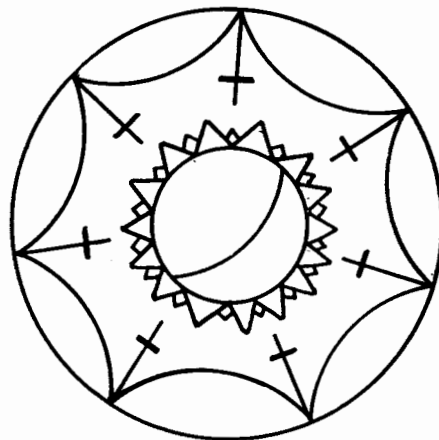


SANTEIOI MAOAIOMI MIKMAOEI

COMMUNICATION
under the
OPTIONAL PROTOCOL
regarding the right to
SELF-DETERMINATION



COMMUNICATION OF THE SANTE' MAWI'OMI wjit MIKMAQ
UNDER THE OPTIONAL PROTOCOL TO THE
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Me taleyn:

1. Since before human memory, Mikmaqs have been a separate and distinct people enjoying their own written language, and customarily living by hunting, fishing, and farming. Having learned the art of sailing centuries before the arrival of Europeans, we explored the North American seacoast from the Gulf of Mexico and Florida to the frozen ocean beyond Newfoundland. Until weakened by Europeans' invasions, colonisation and diseases, we were caretakers of a country of 13 million hectares and as many as 100,000 persons (Map).

2. Mikmakik was long recognized as an independent, federal state through the negotiation of treaties and alliances with its national council, the Sante' Mawi'omi or Grand Council. In addition to commercial and defensive arrangements with France and the United Kingdom extending over more than two centuries, Mikmakik established Catholicism under concordat with the Holy See, and became the first state to recognize the independence of the United States of America under a military-assistance treaty of 1776.

3. For more than a hundred years, Mikmaq territorial and political rights have been in dispute with the Government of Canada, which has claimed an absolute sovereignty over Mikmakik by virtue of its independence, since 1867, from our common parent the United Kingdom. In Canada's view, unambiguously argued in its 21 July 1981 and 10 June 1982 replies under Rule 91 to our previous communication (Denny v. Canada, R.19/78), the United Kingdom gave Canada plenary legislative authority over the race of "Indians" in North America. In our view, Mikmakik was never part of Europe's American colonies; enjoyed, by treaty, the status of a separate and distinct commonwealth under the British Crown; and could not lose its right to self-determination as

a result of dealings between Canada and the Crown to which we were never parties.

4. Recognizing past injustices, Canada in 1982 amended its constitution to "recognize and affirm" the "existing aboriginal and treaty rights" of indigenous peoples (Enclosure G). Under the constitution the specification of these "existing" rights must be negotiated with indigenous representatives "invited" for this purpose by the Prime Minister of Canada. Our request to participate has been denied, on the extraordinary grounds that direct discussions with Mikmaqs are not "practical," and other "Indians" can negotiate our future political status for us (Enclosure H). This racist position, viz. that any members of the "Indian" race can exercise the Mikmaq people's right to self-determination, is the basis of this communication.

Facts and circumstances

5. In the beginning Niskam, the Creator, brought down Nakuset, the sun, from the Milky Way to light the earth. Nakuset's rays created all living things, which at first shared a common language and plan. People across the Great Sea displeased the Creator, however, and the first world was destroyed by earthquakes and floods. When the land finally dried, people could no longer understand one another. The people of Mikmakik, which Europeans later called Acadia, Nova Scotia or New Brunsvick, discovered themselves joined together by a single tongue and spirit. This was thousands of years ago.

6. One time during a terrible famine Nakuset's spirit descended on an old man. In the darkness of sleep, this old man was approached by a young man bearing three crosses. One of the crosses, the young man said, would protect the Mikmaqs in times of conflict and hunger. The second would safeguard them through long sea voyages and among strange peoples. The third would give them wisdom in council, and in anticipating the future. When the old man awoke, he drew these three crosses on birchbark and explained them to all the people.

7. The famine ended, but Mikmakik was invaded from the west. As Europeans reckon time, this was six hundred years ago. Led by the

great Kaktugu under the symbol of the three crosses, Mikmaq troops reclaimed the western provinces and forced a treaty of peace with the Haudenosaunee, the Six Nations of Iroquois.

