

INUIT PERSPECTIVES ON TREATY RIGHTS AND GOVERNANCE

by Wendy Moss

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EXECUTIVE SUMMARY

The topic of treaty rights and governance involves examining ways of reversing the negative impacts of colonialism in the context of Canadian federalism. Treaty rights and governance issues encompass the most fundamental aspects of the relationship between Aboriginal peoples in Canada and the Canadian state. Part 1 of this paper reviews policy statements and publications by Inuit organizations on the subjects of self-government and treaty rights. Part 2 is a report of interviews with Inuit leaders on several issues relating to treaty rights and self-government.

The history of Inuit contact with non-Aboriginal people and with European colonialism has a number of features to distinguish it from that of other First Nations. Inuit have not been subject to the Indian Act or confined to reserves. The Canadian government was not active in the North until the 1950s. Although extensive contact with non-Aboriginal people and institutions is relatively recent, it has been highly disruptive to Inuit laws and way of life. Despite the absence of a centralized authority like the European concept of 'the state', Inuit were a selfgoverning people before the intrusions of European peoples into Inuit lands and Inuit life. Inuit social systems, laws and values have been ignored and displaced by the imposition of government structures and alien laws without Inuit consent.

Inuit self-government rights have been advanced by Inuit organizations within a human rights analysis as well as an Aboriginal rights framework. Inuit have taken a practical and cautious approach to the use of legal and political theories of European origin to advance Inuit rights within a system largely not of their making.

Inuit organizations have argued that the inherent right of selfgovernment is an aspect of the right of self-determination and an Aboriginal right under Canadian common law. While the right of self-determination occupies a central place in Inuit political aspirations, there is a desire to exercise this right within Canadian federalism, renewed and reformed by constitutionally protected self-government agreements and by constitutional amendments. There is a strong preference in at least three of the four Arctic regions for non-racially based forms of self-government with territorial boundaries that ensure Inuit constitute the majority population of these regions. (The four regions are the Western Arctic, Nunavut, Nunavik, and Northern Labrador.) These non-racially based governments, although referred to by Inuit as 'non-ethnic' or 'public' forms of government, would nevertheless provide protections for Inuit language and culture as well as being subject to the Canadian Charter of Rights and Freedoms.

Through their national organization Inuit seek a political accord with the government of Canada reaffirming their status as a unified people across all four Inuit Arctic regions and acknowledging the federal government's commitment to pursue Inuit self-government objectives in all four regions. The obligation of governments to negotiate self-government agreements arises not only from the inherent right of self-government but also from the Crown's fiduciary obligation, which includes an obligation to respect the fundamental human rights of Inuit such as the right to self-determination.

In each of the four Arctic regions, Inuit have pursued, for many years, self-government agreements to implement the inherent right of self-government under the existing Constitution. Constitutional protection of self-government agreements, by deeming self-government agreements to be treaties within the meaning of section 35 of the Constitution Act, 1982, is regarded as an essential measure. In addition to constitutional protection under the existing Constitution, Inuit regard constitutional amendments explicitly recognizing the inherent right of self-government as highly desirable and perhaps essential. Other aspects of the Inuit constitutional agenda include recognition of Aboriginal peoples' governments as one of three orders of government, a consent clause for constitutional amendments affecting Aboriginal and treaty rights, and full and equal participation in all constitutional conferences.

Despite some ambivalence about their identity as Canadian citizens, Inuit appear to wish to resolve this conflict by formally joining Canada as a people with an inherent right to self-government. The mechanisms for achieving this would be constitutionally protected self-government agreements and constitutional reform.

Inuit positions on treaty and governance issues are founded on principles such as the interdependence and equality of all peoples and individuals and the inseverable connection between Inuit and their land. The positions of Inuit organizations also show how individual and collective rights can be reconciled within a human rights analysis and how the notion of equality of all peoples is as important as, and is related to, the equality of individuals.

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For most of Canada's history, the self-government systems of Indigenous peoples have been ignored, hemmed in and at times actively repressed by Canadian governments.ⁱ Indigenous peoples also were excluded for many years from the right to vote federally and provincially.ⁱⁱ Until the 1980s Indigenous peoples were excluded from constitutional discussions.

Inuit experience with European colonization has a number of distinguishing features from the experience of 'Indian' peoples. Although Inuit fall under federal jurisdiction as 'Indians' as the term is used in section 91(24) of the *Constitution Act, 1867*,ⁱⁱⁱ Inuit have been excluded from the application of the federal *Indian Act*^{iv} and have never experienced the reserve system. In addition, the Arctic climate provided a relative isolation from extensive contact with non-Inuit until the 1950s.

At that time the federal government became quite active in the North and began to implement numerous policies and actions that greatly affected Inuit lives, such as the settlement of Inuit in permanent communities and away from the nomadic lifestyle they had pursued for thousands of years. Federal and provincial governments were perceived by Inuit as alien and all-powerful.^v The federal presence was so intrusive that it displaced or seriously disrupted Inuit customary law and traditional Inuit social systems.^{vi} Zebedee Nungak has described this process as it affects Inuit in Northern Quebec:

When authorities of the Government of Canada, represented by the Royal Canadian Mounted Police, became the chief arbiters of justice among Inuit, traditional methods and customs of dispensing justice were immediately and completely displaced by the new order. The King's (or Queen's) authority, represented by the police and courts, became the only system of justice. There was no place for Inuit traditions, and neither was there any regard for how things were done before. An utterly foreign system of justice was imposed upon the Inuit, and the role of the Elders and leaders rendered useless. The new representatives of British justice totally ignored the values, traditions, and customs of the Inuit in their determination to have their laws abided by. Crown law, vaguely and not understood at all by Inuit (Wishes of the Great White Monarch for His Subjects), became supreme.^{vii}

Before the intrusions of European traders and Canadian government agents, Inuit society fit David Maybury-Lewis' definition of a tribal people: a small-scale pre-industrial society living in comparative isolation and managing their own affairs without any centralized authority such

as the state.^{viii} The lack of state government structures, as Europeans knew them, has been used as an excuse to deny the existence of indigenous self-government systems and the right of self-determination to Indigenous peoples. Inuit were nevertheless selfgoverning as all human societies are in the absence of colonialism. From an Inuit perspective, the lack of a state does not make them any less a people with a right of self-determination. Pauktuutit (the Inuit Women's Association) has identified one of the most critical differences between Inuit and Qallunaat (literally, 'persons with pale or white faces') in conceptualizing and recognizing the existence of self-governing societies — the use and priority placed upon formal institutions of government and written law. Despite the absence of these in Inuit traditions, Inuit demand recognition as a society with its own laws and institutions:

The customary laws of most native peoples have been historically ignored or had their existence denied because they did not fit into Western concepts of what laws should be. The laws were not usually written down, nor were there people with special authority to enforce the laws, and punishments for misbehaviour were often applied irregularly against offenders. However, these societies did have strict codes of behaviour that were understood by all members of the society. People who did not follow this code of behaviour could expect to face a range of reactions from the community. These societies were self-governing and able to maintain a relatively peaceful and stable existence.^{ix}

Zebedee Nungak also has cautioned against Eurocentric judgements of Inuit society:

The radical transformation of Inuit life in the Arctic which has transpired over the past forty years can lead the uninformed to the erroneous conclusion that Inuit did not possess any semblance of a justice system before contact with European civilization. That our people lead a nomadic existence in a harsh unforgiving Arctic environment may lead Qallunaat or others to conclude that Inuit did not have a sense of order, a sense of right and wrong and a way to deal with wrongdoers in their society. Inuit did possess this sense of order and right and wrong. The way it was practised and implemented may never have been compatible with European civilization's concepts of justice, but what worked for Inuit society in their environment was no less designed for conditions of life in the Arctic than that of Qallunaat was for conditions of their life.^x

The topic of treaty rights and governance involves examining ways of reversing the negative impacts of colonization in the context of Canadian federalism. The process of decolonization has just begun for Inuit with the advent of land rights agreements (modern treaties) and self-government negotiations in four Canadian Arctic regions: the Western Arctic, Nunavut, Nunavik and Northern Labrador. Treaty rights and governance issues therefore encompass the most fundamental aspects of the relationship between Indigenous peoples and the Canadian state. The political and legal mechanisms that should be used to reflect a renewed and

more equitable relationship between Canada and the Indigenous peoples living in Canada have been the focus of many constitutional reform discussions in the 1980s and in 1992. Since the 1992 constitutional referendum, self-government and treaty rights have continued to be a central focus of discussions between Canada and Aboriginal peoples.

At a research workshop held by the Royal Commission on Aboriginal Peoples in January 1993, a number of these issues and some options for defining the relationship between Aboriginal peoples and the Canadian state were discussed in a preliminary way with representatives from several national Aboriginal organizations, including the Inuit Tapirisat of Canada. This research study is intended to follow up the work begun in the treaty rights and governance research workshop by exploring in more detail Inuit perspectives as contained in public statements by Inuit organizations and leadership in Canada, as well as the international voice of Inuit, the Inuit Circumpolar Conference.

The topic of governance can encompass a wide range of matters, from the right of self-determination under international law, to the constitutional expression of Aboriginal peoples' self-government rights, to the range of regional and community self-government objectives of Aboriginal peoples.

Similarly, the topic of treaty rights encompasses a wide range of issues such as the domestic and international legal status of treaties, the role of land claims agreements as vehicles for addressing self-government objectives, the legal and political nature of comprehensive land claims agreements, and the potential for constitutionally protecting self-government agreements under the Constitution as it now stands.

All these issues and the connection between treaty rights and governance are of concern to Inuit. Part 1 of this paper reviews policy statements of the Inuit Tapirisat of Canada, its member organizations, the Inuit Committee on National Issues and the Inuit Circumpolar Conference on the subjects of self-government, treaty rights and the relationship between Inuit and the Canadian state. Part 2 is a report of interviews with Inuit leaders on several issues relating to treaty rights and governance: the Canadian Charter of Rights and Freedoms; Inuit identity and Canadian citizenship; the fiduciary duty of the federal Crown; constitutional protection of self-government and land claims agreements; and the nature of the inherent right of self-government. This paper provides an overview of Inuit perspectives on treaty rights and governance issues in the following areas (though not necessarily under these headings):

1. citizenship and the relationship of Inuit to the Canadian state;
2. Inuit identity as a people within Canada and within the circumpolar region;
3. constitutional reform and the inherent right of self-government;
4. Inuit models of self-government in Canada;
5. the relationship between the inherent right of self-government, ethnicity and the regional self-government objectives of Inuit in Canada;
6. the relationship between the fiduciary duty and the inherent right of self-government;
7. the status of self-government agreements as treaties; and
8. Inuit positions regarding the right to self-determination under international law and its relationship to the inherent right of self-government under Canadian law.

PART 1 — REVIEW OF INUIT STATEMENTS AND PUBLICATIONS

Inuit and the Right of Peoples to Self-Determination

In Inuktitut, the language of the Inuit, 'Inuit' means 'the people' and in this sense refers only to the people formerly called 'Eskimos', a term regarded by Inuit as pejorative. 'Inuit' can also mean 'people' and in this sense can refer in a generic way to other ethnic or racial groups as well.^{xi}

Inuit statements about the relationship of Inuit to Canada and their place in the world often identify Inuit as a people in the political and legal sense, that is, as possessing the equal rights of peoples under international human rights law including the right to self-determination. In English, Inuit have also referred to themselves collectively as a 'nation' or a 'nation of people' with a distinct language, culture, society and a homeland encompassing most of Arctic Canada. In 1980, the Inuit Committee on National Issues (ICNI) described Inuit as a nation of people who were recognized as such, along with other Aboriginal peoples, by the *Royal Proclamation of 1763*. ICNI explained the central constitutional problem facing Inuit since 1867 as the failure of Canada properly to respect this nation-to-nation concept and clearly to recognize the constitutional status of Inuit as a people.^{xii}

A comprehensive statement of policy principles by the Inuit Circumpolar Conference (ICC) asserts that "Inuit are a distinct Indigenous people, with a unique ancestry, culture and circumpolar homeland that transcends political boundaries."^{xiii} The ICC has also stated that Inuit must be regarded as subjects of international law and that the status of Inuit internationally and

within Canada is that of a people:

It is critical that Inuit be recognized and referred to both nationally and internationally as a distinct 'people'. Inuit are not mere 'populations' or 'minorities'. These latter terms serve to unfairly deny or undermine the true status, rights, and identity of Inuit as Indigenous peoples. Inuit rights will be advanced only if states use accurate terminology and concepts and respect Inuit perspectives.^{xiv}

In various presentations, Canadian Inuit have asserted their status as a people within Canada and a corresponding right to maintain that status within Canada, as well as the circumpolar world. In 1987 the Inuit Committee on National Issues^{xv} stated that the survival and development of Inuit as a people in Canada depend on explicit constitutional provisions and on land claims policies informed by recognition of the principle of self-government^{xvi}. The failure to respect the status of Inuit as a nation or people within Canada is evidenced, Inuit say, by the imposition of government structures and laws alien to Inuit without their consent^{xvii}.

Rosemarie Kuptana, president of the Inuit Tapirisat of Canada, has stated that the starting point for understanding the conceptual context of Inuit self-government objectives is recognition of the status of Inuit as a people and of the right of all peoples to self-determination.^{xviii} In the view of itc, the right of self-determination in the form of complete independence probably arises only when there is a gross denial of fundamental human rights to a people within a state. In this regard, Canada has nothing to fear from Indigenous peoples so long as it continues efforts to negotiate self-government arrangements.^{xix} The right of self-determination can be expressed in many ways other than complete independence. It encompasses expressions internal to existing states such as joining with other peoples in a federal state.^{xx} The domestic self-government agenda of Inuit in Canada (constitutional reform and the negotiation of self-government arrangements within Canada's constitutional framework) is therefore regarded as an aspect of the Inuit right to self-determination.

Itc and icc statements on Inuit self-government and self-determination rights are firmly grounded in a human rights analysis consistent with international human rights norms. Inuit also say the right to self-government is an existing Aboriginal right. This has important implications for the recognition of the inherent right of self-government without constitutional reform. If the inherent right of self-government is an existing Aboriginal right within the meaning of section 35(1) of the Constitution Act, 1982,^{xxi} then it is arguably constitutionally protected and capable of being implemented without constitutional reform.

This purported dual character of the inherent right of selfgovernment raises questions about the relationship between Aboriginal rights and human rights and about how group/Aboriginal rights can be reconciled with human rights. Inuit maintain that some Aboriginal rights are fundamental human rights (for example, the right of selfdetermination) and that the right of self-determination and individual rights are interdependent. In a submission to the Royal Commission on Aboriginal Peoples in March 1994, itc said that the dual character of the inherent right of self-government as an Aboriginal right and as a fundamental human right means, first, that the right to self-government was and is not subject to extinguishment (since human rights can not be extinguished) and, second, that the right to self-government is therefore an existing right within the meaning of section 35. The itc submission also asserted that the common law doctrine of Aboriginal rights has often been used as a means of restricting Indigenous peoples' right of self-determination and suggested that some aspects of the common law of Aboriginal rights should be revisited to ensure compliance or consistency with international human rights principles, such as the equality of all peoples and the equal rights of all peoples. Itc maintains that the fiduciary obligation of the Crown requires that governments respect the fundamental human rights of Inuit, including the right of self-determination.xxii As means to accomplish this, itc recommended recognition of the inherent right of self-government in a constitutional amendment, and recognition of Indigenous' peoples right of selfdetermination under a United Nations instrument on Indigenous peoples' rights.

