

Contemporary State-Aboriginal Treaty Making: Beyond Colonizing relations?

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ABSTRACT

Contemporary State- Aboriginal Treaty Making: Beyond Colonizing relations?

Julie Cunningham

New self-government arrangements are said by government officials to call into question the traditionally colonialist state- aboriginal relationship. Is it the case? Available theories on the matter suggest that existing structures protect the primacy of the white majority's interests over aboriginal peoples' and impede such a change. But is this reading really reflecting reality? The task I am assigning myself is to unpack received conceptions of state-aboriginal relations by analyzing the content of the General agreement in principle between the Canadian, the Quebec government and a number of Innu First Nations. By doing so, I shall provide a description of the diverse dimensions the relationship between the Québec government and the signatory First Nations which that can be expected to emerge. Can this treaty mark the beginning of a more egalitarian relationship or can it only be characterized by the reproduction of a colonizer-colonised rapport?

Providing new material for discussing the rapport between states and aboriginal peoples on the ground of empirical analysis has become increasingly pertinent. This is the case because the domain of aboriginal studies, within the discipline of political science at least, is dominated by a tendency to examine this topic from exclusively theoretical angles. I argue that single case analysis permits to understand singular trajectories in a manner that can help to apprehend other cases. In so-doing I hope to contribute enriching the literature on aboriginal-state relations by highlighting the relevant nuances the analysis of the Innu-Québec government interface sheds light upon.

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CHAPTER 1

« If, from the outset they tell us: we want to be in charge of everything...that's too bad but the government has a collective responsibility here. We will not ask to the white community to roller-skate back to France with their houses and businesses, under the arm. It's not feasible. We are doomed to live together. Whether we want it or not. It's only with good faith from either part that we will set our relations and our respective share of wealth drawn from resources that we will live correctly.»¹

Introduction

Although it constitutes a growing feature of Canadian and Quebec politics, aboriginal-state treaty making remains unknown and misunderstood by the general public. Indeed, only a limited number of individuals are aware that asymmetrical aboriginal governments are being created by way of negotiations and settlements involving the state and some native groups. When these treaties are presented to the public, mitigated reactions based on very limited knowledge of the situation emerge. On the one hand, people sensitive to First Nations' history may think that these agreements constitute a fair compensation for centuries of grievances. National unity proponents, on the other hand, are more likely to oppose the ratification of such treaties and criticize them for being threats to territorial integrity, sovereignty and formal individual equality. Overlapping these previous concerns, the general population will also tend to be wary of the fact that state-aboriginal peoples' treaties entail the enlargement (highly variable) of the territorial base over which the newly acquired autonomy will be exercised:. In fact, these territorial transfers will often be perceived as "gifts" in the majority's minds and this

¹ Comments from Guy Chevette, then provincial delegate Minister responsible for native affairs (my translation). Québec National Assembly. April 29th 1998. *Journal des débats*. Commission des institutions. (Québec). On line : www.assnat.qc.ca/archives-35leg2se/fra/Publications/debats/journal/ci/980429.htm

perception in turn reinforces otherwise widespread stereotypes projecting “Indians” as privileged citizens who do not pay taxes or get “free” education, etc.²

Thus, it is within a climate where prejudices and distrust remain rampant that state-aboriginal treaties slowly become part of the institutional scenery. Such a context sporadically reveals otherwise latent nodes of tension and the polemics triggered unfortunately cloud the potential relational changes that might nonetheless be occurring between the settler majority and native peoples. Indeed, at least to some extent, these agreements aim to compensate for years of paternalism and neo-colonialism by transferring the decision-making centers from Ottawa to band councils. If they are successful in achieving this goal remains truly, even within academic production, an object of speculation. Thus, it becomes imperative to fill this gap in the literature by means of empirical analysis. Participating to this effort, this thesis aims at qualifying the extent of the transformation that can be brought about by contemporary state-aboriginal treaty making, a transformation argued by governmental authorities to be both structurally and normatively significant.

1.1 Aboriginal autonomy and the State: heterogeneous views on a common relational past

Looking back at an epoch where it implemented openly assimilationist policies towards aboriginal peoples, the Canadian state and provincial authorities proclaim to have gone a long way. In the Quebec case for instance, since the well known James Bay hydroelectric project launched without consulting natives whose lands would be irreversibly destroyed by it, the Québec government has reframed its aboriginal policy in numerous instances, for instance by recognizing Amerindians as nations in 1983 and by coming to various sector-based agreements since then. Alternatively, critics of the governmental records with respect to aboriginal policies

² For more information on this topic, please consult: Lepage, Pierre. 2002. *Aboriginal Peoples: Facts and Fiction*. (Québec: Commission des Droits de la personne et de la jeunesse.)

highlight that actual will to transform the colonial relationship has never been an act of good faith; it has only emerged *after* ferocious resistance and calculated interventions from the principally concerned First Nations against the nationalist and unifying will of the states, including the Québec government³.

This interpretative gap reflects a simple reality: there are many competing views with respect to how much substantial change these alleged policy and institutional reformation actually imply⁴. Indeed, in the eyes of many native groups' leaders and critics of modern state-treaty making, the relationship has not changed significantly: because "modern agreements" such as the JBNQA implies that aboriginal titles on the land have been surrendered and exchanged for more specific rights and compensations, this treaties only blatantly perpetuate the very same colonialism and assimilationist will exercised traditionally by the Canadian state commonly known for having systematically eluded the recognition of aboriginal sovereignty and aboriginal ancestral rights. Simultaneously, amongst the communities themselves, there also exists diverging views concerning the manners according to which the traditionally colonial rapport between the state and First Nations can finally be transcended. This question is linked to

³ For instance, the acceptance by state authorities that aboriginal peoples had an equal stake on James Bay territory was ultimately the result of a court challenge initiated by Cree and Inuit leaders. In response to Judge Albert Malouf's ruling, favourable to the native claimants, the federal and provincial governments sat at the negotiation table with Cree and Inuit leaders and agreed upon what came to be known as the first modern treaty, the James Bay and Northern Quebec Agreement (JBNQA).

⁴ To follow up on the previous case, although the outcome consecrated by the JBNQA was said by Cree leaders to be the best that could be gained in the prevailing circumstances, namely that the dam would be built no matter what and accordingly, that it was Cree leaders' responsibility to draw as much benefit as possible from it for the Cree people as a whole, the JBNQA has come under sharp criticism for not constituting a real change from the old colonial policy of eternal territorial cession and rights extinction dominating during the numbered treaties era. Indeed, between 1871 and 1921, eleven numbered treaties were signed between the Crown and First Nations on much of the Canadian territory, save for Québec and British Columbia. It is said that the first five treaties were concluded without too much resistance while the following ones were signed out of obligation. Although in exchange natives were given minute financial compensations and reserves, the Canadian government has held that these treaties mark the legitimate eternal cession of signatory First Nations' ancestral territories.

Aboriginal Peoples' quest to self-determine freely as collectivities⁵. Thus, some aboriginal leaders have favoured the constitutionalization of an inherent right to self-government for aboriginal peoples⁶, a view argued by the Royal Commission on Aboriginal Peoples to be the most likely to lead to a successful renewal of the relationship between natives and the settler majorities⁷. In that perspective, premature treaty ratification, although treaties are now most likely to be constitutionally protected⁸, can freeze a certain power configuration, aboriginal rights definition and ensuing access to resources that could otherwise evolve more generously under different circumstances. Other aboriginal leader argue the alternative point that refusing negotiations and land settlements takes cohorts of aboriginal youth hostage of ideological stalemate, depriving them from the financial benefits and resources flowing from land claim and self-government settlements (through royalties sharing, financial compensations, new development programs designed by and for First Nations, etc). Yet, if viewpoints on self-determination are clearly heterogeneous, a concern seems to be commonly shared by all stakeholders: governance models should at last be adapted and respectful of First Nations'

⁵ This quest has been led on many political stages and for many aboriginal leaders it is clear that much of the battle remains to be done: although they have consistently affirmed that as collectivities they hold this right in the very same fashion as other peoples do, its exercise is contingent upon state official's will. Thus, they feel that they are not considered as equals and are seeking to develop new institutions that will enable them to control their ancestral lands and live off these.

⁶ In contrast to contingent aboriginal right to self-governance, the recognition of an inherent right to self-government by the Canadian government would imply the recognition of a right based on aboriginal sovereignty instead of a right flowing from Crown sovereignty.

⁷ Royal commission on Aboriginal Peoples, 1993. *Partners in the Confederation: Aboriginal peoples, self-government and the Constitution*. (Ottawa: Supply and Services). According to Crane, Brian A. Robert Mainville and Martin W. Mason, the members of the commission argued the view that aboriginal peoples had an organic right to self-government "which conferred an immediate area of aboriginal jurisdiction, while more extensive governmental powers would be achieved through negotiation or litigation". *First Nations Governance Law*. 2006. (LexisNexis: Markahm, ON): 56.

⁸ Since the adoption of the August 1995 policy on Aboriginal right to self-government, the Canadian government is disposed to consent to the protection of self-government treaties protected under section 35 of the 1982 Constitution, provided that provincial authorities also agree to that condition. This policy was to remedy the fact that the first ministers conferences held in the eighties failed to enshrine in the constitution a definition of self-governance acceptable to the provinces' and aboriginal representatives.

specific cultural practices. This adaptation is seen as pre-condition of effective aboriginal peoples' self-determination.

To reiterate, it is within a web of competing claims to sovereignty, of contending visions about the social boundaries of nationality as well as conflicting understandings of normality that present negotiations to settle past grievances and commence new relationships are taking place. Consequently, it seems quite a relevant challenge to craft an interpretation of contemporary treaty negotiation simultaneously assessing the effects of state and majoritarian domination. Consequently, this thesis seeks to address the following general research question: **do recent aboriginal treaties negotiated in Quebec substantially change the fundamental connection between the state and the majority it ultimately represents and embody by effectively permitting First Nations to self-determine?**

Addressing the theoretical implications of such a large question is unquestionably beyond the scope of this thesis. However by conducting an extended case study analysis, that is by examining the evolution of a given First Nation's historical trajectory, the structures within which it operates as well as the prevailing discourses of an epoch, it becomes in the end possible to shed light upon the validity of the expectations drawn from the dominant paradigms of a time. Because one of the most debated negotiations process of state-aboriginal treaty-making is that between the Québec government and Innu First Nations of Québec⁹, this thesis will seek to answer the following specific research question: **Does the "Agreement in principle of General Nature between the First Nations of Mamuitun and Nutashkuan and the Government of Québec and the Government of Canada" enable the birth of a genuine relational transformation, putting an end to domination by the Québec government upon the signatory**

⁹ Innu First Nations from Labrador have been engaged in other negotiations. The present analysis does not concern them.

Innu First Nations? By asking and attempting to resolve this question, this thesis ambitions to open up and refresh the scope of assessments available to students, researchers and practitioners of aboriginal self-governance.

1.2 State-Aboriginal Treaty making and its relation to diversity and First Nations “management” debates: the pertinence of the question

Asking questions about the meaningfulness of aboriginal self-determination has become indeed very salient as much in Quebec as in any other Canadian province or territory, note worthily by way of academic reflections upon the (genuine or fake) materiality of Canadian and Quebecker narratives regarding their respective uniqueness in matters of internal diversity management¹⁰. For instance, the deeper connection between multiculturalism and the construction of Canadian unity and identity has been exposed under different critical angles, demonstrating how policies of multiculturalism (though not always knowingly) perpetuated cultural assimilation of minorities and aboriginal peoples by systematically eluding the fact that “racial” or “ethnic” discrimination exists and affects the daily lives of individuals despite policies protecting formal equality for all.

Issues of this nature entail an equivalent yet qualitatively different level of debate within the Quebecois community. To be sure, the majority’s self-perception as a “highly tolerant” and “engaging with cultural diversity” type of society has sporadically been contested by linguistic, national or cultural minorities over the last two decades. At the heart of this apparently more

¹⁰ Indeed, these debates appear intrinsically interconnected when is considered the literature criticizing the rosy attributes of the Canadian “conversation” and “myths”. For instance: Kernerman, Gerald. 2005. *Multicultural Nationalism*, (Vancouver, Toronto: UBC Press); Kalant, Amelia. 2004. *National identity and the conflict at Oka: Native belonging and myths of Postcolonial nationhood in Canada*, (New York: Routledge); Abu -Laban, Yasmeen and Christina Gabriel. 2002. *Selling Diversity: Immigration, Multiculturalism, Employment Equity and Globalization*, (Peterboroug, ON: Broadview Press); Mackey, Eva. 1999. *The House of Difference*, (London, New York: Routledge).

lively discussion lies an ambivalent quest for re-defining what has been the Québécois community (the well-known national identity narrative telling the tale of a threatened, traditional, French, catholic and rural community) for something more modern, fitting liberal-democratic standards¹¹. The ambivalence of this re-definition process is apparent within political discourses reaffirming the necessity for Québécois to nonetheless continue the battle for ensuring the collective identity's survival.

Integral part of Québécois' "modern" narrative is its approach towards aboriginal peoples. According to this conception, First Nations possess the right to self-determination in economic, cultural and political matters. However, this right is contingent upon First Nations' acceptance of the "territorial integrity" of Quebec, a concept which encompasses as much territorial boundaries as paramount authority in terms of territorial management. In fact, no matter how incompatible is this premise with aboriginal peoples' understanding of their own self-determination, the question of territorial integrity is not negotiable for Québec leaders. This "little inconsistency" has been systematically brushed under the rug by governmental officials who emphasize instead that First Nations' living conditions are much better in Québec than elsewhere in Canada¹² and that indeed the Québec government was the first (in 1983) to have recognized First Nations as such¹³. More recently, the 2002 "Paix des Braves" has been glorified in Québec and abroad as the quintessence of Quebec's unprecedented approach: the nation-to-

¹¹ Accordingly, the Quebec society has finally embraced modernity and developed a "distinct" model of diversity management whereby accommodation is possible insofar as Québécois values are shared and crucially, if newcomers embrace French as their language of expression in public but also in the private realm (as is revealed along the recurrent polemics in the public sphere inevitably following surveys demonstrating the retreat of the French language in family households of Montreal...).

¹² This is evidenced by the substantial transfer payments made to Cree and Inuit Peoples according to Québec officials.

¹³ Gourdeau, Éric. 1994. "Québec and the aboriginal question". In Gagnon, André et al. *Québec state and society*. (Nelson Canada: Scarborough, Ontario): 349-371.

nation treatment¹⁴. Discursively, the Quebec government presents itself as at the avant-garde of everybody else with respect to the extent to which the agreements it presently negotiates with First Nations provide for extensive as well as substantive autonomy¹⁵. This “benevolent” image of the state compliments official *but contested* social representations of the Québec polity emphasizing its “natural tendency to understand” aboriginal’s quest for self-determination given its own comparable quest for autonomy in the Canadian federal framework. These official and contested social representations are very much present in the Agreement in principle signed between four Innu communities, the Quebec and the Canadian government, which makes it a particularly relevant case for studying the materiality of change in matters of colonial and national domination.

1.3 Literature review

Scholars interested by the prospects of citizenship regime reform as a blueprint for satisfying natives’ demands for autonomy are generally positive on the possibilities afforded by institutional reconfiguration based on the materialization of liberal-democratic principles.¹⁶ In Will Kymlicka’s opinion for instance, in Canada as much as in New Zealand, Australia, Sweden, Denmark, the United States and some Latin American countries, “there is a gradual but real process of decolonization taking place, as indigenous peoples regain their lands and self-

¹⁴ Secrétariat aux affaires autochtones. January 24- 26, 2005. « Les relations entre le Québec et les peuples autochtones: Vers un nouveau partenariat pour le 21e siècle ». Notes à l’intention du secrétaire-général associé aux affaires autochtones, M. Pierre H. Cadieux pour une série de conférences données en Nouvelle-Angleterre. On line :

http://www.saa.gouv.qc.ca/publications_documentation/publications/saa_dis20050124.pdf

¹⁵ Chabot, Mélanie interviewing Thibault Martin. 2008. “Regards croisés sur le projet de gouvernance Québécois”. Développement Social, Vol. 9 (1) : 29-33.

¹⁶ Favell, Adrian. 1998. “Applied political philosophy at the Rubicon: Will Kymlicka’s multicultural citizenship”. *Ethical Theory and Moral Practice* 1: 255–278.

government”.¹⁷ As this process of decolonization occurs within the ideological boundaries of “western” philosophy, the issue has been to find a formula which will suit aboriginal peoples and other minorities while letting the broader functioning of a given society continue its course. Generally, it is advocated that minorities need to be integrated in the sense that they should be equal beneficiaries of rights and freedoms generally enjoyed by members of the majority; if this enterprise was to become successful, one would expect the end of collective demands for differentiated recognition. According to that perspective, societal challenges regarding the *possibility* of achieving these objectives without “problematizing” its actual normative foundations are viewed as unreasonable. With respect to state-aboriginal relations in particular, proponents of citizenship reform will acknowledge that huge challenges await countries like Canada, and that the challenge is not one to be confronted by state officials who have to make it palatable for Canadian citizens’ to accept that Indians “deserve” a citizen plus type of status, but also by First Nations themselves who independently of their relation with Canada are scattered, diverse and weakly organized.¹⁸ Assessing the overall picture, they tend to adopt the view that fundamental relational transformation *can* occur through institutional reconfiguration.

As one would expect, this optimism is not shared by all theorists. For scholars of *dominant nationalism* and *postcolonialism*, the whole issue has deeper ontological roots. Because practices of dominance are so deeply embedded, one cannot assume that policy reformation ultimately informed by “nationalistic” motives in the former and “western” conceptions of individual rights (which can be argued to be essentially interrelated) in the latter are likely to produce true relational change. In contrast to citizenship reformists, they will question the capacity of *any* state to give its consent to a settlement that undermines its power

¹⁷ Kymlicka Will. 2003. “Being Canadian”. *Government and Opposition Ltd.* (Oxford, Maden: Blackwell Publishing): 372.

¹⁸ Cairns, Alan. 2000. *Citizen plus: Aboriginal Peoples and the Canadian state.* (Vancouver: UBC Press).

leverage in a manner that is truly fair to its indigenous peoples or minorities. With respect to the prospected case study of this thesis (the treaty negotiation involving Innu First Nations), they would certainly be sceptical that it holds the promise to impede the otherwise “natural” tendency of the Quebec government to put the interest of millions of Quebecers ahead of those of “70 000 amerindians”¹⁹.

Starting from the premise that state institutions are *not* culturally neutral since they project the norms and values structuring the communal lives of the majority and, perhaps more importantly, that they reinforce the legitimacy of a system of belief whereby loyalty towards the state compliments policy-making benefiting or corresponding to the interests of the dominant group of a society, the analytical perspectives and hypotheses afforded by dominant nationalism and postcolonialism can be considered highly pertinent to address the research questions of this thesis. Let us now review how these bodies literature apprehend state-aboriginal treaties’ relational and normative impacts upon aboriginal demands for autonomy and self-determination.

1.3.1 Dominant manifestations of nationhood: a theoretical project

Scholars of nationalism have only been drawn to examine majority/dominant nationalism recently²⁰. As noted by Lecours and Nootens²¹, until attention was given to the

¹⁹ Robert Bourassa said during the November 1985 elections that the economic development of Québécois was to prevail over Cree pretensions that hydroelectric development would not take place on their territory without their consent. *La Presse*, November 7, 1985. He stated : “Le problème se résume en un principe bien clair: Il y a au Québec quelques milliers d’Indiens, pour lesquels nous devons porter la plus grande attention, la plus grande ouverture, mais il y a aussi six millions de québécois, six millions qui eux ont besoin de développement économique.”

²⁰ A cultural group that constitutes the majority of a state’s population is distinguished from a group that might be numerically inferior to the balance of a state’s population but may nonetheless remain the most powerful by virtue of historical circumstances that permitted the control of a country’s key institutions and resources.

subtle and continuously active mechanics of nation-state building, the literature on nationalism has commonly presented the phenomena as an attribute adjective of minorities; a mobilizing factor for politically underrepresented or culturally oppressed groups in their quest for secession and thereafter nation-state formation²². According to Guibernau²³, this focus on “resurgent nationalism” in spite of the so-called “end of history” was in part intended to fill explanatory gaps left by analysts of the perennialist tradition²⁴ (who saw the sense of national affiliation as a permanence, explainable biologically), modernist authors²⁵ (for whom nationalism is a product of modernity; with the emergence of the modern state came the need to create nations) and ethno-symbolist scholars²⁶ (for whom nations are formed around ethnic cores which predates the modern era). The type of analysis they provided, emphasizing nationalism as either biological, instrumental or politically anaemic, left unaddressed the linkages between ongoing political and cultural processes through which nations are redefined and reconstructed. As integral producers and reproducers of what Brubaker called “groups’ reification”²⁷, these scholars of nationalism (as well as those focusing on minority nationalism)

²¹ 2007. *Les Nationalismes majoritaires contemporains: identité, mémoire, pouvoir*, (eds.) Gagnon, Alain-G., André Lecours and Geneviève Nootens (Montréal: Québec Amérique). According to them, the commonly held distinction between patriotism and nationalism hides a normative bias whereby nationalism threatens state unity, seen as a vector of instability, and patriotism enhances social cohesion. They argue that, mechanics-wise, patriotism is only the reverse of state nationalism and that those who argue that there is a fundamental distinction between the two tend in fact to seek to undermine competing claims of nationhood within a given state.

²² Keating, Michael. 2001. *Plurinational Democracy. Stateless Nations in a Post-Sovereignty Era*. (Oxford: Oxford University Press). Kymlicka, Will. 1998. “Le fédéralisme multinational au Canada: un partenariat à repenser”. In *Sortir de l’impasse*. (eds.) Laforest, Guy and Roger Gibbins. (Montréal: IRPP): 15-54.

²³ Guibernau, Monserrat. 2004. “Anthony D. Smith on nations and national identity: a critical assessment”. *Nations and Nationalism*. 10 (1/2): 125–141.

²⁴ See Geertz, Clifford. 1973. *The Interpretation of Cultures*. (London: Fontana).

²⁵ See for instance: Gellner, Ernest. 1983. *Nations and Nationalism*. (Oxford: Basil Blackwell); Hobsbawm, Eric and Terence Ranger (eds.). 1983. *The Invention of Tradition*. (Cambridge: Cambridge University Press); Anderson Benedict. 1983. *Imagined Communities: Reflections on the origins and spread of nationalism*. (London: Verso).

²⁶ See Smith, Anthony D. 1986. *The Ethnic Origins of Nations*. Oxford: Blackwell. Smith, Anthony D. 1991. *National Identity*. (London: Penguin).

²⁷ A process consisting of representing “the social and cultural world as a multichrome mosaic of monochrome ethnic, racial or cultural blocs” in Brubaker, Roger. 2004. “Ethnicity without groups” In

failed to account for the political dynamics at play sustaining official and totalizing myths of nationhood. The most apparent evidence of these large scale processes can be appreciated by looking at state institutions which perpetually act as nation-state or unity builders by providing a language, a culture and a common identity, attempting to ensure the allegiance of majorities and minorities living in it, providing a cause for the latter to resist and seek alternate political projects to that proposed by the state²⁸. The concept of majority/dominant nationalism therefore accounts for the filtering capacities of individuals and groups: in spite of the (generally) paramount importance of allegiance to one's country of origin, named collectivities are culturally heterogeneous at all scales of aggregation, be it local, regional or national. At the same time, majority/dominant nationalism posits that state institutions' cultural roots are highly explanatory of societal normative boundaries and ensuing power struggles.

An alternative but related position on the matter is offered by Kaufmann, for whom the deconstruction of national historical narratives reveals its "core ethnic origins" and dominant legacies which in turn facilitates the understanding of actual social stratification²⁹. According to him, the concept of "dominant ethnicity" captures better than any other concept what he considers to be a universal and inherent manifestation of cultural groups' institutionalized domination. At a practical level, dominant ethnicity provides lenses through which one can historically trace and make sense of contemporary limitations imposed onto minorities, especially if they seek to challenge the relation they entertain with the dominant ethnic group (which may not be dominant numerically). His argument develops further onto normative fields. Contrary to dichotomist categorizations where western states are deemed to have developed

Facing ethnic conflict. Towards a new realism. (eds.) Wimmer, Andreas, Goldstone, Richard J., Horowitz, Donald D., Joras, Ulrike and Conrad Schetter, (Lanham: Rowman & Littlefield Publishers Inc.): 35.

²⁸ Lecours and Nootens. 2007. Op cite.

²⁹ Kauffman, Eric P. (ed). 2004. *Rethinking ethnicity. Majority groups and dominant minorities.* (London, New York: Routledge).

governance systems distinguishing them “in kind” from non-democratic/liberal countries, Kaufmann argues instead that substantial idiomatic cross-countries differences could be better explained by the fact that “traditions of state, like those of geography and history, are more malleable in the hands of their nationalist or liberal interlocutors”³⁰.

Albeit quite enlightening on the intertwined materiality of narratives of statehood traditions and that of dominant ethnicity, Kaufmann’s work is somewhat undermined by its static character³¹. As a general rule, it leaves the construction and reconstruction of nationhood ultimately rooted in the past, almost devoid of “present”. With respect to the relevancy of his work for this thesis, it is problematic insofar as it especially does not either take into account the influence of a growing body of international norms and rights claimed by indigenous peoples. In my view, these have the potential to afford inventive, charismatic and strategic actors political capital as well as opportunities for reinterpreting circulating ideas to fit their political goals. Norms promoting aboriginal peoples’ inherent rights to self-government are examples of such force enabling indigenous leaders to constrain assimilationist expression of dominant majorities or state preferences for status quo.

Integrating more dynamic considerations, Andreas Wimmer deepens the idea of dominance by looking at the diverse processes of politicizing majorities and minorities on the basis of ethnicity³²; hence enabling us to grasp human inputs as well as contingencies characterizing the playing field of political identities formation. Wimmer further labels ‘dominant nationhood’ the prevalent idealistic- liberal collective project of modernity, that of

³⁰ Kaufman, Eric P. 2005. “National Ethnicity and the Modern State” in *Statehood Before and Beyond Ethnicity*, (eds.) Leos Muller and Linas Eriksonas (Brussels: Peter Lang).

³¹ Although evidence does not support the claim that nations are a disappearing feature of modernity, nations and ethnic groups’ “imagined communities” are undergoing constant reconfigurations seemingly enhanced by hegemonic normative convergence related to democracy and liberalism that comes along globalization. Dieckhoff, Alain. 2007. “Rapprochement et différence: le paradoxe du nationalisme contemporain” In Gagnon, Lecours and Nootens. Op cite : 49-74.

³² Wimmer, Andreas. 2004. “Dominant ethnicity and nationhood” In *Rethinking ethnicity. Majority groups and dominant minorities*. (ed). Eric P. Kaufmann. (London, New York: Routledge): 40-58.

making congruent sovereignty, citizenry and nation. The project is not understood from a Gellnerian-functionalist standpoint; instead, “nationalising the principles of social inclusion and exclusion [...] depends on a successful compromise between [...] states elites and the various component parts of the society: an exchange of political loyalty for political participation, equal treatment before the law, and the symbolic capital associated with the rise from plebs to nation”³³. In our views, this open-ended conceptualization avoids the overly antagonistic presumption attached generally to inter ethnic/cultural relations while accounting sufficiently for prevalent and certainly constraining social norms in Canada (political participation, attention to socio-economic inequalities, equal treatment before the law and consideration for international norms development) and their meta-importance on the evolution of inter-groups relations. Accordingly, the difficult relational past between the state and aboriginal nations could be interpreted as a continual failure from state elites to compromise and listen to aboriginal demands, which ultimately left unachieved the goal to make congruent sovereignty, citizenry and nation. The concept of “dominant nationhood” is particularly helpful in the Quebec context as will be seen later on in the next chapter.

1.3.2 Aboriginal-state relationships from a postcolonial standpoint

Essential to understanding aboriginal quest for political autonomy and self-governance is the need to review postcolonial scholarship of aboriginal peoples’ relationship with the Canadian and Quebec states. From the outset it must be specified that achieving political autonomy implies various and contextually specific qualitative thresholds. From an postcolonial academic standpoint however, two conditions seem to stand out for having achieved a desirable

³³ Ibid: 44-45.

level of autonomy: first, it requires the necessary taking over by First Nations' autonomous entities of *substantial* jurisdictional competences and the effective control of self-determined political institutions within the nation's ancestral lands and second, the subjective feeling that aboriginal peoples have the right to take decisions for themselves, and live in human conditions which are suitable for themselves, according to themselves³⁴. This latter 'condition' introduces the subjective dimension I suggest necessarily comes along the study of political communities' evolution. In other words, one must be attentive to aboriginal discourses and counter-discourses, especially if aboriginal leaders stand out claiming that a true relational change is occurring through treaty negotiation.

Aboriginal authors, by virtue of their personal experiences as members of indigenous communities, often adopt a post-colonial standpoint to analyze the patterns of aboriginal peoples' relationships with the state. Adopting a postcolonial standpoint means looking at "experiences of various kinds, such as those of slavery, migration, suppression and resistance, difference, race, gender, place and the responses to the discourses of imperial Europe such as history, philosophy, anthropology and linguistics"³⁵. According to most post-colonial scholars, it is a mere fact that First Nations' quest for decolonization has been fundamental in raising general awareness about the necessity to change past and present state practices. Indeed, they challenged the Euro-constitutional order since the arrival of settlers, they fought to ensure that their land would not be deemed surrendered without their consent and they are now engaged in jurisdictional struggles "to reaffirm their own constitutional order and autonomy"³⁶. For

³⁴ Daes, E.- I.A. cited in Perrin, Hélène. 2005. "Les peuples autochtones, à l'origine d'un renouveau du principe d'autodétermination?" In *La nouvelle question indigène* (eds.) Fritz, J.-C., F. Deroche, G. Fritz and R. Porteilla. (Paris: L'Harmattan): 268.

³⁵ Quayson, Ato. 2000. *Postcolonialism. Theory, Practice or Process?* (Blackwell Publishers: Cambridge, Oxford, Maiden): 2.

³⁶ Alfred, Gerald. 1995. "L'avenir des relations entre les autochtones et le Québec". (Montréal : IRPP); Ladner, Kiera L. 2005. « Up the Creek: Fishing for a New Constitutional Order ». *Canadian Journal of*

aboriginal post-colonial scholars, the battle for recognition of their inherent rights, not those recognized by the Crown, is essential to collective healing³⁷. "Aboriginal peoples, in their relationship with the Canadian state, do not perceive themselves as simple citizens complaining about economic marginalization or political alienation: they see themselves as Mohawks, Crees or Denes, members of a dozen other nations dispossessed and colonized"³⁸. Acceptable for the majorities or not, it is obvious that many First Nations are no longer willing to accept being told under which terms will the past be "fixed". Members of the Mohawk nation, for instance, refuse to acknowledge the frontiers dividing their ancestral lands drawn by the colonizer or to be subjected to any piece of legislation that would entail recognizing Canada or Quebec's sovereignty over their lands³⁹.