8. With peace restored, the nation reorganized itself under a new constitution, proclaimed at Miramichi in what is now known as New Brunswick. All Mikmakik was divided into seven great sakamowti or districts, and each was divided in turn among many clans (wikamow), each with sakamow (chiefs) and sa'ya to guide them. Sakamow and the leaders of the militia (keptin or "captains") all together formed one national council, the Sante' Mawi'omi ("holy gathering," or grand council) to advise the people and defend the country. The ancient symbol of this union, which still may be seen carved in the rocks around Kejimikujik Lake (Kespokoitik sakamowti), is a ring of seven hills (the sakamowti) and seven crosses (the seven sakamow or chiefs), and in the middle are the sun (Nakuset) and the moon, who together represent Niskam, the Creator.

9. The officers of the grand council are three: the Kjisakamow (grand chief) is the ceremonial head-of-state, the Kjikeptin (grand captain) is the executive of the council, and the Putus (wisdom) is keeper of the constitution and rememberer of treaties. From early times Mikmakik has formed alliances (lakamanen) with other nations based on the idea of national kinship, and, like the Haudenosaunee, recorded these relationships symbolically in woven belts of shell beads known to Europeans as wampum, or in Mikmaq ulnapskok.

10. One night about five centuries ago a Mikmaq woman dreamed of a small island floating towards Mikmakik. At first the island seemed to be covered with white rabbit skins, but as it drew closer she saw it was covered with bare trees and black bears were sitting in the branches. She told this dream to the elders but none could interpret it. Many years later, a sailing-ship full of black-bearded Europeans landed in Mikmakik. They planted a cross of wood on the shore, and when Mikmaqs saw that they, too, belonged to the cross, they welcomed them.

11. Those first Europeans may have been in the company of John Cabot, who explored Newfoundland, Labrador and possibly the Gaspé (Kespikiok sakamowti) region of Mikmakik in 1498. By 1504, many

Basque fishermen were summering among us in Cape Breton (Unamaki sakamowti), and Jacques Cartier stopped to trade with us in Baie des Chaleurs (Kespikiok) in 1534. The French seigneur de Monts left some men among us at Port Royal in 1605, and from them we began to understand more of the Catholic religion. Some of us also returned to France to see the strangers' country with their own eyes. The Europeans in those days called us Souriquois, a word they learned from our northern neighbours in Labrador, the Innu (Montagnais).

12. On 24 June 1610, our Kjisakamow Membertou was baptized as a Catholic, and a covenant was made to protect the priests of the Church, and the French who brought the priests among us. A great wampum belt two metres in length records this concordat (Enclosure A), and has ever since then been kept at the Collegio di Propaganda Fide in Rome. Its meaning is plain. On its left are the symbols of Catholicism--the crossed keys of the Holy See, a church, and a line of text from the Gospels written in our own language. On the right are symbols of the power of the grand council--crossed lances, an armed keptin, a pipe and arrow, and seven hills representing the seven sakamowti. At centre, a priest and sakamow hold a cross, and in the hand of the sakamow is the holy book. Over the course of the 17th century the whole Mikmaq people became Catholics and took St. Ann as their patron.

13. Although we loved the French for living peacefully and usefully among us, learned their language and shared their religion, we did not wish to become part of their country. They found this strange. "Ils s'estiment plus vaillans, que nous," one of our first priests, l'Abbe Biard, complained of us, "meilleurs que nous, plus ingenieux que nous, et, chose difficile a croire, plus riches que nous!" But one of our Gaspesian sa'ya spoke well in 1690, when he told the French visitors, "if France, as thou sayest, is a little terrestrial paradise, art thou sensible to leave it?"

Why risk thy life and thy property every year 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.

14. In 1689 war was declared between Great Britain and France, and the following year the French at Port Royal in Mikmakik surrendered to British forces. Neither Mikmakik nor France's other indigenous allies recognized British sovereignty, however, and we continued the war until 1699. We believed it was a matter of religious as well as political freedom, for such was our ignorance of Europeans that we believed that the English were pagans. It was many years later, in 1761, that Kjisakamow Toma Denny told this to the British. "I long doubted whether you was of this [Christian] Faith," he said, "I declare moreover that I did not believe you was baptized; but at present I know you much better than I did formerly."

15. By the Treaty of Utrecht (1713), France ceded all of Acadia except Cape Breton to Britain, temporarily settling the two powers' quarrel in North America. By Article XV of this treaty (Enclosure G) Britain promised not to disturb any of the indigenous allies of France. Mikmakik retained its alliance with France, however, and continued to destroy British settlements and ships in the Gulf of Maine. Much of the war was fought at sea, our people having learned to sail European ships as early as 1606. In 1722 alone, Mikmakik took 22 British ships.

