

## Autonomy and legal systems of Greenland and Nunavut

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### Abstract

The scope of Greenland Home Rule or Nunavut governance institutions does not embrace Inuit judicial powers or an independent legal system. At the same time, representatives of Inuit communities and prominent scholars are advocating for aboriginal justice and law reform of the existing legal mechanisms, which are often alien and ignorant of traditional indigenous forms of social control.

By using the examples of Greenland and Nunavut and by applying their experience to the Inuit of Chukotka, this paper aims to find out: whether the scope of indigenous autonomy in the Arctic should include the right to an independent legal/judicial system for Inuit and to what extent *lex loci*- Inuit customary law- can be adjusted to the existing legal systems for the better fulfillment of Inuit aspirations for their governance.

When tracing the traditional system of social control within Greenland and Nunavut, it was revealed that there was no legal system of law, as law is understood in “western” societies. However, the traditional Inuit society carried a number of methods of social control, which functioned as law and created a basis for Inuit natural norms of justice.

Currently, these norms are underused or non-existent because of colonial practices and changes in the Inuit livelihood. Therefore there is a need for reconsideration of modern legal systems of Greenland and Nunavut with due respect to the Inuit perspectives on law.

Examining the framework of administration of justice and legal systems of contemporary Greenland and Nunavut, it is argued that there is no formal legal obstacle for creation of Inuit justice system within governance models of these Arctic jurisdictions. Though political, social and technical conditions do not favor this, the establishment of Inuit justice would make a positive step forward in the political autonomy of Greenland and Nunavut.

Finally, the paper analyses the lessons to be learned by the Russian Inuit of Chukotka in their quest for autonomy.

## Introduction

*The trouble is that it's so different, it's so dangerous, it's so wrong to impose a foreign alien system on people in a totally different culture.*

*Hans Christian Raffnsoe, Chief Judge, High Court of Greenland<sup>2</sup>*

The recent rebirth of interest among Russian scholars, mostly ethnographers,<sup>3</sup> to the problems of juridical anthropology and its application to the indigenous peoples of the North and the Far East, requires further research and theoretical consideration. The introduction of indigenous customs to modern Russian legislation is complicated by national-regional policies, legal philosophy of legislators and problems connected with the gap in indigenous and the “others” perceptions on existence and the usage of ‘*lex loci*’. In light of recent changes to the Federal Russian legislation on indigenous peoples rights<sup>4</sup> and growing indigenous movement toward political self-determination and self-governance, the question of indigenous legal acculturation and co-existence within the dominant legal system becomes of utmost importance.

The examples of Nunavut public governance and Greenland Home Rule show that reforms of legal mechanisms, which are often alien and ignorant of traditional Inuit forms of social control, are at stake for these Arctic jurisdictions as well. From the perspective of comparative research, this paper aims to find out whether the scope of autonomous jurisdiction for indigenous peoples in the Arctic should embrace judicial powers or an independent legal system. Given that the Inuit population of Russia is connected by kin with the Inuit of Circumpolar world, the experience of Inuit of Greenland and Nunavut is of particular interest for the Russian Inuit (Yupik)<sup>5</sup> of Chukotka and is valuable to other Indigenous groups of the North.

To understand the possibilities of law reforms in contemporary Greenlandic and Nunavut societies, this paper has a twofold goal. Part one traces the traditional system of social control within Greenland and Nunavut. It argues that there was no Inuit legal system or law as law is understood in ‘western’ societies. But traditional

Inuit society carried a number of methods of social-behavioral control and beliefs, which functioned for a law and order, and created a basis of Inuit 'customary', 'informal', folk or natural norms of justice. This links the study to the main issue: how traditional Inuit patterns of social control could be adjusted to the system of Danish and Canadian laws with profound differences in controlling mechanisms and law enforcement. It further questions the possibility of incorporation of Inuit customary norms, as the Nunavut and Greenland societies rely less on the old Inuit law-ways and often copy the imposed Danish - Canadian legislation. If there is a gap between 'western' and Inuit traditional systems of social control, but the latter are underused or disappear because of colonial practices and changes in the Inuit livelihood, then what legal/ judicial system would suit the Inuit?

Part two examines the legal systems of Greenland and Nunavut after colonization and administration of justice in contemporary Greenland and Nunavut societies. It argues that there is no formal legal obstacle for creation of an Inuit justice system within Greenland and Nunavut jurisdictions. However, social, political and technical conditions do not favor the establishment of an independent Inuit judiciary. The transfer of judicial powers from Copenhagen to Nuuk (Greenland's capital) or creation of an independent Inuit justice in Nunavut would not threaten Danish or Canadian sovereignty. That could make a positive step forward in the political autonomy of Greenland and Nunavut.

As it follows from the working document "Building Nunavut",

*Inuit turn to the formal justice system much less than other people, preferring their own traditional methods of working out disputes within their social system...It is important that an administrative framework for justice matters be developed with due regard to the cultural traditions and needs of the Nunavut people<sup>6</sup>...*

Notably the Nunavut and Greenland law reform commissions tried to achieve this goal. In the context of possible future changes to the Home Rule structure and Greenland's administration of justice system<sup>7</sup>, this paper might become a part of the legal history.

## **General features of the Inuit traditional legal order and mechanisms of conflict resolution**

*Law is, within its sphere, the instrument by which a whole community is organized and works; it is also the expression of that working organization. The law and its rules must suit the needs and have the approval of the whole community if it so to be observed; and it is, above all, the needs of the community that determine that approval and shape the law.*

*A. S. Diamond<sup>8</sup>*

Inuit law-ways are embedded and interdependent upon their culture. Community and independent households shaped the structure of traditional Greenlandic and Nunavut societies. Therefore, any perception of Inuit traditional norms and order should be evaluated from the prism of Inuit understanding and practice of socio-cultural patterns of behaviour. Given that only a few Inuit representatives<sup>9</sup> have expressed their opinion on that matter, the comparison of Inuit of Greenland and Nunavut traditional legal concepts is complicated by differences within Inuit groups inhabiting these regions and limited by the contextualist and textualist interpretation of extensive Euro-American literature on that subject.<sup>10</sup>

Analysis of this literature draws striking differences between the Inuit and Western legal beliefs.<sup>11</sup> It shows the complexity and limitations of the study of non-Western social order on the basis of modern law concepts. In attempts to apply Western legal categories to the traditional Inuit order, many scholars addressed the disputable issue: whether traditional Inuit forms of social-control could be considered as ‘law’ in the frames of western legal stream. This led, to “the divergent conclusions as to the presence of law among the Inuit”<sup>12</sup> and different approaches to the nature and concepts of law-ways.

Thus, some authorities maintain that traditional Inuit society exhibited insignificant legal mechanisms and structures.<sup>13</sup> Others recognize adjudicative mechanisms and legal structures among the Inuit<sup>14</sup>. In the words of N. Rouland, “...the denial of legal status to indigenous, non-Western systems of social regulation, including Inuit legal beliefs and practices was merely ethnocentric bigotry on the part of Western legal anthropologists and jurists.”<sup>15</sup>

Inuit representatives claim that they had a system of law and justice prior to colonization.

