that the key to success is understanding dynamic elements in domestic politics is just as crucial to success as understanding domestic structures. Dynamic elements may refer to the availability of leverage and the target actor's sensitivity to leverage. Applying the literature to the WBNP case, the unique status of the Park as a World Heritage Site, the protected status of the Indigenous inhabitants of the Park, the strength

⁴⁴² *Ibid* at 74.

⁴⁴³ *Ibid* at 212.

and density of the advocacy network, the strategies utilized, Canada's eco-credentials and sensitivity to leverage are all contributory factors to the relative success of the WBNP advocacy campaign. However, this is by no means a blanket endorsement for applying a transnational advocacy network to another jurisdiction; I must issue a caveat- judge each case on its merit.

In this chapter, I analyzed the interview data presented in the previous chapter and presented my qualitative research findings in Keck and Sikkink's two typologies of tactics and influence stages. The interviews' results indicate that MCFN, CPAWS, and UNESCO employed the typologies of tactics in varying degrees and exerted some measure of influence on several levels. The present results are significant as they show the network's utilization of the four tactics and the reported shortcomings, which help understand the impact of network action on the target actor. These findings also show the conditions for better enforcement and possible application elsewhere. In the next and final chapter, I present my conclusion and make recommendations for future research.

CHAPTER SEVEN

7.0 Conclusion

This study set out to determine whether NSAs influence the enforcement of environmental laws and the conditions under which NSA has led to better enforcement. The study had three objectives. First, to identify the strategies used by NSAs in effecting the enforcement of environmental laws. The next objective was to explore the impacts of NSAs on Canadian environmental law enforcement. Finally, to discuss the possible application of these findings to a different jurisdiction. I adopted a qualitative analytical approach using data collected from case study documentary analysis and interviews in my thesis to answer the research questions. The broad implication of the study shows that NSAs have evidently assisted in efforts leading to the enforcement of environmental laws in Canada. They collaborated, formed an international linkage, used a strategy consistent with Keck and Sikkink's boomerang model, utilized strategies consistent with their typology of tactics, and exerted pressure consistent with their impact on state influence. Their network used UNESCO to exert influence on Canada and was able to identify specific examples of impact. This study also demonstrated that certain factors, such as actor characteristics and issue characteristics, contribute to a more significant impact on the set target. However, those factors are dynamic and depend on certain variables, including the strength and density of the network, the strategies employed, the ability to achieve leverage and the impact on stages of influence, among others.

In this concluding chapter, I situate the qualitative findings into a broader discussion on NSAs' interactions and the resultant effects of their influence on the set target according to Keck, and Sikkink's two broad typologies focused on tactics and stages of influence. I equally consider what the implication of this influence might mean for other jurisdictions and some of the conditions for better enforcement. Finally, I discuss the significance of these findings on the enforcement of environmental laws and future research ideas. The constructivist literature discussed in chapter two provided a much-needed frame for explaining NSA activism. The analytical framework used for this research sits squarely within constructivist tenets.

7.1 Typology of Tactics

The findings detailed in chapter six indicate that NSAs involved in transnational network advocacy employ several strategies, practices, techniques, and tools geared towards achieving a set goal. Original studies on TAN showed that members of the network were motivated by shared values and beliefs to mobilise action.⁴⁴⁴ This conclusion parallels the findings in the study. The NSAs shared common environmental beliefs and a common goal. Though a network may comprise of actors with different beliefs or values, they must reach a consensus and produce shared values and goals; else, they might encounter problems with issue-framing, venue-coupling and jeopardize the advocacy. It is equally imperative that network members are receptive to new relationships with other non-state actors. This tactic helps multiply avenues of entry to the international system and increases the chances of forming a boomerang model.

Keck and Sikkink note that activists see the benefit of exchanging information and promoting their cause by collaborating with other like-minded organizations.⁴⁴⁵ However, owing to the digital divide and awareness gap prevailing at the time, Keck and Sikkink's work paid little attention to the media's effect on the networks. An examination of the first category in the typology—information politics—revealed the immense technological advancement over time. It showed how technology and media improved long-distance communication and communication typical of transnational advocacy networks, significantly aiding entry access points. Besides, communication technology has significantly enhanced NSA's ability to organize campaigns, policy debates, advertisements and influence wider audiences.

Similarly, improved technology and technological tools have led to the easy spread of information, shorter feedback time on campaign issues, and significantly advanced advocacy issues. Technological advancement and increased collaboration between the network members greatly enhance the information flow, networking process and create new access channels where there are none. Technology also reinforces the expression of symbolism.

⁴⁴⁴ *Ibid* at 1.

⁴⁴⁵ *Ibid* at 128.

Leverage politics and accountability politics are close counterparts and frequently complement each other. The findings suggest that when the target actor is bound legally by laws, treaties or policies that may keep them accountable, international NSAs may be more effective at achieving leverage. Material and moral leverage play key roles in leverage politics. However, its reach depends on certain factors that include the target actor's reputation, economic wealth, and culture.

There are no guarantees for success using any of the above strategies; neither is any more important than the other. However, in this study, the four categories of typology tactics seem to have a symbiotic relationship contributing to their successes.

7.2 Stages of Influence

Networks of transnational activism are proliferating. They aim to influence the actions of states and international organisations. Network advocates aim not only to influence policy performance but to alter the terms and essence of policies.⁴⁴⁶ NSA activism impacts several stages. The structure of the domestic actor determines the need for international assistance. A closed or blocked structure would likely need some international linkage to form a boomerang model, as in the case study. The combination of the closed political structure in one domestic state and open structures in an international organisation activates the boomerang model in line with the literature.⁴⁴⁷ A set target's amenability to leverage is a crucial determinant of impact, although that is not implacable. It is pertinent to note that perceptions on impact and goal achievement may differ across the different perspectives of the network members; however, this may not diminish the advocacy efforts to achieve their common goal. An essential recipe for relative success suggests an understanding of the complexities surrounding the domestic structure of the set target. In our case study, the unique quality of the case study, World Heritage Status of the Park, the protected status of the Indigenous people who petitioned UNESCO, Canada's eco-credentials all contributed to the leverage used on Canada. However, this is by no means a yardstick for evaluating network success or failure for a state actor. There are other distinct variables to consider.

