

# The Place of Quebec and Power Sharing in the Canadian Federal System, as well as a Few Observations on Resources Management in Nunavik and Nunavut in the Light of the Moroccan Autonomy Initiative for the Sahara Region<sup>59</sup>

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## Background

The Canadian Federation is made up of ten provinces and three territories (Yukon, Northwest Territories, Nunavut) each with its own Prime Minister and its own legislative assembly. Quebec is one of the four provinces that initiated the Federal Pact of 1867. The Government of Quebec exercises major responsibilities with relative autonomy, for instance in the fields of health, education, transportation, immigration, economy and culture. These powers are sometimes limited by the spending power of the central government that over time arrogated this unconstitutional competence claiming it was acting for the *national interest*<sup>61</sup>.

From a sociological point of view, Canada is a multinational federation in which several nations co-exist: the English-Canadian nation, the Quebec nation, the Acadian nation and the First Nations. This sociological reality was often ignored by politicians in Ottawa and in the various capitals of the provinces, but it is always back in the spotlight in times of major political tension (Gagnon, 2010). This was the case in the early 1960s when the Laurendeau-Dunton Commission on Bilingualism and Biculturalism was set up, bringing together the two main Canadian linguistic communities. It was also the case in 1991 when the Erasmus-Dussault Commission on Aboriginal Peoples was set up as First Nations were increasingly insisting on respect for their inherent historic rights. Some of these rights were acknowledged and enshrined in the *1982 Constitution Act*. The meeting of the first commission highlighted the existence of Canada's cultural and identity dualism. As for the Erasmus-Dussault Commission, it helped reveal on the one hand considerable tension between the first inhabitants of the Canadian territory (the First Nations) and the colonizers (the French and the British), and on the other important inequities in the quality of life of the First Nations and the Canadian population in general.

Among the main issues Canadians must now debate can of course be mentioned the recognition of the First Nations in the political institutions of the central government and in provincial governments. And then there is also the empowerment of the First Nations that were robbed of their resources and parked in reserves through successive waves of colonization. Likewise, there is tension with the Government of Quebec, which still hasn't signed the new 1982 constitutional agreement that is the direct successor of the 1867 Constitution Act.

In Canada, the existence of a federal system made life more difficult, and even more complex, for the indigenous populations that were often ignored in the conflicts of competence between the central government and the member states of the federation. Besides,

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<sup>61</sup> For more in-depth analysis of the Canadian federal system, see: Alain-G. Gagnon, *Contemporary Canadian Federalism: Foundations, Institutions, Traditions*, Toronto, University of Toronto Press, 2009.

through the political battles fought, among others, between the Government of Quebec and the central government, this very federal system provided opportunities to assert indigenous claims. Such was for instance the case during the negotiations on the agreement between the Government of Quebec and the Cree nation<sup>62</sup> when the 2002 "Peace of the Braves" was signed and, subsequently, during the staged establishment of Nunavik as an indigenous autonomous territory in the northernmost region of Quebec.

In the Kingdom of Morocco, the Moroccan Autonomy Initiative for the Sahara Region<sup>63</sup> refers not to a federal system but to a unitary state. Morocco was amongst the few developing countries that from the early years of its independence in 1956 adopted a modern decentralized and regionalized system in line with the country's segmental plural society. The Moroccan autonomy initiative for the Sahara region offers political autonomy and not mere administrative autonomy. It provides for a Region with a Government, a Parliament and a judiciary, which will allow the local populations to manage their own affairs, while respecting the Kingdom's unity and sovereignty. Morocco presented this Initiative to the United Nations on 11 April 2011, in order to make a constructive contribution to the efforts made to find a concrete and mutually acceptable political solution to the regional dispute over the Sahara. In all of its resolutions since 2007 this Initiative has been acknowledged by the Security Council as being "serious and credible". It is a compromise initiative that aims at finding a successful exit to the crisis under the aegis of the UN, while fostering sustainable reconciliation, peace and stability in the region. The Moroccan Initiative is neither a static text nor a unilateral imposition. It is opened for negotiation with the other parties in order to spell out its provisions and specify its scope and the extent of the powers vested in the Sahara region.

