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CHAIRE DE RECHERCHE SUR LE
DÉVELOPPEMENT DURABLE DU NORD

NORTHERN SUSTAINABLE
DEVELOPMENT RESEARCH CHAIR

Institutional Development and Resource Development



Knowledge Network on Mining Encounters
and Indigenous Sustainable Livelihoods

The Case of Canada's Land Claims Agreements (Modern Treaties)

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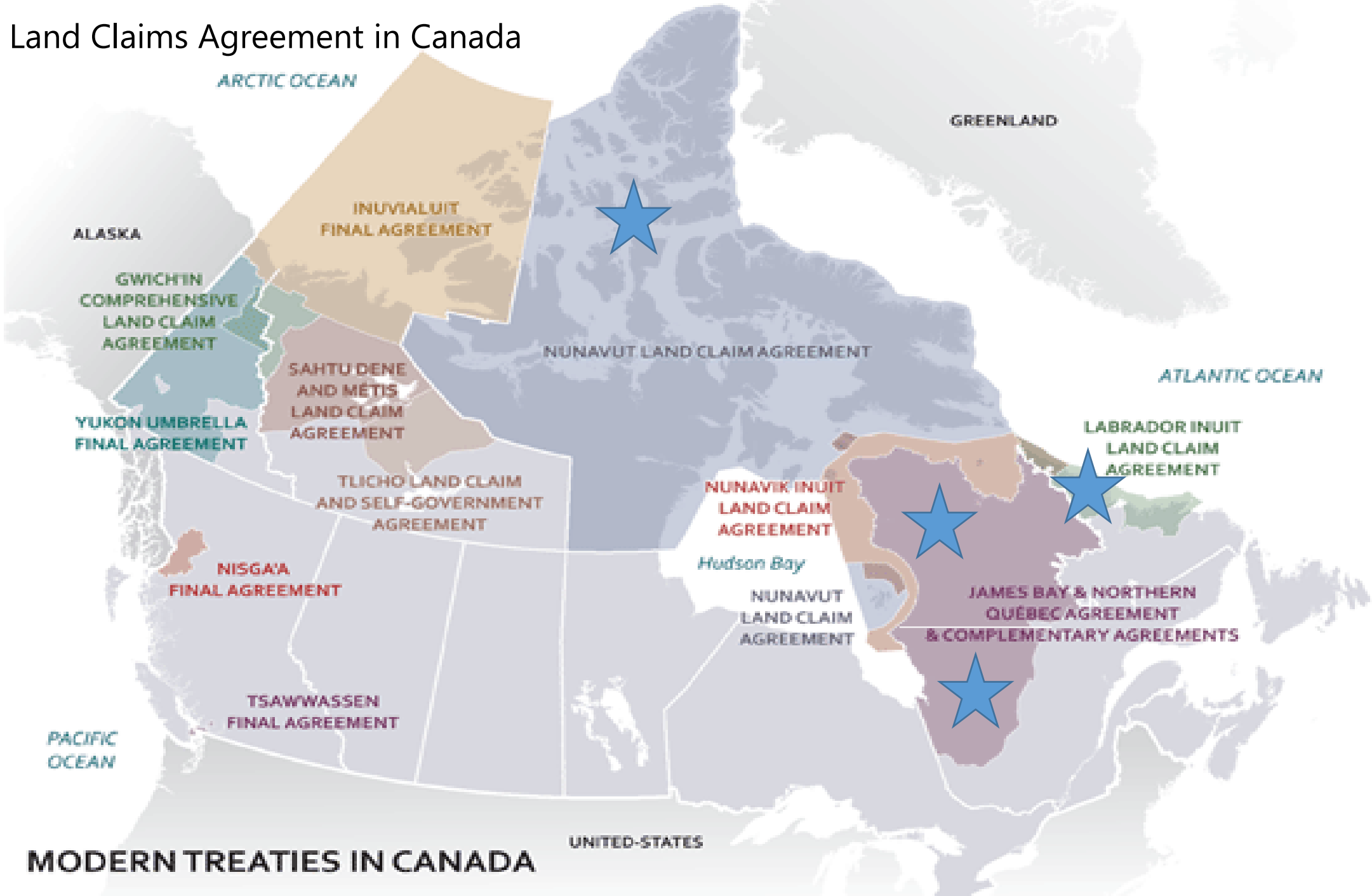
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The Debate