⁴⁴⁶ *Ibid* at 2.

⁴⁴⁷ *Ibid* at 212.

7.3 Contribution to Literature and limitations of the study

This thesis contributes to the study of transnational advocacy and environmental law by building on existing literature and offering unique insights into the role NSAs play in the enforcement of environmental law. It reinforces the Keck and Sikkink literature that suggests applying the boomerang pattern beyond the human rights realm. The application of the boomerang pattern in the WBNP case study further demonstrates that contrary to earlier claims by some constructivist scholars, high-income countries like Canada are neither immune to leverage nor insensitive to influence.

This thesis also contributes to the knowledge of the dynamic interplay and synergy between domestic Indigenous organisations, domestic environmental organisations and international organisations. Finally, this study supports the argument that NSAs play a critical role in enforcing environmental law by engaging transnational advocacy strategies.

The limitation of this thesis is evident in the result of findings from a single case study. Comparative case studies include analyzing and synthesizing the similarities, differences, and patterns between two or more cases. It does this in a way that offers easier-to-generalize knowledge about causal issues, how and why specific methods function or fail.

7.4 Future Research

This research focused primarily on the strategies used by NSAs and the impact of those strategies on target actors. The findings from the case study are consistent with the argument that NSAs influence the enforcement of environmental laws. I demonstrated that NSAs in this jurisdiction have assisted in advocacy efforts that lead to state action. What does this entail for other jurisdictions, and what are the conditions for better enforcement of environmental laws? It is imperative to incorporate a caveat when evaluating the probability of network advocacy success or failure. This question is a thesis on its own. There are various unknown variables that depend on a particular state's culture, domestic institutions' structure and their sensitivity to leverage, necessary law enforcement, budget financing, and more. However, ascertaining these unknowns

is not a guarantee for an accurate evaluation as the nature of the issues and networks are significant factors for consideration.⁴⁴⁸

Some of these questions are desirable for a future research study beyond the scope of this work. On importing legal structures to another jurisdiction, Pierre Legrand's words come to mind, "every purported replication of the legal produces singularity".⁴⁴⁹ How can Canada's template for non-state activism contribute to environmental advocacy in other jurisdictions? Despite Canada's environmental reputation and high-income status, with more than 250 treaties on international environmental law and its great disdain for international embarrassment, Canada is nevertheless dragged before UNESCO to enforce its environmental laws. What then becomes the fate of people and natural sites in countries with inverse values, prestige, state's eco-credentials and size of its resources, such as Nigeria with extreme environmental threats?

The Indigenous people of Ogoniland in Nigeria's Niger Delta have had their lives, lands, and means of livelihood destroyed by many years of immense environmental damage stemming from oil spills and gas flaring resulting from multinational companies' unchecked activities.⁴⁵⁰ While the benefits of oil and gas exploration and productions in Nigeria are not in doubt, one cannot discountenance the consequent environmental impact of oil industry activities. The impact of non-state activism in that jurisdiction will be interesting to examine, mainly where the case study is not a World Heritage Site and may not have recourse to an international platform such as the UNESCO WHC.

⁴⁴⁸ *Ibid.*

⁴⁴⁹ Pierre Legrand, "On the Singularity of Law Symposium: Diffusion of Law in the 21st Century: Interaction and Influence" (2006) 47:2 Harv Int'l LJ 517-530.

⁴⁵⁰ Carr, Douglas & Onyeagucha, *supra* note 198; Okonta & Oronto, *supra* note 197.

BIBLIOGRAPHY

Primary Sources: Legislation

Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, 2nd Session, 43rd Parliament, 2020.

Canada National Parks Act, SC 2000, c 32, 2000.

Constitution Act, 1867, 30 & 31 Victoria, c 3 (UK).

Constitution Act, 1982, being Schedule B to the Act 1982 (UK), 1982, c 11.

Fisheries Act, R.S.C. 1985

Impact Assessment Act, 2019, (28 August 2019).

Canada National Parks Act, SC 2000, c 32, 2000.

Association Greenpeace France, 1998 Conseil d'Etat.

Association Greenpeace France and others v French State, Ministry of Agriculture and Fisheries, In the presence of Novartis Seeds SA and another, 2000 European Court of Justice.

Calder v British Columbia (Attorney-General), [1973] SCR 313, .

Canada (Governor General in Council) v Mikisew Cree First Nation, [2017] 3 FCR 298, 2016 Federal Court of Appeal.

Canadian Parks and Wilderness Society v Canada (Minister of Canadian Heritage), [2003] 4 FC 672.

Delgamuukw v British Columbia, [1997] 3 SCR 1010.

Haida Nation v British Columbia (Minister of Forests), [2004] 3 SCR 511.

Mikisew Cree First Nation v Canada (Governor General in Council), [2018] 2 SCR 765.

Mikisew Cree First Nation v Canada (Minister of Canadian Heritage), [2005] [2005] 3 S.C.R. 388, 2005 SCC 69 [2005] 3 SCR 388, 2005 SCC 69 .

Prophet River First Nation, et al v Minister of the Environment, et al, 2017 CanLII 40513 (SCC), 2017.

R v Sparrow, [1990] 1 SCR 1075.

Rio Tinto Alcan Inc v Carrier Sekani Tribal Council, [2010] 2 SCR 650.

Stichting Greenpeace Council (Greenpeace International) and others v Commission of the European Communities, 1998 European Court of Justice.

