Indigenous Rights Recognition in Federal Systems – Nunavut: The "good news" case?

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Diese Arbeit ist meinen Eltern in Dankbarkeit gewidmet.

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Due recognition is not just a courtesy we owe people.
It is a vital human need. (Charles Taylor)

A. Introduction

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My thesis asks the following question: "Is Nunavut the 'good news' case in terms of indigenous rights recognition when compared with indigenous rights provisions in domestic Canadian and international law and with other cases in federal systems?" The research question alone consists of terms that need to be defined and thus specified. What are indigenous Rights? What is Federalism? How would a scenario look like that deserves the label "good news" case?

My thesis concentrates on the dimension of power and its distribution to smaller units. That is to say that this paper looks at indigenous rights recognition as a technique of providing indigenous minorities with more power thereby analysing the case of Nunavut from a political science perspective. Thus, political science seen as the academic discipline that analyses power-relations with the "comparative politics" tools of vertical and horizontal comparison constitutes the instrument with which this thesis looks at the Nunavut case. Nevertheless, analysing indigenous rights recognition with respect to the case of Nunavut from a political science perspective does not mean that central aspects of other disciplines are not touched by this paper. On the contrary, neighbouring disciplines are important for my thesis too, especially law (international and domestic Canadian law), anthropology, environmental studies, and history.

This section of my thesis briefly introduces the current state of research and the objectives of my thesis. Equally important, the methods applied to complete this paper will be discussed in this introduction. Furthermore, it seeks to provide clear definitions of the key terms. Finally, it tries to pinpoint central patterns of what a possible "good news" case would look like.

a.) The current state of research and the purpose of this paper

On the broadest level, my paper contains material on the recognition of indigenous rights in the case of Nunavut within three different research perspectives: first of all, research that has been done on Nunavut particularly. Secondly, research on indigenous rights and their recognition generally. And thirdly, the philosophical underpinnings of indigenous rights as a political concept and the politics of recognition. All these perspectives are held to interact in such a way as to construct the common ground on which this paper tries to answer central questions that it asks.

So far there has been a lot of research on Nunavut particularly. This research includes: Nunavut government institutions and the machinery of government in the new territory (especially Légaré 1997; Hicks & White 2000; or White 2003); Nunavut and section 35 of the Canadian constitution – the so-called aboriginal self-government provision (Whittington 1990; or Whittington 2004); the history of the Nunavut Land Claims Agreement (Purich 1992; or Légaré 1996); Nunavut's position within the Canadian federal framework (Cameron & White 1995; Hicks & White 2000; or Dacks 2003); and collective identity in Nunavut (Légaré 2001; or Légaré 2002). As the work of political scientists such as Gurston Dacks, Jack Hicks, André Légaré, Graham White, or Michael S. Whittington on Nunavut suggests, a lot of work is measuring the scope and significance of the Nunavut Land Claims Agreement in the inner-Canadian context. Hence a big part of the scientific discourse has dealt with issues concerning the dimension of "Nunavut and Canada" and not so much with that of "Nunavut and indigenous rights recognition".

At the level of indigenous rights and their analysis generally, a lot has happened over the last ten years: during the UN decade of indigenous rights 1994-2004, many scientific debates in both social and legal sciences were determined by discourses on indigenous rights, their frame, their scope, and their significance within the international legal system. Most importantly, scholars like James S. Anaya (2004), Patrick Thornberry (2000), Hurst Hannum (1990), or Réné Kuppe (2004) portrayed the current situation and the state of implementation of indigenous rights in the world and within international law. Central questions of their research were: how did international law come to outline the particular rights of indigenous peoples? Why is it so important that indigenous rights are implemented and recognised? What are the critical elements of indigenous rights? How did the concept of indigenous rights evolve? What are the key provisions of indigenous rights? How significant ("binding") are indigenous rights?

Finally and perhaps most interestingly, a debate on the "politics of recognition" was sparked off in the early nineteen-nineties by Charles Taylor (1992) with his famous article *Multiculturalism and the Politics of Recognition.* His central assumption in this essay was that: "Due recognition is not just a courtesy we owe people. It is a vital human need." (Taylor 1992: 26) From this point, Taylor argues a communitarian stance that implicitly emphasises the necessity of achieving the "recognition of equal value" within society, especially regarding the recognition of its marginalised minorities. As the great echo in contemporary philosophy shows (Jürgen Habermas [1994] and others openly discussed about Taylor's contentions), Taylor's article was quite influential.

Not only the communitarian but also the liberal part of the debate (and most importantly the rivalling discussions between them) is of special significance to the issue of indigenous rights recognition. As Will Kymlicka (1995) made clear, the recognition of the rights of minority cultures within a given society is inextricably linked with overcoming a "cultural bias" that otherwise exists and thus discriminates against these groups. In other words, the fact that it is almost impossible for a human being to deny its cultural background, implicitly clashes with the demand of most liberal states to achieve common rights for all citizens. According to Kymlicka, though, the liberal nation state is not culturally colour-blind or even neutral. On the contrary, it provides a framework that is culturally biased in that it serves the interests and cultural perceptions of some groups while threatening those of others. Although he is more concerned with the rights of traditional minorities, Kymlicka's claim that these minorities need to be free of such oppression applies to indigenous minorities too (for more details see: Kymlicka 1995).

A third part of the debate was the contention of Tully (1995) that all three dimensions of modern constitutionalism (liberalism, communitarianism, and nationalism) indirectly legitimised the oppression of ethnic and cultural pluralism. As Tully points out, indigenous minorities have an inherent right to self-government, which in most instances was and still is not used to install a new kind of statehood but serves as the basis for a new status within a given framework. A second dimension concerns the common good premise of modern constitutionalism: this premise serves as a common ground for many people in the belief that special rights for cultural and ethnic minorities are not necessary because they are "not in line with common good demands of not allowing particularity". On a third level, the recognition of indigenous rights as a whole does not fit into perspectives of modern constitutionalism because culture is seen as something "private". To these ends, modern constitutionalism does not view statehood as a result of the perceptions of mainstream cultures (which it is) but as a kind of legitimate order (for more details see: Tully 1995). According to Tully, the main challenge for modern constitutionalism is a "strange multiplicity" produced by a necessity to recognise the rights of minorities in an age of cultural and political diversity.

Taking into account this current state of research, my thesis does not try to offer new solutions to the problems of indigenous rights recognition generally. Instead, my paper tries to analyse Nunavut from these perspectives, at the same time answering the question whether Nunavut can be viewed as "good news" for the implementation and recognition of indigenous rights.

b.) Methods applied

In completing this thesis and to meet its basic objectives, I applied the following methods: Document analysis, comparison between Nunavut and other cases, and analysis of scientific research on the issue. I also conducted interviews with the directors of some of the Canadian federal departments using a free-response questionnaire and asking them about their experiences with Nunavut. The questions I asked them were:

- *Five years of Nunavut – what has changed?*
- *Would you think that the creation of Nunavut had a positive impact on the lives of the Inuit?*
- *How have inter-governmental relations between the Department of Fisheries and its territorial counterparts in Nunavut improved throughout the last five years?*
- *There are various sustainable development strategies for the Canadian North. To what extent have they changed the state of the issues your department is concerned with in Nunavut?*
- *What would you think are the main challenges Nunavut has to face in the next few years?*
- *Would you back the claim that Nunavut is a good example for other cases in the world?*

The directors were asked to report on their experiences while answering this short questionnaire in a face-to-face situation with myself as the interviewer.

c.) Definitions of the key terms

Clearly a definition of the key terms this thesis operates with is of importance. What is this thing called “indigenous rights”? What are the main purposes of them? Where do we find indigenous rights and to whom do they apply? What are the key components of indigenous rights? What are the differences between self-determination, self-government, and autonomy? What are “federal systems”? What is federalism? And perhaps most importantly: what is Nunavut?

First of all, indigenous rights are a set of principles set up for the purpose of a recognition of indigenous peoples as societal minorities of a special kind, actively in need of special undertakings that protect their inherent rights to self-determination, cultural preservation, social well-being, and economic participation. (It will be outlined later in this paper what that means). In other words, indigenous rights are minority rights which in essence seek to protect the fundamental human rights of specific minorities: indigenous peoples. In this context it is

important to note that indigenous peoples are *cultural minorities* within a community that (at least in most cases) for a long time has violated these inherent rights. Perhaps most significantly, indigenous groups were subjected to a process of colonial domination by foreign and somehow alien societies. As will be argued in the course of this paper, it is important to note that indigenous rights are not ethno-centrist fantasies but necessary realities.

However, the term *indigenous rights* has two dimensions: first of all, it is "characterised by purposes", the most important one being the demand to implement a right to self-determination. Just as much as indigenous groups are peoples, they are inclined and capable of having all rights that all peoples enjoy. Therefore, not just pieces of international law such as Article 27 of the International Covenant on Civil and Political Rights but also aboriginal self-government rights in national legislations like Article 35 of the Canadian Constitution Act aimed at meeting these basic criteria.

The second dimension of indigenous rights consists of "compensation". Throughout history, indigenous groups have witnessed colonial history from a very disadvantageous position. Most indigenous societies were oppressed by foreign forces and thus violated in their rights. This situation has left the former oppressors in a position in which they had to recognise and thereby criticise the wrong-doings of their ancestors. Indigenous rights as compensation means the obligation of the states concerned to implement more favourable norms for indigenous groups and thereby return significant powers to them.

Perhaps most importantly, indigenous rights are debated and at the same time open to debates. They are not static or bible-status principles that one has to believe in, or even support. For example, a significant number of people criticised and/or opposed the inherent right to self-determination, pointing out that this provision may lead towards ethnic disintegration in the countries concerned. Others were more concerned with the term "indigenous" itself and possible implications of different definitions by asking the following question: who is "indigenous"? A group of intellectuals pointed out that *group rights* are problematic because the initial idea of human rights was that they sought a maximum of freedom for an individual and not for a group. All these constraints in the debate suggest that indigenous rights are and must be discussed in a discursive manner.

Comparative indigenous rights recognition surveys (like this one) touch on two basic principles of comparative politics as a political science method:

1. The *question of democracy* in asking: how/to which extent does a political system recognise the rights of indigenous peoples to participate in the decision-making process?

2. The *principle of collective identity*: indigenous rights are group rights. Therefore, indigenous rights recognition means "recognition of the rights of a specific group in society: the indigenous peoples.

And perhaps most importantly, comparative indigenous rights recognition surveys refer to a certain meta-theoretical approach in political science, namely the "cleavage theory". That is to say that states with indigenous minorities are characterised by the existence of an ethnic cleavage which in essence views society as divided into two groups of people: the indigenous "native" groups and the non-indigenous rest of the population. These basic contentions of the cleavage theory are important for our understanding of indigenous rights recognition generally.

Somehow related to the indigenous rights issue are the key differences between self-government, autonomy, and self-determination, because the right of indigenous peoples to exercise more control over their lives is an important aspect of their inherent rights. These key differences are:

- Self-government means that a political entity does not have full sovereignty or control over all issues that concern it. Instead, sovereignty is restricted to certain designated areas and/or issues. The greater the number of areas/issues a political entity is entitled to control, the more "autonomy".
- Autonomy is a model that grants a political entity the ability to control parts of its own issues in self-determination or self-government (both at a territorial and at a personal level). In other words, autonomy does not mean that a political entity is entirely sovereign under the sovereignty rules of international law. A political entity that enjoys autonomy in certain designated areas has to be placed within a state and does not have full sovereignty over the matters that concern it.
- Self-determination can involve autonomy but can also go far beyond it. A political entity that enjoys self-determination rights has a relatively high degree of self-control/power of its own matters and concerns. As such, self-determination is an open concept which can evolve everything from significant self-government rights over autonomy to ethnic or cultural disintegration. Hence self-determination is a concept that most nation states that host ethnic or cultural minorities are afraid of. And, more significantly, self-determination is sometimes misunderstood as only being about full sovereignty for a cultural or ethnic minority, a belief that does not take into account that self-determination can be restricted to a number of designated matters/issues.

These contentions will be subjected to a deeper analysis in the theoretical part of my paper.

In its most rudimental sense, federalism is a form of ordering a political system in such a way as to ensure that power is distributed over different levels of government. It is argued that a closer alliance between bigger and smaller units is helpful if some powers are in the hands of smaller units because this creates "a need for compromise" between both levels. Generally, it is believed that the federal model works excellently in countries in which two or more national groups coexist. To avoid bigger tensions, it seems to be a good idea to give certain powers to the lower levels of government. To this extent, federalism is a conflict-solving mechanism too.

Nunavut is a Canadian territory which came into existence in April 1999 by dividing the Northwest Territories into two parts. In Inuktitut, the language of the Inuit locals, Nunavut means "our land". The objective was to provide the Inuit (85% of Nunavuts' total population) with more rights to participation in the Canadian federal framework and a greater degree of autonomy. But calling the Nunavut Land Claims Agreement (on which the new territory rests) an act that would allow for true Inuit self-government would be misleading. Rather, the agreement outlined the status of a new territory with public government. Nevertheless, the NLCA held that Nunavut is inextricably linked to and thus a realisation of the inherent aboriginal rights to self-government outlined in Article 35 of the Canadian Constitution Act.

d.) What would the "good news" case look like?

Generally, there is no clear "good news" case scenario that Nunavut could either fit or fail. Hence looking at the question whether Nunavut possibly is the "good news" case in terms of indigenous rights recognition has to involve two aspects: that of Nunavut being close to actually recognising indigenous rights (in its economic, political, social, and cultural dimensions) in general, and that of Nunavut being "good news" in the realm of indigenous rights recognition in comparison with other cases. A glance at the first aspect poses the following question: how does Nunavut deal with the fundamental right of the Inuit to lands and resources, economic participation, social well-being, cultural integrity, and political self-government? Is Nunavut "good news" in absolute terms? The second aspect would focus on indigenous rights recognition in Nunavut by comparing it with Alaska (United States of America), Greenland (Kingdom of Denmark), and Chiapas/Oaxaca (Mexico). What for instance are the key strengths and weaknesses of the Nunavut Land Claims Agreement in comparison with the Alaska Native Claims Settlement Act? Is Nunavut "good news" in relative terms?

e.) How does my thesis seek to answer the central question? – A few words on its structure

An answer to the central question of my thesis has to involve three parts: since indigenous rights recognition in federal systems is a topic that might be almost if not entirely new to the reader, a first part has to introduce the key aspects of the underlying theories, and their philosophical and political underpinnings. A second part has to deal with the Nunavut model, its history and the polity it established. Finally, it analyses the extent to which Nunavut is in line with indigenous rights recognition. My paper deals with these aspects by subdividing the broad theme of Nunavut as a means of indigenous rights recognition into three parts: indigenous rights and federalism generally; the Nunavut case specifically; and indigenous rights recognition and the Nunavut case. Following on from these parts, final conclusions are drawn on the extent to which Nunavut can be called a "good news" case with respect to indigenous rights recognition.

B. Indigenous rights and Federalism: an introduction to the underlying concepts

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"Indigenous rights" and "federalism", key concepts that are of great importance for any analysis of the Nunavut territory, will be subjected to deeper analysis in this chapter. Both concepts have a variety of meanings and nuances which it is important to outline. Indigenous rights and their possible meanings are also discussed. For these and other reasons, a quick overview of the key concepts and the two terms relevant to this paper seems necessary.

A first introduction will focus on the debated concept of indigenous rights. What are "indigenous rights" all about? Why is this term so problematic? How did the idea of indigenous rights evolve over time? What was the mainstream political thinking with respect to indigenous rights through history? How are certain aspects of indigenous rights entrenched in the international legal system? Do indigenous rights "matter"? And if yes: to whom?

A second part of this general introduction into the key terms will focus on federalism as a political concept. The conceptualization of federalism in the context of this paper is necessary since this thesis compares the recognition of indigenous rights within "federal systems" while asking the question whether a certain situation poses a "good news" case in this regard. As I will point out in this introduction, federalism is a complex concept too. It is also a concept with certain "advantages" with respect to indigenous rights recognition.

1. "Indigenous rights": the meaning and implications of a concept

If we take a look on the meaning and evolution of "indigenous rights" both as a political concept and as a principle within the international legal system, we may discover that the entire topic was and still is very intensively debated. In other words, there is no singular agreed explanation as to what indigenous rights really mean and what they really encompass. Nevertheless, the United Nations declared 1993 as *"the year of indigenous rights"*. It is not surprising that in the same year the federal government of Canada signed a treaty with the Inuit, an "indigenous group", and that this treaty was meant to make provisions for something called *"indigenous rights"*. But why is there something like "indigenous rights"? Were existing minority rights just "not enough", so that international law and political science experts thought up a new concept? What does "indigenous" mean and who is "indigenous"? What is the right term for "indigenous individuals" gathered in a community: are they "populations", "people" or "peoples"? Are "indigenous people(s)/populations" something "unique" or are they just "minorities of a special kind"? This chapter is designed to answer these questions because in order to make a deeper analysis of our research question ("is Nunavut the 'good-news case'?") possible.

Right after the UN year of indigenous rights had passed, the decade that followed it was termed the "decade of indigenous rights" (from the 10th of December 1994 to the end of the year 2004). Within this decade we witnessed a couple of developments that ran under the flag of "indigenous rights": the establishment of Nunavut in April 1999 was a step into this direction. All these undertakings signalled a development towards more recognition of indigenous rights, but there were quite a few developments that heavily contradicted this assumption, especially on the African continent. Since this essay is designed to answer the question whether the territory of Nunavut and its establishment is "the good news case", any analysis has to take other possible good news cases into account.

1.1. Excursus I.: "Indigenous rights" – the history of the perception of a concept in western political thought

There are many possible ways to measure the idea of "indigenous rights". A very special method would include a closer look at the history of "indigenous rights" as a political idea. Our current understanding in this regard is deeply rooted in history. Therefore, a good question would be: how have ideas of indigenous rights evolved over time? What were the major turning points in the history of indigenous rights?

This "story of indigenous rights", initially began the moment Europeans had "first contact" with the people that already lived on the American continent. With arrival, tensions between the two groups of the natives and the Europeans arose and became a significant problem. The need of European settlers to find a place to live clashed with high degrees of resistance by the peoples already living on the American continent. As we now know, this whole situation reached its climax with brutal attempts by the Europeans to suppress indigenous resistance, a situation which culminated in the murder of a great number of North-American Indians.

The first political thinker who saw and criticized the way in which European colonialists and settlers treated the locals was *Bartolomé de las Casas* (1474-1566), a *naturalist thinker* from Spain. Driven by moral concerns, *de las Casas* showed discontent with the extent and style of systematic slavery, torture and killing of the native population. in his book *History of the Indies* de las Casas described the brutality of the massacres and enslavements in America, particularly criticizing the Spanish *ecomienda system*[1] (see Anaya 2004). In the tradition of early naturalism, *de las Casas* viewed the rights of indigenous peoples to land and resources as rights they possessed by nature (see Ingram 2000).[2] Early naturalist thought such as *Bartolomé de las Casas'* stood at the beginning of a school of thinking which rejected the assumption that Europeans were allowed to settle without asking the native tribes for permission.

One of the scholars of this tradition was *Francisco de Vitoria* (1486-1547), who, in the light of abuses by the Spaniards, came up with the contention that Indians possessed certain autonomous powers that Europeans were bound to respect. His view on the Indians was overall surprisingly positive, given that de Vitoria had never met the people he wrote of [3] (see Anaya 2004). Hence, de Vitoria defended the Indians and their rights to their lands.[4] Although de Vitoria criticized the contention that the Indians were inferior and therefore not able to have a land of their own, he did not draw any consequences from this position. Instead, he gave the Spanish Crown a possibility to argue its wrongdoings in America as "just".

It was the important naturalist *Hugo Grotius* (1583-1645) who rejected the idea of "title by discovery". In his famous book *On the Law of War and Peace* (1625) *Grotius* held that the natural rights of all people have to apply to all people, no matter where they come from. This claim inevitably meant that acquiring lands without the consent of the natives was as "unjust" as the same act would be at any other place in the world. *Grotius* rejected the idea that those Indians who did not convert to Christianity voluntarily could not claim natural or civil rights for themselves.[5] Perhaps the most interesting part is *Grotius'* heavy defense of the idea of equality among men with respect to "human rights".

Along with the rise of the nation-state model out of the *Peace of Westphalia 1648*, naturalists shifted their attention away from universal moral concerns. The most influential political thinker of this tradition, *Thomas Hobbes* (1588-1679), argued in favour of a strong ruler in the state of nature.[6] The Hobbesian stance is significant for the evolution of the idea of indigenous rights. Not only was indigenous resistance generally considered somehow illegitimate under a Hobbesian approach, but also the claim that the state of "Common wealth" inevitably rested on consent proved an important underpinning for western political thought as a whole.

Although *Hobbes* did not comment explicitly on the situation in the new world, his thought was nonetheless influential. A thinker that applied parts of the ideas of Hobbes in his thought was the Swiss diplomat *Emmerich de Vattel* (1714-1769). In his book *The Law of Nations, or the Principles of Natural Law* (1758), *Vattel* argued in favour of a state-centred approach to international law. Out of the individual/state dichotomy arising from his thought *Vattel* developed an approach which acknowledges the rights of individuals while taking into account the sovereignty of the total social collective (see: Anaya 2004: 20). Consequently, the rights of indigenous peoples were seen as no different from the rights of any member of a given state. In *Vattel's* view, indigenous peoples ended up with a situation in which they could not enjoy rights as distinct communities.[7]

In the late seventeenth century, social contract theory became the central way of viewing relations between aboriginies and the state. This may have contributed to *Vattels* thought too. Perhaps the most influential theorist in this regard was *John Locke* (1632-1704) who came up with the image of the "wild Indian" in his defence of private property in his book *The Two Treatises of Government* (1690):

> "God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life, and convenience. (…) The fruit, or venison, which nourishes the wild Indian, who knows no enclosure, and is still tenant in common, must be his, and so his i.e., a part of him, that another can no longer have any right to it, before it can do him any good for the support of his life" (Locke 1982 [1690]: 17-18).

In other words: as far as property was concerned, the "wild Indian" had the same "right to all things" as had the non-Indians. Locke drew this idea from a belief that god has given the world (and thus the American continent) to all of mankind in common. "The fruit", the "outcome" of Indian labour, is his to own, something that no other person is allowed to take away from him. In the Lockean view this meant that indigenous peoples could not claim certain rights on the basis of difference. A second Lockean contention important to eighteenth century political thought was the claim that even people who do not possess property in terms

of land or material goods werenot left with nothing: they still had a property in their own person to use for obtaining and gathering material goods.[8]

It was this Lockean claim that had great influence on *Vattel's* arguments about indigenous peoples' rights to claim land on the basis of rights they enjoyed before. In this view, god has given the American continent to all of mankind, and therefore the only way to claim ownership of land was to use the individuals' own property to get to the situation in which this property could be considered as belonging to the Indians.[9]

Together with the political thought of *Charles Secondat de Montesquieu* (1689-1755), Locke's ideas became influential for another group of thinkers called the *Federalists*: *James Madison* (1723-1801), *Alexander Hamilton* (1755-1804) and *John Jay* (1745-1829). In their *Federalist Papers* (1787-1788) they proposed the model of American democracy with a federal constitution, a president, two chambers of parliament, an "independent judiciary" with a Supreme Court of Justice and the so-called "checks and balances" model as the right form of a constitution for the newly emerging United States of America. The "fathers of the constitution", as they are sometimes called, proposed models in which the American Indians did not have a special place unless they assimilated and thereby became a part of the "American people".

The *Federalists* of course never thought about the consequences of wars against hostile Indians except for members of their own cultural and national background.[10] However much they seemed to embark upon a fair federal system designed for all its citizens, they did not regard Indians as being a part of this project.[11] In short, *Hamilton, Madison, and Jay* took their ideas of man from John Locke who famously claimed that all men are in fact free and equal. A constitution of the United States had to rest upon this principle and every citizen had to consent to the institutions of government he was provided with in the United States. The Indians did not play a major role in the discussions and consequently excluding them from the political process was neither considered unfair nor seen as a violation of any rights Indians might have possessed at that time.

The third American president, *Thomas Jefferson* (1743-1826), took a slightly different stance with respect to the development of human rights in general and indigenous rights in particular. Influenced by European natural law theorists such as *Jean Jacques Rousseau* or *John Locke,* he wrote essential human rights into his draft of the *Declaration of Independence* (1776)[12], e.g. the claim that all men were born free and equal.[13] Nevertheless, as we can read from the *American Declaration of Independence*, Indians were regarded as being born free and equal just as all of mankind was.

A nineteenth-century liberal thinker who drove restrictive claims in this regard even further was *Alexis de Tocqueville* (1805-1859). In his book on *Democracy in America* (1835)[14] he famously stated that: "the Indians occupied but did not possess the land" (Tocqueville 1966[1835]: 30). *Tocqueville* defends this claim by stating that Indians were non-Christian nomads who did not cultivate the land. Cultivating the land and being Christian were thought to be important cornerstones of the "American nation". Although *Tocqueville* seems to have been aware of the fact that Indians inhabited America long before Christians came, he argued that they werenot a part of the "American civilisation" simply because they differed from Christian settlers in two respects: they werenot Christians and they did not exercise agriculture (see: Connolly 2000: 185). Therefore, exclusion from the possibility of owning land and resources was not considered unjust.[15] In other words:

> "Tocqueville weaves Christianity, morality, agriculture and the mastery over nature into the territory of American democracy. In doing so, he generates an image of the nation that requires the displacement of nomads already there" (Connolly 2000: 186).

For *Tocqueville* it was the relation between agriculture and Christianity that was essential for a sustainable democratic future as a whole.[16] So for Tocqueville it was the American nation that needed Amerindians to become Christian peasants because on the basis of these approaches, assimilation seemed to be the only game in town.

Another nineteenth-century liberal, *John Stuart Mill* (1806-1873), came up with ideas that did not differ greatly Tocqueville's view of the Indians. In his essay *Considerations on Representative Government* (1860)[17] he argues that it was the civilising process and the nature of progress as a whole that American Indians were subjected to. Mill did not legitimize exclusion and/or oppression of American Indians, he did not explicitly doubt a general possibility that Indians could play a part in the process of building the American nation.[18]

Although *Mill*'s defence of the systematic killings of American Indians is weak, he somehow backed the claim of colonizers that Indians should surrender their original rights to land and resources in favour of the benefits ("pleasures") of an emerging bigger "American community". Consequently, for *Mill* it was neither Christianity nor agriculture that had the defining power over what Indians should be. Rather, a form of progress was what Amerindians were tied into and thus bound to respect. This was especially true as long as it provided them with happiness (which of course was not necessarily always the case).[19] It remains unclear whether *Mill's* concept of nationhood envisaged a possible justification of indigenous resistance to the forces of progress.[20]

In the *positivist view*, which evolved at the end of the nineteenth century, indigenous peoples were even worse off because they did not have their own "nation-states", just "lands" and lands were not recognised by international law. Positivism rests on four major premises:

- International law (and therefore the rights of indigenous peoples) is only concerned with the rights and duties of states;
- International law upholds exclusive sovereignty of states;
- States make international law; and
- The States that constitute international law and possess rights and duties in it make up a limited universe that excludes a priori indigenous peoples (see Anaya 2004: 26).

The British positivist *John Westlake* (1828-1913) provided the most important justification for the exclusion of indigenous peoples from international law in his book *Chapters on the Principles of International Law* (1894) by distinguishing between civilised and uncivilised parts of humanity. From Westlake's point of view, Indians were part of the uncivilised constituents of humanity. His theory held that international society and the beneficiaries of international law were limited to "the civilised".[21] By making that distinction, Westlake stood in the tradition of a number of positivists who believed in a certain type of international law designed by and for states wherein indigenous peoples had no rights distinct from those other citizens the same country already enjoyed. Positivists like Westlake were not critical about the claim by colonisers that they came into vacant lands.[22]

The twentieth century liberal *John Rawls* (1921-2002) appears prepared to argue against the contention that indigenous rights were limited to states alone. He does not seem to doubt this contention explicitly, because states are and will remain important players in international affairs, but he says that it is not possible to exclude individuals or certain groups from the discussion. In his book *The Law of Peoples* (1999), John Rawls explicitly argues that liberal democratic peoples have to be conceived as the actors of a society of peoples "just as citizens are in domestic society. Starting from a political conception of society, political liberalism describes both citizens and peoples by political conceptions that specify their nature, a conception of citizens in one case, of peoples acting through their governments in the other" (Rawls 1999: 23). In other words, international law has two components: citizens and peoples acting through their institutions of government.

These somehow "traditional views" of international law are paired with a new belief, namely "the claim that nations have the duty to provide economic and development aid to burdened societies" (Martin 2003: 498). Indigenous peoples fall into this category, at least in most cases. Therefore, providing indigenous peoples with special means of protection and

recognition has to be considered central to any form of justice both within international law as a whole and within the nation-states concerned in particular. In the eighth of his basic rules of the Law of Peoples[23], Rawls states that "peoples have the duty to assist other peoples living in unfavourable conditions that prevent their having a just or decent political and social regime" (Rawls 1999: 37). Living in "unfavourable" living-conditions is the reason for indigenous groups having to face a variety of negative side-effects such as low levels of self-esteem, high crime rates, and unemployment. In some cases welfare dependency brings them into a situation in which special means of recognition and protection appear unavoidable.

To sum up his arguments, Rawls' theory has two basic implications with respect to indigenous peoples: first, they have to be recognised as sovereign players in world affairs even if they have not acquired statehood. This assumption follows the Rawlsian conviction that not only states but also groups and/or individuals constitute a "Law of Peoples". Indigenous peoples, despite living in a certain nation-state structure, cannot easily be excluded from world affairs on the basis of belonging.

Secondly, the basic principle that both international law and domestic policy have to recognise and meet the needs of "burdened societies", applies (in most instances at least) to indigenous groups as well as to other marginalised groups of people. Deeply rooted in unfavourable living-conditions, excluded from certain means of protection and recognition on the basis of ethnicity, and vastly ignored in their desire for self-government, these societies are threatended by decimalization or even extinction. Basic principles of international human rights law and national policy must therefore focus on the needs of these groups.

The current debate in political thought evolved around the question whether or not indigenous peoples should be provided with self-determination rights and/or forms of self-government and to what extent. This debate rests upon deeper theoretical concepts, namely those of liberal universalism versus communitarian approaches. It is important to note here that both concepts initially evolved out of liberal political thought.

On one side of the political spectrum, liberals like Will Kymlicka (2001) claim that although indigenous peoples must have the chance to enjoy all the rights other peoples enjoy by means of the Universal Declaration on Human Rights and inherent rights to self-determination for them are justifiable,[24] the application of articles 1 and 27 of the International Covenant on Civil and Political Rights is not helpful because: "the right to self-determination in article 1 is too strong, for it has traditionally been interpreted to include the right to form one's own state" (Kymlicka 2001: 123). The threat seen and thus identified is not just ethnic disintegration in the countries concerned, but also a tendency to lump all indigenous peoples

together in their aspirations. This tendency is dangerous since not all indigenous minorities might wish to enjoy the right of full self-determination and independent statehood. Consequently, liberals like Kymlicka (2001) argue in favour of more flexible approaches with respect to "inherent rights to self-determination" because:

> "For these and other reasons, we need a new conception of the rights of national minorities which accords internal minorities substantive rights of autonomy and self-determination (unlike article 27), but which works within the framework of larger states (unlike article 1)" (Kymlicka 2001: 124).

Kymlicka's political thought holds that most individuals think of themselves as being a part of a greater community and/or culture and that they have an inherent right to do so. According to Kymlicka, the official political order of a state either fosters or neglects the needs of cultural and/or ethnic group (because some states are "colour blind", in a cultural sense, and others are not). In other words, a state is not culturally neutral. Kymlicka calls this phenomenon the "cultural bias of a state": a state has certain cultural foundations that constitute its statehood and advance the cultural identity of some while neglecting those of others. Kymlicka's suggestion with respect to indigenous minorities is that their discrimination has to be overcome without threatening the sovereignty of the bigger contexts (states) they live in (see: Kuppe 2004; Kymlicka 1995).

Communitarians like Charles Taylor (1992), on the other hand, argue in favour of a concept of international law and domestic politics that recognises all peoples as "sovereign communities". In a second step, a politics of equal respect among these entities can help to bring about more justice for all sides: "The politics of equal respect, then, at least in this more hospitable variant, can be cleared of the charge of homogenizing difference" (Taylor 1992: 61). This form of equal respect among the distinct (but somehow similar) communities is and should be formative for both international law and current political practice, since:

> "Recognition of equal value was not what was at stake – at least in a strong sense – in the preceding section. There it was a question of whether cultural survival will be acknowledged as a legitimate goal, whether collective ends will be allowed as legitimate considerations in judicial review, or for other purposes of major social policy. The demand there was that we let cultures defend themselves, within reasonable bounds. But the further demand we are looking at here is that we all recognise the equal value of different cultures; that we not only let them survive, but acknowledge their worth" (Taylor 1992: 63-64).

Taylor does not envisage ethno-centrist approaches at the centre of this recognition of equal value (see table below). Instead, he suggests that the communities themselves have to negotiate and thereby find a way to live with the demands for recognition of the "worth of difference". While not arguing explicitly for the self-determination approach, Taylor does back the claim that peoples as collective entities can have and enjoy certain rights. What is to

be preserved is an acknowledgement of the worth of difference, be it cultural, ethnic, economic or political. It is this goal which makes equal recognition within a just society necessary.

Table 1: The differing views of Kymlicka and Taylor concerning self-determination rights:

	Kymlicka (2001)	**Taylor (1992)**
Theoretical approach:	Liberalism	Communitarianism
The inherent right to self-determination guaranteed by articles 1 and 27 of the International Covenant on Civil and Political Rights is…	… problematic because it can be interpreted as a right to independent statehood. … problematic because it throws all national minorities into one and the same pot, which does not reflect more complex realities.	… not problematic as long as all sides agree to it in the spirit of a recognition of equal value. … could lead to acknowledgement of the worth of difference.
Aboriginal self-determination in general is a good idea …	… because indigenous groups exercised historical sovereignty that was wrongfully taken from them; self-government restores this inherent sovereignty. … because some indigenous peoples need it to preserve their pre-modern way of life.	… because it contributes to the „politics of recognition“ and the value of diversity. ... because it strengthens indigenous communities. … because it leaves more space for a recognition of the equal value of different cultures and communities.

Source: author's interpretation

In Tully's (1995) opinion, modern constitutionalism did away with tradition and thus legitimated the "neutrality of the state" by over-estimating the principles of reason and expediency. According to Tully this modern constitutionalism had three driving forces: liberalism, communitarianism and nationalism. With respect to the indigenous peoples, all three driving forces legitimated their oppression in the name of modern constitutionalism. The main reason for opposing the inherent right of indigenous peoples to self-government is to be found in the belief that the political order that modern constitutionalism constitutes would otherwise collapse because it might provoke ethnic or cultural secession (see: Tully 1995; Kuppe 2004).

The element of common good inside modern constitutionalism (which continues to play an important role), provides certain oppressed groups such as indigenous minorities with strong arguments in favour of their interests: modern constitutionalism in its current form serves the rights of some whilst oppressing those of others. This failure has to be overcome by providing marginalised minorities with particular rights. From the perspective of modern constitutionalism, the recognition of the rights of indigenous peoples falls into the category of privacy. Statehood cannot be viewed as an expression of the mainstream culture but as one of

legitimate order (see: Tully 1995; Kuppe 2004). This "strange multiplicity" is what drives and thus threatens the unity of modern statehood and constitutionalism.

1.2. Short overview: "indigenous rights" in international law

Indigenous rights within the United Nations' instruments of human rights lack clarity: despite the fact that they outline the right of all peoples to self-determination they do not specify the term "peoples" more deeply. Generally speaking, we have the following instruments in the UN system that could apply to indigenous peoples:

Table 2: Instruments for indigenous rights protection within the UN system and beyond:

- The Universal Declaration of Human Rights (1948) in the articles 1, 2, 4, 7, 17, 26 and 27;
- The Convention for the Prevention and Punishment of Genocide (1951) in article 2;
- ILO Convention No. 107 "Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries" (1957);
- An additional convention for the abolishment of racial discrimination in article 1.1. (1969);
- The International Covenant on Economic, Social and Cultural Rights in the articles 1, 2, 3, 13, 15 and 25 (1976);
- The International Covenant on Civil and Political Rights in the articles 1 and 27 (1976);
- The applied protocol to the International Covenant on Civil and Political Rights in its preamble and in article 1 (1976);
- The UNESCO Declaration of San José concerning Ethnocide and Ethnic Development (1981);
- The creation of the Working Group on Indigenous Peoples (UNWGIP) (1982);
- The beginning of a working on a Draft Declaration on a Universal Declaration on the Rights of Indigenous Peoples (1985);
- 1993 Human Rights Conference establishes the "Permanent Forum on Indigenous Issues" in the ECOSOC in UN-resolution 2000/22;
- ILO Convention No. 169 on the Rights of Indigenous Peoples (1989);
- From the 10th of December 1994 until the end of 2004: UN-Decade on the Rights of Indigenous Peoples;
- 2001: Establishment of a UN Special Reporter on Human Rights and the Rights of Indigenous Peoples;
- Since January 1, 2005: The second UN-decade on the Rights of Indigenous Peoples.

Source: author's interpretation, with reference to Defrancheschi 2000

Despite the fact that the International Labour Organisation (ILO) is not a special organisation of the United Nations (because it is not linked into it by a treaty with the United Nations' Social and Economic Council), it remains the only international organisation that has issued specific rules on indigenous rights that are more or less binding.

Despite the fact that both the Universal Declaration of Human Rights (1948) in its articles 1, 2, 4, 7, 17, 26 and 27, and the Convention for the Prevention and Punishment of Genocide (1951) in its article 2 apply to indigenous groups too, a first document that dealt explicitly with the concerns of indigenous peoples did not come about until 1957. The ILO Convention No. 107 "Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries" (1957) issued that year outlined basic rights that indigenous groups and individuals were held to possess, such as indigenous populations' (the Convention spoke of populations instead of peoples) rights to equal recognition within the societies they lived in. Its basic purpose was:

> "(…) to promote improved social and economic conditions for indigenous populations generally, but within a perceptual scheme that does not seem to envisage a place in the long term robust, politically significant cultural and associational patterns of indigenous groups. Convention No. 107 is framed in terms of members of indigenous populations and their rights as equals within the larger society. Indigenous peoples or groups as such are only secondarily, if at all, made beneficiaries of rights or protections" (Anaya 2004: 55).

However, it is important to note that at this time there was no declared right of peoples to self-determination. Indigenous groups were required to assimilate into the majority populations of the places they lived in. Therefore, the basic progress that ILO Convention No. 107 initiated was not a development towards indigenous self-determination but a process of increasing sensitivity towards the fact that the way in which European colonialists dealt with the native populations of the Americas was wrong and that indigenous groups were actively in need of special means of protection.

The first documents that did in fact speak of a right of indigenous and other peoples to self-determination were the two covenants issued in the course of the nineteen-seventies: The International Covenant on Economic, Social and Cultural Rights in the articles 1, 2, 3, 13, 15 and 25 (1976), and the International Covenant on Civil and Political Rights in the articles 1 and 27 (1976). Not only did these documents change the way in which indigenous rights could be interpreted, but also the outlook of human rights themselves (Hummer 1994: 103). International human tights law changed significantly when these provisions were issued.

All documents that followed these covenants, most prominently the ILO Convention No. 169, stressed the approach of an inherent right of indigenous peoples to self-determination. The

basic theme of ILO Convention No. 169 was that indigenous peoples could exercise control over their own institutions, ways of life, and economic development; maintain and develop their own identities, languages and religions within the framework of the states they lived in; advance their cultural integrity, land and resource rights, and non-discrimination in the area of welfare; and have a guarantee that their home-countries respected their aspirations in all decisions affecting them (see Anaya 2004).

The extent to which these provisions are chargeable remains the subject of debates in international law theory. But we can rely on the fact that there is a small repertoire of mechanisms the ILO can use to provide optimal respect towards ILO Convention No. 169 and its implications. The provisions of the Convention are monitored by all control agencies of the International Labour Organisation. The mechanisms of control include the duty of all participating states to report periodically on the progress in implementing Convention No. 169. Just as interestingly, the ILO system provides the possibility of a state-complaint (currently only rarely used). Furthermore, all employees are granted the ability to lodge complaints. Finally, employees of the organisation have the right to complain individually (see: Binder 2003).

Despite considerable resistance by some countries, the United Nations Working Group on Indigenous Rights was created in 1985. Right after its establishment the Group presented its vision of what a universal declaration on indigenous rights should include:

> "All indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right to freely determine their political status, freely pursue their own membership and/or citizenship, without external interference." (Hummer 1994: 108)

This first draft met with considerable tensions over the scope of self-determination and other issues, which made it clear that its key provisions had to change. The Declarations' second version abstained from clearly writing a right to self-determination into its key provisions:

> "indigenous peoples have the right to self-determination, in accordance with international law. By virtue of this right, they freely determine their relationship with the States in which they live, in a spirit of co-existence with other citizens, and freely pursue their economic, social, cultural, and spiritual development in conditions of freedom and dignity (…)." (cited in Hummer 1994: 108)

At the time the UNGWIP issued this declaration, the organisation pursued a unique kind of *open door policy* which was introduced by its first secretary, Mr. Asborn Eide (see: Kuppe 2005). Indigenous peoples and their representatives were provided with the unique opportunity to participate directly in the standard-setting process. A growth of political consciousness among indigenous peoples subsequently lead to an increased knowledge on

how to use the UN system for promoting change in indigenous rights recognition around the globe.

Unlike the original version, which included a general right to self-determination on the basis of indigenous peoples' own choice, this second version just spoke of self-determination in accordance with international law. This essentially meant that any form of aboriginal self-determination could not be anything more but a concept as contested as the right of peoples to self-determination in the international legal system generally. The special remark about a life in the spirit of co-existence signalled the will to tackle another fear expressed by states with indigenous minorities, i.e. that of a possible secession or ethnic disintegration within their countries.

On the whole the Declaration on the Rights of Indigenous Peoples largely remained a draft, since for reasons outlined above opposition to any UN treaty on this topic was far too intense.[25] Still, the first UN decade on indigenous peoples' rights, which began with the establishment of a "Permanent Forum on the Matters of Indigenous Peoples" within ECOSOC at the 1993 International Human Rights Conference in Vienna (in UN-resolution 2000/22), and continued with its official start in January 1994, sparked off a fresh lookt at the matters and concerns of indigenous peoples (see: Kuppe 2005). A significant number of Land Claims Agreements and other treatises between indigenous and state authorities (such as the Nunavut Land Claims Agreement which we will look at later on in this paper) were finalised within the last ten years. A second UN decade on the rights of indigenous peoples began on January 1st, 2005.

It remains unclear whether indigenous rights can become customary international law in the foreseeable future. On the one hand, the increasing number of states that have promoted, ratified and implemented the international treatises concerning the rights of indigenous peoples can be regarded as a step in the direction of an emerging customary international law on this issue (see: Binder 2003). On the other, states with significant numbers of aboriginal minorities have refused to sign any treaty that would keep them from pursuing their policies (e.g. the United States of America, or Australia). Much will depend on whether these states can be persuaded of the necessity to embark upon paradigmatic changes in their way of doing business, both on the national and on the international level.

1.3. Indigenous Rights in perspective: demand, concept, and reality

a.) The meaning of the term "indigenous"

Perhaps the biggest problem in thinking about indigenous rights is that of "defining what *indigenous* means". The question itself is quite important since the term "indigenous" has to be defined *before* we think about possible implications of certain rights. An initial assessment of the possible meanings of the term "indigenous" seems unavoidable. We might have to accept the explanation of international law experts such as Hannum (1990) as a starting-point for any assessment in this respect: "Among the criteria which have been utilised in defining indigenous groups or individuals are ancestry, culture (…), language, residence, group consciousness or self-identification, and acceptance by an indigenous community" (Hannum 1990, 88). In other words, indigenous identity is directly linked to the individuals' ancestors, his/her culture, his/her language, his/her residence, group consciousness and self-identification.

As is true for many other terms in political science and international law, the term *"indigenous"* is defined in a number of different ways. As Hummer (1994) notes, there are *objective* (ethnic, cultural, language-based), *subjective* (self-identification), and *functional* (living standards etc.) criteria for determining an individuals'/a group's belonging to other individuals/groups of people of his/her/their kind (see Hummer 1994, 102). On this basis, a possible *definition of "indigenous"* might sound like this: *An individual/a group of people is "indigenous" because it feels his/her/its linkage to another individual/group of people on the grounds of common ancestry, culture, language, residence, group consciousness or self-identification.*

However much this definition can be regarded a great tool for determining a concept of indigenous identity, its implications are tricky in a number of respects. As mentioned before, the concept itself is not easily separable from the concept of other minority groups for a couple of reasons: first, the concept involves *the idea of "primal colonisation"* of a certain territory. This idea contains a conceptual problem because it is not clear whether these "indigenous groups" really colonised the related territory in a "native manner". Secondly, the concept pretends to deliver *historical continuity of colonisation* of a certain individuals'/group of peoples' within a given territory. This notion also contains conceptual problems because the determining factor for "indigenous existence" in these cases is not (as pretended) "historical continuity". Rather, the concepts' underlying assumptions refer to a form of "genetic continuity". Finally, the concept of "indigenous identity" is subject to a number of

debates among the individuals/groups of people it pretends to comprise. There is not enough clarity on the notion or definition of "indigenous identity", most importantly not even within the group concerned (see: Stavenhagen 1994; or: Kuppe 2004). For these and other reasons, conceptualising the term "indigenous" in order to define common explanations on "indigenous rights" must be considered a hard task.