### **Power Sharing between the Central Government and the Government of Quebec**

Power sharing between the central government (Ottawa) and the Government of Quebec (and the other provincial governments) is enshrined in the 1897 *Constitutional Law*. The central government exclusively controls areas as wide as trade regulation between the provinces and at international level, the central bank, monetary policy, defense, divorce, bankruptcies, etc. Based on the principle of *de jure* sharing of powers established when the federal agreement was adopted, provincial governments enjoy exclusive powers in the fields of health and social services, education, the right to property, civil rights, provincial infrastructures and roads, administration of justice, etc. (see Table 1). There exist so-called shared competences such as agriculture and immigration. And then there are areas in which powers are *de facto* shared, such as pensions, the management of natural resources, the environment and university education. In other words, the two types of governments vie for these fields of responsibility.

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<sup>62</sup> The Cree (or Crees) are a first nation of North America, which belong to the extended linguistic and cultural Algonquin family. They live from the Rocky Mountains to the Atlantic Ocean in Canada and in the United-States. The Cree language is one of the Amerindian languages among the most widely spoken in North America.

<sup>63</sup> Permanent Mission of Morocco to the United Nations and other international organizations in Geneva, "Moroccan Initiative for the Negotiation of an Autonomy Statute for the Sahara Region" (<http://www.mission-maroc.ch/fr/pages/308.html>).

**Table 1: Provincial and Federal Fields of Competences**

Federal competences	Provincial competences	Shared competences
<ul style="list-style-type: none"> <li>- Taxes</li> <li>- Post</li> <li>- Militia and defense</li> <li>- Currency and banks</li> <li>- Indian policy</li> <li>- Criminal law</li> <li>- Residual powers (fields not defined in the 1867 Constitutional Law)</li> <li>- Marriage and divorce</li> </ul>	<ul style="list-style-type: none"> <li>- Intraprovincial trade</li> <li>- Public lands and forests</li> <li>- Health care system</li> <li>- Municipal institutions</li> <li>- Wedding celebrations</li> <li>- Property and civil rights</li> <li>- Education</li> <li>- Trade licenses</li> <li>- Provincial Constitution</li> </ul>	<ul style="list-style-type: none"> <li>- Agriculture</li> <li>- Companies and economic development</li> <li>- Prisons and justice</li> <li>- Fisheries</li> <li>- Public works</li> <li>- Transport and communication</li> <li>- Immigration</li> </ul>

Source: "Acte de l'Amérique du Nord britannique", in *Gérald-A. Beaudoin, La Constitution du Canada, Montreal, Wilson et Laffleur, 1990, pp. 849-902.*

Courts can occasionally be called upon to rule on the constitutionality of measures taken by either level of government in disputed fields of competences. In case of conflict between a federal law and a provincial law, the *federal law usually prevails*. This interpretation slightly evolved over time and judges are now less inclined to overrule a provincial law that, though overlapping central power, is not in conflict with a federal law.

The powers that are not expressly assigned by the Constitution to provincial governments fall under the competence of the central government in keeping with the principle of *residual powers*.

It is worth mentioning that since 1982 the central government has been constitutionally obliged to ensure that provinces have sufficient revenues "to provide reasonably comparable levels of public services at reasonably comparable levels of taxation" (see Constitutional Act of 1982, article 36(2)). This so-called *equalization* programme of the central government implies receiving revenues from all provinces (and from various sources) and redistributing these funds by channeling them from the richest provinces to the poorest. The first equalization formula dates back to 1957 and was modified on various occasions, as and when political forces realigned in Ottawa, to take into account fluctuating revenue sources at provincial level. Each time the formula was revised it caused a real struggle between the member states of the Canadian federation on the one hand, and on the other between member states and the central government.

It is worth noting that the central government is free to use any taxation method and to make new investments for it enjoys *spending authority* over the money thus collected. This can occasionally cause tension between the federal authorities and the provinces. It can also borrow or lend money on the markets without being accountable to the provinces or territories.

The resources of the provinces are restricted to personal and corporate income tax, sales taxes and services taxes. Besides, as mentioned before, provinces enjoy exclusive access to the proceeds of the exploitation of natural resources. Provincial revenue sources thus greatly vary from one region to the other depending on the resources available to them (see Table 2).