Inuit have at times characterized their Aboriginal right to self-government as arising from the special status of Aboriginal peoples as nations within Canada.xxiii In recent years, itc has tended to avoid arguments based on special status in favour of an analysis focusing on equality rights at a collective level.xxiv An equality rights analysis of collective rights and Inuit aspirations for self-government has been present in Inuit statements for sometime. This is evident in the 1983 presentation of the icni to a joint committee of the Senate and the House of Commons, where Inuit argued an equal right for Inuit communities to shape government institutions in Canada:

Unlike immigrant minorities which came to a new land, drawn by the promise of opportunity or freedom, we did not move into a pre-defined society in the knowledge that we would have to learn new languages and adjust to new ways. Rather, we were here in full possession of our land, making decisions according to our own way of doing things.

A new and imported legal system simply ignored all that, and we found

ourselves without recognized rights. Our fundamental rights to make our living using the resources and lands we had always used were denied or ignored. By virtue of our location, remote from your population centres, and sometimes — as with the Indian peoples — by virtue of the law, we were outside the political system. We did not vote and had not the opportunity, legal or otherwise, to do so. Even today our population is fragmented and divided among provincial and federal electoral districts, so some candidates or incumbents do not even find it worth the time to travel to the north to campaign and speak to use.

This situation is unacceptable. We believe we have the right to participate fully and equally in Canadian political life and in the electoral process. *Through land claim agreements, constitutional change and regional governments in the N.W.T., Northern Quebec and Labrador, we want to gain powers and opportunities at the local or regional level to give us equality with other Canadians.* What we need now are similar powers and opportunities at the national level.^{xxv} [emphasis added]

It can be argued that any special status or rights that Aboriginal peoples have with respect to self-government in Canada arise not from their ethnicity or 'aboriginality' but from their status as members of peoples who have been subjected to colonialism and have had their rights of self-determination denied. A UN expert has said that the right of self-determination can be regarded as an individual right as well as a collective right in that it is every person's right that the people of which he or she is a member be free of colonialism and be able freely to determine its own political, economic, social and cultural condition.^{xxvi} As is evident from the passage just quoted, Inuit have distinguished their situation from that of immigrant populations who have chosen Canada and whose right of self-determination is arguably met by the federal and provincial governments. Rosemarie Kuptana has argued that the status of colonized peoples is implicit within the meaning of 'Indigenous peoples':

The term 'indigenous peoples' is not used by us to claim special status or special rights but to name collectively the peoples for whom the right of self-determination is denied. In the context of self-determination, it is not an anthropological term, but rather a socio-political term to name various peoples who have experienced colonization but for whom the right of self-determination is denied in an arbitrary, and therefore discriminatory fashion.^{xxvii}

Inuit have called for the application to Inuit of existing international human rights standards that affirm the equality of all peoples and that recognize the right of all peoples to self-determination.^{xxviii} In particular Inuit have said that article 1 of two UN human rights covenants^{xxix} that recognize the right of all peoples to self-determination must be applied to them. In a statement to the Preparatory Committee of the World Conference on Human Rights, the Inuit Circumpolar Conference stated that an indispensable part of reaffirming the universality,

indivisibility and interdependence of all human rights is a reaffirmation of the equal rights of all peoples and recognition that Indigenous peoples are full members of the human family in this regard.^{xxx} Universality of human rights means that all human beings (in the case of individual human rights) and all peoples (in the case of collective human rights) possess the same inalienable and fundamental human rights. The concept of indivisibility is related to universality. Indivisibility means entitlement to the full range of human rights for all people; that is, a given individual or group can not be entitled to some human rights and disentitled to others. The concept of interdependence means that the full enjoyment of a given human right is related to, or dependent upon, the enjoyment of other human rights. In March 1994 ITC stated,

We assert the right of self-determination by invoking human rights standards that purport to be universal and that purport to be concerned with the fundamental dignity and equality of all peoples. Human rights are either universal or they are not. The issue of recognizing us as a people with the equal rights of peoples is an issue of equality.^{xxxii}

ITC and ICC have emphasized the interdependence of individual human rights with the right of self-determination and have pointed out that the UN itself regards the right of self-determination as a prerequisite and precondition for the implementation and preservation of all other human rights.^{xxxiii} The interdependence between individual and collective human rights has been commented on by the ICC:

It is the view of Inuit that the equality of all peoples is a concept vitally important to the full protection of *individual* human rights as well as the rights of peoples. It is after all, theories of racial, cultural and group superiority that are so often used to rationalize violations of individual human rights. Inuit firmly believe that equal respect by all peoples for all peoples would significantly contribute to the respect of the rights of individuals and we firmly believe that this concept is a fundamental cornerstone in the task of addressing racism, xenophobia and other forms of intolerance.^{xxxiv}

The Inuit view of human rights considers collective and individual human rights as necessary and complementary elements of an effective and holistic human rights regime. Inuit organizations have supported the current draft "Declaration of the Rights of Indigenous Peoples"^{xxxv} of the United Nations Working Group on Indigenous Populations because it reflects this vision of human rights.^{xxxvi} With respect to self-determination the draft declaration provides in article 3:

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

The active role of Inuit in contributing to this UN drafting process since 1985 is described by Dalee Sambo in an article entitled "Indigenous human rights: The role of Inuit at the United Nations Working Group on Indigenous Peoples".^{xxxvi}

Ethnicity and Inuit Self-Government Aspirations

The significance of the Inuit claim to a distinct identity as a people in Canada has been explained in the following terms:

It is not our race in the sense of our physical appearance that binds Inuit together, but rather it is our culture, our language, our homelands, our society, our laws and our values that make us a people. Our humanity has a collective expression, and to deny us recognition as a people is to deny us recognition as equal members of the human family. Individual human rights protections will allow us to assimilate into the dominant society, but they will not allow us to survive as a people, and therefore will not allow us to survive as Inuit.^{xxxvii}

This statement makes an important distinction between race and culture and the relationship of each to self-government rights. The right of self-determination is seen as a fundamental human right of Inuit to express their sense of community as a people — not because of racial (i.e., physical) distinctions — but because of the common values and aspirations that bind them together. When Inuit assert a distinct identity as a people, they are asserting a right to express their collective identity not just in the private sphere but publicly and politically as well. Inuit aspirations to self-determination are not a form of xenophobia, nor are Inuit aspirations the type of ethnic group demand Daniel Patrick Moynihan speaks of, where "people define who they love by whom they hate".^{xxxviii} Inuit positions reveal a recognition of the interdependence of peoples in the modern world and a commitment to respecting the fundamental human rights of all people and all peoples. This is evident in the embracing of domestic and international human rights norms, in the interest in Canadian federalism and in non-racially based forms of self-government, and in the active interest of organizations such as the Inuit Circumpolar Conference in global issues such as peace and the environment.

Inuit organizations frequently distinguish between 'ethnic' and 'non-ethnic' forms of government. The notion of 'public' or 'non-ethnic' government is a distinctive preference of the regional Inuit organizations that constitute the Inuit Tapirisat of Canada. 'Non-ethnic' governments are defined by Inuit organizations as governments where participation and voting requirements are not restricted by race, ethnicity or descent.^{xxxix}

Michael Ignatieff draws a similar distinction between "civic nationalism" and "ethnic nationalism" in his recent book, *Blood & Belonging*. Nationalism he defines as the belief that the world's peoples are divided into nations and that each nation (or people) has the right of self-determination, either as self-governing units within existing states or as nation-states of their own. Ignatieff defines "civic nationalism" as the belief that the nation should be composed of all those — regardless of race, colour, creed, sex, language or ethnicity — who subscribe to the nation's political creed. Further, he says, civic nationalism envisages the nation as a community of equal, rights-bearing citizens, united in patriotic attachment to a shared set of political practices and values. Ethnic nationalism is defined as the belief that an individual's deepest attachments are inherited, not chosen, and that it is the national community that defines the individual and not individuals who define the community.^{xi}

Violent conflicts in Europe and Africa between different ethnic groups (often of the same race) have become a major international concern. Some contemporary observers assume that attaching political value to preserving ethnic diversity leads ultimately to ethnic conflict given that the vast majority of states are multi-ethnic in nature.^{xii} As a result, the value of ethnicity is being attacked and the practicality of actually applying the right of self-determination to *all* peoples called into question. David Maybury-Lewis points out that the value of maintaining ethnic diversity is now often referred to pejoratively as 'tribalism':

Tribalism is a dirty word now used, all too often, as a pejorative way of referring to ethnicity. Ethnicity is no more than the sense, however strongly or weakly felt, of belonging to a certain people. Tribalism is used to emphasize the divisive effects of ethnic affirmation.^{xiii}

Daniel Patrick Moynihan's book, *Pandaemonium: Ethnicity in International Politics*, focuses on the aftermath of the disintegration of the U.S.S.R. into numerous nation-states. He mourns the loss of "relative stability" in international relations he says existed during the Cold War. While not regretting the end of the Cold War or the Communist East Bloc, Moynihan views the aftermath as a much more violent period. For this, he blames ethnicity, which he views as "primal" and "primitive". In his view, the aftermath of the Cold War is "pandaemonium" (the capital of Hell in *Paradise Lost*), because the breakdown of central authority has allowed ethnic identities to assert themselves:

Pandaemonium [the book] was written as a warning. It appeared to me that the world was entering a period of ethnic conflict, following the relative stability of the cold war. This could be explained. As large formal structures broke up, and

ideology lost its hold, people would revert to more primal identities. Conflict would arise based on these identities. Indeed, the world had already been introduced to the words 'ethnic cleansing'.^{xliii}

Ignatieff, Maybury-Lewis and Moynihan all seem to agree that the attachment of human beings to group identities seems to satisfy an individual need for belonging and that history has proved these attachments to be strong and lasting. However, there is a difference of opinion about whether attachments to ethnic identities are inherently threatening to the cause of peace and to individual human rights. Moynihan and Ignatieff would seem to say they are. Maybury-Lewis on the other hand sees the political expression of ethnic diversity as something states have attempted to suppress, and it is the suppression of ethnic identities that is the problem:

The idea that taking other peoples' cultures seriously and making an effort to coexist with them will lead to endless ethnic strife is simply not true. By and large we have been too fearful even to try doing this seriously. If we had devoted anything like the amount of energy to making federalist systems work as we have to trying to stamp out 'the ethnics' and to homogenize large-scale societies, I think we would be in much better shape today than we are...

What we think we're dealing with is 'tribals' — people clinging to their own groups and fighting their neighbours — but in fact, people have been clinging to their own groups for their identity ever since the beginning of human history and they're going to go on doing that as far as I can see. The problem in the modern world is not 'tribalism'. The problem is that we have so systematically and unsuccessfully attempted to suppress these units of identity that human beings appear to need.^{xliiv}

Based on the positions taken in constitutional and international forums, Inuit appear likewise to hold that the correct approach to interethnic peace is not to repress national or ethnic identities but rather to recognize their equal rights to survive and determine their political future. For Inuit, this seems to mean recognizing the right of each nation to survive while acknowledging the reality of the interdependence of peoples within states and internationally. In this view, the cause of inter-ethnic peace and the survival of all nations requires mutual respect and support.

Non-ethnic governments can be a legitimate means of realizing the inherent right of self-government (right of self-determination) of Inuit while recognizing the interdependence of peoples in Canada. One of the clearest explanations of why Inuit have focused so much of their efforts on non-ethnic forms of government is contained in an ITC constitutional position paper presented to the Right Honourable Joe Clark in February 1992:

A non-ethnic government reflecting the values and goals of the majority Inuit population while respecting the rights of the minorities would be a form of self-determination within Canada. Given the geographic and demographic features of the Canadian Arctic this form of government would be an appropriate model for many Inuit in regard to our traditional territories. Since most Inuit regions intend to pursue this model, non-ethnic forms of government must be explicitly recognized as available aboriginal self-government options in any constitutional amendment. The precise form of Inuit models of self-government will be determined through regional negotiations and conclusion of specific self-governing agreements. It is expected that in the agreements the exclusive and concurrent authorities of our governments will be defined as well as the paramountcy of our governments in certain areas. Guaranteed Inuit representation and entrenchment of acquired Inuit rights within these governments will also be included in specific self-government agreements to protect Inuit in the event of future demographic changes. The preference of most Inuit for non-ethnic government lies in the belief that this represents the most efficient and equitable means to provide good government for all residents. However, each Inuit regional organization will decide whether to conclude arrangements for either ethnic or non-ethnic based government. This will be a decision made by each organization at the regional level and will depend upon whether non-ethnic government agreements provide an adequate expression of Inuit self-government goals, including the proper protection of Inuit language and culture. These negotiated agreements must be constitutionally protected, as 'treaties' within the meaning of section 35(1) of the *Constitution Act, 1982*.^{xiv}

The use of the term 'non-ethnic' in this context can be unintentionally misleading; the word 'ethnic' is sometimes used in reference to different races, meaning groups of people distinguishable from one another by physical attributes, while in other situations 'ethnic' is used in a cultural context, to refer to groups of people distinguishable from one another by their social values, ways of life, art, etc. Inuit generally seek self-government structures in which racial descent is not a factor in determining citizenship. However, this does not mean there will not be ethnic components to the self-government arrangements that Inuit seek in the North. Inuit organizations expect that new non-racially based governments in the North will nevertheless provide Inuit with culture and language guarantees. Inuit organizations also clearly expect that, by having control of governments in the territories (through the ballot box as the majority population), Inuit cultural values will be expressed and reflected in those new governments (without violating the human rights of non-Inuit in those territories). Inuit organizations refer to these governments as non-ethnic or public forms government, though non-racially-based governments may be the more accurate term.

Perhaps the best known example is the desire of Inuit to create a Nunavut Territory out of

the eastern half of the Northwest Territories. The purpose of Nunavut, as described in the first formal proposal for the settlement of Inuit land rights issues in the Northwest Territories, was as follows:

...the basic idea is to create a Territory, the vast majority of people within which, will be Inuit. As such, this Territory and its institutions will better reflect Inuit values and perspectives than with the present Northwest Territories.^{xlvi}

While the Inuit proposal for a Nunavut territorial government underwent many revisions between the 1976 proposal and the enactment of the *Nunavut Act*,^{xlvii} the fundamental notion of ensuring cultural survival through control of a non-racially-based democratic government has remained constant. The federal government recognizes this objective. At a meeting of Aboriginal affairs ministers on the inherent right of self-government in Quebec City in May 1994, the federal government described Nunavut in terms of Inuit self-determination and cultural survival. This reflects an understanding of the flexibility and scope for implementation of the right of self-determination/inherent right of self-government, and an understanding that non-ethnic forms of government can serve the interests of cultural survival in regions where Aboriginal people are the majority population (and are expected to remain so). Self-determination under the non-ethnic model can be achieved by ensuring that the boundaries of the territory of the new governments include a majority Inuit population.

Two other Inuit land claims regions have stated a preference for non-racially-based governments in their traditional territories, the Western Arctic and Northern Quebec.^{xlviii} The opportunity to exercise jurisdiction over Crown lands as well as Inuit settlement lands through non-ethnic governments appears to be the primary motivating factor behind the Inuit preference for this model of self-government. Inuit are well aware of the deprivations suffered by Indian peoples in the South when confined to Indian reserve lands.

Inuit have been careful to say that their choice of non-ethnic government is premised on the continuing majority status of Inuit in their traditional lands. Inuit organizations have indicated that they may have to consider so-called ethnic-based governments should Inuit become a minority in their homelands. Seeking some other form of selfgovernment under these circumstances would be consistent with an understanding of the right of self-determination as a continuing right of a people to determine their political future and the form of selfgovernment best suited to them. Using descent requirements in order to determine citizenship is not unknown to liberal democracies. Many countries determine citizenship on the basis of descent from

existing citizens either exclusively (Germany) or in combination with immigration (Canada and the United States). Alternatively, Inuit may seek some form of guaranteed representation in the new governments in order to provide for any radical changes in demographics.

