EXECUTIVE SUMMARY

HIGH ARCTIC RELOCATION: INTERNATIONAL NORMS AND STANDARDS

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Inuit from Inukjuak, Quebec, were resettled to Resolute and Grise Fiord in the High Arctic in two waves, 1953 and 1955. Relocatees have since complained that they were intimidated into participating by the RCMP, were not adequately informed of different ecological conditions in the High Arctic, and were inadequately provisioned for what several official sources candidly described as an "experiment" aimed at seeing whether Quebec Inuit could be made self-sufficient hunters.

There were also allegations of intrusive government supervision, the break-up of families, inadequate food or shelter, poor educational and health facilities, and unpaid work. Admittedly, these conditions had abated by the 1970s, when many of the people involved were able to return to northern Quebec.

High Arctic relocation has been exhaustively debated in terms of its motivations, in particular the suggestion that it may have played a role in securing Canadian Arctic sovereignty. Whatever its official motivations, however, it clearly raises problems of human rights under international law.

International human-rights norms were still in a relatively early stage of development in the 1950s. Apart from the conventions against slavery, forced labour, humane treatment of civilians in war-time, and genocide, to which Canada was already a party directly or through the United Kingdom, the principal delineation of "human rights" throughout the period in question was the United Nations Universal Declaration of Human Rights (1948). Although a declaration of the General Assembly, rather than a binding convention, it was so widely accepted that legal scholars agree that it evolved into customary international law by the mid-1960s at the latest.

The norms contained in the Universal Declaration of Human Rights were reaffirmed and enlarged by the International Covenants of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and other conventions which were ratified by Canada in the 1970s and 1980s. Without exception, they would apply to any comparable resettlement of Inuit attempted today.

Although the record is rife with factual disputes between former Canadian government officials and Inuit, it is the practice of United Nations human-rights bodies to place the burden on governments to come forward with evidence discrediting or justifying alleged violations.

A reasonable reading of the evidence in the light most favourable to Inuit, and with regard to authoritative interpretations of norms by United Nations human-rights bodies, leads to the conclusion that there were violations of international law in the course of relocation. The principal areas of concern are non-discrimination and equality before the law; freedom of movement and of labour; equal enjoyment of basic socio-economic rights including an adequate standard of living, health and education; and rights to the integrity of families and community. Although they may not apply fully to events in the 1950s, recent human rights conventions and decisions expressly condemn experimentation and resettlement without free and informed consent.

It should be noted that the available evidence does not support a claim under the 1948 convention on genocide, and that the principle of self-determination, although arguably applicable to Inuit, has not yet been widely recognized as a right of indigenous peoples in independent countries. Involuntary resettlement is specifically prohibited by two International Labour Organization conventions on indigenous peoples--but neither has been ratified by Canada.

With respect to sovereignty, it can be said that Canadian claims to Arctic seas and sea-ice are still not fully settled today, and must be understood as distinct from claims to land areas. Whatever was the real motivation of the Canadian government in the 1950s, Canada today enjoys a certain advantage in the question of Arctic sea, derived from Inuit occupation and use, through the Nunavut Agreement.

In concluding, it must be emphasized that human-rights law can be highly political and selective in actual

practice. It is difficult to predict the outcome of a formal proceeding, because the institutional machinery established within the United Nations system is complex, and constantly in flux. Nevertheless, a fair application of international standards to the High Arctic case would not reflect well on Canada. A persuasive point may in fact be that Canada has not yet provided Inuit with an effective remedy for these 40-year-old violations. This alone may still be actionable under international human-rights law today.

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I. FACTUAL BACKGROUND

The task of providing the Commission with a "legal opinion" based on international norms has been complicated by the depth and intensity of the disagreement between Inuit, and former government officials, as to what actually happened in the 1950s. Inuit witnesses told a story of misunderstanding, betrayal, hardship and humiliation. The Canadian government officials who planned and executed the project denied these charges, supported their position with archival documents showing that the project had been a success, and even directly accused the Inuit of a deliberate "fabrication".[1]

It is not the function of this report to evaluate disputed facts. That is the task of the Commission. In preparing this opinion, I have nevertheless focussed on the most relevant and convincing allegations, and indicated where there are serious, and material, factual disputes. At the same time, I have presented the chronicle as a whole in a light favourable to the Inuit, bearing in mind that the Commissioners, or an international tribunal, could well decide to believe the Inuit in this matter, and resolve the relevant issues of fact against the government of Canada. I have also been mindful of the fact that, in proceedings before the U.N. Human Rights Committee, the burden is on the *State* to investigate and refute allegations of violations, and allegations made by individuals are presumed true unless and until the State concerned provides substantial evidence to place them in doubt.[2]

The relocation project

Inuit were relocated from two existing settlements. Most of them were recruited from Inukjuak on the eastern shoreline of Hudson Bay in Quebec, one of the most southerly Inuit communities. Several families were also recruited from Pond Inlet at the north end of Baffin Island, an environment more typical of the High Arctic. The Pond Inlet people were apparently sought so they could help the Inukjuak families learn how to survive in unfamiliar conditions.[3] This plan was frustrated, at least in part, by the fact that the groups spoke different dialects of Inuktitut, and were unable to communicate fully for years.[4]

There were two ultimate destinations. Resolute Bay on Cornwallis Island was already the site of Canadian and American air bases, with a number of non-Inuit residents, as well as an RCMP post. By comparison there was only an RCMP station with two residents at Grise Fiord. The first group of settlers arrived in September 1953, the second in 1955. Apart from medical evacuations, necessitated by very high rates of TB, most of the settlers remained in the High Arctic until the 1970s.

In 1953, Inukjuak was already relatively "modernized". Besides a long-established Hudson Bay Company trading post, it had a newly-built school and its own nursing station. These facilities were lacking at either Resolute and Grise Fiord. With regard to health, the Resolute settlement

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[1]. Graham Rowley (Heating 29, June 1993).

[2]. *Solorzano v. Venezuela*, No. 156/1983 (1986); *Bleier v. Uruguay*, No. 30/1978 (1982); *Grille Motta v. Uruguay*, No. 11/1977 (1980).

[3]. Bent Sivertz (Hearing, 29 June 1993), who was directly responsible for planning the project, described the role of the Pond Inlet people as "orientation".

[4]. Minnie Allakariallak, Samwillie Elijasialuk, and Simeonie Amagoalik (Special Hearing, 5-8 April 1993).

could, in an emergency, rely on the RCAF nurse, and airlift to Thule Air Base or Churchill, Manitoba. The Grise Fiord settlement, by comparison, was visited only once each year by medical personnel on the *C.D. Howe*. At other times, RCMP officers provided primary medical care. Neither settlement had a school building or permanent teachers for several years.

The thinking behind relocation

They told us that there were too many Inuit living there [Inukjuak], so therefore the animals or the game, there were not enough game animals to sustain us. That was not true. I'm not happy about the fact that we were told lies, I'm not happy at all.[5]

The resettlement project was apparently motivated, in large part, by concerns over what were perceived as the degrading impacts on Inuit of living in permanent towns--in particular the decline of subsistence activities, dependence on relief, and what Henry Larsen referred to as "loafing".[6] "The intent of the move," recalled Gordon Robertson, who was the deputy minister responsible for the North at the time, "was to establish Inuit communities that would be self-reliant in their way of life, the traditional way of life."[7] Accordingly, Inuit settlers were not to be provided with material assistance, or permitted free contact with nearby air bases, as a matter of policy.[8] Indeed, the settlement at Grise Fiord was even moved a second time, farther from the two-man RCMP post, for "Only by moving the camp at Grise Fiord from all white influences would they learn to fend for themselves".[9] No such policy applied to existing Inuit settlements elsewhere, however.[10]

Former government officials involved in planning the resettlement project argued that the Inuit of northern Quebec were "destitute," and suffered greater malnutrition, and greater dependence on relief, than any other Inuit communities.[11] They believed that wildlife "might" be

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[5]. Markoosie Patsauq (Special Hearing, 5-8 April 1993).

[6]. Gordon Larsen (Hearing, 28 June 1993). Henry A. Larsen accompanied the relocatees to the High Arctic and played a major role in planning, and supervising, the project as a whole. Graham Rowley (Hearing, 29 June 1993), made the same argument.

[7]. Gordon Robertson (Hearing, 28 June 1993). His deputy, Bent Sivertz (29 June 1993), also recalled the main issue being increased reliance upon relief as a result of poor hunting.

[8]. Gordon Robertson (Hearing, 28 June 1993). This was also mentioned by Ross Gibson (28 June 1993) and Bent Sivertz (29 June 1993).

[9]. Gordon Larsen (Hearing, 28 June 1993). Bent Sivertz (29 June 1993) and Henry Larsen justified the restriction on contacts with RCAF and USAF personnel as being for the "protection" of the Inuit from alcohol abuse and prostitution.

[10]. Armand Brousseau (Hearing, 28 June 1993) compared the restrictions imposed at Resolute to the casual fraternization of RCAF personnel and Inuit on Baffin Island.

more abundant farther North,[12] based on the reports of occasional RCMP patrols through the area and other anecdotal sources.[13] The Canadian Wildlife Service had "almost no data" for the resettlement sites, Bent Sivertz recalled, nor was there any climatological data. As Markoosie Patsauq put it, "They did not do their homework," and were relatively ignorant of ecological conditions in the destination areas.[14] Indeed, "It was an experiment," Bent Sivertz told the Commissioners. "We used that term a great deal".[15]

Marine mammals such as walrus, seals, and whales were indeed more abundant in the areas targetted for resettlement. What the government failed to appreciate, and apparently failed to explain to the Inukjuak people they recruited, was the fact that fish, birds, and land mammals such as caribou were considerably *less* abundant in the High Arctic than in Quebec. Quebec Inuit had been able to make seasonal use of a great variety of species; the High Arctic larder is less varied, more dependent on hunting on open water and requires hunting in the dark of the Arctic winter. It is difficult to avoid concluding that planners of the project fell victim to a racist assumption that *all Inuit* were adapted to the North *as a whole*, disregarding the great variability of Northern ecosystems and Inuit regional subcultures. It is interesting in this context that specific sites for Inuit resettlement were chosen where the RCMP found remains of Thule-period whalebone beach houses,[16] apparently without thinking that they represented a different culture, and could have been abandoned for centuries due to changing ecological conditions.

It should be borne in mind that Grise Fiord is a little more than 1,000 kilometres *north* of the Arctic Circle; Inukjuak is nearly 1,000 kilometres *south* of the Arctic Circle. For Inuit settlers, the change in climate, wildlife, and travel conditions was comparable to a move from Miami to Ottawa. With no previous experience in the High Arctic, inadequate tools, and arriving barely a month before the dark phase of the Arctic year, they would have understandably been terrified. Their distress would have been heightened by the wide gap between what they had been led to expect, and what they actually encountered. Settlers from Inukjuak not only had to adapt to a colder and darker environment with less wood and less fresh water, but had to learn "a whole new way of hunting".[17] Their sleds did not work properly because the snow was too shallow; for the

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[11]. Bent Sivertz (29 June 1993); also Graham Rowley (29 June 1993), a member of the Advisory Committee on Northern Development at that time. Bud Neville (29 June 1993) clarified that there was no starvation, but a relatively poorer quality of life in Quebec.

[12]. Bent Sivertz (Hearing, 29 June 1993).

[13]. Graham Rowley (Hearing, 29 June 1993), who added "I don't know how deeply the people involved in planning had dug" for specific data.

[14]. Significantly, this view was also shared by Douglas Earl Wilkinson (Hearing, 28 June 1993), one of the witnesses who defended the motives and integrity of the project's proponents, and accused Inuit settlers of exaggerating their hardships.

[15]. This was also the way the project was explained to RCAF personnel. Armand Brousseau and Pierre Desnoyers (Hearing, 28 June 1993).

[16]. Bob Pilot (Hearing, 28 June 1993).

[17]. Bob Pilot (Hearing, 28 June 1993). Pilot was assigned to the RCMP post at Grise Fiord shortly after

same reason, they had difficulty building igloos in their accustomed manner.

Bent Sivertz told the Commission government planners realized the High Arctic would be "a different world" to Inukjuak people, and "did their best to explain" this to them.[18] There is no direct record of the words they used, but the settlers themselves recalled their dismay at what they found awaiting them.

While there was no direct evidence of any malicious intent on the part of Federal officials, it was plain that they had little expertise of their own to draw on in planning the project, and failed to consult with Inuit. It would probably be fair to say that they suffered from "a tendency to play God"[19] with the people under their control. Their scheme was to re-create a traditional, self-reliant Inuit community *as they understood it*, which required complete isolation, and deprivation of outside aid or supplies. Strictly speaking, it was a *colonization* scheme, designed to force Inuit to be self-reliant in a new ecosystem that required more human effort and different technologies than their homeland in northern Quebec.

Why did Inuit go?

There are differences of opinion concerning the economic distress of Inukjuak in the years leading up to the 1953-55 relocations, which cannot be resolved on the basis of the personal recollections offered in evidence to the Commission. The growing concentration of Inuit in a central settlement presumably had the same effect on wildlife as it had elsewhere in the Arctic at that time: local wildlife was depleted and hunters had to travel farther and farther, a serious problem until snowmobiles became widely available.[20] Caribou had grown scarce in the immediate vicinity of Inukjuak by 1953.[21] Inuit recalled there being no particular scarcity of other wildlife in northern Quebec just prior to the relocations, however.[22] Reuben Ploughman, manager of the Hudson Bay Company store at Inukjuak at the time, did not recall there being any serious hardships. Neither did Ross Gibson, although he commented on the community's growing dependence on relief and store-bought food. Some Inukjuak people were earning wages, which they gave up when they were relocated.[23]

In any event, it is clear that many government officials *believed* that there was better hunting

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the first Inuit arrived.