Municipalities come under the purview of provinces. They are considered the *creatures* of provincial governments. They have local, more immediate responsibilities such as road maintenance, municipal police, waste collection and management, water supply. Municipalities can occasionally come under considerable pressure when the central government uses its *spending power* to interfere in provincial jurisdictions.

**Table 2: Tax Assignment: Federal, Provincial, Municipal**

	Federal	Provincial	Municipal
<b>Federal</b>			
Income tax	64.70%	35.30%	0%
Consumer tax	45.30%	54.75%	0%
Payroll tax	68.60%	31.40%	0%
User fees	24.40%	23.30%	52.30%
<b>Provincial</b>			
Income tax	64.70%	35.30%	0%
Consumer tax	45.30%	54.70%	0%
Payroll tax	68.60%	31.40%	0%
User fees	24.40%	23.30%	52.30%
Natural resources royalties	0%	100.00%	0%
Health Premiums	0%	100.00%	0%
Property tax	0%	2.20%	97.80%
<b>Local</b>			
Property tax	0%	2.20%	97.80%
User fees	24.40%	23.20%	52.30%

Source: Robin Boadway, "Canada" in Anwar Shah, dir, *The Practice of Fiscal Federalism: Comparative Perspectives, A Global Dialogue on Federalism Series, vol. 4. Montreal, McGill-Queen's University Press, 2007, p. 105.*

This data has to be considered in the light of Canada's demographic evolution (see Table 3).

By way of comparison, the Moroccan Autonomy Initiative for the Sahara Region offers to allocate powers and resources between the central state and the autonomous region as described below.

The populations of the Sahara autonomous Region shall exercise powers, within the Region's territorial boundaries, mainly over the following:

- The Region's local administration, local police force and jurisdictions;
- In the economic sector: economic development, regional planning, promotion of investment, trade, industry, tourism and agriculture;

- The Region's budget and taxation; infrastructure: water, hydraulic facilities, electricity, public works and transportation;
- In the social sector: housing, education, health, employment, sports, social welfare and social security;
- Cultural affairs, including promotion of the Saharan Hassani cultural heritage;
- The environment.

Moreover, the proposal provides that the autonomous region of the Sahara will have the financial resources required for its development in all areas. Resources will come, in particular, from:

- Taxes, duties and regional levies enacted by the Region's competent authorities;
- Proceeds from the exploitation of natural resources allocated to the Region;
- The share of proceeds collected by the State from the exploitation of natural resources located in the region;
- The necessary funds allocated in keeping with the principle of national solidarity;
- Proceeds from the Region's assets.

The State of Morocco shall keep exclusive jurisdiction over the following in particular:

- The attributes of sovereignty, especially the flag, the national anthem and the currency;
- The attributes stemming from the constitutional and religious prerogatives of the King, as Commander of the Faithful and Guarantor of freedom of worship and of individual and collective freedoms;
- National security, external defense and defense of territorial integrity;
- External relations;
- The Kingdom's juridical order.

State responsibilities with respect to external relations shall be exercised in consultation with the Sahara autonomous Region for those matters which have a direct bearing on the prerogatives of the Region. The Sahara autonomous Region may, in consultation with the Government, establish cooperation relations with foreign regions to foster interregional dialogue and cooperation. The powers of the State in the Sahara autonomous Region shall be exercised by a Representative of the Government. Moreover, powers which are not specifically entrusted to the autonomous Region shall be exercised by common agreement, based on the principle of subsidiarity. The populations of the Sahara autonomous Region shall be represented in Parliament and in the other national institutions. They shall take part in all national elections.

In the next section we shall look into three factors that have been causing mounting political tensions in Canada: the regional concentration of natural resources; the implementation of the equalization principle to restore member states' financial capacity and the services offered to the population; and, finally, the mismatch between the responsibilities of provincial governments and available revenues (Bickerton and Gagnon, 2011).

