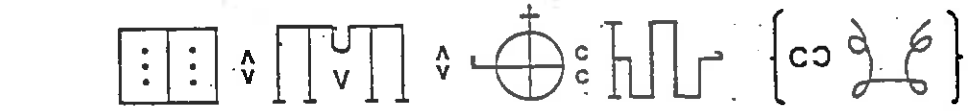
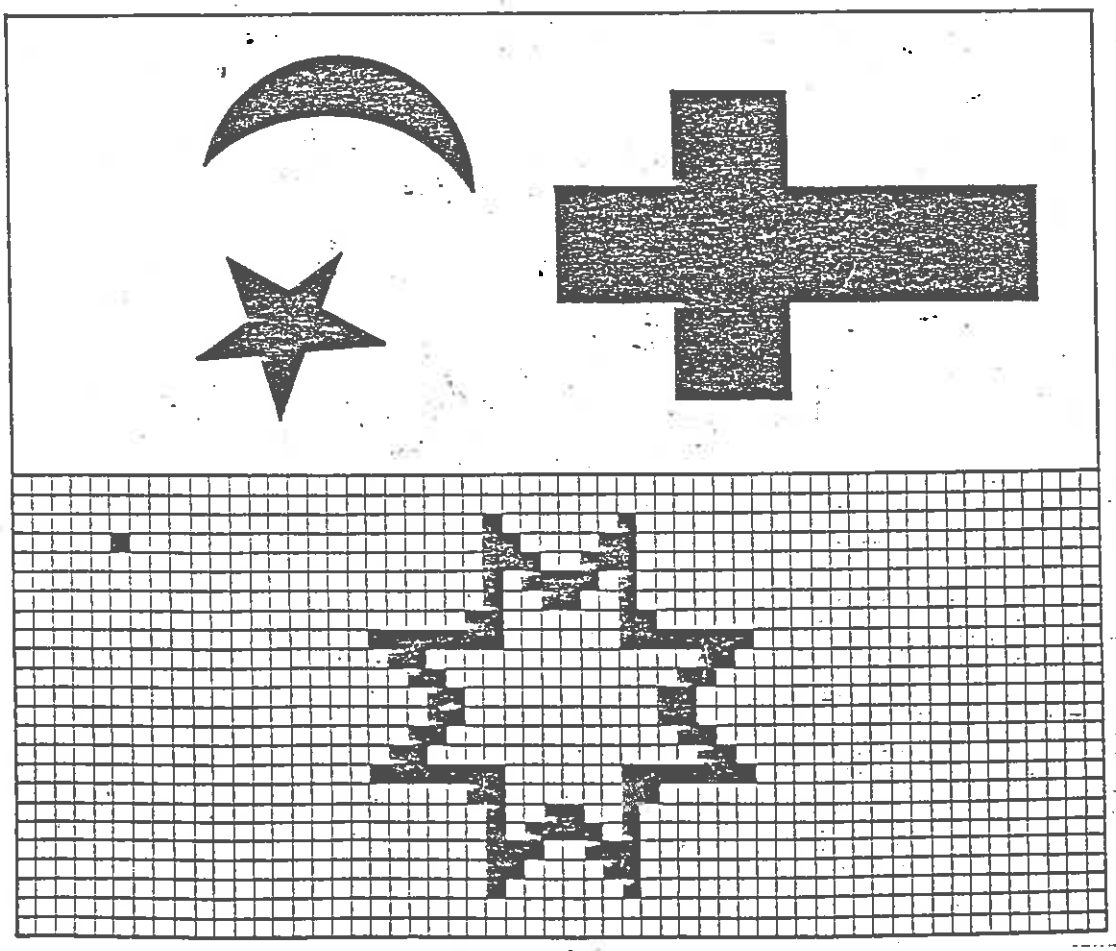
MIKMAQ GRAND COUNCIL

STATE PAPERS (FOREIGN AFFAIRS)

1977-1984





mikmaq state papers

Russel L. Barsh and Sakej Henderson (Foreign Affairs)

Bernie Francis (Secretary to the Council)

editors

A HISTORY OF THE GRAND COUNCIL to 1800

MARIE ANN BATTISTE

On the other side of the Path of the Spirit, in the ancient times, a decision was made by the Creator Niskam. The Creator sent the best of the spirits to the dry land of the dark earth which was separated by the Great Lakes. These spirits were sent with the rays of the Sun Nagooset, the Very Most, to be brought across the Milky Way to light the earth.

In a mysterious, and still secret way, the union of Nagooset's rays with the earth created the land of the living and the seven directions.

Mankind was created from this union of Nagooset together with the earth and all other things. The shadow of Life placed within Man held the beauty and spirit of all living things. All of Nagooset's creations spoke a common language and had the same heart. All shared the same purpose and plan of the Creator. All had the same shadow under Nagooset, each having its own role in maintaining harmony and life on earth.

Something happened, however, between the men across the Great Sea and the Creator. The Creator caused the land to stomp and shake until it finally sank and the waters of the Great Lake covered the land. When the land finally dried, it is said that things were not the same. The Creator had changed life on earth. Man was no longer able to speak to all other men including the plants or creatures of the earth. The Creator had ended the common language, and had created many languages and confusion under Nagooset.

The language and spirit of the Micmac was created at this time. The Micmac spirit was placed in the heart of the life soul of some of the people expressed in the Micmac language. It was a different language from the shadow soul which had earlier been sent with Nagooset. The language of the shadow soul was a link to the beginning and is said to be still in the language of the Micmac, just as the stories of Glooscap are still in the minds of the Micmac.

The Micmac could still learn about the language of the life soul. Since the Creator had divided up the language among the other animals and plants and things of the earth, the Micmac could learn from the other life forms. They were brothers (or totems) to mankind. But communication with the shadow soul was a spiritual gift given only to the worthy by Nagooset. Even when given to the Micmac, it was a temporary gift. Hence, memory was formed to hold these lessons in the life soul of the Micmac for the future generations.

It was through these gifts of Nagooset that the Micmac learned to live and enjoy their new world. The stories of these gifts were handed down from father to son, mother to daughter, and from family to family. Certain rituals of these gifts were also handed down by the elders of each generation to other worthy Micmac. In this way, knowledge of life was acquired. It was the duty of each family to teach the gifts and rituals to their children and grandchildren.

Those people who possessed the Big Hearts and followed the correct path were given the ability to communicate with the shadow soul of the forest and the streams. They provided for the others by hunting and fishing or by teaching others some of their gifts. They became the leaders of the families and clans, and later of the Council and nation.

There were other gifts also given to the Micmac from Nagooset: The ability .o manipulate the world for good or bad, the ability to envision the future, the ibility to heal the sick, and the ability to make people smile. The primary purpose of these gifts was to guard the values of life given to the Micmac, while guiding the families on the correct path and away from misfortune. Yet, the correct path was not always followed.

The confusion of the language had also created disorder and misfortune. Disorder and misfortune became a reminder of the need for learning the proper values of life and the need for families and clans. Each generation had to learn this lesson with the help of Nagooset, just as each generation had to learn the language of the Micmac. To help the Micmac, Nagooset sent them visions of the future.

At one time during a harsh famine which had stricken all the Micmac, Nagooset's spirit came to an old man. In the darkness of sleep, the old man was approached by a young man carrying three crosses. He told the elder that each cross had a purpose in the survival of the Micmac families and if used according to his word, the Micmac would benefit by it in the future. It was one of the most important visions ever given to the Micmac.

One of the crosses, the young man said, would serve the Micmacs in times of conflicts with other humans and nature, such as the present famine. Another cross would grant them safety on long voyages and new experiences. The remaining cross would serve them in deliberations and in councils, to aid them in making proper decisions for the future. All of these gifts from Nagooset would be needed by the Micmac in the future. Awaking from this vision, the prophet drew the symbols of the vision on birchbark and traveled to other villages to share it with the other families.

Not long after the Micmac learned of the elder's vision, the famine ended. But the famine created a new conflict for the Micmac, other tribes and clans of true people had violated the hunting grounds and fishing rivers given to the Micmac by Nagooset. Led by wooden crosses on their canoes, crosses of wampum on the breast of the men, cloth crosses on the womb of pregnant women, and wooden crosses in the wigwam, the warriors of the cross subdued their enemies and once again took up their customary hunting and fishing grounds. Kaktoogo, grandson of the legendary Kaktoogwak (Thunder), led the fight with the cry of "disobey your father" against the disbelievers of Nagooset's plan.

Under the leadership of the grandsons of the prophet from Pictou Harbor, Ulgimoo and Mejelabegadasich, who were brothers, the Micmac expanded their language and territorial villages westward to create the district of sigenigeteoag and northwest to create the district of gespegeoag. At the same time, their cousins expanded the language to all of epegoitg and onamagi (which includes southern Newfoundland) by driving the Beothuks to the north.

Once warfare had begun among the true people, it could never be ended, only prevented. In breaching Nagooset's rule, the people unleashed the power of misfortune upon everything. To restore harmony, as much as possible, as predicted with the gift of the third cross, the Holy Gathering (Sante' Mawi'omi) or Grand Council of Micmac was created in a secret settlement on the Miramichi River in the district of gespegeoag. The warriors (holders of the horror of war among men), the manipulators, and prophets met each spring and autumn to seek brotherhood under the three Crosses. To other tribes and to the European, this council was known as the Nation of Cross-Bearers.

In the Holy Gathering, peace with other true people were made and harmony was restored by the Holy Gathering's confederating with the other tribal people by treaties, called lecamanen. A wampum belt, representing the terms of peace with the Iroquois Confederacy and Wabanaki Confederacy, was used to instruct the men who had killed their first moose on their duties and obligations as Micmacs.

Internal peace was maintained among the families by dividing up the national territory in districts, each with a Chief, and acknowledging family rights to certain hunting grounds and fishing waters, with district and territory divisions depending upon the size of the family and the abundance of game and fish.

The Holy Gathering maintained peace and continuity by sharing the history and experiences of the Micmac through the stories of ancient times, ato'wakun. The history of the Micmac and experiences provided a wealth of stories. The authority of the gathering came to reside in the accumulated wisdom acquired over the years by the leaders of each family.

Not all was known, however, about the deeper meanings of the prophesy of the crosses for Micmac. Events across the Great Sea were to bring new understandings to the old man's vision.

A Micmac woman dreamed one night that a small island floated toward the land of Nagooset. The island contained the garments of white rabbit skins at one glance; then it became an island of bare trees with black bears on its branches. The women told her dreams to the elders and vision people of the village, but none at the time could interpret the significance of the dream and what it foreshadowed.

With the sighting of the first European sailing ships, the vision of the Micmac prophet became clearer, but more significant was the new meaning given to the prophesy of the crosses. Jacques Cartier landed in the gespegeoag district in 1536. As he left his prophesized island, his sailing ship, in his canoe, he placed in the front of the canoe a big wooden cross. This was the Micmac's first introduction to the European crosses. Since the cross was also used in this way among Micmac in their exploration, the strangeness of the outsiders melted away. In this way the cross provided a spiritual link between the peoples. Cartier was allowed to erect his cross on a hill. The curiosity and similarity of cross functions inspired the district leader to send two of his sons back to France to learn more of the lessons of the cross of the people across the waters. A few winters later, the sons returned with many interesting stories about the people across the Big Lake.

In the meantime, the Micmac learned more of the beliefs of the Christian cross from the white fishermen. These fishermen told them stories of the leader called the Pope, who lived in the old city of Rome, and was the source of all law and government in their homelands.

Under the symbol of the cross, the Pope granted rights to European princes to trade, discover, and fish throughout the Holy Kingdom. While the language and rituals of these white men were strange, the Micmac found great similiarity

in the functions of the Pope and the Holy Gathering. Both were concerned with creating brotherhood under the cross, and both divided up the land among their district leaders.

The initial meeting between these men filled each side with awe and questions, which arose of their origins, homeland, government, people and culture. A proclamation by the Pope that the "Indians" were "truly men" and not animals inspired the European explorers and missionaries to act on the behalf of the European Princes and the Pope to enlarge the European Kingdom and to instruct and baptize the Micmac. The Micmac, however, were not troubled by these acts since the Pope had also declared that no one was to deprive them of their liberty or possession of their property. The Pope appeared to the Micmac to be a benevolent man who was also guided by the same Creator.

In the moon of good fishing in 1610, Grand Chief Membertou and twenty-four other warriors were baptized by a secular priest, Father Jossee Flesche, in Port Royal. This act brought together the traditions of the three crosses and the white man's version of the cross in the spiritual life of the Micmac.

Grand Chief Membertou, as traditions of the Holy Gathering required, sent his sons out to all the district leaders to tell them about his baptism and request that they also embrace this union with the Catholic Church. As a final assurance to the Pope, he promised the priest that he would make war against all those who fought against the cross or refused to be baptized, although the priest felt certain that this was unnecessary. In order to ease the Micmacs into this union, the priest and the Governor of Port Royal composed hymns, chants, and ceremonies in Micmac which further merged the spiritual traditions and doctrines together in the Micmac language.

The Queen of France, after hearing of the conversion, sent Father Biard and Father Masse from the Order of Jesus. Rather than promoting Christianity, these priests, however, created confusion and doubt among the Micmac about the new faith. Biard and Masse first refused to bless the traditional burial grounds of the Micmac, making Grand Chief Membertou prove his conversion to the new faith by consenting to be buried with the non-Micmac Christians in Port Royal. They then sent Father Fleshe, the first priest to baptize Micmacs, back to France. Finally, they refused to administer baptism to the Micmac until they were first fully instructed and knowledgeable of Catholic doctrines. All these commands began to trouble the Holy Gathering.

The French and British struggles with each other also were troubling. Finding the Micmac more and more uneasy about their mission, Baird and Masse left for Penobscot where they were soon captured by the British. These British soldiers, together with their prisoner, Father Biard, soon arrived in Port Royal. Their mission was to destroy the French village. The Micmac village leader, confused and troubled by these acts, circled the quarreling parties with his warriors to ask why brothers of the cross should make such conflict upon each and burn each other's crosses and towns. Unsatisfied with their answer and their destructive acts, the Micmac leader requested the British to leave and to take the Black Robe, Father Biard, with them or face the consequences of the Micmac warriors. The French were allowed to take up residence with the Micmac, if they chose to remain, under the protection of the Holy Gathering.

Extensive talks with the Frenchmen, both Catholic and Huguenots, and leaders of Micmac families about the cross-bearers, determined for the Holy Gathering what they construed to be the wisest course of action. They decided to

ally directly with the Pope of Rome and not with any order of priests. The Recollect Missionaries aided the Holy Gathering in this effort. Under the terms of the ulnapskok, the Holy Gathering agreed to give the Church of Rome free access to their national territory, the privilege of building and maintaining churches and attending to the Micmac. In this way, the promises of Grand Chief Membertou were maintained and the doubts of the Holy Gathering appeased.

Many winters later, the onamagi district leader asked the Holy Gathering to consider accepting St. Anne, the Holy Grandmother, as their patron saint. As an official act, this suggestion was accepted around 1630.

Under the ulnapskok some names of the members of the Grand Council were changed to conform to papal law. The Jesuits introduced the term "captains" into the structure of the Grand Council replacing the headmen of the family. The Jesuits defined a "captain" as the heads of a republic to distinguish between authority based on respect and admiration rather than the absolute power of a European king or absolute prince. Noting that ability was the essential requirement to be a captain, the Jesuits commented that in large villages there were sometimes several captains who were divided among the families of the village.

The ranking captain which summoned the Grand Council was termed the Grand Captain. The Grand Captain presided over the assembly and often steered the discussion. He was in charge of civil affairs as well as warfare. With regard to tribal affairs, the "sagamores" (sakamow, village leaders) remained the actual leaders in war under the Grand Chief who was also a member of the Grand Council.

The Grand Council determined the policy and direction of the Micmac Nation. Its policy directed the captains and the sagamores within the tribal nation.

In dealing with outsiders, the Grand Council negotiated alliances of confederation, neutrality, and military cooperation and warfare, as well as concluded peace treaties. Once it had declared war, after seriously deliberation, the sagamores and captains conducted the affairs of the war. The Grand Council, however, still retained jurisdiction over captives of the tribes. They determined who should be tortured or killed by the women and children and who should be adopted into the tribe and to which family.

3

During the following winters, the white men continued to fight each other. The Holy Gathering remained at peace, considering the conflict an internal family affair. Some Micmac youths under the leadership of one priest became involved with the conflict, which was considered their right as men, but the Holy Gathering refused to take up arms collectively. One exception was when a village was directly attacked and harmed. Then the law of hapenkuituik required action. This law of vengeance states that great offenses are to be avenged by the family that was wronged. But if the guilty one repented of his fault, and wished to make peace, he was usually received with satisfaction. By this act, the harm was avenged, and the conflict ended with each becoming good friends again.

The Wabanaki Confederacy, southern allies of the Micmac Nation, ended its warfare with the British Crown in 1725. The speaker of the Wabanaki Confederacy took a copy of this treaty to the district chiefs (sa'yas) and captains of the gespogitg (Cape Sable) district. This treaty, authorized by His Majesty and numbered 239, was sent with a wampum belt to the district leader. After discussing the terms of the Wabanaki treaty with the entire Grand Council, the district leaders ratified it in 1728 at Annapolis Royal, recognizing the removal of the French Crown and agreeing to conform to the terms of the treaty.

In 1750, the Holy Gathering moved their district meetings from Oaletjg, Tjigog, and Malagawatch to Potloteg (Holy Family Island, now called Chapel Island). One of their pressing matters at this annual meeting was whether to ally with the British Crown. At the 1752 meeting, they agreed to enter into a treaty with the British. The formal Treaty of Peace, Friendship and Protection with His Majesty, George II, was signed by Grand Chief Cope, who was accompanied by his delegation of captains and warriors. The Treaty was ratified by the Legislative Assembly of Nova Scotia on November 24, dispatched to His Majesty on December 6, and printed in French and English the following year.

The purpose of the Treaty was to establish a political confederation or alliance similar to the treaty with the Holy See of Rome.

His Majesty, George II, recognized the Grand Chief as the executive of the Micmac Nation and as the proper party to enter into a treaty which would bind all Micmac families and clans. In addition, His Majesty recognized the independent polity of the Micmac Nation as a member of the family of states in international law.

Under the terms of the European treaty, the Grand Chief agreed to recognize the replacement of the King of France by the British King, but he did not submit to be governed by His Majesty's laws as had the Wabanski in the Wabanaki Treaty. The Grand Chief refused to allow British diplomats to talk with the district chiefs, promising to bring all the other Micmac families and clans into the terms of the Treaty of 1752 himself. In addition, the Grand Chief agreed to discover, inform, and obstruct designs against His Majesty's subjects by his allies, and to allow British forts to be constructed in Micmac lands.

The Grand Chief agreed to allow and protect British subjects, a minority within Macmac territory, in their pre-existing settlements. He also granted them the use and occupation of these pre-existing settlements, since the amount of land was small and it was consistent with their Creator's law of loving thy neighbour. His Majesty in turn recognized that all other land still belonged to the Micmac Nation. The preexisting settlements were recognized by the Grand Council in the same way as other hunting allotments were recognized among Micmac families.

In ending the warfare and consistent with the law of hapenkuiduik, the Grand Chief agreed to release British prisoners and return British deserters to the military. He also agreed to save the survivors of shipwrecks and conduct them safely through Micmac territory to the settlement of Halifax. He agreed to have the Micmac attempt to save the goods of shipwrecks in return for adequate reward which was equal to the value of the salvaged goods.

The Grand Chief agreed to allow only British subjects to trade within Micmac territory. He refused to allow regulation by the province of Nova

Scotia. The management and regulation of the province of Nova Scotia was to be limited to British subjects.

Within the boundaries of their preexisting settlements, the Grand Chief agreed with His Majesty not to interfere in other affairs of the British subjects, such as government, laws, and religion. The British settlements were separate from the rest of Micmac territories in this regard.

His Majesty and the Grand Chief agreed that all disputes between British subjects and the Micmac would be brought to a "royal court of civil judicature" rather than be resolved by tribal law. Disputes between Micmacs would still be handled by tribal law. The Grand Chief also agreed that if any Micmac robbed or did any outrage to British subjects of the settlements, the families would give satisfaction and restitution as tribal law required.

His Majesty accepted the boundaries between his settlements and the Micmac Nation, specifically limiting the British settlements to pre-1752 areas. He agreed that no house or building would be constructed outside of this area, unless the land was purchased at a fair price from the Grand Council.

In addition, His Majesty confirmed "forever" the Micmacs' "privilege" of fowling, and their traditional "liberty" of hunting and fishing as usual throughout the British settlements. The Grand Chief especially would not allow this right to be regulated by the settlers as had been done in the Wabanaki Treaty. He would not allow it to be limited in any manner. (The Wabanaki Confederacy had to agree not to hunt or fish in portions of the settlements which were fenced in.)

In exchange for the exclusive right to trade with the Micmac, His Majesty agreed that the Micmac would always be free to sell their goods anywhere in the British settlements at a price to their best advantage. No law of the settlers could limit this liberty. If Micmacs felt it necessary, His Majesty would build a "truck house," or a trading house, in places where the Micmac determined was most needful. His Majesty promised these truck houses would have proper merchandise for trading purposes.

In addition to the right to trade, His Majesty agreed to procure necessary provisions for Micmac families on a per capita basis twice a year. This would ensure that the Micmac would not starve in the winter.

The terms of the Treaty of 1752 established a charter of rights for the Micmac Nation within the law of Great Britain. The Nation became a protected state under His Majesty, although still retaining all its governmental powers and lands. This confederation with the King of Great Britain was symbolized in Micmac tradition by the eight-pointed star.

In this star, Great Britain is represented as the eighth district of the Nation, with the Union Jack in the middle.

As promised, the Grand Chief led all the districts into the Treaty of 1752. A few moons after he signed the charter as the Grand Chief, he brought his home district of segepenegatig into the Treaty. However, the renewal of conflict between the French and British after the Treaty made it necessary in the moon where all the animals are fat and ready for winter, 1761, for the leaders of the district to accede again to the terms of the Treaty of 1752.

The gespogotig district acceded into the treaty in stages. In the moon the birds lay their eggs, of 1753, the La Have settlement acceded to the terms of the Treaty. The rest of the clans acceded in the moon where all the animals are fat and ready for winter, 1753. Again, however, warfare between the French and English made it necessary for the district leaders to accede to the treaty a second time. In the snow-blinding moon of 1760, some of the bands acceded. The rest of the bands acceded in the festival moon in 1763.

The siegenigteoag district acceded in two stages--in the half-year moon in 1755, and after the conflict in the spring moon of 1760.

The districts of onomagi pigtogeog ag epigoitg, esgigeoag, and mirimechi portion of the district of gespegeoag entered into the Treaty of 1752 in the moon of good fishing in 1761. Under the leadership of a new Grand Chief, Toma Denny, after the fall of the French King, most of the Micmac were reunited under the treaty.

In the following moon where the water-fowl and their young swim together, the clans at Pictou and Merigomish acceded to the Treaty of 1752.

Some understanding of His Majesty's intent is provided by the transcript of the Governor of Nova Scotia's declarations to Grand Chief Denny after the fall of the French King in 1761. The Governor, who was also the Chief Justice of the Supreme Court of Nova Scotia, explained the concept of protection, stating:

> Protection and allegiance are fastened together by links; if a link is broken, the chain will be loose. You must preserve this chain entire on your part by fidelity and obedience with the great King George the Third, and then you will Have the security of his Royal Arm to defend you. The Laws will be like a great Hedge about your Rights and properties--if any break his Hedge to hurt and injure you, the heavy weight of the Laws will fall upon them and punish their disobedience.

After complying with the tribal protocol of formally burying the hatchets of war, the Governor expressed its meaning in British law as:

> a sign of putting you in full possession of English protection and Liberty, and now proceeding to conclude this memorial by these solemn instruments to be preserved and transmitted to you with charges to your Children's Children, never to break the Seals or Terms of this Covenant.

Grand Chief Toma Denny responded,

> I swear for myself, Brethern and People, by the Almighty God who sees all things, visible and invisible, that I sincerely comply with all and each of the articles that you have proposed to be kept inviolably on both sides. As long as the Sun and Moon shall endure; as long as the earth on which I dwell shall exist in the same state you this day see, so long will I be your friend and Ally, submitting myself to the Laws of your Government; faithful and obedient to the Crown. (...) I again

swear by the Supreme Commander of Heaven and Earth, by the sovereign disposer of all things that have life on Earth or Heaven that I will forever continue in the same disposition of mind I am presently in. (G)reat God, let (His Majesty) be happy and blessed during his whole reign over his subjects. May he never have occasion to scruple calling us his children, and may we always deserve at his hands the treatment of a Father. (Y)ou will be pleased to inform His Majesty, as soon as possible, of what you have this day seen and heard from our people, whose sentiments have now been declared unto the King by my mouth.

In the spring moon of 1779, the Grand Council held a special meeting in Pictou Harbor to discuss the lack of unity among the Micmac leaders. Some of the Micmac had broken the treaty and fought for the American colonies against the King of England. Some had participated with the British troops, and others with the French troops. At this special meeting of the Grand Council, the Treaty of 1752 was declared to be part of the law and would be honoured by all Micmacs. Shortly after that meeting the chiefs and captains of the Micmacs of the St. Lawrence Bay acceded to the Treaty of 1752 with the King's superintendent for Indian Affairs. The chain of union was complete.

1

Beginning in 1977, a concerted effort was made to win Canadian and British recognition of the unique legal status of Mikmakik as a separate commonwealth in North America protected by its 18th century treaties with the Empire. The Government of Canada's 1978 announcement of plans to draft a new national constitution breaking its legal bonds with the United Kingdom added great urgency to this programme. Most of the documents in this Part involved proposals for the text of the new constitution, and objections to Canada's consistent failure to make adequate constitutional provision for Mikmaq self-determination.

Many of these documents were transmitted to the Minister of Indian and Northern Affairs via the Union of Nova Scotia Indians, because Canada did not recognise the Grand Council itself as a legal entity capable of participating in negotiations.

STATEMENT BY ALL THE INDIAN ACT CHIEFS · 1977

This was the first public statement of the aims and aspirations of the Mikmaq people, after Canada "centralised" them on a small number of "Indian Reserves" in the 1950s. "Indian Act" chiefs were those elected to the administrative councils Canada established on each Reserve in the 1960s, to break up unified Mikmaq government and nationality.

◆

From time in memory, our forefathers have lived in this land. This is our land. This is our home. Our history and our allegiance is to this land and to no other. Today we still live in this land that belonged to our forefathers; that still belongs to us and that we will pass on to our children yet unborn. Our existence in this land predates the coming of European explorers and immigrant settlers. Our existence in this land predates the establishment of colonial settlements and governments by Europeans. Our existence in this land predates the Confederation of Canada.

Before the English and French came, we were here. We are a pre-Confederation nation of peoples.

Prior to the coming of the European immigrants, our ancestors exercised all the prerogatives of nationhood. We had our land and our own system of land holding. We made and enforced our own laws in our own ways. The various tribal nations dealt with one another according to accepted codes. We respect our distinctive languages. We practice our own religious beliefs and customs. We develop our own set of cultural habits and practices according to our particular circumstances. We, in fact, had our own social, political, economic, educational and property systems. We exercised the rights and prerogatives of a nation and existe as a nation.

It was as nations our forefathers dealt with the European immigrants. It is as nations we exist today. It is our desire and intent to continue to exist as a nation of Micmacs.

As nations of Indian peoples or Indian nations, our rights and entitlements to this land were inherited from our forefathers. Our rights to the ownership of the land precede and supercede the claims upon our lands by the Europeans.

We have prior rights of ownership by prior occupation and rightful inheritance. Our ownership and entitlements to this land does not arise by virtue of any rights granted to us by foreign sovereigns of the Europeans or their succeeding governments; rather the European immigrants and their descendants live in this land by virtue of the rights we granted them. The rights were granted them merely the rights to use and share the lands with us.

Vast portions of this land still remain Indian land. Our continued ownership and rightful use of our lands has not been terminated. Even though succeeding governments of our European immigrants attempt to dispossess us by seizing and claiming all our lands, we maintain the European peoples and their succeeding governments have not, at any time or in any way, rightfully acquired these lands. We further maintain we are deserving of the recognition, restoration and compensation for the wrong seizure of our lands and resources thereon. We will continue to inhabit, occupy and use these lands for our survival and subsistence according to the rights we have inherited from our forefathers.

We have paid a very grave and exhorbitant price; we face the danger of being wrongfully dispossessed of much of our other land; our religious beliefs and practices were outlawed; we were denied the use of our language; our music, dances and arts were declared barbaric; we were prohibited to live and practice according to our own cultural customs; and our entire way of life, based on the land, was endangered and weakened by deliberate acts of destruction of the animals which sustained us and our movements were restricted so that our survival was made perilous and precarious.

Yet we have survived. We have not perished. We have not vanished. We are not also merely people of the past; we are of this land today; and we will be of this land in the time yet to come. Our survival in our land today is still perilous and precarious.

If we are to survive as a people in the future, to be strong and independent as we once were, we must develop and strengthen our existence with a special relationship with the European in this land today.

Therefore, let it always be known, as it has always been known and accepted by us, that we are nations of Indian people; and that we declare and proclaim a special relationship within the Canadian federation.

This is the understanding that exists in the minds and hearts of our people.

We, as a people, submit our aboriginal rights and statutory rights claim as the only avenue through which the Micmacs of Nova Scotia can achieve social and economic justice. The negotiations of these claims are our future and our children's future.

"MAPLE LEAF or FIG LEAF?" • 1978

This analysis of the Trudeau Government's original draft for the constitution of Canada includes specific proposals for the constitutional entrenchment of native rights. The original document has been somewhat abridged. Canada's response follows.

◆

Maple Leaf or Fig Leaf?
What is Canada Trying to Hide?

The burning issue in Canada today is national identity. In the controversy over Quebec, in literature, social sciences, and art, we see questioning of the meaning of Canada. Is Canada just a reflection of the United States? Is there a Canadian culture?

In the midst of this debate, the Trudeau administration proposes a new national constitution to the Canadian people. We are told it will bring us closer to Canadian ideals, recongizing the diversity of Canadians. But this constitution does not even pretend to improve the political condition of Indian Bands or Indians. As Indians, we find this puzzling.

In its pursuit of identity, Canada has often fallen back on its Indian heritage. Everywhere in Canada, there is Indian art, paid for by the government. Bookstores are filled with sentimentalism about Indians. Everyone in Canada is loving the Indians to death. Yet, nowhere is it admitted that Canada's Indians are a free people who came into this union, like the provinces, of their own free will with the consent of the Crown. Nowhere is it admitted that Indians have subsequently been denied the right to choose their own leaders and make their own laws to the same extent as other Canadians.

The growing debate in Canada over the nature of the Confederation has made Indians more aware of the fact that they are excluded from meaningful partnership in the making of Canada. Out of this awareness grows resistance.

We see Canada is a union of peoples. It is not just a nation broken up into provinces for the sake of convenience. Unlike the United States, Canada has not given up the ideal of a real federalism that does not homogenize all who enter into it - except for the Indians. While the administration urges us to reaffirm, in a new constitution, the federal philosophy, Indians find in it only a continuation of the denial of their political rights.

This document is a statement of the principles we believe must govern any new constitution, if the political freedoms of Indians and other Canadians are to be equalized, and a revision of the Constitutional Amendment Bill, 1978 consistant with those principles.

STATEMENT OF PRINCIPLES

The Constitutional Amendment Bill, 1978 (C-60) purports to be a design for improving the whole fabric of Confederation. It affords Parliament a unique opportunity to demonstrate good faith in their repudiation of the "White Paper" policies of a decade ago. It offers the country an opportunity to prove that

Canadian federalism is strong and flexible enough to protect the interests of all citizens. The Bill is, therefore, a test of Canada's principles.

The Bill fails. It simply reiterates the pretence that there are no Indian rights, only federal prerogatives to govern Indians by administrative fiat. It does not hint that Indian treaties have any role in shaping the political structure of Canada. It forces individual Indians to choose between self-government and personal security.

Canadians today do not understand the real relationship between Indian bands and the Government of Canada. The Government, however, cannot fail to be aware that Indian bands joined this union by treaties or compacts with the Crown. Nonetheless, while the Constitutional Amendment Bill describes the basic constitutional arrangement of provincial federalism, it ignores treaty federalism.

What most Canadians think of as federalism is provincial federalism -- the allocation of power between provinces and the Government of Canada ratified by statutes such as the British North America Act. Treaty federalism is the allocation of political power between Indian bands and the Government of Canada flowing from the treaties of the eighteenth and nineteenth centuries. Provincial federalism and treaty federalism differ only slightly; in fact, there has been much discussion recently whether the British North America Act was a treaty or compact among the provinces.

In most treaties bands empowered the Crown to manage their external or international affairs and reserved their internal or domestic powers. Similarly, provinces reserved for their own legislatures "local" matters, leaving defense, commerce, and other national or international matters to Parliament. Indian treaties are a lot simpler than the Constitution, however, and strictly read, give up less power to the federal authorities.

The Crown delegated its treaty responsibilities and obligations to the federal Government of Canada in Section 91 (24) of the British North America Act. In so doing it did not modify any of these rights. That would have violated the constitutional nature of the treaties or compacts. Treaty federalism and provincial federalism therefore flow from different historical sources and documents but reflect the same fundamental political ideas and processes.

Indian bands are original, historical and contemporary governments of the Indian People. In the treaties the bands have delegated some of their inherent political power to the Crown. Modern bands' authority to govern does not come from the federal government, but consists of those powers never delegated to the Crown.

If in recent years bands have not always exercised their powers it has been because of widespread denial and obstruction of their right to do so. The British North America Act gave the federal government a duty to execute treaties already made, as well as authority to make further treaties with the Indians in the name of the Crown. The federal government has misinterpreted this as a license to set up administrative agencies to manage and control the lives of the Indians, rather than to secure the bands' place in this Confederation according to the terms of their Union. To correct this misinterpretation, the Union of Nova Scotia Indians propose the following revised draft of the Constitutional Amendment Bill for the consideration of Parliament.

In drafting these proposed revisions of the Constitutional Amendment Bill, the Union of Nova Scotia Indians was guided by three principles of political freedom. The Government of Canada and Canadians are asked to accept and advance these principles in all deliberations on constitutional reform and Indian rights.

The three principles of political freedom are:

1. culture;
2. political liberty; and
3. equality of economic opportunity.

These principles spring from the same source as the Magna Charta, the English Bill of Rights, the Canadian Bill of Rights, and the proposed Canadian Charter of Rights and Freedoms. Canadians are not being asked to accept or advance unfamiliar values, but only to apply familiar ones to the Indian bands.

The first principle, cultural integrity, is a principle of individual freedom and dignity. The fact that a culture is Indian does not make it inferior to other cultures. Indians have a right to enjoy their culture, their world view, and their language without interference from government. The Constitutional Amendment Bill seems to have taken Canada little beyond the French and Indian Wars of the seventeenth century. Indians are asked to align themselves with either Anglophones or Francophones, while the identity of the native people of Canada is ignored.

It is the position of the Union of Nova Scotia Indians that the significance of Indian cultures in shaping Canada should be recognized expressly in the Constitution, together with right of bands to exercise legislative authority to preserve and foster Indian languages and culture, and to offer Indians the opportunity to follow the lifestyle of their choice.

The second principle, is political liberty. The future of the Indian people must remain in the hands of Indians and the institutions appointed by the Indian people for their government. All legitimate political power over the Indian people must arise from consent. Band government always was, and remains the legitimate political authority on Indian reserves. Rule by an administrative agency, however, well-intentioned, is despotism.

It is the position of the Union that Indian people residing on reserves must have no less political liberty than other citizens of Canada. This means that band governments must be as secure in their internal authority, as secure from external political constraints, and as well as represented in the assemblies of the nation, as the provinces.

The third principle is equality of economic opportunity. Federal efforts in this direction must apply to Indian bands and the provinces alike, without discrimination. Bands and provinces must be placed on an equal footing in the allocation and use of federal subsidies. The current regime of separate appropriation and costly federal administration of Indian monies places bands at a disadvantage in seeking partnership in Canada's economic future.

An additional factor in the equalization of opportunity is the protection of political liberty; the power of bands to create an environment favorable to development is a condition of development.

It is the position of the Union that bands should be directly and unconditionally subsidized by the Government of Canada in the same manner as the

provinces, due regard being given to the relatively greater poverty of bands at this time, and that bands should have no less power to regulate commerce, tax, or develop human resources than the province.

These are the principles upon which the Union would see Canada build a stronger and more lasting union including in full partnership, for the first time, the Indian People.

COMMENTARY

The purpose of this commentary is to explain the intended effect of each proposed amendment and to relate each proposal to the statement of principles in Part I.

Preamble

> Welcoming as witness to the inheritance the evolution of the *[Indian,] English-speaking and French-speaking communities, in a Canada shaped by men and women from many lands;
>
> 2. By this enactment, the people of Canada declare and affirm the continuation of the union brought into being by the British North America Act, 1967 (hereinafter called the "Act of 1867") and subsequent constitutional enactments, following upon the expression, in the Act of 1867, of the desire of its original component provinces to be united together under the name of Canada with a constitution similar in principle to that of the United Kingdom, by the law of whose Parliament the union was thus born. *[By this enactment, the people of Canada also declare and affirm the continuation of the separete union brought into being by treaties with the Indian tribes and bands, and further resolve to equalize the participation of the tribes and bands, and of the provinces, in this federation.]

These two proposed additions clarify the spirit and intent of the provisions for Indian bands that follow. The language of the Preamble is amended to emphasize the significance of Canada's Indian heritage, and the continuing role of the Indian community in determining Canada's future. It rejects the characterization of Canada as a fundamentally bi-ethnic (Anglophone and Francophone) society.

Section 2 as originally drafted declares the nature of the Canadian Confederation as a voluntary union of provinces under the authority of the British Parliament. Our proposed amendment would make a parallel declaration of the fact that Indian bands entered this Confederation by means of a different, but equally important route: treaties made with the Crown before and after Confederation. Like provinces, bands share in the Canadian union only because they have consented to this frame of government.

(Ed. Note: in each section of the draft Canadina constitution reproduced here, phrases underscored and marked by "" are those proposed for insertion by Mikmakik.)

Section 2, as we prepose to amend it, would also state in precise terms the overall philosophy of the Union of Nova Scotia Indians: to equalize, as much as possible, the political status and freedom of the Indian citizens of bands with the status and freedom of provincial citizens.

Mobility Rights

Every citizen of Canada wherever the place of his or her residence or domicile, previous residence or domicile, or birth, has

-the right to move and take up residence in any province or territory of Canada, and in consequence thereof to enjoy the equal protection of the law within that province or territory in the matter of his or her residence therein; and

-the right to acquire and hold property in, and to pursue the gaining of a livelihood in, and province or territory of Canada;

subject to any laws of general application in force in that province or territory but in all other respects subject only to such limitations on his or her exercise or enjoyment of those rights as are reasonably justifiable otherwise than on the basis of the place of his or her residence or domicile, previous residence or domicile, or birth.
* [This Section shall not apply to lands reserved for Indians.]

Unless amended as we propose, this section would be in conflict with the continuation of bands' exclusive use of Indian Reserves. Our proposed addition excepts Reserves from the right of non-Indian Canadians to reside and work wherever they wish.

Official Languages

13. The English and French languages are the official languages of Canada for all purposes declared by the Parliament of Canada or the legislature of any province, acting within the legislative authority of each respectively;
* [except that Indian bands may provide for the use of their native languages on Indian Reserves, anything in this subpart to the contrary notwithstanding.]

Without some revision, the Constitutional Amendment Bill's entrenchment of the Official Languages Act could affect bands' right to use and promote the use of native languages in Reserve schools, band government, bank legal process, and other Reserve business. Our proposed addition declares the right of bands to use or require the use of native languages on Reserves.

Rights Unaffected

26. Nothing in this Charter shall be held to abrogate, abridge or derogate from any right of freedom not declared by it that may have existed in Canada at the commencement of this Act, including, without limiting the generality of the foregoing, any right or freedom that may have been acquired by any of the native peoples of Canada by virtue of the Royal Proclamation of October 7, 1763,
* [or any treaty formerly concluded with the crown].

As currently drafted, this section of the Bill is the only attempt to preserve the rights Indians enjoy by virtue of their separate entry into the Canadian federation. We feel that this section should expressly include treaties with the Royal Proclamation of 1763 as examples of special provisions for native rights that this constitutional amendment pledges to protect.

Constituents of Federation

The Canadian federation under the name of Canada declared and affirmed to be continued by this Act shall be composed of

(a) the federal authority in and for Canada, which shall consist of and be constituted by the Parliament of Canada and the executive government of and over Canada, as hereinafter provided;

(b) the authorities of the political division styled provinces by this Act and known respectively as Ontario, Quebec, British Columbia, Prince Edward Island, Saskatchewan, Alberta and Newfoundland, each being a constituent element of the Canadian federation, constituted as provided in this Act and by its constitution;

*[(c) the authorities of the political subdivisions styled Indian bands by this Act and comprising those bands exercising jurisdiction of Indian Reserves on the date of this Act, each also being a constituent element of the Canadian federation, constituted as provided in this Act and by its charter or customs; and]

(d) the territories known respectively as the Yukon Territory and the Northwest Territories.

It is fundamental to the preservation of band government that its status as one of the constituent elements of Canadian federalism be declared in express terms. The original draft of section 31 is a list of the levels of government that constitute Canada; our proposed addition adds Indian bands to the list.

As proposed here, section 31 would recognize the self-governing rights of all bands in existence as of the date of the Act's adoption by Parliment.

Territorial Rights

33. The territorial limits of each of the provinces, *[bands] and territories described in paragraphs 31(b), (c), *[and] (d) shall remain as they were at the commencement of the Act, unless and until they are altered in accordance with the provisions of this Act.

Our revision of this section guarantees Indian bands the same rights of territorial integrity against boundary alterations as the provinces would enjoy. See section 37.

Administration of Justice

36. The administration and enforcement of the laws of the federal authority in and for Canada shall rest with the authority, and the administration and enforcement of the laws of each province, * [band] or territory of Canada shall rest with it, except as otherwise provided by or pursuant to the Constitution of Canada or by any agreement or arrangement not inconsistent therewith.

Like section 31 and 33, section 36 is declaratory of rights of self-government described more fully in later sections. Section 36 guarantees to each province and territory the right to enforce its own laws. Our proposed revision includes Indian bands in this guarantee.

Alteration of Boundaries

37. The Parliament of Canada may from time to time, after consultation among the First Ministers of the Canadian federation at a meeting duly constituted for that purpose, and with the express consent of the legislature of any province * [or band] affected thereby, increase diminish or otherwise alter the territorial limits of any such province * [or band] upon such terms as may be agreed to by that legislature, and may after the like consultation and with the like consent make provision respecting the effect and operation of any such increase, diminution or other alteration of territorial limits in relation to any province * [or band] affected thereby. * [Nothing in this section, however, shall prevent the Supreme Court of Canada, upon a determination that a band has hitherto been improperly deprived of any lands, from restoring such lands to the band without legislative approval.]

As we propose to amend it, Section 37 recognizes the possibility that Reserve boundaries may from time to time be enlarged or diminshed by the mutual consent of Parliament and the affected bands. It implicitly deprives the federal authorities of power to expropriate band lands (as under section 35 of the Indian Act) without band consent.

Additional language was thought necessary to make it clear that, although Parliament can only enlarge or diminish a Reserve with the consent of the band, the return of improperly confiscated Indian lands to the bands by the courts (as in pending aboriginal title claims) would not require Parliamentary approval.

Census

41. In the general census of the population of Canada, which is hereby required to be taken in the year 1981 and in every tenth year thereafter, the respective populations of the provinces, * [bands] and territories shall be distinguished.

We believe that a major obstacle to effective planning and advocacy by bands has been the absence of complete statistics on population, incomes, educational level, and other socioeconomic factors. Our proposed revision of section 41 would require the federal government to collect and publish separate statistical reports on the provinces and each band.

Representation in the House of Federation

62. The house of the Federation shall consist of * [128] members, who shall be selected as hereinafter provided in accordance with the following provincial, * [band,] and territorial distribution of its members:

- -from the Atlantic provinces, 32 members, of whom 10 shall be selected from Nova Scotia, 10 from New Brunswick, 4 from Prince Edward Island, and 8 from Newfoundland;
- -from Quebec, 24 members
- -from Ontario, 24 members
- -from the Western provinces, 36 members, of whom 8 shall be selected from Manitoba, 10 from British Columbia, 8 from Saskatchewan and 10 from Alberta;

with one member being selected from the Yukon Territory and one from the Northwest Territories, * [and one from each of the ten unions of Indian bands, which is to say the Union of Nova Scotia Indians, the Union of New Brunswick Indians, the Confederation of Indians of Quebec, the Union of Ontario Indians, the Indian Association of Alberta, the Manitoba Indian Brotherhood, the Federation of Saskatchewan Indians, the Union of British Columbia Chiefs, the Yukon Native Brotherhood, and the Northwest Territories, or their successors.]

This Section contains the rule of apportionment of the new House of the Federation which would replace the Federal Senate. We consider it essential that there be Indian representation in this House. Since the philosophy of the House of the Federation is to give each province and territory a direct voice in federal legislation affecting it, we see no reason why bands, which also constitute political subdivisions of the federation and have many special and separate interests, should not also be directly represented.

Appreciating how unlikely it is that Parliament will agree to direct representation of all of the bands, since they number in the hundreds, we are suggesting a compromisory approach by which one Member of this House would be selected by each of the regional Indian unions or associations. This would place ten Indian Members in the House, or a little less than 10% of the total seating.

See section 63 for Indian Members' qualifications to hold office, section 68 for special powers of Indian Members, and section 71 for Indian representation in the House of Commons.

Selection of Representatives

63. (1) Of the total number of members of the House of the Federation to be selected from any province,

(a) one-half shall be selected by the House of Commons within the first thirty sitting days of the House of Commons next following each general election of members of that House, and

(b) one-half shall be selected by the legislative assembly of that province within the first thirty sitting days of the legislative assembly next following each general election of members of that assembly, and the members of the House of

the Federation from the Yukon Territory and the Northwest Territories shall be selected by the Governor General in Council not later than the end of the first thirty sitting days of the councils, respectively, of those territories next following the day fixed by proclamation pursuant to subsection

(2) and thereafter next following each general election of members thereof. * [The members of the House of Federation from the unions of Indian bands shall be selected by the Unions in such manner as each of them may provide within the first thirty sitting days of the House of Commons next following each general election of members of that House; and Parlaiment shall not disqualify any person so selected, anything in Section 65 of this Act notwithstanding.]

Section 63 of the original draft would continue Parliament's powers to fix the qualifications of its members. We fear this power could be used to defeat the right of Indians to choose their own representatives, as provided in Section 62. We therefore propose to add to section 63 a proviso to the effect that the qualifications of Indian Members of the House of the Federation be exclusively determined by the Indian unions and associations.

Legislation Affecting Indians

68. (1) Where, by the adoption of a motion under this section with respect to any Bill, notice of which motion was given by a Minister of the Crown in the House of Commons at least seven days after the day the Bill was presented to the House of the Federation following its passage by the House of Commons, the House of Commons has agreed, by a vote of at least two-thirds of its members voting on the motion, that

(a) The Bill would not if it were a law of Canada have an obvious and significant impact on relations between the federal authority in and for Canada and a provincial authority, or between any of their respective institutions, and

(b) its enactment as a law of Canada is of such urgency that any additional delay therein that could be occasioned by compliance with the requirements of section 67 respecting the presentation of the Bill for assent pursuant to that section, and any delay therein that there is reason to believe is likely to occur if the motion is not adopted, would be detrimental to the interests of Canada or of the public in any part of Canada, notwithstanding anything in section 67, the Bill may, at any time following the adoption of the motion but not later than the end of the session of Parliament in which it was adopted, be presented for assent pursuant to section 67 without further compliance with the requirements of that section.

(2) This section does not apply with respect to a Bill that is a measure of, or a measure containing provisions of, special linguistic significance within the meaning of section 69.

* [(3) Notwithstanding any other provision of this act, no bill that distinguishes, in its effect, between Indians and other Canadian citizens shall be adopted and passed by Parliament except with the

approval of at least seven of the members of the House of the Federation selected by the unions of Indian bands.

Section 68 appears to us to be a convenient place to insert a special power of the Indian Members of the House of the Federation that we deem essential for the proper execution of this Act. Just as Quebec would enjoy special leverage to oppose "measures of special linguistic significance" (section 69), in our proposed new subsection (3) the ten Indian Members of the House of the Federation would have to agree, by a two-thirds majority of seven, to any federal bill "that distinguishes, in its effect, between Indians and other Canadians."

Our proposed revisions of sections 91 and 92 make it clear that bands are to enjoy the same right of exclusive local legislation as provinces. Parliament may nevertheless attempt to encroach upon band legislation by continuing to treat band governments as inferior to the governments differently than provincial governments require direct Indian approval.

This would not prevent Parliament from treating bands or band citizens better for some purposes. It would only prevent Parliament from treating bands differently in ways Indian representatives agree would make them worse off.

House of Commons

71. Subject to this Act, the House of Commons shall consist of 282 members, of whom 95 shall be elected for Ontario, 75 for Quebec, 11 for Nova Scotia, 10 for New Brunswick, 14 for Manitoba, 28 for British Columbia, 4 for Prince Edward Island, 14 for Saskatchewan, 21 for Alberta, 7 for Newfoundland, 1 for the Yukon Territory and 2 for the Northwest Territories. * [Citizens of bands shall vote for members of the House of Commons in and for the provinces and territories within which they are located.]

We propose to continue the current arrangement of Reserve Indians voting for the House of Commons from ridings that include both provincial and Reserve lands. We believe it is important for Indians to enjoy both a direct representation in the House of the Federation, as provinces would, and to have some influence over the actions of provincial representatives, who in any event would always command a majority of the House of Commons.

Our proposal for revising section 71 simply clarifies this position, making it plain that direct Indian representation in the House of the Federation does not in any way substitute for the right to vote in federal elections for the House of Commons.

Indian Self-Government

90. (1) Until the legislature of any province otherwise provides, all laws in force in each province with respect to the election of members to the legislative assembly including controverted elections and proceedings with respect thereto, the qualifications and disqualifications of persons to be elected or to sit or vote as members thereof, the oaths to be made or subscribed by such members, the election of a Speaker of the legislative assembly originally and on any vacancy, the powers and duties of the Speaker, the selection of and the powers and duties of deputies of the Speaker, the quorum of and mode of voting in the legislative assembly,

appropriation and tax Bills and the recommending of money votes shall continue in force after the coming into effect of this section; and in all

other respects, subject to this Act, the constitution of the legislative assembly shall continue as it was at the coming into effect of this section until altered by the legislature under the authority of the Constitution of Canada.

* [(2) Nothing in this division (VII) shall be construed to limit the power of Indian bands to organize themselves for self-government in the forms they deem best adapted to their needs and resources, provided they be otherwise consistent with this Act.

Sections 79 to 90 impose limitations on the form and structure of provincial governments. We believe that the great diversity among Indian bands, and their political traditions, make it imperative that each band enjoy a measure of freedom to design its own institutions of self-government. The proposed amendment of section 90 would expressly exempt band governments from the requirements of sections 79 to 90, but would not immunize them from the Canadian Charter of Rights and Freedom or any of the limitations on exclusive legislation in sections 91 and 92.

Powers of Parliament

91. It shall be lawful for the Governor General of Canada, by and with the advice and consent of the House of the Federation and the House of Commons of Canada in Parliament assembled, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces * [and bands;] and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters within the classes of subjects next hereinafter enumerated, that is to say:

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces * [and bands,] or as regards rights or privileges granted or secured by the Constitution of Canada to the legislature or the government of a province * [or band or to citizens of Indian bands] or to any class of persons with respect to schools or as regards the use of the English or the French language, or as regards the principles with respect to elections to legislative bodies declared by section 10 to be fundamental principles of the Constitution of Canada and the requirements respecting legislative bodies and legislatures set out in sections 11 and 12.

1A. The public debt and property.

2. The regulation of trade and commerce.
2A. Unemployment insurance.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The census and statistics.
7. Militia, military and naval service, and defence.
8. The fixing of and providing for the salaries and allowances of civil and other officers of the government of Canada.
9. Beacons, buoys, lighthouses, and Sable Island.
10. Navigation and shipping.
11. Quarantine and the establishment and maintenance of marine hospitals.
12. Sea coast and inland fisheries, * [except as provided by Section 92 of this Act in the case of Indian bands.]
13. Ferries between a province and any British or foreign country or between two provinces.
14. Currency and coinage.
15. Banking, incorporation of banks, and the issue of paper money.
16. Savings banks.
17. Weights and measures.
18. Bills of exchange and promissory notes. 19. Interest.
20. Legal tender.
21. Bankruptcy and insolvency.
22. Patents of invention and discovery.
23. Copyrights.
24. Indians, and lands reserved for the Indians, * [subject to the legislative authority of Indian bands over Reserves.]
25. Naturalization and aliens.
26. Marriage and divorce.
27. The criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters.
28. The establishment, maintenance, and management of penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces * [and bands].

And any matter coming within any of the classes of subjects enumerated in this section shall be deemed not to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the legislatures of the provinces * [and bands].

Subsection (24) of the Section of the B.N.A. Act has, of course, remained the sole constitutional authority in Indian affairs since Confederation. Our proposals affirm and specify the principle of band selfgovernment throughout the entire constitution, leaving Section 91(24) to define the exclusive legislative authority of Parliament over Indians, as opposed to the exclusive legislative authority of the bands themselves.

Consistent with the position of the Union of Nova Scotia Indians over the

ırs, our proposed revision of Section 91(24) preserves a general Parliamentary thority over Indians on and off Reserves. This we believe remains necessary r the enforcement of treaty obligations, and for the improvement of Indians' tegorically poor economic condition nationwide.

In addition our proposal declares a new constitutional principle that thin Reserves band laws have supremacy over federal laws in relation to dians.

Currently, federal laws supercede band laws even in areas such as marriage d divorce where they could not interfere with provincial legislation. Our oposal guarantees bands a sphere of exclusive legislative authority similar to iat enjoyed by the provinces. See also section 92.

We propose several other modifications of section 91. Section 91(1), the nending clause, should make it clear that Parliament cannot legislatively nterfere with the band rights recognized by this constitutional amendment, by xercising its power of further amendment. Like provinces, bands should be ecured against the loss of the rights recognized in sections 31, 33, 36, and 2.

We also propose to revise section 91(12) to avoid conflict between the ishing rights of tribes and bands secured by treaties, and federal fisheries egislation. See also section 92.

Lastly, our proposed revision of section 91(29) equates the provinces and ands with regard to the interpretation of conflicts between sections 91 and 92.

Provincial and Band Powers

92. In each province * [and Reserve,] the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:

1. The amendment from time to time, notwithstanding anything in this Act, of the constitution of the province except as regards the office of Lieutenant Governor, or as regards the principles with respect to elections to legislative bodies declared by section 10 to be fundamental principles of the Constitution of Canada and the requirements respecting legislative bodies and legislatures set out in sections 11 and 12, as those principles and requirements apply by their terms to the legislative assembly and legislature.

2. Direct taxation within the province in order to the raising of a revenue for provincial purposes.

3. The borrowing of money on the sole credit of the province.

4. The establishment and tenure of provincial offices and the appointment and payment of provincial officers.

5. The management and sale of the public lands belonging to the province and of the timber and wood thereon.

6. The establishment, maintenance, and management of public and reformatory prisons in and for the province.

7. The establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province, other than marine hospitals.

8. Municipal institutions in the province.

9. Shop, saloon, tavern, auctioneer, and other licences in order to the raising of a revenue for provincial, local, or municipal purposes.

10. Local works and undertakings other than such as are of the following classes:

(a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province;

(b) Lines of steam ships between the province and any British or foreign country;

(c) Such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces.

11. The incorporation of companies with provincial objects.

12. The solemnization of marriage in the province.

13. Property and civil rights in the province.

14. The administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated in this section.

16. Generally all matters of merely local or private nature in the province.

*[Indian bands shall have the same legislative authority as provinces, and also exclusive power to regulate the hunting, fishing and fowling of band citizens in areas secured for those purposes to them by treaty. This shall not, however, preclude bands from delegating any of these powers from time to time to the federal authorities, provided such delegations be revocable by the bands.]

We propose to equate the exclusive legislative powers of provinces and bands, placing them on an equal footing, with two important exceptions.

The first exception is to recognize the right and responsibility of bands, under treaties, to enjoy and regulate hunting, fishing and fowling both on and off Reserves. To the extent of the treaties' reservation of offReserve hunting, fishing and fowling rights, then, bands would enjoy an extraterritorial power of legislation. In effect this is a power to protect and conserve the offReserve property of the bands.

The second exception is an enabling clause for delegations of authority to the federal government. It may happen that a band has inadequate resources or is unprepared to exercise the full sweep of legislative powers secured to it by this Section. Some powers might be delegated to the federal government for a time, until the band wishes to reassume them. Since it is a rule of Canadian constitutional law that exclusive legislative powers conferred on a province or the federal government by the B.N.A. Act cannot be delegated, the Act must be expressly amended to permit a delegation in the case of an Indian band.

Education

93. In and for each province, the legislature may exclusively make laws in relation to education, subject and according to

(a) in the case of Ontario, Quebec, Nova Scotia, New Brunswick, British Columbia and Prince Edward Island, the provisions of section 93 of the Act of 1867,
(b) in the case of Manitoba, the provisions of section 22 of the Manitoba Act, 1870,
(c) in the case of Saskatchewan and Alberta, the provisions of section 93 of the Act of 1867 as altered with respect to Saskatchewan by section 17 of The Saskatchewan Act and with respect to Alberta by section 17 of The Alberta Act, and
(d) in the case of Newfoundland, the provisions of Term 17 of the Terms of Union of Newfoundland with Canada, as those provisions applied or extended to and were in force in and for that province, immediately before the coming into effect of this section. * [Indian bands shall have the same legislative authority in relation to education as the provinces within which they are located.]

This Section preserves the respective powers of the federal and provincial governments in relation to education as are today under the B.N.A. Act, the Manitoba, Saskatchewan and Alberta Acts, and the Terms of Union of Newfoundland.

We recommend putting each band on the same footing in education as the province within which it is located to facilitate the exchange of educational resources and avoid nonbeneficial additional complexities in federal financial support for education.

