

# Roads to autonomy

Similar paths, different outcomes in two Inuit regions

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## **Abstract**

The purpose of this study is to analyze and explain why two Inuit regions in Canada, Nunavik and Nunatsiavut, experienced different outcomes after extensive tripartite negotiations for self-government. Although both regions appear to have similar basic features, the Nunavik self-government agreement failed in a referendum in 2011, while the Nunatsiavut agreement was ratified six years earlier. I present a set of factors that have been known to influence outcomes in self-government negotiations. The factors I consider are the compatibility of government and Aboriginal group goals, minimal use of confrontational tactics, Aboriginal group cohesion and government perceptions of Aboriginal group. I also pay heed to institutional and contextual factors, such as the evolving institutional framework of Canada's self-government policy and the emergence of multilevel governance structures in Inuit regions.

In order to investigate this puzzle, I do a multiple case study and utilize the strategy of process tracing. Using semi-structured interviews, newspaper data, government reports, meeting minutes and scholarly literature I seek to identify the factors that might have contributed to Nunavik and Nunatsiavut's different outcomes. The findings indicate that the divergent outcomes in the two cases best can be explained by the lack of group cohesion in Nunavik as compared to Nunatsiavut. In addition, I find that the layering of self-government policy and the emergence of a multilevel governance structure in Nunavik affected the self-government negotiation outcome in Nunavik negatively. In contrast to Nunatsiavut where there did not exist any multilevel governance structure, and which was positively impacted by the more extensive self-government policy that emerged over the years.

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## List of abbreviations

AIP	Agreement-in-principle
CLC	Comprehensive land claims
CPO	Causal process observation
DIAND	Department of Indian Affairs and Northern Development
IBA	Impact and Benefits Agreement
INAC	Indigenous and Northern Affairs Canada
ISR	Inuvialuit Settlement Region
ITN	Inuit Tungavingat Nunamini
JBNQA	James Bay and Northern Quebec Agreement
KRG	Kativik Regional Government
KSB	Kativik School Board
LIA	Labrador Inuit Association
LMN	Labrador Metis Nation
MLG	Multilevel governance
MOU	Memorandum of Understanding
NBHSS	Nunavik Board of Health and Social Services
RCAP	Royal Commission on Aboriginal Peoples
SAA	Secrétariat aux affaires autochtones

# 1. Introduction

On April 27 2011, the Inuit in Nunavik, Quebec turned to the ballots to decide whether to ratify the proposed self-government agreement with the Crown and the province of Quebec. After tripartite negotiations spanning over a period of two decades, numerous public consultations and four separate referendums, the process culminated with a decisive 66 percent victory for the 'no'-side. Six years prior, the Inuit in northern Labrador, just adjacent to Nunavik, voted on their own self-government plan, where 76 percent voted in favor of ratifying the agreement. That number would be even higher if you take in to account the fact that votes that were not cast counted as 'no' votes. The referendum came after nearly 20 years of negotiations.

Since the end of World War II, indigenous peoples across the globe have increasingly participated in political activism. There is a high demand for the decolonization of relations between the settler states and the indigenous peoples, the "nations within". There is an Aboriginal call for reallocation of powers on the basis of collective rights. In Canada, the Indigenous peoples' drive towards self-governance started with a court case in British Columbia. It was in 1973 with the decision in *Calder v. British Columbia* where Canada recognized legal Aboriginal title to land. The decision prompted the federal government to develop new policy to address Aboriginal claims to land, and invite Aboriginal groups to file what it called comprehensive land claims (CLC). Under this process, Aboriginal groups that had never before completed a treaty could exchange undefined 'Aboriginal rights' for a "clearly defined package of rights and benefits set out in a land claim settlement agreement" (Hicks & White 2000, 94). The rights and benefits included in such a settlement would typically include "large amounts of land and money, jurisdiction over natural resources, fish and wildlife, migratory birds, taxation, economic development, and other far-reaching jurisdictions" (Alcantara 2013, 3).

In the beginning of this process, self-government provisions were not a part of these agreements. It was not until Canada's *Inherent Right of Self-Government Policy* of 1995 that indigenous groups were able to include self-government arrangements in CLCs. Additionally, self-government became recognized as a fundamental right of Aboriginal peoples, and the Canadian government agreed to constitutionally protect particular aspects of self-government agreements as treaty rights under section 35 of the *Constitution Act, 1982*. All of the CLCs completed after this policy was implemented have included self-government provisions (AANDC, 2016).

This is an important field of study, not only because self-government agreements have a significant impact on indigenous peoples' lives, but also because it represents a positive change for Indigenous peoples in Canada and possibly elsewhere. Second, it is an important field of study as Aboriginal self-government, especially in the provincial North, represents a new phase in Canadian federalism, as it creates autonomous regions within existing federal units. In my thesis, I intend to study what factors can explain self-government negotiation outcomes, and more specific, what explains the divergent outcomes in the cases of the Inuit in Nunavik and Nunatsiavut.

At first glance, Nunatsiavut and Nunavik share common traits that make their outcome variations puzzling. Firstly, the majority of the inhabitants in Nunavik and Nunatsiavut are Inuit, a population with one cultural and political tradition (Rodon and Grey 2008, 1). Secondly, Nunavik and Nunatsiavut are both located within provinces, as opposed to within territories. This means that their governance arrangements are the result of tripartite negotiations, in which the provinces have most of the jurisdiction. Thirdly, they were both negotiating for regional self-government and not a community-based self-government. Accordingly, Nunavik and Nunatsiavut's shared similarities make their different outcomes even more puzzling. What explains their divergent outcomes, given their similar outset?

Subsequently, the research question I intend to answer is the following:

*Why did Nunatsiavut succeed in attaining self-government following extensive tripartite negotiations while Nunavik did not, when they share similar basic features?*

### **1.1 Who are Indigenous peoples in Canada?**

Indigenous peoples, also referred to as Aboriginal peoples, have been in Canada since time immemorial. In 2011, more than 1.4 million people in Canada identified as Indigenous, representing 4,3 percent of the population. There are three categories of Aboriginal peoples in Canada: the First Nations, Inuit and Metis. First Nations are predominant in Canada south of the Arctic, and there are currently 634 recognized First Nations governments or bands<sup>1</sup> spread across Canada, roughly half of which are in the provinces of Ontario and British Columbia. They represent 60,8 percent of the total Aboriginal population. The Inuit primarily inhabit the

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<sup>1</sup> The basic unit of government for those peoples subject to the Indian Act, with membership ranging from below 100 to over 20 000.



northern regions of Canada, in what is known as Inuit Nunangat<sup>2</sup>, which comprises approximately 35 percent of Canada's land mass. The Inuit represent 4,2 percent of the total Aboriginal population and 0,2 percent of the total Canadian population. Metis peoples are of mixed European and Indigenous ancestry and mostly inhabit the Prairie Provinces<sup>3</sup> and parts of Ontario. They represent 32,3 percent of the total Aboriginal population.

The Indigenous peoples of Canada are found in all parts of the country. Aboriginal communities are located close to or in major cities (such as the Squamish First Nation in Vancouver)<sup>4</sup> and in more remote northern communities. The Inuit, for example, inhabit large areas of land in the Arctic regions of Canada, and are very much isolated from the non-Aboriginal population of Canada.

The territory of Canada was acquired mainly through the signing of historical treaties by the British and later the Canadian Crown with Indigenous peoples. The primary goal of those agreements was to acquire title to Indigenous lands in order to use and dispose to European settlers. In return for those lands, Aboriginal groups received much smaller parcel of lands, usually located in remote areas, money and supplies (Miller 2009). Much of Canada's territory is covered by historical treaties, and believing that it had sufficient authority over all of Canada's land, the government of Canada ceased signing treaties in 1921. Aboriginal groups that voluntarily entered into treaties with the Crown were harmed as a result of the treaties failing to match what they believed the agreements meant. They became impoverished and lacked a sufficient land base to carry out the political, economic and cultural activities that were vital for their way of life. Many Aboriginal groups signed treaties because of their poor circumstances, and wanted protection from encroachment and squatting. In sum, "Aboriginal groups entered into treaties to protect their way of life while government negotiators wanted Aboriginal lands for settlement and expansion" (Alcantara 2008, 44).

Government policies towards Aboriginal peoples in Canada has traditionally been assimilationist in nature; the government has long tried to absorb Aboriginal groups into "mainstream" Canada and extinguish their cultural distinctiveness (Cairns 2000, 17). The *Indian Act of 1876* was a compilation of the legislation the Canadian government had developed over the years to deal with First Nations and codified its relationship with Aboriginal people

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<sup>2</sup> Means "the place where Inuit live" and is comprised of four regions: Inuvialuit (NWT and Yukon), Nunavut, Nunavik (Northern Quebec and Nunatsiavut (Labrador).

<sup>3</sup> Comprise the provinces of Alberta, Saskatchewan and Manitoba.

<sup>4</sup> There are 11 First Nations in the Metro Vancouver region alone.

(Miller 2009, 190). The Indian Act assigned ward-like status to First Nations, giving the government extensive control over many aspects of their lives and ensured that First Nations did not enjoy full citizenship rights, such as the right to own land and vote (Poelzer and Coates 2015, 8). The Indian Act also defined who qualified as an “Indian” in the eyes of the government, distinguishing between status and non-status Indians, who did not enjoy Aboriginal rights<sup>5</sup>.

The Indian Act led to the fracturing of the First Nation communities into many different reserves created by Canada, and required First Nations children to attend residential schools (Abele and Prince 2006, 371). Their ability to exercise traditional forms of government in keeping with their culture was also severely diminished, as they were replaced by band councils in keeping with the Indian Act (Morse 1999, 18). Abele and Prince (2006, 572) have noted that band councils have been referred to as “minus-municipalities” because they had less power and independence than the elected leaders of Canada’s cities and towns. Band councils exercised authority delegated to them from the federal government, but were closely monitored by the Department of Indian Affairs (ibid).

Aboriginal groups have long been marginalized in the Canadian public through government policies meant to integrate them into Canadian society. Government intervention brought uneven benefits. Health care and life expectancy improved. However, there was little long-term economic development, and welfare dependency emerged as the core economic feature of Aboriginal communities. By the 1950s, reserve communities resembled ghettos and were typically separate from non-Aboriginal towns, while Metis and non-status settlements tended to be more poorly served than official reserves. Changes in the Indian policy came slowly, and it was not until 1960 that status Indians received the right to vote and the right to buy and drink alcohol.

Prime Minister Pierre Trudeau’s White Paper on Indian affairs of 1969 called for the dismantling of the Department of Indian Affairs and proposed that Indigenous people be incorporated into the rest of Canada. The White Paper was met with widespread opposition from Aboriginal leaders throughout the country, who had long done a poor job of coordinating their activities, but banded together effectively to battle the federal government’s proposal with

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<sup>5</sup> Non-status Indians included those with mixed heritage, Indian women who married non-Indian men (and their children). Joining the military, obtaining a college degree or becoming a professional automatically resulted in the loss of Indian status. The Metis and Inuit were not classified as “Indian”.

one voice. They demanded the White Paper retracted and called for more control over their lives and communities (Poelzer and Coates 2015, 18).

## **1.2 Aboriginal self-government**

Given the extreme heterogeneity in the circumstances of Aboriginal nations and peoples, there have emerged several different models of Aboriginal self-government in Canada. Differences due to economic circumstances, geography, demographics, political history and ideology among the various Aboriginal groups affect what model of self-government is appropriate. The models differ by the constitutional status of the Aboriginal governments and their relationship to the Canadian state system. Self-government allows an Aboriginal group to take control of jurisdictions that are under the purview of the provincial or federal government. Depending on the Aboriginal group and its characteristics, a wide array of municipal, regional, provincial and federal responsibilities can be included in a self-government agreement.

The federal government has identified three major models of self-government: nation, public and communal. The nation self-government model is appropriate for those Aboriginal groups with exclusive territories and territorial jurisdiction (e.g. reserves or settlements), and who exhibit a strong sense of shared identity. This form of self-government would have exclusive jurisdiction on core issues and could negotiate with other governments on more peripheral matters. It is up to each group to determine eligibility criteria. It could also incorporate elements of traditional governance and different levels of government (community, regional, territorial). The public model of self-government exercises jurisdiction over a geographically defined area, where all residents within the area participate equally in the government. The communal model of self-government is suited for those Aboriginal groups that are not land-based or territorial. In general, that will include urban Aboriginals, non-status Indians and some Metis. This model of self-government could encompass urban reserves or Aboriginal neighborhoods

Indigenous self-governance is a heavily discussed and researched part of Canadian politics. As of August 2016, there were 25 completed comprehensive land claims agreements in Canada, 18 of which includes self-government provisions. In addition, there were four stand-alone self-government agreements. As of June 2014, there were 99 ongoing comprehensive land claims and/or self-government negotiations (AANDC, 2014).

With the Nunavimmiut<sup>6</sup> rejecting their proposed self-government agreement and with a number of other indigenous groups making their decision in the coming years, this is an area of great interest. However, deciding on what factors facilitate a successful negotiation is a difficult task. Every agreement, whether it is a self-government or a CLC agreement, is tailored to address specific needs of each Aboriginal group; there is no template to follow.

My interest in this project started at a time when many indigenous communities in Canada were participating in self-government negotiations and the outcomes of these negotiations were very much uncertain. A lesson learned from the failed self-government proposal in Nunavik is that a successful framework agreement, an agreement in principle and a successfully negotiated final agreement, can still fail to pass. Aboriginal governance has become a widely researched topic since the creation of the predominantly Inuit territory of Nunavut. Scholars have written highly detailed accounts of Canada's self-government policy, both describing its evolution over time and what kind of self-government models that have been produced by different stages of policy. Scholars, such as Belanger (2008), Cairns (2000) and Flanagan (2008), have all written detailed accounts of Canada's self-government policy and its real-world implications on the indigenous population.

### **1.3 Structural outline of the thesis**

In the next chapter, I will provide a short background history of Canada's self-government policy and how it has evolved over time, which clarifies the context in which self-government negotiations take place.

Chapter three introduces the theoretical framework for my thesis. I will start by explaining the nature of the negotiation process, and present the actors involved and their respective roles in the negotiations. The analytical framework consists of four factors thought to promote a successful outcome in self-government negotiations: *compatibility of government and Aboriginal group goals*, *minimal use of confrontational tactics*, *strong Aboriginal group cohesion* and *positive government perceptions of Aboriginal group*. Additionally, I draw upon the literature of historical institutionalism to consider the effects of Canada's evolving self-government policy and the institutional structure in the regions on negotiation outcomes.

In the fourth chapter, I present and elaborate upon the research design that has been selected for this thesis. I conduct a multiple case study of two Inuit self-government negotiations. This

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<sup>6</sup> The suffix *-miut* means "from" in Inuktitut. A Nunavimmiut is therefore somebody from Nunavik.

chapter also touches upon methodological challenges, case selection, process tracing and data source material.

Chapter five consists of the analysis of the negotiation processes in the two regions. This chapter focuses on the unfolding of significant events and characterizes the key steps in the processes leading up to the conclusion of the negotiations.

Chapter six explores how the theoretical framework can explain the divergent outcomes by examining the causal process observations and how they relate to the separate factors thought to explain settlements and non-settlements. I argue that the divergent outcomes in the two cases best can be explained by the lack of group cohesion in Nunavik as compared to Nunatsiavut. In addition, I find that the layering of self-government policy and the emergence of a multilevel governance structure in Nunavik affected the self-government negotiations in Nunavik negatively, as opposed to Nunatsiavut that was positively impacted by the more extensive self-government policy and where there did not exist a multilevel governance structure.

The last chapter summarizes the main findings. This chapter also discusses the implications of the conducted research, and provides suggestions for future research on this topic.

## 2. The evolving institutional framework of Canada's self-government policy

To cover Canada's relationship with its Aboriginal population is a task that is far beyond the scope of this thesis. However, in order to fully comprehend the modern land claims process, it is necessary to recognize its history. What follows is a summary of Canada's self-government policy, how it has evolved and how the indigenous population has mobilized in order to attain self-government rights within a federal-provincial constitutional order. I start with a summary of Indian policy before 1945. The next section looks at the postwar period, which is characterized by many attempts to amend the Indian Act, further assimilate the Aboriginal population, and an increasing Aboriginal population. The last part addresses the period after the federal government published the Penner Report, which explicitly recognized the right of Aboriginal self-government.

### **2.1 Indian policy in Canada before 1945**

Official government policy towards Aboriginal people in Canada has historically been assimilationist in nature. British imperial policy recognized an indigenous right to land, and adopted the policy that imperial representatives should enter into treaty agreements to cede or extinguish Aboriginal rights in return for reserved lands and goods. With the enactment of the *Indian Act* in 1876, the federal government had a way of regulating almost every aspect of Indian reserved lands and community life (Scholtz, 2006, 40). The Indian Act was a compilation of the legislation the Canadian government and previous colonial governments had developed in order to deal with its indigenous population (Miller 2009, 190).

The process of signing land secession agreements continued until 1921. After this, Aboriginal peoples had two choices: either to enter into lawsuits with the government, or to pressure the federal government to recognize Aboriginal title. The overriding goal of Canada's Indian policy was to assimilate the indigenous population, and thus there was not much toleration for Indian land claims, not to speak of Aboriginal self-government. Aboriginal attempts to mobilize were swiftly shut down by the federal government with the 1927 amendment to the Indian Act, which made it illegal to raise money to pursue a land claim against the Crown (Scholtz 2006, 41). This amendment prohibited the ability of the Aboriginal people to enter into lawsuits and pressure the federal government, the two options that were available to them.

As the senior public servant of the Indian Affairs branch stated in 1920 , “Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic, and there is no Indian question, and no Indian Department” (Miller 2000, 282). Until the end of World War II, the official policy on Indian affairs was one of assimilation and compulsory enfranchisement.

## **2.2 The postwar social welfare agenda**

By the end of the Second World War, the indigenous population in Canada was on the rise, and had been since 1936. This was of great concern to the federal government as increasing education costs and other expenditures directed towards the indigenous were not budgeted, as they were a population group that was supposed to disappear. In 1945, the North American Indian Brotherhood (NAIB) saw the light of day, a national political organization which remained limited for years due to lack of resources, but its foundation was an important step in mobilizing the indigenous on a national level.

When the Liberal Party won the election in 1949, the newly elected prime minister Louis St. Laurent moved Indian Affairs into the Minister of Citizenship and Immigration. This move clearly signaled the ideological course that this new government had for the Indian policy, as it showed commitment to the continued assimilation of indigenous peoples, which did not differ a great deal of that of previous governments. When John Diefenbaker of the Conservative Party took over as prime minister in 1957, prospects for change improved. A conservative populist, he sought to eliminate “second-class citizenship” and extended status Indians<sup>7</sup> the unconditional right to vote (Scholtz 2006, 47). The Diefenbaker government was enthusiastic about individual civil rights for Aboriginals, but less so about the collectivist nature of Aboriginal rights, which it felt would distract from integration (Scholtz 2006. 47-48). Concrete accomplishments regarding the federal Indian policy still eluded the government, mainly because of the disregard of collective rights, but also because of Diefenbaker’s ensuing minority government, and later on with Prime Minister Pearson’s focus on foreign policy in the Cold War era.

With the increasing amounts of media reports depicting the poor state of Aboriginal socio-economic and living conditions, the federal and provincial politicians were pressured to improve the situation. In 1963, the Department of Citizenship and Immigration commissioned

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<sup>7</sup> First Nations that are subject to the Indian Act, excluding the Inuit, Metis and First Nations individuals who for whatever reason are not registered with the federal government.

a number of studies to assess the situation, which later on took the name the Hawthorn-Tremblay report. The report rejected assimilation as a policy goal and proposed that Indians should be regarded as “citizens plus”, benefitting from regular citizenship in addition to maintaining those rights guaranteed as a result of their Indian status (Belanger & Newhouse 2008, 3). The report also argued that the Aboriginals should have the ability to govern themselves and should be encouraged to take on governing responsibilities. “In these recommendations, we have a notion that Indians could govern themselves in some fashion within the constitutional structure of Canada” (ibid 2008, 4).

With Indian welfare policy on the national agenda and under intense media scrutiny, the government created the Department of Indian Affairs and Northern Development (DIAND) in 1966, with its own minister at the cabinet table. With newly elected Prime Minister Pierre Trudeau and the first majority government in six years, the stage was set for a review of the federal government’s Indian affairs policy. Trudeau, like many of his predecessors, strongly valued the protection of individual rights and objected to the notion of ethnic rights. *A Statement of the Government of Canada on Indian Policy*, commonly known as the *White Paper*, was issued in 1969, and rejected the idea of Indians as citizens plus. The policy proposed repeal of the Indian Act, and positioned Indians as “Canadian citizens with neither special status nor valid claims to special administrative provisions or unique legal standing” (Belanger & Newhouse 2008, 4).

The white paper said little about Indian governance, and was met with great resistance from Aboriginal leaders all over the country. The government officially withdrew the white paper in 1971, but would not so easily turn away from the policy’s ideological assumptions. The government’s retreat from the policy presented a critical juncture in Canadian Indian policy, and more voices within the cabinet came to support the recognition of special Aboriginal rights through direct negotiation (Scholtz 2006, 59). In 1973, the Supreme Court of Canada’s *Calder v. The Attorney General of British Columbia* decision recognized the existence of Aboriginal rights, and effectively started the phase of modern treaties. During the aftermath of the Calder decision, Aboriginal organizations became more and more influential, resulting in the inclusion of the National Indian Brotherhood, the Inuit Committee on National Issues and the Native Council of Canada in constitutional discussions in 1978.