[18]. Also see the testimony of Graham Rowley (29 June 1993).

[19]. Douglas Earl Wilkinson (Hearing, 28 June 1993).

[20]. The 1950s transition from living in widely dispersed hunting camps to long-distance hunting by snowmobile is described in the chapter on "Sealing in Northern Communities," *Seals and Sealing in Canada*; *Report of the Royal Commission* (Ottawa, 1986), volume 2.

[21]. Lazeroosie Epoo (Special Hearing, 5-8 April 1993). The Arctic fox cycle peaked in 1953, and hunters had abundant furs to sell. The year of chosen for resettlement was ironically a particularly good one, and this undoubtedly added to the settlers' disappointment with their new territory.

[22]. Minnie Allakariallak, Samwillie Elijasialuk, Simeonie Amagoalik, Lazaroosie Epoo, Anna Nungaq, Jaybeddie Amagoalik, Markoosie Patsauq (Special Hearing, 5-8 April 1993).

[23]. Rynie Flaherty and Maina Arragutainaq (Special Hearing, 5-8 April 1993).

in the High Arctic, and stressed this in their recruitment campaign in northern Quebec. Ross Gibson, the RCMP officer chiefly responsible for recruiting Inukjuak people, remembered actively promoting the project based on his belief in the abundance of wildlife in the High Arctic, and his understanding that settlers would be provided all of the assistance they might need.[24] At least some of the Inukjuak people also believed this, and saw the project as a good opportunity either for themselves, or for the younger Inuit whom they counselled to go.[25]

Some Inuit also apparently went because they feared, or felt they had to obey the RCMP officers who recruited them. Susan Aglukark told the Commission that this was understandable, in light of the relations which existed at that time between Inuit and *Qadlunaat*:

> To Inuit, this is best explained by the concept of "Ilira". Inuit use "Ilira" to refer to a great fear or awe, such as the awe of a strong father inspires in his children or the fear of the Qadlunaat previously held by Inuit. ...
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> This relationship and the feeling of the "Ilira" to which it gave rise, meant that whatever the Qadlunaat suggested or wanted was likely to be done. Qadlunaat could make the difference between success and disaster, sustenance or hunger, and Inuit responded to their desires and requests as if they were commands. In this cultural context, a challenge to the authority of the Qadlunaat or defiance of their requests as almost unthinkable.

It should be noted that Bent Sivertz, Graham Rowley, Gordon Robertson, and Douglas Wilkinson discounted this analysis, arguing that, in their field experience, Inuit never did anuthing they did not want to do and viewed themselves as superior to Qadlunaat. Thus while Inuit recalled feeling intimidated by government officials, the officials themselves implied that the Inuit were headstrong, independent, and (implicitly) uncooperative.

Inuit people had grown accustomed to living under the supervision of the RCMP and other Federal officials, and simply felt that they had no real choice.[26] Minnie Allakariallak recalled the police explaining through an interpreter:

> "You have to leave to another community. The government wants you to move." Since they were telling us this and they were policemen, when the Qadlunaat or white men spoke, we were afraid of them.

She added that, "We were told that they arrest people if they do a bad thing, so therefore we felt that

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[24]. Ross Gibson (28 June 1993). Minnie Allakariallak recalled, "They told us, 'You are hungry and you would have to move to where there is lots of game.' That is what they told us originally. But there were lots of lakes in the surrounding, where there was fish... . There was lots of food, bird, so we were not worried."

[25]. Minnie Allakariallak, Jackoosie Iqaluk, Lazeroosie Epoo, Jaypettie Amaraulik, Samuel Arnakallak (Special Hearing, 5-8 April 1993).

[26]. Reuben Ploughman, a non-Inuit who had long lived in Inukjuak and elsewhere in the North, shared this opinion (Hearing, 28 June 1993). Mary Attagutaaluk complained that the RCMP routinely "treated us like dogs," *i.e.*, to be ordered around.

we had to comply with their wishes". Simeonie Amagoalik told a similar story:

> I myself was newly married at the time and the police told me that my brothers-in-law would probably agree to go to the High Arctic if I myself could agree to do so and my mother-in-law, Minnie, sort of pushed me on. I myself had questions in my own mind about why we had to do this, but this was being said by a policeman, and armed policeman, and an armed policeman in those days you don't argue with very much.

There were also allegations that some people were deceived into believing that their kinfolk had agreed to participate in the project, as a way of persuading them to go. RCMP officers made repeated visits to John Amagoalik's father, before he finally agreed to participate.[27] What is undisputed, in any case, is that no general meetings were held with Inukjuak Inuit; they were approached individually, by policemen. RCMP officers were communicating through local interpreters, moreover, who may themselves have understood little of what was transpiring. As a result, there may have been consent--some of it grudging--but there was almost certainly no *informed* consent.

Reuben Ploughman testified that the project was never adequately explained to Inuit. Even Gordon Robertson, who defended the project's good intentions, conceded that Inuit may have "misunderstood" what lay in store for them. It seems clear from reading the testimony of those who were directly involved, Inuit and non-Inuit, that the planners did not understand some important differences between the northern Quebec and High Arctic ecosystems, and thus failed to prepare Inukjuak people meaningfully for the life-changes and hardships that lay ahead.

Were hardships experienced?

> It had a great impact on all the people who are sitting around here. They are hurting inside. They cannot tell you how much they are hurting. They cannot even speak to you as to how much they are hurting inside. They cannot even begin to tell you.[28]

Inuit witnesses recounted in painstaking detail the ship passage to the High Arctic under conditions they found cramped, unhealthy, and humiliating. The food was unfamiliar, and they became "skinny people" by the time they had landed at their High Arctic destinations.[29] Their distress was heightened when, apparently without forewarning, families were separated into different groups for Resolute and Grise Fiord, "as if they were separating dogs".[30] "Even the dogs

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[27]. (Special Hearing, 5-8 April 1993). There were also allegations of misrepresenting the wishes of the first wave of settlers to have their kinfolk join them, when the second wave was recruited. See the *Summary of Factual Allegations*, annexed to this report.

[28]. Martha Flaherty (Special Hearing, 5-8 April 1993).

[29]. Samwillie Elijasialuk (Special Hearing, 5-8 April 1993). It was argued, on the other side, that this was entirely due to malnutrition before they left Quebec.

[30]. Samwillie Elijasialuk (Special Hearing, 5-8 April 1993). It would appear from Bent Sivertz' (29 June 1993) testimony that this decision was taken after the *C.D. Howe* sailed.

were howling, and the people were crying, because they were being separated".[31] Once again, the physical hardships, which might have been tolerable had they been understood and agreed in advance, seemed all the more terrible because they came as a surprise to people who were expecting to *improve* their conditions by leaving Inukjuak.

When they arrived in the High Arctic, the people suffered another unpleasant surprise, in that the supplies and equipment they expected were not forthcoming. They had not anticipated starting from scratch, without materials or rations. "They put us on the land that there was no shelter for us," Minnie Allakariallak testified to the Commission. "We had to bring our tents and we put up those and later on we had to build our own houses from the [RCAF/USAF] dumps". Simeonie Amagoalik complained that:

> The government who did this relocation simply dumped us on the ground, dumped us on the shore, and we were forced to live off the garbage of the white men. The police, who was conducting our lives all ways possible, was doing his best to prevent us from going to the dump. We used to have to act like criminals and sneak around to get life-sustaining food from the dump.[32]

Ross Gibson was disappointed that the settlers "didn't adjust as well as I thought they might," but felt obliged to try to prevent them from scrounging in the military dumps "so they didn't become dependent on the dump as a way of life". To make matters worse, the scarcity of caribou and muskox in the area made it necessary to limit the hunting of these familiar game animals, which Inuit found incredible, and the initial scarcity of food supplies persuaded the RCMP to kill some sled dogs, leaving the settlers feeling even more trapped and helpless.[33]

For Quebec Inuit, accustomed to a region of freshwater lakes and brushy vegetation, the High Arctic appeared a barren, blasted desert. "It was like a desert, just gravel," remembered Minnie Allakariallak. The landing site was "just basically bare rock". "We were, literally, set up on rock," Jaybeddie Amagoalik explained, without any materials to build shelters, or adequate boats to go more than a few miles from the settlement. According to Rynie Flaherty, "They simply literally dumped us on the shore to a place where there was absolutely nothing." The High Arctic was markedly darker and colder than Quebec. Snow, ice and tide conditions were unfamiliar, and the settlers were unprepared for them.

The food was different as well, rich in marine mammals but absent the birds, fish and caribou familiar to Quebec Inuit.[34] When they had been told there was plentiful wildlife in the High Arctic, they surely had imagined a better version of what they already enjoyed in Quebec. Instead, they found a completely different ecosystem. "When we were told about the High Arctic, we were told it was a land of plentiful wildlife, but what they did not tell us was that it was all rock,

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[31]. Jaybeddie Amagoalik (Special Hearing, 5-8 April 1993).

[32]. Armand Brousseau and Pierre Desnoyers (Hearing, 28 June 1993), who had been stationed at the RCAF base, confirmed this, and observed that military supplies and spare housing had been available to mitigate the conditions initially experienced by the settlers.

[33]. Graham Rowley confirmed that relief was not provided to these new High Arctic settlements because it was considered that they had enough country food to eat (Hearing, 29 June 1993).

[34]. Minnie Allakariallak (Special Hearing, 5-8 April 1993).

no vegetation, very desolate, very bare of any resources."[35] While bush food was available, the techniques and tools needed to procure it were unfamiliar, and people were unhappy with the profound change in their diet.[36]

Compared to Inukjuak, the new settlements lacked a school, nurse, or Hudson Bay store. Bent Sivertz justified this on the grounds that the project was an experiment, and government was reluctant to pay for new infrastructural facilities until it was clear that the Inuit were going to stay.[37] To add to this, the policy of isolation resulted in limited communication with kinsmen in Quebec, and allegedly, instances of tampering with mail and radio messages.[38] A former RCAF serviceman testified that photography was generally prohibited.[39] "The police was our boss there".[40] Whatever the official justifications for isolation --*e.g.*, promoting self-reliance or protection from RCAF personnel--the effect on Inuit must have been to heighten feelings of loneliness and confinement, and to make them *more* dependent upon, and obedient to the RCMP who were, for all practical purposes, their warders.

There were also numerous allegations of unpaid labour, either for work on the new settlements and RCMP posts, or as guides for petroleum exploration.[41] Some of these charges may reflect misunderstandings of the practice of crediting the accounts of individuals at DIAND, rather than paying directly by checque or cash, as was alleged by government witnesses. There is no direct evidence, however, that this was done. Nor is there any quantification of the amount or value of labour that was inadequately compensated. The issue is an important one, because, as explained below, Canada was already party to international treaties on forced labour in the 1950s,

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[35]. Anna Nungaq (Special Hearing, 5-8 April 1993).

[36]. Simeonie Amagoalik: "[H]ere we were, having been plucked out of an area that had just about everything, berries, vegetation, and all sorts of different varieties of food. Here in the High Arctic we were now living only on polar bear meat and seal meat. Those were the only two staples" (Special Hearing, 5-8 April 1993). For the recruits from Pond Inlet, of course, this diet was adequate and familar, but for the settlers from the south, it seemed sparse and unhealthy. Indeed, this absence of berries and fish would have weakened people accustomed to a larger, more regular intake of vitamin C and calcium, and may explain the pandemic illness of their first few years. "Sealing in Northern Communities," *op. cit*.

[37]. Bent Sivertz (Hearing, 29 June 1993). He also argued that Eastern Arctic Inuit communities as a whole lacked such facilities, which, to the extent it is true, would arguably constitute a violation of human-rights norms relating to discrimination and socio-economic rights.

[38]. See the *Summary of Factual Allegations*, annexed to this report.

[39]. Armand Brousseau (Hearing, 28 June 1993). It might be argued that the intent of this was to protect Inuit from exploitation, but it must be borne in mind that Resolute was scarcely a tourist destination.

[40]. Samwillie Elijasialuk (Special Hearing, 5-8 April 1993).

[41]. Simeonie Amagoalik, Jaypettie Amaraulik, Jackoosie Iqaluk, Andrew Iqaluk (Special Hearing, 5-8 April 1993). In addition the Pond Inlet people who were recruited to "orient" the Inukjuak settlers believed that they should have been paid for their work; Bent Sivertz testified (29 June 1993) that this had never been the government's intent.

and Inuit may well have felt powerless to refuse the requests of the RCMP for services.

According to Bent Sivertz, fur sales at Resolute and Grise Fiord were initially used to reimburse the Eskimo Loan Fund for the expenses of resettlement.[42] In other words, Inuit relocatees were required to *repay* Canada for the project, without their direct knowledge that this would be done, either before or after they agreed to move. They were charged for an "experiment" in providing them with something--adequate food--which other Canadians enjoyed as a right.

Why didn't they return?

I feel that we were stolen. I feel that we were held by the government as hostages.[43]

Former government officials testified that resettlement had been an unqualified success, and that there was no talk of returning to the south until the 1970s. In Bent Sivertz' words there was "no hardship" in the 1950s. Gerard Kenney argued that the relocatees had been happy with their lot and anxious to remain where they were, based on twenty Inuktitut letters he recovered from DIAND files, and the contemporary reports of non-Inuit visitors to the High Arctic.[44] On the other hand, Shelagh Grant found evidence of disappointment, problems, and requests for transportation home in RCMP reports from that period. Evidently, there was a considerable gap between what Inuit themselves *felt* in the 1950s, and what non-Inuit thought they had *observed*.