Furthermore, it must be added that the importance of a postcolonial ontology in analysing state- aboriginal relationship in the Canadian context or elsewhere is by no means exclusive to aboriginal scholars' circles. Samson for one, on the basis of an empirical study of the Innu people of the Quebec-Labrador peninsula, argues that "far from being a neutral doctrine of rights and citizenship, liberalism functions as a magical, yet ethnocidal, instrument of colonial

Political Science. (38) 4; Ladner, Kiera. 2001. "Visions of neo-colonialism? Renewing the relationship with Aboriginal peoples". *The Canadian Journal of Native Studies*. (21) 1: 105-135.

³⁷ Hawkes, David C. 2001. "Indigenous peoples: self-government and intergovernmental relations". *International Social Sciences Journal* (167): 153-161; Franks, C.E.S. 2000. "Rights and Self-government for Canada's Aboriginal Peoples" In *Aboriginal Self-government. The Canadian and Mexican Experience in North American Perspective* (eds.) Cook, Curtis and Juan D. Lindau (Montreal & Kingston, London, Ithaca: McGill University Press):101-134.

³⁸ Alfred, Gerald. 1995. op cité.

³⁹ For other critical outlooks, consult for instance: Glen S. Coulthard.2007. "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada". *Contemporary Political Theory*. 6: 437-460; Nadasdy, Paul. 2005. *Hunters and Bureaucrats: Power, Knowledge, and Aboriginal-State Relations in the Southwest Yukon*. (Vancouver: University of British Columbia Press);

domination and land usurpation”⁴⁰. Schulte-Tenckhoff, in her analysis of what she calls the “paradigm of domestication” of indigenous peoples, arrives to similar conclusions⁴¹.

Other researchers will alternatively try to extract from discourse analysis the processes through which First Nations leaders resist policies of assimilation and its effects on the evolution of domestic politics. Attempting to trace how self-governance discourse made its way into Canadian institutional settings, Posluns argued that indigenous peoples’ demands for autonomy have gained normative salience through their leaders’ efforts to incorporate and reinterpret international law’s vocabulary.⁴² In his view, the appropriation of the terms “nation” (in contrast to Indians) and “self-government” following the shelving of the 1969 white paper has progressively enhanced aboriginal leaders’ authority which in turn led to a wider acceptance of First Nations’ right to govern themselves throughout the eighties. This discursive and active interbreeding resulted in the institutionalization of a meta-policy discourse of First Nations’ autonomy recognition which he is careful not to conflate with actual policy-making.

Postcoloniality therefore emphasizes that First Nations’ right to self-governance recognition does not imply equal institutional opening for its exercise, especially in domains considered of “national interest”. As Amelia Kalant shows in her analysis of the Oka crisis in relation to dominant national representations of postcolonialism, there are mythical limits according to which the Canadian and Quebec societies are willing to accept that aboriginal peoples *can and should* exercise and enjoy autonomy. These myths have been enacted through

⁴⁰ Samson, Colin. 1999. “The dispossession of the Innu and the Colonial Magic of Canadian Liberalism”. *Citizenship Studies*, 3 (1): 5-25.

⁴¹ Isabelle Schulte-Tenckhoff. 1998. “Reassessing the paradigm of domestication: the problem of indigenous treaties.” *Review of Constitutional studies*, 4 (2): 239-289;

⁴² Posluns, Micheal. 2007. *Speaking with authority. The Emergence of the vocabulary of First Nations’ Self-government* (New York, London: Routledge).

long term processes of rendering settlers “colonized” towards a named enemy⁴³ and by erasing natives from historical national narratives. The prevailing end-result is that aboriginal peoples have become deprived of the uniqueness of their relationship to the territory, making it difficult for them to render legitimate in the eyes of non-aboriginals their desire to put an end or to make conditional their allegiance to Canada or Quebec’s political communities. In order to gain support, therefore, claims of self-determination need being adapted to fit the acceptable limits set (quite often implicitly but sometimes explicitly, when physical confrontation is involved) by the colonizer.

Now, although a certain consensus seems to exist on how relational dynamics evolved in the past (prior to 1970 roughly), analysts of contemporary developments between aboriginal peoples and the Canadian and Quebec states are less unequivocal. Without even alluding to official governmental positions, one cannot silence the diversity of viewpoints on the meanings of self-determination emerging from the communities themselves, impacting inevitably on how self-governance is comprehended to function as a vector for aboriginal decolonization from the state. In the case of the Nisga’a treaty for instance, the chief Nisga’a negotiator admits that the final agreement falls short of many of the demands they have carried over the last century⁴⁴. Another commentator sees it as “the first comprehensive claims agreement to include recognition of the inherent right of self-government and the constitutional protection of this right”⁴⁵.

⁴³ In her analysis she describes the construction of the evil other. French Canadians are who they are because they all suffer from British attempts to assimilate them while Anglo-Canadians resist imperialists Americans.

⁴⁴ Murphy, Michael. 2003. “Relational self-determination and Federal Reform” in *Reconfiguring Aboriginal-State Relations*. (ed). Murphy, Michael. (Montreal & Kingston, London, Ithaca: McGill-Queen’s University Press): 4-5.

⁴⁵ Allen, E. 2004. “Our Treaty, Our Inherent Right to Self-Government: An Overview of the Nisga’a Final Agreement”. *International Journal on Minority and Group Rights*. 11(3): 233.

To summarize, the underlying quest attached to these theoretical enterprises is above all to facilitate the comprehension of inter-groups dynamics whilst letting aside the very much received idea that liberal-democratic societies have developed an orderly (read superior) way of managing internal conflicts related to divergent collective interests as well as normative and cultural differences. Canada's and Quebec's institutional practices, often said to represent such models societies, are increasingly scrutinized and the discourses that are activated to legitimate those policies are more and more the object of deconstruction⁴⁶. Self-government treaty agreements constitute an invaluable site for looking into these issues and this is the path undertaken in the present thesis.

1.4 Methodology

To reiterate, this thesis aims to provide an answer to the question: Does the "Agreement in principle of General Nature between the First Nations of Mamuitun and Nutashkuan and the Government of Québec and the Government of Canada" enable the birth of a genuine relational transformation, putting an end to domination by the Québec government upon the signatory Innu First Nations? After having criticized overly generalizing analyses that tended to take for granted that the present is very much a repetition of the past, answering this question necessarily involves devising a multidimensional grid of analysis. To facilitate the production of a meaningful yet understandable portrait, a matrix comparing the old "colonial" and the "dominant nationhood" models to a possibly new relational paradigm has been designed. The principal document upon which the comparative analysis will be conducted is the *Agreement in*

⁴⁶ Bickerton, James. 2007. "La question du nationalisme majoritaire au Canada" in *Les Nationalismes majoritaires contemporains: identité, mémoire, pouvoir*, (eds.) Gagnon, Alain- G., André Lecours and Geneviève Nootens (Montréal: Québec Amérique): 217-270; Gagnon, Alain G. 2003. "Undermining Federalism and Feeding minority Nationalism: The impact of majority Nationalism in Canada" In *The Conditions of diversity in multinational Democracies*. (eds.) Gagnon, Alain G. Guibernau, Montserrat and François Rocher (Montreal: the Institute for Research on Public Policy): 295-314.

principle signed between Governments of Québec, Canada and the Mamuitun and Nutashkuan First Nations in 2004. Thus, it is on the basis of this text that I intend to verify whether or not the stage for substantial relational change between state authorities and Innu First Nations is set.

In compliance with the federal policy on both comprehensive land claims settlements and aboriginal self-governments, the *Agreement in principle of General Nature between the First Nations of Mamuitun and Nutashkuan, the Government of Québec and the Government of Canada* (AIPOG) ensues the stage during which “the parties negotiate the issues set out in the Framework agreement [and which] should contain all the major elements of the eventual Final Agreement”⁴⁷. Again according to the federal guideline, the Final Agreement can be constitutionally protected provided that this wish is shared by all negotiating parties. In this case study, it is clear that the signatories intend to ratify a Treaty that will fall under the protection of article 35 of the 1982 constitution⁴⁸. This is observable in the preamble of the agreement- in-principle, which enumerates the parties’ intentions as well as how these interests intersect with the general evolution of aboriginal law. However, it is important to emphasize that the preamble has more than diplomatic functions. Indeed, these statements will serve to facilitate the interpretation of the treaty in the advent of future conflict and therefore holds an important theological purpose. It is followed by nineteen chapters which can be divided between six main categories⁴⁹. Firstly, there is the part concerning *aboriginal rights recognition* which essentially corresponds to Chapter 2 and 3, entitled respectively “Proposed preamble to the Treaty” and “General Provisions”. Second, there is the category concerning *territorial ownership and ensuing*

⁴⁷ Indian and Northern Affairs Canada. *Agreements*. Last Update: 2008-05-22. www.ainc-inac.gc.ca/pr/agr/index_e.html Accessed on July 22nd, 2008.

⁴⁸ *Agreement-in-Principle of General Nature between the First Nations of Mamuitun and Nutashkuan and the Government of Quebec and the Government of Canada*. Art. 2.1.

⁴⁹ The establishment of the categories was inspired by the presentation of Québec negotiator of the AIPOG on January 21st, 2003. Québec national Assembly. *Journal des débats*. Commission des institutions. January 21st 2003. Online : <http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030121.htm>

rights to the land; these are covered by Chapters 4 (“Lands”), 5 (“The Right to the Practice of Innu Aitun”), 6 (“Participation of the Managements of Lands, Natural Resources and the Environment”) and 7 (“Royalty Sharing”). The third category equates to the *exercise of self-governance* and is the object of Chapter 8 (“Self-government”) and 9 (“Administration of Justice”). The fourth category concerns *financial and fiscal measures*, comprised by Chapter 10 (“Financial Arrangements”), 11 (“Financing”) and 12 (“Taxation”). Chapter 13 is dedicated to *socio-economic development* and constitutes a rubric in itself. Lastly, the AIPOG organizes diverse aspects of *treaty implementation*: 14 (“Eligibility and Enrolment”), 15 (“Dispute Resolution”), 16 (“Implementation of the Treaty”), 17 (“Amendment and Review of the Treaty”), 18 (“Ratification of the Agreement-in-Principle and of the Treaty”) and 19 (“Transitional measures”).

The entire document will be the object of analysis save for chapters 18 and 19 because they are more of procedural than substantive importance. Now, even though the grid of analysis will be explained later in the third chapter, it remains necessary to provide a more specific overview of the method according to which I intend to measure change. First of all, the above six categories will serve as basis for assessment. Determining if the agreement features more than administrative and executive power in each of the six categories would in itself indicate a significant measure of change. This is because federal as well as provincial authorities have always been reluctant to “transfer” effective legislative and judiciary powers to aboriginal peoples. Indeed, crossing these thresholds set clear and explicit precedents for enunciating and defining the contours of legal and normative pluralism, a matter dominant nation-builders will expectedly want to eschew in conformity with their unitary ‘tendencies’. Thus, analyzing each of these categories, that is, aboriginal rights recognition (1), territorial ownership and ensuing rights to the land (2), exercise of self-governance (3), financial and fiscal measures (4), socio-

economic development (5) and treaty implementation (6) will involve finding the key provisions determining how decision-making responsibilities are shared out between the Innu communities and the Quebec – Canadian governments.

On the basis of this repartition of power, I will conduct the assessment of whether or not each category demonstrate evidences of change according to two possible levels; first, the power distribution it entails (ranging from trusteeship to full autonomy) and the transformative effect on state-aboriginal relation (ranging from assimilation to understanding) the agreed provisions brings about. These assessments will be summarized in a table juxtaposing the old to the new paradigm.

If postcolonial and dominant nationhood literatures are right, we should see that there is little change in each category on both possible levels of change namely that the power distribution should be overall one that freezes trusteeship while the relational dimension should continue to reveal assimilationist will from the state. To make myself clear, I do not intend to provide an all encompassing assessment on the validity of such expectations unless there is blatant homogeneity between each category's appraisals.

After having conducted this diagrammatically induced assessment, I will validate the above assessments by introducing the subjective dimension of relational change I alluded to earlier. By analyzing public speeches and parliamentary proceedings surrounding the ratification of the 2004 agreement (which occurred mainly during the 2003 Québec Parliamentary Commission upon the AIPOG), I will be able to bring into the perspective the different viewpoints on the matter of "change", and validate, or not, prior analysis made on the basis of official documents. On the state counterpart, I will look into the positions of the two main political parties in Québec, the PQ and the Liberal Party, but also those expressed by government representatives since then. On the Innu side, I will treat separately the views of the

different Innu negotiation tables and relate their position concerning the agreement in principle. The Council of Pessamit, Mamit Innuat and Mamuitun mak Nutakuan are all different bodies of representation whose expressed views in the format of speeches and briefs submitted to parliamentary proceedings need to be taken into consideration in order to propose broader conclusions reflective of empirical developments.

Here I think there are specific aspects that need to be looked into for assessing change. In the case of the Québec government, substantial change would involve the recognition of Innu territorial sovereignty and the abandonment of the Québec nationalist principle of territorial integrity as well as integrate aboriginal knowledge in land, resources and environmental management practices, involving the acceptance by decision-makers that development in lands belonging to aboriginal peoples require their consent and participation. On the Innu side, manifestations of change would be expressed by their explicit statement that the agreement paves the way for the aforementioned changes to take place in reality. In other words, Innu communities have been negotiating for the last 30 years the terms of this type of agreement: they know if it is unjust and colonial or if it is a fair compromise towards the building of a new relationship between themselves and the state.

To be clear, based on the two bodies of literature reviewed above, while we should expect tensions emerging from challenges to dominance, we could anticipate that self-government treaties reproduce the status quo regarding dominance and additionally, that expansive governmental discourses on self-governance are in fact hiding this reality. This thesis aims to assess through case study analysis whether these claims and underlying assumptions hold true empirically.

1.5 Case- study selection

Specifying why picking the Agreement in principle concerning the Innu seems more pertinent to answer to our general research question compared to other similar negotiations, those regarding the formation of the Nunavik autonomous government to be precise, is needed at this point. (There are many indications that the Inuit will have their agreement on local government implemented faster than the Innus since the agreement in-principle signed in December 2007 dealt with 80% of the issues at stake in the negotiation process⁵⁰). First, the relationship between Inuit communities and the Quebec government is fundamentally different from that between “Indian” first nations and the Quebec government since it started taking interest in managing the North. As noted by Lajoie, the Inuit have been less inclined to claim rights relative to territory since their effective management of the latter was not directly contested⁵¹ (this was not the case for the Innus for instance, who have been displaced or put into reservations with poor access to resources). This is related to the fact that the Indian Act never effectively applied to Inuit (although in theory it did) which has had fundamental impacts on the relationship Inuit have had with the Canadian state and the Québec government. Second, and quite significant in our view, is the fact that Inuit leaders’ accepted to set-up institutions of non-ethnic nature along the process of negotiating their own government, which has always appeared more acceptable for the majority and state representatives. Indeed, Quebec government officials have repeatedly lauded the Inuit for wanting to create a government premised on a “public” form of representation, a format that is not followed by other First Nations, especially not the Innus. Third, the decision taken by the Inuit since the beginning of

⁵⁰ Chabot, Mélanie. Op cite.

⁵¹ Lajoie, Andrée. 2007. « Conceptions autochtones des droits ancestraux ». In *Gouvernance autochtones : aspects juridiques, économiques et sociaux*, (ed.) Lajoie, Andrée. (Montréal: Les Éditions Thémis): 17- 25.

the negotiations to establish a system of taxation financing public services encountered a lot of support amongst governmental officials since it has long been advocated that indigenous communities should “learn” to be self-reliant. In contrast, many Innu communities have opposed to forgo personal tax exemptions based on Indian status. In short, because it appears that the conception of Inuit autonomy is much more acceptable in normative terms than that proposed by Innu First Nations, we expect that the conclusions of an analysis based on the latter would at least be more reflective of the contemporary signification of dominant nationalism and postcolonial axioms.

1.6 The structure of the thesis

The next chapter will be dedicated at describing the evolution of the Quebec state-aboriginal relationship since the seventies, putting special emphasis on the Innu case. Attention will be paid to political parties’ term in office since the rapport between indigenous communities and state representatives often varied consequently. The third chapter will be divided in three sections. The first will present the framework of analysis, explaining how the *Agreement in Principle* fits into it. The second section will thoroughly discuss the aspects of the relationship that can be said to have muted and those which did not. The last part will present the subjective dimension of change by mean of discourse analysis, which will be used to complete and validate the assessments provided in section two. At this stage, there will be sufficient material for discussing qualitatively the materiality of change. In conclusion, dominant nationalism and postcolonialism’ hypotheses will brought back into the picture to see where they are relevant or not in understanding the evolution of Innu first Nations and the Québec government relationship. By then, I hope to have substantiated and nuanced the literature on

state-aboriginal affairs in a way that will help actors and researchers of the domain to think more clearly about the future of the stakeholders' relationship.

CHAPTER 2

2.1 Introduction

This chapter aims at describing two things: firstly, the evolution of the relationship between the Quebec state and aboriginal peoples under its jurisdiction in general and secondly, how this evolution relates to the particular case of Innu communities and their quest for self-governance. To achieve this goal, an account of historical developments will be provided and will be structured around four time periods encompassing the very formation of the Quebec policy towards aboriginal peoples until 2001⁵². By reviewing this stretch of time, I intend to portray the various dominant conceptions and interests that informed Québec leaders in designing the government's approach towards aboriginal peoples. I argue that at the heart of this approach continuously lied a tension between an acknowledged interest to improve state-aboriginal relationship by implementing policies respecting the cultural integrity of aboriginal peoples and the more general goal to make Québec dominant within and beyond the realm of its competencies. In the first case the interest is twofold: implementing an amalgam of policies promoting cultural integrity diminishes acts of resistance and connected social unrest, enhancing the government's chances to keep peaceful relations with band chiefs who will feel then less compelled to politicize sources of disagreements across the globe. However, this conceived interest never prevailed over the defence of the francophone majority's interests and identity. Accordingly, Québec leaders have been discursively expansive in their articulation of aboriginal peoples' right to self-determination but their actions often reproduced colonial ways of dealing with First Nations, systematically going against the grain of their own "generous" aboriginal approach. In short, I argue that these tensions emanating from the expression of

⁵² While seeking ultimately to inform the reader, it is important for the latter to remember that this tale implies a necessary selection of historical facts complementing the goal of answering to the primary research question. In as much as possible, facts selection will be justified by explicating the reasons for selecting them and obviously by citing authors who contributed to forging my interpretation of the story.

Québec dominant nationalism have tinted Québec leaders' actions in the realm of state-aboriginal relations and that it is this very expression which has produced the most vigorous acts and strategies of resistance from aboriginal peoples.

The present chapter is divided into four sections. The first will detail issues at stake during various constitutive encounters⁵³ between the Quebec government and aboriginal communities from the 1960's until 1978. These 'meetings' were marked both by the preoccupations sometimes local and some other times overarching in nature of governmental and indigenous representatives and by the evolution of indigenous politics' standing within broader political contexts. In practical terms this means that the rapport aboriginal leaders entertained with the Quebec government was ever increasingly affected by a greater trend whereby indigenous politics of self-determination had gained normative weight not only in Canada, but also in other regions of the Americas, Oceania and Europe. The next section explicates the construction of a specifically Quebecois approach towards First Nations which occurred between 1978 and 1985. We will see that the foundations of this approach were ultimately informed by the Québec government's reading of its own positioning within national constitutional talks. Thus, this period is characterized by the existence of a tension between sometimes expansive, sometimes contingent discourses of aboriginal rights recognition and majoritarian-nationalist conceptions of the Québec polity. The third period will discuss Robert Bourassa's second government, which lasted from 1985 until 1994. Again, a special focus will be placed upon Québec leadership's priority to include the province in the federal compact upon terms satisfactory for the francophone majority and its effect on how Québec officials conceived of the government's role towards aboriginal peoples. The fourth period corresponds to the PQ's re-election in September 1994 until the end of Lucien Bouchard's mandate in January 2001. This epoch appears to

⁵³ Different political parties were in office: Union Nationale from the early 1960's until May 1970; the Parti Libéral from May 1970 until November 1976 and the Parti Québécois, from then until December 1985.

showcase the (hopefully) last attempts by the Québec government to gain the unconditional acceptance by First Nations of its sovereignty and to circumscribe their self-determination to fit the underlying nation-state building project of the PQ. The relationship renewal proposition entitled *Partenariat, Développement, Actions* proposed by the Québec government to aboriginal peoples in 1998 embodies this strategy.

2.2 The Québec government and Northern natives' beginnings (1963-77)

2.2.1 Emerging political battles: Quebec and aboriginal Peoples' quest for autonomy

Taken separately, contests for political collective recognition and connected quests for reconfiguring Canadian institutional compact grew roughly at the same time period in both Québec and within aboriginal communities across Canada⁵⁴. In the case of First Nations, the continuation of assimilation and civilization policies clashed increasingly with their wish to regain control over the organizational structures of their societies. In fact, the endurance of colonial ways and racist modes of thinking was still openly visible by the 50's. For instance, the 1951 revision of the Indian Act established a centralized Indian registry with strict admissibility rules (and a disproportionately short time period to register to the list) in the hopes of diminishing the number of Indians with status⁵⁵. At the same time, the post-World war II period witnessed the multiplication of decolonization and indigenous movements of emancipation at the global scale and inevitably fed and reinforced the content of circulating political ideas regarding self-determination in Canada.

⁵⁴ Aboriginal demands for autonomy and rights recognition started occurring with the increase of settlers demands for territory, during the 1840's, whereby Indians' way of living, impeded agricultural and industrial development. To stop settlers from thieving their territory, the Crown undertook to "protect" Indians living off coveted territory by putting them on reserves which would later on become under its exclusive jurisdiction. However, the political importance of those claims truly sharpened in the 1960's.

⁵⁵ Royal Commission Aboriginal Peoples. 1996. Volume 1. *Looking forward Looking Back*: 237.

Yet, it seems that it is the *resolution* of Pierre Trudeau and his attempts to achieve his liberal vision of Canada, a collection of individuals with equal standing and rights living in a political community free of primordial cultural bounds, which prompted the most significant political resistance from aboriginal peoples and French speakers in Québec and in the rest of Canada. In many instances, members of these communities did not think of themselves as bearers of this “universalistic” identity and formed political movements of resistance accordingly⁵⁶. To be sure, Trudeau’s ideas were by no means new: they fundamentally advocated the same objectives of assimilation and civilization that marked the colonial history of Canada while being couched in the more palatable words of equality and citizenship.⁵⁷

The application of Trudeau’s conception in dealing with aboriginal claims took the form of the White Paper on Indian Policy released in 1969. Proposing to abrogate the Indian Act, to transfer the competence of Indian Affairs to the provinces and prepare Indians to assimilate into Canadian mainstream society, Prime Minister Trudeau stated the following in defence of the tangent the government aimed at taking:

“aboriginal rights, this really means saying, ‘We were there before you. You came and took the land from us and perhaps you cheated us by giving us some worthless things in return for vast expanses of land and we want to reopen this question. We want to preserve our aboriginal rights and restore them to us’. And our answer-[...] our answer is no.”⁵⁸

To put it succinctly, Trudeau had no time for differentiated collective rights, no matter if a claiming group had been systematically discriminated against historically. To overcome “reasonably” these injustices, the solution was to remove discriminatory institutional

⁵⁶ McRoberts, Kenneth. 1997. *Misconceiving Canada: the struggle for national unity*. (Don Mills, Ont. : Oxford University Press).

⁵⁷ Royal Commission Aboriginal Peoples. 1996. Volume 1. *Looking forward Looking Back*.:237.

⁵⁸ Prime minister Trudeau. *Remarks on Indian Aboriginal and treaty rights*, excerpt from a speech given August 8th, 1969, in Vancouver, British Columbia.

instruments -he thought that differentiated legal status was the cause of Indians' incapacity to achieve the same privileged position as non-native were able to achieve⁵⁹ - and enact legal tools for protecting every individual's equality without regards to its religious affiliation, language or "race". Inadvertently, the denial of contending identities and rights of aboriginal peoples orchestrated by Trudeau in a context of rising Indian collective consciousness has had the effect to trigger the truly first pan-Canadian Indian mobilization, sparking enough opposition to force the Canadian government to shelve the policy in the spring of the following year⁶⁰. Indian chiefs of Alberta even released their counter-Indian policy: the *Red Paper*. A turning point in state-aboriginal relations in Canada had occurred.

One does not need spending too much time elaborating a description of the paralleled intensification of Quebec identity politics, nationalism and separatism as it was done in more than a few instances. Yet it should only be pointed out for the purposes of understanding the evolution of the particular Quebec state- Aboriginal relationship that the Quebec government became, in the minds of Quebec nationalists, the critical institution serving the interests of the French speaking political community: the government was to take action for improving the socio-economic conditions of French speakers and the protection and enhancement of the status of the French language within the boundaries of the province⁶¹. Accordingly, and very much in line with paternalistic and colonialist practices of the Canadian government's Indian affairs department, the Quebec government was from the outset reluctant and weakly concerned to agree with aboriginal claims linked to territorial and self-governance rights.

⁵⁹ This is nowhere else clearer than in the *White Paper* itself: "The simple reality that the separate legal status of Indians and the policies which have flowed from it have kept the Indian people apart from behind and other Canadians". Canada. 1969. *Statement of the government of Canada on Indian Policy*. (Ottawa: Minister of Indian Affairs and Northern Development): 5.

⁶⁰ Kernerman, 2005. Op cite: 74-75; Weaver, Sally. 1981. *Making Canadian Indian Policy: the hidden agenda, 1968-70*. (Toronto: University of Toronto Press).

⁶¹ McRoberts, Kenneth. 1977. "Quebec and the Canadian political crisis". *The annals of the American Academy of Social and Political Sciences, Ethnic Conflict in the World today*. Vol. 433. 19-31: 28.

Because of its main self-ascribed duty to defend the interest of the Québécois community, it would act for the foremost benefit of the majority and to the detriment of aboriginal peoples, as was going to be the case for the next thirty years.

2.2.2 The context in Québec

Indian affairs, understood as encompassing the individuals holding Indian status as well as the lands reserved by the Crown for their use, have been a responsibility of the British Crown before 1867 and thereafter, a federal competence. Due greatly to this fact, the Quebec government, like all other provinces, did not interact much with aboriginal communities outside those residing nearby urban centers until developmental prospects in the Northern territories came to the fore during the early sixties⁶². However, unlike in most other provinces save for British Columbia, Indians of Northern Québec had never signed treaties surrendering the land upon which they lived⁶³. This failure to have done so, according to British colonial doctrine, meant that aboriginal peoples such as the Crees, Inuit, Naskapis and Montagnais retained their aboriginal title on their ancestral lands, in Northern Québec⁶⁴. This was the direct consequence of the Québec Boundary Extension Acts of 1898 and 1912 (the latter year marking the beginning of Québec's present day boundaries):

The province of Quebec will recognize the rights of the Indian inhabitants in the territory above described to the same extent, and will obtain surrenders of such rights in the same manner, [surrender treaties] as the Government of Canada has heretofore recognized such rights and has obtained surrender thereof, and the

⁶² Forest, Pierre-Gerlier. 1998. "Qu'il est difficile... Les relations politiques entre le Québec et les peuples autochtones". In *L'année politique au Québec 1997-1998*. (Montréal: Les presses de l'université de Montréal).

⁶³ These treaties are known as numbered treaties and were signed between the Crown and Indian bands. The whole of Ontario, Manitoba, Saskatchewan, Alberta and a part of Yukon and Northwest Territories have been "cleared" of aboriginal titles.

⁶⁴ Please view Appendix A for exact boundaries.

said province shall bear and satisfy all charges and expenditures in connection with or arising out of such surrenders.

Thus the Quebec government was facing a particularly delicate situation when scrutinizing mining or hydroelectric possibilities. Yet the Québec government did originally endorse a colonialist approach towards aboriginal peoples⁶⁵: it would set up developmental projects in lands inhabited by aboriginal peoples without consulting them, assuming that because it was tutelary of the natural resources of the province, it could dispose of them as it wished. This was to be the notorious case of the James Bay hydroelectric project in the early seventies, a topic which will be discussed below. To put it in general terms, the beginnings of the relationship were marked by the government's conception whereby its varied "duties" towards Indians were subordinated to the economic development of the province and unless aboriginals mobilized significantly against its enterprises, it did not consult them.

The first provincial institution to be set up with a jurisdiction involving Indian affairs was created in April 1963: the General Directorship of Nouveau Québec. It was designed to be an administrative body in charge of all the province's governmental activities, except those of policing, justice, lands and forests⁶⁶. It was no hidden fact that the main objective to be fulfilled by the establishment of this directorship was to extend Quebec governmental activities in territories where they were previously absent. Coherently with the main concern of the Quebec authorities, natural resources, the directorship conducted his functions under the umbrella of

⁶⁵ "where the native people were no threat, either because there was little or no colonization or enough time had elapsed so the people came to gradual acceptance of Canadian rule [...]: the government did nothing" Craig, William. 1973. *The First Peoples in Quebec, A reference work on the history, environment economic and legal position of the Indians and Inuit of Quebec*. (Thunderbird Press): 53.

⁶⁶ Gourdeau, Éric. 1994. "Québec and the aboriginal question". In Gagnon, André et al. *Québec state and society*, (Nelson Canada: Scarborough, Ontario): 349-371.

the new Ministry of Natural Resources (created from the amalgamation of the Ministry of Hydraulic Resources and the Ministry of Mines in 1961) until its replacement in January 1978⁶⁷.

At the same time, the Québec government could not integrally reproduce DIAND's (already very criticized for its paternalism) management pattern of Indian affairs in the North. The Quebec government, contrary to the federal government who sought to rid itself of the Indian "problem", was seeking to enlarge its influence and presence in as much territory as it could to establish and affirm its sovereignty on territories upon which it did not actively govern until then. Accordingly, it had to be somewhat sensitive to the general antagonism natives were bound to feel with the arrival of new civil servants who had no knowledge about their ways of living yet at the same time came to take over the administration and direction of services. These intentions were not welcomed by Québec natives because, as was explained earlier during the controversy of the *White Paper*, aboriginal peoples were fully aware that the recognition and endurance of their aboriginal title was (then, according to prevailing doctrines) contingent upon the contracted relationship between the federal Crown and themselves; as a result, they could not accept that this historical relationship be severed and replaced by an uncertain one with the provinces. They were also wary of Québec's colonizing tendencies: most aboriginal peoples had been educated by religious schools in English (others were educated in the residential school system) and were hostile to the Quebec government's attempt to impose upon them a new language of instruction. Of all these sensitivities the Québec government became quickly aware of and was soon forced to take into account these issues while formulating its own views about aboriginal rights in the Québec context.

⁶⁷ Ibid.