Pensions

94. The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits, including survivors' and disability benefits irrespective of age, but no such law shall affect the operation of

any law present or future of a provincial legislature * [or band] in relation to any such matter.

We propose to equalize the powers and authority of provinces and bands regarding old age pensions and other local support for the elderly, disabled, and survivors.

Agriculture and Immigration

95. In each province the legislature may make laws in relation to agriculture in the province, and to immigration into the province; and it is hereby declared that the Parliament of Canada may from time to time make laws in relation to agriculture in all or any of the provinces, and to immigration into all or any of the provinces; and any law of the legislature of a province relative to agriculture or to immigration shall have effect in and for the province as long and as far only as it is not repugnant to any Act of the Parliament of Canada. The laws of Indian bands in relation to agriculture shall have the same status, for these purposes, as the laws of provinces; but the power of bands to regulate immigration to and citizenship in bands shall remain exclusive.

This Section of the original draft addresses two significantly different areas of concern over which the federal government has legislative authority concurrent with, but superior to that of the provinces.

Consistent with our overall philosophy of equalizing the political status of provinces and bands wherever possible, we recommend placing bands on the same footing as provinces in the area of agricultural policy and legislation.

However, we feel it is fundamental that bands have and retain an exclusive power to determine who are their members and citizens, and who may share in the use and enjoyment of band lands. For this reason, we propose adding language to section 95 to secure bands' exclusive authority over "immigration to and citizenship in" bands and their Reserves.

Economic Equalization

96. Without limiting or restricting the generality of the statement of aims of the Canadian federation set forth in section 4 of this Act and without altering the legislative authority of the Parliament of Canada or of the legislatures of the provinces * [or bands] or the rights of any of them with respect to the exercise of their legislative authority pursuant to law, the Parliament of Canada and the legislatures of the provinces * [and bands,] together with the government of Canada and the governments of the provinces and bands, are committed pursuant to the Constitution of Canada to

(a) promoting equal opportunities for social and economic well being

(b) assuring as nearly as is practicable the availability of essential public services of reasonable quality, and

(c) furthering economic development to reduce disparities in opportunities for social and economic wellbeing and in the

availability of essential public services of reasonable quality for the benefit of all individuals in Canada, wherever they may live. *[In appreciation of the present extreme underdevelopment of Indian Reserves, attributable in great part to expropriations of resources hitherto improperly made or inadequately compensated, the Parliament of Canada shall for fifty years apportion to each band an amount of funds equal to two times the per capita amount of funds contributed to the province within which the band is located, subject to no greater conditions on the use and application thereof; and thereafter each band to receive an amount of funds equal to the per capita amount of funds contributed to the province within which it is located.]

99. Where authority is conferred or provided by any Act of the Parliament of Canada for the payment, otherwise than pursuant to an agreement or other arrangement having the force of a binding contractual obligation, of any public money of Canada to or to the use of any institution of government of any province, * [band] or territory of Canada subject to such terms and conditions, if any, as may be contained in or provided for by that Act, the authority for such payment, if expressly stated in that Act to create an obligation on Canada to which this section shall apply, shall, for the period of the subsistence of the authority and subject to those terms and conditions, if any, constitute an obligation accordingly by which Canada shall be bound and to which Canada shall be committed pursuant to the Constitution of Canada, and it shall not be compentent for the Parliament of Canada to terminate or alter any such obligation except as one by which Canada is so bound and to which it is so committed.

These two Sections, which should be read together, form the constitutional basis for federal commitments to finance provincial economic equalization. We believe that commitments made by the federal government to support bands financially should be just as binding as commitments of a like nature made to provinces, and have proposed the addition of language to Section 99 for that purpose.

We also believe that, if bands are to assume full legislative responsibility for their needs in common with the provinces, they will undeniably require, for some years to come, greater per capital financial support from the federal government than the provinces. We have accordingly proposed that for the space of fifty years bands receive from the federal government twice as much support, per capita, as the provinces within which they are located. After fifty years, bands and provinces would be supported on an equal basis.

Under the proposed amendment, band support is tied to provincial support. Parliament cannot increase provincial support without increasing band support, nor decrease band support without decreasing provincial support. Parliament cannot impose any restrictions on bands' use of federal funds unless the same or greater restrictions are imposed upon the provinces.

In the absence of any substantial Indian representation in Parliament, this requirement is an important safeguard against the loss of federal funds. It moreover implicitly elimipates the DIAND position as banker and middleman in all federal support of bands. See also Section 131(3) (c).

We think the formula adopted (double the provincial per capita share) is reasonable and reflects the average difference in incomes and public resources available to bands and provinces.

Expropriation

98. Before the Parliament of Canada may exercise its legislative authority under the Constitution of Canada to declare any work, although wholly situate within a province, to be for the general advantage of Canada or for the advantage of two or more of the provinces, the government of Canada shall consult with the government of the province or the governments of each of the provinces in which the work is situate, * [and also with the government of any Indian band affected thereby.]

Our proposed amendment would require the federal government to consult with bands before taking band lands for national use. In this respect the rights and bands and of the provinces would be equalized.

Jurisdiction of Appeals

(2) Where, with respect to any appeal from any judgement or decision on any constitutional question of the highest court of final resort in or for a province, the Supreme Court is of the opinion that the question involved therein is not of sufficient public importance that it ought to be decided by the Supreme Court, or for any other reason, is of such a nature or significance as not to warrant decision by it, the Court may refuse to hear such appeal.

(3) For the purpose of this section, the term "province: includes the Yukon Territory and the Northwest Territories * [, and Indian bands.]

This proposed revision simply makes it clear that appeals from courts established by band governments may be taken to the Supreme Court of Canada in the same manner as appeals from provincial courts.

Appointment of Judges

117. The Governor General of Canada shall appoint the judges of the superior, district and county courts in each province, except those of the courts of probate in Nova Scotia and New Brunswick * [, and of the courts established by Indian bands.]

We believe it would be inappropriate for the Governor General of Canada to appoint band judges, inasmuch as the laws and customs of bands are at least as foreign to the common law as Quebec's civil law, and the role of the juduciary in band government tends to be significantly different than in the governments of the provinces. Our proposal would simply leave the selection of judges to the bands themselves. It would not immunize band judges from the procedural rights of criminal defendants detailed in the Canadian Charter of Rights and Freedoms, or from any other constitutional requirements of fairness in court proceedings.

Taxation

121. All taxes, imposts and other revenues over which the Parliament of Canada has the power of appropriation shall form one Consolidated Revenue Fund, to be appropriated by the Parliament of Canada for the public purposes of Canada; and all taxes, imposts and other revenues over which the legislature of any province *[or band] has the power of appropriation shall likewise form one Consolidated Revenue Fund, to be appropriated by the legislature of that province for the public purposes of that province.

122. All articles of the growth, produce or manufacture of any one of the provinces * [or bands] shall be admitted free into each of the other provinces * [and bands].

123. No lands or property belonging to Canada or any province * [or band] shall be liable to taxation.

Our proposed insertion of the words "or band" simply makes it unambiguous that bands enjoy the same powers of taxation as the provinces, within their own territory.

Like provinces, bands, by this proposed amendment, would not be authorized to discriminate against goods imported from other parts of Canada by laying special taxes on them.

The insertion of words "or band" in section 123 is essential to contitutionalize and entrench the policy of exempting band lands from taxation. The current tax exemption is merely statutory (under the Indian Act).

Ratification

130. (1) On and after the Commencement of this Act, the statement of aims of the Canadian federation set out in section 4 of this Act shall be read and construed as a statement subscribed to by the Parlaiment and government of Canada, by which they are bound and to which they are committed pursuant to the Constitution of Canada.

(2) In order that effect may be given as soon as may be to the statement referred to in subsection (1) as one subscribed to by and binding on the legislatures and governments of all the provinces * [and bands] in common with the Parliament and government of Canada, as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of a resolution for the amendment of the Constitution of Canada in the form and to the effect of the statement referred to in subsection (1), which resolution may be taken up and dealt with by action as on a joint address or by proclamation, as the case may be, at any time after an amendment to the Constitution of Canada in like form and to the like effect has been approved by the legislatures of all the provinces, in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly provided for, if there is then such a procedure.

Instead, we propose to provide, by amendment to Section 131(3), that the Indian Act remain applicable to a band, notwithstanding any inconsistency with the Amendment Act, until the band ratifies the Canadian Charter of Rights and Freedoms. Application of this new constitution to the affairs of an individual band would therefore require band consent.

Transition (Courts)

133. In order that effect may be given as soon as may be to the provisions of division XI of Part I of this Act respecting the Supreme Court of Canada as being binding equally on the Parliament of Canada as on the legislature of all the provinces * [and bands] as part of the Constitution of Canada, a declaration and direction with respect to those provisions, to the effect set out in subsection 13(2) but with such modifications as the circumstances requrie, shall be deemed to form part of this subsection as if set out herein.

Our proposed addition of the words "and bands" in this Section is a housekeeping measure, lest section 112, as we have proposed to amend it, be in conflict with this transition clause.

Transition (Parliament)

141. Notwithstanding anything in this Act, during the period beginning with the commencement of this Act and ending immediately before the day specified in any proclamation issued under section 142 declaring that the House of the Federation shall come into existence and replace the Senate as part of the Parliament of Canada.

(a) the Senate of Canada shall continue in existence as part of the Parliament of Canada in the place of the House of the Federation, and for greater certainty section 56 of this Act shall be deemed to read as follows:

"56. There shall be one Parliament for Canada consisting of the Governor General of Canada, an upper house styled the Senate, and the House of Commons.";

(b) the Senators who, but for this Act, would continue to hold their places therein * [except only that the ten representatives of Indian unions provided for in Section 62 of this Act shall be added thereto and serve as Senators;

(c) the provisions of Sections 18, 21 to 36, 39, 51A, 59, 91,99, 128 and 147 of and of the Fifth Schedule to, the Act of 1867, as amended or modified by any subsequent constitutional enactment, shall be read and construed as being unaffected by this Act, in so far as they relate to the Senate or Senators;

(d) the reference to the House of the Federation in head 1 of section 91 of the Act of 1867, as enacted by the British North America (No.2) Act, 1949 and amended in Schedule A to this Act, shall be read and construed as a reference to the Senate;

131. (2) In order that effect may be given as soon as may be to the extension of the Charter referred to in subsection (1) to matters coming within the legislative authority of the legislatures of all the provinces * [and bands] equally as to matters coming within the legislative authority of the Parliament of Canada, as part of the Constitution of Canada, it is hereby declared and directed that, on and after the commencement of this Act and by virtue of its enactment by the Parliament of Canada, both Houses of the Parliament of Canada shall be deemed to have approved of a resolution for the amendment of the Constitution of Canada in the form and to the effect of the Charter referred to in subsection (1) which resolution may be taken up and dealt with by action as on a joint address or by proclamation, as the case may be, as and when it may lawfully be so taken up and dealt with in accordance with the procedure for such amendment then recognized by accepted usage, if there is then no procedure for that purpose expressly provided for by the Constitution of Canada, or in accordance with the procedure for that purpose expressly so provided for, if there is then such a procedure.

(3) From and after such time as it is provided by the legislature of any province * [or band] acting within the authority conferred on it by the Constitution of Canada, that the provisions of the Canadian Charter of Rights and Freedoms as enacted by this Act extend to matters coming within its legislative authority.

(a) the provisions of the Act of 1867 respecting the reservation of assent to Bills, the disallowance of Acts and the signification of pleasure on Bills reserved, as those provisions extend and are made applicable to the legislatures of the several provinces by virtue of and in the manner provided in section 90 of the Act of 1867, shall cease to extend and be applicable to the legislature of that province as if they were herein repealed or made inapplicable in terms to the province and its legislature; and

(b) where that province is Ontario, subsection 15(2) of this Act shall not apply so as to require the printing and publishing in English and French of any statues of, or any revision or consolidation of statues authorized by, the legislature of that province except any such statues enacted after, or any such revision or consolidation authorized to have effect after, such day or days as that legislature shall have fixed therefor.

* [(c) where an Indian band, all provision of the Indian Act, 1970, as amended, inconsistent with this Act are repealed.]

These provisions and our proposed alerations must be read together. The original draft conditions constitutionalization and entrenchment of the Amendment Act upon ratification by the provinces. It also conditions Parliament's surrender of the power to disallow provincial laws upon each provinces agreement to abide by the Canadian Charter of Rights and Freedoms.

We propose to permit entrenchment of the Amendment Act without band ratification. We believe that a process of band ratification would result in siginficant delay in the implementation of changes we feel have Indian support to begin with.

(e) a reference, in any portion of an Act of the Parliament of Canada amended in Schedule A to this Act, to the House of the Federation or a member thereof shall be read and construed as a reference to the Senate or a Senator, as the case may be;
(f) the provisions of this Act relating to the House of the Federation shall have the effect to enable the taking of all measures necessary with respect to the selection of persons to become members of that House and to enable that House to exercise and perform its powers, authorities and functions as one of the Houses of the Parlaiment

Ratification of the Amendment Act by the provinces could conceivably take several years. In the meantime, this section provides, the Senate of the present Parliament would continue its functions unchanged. To secure Indian representation at the earliest possible date, we propose to amend Section 141(b) to require the seating of the ten Indian representatives of unions and associations between the time the Amendment Act is adopted by Parliament and the time it is ratified by the provinces, rather than only after ratification. During the interim period, the Indian representatives would sit as Senators rather than members of the House of the Federation.

◆

4 August 1980

Dear Chief Johnson:

At our meeting in Truro on June 2nd, you presented me with a copy of the Union of Nova Scotia Indians' position paper on Constitutional Reform "Maple Leaf or Fig Leaf?" I found it a very interesting proposal, and I'm glad to take this opportunity to respond to it.

First of all, I'm sure you are aware that, by the nature of the Parliamentary process, the actual Bill C60 which your paper specifically addressed is no longer an issue. To use the accepted phraseology, it "died on the Order Paper" when that Parliament was dissolved to make way for the first of the recent General Elections. For me to reply to it in that context would therefore not serve the purpose for which your paper was originally intended.

Nevertheless, the issue of Constitutional Renewal is still very much alive and therefore the excellent work which went into "Maple Leaf or Fig Leaf" is still relevant to your joint concerns. I found some of your contentions particularly intriguing and I'm sure that they will receive further detailed study by those who are involved in considerations of Constitutional issues directly affecting Indian people.

In terms of the specifics of your paper, I can fully subscribe to the three principles of political freedom which you have outlined. It seems to me that in the area of cultural integrity, the Indian people have been very effective in demonstrating to other Canadians that Indian languages, cultural institutions and traditional beliefs are very much alive and well. Just how their presence, within the overall Canadian cultural fabric should be recognized in a constitutional sense must be, as you have pointed out, considered seriously. Your proposed addition to S. 13 of Bill C60 certainly indicates one avenue which could be explored.

On the principle of political liberty, you are aware that I agree with much of your thinking in this direction. As I stated at the All Chiefs Conference, I feel the present Indian Act gives me the sort of control and authority over the day-to-day affairs of Indian people which is neither necessary nor, to me personally, desirable or acceptable.

Band governments should be secure in their internal authority, and should be able to negotiate directly with those other external political authorities which make up the totality of Canadian federalism. This is basically what I have proposed as part either of a revised Indian Act or of alternative enabling legislation as a means of recognising Indian Government as a viable, legally authorized institution exercising its own powers, authority and responsibilities.

However, I have difficulty in accepting the extension of your hypothesis that bands would be represented in the "assemblies of the nation" on the same basis as provinces. I do feel that ways should be devised which would permit a more effective representation of Indians and Indian concerns than has been achieved in the past, and your suggestions concerning representation in a House of Federation or any comparable body points in a possible direction. On the other hand, if you are suggesting that bands should be regarded as the political equivalent of provinces in all jurisdictional areas, that is a matter which presents major philosophical and practical difficulties, as has been already stated by other of my Cabinet colleagues, including the Prime Minister himself.

Your third principle, that of the equality of economic opportunity is one which is implicit in the funding and program relationships which my Department is developing. Again however, there are practical difficulties of achieving this in the terms which you have spelt out. To place bands and provinces on an "equal footing" in the allocation of federal subsidies would not be in line with the nature of the present services for which such subsidies are allocated.

I feel that a realignment of the funds spent on the federal administration of programs for Indians to those Indian government willing to administer such programs themselves would go a long way towards correcting the present imbalances in the distribution of resources allocated for the benefit of the Indian people. This, together with the assumption of the actual programs and program resources themselves, would effect the economic redistribution you are seeking but within a framework that recognizes Federal government responsibilities for the resourcing of the Indian people.

When you speak of the unconditional subsidization of bands in the same manner as the provinces, are you referring to the programs funding provincial health care, etc.? If so, then I think the type of funding for bands which could be achieved under an Indian Government Act would come very close to such a system. The major directions of accountability under such a regime would be towards the Indian community itself for the sound and responsible expenditure of funds, development and administration of programs, etc. As long as a mutually agreed-upon accounting system for the maintenance of financial integrity was put into place by the Indian Government concerned, then I feel that the fiscal relationship between the Federal Government and Indian Governments would be very similar to the present Federal-Provincial arrangements.

When I consider your presentation here in conjunction with your second presentation "More Fig Leaf" on a Band Government Act, I feel that there is much similarity between our viewpoints on most of the issues you raise. While it is apparent that the discussions on Constitutional Renewal will be vitally important to the future development of Federal, Indian and Provincial relationships, I feel we have some common ground on which to proceed without prejudice to and unprejudiced by the outcome of those discussions - in the area of implementing a system of Indian Government which can serve the needs of Indian bands.

I would like to thank you for the attentive reception which you and your fellow Chiefs accorded me at our meeting at the Abenaki Motor Inn. It is obvious from the work which has been put into "Fig Leaf" that you have already worked hard and long to effect a significant change in the relationships between Indian people and their governmental institutions and other Canadians. Upon such a base, I look forward both to our coming meeting in the Fall to further discuss these topics and to the eventual resolution of these concerns to the satisfaction of all concerned.

Yours sincerely,

John C. Munro

"MORE FIG LEAF" - 1979

In the summer of 1979, the Prime Minister challenged native organisations to submit specific proposals for self-government, within the framework of amending the Indian Act. This recommendation for transitional recognition of self-government was delivered personally to the Minister the following week. It reflects a far more conciliatory position than the Grand Council would later take.

◆◆

2 August 1979

The Honorable Jake Epp
Minister Of Indian Affairs And Northern Development

Please find attached the Union's proposal for revision of the Indian Act. We trust you will find it concise, specific, and complete. You also may find it provocative.

Our staff frankly was incensed by the Prime Minster's recent intimations that Indian organizations have failed to present the government with specific legislative proposals. The Union has vigorously attempted to present specific proposals both to the administration and to the National Indian Brotherhood for a year and has been ignored and avoided. Indeed, we find it difficult to understood your refusal to meet with us in Nova Scotia as anything but a conscious attempt to avoid the only Indian organization apparently prepared to give the government what it says it wants to see--a specific Indian Act proposal.

We would like to believe that the new government is sincere in its expressed desire to resolve the gross inequities of the Indian Act. We would prefer not to believe that Mr. Clark's recent remarks were calculated to blame Indians in advance for a strategy of unilateral amendment of the Act in defiance of the clearly expressed wishes of Indian government. In any event we will learn a great deal from your response to this document. I will be happy to meet with you at length to give our proposal serious discussion.

Yours in recognition of aboriginal title,

Sak'ej Henderson
Putu's

MORE FIG LEAF
RESPONSE OF THE
UNION OF NOVA SCOTIA INDIANS
TO THE
INDIAN ACT REVISION PROCESS

In 1978 Canadian Indian organizations issued a call for the amendment of the Constitution to recognize Indians' status as a founding people. When National Indian Brotherhood President Noel Starblanket addressed Parliament's

special joint committee on the Constitution of Canada, the Liberal majority chastised Indians for failing to produce specific legislative proposals. The Union of Nova Scotia Indians submitted a specific proposal to Parliament, however, containing a complete Constitutional draft.

Aptly, the Union's proposal was entitled MAPLE LEAF OR FIG LEAF, or, WHAT IS CANADA TRYING TO HIDE? referring to the Trudeau Government's Bill C-60 and its silence on Indian status in this Confederation.

Unfortunately, the Liberals proved more anxious to criticize Indians for failing to be specific, than to take specific Indian proposals seriously. The FIG LEAF paper was ignored.

The Union finds itself in the same situation once again. Now it is the conservatives' turn to criticize Indians. The Union of Nova Scotia Indians is as much prepared in 1979 as in 1978 to speak plainly and to the point, if that truly is what the administration wants. This document contains

- A PROPOSED "BAND GOVERNMENT ACT" TO ENABLE BANDS, IF THEY CHOOSE, TO ASSUME FULL LOCAL SELF-GOVERNING STATUS,
- A STATEMENT OF PRINCIPLES, and
- A SECTION-BY-SECTION COMMENTARY ON THE PROPOSED ACT.

It makes the position of the Union perfectly clear, and it provides the government with a complete piece of draft legislation ready for Parliamentary consideration. WILL WE GET RESPONSIBLE CONSIDERATION, OR ANOTHER FIG LEAF?

TITLE

1. This Act may be cited as the Band Government Act.

DEFINITIONS

2. In this Act

"band" means a community of Indians for whose use and benefit lands have been set apart as a reserve;

"band government" means

(a) in the case of an option band, the constitutional governing body or legislature of the band, or

(b) in all other cases, the council of the band as defined in section 2 of the Indian Act;

"elector" means a person registered on a Band List who is twenty-one years of age or older;

"Minister" means the Minister of Indian Affairs and Northern Development;

"Option band" means a band that has adopted a written constitution pursuant to section 3 of this Act.

BAND CONSTITUTIONS

3. (1) Any band may adopt a written constitution describing, among other things,

(a) procedures for arriving at binding band decisions,

(b) the selection, duties, and compensation of band officers, and

(c) band legislative powers and limitations on their exercise.

(2) A band constitution shall become effective only after it has been approved by the electors of the band in a manner prescribed by the band government.

(3) A band constitution shall not be altered except with the consent of the band.

(4) The Minister shall transfer to a band all monies held for it by Her Majesty within ninety days of the band's adoption of a constitution.

BAND MEMBERSHIP

4. (1) All persons included on the Band List on the effective date of this Act, together with all of their natural children and, to the extent provided by the resolutions or constitution of the band, their spouses and adopted children, shall be members of the band.

(2) The right to participate in band government shall be limited to band members.

BAND LEGISLATION

5. Option bands may exclusively make laws governing

(a) the amendment from time to time of band constitutions,

(b) raising monies within reserves for band purposes,

(c) the assignment, management, use, and disposition of reserve lands and resources, and of band hunting and fishing rights wherever they may be enjoyed,

(d) the establishment of schools, hospitals, roads, and other public works and institutions,

(e) the licensing and regulation of business operating within reserves,

(f) marriage, divorce, inheritance, guardianship of minors and incompetents, and the protection of life, safety, health, and property within reserves, through courts or other band agencies, and

(g) the employment, compensation, and duties of band officers and other agents of band government.

DELEGATION OF BAND POWERS

6. In its constitution a band may revocably assign any or all of its legislative powers to the Minister.

CORE FUNDING

7. (1) Each option band shall receive annually as core funding a per capita amount not less than the percapita equivalent of all federal funding that year provided to the province within which the band's reserve is located.

(2) Core funding may be disposed of by an option band in the exercise of any of its constitutional legislative powers, including contracts for the performance of services by other public or private agencies.

(3) Payments made to bands or to individual Indians in compliance with specific treaty obligations, payments to bands or to individual Indians out of monies now or hereafter held by the Minister for a band such as the proceeds of surrendered lands, and other payments to bands otherwise required by law, shall not be included in or offset against core funding.

RESERVES

8. (1) Reserves are the territories, political and jurisdictional, of bands.

(2) All lands retained by, or heretofore set apart for the use and benefit of bands, are reserve lands, whether or not legal title thereto is vested in Her Majesty. Reserve lands shall not be taxable.

(3) Reserves may be enlarged by the Minister, or by bands with the approval of the Minister, but no reserve shall be diminished except by surrender.

(4) Reserve lands are the property of the bands that retained them or for which they were set apart. Option bands may assign interests in reserve lands in accordance with band legislation made for that purpose.

INDIVIDUAL ASSIGNMENTS

9. (1) Band members are entitled to assignments of reserve lands for their own residential and productive use. Individual assignments shall

include at a minimum all lands held by band members under Certificates of Occupation or Possession, or actually improved by them, as of the effective date of this Act.

(2) Band members' assignments shall not be limited or revoked by the band except for the use and benefit of the band as a whole, and upon payment of full compensation to the assignees.

(3) Members of an option band may transfer assignments and interests in assignments among themselves by sale, lease, gift, or will, subject only to band legislation governing the form of these transactions. Transfers to or among other persons or corporations shall be void unless authorized by the band and shall not, if authorized by the band, constitute a surrender.

(4) Option bands shall provide for the recording of assignments and transfers of assignments. These records shall be available for public inspection and copies shall be provided to the Minister or his authorized representative.

SURRENDERS

10. (1) A band may surrender to Her Majesty any right or interest in its reserve, subject to such conditions as the band may choose to make.

(2) A surrender is void unless it is made to Her Majesty and is accepted by the Governor in Council, and is either approved by the band in accordance with its constitution or, if the band lacks a constitutional provision for surrender, by a majority of the electors of the band at a general meeting of the band called by the band government.

TRESPASS

11. (1) A person who trespasses on and causes injury to a reserve is guilty of an offence and is liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding one month for each such offence.

(2) Without prejudice to subsection (1) or to the power of a band to seek appropriate relief through its own courts, where band complains that persons other than Indians are or have been

(a) unlawfully in occupation or possession of,

(b) claiming adversely the right to occupation or possession of, or

(c) unlawfully causing injury to reserve lands, the Attorney General of Canada shall exhibit an Information in the Federal Court of Canada claiming, on behalf of the band, the relief or remedy sought.

(3) An Information exhibited under subsection (2) shall, for all purposes of the Federal Court Act, be deemed to be a proceeding by the Crown within the meaning of that Act.

(4) Nothing in this section shall be construed to affect any right or remedy that otherwise would be available to Her Majesty or to an Indian or a band.

APPLICATION

12. The provisions of this Act supercede any inconsistent provisions of prior laws, and shall be construed liberally to effect the recognition and achievement of band selfgovernment.

STATEMENT OF PRINCIPLES

One year ago, in MAPLE LEAF OR FIG LEAF? RESPONSE OF THE UNION OF NOVA SCOTIA INDIANS TO THE CONSTITUTIONAL AMENDMENT BILL, we argued that any new Canadian constitution must accord Indian Tribes and bands permanent, secure, and complete local self-governing status. Our position has not changed. In the meantime, however, constitutional amendment has been delayed, and the Department of Indian Affairs and Northern Development has encouraged Indians to divert their attention from constitutional status to revisions of the Indian Act.

Naturally the government would prefer to avoid constitutional issues. A new Indian Act, however improved, would remain vulnerable to amendment by Parliament without Indian consent. A new Indian Act can, in our judgment, serve only as a stopgap remedy for the insecurity of band government and the paternalism of Ministerial discretion.

We would prefer to avoid the Indian Act altogether. Unhappily, the Prime Minister has left us no alternative. Chastising Indians for failing to prepare concrete proposals for Indian Act revision, Mr. Clark threatens unilateral federal amendments of the Act. Rather than permit the government or the Canadian people believe that Indians are incapable of attending to their own affairs, we have proposed a Band Government Act to modify the Indian Act. We think the government must agree that our proposal is concrete and specific, whether or not they find its philosophy pleasing.

The Band Government Act we propose is consistent with our proposal in MAPLE LEAF OR FIG LEAF? for constitutional amendments. It is our position that the Band Government Act should be adopted promptly by Parliament to guarantee band self-government UNTIL SUCH TIME AS ITS PRINCIPLES CAN BE CONSTITUTIONALIZED.

THE GOVERNMENT'S PROPOSALS ARE UNACCEPTALBE —

"Consultations" on Indian Act revision, continuing over the past decade, have not challenged the basis structure of the Act, or its assumption that BANDS ENJOY ONLY THOSE POWERS GRANTED THEM AS A PRIVILEGE BY PARLIAMENT. Under the Indian Act, bands are "allowed" to act like governments when, and to the extent that it pleases the Minister of Indian Affairs. Wielding his discretion to reward or punish bands, the Minister can make band governments do whatever he wishes. We are alarmed particularly by the frequency with which Nova Scotia bands have "willingly" surrendered reserve lands to the Minister.

To end what it freely admits is "paternalism," the government proposes to mend the Indian Act so that bands may "negotiate" charters of self-government with the Minister. This is practically and philosophically unacceptable. Even if we were able to ignore the implication that band charters would be grants, rather than recognitions, or self-governing authority; even if we were able to live with the possibility that, by negotiating a charter, a band would be admitting its lack of inherent and original sovereignty; we cannot accept Ministerial discretion to approve or reject a band's charter proposals. The Minister could exercise this power to write into band charters the same extraordinary and paternalistic power over band affairs he now enjoys under statute. The only difference would be this: today, under the Indian Act, the Minister exercises these powers without band consent, but under the proposed charter system, bands would be forced to give their consent to Ministerial paternalism as the price of symbolic self-determination.

The proposed charter system is unmistakably another imitation of the United States, where since 1934 tribes have been able to adopt charters and constitutions subject to the unreviewable discretion of the Secretary of the Interior. Most tribes in the United States feel that this system consolidated, rather than alleviated, the Bureau of Indian Affairs' grip on tribal life.

Canada does not always have to repeat the United States' mistakes, however much it seems committed to that fate. Indian communities can become full partners in Confederation and enrich the political diversity that is uniquely Canadian. Indians will contribute little to Canada, however, as serfs of bureaucracy.

INDIAN COMMUNITIES ARE SELF-GOVERNING OF RIGHT

Indians in Canada are subjects of the Queen, but this fact does not place them at the disposal of Parliament. Australians and Londoners also are subjects of the Queen, but Canada has no power over them. Each component state of the British Commonwealth traces it subjectship and allegiance to a different act of union. Where the inhabitants were British settlers, an Act of the Imperial Parliament sufficed to create a special, bilateral relationship of state and empire. Such was the case in Canada; we refer of course to the British North America Act recognizing the Canadian Confederation.

Canada's Indians are subjects of the Queen on account of treaties, not acts. Some treaties were made directly with the Crown; the Mi'kmaq Nationmuow originally gave its allegiance by treaty to King George II. Other treaties were with the Crown in right of Canada, i.e. the numbered treaties.

In either case, subjectship is not unconditional submission to a master, but incorporation into a constitutional system of rights and laws. Cape Breton bands of the Mi'kmaq Nationmuow were told in 1761 by the King's representative that their treaties were meant to

> build a covenant of Peace with you, as upon the immovable rock of sincerity and truth, to free you from the chains of Bondage, and to place you in the wide and fruitful field of English liberty.

In their submissions to King George II and subsequent sovereigns, the Mi'kmaq Nationmuow sought the security of Crown justice and protection. They did not offer their children up for dispossession and murder.

John Marshall, Chief Justice of the United States Supreme Court in its early years, observed of the Crown's treaties of protection with Indian tribes,

> the strong hand of government was interposed to restrain the disorderly and licentious from intrusions into their [the Indians] country, from encroachments on their lands, and from those acts of violence which were often attended by reciprocal murder. The Indians perceived in this protection only what was beneficial to themselves an engagement to punish aggression on them. It involved, practically, NO CLAIM ON THEIR LANDS, NO DOMINION OVER THEIR PERSONS. It merely bound the nation to the British Crown as a dependent ally, claiming the protection of a powerful friend and neighbor, WITHOUT INVOLVING A SURRENDER OF THEIR NATIONAL CHARACTER. . . . Protection does not imply the destruction of the protected.

[Worcester v. Georgia, 6 Pet. 515, 551552 (1832)(emphasis added)]. As treaty subjects, tribal citizens could, in their dealings with the Crown and administration, claim the civil and political rights of Englishmen under the constitution, without surrender of their ancient forms of internal self-government.

This special constitutional relationship devolved on the federal government of Canada under the British North America Act, Section 91(24), in 1867. The BNA Act neither enlarged nor altered the constitutional authority of the "protector" government. Instead of occupying a unique constitutional role within the colonial system Indians were to occupy a unique partnership-within the Canadian Confederation.

THE INDIAN ACT IS UNCONSTITUTIONAL

The British North America Act is the Constitution of Canada. It delegates to the federal government of Canada the responsibility of the Crown to protect and defend Indian tribes and bands, not absolute despotic power over the lives of Indians. Instead of implementing Canada's alliance with tribes, however, the Indian Act established over Indians a form of bureaucratic absolutism contrary to the BNA Act, the civil and political liberties of the Queen's subjects, and the civil rights of Canadians under the Canadian Bill of Rights.

Ministerial absolutism is neither democracy nor constitutional monarchy; it cannot protect that enjoyment of life, liberty, and proerty guaranteed to Canadians by the Bill of Rights. No right is safe when vulnerable to unreviewable administrative discretion, and no local government can act responsibly and effectively when any action it takes, howsoever reasonable and necessary, may be arbitrarily nullified by unnamed, unaccountable, and unelected civil servants.

Canada's Indians are, in a word, oppressed by that perfect form of administrative tyranny dubbed "Robinarchy" by eighteenth-century opponents of Walpole's administration: a bureaucracy so independent that it can reward and punish at will.

Any revision of the Indian Act must resolve this fundamental political
oblem. If they are to be able to serve responsibly and effectively, band
vernments must be free of capricious supervision and bureaucratic second-
essing. If Indians are to be productive partners in Confederation they must
secure in their rights and free from the fear of arbitrary confiscation,
ustration, and restraint.

THE PROPOSED

BAND GOVERNMENT ACT

ECTION 1: TITLE

This is not a revision of the Indian Act, but a supplemental piece of
egislation guaranteeing bands an option for full local selfgovernment. Bands
ill choose to be governed by the Indian Act OR the Band Government Act.

ECTION 2: DEFINITIONS

For the purposes of this Act only, "bands" are communities that have some
erritory to govern, i.e. communities that have reserves. Other definitions in
his section are for convenience of expression, e.g., "option band" to refer
simply to bands that adopt written constitutions.

SECTION 3: BAND CONSTITUTIONS

This section is the heart of the Band Government Act. To opt out of the
Indian Act and achieve unsupervised local self-government a band must adopt a
constitutiona written declaration of how it will organize itself. The form and
structure of band government are not limited by this section. Those are
strictly matters to be determined by the bands. Moreover, the federal govern-
ment must accept the bands' constitutions as submitted.

As soon as a band adopts a constitution to take advantage of the Band
Government Act, it is liberated from the provisions of the Indian Act (see
section 12) and is entitled to possession of any monies held in trust for it by
the government.

SECTION 4: BAND MEMBERSHIP

This section is intended to affect all bands, whether or not they adopt
Band Government Act constitutions, and it leaves to each band the authority to
legislate on the membership status of band members' spouses and adopted
children. It only affects future memberships; persons already members of bands
cannot lose their membership under any circumstances.

SECTION 5: BAND LEGISLATION

This section serves as the only real limitation on the power of option
bands over their reserves. Parallelling the BNA Act's enumeration of the
exclusive legislative jurisdication of provinces, section 5 of the Band

Government Act identifies those legislative powers band may choose to include in their constitutions. A band could choose to include them all, to include only some of them, or to include them in rephrased or restricted form.

The intent of this section is to establish securely a zone of exclusive band self-government-exclusive as to both the federal and the provincial governments. It necessarily implies reserve Indians' tax immunity, because taxation on reserves is exclusively a power of bands under section 5(b).

Together with section 3(c), section 5(a) reserves to bands exclusive authority to amend band constitutions, and immunizes band constitutions from future acts of Parliament. Once adopted, a band constitution becomes entrenched against Parliamentary amendments of the Band Government Act or the Indian Act.

SECTION 6: DELEGATION OF BAND POWERS

Some bands may prefer to preserve the status quo under the Indian Act; these bands need do nothing, for the Band Government Act will not affect their relationship with the Department of Indian Affairs. Other bands, while wishing to exercise some unrestricted powers of selfgovernment, amy feel a need to leave some powers in the hands of the Minister, at least for the time being. This section authorizes option bands to delegate powers to the Minister, to be exercised by him until such time, if ever, the bands decide to exercise those powers themselves.

Delegated powers can be reclaimed by bands whenever they wish. The Band Government Act makes it clear that self-governing powers originate with the bands, not Parliament.

SECTION 7: CORE FUNDING

Option bands cannot be "punished" financially by the Department for breaking loose from the administrative ties of the Indian Act. Option bands are guaranteed a minimum annual core funding linked to federal subsidization of the provinces. Option bands cannot lose financial support, then, unless the provinces are cut back as well.

Unlike Indian Act bands, option bands under the Band Government Act can dispose of their federal funding however they think best. Among other things, option bands can use federal subsidies to buy services from the Minister, from other federal agencies, from the provinces, or from private suppliers.

SECTION 8: RESERVES

The first part of this section makes it clear that band powers extend to the boundaries of the reserves. Reserves are not merely tracts of land used by Indians; they are political territories governed by bands.

This section also consolidates so-called "special reserves" with Crown reserves, provides authority for enlarging reserves, and prevents the federal and provincial government from expropriating reserve lands without band consent. Interests in reserve lands can be transferred or modified only by the bands themselves.

SECTION 9: INDIVIDUAL ASSIGNMENTS

This section guarantees band members' right to have and enjoy, without fear of confiscation, reserve lands. In addition, it recognizes option bands' power to regulate land transactions and mandates the establishment of land registries by band governments.

Although the purpose of this section is to encourage the free use and development of reserve lands by band members, it is explicit (in subsection 3) that reserve lands cannot be used by non-members without band consent. Band members may deal freely with one another in reserve real estate, but their dealings with nonmembers are limited.

SECTION 10: SURRENDERS

The Indian Act outlines a complex surrender process in which the Minister may take the initiative and manipulate the process of decision. This section leaves to bands - whether or not they are option bands--full authority to establish the forms and conditions of surrenders.

SECTION 11: TRESPASS

Indian Act penalties for trespass on reserve lands are far too mild. This section increases the dollar amount and makes each incident of trespass a separate offence. Hence, if a non-member entered a reserve on five separate occasions to cut timber without license, he would be liable to conviction on five counts of trespass, and subject to, not $500 or one month, but up to $2,500 or five months.

A greater problem than the severity of penalties has, in the past, been the laxity of Crown enforcement. Subsection (2) makes prosecution of encroachments on reserve lands mandatory whenever the band initiates the complaint.

SECTION 12: APPLICATION

This is a legal housekeeping provision. It reminds judges that some parts of the Band Government Act apply to all bands, whether or not they are option bands, and to that extent supercede and modify the Indian Act. An example is section 8(3), which protects all reserves from expropriation, thus superceding section 35 of the Indian Act.

This section also reminds judges that the purpose of the Band Government Act is to strengthen band selfgovernment so that any conflict or ambiguity discovered in the text of the Act should be resolved in the way that will increase band authority.

A PROPOSAL for TERRITORIAL RECONCILIATION · 1980

Before taking their concerns to the United Nations (Part Five), the Mikmaq extended one last offer to negotiate territorial claims with the Government of Canada. Frustrated with the results of negotiations under Canada's 1973 "Indian" land claims policy (Appendix C), the Grand Council suggested a more formal, high-level procedure consistent with the international character of the formal situation. There was no Canadian response.

◆

1. Goal. The purpose of this process is to settle outstanding territorial grievances of the Mikmaq Nation against the Government of Canada, fully, finally, and fairly in accordance with the commitment of both parties to the principles of human rights, the obligation of treaties, and the peaceful resolution of disputes embodied in the charter and conventions of the United Nations.

2. Scope. This process will include claims of the Mikmaq Nation for ancient dominion, grants, and servitudes within the present-day boundaries of Nova Scotia, New Brunswick, Newfoundland, Prince Edward Island, and Quebec.

3. "Ancient dominion." Ancient dominion refers to land and sea within the seven districts of the Mikmaq Nation as they existed in 1713, including all and singular rights of use and occupation.

4. "Grants." Grants are lands ceded to private persons, government authority, or other nations by the Mikmaq Nation after 1713, which subsequently were acknowledged or set apart for the use of any of the families of the Mikmaq Nation or for the Nation itself. "Indian Reserves" are not grants unless formerly ceded by the Mikmaq Nation and later returned to it.

5. "Servitudes." A servitude is a right to the use of a specific resource such as fish or wildlife, or a right of access or commerce, or a right-of-way, which the Mikmaq Nation reserved for itself out of cessions to others.

Principles

6. Lawful cessions. The ancient dominion and servitudes of the Mikmaq Nation can lawfully be limited or reduced only by cession. To be effective, a cession must be a writing freely executed by the principal officers of the Santeioi Maoaiomi as part of a public treaty. Cessions will be construed narrowly to convey only those lands and rights specifically and expressly included.

7. Lawful surrenders. A grant may be expropriated by, or surrendered to the Crown in right of Canada, but only upon full compensation to the families of the Mikmaq Nation entitled to its use as determined and witnessed by the principal officers of the Santeioi Maoaiomi.

8. Applicable law. Cessions are governed by the principles of the Vienna Convention on the Law of Treaties and, where not inconsistent, the public international law of the British Commonwealth and of the Mikmaq Nation. Questions of authority and agency of officers of the Mikmaq Nation will be resolved by reference to the laws of the Mikmaq Nation.

9. Responsibility. Pursuant to Imperial legislation including but not limited to the Royal Proclamation of 1763, the British North America Act of 1867 and its amendments, and the Constitution Act of 1982, the federal government of Canada is constitutionally responsible for the administration of Imperial treaty obligations to the Mikmaq Nation.

10. Unlawful acts. Any limitation of the ancient dominion, grants or servitudes of the Mikmaq Nation by Canada or its Provinces, or by the agents, instrumentalities, citizens or predecessors in interest of any of them, not in accord with paragraphs 6 through 8 above, was and is unlawful and results in an obligation to furnish full restitution to the Mikmaq Nation.

11. Restitution. Restitution includes restoration of the unceded ancient dominion of the Mikmaq Nation, enforcement of the terms and spirit of treaties, and enforcement of the terms and conditions of grants and servitudes. The federal government of Canada may substitute payment of money compensation for restoration of unceded ancient dominion, but this option will not apply to grants, servitudes, the sea, or to lands held by the Crown in right of Canada or of a Province.

12. Compensation. Compensation paid in accordance with paragraph 11 above will be computed either as (a) full market value at the time of payment, or (b) the current value of all natural resources removed from the land since the time of the unlawful act, whichever is greater.

13. Predecessors in interest. The predecessors in interest of Canada and its Provinces include the Imperial Crown and the British Colonies in North America prior to their admission to Confederation.

Procedure

14. Representation. The Crown in right of Canada will be represented by the Governor General of Canada. The Mikmaq Nation will be represented by the Santeioi Maoaiomi and its principal officers.

15. Application. The Mikmaq Nation may file an application for reconciliation with the Governor General within one year of the adoption of this protocol. The application will contain (a) a concise description of the rights claimed, (b) a map indicating all claimed ancient dominion and grants with reasonable specificity, and (c) a summary recitation of the events which the Mikmaq Nation alleges resulted in its loss of the rights claimed.

16. Response. The Governor General will respond in writing to the application for reconciliation within six months. The response will (a) indicate specifically which claims and allegations of historical fact he will concede and which he will dispute, (b) summarize the basis for disputing each disputed allegation, and (c) briefly describe each defence he will advance on behalf of Canada.

17. Defenses. A claim will be proven unless Canada (a) disproves the allegations of historical fact upon which the claim depends, or (b) proves that the right claimed was ceded or, in the case of a grant, expropriated or surrendered in accordance with paragraphs 6 through 8.

18. Evidence. Treaties and agreements between the Mikmaq Nation and Canada or its predecessors-in-interest will be conclusive. Historical and geographical matters not contained in treaties or agreements may be proven by contemporary writings of unofficial observers, by public documents of Canada or the Mikmaq Nation, or by oral records of the Mikmaq Nation. Written and oral records are to be given equal weight except that a documentary statement against interest by an officer of Canada or its predecessors-in-interest will be conclusive.

19. Negotiation. The parties agree to negotiate in good faith to achieve a mutually-satisfactory reconciliation within two years of the Mikmaq Nation's application under paragraph 15.

20. Advisory opinions. At any time during the course of negotiations, either party may obtain an advisory opinion on specific questions of law or fact in the federal courts of Canada. Advisory opinions will be binding on both parties in any subsequent litigation. Time taken in obtaining an advisory opinion will be added to the two years provided for negotiation by paragraph 19, but in no event will negotiations continue for longer than five years.

21. Reconciliation. Reconciliation may (a) reconstitute as lands of the Crown "in right of the Mikmaq Nation" any lands of the Crown in right of Canada or of a Province, (b) provide for an Order-in-Council declaring and securing the rights of the Mikmaq Nation to ancient dominion, grants, and/or servitudes, (c) recommend that the Government of Canada assume as a lawful debt all compensation owed to the Mikmaq Nation, and by legislation further secure the Mikmaq Nation's territorial rights, and (d) establish procedures for future exchanges of territory between Canada and the Mikmaq Nation in the interests of consolidation. Once written and executed by the Governor General and the Santeioi Maoaiomi, the terms of reconciliation will be binding on both parties.

22. Failure of negotiations. Should the parties fail to agree on terms of reconciliation within the time provided by paragraphs 19 and 20, (a) the Crown in right of Canada and its Provinces consents to be sued for title, damages, and injunctive relief in the federal courts of Canada, and (b) all leasing, use and exploitation of federal and provincial Crown lands within the claimed area will cease pending a final judicial determination of each party's rights. The Mikmaq Nation will be entitled to a caveat and injunction for this purpose.

23. Judicial determination. A federal court acting under paragraph 22 will hear and determine all claims of the Mikmaq Nation to ancient dominion, grants and servitudes, and award title, possession, damages, declaratory and injunctive relief as may be necessary to secure the Mikmaq Nation's rights. Canada will be limited to the defenses enumerated in paragraph 17, and by the principles described in paragraph 6 and 8.

24. Satisfaction. A reconciliation or judicial determination will be considered satisfied if its terms and conditions have been implemented within five years, except that compensation may be paid in installments of not less than $25 million yearly until fully discharged.

25. Failure of satisfaction. If the Government of Canada refuses or otherwise fails to satisfy any term of a reconciliation or judicial determination, the Mikmaq Nation will be entitled to appropriate relief in the federal courts of Canada, including but not limited to a declaration of its rights, possession of land as against private persons, and caveat and injunction against officers and employees of the Crown, Canada, and Province, or municipalities.

26. Effect of satisfaction. Satisfaction of a reconciliation or judicial determination will (a) finally and irrevocably settle forever all territorial grievance of the Mikmaq Nation arising from events preceding the adoption of this process, and (b) serve as a basis for adjusting any future territorial disputes that may arise between the parties.

27. Rights not affected. Satisfaction will not affect any right of self-government of the Mikmaq Nation, or in any way alter the political relationship between the Mikmaq Nation, the Crown, and Canada, except that (a) ancient dominion successfully claimed by the Mikmaq Nation will never be subjected to the jurisdiction or taxes of any Province without the consent of the Mikmaq Nation, and (b) Canada may regard satisfaction as a discharge of any duty in may have to accord the Mikmaq Nation preferential treatment in federal financial assistance, but may thereafter place the Mikmaq Nation on the same footing as a separate Province.

28. Adoption. This process will be adopted when it has been agree to by the principal officers of the Mikmaq Nation, the Governor General of Canada, and the Prime Minister of Canada.

STATEMENT to the SPECIAL JOINT COMMITTEE on the CONSTITUTION·1981

On behalf of the Union and Grand Council, Union President Stanley Johnson made these remarks at a session of the Special Parliamentary Joint Committee on the Constitution of Canada on 6 January 1981. Reprinted from Hansard.

◆

THE JOINT CHAIRMAN (Senator Hays): Chief Stanley Johnson, would you like to present your oral presentation on behalf of the Union of Nova Scotia Indians?

Chief Stanley Johnson (President, Union of Nova Scotia Indians): Joint Chairman.

My name is Chief Stanley Johnson. I wish to introduce my delegation. Behind me to my right is our legal advisor, Dr. Sageth Henderson. To my left is our legal researcher, Mr. Stuart Killen.

I would like to thank the Committee for allowing us the time to make our presentation and to take the time to read our short brief and background information.

Me Taleyn.

Little is known about the relationship between the legal mind and politics in Canada. Creating a prospective legal document to control political behavior in the future throws a strong light on the connection between the legal mind and government.

This proposed relationship confronts all peoples of Canada; but as a representative of the Micmac people in Nova Scotia and administratively united with Mi'kmaq Nationimouw, the Union of Nova Scotia Indians is dramatically concerned about the purpose of such a document as the Canada Act.

After more that three centuries of witnessing the interaction between the legal mind and democratic politics in continental Canada, this we know about the relationship: by some irresistible movement which imitates the attraction death exercises over life, the political mind again and again uses the legal instruments of its own freedom to bind itself and others in chains.

Yet -- in a manner which reminds mortals that death lasts forever and remains the same, while life, although fleeting, can always become something higher than it was before -- the political mind can break its conceptual chains, creating freedoms and liberty greater than was known to law, and the splendour of this triumph surpasses the wretchedness of its earlier subjugation to more primordial inclinations.

The history of Canadian politics goes from mastery of a dream to enslavement of ideas of power and glory. It was the common dream of a better society which was imprisoned by the transformation of scientific racism into the rule of law and responsible government in nineteenth century Canada.

The World Wars of the first half of the 20th Century subordinated the dream to the reality of fighting for political freedoms and liberties.

After the wars the United Nations attempted to cure the evils which caused the wars -- colonialism and racism -- through the Covenants on Human Rights. The Canada Act seeks a similar end, but fails in its efforts.

The proposed Canada Act is an attempt by the current government to readjust the legitimacy of Canadian sovereignty. It states that Canada is no longer a British outpost, but a valid government committed to human rights. Yet, it continues the racist concepts of its birth; that Canada is a European nation.

It refuses to admit to the world that a major part of its legitimacy is founded on the consent of nations and tribes of Indians embodied in treaties with the Imperial Crown.

North America is not England. The ancient territory and theory of government in England were not applicable to North America since the nations and tribes of Indians had their own view of government and held the territory.

Despite the rhetoric of discovery and settlement, the legal fact remains that the rights of Great Britain in North America are derived from the consent of the tribal sovereigns in their treaties.

Under the terms of the treaties and in instruments of the Royal Prerogative, land acquired by the Crown in North America was purchased from the tribal sovereigns; parts of the tribal sovereign were delegated to the Crown to perform; by the treaties according to the will of the tribal nations. The delegated powers became the source of Great Britain's jurisdiction in North America.

Nowhere in the Canada Act is it acknowledged that tribal treaties with the Crown legitimize the European presence in North America. Throughout Canadian history, its constitutional documents are derivative from the treaty perogative of the Crown. The tribal treaties, not provincial treaties or federal treaties establish the legitimacy of first the provinces and then the BNA Act of 1867. If it were not for these treaties, Imperial Parliament would have lacked the constitutional power to create responsible government in North America.

Nova Scotia, the first colonial government in Canada is illustrative of this process. The treaties with the Micmac Nation preceded the establishment of a colonial government. Consistent with the imperial scheme embodied in the reports of Atkins and Kennedy in the 1750's, the Crown acknowledged that only through a permanent union with the Indian nations and tribes in North America could the British hope to maintain the continent from other European nations. Consequently, the treaty of 1752 with the Grand Chief of the Micmac Nation established a political compact with the Imperial Crown.

Six years later, the Legislative Assembly of Nova Scotia was called in 1758. In the maritimes, this pattern was consistently followed. All district Chiefs of the Micmac Nation acceding to the treaty of 1752, followed by the establishment of popular assemblies.

By ignoring the foundation of the treaties, the original source of British consitutional authority, the Canada Act assumes that Canada is part of European history not American history. It assumes, without legitimacy, that by virtue of its colonial charter of responsible self-government from Great Britian, the BNA Act, that it can ignore the original political compact between the tribal

Furthermore, the Canada Act, in frank violation of the laws of nations, attempts to abolish the significance of the Imperial compact with the nations and tribes of Indians in North America. It attempts to forget that the Micmac Nation was a government in its own rights, recongized as such by its imperial treaties, while Canadian government is based on a colonial charter from the Imperial Parliament.

The federal Parliament was originally empowered to perform the treaty obligations of the Empire, section 132 of the British North America Act, and the federal government was assigned the exclusive authority to administer the inherited responsibilities for "Indians and lands reserved for Indians," section 91, in the Provinces of Nova Scotia, New Brunswick and Canada. This is called treaty federalism.

The Imperial Parliament did not grant absolute legislative power over tribal governments in the BNA Act. This was contrary to imperial policy expressed in the Select Committee on Aborigines in 1837 against granting legislative authority over native states protected by the Crown. Neither the BNA Act or the Statute of Westminster in 1931 were novations of our treaties. Political compacts are unassignable unless both parties consent. Since we did not participate or consent to either instrument, our treaty federalism was entrenched in the constitution of Canada just as the Royal Proclamation in 1763 was entrenched. Our treaty with the Crown remains unaffected and carried over indelibly into the constitution of Canada.

Absolute legislative power over Indians is a Canadian unsurpation of power based on racism.

The Micmac people have suffered the total subjugation of their integrity and will to the Department of Indian Affairs; however, our autochthonous polity was not destroyed in these transitions of the political process from observance of treaty obligation and protection of our tribal society to coerced assimilation for the common good.

With the focus on racial consciousness and individualism, that is, Indianism, the Canadian mind simply ignored our treaties and our protected tribal polity. Once recognized it takes positive legislation or formal annexation to destroy vested treaty rights. Hence silence and neglect cannot destroy our traditional government.

The individual assimilation model, which still provides the "deep structure" to federal policy, goals and current law, is marred by an imitation of European greatness. It is a social Darwinist political universe. It was introduced by men at a loss to solve the particular problems of encroachment by immigrants and refugees on land reserved for tribla society and tribal wealth in a democratic society under imperial obligations. At the time it appeared to be only a transitory problem under the imperative of the vanishing races; now this problem is connected with the birth of human rights and the new power of Third World countries. The present bafflement of federal policy toward "Indians" is whether to modify the assimilation model, drop it, or make it operational.

Policy makers and scholars from all parts of the world and from all races have already grappled with this problem. Their solution: the Human Rights Covenants, a new system beyond scientific racism which attempts to eliminate

those standards. The Canadian government has already acceded to these multilateral treaties; these covenants exist in the constitution of Canada as federal obligations. In their totality, the acceded covenants encourage a world of initiatives which previously were considered impossible.

The federal government in the proposed Canada Act has not sought to effect the total principles of the Human Rights Covenants. They have selectively chosen only those principles conducive to its psychological and political ideas based on scientific racism.

Recently in U.N. debates, Canada has attempted to argue against recognizing native rights based on its own self-interest. Now in the Canada Act the federal government seeks to abrogate its obligations to the Human Rights Covenants, imperial treaties, and common law obligations toward tribal society. Of particular importance is the right of self-determination for all peoples regardless of race, religion, or creed, which has remained unacknowledged by the federal government. This illustrates to Micmac society that racism and self-serving goals remain the guards that watch over the relationship between individual and the state and the problem of the distribution of wealth in continental Canada. These attitudes also immunize the Indian Act from the Canadian Bill of Rights and the Canadian Human Rights Act.

The federal government seeks to rewrite its history. It seeks to cover up its sins. The White Paper policy of 1969 sought to comply with the International Covenant on the Elimination of Racial Discrimination by terminating the constitutional category of "Indians and Land Reserved for Indians".

Forgetting that these categories were derivative of political rights under the imperial treaties with nations and tribes of Indians, the government only saw them as reflection of racial standards. The legal reality was hidden to the racist mind. The proposed Canada Act continues this error. It seek to change the constitutional language of the BNA Act--Indians--to the vague category of native peoples rather than tribal society.

The phrase "native people" grants the federal government total flexibility in determining who are native people and the criteria for federal services. In the past, the government has abused its right to determine who is an Indian, they should have no future power to determine its constitutional mandate consistent with its own purposes.

The Canada Act also fails to unite treaty federalism with provincial federalism. Preoccupied with limiting provincial power, the federal government has ignored all the fundamental law of the tribal compact with the Crownthe treaties and the prerogatives acts protecting the aboriginal rightsin both the text and schedules of the act. There is no excuse for this oversight. The federal government is the constitutional protector of tribal rights and interest under the BNA Act. It seeks to ignore its constitutional duty as well as its high statements of its duty to the tribal people, just as it has in the administration of our treaties. The federal government is advocating only its policy, not its constitutional responsibilities and obligations. It hopes that censorship of our rights under treaty federalism will terminate those rights.

Section 24 of the act attempts to give the appearance of preserving our existing rights, undeclared. Why should this be such a benefit to us? We have had our rights for over two centuries, yet the federal government has refused to

implement them. We are not a corporation existing solely in law, we are human beings attempting to forge a better society.

The preservation of the existing rights, undeclared or declared, merely grants us the right to live in poverty at the discretion of federal policy. If our existing rights are so extensive, why are they not included in a schedule or distinguished between treaty rights and other rights?

If our existing rights are so extensive, why is 90 per cent of the work force unemployed? Why only 9 per cent of our housing up to provincial standards? Why does substandard water and sewage system destroy our health daily? Why does our community only have a seventh grade education level after more than a century of federal supervision? The answer is that through the Department of Indian Affairs most of the monies are spent on political payoffs or to nontribal merchants in the surrounding towns, not in fulfilling its responsibility to our society.

The only legitimate authority of the federal government under the BNA Act is to protect our land, resources and tribal people from the immigrants. Having failed in this administrative obligation to the Imperial Crown and Parliament, the federal government seeks to destroy our protected status. They also hope to implement the Canada Act before the Auditor General has a chance to report on tribal trust funds.

In this regard, the Santeoi Mawa'iomi, with our concurrence, have filed a communication with the Human Rights Committee of the United Nations to protect our legal rights and obligations under the optional protocol to the Human Rights Covenants. Our people have no faith or patience with existing legal or political institutions in Canada.

Our imperial treaties guarantee Micmac families the rights of economic opportunity, political liberty, and cultural integrity. The Canadian government has refused to honour its commitments to us and the Crown for a variety of excuses based on tribal lifestyles, not federal policies, assumptions and attitudes. They seek to destroy the last vestiges of our tribal society under the notion of individual rights rather than fidelity to their obligations.