Inuit recalled promises that they could return to Inukjuak after two years if they wished, and indicated that this escape-clause was an important factor in their willingness to participate. The possibility of a failure, and of the need to return the settlers to Inukjuak, was considered from the start by government officials,[45] and, according to Bent Sivertz, "everybody knew" about the government's promise to bring the settlers home in two to three years if they were dissatisfied.[46] No contingency plans were made for this , however, nor were the Inuit settlers involved in any formal, collective review of their situation after the first few years had elapsed.

Graham Rowley testified that no requests for transportation south were received until the 1970s, and Ross Gibson did not recall hearing any requests to return, but Bob Pilot, then stationed at Grise Fiord, recalled requests for transport home to Quebec, and that they had been denied for financial reasons.[47] Inuit witnesses testified that they, or relatives, had requested transportation and either been denied, or told that they must arrange to pay for the expenses themselves. Some families did eventually return to Inukjuak at their own expense.

People were not only allegedly discouraged from trying to return, but discouraged from

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[42]. This was confirmed by the archival documents recovered by Shelagh Grant (Hearing, 30 June 1993).

[43]. Jaybeddie Amagoalik (Special Hearing, 5-8 April 1993).

[44]. Of the 20 letters, 18 were favourable (Hearing, 29 June 1993).

[45]. Gordon Larsen (Hearing, 28 June 1993).

[46]. Also confirmed by Graham Rowley (Hearing, 29 June 1993).

[47]. Bob Pilot (Hearing, 28 June 1993). There were indications that in some instances, individuals were told they could not return to Quebec unless their entire family was anxious to move.

telling outsiders about their disappointment with the project. It was reported that, when the *C.D. Howe* made its annual visit, Inuit settlers were reminded to "make sure if you talk at all, you say nice things about this place and make sure you wear your best clothes".[48] Some witnesses explained that they had failed to explain their distress when they wrote to relatives in Quebec, out of concern for worrying them. Others may have felt powerless to complain.

Whatever the precise nature of the commitments that were actually made to Inukjuak recruits, it seems clear that the people clung to the belief in their right to return as a source of hope during their first dark winters of disappointment. As the years passed, it became clear to them that this was not possible, deepening their feelings of power-lessness and loneliness:

> I remember they told us, "You will be home maybe in a year or two", and then after two years I remember my husband asking when we would be going back. I mean they wanted to go back afterwards because they were promised they will go back in two years. I remember our Elders asking almost everyday, "Have they told us yet that we will be going back, when we would be going back to Inukjuak". I mean we have no way of knowing. No one told us afterwards.[49]

> We were told of the promise of two years; that we were going to be there two years only. I remember there were waves--they were waving each other goodbye, with tears streaming down their faces. "Cousin, I am going to see you again. I will return." And there were many people saying that as the ship was departing. They never saw there family again. Not only did they not see them ever again, they never heard from them again.[50]

Reuben Ploughman recalled hearing that people were "disappointed" and wanted to return to Inukjuak. Disappointment, combined with their feelings of being trapped and isolated, nearly *incommunicado*, weighed heavily on many of the settlers. Samwillie Elijasialuk remembered:

> My father lived for only eight months after our relocation into the High Arctic. He did not even last the year after we were relocated when it sunk into him that it will probably never be possible again for him to ever return to his original homeland, ascertaining that what he had been been told about plentiful wildlife was absolutely not true, and he died of a broken heart.

There were other stories of people dying of broken hearts, as well as deaths and disability due to malnutrition, or to inadequately treated ailments and injuries.[51] The record prepared by the Commission is not sufficient to quantify the loss of life and health due to relocation, but it would be surprising--in view of the change in diet, much colder climate, and relative inaccessibility of

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[48]. Samwillie Elijasialuk (Special Hearing, 5-8 April 1993).

[49]. Minnie Allakariallak (Special Hearing, 5-8 April 1993).

[50]. Jaybeddie Amagoalik (Special Hearing, 5-8 April 1993).

[51]. Samwillie Elijasialuk, Simeonie Amagoalik, and Maina Arragutainaq (Special Hearing, 5-8 April 1993). Witnesses testified that one third of the children born at Resolute or Grise Fiord in the 1950s had died. Canadian Inuit as a whole had an infant mortality rate of 11.1 percent in 1960, compared to a national Canadian rate of less than 1 percent. DIAND, *Basic Departmental Data 1992* (Ottawa, 1992).

professional health care--if the settlers had been as healthy as their kin in Inukjuak.

It is important to recognize that the relocatees *did* learn how to make good use of the High Arctic ecosystem, and that some of them, and many of their children, appear satisfied with their situation today.[52] Of course, much has changed since 1953. In addition to the experience gained by the people, physical infrastructure and financial assistance was provided once Federal officials abandoned their original policy of enforced isolation and self-reliance. On the other hand, those people who returned to Inukjuak reportedly came home with nothing, since they had to sell their possessions for to pay for transportation, or simply leave them behind in the High Arctic.

Summary of the facts

Inuit witnesses made six general classes of allegations regarding the circumstances and consequences of the relocation scheme, which are relevant to international human-rights standards:

1. They were *compelled* to remove, if not by the use of force, out of fear or respect for the RCMP, and they prevented from returning. No genuine, collective decision to relocate was ever taken.

2. They were *not fully informed* of the conditions they would face in the High Arctic and were deliberately misled as to the assistance they would receive from Canada.

3. The resettlement program was *experimental* in nature, aimed at the securing of Canada's claims to Arctic sovereignty, rather than at the improvement of Inuit conditions.

4. During the removal itself, and for a number of years thereafter, the relocatees suffered a significant decrease in their material *conditions of life* (shelter, food, health, education).

5. The removal and resettlement involved the *separation of families*, and interference with continued communications and contacts among families.

6. Inuit relocated to the new settlements were compelled to work for the Government without compensation.

II. APPLICABLE INTERNATIONAL INSTRUMENTS

Customary and conventional law

A preliminary distinction must be drawn between international law created by the express consent of States through treaties, conventions or other formal acts, and standards which have evolved in practice and become generally accepted. States are clearly bound by what they have ratified, from the date of ratification, but questions may arise as to the date upon which customary norms have become effective. Principles may, for some time, be regarded by the international community as *lege ferenda* ("nearly laws") if broadly but not universally accepted. Such norms may not only eventually achieve universal acceptance but may, in certain instances, assume the character of *jus cogens*--that is, rules of such a fundamental character that they supersede all others whether customary or conventional.

The International Court of Justice has ruled that, since the 1945 adoption of the Charter of

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[52]. Anna Nungaq, Larry Audlaluk, and Paul Amagoalik (Special Hearing, 5-8 April 1993).

the United Nations, not only the principle of self-determination, but also "principles and rules concerning basic rights of the human person, including protection from slavery and racial discrimination", have emerged as customary international law.[53] Article 55(c) of the Charter commits Member States to guarantee "full respect for, and observance of, human rights and fundamental freedoms for all," and this broad commitment was given specific content in 1948 by the Universal Declaration of Human Rights, which has thereby become an expression of customary norms.[54] This was universally recognized in 1968 by the Final Act of the first International Conference on Human Rights, at Teheran, which declared:

> The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.[55]

Thus the Universal Declaration became applicable to all Member States, *at least* as early as 1968, if not even earlier. The precise date upon which Canada became subject to these customary norms is debatable, and this bears on the case at hand, where the alleged violations began in 1953, and chiefly relate to the 1950s and 1960s.

It should be noted in this context that in 1959, the Economic and Social Council (ECOSOC) authorized the U.N. Commission on Human Rights to discuss, with the States concerned, individual communications which allege violations of "respect for, and observance of, human rights and fundamental freedoms" as stated in the Charter.[56] ECOSOC elaborated on the procedures to be followed in the public and private consideration of such grievances in its resolutions 1235 (XLII) and 1503 (XLVIII) of 1967 and 1970, respectively. Both refer to a "consistent pattern" of the violation of "human rights and fundamental freedoms," without any specification, and this has been understood to incorporate the rights proclaimed by the Universal Declaration. Thus during the period 1959-1970, the Commission on Human Rights was empowered to discuss alleged violations of the Universal Declaration involving any Member State. A strong argument can therefore be made that these norms were *emerging--lege ferenda*--well before 1959, and may well have become applicable to Canadian teritory as early as 1948.

The principle of non-retroactivity

A convention cannot ordinarily be applied to events that preceded its adoption or ratification by the State in question, nor can a norm of customary international law be applied to situations that occurred while the norm was still evolving in practice. A continuing violation may nonetheless become actionable the moment a new norm, customary or conventional, comes into force. In the

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[53]. *Barcelona Traction*, [1970] ICJ Reports, at 32. Also see the ICJ's *Namibia* advisory opinion, [1971] ICJ Reports, at 57 para. 131.

[54]. Ian Brownlie, *Principles of Public International Law, 4th edition* (Oxford, The Clarendon Press 1990), pages 570-571.

[55]. *Final Act of the International Conference on Human Rights*, U.N. document A/CONF.32/41 (1968), para. 2.

[56]. ECOSOC resolution 728F (XXVIII).

context of the practice of the U.N. Human Rights Committee, States are responsible for a sequence of violations which *began* before their ratification of the International Covenant on Civil and Political Rights and its Optional Procotol, when the violations *continue* to occur after ratification.[57]

One exception to non-retroactivity has emerged, which relates to "peremptory norms of international law" (*jus cogens*)--norms which are essential to international order, and admit of no possible derogations or exceptions. These norms include the inadmissibility of the use of force in international relations, respect for the right of peoples to self-determination, and (as noted above) respect for human rights. A State may not assert rights or claims which arose from its violations of *jus cogens*, even if they occurred before 1945.[58] Article 61 of the Vienna Convention on the Law of Treaties (1970) provides rules for the reform of treaties which conflict with new, emerging peremptory norms (or *jus cogens*) of international law. Thus Canada may be barred from asserting territorial or other claims to the High Arctic, based on its actions in 1953-1955, if those actions violated peremptory norms.

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[57]. *Solorzano v. Venezuela*, No. 156/1983 (1986). The fact that some of the *injury* resulting from a pre-ratification violation persists is not sufficient. *J.K. v. Canada* (1984), No. 174/1984.

[58]. As applied in *Western Sahara Advisory Opinion*, [1975] ICJ Reports, and *Namibia Advisory Opinion*, [1971] ICJ Reports, with respect to the acquisition of colonial territory.

The status of relevant law in 1953

Accordingly, at least four international human rights instruments were applicable to Canada during the original relocations of Inuit in 1953-1955:

The 1926 Slavery Convention was ratified by Great Britain in 1927, with respect to the British Empire. Canada signed the 1953 Protocol to the Convention on 17 December 1953, thereby admitting its earlier application to Canada through British ratification.

The ILO Convention on Forced Labour, No. 29 (1930) which was ratified by Great Britain and thereby became applicable to Canada automatically through Article 35 of the ILO Constitution.

The Fourth Geneva Convention (for the Protection of Civilian Persons in Times of War), which Canada signed on 12 August 1949, and subsequently ratified, with respect to forced relocations.

The Convention on the Prevention and Punishment of the Crime of Genocide, which Canada ratified on 3 September 1952, and which forbids inflicting conditions of life upon a group, calculated to bring about its destruction.

In addition, Canada was a party to the Charter of the United Nations, which came into force on 24 October 1945, and (as discussed above) was arguably subject to the Universal Declaration of Human Rights, adopted by the General Assembly on 10 December 1948, at some time between 1948 and 1968. The principles of self-determination and respect for human rights had arguably evolved into customary *jus cogens* prior to 1953.

International norms applicable after 1953

Subsequent to 1953, Canada ratified a number of international and regional instruments which are applicable to the resettlement process, and its continuing consequences--in particular to the deterioration of material conditions of life which Inuit argue they suffered during the generation *following* relocation:

ILO Convention No. 105 (Abolition of Forced Labour), which went into force on 17 January 1959, and forbids the mobilisation of forced or compulsory labour in "development" projects.

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), ratified by Canada on 14 October 1970, which forbids discrimination in the enjoyment of freedom of movement and other civil and socio-economic rights.

The International Covenant of Economic, Social, and Cultural Rights (CESC), ratified by Canada on 19 May 1976, which requires equal treatment and progressive improvement with respect to such socio-economic rights as standard-of-living, health, housing, and education.

The International Covenant of Civil and Political Rights and its First Optional Protocol (CCPR), ratified by Canada on 19 May 1976, which refer, *inter alia*, to degrading treatment, freedom of movement and residence, forced labour and protection of families.

The Final Act of the Conference on Security and Co-operation in Europe (CSCE), signed by Canada on 1 August 1975, secures non-discrimination in the enjoyment of those fundamental human rights defined by the United Nations.

The Convention on the Rights of the Child (CRC), ratified by Canada on 13 December 1991, which refers to survival of the child and to the protection and improvement of children's well-being.

It is not altogether clear from Inuit testimony to the Commission at what point the alleged violations of relocatees' rights *ceased*. It would appears that most of the situations described by Inuit witnesses took place before 1970, *i.e.*, prior to the application of most of the above instruments to Canada. On the other hand, most of the standards which are enuniciated in these instruments, can be found in some form in the Universal Declaration of Human Rights, which certainly applied to Canada before 1970, and perhaps much earlier. The events described by Inuit fall, historically, within what might best be described as a "window" of legal uncertainty, between the adoption of the Declaration and the ratification of CERD, the two Covenants and other instruments. It is not absolutely certain that Canada was bound by the Declaration during this brief period, neither is it certain that Canada was not so bound. Canada's actions, as described by Inuit witnesses, would have violated a number of principles contained in the Declaration, which do not appear in instruments Canada had ratified by 1953.