#### ***A. Regional Concentration of Natural Resources and Demography***

Canada's economy and the quality of life of its citizens remain highly dependent on the country's natural resources. So-called "intra-coastal resources" belong to the provinces. Royalties generated by the exploration of natural resources on the intra-coastal territory go to the provincial governments. Oil and natural gas production is concentrated in the Province of Alberta that accounts for two thirds of total production. The rest of the production comes from

the West of Canada, mainly from British Columbia and Saskatchewan and, in the provinces located on the East Coast, from Nova Scotia and Newfoundland and Labrador. The concentration of these resources implies considerable regional economic disparities.

However, it has to be stressed that though offshore resources lie within the only remit of the central government, agreements were signed between Ottawa and the provinces of Newfoundland and Labrador as well as with Nova Scotia in the middle of the 80's. The idea was to make sure the provinces that were less well off at the time would directly benefit from the exploitation of offshore oil and gas resources. These agreements were signed following the coming to power of Conservative Brian Mulroney in 1984, who wanted to mitigate the centralized practices of previous liberal governments.

Across the country, agreements were signed at various times with First Nations so that their communities could gain control over the product of the exploitation of the natural resources located on the territories they live on. Resources located in the Yukon Territory, in the Northwest Territories and in Nunavut are under the jurisdiction of the central government. We shall come back to this later.

**Tableau 3: Demographic Situation**

	1 <sup>st</sup> January 2010*
Canada	33,930,830
Newfoundland and Labrador	510,805
Prince Edward Island	141,232
Nova Scotia	940,744
New Brunswick	750,658
Quebec	7,870,026
Ontario	13,134,455
Manitoba	1,228,984
Saskatchewan	1,038,018
Alberta	3,711,845
British Columbia	4,494,232
Yukon	33,992
Northwest Territories	43,281
Nunavut	32,558

\* Preliminary postcensal estimates.

Note: These estimates are based on 2006 Census population counts adjusted for census net undercoverage and incompletely enumerated Indian reserves. Source: Statistics Canada. <http://www.statcan.gc.ca/daily-quotidien/100325/t100325a2-fra.htm>.

As regards natural resources, in a study financed by USAID in 2010, the International Fertilizer Development Center (IFDC), an American organization specialized in fertilizers, estimated the reserves in the Sahara region at 1 billion cubic meters of phosphate rock

(i.e. at best 825 million tons) and at 51 billion tons for the whole of Morocco. The reserves of the Sahara region thus account for 1.6 percent of Morocco's phosphate reserves.<sup>64</sup>

### ***B. Equalization Principle***

In order to ease the political tensions arising from the fact that the regions do not have the same resources, in 1957 the central government established a wealth redistribution programme called equalization programme. The idea was to allow each member state of the Federation to provide its citizens with comparable public services while raising comparable taxes. Equalization entitlements of so-called "poor provinces" are determined by comparing each province's fiscal capacity with the average fiscal capacity of all ten provinces. In so far as these two measurements differ, the central government will strive to fill the gap by making variable equalization payments (see Table 4).

This programme was put to the test on several occasions over the years. As could be expected, rich provinces usually consider that they pay too much whereas poor provinces try to demonstrate that they receive too little to meet the needs of their populations. This is a major social and political challenge in Canada, and it will remain so in the years to come especially since the Canadian population's centre of gravity is gradually moving West, precisely where the country's gas and oil resources are concentrated. This attraction of Western provinces is undermining the economic vitality and the political leadership of Eastern provinces.

The equalization principle is established in article 36 (2) of the Constitution Act of 1982 that states that: "*Parliament and the Government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.*"

**Table 4: How Does Equalization Work in Canada?**

1. Equalization entitlements are determined by measuring provinces' ability to raise revenues – known as "fiscal capacity".
2. Before any adjustments, a province's per capita Equalization entitlement is equal to the amount by which its fiscal capacity is below the average fiscal capacity of all provinces – known as the "10-province standard".
3. Provinces get the greater of the amount they would receive by fully excluding natural resource revenues, or by excluding 50 percent of natural resource revenues.
4. Equalization is adjusted to ensure fairness among provinces while continuing to provide a net fiscal benefit to receiving provinces from their resources equivalent to half of their per capita resource revenues.
5. Equalization is also adjusted to keep the total programme payout growing in line with the economy. The growth path is based on a three-year moving average of gross domestic product (GDP) growth. This helps to ensure stability and predictability while still being responsive to economic growth.
6. The programme also maintains the benefits of the Atlantic Accords for Nova Scotia and Newfoundland and Labrador. In 2007, the two provinces were given the choice to continue to operate under the previous Equalization system or to permanently opt into the new programme at any point prior to the expiry of the offshore accords. Having chosen the new programme, Nova Scotia benefits from a guarantee that it will do at least as well, on a cumulative basis, as it would have under the formula agreed at the time the Accord was signed. Newfoundland and Labrador no longer qualifies for Equalization.