Susan Inuaraq notes, that:

“Before the Europeans brought their system of law upon the Inuit they had a system of their own like most of societies (p.256) ...The legends and the powers of the elders and shamans were intertwined together to form a very unique system of justice.”<sup>16</sup>

In the words of Zebedee Nungak, it is an erroneous conclusion that:

“...Inuit did not possess any semblance of a justice system before contact with European civilization. That out [Inuit] people lead a nomadic existence in a harsh unforgiving Arctic environment may lead Qallunaat or others to conclude that Inuit did not have a sense of order, a sense of right and wrong. The way it was practised and implemented may have never been compatible with European civilization’s concepts of justice, but that worked for Inuit society in their environment was no less designed for conditions of life in the Arctic than that of Qallunaat was for conditions of their life.”<sup>17</sup>

Further analysis will show that Inuit had strong forms of social control and notions of right and wrong, but there is no unanimous opinion on the qualification of these practices as law or justice as these concepts are understood in western societies. For instance, G. van den Steenhoven finds out by linguistic analysis, that there is no word for ‘crime’, ‘justice’ or ‘law’ in the Inuit language.<sup>18</sup>

N. Graburn explains the antithetical positions and divergent conclusions about the Inuit legal practices by a variant behavior among the Inuit in the field of law and other fields, and flexible judging each situation of conflict (or anything else) in terms of the apparent factors present, which importantly include the personalities of the people involved.<sup>19</sup>

Arguably, traditional Inuit forms of social control and customs played a similar role in the regulation of social conflicts and order, as law does in the Western society. Admitting the difficulties in conceptualization of traditional Inuit law from European-American perspective, the analysis of sources on the Inuit social order allows us to identify the following aspects of traditional Inuit justice and legal concepts:

*First*, Inuit law ways did not exist in written form. They were elaborated by oral traditions (myths, tales, legends), rooted in people's minds (elders, shamans) and transmitted orally from generation to another.<sup>20</sup> As M. Aupilaarjuk puts it,

“The *maligait* of the Inuit are not on a paper. They are inside people's heads and they will not disappear. It is part of a person. It is what makes a person strong.”<sup>21</sup>

*Second*, there was no codification of the Inuit laws as such<sup>22</sup>;

*Third*, animism underlines the Inuit legal thinking. Inuit viewed people and animals as equal creatures and ascribed human characteristics to animals. They believe that man and animals have a soul (*inua*), a character and capacity to think (*isuma*)<sup>23</sup>. “Every object, every rock, every animal indeed even conceptions such as sleep and food, are living.”<sup>24</sup>

*Fourth*, the Inuit religious beliefs and rituals formed the basis of right and wrong doings. The paucity of legal rules in the traditional Inuit system, “is amply compensated for and, in part caused by, the embracing religious norms which control and direct Eskimo social and economic life.”<sup>25</sup> Taboos played the role of regulatory mechanism and confronted the Inuit daily life.<sup>26</sup> However, as Adamson Hoebel notes, “...it rarely gives rise to legal action, even though the consequences of sinful behavior may be believed to result in famine and starvation for the entire community.”<sup>27</sup>

*Fifth*, in the traditional Inuit society the customs serve as a source of law and rights. As N. Rouland states, “In a society with no state control, law cannot arise from sources other than the “*opinion communis*”, and from the repetition of precedents.”<sup>28</sup>

*Sixth*, the rights and duties have a collective-communal<sup>29</sup>, rather than individualistic nature. Consequently, the public-communal opinion has a great value in the following of law ways and no one may break the law without colliding with public opinion.<sup>30</sup>

*Seventh*, traditional Inuit society lacked courts, police, penitentiary or any other forensic or law-enforcement institutions. In the meantime, the ‘administration of justice’ was exercised by the community<sup>31</sup>, shamans and headmen<sup>32</sup>, who often possessed quasi-legal powers. For instance, by initiation of legal action,<sup>33</sup>

“A forceful shaman of established reputation may denounce the member of his group as guilty of an act repulsive to animals or spirits, and on his own authority he may command penance. The lightest penance is abstention from foods designated by the shaman.”<sup>34</sup>

Arguably, there was no need for courts, judges or police as Canadian-Western society -state punishes wrongdoer. In traditional Inuit society the community deals with offender to restore peace.

*Eighth*, Inuit laws were oriented to peace restoration, communal conciliation rather than justice through punishment, which did not exist as an independent concept among the Inuit<sup>35</sup>.

In the words of K. Birket-Smith,

“...in essence it is not the mission of the society to execute law and justice, but exclusively to restore peace, using this word in the medieval sense of the ordinary, regular course of life. On this basis the settlement may, for instance, combine in killing a man or a woman suspected of witchcraft, for such persons are a menace to the peace of the society. The killing is not, however, a *punishment* for the practising of witchcraft, for the society may in the same manner get rid of a man with a wild and brutal temperament, or old or sick people who are a burden upon the settlement.”<sup>36</sup>

*Ninth*, the definition of right and wrong is based on the traditional code of behaviour, which was governed by

“...common-sense, realism, self-criticism and a happy absence of righteousness.”<sup>37</sup> Adamson Hoebel’s

postulates of jural significance in the Inuit culture reveal a uniqueness of Inuit social conduct. For example,

Adamson Hoebel underscores that,

“The third basic postulate (*Life is hard*) and its corollary (*The unsupportability of the unproductive members of the society*) are expressed not in the form of legal injunctions but, on the contrary, in privilege-rights. Infanticide, invalidicide, senilicide, and suicide are privileged acts: socially approved homicide.”<sup>38</sup>

Accordingly, these forms of homicide were legally acceptable in traditional Inuit society and were not regarded as criminal actions.<sup>39</sup>

*Tenth*, the Inuit traditional system of social control was marked by its flexibility in reaction to conflicts<sup>40</sup> and developed a number of mechanisms of dispute resolution for restoration of peace, rather than punishment. Consequently, the determination of guilt and sentence were measured and “...reached individually on the basis of the offender’s situation and not on the basis of the offence itself.”<sup>41</sup> In sharp contrast to the Euro-Canadian definition, traditional Inuit sanctions sought to aid the offender instead of imposing a punishment. This becomes evident from the analysis of traditional forms of Inuit conflict solving. R. Petersen points out the distinction between violence (criminalized) and insult (non-criminalized) actions in the Greenlandic society. In his words, “With regard to non-criminalized actions, the interest of both parties often in efforts to prevent tension from developing into an uncontrolled conflict rather than in indemnifying the victim. In connection with criminalized actions, the reaction was most likely to be revenge.”<sup>42</sup>

*Eleventh*, the traditional Inuit system of rules and beliefs were not universal. They fluctuated according to the situation. N. Graburn notes, that Inuit legal actions represent a case of *situational* pluralism and differed depending on the season of the year.<sup>43</sup> Thus, Inuit vision and application of law-ways were determined by the temperature (coldness) and specific Northern conditions. This implies special spiritual connection with the wildlife and the land, which does not comply with modern ‘Southern’ laws.

*Twelfth*, there was a differentiation of Inuit norms of social control in accordance with nature of the wrongdoing and the persons involved. In the words of N. Rouland,

“For each social level, there was a corresponding legal system: internal family disagreements were settled by the family leader; anything that could disturb the balance of the group as a whole belonged to the *umiliak*.”<sup>44</sup>

*Thirteenth*, the traditional Inuit system was marked by emotionally and audio-visional perception of conflicts and moral norms, rather than contextual interpretation of legal canons. Postulates with juridical functions were embedded in mythological narratives<sup>45</sup>, song duels, dancing and music<sup>46</sup>. Their fulfillment was secured not through sanctions but through the need to be a part of the community. This phenomenon can also be explained

by the character of the Inuit language, which is full of metaphorical ways of describing understandings and lacks abstract legal terminology.<sup>47</sup>

Fourteenth, Inuit forms of social order regulation were based on self-control and methods of conflict resolution, which were shaped in conformity with Inuit values and understanding of right and wrong-doings. Consequently, these norms are not always considered as punishable under the Western law<sup>48</sup> and vice-versa. Even though it is questionable whether the Inuit customary law continues to exist,

according to A. Patenaude<sup>49</sup>, Inuit traditional forms of conflict resolution included:

informal methods like gossip, mockery, derision, ignoring, fear of magic retribution in case of (insult, failing to share food/poor or lazy hunting, theft of property, offences related to women, failure to accept a spouse as gift or failure of wife to accept another man; formal methods like, song/drum duels, physical contests, banishment, execution in case of (theft of woman, meeting strangers, witchcraft, insanity, murder or retributive murder); and individual duty, action by individual required in accordance with custom. It was applicable to infanticide, suicide, assisting suicide and senilicide.