The seminal document entitled *Indian Government*, by the Federation of Saskatchewan Indians (FSI), published in 1977, was the first to formally articulate the principles of Aboriginal self-



government. The document stated that all Indians have the same fundamental and basic principles upon which they can continue to build their governments. They noted that Indian nations historically are self-governing and that Indians have inalienable rights, including the “inherent sovereignty of Indian nations, the right to self-government, jurisdiction over their lands and citizens and the power to enforce the terms of the Treaties” (Belanger & Newhouse 2008, 7-8). The publishing of this paper started a debate on what Aboriginal self-government would be in Canada.

In 1982, the government commissioned the Penner Report in order to define the parameters of Aboriginal self-government. The committee in charge of penning the report travelled across Canada to get first-hand testimony from Native people, and presented their findings in November 1983. The report stated that the relationship between Native people and the federal government was not working, and that Indian people have the right to a special place within the Canadian Constitution. The committee advanced a view of Aboriginal government that was an enhanced municipal-style government within the federal legislative framework (Belanger & Newhouse 2008, 9).

The report, however, envisaged three distinct features for Aboriginal self-government: (1) Indian government should be seen as a ‘distinct order’ of government within the Canadian system and with negotiated fiscal arrangements and jurisdictions. (2) The right of Aboriginal self-government should be explicitly recognized, stated and entrenched in the Constitution of Canada. (3) The report defined a set of areas of authority for Aboriginal governments that included health care, economic and commercial development, land and resource use, education, child welfare, membership, social and cultural development, revenue-raising, justice and law enforcement, and intergovernmental relations (Belanger & Newhouse 2008, 9-10). This report is significant because it is the first federal recognition of Aboriginal self-government in Canada and presented historical evidence for the FSI claim that Indians have historically been self-governing.

### **2.3 Post-Penner 1984-**

In the mid-1980s, the Conservative government under Brian Mulroney indicated early on that it was willing to change the nature of the federal stance on Aboriginal self-government. They published the Nielson Report in 1985, which was radically different from the previous Penner Report, and saw the problem of Indian government more as a matter of administration and delivery service than a political and constitutional issue (Cassidy & Bish 1989, 20-21). In the

face of widespread dissatisfaction with the report in Indian communities, the government commissioned a new report in December of 1985. *The Coolican Report* suggested that the government's position on and activities in relation to self-government could not be detached from land claims or Aboriginal rights. Coolican urged the government to turn toward recognition, whereas the Nielson Report had tilted more towards assimilation (Cassidy & Bish 1989, 21-22).

The confusing and contradictory reports regarding Aboriginal self-government that came out during the Mulroney era were reinforced by the actions of the Department of Indian Affairs and Northern Development (DIAND). David Crombie, the minister of DIAND, proclaimed in 1986 that self-government was a major priority for his department, and argued for an approach that emphasized collaboration and consultation with Indian governments. Aboriginal people would decide the pace at which self-government would emerge. The self-government programs that were initiated under Crombie's leadership were, however, not in accordance with his intentions. DIAND would decide when "properly developed" Indian communities were ready for self-government, a more advanced place within the federal-provincial framework and the limits within which self-government would evolve (Cassidy & Bish 1989, 22.23).

In 1986, the government introduced their two-track approach to the subject of self-government, where track 1 constitutes a constitutional negotiation where the principles of self-government would be addressed. Track 2 addressed Aboriginal self-government in a day-to-day manner through a process of community-based negotiations, which would achieve practical benefits to individual communities and determine the pace of their progress towards self-government. The Indian community was skeptical of this two-track approach, as they wondered "if the federal government's approach was not assimilation clothed as recognition" (Cassidy and Bish 1989, 23). When the *Sechelt Indian Band Self-Government Act* was signed in 1986 after fifteen years of negotiations, it was seen as a unique effort of the federal government to establish Aboriginal self-government apart from the attempts to entrench Aboriginal self-government rights in the constitution, which had been set in motion with the Penner Report. The act gave the Sechelt jurisdiction over different parts of the community such as taxation and the control of band land.

Just two years prior to the *Sechelt Indian Band Self-Government Act*, another landmark self-government agreement was signed, the *Cree-Naskapi Act*. This is considered the first Aboriginal self-government agreement in Canada. In return for extinguishing their Aboriginal title and ceding vast tracts of territory, the Cree and Naskapi of northern Quebec were given

control over resources and varied powers of self-government (Belanger & Newhouse 2008 11). However, as Papillon notes, the act was quite limited in the transfer of powers, as the Aboriginal leadership had to follow specific policies handed down from Ottawa and follow budgets set by the federal government (2009, 188).

The 1980s also saw several amendments to the *Indian Act* that were intended to delegate different powers to Aboriginals. While Aboriginal groups supported the intention of the delegation of powers, they would have preferred a replacement of the *Indian Act* in the place of an amendment (Cassidy & Bish 1989, 25). The passage of Bill C-31 in June 1985 gave Aboriginal groups the power to manage band membership, and the 1988 Indian-led amendment to the *Indian Act* gave Aboriginal groups control over the development of reserve land and the ability to collect taxes (Ibid 1989, 25).

Between 1983 and 1987, four First Minister conferences took place, which included the Prime Minister, the Premiers and the leaders from four national Aboriginal organizations. These conferences led to two different proposals to amend the Constitution. The Meech Lake Accord, designed primarily to bring Quebec into the constitution, failed to ratify in 1990. The Charlottetown Accord of 1992 recognized the inherent right to self-government, and that it should be interpreted as one of three orders of government in Canada. The proposed Charlottetown Accord of 1992 was, if nothing else, a symbolic step in the process of recognition of the Aboriginal right to self-government. This was the first time that the federal government and the provincial governments explicitly recognized the legitimacy of Aboriginal governments. The Charlottetown Accord failed in a countrywide referendum in 1992, but the principle of an inherent right to self-government was now a part of the Canadian political landscape.

In 1990, Mohawks living in Kanasatake, Quebec erected a blockade to prevent the municipality of Oka from expanding a golf course on traditional Mohawk land. This sparked a 78-day armed standoff between Mohawks and Canadian soldiers, leaving one police officer killed. The Oka crisis, as it has been named, combined with the two failed constitutional conferences, propelled Prime Minister Mulroney to establish the Royal Commission of Aboriginal Peoples (RCAP) in 1991. The RCAP produced a comprehensive five-volume report tackling several issues facing Aboriginal groups in Canada at the time. Self-government and mutual recognition were important parts of the findings of the commission and the report included 17 different case studies of current Aboriginal governments. The RCAP reinforces the claim that Aboriginal

groups have an inherent right to self-government, which is affirmed through section 35 of the *Constitution Act, 1982* (RCAP 1996, 647).

The Commission also identified three major models of self-government – public government, nation government and the community of interest model (RCAP 1996, 233). The nation self-government model would be best suited for those Aboriginal groups with exclusive territories and territorial jurisdiction, such as reserves or settlements, and allow the group to have control over citizenship. The public government model would exercise jurisdiction over a geographically restricted area, and would encompass all residents in the area. This sort of model has since been undertaken by Nunavut Territory. The community of interest government model would be best suited for Aboriginal groups who are not territorial. Both the nation and public government model could have different levels of government, e.g. Community, regional or territorial (Frideres 2008, 131)

In advance of the publication of RCAP, the federal government tabled their Inherent Right Policy (IRP) in 1995. This policy affirmed the inherent right to self-government under s.35(1), and states a clear preference for implementation through public government. The IRP started a public debate in Canada on what the word 'inherent' meant in relation to self-government. The policy recognizes the right to self-government in matters "internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions and with respect to their special relationship to their land and their resources" (Belanger 2008, 406). The IRP assures that self-government provisions may be negotiated as a part of a comprehensive land claims agreement.

As we have seen, the policy on Aboriginal self-government has evolved significantly over the years. The next chapter will further elaborate on the self-government negotiation process, the actors involved and the factors thought to determine its outcome.

### 3. Theory and practice

The aim of the preceding chapter was to provide important background information and context for the theoretical and empirical chapters that follow. We shall now continue with introducing the theoretical framework, which will shed light on the factors thought to determine self-government negotiation outcomes. This chapter begins by describing the process of negotiating self-government agreements in Canada, and identifying the role of the different actors in this process. Subsequently, the second section discusses Alcantara's theoretical framework, which posits four factors that determine whether an Aboriginal group can complete a self-government agreement. Much of this framework draws upon the literature of rational choice theory and emphasizes the preferences and incentives of the different actors. In order to attain a more comprehensive and accurate explanation of self-government negotiations, I draw upon the literature of historical institutionalism to consider the effects Canada's evolving land claims and self-government policy and other contextual factors in the two regions. I will finish this chapter by presenting the concept of multilevel governance, which describes the deconcentration of the policy-making process in Aboriginal-state relations and how there are more actors and levels involved in the decision-making processes.

#### **3.1 The negotiation process and the actors involved**

The federal government of Canada prefers to devolve self-government powers to Aboriginal groups through a comprehensive three-stage negotiation process. The range of powers devolved and the contents of the agreement, will depend on the Aboriginal group and whether it is a combined land claims and self-government agreement or a stand-alone self-government agreement. However, the negotiation process is similar in both cases. Aboriginal groups submit a proposal to be verified and accepted by the federal and relevant provincial governments. Once both governments have accepted the proposal, the three parties can begin negotiating a framework agreement. This agreement is basic in many respects, as it sets out the issues to be negotiated later, how they will be negotiated and by what date they must be resolved.

Once a framework agreement is negotiated, the parties move on to a non-legally binding agreement-in-principle (AIP). Negotiations for the AIP are typically the most difficult and time-consuming part of the process (Alcantara 2013, 16). The AIP serves as the basis for the drafting of the final agreement, but does not resolve all negotiation issues. Rather, it can leave some of the more contentious issues for final agreement negotiations. Once the AIP is finalized and approved by the three parties, they can move on to the negotiations for the final agreement.

The final agreement, as the name indicates, is the last stage of the negotiation process. The main purpose of the final agreement is to translate the AIP into a complete agreement and to formalize the negotiated terms. The final agreement is subject to a ratification vote by the Aboriginal group, and needs to pass through Parliament and the relevant sub-national legislature in order to become a constitutional document under section 35 of the Canadian Constitution.

### *3.1.1 Aboriginal group*

For the purpose of this thesis, it is important to adequately define the role of the Aboriginal group in a tripartite negotiation setting. How does one categorize Aboriginal groups in the setting of self-government negotiations? There are several different possible categories which one could put 'Aboriginal group' within. For instance, one could categorize it as a social movement. Susan Phillips (2004) defines a social movement as a network of organizations, and not a single organization, which form and express collective identities. Social movements also undertake collective action that is intended to influence state and society. However, the concept of 'social movement' does not grasp the extent of the complex situation for the Inuit. For the first part, even though Aboriginal groups consist of several organizations and individuals, during self-government negotiations they operate as a single organization. Secondly, even though Aboriginal groups form collective identities, negotiations lead to individual settlements for a single Aboriginal group: the Inuit in Nunavik fight for the interests of the Inuit in Nunavik and not for all Inuit. For the last part, "the collective action undertaken by Aboriginal groups in the comprehensive land claims process is not intended to influence both state and society" (Alcantara 2008, 68). The Aboriginal groups that are a part of a negotiation process are less concerned with influencing the non-Aboriginal society.

Another possible categorization of 'Aboriginal group' is as an interest group. However, this is also not completely accurate. Phillips states that interests groups are formal structural organizations, with defined policies and infrastructure. In addition, their focus is on the state and influencing public policy choices from the inside, rather than from the outside (Phillips 2004, 325).

Alcantara (2008) argues that Aboriginal groups in the setting of self-government negotiations are neither social movements nor interest groups, but are rather "groups of individuals represented by highly complex quasi-governments, and band and community governments" (69). To illustrate this, one does not need to look further than the role of Makivik Corporation

in Nunavik. Makivik was created as a result of the James Bay and Northern Quebec Agreement (JBNQA), the comprehensive land claims agreement that was concluded in 1975. Makivik is a private, not-for-profit corporation, owned by the Nunavik Inuit, and mandated to protect the rights, interests and financial compensation provided by the JBNQA. In terms of managing the financial compensation, it does this through a variety of typical corporate activities, and through their subsidiary companies: they own two airlines, a fuel services enterprise, a construction company which is to act as a general contractor for the construction of social housing and several joint ventures in sectors such as tourism, fishing and shipping. (Janda 2006, 389-390). In addition to their extensive economic ventures, Makivik contributes to the management of the region with support to organizations that are managed by the public governance bodies, as well as negotiating the self-government agreement on behalf of the Inuit.

The Labrador Inuit Association (LIA) also falls into this category. It is a non-profit organization that was established in 1973 in order to promote the constitutional, political and human rights of the Labrador Inuit, in addition to being involved in fishery, wildlife, natural resource management, and taking control over several government services from the province in health and education sector. They also represented the Labrador Inuit in the comprehensive land claims negotiations.

### *3.1.2 The role of the federal government*

Aboriginal policy has historically been dominated by the powerful bureaucracy of the Department of Indian Affairs, today known as Indian and Northern Affairs (INAC). The role of the department has shifted from one of paternalistic control as a service provider to a funding agency concerned with promoting the development of autonomous communities (Papillon 2008a, 70). Most interactions between INAC and Aboriginal governments are through civil servants who are regionally-based, with a limited mandate to engage in unforeseen scenarios. However, INAC's position as lead negotiator in land claims gives the agency substantial influence. INAC ministers and deputy ministers are important middlemen in persuading ministers of other departments who tend to have veto power on issues that affect their department (Alcantara 2013, 17).

INAC is responsible for drafting the negotiation mandate, which is then up for cabinet consideration. Once the mandate is approved, INAC is responsible for enforcing it and to seek modifications to it on behalf of the Aboriginal group and the provincial government. While INAC is the main department for dealing with Aboriginal affairs, other departments are playing

an increasingly important role. Central agencies such as the Privy Council Office, the Prime Minister's Office and Treasury Board are "increasingly involved in negotiations over self-government and land claims as well as in the definition of conditions for the allocation of fiscal transfers" (Papillon 2008a, 71). A motivated Prime Minister can also unilaterally alter a mandate to speed up the negotiations (see Dewar 2009).

The chief federal negotiators are external consultants and act as the federal government's main contact with the Aboriginal group. Along with the minister and deputy minister, the chief federal negotiator is one of the most influential actors in the negotiation process. Ideally, the chief negotiator is one with extensive knowledge about the Aboriginal group and the territory with which he is negotiating, and is able to build a positive relationship and search for innovation (Interview B 2017).

### *3.1.3 The role of the provincial government*

Until the mid-1980s, provincial governments' involvement has been quite limited, with many provinces not even having a ministry solely dedicated to Aboriginal affairs. Newfoundland and Labrador's Aboriginal affairs portfolio is located in the department of Labrador and Aboriginal Affairs, and during Premier Clyde Wells' reign (1989-96), the Premier himself was minister for Aboriginal affairs. Quebec was earlier in developing a ministry dedicated to relations with Aboriginal peoples, which it did in the early 1960s with the establishment of the *Direction générale du Nouveau-Québec*, which would later become the *Secrétariat aux affaires autochtones* (SAA).

As is the case for the federal level, provincial department of Aboriginal affairs is the lead agency in charge of land claims and self-government negotiations. They draft the mandate, enforce it and recommend changes to it, if necessary. The provinces have constitutional ownership and jurisdiction over several key negotiation stakes in land claims and self-government negotiations. Provinces have jurisdiction over land ownership and natural resources, taxation, municipalities, fish and wildlife, and self-government powers. Federal policy declares that provincial governments must be involved in claims that are located within a province, and recognizes the importance of the provincial governments (Haysom 1990).

A large part of the actual negotiating tends to be between the provincial government and the Aboriginal governments (Alcantara 2013, 19). Provincial governments are significant parties to the negotiations and, as such, are veto players. Christa Scholtz (2006) has found that sub-national governments, such as provincial governments, are more reluctant to adopt Aboriginal



treaty negotiation policies, and are more likely to protect established economic interests (8). Attempts by central governments to impose negotiations policies will meet resistance from the sub-national governments, as they tend to have a larger effect on provincial powers and jurisdiction.

### **3.2 Analytical framework**

In Richard Simeon's seminal *Federal-Provincial Diplomacy*, he examines the role of direct negotiation between the executives of different governments in Canada. He looks at what factors account for its importance, how it operates in national policy-making, and its consequences (Simeon 2006, 5). Simeon focuses on three cases in particular (1) the federal-provincial negotiation of a universal national pension plan, (2) the division of financial resources among the provinces, and (3) the re-evaluation and revising of Canada's written constitution. He identifies eight factors that explain the dynamics and outcomes of federal-provincial policy making. Simeon's (2006, 12-16) eight variables, which all interact with each other, are:

- social and institutional context,
- actors,
- issues,
- sites and procedures,
- goals and objectives,
- political resources,
- strategies and tactics,
- outcomes and consequences.

Social and institutional context refers to how some of the basic characteristics of Canadian society and its institutional arrangements can shape the form of the negotiation process. The underlying social and institutional factors are expected to play a major role in determining the power relations between the negotiating parties. "They should also affect the issues that arise and the goals, tactics, and resources of individual participants as they debate the issues" (Simeon 2006, 13). The term "actors" refers to the participants in the negotiation process, and in Simeon's case, that is the different governments. He mostly deals with the governments as single units. "Issues" refer to the stakes in the negotiation process. Issues can vary in different ways, all of which can affect the way they are negotiated. The actors' perception of the issues at hand may differ, and therefore different actors may treat the same issues differently.

"Sites and procedures" refers to where the negotiations are done, how they are conducted, and if the procedures favor some at the expense of others. In short, what effect does the structure have on the process? "Goals and objectives" are the set of values and interests the different parties bring to the negotiation. Are the interests of the negotiating parties compatible or incompatible in terms "of the proper roles of the two levels of government" (Simeon 2006, 14-15). The sixth variable, "political resources", is the allocation of resources between the two levels of government, and is a measure of power relations. A resource is, as Robert A. Dahl defines it, "anything that can be used to sway the specific choices or strategies of another individual" (1961, 226).

"Strategies and tactics" is a more complex variable, and is heavily influenced by the previous factors. "Given a set of objectives, a certain strategic environment, and available political resources, the actors engage in various strategies to gain their ends" (Simeon 2006, 15). The range of available strategies is wide, and can vary from persuasion, trading of favors and even violence. Simeon distinguishes between legitimate and illegitimate tactics, where the former increases conflict and hostility (Simeon 2006, 255). "Outcomes and consequences" refers to which actors achieved their goals and which failed, as well as what consequences the outcomes have on the actors themselves, the system as a whole and future negotiations.

In *Negotiating the Deal*, Alcantara modifies Simeon's framework to make it better suited to examine the comprehensive land claims process. He draws heavily upon rational intuitionism to argue that there are four factors that explain settlements or non-settlements in comprehensive land claims negotiations (Alcantara 2013, 5). The first factor is *compatibility of goals* between aboriginal and federal/provincial actors. It matters to what extent federal and provincial goals are common and conflicting. "The goals of the two parties are likely to be compatible when the Aboriginal group is willing to accept a final agreement that exists and operates within the political, economic, and legal context of the Canadian constitutional order" (Alcantara 2008, 95). This factor relates to Simeon's "goals and objectives" variable, which emphasizes whether the goals of the different actors are compatible or not. An Aboriginal group that has a stronger sense of Aboriginal sovereignty will find it more difficult to complete a treaty.

The second factor that generates a successful outcome is the minimal use of *confrontational tactics* by the Aboriginal group. The governments prefer to use negotiations in order to complete treaties because they see them to be less costly in terms of money, reputation and political capital than alternatives like protest, litigation and lobbying (Alcantara 2013, 59).

Groups that adhere to any of those more confrontational tactics are therefore less likely to be invited to the negotiation table. Groups that use more conventional methods and that stay within the established framework are more likely to complete a treaty. This factor is similar to Simeon's "strategies and tactics" variable with regards to the use of legitimate and illegitimate tactics. In this setting, confrontational tactics include "protests, litigation, domestic and international media campaigns, and appeals to international tribunals, organizations, and governments" (Alcantara 2008, 95).

The third factor is the *degree of unity* within an Aboriginal group in the context of the negotiation process. The internal workings of an Aboriginal group engaged in negotiations can affect the possible outcomes. Divisive leadership and internal division can be disruptive for the negotiation process as it can bring unstable negotiation teams and positions to the negotiation table. In addition, socioeconomic distress is a part of this factor. Regions plagued with alcohol and substance abuse, suicide and vandalism are less focused on completing a deal, and perhaps more interested in finding solutions for these community problems. Domestic problems and internal conflicts can overtake any sustained community interest or effort to negotiate an agreement (Alcantara 2013, 63). Group cohesiveness is crucial to the extent to which internal problems enter into the negotiation process. This factor draws both from Simeon's "actors" variable, because it deals with individual participants' attitudes and behaviors, and from "political resources", where one of the most important political resources is political support from the underlying population (Simeon 2006, 204).

The final factor that leads to positive outcomes in comprehensive land claims negotiations is *positive perception of aboriginal group capacity* by the two negotiating governments. Government perceptions are related to the Aboriginal group's use of political resources in order to convince the governments of their capacity for financial accountability, and their capacity to both negotiate an agreement and implement it (Alcantara 2008, 97). This also relates to the Aboriginal group's acculturation. As Nadasdy (2003) notes in his research on state-Aboriginal relations:

*If Aboriginal peoples wish to participate in co-management, land claims negotiations, and other processes that go along this new relationship, then they must engage in dialogue with wildlife biologists, lawyers, and other government officials [...] if they wish to be taken seriously, then their linguistic utterances must conform to the very particular forms and formalities of the official linguistic field (5).*

Table 3.1: Factors that affect which self-government negotiations outcomes are obtained

Factors promoting a successful outcome	Factors leading to an unsuccessful outcome
Compatibility of government and Aboriginal group goals	Incompatibility of government and Aboriginal group goals
Minimal use of confrontational tactics by Aboriginal group	Frequent use of confrontational tactics by the Aboriginal group
Strong Aboriginal group cohesion	Weak Aboriginal group cohesion
Positive government perceptions of Aboriginal group capacity	Negative government perceptions of Aboriginal group capacity

Source: Alcantara (2013)

In addition to those four factors affecting outcomes, four factors affect the speed of the negotiations. *Trust relationships* can affect the pace of the negotiations, and specifically the ability of Aboriginal negotiators and officials to develop professional trust relationships with federal and provincial negotiators (Alcantara 2013, 68). A solid trust relationship will allow for more compromise and focus on the issues at hand. *Government and external negotiators* can affect the pace in two specific ways. The choice of a non-bureaucratic negotiator can speed up the negotiations because she is not subject to the same hierarchical constraints as a bureaucratic negotiator. Second, the commitment and personality of the specific negotiator seem to have an effect on speed: the higher the degree of commitment to the proceedings, the faster it can go.