It may be possible to establish non-racially-based territorial or regional governments in ways that recognize as a source of power the inherent powers of Aboriginal peoples. Inherent powers are defined in *Black's Law Dictionary* as powers that are enjoyed by the possessors of a natural right, without having been received from another.^{xlix} Aboriginal peoples, like the provinces when they entered Confederation, can be regarded as bringing with them into Confederation their own inherent powers.¹ The future scope of the powers of new government structures can be defined through self-government agreements without necessarily having to define the scope of inherent powers as they existed before self-governments agreements were concluded.

Insisting on a particular theoretical basis for the source of the powers of the new governments could result in a lengthy delay in achieving the goal of self-government. Perhaps some Inuit will accept delegated powers from federal and/or provincial governments as the shortest route to achieving their regional self-government goals. On the other hand, Inuit may insist on government structures whose powers are defined under federal or provincial legislation, either with some recognition that the original source of these powers is the people themselves or some guarantee that the powers cannot be taken back by federal or provincial governments. Federal or provincial legislation could be regarded as simply defining, for purposes of greater certainty, the agreed upon powers of a newly recognized or established government. Aboriginal peoples could be regarded through this legislation as receiving *back* powers that were appropriated through the process of colonization. Careful drafting can allow the Aboriginal party and the government to read the legislation in their own way. For example, the *Yukon First Nations Self-Government Act*^{li} seems carefully to avoid the term 'granting' and instead describes Yukon First Nations as "having" the power to enact laws in relation to matters listed in an attached schedule. The term 'having' can be read as consistent with clarifying the scope of 'inherent' law-making powers. Alternatively, the fact that it is federal legislation that is defining the jurisdiction of the First Nations can be read as an indication of devolution or delegation of federal power. In other words, it is left ambiguous whether First Nations have the powers enumerated in federal legislation because it has been granted by the federal government or

because First Nations have always had these powers. (This ambiguity would arise only if section 35 of the *Constitution Act, 1982* is read as including the inherent right of self-government within the meaning of "existing aboriginal and treaty rights".)

In this regard, it is interesting to note that a joint Inuvialuit and Gwich'in proposal for a regional 'public' government in the Western Arctic emphasizes that the powers of the regional government would be devolved rather than delegated from the federal government.^{lii} A recent framework agreement to guide self-government negotiations between the government of Quebec and the chief negotiator for the Nunavik constitutional committee likewise anticipates discussions on "devolving" powers to a Nunavik Assembly.

Delegation of powers is usually understood as a transfer of powers from one branch of government to another, where the granting power has the right to take back the powers. *Devolution* of powers on the other hand can convey a permanent transfer of power to the recipient. Powers received from the federal government in a constitutionally entrenched self-government agreement are perhaps more properly regarded as a devolution of powers. Devolution may be regarded as more consistent with recognition of the inherent right of self-government than delegation would be.

It is also worth noting that while the joint Gwich'in-Inuvialuit proposal calls for federal legislation to establish the regional government and to set out the scope of powers it may exercise, the source of the proposed regional government's legitimacy and its law-making authority is described as coming from the communities within the region. Federal legislation would describe the limits of the new government's powers but that power could be exercised only as and when the communities agree that the regional government should do so:

The Committee proposes a model of regional government with wide ranging authority. It would hold many powers currently held by either the Government of the Northwest Territories or the Government of Canada. These powers would not be delegated, but rather devolved in legislation. Some authorities, or law making abilities would be paramount to those currently enjoyed by the Government of the Northwest Territories... It is emphasized that any particular legislative power of the regional government would take effect only when, and as the regional assembly (made up of elected community councillors) so decides to exercise the given legislative power. Any law making authority to be exercised by the regional government would have to be conferred by the communities through their representatives in the regional assembly. The proposed regional government will have no legislative powers unless, and until, the communities through their representatives in the regional assembly wish to confer a given power to the regional government.^{liii}

In addition, 'ethnic' or 'non-ethnic' governments may be established at the *community* level by either Gwich'in or Inuvialuit under this proposal.

Inuit interest in the option of inherent law-making powers is evident in the following ITC statements made in the context of constitutional reform discussions:

Sovereign lawmaking powers in Canada cannot be divided exclusively between the federal and provincial levels of government, with other governmental bodies exercising only those powers and authorities delegated to them by the senior levels of government. The Constitution of Canada must be amended to clearly establish the self-governing rights of aboriginal peoples. Other distinct regions of the country have negotiated entry into Confederation and have been allowed the exercise of exclusive legislative powers over matters of local concern. Aboriginal peoples have not been permitted this same opportunity to conclude terms of union with Canada and have them reflected in the Constitution. The myth of English and French speaking Canadians as the two founding peoples of Canada ignores the contributions and needs of aboriginal peoples as Canada's first citizens. It is this political inequality that a self-government amendment must address. In past rounds of constitutional discussions, the debate has focused on whether aboriginal peoples should accept delegated powers from the federal or provincial governments. Aboriginal peoples continue to insist we have never given up our self-governing rights and therefore, they cannot be delegated to us by others.^{liv}

Interest in inherent law-making powers is explained in part by the need for regional Inuit organizations to come to the self-government negotiating table with some power of their own that is recognized at the outset:

...the entrenchment of the inherent right to self-government will create a greater equality in bargaining positions when it comes to negotiate specific agreements. It will create a greater incentive to the federal and provincial governments to negotiate in good faith.^{lv}

Inuit organizations have begun to map out the connections between the concepts of Aboriginal rights and human rights. Inuit self-government proposals have been advanced within an Aboriginal rights framework and a human rights analysis and attempt to maximize the benefits of both. The ultimate goals of Inuit self-government proposals have been clear and consistent — democratically elected governments in the traditional territory of Inuit that reflect Inuit aspirations and values.

Pragmatism Versus Theory

Inuit leaders often say they are concerned primarily with the end goal of realizing self-government structures suitable to the needs of Inuit communities and are less concerned

with debates over abstract political or legal principles. The ways Inuit have articulated the Inuit right of self-government in a political and legal system largely not their making is seen perhaps as a means to an end. The vehicle for achieving self-government is seen perhaps as less important than the end itself — the reassertion of Inuit control over Inuit life. The theoretical foundations of arguments used in a legal and political system dominated by non-Inuit are primarily tools to translate Inuit political objectives into a conceptual framework that is persuasive to Canadian society as a whole. This is evident in remarks by the late Inuit leader Mark R. Gordon, who said that the concepts of land claims and Aboriginal rights were introduced by non-Inuit lawyers and were "a tool not of our invention" but were used by Inuit "with the intention to run our own lives".^{lvi} Inuit have taken a practical and cautious approach to using western legal traditions as a tool for achieving Inuit goals. This is evident in the following statement by the Inuit Tapirisat of Canada:

At the political level, the uneven power relationship between aboriginal peoples and non-aboriginal decision-makers has provided little opportunity for aboriginal peoples to shift discussion from conceptual frameworks rooted in western legal traditions towards some more neutral ground. The decision to work within a common law framework, a human rights framework or some other conceptual framework to articulate Inuit self-government rights is a strategic decision influenced by a range of complex political, legal and other factors. Needless to say, Inuit are placed at some disadvantage in attempting to express Inuit perspectives of Inuit rights through an alien legal system.^{lvii}

Inuit aspirations for self-government and self-determination within their lands have often been expressed as a desire for greater control over Inuit life. For example, the Inuit Ratification Committee described one of the objectives of the Nunavut Land Claim Agreement as being to ensure "that Inuit will have more control over the way they live, and will help to protect the Inuit way of life".^{lviii} In a survey of views of Inuit women, Pauktuutit states: "Aboriginal self-government is not an abstract concept which needs definition; it is the means by which Inuit can regain control over their lives."^{lix}

Current social and economic problems and deprivations that Inuit experience are regarded as having a political dimension, as being intimately connected to the violation of Inuit civil and political rights, particularly the right to self-determination. In this regard, the Inuit Tapirisat of Canada has stated:

The current "circumstances" of aboriginal peoples (poor socio-economic conditions, loss of land, a lack of political autonomy and threatened cultures and languages) are not accidental nor did they arise from neutral political acts of

European settler populations. Colonialism is a purposeful exercise of power to subjugate other peoples, based on theories of cultural and racial superiority and is one of the most serious human rights violations."^{lx}

The impact of colonialism on Inuit is typically described in terms of the imposition of alien laws and values with a disregard for, and a negative impact on, the pre-existing social, economic and political systems of Inuit. For example, Josepi Padlayat of the Inuit Committee on National Issues states:

When the Qallunaat, or white people, began coming to our land in great numbers, we shared our land and our resources with them; and suddenly our homeland became a jurisdiction governed by someone else's laws. Our children were taught to speak a different language from that of our people, and we were immersed in a whole new way of life, whether we liked it or not. In short, the newcomers paid little heed to the fact that we had rights to our land and to our own political, cultural and economic systems. So we are participating in the a current process to demonstrate that as the original inhabitants of what is now referred to as the Canadian arctic and sub-arctic, we have distinct rights which must be recognized in the highest and most fundamental of Canadian laws, the Constitution.^{lxi}

The Inuit Circumpolar Conference states:

As Arctic aboriginal people, Inuit have rights to the possession, ownership, and control of surface and subsurface resources within their traditional territories... It is important to recognize that violations or abuses of the fundamental rights of indigenous peoples are most frequently related to development issues. Developments imposed by states and third parties have served to deprive indigenous peoples of their right to self-determination, an adequate land and resource base, means of subsistence, and other human rights.^{lxii}

While the current self-government agenda of Inuit in Canada includes international, constitutional and regional objectives, the primary focus is the negotiation of regional or territorial government structures in each of the four Inuit land claims areas: the Western Arctic, Nunavut (Eastern and Central Arctic), Nunavik (Northern Quebec), and Northern Labrador. The positions taken nationally by Inuit organizations in constitutional discussions and other intergovernmental meetings are driven by the needs and objectives of the regions that make up the ITC board of directors, along with a nationally elected president and the president of Pauktuutit. (The Nunavut region is composed in turn of three regions, each with their own representative on the ITC board: Baffin, Kitikmeot and Keewatin.) The objectives of the regional Inuit organizations are determined through continuing community consultations. The regional and territorial government structures sought by regional Inuit organizations are described more fully later in this paper.

With respect to jurisdictional powers, the ICNI has said that Inuit seek provincial-type

powers in areas such as education, health, justice, culture, recreation, housing and renewable resource management, as well as some authority in areas of federal jurisdiction such as the offshore and its resources, and contact with Inuit in other parts of the circumpolar world.^{lxiii}

The Inuit agenda was summarized recently in the following words:

The implementation of our right to self-determination will be pursued in a cooperative and practical manner with all Arctic States including Canada, but the Inuit agenda is first and foremost premised upon our recognition as a people. We are a people who have been subjected to the sovereignty of Canada without our consent, without recognition of our collective identity as a people and in violation of our right to self-determination under international law. This must be rectified by several initiatives: the negotiation of regional self-government agreements, constitutional entrenchment of the inherent right of self-government, and the full recognition of the right of indigenous peoples to self-determination, under international human rights standards.^{lxiv}

Inuit and Citizenship

Inuit in Canada identify with Inuit throughout the circumpolar world. As a constituent member of the Inuit Circumpolar Conference, ITC endorses ICC statements identifying Inuit as a single people living throughout the circumpolar world. At the same time, within the context of constitutional negotiations and self-government discussions within Canada, Inuit identify as a people in Canada and as Canadian citizens. Thus, Inuit exist as a people within Canada and within the circumpolar world.

Inuit organizations at all levels have stated repeatedly that Inuit do not wish to exercise their right of self-determination through secession (i.e., complete independence). Inuit in Canada have stated repeatedly a desire for "internal self-determination" through the negotiation of self-government agreements at the regional level and constitutional amendments expressing the status of Inuit as a people with inherent self-government rights in Canada. These measures are regarded as necessary, along with the settlement of Inuit land claims, as an essential means of including the Inuit as equal partners in Confederation. For example, the Inuvialuit land claims agreement (the Inuvialuit Final Agreement) and the Inuvialuit proposal for a regional government for the Western Arctic are intended to allow equal opportunity for Inuit participation in Canadian society while ensuring the retention of Inuvialuit culture and identity. Inuvialuit have emphasized their dual identity as Inuvialuit and Canadians.^{lxv}

ITC has explained the choice of Inuit in Canada to exercise their right of self-determination within Canada as follows:

Throughout the constitutional negotiations, we explained our sense of exclusion from Canada, and the central issue we brought to the constitutional table was the desire of Inuit to finally join Canada, as a people and as equal partners in Confederation.

We have selected this means of expressing our right under international law to self-determination for a number of important reasons:

1. our bargaining power within Canada as an equal partner in Confederation is stronger than it would be as a small nation outside it;
2. partnership with Canada is practical and desirable in and of itself; Inuit have a strong attachment to Canada and identify positively as Canadians as well as a nation of people awaiting inclusion in the federation;
3. even assuming a separate state was desirable, we do not believe it would be economically feasible and therefore separation would not be politically responsible, given our small numbers and the socio-economic challenges of the North (under international law however, small population and economic considerations do not qualify the right to self-determination).

The Inuit agenda for the exercise of our right to self-determination is not to secede or remain separate from Canada, but to enter Canada as a people, and to share a common citizenship with other Canadians. We say this with no intent to judge the choices other peoples may make, but to ensure that the Inuit path to self-determination is clearly understood.^{lxvi}

In a similar vein, the Inuit Circumpolar Conference states:

The right of self-determination is a prerequisite and pre-condition for the implementation and preservation of all other human rights. This fundamental right includes the right to selfgovernment. By exercising self-determination in circumpolar regions, Inuit do not seek to dismember existing states but rather to contribute to and strengthen Arctic countries. For matters affecting Inuit and the Arctic, these states have a duty to involve Inuit and obtain their consent to proposed initiatives.^{lxvii}

Thus, Inuit in Canada wish to join Canada as a distinct yet integral part of Confederation and in a way that explicitly recognizes the place of Inuit as a people in Canada with an inherent right of self-government. Many but not all Inuit identify as Canadian citizens. A sense of exclusion stemming from the failure to recognize the distinct identity of Inuit in Canada as people with their own language and culture appears to be a major factor. In a 1991 survey of Inuit women, Pauktuutit reports:

As the tables at the end of this section indicate, a large majority of the women (84%) believe Inuit should have a say on national issues, including Canadian unity and constitutional reform, and an equal number believe that the constitution should recognize Aboriginal self-government. Sixty per cent (60%) of the women say that they think of themselves as Canadian. This is surprisingly low, for throughout the previous round of constitutional negotiations Inuit leaders maintained that their people felt strongly about their identity as Canadians. One woman commented that she would be able to see herself as a Canadian `if Canada

and Canadians gave recognition and protection to Aboriginal languages and culture and treated us equally'. In fact, 72% of the respondents believe there is racism against Inuit in Canada and 64% report personal experiences of racism. Thus, the women in this study feel strongly that Inuit should be involved in national decision-making but they are much less confident about being accepted as Canadians. Moreover only one in five of the women (20%) believe the federal government deals fairly with Inuit.^{lxviii}

In a presentation to the thirty-second premiers conference (1992) ITC stated that "Inuit view themselves as Canadians — an integral and uniquely original part of Canadian society" and that "survival of a distinct Inuit identity means the survival of an integral part of Canadian identity". However for some Inuit (as the report of interviews with Inuit leaders in Part 2 reveals), Canadian citizenship is a political fact of life that Inuit have come to accept because they believe they have no other choice. And for others, attachment to the notion of Canadian citizenship is an attachment to the land rather than the state. The Pauktuutit survey reveals that more than a third of the Inuit women involved did not identify as Canadian citizens.