These forms of conflict resolution were not based on the law enforcement mechanisms in the form of an institutionalized authority.<sup>50</sup>

Arguably, the traditional Inuit system of conflict resolution was based on the norms of morality, behaviorism and emotional relief. In the words of Finn Lynge,

“In the old days, morality consisted more of tacit expectations than of formal injunctions, evidently because nobody had the authority to moralize. There can be no doubt that these tacit rules wielded great power, and that pre-colonial Inuit society in Greenland by and large was of a very high moral standard.”<sup>51</sup>

Therefore, such forms of social control as, a public confession, shame, gossip, derision or song duels played an important role. The song duels were of particular significance in the process of conflict resolution and restoration of peace. As Adamson Hoebel observes,

“Used to work off grudges and disputes of all kinds, save murder...the song duels are juridical instruments as they do serve to settle disputes and restore normal relations between estranged members of the community, and insofar as one of the contestants receives a “judgment” in his favor. But like medieval wager of the original actions, which gave rise to the dispute, there is no attempt to meet justice according to rights and privileges defined by a substantive law. It is sufficient that the litigants (contestants) feel relieved - the complaint laid to rest - a psychological satisfaction attained; the juridical song contest is above all things a contest in which pleasurable delight is richly served that the dispute-settlement function is nearly forgotten.”<sup>52</sup>

Consequently, as a sort of psychotherapy<sup>53</sup> through dancing and singing, the emotions were released, and the conflict was brought to the public openly. It is disputable whether the song duels were a kind of public court, with the community (an audience) acting as a judge or jury. It is known that “society stimulated the free expression of aggressive feelings. Song duels thus undoubtedly had a cathartic value for the individual opponents, and in this particular sense conflicts became ‘resolved’.”<sup>54</sup> Evidently, the main purpose of these duels was to restore peace, rather than justice.<sup>55</sup>

According to some authors, the formal song duels could not qualified as legal, because of the lack of application of physical force and voluntary cooperation of both parties without enforcing something.<sup>56</sup> Other scholars argue that despite the absence of physical coercion or sanctions, the song duels were considered to be juridical<sup>57</sup>. As I. Klievan shows,

“...by bringing inter-personal and inter group antagonisms out into the open in this formalistic way, more overt forms of hostility were avoided (p. 9)...and more importance was attached to their (song duels) function as punitive remedies for violation of the norms than to their role in preventing a breach in social relations.”<sup>58</sup>

In addition to the cathartic value, the song duels carried an ethical and psycho-therapeutic significance and were compared by some to be moral lectures<sup>59</sup>. The phenomenon of song duels ceased to exist with the imposition of Western culture. From the discussion above the question becomes: whether there was a need for

forensic mechanisms of justice in traditional Inuit society. Arguably, the norms of natural justice and morality fulfilled this function. Based on Inuit religious beliefs and cosmology, they played the role of inner restraint<sup>60</sup> for wrongs and rights. I. Kleivan expresses a similar position regarding the West Greenland Inuit.

“Social order is maintained not only by external but also by internal controls. Through the socialization process the members of society acquire insight into which behaviour society does and does not value. This knowledge can act as a restriction, so that the wish to behave in a manner unacceptable to others either does not arise or is accompanied by so much mental discomfort that the idea is given up, even if the desire to violate the norms is still present.”<sup>61</sup>

In sum, the study of traditional Inuit law-ways and methods of social control reveal that the Euro-Canadian way is not universal for everyone. In the eyes of the Western legal paradigm, traditional Greenlandic and Nunavut society did not practice law. Being different in several respects from the law of industrial societies, Inuit system of social order and control based on Inuit practiced customs and values, functioned as law for the Inuit. This situation shows that there is another image of law, which may be determined by visual normativity and morals conveyed by the visual images.<sup>62</sup>

Perhaps, as H. Petersen notes, we need

“...to consider whether the visual norms and normative visual cultures may be taking some of the important functions carried out by the written normative culture-creating a minimum of common considerations, values and demand.”<sup>63</sup>

According to this view the traditional Inuit images of law- ways and beliefs could be regarded as law by Western jurisprudence. The question becomes: whether there is a cross-cultural transferability of Inuit natural justice and customs to the legal systems of Denmark and Canada? Is Inuit customary law a part of state law and how is it reflected in the contemporary administration of justice of Greenland and Nunavut? If Inuit methods of social control and law ways are alien to Western concepts of legal justice, then how can imposed alien Qallunaat legal beliefs regulate the Inuit? These issues are crucial to understanding Inuit autonomy, as

according to Euro-Canadian paradigm, judicial powers are the exclusive domain of Danish and Canadian states. Images of traditional Inuit legal path-ways challenge this exclusiveness and question the creation of parallel or independent forensic and law enforcement institutions. Until recently, several authors revealed the very small impact of Canadian law on the legal acculturation of the Inuit of Baffin Island and their little participation in the administration of justice.<sup>64</sup> Some may argue that Canada is a multicultural society, which absorbs various legal traditions – western and non-western more easily than homogenous society of Denmark. However, Greenland's case was different not just for that reason. The question has to be addressed: whether Greenland and Nunavut systems of governance make any difference in this situation? In other words, do Inuit of these Arctic jurisdictions due to creation of Nunavut and development of Greenland Home Rule attain any powers to a greater degree of control over the legal systems?

### **Judiciary and legal systems of Greenland and Nunavut**

*The logo of the Greenland Judiciary is a drum with a drumstick, and in the drum you see two figures. This logo draws on the Eskimo tradition of song duels, one of the devices used to 'solve' conflicts between individuals. Whether this is really a living symbol today, and whether the voice of the drum is actually still heard may be questioned. But you will find the drum hanging on the walls of magistrates' courtrooms throughout Greenland.*

*Hanne Petersen<sup>65</sup>*

Starting with colonization of Greenland in 1721 and the assertion of Canadian sovereignty in the Arctic at the beginning of the last century, in both countries, the legitimacy of Inuit methods of social control were rejected and traditional Inuit ways of conflict resolution, peace management and rituals almost ceased to exist.

Compared to Canada, where the national legal system was imposed on the Inuit<sup>66</sup> "...without any consultation or evaluation as to whether it was appropriate or required any modification to fit the cultural milieu,"<sup>67</sup>

Greenlanders were subject to a dual system of law, which made a distinction between Danish and Greenlandic customary legal practices<sup>68</sup>. Collisions caused by overlapping of Danish and Greenlandic legal systems and the

need for a common legislative scheme and administration of justice<sup>69</sup>, led to the sending to Greenland in 1948 of the Juridical expedition (Jurex)<sup>70</sup> and consequent reforms, based on its reports<sup>71</sup>.

In Nunavut, changes to the legal system were brought with the creation in 1955 of the Territorial Court, which was the first circuit court in the Eastern Arctic<sup>72</sup>. The work of this court under Judge J. Sissons revealed numerous problems of administration of Canadian justice for the Inuit. In attempting to bring justice to every man's door<sup>73</sup>, Sissons tried to encompass Inuit concepts of right and justice into the Canadian system. In his words,

“If another culture lacks some concept allowance must be made for it... Even with a full vocabulary of words it would be not possible to explain satisfactory to all Eskimos the importance of some procedures in the white man's legal system.”<sup>74</sup>

The necessity of accommodation of Canadian justice system to the Inuit legal practices and particular Northern conditions of life was obvious<sup>75</sup>. Gradual changes to the judiciary of the N.W.T. took place until 1999, when significant attempts were made to bridge the gap between traditional Inuit and modern ways in the administration of justice of Nunavut.<sup>76</sup>

In Greenland, this process started in the late forties. Based on Jurex recommendations, the Greenland Administration of Justice Act was introduced in 1951<sup>77</sup>, followed by adoption of the Greenland Criminal Code in 1954.<sup>78</sup> Given the possible changes to the administration of justice in Greenland, connected with probable introduction of the new law on Greenland self-governance within the next 2-3 years, only some of the most distinctive features of the current Greenland legal system have to be mentioned, compared to Nunavut.