Micmac society seek tribal assimilation into Canadian politics, not individual assimilation into a province. We desire to maintain our freedoms, not end a tribal legacy we inherited with our heartbeat from our parents.

Faced with a similar problem between the races and culture of French and English in Canada, the province of Quebec was created out of the province of Canada to resolve the crisis in the BNA Act; the Canada Act seeks to extend that protective policy for a cultural minority from the dominant society.

The Union has sought to build on this principle of political liberty to our situation in our drafts proposed on Bill C60 and on the revisions to the Indian Act. Both were ignored by the federal government. While we are in agreement with ending racial discrimination we do not accept the federal government's solution to Indian problems. After all, when a baby's bath water gets dirty, you do not throw out the baby with its bath water.

Our current poverty has been officially blamed on the Department of Indian Affairs since 1969. That is a correct analysis of the problem. The Department controls our wealth for national concerns, allocating moneys mostly to provinces

to provide services, and spending about 83 per cent on direct and indirect administration with less than 5 per cent of its budget ever reaching a poor tribal Indian. It also fails to protect us in federal Cabinet in fishing and hunting legislation. To correct these fiscal abuses, federal monies have to be sent directly to the bands to create economic self-sufficienty in the same manner as to other poor provinces and the Department of Indian Affairs must be disestablished.

In the past our goal was to have all the Micmac bands in Canada consolidated into a province of Canada regardless of existing provincial boundaries. Each band would have been a municipality of the Micmac province.

After witnessing the current governments' attempt to confiscate the wealth and power of the existing provinces in the same manner as land and natural resources were confiscated from Indian tribes after Confederation and its current refusal to have an Inuit province in the North, we are not sure that Canada is an acceptable political environment. There exists a strong parallel here. The federal government, in its first century, deliberately sought to end tribal governments in Canada despite our treaties. In its second century, it seeks to limit provincial government for its own benefit despite the BNA Act. Having already seen the effect of this march toward absolute power, this political cancer is undemocratic. It disregards the elements of political consent both in the treaties and the BNA Act. It would be better for our children if we became a trust territory of either the United Kingdom or the United Nations striving toward independence than to have our tribal heritage terminated for the utilitarian calculus of the federal government.

We refused to be treated like colonies of Canada or to be forcefully assimilated in a tyrannical Canada. Our political and legal relationship is with the Imperial Crown, not Canada; hence it is our decision as to our future, to be made in the following months, on what is in our best interest for tribal society.

We have two questions which we would like the Committee to ponder and answer for us. First, will the Canada Act freeze the notions of a superior European race and culture into constitutional law or is it an attempt to break the history of colonialism and racism in Canada?

Second, does Canada still believe that tribal society is an evolutionary cul-de-sac in political development which is preordained to vanish by the will of racial genes and scientific racism or that it is entitled to the same protection as the French people in Canada? These are dangling questions in the debate over the Canada Act. The answer to the questions would help our society address the Canada Act in a more rational manner.

We shall not fold our arms in this battle for human rights. We have the support of the world behind our quest for self-determination and dignity. We are not alone, anymore.

Thank you.

The Joint Chairman (Senator Hays): Thank you very much, Chief Stanley Johnson. Does that complete your presentation.

Chief Johnson: Yes.

The Joint Chairman (Senator Hays): And also New Brunswick.

Mr. Nicholas: Yes.

The Joint Chairman (Senator Hays): Then we go to our questioners and the first on our list is Mr. Hawkens followed by Mr. Manly.

Mr. Hawkens: Welcome to the constitutional Committee. I think we are drawing to a close the opportunity that we have to talk with a number of Canadians about what they would like to see in the constitution. We are facing a closure as of this Friday with the about 1,000 groups and individuals who want to appear that have not had a chance to appear.

On the closing part of the Nova Scotian presentation you asked two questions of us and I cannot respond to those questions on behalf of the whole Committee but I can respond to those questions on my own behalf and I think I would like to start there by giving you may answer to those two questions and if you would like further clarification I would invite you to seek that. If there is a coherent philosophy in the Canada Act 1980, and I say if because I think the weight of testimony would indicate that at best it is illusive and may not in fact be there, but if there is such a philosophy then I think your question here, and let me read it, first:

> Will the Canada Act freeze the notions of a superior European race and cultural into constitutional law or is it an attempt to break the history of colonialism and racism in Canada?

And my answer to that question is that I think it is an attempt to entrench the notions of a superior European race in the constitution of Canada and it is a particular subelement of that that I think is of particular danger to not only your culture but other cultural entities which exist in Canada, that it would, if it went forward the way it is written entrench in the constitution of Canada the right of elected people and in particular at the federal level to intrude more into our lives rather than less, to take more things away, to change more things without consultation than it now can do, that is as it is written.

We have been told on more than one occasion that through the Charter of Rights there is an attempt to protect our rights and freedoms. As I read the Charter in its totality I think I do see an attempt to protect the rights of individuals but I think you understand perhaps better than most Canadians that the rights of individuals can intrude on the rights of the collective, that freedoms for individuals that have no strings attached to them are elements, there exists in there an element of destruction for collective rights. I think one of the characteristics that we should pay a lot of attention to is the fact that the Charter of Rights has been seen as flawed I think by every group from school boards to a variety of cultural groups, every group that wishes to protect a cultural identity has been unstinting in indicating to us that they see nothing in that Charter that would help them maintain their collectivity and their culture and in fact they see a great deal in that Charter that could be and would be interpreted as destructive to that collective sense of identity.

Your second question: does Canada still believe that tribal society is an evolutionary cul-de-sac in political development which is preordained to vanish by the will of racial genes and scientific racism, or that it is entitled to the same protections as the French people in Canada?

I really think there are sort of two questions or as least one question, one statement in that long sentence. The Government of Canada, the particular government that we face today may in fact believe that tribal society is an evolutionary cul-de-sac, but I do not sense that in the people of Canada. I sense in the people of Canada some pretty solid belief in whatever tribe, in the sense that they happen to belong to, whatever subelement of this country that they want to belong to, and they are fighting the unilateral nature of this in their public opinion because they believe that the cultural part of this country that they belong to is in evolution, they want to be involved in that evolution and they see it chaning with the passage of time and I think I see everyone of the aboriginal groups that have appeared before us saying that to us clearly, the evolutionary direction which has been part of your life for the last 100 years has not been positive but this is a nation, if we would smarten up it could become positive to everybody's advantage but we need to evolve together and to work together and I think that is where the people of Canada are, whether this government is there or not.

The second part of that statement relates to the protection of the French people in Canada and I suggest to you that they will have no more protection, they will have less protection if this Canada Act passes than they have now, and they are in the same boat as one of the cultural entities within the country.

Do you want to quiz me on my answer to your question, anybody in your group?

Mr. Stuart Killen (Research Director, Union of Nova Scotia Indians): No, it is clear.

MEMORIAL to HER MAJESTY the QUEEN · 1981

This note refers to the 30 September 1980 communication to the United Nations Human Rights Committee a copy of which was transmitted courtesy of the Governor-General of Canada to the Queen. There was no response.

◆

6 October 1980

Governor-General Ed Schreyer
Rideau Hall
Ottawa, Ontario
K1A 1A1

Me talyen:

What can we say about the government of Canada? The Santeoi Mawa'iomi has tried to live with the immigrants under the terms of our treaty of union with Great Britain, under the law of Jesus Christ, and in the best of our tribal legacy for three centuries. We have not violated our part of the treaty, although we have been denied the dignity and equality as members of the human family and deprived of the obligations, rights and freedom inherent in our chain of union with the Crown. Still we have lost many of our sons in conflicts originating in Europe since 1752 fulfilling our treaty obligations to the Crown, while hoping for the political maturing of the Canadian government.

What is our reward for fidelity to our treaty of union? The Canadian government has refused to recognize our rights to self-determination, confiscated our ancient lands, forced many of our members to assimilate to another culture against their choice, forced us into ignorance and poverty under the guise of developmental policy, and failed to respect our religion. We tolerated this when our protests were ignored, fighting with paper only when our tribal society was threatened with extinction, because we believed that was the way to the kingdom of God. In short, we tried to love and respect our neighbors and to turn the other cheek when faced with blantant racism and economic discrimination. We guided our people in spiritual affairs in humility and dignity through the tough times. The foundation of our faith was the idea that one day the Crown will untie the government of the immigrant with our tribal society when the colonies reached maturity sufficient for nationhood.

Now, we find that nationhood for Canada means a total denial of our royal treaties and perogative protection, as well as the destruction of our status as a protected autochthonous state under the Crown. What we are offered is liberty and equality as native "citizens" of Canada, rather than as a tribal society and government. This is the same goal as the "white paper" of 1968, which we defeated in the 1970's.

This concept is in frank violation of the law of protectorates in the British Empire, International Covenants on Human Rights and self-determination acceded to by Canada, the Vienna Convention on the law of Treaties, and the constitutional law of Canada. The philosophy of this concept is based on the

doctrine of superiority based on racial differentiation, prohibited in the International Convention on the Elimination of All Forms of Racial Discrimination, created by Herbert Spenser in the nineteenth century. It is also a prohibited form of modern colonialism. Yet, still the federal government will not even discuss the issue with us in a public or private forum. We are denied access to discuss our future in Canada with the government.

This oppression could not be the position of the Crown. The Queen, in 1973, told our jigapten that not only the "terms" of our treaties would be respected by the Canadian government, but also the "spirit" of our treaties. The role of a constitutional monarch is to personify the democratic state, to sanction legitimate authority, to assure the legality of its measures, and to guarantee the execution of the popular will. Her Majesty's statements of policy are in total conflict with the current attitude of the custodians of the immigrants' government in Canada.

Independent from the attitudes and policies of federal Parliament and provincial assemblies, the Santeoi Mawa'iomi of the Mi'kmaq Nationimouw, as keeper of the chain of union and autochthonous government of the Mi'kmaq, has decided that the current policy is an outrageous executive action beyond the constitutional mandate in its wider scope. Not only is the federal government acting as if its plans were already law, and certain leaders are taking advantage of the political upheaval to act unconstitutionally in their own interest against Mi'kmaq society, but the federal government is trying to circumvent constitutional controls by acting secretly behind the scenes and ignoring our constitutional status under the Crown. Having reached this conclusion, we seek to invoke the promises of the Crown in our treaties and to prevent this knavish process of constitutional reform and jeopardizing our treaty rights and status.

Our treaties are not with the government of Canada in any manner, it only administers our treaty rights. Our treaties are head of state treaties with the Crown. In the treaties, we were assured that if we upheld the chain of union with the Crown that we shall enjoy the protection of the "Royal Arm" of law and justice against all actions by immigrants which threaten our chain of union. Such protection is the terms and spirit of our compact with the Crown. We seek to invoke this protection in the turbulence of the constitutional revision of the government of Canada. First, we request that you take firm action to protect our rights against the tyranny of government and the masses, second, we request the aid of honest and competent Queen's Counsel to help us obtain an advisory opinion on our status under the current British North America Act in the fair and neutral Judicial Committee of the Privy Council under its extraordinary jurisdiction prior to any royal assent of the constitution act of 1980. Third, to convey to the leader of the Opposition our plight and request him to place this issue in a predominate place. Fourth, to tell all appropriate parties that we refuse to acknowledge that any continued colonial status in a new federal government of Canada. In short, we refuse to consent or be bound by any change in constitution of Canada.

It must be remembered that Canada has many different forms of governments, not regimes, and the Crown unites and ensures recognition of the differences. The British North America Act did not end our autochthonous government. We are, however, the only people exlusively under the jurisdiction of the federal government, still we have been excluded from consultations and not directly representated in the federal Parliament.

We realize that your powers as representative of the Crown are best exercised in private, rather than in public. We honor that style, as it is our style in tribal society also. Yet, we request your acceptance of our petition for protection for the Crown, because you represent law, you represent order, and you represent authority in Canada. Those are our needs in this crisis, those were the royal promises when we entered into our union with the Crown.

Enclosed is the summary of our petition of right to the Queen, which you have previously forwarded for the Nationimouw. It has also been sent and received by the Human Rights Committee of the United Nations in our quest for self-determination and enforcement of our chain of union. We await your response and are prepared to travel to Ottawa for a meeting.

God Save the Queen

Alexander Denny
Jigapten,
Santeoi Mawa'iomi of the
Mi'kmaq Nationimouw

Sakej Henderson
Putu's
Union of Nova Scotia Indians

DRAFT PROTOCOLS FOR SETTLEMENT·1983

12 September 1983

Hon. John C. Munro
Minister of Indian and Northern Affairs
Les Terrasses de la Chaudiere
Ottawa, Ontario K1A 0H4
CANADA

CONFIDENTIAL

me taleyn:

As you are no doubt aware, the legal status of this community is currently before the United Nations Human Rights Committee (Denny v. Canada, R.19/78), and has been the subject of interventions and discussion in the United Nations Commission on Human Rights (U.N. Doc. E/CN.4/1982/NGO/30/Rev.1) and its Working Group on Indigenous Populations (U.N. Doc. E/CN.4/Sub.2/ AC.4/1983/CRP.1 and CRP.3). We have asserted the right to choose freely between a renewal of our historical relationship with the United Kingdom, and some negotiated voluntary association with Canada. Our position rests on the internationally-recognized principle of self-determination, to which Canada acceded through ratification of the International Covenants on Human Rights, and on our treaties of 1752, 1760, 1761, 1779 and 1794 with the United Kingdom, and 1776 with the United States of America.

Informal discussion with representatives of your Government at Geneva persuade us that a mutually-convenient resolution can be achieved through amicable negotiation. It is in our mutual interests to proceed in this manner notwithstanding the international procedures already set in motion. We are confident your Government would benefit from achieving a satisfactory settlement on its own initiative in advance of an international decision concerning our rights and responsibilities.

Unfortunately, your Government has not seen fit to recognize us as a party to the constitutional process. We are not represented by the four indigenous organizations your Government has chosen to include in consultations, nor are we prepared to surrender our right to participate directly in any negotiation or compact affecting our destiny. We gravely doubt, futhermore, that public conferences involving a few native leaders, purporting to represent scores of diverse communities, will ever achieve agreement on specific principles--much less principles acceptable to the large majority of native groups. In our view, substantial progress will depend on constructive, confidential negotiation with representatives of individual organized communities.

We have no ulterior objectives. We are not interested in public sentiment, or in Canada's wealth or power. We are concerned solely with arriving at a political relationship with Canada--as neighbours or associated states--that protects our ability to remain distinct, to live under our own laws, and by our

own efforts in our own country. The security of Canada need never be jeopardized by the tolerance of, and friendship with, a small, separate, and appreciative people.

Enclosed are two proposed protocols, one suggesting the form our discussions might best take, and the other indicating the general form of relationship we believe would be mutually agreeable and practicable. We consider your acceptance of the first protocol a necessary condition of negotiation, but the second protocol may serve merely as an agenda for initial discussions.

If your Government is agreeable to our proposal, this communication will remain confidential.

Russel L. Barsh
Counsel, Foreign Affairs

First Protocol

1. The political relationship between Canada and Mikmakik should be resolved before any attempt is made to settle territorial claims.

2. Any settlement of political status must be consistent with the principle of self-determination of States and peoples under the Charter of the United Nations and the International Covenants on Human Rights.

3. No lasting settlement can be achieved without the direct participation of the people affected. Options for settlement concluded by negotiation must be returned to the Mikmaq people for ratification by democratic means.

4. Negotiations must be conducted at the hightest level, with full authority. Mikmaq will be represented by the Kji Kapten (Grand Captain) and Secretary of the Grand Council, as its principal officers for foreign affairs. Canada will be represented by its Ministers for Indian and North Affairs and for External Affairs.

5. Negotiations must remain confidential to remove them from partisan politics and assure a constructive and practical relationship.

6. Both federalism and free association, on the Micronesian, Puerto Rican or Greenlandic models, are acceptable frameworks for settlement.

7. A joint report of discussions and understandings should be made to both Governments no later than 1 January 1985.

Second Protocol

1. The territory of the Mikmaq people (Mikmakik) is held by Her Majesty the Queen in right of the Mikmaq people.

2. The relationship of Mikmakik and Canada is one of free association in accordance with a constitutionally-entrenched compact ratified by the Mikmaq people.

3. Mikmakik and Canada will share a common defence and currency, both under the routine jurisdiction of Canada. Mikmakik will continue to represent itself in external affairs, in consultation and coordination with Canada.

4. There will be no customs or immigration restrictions between Mikmakik and Canada, but Mikmakik will continue to determine who may reside in Mikmaq territory. Mikmakik will remain free from Canadian taxation except under the terms of agreements for the compensation of particular services.

5. Except as provided by the terms of compact and association, Mikmakik will retain full internal sovereignty and jurisdiction.

6. The territorial and marine extent of Mikmakik, as well as compensation for irreparable territorial losses, will be settled by negotiation or by mutually-agreed referral to the International Court of Justice.

7. Implementation of the terms of compact and association will be supervised by the United Nations.

:ıary 7, 1984

Russel L. Barsh, Counsel
5 42nd Avenue N.E.
ttle, Washington 98105
.A.

ır Mr. Barsh:

ank you for your letter of September 12, 1983. Further to the interim reply om my Special Assistnat of September 26, 1983, I have now had the opportunity eview your letter and proposals. Please accept my apologies for the delay responding.

e Government of Canada is not prepared to discuss the Grand Council Mikmaq tion's views of a political relationship with Canada. Given that the Indian ople of Canada are represented by their Chiefs and Councils as directed by the dian Act my responsibility is to that end. We are therefore not willing to scuss proposals of separate status from the Mikmaq Nation or any native group Canada outside of our current constitutional arrangement.

.e relationship of the Government of Canada to its Indian peoples is an internal nadian responsibility. As you may be aware this postition was most recently pported in R v Secretary of State for Foreign and Commonwealth Affairs ex rte Indian Association of Alberta and others (1982) 2 All ER118 (CA) and rongly stated by Lord Diplock at 143 in refusing leave to appeal to the House Lords:

> "...it simply is not arguable that any obligations of the Crown in respect of the Indian peoples of Canada are still the responsibility of Her Majesty's government in Canada."

trust that this letter clarifies our position in this matter.

ours sincerely,

ohn C. Munro

a Catholic government by tradition, the Grand Council brought its dispute :h Canada to the Holy See and World Council of Churches before appealing to ıer secular nations. After the Canadian representatives of the churches were ɔroached unsuccessfully in 1980-81, a memorial was addressed directly to His liness the Pope.

APPEAL to the WORLD COUNCIL OF CHURCHES · 1980

verend E. W. Scott
imate, Anglican Church of Canada
0 Jarvis Street
ronto, Ontario M4Y 2J6

taleyn:

ı behalf of the Santeoi Mawa'iomi (Grand Council), spiritual and ancient ɔvernment of the Mi'kmaq Nationimouw, I am directed to acquaint you with our .tuation and seek your intercession and assistance as a member of the Central ɔmmittee of the World Council of Churches.

ıe enclosed communcation to several Committees of the United Nations will ivise you generally of our history and current circumstances. We would, of ɔurse, appreciate the advocacy of the World Council of Churches in our efforts ɔ secure for our people the essential family and community rights denied to us y Canada.

his letter concerns a more particular and sensitive service in which we hope ou will assist us. Our traditions tell us that we entered into an engagement r Concordat with the Holy See in which the spiritual responsibilities and uthority of the Santeoi Mawa'iomi were described and recognised. We must ssume that this covenant was recorded in "wampum" (ulnapskok in our language) nd conveyed to Rome; we retain no evidence of it save in our oral chronicles.

hese things are essential to our culture: the Mi'kmaw Nationimouw is a hristian State, indigenous to this continent, and guided by a council in which acred and secular concerns are merged. The Mi'kmaq people have been subjected o every possible indignity to break them of their faith and their culture. For ıearly four hundred years, this has failed to alter the Mi'kmaq way of life.

hen English troops assailed us in the late 17th century, we had the strength of ɔur culture and faith, and prevailed. When the arms of England dislodged France rom Canada and French priests were expelled from our country, our gap'ten conducted Mass in secret and wrote the Gospels in our own language in hidden ɔooks, and so prevailed. In the last century, when colonial officers deceived ɔur Queen by selling our lands in contravention of Crown statutes and regulations, our Santeoi Mawa'iomi protested them, instructed our youth, and the Mi'kmaq survived.

In our present lifetimes, however, the struggle grows more difficult. It often seems that the Church opposes, rather than aids us. Efforts of the federal

government of Canada to shatter our families by coercive "residential" education, to denigrate our Santeoi Mawa'iomi, and to disperse the small remainder of our territory have been joined or tolerated by our own Church. For this reason, the generation that will follow us already regards the Christian faith with suspicion and mistrust, and it may lose altogether its historic role in Mi'kmaq family and national life.

In this century, the Mi'kmaq Nationimouw has fallen from honour as the first established Catholic communion in North America (1628), to the poorest and most neglected of perfunctory parishes.

This is our mission: to renew the Concordat between the Mi'kmaw Nationimouw and the Holy See, in plain language as we speak, and thereby establish a sound and practical working relationship suited to our situation, needs, and government.

The Mi'kmaq Nationimouw is a small and poor State, forgotten among nations. We seek assistance in obtaining an audience with representatives of the Holy See, for the purpose of negotiating a new Concordat. Knowing of your commitment and regard in the arena of social justice, we hope you will accept part of the burden of providing that assistance.

Yours in truth,

Sakej Henderson
Put'us

DRAFT PRINCIPLES OF CO-OPERATION with the HOLY CATHOLIC CHURCH ·1980

Bishop William Power
Catholic Bishop of Cape Breton
Sydney, Nova Scotia

Me taleyn:

We wish to thank you for your audience of 28 August, which we appreciate was arranged hastily, and have the honour to enclose three Requests on behalf of the Santeoi or Grand Council of the Mi'kmaw Nationimouw.

Pursuant to our discussion, which we trust was equally positive and enlightening on both sides, we have identified with jigap'ten Denny three specific areas of particular and urgent concern: recovery of manuscript documents relating to the use of our ancient writing system, recovery of records of our original engagement or Concordat with the Holy See, and development of a fruitful spiritual working relationship between yourself and the priests serving us under your direction, and our Santeoi Mawa'iomi.

Our first and second Requests may, we hope, with your good offices go far toward realization at your meeting with the other Bishops and Pronuncio next month. The third takes the form of a formal Note or Memoire, which we hope may soon be initialed as the first and greates step towards a renewal of the long and unbroken association of our Church and State.

ours in recognition of this mission,

Sakej Henderson
?ut'us

REQUEST No. 1

THE SANTEOI MAWA'OMI OF THE MI'KMAQ NATIONIMOUW respectfully request that Bishop William Power identify the location in the Library of the Archbishop of Quebec, of the personal papers of the Abbe Maillard, missionary priest to the Mi'kmaq in the eighteenth century, and most particularly (i) Father Maillard's notes on and interlineal translations of Mi'kmaq "hieroglyphic" writing, phonetic Mi'kmaq writing, and French and/or English, a folio of which is pictured in Wilson and Ruth Wallis, The Micmac Indians of Eastern Canada (Minnesota 1955), at page 24; and (ii) Father Maillard's journal, notes, and other records, if any such exist, of his service as our Interpreter at the negotiation of Treaties with Great Britain at Halifax in 1752 and 1761.

AND FURTHER WE REQUEST if these documents or any of them be found, that complete copies (xerox, photographic, microfilm, or microfiche) be provided in all haste to our servant, Sakej Henderson, Union of Nova Scotia Indians.

THE PURPOSE OF THIS REQUEST is FIRST, to assure the preservation and propagation of the Catechism and Gospels in our own language in its original and ancient written form, and the promotion of literacy and spiritual knowlege among our children, and for this we entrust Murdina Sylliboy Marshall and Helen Marie Sylliboy, granddaughters of our late jisagamow Gabriel Sylliboy, and Marie Battiste, to learn and teach what Father Maillard deposited with our Church for our posterity.

THE PURPOSE OF THIS REQUEST is, FURTHER, to aid us in teaching our grandchildren the history of their Nation, and more particularly, the wisdom of their ancestors, in partnership with the Holy Catholic Church, in negotiating our association with Great Britain, which, sadly, has lately been much neglected.

REQUEST No. 2

THE SANTEOI MAWA'OMI OF THE MI'KMAQ NATIONIMOUW respectfully request that Bishop William Power discover for us where records of our original Concordat with the Holy See are deposited, or to assist us in discovering their location, and by letters of introduction to the custodians of these records to endorse our mission to see and to recover them.

MORE PARTICULARLY, our traditions tell us that an engagement (or, in the language of the canon law, a Concordat) was made between our ancestors and the Holy See, represented by the Jesuit Order, in or about the year 1620, and that it governed the establishment of the Holy Catholic Church in the Mi'kmaq Nationimouw, the relationship between the Santeoi Mawa'omi and offiers and priests of the Church, provision for churches and protection of Church property, and principles for the spiritual instruction of youth. It was the manner and custom of our ancestors to records their Treaties on belts of strung shell beads, or "wampum", called by us u'lnapskok, in which the principles of agreement were represented by symbols. We know of no paper record of our agreement with the Church, although one may exist, but anticipate that one or more belts of u'lnapskok were given the Jesuit Order by our Mawa'omi with the purpose of their being conveyed to Rome.

THIS WE BELIEVE: that such an agreement did exist, and was recorded, and that it is the basis upon which our present and future association with the Holy Catholic Church could be governed, and that this agreement or Concordat should be renewed in the written words of contemporary familiarity.

THE PURPOSE OF THIS REQUEST is to renew and revitalize the association of the Mi'kmaq Nationimouw and the Holy Catholic Church on just and spiritual principles, to provide for wise and effective governance of churches and religious education in the territory of the Nationimouw, and thereby to preserve and strengthen the faith of our children and their children.

REQUEST No. 3

THE SANTEOI MAWA'OMI OF THE MI'KMAQ NATIONIMOUW respectfully request that Bishop William Power ascribe, on behalf of the officers and priests under his direction, to the following Principles, which we offer as measures of interim governance for the welfare of our Catholic churches in Nova Scotia pending the outcome of our mission for a renewed Concordat.

INTERIM PRINCIPLES OF COOPERATION AND RENEWAL OF THE FAITH

MI'KMAQ NATIONIMOUW

Recognizing the spiritual and historical significance of the established Holy Catholic Church of the Mi'kmaq Nationimouw, being the first established Catholic Church in North America and the first among the indigenous Nations of that continent, and

RECOGNIZING FURTHER the inseparable association of Church and State in the Mi'kmaq Nationimouw, represented by its Santeoi Mawa'omi or Grand Council, and the sufferings and persecution of the Mi'kmaq people for one hundred years on account of their faith until the establishment of religious toleration in Nova Scotia,

WE AGREE TO THESE PRINCIPLES OF COOPERATION AND RENEWAL OF THE FAITH:

PRINCIPLE I.—The Holy Catholic Church is established among the Mi'kmaq Nationimouw and always will be defended by them, as it was during the great intercolonial wars of the eighteenth century.

PRINCIPLE II. The Santeoi Mawa'iomi is the ancient government of the Mi'kmaq Nationimouw and shall remain, as it has been since the baptism of jisagamow Membertou more than three centuries ago, pare inter pares with the officers of the Church in the spiritual governance and spiritual education of the Mi'kmaq people.

PRINCIPLE III. In accordance with Principle II., it will be the duty of priests serving the Mi'kmaq Nationimouw to consult regularly with the gap'ten and jigap'ten of the Santeoi Mawa'iomi and to inform them of events and policy within the Church; and it will be the duty of the gap'ten and jigap'ten, as always before, to instruct them in matters of the Mi'kmaq.

PRINCIPLE IV. The gap'ten and jigap'ten will continue their long privilege, established by the Mi'kmaq Nationimouw's original engagement or Concordat with the Holy See, of instructing youth in matters of life and death; of participating in the administration of the Last Rites; and in serving in the absence of priests as lay priests with full authority.

PRINCIPLE V. The Santeoi Mawa'iomi will participate in the administration and disposition of tithes to assure that they properly are applied wherever possible to the spiritual needs of the Mi'kmaq Nationimouw, and to other peoples and countries after just consideration of spiritual merit; and for this purpose, that parish boundaries should be reformed to correspond to the boundaries of Mi'kmaq communities.

PRINCIPLE VI. Within the territory of the Mi'kmaq Nationimouw the Mass will be celebrated in the Mi'kmaq language, and as soon as practicable the publication and distribution of spiritual readings in the Mi'kmaq language will be resumed.

PRINCIPLE VII. In the assignment of priests to parishes of the Mi'kmaq Nationimouw, preference will be accorded to those possessed of skills essential to the survival of the Mi'kmaq people, such as fisheries, forestry, and agriculture.

PRINCIPLE VIII. These principles will be renewed yearly during the Feast of Saint Anne at Potloteg (Chapel Island), which is the one true celebration of devotion of the Mi'kmaq Nationimouw to their Saint and Patron; and at this Feast the banners of the Holy Catholic Church and the Santeoi Mawa'iomi will be flown together, and the Bishop, jisagamow and jigap'ten will speak together before the people.

PRINCIPLE IX. We are committed to the formal adoption of a renewed and explicit covenant and Concordat with the Holy See, as early as negotiation of the same may properly be initiated, and we will cooperate and assist one another fully toward the fulfillment of that mission.

This day of , 1980, IN JESUS CHRIST:

_____ _____

Bishop, Cape Breton Jigap'ten, Santeoi Mawa'iomi

MEMORIAL to HIS HOLINESS THE POPE · 1982

His Eminence Cardinal Agostino Casaroli
Secretary of State to the Holy See
Vatican City

Me taleyn:

We have the honour to transmit to you the enclosed message of the Santeoi Mawaiomi (Grand Council), ancient and spiritual government of the Mikmaq Nationimouw, to His Holiness Pope John Paul III.

Forswearing coercion and secular laws, the Mawaiomi maintains no bureaucracy of its own and has directed us to address you on its behalf.

The Santeoi Mawaiomi's purpose is weighty but may be stated briefly: the Mikmaq Nationimouw, as a British protectorate and Catholic state in North America, seeks the guidance and wisdom of His Holiness in resolving its dispute with Canada. In a communication filed with the United Nations Human Rights Committee October last, the Mawaiomi charges Canada with violating the rights of Mikmaq people to their territory, self-government, and religion, under international law.

The Mawaiomi is conscious of the gravity of these charges. It also is conscious of the desperate consequences should Canada prevail. There is no question of the propriety and urgency of consulting His Holiness, as Supreme Pontiff of the Mikmaq Nationimouw's oldest and dearest Eurochristian ally.

Sakej Henderson
Putus

TO HIS HOLINESS POPE JOHN PAUL II

FROM THE GRAND COUNCIL OF THE MIKMAQ NATION IN NORTH AMERICA,

GREETINGS

It is with a deep sense of humility and respect that we invite you to join us this July coming in the celebration of the Feast of the Patron Saint of our Nation, St. Anne de Beaupre, at our holy ground in the island of Potloteq, called by Eurochristians "Chapel Island" in Nova Scotia.

It was at this place more than 350 years ago that our Nation embraced the Holy Catholic Faith and of our own free will became the first indigenous Catholic communion, and the first Catholic state, in North America. It is at this place that we have renewed annually our allegiance to the Church and to our own

Catholic government, the Santeoi Mawaiomi. It is at this place that we have met since the beginning of the world to seek the wisdom of the Creator and our elders when our existence as a people and as a nation has been threatened. This is such a time.

We call upon you now because we face the greatest spiritual crisis of our three-century history as a Catholic state and people. Canada asserts an absolute sovereignty and dominion over our land and people, threatening to disband our Catholic government; to prevent us from educating our children in our own language and religion as we choose; and to make us the meanest paupers upon earth. Canada tells us it may do these things because we are "Indians" and therefore have no rights as a people.

We are not "Indians." We are a people and a state since time began. Three hundred years ago we concluded a concordat with the Holy Catholic Church, our traditions record, to assure the maintenance and protection of churches and priests forever in our country. When British forces expelled our French neighbours in the 18th century we interceded for our French priests, and hid them from the invaders. For some years we enjoyed the only free and public Mass in North America, so strongly did we struggle for our Faith. In the dark days when British authorities at last deported our priests and closed our churches, the Captains of our Santeoi Mawaiomi celebrated the Mass and administered the Last Rites secretly in accordance with the privileges of our concordat.

We preserved the Catechism, Missal, and Holy Bible in our own language and its ancient characters, such as appear at the head of this message, sacred to us but impenetrable to the foreigners who sought to expunge Catholicism from our country. When, after four generations, religious toleration was restored in North America, our Faith was as it had been before.

Surrounded by hostile British colonies, we fought on sea and land for fifty years for the survival of our country. In 1752 the British Crown sought peace. Tired of war, we agreed.

Our 1752 treaty with Great Britain made us British subjects, and our Nation a British protectorate under the laws of nations. We sold no land, but reserved to ourselves forever all that was ours. We relinquished none of our rights as a people to govern ourselves, but agreed only to protect the subjects of the Crown, and to be protected by them, against foreign enemies.

We have never agreed to any change, well liking to be a free Catholic state under British protection, enjoying our ancient lands and institutions. But as soon as the British Crown gave its Eurochristian subjects in North American the privilege of forming their own government, Canada, in 1867, these immigrants have tried to subvert our rights and separate us from the Crown and from the Holy Catholic Church.

When they trespassed on our lands, we were a Christian people and turned other cheek. When they destroyed the fish, game and corn fields on which we depended for our subsistence, we forgave them. Instead of understanding our they took our tolerance as evidence of our weakness and unfitness to Creator's earth, and their judges and legislators used it to justify indignities. We have been persecuted as a race and as Catholics.

Now we have been moved to action.

Canada plans to amend its constitution within the year. In attempting to explain this revised frame of government to us, Canadian officials have asserted (1) we are not a "people" entitled to land ownership or political self-determination under international laws, (2) our 1752 treaty with Great Britain is not a treaty, is not binding on Canada, and will be ignored, and (3) Canada has the right to confiscate our land, abolish our government, and govern us as it pleases, without our consent, in violation of international laws, our treaty, and the Canadian Bill of Rights. We thought our Canadian neighbours, who profess to be a Christian state, had learned more wisdom in their hundred years of independence.

Appalled by Canada's pretension we promptly filed a complaint with the United Nations Committee on Human Rights, a copy of which we enclose.

As your first and lasting church and native ally in North America, we humbly appeal to Your Holiness to advise us spiritually on the position we have taken before the Human Rights Committee; to reconfirm our 17thcentury alliance with the Holy Catholic Church before the world and help us reinterpret it for modern times; and to help our Nation preserve our religion and our right to educate our children in religion as we deem fit and necessary.

We have carried our appeal already to the Princes of Your Church in Canada but they have ignored us. Can it be that they bear greater allegiance to the secular government of Canada than loyalty to our spiritual government? Can they be more beholden unto parliaments and prime ministers than to He that made us, the Mikmaq Nation, and placed us first upon this land as its original inhabitants? These thoughts trouble us greatly, and so at last, after dreadful doubt and deliberation, we turn to you as our true ally in spirit and Vicar of Christ on earth.

This is a time of great moral crisis for us. We labour to bind our children to Faith, while the schools Canada sends them to break them and turn them against us. Now our children see the representatives of Christ in North American disdain to recognize and support the Mikmaq Nationimouw in their struggle with Canada. If the Church rejects the Mikmaq people in this time of need, can our children be faulted for believing that their ancestors were deceived by the missionaries of the Gospel; that the Church is nothing but another nation of Eurochristians that breaks treaties and takes advantage of "Indians"; that other North American native peoples were right to resist the Word; that the Faith of their ancestors for twenty generations is false?

We know you will understand the things we have said, because we know of the great troubles in your own native country. We understand as well as any nation what it means to be held captive by another. We also know of the great spiritual comfort and moral guidance you have given your countrymen, and this fills us with hope for them, and for ourselves.

We invite you, then, to Potloteq for St. Anne's Feast, to hear us, to guide us, and that we may share our hearts on these things.

In Jesus Christ, we pray.

Alexander Denny
Jigapten (Grand Captain)
Santeoi Mawaiomi Mikmaq Nationimouw

CORRESPONDENCE with the PAPAL PRONUNCIO · 1983

20 February 1983

Most Reverend Angelo Palmas
Apostolic Pronuncio
Apostolic Nunciature
724 Manor Avenue, Rockcliff Park
Ottawa, Ontario K1M 0E3

santeioi nujiakununtum:

I have the honour to request an appointment with you, to communicate several matters of faith and religion that greatly concern this Council.

Mikmaq is the oldest Catholic communion native to this region now called Canada. In 1610 our national council embraced the Catholic faith, and it has ever since been the established religion of the Mikmaq nation. As the highest civil and religious authority of the nation, the Santeioi Maoaiomi assumed then, and has ever since retained, the responsibliity of Catholic instruction, the protection of the Church in Mikmaq country, and the religious and cultural freedom of the people. According to tradition, this responsibility was assumed under the terms of a concordat with the Holy See.

The council fire of the Santeioi Maoaiomi, and the holiest Catholic shrine of the nation, are at the same spot on an island in what is now called Cape Breton where, by tradition, a miracle brought a stone from the sea for the foundation of the first church. St. Anne de Beaupre's feast day has been celebrated on that spot every summer for three centuries without interruption; and before that, the council met there for a thousand years.

A vision of three crosses at Piktokiok (Pictou) about the year 1400 is said to have foreseen the new religion, and when the first English navigators explored Mikmaq country in 1498 they found to their surprise that the people wore crosses and used the cross as a holy sign.

As early as 1675, the Gospels and Missal had been written in our "hieroglyphic" form of writing, such as you see on this page.

When Britain invaded our country in the 18th century, we fought alongside France to defend it for nearly fifty years. When French armies surrendered, we fought on, until in 1752 a treaty of peace was arranged with King George II. Under this treaty Mikmaq retained its territory and sovereignty as a protectorate of the Crown and - at a time when Acadia was purged of Catholics and Catholic priests - demanded and enjoyed the right to Catholic worship. The only priests remaining in Acadia were those sheltered by the Santeioi Maoaiomi. There were, however, persecutions when churches were sacked and books destroyed by the British - in these times the Mass was conducted secretly by the Captains of the Santeioi Maoaiomi and relics were hidden in floors and walls. As recently as the 1920s there was a campaign to destroy Mikmaq religious books - no longer expressly to extirpate Catholic religion, but to abolish the use of the Mikmaq language and Mikmaq writing.

Mikmaq has always considered itself a separate state and people owing an allegiance to the Crown of the United Kingdom, and not to Canada. It has always considered itself a Catholic state with a Catholic government, the same government that was here when the first priests arrived with French fishermen in 1580.

Preserving the cultural integrity, religious security, the freedom of the Mikmaq people is the chief concern of this council. Recent actions of Canada to possess Mikmaq lands, subject Mikmaq children to compulsory Canadian schooling, and submit Mikmaq towns and villages to Canadian supervision and interference, have sorely tried our ability to survive as a free Catholic people. Of greatest sadness, the children are now falling away from their religion out of disillusionment and alienation.

Mikmaq people have always regarded the Holy See as their oldest and truest ally and protector. At this time when their very existence as a people is in danger, it is to the Church first they seek aid.

I have been directed to suggest most respectfully, first, that we may meet informally to adivse you more fully of the Mikmaq situation. We suggest that this meeting be at Ottawa if convenient for you, and that it include Grand Captain Denny as a responsible officer of this council.

Second, we suggest that consideration be given to arraying for His Holiness to visit Mikmaq country during his 1984 tour of Canada. We believe this will be a great aid to the people, and a medicine for the despair and isolation they increasingly feel. We would like to invite His Holiness to open officially our celebration of the 375th year of the foundation of Mikmaq Catholicism, which will begin following St. Anne's day in the summer of 1984 - to bring the people to meet him at the spot where rests the stone that rolled from the sea.

Lastly, we trust and hope that consideration may be given to the possibility of Papal mediation of our disagreements with Canada, in the interest of arranging a peacable and meaningful resolution that secures the cultural and religious survival of Mikmaq in amity with its neighbors.

Your gracious consideration in these matters will be appreciated, and we look forward to speaking with you further.

Russel Barsh
Foreign Affairs

N. 16578

Ottawa, March 24, 1983

Russel L. Barsh
4155 - 42nd Avenue N.E.
Seattle, Washington 98105
U.S.A.

Dear Sir,

With reference to your letter of February 20, 1983, I am pleased to inform you that your letter will be forwarded to the knowledge of the Holy Father and of the Canadian Conference of Catholic Bishops.

Please accept, dear Sir, the expression of my devoted sentiments of Our Lord.

Angelo Palmas
Apostolic Pro-Nuncio

COMMUNIQUÉ on the STATE VISIT TO AUSTRIA · 1983

On 16 May 1983, Mikmaq Kjikeptin Alex Denny met with Austria's Federal Chancellor, Dr. Bruno Kreisky, at the Chancery in Vienna, accompanied by serveral Mikmaq and Innu representatives. The meeting was viewed as the first step toward normalising relations, and collaborating in human rights work at the United Nations. This was the formal statement released to the European press after the head-of-state meeting.

◆

When the heads of two different countries meet to discuss mutual problems, this is usually called a political meeting. Such a meeting is unquestionably political, and one of the highest forms of recognition between nations, but it is more than political. It is a fundamental gesture of humanity to strive for justice and freedom in an unsettled world. In that sense, it is a meeting of both spiritual and cultural values of different societies in search of humane solutions to timeless problems. Today, two completely different peoples have met because of the principles of human rights and dignity. As a statesman of the Grand Council of the Mikmaq nation, which formerly existed as a treaty protectorate of Great Britain in British North America, I have discussed the question of the future of our Indian people in the new independent state of Canada. In this context, the Santeoioi Maoaiomi Mikmaoei has been formally acknowledged as a tribal state by the Austrian Chancellor Dr. Bruno Kreisky.

This is not new to us, but it is a recognition of our political continuity as the state in which we have lived from times immemorial. Although the Canadian government still refuses to recognize this principle as a matter of national rights, the validity of our international status is documented by treaties with the Holy See and with Great Britain. In the course of our meeting with Dr. Kreisky, we briefly discussed the possibilities of political self-determination, which we have told Canada and the United Nations will be our path to a tribal state in the modern world.

We as a people feel honoured that the Austrian people have not only supported us through their elected leaders in the question of human rights, but also that their representative has always advocated the interests of the human rights movement on this planet.

We feel honoured that we are recognized by such a politician, a man who, after many years of active political life and daily difficulties, puts these principles of human rights and self-determination above friendship with the Prime Minister of Canada, Mr. Trudeau. The timeless search for political freedom and self-determination, regardless of the size or race of peoples, has been strengthened today between our two nations.

We are proud that Dr. Kreisky has taken the first steps with his recognition of the principle that the tribal governments of North American nations have the right to choose their own political way in this world. We are not proud because we are recognized as a state (for we had this honour already in the past) but rather because we know that politicians as courageous as Dr. Kreisky can only be found in certain societies and times in the history of mankind.

It is the highest duty and honour between different peoples to discuss the path to a better society and future. We feel especially honoured that this great man has listened with his heart to our vision of a better world. We didn't ask him for anything but to accompany us when we take the first steps of our way to an uncertain future, which will be the legal arguments at the United Nations. We are aware of our traditional duties and rights toward our children, and only they can realize the tribal society for which we are striving. To start our way in the company of this great man - in the bright light of a spring day - is a special honour for the Mikmaq people.

We didn't meet with the Austrian government for pecuniary reasons, but to start our political struggle with the sympathy of this great man. This is no small matter for an aging man. When one asks a government for money, one only takes away a part of its wealth, but when one asks a man for his time and support, one asks him for a part of his life. And the life of every man is too short not to be impressed with the seriousness of such a request, for all human time is limited. We feel honoured that this great man granted us this meeting of heads of states, for with this he has given us a part of his life which we will never be able to give back to him. And he has shared this special vision of human rights with our people. We, the Mikmaq people, will continue to pursue our vision of a better world through the institutions of the United Nations. We have been given a wonderful start and we hope to do justice to the principles of human rights for which Dr. Kreisky has been struggling so many years.

Our ancestors met other leaders on a political and spiritual level. They always promised us many advantages in return for our recognition of them as our protectors against other countries. But as soon as the beautiful words were written down they forgot about our treaty and only saw the fact that we were of a different race, language and culture. They never fulfilled any of their promises, and were content to use our possessions for their own ends and their own celebrity. Today we aren't looking for promises, but for respect and dignity, and for new political options in the new state of Canada - which has a long history of broken treaties and violated rights. This process is called in international law political recognition, and if we translate it into reality (instead of merely stating it as an idea), it is called "self-determination".

Canada's new constitutional law, the Constitution Act 1982, makes Canada independent from the British parliament. This creates a new form of political power for the immigrants, but not for the indigenous population. We were not part of this process. While Canada has failed to apply the human rights covenants of the United Nations, which it has accepted, to Mikmaqs and other tribal peoples, it has created a new source of power for itself. Instead of taking into account our traditional tribal governments, Canada has tried to organize the leadership of the Indian population in such a way that they are in reality representatives of Canada's government bureaucracy and are financed by Canada's Federal government. Canada has tried to force new institutions on tribal culture, instead of recognizing existing independent, traditional indigenous states under the protection of European treaties and international law.

If this meeting of heads of states serves a purpose, it is to show that there is at least one great man who recognizes that our claims to self-determination are justified as a matter of human rights. The world cannot ignore his wisdom or his foresight, nor his capacity of putting principles into appropriate action.

Few leaders have this gift and this determination. We hope that this meeting will open the eyes and the hearts of the Canadian people concerning the Mikmaq people, and that it won't provoke their hate and their envy. It isn't asking too much that the Mikmaq Grand Council should be allowed to determine its own future as it has done in the past through treaties.

We won't sell our children and our cultural future by allowing Canada to impose its political aims on our children. If Canada wishes the Grand Council to be part of its new constitutional system, it has to build upon the firm foundation of human rights and self-determination, as it is embodied in the beliefs of this great man of Austria.

The Mikmaq people will not enter Canadian society as individuals, for we are a tribal state. Our independent political status must be included in the Canadian system, and it mustn't be ignored or destroyed.

As the head of the Mikmaq, I hope that our people will be capable of bringing forth men of such principles as we find in the Austrian government. We have been waiting for several generations for Canadian society to brign forth such men. Since it didn't, we have been searching the world for them. Considering the rich cultural and family traditions of the Austrian society, it is not surprising that its government has produced a man like Dr. Kreisky.

We are indebted to the Austrian families who honour may continue in their children, so that they too will contribute to the realization of human rights in the future.

An assertive programme of United Nations and bilateral diplomacy began in the autumn of 1981, when Mikmaq joined the Lakota and Haudenosaunee in a seven-nation tour of Europe publicly advocating Mikmaq self-determination, visiting European political-action organisations, and meeting the foreign and cultural ministers of other states. The following winter, 1982, Mikmaq participated for the first time in the meetings of the United Nations Commission on Human Rights, under the temporary sponsorship of the Indian Law Resource Center. (In May 1983 the Sante' Mawi'omi, Innu Kanantaupatshet, Lakota Treaty Council and Southern Cheyenne Human Research and Human Development Corporation were accredited with the Economic and Social Council as the Four Directions Council, a Non-Governmental Organisation in consultative status, Category II.)

STATEMENT on the RIGHT OF SELF-DETERMINATION-1982

COMMISSION ON HUMAN RIGHTS
Thirty-eighth session
Agenda item 20

E/CN.4/1982/NGO/30/Rev.1

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS THIRTY-FOURTH SESSION

Written statement submitted by the Indian Law Resource Centre, a non-governmental organization on the Roster

[23 February 1982]

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

The Santeoi Maoaiomi (Grand Council of the Mikmaq Nation) takes pride in being a Government and a people that has survived for 10 thousand years, within the place originally given us by the Creator, and for most of that age under no power but the free consensus of our men and women. We expect of others, and submit ourselves to, the highest standards of human freedom and dignity, and are honoured by this occasion to share our ancient views with our peers and brothers in this assembly.

Of indigenous peoples, the community of nations in adopting the Charter and Human Rights Covenants of the United Nations has long since abandoned the pretence that peoples may be ineligible to form States on account of their race, the nature of their culture, or their degree of technological dependence. Rather, it is now the just view of nations that all law-abiding peoples committed to human dignity and the peaceful resolution of disputes merit the privileges of self-determination and Statehood whether they be rich or poor,

large or small. In a mature world, diversity of cultural expression and development is a right and a duty, rather than a basis for disqualifying peoples from essential freedoms.

It would of course be inconsistent with the dignity of this Commission unwittingly to open itself to criticism that its standards or practices distinguished among peoples on the unjustifiable basis of race or culture. We trust that no such appearance will be permitted.

We draw the Commission's attention to the distinction in law between national "minorities", and "peoples" competent to assert the right to political self-determination. This distinction must be drawn with great care, lest it provoke needless jealousies and hardships.

In our view the distinction is clear. If a people exercise their right to self-determination by incorporating themselves freely into another people - whether by immigration or voluntary cession - they surrender their separate status and become one, politically, with the host State. The right to self-determination persists, but ever after must be exercised in common with the host as one people with one voice. As a minority they may justly demand both non-discriminatory treatment under the host's laws, and freedom to preserve and develop their culture within the general framework of laws and responsibilities they have undertaken by casting their destiny with another State. The jus cogens of international human rights instruments properly constrains the host's use of its greater power to oppress a minority, but concede the host's lawful jurisdication - arising, as it does, by consent.

The situation is different where no voluntary incorporation of peoples has occurred, and there has been no free consolidation of two peoples' political rights. A people lawlessly annexed or taken from their country by force do not thereby lose their separate voice or choice of destiny, but retain it until given an unrestrained opportunity for its exercise. They do not become, by force of seizure, colonization or enslavement, a minority, but remain a people still.

The distinction therefore between a minority and a people, in our conception, flows from the quality of consent. A people can become a minority, if it chooses. Minorities cannot be made by violence or oppression, however.

In this we respectfully submit that construing treaties of confederation and alliance must be undertaken with the utmost caution. Two States or peoples may combine for limited purposes such as trade of defence without losing their separate international character. Even a lasting federal union does not destroy the international character of its parts, except as the parties should desire it and state so expressly. The right of political self-determination is so precious that, in interpreting the effect of a voluntary undertaking among peoples, we should never presume that it has been relinquished by any of them.

If peoples choose to confederate completely and irrevocably, they may do so explicitly. But it is dangerous merely to imply such a desire from treaties or agreements.

We speak also of the defence of territorial integrity, when raised to bar an inquiry into the self-determination status of indigenous peoples. Whether a community of men and women is internal to a State, or retains its separate international character as a people, cannot sensibly be determined by municipal law. Annexation accomplished without the consent of those annexed, and in violation of the universal principles of the Charter and Human Rights Covenants,

arcely can render its victims internal to the aggressor, lawfully subject to s commands, or beyond the reach of international scrutiny.

No lawless annexation can justly be regarded as fait accompli while those nexed have never acquiesced in it, and while they remain a distinct rritorial entity, preserve an identifiable language and culture, and continue be regarded as separte under the laws of the aggressor. Nor is it just nor nsible to disregard a captive people because they have strived, for a neration or more, to resolve their status by peaceful recourse to the laws and stitutions of the aggressor, and failed. A people that has the misfortune to annexed against its will, and exhausts all peaceable means of regaining its eedom before advancing its cause to the forum of nations, surely is not less rthy of consideration than one that resorts at once to violence or rebellion.

The distinction often made in practice between continuing oppressions and ose that are new concerns us much. Perhaps it is a weakness in us all that we bituate to others' misfortunes after a time, and are more offended by a novel uelty, than one that has been among us before. Novelty does not make an justice less just, or more worthy of condemnation. The accumulated suffering f multitudes under a long-continued evil must count for something against the velty of an evil not yet fully grown.

When we look upon the energy with which nations mobilize to censure a new ggression, a sudden annexation, or the immediate suppression of popular emocracy in a country, we wonder that even greater oppressions go largely nremarked because they began a generation or two ago. Some States continue to e punished to this day for crimes of aggression committed and condemned 40 ears ago; can it be improper to inquire today into other injustices of that era hat remain unredressed? We are cognizant of the fact that some peoples have cquiesced in past acts of annexation and colonization and, through a course of ubsequent liberal treatment, have freely thrown in their lot with their fomer ppressors. We congratulate those mature States which have had the stature to arn freely the respect and allegiance of their erstwhile victims. But we also now of too many instances of unrelenting oppression and unflagging resistance hat have continued from years past to this day.

If a people resist, by all lawful means, an unjust annexation of their ountry, does their right to self-determination cease after a number of years as passed? Does this mere passage of time render resistance of nullity? We think not. Further, we feel the passage of years weighs least against a people that resists by firm but peaceful means; for while the law is slow, it would ndo the rule of law to discriminate against the right of certain peoples to self-determination because they preferred the slow means of peaceful protest and recourse to law, to violence.

If we hope to fulfill the vision of world peace and freedom, we must abandon for ever all pretence that any race of men is incapable of forming States, of conducting foreign relations as a State, or of exercising the right to self-determination as a State and people. It is unworthy of this great assembly. We must bear carefully in mind that decolonization and the emancipation of non-self-governing peoples is not a problem peculiar to one or two continents, but is a problem sadly common in some degree to all continents. And we must recognize that law and history, rather than cartography, determine the just boundaries of all States. We think all nations can agree that map-makers are powerless to destroy a people's right to determine its own future.

STATEMENT on GROSS VIOLATIONS OF HUMAN RIGHTS·1982

The following additional report was submitted for the record of the Human Rights Commission's 38th session, but was not issued as an official document of the United Nations.

◆

COMMISSION ON HUMAN RIGHTS
Thirtyeighth session
Agenda item 12

STUDY OF SITUATIONS WHICH APPEAR TO REVEAL A CONSISTENT PATTERN OF GROSS VIOLATIONS OF HUMAN RIGHTS

Written statement submitted by the Indian Law Resource Center, a non-governmental organization on the Roster

(1 March 1982)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296(XLIV).

The Indian Law Resource Center has received the following statement from representatives of the Anishinabek, Innut, the Oglala Lakota and Mikmaq nations in North America, which reveals numerous gross violations of human rights.

Brothers. Fundamental to the legal framework of international human rights are the rights of peoples to political self-determination, the security of their economic resources, and the development of their social, political and economic institutions. While a people may be offered fair treatment as individuals or as a collective "minority" within another state, nothing so fully or enduringly guarantees the freedom and safety of a people as the opportunity to govern and feed themselves. Political and economic self-determination is more than a human right protected by international law; it is the means by which all other human rights are most effectively preserved.

The applicability of the principle and right of self-determination to the indigenous peoples of North America has not yet been expressly affirmed by the Commission on Human Rights. This apparent omission has become a matter of considerable concern among us. We are certain it was not the intention of the state parties to the International Covenants on Human Rights nor of this Commission to restrict the geographic scope of human rights standards. We have previously addressed the grounds on which a restricted application of the right of self-determination has been advocated by certain states. This statement addressed gross violations of the right of self-determination against indigenous peoples of North America.

We congratulate our North American brothers who already have achieved freedom and self-determination as nations and peoples. When immigrants first came to our shores they were subjects of foreign powers; many were outcasts and refugees from religious and political oppression. We supported their early efforts to build a new and free life. We made treaties of peace, mutual

derstanding and defense protecting these settlers and sharing with them some f our land. When some achieved their independence by revoluation and became a ew state, we gave it our peace and friendship by treaty and were pleased these ewcomers had made such great strides in realizing the principles of democracy, oleration and human rights we had long enjoyed among ourselves. As we speak oday, another newcomer stands at the threshold of achieving its full measure of ndependence as a state.

It is, therefore, inconceivable to us that we, as original nations and eoples of North America, should today lack the freedom and independence we once njoyed, and which the immigrant nations of North America now fully enjoy. No ndigenous nation of North America sits in the General Assembly or in this ommission, although we have had our own united nations at Onandaga in the laudenosaunee country for centuries. We must speak to you through "non-governental organizations", although in many cases our governments are older than your own.

The immigrant nations deny our right to political existence; they call us 'minorities" and, under their laws, as interpreted by their highest courts, we ave not political or economic rights. One high court last month said that our uman rights "exist at the sufferance of Congress and are subject to complete defeasance," which is to say that we exist as a separate people only to the extent permitted by the national legislature. We recognize and applaud the United Nations success in hastening the decolonization of many dependent peoples in Asia, Africa and the Pacific area. Many indigenous peoples elsewhere remain trapped in colonial systems presently outside international supervision. In large measure this is a result of what we deem pseudo-decolonization. By this term, we mean the attempt of the imperial powers to avoid their duty of emancipating colonized countries and peoples by enfranchising new states comprised of immigrants, rather than indigenous nationals. Often this means a hybrid colonial state which continues the process of lawless annexation and exploitation of indigenous communities.

Brothers. Numbering today some 9,000 persons, the Innut have lived by following the caribou of the northeastern Artic region. Prior to the last three decades of colonial expansion, the immense territory of Ntesinan remained exclusively under Innut control for nine thousand years. It has never been ceded to any foreign power. Disregarded as a barren wasteland and virtually unexplored by non-Innut until the 1950's, Ntesinan's northern isolation and harsh climate long delayed colonial intrustion. The first major foreign intrusion was the military airbase at Takutauat, constructed in 1942. In 1956 a railway was built from Uashat north to Petitsikapau to exploit vast iron ore deposits in Ntesinan's western interior. Foreign companies subsequently dammed many of Ntesinan's southern rivers and, in 1965 work began on a massive hydroelectric complex at Patsheshtunan. In 1971 the reservoir was flooded, drowning the heartland of Ntesinan.

A program to remove the Innut from the interior of Ntesinan and confine them in sedentary villages is now underway. Resettled Innut have been forbidden to take their children with them into the interior during the seasonal migration; the children are now being sent involuntarily to foreign educational institutions to be Europeanized and denationalized. Innut are routinely arrested and punished for subsistence hunting, and for this purpose are often pursued in the interior by helicopter. These actions are reducing the Innut in a single generation from democracy and self-sufficiency to truncated lives of poverty, destitution, colonial supervision and indignity. During the same period the

colonial administration has drained more than Can. $4.5 billion from Ntesinan in economic rents from iron ore and hydro-electric projects. Extensive new extractive projects are planned.