Constitutional Reform and the Inherent Right of Self-Government

Substantive Inuit involvement in constitutional reform issues at a national level can be traced to 1978 with the appearance of Inuit representatives before a special committee of the Senate and the House of Commons, where they proposed ways for Inuit to become involved in the constitutional reform process.^{lxix} In 1979 Inuit obtained observer status at a first ministers conference on the Constitution, and the ICNI was created to develop national positions on constitutional reform. From 1979 until it was disbanded in 1987, the ICNI under the leadership of individuals such as John Amagoalik and Zebedee Nungak developed and presented national Inuit positions on constitutional reform matters to a great variety of parliamentary committees and ministerial committees on the Constitution.

In 1980, Inuit supported the patriation of the Constitution, provided there were certain constitutional protections for Inuit rights. ICNI participated in the series of constitutional conferences between 1983 and 1987 prescribed by section 37.1 of the *Constitution Act, 1982*. These conferences were intended to elaborate on the meaning of "existing aboriginal and treaty rights" in section 35(1) of the Act. Inuit worked closely with other Aboriginal peoples in Canada to secure the entrenchment of Aboriginal and treaty rights under section 35 of the *Constitution Act, 1982* and toward the *Constitutional Proclamation, 1983* that ensures, through amendments

to section 35, constitutional protection for rights under land claims agreements, as well as sexual equality in the enjoyment of Aboriginal and treaty rights. Mary Simon of ICNI was one of the key figures pressing for the sexual equality amendment now contained in section 35(4) of the *Constitution Act, 1982*.

In the later conferences, Inuit and other Aboriginal peoples focused a good deal of effort on securing constitutional recognition of the inherent right of self-government and a process for negotiating and constitutionally protecting self-government agreements. Explicit constitutional provisions respecting the inherent of self-government have been regarded as a means of including Inuit formally as a political partner in Confederation and as a necessary tool to prevent assimilation and the loss of an Inuit identity in Canada.^{lxx} Apart from the specific constitutional conferences devoted to Aboriginal rights, ICNI put forward Inuit perspectives on a wide range of constitutional matters such as senate reform and the 1987 Meech Lake Accord.

In a 1987 publication, ICNI summarized some of the outstanding constitutional objectives of Inuit:

ICNI is seeking constitutional entrenchment of the following:

- recognition of aboriginal peoples as culturally distinct by virtue of their historic occupation of the lands that now comprise Canada;
- recognition of aboriginal peoples' right to retain, use and develop their own languages and cultures;
- recognition of aboriginal peoples' right to the ownership and use of lands and waters (including sea-ice) as a necessary condition of their self-sufficiency;
- recognition of aboriginal peoples' right to participate in the harvesting and management of renewable resources and in the management and development of non-renewable resources;
- recognition of aboriginal peoples' right to self-government;
- a legal mechanism for negotiating self-government at local, regional, territorial and provincial levels;
- protection of the agreements that result from the negotiations on self-government;
- recognition of the principle that aboriginal governments must be adequately financed.^{lxxi}

Following the failure of the 1987 First Ministers Conference on Aboriginal Rights to produce a self-government amendment, the federal and provincial governments shifted their attention to Quebec's constitutional agenda and in the course of doing so, excluded Aboriginal peoples from the constitutional negotiations that led to the 1987 Meech Lake Accord. The issue of full participation in all constitutional conferences affecting Aboriginal peoples' rights and an Aboriginal consent mechanism for constitutional amendments affecting Aboriginal rights had

been an issue raised by ICNI for many years. Inuit representatives joined with other Aboriginal peoples in protesting their exclusion from the negotiations leading to the Meech Lake Accord. This mistake was not repeated when constitutional negotiations on a wide range of matters of national concern resumed in March 1992. Inuit and other Aboriginal peoples were included in the full range of meetings of officials, constitutional affairs ministers and first ministers on aboriginal rights and self-government but also on senate reform, the division of powers, and a distinct society clause for Quebec.

This constitutional reform process began with the federal proposals for constitutional reform released in September 1991, developed into negotiations between the governments and Aboriginal peoples in March 1992, and ended with the August 1992 Charlottetown Accord and the constitutional referendum in October 1992. Throughout this period, the Inuit constitutional agenda maintained a high level of consistency. Beginning with an Inuit Assembly on the Constitution held in mid-September 1991 in Pangnirtung, ITC focused largely on three main principles throughout the discussions and negotiations leading to the Charlottetown Accord:

1. constitutional recognition of Inuit as a distinct people;
2. constitutional entrenchment of the inherent right of self-government of Aboriginal people as well as a process for negotiating self-government agreements and entrenching the agreements themselves; and
3. full, equal and direct participation of Inuit in all stages of the constitutional reform process.^{lxxii}

These three principles were reflected to a large degree in the Charlottetown Accord. The final outcome respecting the third point fell short of Inuit goals: while full and equal participation was provided Inuit in the Charlottetown Accord process, the Accord itself would have restricted future participation to "matters directly affecting" Aboriginal peoples. During the negotiations leading to the Charlottetown Accord, these three principles were supplemented by others such as recognition of Aboriginal peoples' governments as a third order of government under the Constitution; recognition of inherent law-making powers under a provision called the 'context clause'; and Aboriginal peoples' consent to proposed amendments affecting Aboriginal rights provisions in the Constitution.

The importance of the outstanding constitutional agenda of Inuit is evident in ITC statements. Inuit have repeatedly expressed a sense of exclusion from the Canadian political

process and insist that there is a need to invite Inuit formally as a people within the federation.

The President of Inuit Tapirisat of Canada states:

There are two fundamental flaws respecting the existing Constitution from an Inuit viewpoint. One is a flaw in the way the Constitution has been made. The other is a fundamental flaw in its content. The existing Constitution [apart from the Aboriginal rights provisions in the *Constitution Act, 1982*] and the governments created under it were imposed upon Inuit without our consent. No one came and asked us about where the boundary lines of provinces should be or what powers federal and provincial governments should have. The recent plebiscite in N.W.T. on the proposed territorial boundaries is a notable and very recent exception. Not surprisingly, this flaw in process has led to a flaw in the content of the Constitution — it fails to recognize aboriginal peoples as having any law-making power of our own. In constitutional terms, we do not exist as a people except as an object of federal power.^{lxxiii}

The proposed constitutional amendment recognizing Aboriginal peoples' governments as an order of government would have qualified the division of power provisions of the *Constitution Act, 1867* in respect of federal and provincial governments by taking into account the inherent right of self-government of Aboriginal peoples. The president of Inuit Tapirisat of Canada has stated:

The exclusion of aboriginal peoples from the division of powers is a fundamental violation of our human rights as a people. It can be corrected in part by including in the Constitution the recognition of our “inherent” right of self-government... This is an issue of fundamental principle that speaks to the very nature of the relationship between aboriginal peoples and the rest of Canada. We are seeking constitutional statements on our right to self-government that reflect the fact that Inuit are equal to any other people in Canada. We are seeking constitutional statements that reflect this sense of equality and that will reverse the current values expressed in the Constitution of domination and subordination of aboriginal peoples by governments controlled by non-native people. For example, under a part of the Constitution to be called the Canada Clause, the governments of aboriginal peoples are recognized as one of three orders of government in Canada. This reflects the principle that the governments of aboriginal peoples have a constitutional status like the federal and provincial governments.^{lxxiv}

During the 1990s Inuit brought a strong human rights analysis to the constitutional table that explained the nature, source and significance of the inherent right of self-government and its relationship to the regional self-government objectives of Inuit. The distinctiveness of Inuit as a human society, their status as a people, and the inseparable connection of Inuit to their homelands are regarded as the source of the inherent right of self-government.^{lxxv} The word ‘inherent’ suggests the nature of the inherent right of self-government as a fundamental human right:

the word 'inherent' is used in the preamble of the United Nations' covenants on human rights. It is therefore part of the international language of human rights, and as Inuit use the word 'inherent' with reference to self-government, it signifies the notion of rights that can be recognized but not granted, rights that may be unlawfully violated but that can never be extinguished.^{lxxvi}

ITC has articulated some elements of the inherent right of self-government from an Inuit viewpoint:

1. it is a pre-existing and fundamental human right and therefore not subject to extinguishment (inherent);
2. the inherent right of self-government exists independent of any self-government agreement (non-contingent);
3. governments established by aboriginal peoples in exercise of the inherent right constitute an order of government with constitutional status (aboriginal peoples' governments are one of three orders of government in Canada that are sovereign within their spheres of jurisdiction);
4. the consent of aboriginal peoples is necessary in defining the relationship between aboriginal peoples' governments and federal and provincial governments (consent requirement);
5. the inherent right of self-government does not prescribe any particular form of government and therefore encompasses ethnic and non-ethnic forms of government (Inuit are not restricted to traditional forms of government or from joining with others in the exercise of their inherent right of self-government).^{lxxvii}

In March 1992, at the beginning of the constitutional negotiations, ITC tabled draft amendments in response to the federal government's proposals on matters such as the Canada clause and the distinct society clause. The Inuit amendments also addressed the inherent right of self-government and sexual equality rights. With respect to sexual equality, ITC recommended that the existing equality provision applying to the enjoyment of Aboriginal and treaty rights (section 35(4) of the *Constitution Act, 1982*) be broadened. In an explanatory note to the draft amendments ITC stated,

It can be argued that the rights of aboriginal women are now fully protected by the combined operation of sections 15, 28 and 35(4) of the Charter.

However, there are concerns that the section 25 exemption from the Charter for aboriginal and treaty rights and "other rights or freedoms that pertain to the aboriginal peoples of Canada" may override the specific sexual equality guarantees in section 28. Another concern is that s. 35(4) may not be broad enough to cover the very general reference to "other rights and freedoms" in section 25.

Regardless of the merits of the arguments on either side, the draft wording suggested here would make explicit a restriction on all governments — federal, provincial and aboriginal peoples — preventing them from passing laws or creating or recognizing rights in a way that discriminates between women and men. This is done in two ways: first, by broadening the wording of section 35(4)

by adding the words 'the rights and freedoms referred to in section 25' and second, by explicitly stating that the section 35(4) guarantee of equality rights applies to the laws of federal, provincial and aboriginal peoples governments.^{lxxviii}

In March 1992, ITC also tabled a draft amendment recognizing the inherent right of self-government and recommended that this provision be separate from section 35(1), which affirms "existing" Aboriginal and treaty rights. This was done for two reasons:

1. to clearly avoid any arguments flowing from the word 'existing' — that the inherent right of self-government for any aboriginal people in Canada has been extinguished in any manner;
2. to clearly signal recognition of an existing and third order of government with constitutional status.^{lxxix}

This approach was ultimately adopted in the Charlottetown Accord (and the accompanying draft legislation released in September 1991) along with a broadened sexual equality provision, a Canada clause provision recognizing Aboriginal peoples' governments as an order of government, and other positions consistent with Inuit positions.

The negotiations and consultations within the Inuit community leading up to the Charlottetown Accord and the constitutional referendum process ultimately resulted in a high level of national consensus among Inuit about the self-government amendments. In the constitutional referendum of October 1992, Inuit communities voted strongly in favour of the Charlottetown Accord. Despite the negative results of the referendum at the national level, Inuit insist that the political recognition of the inherent right of self-government by ten provincial governments and the federal government is not something that can be taken back.^{lxxx}

Since the failure of the Charlottetown Accord, Inuit have set for themselves a self-government agenda that can be achieved within the existing constitutional framework. This self-government agenda envisages new northern governments in the four Arctic regions corresponding to the four Inuit land rights settlement areas (or 'comprehensive claims'). The Inuit constitutional agenda remains outstanding and will be pursued again when the opportunity arises:

the Inuit "yes" vote in the national referendum demonstrates a strong national consensus among Inuit about the central principles relating to self-government that must be included in the Canadian Constitution. And as we have now said on several occasions, the recognition of the inherent right of self-government by the federal and provincial governments is an irreversible and defining moment in Canadian history. The Inuit leadership will pursue our outstanding constitutional agenda at an appropriate time in the future. In the meantime, Inuit have charted a course for the achievement of certain Inuit self-government objectives within the

existing constitutional framework.^{lxxx}

Treaties, Treaty Rights and Constitutional Protection of Self-Government Agreements

From an Inuit perspective, the exercise of treaty making through the land claims process and through self-government agreements is regarded as an important means of reasserting control with respect to land, resources and Inuit life in general. It is also seen as an essential process of including Inuit within Confederation as a people and as partners in Confederation. Inuit feelings of alienation and exclusion appear to be connected to Canada's failure to deal with the fundamental rights of Inuit as a people, particularly in the area of self-government, language and culture. This in turn has led to a less than enthusiastic embracing of Canadian citizenship, as the Pauktuutit study and the interviews reported in Part 2 of this paper reveal.

The Inuit experience with treaties has been restricted to the modern treaty-making process of land claims settlements, beginning with the 1975 James Bay and Northern Quebec Agreement. It is clear that Inuit would like to see the modern treaty-making process expanded to include self-government agreements with constitutional protection. Over the years, regional and national Inuit organizations have said regional self-government arrangements must receive constitutional protection and that there must be a specific constitutional provision recognizing in a general way Aboriginal peoples' right of self-government. In 1987 the ICNI stated:

But although the creation of Nunavut would provide two-thirds of Canada's Inuit with their own government, in the absence of constitutional amendment it would not provide constitutional protection for Inuit self-government in the North. Consequently, constitutional protection of aboriginal peoples' right to self-government continues to be a priority for Inuit. Entrenchment of a process for arriving at and constitutionally protecting self-government agreements is necessary for the long-term security of all aboriginal peoples.^{lxxxii}

In 1987, the federal government revised its land claims policy and, among other changes, allowed, so it said, for a "broader range of self-government matters to be included in claims negotiations". The 1987 policy statement^{lxxxiii} on its face does not exclude the possibility of constitutional protection for self-government agreements as part of land claims agreements, but as a matter of practice the federal government has insisted on 'parallel' negotiations in order to exclude self-government arrangements from constitutional protection.

The current federal government has indicated some openness to broadening its opportunities for constitutional protection of self-government agreements. In a speech in May 1994, the Honourable Ron Irwin indicated that he would likely bring before cabinet in the fall of

1994 the issue of deeming self-government agreements treaties within the meaning of section 35 of the *Constitution Act, 1982*. The government of Quebec has also demonstrated some openness to constitutional protection of self-government agreements but it is not clear to what extent. Newfoundland has usually said that it does not support constitutional protection for self-government agreements in the absence of an explicit constitutional amendment recognizing the inherent right of self-government.

Although Inuit and others (including some provincial governments such as Ontario and Saskatchewan) have rejected this argument, explicit constitutional provisions recognizing the inherent right of self-government and providing for constitutional protection of self-government agreements is clearly preferable. Arguments contrary to the Newfoundland position can be found in Janet Keeping's *The Inuvialuit Final Agreement*.^{lxxxiv} For example, rights under treaties and land claims agreements could be regarded as constitutionally protected without being regarded as part of the Constitution, in which case, the constitutional amending formula would not be a concern.

Therefore, constitutional protection for self-government agreements, independent of whether the inherent right is an existing Aboriginal right, may be obtained by characterizing self-government agreements as 'treaties' or including them within land claims agreements. Section 35(1) affirms and recognizes existing Aboriginal and treaty rights. Section 35(3) includes, within the meaning of treaty rights, rights acquired under land claims settlements. Together these sections suggest two possible means of constitutionally protecting self-government agreements — either by characterizing self-government agreements as treaties or by inclusion of self-government matters in land claims agreements.