Source: <http://www.fin.gc.ca/fedprov/eqp-eng.asp>

<sup>64</sup> IFDC, International Fertilizer Development Center. 2010. *World Phosphate Rock Reserves and Resources*, Technical Bulletins, N°75, <http://www.ifdc.org/getdoc/56358fb1-fc9b-49ba-92fe-187dc08e9586/T-75 World Phosphate Rock Reserves and Resources>.



In order to compare the provisions of the Moroccan Autonomy Initiative for the Sahara Region, let us recall that, as indicated above, the resources of the Region will include "the necessary funds allocated in keeping with the principle of national solidarity", which will have to be spelled out in negotiations between the parties. Since Spain's withdrawal in 1975, the Moroccan state has however made major efforts to promote the region and ensure its economic and social development in order to open it up and foster its economic integration into the country in keeping with the principle of national solidarity. This made it possible to plug the infrastructure gap that affected the region in 1975. These investments enabled the region to upgrade its infrastructure and bring it to the same level of development as the other regions of Morocco.

### ***C. Mismatch between Provincial Powers and Available Revenues (Fiscal Imbalance)***

The notion of fiscal imbalance made its way on the Canadian political stage over the past decade and took several twists and turns. In Quebec, the Séguin Commission on fiscal imbalance established in 2001 set the tone in its 2002 report by clearly illustrating that financial resources are to be found in Ottawa whereas it is the provinces that have needs. This report confirms the results of the *Conference Board of Canada* in its study published in August 2002 under the title of *Vertical Fiscal Imbalance: Fiscal Prospects for the Federal and Provincial/Territorial Governments*.

In this fundamental debate, provinces have followed two distinct pathways. On the one hand, Quebec and Alberta are demanding a new sharing of tax competences in order to provide their populations with the services they require. On the other hand, provinces such as Atlantic Provinces would rather give more power to the central government by entrusting it to rebalance public finances through the equalization principle. Generally speaking, less well-off provinces want to find a solution to the problem of territorial deficit, whereas Quebec and Alberta want to reduce the vertical imbalance between member states and the central government. This rebalancing may be possible by transferring certain tax fields from Ottawa to member states or by demanding the transfer of tax points to provinces.

The case of Quebec is more complex than it first appears since the Government of Quebec decided to share large swathes of governance and part of the responsibility for the management of the Far North's resources with the communities living on the territory. Let us take a look at the case of Nunavik.

*Nunavik: a Sub-set of the Territory of Quebec*

#### **Nunavik**

Area: 500 000 sqkm, territory located north of the 55<sup>th</sup> parallel

Population: ~ 11,000 - 90 percent Inuit

Nunavik is a large territory located north of the 55<sup>th</sup> parallel whose limits were set by in the James Bay and Northern Quebec Agreement of 1975. It has been calculated that 11,000 Inuit live on this territory, the population being scattered around fifteen growing communities. Until the early 1960s, the federal administration (Ottawa) was bearing the main responsibilities on this territory. The federal and provincial governments only came to this large Nordic territory very late. The Canadian army, the Royal Canadian mounted police followed by officials of the Canadian Department of Indian Affairs established themselves there in the wake of the Second World War. The Government of Quebec awoke to its responsibilities in the early 1960s. Later on, following negotiations between the Governments



of Quebec and Ottawa, the Government of Quebec came to exercise full authority over the region, by gradually taking over from the federal administration. From 1978 onwards, following the conclusion of the James Bay and Northern Quebec Agreement (Gagnon and Rocher, dir., 2002), Inuit institutions (the Makivik Society), landholding companies and public institutions (regional administration, regional health authorities, social services and the education commission) slowly started taking over. These activities are part of a legislative framework under the responsibility of the Government of Quebec.