16. In 1719, while hostilities continued, Great Britain appointed a governor for Acadia, henceforth to be known as "Nova Scotia," and instructed him to engage our "friendship and good correspondence" by treaty. He was governor only in name, however, for there were no British settlements in our country, and he kept his office at Boston a thousand kilometres away. Never having been subjects of France, we did not consider ourselves bound by the Treaty of Utrecht, nor that it had passed dominion over any of our lands.

17. Mikmakik and its southern indigenous allies, the Penobscots, Passamaquoddies and Malecites made their peace with the British at Boston in 1725. While they accepted nominal British sovereignty, they refused to surrender any of their lands and agreed merely not to disturb existing British settlements (Enclosure B). Indeed, we continued to meet annually with France on Ile St. Jean (now Prince Edward Island, Epikoitik sakamowti) to renew our engagements with

that nation, and France retained its naval base at Louisburg in our Unamaki sakamowti.

18. The war resumed in 1743, ending with the defeat of the French fortress at Louisburg two years later. In 1749 the Crown appointed Lord Cornwallis to govern Nova Scotia and directed him to make peace with us. That same year, a royal commission of inquiry into the legal rights of the indigenous nations of North America concluded that "[t]he Indians, though living amongst the king's subjects in these countries, are a separate and distinct people from them, they are treated as such, they have a policy of their own, [and] they make peace and war with any nations of Indians when they think fit, without control from the English."

19. Mikmakik continued to deny British authority, and the grand chief declared war again on 24 September 1749 in these terms:

[C]ette terre dont tu veux presentement te rendre maître absolu, cette terre m'appartient, j'en suis certes sorti comme l'herbe, c'est le propre lieu de ma naissance et de ma résidence, c'est ma terre a moy sauvage; oui, je le jure, c'est Dieu qui me l'a donnée pur être mon pais a perpetuité.

20. A definitive treaty of peace was concluded at Halifax in 1752 (Enclosure C). Grand Chief Cope renewed the Treaty of Boston and promised to seek accessions from each Mikmaq sakamowti and Mikmaqs' allied nations. While the Halifax Treaty acknowledges Mikmaqs as British subjects, it also confirms their separate national identity and rights of hunting, fishing and trading throughout Nova Scotia. Mikmaqs again agreed not to "molest" existing British settlements, but did not consent to any new ones. The symbol of this treaty, in our traditions, is an eight-pointed star representing the original seven sakamowti and the British Crown, with the Union Jack at its centre. Despite another outbreak of hostilities in 1755 over Great Britain's expulsion of our French-Acadian neighbours, the Treaty of Halifax was restored and renewed by the grand council in 1761.

21. Similar arrangements were negotiated with the other indigenous nations and peoples of the Atlantic regions of North America so as to consolidate a single "covenant chain" or confederation with the British Crown. This cycle of alliances was described eloquently in 1775 by Sir William Johnson, Britain's superintendent for indigenous

affairs, as a "Silver Chain fix't to the immovable Mountains," and in 1793 Lord Simcoe explained that these treaties

prove that no King of Great Britain ever claimed absolute power or sovereignty over any of your lands or territories that were not fairly sold or bestowed by your Ancestors at Public Treaties. They will prove that your natural Independence has ever been preserved by your predecessors, and will establish that the rights resulting from such independence have been reciprocally and constantly acknowledge in the Treaties between the Kings of France formerly possessors of parts of this continent, and the Crown of Great Britain.

The meaning of this was always clear to us: a confederation of many peoples under one Crown, but each completely distinct like the links of a chain. In our language this is called elikawake. As recently as the 1840s, our sakamow and keptin were receiving commissions in the name of the Crown, the same as the governors of the provinces.

22. King George III implemented all of these treaties shortly after he ascended the throne in 1761, forbidding the governors of his American colonies to grant any land or permit any new settlement without first obtaining his approval, and ordered the removal of any settlements already made on Indian land, emphasizing the Crown's "determin[ation] to support and protect the said Indians in their just Rights and possessions and to keep inviolable the Treaties and Compacts which have been entered into with them." On 4 May 1762, these instructions were proclaimed in Nova Scotia by the British Governor, Jonathan Belcher (Enclosure D).