Taku River Tlingit First Nation v British Columbia (Project Assessment Director), [2004] 3 SCR 550.

Tsleil-Waututh Nation v Canada (Attorney General), [2019] 2 FCR No 3, 2019 Federal Court of Appeal.

Antweiler, Werner, *Elements of Environmental Management* (University of Toronto Press, 2014).

Boyd, David R, *Unnatural Law. Rethinking Canadian Environmental Law and Policy* (The University of British Columbia Press, 2014).

Chayes, Abram & Antonio Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge: Harvard University Press, 1995).

Creswell, John W & Cheryl N Poth, *Qualitative inquiry & research design : choosing among five approaches*, 4th ed (Thousand Oaks, CA: SAGE Publications Ltd, 2018).

Finnemore, Martha, *National interests in international society* (Ithaca, N.Y.: Cornell University Press, 1996).

Gerring, John, *Case Study Research: Principles and Practices* (Cambridge, United Kingdom: Cambridge University Press, 2006).

Hallegatte, Stephane et al, *Shock Waves, Managing the Impact of Climate Change on Poverty* (Washington, DC: The World Bank Group, 2016).

Keck, Margaret E & Kathryn Sikkink, *Activists beyond borders: Advocacy networks in international politics* (Ithaca and London: Cornell University Press, 1998).

Kiss, Alexandre Charles & Dinah Shelton, *Guide to International Environmental Law* (Leiden, Netherlands: Brill, 2007).

Lowry, John & Rod Edmunds, *Environmental Protection and the Common Law* (Bloomsbury Publishing, 2000).

Malone, Linda & Scott Pasternack, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law* (Washington, United states: Island Press, 2006).

Okonta, Ike & Douglas Oronto, *Where vultures feast : shell, human rights, and oil in the Niger Delta* (Verso, 2003).

Peters, Anne et al, *Non-State Actors as Standard Setters* (Cambridge, United Kingdom: Cambridge University Press, 2009).

Rodrigues, Maria Guadalupe Moog, *Global Environmentalism and Local Politics: Transnational Advocacy Networks in Brazil, Ecuador, and India* (SUNY Press, 2003).

Sarkar, Dibyendu et al, *An Integrated Approach to Environmental Management* (John Wiley & Sons, 2015).

Slowey, Gabrielle, *Navigating Neoliberalism: Self Determination and the Mikisew Cree First Nation* (Vancouver, Canada: UBC Press).

Stake, Robert E, *Qualitative Research: Studying How Things Work* (Guilford Press, 2010).

Tarrow, Sidney, *The New Transnational Activism*, Cambridge Studies in Contentious Politics (Cambridge: Cambridge University Press, 2005).

Tysiachniouk, Maria S, *Transnational governance through private authority: The case of Forest Stewardship Council certification in Russia* (Wageningen Academic Publishers, 2012).

Uyigüe, E & M Agho, *Coping with Climate Change and Environmental Degradation in the Niger Delta of Southern Nigeria* (Community Research and Development Centre (CREDC) Press, Benin, Nigeria, 2007).

Yin, Robert K, *Case study research: design and methods*, 5th ed (SAGE Publications, Inc, 2014).

———, *Qualitative Research from Start to Finish*, second ed (New York, United States: Guildford press, 2016).

Adler, Emanuel, “Seizing the Middle Ground:: Constructivism in World Politics” (1997) 3:3 *European Journal of International Relations* 319–363.

Ali, Cheikhmous, “Syrian Heritage under Threat” 351–366.

Amiott, Jennifer A, “Environment, Equality, and Indigenous Peoples’ Land Rights in the Inter-American Human Rights System: Mayagna (Sumo) Indigenous Community of Awas Tingni V. Nicaragua” (2002) 32:4 *Environmental Law* 873–903.

Andonova, Liliana B, Michele M Betsill & Harriet Bulkeley, “Transnational Climate Governance” (2009) 9:2 *Global Environmental Politics* 52–73.

Bianchi, Andrea, ed, “Globalization of Human Rights: The Role of Non-state Actors” in *Non-State Actors and International Law* (Routledge, 2017).

Binnema, Theodore (Ted) & Melanie Niemi, “‘Let the Line Be Drawn Now’: Wilderness, Conservation, and the Exclusion of Aboriginal People from Banff National Park in Canada” (2006) 11:4 *Environmental History* 724–750.

Carothers, Thomas, “The Rule of Law Revival” (1998) 77:2 *Foreign Affairs* 95–106.

- Carr, Susan, Oronto Douglas & Uche Onyeagucha, “The Ogoni people’s campaign over oil exploitation in the Niger Delta” in *Environmental Policies and NGO Influence; Land degradation and sustainable resource management in the sub-Saharan Africa* Routledge Research Global Environmental Change Series (Routledge, 2001) 201.
- Cashore, Benjamin, “Legitimacy and the Privatization of Environmental Governance: How Non-State Market-Driven (NSMD) Governance Systems Gain Rule-Making Authority” (2002) 15:4 *Governance* 503–529.
- Chandler, David, “The Constructivist Thesis” in David Chandler, ed, *Constructing Global Civil Society: Morality and Power in International Relations* (London: Palgrave Macmillan UK, 2004) 25.
- , “The Constructivist Thesis” in David Chandler, ed, *Constructing Global Civil Society: Morality and Power in International Relations* (London: Palgrave Macmillan UK, 2004) 25.
- Chechi, Alessandro, “Non-State Actors and the Implementation of the World Heritage Convention in Asia: Achievements, Problems, and Prospects” (2018) 8:2 *Asian Journal of International Law* 461–489.
- Ciorciari, John D, “The Lawful Scope of Human Rights Criteria in World Bank Credit Decisions: An Interpretive Analysis of the IBRD and IDA Articles of Agreement” (2000) 33:2 *Cornell Int’l LJ* 331–372.
- Clapham, Andrew, “‘Non-state Actors.’ In *Post-Conflict Peacebuilding: A Lexicon*” (2009).
- Cole, Matthew A, “Corruption, income and the environment: An empirical analysis” (2007) 62:3 *Ecological Economics* 637–647.
- Conticini, Edoardo, Bruno Frediani & Dario Caro, “Can atmospheric pollution be considered a co-factor in extremely high level of SARS-CoV-2 lethality in Northern Italy?” (2020) 261 *Environ Pollut.*
- Cotterrell, Roger, “What Is Transnational Law?: Transnational Law” (2012) 37:2 *Law & Social Inquiry* 500–524.
- Damania, Richard, Per G Fredriksson & Muthukumara Mani, “The Persistence of Corruption and Regulatory Compliance Failures: Theory and Evidence” (2004) 121:3 *Public Choice* 363–390.
- Dannenmaier, Eric, “The Role of Non-State Actors in Climate Compliance” (2011) *Promoting Compliance in an Evolving Climate Regime.*
- Eilstrup-Sangiovanni, Mette & Teale N Phelps Bondaroff, “From Advocacy to Confrontation: Direct Enforcement by Environmental NGOs” (2014) 58:2 *Int Stud Q* 348–361, online: <<https://academic.oup.com/isq/article-lookup/doi/10.1111/isqu.12132>>.