Aboriginal leaders themselves were responsible for inducing these subtle changes. They had started to organize across bands, forming the Indian Association of Québec (IAQ) in 1965 to facilitate the articulation of a coherent narrative about aboriginal rights in the Quebec context. Amongst other things they sought to inform governmental authorities about their claims and gain aboriginal rights recognition for First Nations living in Québec.⁶⁸ Hence the IAQ submitted in 1967 a brief to the Québec government demanding it to negotiate over the recognition of aboriginal's hunting and fishing rights.⁶⁹ Talks surrounding these rights occurred in 1970 between the IAQ, DIAND and the Quebec Ministry of Tourism, Hunting and Fisheries. The parties came to an agreement in April 1970 but the accord did not follow through since elections occurred in Québec and the Liberal Party replaced Union Nationale in office in May 1970. As was generally the case in the domain of state-aboriginal negotiations (and still is to a great extent, the Kelowna Accord is a recent example of this frequent occurrence), a change in government is very likely to compromise any prior agreement/progression made by negotiating representatives. Nonetheless, the achievement of an accord in such short time-span confirms that aboriginal fishing and hunting rights (equivalent more or less to usufruct rights) have always been normatively less problematic than settling issues of territorial ownership⁷⁰.

But the IAQ was not only interested in gaining fishing and hunting rights. It had specific interest in gaining state recognition of aboriginal titles and its associated enjoyment of the land. It expressed this will in January 1969 to the government and during the hearings of the

⁶⁸ Proulx, J.R. 1982. *Les Traités et revendications autochtones: le cas du Québec dans le contexte canadien*. (Hydro-Québec, direction de l'environnement).

⁶⁹ Association des Indiens du Québec. 1967. « Mémoire de l'Association des Indiens du Québec au ministre du Tourisme, de la Chasse et de la Pêche ».

⁷⁰ This is also visible in the 1975 James Bay and Northern Québec Agreement whereby the Crees and Inuits are granted exclusive fishing, hunting and trapping rights over large areas of originally claimed territories while at the same time sanctifies the extinguishment of aboriginal title. (This type of title pertains to aboriginal by virtue of having inhabited the land prior to colonization; it is not derived from statutory law and was recognised by the Canadian Supreme Court in 1973 in the Calder decision as title that was not extinguished in areas not covered by Treaties).

Commission d'étude sur l'intégrité du territoire du Québec (also called Commission Dorion) by submitting to both institutions an exhaustive brief describing doctrinal foundations of aboriginal territorial rights and the connections between these sources of authority and First Nations' aspirations.⁷¹ According to Forest, IAQ's assertions to the provincial government informed the creation of the *Commission (québécoise) de négociation des affaires indiennes* in 1970 and the Dorion Report's conclusions: Indians territorial rights existed⁷². In fact, the extent to which Indians had already developed an understanding of their political future that was likely to clash against Quebecker's own quest for self-determination stands out conspicuously from the brief they wrote. Indeed, the IAQ was adamant that the Quebec government had failed to recognize that aboriginal peoples held territorial rights and needed to rectify this failure by coming to an agreement over the content and implications of these rights as shortly as possible.⁷³

As we will see soon, issues mixed with "territorial integrity" will become ever more contentious between First Nations and Quebec nationalist leaders. These were particularly noticeable in instances when the latter were publicly faced with Innus and Attikameks demands for self-governing institutions based on significant portions of Québec territory or with Crees, Inuit and Mohawks claims of inherent right to self-determination involving possible territorial partition during the pre-1995 referendum period. Jacques Parizeau, Guy Chevrette and Lucien Bouchard, to name only a few, demonstrated in many instances how inflexible they were on issues of territorial autonomy due to their interest to keep intact and unquestioned Quebec's external boundaries in the advent of a winning referendum on sovereignty. Yet, however legitimate the IAQ arguments were back in the early seventies, the Québec government

⁷¹ Association des Indiens du Québec. 1969. « Mémoire de l'Association des Indiens du Québec ». (submitted on January 7, 1969).

⁷² Forest, op cite.

⁷³ *Rapport de la Commission d'étude sur l'Intégrité du territoire du Québec*. 4. "Le Domaine indien". 4.2. "Mémoires". : 36-39.

continued not being preoccupied by aboriginal demands for territorial rights recognition and would not be until it faced the opposition initiated by the Crees, in response to the announcement of the James Bay hydroelectric project in April 1971.

2.2.3 The JBNQA: Quebec's model agreement for future Quebec-First Nations relations

Two main reasons were evoked to justify the construction of such gigantic dams. Firstly, Québec's steadily growing demand for energy was said by newly elected Quebec Premier Robert Bourassa to propel the need for the province to build mega-powerhouses on its northern rivers and its uniquely tremendous energetic production potential⁷⁴. Secondly, hydroelectric development had already been envisioned by a generation of francophone elites as the engine of Quebec's economic brighter future, the expression of its self-reliance and expertise's trademark. Indeed, under the stewardship of René Lévesque, hydroelectricity had effectively been nationalized (starting in august 1962) to become a sustaining pillar of the achievement of French Canadians "mastering of their own house"⁷⁵. The James Bay project was to meet both concerns and it was of relatively no governmental preoccupation that about 6500 Crees and Inuit were living on and off the land that would be flooded by the projected dams.

The sheer magnitude of the project and interests involved brought about the necessity for the Crees to seek external allies since they did not hold the sufficient resources to stage a

⁷⁴ This view was also held by Hydro-Québec. In Craig, William. 1973. Op. cite: 218.

⁷⁵ The infamous sentence of Jean Lesage, "Maîtres chez nous" has been viewed by many as a clear demonstration of nation-state building. This trend had been set in motion as early as 1944 when the government enacted a legislation expropriating companies like *Montreal Light and Heat and Power Company Consolidated* whose belongings were thereafter transferred to the *Commission Hydro-Électrique de Québec*, the Crown corporation later to be known as Hydro-Québec. Thus hydroelectric development slowly became intertwined within the meta-narrative of the passage of the French majority from an agrarian, non-qualified society towards the establishment of a workforce self-reliant in terms of its entrepreneurship and managerial capacities.

decent fight on their own. It was more effective to join the IAQ, an already established Indian organization working in partnership with very much needed lawyers and scientific researchers to build their case for aboriginal rights recognition⁷⁶. Thus the IAQ took the leadership of Crees' fight against James Bay project and, after having commissioned various ecological and sociological impacts reports, the organization became convinced that tougher action had to be taken against the Quebec government and its Crown Corporation to vanquish their contempt of aboriginal rights. In May 1972, IQA's lawyers requested an interim and a permanent injunction to stop the construction of the dams. They based their request on the argument that although James Bay and Northern Quebec territories had been transferred to the province from the Hudson Bay Company by the 1898 and 1912 Québec Boundaries extension acts, the government could not dispose of these lands unless it negotiated treaties with Indians to settle their aboriginal claims to the land, in conformity with British colonial doctrine⁷⁷.

The proceedings started in December 1972 and a year later, on November 15, 1973, Judge Albert Malouf conceded the interim injunction to the Crees. Although the government and the Crown Corporation appealed of this decision (and eventually succeeded in getting it overturned), the court challenge proved to be useful: the provincial Premier manifested four days after Malouf's decision his interest to negotiate with the Crees. The IQA accepted to go to the negotiation table with the government however the Crees soon realized to their dismay that the IAQ was more preoccupied to advance the settlement of broader issues regarding aboriginal rights in the whole of Québec than arriving to a settlement that would compensate the Crees for the infringement of *their* aboriginal title. This understanding rooted the decision of the Crees to break off from the IQA in August 1974 and form their own representative organisation, the

⁷⁶ Salisbury, Richard. 1986. *A Homeland for the Crees* (McGill University Press): 54.

⁷⁷ Salisbury, Richard. Ibid.

Grand Council of the Crees⁷⁸. In their view, it was preposterous to hold off settlement with the government based on the prerequisite to come to a broader agreement on aboriginal rights in the whole province of Québec because they were the people confronted with the facts that the James Bay project was already underway and the likeliness that future court decisions would weight in their favour was slim. Striking the agreement in principle in November 1974 was “the best way to see that [their] rights and [their] land [were] protected as much as possible from white man’s intrusion and white man’s use.”⁷⁹

After a year of intense negotiation, the Crees, Inuit, provincial and federal governments and Hydro-Québec finally reached an agreement and on November 11, 1975 was signed the James Bay and Northern Quebec Agreement. According to the Crees and Inuit, the agreement was good, enabled older and younger generations to fulfill their aspirations within their community and offered them the protection they needed to maintain their traditional lifestyle⁸⁰. Although there has been dissenting voices throughout the years, most leaders of these two aboriginal groups uphold this view to this day⁸¹. At the same, the outcome of the agreement was not all perfect. The source of Cree grievances, which was sporadically exposed in the public space until the 2002 *Paix des Braves* and the 2007 agreement with the federal government, flowed from the strenuous implementation of the objectives of the treaty, which governmental representatives saw overwhelmingly as non-binding. This situation (which occurred in many

⁷⁸ Ibid. : 55.

⁷⁹ Billy Diamond, quoted in Feit, Harvey, A. 1995. “Hunting and the quest for power: The James Bay Cree and White men in the 20th century”. In *Native peoples: the Canadian experience*, (eds.) Morison, R. Bruce and C. Roderick Wilson (McCelland & Stewart).

<http://articcircle.uconn.edu/HistoryCulture/Cree/Feit1/feit3.html> (consulted 2007-07-23)

⁸⁰ Ibid.

⁸¹ Billy Diamond, Matthew Coon Come, Ted Moses, Romeo Saganash (all four Cree leaders) as well as Zebedee Nungak, Pita Atami (Inuit leaders) have been repeating that JBNQA is satisfactory throughout the years but certain Inuit communities have remained outside the parameters of the JBNQA until the early nineties when they decided to join in after having argued for two decades that the agreement was illegitimate for having extinguished aboriginal title in Northern Québec.

subsequent Final state-aboriginal agreements) was provoking the outcry of Crees and other First Nations engaged in the process of land claim settlement negotiations. This was symptomatic, in their view, of a pervasive and institutionalized colonial attitude, whereby once settlement was obtained and land claims were cleared by extinguishment provisions, federal and provincial institutions would eschew abiding to their theological responsibilities towards First Nations, as outlined in the agreements.

To be clear, to make statements about the colonial attitude the Quebec (and federal) government(s) displayed does not equate to say that the Crees and Inuit were the defenceless victims of the malicious governments. On the contrary, and this was certainly not foreseen by any of the actors, it seems that although the overall relationship appeared highly conflicting due to largely incompatible normative bases⁸², battles surrounding the implementation and the interpretation of the JBNQA have enabled the Crees and Inuit to become some of the most powerful indigenous groups in the world. At the same time, understanding the evolution of state-aboriginal relationships requires taking into account the various contexts underlying them. In the case of the JBNQA, a central piece of the Québec- aboriginal peoples' relational jigsaw, the circumstances were marked by the very purposes of the negotiating parties as well as the prevailing balance of power. In light of the portrait depicted above it will come to no surprise that it can be attested to weigh in favour of the governments.

Consider the trade-offs ratified by the JBNQA: the federal government transferred local administrative autonomy on category 1 lands (health, education, police and social services on 2140.6 sq. m.), the provincial government granted exclusive fishing, hunting and trapping rights

⁸² The governments often held that they were only bound to meet strict, explicit and well-defined obligations while the Crees thought it was also the government's responsibility to work to the achievement of the general objectives of the treaty. This is an important conclusion of the independent Cree-Naskapi Commission established in 1986: it tabled since then one report every two years and each of the reports blamed the government for failing to abide to its financial responsibilities.

on category 2 lands (24899 sq. m.) and established an income security program for those who desired to keep on living of the bush, both governments committed to include Crees and Inuit (and later on, Naskapis) in a joint committee in charge of reviewing the potential environmental and social impacts of future developments on category 3 lands and to give \$225 millions of financial compensations in exchange for 2/3 of Québec territorialpwnership, Cree consent to the James Bay project, totalizing a value of \$11 billion, and to future development projects (reviewed by the above environmental committee with recommendation powers).

But even more fundamentally than the exact terms of exchange, the balance of power framed by the JBNQA finds its expression by the imposition by the Quebec government of a theoretical hierarchy of norms and values: Quebec sovereignty over Cree and Inuit “local autonomy”, Quebec rational developmental know-how over Cree and Inuit “participation to a environmental reviewing committee”, Quebec’s welfare state obligations over Cree and Inuit “right to maintain a traditional lifestyle”, etc. As stated in the Agreement’s philosophy (preamble) authored by Quebec’s chief negotiator John Ciaccia, through this treaty the Crees and Inuit gained the recognition of their special needs and differing culture as natives and the Quebec government confirmed its ownership of the territory and the capability to accomplish hydroelectric development for the paramount benefit of the majority⁸³. For a very long time indeed, and this applied subsequently to the Innu land claim, the Quebec government has maintained that the JBNQA was the farthest it was willing to go in terms of economic development, self-governance, hunting and fishing rights and cultural aspects protection. With

⁸³ John Ciaccia, *La Convention. Philosophie* : XI- XXVII (XVIII). Speech, Assemblée Nationale, November 5, 1975.

respect to land concessions, there was no possibility to replicate such a “wide area because we are not in the same conditions”⁸⁴.

2.2.4 The JBNQA: its impact on Innu rights

This treaty, no matter how positively portrayed by the signatories, was criticized for being another aboriginal rights sell-out by many Indians in Canada and Quebec. Representatives of the National Indian Brotherhood spoke against it because they argued it would create a precedent justifying the federal government to require aboriginal title extinction to settle land claims in Northern Territories. Lloyd Tatary, of the National Indian Brotherhood, commented: “As far as Indians in the rest of Canada are concerned, it’s a bad deal. Aboriginal rights can’t be bought and sold. What Indians in the rest of Canada are worried about is that it will be used as a precedent”⁸⁵. This criticism is understandable: following the 1973 Calder decision, which established the existence of aboriginal title in Canada, the federal government announced a new policy to negotiate land claim settlements very much inspired by the *Alaska land claim settlement* (1971). In this settlement aboriginal land was literally bought in exchange for the extinction by Inuit of any claim to the territory and its resources. In other words, contrary to aboriginal peoples’ widely expressed desire to gain control over their ancestral territories (and not merely settle the issue of title by financial compensations), the federal government continued to hold the position that aboriginal rights extinction was a prerequisite to state-aboriginal peoples agreement. This policy was enforced until 1986 when the vocabulary of rights

⁸⁴ Québec National Assembly. Mai 23rd, 1990. *Journal des Débats*. Commission des Institutions, (cahier 12). p. 231-2. On line: [http://www.assnat.qc.ca/indexweb/Recherche.aspx?cat=ex&Session=id34l1se&Section=sujets&Requete=CI%20231-2&Hier=Conseil%20Attikamek-Montagnais Territoire Négociation CI%20231-2](http://www.assnat.qc.ca/indexweb/Recherche.aspx?cat=ex&Session=id34l1se&Section=sujets&Requete=CI%20231-2&Hier=Conseil%20Attikamek-Montagnais%20Territoire%20Négociation%20CI%20231-2)

⁸⁵ Quoted in Simpson, Jeffrey. “Native groups in conflict over James Bay Accord”. *The Globe and Mail*, February 11, 1977: 9.

extinction was replaced by “better defined rights, to enhance territorial ownership certitude”, as a result of the official acknowledgement that the words were offensive from an aboriginal perspective. In essence it remained the same and still is, to a certain extent.

In Quebec, some aboriginal communities were directly affected by the JBNQA. Such was the case of the Innus (better known by some as Montagnais) who planned to table claims on territories “organized” and “settled” by the JBNQA. Unfortunately for them, the IAQ which they were member of had dissolved soon after the Cree departure from the organization and there remained no overarching organization in charge of defending indigenous territorial rights in Quebec. Aboriginal communities who wanted to settle land claims, self-govern and protect their rights had to rapidly organize themselves to define their own political project.

This situation prompted the creation of the Conseil Attikamek-Montagnais (CAM) in 1975⁸⁶. The new umbrella organisation was given as first mandate to advocate against the JBNQA enforcement (Bill C-9) during the Permanent Senatorial Committee on Indian and Northern Development affairs proceedings in February 1977. In fact, there was one Innu community, that of Matimekoshe Lac-John, which had seen its aboriginal title extinguished by the JBNQA without having consented to it. Although the CAM pressed the committee to reject the bill, the JBNQA was given senatorial assent: alternative stakes were much higher than Innu concerns about the extinguishment of their rights. Crees’ lawyer James O’Reilly told the committee that the failure to pass the bill on grounds that aboriginal title should not be exchanged would leave the Crees at square 1: the Québec government’s bottom line was that it should clear any impediment to the development of the land and its financing⁸⁷. Following this

⁸⁶ Mamuitun Tribal Council. www.mamuitun.com/contexte-negotiation.asp (consulted on 31-03-2008)

⁸⁷ Canadian Press. “Indians try to head off agreement”. *The Globe and Mail*, October 31, 1975: A3; Simpson, Jeffrey. “Native groups conflict over James Bay accord”. *The Globe and Mail*, February 11, 1977: A9.

defeat, the CAM worked on submitting its own land claim proposition to the governmental authorities, which it did in 1978: it was accepted by both the federal and the provincial governments respectively in 1979 and 1980. All the while, the newly elected Québec government was preparing its own policy to orient its relationship with aboriginal peoples.

2.3 The formation of Québec policy on aboriginal peoples (1978-85)

2.3.1 Context and conceptions

More than a decade after the formation of the IAQ, a pan-Québec Indian organization whose goal was aboriginal rights recognition, Quebecers elected the Parti Québécois in November 1976 to lead their National Assembly, a political party whose main pledge was to hold a referendum on Québec sovereignty-association with Canada. At this stage, Québec and Aboriginal politics of identity in Canada were no longer at the burgeoning stage but rather an integral and daily affair of public life. Rapidly, the provincial Premier René Lévesque and its cabinet came to conceive the need to define their relationship with aboriginal peoples in a less paternalistic fashion than previous governments in Québec⁸⁸. Yet, the tension between this need and the nationalistic considerations of the PQ government would give birth to an ambivalent approach that would hardly live up to the nobility of its underlying principles.

Three guiding principles were posited to instruct its approach regarding First Nations: 1) all attempt to define their future for themselves must be rejected: it is up to these collectivities to decide on their own development, implying that they should participate freely to debates on

⁸⁸ This vision can arguably also be drawn from the Philosophy of the JBNQA but it was not a systematic policy of the Bourassa government. It was limited to the agreement's signatories by virtue of the fight Crees and Inuit staged.

their social and cultural status; 2) the government should not abandon the natives to their own resources; they must be able to rely on Québec state' support; 3) natives cultures have the responsibility to invent the institutions and strategies they see fit to their own development⁸⁹. Informed by these principles, the Québec government created on January 18, 1978 the Secrétariat des Activités Gouvernementales en Milieu Amérindien et Inuit (SAGMAI), a new institution aiming at assuring the « coordination and coherence of the governmental and paragonmental interventions in Amerindian and Inuit milieux [...] and supply those milieux with pertinent information”⁹⁰.

There are good reasons to believe that this vision intending to reform Québec state-aboriginal relationships was articulated for overlapping “pragmatic” and/or strategic reasons. At the pragmatic level, the enforcement of the JBNQA rendered obsolete the Directorship of Nouveau Québec: entirely new institutions (managed by the Crees and Inuit) were to take over the administration of various services in Northern Québec⁹¹. On the strategic front, it appears coherent for a government with separatist purposes to develop a framework for policy-making respecting aboriginal peoples’ political aspirations. To be sure, it had become more than clear over the years that aboriginal peoples were fed up of being steered from outside, that they were concerned about the preservation of their identities and cultures and that they were consequently ready to take their battles on the public stage to shame governments for remaining assimilationist in their institutional practices. The indigenous mobilization surrounding the applicability of Bill 101 (on the French language protection Charter) in 1977 demonstrated clearly that indigenous consciousness in the Quebec context was not only a Cree

⁸⁹ (My translation). Québec government *La politique québécoise du développement culturel*, volume 1, ministre d’état au Développement culturel, Québec, Éditeur officiel du Québec, 1978, 89-90.

⁹⁰ Ibid: 356.

⁹¹ In Cree lands, the Cree Regional board of health and social services, the Cree school board and the Cree Regional authority were created. In Inuit lands, where the directorship was originally active, the Makivik Corporation and the Kativik school board took over its activities. Gourdeau. 1994. Op cite: 355.

or Inuit fact. Additionally, as a whole and independently of Quebec politics, indigenous political battles were flourishing on the global stage⁹². The Quebec government knew that it could not make the transition towards being an independent state without support from other states: it needed to have good relationships with “its” First Nations otherwise they could seek external support to undermine the Québec independence project. During these years, Indians from everywhere across Canada and Quebec were travelling to London in order to gain British MPs’ support to change the Canadian government’s decision to exclude them from constitutional talks⁹³. It was a real possibility aboriginal leaders would take similar actions against Québec were it to ignore their say regarding their own political aspirations.

All the same, the PQ leadership thought that good relationships between the government and aboriginals necessitated a better institutional understanding of Indians’ views and that coming to a better understanding involved multilateral discussions. Accordingly, the Lévesque cabinet invited representatives from 9 nations and 40 band councils at a meeting held on December 13, 1978. Very early during the meeting, the question of aboriginal rights and the ways according to which the separatist option affected them was raised. How was the government prepared to fulfill aboriginal demands for autonomy? As far as principles were concerned, the Premier and the members of its cabinet seemed very committed to achieve the political and cultural integrity of First Nations. However, when specific questions coming from the representative of the Mashteuiasht Innu reserve, Aurélien Gill, was raised regarding the willingness of the Québec government to accept that the federal government would transfer the

⁹² In September 1977 was taking place the first non-governmental organization conference on American indigenous peoples discrimination. In August 1978 was taking place the 1st conference against racial discrimination, which addressed specifically the question of indigenous peoples living in the “first world” atrocious conditions of living and systematic discrimination. These are examples of the visibility indigenous grievances gained on the global stage and from then onwards it only expanded.

⁹³ Sanders, Douglas. E. 1985. “The Indian Lobby” in *Indigenous peoples and the nation-state*. Noel Dyck (ed), (Institute of Social and Economic Research: Memorial University of Newfoundland).

responsibility to provide educational and health services directly to the bands instead of to itself, the commitment to enable their autonomy seemed less obvious:

If the government sees that the reserve Indians *as a whole* wish to administer the funds themselves, then we shall have a concrete proposition to study. Personally, I am not ready to answer yes or no to this question; it is clearly far outside my authority.⁹⁴ [...] We can say clearly that we are now ready to take over and that the Federal government is ready to transfer.(our emphasis)⁹⁵

For Indian chiefs who were promised a new governmental approach, this evasiveness evoked a déjà-vu feeling:

[...]the question that was proposed by Chief Gill [...] is an important question and has to be answered and resolved because the Indian people- and we were part of the position taken after the Federal government stated its white paper which has become known as 69 white paper, where it wanted to decentralize responsibilities- the Indian people took the position that, if anything was to be decentralized, it would be decentralized by the Indian people themselves.⁹⁶

After two days of discussion, Indian representatives were left with the impression that actions would, as usual, not match governmental discourse. This confirms Forest's assessment of First Nations' role in Quebec's political system since the late seventies: "essential actors when it comes down to native "high politics", especially on the principles' front, they are often downgraded to the margins in the decision making process regarding concrete activity domains like energy and territorial planning".⁹⁷

⁹⁴ The speaker, Denis Lazurre, was the minister for Social Services

⁹⁵ SAGMAI. 1978. *Discours et Ateliers. La rencontre des Amérindiens du Québec et du Gouvernement Québécois* 13, 14 et 15 décembre 1978.. (Gouvernement du Québec) 137-8.

⁹⁶ Ibid. :145.

⁹⁷ (My translation). Forest, op cite.

A few years would elapse before the provincial government and aboriginal peoples of Québec would resume communication multilaterally. (However, if multilateral meetings would not occur until late-1982, intensive preliminary meetings between the Québec government and the CAM, while not very productive, took place in 1980 and 1981⁹⁸). The absence of negotiations was mainly due to the separate battles staged by Aboriginal peoples and the Québec government vis-à-vis Ottawa in the trail of the constitution's repatriation⁹⁹. Beyond provincial issues, they had much more to gain by focusing their energies on influencing the course of federal politics. In fact, PQ's defeat in the May 1980 referendum had exhausted the separation option and Québec representatives had to make maximal gains in terms of differential status recognition for the province. Aboriginal leaders were seeking (independently of Quebec leaders' aspirations) to become constitutionally part of the national compact and, to achieve such a task, they established the "Aboriginal Peoples of Québec task force on the constitution"¹⁰⁰. The objectives were monumental on both sides; they were facing the same man who had tabled the 1969 White Paper and refused the Bourassa's proposal during the 1971 Victoria conference ten years before¹⁰¹.

It is important to state that the CAM took actively part of aboriginal efforts for constitutional recognition. Faced with the closure of the federal government regarding their own land claim (particularly their demand to forgo aboriginal rights extinction as a condition for

⁹⁸ Gourdeau, op cite : 352. Dupuis, Renée. 1993. "Historique de la négociation sur les revendications territoriales des Atikamekw et des Montagnais (1978-1992)", *Recherches Amérindiennes au Québec*. 23 (1): 43.

⁹⁹ Gourdeau, op cite.

¹⁰⁰ Joffe, Paul. May 2000. "The 1985 Québec national assembly resolution on aboriginal rights: a brief commentary": 2.

¹⁰¹ Bourassa constitutional formula proposal towards Trudeau's plan to repatriate the constitution in 1971 placed emphasis on Quebec's desire to protect the French language. Trudeau found the proposal unacceptable.

agreement¹⁰²), the CAM's representatives went to international forums to gather external support for condemning Canada's perpetuation of Indians' grievances and its refusal to involve them directly in drafting the constitution law. They sought the acknowledgement that Canada's decision and policies infringed their right to self-determine; that is, their right not to be unilaterally included in the Canadian nation-building project and to participate to the definition of their rights entrenched in the highest law of the country¹⁰³. This fight was intrinsically connected to their own land claim: the greater the gains and the smaller the losses were on the national stage in terms of aboriginal rights recognition, the less CAM representatives would have to give up to agree with the federal and provincial governments.

Aboriginal peoples' efforts failed to gain the acceptance of being included into the repatriation process. Yet it is certainly not out of mere generosity that was finally added in the Canadian Charter of rights and Freedom a provision recognizing and affirming "existing aboriginal and treaty rights of aboriginal peoples of Canada"¹⁰⁴ and another one promising a First ministers' constitutional conference where they would be party to negotiations on questions interesting Indians¹⁰⁵. In accordance with this commitment, Prime Minister Trudeau extended in December 1982 an invitation to provincial Premiers and four aboriginal representation groups (the Assembly of First Nations, the Native Council of Canada, the Inuit Committee on National issues and the Métis National Council) for the meeting to be held in March 1983 with the purpose of better defining aboriginal rights, the most contentious of which was that to self-governance. Was it going to be "contingent" upon federal and provincial already

¹⁰² Tremblay, Jean-François. 2000 *Analyse structurale des relations de pouvoir entre acteurs : le cas des Atikamekw, des Montagnais et des gouvernements*, Ph.D., science politique, Université Laval, janvier, Vincent Lemieux (directeur), Gérard Duhaime (co-directeur) : 114-5.

¹⁰³ It appeared before the Russell Tribunal from November 20-24, 1980. The "moral" weight of the decision supported the CAM claims regarding the extinction of its rights and its right to be the agent of its inclusion in the process of the constitutional redaction.

¹⁰⁴ The Constitution Act, 1982. Art. 35 (1).

¹⁰⁵ Ibid. Art. 35. 1, a), b).

established powers or was it going to be “inherent”, leaving open questions of sovereignty? This debate again was very relevant to CAM demands since it was asking for complete sovereignty on the lands it claimed, a veto right on developmental projects touching its aboriginal lands and the recognition by the governments of Atikamekw and Montagnais’ inherent right to self-government¹⁰⁶. Three more conferences were held in 1984, 1985 and 1987 and they would all be as unsuccessful as the first to bring about consensus on a constitutional amendment defining aboriginal right to self-government.

2.3.2 The Québec state’s official recognition

Not having signed the 1982 constitution¹⁰⁷ and therefore holding the view that it was not bound by it¹⁰⁸, the Quebec government was confronting a real quandary throughout the lengthy constitutional talks about aboriginal rights recognition. On the one hand it was pressed by the Aboriginal peoples of Québec Task Force to support its position during the upcoming First Ministers’ conference (15 points elaborated in a letter sent to Premier Levesque on November

¹⁰⁶ Conseil des Atikamekw et des Montagnais. 1979. « Déclaration de principe des Indiens atikamekw et montagnais ». *Recherches Amérindiennes au Québec*, 8 (3): 177-78.

¹⁰⁷ The constitutional package proposed by Trudeau did not meet Québec’s desire to enhance its powers and to hold a veto on future constitutional amendments. It also rejected the Canadian Charter because it judged it limited its legislative power without its consent. It opposed to two particular provisions: the guarantee of the right to be educated in the minority language (French or English), which entered in conflict with the restrictions the French language protection Charter imposed on the instruction of English and the provision guaranteeing the freedom of circulation of workers across Canada, thought to limit the ability of the Québec government to design its labour policy, favouring the employment of Quebecers. It also opposed the modification procedure, which offered no financial compensations to provinces which decided not to apply constitutional modification, as was the case for education and culture.

¹⁰⁸ “The National Assembly of Québec, mindful of the right of the people of Québec to self-determination, and exercising its historical right of being a full party to any change to the Constitution of Canada which would affect the rights and powers of Québec, declares that it cannot accept the plan to patriate the Constitution”. Resolution of the Québec National Assembly, December 1, 1981 and the René Lévesque’s declaration November 5, 1981.

30, 1982)¹⁰⁹ yet, as the representative of the Québec population, it judged it could not budge in the constitutional talks since such involvement could have been interpreted as an implicit acceptance by the Québec government of the legitimacy of the 1982 Constitutional Law¹¹⁰.

Not surprisingly, this is aside of these developments that Lévesque's cabinet undertook negotiations with Québec's aboriginal peoples to define further aboriginal rights in Québec. In fact, the Québec government responded to the 15 points composing the national constitutional position of aboriginal peoples by adopting 15 principles recognizing natives as nations and the necessity to establish harmonious relationship with them on February 9, 1983, a month before the First ministers' conference. This adoption was followed by several meetings and a final counter-proposition by the task force on November 1, 1983. According to Joffe¹¹¹, at some point during 1984, the Québec government announced to the Task force its plan to table a resolution regarding the exercise of aboriginal rights, promising that it would be the product of an agreement between the two parties; a promise it broke the following year by tabling a resolution that did not reflect the content of the negotiations¹¹². On March 20, 1985, the government adopted a text recognizing Québec's 10 First Nations and the Québec government's commitment to support their march towards autonomy guided by- but not limited to- the 1983 principles. The resolution's content was criticized by the entirety of Liberal MPs (John Ciaccia became the spokesman of Cree, Inuit, Mikmaqs and Naskapis leaders' frustrations¹¹³) for failing

¹⁰⁹ Paul Joffe, Op cite: 2.

