NUNAVUT AND THE NUNAVUT LAND CLAIMS AGREEMENT — AN UNRESOLVED RELATIONSHIP

Barry Dewar

A key member of the federal negotiation team on the Nunavut land claim from 1979 to 1993, Barry Dewar recounts here the fascinating story of the unfolding of the negotiations that ultimately led to the signing of the Nunavut Land Claims Agreement (NCLA) in 1993 and the adoption of the *Nunavut Act*. It is a story of stalemates and slowdowns, but also of breakthroughs, compromises, trust and commitment. "To outside observers" he writes, "it may have appeared that the creation of the Nunavut Territory and the resolution of the Inuit land claim unfolded as part of a coordinated master plan for changing the future of northern Canada. But for those working inside the federal system, the reality was very different. Nunavut and the NLCA were pursued as separate, and at times conflicting, initiatives."

Membre clé de l'équipe de négociation fédérale sur les revendications territoriales du Nunavut de 1979 à 1993 et principal négociateur fédéral à partir de 1986, Barry Dewar retrace la captivante histoire des négociations qui ont mené à l'Accord sur les revendications territoriales du Nunavut de 1993 et à l'adoption de la *Loi sur le Nunavut*. Une histoire ponctuée de nombreux délais et impasses, mais aussi une histoire d'avancées, de compromis, de confiance et d'engagement. « Pour un observateur externe, écrit-il, la création du territoire du Nunavut et le règlement des revendications territoriales des Inuits ont pu sembler participer d'un plan général et coordonné visant à transformer l'avenir du Nord canadien. Mais la réalité était tout autre pour ceux qui travaillaient au sein du système fédéral. En fait, la création du Nunavut et la négociation de l'Accord relevaient de deux initiatives distinctes et parfois conflictuelles. »

On June 10, 1993, the *Nunavut Act* and the *Nunavut Land Claims Agreement Act* received royal assent in Parliament. For the Inuit of Nunavut, these two initiatives were inextricably linked. These two acts of Parliament were the culmination of a generational effort by Inuit to reassume control of their destiny as a people through recognition of their Aboriginal land rights, and through political control provided by a new territorial government within their homeland.

For the Government of Canada, on the other hand, Nunavut and the Nunavut Land Claims Agreement (NLCA) have consistently been regarded as separate initiatives. Although the two initiatives converged in Parliament in June 1993, throughout the 15 years of negotiations leading up to that date, and in the 15 years of implementation since that date, the Government of Canada has maintained a compartmentalized approach to dealing with Inuit Aboriginal land rights and the creation and operation of the Nunavut Territory, resulting in a bifurcated relationship between Canada and the Inuit of Nunavut.

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In this article I look at the unfolding of these two initiatives from my perspective as a member of the federal negotiation team on the Nunavut land claim from 1979 to 1993.

The creation of the Nunavut Territory changed the map of Canada and established a new political entity in the Canadian federation. The NLCA represented the largest Aboriginal land claims settlement in Canadian history. It addressed the Aboriginal rights and title of approximately 17,500

Inuit living in 27 communities in the central and eastern Northwest Territories (NWT), covering over 2,000,000 square kilometres of land and adjacent marine areas, representing approximately 20 percent of Canada's landmass.

Negotiated between 1980 and 1993, the NLCA consists of over 40 chapters, which address wildlife management and harvesting rights, land water and environmental management regimes, parks and conservation areas, heritage resources, public sector employment and contracting, and a range of other issues. The agreement vested Inuit with ownership of 350,000 square kilometres of land, including mineral rights to 36,000 square kilometres. It provided for capital transfers to Inuit of $1.14 billion and an ongoing share of royalties from resource development within the settlement area. Article 4 of the NLCA committed Canada to introduce legislation to establish Nunavut.

Despite the significance of Nunavut and the NLCA, the initiatives were entrusted, within the federal government, to separate and relatively small core teams within the Department of Indian Affairs and Northern Development (DIAND). Throughout the 1980s, both initiatives proceeded with a relatively low political profile, and the Nunavut land claim had a lower priority than claims in Yukon and the western NWT, where there were greater resource development pressures.

For most of the Nunavut land claim negotiations, the core federal negotiating team consisted of four individuals in the native claims section of DIAND (a senior federal negotiator, an assistant negotiator, a claims analyst and an administrative assistant) and a legal adviser assigned by DIAND legal services. At the negotiation table, the federal team was led by a chief federal negotiator appointed by the minister of Indian affairs and northern development from outside the public service. Tom Molloy, a lawyer from Saskatoon, was the chief federal negotiator from 1982 to 1993. The Government of the Northwest Territories (GNWT) participated in negotiations as part of the federal negotiating team and was usually represented at the table by a senior negotiator and legal counsel. Fortunately, there was a high degree of continuity in the federal team during the negotiation process.

