

1- Introduction

Sustainable development is an ever evolving concept and efforts like the *Guidelines For Environmental Assessments and Traditional Knowledge* renders it feasible. In order to help shed some lights on the relevancy and pertinence of these Guidelines, this paper presents a perspective on relations established over the years between proponents of development projects and the Inuit of Nunavik in Canada.

To achieve this goal, the agreements related to major developments and signed by the Inuit over the past 25 years will be reviewed. These are :

- the 1975 comprehensive land claims James Bay and Northern Quebec Agreement,
- the Kuujjuaq (1988) Agreement pertaining to the diversion of the Caniapiscou river,
- the Kuujjuarapik Agreement-in-Principle (1993) Respecting the Great Whale River Complex and;
- the Raglan (1995) Agreement regarding the development of a nickel mine.

2 - The Inuit

The Arctic region of Quebec which lies north of the 55th parallel, Nunavik (Map 1) is inhabited by an almost exclusively Inuit population of some 8,000. The Inuit live in 14 communities with 120-1,500 people.

With a land area in excess of 480,000 km², Nunavik is an immense territory without roads, the communities being linked with each other and with Southern Quebec only through one regional airline. Starting in the 1950s, the sedentarization process led to large changes

within the Inuit society, driving transition from a subsistence economy, centred on hunting, fishing and trapping, to a mixed economy, with wage earning playing an increasing role.

The Inuit face tremendous challenges, with few alternatives. Given such a context of rapid, externally driven change, the implementation of hydroelectric and mining projects raises fundamental questions and widely shared concerns.

3 - The James Bay project

In 1971 the Government of Quebec decided to proceed with the James Bay hydroelectric project. At that time, there was neither public consultation nor environmental assessment, let alone negotiations. The indigenous people, as well as the entire population of Quebec, learned through the media that a megaproject was soon to be launched. In November 1972, the Indians of Quebec Association lodged a protest with the provincial Government, claiming aboriginal title to the land. The Cree Indians and the Inuit, the two indigenous groups directly affected, filed an injunction request, asking the court that all work be stopped, pending settlement of their land claims. In 1973 such a court order was obtained, but after one week, it was overturned by the provincial Court of Appeals.

Although the indigenous groups lost the judicial battle, they won a political victory, for the Government of Quebec agreed to undertake negotiations, which eventually (in 1975) led to the signing of a land claims settlement – the *James Bay and Northern Quebec Agreement* (JBNQA).

The JBNQA was a treaty within the terms of the Constitution of Canada, establishing an economic, political and legal framework for the James Bay and Nunavik territories. Under

the JBNQA, in exchange of far reaching rights, the Crees and the Inuit surrendered their Native rights to the Land, obtained monetary compensations and a variety of political and economic structures were set up, all of which were to be managed by and on behalf of the indigenous people.

The recognized rights pertained to land, local and regional governments, health and social services, education, administration of justice, police, environment, economic and social development and finally hunting, fishing and trapping. To briefly summarized: 480,000 km² of land north of the 55th parallel was divided into 3 categories of land: Category 1, which covers an area of 8,417 km², was allocated in ownership to the Inuit; Category 2, is 81,107km² of land over which the Inuit exercise some form of controls and where they have exclusif rights of hunting and fishing. Finally, the rest of the region is Category 3 land where Inuit have year round hunting and fishing rights. As shown on map 2, each of the 14 communities received about 776.7km² of Category 1 and 2,589km² plus 9.06km² per capita of Category 2.

These lands are managed by a Landholding Corporation in each of the community and each community has been constituted as a municipality with and elected mayor and Council. At the regional level, the entire Nunavik is under the jurisdiction of the Kativik Regional Government (KRG) with an elected Chairperson and Council. There is also a School Board that offers, through a network of schools in every community, up to high school education. The JBNQA provides for procedures to assess environmental and social impacts of any development project and contains provisions enabling the Inuit, the Crees and Hydro-Québec to conclude agreements on mitigative measures in relation to future development projects.

Finally, Makivik Corporation was established; it is responsible for promoting and protecting the rights and interests of its sole members and beneficiaries, the Inuit of Nunavik. Makivik Corporation was created in 1978, by provincial legislation, and it represents the Nunavik Inuit with respect to matters of a social, cultural, economic, and political nature including areas related to treaty amendments and negotiations, environmental impact assessments, negotiating impact and benefit agreements with developers, research, renewable resource development and a variety of local and regional economic development activities.

In short, there are rights on the land and on the wildlife and an array of administrative structures and committees. The JBNQA set the stage, it created a broad context within which discussions with governments and developers take place. The ensuing discussions and negotiations with Hydro-Quebec on the Caniapiscau River diversion, the Great-Whale River hydroelectric project environmental assessment review process as well as the negotiations and finally the environmental assessment and the negotiations with Falconbridge on the Raglan nickel mine project all took place within this framework.

4 - The Kuujjuaq (1988) Agreement

In 1981, as part of the James Bay hydroelectric project, Hydro-Québec diverted the Caniapiscau river (map 3) a major tributary of one of the most important salmon river in Nunavik: the Koksoak river, which is also an important river for accessing hunting and fishing territories. In order to assess the environmental impacts of such a diversion and to propose remedial measures article 8.10 of the JBNQA provided for Joint Study Group compose of aboriginal representatives, HQ, SEBJ (a subsidiary of HQ) and governments. From 1977 to 1988, hundreds of studies were conducted on the environment and the wildlife. At the same time discussions were going on between the Inuit and SEBJ as to remedial and compensatory measures for the social and environmental impacts of the diversion. These discussions were difficult and obviously there was no will on the part of

SEBJ to carry out any major remedial measures. What was discussed at the time were minor works to be done to facilitate navigation on the Koksoak river. Moreover, SEBJ's mandate was coming to an end and HQ was taking over the operation of the James Bay project.