Eilstrup-Sangiovanni, Mette & J C Sharman, “Enforcers beyond Borders: Transnational NGOs and the Enforcement of International Law” (2019) *Perspectives on Politics* 1–17.

Evans, Peter & César Rodríguez-Garavito, “Transnational Advocacy Networks; Twenty Years of Evolving Theory and Practice” in Peter Evans & César Rodríguez-Garavito, eds, *Introduction: Building and Sustaining the Ecosystem of Transnational Advocacy* (Bogotá, Colombia, Ediciones Antropos Ltda., 2018) 189.

Fairlie, John & Philip Sworden, “Law and the Canadian Constitution” in *Introduction to Law in Canada* (Toronto, Canada: Emond Montgomery Publications Limited, 2014) 103.

Farley, DW & H Cheng, “Hydraulic Impact of Flow Regulation on the Peace-Athabasca Delta” (1986) 11:1 *Canadian Water Resources Journal* 26–42.

Fuller, W A, “Behaviour and Social Organization of the Wild Bison of Wood Buffalo National Park, Canada” (1960) 13:1 *ARCTIC* 2–19.

Ganga, Deianira & Sam Scott, “Cultural ‘Insiders’ and the Issue of Positionality in Qualitative Migration Research: Moving ‘Across’ and Moving ‘Along’ Researcher-Participant Divides” (2006) 7:3 *Forum Qualitative Sozialforschung / Forum: Qualitative Social Research*, online: <<http://www.qualitative.research.net/index.php/fqs/article/view/134>>.

Godlewska, Christina & Jeremy Webber, “The Calder Decision, Aboriginal Title, Treaties, and the Nisga’a” in Foster Hamar, Heather Raven & Jeremy Webber, eds, *Let Right Be Done: Aboriginal Title, the Calder Case, and the Future of Indigenous Rights* (University of British Columbia Press, 2008).

Gualtieri, Alix Gowlland, “The Environmental Accountability of the World Bank to Non-State Actors: Insights from the Inspection Panel” (2002) 72:1 *British Yearbook of International Law* 213–253.

Guggisberg, Solène, “The roles of nongovernmental actors in improving compliance with fisheries regulations” (2019) 28:3 *Review of European, Comparative & International Environmental Law* 314–327.

Hofferberth, Matthias et al, “Multinational Enterprises as ‘Social Actors’—Constructivist Explanations for Corporate Social Responsibility” (2011) 25:2 *Global Society* 205–226.

Jetschke, Anja & Andrea Liese, “The Power of Human Rights a Decade After: From Euphoria to Contestation?” in Thomas Risse, Stephen C Ropp & Kathryn Sikkink, eds, *The Persistent Power of Human Rights from commitment to compliance* (New York, United States: Cambridge University Press, 2013) 26.

Josselin, Daphné, “Back to the Front line? Trade Unions in a Global Age” in Daphné Josselin & William Wallace, eds, *Non-state Actors in World Politics* (London: Palgrave Macmillan UK, 2001) 169.