Nevertheless, Inuit have some concerns about constitutional protection of self-government agreements in the absence of a provision explicitly recognizing the inherent right of self-government because of reservations about the common law doctrine of Aboriginal rights. ITC has made the following caution:

Constitutional entrenchment of self-government agreements may be a means of injecting Inuit perspectives into the constitution but the problems inherent in the existing doctrine of aboriginal rights would remain. Efforts should be made to redefine the common law and the Constitution to better reflect Inuit perspectives of Inuit rights and to make Canadian law regarding aboriginal rights consistent with international human rights standards concerning the equal rights and self-determination of peoples.^{lxxxv}

While maintaining that the inherent right of self-government is already protected under section 35, Inuit are well aware of the risks of litigating this fundamental issue within a legal system that has a vested interest in affirming its own legitimacy. Inuit would clearly prefer an explicit amendment affirming the inherent right of self-government as well as constitutional protection for self-government agreements.

It is not clear what international status, if any, such treaties might have from an Inuit perspective. The Inuit Circumpolar Conference has made the following statement of principle regarding the significance of treaty making and the inviolability of treaty rights:

The significance of land rights settlements or treaty-making between Inuit and state governments should be recognized as an important means of ensuring proper respect for Inuit rights to land, resources, and other fundamental matters. Whenever land rights settlements or treaties are entered into, the inviolability of Inuit land rights or treaty rights must be guaranteed in the national legal system of the state party concerned.^{lxxxvi}

Regional Inuit Self-Government Objectives Within the Existing Constitutional Framework

In the aftermath of the Charlottetown Accord and the 1992 constitutional referendum, Inuit organizations looked for ways to realize some of the self-government objectives of the regional Inuit organizations within the existing constitutional framework. Long-standing proposals for each of the four land claims regions have been pursued for many years independent of the constitutional reform process. The collective decision by Inuit organizations at the regional level to pursue self-government negotiations within the existing constitutional framework carries some risk in terms of constitutional protection of self-government agreements (see earlier discussion).

The goal of creating Nunavut in the Eastern and Central Arctic had been pursued vigorously for more than 20 years independent of the periodic focus of constitutional talks on Aboriginal self-government. Throughout the constitutional discussions in 1992, separate negotiations continued between the Tungavik Federation of Nunavut and the government of Canada on a land rights agreement covering the Eastern and Central Arctic. The Nunavut Land Claim Agreement was ratified by Inuit in November 1992 and signed by the prime minister in May 1993. Nunavut means 'our land' in Inuktitut and refers to both the eastern and the central portion of the Northwest Territories and to the territorial government that is planned for the new territory.^{lxxxvii} Under article 4 of the Nunavut Land Claim Agreement, the federal government

commits itself to introduce legislation to establish Nunavut separate from the government of the remainder of the Northwest Territories. Throughout the negotiations, Inuit insisted that any agreement on land rights in the Eastern and Central Arctic had to be linked to agreement on the long-standing aspiration of Inuit for Nunavut. (A referendum on the issue in 1982 supported division of the N.W.T. to create Nunavut.)

In the Western Arctic, Inuvialuit have sought a negotiation process with the federal government concerning their proposal for a Western Arctic Regional Government within the remainder of the Northwest Territories after division. The Inuvialuit wish to conclude a self-government agreement on this matter before division takes place. At one time, the Western Arctic was included in the Nunavut proposal. However, the Inuvialuit land claim was negotiated separately, and the boundary for Nunavut was ultimately determined as excluding Inuvialuit territory in the Western Arctic.

The 1984 Inuvialuit Final Agreement (IFA) does not address self-government other than to provide a guarantee that Inuvialuit will not be treated any less favourably than any other group with respect to public government structures in the Western Arctic^{lxxxviii}. This commitment to discuss public government issues with the Inuvialuit has been triggered now by discussions in N.W.T. on a new constitution for the western half left after the creation of Nunavut and by the terms of the 1991 Gwich'in land claims agreement. The Gwich'in agreement commits the federal government to self-government negotiations with the Gwich'in at the community and regional levels and states that

The objectives of self-government agreements shall be to describe the nature, character and extent of self-government, the relationship between government and Gwich'in institutions and to accommodate Gwich'in self-government within the framework of public government.^{lxxxix}

In June 1994, the federal government agreed to begin a negotiation process with the Gwich'in and the Inuvialuit regarding a Western Arctic Regional Government. The municipalities and the territorial government will participate in these discussions.

In Northern Labrador, the Labrador Inuit Association seeks an agreement on self-government covering the Labrador Inuit settlement area either as an integral part of their land claims agreement or in a separate self-government treaty. Progress in the land claims negotiations with the federal and provincial governments has been minimal and slow. In addition, there appear to be significant differences between the government of Newfoundland

and Labrador Inuit on the potential territorial scope of Inuit self-government in Northern Labrador.

In Northern Quebec, Inuit wish to consolidate and expand upon the powers exercised by institutions created under the James Bay and Northern Quebec Agreement, such as the Kativik Regional Government (KRG). The KRG is regarded by Inuit as an administrative entity, and the Inuit of Northern Quebec now seek a proper legislative body — a Nunavik Assembly. The KRG is a non-ethnic public administration in the northern third of the province on which representatives of thirteen villages sit. By virtue of their majority status, Inuit effectively control the KRG. The financial dependence of the KRG on the province because of its limited taxing capacity has hampered the ability of the KRG to function effectively. In 1987, the ICNI concluded that "the KRG lacks the degree of autonomy that would properly qualify it as an institution of self-government."^{xc}

Conclusions such as these on the part of Northern Quebec Inuit communities led to the current proposal for a Nunavik Assembly. In May 1994, the government of Quebec appointed a negotiator to discuss this issue, and a framework agreement to guide negotiations was reached in July of the same year. There is no commitment yet from the federal government to participate in these discussions. (The Quebec-Inuit framework agreement on self-government negotiations considers federal participation necessary in matters directly involving federal jurisdiction.)

The interest of the federal and provincial governments in discussing Inuit self-government objectives has not been consistent over the years. Consequently, the loss of the commitment to negotiate self-government with Aboriginal peoples under the Charlottetown Accord was considered significant by Inuit. Shortly after the referendum, ITC began discussing a "national Inuit self-government process". In a resolution passed at the Inuit Tapirisat of Canada board meeting of 8 December 1992, the national Inuit leadership was instructed to "take steps to immediately enter into discussions and conclude an agreement with the federal government to establish an Inuit self-government negotiation process available to each Inuit region and suitable to the needs and objectives of each region and which permits bilateral and trilateral negotiations". The president and vice-president of ITC met with the Honourable Jean Chrétien in 1993 when he was leader of the opposition and while the Liberal Party of Canada was preparing its policy statement on Aboriginal affairs. The Liberal Party ultimately committed its support to the establishment of a national Inuit selfgovernment process in its party platform.^{xcii}

In several meetings with ITC, the minister of Indian affairs, the Honourable Ron Irwin, has assured ITC president Rosemarie Kuptana that the federal government stands behind the commitments in the Liberal 'Red Book', as the party platform is commonly referred to. The federal government has also indicated an interest in a political accord with ITC on implementing Red Book commitments. ITC has proposed a political accord specifically on the subject of self-government as a means of implementing the Red Book commitment to the national Inuit self-government process. At the time the ITC proposal was first put forward, the federal government had not committed itself to begin a negotiation process with the Inuvialuit concerning regional public government in the Western Arctic. There is now a negotiation process available to each region, but there is no formal federal policy or statement on Inuit self-government.

The primary purpose of a political accord would be to reaffirm the relationship between the federal government and all Inuit in Canada, to reflect the existence of Inuit as a unified people living in four Arctic regions, and to record the commitment of the federal government to participate in the negotiation of self-government structures in each of the four Arctic regions. ITC has said that the role of the federal government in negotiating and implementing Inuit self-government will be slightly different for each of the Inuit regions:

With respect to the Western Arctic Region, the federal government would commit itself to bilateral negotiations with the Inuvialuit Regional Corporation in cooperation with the Government of the Northwest Territories respecting the establishment of a Western Arctic Regional Government. With respect to Nunavik, the federal government would commit itself to join the negotiations between the Government of Quebec and Northern Quebec Inuit respecting the establishment of the Nunavik Assembly, when invited to do so by those parties. With respect to Nunavut, the Government of Canada would reaffirm its commitment to work cooperatively with Nunavut Tunngavik and the Government of the Northwest Territories towards the establishment of the Nunavut Territorial Government as previously agreed, while ensuring that Inuit organizations in the Nunavut region have the resources to have meaningful input into the work of the Nunavut Implementation Commission. With respect to Northern Labrador, the federal government would commit itself to continue to work cooperatively with Labrador Inuit and the Government of Newfoundland toward the ratification of a comprehensive self-government agreement.^{xcii}

In addition to securing a formal political commitment to regional Inuit self-government objectives, ITC is also seeking financing commitments for the regional Inuit organizations for self-government negotiations and for ITC itself to co-ordinate self-government issues at the

national level. The proposed political accord would therefore pull together into a national document federal commitments respecting the self-government objectives of Inuit.

Overall, ITC believes that the federal government has not devoted as much attention to Inuit self-government objectives as it should, in contrast to the existence of a federal policy for pursuing "Indian community self-government negotiations" for First Nations communities. ITC and its member organizations are now pressing for Inuit-only programs in areas such as self-government, housing and many others. There is a sense that too often Inuit are dealt with as afterthought to programs designed primarily for the very different circumstances of First Nations. An equally important concern is the federal offloading of its fiduciary and program responsibilities for Inuit onto provincial and territorial governments.

Inuit Models of Self-Government

Inuit have said that the purpose of constitutional reform is not to articulate models of self-government but rather general principles that recognize the place of Inuit in Canada — that recognize Inuit as a people with an inherent right of self-government and a right to protect and promote Inuit language, culture, traditions and values. Specific models of Inuit self-government are to be addressed through regional selfgovernment negotiations. Inuit have indicated a preference for non-ethnic forms of government but have not excluded ethnic-based models as a possible option for the future.

Specific proposals for each of the four land claims settlement areas of the Arctic have been developed. Non-ethnic forms of government are attractive for their potential to ensure control and management over Crown lands in Inuit traditional territory as well as Inuit settlement lands. Inuit control through non-ethnic forms of government is premised upon the existence of an Inuit majority in the territories concerned (for example, Nunavut) or, alternatively, structures of government that will ensure a strong Inuit voice even in a minority situation (proposals for a Western Arctic Regional Government have addressed this situation). There is a desire to leave open the option for so-called ethnic forms of self-government.

With respect to the Eastern Arctic, article 4 of the Nunavut Land Claim Agreement committed the federal government to recommend legislation to Parliament to create the Nunavut Territorial Government. The *Nunavut Act*^{xciii} was passed by Parliament in July 1993 and is to come into force no later than 1 April 1999. The legislative powers of the new territorial

government are established by sections 23-27 of the Act and include, among other matters, the administration of justice, municipal and local institutions in Nunavut, hospitals and charities, direct taxation, licensing, property and civil rights, education, the preservation, use and promotion of the Inuktitut language, the preservation of game, and generally all matters of a merely local or private nature. The Nunavut Territorial Government can also exercise control over the management and sale of certain public lands. Section 28(2) provides that the federal cabinet may disallow any law made by the legislature within one year of its enactment. Inuit will have a significant role in planning the implementation of the *Nunavut Act*. Part II of the Act establishes a Nunavut Implementation Commission. Three of the nine Commissioners are selected from a list of nominees submitted by Tungavik Inc. The remainder are selected by the federal government and the government leader of the Northwest Territories.

There is no provision in the Nunavut Land Claim Agreement or the implementing legislation excluding Article 4 (the commitment to establish Nunavut) from constitutional protection as part of the land claims agreement. However, the Nunavut Political Accord and the *Nunavut Act*, which set out the details of this commitment, are excluded from constitutional protection by the terms of article 4.1.3 of the land claims agreement. Thus the commitment to establish the Nunavut Territorial Government (NTG) is constitutionally protected but not the legislative powers of the NTG as these are set out in the *Nunavut Act*. Nunavut Tunngavik^{xciv} would prefer greater constitutional protection for the Nunavut government and would also like to continue discussions with the federal government on the scope of its jurisdiction, particularly in the area of natural resources.^{xcv}

Section 2.7.4 of the Nunavut final agreement states that nothing in the agreement shall be construed so as to deny Inuit are an Aboriginal people or affect their ability to benefit from any existing or future constitutional rights for Aboriginal people. This constitutional saving clause is subject to the extinguishment clause, under which Inuit surrender all their "aboriginal claims, rights, title and interests, if any, to lands and waters anywhere within Canada...". However, this clause is read narrowly by Inuit as applying only to previously held land rights, not to any rights of self-government or other parts of the Inuit constitutional agenda, such as protections for Inuit language and culture.

In the Western Arctic, Inuvialuit have pursued their selfgovernment objectives for more than twenty years. The original Nunavut land claim proposal included the Western Arctic (the

Nunavut final agreement does not) and provided for a Western Arctic Regional Municipality (WARM) in addition to the proposal for a Nunavut Territorial Government. The Inuvialuit proposal for a regional government was not addressed in the final land claims agreement for the Western Arctic (the Inuvialuit Final Agreement, 14 June 1984), but section 4(3) of the Inuvialuit Final Agreement provides that Inuvialuit shall not be treated less favourably than any other Aboriginal group with respect to governmental powers and authority.

The Inuvialuit Regional Corporation (IRC) clearly regards the issue of self-government as outstanding and unfinished business for Inuit of the Western Arctic and wishes to have a "functional regime of regional and community government for the Western Arctic...well before division of the Northwest Territories takes place".^{xcevi}

The extinguishment provisions of the IFA and the federal ratifying legislation^{xcevii} call for the extinguishment of "all" Aboriginal claims "in and to" the settlement area. Like the similar provisions in the Nunavut Land Claim Agreement, these are read narrowly by Inuit as applying only to land rights of Inuit as they existed before the ratifying legislation. (In exchange for extinguishment, Inuit receive various benefits under the agreements, including cash compensation and secure title to Inuit lands within the settlement region.)

A basis for arguing an outstanding right or claim to Aboriginal self-government rights in the Western Arctic can be found in section 4(3) of the IFA, which commits the federal government to treat the Inuvialuit no less favourably than other Aboriginal people when public institutions or governments are restructured, and in section 3(6), which preserves the right of Inuvialuit to benefit from any future constitutional rights and preserves their identity as an Aboriginal people of Canada.^{xceviii}

The IRC has stated the Inuvialuit preference for a public (or non-ethnic) form of government at the regional level and wishes to negotiate this with the federal government. Community self-government within the region may be ethnic or non-ethnic. The IRC envisages the territorial government participating as a member of the Canadian delegation. The regional government the IRC envisages would be called the Western Arctic District Government, and

its nature and status will be determined by the Self-Government agreement to be negotiated, with federal legislation to give force and effect to the Agreement and to the self-government structures. At the later point of division of the Northwest Territories, the intended governmental structures would also be reflected in the new constitution for the so-called Western Territory.^{xceix}

The IRC views its proposal for a Western Arctic District Government as a practical means

of acquiring law-making powers. The March 1993 IRC proposal states that "self-government means a devolution of legislative powers and jurisdictional authority, not just an administrative role."^c The joint Gwich'in and Inuvialuit proposal later the same year (1993) is largely consistent with the March 1993 Inuvialuit proposal.

