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INUIT SUBSISTENCE RIGHTS IN NUNAVIK: A LEGAL PERSPECTIVE ON FOOD SECURITY IN THE ARCTIC *

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Abstract: *This article outlines some of the key issues relating to the security of the subsistence rights of the Inuit in Nunavik. It is as part of a broader research question aimed at achieving a better understanding of how food security relates to legal security with regard to access to and use of country-food resources by Aboriginal people. Existing research underscores the importance of subsistence economies in the quest for sustainable development and food security in the Arctic. It also acknowledges the critical role played by Aboriginal land rights regimes in securing access to the land and its renewable resources. This article thus ascertains the legal foundations and scope of Inuit subsistence rights in Nunavik under the James Bay and Northern Quebec Agreement and the Nunavik Inuit Land Claims Agreement. It also briefly examines how these rights interact with other uses of the land and identifies potential insecurity-generating features of the Agreement's subsistence regime.*

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1. THE CONNECTION BETWEEN INUIT RIGHTS TO LAND AND RESOURCES AND FOOD SECURITY IN NUNAVIK

1.1 Food Security and Legal Security

The central aim of the research is to achieve a better understanding of how food security can relate to legal security as regards access to and use of country food resources by indigenous people for subsistence and non-subsistence purposes. One of the key issues examined, therefore, is the ability of legal systems to provide a secure, effective, and reliable regime regarding the subsistence and non-subsistence rights of the indigenous people in the Arctic.

Jurists are ill equipped to determine precisely which level of legal security is desirable with regard to native subsistence use of resources from a social and economic policy viewpoint. Therefore, a rather modest goal of the research is a purely legal assessment of the level of formal normative security that characterizes indigenous rights to country food resources in Nunavik, with a view to assisting social scientists and economists in considering the need for policy prescriptions.

The work undertaken with regard to Nunavik is centered on the interplay between indigenous rights to country-food resources and other legal land tenure or interests in land. It does not address environmental law issues, which constitute one of the chief legal determinants of a secured access to sufficient and wholesome country-food.

Our chosen method is typical of positivistic legal science, which identifies and critically analyses the principles and rules both recognized and enforced by the state's institutional machinery. Legal security in this context can be summarily defined as 'the existence of stable and clearly-defined legal entitlements that are actually enforced through state institutions as against the whole world.' Positivistic methodology draws on normative sources such as international norms, constitutional instruments, legislation, case law and the writings of legal specialists.

1.2 Food Security and Subsistence Use of Resources in the Arctic

In remote northern regions, the indigenous population relies on a combination of traditional subsistence activity, wage employment and transfer payments (Duhaime & Bernard (eds.) 2008; Gombay 2010). Although the harvesting of country-food is no longer the main source of food resources for many households in aboriginal Arctic communities (Duhaime 1998:107) guaranteed indigenous access to these resources over time is often cited as a key component of a food security strategy (Rio Declaration, Agenda 21 in Otis and Melkevik 1996:116, UNGA 2005).

Some of the existing research underscores the importance of supporting subsistence economic activity as one of the means of promoting culturally appropriate and community-based development in the Arctic (Berkes & Fast 1996:254-255). Subsistence is seen as compatible with indigenous social institutions, the preservation of traditional knowledge, and the quest for greater economic self-reliance (Chaturvedi 1996:233). The preference for subsistence practices in the use of renewable country-food



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resources has even been characterized as a primary principle for sustainable development in the circumpolar world (Young, quoted in House of Commons 1997:102).

The impact of indigenous rights to land and renewable resources on the pursuit of sustainable development is acknowledged. The clear recognition and effective implementation of such rights by states are commonly seen as critical to the development of subsistence economies for northern indigenous communities as part of a larger development agenda (Morehouse 1989, Berkes & Fast 1996). In complex nation-states that have elaborate and highly developed legal systems, state recognition of native claims to land and resources constitutes a basic requirement for secured access to these resources, as it may provide an indispensable defense against countervailing interests in the broader society.

Legal scholars, however, must keep in mind that an adequate level of legal security with respect to subsistence use of food resources would only be one of several determinants of such use. Factors unrelated to the subsistence rights regime such as, for example, the vitality of subsistence values in the Inuit communities, the cost of harvesting country-food, and the availability of alternative food supplies will, in the end, prove decisive.