It should be noted that Canada has never ratified ILO Convention No. 107 (Indigenous and Tribal Populations), or ILO Covention No. 169 (Indigenous and Tribal Peoples), both of which forbid the involuntary resettlement of the peoples concerned, except in specified situations, with full restitution and compensation. Relevant provisions of these two conventions will nonetheless be discussed for comparison purposes, and because they best reflect the progressive development of standards specifically applicable to indigenous peoples.

III. THE CONTENTS OF RELEVANT INTERNATIONAL NORMS[59]

Genocide

The Contracting Parties confirm that genocide, whether committed in time of peace or time of war, is a crime under international law which they undertake to prevent and to punish. ***Genocide Convention: 1.***

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its

[59]. Abbreviations of the titles of international instruments, employed here for convenience and brevity, are defined in a *Key to Instruments*, annexed to this report. General Comments of U.N. human rights treaty bodies are compiled in U.N. document HRI/GEN/1, which is periodically revised and updated.

physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group. ***Genocide Convention: 2.***

Genocide and *apartheid* are categorized as crimes against humanity and, as such, entail *individual* rather than State responsibility. Any person who commits, conspires to commit, or assists in the commission of these crimes is punishable by any State in whose territory s/he may be found. The establishment of the International War Crimes Tribunal, by Security Council resolution 827 (1993), while aimed immediately at the situation in the former Yugoslavia, has been widely regarded as an important step towards developing a permanent system of international criminal jurisdiction to address genocide, *apartheid* conventions, and the Geneva Conventions of 1949. The 1948 genocide convention has been applicable to Canada since 1952.

As defined by the 1948 convention, genocide requires evidence of specific intent (*mens rea*), that is, an intention to destroy the group in question, by any of the means enumerated in Article 2. Destructive *effects*, absent specific intent, do not constitute genocide, although they violate the human rights of the victims as guaranteed in a number of other international instruments, such as the CCPR, which are based on effects rather than intent.[60] To the extent that Inuit relocated to the High Arctic suffered physical and mental harm, and conditions that threatened their survival, the project fell within the effects test of the 1948 convention, but there has been no direct evidence of specific intent to cause this harm. An argument could be made that the project involved the secondary crime of "complicity" under Article 3(e) of the convention, but that would presumably still require direct evidence of a broader government scheme to destroy Inuit, of which the project in question was a part.

Involuntary relocation

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. ***Fourth Geneva Convention: 49.***[61]

The populations concerned shall not be removed without their free consent from their habitual territories except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the health of the said populations.

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[60]. Compare, in particular, CCPR Articles 2 (discrimination); 6 (right to life); 7 (torture or degrading treatment); 8 (forced labour); 23 (security of families); 24 (protection of children); and 27 (rights of minorities).

[61]. Article 6(c) of the Charter of the International Military Tribunal (the "Nuremberg" tribunal), endorsed by the U.N. General Assembly in its resolution 95(I) of 11 December 1946, defined "war crimes" as any "murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory."

When in such cases removal of these populations is necessary as an exceptional measure, they shall be provided with lands of quality at least equal to that of the lands previously occupied by the, suitable to provide for their present needs and future development. ...

Persons thus removed shall be fully compensated for any resulting loss of injury. ***ILO Convention No. 107: 12.***

Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effect-ive representation of the peoples concerned.

Wherever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

Where such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. ...

Persons thus relocated shall be fully compensated for any resulting loss or injury. ***ILO Convention No. 169: 16.***

The first express treatment of forced relocation in international law can be found in the Fourth Geneva Convention of 12 August 1949, to which Canada was an original signatory. This instrument prohibits the relocation of civilians in times of "armed conflict" or the occupation of territory by a foreign power, including civil war (Article 3). The only exceptions permitted by the convention are *temporary* evacuations, to protect the safety of the people concerned, or "imperative military reasons" (Article 49). The Geneva Convention would seem not to apply, *ratione materiae*, to the forcible relocation of civilians in times of peace. It might be argued that the North was "occupied" by Canada in 1953, in violation of international law,[62] or that no lesser standards of protection should apply in peacetime than in time of war, but these arguments would be relatively difficult for international agencies to accept at the present time.

Comprehensive standards on the forcible relocation of indigenous peoples were adopted by the International Labour Organisation (ILO) in its Convention No. 107 (1957) and Convention No. 169 (1989). Although Canada has failed to ratify either of these conventions, they indicate the

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[62]. Additional Protocol I (1977) to the Convention explicitly extends its provisons to situations of struggles against "colonial domination or alien occupation and against racist regimes." See the discussion of the right to self-determination, below. The application of the Fourth Geneva Convention may thus extend part the time of actual hostilities, to the subsequent period of unlawful occupation of territory.

prevailing trend of international-law thinking on this topic. The 1957 convention permits the resettlement of indigenous peoples for the purpose of "national economic development"--in the national interest-- or in the event of a health emergency, but requires restitution of the lands, and compensation for individuals' losses. The 1989 convention requires "free and informed consent" even for most emergency measures, and provides that the relocatees have the right to return. Had Canada been subject to either of these conventions in 1953-1955, its actions would have been colourable with respect to free consent, the necessity of the relocation, restitution, compensation, and right of return.

It should be noted that, in connection with the right to *adequate housing* (discussed in detail below), the Committee on Economic, Social and Cultural Rights has stated that "instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law".[63] While the CESC has only been in force in Canada since 1976, the Committee's reasoning may also be extended to the UDHR, which arguably has applied to Canada since 1948.

A United Nations report on the question of forced resettlement,[64] albeit only preliminary, concluded that such practices violate several provisons of the UDHR, CCPR and CESC, including those discussed below, and additionally may constitute a crime against humanity, depending on its intentions and effects.

Freedom of movement and residence

Everyone has the right of freedom of movement and of residence within the borders of the borders of each State. ***UDHR: 13.***

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. ***CCPR: 12.***

The Human Rights Committee has applied these provisions to cases of "internal exile," *i.e.*, persons either placed under house arrest or placed under restrictions on their free travel. *Ngalula v. Zaire*, No. 138/1983 (1986); *Mpaka-Nsusu v. Zaire*, No. 157/1983 (1986). Although the Committee has not yet considered a case of collective restrictions on movement or of forced resettlement in this context, there is little doubt that such actions would fall within the scope of Article 12, as the Al-Khasawneh-Hatano report concluded.[65]

The right to freedom of movement and residence is subject, under Article 12(4) of the CCPR, to legal restrictions which are necessary "to protect national security, public order, public

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[63]. In the Committee's General Comment 4 (1991), para. 18.

[64]. "The human rights dimensions of population transfer, including the implantation of settlers; Preliminary report by prepared by Mr. A. S. Al-Khasawneh and Mr. R. Hatano," U.N. document E/CN.4/Sub.2/1993/17.

[65]. "The human rights dimensions of population transfer," *op. cit.*, at paras. 223-232. However, see *Birshashwira and Mulumba v. Zaire*, Nos. 241/1987 and 242/1987 (1990), where all leading members of a political opposition party were banished to their home villages.

health or morals." The burden of establishing the *necessity* of any restriction rests with the State. *Mabel Pereira Montero v. Uruguay*, No. 106/1981 (1983). It is not enough for the State merely to allege that its actions were in the public interest.

In the absence of informed consent to the physical isolation and restricted freedom of movement endured by the High Arctic relocatees--and lacking any justification, other than financial, for subsequently refusing to return them to their homeland in Quebec, the project would violate the UDHR (arguably applicable to Canada since 1948), and CCPR (applicable to Canada since 1976).

Freedom from cruel and degrading treatment

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. ***UDHR: 5.***

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. ***CCPR: 7.***

In its General Comment 7 (1982), the Human Rights Committee has made it clear that the scope of protection required by this norm "goes far beyond torture as normally understood."[66] It may include corporal punishment of schoolchildren, solitary confinement of detained persons or any kind of humiliating or degrading treatment of persons deprived of their liberty. Unconsented experimentation is a violation, *per se*, of the CCPR provision. In *Quinteros v. Uruguay*, No. 107/1981 (1983), the Committee concluded that mental anguish suffered by a mother whose daughter had been "disappeared" by State security forces, was covered by this Article as well. Hence any action by government which results in physical pain, *or* humiliation and mental anguish, could fall within this norm depending "on all the circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and status of health of the victim".[67]

The Human Rights Committee further observed in General Comment 20 (1992) that Article 7 admits of no derogations or exceptions, and must apply equally to physical pain as to "acts that cause mental suffering to the victim". The Committee emphasized the particular vulnerability of persons in custody or detention to experimentation, observing that persons deprived of freedom of movement are incapable of giving valid, free consent.[68] For this reason, the Committee concluded that medical or scientific experimentation which is "deterimental to [the] health" of such persons, is *prima facie* a violation of Article 7 even if there is the *appearance* of consent. This has special significance for Inuit transported to the High Arctic, since for all practical purposes they were

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[66]. By comparison, the Convention Against Torture defines "torture" in Article 1(1) as inflicting pain for the purpose of extracting informa-tion or a confession or as a means of punishment. Under Article 1(2), however, this does not affect the wider definition contained in other international instrument, such as the CCPR.

[67]. *Vuolanne v. Finland*, No. 265/1987 (1989), para. 9.2.

[68]. General Comment 20 (1992), para. 7.

deprived of freedom of movement, and were under RCMP supervision.

It should be noted that Article 10(1) of the CCPR provides that, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." While this refers primarily to persons arrested or detained by the criminal justice system, the Human Rights Committee has emphasized its relation to Article 7, and expressed the view that it applies to all situations in which persons have been "lawfully"--which is to say, by government officials--"held against their will, not only in prisons but also, for example, hospitals, detention camps or correctional institutions."[69]

To the extent that Inuit settlers and their families in Inukjuak were subjected to separation, isolation and loss of communication--and to the extent that the RCMP and other government officials involved in transporting the Inuit to the High Arctic, and supervising settlements there, treated Inuit in a degrading manner--there would be violations of the UDHR (arguably applicable to Canada since 1948), and the CCPR (applicable to Canada since 1976). As interpreted by the Human Rights Committee, Articles 7 and 10 of the CCPR impose a duty of humanity on State officials whenever they assume control over people's freedom of movement.

Forced or unpaid labour

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Everyone, without discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplement, if necessary, by other means of social protection. ***UDHR: 23.***

No one shall be required to perform forced or compulsory labour. ***CCPR: 8.***

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

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[69]. General Comment 9 (1982), para. 1.

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(iii) Safe and healthy working conditions. ***CESC: 7.***

Every Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour:

(b) As a means of mobilising and using labour for purposes of economic development; ...

(e) As a means of racial, social, national or religious discrimination. ***ILO Convention No. 105: 1.***

The Slavery Convention (1926) defined slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised". The Supplementary Convention on the Abolition of Slavery (1956) added debt bondage, serfdom and the involuntary marriage of women. Although RCMP allegedly restricted the freedom of movement of Inuit, and recruited Inuit to work without pay, it is debatable whether the degree of RCMP control over the lives and work of Inuit settlers was comprehensive enough to constitute slavery. Canada signed the 1926 Slavery Convention on 17 December 1953, barely three months after the first Inuit were delivered to the High Arctic; Canada signed the Supplementary Convention in 1956 and ratified it on 10 January 1963. Both therefore applied to Canadian territory during the decade following the initial relocation.

The first express international prohibition against *forced labour* can be found in ILO Convention No. 29 (1930), which made exceptions in favour of compulsory military service, penal servitude, "normal civic obligations of citizens," and (Article 2):

cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population.

The convention also called for the *progressive* prohibition of the use of forced labour in the construction of public works, and in the mean time required that such labour be used only where "the work or service is of present or imminent necessity," and of benefit to the community concerned (Articles 9 and 10).

Canada did not ratify this convention; it was not yet independent of the Empire with respect to its foreign affairs.[70] Convention No. 29 was ratified by Britain, however, and therefore applied

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[70]. That would await the Statute of Westminster, in 1931, and further developments in the customary law of the Empire.

by the express terms of Article 26 to all territories under British jurisdiction. To the extent that the Crown in right of Canada had evolved a separate or distinct international personality between 1930 and 1953, furthermore, it would have succeeded to British multilateral treaty obligations by the routine operation of principles of international law.[71] There is little doubt, then, that Convention No. 29 was in force in Canada when the High Arctic relocations took place. The relevant legal issue then becomes whether the unpaid work performed by Inuit in the High Arctic was *voluntary*, and whether it was *necessary* and *beneficial*: questions of fact that do not admit of clearcut answers.

The use of forced labour for development was eliminated in later international treaties, however. CCPR Article 8 only excludes, from its definition of "forced or compulsory labour," compulsory military service, punishment under a court order, and services requisitioned by governments "in cases of emergency or calamity threatening the life or well-being of the community". This last exception would seem to apply to natural disasters, such as hurricanes and earthquakes, where labour must be mobilised to prevent an imminent loss of life, or destruction of the community's physical existence. It would not shield activities aimed merely at "development". This is consistent with ILO Convention No. 105, which expressly forbids the mobilisation or use of labour for "development" purposes. ILO Convention No. 105 has been applicable to Canada since 1959, and the CCPR since 1976.

Labour which is voluntary, but is nevertheless inadequately paid, would violate the fair-wage and just employment provisions of the UDHR (arguably applicable to Canada since 1948), and CESC (applicable since 1976). The extent to which these provisions may have been applicable, in fact, to the conditions of work of Inuit in the High Arctic is not entirely clear from the record available to the Commission, but there is little doubt that Inuit believe they were unpaid or underpaid. The likelihood that wages were paid into the Eskimo Loan Fund, and thereby used to reimburse Ottawa for the expense of relocation, is relevant as well.

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[71]. Compare Lord Denning's reasoning in *Indian Association of Alberta v. Secretary of State*, [1982] 2 All E.R. 118, that British commitments under Indian treaties had devolved to Canada.