¹¹⁰ René Lévesque's opening Speech, First Minister's constitutional conferences on questions interesting natives, Ottawa, March 15-16, 1983, SCIC, doc 800-17/033, p.1; March 8-9, 1984, SCIC, doc 800-18/021, p.1; April, 2-3, 1985, SCIC, doc 800-20/014, p.1.

¹¹¹ Op cite: 3. Paul Joffe was one of the main lawyers of aboriginal peoples in Québec, along James O'Reilly.

¹¹² This view is not shared integrally by Billy Diamond, eminent Cree representative (Grand chief, chief of Waskaganish, chief negotiator during Québec –Cree negotiations), who respected René Lévesque's choices with regards to the affirmation of aboriginal rights in Québec. *L'Actualité*, vol. 25, n° 12, p. 20 (18 août 2000).

¹¹³ Assemblée nationale, *Journal des débats*, Mar. 19, 1985, vol. 28, No. 38, at 2504, where MNA J. Ciaccia communicates to the National Assembly the objections of the Crees, Inuit, Mikmaqs and Naskapis. Also, at

to bring the concrete changes demanded by aboriginal peoples with respect to the exercise of self-governance.

In the view of many, aboriginal rights activists and political analysts alike, the two documents recognizing aboriginal rights in Québec display genuine intention to promote the autonomy wished by aboriginal peoples, but only in so far as this autonomy is manifested within the parameters of Québec's interest, norms and territorial integrity. According to Forest, the final wording of the texts betrays "signs of rigidity" and strategic self-interest from the Québec government's behalf¹¹⁴. For instance, the third principle states that

The rights mentioned in sub-paragraphs 1 and 2 [aboriginal rights to culture, language, customs, traditions, to orient the development of their identity, to possess and control the lands attributed to themselves], must be exercised within Québec society and cannot, consequently, imply sovereignty rights which could affect Québec's territorial integrity.(my translation)

Going even further in its interpretation of the Québec government's strategy, Joffe argues that the choice to recognize them as "nations" serves the purpose to deny them the right to "self-determination" attributed to peoples. "In this way, Québec hopes that it can prevent any division of territory within the province, should Québec seek to secede. No Aboriginal peoples in Québec are to be permitted to choose to remain with their traditional territories in Canada."¹¹⁵

Now, whether or not the government had foreseen the debate which was going to be integral to the draft and acceptance of the Universal Declaration of indigenous peoples' rights, and

2527-2528, MNA M. Polak indicates the objections of the Mohawks and the Crees. This issue and the unilateral actions of the PQ government are discussed in Grand Council of the Crees (of Quebec), Submission: Status and Rights of the James Bay Crees in the Context of Quebec's Secession from Canada (Submission to the U.N. Commission on Human Rights, February 1992), at 165-168.

¹¹⁴ Forest, op cite.

¹¹⁵ Op cite: 4.

accordingly, picked the word with less normative weight is another thing¹¹⁶. Yet, in light of PQ's political project, it appears uncontroversial to affirm that the Québec government was acting coherently with its primary concern to circumscribe the realm of possible claims (both related to territory and self-governance) made by aboriginal peoples in the Québec context.

2.4 Contending battled for political recognition (1985-95)

2.4.1 PLQ's priority: Québec inclusion

Practically, these acts of recognition did not immediately bestow any changes. This can be attributed to PQ's replacement by the Parti Libéral du Québec in December 1985, eight months following the adoption of the motion recognizing First Nations as such by the National Assembly. Again, it must be noted that the arrival of new political representatives in office involved an adjustment at the level of state-aboriginal relationships to take into account the new set of priorities newly elected officials bring along their victory. In this case, contrary to Lévesque's government, the Liberal Party displayed less willingness to taking over the management of Indian Affairs and instead "advocated the authority of the federal government and its tutorship over Indians"¹¹⁷. This tendency to disengage mostly occurred from late 1985 until 1990, year during which state-aboriginal affairs took another dimension. Prior to 1990, Bourassa's priority to booster the province's economic development (in period of economic slow-down) by launching new hydroelectric projects partially shadowed previous attempts to modify state-aboriginal rapports. Once more, nationalistic conceptions whereby the benefits of

¹¹⁶ Indeed, it seems a little farfetched to assume that the Québec government intentionally picked the word at that time- it is a different story today- since even the Canadian government did not seem to have reserves using the word "peoples" in the constitution and it was certainly not his goal to imply a right to self-determination in the sense of sovereignty.

¹¹⁷ Gourdeau, op cite: 366.

the majority triumphs over the needs of the minority sourced the resistance orchestrated by First Nations during Bourassa's second term in office.

Within the framework of the First ministers' constitutional talks, the Minister of intergovernmental affairs Gil Rémillard declared being favourable to the principle of aboriginal right to self-government's constitutional entrenchment, as a component of agreements negotiated between governments¹¹⁸. A similar position was argued by the Ontarian, New Brunswick and Saskatchewan governments; Alberta and British Columbia's spoke against the concept altogether; Nova Scotia, PEI and Newfoundland's were roughly situated between the two alternates and Manitoba's was willing to endorse the principle without prior governmental negotiations.

The position of the newly elected government vis-à-vis aboriginal peoples in Québec was directly linked to its self-ascribed mission to make the province politically part of Canada (the Supreme court had ruled that Québec was bound by it, despite its pretensions to the contrary), provided that its demands were met¹¹⁹. The success of the latter had become more likely with both Mulroney's conservative party's victory in Ottawa and Bourassa's PLQ win in Québec. Indeed, Mulroney had promised Quebecers a dignified inclusion in the constitution and Bourassa displayed an unprecedented level of determination to convince the ROC of the need to resolve the constitutional imbroglio¹²⁰.

¹¹⁸ Gil Rémillard, delegate Minister to intergovernmental affairs, during the 4th First Ministers' conference on question interesting natives, Ottawa, March 26-7, 1987. SCIC doc 800-23/017: 4-5.

¹¹⁹ Québec demands for its ratification of the constitution were: constitutional recognition of Quebec as a distinct society; a Constitutional veto for Quebec over constitutional change; a role for Quebec in the appointment of judges to the Supreme Court of Canada; a constitutional guarantee of increased powers in the field of immigration; and a limitation of the federal spending power.

¹²⁰ Robert Bourassa. "Speech for the presentation of the motion proposing that the Québec national assembly authorise the modification of the constitution of Canada in conformity with the Meech Lake Accord". Québec National Assembly. *Journal des débats*, 18 juin 1987, p. 8707-8710.

Although Québec's renewed interest in the federation opened up possibilities for aboriginal peoples of Québec at the national level, it remained that the Québec government's interest in settling aboriginal grievances was trumped by its priority to settle its own. Federal government's representatives agreed to separate the issue of Québec inclusion from other outstanding constitutional issues, against the protestation of minorities and aboriginal peoples. But unlike "other" minorities, aboriginal peoples had gained in 1982 the constitutional guarantee they would be invited to constitutional negotiations affecting their status and they were not satisfied with the statement that negotiations surrounding Québec's demands at Meech Lake were unrelated to aboriginal peoples' constitutional rights. On the contrary, they argued that granting to Québec a distinct status could create two classes of aboriginal peoples in Canada; those in Québec would become subjected to the government's constitutional right to potentially legislate in favour of the majority's culture, which they feared sometimes could be done at the expense of "historical minorities".

At the same time, the Bourassa cabinet sent signals that it was not changing the broader conception of the relationship between the government and First Nations designed by the previous government. Indeed, SAGMAI was replaced in 1987 by the Secrétariat québécois aux affaires autochtones (SAA) to render even more flexible and punctual the governmental intervention with aboriginal communities. According to Forest, the new institution was conceived to fulfill a role halfway "between a high commissariat habilitated to conduct affairs between nations of a same political community and that of general service of coordination and interventions planning, for the benefit of all branches of the government"¹²¹, functions that are strikingly different from DIAND's in its heavily centralized structure. In fact, the Québec government's approach towards First Nations was becoming increasingly coherent with the

¹²¹ (My translation). Forest, op cite.

advent of this intermediary institution acting within Québec's Executive Council to coordinate governmental policies with the exercise of future "jurisdictional contracts", or sector-based agreements between Québec and First Nations¹²². The continuity between the two governments is also visible through the application of the 1983-85 resolutions: it became the "Basis of the Québec government's policy on Aboriginal peoples"¹²³ and it added by decree to the 1985 list the Malécite nation in 1989.

2.4.2 CAM's land claim evolution

While broader political negotiations were occurring on the national stage, talks between the CAM and both governments started to evolve significantly for the first time since the acceptance of its land claim by the latter parties. This event was rendered possible by two changes, both of which occurred in December 1986, one being internal to the representation structure of the CAM and the other being -although slim- an institutional response to aboriginal demands. In the first case, Bernard Cleary replaced Andrew Delisle at the helm of an organization suffering already from important internal divisions threatening its overall unity. The second enabling transformation was essentially related to the revision of the Canadian policy on land claim settlements¹²⁴. Indeed, the federal government officially replaced its much criticized rights extinguishment requirement by an alternative certainty requirement that allowed

¹²² Forest, op cite. Gourdeau, op cite.

¹²³ Québec Government. "The Basis of the Québec governments' policy on Aboriginal Peoples". March 1988. (Québec: SAA, Executive Council).

¹²⁴ Tremblay, Jean-François. Op cite: chapter 3.

claimants to retain certain rights to the land (hunting, fishing and trapping) but not to the resources¹²⁵.

The new policy also set out that a Framework Agreement should be reached early in the negotiation process to avoid lengthy discussions on irrelevant issues¹²⁶. By September 1988, this step was achieved: despite the constitutive importance for CAM's members of preserving their aboriginal title on land *and* resources¹²⁷, CAM's representatives agreed to exchange land rights against others in the sense of art. 35 (3) of the 1982 Constitutional law.¹²⁸ The next step, always according to the federal policy, was to arrive at an agreement on transitional measures. Here again, CAM made important concessions to move towards settlement: the April 1989 agreement states that Montagnais and Atikamekw will not oppose to developmental projects on the territories they claimed and that JBNQA territories claimed are excluded¹²⁹. Originally, this agreement was set out to be renewed after two years; it never was. The dissent expressed by band leaders, such as those from Matimekoshe-Lac John, confirmed the gaps between the priorities of each band councils represented by the CAM which ever more undermined CAM's legitimacy to negotiate for the entirety of the group. Matimekoshe-Lac-John leaders, for instance, could not accept to exclude the territories organized by the JBNQA for the sake of progressing towards final settlement; it was a too great ignorance of the First Nation's aboriginal

¹²⁵ The provincial government had accepted from the beginning of the negotiations with the CAM to not impose the requirement of rights extinguishment to come to an agreement.

¹²⁶ Charest, Paul. 2001. "The land claims Negotiations of the Montagnais". In Colin Scott (ed). *Aboriginal Autonomy and Development in Northern Québec and Labrador*. (Vancouver, Toronto: UBC Press), 255-273: 258.

¹²⁷ Statement of principle presented by Mashteuiatsh First Nations to David Crombie, Indian affairs minister, March 1986. The principle #2 declared that by virtue of being a First Nation, Innus had the right to retain the property of their traditional territory, including waters and sub-lands, in appropriate conditions, to ensure our independence and social and economic self-reliance, in conformity with our traditional and contemporary values (my translation).

¹²⁸ CAM, Government of Canada, Government of Québec. *Framework-Agreement*. Québec, September 13, 1988.

¹²⁹ CAM, Government of Canada, Government of Québec. *Agreement on Transitional measures*. Québec, April 1989. One point of the CAM's original position was that they should hold a veto over any developmental project while negotiations were ongoing. Tremblay, Jean-François. Op cite: 123.

title. This stake was however only integral to this communities' demands, as was the case in many other instances, and CAM's mandate to move toward settlement was becoming unbearably hard to achieve for its representatives.

Still, the accentuation of strikingly dissenting voices following the agreement on transitional measures propelled the CAM to hold meetings within communities to rebuild consensus across band councils prior to moving towards the next step: the agreement-in-principle. These only disclosed the deep incompatibility between each First Nations' projects, which would only get greater with the subsequent evolution of the Québec government- First Nations relationships. Bernard Cleary withdrew from its functions early in 1990.

2.4.3 Face-offs

Indeed, besides these timid advances in the settlement of Innu claims, the Québec Liberal party's terms in office was marked by several crises involving aboriginal issues. To begin with, Robert Bourassa announced in 1988 the construction of the second phase of the James Bay hydroelectric project. Despite a prevailing political context enflamed by Cree leaders' high disillusion with both governments' attitude regarding the implementation of the JBNQA agreement, the provincial Premier claimed that Cree consent to the continuation of the project was irrelevant considering it had already given it back in 1975. These circumstances as well as deeply felt discontent following governmental attempts to swiftly bypass the required environmental review process for the mega-project encouraged the Crees to stage a massive international public relations fight against Great Whale hydroelectric project, Hydro-Québec and

the Québec government¹³⁰. Secondly, the standoff at Oka became the center of much public attention during the summer 1990¹³¹. Outside Québec's medias, the management of the conflict by the province became highly controversial¹³² and appeared linked to Bourassa's bitterness vis-à-vis Manitoba aboriginal MP, Elijah Harper, for having officialised the failure of the Meech Accords. Images displaying "white" racism and intolerance towards aboriginal peoples raised questions around the world about the meaning of racial equality in Canada but to a different extent in Québec. What indeed explained the "deep antagonism" between the francophone majority and aboriginal peoples in Québec¹³³?

The occurrence of these events was understood by many as being logically coherent with the "unique" character of Québec's "ethnic nationalism" and its connected public support for separatism. Furthermore, populist news broadcasters and publishers were instrumental in reinforcing essentialist understandings of each party's political communities as explanatory factors of actual political battles. To be fair nonetheless, it is understandable that such perceptions came to the fore since deep disagreement *did* dominate Québec- First Nations relationships. For instance, during the Commission d'étude des questions afférentes à la

¹³⁰ Grand council of the Crees submission on discrimination of indigenous peoples. Statement by Ted Moses in July 1991, ninth session of the Working Group on Indigenous Populations, of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights. <http://www.gcc.ca/archive/article.php?id=63> (consulted April 6, 2008).

¹³¹ In this case the Canadian government's actions were not spared disapproval from human rights activists. These accusations were also formulated by then deputy minister to autochthons affairs in Québec, John Ciaccia, who argued that had the federal government listened to his advice about Mohawks land claim, the whole standpoint could have been avoided.

¹³² At least what was reported of it by the Medias. The decision to go ahead in the construction of the golf course in Mohawks burial grounds was made by the town Council, not by the province. Furthermore, John Ciaccia long blamed the federal government for its management of Mohawks land claims which is directly linked to the standoff.

¹³³ Indeed, demonstrations in Chateauguay by Mercier bridge users against Kahnawake Mohawks largely dominated external representations of Québécois rapports by First Nations. However, we must note that there was at the same time, efforts being made by unions, churches, human rights activists as well as bar and scientific associations who sought to support Mohawks' claims. This gathering lead to the formation of the Forum paritaire québécois-autochtone in 1991 and which published during fall 1993 a manifesto entitled: *Manifeste concernant l'avenir des relations entre les Autochtones et les Québécois*. These initiatives, tells us Pierre Gelier Forest, remained nonetheless secondary. Op cite.

souveraineté by the Assembly of First Nations' chief of the time, Ovide Mercredi took the opportunity to tell Québec nationalists the flaws inherent to their conception of a Québec people, causing the uproars of Québec nationalists who started to label "all Indians" as "federalists"¹³⁴. Frustration was also manifested by Innu chiefs in November 1990 during the hearings of the Bélanger-Campeau Commission (sur l'avenir du Québec); in that case, they denounced the continuing blatant incapacity of Québec nationalist leaders to accept the equal normative value pertaining to Innus' quest for self-determination.¹³⁵ They asked to the members of the Committee:

The traditional concept of the state is too often the expression of a social group, who once carried to power, use the state institutions to serve its own interest [...] Native people have always been denied the collective right to choose a democratic regime to represent their own interests. The history of Canada is one of nations building their future and prosperity to the detriment of native people. Will it be the same in an independent Québec¹³⁶?

Similar statements were made by the Crees in various instances. In their perspective, and to the dismay of most Québec nationalists, it was the very claim of Québec's territorial integrity that was ludicrous. As a matter of fact, Cree leadership headed by Matthew Coon Come was probably the most efficient aboriginal actor questioning the legitimacy of Québec sovereignty project. Indeed, although similar positions were held by Inuits, Innus and Mohawks, they distinguished themselves by organizing a coherent campaign on the international stage- in various international organizations and in academic institutes situated in the United States, Europe, and Australia- to gain external support for crushing the Québec and Canadian governments to recognize their right to self-determination. For example, in February 1992, the

¹³⁴ Assembly of First Nations chief. *Ovide Mercredi's testimony*. February 11, 1992. (Québec: Commission d'étude des questions afférentes à la souveraineté)..., r-1055, p.2; Assembly of First Nations, *Mémoire à l'intention de l'Assemblée nationale*, February 11, 1992.

¹³⁵ Innu Takuaikan Uashat mak Mani-Utenam. "Brief presented to the Commission sur l'avenir constitutionnel du Québec. November 28, 1990. Sept-Îles: 3.

¹³⁶ Séguin, Rhéal. « Québec is urged to redefine state ». *The Globe and Mail*, November 29, 1990: A6.

Grand Council of the Crees submitted a brief entitled "Status and rights of the James Bay Crees in the context of Québec's secession from Canada" to the Commission on Human rights to let the world know how the Québec independence project was harmful to their political aspirations¹³⁷. In short, notwithstanding common essentialists perceptions of each political communities, these type of rapports were in fact been prompted by a broader course of events. The trigger was pulled by the notorious adoption of Bill 150 in June 1991 by the Québec National Assembly, *Loi sur le processus de détermination de l'avenir politique et constitutionnel du Québec* and its provision planning to hold a referendum on Québec secession by October 26, 1992.

However, the threat of Québec separation, in the perspective of aboriginal peoples, was temporarily put on hold with Robert Bourassa's decision to follow the Charlottetown Accord route¹³⁸. In a last attempt to keep Canada truly together, the Accord proposed a solution to all constitutional grievances: Québec's distinct society (and by implication, greater autonomy), aboriginal peoples' right to self-governance, senate reform, etc. In a national referendum held on October 26, 1992, the Canadian majority rejected its proposed changes, preferring to keep the old constitution¹³⁹. During the aftermath of the vote, a short lull period characterized Québec government- First Nations relations. Aboriginal representatives manifested their interest to resume talks on outstanding issues¹⁴⁰. The recent developments had indeed put

¹³⁷ They repeated the experiment with "Sovereign injustice", a 500 pages long demonstration of the legitimacy of their claims, which they released in October 1995, a little prior to the Québec referendum.

¹³⁸ The Allaire report, which became the official political platform of the PLQ in March 1991, recommended the transfer of all federal powers to Québec. However, by September 1992, the liberal party amended Bill 150 to replace the referendum on sovereignty by a referendum on the Charlottetown Accord. Parti Libéral du Québec. 1991. A Québec free to choose: report of the Constitutional Committee of the Québec Liberal Party. (Commission Constitutionnelle: Québec).

¹³⁹ Johnston, Richard. 1993. "An inverted logroll: The Charlottetown Accord and the Referendum".

Political science and politics, 26 (1): 43-48.

¹⁴⁰ Inuit leaders re-affirmed their desire to further the negotiation on self-government. Cree leaders announced their desire to build a new relationship with government based on 15 principles. The CAM announced its intention to resume talks on their land claim. *Journal des débats*, November 4, 1993:# 58.

these direct relations at a standstill. The election of the PQ government in September 1994 would jeopardize this timid reacquainting.

2.5 The PQ's return in office

2.5.1 The march towards the 1995 referendum

Following the failure of Charlottetown, the Liberal Party's popularity plummeted in Québec. Robert Bourassa resigned in January 1994 and was replaced by Daniel Johnson whose leadership was no more popular than his predecessor. Galvanized by what was perceived as federalist affronts by some and demonstrations of anglo-canadian hatred by others, nationalism in Québec rose again and surveys indicated that it was now or never that a referendum on sovereignty should be held if its proponents wanted their project to materialize. The PQ was elected in September 1994 under the promise to hold a referendum and its victory came as no surprise for aboriginal leaders.

The arrival of the PQ in office was bound to signal the renewal of the public exposure of the tensions between some aboriginal leaders and the newly elected representatives¹⁴¹. During this period it was unequivocal that the Québec government was willing to disregard aboriginal leaders' alternative political projects as soon as they conflicted with the ambitions and interests of the majority. In other words, the march towards the referendum witnessed the most outstanding manifestations of dominant nationalism within Québec; even journalists respected for their analytical capacities oversaw the legitimacy of aboriginal leaders' opposition to their

¹⁴¹ The tensions are not uniformly lived across First Nations. Ghislain Picard, chief of the Assembly of First Nations of Québec along with Max Gros-Louis, chief the Huron Wendat First Nation have hoped to sit down with the Québec government whereas Matthew Coon come and Billy Two Rivers (Mohawk) have advocated (although not consistently) for completely severing the relationship with Québec. Noreau, Pierre-Paul. "Les autochtones résisteront à une souveraineté imposée par le PQ". *La Presse*, 14 octobre 1994: A5.

forceful inclusion in the Québec sovereignty project¹⁴². Indeed, PQ leaders openly took positions betraying a fundamental belief that Québec people's claim to self-determination had greater normative standing than that of aboriginal peoples. For starters, government's representative Jacques Brassard made clear that an independent Québec would not tolerate aboriginal denial of the government's authority in their territory, as was said to have been the case in the Oka crisis¹⁴³. The government's official to native affairs, David Cliche, repeatedly dismissed the value of aboriginal democratic will in cases where the province's territorial integrity was at stake:

The Inuit can hold their own referendum and so can the Cree. But where we disagree is on the impact of such a referendum... We cannot accept that the territory of Québec be taken apart. This position is not new. We have been saying it for years. But we do respect the right to aboriginal self-determination¹⁴⁴.

In response to First Nations strategies to seek external support in their quest for self-determination, Cliche also affirmed that their successes were bound to remain limited. No matter how loudly expressed, natives' wish to keep their lands would continue being unheard by states since explicit recognition would set too big of a precedent for aboriginal sovereignty, a concept states representatives were traditionally unavailable to talk about¹⁴⁵.

¹⁴² In his editorial, *Le Devoir* journalist Gilles Lesage writes: « Les leaders mohawks et, surtout, cris, sont passés maîtres dans l'art peu respectable de dénigrer à l'étranger les dirigeants du cru, hier libéraux, aujourd'hui péquistes, qui les *empêcheraient* de se développer et de s'épanouir comme ils le souhaitent. Surtout depuis que le PQ est revenu aux affaires, avec son projet de référendum pour l'an prochain sur l'avenir du Québec, MM. Ovide Mercredi, Matthew Coon-Come, et *autres grands chefs des premières nations brandissent à l'excès anathèmes et menaces.* » (emphasis added). In « Le Dénigrement autochtone ». *Le Devoir*. 21 novembre 1994: A6. This type of analysis, widespread in Québec newspapers, inevitably reinforced dominant nationalist conceptions of the Québécois political community where Indians were associated to federalists and who were automatically finger pointed for standing in the way of Québécois' self-determination.

¹⁴³ Picard, André. "Oka negotiator appeals for new talks". *The Globe and Mail*. May 31, 1994: A4.

¹⁴⁴ David Cliche declaration cited in Canadian Press. "PQ dismisses impact of native vote". *The Globe and Mail*, February, 8, 1995: A4.

¹⁴⁵ Mr. Cliché said: "So what I suspect is that Canada and the United states are most likely not to support the Crees very long in this kind of argument because the argument will quickly backfire and question their own territorial integrity.[...] We are on very, very solid ground. There is no question that on this aspect [territorial integrity] we'll not move. It's not on the table". In Gray, John. "Crees will have no friends, PQ negotiator warns". *The Globe and Mail*. October 19, 1994: A2.

But these statements would only fuel aboriginal leaders from Crees, Inuit, Mohawks, Innu and Atikamekw communities' attempt to convince the rest of the world about the inherent flaws contained in the postulate of Québec territorial integrity upon which laid the ideal of Québec sovereignty. To every organization willing to give them a stage, they accused the Québec government of infringing their right, as peoples, to self-determination.

The largest obstacle to an independent Quebec is probably the rights of aboriginal peoples. In the event Quebec tries to secede, we also have the right to self-determination, to control our resources and our lands. [...] Despite this, Quebec Premier Parizeau states that the government of an independent Québec will simply assume the obligations of Canada to the Crees. [...] Needless to say, he thinks that the provisions affirming a continuing and permanent relationship between the Crees and Canada, and those affirming our Canadian nationality in Québec, will simply fall by the wayside. Once again, let me state clearly and firmly: this will not be so without Cree consent¹⁴⁶.

In such a context, it is expectable that not much tangible progress was possible with respect to the evolution of aboriginal self-governance and land claim settlements until the issue of Québec sovereignty was clarified. The uncertainty of Québec status within the confederation made First Nations negotiating land claims settlements wary of any promises made by either the provincial or federal government. Yet, it was politically important for the Québec government to *appear* to have a good relationship with at least some of "its First Nations". In fact, Québec attempted to achieve such a result by making an offer to CAM representatives to settle their land claim in December 1994. As was stated by the Innu representative Jacques Kurtness: "It would be something the government could wave in front of the international community and the rest of Canada to show that their relations with natives aren't so bad, and that not all first nations are their enemies"¹⁴⁷. To be sure, Parizeau was envisaging with delectation the foreseen successes of the CAM land claim negotiation. However, the government did not seem to understand how

¹⁴⁶ Matthew Coon Come. Address to the Conference of the American Council of Québec Studies in Washington, D.C. November 18, 1994. In *The Globe and Mail*. November 24, 1994: A31.

¹⁴⁷ Canadian Press. "PQ to offer land settlement to natives". *The Globe and Mail*, December 15, 1994: A8.

many shortcomings their offer had, aside of potentially severing the fiduciary relationship the Innu and Atikamekw nations enjoyed with the federal Crown in the advent of a separatist victory. Indeed, the offer involved the replication of the very same terms upon which CAM representatives had opposed the JBNQA, back in the 1970's, that is, the cession of their aboriginal title in exchange for rights defined in the future treaty and exclusive territorial ownership over 4000 km² for all 12 native groups member of the CAM (less than 1% of the territory originally claimed and significantly less than what the Crees and Inuit had obtained). A few days after the Québec offer was released the CAM dissolved and spokesmen for both First nations eventually rejected it.

2.5.2 A new minister for a new approach?

Following the Québec referendum and the replacement of Jacques Parizeau by Lucien Bouchard in 1996, the Québec government became more than ever convinced of the need to solidify arguments pertaining to Québec's right to self-determination and the related paramount importance of territorial integrity. Indeed, in the wake of the Supreme Court reference re Secession of Québec (December 1996)¹⁴⁸, Québec leaders were faced with a new 'alliance' between a faction of federalists and aboriginal leaders such as Matthew Coon Come who questioned the legality of the referendum process for achieving Québec independence. Hence it undertook several steps to affirm Québécois' rights as a people and to legitimize its claims with regards to the province's territorial integrity. This is why in 1997 the province's minister of

¹⁴⁸ In three open letters, Dion challenged Bouchard and Brassard's assertions according to which a unilateral declaration of independence is supported by international law, a majority of 50% +1 was a sufficient threshold and that international law would protect the territorial integrity of Québec following a secession. These challenges grounded Dion's questions to the Supreme court which preceded the 1998 secession reference.

intergovernmental affairs, Jacques Brassard, issued a comprehensive governmental position based on the (controversial) commissioned legal opinion formulated in 1991 by five international law experts. Besides affirming Québec's indivisibility, the document states the following concerning aboriginal peoples:

Aboriginal peoples have certain rights recognized by the international community and by international law. Every international law sources of authority confirm that native rights take effect within sovereign states. The rights recognized to natives do not question states' territorial integrity; no more in Québec, Canada or elsewhere. [...] Furthermore, let us recall that JBNQA states, at article 2.1 [my translation]: "In consideration of the rights and benefits herein set forth in favour of the James Bay and the Inuit of Québec, the James Bay and the Inuit of Québec hereby cede, release, surrender and convey all their Natives claims, rights, titles, interest, whatever they may be, in and to land in the Territory and in Québec, and Québec and Canada accept such surrender" [exact provision]¹⁴⁹.

This position, as we have seen before, was unacceptable for most First Nations chiefs. But the question of territorial integrity was not the only front upon which they would clash with the provincial government. At a less theoretical level, they were demanding to manage and share the exploitation of natural resources on their territories. But because of their ideological inclinations and their reading of Québec's interests, Québec officials were caught in a dynamic of constitutional powers protection and tended to take uncompromised positions with respect to resource management. For instance, the newly appointed delegate Minister for native affairs Guy Chevette declared:

"When they talk about rights over natural resources, we tell them [First Nations]: we are ready to negotiate some arrangements but I will remind you that art. 109 of the Canadian constitution says that natural resources are an exclusive property of provinces, without allocating any rights to any community [...] That is what guides us"(my translation).¹⁵⁰

¹⁴⁹ Québec government. 1997. "Le Québec et son territoire" : 4. [Online] <http://www.saic.gouv.qc.ca/publications/territoire-f.pdf>, Retrieved on March 6th, 2008.

¹⁵⁰ Québec National Assembly. April 25th 1996. *Journal des débats*. Commission des Institutions. [Online] <http://www.assnat.qc.ca/archives-35leg2se/fra/Publications/debats/journal/ci/980429.htm>, Retrieved March 15th, 2008.

Consequently, straightforward recognition of native rights over natural resources was generally denied by Québec representatives during the aftermath of the referendum.

But upholding such inflexible positions publicly was simultaneously becoming increasingly impossible. In many instances, First Nations had proven capable to seriously discredit separatists/PQ contentions by highlighting the inconsistencies between their political project and their actual behaviour towards others'. In the same time period, the Royal Commission on Aboriginal peoples' report was tabled (November 1996) and the magnitude of the changes it recommended in terms of constitutional protection, self-governance and self-determination could only highlight Québec's failure to appreciate aboriginal demands. Therefore, Québec leadership was faced with the urgent necessity to design a policy of its own capable of reconciling its interests and seducing First Nations' who were more open to compromise for the renewal of their relationship with the Québec government.