The Oglala Lakota Nation today faces the systematic destruction of part of its homeland and sacred shrines in the Pahasapa, an extent of 7 million acres in the northern plains of the United States. This is the place where, according to Lakota tradition, the Creator placed the first man and woman. The entire area is threatened by leasing for stripmining of coal, uranium mining and milling, and construction of fossil-fuel and nuclear power generators. This is being done without the consent of the Lakota people, who have occupied the area from the beginning of history. The Lakota people consider it essential to their physical and spiritual survival. Development already has resulted in the destruction of sacred places and the contamination of water supplies. The untapped mineral wealth of the Pahasapa exceeds US $50 billion; the area also contains rich agricultural and timber lands, and without it, the Lakota have no significant means of subsistence. Under international law, territorial acquisitions derive their legitimacy from the consent of the original inhabitants. In the Pahasapa and elsewhere in North America this principle is violated continually. Lands are seized unilaterally under the pretence that some subsequent money compensation, computed by the coloniser and forced upon displaced indigenous peoples, satisfies the requirements of human rights law and justice. In the past century a large part of the North American continent was acquired in this manner. A significant part remains predominantly indigenous, and is currently under assault by settlers and energy producers, continuing a pattern of lawless westward and northward expansion.

The Mikmaq people have made their home for ten thousand years along the easternmost Atlantic shores of North America. The Mikmaq people have been free, until this time, to govern themselves by a consensus of their clans and villages. From 1580 to 1794, they were recognized repeatedly as a state by engagements and treaties with the United Kingdom, France and the Holy See. Their right to the soil on which they have lived has never been denied, nor have they ever condescended to surrender any of their territory or liberty. Over the past century, however, and particularly since 1951, they have been subjected to an accelerating pattern of colonization, resettlement, confiscation of subsistence resources, and suppression of their familial, economic and political institutions by violence and the threat of violence and hunger. They are in imminent danger of disappearing as a nation and people.

After twenty years of unsuccessful negotiations and peaceful protests, in 1980 the Mikmaq communicated their concerns to the Human Rights Committee of the United Nations and attempted to file a declaration accepting the conditions for use of the International Court of Justice under Security Council Resolution 9. Questions have been raised about the applicability of the International Human Rights Covenants on geographic grounds and on the pretence that no decolonization or self-determination issues remain, or have been acknowledged to be applicable to peoples indigenous to that continent. We also remind the Commission of last year's four-day seige by police forces on the Mikmaq village of Restigouche, purportedly to arrest a handful of persons fishing without a license. This occurred while the Human Rights Committee proceedings, under the Optional Protocol, were underway. As such, this jeopardized the principle of orderly conduct of human rights review.

The Anishinabek continue to exist as a distinct people, but at the very periphery of North American society. Compared to nonindigenous populations,

ndigenous communities such as the Anishinabek have a lower life expectancy, igher infant mortality, higher unemployment (from 60 to 100 percent) higher lcoholism and suicide rates, higher institutionalization rates, and poorer ducation. The cause common to all these appalling statistics is a policy of thnocide-- that is, extermination through assimilation. This policy has ncluded the supervision and confiscation of Anishinabek subsistence resources, enial of the families right to educate their children in their own culture, enial of the communities of Anishinabek right to determine their own membership nd nationality, denial of the right of the Anishinabeks to travel freely within heir own country, and suppression and dissolution of Anishinabek political and ocial institutions. We have been told that this pattern of gross violations of he human rights of the Anishinabek is justified because they are "Indians", nd, as such, a race without rights.

We have not the time here to propose all that the international community ay do to remedy the violations described above. We do propose procedural steps ithin the immediate competence of this Commission in the hope of enlarging our pportunity to work within the family of nations for our survival.

We seek this Commission to affirm and to urge the Economic and Social ouncil to affirm, that the rights of political and economic self-determination re universal, and not restricted in scope to particular continents, races, and eoples. We ask that this Commission take appropriate steps to increase the ccess of indigenous peoples and nations to the United Nations human rights rocedures, including access to the proposed working group on indigenous opulations, by permitting wider use of the consultative status. We ask this ommission to undertake a study of the right of indigenous people to obtain dvisory opinions from the International Court of Justice on their human rights oncerns, as a means of resolving sensitive human rights disputes in a dignified nd orderly manner.

Brothers, we say no more for this time, except to thank you for this pportunity to speak with you.

Larry Red Shirt
Representative of the Lakota Treaty Council of the Oglala Lakota Nation

Richard Powless
Representative of the Anishinabek

Penote Michelle
Representative of the Innut

Russel Barsh
Counsel for the Santeoi Maoaiomi Mikmaoei (Grand Council Mikmaq Nation)

SPEAKING NOTES on the DECOLONISATION OF MIKMAKIK · 1984

SPEAKING NOTES
Commission on Human Rights
Fortieth Session
Agenda Item 12

The Four Directions Council is concerned about discrimination against indigenous populations in the protection of fundamental human rights and freedoms. It is our experience that many communities popularly classified as "indigenous" are in actuality colonised peoples--colonies located adjacent to, or enclosed by the claimed territory of a state.

The equal right of all people to self-determination is fundamental to the universal realization of all human rights: the purpose of decolonisation is to give the world's non-self-governing peoples the ability to secure their own human rights through the development of their own autonomous social, political, economic and cultural institutions. The ultimate goal of decolonisation must be to eliminate all situations in which the destiny of one people is controlled by the desires and appetites of another. The extraordinary violence we have witnessed around the world over the past century is proof that we can never achieve world peace as long as situations of alien domination continue to exist.

We would like to observe, particularly, that none of the indigenous peoples of the North American or Australian continents have been decolonised. Rather, it has been the colonisers that have achieved independence and self-determination. By what twist of legal logic do we emancipate the colonised on some continents, but emancipate the colonisers on others?

The International Covenant on Civil and Political Rights seems clear enough. All "peoples" have the right of selfdetermination. A "people" is defined by a common history, language, culture and geography, whether or not it has ever been recognised as an independent state. By this definition, there are "peoples" in North America and Australia that should be entitled to self-determination. Surely their race does not disqualify them from the enjoyment of such a fundamental human right. The right of self-determination unquestionably extends to all peoples regardless of race, creed or ethnicity.

But it is moreover clear that many indigenous populations, particularly in North America, have been recognised as states in the past. Therefore we are dealing with something even more astonishing, perhaps, than the systematic exclusion of the peoples of two continents from the enjoyment of self-determination. We are dealing with the systematic exclusion of the states of at least one continent and race from the enjoyment of territorial integrity and self-determination.

We would propose Mikmakik in North America as an example. The Mikmaq state was established more than a thousand years ago, and always consisted of a great national council (which we call the Grand Council) and seven districts or provinces. Mikmakik sent its own ambassadors to other nations and peoples in North America under its own diplomatic letters--which, by tradition, were made of shell beads or "wampum."

European sailors discovered Mikmakik in 1498. By 1590 the Kingdom of ance had established fishing stations and a navy base in Makmakik under lease om the indigenous government. After a century of peaceful association with ance, Mikmakik was invaded by Great Britain. The treaty of peace finally ncluded at Halifax in 1752 established a new association for peace and mutual d. Mikmakik surrendered neither its territory nor its sovereignty. For ample, in 1776 Mikmakik concluded a treaty recognising the new government of e United States as an independent state, and pledging neutrality in the erican Revolution.

As late as 1841, the government of the United Kingdom routinely regarded ikmakik as a separate community with its own laws, warned its colonies in North erica to respect Mikmaq territoriality, and to strictly observe the Treaty of 752. In 1867, however, the United Kingdom granted limited selfgovernment to uro-Canadian settlers who proceeded, over the next 75 years, to seize and ccupy virtually all Mikmaq territory.

Over the past two years, both the courts of Canada and the United Kingdom ave ruled that Mikmaqs belong to the "Indian" race and that treaties made with "Indians" are not really treaties--and therefore need not be respected. Thus a country the size of France, with a democratic government 1,000 years old, and a 300-year history of recognition by European states, has simply been written off on the grounds of its race.

We should add that Mikmakik attempted to bring this matter last year to the International Court of Justice. A Declaration of Acceptance of the Jurisdiction of the Court was tendered in due course to the Registrar, identifying the facts upon which statehood is claimed. This document was not accepted for deposit, nor did the Court hold a hearing to determine by open judicial process whether the facts on which Mikmqkik claims statehood are sufficient.

Mikmakik is certainly not the only North American community to have dealt with one or more European nations by treaty. We are aware of at least 450 treaties concluded by North American peoples with France, the Netherlands, the United Kingdom, the United States, Canada, and Spain. Why, then, are the original inhabitants of that continent referred to as merely "indigenous populations," and not as "states," or at least as "peoples" entitled to the full exercise of self-determination?

We propose international rejection of the idea that treaties made with people of a particular race are not obligatory. Rejection of this racist idea is long overdue.

SPEAKING NOTES on the WORK of the WORKING GROUP · 1984

SPEAKING NOTES
Commission on Human Rights
Fortieth Session
28 February 1984
Agenda Item 19

The Four Directions Council is honoured to address this Commission on the subject of the SubCommission's report, and particularly on the activities of the Working Group on Indigenous Populations, in which we have participated for the past two years. We are quite satisfied with the Working Group's plan of action for the next five years and have little to add in that regard. What we would like to comment upon is the unique procedural role of the Working Group, and the importance of its continued accessibility to indigenous peoples.

Of particular significance is the opportunity, at the Working Group, for states and the representatives of the indigenous peoples themselves to review problems and proposed solutions informally. This spirit of equal access and co-operation has been extremely constructive. The meetings of the Working Group have, we believe, succeeded in bringing the views of many states and the indigenous peoples currently under their administration closer together.

The Government of Canada, for example, has participated actively in exchanges with indigenous North Americans at the Working Group on the question of self-determination. After maintaining for many years that indigenous peoples in Canada were not a subject of international law, the Government of Canada is now reviewing a Parliamentary recommendation which acknowledges and emphasizes the responsibility of Canada to implement native peoples' rights of self-determination under the International Covenant on Civiland Political Rights.

If carried through, this is a significant development in progress on human rights, and one which we have no doubt reflects the constructive functions of the Working Group. We would like to see more states make candid commitments to self-determination for indigenous peoples--and of course we would like to see this Commission follow up by reviewing the implementation of those commitments so that successful programmes can be imitated, and so that praise is given where it is truly due.

Returning to this issue of accessibility, we note that Sub-Commission resolution 1983/37 suggests the establishment of a fund at the United Nations to increase indigenous organizations' ability to attend the meetings of the Working Group at Geneva.

We heartily support this suggestion.

We've been fortunate ourselves to be able to attend the meetings of the Working Group. But we are aware of many indigenous groups that simply have been unable to bear the cost of travel to this continent. Since the virtue of the Working Group has been to get indigenous peoples and affected states talking to each other directly in a friendly forum, it is absolutely essential that indigenous groups that wish to participate can do so.

It seems to be in the mutual interest of the affected states as well as the indigenous peoples involved to resolve their concerns here at the United Nations by peaceable and cooperative means under international law. For this reason, we are surprised that few states have contributed financially to making the Working Group process available to the indigenous population currently under their administration. A praiseworthy exception has been Norway, which supported a delegation of the Sami people to last summer's meeting of the Working Group. As the distinguished representative of the Government of Australia earlier indicated, several Aboriginal Australian organizations participated in last summer's meeting of the Working Group. Only one, however, was given assistance and encouragement to attend.

If many states cannot or will not take full advantage of the Working Group to promote constructive dialogue on indigenous rights, by supporting attendance by indigenous organizations, that task should be taken up by the United Nations Organization itself. In our view, then, a fund for indigenous participation in the Working Group should be established, and should be administered by the Division of Human Rights in the Secretariat, in consultation with indigenous NGOs. This would not only increase the availability of the Working Group to those indigenous populations seeking peaceful progress in human rights, but also assure a certain degree of balance in the Working Group's inquiries. We would not like to see any situation threatening indigenous peoples' human rights anywhere in the world neglected merely because the victims--unlike some of us in North America--lack the financial resources to appear and be heard here in Geneva.

SPEAKING NOTES on RELIGIOUS FREEDOM 1984

SPEAKING NOTES
Commission on Human Rights
Fortieth Session
Agenda Item 23

The Four Directions Council has a special interest in the subject at hand, because many of its members are practitioners of traditional indigenous religions threatened by the confiscation and destruction of sacred lands. But we will try to speak from the neutral viewpoint of international law, and not out of personal feelings.

The protection of indigenous peoples' religious freedom--in our experience in North America and Australia--is inseparable from land rights. Particular natural features such as caves, rock formations and mountaintops have been used continuously for thousands of years as ceremonial sites. These sites are irreplaceable. Unlike many JudaeoChristian religious practices, indigenous North American and Australian religious practices cannot be moved to other locations or inside buildings. Physically disturbing the site, as by mining, or excluding worshippers from using it, practically extinguishes the religion.

At its first meeting in 1982, the Working Group on Indigenous Populations underscored the importance of religious freedom and sacred lands to indigenous peoples. As an example of serious violations of human rights, the Working Group's report referred to the United States' annexation of the Black Hills, a range of mountains and caves sacred to the Lakota Sioux and Cheyenne peoples. This and related situations in North America and Australia illustrate the most serious threat to the survival and development of indigenous religions in much of the world: the sacrifice of traditional sacred sites to national and transnational economic interests.

The most holy shrine to the Lakota Sioux and Cheyenne peoples, Bear Butte, is a mountain in the northeastern part of the Black Hills. Bear Butte was recently developed as a tourist attraction over vigorous indigenous opposition. Roads were built in to ceremonial places to put Lakota Sioux and Cheyenne religious practices on public display, resulting in disruptions and loss of privacy. Last year, U.S. courts refused to stop the disruption and desecration of Bear butte, saying that public recreation and "education" are more important than the protection of indigenous Americans' religious freedom. They told the Lakota Sioux and Cheyenne they would have to learn to "coexist" with more than one hundred thousand tourists yearly.

A similar conflict has arisen over San Francisco Peak in the southwestern United States. This mountain is sacred to the Hopi people, but is being developed as a ski resort by the Government of the United States. The Hopis complained unsuccessfully to the courts, where they were told that public recreation and tourism were legitimate government priorities.

In Canada, Mikmaq lands at Kejimikujik Lake were expropriated a few years ago to develop a national park. The purpose of the park, according to the Government of Canada, is to preserve sacred petroglyphs surrounding the Lake. For centuries, Mikmaqs have lived on this land the protected its religious

treasures. Within a year of being opened to public view, however, many of the petroglyphs had been stolen, defaced or destroyed.

There is no legitimate basis for State Parties to the International Covenant on Civil and Political Rights to participate in the destruction of religious shrines or religious practices in the name of recreation, tourism, or "educating" the general public about indigenous peoples. Religious freedom is undeniably a fundamental and inalienable human right. Where religious practices depend on the use and protection of particular lands, states should strictly abstain from expropriating these lands and from putting them to other, incompatible uses.

In Australia, religious freedom is often in conflict with mining. In the Kimberley region of Western Australia, for example, diamonds were discovered in a 1-kilometre round formation of kimberlite rock in 1978. The rock formation itself was sacred to the Barramundi Dreaming, and as such its significance was not restricted to the local people who were the site's traditional custodians. The site was bulldozed in 1980 while a senior caretaker was in Melbourne seeking public support for its protection. Mining is being conducted by an Australian subsidiary of Rio Tinto Zinc, which we note is also involved in mining in Namibia, and marketing is controlled by the South African firm, DeBeers. Mining is by the open-cut method, completely destroying the site and dispersing the indigenous community associated with it.

There are other examples in Australasia. At Noonkanbah, the Pea Hill sacred site was drilled for petroleum over vigorous Aboriginal opposition. The Ranger uranium project in Australia' Northern Territory has disturbed the Green Ant Dreaming. In these and other cases, human rights have been subordinated to commercial projects that chiefly benefit non-indigenous people.

The issue here is not merely disregard for religious freedom, but discrimination against particular religions and religious practices. In the United States, for example, there is an express constitutional guarantee of religious freedom. American courts interpret this as forbidding any government interference with religious practices, except where there is an imminent threat to public health or safety. In cases involving traditional indigenous (American Indian) religious practices, however, American courts merely require the government have <u>some</u> reason--any reason at all--to interfere.

That idea that some religions are less deserving of legal protection than others is, of course, unacceptable under the International Covenants on Human Rights and the Declaration which is the subject of this agenda item. We would like to draw the Commission's attention to operative ARticle 6(a) of the Declaration, which refers to the right "to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes." Surely this applies to the protection of a religious shrine which has been in continuous use by an indigenous population for hundreds or thousands of years, and we invite the Commission to clarify this point for the benefit of those States in which indigenous populations are victims of the confiscation of sacred lands.

Commission on Human Rights
Fourtieth session
Agenda item 9

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the Four directions Council
a non-governmental organization in consultative status
(Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 March 1984]

CONTINUED DISREGARD FOR SELF-DETERMINATION OF THE INDIGENOUS PEOPLES OF NORTH AMERICA AND AUSTRALIA

The right of self-determination was intended to apply to "all oceans and all countries," but this ideal but this has not yet been achieved. On at least two continents, European immigrants have achieved independence and self-determination, but the surviving indigenous inhabitants of those territories remain subject to alien domination and administration. It would be a serious mistake for the decolonization process to be brought to a premature end.

On what basis are the native peoples of these two continents excluded from the enjoyment of a fundamental and universal human right? It cannot legitimately be their race, culture or ethnicity. The fact that they are located geographically within the generally-accepted boundaries of other States is not conclusive, for no determination was ever made that their territories were lawfully annexed and incorporated. Indeed, native lands on both continents were appropriated by "right of discovery" and physical occupation under the racist theory of terra nullius, which was rejected by the International Court of Justice in its advisory opinion on Western Sahara (1975).

In some instances the community of nations, in extending recognition to an immigrant State established on aboriginal soil, was materially misinformed. General Assembly resolution 1469 (XIV) of 12 December 1959, recognizing the United States' annexation of Alaska, was apparently approved without any awareness that half or more of that territory's population was indigenous, and that the United States had never made any agreement with that population for its land or for its allegiance. Having annexed Alaska, moreover, the United States in 1971 divided the territory, leaving about 12 per cent of it for the indigenous population - which still comprised more that 25 per cent of the region's inhabitants.

In other instances, there is a widespread but mistaken belief that the displacement of native Americans and Australians was historical, and therefore no longer a priority for international action. On the coutrary, nearly one fifth of Australia and one third of Canada consist of unceded indigenous territories in which organized indigenous communities form a majority. These areas are still being annexed and exploited for mining and hydroelectric power, years after the respective States ratified the Charter of the United Nations and the Inter-

national Covenant on Civil and Political Rights. Areas of particular concern include Ntesinan (Labrador), the western Canadian Arctic, Western Australia, and Australia's Northern Territory, where nearly 100 thousand indigenous people are threatened with or are in the process of being displaced. Some of the same transnational mining companies are involved on both continents, e.g., Amax (United States), Rio Tinto Zinc (United Kingdom), and Urangesellschaft (FRG).

In other cases, indigenous Americans and Australians are the victims of discrimination in international law itself. The case of North American "Indian" treaties is illustrative. From 1620 to 1927 the United Kingdom and, subsequently, the United States and Canada concluded a total of more that 450 treaties with the governments and representatives of native North Americans. Under these instruments, native nations typically reserved their territorial rights and political character, and continued to conduct their own affaris as if they were independent or associated States. After 1870, however, the United States and Canada began to appropriate native territories in violation of these treaties, relying on the theory that treaties made with "Indians" or "savages" need not be respected.

Certainly one obstacle to indigenous self-determination that the Commission can readily condemn as members' failure to recoginze the obligatory force of treaties formerly made with indigenous nations. Even if these treaties do not suffice in themselves to confer recognized statehood on native nations, they identify organized and historically distinct "peoples" entitled to the exercise of self-determination and to decolonization. Belligerant occupation and colonization may suspend, and sometimes even extinguish statehood as such, but cannot destroy a people's right to emanicpation under the Charter and Article 1 of the International Covenant in Civil and Political Rights.

The most widespread example of legal discrimination against indigenous populations, however, is in the persistent use of the theory of terra nullius to justify the confiscation of territory. The situation in Australia is illustrative. Beginning in 1788 and continuing to this day, the Government established on the Australian continent by the United Kingdom has been displacing the indigenous population by coercive means. No remedy has been available in Australia's municipal courts on the pretence that the entire continent was legally uninhabited (terra nullius) - that is, the indigenous population was culturally and institutionally inferior and therefore incapable of owning land. According to this racist theory, the entire continent became the property of the United Kingdom the movement (sic) white Britons set foot on its eastermost shore two centuries ago.

In Coe v. Commonwealth (1979) 24 ALR 118, indigenous Australians unsuccessfully argued that past and continuing seizures of land violate the Charter of the United Nations and the principles established by the advisory opinion on the Western Sahara. Australia's High Court ruled that it must enforce the laws of the Government of Australia even where they are - as here - in conflict with international law and with Australia's international obligations.

The human toll of Euro-Australian encroachment has been extraordinary. The indigenous population was reduced by at least four fifths, with the number of deaths attributable to violence, starvation and disease running to the millions. The survivors live with disproportionate infant mortality, arrest and imprisonment rates, shortened lifespans and disrupted social and cultural institutions.

At Baryugil, for example, hundreds of Aboriginal Australians were recklessly exposed to contamination from a mine and mill operated by James Hardis Pty Ltd., which was importing blue asbestos from South Africa. Australia's original inhabitants have also suffered from military use of their land. From 1953 to 1959, the United Kingdom conducted nuclear tests in Aboriginal territory, exposing hundreds of unsuspecting people to radioactive fallout.

We applaud the Government of Australia for recently acknowledging these unhappy facts. In a statement made in August 1983 to the Working Group on Indigenous Populations, Australia's representative quoted his Government's Minister for Aboriginal Affairs, conceding that "the occupation of this nation was one of most brutal and genocidal acts in history." The Honorable Minister reiterated that view in a statement made at the Australian National University, Canberrra in November 1983.

One fifth of the continent was still occupied by indigenous people in 1980 when Australia ratified the International ovenant on Civil and Political Rights, however, and displacement of Aboriginal Australians continues. Aboriginal Australians never acquiesced in the expansion of Euro-Australia. There has been continuous resistence, with documented instances of retaliatory violence against Aboriginals as late as 1929 (and reported cases in the 1940's and 1950's), and the emergence of large-scale peaceful demonstrations in the 1970's. Indigenous Australians continue to assert claims to territorial sovereignty and self-determination.

The advisory opinion on Western Sahara has already settled the legal issues relevant to the Australian situation, but indigenous Australians have no direct access to the International Court of Justice and to protect their territorial rights. Indigenous peoples should, in appropriate cases, have standing to raise terra nullius cases to the Economic and Social Council with the recommendation that they be submitted to the Court for advisory opinions. Since the lawless annexation of indigenous territory is where human rights problems for indigenous Australians and North Americans begin, it is the point at which the more effective action can be taken to protect human rights.

Just as we feel the Commission can readily reject a distinction between treaties made with indigenous peoples and treaties made with others, we feel that it must condemn the continued application of the obsolete and racist theory of terra nullius to justify the removal of indigenous peoples from their lands. In either case, it is essential not to permit racial distinctions to impede the universal realization of human rights.

(The foregoing information was transmitted by the National Aboriginal Conference, National Aboriginal and Islander Legal Service Secretariat, National Aboriginal and Islander Health Organization, National Aboriginal and Islander Childrens Service, and the Federation of Land Councils.)

The Working Group on Indigenous Populations was established by ECOSOC Resolution 1982/34, 7 May 1982, and charged with studying the situation of indigenous peoples with particular attention to the development of appropriate legal standards. It now meets annually in August, at Geneva, and is open to all indigenous organisations regardless of conventional United Nations accreditation. The following submissions were made to the Working Group's first (1982) and second (1983) meetings.

COMMUNICATION concerning STANDARDS and AGENDA·1982

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection of
Minorities
Working Group on Indigenous Populations
First Meeting

COMMUNICATION OF THE SANTEIOI MAOAIOMI MIKMAOEI
CONCERNING STANDARDS AND AGENDA FOR EXAMINING THE
RIGHTS AND STATUS OF INDIGENOUS POPULATIONS

(9 August 1982)

We are honoured to participate in the first meeting of the Working Group on Indigenous Populations, and privileged to have spoken in support of its establishment at the last plenary session of the Commission on Human Rights. We believe this represents a constructive new step towards realizing the United Nations' goal of universal equality and self-determination of peoples, and will try to contribute to the Working Group's activities with the dignity and circumspection that befit its purpose. It would be remiss of us not to state plainly at the outset what course we believe the Working Group should pursue.

In our opinion, it is wise to agree on standards before proceeding to specific cases. Documentation of the circumstances under which indigenous populations live may produce a tragic record, but will lead to few practical results unless accompanied by credible analysis of legal implications.

We think the principal instruments of United Nations law already speak clearly to the rights of indigenous populations. The Charter (Articles 1 and

76), the International Covenants on Human Rights (Article 1), and interpretive legislation such as General Assembly Resolutions 1514 (XV) and 2625 (XXV) acknowledge the right of all peoples to sefl-determination and territorial security. No distinction is drawn between indigenous and other peoples. These rights are universal and non-discriminatory in application.

There has been some unfortunate confusion, however, in the interpretation of these instruments, which has materially delayed their implementation among indigenous peoples. Several issues must be resolved in advance of any serious consideration of indigenous rights, among them

(1) the distinction in law between "minorities" and "peoples;"

(2) the applicability of self-determination to peoples residing within the purported municipal boundaries of recognized States; and

(3) treaties with indigenous peoples as evidence of their exercise of self-determination.

On the first point (1), we think it clear that a "people" becomes a "minority" by exercising its right of self-determination to incorporate itself with another State or people. Minorities do not arise de facto, but by choice, either in the nature of a formal legal action such as a surrender or cession, or by long acquiescence. Our views on the matter are set out more fully in our statement to the Commission on Human Rights, E/CN.4/1982/ NGO/30/Rev.1.

We note that minorities have clearly defined rights of cultural, linguistic and religious freedom, and freedom from discrimination, but that these rights are of a different character than the political and economic rights of peoples. Classification therefore has a significant substantive effect on identifying violations and fashioning remedies in particular cases.

On the second point (2), we deem it essential to adopt the conclusion of Special Rapporteur Hector Gros Espiell in section 90 of his study Self-Determination: Implementation of United Nations Resolutions [1980], E/CN.4/Sub.2/405/Rev. 1, that national unity and territorial integrity may be "merely legal fictions which cloak real colonial and alien domination" of peoples. States should be reasonably able to justify their territorial claims under law, and to show that identifiable groups within their claimed boundaries were not annexed or engulfed by aggressive or other lawless means. We vigorously reject the notion that colonization is restricted to overseas exploits. Colonization also proceeds by the seizure of neighbouring territories, States, and peoples.

We also despair at the idea that granting independence to overseas colonists, gives them dominion over the peoples and territories they have colonized. We must be careful not to apply the principle of self-determination to the wrong people in a colonial situation. It is not decolonization, but a cruel deception, when self-determination in a colonized country is considered the exclusive prerogative of the colonists.

Any doubt that an indigenous people's territory is entitled to respect and security, and does not pass to other States except by peaceable bilateral means, was properly put to rest by the 1975 Western Sahara Advisory Opinion of the International Court of Justice. No State should be permitted to assert legislative authority over indigenous peoples except in accordance with that decision.

On the third point (3), we think it important to insist that treaties with indigenous peoples be construed and applied in the same manner as other treaties, without racist distinctions as to the capacity of indigenous peoples to engage in foreign relations or to form States. States that have treated with indigenous peoples according to the customary forms of international agreements must respect these obligations (pacta sunt servanda) and abide by the recognition of Statehood they have bestowed.

At the same time, we think the fact that a people heretofore has made no treaties with its neighbours, is not conclusive as to its Statehood, nor evidence that it is not entitled to the exercise of self-determination.

Treaties ordinarily are construed strictly against any delegation or relinquishment of sovereignty or independence and, once made, cannot be overcome by municipal legislation. Treaties of free association therefore cannot, by mere implication, give one of the associated States authority to terminate the existence or alter the political or economic institutions of the other.

We reject the suggestion that the rights of indigenous populations are different from the rights of others. The idean of distinctively "aboriginal" rights has often served the pretext, in the municipal law of States, of according indigenous groups diminished rights and limited protection. We think the principle of self-determination, applied fully to all peoples, answers the legitimate needs and aspirations of indigenous people better than any new and isolated norms.

We also fear that too much effort to define rights particular to indigenous populations will itself become a limitation on self-determination and on the right of each indigenous population to pursue its own aspirations.

We pass now from standards to agenda. In our opinion, the first goals of the Working Group should be the adoption of a draft interpretive Resolution, clarifying the application of existing United Nations instruments to the special case of indigenous populations. We suggest this be laid before the Commission on Human Rights at its next plenary session, with the recommendation that it be forwarded to the Economic and Social Council for adoption. We propose the following language:

" Recalling Resolutions 1589(L) and 1982/34 of the Economic and Social Council, calling for the study of discrimination against indigenous populations, with special attention to the evolution of standards;

Recognizing and reaffirming the urgent need to promote and to protect the human rights and fundamental freedoms of indigenous populations;

Mindful that the principle of self-determination is fundamental to world peace and must be universal in dignity and application;

Believing that the principle of self-determination as expressed in the Charter and the International Covenants on Human Rights should be implemented among all peoples without regard to culture, race, or ethnicity; and

Believing further that the human rights and fundamental freedoms of indigenous populations are no less, nor substantively different from those of others on account of their cultures, history or institutions:

1. Declares that indigenous populations are "peoples" within the meaning of United Nations law unless and until they have freely and unambiguously chosen to incorporate themselves with other States or peoples by democratic means, and as such they are entitled to self-determination, territorial security, and, in appropriate instances, decolonization;

2. Further declares that the location of an indigenous population within the municipal territory claimed by a State is not of itself a bar to their exercise or self-determination, if they can show that they were annexed or incorporated by aggression or otherwise without their consent, and did not acquiesce therein by any subsequent settlement; and

3. Further declares that treaties formerly made by States with indigenous peoples have the same force and effect, and are to be construed by the same means, as other treaties, and where they form the basis for the association of indigenous peoples with States, neither extinguish the international character of the indigenous party nor subject it to any greater limitation on its independence than was expressly agreed; and lastly

4. Recommends that the Division of Human Rights and Commission on Human Rights take reasonable steps to assure indigenous populations full and equal access to their resources and activities, and to encourage them to seek peaceable means of resolving their concerns within the United Nations Organization.

The second goal of the Working Group, we believe, should be the adoption of a protocol for reviewing specific cases, and passing them to appropriate agencies of the United Nations for further action. We suggest the following principles be included:

(1) activities of the Working Group should be directly accessible to all indigenous populations, in addition to organizations in consultative status with the Economic and Social Council;

(2) communication of concerns to the Working Group on behalf of an indigenous population, if not transmitted by their own duly constituted representatives, should be circulated among them by some appropriate means that they may have an opportunity to participate;

(3) States that are subjects of communications should ordinarily be encouraged to respond freely; however, indigenous populations should have the option of communicating with the Working Group in the strictest confidence, for their protection;

(4) the Working Groups should limit its findings and reports to instances of substantial evidence of specific violations of United Nations law and indigenous rights standards, and should make specific recommendations for the resolution of situations in conformity with the principle of self-determination; and

(5) in appropriate instances, the Working Group should recommend the submission of issues to the International Court of Justice for Advisory Opinions or, with the consent of the parties, contentious proceedings, especially where the origin and legitimacy of territorial boundaries are a factor.

SUPPLEMENTAL STATEMENT

regarding EXAMPLES OF VIOLATIONS · 1982

ECONOMIC AND SOCIAL COUNCIL
Commission on Human Rights
Sub-Commission on Prevention of
Discrimination and Protection of
Minorities
Working Group on Indigenous Populations
First Meeting

SUPPLEMENTAL STATEMENT OF THE SANTEIOI MAOAIOMI MIKMAOEI
REGARDING EXAMPLES OF VIOLATIONS OF EXISTING NORMS

(11 August 1982)

In earlier interventions we suggested that some existing norms of international law should apply to indigenous groups, and should be implemented without delay. We feel that the Working Group's report should identify the characteristic--and well-documented--ways that these norms are being violated today. We feel there is no real dispute regarding the facts in these cases, and further study is unnecessary.

We think it essential that the requirement of consent to annexations or appropriations of land be given universal application, particularly in regard to so-called indigenous peoples. We urge the Working Group to refer to this principle in its first report.

We also think it clear that the requirement of consent has been ignored by many states in recent years, and offer some examples from our own experience.

In 1951 the Government of Canada amended its Indian Act to classify all lands occupied by native peoples--including lands secured by head-of-state treaties--as belonging to the Crown in right of Canada, and to assert power to remove the native occupants at pleasure, with or without compensation. The current legal term for this "supercession [of indigenous land rights] by law"--that is, by municipal legislation. Lands neither ceded nor seized are placed under the discretionary and unreviewable management of the Minister of Indian Affairs, moreover--the Minister has authority to determine the use and disposition of lands still occupied by indigenous groups.

Ministerial control of land use is justified as an exercise of protection, to prevent individual natives from dissipating their resources. Collective management of land under indigenous government preserved these resources for thousands of years, however; protection would be better achieved by allowing native groups to regain effective collective sovereignty over their territories.

We note that Canada's newly-revised constitution (the Constitution Act, 1982) provides for the protection of "existing aboriginal and treaty rights." That is, it now protects any rights still unimpaired after a century of erosion, rather than restoring indigenous peoples to the full exercise of their human rights.

The most pressing instances of land encroachments may be found in the Arctic. Some two-thirds of the territory north of 60°N latitude has never been ceded or sold by its aboriginal inhabitants. The Government of Canada nonetheless has taken the position, in written exchanges with native leadership, that this territory belongs to Canada by mere assertion or discovery. The Government has offered to compensate Arctic natives for lands they still occupy through negotiations, but does not await negotiations to begin settlement. In Labrador, for instance, the Government of Canada began to relocate the indigenous population in the 1960s to make way for regional mineral and hydroelectric projects--without any agreement, and with warnings that relocation would continue whether or not they agreed to negotiate compensation.

The Government of Canada has invited United States and western European firms to relocate in the eastern Arctic to take advantage of the region's unsurrendered resources, and has leased part of the territory to the Government of the Federal Republic of Germany for a military air target range. In a tragic parallel to the 19th-century destruction of buffalo, the subsistence for indigenous peoples of the central North American plans, the Government of Canada has dispersed the herds of caribou on which eastern Arctic peoples rely for food, and has arrested and often imprisoned hunters.

We think it indisputable that Canada's claim to this area, based on mere discovery and that Government's physical power to remove the inhabitants, is a violation of international law.

The Arctic offers only the most recent example of these problems: we direct the Working Group's attention to our own situation. Our Grand Council entered into a head-of-state treaty with the United Kingdom in 1752, establishing peaceable relations and a common defence. We surrendered none of our statehood or sovereignty, and sold no land. We have sold no land since. Yet in the 1940s the Government of Canada began to "centralize"--that is, to relocate--Mikmaq people into a few small areas, comprising less than 5 per cent of our territory and making no adequate provision for our subsistence. We have been informed in writing by the Government of Canada that they consider centralization a proper exercise of their power.

We note further that in 1960, the Government of Canada divided our people, who had always lived under one government and spoken one language, into a number of administrative units, and thereafter refused to acknowledge our Grand Council. And within the past few years there have been armed confrontations over our efforts to catch fish, within our remaining few lands, for food.

In the United States (for comparison), we observe that it is the position of that Government, advocated successfully in its courts, that legal title to the entire country was vested by discovery, and is superior to the so-called right of occupancy retained by the original inhabitants. According to the United States' Supreme Court in recent decisions, the Government of the United States enjoys an absolute and exclusive power to remove the native inhabitants by purchase or, if it chooses, "by the sword." This is called "plenary power" by municipal lawyers.

The United States' theory of "trust responsibility"--a polite way of saying "the white man's burden"--is applied in legislation and in the courts to sustain

discretionary administrative power in the Secretary of the Interior to veto the use of land by indigenous groups, and in some instances to lease land out from under indigenous occupants without notice or consent.

Our colleagues from the Lakota Sioux nation earlier recalled how their religious homeland, the Black Hills, was confiscated in 1877 to make way for a gold rush. The Government of the United States has in the past few years conceded, in its courts, that this was an involuntary and uncompensated seizure, but has thus far successfully maintained the power to force Lakotas to accept nominal compensation for the area rather than regaining possession of some of the lands stolen.

It should be emphasized that the Lakota--and indeed many other peoples of the North American plains--regard this land as their holiest shrine and the foundation of their religion, and that they have tried to avail themselves of every opportunity under municipal law to regain access to it.

In several other cases involving, among others, the Shoshone and Six Nations, the Government of the United States has attempted to cure conceded confiscations by forcing the original inhabitants to accept nominal compensation. Many indigenous groups have refused to accept conpensation--their claims cover about one-sixth of the United States' contiguous land area.

Hence in Canada today the Government is seizing new lands, with or without native consent, and in the United States efforts are being made to settle past wrongs--not by restoring some of the lands formerly seized, but through a program of involuntary partial compensation, amounting to less than one per cent of current economic value.

Neither programme, we think, comports with Article 1(2) of the International Covenant on Civil and Political Rights, or with the recent decision of the International Court of Justice in its Western Sahara Advisory Opinion that states' title to lands should be based on the consent of the original inhabitants. Practices of the United States and Canada involve aggression, disrespect for self-determination, and, in many instances, the violation of treaties.

We wish to underscore some of the common features of U.S. and Canadian policy: the claim of superior title to land through mere discovery, the physical occupation of land without native consent (often by naked aggression), and efforts to clear away subsequent legal objections by forcing native groups to accept nominal money compensation. We also note the common theory of protection or trusteeship, used to justify continuing arbitrary interference with indigenous groups' use of lands not yet sold or seized.

And, of consequences, we can add little new to the contemporary statistical record of poverty, despair, disruption of social and cultural institutions, and disease attributable to loss of subsistence resources and overcrowding. We merely draw attention to the fact that while the present indigenous population of Central and South American--where the process of land confiscation is less advanced--is estimated at upwards of 30 million, the indigenous population of North America has fallen from an estimated pre-Columbian level of 5 to 15 million to less than 3 million. Land confiscation can be an effective form of genocide and ethnocide.

We are not suggesting that North American states are the only ones that deserve criticism, nor that they are necessarily the worst offenders in this regard. We merely speak from experience and familiarity. These cases are well documented in the legal decisions, legislation, and state papers of the United States and Canada, and, if the Working Group desires, we would be happy to compile a documentary appendix verifying this intervention, including maps detailing which parts of North America were acquired without native consent.

The issue, common to these examples, is the right to a homeland, for religious, cultural, and economic purposes. No original territory in North America is a secure homeland for indigenous peoples, because none is free from arbitrary management and confiscation.

We would be satisfied to see these examples identified in the Working Group's report as illustrations of contemporary, continuing violations of indigenous populations' human rights under existing, binding norms of international law.

COMMENTS on the PRELIMINARY DRAFT REPORT · 1982

ECONOMIC AND SOCIAL COUNCIL
Commission on Human Rights
SubCommission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
First session

COMMENTS OF THE SANTEIOI MAOAIOMI MIKMAOEI
REGARDING THE PRELIMINARY DRAFT REPORT

(14 August 1982)

We are pleased to be able to give the Working Group's preliminary draft report, E/CN.4/Sub.2/AC.4/1982/2 of 13 August 1982, our wholehearted endorsement. It identifies the major issues to be refined and addressed by future sessions, and makes sound recommendations for procedures. We consider this a constructive and appropriate beginning.

Several aspects of the draft report merit our particular attention and support:

--representatives of indigenous groups should have direct access to sessions of the Working Group, with efforts to establish a fund to facilitate indigenous representatives' participation, and meetings closer to major concentrations of indigenous populations.

--while the Working Group should not seek to duplicate existing channels for the review of specific grievances, such as communications under the Optional Protocol or ECOSOC Resolution 1503, it should encourage dialogue between governments and indigenous groups regarding their actual experience in the evolution of municipal laws and practices.

--the study of standards should begin with the implementation of existing binding norms, and accord primacy to life, self-determination and land among the needs and aspirations of indigenous peoples today.

We feel this is a document we can transmit to our Council and people with complete satisfaction, and would vigorously oppose any substantive change in the preparation of the final draft.

Bernie Francis
Secretary to the Grand Council

Russel Barsh
Counsel, Foreign Affairs

14 August 1982

STATEMENT on LEGAL STANDARDS · 1983

COMMISSION ON HUMAN RIGHTS
SubCommission on Prevention of
Discrimination and Protection of
Minorities
Working Group on Indigenous Populations

Second Session (8-12 August 1983)

E/CN.4/Sub.2/AC.4/1983/CRP.1

STATEMENT ON LEGAL STANDARDS

by the

FOUR DIRECTIONS COUNCIL

a non-governmental organization in consultative status,
Category II, with the Economic and Social Council

[8 August 1983]

The Santeioi Maoaiomi Mikmaqei:

"At the first session of the Working Group in 1982, there appeared to be general agreement among both the States and indigenous representatives participating that, at a minimum, indigenous populations should enjoy the same general human rights as others under existing international norms. The implementation, rather than the adequacy of existing norms was stressed by most of the delegations. Self-determination, land, and religious and cultural rights were emphasized, as well as the right to existence, with attention to existing international agreements on the crime of genocide and the protection of human rights.

As we suggested in our intervention at last year's session of the Working Group, we find three potential legal obstacles to the full enjoyment, by indigenous populations, of the rights and freedoms secured by the International Covenants on Human Rights. First, whether indigenous populations are 'peoples' within the meaning of the Covenants. Second, whether treaties made with indigenous populations, and in all respects purporting to be of the same character as any other treaties, are of equal dignity and juridical significance. And third, whether the location of an indigenous population within the municipal territory of a State bars consideration of communications under Article 1 of the International Covenants.

We believe that it is only fitting and necessary, as the foundation for the future work of the Working Group, that the essential jural equality of indigenous and other peoples be declared unambiguously. It would be curious to begin the examination of indigenous populations' rights, by failing to affirm their basic humanity, and the irrelevance of their race, cultures, or the stage

: nature of their sociopolitical organizations to the enjoyment of universal
uman rights. If agreement on this simple proposition cannot be reached, it
ould seem pointless to continue the examination of specific situations and
ssues.

We can find no basis in contemporary international law for a discrimination
gainst 'indigenous' societies on account of their characteristics social
rganization, technological capabilities, or cultures. If, indeed, a large
roportion of the world's indigenous populations are of 'American Indian'
rigins, this racial classification would also seem no legal basis for
istinction. Relative physical numbers or military power have long since been
bandoned as tests of collective rights or of statehood: the legal framework of
world affairs today presupposes the jural equality of all States and peoples,
'large and small', as a deliberate rejection of the imperialistic model of great
Powers and colonies.

If there is some specific legal basis for excluding indigenous populations
from universal human rights, we would like to know it. If none can be found, we
would like to see the universality of these rights re-affirmed as a signal of
hope and respect for the world's indigenous populations.

Attached to this intervention as an Annex is proposed language for a
Resolution of the Commission on Human Rights for this purpose. We respectfully
suggest consideration and adoption of this Resolution by the Working Group, for
transmittal to, and consideration by, the Sub-Commission and the full
Commission."

E/CN.4/Sub.2/AC.4/1983/CRP.1
Annex

Annex

DRAFT RESOLUTION DECLARING THE UNIVERSALITY OF ALL HUMAN RIGHTS

Recalling Resolutions 1589 (L) and 1982/34 of the Economic and Social Council, calling for the study of discrimination against indigenous populations, with special attention to the evolution of standards,

Recognizing and affirming the urgent need to promote and to protect he human rights and fundamental freedoms of indigenous populations,

Mindful that the universal implementation of human rights is essential to world peace, and

Believing that the human rights guaranteed by the International Covenants on Human Rights should be enjoyed equally without regard to race, culture, or state of socio-political organization,

1. Declares that indigenous populations are "peoples" within the meaning of the International Covenants on Human Rights, unless and until they freely and unambiguously choose to incorporate themselves with other States or peoples by democratic means,

2. Further declares that treaties formerly made by States with indigenous populations constitute evidence of statehood, and are of no less dignity than treaties made with other States, and

3. Recommends that the geographic location of an indigenous population be no bar to the admissibility of communications to the Commission on Human Rights or the Human Rights Committee, concerning any of the rights enumerated in the International Covenants on Human Rights.

STATEMENT concerning RACISM in the application of the PRINCIPLE OF SELF-DETERMINATION - 1983

E/CN.4/Sub.2/AC.4/1983/CRP.3
9 August 1983

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations

Second session (8-12 August 1983)

STATEMENT CONCERNING RACISM IN THE APPLICATION OF THE PRINCIPLES OF SELF-DETERMINATION AND LEGAL EQUALITY OF STATES

of the

FOUR DIRECTIONS COUNCIL

a non-governmental organization in consultation status, Category II, with the Economic and Social Council

The Santeioi Maoaiomi:

"There are two general kinds of racial discrimination. One is denying the legal equality of citizens of a State, in regard to individual rights. The other is denying the legal equality of States and peoples, in regard to the rights of self-determination, statehood and territorial security. We are concerned here with the second.

The equal right of all peoples to self-determination is fundamental to the universal realization of human rights generally. As Hector Gross Espiell observed in his 1980 report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the exercise of self-determination is a people's ultimate recourse against all forms of social, economic and political disenfranchisement - a means by which they may erect a legal regime more conducive to their equality, freedom and dignity.

Decolonization has aimed to place in the hands of the world's non-self-governing peoples the means of securing their own human rights, through the design of their own institutions. Human rights are most typically abused by States which have annexed, absorbed or dominated other peoples involuntarily. Coerced assimilation and coerced segregation are both characteristic evils of these situations. Both restrict dominated peoples' lives to activities useful to others, and inimical to their own welfare. The ultimate goal of the

implementation of universal self-determination must be, we believe, to eliminate all instances in which the destiny of one people is dictated by the desires and appetites of another. Only this will assuage the jealousies and resentments which have proved a continuing threat to world peace.

Looking around the world today, we observe a curious phenomenon. Peoples of every race, with one exception, have been achieving self-determination and colonization under the auspices of the United Nations. There are independent States today of every colour, save one. Is this a temporary oversight, or the result of institutionalized discrimination?

We observe, first that the 'Indians" of the Americas are never described in the United Nations as 'peoples' but as 'indigenous populations'. We understand that a 'people', in international law, is determined by a common history, language, culture and geography, whether or not it has acted or been recognized as an independent State. This being the case, 'indigenous' Americans must be 'peoples', unless somehow their race disqualifies them from equal consideration. But such an institutionalized racial distinction would of course be impermissible.

We note, further, that 'indigenous' Americans' history of conducting relations with European powers by treaty has been consistently disregarded in determining whether these peoples are, or have the right to form States. The Mikmaq people, for example, negotiated treaties with France, the United Kingdom and the United States. Other American peoples made treaties with European States as late as the 1920s. Treaty relations are evidence of international recognition of statehood, and recognition, once given, cannot ordinarily be withdrawn. Yet we find in the reports of international arbitration and human rights proceedings an assumption that treaties made with peoples of the 'Indian' race are not treaties at all, and have no international legal consequences. The United Nations cannot afford to admit that a document called itself a 'treaty' and signed by the representatives of two 'nations' is without effect, merely because one of the nations signing it is of the wrong race.

Lastly, we note that the legal doctrine of terra nullius, although expressly condemned by the International Court of Justice in 1975, and implicitly by Article 1 (b) of the International Covenants on Human Rights, continues to be asserted successfully against indigenous Americans. It is the entire legal basis of colonizing powers' claims to the North American Arctic, and to roughly one-fifth of the rest of that continent, albeit in several instances some nominal retroactive compensation has been paid. These powers also assert a continuing right to appropriate remaining indigenous territories on the grounds of 'plenary power', 'parliamentary supremacy' or 'trusteeship' - little more in reality than the assertions of unrestricted jurisdiction and authority over involuntarily annexed and encircled peoples, on the basis of racial and cultural superiority.

All of these objections have been raised against ourselves.

We do not doubt that there are some indigenous American groups which properly can be described as national minorities, having freely and unambiguously incorporated themselves with the colonizing powers. But to assert as a matter of general international principles or policy that all populations of the 'Indian' race are thus incorporated, in an institutionalized form of racism denying peoples of one colour any hope for self-determination.

It has been 400 years since the international jurist Francisco de Vitoria wrote that 'Indian' communities in the Americas were States entitled to the same rights and freedom as European States. It is extraordinary that this point must be reaffirmed today.

It is imperative to distinguish situations involving racist exclusions from full citizenship, and racist denials of self-determination. Carelessly applied without regard to history, the imperative international norm against racial discrimination can be used to justify the coerced cultural assimilation and legal incorporation of captive peoples. Colonized or lawlessly annexed peoples should never be denied the right to self-determination on the pretence that they must become 'equal' with citizens of the colonizing State. Whether a particular people should be emancipated through decolonization or through integration is, above all, a matter of choice and of self-determination for that people themselves.

The Working Group should avoid suggesting standards for combatting racism which conflict with indigenous groups' collective self-determination. Self-determination has been referred to in the 1973 Programme for the Decade for Action to Combat Racism and Racial Discrimination (sec. 1 (d): the United Nations has recognized 'the legitimacy of the struggle of all oppressed peoples, in particular in the territories under colonial, racial or alien domination'); in the Declaration of the 1978 World Conference to Combat Racism and Racial Discrimination (sec. 5: 'denial of the right of peoples under colonial or foreign domination to self-determination' is one of the 'root causes of discrimination and tension'); and by the Working Group on Indigenous Populations of the Commission on Human Rights in its 1982 first annual report. Principles for resolving conflicts between individual equality and self-determination have not yet been identified, however.

In light of this, we suggest that the following comments be included in the final report of this session:

> Assertion that the indigenous populations of the Americas are not 'peoples' within the meaning of international law, that treaties formerly made with them have no obligatory force, or that their lands can be appropriated without their consent as terra nullius or otherwise, is racist and impermissible.
>
> The convention on the Elimination of All Forms of Racial Discrimination does not require the involuntary assimilation of lawlessly annexed or colonized peoples under the pretence of eliminating racial discrimination, where the result would be the denial of their right to self-determination."

SPEAKING NOTES on SELF DETERMINATION·1983

11 August 1983

Last year I sat here at the Working Group's first session with Larry Red Shirt, a representative of the Lakota Sioux people. In one of the final interventions of the session, he commented that he had participated in hundreds of meetings concerning the rights and status of native Americans, and that they all ended by saying, "yes, you really do have a problem," without addressing specific standards or making commitments to change. He hoped this new Working Group would be different. Red Shirt died earlier this year at the age of thirty-two. I intend to reiterate his concerns.

Self-determination is not a separate right, but a matter of implementation that lies behind all other rights. The distinguished representative of Brazil suggested earlier this week that the right to vote satisfies the right of self-determination. Surely this is not true of a group unable to affect, through majoritarian process, the laws and policies of the administering state--especially if it is a state to which they have never volunteered their allegiance.

Indigenous populations cannot secure cultural or social rights without the ability to set their own standards. If, as the International Indian Treaty Council suggested, we have a problem here of "two civilizations," it is all the more reason to leave the definition of social and cultural norms to the indigenous peoples themselves. Self-determination is the best way to solve the problems of different perceptions of rights and aspirations.

As I indicated earlier, we are emphatically concerned over the admissibility of communications alleging violations of indigenous peoples' rights to self-determination, as well as their right to land, under Article 1 of the International Covenant on Civil and Political Rights. This is addressed in detail in our two written submissions to this meeting, available as E/CN.4/Sub.2/AC.4/1983/CRP.1 and CRP.3. Channels already exist for the resolution of particular situations --particularly the Human Rights Committee--but indigenous concerns have been excluded because of ambiguity in international law. This is an appropriate and important task for the Working Group.

On the issue of self-determination, let us try to agree on at least one thing: obviously it is <u>not</u> the task of the Working Group to decide what degree of autonomy indigenous peoples should have. The idea of self-determination means, of course, that this is a matter for the indigenous peoples themselves. The task of the Working Group is to affirm that indigenous peoples have the right to make that choice.

Of course the exercise of self-determination does not necessarily lead to full autonomy in all cases. It has been the position of the Mikmaq Grand Council, for instance, that a limited union with Canada, based on a common defence, common currency, and coordinated foreign relations, would be both agreeable and practical, as well as compatible with the 1752 Treaty of Halifax that secures and guarantees our territory. A similar arrangement subsists in Greenland which, as an "autonomous province" of Denmark, offers the indigenous Inuit population there a measure of real self-determination.

By these means, the security of a metropolitan state and the aspirations of indigenous populations can often be reconciled.

Indeed, a review of the historical situation in North America suggests that this was exactly the arrangement contemplated by many of the treaties made with native nations. The United Kingdom, France, and later the United States and Canada agreed by treaty to help protect native nations from foreign intervention in exchange for commercial advantages. Many of these treaties include detailed allocations of jurisdiction and responsibilities between the allied governments. Native North American nations consider these treaties constitutional documents of fundamental importance.

In these cases, the problem is seeing that indigenous peoples' historical, formal exercise of self-determination is respected. The obligatory force of these treaties should be included in the work of the Working Group.

We are agreeable to the proposed five-year plan for the activities of the Working Group, with three small but important suggestions.

First, that the right of self-determination is a backdrop against which all other rights of indigenous peoples must be considered. Discussion of this right should continue through the next five planned meetings of the Working Group. However, as a preface to its planned work, the Working Group should, in its 1983 report, expressly affirm that at a minimum indigenous populations have a right to continue to exist, to enjoy their lands, and to develop their own cultural, social and political institutions.

Second, there should be a provisional definition of "indigenous populations" based on the suggestions prepared by the Centre for Human Rights (E/CN.4/Sub.2/AC.4/1983/CRP.2):

> Indigenous populations have an historical continuity with pre-invation and pre-colonial societies, consider themselves distinct from other populations later settled in their territories, and are determined to preserve and develop their own cultural and social institutions on their own lands. They object to being neither autonomous, nor dominant in the administration of their communities.
>
> Historical continuity is reflected in common ancestry with the original inhabitants, continued occupation of ancestral lands, distinctive cultural, religious, social or economic institutions, a common language, or other factors.
>
> Membership in an indigenous population is foremost a matter of self-identification and group acceptance or recognition.

Lastly, to expand the geographic scope of the Working Group's inquiry, the Commission on Human Rights should authorize a fund for travel to Geneva by indigenous representatives, and in special cases, travel to indigenous territories by members of the Working Group.

SPEAKING NOTES on the U.S. INTERVENTION·1983

12 August 1983

My first comment addresses the importance of indigenous representation at these proceedings. Apparently, the maintenance of protocol and decorum is of concern to some State delegations. We appreciate their concern, but caution against limiting indigenous representation to organizations with NGO status. Restricting commentary to non-governmental organizations would severely limit the geographical scope of your inquiry, and thus deprive the Working Group of exposure to important developments affecting indigenous populations in many parts of the world.

Now that we have spent a week in active discussion, we are at the point of asking ourselves "where are we? what have we accomplished?" I would like to say that our discussion has progressed from subtle avoidance of the term, "self-determination," to recognition of its central importance. Most noteworthy has been the number of State observers expressing interest in, and committing themselves to, the goal of indigenous self-determination.

The problem ahead, then, will be understanding what self-determination means, and how it can be reallized in practical terms, in particular circumstances. In other words, as the Working Group proceeds, its task will become more analytical.

I would like to thank the distinguished representatives of the United States and his comments on legislative developments relating to American Indians.

It is good that the Government of the United States feels comfortable with the word, "self-determination." All indigenous groups consider this a fundamental issue and the importance of recognizing self-determination has been reiterated all week.

The United States Government's approach to improving American Indians' environment through the recognition of tribal self-government illustrates in practice, however, some of the problems of interpreting and implementing self-determination.

It is true that American Indian tribes are permitted to elect legislative councils. Under United States legislation, the governing charters of tribal councils and all subsequent amendments must be approved by U.S. administrators. Furthermore, most legislative decisions of tribal councils, such as those involving land use, finances, civil and criminal laws, must also be approved administratively. This results in a surprising uniformity in structure and practice among tribal governments despite the enormous cultural diversity of American Indian tribes.

The distinguished representative of the United States mentioned the Indian Self-Determination Act of 1975, which delegated much of the lower-

.evel administration of social services to tribal councils. But this Act :xpressly provides that substantive standards for services such as health and :ducation continue to be set by the Government of the United States. Is this :hat self-determination means?

We suggest that if the United States wishes to fulfill its stated objective :f recognizing American Indian self-determination, a necessary step is the :limination of routine, discretionary administrative supervision of Indian :ecisions.

For the indigenous American community to meet the familiar international :riteria of self-determination, we expect to see evidence of real control over :ocial, economic and cultural institutions by tribal councils, and a withdrawal :f the United States' exercise of administrative review. As long as the :overnment of the United States reserves supervisory powers over Indian self-:overnment, U.S. acknowledgment of Indians' right to self-determination will :ave limited meaningfulness.

The interpretation of self-determination also arose in the context of the I.S. observer's suggestion that equal rights of national citizenship satisfy :ndigenous populations' legitimate political rights and aspirations.

We understand what has been said this past week, by all indigenous :epresentatives, to mean that self-determination is the authority to preserve :nd develop our own distinct social, economic, political and cultural :nstitutions--not to participate on an equal or any other basis in someone :lse's institutions. We have a right to our own future.

This cannot be achieved by incorporating indigenous populations, whether as :nferiors or as equals, under existing national laws and institutions. Self-:etermination in the design and development of our own laws and institutions is :he only real guarantee of our free cultural, economic and political survival as :eoples.

Denny v. Canada

THE ORIGINAL COMMUNICATION·1980

Before the leaves
turn colors, 1980

. Theo C. Van Boven
cretary, Human Rights Committee
lais des Nations
11 Geneva, Switzerland

' taleyn:

The Jigap'ten of Santeoi Mawa'iomi of the Mi'kmaq Nationimuow has the nour to address you as well as the sadness to communicate the substance of our rievances against the Dominion of Canada. The people of our tribal society are ictims of violations of fundamental freedoms and human rights by the government Canada: Canada has and continues to deny our right to self-determination; nada has and continues to involuntary confiscate our territory despite the erms of our treaties; Canada has and continues to deprive our people of its own eans of subsistence; and Canada has and continues to enact and enforce laws and olicies destructive of our family life and inimical to the proper education of ur children.