2. The *James Bay and Northern Quebec Agreement (JBNQA)* and the *Nunavik Inuit Land Claims Agreement (NILCA)* as the Sole Legal Sources of Subsistence Rights: The Extinguishment of Common Law Aboriginal Rights

Inuit aboriginal rights originated in pre-colonial customary legal systems and were later recognized by colonial law, on the basis of prior aboriginal occupation, at the time of the assertion of European sovereignty over present-day (Otis 2005, McNeil 1997). They thus became legally enforceable rights in the Canadian courts (Calder 1973, Guerin 1984, Van Der Peet 1996, Delgamuukni 1997). Although the legal system has only recently begun to explore their content, it is already well established that aboriginal rights may include cultural, religious, and social rights, that may or may not be based on land and natural resource rights or any other land-based right such as, for example, subsistence harvesting rights over state-owned land or even exclusive title to the land itself (Otis 2005).

From the earliest days of European colonization, Aboriginal people have been permitted, and indeed strongly encouraged, through sometimes dubious means, (Fumoleau 1994) to abandon their common law rights over their traditional territory to make way for colonial expansion and non-native settlements. As is shown by the commitment solemnly expressed in the Royal Proclamation of 1763, however, British imperial policy was to settle native land claims before allowing European occupation, migrant settlement, and resource development (Royal Commission on Aboriginal Peoples 1993). This policy, which was notoriously disregarded in some parts of British North America (Fisher 1997), was reiterated in the Quebec Boundary Extension Act, 1912 which shifted the province's boundaries further north to embrace Nunavik.

The James Bay and Northern Quebec Agreement (hereafter JBNQA or 'the Agreement') settles the land claims of the Cree and the Inuit of Quebec over a vast territory of 410,000 square miles, which are grounded on the aboriginal rights doctrine. In accordance with long-standing government policy, it contains a clause stating that the native signatories, in consideration of the rights and benefits set forth in



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the Agreement, "cede, release, surrender, convey all their Native claims, rights, tide and interests whatever they may be, in and to land in the Territory and in Quebec" (2.1). The extinguishment of common law native claims in and to the land was confirmed legislatively through the enactment by Parliament of the Native Claims Settlement Act in 1977. Although the validity of the surrender clause of the Agreement has been questioned by some, similarly worded provisions found in older Indian treaties have been held valid by the Supreme Court of Canada, which has also ruled that such clauses effectively abrogate aboriginal rights to land as well as fishing, hunting rights or trapping rights (Bear Island Foundation 1991, Howard 1994). In addition, the indigenous signatories of the JBNQA do not seem to have a solid ground for challenging the federal extinguishment statute which expresses a clear and plain intention to terminate all land-connected aboriginal rights in Nunavik (Sparrow 1990, Gladstone 1996, Delgamuukw 1997).

The JBNQA and its extinguishment clause, however, do not extend to the marine areas surrounding Nunavik and Northern Labrador, which are used extensively by the Inuit for the harvesting of marine mammals (JBNQA, 24.1.28, 24.12.1). The Inuit claims in those areas were settled in 2006 with the conclusion of the Nunavik Inuit Land Claims Agreement and the adoption by Parliament of the Nunavik Inuit Land Claims Agreement Act in 2008. This agreement departs to a certain extent from British and later Canadian colonial policy in that instead of extinguishing Inuit ancestral rights in and to the land and natural resources of the marine region of Nunavik, it obliges the Inuit not to "exercise or assert any aboriginal or treaty right other than the rights set out in" the NILCA (NILCA, 2.29.3). However, these other undefined rights that the Inuit are prevented from exercising or asserting by virtue of the Agreement are deemed extinguished in certain circumstances, such as when they have "any effect on the ability of government or any other person to exercise and enjoy all their rights, authorities, jurisdictions and privileges (NILCA, 2.29.4)". This partial and residual extinguishment clause testifies to a certain shift in Canada's native policies towards an approach to land claims settlement that can achieve the aim of legal security while also responding to the demands of many Aboriginal peoples who oppose the wholesale extinguishment of their ancestral rights.