2.5.3 Partnership, Development, Actions: the New orientations of Québec government towards aboriginal peoples

Explaining the tangent the government was taking in April 1998, delegate Minister for native affairs Guy Chevrette stated the following: "The objective is to create a new dynamic based on thrust, respect and greater autonomy for native communities, while respecting the territorial integrity of Québec, third parties' rights and the needs of the Québec society as a whole"¹⁵¹. Four elements constituted the new strategy. Firstly, the government proposed the creation of a political lieu for direct debate and exchange, on a permanent basis, between native and non-native elected representatives. The second element was to achieve self-reliance and

¹⁵¹(My translation). *Journal des débats*. 29 Avril 1998, Étude des Crédits du Ministre responsable aux affaires autochtones. [Online] <http://www.assnat.qc.ca/archives-35leg2se/fra/publications/debats/journal/ci980429.htm>, Accessed

development agreements in order to enable native communities to reach greater autonomy in various sectors, in turn giving them the capacity to assume governmental responsibilities on given territories. The third element was the creation of a native development fund which was to be mainly financed by the Québec government: 125 millions\$ over a five year period would become available to communities lacking resources to launch projects providing employment opportunities¹⁵². The fourth measure concerned the reformation of the tax exemption system. In this area, says Chevrette, "the government intends to take a pragmatic and flexible approach, because [it is] aware that changes in this domain take time and that natives will need our support in this process"¹⁵³.

If the government affirmed his approach contained the seeds of relationship renewal, First Nations of Québec did not manifest the same certainty. In fact, the chief of the Assembly of First Nations of Québec and Labrador, Ghislain Picard could hardly conceive how a transformation of the relation between First Nations and the government could grow from a program entirely and unilaterally designed by the government¹⁵⁴. Furthermore, they were shocked that the government would bury the same old parameters for circumscribing aboriginal peoples' autonomy (territorial integrity, National Assembly sovereignty as well as legislative and by-laws efficiency) under the language of self-reliance and development. They also disapproved Québec's unilateral attempt to strip First Nations of their special right to fiscal exemption. In sum, argued Guy Bellefleur (an Innu representative), this policy did not constitute the nation-to-

¹⁵² The plan invites the federal government to contribute to the fund equally.

¹⁵³ Québec National Assembly. *Journal des débats*. 29 Avril 1998, Étude des Crédits du Ministre responsable aux affaires autochtones. (available online <http://www.assnat.qc.ca/archives-35leg2se/fra/publications/debats/journal/ci980429.htm>)

¹⁵⁴ Quoted in Cloutier, Mario. "Les premières nations rejettent les propositions de Chevrette". *Le Devoir*, 20 mai 1998 : A1.

nation treatment First Nations aspired to, in conformity with their distinct status, identity, history and goals¹⁵⁵.

Taking this stance towards the provincial policy however, did not mean that First Nations were unwilling to pursue negotiations; quite the contrary. In fact, they agreed with the development fund initiative. They supported the government's idea that land claim settlement negotiations should not preclude sector based arrangements. However, they held the view that for a truly new relationship to emerge, Québec nationalists still needed to undergo deep attitudinal change to become capable of understanding natives' desire to participate and be accepted as fully fledged actors in the definition of their future and to take actions coherent with this understanding. Along the process of institutionalizing this attitude would necessary become obvious how embedded beliefs positing aboriginal-state negotiations as a zero-sum game were deeply erroneous. Only then could the government talk meaningfully of relationship renewal.

2.6 Change and continuity: a formal assessment of 40 years of Québec- aboriginal relations

The goal of this chapter was to give to the reader an overview of the elements, in my view, that have structured aboriginal peoples' -especially Innus- relation with the Québec government between the 1960's and 2001. It is clear that throughout this period, albeit sometimes quite subtly, transitions have occurred. We have seen during the first period (between the 60's and 1978) that the relationship between the Québec government and aboriginal peoples was characterized by the colonizing will of the former and the resolute will to resist of the latter. It can thus be understood as "Colonizing-resilient relationship" period. Then,

¹⁵⁵ Ibid.

between 1978 and 1985 we observed a new type of rapport marked by the recognition of the aboriginal right to “conditionally” self-determine which could thus be labelled as the “Contingent recognition” period. Then, after the election of the PLQ in 1985 we are faced with a return to a situation of domination by the government, fuelled by Québécois’ dominant conceptions of nationalism. This could be summed up as the “Nationhood battle” period. Finally, the aftermath of the referendum until the end of 2001 was marked by a revision of Québec nationalists discourse to enable the recreation of the contingent self-determination proposed by René Lévesque with an accent on the economic dimension of autonomy. It can be viewed as the “Convenient partnership” period. Overall, it is undeniable that the relationship between the Québec government and aboriginal peoples has known ups and downs and that it cannot be understood as a linear evolution: it was mutually constructed and influenced by a plethora of factors that needs to be taken into account to understand the present colour of state-aboriginal relations.

2.7 The upcoming analysis

Statements about past relationships are tinted, as can be expected, by advocacy strategies and may or may not reflect reality. However, without comparing the Québec government’s policies and approaches with other governments’, we have nonetheless been able to trace the fundamental elements informing its aboriginal policy. While it has fluctuated in vocabulary and intensity throughout the years, we have seen how dominant conceptions of Québec’ political identity has led nationalist leaders to reproduce patterns of domination that in some respects were similar to colonial and/ or nation-state building projects. New self-

government arrangements are said to pave the way for breaking this mould. Is it the case? This is the issue the following chapter will attempt to address.

CHAPTER 3

3.1 Introduction

Having portrayed generally the relationship between aboriginal peoples and the Québec government over the last forty years, I will now examine whether or not the treaty negotiation process undertaken in the framework of Innu First Nations land claims enables the transformation of the existing institutionalized relationship of domination. This assessment will be conducted in two steps. Firstly will be analyzed the actual product of the treaty negotiations: the Agreement-in-principle of General nature (AIPOG). Secondly will be reviewed each relevant Parties' discourses concerning this agreement in order to validate the assessments flowing from the first section of this chapter. Synthesizing these elements together, I hope being able to make various statements about the meanings of self-determination, majority nationalism and postcolonialism for First Nations in today's Québec context.

3.1.1 The Agreement-in-principle of general nature

On March 31st 2004, the Government of Canada, the Government of Québec and the First Nations of Mamuitun and Nutashkuan signed the Agreement-in-principle of General nature (AIPOG)¹⁵⁶. This accord followed the prior agreement struck between the federal (André Maltais), provincial (Louis Bernard) and Innu (Remy Kurtness) negotiators on June 11, 2002. To be clear, the ratification of any agreement- in- principle is not legally binding for the Parties. However, reaching the step of ratifying a given agreement-in-principle is significant in the negotiations process of comprehensive land claim settlement because the accord has the

¹⁵⁶ At that stage, four first nations out of nine were part of the Agreement. Three were negotiating within the Mamuitun Council also known for being the Western bloc. It comprised Mashteuiatsh, Betsiamites (also called Pessamit), and Essipit. The last first nation broke from the Eastern bloc; Nutashkuan had joined Mamuitun's negotiation table. However, and this will be the object of the second part of this chapter, Betsiamites has withdrawn its assent to the process and is presently undergoing a lawsuit against the provincial government.

function of framing the terms of the final treaty which provisions are foreseen to be in accordance with. Thus, the object of our analysis is by definition open-ended *and* finite; the Parties want to keep for themselves as much bargaining leverage in domains where it suits them *and* define as precisely as possible areas where their fundamental interests are at stake in forecast of the subsequent step which is the negotiation of the final agreement. Consequently, despite the vagueness of some of its chapters, the AIPOG elicits the manners and principles according to which aboriginal autonomy is to be exercised as well as the Parties' respective intentions regarding relationship renewal. Hence this text is highly relevant to address this thesis' research question. Indeed, if for instance, nothing in the AIPOG enables self-governance and relational change, it would become reasonable to state that the upcoming treaty is unlikely to foster a rupture from a colonial/dominant past. On the other hand, if the AIPOG contains provisions promising large law-making powers, land management participation and /or veto powers at the beginning of decision –making processes, and a broader abandonment on federal and provincial governments' behalf of a conception according to which First Nations leaders are inapt to be considered as equals, we could safely expect that the upcoming treaty shall institute substantial change from a colonial past.

3.1.2 Description of the analytical grid

The grid of analysis used in this section was largely built from the AIPOG's content and structure. This decision implies both downfalls and advantages. Indeed, focusing on what *has been* negotiated limits the potential comparative scope of our analysis- that is, between modern treaties- but nonetheless permits to evaluate whether change is occurring in comparison to what was considered more generally a "colonizer-colonized" type of relationship. As was previously announced, the analysis starts by assessing each provision of the accord by taking

into consideration two levels of change. In the first case, the proposition that the *Indian Act* instituted aboriginal peoples as wards of the state¹⁵⁷ served as a departure point of comparison. Then, for each given provision I determined if the AIPOG implies change in the decision-making process in favour of the Innu First Nations party to the agreement. If so, I established whether it gives 1- recommendation power to Innu First Nations but no obligation from the state to comply, 2- consultative power to Innu First Nations coupled with state responsibility to accommodate on the basis of First Nations' opinions, 3- equal decision-making powers to the First Nations and the state, 4- veto powers to the benefit of the first Nations or 5- full autonomy.

The relational dimension implied by a provision is the second angle under which it is considered. From this perspective, the comparative starting point is that the Indian Act historically grounded the objective to assimilate aboriginal peoples into the dominant society. Consequently, each provision has been assessed regarding whether or not it aims at transforming this type of relational objective. If so, it had to be appraised according to the following categories: 1- ignorance of First Nations (slightly more benign than active assimilation), 2- control of First Nations, 3- (forced) acceptance of aboriginality, 4- recognition and respect of aboriginality, 5- mutual understanding (from and to the benefit of both dominant society and aboriginal peoples).

The table below summarizes into six categories the important elements of each chapter of the AIPOG. The next section's object is to explain in detail the nuances underlying each category's assessment.

¹⁵⁷ The most obvious example of this is that under the Indian Act the band council's decisions are never final: the minister of Indian Affairs can always reject them.

Grid of Analysis

Categories	Colonial/ Dominant Nationhood	Post-Colonial/ Nation-to-nation treatment
1. Aboriginal rights recognition	Assimilation	A mix of acceptance and domination with respect to territorial rights. Recognition with respect to cultural rights. Acceptance of socio-economic rights.
2. Territorial ownership and ensuing rights to the land	Trusteeship, ignorance of Innu values	<p>Innu Assi: a mix of veto powers and equal-decision-making powers; recognition and respect of aboriginality</p> <p>Nitassinan: consultative power (genuine participation) coupled with state obligation to accommodate; a mix of forced acceptance of aboriginality (land management/non-constitutionally protected protocol) and recognition and respect (royalty sharing,)</p> <p>Parks, heritage sites: equal decision-making powers; recognition and respect of aboriginal values</p> <p>Innu Aitun: mostly equal decision-making powers; control of the space where Innus can be autonomous-legally and geographically</p>
3. Self-governance	Trusteeship, assimilation	A mix of co-decision making powers and autonomy in the management and regulation of local affairs; limited acceptance that aboriginal people may exercise autonomy with respect to justice
4. Financial and fiscal issues	Trusteeship, ignorance	Recognition, co-decision-making powers
5. Socio-economic development	Trusteeship, ignorance	Recognition, direct involvement
6. Treaty Implementation	Trusteeship, ignorance	Recognition, co-decision making powers with regards to the review of treaty and implementation; full autonomy concerning citizenship

3.2 Analysis

3.2.1 Aboriginal rights recognition

Preamble The AIPOG begins with a preamble outlining the broader intentions of the Parties in coming to a comprehensive land claim settlement. In this case, a number of elements are worth mentioning for understanding the interests and visions of each party. Differing from colonial enterprises whereby aboriginal anterior occupation did not constitute an impediment to the affirmation of crown sovereignty¹⁵⁸, the AIPOG precedes a treaty between Parties who seek to “reconcile the prior presence” of First Nations “with the assertion of the sovereignty of the Crown”¹⁵⁹. Thus the AIPOG illustrates from the outset a mutual intention from the parties to compromise. Indeed, on the one hand it must be noted that by giving their assent to such a claim, Innu leadership accepted to put on the table a long held -and long denied by state representatives- conception of aboriginal sovereignty whereby ancestral lands simply *could not* be the object of tradeoffs between aboriginal peoples and the state. This constitutes a substantial Innu concession in attempting settlement. On the other hand, the statement expressed through the “recognition, confirmation and continuation of the aboriginal rights of first Nations [...] including aboriginal title, and not their extinguishment”¹⁶⁰ is an equally important concession from governmental representatives to try resolving the conflicts relative to territorial rights. Indeed, according to the 1973 federal policy on comprehensive land claim settlement (which is still orienting to this day most negotiations processes), the aboriginal party

¹⁵⁸ Again I must distinguish different epochs along which came different colonial attitudes. In the beginning of British colonization in Canada, the King recognized a form of aboriginal sovereignty in the Royal Proclamation. Later on, during the end of the nineteenth century, the Crown encouraged aboriginal cession of their lands by means of treaty in exchange for a fiduciary relationship and land reservations. By 1930 not all lands were cleared of aboriginal titles and in many cases, aboriginal peoples were simply ignored. Resources belonging to aboriginal lands were assumed to belong to the Canadian and Québec government until they decided to mobilize against neo-colonial enterprises.

¹⁵⁹ First Whereas: 6.

¹⁶⁰ Third Whereas: 6.

had to accept surrendering legally its titles to the land in order for governmental Parties to give their assent to a land claim settlement. By all means, the inclusion of such a statement is a significant achievement for Innu first Nations who, if it is to be recalled, were adamant during the nineties that nothing would convince them to legally abandon their titles to the land in exchange for financial compensations.

Conversely, the wording of other sections of the preamble reveals more what I call a “forced acceptance” of aboriginal title on governmental behalf than its carrying out of genuinely understanding practices towards Innu First Nations. This interpretation is reinforced by the observation that even recently governments altered their ways of dealing with issues concerning aboriginal peoples only *after* important Supreme Court decisions forcing them to respect and protect aboriginal rights, which they thereafter did, but always in accordance with the strictest interpretation of these decisions¹⁶¹. Furthermore, one could point out that the absence of rights extinguishment clauses is clearly counterweighted by the explicit acceptance by Innu Parties of the Crown’s discretionary rights. Indeed, the exercise of aboriginal rights, while remaining theoretically undefined according to the AIPOG, are stated to become formatted by the treaty with regards to the “ownership and use of the lands and resources of Nitassinan and as regards the relationship between Canada, Québec and Innu laws or other rules of law”. In other words, as a general rule save for exceptions stated in chapter three, Innu First Nations accept to forego all claims relative to their aboriginal rights if they are not explicitly addressed in the foreseen treaty. This provision is highly important to understand the conceived self-interest of the state, be it Canadian or Québécois. Very much inscribed in continuance with colonial practices, state

¹⁶¹ For instance, the 2004 Haida decision stated an obligation for governments, companies and third parties to consult aboriginal peoples prior to carrying out development project. The Québec government reacted by producing a provincial guide for conducting aboriginal consultation in 2006, yet it argued in Québec superior court that this decision did not apply on René Levasseur Island where it granted exploitation permits to Kruger- a territory claimed by Pessamit Innus.

representatives refuse to relinquish the degree of legal certainty they need to secure land ultimate ownership as well as the concomitant law enforcement in territories of ancestral importance for aboriginal peoples, In other words, they continue seeking to *control* as much as possible the normative and tangible space Innu First Nations will be able to occupy as a consequence of the treaty.

Two aspects of the relationship between the state and Innu First Nations seem to have nonetheless substantively changed: state and first nations representatives alike seem to be on the same page about the nature of aboriginal peoples' cultural and socio-economic rights and the connected responsibility for both Parties to protect and promote them. In the first instance the Parties affirm recognizing Nitassinan's¹⁶² "fundamental importance for [Innus'] distinctive culture and [...] agree upon protecting this bond in accordance with the provisions provided for in this treaty". At a strictly rhetorical level, this affirmation is strikingly different from previous assimilationist goals underlying the creation by the Canadian state of Indian reservations. Similarly, unlike past instances when the governments acted as though they were not compelled to ensure economic well-being within Indian reservations and provide resources for local development, all Parties seem now to agree that enabling means to facilitate economic growth within Innu communities is part of relationship renewal. How these relational elements concretely promise change will be elicited during the review of chapters five and thirteen.

Chapter 3 Chapter three is entitled General provisions, and, in conjunction with the preamble, it functions to outline the general relationship the governments will entertain with Innu First Nations and their future governments- the latter are also known in the AIPOG as "Innu

¹⁶² Nitassinan signifies Innus' ancestral territories, which would be translated from ilnu (innu language) to English by "our land". It is a territory where innus will receive royalties (to be explained later) and will enjoy in it the right to practice traditional activities, Innu Aitun (to be explained later).

tshishe utshimaut”. Taken comprehensively, this part of the treaty fulfills two purposes very much in line with our prior observations. The first one is to affirm that the state formally recognizes aboriginal rights. This is done by acknowledging the fundamental value of the foreseen treaty, setting its status within the highest law of the land, the 1982 Constitution Act¹⁶³. Similarly, the AIPOG recognizes Innus’ “inherent right to self-governance”¹⁶⁴ and the fundamental value of Innu culture and language. The second objective is to carefully position the normative standing of the recognized rights within the umbrella of state sovereignty. Indeed, it may very well be the case that ancestral rights flow from pre-colonization occupation of the land; however the enjoyment and protection of these prerogatives are contingent upon the acceptance of First Nations that as of today, the land they claim is bounded by federal and provincial jurisdictions.

Aside of eliciting these fundamental objectives, chapter three formalizes the Parties’ acceptance to renegotiate the application of aboriginal rights and aboriginal title in the advent of the entrenchment in the constitution of more expansive aboriginal rights, from the moment they enter into force¹⁶⁵. Likewise, if a higher court rules upon the existence of an aboriginal right not included in the treaty, the Parties agree to negotiate¹⁶⁶ regarding how Innu First Nations will be able to benefit from the newly defined right¹⁶⁷. As a whole, these provisions certainly respond to Innu leaders’ concern to both settle their land claim while making sure not to be prevented the enjoyment of future constitutional changes related to aboriginal rights and autonomy. This is intrinsically linked to the abandonment of the extinguishment clause whereby governmental representatives demonstrate their acceptance of aboriginal perspectives and

¹⁶³ Art. 3.2.1

¹⁶⁴ Art. 3.2.3

¹⁶⁵ Art. 3.3.11

¹⁶⁶ And if negotiations are unsuccessful, they jointly decided to submit the settlement of the dispute to arbitration.

¹⁶⁷ Art. 3.3.13

interests where in the past they completely ignored them; treaties signed in the colonial era were pretty much considered an unrestricted and eternal guarantee that First Nations could never again claim a say in the management and exploitation of their ancestral lands. This change is also visible through the AIPOG provision affirming that outstanding issues linked to the extinguishment of Innu rights by the James Bay and Northern Quebec Agreement's will be settled prior to the ratification of the final agreement¹⁶⁸, arguably a form of state recognition that aboriginal grievances related to the JBNQA can no longer be ignored.

Yet, once again, the conciliatory spirit of these provisions is somewhat undermined by the avoidance of developing further the scope of shared sovereignty which was an ideal long demanded by Innu first nations¹⁶⁹. For instance the AIPOG states that in cases where the Crown's rights with respect to the land are challenged following a court decision on aboriginal title, the former are preferred to prevail¹⁷⁰. In other words, miles away from a nation-to-nation relationship characterized by the mutual recognition of each collectivity's status and rights equality, the AIPOG announces a state-aboriginal rapport whereby the alienation of aboriginal rights remains a privilege of the Crown. Another sign of rigidity is perceivable through the absence of prescription attached to the foreseen treaty; it will be of "infinite duration"¹⁷¹. This provision is not without being reminiscent of treaties signed during the colonial era when state-aboriginal peoples' agreements conceded the cession of territories to the Crown forever. In the present case, the only manner according to which Innu first nations will be able to seek the transformation of the balance of power flowing from the treaty is through the review process

¹⁶⁸ Art. 3.4.2

¹⁶⁹ These ideals were formulated by the Conseil Atikamekw- Montagnais in numerous briefs presented to both the federal and provincial governments during the eighties and nineties, as formerly discussed in chapter two.

¹⁷⁰ Art. 3.3.6

¹⁷¹ Art.3.3.10

set out in chapter 17, planned to occur in the AIPOG once every seven years¹⁷². While the review process will be presented below, it can still be stated as a general rule that the decision to make the treaty “infinite in duration” it is in the interest of the majority and the state: to make it difficult or impossible for the minority to impulse structural changes to impact decision-making processes equates to legally freeze a power configuration that in all likelihood favours state Parties.

Thus, the first category can be summed up in a rather straightforward manner: if we only seek to unveil broader conceptions with regards to the relationship governmental representatives envision with Innu First Nations, we can affirm that the former accept the existence of aboriginal rights while they remain resolute in limiting the consequences these rights can have on the assertion of the state upon claimed lands. The extent to which cultural and socio-economic rights are recognized shall however be better understood through the examination of subsequent chapters.

3.2.2 Territorial ownership and ensuing rights to the land

Chapter 4 Chapter four, entitled “Lands”, deals with the future territorial regime which will apply upon lands claimed by Innu signatories. As such, it must be understood as a pivotal section of the AIPOG. This is the case firstly because the establishment of a different land regime implies setting up different normative and legal parameters than those enforced upon the majority with regards to resources exploitation. Considering how First Nations were in the past legally subjected to rules denying the existence of differential prerogatives, the provisions examined thereafter potentially contain the seeds of the emergence of a new relationship. Furthermore,

¹⁷² Ibid.

this chapter of the agreement-in-principle is fundamental because it delineates the geographic space upon which rights emanating from the affirmation and recognition of Innus' aboriginal title will be enjoyed and aboriginal self-government will be exercised. Still it must be kept in mind that the implementation modalities of the land regime will vary for each Innu First Nation signatory to the final agreement¹⁷³.

The chapter four of the AIPOG establishes two categories of land from which flow two different applications of Innus' aboriginal title: Nitassinan and Innu Assi. Upon lands of the former category, the provincial government will remain the ultimate property owner. However a share of the license fees it collects from the exploitation of the natural resources under its jurisdiction is planned to be diverted to the benefit of Innu governments. Furthermore, in response to Innus' repeatedly affirmed desire to be actors in the management and conservation of Nitassinan and its resources, Innus' participation to governmental processes in that field is planned to be enhanced¹⁷⁴. These two prerogatives constitute the most substantive changes from "colonial" power balances that used to prevail upon Innus' ancestral lands and despite popular urban legends affirming the contrary, the AIPOG does not propose conceding to future Innu governments veto powers of any sort upon Nitassinan. Now, although chapter four outlines the scope of Nitassinan, the implications relative to the exercise of aboriginal title in Nitassinan are detailed later in the AIPOG, such as in chapter five- the right to the practice of innu aitun- and in chapter six- participation in the management of lands, natural resources and environment.

The second land category, "Innu Assi", was decided by the Parties to be almost completely owned by Innu First Nations since it will be the very territorial basis of Innus' future

¹⁷³ As of April 2007 the Nitassinan of Mashteuiatsh was determined to cover 79 062km², Essipit: 8403km² and Nutakuan: 51950km². Conseil Mamuitun. *Sheue Innu newsletter*. May 2007 .

<http://www.mamuitun.com/pdf/SHEUE%20INNU%20-%20SPECIAL%20-%20FRANCAIS-Net.pdf>

¹⁷⁴ This is the object of chapter six.

self-government. Here again, the final dimensions of these territories shall reflect the number of Innu First Nations signatory to the final agreement: each First Nation will be transferred a land base to exercise its territorial powers which shall equate to the -variable- enlargement of its actual reserve. In this respect, save for the exception of Nutashkuan First Nation which would see its territory increase substantially from .2 km² (its actual reserve) to 2507.29 km², the territorial transfers to the benefit of the other First Nations remain modest¹⁷⁵. By way of comparison, 35 years ago the Crees signed the JBNQA which transferred to each Cree the equivalent of .81km² of territory whereas according to the AIPOG, each Innu citizen would be transferred .34km² in full ownership¹⁷⁶. The fact that Nutashkuan negotiators accepted to let hydraulic and mineral development remain a prerogative of the provincial government -upon which the Nutashkuan First Nation must give its consent and will be transferred 25% of undivided share for a project to be launched- is certainly no stranger to the comparatively significant territorial enlargement which is foreseen to be gained by Nutashkuan First Nation.

According to article 4.2.3, aboriginal title, within Innu Assi lands, "shall include full attributes of ownership of soil and subsoil, including the right to freely and fully use, enjoy and dispose of these lands and in particular to exploit fauna, aquatic, water, hydraulic, forest and mineral resources therein¹⁷⁷". Now, aside of the debatable importance of Innu Assis' size, to which must be remembered Innu negotiators have given their consent through presumably

¹⁷⁵ In the case of Mashteuiatsh, the territory owned would increase of approximately 150km², from 15.24km² to 167km². For Essipit, the actual reserve of 0.8625 km² would be enlarged to 48.86 km². In the case of Pessamit, which as I will discuss later on has dropped out of the negotiation process, the reserve would have grow from 255.4km² to about 310km².

¹⁷⁶ These figures would drop today since Cree population increased significantly. They were 6500 to get 5590km²; they are now approximately 14000.

¹⁷⁷ Once more, there is an exception to this article with regards to hydraulic and mineral development. According to art. 4.2.5: in Nutashkuan's Innu Assi, which is planned to be considerably larger than other Innu First Nations', Québec shall retain the ownership of hydraulic and mineral resources but the exploration, exploitation and issuance of subsurface rights shall not be carried out accorded without the consent of the First Nation and whom will hold 25 % undivided share in the ownership of minerals and subsurface rights.

intense negotiation processes, the fact that the AIPOG proposes to Innu communities to *own* the territory and resources upon which they live must be acknowledged to be a significant improvement from their anterior power leverage in the management of the reserve defined by the Indian Act:

60. (1) The Governor in Council may at the request of a band grant to the band the right to exercise such control and management over lands in the reserve occupied by that band as the Governor in Council considers desirable. (2) The Governor in Council may at any time withdraw from a band a right conferred on the band under subsection (1)¹⁷⁸.

Indeed, from effectively no vested right to have the final say in managing the reserved lands, Innu signatories' can now anticipate a time that is perhaps not equivalent to aboriginal sovereignty on the totality of their ancestral lands but closer to self-determination within a limited portion of it.

Furthermore, besides the creation of Innu Assi, the AIPOG plans the establishment of heritage sites and parks upon Innu ancestral lands in which their contribution to the management shall be secured. In the case of heritage sites, the lands will be jointly selected by Innu representatives and the Québec government and these will become subject to adapted and mutually agreed upon rules of law -drawn from those already regulating public lands- to achieve the paramount objective of protecting Innu's patrimonial heritage¹⁷⁹. Parks, on the other hand, shall be exclusively managed by Innu governments by means of a perpetual trust or a long term lease- renewable in perpetuity- and the regulations in force within these parks "shall take into consideration the international definition of parks, taking into consideration the particularities

¹⁷⁸ Indian Act. Canadian Legislation. Art. 60.

¹⁷⁹ Art. 4.6.1

arising from aboriginal management and the recognition of the international community of the special status of aboriginals in these matters”¹⁸⁰.

All in all, these latter provisions are incontestably paving the way for meaningful change to occur according to both angles interesting this thesis’ investigation: from a time where Innu First Nations and their conceptions of land and resource protection were simply ignored for being inferior to state know-how, the AIPOG recognize Innu’s differentiated knowledge concerning land management and accordingly, plans to hybridize state practices by normalizing this expertise’s specific qualities. Considering that these provisions of the land regime meet pivotal Innu requests, and granted that they are further consolidated in the final agreement, it can be anticipated that Innu First Nations and the majority’s relationship will move beyond the dominated- dominant paradigm. Whether this will be the case or not will be however only revealed by the specific content of the final agreement.

Chapter 5 Chapter five touches upon a central aspect briefly introduced earlier: the right to practice Innu Aitun. According to article 1.5 of the AIPOG,

Innu Aitun designates all activities, in their traditional or modern manifestation, relating to the national culture, fundamental values and traditional lifestyle of the Innus associated with the occupation and use of Nitassinan and to the special bond they have with the land. These include in particular all practices, customs and traditions, including hunting, fishing, trapping and gathering activities for subsistence, ritual or social purposes. All spiritual, cultural, social and community aspects are an integral part thereof. The commercial aspects are, however, governed by the prevailing legislation of Canada and Quebec.

¹⁸⁰ Art. 4.7.1

The definition of “Innu Aitun”¹⁸¹ emanates, at least partly, from historically conflicting dynamics between Aboriginal Peoples in general (and Innu First Nations in particular) and provincial authorities regarding the use of public lands and the harvesting of its resources¹⁸². Now, although this affirmation clearly affects third parties’ rights and “privileges” in that Innus will have the opportunity to regulate their ancestral activities in Nitassinan in a manner that might differ from existing legislation, the AIPOG’s provisions themselves are not particularly innovative; they merely comply with recent Supreme Court jurisprudence¹⁸³. That being said, the Parties have agreed in the AIPOG that Innus may sell for subsistence purposes the products of fishing, hunting and gathering¹⁸⁴ safe for species under structured resource management-classification of which will be determined prior to the signing of the treaty¹⁸⁵.

More related to the measure of change is the issue of how exactly Innu Aitun will be regulated. In this regard, the Parties agreed that even though its practice will be governed by laws and regulations enacted by the Innu legislative assemblies¹⁸⁶, Innu Aitun activities are to remain subordinate to Canadian and Québec laws and requirements regarding resource preservation, habitat protection, the preservation of public health and of public safety¹⁸⁷. Innu instruments for controlling Innu harvesting activities, that is permits, certificates and authorizations, are to be harmonized with Canada’s and Québec’s, especially concerning the

¹⁸¹ It can be viewed alternatively as an affirmation from the state to non-aboriginals about Innus’ priority in practicing traditional activities within their ancestral territories.

¹⁸² The most notorious standoffs were seen in Restigouche during the seventies and early eighties but tensions with respect to differential law enforcement were expressed by various participants of the 2003 commission on the Agreement in principle which will be discussed in the discourse analysis below. Also see: Charest, Paul. 2003. “Qui a peur des innus?”, *Anthropologie et société*. 27 (2): 185-206.

¹⁸³ *Delgamuukw* (1997), a landmark Supreme Court decision, explicated the substance of aboriginal title and its connection to the exercise of traditional activities¹⁸³ while *Marshall* (2005) stated that aboriginal title generally did not encompass commercial activities tied to lands upon which aboriginals’ sought their claims validated.

