CHAPTER 10

ENVIRONMENTAL LAW, SUSTAINABLE DEVELOPMENT AND FOOD SECURITY IN NUNAVIK

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Abstract: This chapter discusses a large body of research involving provincial and federal environmental law within the framework of sustainable development in Nunavik. The objective is to identify the links between environmental protection, economic development, natural resource management, and food security and identify how these links, under Canadian and Quebec law, affect the understanding and resolution of conflict pertaining to sustainable development in the region. A systemic approach is used for the study of sustainable development, in which close attention is paid to the ecological dimensions and their interactions with social and economic variables. Using this perspective, the legal framework for Nunavik is identified, and its effectiveness in ensuring ecosystem viability and stability explored. The results presented in this chapter are preliminary. Finally, our study identifies the politicized nature of research on the legal aspects of sustainable development and prospects for future research.

1. INTRODUCTION

This working paper presents the results of a study of the impacts of federal and provincial environmental law on sustainable development in Nunavik. The research objective is to specify the links that exist between legal tools for environmental protection, economic development and the management of the natural and food resources of Nunavik, to cast light on the specific contribution of Canadian and Québec law to the understanding and resolution of issues associated with sustainable development in this region.

It is useful to underscore the specific contribution sof environmental law to an understanding of the concept of sustainable development. To do this, we will present the political dimension of environmental law and the ties that it has with economic development and sustainable development Then, we will explore the links that exist between regulatory control over the environment, economic development and social equity will by examining, in particular, the legal framework applicable to economic activities that are the source of pollution and the framework applicable to the protection of natural and wildlife resources of Nunavik.

2. THE ROLE OF ENVIRONMENTAL LAW IN A SUSTAINABLE DEVELOPMENT PROJECT: INTERVENTION TOOL OF CANADIAN AND QUÉBEC POLICIES

On the subject of the role of law, we emphasize from the outset that we believe, as do several others, that sustainable development in the Nunavik region can occur without the constraints of law (Brown 1995). In this respect, the greatest hope lies in the voluntary reduction and elimination of non-sustainable behaviours and motivations by persons living in Nunavik and elsewhere in the world. Of course, even if this wish were largely shared, issues regarding the sustainable sharing of environmental resources between industrial, recreational, domestic and subsistence users will continue, as in the past, to give rise to conflicts and debates that will undoubtedly result in intervention by public authorities to define the rights of the various users.

Indeed, once the limits of natural resources, and the harmful effects of human activities on natural ecosystems and human health are recognized, the protection of the environment becomes a political problem in Canada as elsewhere (Juillet 1998). The adoption of restrictive rules of law is one means at the disposal of politicians to intervene in conflicts between

users of environmental resources. Moreover, the development of environmental policies over the last thirty years clearly shows that regulatory control has been the main intervention tool of federal and Québec public authorities. Within this context, it is reasonable to believe that the same will be true for the promotion of sustainable development.

2.1 Emergence of environmental policies

Since the early 1970s, Canadian and Québec environmental policies have mainly translated into the regulation of detrimental human activities, through economic incentives and national programs. Still today, regulatory control is the most commonly used public intervention tool in the environment sector.

Luc Juillet (1998) distinguishes two major waves of activity in the development of Canadian environmental policy. The early 1970s mark the beginning of the modern era in environmental policy. Under pressure of public opinion regarding major industrial and maritime accidents, public authorities adopted the first pieces of environmental legislation and established the bases for protection systems. For example, at that time, Parliament adopted the *Arctic Waters Pollution Prevention Act* (1970), the *Canada Water Act* (1970), and the Chapter of the *Fisheries Act* dedicated to fighting pollution in fish-rich waters (1971). During this same period, Québec enacted its general law on the environment, namely the *Environment Quality Act* (1972).

The end of the 1980s marks the second major period. Major accidents were also partly responsible for this second wave of intervention. Concerns focused primarily on emissions of toxic substances: Bhopal in 1984, Chernobyl in 1986 and (a little closer to home), St-Basile-Le-Grand in 1988. This second wave of parliamentary activity led to the institution of several laws and regulations intended to tighten environmental standards. In particular, the federal government passed the *Canadian Environmental Protection Act* (1988) and the *Canadian Environmental Assessment Act* (1992). For its part, Québec passed the *Pesticides Act* (1987), the *Act respecting the use of petroleum products* (1987) and the *Act respecting the Société québécoise de récupération et de recyclage* (1990).

This typology clearly illustrates that Canadian and Québec environmental policies developed as a result of priority given to regulatory control as the main intervention tool. Today, environmental regulatory control takes the form of a lengthy series of laws, regulations and guidelines adopted by federal and provincial authorities in their respective jurisdictions, and form what legal specialists call federal and Québec environmental law. Briefly, national environmental law requires that businesses replace their old pollution generating practices with new processes that show greater respect for the quality of the environment and resources. Advantages of this regulatory approach include, among others, the offer of certain performance guarantees, the presentation of clear public objectives, the design of emission standards related to the quality of the environment, the establishment of economic activity control mechanisms, and finally, the avoidance of economic 'maldevelopment.' However, the effectiveness of regulatory systems largely depends on a political will to implement these controls.

