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POLITICAL ARTICULATIONS OF HUNTERS TO THE STATE

Means of Resisting Threats to Subsistence Production in the James Bay and Northern Quebec Agreement

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RÉSUMÉ : Rapports politiques de chasseurs avec l'État pour résister aux menaces de la Convention de la Baie James contre leur production de subsistance

De plus en plus souvent les peuples de chasseurs tentent de s'opposer activement aux menaces répétées que les gouvernements nationaux et le système économique international font peser sur leurs activités de subsistance en s'articulant aux structures politiques et économiques déjà existantes des États-nations. Cet article expose un cas de ce phénomène assez peu étudié, l'établissement de rapports politiques avec l'État par les Cris de l'est de la baie James durant la négociation de la Convention de la Baie James et du Nord québécois. Une douzaine de tels mécanismes de défense sont identifiés, en particulier : la définition légale des droits et des obligations qui lient les gouvernements ; la reconnaissance au sein du macro-système des structures et des pratiques sociales et culturelles des Cris ; des droits garantis sur la faune et exclusifs sur certaines espèces et régions ; un revenu annuel garanti pour les chasseurs. On montrera comment ces stratégies furent conçues pour répondre aux atteintes ressenties contre le mode de vie des chasseurs cris, dans le contexte politique global des négociations avec l'État. En vue de recherches ultérieures, on s'interrogera sur l'efficacité de ces stratégies au niveau macro-politique, et sur leur impact socio-culturel pour l'intégrité et l'autonomie de la société cri au niveau local.

ABSTRACT: Political Articulations of Hunters to the State: Means of Resisting Threats to Subsistence Production in the James Bay and Northern Quebec Agreement

Hunting peoples are with increasing frequency trying to actively respond to the repeated threats to their subsistence activities from nation state governments and international economies by creating linkages to existing national political and economic structures. The present paper presents an account of one instance of this relatively unstudied phenomenon, the articulations sought and established by the Eastern James Bay Cree of northern Quebec during the negotiation of the James Bay and Northern Quebec Agreement. Approximately a dozen articulatory responses are identified, including: legal definition of rights and obligations binding on governments ; macro-system recognition of Cree cultural and social structures and practices ; guaranteed allocations of wildlife and exclusive species and areas ; and guaranteed annual incomes for hunters. The paper indicates how these articulations were designed to respond to perceived threats to Cree hunting society, given the general political and power setting of the negotiations with the state. Questions for further analysis are raised concerning the macro-

political effectiveness of such articulations, and their social and cultural consequences for local integrity and autonomy.

Introduction¹

Because hunting peoples find themselves inevitably encapsulated within nation states, because the world economy has the capacity to utilize resources in the most remote regions of the earth, and because the animal populations which the hunting peoples harvest are among the limited number of wildlife populations still sufficiently abundant to sustain intensive hunting, the hunting peoples have increasingly found themselves emmeshed in struggles to sustain their hunting activities and to protect the wildlife and the environments on which they depend. Threats to their way of life and resources take many forms: government hunting regulations and wildlife management programs; government relocation, sedentarization, commercialization and local development schemes; primary resource exploitation projects; and intensive sport hunting, among others.

An inevitable consequence of these repeated threats to the ways of livelihood of hunting peoples is that the hunters must increasingly find new alternatives to the common pattern of resisting such threats by retreating from part of their lands and isolating themselves. In many cases the hunting peoples now find that their best chances of surviving and of maintaining their way of life involve creating linkages to some existing national political and economic structures, linkages which can be used to resist the threats. These new political articulations provide, with various degrees of power, the means to directly intervene in the macro-political arena. The political articulation is developed, on the one hand, in response to the kinds and extent of political power the local population can effectively mobilize at the regional or national level, and on the other hand, to local efforts to make such political articulations compatible with local structures and responsive to local needs and aspirations.

The building of political articulations, as opposed to seeking relative isolation, will, in my view, inevitably involve adaptation of some of the structures and methods of the macro-system, if the linkage is to be reasonably effective, but it need *not* involve wholesale adoption of external structures, methods, values and realities. Thus, key questions for future research are whether and how such political articulations may be integrated with local organization so they may serve to enhance the effectiveness of local interests? And, how they may be made politically effective in the macro-arena?

The need for political articulations is one which some hunting peoples have begun giving attention to, yet it is one that has rarely been explicitly addressed by social scientists.² The aim of this paper is to raise the issue of the needs for and possible structures and consequences of new political articulations for consideration by briefly outlining one attempt by a hunting people to create new political articulations between themselves and nation state institutions in order to better resist intrusions by national bureaucracies and the world economy into their land and livelihood.