The chief purpose of native claims, historically, was to give the state a clear and secure title to most of the settlement land (Royal Commission on Aboriginal Peoples 1993). This is no doubt true of the JBNQA and the NILCA so that, from the state's viewpoint, the Agreements are very much about legal security. But analysts are increasingly willing to acknowledge that a land claim agreement can also give legal security to the native party by establishing well-defined and legally enforceable entitlements to land and resource use (Otis & Emond 1996:562-564, Asch & Zlotkin 1997:219-220). Current aboriginal rights litigation vividly illustrates the fact that the substantive scope, and perhaps more importantly the territorial basis, of non-treaty aboriginal rights are still quite uncertain. Because of the uncertainty of common law rights, even aboriginal people who oppose extinguishment clauses now admit that jettisoning the treaty process would not necessarily be conducive to a secure and effective access to, and use of, resources over an adequate land base.

Since any Inuit right to, and in, the land and marine regions of Nunavik can be found solely in the JBNQA and the NILCA, our research seeks to measure the extent to which the regime created by these agreements actually guarantees legal security to the Inuit with regard to the subsistence use of country-food resources. Most of the relevant provisions are contained in Section 24 of the JBNQA and Section 5 of NILCA, which set forth the Inuit harvesting rights, and in Section 7 of the JBNQA and 8 of



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NILCA, which pertain to the land regime applicable to the Inuit. The existing legal literature offers summary references to the land regime and subsistence rights of the Inuit (Bartlett 1990, Coates 1992, Lavallee 1994, McAllister 1985).

3. INUIT SUBSISTENCE HARVESTING AND OTHER INTERESTS IN LAND: OVERVIEW OF SECURITY PROBLEMS IN NUNAVIK

3.1 Inuit Harvesting Rights under Section 24 of the JBNQA and Section 5 of the NILCA

The Inuit are granted, in the JBNQA settlement area, an exclusive 'right to harvest' (24.3.3.), defined as the right to hunt, fish and trap any species of wild fauna (24.3.1) for personal and community use, as well as commercial trapping and fishing (24.3.11a). For residents of native settlements, community use extends to gifting, exchange, and sale of all products of harvesting between native communities and members of native communities (24.3.11c). The right to harvest also includes the right to trade and conduct commerce in all of the by-products (24.3.16).

These rights are completed in the marine region of Nunavik by a prior right, provided by NILCA, of an Inuk to harvest wildlife resources (1.1) 'up to the full level of his economic, social and cultural needs' (5.3.1 - 5.3.3) or, when wildlife conservation requires that the Inuit harvest be restricted, up to the 'basic need levels' set in accordance with the agreement (5.2.12 - 5.2.18). The right to harvest comprises 'the reduction of wildlife into possession and the attempt thereto, and includes hunting, trapping, fishing, netting, egging, picking, collecting, gathering, spearing, killing, capturing or taking by any means' (1.1). It can be exercised for personal and community consumption and uses, as well as for commercial purposes (5.2.13, 5.3.15, 5.3.21-5.3.23).

The general rule in both agreements is that the right to harvest may be exercised at all times of the year (JBNQA, 24.3.10; NILCA, 5.3.26) without prior administrative authorization (JBNQA, 24.3.18; NILCA, 5.3.18). Harvesting activities are, however, subject to two overarching limitations of general application: conservation (JBNQA, 24.2.1; NILCA, 5.1.4, 5.1.5), public safety (JBNQA, 24.3.5; NILCA, 5.3.23, 5.3.27 a) and, in the case of the NILCA, 'humane killing of wildlife' (NILCA, 5.3.23). Such limitations will allow competent regulatory bodies to impose restrictions pertaining, among other things, to harvesting methods and material (JBNQA, 24.3.9, 24.3.12, 24.3.14; NILCA, 5.2.19), the level of harvesting (JBNQA, 24.6.2; NILCA, 5.2.12 - 5.2.18), and the complete protection of particularly endangered species (JBNQA, 24.3.2; NILCA, 5.1.4, 5.1.5, 5.3.27 b). However, regulatory controls will have to be minimal so as to affect harvesting activities as little as possible and not amount to actual infringement of native rights (JBNQA, 24.3.30, 24.3.31; NILCA, 5.2.20, 5.2.21). It should be noted that the Inuit are participating in the elaboration of regulations and policies regarding their harvesting rights through the co-management processes established by the JBNQA and the NILCA (JBNQA, 24.4; NILCA, 5.2; Rodon 2003).