The March 1993 IRC proposal includes a draft Inuvialuit SelfGovernment Agreement that addresses a wide range of matters determining the structure, powers and functioning of the proposed government. The basic objectives of the proposed agreement, set out below, are clearly influenced by provisions of the Charlottetown Accord:

- (a) to recognize and affirm that the Inuvialuit have the inherent right of self-government within the Western Arctic Region of Canada;
- (b) to enable the Inuvialuit to safeguard and develop the Inuvialuit language, culture, economy, identity, institutions and traditions;
- (c) to enable the Inuvialuit to develop, maintain and strengthen the Inuvialuit relationship with their lands, water and environment, so as to determine and control their development as a people according to their own values and priorities and to ensure the integrity of their society;
- (d) to further the principles and goals set forth in the Inuvialuit Final Agreement;
- (e) to bring greater equity and efficiency with respect to government in the Western Arctic Region through devolution of governmental powers and authority; and
- (f) to provide for bodies or institutions of self-government that are open to the participation of all residents of the Western Arctic Region.^{ci}

The following legislative powers are proposed for the Western Arctic District Council:

- (a) community government relations and the co-ordination of local government activities;
- (b) culture, recreation and language;
- (c) district utilities;
- (d) economic development and northern benefits programs;
- (e) education;
- (f) issuance of mineral rights;
- (g) land use planning and zoning;
- (h) lotteries and gambling casinos;
- (i) municipal services;
- (j) district parks;
- (k) housing;
- (l) public safety services;
- (m) tourism;
- (n) wildlife management;
- (o) ancillary matters; and
- (p) other subjects as may be determined from time to time.^{cii}

In Northern Quebec, effective self-government arrangements for Nunavik (the region of

Quebec lying north of the 55th parallel) was one of the objectives of the James Bay and Northern Quebec Agreement (JBNQA). While this objective has been met to a limited degree under the JBNQA through the establishment of numerous public institutions such as school boards and health boards controlled by Inuit, "it soon became evident that Nunavik was lacking overall powers and structure required for effective self-government" and that "the region's decision making powers are fragmented — they are divided up among autonomous organizations which often work independently of each other".^{ciii} A brief presented by Quebec Inuit to the Commission on the Political and Constitutional Future of Quebec states the need for self-government arrangements in Northern Quebec as follows:

Inuit want self-government arrangements in Nunavik which they can rely on to set their priorities, determine their future, and ensure the survival and growth of their culture and society.^{civ}

Inuit in Northern Quebec have also chosen a non-ethnic form of government and sought negotiations toward this end with the province of Quebec. As a result of a 1987 referendum held in the region, the Nunavik Constitutional Committee was formed to pursue community consultations on the matter and eventually to draft a proposed Constitution of Nunavik. Negotiations with Quebec began in January 1991 but were suspended pending the outcome of the constitutional reform discussions. In February 1993, Inuit tabled a document on "a possible political accord to provide for Nunavik self-government". Quebec appointed a special negotiator, Francis Fox, in May 1994, and a framework agreement to govern the negotiations was reached in July 1994 between the Inuit of Nunavik and the government of Quebec. The preamble of the framework agreement says the Quebec government is committed to negotiating a form of self-government for the residents of Nunavik. The purpose of the framework agreement is to promote efficient negotiations to establish a Nunavik Assembly and government. The purpose of the non-ethnic Nunavik Assembly and government includes providing "Inuit and other residents north of the 55th parallel with a strong and effective autonomous government" and "a framework for devolving over time powers and resources to Nunavik".^{cv}

The first draft of the constitution^{cvi} proposed by Inuit calls for a Nunavik Assembly of at least 20 members with the legislative powers in all areas necessary to administer the Nunavik region effectively, including

- lands
- education
- environment

- renewable and non-renewable resources
- health and social services
- employment and training
- public works and infrastructure
- taxation and revenue
- justice
- language and culture
- transportation and communication
- recreation
- offshore areas
- external relations

This new government would have its powers recognized or devolved from the Quebec National Assembly (and perhaps the federal government as well) but "arrangements for the establishment of the Nunavik Assembly and Government shall respect the authority of the Quebec National Assembly".^{cvi}

The Nunavik proposal also contemplates an executive branch (cabinet) and a judiciary system and the application of the *Canadian Charter of Rights and Freedoms*, the *Quebec Charter of Human Rights and Freedoms* as well as a Charter of Rights and Freedoms for Nunavik residents. The Nunavik Charter would "protect and promote special additional rights and freedoms for residents of Nunavik and in particular for Inuit as a distinct people and first founders of Nunavik".^{cviii} Inuktitut, English and French would be the official languages of Nunavik.

The Labrador Inuit Association has considered a number of self-government models in numerous self-government workshops over the years. In 1987 some of the self-government options under consideration included a regional government based on municipal units, a regional government based on federal enclaves like those established under the *Cree-Naskapi (of Quebec) Act*, a system of separate, issuespecific institutions of self-government, and a territorial form of government for Northern Labrador.^{cix} In 1993, the Labrador Inuit Association submitted a proposed agreement in principle for the Labrador Inuit comprehensive land claim that included a proposal for a non-ethnic form of government. However, the choice between an ethnic and a non-ethnic government has continued to be debated and as of this writing had not been finally determined.

The Labrador Inuit Association (LIA) has demonstrated a strong interest in recognizing Inuit customary law as part of any land rights agreement in Northern Labrador. Consistent with this, the inherent right of self-government and the right of self-determination have been

important concepts underlying the LIA approach to self-government. Labrador Inuit customary law is regarded as fundamental to selfgovernment and land claims and to the identity of Labrador Inuit and has been described as "the primary means through which Inuit have traditionally exercised their rights of self-government."^{cx} LIA expects to have Inuit customary law recognized on "Labrador Inuit lands" and throughout the settlement area.

LIA also believes customary law to be a central issue in Labrador Inuit self-government. Within the context of self-government LIA is examining a range of questions about how customary law should be applied and through what institutions or authorities. The critical question is whether, and to what degree, institutions of self-government and self-government arrangements should be shaped by Labrador Inuit customs and traditions and whether those institutions will have the power and authority to establish rules and laws that will supersede and replace Labrador Inuit customary law.^{cx}

Further,

A critically important issue is the relationship between criminal law and the administration of criminal law and Labrador Inuit customary law. Here the primary issues under consideration are local control over policing and the role, if any, to be played by the AngajukKauKatiget (elders) in relation to family and the administration of justice.^{cxii}

Although the federal government is seen as having primary responsibility for addressing Inuit land and self-government rights, the involvement of the provincial government is regarded as necessary in resolving the many issues respecting land entitlement and self-government in Northern Labrador.

Inuit and the Fiduciary Duty

Inuit maintain that the federal Crown has a specific relationship with Inuit as a people and a fiduciary duty to Inuit. Inuit have also indicated that they see a continuing responsibility of the Crown attached to any legislative authority exercised over Inuit:

So long as the federal and provincial governments exercise any jurisdiction over aboriginal people, those governments have a special responsibility to exercise that authority in the best interests of aboriginal peoples.^{cxiii}

In interviews, Inuit leaders have indicated very strong views that the federal fiduciary duty will remain so long as there are Inuit in Canada, and that this duty cannot and should not be diminished or altered without Inuit consent. Considerable concern was expressed by Inuit leaders about federal attempts to offload responsibilities to provincial and territorial governments.

Provincial governments were seen as having a role in providing programs and services as they do

to other citizens, but this was not generally seen as fulfilling a provincial fiduciary duty. Only one leader could contemplate situations where provincial governments could hold a fiduciary duty to Aboriginal peoples. Inuit appear to view their relationship with the Crown primarily as a relationship with the federal Crown, particularly when dealing with the fiduciary duty.

The failure of Canada to obtain Inuit consent to the transfer of federal territory to Quebec and to the establishment of territorial and provincial government authority in Inuit homelands has been described as a violation of Canada's trust responsibility to Inuit and as a failure to respect the bilateral nation-to-nation relationship recognized by the *Royal Proclamation of 1763*. In 1980 Eric Tagoona, co-chairman of the Inuit Committee on National Issues, made the following statement on behalf of the ICNI:

The bilateral nature of our relations with government as witnessed in the Royal Proclamation, has gradually deteriorated in Canada over the past 100 years. Although the Royal Proclamation has never been repealed, unilateral legislation from time to time on the part of the Canadian Parliament has served to violate the essential principles of the Proclamation.

Despite Canada's trust responsibility in regard to Inuit, we were not consulted when Canada transferred jurisdiction over part of our homeland to Quebec by virtue of the Quebec Boundaries Extension Acts of 1912. Nor were we allowed to participate in the formation of a system of government in the Northwest Territories under the Northwest Territories Act. Nor we were consulted when Labrador joined Canada in 1949. In addition, we were denied the right to vote in federal elections until July 1, 1960. This legislative encroachment upon our capacity to predetermine our social order was compounded by various government policies that impeded Inuit local control.^{cxiv}

Inuit maintain that the federal government's fiduciary duty includes an obligation to respect the fundamental human rights of Inuit, including their right of self-determination.^{cxv} For Inuit, this means doing everything possible to help realize the regional self-government objectives of Inuit in Canada as well as the necessary constitutional reforms described in previous sections of this paper. Recent initiatives such as the agreement to establish Nunavut and the self-government negotiations in Quebec and the Western Arctic represent the beginning of such a process.

PART 2 — REPORT OF INTERVIEWS WITH INUIT LEADERS ON SELF-GOVERNMENT AND TREATY RIGHTS ISSUES

Members of the board of Inuit Tapirisat of Canada (ITC) were approached to answer a number of questions concerning Inuit views of self-government and treaty rights. Six members of the ITC

board were available for interviews — Rosemarie Kuptana, Chesley Andersen, Paul Quassa, Senator Charlie Watt, Tony Andersen and Mary May-Simon. These interviews were intended to solicit responses that would supplement or clarify positions taken by ITC in the formal presentations and submissions described in the first part of this report. There were five major areas of inquiry:

1. Inuit views of the *Canadian Charter of Rights and Freedoms*;
2. Inuit identity and Canadian citizenship;
3. the fiduciary duty of the federal Crown;
4. constitutional protection of self-government agreements; and
5. the nature of the inherent right of self-government.

The responses are not the official views of ITC but the viewpoints of the respondents who kindly agreed to be interviewed. To allow ITC to continue to develop formal positions on these issues in its own time, the following comments are not attributed to individuals.

1. The *Canadian Charter of Rights and Freedoms*

The Question:

Inuit leaders were asked to describe in general terms Inuit attitudes regarding the application of the *Canadian Charter of Rights and Freedoms* to Inuit-controlled governments. Leaders were also asked whether it was accurate to characterize ITC's position on the *Canadian Charter of Rights and Freedoms* as ambivalent and whether Inuit traditional values are regarded as in any way consistent with Charter values (for example, the high value placed on respect for personal autonomy within Inuit culture).

The Answers:

(a) ITC is not ambivalent about applying the Charter to Inuit-controlled governments. ITC accepts the application of the Charter of Rights and Freedoms but there has not been a lot of discussion to reach this conclusion. In a general way, Inuit have a positive response to individual rights. Inuit see the Charter applying in terms of having the same rights as other Canadians, without precluding our right to pursue the collective rights of peoples, that is, what applies to other peoples in terms of human rights. To the extent Inuit accept the Charter it is because we've

been exposed to it as Canadians. We see it as an instrument that can protect certain parts of our culture. On the other hand, the degree of accordance between Inuit traditional values and the Charter is an unanswered question. We can anticipate questions if not actual conflicts. This raises the issue of whose Charter and whose Constitution is it, and whether Inuit are going to have a say in what our fundamental freedoms are. There will of course be differences. Inuit culture is evolving and Inuit will decide collectively what the cultural norms of the day are. There are Inuit traditions, traditional values and social sanctions that are still applied in contemporary Inuit society, for example, exile (social ostracism), arranged marriages, adoption. Inuit tend to be very practical and look for protections for things that sustain life such as language and culture. Equality may not mean sameness of treatment. With respect to women's rights, I expect that Inuit-controlled governments will have to deal with traditional Inuit values. On the other hand, our social behaviour has changed to meet the world around us. There is a clash of cultures and it's us [Inuit] trying to fit into Canadian power and value systems rather than doing it the other way around. This is evident in the area of language rights and broadcasting for example. We consider the Inuit language as important as English and French but we don't receive the same level of support financially or legislatively. ('where numbers warrant' criteria have not worked in our favour). I look at the Canadian Charter and the Constitution as a tool that could potentially protect us as a people.

(b) In principle, Inuit accept the Charter. It is a matter of working out the details. On the other hand, Inuit tend to be very accommodating. If a negative effect is not apparent, there will be a tendency to accept. Inuit acceptance of the Charter is a mixture of the two factors — affinity with Inuit traditional values and acceptance of the Charter as a part of the Constitution and [therefore] as a part of Canadian society. [With respect to sexual equality], certain components of Inuit society depend upon women, and certain other components depend upon men. Men and women have different but equal roles. Inuit are quite strong on individual rights but without collective rights, it is very hard to have individual rights. It was clear in our constitutional discussions that there has to be a balance between individual and collective rights. Inuit acceptance of the Charter is a part of a modern transition to accept laws that are considered to advance one's rights. Inuit have talked about having our own Charter, one that is more culturally appropriate.

(c) Inuit are open to Charter in the sense of participating and having something acceptable to

us. The Charter is consistent with Inuit values, and for that reason in my region it is so acceptable.

(d) During the last constitutional reform process, a lengthy debate about the Charter took place. The ITC board agreed that the Charter should apply — provided the rights of the collectivity would be protected. Essentially, Inuit do accept the Charter. ITC board members expressed the view that there is a need for individual protections under any government, and because some traditional values would conflict with individual rights.

(e) Many Inuit would not be familiar with the Charter and assume it is already there. They would accept the Charter automatically. There is some consistency with Inuit values. However, there is no concept of rights in Inuit tradition but they were always there, part of our mentality even though they were never written.

(f) Inuit need some instrument to protect ourselves from ourselves, to deal with conflicts between collective rights and individual rights within Inuit communities. The *Canadian Charter of Rights and Freedoms* attempts to protect individual rights and is good as an interim measure until Inuit have more fully reflected upon what kind of individual human rights protections we require. We need our own Charter and this may conflict with the Canadian Charter. An Inuit Charter may expand upon the protections offered by the Canadian Charter or we may need exemptions. I cannot really say that the Canadian Charter is consistent with Inuit traditional values. Our acceptance of it is more a practical solution, in order to live under one umbrella. We have to ask ourselves whether it is broad enough to accommodate everyone.

2. Inuit Identity and Canadian Citizenship

The Question:

On several occasions, Inuit leaders have stated that Inuit identify as Canadian citizens. Leaders were asked if they could describe how Inuit identify as Inuit and as Canadian citizens.

The Answers:

(a) To say that Inuit identify as Canadian citizens is more a practical statement than a positive reaction to Canadian citizenship. It is an acceptance of reality, of not being able to exercise your right of self-determination as a sovereign nation. The question is how to identify as a Canadian while ensuring our language and culture survives. In terms of my own identity, I

identify first as an Inuk, secondly as being part of a larger Inuit nation (that includes Inuit living in other countries) and third, as a citizen of Canada. It goes back to the question of how to survive. It's a matter of survival. This is our original homeland. We have no other place for our language and culture to flourish and we must have protections for our language and culture here.

(b) Inuit identify with this country as their homeland, that in English is called Canada — so if you want to call us Canadians, o.k. Our land was called Nunavut before Europeans arrived.

Although we may not always agree or identify with Canadian law, Inuit are proud to be Canadians — it is an attachment to the country that has always been one's home. Other people came to it and now it is called Canada. If you live in a country from time immemorial, you belong in that place. There is not necessarily a conflict between Inuit identity and Canadian identity. The attitude of Inuit is non-confrontational. Our regions are less given to resource exploitation and physical occupation. There are fewer competing interests except for resources other than land. Inuit attitudes have helped our rights in many ways. The key question now is how Inuit can be part of the larger society and retain our identity as Inuit.