Moreover, the environmental protection legislative framework shows that the main objective of Canadian and Québec policies, from the outset, has been to balance the requirements of economic development and environmental protection. As economic activities are at the root of environmental problems, legislation adopted since the early 1970s has regulated the exploitation of resources and incorporated ecological considerations in economic decision-making. Today, this priority given to economic interests does not necessarily reflect sustainable development principles.

Finally, the most legislation adopted within this context shows that environmental concerns specific to the northern regions of the country have not received much attention from the political class (Inuit Circumpolar Conference 1992). Generally, problems associated with environment quality and the sustainability of resources have been perceived as being the same everywhere, and the response to them has been the same. However, there is legislation that specifically deals with the Nunavik region or the North, generally. Given Canada's constitutional context, hasty conclusions that issues specific to northern environments and resources and the interests of the communities in these regions have been considered, must be avoided. Indeed, it is possible that public intervention by public authorities specific to these regions may have other bases, such as that relating to the constitutional sharing of legislative jurisdictions between the federal government and the provinces. This is the case, in particular, for certain federal laws such as the Canada *Water Act* and the *Arctic Waters Act*, because the Federal Government does not have general jurisdiction with respect to the environment; its environmental interventions are fragmented in a number of specific jurisdictions (Brun 1993).

Table 1. List of the Laws in which the Objective of Sustainable Development have been Incorporated

Québec laws

- Act respecting land use planning and development, R.S.Q., c. A-19.1
- Forest Act, R.S.Q., c. F-4.1
- Act to protect agricultural land and activities, R.S.Q., c. P-41.1
- Act respecting the Régie de l'énergie, R.S.Q., c. R-6.01

Federal laws

- Standards Council of Canada Act, R.S.C., c. S-16
- Canadian Environmental Assessment Act, S.C. 1992, c. 37 [R.S.C., c. C-15.2]
- Department of Industry Act, S.C. 1995, c. 1 [R.S.C., c. I-9.2]
- Department of Natural Resources Act, S.C. 1994, c. 41 [R.S.C., c. N-20.8]
- North American Free Trade Agreement Implementation Act, S.C. 1993, c. 44 [R.S.C., c. N-23.8]
- World Trade Organization Agreement Implementation Act, S.C. 1994, c. 44 [L.R.C. c. W-11.8]
- Agreement on Internal Trade Implementation Act, S.C. 1996, c. 17 [R.S.C., c. A-2.4]
- National Round Table on the Environment and the Economy Act, L.C. 1993, c. 31 [R.S.C., c. N-16.4]
- Auditor General Act, R.S.C., c. A-1

2.2 The incorporation of sustainable development in Canadian and Québec environmental policies

To these two major waves of environmental policy development must be added the current wave. The Rio Summit of 1992 gave rise to the implementation of environmental assessment practices at the global, national and regional levels. An assessment of the last 25 years of public interventions was negative: human activities continue to threaten the quality of life and the sustainability of natural resources. In response to this observation, public authorities, both local and foreign, began to renew their intervention strategies. This last major wave in the development of environmental policies is still not well defined. However, at least two new currents dominate the debate at the present time.

First, this latest current is marked by an important increase in the inclusion of the concept of sustainable development in statements made by governments concerning the environment. Approved by major international organizations, the concept of sustainable development has given rise to an abundant scientific literature. In the literature, a distinction is made between critical analyses of the concept and works that endeavour to give the concept tangible content (Duhaime 1998). Briefly, applied works adopt a systemic approach and underscore the interdependence of environmental, economic and social factors. These three dimensions, or components, of sustainable development are generally formulated into principles or objectives: we speak of environmental integrity, economic efficiency, and social equity (Vaillancourt 1995, Gosselin *et al.* 1991, Jepma & Munasingle 1998).

The essence of the current political debate on the concept of sustainable development falls within the second perspective; i.e., governments have sought to give tangible form to the concept by applying it to various public activity sectors. Recent parliamentary and administrative activity testifies to this fact. Since the early 1990s, the Federal Government and provincial legislatures have introduced the concept of sustainable development in a series of new and existing laws (see Table 1). Governments have also tended to replace the confrontational attitude between the differing economic, ecological and social interests with a new approach geared to open dialogue between representatives of these interests. Indeed, there has been an increase in the number of roundtable discussions on environmental policy as well as national, provincial, and local summits on the economy and the environment.

The second current that characterizes recent political statements is linked to the neoliberal credo. In this respect, the political class has developed a favourable attitude toward economic circles, calling for fewer legal constraints and less government intervention. In a policy paper, the ministère de l'Environnement et de la Faune du Québec announced, in 1996 its intention to deregulate the environment sector and to instead focus on dialogue, negotiation, voluntary measures, etc. This wish for reconciliation and cooperation, which has become an end in itself, heralds major changes in Canadian environmental policy: preparations are underway to replace legal intervention tools by negotiation in the environment protection field

(Giroux 1997, Halley 1997) and, more generally, to transform the current parliamentary regime into a deliberative democracy.