The present paper presents an account of the structure of the hunting, fishing and trapping regime established by the Eastern James Bay Cree during the negotiation of James Bay and Northern Quebec Agreement (JBNQA) and it indicates how it was designed to respond to the threats to Cree hunting society perceived at the time, given the general political and power setting of the nation state in which negotiations took place.³

The specific relevance of the paper for the issue of aboriginal land claims in Canada is reflected in two contrasting perceptions of the place of hunting matters in politics of Native land claims at the present time. First, discussions of Native land claims in Canada, while they have taken Native hunting, fishing and trapping as of critical importance and indeed as probably the root of the claim for the need to recognize aboriginal rights, have not generally given careful consideration to the specific articulations essential for effective protection of aboriginal hunting, fishing and trapping rights and activities. Second, the hunting, fishing and trapping and associated regimes in the JBNQA were the most important reason for the acceptance of the agreement by the Cree people and their decision to take the provisions of the agreement over the uncertain possible outcomes of continued legal battles.

The first perception is reflected in a recent review of Native land claims agreements and proposals from a legal/rights perspective by Constance D. Hunt (1978), which allows one to clearly see both the minor role that subsistence rights have played in the Alaska and Australian Northern Territory land claims agreements and the general lack of specific proposals on subsistence rights incorporated in most recent proposals for northern Canadian agreements.

The main focus of recent work on Native land claims has been on the land, economic and governmental components of possible agreements. It is clear that land, economic and governmental components have important implications for the exercise of hunting, fishing and trapping rights, especially in so far as land regimes could provide means of protecting the natural environment by providing for control of development activities, and in so far as governmental regimes could provide authority over access to wildlife by non-Native hunters. Nevertheless, I would argue that even these provisions, fully achieved, would not be sufficient in themselves, to protect Native hunting, fishing and trapping activities. In addition, adequate procedures to assure a Native aboriginal right to hunt, fish and trap, and means to regulate non-Native hunting and fishing, and to effectively deal with the impacts of whatever development activity is permitted to occur, would be needed by Native peoples to maintain their hunting, fishing and trapping activities. Some consideration of the solutions to these problems adopted by the Cree and Inuit people in Quebec is therefore of general interest, both in areas where the provisions of other claims agreements should differ considerably from those of the JBNQA, and in areas where no new comprehensive agreement is being contemplated, but where Native people face similar problems of protecting and enhancing subsistence economic sectors.

The second perception of these issues is of the critical role hunting, fishing and trapping provisions played in the court case against James Bay hydro-electric development and the ensuing land claims negotiations which lead up to the JBNQA (Malouf 1973, Penn 1975, Diamond 1977), and in the decisions taken in the Cree communities to accept the negotiated JBNQA as the specification of their rights to be recognized by the governments of Canada and Quebec, and their related decision to drop the court cases and other claims for recognition of aboriginal rights. While these decisions were influenced by many factors, the decisions and votes taken in the communities appear to have been based on a conviction that the rights and measures specified in the JBNQA could be adequate to protect Cree hunting, fishing and trapping, Cree communities, Cree economies and Cree autonomy, and should be tried, even though they were not all that had been wanted, nor were they entirely just.

The general acceptance of the hunting, fishing and trapping regime, and the associated income security and environmental and social protection regimes and the provisions for project modifications and remedial works, were at the basis of the decisions that the JBNQA was

acceptable. Other provisions were also important, especially the provision of lands for permanent communities, and the provisions for local and regional governments with effective control over internal Cree affairs. But, from the data presently available to me it appears that the provisions related to the maintenance of hunting, fishing, trapping and related activities were the most important factors in the decisions taken by the Cree.

To summarize this contrast then, hunting, fishing and trapping rights and measures appear to have been one of the important but least specifically developed areas in recent land claims agreements, and in land claims proposals elsewhere in Canada, whereas in James Bay it was precisely the development of such provisions which may have been decisive in the acceptance of the JBNQA in the Cree communities. The contrast suggests the need to give more explicit attention to the means by which hunters can effectively protect their interests as wildlife resource users against encroachment from national and international interests.

Perceived Threats and Goals

While many problems confront the efforts of the Cree people to maintain hunting, fishing and trapping activities as a central part of their culture and of their economy, these efforts had been generally successful throughout the three hundred year history of involvement with agents of the capitalist markets and the three decade history of involvement with agents of nation state administrations (Feit 1978; Scott 1979). There are real threats to the integrity of their hunting society, and there are real dependencies on external markets and administrators, but nevertheless, their subsistence production activities remain a central part, and the most important part, of their economic activities and subsistence. And, their hunting society is still integrated by a powerful cultural belief system, a continuing system of social and economic relationships, and an effective system of ecological knowledge, which have secured the distinctive integrity of the society to date and which by most indications are viable for the foreseeable future (Salisbury *et al.* 1972; Feit 1973, 1978, in press; Scott 1979; Tanner 1979).

