
Nunavut: Canada Turns a New Page in the Arctic

by John Merritt

In May, 1993 the Prime Minister of Canada and representatives of the Inuit of Nunavut signed the Nunavut Final Land Claims Agreement. The signing of the Nunavut Final Land Claims Agreement represented an historic day for Inuit and for all Canadians. With the signature of the Agreement, and the follow-up enactment of two pieces of federal legislation needed to give the Agreement effect, two very important measures will have been achieved. First, the largest aboriginal "land claim" in North America, and perhaps the world, will have been settled on terms which provide Inuit with substantial rights with respect to such things as land ownership, hunting, resource revenues, and the environmental protection of Arctic lands and waters. Equally important, the Agreement will result in legislation creating a new Nunavut Territory and Government in 1999 through the division of the existing Northwest Territories.

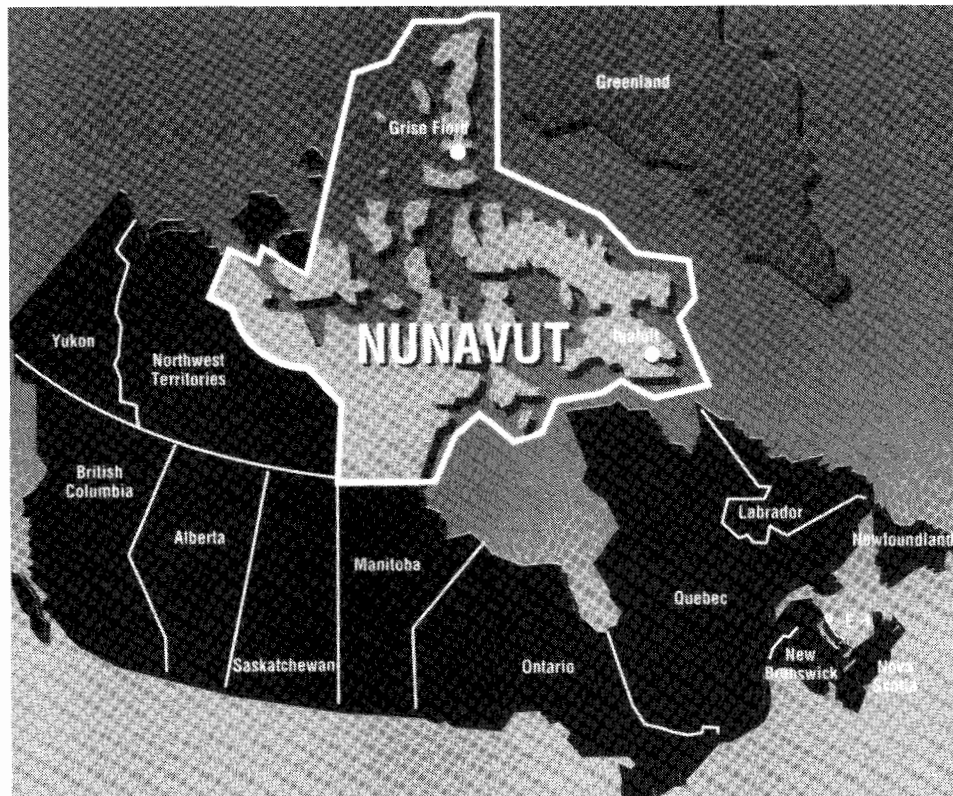
In recent years Canadians have become increasingly, sometimes painfully, conscious of the dissatisfaction that many aboriginal communities feel towards their political, social and economic conditions. Events such as the armed stand-off at Oka, Quebec, and the inability to bring about an amended Constitution with stronger guarantees of aboriginal rights to self-government, have emphasized the gap between aboriginal expectations and circumstances. In this policy environment, the finalization of the Nunavut Final Land Claims Agreement stands out as a major piece of "good news". Interested observers are driven to asking a number of questions. How has the "good news" about Nunavut come about? What lessons can be learned from the Nunavut experience with respect to aboriginal peoples in other parts of Canada? What implications does

Nunavut have for Canada's position as an Arctic state sharing a variety of problems and challenges with other circumpolar states?