- Ongoing debate around the so-called “resource curse”,
- Resource development corrupts economies and institutions
or
- Strong institutions can mediate the impact of resource development.
- 2 questions:
 - With the institutional development created by **land claims and self-government agreements**, are Indigenous peoples able to choose which resource development can take place on their territory?
 - Are they able to benefit economically from such development?
- Four case studies

Land Claims Agreement in Canada



CONSTITUTION

- 1867: Section 91.24 of the British North America Act
- -----
- 1982: Constitution Patriation: recognition of existing Aboriginal rights (art 35)

SUPREME COURT OF CANADA

- 1973 Calder Case: Recognition of Aboriginal rights
- -----
- 1984: Sparrow: Aboriginal rights and consultation
- 1996: Van der Peet Trilogy: Definition of Aboriginal rights (activities)
- 1997: Delgamuukw: Recognition and definition of Aboriginal title (land)
- 2004 Haida River and Taku Nation: Duty to consult, accommodate and in some case consent **but no veto**
- 2014 Tsilhqot'in case: First Aboriginal title recognized

FEDERAL POLICIES

- 1969: Trudeau's White Paper
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- 1975: Canada Land Claims Policy
- 1995: Canada Self-government policy

IBAs

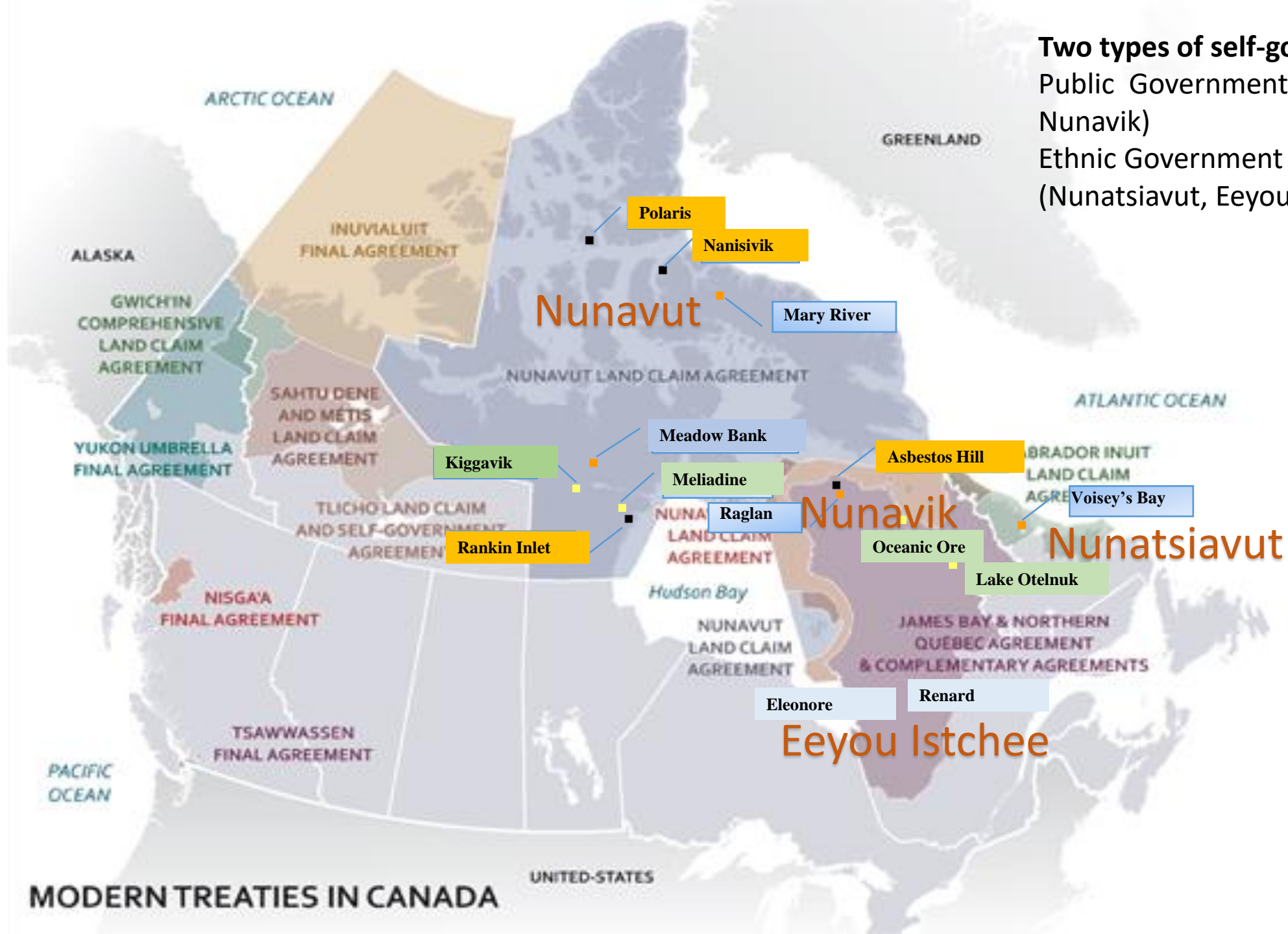
Canadian Land Claims Agreements

- Specific land regime (collective property and additional rights on crown land)
- A share of resource development profits (only recently)
- Specific Impact assessment regime but **no veto on resource development**
- Since 1995, self-government agreements are negotiated at the same time

Land Claims and Resource Development

- Resource development has been key both to development of land claims policy and to negotiation of land claims agreements (LCAs)
- The LCA policy aims mainly to clarify the government's right to develop the land. In fact, land claims agreements are often signed in order to facilitate a specific development project.
 - JBNQA was signed so that hydroelectric development could move ahead
 - IFA was signed at a time when companies were pushing for oil and gas drilling in the Beaufort Sea.
 - Voisey's Bay Project was instrumental for the conclusion of the Labrador Inuit Land Claims Agreement.

Two types of self-government
Public Government (Nunavut, Nunavik)
Ethnic Government (Nunatsiavut, Eeyou Istchee)



MODERN TREATIES IN CANADA

The Cree Nation and the JBNQA

- First Canadian treaty signed in 1975
- No share of resource development until 2003
- Co-management of Impact assessment process
- Renegotiation of JBNQA and Paix des Braves Agreement (2003)
- Eeyou Istchee/Baie-James regional government
- Tight control of development projects through IBA and political influence
 - Wemindji Choice: Eleonore vs Azimuth
 - Matoush mine and Quebec moratorium