Non-discrimination

Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ***UDHR: 2.***

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms, and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the exercise of the following rights: ...

(d)(i) The right to freedom of movement and residence within the border of the State; ...

(d)(v) The right to own property alone as well as in association with others; ...

(e)(i) The rights to work, to free choice of employ- ment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; ...

(e)(iii) The right to housing;

(e)(iv) The right to public health, medical care, social security and social services;

(e)(v) The right to education and training. ***CERD: 5.***

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ***CCPR: 2.***

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ***CESC: 2.***

All are equal before the law and are entitled without any discrimination to equal protection of the law. ***UDHR: 7.***

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. ***CCPR: 26.***

Article 1 of CERD defines *discrimination* to be: "any distinction, exclusion, restriction or preference which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise" of human rights. Article 2 of the UDHR, Article 5 of CERD, and Article 2 of the CCPR and CESC forbid discrimination in the enjoyment of those rights which are specifically enumerated. Article 7 of the UDHR and Article 26 of the CCPR are broader, and forbid discrimination in the

application of *any* laws.[72] Differentiation is permissible only when it is "reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant".[73] Thus affirmative action to correct conditions of discrimination or disadvantage may be legitimate under the Covenant.[74]

As the Human Rights Committee stressed in its General Comment 3 (1981), Article 2 of the CCPR contemplates active measures to ensure equality in the actual "enjoyment" of civil and political rights.[75] It is not sufficient that there are laws which condemn discrimination, or that national legislation as a whole is facially neutral. The Article prohibits discrimination, whether in law, *or in fact*.[76] In accordance with Article 4 CCPR, moreover, the right to non-discrimination in the enjoyment of civil and political rights is *non-derogable* even in times of war or national emergencies.

With respect to discrimination, it may be questioned whether the measures taken in 1953-55 to recruit and relocate Inuit, without full benefit of health, housing, and welfare services which were available at the time to other Canadians, would have been undertaken in the case of non-aboriginal people. Selective treatment of Inuit, particularly with respect to their freedom of movement and access to socio-economic services, would violate the UDHR (arguably applicable to Canada since 1948), CERD (applicable to Canada since 1970), and both the CCPR and CESC (applicable to Canada since 1976).

The rights to life, food, shelter, and health

Everyone has the right to life, liberty, and security of person. ***UDHR: 3.***

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. ***CCPR: 6.***

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood due to circumstances beyond his control. ***UDHR: 25***.

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[72]. Human Rights Committee, General Comment 18 (1989), para. 12.

[73]. *Ibid*., para. 13. *Sprenger v. The Netherlands*, No. 395/1990 (1992) (distinction between married and unmarried couples justified); *Pauger v. Austria*, No. 415/1990 (1992) (different treatment of men and women for pension purposes unjustified); *Jarvinen v. Finland*, No. 295/1988 (1990)(different durations of military service and alternative service not unreasonable); *Gueye v. France*, No. 196/1985 (1989) (distinctions in pensions between French and Senegalese veterans unjustified).

[74]. General Comment 18, *op. cit.*, para. 10.

[75]. Similarly, with respect to the CESC, see General Comment 3 of the Committee on Economic, Social and Cultural Rights (1990).

[76]. Human Rights Committee, General Comment 18 (1989), para. 9.

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. ... The States Parties to present Covenant, recogniz[e] the fundamental right of everyone to be free from hunger... . ***CESC: 11.***

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth- rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness. ***CESC: 12.***

Although the international legal protections of the right to life were historically aimed chiefly with arbitrary killings by government officials, the Human Rights Committee has made it plain that Article 6 of the CCPR "cannot properly be understood in a restrictive manner," but also contemplates states' duty "to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics".[77] In her preliminary report, the Special Rapporteur on Human Rights and the Environment noted the relationship between Article 6 and environmental threats to human life and health, such as toxic waste.[78] The Human Rights Committee appears to share her view, as indicated by its decision in *EHP v. Canada*.[79]

General Comment 4 (1991) of the Committee on Economic, Social and Cultural Rights defines the right to adequate housing as "the right to live somewhere in security, peace and dignity". The Committee further identified seven factors determining the "adequacy" of shelter: legal security of land tenure; availability of basic services (such as safe drinking water and sanitation); affordability; habitability (warmth, safety, protection from the elements); accessibility to all

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[77]. Human Rights Committee, General Comment 6 (1982), para. 5. In its General Comment 14 (1984), the Committee concluded that the production of weapons of mass destruction, including nuclear weapons, constitutes a violation of Article 6. Also see the Committee's decision in *EW and Others v. The Netherlands*, No. 429/1990 (8 April 1993).

[78]. "Human Rights and the Environment; Preliminary Report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur," U.N. document E/CN.4/ Sub.2/1991/8, paras. 47-48.

[79]. No. 67/1980 (27 October 1982). Although it found the communication inadmissible on the grounds of failure to exhaust domestic remedies in Canada, the Committee indicated that the substantive claim, based upon a pattern of toxic discharges into the water supply of a small town in British Columbia, was valid.

persons; location in safe environments and in proximity to education and health services, and cultural adequacy. The Committee noted that a priority should be given to disadvantaged groups, and that the people concerned must have the right to participate in decision-making.[80]

High Arctic relocation had the effect, at least for the first few years, of a *decrease* in the nutrition, housing, standard of living and health of the relocatees. At least some individuals allegedly died or became permanently disabled as a direct result of malnutrition. These conditions had not been anticipated by the Inuit people concerned, who therefore could not be said to have consented to them, and accordingly would violate the UDHR (arguably applicable to Canada since 1948), the ICSEC (applicable to Canada since 1976) in respect to living standards and health, and the CCPR (applicable to Canada since 1976) in respect to the right to life as construed by the Human Rights Committee.

The right to education

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory... .

Parents have the prior right to determine the kind of education that shall be given to their children. ***UDHR: 26.***

The States Parties to the present Covenant recognize the right of everyone to education. ...

The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
(a) Primary education shall be compulsory and avail-able free to all; ... .

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applic-able, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in accord-ance with their own convictions. ***CESC: 13.***

Article 2 of the CESC explains that States are obliged to strive to realize economic and social rights "progressively," to the "maximum of [their] available resources," and without any discrimination in the distribution of benefits among different social groups. Hence Article 13 does not necessarily require the *immediate* provision of compulsory, free primary education to all children in those States which genuinely lack adequate resources to do so. It does require that, regardless of their resources, States give *priority* to realizing this right, and not favour some groups to the exclusion of others. The CESC also implies a certain *minimum* threshold, or "core" level of achievement for every economic and social right.[81] The State cannot simply do nothing, even when its resources are limited.

To the extent that Inuit relocatees lacked school facilities that were comparable to those they

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[80]. General Comment 4 (1991), paras. 7-9, 13.

[81]. Committee on Economic, Social and Cultural Rights, General Comment 3 (1990), para. 10.

had enjoyed in Quebec--or to those which non-Inuit communities enjoyed at that time--it would violate the UDHR (arguably applicable to Canada since 1948), and the CESC (applicable to Canada since 1976). In addition, there were allegations that Inuit children were forbidden to use their own language, raising a question under both the UDHR and CESC regarding parental choice and guidance.

Privacy, security and correspondence

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour or reputation. ***UDHR: 12.***

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation. ***CCPR: 17.***

In its General Comment 16 (1988), the Human Rights Committee took the view that interference which is authorized by law, still violates Article 17 if it is "arbitrary," *i.e.*, "unreasonable in the particular circumstances". In particular,

Compliance with Article 17 requires that the integrity and confidentiality of correspondence should be guaranteed *de jure* and *de facto*. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of communication, wire-tapping and recording of conversations should be prohibited.[82]

There were allegations of RCMP interference with relocatees' mail and radio messages. Such activities would violate the UDHR (arguably applicable to Canada since 1948) and CCPR (applicable to Canada since 1976).

Security of families and children

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. ***UDHR: 16.***

Motherhood and childhood are entitled to special care and assistance. ***UDHR: 25.***

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. ***CCPR: 23***.

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. ***CCPR: 24.***

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[82]. See, in this regard, *Miguel Angel Estrella v. Uruguay*, No. 74/1980 (1983); *Pinkney v. Canada*, No. 27/1978 (1982).

States parties shall ensure to the maximum extent possible the survival and development of the child. ***CRC: 6.***

As explained by the Human Rights Committee in its General Comment 19 (1990), Article 23 of the CCPR "implies the adoption of appropriate measures [by States] to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons".[83] Forced evictions or resettlement of some, but not all members of an existing community would almost certainly result in separating families and violating this provision.[84]

According to General Comment 17 (1989), CCPR Article 24 requires greater protection to children than might be accorded to adults. This protection goes beyond physical safety, hence, for example:

> every possible measure should be taken to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited ... .[85]

In addition, the Committee included the right to "a level of education that will enable them to enjoy the rights recognized in the Covenant." By this reasoning, any program which exposed children to greater risks to their health, nutrition or physical safety, or which deprived them of educational opportunities, would be colourable. This is also clear from Article 6 of the CRC, which places an *absolute priority* on child health and survival. Canada ratified the CCPR in 1976, and the CRC in 1991, long after the period in which the children of Inuit relocatees apparently suffered such markedly elevated mortality, malnutrition and disability. However, these binding instruments borrowed language from the UDHR, which arguable became applicable to Canada by the 1950s.[86]

Rights to collective identity and self-determination

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. ***CCPR: 1, CESC: 1.***

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to

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[83]. Also see *Aumeeruddy-Cziffra v. Mauritius*, No. 35/1978 (1981).

[84]. "The human rights dimensions of population transfer," *op. cit*., at para. 232. General Comment No. 19 (1990), para. 2 indicates that what constitutes a "family" depends on the culture of the people concerned, and may include members of "extended," as well as "nuclear" families. This is also reflected in Article 5 of the CRC.

[85]. General Comment No. 17 (1989), para. 3.

[86]. The CRC also reiterated most of the rights contained in the CESC and CCPR, stressing their application to children. Since Canada had ratified the CESC and CCPR in 1976, Canada's subsequent ratification of the CRC did not add substantively to these rights, insofar as they already applied by the terms of the earlier treaties to "everyone".

such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. ***CCPR: 27.***[87]

The applicability of the principle of self-determination to Inuit and other indigenous peoples has been the topic of ongoing controversy in the United Nations system since 1982, when it was advocated at the first session of the U.N.'s Working Group on Indigenous Populations.[88] The General Assembly has determined that any territory "geographically separate and distinct ethnically and/or culturally from the country administering" it, which has been "arbitrarily" subordinated in law or in fact, must be decolonized in accordance with Article 73 of the U.N. Charter.[89] Distinctiveness and subordination are issues of fact to be determined, ultimately, by the General Assembly.[90] Member States tend to argue that the principle of self-determination cannot be applied in a manner that disrupts the national unity and territorial integrity of existing States, as set out in General Assembly resolution 2625(XXV) of 24 October 1970. However, that resolution contains a proviso, that limits the defence of territorial integrity to States "possessed of a government effectively representing the whole of their population."[91] This would seem to apply to the case of Inuit, who were living within a geographically distinct territory, where they constituted a majority of the total population, enjoyed a distinct culture, were subordinated legally by Canadian laws and management, and lacked citizenship.

Reports by U.N. legal experts on the rights of indigenous peoples have concluded that self-determination is an applicable norm, which in the indigenous context entitles the peoples concerned to control their own territories and development, and negotiate their relationship with States.[92] The draft Declaration on the Rights of Indigenous Peoples, completed by the U.N. Working Group on Indigenous Populations in 1993, is currently awaiting action by the Commission on Human Rights, ECOSOC and the General Assembly; if it is eventually adopted in its present

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87. The same principle is restated, in respect of children, by Article 30 of the CRC, ratified by Canada in 1991.

88. For background, Russel L. Barsh, "Indigenous Peoples: An Emerging Object of International Law," *American Journal of International Law* 80 (2):369-385 (1986).

89. General Assembly resolution 1541(XV), 15 December 1960, Principle IV. Also see Article 1(2) of the United Nations Charter ("respect for the principle of equal rights and self-determination of peoples"); and General Assembly resolution 1514(XV), 14 December 1960, paragraph 2 ("All peoples have the right to self-determination").

90. Hector Gros Espiell, *The Right to Self-Determination: Implementa-tion of United Nations Resolutions*, UN document E/CN.4/Sub.2/405/Rev.1 (1980), pages 13-14,

91. Reiterated in slightly different words in the declaration of the World Conference on Human Rights, U.N. document A/CONF.157/23, para. 2 (1993).

92. "The effects of racism and racial discrimination of the social and economic relations between indigenous peoples and States; Report of a Seminar," U.N. document HR/PUB/89/5 (1989), pages 8-9, conclusion (v), and recommendations (1) and (ii); Jose R. Martinez Cobo, "Study of the Problem of Discrimination against Indigenous Populations," U.N. document E/CN.4/Sub.2/1987/7/Add.4, paras. 399-403.

form, it would explicitly recognize the right of indigenous peoples to self-determination.[93]

It should be noted that the International Court of Justice, in a 1971 advisory opinion on the status of the South African occupation of Namibia, concluded that self-determination has comprised a peremptory norm of international law (*jus cogens*) since the adoption of the U.N. Charter in 1945, and as such supersedes all inconsistent treaties and municipal legislation after that date. Hence, if applicable to Inuit territories in 1945, the principle of self-determination would render void any subsequent action disposing of the people or their territory without their free and informed consent.[94] Although the Human Rights Committee has expressly declined jurisdiction over self-determination disputes involving indigenous peoples within Member States,[95] this was a matter of the Committee's legal competence under the treaties which created it, rather than the substantive merits of the claims.