On 5 November 1999, an agreement in principle was found between the Governments of Quebec and Ottawa and the representatives of the Inuit population to establish the Nunavik Commission responsible for the development of a calendar for the creation of an autonomous government. The agreement states that the government to be established shall merge existing institutions and be based on territorial rather than on ethnic benchmarks, it shall respect the legislation of the federation and that of Quebec. At the same time, the National Assembly of Quebec committed to transferring powers in the fields of justice, education, the environment, health and tax matters, to the newly established government.

The Government of Quebec was thus considering giving Nunavik Inuit wider political autonomy. For the time being it only involved establishing a regional elected Assembly. This Assembly, which shall be made up of at least 21 elected representatives of the 14 communities, will take over the regional Kativik administration, the regional health authorities and the social services of Nunavik and the education commission of Kativik. An agreement in principle was signed on 5 December 2007 by the representatives of the Governments of Quebec and Ottawa as well as by representatives of the Inuit for the creation of this new government.

On 27 April 2011, 66 percent of the population of the region however rejected the regional government as proposed by its own leaders. True enough, the new assembly would have legitimated the region's claims, but no agreement was found on the sharing of the proceeds from the exploitation of the natural resources of this large territory.

The region has considerable economic potential, hence the reluctance of Quebec's leaders to give in on major economic interests. Nunavik has huge energy resources as well as large catchment areas that can account for up to 25 percent of Quebec's total current production in this industry.<sup>65</sup> For the time being, under the 1912 Quebec Boundaries Extension Act, natural resources on this large territory come under the Government of Quebec.

Several fundamental issues related to the autonomy of Nunavik were left unanswered. In 2001, the Nunavik Commission raised a number of them. It first raised the issue of the tax revenue needed for governmental autonomy to come to fruition. In the case of Nunavik, "the financial needs of the Government of Nunavik significantly exceed the region's fiscal potential."<sup>66</sup> In order to correct this imbalance, the Commission offered to develop three potential tools: a) taxes; b) proceeds and royalties from natural resources; and c) fees and dividends from public utility companies. The Commission suggested allowing Nunavik to modify tax rates "for income tax and the sales tax"<sup>67</sup> and refunding part of income taxes and other taxes levied on the territory of Nunavik<sup>68</sup>, by the Governments of Quebec and Canada.

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<sup>65</sup> Quebec, *Tracer la voie vers un gouvernement pour le Nunavik*, Report of the Nunavik Commission, March 2011, p. 41,

<sup>66</sup> *Ibid.*, p. 20.

<sup>67</sup> *Ibid.*

<sup>68</sup> Let us underline that Nunavik Inuit, unlike other aboriginal groups, already pay duties and taxes.

The Commission is of the opinion that considering the Nunavik Government's land base, it would only be normal that it should get part of the rent and royalties. Quite naturally, "in such as sparsely populated region, rents and royalties would be the main sources of autonomous revenues"<sup>69</sup>. The establishment of an autonomous Government for Nunavik should be preceded by negotiations to spell out the modalities for the sharing of financial resources.

On top of taxes, rents and royalties, the Commission wants the Government of Nunavik to be allowed to collect charges on certain economic activities. In areas under provincial or federal jurisdiction, negotiations should be held without delay. Moreover, the Government of Nunavik should be allowed to create its own public utility companies. However, the Commission considers that since tax resources nevertheless remain quite limited, they wouldn't be sufficient to fully finance public utilities. Transfer payments would fill in the gaps.

The Commission also looked into the management of the territory and resources. It considers that the stakes are high in this area in the light of the economic potential it involves, the profits they may offer and the attachment of Nunavik communities to their living environment.

The vast territory of Nunavik holds considerable potential: mineral resources (nickel, copper, iron, gold, zinc, lead, lithium); energy resources (rivers, tides, wind, biomass); freshwater resources. These resources offer considerable development potential and are a substantial source of income for the Government of Nunavik.