Indeed, despite the many problems encountered the only occasion, of which I am aware, in which many Cree themselves have recently voiced doubts about the future viability of their hunting society was in the context of the commencement of the James Bay Hydro-electric project. In the context of the unilateral commencement of the project, the central adaptations of the Cree seemed threatened, and the range of outstanding problems encountered in maintaining hunting activity took on critical proportions. It was these central problems which the Cree sought to resolve through the land claims negotiations.

The hunting issues which I would identify as being most critical to the Cree at the time of the commencement of negotiations were: 1. the recognition of a basic right to hunt at essentially all times, all places, by all Native people for all currently pursued purposes; 2. an effective Cree role in wildlife management; 3. conflicting use of wildlife resources with non-Native sports hunters and fishermen; and, 4. the potential impacts of future development. I will consider each of these problem areas in turn, and the negotiated legal and political responses to each incorporated in the JBNQA.

Definition of Basic Hunting rights

During the 1960's increasing conflicts developed between the Cree and the governments of Canada and Quebec because those governments did not recognize the existence of a basic aboriginal right to carry on hunting, fishing and trapping activities. Quebec legislation provided a

privilege, subject to the decisions of the Minister of Tourism, Fish and Game, for Native people to hunt all species at all times only for subsistence and only while on their traplines. While this avoided most conflicts when Native people were out in the bush, a series of *ad hoc* rules were increasingly imposed by game wardens during the late 1960's. These rules appeared to be designed to make enforcement easier, and to resolve conflicts between Natives and sport hunters and fishermen in favor of the sportsmen. Native people were arrested for killing big game within ten miles of non-Native settlements and major roads, and for bringing meat back to the settlements from their traplines. A central issue of the negotiations was therefore to establish a recognized right to hunt, fish and trap, a right that was not narrowly restricted geographically nor to only a portion of the Cree population, nor to people with proved or presumed subsistence need.

The solution was to establish a general right to hunt that would codify the aboriginal hunting rights in modern terms and that would be given legal force and be binding on governments at all levels.⁴ The JBNQA provides for a Native right to hunt, fish and trap, called a right to harvest, all species of fauna at all times over the entire territory wherever this activity is physically possible, including all categories of land. The only general restrictions on this right are that the right is subject to the principle of conservation, it cannot be exercised inside towns, and it is restricted when there is actual interference with physical activities of others or public safety. The latter restraints are specifically and narrowly defined.

Unlike the standard Canadian formula, which had been included in the governments' proposal to the Cree and Inuit at the beginning of the negotiations, and which offered hunting rights to unoccupied Crown lands, the JBNQA Native right to harvest extends to all the territory subject to the agreement, including occupied Crown lands, vacant lands within municipalities but not within the towns, and to lands privately owned for development purposes.

Unlike the original Quebec legislation which permitted hunting for subsistence the right to harvest included all harvesting for personal use or for use within the Native community, including commercial trapping and fishing. There is no basic subsistence means test and the right can be exercised by all Cree and Inuit beneficiaries. Harvesting in order to sell meat to non-Natives is however effectively prohibited. The right to harvest also explicitly includes the right to subsidiary activities and technology necessary to exercise harvesting rights, many of which have been and are often restricted by current provincial, territorial and federal legislation.

In short, the right to harvest includes the right to conduct essentially all of the hunting, fishing, trapping and related activities which the Cree people were presently pursuing, and have traditionally pursued. That is, the right to harvest codifies one version of the aboriginal right to hunt. This codification however is subject to one new provision.⁵ The new constraint on the right to harvest is that it is subject to the principle of conservation, which is specifically defined in the agreement:

'Conservation' means the pursuit of the optimum natural productivity of all living resources and the protection of the ecological systems of the territory so as to protect endangered species and to ensure primarily the continuance of the traditional pursuits of the Native people, and secondarily the satisfaction of the needs of non-Native people for sport hunting and fishing. (Paragraph 24.5.1, JBNQA.)

In essence the principle of conservation provides that the right to harvest may be limited only under specific conditions, to protect endangered species and ecological systems. These limitations are in principle consistent with Native interests to protect wildlife and environments, and they are consistent with present Cree practices which include a wide range of cultural rules for

hunting in ways that maintain ecological systems, and cultural rules for limiting harvests when species populations decline or are endangered (Feit 1973, 1978; Berkes 1977, 1979).

Overall, the right to harvest as set out in the JBNQA was intended to give legal recognition to Cree hunting and to provide the basis for stopping the increasing legal encroachments on that activity which were developing in the decade prior to commencement of the hydro-electric scheme. It established that hunters would now be allowed to pursue their way of life according to their own culturally ordered knowledge, decisions and activities. The agreement does not try to codify or generally define the cultural system, but recognizes its key structures and authorities, the system of hunting territories and of "owners" of territories, called "traplines" and "tallymen" respectively.