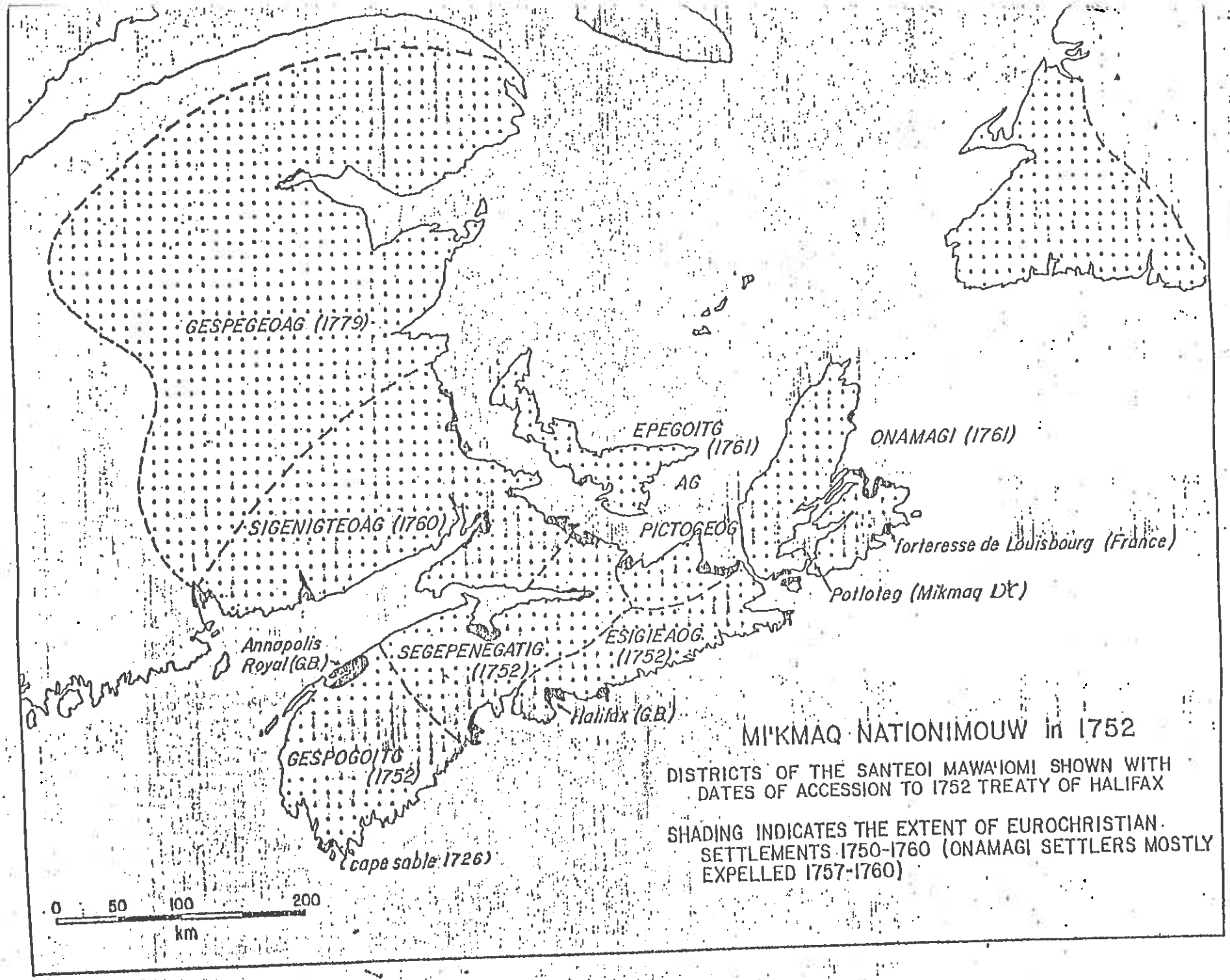
We speak plainly, so that there is no misunderstanding. For three enturies, we have honoured and lived by our Treaty of protection and free ssociation with the British Crown. We have remained at peace with British ubjects everywhere, and our young men have given their lives, as we had romised, in defense of British lives in foreign wars. As the original govern- ent of the Mi'kmaq Nationimuow from time out of mind, and as signatories and eepers of the great chain of union and association with Great Britain, we, the awa'iomi, have guided our people in spiritual and secular affairs in freedom nd dignity, in our own way, without compulsion or injustice.

Now, there is a great and terrible idea in this land. The government of anada claims that, by virtue of its charter of self-government from Great ritain, the British North America Act, it has succeeded to the Crown in our reaty. Furthermore, and in frank violation of the law of nations, the govern- ent of Canada claims power and right to ignore our Treaty at pleasure, and to eize our ancient lands, substitute, supervise, or abolish our government, emove our children to schools of its choosing, rather than ours, prevent us rom farming and fishing for our subsistence, and scatter our homes and amilies. They tell us we no longer are a protected State, but a minority group f "Indians," subject absolutely to their discretion and control, exercising the rights of property, self-determination, and family life only at their will. hey offer our people political peonage and the destiny of dependence upon financial relief.

This we cannot accept. Under the Optional Protocol to the International Convenant on Civil and Political Rights, acceded to by Canada on 19 May 1976, we submit this to the Committee on Human Rights.

For the Santeoi Mawa'iomi
Alexander Denny, Jigap'ten

Sakej Henderson, Putu's Union of N.S. Indians


GESPEGEOAG (1779)
EPEGOITG (1761)
AG
ONAMAGI (1761)
SIGENIGTEOAG (1760)
PICTOGEOG
forteresse de Louisbourg (France)
Potlotek (Mikmaq Dt')
Annapolis Royal (G.B.)
SEGEPENEGATIG (1752)
ESIGIEAOG (1752)
Halifax (G.B.)
GESPOGOITG (1752)
cape sable 1726)
0 50 100 200
km
MI'KMAQ NATIONIMOUW in 1752
DISTRICTS OF THE SANTEOI MAWA'IOMI SHOWN WITH DATES OF ACCESSION TO 1752 TREATY OF HALIFAX
SHADING INDICATES THE EXTENT OF EUROCHRISTIAN SETTLEMENTS 1750-1760 (ONAMAGI SETTLERS MOSTLY EXPELLED 1757-1760)

newt: on standing

1. The Mi'kmaw Nationaimouw is and always has been a distinct people, speaking its own language, free in the enjoyment of its own culture and religion, governed by its own officers and laws in its own territory, and recognized, until limited by its free association with Great Britain, as capable of engaging in Treaties with other States, both States native to this continent and States of Europe.[1]

2. In accordance with our ancient laws and the law of nations, we recognize two Eurochristian allies or lacamanen: the Church of Rome and the British Crown. In 1621 our jisagamow Membertou, by his baptism and agreement, associated the Mi'kmaq Nationimouw with the Holy See, and ever since we have given the Church of Rome free access to our territory and people, the liberty to build and keep churches, and the privilege of yearly renewing this association at our great meeting on Chapel Island. Agents of Great Britain sought us out as early as 1719 to treat for peace and political association, but, as we then were surrounded by settlements of France, we did not adhere to Britain's Treaties with our southern lacamanen, the Penobscots, Passamaquoddies, and Maliseets.[2] In 1752, as British arms displaced the French from our frontiers, we associated ourselves by Treaty with Great Britain (Enclosure "A"), and by this Treaty have recognized that State, and they us, ever since.

3. The Mi'kmaq Nationimuow claims de jure, by ancient title and dominion, all that territory which it possessed, governed, used and defended at the time it entered into the protection of Great Britain. Sitqamuk,* our national territory, includes the lands today known as Nova Scotia, Prince Edward Island, and parts of Newfoundland, New Brunswick, and the Gaspe peninsula of Quebec (Enclosure "B"), an extent of twenty thousand square miles, more or less. Although our Treaty of protection guaranteed us permanent enjoyment of this territory, save only for settlements of British subjects then existing (to the extent of one thousand square miles or less), we recently have been confined to small parcels of land in total less than fifty square miles. Title and right even to these parcels, denominated "Indian Reserves," is contested now by the government of Canada, yet we never have sold or ceded by deed or by Treaty a single acre of our original domain.

4. For evidence and proof of our territorial extent, we submit for your consideration that all physiographic features within these lands have ancient names in our language, which refer to our continuous use and possession of them, and identify the wigmamow or settlements of our people that belonged to each of them. We offer to show these facts to you in our own country as you may see fit and convenient.

---

1. "State" Montivideo Convention (1933), 49 U.S. Stat. 3097, Article 1; Hackworth, Digest of International Law (1940), at 47.

2. Labaree (ed.), Royal Instructions to British Colonial Governors (1935), at 469. A similar objective was described in the Charter of 1621 for Nova Scotia given to Sir William Alexander, but the Charter never was implemented.

(* Ed. note: "our country," also Mikmakik or "Mikmaq Country")

5. We have existed as autochthonous people from the beginning of time. When the Mi'kmaq awoke naked in the world and ignorant of everything in it, they asked the creator, Nisqam, how they should live. Nisqam taught us how to cultivate the ground, and to respect the nations of the trees and their dependents; to hunt and fish, and to pray while we hunted and fished; to name the stars, the constellations, and the milky way, which is the path our spirits take to the other world. Most of all, Nisqam taught us to live together as one people, ginuk, in brotherhood with all other humans, animals, and plants.

6. To lead the Mi'kmaq along the good path in their domestic relations, and to advocate their interests in foreign affairs, the creator endows a few of each generation with special knowledge of the woodlands and the ocean, and concerns of the spirit. Long before our memory, these people of wisdom and responsibility joined together in a body, the Santeoi Mawa'iomi, or great league, called the Grand Council by the Jesuitical emissaries of the Holy See who first described us to Eurochristians, and the Mi'kmaq Nationimouw by the diplomats of the British Crown with whom we made our Treaty of protection and association. As early as 1616, Eurochristian observers described the division of the Mi'kmaq State into seven great geographical districts under the direction of one Grand Council, and our affiliation with other peoples and autochthonous States in the relationship of confederation called by us lacamanen.[3]

7. From each wigamow or settlement of kinsmen and their dependents, the Santeoi Mawa'iomi recognise one or more gap'ten ("captains") to show the people there the good path, to help them with gifts of knowledge and goods, and to sit with the whole Santeoi Mawa'iomi as the government of all the Mi'kmaq Nationimouw. From among themselves the gap'ten recognise a jigap'ten ("grand captain") and jisagamow ("grand chief"), one to guide them and one to speak for them, and from others of good spirit they choose advisers and speakers, or put'us. The authority of our government is and always has been spiritual, persuasive, and noncoercive. The cruelties of coercive laws and majoritarian oppression were unknown among us until the recent interventions of Canada. The continuity and authority of our State exists in our culture, in a common bond and vision that transcends temporary interest. This bond arises naturally from the fate of birth into a family, community, territory, and people-munijinik, wigamow, sitqamuk, ginuk.

8. Before the interventions of Canada, our gap'ten saw that each family had sufficient planting grounds for summer, fishing stations for spring and autumn, and hunting range for winter. Once assigned, these properties were inviolable, and disputes were arbitrated by our gap'ten individually or in council. We neither were settled nor migratory, as Eurochristians understand these things. The environment of our birth always has been suited best to seasonal use, so that, compatible with the rhythm of the earth, our families each owned a hunting home, a fishing home, and a planting home, and travelled among them through the year in the beauty of our land. Today we keep these

---

3. See especially the writings of Father Pierre Biard, reproduced in Thwaites (ed.), The Jesuit Relations and Allied Documents (1896-1901); Chretien Le Clerq, New Relations of Gaspesia (Ganong ed. 1910); Marc Lescarbot, Histoire de la Nouvelle France (1609); Nicolas Denys, Description Geographique et historique des costes de l'Amerique septentrionale (1672).

things as best we can, but our freedom to use our earth according to the annual cycle is much restricted, and the security of our cultivation, fishing and hunting rights much impaired by arbitrary laws and regulations of Canada.

9. We do not distinguish spiritual and secular affairs because we do not need to: we are one people entire. From time immemorial to this day, the Mi'kmaq Nationimouw have assembled each year in midsummer at Potloteq, the place Eurochristians know as Chapel Island, in Nova Scotia, to unite the people, ratify births and deaths, and share in prayer and thanksgiving. So, too, at this time, the Santeoi Mawa'iomi have since before memory annually met to consider policy, and to send the jisagamow and jigap'ten to address the people, and to read the ulnapskoq or records of our alliances. Whosoever doubts that we are one people with one government must observe this day and this place. The ground itself is worn into furrows by the passing of our feet, for thousands upon thousands of years.

10. As keepers of the chain of union between Great Britain and the Mi'kmaq Nationimouw, the Santeoi Mawa'iomi have direct and reliable knowledge of the condition of the Mi'kmaq people, the conduct of Canada in violation of Treaty and of international law, and of the destiny the Mi'kmaq people choose. We have witnessed the confiscation of ninety-nine per cent of our territory, and have struggled to save the spirit of our remaining ten thousand people from despair as their health and education declined. When our Treaty was made, we had an abundance to eat and we lived and prospered in good health. Today we know hunger, malnutrition, disease, alcohol and drug abuse, and suicide, all greatly in excess of what is known among our Eurochristian neighbours (Enclosure "C"). These things alone would be sufficient basis for complaint that Canada had violated our rights, as individuals, to dignity, subsistence, health, education, and life. However, the Santeoi Mawa'iomi also bear witness to a greater breach, Canada's violation of our Treaty of protection and association and its guarantee of our freedom as a community. We speak for all the people: Canada seeks to destroy a State.

tapu: on covenants

11. When Eurochristians first appeared on our frontiers, we extended our brotherhood gladly. They came to us as refugees from overcrowded and hungry nations; many fled from injustices and intolerance. We fed them and showed them how to live on this continent. We listened to them speak of religion and, accepting Catholicism as consistent with our own faith and beliefs, in 1621 allied ourselves with the Holy See through the Church of France. Unfortunately, feuds among Eurochristian States over imaginary territorial lines forced us to assert our territoriality by force of arms. Although at first both British and French were welcome in our country, British efforts to expel French influence and religion from this hemisphere soon made coexistence impossible.

12. Sectarian Christian disputes and rum brought violence to our beloved forests and the smoke of European cannon mingled with the fog enshrouding Eurochristians' intentions. In their haste to destroy French settlements, British forces crossed and devastated our country and the lands of our Wabanaki lacamanen: The Penobscots, Passamaquoddies, and Maliseets. In response, we permitted the King of France to erect fortifications on our soil, and for fifteen years we seized and destroyed British shipping from north of Casco Bay to the Grand Banks. When French settlements on the mainland of Nova Soctia fell

into British hands,[1] King George II instructed his military governor to enter if possible into an association with the Mi'kmaq Nationimouw.[2] No extensions of Eurochristian settlements were proposed, nor would we have accepted them. Wherever our own language was spoken was sitgamuk, and every part of this territory was sacred to us. Every tree, every shore, every mist in the dark woods, every clearing was holy in our memory and experience, recalling our lives and the lives of our ancestors since the world began. These things cannot be sold.

13. On 5 December 1725, representatives of many of our southern racamanen initialed a Treaty with Great Britain at Boston, in which they admitted to have breached their former Treaties of peace with that kingdom.[3] Renewing these prior engagements, they promised to "hold and maintain a firm and Constant Amity and Friendship with all the English, and never [to] confederate or combine with any other nation to their prejudice," to join British forces in the suppression of hostilities with other natives States, and to submit future disputes with British subjects to "due course of Justice... governed by his Majesty's Laws." The Treaty preserved the territorial status quo as it then existed, guaranteeing to Great Britain all of its "former Settlements" in New England and Nova Scotia, and reserving to our racamanen all the rest of their ancestral lands. Our southern allies, together with one of our own districts, the gespogoitg,[4] ratified this Treaty at Casco Bay in what now is called Maine on 11 August 1726, the British signatory, William Dummer, expressing his opinion that "this will be a better and more lasting Peace than ever was made yet, And that it will last to the End of the World."[5]

14. Having made no former Treaties with Great Britain ourselves and wishing to remain nonalligned, the Mi'kmaq Nationimouw would not concede wrongdoing by adhering to the Treaty of 1725, although that instrument purported to check further British expansion. For two decades British emissaries sought the assent of the various Mi'kmaq wigamow individually, but it was not until 1752, at the conclusion of another British war with the Nationimouw, that a Treaty was properly arranged with the Santeoi Mawa'iomi acting by its jisagamow, Jean Baptiste Cope.[6] We agreed to abide generally by the terms of the Treaty of

1. By the Treaty of Utrecht (1713).

2. Labaree (ed.), Royal Instructions to British Colonial Governors (1935), at 469.

3. Atkins (ed.), Nova Scotia Archives 1 (1869), at 572-574. As used in this Treaty, "Nova Scotia" included the area today known as New Brunswick, and did not include Cape Breton Island.

4. Identified in the Treaty of 1725 as "Cape Sable Indians."

5. Nova Scotia Archives 1, at 572-574; Public Archives of Nova Scotia, "New England (America & West Indies)" Volume 1, Nos. 1-8.

6. Nova Scotia Archives 1, at 681; Enclosure "A". About ninety delegates from the Mi'kmaq wigamow attended this conference.

1725 [Article 1], thereby acknowledging British possession of existing settlements, and receiving Britain's acknowledgment of our title to the balance of our national territory. Our right to hunt and fish, and to conduct trade, was guaranteed everywhere, even within British bounds [Article 4]. We consented to litigate our disputes with British subjects in royal courts [Article 8], provided that we always be accorded "the same benefits, Advantages & Priviledges as any others of his Majesty's Subjects." So eager were His Majesty's representatives for association with us, that we were paid reparations and aid [Article 5, 6]. Our jisagow promised to bring all our wigamow into this lacaman. [Article 3].

15. Treaties of association and protection were common among the autochthonous States of North America. Such Treaties formed the covenant chains of the great eastern confederations, such as the Iroquois, and the Wabanaki. Britain's King George III took advantage of this shared understanding of the law of nations to neutralise the indegenous States that bordered upon British settlements, placing them under permanent protection. Each remained a State, yet in perfect association with the British Crown. In its Treaty of 1752, the Mi'kmaq Nationimouw sold no land, and ceded no sovereignty over its domestic affairs. It became a protected State or dependency, as that term would come to be used and understood more generally a century later in the evolution of the British Empire into a Commonwealth of Nations.

16. We were conscious of the law of nations when we associated ourselves with Great Britain, and we properly relied upon Great Britain's representations and on the practice of nations at that time. In 1761, shortly after the fall of French forces in Canada, Great Britain and the Mi'kmaq Nationimouw ceremonially renewed the Treaty of 1752 at Halifax. Standing by a monument erected for that purpose, Nova Scotia Governor Jonathan Belcher described our relationship with the Crown in these words:

> Protection and allegiance are fastened together by links, if a link is broken the chain will be loose.
>
> You must preserve this chain entire on your part by fidelity and obedience to the great King George the Third, and then you will have the security of his Royal Arm to defend you.
>
> I meet you now as His Majesty's graciously honored Servant in Government and in his Royal name to receive at this Pillar, your public vows of obedience to build a covenant of Peace with you, as upon the immovable rock of Sincerity and Truth, to free you from the chains of Bondage, and to place you in the wide and fruitful Field of English Liberty.
>
> The Laws will be like a great Hedge about your Rights and properties if any break this Hedge to hurt and Injure you, the heavy weight of the Laws will fall upon them and furnish their disobedience.[7]

7. Nova Scotia Archives 1, 699-700; P.A.N.S. MS Doc Volume 37, No. 14.

Assuring the Governor that our common religion would assure that the articles of agreement would be "kept inviolably on both Sides," jisagamow Toma Denny replied, "Receive us into your Arms, into them we cast ourselves as into a safe and secure Asylum from whence we are resolved never to withdraw or depart," remaining the Crown's "friend and Ally."[8]

17. British Nova Scotia was controlled entirely by prerogative instruments of the Crown such as Letters Patent, Instructions, and Imperial Proclamations until 1867, and colonial officials had no power or authority beyond the terms of these instruments.[9] The King in Council perfected the covenant chain with us by entrenching our protected status in the constitution of Nova Scotia. Letters Patent issued to Lord Cornwallis in 1749 to form a government for that British settlements directed that no grant of land be made or confirmed to British subjects, except out of territory freely ceded by the native proprietors.[10] As earlier clarified by the Privy Council, this meant that land cessions be accepted only from the properly constituted governments of indigenous States, and not merely from their individual citizens, conformable to the law of nations.[11]

18. The protection of territoriality always was central to our Treaty relationship with Great Britain. In 1761, the King in Council admonished the royal governors of Nova Scotia and other Crown colonies to keep "a just and faithfull Observance of those Treaties and Compacts which have been heretofore solemnly entered into" with indigenous States, and directed that action be taken to prevent unlawful settlements of British subjects on unceded lands.[12] In 1762, Nova Scotia Governor Belcher implemented the Royal Instruction by proclamation, ordering British subjects to remove themselves from any lands claimed by us, and to avoid molesting us in the exercise of our Treaty right to hunt and fish within the British settlements.[13] In 1763, the King amplified Imperial policy by Royal Proclamation, strictly forbidding British occupation and settlement of lands "reserved under our sovereignty, protection, and dominion," on behalf of "the several Nations or Tribes of Indians with whom we

---

8. Ibid. Our word for this relationship of protection is elegawage.

9. In re Cape Breton (1846), 13 E. R. 489; Whyte & Lederman, Canadian Constitutional Law (2d ed. 1977), c. 2.

10. Nova Scotia Archives 1, 500.

11. The Governor and Company of Connecticut and Moheagan Indians (1769); Acts of the Privy Council of England, Colonial Series 5 (1912), at 218.

12. Reproduced in Cumming and Mickenberg, Native Rights in Canada (2d ed. 1972), at 285-286.

13. Native Rights in Canada, op. cit., at 287-288.

are connected, or who live under our protection."[14] As an autochthonous State associated with Great Britain by Treaty, the Mi'kmaq Nationimouw indisputably was "connected" with, and "protected" by the Crown. Thus after 1763 no subject or officer of Great Britain possessed authority to interfere with the territory we reserved in 1752, not only as a matter of the international law of Treaties, but as a matter of Imperial regulations limiting the constitutional power of the British colonies in North America.

19. A British royal commission in 1749 concluded that "[t]he Indians, though living amongst the king's subjects in these countries, are separate and distinct people from them, they are treated with as such, they have a polity of their own, they make peace and war with any nations of Indians when they think fit, without control from the English," hence the law to be applied to relations between the Crown and indigenous States in North America was necessarily "a law equal to both parties, which is the law of nature and of nations."[15] The international status of protected States was well defined in the eighteenth century. Writing in 1760, Emerich Vattel explained:

> We ought, therefore, to account as sovereign states those which unite themselves to another more powerful, by an unequal alliance, in which, as Aristotle says, to the more powerful, is given more honor, and to the weaker, more assistance. The conditions of those unequal alliances may be varied.... Consequently a weak state, which in order to provide for its safety, places itself under the protection of a more powerful one, and engages, in return, to perform several offices equivalent to that protection, without however divesting itself of the right of government and sovereignty--that state, I say, does not, on this account, cease to rank among the sovereigns who acknowledge no other law than that of nations.[16]

According to the American jurist, Henry Wheaton,

> Treaties of equal alliance, freely contracted between independent States, do not impair their sovereignty. Treaties of unequal alliance, guarantee, mediation, and protection, may have the effect of limiting and qualifying sovereignty according to the stipulations of the treaties.[17]

To limit the capacity of a State, a Treaty must do so expressly; no State ceases to exist by implication only.

---

14. R.S.C. 1970, Appendix, 127129. Quebec and Florida were excepted from the operation of this Proclamation, but its application to what then was called "Nova Scotia" is unquestionable. R. v. Isaac (1973) S.H. No. 05763, Supreme Court of Nova Scotia. Protection of native territories in Quebec was agreed to by Britain in Article 40 of the Articles of Capitulation with France (1760).

15. Governor and Company of Connecticut and Moheagan Indians, op cit.

16. Droit des Gens sec. 5, 6.

17. Elements of International Law (Dana ed. 1866), sec. 33. Emphasis ours.

20. The protected status of North American indigenous States was further elaborated by the United Supreme Court in the case of Worcester v. Georgia [1832], observing that the Crown's system of protection "involved practically no claim to their lands, no dominion over their persons. It merely bound the nation to the British Crown as a dependent ally, claiming the protection of a powerful friend and neighbor, and receiving the advantage of that protection, without involving a surrender of their national character."[18] Following Vattel and Wheaton, the Supreme Court further concluded that

> a weak power does not surrender its independence--its right to self-government, by associating with a stronger and taking its protection. A weak state in order to provide for its safety, may place itself under the protection of one more powerful without stripping itself of the right of government and ceasing to be a State.

Similarly, British royal courts in India recognized the continuing validity of the lex loci of native protectorates, except where otherwise provided by treaty,[19] and in 1823 Nova Scotia Judge T.C. Haliburton noted that, while the Mi'kmaq Nationimouw are considered British subjects in respect of their rights in royal courts, "yet they never litigate or in any way are impleaded. They have a code of traditional and customary laws among themselves."[20] Under Crown precedents, a protectorate also often retains sufficient sovereignty to plead immunity from ordinary legal process.[21]

21. In 1867, the British Imperial Parliament granted to Canada a charter of limited self-government, the British North America Act.[22] The former Crown Colony of Nova Scotia became a constituent "province" within a national confederation.[23] The general government of Canada was not a State, however, until in 1931 the Status of Westminster empowered it to conduct foreign relations independently of Great Britain.[24] The B.N.A. Act itself merely

---

18. 6 Pet. (31 U.S.) 515, 542-546, 559, 561.

19. Freeman v. Fairlie (1828), 1 Moo. P.C. 305.

20. Nova Scotia (1823), at 65.

21. Duff Development Corporation v. Kelantan Government (1924) A.C. 797. Such immunity even is due a mere de facto government in British courts. The Arantzazu Mendi (1939) A.C. 236.

22. 30 & 31 Vic. c. 3.

23. We well understand the principle of this league, as distinct from the nature of our relationship with Great Britain, and call it awitkatultik ("many families living in one house"), not lacamanen.

24. 22 Geo.V c. 4. Explicit Imperial authority to enter into separate treaties was delayed until the Letters Patent of 1947, R.S.C. 1970, Appendix II No. 35. Regulation and Control of Radio Communication in Canada (1932) A.C. 304, 312; McConnell, Commentary on the British North America Act (1977), at 373-374.

authorized Canada to "perfor[m] the Obligations of Canada or of any Province thereof, as part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries" [sec. 132]. It is possible that by this Imperial Act Canada succeeded to the Crown's duties under our Treaty of 1752. Such may have been the intent of the Imperial Parliament, for while section 132 of the Act referred only to "Foreign Countries," which ordinarily would exclude protected States,[25] section 91(24) assigned to the general government of Canada, rather than the Provinces, responsibility for "Indians, and Lands reserved for the Indians." Assuming that we are "Indians" within the meaning of that provision, the Canadian Parliament may have authority and responsibility to implement our Treaty of 1752. However, delegation of legislative authority over protected native States was contrary to Imperial policy.[26] Moreover, the B.N.A. Act plainly was not a novation of our Treaty since we did not participate or consent,[27] and "many treaty rights and obligations are clearly unassignable; e.g., ... in the case of rights or obligations under treaties of a purely political nature."[28]

22. The issue of succession is not essential to our grievance, however, for either Canada or Great Britain must be obligated under our Treaty, and in either case Canada lacks lawful authority to interfere with our territory or self-government against our will. Great Britain never has denounced its Treaty of 1752 with the Mi'kmaq Nationimouw; on the contrary, Her Majesty Queen Elizabeth II in 1978 declared that all Crown Treaties with indigenous peoples of North America would be respected.[29] Implementing Imperial regulations such as the Royal Instructions of 1761 and Royal Proclamation of 1763 never were repealed. They were inalterably entrenched in the constitutions of North American Crown colonies, for "[n]o colonial legislature could ~~amend its~~ own constitution,"[30] and, unaffected by any express disclaimer or exemption in the

---

25. Cherokee Nation v. Georgia (1831), 5 Pet. (30 U.S.) 1, 16-17. The Santeoi Mawa'iomi was a protected state of Great Britain, not Canada; the Cherokee Nation was a protected state of the United States.

26. Report, Select Committee on Aborigines (British Settlements), C.P. 425 VII, at 77.

27. Vienna Convention on the Law of Treaties, Articles 34-38.

28. Starke, An Introduction to International Law (8th ed. 1977), at 470.

29. "You may be assured that my Government of Canada recognises the importance of full compliance with the spirit and terms of your Treaties" (5 July 1978), at Calgary. The Hon. Pierre Elliott Trudeau, Prime Minister of Canada, in his address of 28 April 1980 to the "First Nations Constitutional Conference," Ottawa, acknowledged this remark but did not concur in its implications.

30. Judge J.E. Read, author of the Statute of Westminster, quoted in (1948) C.B.R. 621, 625; Beck, The Government of Nova Scotia (1857), at 12, 143. On the Proclamation's vitality, R. v. Isaac (N.S. 1975), S.H. No. 05763.

British North America Act, carried over indelibly into the constitution of Canada. Indeed had it so desired, the Crown nevertheless could not have delegated to Canada in 1867 what it did not itself have. Since the Mi'kmaq Nationimouw granted the Crown no authority to dispose of its lands or to determine its right of self-government, the Crown could pass no such authority to Nova Scotia or to Canada. Our status must be today as it was in 1752.

sist: on duties

23. Great Britain or Canada, or both of them, are obligated to protect and secure for the benefit of the Mi'kmaq Nationimouw all Mi'kmaq national territory not settled by Eurochristians prior to 22 November 1752. They also are obligated to protect the right of the Mi'kmaq Nationimouw to political, economic, and cultural self-determination, and to make and enforce no laws limiting the authority of the Santeoi Mawa'iomi to govern the territorial affairs of the Nationimouw. All laws and acts of Great Britain and Canada tending to deprive the Mi'kmaq Nationimouw of territory or self-determination are void and of no effect as repugnant to (i) the obligation of Treaties in the law of nations, (ii) Imperial legislation regulating and forming the constitution of Canada, (iii) customary international law governing the territorial rights of autochthonous peoples and States (iv) jus cogens as expressed in covenants, declarations, and other binding instruments of the United Nations, to which Canada is a party, and (v) unilateral declarations and undertakings of Canada to abide by principles of international law and the law of the United Nations.

24. It is an ancient principle of international law that all Treaties are obligatory on the parties: pacta sunt servanda. The Vienna Convention on the Law of Treaties,[1] acceded to by Canada on 14 October 1970[2] and accepted as generally declarative of nations' historical practice,[3] reiterates the "universally recognised" rule that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith."[4] Treaties remain in force unless modified by agreement or suspended by a material breach, impossibility of performance, or a supervening peremptory norm of international law.[5] Neither Canada nor Great Britain have grounds to suspend or terminate our Treaty of 1752, for we have fulfilled every obligation on our part, and both Great Britain and Canada always have had power to fulfill their duties to us. It is no excuse that Canada and its Provinces have, since 1752, enacted

---

1. U.N. Doc. A/CONF.39/27 (1969).
2. American Journal of International Law 63 (1970), at 875.
3. Kearney & Dalton, "The Treaty on Treaties," Am. J. Int. Law 64 (1970), at 495; Briggs, "Unilateral Denunciation of Treaties," Am. J. Int. Law 68 (1974), at 51.
4. Vienna Convention Preamble, Article 29.
5. Vienna Convention, Articles 39, 42, 53, 60, 61, 63.

municipal laws in derogation of our Treaty rights, for a State never could relieve itself from a Treaty by invoking provisions of its own domestic laws.[6]

25. The constitution of Canada incorporates all prerogative acts and Imperial legislation prior to the British North America Act [1867],[7] and all Imperial Treaties concluded prior to the Statute of Westminster [1931].[8] The Royal Instructions of 1761, Royal Proclamation of 1763, and our Treaty of 1752 therefore are entrenched in the constitution of Canada and cannot be disregarded without Imperial consent. These instruments are express delegations or reservations of legislative authority, in the nature of Treaties by which a State creates or enlarges the sovereignty of another State. Just as the Mi'kmaq Nationimouw delegated limited powers of protection to Great Britain by Treaty in 1752, Great Britain delegated Canada enumerated powers of self-government in 1867 and 1931, subject to pre-existing limitations not expressly revoked. Canada no more can exceed its constitution without the consent of the Imperial Parliament, than the Mi'kmaq Nationimouw can, without sufficient cause in the law of nations, suspend its recognition of British protection. There is an essential distinction, however, between the international status of Canada and of the Mi'kmaq Nationimouw. Canada never was a State until delegated powers by Great Britain. The Mi'kmaq Nationimouw always was a State, and merely has associated itself with a Eurochristian State as a matter of policy.

26. Even if specific Imperial regulations recognizing and protecting our rights of territoriality and self-determination had not been entrenched in the constitution of Canada, both Canada and Great Britain would be governed by the customary international law of autochthonous peoples' rights. In 1532 the international jurist Franciscus de Victoria advised the King of Spain that "the aborigines [of America] were true owners, before the Spaniards came among them, both from the public and private point of view," of their territories, and were not incapacitated by reason of religion, "unsoundness of mind," or the pretence of discovery from enjoying their lands subject only to voluntary sale.[6] Five years later, the Papal Bull Sublimis Deus [1537] proclaimed that "Indians and all other peoples who may be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ."[7] This principle was incorporated in the treatises of Grotius[8] and reiterated as a matter of Imperial British law in 1847:

---

6. Vienna Convention, Article 27.

7. Colonial Laws Validity Act (1865), 28 & 29 Vic. c. 63.

8. British North America Act (1867), 30 & 31 Vic. c. 3, sec. 132; Statute of Westminster (1931), 22 Geo. V c. 4.

6. De Indis et de Ivre Belli Relectiones (Nys ed. 1917).

7. Translated in MacNutt, Bartholomew de las Casas (1909), at 429-431.

8. Scott, The Spanish Origin of International Law (1934), at 159-160, 287-288, discussing in particular Grotius' Mare Liberum.

> The practice of extinguishing Native title is certainly more than two centuries old. It has long been adopted by the Government in our American colonies, and by that of the United States. It is now part of the law of the land. ... Whatever may be the opinion of jurists as to the strength or weakness of Native title, whatsoever may have been the past vague notions of the Natives of this country, whatever may be their present clearer and still growing conception of their own dominion over land, it cannot be too solemnly asserted that it is to be respected, and that it cannot be extinguished (at least in times of peace) otherwise than by the free consent of the Native occupiers.[9]

Even in the United States, where municipal courts evolved the misleading fiction that described Eurochristian States' right to purchase native lands as a kind of "title," the right of native States to sell if they chose was firmly established.[10]

27. Independent of the Treaties, legislation, and customary international law of the British Empire, Canada is bound by the jus cogens of United Nations convenants, declarations, and charters to which it is a party. As a Member of the United Nations, Canada undertakes to "fulfill in good faith" each and every one of these instruments, which supersede all other international agreements and the municipal laws of the Members party to them.[11] Chief among these peremptory principles are "respect for the obligation arising from treaties" and for the "equal rights of nations... large or small."[12]

28. United Nations Members agree to respect the "self-determination of peoples."[13] "[A]ll peoples have the right of self-determination [and] to freely determine their political status,"[14] and "[t]he will of the people shall be the

---

9. Queen v. Symonds (1847), N.Z.P.C.C. 387. For the subsequent application of this rule in New Zealand, R. v. Fitzherbert (1872), 2 N.Z. (C.A.) 133, and Wi Parata v. Bishop of Wellington (1878), 3 N.Z. Jur. 72.

10. Johnson v. M'Intosh (1823), 8 Wheat. (21 U.S.) 543. In the law of nations ancient possession of a territory is as good as documentary title. Legal Status of Greenland (1933) P.C.I.J. Series A/B No. 53.

11. U.N. Charter, Articles 2(2), 103; Vienna Convention, Articles 27, 53, 64.

12. U.N. Charter Preamble.

13. U.N. Charter, Article 1(2); G.A. Res. 2625 (XXV), 24 October 1970, Preamble.

14. International Covenant on Economic, Social and Cultural Rights, Article 1(1), and International Covenant on Civil and Political Rights, Article 1(1), both contained in G.A. Res. 2200 (XI), 16 December 1976, and acceded to by Canada on 19 May 1976; Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), 14 December 1960, Preamble, Article 2.

basis of the authority of government" in all countries.[15] A people's "inadequacy of political, economic, or social preparedness should never serve as a pretext for delaying independence" or the exercise of self-determination.[16] As a "people" as well as a State, the Mi'kmaq Nationimouw has a right to choose its political destiny. Its free association with Great Britain could not empower the government of Canada to impose upon the Mi'kmaq people any form of government without their consent. Yet the Mi'kmaq Nationimouw was not a party to the British North America Act, nor did it consent to any other act of Great Britain or of Canada limiting its exercise of territorial self-government.

29. United Nations Members recognise the "sovereign right of every State to dispose of its wealth and its natural resources."[17] This right is "permanent" and "inalienable,"[18] and "in no case may a people be deprived of its own means of subsistence."[19] A State's appropriation of private property, even when domestic and for some constitutional public purposes, must be compensated.[20] The Mi'kmaq Nationimouw has sold no part of its territory and has received no compensation for Canadian encroachments. As will appear more fully in other parts of this communication, the remaining territory occupied by the Nationimouw is inadequate for subsistence and, in fact, more than three-fourths of all Mi'kmaq food, shelter, and income today consist of government and charitable relief. According to the Declaration of the Principles of International Cultural Cooperation of 14 November 1966, 14th General Session of UNESCO, "each culture has a dignity and value which must be respected and preserved [and] every people has the right and duty to develop its culture." We understand this to mean that Great Britain and Canada may not compel us to live as Eurochristians live, but that we may raise our children in our own way, without interference.

30. The Mi'kmaq people are entitled to the enjoyment of "human rights ... without discrimination as to race,"[21] nor distinction "on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing, or

---

15. Universal Declaration of Human Rights, Article 21(3), U.N. Doc. A/811, 10 December 1948.

16. Declaration on the Granting of Independence to Colonial Countries and Peoples, Article 3.

17. G.A. Res. 1515 (XV). 15 December 1960; Declaration on the Granting of the Independence to Colonial Countries and Peoples, Preamble.

18. G.A. Res. 1893 (XVII), 14 December 1962, Preamble, Article I(1).

19. International Covenant on Economic, Social and Cultural Rights, Article 1(2).

20. G.A. Res. 1803 (XVII), 14 December 1962, Article 1(4).

21. U.N. Charter, Article 1(3); Universal Declaration on Human Rights, Article 2; International Covenant on Economic, Social and Cultural Rights, Article 2(2); International Covenant on Civil and Political Rights, Article 2(1); Declaration on the Granting of Independence to Colonial Countries and Peoples, Preamble.

under any other limitation of sovereignty,"[22] We understand this to mean that the Mi'kmaq people cannot be denied their fundamental human rights on the allegation that they belong to a race of "Indians," nor on the basis that they are a dependency or protectorate of Great Britain, or of Canada. As stated in the International Convention on the Elimination of All Forms of Racial Discrimination, "any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially dangerous, unjust and dangerous and there is no justification for racial discrimination, in theory or in practice, anywhere," and States are obligated to eliminate discrimination of all kinds.[23] Canada has ratified this convention, and many of its principles also are incorporated in the Canadian Bill of Rights [1960].

30. Among the fundamental human rights guaranteed to all peoples regardless of race are "life, liberty, and security of person,"[24] health,[25] and freedom from slavery.[26] Fundamental legal and political rights include the right to be regarded as a "person before the law,"[27] to be "equal before the law,"[28] and to participate in the processes of government.[29] Fundamental economic rights include the right to own property,[30] the right to work,[31] and the right to an adequate standard of living.[32] Among the most important fundamental human rights, in our conception, are cultural rights. Every person

---

22. G.A. Res. 2106 (XX), 21 December 1965, Preamble.

23. G.A. Res. 2106 (XX), 21 December 1965, Preamble, Article 2(1).

24. Universal Declaration of Human Rights, Article 3; International Covenant on Civil and Political Rights, Article 9(1).

25. International Covenant on Economic, Social and Cultural Rights, Article 12.

26. Universal Declaration of Human Rights, Article 4; International Covenant on Civil and Political Rights, Article 8.

27. Univeral Declaration of Human Rights, Article 6; International Covenant on Civil and Political Rights, Article 16.

28. Universal Declaration of Human Rights, Article 7; International Covenant on Civil and Political Rights, Article 26.

29. International Covenant on Civil and Political Rights, Article 25.

30. Universal Declaration of Human Rights, Article 17; "no one shall be arbitrarily deprived of his property," ibid.; G.A. Res. 1803 (XVII), 14 December 1962, Article I(4).

31. Universal Declaration of Human Rights, Article 23; International Covenant on Economic, Social and Cultural Rights, Article 6.

32. Universal Declaration of Human Rights, Article 25; International Covenant on Economic, Social and Cultural Rights, Article 11(1).

regardless of race, has a "right to a nationality,"[33] a right to an education,[34] and a right to the free practise of religion,[35] and every people has a right "to enjoy their own culture, to profess and practise their own religion, [and] to use their own language."[36] In the exercise of these national and cultural rights, "the widest possible protection and assistance shall be accorded to the family, which is the natural and fundamental group unit of society."[37] Families are entitled to freedom from "arbitrary interference."[38] and "[p]arents have a prior right to choose the kind of education that shall be given to their children."[39] No State may oppress the family by denying men and women equal rights in marriage.[40] The Mi'kmaq Nationimouw is in, and always has been in full accord with these principles, and has struggled to abide by them notwithstanding the contrary, arbitrary, and discriminatory laws of Canada.

32. Canada has ratified or acceded to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, Canada repeatedly has declared, unilaterally, its intention to support the implementation of these covenants, as well as the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States. Advocating all peoples' right of self-determination and independence[41] and universal membership in the United

---

33. Universal Declaration of Human Rights, Article 15; International Covenant on Civil and Political Rights, Article 24.

34. Universal Declaration of Human Rights, Article 26; International Covenant on Economic, Social and Cultural Rights, Article 12.

35. Universal Declaration of Human Rights, Article 18; International Covenant on Civil and Political Rights, Article 18.

36. International Covenant on Civil and Political Rights, Article 27; Declaration of the Principles of International Cultural Cooperation, 14th General Session of UNESCO, 4 November 1966.

37. International Covenant on Economic, Social and Cultural Rights, Article 10(1); International Covenant on Civil and Political Rights, Article 23.

38. Universal Declaration of Human Rights, Article 12; International Covenant on Civil and Political Rights, Article 17.

39. Universal Declaration of Human Rights, Article 26(3).

40. Universal Declaration of Human Rights, Article 16; International Covenant on Civil and Political Rights, Article 23.

41. Ambassador Jacques Gignac, 14 November 1976, Fourth Committee debate on the question of Namibia.

Nations,[42] Canada has supported vigorously the decolonization of South Africa, Namibia, and Rhodesia.[43] Decrying the "complex web of legislation" oppressing the native peoples of those countries, Canada has been critical of South Africa's efforts to respond to native demands for self-determination by erecting satrap "native" governments,[44] while Canada itself engages in a similar programme under the "Indian Act."

> The Canadian attitude to the problem of ending colonialism comprises support for the idea of self-determination and the wish to assist in promoting the evolution from colonial rule to self-government and independence of all dependent peoples who desire that status, at a rate governed only by practical considerations of internal stability.[45]

Canada recommends for very small States and peoples the choice of "free association with an independent State,"[46] which is the basis of our Treaty of 1752 and of the grievances contained in this communication. Canada also has been outspoken in condemnation of other Members' failure to implement international human rights conventions.

> Agreement on standards and principles of human rights is not matched by an equal determination to implement these standards without discrimnation.... None of us have perfect records.... Appeals against violations of human rights can be a threat to the legitimacy of some governments and an embarassment to others. No State is immune to criticism in this regard, although some manage to deflect attention while others become the centre of attraction. Canada will speak out to the best of her knowledge without regard for power or favour.[47]

No State, indeed, is immune from criticism.

---

42. Hon. Don Jamieson, Secretary of State, External Affairs, 29 September 1976, address to the General Assembly.

43. Ambassador Jacques Gignac, op. cit.; Canada Department of External Affairs Discussion Paper, "Where Is The United Nations Heading?" (1977).

44. Hon. Robert Stanbury, P.C., M.P., 1 November 1976, addressing the General Assembly in Plenary Session.

45. Canada Department of External Affairs, Canada and the United Nations 1945-1975 (1977), at 94.

46. Ibid. 93, 95.

47. Hon. Don Jamieson, Secretary of State, External Affairs, 29 September 1976, address to the General Assembly.

33. While Canada has acceded to these fundamental rights, it has failed to respect the duties which such rights imply. It is quick to confirm the rights, yet rejects or underestimates the logical and real relationship for these rights to its respective duties to the Nationimouw. To speak of human rights and responsibility means to speak not only of the rights and responsibilities of individuals but also those of communities and States. Canada can only demand complete respect for its fundamental rights only when it conscientiously respects the obligations to discharge correlative duties to the Santeoi Mawa'iomi.

new: on violations

34. This we believe: No State can be made a nonState by the municipal laws of another State. No people's right to selfdetermination and the free choice of its political, social, and economic future can be lost because their capacity, as a State, to have entered into binding Treaties is later denied on the basis of their race. No State can be deemed "conquered" and denied fundamental human rights, when in fact it has remained at peace with all nations for two hundred years. No State or people can be deprived of its territory and subsistence on the theory that its endowments exceed its needs. If we are wrong to believe these things, then your response will be our answer. If we are correct, Canada has violated our rights as a State, as a people, and as individuals by depriving us of our territory, our destiny, and our families under colour of colonial laws (prior to 1867), Provincial legislation, and federal legislation such as the "Indian Act."[1] Great Britain has violated our rights by failing to defend us from the unlawful actions of Canada, as provided by our Treaty of 1752.

35. The first violation of Canada was and continues to be involuntary confiscation of our territory and resources, and involuntary supervision of our use of remaining, unconfiscated territory and resources. As described earlier in this communication, our Treaty of 1752, the terms of renewal in 1761 and confirming treaties, and the King's Instructions and Royal Proclamation of 1761 and 1763, respectively, secured to the Mi'kmaq Nationimouw all of its ancient territory, save that already actually occupied by British subjects (Enclosure "B"). Our reserved lands were divided among several Crown administrative districts, and the history of our heartland, in "Nova Scotia," will be illustrative. Unimpeded by Crown officers, British immigrants from 1752 to 1820 possessed themselves of many of our cultivated fields and woodlands. Crown surveyors after 1820 issued "tickets of location" to a number of our wigamow, in an apparent effort to document, for legal purposes their boundaries, but no action was taken against the trespassers.[2]

---

1. 39 Vic. c. 18, extensively amended and codified in R.S.C. 1970 c. I6.

2. Lord Falkland to Lord Russell, 15 July 1841, CO 217/178 ff. 74-76, 89-101; Lord Russell to Lord Falkland, 30 January 1841, CO 217/177 ff. 128-129; the petition of Paussamigh Pemeenaweet to the Queen, n.d. but marked "Received 25 January 1841," CO 217/179 ff. 406-408.

gnificantly, most of the trespassers also held their settlements merely by ickets of location,"[3] plain evidence that the colony knew it lacked authority restrict us or to make grants of land. At such times, "the whole nation ems to enter into one large conspiracy to evade its own laws."[4]

36. Following receipt of a petition from the Santeoi Mawa'iomi addressed the Queen in 1841, the Colonial Office urged investigation and response to r situation.[5] On 19 March 1842, the Nova Scotia Assembly passed "An Act to ovide for the Instruction and Permanent Settlement of the Indians,"[6] pointing a Commissioner of Indian Affairs to select and survey lands as Indian Reservations." Only these "Reservation" lands, totalling fewer than two undred square miles, would be protected by prosecution, or exchange of lands ith trespassers. Since the Crown never had conveyed its interest in Nova cotia lands to the colony, the colonial Assembly actually had no constitutional uthority to set aside or otherwise deal with our territory.[7] Nor could Nova cotia, by setting aside a few parcels for our use, constitutionally or lawfully eprive us of the remainder of our territory. The Assembly was fully aware of his: the 1842 Act did not purport to restrict us to "Reservations," but merely irected the Commissioner of Indian Affairs to "invite" our wigamow "chiefs" or a'ya "to cooperate in the permanent settlement and instruction of their eople." This we refused. Following Nova Scotia's assurances that the 1842 Act ould protect the Mi'kmaq Nationimouw and involved no alienation of our erritory,[8] it was approved by the Colonial Office.

37. The 1842 Act failed to prevent trespass on our territory. No Eurochristian judge or jury would convict the trespasser, and Mi'kmaq people were denied the rights to vote or to serve as jurors.[9] On 30 March 1859, the Asembly adopted "An Act concerning Indian Reserves,"[10] enlarging the supervisory powers of the Commissioner of Indian Affairs. Although this new law authorized summary removal of trespassers, bypassing recalcitrant Eurochristian juries, it also empowered the Commissioner, in his discretion, simply to sell

3. White (ed.), Lord Selkirk's Diary 1803-1804 (1958), at 54-55.

4. Maitland & Montague, A Sketch of English Legal History (1915), at 123.

5. Petition of Paussamigh Pemeenaweet to the Queen, op. cit.; CO 217/177 ff. 128-129, 30 January 1841.

6. S.N.S. 1842, c. 16. Also R.S.N.S. 1851, c. 28 ("Of the Crown Lands") and c. 58 ("Of Indians"); S.N.S. 1851, c. 4 ("An Act relative to the Crown Land Department").

7. Compare the Union Act (1840), 3 Vic. c. 35, uniting Upper and Lower Canada under a single colonial administration with authority over Crown lands.

8. Correspondence of 9 March 1842, CO 217/180 ff. 215-216, CO 217/181 ff. 153-155, and of 12 July 1842, CO 217/180 ff. 294-301.

9. Legislative Assembly of Nova Scotia, Journal (1845), at 170; Journal (1851), at 233; Journal (1854), at 211-212; Journal (1855), at 164-165.

10. S.N.S. 1859, c. 14.

Reserve land to the trespassers, the proceeds to be held in trust for the Mi'kmaq Nationimouw. "[T]his extraordinary proposal of this Protector of the Indians' Rights, to deprive them of these rights by entering into a compromise with the violators of them," was "unconstitutional," the Santeoi Mawa'iomi wrote Nova Scotia's Governor in 1860.[11] Plainly it violated our Treaty of 1752, the Royal Instructions of 1761, and the Royal Proclamation of 1763, so far as these instruments had become incorporated in Nova Scotia's constitution. The 1859 Act also violated Crown policy, Crown prerogative, and international law as it deprived the Mi'kmaq Nationimouw of the right to sell only at the time of its own choosing, and only by cession to the Crown.

38. Following national confederation under the British North America Act, the newly-formed Canadian Parliament in 1868 adopted "An Act providing ... for the management of Indian and Ordinance Land," by which the administration of constituent colonies' Indian legislation was transferred to the general government.[12] Compatible with the Royal Proclamation of 1763 this Act, and the "Indian Act" adopted a decade later,[13] provided that title to Indian reserve lands, i.e., "any tract or tracts set aside by treaty or otherwise for the use and benefit of a particular band of Indians," could be acquired only if the "Indians" first ceded to the Crown. Settling with trespassers no longer was lawful, and our territorial rights appeared to have been restored. In 1951, however, the "Indian Act" was amended to limit the definition of "reserves" to lands in which the Crown has vested title, and which have been set aside by the government for Indian use.[14] This has been interpreted to restrict the Mi'kmaq Nationimouw to lands surveyed by Nova Scotia for our use under that colony's 1842 and 1859 legislation. While Nova Scotia's laws, assuming them to have been constitutional at all, purported merely to secure a portion of our territory in hopes of our agreeing to consolidate, the amended "Indian Act" implicitly aleinated all Mi'kmaq territory not set aside for our use. An appreciation of this legal sublety was forced upon us by Canada's subsequent efforts to "centralise" our population on a few small "reserves" set aside a century ago by colonial Nova Scotia without our consent.

39. The "Indian Act" authorizes continuing interference with the fifty square miles, more or less, remaining of our national territory. The Act declares our interest in unceded lands to be merely beneficial [sec. 2] and generally empowers the Minister of Indian and Northern Affairs to manage, allocate, develop, and dispose of our unceded lands with or without our consent [sec. 1831, 53-60, 71, 89-90]. In the exercise of a power so broad that it may, in individual cases, summarily exempt itself from any of its own laws and regulations [sec. 4(2)], the government of Canada may confiscate our lands for roads and bridges [sec. 19, 34], or for any purpose of a neighbouring Province or municipality [sec. 35]; authorize the removal of timber and gravel [sec. 58];

---

11. P.A.N.S. MS Doc. R. G. 5 Series "GP" Misc. "A" 18551858, Volume 3, No. 162; Legislative Assembly of Nova Scotia, Journal (1860) at 327.

12. (1868) 31 Vic. c. 42.

13. (1876) 39 Vic. c. 18, sec. 6.

14. R.S.C. 1970 c. 16, sec. 2: "a tract of land, the legal title to which is vested in Her Majesty, that has been set aside by Her Majesty for the use and benefit of a band."

or permit persons other than Mi'kmaq to take temporary possession for any use [sec. 28]. In contrast with the Minister's vast powers of administration and disposal, our own citizens may do little in their own country without Ministerial approval. We cannot sever timber or minerals without approval, subject to criminal penalties [sec. 93], nor lease our lands ourselves, being required instead first to "surrender" our lands to the Minister [sec. 37] to be disposed of in the exercise of his discretion [sec. 53-57] together with any proceeds [sec. 61-67]. All inheritance of property in our territory is controlled by the Minister [sec. 42-50], and he enjoys absolute discretion in managing the property and affairs of our children and non compos mentis [sec. 51-52]. Yet, Canada denies that it has any trust responsibility to the Mi'kmaq. As regards our ancient and unceded lands, then, we are serfs of an absolute bureaucracy; yet a trespasser on our territory is subject only to a fine of fifty dollars, should the Minister choose to prosecute [sec. 30]. No Eurochristians in Canada are subjected to such an insincerely "protective" regime.

40. Our Treaty of 1752 reserved forever, in addition to lands, the right of the Mi'kmaq Nationimouw to hunt and fish "as usual" both in ceded and unceded territory. Freshwater and coastal fishing always contributed a large portion of our subsistence and, as lawless encroachments on our farms and destruction of our fields increased, fisheries became increasingly necessary to our survival. Section 88 of the "Indian Act" purports to subject us to Provincial "laws of general application," however, and over the past fifty years the Provinces have sought to bring their wildlife regulations within this provision. Provincial laws, unlike our own, do not regard fish and game lands as private property to be allocated among families in tracts sufficient for subsistence. Instead, provincial laws treat hunting and fishing as forms of recreation only, and have as their goal permitting all persons to participate. In time, free access means no one can subsist on his share. This policy, together with poor land and wildlife management, has deprived us of self-sufficiency and profitable work, and of an adequate diet. A century ago, it was Canada's policy that "the utmost care must be taken ... to see that none of the treaty rights of the Indians" to hunt or fish "are enfringed without their concurrence."[15] Today, Canada's courts are divided over whether Provincial wildlife legislation may supersede our express Treaties.[16] We lack faith or patience in resolution of this issue by Canadian law.

41. In 1887, the Supreme Court of Canada first considered the character of authochthonous States' territorial rights, concluding

> that at the date of confederation the Indians, by the constant usage and practice of the crown were considered to possess a certain proprietary interest in the unsurrendered lands which they occupied as hunting grounds; that this usage either ripened into a rule of the common law as

---

15. Cited in Hodgins, Dominion and Provincial Legislation, 1867-1895 (1896), Report of the Minister of Justice to the Governor General of Canada.

16. E.g., R. v. Isaac (1975) S. H. No. 05763 (N.S.); R. v. Discon & Baker (1968), 67 D.L.R. (2d) 619 (B.C.); R. v. George (1966) S.C.R. 267 (Ont.); R. v. White & Bob (1965), 50 D.L.R. (2d 613), aff'd (1966), 52 D.L.R. (2d) 481 (B.C.); R. v. Francis (1969), 10 D.L.R. (3c) 189 (N.B.); R. v. Syliboy (1929), 1 D.L.R. 307.

applicable to the American Colonies, or that such a rule had been derived from the law of nations and had in this way been imported into the Colonial law as applied to Indian Nations; that such property of the Indians was usufructory only and could not be alienated except by surrender to the crown as the ultimate owner of the soil; and that these rights of property were not inaptly described by the words "lands reserved for the Indians."[17]

The Supreme Court ignored the effect of express Treaties of protection and alliance.[18] deriving our rights, and therefore rendering them dependent upon the municipal laws of Great Britain and Canada. The Supreme Court nevertheless did recognize the historical significance of Treaties indirectly, observing that the

> peaceful conduct of the Indians is in great degree to be attributed to the recognition of their rights to lands unsurrendered by them, and of the guarantee of their protection in the possession and enjoyment of such lands given by the crown in the proclamation of October, 1763 .... The Indian nations from that time became and have continued to be the firm and faithful allies of the crown and rendered it important military services in two wars - the war of the Revolution and that of 1812.[19]

42. More recently, the Supreme Court of Canada has divided on the immunity of autochthonous States' territorial rights from confiscation. Calder v. Attorney General of British Columbia [1973] upheld a Provincial court's conclusion that, to be protected by law, native lands must have been set aside expressly by law.[20] If set aside by law, however, the Supreme Court concluded, native lands also may be confiscated by law, and "whether it be done by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise, its justness is not open to inquiry in the courts."[21] Calder thus vindicated, after the fact, Canada's exercise of sweeping powers of supervision and expropriation of unceded territory, and resulted in an offer by the government of Canada to negotiate compensation for native lands lost in the process. The Mi'kmaq Nationimouw advised Canada that it considered itself to retain de jure ownership of all lands reserved by the Treaty of 1752.

17. St. Catherines Milling & Lumber Co. v. The Queen (1887), 13 S.C.R. 577, aff'd (1888), 14 A.C. 46.

18. St. Catherines involved a "numbered" Indian treaty, i.e., one made by Canada after confederation. The Supreme Court and Privy Council may have overlooked it deliberately to avoid the issue of Canada's authority, under the British North America Act, to make treaties at all.

19. St. Catherines, op. cit., 13 S.C.R. 577.

20. [1973] S.C.R. 313, affirming by split (3-3) decision 13 D.L.R. (3d) 64. No native treaty with the Crown was involved in that case.