23. Belcher's Proclamation explicitly identified and reserved the territories still occupied and claimed by Mikmakik, including the sea-coasts of the Unamaki, Epikoitik, Piktokiok, Sikiniktiok and Gaspekiok sakamowti--altogether about two-thirds of the Province. British subjects were forbidden to "molest" us within these reserved territories, at least until further instructions were received from the Crown. No contrary Crown instructions ever were received, but the Provincial Government was repeatedly reminded to respect Mikmaq rights.

24. The intent of the Halifax Treaty appears more clearly from the record of discussions between Governor Belcher and Kjisakamow Toma Denny at Halifax in 1761, a month following Belcher's proclamation of the King's instructions. "The Laws will be like a great Hedge

about your Rights and properties," Belcher assured the Mikmaqs, "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 his reply, Kjisakamow Denny acknowledged his role as "friend and Ally, faithful and obedient to the Crown." In the Mikmaq view, the 1752 compact left Mikmakik and Britain two states sharing one Crown--a Crown pledged to preserve and defend Mikmaq rights against settlers as well as foreign enemies.

25. A definitive peace between Britain and France was achieved in the Treaty of Paris (10 February 1763). France ceded its remaining North American interests, and by Article II the Treaty of Utrecht, with its guarantee of indigenous rights, was renewed. This led the King to reiterate his 1761 instructions in an Imperial Proclamation of 1763 (Enclosure F) extending to all Indian nations "with whom we are connected, and who live under our protection," directing that Indian land be acquired only under treaties made with the Crown. This guarantee of all unceded Indian lands is now incorporated in the Canadian constitution, section 25 (Enclosure G).

26. Great Britain did not keep its promises. While France had come among us only to trade, Britain planned to colonize. There were no permanent French settlements in Mikmakik before 1605, and as late as 1686 the European population of Acadia was scarcely 900. Britain established its first major colony in our territory in 1749, and within two decades Europeans outnumbered us in our own country. France had been a guest which never asserted any control over our affairs; Britain at once seized our land. Britain also broke its promise to let us retain our own Catholic religion, expelling all of our priests, and forcing us to rely on the French at the island of St. Pierre near Newfoundland for religious books. Our own captains assumed the role of priests for many years after.

27. At the outbreak of hostilities between the American colonies and Great Britain, General George Washington, commander-in-chief of the revolutionary Army, wrote to the chiefs and captains of Mikmakik requesting military assistance, and on 17 July 1776 a mutual-defence treaty was concluded at Watertown (Enclosure E). Mikmakik thus became the first nation to acknowledge the independence of the United

States, proclaimed just two weeks earlier at Philadelphia. In the course of the negotiations the U.S. plenipotentiary, James Bowdoin, declared, "The United States now form a long and Strong Chain, and it is made longer and Stronger by our Brethren of the St. John's and Mickmac Tribes joining with us; and may Almighty God never suffer this Chain to be broken." The symbol of this treaty, on a silver medal engraved for the occasion, is a Mikmaq seated at the pillar of peace, with thirteen hands extended to the pillar for aid.

28. We restored relations with Great Britain after the American victory left us on the British side of the new border. A meeting of the grand council at Piktokiok in 1779 renewed the Halifax Treaty (Enclosure E), but the American war had left Britain with only one naval base in North America, Halifax. To strengthen its strategic position, Britain intensified its colonization of Mikmakik, trying to restrict and centralize us. British settlements disrupted our fisheries and farms, and by the 1790s our people were starving.

29. Great Britain and the United States continued to recognize the special status of Mikmakik and other allied indigenous nations for a number of years, however. The first commercial treaty between the two states, in 1794, guaranteed indigenous peoples' right to cross and trade along the international border, and the treaty concluding the final Anglo-American war in 1814 guaranteed the restoration of all the rights and privileges we previously enjoyed (Enclosure F).

30. Uncertain whether they could legally sell our land to settlers under the 1762 and 1763 proclamations, provincial officials issued trespassers "licenses of occupation" which were only good against other settlers. Some licenses were also issued to Mikmaq wigamow in the hope that we would be satisfied to be granted back a portion of our own country. British settlers "were accustomed to squatting where they pleased on crown lands and making their peace with the authorities sooner or, preferably, later," explains the Canadian historian L.F.S. Upton. "They saw no reason to treat Indian lands any differently and assumed the government would take an equally indulgent view of their presence on them." At least in dealing with provincial-level officials, Upton admits, "generally speaking, the squatters were right."