It was recognized, however, that the continuation and enhancement of Native harvesting was no longer an isolated activity, and that competing use of the same resources by sportsmen, and impacts on the wildlife resources by development now required that certain linkages be established between Cree hunters and governments, and that the means be specified by which resources subject to competing interests should be allocated. Thus, in addition to protecting hunters' autonomy by recognizing rights and the culturally defined system, it was recognized that it would have to be protected also by means of new structures and principles for articulating that system with government powers. The underlying assumptions were that the new structures would only come into play when problems arose and that most day to day activities of most hunters would be unfettered by such measures. When conditions interfered with these activities in a way the hunters or governments considered significant, then either could make use of these linkages to protect themselves and/or wildlife. These ideas are expressed in the concept of conservation, with its limited bases for restricting Native activities, and its priority to those activities over sport hunting and fishing.

However, in practice, the central issues were who would exercise jurisdiction to enforce this principle and to decide if, when and what restrictions could be placed on sportsmen's activities and/or on Native harvesting activities because of the need to conserve and manage wildlife and ecological systems, or the need to protect the priority of Native harvesting.

The Exercise of Authority for Wildlife Conservation

The Native people sought authority over wildlife and environment, and the governments of Quebec and Canada refused to agree to such authority. The problem of who had the authority to manage the resource and the rights was the central point of conflict in the negotiation of the hunting, fishing and trapping regime, and because the government position could not be substantially modified with the leverage available, this problem gave rise to many of the distinctive features of the regime.

Two criteria guided the Native negotiators in their efforts to find measures which could reduce the problems if governments exercised authority: 1. the need to assure that the special Native rights, interests and concerns would be effectively protected even if authority were exercised primarily by governments; and, 2. the need to assure that the major areas of conflict with non-Natives, particularly sportsmen and developers, could be effectively regulated so that Cree society and economies could survive and be enhanced despite such conflicts. These concerns gave rise to several negotiating strategies for exploring various kinds of appropriate mechanisms. One was to develop a series of principles which would be legally binding on the governments which would exercise management authority with respect to wildlife, environment, Native harvesting

and non-Native sport hunting and fishing. The aim was to develop principles which would effectively restrict the exercise of powers by the governments so as to assure that they exercised their decision-making powers in ways that would give priority to Native rights and interests, despite the considerable pressures which could be brought to bear on government policy by sportsmen's associations, outfitters' associations, the outdoors industry, media, and some ideologically committed wildlife managers. The principles would place the governments under a legal obligation, and would provide the Native people with an ultimate legal recourse against abuse and/or abandonment of government responsibilities to them.

Second, it was clear that because management authority was generally not to be transferred to Native peoples, much of the Native participation would be consultative, and measures were sought which would make consultation effective with respect to the operation of the regime and the protection of Native interests. The second aim was therefore formulated in the establishment of a joint Native-government body that, while mainly consultative, would be a maximally effective means of pursuing: realistic solutions to wildlife use problems; solutions which were compatible with Native activities and society; and solutions which were acceptable to the Native people.

The actual negotiating process in which these two strategies were pursued cannot be recounted in this brief paper which focusses on the outcome. Nevertheless, it should be noted that the cooperation of the Native people was recognized to be essential by many government negotiators if wildlife conservation decisions were to be effectively enforceable under northern Quebec conditions.

The key principles which were legally binding on the regime were the principles of conservation, priority to Native harvesting, and minimum of regulations. The JBNQA and the legislation which implement it provide that all governments which implement the hunting, fishing and trapping regime will apply the principle of priority to Native harvesting in their decisions and activities. The principle of priority to Native harvesting is incorporated into the definition of conservation cited above, which states that management of the productivity of living resources and protection of ecological system shall, after endangered species are protected, ensure primarily the continuance of the traditional pursuits of the Native people, and secondarily the sports hunting and fishing needs of non-Natives. Further, a specific mechanism, a guaranteed allocation of harvests, was established as one means of giving effect to this principle, I will discuss this mechanism below.

The principle of priority of Native harvesting is elaborated also in the subsidiary principle that a minimum of control or regulations should be applied to Native people. This principle provides that conservation decisions affecting Native people should be implemented first through guidelines and/or advisory programs, in effect Native self-regulation according to cultural traditions. Regulations may be used if the former mechanisms are not effective or if they are inappropriate, but in that case the responsible authority shall make regulations with a minimum of impact on Native people and harvesting activities. And, the responsible authority is under obligation to take into account the local food production, Native social organization, access to resources, and the labor and cash economics of Native communities, when promulgating such regulations.