The core federal negotiating team was supported by a federal caucus, which included representatives from government departments affected by the negotiations. While most caucus members worked positively to advance negotiations, they often had limited flexibility or authority to endorse proposals for change. They were generally middle managers who were expected by their departmental senior management to protect departmental interests. Caucus representatives frequently attended the negotiations to provide technical information or as observers. For members of the core federal negotiating team, it often felt as if their caucus "supporters" were there primarily to ensure that the federal negotiators defended departmental interests and that they did not exceed caucus-approved federal positions.

Some of the most difficult debates occurred within DIAND itself between the land claims negotiation team and Northern Program. Northern Program was responsible for federal land and resource management activities in the NWT. It was also responsible for the political development process in the territories. Inuit proposals to turn over much of Northern Program's authority over and management of lands and resources to Nunavut-based comanagement boards with guaranteed Inuit membership were seen as creating regulatory complexity and undermining the federal government's ability to manage northern resources. On many occasions, Northern Program suggested that negotiations on these issues be deferred pending a decision on the creation of Nunavut — the premise being that with Nunavut there would be no need to negotiate co-management boards, as Inuit could gain control of lands and resources through eventual devolution to a Nunavut territorial government.

Had commitments to Nunavut been made early in the negotiation process, it is possible that the NLCA might have been more streamlined. Guarantees with respect to land and water management boards might have been less detailed. Issues relating to municipal lands, public sector employment and contracting might have been addressed through Nunavut rather than at the land claims table.

However, self-preservation dictated that the federal land claims team remain firmly agnostic on the creation of Nunavut. If we suggested that the claim could not be settled without Nunavut or if we invited dialogue on how the claims package might be dif-

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ferent with Nunavut, we ran the risk of being put on hold pending the outcome of the political development process. Our only option was to keep our heads down and soldier on with the land claim agreement in hopes that it could be approved without Nunavut, or that it would ultimately trigger a decision on Nunavut.

The Inuit also functioned with a relatively small core negotiation team led by a succession of capable Inuit chief negotiators and regional negotiators, supported by a small but dedicated and relatively consistent group of non-Inuit advisers. Given the small size of the negotiation teams, negotiations were centralized at a main table. There was limited capacity to accelerate negotiations through working groups or side tables. While some topics were contentious, the atmosphere was generally respectful and businesslike, with both sides strongly committed to achieving an agreement.

The 1970s saw the intersection of two major issues in the Northwest Territories: the federal commitment to negotiate outstanding Aboriginal land claims pursuant to its 1973 comprehensive land claims policy, and initiatives to divide the territory and restructure the territorial government.

In February 1976, the Inuit Tapirisat of Canada (ITC) made a presentation to the federal cabinet on addressing Inuit Aboriginal claims in the NWT, including the creation of a separate Nunavut territory as integral to the settlement of the Inuit land claim. The ITC proposed a tree-line boundary between western NWT and eastern NWT, with Nunavut including the Mackenzie Delta-Beaufort Sea region occupied by the Inuvialuit. A revised Inuit claims proposal presented in December 1977 retained the concept of a new territory. In the same period, the Dene and Métis of the western NWT submitted their land claims and also made proposals to divide and restructure the government of the NWT.

For the federal government, the division of the NWT and the structure of territorial government were a public government issue affecting all NWT residents, not an Aboriginal rights issue. Canada was not prepared to negotiate Nunavut at a land claims table. Land claims negotiations in 1978 and 1979 made virtually no progress due to the impasse on addressing Nunavut.

In the spring of 1980, the ITC and Canada agreed to resume negotiations on the Nunavut land claim on the understanding that the Inuit proposal for the creation of the Nunavut Territory would be dealt with through a political development process in the NWT, separate from, but parallel with, the land claim negotiations. When negotiations began on the land claim in 1980, there was no framework agreement with Inuit setting out the elements and scope of a potential claim settlement; there was no formal federal interdepartmental mandating process; and there was no contemplation of how the creation of a Nunavut territory might affect the shape and content of a land claim agreement. For Inuit, both the land claim track and the political development track were directed at moving the levers of political control from Ottawa and Yellowknife to Nunavut.