31. Other views prevailed for a time in London, however. After receiving an 1841 petition from Kjisakamow Peminawit, the Colonial Office reminded provincial officials that we had "an undeniable Claim to the Protection of the Government as British Subjects," and should be compensated for any losses. The province of Nova Scotia responded by authorizing the setting aside of 50,000 hectares of land as "Indian Reservations" for our use in 1842. Well aware that it had no authority to force us to abandon our existing settlements, the province told London it would "invite" our chiefs "to cooperate in the permanent resettlement and instruction of their people." We continued to live where we could, refusing to be confined to these places.

32. Only half the promised Reservation land was set aside, and by the 1850s even this small remainder of our country was being settled illegally by Europeans, leading to hunger, starvation, and a great decrease in our numbers. Instead of expelling the squatters as it was required by the 1762 and 1763 proclamations, and by its own 1842 legislation, the province in 1859 ordered the squatters to pay for the land they had taken. Few ever did. Our grand council wrote to the governor of Nova Scotia, challenging the constitutionality of "this extraordinary proposal to deprive them of th[eir] rights by entering into a compromise with the violators of them," but it was not heard. What wildlife we had was hunted out by settlers, our few farms were stolen, and we were reduced to living as itinerant woodcutters and peddlars of handicrafts.

33. We suffered similarly in Prince Edward Island and New Brunswick, which became separate provinces in 1769 and 1784, respectively. New Brunswick began selling lands we still reserved or occupied in 1844, while in Prince Edward Island only one small island was left for our use in 1838. None of these actions was authorized by Imperial legislation as required by the proclamation of 7 October 1763. "Colonial governments affected the Micmacs differently in matters of policy, but the people themselves retained their identity regardless of political boundaries," professor Upton has concluded. "One people, albeit under three jurisdictions, remained one people."

34. Throughout the years Mikmaqs "retained their tribal authority, with its structure of chiefs and captains chosen by election." We retained our own language and, in the face of an overwhelmingly Protestant settler majority, our Catholic religion, continuing to meet annually as a whole people on St. Ann's day (26 July) at Potoloteq (Chapel Island on Cape Breton). On the whole, we continued to live in our own communities, although their number decreased as our land was seized by settlers or sold by government officials.

35. The British North America Act, 1867, united all of Britain's North American provinces into a single federal government, Canada, and entrusted this new government with responsibility for "Indians, and land reserved for the Indians." Canada has used this authority not to protect us from further encroachments, but to further reduce our settlements as part of a "centralization" programme from 1941 to 1953, and in 1960 to order us divided into twelve separate "Indian bands" instead of one nation and people (P.C. 1960-261). With its approval of Canada's Constitution Act, 1982, the United Kingdom now considers it has transferred all of its remaining obligations under our treaties to the government of Canada.

36. Sections 25 and 35 of the Constitution Act recognize, at long last, our rights as an "aboriginal people" under the Halifax Treaty and the proclamations implementing it, but only to the extent they still "existed" in 1982 (Enclosure G). The specification of rights entrenched by the Act was left, by section 37(2), to be negotiated with "representatives of those [aboriginal] peoples" at meetings of Canada's Prime Minister and Provincial Premiers. Such meetings were held in 1984 and 1985, and the final meeting is to be held in March 1986. Mikmaq representatives have not been invited to participate, and a direct request to participate has been denied (Enclosure H). Canada invoked sections 35 and 37 of the Constitution Act in reply to our previous communication--and now ironically refuses to allow us the benefit of these provisions.

Applicable law

37. From all of the foregoing it clearly appears that the Mikmaqs always were, and continue to be a separate and distinct people, and were long recognized as such, and as a state capable of engaging in international relations. Mikmaqs' right to self-determination was never formally surrendered; on the contrary, Mikmakik must still be considered a non-self-governing territory within the meaning of the Charter of the United Nations.

38. Article 1(2) of the Charter, Article 1(1) of the International Covenant on Civil and Political Rights, and (among others) General Assembly Resolutions 1514(XV) of 14 December 1960 and 2625(XXV) of 24 October 1970, guarantee all peoples' right to self-determination, i.e., their right to "freely determine their political status and freely pursue their economic, social and cultural development." At a minimum this includes the choice of independence, some degree of association or federation with an existing state, or integration with an existing state, General Assembly Resolution 1541(XV) of 15 December 1960.