Aboriginal groups with low *competition for use of Aboriginal-claimed lands* have the ability to complete a deal quicker than those with high competition. Level of competition refers to the proximity to non-Aboriginal communities, claims for lands that are isolated will likely be completed in a faster fashion. The last factor that can affect the speed of negotiations is *development pressures*. Governments are in no hurry to complete deals that are subject to third party interests, such as licenses for resource extraction or planned construction, since government and businesses can benefit from exploitation without a treaty. However, if the land claim includes valuable lands where there do not exist any third party interests, this can speed up the negotiations process, as a treaty is necessary in order to start an extraction process. An example of this is when nickel was discovered in Voisey's Bay in Labrador, an area which was included in both the Inuit and Innu land claim. Government actors, especially provincial ones,

felt strong development pressures to speed up the negotiations in order to start resource extraction (Alcantara 2008, 99-100). Competition and development pressures over land and resource development, however, will not be transferable to self-government negotiations that occur separate from land claims negotiations.

### **3.3 Institutional factors**

Absent from Alcantara's framework is the role of institutional and other contextual factors at both the national and regional levels in affecting negotiations. Historical and cultural legacies enter into the framework as conditioning influences on the likelihood of aboriginal groups adopting the behaviors and goals that government actors require to complete treaties (Alcantara 2008, 74). Alcantara's framework draws heavily from rational institutionalism, which posits that relevant actors have a fixed set of preferences, behave instrumentally in order to maximize the attainment of these preferences and do so in a highly strategic manner in ways that are relatively immune from contextual and institutional innovations (Hall & Taylor 1996, 944-945). In addition, rational choice institutionalists tend to see politics as a series of collective action dilemmas where actors seek to maximize the attainment of their own preference, which will likely produce an outcome that is collectively and individually suboptimal.

Even though power dynamics, preferences and choice of tactics are important in explaining treaty outcomes, the comprehensive land claims and self-government processes and policy environments have evolved significantly over the years (Alcantara & Davidson 2015, 558). Alcantara & Davidson argue for a "greater appreciation of the effects of any and all relevant contextual and institutional dynamics and changes at multiple levels" in their analysis of the Inuvialuit self-government agreement (ibid). In exploring the effects of Canada's evolving land claims and self-government policy and other contextual factors on self-government negotiations, they draw upon the literature of historical institutionalism, which argues that institutions play a significant role in influencing and structuring political outcomes (Steinmo, Thelen and Longstreth, 1992). In the realm of studies on the Canadian indigenous peoples and governance in the Arctic, this has been done on analyses of intra-jurisdictional relations in Inuit regions (see Alcantara & Wilson 2014), indigenous self-determination (see Papillon 2014) and the Canadian mineral resource policy's impact on Aboriginal peoples (see Grant et al 2014).

Where rational choice theorists tend to see institutions in terms of their coordinating functions, historical institutionalists view institutions as the legacy of concrete historical processes (Thelen 1999, 382). Historical institutionalism is historical in the sense that it recognizes that

political development is a process that unfolds over time, and it is institutionalist in the sense that "it stresses that many of the contemporary implications of these temporal processes are embedded in institutions" (Pierson, 1996, 126). Institutions are defined as the formal or informal procedures, routines, norms and conventions that structure the relationship between actors in a political community. They are, as Douglass North (1990) puts it, "the rules of the game in a society or, more formally, [...] the humanly devised constraints that shape human interaction" (3). This is indeed an inclusive and broad definition of institutions, ranging from rules of a constitutional order to the conventions governing organizational behavior. Self-government policies can be interpreted as formal rules and procedures that determine how self-government is negotiated. Once established, institutions can serve as intervening variables, which can structure how different actors interact with each other.

Once created, institutions are highly resistant to change, but not immune. Exogenous shocks can spur radical institutional reconfigurations, but most institutional change occurs as a result of endogenous development, and is subtle and gradual over time. Mahoney and Thelen (2009) suggest that gradual institutional change can take various forms, two of which I retain for the purpose of this analysis: *layering* and *conversion*.<sup>8</sup>

*Layering* occurs when new rules are created and attached to already existing ones. Layering does not introduce new rules or institutions, but rather amends or adds on to existing rules. Layering will often take place when institutional challengers lack the capacity to challenge the original rules, and instead work within the existing system and add new rules on top of old ones. Each case of layering may seem insignificant, but can accumulate over time and lead to a significant change in the long run. As such, the federal government's imposition of new policies on top of existing ones with respect to self-government negotiations can be understood as a process of layering. Another example is the diffusion of the policy process and the transfer of policies associated with Aboriginal multilevel governance, where new rules are layered over formal structures of authority without directly altering them.

*Conversion* occurs when institutions are redirected to new goals or functions. The rules will formally remain the same, but are interpreted in new ways. This happens when actors exploit the inherent imprecision of the institutions. Such redirection of institutional resources often occurs through political contestation over what functions a particular institution should have,

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<sup>8</sup> Mahoney and Thelen (2009, 16-18) propose four different modes of institutional change: displacement, layering, drift and conversion. I retain only the last two, as they are the most relevant for the purpose of this thesis.

and especially when there is a gap between the rules of an institution and its enactment. An institution can thus remain largely unchanged in its structure and legal foundations but have an altered function.<sup>9</sup>

The federal government policy on land claims and self-government has been subject to gradual institutional change since its introduction mainly through layering and conversion. Papillon (2008) argues that the reconfiguration of Aboriginal governance from a highly centralized and tightly controlled system to a more complex multilevel system can best be understood as a process of institutional adaptation through *layering* and *conversion*. In a comparison of indigenous multilevel governance in Canada and the United States, Papillon (2012) argues that the capacity of indigenous organizations to establish one's claims in political arenas according to the political opportunity structure is essential to the agency of those organizations, as there are limited access points. This is a central, and often neglected, aspect of the layering process, the way in which actors position themselves within and in relation to the existing institutional framework.

### **3.4 Multilevel governance in Inuit regions**

What happens in cases where minorities seeking greater territorial autonomy do not control institutions of one of the federated units? Aboriginal groups in Canada are a classic example of small, territorially defined, political entities who did not participate or were excluded from the federal compact<sup>10</sup>. In the field of Aboriginal politics, multilevel governance (MLG) has been used to describe how indigenous people in Canada have been able to change their relationship with the federal and provincial governments (Papillon 2012). Scholars have used the term to describe “a particular trend involving the emergence of non-traditional governmental actors, embedded in different territorial levels beyond the traditional federal and provincial ones” (Wilson, Alcantara and Rodon 2016, 45). The range of actors involved in the process of governing has come to include non-governmental and quasi-state actors. The literature on Aboriginal MLG is still in its early years, and there is still no consensus on exactly what it actually entails.

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<sup>9</sup> Makivik Corporation in Nunavik is an example of an institution that is largely unchanged in its structure, but its function does not correspond to its initial role. It is mandated to protect the rights and interests of the Nunavimmiut, but its activities have social and economic benefits for all the inhabitants of Nunavik, regardless of ethnicity.

<sup>10</sup> Deliberate attempts, such as not granting indigenous people voting rights, were made to prevent the formation of indigenous-controlled provinces, in hope that a lack of institutional basis would facilitate assimilation.

Some scholars prefer a narrower definition of the term. Alcantara and Nelles (2014) defines it as a “policy process that engages a variety of *actors* (governmental, nongovernmental, and/or quasi-governmental) located at different territorial *scales*, the outcomes of which are the product of negotiation (*decision making processes or negotiated order*)” (189). The most important and most difficult element to establish is the criteria of a negotiated order, seen as a counter measure to the more traditional hierarchical orders such as devolution and delegation. This approach focuses more on the specific nature of the way actors and levels interact in the policy process. MLG envisions “a broader dispersal of power and influence, both vertically to new government actors and horizontally to non-state and nongovernmental actors” (Wilson 2017, 149). Aboriginal MLG in Canada operates through a spectrum of more or less formal mechanisms, ranging from co-op boards to the negotiation of comprehensive land claim agreements.

A more structural perspective would view MLG as a “distinctive system of governance that has emerged as an alternative to the mechanisms associated with classic federalism or decentralization” (Papillon and Juneau 2013, 17). In this manner, MLG is defined as a distinctive institutional form that is layered over the existing federal structure, as a result of the federal government’s limited capacity to adapt to Aboriginal peoples as self-governing actors (Papillon 2012).

MLG thus have three distinct perspectives. Firstly, it can be used strictly as a descriptive measure, and make the case that there are now more actors and levels involved in decision making processes that are affecting the life of Aboriginal peoples. Secondly, it can be used to “unpack the specific dynamics of these policy processes and asses who does what, and how, in shaping policy outcomes” (Papillon and Juneau 2013, 18). Thirdly, the structural approach focuses more on the origins and systemic consequences of MLG as it becomes institutionalized. As such, it is important to take into consideration a region’s institutional structure, as the development of MLG has introduced more actors in the decision-making process, when researching the political development of these regions.

As we shall see in the analysis, it would be difficult to understand the variations in self-government negotiation outcomes without emphasizing the factors introduced in this chapter. First, it is necessary to present and justify the methodological approaches applied in this thesis.



## 4. Methodological assessments

There are two main approaches when designing a study, the quantitative and qualitative research designs. Quantitative research approaches are often lauded for having the ability to analyze several different variables across numerous cases. Qualitative approaches are described for their advantages in handling one or a few cases in a holistic and thorough manner. The long lasting debate between the two methodological camps can be attributed to the tradeoff between generalizability and complexity. This thesis is based on the qualitative approach, mainly because a small-N study is more suitable for my research question as I am investigating two cases in depth, namely, Nunavik and Nunatsiavut. The reasoning for why those two cases were chosen is elaborated upon in section 4.3.

This chapter presents and justifies the methodological approaches applied throughout the thesis. First, the research question and research design, on which the thesis is based, will be presented. Second, I briefly present and discuss the multiple case study design, and how it is an appropriate choice in order to answer the research question. Third, I present process tracing, an analytical tool for causal inference, which is the research strategy applied to this study. Fourth, I discuss my data sources, which consist of semi-structured interviews, newspaper data, government documents, meeting minutes and academic studies. Lastly, I elaborate upon the case selection, introducing other potential cases and provide an overview of Nunavik and Nunatsiavut.

### 4.1 Choosing the case study approach

A central concern when conducting an inquiry is the selection of the method that provides the best tool to answer the research question. A place to start when considering which method is best suited is the framing of the research question. My research question is: *Why did Nunatsiavut succeed in attaining self-government following extensive tripartite negotiations while Nunavik did not, when they share similar basic features?*

My intention with this is twofold. First, I want to understand why the specific two Aboriginal groups, that may appear similar, experienced disparate outcomes. Second, I aim to identify general factors that contribute to outcomes of self-government negotiations in general in Canada. The degree of certainty of my conclusions will of course be strongest for the two specific cases. I thus seek to discover the factors and variables that may influence a group's chances for success. This is therefore a question of causation. The case study approach is

particularly suited to explaining “how” and “why” questions (Yin 2009, 9). Case studies often deal with establishing causation between variables and outcomes (George and Bennett 2005). This differs from the underlying logic behind quantitative research (large-N) which establishes broad correlations and frequencies rather than causality, according to critics (Ragin 2004).

The aim of this study is to investigate factors that may have contributed to Nunavik and Nunatsiavut’s different outcomes after negotiations for self-government. Therefore a case study approach is a suitable one. Moreover, the research question focuses on two cases in particular, which gives the study a comparative dimension. Two cases offer “a balanced combination of descriptive depth and analytical challenge that progressively declines as more cases are added” (Tarrow 2010, 46). The inclusion of two cases permits the researcher to examine how common mechanisms are affected by the particular characteristics of each case.

#### *4.1.1 What is a case study?*

The literature offers different definitions of cases and case studies. George and Bennett (2005, 17) defines a case as an instance of a class of events and the case study as a study of these events. According to Gerring (2004, 341), a case study is an “in-depth study of single unit (a relatively bounded phenomenon) where the scholar’s aim is to elucidate features of a larger class of similar phenomena”. While Yin (2009, 15) defines it as “an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-world context”. One of the advantages of a case study is that it allows for careful consideration of contextual factors and how they may influence the workings of variables.

Following the definition of George and Bennett (2005) one can argue that I conduct a comparative case study. Because there are two cases in my study it constitutes what is often called a multiple case study. Since there are more cases to draw conclusions from, the results are more robust than when using only one case (Johnson et al. 2008, 152). Yin (2009, 56-57) argues that the multiple case study uses a replication logic in which every case is treated as an individual case study, and later on a cross-case comparison is conducted where the results of each individual case are compared. This is exactly what I intend to do in this thesis.

The selection of cases corresponds to what Przeworski and Teune (1970) define as most similar system design (MSSD). The reasoning behind the MSSD-approach is straightforward as it aims to identify ‘intersystemic’ differences through the selection of cases with ‘intersystemic’ similarities. The logic is that “common systemic characteristics are conceived as ‘controlled for’, whereas intersystemic differences are viewed as explanatory variables. The number of

common characteristics sought is maximal and the number of not shared characteristics sought, minimal” (Przeworski and Teune 1970, 33). Assuming that the basis for Aboriginal self-government in the population of the study is fairly similar, the MSSD provides the opportunity to follow this logic to identify deviating explanatory variables. In this case, the variation in the dependent variable, namely the outcome of the self-government negotiations, was the prime tool for selection. This clearly breaks with the advice given by certain scholars to not choose on the dependent variable.<sup>11</sup> However, choosing on the dependent variable is first a problem when “there is no variation to be explained” (Ragin 2004, 128). This vision has been criticized by case-oriented scholars such as Ragin (2004) as being irrelevant when applied to case studies.

In addition to this, there are certain other caveats that have been proposed by quantitative scholars. Much of the critique towards case studies comes from the fact that one allegedly focuses on a limited amount of information, drawn from only one or a few cases, which may lead to a lack of representativeness (George and Bennett 2005, 28). The case may not be representative of other cases, and the conclusions drawn might not be transferable. With quantitative, large-N studies one can more easily make generalizations. This can be traced back to Przeworski and Teune (1970) who favor parsimony and generality over accuracy, and therefore generating less accurate theories that can easily be transferred to different contexts. However, generalizability is not the objective of most qualitative research, where one is more interested in providing explanations for a defined set of outcomes. Explaining and identifying the links between cause and effect is just as important as making wide-spread generalizations (Ragin 2004). Yin (2009, 15) argues that analytical generalizations to general theory are possible with the case study, but should not be confused with statistical generalizations to populations and universes. It is important to keep these considerations in mind when discussing the implications of the findings.

#### *4.1.2 Why Aboriginal self-government in Canada?*

Why do I focus on Aboriginal self-government negotiations in Canada? I argue that Canada is a good place to study this issue for several reasons. Firstly, Canada as a federal state is one of a minority of countries that divide sovereignty between a central government and regional governments. Indigenous communities in Canada have organized and mobilized, within the federal system, against assimilation initiatives by seeking political and legal recognition of their title and rights. This mobilization has allowed delegated self-government rights to the

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<sup>11</sup> See King, Keohane and Verba (1994, 142)

Indigenous peoples through comprehensive land claims agreements, unlike any other country (Alcantara 2017, Poelzer and Coates, 2015). Secondly, in Canada there are over 1.4 million Aboriginal peoples, spread over 600 recognized groups. Twenty-nine different land claims and/or self-government agreements have been ratified since 1973. Thirdly, Canada's Indigenous population has a high level of mobilization, with over 90 Aboriginal groups currently negotiating for self-government.

Lastly, Nunavik and Nunatsiavut are examples of Arctic regions in Canada that are seeking autonomous status *within* an existing constituent unit of the Canadian federation, which in many respects constitutes a new phase in the evolution of Canadian federalism (Wilson 2008, 71). These nested regions represent large and strategically significant territories within the Canadian Arctic. They hold vast deposits of resource wealth that are not only important for the provinces where they are located, but also for the regions themselves as they seek sustainable employment opportunities for their inhabitants. It is thus a somewhat new, but still very rich empirical context within which I will seek to answer my research question.

#### *4.1.3 Process tracing*

In addition to applying the research strategy of multiple case study, I will also apply the strategy of process tracing, which is an analytical tool for causal inference. Process tracing consists of the examination of diagnostic pieces of evidence within a case that can either contribute to supporting or overturning explanatory hypotheses (Bennett 2010, 208). Collier, Brady and Seawright (2010, 201) understands process tracing as “the examination of diagnostic pieces of evidence, commonly evaluated in a specific temporal sequence, with the goal of supporting or overturning alternative explanatory hypotheses”. The diagnostic pieces of evidence that are examined through process tracing are called causal process observations (CPO). Thus, process tracing consists of procedures for identifying specific CPOs and determining their contribution to causal inference.

According to Collier et al (2010) qualitative researches that analyze processes rely upon CPOs. They define CPO as either a piece of evidence or insight that provides information about context or mechanism, and therefore contributes to a different kind of leverage in causal inference. In other words, CPOs can be seen as proof regarding what happened in a process and why it happened the way that it did. The strength of process tracing lies in its in-depth insight. As a tool for causal inference, process tracing focuses on the unfolding of events or situations over time. Hence, careful description of the central steps in the processes being

analyzed is a foundation of process tracing, which in turn permits good analysis (Collier 2011, 824)

Although process tracing has many advantages, there have also been critiques raised. Process tracing has been criticized for taking the form of storytelling. Tilly (2002, 9-10) argues that although stories are an instinctive way of ordering experiences, they do not automatically help in generating causal analysis. However, this is an oversimplification of what process tracing entails. Venneson (2008) argues that process tracing differs from stories in three distinct ways. Firstly, process tracing is focused in the respect that it deals selectively with other certain aspects of the phenomenon. Secondly, process tracing is structured in the sense that the researcher is developing an analytical explanation based on a theoretical framework. Thirdly, “the goal of process tracing is ultimately to provide a narrative explanation of a causal path that leads to a specific outcome” (ibid, 235).

#### **4.2 Information about the data**

In order to answer my research question, I have drawn information from several different sources. One source of information comes from newspapers. There are according to Earl et al (2004) several problems with using newspaper data. The first problem relates to the issue of selection bias, meaning that newspapers will not cover all possible events. In fact, much of the comprehensive land claims negotiations take place outside the public view, so additional sources of information are needed to get a complete view (McPherson 2003, xv). To find the newspaper articles, I used the Eureka.cc news retriever. This contains more than 13 950 sources and full-text coverage of over ten newspapers from Newfoundland and Labrador. I also used ProQuest’s Canadian Newsstream database, which offers access to the full text of over 190 Canadian newspapers. In addition, I searched Nunatsiaq News’ online database to find detailed information about the Nunavik case<sup>12</sup>. There is thus a high degree of diversity in the newspaper sources.

In order to gain more information, I decided to go on a two-week fieldwork to Canada in June 2017. I gathered primary and secondary material from the national collection in the Grande Bibliothèque in Montreal and from the Labrador Institute in Happy Valley-Goose Bay. This allowed me to search through government publications, conference summaries, and other documents not found elsewhere. In addition, I sought to contact people who were involved in

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<sup>12</sup> Weekly newspaper based in Iqaluit, Nunavut serving Nunavut and the Nunavik region.

the negotiation process in order to conduct semi-structured interviews. The interviewees were identified by consulting public documents, published sources and newspaper articles. The initial focus was on establishing a list of the different negotiating teams, the senior bureaucrats and lead negotiators. One initial problem was finding the contact information of the people involved. 12 years have passed since the ratification of the Labrador Inuit Land Claims Agreement, and six years since the failed ratification of the Nunavik Final Agreement. Many of the people involved have switched jobs, retired or otherwise become less available.

Another problem was the willingness of some potential interviewees to be interviewed. This was especially true for the case of Nunavik, where several informants either did not respond to my requests or did not want to participate for a variety of reasons. I ended up with six respondents, which includes representatives for the federal, provincial and the two Aboriginal groups.<sup>13</sup> Four of them were involved in the negotiations for self-government in Nunavik, while the other two were involved in Nunatsiavut. In the case of Nunavik, I interviewed the two different lead negotiators representing the federal government, who between them have been involved in the whole duration of the negotiation process. I interviewed one representative of the Inuit party and one representative of the provincial government, who both wished to remain anonymous.

In the case of Nunatsiavut, I interviewed the lead negotiator for the Labrador Inuit Association, who had been involved in the negotiations from beginning to end. I also met with a representative of the federal government, who will remain anonymous.<sup>14</sup> These interviews allowed me to acquire information and knowledge about the two negotiation processes that is not available through other sources. Even with the limited amount of informants, I am confident that the sources of information, including interviews, newspaper articles, meeting minutes, government documents and relevant academic work will provide valuable insight into the mechanisms that caused the different outcomes between Nunavik and Nunatsiavut,

### **4.3 Case selection**

In a comparative perspective, research on indigenous self-governance is a tricky matter. Not only are self-government agreements tailor fitted to the specific Aboriginal groups that are doing the negotiating, but at this point in time, there are very few completed stand-alone self-

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<sup>13</sup> See Appendix 1 for a list of interviews, and Appendix 2 for the interview guide.