21. [1973] S.C.R. 329, 334, quoting from United States v. Sante Fe Pacific Ry. Co. (1941), 314 U.S. 339, 347.

The government of Canada has responded by disclaiming any liability for occupation and settlement of our territory since 1752, arguing (i) that our rights to any lands outside of the "Indian Reserves" surveyed for us by colonial Nova Scotia have been "superseded by law,"[22] and (ii) that our Treaty of 1752 was not a binding "Empire treaty" but "only" a nonbinding declaration of friendship. The government of Canada has not been able to identify any specific laws that "superseded" our Treaty (Enclosure "D"), and we maintain that any such laws, if they had been made, would be unconstitutional and in violation of the law of nations.

43. Canada's position that our Treaty of 1752 is nonbinding reflects two antequated Eurochristian theories, both repugnant to international law. The first theory is, that treaties made with uncivilized nations have no binding moral force as against civilized and Christian nations. This theory is inapplicable to the Mi'kmaq Nationimouw in fact, because we were a Christian State in alliance with the Holy See for more than a century before we negotiated our Treaty with Great Britain. Furthermore, this theory is racist and violative of peremptory norms of international law, in that it conditions the rights of peoples, even under solemn international agreements, on their race, culture, and religion.[23] If this theory is admitted in the forum of nations, all future resolution of international affairs by treaty and peaceable engagements necessarily will be jeopardized.

44. Canada's position also reflects the theory that the territory of the Mi'kmaq Nationimouw in 1752 was terra nullius, belonged to no State, and therefore was entirely subject to the disposition of Eurochristian "discoverers." The International Court of Justice has twice rejected this theory as unacceptable in the law of nations,[24] and its continued application to us must be regarded as unjust and racist. Terra nullius is, in fact, a post hoc rationalization of unlawful and unconstitutional failures of Great Britain, its North American colonies, and the government of Canada to perform their Treaty obligations to us since, as we have shown elsewhere in this communication, Great Britain's own municipal law until recently strictly respected our status as a protectorate and limited territorial sovereign. The principle of intertemporal law should apply to the interpretation of our Treaty of 1752: our capacity as a State was recognised then, and so must it be recognised now.

45. The second violation of Canada was and continues to be interference with our ancient institutions of self-government. In sec. 10 of the "Act

22. Since Canada lacks any general power of expropriation, Reference re Waters and Water-Powers (1929) S.C.R. 200, it could have taken our lands only in the exercise of some specific duty enumerated in sec. 91 of the B.N.A. Act, and the necessity of compensation would remain open to judicial inquiry. In effect, the government of Canada asserts power to go beyond its constitution when dealing with "Indian" lands.

23. Our Treaty of 1752 is analogous in many respects to the Act of Union (1707) between England and Scotland, by which the latter submitted to the sovereign of the former. This instrument, between the Crown and a "white" State, always has been held irrevocable and constitutional in nature. MacCormick v. Lord Advocate [1953] S.C. 396.

24. North Sea Continental Shelf (Judgment) I.C.J. Reports 1969, at 3; Western Sahara (Advisory Opinion) I.C.J. Reports 1975, at 12, 39-40.

providing ... for the management of Indian and Ordinance Land," Canada's Parliament in 1868 provided that

> the Governor may order that the Chiefs of any tribe, band or body of Indians shall be elected by the male members of each Indian settlement of the full age of twenty one years at such time and place, and in such manner, as the Superintendent General of Indian Affairs my direct, and they shall in such cases be elected for a period of three years.[25]

As subsequently provided by the "Indian Act" [sec. 3, 17, 74-80], the government of Canada recognises the authority only of those "Indian bands" organised in accordance with regulations and approved by the Minister of Indian and Northern Affairs. Canada claims power to create and destroy "bands" at will [sec. 17, 74], to delegate or prohibit "bands" exercise of governmental authority at pleasure on a case-by-case basis [sec. 4(2), 83], and to veto any action taken by a "band" [sec. 82]. "Bands" must be governed by elected "band councils," permitting a simple majority of citizens to oppress the minority, whereas the traditional constitution of the Mi'kmaq Nationimouw forbids the compulsion of anyone against his conscience. "Bands" are empowered to allot and regulate land use [sec. 20(1), 60], make and enforce ordinances controlling health, traffic, public safety, public works, hunting and fishing [sec. 81] and taxation [sec. 83], if consistent with other federal laws and regulations. Most of these powers also can be exercised without our consent by the Minister on an individual basis [sec. 73], and in all other subjects we are subjected involuntarily to federal and Provincial laws [sec. 88]. The Mi'kmaq Nationimouw never consented to be governed by a Canadian bureaucracy, or by the Provincial Assemblies, or by native institutions not of our own choosing designed and supervised by Canada. Our own traditional institutions are mild, confidential, and theocentric; the imposition upon our communities of coercive, majoritarian agencies and foreign laws bearing no relation to our culture has bred little but conflict, bitterness, and despair.[26]

46. Jealous of the Santeoi Mawa'iomi, Canada was not satisfied simply to create Mi'kmaq "band government" according to provincial boundaries, rather than our districts, to interfere with our government. In 1960, the government of Canada unilaterally divided the Mi'kmaq Nationimouw in our heartland of Nova Scotia into twelve "bands," creating twelve artificial and intrinsically bureaucratic agencies that ever since have been encouraged to compete for power and for the limited public subsidies upon which we have come so much to depend for our subsistence. Accompanying this programme of *diuide et impera*, the government of Canada "centralised" the Mi'kmaq people on a smaller number of "Indian reserves," confiscating most of our remaining lands and farms.

---

25. (1868) 31 Vic. c. 42.

26. A frank confession of this may be found in Department of Indian and Northern Affairs, Indian Government under Indian Act Legislation 1868-1951 (1980).

Justified to us as a matter of administrative efficiency against our will, "centralisation" had two motives: first it accumulated us on two "reserves" and then it terminated our political status,both with the object of involuntary assimilation.[27] It was not only an intentional fraud with promises unfulfilled but was also the greatest economic disaster of our history. Over the course of the centuries we refused to recognise the legitimacy of "reserves" and remained, as much as possible, on our own ancestral family and wigamow lands, adapting Eurochristian technology to our own needs and resources. Increasing the intensity of our agriculture and diversifying crops, reducing dependence upon hunting and utilizing domestic materials for new architecture, tools, machinery and textiles, we remained entirely self-sufficient and enhanced our standard of living wherever our settlements remained undisturbed. During the Depression of the 1930's, which plunged Atlantic Canada into poverty and brought the Provincial governments near bankruptcy, our communities continued to feed and clothe themselves by their own means. "Centralisation" ended this by combining wigamow to a few overcrowded "reserves", and resulted in abject poverty, dependence upon government relief, and conflict between formerly independent families and clans.

47. The third violation of Canada was and continues to be the enactment and enforcement of laws and policies destructive of our family life and inimical to the proper education of our children. The erosion of our Mi'kmaq family life has resulted chiefly from (i) laws limiting citizenship in the Mi'kmaq Nationimouw, and (ii) laws entrusting to the Minister of Indian and Northern Affairs absolute control and discretion in the education of our children. Until the practice was discontinued thirty years ago, the government of Canada involuntarily reclassified individual "Indians" as not-"Indians," automatically depriving them, under provisions of the "Indian Act," of the right to reside in their natal communities. This "enfranchisement" policy, so-called because in many Provinces it was a condition of the right to vote, was applied to Mi'kmaq men enlisted in the Canadian Armed Forces in both World Wars without their consent and in their absence overseas,[28] and to individuals taking temporary employment outside of their "reserves." "Enfranchisement" today requires the individual's consent [sec. 109-111] or the consent of a simple majority of the members of a "band" [sec. 112-113].

48. Under the terms of the "Indian Act," the Minister of Indian and Northern Affairs generally has power to define for legal purposes who is an "Indian" [sec. 5-17]. The "Indian Act" further provides that an "Indian" woman, by marrying a non-"Indian" man, irrevocably loses her status as an "Indian" and thereby her right to reside in her natal community [sec. 12(1)(b), 14, 16(3), 109(2), 110]. The practical effect of this racist and sexist law is that a Mi'kmaq woman, by marrying a man who is not classified as an "Indian" by the

---

27. Department of Indian Affairs and Northern Development, Statement of the Government of Canada on Indian Policy (1969), popularly known as the "White Paper on Indian Policy." The Order-in-Council P.C. 1960-261 dividing us was adopted without our prior knowledge or opportunity to protest.

28. It is ironic and tragic that thes enfranchised Mi'kmaq soldiers were deprived of the right to return to their homes and families while carrying out the responsibility of the Mi'kmaq Nationimouw, under its Treaty with Great Britain, to fight the Crown's foreign enemies.

nister, though he may be a citizen of an indigenous State and in all ways tisfy the cultural and political requirements of Mi'kmaq citizenship, omatically loses all rights of participation in our lands, government, and mmunity. We were powerless to resist this law because a reclassified or nfranchised" Mi'kmaq may be removed from our territory without his or her nsent or ours. We are powerless to protest this law because the Supreme Court Canada already has ruled that it does not violate the Canadian Bill of ghts.[29] If our national territory was not confiscated, this matter would have a occurred; all lands are allocated to families not individuals.

49. In response to a pending grievance under the Optional Protocol; ternational Covenant on Civil and Political Rights,[30] the government of Canada gues that the "enfranchisement" of our women is reasonable and expedient. The vernment alleges that the laws of descent and citizenship in "Indian" mmunities always was patrilineal. The Mi'kmaq Nationimouw never has cognised any such limitation in descent or citizenship, and considers Canada's eory of a universal "Indian" custom in this regard plainly racist and ecious. The real purpose of limitations on citizenship in autochthonous tates was explained more candidly by Canada's Deputy Superintendent-General of dian Affairs in 1920: "Our goal is to continue until there is not a single ian in Canada that has not been absorbed into the body politic and there is Indian question, and no Indian Department, [and] that is the whole object of" e "Indian Act."[31]

50. Most precious of all things to us are our children: they will scover our destiny, and the secrets Nisgam has entrusted to us to share with peoples. Beginning in the early decades of this century and continuing for early forty years, the government of Canada removed our children against our ill to "residential schools" managed by public or private organisations. At the ubenacadie residential school, Mi'kmaq children were imprisoned like convicts, eaten for speaking in our language, and often forbidden to communicate with eir families.[32] An entire generation of our people were embittered, and all our families were separated by this programme. Over the past twenty years, e government of Canada gradually has transferred responsibility for the ducation of our children to public Provincial schools, over which we enjoy no reater control.[33] The Mi'kmaq language no longer is proscribed, but neither is t spoken in instruction. Public curricula are entirely irrelevant to our

---

9. Attorney General of Canada v. Lavell (1973), 38 D.L.R. (3d) 481.

0. Matter of Sandra Lovelace, United Nations Division of Human Rights Ref. No. G/SO 215/51 CANA (8) R. 6/24.

1. Public Archives of Canada R610 6810/470203/7.

2. A series of articles in the Micmac News appearing in the summer of 1978 collected firstperson accounts of Mi'kmaq people who were placed in the Shubenacadie school.

3. The Government of Canada continues to operate some schools on "reserves," but they conform to Provincial curricula. Generally, "Indian Act" sec. 114-123.

(Ed. Note: this was decided in Sandra Lovelace's favour on grounds of the ight of association, U.N. Doc. CCPR/C/DR (XII)/R.6/24, 31 July 1981.)

circumstances, resources, and aspirations as a people, and teach disrespect and shame for our history and traditions. The consequences are plain. No significantly greater proportion of our children complete school today than did formerly during the residential school era [Enclosure "E"], and, as shown by a 1978 survey conducted by the Union of Nova Scotia Indians, there is no correlation among our adults between years of school completed and either employment or income.

51. Through all these tragedies, Canada's thoughts and actions were in violation of our treaties, imperial law, the law of nations, and, now, the declarations and covenants of human rights. In the past, it could have been a problem of clarity and apprehension of our legal rights. Since the accession to the declarations and covenants by the United Kingdom and Canada, these excuses have been impounded by hesitations, objections, reservations, and even vehement racism and sexism when faced with these violations against the Nationimouw's rights. There has been no truly constructive or effective contribution to human liberation since accession; no change in policy, no acknowledge of error, no request for forgiveness -- only more oppression in Canada. The United Kingdom has remained aloof in the controversy and failed to take corrective measures. The threat of force of arms continues to be the basic elements of Canadian policy rather than human rights.

nan: on jurisdiction

52. The Mi'kmaq Nationimouw was a State in 1752 when it treated with Great Britain, and remains a State today. Recognition once given is irrevocable[1], and it is of no significance that a State is small[2], consists of two or more isolated territories,[3] or lacks a fixed boundary.[4] Nor is it fatal to State character that a nation has associated itself with another for its protection, "for although a State may have accepted important restrictions on its liberty of action, in other respects it may enjoy the widest possible freedom," as determined by its Treaties.[5] Disregarding these principles of international law and the express terms of our Treaties with Great Britain, the government of Canada insists upon classifying Mi'kmaq people as a racial, cultural, ethnic and linguistic minority subject entirely to its control, even in violation of its constitution. Our legal rights take precedence over geography and political structures of Canada.

---

1. The Gagara (1919) P. 95, expressive of British Commonwealth policy; Starke, An Introduction to International Law (8th ed. 1977), at 157, 160.

2. Coret, "L'Independence de l'Isle Nauru," Annuaire Francais de Droit International (1968), at 178; Annual Report 1966-1967, Secretary General of the United Nations, at 20.

3. E.g., Pakistan. Lesotho and San Marino are entirely surrounded by another State.

4. E.g., Israel, at the time of its original recognition in 1948.

5. Starke, op. cit, 111.

53. If the Mi'kmaq Nationimouw cannot be a State, a people, a territorial sovereign and proprietor, merely because Eurochristians classify us as a domestic race of "Indians," we are victims of the grossest possible form of racism disguised as law. All other indigenous States subjected to historically Eurochristian interference and pretensions of Empire have been accorded the right of political self-determination, and nearly all have been liberated from involuntary control. In North America and especially in Canada--"Indians" remain an exception, all the more racist because they were, for the most part, like the Mi'kmaq Nationimouw, ancient governments never conquered and always in Treaty relations with Eurochristian States as equals and allies. We are "Indians" today only in the imagination of Eurochristians. We know no such conceptor word. The Nationimouw is a tribal society, in the Mi'kmaq language there is only elnu, "human beings," and we believe all are entitled to the same rights and freedom. Can the United Nations permit English-speaking States to avoid responsibility for violation of every basic instrument of modern international law, every principle of jus cogens, simply because Canada has propagated an individualistic taxonomy in which all members of North American autochthonous States are deemed legally sub-human?

54. The Santeoi Mawa'iomi has not been dilatory in bringing its grievances. We have objected to every violation of our Treaty, but the government of Canada has been deaf. We have never been afforded standing to protest our treatment in judicial proceedings or before Parliament, because Canada denies we are a State and a Government. Individual Mi'kmaq people were not extended full rights of Canadian citizenship until 1956, and so have only in this past generation enjoyed general access to domestic avenues of redress. Our "band governments," while they remain creatures of the Minister of Indian and Northern Affairs, lack the independence or resources to challenge Canada. Extreme poverty, dependence upon government relief and fear of government reprisals, lack of education, and dispersal of families all have contributed to our inability, until this time, to assert our national rights in an international forum. We appeal now to the great and living law that binds us all: not the prescriptive law of princes or republics, nor the law (if such it be) of bureaucratic policy, but that code of elementary human justice that liberates the spirit and advances the essential dignity of peoples.

55. We have exhausted all reasonable means of domestic relief, and have learned that municipal law often is little more than frozen prejudice. Recently the Supreme Court of Canada ruled that the Nishga people could not institute proceedings against the Crown in right of British Columbia for repossession of ancestral lands without the government's consent.[6] Instead of opening its courts to natives' grievances, the government of Canada requires "negotiation" with the Office of Native Claims, a federal administrative agency empowered merely to review written submissions and make recommendations to the Minister. This ineffectual and biased bureaucracy ignores our submissions, dissipates our resources in pointless meetings, and, after ten years of "negotiations" ending in a blunt rejection of all of our claims (Enclosure "D"), declines to free us legally from the process by calling its action "final." The Supreme Court of Canada has held the "Indian Act" virtually immune from attack under the Canadian

---

6. Calder v. Attorney General of British Columbia [1973] S.C.R. 313, affirming 13 D.L.R. (3d) 64.

Bill of Rights,[7] and Canada's new Human Rights Act [1978] expressly exempts our condition from review. The same government that places these jurisdictional obstacles in our path has ridiculed our grievances on state-controlled television and radio, and last year prevented representatives of indigenous States from meeting with Her Majesty Queen Elizabeth II in London by urging Her Majesty's government to consider their visit improper. It was the government of Canada that imprisoned native leaders for appealing to the League of Nations half a century ago; we hold out little hope for a full and impartial consideration in a domestic forum today. Must we wait until Canada no longer can invent fruitless and discriminatory "remedies" to occupy us here, before the application of Queen's justice?

56. Time is of the essence in this communication. A closed conclave of Canadian federal Ministers and Provincial Premiers is negotiating the terms of a new national constitution. The Prime Minister has stated in public that he will seek authority from the Imperial Parliament to "patriate" Canada's constitution, i.e., place the revision wholly in Canadian hands, sometime this month. The autochthonous States of Canada have demanded representation at the negotiating table, unsuccessfully. Judging from statements made by the Prime Minister last year,[8] we believe that patriation and revision will remove Canada completely from the Imperial laws, such as the Royal Proclamation of 1763, that secure the Treaty rights of the Mi'kmaq Nationimouw. We believe that the intended effect of patriation and revision, in the matter of "Indians," will be to render it constitutionally required that we be integrated socially, politically, and legally with the existing Provinces, thereby losing all of our Treaty rights and our right of national self-determination.

57. Time also is of the essence because our socio-economic circumstances continue to deteriorate. Each year that we await settlement of our rights, more of our ancestral lands are occupied, mined, paved, and poisoned; more our our children discontinue their educations in disillusionment and pain; more of our kinsmen are expelled from their native country; more of our language, arts and laws are lost and destroyed; more of our communities collapse in overcrowding, economic dependence, and despair. We of the Santeoi Mawa'iomi seek nothing for ourselves, but for our children and grandchildren, for seven generations to come, we must lose no more of their heritage.

asagom: on remedies

58. We speak first of the terrible things that cannot be remedied by law or political man. Seven generations have come and gone since Canada first sought to demean the Mi'kmaq people. Three generations have suffered the "residential" schools, and two generations have bore the pain of removal from their homes and lands under "centralisation." No law, no reparations can reverse the broken promises, the loss of self-esteem, or dispel the great darkness of self-doubt left by these years in our people. No mere fiat has the power to restore the spirit and aspiration of a people, once they have been

---

7. Attorney General of Canada v. Lavell (1973), 38 D.L.R. (3d) 481.

8. Hon. Pierre Elliott Trudeau, address of 28 April 1980 to the "First Nations Constitutional Converence," Ottawa.

crushed by oppression, rejection and cruelty. No declaration, however grand, can light again the spark of genius that once established a people's unique and irreplaceable artistic and intellectual contribution to human achievement. The Santeoi Mawa'iomi acknowledges that for past harm to human personality by Canada which limits our present existence there exist no external remedy; but demands the assurance of a free and self-determined future in which to strive to rebuild its society consistent with the best ideals of our heritage and modern technology. To solve these problems, the Santeoi Mawa'iomi accepts its duty.

59. For its first remedy, the Santeoi Mawa'iomi of the Mi'kmaq Nationimouw asks the forum of nations to obtain answers, for our children, to the questions Canada refuses to hear from poor "Indians": Why do you ignore our traditional government and out Treaties? Why do you attempt to destroy our ancient institutions and replace them with ones of your foreign design? Why have you permitted your citizens to possess our unceded territory with impunity? Why have you deprived us and our posterity of subsistence, educational opportunity, and security? Why have you toiled to remake our children in your image without our consent? Why have the inalienable and essential rights of all peoples been denied to us? Why do you seek to destroy our dreams? Help our children to understand that history was not of our making, nor was it the fault of our values, but that it was in defiance of the common ideals of mankind, and in so doing help us to restore our self-respect.

60. For its second remedy, the Santeoi Mawa'iomi of the Mi'kmaq Nationimouw asks the forum of nations to declare that our character as a protected State under Treaty continues unaffected by the unlawful acts of Canada, and so restore to us the power and right of national self-determination. Canada and the Mi'kmaq Nationimouw are equal in law. Canada has its treaty of protection with Great Britain, the British North America Act, and we have ours. We may regret being condemned by history to live as neighbours, but this need not deprive each of us from fulfilling its own destiny. Canada need not fear the Mi'kmaq Nationimouw. We have given more than a hundred of our sons to each war in which Canada has called us to its aid and, for a small people, this is not a mean price to pay for tolerance and freedom. We ask the forum of nations to declare, simply, that "the Mi'kmaq Nationimouw is under no power of Canada save in the arena of foreign affairs, as may be consistent with its protected status, but the Mi'kmaq Nationimouw always will be free to associate further with Canada on the basis of equality, self-determination, and mutual consent."

61. For its third remedy, the Santeoi Mawa'iomi of the Mi'kmaq Nationimouw asks the forum of nations to declare our right to the possession of all the territory we reserved in our Treaty of 1752. Canada in the British North America Act, and the Mi'kmaq Nationimouw in its Treaty, both recognise the dominion of the British Crown. Canadian territory resides in "the Crown in right of Canada" or "the Crown in right of a Province." Compatible with our Treaty, the territory of the Mi'kmaq Nationimouw should have been held, since 1752, by "the Crown in right of the Mi'kmaq Nationimouw." We will abide by our Treaty and respect the integrity of Canada's federal and provincial Crown territory if Canada gives assurances that it will respect the integrity of our "Mi'kmaq Crown" lands. We ask the forum of nations to declare that "except where settled by British subjects prior to 1752, the ancient territory of the Mi'kmaq Nationimouw is properly vested in the British Crown in right of the Nationimouw, and cannot be taken or occupied by Canada or any other State without the consent of the Santeoi Mawa'iomi.

62. For its fourth remedy, the Santeoi Mawa'iomi of the Mi'kmaq Nationimouw asks the forum of nations to direct Canada to execute fully their responsibilities of protection and defense in accordance with our Treaty of 1752, and to assist us in restoring our country to self-sufficiency and a reasonable standard of health and education. If Canada will give assurances in this regard, we ask, in the alternative, that responsibility for the Mi'kmaq Nationimouw be transferred to the United Nations Trusteeship Council, where we hope to obtain more aid and consideration, and bear less intervention than hitherto has been our misfortune.

63. Consistent with our requested remedies, if the forum of nations can acknowledge our fundamental rights in law as a starting point for justice to the Nationimouw, the Santeoi Mawa'iomi acknowledges the indivisible interrelationship between facultas and obligatio, the existence of rights and its consequent responsibility. We are not merely aware of our rights; we are equally aware of the duties and our obligations to discharge those duties. Canada has claimed our historical rights, yet altogether forgot or neglected to carry out their respective duties. The Santeoi Mawa'iomi will not build with one hand and destroy with the other: it accepts the duty to promote human rights as stated in declarations and covenants of the United Nations.

64. Na nige gespiatogsieg ag wigatiegen gagayag. (Now our voices die away and our communication ends.)

CERTIFICATION

We have spoken plainly so that we will not be misunderstood. The Santeoi Mawa'iomi of the Mi'kmaq Nationimouw honour you with this communication, because we had despaired that Eurochristians knew nothing of the rightful dignity of peoples so long a principle of our culture and traditions. We now appreciate that this was a fault of our vision, that we looked no further than Canada. It saddens our hearts that Canada has not achieved the stage in its political and moral growth at which the great virtues of political liberty and human rights are universally acknowledged.

Foreswearing any bureaucracy of our own as incompatible with our constitution, the Santeoi Mawa'iomi have appointed the Union of Nova Scotia Indians, acting through its Put'us, to serve as our general agent in the foregoing communication, as we may from time to time direct, and to enlist the assistance of persons of good judgment as advocates and counsel.

DATED the 30th day of September, 1980, at Eskasoni in the District of Onamagi.

FOR THE SANTEOI MAWA'IOMI

Alexander Denny, Jigap'ten

Sakej Henderson, Put'us, UNSI

INTERIM DECISION of the Committee on STANDING·1980

OFFICE DES NATIONS UNIES A GENEVE

G/SO 215/51 CANA (18)
R. 19/78

UNITED NATIONS OFFICE AT GENEVA

REGISTERED

24 November 1980

Dear Mr. Denny,

I have the honour to transmit to you herewith the text of a decision adopted by the Human Rights Committee on 29 October 1980, concerning the communication, dated 30 September 1980, which you have submitted to the Committee under the Optional Protocol to the International Covenant on Civil and Political Rights. Your communication has been assigned the register number R.19/78, which you are kindly asked to refer to in any future correspondence.

In accordance with paragraph 1 of the Committee's decision, your attention is drawn to articles 1 and 2 of the Optional Protocol (copy enclosed for ready reference) which provide, inter alia, that communications submitted to and received by the Committee should emanate from individuals claiming to be victims of violations of the Covenant. You are in this connexion requested to clarify your standing as author of the communication and, in particular, to comment on the points set out in paragraph 1 of the decision.

In accordance with paragraph 2 of the Committee's decision, you are also requested to clarify whether it is your contention that, in addition to article 1 of the Covenant, articles 23 and 27 or any other articles of the Covenant have allegedly been violated.

Your reply pursuant to the Committee's decision should reach the Human Rights Committee, in care of the Division of Human Rights, United Nations Office at Geneva, within two months of the date of this letter, that is not later than 24 January 1981.

Yours sincerely,

Jakob Th. Moller
Chief, Communications Unit
Division of Human Rights

Mr. Alexander Denny, Jigap'ten
of the Santeoi Mawa'iomi,
c/o Mr. Sakej Henderson, Put'us,
Union of Nova Scotia Indians
P.O. Box 961, Sydney,
Nova Scotia,
B1P 6J4
Canada

Distr.
RESTRICTED */
CCPR/C/DR(XI)/R.19/78
12 November 1980

Original: ENGLISH

UMAN RIGHTS COMMITTEE
leventh session

DECISIONS

Communication No. R.19/78

Submitted by: Alexander Denny

Alleged victims: the people of the Mi'kmaq tribal society

State party concerned: Canada

Date of communication: 30 September 1980

Documentation references: Prior decisions none

Date of present decision: 29 October 1980

The Human Rights Committee decides:

1. That the author's attention be drawn to articles 1 and 2 of the Optional Protocol, under which communications may be received by the Human Rights Committee only from individuals who claim to be victims of violations of the Covenant. The author is therefore asked to clarify his standing to submit the communication to the Committee and in particular to explain:

(a) whether he himself claims to be a victim of any violation of the Covenant and on what grounds;

(b) whether he has been specifically authorized to act on behalf of individuals who claim to be victims of such violations;

(c) whether there is any other basis on which he claims to have the necessary standing to submit the communication to the Committee under the Optional Protocol;

2. That the author be requested to clarify whether he contends that besides article 1 of the Covenant articles 25 and 27 or any other articles have allegedly been violated;

---

*/ All persons handling this document are requested to respect and observe its confidential nature.

3. That the author be requested to furnish his clarifications or observations to the Human Rights Committee, in care of the Division of Human Rights, United Nations Office at Geneva, within two months of the transmittal of this decision to him;

4. That this decision be communicated to the author of the communication.

LETTER CLARIFYING STANDING·1980

December 9, 1980

Mr. Jacob Th. Moller
Chief, Communications Unit
Division of Human Rights
United Nations Office at Geneva
CH - 1211 Geneve 10

RE: R. 19/78

Me'taleyn:

Reference is made to your letter of 24 November 1980 with Decisions of the Human Rights Committee, Eleventh Session.

The following are the answers to questions you have directed to clarify my standing in submitting the communication to the Committee:

1. Whether I am a victim of any violation of the Covenant and on what grounds?

Since the beginning of the heartbeat in this land, the Mi'kmaq have had a spiritual leader from certain families. In this generation, that is my position.

In the same manner that my father before me was hindered as Jigap'ten by the Federal Government, so have I and my kinsmen and relatives. Today, however, they seek to end our traditions and render them to the museums and/or antiquarian interest. Being loath to scrap what I have not started nor have the power to end, I find myself a victim. Not personally, for surely my life will end, but as the only Jigap'ten of this generation that will ever exist. In that regard, the denial of self-determination by Canada makes me a victim; however, I rarely think about it in those terms as the terms are absent from our language.

2. Whether I have been specifically authorized to act on behalf of individuals who claim to be victims of such violations?

The Santeoi Mawa'iomi have discussed this course of action for three summers but it was only this July that I was given specific authorization to see if the Pope's belief in human rights could help us. We do not come to this because it is an international law or norm, it is a matter of religion. We appeal to the Committee, not out of knowledge based on their written words, but rather out of knowledge that their words are morally and spiritually correct and that all our kinsmen and relations have been victims of an evil that no one should have to endure. God created the Mi'kmaq, gave us our language, and forged the Santeoi Mawa'iomi, as well as creating the need for a Jigap'ten. Western thinkers gave us the notions of individuals rather than families, and governments rather than consensus.

Yes, I have been authorized to act on behalf of all the families and individuals who are being denied their fundamental rights to exist as a tribal

society, fidelity to our fathers' fathers' promised of peaceful coexistence with the Eurochristian because that is the law of Jesus.

3. Whether there is any other basis on which you claim to have the necessary standing to submit the communication to the Committee? By the operation of time alone, have I been forced to talk to strangers across the water to answer our prayers.

4. Whether you contend that besides Article 1 of the Covenants, Articles 23 or 27 or any other articles have been violated?

Most Articles have been violated by the Federal Government of Canada, but the one that preys on my mind is the correcting of the future, not the past. All people make mistakes over a time; this is the nature of flesh and blood.

Nevertheless, the article with which the communications is concerned with is the right of self-determination se we can protect the families in the future and not be classified as non persons subject to bureaucracies of supervision and cultural re-education while they take our wealth.

As to Article 23, yes, the families have been violated. But is not the Santeoi Mawa'iomi nothing but the families in their spiritual role? What we are talking about is not paper illusions and organizational charts, but something that is real; families and relatives uniting to meet common visions. This is taken care of by the right to self-determination.

As to Article 27, to the European mind, I guess we could be considered a minority. But that is not objective; we are a Catholic state, not a racial minority; we are families, not individuals; and we are united by an intense kinship and elementary spiritual consensus. We are few in number in Canada but that makes us a small state or polity, not a minority. No, Article 27 does not describe us at all; it describes the shadows of the Canadian mind.

No, Article 1 is our goal, our vision.

Alex Denny, Jigap'ten
Santeoi Mawa'iomi

FIRST RESPONSE of the GOVERNMENT OF CANADA - 1981

21 July 1981

Response of the Government of Canada respecting Communication submitted by Mr. Alexander Denny on behalf of the people of the Mi'kmak tribal society on September 30, 1980 (date of initial letter)

---

1. General

The Secretary-General of the United Nations in his note No. G/SO 215/51 CANA (18) Reference R. 19/78, dated May 22, 1981, has requested from the Canadian Government, information and observations concerning a communication dated September 30, 1980 (date of initial letter) which was submitted by Alexander Denny to the Human Rights Committee. The communication was submitted under the Optional Protocol to the International Covenant on Civil and Political Rights and Canada was requested by the Committee to submit "information and observations relevant to the question of admissibility of the communication, particularly in so far as it may raise issues under article I of the Covenant".

In his communication, Mr. Alexander Denny alleges that:

> "Canada has violated our rights as a State, as a people, and as individuals by depriving us of our territory, our destiny, and our families under colour of colonial laws (prior to 1867), Provincial legislation, and federal legislation such as the 'Indian Act'. Great Britain has violated our rights by failing to defend us from the unlawful actions of Canada, as provided by our Treaty of 1752." (p. 21 of Mr. Denny's communication of 30 September, 1980)

In the same communication, Mr. A. Denny is requesting the following remedies:

a) obtaining answers to questions supposedly not answered by Canada regarding their existence as a separate government, the possession by Canadian citizens of unceded territory, their deprivation of subsistence, educational opportunity, security of inalienable and essential rights to all peoples, and of remaking their children in a Canadian way without their consent.

b) a declaration to the effect that their tribal society is a parallel State to Canada, because the two States have their own distinct treaty of protection with Great Britain. Nevertheless Canada could represent them in the arena of foreign affairs;

c) a declaration to the effect that they are sole possessors of the lands not settled by British subjects prior to 1752 in conformity to a treaty passed with Great Britain in 1752;

d) an order to be given to Canada for executing fully its responsibilities of protection and defense in respect of the treaty of 1752 as well as for assisting the tribal society to restore its self

sufficiency and enjoy a reasonable standard of health and education, and/or that responsibility for their tribal society be transferred to the United Nations Trusteeship Council.

Mr. Alexander Denny alleges that Canada has violated article I of the International Covenant on Civil and Political Rights.

2. Admissibility of Communication

On the question of admissibility, the Government of Canada submits that the communication from Alexander Denny is not admissible for the following reasons:

a) Article 1 of the International Covenant on Civil and Political Rights cannot affect the national unity and territorial integrity of Canada.

Article I of the International Covenant on Civil and Political Rights recognizes the right of self-determination. In particular, the third paragraph of this article states that all States Parties to the Covenant "shall promote the realization of the right of self-determination and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

In the Declaration on the granting of independence to colonial countries and peoples, General Assembly Resolution 1514 (XV) of 14 December 1960, the General Assembly declared that:

> "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."

In the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, Resolution 2625 (XXV) of 24 October 1970, the General Assembly stated under the principle of equal rights and self-determination of peoples that:

> "Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour."

This right of self-determination was therefore not endorsed to support secessionist movements within individual sovereign states.

It is, therefore, clear that under article I, paragraph 3, of the Covenant, Mr. A. Denny cannot seek a declaration of independent nationhood for his tribal society that could affect the national unity and territorial integrity of Canada.

b) International, American and Canadian law do not recognize treaties with North American Native People as international documents confirming the existence of these tribal societies as independent and sovereign States.

International, American and Canadian law do not recognize treaties with North American Native People as international documents confirming the existence of these tribal societies as independent and sovereign States. These treaties are merely considered to be nothing more than contracts between a sovereign and a group of its subjects. The following jurisprudence will illustrate this legal concept:

i) In the American case of CHEROKEE NATION v. GEORGIA, 30 U.S. (5 Pet) 1 (1831), Chief Justice Marshall at page 17 makes the following statement regarding Indian tribes:

> "They look to our government for protection; rely upon its kindness and its power, appeal to it for relief to their wants; and address the president as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connexion with them, would be considered by all as an invasion of our territory, and an act of hostility."

Justice Johnson added at page 26:

> "When this country was first appropriated or conquered by the crown of Great Britain, they certainly were not known as members of the community of nations; and if they had been, Great Britain from that time blotted them among the race of sovereigns. From that time Great Britain considered them as her subjects whenever she chose to claim their allegiance; and their country as hers, both in soil and sovereignty. All the forbearance exercised towards them was considered as voluntary; and as their trade was more valuable to her than their territory, for that reason, and not from any supposed want of right to extend her laws over them, did she abstain from doing so."

ii) Reference is also made to the matter of the Cayuga Indians who moved from the United States to Canada subsequently to their becoming a party to a treaty with the New York State between 1789 and 1795. An Arbitral Tribunal examined the effect of the said treaties: Cayuga Indians Claim (GREAT BRITAIN v. UNITED STATES), Arbitral Tribunal, 6 U.N.R.I.A.A. 173 (1926).

At page 176 the Tribunal states that "the tribe had never constituted a unit under international law and had always been treated as under the protection of the power occupying its land".

At page 177 the Tribunal adds: "the Cayuga Nation with which the State of New York contracted in 1789, 1790 and 1795, so far as it was a legal unit, was a legal unit of New York law".

At page 187, it is said "that the 1789 treaty was made at a time when New York had authority to make it, as successor to the Colony of New York and to the British Crown".

The same reasoning was applied to the position of Canada:

> "Canadian Cayugas were and are dependent upon Great Britain or later upon Canada, as the New York Cayugas were dependent on and were wards of New York". (p. 177)

It was decided by the Tribunal that "the treaty was in the nature of a contract between New York and the Cayugas and was within New York's competence". (p. 189)

The case of the Legal Status of Eastern Greenland, (1933) P.C.I.J. ser. A/B No. 53 demonstrates clearly that these Native Peoples are not recognized as a sovereign State in the community of nations.

In this particular case, Eskimos (Inuit) had succeeded in exterminating settlers and in destroying settlements, but nevertheless the Court decided that this did not destroy the title of the settling power.

The Permanent Court of International Justice held that:

> "Conquest only operates as a cause of loss of sovereignty when there is war between two States and by reason of the defeat of one of them sovereignty over territory passes from the loser to the victorious State. The principle does not apply in a case where a settlement has been established in a distant country and its inhabitants are massacred by the aboriginal population. (p. 47)

iii) In Canadian law the treaty of 1752 was the subject of a judgment by a County Court of Nova Scotia in REX v. SYLLIBOY (1929) 1 D.L.R. 307.

Patterson (Acting) Co. Ct. J. states at p. 313 that:

> "Treaties are unconstrained Acts of independent power. But the Indians were never regarded as an independent power....
>
> Indeed the very fact that certain Indians sought from the Governor the privilege or right to hunt in Nova Scotia as usual shows that they did not claim to be an independent nation owning or possessing their lands. If they were, why go to another nation asking this privilege or right and giving promise of good behaviour that they might obtain it? In my judgment the Treaty of 1752 is not a treaty at all and is not to be treated as such; it is at best a mere agreement made by the Governor and council with a handful of Indians giving them in return for good behaviour food, presents, and the right to hunt and fish as usual an agreement that... was very shortly after broken (by Indian raids)".

c) Representatives of the Indians, Inuit and Metis people are assured to be involved in the present constitutional review process.

Canada is a federal country composed of eleven governments, one federal and ten provincial, and of two territories which are not autonomous governments but which come under the legislative jurisdiction of the Parliament of Canada. The federal government and the provinces have discussed, intermittently, constitutional reform over the years. On this point the Government of Canada would like to reiterate the position taken by its Ambassador and Permanent representative to the United Nations in Geneva, in a letter dated 9 April, 1980 to the Director, Official Records Editing section, which must be considered as an integral part, i.e. paragraph 10 of document CCPR/C/SR 211 of April 2, 1980 and which contains the summary record of the intervention the Ambassador made before the Human Rights Committee on March 28, 1980. The following is an extract from this paragraph:

> "With respect to the possibilities of change in our system, Canada has a constitution which is now 113 years old and there is widespread feeling in the country that it needs modification. Processes exist by which elected representatives, federal and provincial, can bring about constitutional change. Discussions have been going on intermittently for many years for this purpose and constitutional change is at the moment a subject of widespread and lively debate. While the constitution makes provision for the addition or creation of new territories and provinces, it makes no provision for the severance of provinces, territories, or peoples from Canada or for major variations in their constitutional status. Such changes would have to be the subject of constitutional amendment. Thus, the system permits the free advocacy of any constitutional change, as long as it does not involve the use of unlawful force, and there are mechanisms by which freely elected governments can bring about such change."......

In the paper entitled "A Time for Action", published in 1978, the Prime Minister of Canada gave a high priority to the involvement of Indian, Inuit, and Metis representatives in the process of constitutional reform.

At the First Ministers Conference on the Constitution in February 1979, the Prime Minister of Canada succeeded in having placed on the agenda a discussion item entitled: "Natives and the Constitution". It was agreed that Native representatives would meet with the First Ministers on that subject.

The Conservative government carried forward that initiative by inviting Native representatives to a meeting on December 1979 of the Steering Committee of the Continuing Committee of Ministers on the Constitution.

On April 29, 1980, at a Native Conference of Indian Chiefs and Elders held in Ottawa, the Prime Minister of Canada reaffirmed that the Native representatives would continue to be involved in the discussion of constitutional changes which directly affect them. Copy of the press release issued at this occasion is attached as schedule "A".

Again in October 30, 1980, in a letter to Mr. Del Riley, President, National Indian Brotherhood, (attached as schedule "B") the Prime Minister reiterated his commitment and that of the Government of Canada to working with the Native Peoples towards constitutional changes which will make Canada a better place for them and all Canadians. He then stated:

> "in the 'Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada' you will note that under section 24 any rights or freedoms that pertain to the Native Peoples of Canada shall not be abrogated by the introduction of a guarantee in the "Charter of Rights and Freedoms' of certain rights and freedoms for all Canadians. This section is meant to safeguard any special rights which Native Peoples may have and leaves open the possibility of future entrenchment of such rights in the Constitution."

Section 24 to which the Prime Minister referred to is now Section 25 of the proposed Constitutional Resolution ~~tabled~~ by the Minister of Justice in the House of Commons on February 13, 1981 with the amendments approved by the House of Commons on April 24, 1981. Copy of this Resolution is attached as schedule "C". The Resolution also contains the following sections 34, 36, 55(C) and 59.

34. (1) The aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

36. (1) Until Part VI comes into force, a constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once in every year.

(2) A conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

55(C) The text of which is to be found in schedule C (Attachment to our reply).

59. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

(2) The Constitution of Canada includes

(a) the Canada Act; (b) the Acts and orders referred to in Schedule I; and

(c) any amendment to any Act or order referred to in paragraph (a) or (b).

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained on the Constitution of Canada.

This Resolution is presently before the Supreme Court of Canada on a reference case. The decision of the Court is expected in the near future. The Government of Canada therefore cannot comment further on this matter.

Conclusion

The Government of Canada submits that the the communication dated September 30, 1980 (date of initial letter), of Mr. Alexander Denny to the Human Rights Committee should be considered inadmissible by the Committee since it cannot be the basis for a communication under article I of the International Covenant on Civil and Political Rights for the reasons given above.

COMMENTS on CANADA'S RESPONSE·1981

Before the leaves fall:
3 October 1981

G/SO 215/51 CANA (18) R. 19/78

Jakob Th. Moller
Chief, Communications Unit
Division of Human Rights
United Nations Human Rights Committee
Palais des Nations (Room 231)
Geneva, Switzerland

Me taleyn,

I have the honour to comment on Canada's 21 July response to our communication under the Optional Protocol to the International Covenants on Human Rights, which you transmitted to us by your 8 September letter.

Since the government of Canada has chosen to be brief with us, we will be brief in reply. Canada contends that the violations we allege are inadmissible. Canada's arguments are three:

(1) "Article I of the International Covenant on Civil and Political Rights cannot affect the national unity and territorial integrity of Canada. . . . (The) right of self-determination was . . . not intended to support secessionist movements within sovereign states."

(2) "International, American and Canadian law do not recognize treaties with North American People as international documents confirming the existence of these tribal societies as independent and sovereign states."

(3) "Representatives of the Indians, Inuit and Metis people are assured to be involved in the present constitutional review process."

We will comment on each of these arguments in turn. It is our belief that Canada's first argument begs the question of whether the Mikmaq people are or ever have been "within" Canada; that the second argument asserts a racist doctrine to bar human rights inquiry into the condition of "In-de-ans"; and that the third argument is premature and misleading, since as yet the Mikmaq people have been accorded no recognition in Canada's draft constitution.

newt: on territorial integrity

Canada's first objection is inappropriate because it assumes a disputed ct, viz. whether the territory of the Mikmaq Nationimouw ever lawfully became rt of the territory of Canada. We have shown that no part of the Mikmaq ople's territory ever was ceded to Canada or to its parent state, Great itain. We have shown that no part of the Mikmaq territory ever was rrendered to Canada or to Great Britain as the consequence of a just war. w, then, did we become part of Canada, in accordance with international law? less Canada can show affirmatively when and how it lawfully acquired vereignty over us, we are not part of Canada, nor can we be proposing to cede from a state from which we always have been separate. Treaties and rrenders are the things that unite states in law, not the lines drawn by apmakers.

If the Human Rights Committee accepts Canada's objection, no unlawful nnexation, colonization, or extermination of one people by another will be ubject to human rights discipline. The aggressor need only argue that the nnexed or colonized people have become domestic concerns beyond this ommittee's mandate. The very act of violating a people's human rights will be sed to defeat international intervention on the side of the victims. This ould be an absurdity.

Canada answers its own argument by quoting at length from the Declaration n Principles of International Law Concerning Friendly Relations and Cooperation mong States, G. A. Resolution 2625 (XXV), 24 October 1970, where it provides xpressly that the defense of territorial integrity can be claimed only by tates "conducting themselves in compliance with the principles of equal rights nd self-determination of peoples." Hence a finding of respect for elf-determination is a condition precedent for the cloak of national unity to pply to individual human rights complaints. Why, indeed, was the right of self-determination included in the very first Article of the Covenants, if it was not intended to be included in the enforcement mechanism provided for all ther rights? Why was it not set apart explicitly?

It is our belief that the right of peoples to self-determination is the most fundamental of all human rights and merits the most vigorous protection, because it confers on peoples of one heart and spirit the freedom to preserve all of the other rights of individuals and families, through institutions of their own choosing.

We find great meaning in Canada's intimation that its representatives did not contemplate a complaint such as ours when they acceded to the Covenants and the Optional Protocol. The Covenants are a treaty among states for the protection of the rights of all peoples. Our 1752 Treaty of Halifax was a treaty with Great Britain for the protection of our own separate territorial and political rights. In our communication we indicated that Canada interprets our treaty according to expedience rather than expressed intent or law, hiding behind the fiction of what was not written but supposedly intended by Great Britain. Canada now tells the community of nations that it did not intend to respect the right of self-determination when it acceded to the Covenants, for while the right of expressed plainly in that instrument, Canada now finds it inexpedient to comply. As they did to us, so now they do to the world.

Finally we say, by what right does Canada allege to be an "independent sovereign state"? Canada is not independent. It is a creature of Great

Britain, a colony still in the process of emancipation from its parent state. Its "constitution" is a British statute that cannot, by its own express terms, be amended except by the consent of Great Britain. If Canada is an independent sovereign state, then surely so are we. Our constitution is older than that of Canada or of Great Britain, and it comes from God and our own free will, not from any foreign potentate. We are not a colony but an original people in their own land. We regard Her Majesty the Queen as our protector and all under treaty, but so is she also Queen of Canada, Australia, and other states. If Canada may sit in the assembly of nations notwithstanding it is only a small fragment of an empire, so may we; and if Canada may assert a "sovereign" right to territory and unity, we too may claim such a right, but with greater justice.

tapu: on treaties and lies

Canada contends that agreements negotiated in the manner of treaties and styled "treaties" on their face, nevertheless are not treaties at law and have no obligatory force because they were made with "In-de-ans." This racist argument should not be admitted to bar a communication that alleges racism; it does not dispute, but rather proves what we have alleged. No matter how many times the courts of the United States or of Canada declare that treaties made with "In-de-ans" are not treaties, this remains at odds with jus cogens and the instruments of international law to which Canada has so recently acceded. Why did Canada accede to the International Convention on the Elimination of All Forms of Racial Discrimination, if it still refuses to acknowledge that states of one race are capable of entering into binding treaties? Why did Canada accede to the Vienna Convention on the Law of Treaties, if it still maintains that the competency of a state to make treaties can be questioned after treaties have been made and relied upon?

If our Treaty of Halifax is not a treaty, why is it called a treaty in its caption? Why was it made in the form of a treaty? Why did Great Britain's representatives call it a treaty when they renewed it with our several districts? If a state can ratify a "treaty" and subsequently escape its obligatory force merely by calling it not a treaty, no treaty ever made is secure.

But Canada points to "law" in support of its racist position. None of the decisions cited properly can be used to construe subsequent instruments of peremptory international law to which Canada since has acceded, i.e. the Covenants. An earlier ruling cannot interpret later legislation. Nor are Canada's citations authoritative.

The American decision, Cherokee Nation v. Georgia, 30 U.S. 1 (1831), upon which Canada so heavily relies, was overruled one year later by Worcester v. Georgia, 31 U.S. 515 (1832). In particular, Worcester rejected the notion that "In-de-an tribes" lack sovereign character, observing of their treaties with Great Britain that "a weak power does not surrender its independence-its right to self-government, by associating with a stronger and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful without stripping itself of the right of government and ceasing to be a state." 31 U.S. at 542-46, 559, 561; R. Barsh and J. Henderson, The Road: Indian Tribes and Political Liberty (1980), c. 5.

Canada's reliance on Cherokee Nation therefore is misplaced, for even in the United States its major principle was respected for only a year.

Canada also relies on Rex v. Sylliboy (1929), 1 D. L. R. 307, a candidly racist decision that refers expressly to "In-de-ans" as "savages." It was only the opinion of a temporary local judge, but even if it had come from the highest court of Canada is it proper for a state's own laws to be dispositive of whether it has violated human rights? If it were so, a repressive nation need only declare through its administrators and courts that its treatment of persons is indeed just, and they will be just for the world. The international human rights process would be wholly superfluous.

Indeed, we cannot think it proper to admit the laws of either the United States or of Canada to measure the human rights of "In-de-ans," since both states are the subject of human rights complaints alleging that their laws discriminate against "In-de-ans" systematically.

Canada also identifies international decisions in support of its position that treaties with "In-de-ans" lack obligatory force. The 1926 Cayuga arbitration is of limited precedential value. Self-determination of the Cayuga Nation was not at issue, but only whether Great Britain remained responsible for land purchase payments to the Cayugas after the territory they had ceded to Britain was ceded in turn to the United States. The remarks quoted by Canada are obiter dictum. The arbitration merely decided that the United States, as successor to the land, was successor also to the obligation to pay the purchase price. In any case, the arbitrator was speaking only of the particular Cayuga treaty at issue there, not of all treaties with indigenous nations of North America. Our Treaty of Halifax was of an explicitly different character-neither a contract of sale nor a cession of land, but a compact of alliance and protection.

Lastly Canada refers to the decision of the Permanent Court of International Justice in Legal Status of Eastern Greenland, (1933) PCIJ ser. A/B No. 53, alleging that it "demonstrates clearly that these Native Peoples are not recognized as a sovereign State in the community of Nations." Where, we ask, does this notion appear in the opinion of that learned court? It does not. Greenland was a contest between two European states, not between a European state and an indigenous state. Greenland held nothing more than that settlement-even if interrupted by war-confers a stronger claim to putatively uninhabited or unclaimed territory than does mere discovery.

The International Court of Justice's subsequent decision in Western Sahara (Advisory Opinion), ICJ Reports 1975, holds clearly that neither discovery nor settlement establishes a claim to inhabited territory as against the original, indigenous proprietors. We have cited Sahara in our communication and Canada does not distinguish it. By what reasoning does an earlier decision overrule a subsequent one? Canada's reliance on the discredited theory of terra nullius not only misconstrues Greenland but contravenes the more recent Convention on the Elimination of all Forms of Racial Discrimination and the ruling in Sahara.

Canada makes one more argument on treaties, and it is this argument that troubles us most. Canada says that our treaty of 1752 was a "contract between a sovereign and a group of its subjects." We ask, by what means did we become subjects of Canada (not yet even a dream) or of Great Britain prior to 1752? We

had not yet even seen their faces, except in war. We had made no agreement with them, nor had we surrendered to them in the wake of conflict. If we were subjects already in 1752, moreover, for what reason did the British king sue for peace, and offer us peace and protection in the form and style of a treaty, if we should become his allies and not disturb his possessions? If we were subjects already in 1752 why was this instrument styled a "treaty" signed in the names of our own governors, the officers of our Grand Council? Canada's argument is neither history nor law, but it is very imaginative.

sist: on false hopes

Canada suggests that our complaint should be disregarded because we "are assured to be involved" in Canada's current efforts to revise and amend its "constitution," the British North America Act. Since this revised constitution has not yet been adopted and is not yet in force, what it contains can be of no legal significance here. We have alleged past and continuing violations of our rights. Canada's assertion that it may make some provision for our remaining rights, if any, in the future is poor cause for this Committee to give Canada free hand with us until that day, if ever, comes. Assuming that Canada is sincere in its interest to accomodate us in its destiny, it is more appropriate that this Committee recommend continuing review and supervision of Canada's constitutional amendment process than simply disregard our grievances. Should a state ever be permitted to divert a human rights inquiry merely by alleging that it will do something about the problem in the unspecified future?

Our "involvement" in Canada's constitutional revision process has been far from meaningful. We have had nothing more than an opportunity to make suggestions directly to officials of that government. Bare opportunity to propose means nothing unless proposals are realized. None of our proposals have been accepted by Canada, and we have been given to understand that we will have no voice in whether the amended constitution is adopted. Adoption will be be agreement of the Parliaments of Canada and Great Britain, and in neither do we enjoy a voice or vote.

Canada advances several provisions of its proposed constitution as evidence that our rights will be protected if the amendments are made. No provision assures us of self-determination or self-government, however. The terms "treaty rights" and "aboriginal rights" as used in the draft are undefined, hence will be left for construction and interpretation by Canadian courts. They in turn must look to the travaux preparatoires of Canada's constitutional draftsmen, and to Canadian case law, in which the Sylliboy case is considered central.

In a 1980 briefing paper Canada's Department of Indian Affairs recommended that the following principles be incorporated in the revised constitution:

> Indian institutions of self-government have no legal authority save that given to them pursuant to section 91(24) (of the British North America Act and the Indian Act).
>
> Through the exercise of section 91(24) the Canadian government has clearly asserted its sovereignty with respect to Indians and this position has been supported by judicial decisions. Indian tribes are subject to the laws passed by parliament and in certain circumstances laws passed by provincial legislatures. The power exercised by Indian governments are considered as delegations of powers from a law making authority.

It is the present federal view that treaties extinguished all Indian interests and rights (political, economic and social) arising from original occupancy and gave back, in their stead, some very specific guarantees of annuities, hunting and fishing rights, etc.

A copy of this paper and corroborative internal documentation of Canada will be furnished to the Committee as requested. All reflect the same philosophy as Canada's response to our communication, i.e. that any rights we may have had as peoples or as states party to treaties are terminated and/or subordinate to Canadian legislation. Of what use to us will it be to preserve this status quo constitutionally? How will a declaration that our current "rights" under Canadian law be affirmed alter our oppression, assuming it is made at all?

conclusion

We have told you plainly why we consider Canada's 21 July answer to our communication unresponsive and unpersuasive on the issue of admissibility under Article I of the International Covenant on Civil and Political Rights. We have shown that Canada relies on racist theories: that "In-de-ans" cannot make treaties and cannot be states because of their race. Even if we have not convinced you, we beg to point out that our communication alleges violations of other Articles of the International Covenants on Human Rights, particularly those respecting security of the family, freedom of worship, security of property, and education. The admissibility of these issues has not been denied by Canada and therefore should be taken as admitted. We rest confident that we are entitled to a substantive review of these matters irrespective of the Committee's action with respect to Article I.

But also we must tell you, from the hearts of one of the oldest free nations on earth, and one that only recently has learned to be ashamed under the demands of a foreign aggressor, that the final refuge of human rights is and always will be the power of men and women to form societies freely and peaceably for their common welfare, love and happiness. Freedom flows from love and respect, love and respect from kinship and cooperation, and from love and kinship flow true government. So it has been with us. This is the secret we will tell when the world ends; we can be destroyed but it cannot be taken from us.

DATED the third day of October 1981 at Munchen among the Canadians' older Eurochristian brothers.

FOR THE SANTEOI MAWA'IOMI:

Alexander Denny
Jikapten

BY:

Russel L. Barsh
counsel

ADDITIONAL COMMENTS on the RESPONSE · 1981

11 November 1981
geptegeoigos/rivers freezing

G/SO 215/51 CANA (18) R. 19/78

Jakob Th. Moller
Chief, Communication Unit
Division of Human Righs
United Nations Human Rights Committee
Palais des Nations (Room 231)
Geneva, Switzerland

Me taleyn.

On behalf of Alexander Denny and the Grand Council of the Mikmaq Nationimouw, I beg to inform the Human Rights Committee of recent actions of Canada that bear on the proceedings in Mr. Denny's case.

In its 21 July response to Mr. Denny's original communication, Canada contended that "representatives of the Indians, Inuit and Metis peoples are assured to be involved in the present constitutional review process." As evidence of the success of this policy, Canada identified several provisions of its draft national constitution that refer to the "aboriginal and treaty rights" of "native peoples." Canada suggested that entrenchment of these provisions in the constitution would remove all cause for complaint on our part.

Our 3 October letter argued that provisions of law Canada merely proposes should be disregarded unless and until they actually are adopted and enforced, lest states be encouraged to make such proposals merely to deflect international inquiries. Our concern appears justified by recent events. Last week Canada's Prime Minister and seven of Canada's ten provincial Premiers agreed to delete provisions for "aboriginal and treaty rights" from the draft constitution before placing the draft before Parliament. The only remaining attention to "Indians" in the draft is its requirement that "representatives of native peoples" be permitted to "participate in discussions" of future amendments.

Accordingly, we respectfully suggest that the Committee strike and disregard the third part (pages 7 through 10) of Canada's 21 July response, since it is based on proposals Canada has since withdrawn.

AT SEATTLE, for Alexander Denny, Jikapten, and the Santeoi Mawaiomi of the Mikmaq Nationimouw, by:

Russel L. Barsh
counsel

SECOND RESPONSE of the GOVERNMENT OF CANADA·1982

May 17, 1982

RESPONSE OF THE GOVERNMENT OF CANADA RESPECTING TWO FURTHER COMMUNICATIONS DATED OCTOBER 3, 1981 AND NOVEMBER 11, 1981 FROM MR. ALEXANDER DENNY TO THE HUMAN RIGHTS COMMITTEE

- GENERAL

The Secretary General of the United Nations, in his note No. G/SO 15/51 CANA (18) R. 19/78 dated May 28, 1981, requested Canada's comments on a ommunication submitted on September 30, 1980 to the Human Rights Committee by r. Alexander Denny. In his communication, Mr. Denny alleged that Canada was in reach of Article 1, paragraph 1 of the International Covenant on Civil and Political Rights because of its alleged denial of the ight of self-determination to the Mi'kmaq Indian tribe. Following Canada's esponse of July 21, 1981 in which the Government of Canada asked that the ommunication be found inadmissible, the Secretary General of the United lations, in notes dated October 13 and November 25, 1981, sent Mr. Denny's ctober 3 and November 11, 1981 replies to Canada's response.