It should also be noted that ILO Convention No. 169, although not in force in Canada, contains three articles which, when read together, approximate the norm of self-determination. Article 6 requires States to "consult the peoples concerned through appropriate procedures and in particular through their representative institutions whenevever consideration is being given to legislative or administrative measures which may affect them directly." Consultations must be "in good faith ...with the objective of achieving agreement or consent". If proposed measures are aimed specifically at *protecting* indigenous peoples, they moreover "shall not be contrary to the freely-expressed wishes of the peoples concerned" (Article 4). In any event, indigenous peoples have "the right to exercise control, to the extent possible, over their own economic, social and cultural development" (Article 7). Had this been applicable to Canada in the 1950s, "freely-expressed wishes" expressed through formal, representative consultations would have been required.

In at least one case, the Human Rights Committee invoked Article 27 of the CCPR to uphold the right of members of an indigenous people to remain physically together as a community.[96] The recently-adopted Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992),[97] intended to serve as an interpretive guide to Article 27, includes the concepts of *protecting the existence* and *promoting the identity* of minorities. Although the 1948 genocide convention prohibits the *willful* destruction of a racial or ethnic group, the 1992 Declaration goes farther, and requires that States protect such groups even from *unintentional* harm, while helping them promote and development their own identity by

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[93]. Text contained in the "Report of the Working Group on Indigenous Populations," U.N. document E/CN.4/Sub.2/1993/29, Annex I.

[94]. See General Assembly resolution 1541(IV) for definition of consent in the context of exercises of self-determination.

[95]. *Ominiyak v. Canada*, No. 167/84 (1990); *Marshall (Mikmaq Tribal Society) v. Canada*, No. 205/1986 (1991).

[96]. *Lovelace v. Canada*, No. 24/1977 (1981); compare *Kitok v. Sweden*, No. 197/1985 (1988)(Swedish law basing Sami status on reindeer herding was not unreasonable and had no actual adverse impact on the author).

[97]. General Assembly resolution 47/135 of 18 December 1992.

positive means such as financial aid and public education. This expansive interpretation of Article 27 cannot readily be applied, retroactively, to the 1950s, but certainly indicates factors that would be relevant to evaluating a relocation or resettlement project today.

Parallel provisions of regional instruments

Canada only recently obtained full membership in the Organization of American States (OAS), in which it had previously been an observer, and signed the American Convention on Human Rights, otherwise known as the Pact of San Jose. This 1969 convention parallels the terms of the UDHR, and contains a number of provisions of relevance to the present inquiry:

- *Non-discrimination, equality before the law* (Articles 1 and 24);
- *The right to life* (Article 4);
- *Freedom from torture* or cruel, degrading, or inhuman treatment or punishment, and the right "to have his physical, moral and mental integrity respected" (Article 5);
- Freedom from *forced or compulsory labour* (Article 6);
- Freedom from interference with a person's *privacy, family, home, or correspondence* and the right to "have his honor respected and his dignity recognized" (Article 11);
- Right of the *family* to protection (Article 17);
- Right of the *child* to special protection (Article 19);
- *Freedom of movement and of residence* (Article 22).

Canada has been a member State of the Conference on Security and Cooperation in Europe (CSCE) since signing the "Helsinki Final Act" in 1975. The Helsinki pact does not contain such a detailed enumeration of specific human rights, but a more general commitment (Article VII):

> The participating States will respect human rights and fundamental freedoms, including the freedom of thought, coscience, religion or belief, for all without distinction as to race, sex, language or religion.
>
> They ill promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.
>
> Within this framework the participating States will recognize and respect the freedom of the individual to profess and practise, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.
>
> The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will aford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner,

protect their legitimate interests in this sphere.

A recent round of CSCE negotiations on "The Human Dimension" has led to the adoption of more detailed principles on minority rights and the appointment of a High Commissioner on National Minorities, as well as the adoption of a decision affirming the application of these norms without discrimination to indigenous peoples.[98] While CSCE standards are not retroactive in application, they indicate that a breach of the obligations Canada undertook in 1970 under CERD, and in 1976 under the CCPR and CESC, would today also involve a breach of commitments to the other CSCE participating States.

IV. LEGAL ANALYSIS OF THE PRESENT CASE

It is difficult to provide a definitive opinion on the lawfulness of Canada's actions in this case, owing not only to the lack of agreed facts, and the uncertainty surrounding the date of application of some of the most relevant norms to Canada, but the inherently subjective or qualitative nature of the norms at issue. Adjudication, whether it is in national or international fora, is as much a matter of judges as of laws. Adjudicators apply their personal experiences and intellectual biases to equivocal facts and rules, reducing to an absolute certainty that which can be subject to multiple, plausible interpretations. The outcome of a dispute depends greatly on when, where, and in what forum it is heard. Some causes plainly have little or no merit whatsoever, but in most instances it is a matter of ascertaining risks.

This section regroups relevant facts and norms into major themes, and evaluates their persuasiveness against the current practice of the United Nations' principal human-rights organs, based upon the author's personal experience with these organs, as well as published decisions. This provides a basis for an overall opinion on the likely response of these international fora to a hypothetical formal application by Inuit for redress. As a threshold matter, however, it is appropriate to ask whether the question of Arctic sovereignty would play any role in such a case.

The sovereignty issue

In their presentations to the Royal Commission, Inuit placed much emphasis on the possibility that Arctic relocation was motivated by an attempt to assert and defend Canadian sovereignty in the High Arctic. The Commission itself devoted considerable effort to this question, in the hearings and consultancy reports, without doing more than to imply that it is legally significant. Former government officials testified that Canadian Arctic sovereignty was not open to serious doubts in the 1950s, although some of them agreed that the "exercise" of sovereignty was a secondary consideration, at least, in the planning of relocation projects. Assuming, for the sake of argument, that sovereignty *was* an explicit and important motivation, what implications does this have in international law?

To begin with, it should be recalled that *intent* is not a factor in most human-rights norms. With the exception of *genocide*, for which the intent "to destroy" a particular group is an essential criterion, contemporary conventions define violations solely in terms of *effects*. Hence, if the effect of relocation was to deprive Inuit of freedom, of life and health, or of equality of treatment with other nationals, the intent behind these deprivations is, in principle, irrelevant. Modern

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[98]. "Helsinki Document 1992 - The Challenges of Change," UN document A/47/361 - S/24370 (3 August 1992), pages 21 and 65, paras. I(23) and VI(29); *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* (29 June 1990), paras. 32-39.

international law places a strict burden on governments to ensure that human rights are respected fully. Only two defences or justifications are permitted: national emergencies, and, in the case of economic and social rights, lack of national fiscal resources. Emergencies must be formally declared, however, and basic civil rights are "non-derogable" even in times of a declared emergency--that is, they cannot be waived, regardless of the situation of war, disaster, or civil unrest.[99] With respect to the defence of limited resources, this never applies to the protection of civil and political rights,[100] nor does it ever justify any *discrimination* in economic, social and cultural rights.[101]

Weight is undoubtedly given to intent in practice, however, since international organs are altogether human, just like national courts. A situation of grievous harm associated with overtly malicious intent, is more likely to attract severe censure than one in which government officials plead mistake, misguidance or ignorance.[102] Likewise, human rights bodies frequently praise accused governments for "cooperation," *i.e.*, candid discussion of allegations, and openness to investigations and recommendations by United Nations officials.[103] The United Nations is an organization of States, and it is in States' interests to prefer informal diplomatic engagement to public recriminations. Formal means are largely restricted to situations in which the evident vengefulness and hostility of a government poses a threat not only to its citizens, but to its neighbours, trade, or regional strategic alignments. Hence while Canada's reasons for relocating Inuit should be irrelvant to any determination by an international human-rights body, they would likely be weighed informally by decisionmakers in formulating an appropriate response to allegations. An analogy can be made with the principle of proportionality in sentencing. In international human-rights bodies, however, issues of intentionality affect *whether* there is a response, rather than the severity of the response.

Resettlements of communities for strategic reasons are widespread phenomena. The United States removed Aleuts from Alaska in the early days of World War II, and Sweden removed Sami from the Soviet frontier in the decades following the war. Amazonian countries are

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[99]. Limitations on derogability are contained in Article 4, CCPR. See too Leandro Despouy, *Question of Human Rights and States of Emergency*, U.N. document E/CN.4/Sub.2/1990/33, and Adds. 1 and 2; Human Rights Committee General Comment No. 5 (1981); *Landinelli Silva v. Uruguay,* No. 34/1978 (1981) paragraph 8.2; *Salgar de Monteja v. Colombia*, No. 64/1979 (1982) paragraph 10.3.

[100]. Paragraph 10 of the *Vienna Declaration and Programme of Action*, U.N. document A/CONF.157/23 (1993); *The Realization of the Right to Development*, U.N. document HR/PUB/91/2 (1991), paragraph 145.

[101]. General Comment No. 3 (1990) of the Committee on Economic, Social and Cultural Rights.

[102]. It may also be fair to say that malicious intent is inferred from the nature and severity of the violations; it is unconvincing to plead innocence in the face of consistent patterns of official violence, as opposed to situations of *de facto* economic or social inequality.

[103]. See, *e.g.* Commission on Human Rights resolution 1993/60 (10 March 1993) (welcoming "dialogue" with Sudan); resolution 1993/62 (10 March 1993) (expressing its "regret" a Iran's lack of openness); resolution 1993/63 (10 March 1993)("concern" over Cuba's lack of cooperation with investigations). The Human Rights Committee routinely praises States for submitting "candid" reports.

encouraging the migration of settlers to replace the indigenous nations that live on either side of the poorly-supervised Brazilian-Venezuelan-Colombian frontier. A recent United Nations study noted that:

> Integration and consolidation of the State are terms of State formation which echo the nineteenth century experience of the Western hemisphere, where "integration of the State" or "manifest destiny" were slogans for an expansionary process that involved forcible removal and physical elimina-tion of indigenous populations.[104]

Although "politically expedient" resettlements generally violate human rights, it is due to their coercive and discriminatory nature, and the adverse impacts on the people concerned, rather than their intent.

An interesting legal question remains, however, not in the realm of human rights, but in regard to territorial claims. Former Canadian officials told the Commission that Canada's claims to the Arctic were tacitly acknowledged by other States in the 1950s, but there were then and continue to be American challenges over the legal status of Arctic *seas*.[105] Inuit use of the sea ice could constitute an important basis for claiming the interstitial waters of the Arctic archipelago as the territorial waters of Canada, rather than high seas. This question is somewhat complicated by the fact that the United Nations Convention on the Law of the Sea does not distinguish between a relatively permanent ice-shelf and open seas,[106] while the ILO Convention on Indigenous and Tribal Peoples, No. 169 (1989), includes sea-ice in the definition of indigenous peoples' "lands".[107] The United States has never ratified the Convention on the Law of the Sea, and neither country has ratified the ILO convention, but in the event of a dispute the world court may look to both instruments as evidence of international customary laws.

In the 1950s it was presumed that the principle of *uti posseditis* (title presumed from possession) would apply to territorial questions involving the Member States of the United Nations. Boundaries as they existed in 1945 would ordinarily not be disturbed. Recently, however, the world court has taken a more "progressive" view of State borders. In its *Western Sahara* advisory opinion,[108] the court concluded that it could not resolve a territorial dispute between Morocco and Spain, in the absence of evidence on the historical relations between the people indigenous to the disputed area, and the two States claiming it. This is consistent with historical European practices in the acquisition of territory, which required effective "occupation" of the lands claimed, either

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[104]. "The human rights dimensions of population transfer," *op. cit*., at para. 55.

[105]. See, generally, Donat Pharand, *The Law of the Sea of the Arctic; with Special Reference to Canada* (Ottawa: University of Ottawa Press, 1973); Russel L. Barsh, "Demilitarizing the Arctic as an Exercise of Indigenous Self-Determination," *Nordic Journal of International Law* 55 (3):208-218 (1986).

[106]. Article 234, on the pollution of sea-ice, avoids this issue. *The Law of the Sea; Final Act of the Third United Nations Conference on the Law of the Sea* (United Nations, 1983). But the 1958 Convention on Territorial Seas treated permanent sea-ice as an extension of land.

[107]. As noted earlier, neither Canada nor the U.S. has ratified th

[108]. I.C.J. Reports 1975, p. 3, especially at 31-34, paragraphs 54-59.

through settlement, or agreements made with the inhabitants.[109] A claim does not ripen into title merely because unchallenged. Canada was privileged in the past to assert Arctic claims without the need to defend them in neutral fora such as the world court.[110] The situation is slowly changing. Greenland is emerging as a distinct and virtually independent State, with historic claims to the use of the High Arctic, and cultural ties to Baffin Inuit. The United Nations may be close to recognizing the right to self-determination of indigenous peoples.

If fully implemented, the Nunavut Agreement would extinguish any Inuit territorial claims arising from immemorial possession, and merge the High Arctic indisputably into Canada's national territory.[111] Had this Agreement not been made, there would be an increasing question of Canada's territorial legitimacy in the region, subject to challenge by Canadian or Greenlandic Inuit, and the status of the Inukjuak settlers would become a central issue. Were they acting as agents of Canada or in their own right as Inuit? Thus, while the motives behind Canada's 1953-55 relocation of Inuit are of no contemporary legal significance, with respect to human rights, the Inuit occupation of the High Arctic has been of *growing* importance as a possible barrier against competing territorial claims--clearly *more* important than forty years ago.

Principal normative themes

This returns us to the central question of human rights. Part III of this report reviewed a wide variety of legal instruments and norms, all with arguable application to Canada in the 1950s-60s and relevance to the facts in this case. Taken as a whole, which are the strongest points in favour of the Inuit relocatees? Which would tend to be most persuasive to an international forum? The facts and norms can readily be grouped into four clusters according to their logical relationships and the legal instruments under which they can be pleaded.