The second strategy adopted was the formation of a joint body, the Co-ordinating Committee on Hunting, Fishing and Trapping, comprised of representatives of the governments of Canada and Quebec, and of the Native authorities, the Cree Regional Authority and Makivik Corporation

(Inuit) and, since the signing of the Northeastern Quebec Agreement, the Naskapi of Schefferville. The committee has a balanced composition, with an equal number of representatives from governments on one hand and Native authorities on the other, and a chairmanship with a tie-breaking vote, which is alternated annually between government and Native appointed members.

The Co-ordinating Committee is established as a permanent body of experts, including Native experts, which is the preferential and exclusive form for the government and Native peoples to formulate regulations and supervise administration and management of the regime. Its powers are mainly consultative and supervisory but it exercises decision-making authority in one area of importance, which I discuss below. When an authority wishes to act it is mandatory that it consult the Co-ordinating Committee to receive its recommendation, and if that authority decides to reject or modify such recommendations, it must discuss such changes with the Co-ordinating Committee again before taking action.

The decision-making power of the Co-ordinating Committee is the right to establish, and bind the governments, to the maximum number of moose and caribou taken in the territory, and to the maximum number of black bear taken in the area where non-Native hunting of this species is permitted. Because of the provisions of the guaranteed allocations of harvests to be described below, this power is in effect a power to regulate both the sport kill of the species and the Native harvest of those species.

However, the general problem of regulating the conflicts between non-Native sports hunters and fishermen and Native hunters, trappers and fishermen remained critical, because of the government control of management authority, and in this area as well the Native negotiators sought to limit and define the exercise of that authority.

Regulation of Conflicts Between Native and Non-Native Users of Wildlife Resources

In the negotiations the Native negotiators sought by several means to regulate present and future conflicts between the wildlife resource use by Natives and that by sports hunters and fishermen. One means was to limit the area of potential conflict, the second was to establish a mechanism to operationalize the priority of Native harvesting over sport hunting and fishing, the third was to design an outfitting regime that would provide an important degree of practical Native control over aspects of non-Native hunting and fishing activities.

The Native people attempted to limit the potential conflicts with non-Native sports hunters and fishermen to the species and the geographical areas in which they were already established, and to prevent any expanded conflicts. In general, this procedure was successful, and indeed some areas of conflicting resource use were eliminated. The result of this process was to establish several general species and geographical areas which were recognized as being for Native use exclusively.⁶ The negotiations established an exclusive area for harvesting from which all non-Native hunting and fishing activity was excluded, unless the Native authorities granted permission. These areas, Category I and II lands respectively, amounted to approximately 2,160 plus 25,000 square miles respectively for the Cree and 3,130 plus 35,000 square miles respectively for the Inuit. For the Cree this comprises about one-fifth of the area of their traplines.⁷ It was always recognized that such lands would be insufficient as a general means of protecting Cree harvests, because of their limited extent, however the ability of sections of land of this size to offer protection for a portion of the harvests of a Native community varied enormously depending on hunting patterns.⁸

In the hunting, fishing and trapping regime, category I and II lands were only one of a number

of measures used to reduce and regulate conflicts over the use of wildlife resources, and a decision was taken by the Cree during the negotiations on hunting, fishing and trapping regime not to negotiate for marginal increases in the sizes of these categories of land, but rather to negotiate for a stronger regime in the remainder of the territory, called category III lands. This was decided because Cree harvesting would clearly still be dependent on category III lands. It was therefore in the provisions for a guaranteed level of allocation of kills rather than in the provisions over categories of land that the Cree primarily sought to reduce wildlife resource use conflicts.

Several mechanisms for operationalizing a priority to Native harvesting were discussed during the negotiations. One was to guarantee a harvest per Native hunter, another was to guarantee the Native people a percentage of the total kill of a species, a third was to guarantee the Native people a fixed level of harvest, if permitted by animal populations. The first option was dropped early in discussions because it was unacceptable to governments. The choice of the latter of the two remaining mechanisms was based on the conviction that the most critical period for the maintenance of subsistence production occurs when game populations decline for either natural reasons, or because of development or over-hunting/mismanagement. It was considered preferable to have a guarantee of a fixed level that effectively would cut off sport hunting or fishing when animal populations declined and assure the entire available catch to the Native people, rather than to simply be guaranteed fixed percentage of the declining kill, and have sport hunting continue. This would assure a higher Native harvest of a species in the years when there were low populations of that species than would the alternative formula, thereby protecting subsistence production to the extent possible. This fixed level of guarantee, however, was only acceptable to the Native people if it was linked to a provision that made clear that larger kills were possible, and that allocations above the guaranteed level would be based on need.