I - INADMISSIBILITY OF MR. DENNY'S COMMUNICATIONS

The communicant indicated in his reply of October 3, 1981 that the overnment of Canada had limited its response to the question of self-determination and had not dealt with other issues raised in his complaint.[1] The overnment of Canada notes that, in his original communication, Mr. Denny limited his claim to self-determination: "free association with an independent tate ... is the basis of our Treaty of 1752 and of the grievances contained in this communication". In its decision of October 29, 1980, the Human Rights ommittee asked Mr. Denny to clarify whether, besides Article 1 of the International Covenant on Civil and Political Rights articles 23 or 27 or any ther articles were allegedly violated. In his answering letter of December 9, 1980, the communicant indicated that: "No, Article 1 is our goal, our vision." evertheless, the Government of Canada considers it useful to deal with other issues raised by the communicant in his reply of October 3, 1981 and responds accordingly.

In his communication, Mr. Denny raised issues relating to the right of self-determination, to the right of self-government (including control over band membership and education) and to the right of property. Save for the part pertaining to the status of Indian women who have married non-Indians, the Government of Canada considers that the communication of Mr. Denny is inadmissible.

1. Mr. Denny's letter of October 3, 1981, p. 6.

A. RIGHT TO SELF-DETERMINATION

The Government of Canada submits that Mr. Denny's communication, as it pertains to the right of self-determination, is inadmissible and this for three reasons. First, the right of self-determination, as recognized by Article 1 of the Covenant, is not applicable in the present case. The communication is, therefore, incompatible ratione materiae with the provisions of the Covenant and, therefore, should be found inadmissible under Article 3 of the Optional Protocol to the International Covenant on Civil and Political Rights which requires the Human Rights Committee to find inadmissible any communication incompatible with the provisions of the Covenant. Secondly, communications under the Optional Protocol can only be made by individuals and must relate to the breach of a right conferred on individuals. The present communication relating as it does to a collective right should, therefore, be found inadmissible because it is contrary to Articles 1 and 2 of the Protocol. Finally, the Committee, under the Protocol, can only give its views as to breaches of the rights protected by the Covenant. By asking it to pronounce itself on the statehoood of the Mi'kmaq tribe, the communicant is asking the Committee to exceed its jurisdiction, something which it has no authority to do. For the communicant to make such a request constitutes an abuse of process which should result in his communication being found inadmissible, as regards allegations pertaining to a breach of the right to self-determination, under Article 3 of the Optional Protocol.

1. Incompatibility ratione materiae

The Government of Canada reiterates entirely the argument it made in its response of July 21, 1981 to the effect that the right of self-determination as recognized in Article 1 of the Covenant cannot be invoked to justify secession (or quasi-secession) from a sovereign non-colonial State.[1] The United Nations has invariably applied the right of self-determination to dependent or colonial territories. That right has never been endorsed in support of secessionist or separatist movements within individual sovereign States.[2] The Government of Canada is of the view that neither Article 1 of the Covenant nor the Declaration on the Granting of Independence to Colonial Countries and Peoples nor the Declaration on Principles of International Law concerning Friendly Relations and Co-oper-ation among States in accordance with the Charter of the United

---

1. Government of Canada, Reply of July 21, 1981, pp. 2-3.

2. S.A. Williams and A.L.C. de Mestral, An Introduction to International Law, Toronto, 1979, Butterworths, pp. 48-49; J.F. Guilhaudis, Le droit des peuples a disposer d'euxmemes, Grenoble, 1976, Presse Universitaire de Grenoble, pp. 54-67 (in particular pp. 56, 66, and 67); Lee C. Buchheit, Secession: The legitimacy of Self-Determination, New Haven, Conn., 1978, Yale University Press, p. 87; R. Emerson, Self-Determination, (1971) 65 American Journal of International Law, pp. 462-464.

Nations[1] justify an attack on the territorial integrity of a sovereign non-colonial State such as Canada.

In addition, the Government of Canada would like to stress three oints:

a) Recognition in the Covenant of the right of self-determination should not be seen as an encouragement to secessionist tendencies.

The Secretary General of the United Nations, in his "Annotation on the text of the draft International Covenant on Human Rights", indicated that the rights of minorities are dealt with in Article 25 (now 27) of the draft Covenant on Civil and Political Rights. During discussions on Articles 1 and 27 of the Covenant, it was stressed that these Articles could not justify attempts to undermine the national unity of any State. It was clearly understood that the aim of these Articles was not to encourage separatist or irredentist movements and bring about a multiplication of barriers and frontiers.[2]

In addition, reference can be made to a statement by Secretary General U Thant when asked at a press conference on January 4, 1970 how he could reconcile the United Nations support for "self-determination" with its attitude towards the Biafran secession in Nigeria.

"The Secretary General's reply, which included a reference to the United Nations' successful effort to prevent Katanga's secession, affirmed that when a State joins the United Nations, there is an implied acceptance by the entire membership of its territorial integrity and sovereignty. He continued to say:

Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 2514 (XV) of December 14, 1960; Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, General Assembly Resolution 2625 (XXV) of October 24, 1970. In particular, see section 6 of the 1960 Declaration and paragraph 7 of the principle of equal rights and self-determination of people found in the 1970 Declaration which recognize the right of the territorial integrity of States.

Secretary General of the United Nations, "Annotations on the text of the draft International Covenant on Human Rights" in United Nations General Assembly Official Records, Agenda Item 28 (Part II) Annexes, Tenth Session, New York, 1955, Document A/2929, page 15, paragraph 22. See also p. 63, paragraph 188.

R. Emerson, op.cit., p. 464.

So, as far as the question of secession of a particular section of a Member State is concerned, the United Nations' attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its Member States."[1]

Therefore, the Government of Canada is of the view that the principle of self-determination is not applicable to the case of ethnic, religious or linguistic minorities in non-colonial States. It is only applicable in a colonial situation. The protection of the rights of the minorities in non-colonial States, such as Canada, rests on other provisions of treaties or customary international law, such as Article 27 of the Covenant.

b) Paragraph 7 of the principles of equal rights and self-determination of people in The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations recognizes the right of self-determination to peoples in States where the government does not represent all the people. In Canada, Indians, like other citizens, amy avail themselves, at the federal and provincial levels, of the political rights recognized in Article 25 of the Covenant. They enjoy the same protection in respect of human rights as do all other citizens of Canada. In this respect, Canada now has in its Constitution an entrenched Charter of Rights and Freedoms which assures protection of human rights in Canada.[2]

---

1. Infra, pp. 14-15. For the Text of the Constitutional Amendment see Schedule I.

COMMENTS on the SECOND RESPONSE·1982

16 July 1982

akob Th. Moller
hief, Communications Unit
ivision of Human Rights
nited Nations
H-1211 GENEVA 10

G/SO 215/51 CANA (18)

ear Mr. Moller:

s counsel for Alexander Denny and this Council in case No. R.19/78, I have the onour to comment on the further submission of the Government of Canada dated 17 ay 1982.

hank you for the opportunity to review and respond to the State party, and in articular for transmitting Canada's 1979 report to the Human Rights Committee.

here are five enclosures with our comments, as follows:

A- U.N. Doc. E/CN.4/1982/NGO/30/Rev. 1
B- Government of Canada Briefing Paper, Native Rights (1980)
C- Ontario court decision on the Constitution Act, 1982
D- United Kingdom court decision, Queen v. Secretary of State
E- Michael Valpy, "The sellout of Canadian native rights"

our are enclosed. The fifth, Enclosure C, will be mailed under separate cover. he court's decision was earlier this month, and we are having to make special arrangements for a verified copy of the judge's opinion at so short a time after it was rendered. The delay should not be above ten days.

lease advise if the Committee would like copies of other documents to which we have referred. I understand many of them may be unavailable at Geneva.

espect and regards,

Russel L. Barsh

COMMENTS ON THE 17 MAY 1982 RESPONSE OF THE GOVERNMENT OF CANADA TO SUPPLEMENTAL COMMUNICATIONS OF ALEXANDER DENNY (FOR THE MIKMAQ NATION) DATED 3 OCTOBER AND 11 NOVEMBER OF 1981.

In its 17 May 1982 response to our supplemental communications of 3 October and 11 November 1981, the Government of Canada once again challenges the admissibility of our original (30 September 1980) communication. Canada's present objections are basically three:

(1) that individuals may not advance "collective" rights under the Optional Protocol to the International Covenant on Civil and Political Rights;

(2) that as a "non-colonial" State Canada is entitled to assert national unity and territorial integrity as a defense; and

(3) that historical facts as to the circumstances by which Canada came into possession of our territory are "irrelevant" to whether we are entitled to claim the right of self-determination under the Covenant and Protocol.

Canada also disputes several allegations we have made of subsidiary violations of human rights protected by the Covenant, particularly our references to education, involuntary assimilation, forced emigration, and deprivation of property. We feel these questions of material fact are premature in an exchange of views on admissibility, but have responded in summary fashion nonetheless lest there be any misunderstanding.

Lastly, Canada argues that the adoption of its new constitution earlier this year (the Constitution Act, 1982) obviates our principal concerns and assures us the future enjoyment of our rights under the Covenant.

We will comment on these arguments in turn.

I-ADMISSIBILITY OF COMMUNICATIONS RELATING TO SELF-DETERMINATION

A. "Collective" Rights

Canada correctly views the universal right of self-determination as central to our original communication of 30 September 1980. We concur with Special Rapporteur Hector Gros Espiell in his study The Right of Self-Determination: Implementation of United Nations Resolutions (1980), U.N.Doc. E/CN.4/Sub.2/405/Rev.1, in paragraph 59, that "the effective exercise of a people's right to self-determination is an essential condition or prerequisite, although not necessarily excluding other conditions, for the genuine existence of the other human rights and freedoms" contained in the Covenant. It is our belief that no people can be truly secure without a direct voice in the legal definition and enforcement of their human rights.

Canada contends that our communications are inadmissible under the Protocol because they relate to "collective," as opposed to "individual" rights. We believe this misconstrues the plain intent of the Covenant and Protocol, and would, if it were to be accepted by the Committee, bar a large class of human rights violations from needful international scrutiny.

The Covenant and Protocol do not distinguish between individual and collective rights, but between individual and State Party communications. The classification goes to the identity of the communicant, not to the scope or nature of the rights which may be included in the communication. The Protocol (Article 1) is as explicit as it can be when it refers to "communications from individuals...who claim to be victims of a violation...of any of the rights set forth in the Covenant" (emphasis supplied). It cannot be an "abuse of the right of submission" (as Canada contends) for an individual to base his communication on any of the rights enumerated in the Covenant, including right enumerated in Article 1.

Even if there were a distinction such as Canada proposes, requiring individuals to limit their communications to "individual" rights, we find no authority that self-determination is not an "individual" right. On the contrary, Special Rapporteur Gros Espiell, in paragraph 58 of his 1980 study, notes that the Commission on Human Rights "has repeatedly invoked" self-determination as a right of individuals, as much as a right of peoples collectively. The argument that our communication relates only to collective rights is therefore an unwarranted assumption of law on the part of the Government of Canada.

Canada further argues that we have chosen the wrong procedure to communicate with this Committee. If we believe we are a State, Canada suggests, we should have proceeded under Article 41 of the Covenant rather than the Protocol (page 7 of their Response).

We respectfully remind the Government of Canada that Article 41 is available only to States Parties to the Covenant, and that accession to the Covenant is limited by Article 48 to Members of the United Nations, States Parties to the Statute of the International Court of Justice, and States invited by the General Assembly to become Parties to the Covenant. This means we cannot accede to the Covenant without leave, in some form, from the General Assembly, either to confer accept us as a Member, or to authorize us to accede to the Statute or Covenant directly.

We are eager to commit ourselves formally to the Covenant if permitted, for we have lived by its principles for centuries. We have already pledged to abide by it in our declaration of acceptance of the jurisdiction of the International Court of Justice, deposited with the Registrar in October 1980. But this is beside the point. Canada's argument that self-determination must be raised under Article 41 would limit the protection of this right to Members and recognized States--that is, to Governments already fully possessed of self-determination. It would be absurd to suppose that the draftsmen and States Parties to the Covenant intended to restrict the communication of violations of self-determination to cases where there are no violations.

Lastly, we beg to reiterate what we said in our supplemental communication of 9 December 1980: that the communicant speaks both as an individual deprived of his own rights, and as head of state of a people deprived of its rights. He speaks as an individual, as one authorized to speak for other individuals who are his kinsmen, and as the representative of a people and government. The Committee may characterize his status as it chooses, but cannot properly dismiss the propriety of his communication under the Protocol.

B. Territorial Integrity as a Defense

Canada resolutely maintains that our position is "secessionist" and as such is not entitled to Article 1 protection. Canada apparently assumes the colonisation and alien domination only can occur at long distances and across blue water. The location of Mikmaq territory is not conclusive as to whether it is subject to alien domination by Canada.

Whether we are proposing to "separate" from Canada depends upon whether we ever were lawfully "part" of Canada. We have shown, in our original communi-

ation, that we have never ceded our territory or agreed to become incorporated a Canada, or in its predecessor the United Kingdom. Canada's presence in our erritory is the result of aggression and lawless annexation directed against a eighbouring people, and is a violation of our territorial integrity as the riginal inhabitants and government of the place.

There is a powerful irony is Canada's argument that we threaten its unity nd integrity as a State, since Canada is an immigrant nation on other men's ontinent. We think the burden of proof should rest on Canada to show how it or the United Kingdom) acquired half of North America from the original nhabitants, rather have it presumed that the continent is theirs. Indeed, all hat is now Canada was until recently a colony or dominion of the United ingdom, and this no one will deny. Did the United Kingdom's liberation of its olonists in North America, permitting them to exercise self-determination, nehow deprive us of our right of self-determination?

anada describes itself as a "non-colonial state" (page 3). We ask, where do anadians come from? Are they of North American origin? Are they not predominantly peoples of Europe, and do they not speak predominantly two uropean languages? Were they not, until this year, governing themselves under e legislation of the United Kingdom, which is a European State? When peoples of one continent are found in control of lands and peoples on another continent, is it not to be suspected that a colonial situation exists until specific evidence to the contrary is produced?

We are able to agree completely with Canada's staement (page 4) that "the rinciple of self-determination is not applicable to the case of ethnic, religious or linguistic minorities in non-colonial States" (emphasis supplied).* This is tautological. If a State has acquired no territory by unilateral annexation, aggression of colonisation, and if it is composed entirely of peoples who have chosen freely to incorporate themselves as one multi-ethnic State, then in the current view of international law secession is unacceptable.

Canada has not, however, responded to a single historical fact we have advanced to show that Canada is colonising our territory and that we have not chosen to become Canadians by any means accepted by United Nations law. Canada asks this Committee to accept its characterization of itself as a non-colonial State on mere assertion. This is a simple way for States to perpetuate colonial situations: deny that they exist, and thereby render Protocol communications inadmissible. We respectfully direct the Committee's attention to paragraph 90 of Special Rapporteur Gros Espiell's 1980 sutdy, in which he reports

> It is necessary . . . to specify that if the national unity claimed and territorial integrity invoked are merely legal fictions which cloak real colonial and alien domination, resulting from actual disregard of the principle of self-

* Canada routinely refers to us as a "national minority" (e.g., pages 4 and 8). We object to this as a legal conclusion unsupported by historical evidence of Canada's acquisition of our territory or allegiance. Whether we are a people entitled to self-determination, or a minority, is the question before the Committee.

> determination, the subject people or peoples are entitled to exercise, with all the consequences thereof, their right to self-determination.

We suggest that Canada's assertion of territorial integrity is a legal fiction invoked to deflect a substantive examination of the historical basis for Canadian claims to our territory.

Canada misconstrues the language of General Assembly Resolution 2625 (XXV), 24 October 1970, which protects from dismemberment States

> conducting themselves in compliance with the principle of equal rights and self-determination of peoples . . . and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour . . .

(emphasis supplied). In Canada's view (pages 4 and 5) the fact that we may vote in Canadian elections is proof that the Government of Canada represents us, and that Canada therefore has respected our right to self-determination. The Resolution does not state, however, that representative government proves the existence of self-determination. It states that representative government is a natural consequence of the exercise of self-determination. Canada's argument reverses the cause-and-effect order of the Resolution's language.

The significance of Resolution 2625's choice of words is plain. The mere fact that a people is permitted to vote does not in itself show that they have any real influence on their fate. As a practical matter, representation must be substantial in order to be effective. If a large State should annex its much smaller neighbour and accord the annexed people the right to vote, they would be no better off in real terms than if they had not been permitted to vote, nor would the annexation be any the less a violation of international law.

Canada admits (page 5) that our population has been dispersed "within the midst of a more numerous population" of Canadians. How, then, are we to prevent this majority from electing whomsoever they please? Or from oppressing us through the representatives they elect?

If a small people trust the good will and integrity of a large neighbouring State, it may be reasonable for them to seek its protection, and place themselves under its laws. If trust and a common purpose do not unit two peoples, no access to the ballot box can save the smaller from abuse at the hands of the larger. We believe Resolution 2625 does not accept representative government as sufficient proof of self-determination.

We think it clear, moreover, that the principle of territorial integrity in Resolution 2625 was intended to prevent States from intervening aggressively in the internal affairs of other States on the pretext of supporting national liberation movements. We see no evidence that it was intended to deny the right of colonised peoples themselves to oppose and resist continued alien domination. Territorial integrity may bar the United States or some other Member from

intervening on our behalf within territory claimed by Canada, but does not prevent us from speaking to this Committee on our own behalf.

In conclusion, we think Canada's position that territorial integrity bars legal inquiry into the location and legitimacy of State boundaries is erroneous, and maintain that a State only has the right to invoke territorial integrity as a defense within boundaries it can show are lawful in origin. Our views on this matter are set out more fully in our 1982 communication to the Commission on Human Rights, U.N. Doc. E/CN.4/1982/NGO/30/Rev. 1, which is attached as Enclosure A.

C. Materiality of Territorial Issues

Canada relegates the main substance of our communications, "whether the Mi'kmaq tribe's territory was ever lawfully incorporated into Canada," to its list of "other issues" which it deems "irrelevant" under the Covenant and Protocol (pages 15 and 16). On the contrary, there is plainly no way of ascertaining whether we are a people entitled to self-determination, or an incorporated "national minority" (as Canada contends), without examining the basis of Canada's claims to our territory. If our territory was annexed without our consent, we are by definition a non-self-governing people in an administered territory, entitled to assert Article 1 rights.

Under Canada's theory, a State may cut off its colonies' right to appeal to this Committee for Article 1 rights simply by annexing their territory under municipal laws. No peoples would be amenable to decolonisation unless the administering State admitted that their territory had never been annexed and remained separate. No such doctrine should be endorsed by the Committee. It would leave very little of Article 1 of the Covenant, and it would leave lawless-annexed peoples little or no peaceable recourse within the United Nations Organisation.

Canada suggests that its territorial extent is lawful because it has been "accepted internationally." In our view, States recognize the territorial extent of other States on the basis of what they know or believe to be true, and are capable of revising this recognition as new facts appear. A State acquires no rights through other States' ignorance. In municipal law, if a person pretend to be the owner of property, he is treated as such unless and until an adverse claimant appears to dispute his right. The fact that he was for some time accepted as the owner is of no consequence, especially if he knew himself that his claim was subject to challenge. We feel the same principle is applicable here.

We are not aware that the community of nations has been apprised fully of the facts in our situation, and subsequently renewed their recognition of Canadian sovereignty over our territory. We further note that the United Nations accepted the territorial claims of many Members for some years before subjecting them to decolonisation, and that many of today's Members were "accepted internationally" as part of other States' territories until a decade or two ago. It would be subversive to the entire program of decolonisation to accept evidence of States' past mutual territorial recognition as proof that indigenous peoples under their control had been incorporated lawfully.

II-SUBSIDIARY VIOLATIONS OF HUMAN RIGHTS

Canada attempts to refute several of our specifications of human rights violations by alleging that what we describe did not occur, or that the effect on our people was other than as we indicated. Before responding to this portion of Canada's response, we feel we must emphasize that the issue presently before the Committee is admissibility. Whether our assertions of fact relating to specific violations are correct cannot affect the admissibility of our communication. We were under the impression that a communication is admissible if it alleges violations of rights enumerated in the Covenant. The Committee should, we feel, rule first on the admissibility of our communication and then, if it is deemed admissible, proceed to an investigation of the facts upon which our communication is based.

We are prepared to submit extended documentation in support of our allegations of historical facts, with leave of the Committee for reasonable time to prepare it. But we feel that an exchange of evidentiary material with Canada is premature. First it seems advisable to establish that we have a matter here upon which the Committee properly can act. If, of course, Canada wishes to agree that our communication is admissible at this time, we can proceed at once to a consideration of the substance of our concerns.

A. Self-Government

Canada avers that there is no Article 1 violation in fact, because its Indian Act accords us "limited self-government" in accordance with which our people periodically elect "chiefs" to manage their affairs. Canada intimates (page 9) that the existence of these elections proves that we enjoy a "modality" of self-determination. We consider this an admission by Canada that we have a right to govern ourselves. Where we disagree with Canada is whether this right has been sufficiently exercised through the Indian Act.

It is essential to the exercise of self-determination that non-self-governing peoples be afforded a range of options for their political destiny, including "emergence as a sovereign independent State, free association with an independent State, or integration with an independent State." General Assembly Resolution 1541(XV), 14 December 1960. In practice the General Assembly usually has insisted upon multiple-option plebiscites (e.g., Togoland, British Cameroons, Ruanda, Western Samoa, Spanish Sahara) and has refused to recognize changes in the status of territories, short of full independence, unless United Nations observation of the process was permitted (e.g., French Somaliland, Antigua, Grenada and St. Kitts). See A. Rigo Sureda, The Evolution of the Right of Self-Determination (A.W. Sijthoff, Leyden 1973), pages 294-323, and Umozruike Oji Umozurike, Self-Determination in International Law (Archon, Connecticut 1972), pages 105-108.

Recent actions involving non-self-governing territories of the United States illustrate that the administering State must make no effort to influence the outcome of plebiscites, by word or deed. Hence in 1978 the Trusteeship Council dispatched a special mission to the Trust Territory of the Pacific to investigate complaints that U.S. officials there had pronounced certain self-determination options "unacceptable," and the Special Committee of 24 recently reviewed charges that some pro-independence organisations had been barred from

participating fully in Puerto Rico's 1967 plebiscite. United Nations Chronicle, March 1978, page 34; July 1978, page 19; October 1981, page 34.

Whether a plebiscite or other means of ascertaining a non-self-governing people's wishes is legitimate is a question of fact for determination by appropriate agencies of the United Nations, and is not foreclosed by the administering State's position on the matter.

There has never been a Mikmaq plebiscite. As we showed in our original communication, Canada unilaterally divided us into twelve "bands" in 1960, and directed each "band" to form a local elective government under the Indian Act. Canada admits (page 5 note 3) that membership in bands and eligibility to vote in band elections is determined by the Indian Act, not by ourselves. We were given a de facto choice between "limited self-government" under the Indian Act, and no government. We have not surrendered our right of self-determination by doing the best we can to make use of such institutions of self-government Canada permits us for such time as we are forced to endure them.

Canada's argument would deprive every former colony in the world of the right of self-determination. It was nearly universal practice among 19th-century European empires to administer indigenous peoples "indirectly" through appointment of a native civil service and the formation of limited--and carefully supervised-- local native elective governments. The fact that (for example) India, Nigeria and Fiji were administered by the United Kingdom through a hierarchy of native "chiefs" and councils, controlled by a Governor's veto, was never accepted as an argument why these territories and peoples should not be decolonised.

That some individuals collaborated, to a greater or lesser extent, with these colonial systems for their own survival, was never before deemed a surrender forever of their people's right of self-determination. The United Nations have always understood that colonised native governments had little choice in the matter, and that colonised peoples deserved a truly democratic opportunity to reorganize according to their true aspirations.

Canada's position seems to be that Mikmaqs should have resisted the Indian Act by force if they wanted to preserve their human rights; that by taking, for the time being, as much freedom as Canada was willing to give us, we sacrificed our right to seek more freedom. We can only say that we find this an incredible and dangerous excuse for perpetuating a colonial situation.

B. Involuntary "Enfranchisement"

As evidence of an historical pattern of colonialism and violations of human rights, our original communication described Canada's involuntary "enfranchisement" of indigenous peoples, including Mikmaqs, resulting in their being forced to emigrate from their homes and communities.

Part of this problem was addressed by the Committee in Lovelace v. Canada, /SO 215/51 CANA(8) R.6/24, which determined that the policy of "enfranchising" indigenous or "status Indian" women because they had married "nonstatus" men is a violation of the right association. We await concrete action by Canada to implement the Committee's decision. The other part of the problem involved men

and women "enfranchised" because they were deemed educated enough to be forced to integrate into Canadian society.

We agree that this practice came to an end officially in 1962, although we believe its effects continue since persons "enfranchised" twenty years ago still live and are still separated from their homes and communities. They have not been restored to their original rights or status. Canada's remark that its violation of these person's freedom of association and property rights was well-intentioned (page 10) and therefore justifiable is contemnable. Good intentions do not render violations of the Covenant acceptable--less odious, perhaps, but not acceptable, or immune from international scrutiny.

We are surprised at Canada's statement that "it is . . . impossible to ascertain if the Government of Canada actually enfranchised any Mi'kmaq Indians." Does Canada deny, as a matter of fact, that each enfranchisement was a separate administrative proceeding (see page 10 note 1), or that records were kept of the change in individuals' legal status? Are we to conclude that Canada has no idea today whether any particular Mikmaq has been enfranchised? How does Canada know which Mikmaqs are still subject to the provisions of the Indian Act and which are not? We respectfully direct the Government of Canada to the Native Council of Nova Scotia at Truro, Nova Scotia, which is an organization of enfranchised Mikmaqs, and offer to assemble further details on enfranchisement if the Committee should so wish.

C. Education Rights

Canada objects to our communication of interference with the education of our children, arguing that "the Covenant does not make out any provision with respect to the right to education." Canada further argues that any rights our children may have are to be found in Articles 24 (protection of children) and 27 (minority cultural rights). However, our communication was explicitly based on Articles 18 and 23, which provide in material part for "the liberty of parents . . . to ensure the religious and moral education of their children in conformity with their own convictions," and that "the family is the natural and fundamental group unit of society and is entitled to protection." Canada's remarks are therefore not responsive to the issues of law we have raised.

Our position has been that Articles 18 and 23 accord families a broad right to choose the education of their children--a kind of educational self-determination at the family level. We believe these two Articles implement Article 26 of the Universal Declaration of Human Rights: "Parents have a prior right to choose the kind of education that shall be given their children." We did not propose, nor do we now, that Canada be required to provide our children with a Canadian education. Our concern is that Mikmaq families be under no compulsion to participate in any form of Canadian schooling, but remain free to educate their children, if they so choose, in their own communities and in the Mikmaq way, which is a religious and spiritual path of knowledge.

Canada relies on the Belgian Linguistic Case (No. 2), (1980) 1 E.H.R.R. 252, decided under provisions of the European Convention on Human Rights that are similar to Article 27 of the Covenant. The Belgian decision has no bearing on our communication, however, because it involved the duty of a State to subsidize special educational opportunities for national linguistic minorities. We have neither alleged such a responsibility, nor are we a minority group.

Canada tries to bring us within the Belgian decision by commenting (page 11 note 2) that "the Government of Canada possesses full sovereignty over its territories and, therefore, complete legislative authority over its inhabitants, including the Mi'kmaq." This is begging the very question raised by our communication--that is, whether we are within Canada's territory and subject to its legislative authority. The Committee should not be considering the educational rights of "minorities" until it has disposed of the more basic question of whether we are a minority or not.

Canada further argues that its laws encourage federal and provincial schools to include "Indian" cultural content, "wherever possible," in their curricula. We do not dispute that this is a constructive policy, but it avoids the principal issue of our families' ability to choose the education of our children. They still have no choice but to subject our children to Canadian schooling, with as much or as little "Indian" content as Canada's national and local school administrators choose for us.

"Indian" content, furthermore, is not Mikmaq content, nor has Canada shown that we can participate in its selection. We suggest that Canada submit for the Committee specific evidence of the nature and extent of Mikmaq curricular content actually provided by schools attended by our children, for we were aware of very little or none.

According to Canada, its courts "may well" agree with us under the freedom or religion and freedom of association provisions of the Constitution Act, 1982. This is speculation on Canada's part. We do not think it an adequate response to an historical pattern of human rights violations, for the State involved to advise that its laws "may well" protect the communicant. The material issue in Protocol proceedings must be whether the communicant's rights are in fact protected, the public and private remarks of public officials notwithstanding. It would be too easy for States to avoid scrutiny by adopting high-sounding but unenforceable laws and policies, creating a situation of official human rights concern and de facto violations.

D. Property

We are particularly puzzled by Canada's remarks on our communication of concerns relating to rights of property under Article 1(2) of the Covenant. As noted above, we find nothing in the Covenant or Protocol to prevent the assertion of Article 1 rights by individuals, nor do we understand why a people's right to the "free disposal of its natural wealth and resources" is of such a collective nature that it should not be invoked by individuals actually injured by violations. While a State or people enjoys "permanent sovereignty" over its territory, General Assembly Resolution 1803 (XVII), 14 December 1962, each individual is an occupant and user of property and is directly affected by external interference, as, for example, by the loss of his livelihood or home.

We explained in our original communication that Mikmaq land tenure vested most rights of property in families, with a residual power of regulation, but not of alienation, in the nation. Annexation and expropriation of our territory has divested our nation of "permanent sovereignty," and our families of ownership, subsistence, and homes. Two associated rights, political and economic, collective and individual, are bound together in Article 1(2). It is pointless

the people as a whole to have property, if none individually have the right use it.

Most particularly, our original communication indicated that Canada's tions in expropriating our farms and fisheries have deprived us of our own ans of subsistence, which is a matter collective in magnitude, but certainly y much individual in hardship.

Canada's assertion that we may pursue municipal remedies contradicts its ws and our experience. It is Canada's current policy to settle selected sputes over lands still occupied by indigenous peoples through negotiation. gotiated settlements, according to the Government of Canada's current guide- nes, "exchange undefined aboriginal land rights for concrete rights and nefits." Department of Indian Affairs, In All Fairness: A Native Claims licy (1981), at 19. That is, the settlement itself is a treaty of cession by ich the indigenous peoples acknowledge Canadian sovereignty over their rritory and receive in return some specific economic benefits and continued e of portions of their land. Such is the James Bay and Northern Quebec greement (1975), extending Canadian sovereignty into the eastern Arctic.

It is Canada's policy not to negotiate for lands previously expropriated or nexed by its Parliament ("superseded by law"). Where a people's territory was eded or seized in the past, Canada will consider compensation for its failure o implement terms of the cession or annexation legislation, provided these too ave not been cut off by subsequent Parliamentary enactments. Department of ndian Affairs, Outstanding Business: A Native Claims Policy (1982).

Indigenous peoples' grievances are reviewed by an Office of Native Claims mployed by the Minister of Indian Affairs, and either accepted or rejected by he Minister and the Attorney General. If a grievance is rejected, it cannot be aken to the courts of Canada without the Government's consent.

In no case has Canada indicated that it is prepared to recognize indigenous eoples' right to remain sovereign and independent in their territories, or even o retain ownership of all unceded lands which they occupy or hold under reaties. It is a prerequisite to negotiations that indigenous peoples submit themselves without reservation to Canadian legislative authority. This is why anada has refused to discuss land rights with us, or with the Innut people of Ntesinan (Labrador), since 1980: we insist upon recognition of our right of self-determination as an element of any boundary settlement. Canada has taken the position that it already owns Mikmaq and Innut lands and has only a moral obligation, if any, to deal with us.

The municipal laws and policy of Canada, then, protect our property only if we first surrender our right of self-determination. This is a choice we dare not accept. We will not relinquish our Article 1(1) rights in exchange for Canada's temporary and limited protection of our Article 1(2) rights.

E. Other Human Rights

Canada argues that we enjoy the same rights as Canadians under general human rights provisions of Canadian law and the Constitution Act, 1982. The Charter of Rights and Freedoms in the Constitution Act was based of the Canadian Bill of Rights, which Canada's courts already have declared inapplicable to the Indian Act and other discriminatory legislation of Canada. Attorney-General of

Canada v. Lavell (1973), 38 D.L.R.3d 481, at 490. Parliament was said to have inherent authority to treat "Indians" differently from Canadians, even in derogation of treaties.

It is true, however, that "Indians" may escape most or all of the disabilities of the Indian Act by emigrating to Canadian communities and incorporating themselves with Canadians. But it is not freedom, to be free only by emigrating and losing one's home and family. The Committee already concluded that Canada may not force a woman to emigrate from one of our communities in Lovelace v. Canada; the Committee should for the same reasons condemn conditioning the enjoyment of human rights on emigration.

III - THE CONSTITUTION ACT, 1982

Canada relies considerably on section 35 of its newly-adopted national constitution, the Constitution Act, 1982, as evidence that we are already possessed of our human rights. In partinent part, section 35 provides that "the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." Canada's position fails on three grounds. First, this provision of Canada's municipal law only secures "existing" rights; Second, it refers to "aboriginal and treaty rights," which remain undefined; and third, this provision can be abolished at any time by Canada over the objections of the "aboriginal peoples" to whom it refers.

In our original communication we described a systematic pattern of discrimination and oppression of inidgenous peoples, including Mikmaqs, under the Indian Act and decisions of Canada's courts. We showed that "aboriginal peoples of Canada" had few, if any "existing rights": their lands could be abolished, and their children removed or schooled without their consent. It is therefore of little interest to us that Canada's new constitution purports to preserve those rights we had at the time of its adoption, for we had little or nothing then. What rights "existed" on the date of the constitution's adoption will of ourse be subject to some degree of interpretation by the courts of Canada.

There is no definition of "aboriginal and treaty rights" in Canadian law, but we note that Canada has interpreted them in practice in its "native claims" policies. Department of Indian Affairs, In All Fairness, and Outstanding Business, op. cit. According to these documents, a people has an "aboriginal right" to be compensated, in some form acceptable to the Government of Canada, for the surrender or seizure of its lands. A people has a "treaty right" to be paid the compensation agreed in a treaty of cession or "land claims settlement" negotiated with Canada unless Parliament abolishes the obligation by legislation. Self-determination is nowhere to be found in this scheme.

Canada's understanding of the Constitution Act's provision for "aboriginal" peoples' rights is contained in a Cabinet briefing paper circulated within the Government at the time the Act was drafted. Pertinent portions of this document are attached as Enclosure B.

Lastly, any protection afforded us by the Constitution Act, 1982 can be abolished at any time without our consent. In accordance with section 38 of the Act, amendments require the consent of two-thirds of Canada's ten Provincial Assemblies representing at least one-half of Canada's population. We are far too few, even in combination with all indigenous peoples of Canada, to prevent such

an amendment by democratic means. Should the non-indigenous majority choose to amend or delete section 35 of the Constitution Act, 1982, we would be powerless to object.

It may not even be necessary for Canadians to amend their constitution to eliminate such few rights as it may secure to us. An Ontario court already has held that Canada's Parliament may legislate against our rights notwithstanding the Constitution Act, 1982. Section 35 of the Act, the court apparently concluded, merely "recognizes" our rights but does not prevent Parliament from "suspending" their exercise and enjoyment indefinitely. The court's decision is attached as Enclosure C.

Canada quotes the opinion of Lord Denning in a recent United Kingdom decision, The Queen v. Secretary of State for Foreign and Commonwealth Affairs, that the Constitution Act, 1982 "does all that can be done to protect the rights and freedoms of the aboriginal peoples of Canada." Lord Denning's remarks were not based on any facts presented in that case, but merely on his reading of the Act itself. In our opinion, they were gratuitous dicta and quite premature. We would be more assured if the Government of Canada were prepared to acknowledge Lord Denning's words as a rule of law binding on Canadian courts.

Far from supporting our rights, The Queen v. Secretary of State actually disregarded them. It questioned whether the United Kingdom could lawfully grant Canada full independence without providing for the continued freedom and self-determination of indigenous peoples, including ourselves, who have subsisting treaties of association with the British Crown. The court acknowledged that the Constitution Act, 1982, once approved by the United Kingdom, would have the effect of turning us, our lands and treaties, over to Canada, but refused to treat this as a state succession problem. Instead, the court relied on the racist theory that, as "Indians," we have no right of self-determination and are naturally and inevitably subject to alien domination.

This case upon which Canada so plainly relies is not an argument that our human rights are protected, but on the contrary potent evidence for the continuing disregard of our rights as peoples, and the use of racist theories to justify our subjugation. A copy of the court's decision is attached as Enclosure D.

We find Canada's particular response (page 14) to our 11 November 1981 supplemental communication rather poignant. On 11 November we advised the Committee that the "aboriginal and treaty rights" provision had been deleted from the draft of the Constitution Act. Canada now retorts, eight months later, that our advice in this matter is "irrelevant" to the Committee's proceedings because the provision for "aboriginal and treaty rights" involved "is still part of the Constitution Act, 1982" as enacted, although admittedly "it has been amended to provide that 'existing' rights would be protected."

We beg to observe that this provision of the draft constitution was in fact deleted in November 1981, as described in an article in the 11 November 1981 edition of the Toronto Globe and Mail, attached as Enclosure E. The Government of Canada restored this provision to the draft only after we brought the deletion to this Committee's attention.

Far from evincing a consistent pattern of respect for human rights, we ink this demonstrates that Canada will not bring its municipal actions into formity with international norms until subjected to international attention id criticism.

V-REMEDIES

Canada argues that our communication is inadmissible because, in its view, here is no remedy for the violations of the Covenant we have related (page 5). e have no need to deny Canada's allegations that our population of about 18,000 s scattered in several small towns and villages, and is surrounded by some 2 illion Canadians, but merely observe that this is a situation of Canada's own oing. The seizure of our territory and forcible removal of our people was the ause of our being concentrated in a few small enclaves not unlike the current ituation in South Africa. We also suggest that the present size of our opulation be considered in relation to Article II(c) of the Convention on the revention of the Crime of Genocide, General Assembly Resolution 260A(III), 9 ecember 1948, and Article 1(2) of the Covenant as it regards subsistence ights.

Canada asserts that we "live in bands, each of which is politically ndependent from the others" (page 5 note 3). We direct the Committee's ttention to an Order-in-Council, P.C. 1960-260, by which the Government of anada unilaterally divided our people in "bands." This was not our way, but art of the colonial administration of our country and an illustration of diuide et impera.

In effect, Canada is advancing the consequences of its violations of our human rights as a justification why we should not be afforded a hearing, or relief by the Committee.

We have no desire to be unreasonable, nor do we wish to compound one injustice with another. Although we maintain firmly our right to claim the entire territory we occupied and governed prior to intervention by the United Kingdom and Canada, we are agreeable to settling for permanent sovereignty and self-determination in a reduced area sufficient for our needs.

Presently uninhabited lands and unexploited fisheries lay adjacent to our existing communities. Few if any Canadians need be displaced to provide us with a small and modest country of our own, at least as great in extent as many Members of the United Nations. Even in such a diminished territory we could have our freedom.

Canada contends that the remedies we seek nonetheless fall outside of the Committee's competence--particularly, that the Committee is without authority to declare that we are a separate State. We had thought that whether we are, or have been a State and a people are matters to be determined in ascertaining whether our right of self-determination has been violated. If we are neither a State nor a people, there may be no violation of Article 1. Our collective identity therefore is a question the Committee must resolve before any others, and is a matter of fact and law in identifying violations, not a remedy as such.

We moreover believe the Committee is competent to make a number of determinations of fact and law under the Covenant, in support of our desire for self-determination:

> (1) Mikmaqs were an independent sovereign State and/or people prior to European exploration of the Americas;
> (2) Mikmaqs are still a State and/or people today;
> (3) Mikmaqs never exercised their right of self-determination in any way adverse to their continued independence, except to enter into a free and equal association with the United Kingdom in 1752;
> (4) Mikmaqs never disposed of any of their natural wealth or resources to the United Kingdom or Canada;
> (5) Mikmaqs are entitled to determine their own political, social, economic and cultural institutions by democratic means under United Nations supervision;
> (6) Mikmaqs are entitled to the use, enjoyment and disposal of their natural wealth and resources, and to subsist by their own means, within their unrelinquished territories; and
> (7) the United Kingdom and Canada are obligated by Articles 1 and 76 of the Charter, and by Article 1 of the Covenant, not to interfere with Mikmaqs' exercise of self-determination, or in any way to subject Mikmaqs to alien domination.

We understand that the Committee itself cannot confer Statehood upon us, nor make a specific demarcated settlement of our boundary with Canada. But the Committee can pronounce itself on whether Canada's assertions of authority over us and over our historical territory violate the Covenant. If they do violate the Covenant, these assertions are contrary to international jus cogens and do not merit recognition by the community of nations.

Canada proposes as an alternative that our concerns might better be advanced before the Special Committee of 24 (page 6). We note, however, that the Commission on Human Rights has consistently viewed decolonisation and human rights as closely related problems, and has coordinated its work with the work of the Special Committee. We think it is reasonable to infer that there is no basic distinction in United Nations law or practice today between colonial situations and other violations of human rights, such that the one cannot be considered with the other.

In practical terms, Canada is a State Party to the Protocol and as such is amenable to the jurisdiction of this Committee. Canada has not participated as an Administering Power in the work of the Special Committee of 24. We see no reason why our concerns should not be considered in a process familiar to, and supported by Canada, rather than one in which it has little experience.

The jurisdictions of this Committee and the Special Committee of 24 are not separate, but overlap in explicit terms. The Covenant under which this Committee serves embraces "self-determination," as does the General Assembly Resolution which forms the charter of the Special Committee of 24. General Assembly Resolution 1514 (XV), 14 December 1960. The only distinction we can

find between the review powers of this Committee and the Special Committee of 24, is that this Committee must limit its work to States Parties to the Protocol, and typically works in relative confidence.

If the Committee is persuaded nevertheless that our communication is of such a nature, and relates to such rights, that it falls beyond the Committee's competence, we respectfully suggest that our concerns be brought to the attention of the Economic and Social Council with the recommendation that an Advisory Opinion be sought from the International Court of Justice. There can be no doubt that the International Court is competent to rule on all of the self-determination and territorial issues we have communicated, and we would welcome the finality of its decree.

For the foregoing reasons, we suggest that the Government of Canada has not yet shown why our communication of concerns under Article 1 of the Covenant should be deemed inadmissible. The Protocol is explicit that "any" right enumerated in the Covenant may be advanced by individual communicants, and Canada has offered no facts to support its contention that it is a "non-colonial" State or to rebut the evidence we have provided of actual alien domination. Canada admits that we are permitted only "limited self-government" under its Indian Act, and does not show how its new constitution enlarges this or extends us the full measure of self-determination to which we are entitled by the Covenant.

We respectfully propose that the Committee accept our original communication as admissible and proceed to the determination of specific violations and remedies.

DONE at Seattle on the 15th day of July, 1982, for Alexander Denny, Grand Captain (Jikapten, Santeioi Maoaiomi), by:

Russel L. Barsh
Counsel

ADDITIONAL COMMENTS and DOCUMENTATION · 1983/1984

2 October 1982

Jakob Th. Moller
Chief, Communications Unit
Division of Human Rights
United Nations
CH-1211 GENEVA 10

G/SO 215/51 CANA(18)
R.19/78

Dear Mr. Moller:

I am pleased to acknowledge receipt of your telegram of 29 September, reminding us to provide you with Enclosure C to our last submission. I trust you have now received it.

We have just this week had an opportunity to obtain and review a copy of a recent decision of the Supreme Court of Nova Scotia, touching our rights under Canadian law. I have taken the liberty of enclosing a copy, and respectfully suggest that it be brought to the attention of the Committee.

This decision is unequivocal evidence that Canadian courts will not enforce the terms of the Treaty of Halifax, or protect the rights of the Mikmaq people to security and self-determination. As such it bears on the issue of whether a municipal remedy exists for the resolution of our concerns.

Leave to appeal this decision to the Supreme Court of Canada was denied.

We are particularly conscious of the persistence, in this decision (pp. 30-31), of the racist notion that treaties made with us are of no force or effect because we are "Indians."

Our copy of this decision is from the Canadian Native Law Reporter, a publication of the University of Saskatchewan's Native Law Centre.

Thank you for your attention to this additional documentation.

Best wishes,

Russel L. Barsh

6 January 1984

akob Th. Moller
hief, Communications Unit
ision of Human Rights
nited Nations
H-1211 Geneva 10

G/SO 215/51 CANA(18)

ear Mr. Moller:

s counsel for Alexander Denny and this Council in Case No. R.19/78, I have the onour to report on recent developments within Canada which may be of relevance o the Committee's deliberations.

n 7 November 1983, the Canadian House of Commons tabled a report on "Indian elf-Government in Canada," which is currently under review by the Prime inister and Cabinet. At page 136, the report concludes:

> Canada is obliged to protect and promote the rights of the peoples of the Indian First Nations in a manner consistent with the rights guaranteed in the international covenants Canada has ~~signed~~ the United Nations Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights, and the Helsinki Final Act of 1975. These agreements guarantee both the fundamental collective right of peoples to be self-governing and basic human rights of individuals.

The Committee will recall that Canada's 17 May 1982 submission in this case challenged the admissibility of Mr. Denny's communication on the grounds that it involved "collective" rights, and that these "collective" rights could not properly be asserted or exercised consistent with the territorial integrity of Canada. In the report quoted above, however, the Government of Canada appears to recognise that these very same "collective" rights must be respected by and within Canada by force of the Covenants.

We respectfully suggest that the Committee invite the Government of Canada to comment on whether it has changed its views in this regard. If the report of its House of Commons is a correct reflection of Canada's present understanding of international law and obligations, we believe the issue of admissibility should be decided forthwith in Mr. Denny's favour, so that the substantive question of whether Canada has violated his Covenant rights can be addressed.

Russel L. Barsh
Counsel

6 February 1984

akob Th. Moller
hief, Communications Unit
nited Nations
H-1211 Geneva 10, SWITZERLAND

G/SO 215/51 CANA(18)
R.19/78

)ear Mr. Moller:

is counsel for Alexander Denney and this Council in Denny v. Canada, R.19/78, I ave the honour to communicate additional documentation which may clarify the overnment of Canada's 17 May 1982 response to our earlier submissions.

In its response, the Government of Canada suggested that s.35 of its Constitution Act, 1982, which recognizes and affirms "the existing aboriginal and treaty rights" of indigenous peoples, remedied all of the violations of the Covenant we had alleged. We commented (pages 11-12, 16 July 1982) that this would limit us to those rights Canada considered as still "existing" in 1982, which is to say none at all. That is, Covenant rights such as self-determination and land, which Canada contended had been "superseded" by its municipal legislation prior to 1982, were not restored or renewed by the Constitution Act.

Our interpretation of the shortcomings of s.35 is confirmed by the attached letter from the Government of Canada to counsel for the Anishinawbe people of Ontario. It is clear from this that s.35 merely preserves the legal status quo of which we complained in our original communication.

We therefore respectfully propose that reference to s.35 in Canada's 17 May 1982 response to our earlier submissions be struck, on the grounds that s.35 plainly is irrelevant to whether our Covenant rights have been, or will continue to be violated in the manner we alleged.

Regards from North America

Russel L. Barsh

January 24, 1984

Mr. Paul Williams,
Barrister & Solicitor,
[illegible]5 Millwood Road
Toronto, Ontario
CANADA M4G 1W5

Dear Mr. Williams:

Thank you for your letter of January 5, 1984. You are quite correct that the addition of the word "existing" added nothing to the original meaning and intent of section 35 of the Constitution Act, 1982. Section 35 never did more than "recognize and affirm" aboriginal and treaty rights and in our view the Constitution would never have been interpreted as "recognizing and affirming" something which had ceased to exist. However, some of the constitution makers were concerned that section 35 might be misinterpreted by the courts to revive aboriginal and treaty rights already surrendered or superceded by valid legislation. Accordingly, the word "existing" was put into the section to ensure that the meaning of section 35 as originally intended was accurately conveyed to the courts.

Internal departmental legal work produced for the legal advice of the government in this and other matters is, of course, covered by a solicitor/client privilege and I am not at liberty to make it available to you.

I trust this answers your question.

Yours very truly,

Ian Binnie, Q.C.
Associate Deputy Minister

DECLARATION
ACCEPTING the JURISDICTION of the COURT·1982

25. July 1982

he Registrar
nternational Court of Justice
eace Palace
517 KJ The Hague
he Netherlands

e taleyn:

e have the honour to deposit the enclosed Declaration of Acceptance of the urisdiction of the International Court of Justice, in accordance with the esolution on Access to the Court of States Not Parties to the Statute of the nternational Court of Justice, Security Council Resolution 9, 15 October 1946. e trust you will find it in order.

e earlier transmitted a Declaration of this tenor under date of October 1980, ut, having received no confirmation or acknowledgment from your office of its eceipt and acceptability, we deemed it best to proceed again.

ur Government has enjoyed the privilege of communicating its concerns and views o the Commission on Human Rights (U.N.Doc. E/CN.4/1982/NGO/30/Rev. 1) and Human ights Committee (G/SO 215/51 CANA (18) R.19/78). We are firmly committed to he pursuit of peace and adjustment of disputes through orderly process of law, nd deem it essential to the dignity and responsibility of all nations, ncluding such small ones as ourselves, to be amenable to legal process through he International Court.

ur constitution and laws are more than a thousand years old. Experience has aught us the principles embodied in the Charter and human rights Covenants of he United Nations. Although we are a small voice, it speaks with age. Only hen all disputes among nations and peoples can be submitted to just and neutral ribunals, can there be peace, and for this reason we place ourselves and our uture in the hands of the Court.

espectfully,

ussel L. Barsh

SANTEIOI MAOAIOMI MIKMAOEI

Grand Council Mikmaq Nation

DECLARATION OF ACCEPTANCE OF THE JURISDICTION

of the

INTERNATIONAL COURT OF JUSTICE

Article 1. The Mikmaq Nation is a State in free association with the nited Kingdom, as provided and described in the Treaty of Halifax, 22 November 752, between King George II and Jisakamou Jean Baptiste Cope, and as further xplained in the Treaties of Halifax, 10 March 1760, between King George III and aya Michael Augustine of Richebuctou; Halifax, 25 June 1761, between King rge III and Jisakamou Toma Denny; Halifax, 22 September 1779, between King eorge III and the Saya and Kapten of the Gulf of St. Lawrence; and aboard His ajesty's ship at New Brunswick, 17 June 1794, between King George III and Saya ohn Julian of Miramichi. No subsequent Treaty, nor any act or agreement uthorized by these Treaties, has terminated the international character of the ikmaq Nation.

Article 2. The Santeioi Maoaiomi is the true and lawful Government of the ikmaq Nation, and so has been since the beginning of our history, in continuous aceful succession from before the time of Jisakamou Cope to this day. By the reaties of Halifax and New Brunswick aforesaid, the Santeioi Maoaiomi reserved erritorial sovereignty and authority over lands throughout the area described contemporary cartographers as Nova Scotia, New Brunswick, Prince Edward sland, Quebec, Newfoundland, and Maine. No part of these lands, nor any element of sovereignty over them, has ever been ceded or surrendered by us.

Article 3. The Holy See has recognised the Santeioi Maoaiomi, and the atholic Church has been established in the Mikmaq Nation, since 1621.

Article 4. The heads of state of the Mikmaq Nation are its Jisakamou "grand chief") and Jikapten ("grand captain"), who either or both of them speak r the Santeioi Maoaiomi, and who jointly are responsible for the faithful ecution of our Treaties and external affairs. The Putus of the Santeioi aiomi is the guardian and interpreter of its Treaties and laws.

Article 5. The Santeioi Maoaiomi governs by Christian principles, reswears coercion by law, and maintains no bureaucracy. The spirit of our vernment is the free and enlightened consensus of our people, as guided by our adition, our religion, and our elders.

Article 6. On behalf of the Mikmaq Nation, the Santeioi Maoaiomi declares s full and irrevocable commitment to the principle of human rights and the aceable resolution of disputes proclaimed in the United Nations Charter, the iversal Declaration of Human Rights, the International Covenants of Human

Rights, the Declaration of Principles of International Law Applicable to Friendly Relations and Cooperation Among Nations, and all interpretive Resolutions of the General Assembly of the United Nations. The Santeioi Maoaiomi is pleased to assure the community of nations that it is fully in compliance with each and every one of these principles, and welcomes inquiries and examination by other States in any international forum.

Article 7. On behalf of the Mikmaq Nation, the Santeioi Maoaiomi declares its acceptance of the Statute of the International Court of Justice and of the Rules of that Court, without reservation, and that it will undertake to abide fully and responsibly by the judgment of the Court in any proceeding to which it may be a party.

Article 8. On behalf of the Mikmaq Nation, the Santeioi Maoaiomi accepts the jurisdiction of the International Court of Justice for the particular purpose of resolving peaceably its territorial dispute with the Government of Canada.

Article 9. On behalf of the Mikmaq Nation, the Santeioi Maoaiomi also generally accepts the compulsory jurisdiction of the International Court of Justice as provided by Article 32 of the Statute, subject only to the following reservation: that, being a small and poor State deprived by its neighbours of most of its territory and its means of subsistence, the Mikmaq Nation may be given due and just consideration in the allocation of costs of Courts in any proceeding to which it may be made a party respondent.

DONE at Potlotek, Mikmaq Nation, the 25th day of July, 1982.

FOR THE SANTEIOI MAOAIOMI:

Alexander Denny, Jikapten

5 August 1982
AIRMAIL

ar Sir,

I have the honour to acknowledge receipt of your communication of 25 July 82.

I am directed to draw your attention to paragraph 1 of Article 34 nd to Article 35 of the Statute of the Court and to inform you that the ove-mentioned letter and the documents attached thereto do not l for any action.

Yours faithfully,

A. Pillepich
Deputy-Registrar

. Russel L. Barsh
5 42nd Avenue N.E. Seattle
shington 98105
ited States of America

COMMENTS on the REGISTRAR'S RESPONSE·1982

23 August 1982

A. Pillepich
Deputy-Registrar
International Court of Justice
Peace Palace
2517 KJ The Hague
Netherlands

Dear Mr. Pillepich:

Thank you for your communication of 5 August 1982, responding to ours of 25 July. I have the honour to request a clarification of your comments.

In your 5 August response, you direct our attention to Articles 34 and 35 of the Statute of the Court, and indicate that pursuant to these provisions no action by your office is called for on our Declaration of Acceptance of the Jurisdiction of the Court. Are we to understand that you do not deem our Declaration to be in order, and therefore have not recorded it? If so, we would respectfully question this decision.

Pursuant to the Articles mentioned, and to Security Council Resolution 9, any "state" may subject itself to the jurisdiction of the Court by the means we have taken. Since neither the Statute nor the Resolution define the term "state," we must rely on customary international law to supply the meaning.

We think it universally agreed that a "state" has (1) an identifiable population distinguished by language, culture, or history; (2) an identifiable geographic territory; (3) a government; and (4) recognition by other states as capable of engaging in international relations.

We think it clear that we satisfy this test.

On population, we are an identifiable people speaking a single language (Mikmaq), and have always been regarded as separate and distinct by our North American and European neighbours. Since the 16th-century we have been described as one people, tribe or nation by representatives of France, the United Kingdom, and the Holy See. There is an abundant contemporary literature on our history, culture, and language that confirms our separate linguistic, ethnic, cultural and historical identity from before memory. See Annex I.

On territory, we have always lived together and exclusively on our own lands and in our own villages, apart from other peoples. From 1600 to 1750, our contiguous territory was acknowledged by scholars and states to include all of what is now referred to as the Maritime region of Canada. Our actual possessions have been reduced significantly since that time through involuntary annexations, but we continue to reside on the unsurrendered and undisturbed portions of our traditional national territory. See Annex II.

On government, our Council is more than a thousand years old, and our constitution has changed but little in that time. We have a legislature of Kapten who represent our villages, meeting periodically as a single assembly, and three chief executive officers--the Jisakamou ("grand chief"), Jikapten ("grand captain"), and the Putus (law-keeper). Our government has met and carried on the affairs of state from before the appearance of Europeans on our shores to this day, without lapse. Our Declaration of 25 July was issued under the authority and signature of the jikapten in his capacity as executive for foreign affairs, at the time of the regular annual assembly of our government.

On foreign relations, we have subsisting treaties with the United Kingdom, a Member of the United Nations, and with the Holy See, an Observer state, and in the past we made treaties with France, and acceded to treaties of our allies the Haudenosaunee (Iroquois) with France, The Netherlands, and the United Kingdom. It is our understanding that recognition as a state, once conferred by treaty, cannot be withdrawn absent some extraordinary circumstance. As recently as 1978 Her Majesty Elizabeth Queen of the United Kingdom and of Canada, publicly acknowledged the subsisting force of ours, and other treaties with the indigenous nations of North America.

Since we are one people, with both an historical and contemporary territory, a government, and subsisting treaties with state Members of the United Nations, we cannot but be a state. It is therefore proper for us to submit to the jurisdiction of the Court in accordance with Security Council Resolution 9.

If it be true (as some may believe) that our freedom and territory have been much reduced by the aggressions of our neighbours in recent years, we can only say this: that the Charter of the United Nations, and the International Covenants of Human Rights, do not recognize aggression as a lawful limitation on the self-determination, sovereignty, or territory of states.

Our history and circumstances are set out more fully in documentation received by the Division of Human Rights, G/SO 215/51 CANA 18, R. 19/78, copies of which we will be pleased to furnish to you upon request.

If you remain persuaded that we have no right to place ourselves within the Statute, we respectfully request your views in writing. We further request the opportunity to submit this question to the Judges, as they are the proper interpreters of international law, and especially of the Statute. We would be agreeable to initiating a contentious proceeding, to provide a basis for a decision by the Court on our capacity in invoke its jurisdiction. If you can suggest an alternative means of bringing this question to the Judges' attention, we will be most grateful for your advice.

Sincerely,

Russel Barsh

ANNEX I

PRIMARY MIKMAQ HISTORICAL SOURCES

Pierre Biard
NOUVELLE FRANCE, DES SES TERRES, NATUREL DU PAYS, DE SES HABITANS, &c. Relations des Jesuites, contenant ce qui s'est passe de plus remarkable dans les missions des Peres de la Compagnie de Jesus dans la Nouvelle France. Government of Canada, Quebec. 1858. v.1.

Nicholas Denys
DESCRIPTION GEOGRAPHIQUE ET HISTORIQUE DES COSTES DE L'AMERIQUE SEPTENTRIONALE. AVEC L'HISTORIRE NATURELLE DU PAIS.
Louis Billaine, Paris. 1672.
English translation per W. F. Ganong for the Champlain Society, Toronto. 1908.