For the purpose of this paper and for simplicity, the conceptual approach outlined above will be used in the analysis of the question whether Nunavut might be the "good news" case in terms of indigenous rights recognition.

b.) The "fight for a letter" and the significance of the "s"

Having defined "indigenous" as a concept, it seems unavoidable to turn to another debated issue, i.e. that of the distinction between "populations", "people", and "peoples". Historically, both international law and the indigenous rights movement witnessed a phenomenon called *"the fight for the s"*. This fight evolved out of the unsatisfactory fact that international law only recognises peoples as capable of their own rights to sovereignty and self-determination. Therefore, the "s" in "peoples" represents a letter that inevitably increases the potential in certain respects, such as self-determination rights. Similarly, the distinction of "populations" from "peoples" lead to a preferred usage of the term "peoples" among indigenous groups since "populations" was seen as a term that involved a preference for indigenous assimilation rather than self-determination (see Hummer 1994). This argument is quite striking since many states that contain indigenous minorities continuously resisted the term "peoples" as it involved "self-determination" rights and thus more potential for real autonomy.

Historically, the first instrument for indigenous rights protection was the ILO Convention No. 107 "Concerning the Protection and Integration of Indigenous and other Tribal and Semi-Tribal Populations in Independent Countries" issued by the International Labour Organisation (ILO) in 1957. It assumed that indigenous groups were populations, not peoples. Nevertheless, this convention clearly identified "indigenous populations" as "in need of special measures for the protection of their human rights".

In the course of the debate it became increasingly agreed and fashionable to use the term "peoples", despite the criticism of some countries, as it constitutes without any doubt the only plausible way of dealing with the problem. Indigenous communities could not be regarded as "populations" because this term involved "assimilation" rather than coexistence. For reasons explained later in this paper, "assimilation" is not the preferred model of dealing with indigenous groups anymore. Neither was there a chance of usin the term "people", since this

term recognised indigenous communities' individual identities rather than acknowledging indigenous groups' collective identity evolved by means of shared cultural values and a common history.

As far as we can judge, most of the documents that dealt with indigenous groups/individuals drew on the hope that solutions to existing problems could be found on a national rather than an international level. The ILO Convention No. 107 emphasising the term "populations" over "peoples" did in fact suggest that indigenous groups were minorities within a given state. This status did not immediately entitle them to certain rights. On the contrary, type and speed of change was up to authorities within the nation states concerned. As I already mentioned before, the resistance against changes in favour of a more universal declaration had several reasons:

1. The fear that with an acceptance of the term "peoples" indigenous groups could claim a right to self-determination on the basis of articles 1 and 27 of the International Covenant on Civil and Political Rights and similar provisions.
2. For domestic reasons there was a general reluctance towards change in aboriginal policies in the nation states concerned.
3. The fact that international law itself was and still is essentially state-centred delayed actual change because some countries could veto and/or block solutions at any time.
4. And the claim that all peoples should enjoy rights to self-determination was severely contested.

Such difficulties with widening the scope of indigenous rights were behind the fact that changes did not really become material until the late 1980s. At this time, the International Labour Organisation renewed its stance with regard to central rights of indigenous peoples. This change was a notable victory, as indigenous organisations and lobby groups had fought for the recognition of the "s" in "peoples" for nearly two decades. The first instrument that entitled them to rights common to all peoples was ILO Convention No. 169 issued in 1989.

So historically the "fight for the s" was won and "peoples" became the preferred usage as the ILO Convention No. 169 readily evidences. Despite this historical victory, careful usage of the term "peoples" seems to be highly recommendable. Anaya (2004) identifies three variants of restrictive approaches towards the term usage of "peoples":

I. the obligation that self-determination should only apply to populations of territories that were/are under the conditions of classical colonialism;
II. the demand that self-determination ought to apply to populations that are aggregates of independent states and to those of classical colonial territories; and

III. the acceptance of the claim that these “peoples” are not entitled to self-determination by the status quo of recognised statehood or colonial territorial boundaries but by forms of territorial cohesion. (see 100-101)

This careful usage of the term “peoples” is something we have to bear in mind if we think about indigenous rights.

c.) Indigenous rights: for “individuals” or a “collective”?

The discussion about indigenous rights has a second dimension, namely that of “individual versus collective rights”: As we all know, international human rights law is mainly concerned with the individual and not the group. All human rights pacts that we know at the time of writing are first and foremost characterised by the objective of protecting the rights of individuals. In their own self-image, however, indigenous rights are “group rights” not individual rights. Indigenous rights did however also fall into the category of political rights (via Article 1 and 27 of the International Covenant on Civil and Political Rights).

Major difficulties arise from this because of a general idea that some theorists have, namely that human rights are inappropriate for social groups. Nevertheless, there are two assumptions which back the claim that the linkage of indigenous rights with group rights does not contradict the recognition of the essential human rights of indigenous people as a whole:

First, sometimes some individual rights can not be recognised without the recognition of collective rights. This fact became evident in the “Chiapas case” in which the Zapatista movement put forward the claim that the rights of indigenous individuals could be protected if only the Mexican government acknowledged their status as an ethnic minority. The so-called “rebellion of dignity” was essentially aiming at getting the government of Mexico to acknowledge that the Maya minority as a group had to be recognised in their needs and thereby protected (see: Gabriel 2004; or: López y Rivas 2004).

Secondly, human beings are social creatures: it is not possible to separate them from circumstances or social relationships they were born into. In the debate about “peoples vs. people vs. populations” the main bone of contention is the question of the rights of peoples to self-determination.

d.) Minorities of a "special kind"? – main characteristics of indigenous peoples

Indigenous rights are not only group rights but also (at least in most instances) minority rights. This claim is especially true if we think of indigenous history as one of colonial domination, marginalisation and massive repression. In the course of the last century, indigenous peoples *became* "ethnic minorities" of the areas they populated. Entirely new and somehow "alien" nation-states evolved around them without asking for their consent. Ethnic minorities in this respect are groups of people that are a "minority on the basis of ethnic difference". However, the concept of ethnicity holds that people belong to an ethnic group by means of similarity in cultural, national and sometimes religious or "racial" respects. Ethnic minorities are groups that are marginalised, discriminated, excluded and disadvantaged on the basis of their belonging to a specific ethnic group. Consequently, provisions to minority rights such as articles 1 and 27 of the International Covenant on Civil and Political Rights conceived of ethnic minorities as in need of "special means of protection" via a right to self-determination. But the decisive question is not whether indigenous peoples really are ethnic minorities. Instead, the existence of indigenous rights poses the question: why are existing minority rights insufficient for the protection of indigenous minorities? Do existing indigenous rights like the ILO Convention No. 169 hold that indigenous people are "minorities of a special kind"?

As most organisations of indigenous groups constantly claimed, indigenous peoples are different from other minorities in three major aspects:

I. Indigenous minorities are different from other minorities on the grounds of nativeness of settlement in a certain territory.
II. They are different because of their status as victims of invasion, robbery of lands and oppression.
III. The fact that their ancestors used to live within sovereign nations prior to contact with colonialists and the means of their unintended and involuntary surrender of their natural rights to freedom and lands are thought to be sufficient to entitle them to special rights (see: Stavenhagen 1994; Kuppe 2004).

As I will point out later, the International community acknowledged and thus recognised these claims by issuing a couple of indigenous human rights pacts such as the ILO Convention No. 169. However, the fact that indigenous peoples differ from other minorities on the basis of the claims outlined above suggests that they are not only viewed as minorities within a given setting, but intrinsically hold the status of minorities of a "special kind" and thus in need of special means of protection.

e.) The "state-centred nature" of international law and indigenous rights

Another conceptual problem might arise from the difficult position of indigenous peoples within the "rights of peoples" in international law. The *problem* in this context is that *international law is essentially state-centred.* There is a tendency in international law to prefer peoples to have their own states as opposed to just forming minorities within a given state. This contradicts the requirements entrenched in many human rights pacts of the *third generation of human rights* and earlier agreements, i.e. the idea of a right of all peoples to self-determination. Even though indigenous peoples do not have their own state these pacts claim that the situation indicated above is not a desirable one. As the current theory and practice of international law suggests, there is no exemption to the claim that all peoples have the right to self-determination, whether they are a collective of citizens of a given and existing state or a human conglomerate which is somehow shaped by similarity in historical, territorial, cultural and ethnic terms. The concept of self-determination is a sensitive issue since for many states there is a lot at stake and sometimes provisions to minority rights explicitly heighten the fear of "ethnic disintegration".[26]

With the end of the Cold War world politics and international law witnessed a number of significant changes. These changes did not only encompass a demise of the bipolar world order and a triumph of the capitalist logic but also an increased disappearance of the nation-state model as the only way of running both a countries' destiny and world affairs. With the beginning of the post-ideological and post-modern age at the beginning of the nineteen-nineties, older (in most cases "ethnic") conflicts that had been hidden behind the curtain of a world that was essentially about rivalling ideologies during the Cold War started bubbling up: The implosion of the Soviet Empire left a gap and thereby paved the way to increased nationalism and related concepts. In some parts of the world like Chechnya, Yugoslavia, western and north-eastern Africa, this development culminated in the desire of certain ethnic populations to leave the contexts they were living in and to get their own models of governance in change. These claims and desires were not so much driven by the concept of "ethnic difference" but took advantage of globalisation's increased possibilities to act "internationally" rather than "intra-nationally". The "ethnic conflicts" that arose from these tensions did in fact herald a collapse of state-authority.[27]

With these developments new phenomena emerged such as states that were actively challenged by the threat of or actually engaging in civil wars on the basis of ethnicity. And to some extent these developments are still apparent obstacles to peaceful co-existence at the time of writing. Hence both international law and state actors had to think about solutions to

these problems and while doing so these actors became increasingly aware of the new situation outlined above. New international legal provisions initiated a number of significant changes: For example the need to adjust to new challenges such as ethnic cleansing and oppression of minorities in some countries led to a further strengthening of minority rights in international law. To this end, the successful enhancements of indigenous rights at the beginning of the nineteen-nineties with the draft and ratification of the ILO Convention No. 169 and similar documents pursued similar goals (see Hummer 1994). The fact that the UN declared 1993 a "year of indigenous rights" and 1994-2004 a decade under the same flag might well function as an indicator for the increased attention international organisations and institutions gave to both minority rights as a whole and to indigenous rights in particular.[28]

To sum up, the fact that international law, international politics and international governance have become increasingly autonomous from nation-states does in fact suggest that indigenous peoples' voices strengthened over the last decade. On the other hand, in most cases indigenous peoples need state-authorities to bargain with. Without a partner their claims would not be heard either. Much of current political action rests upon the dichotomy (the "individual – state" dichotomy) between more freedom due to a less state-centred outlook of international affairs and a need for state-action to bring about significant changes.

f.) "Self-determination" and its related concepts

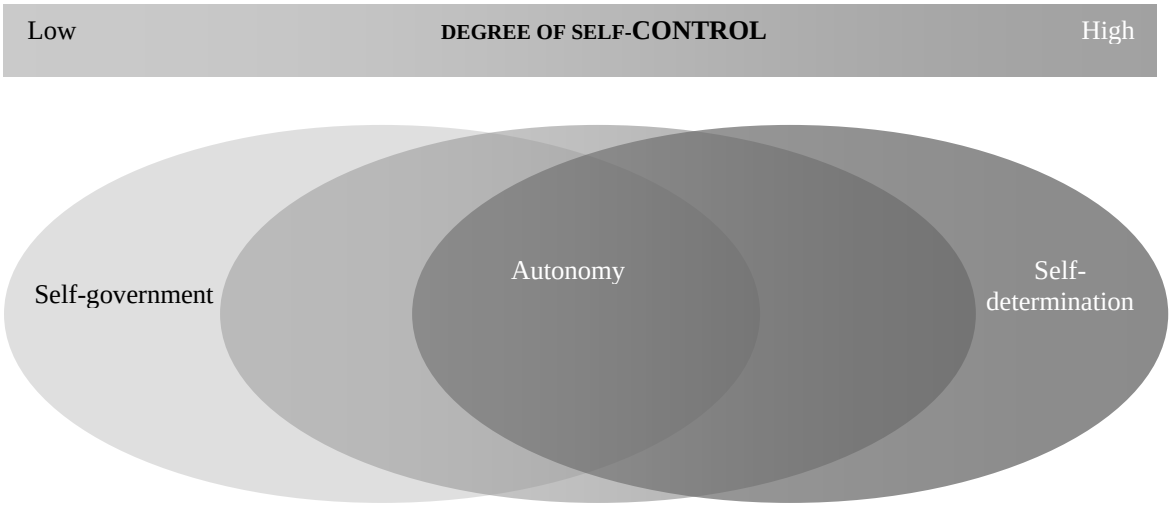
Both as a term and as a political concept "self-determination" refers to the question of political power and self-control. Self-determination is closely related to other terms such as "autonomy" and "self-government". In the context of indigenous rights and their recognition people often tend to mix these terms up or attribute wrong meanings to the terms. Hence a closer look at the key differences between these words seems appropriate.

Self-determination both as a term and as a political concept is inextricably linked to the question of power and self-control. To put it differently, self-determination, self-government and autonomy are all connected to the question: who has power, and how much of it? Or: what potential does a group of people (e.g. an indigenous minority) have to control its own goals and matters? Is the degree of self-control relatively low, or is it relatively high? Or: how much sovereignty does a political entity have?

Self-government means that a political entity does not have full sovereignty or control over all issues of its concern. Self-government is restricted to certain designated areas and/or issues. The greater the number of areas/issues a political entity is entitled to control the more "autonomy" is involved in this. And sometimes self-government can even take on central

features of self-determination. Self-government therefore means that a political entity has the ability to control some matters of its concern on its own.

Table 3: Degrees of self-control: self-government, autonomy, and self-determination:



Source: author's interpretation

Autonomy is a model that grants a political entity the ability to control some of its own issues in self-determination or self-government (both at a territorial and at a personal level). Autonomy does not mean that a political entity is entirely sovereign under the sovereignty-rules of international law. A political entity that enjoys autonomy in certain designated areas has to be placed within a state and does not have full sovereignty over the matters that concern it (see: Simon 2000). In most instances autonomy models are found in federal systems (e.g. the case of Quebec in Canada) and alongside the "ethnicity cleavage" (e.g. the case of South Tyrol in Italy). In the light of these assumptions, autonomy can be seen as a kind of law that provides ethnic or cultural minorities with the ability to act with a certain degree of self-control in some particular areas/matters.

Self-determination can involve autonomy but can also go far beyond it. A political entity that enjoys self-determination rights has a relatively high degree of self-control/power of its own matters and concerns. Self-determination is an open concept which can stretch from significant self-government right to autonomy to ethnic or cultural disintegration. Hence self-determination is a concept that most nation states that host ethnic or cultural minorities are afraid of. And, more significantly, self-determination is sometimes misunderstood as only being about full sovereignty for a cultural or ethnic minority, a belief that does not take into account that self-determination can be restricted to a number of designated matters/issues. A model that provides an indigenous minority with rights to self-government and some

autonomy can also fulfil the demand of self-determination without leading to any kind of ethnic or cultural disintegration in its bigger context.

Kuppe (2004) suggests that autonomy models ought to recognise the rights of indigenous peoples in a fair and peaceful manner. Kuppe calls this concept "multicultural autonomy" (see: Kuppe 2004).

g.) The "right to self-determination": issues and problems

As a brief summary of what we've seen so far suggests, all indigenous groups are characterised by their members' commonality in language, culture, ancestry, residence, group consciousness and/or self-identification. The preferred usage of the term "peoples" for indigenous groups suggests that they should be provided with rights to self-determination. Indigenous peoples enjoy certain rights in the form of group rights. The assumption behind this is that a protection of the rights of indigenous individuals is only possible if the groups they belong to are recognised as "in need of special protection". Indigenous peoples are not just minorities with a status comparable to that of other national minorities (despite the fact that in most instances indigenous groups do constitute a minority within their home countries), but *minorities of a special kind* due to their status as *native settlers in a certain territory*, their status as *victims of colonial oppression*, and the fact that they formed *sovereign nations on their lands prior to contact* with the colonialists. The rights of indigenous peoples do not contradict the provisions and requirements of international human rights law.

All these facts of course underline the fundamental right of indigenous groups to self-determination. If indigenous groups are "indigenous peoples" in the same way as Frenchmen form a "French people" or Englishmen an "English people", the applicability of all peoples *"fundamental right to self-determination"* appears unquestionable (at least on the basis of current international law and practice). Despite the fear of a number of countries this right to self-determination does not mean that there is a single standard for self-determination:

> "The content of this asserted right to self-determination varies tremendously, reflecting the diversity of situations in which indigenous peoples find themselves and the diverse character of indigenous groups themselves. Some do aspire to complete independence and statehood, while many others demand autonomy or self-government only in specific areas of competence (such as full control over land and natural resources)" (Hannum 1990: 95).

Indigenous rights to self-determination did not creep into international pacts without resistance for a couple of reasons: The usage of the term "self-determination" frightens nation states with indigenous ethnic minorities such as Canada, Australia, the United States or Mexico because it is closely associated with a higher degree of autonomy or (in the "worst

case") independent statehood[29]; this point is particularly striking because "self-determination" inevitably challenges all forms of the "current status" which confronts indigenous ethnic minorities containing states like Canada, the US or Australia with the need to shape, cope with and adjust to "new realities". Sometimes figures in public opinion polls suggested that for a majority of people within the nation states concerned providing indigenous groups with greater degrees of autonomy was considered unpopular and/or undesirable. Governmental authorities were therefore very reluctant to introduce changes in their aboriginal policies, especially at election times.

As this paper tries to show, self-determination is a controversial and contested term. Until the time of writing, some countries like Canada and Australia resisted a ratification of the Draft Declaration on Indigenous Rights.

h.) Indigenous assimilation versus self-determination, or: why assimilation is not the appropriate alternative

As indigenous realities suggest, however, in many cases the "alternative" would be complete assimilation to the cultural, civil and political values, thoughts and beliefs, and the styles of living of the majority population within their home-countries. As discussed later, the idea of forced indigenous assimilation follows a *"Jacksonian model"* of dealing with indigenous minorities. The assumption was that because of their different cultural, ethnic and political identities, indigenous peoples could not have the same rights as the European colonialists. The idea of assimilation is racist, colonialist and discriminative at the same time. The fact that assimilation is seen as something "more desirable" than co-existence makes assimilation a colonialist concept. To assert that a population which is "different" in ethnic, social, cultural and political respects lives a life that is "less rational" on the basis of these differences does in fact involve a certain degree of racism. The concept of forced assimilation is discriminatory: it claims that the non-assimilated are not the same and therefore "rightly oppressed". This concept claims that it is the fundamental assimilation of an indigenous individual and the (almost) complete abandonment of his/her cultural values, thoughts and feelings that gives him/her the same "right to all things" as all the other citizens of the same country already enjoy.

i.) The assimilation-problem: an historical example

Historically the debate goes back to the early thirties of the eighteenth century. An American president who took his ideas partly from his great predecessor Jefferson was *Andrew Jackson* (1767-1845). Jackson was highly in favour of more involvement of the population in state affairs, a fact which led him to reform some laws and procedures that in his view were not democratic enough. This new model of populist democracy stood in the tradition of *Jean Jacques Rousseau's* political thought which held that all men are born free and equal. This human nature was violated in many parts of the world as men were captured through brutal oppression and lived in chains. Consequently, Jackson sought to decentralise power in the United States, or to distribute it to a greater number of people (see: Pelinka 2004, or: Heideking 1999, or: Feest 2000). Surprisingly, these developments did apply to Indians that assimilated to American political culture but not to those who refused assimilation.

Somewhat inconsistent with the ideas of Jefferson is the way in which Jackson viewed the Indians as a whole: in deep contrast to Rousseau's (and Jefferson's) positive and optimistic views[30], Jackson thought that all but some men within the newly evolved American nation were equal. He divided the people living under his administration into two kinds: on the one hand those who actively professed to belong to the new nation through key values such as the Christian religious beliefs, the belief in democracy as the only form of legitimate government, and the universality of human rights. These people were the ones he thought capable of perfect freedom and equality. On the other side he identified the "wild Indians" who resisted assimilation and a conversion to Christianity. These "wild savages" were the ones who "threatened to destroy" his vision of an Empire of Liberty in the West. Therefore, "non-assimilated Indians" had to be moved to a certain place west of the Mississippi. Hence they could not possibly have the same rights to freedom and equality. His Indian Removal Act of 1830 passed both houses with small majorities (see: Heideking 1999: 137, or: Feest 2000: 99). We can therefore attest that as far as the assimilated Americans are concerned Jackson stood in a Jeffersonian tradition, but his thought essentially lacks a clear conviction that all of Jeffersonian thought could possibly apply to the Indians as well.

Another person who was deeply influenced by the political thought of John Locke was Chief of Justice *John Marshall* (1755-1835) who took a "federalist Lockean stance" in three Court decisions: it was Jackson's Removal Act that has sparked off debates about Indian rights to lands. Since the US adopted the British case-law system, court decisions were and still are of considerable significance. The first these decisions was made in the *Johnson versus M'Intosh* and not clearly in favour of Indian rights to lands. It was a case wherein he stated that Indians

did not have full rights to group autonomy or ancestral lands because leaving them in the possession of their land was to leave their country in wilderness.

Marshall had to decide over Indians and their rights to property of lands in the case *Cherokee nation versus the State of Georgia*, wherein he did not qualify the Cherokee people as a "foreign state" under the provision of Article III of the US constitution.[31] The Cherokee nations' rights were inextricably linked with the State of Georgia because they were a part of Georgia and not a distinct "foreign state" under the constitution.

In a third decision (in the case *Worcester versus the State of Georgia*), *Marshall* stated that the rights to acquire the lands of the Indians could not be linked to discovery. Since the Cherokee nation did not lose its lands on the basis of voluntary cession or conquest, the United States' relationship with the Cherokee had to be based on special treaties (see Anaya 2004). This decision contradicts *Marshall's* earlier decisions insofar as he started thinking about the capacity of the Cherokee nation to govern itself, at the same time stressing that the Cherokee people were a part of the state of Georgia too.

As the table below shows, however, Jackson and Marshall embarked upon different political approaches to the rights of indigenous groups. Whilst Jackson's negative picture of the "non-assimilated Indians" led him to believe that Indians had the choice to either assimilate or to be moved to a certain place where they could not destroy the manufacturing of an Empire of Liberty, Marshall decided via court rulings that Indians were not subjects of the constitution because they were distinct communities that had their own rights to lands and properties.

Table 4: The differing views of Jackson and Marshall on Indians and their rights:

	Jackson	**Marshall**
View on Indians:	Negative: Indians are wild savages, a "wild part" of the American Society that needs to be educated and assimilated.	Neutral, slightly positive: Indians are "distinct political communities", capable of living their own life in self-determination.
Perspective on the rights of Indians:	"Assimilated Indians" have the same rights as any other American citizen enjoys. "Non-assimilated Indians" do not have certain rights.	The rights of the Indians can not be guaranteed by constitutional provisions because Indians are "distinct political communities".
How should the United States of America deal with the Indians?	Encourage assimilation; where assimilation is not possible, encourage segregation by moving the Indians to a certain place west of the Mississippi River.	As "domestic dependent nations" Indians are "Americans of a special kind": assimilation is wrong!

Source: author's interpretation

In general, aboriginal peoples had to consent to the social contracts of European discoverers just as they did among themselves. In the course of the construction of nation-states in the Americas, they were taken by a nationalism which required political boundaries congruent with the ideas of their constructors.[32] As for nationalist viewpoints as a whole, Europeans did not only seek this form of congruence, but also a notion that ethnic boundaries should not cut across political ones. The Native American population was thus confronted with high degrees of racism that drove Europeans to aims such as the extinction of the ethnic Indians.

j.) Why assimilation is not considered an appropriate alternative anymore

Currently, however, the assimilation approach is not considered the "appropriate alternative" anymore because the demand of assimilation and cultural integration clashes with the right to cultural integrity and other basic human rights. Interestingly, only the ILO Convention No. 107[33] embarked upon an "assimilation approach" as opposed to a guaranteed right to self-determination (see Anaya 2004; or Hummer 1994). With the turn from the second to the third generation of human rights, a right to cultural integrity was established which itself meant that assimilation could not be considered an appropriate concept.

If we take into account Kymlicka's idea that a cultural bias exists within every nation-state which (at least in tendency) discriminates against indigenous and other minorities, assimilation is discrimination since it neglects the recognition of equal value. This fact contains the necessity for affirmative action and its positive discrimination mechanisms. Affirmative action in this regard would mean to enable indigenous minorities to develop equal rights through the ability to live their lives in a non-penetrated manner (see: Kuppe 2004). Because "mainstream culture" and its demand of equality (the erasure of differences – or simply: assimilation) discriminated indigenous peoples in their identity and lives it was and still is necessary to provide them with a certain scope of particular rights, namely indigenous rights. As outlined above, these rights should not stand in the tradition of discriminatory assimilation.

The demand for indigenous peoples to assimilate which was put forward by mainstream political practice and thus people like former American President Andrew Jackson and others in particular increasingly went out of fashion. At the same time it agreement grew that a preservation of indigenous variety and cultural values was a central cornerstone for both the preservation of indigenous lifestyles and the one of indigenous life as a whole. Therefore the ILO Convention No. 169 and other documents were talking about indigenous self-determination instead of assimilation.

k.) Indigenous peoples' right to self-determination: the current debate

Indigenous rights provide one group of a society with "special rights" to lands and resources on the basis of the inherent right to self-determination. At the same time, it should be designed to avoid forms of independent statehood. Nevertheless, some people accused the supporters of indigenous rights of taking "ethno-centrist" stances because they argue them on the basis of the ethnically different status of the natives (see Stavenhagen 1994). As these analysts suggested, *indigenous rights are a contradiction in terms* because their target are not "fundamental rights" that indigenous peoples shared with all of mankind such as rights to life and property but "special rights" that derive from the different "ethnic status" of indigenous peoples (see: Flanagan 2000).[34] In this view, an international law that acknowledges indigenous peoples rights on the basis of aboriginality has left its most fundamental principle behind, i.e. the claim that men are free and equal and the universality of this claim.

On the other side of the spectrum, the "accused" argue that indigenous groups did not accept their marginalised status voluntarily or by choice. Their current status can only be explained by the fact that they were forced into a certain situation on the basis of difference. Consequently, the ethno-centric approaches of colonialists and not those of indigenous rights defenders stood at the beginning of a marginalisation of indigenous groups. Indigenous groups were not discriminated on the basis of equality, but on the basis of difference. However, the initial problem of colonialism was that indigenous peoples were different and for a long period of time (and in some cases up until now) this difference was viewed as something worse, alien and less desirable by newly arrived "white settlers" (see: Ladner 2003).[35] To this end, the demand to assimilate is problematic too because it creates a hierarchy through the question which style of living is more "desirable".

In this view, the application of self-determination rights in international laws, such as articles 1 and 27 of the International Covenant on Civil and Political Rights, evolved as a consequence of colonial rule with all its negative side-effects. Indigenous groups felt a need for a form of protection that enabled them to have the same rights as all of mankind is entitled to under the provisions of International Human Rights Law. This approach neither contradicts the universality of human rights nor does it question the fact that all people are free and equal. On the contrary, this belief says that there are particular rights within the universe of rights to freedom and equality that need to be respected in order to bring about a state of "perfect liberty and equality" of all peoples on this planet.

To sum up part, the discussion around indigenous rights in theory does not necessarily mean that indigenous rights practice is illegitimate. As indicated below, the theoretical debate could

not hold indigenous rights back from becoming a reality. Because of to the inevitable existence of indigenous rights my thesis does not discuss the rightness of the existence of indigenous rights as such. Rather, its purpose is to analyse the case of Nunavut within the context of indigenous rights.

l.) Small conclusion: "indigenous rights" – what are they all about?

From what we have seen so far, indigenous rights as a political concept contain some basic truths:

- Indigenous rights are a method put into place in order to protect the rights of indigenous peoples;
- Indigenous rights are collective rights;
- They are minority rights because in most parts of the world indigenous peoples form an ethnic minority;
- The concept of indigenous rights actively challenges the state-centred nature of international law;
- By their emphasis of the term "peoples", indigenous rights imply a right to political self-determination. This right is disputed because many countries have a lot to lose by it;
- In terms of legal history, indigenous rights have left the "nasty concept" of assimilation behind in favour of the self-determination approach;
- Indigenous rights are not just the phantasms of "ethno-centrist thinkers", they evolved out of the political necessity to protect indigenous groups from such phantasms by ethno-centrists on the other side of the spectrum.

Indigenous rights contain a number of requirements that both states and individuals are bound to fulfil. Effective means of protecting these rights include important provisions of international norms for indigenous peoples on the following themes:

- *Non-discrimination;*
- *Cultural integrity;*
- *Lands and resources;*
- *Social welfare and development;*
- *Self-government.*

In this context non-discrimination means that indigenous peoples should not be discriminated against on the basis of difference in any respect. The right to cultural integrity means that indigenous groups should not be kept away from cultivating their own cultural, political and

religious practices. The right to land and resources evolved out of the historical experience that most indigenous peoples were stripped off their lands and resources in the course of the nineteenth and twentieth century. As native settlers in the territories concerned indigenous peoples should be provided with similar rights to those they used to enjoy prior to colonial oppression. The right to social welfare and economic development evolved out of the experience that indigenous peoples were stripped off their lands and resources without being recognised as free and equal citizens in the evolved nation states. These rights correspond to the demand for non-discrimination because it says that indigenous peoples should have the same right to social welfare as all the other citizens of the country concerned. The right to self-government is there to fulfil a central demand of both minority rights as a whole and indigenous rights in particular: the right of indigenous peoples to self-determination.

2. "Federalism": its meaning and its "political uses"

As this paper is about indigenous rights recognition in federal systems, a conceptualisation of the term "federalism" appears necessary. As a political principle, federalism touches on the "separation of powers" issue, arguing that power has to be distributed not only between legislative, executive and judiciary but also between levels of government. In principle, federalism envisages a vertical division of powers (see Pelinka 2004). But is there more to the term "federalism" than this? Where does the term "federalism" come from? Who conceptualised and introduced federalism?

"Federalism means different things to different people" (Gagnon 1995: 24), it seems difficult to determine a common idea or understanding as to what the term and concept federalism contains. Perhaps a majority understanding might be that our idea of federalism is closely linked to our experiences. In other words, "our understanding of federalism as a concept of political organisation is commonly derived from its practice in a handful of classical federal states" (Hueglin 2003: 275). Germans experience federalism because the system of government in Germany is not only characterised by a horizontal division of powers between legislative, executive and judiciary but also built upon a vertical division that gives certain powers to the so-called "Länder" – a level of government below the national one. Germans might not only find a common understanding as to what federalism means in their national context. Some Germans (or all of them) are able to distinguish countries with similar power divisions and thus concepts of federalism from those with a unitary form of government.

2.1.Excursus II.: "Federalism" – the history of a political concept in "western" political thought

An important way of measuring the meaning of federalism is by referring to its roots in political thought. It was the idea of the French philosopher *Charles Secondat de Montesquieu* (1689-1755) that stood at the cradle of both the term and the concept of federalism. In his book *The Spirit of Laws* (1750) Montesquieu argued that a republic had to separate its central powers and thus delegate them to different institutions so that these institutions could work without outside interference: the legislative, the executive and the judiciary (see Pelinka 2004: 192). A second idea he put forward was that the republic is best designed if it has a "confederal structure" of government, which inevitably meant that power should be distributed between levels of governance (see Hueglin 2003: 276).

A group of political representatives that drew upon these ideas of Montesquieu were the federalists *James Madison, John Jay and Alexander Hamilton.* The model of federalism they constructed and wrote down in the *Federalist Papers* (1787-88)[36] became the most important point of reference for all models of federalism. All theorists and practitioners of federalism had the ideas of these three men in mind when they wrote down their findings:

> "They can rightly point to a powerful tradition and proven track record in modern federal states. Both are epitomised by the American model and its seemingly timeless constitutional commentary in the Federalist Papers. Written as newspaper commentaries by Alexander Hamilton, John Jay and James Madison in 1787-1788 in order to bring about ratification of the American constitution in the state of New York, these essays doubtlessly comprise the very essence of the modern federal state in theory and practice" (Hueglin 2003: 275-276).

Consequently, the US federal system with its characteristic forms of horizontal (between legislative, executive and judiciary powers) and vertical (between the federal government and the level of the states) divisions of power became the central model for both federal political systems and the concept of federalism in particular.

2.2."Federalism": the concept itself

A first attempt to define federalism might lead us to believe that (with some degree of uncertainty) the elements of which it is made up touch on three levels:

- interstate relations (division of powers between orders of government);
- intrastate linkages (representation at the central level);
- and inter-community cooperation (see Gagnon 1995: 23)

All federal systems of this world are characterised by a distribution of powers to specified orders of government. These powers are inter-linked in a number of ways (e.g. a "second chamber" of parliament in the legislative branch). Most of theses systems are embedded in a bigger context. Germany, for instance, has got a federal system at the national level. At the same time the country is a part of another federal system (though not a state): the European Union.

As Thomas Hueglin (2003) points out, federalism is not a rigid concept that never changes. On the contrary, it is a highly contested model:

> "On all counts, federalism has remained a contested concept. Constitutional rigidity is giving way to the greater flexibility of negotiated agreements or treaties. Accordingly, the relationship between federal and regional governments is taking on more balanced or even confederal characteristics. Territorial jurisdiction and representation are challenged by the rise of transborder and identity politics. The boundaries of national and regional policy domains are increasingly blurred by forces of economic globalisation." (Hueglin 2003: 275)

This "contested nature of federalism" and its vulnerability to changes in the political and economic sphere is not just a negative thing, since federalism itself can be viewed as a good conflict-solving mechanism. It is a good framework for distributing powers to minorities that otherwise would feel threatened in their aspirations for self-government. Rightly applied, this fact implies that federalism leaves a lot of space for innovation in the field of democratic practices on the territorial level (see Gagnon 1995: 23). So even though federalism is not a "closed concept" or "way of ordering" a political system, it seems inevitable that its underpinnings leave more space for minorities and innovative governance than a unitary system is ever able to.

Keeping this in mind, we may discover that a formal definition does not only contain the basic form of distributing power to different levels of government. Although Rand Dyck (2004) argues in favour of a simple explanation of federalism as "a division of powers between central and regional governments such that neither is subordinate to the other" (411), this approach does not quite meet the complexity of the concept itself in an appropriate manner. This is evident because modern federalism has two other implications that are central to any conceptualization: Federalism is a method of balancing centripetal and centrifugal forces in a country, but federalism is not just a constitutional principle, it is also a means of distributing powers with treaties between a central government and certain groups of people (in most instances minorities).

Coming to the first element, namely that of balance between centripetal and centrifugal forces, it has to be stated that most countries with federal systems know a certain kind of

threat: that of (ethnic) disintegration as a centrifugal force to different extents. Through its way of distributing power to two (or more) levels, federalism can help to accommodate this threat. This fact is what many political analysts have termed the "balancing power of federalism". The assumption behind this claim is quite understandable since:

> "An essential element of federalism (...) is that people desiring to find an equilibrium between forces of centralisation and decentralisation, or else between provincial and federal powers, must desire union, and must not desire unity. A central feature of federalism has been its ability to establish varying balances between centripetal and centrifugal forces. Difficulties emerge only when a sense of unfair treatment, perceived or real, is being felt by communities" (Gagnon 1995: 31).

These difficulties cannot change the fact that federalism is a good and thus appropriate way of balancing uneasy relationships between a union at the centre and awkward approaches in the periphery.

In this regard federalism can take on a variety of different outlooks: symmetric versus asymmetric, dual versus cooperative forms of federalism are identifiable.

Federalism is called symmetrical once a federal system provides all of its constituents with the same amount of power. Otherwise, as in the case of Canada, where the provinces have more power than the territories and the province of Quebec more authorities than the rest, a federal system takes on asymmetrical features. The division between dual and cooperative federalism touches on the extent to which a federal system builds up parallel institutions at both levels of federal governance. Federal systems in which we can find institutions on the same issue at both levels (such as Switzerland) are called "dual", and those without this phenomenon and more sense of cooperation between federal and provincial authorities (Germany, Canada etc.) provide a "cooperative federal framework" (see: Sturm & Zimmermann-Steinhart 2005).

As outlined before, there is a second element constitutive to modern federalism: That of a "non-constitutional" model based upon treaties between government authorities and other agencies such as national and/or cultural minorities (mainly indigenous peoples). The "right term" for this phenomenon is treaty federalism. As Ladner (2003) points out,

> "(…) treaty federalism (or Tully's treaty constitutionalism) is premised on the idea that the treaties between the various indigenous and colonial nations established (in law) federal relationships between these nations. In doing so, the treaties created the 'treaty order' or 'treaty federalism' as a constitutional order of asymmetrical federalism (asymmetrical because each treaty and each treaty relationship is different)." (Ladner 2003: 174)

With our first attempts to define federalism as a whole and these two additional and contributing elements in place we might reformulate the definition. In the words of Thomas J. Anton we note that:

> "'Federalism is a system of rules for the division of public responsibilities among a number of autonomous governmental agencies. These rules define the scope of authority available to the autonomous agencies – which can do what – and they provide a framework to govern relationships between and among agencies. The agencies remain autonomous in that they levy their own taxes and select their own officials, but they are also linked together by rules that govern common agencies'." (cited in Rocher 2000: 262)

To conclude this section, federalism both as a political principle and as a method of power-distribution is a flexible concept which does not only contain action due to constitutional provisions but also recognition of smaller unities by treaties with them. Consequently, federalism is a concept which heavily contributes to desires of indigenous groups for more autonomy. To put it more specific, federalism leaves more room for the protection of national and regional minorities than Unitarian systems. With treaty federalism applied, indigenous minorities are able to re-order their relations with central authorities. Therefore, federalism is not just a political principle or a method of power-distribution but also (at least for indigenous groups) a chance for the future.

3. "Indigenous Rights" AND "Federalism", or: what happens if these principles coincide?

Now, can we actually say that Nunavut - a newly evolved Canadian territory in the countries' north-east which was put into place in 1999 for the purpose of more recognition of the Inuit population living there – is by comparison to other cases the "good news" case? This is the central question of my thesis. The question deals with Nunavut and with comparable cases from two countries: that of the Alaska Native Claims Settlement Act (United States) and that of the Chiapas (Mexico). All three nation-states that my study deals with – Canada, the United States of America, and Mexico – have something in common: a federal system of governance. So to some extent federalism is the framework in which indigenous rights (non-)recognition is taking place. The central question of this thesis, however, deals with a bigger context, one of indigenous rights and their recognition. The example of Nunavut (apart from other goals) was about the indigenous rights of the Inuit. Does this model represent the "good news" case?

I wish to point out and make clear that indigenous rights and their recognition work within broader frameworks: the international community, the nation-state, the political order of this nation-state and governmental agencies. The broader framework relevant to this study is federalism and federal political order. How does indigenous rights recognition function within the "broader framework" of a federal political system?

As indicated above, federal systems have got the advantage that they leave more space for the recognition of minority rights in general. In federal systems power is decentralised and transferred to different levels of government. To deliver certain powers to a "third level", namely that of aboriginal institutions, does not stop the entire systems' federal outlook.

One form of drawing together federalism and indigenous rights is the "treaty federalism" model. This concept is grounded fundamentally on a nation-to-nation approach.

> "A contemporary vision of federalism, treaty federalism recognises sovereignty of Indian governments as co-autonomous nations within the federal system, constituted by the Indian people and Indian traditions. This is a radical departure from contemporary self-government agreements, models, and discourses that perceive Aboriginal governments as inferior or subservient governments exercising a limited array of delegated powers and imitating British traditions structurally and procedurally" (Ladner 2003: 181).

Consequently, treaty federalism can be termed a model which has certain advantages that other approaches lack.

In conclusion we can say that if indigenous rights recognition and federalism join in the same frame of reference new forms of federalisms evolve. These new forms of federalism - treaty federalisms – rely on treaties agreed between nation-states and their indigenous minorities on the basis of a nation-to-nation approach. A case that fits into this new framework is the one of Nunavut.

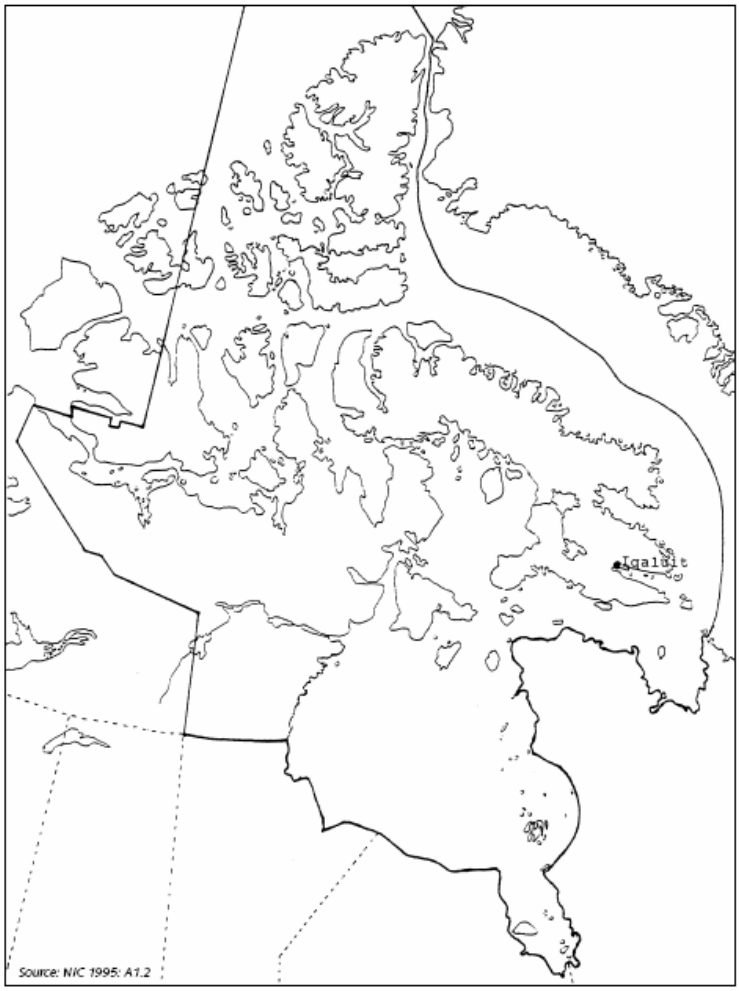
C. The framework: History and polity of Nunavut

C. The framework: history and polity of Nunavut

1. What is Nunavut?

The piece of land this thesis is all about with the name "Nunavut" (Inuktitut for "our land") can be termed a significant model in a number of respects: its size (Nunavut extends over more than 2 million km²) does not only indicate that Nunavut is Canada's biggest territory, it also makes it the largest Land Claim of the world (in terms of size). Nunavut with its 26745 inhabitants (85% of which are Inuit) is a land with the smallest population density worldwide. Communities are fairly small "up there" and no not exceed 3000 inhabitants. The territory's closeness to the north pole makes it extraordinary to hear that it is a place where people live and survive.

Table 5: A map of Nunavut



Source: NIC 1995: A1.2.

Nunavut as a territory has got a capital – Iqaluit – which is located on Baffin Island (the east of the Nunavut territory). The only way to get to Iqaluit is by airoplane and fares to this place are fairly expensive. There are no roads or tracks up there, and due to the Arctic climate the likelihood of ships reaching Nunavut communities is fairly small. Consequently, most southern consumer goods have to be delivered to Canada's territorial North by plane. So another outstanding characteristic is the territory's lack of a proper transportation infrastructure.

As far as Nunavut's climate is concerned, the territory is situated exclusively in the Arctic which means: permafrost, polar desert conditions (especially in winter), and a fragile ecosystem are present almost throughout the entire year.[37] "Under such climatic conditions, normal tree growth and soil formation are not possible" (Bone 2003: 21). These conditions have a serious impact on the daily life of northerners. Most people live on fish and seals caught in Arctic waters. In terms of indigenous rights, this underlines the importance of rights to autonomy on hunting and fishing grounds for the local Inuit population.

As mentioned above, Nunavut's local population is mainly (i.e. 85%) Inuit. Inuit both as an ethnic and as a social group total 30,000 (18,000 in Nunavut alone) and thereby make up one of the biggest aboriginal groups in Canada. Inuit can be found in Alaska (United States of America) and in Greenland (crown territory of Denmark), and the total number of Inuit living in this world come to 350,000 people. There are some other people in Nunavut too such as southern Canadians, Cree and Métis which altogether account for 15% of Nunavut's population.

Similar to that of other Canadian aboriginal groups, the Inuit went through the painful process of colonisation (more on that later). As we can assume, the integration of the Inuit into the Canadian wage-based economy and society did not come about without serious impact on them. The fact that the Inuit were forbidden to hunt on their land until recently and forced to abandon their nomadic lifestyles gave rise to new problems for them: high unemployment rates, low levels of education and alcoholism. To put it differently, unemployment and underemployment became a chronic problem which, combined with alienation from the land and from traditional culture and with so-called "benefits of the welfare state", began to engender social pathologies such as low self-esteem, alcohol and substance abuse, family violence, youth suicide and welfare dependency (see Hicks & White 2000: 50ff.). It must be noted that most of these problems remain unsolved at the time of writing.