First, following the NIC recommendations on ‘unification’ of the court system<sup>79</sup>, the Judicature Act of 1998 established the Nunavut Court of Justice, which has all the powers and rights that the Supreme Court and Territorial Court of the Northwest Territories had before April 1, 1999<sup>80</sup>. In contrast to the Magistrate courts in Greenland with lay judges without legal education but appointed among the Inuit<sup>81</sup>, the Nunavut Court of

Justice is a professional court with judges appointed by the Governor in Council<sup>82</sup> (i.e., federal Cabinet). None of them, however, is yet Inuk or speak Inuktitut<sup>83</sup>.

Second, the Nunavut Court of Justice is a circuit court, a “fly-in” court<sup>84</sup>, which travels all around Nunavut, while 18 Greenlandic Magistrates are local courts. Taking into account extremely high priced means of transportation in the Arctic, unpredictable climatic conditions and non-Inuit composition of the Nunavut Court of Justice, the model of Greenlandic Magistrates with familiarity of local population and permanent community residency seems to be more appealing for administration of justice in circumpolar jurisdictions. Some authorities note, that the delivery of justice services via circuit court makes this institution a foreign entity to the Inuit communities<sup>85</sup>, it has a high rate of acquittals and is known for its delays.<sup>86</sup> Others, point out the benefits of a circuit system, which gives meaning to the representative and public involvement functions of the criminal jury and provides a bridge to traditional native resolution practices.<sup>87</sup>

Third, Greenlandic Magistrates hear all types of local cases, while Justices of the Peace in Nunavut handle only lesser crimes.<sup>88</sup>

Fourth, according to Greenland Criminal Code judges are entitled to tailor their dispositions to the specific circumstances of the offender, while in Nunavut, the sentences are prescribed by judges in conformity with maximum and minimum boundaries of the Canadian Criminal Code<sup>89</sup>.

The Greenland Criminal Code of 1954, which has incorporated the unique features of Inuit law ways and customary law<sup>90</sup>, was tailored to include Inuit traditional beliefs. Being based on the Inuit legal tradition, which aims to achieve neither punishment nor justice, but the elimination of the conflict and restoration of peace, the Code’s sanctions are not measured by the gravity of the crime. Judges are given a broad discretion to impose a wide variety of sanctions on the basis of the individual offender’s personal background.<sup>91</sup> This “Arctic Peace Model,”<sup>92</sup> which aimed for the restoration of harmony in society, could work for small isolated communities, but

it does not answer the contemporary Greenlandic realities. The system of law and justice in Greenland has come under increasing scrutiny<sup>93</sup> and the advantages of codification of Inuit customary law are questionable.<sup>94</sup>

The Greenland Criminal Code has been criticized for lenient sentences, as “...rapists and other sexual offenders are given less severe sentences, than thieves.”<sup>95</sup> The growing amount of new types of crime and cases before the lay-judges and lay assessors, require specific knowledge from the latter. As lay judge M. Pedersen notes from his experience, the largest problems are the recruitment of suitable lay judges, the volume of juridical work, which falls within the normal working hours of the principal occupation, training/education and remuneration for the work.<sup>96</sup> The lack of a permanent prison in Greenland or maximum security penitentiaries, an increased criticism by the community and victims calling for more protection and harsher sentencing<sup>97</sup>, add to the list of administration of justice problems in Greenland. Ineffectiveness of the circuit justice system to solve the issues of crime in the Nunavut communities because of weak knowledge of the traditional Inuit wisdom by mostly Qallunaat juridical personnel, language barrier, case delays, adversarial approach of the Canadian criminal justice, inappropriate leniency in sentencing, partially caused by so called double standard of justice<sup>98</sup> and offenders paradise of correctional institutions<sup>99</sup>, are the least of the problems Nunavut has to deal with as its legacy from the Northwest Territories.

In sum, compared to Canadian experience, which historically imposed its own legal system upon Inuit, Danish legislators attempted to preserve some of the unique features of Greenlandic customary law. Does creation of Nunavut public governance in 1999 or an introduction of Greenland Home Rule in 1979 make a difference in Inuit political or legal capacity to maintain their traditional customs in the modern judicial/ legal systems of these Arctic jurisdictions? In other words, should the concept of governance in Greenland and Nunavut, with the majority of indigenous population embrace jurisdiction of local authorities to create an independent/parallel to mainstream legal system and is there a need for it?

Modern legal systems of Greenland and Nunavut are products of Danish, Canadian and European legal thinking<sup>100</sup>. In both entities there is a phenomenon of mimetic legislation, which often repeat Canadian and Danish laws<sup>101</sup>. This practice causes misunderstanding of legislation by local performers<sup>102</sup> and alienates local population from its enforcement. Compared to unique Greenlandic example of partial incorporation of Inuit traditional law, in Canada, until recently, there was relatively little Canadian jurisprudence about the validity of Inuit law ways. The clear weight of the decisions supports the validity of Inuit customs concerning marriage, divorce, and adoption, as well as their impact upon inheritance, spousal immunity in evidence and related matters.<sup>103</sup> Some elements of Inuit family law were incorporated into the common law by judicial practice within the last decades<sup>104</sup> and attempts were made to integrate Inuit customary law within the overall justice system of Nunavut.<sup>105</sup> However, the question remains, whether introduction of the Inuit judiciary and legal systems is feasible?

One well known Danish legal expert on Greenlandic matter, F. Harhoff observes no ultimate reason why Greenland should be barred from establishing their own courts to settle questions under Greenlandic law<sup>106</sup>. As he notes,

“...according to the Greenland view, the judiciary cannot be excluded from the areas assumed under Home Rule; any autonomous legal system has the right to establish a juridical structure for the solution of legal conflicts within the system itself. The Greenland authorities therefore believe that they are entitled to establish a separate Greenlandic judiciary with independent courts.”<sup>107</sup>

Though legally it is feasible<sup>108</sup>, in practice, “the existing Danish courts proved to be loyal to the Home Rule legislation and there has been no incentive to institute a parallel and costly system of courts.”<sup>109</sup>

The Nunavut Act and the Nunavut Land Claim Agreement do not confer authority to create an alternative Inuit court system or administration of justice. According to some authorities, there is no serious impediment to the establishment of a separate or parallel system of justice for Aboriginal people in Canada<sup>110</sup> and legislative initiatives aimed at vesting greater control over criminal justice in Aboriginal communities do not infringe

constitutional guarantees enshrined in the Canadian Charter of Rights and Freedoms<sup>111</sup>. However, in Nunavut, the introduction of the Inuit justice system was not at the forefront of the debate<sup>112</sup>. This may be partially explained by the new challenges the young government has to face, connected with the building of Nunavut and making it a homeland for all its citizens. Nunavut elders say that Inuit are forced to use the court system they know nothing about and that Inuit ways should be integrated into the Canadian court system, especially in dealing with minor offences<sup>113</sup>. In the words of F. Piugatuk, then a court worker from Iqaluit, a separate justice system for the Inuit is never going to become a reality.

“Because the crimes the Inuit people commit are the same as the crimes white people commit. The Inuit system is usually rehabilitation if possible. We have a system of justice in place and what we have to do is make the present system work to our advantage. Hopefully there will be Inuit lawyers in the future and maybe we can have a hand in making the system a little bit more flexible.”<sup>114</sup>

Indeed, with the opening in 1999 of the Akitsiraq Law School Programme,<sup>115</sup> the lack of Inuit lawyers will be addressed and Inuktitut speaking law graduates “...will naturally tend to look at customary and informal approaches to law and policy development that will ensure the justice system reflects the population as a whole.”<sup>116</sup> Greenland does not have a law school program. However, possible upcoming law and Home Rule system reforms should bring a positive change to the indigenous Greenlandic involvement in the administration of law and justice.