¹⁸⁴ Art. 5.2.4

¹⁸⁵ Art. 5.4.2

¹⁸⁶ Art. 5.2.2

¹⁸⁷ Art. 5.2.5

transportation of species and its existing international regulation¹⁸⁸. Article 5.10 specifies that the Parties will agree upon the methods to monitor and manage wildlife, which will thereafter be the responsibility of Innu governments whom will mandate territorial officers to enforce legislation. Outside Nitassinan Innu permits shall be recognized by the federal and provincial governments- with the exception of those related to salted waters- as well as between Innu tshishe utshimaut.¹⁸⁹ Finally, exportation permits outside Canada and Québec shall remained governed by the latter's laws¹⁹⁰ safe for cases where, after the request of a First Nation, legislation regarding the exportation of Innu handicrafts has been adapted to promote Innus' culture and participation into international affairs¹⁹¹.

Of all things agreed upon in this chapter of the AIPOG arise similar observations from those emanating from the prior category. For example, article 5.3.2 is unambiguous in securing the scope of state sovereignty: "Canada and Québec, within their respective jurisdictions, retain the ultimate responsibility for resource conservation, protection of habitats and their environment as well as the preservation of public health and safety." This means that even if Innu governments are granted the competence to legislate upon their citizens'¹⁹² activities, they may be disqualified to enact laws or design policies if the federal or provincial governments invoke their "ultimate responsibilities" concerning the above fields of competency. This may be of no concrete consequences if state representatives do not intend to abuse this safeguard clause but in analyzing whether change is occurring on both analytical levels, this provision indicates resilience on behalf of state representatives to bypass the historical relationship of domination they entertained with Innu communities. Conversely, one cannot ignore that

¹⁸⁸ Art. 5.7.1

¹⁸⁹ Art. 5.11.1

¹⁹⁰ Art. 5.12.1

¹⁹¹ Art. 5.12.2

¹⁹² In chapter 16 will be discussed the issue of citizenship.

Canada and Québec's capacity to interfere within Innu affairs will also be greatly constrained as a result of the future treaty. Indeed, if jurisdictional disagreements occurred regarding the regulation of Innu Aitun, Innus would become able to rest their case against the future treaty's objectives regarding the promotion of Innu Aitun's continuity and the necessity to draw upon *both* the knowledge and expertise of the Innus and that of the scientific community¹⁹³.

Chapter 6 Chapter six elaborates upon themes dealt with in previous chapters: it defines how Innus shall participate in the management of lands, natural resources and the environment on Nitassinan, the land composing the majority of the land claim settlement. Keeping in mind the long battle carried out by Innus to be considered an equal agent in the decision-making structures managing Nitassinan, one easily figures that this chapter is fundamental in assessing whether or not relational change can be coming along state-aboriginal treaty making. Firstly is enunciated the principle underlying this section's redaction: that Canada and Québec undertake to "ensure the genuine and significant participation of the Innu tshishe utshimaut in the decision-making process relating to the management of land, environment and natural resources on Nitassinan". Then are outlined the objectives attached to the exercise of Innus' genuine participation, which the Parties affirm being committed to pursue the achievement. Yet, right after having affirmed their noble intention, the Parties add that these very objectives are non-binding and in turn, that they "may not be the object of legal recourse" in the advent of a failure to attain them. On a side note, it is striking that this "non-binding" section is the one appearing to reflect most comprehensively Innu concerns towards Nitassinan. Indeed, non-binding objectives include to: "contribute jointly to ensure that the use and protection of the lands and resources on Nitassinan respect the rights protected by the treaty", "promote compatibility between the practice of Innu Aitun and the development of natural resources",

¹⁹³ Article 5.1.1

promote the use of millenary knowledge and expertise of the Innus in land management, natural resource management and environmental protection” and “ensure the consultation of First Nations by taking into account their cultural specificities”. Again, this may be of no concrete consequence but one wonders why is it necessary to include these provisions in a constitutionally protected treaty if not to ensure governmental parties’ capability to always act in the majority’s interest.

At the institutional level, the Parties nonetheless agreed upon the creation of “sectoral liaison committees” and of a “participation coordinating body”. These new structures’ foreseen duties will mainly revolve around the general objective of ensuring the genuine participation to the management of the land, environment and resources on Nitassinan of Innu First Nations which protocol of application will soon be discussed below. As their titles indicate, the former are designed to connect the various representative instances acting within the decision-making process while the latter shall have for mandate to guarantee and monitor the good functioning of the overall genuine participation process. Both bodies shall be equally represented by all three Parties and their recommendations will once again be non-binding. In sum, from no formal ways of conducting co-decision making process, Innus and state authorities will be acting jointly in at least two bodies whose missions will be to make Innu participation in land management structures a reality. This is a transformation not to be neglected.

Perhaps heavier in consequence are the agreed upon instances when the provisions of chapter six shall apply. According to section 6.5.2, the genuine participation proceedings shall take place as soon as new laws, regulations or legislative amendments concerning land, environmental and natural resources management are being crafted, throughout the

implementation of the primary planning process¹⁹⁴ and finally during the environmental assessment of development projects (always on Nitassinan). However article 6.5.3 plans that “the manner in which genuine participation is to be exercised shall be determined in the complementary agreements concluded prior to the signing of the treaty.” In the view of many critics of state contemporary practices towards aboriginal peoples, it is all too coherent that governmental representatives avoid protecting constitutionally Innus’ privilege to play a role at the beginning of decision-making processes due to its judicially constraining effects¹⁹⁵. Article 6.5.6 reinforces this interpretation by only conceding recommendation powers to Innu governments in matters related to Innu participation in development projects in general ¹⁹⁶; final say shall remain in the hands of the minister in charge of territorial planning. In the event of a persisting disagreement between the Parties, no compensatory measures can be demanded by Innu governments. However, compensations shall be negotiated if negative environmental impacts are produced by development projects involving forest management plans, the realisation of mining projects and the creation of structured territories¹⁹⁷.

With respect to environmental assessment, a sensitive domain for Innus who have repeatedly expressed their concerns to put into place development practices respecting principles of sustainable development, the Parties agreed to decide upon a directive ensuring Innu participation prior to the signing of the treaty¹⁹⁸. Similarly, article 6.8.1 also states that Canada shall *consult* Innu governments in formulating its positions regarding international

¹⁹⁴ This refers to particularly the allocation of Crown lands, development of public territory, structured territories, management of marine environment, migratory birds and the management of forest resources. Art. 6.5.2

¹⁹⁵ Comments formulated by aboriginal law specialist Jean-Paul Lacasse.

¹⁹⁶ Section 6.6

¹⁹⁷ In accordance with Canadian case law these activities are considered as development projects whose environmental assessment is subject to genuine participation.

¹⁹⁸ Section 6.7

discussions which may affect the natural resources mentioned in the final treaty¹⁹⁹. Whether or not these statements reflect substantial commitments will be revealed through practice.

Finally, chapter six envisions setting up a pilot experiment involving the Québec government and First Nations to explore a concrete procedure for putting into practice the principle of genuine participation. Since this pilot experiment is presently occurring in Mashteuiasth, Essipit and Nutashkuan, I will briefly stop the analysis of the AIPOG to address this issue and resume the analysis of this category afterwards, continuing with chapter seven.

*Agreement protocol on a pilot experiment for the participation of Mashteuiasth, Essipit and Nutakuan First Nations to the creation of the Public lands allocation plan (PATP)*²⁰⁰

The PATP protocol was signed between the Québec government and the remaining three Innu First Nations on May 3rd 2006. Presented as an “integral part” of the protocol, the preamble reiterates that the aim of the pilot experiment and the future agreement it may give birth to is to render territorial planning conform to the concept of Innus’ genuine participation²⁰¹. As a whole, this section emphasizes how Innus’ holistic vision of nature and its calls for implementing integrated territorial planning practices²⁰² are being endorsed as guiding axioms for Nitassinan’s future territorial organization. Next is explained that the genuine

¹⁹⁹ First Nations have long demanded to be consulted prior negotiations are being held on the international stage upon issues affecting them.

²⁰⁰ The protocol was written in French and is entitled Plan d’affectation du territoire public. Thus it was decided to keep the acronym in French for future references.

²⁰¹ Article 1.1

²⁰² Generally, this means a way of taking decisions based and subordinated upon the observation that nature and humans’ survival are mutually dependent that nature is not simply a resource but a life habitat, that “production maximisation” needs to be replaced by the “optimalization” of production means and that Innus’ territorial belonging feelings based on their historical and contemporary occupation of Nitassinan needs to be fully taken account in planning territorial usages, etc.

participation process shall occur within four steps. Firstly, all the relevant information is to be collected and consultation within concerned communities is conducted to enrich the data gathered. The preliminary PATP is prepared afterwards. The third step involves the submission of the preliminary PATP for another round of consultation. The process terminates with the examination of the final PATP.

According to the protocol, Innu participation will take place from the very beginning of the PATP's elaboration process until its very end by means of general consultation of Innu representatives and through Innu participation within the technical and liaison committees where Innu representatives must equal in number with Québec government's representatives. The technical and liaison committees' duties are to ensure that talks and information exchange between the Parties are fluid at all times, especially in the advent of dispute regarding any aspect of the plan elaboration. As in other domains reviewed above, the protocol leaves the final say's prerogative regarding territorial planning to the Québec government. At the same time, the protocol sets an array of procedures complicating the continuance of straight forward ignorance by state representatives of Innus' positions regarding territorial planning. Indeed, prior to the decision-making stage, that is, before submitting the PATP to the province's executive council for approval, the Minister of natural resources has to send a copy of the PATP to Innu First Nations representatives who then have 30 days to submit a final opinion upon it. Once the Minister received this written final opinion, he must present it along the final PATP to the government's executive council. Furthermore, prior to the approval step, the Minister of natural resources has to produce a report indicating if and how the agreed process for genuine participation has been respected; the efforts made to obtain an "enlightened opinion" from First Nations, taking into account their rights, interests and concerns and where appropriate, efforts made to accommodate them and the positions expressed by First Nations about the residual

effects caused by the PATP and its effects on their rights, concerns and interests²⁰³. This report is to be taken into account in the decision to approve or not the plan. Once the decision is made, the Minister of Natural resources must inform First Nations' representatives about it and when relevant, he must provide to them the reasons why their positions were rejected.

Unfortunately, it is too early to state to what extent this protocol will be successful in changing the anterior decision-making structure. However, even if it recognizes only recommendation and consultative powers to Innu First Nations party to the agreement, it is clear that the implementation of this protocol will enable them to render accountable the government for their actions if they do not comply with their own commitments. Unlike in the past when no procedure existed to protect Innu First Nations against insensitive state officials, the treaty negotiation process establishes a structure helping Innus to force the governments to compromise and take into consideration Innus views even they do not match that of their representatives. Evidently the sole implementation of the protocol does not warranty that Innus' power leverage will be levelled to that of the government on matters of territorial planning. Nonetheless, and especially if one draws conclusion from the Cree experiment since the JBNQA, there is great hope that the institutionalization of co-decision making structure can create the tools and opportunities for Innu leadership to transform the relationship they entertain with the majority towards greater equality.

Chapter 7 Innus' entitlement to royalties upon resources exploitation revenues²⁰⁴ is the object of chapter seven but much of it has yet to be negotiated. According to this section, the

²⁰³ Section 5.

²⁰⁴ According to article 7.1, this entitlement is said to flow from the rights recognized in Chapter 3 upon Nitassinan.

exact proportion of the Québec government revenues transferred to Innu governments remains to be settled before the final treaty but the AIPOG suggests that it shall be no less than 3%²⁰⁵ and the sources of income involved include those drawn from forest exploitation, public lands leases, water power development and surface mineral substances, gas and petroleum extraction and leases of exclusive rights upon wildlife as well as hunting, fishing and trapping permits²⁰⁶. Unlike other non-negotiable (final) parts of the foreseen treaty, the chapter on royalty sharing expects that the list of source revenues included to the “equalization” formula shall be adaptable to the variation of the structure of royalties collected by the Québec government²⁰⁷. The flexibility here proposed is an interesting option since in the past governments did not accept revisiting an aspect of an agreement if it had become irrelevant to new realities. Imagining that the final treaty would eschew readjustments and that due to unexpected factors the Québec government decided, for instance, to abandon hydroelectric energy to replace it by nuclear facilities in Nitassinan, Innu governments would lose the royalties without straightforward compensations. In short, because the Québec and Innu governments become partners of revenue collection upon Nitassinan, it appears that the future relationship has greater chances to move beyond domination towards understanding and cooperation.

Summary To summarize the second category, it must be stated that all four chapters do contain provisions enabling both relational and balance of power transformations. Yet the importance of the changes it could bring about will tend to vary substantially in accordance with the intricacies of the future land regime. Within Innu Assi, parks and heritage sites, Innus will in all likeliness enjoy a mix of full autonomy and co-decision making powers with limited legislative autonomy as soon as federal jurisdiction overlap Innus. Thus, within Innus Assi one can

²⁰⁵ Article 7.2

²⁰⁶ Article 7.3

²⁰⁷ Article 7.4

anticipate that the Parties shall move towards a relationship marked by the recognition of Innu rights and the acknowledgement of a necessity to hybridize institutions in order for first nations to fully benefit from the treaty. On Nitassinan, the changes to be expected are slightly less dramatic. Indeed, and due to the vastness of these territories, Innus would largely be recognized consultative powers in the management, development and preservation of the land and resources it contains. Again, the fact that Innus will not hold veto powers does not imply that their views will continue being systematically dismissed²⁰⁸. Rather it can be expected that these First Nations' leverage to force the Québec government to honour its commitment regarding Innus' significant participation, even though the principle is non-binding and its protocol of implementation is not constitutionally protected, would be enhanced by virtue of the simple moral weight the future treaty will carry. If this materializes we could observe a transition from ignorance of aboriginal rights and values towards a forced acceptance of these rights and values on Nitassinan. This however supposes a consolidation of Innu leadership by way of greater social mobilization within First Nations and by the making of alliances outside the communities to publicize the government's failure to abide by its commitments. Finally, the regulation of the practice of Innu Aitun, save for a few exceptions, will become the responsibility of Innu governments. In contrast with the present regime whereby Innus must obtain permits from the responsible provincial institution in order to be legally able to fish, hunt and trap, the foreseen treaty promises definite improvement for achieving Innu self-determination within Nitassinan. At the same time, the agreed provisions clearly stop short from by-passing old tendencies to control the expression of Innus' traditional livelihoods: the regulation adopted by Innu

²⁰⁸ Again, Crees are member of a nation whose aboriginal title to the land was extinguished by the JBNQA. Yet the Cree leadership crushed a number of undertakings from the Québec government's which in their view did not respect Crees rights flowing from the JBNQA. Noteworthy examples are their successful battle against Great Whale river project in the early nineties and their stoic affirmation of Crees' right to remain in Canada in the advent of Québec sovereignty.

governments will have to meet provincial and federal requirements of all sorts which might in the end have the effect of eroding the feeling of self-determination emanating from the autonomous management of Innu Aitun. All in all, the interest of the majority continues to prevail over Innus' collective desires: the priority is the social acceptability of Innu Aitun, that is, the implicit requirement that the majority does not oppose the consequences of governmental recognition of Innus' right to practice their traditional activities upon their ancestral lands.

3.2.3 Self-governance

The Canadian government has adopted a policy on the recognition of aboriginal peoples' inherent right to self-government in August 1995. From this time onwards, it has officially taken the position that arrangements instituting aboriginal self-governments could also be constitutionally protected, provided that the province party to a given agreement also gave its consent to its constitutionalization. It is now time to look deeper into the implications of such policy and view how powers and jurisdictions are reshaped in a "modern" arrangement institutionalizing aboriginal self-government in the Québec-Canadian context.

Chapter 8 Chapter eight is the densest and most complicated chapter of the AIPOG. This is the case because it outlines the legislative hierarchy (general rules and exceptions) that shall prevail as a result of the future treaty between Innu First Nations, the Québec and the Canadian government. To begin with, it states that each Innu First Nations will adopt democratically its own constitution and that the written document, the fundamental law of each Innu Assi, shall define *at least* the rules establishing Innu citizenship, the selection of leaders, the procedures guiding the exercise of power to enact laws and the composition of the legislative body, the

publication of laws and regulations, the rules of accountability and the rendering of account, the rights of appeals and recourse and the mechanisms for constitutional ratification and amendment²⁰⁹.

On Innu Assi and upon persons thereon, the Innu governments are granted the general power to enact laws regarding the organization, general welfare, development and good government of their community in compliance with the future treaty's provisions. As wide as these legislative powers may seem at first sight, there are however many areas excluded from the general legislative competence of future Innu governments upon Innu Assi. Indeed, matters listed in article 91 of the Constitution Act, 1867- matters belonging to federal jurisdictions²¹⁰-, issues related to immigration, to the establishment of legal persons (except for the purpose of self-governance), to the issuance of vehicle registrations, transport permits and drivers licenses, to the manufacture of alcoholic beverages, drugs and medication and finally matters connected to compensations for damages covered by a public no-fault indemnification plan are excluded from Innu legislative competences²¹¹. Yet, these excluded areas of governance may become the object of bilateral negotiations to take into account "special circumstances experienced within First Nations, particularly in the matter of broadcasting in the Innu language" by way of complementary agreements²¹². To put it succinctly, because of the "extra-aboriginal" scope of the above matters, the federal and provincial governments prefer to retain their ultimate control but are willing to make some adjustments if it appears that some dimensions of these areas of governance could be better managed at the Innu Assi level; the protection of the innu language is one example where the governments intend to set into place mechanisms providing for greater autonomy than the current system allows.

²⁰⁹ Articles 8.1.1, 8.1.2 and 8.1.4.

²¹⁰ Except for matters listed in Art. 8.4.4.1. These will be reviewed later in the text.

²¹¹ Art. 8.3.1.2

²¹² Art. 8.3.1.3

Of all fields where the governments display the greatest acceptance to let Innus self-determinate, the area of culture is probably the most apparent. In fact, cultural protection is one of the few domains where Innu laws may apply *outside* Innu Assis. For instance, section 8.3.2 proposes that Innus legislative assemblies shall have the power to enact laws protecting Innus' patrimonial heritage within heritage sites. Article 8.3.3.2 goes even further by stating that Innu laws relative to the protection and authenticity of Innu heritage shall apply everywhere in Canada and Québec²¹³. These provisions clearly transgress the traditional frontier between colonizer and colonized and for that reason they must be highlighted to nuance previous assessments which tended to weigh in favour of continuity rather than change.

This brings us to another important element concerning our general research question: the extent to which Canadian and Québec law continue to prevail within the self-government territorial basis. Perhaps it is pertinent to remind the reader that this issue is a highly contentious one in aboriginal politics; one only needs remembering the normative debates surrounding the issue of the Canadian Charter of rights and freedoms' applicability upon reserved lands to grasp why²¹⁴. In the case interesting us it is impossible to say whether First Nations negotiators battled significantly over this issue; the Canadian Charters of rights and freedoms and the Civil Code will continue to apply in matters of private law²¹⁵. At the same time continue is altered by article 8.4.1.2 which states that "each first nation may adopt an Innu charter of rights and freedoms which shall bring out its distinctive philosophy, traditions and cultural practices". The joint recognition of potentially conflicting charters reveals a greater understanding of the importance of collective rights for Innu First Nations on the behalf of state

²¹³ Through procedures to be determined prior to the ratification of the final Treaty.

²¹⁴ Contested was the precedence of individual rights over collective rights as a foundation of the Canadian normative order which some aboriginal leaders argued was incompatible with First Nations philosophies.

²¹⁵ Article 8.4.1 and 8.4.3.1. In the latter case Innu laws may derogate in matters mentioned in 8.4.4.1

representatives as well as the acceptance by Innu representatives that the individual rights protected by the Canadian Charter are not necessarily eroding aboriginal conceptions of their rights. Technically it must also be added that the constitutional protection sought by Innus is nowadays rooted in articles 25 and 35 of the 1982 Constitutional Act due to Supreme Court interpretations of the Charter; it would be contradictory for Innu leadership to seek the enjoyment of the legal protection afforded by the Act while simultaneously refusing to recognize it as having force of law upon its citizens.

In case of conflict between the treaty and laws of general application or with Canadian and Québec laws implementing the treaty, the AIPOG states that the provisions of the treaty shall prevail to the extent of the inconsistency²¹⁶. This being said, it remains important to figure out exactly *when* Innu laws adopted solely by Innu legislative assemblies will prevail over Canada's or Québec's in the event of conflict. Article 8.4.4.1 enumerates the matters for which it would be the case²¹⁷. They include: the organization and internal management of Innu governments and their own institutions; the management of the rights and benefits ensuing from the treaty; the protection and diffusion of any element of Innu culture, language and identity²¹⁸; the practice of Innu Aitun²¹⁹; Innu Assi's control and management (including its resources and land tenure); the environment provided that the current and potential effects of governance are limited to Innu Assi; education, from preschool to high-school education (including adult and vocational training); marriage (subject to legislation on minimum age -16- and monogamy) and the solemnization of marriage (understanding that the applicable law is that of the territory where the marriage is solemnized); family law (filiation, adoption, parental

²¹⁶ Article 8.4.2.1

²¹⁷ In a few instances these overlap with federal jurisdiction.

²¹⁸ Safe for the right to be registered under the Indian Act.

²¹⁹ Safe for its practice in salt water and commercial aspects and subjected to agreed upon conservation and preservation measures.

authority, child custody, matrimonial regimes, youth protection, successions and wills²²⁰; peace, safety and public order (subject to laws on national security and national interest); police, fire brigade services and territorial agents; health and social agencies as well as early childhood education; traditional medicine (subject to laws on public health); income security and last resort assistance; labour training and development; Innu handicraft's and heritage standards of quality and authenticity for both trade and protection (subject to laws on intellectual property), and finally, any other matter or field agreed upon before the conclusion of the final treaty.

This means, in practical terms, that within Innu Assi, Innu First Nations will have the jurisdictions to enact laws, administrate and design policy upon virtually every aspect of governance which is presently exercised by the Québec government as a provincial government. The most tangible limits to Innu governments' legislative power will be felt in matters where Innu laws will need to comply with federal laws and for some exceptional matters (criminal law and criminal procedure, protection of intellectual property, radio-communication and telecommunications and any matters regulating uranium or nuclear energy) Innus assemblies will not be recognized the jurisdiction to enact laws²²¹. Innu governments will be able to adapt education, health and a wide array of services to better suit the needs of its population. No matter which way one looks at it, the forecast is strikingly different from any prospect under the Indian Act. Provided that an adequate funding formula will be adopted, it seems unequivocally that the governments accepted to render meaningful the right of Innu First Nations to self-govern.

Chapter 9 Chapter nine elaborates upon another dimension of self-governance briefly introduced in chapter eight which may reveal critical in qualifying the changes modern treaties

²²⁰ Including the testamentary capacity of Innu citizens.

²²¹ Article 8.4.4.2

bring on their path: the administration of justice. Indeed, it has long been documented that aboriginal peoples are considerably overrepresented within the Canadian penal system²²². Furthermore, the culturally insensitive law enforcement by non-aboriginal judges and police officers has often been singled out as an important factor explaining such an outcome. The observation of these connections has led many to conclude that indeed law enforcement needed to be reformed to take into account the realities of aboriginal peoples and in as much as possible, to facilitate the use of traditional ways of mediating conflicts within communities over strictly westernized ways of punishing offenses. In Québec, the acknowledgement that adjusting the justice system was necessary came along broader introspection about the Oka crisis; the sad event was followed by several provincial- First Nations agreements transferring to band councils the responsibility of administering the police. Yet establishing a judicial system responsive to aboriginal peoples' norms and practices has proven more difficult to achieve thus far, possibly due to a lack of political will to attack the challenges of managing legal pluralisms. Let us now examine how the AIPOG fares in this respect.

The chapter begins by announcing the guidelines framing the transition towards Innu self-administration of justice: the treaty, "in an orderly and progressive manner", shall contain provisions defining the measures establishing the new Innu justice system and the "gradual putting into place of measures for the adaptation of the legal systems of Canada and Québec to the reality and cultural practices of the Innus"²²³. Next follows the Parties' statement that they agree to examine during the first review of the treaty²²⁴ the possibility to enlarge Innu courts' jurisdictions to include civil, penal and criminal matters²²⁵. Until then, Innu legislative assemblies

²²² Couture, 1995. *La Justice par et pour les autochtones*.

²²³ Article 9.1.1

²²⁴ Planned to occur seven years after the ratification of the treaty, the treaty review process is the object of chapter 17.

²²⁵ Article 9.1.2

may enact laws to constitute and maintain a tribunal in charge of administering Innu laws²²⁶ which decisions shall be of quasi-judicial nature²²⁷. In that event, laws providing for the selection, mandate, powers and remuneration of the judges as well as laws explicating judicial deontology shall also be adopted by Innu assemblies²²⁸. The tribunal's functioning must respect the legal guarantees provided by the Québec and Canadian Charters of rights and freedoms as well as with the future Innu charters that may be enacted within each Innu first nation²²⁹. Once these requirements are fulfilled, the Innu government and its institutions shall be empowered to initiate proceedings in connection with Innu legal offenses²³⁰. Additionally, the Parties also agreed that Innu governments *may* institute "alternative community mechanisms for dispute resolution that may take the form of mediation, arbitration, non-judicial treatment as well as mechanisms for the application of social reintegration programs" which shall be outlined in the treaty. This implies that alternate mechanisms aiming to better respond to Innu realities will in fact be designed by both the Québec and Innu representatives rather than uniquely by Innu legislative assemblies²³¹.

With regards to the court system, it is important to emphasize that only a limited autonomy in favour of Innu First Nations shall be constitutionally protected. Indeed, until the treaty review process is conducted, which *may* transfer to Innus the judiciary responsibilities provinces constitutionally hold, the Innu tribunal shall not be a court within the meaning of section 96 of the Constitution Act, 1867²³². Consequently, appeals of the decisions of the Innu

²²⁶ Article 9.2.1

²²⁷ Article 9.2.5

²²⁸ Article 9.2.2

²²⁹ Article 9.2.3.

²³⁰ Article 9.2.8

²³¹ Article 9.2.9

²³² Article 9.2.1

tribunal will take place before the competent courts of Québec²³³. Additionally, even though much of the spirit of the chapter is about making the court system responsive to Innu realities, the AIPOG states that in the advent of conflict between Innu laws and laws of general application of Canada or Québec in matters of penal or civil procedure, the federal and provincial laws will be deemed to prevail to the extent of the inconsistency or conflict. Conversely, governmental Parties display greater willingness to adapt the enforcement law system within ad hoc frameworks. Indeed, in accordance with a possible complementary agreement signed to this effect, Québec may appoint an Innu judge who could act as a prosecutor for Innu criminal offenses²³⁴. Additionally, the Parties agree to gradually put into place the following measures: to conduct court hearings within Innu First Nations (rather than in far-away urban centers), to raise Québec judges, lawyers and whomever enforces the law upon Innus' awareness, to hire and train -when possible- Innus in various positions of the legal system and finally, with respect to setting sentences, to enhance the cooperation between Innu community mediators in advising the provincial tribunals²³⁵.

Whether the avoidance of constitutionally protecting changes to the current justice systems reflects patent paternalism from governmental authorities, state representatives' preference for status quo or plain managerial precaution remains speculative. However the decision to leave most of the concrete and substantive aspects of justice administration out of the realm of constitutional protection reinforces broader conclusions concerning the advent of a new relationship brought about by current state-aboriginal treaties: the governments are not ready (for whatever reason this case may be) to accept Innu norms as equally forceful to the common law or the civil code *even within* Innu Assi. But it is perhaps overly presumptuous to

²³³ Article 9.2.5

²³⁴ Article 9.2.6

²³⁵ Article 9.3.2

speak of these issues prior to viewing the final treaty and perhaps even before witnessing the outcomes of the review process; it is certainly not an easy task to transit so drastically from one legal system to another without doing so incrementally. One could perhaps more safely wait and see which criteria will be used to determine whether or not Innus shall be transferred penal and criminal jurisdictions to take a stance upon the readiness of governmental representatives to recognize the validity of innu judicial norms. Will the effect self-administration of justice has on First Nations penitentiary detention or will the governmental observance that Innu institutions master the judiciary know-how of the dominant society be the evaluating threshold for broader judiciary autonomy? Regardless of the future, the AIPOG only allows to foresee at the relational level a transition from trusteeship to a varying control regarding Innus' future management of criminal, penal and civil offenses. Under the power reconfiguration angle, Innus will be given co-decision making powers for quasi-judiciary purposes as well as consultative powers which may have more substantive implications along the signing of complementary agreements adapting the current provincial system of justice.

In sum, the latter chapters defining the exercise of Innus' right to self-governance propose to transfer to Innus' future governments the powers to manage and regulate local affairs within Innu Assi, safe for cultural matters where Innu laws shall prevail outside these territories, in fields that previously belonged to the Québec government's jurisdiction. Yet as soon as matters of Innus' self-governance overlap provincial territories and federal jurisdictions, Innus are no longer recognized the competency to define *by themselves* the parameters of law making and enforcement within Innu collectivities; in these cases, Innu regulation will have to comply with federal and provincial laws of general application, as will be set out within the final treaty. Now, it is important to be careful in qualifying the deeper implications of such

statements. Perhaps these were perfectly acceptable for Innu leadership. The short section analysing the discourse of Innu negotiators will help us to take a clearer stance upon this issue.

3.2.4 Financial and fiscal issues

Perhaps the most well-known dimension of state-aboriginal treaty-making is the aspect involving mutual agreement upon financial compensations to settle the aboriginal land claim. Public attention to this aspect is largely tributary of the impressive sums of money involved which logic of attribution can be summarized as the following: the more the governments have interests in clearing aboriginal claims upon a given territory, be it for development or strategic purposes, the more the governments will offer to settle the case quickly, hoping that in exchange aboriginal peoples will forego participation in the management of their ancestral lands. In the case of Innus' land claim negotiation process, it must be nonetheless noted that the bargaining leverage of each First Nations varies greatly according to their geographic location. Besides I would like to emphasize that it is not considered in this thesis that measuring change involves comparing cash offers per se since it is probably the least demanding part of state-aboriginal treaty making and is a well-established practice in Canada. What could reveal change is the acceptance by the governments that cash settlements may not appreciate unforeseen damages or the possibility that the land's value may skyrocket after settlement; this would mean that cash settlements would not be considered "final" but rather set for a negotiated period of time. Let us turn to how chapter ten deals with these issues.

Chapter 10 Aside of amounts that may definitely change between the AIPOG's signature and the final treaty's²³⁶, article 10.6.1 states that the treaty shall include a release by the Innus for the benefit of Canada or Québec for any damage resulting from the infringement of the rights recognized in the treaty in Canada which occurred *prior* to the date of the treaty or, in the case of a right referred to in section 3.3.13 (a definitive judgement of Supreme court on the exercise of aboriginal title), prior to the date of recognition of this right. It is important to stress that the release is restricted to past infringements; it does not release Canada or Québec from future responsibilities to respect Innus' aboriginal title. Another interesting aspect of the chapter is that the Parties agree that this release shall not affect third parties' rights at stake in other negotiations for land claim settlements²³⁷. This again shows a novel acceptance of aboriginal rights with regards to their ancestral lands, acceptance which was non-existent from a colonial perspective. Finally, article 10.6.3 states that any pending legal actions against Canada, Québec or one of its agents and corporations (including HQ and its subsidiaries) in which an Innu First Nation is petitioner party (and Party to the settlement) shall be withdrawn²³⁸.