Land claim negotiations began with a focus on wildlife management and harvesting rights. Inuit wanted wildlife management decisions to be depoliticized and turned over to an independent regulatory board jointly appointed by Inuit and government. Federal and territorial departments responsible for wildlife and fisheries management were reluctant to move beyond the establishment of advisory boards that would leave final decision-making power and political accountability in the hands of ministers. By the fall of 1981, the negotiation teams had developed a potential compromise, which provided for a joint wildlife management board that would have decision-making powers over harvest regulations and quotas but would be subject to a ministerial power to disallow or override decisions based on conservation and certain other considerations. On that basis, a wildlife subagreement was initialled by the chief negotiators, subject to review by the parties. The federal fisheries and environment ministers refused to endorse the agreement and it remained in suspension until 1986, when the approach was finally accepted, with certain modifications.

In 1982, negotiations witnessed a significant slowdown. The Inuit undertook an internal reorganization, transferring responsibility for negotiations from the ITC, the national Inuit organization, to the Tungavuk Federation of Nunavut (TFN), a regional organization established specifically to represent the Inuit of Nunavut. On the federal side, Tom Molloy was appointed as the new chief federal negotiator. With the cloud of the unresolved wildlife agreement hanging over the parties, it took considerable time to reestablish trust and productive working relationships at the negotiation table.

By 1985, the negotiation teams had regained momentum and had ini-

Of equal significance, the 1986 comprehensive claims policy also brought major structural changes to comprehensive claims negotiations through a new federal mandating process. Through section 35 of the *Constitution Act, 1982* and an amendment in 1983, comprehensive land claims agreements acquired the status of constitutionally protected treaties. The constitutional status of agreements required increased political oversight and control of negotiations.

tialled subagreements on 17 chapters, approximately half of a potential agreement in principle (AIP). However, the negotiations were facing a number of policy impediments. The federal government's comprehensive claims policy did not permit negotiation of Aboriginal rights in the offshore, or royalty sharing from mineral and oil and gas development. And there was continuing deadlock over whether land and water and environmental management boards would have advisory or decision-making roles.

The Nunavut land claim agreement in principle was signed in Igloolik on April 30, 1990. For the first time, the Nunavut land claim agreement and Nunavut acquired a significant political profile in the federal system, with Minister Thomas Siddon and Inuit leaders forging a working relationship to advance the agenda.

With the constitutional recognition of Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*, the Government of Canada was facing increasing demands across the country for changes to its comprehensive claims policy and, in particular, to requirements for surrender or extinguishment of Aboriginal rights. In 1985, the federal government established a task force to conduct national consultations and to recommend revisions to its claims policy. In late 1986, the federal cabinet approved a revised comprehensive claims policy, which included a number of changes favourable to the Inuit negotiations.

Of equal significance, the 1986 comprehensive claims policy also brought major structural changes to comprehensive claims negotiations through a new federal mandating process. Through section 35 of the *Constitution Act, 1982* and an amendment in 1983, comprehensive land claims agreements acquired the status of constitutionally protected treaties. The constitutional status of agreements required increased political oversight and control of negotiations. The 1986 policy established a requirement that all negotiations have a cabinet-approved mandate for all elements of a potential settlement package. The policy also provided for the establishment of a federal steering committee of assistant deputy ministers that was authorized to provide more specific direction for negotiations within the broad mandates approved by cabinet. This provided a forum in which to resolve disagreements that had previously festered unresolved between DIAND and other departments.

Consistent with the new comprehensive claims policy, the federal negotiating team on the Nunavut land claim was required to seek a cabinet mandate on an overall land claim settlement package before returning to the negotiation table. Discussions with TFN in mid-1987 reached consensus on the remaining list of matters for negotiation. The federal team then sought cabinet approval of the subagreements already negotiated and a mandate to address all of the remaining issues. The mandate was approved in November 1987. Reflecting the changes in the claims policy, it empowered federal negotiators to address offshore rights, royalty sharing and decision-making powers for land and water management boards. Notably, the mandate maintained a total separation between the land claim agreement and Nunavut.

With the federal mandate in place, negotiations resumed with greater intensity and focus. By the fall of 1989, negotiations were narrowing down to a limited list of issues that would go for resolution at a meeting between Inuit leaders, the minister of Indian affairs and northern development and the GNWT. The two key outstanding issues were the financial component of the land claims agreement and Nunavut.

Throughout the 1980s, the federal land claims negotiation team monitored the on-again, off-again progress on the political development front, but maintained a total separation between the initiatives.