(c) Inuit do identify as Canadian citizens because of our connection to other Canadians in the country and our strong connection to other parts of Canada where Inuit live. We identify as Inuit as a group of people that goes across Canada. However I don't know what older Inuit from Labrador think who were born before Newfoundland joined Confederation. Many Canadian institutions may be consistent with Inuit values. In terms of Inuit identity, we consider ourselves northern Labradorian [Inuit] first, and secondly as Canadian. We don't identify as citizens of Newfoundland.

(d) There is a realization that we live in a country that is larger than the Inuit nation — Canada — and Inuit like living in a country where they can express their own views and retain our identity as Inuit. Inuit feel we can do that in Canada.

(e) When I was younger I questioned why we say we're Canadians when we were here before Canada was created. However, because we pay taxes, we are true Canadians and we've always stated that we want to be treated like other Canadians and that was the purpose of land claims — to have economic opportunities and to have an equal say. Then we can be true Canadians. If we are to be true Canadians, we have to be a part of Canada. In the early days we never thought of ourselves as Canadians. Land claims are a means of becoming, and being accepted as, Canadians. Before claims agreements, Canada just meant the RCMP and so on. It was

alien. The process of negotiating land claims agreements has been a process of inclusion.

(f) Our acceptance of Canadian citizenship is more a recognition that it is late in the day to say anything else. We also want to go forward to finding solutions rather than moving apart, to move toward partnership and toward recognizing what the power of the majority means to the minority. Inuit are here to stay and we must be allowed the space to live within the umbrella of Canada.

3. The Fiduciary Duty of the Federal Crown

The Question:

The Supreme Court of Canada has stated that the federal government has a fiduciary duty toward Aboriginal peoples in Canada, arising from a variety of sources including the federal government's law-making power over Aboriginal peoples under section 91(24) of the *Constitution Act, 1867*. Inuit leaders were asked how they view the future of the federal fiduciary duty and its relationship to Inuit self-government objectives. In what manner and to what extent should or would the federal fiduciary duty be limited? Would the fiduciary duty of governments lessen to the extent Aboriginal peoples were permitted to reassert law-making authority over their people? Do provincial governments hold a fiduciary duty in respect to any law-making authority they hold over Aboriginal people?

The Answers:

(a) The federal government is trying to offload so many of its duties to Aboriginal peoples on to provincial governments. The fiduciary duty lies solely with the federal government and Inuit wouldn't want any province or territory to acquire that responsibility.

(b) I am concerned that the fiduciary duty with respect to Inuit living in the provinces is being eroded by a number of things. The overall responsibility of the federal government in respect to Inuit in Labrador and Quebec is being affected — it's just not clear how yet. Historically, section 91(24) of the *Constitution Act, 1867* gave the federal government the fiduciary duty to Aboriginal peoples. However, there may be circumstances where a provincial government has a fiduciary duty to Aboriginal people, for example, a Davis Inlet type of situation. The fiduciary duty as a general duty must always exist as a duty of the Crown. Aboriginal governments should be able to exercise a relationship with other levels of

government. Quebec has tried to insist on provincial-Inuit negotiations on self-government. A self-government agreement resulting from such negotiations would not be constitutionally protected and could be changed by the provincial assembly. Inuit-controlled governments would want to have a relationship with other governments, for example, Greenland.

(c) I could see the duty decreasing with realization of self-government. Given the opportunity to govern ourselves, the federal fiduciary could diminish but if we are to remain part of the federation, it could never completely disappear. It is not at all desirable that provincial governments have any fiduciary duty in respect of Inuit. In fact, this would be very undesirable.

(d) Certain aspects of the duty should be there but in terms of selfgovernment institutions there may be a need for institutions to take on the responsibility for running them and financing a portion of them if able to do so. However, in order to do that, economic opportunities need to be completely available, and [self-government institutions] need the ability to tax. Provincial governments do not necessarily hold a fiduciary duty to Aboriginal people but they do have a duty to supply services such as education and health to residents of the region. That shouldn't be just a federal responsibility.

(e) I believe the federal fiduciary duty has to be there indefinitely. It has always to be there. It has been there since 1867. It would not diminish with the realization of self-government rights, just as it did not diminish when Aboriginal rights were recognized in the Constitution. The federal fiduciary duty can't and shouldn't diminish. Many programs, funds and services have been cut because the federal government is handing over its fiduciary duty to territorial governments. The fiduciary duty shouldn't be handed over to provincial or territorial governments, because this will diminish our rights. The federal fiduciary duty cannot be delegated. The federal government can devolve powers and programs but not the fiduciary duty.

(f) Regardless of where they are, as long as Aboriginal people live in Canada, Canada cannot say the federal government does not have a responsibility. The federal government has been trying to escape its fiduciary responsibility but it cannot do so totally. Provincial governments may assume responsibility for some areas in respect of Aboriginal peoples with the consent of Aboriginal people. For example, under the James Bay and Northern Quebec Agreement, the provincial government acquired responsibilities that were previously federal. However, despite the transfer of responsibilities to the provinces, the federal government always has a fiduciary duty. For example, the federal minister of Indian affairs has to report to Parliament on the

standing of the James Bay Agreement periodically, that is, to monitor the execution of the James Bay and Northern Quebec Agreement.

4. Constitutional Protection of Self-Government Agreements

The Question:

ITC has made known its view through several constitutional reform processes and in numerous public statements that self-government agreements like land claims agreements should be recognized by governments as treaties under section 35(1) of the *Constitution Act, 1982*. Why is constitutional protection of self-government agreements and land claims agreements important? If each Inuit region negotiated a constitutionally protected self-government agreement, would there still be a need for a constitutional provision recognizing and entrenching the inherent right of self-government?

The Answers:

(a) Self-government agreements must receive constitutional protection because we have to be reflected in the highest law of the country and to ensure our rights are protected. If these agreements were not constitutionalized, our fate would be left to the governments and the political will of the governments in power. Irrespective of whether or not there are constitutionally protected self-government agreements, there is a need for a stand-alone provision entrenching the inherent right of selfgovernment, a provision recognizing this fundamental human right of Inuit. We will be a third order of government.

(b) Land claims agreements have provided an opportunity to have a better relationship with the government of Quebec by providing greater control over education and other areas and more secure land ownership. Land claims agreements do not provide a system of government, only co-management in resource development. Non-renewable resources have not been part of resource-sharing. Under land claims agreements, we do exercise more control but they are not self-government arrangements. Land claims negotiations need not be separated from self-government negotiations. Both negotiations are complex but self-government is more complex. Inuit [in Northern Quebec] probably would have liked to negotiate self-government but probably would not have been able to negotiate within the two years it took to negotiate the JBNQA. Once land claims agreements are settled, the impetus to pursue self-government lessens (in part because of the demands of implementing the land claims agreement). Land claims

provide more power but not necessarily autonomy. Constitutional protection of self-government agreements is required because it provides the most protection. The Constitution is not a law that is changed easily. Protection of the highest order is needed for self-government and land claims agreements. Self-government created by provincial legislation can be changed by ordinary legislation. We could argue that the inherent right of self-government is already in section 35. If we negotiated agreements that recognized the inherent right of self-government, we might not need an explicit provision. However, Inuit can not accept any implication that any self-government powers Inuit exercise stem from anything other than the right that existed before the Canadian Constitution.

(c) Constitutional protection of self-government agreements is important because of our fear that if not, the provinces, through taking away federal responsibilities, could become more and more responsible for Aboriginal people and our rights would become further eroded. It is also important because we are a distinct people in this country and governments do change as well as their attitudes, and constitutional protection is needed to ensure we remain distinct.

(d) Through the experience of negotiation and implementation of our rights, Aboriginal people have come to realize that without constitutional protection, our rights can be overturned — governments change and times change. But rights should not change. We don't want to go back to the old days of having treaties not written up — or written by one side. If we had self-government agreements protected under the Constitution and we can argue the inherent right is already in the Constitution under section 35, we may not need a separate provision.

(e) Constitutional protection of self-government agreements, like land claims agreements is needed. If not, our rights could vanish. There is less chance governments will attempt to erode our rights if they have constitutional protection and our rights could not be eroded through ordinary legislation. Governments would have to monitor the legislation they pass for its effect on our rights. With respect to the need for a stand-alone provision in the Constitution recognizing the inherent right of self-government, the right to self-government, including the right to govern other people [non-Inuit], should have been in the Constitution from the beginning.

5. The Nature of the Inherent Right of Self-Government

The Question:

Do Inuit regard the inherent right of self-government as an Aboriginal right, a fundamental

human right, or as both?

The Answers:

(a) The inherent right is a fundamental human right — a human right that we've always had and always will have. I have a lot of doubts about the way Aboriginal rights are defined in this country. It depends on who you are talking to and who is making the decisions. Often those making the decisions, their ideas don't conform with our ideas of our fundamental human rights. Human rights are one thing and Aboriginal rights are another.

(b) There is a distinction between Aboriginal rights and human rights. Self-government is both. The source of the right is a human right and it is an Aboriginal right because we're talking about exercising a right of different peoples. All fundamental human rights are tied to Aboriginal rights.

(c) It's important that the self-government agreements include recognition of the inherent right of self-government.

(d) The inherent right of self-government is primarily an Aboriginal right but has also become a human right and they now match one another quite completely.

(e) Self-government falls under that box of Aboriginal rights under section 35. The concept [of being self-governing] has always been with us. Aboriginal rights are not defined [under section 35] and self-government is part of it. Everything is included under the concept of Aboriginal rights including self-government. An Aboriginal right is an inherent right and therefore self-government is included.

(f) The interpretation of the inherent right of self-government varies depending on who you talk to. However, everyone has it in principle. At a practical level, there may be difficulties in exercising it beyond a reserve community in southern regions. In the case of Northern Quebec, my inherent right has never been on the [negotiating] table and it includes the right to govern people who are not my race. The inherent right is not necessarily an Aboriginal right. It is more of a fundamental right, a human right, a right of all peoples.

CONCLUSION

There is ample evidence that European colonization of North America and the creation of new states such as Canada by settler populations have taken place at the expense of the rights of

self-determination of Indigenous peoples. While Inuit and other First Nations were often willing to share their land with newcomers, this generosity was used against Indigenous peoples to deny their rights of ownership and self-government by the newly created states.

Inuit self-government rights have been expressed by Inuit organizations in human rights terms by asserting the political and legal status of Inuit as a people with a right of self-determination. The inherent right of self-government is regarded as an aspect of the right of self-determination and as an Aboriginal right within the framework of Canadian common law. Although Inuit self-government rights have been asserted within an Aboriginal rights framework, there is significant concern about the limiting aspects of the common law. The international human rights framework is looked upon as a potential standard against which to measure the protection of the equal rights of Indigenous peoples under Canadian common law.

Constitutional reform measures explicitly addressing the question of self-government are considered necessary and desirable, particularly given the uncertainty about whether section 35 of the *Constitution Act, 1982* will be interpreted by the courts as guaranteeing the inherent right of self-government.

While the right of self-determination occupies a central place in Inuit political aspirations, there is a desire to exercise this right within Canadian federalism and a preference in most regions for non-racially based forms of self-government with territorial boundaries that ensure that Inuit are the majority population (e.g., Nunavut). These so-called non-ethnic governments would nevertheless provide protections for Inuit language and culture and in some cases may provide mechanisms to guarantee Inuit representation. In some regions, there is a continuing interest in ethnic forms of government at the community level and in customary law.

Self-government agreements will be negotiated at the regional level in order to deal with the jurisdictional realities of Canada as a federal state. Treaty making through the negotiation of land claims settlements and constitutionally protected regional self-government agreements is regarded as essential to ensuring the full and equal participation of Inuit in Canadian society. Constitutional protection of self-government agreements would provide a greater degree of security for the powers recognized under federal or provincial legislation. In this sense, the powers exercised by new self-government structures would be devolved rather than delegated and would be consistent with a recognition of the inherent right of self-government.

There is a high level of consensus among Inuit in all regions on the fundamental legal

principles that should be reflected in the Canadian Constitution. This is evidenced by the strong Inuit support for the Charlottetown Accord in the referendum and by the consistency in Inuit positions over the past 20 years. Just as important, detailed proposals for regional or territorial self-government structures have been proposed for the Western Arctic, Nunavut, Nunavik and Northern Labrador by regional Inuit organizations. Many years of preparations and consultations at the community level have led to this result. Constitutional reform is seen generally as a necessary complement to the self-government arrangements being negotiated and implemented at the regional level now.

The relationship with the federal Crown is regarded as the primary one, and the Crown's fiduciary duty to Aboriginal peoples is considered a permanent fixture of Canada's constitutional framework. Nevertheless, Inuit in Quebec and Newfoundland have accepted the need to include provincial governments in self-government negotiations because of provincial jurisdiction in areas important to Inuit such as lands and resources.

Inuit in Canada have a strong sense of their common identity and exist as a people within Canada and within the circumpolar world. There is a strong attachment to Inuit language, culture, traditions, and their traditional lands. Inuit regard themselves as a practical and adaptable people, who value negotiation as a means of conflict resolution and who recognize the interdependence of peoples. Inuit accept the existence of Canada but expect an opportunity to negotiate their place in the federation. A reluctant acceptance of Canadian citizenship appears related to feelings of exclusion because of the failure of Canadian society fully to address the status of Inuit as a people with fundamental rights.

Inuit aspirations for new self-government structures in the North do not represent a return to the past or a rejection of the past. Inuit simply wish to determine their own lives, to continue to adapt to a rapidly changing world, as all peoples must. Inuit seek new selfgovernment structures that will reflect Inuit identity while living in a federal state. The willingness of Inuit to work within a federal state, renewed and reformed by self-government agreements, demonstrates Inuit adaptability and pragmatism — attributes highly valued by Inuit. The interest in non-ethnic forms of government and in international and domestic human rights norms shows that Inuit acknowledge the interdependence of peoples and the value of individual rights. Recognition of the inherent right of self-government within the Canadian Constitution and the right of self-determination under international human rights law will allow Inuit the freedom to be

themselves within the larger Canadian and international communities of interdependent and equal peoples. The positions of Inuit organizations on self-government issues show how individual and collective rights can be reconciled within a human rights analysis and how the notion of equality of all peoples is as important as, and is related to, the equality of individuals.