The dimension of land claim settlement related to financing is less known due to its connection to the implementation of self-governance, a relatively recent and complex matter. It is nonetheless a pragmatic issue to be dealt with: the governments' concern is to ensure that their contribution related to the exercise of governmental activities should steadily decrease over the years after the finalisation of the treaty, the latter promoting ever greater self-

²³⁶ Through article 10.1.1 Canada offers a capital transfer of \$236 million to the First Nations of Mamuitun (Mashteuiahtsh, Essipit and Pessamit- whom we know has left the agreement) and \$23.5 million to Nutashkuan. 10.2 states that Québec shall pay an indemnity, as compensations for past development to Pessamit (\$75 million), Essipit (\$750 000) and for Mastheuiatsh (amount to be determined).

²³⁷ Article 10.6.2

²³⁸ This provision would become impossible to accept for the Innu first Nation of Pessamit; during the summer of 2005 Pessamit leaders to a fall out with the Québec government over logging rights upon René Levasseur Island. Tardif, Daniel. « Demande d'injonction des Innus de Betsiamites - Kruger n'aurait pas dû se retrouver devant les tribunaux ». *Le Devoir*, May 27, 2005. En ligne : <http://www.ledevoir.com/2005/05/27/82653.html#content>

sufficiency; for aboriginal representatives the conundrum is to retain as much as possible sources of financing, aside of financial compensations and royalties, in order to build (from scratch) institutions with sufficient financial capabilities to provide good services to the aboriginal population.

The second article of chapter eleven reflects exactly the governments' preoccupations. Indeed it states "that the financing of self-government is a joint responsibility. Their common objective is that, with time, when feasible, the first nations will resort less and less to Canada and Québec financing". Next Innus' interests are addressed: until self-sufficiency is reached, the Parties shall convene periodically to conclude financing agreements to allow the Innu governments to provide services equivalent to those existing in neighbouring communities in Québec and to exercise the responsibilities linked to the management of lands, natural resources and the environment, as shall be provided for in the final treaty²³⁹. The inscription in the treaty of this joint obligation to negotiate financing agreements speaks apparently to lessons drawn by other aboriginal peoples' own transition towards self-governance. Indeed, the Crees, the Inuits from Nunavut, Nunavik, Labrador and Yukon, (to name only a few) have long complained about how difficult it has been for them to secure the funds to pay for the costs of providing the services which responsibility they were newly transferred. From these prior experiences, Innu representatives have understood that an important challenge awaiting them throughout their transition to autonomy was to ensure predictable and fair governmental transfers²⁴⁰. Thus, the AIPOG enumerates various factors to be taken into account while determining the formula establishing base funding. Half of them respond to Innus' concern to reduce the future weight to be bared as a result of an increase of the services' cost they will

²³⁹ Article 11.3.1 a) & b)

²⁴⁰ These issues, by the way, also animated federal- provincial disputes regarding the equalization program; they are not specific to state-aboriginal negotiations.

provide (demographics, geographic distribution of the population, etc.) while the other half answers to governmental concern to keep control of its expenses (e.g.: “existing budgetary policies”).

Next chapter eleven talks about the first financing agreement to be negotiated: the Parties must foresee much higher functioning costs at the beginning of the implementation of the final treaty than later on, when Innu governments will have gained experience of their own²⁴¹. Article 11.3.7 in turn elaborates upon subsequent financing agreements: they shall include provisions determining the repartition of the costs of treaty implementation and will outline a mechanism for temporary funding in “case of significant revenue fluctuations which take time to be reflected in the official data”. As a whole, these provisions overwhelmingly suggest a significant break from older state tendencies to ignore aboriginal economic needs and, although the mechanisms to be implemented will not be constitutionally protected, the treaty will spell out the state obligation to address issues crucial to Innus’ exercise of self-governance.

Besides these advances, the Parties also agreed to negotiate, prior to the treaty, “an agreement on the own source revenue capacity of Innu governments”²⁴² which goal will be to progressively reduce governmental financing in a manner that shall not discourage First Nations from earning and increasing its own source revenue²⁴³. The equation for determining Innu governments’ own source revenue shall not take into account cash settlements agreed for in chapter ten, the royalties agreed for in chapter seven, the transfers issued from the financial agreements set out in chapter eleven as well as the transfers paying for services offered to the population at large that are not provided for by Innu governments²⁴⁴. Furthermore, the Parties

²⁴¹ Article 11.3.6

²⁴² Article 11.4.1: They “shall define, in particular, the revenue capacity for each revenue source taken into account, their inclusion rate and the phase-in rates in order to calculate such own revenue capacity”.

²⁴³ Article 11.4.2 a) & b).

²⁴⁴ Article 11.4.3

agreed to establish a joint tripartite financial committee equally represented by nominees from Canadian, Québec and Innu governments which shall operate by consensus and whose mandate will be to review each agreement and recommend the appropriate measures to facilitate the administration thereof²⁴⁵. The chapter terminates with a notwithstanding clause to the benefit of the governments which by now will appear standard to the reader: “The recognition under the treaty of a jurisdiction of a First Nation does not entail an obligation by Canada or Québec to provide funding”. This means pragmatically that the governments’ funding responsibilities towards Innu governments are purposely limited to those which will be explicitly mentioned in the final treaty.

The last chapter relevant to financial and fiscal issues is chapter twelve on taxation. Unfortunately, this chapter is very slim in content and indeed it would have been very interesting to learn more about this aspect: taxation is a very controversial issue in state-aboriginal politics since the “privilege” of remaining tax free is seen by some aboriginal leaders as an aboriginal people vested right. Other leaders can hardly imagine a structure of self-governance that would eschew taxing its citizens; it is certainly a conceptual as much as a practical challenge to come up with an alternative way of “running” self-governance. On governmental representatives’ behalf, the view is relatively unanimous upon the necessity of Innu governments to collect taxes because it admittedly corresponds to their interest to successfully render aboriginal peoples’ self-sufficient.

The AIPOG nonetheless plans that Innu legislative assemblies shall have the power to enact laws in matters of direct taxation according to the provisions set out in the treaty or complementary agreements²⁴⁶. The tax treatment will be determined prior to the signing of the treaty and the latter will explicit the transitory manners according to which the First Nations will

²⁴⁵ Article 11.6.1 and 11.6.2

²⁴⁶ Article 12.1

abandon the Indian Act's tax exemption regime (section 87) towards the introduction of the Innu tax regime. In short, it is clear that Innu First Nations Party to the final agreement will forego the Indian exemption system but the modalities of this transformation are yet to be determined²⁴⁷.

Returning to the grid of analysis this section brings interesting nuances with respect to the prior assessments of the potential relationship that could emerge between the state and Innu First Nations. Elements of continuity are visible through the insistence by the government that crucial parts (such as financing agreements) of the agreement shall not be constitutionally protected. Still, one could rightfully argue that these tendencies are also visible within federal-provincial equalization programs disputes hence indicating that these issues are not limited to state-aboriginal politics but to the practice of federalism in general. Taken broadly however, most of this category betrays a governmental acceptance of Innus' right to be given the means to self-govern, evidence that state-aboriginal relationship *can* move beyond histories of domination. Changes can also be expected at the level of power configuration. Indeed the modalities of financing self-government will be jointly determined by the Innu as well as provincial and federal governments instead of unilaterally, as was generally done in the past. In this respect Innu First Nations can definitely expect letting behind their trustee status within the Canadian federal framework. Denying this reality would equate to saying that provinces neither have meaningful autonomy or that the only way First Nations can truly enjoy determining their future would be by way of having unconditional financial transfers; a definitely unrealistic standard in today's world.

²⁴⁷ We will see in the section analyzing discourses that this issue is one of the main reason why other Innu First Nation affirm that it is not in their interest for them to join in the negotiation process to settle the land claim.

3.2.5 Socio-Economic development

A consequence of the recognition of Innus rights and the mutual agreement about the need for most First Nations to socio-economically catch-up with neighbouring municipalities, the Parties agree to take measures to enable Innus participation to the extraction, development and processing of natural resources upon Nitassinan²⁴⁸. This commitment is contingent upon the acceptance by First Nations that rules governing the exploitation of these resources remain the same for all users; complementary agreements may be negotiated to adapt general rules to the needs and condition of First Nations. The economic activities from which Innus' will increasingly benefit according to the AIPOG are principally related to forest exploitation and hydroelectric development. In the first domain it is agreed that the Innu government of Mashteuiatsh, Essipit and Nutashkuan shall be reserved respectively 250 000, 100 000 and 250 000 cubic meters of lumber²⁴⁹. The Québec government also undertakes to ensure the quality of the stocks to enhance its profitability and prior to the signing of the treaty, it shall announce a timetable for the achievement of these commitments²⁵⁰. Innu tshishe utshimaut may determine its own silvicultural method but article 13.4.4 states that these methods should at least be equivalent to Québec standards. Concerning hydroelectric development Québec agree to set aside for the exclusive use of Innu First Nations a volume of energy (between 30 and 50 Megawatts)²⁵¹ and to give priority to the First Nation of Nutashkuan on the development of hydraulic power of 50 MW or less on its Innu Assi²⁵². These prerogatives, article 13.5.3 says, shall not prevent Innus from

²⁴⁸ Article 13.1.1

²⁴⁹ Article 13.4.1. Pessamit would have also been reserved 250 000 cubic meters of lumber were it still part of the AIPOG

²⁵⁰ Article 13.4.2, 13.4.3.

²⁵¹ Article 13.5.1

²⁵² Article 13.5.2

being partners in other hydroelectric projects. The manner according to which this will occur shall also be the object of a complementary agreement²⁵³.

The Parties also agree, for the purpose of raising the socioeconomic development level of First Nations, to implement a tripartite fund which may total up to 35 million\$²⁵⁴. To a similar effect the Parties intend to promote First Nations' participation to major economic projects by way of public and private partnerships; in all cases the term of this participation shall be decided by way of agreements between the interested Parties²⁵⁵. Also in order to accelerate First Nations' economic development, the Parties decided to instigate training and employment opportunities development measures. Both Canada and Québec shall support the financing of these measures which shall be of affirmative action or financial assistance nature (enterprises tax credit or subsidy) in the objective of giving Innus employment priority in enterprises exploiting natural resources of Nitassinan²⁵⁶. Lastly, it is agreed by the Parties to create a follow-up committee which shall evaluate the attainment of the objectives mentioned above. No mention is made to the non-binding character of the recommendation that shall be offered by the Committee.

As was mentioned in the first section discussing Innus' rights, a great level of convergence seem to unite all Parties about how problematic the socioeconomic status of First Nations is and accordingly, that measures must be taken to remediate to this situation. In order to turn these observations into history, governments are willing to implement affirmative action measures going against the grain of classical liberal postulates. This type of strategy was ostracized by older generations of politicians, such as Trudeau's inner circle, who thought the solution to aboriginal poverty was to simply eliminate discriminating legal status. Governments

²⁵³ Article 13.5.4

²⁵⁴ Article 13.6.1

²⁵⁵ Article 13.7.1 to 13.8.2.

²⁵⁶ Articles 13.9.1 to 13.9.4

are also willing to reserve a portion of natural resources' development for the benefit of First Nations; this was never a concern for governments in the colonial era who saw First Nations as unfit to achieve their own economic development. Being able to make a living of the resources from their ancestral lands is a wish formulated by most aboriginal peoples across the world; indeed the inclusion of a provision guaranteeing the right of aboriginal peoples to live and prosper from their ancestral territories and its resources was considered fundamental in the process of adopting the Declaration on the rights of Indigenous peoples at the United Nations. Because of the substantial level of commitment displayed by all Parties regarding socioeconomic development, it must be stated that the future treaty could help the protagonists to reach an unprecedented level of understanding that would significantly overtake the colonizer-colonized relationship. Once more, the extent to which this assessment is valid shall be enlightened in the section analyzing the discourse of the Parties.

3.2.6 Treaty Implementation

The last category encompasses four chapters dealing with issues of technical and substantive scope²⁵⁷. Chapter fourteen elicits the procedure for defining and enforcing the rules of eligibility and enrolment of the treaty beneficiaries. These rules are to be defined by an Enrolment Committee to be established *exclusively* by Innu legislative assemblies no later than fifteen days after the entry into force of the final treaty. Chapter fifteen elaborates the framework for dispute resolution, the last resort to which the Parties can turn themselves to if informal and talks conducted in a spirit of good faith failed to solve outstanding conflicts with

²⁵⁷ The last two chapters are excluded because they are mainly of technical nature and do not add to the present analysis.

respect to the application and interpretation of the Treaty²⁵⁸. The first mechanism to which any Parties can initiate is the Joint review procedure conducted by the Joint review committee (whose members shall equally represent each Party). If this step proves unsuccessful a party can submit the conflict to mediation (the mediator is chosen by consensus)²⁵⁹ and ultimately, to arbitration. Because by definition arbitration is binding, this process is reserved for specific sections of the future treaty²⁶⁰. One such case concerns section 3.3.13, which specifies how an aboriginal right not recognized by the treaty but affirmed through a decision of a court of final instance may also be enjoyed by Innu signatories. If, after having mediated the issue regarding 3.3.13 the arbitrator is unsuccessful in getting the agreement of the parties, the arbitrator will then act as an “amiable compositeur” and “shall establish the effects and manners in which the aboriginal right is recognized by the court, which shall be incorporated in the treaty”, [...] preserving the balance in the relations between the Parties²⁶¹. The parties shall equally bear the costs relating to the application of this chapter²⁶².

Chapter sixteen tackles the issue of treaty implementation by setting firstly that the final treaty will contain an implementation plan (which shall not create obligations for the Parties unless agreed otherwise) and secondly, that the entry into force of the treaty shall be shortly followed by the establishment of a Treaty implementation committee whose composition, operating procedure and responsibilities shall be determined prior to the final treaty signature. Its duties will obviously encompass the supervision of the treaty implementation but will also involve preparing an annual public report, monitoring the application of the implementation

²⁵⁸ Article 15.1.1 to 15.2.3

²⁵⁹ A maximum of 75 days can elapse between the submission by a party to the joint review procedure and its termination through mediation. The recommendations formulated through both procedures are once again non-binding. Section 15.3 and 15.4

²⁶⁰ Article 15.1.1

²⁶¹ Article 15.5.5

²⁶² Article 15.7.1

plan and making various recommendations regarding the financing necessary to the implementation of the treaty. These recommendations may be taken in account into the renewal of the financing agreements mentioned in chapter eleven. The last issue is connected to the already highlighted importance given to socioeconomic catching up: “given the utmost importance of building capacities of the Innus”, the Parties agreed to examine Innus’ needs regarding the implementation of the treaty and fully exploit existing programs’ tools in order to facilitate Innus’ enjoyment of the economic benefits brought about by the conclusion of the treaty²⁶³.

Finally, chapter seventeen elaborates upon perhaps the most important aspect of the category: the amendment and the review of the treaty. As a general rule the treaty is permanent and all parties must consent to its amendment²⁶⁴. The review procedure is to be conducted periodically (the AIPOG plans for the review to occur every seven years) but does not intend to call into questions the fundamental precepts underlying the conclusion of the treaty²⁶⁵. Rather the review process may deal with *any* aspect of the Treaty safe for compensations or economic development funds provided for in 10.1, 10.2, 10.3 and 13.6²⁶⁶. Chapter 17 also states that a special review of the chapter of the treaty dealing with self-governance can be inducted by First Nations if following the finalization of a land claim agreement, another First Nations is consented legislative powers substantially more extensive than those provided for in the treaty *and* if more than three years would have to elapse before the next treaty review²⁶⁷. Each party shall appoint a representative that is not normally involved

²⁶³ Section 16.4

²⁶⁴ Article 17.2.1

²⁶⁵ Article 17.2.2

²⁶⁶ Again the amounts may change by the ratification stage.

²⁶⁷ Article 17.2.6

in the implementation of the treaty and the Parties will attempt to complete the review process within twelve months²⁶⁸.

This last category touching upon practical issues of treaty implementation effectively concedes the acceptance that the treaty may evolve as a result of the evolution of aboriginal self-governance in Canada. The inclusion of this dimension concretely enables Innu First Nations to give their consent to a format of self-governance that may not be equal to a stricter definition of aboriginal sovereignty but which will be a novel starting point for subsequent advances to reach broader autonomy. From pupils of the state Innus will become interlocutors whose consent will become required for the Treaty to be changed in whatever way and will also become enabled to influence the tangent according to which the exercise of self-governance may evolve due to their representation in all the committees to be established as a result of the conclusion of the Treaty.

Now that we have thoroughly examined the AIPOG and that we have a clearer idea of the possibilities and limits Innus' state-aboriginal treaty is likely to foster, it is time to turn to the analysis of the views of the First Nations and governmental representatives to validate and refine the assessments provided above.

3.3 Discourse analysis

As already mentioned, specific discursive elements are thought necessary to be appraised to determine if the relationship between the Québécois majority and Innus is moving beyond Euro-settlers' domination towards greater and genuine equality between these peoples. Having paid a close attention to Québec officials' dominant discourses concerning aboriginal peoples over the last forty years, significant relational transformation is expected to be revealed

²⁶⁸ Article 17.2.9 and 17.2.10

on two levels: 1- a form of recognition of Innu territorial sovereignty that would transcend the paramountcy of Québec's territorial integrity; 2- a genuine valorization and integration of aboriginal knowledge in land, resources and environmental management practices accompanied by the acknowledgement by decision-makers that development in lands belonging to aboriginal peoples require their consent and participation. On the Innu side, manifestations of change are expected to be expressed by their explicit statement that the AIPOG, as it is, permits the aforementioned changes to take place in reality. By looking at the parliamentary commission proceedings that took place between January and March 2003 and the various briefs submitted by Innu parties after this commission to the provincial government in various occasions (until December 2007), this last analysis also intends to complete previous assessments left on hold. Indeed, three elements of section 3.2 needed further data to be properly nuanced: the reasons why Pessamit decided to opt out of the AIPOG, if and how chapter 8 and 9 responded adequately to Innu First Nations' quests with regards to their exercise of self-governance and finally whether chapter 13 on socioeconomic development met satisfactorily Innu First Nations' desire to determine their future economically. The next section will touch upon these issues by examining firstly First Nations' positions which express both assent and dissent towards the AIPOG and secondly, those of governmental officials who also convey mitigated impressions upon the matter of change.

3.3.1. The Mamuitun Bloc

It is at the very beginning of the public consultation of January 2003 that most Innu representatives expressed their views regarding the positive aspects and the drawbacks of the

AIPOG²⁶⁹. Globally, it is fair to say that the discourse held by the leaders of the Mamuitun bloc was pretty unanimous upon the positive character of the AIPOG²⁷⁰. In fact, only one group from Mashteuiatsh named the Autochtons Coalition Ukaumau Aimu, lead by Jeanne-Mance Charlish and Francine Buckwell, expressed a position mainly dissident to the AIPOG²⁷¹. According to formally elected Innu representatives however, the AIPOG embodies mutual attitudinal transformations in various ways. The first one, according to Innu chief negotiator Remy Kurtness, concerns the Québec government and Innu parties' acceptance to eschew the issue of territorial integrity for the benefit of broader agreement between the Parties. Indeed, they agreed in principle that **both** Peoples held the inalienable right to claim territorial ownership. In his view, the AIPOG recognizes this reality by relinquishing the affirmation of Québec's territorial integrity and proposes instead to define new rules of territorial ownership and to harmonize Innu and Québécois rules to reflect this mutual acknowledgement²⁷². Similarly, according to Nutashkuan leader Richard Malec, the agreed provisions cannot be interpreted as a victory for one side at the expense of the other. He stated:

We can only be delighted of the result obtained by the negotiation teams and the legal experts committee on this point. The Parties achieved a settlement meeting the interests of everybody, namely that along the recognition of our

²⁶⁹ Once more, Mashteuiatsh, Essipit and Pessamit Councils are all members of the Mamuitun negotiation table until May 2005.

²⁷⁰ Québec National Assembly. Testimony from Remy Kurtness. *Journal des débats*. Commission des institutions. January 21st 2003. <http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030121.htm>

²⁷¹ The main point upon which they disagree is about the process according to which off-reserve Innu remain incapable of voting in Mashteuiatsh despite the Corbière decision which has the effect of excluding them of the democratic process related to the future adoption or refusal of the final treaty. The group these women represent do not accept the legitimacy of the definition and the scope of autonomy that would belong to Innus upon Nitassinan, which they argue is far too limited. Québec National Assembly. *Journal des débats*. Commission des institutions. 26 février 2003. <http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030226.htm>

²⁷² Québec National Assembly. Testimony from Remy Kurtness. *Journal des débats*. Commission des institutions. January 21st 2003. <http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030121.htm>

rights the Crown gains the degree of legal certainty it seeks regarding the modalities of exercise of our rights²⁷³.

Overall, the Mamuitun and Nutashkuan First Nations representatives appeared thus very proud to have participated to the establishment of a new formula of aboriginal rights recognition, the first one of its kind in Canadian history.

We also raised earlier the hypothesis that the Québec government, in its concern to protect the interest of the majority, sought to limit as much as possible the provisions constitutionally protected and deal with them within the framework of complementary agreements. On this issue, Remy Kurtness affirmed that in some instances it was desirable for both Parties to forgo the constitutional protection of agreements, especially if the issue at stake is expected to fluctuate throughout time. At the same time, as a general rule, the Innu position would generally endeavor the greatest constitutional protection of agreements²⁷⁴. This question appeared to us particularly relevant for the establishment of the mechanism of genuine participation dealt with in chapter 6. Unfortunately, Innu leaders of the Mamuitun bloc did not specifically speak of this issue during the 2003 public consultation. Nonetheless, the Council of Essipit did express the view in 2004 that the pilot experiment enables Innu intervention at the beginning of the negotiation process, which in turn facilitates the genuine appreciation of Innu rights, interests and aspirations during the establishment of policies and intervention norms²⁷⁵. This opinion is shared by Nutashkuan and Masteuiatsh leaders but it is no longer considered sufficient by Pessamit leaders, as will be shortly seen.

²⁷³ (My translation). Ibid.

²⁷⁴ Ibid.

²⁷⁵ Ross, Denis. (2004), " L'expérience de la communauté d'Essipit " in *Actes du colloque : les Premières Nations et les mesures d'harmonisation en milieu forestier*. Colloquium held in Wendake, March 9 to March 11 2004. « Dans le cadre de cette expérience, notre intervention à ce chapitre se situe en amont des processus de consultation et est donc, de ce fait, de nature à favoriser la prise en compte réelle des droits, des intérêts, des préoccupations et des aspiration des Innus lors de l'élaboration des politiques et de l'établissement des normes d'intervention ».

Innu leaders affirmed being satisfied with the scope of autonomy regarding justice administration planned in the the AIPOG. In the view of Remy Kurtness, criminal law is bound to remain a federal jurisdiction. What matters for Innu parties is that the AIPOG allows for the establishment of Innu tribunals which at last will take into account Innu cultures in their duty to enforce laws and by-laws²⁷⁶. Another view expressed by then Mastheuiatsh chief Clifford Moar highlights the function played by the AIPOG to facilitate the self-determination sought by Innus for decades. He stated:

The treaty we wish to achieve based on the present agreement in principle will contain, we believe it sincerely, the main tools we need to take the lead of our destiny. It will constitute a fundamental milestone in the construction of our collective future and an important mean to protect our identity. [...] At the same time, we will gain the unique opportunity to advantageously contribute to the development of the regions in which we live. [...]Future investments will be enhanced by the partnerships emerging from the future treaty. [...] We must all clearly realize that we do have a common future but also that our differences are sources of wealth²⁷⁷.

In the view of Mamuitun bloc leaders the AIPOG and the future treaty are thus considered both as a tool to achieve self-determination and as a source of relationship renewal. This conception seem to also have informed comments made by Chief Raphael Picard of Pessamit concerning the urgent need for Innu communities to finalize the treaty negotiations. According to him and against all pretences that the AIPOG constitutes a gift from the governments to Innu communities, the achievement of the AIPOG is not seeking to break social peace between Innus

²⁷⁶ Ibid.

²⁷⁷ Ibid. (My translation). «Le traité que nous voulons conclure, basé sur l'entente de principe actuelle, contiendra, nous le croyons sincèrement, les principaux éléments de prise en main de notre destinée. Il constituera un outil fondamental dans la construction de notre devenir collectif et un moyen de protection important de notre identité. Nous entendons nous servir de cet outil pour bâtir positivement notre avenir. Par le fait même, nous aurons aussi l'opportunité unique de contribuer avantageusement au développement des régions où nous vivons. Les retombées économiques de ce traité seront importantes pour le Saguenay—Lac-Saint-Jean et la Côte-Nord, autant dans l'immédiat que dans le futur. Les éventuels investissements seront favorisés par le contexte de partenariat qui émergera d'un tel traité et par la solidité de notre pacte. Il nous faut tous clairement réaliser que nous avons un avenir commun, mais qu'aussi nous sommes riches de nos différences ».

and Québécois. Instead, the leader called upon Euro-descendants to recognize that time has elapsed and that Innus have been waiting for far too long to reap their fair share of development. Negotiations must reach a further stage and the treaty must be finalized within reasonable deadlines²⁷⁸.

As a whole, Innu leaders of the Mamuitun bloc overwhelmingly recommended the adoption of the AIPOG by the Québec National Assembly and the continuation of the treaty negotiation process on its basis. The briefs and comments presented to the National Assembly on the occasion of the public consultation illustrate their faith that the treaty negotiation in which they are engaged permits self-determination and a new future relationship between Innus parties and the Québec state (as well as with the majority it represents).

The case of Pessamit As pointed out previously, the Council of Pessamit leader was optimistic upon the potential of the AIPOG according to its January 2003 testimony. However, in the aftermath of the signature of the AIPOG by all Parties on March 31st 2004, the Council of Pessamit became quickly disenchanted with respect to the way the Québec government intended to deal with Innu demands of inclusion in the process of managing the lumber resources of René Levasseur Island, a territory considered to be part of the community's Nitassinan. The conflict's origins dated back to 1997 when the Kruger Company had been allocated a CAAF²⁷⁹ (valid for 100 years) to harvest the lumber on the island- a decision taken then without the consultation of the Pessamit Council. The company started to take advantage of this CAAF in 2002 and ever since collected the wood on a "24 hour seven days a week basis", a rhythm which in the view of many observers would lead to the rapid pillage of the resource on the island. The Pessamit Council wrote to Kruger and the Québec government at the end of July

²⁷⁸ Ibid.

²⁷⁹ Forest lay out and supply contract. (Contrat d'aménagement et d'approvisionnement forestier).

2004 to demand the end of the activities as well as adjustments of the René Levasseur Island's management procedures to take into account the "commitments" of the Québec government to facilitate the "genuine participation" of Innus. No answer was given and the Council of Pessamit decided in September 2004 to instigate an interlocutory injunction against Kruger and both governments to force the company to stop its activities. These legal proceedings marked the end of Pessamit participation to the treaty negotiation process which in the view of Raphael Picard had been at a standstill since the election of the Liberal Party in April 2003²⁸⁰. The case is still pending.

The events surrounding René-Levasseur Island clearly illustrates a continuance by government officials to ignore Innu First Nations' desire to be consulted and participate to the development and management of the territory *and* a governmental tendency to avoid the restoration of past wrongdoings. How are Innu First Nations leaders (or any other First Nation representative for that matter) to interpret the Québec government's commitments to ensure their genuine participation without constitutional protection?

Since then case law has evolved. The Canadian Supreme Court ruled in November 2004 in the Haida judgement that provincial governments must consult First Nations who appear to have serious rights upon a given territory before granting natural resources exploitation permits. Furthermore, in the Taiku decision rendered during the same time period, the Supreme Court ruled that the acceptance of a territorial land claim by the governments sparks the obligation to consult and accommodate First Nations upon any natural resources development project. These judgments as well as the proceedings instigated by Pessamit have arguably led the Québec government to adopt in April 2006 a preliminary guide designed to inform third parties and institutions about the steps and conditions that should be considered in conducting First Nations

²⁸⁰ Council of Pessamit Innus. April 2006. « Les Innus de Pessamit: des droits à connaître et à reconnaître ».

consultations in the province of Québec²⁸¹. These recent developments and others discussed below leave serious doubts about the willingness of present governmental officials to orchestrate change at the relational as well as at the power configuration level with First Nations *without being forced legally to do so*.

3.3.2 Mamit Innuat and Matimekosh- Lac-John

As was mentioned before, five other Innu communities did not participate to the negotiations that lead to the signature of the AIPOG; they have been leading their negotiations process at two separate tables. At the time of the 2003 public consultations the Mamit Innuat group included First Nations of Uashat-Mak-Maniottenam, Pakua-Shipi, Unamen-Shipu and Ekuanitshit. The Matimekosh-Lac-John community was negotiating on its own until May 2005 when Uashat-Mak-Maniottenam decided to joint it by forming the Ashuanipi Corporation. It is as members of the Innu Nation that representatives of each of these communities presented briefs during the 2003 public consultation.

Perhaps unsurprisingly, representatives belonging to the Mamit Innuat group expressed a convergent level of satisfaction regarding the formula agreed upon concerning the recognition of aboriginal rights without their extinction. In the brief submitted to the Parliamentary commission Mamit Innuat representatives also affirmed being content with the evolution of their own treaty negotiation which seals an essentially identical version of self-governance and

²⁸¹ Québec Government. 2006. *Guide intérimaire en matière de consultation des communautés autochtones*. (Secrétariat des Affaires autochtones : Québec).
http://www.autochtones.gouv.qc.ca/publications_documentation/publications/guide-interimaire.pdf

justice administration to that developed in the AIPOG²⁸². Conversely, they were equally unanimously dissatisfied with many aspects of the AIPOG. Firstly, they did not agree with the exclusion of ownership rights upon Innu Assi's hydraulic resources. In the view of Mamit Innuat chief representative Guy Bellefleur, this exclusion constitutes a non-sense taking in consideration the view that all parties affirmed their determination to facilitate Innus' economic catching up²⁸³. Secondly, they manifested dissent with regards to the modalities of Innus' participation to the management of Nitassinan: they felt it lacked substance and sufficient safeguard provisions. According to Bellefleur, the genuine participation model is unnecessarily different to the mechanisms already known and developed in the framework of the JBNQA. Mamit Innuat representative affirmed that the establishment of joint committees whose responsibilities would be to manage Nitassinan and conduct environmental assessments, similarly to the provisions orienting Cree-Québec territorial management, would be better suited to answer to Innus' aspirations²⁸⁴. Thirdly, the abandonment of the fiscal exemption was mentioned as an element of disagreement. Bellefleur spoke about Pakuashipi's historical developments which in his view, does not even allow thinking about abandoning Indian status' fiscal exemption: the community settled only thirty years ago, three quarters of the population lives off social welfare and the 300 or so members of the community are weakly educated. Thus, it would be irresponsible for his Party to accept the end of the fiscal exemption often required recently by the governments to advance aboriginal self-governance and land claim

²⁸² Mamit Innuat. January 2003. Mémoire présenté lors de la Commission des institutions chargée de tenir des audiences publiques à l'égard de: l'Entente de principe d'Ordre général entre les Premières Nations de Mamuitun et de Natashquan et le Gouvernement du Canada et le Gouvernement du Québec : 44-45.