This final wave in the transformation of Canadian and Québec environmental policies reflects a major evolution since the early 1970s. While it is still too early to judge, the current evolution of policies raises concerns as to the relevance of certain means used to achieve the objectives of sustainable development. Recent evaluations have been rather critical on this point (Bruton & Howlett 1992, Giroux 1997, Halley 1997).

Briefly, and by simplifying this new public intervention framework, we can say that sustainable development has emerged as the official objective of the Canadian and Québec governments. Hence, we can expect a better understanding of the environmental and social impacts in light of economic development. But the way in which this principle will be translated into administrative practices has yet to be clearly expressed. Thus far, public authorities have been content to introduce the objective of sustainable development, without recommending changes to the systems used to manage economic activities that are prejudicial to the environment and its resources (see Table 1). As for the neoliberal influence of an environmental law deregulation policy, the question remains whether it should be tied to or dissociated from the incorporation of sustainable development in environmental policies. The simple fact that we ask this question illustrates the importance of the changes taking place, the unquestionable influence of economic players regarding questions related to the environment and its resources and finally, the difficult progression of environmental and social claims associated with sustainable development (Juillet 1998).

After all is said and done, the recent evolution of federal and Québec policies is likely to substantially alter the way in which environmental problems have been managed thus far. The emergence of a policy geared toward sustainable development could lead to institutions and practices that show greater respect for the principles of social equity, environmental integrity, and economic efficiency. However, the deregulation proposed here does not necessarily lean in this direction as, in the absence of rules guaranteeing participation by and taking into account of, the other interests present, dialogue and the negotiation of permits strengthen the hand of economically powerful lobbies and favor employer associations that support traditional economic development.

3. EXAMINATION OF THE TIES BETWEEN REGULATORY CONTROL OVER THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

When examining the existing ties between the legal framework for environmental protection and sustainable development in the Nunavik region, a systemic approach to sustainable development was use. More specifically, this approach makes it possible to underscore the interdependence of economic, ecological and social factors. These three dimensions of sustainable development used in the systemic approach are often formulated in principles and objectives presented by a triangular model (see Table 2).

The systemic approach to sustainable development provides a framework for evaluating the legal systems implemented since the early 1970s. This analysis makes it possible, among other things, to underscore how environmental law currently standardizes the interactions between the economic, ecological and social dimensions of sustainable development.

Table 2. The Three Dimensions of Sustainable Development

social equity
economic efficiency
ecological integrity
—viability of ecosystems
—stability of ecosystems

Source: (*Vaillancourt, J.G.*, 1995)

Research focuses on the environmental perspective of sustainable development by emphasizing environmental integrity. The measures are the viability and stability of the environment's ecosystem: the viability of the ambient milieu and the stability of environmental resources. For this, we examine the current legal framework by underscoring the interactions between environmental integrity, economic efficiency, and social equity. Finally, this systemic grid of sustainable development is applied to the specific stakes of economic development and of the sustainability of the natural and wildlife resources in Nunavik.

As for the data used in the research, we draw on the legislative corpus applicable to sustainable development in Nunavik. Faithful to our disciplinary perspectives, we examine the applicable laws, agreements, regulations, and policies. We also refer to

international commitments to sustainable development, such as the *Rio Declaration*, the *Convention on ecological biodiversity, Action 21*, and the policies of international organizations and of the Arctic. Particular attention is paid to the legal literature that deals specifically with issues that apply to research on Nunavik. Research has shown that this literature is limited in scope and that the main sources remain primary legal sources: namely, legislation, regulations, agreements applied to the territory of Nunavik. American legal literature does appear to be more extensive.

Finally, an examination of laws relating to the promotion of sustainable development and the conditions of food security for communities in Nunavik may take place at several levels. One approach would be to focus only on those pieces of legislation that specifically concern the territory or the resources under scrutiny; another would be to examine all of the environmental laws applicable to the territory. In this case, we would have to examine almost all federal and Québec environmental laws. Instead, we chose the 'middle ground:' we will examine the main legal intervention systems of Canadian and Québec public administration, taking into account the legal and environmental context specific to Nunavik.

This approach allows us to present and evaluate the way in which the economic, ecological, and social factors of sustainable development are considered in current environmental policy. Then we examine the legal framework chosen to examine the ties between regulatory control over the environment and sustainable development in Nunavik. In the next section we explore environmental integrity from the standpoint of pollution control, pollution-generating activities, public participation, and civil protection. Under the last heading, we address environmental integrity from the standpoint of the protection of natural resources and the exploitation of wildlife and its habitats for traditional, sport, and commercial purposes.