The right to harvest also comprises a bundle of ancillary operational rights. It thus includes the right to travel and establish such harvesting camps as are necessary (JBNQA, 24.3.13; NILCA, 5.3.26), the right to use traditional or modern methods of harvesting (JBNQA, 24.3.14; NILCA, 5.3.23) and the right to possess and transport the products of harvesting activity (JBNQA, 24.3.15; NILCA, 5.3.21.1,



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5.3.21.2). Such ancillary entitlements may well appear self-evident, but aboriginal communities governed by older treaties that contain no explicit recognition of incidental rights have had to challenge legislative prohibitions as far as the Supreme Court of Canada in order to be allowed to build hunting cabins as an implied treaty right (Sundown 1999). But the actual scope and practical significance of the native right to harvest will very much hinge on the way it interacts with the other uses of the land. In other words, the security of Inuit subsistence rights will depend on whether access to and use of country-food resources is shielded from interference caused by competing tenures or interests in land.

3.2 Harvesting Rights on Inuit-Owned Land

Tracts of land have been granted to the Inuit in ownership for Inuit community purposes in accordance with section 7.1 of the JBNQA. These tracts of land are located within a geographical area designated as Category I lands although that area encompasses various parcels of land that are actually excluded from Inuit ownership. These include, for example, land subject to various third party interests at the time of the signing the Agreement (7.1.8, 7.1.7b), government properties such as main roads, landing strips, airport installations and maritime structures (7.1.9). Land can also be taken up by provincial public authorities for the purpose of providing various public services, in which case compensation in land or money, at the option of the Inuit, will normally have to be awarded to the Inuit (7.1.10). In addition, the federal government has the power to expropriate Inuit-owned land for a public purpose (7.1.13). Quebec has retained the ownership of mineral and other subsurface resources in Inuit-owned land but no extraction and development of these resources can be carried out without the consent of the Inuit and then only upon payment of agreed-upon compensation (7.1.7).

In addition, with the conclusion of the NILCA, the Inuit were granted a fee simple title over 80% of the land base in the islands located in the marine region of Nunavik (NILCA, 8.2.1, 8.3.3). Contrary to the land ownership regime provided for in the JBNQA, Inuit land ownership under the NILCA encompasses mines and minerals, including all 'precious and base metals', as well as 'coal and petroleum' (NILCA, 1.1, 8.3.1 c). The Government of Canada, as well as the Government of the Nunavut territory, can expropriate Inuit property in the marine region of Nunavik, in exchange for compensation in money, in alternate lands, or both (NILCA, 12.4.1 - 12.4.5). However, these expropriation powers can only be exercised on 12% of the total Inuit land base provided by the NILCA (NILCA, 12.4.10).

Subject to the principle of conservation, and provided harvesting activities do not conflict with some other physical activity or with public safety (JBNQA, 24.3.5; NILCA, 5.3.23), the harvesting rights of the Inuit extend to all Inuit-owned land (JBNQA, 24.3.32; NILCA, 5.3.26), except for areas where non-Inuit persons have a right of access under the Agreement (JBNQA, 7.1.16) or have been otherwise granted a right of use or occupation by the community (JBNQA, 7.1.5, 24.3.32).

Because it empowers the Inuit to control access to and use of their property, ownership of the land base itself provides them with a significant degree of security as regards the subsistence use of country-food resources. It is apparent, however, that some features of the regime applicable to Inuit-owned lands nevertheless generate insecurity. For example, the federal power of expropriation is framed in exceedingly broad terms by the JBNQA, which seems to result in extensive governmental discretion



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as to when and how a unilateral taking of Inuit land can be effected. Contrary to the NILCA, it is nowhere provided in the JBNQA that the Inuit must be consulted and offered compensation with alternative land of equivalent significance and value, nor is the federal power of expropriation limited to a maximal quantity of land.