- ***Discrimination***

The principle of non-discrimination was already well established, in the United Nations Charter as well as the Universal Declaration of Human Rights, before the relocation project was planned. It was later reaffirmed in the Convention on the Elimination of Racial Discrimina-tion and the two International Covenants of Human Rights, which Canada ratified in 1970 and 1976, respectively. This right has two aspects, as indicated in Articles 2 and 7 of the Declaration and Articles 2 and 26 of the Covenant on Civil and Political Rights. One is the right to be free from discrimination in the *enjoyment of human rights*, which is not subject to exceptions. The other is the right to *equality before the law*, which is broader, but subject to a "reasonableness" test. In particular, as specified by CERD, temporary measures needed to redress past inequality may be

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[109]. *Status of Eastern Greenland* (1933), P.C.I.J. Series A/B, No. 53; M.F. Lindley, *The Acquisition and Government of Backward Territory in International Law* (London: Longmans, Green & Co. 1926), at 169-177; Charles H. Alexandrowicz, *The European-African Confrontation: A Study in Treaty-Making* (Leiden: A.W. Sijthoff, 1973), at 7-12.

[110]. It is worth recalling that former Prime Minister Mulroney, during the last American "demonstration" in Arctic waters, threatened to take the matter to the world court, but never did so. (Instead he promised to build a fleet of nuclear-powered ice-breakers--but never did so.)

[111]. Except insofar as the issue of freedom of the high seas, which is not dependent on the validity of Canadian claims to the land mass, but on the definition of "seas".

considered reasonable.

It is difficult to imagine that any non-Inuit community in Canada would have been treated in the same way as the people of Inukjuak. At least five distinct issues of discrimination can be discerned, some of which refer to relocation specifically, and others to conditions under which Canadian Inuit generally were living during the 1950s:

- Lack of Canadian citizenship.

- Low standard of living and poor health, education and social security provisions, which allegedly became even worse after relocation.

- Minimal Inuit involvement in planning, decisionmaking or the management of the project once it was underway.

- Limited freedom of choice or of movement, police supervision and humiliating treatment.

- Unpaid or underpaid labour, or the use of proceeds of labour to pay for public services which were matters of right.

Regardless of the purported good intentions of the project, which were emphasized by former government officials, the project continued a pattern of managing the lives of Inuit people more intrusively than other residents of Canada. The implicit justification for this policy --that Inuit required greater supervision on account of their cultural backwardness or ignorance--must be defended against a presumption, in contemporary human-rights law, of the equal dignity and rights of all cultures,[112] including indigenous cultures.[113] Canada would bear the burden of justifying its discriminatory treatment of Inuit as a matter of fact. Although the relocation project as a whole might be defended as "positive action" to redress past inequalities, that argument would necessarily require showing that Inuit had not been prejudiced in any of their basic human rights by participating. On the whole, there is a strong case that, despite the project's purportedly good intentions, Inuit suffered from discriminatory treatment and conditions before and during, as well as several years after their move. The "experimental" nature of the project reinforces its discriminatory appearance, and is a violation in its own right of Article 7 of the Covenant on Civil and Political Rights in the absence of free and informed consent.

- ***Freedom of movement and of labour***

As noted earlier, Canada succeeded to pre-Charter British treaty obligations in respect of forced labour, and undertook additional ones in the 1950s (ILO Convention No. 105 and Slavery Convention Protocol), and the 1970s (the Human Rights Covenants). The basic civil guarantee of

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[112]. Especially UNESCO, *Declaration of the Principles of International Cultural Cooperation* (1966), reproduced in Human Rights; A Compilation of International Instruments (New York: United Nations 1993), volume 1 at 591; also General Assembly resolution 1514(XV), cited above, which rejected any defence of colonialism based on the purported "inadequacy of political, economic, social or educational preparedness".

[113]. *Vienna Declaration, op. cit.*, page 8, paragraph 20.

freedom of movement and residence was arguably applicable to Canada in the 1950s through the Universal Declaration, and was reaffirmed by Canada's ratification of the Covenant on Civil and Political Rights in 1976. Deprivation of liberty has also been linked, in the practice of the Human Rights Committee, with cruel and degrading treatment; people confined by government action are entitled to special protection, due to their extreme vulnerability.

There is little dispute that the Inukjuak relocatees experienced a relative deprivation of freedom of movement in their new environment owing to its greater geographical isolation, lack of routine transport (at least at Grise Fiord), lack (initially) of boats and sleds adapted for the different snow and ice conditions, and, arguably, more intense police presence. Whether the move itself constituted a restriction on freedom of movement depends, as a matter of fact, on evidence of free and informed consent. On balance, the evidence made available to the Commission suggests that some Inuit felt intimidated by the manner in which they were recruited--by the police--while others agreed to join the project only because they were misled about High Arctic conditions or about their right to return to Quebec. Whether Inuit participated because of fear of the RCMP, or agreed on conditions which were later violated by the government, it is stretching to say that their consent was free, or informed. The burden was clearly on government to obtain unambiguously voluntary participation, on express conditions that were faithfully fulfilled.[114]

As noted above, the "experimental" nature of the relocation was a violation *ex proprio vigore* of Article 7 of the Covenant on Civil and Political Rights, in the absence of free and informed consent. As the Human Rights Committee has repeatedly stressed, the threshold of free and informed consent is higher in the case of people deprived of their freedom, such as prisoners, detainees, and hospitalized patients. The case can therefore be made that government officials should have been *especially* careful to obtain, and to document genuinely free and fully informed consent from the Inuit of Inukjuak, due to the fact that they were already under a measure of government supervision, restriction on their freedom and limitation of their civil rights, due to their legal status as Inuit and non-citizens.

The allegation of forced labour is more difficult. The extent to which Inuit relocatees laboured on tasks *other* than building their own settlements, or were *compelled* to undertake tasks such as guiding RCMP and geologists, remain uncertain from the hearings record. The weight of evidence suggests that there were sporadic instances, falling short of a consistent pattern or policy. It does seem clear, however, that DIAND officials arranged to reimburse their Department, from Inuit fur sales, for the expenses of the resettlement scheme--and that this plan was not advertised in advance to Inuit. It does not appear that Inuit ever consented to this disposition of their personal income, nor is it just, under the circumstances, that people be charged for the expenses of a project which, according to government officials, was designed to ameliorate their subsistence conditions. Adequate food is a matter of basic human rights.[115] Accepting *arguendo* that the relocation project was genuinely conceived as a means of improving the living conditions of Quebec Inuit, Canada

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[114]. In any event, the unconsented physical separation of families in the course of the voyage to the High Arctic in 1954 was undoubtedly a violation of the people's rights to freedom of movement, and rights to the security of their families. It is unclear how many individuals or families were directly affected, out of the group as a whole.

[115]. Asbjorn Eide, "The right to adequate food as a human right," U.N. document E/CN.4/Sub.2/1987/23; Katarina Tomasevski, ed., *The Right to Food; Guide Through Applicable International Law* (Dordrecht: Martinus Nijhoff 1987).

was only doing what it was obligated to do for *everyone*, Inuit and non-Inuit, *i.e.* ensuring an adequate and equitable distribution of food. Charging Inuit for its remedial action not only violated their right to adequate food, but compelled them to work with little or no compensation.

This situation can be distinguished from so-called "workfare," in which unemployed persons are employed by the State at designated wages as an alternative to "welfare". As long as the wages paid are fair in comparable market terms, no discriminatory deductions are made, and no person is forced to work in degrading or unsafe conditions, a case can be made that "workfare" is compatible with international norms. Inuit in the High Arctic were not even aware that they were being charged to reimburse Canada. What is more, they were subjected to an arrangement which did not apply to any other group of Canadians, hence the project discriminated against them as Inuit, in relation to other un- or under employed Canadians.[116]

- ***Economic, social and cultural rights***

The rights to an adequate standard of living, health, education, and other socio-economic rights have been described as "softer" norms than, for example, freedom of movement or non-discrimination. This is a reflection of the understanding that the "adequacy" of such programs is subject to reasonable dispute--and in any event depends entirely on the fiscal ability of States to provide them. There is a gulf between what is a reasonable or adequate level of education (for example) in a rich State like Canada and a poor State like Bangladesh. As a result, there has long been a reluctance on the part of international agencies to censure deprivations of socio-economic rights with the same vigour as violations of civil or political rights. Only recently have there been some serious attempts to develop a framework of *minimum* levels of socio-economic security, or "thresholds," to make the task of applying these norms more precise and consistent.[117]

There is no question, however, that States are obliged to ensure the *equitable distribution* of the services and programs they are able to provide, as was emphasized by the Committee on Economic, Social and Cultural Rights in its General Comment No. 3 (1991). Any distinctions in the provision or enjoyment of basic socio-economic rights must have a reasonable justification; distinctions based upon race or ethnicity are presumed to be unjustified. In the case of High Arctic relocation there are three distinct kinds of concerns, then, with respect to the socio-economic provisions of the Universal Declaration and Covenant on Economic, Social and Cultural Rights:

- Inuit as a whole were not provided with socio-economic benefits comparable to those enjoyed by other Canadians in the 1950s.

- Inuit relocatees experienced a decline in socio-economic rights and benefits, compared to other Inuit and Canadians as a whole, at least during the first decade of the project.

- Socio-economic programs in the Arctic as a whole, and the High Arctic in particular, did not meet minimum acceptable levels in the light of Canada's available fiscal resources in the period at issue.

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[116]. It should be recalled here that the Human Rights Committtee has repeatedly condemned unreasonable distinctions in the distribution of public benefits such as social security. See note 73, above.

[117]. Danilo Turk, "The realization of economic, social and cultural rights; second progress report," U.N. document E/CN.4/Sub.4/1991/17.

There is also an issue, as discussed in the previous section, that the Canadian government made Inuit relocatees pay for their discrimination and poverty by charging them for the expenses of a resettlement scheme aimed at redressing inequalities.

Discrimination, both against Inuit as a whole and the relocatees, seems relatively clear. Former government officials testified that it was only in the 1950s that Canada began to concern itself with Arctic populations, and there is no denying that the availability of services remained relatively poor. While this was naturally connected with the expense and logistical challenges of operating in Northern conditions, international law does not excuse poor servicing of isolated areas of the country on these grounds, and requires progressive measures to put isolated areas on a footing of equality of treatment. Ironically, the measures undertaken in 1953-55 were largely experimental, inadequately supported, and temporarily had the opposite effect of what purportedly was intended. Programs designed to achieve "development," in the long term, never justify short-term violations of basic rights.[118] Outside observers might disagree over whether the actual conditions prevailing in the 1950s in Inuit settlements in Quebec, or the High Arctic, fell below minimal acceptable "thresholds," but there is little denying the gaps between Inuit and non-Inuit conditions at that time.

A closely related issue is the *right to life*, under the Universal Declaration and Covenant on Civil and Political Rights, in particular the right of *children* to special protection, and to effective measures to maximize their survival. There was evidence in the Inuit testimony before the Commission that chronically ill people were relocated, that contagion increased and health conditions worsened in the High Arctic, and even that several persons had died or become disabled as a direct result of the harsh conditions under which the settlements were first established. Subjecting *adults* to unhealthy or unsafe conditions is a violation of the right to life and other norms[119] except, arguably, as part of an experiment with free and informed consent. It would appear that there is *no* permissible justification for subjecting *children* to such conditions, since they are entitled to special protection and may be legally incapable of consenting to life-threatening hazards.

- ***Collective identity and self-determination***

In the current state of international law and practice, it would be unlikely for United Nations bodies to apply the principle of self-determination to Inuit although, as a geographical matter, they pose a stronger case than the indigenous peoples that previously attempted to assert this right in the Human Rights Committee. On the other hand, a strong argument can be made that Inuit were entitled to maintain their family and cultural integrity, as distinct groups, under provisions of the Universal Declaration relating the families and culture, and under Article 27 of the Covenant on Civil and Political Rights, with respect to minorities. The 1992 U.N. Declaration on the Rights of Minorities, in Article 3(1), emphasizes the "community" aspect of the exercise of linguistic, cultural and religious rights under Article 27; Article 5 of the Convention on the Rights of the Child recognizes the importance of the extended family. Taken together, these instruments indicate an understanding that families and communities will not unnecessarily be separated, or deprived of

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[118]. *Realization of the Right to Development, op. cit.*, U.N. document HR/PUB/91/2 (1991), paragraph 145.

[119]. Such as the right to safe conditions of work, and to the highest attainable standard of health, under the Universal Declaration and the Covenant on Economic, Social and Cultural Rights.

their collective socio-cultural existence.

Several aspects of the present case are relevant: the separation of families on the voyage; loss of communication between settlers and kinsmen in Quebec; alleged interference with correspondence and mail between kinsmen; and, perhaps most centrally, failure to consult with or share decisionmaking with the community as a whole, whether before, during or after the move. The Inukjuak people were neither treated as a community, nor kept together and in contact in accordance with their own wishes. Disregard for, and disruption of the integrity of family and community raise a number of related questions, which could provide a basis for additional findings of violations.

Enforceability and/or remedies

A final analytical consideration has to do with the institutional machinery for *enforcing* the norms which have been discussed thus far. Implementation processes can profoundly affect the likelihood that any particular rule will actually be enforced, and the circumstances under which it is most likely to be enforced. While a distinction should be made between what is unlawful in principle, and what is most likely to be punished in actuality, the Commission and the Government of Canada must consider that "getting away with something" because of weaknesses of enforcement, does not convert wrongs into right. The international community will not think any better of Canada, simply because there is no effective international remedy for some violations of Inuit rights.