To conclude, Inuit of Greenland and Nunavut adapted to Euro-Canadian-Danish culture and legal systems, even though they were denied the legitimate means of participation in the creation and management of their lives in traditional Inuit law-ways. Public governance of Nunavut and Home Rule system of Greenland opened new opportunities for Inuit involvement in the administration of justice and incorporation of Inuit legal beliefs, even though it is not clear to what extent Inuit legal traditions have survived the Danish/Canadian imposition of legal systems. Since much of Inuit law-ways are informal, it is disputable how customary law is inconsistent

with or complementary to western legal traditions. Thus, theoretically there are no legal obstacles for establishment of an alternative Inuit judiciary, practically it is not clear how it could be done because of eroded traditional Inuit practices, financial burden and dependency on Qallunaat ways of life.

The cases of Greenland and Nunavut show that via self-governance<sup>117</sup>, through further evolution of Greenland Home Rule and development of Nunavut public governance systems, increasing of Inuit representation in legal services and judicial system, it should open more possibilities for application of Inuit law-ways.

Compared to Greenland and Nunavut, the Inuit of Chukotka are at the most disadvantaged position in any quest for self-governance. Being outnumbered and mixed with other indigenous groups of the region<sup>118</sup>, overwhelmed by social, economic and political problems of post-Soviet legacy<sup>119</sup>, the Inuit of Russia have a long way to go toward self-determination and autonomy.<sup>120</sup> The Greenland and Nunavut experience prove that despite the national governments' unwillingness to recognize Inuit rights, the dream of an Inuit homeland and gradual respect and consideration of Inuit legal practices became possible thanks to the persistent and diplomatic strategy of Inuit political activists, leaders and all other Northerners, who believed in the importance of new national policies towards the 'lords of the Arctic.' The inspirational example of Inuit of Greenland and Nunavut in their struggle for governance and legal recognition proves that Inuit and other indigenous peoples of the Russian North and Far East have a chance to succeed by taking the fate of their nations into their own hands.

## References

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- <sup>1</sup> The author wishes to express her gratitude to M. Garfield and L. Sossin for their comments.
- <sup>2</sup> Quoted from: Historical development of Northern justice Issues, in Preventing and responding to Northern Crime. A Publication of the Northern Justice Society and Simon Fraser Univ., C. Griffiths (ed.), 1990, p.1
- <sup>3</sup> N. Novikova & V. Tishkov, Folk Law and Legal Pluralism, materials of the XI Int'l congress on folk law and legal pluralism, Moscow 1999; Juridical Anthropology. Law and Life, Moscow 2000; Custom and Law. Studies in Legal Anthropology, Moscow 2002;
- <sup>4</sup> The most notable are the Federal laws: "On the guarantees of rights of indigenous peoples of the RF" April 30, 1999, N 82-FZ; "On general principles of organization of communes of indigenous outnumbered peoples of the North, Siberia and the Far East of the RF" July 20, 2000 N 104-FZ; and the law "On territories of traditional land-use by indigenous outnumbered peoples of the North, Siberia and the Far East of the RF" May 7, 2001, N 49-FZ
- <sup>5</sup> The Russian Inuit are called Siberian Yupik or Eskimo. Most of them live in Chukotka -the Autonomous Okrug of the Russian Far Northeast.
- <sup>6</sup> Building Nunavut. A working document with the proposal for an Arctic Constitution. Nunavut Constitutional Forum, 1983, Administration of Justice, p.28
- <sup>7</sup> In Spring of 2003 the Commission on self-governance for Greenland has submitted its final report for consideration of the Danish and Greenlandic parliaments. It may take a few years to enact a new law on self-government for Greenland. If it happens, than the current Home Rule Act of 1978 will be replaced by the new legislation. Results of work of the law reform commission may alter the current Administration of Justice Act of 1951 and the Greenland's Criminal Code of 1954. Until these laws are enacted and published, there is no possibility to use them as a source of information.
- <sup>8</sup> A. Diamond, The comparative study of primitive people, L.T. Hobhouse Memorial Trust Lecture, No. 35, delivered on 4 May 1965, at King's College, London, Univ. of London, The Athlone Press, 1965, p. 10
- <sup>9</sup> Susan Inuaraq, Traditional Justice among the Inuit, in *Peuples des Grands Nords Traditions et transitions Textes recueillis par A-V. Charrin, J-M Lacroix et M. Therrien, Sorbonne, 1995, pp.255-261*; Interviewing Inuit elders Perspectives on traditional law, Vol.2, M. Aupilaarjuk, M. Tulimaaq, A. Joamie, E. Imaruittuq, L. Nutaraaluk, edited by: J. Oosten, F. Laugrand and W. Rasing, Nunavut Arctic College, 1999; Zebedee Nungak,, Fundamental values, norms and concepts of justice-Inuit of Nunavik, in *Report of the National Aboriginal Justice Issues, Royal Commission on Aboriginal Peoples, Canada 1993, pp. 86-104*; Peter Ittinuar, The Inuit Perspective on Aboriginal Rights, in *The Quest for Justice. Aboriginal Peoples and Aboriginal Rights, M. Bold t& J. Anthony Long in assoc. with Lerroy Little Bear, U f T Press, Toronto Buffalo London, 1985, pp. 47-53*; Robert Petersen, Administration of Justice in the traditional Greenlandic community, in: *The living law of nations: essays on minorities, indigenous peoples and the human rights of other vulnerable groups in memory of Alte-Grahl-Madsen, 1996, pp. 279-286*;
- <sup>10</sup> This literature is too numerous to mention, please follow the endnotes.
- <sup>11</sup> In the Canadian context there have been significant attempts to bridge the gap between indigenous and non-indigenous vision of law and justice system. See, for instance, Aboriginal Peoples and the Justice System, Report of the National Round Table on Aboriginal Justice Issues, Royal Commission on Aboriginal Peoples 1993; Bridging the Cultural Divide. A Report on Aboriginal People and Criminal justice in Canada, Royal Commission on Aboriginal Peoples, 1996; However, the Inuit views on justice system deserves a special attention. Therefore, Inuit ways of dealing with wrong-doers and legal systems of Greenland and Nunavut are the focus of this article.
- <sup>12</sup> W. Raising, 'Too Many People' Order and Nonconformity in Iglulingmiut Social Process. Nijmegen 1994, p. 38
- <sup>13</sup> For instance: E. Adamson Hoebel, in: The law of primitive man. A study in comparative legal dynamics. Ch. V, The Eskimo: Rudimentary law in a primitive anarchy, Harvard Univ. Press, Atheneum, 1968, reprint of 1954, pp.