- Keck, Margaret E & Kathryn Sikkink, “Transnational advocacy networks in international and regional politics” (1999) 51:159 *International Social Science Journal* 89–101.
- Koh, Harold, “Why Do Nations Obey International Law?” (1997) 106:8 *Yale Law Journal*, online: <<https://digitalcommons.law.yale.edu/ylj/vol106/iss8/7>>.
- Kuyper, Jonathan W, Björn-Ola Linnér & Heike Schroeder, “Non-state actors in hybrid global climate governance: justice, legitimacy, and effectiveness in a post-Paris era” (2018) 9:1 *Wiley Interdisciplinary Reviews: Climate Change* e497.
- Leavy, Patricia, “Introduction” in Patricia Leavy, ed, *The Oxford Handbook of Qualitative Research* (Oxford University Press, 2014) 1.
- Legrand, Pierre, “On the Singularity of Law Symposium: Diffusion of Law in the 21st Century: Interaction and Influence” (2006) 47:2 *Harv Int’l LJ* 517–530.
- Leitão, Alexandra, “Corruption and the environmental Kuznets Curve: Empirical evidence for sulfur” (2010) 69:11 *Ecological Economics (Special Section - Payments for Ecosystem Services: From Local to Global)* 2191–2201.
- Loo, Tina, “Disturbing the Peace: Environmental Change and the Scales of Justice on a Northern River” (2007) 12:4 *Environmental History* 895–919.
- Lynda M Collins & Meghan Murtha, “Indigenous Environmental Rights in Canada: The Right to Conservation Implicit in Treaty and Aboriginal Rights to Hunt, Fish, and Trap -” (2010) 959:47–4 *Alberta Law Review*, online: <[131](https://commentary.canlii.org/w/canlii/2010CanLIIDocs297?zoupio-debug#!fragment/zoupio-_Toc2Page1-Page10/(hash:(chunk:(anchorText:zoupio-_Toc2Page1-Page10),notesQuery:”,scrollChunk:!,n,searchQuery:’mikisew%20cree%20and%20wood%20buffalo%20road’,searchSortBy:RELEVANCE,tab:search))>.”>>.</p>
<p>Metcalf, Cherie, “Indigenous Rights and the Environment: Evolving International Law” (2003) 35:1 <i>Ottawa L Rev</i> 101–140.</p>
<p>Nasiritousi, Naghmeh, Mattias Hjerpe & Björn-Ola Linnér, “The roles of non-state actors in climate change governance: understanding agency through governance profiles” (2016) 16:1 <i>Int Environ Agreements</i> 109–126.</p>
<p>Newell, Peter, “Campaigning for Corporate change: Global Citizen Action on the Environment” in Michael Edwards & John Gaventa, eds, <i>Global Citizen Action</i> (Lynne Rienner Publishers, 2001) 180.</p>
<p>O’Connell, Mary Ellen, “Enforcement and the Success of International Environmental Law” (1995) 3:1 <i>Indiana Journal of Global Legal Studies</i> 47–64.</p>
<p>Ogen, Yaron, “Assessing nitrogen dioxide (NO₂) levels as a contributing factor to coronavirus (COVID-19) fatality” (2020) 726 <i>Sci Total Environ</i> 138605.</p>
</div>
<div data-bbox=)

Olszynski, Martin ZP, “Environmental Damages after the Federal Environmental Enforcement Act: Bringing Ecosystem Services to Canadian Environmental Law?” (2012) 50:1 *Osgoode Hall Law Journal* 129–176.

Orsini, Amandine, “Multi-Forum Non-State Actors: Navigating the Regime Complexes for Forestry and Genetic Resources” (2013) 13:3 *Global Environmental Politics* 34–55.

Redgwell, Catherine, “National Implementation” in Daniel Bodansky, Jutta Brunnée & Ellen Hey, eds, *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2008).

Remmer, Casey R et al, “Inconsequential effects of flooding in 2014 on lakes in the Peace-Athabasca Delta (Canada) due to long-term drying” (2018) 63:4 *Limnology and Oceanography* 1502–1518.

Reyes, Victoria, “Ethnographic toolkit: Strategic positionality and researchers’ visible and invisible tools in field research” (2018) 0(0) *Ethnography* 1–21.

Risse, Thomas, ““Social Constructivism Meets Globalization”” in David Held & Anthony G McGrew, eds, *Globalization theory: approaches and controversies* (Cambridge: Polity Press, 2007).

Risse, Thomas & Stephen C Ropp, “Introduction and overview” in Thomas Risse, Stephen C Ropp & Kathryn Sikkink, eds, *The Persistent Power of human rights from Commitment to Compliance* (New York, United States: Cambridge University Press, 2013) 3.

Rowe, Wendy E, “Positionality” in *The SAGE Encyclopedia of Action Research* (2455 Teller Road, Thousand Oaks, California 91320: SAGE Publications Ltd, 2014).

Rutherford, Kenneth R, “The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Landmines” (2000) 53:1 *World Politics* 74–114.

Shaffer, Gregory & Daniel Bodansky, “Transnationalism, Unilateralism and International Law” (2012) 1:1 *Transnational Environmental Law* 31–41.

Sikkink, Kathryn, “The United States and torture: does the spiral model work?” in Thomas Risse, Stephen C Ropp & Kathryn Sikkink, eds, *The Persistent Power of Human Rights: From Commitment to Compliance* (New York, United States: Cambridge University Press, 2013) 145.

Spiro, Peter, “Non-Governmental Organizations and Civil Society” in Daniel Bodansky, Brunnée Jutta & Ellen Hey, eds, *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2012).

Spiro, Peter J, “Non-Governmental Organisations in International Relation (Theory)” in Jeffrey L Dunoff & Mary A Pollack, eds, *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (New York, United States: Cambridge University Press, 2013).

Timoney, Kevin P, “Three centuries of change in the Peace–Athabasca Delta, Canada” (2009) 93:3 *Climatic Change* 485–515.

Wagner, Markus, “Non-State Actors” (2008) Research Gate, online: <https://www.researchgate.net/publication/308874846_Non-State_Actors>.

Watts, Michael J, “Chronicle of a future foretold: The complex legacies of Ken Saro-Wiwa” (2015) 2 *The Extractive Industries and Society* 635–644.

Webley, Lisa, “Qualitative Approaches to Empirical Legal Research” in Peter Cane & Herbert M Kritzer, eds, *The Oxford Handbook of Empirical Legal Research* (2012).

Wendt, Alexander, “Anarchy is What States Make of it: The Social Construction of Power Politics (1992)” in James Der Derian, ed, *International Theory: Critical Investigations* (London: Palgrave Macmillan UK, 1995) 129.

Wu, Xiao et al, “Exposure to air pollution and COVID-19 mortality in the United States: A nationwide cross-sectional study” (2020) medRxiv 2020.04.05.20054502.

Yanto, Chandra & Shang Liang, “An RQDA-based constructivist methodology for qualitative research” (2016) 20:1 *Qualitative Market Research: An International Journal* 90–112.

Youdelis, Megan, ““They could take you out for coffee and call it consultation!”: The colonial antipolitics of Indigenous consultation in Jasper National Park” (2016) 48:7 *Environ Plan A* 1374–1392.

Zajak, Sabrina, “Rethinking Pathways of Transnational Activism” (2017) 31:1 *Global Society* 125–143.