²⁸³ Québec National Assembly. Testimony from Guy Bellefleur, Mamit Innuat negotiator. *Journal des débats*. Commission des institutions. January 22nd 2003.

<http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030122.htm>

²⁸⁴ Mamit Innuat. Op cite: 46.

settlements²⁸⁵. Additionally, other agreements such as the JBNQA (and other agreements signed with some Mohawk communities) permit such an option. Fourthly, Mamit Innuat negotiator expressed reserves with the establishment of aboriginal title royalties at 3%. He affirmed remaining uncertain with the manner followed to set this value. Was this number sufficient to compensate Innus in exchange of land clearance to the benefit of the government on much of Nitassinan²⁸⁶?

Other less explained yet connected aspects of dissent are: the choice of neighbouring municipalities socio-economic indicators as benchmarks to assess Innu governments funding needs to provide services to their population; the fact that reserves will no longer be lands in the sense of the 1867 North American Britannic Act (which they argue brings on its sway the end of the fiduciary obligation of the Crown, in accordance with treaty provisions) and finally, the continuance of the applicability of provincial laws of application on Nitassinan²⁸⁷. In short, when one looks at the positions expressed, it seems fair to state that the level of self-governance achieved in the AIPOG does seem satisfactory to most of the principally interested aboriginal parties of Mamit Innuat. The remaining contentious elements are intrinsically linked to the possession, management and development of Innu ancestral territories. Mamit Innuat representatives were satisfied with the recognition of their territorial rights but affirmed they had to continue their struggle with state representatives to play the role they have requested for centuries: being equally participants and beneficiaries of the management and development of their ancestral lands according to norms that would be jointly instead of unilaterally set.

²⁸⁵ Québec National Assembly. Tstimony from Guy Bellefleur, Mamit Innuat negotiator. *Journal des débats*. Commission des institutions. January 22nd 2003.
<http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030122.htm>

²⁸⁶ Ibid.

²⁸⁷ Québec National Assembly. Testimnoy from Jean-Charles Pietacho, Mamit Innuat negotiator. *Journal des débats*. Commission des institutions. January 22nd 2003.
<http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030122.htm>

The positions of Uashat Mak-Maniottenam and Matimekossh-Lac-John representatives can be easily summarized. Indeed, similarly to their previous homologues, they are in general positive about what was achieved by the Parties with respects to the non-extinguishment of Innu rights or self-governance. Armand McKenzie, a well-known Innu lawyer defending the rights of Innus on the international stage, has even stated during the *Expert Seminar on indigenous peoples' permanent sovereignty over natural resources and on their relationship to the land* that the AIPOG is

in line with this fundamental principle related to the necessary recognition of Indigenous Peoples permanent sovereignty over natural resources [and on] principles of discussion, negotiation, flexibility and on the idea that it is in the best interests of partners to conclude agreements in order to achieve economic prosperity and to assume political responsibility²⁸⁸.

The problem they see in the finalizing of their own land claim settlement flows both from diverging community's self-interest than those informing the negotiators of the Mamuitun or Mamit Innuat blocs, as well as markedly different historical trajectories. In the case of Uashat-Maniottenam²⁸⁹ the very conception of the community's Nitassinan, which overlaps provincial boundaries, impedes the acceptance of any settlement that would not implicate the Newfoundland government²⁹⁰. In the case of Matimekossh-Lac-John it is the grievances related to the extinction of Innu rights by the JBNQA back in the seventies which precludes negotiators to move forward²⁹¹. Taking an analytical stance on these views could force one to conclude that remnants of colonial rule (the imposition of arbitrary frontiers; between settlers battles for greater territorial sovereignty; denial of aboriginal rights in problematic cases) continue to affect

²⁸⁸ Mackenzie, Armand. January 2006. Document prepared for the Expert Seminar on Indigenous Peoples' permanent sovereignty over natural resources and on their relationship to land. Geneva Palace: 6.

²⁸⁹ Two territorially separated but politically united reserves...

²⁹⁰ Québec National Assembly. Testimony from Rosario Pinette, Uashat Mak-Maniottenam chief. *Journal des débats*. Commission des institutions. January 21st 2003.
<http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030121.htm>

²⁹¹ Québec National Assembly. Testimony from Jacques Gautier, Matimekossh-Lac John chief, *Journal des débats*. Commission des institutions. January 22nd 2003.
<http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030122.htm>

the lives of the members of these particular communities in a way that hinders the transformation of the rapport of domination altogether.

3.3.3 Government actors

Since the 2003 public consultation aimed in some respects to inform the general public about the arguments in favour of signing the AIPOG, it can be considered expectable that governmental parties would generally take a positive stance on it. In a rather elusive fashion, spokespersons of the PQ and PLQ affirmed being in favour of a treaty recognizing Innus' ancestral rights, "hence putting an end to the colonial relationships associated with the Indian Act"²⁹². Perhaps more transparent about the concerns and feelings of Québec nationalists, special representative of the Québec government Guy Chevrette spoke of the agreement in generally positive terms, in so far as Québec's territorial integrity remained protected and that the concerned population (the non-Innu inhabitants of adjacent reserves) is involved in the next steps of the negotiation process²⁹³. Yet, to better assess whether these intentions have become coherently articulated since the adoption of the AIPOG, one must look into subsequent

²⁹² Québec National Assembly. Testimony from Marie Malavoy, presenting Parti Québécois National Council' brief. *Journal des débats*. Commission des Institutions. 4 février 2003. <http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030204.htm>. In her brief she stated : « Nous reconnaissons aussi que les Innus ont des droits distincts dits ancestraux qui ont été reconnus par les tribunaux et que ces droits doivent être précisés formellement dans un texte qui doit avoir valeur de traité. Donc, nous sommes favorables, très favorables à la conclusion d'une entente qui mette fin à ce que nous appelons les relations coloniales qui ont été associées à la Loi sur les Indiens. Nous souhaitons que les Innus puissent contrôler leurs institutions, qu'ils fassent leurs propres choix de société tout en collaborant avec le peuple québécois au développement de notre pays. On pourrait appeler cela un «nouveau contrat social», cette entente. On pourrait dire, et c'est probablement juste de le dire, qu'il faut un changement majeur de mentalités, que la reconnaissance de la nation innue, ça veut dire les reconnaître comme étant partenaires du développement du Québec et que nous souhaitons que cela s'appuie sur une participation réelle de leur part. »

²⁹³ Québec National Assembly. Testimony from Guy Chevrette. *Journal des débats*. Commission des institutions. January 21st 2003. <http://www.assnat.qc.ca/fra/Publications/debats/journal/ci/030121.htm>. His report, *Pour un traité juste et équitable*, is available online at: http://www.versuntraite.com/documentation/publications/rapport_chevrette.pdf

institutional developments such as those occurring in the adoption of legislative pieces or during the formulation of similar official statements. Because the Liberal Party has been the only political party in power since these consultations, this brief analysis will bear mostly if not exclusively on this political party.

3.3.3.1 Québec's territorial integrity Versus Innu territorial sovereignty

As the newly appointed Minister for Aboriginal Affairs in April 2003, Benoît Pelletier expressed reserves towards the "social acceptability" of the AIPOG on the basis of three issues that needed to be investigated by jurists prior to giving it the official assent: the constitutional jurisprudence this agreement could create in matters of self-governance, the preservation of Québec's territorial integrity and the possible attack to the rights of the Québec National Assembly²⁹⁴. This governmental about-turn, after three years of hardly achieved agreement, was received with disbelief by astonished Innu leaders²⁹⁵. What matters in this temporary twist of events is the message it sent to the population: the whole negotiation process with the Innus would be halted once more, no matter if it had been jointly agreed upon, if it was demonstrated that the AIPOG threatened the province and the majority's interests.

Yet, members of the government cannot be taken as a homogenous group with undifferentiated attitudes towards aboriginal peoples. Geoffrey Kelley, replacing Benoît Pelletier in its functions of Minister for Native Affairs between February 2005 and April 2007 cannot be accused of having placed Innus or aboriginal issues in terms of priority below the protection of Québec's territorial integrity: in fact he never spoke publicly about this concept²⁹⁶. Rather, Kelley

²⁹⁴ Presse Canadienne. « L'approche commune est remise en question- Les libéraux pourraient reprendre la parole donnée aux Innus ». *Le Devoir*, 20 août 2003.

²⁹⁵ Ibid.

²⁹⁶ As the Official Opposition critic for native affairs and the Great North between 1999 and 2003 he displayed an appreciable amount of reflexivity and farsightedness.

demonstrated a considerable level of willingness to conciliate minority and majority interests. However, he did not get reappointed in his functions after the re-election of the Liberal Party in April 2007; Pelletier did. Discussing this time the International Declaration on Indigenous Peoples rights, Pelletier reiterated a position coherent with his conception of the province's interest:

With respect to the Declaration, in its actual form, we contend that numerous issues need to be clarified. [...] the objective is to have an international declaration recognizing the rights of natives, but at the same time, we can actually tell that some provisions could have deeper implications due to its imprecision. [...] international commitments need to be clarified to be really sure about how this declaration will be interpreted and implemented because of the implications it can have upon the development of the resources in Québec and upon the sharing of its territory (my translation)²⁹⁷.

Can the views of one minister be said to reflect the entirety of the government? This is a debatable point which is beyond the object of this thesis. In the present case however, it seems beyond doubt that it would make very small sense to reappoint an MP to a given ministry unless he acted in accordance with the philosophy of the political party in power. This admittedly very brief review of officially held discourses can thus only reveal how much continuity there is with respect to the obstacles Innu and Aboriginal peoples face to gain the recognition of their sovereignty upon their lands: Québec territorial integrity remains a top priority in the mind of members of the political elite and aboriginal self-determination is contingent upon the

²⁹⁷ Québec National Assembly. Testimony from Benoît Pelletier. *Journal des débats*. 15 juillet 2007. <http://www.assnat.qc.ca/fra/38Legislature1/DEBATS/journal/ci/070615.htm>. En ce qui concerne la déclaration, dans sa forme actuelle, nous sommes d'avis qu'elle contient un certain nombre d'imprécisions et que forcément il y a des choses qui vont devoir être éclaircies. Et c'est pourquoi nous encourageons, dans le fond, la poursuite des négociations, c'est parce que nous croyons dans l'objectif général qui est celui d'avoir une déclaration internationale reconnaissant les droits des autochtones, mais en même temps nous sommes en mesure de dire qu'il y a des clauses de cette déclaration dont la portée est difficilement saisissable, au moment où on se parle, à cause justement de leur caractère ambigu ou de leur caractère imprécis. Alors, dans ce contexte-là, nous encourageons la poursuite des négociations mais dans un contexte où on cherchera à préciser les engagements internationaux justement pour être bien, bien certains de comment cette déclaration-là pourra être interprétée, devra être interprétée et devra être mise en œuvre éventuellement à cause des conséquences possibles sur le développement des ressources au Québec et sur le partage du territoire.

intangibility of this principle. If negotiations and demands jeopardize this bottom line negotiations are over; the Québec government will then willingly accept or conduct legal challenges to defend and uphold the structuring power of this principle. This is why much of this dimension of aboriginal peoples and the Québec government relationship can be expected to evolve *only* with the nomination of Supreme Court judges sensitive to need for a reformation of aboriginal peoples' status within the Canadian federation, a situation which does not seem about to happen for a long time.

3.3.3.2 Right to be consulted and integration of aboriginal knowledge

The examination of governmental discourses to find if it accepts to consult and accommodate First Nations must specify the understanding its representatives entertain about their responsibility towards First Nations in this regard. I already mentioned earlier that the 2004 Haida and Taku river rulings have marked the “beginning” of a constitutional obligation to consult First Nations²⁹⁸ and that in Québec, this duty was implemented through the adoption of the first provincial guide informing governmental stakeholders about the steps they should follow to respect their obligations. In the words of Minister for native affairs Geoffrey Kelley the interim quality of the guide is a function of the government's intentions both to comply in a responsible fashion with the obligation defined by the Supreme Court and to present the guide to aboriginal communities' representatives as well as to concerned stakeholders before establishing a more definitive policy²⁹⁹. Again according to the Minister, the obligation to consult will vary according to two factors: the seriousness of the claim made by a First Nation and the

²⁹⁸ The obligation was implicit to the fiduciary obligation of the Federal Crown prior to the rulings.

²⁹⁹ Geoffrey Kelley. Speech given on April 11, 2006. *Notes pour la déclaration ministérielle du ministre délégué aux Affaires autochtones à l'occasion de la présentation du Guide intérimaire en matière de consultation des communautés autochtones*. (Québec : Secrétariat aux Affaires autochtones): 4-5.

magnitude of a given project's anticipated impacts upon its rights. "Thus, the right to be consulted does not grant to aboriginal communities a veto right upon Crown decisions"³⁰⁰. In his view, the guide corresponds to 75- 80% of the recommendations made by the Assembly of First Nations of Québec and Labrador in its consultation protocol³⁰¹. The other 20%, he stated, is up for discussion following the review conducted six months after the beginning of the guide's implementation³⁰². Finally, to demonstrate the importance for the province to endorse the policy he reminded the Québec National Assembly that maintaining harmonious relationships with First Nations was vital to Québec's exporting industries which happen to be mainly based upon natural resources found within aboriginal ancestral lands. Québec's economy he implied, would gain from an ever greater integration of the reflex of consulting First Nations³⁰³.

According to representatives of the Secrétariat aux affaires autochtones (SAA), the set consultation process is by far much easier to implement in cases when First Nations have signed treaties (such as for the Crees and Naskapis) or have engaged in a comprehensive land claim negotiation process (such as the Innus and Atikameks). This is the case because the acceptance of a land claim settlement by the federal Crown is based upon the demonstration orchestrated by the claiming aboriginal party, with various historical evidences, of the existence and limits of its aboriginal title. Conversely, First Nations who do not belong to these two groups "tend to

³⁰⁰ Ibid.

³⁰¹ Québec National Assembly. Testimony from Geoffrey Kelley. *Journal des débats*. Commission permanente des Institutions. 8 mai 2006.
<http://www.assnat.qc.ca/fra/37Legislature2/DEBATS/journal/ci/060508.htm>

³⁰² The review process included interviews in all First Nations communities and findings included: Increasing number of requests and impact on delays; lack of resources (human, financial); Lack of cohesion between the departments and between the sectors of a department; Differing interpretation of the jurisprudence; Hard to know the tangible concerns of the FNs. Secrétariat aux affaires autochtones. *The Obligation to Consult Aboriginal Communities: Current Situation in Québec*. Presentation of the Government of Québec: Panel on the Consultation of Aboriginal Communities at the occasion of the 4rth interjurisdictional Symposium on Aboriginal Involvement in Resource Management. Edmonton. September 10- 13, 2007.

³⁰³ Québec National Assembly. Testimony from Geoffrey Kelley. *Journal des débats*. Commission permanente des Institutions. 8 mai 2006.
<http://www.assnat.qc.ca/fra/37Legislature2/DEBATS/journal/ci/060508.htm>

claim the attributes of aboriginal title on very vast territories” and “the analysis of the prejudicial effects on a right that is not truly clearly defined is a major challenge”³⁰⁴. In other words, governmental representatives are reluctant to consider all First Nations as equally having the right to be consulted.

Since the signature of the AIPOG, there have been numerous bills debated in various parliamentary commissions to which Innu First Nations have participated hoping to influence law and policy-making. Over time though, it is clear that signatory Innu First Nations have diminished the number of briefs complaining about governmental ignorance of their views. In the case of other First Nations, the matter of consultation remains conflicting. For instance during the deliberations surrounding the adoption of the bill establishing biodiversity reserves, the Pakua shipi Innu Council complained that the government did not consult them in the selection of the territories to be preserved³⁰⁵. At the same time, the government does seem serious about its intentions to improve its record for all First Nations alike. Eighteen months after the beginning of the consultation policy, the SAA claims that it has had tremendous consequences: human resources to conduct the steps are insufficient, the costs are high and the carrying out of some projects has been slowed down and in some cases has been jeopardized³⁰⁶. To mitigate these effects and increase the process’ efficiency, the government has put into place pilot experiments setting up coordination offices bringing together several First Nations and

³⁰⁴ Secrétariat aux affaires autochtones. *The Obligation to Consult Aboriginal Communities: Current Situation in Québec*. Presentation of the Government of Québec: Panel on the Consultation of Aboriginal Communities at the occasion of the 4th interjurisdictional Symposium on Aboriginal Involvement in Resource Management. Edmonton. September 10- 13, 2007.

³⁰⁵ Pakua Shipi Innu Council. Brief presented to the Bureau des Audiences Publiques sur l’environnement (BAPE) on the establishment of Biodiversity reserves. November 23rd 2006.

³⁰⁶ Ibid.

intends to conduct more discussions with First Nations leaders in order to clarify processes, agree on consultation parameters and territories of interest³⁰⁷.

As well-known defenders of natural resources, First Nations' vision of sustainable development, if it was valued by actual Québec government representatives, should logically be integrated in the *2008-2013 Sustainable development Strategy* announced in December 2007. Of all eighty-seven pages of the Plan though, nothing in them speaks about the necessity of giving to First Nations a greater voice in the process of defining the provincial objectives and measures to be taken to implement formulas of development that are sustainable. The only passage referring to First Nations talks about the government's commitment to consult First Nations in accordance with its constitutional obligations³⁰⁸. If this document represents the extent of the government's will to integrate and valorize First Nations' knowledge of the environment and nature, the conclusion has to be that much remains to be done for First Nations to be considered equals in the field of territorial and natural resources preservation.

All in all, it has become clear that those First Nations involved in land claim settlement negotiations are more likely to see their right to be consulted respected. First Nations who refuse to engage in this type of undertaking will remain in constant battles and only temporary solutions will be adopted; the foundations of the relationship between the state and themselves will remain one characterized by domination. This is visible for instance in the *2008-2013 Forestry management general plans instructions*. Indeed, the document presents a clear process describing the ways acceptable for consulting the Crees, Naskapis and Innus who signed the

³⁰⁷ Ibid.

³⁰⁸ Gouvernement du Québec. 2007. *Stratégie gouvernementale de développement durable 2008-2013. Un projet de société pour le Québec*. (Québec : Gouvernement du Québec) : 59. On line : http://www.mddep.gouv.qc.ca/developpement/strategie_gouvernementale/strat_gouv.pdf « Afin de permettre aux communautés autochtones de faire valoir leurs points de vue, le gouvernement s'assurera également que les Premières Nations seront consultées en conformité avec les obligations constitutionnelles qui lui incombent. »

agreement in principle, the resources available for such a process to be conducted and the existing accountability mechanisms to which the stakeholders must participate. For territories claimed by all the other First Nations the plan proposes general measures that do not seem to bear many consequences³⁰⁹. This situation is likely to generate numerous normative conflicts for the latter aboriginal parties in the future.

³⁰⁹ Gouvernement du Québec. 2007. *Instructions pour la confection des plans généraux d'aménagements forestiers 2008-2013*. (Québec : Ministère des Ressources Naturelles et de la Faune). Section 3.

Conclusion

4.1 State-aboriginal people treaty-making: the cornerstone of the end of colonialism?

Issues connected to state-aboriginal relations are often apprehended theoretically through postcolonial eyes. This tendency complements the growth of reflexive epistemologies questioning the materiality of liberalism in western societies. These epistemologies seek, amongst other things, to unmask the genuine foundations of the Canadian state and societal institutions. These foundations, marked by histories of nation-building, are often singled out as the source of the general continuation of aboriginal peoples' domination. Yet, recent empirical developments suggest that this picture may not reflect adequately the steps and trajectories undertaken by a number of First Nations in Québec.

This thesis aimed at one thing: figuring out, by way of single case study, whether contemporary state-aboriginal treaties *can* enable the end of colonial/ dominant-dominated relationship between signatory Parties. The analysis of the Innu First Nations treaty negotiations revealed that indeed it can become the springboard for greater equality between a given aboriginal people and the "settler majority". Indeed, the examination of the AIPOG revealed important elements of change in each of the six analyzed categories but it also displayed significant elements of continuity. The first category revealed the acceptance by governmental authorities of aboriginal rights combined with a prevailing concern to limit the scope of these rights upon public lands. The second category, which deals most importantly with the intricacies of the establishment of a new land regime, also permits Innu First Nations to exercise a newly recognized role in the management of Nitassinan, Innu Assi and heritage sites. It may not be equally extensive upon most of the surface involved in the AIPOG but it nonetheless gives the possibility to Innu First Nations' members to participate to the decision-making processes regarding territorial planning and environmental protection, areas of governance which were

unilaterally managed in the past. This observation does not mean that the interests of the majority upon these lands are not taken account. On the contrary, the greater part of the remaining negotiations to be carried will deal with the social acceptability of the new land regime and the rights exercised by Innus. The third category showcases the acceptance of state authorities that Innus can manage local affairs and establish a judicial system responsive to Innu culture upon Innu Assi. At the same time, future Innu legislative assemblies are not recognized the power to make laws in areas of governance which scope bypasses Innu Assis. The fourth category exhibits the acceptance by state authorities of their responsibility to finance aboriginal self-governance. Innus' involvement in the determination of the modalities of their government's financing also betrays a transforming dimension of the relationship. The content of the fifth section demonstrated an appreciable amount of convergence between state and Innus representatives' views concerning socio-economic development. The Parties agreed upon the implementation of various measures to favour the economic development of Innu First Nations and some of them meet the widely expressed desire by First Nations to make a living of the resources from their ancestral lands. The last category, dealing with treaty implementation, brings about a substantial change from traditional state aboriginal peoples treaty –making: to take into account the possible evolution of aboriginal rights, the future treaty will contain a review procedure which could lead to the amendment of the treaty and Innu First Nations will be able to initiate this process under specified circumstances.

The discourse analysis has nevertheless revealed significant elements of continuity. The long standing Québec government's priority of protecting the province's territorial integrity remains truly alive and it continues to inform the conception of its representatives about the francophone majority's interest; concessions may be made in many areas, yet no chance must be taken at the legal level to compromise the territorial integrity of the province. It must be

pointed out that this aspect is not solely connected to political concerns about the possibility of the province's separation from the rest of Canada since this view is argued by Québec "sovereignists" (PQ) or "federalists" (LP) alike. In fact, since all Québec political parties posit this principle as paramount, it can perhaps be associated to the resilience of dominant conceptions of nationalism in spite of the growing institutional acknowledgement of First Nations' ancestral rights to self-determine. This resilience can perhaps also be traced as a strong element factoring into the differential perception entertained by Québec state representatives about their obligation to consult and accommodate First Nations. Indeed, why else would Québec representatives honour their obligation to consult First Nations who signed Treaties (or are about to do so) while they are hesitant to carrying out similar procedures for other First Nations? The discourse analysis also revealed another element of continuity touching upon the normative level: First Nations' expertises drawn from their cosmology of the world and their experiences on the ground are not taken into account in areas where they logically should. It remains to be seen if the genuine participation process will allow Innu signatories to contribute to the definition of the objectives in terms of environmental protection and sustainable development.

Post-colonialism and dominant nationalism theoretical underpinnings do help understanding some aspects of the contemporary relationships between aboriginal peoples and the state. However they provide insufficient tools to appreciate the specific trajectories followed by aboriginal peoples. They generalize dimensions of state-aboriginal relations that deserve greater attention thus, unconsciously perhaps, clouding empirical developments that do not fit these frameworks of analysis. This does not equate to say that they are irrelevant. In fact they are highly pertinent to see why crucial parts of our institutional settings are resilient to change,

exposing the complicity of nationalistic projects and colonial discourses as structuring forces of our societies.³¹⁰

4.2 Limitations

It must be acknowledged that this thesis has important limitations. Perhaps the most important one is linked to the issue of measuring and qualifying the representativeness of the content of leadership discourses to the remaining part of the population. This important methodological issue is eschewed for the benefit of providing a nuanced but still limited analysis of some of the latest empirical developments in the domain of state-aboriginal relations. On the basis of this study I would nevertheless contend that the future treaty involving Innus is likely if not to put an end at least to seriously impede attempts by Québec government's representatives to dominate Innu First Nations. When this trajectory is juxtaposed to the Cree's, it appears that state-aboriginal treaty making constitute a genuine alternative for aboriginal peoples to transcend the otherwise synergic connection between the state, the majority and the territory it claims sovereignty upon. But at this stage too many ifs and buts remain to be conclusive about the prospects it holds in putting an end to colonialism. Nevertheless, it can not be dismissed too swiftly for any aboriginal contender seeking the greater collective equality of a given aboriginal people.

If anything this thesis contributes to the understanding of a particular relational trajectory. Yet it also highlights the need for greater comparative analysis at the Canadian and international scale. What are the conditions that enabled the positive transformation of the relationship between aboriginal peoples and the state in the rest of Canada, in Oceania or

³¹⁰ Chatterjee, P. 1986. *Nationalist thought and the colonial world: A derivative discourse*. (Oxford: Oxford University Press).

Northern Europe? What other strategies have been developed by aboriginal peoples and how do they fare in terms of changing histories of domination? Finding out similarities as well as differences in various contextual settings is certainly a way to learn more about the evolution of the relationship between peoples, for the better or the worst.

4.3 Explaining change. Elements of reflection for future comparative work

After having gone this far, an important question remains unanswered: what are the factors underlying change with respect to the relationship between some Aboriginal peoples and the Québec government? In order for future research bearing on the topic to benefit from the present thesis I will conclude this text by proposing a speculative answer to this question. Alcantara, through his analysis of Innus and Inuit land claim settlements in Labrador, has offered in my view one of the most contextually relevant explanation of the outcome of their respective land claim agreements³¹¹ which can help us shed some light upon the issue of change in the distribution of power in favour of some Aboriginal peoples in Québec. Integrating elements of agency and structure, Alcantara proposed a matrix of explanatory factors for CLC negotiation Outcomes³¹².

³¹¹ Alcantara, Christopher. 2007. "Explaining Aboriginal Treaty Negotiation Outcomes in Canada: The cases of the Inuit and Labrador". *Canadian Journal of Political Science*, 40 (1): 185-207; see also Alcantara, Christopher. 2008. "To Treaty or Not to treaty? Aboriginal Peoples and Comprehensive Land Claims Negotiations in Canada". *Publius: the Journal of Federalism*, 28 (2): 343-369.

³¹² Alcantara, Christopher. 2007. Op cite: 195.

Matrix of Explanatory Factors for CLC Negotiation Outcomes		
	Factors affecting whether an outcome is obtained	Factors affecting the speed at which an outcome is obtained
Internal factors	Quadrant 1	Quadrant 3
	Congruency of goals Choice of tactics Internal cohesion	Trust relationships Tactical timing
External factors	Quadrant 2	Quadrant 4
	Government perceptions	Governmental and external negotiators Land value and location

In the case of Innu signatories- Québec government relations, all the factors of this table seem to have contributed, albeit to a different extent and perhaps in a different manner than it did in Labrador, to the observed evolution. Yet the features found in quadrant 1 and 2 are the most relevant since they bear on the explanation of the outcome, roughly likening to our goal to give an approximation of why change occurred. For starters, the issue of “congruency of goals” (at the leadership level), that is the goals with respect to the purpose of achieving the treaty, is certainly present between the Parties. The most visible part of this convergence is displayed in the chapter on socio-economic development whereby the issue of investing and developing Nitassinan for the benefit of Innus (a priority for the latter) is also understood by governmental officials as a “benefit” for the whole of Québec. The willingness by all the parties to settle the land claim and self-government agreement is also visible in the provisions displaying mutual compromise: the legal formula attached to the new land regime gives the level of certainty demanded by the government while respecting the will of Innus to “keep” their title upon Nitassinan. Next, the “choice of tactics” for advancing Innu interests also stood out as something that affected the evolution of the relationship between the government and signatory First Nations. Indeed, Innu leaders from the Mamuitun bloc have emphasized compromise over confrontation, eschewing the language of Innu sovereignty and trying not to challenge the

concept of Québec's territorial integrity. Another decisive element, not explicitly mentioned in this thesis so far but which still stood out during the research process, is the matter of "internal cohesion". Unsurprisingly perhaps, First Nations for whom the leadership and the population was united behind the cause of settling the land claim have been able to advance much further in the negotiation process. At a more general level it must not be forgotten that division and fragmentation in small communities are certainly an impediment to changing the general rapport between themselves and the government. Québec "government perceptions" about the level of "readiness" in matters of self-governance of negotiating First Nations also appear to factor in the overall evolution of the relationship. In their discourse officials often referred to the quality (always according to their standards) of the existing internal management of the communities involved in negotiations about self-government. The more transparent and efficient band councils are, the more the Québec government official will be receptive to make changes to existing structures.

The factors enumerated in quadrant 3 and 4 are said by Alcantara to affect the speed at which the agreement can be obtained. His reading of the situation in this respect is that confrontational tactics can speed up the process when an opportunity window emerges (the discovery of a mine, a hydroelectric project; any development project that could involve dealing with territorial rights). It cannot be said as of now that this holds true in the case at hand because no final treaty was signed. However, we may see with the particular evolution of Pakua Shipi (which is directly involved by the La Romaine hydroelectric project) and Matimekoshe-Lac John (involved with the future Churchill Falls hydroelectric project) if this turns out to be a very decisive factor. The same can be said about "land value and location". According to Alcantara, if a First Nation demands the ownership of lands with high development potential, there is absolutely no chance the government will accept to settle upon an agreement. It may accept to

give royalties to the First Nation in question but it will rather hold off settlement and development rather than give away territories with high value. The remaining two aspects concern “trust relationship” and “governmental and external negotiators”. That these factors may speed up the process seems rather evident in the case at hand: when a political party replaced another in office, everything had to be started over again.

In conclusion, he calls upon researchers and scholars to pay more attention at the characteristics of aboriginal peoples’ representatives’ agency to understand why some groups are successful and others are not in their quest to agree upon a settlement that would satisfy their demands for self-determination upon their ancestral lands³¹³. In his view, the focus should be put on understanding the “relationship between the preferences and the incentives (which are derived from the relevant institutional structures) that drive Aboriginal and non-Aboriginal governments to negotiate treaties”³¹⁴. I think that indeed it is a very good place to start.

³¹³ Op cite : 204.

³¹⁴ Alcantara, 2008: 19-20.

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