<sup>14</sup> Alcantara's (2008) research on comprehensive land claims agreements in Canada include the case of Nunatsiavut and a series of interviews with informants relevant to this thesis.

government agreements. At the time of writing, Nunatsiavut and Nunavut are the only Inuit regions that have completed a self-government agreement, both as a part of a comprehensive land claim agreement. Nunavik completed their Comprehensive Land Claims (CLC) agreement in 1976, and failed to ratify the 2011 self-government agreement. The Inuit in the Inuvialuit Settlement Region completed a CLC in 1984, and have since been negotiating a self-government agreement and are expected to reach a final agreement in the near future.

Since this is the case, I have to choose the cases that are best suited for comparison. I seek cases that share the maximal amount of common characteristics and the minimal amount of not share characteristics. In order to assure that there is variation in the dependent variable, *the outcome*, it is imperative to include a negative case, so Nunavik is a given. For my second case, there are several options. The ideal option is a case that has completed a CLC without self-government provisions, then completed a stand-alone regional self-government agreement, and is situated within a province. There are, unfortunately, no cases that fit this description, but there are some that come close. Nunavut, which completed a CLC with self-government provisions in 1999, is a viable option. However, it differs from Nunavik in several important ways. Firstly, the Nunavut Land Claim Agreement (NLCA) led to the formation of a new public federal jurisdiction, Nunavut Territory, where Nunavik is a region in an already existing federal jurisdiction, Quebec. Secondly, the NLCA was a result of negotiations between Inuit representatives, the Northwest Territories and Canada. Negotiations with a Canadian territory are assumed to differ from those with a province (see Wilson 2008; Alcantara and Davidson 2015).

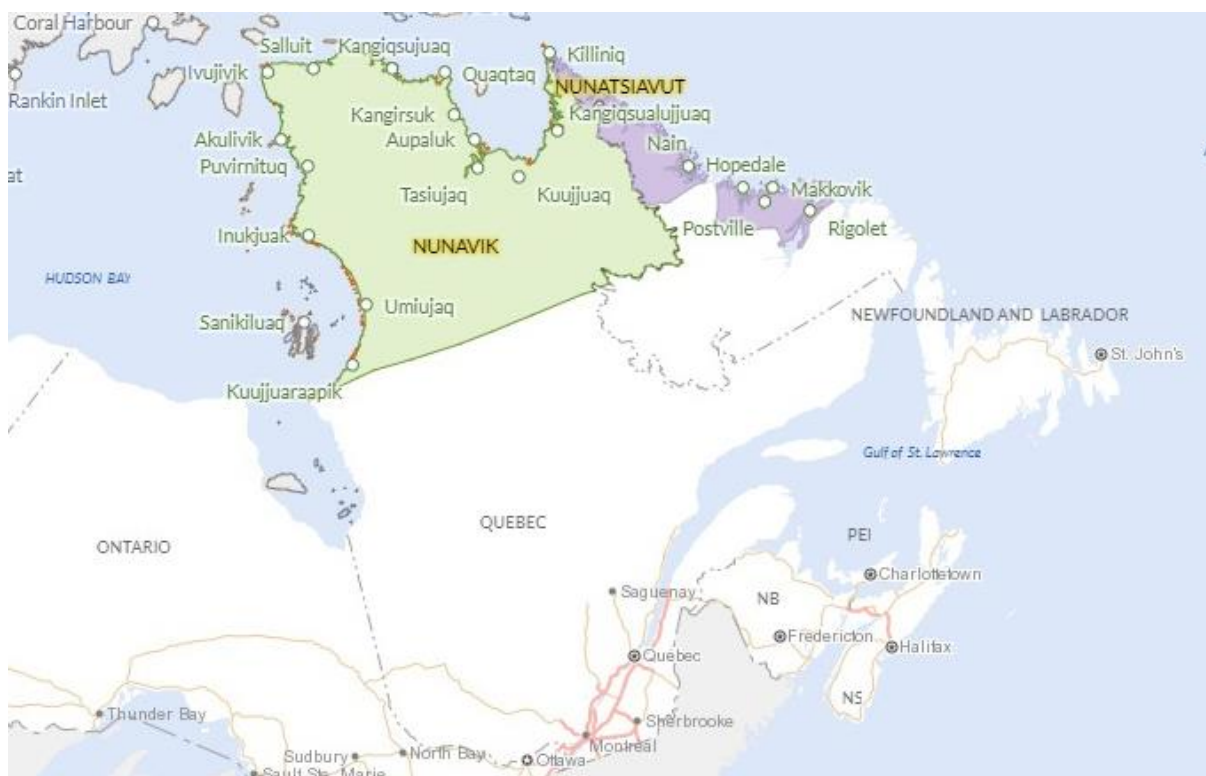
Another possible second case is the Deline Self-Government Agreement, which was completed in September 2016. Like with the Inuit in Nunavik, this is a stand-alone self-government agreement completed after a CLC. Unlike the Nunavik case, it is a community based self-government agreement, and not a region based agreement. Deline has a population of 472, where 88 percent is North American Indian and only 3 percent is Inuit, and a land area of approximately 80 km<sup>2</sup> (Statistics Canada, 2011). This is a big contrast to Nunavik's land area 500 000 km<sup>2</sup> and 12 000 inhabitants. For those reasons alone, I find a Deline and Nunavik to be unfit for comparison

A third option is the Inuvialuit in the Inuvialuit Settlement Region (ISR). As mentioned earlier, the Inuvialuit finished their CLC in 1984, and the Inuvialuit Final Agreement did not include self-government provisions. The negotiations for self-government have been ongoing since the

mid-1990s, but they have yet to conclude negotiations, which is my biggest concern in including it in my analysis. Apart from being located in a territory and not a province, this potential second case ticks off several of the right boxes: a predominantly Inuit population and a potential region based self-government agreement. However, they still have to compose a final agreement, which then is subject to a region-wide referendum, and it was at this stage that the Nunavik final agreement failed. I cannot justify including the Inuvialuit at this point in time, but it is an interesting case for future research.

Nunatsiavut in Labrador is therefore the case that is best suited for comparison. While they gained self-government as a part of a land claims Agreement, they do share several traits with the Nunavik Inuit. First, the majority of the inhabitants are Inuit. Second, Nunatsiavut is located within a region and they negotiated for a regional self-government. Even though they did gain self-government powers through a land claims agreement, these processes are relatively similar and I feel confident in including the case in my thesis.

Map 4.1: The regions of Nunavik and Nunatsiavut.



Source: Indigenous and Northern Affairs Canada



#### *4.3.1 Nunavik: An overview*

The Inuit and their predecessors have lived in Arctic Quebec for more than 3500 years, evident by the Dorset and pre-Dorset sites found along the Nunavik coast. At the time of the first encounter with white people in the late 16<sup>th</sup> century, the Inuit lived in bands composed of two to five families. The most populated area of Nunavik was north in the Ungava Peninsula, where food was abundant, and they would seldom venture south of the three line because of potential conflicts with Indians (Vick-Westgate 2002, 25). The European presence was sporadic this early on, and it was not until the 19<sup>th</sup> and early 20<sup>th</sup> century that trading posts were established in some parts of the region. Except for a few independent trading companies, it was the English Hudson's Bay Company and the French Révillon Frères who established the bulk of the trading posts in Nunavik during the 19<sup>th</sup> century. Fur trading became a major source of income and a means for the Inuit in acquiring vital commodities, but also a source of diseases and alcohol (AANDC 2006, 3).

In addition to contact with fur traders and whalers, there were some attempts to evangelize the area. The Jesuits took part in some expeditions to the Hudson Bay in the 17<sup>th</sup> century and the Moravians established missions by the Labrador coast, but it was not until 1876 that the first mission in northern Quebec was established. "Missionaries ended up being respected as important providers for the community. Their paternalism toward the Inuit had of course a practical aim. They were trying to integrate into the community and thereby attract converts" (Hervé 2017a, 6). The missionaries were also a provider of education in the area, but since most of the Inuit were still pursuing a nomadic lifestyle, mission schools operated on an irregular basis. Federal authorities provided education from 1949 until the province took over in 1963 (Kativik School Board, n.d)

It was the Hudson Bay Company, missionaries and later the Royal Canadian Mounted Police that was the main non-Inuit presences in Nunavik up until the end of the 1940s. Quarreling between the federal and provincial government was settled in a Supreme Court case in 1939, which ruled that the Inuit should be under federal jurisdiction. The Department of Northern Affairs and National Resources was created in 1953 and took over the responsibility of administering Arctic regions. The federal government encouraged the Inuit to try a more sedentary lifestyle and give up their nomadic ways by introducing several housing programs in

the early 1960s, with the goal of providing every Inuit family with a house by the early 1970s (Hervé 2017a, 8).

In the 1960s, Quebec challenged the federal government's dominance in Northern Quebec and initiated negotiations in order to take over the responsibilities in the north. Quebec realized the economic potential in the region and that any attempt of sovereignty was dependent on full control of the northern parts of its province. The Inuit were not convinced that a Quebec takeover in the region was to their best interest, as they considered the provincial government to be less wealthy and influential. In addition, the Inuit were more attached to English and Anglicanism, and the Quebec was associated with French and Roman Catholicism (Hervé 2017a, 11).

The sedentarization of the Nunavimmiut was almost complete by the late 1960s, and government villages have now become the centers of residential life. As a result of this, the economic structure of the region changed drastically, going from hunting and fishing to a wage economy (Kishigami 2000, 175). As of 2011, only 0,2 percent of the Inuit labor force is employed in the agriculture, forestry or fishing and hunting industry, and the main industry providing jobs in the region are public administration, education and health care, which are employing almost 60 percent of the aboriginal working population (Statistics Canada 2011). The mining sector is also a big provider of jobs in Nunavik, providing over 1000 jobs, but only 15 percent of them are employed by Inuit workers (Parnasimautik 2015, 123)

Nunavik is a part of the arctic world, and is made up of the Kativik region, covering approximately 500 000 km<sup>2</sup> north of the 55<sup>th</sup> parallel, as well as the Nunavik Marine Region, covering approximately 265 000 km<sup>2</sup> of offshore areas. Most of the Inuit inhabit the coastal areas, living in fourteen communities ranging in size from 200 to 2400. There are no roads connecting the different communities, and the inhabitants are relying on air transportation and summer sealift for non-perishable foods and supplies.

Nunavik has a population of 12 090, where 89 percent are Inuit. The population is extremely young, with 65,9 percent of the Inuit under the age of 30 and 36 percent under the age of 14. Social problems as teen pregnancy and suicide are much more prevalent in Nunavik than the rest of Quebec. The teen pregnancy rate is four times higher among girls aged 14 to 17 than the rest of the province, while the suicide rate for Inuit aged 20-24 is 23 times higher than the rest of the province; for Inuit aged 15-19 it is 56 times higher (Lawrence, 2010). The cost of food and household items are 52 percent and 97 percent higher than elsewhere in Quebec,

respectively. Life expectancy is approximately 14 years less than the rest of the province, and 37,5 percent of Inuit households live in poverty (Parnasimautik 2015, 8).

When the provincial government in Quebec announced the plans for the construction of a series of hydroelectric power stations on the La Grande River in northwestern Quebec in 1971, it created dissatisfaction with the indigenous people in the area. The development of the project would reap great economic benefits to the province, but at the same time lead to big changes to traditional lands and water streams, which in turn would affect the local indigenous population. The case went to court and ended in the *James Bay and Northern Quebec Agreement* (JBNQA). The Inuit in Nunavik received 8 151 km<sup>2</sup> category I lands, 81 596 km<sup>2</sup> of category II lands, while one million square kilometers are identified as category III lands<sup>15</sup>. In addition the Nunavik Inuit received a monetary compensation of \$91 million (1975\$) (AANDC 2016).

The Makivik Corporation was responsible for managing the financial compensation from the JBNQA on behalf of the Inuit beneficiaries, and is the primary political representative of the Inuit beneficiaries. Together with Makivik, three regional public administrations were created: the Kativik Regional Government (KRG), the Kativik School Board (KSB) and the Nunavik Board of Health and Social Services (NBHSS), which would provide a level of administrative autonomy the region. These three administrations are still in place, and it constitutes a very fragmented form of government, as each administration is responsible to its parent Quebec department, and there is very little coordination between them<sup>16</sup>. Supporters of a more extensive form of self-government rejected this form of limited autonomy and created a dissident organization called Inuit Tungavingat Nunamini (ITN) (Rodon & Grey 2008, 4).

Along with ITN, the organizations stemming from JBNQA created a joint working group to draft a consultation report on Inuit self-government, which tabled two proposals for future self-government. The first proposal was that a constitutional committee should be elected to develop a strategy for further autonomy. This committee would be funded by voluntary taxes, establishing it as a grassroots democratic initiative. The second proposal was that the committee should be constituted of representatives of the different Inuit organizations, and funded by those

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<sup>15</sup> Category I: lands allocated to the Inuit for their exclusive use, in and around the communities where they normally reside and where they will have self-administration

Category II: lands where the Inuit will have exclusive hunting, fishing and trapping rights, but no special right of occupancy.

Category III: Quebec public lands where the Inuit have special rights to harvest certain species.

<sup>16</sup> This governance structure, with three public government bodies (KRG, KSB and NBHSS) along with a strong non-governmental actor (Makivik), constitutes multilevel governance as described in chapter three.

same organizations. However, no agreement was reached, and the Inuit requested a referendum. When the people of Nunavik decided in 1987, they went with the first proposal, and the proponents of the second proposal were elected to sit in the committee. “To some degree, this ensured the end of the dissension, since the two camps could both claim victory and admit defeat” (Rodon & Grey 2008, 5)

With the committee in place, the Inuit could now start drafting a proposal for a constitution. The Nunavik constitutional committee visited all the Inuit communities, and was able to draft a proposal for the self-government negotiations, which was accepted in a referendum in 1991, Nunavik’s third referendum since 1975. With the Inuit united behind a single proposal, they could now enter into self-government negotiations with the federal and provincial government. The drafted constitution proposed the creation of a public regional government. In the mid-1990s, the negotiations took a backseat to Quebec’s second sovereignty referendum in 1995. The Inuit of Nunavik, however, decided to arrange their own referendum, where 96 percent voted in favor of separating from Quebec and remaining a part of Canada in the case of Quebec sovereignty.

As history has it, Quebec remained a part of Canada, and elected a new premier in 1996. The negotiations could once again continue, but with new participants at the table it had to start from scratch. In order to determine the framework of the system of government, the three parties of the negotiation created the Nunavik Commission, a trilateral body with representation from Canada, Quebec and Nunavik. The goal of the commission was to “identify the required means to establish a form of public government that can meet the needs of a northern community while operating within federal and provincial jurisdictions” (Dufour & Tremblay, 2001, 1). The commission travelled to all the different Inuit communities in Nunavik for public consultations in a process that lasted nearly 17 months and ended in March 2001. The recommendations stemming from the Nunavik Commission formed the basis of the ensuing self-government negotiations. On December 5, 2007, Makivik, the Government of Quebec and Canada signed an Agreement-in-Principle (AIP) setting out the parameters for the negotiation of a final agreement.

A final agreement between the Inuit of Nunavik, as represented by Makivik, the government of Quebec and Canada was reached in January of 2011. The objective of the agreement was “to provide for the creation and continued existence of the NRG (Nunavik Regional Government) for all residents of Nunavik” (NRGFA, 2011, 3). The agreement was a two-phased process,

where phase one is an amalgamation of the three public administrations into a unified entity, the NRG. All the existing powers and responsibilities of KRG, KSB and NRBHSS would be transferred to the NRG. The NRG was to be composed of (1) the Nunavik Assembly, the legislative branch, constituted of elected representatives. (2) The Executive Council, who is responsible for implementing the decisions of the Nunavik Assembly, and composed of five elected members. (3) The Administration of the NRG, who shall replace the administrations of KRG, KSB and NRBHSS and assume all their duties and functions.

Phase two was subject to NRG obtaining the necessary authorities and “undertaking subsequent negotiations of a supplementary agreement or supplementary agreements which could provide, as the case may be, new powers to the NRG” (NRGFA 2011, 25). The Nunavik Regional Government Final Agreement was voted down in a region-wide referendum in April 2011. The approval of the referendum was conditional upon a majority of the votes being in favor of the agreement and that this majority represents at least 25 percent plus one of all the electors qualified to vote.

#### *4.3.2 Nunatsiavut: An overview*

The Thule people arrived in Labrador in about AD 1450, a century after they expanded to Nunavik (McMillan & Yellowhorn 2004, 286). Traditionally, the typical winter Labrador Inuit household was "comprised of multiple closely-related nuclear families consisting of a father and his married sons" (Arendt 2011, 50). The Inuit were constantly on the move throughout the year and hunted game such as caribou and porcupine during the summer months and walrus, seal and other sea mammals during the winter (Dorais 2002, 135; Pedersen, 2006).

The Inuit of Labrador first encountered Europeans in the form of Basque whalers along the southern Labrador coast, who established whaling stations in the area in the mid-16<sup>th</sup> century (Barkham 1984, 517). The actual extent of the Basque-Inuit connection is unknown, but stratigraphic evidence does suggest that "contact between Inuit and Basque could have been at the very least a cordial one and instrumental in the Basque whaling enterprises" (Arendt 2011, 78). Increasing competition, southward movement of the Inuit population and piracy led to the total disintegration of Basque whaling in the area by 1632 (Barkham 1384, 518). They were quickly replace by French and English whalers and fishermen, which eventually led to increased contact and trading with the Inuit (Alcantara 2008, 34).

In 1769, Moravian missionaries, a protestant group based in Germany, were granted permission to establish missions in Labrador. Before establishing the mission, the Moravians sought verbal

permission from local Inuit to purchase the land in exchange for gifts such as fishing hooks (Arendt 2011, 121). They established their first mission in Nain in 1771 and became the first Europeans to establish a permanent settlement in the area. In order to spread the gospel to more than Inuit visiting Nain in the summer to fish, they established missions north of Nain, in Okak, and south, in Agvituk, quickly renamed Hopedale, by 1782. The Moravians struggled to make an immediate impact on the Inuit, as they were hesitant to give up their traditional Inuit religion in exchange for Christian norms and values, but as more and more Inuit decided to live near and work with the Moravians, new cultural features and Christian norms were incorporated into the Inuit routine (ibid, 148-250).

Moravian trading posts in Inuit communities meant that the Inuit no longer needed to travel south to trade and provided them with immediate access to European goods and services. "Most of the Inuit eventually converted to Christianity and abandoned their nomadic, season-centered living habits to settle in the permanent Moravian mission-centered communities" (Alcantara 2008, 35). The move from a nomadic lifestyle to a more sedentary life was almost complete by the end of the 19<sup>th</sup> century, and happened much earlier than it did with their Inuit neighbors to the west.

During the 19<sup>th</sup> and 20<sup>th</sup> centuries, the Inuit became more dependent on a market economy and adopted new technology to compete in natural resources industries such as cod and salmon fishing, seal trapping and fox trapping (Brice-Bennett 1997). The construction of a military air base near Happy Valley-Goose Bay in 1942 and several radar sites along the coast, gave the Inuit an opportunity to enter into wage employment. The confederation of Newfoundland and Labrador with Canada in 1949 led to the province receiving funds to administrate the Aboriginal peoples in the province. The funding was used by the province to further assimilate the Inuit, and they quickly closed the two northern missions in Nutak and Hebron in 1956 and 1959, respectively. The official reason for the relocation was to provide the Nutak and Hebron Inuit with a higher standard of living through social services that would be available in larger communities (Brice-Bennett 2017, 176). The relocated Inuit struggled to make a living further south as they competed for resources with local fishers and hunters that had prior customary harvesting rights, and left many dependent on social welfare. Their poverty combined with their lack of understanding of the English language, unusual dialect of Inuktitut and cultural preference for seal set them apart from other community members, which in turn led to alcohol abuse and violent attacks within households (Ibid, 151). By the end of the twentieth century,

"almost all Inuit were Christianized, educated in English schools, and could speak the English language (Alcantara 2008, 37).

Nunatsiavut has a total population of 2 617, where the Inuit represent 90 percent. As in other Arctic regions, the population is young. In 2011, 44 percent of Inuit in Nunatsiavut were under the age of 25, and the median age was 28,7. The suicide rate in the region is at an alarming rate of 275,3 per 100,000 in the period 2009-2013, higher than it is at any other Canadian Inuit region, and about 25 times higher than the national average of 11,3 (Inuit Tapiriit Kanatami). This figure should of course be considered with caution as we are dealing with a relatively small population. 42 percent of Inuit aged 25 and over in the region had experienced food insecurity in the last twelve months according to Aboriginal Peoples Survey 2012. In terms of language preservation, 25 percent of Inuit in Nunatsiavut reported the ability to conduct a conversation in Inuktitut, which is among the lowest percentage of the Inuit regions (Statistics Canada 2016).

In terms of educational attainment, 43 percent of the Inuit population has no certificate, diploma or degree, 25 percent reports having a high school diploma and 33 percent reports having a postsecondary certificate, diploma or degree, of which 80 percent is either apprenticeship or non-university diploma. In terms of employment, the region has an unemployment rate of 34,7 percent and the median income is \$19,465, which is substantially lower than the provincial and national level (respectively, 14,7 percent and 8,1 percent, and \$27, 170 and \$30, 180) (Statistics Canada 2011).

It was not until 1980 that the provincial government accepted the Inuit claim for negotiations. This happened after Brian Peckford took over as premier after Frank Moores. This was important because Peckford was more open to recognizing Inuit claims than his predecessor. Even though there was interest from the provincial leadership and the LIA, the negotiations did not begin until 1985, because of a federal policy that restricted the amount of active negotiations to six. When the Inuvialuit Inuit settled their land claim in 1984, it opened up a spot for the Inuit in Labrador. However, the federal government suspended all of their negotiations in 1985 as they were reviewing the comprehensive land claims policy. The suspension ended with the publication of the Coolican report in 1986, and the federal government made several changes to their policy in 1986. In a response, the province reviewed the report and the policy changes, and generated their own response, which they finished by October 1988. Even though the

province was unhappy about the lack of a cost-sharing agreement with the federal government, it was willing to enter into tripartite negotiations.