67-99, at p. 68; G. Van den Steenhoven, Legal concepts among Netsilik Eskimos of Pelly Bay, N.W.T., Report, Ottawa, Dep. of Northern Affairs and Natural Resources, 1959, p. 62; Leadership and Law among the Eskimos of the Keewatin District, N.W.T., 1962. In his research regarding the Netsilingmiut, he found out only two cases “the existence of what might be called a legal norm: *sorcerers and dangerous insane persons are liable to be executed as public enemies*,” 1962, p. 112

<sup>14</sup> N. Rouland, The sanction of the Law among some Eskimo populations: Theoretical problems and ways of intervening for the community in the process of settling disputes, reprint of 1976 in the E/I/S, Vol. 3, suppl. Issue 1979. In his work Rouland shows, from the point of view of a lawyer, the specific nature of legal sanction in Inuit populations and legal processes of coercion. Arguing with G. Van den Steenhoven, he supports the legal nature of traditional Inuit forms of social control and existence of legal structure among the Inuit. P. 11

<sup>15</sup> Quoted from A. Patenaude, who describes the belief of N. Rouland (1979). A. Patenaude, Whose law? Whose justice? Two conflicting systems of law and justice in Canada’s Northwest Territories, Simon Fraser Univ. 1989, p. 29

<sup>16</sup> S. Inuaraq, supra note 8, p. 261

<sup>17</sup> Z. Nungak, supra note 8, p. 86

<sup>18</sup> G. Van den Steenhoven, Study of legal concepts among the Eskimos in some parts of the Keewatin District, NWT, summer 1955, Report, Ottawa: Dep. Of Northern Affairs and National Resources, 1955, p. 25

<sup>19</sup> N. Graburn, Eskimo Law in Light of Self-and Group - Interest, Law and Society Review, Vol. 4, No 1, Aug. 1969, p. 46

<sup>20</sup> R. Petersen notes that: “The relationship between different households and the relationship between people inside and outside the household structures were regulated by unwritten rules and a strong demand for self-control,” supra note 8, p. 279; W. Rasing states that “The Iglulingmiut rules were not written down, as is Canadian law, but existed in people’s minds, particularly in those of the elders and leaders,” The case of Kolitalik on the encounter of Iglulingmiut culture and Canadian justice, Continuity and Discontinuity in Arctic cultures. In: Essays in honour of G. Curator and the National Museum of Ethnology, 1970-1990; Netherlands, 1993, p. 100; K. Birket-Smith, The Caribou Eskimos. Material Culture and social life and their cultural position. Report of the Firth Thule Expedition 1921-24, The Danish Expedition of Arctic North America in charge of K. Rasmussen, Vol. V, Ch. VII, Copenhagen 1929, p. 261

<sup>21</sup> M. Aupilaarjuk, Tirigusuusit and Maligait, in Interviewing Inuit elders, 1999, supra note 8, p.14

<sup>22</sup> K. Birket-Smith pointed out in 1929 “In speaking of the customary laws of the Eskimos, it is always necessary to remember that these are not codified in definite forms,” supra note 19, pp. 260-261

<sup>23</sup> W. Rasing, 1994, supra note 11, p. 69

<sup>24</sup> K. Birket-Smith, The Eskimos, London, 1959, reprint of 1936, pp. 162-163

<sup>25</sup> E. Adamson Hoebel, Law-ways of the Primitive Eskimos, Journal of the American Institute of Criminal law and Criminology, Vol. XXXI, May-June, 1940, No. 6, Mar.-Apr. 1941, p. 668

<sup>26</sup> Ibid., p. 668

<sup>27</sup> Ibid., p. 669

<sup>28</sup> N. Rouland, 1979, supra note 13, p. 14. He also explains that custom was not a “biological” or instinctive behavior but the result of empirical thinking initiated by the fear of anything the individual considered beyond him. P. 14

<sup>29</sup> E. Adamson Hoebel, supra note 24, pp. 665-667

<sup>30</sup> K. Birket-Smith 1929, supra note 19, p. 261

<sup>31</sup> N. Rouland is of the opinion that “the community played as active a part as the shaman, and was in a way the intermediary between him and the guilty individual, for it spoke to both of them,” supra note 13, p.18

<sup>32</sup> N. Hallendy suggested that on south Baffin Island the formal Inuit justice did exist. In his paper he “...described a remarkable circle of large, uprights stones on the coast of southwest Baffin, shown to him by a Cape Dorset elder on 1 August 1991. The elder had called this place and its megalithic structure “Akitsiraqvik”, a very old word with an imbedded root meaning “to strike out, to punish”. According to the elder, this was “where a powerful council met and exercised justice before the arrival of the Qallunaat.” Hallendy also

describes the last- remembered formal Inuit trial, which took place in August 1924. N. Hallendy, The last known traditional Inuit trial on southwest Baffin Island in the Canadian Arctic, Paper, prepared for the World Archeological Congress III, 1994, quoted from D. Eber, Images of Justice, A legal History of the Northwest Territories as traced through the Yellowknife Courthouse collection of Inuit sculpture, 1997, p.15

<sup>33</sup>The term “legal action” is used in Hoebel’s interpretation.

<sup>34</sup> E. Adamson Hoebel, 1954, supra note 12, p.73

<sup>35</sup> G. Van den Stenhoveen notes, that: “Though justice is not regarded by them [Inuit of Keewatin District] a something that should be maintained, if necessary, with the help of physical coercion; or rather, though justice as an independent concept is unknown among them, there is a common and strong feeling for fair and reasonable practices in routine daily interactions,” 1962, supra note 12, p.123 W. Raising shows, justice through punishment was never an aspect of Iglulingmiut social control, Raising 1994, supra note 11, p. 144

<sup>36</sup> K. Birket-Smith, 1936, supra note 23, p.149

<sup>37</sup> G. Van den Stenhoveen, 1962, supra note 12, p. 123

<sup>38</sup> E. Adamson Hoebel, 1954, supra note 12, p. 74

<sup>39</sup>This is clear from Inuit interpretation of murder. See R. Janes’ murder case in the Pond Inlet in 1920 and Inuit understanding of it. J. Matthiasson, Eskimo Legal Acculturation. The Adjustment of Baffin Island Eskimos to Canadian Law, Ph. D. Thesis, Cornell Univ. 1967, pp. 50 -51

<sup>40</sup> N. Rouland points out the flexibility of Inuit customs and Inuit’s ability to change the latter when the evolution of historical conditions made them obsolete. Supra note 13, 1979, p.14

<sup>41</sup> E. Schlechter, The Greenland Criminal Code and the limits to legal pluralism, E/I/S, Vol.7, No 2, 1983, p. 82

<sup>42</sup> R. Petersen, 1996, supra note 8, pp. 282-283

<sup>43</sup> N. Graburn, 1969, supra note 18, p. 58

<sup>44</sup> N. Rouland, 1979, supra note 13, p. 20

<sup>45</sup> For instance see: E. Holvet, Myth collecting in Greenland and Alaska, Folk, Vol. 16-17, 1974/75, pp. 15-24

<sup>46</sup> See: Hanne Petersen, On law and music. From song duels to rhythmic legal orders? Journal of legal Pluralism, No. 41, 1998, pp. 75-87. Using Greenland’s example, she draws special attention to the power of word in the song duels and its reflection in the contemporary court trials.

<sup>47</sup> H. Petersen observes that Greenlandic lacks the European type of abstract terminology, which has to be re-created, inevitably in a circumscribed form, when ‘translated’ from Danish to Greenlandic. Ibid. p. 78. This is true for Inuktitut in Nunavut.

<sup>48</sup> For instance, W. Raising notes that: “People who violated the norm of contributing to survival could become the subject of mockery and gossip, and risked to be ostracized or to be castigated in a song. Violations of this nature were not punishable under the Canadian law”, supra note 11, 1994, p. 147

<sup>49</sup> A. Patenaude, 1989, supra note 14, p. 41

<sup>50</sup> N. Rouland states that: “In the Inuit societies, gossip was thus raised to the rank of an institution: it spread information, put pressure on the atypical individual and prepared the community to be able to later fulfill its role as a judge”, supra note 13, p. 29

<sup>51</sup> Finn Lynge, Conflict treatment, old and new. From Singajuk to EEC and Greenpeace, Folk, Vol. 30, 1988, p. 12

<sup>52</sup> E. Adamson Hoebel, 1941, supra note 24, p. 678 and pp. 681-682

<sup>53</sup> Several authors compare song duels with psychotherapy. P. Eckert & R. Newmark note that: “...by setting the confrontation in the form of a song contest, both the grievances and the outcome of the confrontation are kept out of everyday context, to keep life relatively free of overt conflict. The Euro-American tradition of psychotherapy resembles the duel in this respect.” Central Eskimo song duels: a contextual analysis of ritual ambiguity. Ethnology, 1980, p.198