Another source of insecurity for Inuit subsistence rights lies in Quebec's right to deny replacement of land taken up for a public service when the service is one that affords a 'direct benefit' to the community or to category I lands (JBNQA, 7.1.10A). The notion of 'direct benefit' is only partially defined (JBNQA, 7.1.10A-B) in the Agreement, which may mean that the community will be forced to challenge in court the government's view of what is directly beneficial to the community or to Inuit land.

On the other hand, recent decisions by the Supreme Court of Canada have laid down the general rule that the exercise of Crown's powers and discretion to take up land under modern treaties is constrained by the duty to act honourably. (Moses 2010, Beckman 2010). Such a duty, which may entail a duty to consult and to accommodate the Inuit, provides a potential shield from abuse of power on the part of government. In addition, these apparent insecurities may have little practical significance given the relatively limited extent of Inuit-owned lands.

3.3 Inuit Harvesting Rights on State-Owned Land and Marine Areas

By far the most substantial part of the land mass and marine areas included in the settlement is owned by the state. The Inuit consequently have no discretionary control over access to and use of these lands, even though their exclusive subsistence rights extend to them. The potential for the coexistence or overlap of Inuit harvesting rights and non-Inuit interests over the same land base thus becomes a general rule. Such a joint use regime, by its very nature, is likely to generate a measure of insecurity because of the constant risk of clashing interests and uses, and the difficulty of devising effective rules for resolving conflicts.

3.3.1 Under the JBNQA

The JBNQA creates two discrete regimes organizing the relationship between Inuit harvesting rights and other land uses and tenures on state-owned land. These regimes, territorially designated as Category II and III lands, do not provide the same level of legal security for Inuit subsistence rights. They are outlined separately.

a) Category II lands

Section 7.2.1 of the Agreement affirms the exclusive harvesting rights of the Inuit and provides that other uses of Category II lands "for purposes other than hunting, fishing and trapping shall be subject to the provisions set forth below." The provisions that follow only permit interference with Inuit rights in specifically enumerated cases. It therefore means that no activity that interferes with the exercise of Inuit subsistence rights can be carried out on Category II lands, unless such activity is contemplated in Section 7.2 of the Agreement.



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Conversely, the government can authorize, without the consent of the Inuit and without any monetary compensation or land replacement, any land use or tenure that is not incompatible with the continued exercise of Inuit harvesting rights. Quebec has, however, undertaken to control any such authorized use or activity in order to prevent interference with the rights granted to the Inuit pursuant to Section 24 of the Agreement (7.2.3).

Quebec can only occupy or use the land for "any act or deed that precludes the hunting, fishing and trapping activities by Native people" if it replaces the land or, should it be the wish of the Inuit, gives a mutually agreed upon monetary compensation (7.2.3). The procedure for taking Category II lands, which is referred to in the Agreement as appropriation for 'development,' thus is intended to allow the state to develop tracts of land without undermining the land base for Inuit harvesting activities.

But the Agreement nevertheless allows for some degree of interference with harvesting activities. Public servitudes can be established on Category II lands without compensation to the Inuit (7.2.5.). Furthermore, a number of specified uses can validly be made of the land as long as they do not result in an 'unreasonable conflict' with harvesting activities. Such uses include mineral exploration, technical surveys, mapping, diamond drilling (7.2.5a), exploration, pre-development activities, scientific studies, and administrative duties (7.2.6b). All persons exercising rights that are compatible with the harvesting of the Inuit, or persons fulfilling a duty imposed by law, have access to the land, and may remain and erect ancillary infrastructures on the land (7.2.6). Forestry operations on Category II lands will be defined in accordance with management plans devised by Quebec and 'taking into consideration' the hunting, fishing and trapping activities (7.2.5c). The duty to take harvesting rights 'into consideration' apparently allows for some interference with these rights. Once a non-Inuit use of the land falls within the situations specified in Section 7.2., the Inuit may not harvest if their activity conflicts with any lawful physical activity (24.3.5).