4. VIABILITY OF THE AMBIENT MILIEU: POLLUTION CONTROL AND THE INTERACTIONS BETWEEN ENVIRONMENTAL LAW, ECONOMIC ACTIVITIES AND CIVIL SOCIETY

Pollution affects environmental functions that are vital for human societies; these include the viability and stability of ecosystems. For example, by serving as a site for the elimination of waste (effluent) from human activities, the environment accumulates and transports contaminants detrimental to the health of Inuit communities. Contaminants make their way into the meat of fish and mammals consumed. Moreover, the disruptions of the ecosystems caused by contaminants are likely to result in economic losses, and upset the communities of Nunavik socially (Simon 1997).

The relationship between the functions of the environment and pollution-generating economic activities has been taken into account in Canadian and Québec environmental policy. In particular, it is manifested in the first pieces of environmental legislation—and more specifically, with the adoption of contaminant emission standards and the introduction of control systems to regulate activities that may be detrimental to the environment. As regards sustainable development, it is important to underscore that the incorporation of ecological considerations into economic decision-making appears to be at the heart of administrative concerns with respect to the quality of the ambient milieu. The social and ecological concerns associated with the viability of living environments and the stability of ecosystems are also present in the legal framework, but to a lesser extent, in our opinion.

The legal framework of the fight against the pollution of Nunavik's environment does not differ significantly from that which applies elsewhere in Québec. There is one exception; it is the system for authorizing economic development activities stipulated in Chapter 23 of the *James Bay and Northern Québec Agreement* [hereinafter the *Agreement*]. Here, we present the legal systems put in place to control the contamination of the environment and pollution-generating economic activities. Pollution control is also envisaged from the standpoint of the participation and the safety of the populations of Nunavik.

4.1 Control of Contaminant Emissions

In Nunavik, government intervention in the fight against pollution is governed by provincial and federal environmental laws (e.g., *Environment Quality Act*, *Canadian Environmental Protection Act*). These pieces of legislation empower governments to set emission level standards and regulate industrial processes. Thus far, certain contaminants are regulated as well as the emission levels of some industries. Moreover, anti-pollution laws generally prohibit the emission in the environment of contaminants, even if they are not regulated, when these emissions are likely to be detrimental to humans, vegetation, wildlife, or property (s. 20 *Environment Quality Act*).

On the subject of environmental viability in Nunavik, it is particularly noteworthy that regulatory control over contaminants focuses less on the quality of the ambient milieus than on the emission sources which are generally located outside Nunavik, namely in southern Québec, Ontario, the United States or elsewhere. In this context, the institutions of Nunavik, including the regional offices of federal and provincial departments, and the persons living in this region have no control over most of the pollution sources affecting this territory. Moreover, contaminants originating from remote regions raise uncertainties as to the identity of the sources of emissions that are detrimental to Nunavik. These uncertainties have a negative impact on the effectiveness of the legal prohibitions forbidding environmental pollution: the establishment of criminal or civil responsibility presupposes a proven causal link between a contamination and the prohibited pollution emission.

More generally, the trans-border nature of pollution in Nunavik raises questions regarding pollution problems affecting northern regions when it involves setting emission standards and negotiating intergovernmental agreements on trans-border pollution (Inuit Circumpolar Conference 1992). Political commitments in regard to sustainable development should favour the implementation of the precaution principle in public decisions pertaining to contamination levels. The precaution principle, originating from the *Rio Declaration* (Principle 15), can play a positive role in determining emission and contamination levels that are less risky for the population and the environment in Nunavik.

4.2 Control of Economic Development Activities

The control of economic development activities as generally governed by administrative and permit systems applicable to activities that are detrimental to the environment. Two basic mechanisms allow public authorities to exercise control over projects carried out in Nunavik: the authorization system of section 22 of the *Environment Quality Act* and the environmental assessment and public participation procedures provided for in Chapter 23 of the *Agreement*.

The preliminary evaluation system of section 22 has existed since enactment of the *Environment Quality Act*. The most general authorization mechanism of this law, it has two components. The first deals with those activities likely to result in the emission of contaminants or in some way impact the environment. The activities in question are those listed in the legislation (see Table 3) and whose potential impact on the environment is negligible or minimal. The second deals with activities carried out in a marine environment (see Table 4). In the latter case, a certificate of authorization is required, regardless of the degree of the project's potential impact on the environment. The legislation assumes that project activities will result in contamination, or impact the environment in some way, which explains the need for a preliminary evaluation.

Table 3. List of Economic Development Activities Referred to in the First Part of Section 22 of the *Environment Quality Act*

— erect a construction
— alter a construction
— undertake to operate any industry
— undertake to carry on an activity
— undertake to use an industrial process
— increase the production of any goods
— increase the production of services

In very broad terms, Section 22 required the adoption of regulations that provide for the exemption, in whole or in part, of certain activities. However, even a fully exempted project is subject to the general prohibitions regarding pollution in environmental legislation (e.g., s. 20 of the *Environment Quality Act*). Moreover, a certificate of authorization issued under Section 22 does not exept the proponent from an obligation to obtain other authorizations or permits required by legislation (e.g., municipal permits, certification following an environmental assessment).