The main characteristics outlined above (i.e. low population density, lack of transportation infrastructure, polar desert conditions, high levels of welfare dependency among the local population etc.) indicate that Nunavut has to be termed an "economic hinterland". Friedmann's (1967) theory of heartlands and hinterlands and his exceptional "core/periphery model" hold that there are two types of locations: an industrial "core" or "heartland" in which space and physical barriers are overcome by a modern transportation system, industrial production emphasises manufacturing, cultural attitudes and social customs prevail; and a "periphery" or "hinterland" controlled by the core within a given context such as a nation-state (see table 6). This "controlled hinterland" or "periphery" is dependent on the industrial core due to its intrinsic disadvantages: in the worst case (like in that of Nunavut) they are "resource frontiers"[38] in which space and physical barriers continue to hinder economic development, and in which primary production dominates the economy (in most instances the exploitation of both renewable and non-renewable resources). Culturally these "frontiers" or "hinterlands" are forced to accept the values, thoughts, beliefs etc. of the heartlands, while remaining politically subservient to the core (see: Bone 2003: 11).

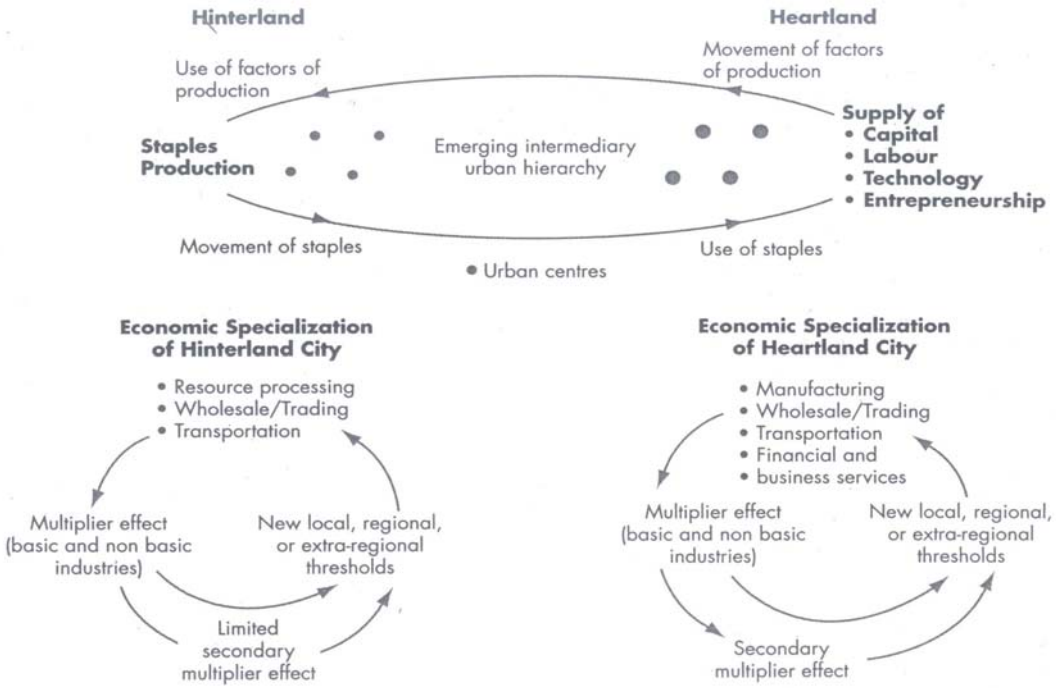
Table 6: Basic characteristics of a core and a periphery:

	Core	**Periphery**
Geographic:	Space and physical barriers overcome by a modern transportation system	Space and physical barriers continue to hinder economic development
Economic:	Industrial production emphasises manufacturing	Primary production dominates
Cultural:	Attitudes, language, social customs, and values prevail	Forced to accept the core's culture
Political:	Controls the periphery	Is subservient to the core

Source: Bone 2005, 19

In the case of Nunavut, however, its position as a resource frontier or hinterland paired with a history of colonial domination by southerners has led to certain dynamics that brought about the problematic situation the territory now finds itself in. The fur trade with the Hudson's Bay Company and the extraction of non-renewable resources such as gold and zinc became increasingly important in the nineteenth and throughout the twentieth century while the Canadian heartlands in the countries' south supplied capital, labour (but not entirely), technology, and entrepreneurship (see table 7). Economic activity remained concentrated in the primary sector, while the secondary and tertiary sectors stayed insignificant. To the chagrin of northerners, companies that operated in Canada's territorial north did not employ them but used a southern workforce.[39]

Table 7: The economic dynamics of heartlands and hinterlands



Source: Adaptation of the Friedmann-model (1966)

True to this model the situation of the Canadian Inuit worsened alarmingly throughout the last two centuries. The Nunavut economy currently depends to an extraordinary degree on federal payments. More than half of the jobs in the territory are in the public sector, and the rest of the jobs depend on government activity (see: Hicks & White 2000). Depending on how you measure it, the domestic unemployment rate in Nunavut stands at 20.7% (national criteria), 27.2% ("no-jobs" criteria) or even 35.6% ("want a job" criteria).[40] These rates exceed the national rate by at least 8.5% (for more details see: http://www.nunatsiaq.com/archives/nunavut990930/nvt90924_04.html, 12.01.2006). Private sector economic activity is dominated by the extraction of non-renewable resources like diamonds, zinc and gold. And the fundamental question remains, how Inuit locals can become more integrated into these parts of the private sector.

The tourism industry – one of the "private sector hopes" of northerners generally – represents a growing sector that helps small enterprises in the fields of arts, crafts, hospitality and transportation. Still, holidays in Iqaluit for example are far too expensive because of high transportation costs and low availability of southern consumer goods (see: Myers 2000).

All this being the case, it would still be wrong to assume that Nunavut is "just a part of Canada with a certain name" and the conditions for its inhabitants outlined above. Nunavut is also a concept of aboriginal self-government. Nunavut is about the fundamental rights of its local Inuit population. Nunavut as a "self-governing unit of the Canadian Federation" rests

upon a Land Claims Agreement between Inuit and federal authorities: the Nunavut Land Claims Agreement of 1993. This agreement was reached and approved by the Canadian parliament in 1992/93. From this 1993 land claim settlement derive not only the territories' boundaries but also general agreements on the scope and areas of autonomy and a commitment to public government. Some law experts such as Shin Imai (1999) argue that this agreement was one in which Eastern Arctic Inuit surrendered a significant number of their central (aboriginal) rights to get a homeland in change (see Imai 1999).[41] Consequently, this paper asks whether Imai and others are "right" in this assumption. It should not remain a secret to the reader that the territories' boundaries were drawn artificially (and after a long period of discontent among northerners), not ethnically.

On the 1st of April 1999, a new Canadian territory came into existence out of the agreement by dividing the Northwest Territories into two parts: Nunavut in the east and the Northwest Territories in the west. Nunavut's existence derives its legitimacy from section 35 of the Canadian constitution of 1982, in which the state of Canada grants self-government rights to aboriginal peoples. We can therefore argue that Nunavut is about indigenous rights. One of the most interesting questions this fact poses (and the focus of this paper) is whether Nunavut can be viewed as the "good news" case with respect to the fundamental rights of indigenous peoples.

If we take it as read that Nunavut is about indigenous rights (of its local Inuit population) we can also assume that the Nunavut Land Claims Agreement has a certain history which may or may not differ from those of other cases in that field. The agreement is of a certain scope and significance, so any analysis of the "indigenous rights recognition" policy in Canada with respect to Nunavut has to focus on these aspects (and so does this study).

2. History: The Canadian Inuit and the evolution of the Nunavut Land Claims Agreement

As mentioned above, a closer look at the history of Inuit and Nunavut makes sense because it gives us an understanding of the reasons for the creation of Nunavut as a self-governing territory. In doing so, this chapter is subdivided into four basic parts: the four "phases of development" in the Canadian North. This chapter seeks to answer a couple of basic questions such as: how did Inuit live prior to contact with Europeans; how did first contact with Europeans change their economic, political, social and cultural pursuits; what (if any) were the interests of Europeans in the Canadian North; when and how did the north and the hunting and fishing grounds of Inuit become the "Canadian North"; how did the process of national integration touch on the lives and habits of Inuit; when did southern Canadians become aware of the bad outcomes of their actions in the Canadian North; how did the process of adjustment get under way; when, why and how was Nunavut created and thus made "a reality"?

If we perceive history as a process of change we may discover that this process might apply to Inuit too: we know for a fact that Inuit (as almost all other indigenous groups in Canada and the wider world) were at one point or the other violated in their fundamental rights. A history of colonial domination did not only make them lose control over their lands and lives but also impacted on some of their cultural and social heritage. Consequently, we may also come to the conclusion that this process of change was a painful experience for Inuit and other indigenous groups. From this perspective, the acquisition of land by south Canadian forces was theft.[42] If we acknowledge this basic fact we may also ask the question: was the proclamation of Nunavut an act of "real adjustment"?

At this point it is important to take a closer look at the question of how "history as a process of political change" is defined. Any definition of this "process of political change" has to acknowledge the fact that this process is not deterministic (see Table 8): "Huntington and others suggest that the process of political change is not deterministic – that it is not unilinear but a multilinear process. Political change may lead to political development, but it also may lead to political decay." (Dickerson 1992: 7) These two basic possibilities result in a view of history that acknowledges the coexistence of stagnation and development (political decay and political development!) within the same point of reference. This coexistence leads us to believe that all political development has got an element of political decay in it, and vice versa. In order to achieve a deeper understanding of historical events any analysis has to apply a multilinear approach.

Table 8: Huntington's model of political change

Unilinear analysis	**→ political change**		**→ political development**
Multilinear analysis	**→ political change**	--<	**→ political development** **→ political decay**

Source: Dickerson 1992: 7

Within the context of this paper, the analysis of Inuit history follows two basic tracks: the question of political legitimacy on the one hand, and the context of the "four phases" model on the other (which will be explained later).

For Inuit peoples in particular and for the creation of Nunavut in general, the question of political legitimacy plays an important role because of the basic assumption that throughout history these peoples were violated in their rights to political, social and cultural self-determination. As Dickerson (1992) points out, the basic starting point of political legitimacy is the idea of political consent:

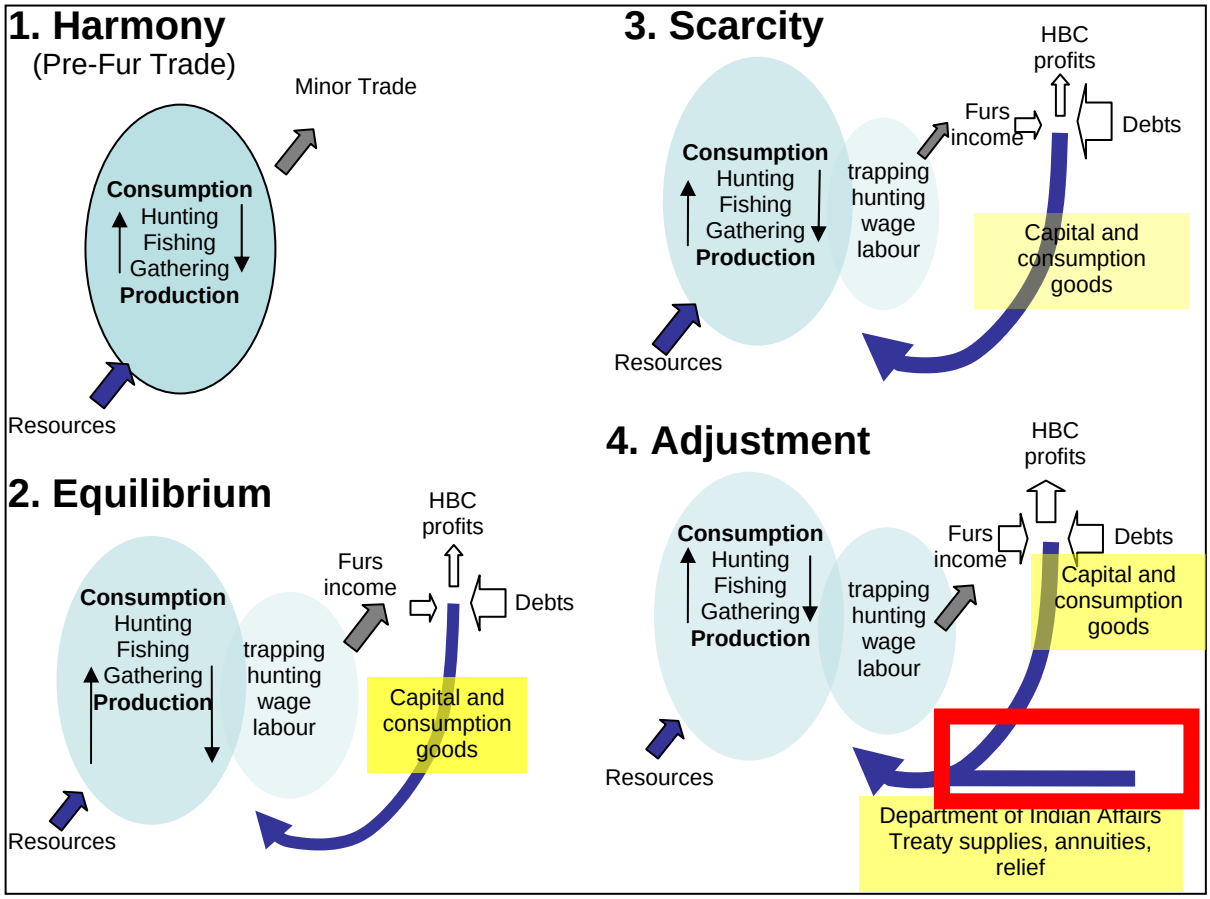
> "Another way of conceptualizing what political legitimacy means goes back about 300 years to John Locke's idea of political consent. In constructing a political system with power over individuals in a community, 'this power as its original only from compact and agreement, and the mutual consent of those who make up the community'. Locke's idea of consent and what Lipset and Schaar mean by political legitimacy go hand in glove. If individuals perceive the political system as right or appropriate for their society, then they will consent to the laws and politicise of that system. Engendering this sense of legitimacy is also an integral part of the process of political development." (Dickerson 1992: 8)

As I will point out in the course of this chapter, the period from first contact right until the creation of Nunavut was characterised by a "crisis of political legitimacy" in the Canadian North. The consent of Inuit inhabitants of the north was something that southerners have never asked for. The development process in the Canadian North was one that at some point in time started to ignore the needs of the peoples living in the Yukon and Northwest Territories, and the "crisis of political legitimacy" up there grew into a problem that heralded the need for a change.

The so-called "four phases" model constitutes a second part of my analysis of the history of the Canadian Inuit. This model portrays the history of the Canadian North as divided into four phases of development:

- Harmony in the time pre-contact;
- Equilibrium with first contact Europeans and early trade relations;
- Scarcity with trade relations getting closer and more intense;
- Adjustment with the acknowledgement of the fact that "something went wrong" (see Table 9).

Table 9: The *"four phases model"* of development in the Canadian North:



Source: author's interpretation of Tough 1996, p. 16

At a first stage, i.e. prior to contact with the Europeans, the north witnessed a phase of *harmony*, that is to say that northerners consumed the resources of their surroundings only to satisfy their own needs. On contact this situation changed quite dramatically. Europeans became interested in the resources of the north, especially in furs. The Hudson's Bay Company began to trade with northerners, so that trapping, hunting and fishing was no longer carried out to satisfy the northerners' own needs, but to trade with the Company that seemed

so interested in the goods the north was able to provide. In exchange, northerners received capital and consumer goods so that the northerners no longer lived in an economic subsistence structure. In the course of this *equilibrium* phase a system of capitalist wage economy was installed in the Canadian North.

As debts grew, northerners were forced to hunt and fish more than they did before and entered a phase of *scarcity*. As the bad influences of this process became increasingly obvious to federal government officials, possible ways to stem a worsening of this situation were sought. Surprisingly, this *adjustment* phase was not only "good news" for the north as northerners became increasingly dependent on governmental subsidies. Subsidising the north without exemption had a couple of serious side-effects: welfare state dependency, loss of cultural values, and social decay, just to name a few.

2.1. Inuit life pre-contact: a phase of harmony

Beginning with the first phase – harmony – it seems important to note that as far as political legitimacy is concerned, this period of time does not differ much from the experience of other indigenous peoples of the American continent. A closer look at the ethnic and cultural roots of the Inuit, at their style of economy and social life, and at their sense of identity seems appropriate for a better understanding of their current political, social and cultural situation.

The ethnic and cultural roots of Arctic Inuit are to be found in 1000 BC when the Dorset peoples moved to Baffin Island and rapidly spread over the Arctic. Their culture, too weak to survive, was quite quickly overcome by other groups that were better equipped. These new groups (the Thule Inuit) can be called the direct ancestors of Canadian and Arctic Inuit (see: Frideres 1998: 391). It may not come as a big surprise, that the roots of Inuit culture and ethnicity are not "given" but constructed and "artificial". "Few human societies have lived in such isolation. Also, anthropologists are beginning to ask whether the very ideas of culture and society do not imply some artificial boundaries that aid in representation but do not fit with social reality." (Matthiasson 1995: 83) This "cocktail" of Thule Inuit origin on the one side and "constructed" Inuit cultural narratives on the other is thought to represent the "roots of Inuit culture and ethnicity".[43]

Economic life pre-contact was fundamentally driven by subsistence lifestyles which meant that Inuit went hunting and fishing to satisfy their own needs. This fact is not just interesting in terms of its impact on Inuit culture and behaviour but also with respect to gender roles, because: "Ecological studies have demonstrated that in many such societies, where women do the gathering of wild plant life while men hunt, most of the food that nurtures the population

is provided by the women activities. For the Inuit, however, there is no question. While during the brief summers women and children might collect arctic moss for their soapstone lamps and some berries, these were negligible contributions – they were dependent on hunting and fishing." (Matthiasson 1995: 84) To put it simply, the "gender roles" problem with respect to the application of subsistence economic lifestyles has never been a real factor in the case of Inuit.[44]

It is interesting to realise that the layers of social organisation and identity among Inuit were attached to identification with a certain geographical area which (in most cases) was fairly small and had a certain name. "On a larger scale, the people might identify with other peoples in adjoining areas, and another term would apply to all of them. On top of that, there may be some sense of identification with an even broader range of other Inuit, and a name would apply there as well." (Matthiasson 1995: 89) This fact is particularly interesting if we view it in the light of the fact that Inuit used to be nomads until the sixties of the twentieth century.

Inuit seem to have had a bilateral understanding of kinship which has survived until the time of writing. In other words,

> "Kinship groupings among the Inuit were not real groups at all, and this is a significant point, for in societies organised largely around kinship principles the descent groups were the primary social units. (…) Among the Inuit, as in Canadian society, the system was bilateral. (…) This arrangement results in a kind of quasi-kinship group termed a "kindred". Kindreds were the relatives, to use the English expression, of the individual. Both the kinship system, which gave the individual some sense of continuity over generation, and the kindred, which provided a large network of relatives for the individual, were sources of social support. This fact of bilaterality is a prime example of why kinship was not that central to Inuit society, and is another instance of the flexible nature of their social arrangements." (Matthiasson 1995: 94)

Through this system individuals felt attached to their families on the one hand and the greater context of Inuit society on the other.

Concluding we can say that Inuit life pre-contact was community-based with only minor contact to the outside world. All hunting, fishing and trapping that was undertaken served to satisfy the communities' own needs. There is no doubt that this system was politically legitimate. Inuit identified with their local communities and with their families, but there was an understanding that Inuit of other communities were "brothers", not enemies. The close attachment to both the family and the community readily evidences the claim that Inuit society was socially, culturally and politically relatively homogenous at that time.

2.2. Equilibrium – or the period of "first contact"

When we look at the period of "first contact" of the Inuit with Europeans we have to ask ourselves some basic questions: what is a first meeting; when did Inuit have first contact with Europeans; what were the Europeans interests in the north at this first stage; what did the time immediately after first contact look like; what kinds of relationships between Europeans and northerners emerged afterwards; how has first contact changed the life of Inuit and other northerners; has first contact lead to a change in political legitimacy, and if yes: why and how?

Bearing in mind the difficulties of fixing the date of a "first meeting", it seems to involve not just this date but also the "broader temporal context" of this event. It may be of considerable importance to know whether this first meeting took place at the very beginning of the discovery of America or a hundred or two hundred years later. Also important is the type of contact. As Dickason (2002) notes:

> "First meetings can, of course, be defined in a number of different ways. Historian Urs Bitterli has defined three basic types contacts, collisions, and relationships, all three of which he admits rarely occur in a pure form. 'Contacts' were encounters, for the most part short-lived, between Europeans and members of a non-European culture, and were usually peaceful, although they often involved ritual displays, such as flag or cross-planting ceremonies, that could be interpreted as threats and could lead to eventual collisions. 'Collisions' tended to develop in subsequent meetings; Bitterli includes the transmission of disease, the slave trade, and the Spanish repartimiento and encomienda systems under this heading. Trade, evangelisation, and colonial administration characterised the third type, 'relationships'." (Dickason 2002: 67)

In this context we can hold that at a broader level Inuit – European first contact was essentially a collision with the transmission of diseases in the north that almost extinguished entire communities. As time went on and trade relationships, evangelisation and colonial administration began to catch a hold in the north, the form of contact slowly changed from that of collisions to one of "relationships".

In the case of the Arctic Inuit, the so-called *contact period* lasted for about 300 years beginning with *first meeting* around 1500 *on Baffin Island*: "During the 1500s, various nations of Europe were exploring the world, wishing to conquer and spread the Christian faith to all." (Frideres 1998: 391) These contacts had a serious impact because two of the native peoples involved in this first meeting have since then disappeared: the Dorset and the Beothuk peoples (see: Dickason 2002).

One of the most important interests Europeans had in the Arctic at this first stage was the exploration of the Arctic and especially the search for the Northwest Passage. Among many

other explorers that tried to find this passage, two names are of considerable importance: *Martin Frobisher* (1529-1594) and *Henry Hudson* (1570-1611).

> "By the time Sir Martin Frobisher (1529-1594) undertook his Arctic voyages in 1675, 1577, and 1578, the Thule culture had developed into that of the Inuit. When they met Frobisher, they were already familiar with Europeans and their ships. There was no hint about wondering if Europeans were supernatural beings, any more than there had been on the North Atlantic coast when Giovanni Caboto had made his landfall in 1497." (Dickason 2002: 70)

The meeting with Henry Hudson was of some significance for the few Sub-Arctic Inuit because:

> "The first contact with Subarctic Amerindians appears to have been that of Henry Hudson (1607-1611) in James Bay in 1611, more than a century after encounters had become sustained for the Natives of the North Atlantic coast." (Dickason 2002: 73)

These contacts were of some significance for two basic reasons: they gave Europeans an impression of what kinds of peoples lived up there.[45] And they provided Inuit locals with Western consumer goods.[46] Both had a significant impact on the historical developments afterwards.

Against all logic, these first collision-style contacts between Europeans and Inuit locals did not lead to immediate changes in the way of life of the Arctic Inuit. Despite the fact that southerners tended to claim responsibility for the newly discovered north, the medium through which southerners acted up there did not change for a long time. At first, the fur-trade business and "the appearance of non-Natives did not at first rapidly alter subsistence patterns, although changes did occur with the emphasis on fur hunting in the boreal forests and whaling in the Arctic, and the concomitant availability of trade goods." (Dickason 2002: 255) The equilibrium phase was thus marked by a co-existence of subsistence lifestyles with early forms of a market economy. As outlined above, hunting, fishing[47], and trapping was not only undertaken for the purpose of satisfying the communities' own needs anymore, but for selling furs and other northern resources to southern companies such as the Hudson's Bay Company (HBC).[48]

As time went on and trade relations intensified, first forms of real inter-community exchange emerged in the Arctic: not only fur-traders but also missionaries and police had a severe impact on the Inuit way of life:

> „Later, when the fur trade emerged, new agents of control from southern Canada entered the Arctic. The fur traders, the missionaries, and the police would influence the lives of the Inuit across the Arctic for the next half-century. First were the French Compagnie du Nord and the free traders. These voyageurs were major influencers of Inuit as they developed the fur trade." (Frideres 1998: 393)

At this stage, contact between Europeans and northerners could not be termed "collisions" anymore, but "relationships" (with all the implications outlined above).[49]

To sum up, first contact with Europeans changed Inuit life quite significantly. The fact that Europeans became interested in the goods the north was able to provide and thus started to trade with Inuit locals lead to a situation in which they gradually abandoned their subsistence lifestyles. First signs of an emerging "crisis of political legitimacy" were increasingly evident in the north: as relations with Europeans got closer and thereby more intense, dependency on the trade with them became an easily identifiable problem. Consequently, the equilibrium phase was not only characterised by the change from a "collision" to a "relationship" with newly arrived Europeans and the adoption of market economy models in the economic sphere but also by a change in paradigms in the area of politics: increasing degrees of colonial domination substituted old self-determination patterns.

2.3.The emerging crisis of legitimacy, or the "scarcity-phase"

Taking into account the growing intensification of an increasingly "relationship-like" contact between Europeans and Inuit, we come to ask ourselves some interesting questions: what was the central impact the deepening of trade relations had on Inuit life; when, why and how did Christianisation occur in the territorial north; when, why and how did the lands of the Inuit become a part of Canada; who administered Inuit affairs; could Inuit participate in the political process; has this intensification of Inuit-European relations contributed to the emerging "crisis of political legitimacy", and if yes: why and how?

The emerging crisis of legitimacy in the north did not come suddenly or unexpectedly. Rather, the history of colonial attitudes of southerners and the ever closer entanglement between Inuit and Europeans created a system which was clearly lacking political legitimacy. The Inuit, soon dependent on the fur trade and southern investments, suffered from the negative experience of being dominated by southern interests. To put it differently:

> "As Inuit adopted modern technology, so they became vulnerable to shifting economic patterns in the larger world. Fur prices rose and fell, and during lean years many Inuit became totally dependent on the traders for their own survival. In the late 1940s fur prices collapsed, bringing the trade to halt in most of the Arctic. Many posts closed, leaving the Inuit unable to return completely to their old hunting way of life, merely subsisting precariously in a mixed economy. It was at this point that the Canadian government belatedly took up its responsibilities to the Inuit." (Creery 1993: 8)

As indicated above, this history provoked a "crisis of political legitimacy" in the Canadian North.

It is hardly surprising that not only the decline in political legitimacy but also the slow growth of debts on the part of the Inuit forced them to gradually abandon their old subsistence lifestyles. Development in the north reached a point where Inuit locals had to hunt, fish, and trap more than they ever did before. Subsistence was replaced by exploitation.

One of the biggest "tasks" southerners and Europeans seem to have identified at these times was neither political, nor was it economic. Perfectly in line with the views of Alexis de Tocqueville, Europeans and other newcomers were quite openly convinced of the notion that only if Inuit and other aboriginal groups of the north were baptised and thus converted to Christianity were they to be viewed as equals. Consequently, converting Inuit to Christianity was not just a task but a priority for Moravian missionaries.[50] The impact of 200 years of Christianisation in the territorial north on the social and cultural way of life of the Inuit was quite substantial: "While their influence was directed toward religious activities, they struck at the basic norms and values of Inuit life. For example, religious groups destroyed the social solidarity of Inuit groups by insisting that sexual liaisons between men and women who were not married must stop." (Frideres 1998: 393) As Dickason (2002) points out, the interesting conjunction of Christianisation and trade did not only alter trust in Moravian activities among the Inuit of the territorial north but also ensured its quick Christianisation (see Dickason 2002).[51] It is important to note that with Christianisation Inuit cultural self-determination partly (sometimes exclusively) vanished, thereby destroying a lot of their cultural well-being.

Another crucial event of the scarcity phase was that of the territorial inclusion and political integration of Inuit lands into the Dominion of Canada which happened in the middle of the nineteenth century. The central agency responsible for this change in political realities in the territorial north was the Royal Canadian Mounted Police[52]:

> "This group was sent into the North to establish a Canadian presence as well as to enforce Canadian law. Any behaviour by the Inuit that did not meet the minimum conditions of Canadian law was subject to immediate and harsh sanctions. As this triumvirate of Canadian institutions imposed its will it was able to influence every institutional sphere and network of the Inuit." (Frideres 1998: 394)

It is difficult to give an exact date when all Inuit lands were claimed for Canada. But we know for a fact that the last police stations in the north were established at the end of the nineteenth century.

A second factor that contributed to the inclusion of Inuit lands into the Dominion of Canada was that of explorations and scientific research in the Arctic. According to Dickason (2002) the exploration of the Canadian North did not in itself bring up the question of land since none of the Europeans were interested in living in the Arctic anyway (see: Dickason 2002).[53] It was

not until the 1984 Inuvialuit Agreement and the 1993 Nunavut Land Claims Agreement that Inuvialuit and Inuit signed treaties that confirmed their being a part of the state of Canada.

Once Inuit were politically included the important question arose what to do about them. At first, the exercise of power over them was delegated to the RCMP (Royal Canadian Mounted Police).[54] It was not until the 1950s that this situation was changed and the federal *Department of Northern Affairs and Natural Resources* (as it was called in the 1950s)[55] was declared responsible for them (see Dickason 2002). The administrational dilemma that arose from the question of "who should administer Inuit affairs" continued to pose problems to both federal forces and Inuit. The fact that the Inuit were not considered aboriginal groups under the umbrella of the Indian Act became a severe problem in terms of political legitimacy. The administration (not legislation!) of Inuit affairs was transferred to the Northwest Territories which lead to confusion among both Inuit and federal forces. "Historically and politically (…) Inuit had been habitually classed as Indian, as Quebec proved in court." (Dickason 2002: 373) The only difference (from other indigenous groups of Canada) that never really left the table was the fact that the Inuit had never signed a treaty in which they consented to this state of affairs.

As time went on and northerners became increasingly dependent on trade with southerners, the negative sides of the market economy did not leave the north untouched. As the Inuit were able to witness in the mid-1940s:

> "The collapse of the fur trade also meant that the productive activities of Inuit, e.g. hunting and trapping, did not produce a wage or saleable goods. After World War II the federal government continued its centralisation policy to urbanise the North with most of the Inuit population leaving the tundra, the sea, and the sea ice to live in small, serviced communities. At the same time, improved educational and medical facilities in the small towns of the Arctic attracted Inuit. (…) As a result, for the next two decades there was a steady migration of Inuit from the tundra to the settlements." (Frideres 1998: 394)

Inuit groups were increasingly vulnerable to changing their nomadic life into one of permanent settlement.

With paradigms in Indian policy changing again in the 1950s the crisis of political legitimacy deepened significantly:

> "Historically, Indian policy and legislation was devised largely without Indian consent or participation. The 1951 Indian Act was an exception. A more recent example of lack of meaningful consultation was, of course, the 1969 white paper. Both Indian policy and Indian Act legislation were developed by members of the dominant society, and they reflected the views and values of that society in regard to the proper place and role of aboriginal people." (Leslie 2002: 23)

It may have been the spirit of their time that made both the 1951 Indian Act (which was later amended to include Inuit) and the 1969 White Paper[56] embark upon the "integration by assimilation approach". In this regard, the policies pursued were not just in line with the thoughts and beliefs of a clear majority of the Canadian population, but also with that of major human rights pacts that existed at this time such as the ILO Convention No. 107 of 1957.

Another important change of the 1960s concerned the resources of the Canadian North. According to Frideres (1998) the development programmes that were undertaken at this stage were not in the interest of Inuit locals, because southern Canadians had needs that subordinated those of the aboriginal populations in the north.

> "There was also a belief that Inuit culture was inferior, and that the standard of living for Inuit needed to be enhanced. Nevertheless, the ambivalence of the federal government's policy toward Inuit showed through. On the one hand they were sure that Inuit culture was doomed, but at the same time they wanted to allow Inuit to "live off the hand" if that was what they wanted to do. The result was a compromise: it was decided to create cooperatives as a tool that would allow Inuit integration into the economic structure of Canada, while at the same time allowing them to retain their traditional cultural patterns in other spheres of life. While there was no overall economic plan, there was a logic to the policy." (Frideres 1998: 395)

The federal governments' housing programme, too, had a significant influence on development in the north and the life of Inuit locals:

> "Not only did it provide better permanent shelter, but it also meant the establishment of permanent residence in communities. And with permanent communities, greater services could be provided. With improvement in health services and housing, health conditions did begin to improve. (…) It seems ironic that as health problems began to decline with the construction of permanent communities, a host of social problems were encountered." (Dickerson 1992: 77)

These changes, were not just "good news" for Inuit, because with moving to permanent settlements they abandoned their old nomadic lifestyles and thus lost an important branch of their culture and lifestyles. The integration of Inuit into the wage economy did not only have positive effects on their lives, because there was no real basis for waged employment in the newly installed settlements. As a result, the Inuit got increasingly dependent on federal payments and subsidies, a situation which has lasted until the time of writing. The fact that south Canadian enterprises operating in the Canadian North kept employing skilled workers from the south (e.g. Winnipeg) instead of Inuit locals contributed to the bad employment situation in the Northwest Territories.

To sum up, we can say that Inuit lives and lands became increasingly endangered as relations between them and south Canadian forces intensified. As Frideres (1998) puts it:

> **"**If there is a lesson to be learned from this short history of the Arctic, it is that the entry of southern Canadians has always created a crisis for Inuit. As Moss (1995) points out, their presence has always been so intrusive that it displaced and disrupted Inuit culture. Thus it shouldnot come as a surprise that Inuit are less than enthusiastic about any plans that souther Canadians have about the North, and that they wish to achieve some level of self-government." (Frideres 1998: 395)

The result of the intensified fur-trade was that Inuit shifted their century-old attitudes and their subsistence lifestyles towards a more exploitative market-economy style of doing business. This shift not only led to food shortages in the north, it also opened up more space for south Canadian interests. Nor did the territorial inclusion of Arctic lands by south Canadian forces have the official consent of its Inuit inhabitants. All this contributed to a crisis of political legitimacy which reached its climax in the 1950s and 1960s: with federal housing programmes that deepened the alienation of the Inuit from their old nomadic ways of life. And with official documents such as the 1951 Indian Act or the 1969 White Paper which held that Inuit were "inferior" unless they integrated and fully assimilated to "average Canadian" lifestyles.

2.4. Adjustment, or the road to self-government

This newly emerged "crisis of political legitimacy in the Northwest Territories" could not remain in place for a long time because of two major obstacles: it was only a question of time until the Inuit would become aware of their miserable situation and would begin to protest against it. Also, a crisis of political legitimacy in the Canadian North could not drag on without serious repercussions on what was happening in other parts of the country. Therefore federal authorities slowly came to the conclusion that their system of governance and their policies were unjust. This increase in political awareness with respect to the north describes a new period of history and thus a slow change in paradigms in federal aboriginal and northern development policies: the adjustment phase. Why and how did this change come about?

Following the climax of the crisis of political legitimacy in the north in the 1950s and 1960s, a new movement was born in the 1970s: Inuit nationalism. This movement changed Inuit life quite dramatically. It was in the late 1960s and early 1970s, when the first Inuit received university degrees and became the founders of Inuit organisations such as the Inuit Tapirisat and other land claims movements.[57] As Purich (1992) points out:

> "The 1960s and early 1970s saw the growth of political activism among Canada's Aboriginal people. There were demands for an end to racism, for recognition and settlement of Aboriginal claims and for constitutional recognition for Aboriginal people. That activism took on many forms. Political and cultural organisations arose. (…) The Inuit took no violent action, but organised politically. The Inuit Tapirisat of Canada (ITC) was formed in 1971." (Purich 1992: 99)

This growth in political activism had serious repercussions on Inuit identity. The experience of protesting as a group gave Inuit a broader idea of Inuit-hood, a stronger "we-feeling" and a way of thinking in bigger contexts. Inuit were driven by a nationalism which required ethnic and political boundaries' to converge:

> "Prior to contact, Inuit identities and loyalties were rooted in local groups and the social organisation of extended families. The social and economic change wrought by contact served to differentiate Inuit from non-Inuit and to emphasise commonalities among Inuit, resulting in what has been termed "Inuit nationalism". Thus, while regional divisions and antagonisms are certainly evident in contemporary Nunavut society and politics, they are generally subsumed into a larger Inuit identity and unity." (Hicks & White 2000: 51)

Another factor that actively contributed to this situation was the increasing conjunction of class and ethnicity because the economic elite of Nunavut is predominantly non-Inuit.

While Inuit resistance grew in the mid-1970s because more Inuit intellectuals came home from the universities, resistance movements grew in size and skills. Out of little action groups and intellectual circles the Land Claims Movement evolved and constituted a first "nationalist" movement. Despite the fact that the pioneers of this movement initially faced extraordinary degrees of resistance within the Inuit society (because some Inuit thought that the homecoming intellectuals were the communists they had been warned of by local priests and the church) Inuit nationalism began to increase both in scope and significance in the east of the Northwest Territories. Public education campaigns, community meetings and radio phone-ins created a sense of genuine civic Inuit identity, and overwhelming support for the Land Claims Movement could be established.

The 1976 Land Claim proposal set up by Inuit Tapirisat of Canada Inc. was successfully announced in a first step and thus served as a common Inuit stance in the negotiations with the Government of Canada (see: Cameron & White 1995). Not surprisingly, however, no final agreement was signed within the 1970s and 1980s although the Supreme Court decision in the "Calder Case" heavily supported and thus eased a true land claims process between federal authorities and Inuit organisations.[58] Negotiations were underway and their speed, scope and development signalled that both federal and Inuit authorities were determined to solve the existing problems.[59]

The paper clearly expressed the underlying hopes for a Land Claims Settlement including the creation of a self-governing Nunavut territory (see Jull 1988)[60] and Inuit Tapirisat never really gave up these goals.

Inuit groups such as Inuit Tapirisat of Canada (ITC) applied certain techniques to bring about the desired change and to make their dream a reality. Public protest ("going public") was the most important instrument. To put it differently:

> "The uproar stirred by the Inuit and Cree was unprecedented; besides the usual speeches, meetings, and public demonstrations in Ottawa, Montréal, and Quebec City, among other places, theatrical evenings were held in which Natives put on performances that ranged from the traditional to the contemporary (…). All of this was widely reported in newspapers and on radio and television; films were made and books rushed into print. The Natives, realizing that they must negotiate rather than simply oppose, based their case on the need for reciprocity." (Dickason 2002: 397)

All this took place within the "confrontation phase" which lasted for almost thirteen years from 1969 to the patriation constitution in 1982. This period of time "was marked by protest and confrontation, bureaucratic dissension, and policy confusion. (…) Amerindians, Inuit, and Métis, concerned that Aboriginal rights be enshrined in the new constitution and convinced they were not being given a fair hearing in Canada, sent delegation after delegation to Britain and continental Europe to press their cause on the international scene." (Dickason 2002: 400) The confrontation phase was not only characterised by protest on the national and international stage but also by negotiations between Inuit and federal authorities.[61]

Lobbying and negotiation soon opened the gates for constitutional talks which involved aboriginal issues too. "Throughout the 1970s the Inuit, along with other Native people, came to the conclusion that constitutional change was needed to protect their culture and way of life, and to secure a land base and the right to self-government." (Purich 1992: 105) And Inuit organisations were involved in the talks and pressed for a passage in the new Canadian constitution entirely devoted to the protection of Canada's aboriginal peoples' rights.

> "Throughout 1978 and 1979 the three national Native groups – the National Indian Brotherhood (now known as the Assembly of First Nations), the Native Council of Canada and the Inuit Tapirisat – lobbied for additional constitutional protection. At the October 1978 first ministers conference these groups were granted observer status, and at the next conference in February 1979 the first ministers agreed that future conferences would discuss Canada's Native people and the constitution." (Purich 1992: 106)

It was no bad news for these groups that in the end the Canadian constitution made space for the protection of the fundamental rights of indigenous groups in Canada. Although assimilation demands did not completely vanish, the groups mentioned above had the constitutional guarantee written down in section 35 of the Constitution Act that they had to be provided with rights to authority over their own lands and lives.[62]

But 1982 was not only significant with respect to the patriation of the Canadian constitution and the introduction of a Charter of Rights and Freedoms but also in terms of developments that occurred within the Canadian North:

> "A number of key developments occurred in 1982, most notably a plebiscite on division of the NWT. Given the critical link between the Inuit land claim proposal and the creation of a new territory, this was an essential step. (…) During 1982, a new Inuit organisation, the Tungavik Federation of Nunavut (TFN), was established to focus exclusively on the Nunavut claim and associated matters." (Cameron & White 1995: 95)

The April 1982 plebiscite indicated that there was a majority of 56 per cent of NWT voters that supported the division of the Northwest Territories. In November 1982, the government made clear that it would support the division if the two sides agreed on a division boundary (see: Dickerson 1992). The creation of the Tungavik Federation of Nunavut (TFN) indicated that Inuit groups were desperately pressing for the creation of the Nunavut territory after division. The positive outcomes of the 1983-1987 Constitutional Conferences signalled that a Land Claims Agreement could be possible:

> "Two other items were agreed upon. The constitutional guarantee for existing treaty and Aboriginal rights was extended to include future land claims agreements – a significant provision for the Inuit, as it would mean that their land claims would be constitutionally protected. Finally, the constitution was amended to guarantee sexual equality in the area of constitutionally protected Aboriginal and treaty rights." (Purich 1992: 108)

It is worth noting that these Conferences were not just important in terms of their immediate material outcomes but also with respect to an increase in confidence and the creation of a climate of trust between federal and Inuit authorities. In the negotiations prior on the Nunavut issue that followed the Conferences, both sides came closer to a solution. Step by step they were able to resolve tricky issues such as the boundary question or that of public government instead of Inuit self-determination. In the end, an arrangement was found that both sides could agree on: the Nunavut Political Accord. The willingness of the central government to sign the Accord did not come as a surprise, since the Mulroney government was badly in need of a "good news story" on its relationship with Canada's aboriginal peoples (see: Hicks & White 2000).

2.4.1. Getting to Nunavut – the realization of an idea

But how exactly did Nunavut come into being? What were the key developments in the negotiation phase prior to the Nunavut Land Claims Agreement? What were the factors that supported the creation of a new Nunavut territory, and what were its obstacles? Were there concerns among political scientists at that time? How did federal authorities think about it?

All these questions matter if we are to examine the history of the creation of Nunavut. In attempting to frame the Comprehensive Land Claims Policy Negotiation Process, the Canadian geographer and political scientist André Légaré (1996) has introduced a model which subdivides the process into 5 stages: preparation, proposition, elaboration, approbation, and implementation. Within the preparation phase, federal authorities (scientifically) identified that there were problems up in the north that needed to be solved. The proposition phase started with the Land Claims proposal by Inuit Tapirisat in 1976 in which the organisation made its aims to create an own Nunavut territory public; negotiations on this issue followed. With negotiations coming to positive conclusions and a first agreement in principle, which stated that both sides were desperate to solve the issues in the north, an elaboration phase came into being; further negotiations were undertaken. Within the approbation phase, federal and Inuit authorities signed and thus approved a final agreement: the Nunavut Land Claims Agreement. The implementation of this agreement signifies a last stage in this 5 phase model (see Légaré 1996: 142).

Table 10: Five phases of the Comprehensive Land Claims Policy Negotiation Process:

Research study on land use and occupancy financed by the Federal Government	PREPARATION
Claim the proposal is accepted	PROPOSITION
Negotiations drafting of an agreement in principle	
Agreement In Principle signed	ELABORATION
Negotiations drafting of a final agreement	
Final Agreement signed and approved	APPROBATION
Law Through Parliament	
The Carrying Out Of The Agreement establishment of public boards	IMPLEMENTATION

Source: Légaré 1996, 142

As we have seen above, the *preparation phase* was characterised by four major events: "(1) the Federal government's 'White Paper' on Indian Policy; (2) the recognition on the political scone of Aboriginal rights, following the Calder case; (3) Ottawa's policy on outstanding land claims; (4) the Inuit Land Use and Occupancy Project." (Légaré 1996: 144)

The 1976 Land Claims Proposal by ITC marked the dawning of the *proposition stage* and stood at the very beginning of the negotiations between ITC and the federal governments' DIAND. The third and final version of this proposal (issued in September 1979) became an important starting point for an agreement in principle and had four objectives: "(1) ownership rights over portions of land rich in non-renewable resources; (2) decision-making power over the management of land and resources within the settlement area; (3) financial indemnisation and royalties from resources developed in the area; (4) a commitment from Ottawa to negotiate self-government once a land claim agreement-in-principle is signed." (Légaré 1996: 147)

As mentioned above, these developments underwent the so-called elaboration phase (in which the two actors elaborated and thus negotiated possible scenarios) and at its end negotiations could be concluded successfully and an agreement-in-principle was signed between TFN, the Federal Government, and the NWT government on October 30, 1992. The Nunavut Political Accord confirmed the emergence of the Nunavut Territory on April 1, 1999.