In 1984, 10,000 caribous drawn in the Caniapiscou river. This was the object of a huge controversy. Who was responsible for such a catastrophe. Was it an Act of God or was HQ responsible? Whoever was responsible is not the issue here. What it did, is that it put pressure on both the Inuit and HQ to discuss the diversion of the Caniapiscou river, the impacts it may have on the Inuit and the wildlife. HQ took over the operation of the project, a vice-president for Native Affairs was appointed, a negotiation team was set up and on October 1988 the Kuujjaq Agreement was signed. The object of the Agreement was to satisfy the commitments of subsection 8.10 and 8.17 of the JBNQA by supplying funds to compensate the Inuit for any losses and to obtain appropriate releases.

As we can see, the Kuujjaq Agreement was negotiated within the framework of the JBNQA as well as to satisfy articles of the Agreement. It was also done in the same spirit: monetary compensations are given in return of a release of any further responsibilities. As we will see for other agreements, an entity was created to receive the monetary compensation of \$48 million dollars and to continue research, more particularly on the salmon, that the diversion may have. This entity is controlled by the Inuit but HQ representatives are members of its Board of Directors (4 members from the community, 1 from Makivik and 2 from HQ).

5- Kuujjuarapik Agreement-in-Principle (1993) Respecting the Great Whale River Complex.

HQ representative has just described the GWR Complex as well as the Agreement in principle. What I would like to add is that while this Agreement deals with many issues, basically it was compensation for damages and it was negotiated to respect the JBNQA. Here also, the Agreement provides for the creation of an entity for the joint control and management of mitigating and remedial measures.

6- The Raglan (1995) Agreement.

This Agreement pertains to the development of a nickel mine and was signed with a private enterprise: Falconbridge Nickel Mine Co.

A more detail analysis will be done during the next session. Suffice to say for our purpose that in this Agreement a distinct change occurred: first, there was no requirement for an agreement; second, the concept of “profit-sharing” was introduced and third, the idea of negotiated contracts for Inuit enterprises is part of the Agreement.

Instead of just a lump sum of money or guaranteed payments for the life of the project, the idea of profit sharing was introduced. At the time the Inuit perceived at least two advantages to such a formula: first, since, as just mentioned, unlike the previous agreements there was no requirement for a benefit agreement our negotiation position was mainly based on principles as formulated in the Whitehorse Mining Initiative document and found also in the Guidelines. Principles like those of cooperation with local people, of working together, etc. We were selling “peace” to the company and we thought that profit-sharing might be a

better sell than asking for outright compensations. It was already costing the company over 500 million dollars to set up the project and this before any returns. Later on in the negotiations however, the fact that Falconbridge would be using Deception Bay to ship the nickel became an important factor. The Inuit were claiming to have rights and titles in the offshore area and a negotiation was on-going with the Federal government. Second, it was thought that profit sharing would bring the Inuit and the company to work closely together. In other words the Inuit would have a vested interest to see the mine works.

It is a compromise: part compensation, part profit sharing. A combination of security and risk. A compensation for damages to the land, to the wildlife, for the inconveniences it may cause to the hunters and the communities. A compensation for intruding on Native land and disturbing a way of life. It is also a risk, a joint-venture, where both partners may win or lose together.

7- The Future

Recently HQ in its Strategic Plan for 1998-2002 talks about limited partnerships. Native people will be able to participate, as partners, in hydro development projects on their respective territories. This is a new concept, not yet defined. It is vague, no agreements have been signed and it raises many questions.

To build a major hydro project on native land is not just another joint-venture. It is not just another business deal. Call it partnerships, limited partnership or what have you, compensations for using the land, for damages, for the social, economic and environmental impacts will be there for a time to come.

Up to now agreements have been what I would call "passive". By this I mean that compensations are given and the proponent can build its project. Of course there are degrees and all sorts of nuances: like participation in monitoring, environmental studies and so on. On the other hand there are the "active" agreements, like revenue-sharing and limited partnership and possibly full partnership in a near future.

Over the years things have evolved considerably. Have we followed the Guidelines for Environmental Assessments and Traditional Knowledge? In some instances yes, in others no. Many of the ideas and concepts have to be adapted to each particular situation. One of the issue we had to contend with, which does not seem to come out clearly in the Guidelines, is that we had to reconcile two processes: an environmental assessment and a negotiation. These are two parallel processes, on the same project, quite often carried out by many of the same players. The stakes are high and the parties stand to gain or loose a lot. This would be the subject of another paper.

The Guidelines are like a cooking recipee: following it does not ensure success. The Guidelines however do give a general direction, a global framework more particularly when it discusses the concepts of trust, mutual respect, aboriginal rights and aboriginal attachment to the land. I would like to add that who the proponent is makes a difference as to the questions raised and the relations established. On the one hand, HQ is a public body and when it undertook the James Bay project and more recently the GWR project the effects were province wide. The debate was a public debate. It became highly political. The issues of land, of aboriginal rights, of self-government, of self-determination were raised and for some native groups became the dominant issues. Other choose a different route: seeking in parallel economic development and self-determination. In any case, it is usually not a matter of being for or against development, as the media almost always deals with it, there are different approaches to development. On the other hand, Falconbridge is a private enterprise and the negotiations were more business like.

In closing I would like to make one more comment: make sure that the people you are dealing with have a mandate. We had two examples where our interlocutors had no mandate to negotiate with us. A lot of time and energy were wasted.