In 1982, a plebiscite was held in the Northwest Territories to test public support for division. A small majority of participating voters endorsed the concept. The Constitutional Alliance was established, composed of members of the NWT Legislative Assembly and representatives of Aboriginal organizations, to pursue the initiative. It established two subgroups, the Western Constitutional Forum and the Nunavut Constitutional Forum. In 1987, they negotiated the Iqaluit Agreement, which proposed that the boundary for division be based on the boundary between the Inuit land claim and the Dene-Métis and Inuvialuit land claims, and that the boundary be approved by a plebiscite. However, the Inuit and the Dene-Métis failed to reach agreement on a boundary between their claims. As a result, the agreement was not implemented and the two constitutional forums and the Constitutional Alliance were disbanded.

In mid-1989, with the land claim AIP nearing completion, the separate but parallel tracks of the Nunavut land claim negotiations and the Nunavut Territory began to converge. It was becoming clear that the success of any meeting between the minister and Inuit leaders to finalize an AIP on the land claim would hinge on a commitment with respect to the creation of Nunavut. It was not possible in the time available to galvanize the federal system or the territorial government to make firm commitments to the creation of Nunavut. However, it was recognized that, at a minimum, Inuit needed assurance that the fate of Nunavut would be determined one way or the other before

a ratification vote on a final Nunavut land claim agreement.

On the night of December 7, 1989, a meeting was held on Parliament Hill between Inuit leaders, the Minister of Indian Affairs and Northern Development and the GNWT to conclude the final issues on the Nunavut land claim AIP. In preparation for the meeting, the Minister had written to the territorial government seeking support to establish a process and timetable for achieving a decision on Nunavut. At the meeting, the GNWT and TFN reached agreement to develop, within six months of the AIP, a process for the creation of Nunavut outside the land claim agreement, consistent with the 1987 Iqaluit Agreement, including a requirement for a territory-wide plebiscite on the boundary. The commitment was set out in article 4 of the land claim AIP, confirming the support in principle of the three parties for the creation of the Nunavut Territory as soon as possible. With article 4 in place, agreement was reached on the remaining claim issues.

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The parties announced a target of 18 months to achieve a final agreement, with a view to securing ratification by Parliament before the next federal election, projected for the fall of 1992. With that target, final negotiations on the land claim and the political development process embarked on a demanding "beat the clock" agenda with essentially no room for delays or setbacks.

Within the federal system, the assistant deputy minister of Northern Program, Richard Van Loon, and the director general of constitutional development in Northern Program, Jack Stagg, performed a strategic oversight and coordination role. But at an operational level, the land claim negotiations and the political development process continued on separate tracks. Given the timelines and work pressures, there was virtually no contact between the federal land claim team and the federal team in Northern Program working on the Nunavut process.

At the land claims table, energies focused on a daunting regional land identification process involving all 27 Inuit communities. Equally pressing was the need to address overlapping claims between the Inuit and other Aboriginal groups, including the determination of the boundary between Inuit and Dene-Métis claims in the NWT.

A boundary was essential, for both the land claim agreement and the political development process. Following a fact-finding exercise demonstrating continued disagreement between Inuit and Dene, the federal government asked John Parker, a former commissioner of the NWT, to recommend a single line boundary between the two claims areas. Despite severe discontent with portions of the "Parker line," Inuit leaders reluctantly accepted the boundary in July 1991, subject to a number of concessions at the land claims table on land quantum and ownership rights. The urgent need for a boundary line for the Nunavut process and boundary plebiscite was the deciding factor for the Inuit leaders. Had Nunavut not been in the equation, the boundary issue could have caused the land claim to founder or fragment into three regional Inuit claims.

By December 1991, the final agreement on the land claim was essentially completed, pending another decisive meeting on final issues between the Minister of Indian Affairs and Northern Development, Inuit leaders and the GNWT. Once again, the pivotal issue for that meeting was Nunavut. At a late-night meeting on Parliament Hill in mid-December, negotiations were finalized on the outstanding issues on the Nunavut land claim, including agreement on a new article 4 on political development.

The new article 4 committed the Government of Canada to recommend legislation to Parliament to establish the Nunavut Territory. It provided that Canada, the GNWT and TFN would negotiate a political accord addressing the powers and financial arrangements for the Nunavut government and the timing for its creation. The accord was to be completed by April 1992, prior to the Inuit ratification vote on their land claim agreement.