Aghogin, Bemigho Victor, “Gas flaring, government policies and regulations in Nigeria : 2008, a myth or reality”, (2008), online: <[/paper/Gas-flaring%2C-government-policies-and-regulations-in-Aghogin/425dc596f9cfd5e7d6f60b0be6b135dafb6b1300](https://paper/Gas-flaring%2C-government-policies-and-regulations-in-Aghogin/425dc596f9cfd5e7d6f60b0be6b135dafb6b1300)>.

Alberta Cancer Board, Division of Population Health and Information, Surveillance, & Alberta Cancer Board, *Cancer Incidence in Fort Chipewyan, Alberta 1995-2006*, by Alberta Cancer Board, Division of Population Health and Information, Surveillance, & Alberta Cancer Board (2009).

BC Hydro, “British Columbia Hydro and Power (BC Hydro)”, online: <<https://www.bchydro.com/toolbar/about.html>>.

Becklumb, Penny, *Federal and Provincial Jurisdiction to Regulate Environmental Issues* (Library of Parliament, Ottawa, Canada, 2019).

Boyd, David R, *Canada vs. the OECD: an environmental comparison* (2001).

Canada, Global Affairs, “North American Free Trade Agreement – Investment”, (10 February 2017), online: *GAC* <<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/fta-ale/11.aspx?lang=eng>>.

Canada, Government of Canada; Indigenous and Northern Affairs, “History of Indigenous peoples, Aboriginal Affairs and Northern Development Canada and the treaty relationship”, (5 June 2012), online: <<https://www.aadnc-aandc.gc.ca/eng/1338907166262/1338907208830>>.

Canadian Environmental Assessment Agency & British Columbia Environmental Assessment Office, *Report of the Joint Review Panel; Site C Clean Energy Project; BCHydro and Power Authority, British Columbia*, by Canadian Environmental Assessment Agency & British Columbia Environmental Assessment Office (2014).

Canadian Heritage, Parks Canada, “National Park System Plan: Status of Planning for Natural Regions”, online: <<https://webcache.googleusercontent.com/search?q=cache:moadzxRXIagJ:https://pcacdn.azureedge.net/-/media/docs/v-g/pn-np/National-Park-System-Plan-Parks-Canada.pdf%3Fmodified%3D20090819113553%26la%3Den%26hash%3D9B799D7CC4B5F6C37CE21FC46DA6B6E88CA7DE67+%&cd=5&hl=en&ct=clnk&gl=ca>>.

Candler, Craig et al, *Athabasca Chipewyan First Nation and Mikisew Cree First Nation Initial Report on Peace River Knowledge and Use for BC Hydro’s Proposed Site C Project* (2013).

Centre, UNESCO World Heritage, “Convention Concerning the Protection of the World Cultural and Natural Heritage”, online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/conventiontext/>>.

———, “States Parties”, online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/statesparties/>>.

———, *The Operational Guidelines for the Implementation of the World Heritage Convention* (2019).

———, “The World Heritage Committee”, online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/committee/>>.

———, “UNESCO World Heritage Centre - Decision - 39 COM 7B.18”, (2015), online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/decisions/6275>>.

———, “UNESCO World Heritage Centre - Decision - 41 COM 7B.2”, (2017), online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/decisions/6860>>.

———, “UNESCO World Heritage Centre - State of Conservation (SOC 2015) Wood Buffalo National Park (Canada)”, (2015), online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/SOC/3318/>>.

———, “UNESCO World Heritage Centre - State of Conservation (SOC 2019) Wood Buffalo National Park (Canada)”, online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/soc/3905/>>.

———, *Wood Buffalo National Park*, by UNESCO World Heritage Centre.

———, “World Heritage”, online: *UNESCO World Heritage Centre* <<https://whc.unesco.org/en/about/>>.

Council of Canadian Academies, “Environmental Impacts of Shale Gas Extraction in Canada”, online: <<https://www.scienceadvice.ca/reports/environmental-impacts-of-shale-gas-extraction-in-canada/>>.

Dec 15, Anna Desmarais · CBC News · Posted:, 2020 6:00 AM CT | Last Updated: December 15, & 2020, “‘We’re just frustrated’: Missed UNESCO deadline a setback for Wood Buffalo National Park, advocates say | CBC News”, (15 December 2020), online: *CBC* <<https://www.cbc.ca/news/canada/north/missed-unesco-deadline-wood-buffalo-1.5841504>>.

Dec 16, CBC News · Posted:, 2014 12:24 PM PT | Last Updated: December 17, & 2014, “Site C dam: How we got here and what you need to know | CBC News”, (16 December 2014), online: *CBC* <<https://www.cbc.ca/news/canada/british-columbia/site-c-dam-how-we-got-here-and-what-you-need-to-know-1.2874998>>.

Environment, U N, “Environmental Rule of Law: First Global Report”, (24 January 2019), online: *UNEP - UN Environment Programme* <<http://www.unenvironment.org/resources/assessment/environmental-rule-law-first-global-report>>.

Government of Canada, *Report on the State of Conservation of Wood Buffalo National Park World Heritage Site (Canada) in response to World Heritage Committee Decision 43 COM 7B.15*, by Government of Canada (2020).

Government of Canada, Fisheries and Oceans Canada, “Reponses from Indigenous groups and resource management boards”, (24 July 2017), online: <<https://www.dfo-mpo.gc.ca/pnw-ppe/summaries-sommaires/indigenous-autochtones-eng.htm>>.

Government of Canada; Indigenous and Northern Affairs Canada; Communications, “Indigenous peoples and communities”, (12 January 2009), online: <<https://www.rcaanc-cirnac.gc.ca/eng/1100100013785/1529102490303>>.