Issues related to the management of the territory and its resources naturally come under the purview of the Government of Quebec while environmental issues are the joint responsibility of the federal government and the Government of Quebec. In this area, the Commission considers that a "Government of Nunavik should share the responsibility of the control over the territory and its resources with the Governments of Quebec and Canada."<sup>70</sup>

The central government has however not shed all of its responsibilities as confirmed by the signing on 1<sup>st</sup> December 2006 of the *Nunavik Inuit Land Claims Agreement*. This agreement was signed by representatives of the central government and of the Government of Nunavut as well as by the Makivik Society (representing the Inuit population). The *Nunavik Inuit Land Claims Agreement*<sup>71</sup> was ratified, among other things, to provide elements of an answer to the issue of extra-coastal areas that was still pending when the James Bay Convention was signed. This new agreement provides that "Nunavik Inuit will be entitled to receive annual royalties from the Government of Canada based on resources development in the Nunavik Marine Region. This amount will equal 50% of the first \$2 million and 5% of any additional resource royalties received by the Government that year."<sup>72</sup>

These notes, though summary, lead us to look deeper into the management of resources in the light of the example of Nunavut. This is a territory larger than Mexico that covers the Northern and Eastern part of the Canadian Arctic (see Map 1).

### *Nunavut: an Autonomous Territory in the Canadian Federation*

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<sup>69</sup> Quebec, *Tracer la voie vers un gouvernement pour le Nunavik*, op. cit., p. 21.

<sup>70</sup> *Ibid.*, p.41.

<sup>71</sup> Canada, *Nunavik Inuit Land Claims Agreement*, *Aboriginal Affairs*, Aboriginal Affairs and Northern Development, 2007.

<sup>72</sup> <http://www.aadnc-aadnc.gc.ca/aiarch/mr/nr/j-a2007/2-2855-bk-fra.asp>.



## Nunavut

Area: over 2 million square km

Population: around 31,000, of which 85 percent Inuit.

The example of Nunavut is just as useful for our study. The fact is that it is an autonomous territory in the Canadian Federation that does not come under any of the Canadian provinces. This territory comes under the direct responsibility of the central government, i.e. there are only two players involved in this case.

Let us state at the outset that the central government, through its 1985 Territorial Lands Act - whose latest update dates back to 1<sup>st</sup> April 2003 - provides in article 15 that "[t]here shall be deemed to be reserved to the Crown out of every grant of territorial lands (a) all mines and minerals whether solid, liquid or gaseous that may be found to exist in, under or on those lands, together with the right to work the mines and minerals and for this purpose to enter on, use and occupy the lands or so much thereof and to such extent as may be necessary for the working and extraction of the minerals; and (b) all rights of fishery and fishing and occupation in connection therewith on or around or adjacent to those lands."<sup>73</sup> This act was meant to clarify the exercise of sovereignty by the central government on the three territories bordering Canada in the North.

Since 1999, Nunavut Inuit have had their own territorial government and are thus able to exercise some sort of internal self-determination. The process that led to the creation of the territory of Nunavut started in 1976 when the Inuit Tapirisat of Canada (ITC) proposed to create the Territory of Nunavut. The Nunavut Land Claims Agreement Act was agreed upon. It was ratified six years later in 1999 under the name of Nunavut Act.

Though a negotiation protocol was signed in 2008 by the Canadian Government, the Government of Nunavut and the Nunavut Tunngavik Inc., the issue of resource management is far from being settled. The Nunavut *Lands and Resources Devolution Negotiation Protocol* identifies subject matters to be negotiated. These relate to the devolution of administrative powers, land rights and control over lands, water rights, power to legislate and territorial management responsibilities. It also provides that a major proportion of human resources mobilized for land, water and resources management be transferred by the central government to the Government of Nunavut. These transfers suggest that fiscal resources shall be provided to the new government to allow it to fully exercise its new responsibilities.

As for natural resources, the 2008 Protocol mainly covers oil and gas. Under this protocol, the Government of Nunavut and the Nunavut Tunngavik Inc. informed that they demanded "transfer of administration and control in respect of Crown lands and resources in all areas, both onshore and in the seabed". Moreover, they consider that "a devolution agreement should make no distinction between resource management regimes onshore and in the seabed in and adjacent to marine areas". Throughout the discussion, Ottawa was very quiet about seabed resources (including oil and gas resources in coastal areas and in the seabed), but committed to discuss this issue eventually. In a nutshell, the parties committed to discuss transfer of responsibilities for the management of the territory and resources and to determine "resource revenue sharing and net fiscal benefit to Nunavut" in reasonable time.