The legal security of Inuit subsistence rights on category II lands will, to a great extent, hinge on the meaning that is ascribed to such key phrases as 'preclusion of harvesting,' 'compatible rights,' 'unreasonable conflict' and 'taking into consideration'. 'Preclusion is a particularly decisive concept since it is the sole legal basis for guaranteed replacement of the land base affected by non-harvesting uses. A finding of preclusion will, in other words, trigger a vital security-enhancing mechanism although, it must be said that the procedure is by no means without defect (i.e., no dispute settlement mechanism is created to ensure that the land offered as replacement is satisfactory). On the other hand, if a planned use or occupation by the state, or any private party to whom an interest in land may be granted, does not amount to preclusion, such use or occupation may be held 'compatible' with the rights of the Inuit even though it would 'reasonably conflict' with such rights. No land replacement and no compensation can be claimed when a conflict is shown to be 'reasonable.'

There is a growing body of case law not directly related to the JBNQA which deals with the difficult issue of co-existence of Indigenous rights and other interests in land. For example, the courts have drawn a distinction between the 'extinguishment' of indigenous rights and a mere 'infringement' of such rights (Sparrow 1990, Gladstone 1996). They have dealt with the question of 'inconsistent' rights (Fik) and have laid down general rules to determine what constitutes a 'reasonable' or 'justifiable' impairment of hunting and fishing rights (Sparrow 1990, Gladstone 1996, Delgamuukw 1997). A



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thorough analysis of these cases will yield information that may be very useful in assessing the security of Inuit subsistence rights on Category II lands.

b) Category III lands

The Agreement explicitly states that 'Quebec and Hydro-Quebec, and their nominees and such other persons acting lawfully authorized shall have the right to develop the land and resources in Category III lands' (7.4.1.). Monetary compensation or land replacement is not required, which means that the issue of preclusion, which is so critical for Category II lands does not arise here, and that 'development' refers to any use and occupation of the land. The harvesting rights of the Inuit on these lands exist only where access to the land is authorized by the general laws applicable to public lands (7.3.1.) and are confined to areas intended 'for the joint use of Native people and non-Natives' (24.3.32). It must also be noted that the Inuit may not hunt, fish or trap if such activities conflict with other physical activity (24.3.5. 24.3.6). The basic rule of co-existence and conflict resolution applicable Category III lands is, therefore, that Inuit subsistence rights will have to yield to any inconsistent legislation and regulation that governs access to and use of the land.

Although Inuit subsistence rights is insecure, it should not be assumed that an 'inconsistency' between non-Inuit use and occupation of Category III lands is a straightforward operation in terms of legal analysis. Put differently, the harvesting rights of the Inuit may be more secure than they first appear if a narrow definition of inconsistency is favoured.

c) Inuit Harvesting Rights on Privately-Owned Land

Parcels of land owned by third parties when the Agreement came into force are clearly removed from all categories of land (7.1.8, 7.2.2., 7.3.1). If the state has since then granted full ownership in the land to third parties, in compliance with the JBNQA, which sometimes requires compensation or land replacement (7.2.3), that land is not subject to the harvesting rights of the Inuit. It follows that the Inuit may not lawfully harvest country-food resources on any privately-owned land located within the settlement territory. The security of third party ownership has precedence over Inuit subsistence activity. But since private ownership of land has to date been marginal in Nunavik, and is likely to remain so over the next decades, it should not be regarded in practice as a substantial threat to Inuit subsistence.

3.3.2 Under the NILCA

Inuit harvesting rights in the marine region of Nunavik are subject to any land use activity 'otherwise not in conflict with' the NILCA, however only 'to the extent that the right of access is incompatible with that land use activity and for only as long as is necessary to permit that land use to be exercised' (NILCA, 5.3.27 d). The capacity of the Inuit to exercise subsistence activities in the marine region of Nunavik, as in Category II lands, could hinge to a large extent on the interpretation of the notion of 'incompatibility'. In that regard, it should be noted that unlike the JBNQA, the NILCA provides that in the event of a disagreement opposing the Inuit to an interested party with respect to the



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'incompatibility' of harvesting activities with a land use activity, the matter shall be submitted to arbitration in accordance with the procedure established by Article 24 of the NILCA (NILCA, 5.3.28).