Because it is effectively impossible to guarantee actual harvests over time, the mechanism finally adopted provides for the governments and Native peoples to establish fixed guaranteed levels for allocation of kills to Natives based primarily on the results of a joint research project into the Native harvests of wildlife occurring during a seven-year period (Feit 1980, Feit *et al.* 1976, 1978, 1979; Kemp *et al.* 1976, 1979). Once the guaranteed level is established, it partly determines how the permissible kill in any one year is allocated between Native and non-Native users. When the estimated kill permissible from a wildlife population in a given year is equal to or less than the guaranteed level, the entire kill is allocated to Native people. When the permissible kill of a wildlife population in a year is higher than the guaranteed level, then the Native people are guaranteed an allocation of at least the guaranteed level, and the balance of the permissible kill is divided between the Native people and non-Native sportsmen according to their needs, with the proviso that some of that balance must be allocated to the non-Natives. This mechanism for giving effect to a priority to Native harvesting is a major means by which the kill taken by sports hunters and fishermen is to be controlled, so as to limit conflicts with Native hunters. The mechanism is only used when conflicting use creates a conservation problem. Furthermore, while quotas are given priority as the means of implementing allocations, other management techniques are to be used as is appropriate.

Other areas of Native concern with respect to non-Native hunting and fishing were to have some effective control over the times, places and ways non-Natives hunted, and to assure Native people that they would receive a higher share of the economic benefits that are produced from outfitting for sports hunters and fishermen. The outfitting provisions established in the hunting, fishing and trapping regime therefore provide that: the numbers, times and places where non-Natives may

hunt or fish in category III will be regulated; outfitting shall be a principle means of that control; as the number of outfitting facilities grows, non-Native hunters and fishermen shall increasingly be required to use such facilities; Native people shall have a right of first refusal which they may exercise in three out of ten cases of new or transferred outfitting establishments; this right shall continue for thirty years, and its continuation will be reviewed at that time; to the extent possible non-Natives shall be required to use Native guides.

In summary, several means were used to set up a regime in which while authority for conservation of the resource rested with governments, a combination of restrictions on that authority would exist: legislated Native rights; principles recognizing the priority of Native rights and interests; and operational procedures for giving effect to those rights and priorities. These provisions were negotiated with the aims of protecting Native harvesting activities and reducing conflicts between those activities and non-Native sport hunting and fishing. This also should have effectively protected the wildlife resources as well from depletion through over-hunting, but a major problem remained because these provisions would not protect the wildlife resources from the impacts of development.

Regulation of the Impacts of Development on Wildlife and Harvesting

The basis of the negotiation of the JBNQA was, on one hand a specification and enshrinement of Native rights, and on the other hand an opening up of the James Bay and Northern Quebec territory to non-Native development. These positions, established early in the negotiation process structured much of the detailed negotiations. In the case of the negotiation of direct provisions for environmental and social protection, the insistence on opening the territory to development prevented any substantial transfer of authority from the governments. It also limited both the form and effectiveness of the restrictions on the exercise of government authority, and it limited the effectiveness of the regime to clearly specify when development should be restricted or stopped.

The direct measures for environmental and social protection are an impact assessment process and a consultative body on regulatory and administrative measures. These are advisory bodies and final decision-making power rests with the appropriate government administrator: a Native official in the case of the category I lands; a federal or provincial government administrator, according to jurisdiction, on category II and III lands, i.e. in most of the territory.

In brief, effectively all projects which may have significant impact on the Native people and / or the environment are to be subject to assessment, although there is a complex procedure involved. The nature of the assessment required is decided by the appropriate government administrator on the advice of a joint and balanced, Native / government, evaluating committee. The assessment statement is reviewed by other joint review committees composed of a majority of government appointees, whose recommendations are received and acted upon by the appropriate government administrator. An advisory committee on the environment recommends to and is consulted by the administrators on all regulatory and administrative measures needed for environmental and social protection. There is considerable opportunity for the expression of Native interests and concerns through the procedures established.

The actions of the administrators, the governments, and all of the advisory bodies are constrained to the extent that they are bound to give due consideration to a series of principles, which emphasize Native interests, but also make clear that objection to development cannot be blanket. The principles to be considered include: protection of harvesting and land rights of Natives; protection of Native people, societies, communities and economies; protection of

wildlife resources, the natural environment and ecological systems; minimization of impacts of developmental activity on Native people and communities; rights and interests of non-Natives; and the right to lawfully develop.

This regime is as strong, or weak, as the policies of the governments which appoint the federal and provincial administrators. Under present circumstances it is a weak regime (cf. Freeman and Hackman 1975; Usher and Beakhurst 1973). Whether it becomes stronger with time depends on factors beyond Native control, on the general emphasis placed on environmental and social protection in Canadian and Quebec northern policy.