As Jull (1988) points out, federal negotiators had very pragmatic reasons to embark upon a successful conclusion of the talks at the stage prior to the accord because:

> "Another universal point was the need for a Nunavut government to be an active participant in offshore management. Federal governments have been moving towards greater recognition of Inuit offshore interests because of the Canadian claim to full marine sovereignty in the Arctic based on Inuit use and occupancy of the Arctic islands and seas and ice between." (Jull 1988: 66)

Nevertheless, at this stage of development the debated boundary question continued to present a difficulty that had to be solved before a Land Claims Agreement could be signed:

> "A key indicator of the prospects for Nunavut was the boundary question, which proved a particularly difficult hurdle. It was generally accepted that the Nunavut boundary would roughly follow the tree-line, but both Inuit and Dene claimed extensive tracts of land in the central Arctic as traditional hunting areas. Despite attempts to work out compromises through overlapping usage zones and other means, voluntary settlement of the boundary proved impossible. A tentative boundary agreement reached in 1985 fell apart, as did the 1987 Iqaluit Agreement between the NCF and WCF, which for a time appeared to have settled the key issues standing in the way of division. The Iqaluit Agreement was abandoned owing to the dissatisfaction of the Dene-Métis in the Western NWT and of some people in the Kitikmeot (central Arctic) and Inuvialuit regions with the proposed boundary." (Cameron & White 1995: 96)

Apart from the difficult situation with respect to the intensively debated boundary question, Merritt (1993a) identifies other obstacles that delayed a compromise in the negotiations. There were concerns during the Trudeau years that Nunavut would represent an ethnic state and therefore have negative repercussions on separatist tendencies in the francophone

province of Quebec. Other concerns touched on the economic, social and cultural situation within the Northwest Territories. As confidence and trust grew on both sides, these initial obstacles could be overcome and thus slowly left the table. Nevertheless, concerns inside political science continued to play a role in scientific discourse.[63]

Table 11: Obstacles to the creation of Nunavut at the negotiation stage

The process has been successful despite formidable obstacles. These have included, among others:

- concerns during the Trudeau government era that Nunavut would represent an ethnic state that would serve as some kind of template or test run for separatist opinion in Quebec;
- a worry that an Inuit-dominated government in Nunavut might be drawn into foreign policy adventurism towards Inuit living in other parts of the circumpolar north, especially in Greenland with its Home Rule government and, by Canadian standards, left-wing politics;
- A fear that any boundary approximating the treeline would cater to feelings of ethnic solidarity among the Inuit of the Northwest Territories (NWT) at the expense of more practical lines of transportation and communication;
- economic concerns, particularly in Yellowknife, that division of the NWT would be bad for business in every sense of the term (…);
- bureaucratic preference for the status quo both in Ottawa and in Yellowknife. The status quo was steadily (if unspectacularly) being reinforced by the devolution of authority from Ottawa to the GNWT and the strengthening of the administrative capacity and competence of the GNWT;
- opposition from Dene and Métis to various boundary scenarios which would divide the Inuit and Dene/Métis homelands;
- official federal land claims policy which, during the entire period in which Inuit were organising for the creation of Nunavut (and, at least formally, continuing in the present) precluded the direct negotiation of northern constitutional change at the land claims table;
- an assessment inside the federal government for much of the 1980s that the real priorities and opportunities for settling northern land claims and related aboriginal issues rested in Yukon and the Mackenzie Valley;
- a belief that the north in general, and the Nunavut area in particular, had little clout in national politics (the "how many votes are there in Nunavut" syndrome);
- most importantly perhaps, the difficulties and frustrations internal to Inuit communities and representative organisations in maintaining interest in and commitment to Nunavut during periods of time when other projects appeared to offer far brighter prospects.

Source: author's interpretation of Merritt 1993a, 3-4

As mentioned before, the critical boundary question could be solved after a plebiscite in the Northwest Territories gained a clear majority in favour of the Inuit position. "With the narrow public acceptance in the 1992 plebiscite, the boundary hurdle was removed and attention became focussed on the difficult task of securing an acceptable process for division. This was not simply a question of boundaries, for it raised broad constitutional issues." (Cameron &

White 1995: 96) It is hardly surprising that the creation of Nunavut was difficult given the constitutional barriers: on the one hand, the constitution left space for aboriginal self-government on the basis of section 35 of the Canadian constitution. Consequently,

> "The Inuit framed their case for Nunavut as an expression of their claims and, by extension, of their self-government interests. They wished to see the concept of Nunavut as a separate territory incorporated into the land claim itself. By doing so, the Inuit and the federal government would be agreeing to the recognition of the new territory as an embodiment of the Inuit's Aboriginal rights, protected by section 35 of the Constitution Act, 1982." (Cameron & White 1995: 96)

On the other hand, a change in the constitution would have been necessary if a successful creation of a new territory had been the aim. The federal Mulroney government made clear that it would be inappropriate to create a territory with an "ethnic aboriginal government". Instead, Ottawa strongly supported the idea that a "public government" open to all people living up there would rule the new territory since this would reflect the general interest of all Canadians and thus would not collide with the democratic principles of the federation (see: Cameron & White 1995). In the end, federal and constitutional barriers could be overcome by the agreement between negotiators from both sides that the new territory would have a public instead of an aboriginal self-government. The Nunavut Land Claims Agreement was termed a treaty on the basis of section 35 of the Canadian constitution which followed the logic of "treaty federalism". Therefore no constitutional barriers had to be removed.

As Cameron and White (1995) point out, patient determination and pragmatism on the part of TFN negotiators were the kind of supportive factors that brought negotiations to a positive ending. Another contributing factor was the fact that "Unlike the situation in the Western NWT, the land occupied by the Inuit in the central and Eastern Arctic was never subject to treaties with either the British or Canadian government." (Cameron & White 1995: 90) The successful conclusion of the Nunavut Land Claims Agreement in 1993 with the approval of federal (through the Canadian parliament), royal (through the British parliament), and territorial (through a successful referendum in early November 1992) institutions meant a change in paradigms in the history of Canadian aboriginal peoples.

2.4.2. Nunavut becomes a reality: the Nunavut Land Claims Agreement and its implementation

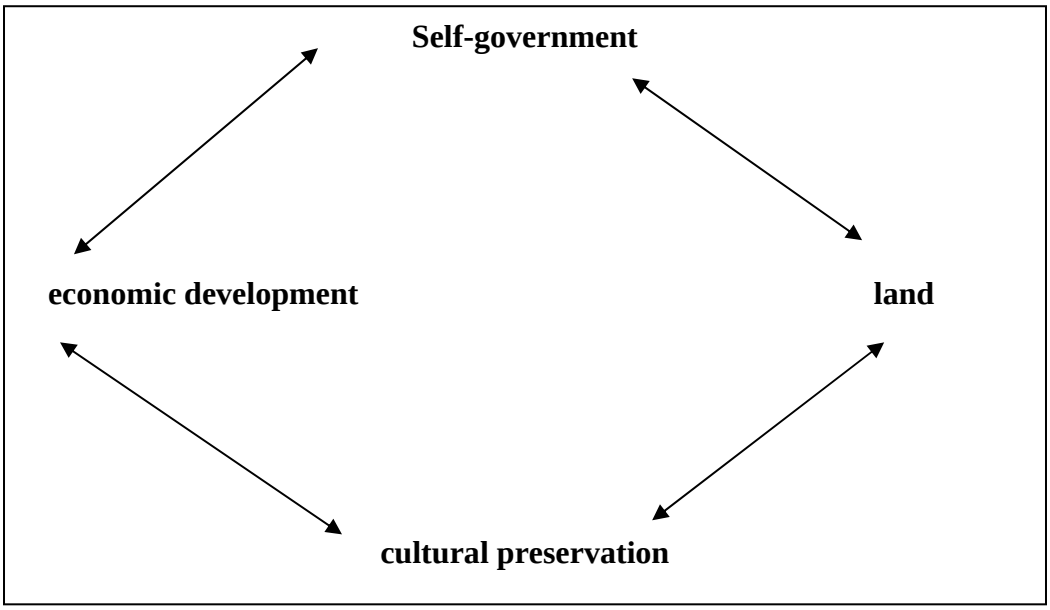
As outlined above, the Nunavut Land Claims Agreement followed an agreement-in-principle between federal and Inuit negotiators – the Nunavut Political Accord – which was signed in late October of 1992. This agreement-in-principle was significant because it solved one central problem i.e. that of a decisive date for the creation of a Nunavut territory, April 1, 1999 (see: Cameron & White 1995).[64] The remarkable speed of the negotiations prior to the Nunavut Political Act (only six months!) contributed to a situation of trust between negotiators and thus underlined the federal governments' wish to bring them to a positive ending. On the part of Inuit negotiators this approach was welcomed with some applause because: "Essentially, the Inuit were prepared to accept a modified status quo, with the critical difference that they, not a distant government in Yellowknife, would be in control." (Cameron & White 1995: 97) This first step towards effective self-government was celebrated on October the 30th, 1992.

The Nunavut Political Accord paved the way for a comprehensive land claims agreement in the Canadian North which comprised the creation of a new territory - Nunavut - in the eastern part of the Canadian Arctic and a cash settlement. This agreement contributed to Inuit aspirations to their four interconnected goals, of self-government in a self-governing territory, land rights, rights to cultural preservation, and better opportunities in terms of economic developments. Political scientists such as Dickerson (1992) tend to view these goals as "interconnected" (see table below!):

> "Self-government is a crucial part of linking the goals of land, cultural preservation, and economic development. Land is the anchor for maintaining a traditional way of life. Without land, there would be no base from which to retain a part of their cultural heritage. With land and its resources, Native people may have a fighting chance to improve their economic condition and to keep their environment an attractive place in which their young people will desire to reside." (Dickerson 1992: 171)

This interconnectedness would give rise to enhanced chances for sustainable development and better living conditions within their communities as Inuit claimed in the events leading up to the Nunavut Land Claims Agreement.[65] While there's no question about whether or not the document seeks to respond to these needs (because we can take it for a fact that it does so!), we may ask the question (and this is the topic of this paper) whether or not it does represent the "good news" case in this regard. Setting aside these questions, TFN continuously made clear that together with means of financial compensation this agreement would (at least in theory) alter their chances to develop a sustainable and successful future for eastern Arctic Inuit.[66]

Table 12: The four interconnected goals of aboriginal peoples (and the Inuit)



Source: Dickerson 1992, 171

Inuit negotiators made clear that they were in need of compensational payments and money-flows to restructure their system and to create this new territory. As is true for earlier Land Claims Agreements in the Canadian North (such as the Inuvialuit Claim) the Nunavut Land Claims is made up by two components: the rights to lands, resources and self-government on the one side, and financial compensation on the other. The agreement sought to provide the Inuit with a substantial land base, monetary payments and a significant role in resource management (see: Cameron & White 1995). Given the territory's weak infrastructure, the low availability of jobs in the region, and unsatisfactory standards of school education it appears inevitable that Nunavut will continue to depend on federal transfers in the foreseeable future:

> "The private sector is far larger and more diverse in the west than in Nunavut. The relatively underdeveloped state of the economy of the central and Eastern Arctic will severely limit Nunavut's capacity to generate its own revenue through taxation, and it will thus rely heavily on funding from Ottawa for basic operations." (Cameron & White 1995: 99-100)

This fact could not hold back the Canadian parliament from approving the Nunavut Land Claims Agreement:

> "With these factors influencing the parliamentary environment, the tabling of legislation to institute the largest land claim in history was a matter of particular sensitivity. The Nunavut bill was one of the last passed by parliament before it was dissolved prior to the 1993 general election." (Cameron & White 1995: 100)

The approval of the Nunavut Land Claims Agreement ended the short approbation phase of the years 1992/93, thereby opening the stage for a new Canadian territory by 1999: Nunavut.

The realization of Nunavut did not just receive high degrees of scientific interest throughout the world but was also accompanied by a lot of media attention. “International interest in Nunavut was considerable. Media around the world carried the story, including such diverse outlets as Russian and Australian television, the New York Times and Spain’s El Pais.” (Cameron & White 1995: 100) Consequently, April 1 of 1999 was celebrated by all of them without exeption. The Manchester Guardian, for example, noted:

> The emergence of Nunavut is unequivocally good news. While large tracts of the world are mired in war and insurgency, an ethnic minority has quietly negotiated an equitable deal with a central government that gives them the freedom to run their own affairs.” (Quoted in Hicks & White 2000: 78)

A new territory was born and a number of newspaper analysts appeared to be convinced of the fact that it promised much in terms of indigenous rights recognition for the years to come. It is this conviction that needs to be analysed in the course of this thesis.

Photograph: Nunavut officials welcome Canadian and International Guests

Legend: Canadian Prime Minister Jean Chretien and French President Jacques Chirac meet Nunavut’s Premier Paul Okalik on 5 September 1999 in Iqaluit, capital of Nunavut
(Source: Paul Chiasson/Canadian Press)

3. Polity: The Nunavut Land Claims Agreement – an overview

The Nunavut Land Claims Agreement which was finalised in March 1993 provides a framework for a newly emerging self-governing territory in the eastern Arctic. The Agreement had a number of main objectives such as:

- providing certainty and clarity of rights to ownership and use of lands and resource, and of rights for Inuit to participate in decision-making about the use, management and conservation of land, water and resources, including offshore resources;
- providing the Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting;
- providing the Inuit with financial compensation and means of participating in economic opportunities;
- encouraging self-reliance and social well-being in the Inuit (see: Hicks & White 2000).

These objectives can be achieved by putting into place an agreement which by its outlook fulfils parts of these requirements. The objectives of the agreement touch on fundamental indigenous rights: providing the Inuit with rights to wildlife harvesting and clarifying ownership rights to lands and resources in the region promises a lot. The central question is: does the agreement itself stick to these goals; are indigenous rights and the four interconnected goals of aboriginal peoples and the Inuit successfully ensured and protected?

One (in fact two) simple way(s) of measuring the quality of indigenous rights recognition would be to look at the beneficiaries of the agreement. The following beneficiaries contribute to an overall good impression. The most important of these provisions for the Inuit beneficiaries are:

- Collective title to approximately 350,000 square kilometres of land of which roughly ten per cent include subsurface mineral rights.
- Priority rights to harvest wildlife for domestic, sports and commercial purposes throughout lands and waters covered by the Nunavut Land Claims Agreement. rights;
- Inuit participation in co-management boards ;
- Capital transfer payments of 1,148 billion Canadian Dollars to be paid over a 14 year period;
- Commitments to increase Inuit employment and to give preference to Inuit-owned businesses;
- Commitments to create a Nunavut territory with a Nunavut Government by April 1, 1999 (see Hicks & White 2000).

As mentioned in the last chapter, the Nunavut Land Claims Agreement stood in the tradition of negotiating land claims with indigenous groups of the Canadian North in the course of the adjustment phase (see table below). In other words: “Four comprehensive claims have been the subject of negotiation in the territories: that of the Council of Yukon Indians (CYI), of the Inuvialuit of the western Arctic, of the Dene and Métis of the Mackenzie valley, and of the Inuit of the eastern Arctic.” (Morrison 1992: 167) The Inuvialuit Claims Agreement of 1984 especially was quite influential since negotiators could draw on their experiences of this process while negotiating for a claim with the eastern Arctic Inuit.

Table 13: Land Claims Agreements in the Canadian North:

Modern Land Claims Agreements in Canada's North

Modern land claims agreements have recognized Aboriginal ownership of large tracts of land in the territories. See, for example, the following:

- James Bay and Northern Quebec Agreement (1975)
- (Western Arctic) Inuvialuit Claims Agreement (1984)
- Gwich'in Comprehensive Land Claim Agreement (1992)
- Nunavut Land Claim Agreement (1993)
- Sahtu Dene and Métis Comprehensive Claim Agreement (1993)
- Umbrella Final Agreement between The Government of Canada, The Council for Yukon First Nations and The Government of the Yukon (1993)
- Teslin Tlingit Council Claim Agreement (1995)
- First Nation of Nacho Nyak Dun Claim Agreement (1993)
- Champagne and Aishinik First Nations Claims Agreement (1995)
- Vuntut Gwich'in First Nation Claim Agreement (1995)
- Selkirk First Nation Final Agreement (1997)
- Little Salmon/Carmacks First Nation Final Agreement (1997)
- Tr'ondek Hwech'in First Nation Final Agreement (1998).

There are also two historical treaties in the Northwest Territories: Treaty 8 (1899) and Treaty 11 (1921).

Source: Sustainable Development Info Canada 2000

The Nunavut Land Claims Agreement established a political order similar to that of the Yukon and Northwest Territories. In other words:

> “Politically, the pattern is similar: common basic features overlaid with significant cross-territory variations. The territories are something of ‘proto-provinces’; in all substantive ways they are autonomous self-governing entities exercising a wide range of jurisdictional powers, but they lack formal constitutional status.” (White 2003: 55)

As will be shown later, this newly created territory, Nunavut, is not just shaped by similar institutions of government, but also by its similar status within the Canadian federal framework.

3.1.The Nunavut Land Claims Agreement and the Canadian Constitution

As mentioned above, the Nunavut Land Claims Agreement established a new territory within the Canadian federal system by dividing the Northwest Territories into two parts: rhe Northwest Territories with Yellowknife as its capital in the west, and the newly formed territory of Nunavut with its capital Iqaluit (formerly Frobisher Bay) in the west. An agreed line serves as a border distinguishing these entities. A central question we have to ask ourselves is: wat exactly is Nunavut's position within the Canadian federal framework; does the new territory have the same position as the other territories within the Canadian constitution; is it distinct; how is the Nunavut Land Claims Agreement embedded in the Canadian constitution?

Similar to other countries of this world, Canada has a constitution which puts forward the central principles of the Canadian nation state. It thereby constitutes the framework in which political decisions are to be taken. The Canadian constitution establishes a kind of order which consists of agreed rules set up by both political actors and citizens. Hence the constitution of Canada very much reflects that element of consent. Put into place in 1867 in the shape of the *British North America Act (BNA)* and deeply influenced by the wish to have it "similar in principle to that of the United Kingdom",the Canadian constitution consists of both written and unwritten parts (so-called "conventions"). The BNA Act expressed the desire of the four founding colonies of Canada to "be federally united with a constitution similar in principle to that of the United Kingdom" (see: Dyck 2004). This implies a second foundational characteristic, namely that the divisions of power in Canada would follow principles apparent in federal systems.

Such foundational principles are entrenched in the Canadian constitution. The Canadian political system is federal in that it gives certain powers to a federal government stationed in its capital Ottawa and other powers to its so-called provinces.

> "As far as the division of powers is concerned, the Fathers of Confederation gave the provinces 16 enumerated powers in section 92 (e.g. hospitals and municipal institutions) and then left anything else – the residual powers – to Ottawa, in section 91. For greater certainty, they also included 29 enumerations of federal powers, such as trade and commerce, and national defence. Two concurrent powers – agriculture and immigration – were listed in section 95, and the treaty power in section 132 provided the federal government with the power to implement Empire treaties, regardless of their subject matter." (Dyck 2004: 415)

This federal design allows for a fairly regulated and rigid constitutional framework which avoids placing political power in the hands of just one political figure or institution. A federal system potentially allows for a more decentralised outlook of the Canadian system of governance.

Table 14: The core of the federal/provincial division of powers in Canada:

Federal Powers	***Provincial Powers***	***Concurrent Powers***
Trade and commerce	Direct taxation within the province	Agriculture
Any form of taxation	Public lands	Immigration
National defence	Hospitals and health care	Old age pensions
Banking	Municipal institutions	
Aboriginal peoples	Education	
Criminal law	Property and civil rights	
Interprovincial transportation and communication	Administration of justice	

Source: Dyck 2004, 415

Despite the fact that Inuit did not fall under the category of status Indians under the provisions of the Indian Act,the form of administration in place until the Nunavut Land Claims Agreement was one of mixed responsibilities of both federal and territorial jurisdictions: for aboriginal peoples like them the primary institution of reference was the federal Department of Indian Affairs and Northern Development (DIAND). Like all other citizens of the Northwest Territories they were subjected to the rule of the democratically elected Legislative Assembly in Yellowknife in certain other areas. The division of the NWT and the subsequent creation of the territory of Nunavut had a significant impact and lead to extraordinary changes in this regard. Therefore the central question we have to ask ourselves is: where does Nunavut fit into this framework? As Cameron & White (1995) point out, the Nunavut Land Claims Agreement establishes an order which is distinct from the status of simple municipalities:

> "Judicial interpretations, the language of the existing Constitution and the implications of the various claims agreements in the North all support the thesis that the constitutional status of the territories, though not on a par with the provinces, is nevertheless distinct from that of legislatively subordinate entities such as municipalities." (Cameron & White 1995: 118)

However, this distinct status remains constitutionally vague since the text does not speak of "territories". A significant number of spectators and constitutional specialists continued to stress that the territories were simply creations of the federal statute which could at any time be stripped off their capacities with a simple piece of federal law (see: Cameron & White 1995). Ironically, political practice does not reflect but anticipates this because:

> "The territories exercise almost all important province-like powers: education, health, welfare, municipal government, local transportation and so on; the principal – and in the North, critical – exception is land and resources." (White 2003: 56)

So we might come to the conclusion that the status of the territories – although not constitutionally protected – might somehow be province-like.

The second branch that Nunavut rests upon is the constitutional provision outlined in section 35 of the Canadian Constitution Act of 1982. This provision is significant in that it grants self-government rights to the aboriginal peoples of Canada. The fathers of the Nunavut Land Claims Agreement were very keen on linking their claim to this constitutional guarantee since eastern Arctic Inuit clearly fell into the category outlined in section 35. Historically the attempts to acquire these guaranteed rights seemed to have entered the political scene at the right time:

> "The Mulroney government recognised the aboriginal concern with constitutional protection and took the formal position that negotiated self-government agreements should be given protection as "treaties" or land claim agreements under section 35 of the Constitution Act of 1982 (Rights of the Aboriginal Peoples of Canada). The Charlottetown Accord went still further and stated that the First Nations governments were to constitute a "third order of government", implying that their status would be constitutionally equivalent to that of the provinces." (Whittington 2004: 119)

And it was still within the Mulroney years that the federal government of Canada signed the Agreement with the Inuit. As Whittington (2004) argues, this general openness of federal authorities towards the rights of indigenous peoples did not fundamentally change the moment the Liberals and their prime-minister Chrétien entered office (see: Whittington 2004). And this overall positive behaviour persisted at the time of writing.[67]

But this still leaves a couple of central questions unanswered, such as: how does Nunavut fit into the constitution and into the Canadian federal framework? As outlined above, the Canadian constitution consists of both written and unwritten parts. In other words, the constitution is not only in documents but also in the hearts and minds of all Canadians. Therefore constitutional change can sometimes mean "formal amendment" and sometimes "change within the conventions". It should be noted that these changes occur rarely, a fact that contributes to a high degree of rigidity of the Canadian constitution. As Cameron & White (1995) conclude, the status of Nunavut does not only depend on the written parts of the Constitution:

> "(…) in a number of ways the territories have a special, albeit unwritten, constitutional status within Canada. This conclusion is important not because of any significant likelihood that the federal government might attempt to revoke representative and responsible government in the territories or that it might exercise its full legal authority over them through strict adherence to the nominal forms of the Yukon Act, the NWT Act and the Nunavut Act." (Cameron & White 1995: 122)

The reasoning behind this claim is somewhat indirect in that an elected majority of the House of Representatives made the Nunavut Act a part of Canadian law. This reflects the will of a majority of the Canadian population via the rules of representative government (which apply to Canada too). It became a convention that Yukon and Northwest Territories have a certain status within the Canadian constitutional framework. The Nunavut Act implied that Nunavut would have the same status as these entities enjoy.

At the end of the day we might come to the conclusion that both the Nunavut Land Claims Agreement and the federal Nunavut Act which made it a piece of Canadian law fall into a certain constitutional category of an agreement which is protected by constitutional conventions (in the unwritten parts of the constitution), constitutional provisions such as section 35 of the Canadian Constitution Act of 1982 (in the written parts), and more vague elements in the overall picture. This construction provides a high degree of stability and thereby decreases the likelihood of this new territory vanishing again, since none of the parts can be taken away without affecting the other parts. As Whittington (2004) concludes it appears inevitable that:

> "While Nunavut is viewed as an Inuit homeland, it is not aboriginal self-government per se. Rather, Nunavut is a territorial government, similar in form and legal status to the government of the Yukon and the Northwest Territories. In the parlance of Indian Affairs, Nunavut is a 'public government', meaning that all residents of Nunavut who are Canadian citizens – Inuit, and non-Inuit alike – have equal political rights under the new government. Non-Inuit can run for all territorial offices and can vote in all Nunavut elections. (…) The Inuit are happy with this arrangement because they are confident that, making up 85 percent of the 30000 residents of Nunavut, they will be able to control their own destiny well into the future." (Whittington 2004: 122)

This interconnectedness of different styles and forms of constitutional recognition does not only provide political scientists with a lot of new fields for research, but also shows that once again Canada functions like a laboratory for societal and constitutional innovation and change.

3.2.The political order the Nunavut Land Claims Agreement establishes

As we might assume, the Nunavut Land Claims Agreement does not only establish a new entity (a territory) within the Canadian federal framework but also a new kind of political order. As parts of this order a set of new institutions, organisations and procedures emerged in the Eastern Arctic. There are three kinds of political bodies the Nunavut Land Claims Agreement established and/or fostered:

- Those that existed long before the Nunavut territory was created, such as the *Nunavut Tunngavik Inc. (TCI)*;

- Those created for implementing the Nunavut Land Claims Agreement, such as the *Nunavut Implementation Commission (NIC)*;
- And those put into existence by the implicit text of the Nunavut Land Claims Agreement, such as Government institutions or co-management boards.

Both the newly established Nunavut territory and the three kinds of political bodies below its surface provide the background for a completely new political order in/for the Canadian North. It remains the purpose of this paper to determine whether this new framework is a "good news case" with respect to the realization, recognition and protection of the Inuit locals' indigenous rights.

3.2.1. Institutions

3.2.1.1.The Legislative: the Nunavut Legislative Assembly

Thinking of these new political bodies, we notice that they are all referred to as "government institutions". As in all other political systems of the world, Nunavut has institutions of government that guarantee a system of governance in the exercise of power and that the political process as a whole follows certain, specified and outlined procedures. Institutions of government are important to the political system because they actively "order" processes within them. As well as for the rest of Canada, Nunavut embarks upon a "division of powers" approach between legislative, executive and judicial forces: A Legislative Assembly holds responsibility for the exercise of legislation and the election of a responsible government. This government – the executive – is called the "Government of the Nunavut territory". A "Nunavut Territorial Court of Justice" controls judicial matters within the territory.

To begin with legislative power, a *"Nunavut Legislative Assembly"* which functions on the principle of consensus similar to that in the Northwest Territories was put into place. This Assembly consists of 22 elected Members of the Legislative Assembly (MLA's) who altogether are elected within Nunavut's eleven communities, - two MLA's in each one of them. Légaré (1997) explains to us what this element of consensus is all about:

> "As in NWT, the Nunavut Legislative Assembly will function on the basis of the principle of consensus. Thus there will not be any political parties in Nunavut; all members of the Legislative Assembly would sit as independents. In this unique variant of the British parliamentary system, the policy decisions are made by a majority of the legislators and all would have the right to freely express divergent views. Bills would generally be put forward by Cabinet and would have to garner the support of the majority of the independent legislators [to become law]." (Légaré 1997: 411)

The principle of consensus implies that decisions are to be taken collectively among all MLA's. There are no political parties within these institutions. Only individuals run for office

in their ridings. Nunavut's political system can be described as a unique variant of the British Westminster system wherein a majority of legislators make decisions after a broad consensus was sought.[68]

The Nunavut Legislative Assembly consists of 23 members, 22 of which are elected in the 11 electoral districts of Nunavut. In each of these districts, people are able to elect 2 members of the Legislative Assembly. The Premier of Nunavut is the 23rd member of the Assembly and elected by the total electorate. However, consensus government in this context does not mean unanimous consent among MLAs in each and every decision. On the contrary, Bills need the votes of half of the Nunavut Legislative Assembly members (i.e. 12 of the 23 MP's have to agree) to become law (simple majority rule).

The original idea of electing 2 MP's in each riding was to achieve proportional representation of men and women in the Assembly:

> "The Nunavut Implementation Commission recommended that the Nunavut Legislative Assembly should consist of equal numbers of men and women, using a system of ten or eleven two-member constituencies each electing one male Member of the Legislative Assembly and one female Member of the Legislative Assembly." (Hicks & White 2000: 70)

Nunavut would have been the first territory to have an equal representation of men and women in a legislative body.

However, this bright idea of the NIC was not put into practice. As Hicks & White (2000) outlined, the non-implementation of the gender-parity model could not come as a surprise because the core belief of this idea followed two intrinsic misconceptions: it wrongly thought that male voters would only vote for male candidates; likewise female voters would prefer female MLA's. The implication of this idea would have been the belief that only men can speak for men whilst only women knew about women want. "The second misconception was that the gender parity would inflate the size of the legislature and increase the costs accordingly." (Hicks & White 2000: 70) In fact each voter has to have the possibility to elect candidates due to their personal preferences, and preferences differ as do tastes and appetites.

The gender parity discussion itself had both its supporters and its opponents in Nunavut and the Northwest Territories. And both sides had reasonable arguments to back their claims. To be more precise:

> "Where supporters saw a way to recognise the differing perspectives that men and women sometimes have on particular issues, opponents argued that disproportionate gender representation in politics is not important – that 'people think with what's between their ears, not with what's between their legs.'" (Hicks & White 2000: 73)

Consequently, both sides were campaigning in favour of their beliefs, a situation which mirrored a division of public opinion in Nunavut.

Nevertheless, this original proposal was turned down by a small majority of "no" votes in a referendum in 1997. "On May 26, 1997, the voters rejected the Nunavut Implementation Commission's proposal for a Nunavut Legislature with gender parity by a margin of 57 per cent to 43 per cent." (Hicks & White 2000: 73) It would be completely wrong to interpret this outcome in any way as "general backwardness of the Inuit population" of Nunavut. There is broad consensus among political scientists that the referendum was more about tastes and less about prejudices and the like.

As far as the voting-system in general is concerned, the general Canadian way of doing business was accepted and adopted for Nunavut too. In essence this means that the 22 Members of the Legislative Assembly (MLA's) are elected under the provisions of the 'one man, one vote norm'.[69] Since there are no political parties in Nunavut, all voters give their vote to an individual candidate at the community level in territorial elections. All candidates that stand for elections to the Nunavut Legislative Assembly receive equal funding from the territory's budget. The two candidates that get most votes at the community level are elected to sit as representative in the Nunavut Legislative Assembly.

In federal elections members of Nunavut communities are called to elect one candidate to the House of Representatives. As in other provinces and territories, candidates stand as members of political parties for federal elections. And the candidate that gets more than 50 per cent of the votes of Nunavumniut[70] is elected to represent them in Ottawa. If no candidate succeeds in getting 50 percent, a second ballot has to bring the decision.

Despite being the Legislative Assembly's 23rd member, the Premier is not elected in the same way as most other Premiers are elected in parliamentary systems. It is not the majority inside the Nunavut Legislative Assembly but (similarly to the Israeli parliamentary system) the total electorate that elects the Premier of the Nunavut territory. Nevertheless, the Premier is responsible to the Legislative Assembly of Nunavut which means that the Assembly has the right to issue a vote of non-confidence.

3.2.1.2. The Executive: Premier, Cabinet, Agencies, and Administration

a.) The Premier and his Cabinet

As in most parliamentary systems, the central political figure of the Nunavut political system is the Premier. Elected directly by the overall Nunavut electorate he is entitled to select the six ministers as members of his cabinet from the Legislative Assembly. Both Premier and Cabinet are responsible to the Legislative Assembly.

To put it differently, "he would select and control the Cabinet of six ministers who would be chosen from among the elected members of the Assembly. As elsewhere in Canada, the Cabinet would be responsible to the Legislative Assembly." (Légaré 1997: 412) Therefore, the Nunavut polity can be called a true Westminster parliamentary system with a strong Premier and a strong parliament.

The situation is also interesting if we look at the methods of choosing the premier and his/her cabinet because:

> "The premier and the cabinet are selected by secret ballot of all MLA's; the premier assigns ministers to portfolios and may subsequently shuffle them. Exceptionally, the premier may dismiss a minister (the constraints are political rather than constitutional) but ministers are more likely to be deposed by those who originally put them in office, the ordinary or regular (i.e. private) members of the assembly. Thus, power relations between the premier, ministers and private members differ substantially from those characterising the premier-dominated cabinets and cabinet-dominated legislatures of southern Canada." (White 2003: 57)

Usually the premier selects his ministers according to the patterns that qualify them for a certain position. The chances of ministers to stay in office for longer periods of time are quite high since there are no political parties in Nunavut which could keep a new premier away from re-nominating the ministers of his predecessor. It may even happen that cabinet members and MLA's nominate a premier which they think works in their favour.

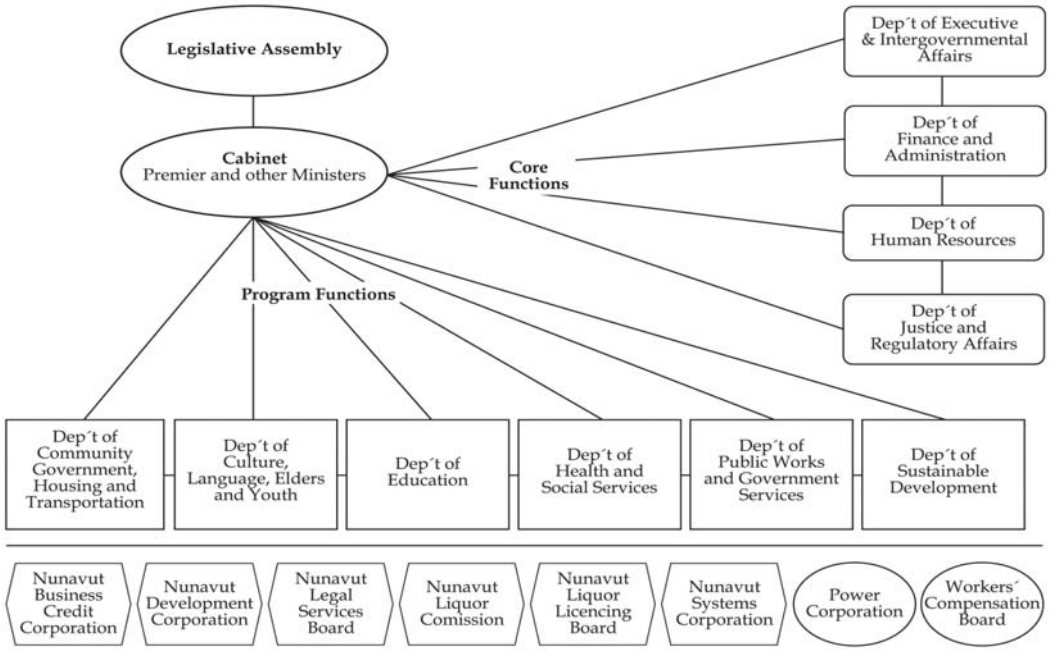
Hence the position of the premier and the scope of his power are fairly limited. As White (2003) points out, the position of the premier is more one of a 'first among equals' and that of the Cabinet one of a permanent minority due to the fact that ministers (MLA's at the same time) have to win six or seven other MLA's in favour of their proposals to have the MLA's approval (see White 2003). In some areas and policies, though, ministers have to work in close cooperation with co-management bodies which further limits their scope of power. Both ministers and the premier can only act freely in the areas assigned to the territory of Nunavut exclusively.[71]

In conclusion, we can say that the Premiers' power in Nunavut is (despite direct election) fairly limited to the extent that he is a "primus inter pares" (first among equals). He holds the position of a speaker for Nunavut matters on the federal level. Departmental ministers have to respect the limits the Nunavut Land Claims Agreement sets up for them, especially with respect to concurrent powers with the federal government and cooperation inside the co-management boards.

b.) Ministries and Agencies

Overall, Nunavut has got ten ministries and eight agencies that coordinate governance throughout the territory. The governmental departments can be found in the following ten sectors: Community Government, Housing and Transportation; Culture, Language, Elders and Youth; Education; Health and Social Services; Public Works and Government Services; Sustainable Development; Executive and Intergovernmental Affairs; Human Resources; Finance and Administration; and Justice and Regulatory Affairs. The eight agencies are: Nunavut Business Credit Cooperation; Nunavut Development Corporation; Nunavut Legal Services Board; Nunavut Liquor Commission; Nunavut Liquor Licensing Board; Nunavut Systems Corporation; Power Corporation; and Workers Compensation Board (see: Légaré 1997).

Table 15: Nunavut's proposed departmental structure:



Source: Légaré 1997

c.) Regional and local administration – decentralised governance

Despite its overall similarity with the framework apparent in the Northwest Territories, the Nunavut government seeks a further decentralisation of its administration in the years to come:

> "In addition to being a more streamlined administration, offering programmes and services similar to those of the NWT, Nunavut Territory, in order to affirm its legitimacy and to distinguish itself from the present administration of NWT, will likely fashion itself into a decentralised government that is closer to the Inuit people, as much by its policies as by the geographical presence of its institutions, as it asserts its presence throughout the vast territory over which its very small population is dispersed." (Légaré 1997: 413)

So far, administration in Nunavut is fairly decentralised already. Nunavut's three regions (Baffin Island, Keewatin and Kitikmeot)[72] already host a number of territorial departments and agencies. "In fact, the Commission recommended that policy responsibilities in Nunavut be concentrated solely in the hands of the Legislative Assembly and the local municipal councils. There would be no legislative body at the regional level." (Légaré 1997: 415) The decentralised outlook of territorial Government institutions would give Inuit locals a closer emotional attachment to their Government and its officials, thereby increasing the possibilities of employment in the public sector throughout the territory:

> "To take one example of what decentralisation will mean, Footprints 2 recommended that the Department of Sustainable Development have its Deputy Minister, 'Policy, Planning and Human Resources', 'Finance and Administration', 'Income support programmes' and 'Trade and Investment' divisions located in Iqaluit. And 'Environmental Protection' division located in Cambridge Bay; a 'Fisheries and Wildlife' division located in Igloolik; a 'Minerals, Oil and Gas' division located in Kugluktuk; and a 'Parks and Tourism' division located in Pangnirtung – in addition to regional offices located in Pangnirtung, Arviat and Kugluktuk." (Hicks & White 2000: 67)

As Hicks (1999) points out, decentralisation was highly debated between people that had hoped for greater decentralised departmental structure and those who wanted to have it more centralised:

> **"**One school holds that the NIC recommended an extremely conventional design, and thereby wasted an opportunity to radically rethink government from an Inuit perspective, while another school holds that the NIC's recommendations, while well intentioned, are optimistic to the point of naivité about how cumbersome and expensive it will be to operate a decentralised government across a fifth of the land mass of Canada." (Hicks 1999: 33)

Decentralised governance became one of the main features of administration in Nunavut. Together with the municipal councils at the local level[73] the presence of Nunavut governmental institutions guarantees for greater chances to integrate Inuit under the umbrella of a Nunavut territorial government and thus identity.[74]

3.2.1.3. Co-Management Boards

Another set of institutions that were created under the umbrella of the Nunavut Land Claims Agreement are the so-called co-management boards. Put into place with the purpose of co-managing some issues such as land and subsurface rights these institutions consist of specialists of both federal and territorial representatives. As White (2003) points out, these institutions are neither exclusively federal nor are they exclusively territorial, nor are they a kind of Aboriginal self-government: "Instead, they exist almost as a distinct order of government: independent of territorial and federal governments and of Aboriginal organisations, exercising on occasion substantial governmental authority." (White 2003: 62) This distinct order was established for joint consultations and policy-making in a number of specified areas such as fishing, harvesting, wildlife[75], and subsurface resources (see table below).[76]

Table 16: Co-management Boards under the Nunavut Land Claims Agreement:

Name: **Nunavut Wildlife Management Board** Date of Activation: January 1995 Function: This body supervises and regulates the exploitation of wildlife while assuring that principles of conservation are respected. It determines quotas for the capture of certain animal species.
Name: **Nunavut Environmental Impact Commission** Date of Activation: January 1995 Function: This body examines economic development projects in Nunavut and determines if there are going to be any adverse impacts on the arctic eco-system. Drawing upon environmental impact studies, this Commission has the power to block any project.
Name: **Nunavut Management Commission** Date of Activation: January 1995 Function: This Commission administers and plans land use in Nunavut. It assures that land development conforms with environmental and land use zoning regulations.
Name: **Surface Rights Board** Date of Activation: January 1994 Function: This tribunal adjudicates legal disputes arising out of ecological damages caused by a developer. It determines the damages awarded to the Inuit
Name: **Nunavut Waters Office** Date of Activation: January 1995 Function: The office has responsibility for issuing permits for the use of potable water and for garbage disposal in the waters of Nunavut.

Source: Adaptation of Légaré 1997: 422

Surprisingly these co-management boards are far less powerful in theory than political practice would suggest because:

> "In a strict legal sense, the four co-management bodies (the Institutions of public government) are 'advisory' bodies that will make recommendations to federal and territorial government Ministers, but in practice they are powerful institutions which are clearly intended to be decision makers with sufficient authorities and resources to function relatively independently from both government departments and Inuit organisations." (Hicks & White 2000: 60)

The boards themselves consist of equal numbers of Inuit and governmental members and their decisions are usually simply reviewed by the governmental ministers.

> "Thus the only way to ensure that decisions in these co-managed areas are sensitive to Inuit needs is to ensure that the minister is an Inuk or is responsive to the needs of the Inuit by being electorally dependent on them. The means of accomplishing this has been realised by the creation of a territory where the Inuit dominate the ballot box." (Dacks 2003: 284)

As Hicks and White (2000) point out, the powers of these co-management bodies never really collided with those of other governmental institutions:

> "The powers of existing federal and territorial departments are neither replaced nor superseded by those of the Institutions of Public Government, but government departments are now required to share some of their decision making processes. Depending on the issues, this power sharing will take various forms, ranging from 'rubber-stamping' the recommendation of an Institution of Public Government, to structured consultations, to a department's need to secure the approval of an Institution of Public Government before proceeding with a decision or policy." (Hicks & White 2000: 60)

In short, the co-management boards the Nunavut Land Claims Agreement established are particularly important for policy-making in contested areas such as wildlife harvesting or fishing. These institutions fulfil a kind of mediation-role thereby bringing together federal and territorial negotiators. The suggestions these boards make are (usually) readily welcomed and thus implemented by both federal and territorial authorities.

3.2.1.4.The Nunavut Implementation Commission (NIC)

The most important of all institutions in the implementation years 1993-99 was the Nunavut Implementation Commission (NIC). Initially created to implement the Nunavut Land Claims Agreement this body had a number of specified objectives:

> "According to Bill C-132, the objective of the Commission was to formulate recommendations with the federal government, among others, on such matters as the site of the capital of Nunavut, administrative structures of the government, and operating procedures for the Nunavut Legislative Assembly." (Légaré 1997: 409)

The NIC itself is not an ethnic institution (in contrast to the Nunavut Tunngavik Inc. [NTI]) but an institution that is meant to represent the interests of all residents of Nunavut (see:

Légaré 1997). As such this public institution was formed in December 1993 when ten members were named by the federal government, the Government of the Northwest Territories (because at this stage of development Nunavut was still a part of the Northwest Territories), and Nunavut Tunngavik Inc. (NTI) to sit on this board. The accorded manner of choosing its members was:

> "Each of these parties placed three members on the commission, while the chairman, Joan Amagoalik, was chosen by consensus. The commissioners are supported in their work by about twenty bureaucrats." (Légaré 1997: 409)

The Nunavut Implementation Commission has so far made a number of important suggestions in different areas and thus issued two reports - Footprints in New Snow I. and Footprints in New Snow II. – both of which were meant to increase the chances o a successful implementation of the accorded Nunavut Land Claims Agreement.

3.2.2. Land rights, harvesting rights, and self-government

a.) Rights to wildlife harvesting, subsurface resources and lands under the NLCA

Inuit leaders continuously made clear that rights to land, wildlife harvesting and water management belong to them on the basis of the inherent right to self-government. Simultaneously to this claim indigenous rights came to recognise their aspirations with the adoption of the ILO Convention No. 169 which made contributions to the four interconnected goals of the Inuit: Land, cultural preservation, economic development and self-government. The Nunavut Land Claims Agreement paid its respect to these requirements, thereby establishing a new political order and thus a new self-governing unit within the Canadian federal system. The question is: how extensive is the Nunavut Land Claims Agreement with respect to wildlife, land and water rights of the Inuit?

To begin with *"wildlife and wildlife compensation"* patterns as outlined in article 5 and article 6 of the agreement, it seems that the agreement took Inuit needs seriously since these articles are of special significance for the Inuit because of the importance of hunting in Inuit everyday life. By these provisions of the Nunavut Land Claims Agreement the Inuit are entitled to co-manage these issues with federal authorities within the Nunavut Wildlife Management Board. However, these provisions are not too extensive for in article 5.1.2.(i) of the NLCA it is stated that "…Government retains the ultimate responsibility for wildlife management." (NLCA, article 5.1.2.(i), 26) Not for wildlife generally but for the management of wildlife in particular.

As to land-rights, it seems worth noting that the agreement embarks upon a broad range of different phenomena in this regard. Article 7 of the NLCA for example covers outpost camps and their political status. It defines outpost camps as camps that are occupied by families or other groups of Inuit who occupy the particular location on a temporary, seasonal, intermittent, semi-permanent or a year round basis for the purposes of wildlife harvesting and the associated use and enjoyment of lands, and includes:

(a) the residential base, and

(b) the surface lands on which the residential base rests and the surface lands within a distance of two kilometres from the centre of the residential base, but does not include any randomly occupied locations used only for periods of several days or weeks.

This part covers the gap between lands outside the Nunavut Settlement areas and outlines the right for outpost camps to establish entirely new communities in article 7.6.2 of the text: "Nothing in the Agreement shall prevent outpost camps from becoming communities or municipalities." (NLCA, Article 7.6.2., 67). This leads to an interesting situation because:

> "In essence then, an Inuit family can apply and receive permission to set up an outpost camp on Crown lands and after a few years (with renewal of the licence of term) they can establish a municipality or town. This may pose a problem should the government wish to reclaim the site." (Fritsch 1996: 33)

However, the broad range of land-rights provisions extends to covering issues such as the particular status of parks, conservation areas, land and resource management institutions, land use planning, development impact, water management, municipal lands, marine areas, and even the outer land ice zone east of Baffin Island's coast (outlined in article 8 to article 16 of the NLCA). "These articles feature the inclusion of the Inuit in decision-making, reporting and benefit-taking in the Nunavut area." (Fritsch 1996: 33) In these issues Inuit representatives are involved in decision-making via the four co-management boards. The Inuit of Nunavut cannot acquire full authority over them.