While cabinet had been briefed on the status of work on Nunavut, Minister Brian Siddon entered the meeting without cabinet authorization to commit the federal government to its creation. However, it was clear at the meeting that statements of support in principle would not carry the day and the time had come for a decision. Following the meeting, Minister Siddon called Prime Minister Brian fMulroney to advise him of developments. The next day, at a hastily organized press conference, Minister Siddon, flanked by Inuit leaders, announced the conclusion of the land claim agreement and the federal government's commitment to the creation of Nunavut.

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for division was approved in a territorial plebiscite on May 4, 1992, and the Political Accord was signed in Iqaluit on October 30, 1992. Following a two-month ratification tour by Inuit and federal negotiators to all Inuit communities, the Inuit ratification vote on the land claim agreement was held from November 3 to November 5, 1992. The land claim agreement was endorsed by 85 percent of those who voted. During the course of the ratification tour, it was evident that the successful ratification vote was highly dependent on the commitment to create Nunavut.

The NLCA was signed in Iqaluit on May 25, 1993 by Prime Minister Mulroney, Paul Quassa of TFN, and Nellie Cournoyea, government leader of the GNWT, and other representatives of the parties. The Bill to ratify the NLCA and Bill to create Nunavut received first reading in Parliament on May 28, 1993, and received royal assent on June 10, 1993. These two major initiatives, which would transform the future of northern Canada, proceeded through Parliament essentially without discussion or debate, just "beating the clock" prior to the calling of the 1993 federal election.

The statements of all parties at the signing of the NLCA in May 1993 described the NLCA and the creation of Nunavut as an accomplishment in nation building and heralded the combined initiatives as the beginning of "a new partnership" between Canada and the Inuit of Nunavut. However, following royal assent, implementation of the NLCA and the creation of the Nunavut Territory again reverted to separate tracks.

Since 1993 the treaty relationship between Canada and the Inuit of Nunavut has attenuated into a technical, activity-based implementation process to fulfill specific obligations set out in a joint implementation plan. The Nunavut Tunngavik Inc. (NTI), the Inuit organization responsible for overseeing implementation of the land claim agreement, is calling for a more purposive approach to implementation and increased implementation funding to achieve the environmental, social and economic objectives of the NLCA. Federal officials have expressed concerns that NTI is conflating treaty rights and obligations with broader socio-economic and cultural objectives that go beyond treaty implementation. The Government of Nunavut finds itself in the middle of a bilateral treaty relationship between the Inuit and Canada, where it has major implementation responsibilities, but where it is not recognized as a full partner and where it does not feel adequately resourced to fulfill its treaty obligations or the expectations of Inuit.

After 1993, NTI continued to have a political role in the transition process for the creation of the Nunavut Territory, which came into being on April 1, 1999. However, once the Nunavut government was in place, federal-territorial relations assumed a bilateral format between the Government of Nunavut and the Government of Canada, with no role for NTI.

While Nunavut is characterized as an expression of Inuit self-government through public government, neither the creation of Nunavut nor the NLCA affected the Inuit inherent right of self-government. Nunavut may yet require further structural arrangements to institutionalize its role as an expression of Inuit self-government, including a more formal role for NTI as the guardian of Inuit Aboriginal and treaty rights. This would require further clarification and separation of NTI's quasi-governmental roles from the business and corporate roles of NTI and the other Inuit land claim corporate entities that control nearly 20 percent of the Nunavut land base and almost one-third of its high-potential mineral lands.

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Nunavut and the Nunavut Land Claims Agreement represent historic achievements, providing Inuit with economic opportunities and political levers to improve their socio-economic circumstances. Both have made major contributions to that objective and hold the potential to do much more. However, the difference between Canada's compartmentalized approach to Nunavut and the Nunavut Land Claim Agreement and the more holistic view of the Inuit remains an underlying source of tension in the ongoing relationship between Canada and the Inuit of Nunavut.

There is currently no forum where the three parties in the "new partnership" between Canada and the Inuit of Nunavut (the Government of Canada, NTI and the Government of Nunavut) can transcend the traditional boundaries of treaty rights and federal-territorial relations to bring together their collective resources to address the challenges facing the Inuit of Nunavut. To unlock the full promise and potential synergies of Nunavut and the NLCA, there is a need for a dialogue on the future relationship between these two initiatives.

Barry Dewar is a retired federal public service executive with a 30-year career in Indian and Northern Affairs Canada, focusing on Aboriginal rights and claims. From 1979 to 1993 he was a member of the federal negotiating team on the Nunavut land claim, and he occupied the position of senior federal negotiator from 1986 to 1993. He was subsequently director general of self-government negotiations and director general of the Comprehensive Claims Branch.