NOTES

- ⁱSee, for example, Zebedee Nungak, "Fundamental Values, Norms, and Concepts of Justice—Inuit of Nunavik", in Royal Commission on Aboriginal Peoples, *Aboriginal Peoples and the Justice System, Report of the National Round Table on Aboriginal Justice Issues* (Ottawa: Minister of Supply and Services, 1993), pp. 86-104; and Wendy Moss, "Indian Self-Government", Library of Parliament current issue review, 1990.
- ⁱⁱWendy Moss, "History of Discriminatory Laws Affecting Aboriginal People", Library of Parliament background paper, 1987.
- ⁱⁱⁱR.S.C. 1985, Vol. XII, Appendix II, Doc. No. 5; *In re Eskimos* [1939] S.C.R. 104.
- ^{iv}R.S.C. 1985, C. I-5.
- ^vAlootook Ipellie, "The Colonization of the Arctic", in *Indigena: Contemporary Native Perspectives*, ed. McMaster and Martin (Vancouver/Toronto: Douglas & McIntyre/Canadian Museum of Civilization, 1992), pp. 39-57.
- ^{vi}Pauktuutit, *The Inuit Way: A Guide to Inuit Culture* (Ottawa: 1991).
- ^{vii}Nungak, "Fundamental Values", cited in note 1, pp. 87-88.
- ^{viii}David Maybury-Lewis, *Millennium: tribal wisdom and the modern world* (New York: Viking Penguin, 1992), pp. xiii-xiv.
- ^{ix}Pauktuutit, *The Inuit Way*, cited in note 6, p. 6.
- ^xNungak, "Fundamental Values", cited in note 1, p. 86.
- ^{xi}Okalik Eegeesiak, Inuit Tapirisat of Canada, personal communication.
- ^{xii}Canada, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada*, Issue No. 16, 1 December 1980, pp. 5-6, 28-29.
- ^{xiii}Inuit Circumpolar Conference, *Principles and Elements for Comprehensive Arctic Policy* (Montreal: Centre for Northern Studies and Research, McGill University, 1992), p. 4.
- ^{xiv}Inuit Circumpolar Conference, *Principles*, cited in note 13, p. 7.
- ^{xv}Between 1979 and 1987, Inuit constitutional issues were developed by the Inuit Committee on National Issues, a body established by the Inuit Tapirisat of Canada.
- ^{xvi}Inuit Committee on National Issues, *Completing Canada: Inuit Approaches to Self-Government* (Kingston: Institute of Intergovernmental Affairs, Queen's University, 1987), p. 17.
- ^{xvii}Canada, *Minutes of Proceedings*, cited in note 12, pp. 4-18; *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and the House of Commons on Senate Reform*, Issue No. 31, 25 October 1983, p. 21.
- ^{xviii}Rosemarie Kuptana, Speaking Notes for the North American Indigenous Nations UN Satellite Meeting, 1 April 1993.
- ^{xix}Inuit Tapirisat of Canada, Submission to the Royal Commission on Aboriginal Peoples, 31 March 1994.
- ^{xx}Erica-Irene A. Daes, "Some Considerations on the Rights of Indigenous Peoples to Self-Determination", *Transnational Law & Contemporary*

Problems 3/1 (1993); Umozurike Oji Umozurike, *Self-Determination in International Law* (Hamden, Conn.: Archon Books, 1972), pp. 234-235.

^{xxi}R.S.C. 1985, Vol. XII, Appendix II, Doc. No. 44. Section 35(1) recognizes and affirms "existing aboriginal and treaty rights". Section 35(3) provides that "treaty rights" in subsection (1) include rights "that now exist by way of land claims agreements or may be so acquired".

^{xxii}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19, pp. 44, 8-30.

^{xxiii}See, for example, the ICNI presentation to the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada, in Canada, *Minutes of Proceedings*, cited in note 12.

^{xxiv}See, for example, Submission of the Inuit Tapirisat of Canada to the Royal Commission on Aboriginal Peoples, 31 March 1994; and Inuit Tapirisat of Canada, Response of the Inuit of Canada to the First Consultation of the Inter-Commission on Human Rights Regarding the Content of a Future Inter-American Legal Instrument on the Rights of Indigenous Peoples, 21 January 1993.

^{xxv}Canada, *Minutes of Proceedings (Senate Reform)*, cited in note 17, Issue No. 31, 25 October 1983, p. 21.

^{xxvi}Hector Gros Espiell, *The Right of Self-Determination, Implementation of United Nations Resolutions* (New York: United Nations, 1980), p. 9 (United Nations Document No. E/CN.4/Sub.2/405/Rev.1).

^{xxvii}Rosemarie Kuptana, "The Universality of Human Rights and Indigenous Peoples: New Approaches For The Next Millennium", paper prepared for the Rights and Humanity Roundtable: Strengthening Commitment to the Universality of Human Rights, Amman, Jordan, 5-7 April 1993.

^{xxviii}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19.

^{xxix}Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights provides that "All peoples have the right of self-determination. By virtue of that right they may freely determine their political status and freely pursue their economic, social and cultural development." The covenants are published in United Nations, *Human Rights: A Compilation of International Instruments*, Volume 1, First Part, Universal Instruments (New York: United Nations, 1993), pp. 8, 20.

^{xxx}Statement of the Inuit Circumpolar Conference to the Fourth Preparatory Committee Meeting of the World Conference on Human Rights, 25 May 1993.

^{xxxi}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19, p. 42.

^{xxxii}Submission of the Inuit Tapirisat of Canada to the Royal Commission on Aboriginal Peoples, 31 March 1994; and Inuit Circumpolar Conference, *Principles*, cited in note 13.

^{xxxiii}Inuit Circumpolar Conference, "Statement of the Inuit Circumpolar Conference to the 49th Session of the UN Commission on Human Rights", February 1993.

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- ^{xxxiv}The text of the draft Declaration on the Rights of Indigenous Peoples as it stood in August 1993 is contained in Annex 1 of the 23 August 1993 *Report of the U.N. Working Group on Indigenous Populations* (United Nations Document No. E/CN.4/Sub.2/1993/29). The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities gave the current title to the draft declaration in resolution 1993/46 of 26 August 1993.
- ^{xxxv}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19.
- ^{xxxvi}*Inuit Studies* 16/1-2 (1992), pp. 27-32.
- ^{xxxvii}Rosemarie Kuptana, Speaking Notes, cited in note 18.
- ^{xxxviii}Daniel Patrick Moynihan, *Pandaemonium: Ethnicity in International Politics* (New York: Oxford University Press, 1993), p. 147.
- ^{xxxix}Rosemarie Kuptana, Speaking Notes, cited in note 18.
- ^{xl}Michael Ignatieff, *Blood & Belonging: Journeys Into The New Nationalism* (Toronto: Viking, 1993), pp. 3-5.
- ^{xli}See, for example, Moynihan, *Pandaemonium*, cited in note 38.
- ^{xlii}Maybury-Lewis, *Millennium*, cited in note 8, pp. 272-274.
- ^{xliiii}Moynihan, *Pandaemonium*, cited in note 38, preface to the paperback edition.
- ^{xliiv}Maybury-Lewis, *Millennium*, cited in note 8, pp. 273-274.
- ^{xli v}Inuit Tapirisat of Canada, "Inuit in Canada: Striving for Equality", constitutional position paper presented to the Rt. Hon. Joe Clark, 6 February 1992.
- ^{xli vi}Inuit Tapirisat of Canada, "Nunavut, a Proposal For the Settlement of Inuit Lands in the Northwest Territories", 27 February 1976.
- ^{xli vii}S.C. 1993, c. 28.
- ^{xli viii}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19.
- ^{xli x}*Black's Law Dictionary*, 5th ed., p. 1054.
- ^lSee the 'compact theory' of Confederation, as explained in Royal Commission on Aboriginal Peoples, *Partners in Confederation—Aboriginal Peoples, Self-Government, and the Constitution* (Ottawa: Minister of Supply and Services, 1993), pp. 22-23.
- ^{li}S.C. 1994, c. 35 (assented to 7 July 1994).
- ^{lii}Western Arctic Regional Government: Inuvialuit and Gwich'in Proposal for Reshaping Government in the Western Arctic, November 1993.
- ^{liii}Western Arctic Regional Government: Inuvialuit and Gwich'in Proposal for Reshaping Government in the Western Arctic, November 1993.
- ^{li v}Inuit Tapirisat of Canada, "Inuit in Canada: Striving for Equality", cited in note 45.
- ^{li v}Inuit Tapirisat of Canada, "Inuit In Canada: Striving For Equality", cited in note 45.
- ^{li vi}Canadian Arctic Resources Committee, *Aboriginal Self-Government and Constitutional Reform* (Ottawa: 1988), pp. 118-123.
- ^{li vii}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19, p. 8.
- ^{li viii}Inuit Ratification Committee, Summary of the Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty in Right of Canada, 1992.
- ^{li x}Pauktuutit, *Arnait: The Views of Inuit Women on Contemporary Issues* (Ottawa: 1991), p. 35.

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- ^{lx}Inuit Tapirisat of Canada, Response of the Inuit of Canada to the First Consultation of the Inter-Commission on Human Rights Regarding the Content of a Future Inter-American Legal Instrument on the Rights of Indigenous Peoples, January 1993.
- ^{lxi}Canada, House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Indian Affairs and Northern Development*, Issue No. 70, 28 June 1983, p. 35.
- ^{lxii}Inuit Circumpolar Conference, *Principles*, cited in note 13, p. 48.
- ^{lxiii}Inuit Committee on National Issues, *Completing Canada*, cited in note 16, pp. 6-7.
- ^{lxiv}Rosemarie Kuptana, Speaking Notes, cited in note 18.
- ^{lxv}Testimony from Roger Gruben, Chief Regional Councillor, Inuvialuit Regional Corporation, in Canada, *Minutes of Proceedings and Evidence of the Senate Task Force on the Meech Lake Constitutional Accord and on the Yukon and the Northwest Territories*, Issue No. 2, 28 October 1987, pp. 140-141.
- ^{lxvi}Rosemarie Kuptana, Speaking Notes, cited in note 18.
- ^{lxvii}Inuit Circumpolar Conference, *Principles*, cited in note 13, p. 7.
- ^{lxviii}Pauktuutit, *Arnait*, cited in note 59, p. 34.
- ^{lxix}Simon McInnes, "The Inuit and the Constitutional Process: 1978-81", *Journal of Canadian Studies* 16/2 (summer 1981).
- ^{lxx}Testimony from the Inuit Committee on National Issues, in Canada, *Minutes of Proceedings*, cited in note 12, p. 7.
- ^{lxxi}Inuit Committee on National Issues, *Completing Canada*, cited in note 16, pp. 12-13.
- ^{lxxii}Inuit Tapirisat of Canada, "The Pangnirtung Accord", resolution adopted by the Inuit Assembly on the Constitution, September 1991; and "Inuit in Canada: Striving For Equality", cited in note 45.
- ^{lxxiii}Rosemarie Kuptana, "Report on Constitutional Reform Talks", 9 July 1992.
- ^{lxxiv}Rosemarie Kuptana, "Report on Constitutional Reform Talks", cited in note 73.
- ^{lxxv}Inuit Tapirisat of Canada, Background Notes for a Presentation by Rosemarie Kuptana, 32nd Annual Premiers Conference, Whistler, B.C., 26 August 1991; and Rosemarie Kuptana, "The Inherent Right of Self-Government: Its Nature and Source", presentation to the Canadian Bar Association Conference on Constitutional Entrenchment of Aboriginal Self-Government, 27 March 1992.
- ^{lxxvi}Rosemarie Kuptana, "The Inherent Right of Self-Government", cited in note 75.
- ^{lxxvii}Rosemarie Kuptana, "The Inherent Right of Self-Government", cited in note 75.
- ^{lxxviii}Inuit Tapirisat of Canada, Discussion Paper on the Constitution, 23 March 1992.
- ^{lxxix}Inuit Tapirisat of Canada, Discussion Paper, cited in note 78.
- ^{lxxx}Rosemarie Kuptana, Speaking Notes, cited in note 18.
- ^{lxxxi}Rosemarie Kuptana, Speaking Notes, cited in note 18.
- ^{lxxxii}Inuit Committee on National Issues, *Completing Canada*, cited in note 16, p. 39.
- ^{lxxxiii}Indian and Northern Affairs Canada, *Comprehensive Claims Policy* (Ottawa: Minister of Supply and Services, 1987), p. 18: "The actual negotiation of self-government institutions will occur pursuant to agreement. Legislation will be required to establish the scope of law-making authority granted to any new institutions or bodies. Finally, as a matter of policy, most

aspects of such arrangements will not receive constitutional protection unless a constitutional amendment to this effect is in force."

^{lxxxiv}(Calgary: Canadian Institute of Resources Law, 1989), pp. 84-86.

^{lxxxv}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19, p. 51.

^{lxxxvi}Inuit Circumpolar Conference, *Principles*, cited in note 13, p. 7.

^{lxxxvii}Inuit Committee on National Issues, *Completing Canada*, cited in note 16, p. 30.

^{lxxxviii}Section 4(3) of the Inuvialuit Final Agreement provides as follows:

"Canada agrees that where restructuring of the public institutions of government is considered for the Western Arctic Region, the Inuvialuit shall not be treated less favourably than any other native groups or native people with respect to the governmental powers and authority conferred on them." Note that this provision speaks of conferring powers on Aboriginal peoples rather than recognizing powers of Aboriginal peoples.

^{lxxxix}Article 1.3 of the Gwich'in Self-Government Framework Agreement, July 1991.

^{xc}Inuit Committee on National Issues, *Completing Canada*, cited in note 16, p. 21. The authority of the KRG is summarized and discussed on p. 20.

^{xcⁱ}Liberal Party of Canada, "Creating Opportunity: The Liberal Plan for Canada"; and "Chrétien Calls For New Partnership With Aboriginal Peoples As He Unveils Aboriginal Platform", press release, 8 October 1993.

^{xcⁱⁱ}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19, p.48.

^{xcⁱⁱⁱ}S.C. 1993, c.28.

^{xc^{iv}}Nunavut Tunngavik Inc. is the successor to the Inuit organization that represented Inuit during the negotiations, Tungavik Federation of Nunavut.

^{xc^v}Paul Okalik, Nunavut Tunngavik Inc., personal communication.

^{xc^{vi}}Inuvialuit Regional Corporation, "A Proposal For Inuvialuit Self-Government In The Western Arctic", 29 March 1993. This proposal was revised and re-submitted to the federal government in the form of draft legislation in November 1993 separately from the joint Gwich'in-Inuvialuit proposal that was submitted in the same month. The joint Gwich'in-Inuvialuit proposal took the form of a descriptive summary of the joint interest of Inuvialuit and Gwich'in peoples in a regional public government and did not include draft legislation. The draft legislation of November 1993 has not been approved yet by either the Gwich'in or the federal government. Negotiations between the federal government, the Gwich'in and the Inuvialuit on a specific form of regional public government for the Western Arctic were due to begin in September 1994.

^{xc^{vii}}*Western Arctic (Inuvialuit) Claims Settlement Act*, S.C. 1984, c.24.

^{xc^{viii}}Keeping, *The Inuvialuit Final Agreement*, cited in note 84, pp. 95-100.

^{xc^{ix}}Inuvialuit Regional Corporation, A Proposal For Inuvialuit Self-Government in the Western Arctic, 29 March 1993.

^eInuvialuit Regional Corporation, A Proposal for Inuvialuit Self-Government, cited in note 99.

^{ci}Inuvialuit Regional Corporation, A Proposal for Inuvialuit Self-Government, cited in note 99.

^{cⁱⁱ}Inuvialuit Regional Corporation, A Proposal for Inuvialuit Self-Government, cited in note 99.

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- ^{ciii}Makivik Corporation and the Nunavik Constitutional Committee, Presentation to the Commission on the Political and Constitutional Future of Quebec, 1992.
- ^{civ}Makivik Corporation and the Nunavik Constitutional Committee, Presentation to the Commission, cited in note 103.
- ^{cv}Nunavik Assembly and Government Negotiation Framework Agreement between the Special Negotiator for the Government of Quebec and the Chief Negotiator for the Nunavik Constitutional Committee, 21 July 1994.
- ^{cvi}Nunavik Constitutional Committee, *Constitution of Nunavik*.
- ^{cvi}Nunavik Assembly and Government Negotiation Framework Agreement, cited in note 105.
- ^{cvi}Nunavik Assembly and Government Negotiation Framework Agreement, cited in note 105.
- ^{cix}Inuit Committee on National Issues, *Completing Canada*, cited in note 16, p. 24.
- ^{cx}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19.
- ^{cx}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19.
- ^{cxii}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19.
- ^{cxiii}Inuit Tapirisat of Canada, Discussion Paper, cited in note 78.
- ^{cxiv}Canada, *Minutes of Proceedings*, cited in note 12, p. 6.
- ^{cxv}Inuit Tapirisat of Canada, Submission to the Royal Commission, cited in note 19, pp. 54-57.