The legal status of Inuit-owned lands is to be found in articles 17 to 19 of the NLCA. For example, article 17 holds that the underlying purpose of having Inuit-owned lands is to "(…) promote economic self-sufficiency (…) in a manner consistent with Inuit social and cultural needs and aspirations." (NLCA, article 17) Not only the purpose but also the type of lands with exclusive Inuit ownership structures is put forward in this section. At this point, the text of the agreement does not give us exact data about which lands are "owned by the Inuit" under the agreement. Rather, the focus is more on the legal status of Inuit ownership rights in principle.

Even more interesting is article 18 which sets out principles for Inuit identification with their land and its linkage to land rights as a whole. This section makes clear that Inuit identification with a certain piece of land does not automatically lead to actual ownership in this regard. Rather, the delivery of lands that the Inuit feel attached to has to be judged (and thus linked to land rights) on a case-by case basis. Where the transfer of land-rights is considered impossible, monetary compensation has to come into being in the form of compensational payments from federal authorities to the Nunavut territory as a whole. As always this claim has one important exception which is that: "(…) in general, identification shall not include areas subject to third party interests in the form of fee simple estates in private hands." (NLCA, article 18.1.1., 141)[77] In other words, the Inuit can only claim sites exclusively and thus rightly for themselves if they actually owned these lands before the land claims process went underway.

However, given these general provisions of the NLCA, it seems possible that the Inuit acquire land in parks, conservation areas, or even archaeological sites in the course of the land claims process. Article 18 states that just to the same extent as the process of land rights delivery went underway, parks and conservation areas may differ in scope from the shape they were in before the land claims process started. It is highly understandable that areas of particular significance for federal authorities do not stand a big chance of becoming a piece of land that Inuit could claim for themselves under the umbrella of their inherent land rights. Contested pieces of land with rivalling claims of both Inuit and other aboriginals' interests (so-called "overlap areas") cannot be subjected to a final decision before claims in other areas are resolved and settled. In addition, both areas that are needed by federal and/or territorial authorities for their own operations and/or facilities as well as lands needed for public purposes or utilities will not be delivered to the Inuit under the provisions of article 18 of the Nunavut Land Claims Agreement. Finally, article 18 states that Inuit may also acquire lands containing deposits of carving stone (see: NLCA, article 18, 141). This is hardly surprising since carving stone is of great cultural and economical importance for a majority of Inuit locals (see: Fritsch 1996, 33).[78]

This raises questions about the explicit title to lands that always belonged to the Inuit. Do the Inuit have to claim these lands again even though they have never been owned by someone else? The NLCA's article 19 gives us an answer to these questions by actually defining the title to Inuit owned lands as belonging exclusively to them. More precisely, the article by definition deals with first title as being situated within the array of two possible claiming procedures: 1) fee simple (as defined above) as the legal basis of the claim, or 2) fee simple

excluding minerals and mines but with the rights to some of the goodies mining produces as a second form of actual ownership (see: NLCA, article 19, 143-151). In the light of this, it cannot come as a surprise that claimed lands are not restricted by form or shape. The lands the Inuit can claim under the provisions of article 19 of the NLCA can include lakes and/or rivers too as long as they are situated within the Nunavut settlement area. The only small exception to this is the requirement that claimed lands should not entirely surround a lake for one simple reason: "(…) the government reserves the right (…) to protect and manage water and land covered by water and to use such water for public purposes." (Fritsch 1996, 34) Nevertheless, the approach promoted by article 19 remains fairly broad.

b.) Rights to cultural preservation, economic development and social well-being

As said earlier, the high unemployment rate is a significant problem within the society of Nunavut. Kevin R. Gray explains the reasons for this situation as follows:

> "A majority of the Inuit in Nunavut are unemployed and therefore are overly dependent on government funding. This is an unfortunate consequence of the rapid transformation of Inuit life from one of subsistence, living among family units, to relocation in communities where education, housing, health care, social services, and other goods were freely available. The marginal feasibility of earning a livelihood through traditional hunting, fishing, and trapping activities, which have suffered from a dwindling fur trade market and seal hunting industry, also contributes to unemployment. The decreasing market for goods acquired from hunting has increased the need for government welfare assistance. More Inuit are being forced to seek employment in the modern economy, with a limited job market." (Gray 1994, 325)

A solution to this problem had to be sought and was found in the negotiations prior to the Nunavut Land Claims Agreement. The right to social well-being is one of the cornerstones of almost all indigenous rights treatises. The outcome of the negotiations found its manifestation in an agreement that comprised two aspects of Inuit employment generally: employment in government institutions and employment in private enterprises.

To be more precise, article 23 of the NLCA proposes proportionality in employment in Nunavut governmental institutions: Inuit employment within Government bodies has to be encouraged until the total percentage of Inuit government officials equals their relative number within the population of Nunavut (see: NLCA, article 23, 191-195). Currently 85% of the population are Inuit which means that the goal of the Nunavut Land Claims Agreement is to have a proportion of 85% Inuit employees in Nunavut government position. Achieving these goals can prove a difficult task because:

> "From the younger generation of Inuit comes a group of potential employees who are unqualified and ill-prepared to work for the government. While qualifications for employment are unnecessary for various wildlife management boards and regional

> organisations in the agreement, they will be necessary for the Nunavut administration's civil service. Without trained Inuit during the early days of Nunavut, it will be necessary to recruit Qallunaat (whites) to staff Nunavut positions." (Gray 1994, 326)

Nevertheless, the aim of having proportional Inuit representation in Nunavut government bodies was not abandoned and professional training programmes were designed to tackle the problems described above.

Article 26 of the Nunavut Land Claims Agreement bridges the gap to employment in the private sector and economic development: Therefore the Inuit Impact and Benefit Agreement's main concern is development projects, capital costs and employment projects and their realisation in political practice (see: NLCA, article 26, 205-210). To this end, benefit also includes development projects. Furthermore, "(…) there is room for negotiations, arbitration and the benefits can be enforced in accordance with the common law of contract. At the end of this article there is a list of 21 items considered appropriate for Inuit benefits, listing such things as scholarships, language of workplace, outpost camps, Inuit preferential hiring and safety, health and hygiene to name but a few." (Fritsch 1996, 37) Article 26 of the agreement thus looks both at regional development projects and at their potential repercussion on Inuit employment as a whole.

In the light of these provisions, it is hardly surprising that article 27 points in a very similar direction by stating that prior to the exploration of both renewable and non-renewable resources federal authorities have to consult Inuit ministries and agencies or representatives to the co-management boards depending on the issues the project is all about. Even more significantly, it is also agreed that consultation has to include and thus refer to the issues of training, hiring, labour relations and so on to lead to a successful conclusion (see: NLCA, article 27, 211-212). Likewise, article 28 which is about northern energy and mineral deposits blows into the same whistle by stating that federal authorities are bound to ask the Inuit for their opinion (see: NLCA, article 28, 213). This fact does not oblige them to actually negotiate these issues or even conclude accords with Nunavut governmental institutions. The approach is consultation, not co-management.

It remains a little problem that Nunavut (just as the other two territories of the Canadian Federation) has not got the ability to raise taxes (see: NLCA, article 30, 219-220). These institutions receive the money for their operation from federal funding and subsidies. "It does, however, state that general tax laws apply to the Nunavut Trust (the recipient of Crown funds for the settlement of this agreement)." (Fritsch 1996, 38) Nevertheless, this article is careful enough to state that Inuit owned lands do not fall under Section 87 of the Indian Act and that

Inuit owned lands in Nunavut are only taxable to the extent that "… profits, rents, royalties, and other revenues or gain derived from Inuit owned lands shall be taxable…" (NLCA, article 30, 219)

The establishment of a Nunavut Social Development Council (NLCA, article 32, 223-224) should provide the Inuit with possibilities to participate in the development of social and cultural policies on the federal level. That is, the Inuit should have a say in both shape and methods of delivery of in the sector of welfare policy. Inside this council, Nunavut and federal authorities act in close cooperation. The reason behind this is that otherwise social development policies might fail the goal of sustainable development for the territory and a climate of increased chances in the realm of social, welfare and education policies.

Interestingly, the spheres of cultural and social life are very interconnected in Nunavut. The Nunavut Land Claims Agreement does not make any special provisions to cultural preservation. The reason lies in the assumption that a better organisation of social and welfare policies might help to recreate cultural life in the territory. As Gray (1996) puts it,

> "(…), many young Inuk are not familiar with the essential hunting, fishing, and trapping techniques. The pervasiveness of Canadian culture, spread through television, transportation, and other aspects of modern life, has substantially altered the community environment and as a result has removed the necessity for young Inuk to live a traditional life. The availability of welfare has hastened the replacement of subsistence living with a monetary system. The hardship of being solely dependent on hunting and fishing act as a deterrent to a subsistence lifestyle when the conveniences and services that the state provides are easily obtainable. Furthermore, due to technological advances, it is more costly to equip hunters. This creates a situation in which individuals who can afford to hunt and fish do not have the time to do so because of work obligations, while the unemployed, with the opportunity to hunt and fish, cannot finance the equipment." (Gray 1994, 325)

But delivering social and welfare policies to the Inuit locals of Nunavut does not only mean having "the right ideas", it also requires a lot of federal money devoted to the solution of these problems. To put it differently:

> "Financing the new territory of Nunavut is an extremely expensive proposition in light of the low economic base in the region. Currently only few communities are economically developed. Unemployment is rampant and job opportunities are scarce. A transformation of the Inuit economy will be a comprehensive task because of a widespread subsistence lifestyle that is funded through government assistance. A successful Nunavut economy with extensive employment opportunities is needed to lessen the social and economic reliance on the government. Without it, political power will become meaningless when eligibility for compensation expires." (Gray 1994, 323)

The question will be whether Inuit and federal authorities manage to get most out of the money and thus the opportunities to help both sustainability and cultural preservation patterns come into being.

c.) Rights to self-government under the NLCA

One of the central reasons for the creation was the desire of the Inuit to control more of their lands and lives. They ultimately claimed this right on the basis of the right of indigenous peoples to effective self-determination outlined in both international and domestic treatises. Consequently, a form of self-government was what the Inuit of Nunavut were aiming at when Inuit Tapirisat of Nunavut formulated and thus issued the Nunavut Land Claim proposal back in 1976.

But what does self-government really mean? What must it contain? Purich (1992) defines self-government as:

> "(…) the right of a community to govern its own affairs. It does not mean independence from Canada; rather, it means defining the terms under which an Aboriginal community is part of the larger federal state, much in the same way that some in Quebec are seeking to redefine that province's role within Canada. Aboriginal self-government means control over those matters of local interest that have a direct impact on daily lives, such as health care, education, economic development and justice. (…) Equally important, self-government means ensuring that those services are delivered by a civil service that is primarily aboriginal." (Purich 1992, 19)

He then goes on with outlining three main reasons for self-government:

> "First, there is the natural desire of human beings to run their own affairs. Second, decisions made on behalf of Aboriginal people by other levels of government have not always been satisfactory, and because of that, Aboriginal people believe that they can administer their affairs better than can government officials. (…) Finally, as many Aboriginal people see it, the alternative to self-government is assimilation, an option that has been rejected by most Aboriginal people." (Purich 1992, 20)

We can assume that these reasons initially applied to the Inuit of Nunavut too, but negotiations made clear that the goal of full self-government was far from reachable.[79] Instead, the Inuit accepted a proposal of federal authorities stating that the territory would have a form of public government wherein all ethnic groups can and thus should participate and have their say. As Hicks & White (2000) point out, the willingness to accept this proposal portrayed a critical element in the Inuit position thereby actively contributing to the creation of the new territory:

> "Under this public government approach all residents could vote, run for office, and otherwise participate in public affairs and the government's jurisdiction and activities would extend to all residents. In other words, Nunavut would in essence have a government like those of other provinces and territories, rather than following the aboriginal self-government model (….) under which only aboriginal people would participate in government or be eligible for its programmes and services." (Hicks & White 2000, 54)

As will be discussed later, the question remains whether this public government approach contributes to or undermines the provisions of indigenous rights in general.

3.3.Financial Compensation

One of the most controversial elements of the Nunavut Land Claims Agreement finds its manifestation in article 29 wherein federal authorities show commitment to provide the newly created territory of Nunavut with enough money to operate effectively. The money devoted to this is quite impressive: "Monetary compensation includes a capital transfer payment of $1.148 billion payable to the Inuit over 14 years, a $13 million Training trust fund and a share of federal government royalties from oil, gas and mineral development on Crown lands." (Imai 1999, 96-97)

In exchange to this commitment the Inuit had to surrender some of their rights to traditional lands and water which aroused anger in parts of the scientific community.[80]

> "In addition, the extinguishment clause precludes the Inuit from taking any legal action against the government. The loss of their rights as titleholder to the land and the right to assert any other legal claims against the government which are stipulated in the Agreement terminate." (Gray 1994: 302)

Apart from the extinguishment of Inuit title to certain lands and resources federal subsidies are not just an act of loyalty and recognition from the federal side but also a political necessity since Nunavut lacks the ability to raise taxes (see: Légaré 1997).[81] as Hicks (1999) points out these subsidies are not without its opponents at the federal level and public relations activities on this issue may continue to play a role within Canadian society as a whole because:

> "One of those forces may be a growing realization among the Canadian body politic of the cost of maintaining Canadian sovereignty over the Arctic. Where the cost of maintainging and developing Nunavut is currently hidden in a maze of federal and territorial funding agreements, the first budget of the Nunavut Government may come as a shock to many – especially when divided by a population of 25000 or so. Both the Nunavut and federal governments may find it necessary to arm Canadians with arguments as to why investments in Nunavut today will mean both healthier communities and reduced costs in the future – precisely the kind of argument which has gone out of favour during the lifetime of the current federal government." (Hicks 1999: 42)

Nevertheless, compensation payments cannot be erased since they are and thus will continue to be a significant financial source for the building up of a truly sustainable future for the newly created territory of Nunavut.

3.4.The big paradox: No political parties in Nunavut on the territorial level

Somehow surprisingly, the Nunavut territory does not know political parties and thus does not possess a party system. Although this aspect is not directly linked to the central question of this paper it appears a good idea to the author to take a quick look at it. As will be outlined in the course of this part of the paper, the fact that Nunavut does not have a party system has four major reasons:

1. The electoral system in place does not make political parties a necessity;
2. Usual theories on the reasons for the emergence of party systems do apply to the Nunavut case too but did not lead to the emergence of political parties;
3. Nunavut Tunngavik Inc. (NTI) is a political movement but not a political party; and
4. The territory's outlook with small and distanced communities, decentralised governance, and the principle inside the Nunavut Legislative Assembly lead to a high degree of transparency and cooperation among smaller units which further hinders the emergence of political parties.

These contentions, will be discussed in the course of this part of the paper.

3.4.1. First layer of analysis: The electoral system does not make parties a necessity

As mentioned above, the rules of the Canadian electoral system apply to elections on the territorial level in Nunavut too (see chapter 3.2.1.1.). That is to say that Nunavut officials and federal authorities have decided to implement the *"first past the post"*[82] electoral system. In other words, the 22 members to the Nunavut Assembly are elected in the eleven communities of the Nunavut territory, - two MLA's in each one of them. Hence the two candidates that get the most votes are elected to sit in the Nunavut Legislative Assembly. In the light of these circumstances people run for MLA as individuals and every individual above the age of 18 can be elected to the Assembly (the age to be elected as a premier is 25). Consequently, it can be held that first-past-the-post voting systems both make the evolvement of single-issue parties (= parties that centre their attention on one singular matter such as class, ethnicity, economy and so on…) as the broader stage[83] and lead to a complete non-existence of political parties in the territory of Nunavut.

However, non-existence on the territorial level does not mean that people vote for individuals in federal elections. On the contrary, candidates that run for the Canadian House of Representatives usually stand for political parties. Therefore, in federal elections the Nunavumniut vote for a political party.

As the 2000 and 2004 federal elections have shown, a clear majority of the electorate (69% in 2000, 51.3% in 2004, and 39.1% in 2006) voted for the liberal candidate (see table below). This tendency reflects a general attitude among Canada's aboriginal peoples, namely that the Liberals Party is the party that best promotes the beliefs of aboriginal peoples on the federal level. Conservative MP's always left the Canadian electorate with the impression that the Aboriginal issue was not one of their priorities. David Chatters, for example, said the following in an address to the Canadian House of Representatives thereby expressing what many of his Conservative fellow MP's think about indigenous rights:

> "The Europeans came to this country 300 years ago and opened it up and settled it and because we didnot kill the Indians and have Indian wars, that doesnot mean we didnot conquer these people. If they werenot in fact conquered, then why did they allow themselves to be herded into little reserves on the most isolated, desolate, worthless parts of the country." (Original quote, cited by: Kennedy 2004)

Ricardo Lopez, another Conservative MP, made himself heard with an idea of how to deal with "the Indians": "I think that all the Indians should all be sent to Labrador, to all live together in peace and leave us in peace." (Original quote, cited by: Kennedy 2004) In the light of the "nation-wide" election result of 2006 which will put the Conservatives into the position of running the country with a minority government many internationally acting nongovernmental organisation expressed the fear that indigenous rights recognition is now at risk in Canada (see: http://www.gfbv.de/). Nevertheless, a change in paradigms in the realm of indigenous rights recognition policies in Canada remains unlikely since Conservatives lack the ability of actually pushing through such changes with their minority government. Despite the fact that the liberal candidate Nancy Karetak-Lindell only won 39.1% of the votes in the 2006 General Elections, a "first-past-the-post" electoral law and the scepticism towards the Conservatives in Nunavut always meant that liberals were sent as parliamentarians to the Canadian House of Representatives.

Table 17: Nunavut's voting behaviour in the federal elections of 2000, 2004, and 2006:

	General Election of 2000	General Election of 2004	General Election of 2006
Liberal candidate	69 %	51,3 %	39,1 %
Conservative candidate	8,2 %	14,5 %	29.6 %
Green Party candidate	----	3,3 %	5,9 %
NDP candidate	----	15,2 %	17,6 %
Independent candidate	----	15,7 %	----
Marijuana Party candidate	----	----	7,8 %

Source: author's interpretation, using data of the "Elections Canada Website": http://www.elections.ca/ (24.01.2006)

In conclusion we can resume that despite the fact that Nunavumniut voted for candidates of political parties on the federal level at the same time not having a party system on the territorial level.

3.4.2. Second layer of analysis: Why general theories on the emergence of political parties do apply, but failed in leading to a party-system in Nunavut

A second way of looking at the interesting phenomenon of a non-existence of political parties in Nunavut is by trying to explain it via theories on the emergence of political parties. As Pelinka (2005) points out, there are three theories on the emergence of political parties and a political party system: The cleavage theory[84], the modernisation theory, and the political crisis theory. Hence we could ask ourselves which one of these theories does or does not apply to the Nunavut case.

As a quick glance on the Nunavut case suggests, class cleavages are not as manifest inside Nunavut society as they are between Nunavut and the rest of Canada (see Dyck 2004). In other words, the degree of social coherence in Nunavut is high whilst most Nunavumniut a considerably worse of compared to their Canadian fellow citizens (especially with respect to the Inuit of the territory it can be held that most of them live below the poverty line). This fact underlines that the inner-logic of cleavage theory makes it fairly understandable that political parties did not evolve in Nunavut because the non-existence of socio-economic differences inside its society lead to a non-existence of political parties as a whole. Nevertheless, cleavage theory is not the only explanation for this interesting fact.

Interestingly, we can take it for a fact that even if class cleavages deepened in the foreseeable future, the emergence of political parties in the Nunavut territory remains far from likely. One of the reasons might be found in a tendency to embark upon the ethnic cleavage between Inuit and non-Inuit instead of viewing social problems as a consequence of socioeconomic differences inside the Nunavut society. To put it differently, it appears noteworthy that among the four cleavages Lipset & Rokkan (1967) identified as parts of the formation process of political parties (see: Lipset & Rokkan 1967) Nunavut's Inuit population decided to grant the importance of the cleavage between dominant "southern" and subjected Inuit cultures.[85] This is striking because of the fact that a clear majority of 85% of the Nunavut population is Inuit which further decreases the likelihood of a possible future emergence of a political party alongside other cleavages than that of dominant versus threatened cultures. Furthermore, the degree of political coherence of interests is achievable without having political party institutions in the territory.

The modernisation theory, too, fails to present reasons for an emergence of a political party system in Nunavut because this theory would imply that Nunavut "is not in the right phase of history yet to host a political party system". Not only Kymlickas' cultural bias theory (namely that the term modernisation is culturally biased) but also the relative nature of the term "modernisation" contribute to a situation in which the emergence of political parties in the new territory of Nunavut does not become more likely just by the force of the modernisation theory. In other words, taking into account that a non-biased way off looking at the situation appears appropriate, the fact that the Nunavumniut are worse off in a socioeconomic sense does not have to imply that the Inuit have not reached a certain stage of history yet, nor does it give rise to the assumption that their way of life is "less modern" just because it is "different".
Finally, the crisis theory, despite explaining the emergence of a crisis of political legitimacy in the north, did not provide suggestions as to why political parties are not existent in Nunavut. This is interesting because the crisis of political legitimacy in the Northwest Territories contributed to a significant extent to the founding of the Tunngavik Federation of Nunavut (TFN) and with it to the manifestation of Inuit protest. Nevertheless, its successor, the Nunavut Tunngavik Inc., is not a political party (as will be explained later) and thus did not pave the way for an establishment of a political party system in Nunavut.
To sum up all this, none of these theories successfully explains reasons as to why political parties emerged almost everywhere in the world but not in Nunavut.

3.4.3. Third layer of analysis: The Nunavut Tunngavik Inc. (NTI) – not a political party?

Another way of looking at the problem could involve the analysis of a Nunavut institution that by its goals could look like a political party: the NTI (Nunavut Tunngavik Inc.). But as Légaré (2003) points out, the political body that evolved out of the Inuit autonomy movement TFN (Tunngavik Federation of Nunavut), namely the NTI (Nunavut Tunngavik Inc.), cannot be called a political party despite the fact that it pretends to protect Inuit interests. On the contrary, NTI is a private Inuit Corporation that was created on April 1, 1993 to defend the interests of the 24000 Inuit in the territory of Nunavut (see: Légaré 2003). As such, NTI is mainly concerned about the matters of Nunavut's indigenous Inuit population and less so concentrated on those of other Nunavumniut. Hence NTI can be described as a political body that monitors the implementation of the Nunavut Land Claims Agreement and its benefits for the local Inuit population. In other words:

> "NTI's role is to make sure that the 212 sections contained in the 40 Articles of the NLCA are properly implemented. Its mandate is to ensure that all beneficiaries benefit from the rights established in the NLCA. Contrary to the Government of Nunavut, which is a public government representing the interests of all residents in Nunavut, NTI is an Aboriginal organisation representing solely the interests of the Inuit of Nunavut. In fact, Inuit beneficiaries are the shareholders of NTI." (Légaré 2003: 119)

Consequently, the NTI cannot be called a political party, not even if we break it down to the basic functions of political parties (integration, recruitment, and legitimacy[86]). First of all, NTI only integrates to a certain extent the interests of the Inuit locals: that of the implementation of the land claims agreement. Secondly, recruitment via NTI functions in a rather indirect way: Some candidates to the Legislative Assembly were former NTI-officials. there is no necessity to be a part of NTI to become an MLA. Finally, legitimacy plays a certain role for NTI (in that it tries to bring the Government of Nunavut to provide legitimacy in its decisions) but the fact that NTI is a private corporation makes it highly unlikely that NTI comes into the position of ruling Nunavut. From all this being the case we can conclude that NTI despite being concerned with the interests of the Inuit is not a political party in the classical sense.

3.4.4. Fourth layer of analysis: Factors that prolong the status quo into the future

The following factors contribute to a situation in which the evolvement of a political party system in the territory stays highly unlikely: the size of the communities, the location of the communities, the climate in the territory, decentralised governance, and the principle of consensus inside the Nunavut Legislative Assembly.

To be more precise:

a.) The small size of the territory's communities and electoral districts implies that almost everyone knows the candidates personally. This fact, does not bear the necessity to found political parties. And this is not likely to change in the foreseeable future since migration-rates in Nunavut are very low.

b.) The fact that Nunavut's communities and electoral districts are far away from each other (Nunavut comprises to one third of the worlds second-biggest nation-state!) does not provide the friendliest environment for political parties. Especially during winter time communities tend to communicate within themselves and less so with the "outer world".

c.) Nunavut with its long winters and short summer seasons provides an environment which would make it very difficult to hold permanent contact with potential fellow-members of a political party. Although some (not all!!!) communities have internet-

access, party-meetings would have to take place in the summer-time. Hence the creation of political parties remains unlikely since it is “cheaper” and “easier” not to have them.

d.) Decentralised government in the territory leads to a closeness of government institutions. This fact subsequently alters the trust in politics and political institutions. Why have a political party if you can meet government officials in the community’s church or other gathering places?

e.) Most importantly, the principle of consensus[87] in the decision-making process of the Nunavut Legislative Assembly (once none of the MLA’s objects it, an act of legislation is passed by the Assembly and thus becomes law) requires unanimity in almost all decisions. Therefore, a climate of cooperation is more helpful and needed than one of conflict and debate.

To cut a long story short, for these reasons the evolvement of a political party system in the territory of Nunavut remains unlikely far into the future.

D. Analysis: Nunavut and indigenous rights recognition

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1. Nunavut and indigenous rights – a framework for analysis

As discussed before, the creation of Nunavut was heavily motivated by the fact that the recognition of indigenous rights in the Canadian North became a policy in Canada. A crisis of political legitimacy in that region made clear that Canadian federal institutions had to rethink and thus readjust their policies towards the Canadian Inuit up there. Consequently, the negotiations came to the conclusion that a land claims agreement should bring more clarity with respect to indigenous rights recognition. Hence the agreement that followed the negotiations intrinsically formulated four major goals:

- First of all, more certainty and clarity of rights to ownership and the use of resources – not only in the sphere of decision-making, but also in that political participation - was seen as a major priority the agreement had to respond to.
- Secondly, providing the Inuit with wildlife harvesting rights and rights to participate in decision-making concerning wildlife harvesting was made an important goal because of the cultural and social importance of these aspects in Inuit everyday life.
- Thirdly, providing the Inuit with financial compensation and means of participating in economic opportunities was thought – besides the element of compensation of course - to enhance more economic and social well-being among the Inuit.
- And finally, the encouragement of self-reliance and social well-being was made an explicit goal of the agreement.

There is no doubt that by their potentials all these provisions can enhance and thus foster the recognition of indigenous rights in the Canadian Arctic. Nevertheless, the central question remains: Could the Nunavut Land Claims Agreement keep up to these ambitions? And if yes: Can we term the example of Nunavut a possible “good news” case in terms of the recognition of the inherent rights of aboriginal peoples?

As outlined in the first chapter of this thesis, the main question is: Why are indigenous rights so important (for the Inuit)? And one of the easiest answers to this is that indigenous rights are important because otherwise discrimination against indigenous groups would linger on. In the course of the history-part I outlined that an emerging crisis of political legitimacy in the Canadian North had to lead to a certain response: Namely, the recognition of the inherent rights of the Inuit and their status as an “indigenous people”.

Not only in international law (under the provisions that are outlined in ILO Conventions No. 107 and No. 169), but also in the inner-Canadian context (section 35 of the Canadian Constitution Act) aboriginal groups such as the Inuit are thought to have a number of certain rights that nobody can take away from them. In other words, indigenous rights are important because they outline the basic rights of aboriginal individuals and their groups.

The demand for greater recognition of their inherent aboriginal rights remains an important part of Inuit intentions. To put it differently, the desire for more control over their lands and lives – once the dream of the Inuit elders such as Joan Amagoalik – still flushes through the veins of all Inuit of the Canadian North and thus echoes in their ears. This is what Amagoalik (1980) has once termed the "Inuit dream":

> "When I talk about the future and try to describe what I would like for my children, some people sometimes say to me that I am only dreaming. What is wrong with dreaming? Sometimes dreams come true, if only one is determined enough. (…) The Inuit were once strong, independent and proud people. That is why we have survived. That strength, that independence and that pride must surface again. We must prove to Canada that the original citizens of this country will not lie down and play dead." (Amagoalik 1980, 164-65)

And while there is no doubt that by its intentions both the creation and the implementation of Nunavut is indeed about indigenous rights recognition thereby mirroring the "Inuit dream", there is still some doubt about the question whether Nunavut is able to provide the Inuit of that region with a truthfully sustainable future.

1.1.Self-determination, Land-rights and rights to economic development and cultural preservation

Interestingly, both indigenous rights entrenched in international law (as discussed in part II. Of my thesis) and those protected by Canadian federal law make a couple of references to the fact that aboriginal peoples such as the Inuit have a couple of inherent rights. The most crucial claim in this context concerns the inherent right to self-determination and aboriginal self-government. To put it differently, it is proclaimed that indigenous minorities such as the Inuit of the Canadian North have to possess the right to have control over their destinies and lives without outside interference. This right, forms part of a broader framework of interconnected goals most indigenous peoples pursue in the struggle for recognition of this inherent right so self-determination, such as: land rights, rights to economic (sustainable) development and rights to cultural preservation. Residual patterns of these goals are apparent to different extents in the Nunavut Land Claims Agreement. The question is: How does political practice differ from theory?

For example, the collective title to approximately 350000 square kilometres of land of which roughly ten per cent include subsurface mineral rights does echo the goal of land rights and explicit title to Inuit lands. These provisions to title to Inuit owned lands have certain implications for Inuit locals in three respects: First of all, the size and scope of the land mass included in the claims influences access to hunting and fishing grounds. Secondly, the title influences the perceptions of Nunavut with respect to the question: What is "our land" from the Inuit perspective? And finally, the explicit title to lands provides a significant degree of certainty and clarity of rights. Put together, these three elements both make up size and significance of Inuit owned lands in particular and portray their link to theoretical provisions of indigenous rights on a broader basis. Central questions might include the extent to which these rights are more/less entrenched in the Nunavut Land Claims Agreement than they ought to be, or the extent to which the Agreement provides a "good/bad framework" in comparison to other cases.

In other words, the analysis of the question whether Nunavut is "good news" in terms of indigenous rights recognition can only be pursued by comparing the case on two different levels: With indigenous rights provisions generally and with other cases of intended indigenous rights recognition in particular.

Table 18: Nunavut and indigenous rights recognition - layers of vertical comparison:

Comparison:	The case of Nunavut	with	indigenous rights
Comparison:	The case of Nunavut	with	Other cases of indigenous rights recognition

Source: Own interpretation

Consequently, the analysis of rights to fishing and wildlife harvesting in the broader context and their successful/unsuccessful entrenchment in the Nunavut Land Claims Agreement has to contain both a comparison of the Nunavut case with the four interconnected goals of aboriginal peoples (which also means: the provisions of ILO Convention No. 169) and a comparison of the Nunavut case with other cases where federal (because this thesis is about indigenous rights recognition in federal systems) authorities tried to recognise the rights of indigenous peoples in their countries. Among the great many of others, these are some of the examples we could potentially use (where applicable) for our comparison: The US (for our purpose the Alaska Native Claims Settlement Act), Denmark (not a "federal system" – but the case of Greenland is interesting because of the self-government model for the Greenland Inuit), and Mexico (the case of Chiapas).

On a second level, the analysis has to contain the structures of government, the rights to land, fisheries and wildlife harvesting, the socio-economic context, and the reversibility of the NLCA. These aspects play an important role for indigenous rights recognition. Is public government the "appropriate alternative" to aboriginal self-government? Are land rights successfully guaranteed? Do wildlife harvesting rights provide a good framework for Inuit to hunt and fish and preserve their cultural attitudes? Is the Nunavut Land Claims Agreement a step towards a truly sustainable future?

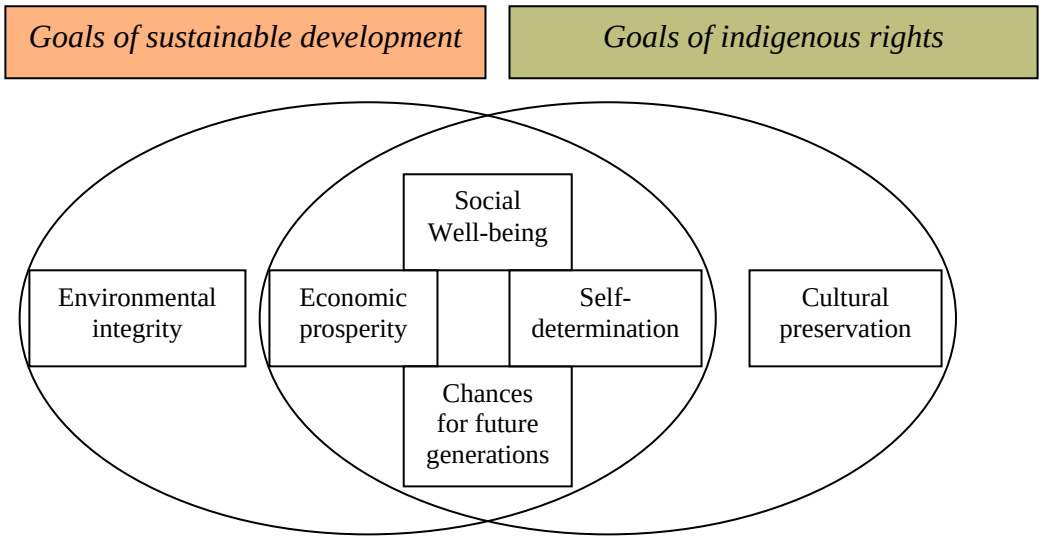
1.2.Sustainability, indigenous Rights, and the case of Nunavut

Answering these crucial and sound questions does not only involve the two layers of analysis I mentioned above, but also the unfolding of the aspect of sustainability. In other words, any discussion of the question whether or not Nunavut can be termed a "good news" case in terms of indigenous rights recognition has to reconsider the element of sustainability in this whole complex of indigenous rights recognition policies in federal systems. To understand this claim, a quick overview on central patterns of sustainability appears to make sense.

Both as a method of working "sustainable" and as a task developmental policies as a whole, sustainability has been one of the key elements of developmental policy discussion in the last 20 years. To be more precise, the element of sustainability portrays one of the most predominant paradigms of almost all development policies from the Brundtland Report of 1987[88] to the present. The approach to Sustainable Development this report established focussed on three main elements that were regarded important for development to be able to call itself "sustainable": Social well-being, environmental integrity, and economic prosperity. With all these elements fulfilled and with the paradigmatic demand that development should not disturb the chances of future generations, a development-process can be regarded "sustainable" (see: Nohlen 2001: 83). While there is no doubt that these requirements pose challenges to both our "western" societies and to third world countries, it seems even more of a challenge to fragile systems and economic hinterlands such as the territory of Nunavut.

Coming back to our main question in this paper, we easily recognise that the kind of sustainability the Brundtland Report subsequently proposes features the main provisions of indigenous rights in the broader context, namely: The enhancement of social well-being and economic prosperity/participation in economic opportunities. Consequently, sustainable development for indigenous peoples involves the recognition of their inherent rights.

Table 19: The overlapping goals of sustainable development and indigenous rights:



Source: author's interpretation

More precisely, we could ask whether the Nunavut model envisages social well-being, self-determination rights, economic prosperity, and the enhancement of chances for future generations, and to which extents. As outlined above, these aspects are to be compared on two levels: With the theory of indigenous rights and sustainable development on the one hand, and with other (similar?) cases on the other.

2. The ambivalent situation of self-determination rights in the Nunavut model

As mentioned before, self-determination rights are rather limited in the Nunavut case which might lead us to believe that the existence of public government instead of Inuit self-government signals a possible ignoring of the inherent right of the Inuit to self-government (at least in a formal sense). Nevertheless, a closer look at the scope and significance of the provisions the Nunavut Land Claims Agreement provide for the Inuit can (at least theoretically) prove us wrong. Consequently, this part of the analysis concentrates on the following questions: What does public government mean to/for the Inuit of Nunavut? Where is the difference between aboriginal self-government and public government, and how significant is this difference in the case of Nunavut and in a comparative perspective with other cases? In other words: Does not having aboriginal self-government in Nunavut make such a big difference? Can indigenous rights theorists learn from Nunavut in this respect?

Given the perception that public government is not the worst thing that could happen to the Inuit, a couple of deeper question may subsequently arise from this such as:

Are the structures of public government "appropriate" in a structural and procedural sense? Is the machinery of government able to provide the Inuit with "good government"? Are there good institutions in place to bring about a truly sustainable future (both at the territorial level and in comparison with other cases)? How have the Inuit made use of their new decision-making powers (territorially and in comparison with other cases)? How does joint decision-making inside the co-management work, and how do the Inuit participate in joint decision-making? Does joint decision-making necessarily have to be a disadvantage? What are the prospects for sustainable development in Nunavut under these conditions and in a comparative perspective? What are the opinions of decision-makers on the federal level?

2.1. Public Government: An appropriate alternative to Inuit self-government?

One of the key turning points in the negotiations leading up to the conclusion of the Nunavut Land Claims Agreement was the fact that Inuit officials dropped the demand for Inuit self-government thereby surrendering an inherent aboriginal right and thus their most important desire. For reasons outlined before, federal authorities were not open enough for the idea that a comprehensive land claims agreement with the Inuit involves self-government rights for them. Consequently, the finalisation of the agreement was only possible if Inuit negotiators would drop the demand for Inuit self-government. Therefore, the switch to a public government approach can be viewed as a manifestation of pragmatism on the Inuit part: Accepting this idea was the main tool to make the dream of a new Nunavut territory come true.

The central idea of public government (as opposed to Inuit self-government) is that every member of the population of Nunavut above the age of 18 is allowed to vote and run for office in the Nunavut Legislative Assembly. Every Nunavut citizen can be elected to the Canadian House of Representatives[89] or be nominated a member of the Canadian Senate on the federal level (see table above).[90] Finally, every Canadian citizen could become an employee in the Nunavut public service (even though there are restrictions as to how many non-Inuit have to face how many Inuit). At least from a democratic point of view, the public government model does not sound bad since everyone in the newly created territory has a voice. The question is: Does the non-implementation of the inherent right to self-government really have to have negative repercussions on Inuit life in Nunavut? Does not having Inuit self-government really make such a big difference?

Table 20: Public Government versus Inuit self-government – the key differences:

	Public Government	**Inuit Self-Government**
Who is allowed to vote?	The entire population of the Nunavut settlement area.	Only ethnic Inuit in the Nunavut settlement area.
Who can be elected to the Nunavut Legislative Assembly?	Every Nunavut citizen above the age of 18.	Only ethnic Inuit persons (above the age of 18) living in the Nunavut settlement area.
Who can be employed in the public service?	Potentially every Canadian citizen.	Only ethnic Inuit persons living in the Nunavut settlement area.
Who can be elected to the Canadian House of Representatives?	Every Nunavut citizen.	Only an ethnic Inuit person.
Who can be nominated by the Crown as a member of the Canadian Senate?	Every Nunavut citizen.	Only an ethnic Inuit person.

Source: author's interpretation

As a quick glance at the population figures of the Nunavut territory suggests, public government is *de facto* (not *de jure*!) self-government since 85% of the inhabitants are Inuit. The non-existence of political parties in the new territory deepens this perception since it appears highly unlikely that Inuit locals would vote for non-Inuit persons. Under these premises, a non-Inuit majority in the Nunavut Legislative Assembly would never come into being.[91] On the other hand, low education-levels among Inuit locals forced territorial and federal authorities to embark upon training (mostly pursued by southern non-Inuit persons) and take more non-Inuit into public service positions than the text of the Nunavut Land Claims Agreement and the NIC were aiming for. All this being the case can lead us to conclude that public government (although failing to fulfil Article 7 of the ILO Convention No. 169 and similar indigenous and human rights acts) does not necessarily have to be bad news in the case of Nunavut. Even more so if we look at the possibilities to actually pursue the self-government approach because:

> "A blanket right to self-government over a settlement region is difficult to reconcile with the detailed terms of land claims agreements. It raises questions of interpretation more than it provides answers to the existing needs of the communities and the people's relationship with the land. Including this right in any agreement creates an ambiguity that can hinder progress for the land claims area." (Gray 1994: 305)

However, if we compare the Nunavut case with other indigenous rights recognition policies in other federal systems we get a more differentiated picture of the whole situation. On the one hand, the case of Greenland and its similarities to the Nunavut case (*de facto self-government* because of a clear Inuit majority in the population) back the position that public government

does not directly violate the inherent rights of the Inuit. As Gray (1994) puts forward, the similarities of both models outweigh the differences by far. He points out that the home-rule system in Greenland is somehow similar to public government in Nunavut:

> "The 'home rule' system in Greenland, in place since 1979, with a 4-to-1 ratio of Inuit to Europeans, is similar to what Nunavut will be. The Inuit in Greenland run their government much like a Canadian province. Greenlandic issues are largely administered by a legislative assembly which is elected by residents of the island. Home rule resembles the public government model, with the Inuit asserting a strong role in government affairs. Originally, this was criticised as not effecting a complete withdrawal from the Danish authorities. Greenlanders have asserted de facto control over social, cultural, and environmental matters without any express powers or rights to self-government. This suggests that in Nunavut Inuit concern, existing or future, that the Agreement fails to acknowledge can be remedied by the Nunavut administration. The legislative process can indirectly create a self-governing territory for the Inuit. Consequently, the Agreement essentially guarantees much of what those who advocate native self-government seek to achieve." (Gray 1994: 311-312)

To these ends, the validity of the claim that Nunavut could possibly be regarded as a "good news" case with respect to the implementation of self-government rights (despite public government approaches) cannot leave the table, although the means through which this is proven do seem rather accidental because of the territory's population figures.

Table 21: Self-determination rights in a comparative perspective – Nunavut and other cases:

	Nunavut	**Greenland**	**Alaska (US)**	**Mexico**
Extent to which indigenous minorities can influence Federal decision-making.	A network of territorial, federal and co-managed issues. Right to participate in federal and territorial elections for all citizens.	"Home rule" system. Right to participate in all elections for all citizens. (Denmark is not a federal system!)	Self-determination in designated (fairly small!) areas (reserves). Right to participate in federal and provincial elections.	Participation-rights on the communal level. Rights to participate in federal elections.
Form of government	Public government.	Public government.	----------	----------
De jure or *de facto* self-government?	*De facto* self-government (85% of the population is Inuit).	*De facto* self-government (87% of the population is Inuit).	*De jure* self-government on the communal level.	Neither de facto, nor de jure self-government.

Source: author's interpretation

On the other side of the spectrum, the case of the Inupiat in Alaska shows that self-determination (on a communal level of course) is far from impossible (see: http://arcticcircle.uconn.edu/SEEJ/Landclaims/ancsa1.html, 15.11.2005).

The Nicaragua case (not included in our analysis) suggests that a regional autonomy model for indigenous minorities can be regarded a good solution in terms of the recognition of the right to self-determination (see: Binder 2003). In the light of the fact that indigenous rights to self-determination are opposed quite heavily by most of the countries that they concern, the Nunavut case – despite entitling the Inuit with full rights to self-determination – can at least be regarded a step into the right direction.

Consequently, we can conclude with Gray (1994) that:

> "Public government does not deviate from self-government principles as much as it contributes towards the establishment of a working relationship with government involving active Inuit participation. Instead of mono-ethnic self-government, public government transplants the Euro-Canadian system of popular representation into a jurisdiction where most of the citizenry are Inuit. The interests and rights of the majority are preserved by government. Protection of the Inuit is furnished not out of a need for special treatment due to historical disadvantage, but because they form a majority of the population." (Gray 1994: 309)

However, there is not a lot of doubt that for Nunavut public government can be regarded an "appropriate alternative" to Inuit self-government. In other words, due to population figures inside of the territory are ensured even though the Inuit are not provided with rights to full self-determination.

2.2. The structures of public government: An "appropriate framework"?

A second way of looking at public government involves the abilities of Inuit persons to influence the political process on the territorial level and beyond. Therefore, an analysis of the structures and procedures of public government in Nunavut in the light of this layer of analysis appears to make sense. An "appropriate framework" in this regard would be one that provides Inuit individuals with a high degree of control, participation rights and/or influence on the political processes inside the Nunavut territory. In other words, a good structure of public government is characterised by significant rights to political participation among the electorate of the Nunavut territory.

As such the ability to influence the political process refers to the concept of participation: The scope for participation in a political system defines the possibility to actually influence political processes. Norris (2002) defines participation as:

> "(…) any dimensions of activity that are either designed directly to influence government agencies and the policy process, or indirectly to impact civil society, or which attempt to alter systematic patterns of social behaviour." (Norris 2002: 16)

Consequently, the ability to influence the political processes in Nunavut is about the scope for pursuing this kind of activity. For the purpose of this paper, the analysis of the ability to influence (not its entire repertoire) government agencies is more important than getting the whole picture of political participation in Nunavut.

Historically, until 1966 the residents of what is now Nunavut were not allowed to vote in either federal or Northwest Territories' elections. This situation changed gradually with the introduction of a general right to participate in the decision-making process: A right to vote was introduced in 1966 and with it the right to get elected as a Member of the Legislative Assembly of the Northwest Territories (see: Hicks & White 2000). The establishment of Nunavut as a new Canadian territory subsequently altered the abilities of Inuit individuals and communities to participate in decision-making at both the federal and the territorial level.