Chrestien le Clercq
NOUVELLE RELATION DE LA GASPESIE.
Amable Auroy, Paris. 1691. English translation per W. F. Ganong for the Champlain Society, Toronto. 1910.

Marc Lescarbot
HISTOIRE DE LA NOUVELLE FRANCE.
Jean Milot, Paris. 1609. English translation per W. L. Grant for the Champlain Society, Toronto. 1907-1914. 3vo.

Antoine S. Maillard
AN ACCOUNT OF THE CUSTOMS OF THE MICMAKIS AND MARICHEETS SAVAGE NATIONS.
Hooper & Morley, London. 1758.

Bernard G. Hoffman
THE HISTORICAL ETHNOGRAPHY OF THE MICMAC OF THE SIXTEENTH AND SEVENTEENTH CENTURY.
Doctoral Dissertation, University of California. 1955. Revised 1976.

Wilson D. and Ruth S. Wallis
THE MICMAC INDIANS OF EASTERN CANADA.
University of Minnesota Press, Minneapolis. 1955.

Leslie F. S. Upton
MICMACS AND COLONISTS: INDIAN-WHITE RELATIONS IN THE MARITIMES, 1713-1867.
University of British Columbia Press, Vancouver. 1979.

18 November 1982
AIRMAIL

Dear Sir,

I am directed to acknowledge the receipt of your letter of 23 August 1982, addressed to the Deputy-Registrar of this Court, and to confirm the contents of the reply dated 5 August 1982 to your letter of 25 July 1982. I am to add that there is no point in reopening a matter which is governed by general directives of the Court and the instructions of its President as reflected in the letter under reference.

Yours faithfully,

Santiago Torres Bernardez
Registrar

Mr. R.L. Barsh
155 42nd Avenue, N.E.
Seattle
Washington 98105
United States of America

FURTHER COMMENTS on the REGISTRAR'S RESPONSE 1982

10 December 1982

antiago Torres Bernardez
egistrar
nternational Court of Justice
eace Palace
517 KE The Hague
he Netherlands

ear Sr. Torres:

have the honour to acknowledge your note of 18 November 1982, in which you ecline to consider further our deposit of a Declaration of Acceptance of the urisdiction of the Court, and to offer the further views of this Government on he matter.

e respectfully direct your attention to the following points of law, in support f our right to a hearing and determination on the question of statehood by the ull Court:

tate personality is a question of fact for the Court. Neither Security Council esolution 9 nor Article 36 of the Rules of the Court require that non-Member tates be individually authorized by the Security Council to proceed in the ourt. It is contemplated, rather, that the validity of non-Members' eclarations under Security Council Resolution 9 be decided by the Court itself nder general principles of international law relating to state personality. S. osenne, The Law and Practice of the International Court (Sijthoff, Leyden 965), I:281-83. This cannot properly be accomplished without the presentation f specific facts, and arguments and rulings of law.

ecognition of a state, once given, is presumed to continue. Recognition of a tate ordinarily cannot be withdrawn, nor does it lapse from neglect. Those retending that a state has ceased to exist bear the burden of showing some aterial fact, as of extinction, surrender and absorption by other states, or ubdivision into new states.

rotected states retain their international personality. Protected states emain states, although they may not be fully independent. Rights of .S. Nationals in Morocco, 1952 I.C.J. Reports, p. 176, 185. Protected states ave sometimes been represented in the Court by the protecting powers. .S. Nationals in Morocco, 1975 I.C.J. Reports, p. 110; Minquiers and Echrehos, 953 I.C.J. Reports, p. 47. But they have also participated in international roceedings in their own right. Ottoman Public Debt (1925), 1 R.I.A.A. 531; adio-Orient Company (1940), 3 R.I.A.A. 1873.

reaties of peace or protection do not diminish a state's sovereignty. On the ontrary, treaties are an attribute of sovereignty and evidence of statehood.

S.S. Wimbledon (1923), P.C.I.J. Reports, Series A, No.1, p. 25; S.S.Lotus, P.C.I.J. Reports Series A, No.10, p. 18.

International recognition of a state is obligatory. It is the duty of Members and international organizations to recognize a people's state personality when they are exercising, or lawfully attempting to exercise the right of self-determination. Namibia (South West Africa) Advisory Opinion, 1971 I.C.J. Reports, p.3. Members are obliged to disregard an illegal territorial status quo.

Recognition of a state does not extend to lawless annexations. In the Western Sahara (Advisory Opinion), 1975 I.C.J. Reports, p. 3, the territorial claims of two Members were rejected because neither had acquired the rights of the indigenous inhabitants by treaty or purchase. The fiction of terra nullius was inadmissible. The right of all peoples to self-determination is, moreover, an imperative norm or jus cogens. Recognition of a state extends only to territory it has acquired consistent with this norm. General Assembly Resolution 2625 (XXV), 24 October 1970.

As indicated in the text of our Declaration, this Government entered into five treaties of peace and protection with the United Kingdom, superceding an earlier relationship with France. We ceded no territory and surrendered none of our prerogatives of self-government. Hence under the decisions of this Court and general principles of international law the international personality of this Government continues unimpaired.

It is a fact that Canada has substantially interfered with our territory and our freedom, over our repeated protests. Canada asserts this power under a purported delegation of the United Kingdom's responsibilities under our treaties. We have objected that the purported delegation would violate accepted principles of state succession; that the powers presumed by Canada exceed those -- if any--originally delegated to the United Kingdon by us; and that Canada's actions violate our rights to self-determination and the free disposal of our natural wealth and resources.

Physical control of a state or people's territory does not end the former sovereignty or extinguish the right of self-determination. It merely "render(s) it inarticulate and deprived of freedom of expression." Namibia (South West Africa) Advisory Opinion, 1971 I.C.J. Reports, p.86 (sep. op. of Vice-President Ammoun).

The courts of the United Kingdom have rejected the issue of state succession on the ground that treaties made with non-white peoples in the Americas have no obligatory force. The Queen v. Secretary of State for Foreign and Commonwealth Affairs (1982), [1981] 4 C.N.L.R. 86. Canada has made the same argument to the United Nations Human Rights Committee in Denny v. Canada, G/SO 215/51 CANA(18), R.19/78

It seems to us this is an argument that could not be maintained in this Court. The indefinite protection or annexation of a state or people on the theory of racial or cultural inferiority is unacceptable. Namibia (South West Africa) Advisory Opinion, 1971 I.C.J. Reports, p.3. But by rejecting our Declaration, this Court implicitly sustains the contentions of Canada and the United Kingdom that treaties recognizing non-white peoples may be ignored, and that formal recognition of certain precedent that a state could be de-recognized on racial grounds.

We observe that the Namibian people, although (as Vice-President Ammoun explained) once a great civilization, were never recognized by European states. We observe also that even a people defeated in a war instigated by their own aggression, have been admitted to this Court under Security Council Resolution 9. Monetary Gold Case, 1954 I.C.J. Reports, p. 22 (Italy). Our Government has been recognized in the past by France and the United Kingdom, has never waged aggressive war, and has never surrendered to an aggressor. It would be strange indeed, then, should we be unable to seek redress by peaceful means as if we were not enough of a state--or a state of the wrong colour.

Our substantive rights vis-a-vis Canada, and our standing to invoke the jurisdiction of this Court, are intimately connected. Both rest on the obligatory force of our treaties, and non-recognition of Canada's attempts to annex our territory without our consent.

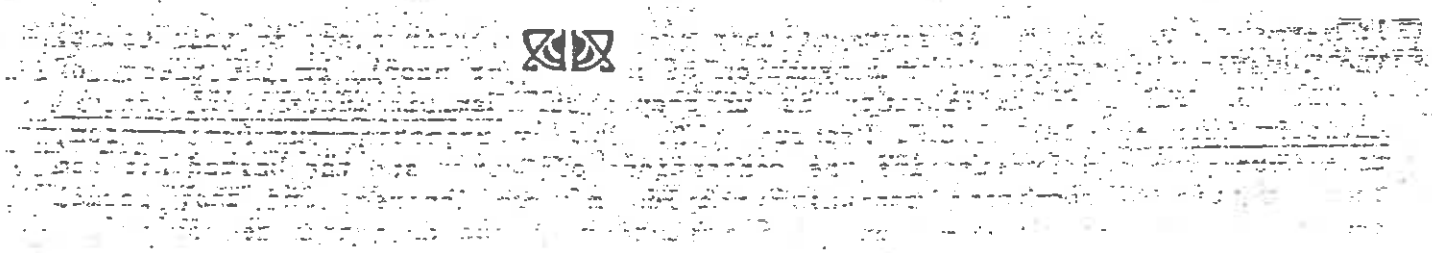
We understand the Court's reluctance to invite litigation unnecessarily, but wish to underscore the fact that both Canada and the United Kingdom have gone on record that our situation involves the interpretation of treaties, state succession, and the subsistence of territorial boundaries. It is therefore by definition a matter for international rather than municipal attention.

Under these circumstances we suggest it is impossible to rule confidently on the validity of our Declaration without a full review of the facts. This is not the case of an individual applying for the Court's attention, but of a state heretofore plainly recognized, and now being dismembered involuntarily by other states, seeking an appropriate forum for peaceful resolution of treaty and boundary questions.

In closing, I am directed to recall your reference to "general instructions of [the] President" of the Court regarding the validity of our Declaration. Since we are not familiar with any particular instructions in this regard, other than the Rules, Statute, and Security Council Resolution 9, we must beg your indulgence to provide us with a copy of the instructions to which you referred.

Sincerely,

Counsel and Agent



TREATY OF HALIFAX·1752

ENCLOSURE IN LETTER OF GOVERNOR HOPSON

TO THE

RIGHT HONOURABLE THE EARL OF HOLDERNESSE 6TH OF DEC. 1752

ARTICLES OF PEACE AND FRIENDSHIP RENEWED

between

is Excellency Peregrine Thomas Hopson Espire Captain General and Governor in ief in and over His Majesty's Province of Nova Scotia or Acadie Vice Admiral the same & Colonal of One of His Majesty's Regiments of Foot, and His jesty's Council on behalf of His Majesty.

and

jor Jean Baptiste Cope, chief Sacham of the Tribe of Mick Mack Indians, abiting the Eastern Coast of the said Province, and Andrew Hadley Martin, briel Martin and Francis Jeremiah members & Delegates of the said Tribe, for emselves and their said Tribe their heirs and the heirs of their heirs rever. Begun made and Concluded in the manner form & Tenor following, viz.

It is agreed that the Articles of Submission & Agreements made at Boston in New England by the Delegates of the Penobscot Norridgwolk & St. John's Indians in the Year 1725 Ratifyed and Confirmed by all the Nova Scotia Tribes at Annapolis Royal in the Month of June 1726 and lately Renewed with Governor Cornwallis at Halifax and Ratifyed at St. John's River, now read over Explained & Interpreted shall be and are hereby from this time forward renewed, reiterated and forever Confirmed by them and their Tribe, and the said Indians for themselves and their Tribe, and their Heirs aforesaid do make and renew the same Solemn Submissions and promises for the strict Observance of all the Articles therein contained as at any time heretofore hath been done.

That all Transactions during the late War shall both sides be buried in Oblivion with the Hatchet, And that the said Indians shall have all favour, Friendship & Protection shewn them from this His Majesty's Government.

That the said Tribe shall use their utmost Endeavours to bring in the other Indians to Renew and Ratify this Peace, and shall discover and make known

any attempts or designs of any other Indians or any Enemy whatever against his Majesty's Subjects within this Province so soon as they shall know thereof and shall also hinder and Obstruct the same to the utmost of their power, and on the other hand if any of the Indians refusing to ratify this Peace shall make War upon the Tribe who have now Confirmed the same; they shall upon Application have such aid and Assistance from the Government for their defence as the Case may require.

It is agreed that the said Tribe of Indians shall not be hindred from, but have free liberty of hunting and Fishing as usual and that if they shall think a Truck house needful at the River Chibenaccadie, or any other place of their resort they shall have the same built and proper Merchandize, lodged therein to be exchange for what the Indians shall have to dispose of and that in the mean time the Indians shall have free liberty to bring to Sale to Halifax or any other Settlement within this Province, Skins, feathers, fowl, fish or any other thing they shall have to sell, where they shall have liberty to dispose thereof to the best Advantage.

That a Quantity of bread, flour, and such other Provisions, as can be procured, necessary for the Familys and proportionable to the Numbers of the said Indians, shall be given them half Yearly for the time to come; and the same regard shall be bad to the other Tribes that shall hereafter Agree to Renew and Ratify the Peace upon the Terms and Conditions now Stipulated.

That to Cherish a good harmony and mutual Correspondence between the said Indians and this Government His Excellency Peregrine Thomas Hopson Esq. Capt. General & Governor in Chief in & over His Majesty's Province of Nova Scotia or Accadie Vice Admiral of the same & Colonel of One of His Majesty's Regiments of Foot hereby promises on the part of His Majesty that the said Indians shall Continue in Friendship, Receive Presents of Blankets, Tobacco, some Powder & Shott, and the said Indians promise once every year, upon the first of October, to come by themselves or their Delegates and Receive the said Presents and Renew their Friendship and Submissions.

7. That the Indians shall use their best Endeavors to save the Lives & Goods of any People Shipwrecked on this Coast where they resort and shall Conduct the People saved to Halifax with their Goods, and a Reward adequate to the Salvage shall be given them.

8. That all Disputes whatsoever that may happen to arise between the Indians now at Peace and others His Majesty's Subjects in this Province shall be tryed in His Majesty's Courts of Civil Judicature, where the Indians shall have the same benefits, Advantages & Priviledges as any others of His Majesty's Subjects.

In Faith & Testimony whereof the Great Seal of the Province is hereunto appended, and the Partys to these Presents have hereunto interchangeably Set their Hands in the Council Chamber at Halifax this 22nd day of Nov. 1752 in the 26th Year of His Majesty's Reign.

P. T. Hopson		
Chas. Lawrence	Jean Baptiste	His X Cope
Benj. Green		Mark
Jno. Salisbury	Andrew Hadley	X
Willm. Steele	Francois	X
Jno. Collier	Gabriel	X

ACCESSION of SIEGENIGTEOAG DISTRICT · 1760

"I, Michael Augustine for myself and the tribe of Richebuctou Indians of ıich I am Chief do acknowledge the jurisdiction and dominion of His Majesty ing George, Second over the territories of Nova Scotia or Acadia and we do make ıbmission to His Majesty in the most perfect way and solemn manner."

"And I do promise for myself and my tribe, that I nor they shall not molest ıy of His Majesty's subjects in their settlements as already made, or that may e hereafter made or in carrying on their commerce or in anything whatever ıthin this the said Province of His said Majesty or elsewhere."

"And for the more effective security of the due performance of this Treaty, ıd for every part thereof I do promise and engage that a certain number of ersons of my tribe, which shall not be less in number than two, shall, on or efore the 24th day of June next reside as hostages at Fort Cumberland, or at ıch other place in the Province of Nova Scotia or Acadia, as shall be appointed or that purpose by His Majesty's Governor of the said Province which hostages ıall be exchanged for a like number of my tribe when requested."

"And all of the foregoing Articles and every one of them, made with His xcellency Chas. Lawrence Esq., His Majesty's Governor of the said Province, I promise for myself and on behalf of my tribe that we will most strictly keep ıd observe in the most solemn manner."

"In witness whereof I have hereunto put my mark and seal at Halifax in Nova cotia this tenth day of March, One Thousand Seven Hundred and Sixty in the hirty Third year of His Majesty's reign.

his
Michael X Augustine
mark

"I do accept and agree to all the Articles of the foregoing treaty, In ıith and Testimony whereof I have signed these presents and caused my seal to herunto affixed, this Tenth day of March in the Thirty Third year of His ajesty's reign and in the year of Our lord 1760."

Signed Charles Lawrence

ACCESSION of ONAMAGI, PIGTOGEOAG ag EPIGOITG, and ESGIGEOAG DISTRICTS · 1761

Halifax
Nova Scotia

25th June 1761.

The following Treaties of Peace and Friendship were this day concluded and signed by the Honorable Jonathan Belcher Esqr. president of His Majesty's Council and Commander-in-Chief of this Province on behalf of His Majesty; and the Chiefs of the Tribes of the Mickmack Indians called Mirimechi, Iediack, Pogmouchand Cape Breton Tribes, on behalf of themselves and their people.

Treaty of Peace and Friendship concluded by the Honorable Jonathan Belcher Esqr. President of His Majesty's Council and Commander-in-Chief in and over His Majesty's Province of Nova Scotia or Acadia be with Claude Stonash Chief of the Iedaick Tribe of Indians at Halifax in the Province of Nova Scotia or Acadia.

I, Claude Stonash for myself and the Tribe of Iedaick Indians of which I am Chief, do acknowledge the jurisdiction and dominion of His Majesty King George the Third, over the Territories of Nova Scotia or Acadia, and we do make submission to His Majesty in the most perfect, ample, and solemn manner.

And I do promise for myself and my Tribe that I nor they shall not molest any of His Majesty's Subjects or their dependents in their Settlements already made, or in carrying on their Commerce, or in any thing whatever within this the Province of his, said Majesty, or elsewhere.

And if any Insult, Robbery or Outrage shall happen to be committed by any of my Tribe, satisfaction and restitution shall be made to the person or persons injured.

That neither I nor my Tribe shall in any manner entice any of his said Majesty's Troops or Soldiers to desert, nor in any manner assist in conveying them away, but on the contrary will do our utmost endeavours to bring them back to the Company, Regiment, Fort or Garrison to which they shall belong.

That if any quarrel or misunderstanding shall happen betwixt myself and the English, or between them and any of my Tribe, neither I nor they shall take any private satisfaction or Revenge, but we will apply for redress according to the Laws established in his said Majesty's Dominions.

That all English Prisoners made by myself or my Tribe, shall be set at Liberty and that we will use our utmost endeavours to prevail on the other Tribes to do the same if any prisoners shall happen to be in their Hands.

And I do further promise for myself and my Tribe, that we will not either directly nor indirectly assist any of the Enemies of His Most Sacred Majesty King George the third, his heirs or successors, nor hold any manner

of Commerce, Traffic, nor intercourse with them, but on the contrary will as much as may be in our power discover and make know to His Majesty's governor any ill designs which may be formed or contrived against His Majesty's Subjects. And I do further engage, that we will not Traffic, Barter or Exchange any commodities in any manner but with such persons, or the managers of such Truckhouses as shall be appointed or established by His Majesty's governor at Fort Cumberland or elsewhere in Nova Scotia or Acadia.

And for the more effectual security of the due performance of this Treaty and every part thereof, I do promise and engage that a certain number of Persons of my Tribe which shall not be less in number than Two persons shall on or before the thirtieth day of September reside as Hostages at Fort Cumberland or at such other place or places in this Province of Nova Scotia or Acadia as shall be appointed for that purpose of His Majesty's Governor of said Province, which Hostages shall be exchanged for a like number of my Tribe when requested.

And all these foregoing Articles and every one of them made with the Honorable Jonathan Belcher Esquire President of His Majesty's Council and Commander in Chief of His Majesty's Province of Nova Scotia or Acadia, I do promise for myself and in behalf of my Tribe that we will most strictly keep and observe in the most solemn manner. In witness whereof I have hereunto put my mark at Halifax in Nova Scotia this Twenty-fifth day of June One Thousand Seven Hundred and Sixty One, and in the First year of His Majesty's Reign.

his
Claude X Stonash
Mark

I do accept of, and agree to, all the articles of the foregoing Treaty. In faith and testimony whereof I have signed these presents, and have caused my seal to be hereunto affixed this Twenty-fifth day of June in the first year of His Majesty's Reign, and in the year of our Lord One Thousand Seven Hundred and Sixty One.

J. Belcher

By order of the Commander in Chief.

Richard Bulkeley Secretary

John Collier
Richard Bulkeley
Jos. Gerrish
Alexander Grant

Signed in the Presence of
the Members of His
Majesty's Council

N.B. Treaties of the above Tenor and Contents was signed by the Chief of each Tribe separately.

The ceremony observed upon this occasion was conducted in the following manner. The Honorable Wr. President Belcher assisted by His Majesty's Council, Major General Bastide, the Right Honorable the Lord Colvill and Colonel Forster Commander Officer of His Majesty's Forces, and the other Officers and principal Inhabitants of Halifax, proceeded to the Governor's farm where proper tents were erected, and the Chiefs of the Indian being called upon, His Honor spoke to them as follows, the same being interpreted by Wm. Maillard.

"Brothers,

"I receive you with the hand of Friendship and protection,
"in the name of the great and mightly monarch King George the
"Third, Supreme Lord and Proprietor of North America."

"I assure myself that you submit yourselves to his allegiance
"with Hearts of Duty and gratitude, as to your merciful Conqueror,
"and with faith never to be shaken and deceived again by delusions
"and Boastings of our Enemies, over the power of the mighty Fleets
"and Armies of the August King of Great Britain."

"You see that this triumphant and sacred King, can chastise the
"insolence of the Invader of the Right of his Crown and subjects,
"and can drive back all his Arrows, and trample the power of his
"Enemies under the footstool of his sublime and lofty Throne."

"As this mighty King can chastise and Punish, so he has power
"to protect you and all his subjects, against the rage and cruelties
"of the oppressor."

"Protection and allegiance are fastened together by links, if
"a link is broken the chain will be loose."

"You must preserve this chain entire on your part by fidelity
"and obedience to the great King George the Third, and then you will
"have the security of his Royal Arm to defend you."

Then the Chiefs were conducted to a Pillar where the Treaties with each Tribes were to be signed, and there the Commander in Chief went on with His Speech.

"I meet you now as His Majesty's graciously honored Servant "in Government and in his Royal name to receive at this Pillar, your "public vows of obedience - to build a covenant of Peace with you, "as upon the immovable rock of Sincerity and Truth, - to free you "from the chains of Bondage, - and to place you in the wide and "fruitful Field of English Liberty."

"In this Field you will reap support for yourselves and your "Children, all brotherly affection and kindness as fellow subjects "and the Fruits of your Industry, free from the baneful weeds of "Fraud and Subtility."

"Your Traffic will be weighed and settled in the scale of "honesty, and secured by Severe punishment against any attempts to "change the just ballance of that scale."

"Your Religion will not be rooted out of this Field, - your "patriarch will still feed and nourish you in this Soil as his "spiritual children."

"The Laws will be like a great Hedge about your Rights and "properties - if any break this Hedge to hurt and injure you, the "heavy weight of the Laws will fall upon them and furnish their "disobedience."

"In behalf of us, now your fellow subjects, I must demand, "that you build a Wall to secure our Rights from being trodden down "by the Feet of your people. - That no provocation tempt the hand "of Justice against you, and that the great levity of His Majesty "in receiving you under the cover of His Royal Wings in this "desertion of you by your leader to the field of Battle, against the "Rights of His Crown, when he stipulated for himself and his people "without any regard to you, may not be abused by new Injuries."

"You see the Christian Spirit of the King's Government, not "only in burying the memory of broken Faith, by some of your People, "by in stretching out the hand of Love and assistance to you."

"Lenity desposed may not be found any more by our submissions, "and like Razors set in oil will cut with the Keener Edge."

At this period, the presents were delivered to each of the Chiefs, and then the Commander in Chief proceeded.

"In token of our sincerity with you, I give you these pledges "of brotherly affection and Love - That you may clothe yourselves

"with Truth towards us, as you do with these Garments, - That you
"may exercise the instruments of War to defend us your brethern
"against the insults of any injurious oppression; - that your cause
"of War and Peace may be the same as ours; - under our mighty Chief
"and King, under the same Laws and for the same Rights and Liberties."

The Indians were then carried to the place prepared for burying the Hatchet where he concluded his Speech.

"While you blunt the Edge of these Arms, and bury them in
"Symbol, that they shall never be used against us your fellow
"Subjects, you will resolve and promise to take them up, sharpen
"and point them against our Common Enemies."

"In this Faith I again greet you with this hand of Friendship,
"as a sign of putting you in full possession of English protection
"and Liberty, and now proceed to conclude this memorial by these
"solemn instruments to be preserved and transmitted by you with
"charges to your Children's Children, never to break the Seals or
"Terms of this Covenant."

The Commander in Chief having finished his Speech, proceeded with the Chiefs to the Pillar, where the Treaties were subscribed and Sealed, and upon their being delivered and the Hatchet buried the Chief of Cape Breton Indians in name of the rest addressing himself as to His Brittanic Majesty spoke as follows; which was likewise interpreted by Mr. Maillard.

"My Lord and Father!

"We came here to assure you, in the name of all those of whom
"we are Chiefs, that the propositions which you have been pleased
"to cause to be seat to us in writing have been very acceptable to
"me and our bretheren, and that our intentions were to yield our-
"selves up to you without requiring any Terms on our part."

"Our not doubting your sincerity has chiefly been owing to
"your charitable, merciful, and bountiful behaviour to the poor
"French wandering up and down the Sea Costs and Woods without any
"of the necessaries of life; - certain it is that they, as well as
"we, must have wretchedly perished unless relieved by your humanity;
"for we were reduced to extremities more tolerable than Death itself."

"You are now Master here, such has been the will of God; He
"has given you the dominion of those vast Countries, always drowning
"your enterprises with success - You were, before these acquisitions,
"a very great people; but we now acknowledge you to be much more
"powerful; tho less great, in the extensiveness of your possessions,
"than in the uprightness of your Heart, whereof you have given us
"undoubted and repeated proofs, since the reduction of Canada. -
"you may be confident that the moderation and lenity wherewith we
"have been treated, has deeply imprinted in our Hearts a becoming

"sense of gratitude. - Those good and noble sentiments of yours,
"towards us in our distressed and piteous circumstances have em-
"boldened us to come out of the Woods, our natural Shelter, from
"whence we had previously resolved not to stir, till the Establishment
"of peace between both Crowns, whatever hardships we might have suffered."

"Your generous manner, your good heart, your propensity to
"clemency, make us hope that no mention will ever be made of any
"Hostilities that have been committed by us against you and yours. -
"the succours so seasonably given us in our greatest wants and
"necessities have been so often the subject of our thoughts that they
"have inspired us with the highest sentiments of gratitude and
"affection."

"We felt ourselves in consequences, forcibly drawn to Halifix,
"to acquaint the representative of the King, not only with the
"resolutions we have taken in his favor, arising from his kindness
"to us, but also to let him understand, that the many proofs he has
"given us of the goodness of his Heart at a time and in a conjuncture
"in which we could not hope for such favorable treatment have so
"entirely captivated us that we have no longer a will of our own:
"His will is ours."

"You now, Sir, see us actually in your presence; dispose of us
"as you please. - We account it our greatest misfortune that we
"should so long have neglected to embrace the opportunity of knowing
"you so well as we now do. - you may depend we do not flatter.
"we speak to you at this time according to the dictates of our
"hearts. - Since you are so good as to forget what is past, we are
"happy in its being buried in oblivion. Receive us into your
"Arms, into them we cast ourselves as into a safe and secure Asylum
"from whence we are resolved never to withdraw or depart."

"I swear for myself, Brethern and People, by the Almighty God
"who sees all things, hears all things, and who has in his power
"all things, visible and invisible, that I sincerely comply with all
"and each of the articles that you have proposed to be kept inviola-
"bly on both Sides."

"As long as the Sun and Moon shall endure; as long as the earth
"on which I dwell shall exist in the same state you this day see it,
"so long will I be your friend and Ally, submitting myself to the
"Laws of your Government; faithful and obedient to the Crown, whether
"things in these Countries be restored to their former state or not;
"I again swear by the Supreme Commander of Heaven and Earth, by the
"sovereign disposer of all things that have life on Earth or in
"Heaven, that I will for ever continue in the same disposition of
"mind I at present am in."

"There is one thing that binds me more strongly and firmly to
"you than I can possibly express, and that is your indulging me in
"the free exercise of the religion in which I have been instructed
"from my Cradle."

"You confess and believe, as well as I, in Jesus Christ the "eternal word of Almighty God. I own I long doubted whether you "was of this Faith. - I declare moreover that I did not believe you "was baptized; I therefore am overwhelmed with great Sorrow and "repentance that I have too long given a deaf ear to my spiritual "director touching that matter, for often has he told me to forbear "imbruing my hands in the blood of a people who were Christians "as well as myself but at present I know you much better than I "did formerly; I therefore renounce all the ill opinions that have "been insinuated to me and my brethern in times past, against the "subjects of Great Britain."

"To conclude, in the presence of him to whom the most hidden "thoughts of Men's Hearts are laid open; in your presence Governor, "(for I conceive that I see in your person him who you represent, "and from whom you derive your authority as the Moon borrows her "light from the rays of the Sun;) and before all this noble Train "who are round about you I bury this Hatchet as a dead-body that is "only fit to become rotten, looking upon it as unlawful and impossible "for me to make use hereafter of this instrument of my Hostilities "against you."

"Let him be happy and blessed for ever, the August person for "the sake of whom I make to day this funeral! Great God, let him "be happy and blessed during his whole reign over his subjects. "May he never have occasion to scruple calling us his children, "and may we always deserve at his hands the treatment of a Father."

"And Sir, we pray you most humbly, as you are entrusted by "George the Third our King, that you will be pleased to inform "His Majesty, as soon as possible, of what you have this day seen "and heard from our people, whose sentiments have now been declared "unto the King by my mouth."

The ceremony concluded with Dancing and Singing, after their manner upon joyful occasions, and drinking His Majesty's Health under three vollies of Small Arms.

ACCESSION of GASPEGEOAG DISTRICT · 1774

Be it known to all men that we, John Julien, Chief; Antoine Arceneau Captain; Francis Julien and Thomas Demagonisbe Councillors of Mirimichy and also representatives of and authorized by the Indians of Pagimousche and Restigouche Augustine Michel Chief. Louis Augustine Cobaise, Francis Joseph Arimph, Captains Antoine and Gamaliel Gabelier Councillors of Richibucto and Thomas James Son and representative of the Chief of Tedyae do for ourselves and on behalf of the several tribes of Mickmack Indians before mentioned and all others residing between Cape Tormentine and the Bay De Chaleurs in the Gulf of St. Lawrence inclusive. Solemnly Promise and Engage to and with Michael Franklin, Esq., the Kings Superintendent of Indian Affairs in Nova Scotia.

That we will behave Quietly and Peaceably toward all His Majesty King George's good subjects treating them upon every occasion in an honest friendly and brotherly manner.

That we will at the hazard of our Lives defend and Protect to the utmost of our power the Traders and Inhabitants and their Merchandise and Effects who are or may be settled on the Rivers, Bays and Sea Coasts within the forementioned District against all the Enemys of His Majesty King George whether French, Rebels or Indians.

That we will not hold any correspondence or intercourse with John Allen or any other Rebel or Enemy of King George, let his Nation or Country be what it will.

And we do also be these presents for ourselves and in behalf of our several constituents hereby Renew, Ratify and Confirm all former Treatys, entered into by us, or those heretofore with the late Governors Lawrence and others His Majesty King George's Governors who have succeeded him the command of this Province.

In consideration of the true performance of the foregoing Articles on the part of the Indians, the Said Michel Franklin as the King's Superintendent of Indian Affairs doth hereby Promise in behalf of the Government.

That the said Indians and their constituents shall remain in the Districts before mentioned, Quiet and Free from any molestation of any of His Majestys Troops or other good subjects in their Hunting and Fishing.

That immediate measures shall be taken to cause Traders to supply them with Ammunition, clothing and other necessary stores in exchange for their furs and other commoditys.

In witness where of the above mentioned have Interchangeabley set our Hands and Seals at Windsor in Nova Scotia this Twenty second day of September 1779.

By Governor William Milan and Micmac King John Julian on June 17th, 1794.

The following copy of the Treaty made with the Micmac Indians of the Miramichi and the representative of King George III was translated from the original treaty written in Micmac.

FURTHER ACCESSION of GASPEGEOAG DISTRICT 1794

The Treaty made with the Micmac Indians and the representative of King orge III of England on June 17, 1794.

Thus was agreed between the two Kings - The English King George III and the dian King John Julian in the presence of the Governor, William Milan of New unswick, and Francis Julian (Governor) the brother of said John Julian, on ard His Majesty's ship, that henceforth to have no quarrel between them.

And the English King said to the Indian King "Henceforth you will teach ur children to maintain peace and I give you this paper upon which are written ny promises which will never be effaced."

Then the Indian King, John Julian with his brother Francis Julian begged s Majesty to grant them a portion of land for their own use and for the future nerations. His Majesty granted their request. A distance of six miles was anted from Little South West on both sides and six miles at North West on both des of the rivers. Then His Majesty promised King John Julian and his brother ancis Julian "Henceforth I will provide for you and for the future generation long as the sun rises and river flows."

(sgd.) KING JOHN JULIAN
KING GEORGE III per
GOVERNOR WM. MILAN

SPEECH of a SA'YA · 1690

"Thou reproachest us, very inappropriately, that our country is a little hell in contrast with France, which thou camparest to a terrestrial paradise, inasmuch as it yields thee, so thou sayest, every kind of provision in abundance. Thou sayest of us also that we are the most miserable and most unhappy of all men, living without religion, without manners, without honour, without social order, and, in a word, without any rules, like the beasts in our woods and our forests, lacking bread, wine, and a thousand other comforts which thou hast in superfluity in Europe. Well, my brother, if thou dost not yet know the real feelings which our Indians have towards thy country and towards all thy nation, it proper that I inform thee at once. I beg thee now to believe that, all miserable as we may seem in thine eyes, we consider ourselves nevertheless much happier than thou in this, that we are very content with the little that we have; and believe also once for all, I pray, that thou deceivest thyself greatly if thou thinkest to persuade us that thy country is better than ours. For if France, as thou sayest, is a little terrestrial paradise, art thou sensible to leave it? And why abandon wives, children, relatives, and friends? Why risk thy life and thy property every year, and why venture thyself with such risk, in any season whatsoever, to the storms and tempests of the sea in order to come to a strange and barbarous country which thou considerest the poorest and least fortunate of the world? Besides, since we are wholly convinced of the contrary, we scarcely take the trouble to go to France, because we fear, with good reason, lest we find little satisfaction there, seeing, in our own experience, that those who are natives thereof leave it every year in order to enrich themselves on our shores. We believe, further, that you are also incomparably poorer than we, and that you are only simple journeymen, valets, servants, and slaves, all masters and grand captains though you may appear, seeing that you glory in our old rags and in our miserable suits of beaver which can no longer be of use to us, and that you find among us, in the fishery for cod which you make in these parts, the wherewithal to comfort your misery and the poverty which oppresses you. As to us, we find all our riches and all our conveniences among ourselves, without trouble and without exposing our lives to the dangers in which you find yourselves constantly through your long voyages. And, whilst feeling compassion for you in the sweetness of our repose, we wonder at the anxieties and cares which you give yourselves night and day in order to load your ship. We see also that all your people live as a rule, only upon cod which you catch among us. It is everlastingly nothing but cod--cod in the morning, cod at midday, cod at evening, and always cod, until things come to such a pass that if you wish some good morsels, it is at our expense; and you are obliged to have recourse to the Indians, whom you despise so much, and to beg them to go a-hunting that you may be regaled. Now tell me this one little thing, if thous hast any sense: Which of these two is the wisest and happiest--he who labours without ceasing and only obtains, and that with great trouble, enough to live on, or he who rests in comfort and finds all that he needs in the pleasure of hunting and fishing? It is true", added he, "that we have not always had the use of bread and of wine which your France produces; but, in fact before the arrival of the French in these parts, did not the Gaspesians (Micmacs) live much longer than now? And if we have not any longer among us any of those old men of a hundred and thirty to forty years, it is only because we are gradually adopting your manner of living, for experience is making it very plain that those of us live longest who, despising your bread, your wine, your brandy, are content with their natural

good of beaver, or moose, of waterfowl, and fish, in accord with the custom of our ancestors and of all the Caspesian nation. Learn now, my brother, once for all, because I must open to thee my heart: there is no Indian who does not consider himself infinitely more happy and more powerful than the French." He finished his speech by the following last words, saying that and Indian could find his living anywhere, and that he could call himself the seigneur and the sovereign of his country, because he could reside there just as freely as it pleased him, with every kind of rights of hunting and fishing, without any anxiety, more content a thousand times in the woods and in his wigwam than if he were in palaces and at the tables of the greatest princes of the earth.

LETTER of LOUIS PAUL · 1841

To the Queen

Madam,

I am Paussamigh Pemmeenauweet, and am called by the White Man Louis enjamin Porminout.

I am the Chief of my People the Micmac Tribe of Indians in your Province of Nova Scotia and I was recognized and declared to be the Chief by our good Friend Sir John Cope Sherbrooke in the White Man's fashion Twenty-Five Years ago; I have yet the Paper which he gave me.

Sorry to hear that the King is dead. Am glad to hear that we have a good Queen whose Father I saw in this Country. He loved the Indians.

I cannot cross the great Lake to talk to you for my Canoe is too small, and I am old and weak. I cannot look upon you for my eyes cannot see so far. You cannot hear my voice across the Great Waters. I therefore send this Wampum and Paper talk to tell the Queen I am in trouble. My people are in trouble. I have seen upwards of a Thousand Moons. When I was young I had plenty: now I am old, poor and sickly too. My people are poor. No Hunting grounds - No Beaver - No Otter - no nothing. Indians poor - poor for ever. No Store - no Chest - no Clothes. All these Woods once ours. Our Fathers plodded them all. Now we cannot cut a Tree to warm our Wigwams in Winter unless the White Man pleases. The Micmacs now receive no presents, but one small Blanket for a whole family. The Governor is a good man but he cannot help us now. We look to you the Queen. The White Wampum tell that we hope in you. Pity your poor Indians in Nova Scotia.

White Man has taken all that was ours. He has plenty of everything here. But we are told that the White Man has sent to you for more. No wonder that I should speak for myself and my people.

The man that takes this talk over the great Water will tell you what we want to be done for us. Let us not perish. Your Indian Children love you, and will fight for you against all your enemies.

My Head and my Heart shall go to One above for you.

Paussamigh Pemmenauweet
Chief of the Micmac Tribe of
Indians in Nova Scotia

His mark X

This was signed in my presence,
as witness
Forever, Second Chief of the Micmacs
His mark

And in mine Francois, First Captain of
the Micmac Warriors
His Mark +

PETITION of the GRAND CHIEF · 1860

That from time immemorial, certain lands in Cape Breton have been in the possession of the Cape Breton Indians, and to these lands their claims have at all times, by the Provincial Government, been distinctly recognized, their limits marked out and clearly defined, and all applications to the Government hitherto, by white men, for any part of these lands, refused.

That as the Crown Lands in Cape Breton became closely settled, some white men took forcible possession of parts of those tracts of land on the Wagmatcook and at Whycocomagh, but on the complaint of the Indians, these men were from time to time warned by the Government to remove from off them, but in so inefficient a manner, that instead of removing, others were encouraged to settle on these lands also; and thus, for upwards of thirty years have unprincipled men continued to crown themselves on these lands, although warned off by the Government from time to time, until such futile warnings have become strength amongst them, a mere jest, and as such, are treated with such merited contempt that these lands are not virtually in possession of these intruders, who not only dare the Indians to meddle with them, but even the Government itself to drive them off.

That thus it has been utterly impossible for the rightful owners of these lands, (the Cape Breton Indians), to cultivate or improve them to any extent, or even more than nominally to occupy them for these many years past, as every such attempt has been met by a series of petty aggressions on the part of these intruders; who by nameless and numberless annoyances to the men and of insults in their absence to their women, have evinced their determinations to drive off the Indians if possible, from these lands, and thus to have them to themselves.

That intruders are thus taking forcible possession of these lands; several having only a few weeks ago wedged themselves in, and are now buying and selling them as freehold property.

That such lawless and unrestrained aggression and of inefficient and nominal protection have been, and still are the direct cause of indescribable suffering and misery to many of the Cape Breton Indians, - who deterred as said, by lawless violence from cultivating, or even to a great extent, from occupying their lands, and denied any redress of the injuries thus inflicted upon them; have been driven from their homes; the strong men to other Countries, and the aged and feeble to the wayside, there to perish of hunger and cold, while to the many earnest solicitations for redress of the grievous injuries that for the long period just names, have been, and continue to be heaped upon them, the apathy of utter neglect or the unfulfilled promise of redress has been all that Petitioners could obtain.

That instead of enforcing the supremacy of the laws and vindicating the authority of the Government by promptly removing and punishing these lawless invaders of the Indians' rights, Petitioners have learned with

surprise, that a Provincial Act has recently been passed, unconstitutional as unprecedented in the annals of modern British Legislation, not for the purpose of punishing these contemptuous men and reducing them to obedience, but for the purpose of giving to them those lands they have forcibly wrested from the Indians, and for the protection of which to the Indians, the faith of the Government has so repeatedly been pledged, and its promises of redress so often been given.

That to these violators of law and contemners of its authority, the present Commissioner of Crown Lands in Nova Scotia (Mr. Fairbanks), whose duty it is by law, to protect the rights of the Indians, has actually offered not only to receive from them, such proposals for a compromise of their misdeeds as they may deem just and reasonable, but has called upon them to submit such proposals for this compromise, as may avoid the necessity of legal proceedings to remove them from the possession of these lands, the inalienable right of the Indians, and from which the powers of the Government have hitherto failed to remove these lawless men.

That this extraordinary proposal of this Protector of the Indians' Rights, to deprive them of these rights by entering into a compromise with the violators of them, was made upwards, of four months before the Act above alluded to,was passed, and shows on his part a most unaccountable attempt to deprive the Indians of those very rights that he has been entrusted to defend.

That against such an Act, and against this compromised and all alienation of their lands, Petitioners do not most firmly, yet respectfully protest, as subversive of their rights as British subjects; and the Act, being one affecting private rights and passed "Without the consent expressly given of all parties in being, and capable of consent, that have the remotest interest in the matter"; as altogether unconstitutional; being expressly for the purpose summarily depriving certain British subjects of freehold rights claimed by them and thereby debarring them from the constitutional mode of vindicating these rights in the legally constituted tribunals of the Province.

That while to the white man, the right as a British subject to hold freehold property and to defend it from all aggressions, has been allowed in this Province. While this right has also been fully conceded, even to the sable zones of Africa; when even to the alien, whether of European or Asiatic or African or American descent, ample facilities have been provided for obtaining and defending freehold property: - to the Aborigines only of this Province has this right been denied - to them only has this right been constantly refused until their homes have been wrested from them by lawless rapacity and even their right to them assailed by unconstitutional legislation; while the very individual whose duty it is by law to protect these rights - by some unaccountable misapprehension of the trust reposed in him, and in order to avoid as he informs the trespassers on these lands, the necessity of legal proceedings to remove them, and to give them an opportunity of obtaining grants of them, has actually proposed to them a compromise of their illegal deeds and on such terms as they "May consider just and reasonable". And thus have those rights of the Indians that to every other class of British subjects have been so fully conceded, and so completely guaranteed, been allowed with impunity, to be invaded and then offered on their own terms to the invaders.

That under the misnamed protection of so very questionable a Protector of their freehold rights and other like so called protection, that has permitted these lands to be so long and with such perfect impunity invaded by lawless men, and then in obtaining for them, instead of punishment and removal, an unconstitutional act for the special purpose of confirming them in the position of that, which in defiance of all law, they have wrested from the Indians and forcibly retained; it can be no just cause for depriving the Indians of these lands, that they have on them, neither fields nor crops, nor even houses to dwell in, during the many years they have been subjected to so great an amount of outrage and of neglect and of consequent loss and suffering; all of which may justly be ascribed to the nominal protection that has so unfortunately been vouchsafed to them in lieu of those rights of British subjects that have so unaccountably and so injuriously been withheld.

LAND CLAIMS CORRESPONDENCE 1977-1980

In 1977 the Mikmaq communities of Nova Scotia made a formal application for land and compensation under Canada's 1973 land claims negotiation policy. The application and negotiations were administered through the Union of Nova Scotia Indians, which Canada had designated as the regional representative of the native peoples of that province. Although the documentation submitted was exhaustive--too much so to be included in this volume--the discussions quickly narrowed to a single question of law: whether the Crown had ever specifically authorized Canadian occupation of Mikmakik or the removal of Mikmaq people to "Indian reserves." When the Government of Canada could find no such authorization in the historical record, it resorted to the argument of fait accompli, i.e., what was done, must have been done lawfully. This foreclosed meaningful resolution of Mikmaq claims within Canada and led to Denny v. Canada.

This Appendix does not contain a complete record of the 1978-1980 negotiations, only those documents illustrative of the principal legal issues.

◆

June 23, 1977

Mr. Alex Denny,
President,
Union of Nova Scotia Indians,
P.O. Box 961,
124 Membertou Street,
Sydney, Nova Scotia.
B1P 6J4.

Alex:

I enjoyed meeting with you and the Nova Scotia Chiefs on April 25th, 1977, to receive the Nova Scotia Micmac Aboriginal Rights Position Paper which you presented to me. I am writing now to assure you that a thorough evaluation of your position paper is currently being conducted and that I will inform you of my position on your claims in due course.

I would like to reiterate some comments I made at your presentation regarding the claims review process. I have now referred your submission to the Office of Native Claims for examination and analysis. All the supporting documentation and evidence in your paper will be considered, as well as pertinent material the Office of Native Claims has found through its own research. All these facts and documentation will then be referred to the Department of Justice for their views which will be conveyed to me. I shall then evaluate all the available information in arriving at a decision as to whether or not there is a basis on which to enter into further discussions on or negotiation of your claims.

In the meantime, should you require any further information on the claims process, please do not hesitate to contact Mr. J. B. Hartley, Special Claims Representative in the Office of Native Claims.

Yours sincerely,

Warren Allmand

◆

October 2, 1978

Mr. Alexander Denny,
President
Union of Nova Scotia Indians
P.O. Box 961
Sydney, Nova Scotia
B1P 6J4

Dear Mr. Denny:

Our analysis of your claim has been completed and the legal opinion which we have received from the Department of Justice has been reviewed.

As you know, the Government's 1973 policy on comprehensive claims provides for the negotiation of those claims where Indian title has not been extinguished by treaty or superceded by law. We have concluded, after careful study of your claim, that Indian title in Nova Scotia has effectively been superceded by law, thus placing your claim outside the terms of this policy. In Nova Scotia, the actions of successive pre-Confederation and post-Confederation governments in opening up the lands of the Province to settlement, in granting such lands by letters patent, in granting various rights to third parties, and in setting apart other lands as Indian reserves, have had the effect of superceding Indian title in all areas other than reserve lands.

Your document, however, refers to some specific land-related issues which can be dealt with separately. This would be done with the view to removing the anomalies and inequities that may currently exist.

In addition, when presenting your claim last April and in subsequent letters you indicated that your primary concern was with the need to improve the social and economic circumstances of the Mic Macs of Nova Scotia. Indeed this concern is reflected in much of what is contained in the body of your claim.

I share that concern and believe we should be devising jointly some firm steps to respond to it. These steps might involve the modifications of old and the development of new policies and programs to address the needs that exist. New joint decision-making mechanisms may need to be established.

Furthermore, it may be advantageous to involve the province, and other federal departments as appropriate, in some matters of common concern.

There are a variety of arrangements to accomplish these aims that are worth looking at. I am anxious to see these examined soon and a strategy developed to deal with the aspirations of the Mic Mac people. To this end I would suggest that a meeting be convened between UNSI, an officer from our Policy, Research, and Evaluation Group at Headquarters, and Mr. Cecil Thompson, Director General of DIAND for the Atlantic Region.

I look forward to your response.

J. Hugh Faulkner

◆

October 26, 1978

Minister Hugh Faulkner
Dept. of Indian Affairs
15th Floor, Les Terrasses
de la Chaudiere
10 Wellington Street Hull, Quebec K1A 0H4

Dear Minister Faulkner:

It is a shame that the Department feels that the aboriginal title of the Micmac Nation was extinguished by "superceding law." It makes one wonder if the federal government understands the difference between intra vires law and the general orders of gangsters. It also makes the Union wonder if the federal government understands the distinction between being obliged to do something, and being obligated to do it. The laws which you determine superceded our aboriginal title are of questionable validity, as the Micmacs thought they were passed for the sole purpose of protecting land title and treaty rights for the Crown. They had no authority to abrogate regal obligations or to modify them without a public treaty with the Indians.

The federal government can't show us one law whose sole purpose was to take our land, thus the land should still be ours. But we know, and you know, we do not have the land we started with. We would like to pursue the justice and validity of our perception of aboriginal title into the courts of Canada so that it can be siad that the Department was fair and allowed us our day in court. That is the civilized way of which modern society handles these cases. Hence, we ask the Department for funds to pursue our rights and conviction to the courts of law of Canada to resolve these issues for once and all for our children and heirs.

We are interested in seeking other avenues for social-economic development from the Department while we pursue the answers to our ancestor's questions about the fairness and justice of those "superceding law" which took away our economy and culture. I feel that both process can go on at the same time, because although different in method they both seek to revitalize the pride and economy of the Micmacs. We desire to accept your offer for a new joint-decision mechanisms, and desire that you quickly establish the procedures.

Aboriginal title, however, is mandated from our fore-fathers. We can't end our quest, because of administrative decisions by the federal government as only courts of law can settle our issues. Our contemporary mandate from the Indian people of Nova Scotia is to determine the truth and validity of our loss of land and to continue to seek the truth of the past. We would like more reasoned elaboration on your rejection of our aboriginal title claim, for our future generations, if you can provide it to the Union. If not, we would like to know why we are not entitled to disclosure of the reasoning of your decision, but just the conclusions.

As always, yours in recognition
of Aboriginal Title,

Alex Denny
President
Union of Nova Scotia Indians

◆

May 22, 1979

Mr. Stanley Johnson
President
Union of Nova Scotia Indians
P.O. Box 961
Sydney, Nova Scotia
B1P 6J4

Dear Mr. Johnson:

On February 20 your predecessor, Mr. Alex Denny, wrote to the Minister putting forward a number of observations on the Union's land claim and the Government's policy on such claims. As well, he repeated the request for the Government to fund legal action that the Union might take in support of the claim. During the current federal election, the Minister has requested that, to the extent possible, I deal with correspondence on his behalf.

On May 7 I wrote to Mr. Denny in response to his request for funds for legal advice on the claim and with respect to the establishment of a process for the delivery of services, and said that I would respond separately to the point on the land claim.

The Minister, in his letter of October 2, 1978 to Mr. Denny, had stated the conclusion that the Indian interest in lands, outside of the reserves, in Nova Scotia has been superceded by law. Under the terms of the Government's policy on native land claims, that conclusion placed the Union's claim in one of two categories in which the Government is not prepared to accept claims for negotiation. The two categories of claims which the Government is not prepared to accept for negotiation were spelled out in the August 8, 1973 statement of the Government's policy on native land claims, specifically, on page 3, and I am enclosing a copy of that statement for your use.

As I understand the position put forward in Mr. Denny's letter, it is that any title that the Micmac people may have in lands traditionally used can only be ceded by treaty. While that is one means by which interests in lands traditionally used and occuped can be ended, it is the Government's position that such interests may also be legally terminated by other means. More specifically, native title may be superceded by the legal exercise of powers by a provincial or federal government in a manner adverse to continuation of the traditional use and occupancy of lands by native people.

Mr. Denny put forward in his letter the view that the Royal Proclamation of 1763 applied to Nova Scotia. Regardless of whether the Royal Proclamation of 1763 did or did not have application in Nova Scotia, it is the Government's position that any Micmac title to lands in Nova Scotia outside of the reserves has been superseded by law subsequent to 1763.

The Minister recognizes the importance of the land claim to the Union. It is in recognition of that importance that I thought it desirable to explain the Government's position to you on your election as president of the Union. I also wish to add my congratulations and best wishes to you on assuming that important post. It was partly in recognition of the importance of the claim to the Union that the Minister previously suggested that discussions be opened between the Union and the Department on how many of the needs and aspirations of your membership, put forward in the claim submission, can be fulfilled outside the land claim forum. In addition, you may feel it is desirable to obtain a clearer understanding of the Government's position on the land claim in a meeting with the Office of Native Claims, at which it might be useful to have our respective legal advisers persent. If you wish to hold such a meeting, I would suggest you contact Mr. G. N. Faulkner, Executive Director, Office of Native Claims, to make the arrangements.

Yours sincerely,

Arthur Kroeger

◆

August 27, 1979

Mr. Neil Faulkner
Director
Office of Native Claims
Indian & Inuit Affairs
Hull, Quebec K1A 0H4

Dear Mr. Faulkner:

We wish to thank you for the opportunity to meet August 9 with Mr. Vansummerfelt and Karen Allen regarding the status of our comprehensive claim; although we were disappointed by your unexpected absence.

We also were disappointed by Mr. Vansummerfelt's attempt to explain his Department's recommendation that Nova Scotia claims have been "superceded by law." As best as we could determine, the recommendation was based exclusively on a cursory reading of the majority opinion in R. v. Issaac, in which (in dictum) the Nova Scotia Supreme Court opined that Mi'kmaq land rights "may" have been lawfully extinguished by colonial Nova Scotia, but the Court could not discover where. Apparently, the Department of Justice stopped there, failing to research any treaties, history, or Nova Scotia colonial legislation to substantiate or reject the Supreme Court's hypothesis.

In light of the years of research we have devoted to this problem, we cannot understand how the Government responsibly can evaluate our position so summarily and superficially.

We believe we sent Mr. Vansummerfelt back with a more comprehensive explanation of our position; and he has given us to understand that he will reconsider the Department of Justice's recommendation and meet with us again.

We appreciate his personal attention, but we must wonder whether his Department is protecting the Government's interest - or ours - by treating this multi-million-dollar claim so casually. If our claim is meritorious -as we are convinced it is - the Government's failure to realize this and to settle, will, if the matter goes to the Courts, result in a far greater loss financially, if not as well, in the esteem of the Indian people.

Yours in recognition
of Aboriginal Title,

Albert Marshall
1st. Vice-president

cc: Senator Robert Muir
Mr. Flynn, Minister of Justice

◆

September 18th, 1979

Mr. Albert Marshall
First Vice-President
Union of Nova Scotia Indians
P.O. Box 961
SYDNEY, Nova Scotia
B1P 6J4

Dear Mr. Marshall:

Your letter of August 27, 1979, concerning your Comprehensive Claim and directed to Mr. Neil Faulkner, a copy of which was sent to the Minister of Justice, has been brought to my attention.

n order that there be no misunderstanding let me say that the views expressed o the Department of Indian Affairs and Northern Development concerning the land laim of the Union of Nova Scotia Indians addressed the content of that claim as was presented to the then Minister of that Department on April 25, 1977, and as preceded by a careful study of that claim. That claim asserts the ontinuing existence of aboriginal title throughout Nova Scotia.

riefly, the position is that under the St. Catherines Milling Case Indian title s a personal and usufructury right, dependent upon the good-will of the overeign, and which may be extinguished by surrender or otherwise, whereupon he Crown's underlying title becomes absolute. In the Calder Case Judson, J. cknowledged the right of the Sovereign to extinguish that title "whether it be one by treaty, by the sword, by purchase, by the exercise of complete dominion dverse to the right of occupancy or otherwise". Prerogative acts of the overeign authority such as setting apart reserves and opening the rest of the and for homestead grants and settlement can bring about extinguishment of ndian title. These views were adopted by MacKeigan, C.J.N.S., in the Isaac Case ho found that lands reserved as hunting grounds had gradually been restricted y white occupation under Crown grant which extinguished the Indian right in the and. In Nova Scotia, in fact, there has been, over the years, a consistent attern of exercising complete dominion over Crown lands adverse to the right of ccupancy by opening the lands for settlement and alienating and disposing of hose lands in a manner inconsistent with the continuation of any aboriginal itle and this has brought about the extinguishment of any Indian title that may ave existed.

t the meeting on August 9 your representatives sought to advance verbally, for he first time, new material and argument in support of your claim, at which ime you were asked to provide a written account of this additional material.

regret if there was a misunderstanding that your claim would be reviewed on he basis of the meeting of August 9.

ours very truly,

. M. Ollivier, Q.C.
ssociate Deputy Minister

◆

11 August 1980

hief Stanley Johnson
nion of Nova Scotia Indians
.O. Box 961
YDNEY, Nova Scotia
1P 6J4

ar Chief Johnson:

his is further to your request made in early May at the All Chiefs' Conference nd again at my subsequent meeting with the Union of Nova Scotia Indians. You equested that the government indicate what specific laws were relied upon in rriving at the decision that the traditional rights and interests asserted by cmacs' Aboriginal Rights claim have been superceded by law.

In reviewing the matter, I find that there is no single piece of legislation explicitly extinguishing native title in Nova Scotia. Rather, this occurred through the generally uncontested and continuous exercise of power by the colonial governments to grant lands within their respective domains subject to such limitations as were imposed upon them from time to time. There is also the undisputed fact that settlement did take place. In Nova Scotia, various pieces of pre-Confederation legislation provided for the opening of public lands for settlement, for the making of surveys, the sale or lease of the land itself or the timber, quarries, and mines thereon and for the reservation of other lands for Indians. Some of these are reproduced in the "Consolidation of Indian Legislation, Volume 3" prepared under contract for this Department and distributed to Indian Associations, including UNSI in 1979. To be noted particularly are "An Act Relative to the Crown Land Department" S.N.S. 1851 Chapter 4, "Of the Crown Lands" R.S.N.S. 1851 Chapter 28, "An Act Concerning Indian Reserves" S.N.S. 1859 Chapter 14, "Of the Crown Lands" S.N.S. 1859 Chapter 28 and "Of the Crown Lands" R.S.N.S. 1864 Chapter 26. There are others which can be readily identified in the above-noted volume. Of course, the process of selling, leasing, alienating and setting aside Crown lands for various purposes has continued since Confederation and is dealt with, at least in part, by the current Provincial Lands and Forests Act.

The basis of the legal opinion of the Department of Justice is that opening Crown lands for settlement, alienating it or otherwise dealing with it in a way inconsistent with the continuation of aboriginal title, and the setting aside of reserves for Indians operates to extinguish any aboriginal title that may have existed. This is in line with the view expressed by Mr. Justice Judson in the Calder case, and applying it to Nova Scotia, Chief Justice Mackeigan, in the Issac case, noted that "only a few thousand widely scattered acres have never been granted, placed under mining or timber licences or leases, set aside as game preserves or parks, or occupied prescriptively". He found that as a result, Indian reserves may be the only place in which native or aboriginal title may still subsist.

I trust that this information will be helpful to you.

Yours sincerely,

John C. Munro