Under these conditions it was clear that significant development will occur in the future in the James Bay and Northern Quebec territory, and the key issue facing the Native people and their negotiators was whether or not conditions for maintenance of a viable Native hunting society might be maintained despite these developments. Several types of provisions were negotiated in the JBNQA to attempt to assist Cree hunters to continue their activities and economy despite the impacts of development. As I have already indicated, harvesting rights were recognized to be exercisable wherever physically possible, subject to certain limited restrictions. This assured that the legal taking of land for development purposes would not preclude use of the land. The key problem was the actual physical transformation of the land and its wildlife resources by development activity, and the impacts of such transformations on harvesting activities.

In order to survive impacts brought about by the reduction of wildlife populations, the Native people were clearly going to have to have access to other wildlife resources. This could happen in three ways. First, in the case of those species for which there was a substantial non-Native kill as well as a Native kill, any reduction of the populations of these species populations as a result of development activity in the territory, would result in a consequent reduction in sustainable yields which, given the principle of priority to Native harvesting, would be reduced first from the total non-Native sport kill. Thus, for certain key species, impacts on the total Native kill could be moderated by the operation of the guaranteed allocation of harvests and the principle of priority to Native harvesting.

However, this buffer works at a generalized level, and it does not reduce impacts on individual Native hunters whose traplines are affected by development. For these men alternative means of hunting had to be provided. Further, not all important species that would be impacted sustain high non-Native kills.

One response to the impacts to be felt by individual Crees, was to establish a guaranteed annual income program which provides a payment averaging approximately \$5,800 per family, indexed to rises in the cost of living, for all Cree hunters who live by harvesting as a way of life. The Income Security Program agreed upon provides an annual guaranteed income to Cree hunters who meet the basic requirements. Requirements for participation are, generally: a) that more time be spent each year in hunting and related traditional activities than is spent in wage employment; and b) that at least 4 months be spent in hunting and traditional activities of which 90 days are out of settlements "in the bush". The main payment was in 1979-80 a \$16.64 per diem for the head of household, and a similar amount for the consort, for every day spent "in the bush" in hunting and related traditional activities, paid four times a year (Scott and Feit 1980; La Rusic 1979; Scott 1979, 1977).

This program was established to provide economic security for Cree hunters in the face of changing conditions, and in part, provide them with the means to maintain, modify or expand harvesting activities. It was intended that the improved funds available to hunters could be used to

pay for transportation to travel to more distant or isolated wildlife resources, to improve hunters' equipment which could improve the efficiency of harvesting at a time when other factors may lead to declines in efficiency, and to improve the levels of security experienced in the bush during a time of disruption caused by development.

The provisions of the Income Security Program are complemented by the provision for a Cree Trappers Association and a Wildfur Program, and by provisions for a remedial works corporation (SOTRAC) to provide programs responding to the impacts of the first phase of the hydro-electric development, La Grande Complex. These bodies could provide additional funds to hunters where ISP payments are inadequate, for example as transportation subsidies. However, their major role is to provide the services and infrastructure needed by hunters and to provide adequate Cree controlled access to the goods and the markets with which hunters enter exchanges. As such these agencies will be involved in the provision of bush radio communications, airplane dispatching services, construction of skidoo trails, base camps and improved bush camps, provision of fur marketing services, and improvement of equipment supply to the villages. The remedial works corporation is also mandated to undertake programs to improve the biological productivity of the habitat, although it is not clear that such measures could effectively improve Cree harvesting.

Conclusions

A key question is whether this combination of articulations would be such as to allow the Cree to maintain their subsistence production at adequate levels and protect the structure of their culture and society? There is no definitive answer to this question at this time. Most of those involved in the negotiation process were, on the basis of all the evidence available, hopeful with respect to the outcome. The final assessment and decision however was with the Cree people in the villages.

The Cree people evaluated the JBNQA from several points of view and, I believe, most carefully on the basis of the question of whether it would in total improve their chances of maintaining their way of life for future generations. On the basis of their considerations, they accepted the provisions of the JBNQA and agreed to withdraw their court injunctions against the James Bay project. My data suggest that they too feel unsure whether these provisions will work, but they thought it better to try them than to go on under the previously existing conditions. The Cree are therefore now embarked in the process of seeing whether they can make the agreement meet their expectations.

For those with a general interest in aboriginal land claims, the lives of northern Native peoples, and hunters more generally, aspects of the JBNQA explore problems that have yet to be extensively addressed elsewhere, and they explore new responses that will need to be assessed as possible solutions to those problems.