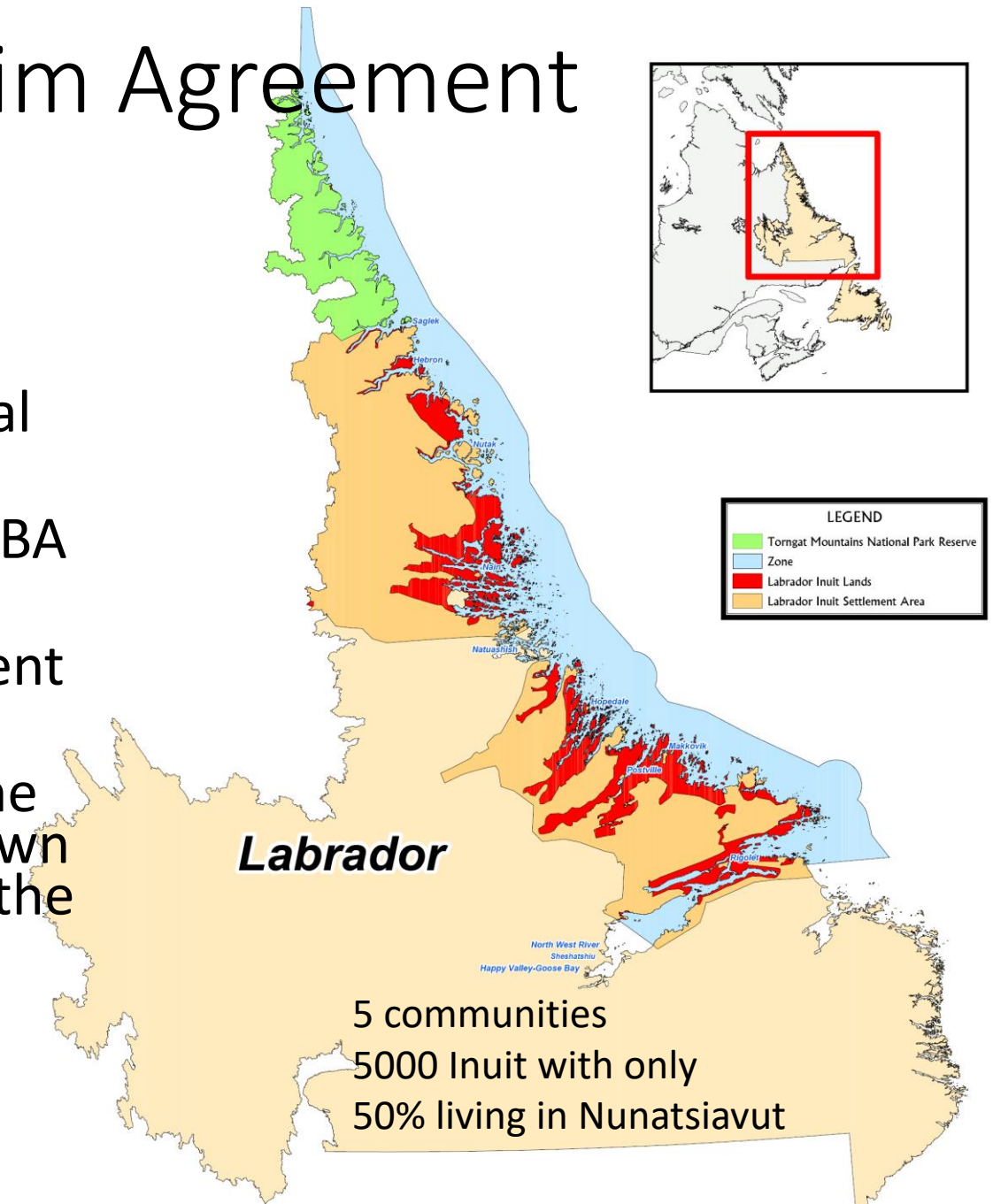
The Nunavik Inuit and the JBNQA



- Similar agreement to the Cree
- Co-management board with decision-making power on resource development through the Impact assessment regime (but possible veto from Québec)
- Very few development projects
 - One past mine: Asbestos
 - Two active mine: Raglan (1995) and Canadian Royalties (2013)
 - Many active projects : Aupaluk, Lake Otelnuk, Ahrsam, Strange Lake,