The three parties agreed to a framework agreement in March 1990, after two months of negotiations. The negotiations for the agreement in principle would last for nine years. There were two main reasons for this. The first six years of negotiations were mainly about disagreements between the province and the federal government about cost sharing. The province was willing to cover costs that were under provincial jurisdiction, such as land and renewable and non-renewable resources, but it was under no obligation to provide money to the agreement. The federal government's stance was that the province was obligated to pay for some of the agreement, as it did not want to set a precedent for other provinces for cost sharing.

Secondly, many of the interviewees from Alcantara's *Negotiating the Deal* pointed to the province's lack of experience in land claim negotiations, as this was their first AIP negotiation, and the province did not have the necessary experience and knowledge to broker a deal. In addition, there was a lack of political will at the provincial level. Even though the premier at the time wanted a deal, it was hardly a main priority, "partly because he did not believe in special recognition for collectives" (Alcantara 2008, 140). After six years of negotiations and one finished chapter on the AIP, two events really changed the pace of the negotiations. The discovery of nickel at Voisey's Bay created a mineral rush to the area. Voisey's Bay is located just south Nain, the administrative capital of Nunatsiavut, in an area that both the Inuit and the Innu had claimed. Both the provincial and the federal government were eager to speed up to the negotiations in order to start mineral extraction in the area.

Once nickel was discovered in Voisey's Bay, the area was pulled off the negotiation table by the federal and provincial governments. The Inuit responded with a court injunction to stop the development. Once again, the negotiations stalled, but a quick conclusion would now be to the advantage of all parties involved. For the first time, LIA, the provincial government and the federal government agreed to fast-track the negotiations, with intensive and frequent negotiation sessions. Still, not all of the issues could be resolved this way. It was during an eleven day negotiation session in October 1997 that the three parties finally resolved the issues that were of major contention, mainly land selection, revenue sharing, cost sharing and self-government. From there on out, the process moved quickly to a completed AIP in 1999 and the ratification vote on the AIP in 2001.



The negotiations for the final agreement went on rather quickly, but there were still some issues left unresolved. The first one was that of land selection. The LIA provided a land selection proposal to the federal and provincial governments, which the provincial leadership was quite negative towards. Almost a decade earlier, the province had offered the Inuit several blocks of land, which the Inuit found to be unsatisfactory and rather wanted several large "ribbons" of land along the coastline of Labrador. The problem of land selection ended in a compromise, where the Inuit had to accept some of the land that they did not really want, and conceding some of the areas that they did want, while the province gave up on their "blocks of land", and went along with the "ribbons", therefore giving up more land than they initially wanted.

The second unresolved issue during the final agreement negotiation was that of Voisey's Bay. The AIP stated the Voisey's Bay chapter would be negotiated during the final agreement, but Inco, the Canadian mining company, was ahead of schedule and both the governments were eager to move the project forward. Although it was determined in the AIP that the Voisey's Bay project should not commence before the completion of the final agreement, the Inuit succumbed to the pressure of the two governments, and the project started before a final agreement was concluded. The LIA felt comfortable doing so partly because of the Impacts and Benefits Agreement (IBA) that was agreed upon between LIA and Inco, and two separate agreements with the two levels of government, but also because there was an informal agreement between LIA leadership, the premier and the federal negotiator that a final agreement would be completed if the Voisey's Bay project moved forward (Alcantara 2008, 145).

After this, I will examine the two negotiation processes in detail in order to identify the causal process observations and how they relate to the theoretical framework presented in chapter three.

## 5. Analysis of the negotiation processes

In order to identify the causal process observations (CPOs) and evaluating their effect on the outcome of the negotiations in Nunavik and Nunatsiavut, careful description of how the processes played out is imperative. This chapter focuses on the unfolding of significant events in the two cases, and characterizes the key steps in the processes leading up to the conclusion of the negotiations. The first section of this chapter describes the unfolding of the negotiation process in Nunavik and the central events and disagreements leading up to the failed referendum in 2011. The second section covers the negotiation process of the Labrador Inuit, characterizing the key moments leading up to the successful ratification of the Labrador Inuit Land Claims Agreement.

### 5.1 The Nunavik Inuit road towards self-government

In September 1997, Quebec Premier Lucien Bouchard travelled to Nunavik, as the first Quebec government leader since 1984, in a visit that signaled the start of warmer relations between Nunavik and Quebec. During the preceding summer, there were intense debates about the partition of Quebec between Ottawa and Quebec, where the Minister of Intergovernmental Affairs Stéphane Dion stated: "You can't consider Canada divisible but the territory of Quebec sacred. If there are native groups, municipalities or regional municipalities who on an equally democratic basis decided they wanted to stay Canadian, you would have to talk to those people" (Young 1998, 354). The newly elected Premier of Quebec replied that Canada is divisible because Canada is not a real country (ibid). The visit to Nunavik, however, was neither about Quebec sovereignty nor partition, but about building a positive relationship with the region. The Premier signed three major agreements with the Kativik Regional Government assuring money to tourism, Inuit culture and the mining industry, in addition to having preliminary self-government talks with the president of Makivik, Zebedee Nungak (George 1997). Bouchard agreed to reopen negotiations on the establishment of a public government institution north of the 55<sup>th</sup> parallel.

This was a significant step in the right direction for the Nunavimmiut. Ever since the signing of the James Bay and Northern Quebec Agreement (JBNQA) they had been seeking more extensive self-government powers. However, there had been internal divisions regarding what

form self-government should take since the early 1970s (Rodon and Grey 2008, 4)<sup>17</sup>. Indeed, one of the preconditions for further discussions of self-government with Quebec, as then-premier René Lévesque explained during a 1983 parliamentary commission on Aboriginal rights, was that the Inuit needed to be united behind a common process (Nunavik Commission 2001, 1). The Nunavimmiut eventually settled their disagreements through two referendums, in 1987 and 1991, which signaled to the provincial government that they had unified their approaches concerning autonomy.

The Quebec government gave the Secrétariat aux affaires autochtones (SAA) the responsibility of setting up a joint task force along with Makivik in order to develop the political accord, that would serve as the foundation for the ensuing negotiations. The first meeting was in December that same year, and in April 1998, the Nunavik Inuit announced that they were close to finishing a deal that would establish a Nunavik Commission that would have the mandate to design a more powerful territorial government (Nunatsiaq News 1998). Just months later in June, there were reports that the negotiations had stalled over the wording of two sections of the accord, and could be delayed for months as a result. The draft accord was now in its seventh version (George 1998). The parties were not able to close the deal before summer and the talks were further delayed.

The resigning of Makivik president Nungak in September, the election of new Makivik president Pita Aatami, the provincial election in November and an avalanche in the northern city of Kangiqsualujjuaq on New Year's Day leaving nine dead contributed to the further delay of negotiations (George 1999a). In May 1999, the wording of the agreement was determined, as the 15<sup>th</sup> version of the draft struck the words "commitment", "assembly" and "elected government" from the text. Quebec officials were however increasingly worried over the level of autonomy the accord seemed to offer Nunavik and fearful of making promises about an eventual government before the proposed commission had made their recommendations (George 1999b). The question of funding for the commission was still not resolved. Quebec wanted to split the bill equally in three, between Quebec, the federal government and Makivik. Makivik was willing to contribute money but did not believe it was fair that an organization that was ethnically based and represented only the Nunavik Inuit should pay for the development of a public government that would represent all the inhabitants of Nunavik.

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<sup>17</sup> Two competing visions emerged: A more radical grassroots organization centered on the co-op movement calling for the creation of an Inuit government, and a more pragmatic group calling for some administrative autonomy with a continued federal presence.

In July that same year, Indian Affairs Minister Jane Stewart commented on the state of the political accord by saying that the federal government has been ready for 10 months to sign the document, but that the province had “been dilly-dallying and deciding whether they’re in or whether they’re out” (George 1999c). Eventually the three parties signed the accord on November 5. By signing the accord, the parties agreed to establish a “Nunavik Commission with the mandate to develop a timetable, plan of action, and recommendations for the structure, operations and powers of a government in Nunavik” (SAA 1999). The commission would be co-chaired by one Inuit representative and one from Quebec, and have six additional members, two from each party.

The commission would develop recommendations that should define the powers, jurisdictions, responsibilities and competencies of a Nunavik Government, as well as the election process and the structure of what would be the Nunavik Government. It would also be responsible for making recommendations on the relationship between governments, such as the relationship between Nunavik and Quebec, and Nunavik and Canada. They would also make recommendations on measures to promote and enhance the Inuit culture in Nunavik, including the use of Inuktitut in the Nunavik Government

The Nunavik Accord introduced 12 overriding principles that the commission should respect in their work. Amongst other things, it stated that any new government would be non-ethnic in nature and open to all residents of Nunavik, which was a precondition for the Quebec Government. While there were some discussions about the issue and some Inuit leaders that wanted an ethnic form of government, Quebec had always had the position that any regional government created by the Quebec Government and under the framework and laws of the Quebec Government had to be homogenous with the Quebec Government (Interview C 2017). This issue was also brought up by the minister of Native Affairs as he stated that he was “particularly pleased with the fact that the proposed Nunavik government will be non-ethnic in nature” (Makivik 1999). Aatami admitted that the accord was not ideal, but that it was a document of compromise that will finally permit self-government negotiations to proceed (George 1999d). The accord also stated that the government “may be innovative in nature” and respect the arctic character of Nunavik.<sup>18</sup>

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<sup>18</sup> The need to be innovative stems from the fact that an autonomous form of public government within a province does not yet exist within Quebec or any other provincial jurisdiction in Canada.

The Nunavik Commission started its work on November 25, 1999. According to the accord, the commission had a timetable of 8 months, which could be extended with consent of the parties. The Commission had a three-phase approach. First, the Commission visited every community in Nunavik and held public hearings, spoke with secondary school students and local elected officials. Second, the Commission held a series of meetings with officials from provincial and federal departments involved in Nunavik-related issues, as well as officials from Greenland and Nunavut. In the last phase, the commission established various working groups in specific issues. The Commission finally tabled their recommendations in March 2001 (Amiqqaaluta 2001, 2)

The work of the Commission was not without controversy, as two of the commissioners refused to sign the document. Annie Popert of the Nunavik Party<sup>19</sup> claimed in a letter to the President of the Kativik School Board in February 2001 that the Commission had “continuously violated the spirit and letter of the Political Accord” (KSB v. Makvik 2004, 4). She also accused the commission of “ignoring Inuit concerns and engaging in undemocratic practices to stifle debate about the right of Quebec Inuit to self-determination” (Bell 2001). At this point, the Commission had finished making their recommendations, but according to Popert, she had voiced her complaints about the process numerous times before, but was shot down every time. One of the quarrels between Popert and the Quebec-appointed André Binette centered on Quebec separatism and the future of Nunavik if Quebec secedes from Canada. Binette went as far as writing to all the commissioners that he had “informed the government of Quebec that one of the Inuit members of the Commission was obstructing the work of the Commission and was hostile to Quebec” (George 2001).

The clash between Popert and Binette was unwelcome news for all parties. Neither the Inuit co-chairman of the commission, Harry Tulugak, nor Makivik president, Pita Aatami, condoned that Popert went public with her concerns about the Commission’s report, and would go ahead with their recommendations despite this (George 2001b). At the time, the commission was not going anywhere and there were concerns that the commission might collapse (Savoie 2017). The federal negotiator, Donat Savoie, suggested that the two representatives from the federal government should take control of the government. According to the deputy minister of the Secrétariat aux affaires autochtones (SAA), “Binette decided that he had his own mandate, he didn’t respect the framework in which we were working, so at one point he decided that it was

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<sup>19</sup> The party representing Nunavik in the negotiations, composed of Makivik, KRG, KSB, and NRBHSS.

‘his plan’ or nothing” (Interview C 2017). The Nunavik Commission getting only 6 of 8 signatures could be seen as problematic as the Political Accord stated that “the recommendations tabled by the Commission shall be subject to a consensus from all its members” (Political Accord 1999).

After the report was tabled at the Makivik annual general meeting in April 2001, dissatisfaction in the Kativik School Board (KSB) grew. Members of the council of commissioners at KSB saw the document as flawed as there was no consensus, it did not address the secession issue, lacked a funding plan for education and it did not include their own recommendations (KSB 2001a, 5-7). KSB frequently discussed the Commission Report leading up to the Nunavik Government Conference, where the different regional organizations met along with representatives of all Nunavik communities to discuss a possible Nunavik government. KSB went into the conference with a clear stance that they did support self-government, but are not happy with the report and stressed the need for consensus. Despite KSB’s concern, the Nunavik Government Conference passed a resolution to authorize Makivik, on behalf of the Nunavik Party, to enter into self-government negotiations based, but not limited to, the recommendations and final report of the Nunavik Commission with a vote of 38 against 12 (Makivik 2002, 31).

In the aftermath of the conference, in a letter to Makivik, KSB reiterated their concerns regarding the report and its lack of consensus, and also stated the resolution passed in the Nunavik Government Conference was illegitimate “because they had been voted on by all the individuals present, whereas the five constituent members of the Nunavik Party should have had one vote each” (KSB v. Makivik 2004, 5). KSB discussed the means of resolving their dispute with Makivik and came up with three possibilities: negotiation, mediation or litigation<sup>20</sup>. They passed a resolution on November 6 where they maintained their position that there should be no negotiations with Quebec and Canada until the Commission meets with KSB, the Commission fulfills its mandate and there is a consensus (KSB 2001b, 6-12). In order to prevent the negotiations to continue, they mandated their legal counsel to take any appropriate legal action that may be acquired.

Makivik and the rest of the Nunavik Party, excluding KSB, started negotiating for self-government based on the recommendations of the Nunavik Commission and relied heavily on it. It laid the groundwork for the ensuing negotiations, and could encompass up to 85 percent

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<sup>20</sup> Negotiations required two parties that are willing to negotiate. Mediation requires the same, but includes a neutral third party. Litigation would mean taking Makivik to court in order to force Makivik to negotiate.

of certain sections of the agreement, such as the creation of the Nunavik Assembly, which was based on a recommendation from the Nunavik Commission (Savoie 2017). On November 20 2001, the KSB sought an injunction against these self-government talks (George 2001c). They were however willing to drop the court case if Makivik agreed to include what they wanted in the Commission Report (KSB 2002a, 4-7). Makivik invited KSB to name people that would negotiate on behalf of the Nunavik Party and later on to name members to an Advisory and Technical Support Committee, but declined on the grounds that “the exercise of naming negotiators at this stage would be premature and improper since the so-called Nunavik Commission Report and the Kuujuaq resolution of October 11 are not legitimate” (KSB v Makivik 2004, 6).

Makivik and KSB met two times in the summer of 2002 in order to sort out their differences, with the first meeting reported to go well, but the second did not go anywhere and lasted less than an hour. KSB felt that issues raised in the first meeting went unaddressed and that Makivik did not study their documents or consider their concerns. Makivik failed to constructively participate in these meetings, and KSB concluded that there was nothing to be gained by continuing to have such meetings and that Makivik was not open to alternative dispute resolution (KSB 2002b, 4-6). KSB passed a resolution on August 27 2002, where the Council of Commissioners “vigorously confirm its position as expressed in resolution no. 2002-02/06 and confirm the mandate to its legal counsel to take any appropriate legal action that may be required, including a request before the Quebec Superior Court for declaratory judgment and a Court injunction, including interlocutory injunction” (ibid).

KSB claimed they had popular support for legal action based on the recent election of commissioners in which six of the seven school board commissioners won reelection (Nelson 2002b). In addition, two prominent opponents of the court action were defeated. Harry Tulugak, Makivik negotiator, lost his election bid in Kuujuaq and dismissed the notion that this election reflected popular sentiment towards KSB’s legal action. Claiming the election results as support for legal action, however, would be a stretch at best, evident by its voter turnout of 33 percent. One would have a better case for arguing for popular support against the legal action based on Pita Aatami’s reelection as Makivik President a couple of months later, with a voter turnout of 53 percent (Makivik 2003a, 26).

In a letter to Nunatsiaq News dated November 22 2002, Makivik president Pita Aatami, commented on the legal fight to stop the Nunavik Government negotiations and the supposed

illegitimacy of Makivik as a negotiator. He stated that Makivik “has never relinquished any of its mandates or rights as the Inuit party to the James Bay and Northern Quebec Agreement” (Nunatsiaq News 2002b). Makivik’s mandate and rights clearly allows it to enter into negotiations on self-government in Nunavik, and the idea that KSB, a non-ethnic body created by provincial legislation, has gained a veto on the question of Inuit governance is alarming, according to Aatami.

KSB failed to win an immediate freeze to the self-government negotiations in November 2002, as the Quebec Superior Court did not grant the school board a safeguard order. With this verdict, the court allowed the Nunavik Party to continue the self-government negotiations. However, the court did schedule preliminary hearings for a future injunction case, which if granted, could retroactively nullify the agreement even after it was completed (Nelson 2002a). While Makivik proceeded with their negotiations, the school board continued with their skepticism towards the framework agreement and the legitimacy of the negotiations. In February 2003, they called the impending framework agreement futile and accused Makivik of bullying (Nunatsiaq News 2003). Both the presidents of Makivik and KSB spoke on local radio in order to sway public opinion to their side of the debate. Aatami refuted the claims that Makivik were bullies and reassured that Makivik was given the mandate to conduct negotiations for self-government through the Nunavik Government Conference (Nelson 2003). While the discussion continued about Makivik’s legitimacy and role in the negotiations, the upcoming provincial election lead to further delays of framework ratification (Nelson 2003). The new liberal government honored the former Parti Quebeois government commitment to a new government for Nunavik and the framework agreement was signed June 26 2003. The purpose of the framework agreement was to:

*establish a formal process for negotiating, as a first phase, an Agreement-in- Principle and a Final Agreement on the amalgamation of the KRG, KSB, NRBHSS, KDRC and, if necessary, of other existing organizations, including their boards and councils, and all of their powers, responsibilities, roles, functions, authorities, assets, jurisdictions, competencies, obligations, resources, and privileges, into a single Unified Entity in Nunavik (Negotiation Framework Agreement 2003, 3)*

Moreover, the agreement establishes a second phase in the negotiations on the creation of a new form of government and to discuss the funding agreements with the two governments. The funding would take the form of block funding and would seek to consolidate all recurring



programs and funding provided to the organizations included in the supposed amalgamation (Negotiation Framework Agreement, 2003, 3-4). The framework agreement also repeatedly refers to the Inuit party as “Makivik” and not as “Nunavik Party”, which was the case in the Political Accord and in the “Negotiation Framework Agreement” of 1994, and one of the main reasons for the dissatisfaction of the KSB regarding the negotiations. The notion that Makivik and its president has authorization to sign a document on behalf of the school board on matters that affect the areas of KSB jurisdiction and its very existence, was illegal and contrary to the mandate given to Makivik, according to the school board (KSB 2003, 4-5).

There were several reasons for doing the negotiations in two phases: (1) Doing a self-government agreement with all provisions included is a very time-consuming affair, and at the time there was a fear that a change in government could scrap the whole process (Interview C 2017). An amalgamation is quicker and there was already some power in those organizations and an existing infrastructure. (2) A two-phased approach would have an easier path through government, and there were concerns by Quebec politicians that the Inuit could not take more at this point and if they went too far, too quick and it crashed, it would take a long time before negotiations could re-start (Interview C 2017). The idea of the two-phased approach came from the Quebec government, but was something all parties agreed upon (Interview C 2017, Savoie 2017, Interview A 2017, Budgell 2017).

The signing of the framework agreement did very little to change KSB’s approach, as it passed a resolution that summer to once again confirm its position and the mandate given to its legal counsel (KSB 2003, 4-5). Makivik, on the other hand, took the position that as the Inuit party to the JBNQA, it created the KRG, KSB, NRBHSS and the KRDC. Therefore, Makivik could also change those institutions (Makivik 2003b, 25). In the wake of the framework agreement, Makivik began printing quarterly newsletters specifically to keep the public and the various government departments informed about the developments of the negotiation process (Makivik 2004a, 22).

In February 2004, the Quebec Superior Court rendered judgment and did not grant the interlocutory injunction to stop the negotiation process. KSB was unsuccessful in arguing that they would suffer “irreparable harm” if they were left out of the negotiations with Canada and Quebec, mainly because an amalgamation of the institutions was part of the agreed upon principles of the Political Accord (KSB v. Makivik 2004b, 11). With regard to KSB’s concerns about language and that Inuktitut would be seriously weakened if people were given the

freedom to choose the language of instruction for their children, the court found no evidence to support the claim that the Commission Report recommended such freedom of choice. “On the contrary, recommendation 1.29 provides a significant improvement of the position of Inuktitut in Nunavik” (ibid, 12).

KSB argued that the uncertainty regarding the School Board’s future was harming educational planning. The court stated that while that may be true, all change creates uncertainty, and that in itself is not a sufficient reason to halt the negotiations. The court was particular critical of KSB’s claim that they did not have the opportunity to participate in negotiations. Firstly, the Political Accord did not grant the individual institutions designated as the Nunavik Party the right to participate in any negotiation at all. Makivik is the only entity empowered to consent to change in the JBNQA. Secondly, KSB had repeatedly refused to participate in the negotiation process, first by refusing to submit names of potential negotiators and then by not participating in the Advisory and Technical Committee. “The injunction as formulated would put an end to **all** negotiations possibly for several years. The momentum for agreement could well be lost in the mean time (sic) and the hope for a Nunavik regional government once again postponed indefinitely” (KSB v. Makivik 2004, 16).