Table 22: The ability to participate in the political process - Nunavut versus other cases:

	Nunavut	**Greenland**	**Alaska Natives**	**Chiapas**
Right to vote:	+	+	+	+
Right to get elected:	+	+	+	+/-
Right to speak out (fundamental rights & freedoms):	+	+	+	-
Approachability of government agencies. / Likelihood that government agencies care:	+	+	+/-	-
Control over own life. / Degree of personal freedom:	+	+	+/-	-

Signs legend: + satisfactory
+/- depends on the situation/level of government
- not satisfactory

Source: author's interpretation

Compared with other models, Nunavut seems to portray a good scope of possibilities to participate in decision-making and a relatively high degree of guaranteed fundamental rights and freedoms. Especially with respect to the approachability of government agencies

Nunavut's decentralised government model seems to provide Inuit locals with more possibilities to influence the political process. By comparison, the degree of self-control seems to be over-all satisfactory too (see table above).

In a comparative perspective the Nunavut appears a good example because unlike the Chiapas case autonomy is exercised territorially, not on the communal level. Furthermore, the tribal control of villages and regional Corporations model apparent in Alaska with all its negative impacts (lack of democracy, social decay, ethnic segregation and so on…) was avoided in Nunavut. At first sight, territorial autonomy and public government in Nunavut are two sides of the same coin and thus indicate that Nunavut is on the right path for a number of reasons: First of all, the "bigger scope" of autonomy creates more opportunities to influence federal policies. Secondly, territorial integrity has the advantage that one government can speak with one voice. It is both easier and more effective in federal negotiations with federal authorities to speak with one voice and to have made the necessary decisions on "what to negotiate for" inside a parliamentary (and thus legitimate) framework before-hands.

However, as a special comparison with the case of Greenland suggests Nunavut is fairly close to providing an optimum of self-control for the Canadian Inuit but "still not there yet". Key similarities such as public government, Westminster parliamentarianism, and decentralised government indicate that Nunavut learned from the Greenland case in a number of respects. Nevertheless, it is important to note that there are some significant differences between the two systems: Proportional representation[92] and the lack of consensus-principles lead to the establishment of a multi-party system in Greenland. Hence decision-making in Greenland follows a simple majority rule in parliament (see: Braukmüller 1990).

The reason why Greenland has to be considered "further ahead" in terms of self-determination rights is buried in the fact that the degree of self-control is higher and thus closer to the fundamental right of indigenous peoples to self-determination. Greenlanders are able to control most of the affairs of their concern on their own (except for foreign affairs). Although public government is not indigenous self-determination the population figures indicate that public government in Greenland is de facto self-determination because only 13 per cent of the population is non-Inuit (see: Gray 1994). Finally, the simple fact that Nunavut is somehow younger could have lead to the pursuit that nation-states with indigenous minorities (such as Canada) have learned from the Greenland settlement of 1979 which in political practice was not the case.

Nevertheless, the Nunavut-framework despite drawing on public instead of Inuit self-government can be considered a good model in terms of indigenous rights recognition in federal systems because Greenland is placed within a non-federal unitary system. A comparison with the situation in Mexico where the indigenous peoples of the Chiapas and Oaxaca regions are not provided with a certain right to self-government underlines this fact.[93] To these ends, the Nunavut case is good news in terms of indigenous self-government rights recognition.

Table 23: Appropriate structures of public government? - Nunavut versus Greenland

	Nunavut	**Greenland**
Form of government:	Public government.	Public government.
System of government:	Westminster Parliamentary-system.	Westminster Parliamentary-system.
Electoral system:	First-past-the-post.	Proportional representation.
Mode of voting in parliamentary bodies:	Principle of consensus.	Majority decides.
Party System:	No political parties. Candidates are elected as individuals.	Multi-party system with two or three major parties.
Centralised or decentralised government?	Decentralised government.	Decentralised government.
Federal involvement?	Some issues with full federal authority. Co-management boards in concurrent parts and certain designated issues.	All issues in the hands of locals except for foreign policy. (Denmark as the bigger point of reference is not a Federal System!!!)

Source: author's interpretation

In conclusion we can say that in comparison to many other cases the structures of self-government in place have to be considered good with respect to the implementation of the right of indigenous peoples to self-determination. the kind of autonomy the territory enjoys cannot be analysed successfully without taking a closer look at the implementation of other interconnected rights and demands of indigenous peoples such as land-rights or rights to economic development and cultural integrity. Therefore, a more concrete answer to the question whether Nunavut portrays a "good news" case in terms of indigenous rights recognition is not possible at this stage of analysis.

2.3.The prospects for a sustainable future

A sustainable future for the Nunavut territory on the level of "good government" would involve the necessity of having the right institutions in place to achieve these aims. As a first glance at the governmental structures in the territory suggests, it seems as if Nunavut has got institutions in place that might be helpful in providing a sustainable future. Both the existence of a Department of Sustainable Development and that of delegations to the co-management boards back this claim.

A final analysis as to whether the entire framework is to be considered appropriate and thus contributing to a "good news" case-scenario is not possible until the degree of land-rights and economic development features are outlined and analysed.

2.4.Summary of arguments including the experiences concerning Nunavut of directors of Canadian federal departments

In conclusion we can hold that limited self-determination rights in the Nunavut case do not necessarily mean that the public government system in place openly offends indigenous rights just by not implementing the demand of political self-government. On the contrary, public government does not only give the territory a more democratic outlook but also avoids the threat of ethnic separation and thus enhances the dialogue between different cultures within a given setting. Public government in Nunavut is largely equivalent to Inuit self-government because of the fact that 85% of the population is Inuit anyway. But quite similarly to the Greenlandic Home Rule system, the Nunavut model opens up the possibility to participate in decision-making at the territorial level by providing all citizens of the Nunavut settlement area with the same right in this respect.

As we can easily assume, the new status quo in the north with a overly Inuit territory and public government posed a lot of new challenges in the realm of administration. As Tim Coleman, Departmental Director of Environment Canada, points out:

> "There have been quite a few changes in terms of governance - going from the Government of the Northwest Territories to the new Government of Nunavut. And I think we are all learning to adjust to this new situation in a number of respects: First of all we're learning from the new politicians in Nunavut and their experiences to the same extent that they're able to learn from our experiences. And we all came to realise that the administration of the new territory is not that easy to conduct. For example, many Inuit are coming into new management positions and getting the public service up to the point that it actually works for the people of Nunavut has been and to some extent still is a difficult task. Secondly, the training of unskilled Inuit locals for government positions seems to be a longer-term process which is still anticipated by some of them. In my opinion people are coming to the conclusion that you canot just put people in charge of Departments and or administrating Government who do not

> have the experience of doing it. These people have to gain experiences and grow up to the point to be able to take those roles on. So in conclusion we could say that it's most probably a slower process and it's still going on." (Coleman 2004)

As will be discussed in the course of this part of my paper the changes in governance and their underlying difficulties created more chances for Inuit employment in the region. On the other hand, taking on the challenges of quasi-self-government meant that locals had to adjust to entirely new circumstances. Hence public policy and efforts in education policies concentrated on meeting these challenges.

it remains highly interesting that analysed in a comparative perspective Nunavut seems to comprise a fairly extensive scope of powers with respect to self-determination rights. The network of territorially, federally and co-managed issues in place in the new territory may even give rise to the claim that the extent to which the Inuit can influence decision-making is good. Only Greenland seems to offer a more extensive model in this regard.

This overall positive conclusion applies to the ability to participate in the political process too: the right to vote and get elected, the right to speak out, the approachability of government agencies, and the degree of personal freedom are met by the Nunavut case in a satisfactory manner with only Greenland offering similar outcomes in this regard. Furthermore, the institutions in place may of course be able to alter the prospects for a sustainable future in the north and thus contribute to a situation in which future generations have the same chances to manage their own affairs.

In conclusion we can say that providing the Inuit with a Nunavut territory and public government does by its potentials portray a good scope of powers in the hands of the indigenous Inuit minority.

3. Land-rights and access to natural resources in the Nunavut case

One of the most important elements in the context of indigenous rights is the right to land-ownership and land-use (see first part of this paper). As article 13 of the ILO Convention No. 169 states:

> "(…) governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship." (ILO Convention No. 169, article 13[1])

This importance of land-rights to the cultural integrity of indigenous peoples has to be acknowledged by implementing the special requirements outlined in articles 14 and 15 of the Convention, namely:

> "The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect." (ILO Convention No. 169, article 14[1])

Consequently, access to renewable and non-renewable resources is of special importance too:

> "The right of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources." (ILO Convention No. 169, article 15[1])

In the case of Nunavut land-rights and regulations concerning the access to both renewable and non-renewable resources are outlined in the Land Claims Agreements' articles 5 to 19.

These provisions, need to be subjected to a deeper analysis in the course of this part of my paper asking the following questions: To what extent is the implementation in line with the core of indigenous rights demands? How "progressive" is the implementation of land-rights in comparison with other cases? How much space does the Nunavut Land Claims Agreement leave for sustainable development policy? How do federal government officials think about the implementation of land-rights and access to natural resources in Nunavut? Does the Nunavut case represent a "good news" case-scenario in terms of land-rights implementation?

3.1.The implementation of land-rights in the Nunavut case

Among the most important declared aims of the Nunavut Land Claims Agreement that of achieving "more certainty and clarity of rights to ownership and the use of resources not only in the sphere of decision-making, but also in that political participation" is easily identifiable. The question is whether or not the agreement sticks to its own promises.

As outlined before, wildlife harvesting rights are fairly important to Inuit lifestyles because most of them live from the harvest of hunting and fishing in subsistent manner. In regard of this fact, the implicit text of the Nunavut Land Claims Agreement does not provide the Inuit with full control over wildlife harvesting in the newly created territory. Instead, wildlife harvesting is co-managed with federal authorities in the frame of the Nunavut Wildlife Management Board. Furthermore, the federal government is keen on emphasising its ultimate responsibility for wildlife management as a whole. This leads us to conclude that wildlife harvesting rights of Inuit locals are fairly limited in the newly created territory.

More importantly, not only wildlife harvesting but also the status of parks, conservation areas, land and resource management patterns, land use planning, development impact, water

management, municipal lands administration, marine areas, and outer-land ice-zone locations are subjected to co-management. In other words, the government of Nunavut's ability to enforce its policies autonomously is restricted to the extent that it has to ask federal authorities for approval. Hence the array of co-managed powers is fairly broad and does not leave a lot of space for a freedom of action in these matters on the part of Inuit locals. The simple fact that territorial concerns sometimes differ dramatically with federal ones deepens the pursuit that exclusive Inuit access to lands and surface resources is relatively limited.

Coming to land-rights, the Agreement does not provide us with a lot of data on which lands owned by Inuit locals. Rather, the focus is more on the legal status of Inuit ownership rights generally. Consequently, the Agreement fails to clarify which lands are to be owned by the Inuit which to a certain extent constitutes a violation of both ILO Convention No. 169s articles 14 and 15 and the aims outlined in the first part of the Nunavut Land Claims Agreement.

Perhaps more significantly in this regard is a further limitation the agreement sets out in its article 18: Inuit identification with a certain piece of land is not enough to actually own or even claim ownership rights on it. Where the transfer of lands is considered impossible by federal authorities, monetary compensation comes into being. The only exception to this is Inuit lands that belonged to them before the agreement was signed. But the size of these lands is far from significant. Due to the fact that federal authorities naturally embark upon their own interests in the region a transfer of lands that contain important non-renewable resources is not likely to happen in the foreseeable future. This means that article 18 of the NLCA openly violates indigenous rights documents such as ILO Convention No. 169.

Generally, restrictions concerning the lands Inuit locals can potentially claim under the provisions of the NLCA are not too harsh. Therefore, the agreement does actually try to respond to Inuit needs. To these ends, the comparison with indigenous rights acts in international law is somehow unfair and does not mirror the complexity of political realities. Therefore the analysis of the NLCA has to involve a comparison with other cases concerning the implementation of land-rights.

3.2.Implementation of land-rights in comparative perspective

Indeed a good example to be compared with the Nunavut agreement is the Alaska Native Claims Settlement Act.[94] The rationale behind this comparison is that Alaskan Natives have a couple of problems in common with the Canadian Inuit both socially and culturally.

Therefore, a comparison between the Nunavut case and that of the Alaska Native Claims Settlement Act appears appropriate in this regard.

As mentioned before, the Nunavut Land Claims Agreement provides the Inuit with collective title to approximately 350000 square kilometres of land. A look at the scope of native title to land in Alaska after the Native Claims Settlement Act (only 178000 square kilometres of lands subdivided in 220 villages and 12 Regional Corporations[95]) indicates that in terms of land-rights recognition Nunavut is far ahead of Alaska. Furthermore, the complicated subdivision of land-rights between villages and Regional Corporations in Alaska (although indigenous peoples are the owners of these companies) limits the possibilities of expressing united views and/or taking unified action towards federal agencies. To these ends, the "divide and rule"-approach of American federal authorities is not all good news for the indigenous peoples of Alaska and thus sheds a different and better light on the Nunavut case where a territorial government provides a framework in which collective action is possible.

Table 24: Land-rights and rights to surface and subsurface resources: Nunavut versus Alaska:

	Nunavut Land Claims Agreement	**Alaska Native Claims Settlement Act**
Land-rights:	Collective title to approximately 350000 square kilometres of land.	Title to 178000 square kilometres of land, divided between 220 villages and 12 Regional Corporations.
Access to renewable and non-renewable resources:	Priority rights to harvest wildlife for domestic, sport and commercial purposes on the lands delivered to the Inuit by the agreement. Access to non-renewable resources on ten percent of these lands.	Surface rights on these lands, subsurface rights only in the areas immediately surrounding the settlement areas, not in the rest of Alaska.
Joint decision-making with the federal level:	Co-management with federal authorities in the following areas: wildlife harvesting, parks, conservation areas, land- and resource-management, land-use planning, development impact, water management, municipal lands, marine areas, and the other outer-land ice-zone east of Baffin Island.	No joint decision-making.
Order of government within the federal framework the agreement establishes:	An own territory (province-like) with its own government.	Municipal level plus Shareholder-status in Regional Corporations.
Financial compensation:	1.148 billion Canadian Dollars over a 14 years period (= almost 1 billion American Dollars).	962.5 million American Dollars (462.5 million of which was to come from the federal treasury and the rest from oil revenue-sharing).

Source: author's interpretation

Despite these basic advantages the Nunavut Land Claims Agreement provides for the Inuit some shadow-sides of the agreement are clearly identifiable such as the claims procedure it establishes: Individual attachment to the land the Inuit live on is not enough to actually claim rights on it under the provisions of the NLCA. Where the transfer of land-rights is not considered possible by federal authorities monetary compensation takes its position. Inuit are only entitled to claiming mere ownership rights on lands they owned before the agreement was signed (and that is not a lot). Differently to this, the Alaska Native Claims Settlement which did not establish a *sui generis* claims process constitutes a status quo that views land-rights implementation as entirely settled and thus the claims process as "ended".[96]

However, as far as access to renewable and non-renewable resources is concerned Nunavumniut still appear to be better-off in comparison the Alaskan Natives: Both priority rights to harvest wildlife for domestic, sport and commercial purposes on the lands delivered to the Inuit by the Nunavut Land Claims Agreement, and improved conditions concerning access to non-renewable resources on ten percent of the lands delivered to them by its basic text deepen the perception that the Inuit are provided with a clear scope of resource-rights. On the other side, Alaskan Natives are only provided with surface rights on their lands, and subsurface rights on and in the immediate surroundings of their settlements, not in the rest of Alaska.

A bit more complex gets the entire situation if we take significance of resource rights into our analysis because Alaskan Natives seem to have more freedom of action inside resource rights than their Canadian counterparts in Nunavut. The scope of co-managed issues in the realm of resource-rights in Nunavut appears fairly broad in this regard: wildlife harvesting, parks, conservation areas, land- and resource-management, land-use planning, development impact, water management, municipal lands, marine areas, and the other outer-land ice-zone east of Baffin Island constitute a great array of joint decision-making powers. Set aside the demand of autonomy in this field one of the central questions we could ask would sound like this: Is co-management inside co-management boards really something bad? The answer to this question is everything but easy and thus contains a number of failures and chances of co-management: On the one hand, increased communication between federal and territorial authorities and more sense of "working together" can lead to a more balanced array of policies in this regard. On the other hand, less freedom of action for the Inuit can lead to policies that do not always directly tackle their basic needs. Nevertheless, more freedom of action in Alaska clearly constitutes a better position of Alaskan Natives with respect to resource-rights and resource-planning.

But if we turn our attention to the position of Alaskan Natives in power-relations within the American federal framework this perception changes quite significantly: As opposed to Nunavut's Inuit who have reached a land claims that provides them with a province-like status and public government on a territorial basis Alaskan Natives just occupy the third order of the American federal framework. In other words, the Nunavut Land Claims Agreement provides Inuit locals with more power within the logic of federal governance. This subsequently may lead us to conclude that (despite the fact that it fails to recognise the entire core of indigenous rights) the case of Nunavut by comparison to other cases does constitute a "good news" case-scenario in terms of indigenous rights recognition policies in this regard. However, other aspects of indigenous rights recognition such as its economic dimension in Nunavut have to be subjected to a deeper analysis before we can come to any precise conclusions on this issue.

One last element underlines the overall conclusion that the Nunavut case is superior compared to that of Alaska, - namely that of financial compensation: In addition to implementing a new territory Canadian federal authorities promised to provide locals with 1.148 billion Canadian Dollars (equals approximately 1 billion American Dollars) over a 14 year period. By comparison, US federal authorities paid 962.5 million American Dollars in the same time 462.5 of which came from the federal treasury and the rest from oil revenue sharing.

3.3.Land-rights in Nunavut and the scope for sustainability in the territory

Somewhat connected to the "money-issue" but not entirely a part of it is the question whether the Nunavut case generally and its provisions to land-rights in particular provides a good scope for sustainability in the newly created territory. To put differently, the question here is: Are land-rights and rights to surface and subsurface resources for indigenous peoples (the Inuit in this case) implemented in such a way as to ensure that the new entity the agreement establishes can develop its future in a sustainable manner?

Generally, the entire framework does provide the Inuit with land-rights and some access to surface and subsurface resources. To this end the implementation of land-rights in Nunavut does actually bring the Inuit closer to satisfying their own needs without disturbing those of future generations. As will be explained in the next part of this analysis, more access would be necessary to successfully implement the basic reforms to provide the Inuit with a truly sustainable future. That is to say that a growing Inuit society (high birth-rates) meets a land claim that does not correspond to these circumstances.

3.4.Summary of arguments including the experiences concerning Nunavut of directors of Canadian federal departments

Generally, though, the Nunavut Land Claims Agreement's intention to address the recognition of indigenous rights cannot be denied: Given its aim to provide more certainty and clarity of rights to ownership of lands and the use of resources the agreement stands in the tradition of major land claims agreements in the Canadian North. Moreover, the agreement holds that a new Canadian territory would be created to successfully implement the provisions to land ownership and resource management.

But intentions should not mislead us to the belief that the indigenous Inuit minority can autonomously command wildlife management or exclusively own pieces of land. In many of these issues joint decision-making federal forces inside co-management institutions prevails. But co-management of certain issues does not really have to be a disadvantage: As Mr. Trevor Swerdfager, Director General of Wildlife (Environment Canada), points out co-management has increased the quality of wildlife management in the new territory:

> "We now have a better staff to deliver government services across the borders, particularly with respect to Canadian wildlife services. Essentially what we've done up there is creating wildlife management boards which are jointly run by the Inuit and by ourselves. It's a form of joint decision-making rather than the federal government deciding everything. This has totally changed the way through which we deal with wildlife management. This is an enormous improvement. We are much further ahead in wildlife management than we ever were before. So the quality of wildlife management has gone up, the money for wildlife projects in the north has gone up, the quality of our management overall has substantially increased. Throughout the last seven years we've seen a huge improvement." (Swerdfager 2004)

On the other hand, higher conduction costs due to decentralised governance in Nunavut make it difficult to work with these insitutions:

> "We've also got at the same time higher conduction costs. We've got a government up there that is very difficult to work with, because the government is spread all over the place and its capacity is fairly small. They're not able to participate in every discussion. So a lot of other problems are build up upon these difficulties. There is some really overhead in administration costs than there has been before as well." (Swerdfager 2004)

Nevertheless, many important issues are jointly decided on by both federal and territorial authorities inside the co-management boards. These issues include: the status of parks, conservation areas, land and resource management patterns, land use planning, development impact, water management, municipal lands administration, marine areas, and outer-land ice-zone locations are subjected to co-management. According to Mr. Swerdfager, the most controversial issues for the years to come will concern wildlife harvesting and hunting in the

new territory. Therefore, co-management in these controversial issues may contribute to a better environmental policy because both federal and territorial concerns are discussed within a joint forum:

> "Now hunting was very much at the centre of life in Nunavut for most people who live there. We donot have a lot of low administration problems in Nunavut. That is to say that there are not a lot of cases of over-hunting or over-fishing. The Beluga-whale is perhaps the most controversial issue: How much can they hunt? But I think the main challenges are getting to a species at risk programme which they donot have now. They've got so many stations they are looking to develop for endangered species and that will remain a big challenge for them. There are going to be some pressures on the environment from a development point of view because non-renewable resource development might cause some severe problems." (Swerdfager 2004)

A comparison with the case of the Alaska Native Claims Settlement Act gives rise to the claim that Nunavut is far ahead of it in terms of both the scope and the significance of indigenous land-rights recognition: Not only the fact that it provides indigenous locals with more access to land but also the non-existence of complicated subdivisions between villages and Regional Corporations gives rise to the contention that Nunavumniut have more room for collective decision-making (no "divide-and-rule"-approaches) compared to their Alaskan fellow-groups.

concerning resource-access the Inuit of Nunavut seem to find themselves in a more comfortable situation: Priority rights to harvest wildlife for domestic, sports and commercial purposes on the lands granted to them by force of the Nunavut Land Claims Agreement, and in a co-managed manner on the rest of Nunavut's lands underline this perception. Nevertheless, the great scope of co-managed issues indicates that resource access is limited to a certain extent. This fact includes both positive and negative sides of the same coin:

- Increased communication between federal and territorial authorities and more sense of working together may lead to a more balanced array of policies in this regard.
- Less freedom of action for the Inuit may lead to political actions that do not always directly tackle their basic needs.

Over all, especially access to non-renewable resources should not be overestimated in the meantime because their potentials of contributing to economic success are rather limited. As the Director General of Environment Canada, Mr. Tim Coleman, puts it:

> "In the case of resource exploration and resource extraction it is important to stress that usually they are short-term enterprises which end once resources are taken out completely. But if Inuit manage to come to production in the north there would be a lot of opportunities to increase the quality of training and thus the future chances of the territory." (Coleman 2005)

As will be outlined in the course of this part of the paper, increased resource-access should not lead to extensive and thoughtless exploration of non-renewable resources if sustainability is a pursued goal. Hence the "economic development versus environmental protection"-trade-off should be handled in such a way as to ensure that a good balance paves the path towards a truly sustainable future in the Canadian North.

4. A good framework for development? - Nunavut and indigenous socio-economic rights

Equally important and thus interconnected with land-rights and rights to self-determination the right to economic development and social well-being makes up a central pattern of both indigenous rights and the interconnected goals of aboriginal peoples. Set aside the general weaknesses of the "right to development" in the context of international human rights law (see: Höll 1994),[97] this central pattern needs to be analysed before drawing tentative conclusions on the ability of the Nunavut-model to indicate a "good news" case-scenario with respect to indigenous rights recognition. To this end, a "good-news" case-scenario would be one that focuses on and adequately tackles the four key factors of wealth-creation in the territory: Physical, human, natural, and social & organisational capital.

Put simply, this part of my paper seeks to answer the following basic questions: What are the key economic and social problems in Nunavut? How are physical, human, natural, and social & organisational capital positioned in this context? How does the Nunavut Land Claims Agreement tackle these problems? Are problems adequately addressed by the accord? How has the socio-economic situation in Nunavut improved in the last five years? A very short analysis comprises the comparison with other cases.

4.1. Key economic and social problems in Nunavut

As outlined before, Nunavut's mixed economy (coexistence of modern and traditional ways of living) has a couple of intrinsic negative side-effects: First of all, the territory's status as an economic hinterland with the implied dependence on the industrial core of Canada and all its other basic characteristics (domination of primary production [hunting and fishing, the crafts-business etc.], culturally dominated by the industrial core, and space and physical barriers continuing to hinder economic development). Secondly, the legacy of colonial domination with all kinds of social pathologies as leftovers (portrayed in the history part of this chapter with the picture of the phases-model of political change in the north) is a central pattern of

Nunavut's economic problems. Finally, widespread underemployment and unemployment in Nunavut communities continues to pose a serious problem in the region.

Nunavut's status as an economic hinterland implies that the territory heavily relies on the industrial core of Canada. To this extent, Nunavut has to be termed a "resource frontier" in which space and physical barriers continue to hinder economic development, and in which primary production dominates the economy (in Nunavut the exploitation of both renewable and non-renewable resources prevails).

As outlined in the history-part of this paper, the Inuit went through the painful process of colonisation. The far too rapid integration of them into the Canadian wage-based economy and society fundamentally changed their lives in a number of respects and thus lead to all kinds of social pathologies such as: High unemployment rates, low levels of education and self-esteem, and wide-spread alcoholism among Inuit locals.

This brings us to the third problem, namely unemployment and underemployment. Both these phenomena have serious impacts on Inuit daily life because they became a chronic problem that, combined with alienation from the land and from traditional culture and so-called "benefits of the welfare state", began to engender social pathologies such as: low self-esteem, alcohol and substance abuse, family violence, youth suicide and welfare dependency.

All these problems are somehow interconnected with each other and all of them stem from significant weaknesses in the four areas of wealth creation which are:

- Physical capital: Does a system offer appropriate transportation infrastructure, telecommunication facilities etc.?
- Human capital: Human labour; society level of literacy; education and skills status, and knowledge; health status.
- Natural capital: Raw materials required for economic activity: land, wildlife, minerals, energy, and the knowledge derived from this.
- Social and organisational capital: the environment in which natural, human and physical capital interact to create wealth. Involves all sectors of wealth creation in Nunavut.

Not surprisingly, Nunavut has severe weaknesses in the area of physical capital: Being situated in the very north-east of Canada and far away from the metropolises in the south the new territory has problems with establishing a transportation system that allows for more than just resource transportation. The extraordinary size of the territory and the small number of its overall population does not only signal a low population density but also subsequently implies the fact that communities are small and far away from each other. Hardly any roads exist in

Nunavut. Arctic climate further limits the ability to reach communities with ships or boats: Half of the year is winter which means that Arctic waters are covered with ice that time and thus unreachable. Hence aviation is somehow the only possibility to reach other Nunavut communities. Currently two airlines connect Nunavut communities between each other and with southern Canada: First Air and Canadian North. As the Nunavut Economic outlook of 2001 argues: “The state of infrastructure is a serious problem that is affecting both economic and social development. A key consideration is how Nunavut’s infrastructure will need to be upgraded to accommodate population growth stemming from a large population young population and a growing number of elderly.” (Nunavut Economic Outlook 2001, ii) The question we have to ask hear would be whether the Nunavut Land Claims Agreement tries to tackle this problem. What measures are undertaken to restructure the Nunavut transportation network?

Another weakness concerns human capital: Despite increased training and schooling in the territory Nunavut has still problems because its population is ill-trained and ill-prepared for the Canadian labour market. Furthermore, another mortal tendency is identifiable: Many young Inuit did not learn how to fish and hunt in such a way as to ensure that a living is possible if necessary. This leads to increased dependence on federal payments among this large group of people. The Nunavut Economic Outlook of 2001 clearly pinpoints the central problem: “The level of formal education has been increasing has been increasing in Nunavut and the situation has been improving; it still ranks low compared to populations in other jurisdictions. Over half of the population has less than a high-school diploma.” (Nunavut Economic Outlook 2001, ii) To this extent, a central question would be: Does the Nunavut Land Claims Agreement and the official policy currently correspond to the problems in the realm of education and human capital building?

As discussed in the part before, the Nunavut Land Claims Agreement does recognise the right of the Inuit to lands and resource access. This point is decisive since raw materials such as land, wildlife fibres, minerals, energy and the knowledge derived from this are crucial components of wealth creation generally. In other words: “Natural resources are vital to Nunavut’s mixed economy and the overall way of life for most Nunavumniut. Sound knowledge of Nunavut’s natural capital is required that builds on and integrates Inuit Quajimajatugangit (IQ).” (Nunavut Economic Outlook 2001, ii) Hence the analysis returns to land-rights and resource-access-patterns this time asking these questions: Does the NLCA provide a good structure to counterbalance negative implications of the fact that Inuit do not own all the lands of Nunavut? Are there any policies that may or may not improve the

situation in the territory of Nunavut with respect to increased resource access? Which development projects were started in the meantime?

Turning our attention to the fourth and last factor of wealth creation (social and organisational capital), we may easily recognise that any analysis focuses on the entire Nunavut model in economic terms. The rationale behind this assumption concerns the basic fact that the environment in which natural, human and physical capital interacts to create wealth needs to be subjected to a deeper analysis too.

A last section of the analysis asks three questions that are central to the Nunavut model: How does the agreement intend to tackle the problem of widespread unemployment? How does the system deal with the legacy of colonialism? And: What (if any) possible motivations does the Nunavut Land Claims Agreement put forward to make dependency on federal payments less of a problem?

4.2. How does the Nunavut-framework tackle these economic problems?

The problems in economic and social spheres described above are tackled by the Nunavut framework in a number of respects: First of all, the Nunavut Land Claims Agreement draws on them by defining the frame wherein (sustainable) development policy should take place. Secondly, political practice in Nunavut gives us a picture of the issues the Nunavut Government and the co-management boards are working on these days. And finally, private sector enterprises are taking decisions that are of significant importance for the people in Nunavut. In the course of this part of my thesis actions taken or written down by these three elements are being subjected to a somewhat deeper analysis.

a.) Physical capital:

Due to the difficult weather situation and Arctic climate in the territory not much was done to actually change the weaknesses of the transportation system or even turn them into strengths. Consequently, the activities of the Department of Transportation of Nunavut focused more on training and capacity building. That is to say that:

> "The Department of Community Government and Transportation (CGT) provided ongoing training to graduates of the Community Land Administrative Certificate Programme by the GN as well as municipal corporations. Training included that provided by educational and annual administrative process. This is critical due to the limited number of knowledge land administrators and the high employment turnover rate in this field." (NIC Annual Report 2000-01, 8)

Apart from these training and research undertakings, not much has been done to increase transportation facilities. Nevertheless, housing programmes and the achieved improvement of

telecommunication networks in the territory indicate that Nunavut actually tries to change something in the realm of physical capital construction (see: NIC Annual Report 2000-01, and: NIC Annual Report 2002). To this end, we can speak of an attempt to make some of the infrastructure needed to support economic production more adequate and available for Inuit locals. At the same time, appropriate structural attributes, more favourable institutional factors, and the construction of social attitudes conducive to development are set up in Nunavut.

b.) Human capital:

As mentioned before the comparatively low education level and the lack of appropriate skills among Inuit locals is a significant problem for that threatens the creation of wealth in the territory. It is a matter of fact that Nunavut's large proportion of young people need to be educated in such a way as to ensure that they get enough skills to make their living in the unfriendly Arctic setting. Therefore, territorial authorities recognised the need for enhanced education and more training programmes on specific issues. The Conference Board of Canada identified the economic benefits in a study conducted in 1997 essentially emphasising that:

> "No matter how much capital investment occurs, without adequate investment in workforce training and education employers will remain unable to harvest the full potential of that investment. The country's economic well-being depends on its capacity to make the most effective use of people and to maintain the skills of its workforce" (quoted in: Nunavut Economic Outlook 2001, 59).

And the board puts forward the contention that Nunavut will only develop in that respect once three main areas of skills are integrated sufficiently:

i.) Fundamental skills (how to communicate, manage information and use numbers);

ii.) Personal Management Skills (demonstrate positive attitudes and behaviours, be responsible, be adaptable and work safely); and,

iii.) Teamwork Skills (work with others, participate in projects and tasks).

According to the board, Nunavut residents will be able to compete with individuals of other Canadian provinces and territories once these fundamental skills are acquired (see: Nunavut Economic Outlook 2001). it's believed that most Inuit need to adjust their skills to the new situation in the territory.

Each community has its own primary school. Both young pupils and older ones are educated both in English and in their own language (Inuktitut).[98] Given the general importance of language to indigenous peoples, the desire in Nunavut to have a formal recognition of their own language was quite important. As Nowak (2005) readily points out:

> "The role of the political process leading towards Nunavut should not be underestimated. Campaigning for the language was part of it and it still is a very important issue, a matter of identity. Inuit in Nunavut and Nunavik share the opinion that language is linked to their most basic identity: 'My thoughts and my heart can only be expressed through Inuit words.' Language maintenance often is a matter of choice – an act of identity." (Nowak 2005: 165)[99]

Hence the decision of having Inuktitut as a second and English first language in school had good reasons. Furthermore, this fact should suggest that the painful history of colonial domination was over.[100] To this end, education in Inuktitut fulfils basic requirements of most indigenous rights pacts (article 28 of the ILO Convention No. 169 for example).

Further education is offered at regional schools and at the Nunavut Arctic College which specifically prepares and trains locals for specific jobs on the labour market. As such, the Nunavut Arctic College is situated in Iqaluit and it provides a great and thus satisfying variety of education possibilities ranging from teachers education over nursing to telecommunications.

Table 25: Education-programmes offered by the Nunavut Arctic College (Iqaluit):

	- Nunavut Teachers Education Program; - Social Worker; - Early Childhood Education; - Alcohol and Drug Counselor Program; - Environmental Technology Diploma/certificate Program; - Management Studies; - Human Resource Management Certificate; - Language and Culture; - Computer Technology Program; - Media Communications; - School Community Counsellor Program; - Community Administration Certificate Program; - Office Administration Program; - Adult Basic Education; - Job Entry; - Community Lands Administration Certificate; - Community Support Worker Program; - Career Development Certificate; - Community Health Representative; - Nursing – Bachelor and Diploma Program; - Nunavut Aboriginal Language Specialist; - Visual Fine Arts and Crafts; - Jewellery and Metalwork; - Drawing and Printmaking; - Small Business Fundamentals – Basket/Doll making; - Sculpture; - Health Careers Access Program; - Small Business Fundamentals for Artists; - Heavy Equipment Operator (Introductory); - Carpentry (Pre-Employment); - Mineral Exploration Field Assistant Program; - Mine Training (Introductory).	

Source: Own interpretation of http://www.nac.nu.ca/courses/index.htm (22.12.2005)

In this regard, the College provides just as many educational programs (if not more) than any other Canadian College.

To sum up, Nunavut does actually try to do something about education and training weaknesses among its population. It must also be noted that the Nunavut Land Claims Agreement offers a good framework for the implementation of education programs that meet the needs of Inuit locals. The fact that Inuktitut is treated as a second language in the territory is a unique situation of indigenous rights recognition in this regard.

c.) Natural capital:

While there is no doubt that Nunavut lands are rich of natural resources this fact does not necessarily mean that the Inuit can claim mere ownership rights and true self-government on all of them. In quite a few policies concerning both renewable and non-renewable resources Nunavut authorities decide concurrently with federal authorities within the so-called co-management boards. As outlined before, these areas concern wildlife harvesting, parks, conservation areas, land- and resource-management, land-use planning, development impact, water management, municipal lands, marine areas, and the other outer-land ice-zone east of Baffin Island.

Currently resource extraction is a growing sector in the Nunavut economy totalling to 129.9 million Canadian Dollars stemming both from mineral exploration and mineral extraction. The Conference Board of Canada points out that:

> "Although the existing mines in Nunavut are winding down production, there are a number of promising projects in the exploration and pre-development stages. Toronto-based Tahera Corporation has begun a feasibility study for mining its diamond-bearing Jericho kimberlite pipe in in Nunavut." (Nunavut Economic Outlook 2001, 39)

Which overall leads us to one significant point:

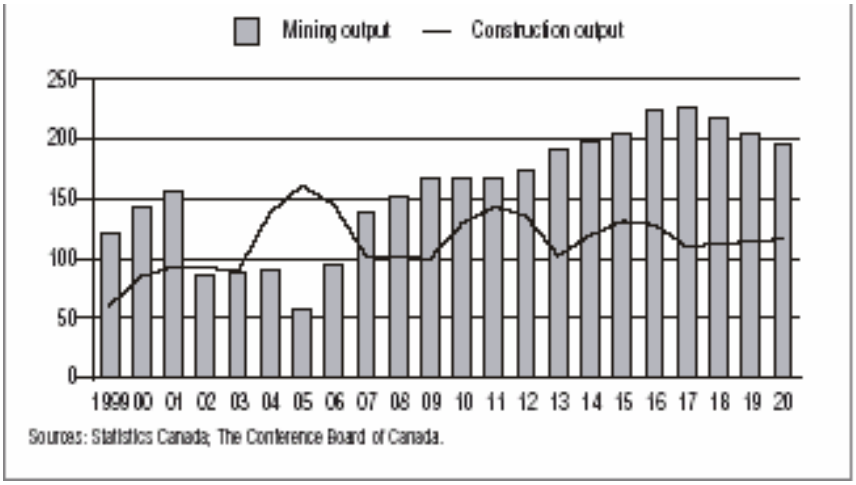
> "Mining is currently Nunavut's largest 'wealth-creating' industry and because most new projects will be 'fly-in/fly-out" operations this industry holds out the greatest opportunities for market employment, and business development in many local communities. (…) With the development of participation agreements, it is expected that more of the economic impacts of mining will stay in Nunavut than was previously the case." (Nunavut Economic Outlook 2001, 40)

In the light of the growing importance of the mining sector for Nunavut's economic growth (see table below) consultation rights outlined in article 27 and 28 of the NLCA seem to perfectly fit the purpose of indigenous rights recognition.

A second glance at this entire complex confronts this fact with considerable degrees of doubt because both the complicated claiming procedure (lands are only transferred to the Inuit after an analysis on the use of this piece of land for federal authorities took place and a decision on

the issue swung the pendulum towards lands transfer instead of monetary compensation) and the fact that Nunavut does not have Inuit Corporations to take out resources on its own (which means that profits go elsewhere) continuously hinder economic development and the prospects for a truly sustainable future in the new territory of Nunavut. So in essence we end up with resuming that the Nunavut Land Claims Agreement leaves us driven by positive (implementation of consultation) and negative assumptions. Hence a final conclusion on whether or not the Nunavut model provides a good framework for indigenous rights recognition in the sphere of natural capital has to be considered a difficult task.

Table 26: Nunavut's Mining- and Construction-sectors as "engines of growth" – a forecast:



Source: the Conference Board of Canada 2001

d.) Social and organisational capital:

By dividing the Northwest Territories into two parts and creating Nunavut as a new territory Canadian federal authorities fundamentally restructured the social and the organisational relations within the Canadian North. The new territorial framework thereby evolved to encompass both a crucial reorganisation of federal-territorial relationship and a completely new way of providing the Canadian Inuit of the eastern Arctic region with rights to participate in the matters of their concern such as wildlife management, environmental review or community waste systems. Hence the question of social and organisational capital in Nunavut and its potentials for an improvement of living-conditions of northerners would involve the entire framework of Canadian-Inuit and of Inuit-Inuit relations. In the light of these considerations, my entire thesis concentrates on this point as a whole. Therefore, this small part takes on the features of a more narrow approach by looking at the extent to which the

social and organisational framework provides appropriate conditions for economically developing and thus overcoming the problems in the Nunavut territory.

A first way of looking at the potentials of the new territorial framework with respect to Nunavut can involve the analysis of the institutions in place in the new territory. Do they successfully foster the means through which wealth creation takes place in Nunavut? What is needed to provide the economy with the conditions helpful for its improvement and survival? To this end, it needs to be mentioned that for the inhabitants of Nunavut having its own territory and public government means taking on more responsibility for their own economic future.

An issue-by-issue analysis of the Nunavut Land Claims Agreements ability to positively influence the economic future would lead to positive conclusions because:

- A democratic political system at both the territorial and the federal level gives rise to the hope that Inuit matters are taken care of by force of the will of a majority of Inuit locals.
- The regional government of Nunavut has everything a good administration needs: Ten Ministers and a Premier that are responsible to a parliament, namely the Nunavut Legislative Assembly.
- Departments specialised in all possible matters that are contribute to the construction of wealth were installed in the territory: Community Government, Housing and Transportation; Culture, Language, Elders and Youth; Education; Health and Social Services; Public Works and Government Services; Sustainable Development; Executive and Intergovernmental Affairs; Human Resources; Finance and Administration; and Justice and Regulatory Affairs.
- The existence of eight agencies exclusively designed to assist the government in achieving its aims underlines an overall positive conclusion. As outlined before, these agencies are: a Nunavut Business Credit Cooperation; a Nunavut Development Corporation; a Nunavut Legal Services Board; a Nunavut Liquor Commission; a Nunavut Liquor Licensing Board; a Nunavut Systems Corporation; a Power Corporation; and a Workers Compensation Board.
- Co-management boards on many important issues and their ability to positively influence the course of Nunavut's economic development such as: a Nunavut Wildlife Management Board; a Nunavut Environmental Impact Commission; a Nunavut Management Commission; a Surface Rights Board; and a Nunavut Waters Office.

Analysed simply by its potentials co-management does not necessarily have to be worse than full authority. To put it differently: Faults may happen nevertheless.

- A Nunavut Implementation Commission that supervises the implementation of the Nunavut Land Claims Agreement. Its annual reports are important land-marks on the road to a better future in the new territory;
- And a model that allows for more decentralised ways of governing this newly created entity. Both the assessment and the accommodation of problems are made easier due to the closer location of government agencies to the people of Nunavut. Hence decentralisation increases the chances of Inuit to participate in the pre-decision-making phase which makes the government more volatile to the needs of Inuit locals.

So overall we can draw positive conclusions: Nunavut's social and organisational framework is good for the implementation of norms that increase living-conditions, well-being and wealth in the territory. Institutions and organisational structures seem to have been implemented in such a way as to ensure that the lives of as well as social-wellbeing among the territory's Inuit improve in the foreseeable future.

e.) Other issues: Unemployment, the legacy of colonial domination, and the hinterland-problem

Indeed one of the most important future challenges for the Nunavut territory and its inhabitants concerns the task of developing an economic framework wherein a growing population can make its living without heavily depending on the welfare-state. As outlined in chapter 1 of part B of my thesis (and then later in chapter 3.2.2 [b] of the same part), unemployment is a big problem in the newly created territory. Low levels of education among the adult working population continued to pose a major challenge to affecting real change in the bad unemployment situation in the north. Taken together, low levels of education, high levels of alcohol- and drug-abuse, and widespread unemployment encouraged all kinds of social pathologies like social decay, low levels of self-esteem and high levels of family violence. Therefore, providing Inuit and non-Inuit locals with a job-market and appropriate structures of adult education programmes would be an important guideline towards more employment in the territory and the only way of absorbing the social problems in Nunavut in an appropriate manner.

Hence one of the first things that were written into the land claims agreement was entirely devoted to the employment-problem in the territory (currently the unemployment rate is at 27.2%). As mentioned earlier, the outcome of the negotiations leading up to the land claims

agreement was that employment in the wage-based primary, secondary and tertiary sectors had to be improved once a Nunavut territory came into existence. The Agreement itself kept up with these ambitions by subsequently proposing a proportionality-model of Inuit employment in Nunavut governmental institutions in its article 23. Throughout the last 5 years political practice failed in fully implementing this provision which was largely due to a lack of education on the part of most Inuit locals but does not necessarily have to mean that goals will be abandoned once 85% Inuit in public-sector employment is possible. From the point of structures and frameworks for Inuit employment in the public sector, the Nunavut Land Claims Agreement has to be called a good example for changing the outlook of employment in a community that is merely indigenous.

Not only the public but also the private sector was subjected to a provision explicitly devoted to employment-patterns in it: Article 26 of the Nunavut Land Claims Agreement bridged the gap between private sector employment and economic development in such a way as to ensure that the Inuit take part in celebrating the benefits of development projects, especially with respect to employment in these spheres. The Nunavut Impact and Benefit Agreement these provisions draw on tries to make sure that skilled and successfully trained Inuit get employed in resource enterprises in the Nunavut settlement area by outlining specific techniques to reach these aims such as scholarships, preferential hiring for Inuit (companies have the obligation to employ those Inuit that are trained onto the same levels of non-Inuit employees) or the general improvement of health-services in the territory.

Both aspects of employment described above are interconnected with the demand of overcoming a history of colonial domination. By putting Inuit locals into the position of actually participating in the wage-based economy on an equal basis the agreement also accommodates the demand of non-discrimination in social and cultural spheres. The fact that the Inuit have to be asked for their opinion prior to starting resource development projects in the region gives rise to the perception that the recognition of indigenous rights is an important aim of the Nunavut Land Claims Agreement. A Nunavut Social Development Council enables locals to participate in decision-making concerning shape and methods of welfare-delivery. To this end, the Nunavut Land Claims Agreement tries to overcome a history of colonial domination without truly ending it due to the money-power of southern-Canadian forces.