Table 4. List of Economic Development Activities Referred to in the Second Part of Section 22 of the *Environment Quality Act*

— carry out works
— carry out projects
— erect a construction
— alter a construction
— undertake to operate any industry
— undertake to carry on an activity
— undertake to use an industrial process
— increase the production of any goods
— increase the production of services

Since 1987, nearly to 90 certificates of authorization have been issued for economic development projects in Nunavik. According to the data provided by the ministère de l'Environnement

(Department of the Environment), more than sixty of the authorized activities have been carried out to date. Most of them concern solid waste disposal sites, or the operation of quarries and sandpits. The others are diverse in nature and concern, for example, the storage of hazardous waste, the rehabilitation of contaminated soils and the construction of ports or wharves.

4.3 Environmental Assessment and Public Participation

The second mechanism for controlling economic development activities is the environmental assessment process. The purpose of this administrative authorization system is to make sure that environmental impacts of a development project will be identified, evaluated, and considered within in the decision-making process. Briefly, it is a planning and decision-making, tool intended to attenuate the negative effects of a development on the environment and the likely, if not inevitable, conflicts between various users and uses of environmental resources.

The environmental assessment process specific to Nunavik is described in Chapter 23 of the *Agreement.* It features two separate procedures: one for projects that fall under provincial jurisdiction (e.g., waste removal and disposal systems, access roads. For other examples, see Table 5), the other for projects that fall under federal jurisdiction (e.g., airports, weather stations). For provincial cases, the relevant provisions of Chapter 23 have been translated legislatively and appear in Chapter II of the *Environment Quality Act* and in related regulations (see Table 6). Federal authorities, however, refer to the actual text of the *Agreement.* According to employees of the ministère de l'Environnement (Department of the Environment, Québec), in 95 % of the cases, projects carried out on the territory fall under provincial jurisdiction.

Legal scholars, as well as the courts, have examined the rules of application and operation of this system. They have also sought to define their foundations and main characteristics. Until now, legal decisions have dealt mainly with procedures that apply to the James Bay territory (Chapter 22 of the *Agreement*). However, they are important analysis tools because of the close ties between Chapters 22 and 23 of the *Agreement.*

Table 5. Examples of Economic Development Projects Referred to in Chapter 23 of the *James Bay and Northern Québec Agreement*

1.	**Projects automatically subject (Schedule A of the *Environment Quality Act* and Schedule 1 of the *James Bay and Northern Québec Agreement)*** All mining projects, including additions to, alterations or modifications of existing mining developments; All sanitary sewage systems including more than 1 km of piping; All projects for the creation of parks or ecological reserves; All outfitting facilities designed to accommodate at one time 30 persons or more, including networks of outposts.
2.	**Projects automatically exempt (Schedule B of the *Environment Quality Act* and Schedule 2 of the *James Bay and Northern Québec Agreement)*** All testing, preliminary investigation, research, experiments outside the plant, aerial or ground reconnaissance work and survey or technical survey works prior to any project; All repairs and municipal works; All small wood cuttings for personal or community use; All temporary hunting, fishing and trapping camps and all outfitting facilities or camps for less than 30 persons.
3.	**Projects for which the Kativik Environmental Quality Commission recommended exemption** Decontamination of soils contaminated by the operation of old diesel power plants in Kangiqsualujjuaq and Quataq; Quarry projects to maintain the landing strips of Kangirsuk and Kuujjuarapik; Project to build a breakwater wall in Koksoak River at Kuujjuak; Project to operate a sand-pit/gravel pit, of a maximum surface area of 1.5 hectares, in particular intended to supply the cover material waste depot.

Table 6. Laws and Regulations Adopted to Ensure the Implementation of the Environmental Assessment System (Chapter 23) and the Hunting, Fishing and Trapping Regime, (Chapter 24) of the *James Bay and Northern Québec Agreement* and Complementary Agreements

Québec Laws
_ Act approving the Agreement concerning James Bay and Northern Québec, R.S.Q., c. C-67
_ Act approving the Northeastern Québec Agreement, R.S.Q., c. C-67.1
Act respecting hunting and fishing rights in the James Bay and New Québec territories, R.S.Q., c. D-13.1
Administrative procedure rules for applications pertaining to outfitting establishments in the James Bay and Northern Québec territories, A.M. 1987, October 6, 1987, G.O.Q. 1987.II.6179 [R.R.Q., c. D-13.1, r.1.1]
Règlement sur le tableau de chasse à l'orignal pour l'année 1998, D. 1415-98, November 4, 1998, G.O.Q. 1998.II.6071 [R.R.Q., c. D-13.1, r.1.2]
Règlement sur le tableau de chasse au caribou applicable aux non-autochtones, D. 1206-86, August 6, 1986, G.O.Q. 1986.II.3475 [R.R.Q., c. D-13.1, r.2]
_ Environment Quality Act, R.S.Q., c. Q-2
Regulation respecting the environmental and social impact assessment and review procedure on the territory of James Bay and Northern Québec, R.R.Q., c. Q-2, r.11
Règlement sur certains organismes de protection de l'environnement et du milieu social du territoire de la Baie James et du Nord québécois, R.R.Q. c. Q-2, r.16
Internal management rules of the Kativik Environmental Advisory Committee, decision of May 29, 1980, G.O.Q. 1980.II.4455 [c. Q-2, r.20.1]
Federal laws
_ James Bay and Northern Québec Native Claims Settlement Act, S.C. 1976-1977, c. 32 [R.S.C., c. I-6]
Order-in-council concerning the ratification and implementation of the *Northeastern Québec Agreement*, February 23, 1978, C.P. 1978-502