In review, I have indicated above, about one-dozen articulating measures which are incorporated into the hunting, fishing and trapping regime:

1. a legal right to harvest;
2. legal obligation to give priority to Native harvesting;
3. legal obligation to conserve wildlife and habitats;
4. recognition of culturally defined structures and authorities, and mechanisms of self-regulation;
5. obligation to minimize regulation of Native harvesting and the impacts thereof;
6. creation of a permanent obligatory and expert consultation mechanism linking Natives and

government as part of the exercise of government conservation, management and regulatory authority;

7. rules and mechanisms for guaranteeing allocations of wildlife resources between Native and non-Native users;

8. exclusive species and areas for Native harvesting;

9. Native priority in outfitting, and an obligation to use outfitting to control times, places and means of non-Native activity;

10. a social and environmental protection regime;

11. funding to increase Native control of the provision of needed goods, services and infrastructures through new associations and corporate entities;

12. guaranteed annual incomes for hunters.

The effectiveness of these provisions will have to be evaluated.

Equally in need of evaluation is the entire concept of building political articulations between hunting peoples and the national and international political and economic structures which impact their daily lives. Is it possible for such articulations to be adequately linked with local social and cultural structures in a way that does not seriously endanger the integrity and autonomy of those structures? And, is it also possible for such articulations to be sufficiently effective in the regional, national and international arenas to significantly contribute to the success of the hunters' efforts to maintain their culture and society? In my view, the critical tests of the JBNQA articulations have not yet taken place. It will be necessary however, to develop responses to these questions in the light of ongoing experiences with the use of such political articulations as responses to the worldwide crises caused by colonial intrusions into the lands occupied and used by hunting peoples.

NOTES:

1. This paper has been prepared with the help of a Canada Council, Killam Post-doctoral Research Scholarship to complete a study of the socio-political impacts of the negotiation and implementation of the James Bay and Northern Quebec Agreement. The present analysis is part of the longer-term analysis required to critically comment on the agreement as a whole. An earlier version of this paper was presented at the Canadian Sociology and Anthropology Association meetings in Saskatoon, June 1-4, 1979. I want to thank Colin Scott for commenting on this earlier version.
2. For exceptions, see recent discussions of the new emphasis now being placed on hunting rights and game management problems in Alaska in Brelsford, 1980 and Worl, 1979. For a consideration of these problems in relation to the James Bay Cree see La Rusic *et al.* (1979), a presentation that takes a different view from that expressed in this paper.
3. Data on the land claim negotiations were gathered while serving as a consultant to the Grand Council of the Crees (of Quebec) and the Cree Regional Authority, since 1973. The focus of this paper is therefore based primarily on data on the Cree situation as opposed to the situation of the Inuit, although both were jointly involved in the negotiation process.
4. It should be noted that such a right is not part of the usual rights of ownership of land and therefore, in one form or another, must be explicitly considered in a land claims agreement that is to guarantee Native aboriginal hunting rights, whatever the land ownership provisions of the agreement may be. Furthermore, many important resources migrate over very large areas of the land and seas, and are not restricted to the territories over which Native peoples are making claims.

5. It is also subject to the resolution of one old problem, the application of the Migratory Birds Convention (MBC). The government of Canada agrees in the JBNQA to seek a modification or amendment to the MBC to eliminate conflicts between its provisions and the regime established by the JBNQA, including the right to harvest. In fact a modification which promises to remove the major area of conflict has now been mutually proposed for ratification by both the United States and Canadian governments, although this agreement is not itself a direct result of the JBNQA. Nevertheless, outstanding problems remain with respect to the MBC. In the interim, and until all such conflicts are removed, Canada and the Native people could only agree to disagree, the Native people maintaining that they do not recognize the application to them of the MBC, and Canada maintaining that it does not recognize that such provisions do not apply. An unwritten policy of leniency continues in effect on the ground, and Canada remains under obligation to remove such conflicts as continue to exist.
6. Native people were assured an exclusive right to take some 25 to 30 species that were not typically utilized by non-Native hunters. These included all furbearers, non-sport fish (whitefishes, sturgeon, suckers, burbot and hiodons), porcupine, woodchuck, black bear in the Cree area north of the area of towns in the south of the region, and wolves in the Inuit area. Recent research indicates that these species account for approximately one-third of the annual Cree food harvest, on the basis of weight, and all of the commercial fur pelt harvest.
7. The category I land was distributed at immediate settlements with extensive Native control but not ownership, the category II land around category I. The lands were distributed by size of Native settlement and generally selected primarily on the basis of the productivity of the land.
8. At an extreme, in one year one Cree community was found to have caught nearly 90 percent of its annual food harvest within the approximate boundaries of its category I and II lands, although this amount includes riverine and coastal harvests not technically in categories I or II. In another year it caught nearly 70 percent in the same area. At the other extreme, one Cree community was estimated to catch about 15 percent of its annual food harvest in its category I and II lands. The potential importance of these lands is therefore variable, although they all did serve to reduce conflicts with sport hunting and fishing in important areas near Native settlements.

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