4.3.Economic rights recognition in a comparative perspective: Nunavut versus Greenland

Analysing the recognition of rights to economic prosperity and social wellbeing in the case of Nunavut with the example of Greenland in this regard proves an interesting task because of the similarities of both cases: First of all, the status of an economic hinterland which makes both entities dependent on the industrial core of the bigger contexts they are placed in. That is to say that Greenland is heavily dependent on payments from Copenhagen just as much as Nunavut is on federal transfers from Ottawa. Secondly, the importance of the public sector within the economic setting is something both cases share. Thirdly, Arctic climate conditions with all their negative impacts on transportation networks etc. continuous to hinder economic development in both the Nunavut- and Greenland case. Fourth, small-sized and distanced communities paired with an overall low population density does not only make travelling a real task but also grants that Nunavut's and Greenland's weaknesses in the realm of physical capital are constitutive for a situation in which economic activity is hard to pursue on a sustainable basis. Finally, although "only" 10.5% of its population is reportedly without a job (as opposed to 25% in Nunavut), unemployment remains a crucial issue for Greenland's governments for the years to come much in the same way as for those of Nunavut.

Given these general similarities, a comparison between them may guide us towards deeper conclusions on the extent to which Nunavut portrays a "good news" case-scenario in terms of indigenous economic and social rights recognition. How does Greenland try to overcome chronic problems in the realm of physical capital? How do education systems in Nunavut and Greenland differ from each other? How does Greenland make use of its natural resources? How "sustainable" are the potentials of Greenland's social and organisational framework?

Now, speaking about ways through which Greenland tries to cope with the problematic state of infrastructure basic parallels with the case of Nunavut are recognisable: Arctic climate, low population density, and weak transportation networks called for different approaches to infrastructure. Hence increased quality of telecommunication networks were endorsed in both cases. Greenland with its investment into better conditions for the fishing sector (especially regarding shrimp-fishery) somehow provides a slightly more advanced state of infrastructure than does Nunavut (see: Hamilton, Rasmussen & Brown 2003). But this does not have to be a disadvantage for Canada's new territory because it can learn from the light- and shadow-sides of Greenland's policies with respect to increasing capabilities in the realm of physical capital.

At the very beginning, Greenland had to face similar problems with respect to human capital: An Inuit population that was not appropriately educated to be able to keep up with an increasingly globalising environment. Hence the Government of Greenland embarked upon a

set of education policies to make Inuit locals ready for employment in the first, secondary and third economic sectors: Education in primary schools follows the Scandinavian model with its 9 years of compulsory schooling for everyone. As the Ministry of Culture, Education and Churches states:

> "The school system works toward advancing and developing the students' spiritual and physical abilities and emphasising the development of independence in balance with respect for the student's personal and social responsibilities." (http://www.randburg.com/gr/cultmini.html, 23.01.2006)

Secondary education focuses on providing an array of different schooling possibilities at business-[101] and the following non-business schools:

- Building and Building systems School;
- School for Metal work;
- Food Industry School;
- School for Animal Husbandry;
- Seaman's School of Greenland;
- Shipping and Fisheries Schools (see: http://www.randburg.com/gr/cultmini.html, 23.01.2006)

Furthermore, a University of Greenland offers a broad array of three-year-bachelor degrees and some two-years-master programmes. Courses are offered such as the three-year programme of the school of Journalism.

As this suggests in comparison to the Nunavut case, quality-differences are hard to find. That is to say that Nunavut, with education in primary schools and at the Nunavut Arctic College is able to keep up with Greenland in terms of education policy and attempts to change the bad situation in the realm of human capital. The fact that Nunavut allows for education in Inuktitut to almost the same extent as Greenland does underlines this overall positive conclusion.

Differences between these cases are even harder to find if we look at the way of dealing with resources nature is able to provide in Greenland and in Nunavut, namely gold, lead, and zinc. Some lessons Nunavumniut could actually learn from Greenland are not "all phantastic": Greenland, too, had big hopes concerning their natural resources and the possible exploitations of them which lasted until the late eighties of last century when major zinc- and lead-mines were closed down. The fact that Nunavut is dependent on co-management with federal authorities inside the co-management boards might once save Nunavut from having similar experiences because of the greater extent of federal involvement in local affairs.

I would like to point out briefly that Nunavut provides a similar model than does Greenland with respect to social and organisational capital. Hence will not expand to any deeper conclusions than outlined in point 2.2 of my thesis because of the fact that social and organisational capital, and the comparison of it between the cases of Nunavut and Greenland, was referred to earlier.

As an overall conclusion concerning economic and social rights recognition suggests Nunavut is close to offering a model that is not necessarily worse than that of Greenland. Thus Nunavut can rightly be "accused of" providing a "good news" case-scenario in comparison to other cases, such as Greenland, too.

4.4. Nunavut – towards economic sustainability?

As mentioned before, the goals of sustainable development (which partly overlap with those of indigenous rights) are: Providing the group of people concerned with social well-being, economic prosperity and self-determination rights in such a way as to ensure that the chances of future generations to enjoy the same rights are not disturbed or undermined. This chapter initially centred its attention onto two of these basic aspects of sustainability, namely economic prosperity and social well-being (two aspects that are somehow interconnected):

- In the case of economic prosperity, growing the economy by increasing the potentials of physical and human capital would be one central aim if a sustainable future. Furthermore, resource extraction in the realm of natural capital should occur without harming the satisfaction of the needs of future generations.
- Secondly, increasing sustainable social well-being in the newly created territory would have to involve increasing human capital to the extent that locals can find a job in the wage-based primary, secondary and tertiary sectors. In other words, the problem of chronic underemployment has to be resolved and thus a truly sustainable future with guaranteed satisfaction of the needs of future generations subsequently emerges from it.

Hence the economic development versus environmental protection trade-off has to be solved in a balanced manner. So far no problems have been recognised and co-management in the realm of resource extraction seemed to have had positive impacts on sustainable development generally. Furthermore, the Nunavut model with its unique array co-managed issues seems to provide a good framework for actually solving the conflict between economic development and environmental protection in a balanced manner. (The question here would be whether self-determination is always a necessary component of sustainable development). However, in

the field of social well-being much has to happen in the years to come if sustainability was the aim. Chronic under- and unemployment has to be tackled; education levels have to be altered; and the capacities of ensuring the chances of future generations to enjoy the same rights have to be installed before a truly sustainable future becomes the present.

4.5.Summary of arguments including the experiences concerning Nunavut of directors of Canadian federal departments

As we have seen in the course of this chapter, Nunavut suffers from a bunch of economic problems: The territory's status as both an economic hinterland and a resource frontier is characterised by a high degree of dependence on the industrial core of Canada (especially with respect to the welfare state and to federal compensation payments), the domination of the primary sector, cultural dominance by the industrial core, and the problem that space and physical barriers continuously hinder economic development. The legacy of colonial domination which is witnessed in the form of all kinds of social pathologies such as low levels of self-esteem, family violence, and alcohol and drug abuse. Widespread unemployment (as a result of a radical shift from subsistence patterns to the employment-economy), in the territory has lead to a situation in which Nunavut depends to an extraordinary degree on federal payments and subsidies. It is easy to see that these problems are inextricably linked and form a vicious cycle of economic misery. Hence problem-solving have to focus on them to build a truly sustainable future for the Inuit of the Canadian Arctic.

More precisely, the problems in the newly created territory concern two of the four factors of wealth creation: A lack of physical capital (mainly a lack of transportation infrastructure), and a lack of human capital (education levels of Inuit locals are relatively low compared to other Canadian fellow citizens). Disadvantaged location, Arctic climate and the small size and distanced location of communities contribute to a weak transportation network in Nunavut. Travellers are overly dependent on aviation. The question is whether changes are achievable with respect to physical capital in such a fragile eco-system. Despite increased training programmes the population of Nunavut is ill-prepared and ill-trained to have a chance on the Canadian labour market. Therefore most efforts undertaken in Nunavut in the last years focussed education.

As David Robinson, Departmental Director of the Canadian Environmental Assessment Agency, reports from his experiences, overcoming physical barriers thereby increasing the infrastructure in Nunavut has to remain a central aim which is currently tackled by the territorial government and inside co-management boards:

> "We know that in Nunavut there's only very little infrastructure. I think Nunavut is looking at ways to foster such infrastructure. Nunavut seems to try to make access to resources that could be developed or exploited, and to have that access made easier. (…) This has to take place before these decisions are taken." (Robinson 2004)

Nevertheless, much more has to happen in this field if increasing the potentials of local business to participate in the Canadian and international market-schemes and successfully compete with other products there was the aim.

Most efforts were centred on education programmes and increasing the skills in the local Inuit population. Tim Coleman, Departmental Director of Environment Canada, pinpoints the fact that undertakings in the past five years were essentially about the necessity to have appropriate education programmes to staff the territorial government of Nunavut:

> "The government in Nunavut tries to put experienced people into government positions. This is crucial because the Government of Nunavut is the greatest employer in this new territory. (…) But personally I would say that because of the departmental employment programmes there are a lot more Inuit in higher positions than ever before. And I suspect that as the mining sector gets a bigger issue and resource extraction becomes more important chances to more economic growth are increasing. It will be southern companies for the most part that come into the territory and search for whatever they are looking for. This gives rise to chances of increased Inuit employment as well. But a lot of times these corporations come in with their experts which might threaten Inuit employment chances. On the other hand, Inuit training programmes can respond to this threat." (Coleman 2004)

This point is of special importance because one of the obligations the Nunavut Land Claims Agreement makes (in its article 23) is proportionality in government jobs. That is to say that 85% of government jobs have to be held by Inuit locals.

Margaret Keast, Departmental Director of Fisheries Canada, reports from her experiences that reaching the 85%-Inuit-in-government-positions-demand was and still is an important and thus pursued goal[102]:

> "And some years before measures were undertaken that were fundamentally designed to get the 85 percent Inuit of the population into government jobs. And the 80 percent Inuit thing seemed to have been quite important. (…) One of the concerns was that a lack of education among the Inuit was a problem, especially among Inuit professionals. There have been so many problems like in other aboriginal communities where you donot have enough teachers and so on. So the main concern was to get the 85 percent Inuit clause into practice which meant that a lot of training was necessary. And also the people that had experience and education were really overworked at the beginning. And many organisations had job offers for them." (Keast 2004)

The institution responsible for achieving more employment in the wage-based primary, secondary and tertiary sectors of the Nunavut economy is the Nunavut Arctic College which offers some 35 different education and training programmes (ranging from teachers education to mine training) intrinsically designed to bring Inuit locals "up to speed" in terms of skills.

These undertakings are of significant importance because, as Tim Coleman readily points out, education-programmes are central cornerstones in "bringing Nunavut up to speed":

> "One of the key challenges is getting the people of Nunavut up to speed in terms of education, training and experience. This is important to be able to take on higher positions in the administration of Nunavut. Entirely, the project should focus on the ability to take on the challenges ahead in the sectors of development policy and the expression of positions on the national level. And certainly growing the economy in Nunavut is a huge challenge too and it continues to be so. The advantage that we have now is that the government can pay more attention to that. Before it was the Northwest Territories Government and the attention was more on the development that was happening in the western resource centres." (Coleman 2004)

Generally, though, more employment in the Nunavut territory does not only foster the indigenous right to economic development but also that of social wellbeing in the newly created territory. According to Trevor Swerdfager, Director General of Wildlife Canada, unemployment is a massive social problem in Nunavut:

> "The challenges for Nunavut are enormous in the social area, because some communities have huge alcohol-problems, social decay and high levels of unemployment because there are no jobs. I was in Iqaluit in April this year and the unemployment rate there is some fifty per cent. So for these people there is nothing else to do than just hanging around in the streets. That is a big problem I think!" (Swerdfager 2004)

Thus current policies focussing on decreasing the unemployment rate by increased education and training can rightly be termed contributors to social wellbeing too.[103]

Another positive aspect of the Nunavut concept as a whole with respect to human capital is to be found in the fact that Inuit locals learn their own language, Inuktitut, as a second language in school which contributes to cultural preservation as an important indigenous right.

natural capital and the appropriate access to natural resources continue to play an important role for Nunavut's economic future, especially in the mining sector. Still, the economic development versus environmental protection trade-off calls for a certain degree of cautiousness in this field if sustainability was the aim. According to Trevor Swerdfager of Wildlife Canada, both renewable and non-renewable resources and their appropriate management are important components of Nunavut's economic future:

> "Now hunting was very much at the centre of life in Nunavut for most people who live there. We donot have a lot of low administration problems in Nunavut. That is to say that there are not a lot of cases of over-hunting or over-fishing. The Beluga-whale is perhaps the most controversial issue: How much can they hunt? But I think the main challenges are getting to a species at risk programme, which they donot have now." (Swerdfager 2004)

And he admits that not all development programmes in the north will focus on possible bad side-effects for the environment because: "There are going to be some pressures on the

environment from a development point of view because non-renewable resource development might cause some severe problems." (Swerdfager 2004) In other words, there are going to be some real challenges to the environment if profit becomes the central aim and not patience.

While there might arise some concerns about the extent to which co-management in so many areas and public government in the territory fulfil the demand of Aboriginal self-government, positive conclusions with respect to the capabilities of Nunavut's social and organisational capital prevail: A democratic political system in the new territory guarantees for a kind of decision-making that envisages the will of a majority of Nunavumniut. The territorial administration and its Departments have the potentials to take care of all matters that are important to Nunavut's inhabitants. Agencies exclusively designed to assist government bodies in achieving central aims complete these overall positive perceptions. Finally, the system has got a Commission in place that monitors the implementation of the Nunavut Land Claims Agreement.

And even co-management does not only have to be bad news. If we took the worry raised above concerning profit-orientation instead of patience in the realm of economic development co-management could potentially counterbalance such negative tendencies. Furthermore, it's not quite clear whether co-management by definition has to be worse than full authorities. Finally, co-management boards may lead to balanced decision-making because in many cases what's good for Canada does not have to be bad for Nunavut, vice-versa. As Margaret Keast of Fisheries Canada reports from her experiences, co-management boards can be viewed as problem-solving agencies between federal and territorial interests too, especially with respect to hot issues like the fishing quotas on the Baffin Island's East Coast:

> "We've got co-management in this area as well with the Nunavut Wildlife Management Board. I think the Inuit wanted some decent quotas for fisheries especially for whales. (…) Those quotas then got allocated to Nunavut. So I think as far as the allocations are concerned that was an improvement for Nunavut. One of the central issues was the bowhead whale which was after the land claims agreement subjected to an allowance to hunt some of them in special designated areas. Bowhead for subsistence was the approach here. One in 3 years or one in 7 years depending on the area was the outcome of these special talks on bowhead whale harvesting." (Keast 2004)

And to a considerable extent sustainability for Nunavut is an important and thus enforced aim of all co-management boards. Nevertheless, environmental assessment inside the Nunavut Environmental Impact Commission does not necessarily have to mean that projects are blocked. Instead, as David Robinson of the Canadian Environmental Assessment Agency points out, environmental assessment usually takes place in such a way as to ensure that

sustainable development (= a balance in the economic development versus environmental protection trade-off) is fostered:

> "(…) there are some people that think that the reason to conduct environmental assessment is to stop projects. And this is not the way we look at it, or the way the Federal Governments looks at it. (Nor is it the way most people look at it.) The purpose of environmental assessment or the fact of having an environmental assessment is meant to foster sustainable development. So you want to make sure that if there's somebody doing a certain type of project, it has to be done in the best possible way for both the environment and the local economy." (Robinson 2004)

So environmental assessment inside the Nunavut Environmental Impact Commission aims at project assessment that looks on sustainable development:

> "If for example in Nunavut the Nunavut Government is planning a project which encounters the things they would like to see to help sustain the economy. What we're trying to do federally, and this applies to both the Canadian Environmental Assessment Act and to the Nunavut Land Claims Agreement, is to identify the kinds of impacts that may occur from someone's development and to identify the mediation measures to avoid or minimise these effects to a certain degree. They have to be acceptable on a long-term basis. So, you can basically say that if you're doing a good job at identifying the problems and at making suggestions as to how to avoid the bad side-effects, you can have an environmental sustainable economic development." (Robinson 2004)

In conclusion we can say that strengths in the realm of social and organisational capital can once outweigh evident weaknesses in the fields of human and physical capital if leaders and decision-makers on both the federal and the territorial level have the patience and the wisdom to take the right decisions at the right time. Obviously, too rapid and thus thoughtless moves towards exploitation of non-renewable resources can have a couple of negative side-effects on the environment thereby threatening sustainability in the new territory. But joint decision-making in co-management boards decreases risks in this field simply by making decisions a matter of negotiations between federal and territorial authorities.

Even a comparison with the case of Greenland underlines the fact that Nunavut is not necessarily bad news with respect to indigenous economic and social rights recognition. On the contrary, Nunavut seems to have the potentials of advancing living-conditions in the regions inasmuch as Greenland does.

5. Two possible ways of reversing the Nunavut Land Claims Agreement: Constitutional amendment, and "playing the money power-card"

If we talk about the transfer of power to the Inuit by building up Nunavut as a new part of the Canadian federal framework we have to include following question in our analysis: How easy is it to take these powers away again? How possible is it to reverse the creation of Nunavut? Can the Nunavut Land Claims Agreement be put out of existence? To put it differently, an assumption would be that if you provide someone with more power there have got to be ways of taking these powers back.

There are two possibilities of reversing the Nunavut Land Claims Agreement and thus the creation of the Nunavut territory:

- The amendment of section 35 of the Canadian Constitution Act;
- A decision by a majority of the members the Canadian House of Commons stating that the federation would stop federal payments to Nunavut after the agreed 14-years-period.

The first of these alternatives (if pursued) would erase the legal grounds of the Nunavut Land Claims Agreement by amending the constitution in such a way as to take out the right of aboriginal peoples to self-determination. The Nunavut Land Claims Agreement as a treaty was inextricably linked to this constitutional provision. However, the amendment formula outlined in section 42 of the Canadian Constitution Act (constitutional amendment in matters affecting both federal and provincial/territorial policies, i.e. the right of Aboriginal peoples to self-government)[104] that changes affecting both levels of government need the approval of the federal and the legislatures of two thirds of the provinces representing at least 50 percent of the Canadian population (for more details see: Dyck 2004: 389-394). This rule is called the two-thirds-plus-50-percent-rule. Constitutional amendment in the case of Aboriginal self-government rights is not too likely since none of the two big Canadian political parties openly opposed this provision in the past (and most probably wonot oppose it in the foreseeable future).

Even if (hypothetically) the Conservative minority government with its Premier Harper (the party that is most critical about Aboriginal self-government) would once attempt to move towards amendment it would need the approval of seven provinces making up 50 percent of the Canadian population to be successful in this matter. This is not too likely to happen since at least seven provinces that account for 50 percent would have to be run by Conservative provincial governments: Ontario/Quebec and six others. The traditional hostility towards the Conservatives in these two provinces does not make this case too likely.

A second way of reversing the Nunavut Land Claims Agreement, despite existing, seems even harder to push through: A declaration that stops financial aid after the agreed 14 years period. As outlined part C. of my thesis, the Nunavut Land Claims Agreement guarantees for a capital transfer totalling to 1.148 billion Canadian Dollars which is to be paid to the newly created territory over a 14 year period (see part C chapter 3 of this paper). In the light of Nunavut's economic situation its financial sustainability does not appear anywhere close. Consequently, playing the "money power"-card by cutting off the umbilical cord that feeds the new territory would mean forcing Nunavut into bankruptcy. Solutions to this problem could involve deconstructing the Nunavut to an affordable extent and thus reversing the Nunavut Land Claims Agreement.

Nevertheless, playing the "money power"-card-alternative would involve taking on the risk of a Supreme Court appeal that in the end forces federal authorities to step back from these undertakings. Apart from the scandalous climate that such a decision would provoke among the Canadian civil society, this would evoke negatively reinforced results in public opinion polls and at election times the risk of being voted out of office. Although the Conservative Harper-administration could once try do push through its eight point "Canada First"-plan thereby shifting money from Aboriginal issues towards increased defence-spending and the instalment of military stations in Nunavut (for more details on this see: http://www.gfbv.de), success in these undertakings are far from likely due to the fact that his minority-government would not get a majority for approval of such plans.[105]

In conclusion it can be stated that although these two possibilities of partly or entirely reversing the Nunavut Land Claims Agreement exist theoretically the likelihood of a federal government embarking on one of them is relatively low.

E. Conclusion

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Similarly to other cases of *indigenous rights recognition*, the *central reasons* on the part of Canadian federal authorities to sit down and negotiate a land claims agreement were a "history of colonial domination" and the lack of political legitimacy it contained. This crisis of political legitimacy evolved in the second and third period of a four-phases-model of political change in the Canadian North:

- A phase of equilibrium which began with first contact between Inuit locals and European explorers and fur traders did not only intensify relations between these groups but also led to a co-existence of subsistent lifestyles with early forms of a market economy. The Inuit did not hunt or fish for satisfying their own needs anymore, but got involved in trade with European newcomers. As relations with Europeans got closer and more intense, dependency on the trade with them became an easily identifiable problem. Consequently, the equilibrium phase was not only characterised by the turn from a "collision" to a "relationship"-like form of contact with newly arrived Europeans and the adoption of market economy models in the economic sphere but also by a change in paradigms in the area of politics: increasing degrees of colonial domination substituted old self-determination patterns.
- A phase of scarcity as a result of the deepening of the fur trade in which Inuit shifted their century-old attitudes and their subsistent lifestyles towards a more exploitative market-economy style of doing business. This shift did not only lead to food shortages in the north, it also opened up more space for south Canadian interests. Furthermore, the territorial inclusion of Arctic lands by south Canadian forces never had the official consent of its Inuit inhabitants. All this contributed to a crisis of political legitimacy which reached its climax in the 1950s and 1960s with federal housing programmes that deepened the alienation of Inuit from their old nomadic ways of life. Official documents such as the 1951 Indian Act or the 1969 White Paper considered Inuit "inferior" unless they integrated and thus fully assimilated to "average Canadian" lifestyles.
- Together with an emerging Inuit elite that subsequently became more aware of the misery of its people, the emerging crisis of political legitimacy called for a phase of adjustment in south Canadian perceptions.

To these ends the NLCA can be seen as an act of political adjustment.

This *act of political adjustment* was the outcome of negotiations between federal authorities and Inuit locals of the eastern parts of the Northwest Territories which went over 5 stages: preparation, proposition (from the acceptance of the claims proposal to the negotiations that led up to the drafting of an agreement in principle), elaboration (from the signing of the agreement in principle to the negotiations that led up to the drafting of a final agreement), approbation (signing and approval of the final agreement), and implementation (the "carrying out" of the agreement). Thus Nunavut became a political reality in 1992/93 when federal authorities signed and approved the Nunavut Political Accord and the Nunavut Land Claims Agreement. The signature under these pieces of law established three things:

- A new territory by dividing the Northwest Territories into two parts thereby changing the federal-territorial bargain in Canada;
- New institutions of public government at the territorial level; and
- An example of how indigenous rights recognition can look like.

Hence this conclusion focuses on all these aspects.

a.) Nunavut: A new territory and a new federal-territorial bargain

On April 1, 1999, a new part of the Canadian federal framework came into existence: Nunavut, as this new territory is called, was the first territory in Canada that based its footing onto the aboriginal right to self-government laid down in article 35 of the Canadian Constitution Act. The Nunavut Land Claims Agreement as the foundational treaty established new forms of working together, especially with respect to joint decision-making inside the so-called co-management boards. Although the Department of Indian Affairs and Northern Development still holds responsibility for federal decisions concerning Nunavut, a province-like status within the Canadian federal framework was perhaps the biggest success. Nunavut enjoys the same rights as the other two Canadian territories.

b.) New institutions on the territorial level

A newly established entity of the Canadian federation with public government called for the establishment of institutions to "run" and administer local affairs in Nunavut. The Nunavut Land Claims Agreement outlined a Westminster parliamentary system in which the legislative branch consists of a 23 members Legislative Assembly (22 of which are elected in Nunavut's eleven communities – two in each one of them – following the rules of a first-past-the-post electoral system) whilst executive power is exercised by a territory-wide elected Premier (who is also the 23rd member of the Legislative Assembly) and a selection of 6 members of

the Legislative Assembly as the ministers of his cabinet. Within the executive, the Premier of Nunavut – despite having been elected by the entire electorate – has a more "first among equals"-like position. This implies that cabinet has to win another 6 or 7 members of the Legislative Assembly over to its proposals to pass a piece of law.

As mentioned above, Nunavut has six ministries to administer its affairs. Their departments have their focus on: Community Government, Housing and Transportation; Culture, Language, Elders and Youth; Education; Health and Social Services; Public Works and Government Services; Sustainable Development; Executive and Intergovernmental Affairs; Human Resources; Finance and Administration; and Justice and Regulatory Affairs. Furthermore, there are eight agencies to assist the cabinet in its undertakings: Nunavut Business Credit Cooperation; Nunavut Development Corporation; Nunavut Legal Services Board; Nunavut Liquor Commission; Nunavut Liquor Licensing Board; Nunavut Systems Corporation; Power Corporation; and Workers Compensation Board. Not less significantly, Nunavut institutions are involved in joint decision-making with federal authorities inside the so-called co-management boards (more on that later). These newly established boards are: Nunavut Wildlife Management Board, Nunavut Environmental Impact Commission, Nunavut Management Commission, Surface Rights Board, and Nunavut Waters Office. In terms of their influence, these co-management boards have the status of advisory bodies which are set up to make recommendations to federal and territorial governments. A Nunavut Implementation Commission (NIC) supervises the implementation of principles outlined in the Nunavut Land Claims Agreement.

A very interesting aspect of this newly created polity is the fact that Nunavut does not have a political party system on the territorial level. The non-existence of deep societal socio-economic cleavages (most Inuit are equally badly off and thus equally dependent on the Canadian welfare-state), a first-past-the-post electoral system, the territories' outlook (far flung, small communities), and the principle of consensus within the Nunavut Legislative Assembly did not make political party institutions a vital political necessity. Despite a tendency among Inuit locals to vote for the Liberals in federal elections, none of the Canadian political parties was able to grasp the icy grounds of the eastern parts of the Canadian Arctic. Because of the small, far flung communities, the Arctic climate, decentralised governance, and the principle of consensus inside the Legislative Assembly changes to this status are unlikely.

c.) Nunavut and indigenous rights recognition

As mentioned before, the basics of indigenous rights concern self-determination, land-rights, economic prosperity, and cultural preservation. How close is Nunavut to actual recognition of them?

The *"Nunavut and self-determination rights"*-complex the NLCA established calls for an overall positive reception. In other words, despite the fact that it was not self-determination but public government that was implemented, Nunavut is "good news" in terms of self-determination rights recognition and for the following reasons:

- Limited recognition of self-determination rights in the Nunavut case does not necessarily mean that the public government system in place openly offends indigenous rights generally. Not implementing the demand of political self-government while embarking on a public government approach can be viewed in the light of its advantages too. Public government gives the territory a more democratic outlook, avoids the threat of ethnic separation and enhances the dialogue between different cultures within this given setting. The political reality suggests that public government de facto equals Inuit self-government in Nunavut: 85% of its population is Inuit anyway and non- or anti-Inuit stances are unlikely.
- There are doubtless similarities with the Greenlandic Home Rule system: just as much as Greenland, Nunavut opens up the possibility for indigenous and non-indigenous groups to participate in decision-making at the territorial level by providing all citizens of the Nunavut settlement area with the same right in this regard.
- Further comparison with other models directly leads us to believe that the network of territorially, federally and co-managed issues in place in the new territory may even give rise to the claim that the extent to which the Inuit can influence decision-making is good. Only Greenland seems to offer a more extensive model in this regard.
- Nunavut provides the Inuit with more fundamental rights and freedoms, and more abilities to take part in the public decision-making process: the right to vote and get elected, the right to speak out, the approachability of government agencies, and the degree of personal freedom are met by the Nunavut case in a satisfactory manner with only Greenland offering similar outcomes in this regard. The institutions in place may of course be able to alter the prospects for a sustainable future in the north and thus contribute to a situation in which future generations have the same chances to manage their own affairs.

As pointed out earlier, the Nunavut Land Claims Agreement's intention to address the recognition of indigenous **land-rights** is undeniable. Nevertheless, a deeper analysis of the extent to which its key provisions in the realm of "land rights" recognition and access to resources take on features of a possible "good-news" case-scenario leads us to more complex answers:

- On the one hand, it's a declared aim of the agreement to provide the Inuit with a greater degree of certainty and clarity concerning their ownership-rights to land and use of resources. To this extent, the agreement stands in the tradition of major land claims agreements in the Canadian North.
- But intentions should not lead us to believe that the indigenous Inuit minority can autonomously command wildlife management or exclusively own pieces of land. In many of these issues joint decision-making with federal forces inside co-management institutions prevails.
- Nevertheless, co-management of issues such as parks, conservation areas, land and resource management patterns, land use planning, development impact, water management, municipal lands administration, marine areas, and outer-land ice-zone locations did not directly lead to negative outcomes. Hence it remains unclear whether co-management really equals "bad news" in the case of Nunavut.
- As we have seen, a comparison with the case of the Alaska Native Claims Settlement Act suggests that with respect to land- and resource-rights Nunavut has the better model in place. Both the scope and the significance of indigenous land-rights recognition and all its implications seem to have found a better manifestation in the new Canadian territory. Not only the fact that Nunavut provides indigenous locals with more access to land but also the non-existence of complicated subdivisions between villages and regional corporations there gives rise to the assessment that Nunavumniut have more room for collective decision-making (no "divide-and-rule"-approaches) compared with their Alaskan fellow-groups.
- But there are some risks Nunavut has to face too: increased access to resources, if not managed appropriately, could lead to extensive and thoughtless exploration of non-renewable resources and this could seriously threaten sustainable development in Nunavut. Hence the trade-off between economic development and environmental protection has to be handled in such a way as to ensure that a good balance between exploration and environmental protection dictates Nunavut policies.

With regard to the *recognition of rights to economic development and social wellbeing*, Nunavut is a "good news" case, because both in comparison with other models and on the basis of the Nunavut Land Claims Agreement the success in these areas is hard to overlook. The following reasons sustain this assessment:

- Although the territory's status as an economic hinterland with all the weaknesses this situation entails will not change in the foreseeable future, many of the undertakings centred on its two basic weaknesses: the lack of physical capital (which is mainly a lack of transportation infrastructure) was tackled by increasing telecommunication networks in Nunavut; the territorial administration confronted low education levels in the realm of human capital with increased activities in secondary education and an broad array of training possibilities in Nunavut.
- Despite the fact that the unemployment-rate is still at 27%, the programmes in place to enhance employment in the new territory have a relatively positive impact, especially with respect to government jobs. This is important because more employment in the Nunavut territory does not only foster the indigenous right to economic development but also that of social wellbeing in the newly created territory.
- Natural capital and the appropriate access to natural resources continue to play an important role for Nunavut's economic future, especially in the mining sector. Still, the economic development versus environmental protection trade-off calls for a certain degree of cautiousness in this field if sustainability is the aim. A threat of thoughtless exploitation of the resources the Inuit have access to by force of the Nunavut Land Claims Agreement has to confront co-management in the areas concerned which decreases its possible manifestation. The fact that southern enterprises have to ask the government of Nunavut for its opinion before developing projects, bears more chances for both sustainable development and indigenous rights recognition in this regard.
- A democratic political system in the new territory guarantees a kind of decision-making that envisages the will of a majority of Nunavumniut. The territorial administration and its departments have the potential to take care of all matters that are important to Nunavut's inhabitants. Agencies exclusively designed to assist government bodies in achieving central aims complete these overall positive perceptions. The system has got a Commission in place that monitors the implementation of the Nunavut Land Claims Agreement.

- And even co-management does not have to be just bad news. If we took the concerns raised above about profit orientation instead of patience in the realm of economic development, co-management could potentially counterbalance such negative tendencies. Furthermore, it's not quite clear whether co-management by definition has to be worse than full authorities. Co-management boards may lead to balanced decision-making because in many cases what is good for Canada does not have to be bad for Nunavut and vice-versa.
- A comparison with the case of Greenland concerning economic and social rights recognition suggests that Nunavut is not directly "bad news" in this comparative dimension. This comparison is so interesting because Greenlanders have to cope with and adjust to similar economic and social problems. Hence not having a model significantly worse than the one Greenland offers for its inhabitants can be termed an improvement and does back the claim that Nunavut offers a "good news" case-scenario in this regard.
- Generally, strengths in the realm of social and organisational capital can one day outweigh evident weaknesses in the fields of human and physical capital if leaders and decision-makers on both the federal and the territorial level have the patience and the wisdom to take the right decisions at the right time. Obviously, too rapid and thus thoughtless moves towards exploitation of non-renewable resources can have negative side-effects on the environment and threaten sustainability in the new territory. But joint decision-making in co-management boards decreases risks in this field simply by making decisions a matter of negotiations between federal and territorial authorities.

Therefore, not only the structural framework the Nunavut Land Claims Agreement offers, but also positive moves in the realm of all four factors of wealth-creation inevitably lead us towards positive conclusions as to how indigenous rights on the part of economic prosperity and social wellbeing are recognised in Nunavut.

Perhaps the most interesting fact about Nunavut is that young pupils learn Inuktitut - the Inuit language - at school. This is even more striking if we take language as a part of "Inuit culture" because having bilingual education (English and Inuktitut) in primary schools does not only enhance the chances of the Inuit to adequately paid jobs, it also pushes buttons in favour of their cultural preservation rights. Given the enormous importance of language for the discursive construction of cultural identity, Nunavut may well be regarded a "good news" case in terms of the recognition of the rights of Inuit locals to cultural preservation too.

To cut a long story short, the Nunavut case with its public government approach with a Legislative Assembly of 22 members elected by the entire electorate of the settlement area, with institutions designed to benefit Inuit locals, without the existence of political parties and with the establishment of a new territory in the Canadian North provides a “good news” case-scenario in that it recognises the indigenous rights of Inuit locals to self-determination, land and resource access, cultural preservation, and socio-economic well-being to a large extent. Hence Nunavut is not a “way of keeping northerners and Inuit busy by providing them with institutions of public government”. On the contrary, Nunavut ambitiously takes on the challenges of indigenous rights recognition in federal systems thereby having a unique model in place that fits these purposes more or less perfectly.

Notes

[1] The *ecomienda system* was a system through which Spanish conquerors and colonists were granted parcels of land and the right to the labour of the Indians living on them. For more details see: Anaya, S. J. 2004, *indigenous Peoples in International Law*, New York: Oxford University Press, P. 16

[2] Nevertheless, the work of de las Casas had a couple of interesting side-effects: "Bartolomé's treatise *A Brief Account of the destruction of the Indies* (1542), inspired the development of the papal regulation known as the doctrine of discovery, which recognised native peoples as sovereign nations whose territories could not be transferred to European powers without their consent". Ingram, D. 2000, *Group Rights: Reconciling Equality and Difference*, Kansas: University of Kansas Press, P. 111

[3] The central question of his time was whether the American Indians were rational human beings and *de Vitoria* took part in the discussion: "In his published lectures, *On the Indians Lately Discovered* (1532), Vitoria answered this question in the affirmative. He surmised that the Indians "are not of unsound mind, but have, according to their kind, the use of reason'." Anaya, S. J. 2004, *indigenous Peoples in International Law*, New York: Oxford University Press, P. 17

[4] Still, *de Vitoria's* thought lacks a clear attack at the address of the Spanish monarchy. On the contrary, *de Vitoria* constructed a theory of "just war" which encountered the idea that Indians did not only have rights, they also had duties. If Indians werenot able to fulfil their duties to the Spanish crown, war on them could've been "just" and the lands acquired in that war. As a closer look at de Vitorias thought suggests his arguments are not completely free of contradictions: "Thus Vitoria articulated a duality in the normative construct deemed applicable to European contact with non-European indigenous peoples. On the one hand Indians were held to have rights by virtue of their essential humanity. On the other hand, the Indians could lose their rights through conquest following a "just" war, and the criteria for determining whether a war was "just" were grounded in a European value system." Anaya, S. J. 2004, *indigenous Peoples in International Law*, New York: Oxford University Press, P. 18-19

[5] As Grotius writes in his book *On the Law of War and Peace*: "According to the law of nature this is no degree a matter of doubt. For right to enter treaties is so common to all men that it does not admit of a distinction arising from religion" Cited in: Anaya, S. J. 2004, *indigenous Peoples in International Law*, New York: Oxford University Press, P. 19

[6] *Thomas Hobbes* (1588-1679) was a contract-theorist who in his famous *Leviathan* (1651) stated that individuals lived in a warlike state of nature. Only the strength and wisdom of the Leviathan could transform this state of nature into a state of law. With other words, if people unite and give their consent to one Man (or a small group of people) the plurality of diverging interests are transformed onto one will: That of the chosen person, - the Leviathan. A "common-wealth" of people emerges in which the principles of peace and reason are reached by people consenting to the authority of one ruler. As Hobbes (1968[1651]) argues, the only way to reach a state of Common-wealth is: "to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will: which is as much as to say, to appoint one man, or Assembly of men, to beare their Person; and every one to owne, and acknowledge himselfe to be Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted, in those things which concerne the Common Peace and Safetie; and therein to submit their Wills, every one to his Will, and their Judgements, to his Judgement. This is more than Consent, or Concord; it is reall unitie of them all, in one and the same Person, made by Covenant of every man should say to every man, I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner. This is done, the Multitude so united in one Person, is called a Common-wealth, in latine Civitas." See: Hobbes, Thomas 1968[1651], Leviathan, in: MacPherson, C.B. (ed.), *Hobbes Leviathan*, Baltimore: Penguin Books, p. 227

[7] "To enjoy any rights as distinct communities, indigenous peoples would have to be regarded as nations or states. Otherwise, indigenous peoples would be conceptually reduced to their individual constituents, presumably in a state of nature, and their rights of group autonomy would not be accounted for." See: Anaya, S. J. 2004, *indigenous Peoples in International Law*, 2nd edition, New York: Oxford University Press, P. 22

[8] "Though the earth, and all inferior creatures be common to all men, yet every man has a property in his own person. This no body has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left with it in, he hath mixed labour with and joined to it something that is his own, and thereby makes it his property." Locke, J. 1982 [1690], *The Second Treatise of Government*, Wheeling [Illinois]: Harlan Davidson Inc. , P. 18

[9] „The constructive doctrines which are elaborated in the second treatise became the basis of social and political philosophy. Labor is the origin and justification of property; contract or consent is the ground of government and fixes its limits. Behind both doctrines lies the idea of the independence of the individual person. The state of nature knows no government; but in it, as in political society, men are subject to the moral law, which is the law of God. Men are born free and equal in rights. Whatever a man 'mixes his labour with' is his to use." See: <http://www.utm.edu/research/iep/l/locke.htm#Two%20Treatises%20of%20Government>

[10] At one point, however, *John Jay* seems to regrettable of the way in which Indians were treated in some of the States, while remaining more worried about his white fellow-citizens: "Not a single Indian war has yet been produced by aggressions of the present federal government, feeble as it is; but there are several instances of Indian hostilities having been provoked by the improper conduct of individual States, who, either unable or unwilling to restrain of punish offences, have given occasion to the slaughter of many innocent inhabitants." Hamilton, A., J. Madison & J. Jay 1961[1787-88], *The Federalist Papers*, New York: New American Library, P. 44

[11] When *Madison* writes about the Indians it sounds as if they were as distinct from Americans as the Spaniards or the French were at his time. With respect to trade, however, Madison's theory holds that the relationship between the American and the Indian nation was not quite "settled" while remaining unclear about what he meant by "settled": "What descriptions of Indians are to be deemed members of a State is not yet settled, and has been a question of frequent perplexity and contention in the federal councils. And how the trade with Indians, though not member of a State, yet residing within its legislative jurisdiction can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible." Hamilton, A., J. Madison & J. Jay 1961[1787-88], *The Federalist Papers*, New York: New American Books, P. 269

[12] Consequently, a majority of the American population back in 1776 viewed the American Declaration of Independence as a tool for "declaring independence" rather than as declaring essential human rights: "The Declaration of Independence, written by Thomas Jefferson, set out the grievances that Americans felt towards the British government in general, and King George III in particular. Most Americans believed that these grievances were so serious that they were prepared to embark on a course of of action which was extremely perilous." Maidment, R., M. Tappin 1990, *American Politics Today*, 3rd edition, Manchester: Manchester University Press, P. 1

[13] This is quite remarkable because American society at his time did not acknowledge this view: Neither were women, slaves and Indians granted the right to participate in the electoral and political process, nor were freedom and equality regarded high values within the American population of 1776. See: Pelinka, A. 2004, Grundzüge der Politikwissenschaft, 2. Auflage, Wien: Böhlau Verlag, P. 192-193

[14] *Alexis de Tocqueville* (1805-1859) was a liberal thinker from Metz (France) who as a young man spent nine months in America. This journey, however, inspired him to write *Democracy in America*, a book in which he argued that democracy in the sense of the Jacobins and the French Revolution 1789 nothing else but tyranny: The tyranny of the majority. In his view democracy had to be restricted to avoid the threats the tyranny of the majority provides for democracy as a whole. Therefore, a form of representative government as witnessed in the United States of America was considered a more accurate model of conducting and sustaining democracy. For more details see: Hereth, M. 1991, *Tocqueville zur Einführung*, Hamburg: Junius Verlag, or: Welch, Cheryl 2003, *Tocqueville*, in: Boucher, D., P. Kelly (eds.), *Political Thinkers. From Socrates to the Present*, Oxford: Oxford University Press, 288ff., or: Pelinka, A. 2004, *Grundzüge der Politikwissenschaft*, Wien: Böhlau Verlag, P. 200-201

[15] „North America was only inhabited by wandering tribes who had not thought of exploiting natural wealth of the soil. One could still properly call North America an empty continent, a deserted land waiting for inhabitants. (…) In this condition ['watery solitudes', 'limitless fields never yet turned by plowshare'] it offers itself not to the isolated, ignorant, and barbarous man of the first ages, but to man who has already mastered the most important secrets of nature, united to his fellows, and taught by the experience of fifty centuries." Tocqueville, A. de 1966[1835], *Democracy in America*, New York: Harper & Row, P. 280

[16] As Connolly (2000) notes: "Put another way, the democratic nation does embody morality of peace and justice in itself, but the territorial formation of the moral nation unfortunately requires massive violence against the nomads who preceded its formation. Such a violence is to be regretted and construed as unfortunate. Tocqueville takes no pleasure at all in violence. (…) But because a nation of agriculture and Christianity sets two key conditions of possibility for moral liberty, violence against Amerindians is not opposed by Tocqueville as intrinsically immoral or repudiated as undemocratic." Connolly, W. E. 2000, *The Liberal Image of the Nation*, in: Ivison, D., P. Patton, W. Sanders (eds.), *Political Theory and the Rights of indigenous Peoples*, Cambridge: Cambridge University Press, P. 186

[17] Perhaps the most important nineteenth century liberal, John Stuart Mill (1806-1873), comes up with a

strong defence of an institutionalisation of liberty in his book *Considerations on Representative Government*. In Mill's view the role of government wasnot to safeguard Natural Law, but to maximise happiness. As Mill notes, however, human beings are pleasure-seeking creatures. Therefore, the criteria by which government action should be judged is inextricably linked to the amount of pleasure these actions are able to provide for the individuals. "All his views about local government, the separation between public policy-making and legislation, plural voting, and the extension of the franchise were designed to facilitate wise policy-making at the same time as preventing any elite from permanently capturing the levels of political power. In terms of constitutionalism, Mill's concern was to educate the masses into the exercise of political power and to protect the subject many from tyranny by a ruling elite." Kelly, P. 2003, *J.S. Mill on liberty*, in: Boucher, D., P. Kelly (eds.), *Political Thinkers. From Socrates to the Present*, Oxford: Oxford University Press, P. 340-341

18 "Nothing but foreign force would induce a tribe of North American Indians to submit to the restraints of a regular and civilised government. The same might be said, though somewhat less absolutely, of the barbarians who overran the Roman Empire. It required centuries of time, and an entire change of circumstances, to discipline them into regular obedience even to their own leaders, when not actually serving under their own banner" Mill, J. S. 1958 [1860], *Considerations on Representative Government*, New York: Liberal Arts Press, P. 6

19 To this end, however, Mill stood in the tradition of utilitarian political thought. Precisely, Utilitarian political thinkers argued that utility is central to politics and the way in which it is conducted. Taking Jeremy Bentham's thought as a basis, utilitarian thinkers argued that the role of government institutions was to maximise individual happiness. "Pushpin is as good as poetry!" as long as it gives individuals the same amount of pleasure. In this view, however, natural law is nonsense. Indians did not have natural rights based on their distinct ethnicity. For more details see: Kelly, P. 2003, *J.S. Mill on liberty*, in: Boucher, D., P. Kelly (eds.), *Political Thinkers. From Socrates to the Present*, Oxford: Oxford University Press

20 This claim, however, touches on the author's assumptions with respect to identity because for Mill the sources of nationhood are threefold: "Sometimes it is the effect of identity of race and descent. Community of language and community of religion greatly contribute to it. Geographical limits are one of its causes. But the strongest of all is identity of political antecedents: the possession of a national history and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past" Mill, J. S. 1958[1860], *Considerations on Representative Government*, New York: Liberal Arts Press, P. 229

21 As Anaya (2004) puts forward, "Westlake's rationalisation effectively admitted that international law was an instrument of the 'white' and powerful colonizer. Not being among the 'civilised' and powerful forces of colonization, indigenous peoples could not look to international law to thwart those forces. Indigenous people's rights had no place in the discussion." Anaya, S. J. 2004, *indigenous Peoples in International Law*, New York: Oxford University Press, P. 28

22 "For international law purposes, indigenous lands prior to any colonial presence were considered legally unoccupied or terra nullius (vacant lands). Under this fiction discovery was employed to uphold colonial claims to indigenous lands and bypass any claim to possession by the natives in the 'discovered' lands. (…) Instead, the positivist doctrines of effective occupation of territory and recognition of such occupation by the "Family of Nations' provided the legal mechanism for consolidating territorial sovereignty over indigenous lands by the colonizing states." Anaya, S. J. 2004, *indigenous Peoples in International Law*, 2nd edition, New York: Oxford University Press, 29-30

23 These principles include: "1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples. 2. Peoples are to observe treaties and undertakings. 3. Peoples are equal and are parties to the agreements that bind them. 4. Peoples are to observe the duty of non-intervention. 5. Peoples have the right of self-defence but no right to instigate near for reasons other than self-defence. 6. Peoples are to honour human rights. 7. Peoples are to observe certain specified restrictions in the conduct of war. 8. Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime." Rawls, J. 1999, *The Law of Peoples*, Cambridge (Mass): Harvard University Press, p. 37

24 „There are two familiar justifications for according peoples stronger rights of self-determination than stateless nations. The first claims that indigenous peoples exercised historical sovereignty that was wrongfully taken from them, and so self-determination is simply restoring their inherent sovereignty. (…) A second familiar line of argument says that peoples need self-determination to preserve their pre-modern way of life. On this view, stateless nations typically share a common civilization with the majority, and so do not need self-determination in the same way as indigenous peoples, whose way of life is incompatible with modern state structures." Kymlicka, W. 2001, *Politics in the Vernacular. Nationalism, Multiculturalism, and Citizenship*, Toronto: Oxford University Press, P. 125-126

[25] „Hardliner wie die USA, Kanada, Australien und Neuseeland wollen sämtliche in dem Entwurf aufgeführten Rechte der Ureinwohner möglichst unter die Kuratel der nationalen Politik stellen, also gerade keinen international verbindlichen Standard zulassen. Angesichts dessen wirkt es paradox, dass nun ausgerechnet die Vertreter der Indigenen Völker als Hemmschuh bezeichnet werden, weil sie darauf bestehen, dass der Entwurf der Charta, wie ihn die UNWGIP erarbeitet hat, unverändert bleibt." See: Gesellschaft für Bedrohte Völker 1998, *„Erfolge in kleinen Schritten: Die UNO und die Indigenen Völker"*, on: <http://www.gfbv.de/voelker/indigene/bilanz.htm> (18.4.2005)

[26] However, this does not mean that there is a "desire for ethnic or cultural pureness" in these states.