Government of Canada; Indigenous and Northern Affairs Canada; Communications Branch, *Treaty Research Report - Treaty Eight (1899)*, report, by Government of Canada; Indigenous and Northern Affairs Canada; Communications Branch, www.aadnc-aandc.gc.ca, report (2009).

International Union for Conservation of Nature and Natural Resources, *World Heritage Nomination* (IUCN Technical Review, 1983).

Johnston, Anna, *Canada's Track Record on Environmental Laws 2011-2015*, by Anna Johnston (2015).

Linnit, Carol, "*The Narwal: Wood Buffalo at Risk*" (Mikisew Cree First Nation).

McKittrick, Ross, Elmira Aliakbari & Ashley Stedman, "Environmental Ranking for Canada and the OECD", (19 April 2018), online: *Fraser Institute* <<https://bit.ly/2HcwaTa>>.

McLachlan, Stéphane M, "*Water is a living thing*" *Environmental and health implications of the Athabasca oil sand for the Mikisew Cree First Nation and the Athabasca Chipewyan First Nation in Northern Alberta. Phase 2 Report*, by Stéphane M McLachlan (University of Manitoba, 2014).

Michael Tyas, *In danger- A call to save Wood Buffalo National Park* (Mikisew Cree First Nation, 2014).

Mikisew Cree First Nation, "Home | Mikisew Cree First Nation", online: <<http://mikisewcree.ca/>>.

———, *Petition to the World Heritage Committee requesting Inclusion of Wood Buffalo National Park on the List of World Heritage in Danger* (Mikisew Cree First Nation, 2014).

———, *Water is Everything nipî tapîtum; An Indigenous understanding of the Outstanding Universal Value of the Wood Buffalo National Park* (2016).

———, *Written Brief of the Mikisew Cree First Nation to the Standing Committee on Environment and Sustainable Development* (2016).

Minister of the Department of Aboriginal Affairs and Northern Development Canada, *Aboriginal Consultation and Accommodation, Updated guidelines for Federal officials to fulfill the duty to consult* (Government of Canada, 2011).

Narwhal, The, "Canada finally has a plan to protect Wood Buffalo's UNESCO world heritage status. Will it be enough?", online: *The Narwhal* <<https://thenarwhal.ca/wood-buffalo-national-park-plan/>>.

———, "Where is the action to save Wood Buffalo National Park?", online: *The Narwhal* <<https://thenarwhal.ca/where-action-save-wood-buffalo-national-park/>>.

Ostro, Bart, *The Health Effects of Industry Air Pollution Exposure in Developing Countries* (World Health Organisation, Protection of the Human Environment, Geneva, 2004).

Pardy, Bruce, *Federal Reforms and the Empty Shell of Environmental Assessment*, by Bruce Pardy (Fraser Institute, 2018).

Parks Canada Agency, Government of Canada, "About - Wood Buffalo National Park", (12 January 2018), online: <<https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/info>>.

———, “Cultural History - Wood Buffalo National Park”, (20 March 2018), online: <<https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/decouvrir-discover/natcul2>>.

———, “Development of the Action Plan - Wood Buffalo National Park”, (7 November 2018), online: <https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/info/SEA_EES/action>.

———, “Guiding Principles and Operational Policies - Parks Canada Guiding Principles and Operational Policies”, (9 September 2008), online: <<https://www.pc.gc.ca/en/docs/pc/poli/princip/sec2/part2a/part2a1>>.

———, “Natural Heritage - Wood Buffalo National Park”, (12 January 2018), online: <<https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/decouvrir-discover/natcul1>>.

———, “Overview of Canada’s Responses to the World Heritage Committee Decisions regarding Wood Buffalo National Park World Heritage Site - Wood Buffalo National Park”, (3 September 2019), online: <https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/info/action/SEA_EES>.

———, “Strategic Environmental Assessment - Wood Buffalo National Park”, (10 August 2018), online: <https://www.pc.gc.ca/en/pn-np/nt/woodbuffalo/info/SEA_EES/bulletin>.

Porte, Teresa La, *The Legitimacy and Effectiveness of Non-State Actors and the Public Diplomacy Concept* (2012).

Refugees, United Nations High Commissioner for, “Vienna Convention on the Law of Treaties”, online: *Refworld* <<https://www.refworld.org/docid/3ae6b3a10.html>>.

Ronggui, Huang, “RQDA: R-based Qualitative Data Analysis”, (2016), online: <<http://rqda.r-forge.r-project.org/>>.

Schmidt, Prof Dr Alexander, Karl Stracke & Prof Dr Bernhard Wegener, *The legal debate on access to justice for environmental NGOs*, by Prof Dr Alexander Schmidt, Karl Stracke & Prof Dr Bernhard Wegener, TEXTE 99/2017, Project No. (FKZ) 3714 18 1010 (Berlin: Independent Institute for Environmental Issues e.V. (UfU), 2017).

Sea Shepherd Conservation Society, “Our Story”, (24 July 2019), online: <<https://seashepherd.org/our-story/>>.

The Times of India, “Threat to Hyderabad heritage as govt scraps Regulation 13 | Hyderabad News - Times of India”, online: *The Times of India* <<https://timesofindia.indiatimes.com/city/hyderabad/Threat-to-Hyderabad-heritage-as-govt-scraps-Regulation-13/articleshow/50099705.cms>>.

The United Nations Framework Convention on Climate Change, “Constituencies”, online: *United Nations climate change* <<https://unfccc.int/process-and-meetings/parties-non-party-stakeholders/non-party-stakeholders/admitted-ngos>>.

The World Bank, “World Bank Country and Lending Groups – World Bank Data Help Desk”, (2021), online: <<https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>>.

The World Bank Group, “About the Inspection Panel | Inspection Panel”, online: <<https://www.inspectionpanel.org/about-us/about-inspection-panel>>.