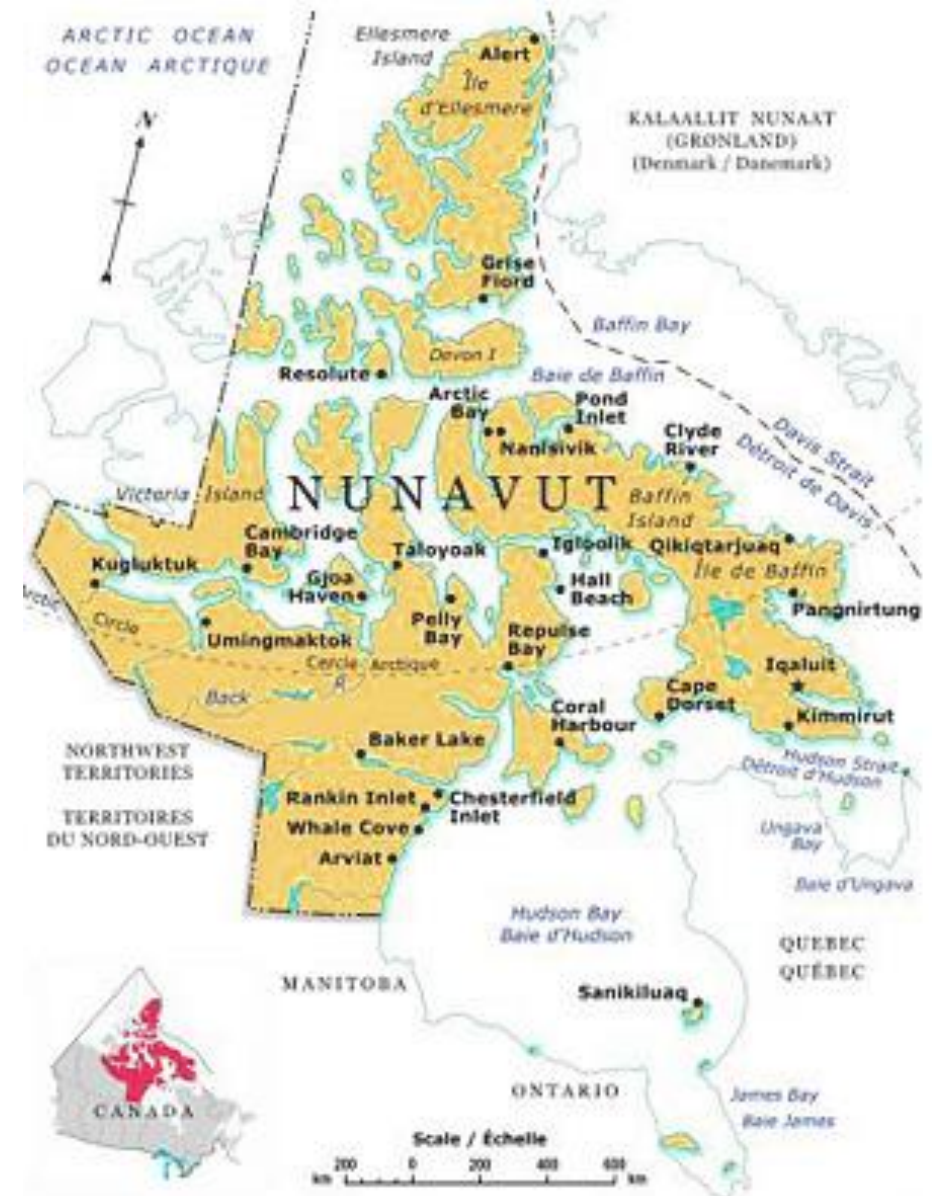
The Labrador Inuit Land Claim Agreement (Nunatsiavut)

- Signed in 2005
- The agreement was a condition for approval of the Voisey Bay mine by the Inuit
- The Labrador Inuit Ass. has also signed an IBA with the mining company
- The government funding is in part dependent on resource revenues
- A study on the economic impact of the mine on the 5 Nunatsiavut communities has shown that it was neither the main employer nor the main source of revenue
- Lifting the uranium moratorium....



The Nunavut Land Claim Agreement (Inuit)

- Based on a court case on uranium mining in Baker Lake in 1972
- Signed in 1993
- Creation of Nunavut in 1999: Public Government but on a territory with an overwhelming majority of Inuit (88%)
- The Inuit organizations are distinct from the government and are signing the IBA and collecting the royalties
- Two mine in operation: Mary River and Meadow Bank
- A very controversial project for an uranium mine (Kiggavik) in Baker Lake, approved by the GN, the Inuit organisations but with a very divided community.



Conclusion

- Two initial questions
 1. are Indigenous peoples better able to choose which resource development can take place on their territory?
 2. Are they better able to benefit from such development?
- **IBAs do ensure economic benefits** through job creation, contracts for Indigenous businesses, and a share of the profits. However, **this wealth often fails to contribute to the development of communities** since Arctic villages have little capacity to retain wealth because of intense economic leakage.
- According to the data we have compiled, **resource development does not account for a large proportion of the local economy** for the four-case studies.
- Finally, the four cases presented points out to the importance of having strong **institutional capacity** in order to control better the **IBA process and to choose with development can go ahead**. This is congruent with the idea that institutions are a key variable in the capacity to benefit from resource development.

And if you want a more detailed account

- Rodon, T. (In Press). Institutional Development and Resource Development: The Case of Canada's Indigenous Peoples. *Canadian Journal of Development Studies* (pp. 1–17).
- Papillon, M., & Rodon, T. (2017). Proponent-Indigenous agreements and the implementation of the right to free, prior, and informed consent in Canada. *Environmental Impact Assessment Review*, 62, 216–224.