A variety of human-rights mechanisms have evolved over the years, in the ILO as well as the United Nations, but all of them fall within five general categories:

- Discussion in the public meetings of a human-rights forum such as the U.N. Commission on Human Rights, potentially leading to a resolution commenting on the situation, the appointment of a *special rapporteur* to investigate, or a decision to engage in an on-going public dialogue with the government concerned.

- Direct discussion of the matter with the government concerned at special closed sessions of human-rights bodies on the basis of information received from governmental or non-governmental sources (*confidential procedure*).

- Investigation and reporting by any one of a number of *thematic rapporteurs*, appointed to report annually on specific problems such as disappearances, torture, religious intolerance, or the abuse of women.

- Submission of *periodic reports* by State Parties to particular conventions, for discussion with government representatives at the public sessions of expert bodies specially established for this purpose (*treaty bodies*).

- Review of individual complaints (*communications* or in the ILO, *representations*) against State Parties to specific conventions at closed meetings of treaty bodies, which may lead to formal conclusions and recommendations.

It is also possible for the United Nations, or the ILO, to request an advisory opinion on a human-rights matter from the International Court of Justice, or indeed for State Parties to a particular convention to utilize the court to resolve questions of non-compliance.

The ILO system, based on *periodic reports* and *representations*, is as old as the ILO itself (1919), and applies to every ILO convention. Hence the provisions of the ILO forced-labour conventions, Nos. 29 and 105, could have been enforced in 1953-1955 by means of representations to the ILO Committee of Experts on the Application of Conventions.[120] Representations can be made by any "industrial association" such as a trade union, and representations regarding indigenous peoples' rights under Convention No. 107 were lodged against Brazil, India, and other States in the 1970s by the International Federation of Plantation and Allied Workers (IFPAW).

The United Nations enforcement system is of more recent origins, and is far less centralized. The Commission on Human Rights, composed of Member States, and its advisory body of experts, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, enjoy a broad mandate to discuss "human rights and fundamental freedoms," and have both existed since 1947. It was only in 1959, however, that the U.N.'s Economic and Social Council authorized the Secretary-General to provide these bodies with summaries of any communications received by the secretariat.[121] In 1967, the Commission was authorized to review, at its public sessions, "situations which reveal a consistent pattern of violations of human rights,"[122] and a confidental procedure for the study of communications was adopted in 1970.[123] Since the public and confidential procedures are not linked to any particular human rights conventions, it is understood that they apply *jus cogens* and customary international law, especially the Universal Declaration.

The case of High Arctic relocation would have fallen within these procedures had they existed in 1953-1955, or had it been raised in the 1960s while the adverse effects of the project were still being felt. Indeed, Canada's failure to provide adequate *redress* to the relocatees could still be raised today, since there are no rigid time limitations on communications, and the denial of the right to *an effective remedy* for violations of human rights is itself a distinct violation.[124] The confidential procedure can be instigated by any individual; and while access to the public sessions of the Commission and Sub-Commission is restricted to non-governmental organizations (NGOs) accredited by the ECOSOC, there has been a tendency for any legitimate complaint to find a champion.[125] In practice, these mechanisms respond only to the most barbaric and urgent

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[120]. See Article 24 of the ILO *Constitution*. In addition, any Member State of the ILO could have lodged a complaint of non-observance under Article 26 of the *Constitution* which, if upheld, could provide a basis for an application to the world court under Articles 29-32.

[121]. ECOSOC resolution 728F (XXVIII), U.N. document E/3290 (1959).

[122]. ECOSOC resolution 1235 (XLII), U.N. document E/4393 (1967); also see Commission resolution 8 (XXIII), U.N. document E/CN.4/940 (1967), at 131.

[123]. This is the so-called "1503 procedure," in ECOSOC resolution 1503 (XLVIII), U.N. document E/4832/Add.1 (1970).

[124]. Under Article 8 of the Universal Declaration, and Article 2(3) of the Covenant on Civil and Political Rights.

[125]. It is relevant to note here that the Inuit Circumpolar Conference has been accredited with ECOSOC for nearly a decade.

situations, however; they can be highly sensitive to political alignments among Member States as well, and consequently quite selective. Although a number of Canadian Aboriginal situations have been reported to the United Nations by NGOs in recent years, only the Oka confrontation led to a formal response in the form of a formal public "dialogue" with Canadian government representatives.[126] On the other hand, the Sub-Commission has acted on the relocation of Navajos by the United States, which began in 1974.[127]

In the 1970s, new human rights conventions led to the creation of a growing number of *treaty bodies*, beginning with the Committee on the Elimination of Racial Discrimination (1970) and Human Rights Committee (1977). Under Article 14 of the Convention on the Elimination of All Forms of Racism and Racial Discrimination and the Optional Protocol to the Covenant on Civil and Political Rights, State Parties may subject themselves to communication procedures. Canada accepted the authority of the Human Rights Committee under the Optional Protocol in 1976, and thereafter could have been the object of a communication by Inuit. As noted earlier, this would mean that no government action prior to 1976 could have been brought to the Committee. Nevertheless, the continued socio-economic inequality of relocated Inuit in the 1970s, and failure of Canada to provide an effective remedy for the events of the 1950s, could have formed legitimate bases for a communication after 1976.

Thus, had Inuit sought to assert their rights under international law during the decade following relocation, they would have found very few procedural options open to them as individuals. The matter could have been voiced in the Commission or Sub-Commission, but as yet there were no formal procedures, public or confidential, for considering the merits of such complaints. On the other hand, the forced labour issue could have been pressed to a decision, formally, in the ILO. Had this dispute arisen in the 1980s, rather than the 1950s, by comparison, the relocatees would have had their choice of all of the procedures listed at the beginning of this section, not exclusive of one another.

V. CONCLUSIONS

In summary, the answers to the legal questions posed in the terms of reference for this report can be stated as follows:

Was High Arctic relocation compatible with international norms at the time (1953-1955)? No. Accepting the Inuit testimony as true, the project violated forced-labour conventions which were then applicable to Canada; as well as a number of human-rights norms which had become part of international customary law by the 1950s, including freedom of movement, freedom from cruel or degrading treatment, the right to life and to health, the right to an adequate standard of living, the right to the integrity of families, freedom from discrimination and equality before the law. The absence of genuinely free and informed consent to relocation is an essential factor in this conclusion; the motivations of Canadian government officials are not, however.

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[126]. *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Forty-Second Session*, U.N. document E/CN.4/1991/2, page 75, paragraph 18; also see the summary records for the Sub-Commission's 2nd, 3rd, 5th, 9th, 13th, 17th, 30th, 31st, 32nd, 33rd, and 36th meetings, U.N. documents E/CN.4/Sub.2/1990/SR.2 *et passim*.

[127]. Sub-Commission resolutions 1992/36 of 27 August 1992, 1990/34 of 31 August 1990, and 1989/37 of 1 September 1989.

Would a comparable project be compatible with international norms if carried out today?
No. Since 1965, Canada has ratified all of the major international human-rights conventions adopted by United Nations organs, with the effect of converting the rights violated in the 1950s from customary to conventional international law in Canada. Moreover, these conventions have enlarged upon the norms applicable in the 1950s --for example, with respect to experimentation, the priority given to the survival of children, and to cultural and linguistic rights. What was only probably unlawful before, is unquestionably unlawful now. It should be noted, however, that Canada has not yet ratified the two ILO conventions which are specifically applicable to indigenous peoples--and which expressly forbid involuntary relocation.

Some of the violations which began in the 1950s, continued in the 1960s, and perhaps later, overlapping the transition from customary to conventional law. In addition, the failure of the Canadian government to *remedy* the earlier violations, became a violation in its own right. Some aspects of the relocation may therefore still be actionable in an international forum.

SUMMARY OF FACTUAL ALLEGATIONS, BY WITNESS AND RELEVANT NORMS

ISSUES and allegations	*Witnesses*	*Principal relevant norms*
REASONS FOR PARTICIPATING		
Inuit respectful and/or fearful of RCMP	A B C D I O V	*Freedom of movement (UDHR, CCPR)*
Promised they could return after two years	B C D F G I O	*Free and informed consent (C107, C169)*
Misled about abundant wildlife in High Arctic	B C D E F G H I N L R W U	*Experimentation (CCPR)*
Misled about the wishes of their relatives	B C D W	*Discrimination (CERD, UDHR, CCPR, CESC)*
CONDITIONS OF TRANSPORT		
Given only one month to prepare	C D	*Cruel or degrading treatment (UDHR, CCPR)*
Not given medicial exams before departure	R	*Right to life (UDHR, CCPR, CRC)*
Ill and disabled persons resettled	B F R W	*Right to health (CERD, UDHR, CESC)*
Crowded, unsanitary boat, poor food	F G I J K Q U	
Delivered in autumn with inadequate supplies	F I O M	
Families separated involuntarily	B C D F G I J X	*Family integrity (UDHR, CCPR)*
CONDITIONS IN THE NEW SETTLEMENTS		
Activities restricted, supervised by RCMP	B C G F J K Q U V W	*Freedom of movement (UDHR, CCPR)*
Lost contact with relatives in northern Quebec	B C D E F G H I O S T W X	*Family integrity (UDHR, CCPR)*
Letters censored, radio messages not relayed	C G H I O R W	*Privacy (UDHR, CCPR)*
Relatives misled concerning their conditions	C D H S	*Cruel or degrading treatment (UDHR, CCPR)*
No shelter, used tents or crates from dump	B C D F I J L M S U *H*	*Adequate standard of living (UDHR, CESC)*
No fuel, burned seal oil or crates from dump	B F G H I	
No bedding or adequate clothing supplied	B C G W	
Unfamiliar climate, tides, ice patterns	B C F G I J L M P S W *C*	*Adequate standard of living (UDHR, CESC)*
Unfamiliar kinds of food and less variety	B C D E F G H I L O P Q W	
Lacked proper tools or expertise for hunting	C D E F G H L M Q	
Hunting of caribou and muskox restricted	D H I L R	
Sled dogs killed by RCMP	F K	*Freedom of movement (UDHR, CCPR)*
No money or place to purchase needed food	B C D F J L R S U	*Adequate standard of living (UDHR, CESC)*
Forced to scrounge food from military dump	C D J O W U *D F*	
Inadequate sources of fresh water	C I F U	*Right to health (CERD, UDHR, CESC)*
No doctors or nurses, treated only by RCMP	B D F H I J O R W U X Y *E*	
Pandemic TB, other illness in first few years	D R O Y *B*	
Widespread alcohol abuse and violence	B K *C*	
No school for several years	C H O P W Z *F*	*Right to education (CERD, UDHR, CESC)*
Punish for speaking Inuktitut in school	*F*	*Minority language rights (CCPR)*

Made to work for RCMP without compensation	D F G I M Q U W	*Forced labour (CERD, UDHR, CCPR, CESC, C105)*
Denied permission/transportation to leave	B C D E F G K I M O *B E*	*Freedom of movement (UDHR, CCPR)*
Returnees impoverished, left with nothing	C D E M W Z *B E*	*Adequate standard of living (UDHR, CESC)*

KEY TO INUIT WITNESSES

(Special Hearing of 5-8 April 1993)

A	Susan Aglukark	ITC
B	Minnie Allakariallak	Resolute
C	Samwillie Elijasialuk	Grise Fiord
D	Simeonie Amagoalik	Resolute
E	Lazaroosie Epoo	Inukjuak
F	Anna Nungaq	Grise Fiord*
G	Elijah Nuturaq	Grise Fiord*
H	Larry Adulaluk	Grise Fiord
I	Jaybeddie Amagoalik	Resolute*
J	Sarah Amagoalik	Resolute
K	Martha Flaherty	Grise Fiord
L	Samuel Arnakallak	Pond Inlet
M	Jaypettie Amaraulik	Pond Inlet
N	Simon Akpaliapik	Pond Inlet
O	John Amagoalik	Resolute
P	Minnie Killiktee	Resolute
Q	Andrew Iqaluk	Resolute
R	Markoosie Patsauq	Resolute
S	Jackoosie Iqaluk	Pond Inlet
T	Dora Pudluk	Resolute
U	Rynie Flaherty	Grise Fiord
V	Mary Attagutaaluk	Pond Inlet
W	Lizzie Amagoalik	Resolute*
X	Maina Arragutainaq	Grise Fiord*
Y	Leah Idlout Paulson	Pond Inlet
Z	Elisapee Nutaraq	Grise Fiord*
A	Johnny Epoo	Inukjuak
B	Allie Salluviniq	Resolute
C	Minnie Nungaq	Resolute
D	Elizabeth Allakariallak	Resolute
E	Bobbie Patsuaq	Resolute*
F	Paul Amagoalik	Resolute
G	Susan Salluviniq	Resolute
H	George Eckalook	Resolute

* Returned to Inukjuak

KEY TO RELEVANT NORMS OF INTERNATIONAL LAW

[Dates in brackets refer to Canadian signature or ratification]

I. United Nations instruments

UDHR Universal Declaration of Human Rights (1948)

GENO Convention on the Prevention and Punishment of the Crime of Genocide (1948) [1953]

CERD Convention on the Elimination of Racial Discrimination (1965) [1970]
CCPR International Covenant on Civil and Political Rights (1966) [1976]
CESC International Covenant on Economic, Social and Cultural Rights (1976) [1976]
CRC Convention on the Rights of the Child (1989) [1991]

II. International Labour Organisation instruments

C105 Convention on the Abolition of Forced Labour, No. 105 (1957) [1959]
C107 Convention on Indigenous & Tribal Populations, No. 107 (1957)
C169 Convention on Indigenous & Tribal Peoples, No. 169 (1989)

III. Other relevant instruments

SLAV Slavery Convention (1926) [Great Britain 1927]
SCSL Supplementary Convention on the Abolition of Slavery (1956) [1956-1963]
GENC Fourth Geneva Convention ("Civilians Convention") (1949) [1949]