After the verdict, Makivik issued a press release where they stated that they were pleased with the decision and that the invitation to the school commissioners to meet with the Makivik board was still open, and so was the invitation to participate in the Advisory and Technical Committee (Makivik 2004). KSB decided not to appeal the decision and sought to meet with Makivik and other members of the Nunavik Party to attempt to open a dialogue and explore the possibility of participating in the negotiation process and appointing a fourth negotiator to protect education’s interest. (KSB 2004, 8-9). Makivik refused to appoint a fourth negotiator, but welcomed KSB’s addition to the Advisory and Technical Committee.

With KSB now more involved in the process, the Nunavik Party was seemingly more unified, which was one of the preconditions for starting self-government negotiations when then-premier René Lévesque was confronted with the question during a parliamentary commission on Aboriginal rights in 1983. Negotiations for an agreement-in-principle (AIP) continued with input from all regional institutions, and by the summer of 2004 the AIP rolling draft was starting to look like a fairly complete document and was circulated to the various Nunavik organizations (Nunavik 01.03, 5-6).

In the fourth edition of the quarterly *Nunavik* newsletter, the three main institutions in Nunavik express their vision of a Nunavik Government. KRG sees “the advent of this new structure as desirable, necessary and even essential for the region’s development” (Makivik 2004b, 8). KRG has long understood that “as the phoenix, KRG must die so as to be reborn with a better structure, merged within the government of Nunavik, which powers shall be many and diversified” (ibid, 9). The Health Board’s vision for a new government was perhaps less grandiose, but none the less positive in spirit, as they saw the new government as a tool to bring people together and were hopeful of good cooperation between the different institutions (ibid, 26-26). KSB agreed to the idea of amalgamation provided that the result was a new government with new powers, but the amalgamation described in the AIP was just putting the powers and budgets of the three organizations in one basket. The School Board believed that “there should be no possibility of confusion, that the Nunavimmiut clearly understand that what they will be voting on is not self-government, but a new form of administration” (ibid, 16). They held the position that Nunavik should negotiate new powers first, then amalgamate.

The three Inuit negotiators responded to each of the organizations in the ensuing newsletter, and in the case of the KSB, “rectifying a number of wrong interpretations” (Makivik 2005, 13). They distanced themselves from the idea that the Nunavimmiut would vote for a new form of administration by stating that a government based on universal suffrage, accountability to the population and being responsible towards these constituents is much more than a simple administration.

In a cabinet shuffle, Quebec premier Jean Charest named Geoffrey Kelley as the new minister of Native Affairs in February 2005. The new government intended to keep on working on all agreements signed by the previous government, and had a general commitment to move forward on self-government in Nunavik. The new minister expressed encouragement about the dropped opposition of the School Board, saying it is “always awkward when one part of the government takes another to court” (George 2005). The department of Native Affairs expected Nunavik to move slowly towards self-government because of tight finances and believed that this was not the time to commit millions to self-government re-organization. The Liberal government generally had a slow-track approach to self-government.

As mentioned earlier, the negotiations for the AIP got off to a quick start, but the signing was severely delayed by outside events. The Nunavik Party hoped to have the AIP signed before the end of 2005, but the political climate at the federal level, in which a general election was

called as a result of a motion of no confidence against Prime Minister Martin, certainly played a role. In addition, legal questions arose from the Quebec Government which called for a meeting between the three parties' legal counsel to review certain sections of the JBNQA (Nunavik Government 2007a). Another issue was the naming of the future government. The Inuit wanted to name their government "Nunavik Government", but Quebec believed that the French word "gouvernement" had too much significance and were concerned with creating a third order of government (Interview A 2017). Quebec rather wished to name it "Administration régionale du Nunavik", and as a compromise they ended up with "Gouvernement du régional du Nunavik"

In February 2007 the parties were ready to sign the AIP during Prime Minister Harper and Premier Charest's visit to Kuujuaq, but the meeting was postponed as Charest prepared to call a provincial election. This postponed the signing until after the election was held April 26 (George 2007). The meeting was eventually rescheduled to be held in August, when Charest, the newly appointed Minister of Indian and Northern Affairs, Chuck Strahl and other representatives for Canada and Quebec visited Kuujuaq. Even though no agreement was signed during the visit, Charest publicly announced that his government is in full support of the Nunavik Regional Government, and that the delay is not in the content, but rather in the process. The agreement was delayed in getting approval at the federal level, but Strahl indicated that the federal government was in full support of the agreement (Nunavik Government 2007b). The AIP was finally signed on December 5 2007.

At this point, the agreement nearly contained 90 percent of the final agreement. The issues under negotiation for the final agreement mainly consisted of setting up the rules and procedures for the referendum, establishing the rights and obligations of the regional government, developing a dispute settlement mechanism and establishing a timetable for the implementation of the agreement (Savoie 2009, 177). One of the more contentious issues was the question of what kind of level of support was required for the agreement to pass. The federal requirement for this kind of agreement was a double majority. In other words, a majority of the population has to vote and a majority of that majority has to vote yes. This was contentious because it establishes a different standard than in an election or other referenda, but as this agreement was affecting the JBNQA and constitutionally protected rights, this was something the federal side held as a standard. It was controversial and contested by the Inuit, but it was something the Federal Government would not budge on (Budgell 2017).

By the early weeks of 2011, the three parties initialed the final agreement and participated in an information tour of all communities in Nunavik. It was at this stage that there appeared widespread questioning, doubt and fear in relation to the document (Budgell 2017, Interview A 2017). There were worries that the agreement did not advance Inuit aspirations far enough, and at the other end of the spectrum, that it was too much to handle (Budgell 2017). The Inuit questioned the reasoning for the vague language in the agreement in relation to the assurance of a second phase of negotiations, which stated that subsequent negotiations *could* provide new powers to the NRG. That part was deliberately vague because “the agreement couldn’t dictate what powers a new institution might want to negotiate” (Rogers 2011c). At the same time, both the provincial and federal negotiators indicated a strong interest in the development of self-governance in Nunavik (ibid). The information tour did not succeed in reaching out to the younger population, and was perhaps not getting a representative sample of the population (Rogers 2011a, Budgell 2017).

It was during the information tour that the people of Nunavik connected very effectively over social media and started discussing the agreement; something the Inuit negotiator Harry Tulugak called “fear-mongering” (Rogers 2011d). The Facebook group *Nunavik and the Nunavik Regional Government’s Final Agreement* attracted over 1000 members, who were very active leading up to the referendum, with more than 1 100 posts and over 5 000 comments during the two months leading up to the referendum. Concerns about the extent of self-government granted and the lack of language protection were voiced, as well as information that might have shown a lack of understanding of the agreement. On April 27, 66 percent of Inuit voters voted no to ratification, with a voter turnout of 54,5 percent. Those who rejected the agreement were in a majority in all of the 14 villages. All persons living within Nunavik had the right to vote, as well as those Inuit beneficiaries living outside of the region.

## **5.2 The Labrador Inuit road to self-government**

The Labrador Inuit Association (LIA) submitted their land claim to the provincial and federal government in 1977. The federal government accepted the claim as establishing the basis of negotiation for Labrador Inuit land claims under the 1973 claims policy. However, the government of Newfoundland and Labrador initially rejected the claim. The Progressive Conservative government under the leadership of Premier Frank Moores refused to acknowledge the special recognition of any Aboriginal group in the province. Historically, the province had taken “the position that there was nothing to negotiate, that the Innu [and the

Inuit] had no more claim to land than other Newfoundland residents” (Backhouse and McRae 2002, 41).

On March 17, 1979, Brian Peckford overtook the leadership of the Progressive Conservative party after Moores’ retirement. This was an important victory for the Aboriginal peoples, as he was more open to recognizing Aboriginal rights. In October 1980, Peckford issued a “Statement on the Question of Native Land Claims in the Province”, which confirmed that the province would attempt to settle claims that were accepted by the federal government (Procter 2012, 139). This policy was significant, but it did offer a very limited approach to land claims. One of the principal features of this announcement was that the provincial government required “a bilateral intergovernmental agreement with Canada regarding the roles and responsibilities of the two governments in relation to land claims prior to the commencement of negotiations” (Haysom 1992, 182). The policy was also limited due to the fact that Aboriginal rights were restricted to those concerning “culture and heritage” and negotiation was classified as affirmative action (Procter 2012, 140). The policy was not a recognition of inherent rights, but an effort from the province to engage Inuit in development.

Although the mutual interest from all three parties was present, formal negotiations did not start until 1989. There were four primary reasons for this delay. In order to maximize the effectiveness of limited federal funds and resources, the federal government capped the number of active negotiations at six. The six that were granted a spot were usually land claims that the federal government viewed as highly likely to succeed, those in which the provincial government was willing to be involved and those where a settlement of claims in the disputed area was a priority (Haysom 1990). With the arbitrarily set number of six and the long period needed to settle a land claim, openings were few and far between. The primary work of LIA between 1981 and 1984 was getting in position to enter into negotiations if a slot should become available. This happened in June 1984 when the Inuit in the western arctic signed the Inuvialuit agreement, and therefore opening up a slot in the exclusive short list. Later that year the federal government invited the LIA to begin negotiations.

In addition to this 3-year delay, the federal government suspended all its comprehensive land claims (CLC) negotiations in 1985 to review the land claims policy. The result of this review was the Coolican Report, which caused many important changes in the land claims policy. Shortly after, Newfoundland and Labrador announced that they were doing their own review of the Coolican Report and formulated their own response, a process that took a year to

complete (Haysom 1990). After this was completed, the province entered into bilateral negotiations with the federal government in order to reach an agreement on their respective responsibilities in relation to land claims. A tentative agreement, or Memorandum of Understanding (MOU), was reached at the officials' level in 1987, and was accepted by the Newfoundland cabinet, only to be rejected by the federal government a year later (Haysom 1992, 183).

The provincial policy was restrictive in many respects, with the province's refusal to provide any financial compensation to the claim beneficiaries being perhaps the most troubling (RCAP, vol 3). In addition, the provincial policy offered no sub-surface rights or revenue sharing. According to Veryan Haysom, legal adviser to the LIA: "The federal government appears to believe that the package of benefits available to claimant groups under the Newfoundland policy is so limited and restrictive that settlements will either not be possible or will lead to inordinate demands on the federal government" (Haysom 1992, 183). In spite of these differences between the province and the federal government, and the fact that they had not signed the MOU, the federal government announced in August 1988 that they would commence tripartite negotiations with the LIA.

During the framework negotiations, both governments were working towards reaching an agreement on the MOU. The framework agreement was finished in March 1990, and signed November 30, 1990. The reason for the delay in ratification was the absence of an MOU, which was still at an impasse. After the signing, the federal cabinet gave the minister of Indian Affairs 18 months to reach an agreement with the provincial government (Haysom 1992, 183). By November 1991, still no agreement had been made between the two governments, and the provincial government signaled dissatisfaction with the whole process when they tabled the *Discussion Paper on an Accelerated Approach to Aboriginal Land Claims Settlement*. The government of Newfoundland and Labrador described the process as "inefficient in its design" and recommended a more holistic approach that would both be timesaving and cheaper (RCAP vol3, 140). In June 1992, the federal government pulled out of negotiations after the province refused to agree to the cost sharing scheme to compensate the Inuit (Gorham 1993).

With the federal side not involved and the province involved in their first land claim negotiation, there was little progress. Six years into the AIP negotiations, only one chapter had been initialed and there was only some progress on other matters (Alcantara 2008, 141). The discovery of a major deposit of nickel and cobalt in Voisey's Bay, 30 kilometers south of Nain,

the biggest community in Nunatsiavut, prompted opposition from the Inuit and Innu, who had both laid claim to the area. The Innu protested the mining by setting up tents at the exploration site and burning mining equipment, while the Inuit did not endorse any confrontation, but opposed development before land claims were settled and urged the parties to discuss the stalemate (Canadian Press 1995a).

The mineral find at Voisey's Bay was welcome news to the province, as they had been struggling with unemployment for years after the collapse of the cod fishery in the early 1990s. In November 1995, Premier Clyde Wells announced that the province wanted to settle the claims before mining development, but there was still little substantive progress (Canadian Press 1995b). Ray Hawco, Newfoundland's top official for native policy, agreed that the Voisey's Bay project had changed the negotiating context and that the government would take a hard second look at the 1987 policy that excluded resource royalties (Gray 1996). During a meeting in the summer of 1996 between LIA president, William Barbour, Premier Tobin and federal Indian Affairs Minister Ron Irwin, the three parties decided to accelerate negotiations in response to LIA's threat to seek legal action against the mining companies (Globe and Mail 1996).

In February 1997, the provincial government and the LIA both agreed to broaden the talks, with the Inuit being concerned that the government had taken the land around Voisey's Bay off the table (Globe and Mail 1997a). While there was little progress on the land claims negotiations, Inco, which had acquired the mining rights at Voisey's Bay, started construction of a temporary airstrip and road at the site of the find. The Inuit found this to be unacceptable as they wanted an Impact and Benefits Agreement (IBA) and resolution to their land claim agreement before development started (Lawton 1997). Without these measures in place, the Inuit and the Innu sought an injunction to halt the exploration work, which was at first dismissed, but was granted on appeals in August 1997 (MacAfee 1997).

In October 1997, the parties met in Ottawa to get a solution. The injunction had the potential to prevent both governments from reaping the benefits from the nickel deposit, which was estimated to contain over 150 million tons of ore. To add weight to the meetings in Ottawa, Premier Tobin appointed two senior provincial servants, Harold Marshall and Bill Rowat, to attend with a mandate to resolve critical issues, in addition to the presence of INAC deputy minister Scott Serson (Alcantara 2013, 45). The proposed three-day session stretched to eleven days, and Premier Tobin flew in to monitor the sessions himself. On October 30, it was



announced that the three parties had signed a tentative agreement resolving the major issues of contention (the amount of land to be included, hunting and fishing rights, surface rights for resources, royalty sharing with the province, cash payment from the federal government, and self-government) (Globe and Mail 1997b)

The agreement still had some hurdles to pass before ratification. Firstly, it had to be translated to Inuktitut and accepted by the LIA board of directors, something that was achieved within a week of the announcement (Hamilton 1997). Secondly, it took a year before the negotiators verbally agreed on an AIP, one that was nearly identical to the initial negotiators' text from October 1997 (Southworth 1997). One of the more difficult issues during that year was the Labrador Inuit's claim of harvesting rights within the Ungava offshore, something the Inuit were willing to drop for adequate compensation, but was very time consuming (Andersen 2017)

With an initialed AIP, the agreement was first to be ratified by the Labrador Inuit. Following a 75-day schedule of community meetings, LIA ratified the agreement when 80 percent of those who cast ballots voting in support of the AIP. This gave the LIA the mandate to enter into final agreement negotiations. However, even with the resounding 'Yes' in the referendum, the voter turnout was only 62 percent, which meant that only 49 percent of all eligible voters voted in favor<sup>21</sup>.

Throughout 2000, the three parties engaged in land selection negotiations and consultation sessions with Aboriginal and non-Aboriginal groups throughout Labrador. These talks were delayed when Nain experienced a series of suicides in the early months of 2000 (MacDonald 2000). On June 14 2000, the provincial government and the LIA reached agreement on a memorandum of understanding to protect lands for a proposed national park in the Torngat Mountains area (Government of Newfoundland and Labrador 2000). This was a significant step forwards in the negotiations, as the understanding between the provincial government and the LIA showed that both sides were committed to the resolution of the land claims and self-government agreement. Along with Makivik dropping its legal action asserting overlapping rights for Nunavik Inuit in the Torngat Mountains area, most of the hurdles blocking ratification had finally been overcome (George 2001a). On June 25 2001, the three parties signed the AIP.

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<sup>21</sup> If this referendum had followed the same rules as the referendum for the final agreement, where the ballots not cast were counted as 'no'-votes, it would have failed to ratify.

The AIP was quite extensive, and laid a solid foundation for the ensuing final agreement negotiations. The agreement included the following:

Settlement area: 72,520 km<sup>2</sup> of land and 44,030 km<sup>2</sup> of ocean extending out to 12 miles. Within the settlement area there will be 15,800 km<sup>2</sup> owned by the Inuit as Labrador Inuit Lands, which will be categorized as Category I. The Inuit government will receive 50 percent of the first \$2 million of revenue and 5 percent of any additional provincial revenue from non-renewable resources in the settlement area and 25 percent in Labrador Inuit Lands.

The agreement also included water and ocean management rights, a national parks and protected area chapter, preparation of a land use plan for the settlement area, authority to pass environmental assessment laws regulating Inuit lands, and exclusive rights to harvest wildlife and plants in Labrador Inuit Lands. In addition, the Inuit would have the right to impose taxes (although federal and provincial taxation laws will continue to apply). The agreement also laid out eligibility criteria, rules for ratification of the final agreement, guaranteed a capital transfer \$140 million, and included a self-government chapter.<sup>22</sup>

The self-government chapter was quite extensive and established that the Inuit should prepare the Labrador Inuit Constitution, which would establish two levels of government: an Inuit Central government with jurisdiction over Inuit at a regional level, and five Inuit community governments. The Central Government would have the ability to make laws for Inuit in Inuit lands in matters such as culture and language, education, health and social services. In addition, the Central Government may provide services to Inuit in the province residing outside of Inuit lands. It may also establish an Inuit Court. The central government would just be open for Inuit citizens in terms of voting and holding office. The Community governments, however, would also be open for non-Inuit residents, with up to 25 percent of an Inuit Community Council available for non-Inuit residents.

Issues that were still to be negotiated in the next phase included an implementation plan, land selection, the Inuit Government's powers in relation to environmental protection and terms related to the Voisey's Bay project. These negotiations proceeded relatively quickly, but not without any hurdles. There was pressure from the provincial government to include recognition of non-native hunters in the settlement area. Although the AIP did not restrict access for

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<sup>22</sup> Other chapters cover rights to fish for subsistence purposes throughout the settlement area and a guaranteed percentage of new or additional fishing licenses, and federal and provincial fiscal financing agreements to be negotiated every five years.

hunters, there were worries that an Inuit government would change that as soon as it assumed power. This was supported by the Mayor of Happy Valley-Goose Bay, who made it clear that the non-natives should be given more of a say in the process, and that they would not allow hunting and fishing rights to be bartered away by the provincial and federal governments for larger resource-harvesting issues (MacDonald 2002). LIA held the position that no other land claim agreement guaranteed rights for non-Aboriginal people, and neither would this one (Stacey, 2002).

The Inuit were responsible for preparing and ratifying the Labrador Inuit Constitution before reaching a final agreement, as were the terms under the AIP. In March of 2001, the LIA's executive and board members toured the villages to hold consultations with the communities. The constitution establishes the Nunatsiavut Government as the senior level of Inuit self-government and the layout of the central government, community governments and the Inuit court. Ratification of the constitution required a 2/3 majority vote of the Labrador Inuit, which they acquired during the ratification vote April 17 2002, when 72 percent voted in favor.

One of the major issues during the final phase of negotiations was land selection, involving determining what lands within the settlement area should become Category I lands, which are reserved exclusively for the use of the Inuit. The provincial government reacted very negatively to the Inuit land selection proposal, which was along much of the coastline of Labrador. In 1994, the Inuit had been offered seven rectangular blocks of land by the province, and this new offer from the Inuit was deemed as unacceptable by then-premier Brian Tobin. The Inuit wanted ribbon shaped pieces of land along the coast, and through long negotiation sessions and persistence, the parties eventually ended up compromising on the land selection issue. The province agreed to the "ribbon" concept and gave up more of the coastline than they had initially wanted. The Inuit, on the other hand, had to accept receiving some land that they were not really interested in, and giving up some land that they originally wanted (Alcantara 2008, 144).

Another big issue was Voisey's Bay. The AIP stated that a Voisey's Bay chapter would be negotiated during the final agreement negotiations, and that the Inuit did not want development of the project before they had a land claims agreement. Several developments in this process changed this view. The multibillion-dollar mining project had for the last six years been buried under "the rubble of political, native and corporate clashes" (McNish and Cox 2002). In June 2002, the province and Inco Ltd. reached an agreement to start operations on the mine. Days

later, 82 percent of the Inuit voted in favor of accepting the impacts and benefits agreement (IBA) with Inco, which included a \$123 million compensation package and a commitment to fill between 25 and 40 percent of the jobs during the construction and development phase with Inuit workers (Nunatsiaq News 2002a). LIA, the provincial and federal governments signed the *Voisey's Bay interim measures agreement*. The agreement provides that the Labrador Inuit agree not to exercise any Aboriginal rights, titles and interest that they may have in the Voisey's Bay area in exchange for certain benefits. In addition to these three agreements, the province, the federal government, LIA and the Innu Nation signed an environmental management agreement (EMA) in July 2002. The LIA's confidence in these agreements, as well as an informal understanding between the LIA president, the Premier and the minister of INAC that the land claims would be completed if the Voisey's Bay project could commence, led them to agree to let the project move forward (Alcantara 2008, 145).

The three parties initialed the final agreement in August 2003, next up was a ratification referendum by the Inuit. This was held on 26 May 2004, and 76,4 percent voted yes to ratification with a voter turnout of 86 percent. This number counts non-casted votes as no votes, meaning the percentage of support for those Inuit who voted was closer to 88 percent. The support in the five communities within the Inuit Lands were all quite high, ranging from 87,6 percent to 97,9 percent. The level of support was significantly lower in Happy Valley-Goose Bay and North West River, which are located outside of the Inuit Settlement Area where Inuit only would have limited rights (Alcantara 2013, 49).