The environmental assessment mechanisms of the *Agreement*, the first to be institutionalized in Canada, were also the most *avant-garde* at the time. Michel Yergeau, former vice-president of the Bureau d'audiences publiques sur l'environnement (BAPE), even claimed, in the late 1980s, that no system in effect on the planet was comparable (Yergeau 1988). One of their boldest characteristics is the obligation to consider impacts of development activities on the social environment, in particular, on populations, land use, wildlife harvesting, social structures, and culture. As regards environmental impacts, the *Agreement* is more extensive than other systems in Canada. Indeed, an impact study prepared by the developer must consider the direct, indirect and cumulative impacts, both long and short term, whether reversible or irreversible.

Public participation is another interesting component of environmental assessment system requirements in Nunavik. Indeed, Chapter 23 stipulates "A special status and involvement for Native people and other inhabitants of the region over and above that provided for in procedures involving the general public through consultation or representation mechanisms (which was in the 1970s)" (Subsection 23.2.2 c) of the *Agreement*). With respect to the Inuit, this intent has been formalized in their participation in federal committees (Selection Committee and Federal Review Committee) and provincial bodies (Kativik Environmental Quality Commission) created to oversee the administration and monitoring of the system. This bestows major consultation powers, particularly as regards provincial procedures, since public authorities generally follow the recommendations of the Kativik Environmental Quality Commission.

However, the rules governing decision-making processes, especially when compared to those currently used in the South, do little to promote public participation (Giroux 1988). Provincial procedures do not formally provide for public hearings, whereas for federal procedure, the decision whether or not to hold hearings is entirely at the discretion of the public authority in charge. Moreover, access to information is rather limited; even those provided for offer only limited access to relevant information. For example, the public register that must be kept by the Québec Minister of the Environment contains limited information on

economic development activities in Northern Québec (s. 118.5 of the *Environment Quality Act*). Given this situation, one may rightfully wonder about the real potential of publicand local environmental groups to make their viewpoints known and express their concerns about projects envisaged for their territory. This shortcoming becomes all the more important as members of the public and environmental groups have limited technical and financial means when compared with those available to developers and economic lobbyists

Generally speaking, and despite certain obvious process system provided for in Chapter 23 of the *Agreement* remains a mandatory gateway for most economic development projects in Nunavik, whether or not they are large in scale. It is important to note that in 1996, the ministère de l'Environnement et de la Faune (Department of Environment and Wildlife) estimated that approximately 350 projects had been subject to an environmental assessment processin Northern Québec (James Bay and Nunavik).

4.4 Public Safety and Health

Environmental pollution is likely to create risks for the population and the vulnerable ecosystems. Indeed, these situations call to mind serious pollution accidents and the on-going and gradual contamination of ambient milieus and food resources.

These events are exceptional in the legal framework, as regulatory controls tend to target risks created by human activities. Applicable legal provisions allow for emergency powers that can complement and sometimes supercede the rules of law that generally prevail. Several federal and provincial public agencies can intervene in situations where it is deemed that environmental contamination jeopardizes public health and safety in Nunavik.

The State's obligations and the rights of persons to receive health care are basically set out in *Public Health Protection Act* and *the Act respecting health services and social services*. The emergency powers held by provincial government, that can act on the advice of the Minister of Health and Social Services, allow the government to intervene rapidly when public health is in danger, as in the event of an epidemic or a real or feared catastrophe. This represents the most important intervention power for health services, in response to a situation where environmental pollution or the contamination of wildlife species may be detrimental to the health of community members. However, the socio-health event must be caused by a catastrophe or an epidemic in order for the emergency power to be exercised. This nomenclature limits the scope of the emergency power in the environmental contamination. At first glance, this emergency power applies more to major accidents of pollution accidents, such as the unexpected emission of a large quantity of toxic substances due to fire, explosion, acts of vandalism or sabotage, than cases involving an on-going and gradual contamination of t environment and wildlife.