<sup>54</sup> A. Balikci, The Netsilik Eskimo, Ch. III, Man and Society: Social Tensions, The Natural History Press, N.Y. 1970, pp. 188-189

<sup>55</sup> N. Rouland notes that “ the main objective was to restore the internal balances within the group”, 1979, supra note 13, p. 8

<sup>56</sup> G. Van den Stenhoveen, 1962, supra note 12, p. 114; H. G. Jensen, Justice in Greenland, in *Self-Sufficiency in Northern Justice Issues*, C. Griffiths (ed.), Simon Fraser Univ. for Northern Justice society, 1992, p. 122

<sup>57</sup> N. Rouland, 1979 supra note 12, p.50 He notes that community acted as a judge and participant, at p. 59; I. Kleivan, Song-duels in Western Greenland-Joking Relationship and Avoidance, *Folk*, Vol. 13, 1971, p. 9

<sup>58</sup> I. Kleivan, *Ibid.* p. 13

<sup>59</sup> *Ibid.* p. 11

<sup>60</sup> F. Breinholt Larsen point out that traditional conflict management among Greenlandic Inuit was based on personal restraint, like suppression of irritated feelings and avoidance of hostile expressions. "Most conflicts were dealt with in an indirect manner such as talking ill about a person behind his back, covert use of sorcery or antagonists simply moving away from each other until tempers were cooled." *Interpersonal violence among Greenlandic Inuit: causes and remedies*, in: *Crime, Law and Justice in Greenland*, New Social Science Monographs, Copenhagen 1996, p. 50

<sup>61</sup> I. Kleivan , 1971, supra note 56, pp. 10-11

<sup>62</sup> H. Petersen, *The Lion King and the Lady Unicorn. Jurisprudential considerations on visual normativity*. EYSL, Italy, 2000, p. 177

<sup>63</sup> *Ibid.* 2000, p. 177

<sup>64</sup> J. S. Matthiasson, in his study of Tununermiut Inuit of Pond Inlet in 1967, finds out that "...although the Tununermiut have been exposed to more than forty years of contact with a resident police force, which represents Canadian law, the influence of this on Tununermiut behaviour has been minimal... Knowledge of specific laws is limited to major offenses such, as murder, and the game laws, which most impinge on the daily behavior of the Tununermiut. Knowledge of the role of the police as law enforcement officers is confused and cloudy, and there is virtually no understanding of the court system. The result has been a continued reliance on the traditional legal system with regard to the handling of property, territorial rights, and family relationships. It can be concluded, therefore, that in a strictly legal sense, Tununermiut acculturation has progressed slowly. Supra note 38, p. 119; H. Finkler reveals a neglect of adequate communication or an information gap among Inuit impeding their understanding of the concepts and mechanisms inherent to Canadian law and a lack of Inuit participation or involvement in the tasks of formal agencies of social -control. *Inuit and the Administration of Justice in the Northwest Territories: The Case of Frobisher Bay*, Univ. of Montreal, Thesis for a *Maîtrise en Sciences Criminologie*, 1975, Abstract.

<sup>65</sup> H. Petersen, 1998, supra note 45, p.75. During my field-work in Nunavut, I was not able to identify any special logo of the Nunavut judiciary, as it is the same for all the provinces and territories of Canada

<sup>66</sup> For historical account see: S. Grant, *Arctic Justice. On trial for Murder, Pond Inlet, 1923*, McGill-Queen's Univ. Press, 2002; R. Moyeles, *British law and Arctic Men. The celebrated 1917 Murder Trials of Sinnisiak and Uluksuk, First Inuit tried under white man's law*, Saskatchewan, 1979.

<sup>67</sup> H. Finkler, 1975, supra note 63, p. 20

<sup>68</sup> The division between Danes and Greenlanders was based upon how they provided their existence, and not on their place of birth in Denmark or Greenland. There were two sets of legal authorities. One for the use of Danish law, and one for Greenlandic law. A. Weis Bentzon, *Law and legislation in Greenland during the transition from colonial status to Home Rule status (1945-1980)*, *Law & Anthropology*, Vol.1, 1986, p. 201

<sup>69</sup> H. Jensen, 1992, supra note 55, pp. 125-126

<sup>70</sup> A. Weis Bentzon, *JUREX Reconsidered*, in *Crime, law and justice in Greenland*, 1996, p. 97

<sup>71</sup> After 18 months of investigation in 1948-1949, the expedition submitted to the Ministry of Greenland six volumes report with a picture of living and co-existing ideas of Greenlandic customary law, A. Weis Bentzon, 1986, supra note 67, pp. 202-204

<sup>72</sup> For a detailed analysis of the Territorial Court see: A. Rowe, *Assimilation through accommodation. Practice, Rhetoric and Decisions in the Territorial Court of the Northwest Territories 1955-1972*, LLM. Thesis, UFT, 1990

<sup>73</sup> This principle was suggested by Sissons for administration of justice in the Eastern Arctic. J. Sissons, *Judge of the Far North, The Memoirs of Jack Sissons*, Toronto/Montreal, 1968, p. 76 (guidelines)

<sup>74</sup> *Ibid.* pp. 123-125

<sup>75</sup> Ibid. p. 123, 125

<sup>76</sup> With creation of the new territory of Nunavut the most radical reforms were taken, like the unification of court system, opening of Law school program, amendments to the Judicature Act and Justices of the Peace Act etc.

<sup>77</sup> Act. No. 271, of June 14, 1951, Jensen, 1992, supra note 55, p. 129

<sup>78</sup> The Greenland Criminal Code, The American Series of Foreign Penal Codes, No. 16, London, 1970, pp. 1-47

<sup>79</sup> In “Footprints 2”, the NIC considered the merger of the Supreme Court of Nunavut and Nunavut’s territorial court as an important step towards unification of Nunavut’s court system and opening up the possibility of the community-based Justice of the Peace network taking on an enhanced role. Footprints 2: A Second Comprehensive Report from the Nunavut Implementation Commission to the Department of Indian Affairs and Northern Development, Government of the Northwest Territories and Nunavut Tunngavik Inc. Concerning the Establishment of the Nunavut Government, Iqaluit, 1996, pp. 166-168, Recommendation # 11-23

<sup>80</sup> S. 32 (1) of the Nunavut Act and Consolidation of Judicature Act (Nunavut), S.N.W.T., 1998, c.34, s.1; s.2 (2)

<sup>81</sup> See: H. Brondsted, The Historical Development of the Greenlandic Judicial System, in Crime, Law and Justice in Greenland, 1996, at pp. 122-123

<sup>82</sup> Nunavut Act, S. 31 (2), Judicature Act, s. 4 (1)

<sup>83</sup> As of February 3, 2003, Ms. Alexina Kublu was appointed as Nunavut’s first full-time Senior Justice of the Peace to the Nunavut Court of Justice. She is Inuk and fluent in Inuktitut.

[www.gov.nu.ca/Nunavut/English/news/](http://www.gov.nu.ca/Nunavut/English/news/). However, all federal government appointees are not Inuit.

<sup>84</sup> There has been a lot of criticism of circuit court system, which includes the key justice personnel usually unfamiliar with communities, this system did not reflect the communal procedures or accounted to the communities. S. Stevens, Northwest Territories Community Justice of the Peace Program, Aboriginal Peoples and the Justice system, Royal Commission on Aboriginal Peoples, 1993, p. 385

<sup>85</sup> C. Griffiths, E. Zellerer, D. Wood, D. Saville, Crime, Law, and Justice among Inuit in the Baffin Region, N. W.T., Canada, Final Report, Simon Fraser Univ. 1995, p. 114

<sup>86</sup> Mr. Justice J. Vertes, Jury Trials in Inuit and other aboriginal communities, A paper presented in Conjunction with a Presentation to the Joint meeting of the Canadian Law and Society Association in Vancouver, B. C., June 1, 2002, pp. 40-46

<sup>87</sup> Ibid. p. 46

<sup>88</sup> s. 722 (1) of the Criminal Code of Canada

<sup>89</sup> Though there is a section in the Code that says that one can look at the aboriginal background of accused when listening, the Greenland Criminal Code is based on another philosophy. See further.