An Ancient Homeland

In one sense, despite its growing recognition by the Canadian public, Nunavut is not "news" at all. "Nunavut" means "our land" in Inuktitut, the language of the Inuit. For thousands of years, the ancestors of today's Inuit have used the lands and waters above the tree line in Arctic Canada (and in the Bering Straits region of Russia, in Alaska, and in Greenland) to sustain a rich culture founded on hunting and gathering. The Arctic seas, and the marine mammals and fish that they support, have been central to Inuit economy and identity. The appearance of Europeans in the Inuit homelands of the eastern and central Arctic regions of Canada, first the Norse and later whalers, traders, and missionaries from a variety of countries, brought about the joys and pitfalls of cross-cultural contact. With the solidification of British, and then Canadian, claims for sovereignty over that portion of the Arctic mainland and archipelago

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The establishment of Nunavut will change the map of Canada. The new territory will have a total population of about 22,000 persons of whom 17,500 will be Inuit. The largest community, Iqaluit will have a population of about 3,500 and the most northerly settlement will be Grise Fiord with a population of about 130. The land mass of Nunavut will be 2,000,000 sq. kms or about one fifth of the total Canadian land mass.

between Greenland and Alaska, the Inuit sense of "belonging" in the Arctic came into conflict with the evolving strictures of Anglo-Canadian law. Specifically, legal questions have surrounded the relationship between the Crown's assertion of sovereignty and the land rights of Inuit founded on use of the Arctic since "time immemorial". The uncertainties of Anglo-Canadian law notwithstanding, for many Inuit the cross-cultural pulls and pushes of the last few generations of close communication with outside societies have not detracted from the proposition that "Nunavut" has existed for as long as the Inuit have lived in the Canadian Arctic, that "Nunavut" is an expression that summarizes the inextricability of Inuit identity and Arctic geography.

A Project Realized

In another sense, it is possible to say that "Nunavut" is about twenty years old. After a hiatus of half a century the policy of treaty-making with aboriginal peoples in Canada began again in the wake of the landmark 1973 decision by the Supreme Court of Canada in *Calder's*

Case. In that decision respecting the aboriginal title of the Nishga Indians to the Nass Valley in British Columbia, the Supreme Court deadlocked on the central issue of whether the Nishga continued to enjoy a common law aboriginal title to their ancestral lands despite the burden of more than 100 years of colonial and provincial land legislation. The legal principles left hanging by the Supreme Court in *Calder's* Case were of direct relevance for the Inuit of Nunavut who, like most of the Indians of British Columbia, had never entered into a land cession treaty.

Spurred by the legal possibilities generated by the Supreme Court of Canada, the Inuit of Nunavut developed a comprehensive negotiating position to take forward to the Government in the mid 1970s. This position, styled "Nunavut", was first tabled with the Trudeau Government in 1976. It proposed a combination of property rights (ownership of lands, hunting rights, royalties), a new environmental protection regime for the bulk of the Canadian Arctic, and a new Nunavut Territory and Government based on a non-ethnic electoral franchise and fitting within the traditions and conventions of Canadian federalism. The Nunavut

Territory, with a population more than 80% Inuit, would encompass the two-thirds of the Northwest Territories located north of a boundary approximating the tree line.

Much has happened since the tabling of the first "Nunavut" proposal with the Trudeau Cabinet. In the late 1970s, the Beaufort Sea Inuit ("the Inuvialuit") decided, under the pressure of oil and gas development in the Mackenzie Valley corridor, to negotiate separately for a regional land claims settlement covering the Mackenzie Delta; this settlement was finally brought into effect in 1984. In 1979 the Inuit of the community of Baker Lake, frustrated by the slow pace of land rights negotiations and apprehensive about intensive uranium exploration in their region, brought an action in the Federal Court of Canada to stop mining activity adjacent to the community. The decision at trial had mixed results: on the one hand, the judge refused to grant a permanent injunction restraining mining developers; on the other hand, the judge made a finding that Inuit aboriginal title had not been "extinguished" by Anglo-Canadian land laws and continued to exist at common law. In 1982, on the occasion of the patriation of the Canadian Constitution, a provision was introduced into the reformed Constitution "recognizing and affirming" the "existing aboriginal and treaty rights" of Inuit and other Canadian aboriginal peoples.