Federal and provincial environmental legislation also provides for various public authority intervention regimes in the event of an emergency. Polluters are requested to report pollution accidents to the Minister immediately. The *Environment Quality Act* also requires that the Minister of the Environment notify the Minister of Health and Social Services when the presence of contaminants in the environment are such that they could affect the life, health, safety, or welfare of humans (s.118.0.1). Environmental law generally empowers the Minister in charge to issue emergency orders against polluters to remedy the spread of contaminants that represent an immediate danger for human life or health (s. 26, 70.4 and 114.1). Finally, the Government can implement plans and programs intended to fight environmental contamination (s. 2c), 49). In this context, the provincial ministère de l'environnement (Department of the Environment) adopted an emergency plan to coordinate the operations and interventions of municipalities, the ministère de la sécurité publique (Department of Public Safety) and federal authorities, according to the scope of the emergency.

5. STABILITY OF ENVIRONMENTAL RESOURCES: INTERACTIONS BETWEEN ENVIRONMENTAL LAW AND THE EXPLOITATION OF WILDLIFE AND HABITATS FOR TRADITIONAL, SPORT, AND COMMERCIAL PURPOSES

Environmental resources are integral to the fundamental functions of the environment for societies in both the North and South. For example, for the Inuit, the stability of wildlife resources and their habitats is directly related to food security. Hunting, fishing, and trapping are not only traditional pursuits; these activities provide food sources and an economic base. Wildlife resources and habitats are also exploited for recreational and commercial purposes by non-Natives. Generally,

environmental resources provide the raw material for numerous economic activities such as commercial fishing and hunting, mining, electricity production, etc. The overexploitation of resources and the destruction of habitats can jeopardize wildlife species of Nunavik and access to basic food resources (World Commission on Environment 1987).

The relationships between the functions of the environment and the exploitation of natural and wildlife resources are taken into account by the legal framework applicable to the protection and management of Nunavik'snatural and wildlife resources Unlike the lobby groups, the legal framework is characterized by systems specific to the region under study. The most important is the hunting, fishing and trapping regime established in Chapter 24 of the *Agreement*. As regards sustainable development, it is noteworthy that the Inuit perspective is paramount in the decision-making processes affecting wildlife harvesting. Social and ecological concerns associated with the preservation and viability of species and their habitats are present, but to a lesser degree.

What follows is a presentation of the legal systems established to ensure the protection of environmental resources and the exploitation of wildlife and its habitats for traditional, sport, and commercial purposes.

5.1 Protection of Biological Diversity

Biological diversity or biodiversity is a term that figures in the vocabulary related to sustainable development (*Action 21*, Chapter 15). The *Convention on biological diversity* (1992) gives it a broad definition: "the variability of living organisms of every origin including [...] the ecosystems [...] and the ecological complexes of which they are part; this includes diversity within the species and among species as well as that of ecosystems" (s.2). Until now, the objectives of the *Agreement* pertaining to the conservation of biodiversity and the sustainable use of its elements (s.1) have brought by a few timid legislative and regulatory initiatives in Canada. In all likelihood, this sector of law will develop over the short term.

The current legal framework does offer, however, a few bases for protecting biodiversity in Nunavik. The most important provincial initiatives are the *Act respecting the conservation and development of wildlife*, the *Act respecting ecological reserves* and the *Act respecting threatened or vulnerable species*. It is important to point out that only the first of these is really effective in Nunavik, given that, at the present time, there are no ecological reserves or species designated as threatened or vulnerable by the Provincial Government in the territories. The most influential federal law is the *Fisheries Act*, which grants protection to several marine mammal species (e.g., narwhals, belugas). Currently, there does not exist any federal legislation to protect threatened or vulnerable species. However, an official list of endangered species does exist, which includes more than 130 wildlife and plant species, a few of which are harvested in Nunavik (e.g., polar bears, belugas). This list is not binding but it signals that some species that are being harvested for subsistence or commercial purposes warrant special protection for the sake of sustainable development.

Table 7. Species Reserved for the Exclusive use of the Native People and whose Management Falls under Québec's Jurisdiction

1. Mammals
Weasel
Beaver
Wolverine
Ermine
Wolf
Otter
Lynx
Woodchuck
Marten
Skunk
Otter
Lynx
Woodchuck
Marten
Skunk
Muskrat
Fox
Mink
2. Fish
Sucker
Whitefish
Sturgeon
Mooneye
Goldeye
Burbot

As regards the protection of biodiversity, the Kativik Regional Government and the municipalities of Nunavik are called upon to play an increasingly important role. It is important to point out that the *Master Plan for the development of the lands of the Kativik region* (1998) sets forth guidelines that will orient the development of Nunavik. Among these principles, is that of conservation and the protection of the environment and wildlife. The *Master Plan* represents the first stage of a process that will lead to the adoption of rules of law by local agencies that will govern territorial development.

5.2 Harvesting of Resources for Commercial Purposes

The rules governing the harvesting of wildlife resources in the territory are contained in Chapter 24 of the *Agreement* and in the legislation adopted or amended to ensure its implementation (see Table 6). In the case of harvesting for commercial purposes, the regime establishes four different frameworks applicable to trapping, fishing, hunting, and the development of outfitting establishments, respectively.