[27] As Anaya (2004) points out, however, the fact that international law becomes less state-centred is due to a loss of state sovereignty – with the rise of economic and political "globalisation" individuals and groups became increasingly important: "This opening, forged by the modern human rights movement, has been the basis for international law to revisit the subject of indigenous peoples, and eventually become reformulated into a force in aid of indigenous peoples' own designs and aspirations." Anaya, S. James 2004, *indigenous Peoples in International Law*, 2nd edition, New York: Oxford University Press, 53

[28] Despite a general trend towards more recognition of the rights of groups and individuals international law has not completely moved away from its state-centred nature. On the contrary state-sovereignty is not something alien or undesirable: "On one hand, the principles, laws and procedures that fall within the rubric of international law remain substantially state-centred, and the rhetoric of state sovereignty continues as central to international legal discourse. On the other hand, the community of states whose sovereignty international law is deemed to uphold has extended far beyond the European "family". International Law has reacquired its presumptive universality and thus theoretically welcomes within the global community of states all those fulfilling the criteria of statehood." Anaya, S. James 2004, *indigenous Peoples in International Law*, New York: Oxford University Press, P. 49-50

[29] "Governments tend to equate all demands for self-determination with independence and secession, and insistence on this formulation, even when an indigenous group desires a status less than full independence, may inhibit the resolution of claims that are not as wholly incompatible as they first appear. (…) self-determination, as that term has been defined thus far by the United Nations, does imply the right (although not the necessity) of independent statehood; it also has been restricted in practice to the colonial context. Thus, negative government reactions to indigenous demands for self-determination are not surprising." See: Hannum, Hurst 1990, *Autonomy, Sovereignty and Self-Determination: The Accomodation of Conflicting Rights*, Philadelphia: University of Pennsylvania Press, 96

[30] Namely the belief that "men are capable of doing good things" paired with the contention that all men are free and equal in the first place as "core-beliefs".

[31] Reference: Implications of Article III

[32] The concept applied here is the modernist „nationalism before nations"-approach which in this perspective is held to bet rue fort he construction of modern nations in the Americas. As the theorists of this approach argued, however, „nationalism" was a „political movement" which required national and political boundaries' congruence. Furthermore, the concept holds that nations are not something natural. On the contrary, nations are constructed by nationalism. For more details see: Gellner, E. 1985, *Nations and Nationalism*, Oxford: Blackwell Publishers, or: Anderson, B. 2000, *Imagined Communities*, Reprint, London: Verso

[33] The goal of the ILO Convention No. 107 was to: Promote improved social and economic conditions for indigenous populations generally; recognise indigenous populations as equal partners within a given society; make clear that assimilation should be made easier by state-authorities. For more details see Anaya, S. J. 2004, *indigenous Peoples in International Law*, New York: Oxford University Press, P. 55

[34] According to Thomas Flanagan (2000) a kind of „aboriginal orthodoxy" emerged in which is grounded in historical revisionism, critical legal studies, and political activism. By these orthodox approaches, however, both scholars and politicians conceded the claim that Aboriginal peoples have an inherent right to self-determination. See: Flanagan, T. 2000, *First Nations? Second Thoughts*, Montreal: McGill Queens University Press

[35] Kiera Ladner (2003) doubts the assumptions of Flanagan (see footnote 33): „While I agree with Flanagan that such ideas have become rather orthodox, I disagree with his assertion that this orthodoxy is predicated on historical revisionism, misunderstanding, and political correctness. Instead, I would argue that Flanagan's criticism of the inherent right to Aboriginal self-determination is itself predicated on historical revisionism. Popular sovereignty, democracy, and self-determination are not (sole) creations of the Western-Eurocentric experience." See: Ladner, K. 2003, Treaty Federalism: An indigenous Vision of Canadian Federalisms, in: Rocher, F., M. Smith (eds.), *New Trends in Canadian Federalism*, Peterborough: Broadview Press, P. 182

[36] The Federalist Papers were a result of a discourse on good forms of republican government between the

Federalists Hamilton, Jay and Madison on the one side and the so-called anti-federalists on the other. "Despite their differences, Federalist friends and Antifederalists foes of the new Constitution were agreed that the Articles of the new Confederation were unsatisfactory and needed changing. They differed, however, over the newly drafted alternatives to the Articles. (…) And so began the greatest non-violent battle ever waged in America. To revisit that debate is to enter a world both different from and yet formative of that in which Americans now live." Ball, T. 2003, *The Federalist Papers*, in: Boucher, D., P. Kelly (eds.), *Political Thinkers. From Socrates to the Present*, Oxford: Oxford University Press, P. 257

37 "The tree-line serves as a boundary between the Arctic and the Subarctic. Ecologically, the tree-line represents a major break between the two regions, though in fact the break is a gradual one consisting of wooded tundra." Bone, Robert M. 2003, *The Geography of the Canadian North: Issues and Challenges*, Oxford/New York: Oxford University Press, 21

38 "Friedmann's version of the core/periphery model constructed three hypothetical hinterlands. One, known as the resource frontier, is far from the industrial world. Its remote location and small population limit economic development and diversification. For our purposes, the North is a resource frontier periphery, and the rest of Canada and the world are the core." Bone, Robert M. 2003, *The Geography of the Canadian North: Issues and Challenges*, Oxford/New York: Oxford University Press, 11

39 Instead, companies usually employed southerners (most of them from Winnipeg, Manitoba) to fly them up to the mines to work there at work-days and back home again on weekends. For more details see: Hicks, J., G. White 2000, *Nunavut: Inuit Self-Determination through a Land Claim and Public Government?*, in: Dahl, J., J. Hicks, P. Jull (eds.), Nunavut: Inuit regain control of their lands and lives, Copenhagen, 74

40 The "National criteria" method of measuring unemployment "(…) refers to people who were available for work in the week prior to the survey, and who were without work and had looked for work within previous four weeks. 'No jobs' criteria: This is the criteria used by the Nunavut government's Bureau of Statistics to recognize the fact that in many Nunavut communities, people without jobs donot bother looking for work because they already know that there are no jobs in their community. (…) 'Want a job' criteria: This is the criteria used by the Nunavut government's Bureau of Statistics to count all the people who simply want jobs but canot find them. This method refers to persons who were not currently employed, but said they want a job." For more details see: http://www.nunatsiaq.com/archives/nunavut990930/nvt90924_21.html, 12.01.2006

41 "The Agreement attempts to provide finality and predictability of interests by requiring a surrender of aboriginal rights. For the rights and benefits provided to the Inuit by the agreement, the Inuit agreed to cede, release and surrender all their aboriginal claims, rights, titles and interests, in and to lands anywhere within Canada and adjacent offshore areas within the sovereignty and jurisdiction of Canada. They also agreed, on behalf of their heirs, descendants and successors not to assert any cause of action, claim or demand of any nature based on any aboriginal claims, rights, title or interests in and to lands and waters." Imai, Shin 1999, *Aboriginal Law Handbook*, Scarborough: Thomson Canada, 99

42 The assumption that the acquisition of Inuit lands by southerners by south Canadian forces was a process of theft does not derive its legitimacy from Proudhon's critique of private property as a whole (namely that all private property is theft). Instead, this claim starts from the point that Inuit were the original owners of these lands (despite the fact that Inuit tend to think differently about private property). In this light, however, the acquisition of these lands which happened without asking Inuit for their consent does not leave room for different assumptions.

43 "So the societies and cultures represented in the ethnographic present were always both constructions and reconstructions. I will avoid its use here, although the authors whose work I will draw upon often did employ it." Matthiasson, J. S. 1995, *The Maritime Inuit: Life on the Edge*, in: Morrison, R. B., C. R. Wilson (eds.), *Native Peoples: The Canadian Experience*, 2nd edition, Toronto: Oxford University Press

44 Against all assumptions of "subsistence economy supporters" (namely that patriarchy was something entirely new for the indigenous peoples of the American continent and which was introduced not before the turn from subsistent lifestyles to wage-based employment – which, for good reasons, may have been the case for many other indigenous groups) there has never really been a "more matriarchy" with respect to gender-specific divisions of labour in the case of Inuit cultures and societies.

45 Martin Frobisher functioned as an important transmitter: „Frobisher brought back an Inuk hunter to England, where he was displayed as a 'token of possession', indisputable proof that the explorer had found and claimed new lands for her Britannic Majesty, The Inuk soon died but others followed." Dickason, O. P. 2002, *Canada's First Nations: A history of founding peoples from Earliest Times*, 3rd edition, Toronto: Oxford University Press, 70

46 Especially the role of left-behind consumer goods of the big expeditions appears interesting in this

context: "The presence of non-Aboriginals in the Arctic and Subarctic may have had more effect on the Natives than the incidence of direct contact would suggest, as the consequences of inshore whaling indicate. From the time of their first appearance in the region, Europeans had frequently encountered disasters that had forced them to abandon supplies and equipment, and sometimes even their ships." Dickason, O. P. 2002, *Canada's First Nations: A history of founding peoples from Earliest Times*, 3rd edition, Toronto: Oxford University Press, 74

47 Trade was also present in the area of fisheries which lead to similar problems as those of the fur-trade: "Exploiting sea resources, especially the cod fisheries, did not involve the type of close of sustained contact with the Native population that the fur trade would later; neither did it tent as settlement, although, as we have seen problems did develop in this regard. Until the fur trade began in earnest and European settlement got under way, the comings and goings entailed in the fisheries (a term that included whaling and walrus hunting) allowed both Amerindians and Europeans to pursue their separate lifestyles without much consideration for each other." Dickason, O. P. 2002, *Canada's First Nations: A history of founding peoples from Earliest Times*, 3rd edition, Toronto: Oxford University Press, 74

48 Another example was the systematic hunting of whales in the Arctic: "The whalers ranged the east coast of Baffin Island, and by the early 1850s started spending the winters there as well as the summers. They were relentless in their exploitation of the bowhead whale, and by the middle of the century had decimated its population. They then turned to the white whale (beluga), with the same results. It is estimated that between 1868 and 1911, Scottish whalers alone took more than 20000 belugas from the Davis Strait, a figure which does not include the catch of American commercial whalers or Inuit hunters." Creery, Ian 1993, *The Inuit (Eskimo) of Canada*, London: Minority Rights Group International, 8

49 "The voyageurs also established the beginning of an unequal trade relationship with the Inuit. Soon after, the Hudson's Bay Company began to dominate the fur trade and extend its sphere of influence into other domains of life." Frideres, J. S. 1998, *Aboriginal Peoples in Canada: Contemporary Conflicts*, 5th edition, Scarborough: Prentice Hall Allyn and Bacon, 393

50 "On the Labrador coast, the Moravian missionaries and traders began to have sustained contact with Inuit, which lasted for over 200 years. Other missionaries from various religious denominations were to enter the North and attempt to convert Inuit to Christianity." Frideres, J. S. 1998, *Aboriginal Peoples in Canada: Contemporary Conflicts*, 5th edition, Scarborough: Prentice Hall Allyn and Bacon, 393

51 But this tactic wasnot pursued without posing a number of substantial problems to the Moravians because: "When they combined trading with their missionary work, they found themselves in competition with the Hudson's Bay Company, a situation that peaked in the latter half of the nineteenth century. The Moravians never did successfully reconcile the contradictions between their evangelical and commercial interests, which eventually led to their abandonment of trade to the HBC in 1926." Dickason, O. P. 2002, *Canada's First Nations: A history of founding peoples from Earliest Times*, 3rd edition, Toronto: Oxford University Press, 205

52 An important reason for the establishment of the Royal Canadian Mounted Police may have been the discovery of gold in the Yukon, and (more prominently) that of oil in the Northwest Territories in the mid-twenties of the 20th century because: "Two things happened in 1920: the fur market crashed, and the first oil gusher came in at Norman Wells, Northwest Territories: 'Biggest Oil Field of the World', newspapers reported." Dickason, O. P. 2002, *Canada's First Nations: A history of founding peoples from Earliest Times*, 3rd edition, Toronto: Oxford University Press, 369

53 "The British were still preoccupied with their centuries old search for the Northwest Passage and the first half of the nineteenth century saw several attempts, including the most famous of them all, the lost expedition of Sir John Franklin (1786-1847) of 1845-8. Since no one except Inuit was interested in permanently settling in the Arctic, the question of land was not raised, and the Inuit did not sign any treaties until the Inuvialuit agreement of 1984." Dickason, O. P. 2002, *Canada's First Nations: A history of founding peoples from Earliest Times*, 3rd edition, Toronto: Oxford University Press, 206

54 "Although non-Natives had been present in the eastern Arctic, off and on, since the eleventh century, and with increasing frequency since the seventeenth, the first permanent official presence had occurred in the western Arctic when Canada sent the NWMP in 1903 to establish posts at Herschel Island and Fort McPherson; the Eastern Arctic Patrol was not instituted on a regular basis until 1922, although there had been occasional government voyages since the late nineteenth century." Dickason, O. P. 2002, *Canada's First Nations: A history of founding peoples from Earliest Times*, 3rd edition, Toronto: Oxford University Press, 371

55 This federal Department was renamed a couple of times throughout history. It had a bunch of different names which themselves had a lot to tell about the current interests of federal forces in the north: Starting from Department of Northern Affairs and National Resources (which somehow signalled the basic southern interests in the north – namely non-renewable resources) to its current name -

Department of Indian Affairs and Northern Development (DIAND) – it mirrored a century of colonial domination within its own name. For more details see: Dickerson, M. O. 1992, *Whose North? Political Change, Political Development, and Self-Government in the Northwest Territories*, Vancouver: UBC Press

56 As Leslie (2002) points out this 1969 White Paper wasnot breathtaking with respect to indigenous rights recognition: "In many ways, the 1969 white paper went right back to the 19th century. It was straight assimilation. The federal policy proposals caused a political uproar among Indian people and their supporters. The discussion paper was formally withdrawn in 1970, but it left a bitter legacy." Leslie, J. F. 2002, The Indian Act: An historical Perspective, in: Canadian Parliamentary Review 25(2), 27. On the other hand, however, the document was somehow not merely negative: "A turning point in Native-white relations was the federal governments' 1969 White Paper on Indian Policy. Introduced by Jean Chretien, then Minister of Indian Affairs, the controversial paper proposed doing away with treaties and turning over responsibility for Indians to the provinces. Turning to Aboriginal rights, the paper stated: 'These are so general and undefined that it is not realistic to think of them as specific claims capable of remedy.' Federal denial of Aboriginal rights would have had a severe impact on the Inuit. If there were no such thing as Aboriginal title in Canadian law, the Inuit would have no legal basis for advancing a land claim." Purich, D. 1992, *The Inuit and their Land: The Story of Nunavut*, Toronto: James Lorimer & Companion, 100

57 "In the late 1960s and early 1970s when young Inuit began using their newly-acquired education and contact with the currents in the world outside their northern homeland, they began to question the situation of their people." Jull, P. 1988, *Nunavut: A story of Inuit Self-Government*, in: Northern Review 1(1), 59

58 "It was in 1973 that the Supreme Court of Canada rendered its decision in the Calder case, throwing open the legal question of whether aboriginal title continues to exist in Canada. This decision is followed by '…the inauguration of the modern land claims process in Canada.'" Fritsch, L. S. 1996, *Nunavut: A Land Claims Agreement concerning the Inuit of the Northwest Territories*, Örebro: Faculty of Law within the Humanities, 29

59 "Despite initiatives to encourage the political empowerment of Inuit in the process of government, the reality of having the institutions of government in the east directed from Yellowknife did not ensure sufficient sensitivity to eastern concerns. In the late 1960s and early 1970s, the physical, psychological and cultural remoteness of the GNWT figured prominently in Inuit proposals for land claims and political self-determination." Cameron, K., G. White 1995, *Northern Governments in Transition. Political and Constitutional Development in the Yukon, Nunavut, and Northwest Territories*, Montreal, 93

60 "ITC fixed its hopes on a proposal for Nunavut: a land claims settlement including creation of a Nunavut territorial government. In other words, while the Nunavut government would function as a provincial-type government open to all residents, the large population majority who were Inuit could expect to dominate its life just as French-speaking people dominate Quebec." Jull, P. 1988, *Nunavut: A story of Inuit Self-Government*, in: Northern Review 1(1), 62

61 And there were some positive signs too as the various forms of Aboriginal involvement into important northern project inquiries readily evidenced: "The Mackenzie Valley Pipeline Inquiry of 1974-7 also quickly developed a high public profile. The chiefs of the Mackenzie Valley Amerindian bands had started things off by filing a caveat on about one-third of the Northwest Territories. Although their right to issue such a caveat was denied on appeal in 1975 on technical grounds, Justice William Morrow's judgement raised doubts as to whether the treaties had extinguished Aboriginal right." Dickason, O. P. 2002, *Canada's First Nations: A history of founding peoples from Earliest Times*, 3rd edition, Toronto: Oxford University Press, 398

62 "Eventually, when the constitutional patriation was accomplished in 1982, Native peoples won recognition of 'existing' Aboriginal rights, but without a definition of the term; however, there was provision that such rights could not be adversely affected by anything in the Charter of Rights and Freedoms." Dickason, O. P. 2002, Canada's First Nations: A history of founding peoples from Earliest Times, 3rd edition, Toronto: Oxford University Press, 400. Furthermore, however, it was a sign that lobbying in the end worked out: "The lobbying worked. On January 30, 1981, Jean Chretien, then Justice Minister, introduced an amendment to the proposed constitution that recognised and affirmed the aboriginal and treaty rights of Canada's Aboriginal people. The term Aboriginal people was defined to include Indian, Inuit and Metis people. The amendment also promised that a conference to define Aboriginal rights would be held within two years, with Aboriginal participants." Purich, D. 1992, *The Inuit and their Land. The Story of Nunavut*, Toronto: James Lorimer & Companion, 107

63 Gurston Dacks (1986) for example claimed that the division of the NWT brings more problems than it

purports to solve: "This paper argues that the following costs of division have not been adequately considered: dividing the Inuit people; weakening the political position of the other aboriginal peoples of the NWT; delaying the devolution of power northward; and imparing the effectiveness and responsiveness of northern public administration. (…) This paper argues that division will produce at least five undesirable consequences: (1) failure to achieve the dream of a pan-Inuit homeland with the most effective possible form of government for the Inuit; (2) fragmentation of the present strength of the Territories' native people; (3) all residents of the NWT will be weakened in their dealings with Ottawa and interests in southern Canada; (4) a more costly and less efficient government will result, which will pose an inevitable choice between lower levels of service and increasing dependence upon financial transfers from Ottawa; (5) there will be a reduction in the effectiveness of northern public administration. In short, division promises to perpetuate Ottawa's domination of the North."" Dacks, G. 1986, *The Case Against dividing the Northwest Territories*, in: Canadian Public Policy 12(1), 202-205

64 "The ever pragmatic Inuit were not prepared to leave undecided the crucial date for the creation of Nunavut. The agreement that Nunavut would become reality no later than April 1, 1999, thus met the Inuit demand for a firm date, while allowing sufficient time for proper planning for the new territory." Cameron, K., G. White 1995, *Northern Governments in Transition: Political and Constitutional Development in the Yukon, Nunavut, and Northwest Territories*, Montreal, 99

65 And Dickerson (1992) continues his argument by referring to the positive repercussions on Aboriginal life a fulfilment of these interconnected goals would bring about: "Thus, the connection between self-government and gaining some control of the changes faced by Native people. Native people must have greater powers at the local level of government in order to control the disposition of land, to influence culture, and to effect economic development. This is why self-government is the cornerstone of Native policy and must be considered as part of a package of goals. For Native people self-government is the key to social, economic, and political development in the NWT." Dickerson, M. O. 1992, *Whose North? Political Change, Political Development, and Self-Government in the Northwest Territorie*s, Vancouver: UBC Press, 171

66 For better or worse the federal government finally accepted this idea. And the reason why it did so was obvious: "To an important extent, the federal government's acceptance, through the claim, of the principle of a Nunavut government reflected the Inuit decision to follow a public, rather than Aboriginal self-government model. Some Dene leaders in the Western NWT believe that the Inuit gave away far too much in accepting a public government rather than an Aboriginal self-government regime, but this does not appear to be a concern for Inuit leaders." Cameron, K., G. White 1995, *Northern Governments in Transition: Political and Constitutional Development in the Yukon, Nunavut, and Northwest Territories*, Vancouver: UBC Press, 92

67 "The Chrétien government has agreed to allow certain aspects of self-government agreements to become treaties, and the recently concluded Nisga'a Final Agreement includes a broad package of self-government provisions that will be protected as part of the section 35 treaty." Whittington, M. S. 2004, *Aboriginal Self-government*, in: Whittington, M. S., G. Williams (eds.), *Canadian Politics in the 21st century*, 6th edition, Toronto: Thomson Nelson Publishers, 121

68 "The best-known northern departure from southern political models is the consensus government system in the NWT and Nunavut (…). In essence the system is a non-partisan Westminster cabinet-parliamentary regime. All the key constitutional principles underlying British-style responsible government exist. The authority of cabinet derives from its capacity to maintain the confidence of the House by winning key votes. Ministers are responsible to the assembly for policy and administration (thus permitting a politically neutral public service). Cabinet solidarity prevails. Only cabinet can place before the assembly measures for raising taxes and directing expenditures. Political parties, however, play no role in the assembly; members (MLA's) seek election and serve as independents." White, G. 2003, *And now for something completely northern: Institutions of Governance in the Territorial North*, in: Anderson, R. B., R. M. Bone (eds.), *Natural Resources and Aboriginal People in Canada: Readings, Cases and Commentary*, Concord: Captus Press, 56

69 "The 'one man, one vote' norm for electoral systems in Canada has been accepted and internalised as 'the way elections are done', even though the results tend to be 'one vote, one man' – indeed the Legislative Assembly of the Northwest Territories had the lowest proportion of female members of any provincial or territorial legislature." Hicks, J., G. White 2000, *Nunavut: Inuit Self-Determination through a Land Claim and Public Government?*, in: Dahl, J., J. Hicks, P. Jull (eds.), *Nunavut: Inuit regain control of their lands and lives*, Copenhagen, 74

70 Nunavumniut is the word for "inhabitants of Nunavut".

71 "Cabinet effectively finds itself in a permanent minority, though its numerical weight – six or seven in 19-member houses – requires it to win over only a very few MLAs to carry a vote. Nothing so adversarial or organised as a formal opposition exists but strong committees offer non-ministers

opportunities to co-ordinate strategy and seek support for their political concerns." White, G. 2003, *And now for something completely Northern: Institutions of Governance in the Territorial North*, in: Anderson, R. B., R. M. Bone (eds.), *National Resources and Aboriginal People in Canada. Readings, Cases and Commentary*, Concord: Captus Press, 57

72 "The distribution of Nunavut government services will be based on three administrative regions with which the Nunavumniut are already familiar. These are: Baffin, with a population of 11500 distributed in 14 communities over 900000 square kilometres. Its capital is Iqaluit; Keewatin, with a population of 5500 distributed in 7 communities over 550000 square kilometres. Its capital is Rankin Inlet; Kitikmeot, with a population of 4500 distributed in 6 communities over 650000 square kilometres. Its capital is Cambridge Bay." Légaré, A. 1997, *The Government of Nunavut (1999): A prospective Analysis*, in: Ponting, J. R. (ed.), *First Nations in Canada: Perspectives on Opportunity, Empowerment and Self-Determination*, Toronto: McGraw Hill Ryerson, 415

73 Local Administration and the municipal councils: "Since the municipal councils represent the order of government closest to the citizens, it would be appropriate that the leaders of Nunavut return important administrative (and service delivery) powers to the communities. Without specifying the scope, the Commission recommended that the municipal councils receive powers and responsibilities in the fields of education, health, social service, justice, and housing." Légaré, A. 1997, *The Government of Nunavut (1999): A prospective Analysis*, in: Ponting, J. R. (ed.), *First Nations in Canada: Perspectives on Opportunity, Empowerment and Self-Determination*, Toronto: McGraw Hill Ryerson, 415

74 "The Nunavut government intends to make itself even more readily accessible to Nunavut residents by decentralising its operations. Services will be delivered in all of the communities, as they were before division, and a number of government departmental headquarters will be located outside of the territorial capital Iqaluit. This will improve access to government. The Inuit also hope that administrative decentralisation will enable more Inuit to obtain government employment without having to leave their home." Dacks, G. 2003, *Reinventing Governance in the North*, in: Brodie, J., L. Trimble (eds.), *Reinventing Canada: Politics of the 21st century*, Toronto: Pearson Education Ltd., 284

75 Wildlife plays an important role in this framework: "Of central importance in this system will be the linkages established between land/habitat and wildlife management. At the centre of this new set of power-sharing arrangements between Inuit and non-Inuit are four co-management bodies." Hicks, J. , G. White 2000, *Nunavut: Inuit Self-Determination through a Land Claim and public government?*, in: Dahl, J., J. Hicks, P. Jull (eds.), *Nunavut: Inuit regain control of their lands and their lives*, Copenhagen, 60

76 „These boards rule on such questions as water use, wildlife management and harvesting, and the exploration plans of mining and energy companies. These are questions that are particularly important for the Inuit, many of whom rely on the land and waters for hunting, fishing and gathering plants." Dacks, G. 2003, *Reinventing Governance in the North*, in: Brodie, J., L. Trimble (eds.), *Reinventing Canada: Politics of the 21st century*, Toronto: Pearson Education Ltd., 284

77 "For purposes of clarity, fee simple means land owned outright by an individual(s) wherein the Crown has no right of ownership to either surface or subsurface matter." Fritsch, L. S. 1996, *Nunavut: A Canadian Land Claims Agreement concerning the Inuit of the Northwest Territories*, Örebro: Faculty of Law within the humanities, 33

78 "This comes as no surprise as the Inuit are master carvers and have developed a market for their art and in keeping with the purpose set out in article 17, this agreement promotes economic self-sufficiency for the Inuit." Fritsch, L. S. 1996, *Nunavut: A Canadian Land Claims Agreement concerning the Inuit of the Northwest Territories*, Örebro: Faculty of Law within the humanities, 33

79 "By the early 1990s, most of the proprietary and resource management aspects of an agreement had been put together, and the moment of truth arrived: would Inuit accept the federal offer of a land claims agreement and drop their demand for a separate Nunavut territory, or would they insist on linking a land claims agreement with the establishment of an Inuit-controlled territorial government as they had done for twenty years?" Hicks, J. , G. White 2000, *Nunavut: Inuit Self-Determination through a Land Claim and public government?*, in: Dahl, J., J. Hicks, P. Jull (eds.), *Nunavut: Inuit regain control of their lands and their lives*, Copenhagen, 55

80 Compensation payments: "The compensation payments ($1.15 billion over fourteen years) which the Inuit will receive as a result of the Final Agreement on their land claims are solely for the 17870 persons identified as beneficiaries under that Agreement. Those moneys will serve, notably, to pay the cost of the programme of subsidies for Nunavumniut hunters and trappers, to finance the costs of the co-management structures envisaged in the Agreement, and to pay the administrative costs of NTI. In short, the compensation payments will in no way contribute to the budget of the public government of Nunavut." Légaré, A. 1997, *The Government of Nunavut (1999): A prospective Analysis*, in: Ponting, J.

R. (ed.), *First Nations in Canada: Perspectives on Opportunity, Empowerment and Self-Determination*, Toronto: McGraw Hill Ryerson, 419

81 "Some might suggest that the key to fiscal autonomy could lie in the transfer of Crown title over public lands and in the exploitation of non-renewable resources with which they are endowed. However, the profit which would be gained from such an initiative would be relatively meagre due to the distance from markets, the difficulties in extracting resources, and the shipping problems associated with the greatly foreshortened shipping season caused by the annual freeze-up." Légaré, A. 1997, *The Government of Nunavut (1999): A prospective Analysis*, in: Ponting, J. R. (ed.), *First Nations in Canada: Perspectives on Opportunity, Empowerment and Self-Determination*, Toronto: McGraw Hill Ryerson, 418-419

82 First-past-the-post means: "In each constituency, the candidate with the most votes wins, even if this is less than 50 percent. This type of electoral system is therefore called 'first past the post'. (…) When all the results are cumulated nationally, however, the proportion of seats a party wins does not necessarily bear much relationship to its overall share of the popular vote." Dyck, R. 2004, *Canadian Politics. Critical Approaches*, Scarborough: Thomson Nelson, 275

83 „Die Merheitswahl erschwert die Existenz von Parteien, die (wie Weltanschauungs- und Klassenparteien) nur ein ganz bestimmtes Segment der WählerInnen (z.B. nur KatholikInnen oder nur ArbeiterInnen) ansprechen wollen." Pelinka, A. 2004, *Grundzüge der Politikwissenschaft*, Wien: Böhlau UTB, 97

84 „Eine gesellschaftliche Konfliktlinie (‚cleavage') tritt von einer latenten in die manifeste Phase. Entlang dieser Linie entstehen Konflikte, es bilden sich soziale Bewegungen, as denen Parteien entstehen." Pelinka, A. 2005, *Vergleich politischer Systeme*, Wien: Böhlau UTB, 75

85 As Seymour M. Lipset and Stein Rokkan (1967) pointed out there are four major cleavages apparent in the history of most western political parties: First of all, the cleavage between dominant versus threatened (ethnic, linguistic etc.) cultures; secondly, the cleavage between state and church (both of which were apparent the phase of national formation); thirdly, the cleavage between the interests of farmers and industrial interests; and finally the cleavage between the "capital" and that of "work" (both of which are seen as classical phenomena of the industrial revolution). For more details see: Lipset, S.M., S. Rokkan (eds.) 1967, *Party Systems and Voter Alignments: cross national perspectives*, 2. print, New York: Free Press

86 Political parties have three basic functions: integration, recruitment, and legitimacy. Integration shapes an interest out of a great variety of particular wishes. Secondly, parties recruit their personnel and send it to parliaments, governments and other political agencies. And finally, once in power political parties are more or less keen on delivering legitimate government. For more details on this see: Pelinka, A. 2004, *Grundzüge der Politikwissenschaft*, Wien: Böhlau UTB, 94ff.

87 „Many elements of consensus government are the same as in a legislature with political parties. We have a Premier, cabinet and private members; three readings for a bill, Hansard, question period, a politically neutral Speaker, motions of non-confidence and so on. Moreover, in terms of constitutional fundamentals, we follow the principles of the British parliamentary model of responsible government. (…) Once Cabinet reaches a decision, all ministers must publicly support that decision, whatever their personal reservations and whatever arguments they may have made behind closed cabinet doors. The principle of cabinet solidarity must remain." O'Brien, K. 2003, *Some thoughts on consensus government in Nunavut*, in: Canadian Parliamentary Review 26(4), 6

88 „Der Brundtland-Bericht von 1987 führte die intergenerationale Perspektive ein bzw. die Idee der sozialen Gerechtigkeit zwischen gegenwärtig lebenden und zukünftigen Generationen. Bei der nachhaligen Entwicklung handelt es sich nach der vielzitierten Definition des Berichts um eine ‚Entwicklung, die die Bedürfnisse der Gegenwart befriedigt, ohne zu riskieren, dass künftige Generationen ihre eigenen Bedürfnisse nicht befriedigen können.' Der Schutz der natürlichen Lebensgrundlagen der Menschheit wurde zu einem unabdingbaren Ziel." Nohlen, D. 2001, *Entwicklung/Entwicklungstheorien*, in: Nohlen, D. (ed.), *Kleines Lexikon der Politik*, München: Verlag C.H. Beck, 83-84

89 In federal elections, however, Nunavut forms a constituency wherein one representative to the House of Representatives is elected (simple majority rule). See: Dyck, R. 2004, *Canadian Politics. Critical Approaches*, Scarborough: Thomson Nelson Publishers

90 In Canada, members of the Senate are not elected but nominated by the Governor General, - the Queens Representative in Canada. The Governor General holds a "head of the state"-like position. Currently one member of the Senate is from Nunavut. See: Dyck, R. 2004, *Canadian Politics. Critical Approaches*, Scarborough: Thomson Nelson Publishers

91 Furthermore, the agreement "(…) does not abandon the issue of self-government but rather reworks it to

fit current models of government in Canada based on democratic representation. Public government is legislative government that is democratic, based on regional and/or popular representation. What is unique in this situation is that the electorate is predominantly Inuit, which ensures that Inuit interests are accounted for in government decisions." Gray, K. R. 1994, *The Nunavut Land Claims Agreement and the Future of the Eastern Arctic: The Uncharted Path to effective Self-Government*, in: University of Toronto Faculty of Law Review 52(2), 309

92 Greenlands electoral law is interesting because it joins proportional representation with a sub-division into eight electoral districts. In other words, 23 (at maximum 27) members of the Landsting are elected in the eight districts (4 mandates in each district). The missing mandates are elected on a territory-wide basis. According to this model, however, the parties that earn the most votes get both in the electoral districts and territory-wide win the most mandates in the Landsting. In contrast to Nunavut, however, Greenlanders do not elect their premier directly throughout the territory but in a rather indirect manner by the majority coalition in the Landsting (Greenland never really had a single-party administration, - the territory has a deeply rooted tradition of coalition-governments). For more details see: Braukmüller, H. 1990, *Grönland – gestern und heute. Grönlands Weg der Dekolonisation*, Münster: LIT-Verlag

93 As Binder (2003) points out, the appearance Article 4 of the Mexican constitution provides is deceiving: This section of the Mexican Constitutional reform has never been put into practice. Although the agreements of San Andrés with its promising establishment of a constitutional reform commission (the COCOPA) gave rise to deeper hopes, the constitutional initiative presented by this body (essentially concerned with develivering more power to Mexico's marginalised indigenous groups) was not fully acknowledged and thus implemented by the Mexican Congress. Instead, Congress only approved the less painful of the "ley COCOPA" in July 2001, and not those who would have provided indigenous peoples with more autonomy. Even more significantly the Supreme Court approved the new law, a fact that is still debated within academia because the law failed to fulfil basic needs such as the necessity of having consent on it in at least half of the country's provinces. For more details see: Binder, C. 2003, *Landrechte indigener Völker unter Bezugnahme auf Mexico und Nicaragua*, Innsbruck (Dissertation)

94 All data on the Alaska Native Claims Settlement Act used for this analysis is taken from the following three sources: Chance, N. A. 1990, *Alaska Natives and the Land Claims Settlement of 1971*, on: Arctic Circle Website: http://arcticcircle.uconn.edu/SEEJ/Landclaims/ancsa1.html (17.12.2005); Jones, R. S. 1981, *Alaska Native Claims Settlement Act of 1971 (Public Law 92-203): History and analysis together with subsequent amendments*, on: Alaskool Website: http://www.alaskool.org/projects/rsjones1981/ANCSA_History71.htm (17.12.2005); and: Wikipedia Website: http://en.wikipedia.org/wiki/ANCSA (17.12.2005)

95 Land-rights in Alaska are subdivided between 220 villages and 12 Regional Corporation. The villages were provided with 18.5 million acres in 25 township areas in the 25 communities surrounding these villages according to population of surface estate. On another 3.5 million acres they have cooperative command together with the Regional Corporations. These 12 Regional Corporations are owned collectively by the indigenous individuals of each region. The Alaska Native Claims Settlement Act provides them with subsurface estate in the 22 million acres patented to the villages, and with full access to both surface and subsurface resources on another 16 million acres in the areas surrounding the 25 townships. Land-rights and the amount of resource access is subdivided among the Regional Corporation on the basis of the total area in each region rather than on that of indigenous population on them. For more details see: Chance, N. A. 1990, *Alaska Natives and the Land Claims Settlement of 1971*, on: Arctic Circle Website: http://arcticcircle.uconn.edu/SEEJ/Landclaims/ancsa1.html (17.12.2005)

96 Currently, land-rights for Alaskan Natives are endangered by a planned amendment to the agreement that the Bush administration wants to issue. This amendment, however, is exclusively designed to enable the federal government to buy some of the lands granted to Alaskan Natives by the Alaska Native Claims Settlement Act. The rationale behind this is the Bush administrations' wish to increase federal oil deposits and revenues. Alaskan Natives are divided on the issue: On the one hand, the Inupiat Inuit of Kaktoowik (the place where these oil reserves are situated) have plans to sell their rights to lands and resources. On the other side of the spectrum, though, other Native groups oppose the plans because they fear that oil-developments in the region threaten the Caribous that usually have live on these lands in winter time. Due to this fact, some Alaskan Native groups not placed in the same Regional Corporation with the Inupiat Inuit fear that their subsistent lifestyles will subsequently come at risk. For more details hear: Schwarte, G. 2005, *Weißer Mann, schwarzes Gold: Alaskas Ureinwohner gegen Bohrtürme*, on: Radio Ö1 Website: http://oe1.orf.at/highlights/44309.html (15.11.2005)

97 The *right to development* as such was fully implemented into the international legal system with human rights pacts of its third generation. After twenty years of debates the United Nations General Assembly issued a Declaration on the Right to Development in 1986. As many analysts criticised, however, the

right to development and its enforcement-possibility is far too fragile to be of any help for those who were thought to benefit from its launch. See: Höll, O. 1994, *Das "Menschenrecht auf Entwicklung" versus "Sustainability"? Herausforderung für das nächste Jahrhundert*, in: Cech, D., E. Mader, S. Reinberg (Hrsg.), *Tierra – indigene Völker, Umwelt und Recht*, Frankfurt a. M./Wien: Brandes & Apsel/Südwind

98 Inuktitut ist he language of the Inuit. Apart from some minor differences, however, Inuktitut is spoken and thus understood by most Inuit peoples of the world. In other words, Inuktitut is not a language that is only spoken in one country: "Inuktitut belongs to the Eskimo-Aleut language family, which stretches from Northeast Asia to East Greenland." Nowak, E. 2004, *Inuummata. Diglossia and Language Maintenance in the Canadian Arctic*, in: Kirsch, F. P. (Hrsg.), *Möglichkeiten und Grenzen des Multikulturalismus. Der Schutz sprachlich-kultureller Vielfalt in Kanada und Europa*, Wien: Zentrum für Kanada-Studien der Universität Wien, 156

99 "At that time, Inuit were already working towards Nunavut. One of the top issues became the language. The whole decision making process leading to Nunavut, excelerating in intensity over the last 15 years, was characterised by ongoing and intense public debates, in Inuktitut, and on Inuktitut., creating a highly politicised climate. As was voiced by the Nunavut Implementation Commission, the maintenance, support and promotion of Inuktitut became top priority – at least with respect to its being talked about." Nowak, E. 2004, *Inuummata. Diglossia and Language Maintenance in the Canadian Arctic*, in: Kirsch, F. P. (Hrsg.), *Möglichkeiten und Grenzen des Multikulturalismus. Der Schutz sprachlich-kultureller Vielfalt in Kanada und Europa*, Wien: Zentrum für Kanada-Studien der Universität Wien, 158

100 This is striking because: „With regard to indigenous languages, however, it is generally assumed that native people have just one chance to articulate themselves: English. This attitude reflects a fundamental difference in the perception of indigenous languages as compared to the immigrant languages. Indigenous peoples have suffered from a colonial situation until recently. With respect to the languages, it must be stated that they have been marginalised right from the beginning of contact. They have never been perceived as being equal. Diglossia in the Canadian North clearly bears the features of such unequality." Nowak, E. 2004, *Inuummata. Diglossia and Language Maintenance in the Canadian Arctic*, in: Kirsch, F. P. (Hrsg.), *Möglichkeiten und Grenzen des Multikulturalismus. Der Schutz sprachlich-kultureller Vielfalt in Kanada und Europa*, Wien: Zentrum für Kanada-Studien der Universität Wien, 155

101 Business schools are to be found in all Greenland communities: "Throughout recent years, a long list of business and trade schools have been established which are now able to supply the Greenlandic labour market with qualified workers." The Ministry of Culture, Education and Churches (KIIP), *Government Jurisdiction in the areas of Culture, Education and Church*, on: http://www.randburg.com/gr/cultmini.html, 23.01.2006

102 Keast points out that not only the new territorial but also federal departments employed more people from 1999 onwards simply because a new territory was there to deal with: "Well, the most interesting thing that I saw was the incoming people. The population increased in Nunavut anyway. Some of the federal department offices in Nunavut were fairly small before April 1999. And we saw an increase of government positions being moved to Nunavut, primarily from Ontario where a programme has been administered to train people for actually living in Nunavut. Before 1999 a lot of federal departments administered Nunavut out of Yellowknife. There was an increase in population and an increase in the number of federal government jobs in the territory. And with this increase a lot happened with respect to housing and subdivisions in Nunavut." (Keast 2004)

103 Somehow surprisingly, however, not too much is done to help those that already entirely rely on the benefits of the Canadian welfare-state. Tim Coleman, Departmental Director of Environment Canada, points out that not much has changed in the realm of social wellbeing throughout the last five years: "In terms of social-wellbeing (drug-abuse, alcoholism and all that sort of things), I would say that there has not been too many changes to the severe problems in this field. Perhaps there is a bit more now in areas where people are failing in trying to find a job. Furthermore, there is more of a tendency towards a black-market economy in these areas. So there might have been some increases in terms of all kinds of social problems in the larger centres. I donot know of increases in smaller centres." (Coleman 2004)

104 In fact the amendment formula is not reducible to section 42 of the Canadian constitution. Dyck (2004) points out that: "(…) a domestic constitutional amendment formula was finally adopted as part of the Constitution Act, 1982. Part V of the act actually provided for five such formulas, depending on the subject matter of the amendment: unanimous consent of federal and provincial legislatures; and consent of Parliament and seven provincial legislatures representing 50 percent of the population; consent of Parliament and one or more provinces affected; consent of Parliament alone; and consent of a provincial

legislature alone." Dyck, R. 2004, *Canadian Politics: Critical Approaches*, Scarborough: Thomson-Nelson

105 In fact, Stephen Harper has to live with a big dilemma in this regard because he needs a majority in parliament. According to Rainer-Olaf Schultze of the Canadian Studies Institute of Augsburg University Harper will not be able to keep all his pre-election promises because: "Harper muss aufpassen, wie er seine Mehrheit austariert. Wenn sich seine Politik kaum von dem unterscheidet, was die bisherige liberale Regierung gemacht hat, kann es passieren, dass er seine Anhänger im kanadischen Westen relativ schnell verprellt. Wenn er das nicht macht und die konservative Agenda vertritt – wie beispielsweise den Ausstieg aus dem Kyoto-Protokoll, eine stärkere Nähe zu den USA in der Außenpolitik und eine deutliche Senkung der Steuersätze – dann wird er sehr schnell Schwierigkeiten bekommen, im Unterhaus eine Mehrheit zu finden." On: http://derstandard.at/, 24.01.2006

Abbreviations

ANCSA	=	Alaska Native Claims Settlement Act.
CERD	=	Committee on the Elimination of Racial Discrimination.
DIAND	=	Department of Indian Affairs and Northern Development.
ECOSOC	=	United Nations Economic and Social Council.
GDP	=	Gross Domestic Product.
GN	=	Government of Nunavut.
GNWT	=	Government of the Northwest Territories.
HBC	=	Hudson Bay Company.
ILO	=	International Labour Organisation.
MLA	=	Member of the (Nunavut) Legislative Assembly
NDP	=	New Democratic Party.
NLA	=	Nunavut Legislative Assembly.
NLCA	=	Nunavut Land Claims Agreement.
NIC	=	Nunavut Implementation Commission.
NTI	=	Nunavut Tunngavik Inc.
TFN	=	Tunngavik Federation of Nunavut.
UN	=	United Nations.
UNWGIP	=	United Nations Working Group on Indigenous Peoples.

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