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<sup>73</sup> <http://laws-lois.justice.gc.ca/fra/lois/T-7/TexteComple.html>.

The protocol signed in 2008 was further improved the next year when the central government agreed to allow the Government of Nunavut and the Nunavut Tunngavik Inc. to benefit from "any discovery of natural or mineral resources, including the discovery of diamonds and diamond-bearing kimberlite pipes located under small lakes"<sup>74</sup>.

It is worth mentioning here that the Canadian Constitution provides that the regulation and exploitation of mining resources on leased public lands are the responsibility of provinces and territories. In the case of Nunavut, things are slightly different. According to the information available on the site of the Canadian Ministry of Natural Resources, it can be said that mining exploration and exploitation are still regulated by the Northwest Territories office of the Ministry for Indian affairs and Northern Canada.<sup>75</sup>

**Map 1: Canada's Provinces and Territories**



Source: <http://www.threecordministries.org/ArcticMaps.html>

It must be understood that in order to have a land claim from the Inuit community, the Canadian Government transferred to that community mining rights over some 10 percent of the territory of Nunavut, in the shape of large blocks scattered all over the territory. (Press release: [www.mcan.gc.ca/mineraux-metaux/politique/lois-reglements/3361](http://www.mcan.gc.ca/mineraux-metaux/politique/lois-reglements/3361)). The financial resources thus mobilized by the Government of Nunavut will make it possible to finance the region's development in all areas. Let us finally say that regarding the approval of mining rights, the central government, though it represents one of the partners, remains the final arbitrator.

Responsibilities transferred to the territories (Yukon, Northwest Territories and Nunavut) share some similarities with those exercised by the provinces. It is worth noting that the territories have gained certain powers over the past few years by increasing their control over lands and natural resources management. The powers attributed to the territories are however not guaranteed by the Constitution and may be modified when governments change in Ottawa. However, once certain powers are transferred to the territories it is hard to imagine

<sup>74</sup> Press Release, [www.aadnc-gc-ca/aiarch/mr/nr/j-a2009/nr00000207-fra.asp](http://www.aadnc-gc-ca/aiarch/mr/nr/j-a2009/nr00000207-fra.asp)

<sup>75</sup> Distinction should be made between the various types of territorial agreements mentioned here by adding that the Inuit, in Nunavik and Nunavut, own underground resources over limited portions of the territory.



that the central government would withdraw some of these powers. To wind up, let us mention that Amerindian peoples' claims of power over these wide territories remain a major challenge in the short and middle term, even though a growing number of social actors and government/para-state institutions support their cause.

Regarding the autonomy statute for the Sahara Region proposed by Morocco, let us mention the following points if comparison:

- The acknowledgment, just like in Canada, of the importance of natural resources both as a source of revenue and development and as long-term strategic potential;
- The willingness, in both countries, to balance the autonomous development needs of local populations and the preservation of the sovereign powers of the central state, through negotiations between all parties concerned;
- Unlike in Canada (at least in the case of Nunavik), the early development of relationships between a central government and an autonomous region, even though the later should probably provide for decentralization at municipal level;
- The acknowledgement, just like in Canada, of the need to give more resources to the autonomous region, possibly by providing fiscal resources support through the principle of "national solidarity" (equalization in Canada);
- The wish of the central government to negotiate with affected parties to give autonomous populations and their institutions the widest possible powers in the management of the region's natural resources. In the case of Nunavut, the central government is negotiating sharing revenues and powers, and in the case of the Sahara Region, Morocco is proposing to allocate to the autonomous region "the proceeds from the exploitation of natural resources allocated to the region" and "the share of proceeds collected by the State from the exploitation of natural resources located in the region".

All in all, it would appear that the best solution is to negotiate among the various stakeholders, in a climate of mutual trust and respect to guarantee the rights recognized nationally on the basis of international standards, as offered by Morocco. The autonomy thus negotiated is a promising approach towards respectful management of the parties to this regional dispute.

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