Briefly, Chapter 24 provides various measures that allow Native people to harvest wildlife for commercial purposes. The most important provisions are those granting Native operations exclusive rights with respect to certain territories and certain species (e.g., caribou, narwhals) (see Table 7). For example, the Inuit have the exclusive right to create and develop commercial fisheries on Category I and II lands. For Category III lands, they are entitled to do so for the fish species for which they hold exclusive rights (e.g., whitefish, sturgeon). For other species, they share wildlife resources with non-Natives and aboriginals (Crees and Naskapis), as per the stated regime. For example, such is the case when an Inuit landholding corporation authorizes non-Natives to hunt wildlife commercially, whereas the Inuit have the exclusive right to do so.

Provincial and federal public authorities remain responsible for the rational management of the territory's wildlife resource. Local organizations (landholding corporations, Makivik Corporation, northern villages, and the Kativik Regional Government) and the advisory committee in charge of administering and monitoring the application of Chapter 24 (Hunting, Fishing and Trapping Coordinating Committee), exercise control over wildlife management. This occurs in various ways but, generally, is divided into three main categories of powers: those relating to the adoption of control measures, participation in the authorization process, and those directly affecting the administration and monitoring of the regime.

5.3 Hunting, Fishing and Trapping for Food

The legal framework governing the harvesting and breeding of wildlife resources for food is also contained in Chapter 24 of the *Agreement* and, as mentioned previously, in the texts adopted or amended to ensure its implementation (see Table 6). This regime aims to ensure a sustainable supply of food for the Native people, and establishes a clear and precise system with respect rights to harvest and manage resources. It also empowers institutions and local agencies to control wildlife harvesting.

Briefly, the Inuit may, at any time and without a licence, engage in hunting, fishing, and trapping for personal and community purposes anywhere on the territory. However, government authorities have the power to limit this access right for public safety reasons (e.g., by prohibiting the use of large nets), for the sound management of wildlife harvesting (e.g., by requiring the securing of a license) or to protect threatened species or populations (e.g., species whose protection required the creation of a wildlife sanctuary).

Access to resources is assured by designating species exclusively reserved for the Inuit (e.g., polar bears, whitefish, narwhals) and minimum harvest levels. Moreover, the regime grants the Inuit a primary harvest right with respect to species that are not exclusive to them. In the latter case, if protection measures prove necessary for a given species, the right of the Inuit to harvest this species for subsistence purposes will only be limited if the suspension of harvesting for commercial (by Native people and non-Natives) and sport purposes does not provide adequate protection. In practice, the Native people may, however, renounce, on a voluntary basis, the exercise of their right to hunt, trap, or fish any wildlife species for food. To date, the only known precedent of such a renunciation is that for musk oxen.

The Inuit also have the exclusive right to practice the breeding of a few animal species (e.g., caribou) until November 10, 2024, a right that can be shared with non-Natives. Generally, such activities require the acquisition of a licence or authorization (Chapter VII.1 of the *Act respecting Hunting, Fishing and Trapping Rights*).

As is the case for the harvesting of wildlife for commercial purposes, provisions are made for the active participation by Native people in the management of resources for subsistence purposes. Briefly, the types of powers devolved to institutions and local organizations are similar to those mentioned in the previous section, namely the power to adopt control measures, to participate in the authorization process, and to directly affect the administration and monitoring of the regime.

6. PRELIMINARY OBSERVATIONS

The formulation and implementation of Canadian and Québec environmental policies illustrate how economic, social and ecological debates on sustainable development are currently settled. Since the early 1970s, public authorities have frequently intervened to settle problems associated with the quality of ambient milieus and the sustainability of environmental resources. During this period, regulatory control was the main

intervention tool of Canadian and Québec environmental policies.

Currently, the legal framework applicable to sustainable development in Nunavik comprises legislation and agreements reached with the Inuit before Canada agreed to promote sustainable development. These pieces of legislation do not fully respect the objectives of sustainable development because, at the time of their adoption, the objective was to incorporate ecological considerations into economic decision-making. Although social concerns also figure in current legal framework, they are so to a lesser extent. This gap between the environmental protection of the 1970s and 1980s and sustainable development is evident in Nunavik, especially in matters pertaining to pollution control and the exploitation of primary resources.

In the end, this old legal framework continues to apply without conditions for sustainable development being imposed on decision-makers in Nunavik. As a result, economic interests may still prevail when decisions that could have a negative impact on the food security of the Inuit and on their economic development. However, the recent introduction of the concept of sustainable development in environmental legislation heralds major developments. It moves toward a more responsible effort for the objectives of environmental integrity and social equity in public decisions affecting environmental resources and the potential for the Inuit to challenge non-sustainable practices affecting Nunavik. Finally, an examination of the laws applicable to Alaska should contribute to illustrate more specifically how national law can incorporate the principles of sustainable development and what role it can play in the claims of Northern communities.

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