These and other important events influenced the course of negotiations between the Inuit of Nunavut, as represented at first by Inuit Tapirisat of Canada and later by the Tungavik Federation of Nunavut, and a government negotiating team made up of representatives of a variety of federal departments and the Government of the Northwest Territories. Moments of crisis and drama notwithstanding, the story of the twenty year old "Nunavut project" is best described as a process of consistent effort, endless negotiation, and detailed text. Unlike other negotiations involving aboriginal peoples that have sometimes captured intensive but fleeting attention, the "Nunavut project" has followed a slow but comparatively steady course. By the late 1980s a decade of concerted negotiations began to pay off in tangible ways: an Agreement-in-Principle concluded in April 1989 was followed by a draft Final Agreement in December 1990. This in turn was followed by a positive vote in a NWT-wide plebiscite on the boundary for the new Nunavut Territory and a solid vote in November 1992 by the Inuit of Nunavut ratifying the Nunavut Final Land Claims Agreement and the accompanying commitment to the creation of the Nunavut Territory and Government.

In addition to its slow-but-steady pace of negotiations, there are two other features that stand out with respect to the course and results of the "Nunavut project".

First, at key moments over the last twenty years Inuit leaders have been prepared to risk the fate of the entire effort in insisting on the tight interconnection between Inuit demands for land-related rights (the detailed provisions of a land claims settlement) and for greater self-government (the insistence that legislation ratifying a Nunavut land claims agreement must be accompanied by parallel legislation creating a new Nunavut Territory and Government). This was evident in last minute negotiations at both the Agreement-in-Principle and Final Agreement stages when Inuit negotiators calmly restated the long-term position "No Nunavut Territory, No land claim agreement". It was evidenced even more tellingly in the two NWT wide plebiscites on the broad issue of division of the NWT in 1982 and on the boundary for political division in 1992, that Inuit won even though a majority of plebiscite voters were non-Inuit living outside Nunavut.

Second, it is remarkable to note how similar, in broad brush, the results of the "Nunavut project" are to the initial negotiating demands put forward in 1976. After almost two decades of hard work, concentration on the essential, willingness to take calculated risks, and refusal to take no for an answer, the Inuit of Nunavut have secured the Crown's agreement to a package that provides the Inuit of Nunavut with both an impressive array of land rights and responsibilities in their ancestral homeland and a new Nunavut Territory and Government that will, on account of an overwhelming Inuit majority, provide Inuit with political power in the contemporary legislative and administrative context of Canadian federalism.

A Hope for the Future

It is possible to see "Nunavut" as both a reality as old as the Inuit themselves and as a contemporary project to secure Inuit a land claims settlement and legislation to create a Nunavut Territory and Government. Without denying the relevance of such interpretations, it is equally plausible to see "Nunavut" as an on-going effort to develop a new society in the Arctic that will sustain Inuit cultural distinctiveness while equipping residents with the political and bureaucratic levers needed to assert northern priorities against the competing claims of the South.

The conclusion of the Nunavut Final Land Claims Agreement and the enactment of legislation creating the Nunavut Territory and Government in 1999 will be a beginning, not an end. Despite federal policies that speak of securing "finality" through land claims agreements, it is evident that any land claims agreement in modern Canada serves only to mark a transition stage in the

relationship between an aboriginal people and larger Canadian society. It is instructive, for example, that the 1976 James Bay and Northern Quebec Agreement has defined arenas and scripts for further debate on the environmental acceptability of hydro-electric development in northern Quebec; the JBNQA has not closed down or pre-determined the debate.

The Nunavut Final Land Claim Agreement and the accompanying commitments with respect to the creation of the Nunavut Territory and Government are, even more so than with respect to other land claims agreement, oriented towards an ambitious program of follow-up implementation. While the Agreement will provide Inuit with some immediate and substantial benefits (such as vesting of title to some 136,000 square miles of land and broadly defined hunting rights), other benefits will only be realized over time (such as the fourteen year schedule for the payment of \$1.14 Billion in capital transfers to Inuit and the two year schedule for the enactment of further legislation to establish joint Inuit/Government environmental and resource management bodies).

Given the disappointments and limitations of the existing educational system, "Nunavut" will have to transform itself from a project to negotiate the acquisition of greater self-determination, to a project to train Inuit to take up the day to day institutionalized expression of greater self-determination.

The "phase-in approach" to benefits will be even more apparent with respect to the Nunavut Territory and Government. The *Nunavut Territory Act* will be passed in 1993, but most of its provisions will not come into effect until 1999. In the period 1993-1999, a special statutory body, the Nunavut Implementation Commission, will oversee the orderly setting up of the new Nunavut Government; even after the election of the first Nunavut Assembly in 1999, it is not expected that the new Nunavut Government will command the same kind of administrative capacity as the existing Government of the Northwest Territories until 2008.