The NILCA, moreover, specifies situations in which incompatibility between Inuit harvesting activities and other land uses is assumed. Hence, the Inuit are precluded from harvesting in specific areas, including on lands that are dedicated to military or national security purposes, lands that are owned in fee simple at the effective date of the NILCA, and in any place, other than on the lands owned by Nunavik Inuit, 'that is within a radius of 1.6 kilometer of any building, structure or other facility on lands under a surface lease, an agreement for sale or owned in fee simple' (NILCA, 5.3.30.1).

Just like under the regime governing land use activities in Category III lands, the NILCA does not require that the land taken for economic development be replaced. However, the agreement contains specific provisions that aim at compensating the Inuit for losses and damages resulting from development activities, in respect to '(a) loss or damage to property or equipment used in wildlife harvesting or to wildlife reduced into possession; (b) present and future income from wildlife harvesting; and (c) present and future loss of wildlife harvested for personal use by claimants' (NILCA, 14.6). The concerned developer is liable absolutely, without proof of fault or negligence, unless he can establish that 'the loss or damage was wholly the result of a fortuitous event' (NILCA, 14.7).

Moreover, the NILCA provides that the Inuit receive each year a share of the royalty paid by the developers for the exploitation of resources in the marine region of Nunavik, in the amount of fifty percent of the first two million dollars of resource royalty plus five percent of any additional resource royalty received by the Government in that year (NILCA, 15.1.1). The royalties are paid to the Nunavik Inuit Trust established by Article 17 of the NILCA (NILCA, 15.2.1). Such monetary benefits for the Inuit derived from resource development will be welcome but they do not provide the same secure land base for subsistence that land replacement does.

Despite various guarantees aimed at minimizing the adverse impact of development on Inuit subsistence rights, it must be concluded that these rights are more vulnerable under the NILCA than on Category II lands under the JBNQA where incompatibility will, in a large number of cases, displace non-inuit activities instead of Inuit subsistence.

4. CONCLUSION

This brief study was aimed at showing the connection between legal security and food security in the context of indigenous rights to use the land and natural resources of Nunavik for subsistence purposes.

Our analysis has focused on the relevant provisions of the JBNQA and the NILCA which define the rights of the Inuit people to harvest country food on their traditional land. We think it cannot be doubted that, because of the uncertainty that plagued common law aboriginal rights, these legally enforceable agreements have significantly improved the security of the Inuit with respect to their harvesting rights. These agreements which demarcate exclusive Inuit land bases and provide subsistence rights over vast tracts of territory enjoy constitutional protection pursuant to section 35 of the



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Constitution Act, 1982, which means that Parliament and legislatures may not unilaterally abrogate or modify them.

It does not follow, however, that Inuit subsistence rights are immune from restrictions, infringements and even suppression by government in some cases provided for in the Agreements. Outside their relatively small exclusive land bases, Inuit rights coexist with other uses and, in particular, the commercial and industrial development of non-renewable and renewable resources. In some cases, like on category II lands, Inuit subsistence will likely prevail over non-Inuit interests in a wide range of situations and, in the case of extensively disruptive development activities, replacement lands will have to be provided to the Inuit. In other cases, non-Inuit interests will at least temporarily displace Inuit subsistence. Such is the case on most of the land covered by the agreements, that is category III lands and on NILCA lands that are not Inuit fee simple lands.

But it is too early yet to determine whether the actual balance between Inuit subsistence and development is just and sufficiently protective of Inuit food security in practice. Several key legal concepts or formulae used in the agreements still need to be applied in concrete cases in order to gauge the legal strength of Inuit harvesting rights. Recent Supreme Court jurisprudence certainly suggests that an ungenerous approach towards Inuit rights will not be countenanced by the Canadian judiciary.

The actual impact of development on Inuit subsistence might be tested in the not too distant future since the government of Quebec has just formally announced the launch of a multi-billion plan (Le plan nord) to help the industry to extract the abundant natural resources of Northern Quebec over the next decades. For the moment, the Inuit have supported the plan because they are confident the land claim agreements afford them sufficient protection from any disproportionate impact on their lifestyle and culture. One can only applaud this pragmatic acknowledgement that, however important traditional subsistence activities are to Inuit food security, such security also depends on sufficient healthy market foods that will be more easily affordable if sustainable economic prosperity materialises in the Arctic.

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