———, “World Bank Group Issues FY19 Sanctions System Annual Report”, online: *World Bank* <<https://www.worldbank.org/en/about/unit/sanctions-system/sanctions-board/brief/fy19-sanctions-system-annual-report>>.

Thomas Gunton & KS Calbick, “The Maple Leaf in the OECD: Canada’s Environmental Performance”, (June 2010), online: *David Suzuki Foundation* <<https://davidsuzuki.org/science-learning-centre-article/maple-leaf-oecd-canadas-environmental-performance/>>.

Timoney, Kevin, *A study of water and sediment quality as related to public health issues, Fort Chipewyan, Alberta.* (2007).

UNEP & CAEC, *Enforcement of Environmental Law: Good Practices from Africa, Central Asia, ASEAN Countries and China* (Publishing Services Section, UNON, Nairobi, Kenya, 2004).

United Nations, *UN Declaration on the Rights of Indigenous Peoples (UNDRIP)* (2017).

United Nations Environment Programme, “Dramatic growth in laws to protect environment, but widespread failure to enforce, finds report”, online: *UNEP - UN Environment Programme* <<http://www.unenvironment.org/news-and-stories/press-release/dramatic-growth-laws-protect-environment-widespread-failure-enforce>>.

World Health Organisation, “WHO | WHO Global Urban Ambient Air Pollution Database (update 2016)”, (2016), online: *WHO* <http://www.who.int/phe/health_topics/outdoorair/databases/cities/en/>.

World Heritage Centre/IUCN, *Report of the joint WHC/IUCN Reactive Monitoring mission to Wood Buffalo National Park, Canada*, by World Heritage Centre/IUCN (2016).

Yale Center for Environmental Law & Policy, “Environmental Performance Index”, (2018), online: <<https://epi.yale.edu/epi-country-report/CAN>>.

———, “Environmental Performance Index | Environmental Performance Index”, (2020), online: <<https://epi.yale.edu/epi-results/2020/component/epi>>.

———, *Environmental Performance Index 2020 Global metrics for the environment: Ranking country performance on sustainability issues*, by Yale Center for Environmental Law & Policy (Center for International Earth Science Information Network Earth Institute, Columbia University, 2020).

“Amchitka: the founding voyage”, online: *Greenpeace International* <<http://p3-raw.greenpeace.org/international/en/about/history/amchitka-hunter/>>.

“Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples, 2nd Session, 43rd Parliament, 2020”, online:
<<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=11007812>>.

“Conservation of Wood Buffalo National Park of ‘significant concern’, Indigenous communities call for more decisive action – CPAWS Northern Alberta”, online: <<https://cpawsnab.org/wood-buffalo-conservation-outlook-of-significant-concern/>>.

“CPAWS celebrates Canada’s nearly \$60 million commitment to Wood Buffalo National Park – CPAWS Northern Alberta”, online: <<https://cpawsnab.org/canada-commits-60-million-to-wood-buffalo-national-park/>>.

“CPAWS’ Response to the Wood Buffalo National Park Action Plan | Alberta Environmental Network”, online: <<https://www.aenweb.ca/media/cpaws-response-wood-buffalo-national-park-action-plan>>.

“Environment | United Nations For Indigenous Peoples”, online:
<<https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/environment.html>>.

“Environmental Assessment Process | Site C”, online:
<<https://www.sitecproject.com/environmental-assessment>>.

“Friends of the Oldman River Society v. Canada (Minister of Transport), [1992] 1 S.C.R. 3”, online:
<https://advance.lexis.com/document/teaserdocument/?pdmfid=1505209&crd=fb49fbd4-d950-44bd-9fb5-1d4b8ccb708a&pdteaserkey=h1&pdicsfeatureid=1517129&pditab=allpods&pddocfullpath=%2Fshared%2Fdocument%2Fcases-ca%2Furn%3AcontentItem%3A5F8T-N3V1-JFKM-605H-00000-00&ecomp=_x7nk&earg=sr0&prid=74aa1c9c-3962-4896-ade7-1df530ae2431>.

“Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage) - SCC Cases (Lexum)”, online: <<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2251/index.do>>.

“Mission & Vision – CPAWS”, online: <<https://cpaws.org/about/about-cpaws/mission-vision/>>.

“Non-State Actors”, online: *ESCR-Net* <<https://www.escr-net.org/resources/non-state-actors>>.

“Peace-Athabasca Delta Ecological Monitoring Program - (PADEMP)”, online:
<<http://www.pademp.com/>>.

“Species at Risk Act, SC 2002, c 29”, online: <<https://www.canlii.org/en/ca/laws/stat/sc-2002-c-29/latest/sc-2002-c-29.html>>.

“The Attorney General of Canada v The Attorney General of Ontario and others (Canada) [1937] UKPC 6 (28 January 1937)”, online:
<https://www.bailii.org/uk/cases/UKPC/1937/1937_6.html>.

“The Constitution Act, 1867, 30 & 31 Vict, c 3”, online:
<<https://www.canlii.org/en/ca/laws/stat/30---31-vict-c-3/latest/30---31-vict-c-3.html?autocompleteStr=const&autocompletePos=2>>.

“The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11”, online:
<<https://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html?searchUrlHash=AAAAAQAMY29uc3RpdHV0aW9uAAAAAAE&resultIndex=1>>.

“The Ramsar Convention and its mission | Ramsar”, online: <<https://www.ramsar.org/about/the-ramsar-convention-and-its-mission>>.

United Nations Declaration on the Rights of Indigenous Peoples, UN GAOR, 61st Sess., UN Doc. A/RES/61/295 (United Nations, 2007).

“Wood Buffalo National Park | CPAWS”, online: <<http://cpaws.org/campaigns/wood-buffalo-national-park>>.

“Wood Buffalo National Park receives \$27.5 million investment in its future | CPAWS”, online:
<<http://cpaws.org/news/wood-buffalo-national-park-receives-27.5-million-investment-in-its-future>>.