The Labrador Metis Nation (LMN) quickly stated that they would take court action against the land claim agreement, charging that their own Inuit-based claim was at risk unless changes were made to the document. The Labrador Metis share family histories and genealogies with Kablunangajuit<sup>23</sup> in Nunatsiavut, and in some cases the only difference between the Kablunangajuit and the Labrador Metis is that the Metis live to the south of Nunatsiavut. The final agreement stated that it was the final settlement of Aboriginal rights for Labrador Inuit, which seemed to preclude the acceptance of the Metis-Inuit claim. In the months leading up to the provincial ratification of the agreement, LMN threatened with "aggressive civil disobedience" if the agreement was ratified (Moore 2004). Despite these protests, Newfoundland and Labrador ratified the land claims agreement December 6, with a 40-to-1

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<sup>23</sup> Inuktitut term for those of mixed Inuit ancestry, and beneficiaries of the Labrador Inuit Land Claims Agreement if living within the settlement region.

vote in the House of Assembly. The only dissenting vote was that of Liberal Yvonne Jones, the only Metis member of the legislature (Bennett 2004).

On 22 January 2005, federal, provincial and Inuit leaders signed the Labrador Inuit Land Claim Agreement, after 28 years of negotiations. It was given royal assent and became law six months later, as it passed through the Senate.

This chapter has given a detailed description of the two negotiation processes and identified the key events. In the next chapter, I will examine these events and how they relate to the factors thought to influence negotiation outcomes.

## 6. Explaining negotiation outcomes

The previous chapter showed how the two negotiations in Nunavik and Nunatsiavut unfolded and described the key events leading up to the two different outcomes. In this chapter, I will explore how the theoretical framework that was presented in chapter three can explain these divergent outcomes by examining the causal process observations (CPOs) and how they relate to the separate factors thought to explain settlements or non-settlements. To refresh, CPOs are pieces of evidence or insight that provide information about context or mechanism. What follows is an examination of how the CPOs provide information about the factors thought to determine negotiation outcomes. I begin by examining the evidence to determine the presence or absence of compatible goals, internal cohesion, positive government perceptions and minimal use of confrontational tactics. I will further examine the role of institutional and contextual factors, such as the layering of the self-government policy and the development of a multilevel governance structure in Nunavik. Lastly, I will look at how the factors relating to the speed of negotiations were at play in the two cases.

### 6.1 Factors affecting outcomes

#### 6.1.1 *Compatibility of goals*

The compatibility of goals between the Aboriginal group and the two governments has a strong effect on whether a treaty is completed. If the Aboriginal group is willing to accept a final agreement that exists within the political and legal context of the Canadian constitutional order, there are likely to be compatible goals.

To what degree were the goals of the different negotiating parties compatible, with respect to the purposes of a final agreement? In Nunavik, there was a commitment from all parties to have a successful negotiation. Quebec's commitment took several different forms: the proposal to do the negotiations in two phases came from the provincial government, for instance. The reasoning for the two-phase approach was quite straightforward: it would be quicker, foundationally sound and easier to accomplish. The amalgamation of Kativik Regional Government (KRG), Kativik School Board (KSB) and Nunavik Regional Board of Health and Social Services (NRBHSS) built upon something solid, and would be less time consuming. There were some fears that a change in government could have negative consequences for the negotiation process. This decision signaled a commitment from the provincial side to complete an agreement, even though it would be a less extensive agreement.

Despite differences, the parties were able to compromise and come to an agreement on most issues. The province was hesitant to include the word “gouvernement” in the French translation of the agreement, as they did not want to create a “third order of government” within the province. The Nunavik Party<sup>24</sup>, on the other hand, was eager for the new government to distance itself from the already existent Kativik Regional Government, which had the French name “Administration régionale Kativik”, and insisted on including “gouvernement” in the French name. At last, they settled on the compromise of “gouvernement régional du Nunavik”.

There were some Inuit leaders at the time that would have preferred an ethnic government, instead of a public form of government. There were some discussion about it, but for the provincial government that was out of the question. Firstly, the Inuit already decided on a public government system when they signed the JBNQA, and it would take a lot to change that, and it would certainly be easier to base it on what already existed. Secondly, Quebec looked on this as devolution as was done in other countries and regions. The new government had to be homogenous with the Quebec government and the land was considered to be public land. In that context, it would not make sense to have an ethnic government. When it was clear that they would be negotiating public institutions, the three parties worked within this framework in order to reach an agreement. Members from all three parties have commented on the negotiations as being very much a collaborative process where they were working towards a common goal.

Compatible goals were also clearly present in the negotiations for the Labrador Inuit Land Claims. The Labrador Inuit wanted an ethnic form of government, mainly to deliver goods and services to Inuit beneficiaries living outside of the settlement area, which is about half of the Labrador Inuit population. The federal government does prefer negotiating for a public government model, but once they recognized the inherent right to self-government, in principle, they also agreed that governments can be ethnic (Interview B 2017). Newfoundland and Labrador were vary of the fact that there lived non-Inuit in the communities and they needed the same treatment as the Inuit. The province needed some assurance that the provision of services was going to be equal between the Inuit and non-Inuit. In an attempt to satisfy both parties, they settled on Inuit-only voting in the election for seats at the regional Nunatsiavut Assembly, and non-Inuit voting rights in elections for councilors in the community governments. In the end, this solution satisfied all three parties.

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<sup>24</sup> The party representing Nunavik in the negotiations, composed of Makivik, KRG, KSB, and NRBHSS.

Another difficult issue during the final agreement negotiations was the wording of the finality and certainty provision (Alcantara 2008, 156). Historically, the federal government required Aboriginal signatories to cede, release and surrender their pre-existing undefined Aboriginal rights in exchange for a set of clearly defined rights as specified in a treaty. The Royal Commission on Aboriginal Peoples (RCAP) had, however, influenced Canada's approach to certainty, and acknowledged that legal certainty was possible without the extinguishment of rights. The federal government had every desire to see some examples of success after the policy change (Interview B 2017). The Labrador Inuit Association (LIA) was not willing to include the word "surrender" in the agreement, as it represented an extinguishment of pre-existing Aboriginal rights and was a stand many Aboriginal groups took (AANDC 2010). The province wanted it included. The objective of the certainty and finality provision is to achieve clarity and certainty about the respective rights and obligations of the parties, and to obtain finality by securing clear title to land for economic and resource development (Eyford 2015, 71).

Provincial officials could benefit from the Inuit and federal officials knowledge about treaty negotiations and agreements signed by other Aboriginal groups (Alcantara 2013, 57). The two most recent completed comprehensive land claims agreements, the Nisga'a final agreement (2000) and the Tlicho final agreement (2003), achieved legal certainty without a surrender of rights, and showed that flexibility in the certainty provision was possible. Eventually, the province agreed to a "cede and release" provision. The Inuit kept their Aboriginal rights in the Inuit Lands (Category I), and ceded and released their rights in the Inuit Settlement Area and all lands that were previously claimed by the Inuit, but were not included in the agreement. According to Alcantara (2013), the province agreed to the "cede and release" provision because they felt that the level of certainty generated by the provision was sufficient for pursuing economic development in the area (58). Later studies on the evolution of the certainty provision have shown that even though the wording changed, they legally lead to the same, original outcome, namely extinguishment and legal certainty to facilitate economic development (see Alcantara 2009, Papillon 2008b, Eyford 2015). The causal process observations clearly indicate that there were compatible goals in both the negotiation processes.

### *6.1.2 Tactics*

Government officials prefer to negotiate agreements with Aboriginal groups that shy away from the use of confrontational tactics such as media campaigns, protests and international



lobbying. Those groups that are committed to the negotiation process and do not have a history of confrontation will be more likely to work towards a final agreement with the two governments. The opposite will obviously be the case with Aboriginal groups that have a history of confrontation. The Inherent Right policy reinforces this notion, and states, “the Government is convinced that litigation should be a last resort” because it would be lengthy, costly and tend to foster conflict (Inherent Right Implementation). In *Delgamuukw v. British Columbia*, the majority decision of the Supreme Court of Canada ended in a resounding endorsement of negotiations over litigation with relation to settling Aboriginal claims.

The Nunavik Inuit have a relatively long history of negotiation with the federal and provincial governments. Ever since the James Bay Northern Quebec Agreement (JBNQA), Inuit leaders in Nunavik have been striving for self-government and have done this through negotiations and compromise. In 1983, when Premier René Lévesque promised self-government talks if the Inuit united themselves, the Inuit followed suit, put their differences aside and worked towards the common goal of self-government, within the negotiation framework. Trying to attain self-government through any other measure than negotiation was not something they ever considered (Interview A 2017). Already being in the “system”, so to say, by previously having completed a land claims agreement and administrating three provincially funded institutions, does also show a commitment towards the negotiation route. The essence is that they were not starting from scratch by no stretch of the imagination, and any sort of self-government agreement would entail an amendment to the JBNQA, which requires the signatures of both levels of government.

Another testament to the Nunavik Inuit’s commitment to the negotiation process is that before the self-government negotiations started, Makivik successfully laid claim to the offshore area comprising certain islands, water and ice of Hudson Bay, Hudson Strait and Ungava Bay in 1993, which were all under the jurisdiction of Canada and Nunavut. During the buildup to the self-government discussions until 2006, the Nunavik Inuit were already negotiating a comprehensive land claim agreement with Canada and Nunavut. All of the people that were involved in the negotiations have talked of the positive atmosphere between the three parties, stating that they were working together like a team. A former Quebec government official, compared the Nunavik Inuit negotiations with the negotiations Quebec had with the Cree Nation, which was suing Quebec and Canada for \$700 million. “While this battle with many high-level lawyers was happening with the Cree, the Inuit sat down with us to see what we

could build together. It was more of a partnership. I remember switching from one to the other, and it was like living two different lives” (Interview C 2017).

This commitment towards negotiations over confrontation reflects the Inuit culture in general. Historically, Inuit culture had its own system of leadership and often sought consensus in decision making among those who were respected for their skills and abilities. Confrontation is seen as a last resort. John Amagoalik, Inuit politician and one of the instrumental figures in the campaign for the creation of Nunavut, argued that cooperation and negotiation were the only ways to solve problems between indigenous peoples and states. Moreover, after the Oka crisis, the armed standoff between a First Nation group and Canadian soldiers in 1990, the governments were much more willing to work with the Inuit (Alfred 2005, 122). Geographer Robert McPherson observed that “consensus building was the Inuit way [during Nunavut comprehensive land claims negotiations]” (2003, 140). Tom Molloy, federal negotiator during the Nisga’a land claim, also noted that the Inuit did not have to resort to litigation to have their rights acknowledged, unlike many other Aboriginal peoples (ibid, 270). The lead federal negotiator during the negotiations for the Nunavik government commented that the Inuit “go quite a bit on their reputation, which is that they are very pragmatic, adaptable, amenable and congenial – that is the “Inuit reputation” for both governments” (Budgell 2017). The lead negotiator for the LIA commented that the advice of the Inuit elders at the time was: negotiate, not litigate (Andersen 2017).

When it came to the use of tactics, both Inuit groups were committed to the negotiation process, and hardly used any confrontational tactics. The Labrador Inuit did hold a minor protest at the Voisey’s Bay development site and turned to the courts to stop development at the site, but it did not create a significant impediment to the negotiations. Alcantara (2013) has argued that protests and litigation can work to jumpstart the negotiations, but only if it is used sparingly (61).

### *6.1.3 Aboriginal group cohesion*

The cohesiveness of the Aboriginal community as it relates to the treaty process is another factor affecting whether an outcome is achieved. Aboriginal groups that suffer from intense political divisions that revolve around self-government issues will find it difficult to complete an agreement, as it can create instable negotiating teams and positions at the negotiating table. Community cohesion is also very important because a negotiated agreement must be ratified by the population through a referendum.

Since before the JBNQA was negotiated, the people of Nunavik had been divided in the question of self-government. Two competing visions of self-government emerged in the 1960s. A more radical grassroots organization which centered on the co-op movement called for the creation of an Inuit government. The other group's vision was more pragmatic and asked only for some administrative autonomy. Of course, the more pragmatic approach won out when the JBNQA came along, but the division between the two groups remained. When they wanted to attain more comprehensive self-government provisions, this division needed to be united, as per Premier Lévesque's wishes. As a result, the regional organizations<sup>25</sup> formed a task force, called *Ujjutuijiit*, to consult the Inuit and propose a self-government plan. They tabled two different proposals: a working group on self-government to be composed of elective representatives and financed by a voluntary tax levied on businesses, institutions and individuals, and a committee constituted of representatives from the different Inuit organizations and funded by those organizations. Unable to choose, they held a referendum in 1987, where the grassroots option with a working group of elected representatives narrowly won the vote (Mitchell 1996, 368).

This created the Nunavik Constitutional Committee (NCC), where the proponents of the first option were chosen to implement the second option. This, seemingly, reunited the Inuit behind a common process (Rodon & Grey 2008, 6). The NCC drafted a constitution that was approved in a referendum in 1991, and were ready to start self-government negotiations until it took a political back seat to the question of Quebec sovereignty in the mid-1990s. In what capacity did this split continue to exist after those years? This is not an easy question to answer. There is a gap of 20 years from the referendum of the Inuit constitution to the referendum on the final agreement to create the Nunavik Regional Government (NRG). The constitution that was drafted and accepted by the Nunavik Inuit by a wide margin in 1991 did recommend the amalgamation of the regional institutions (KRG, KSB and NRBHSS) and for the establishment of a non-ethnic, territorially regional and centrally funded government.

The biggest change from the draft constitution of 1991 and the final agreement of 2011, is the lack of any new jurisdictions to manage for the proposed Nunavik Assembly. In NCC's draft constitution and the Nunavik Commission Report, the Nunavik Assembly would negotiate and manage new areas of jurisdiction in addition to those it would take over from the three regional institutions. The decision to first amalgamate, then negotiate new powers down the road is the

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<sup>25</sup> Kativik Regional Government (KRG), Kativik School Board (KSB) and Nunavik Board of Health and Social Services (NBHSS).

defining difference between a draft constitution that was accepted by the Nunavik population and a final agreement that was voted down. The reasons for the negative outcome is, of course, complex, but there seems to be two distinct camps working against the agreement. On the one hand, you have the people that felt that the agreement did not establish genuine self-government and represent enough of Inuit aspirations. On the other hand, there was a group that felt that the Inuit did not have the ability to manage an institution like the proposed NRG.

The widespread opposition towards the agreement came as a surprise to all parties. The Inuit negotiators had for years provided the public with regular updates through community meetings, radio and by publishing quarterly newsletters. During the information tour of the final agreement, the opposition became clear, and clearer on social media during the two months from February to March leading up to the referendum. With respect to the displeasure of doing the negotiations in two phases, it is clear that there was a lot of mistrust directed towards the governments. The Nunavimmiut displayed little confidence that governments would follow up with a second phase and negotiate new powers to the NRG, as the final agreement did not provide any definite assurances of this. As discussed in the preceding chapter, this was done deliberately, since the agreement could not preclude the decision-making power of the new government. However, both the provincial and federal negotiator made it clear during the information tour that both governments had every intention to go through with the second phase (Rogers 2011c).

Another issue during the period leading up to the referendum was the inability of the negotiators, especially the Inuit negotiators and the Nunavik Party, to refute statements about the agreement. Per referendum rules, the Nunavik Party was not allowed to set itself up as a 'yes'-group during the "Referendum Period" from March 18 to April 26. The federal and provincial side were not allowed to have social media involvement at the time. The three parties were completely unprepared to deal with the social media uproar that occurred after the final agreement was tabled. This was of great frustration to both the federal negotiator and the Inuit negotiators (Interview A 2017, Budgell 2017). They were not able to refute or make coherent responses to statements that might have been false or demonstrated a lack of understanding. This was particularly damaging as the Nunavimmiut were able to connect very effectively over social media, in ways that just years earlier would have been impossible.

The information tour was not able to attract the young population to any significant degree (Rogers 2011a, Budgell 2017). This can be seen as problematic as 50 percent of the eligible

Inuit voters living in Nunavik were under the age of 35. There is no data available on voter demographics in either of the referendums, but it is safe to say that the land claims agreement in Nunatsiavut more effectively reached out to the population than was the case in Nunavik<sup>26</sup>.

The negotiations in Nunavik met resistance from within before the parties could even reach a framework agreement. Kativik School Board (KSB) sought a more prominent role at the negotiation table and a bigger emphasis on education and language. The rift started already under the consultation phase with one of the Inuit representatives in the Nunavik Commission clashing with a provincial representative. The Inuk in question was the director general at KSB from 1983 to 1993. KSB's position on the commission report from the outset was that it was a flawed non-consensus document, did not include KSB's recommendations and did not take into concern education's role in preserving the Inuit language. As KSB was pondering their options, they did not involve themselves in the negotiation process, failing to name potential negotiators or participate in the Advisory and Technical Support Committee. After the school board failed to put a stop to the negotiations through the court, they started to be more included in the process. However, even as a part of the Nunavik Party, they were not too enthused with the proposed self-government agreement, mirroring similar sentiments as those uttered leading up to the referendum, namely that the agreement as constituted did not establish genuine self-government.

Contrast this with the experiences of the Labrador Inuit, who came across as a more cohesive group. In terms of popular support for the agreement, the LIA held three referendums during the negotiation process. Two of them (AIP and Constitution) were directly connected to the ongoing negotiations and can be interpreted as popular support for the land claims agreement itself and the general willingness of the Inuit population to continue the negotiations. Several times during the negotiation process, the Labrador Inuit voiced their support for the agreement, while the Nunavimmiut did not have the opportunity, at least not in an organized way such as a referendum, leading the final agreement referendum to be the first, only and final opportunity for the population to have a meaningful say in the negotiation process<sup>27</sup>. Referendums are significant not only in substantive terms as a mechanism of change, but also for their symbolic role in "bringing together and hence declaring the voters to be – directly, equally and

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<sup>26</sup> The voter turnout in Nunatsiavut was 86 percent, compared to 54 percent in Nunavik.

<sup>27</sup> To reduce the possibility that future final agreements will be rejected, federal policy now requires that all Aboriginal groups ratify their AIP through referendums (Alcantara 2013, 16).

communally – a determining ‘self’” (Tierney 2012, 60). Referendums can engage the self-awareness of citizens as a collective, which might otherwise lie dormant in other processes.

Furthermore, the advent of social media, and especially Facebook, in the intervening years between the two agreements, certainly is a major difference between the two agreements. The Nunavimmiut had a platform where they were able to connect, share and discuss matters regarding the self-government agreement in a way that was not possible leading up to the referendum in Nunatsiavut. This is perhaps a factor that is not properly explored in Alcantara’s theoretical framework. Social media can be an instrument in sparking political expression and participation<sup>28</sup>. Social media can also be used to communicate misinformation as readily as it can be used to convey reliable information<sup>29</sup>.

Within the confines of the negotiation room, the Nunavimmiut did not let the political infighting affect the progress of the negotiations in any significant degree. Although the minister of SAA called KSB’s legal action against Makivik “awkward”, the Inuit negotiators were able to keep it at a distance and worked on the agreement alongside the provincial and federal governments whilst the KSB was taking them to court.

An Aboriginal group that suffers from severe social and economic distress may find it impossible to complete an agreement since it may prevent the group from focusing on negotiating and ratifying a final agreement. Both groups did suffer from substance abuse, unemployment and a high suicide rate. Between 2000 and 2011, 163 Nunavimmiut died by suicide, making it the second highest cause of death in the region, just behind cancer (Rogers 2016). The Labrador Inuit face similar difficulties, and saw a spate of suicides in 2000, when 10 people committed suicide in a period of 10 months in the town of Nain, with a population 1400. In spite of these difficulties, the negotiations were not hampered by it. Alcantara (2013) argues that leadership plays a role in how social and economic problems affect land claims negotiations (111). A leadership that is united on whether to negotiate a land claims or self-government agreement and sees an agreement as the solution to community problems, will to a lesser degree let those problems derail the negotiations.

Historically, the Nunavik Inuit leaders have agreed on the notion of self-government negotiations. However, they were divided on whether they should negotiate this exact self-

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<sup>28</sup> See Joseph (2012) and de Zuniga, Molyneux and Zheng (2014).

<sup>29</sup> Misconceptions about the French translation of “Nunavik Regional Government” was widely shared on the Facebook group for instance (see Nunatsiaq News 2011, Nunavik 2011).

government agreement. Long-serving senator and founding president of the Makivik Corporation, Charlie Watt, commented that it was not genuine self-government and that they should scrap the deal (Toronto Star 2001; Travers 2000). In Puvirnituk, one of the three communities that refused to accept the JBNQA, the mayor was skeptical of the agreement, and did not see it as a genuine self-government, but merely as Quebec “rearranging the furniture” (George 1995). The same sentiment was reiterated when the Nunavik Commission presented their findings in the northern village: that it was not full autonomy if the agreement is based on shared jurisdiction with the provincial government (Blackduck 2001). Even Zebedee Nungak, former Makivik president and the person who rebooted the self-government talks in 1997, was overtly opposed to the agreement just before the referendum in 2011, citing the same worries as Watt and the mayor of Puvirnituk (Rogers 2011d). This divisiveness on the form of self-government in Nunavik has been present since before the JBNQA.

Contrast this with the experiences of the Labrador Inuit, who had a much more clear and consistent leadership, and relatively few internal problems, and a higher level of support for self-government throughout the negotiation process, evident through the different referendums that were held.

#### *6.1.4 Government perceptions*

How the provincial and federal governments perceive the Aboriginal groups does affect the outcome of the negotiations. Government perceptions directly affect its willingness to devolve powers to Aboriginal groups. They want to avoid the potential political backlash that may occur if responsibilities are given to a group that does not have the capacity to manage them. According to Alcantara (2013, 64), governments want to avoid international and domestic embarrassment when they negotiate with Aboriginal groups. Three government perceptions matter: the group’s capacity for financial accountability, its capacity for negotiations and self-government, and the degree of acculturation in terms of its level of understanding of government processes and institutions.