Accordingly, it is necessary to appreciate "Nunavut" as not just a twenty year project being completed, but as a major new undertaking being freshly launched. The land rights, capital transfers, joint management bodies and new territorial government institutions being set up

will equip Inuit with opportunities for empowerment that, arguably, will be greater than those enjoyed by any other aboriginal people in Canada. The challenge for the next two or three generations of Inuit will be to seize and to use those opportunities to the fullest. A big test of the success of the new arrangements will be the ability of a relatively small population of Inuit to acquire, in short order, the technical and managerial skills needed to guarantee Inuit control over new institutions of government and administration at the working as well as at the leadership levels.

Lessons of Nunavut for other Aboriginal Peoples

The completion of the the Nunavut Final Land Claims Agreement and the creation of the Nunavut Territory and Government are of great significance to all the aboriginal peoples of Canada.

The scale of the Agreement, covering almost twenty per cent of the land area of Canada, would itself make the Agreement a "landmark" one for all aboriginal peoples in Canada. In combination with the settlement in 1993 of the Gwichin Dene people in the northern Mackenzie Valley and the expected 1993 finalization of the Council for Yukon Indians settlement, the Nunavut Final Land Claims Agreement will supply tangible evidence that, however long and arduous the process of negotiations, modern land claims agreements can be achieved. After almost a decade in which no comprehensive land claims agreements have been finalized, there will be a renewal of optimism that agreements may be possible in Labrador and British Columbia.

The creation of the Nunavut Territory and Government will have even greater precedential impact. For the first time, the Canadian Confederation will have a permanent member of the federal/provincial/territorial government club that is demographically dominated by a single aboriginal people. Nunavut will demonstrate, in a tangible and non-threatening way, that the flexibility of Canadian federalism can, with some imagination and good will, be made to work so as to accommodate, and not alienate, aboriginal peoples.

It would be easy to overstate the portability of the "Nunavut model". There are few parts of Canada where an aboriginal people form a solid majority throughout its traditional homeland, where the political guarantees associated with "public government" can be offered without relegating aboriginal people to minority status. Accordingly, the features of the Nunavut model are unlikely to constitute a template for aboriginal people in other parts of Canada; greater self-government for aboriginal peoples outside the Arctic will probably

require more complex institutional arrangements based on parallel representative law making bodies and minority electoral guarantees. At the same time, the example of a Nunavut Territory and Government should serve to stimulate and to reassure.

Implications for Canada as an Arctic State

Canadians have traditionally looked across the Atlantic and south of the 49th parallel to define external relations. While more recent years have involved discussion of the Pacific Rim and relations between the developed world and the undeveloped world, little attention has been devoted to Canada's position as an Arctic state and its relations with other circumpolar countries. Few Canadians, for example, appreciate that Canada's second closest neighbour, Greenland, has had a Home Rule Government under Danish sovereignty governing its mainly Inuit population since 1979.

More than 100,000 Inuit live in the circumpolar region, divided among Greenland, Canada, Alaska, and Siberia. Since 1976 an international non-governmental body, the Inuit Circumpolar Conference, has acted as a forum to reinforce shared Inuit identity and to serve as an Inuit voice on matters of common trans-national concern.

In the last few years, the Canadian federal government, supported by Inuit organizations and a number of non-Inuit groups, has demonstrated leadership in the forging of new circumpolar links by calling for the creation of an Arctic Council, made up of

the eight circumpolar states, other interested states, and non-governmental observer groups. Both Prime Minister Mulroney and President Yeltsin have indicated firm support for the Council, and other Arctic states have also been supportive.

The creation of a Nunavut Territory and Government can be expected to underscore Canadian interest and commitment to the development of a foreign policy that is attuned to and responsive to Arctic issues and priorities, both with respect to the foundation and operation of an Arctic Council and to many other aspects of circumpolar relations. The Nunavut Territory will offer eloquent testimony to Canada's willingness to re-order its domestic governmental arrangements to accommodate, not deny, the Inuit fact in its own Arctic. The Nunavut Government can be expected to act as an articulate advocate for maintaining close relations between Canada and its circumpolar neighbours, and be particularly keen to foster of cultural and economic links among Inuit communities throughout the Arctic.

Conclusion

Canada is on the verge of settling the largest land claims settlement in its history and of making the most significant political boundary changes since Newfoundland and Labrador joined Confederation in 1949. The challenges entailed in moving forward with these initiatives are cause for celebration, for renewed commitment, and for continuing hard work.