<sup>90</sup> For preparation of the Code in 1948/49 about 2000 law cases were compiled and verbal information received from 53 of local authorities, interviewed in 1948/49, expressed strongly their wishes for preserving and codifying Greenland law. Verner Goldschmidt elaborated the draft of the Code. V. Goldschmidt, New trends in studies on Greenland social life. Greenland law in changing Greenland. Folk, Vol. 5, 1963, pp. 113-116

<sup>91</sup> E. Schlechter, supra note 40, 1983, p. 80

<sup>92</sup> The system is called so by V. Goldschmidt. See: Schlechter, p. 82, H. Jensen, Contemporary realities, in Crime, law and Justice in Greenland, 1996, p.141

<sup>93</sup> C. Griffiths, Crime, Law and Justice in the Circumpolar North: The Greenlandic Experience in a Comparative Context, in Crime, Law and Justice in Greenland, 1996, pp.10-11

<sup>94</sup> V. Haysom and J. Richstone point out to the argument against the codification of Inuit customary laws. As custom and tradition are changing over the time, plus a situation, which results in a custom becoming frozen just as if it had been stated in a code. Customizing Law in the Territories: Proposal for a Task Force on Customary Law in Nunavut, E/I/S, 11 (1), 1987, P. 103. Accordingly, the codification of customs is not necessary.

<sup>95</sup> H. Jensen, 1996, supra note 91, pp. 143-144

<sup>96</sup> Mille Sovngahl Pedersen, The Historical Development of the Greenlandic Judicial System, in Autonomy, Dependency and Sustainability in the Arctic, 1999, p. 138

<sup>97</sup> L. Gregoire, Greenland’s Gentle Path, Forty years of community- based justice, Arctic Circle, Vol. 8, Fall/Winter 1993

<sup>98</sup> Griffiths and Co, 1995, supra note 84, ch. 6, pp. 101-156

<sup>99</sup> Interviewed Nunavut residents referred to the Baffin Correctional Centre as “The Baffin Hotel” or “Baffin Country Club.” Many offenders look at their trip to jail as the chance to get out the community. “They look forward to it...They see it as a reward.” (Justice of the Peace), quoted from Griffiths and Co, 1995, supra note 84, p. 164

<sup>100</sup> P. Rousseau, Les systemes judiciaires au Nunavut et au Groenland, E/I/S, VoL.18 (1-2),1994, p. 169; E. Schlechter, 1983, supra note 40 ,p. 81

<sup>101</sup> H. Petersen, Performing Mimetic Administrative law under Home Rule, in Dependency, Autonomy and Sustainability in the Arctic, 1999, p. 101

<sup>102</sup> H. Petersen, 1999, p. 101-102

<sup>103</sup> B. Morse, Indigenous law and state legal systems; conflict and compatibility. In Indigenous Law and State Law, B. Morse & G. Woodman (eds.), 1988, p. 108

<sup>104</sup> See for instance, the decision of Justice Browne in *SKK v. JS*, unreported decision of the Nunavut Court of Justice, File No. 01 000053 CV – June 6, 2002.

<sup>105</sup> V. Haysom & J. Richstone, 1987, supra note 93, pp. 91-106

<sup>106</sup> F. Harhoff, Constitutional Relations between Denmark, the Faroe Islands and Greenland. In Nordic Arctic Research on contemporary Arctic problems, 1992, p. 208

<sup>107</sup> F. Harhoff, The Status of Indigenous Peoples under International law: Greenland and the Right to self-determination. CYIL, Vol.32, 1994, UBC Press, 1995, p. 251

<sup>108</sup> Greenlandic judge H. Jensen is of the similar opinion, Jensen, supra note 91, 1996, pp. 139-140

<sup>109</sup> F. Harhoff, supra note 106, p. 251

<sup>110</sup> P. Macklem, Aboriginal Justice, the Distribution of Legislative Authority, and the Judicature Provisions of the *Constitution Act, 1867*, in: Aboriginal Peoples and the Justice System, Report of the National Aboriginal Justice Issues, Royal Commission on Aboriginal Peoples, Canada, 1993, p.326

<sup>111</sup> P. Macklem states that: “By virtue of s. 25 and other provisions of the Charter, Parliament possess significant constitutional flexibility to pass laws that accommodate Aboriginal aspirations for greater responsibility over administration of criminal justice.” P. 299. In his view, the combined effect of ss. 35 (1) and 25 of the *Constitutional Act, 1982* authorizes legislative reform of the criminal justice system to assume more responsibility of the administration of justice in the Aboriginal communities across the country, at p. 280. Aboriginal Peoples, Criminal justice initiatives and the Constitution, U.B.C. Law Review, Vol.26, No: Speiss, 1992.

<sup>112</sup> K. Gray supposes that compare to other land claims discussions, which have centered on this issue, “...the Inuit perhaps need a period of refinement in the nascent stages of Nunavut before an alternative justice system can be formulated...” The Nunavut Land Claims Agreement and the Future of the Eastern Arctic: The Uncharted path to Effective Self-government, UfT FLRev.,Vol. 52, 1994, p.340

<sup>113</sup> Akisu Joamie, p. 51; Emile Imaruittuq, p. 52, in Interviewing Inuit elders, supra note 8, Ch.3, Dealing with Wrong-doers.

<sup>114</sup> Frances Piugatuk, in interview with D. H. Eber, quoted form D. H. Eber, Images of Justice. A legal history of the Northwest Territories as traced through the Yellowknife Courthouse Collection of Inuit Sculpture. McGill-Queen’s Univ. Press, 1997, pp. 38-39

<sup>115</sup> G. Cohen, Northern Promise. Canada’s First Arctic Law School, Canadian Lawyer, Vol. 26, No.5, May 2002, pp. 26-31

<sup>116</sup> Ibid. an interview with K. Gallagher-Mackay, northern director of the Akitsiraq Law School Program, p. 30

<sup>117</sup> There are many discussions on the nature of Nunavut public governance. Even though this system is not based on the ethnic criterion and oriented for all citizens of Nunavut. Because of Inuit majority and increasing Inuit involvement in the administration of government services (according to the Bathurst Mandate, and the NIC recommendations, 85% of all government jobs should be Inuit), it can be argued that Nunavut system of public governance is a virtual Inuit self-governance. Greenland’s Home Rule status in practice means territorial self-governance for all residents of Greenland. This will be enforced with introduction of the new law on self-

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governance. As Greenlandic Inuit represent 85 % of all Greenland population, this system of governance reflects the Inuit culture and customary practices.

<sup>118</sup> The total population of the Russian Inuit (Yupik) is about 1, 718. According to the statistics data of January 1, 2003, about 1268 Yupik live in Chukotka rural areas (Anadyr, Statistics Department, August 4, 2003) together with other indigenous groups as: kereks, koryaks, evens, chukchi and chuvans. Precise number of Inuit in Russia will be known by the end of 2003 with official publication of the national census data. See: the Common list (the united enumeration) of indigenous and small peoples of the RF, approved by the decree of the government of the RF, March 24, 2000, law No. 255.

<sup>119</sup> See, for instance, N. Vakhtin and I. Krupnik, In the 'House of Dismay': Knowledge, Culture, and Post Soviet Politics in Chukotka, 1995-1996, in *People and the Land Pathways to Reform in Post-Soviet Siberia*, E. Kasten (ed.), Berlin, 2002, pp. 1-43.

<sup>120</sup> Despite major changes in Chukotka, connected with the new administration under the Governor R. Abramovich, the issue of indigenous self-determination or self-governance is not the priority of the Russian Inuit. Field work in Anadyr', Chukotka, August 2003.