The Nunavik Inuit were held in a high esteem when it came to their record of financial accountability. They had extensive experience in administrating their own public institutions and managing government funding. The \$90 million the Inuit got from the James Bay settlement had nearly doubled in value and Makivik was at the time running two airlines, an arctic foods company and a fuel service operation. The same was the case for the Labrador Inuit, who had a record of financial accountability leading up to the negotiations. According to

former LIA president, William Barbour, government officials remarked, during a trip to Nain, that LIA had the “cleanest books in all of Atlantic Canada” (Alcantara 2008, 165). This notion is reinforced by the fact that they have never fallen under third party management.

The Nunavik Inuit also showed that they were capable negotiators and able to identify what they were looking for. Both the federal and provincial perception of capacity for self-government was high, in part because of their history of managing public institutions since the implementation of the JBNQA (Interview C 2017, Budgell 2017). The decision to consult the people regarding what kind of government they wanted came from the Inuit, who were looking to the Nunavut Implementation Commission and the Greenland Home Rule Commission as a model, which demonstrated knowledge about the negotiation process and the importance of involving the people. The Nunavik Party came to the negotiating table prepared and skilled at negotiating with government officials. They were very aware of the implications of self-government, and what it represented in terms of training elected people (Interview C 2017). Overall, the Nunavik Inuit demonstrated to the federal and provincial governments that they could deliver programs and services to their population quite effectively.

The same was the case with the Labrador Inuit, who had taken control over several government services from the province during the 1980s. The LIA negotiated directly with the federal government to set up the Labrador Inuit Alcohol and Drug Abuse Program and operated a community health representative program. In 1989, the Labrador Inuit Health Commission, a subsidiary of the LIA, took over the administration of the Non-Insured Health Benefits Program, as one of only a handful of native groups (Baikie 1990). LIA administration of post-secondary assistance funding has been equally successful (AANDC 2006, 230). In addition, the LIA has either alone or along with others sponsored seven other organizations which are involved in providing housing, economic development, legal assistance and cultural programs (Haysom 1992, 181). In addition, their land claim *Our footprints are everywhere* was lauded by the federal government “as a model for other claims submissions by native peoples in Canada” and detailed the Inuit’s use and occupation of the area, showing an understanding of the negotiation process (AANDC 1990). Overall, there were no real doubts regarding both groups capacity for self-government or financial accountability from either of the governments.

Another government perception that the literature has pinpointed to have an effect on whether a group completes a land claims negotiation is the degree of acculturation of the Aboriginal community (see Nadasdy 2003; Alcantara 2013). In the context of tripartite land claims and



self-government negotiations, this refers to the group's knowledge of Canadian institutions, processes and languages.

Overall, the Labrador Inuit are more acculturated to Canadian society than the Nunavik Inuit, largely because of the early contact with Moravian missionaries. This becomes apparent if one looks at language. In Nunatsiavut, 99 percent of the Inuit population speak English and only 7 percent speak Inuktitut most often at home. Contrast this with the Inuit in Nunavik, where 75 percent of the Inuit population speak English, 94,6 percent speak Inuktitut most often at home, but only 23 percent speak French, the official language in Quebec. That most Nunavimmiut lean towards English as a second language puts them in a double minority position in Quebec, as indigenous people as well as English speakers. Although it might not make their lives any easier and creates a challenge in accessing and understanding what kind of services might be available to them, none of the government officials I have spoken to attributed any significance to this factor (Budgell 2017, Interview B 2017, Savoie 2017, Interview C 2017). A former government official, who wished to remain anonymous, assured that this is not an issue and that there is not "any indigenous group in Canada that isn't acculturated enough" (Interview B 2017).

One federal government official did, however, point to the Nunavimmiut's quite recent contact with the "outside world" as a factor when it came to ratifying the agreement, and that there were certain concepts that would have been difficult to understand. In several indigenous groups, the western concept of political autonomy is not well received or understood, which also can be observed in Nunavik (Hervé 2017b, 99).

#### *6.1.5 Institutional factors*

The evolution of Canada's negotiation policy did affect both the case of Nunavik and Nunatsiavut. The layering of the negotiation policy in the period from 1973 to 1995, led to the two negotiations being quite different nature. When Canada invited Aboriginal groups that had not previously completed treaties with the Crown in 1973, devolution of powers such as jurisdiction over education, health care, policing, and the like, was not permitted. Over time, new rules were added to the policy and jurisdiction over new powers became available for Aboriginal groups, culminating in the *Inherent Right to Self-government* policy in 1995.

A significant difference between the two cases is that the Nunavimmiut negotiated a stand-alone self-government agreement, whilst the Labrador Inuit negotiated a joint land claims and self-government agreement. The layering of new rules regarding the inherent right of

Aboriginal self-government in the federal policy allowed the Labrador Inuit to include self-government provisions in the land claim, while the Nunavik Inuit, who had already completed a land claims agreement, and thus had to negotiate two separate agreements in order to achieve what the Labrador Inuit did with one. The different scopes of the two agreements do play a role in governments' urgency and incentives to complete an agreement. Development pressures on land, such as the Voisey's Bay project, can accelerate land claims negotiations, but will not have the same effects in Nunavik as there already existed certainty of land ownership from the JBNQA.

When it comes to ratifying a self-government agreement versus a land claims agreement, one can apply the same logic. A land claims agreement with self-government provisions is, by definition, more comprehensive than a self-government agreement. The progress an Aboriginal group makes by completing the former constitutes a bigger step forward, with a lot more to gain in terms of certainty, financial settlements, natural resources and other far-reaching jurisdictions, compared to the latter. In this respect, the Nunavimmiut were more willing to extend the status quo of regional administration in pursuit of a stronger self-government agreement.

Another perspective involves a learning experience for the Inuit in Nunavik. Having already completed a land claims agreement, they knew of the significance and the finality of what an agreement with the two governments brings. The Nunavimmiut have often in the past referred to the government, either provincial or federal, as *ataatak* (father), implying a power relationship in which the Nunavimmiut has to agree to the requests of the government (Hervé 2017, 101). Saying "no" to the government was seen as an inconvenience, but the acquisition of new knowledge and new experiences after the implementation of the JBNQA gave them "the authority to elevate themselves as an equal partner to the governments and to impose their opinion; to say "no", and eventually, to refuse to follow" (ibid, 102).

The JBNQA also introduced a quite unique government structure in Nunavik. The three public government structures that were created are functionally and administratively independent.<sup>30</sup> Although they are primarily responsible for overseeing the administration of provincially mandated policies, they have over time acquired powers to modify these policies to fit regional needs. The institutional complexity of Nunavik, with the existence of three firmly entrenched and regionally specific governance bodies alongside Makivik, a powerful economic

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<sup>30</sup> KRG, KSB and NHBSS.

development corporation and the primary political representative of the Nunavimmiut, provides an interesting context in which to negotiate a self-government agreement. The emergence of a complex multilevel governance system with several different actors in Nunavik gave rise to a strong regional school board. This setup allowed the school board to grow anxious about their new and different role in the proposed government structure, concerned about the lack of guarantees for the education budget, and to directly oppose the proposed self-government agreement.

Contrast this with the situation in Nunatsiavut, which did not have the same complex institutional situation. The Labrador Inuit Association (LIA) was the only political and cultural organization in Nunatsiavut that represented the Inuit. The LIA and its subsidiaries did assume a quasi-governmental role by providing social services and advancing economic development in the region before the signing of the land claims agreement, but did not have to deal with direct opposition from a firmly entrenched governance body.

## **6.2 Factors affecting speed**

There are certain factors that do not necessarily affect the outcome of the negotiations, but more the speed at which the negotiations are done and stand apart from the factors above. Of the four factors affecting speed that Alcantara (2013) identified in his framework, two of them (development pressures and competition of lands) are intrinsically linked to land claims, and thus irrelevant for the process in Nunavik, but will be discussed nonetheless as they did affect the speed of the negotiations in Nunatsiavut. The development of a professional trust relationship between Aboriginal and government negotiators allows the negotiating teams to make proposals outside of the formal negotiating setting with the knowledge that these proposals will not be used against them in the future. Furthermore, the appointment of an external negotiator to represent the government parties can also speed up the process, as third party negotiators have been found less constrained than government bureaucrats<sup>31</sup>. However, supportive governmental negotiators can have the same effect.

### *6.2.1 Trust relationships*

The professional relationship between Aboriginal negotiators and their provincial and federal counterparts does affect the speed of the negotiations. All of the negotiators in Nunavik have acknowledged the respect and good faith of the parties during the negotiations. They were able

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<sup>31</sup> External negotiators do not have the same chain of command that bureaucrats do, and often have more direct access to high-ranking officials.

to trust both inside and outside the negotiation room. They worked together very closely and shared information, expertise and experience to draw up what they believed to be a very solid document. Building a trust relationship was also important in this particular scenario in terms of the second phase. The Nunavik Party was confident that the provincial and federal government would follow up with a second phase, even though they could not formally promise it.

Another factor was the continuity of the negotiators: the Inuit team remained unchanged throughout the whole process, except for one person stepping down in order to continue as chairperson of the KRG. The federal team employed Donat Savoie as lead negotiator until his retirement in wake of the final agreement negotiations, when Richard Budgell took over. The provincial team changed more often, with three lead negotiators in total, but with Fernand Roy, the lead negotiator since 2005, who was a part of the team since before the Political Accord. The degree of knowledge the government negotiators had of the North, should not be overlooked. Donat Savoie and Fernand Roy both had extensive knowledge of the area and had both spent time living there. At the time of Savoie's retirement, Makivik honored him at the annual general meeting as a longtime friend of the region.

For the Labrador Inuit, there were some trust issues in the beginning of the process. Both the federal and provincial side changed their lead negotiator seven times in total, making it difficult to build the necessary trust relationships. After the federal government appointed Jim Mackenzie in 1996 and the provincial government appointed Bob Warren, who both stayed for the duration of the negotiations, it was easier to build a relationship. In fact, all the negotiators have spoken of the trust built between the negotiators after 1996 as an important factor for completing the agreement (Alcantara 2008, 170). Toby Andersen, lead negotiator for the Inuit, stated that Bob Warren had "a real eye for the Inuit and was an ally" (Andersen 2017). The negotiators knew that proposals coming from either side would be sincere and that each side would be open about their mandate and flexibility regarding those mandates.

Trust relationships between the governments and the Aboriginal group were clearly present in both the case of Nunavik and Nunatsiavut. Within the negotiation room there was mutual respect between all parties and a willingness to work together. The amount of time this sped up the negotiations is difficult to assess, but one cannot attribute the lack of trust as a factor to the prolonged negotiation period.

### *6.2.2 Government and external negotiators*

The use of external negotiators that is not subject to the same hierarchical constraints as a governmental negotiator can speed up to the process. The appointment of Jim Mackenzie, a non-bureaucrat, as lead federal negotiator in the Labrador Inuit negotiations was effective in several respects. Firstly, he had the mandate to negotiate an agreement beyond the existing government policies. Secondly, he was not subject to the hierarchy that bureaucratic negotiators tend to face. This sped up the progress in the sense that the lead negotiator did not have to leave the negotiation room in order to clear items with their superiors.

In the negotiations for the Nunavik self-government agreement, neither the provincial nor the federal government used an external negotiator. One might attribute this to the commitments and personalities of the governmental negotiators. Both Fernand Roy and Donat Savoie were very committed to getting a deal done, and open with the rest of the negotiators what their mandates were. According to one provincial observer, Roy really believed in the project and worked relentlessly for its completion (Interview C 2017). The same can be said for Savoie, who had great relations with the Nunavimmiut and worked effectively on behalf of Inuit concerns.

These two factors affect the speed of the negotiations as opposed to the outcome because negotiators, whether they are external or governmental, are subject to higher ranks of command. If the political willingness is not present from the ministers, it does not matter whether the negotiators are committed to a deal. Conversely, if there exists willingness from the top to complete a deal, an agreement could be reached without the presence of negotiators who believe in the Aboriginal group.

### *6.2.3 Competition for use of lands and development pressures*

The competition for use of lands was relatively non-existent in the case of the Labrador Inuit. The land claimed by the Labrador Inuit was mostly remote and Inuit-populated, and met little competition from other Aboriginal groups or non-Aboriginals. There was a minor disagreement about non-native hunting rights in Labrador Inuit Lands, which the province wanted to ensure. However, there was no precedent in any land claims agreement in Canada about ensuring, or even including, non-native rights, and the LIA did not want to set one either. As the final agreement did not restrict access for non-native hunters and they mostly lived outside of the settlement area, the proposal did not see much traction.

In terms of development pressure, the discovery of Voisey's Bay was a significant factor that sped up the negotiations with the Labrador Inuit. Before the discovery, the negotiations were moving along slowly as there were no financial incentive to complete an agreement. After the discovery, the negotiations were fast-tracked and impact and benefits agreements were signed, in order to clear way for development.

I have through process tracing identified the causal process observations (CPOs), examined how they mattered and then determined whether the two negotiations had compatible goals, internal group cohesion, minimal use of confrontational tactics and positive government perceptions of Aboriginal group. Additionally, I have identified certain CPOs that show how the complex institutional structure in Nunavik was a factor that negatively impacted the negotiation outcome in the region.

The findings indicate that the different outcomes in Nunavik and Nunatsiavut can be explained by the lack of group cohesion in Nunavik. There had since before the signing of the *James Bay Northern Quebec Agreement (JBNQA)* existed two competing visions of Inuit self-government in Nunavik. This division was still present when they voted on self-government in 2011, evidenced by the widespread questioning of the agreement on social media and by prominent leaders in the region. By contrast, in Nunatsiavut the population supported the negotiations throughout the process. The three different referendums during the negotiations not only showed the Labrador Inuit's support for the agreement, but also included the population in a meaningful way, which was not the case in Nunavik. The leadership in Nunatsiavut was able to communicate and include the population in the decision-making process more effectively than the Nunavik leaders.

Furthermore, the institutional legacy of the JBNQA, which created three firmly entrenched and regionally specific governance bodies in Nunavik, gave rise to a strong school board with a high degree of autonomy. Kativik School Board (KSB) opposed the self-government agreement from the beginning and was concerned with what their own role would be in the proposed amalgamated government structure. Consequently, they were critical towards the agreement throughout the negotiation process, even when they were a part of that process. Hence, due to the strong and autonomous government structures created by JBNQA, the self-government agreement met widespread opposition. This was, however, not the case in Nunatsiavut, which was the only Inuit region that had not completed a land claims agreement. Therefore, there were not any existent government structures to oppose the agreement, enabling

the Labrador Inuit Association (LIA) to negotiate with the belief that they had full support and ratify the agreement through referendum without much opposition.

Moreover, the institutional layering of the federal government's self-government policy meant that the two Aboriginal groups negotiated two very different agreements. The Nunavimmiut had less to gain by accepting the self-government agreement, seeing as they already had a form of government structure in place, and were therefore more willing to accept the status quo. The polar opposite was the case in Nunatsiavut, seeing as the agreement constituted a major step forward in terms of certainty, financial settlements and natural resources, in addition to self-government.

## 7. Conclusions

The main goal of this thesis was to explain why Nunavik and Nunatsiavut experienced different outcomes following extensive tripartite self-government negotiations. I considered the following research question:

*Why did Nunatsiavut succeed in attaining self-government following extensive tripartite negotiations while Nunavik did not, when they share similar basic features?*

In order to answer the research question, it was first necessary to elaborate on the evolving institutional framework of Canada's self-government policy, as the range of self-government powers available to Aboriginal groups has increased over time. I furthermore pointed out four factors (compatibility of goals, group cohesion, minimal use of confrontation tactics and government perceptions) thought to explain settlements and non-settlements in self-government agreements. In addition to these factors, I argued for a greater appreciation for institutional and contextual factors, such as the layering of the self-government policy, and the emergence of multilevel governance structures in Inuit regions and their effect on political development. In the methods chapter, I introduced and justified the choice of multiple case study, and the use of process tracing, which consists of examining the diagnostic pieces of evidence that can contribute to either support or overturn explanatory hypotheses. The research question was explored and analyzed through primary and secondary source data material.

Through careful description of the central steps in the two processes, I was able to identify if the different factors identified in chapter three were present in the two cases. The findings indicate that the different outcomes in Nunavik and Nunatsiavut can be explained by several factors. Firstly, there was a lack of group cohesion in Nunavik, which has been present since the signing of the *James Bay and Northern Quebec Agreement* (JBNQA), and evidenced by the widespread questioning of the agreement by prominent leaders in the region and on social media. In Nunatsiavut, the population was to a bigger degree involved in the decision-making process through three different referendums.

Moreover, a major difference between the two cases is the institutional context. In Nunavik, the JBNQA created three firmly entrenched governance bodies, who had operated quite autonomously for 30 years. One of those, Kativik School Board (KSB), opposed the proposed self-government agreement, as it was concerned about the future role of the school board in an amalgamated government structure. In Nunatsiavut, there did not exist any government



structures to oppose the agreement, as the Labrador Inuit Association (LIA) was the only political actor in the region.

Furthermore, the layering of the federal government's self-government policy, with the introduction of new rules over time and an increased willingness to devolve a broader range of self-government powers to Aboriginal groups, meant that the two agreements negotiated were quite different in nature. As the Nunavimmiut already had completed a land claims agreement in 1975, when the range of self-government arrangements available were limited, and had a form of governance structure in place, they negotiated a stand-alone self-government agreement, and had less to gain by ratifying the agreement. By contrast, the Nunatsiavut deal was a joint land claims and self-government agreement and was more comprehensive, as it involved a broader range of powers, including land rights and financial settlements, and thus constituted a bigger change from the status quo.

### **7.1 Implications of the study**

The implications of my study are manifold. First and foremost, it highlights the importance of Aboriginal group cohesion in relation to achieving a self-government agreement. Even if an Aboriginal group minimizes the use of confrontational tactics, is positively perceived by the governments and is willing to accept an agreement within the existing political context, these factors can remain insignificant if they do not attain internal cohesion. In addition, this thesis has highlighted the role social media can play in reinforcing internal division as it relates to self-government agreements.

Another contribution this thesis makes is the need for a greater emphasis on institutional and contextual factors as it relates to Aboriginal self-government. When it comes to negotiating self-government agreements, it matters whether the Aboriginal group has completed a land claims agreement in the past for two main reasons. Firstly, land claims agreements typically creates particular institutional structures, which can affect the outcome of self-government negotiations, as was the case in Nunavik, where one of the institutions created by a land claims agreement actively opposed the self-government negotiations. Secondly, the completion of a land claims agreement in the past, leads the ensuing self-government negotiations to be less comprehensive in nature, and therefore the Aboriginal group has less to gain by completing the agreement.

Any study on the field of Aboriginal politics in general, and self-government agreements in particular is valuable. The amount of studies conducted in this field is limited. This thesis

contributes to this field, and thus adds insight to how one can understand variations in negotiation outcomes. With the amount of self-government agreements thought to rise in the future, further knowledge about the processes and factors that facilitate a positive outcome is in itself valuable.

## **7.2 Limitations and further research**

There are certain limits to my study. The most obvious is the problem of inference. I can only explain with any certainty the self-government negotiation outcomes for the Inuit in Nunatsiavut and Nunavik. Additional cases could possibly have strengthened the findings of this thesis and allow for a greater generalizability. As I have conducted a small-N study, it is limited because it only considers two cases, thus the findings may not be representative of other cases.

A second limitation is that I cannot state with any precision the strength of each of the explanatory factors. This is a limitation of case studies in general, as they can only make tentative conclusions on how much gradations of a particular variable affect the outcome. Case studies remain much stronger at asserting whether and how a variable mattered than asserting how much it mattered (George and Bennett 2005, 22). As such, the most that this thesis can do is to identify those factors that mattered and explain how they mattered in the two cases.

With the amount of completed land claims and self-government agreements expected to rise in the coming years, this area is ripe for future research. An interesting case is the Inuit in the Inuvialuit Settlement Region in the Northwest Territories, as they have a similar institutional structure as Nunavik, and would allow for a better understanding of how institutional and contextual factors affect political development in these regions.

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## Appendix 1

List of interviews conducted during fieldwork in June 2017, Canada

Name	Role	Duration
Toby Andersen	Lead negotiator for the LIA	1h 12 min
Donat Savoie	Lead federal negotiator for the Nunavik Inuit file	1h 14 min
Richard Budgell	Lead federal negotiator for the Nunavik Inuit file	57 min
Interview A	Representative for the Nunavik Party	24 min
Interview B	Representative for the federal government	57 min
Interview C	Representative for the Quebec government	1h 9 min

## Appendix 2

### Interview guide

Could you please tell me a little about how the negotiation process unfolded?

Compatibility of goals:

1. To what extent did you perceive the different negotiating parties to have compatible goals?
  - a. What kinds of issues was the root of disagreement?
  - b. How widely did the interests diverge?
2. Was there a strong commitment to see the negotiations through from all parties?
3. Were the negotiating parties open to alternative suggestions regarding what to include and not include in the agreement?

Tactics:

1. Was there ever any talk about pursuing self-government through other measures than negotiation, such as protest, litigation or media campaigns?
2. Were there anyone who was opposed to the “negotiation route”?

Aboriginal group cohesion

1. Did domestic problems or internal conflicts ever hinder the negotiation progress?
2. Did the Inuit community support the process throughout?
3. Was the community informed about the state of negotiations throughout the process?
4. Community involvement?
5. Did the community voice any concern about the agreement before the final agreement was revealed?

Government perceptions (specific for government employees)

1. How was the Inuit perceived in terms of:
  2. Their capacity for financial accountability
  3. Was there ever any government audits?
  4. Their capacity for negotiations and self-government?
  5. Familiarity with Canadian languages and political processes
  6. Relationship with the province and Canada

## Trust relationships

1. Did the different negotiating parties develop a professional trust relationship?
2. Was it possible for negotiators to propose ideas outside the formal negotiating process (without fear of having this used against them in future sessions)?
3. Was there a continuity regarding negotiators involved? At which rate did negotiators from all sides of the table change?
4. Were the different negotiators committed to seeing the agreement finalized?