39. Changes in the political status of a non-self-governing territory must be based on the "freely expressed wishes of the people involved," General Assembly Resolutions 1541(XV) and 2525(XXV). The General Assembly has generally been satisfied with multiple-option plebiscites as in the cases of Togoland, British Cameroons, Ruanda, Western Samoa, Spanish Sahara and Alaska, and has refused to recognize changes, short of full independence, unless United Nations observation was permitted, as in the cases of French Somaliland, Antigua, Grenada and St. Kitts. The administering state must not try to influence the process, other than assuring that the people are "acting with full knowledge" of their options, General Assembly Resolution 1541(XV), Principle IX.

40. General Assembly Resolution 1541(XV), Principle IV, defines as a non-self-governing territory anyplace that is "geographically separate and distinct ethnically and/or culturally from the country administering it," and which is subject to "elements of an administrative, political, juridical, economic or historical nature which

arbitrarily place [it] in a position or status of subordination." Professor Dinstein interprets this as "an ethnic group linked by a common history and the will to live together and continue common traditions," carefully including groups partly dispersed by the aggression of the colonizer. It bears repeating that Canada refers to the indigenous nations of North America as "peoples" in sections 25, 35 and 37 of its Constitution Act, 1982.

41. Self-determination is not available to disrupt the national unity and territorial integrity of 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," General Assembly Resolution 2625(XXV). In other words, states which have respected their constituent peoples' right to self-determination presumably have evolved genuinely representative forms of government.

42. The reverse is not also true, however: a state that allows everyone to vote has not necessarily respected their right to self-determination, nor does it necessarily represent them all equally. A small people would not likely choose freely to integrate itself with a very large state, precisely because it would have no real influence on national-level democratic processes. They would more likely insist upon some measure of local autonomy. Hence the fact that a small people has in fact been absorbed by a large state, and enjoys the right to vote, scarcely settles whether they chose this status voluntarily.

43. In his report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Special Rapporteur, H. Gros Espiell, stressed that

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 principles of self-determination, the subject people or peoples are entitled to exercise, with all the consequences thereof, their right to self-determination.

"The Right to Self-Determination: Implementation of United Nations Resolutions," U.N. Doc. E/CN.4/Sub.2/405/Rev.1 (1980), ¶90. If a

culturally-distinct territory was, in actual fact, annexed without its consent, its geographical incorporation within the boundaries of another state is no bar to the exercise of self-determination.

44. It is likewise important to distinguish self-determination from the right to popular participation found in Article 25 of the Covenant. Self-determination is a people's choice of a state and a framework of government, and for this reason has been described as "an essential condition or prerequisite, although not necessarily excluding other conditions, for the genuine existence of the other human rights and freedoms" enumerated in the Covenant, U.N. Doc. E/CN.4/Sub.2/405/Rev.1, ¶59. Popular participation is the right of individuals, subsequent to the exercise of self-determination, to participate freely and effectively in the state and form of government chosen. Study by the Secretary-General, "Popular Participation in Its Various Forms as an Important Factor in the Full Realization of Human Rights," U.N. Doc. E/CN.4/1985/10, ¶¶62-72.

45. Self-determination is a progressive norm not restricted by the principle of inter-temporal law, and thus applies to contemporary manifestations of political arrangements that arose in pre-Charter times. Namibia Advisory Opinion, 1971 I.C.J. Reports, p. 16, at 31, and Western Sahara Advisory Opinion, 1975 I.C.J. Reports, p. 12, at 32-33, 110, 121-122. A contemporary state therefore cannot shield "a systematic denial within its territory of certain civil and political rights" behind an appeal to historical circumstances, as professor Fawcett explains in relation to United Nations resolutions on the former racist regime in Rhodesia.

45. Indigenous populations have been described as "those which, having a historical continuity with pre-invasion and pre-colonial societies that developed in their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them," U.N.Doc.E/CN.4/Sub.2/AC.4/1983/CRP.2, also Article 1(1)(b) of International Labour Organisation Convention 107. Thus defined, indigenous populations are non-self-governing peoples in countries where colonists became a majority, as opposed to the situation in most of Africa and Asia where an indigenous majority survived.

46. In his report to the Sub-Commission, the Special Rapporteur on indigenous populations, J. Martinez Cobo, emphasized their right to self-determination, noting that while this did "not necessarily include the right to secede from the State in which they live," did comprehend "the exercise of free choice" among "various forms of autonomy."

It must be recognized that indigenous populations have their own identity rooted in historical factors which outweigh the phenomena of mere solidarity in the face of discrimination and exploitation, and that, by virtue of their very existence, they have a natural and original right to live freely on their own lands.

"Study of the Problem of Discrimination Against Indigenous Populations," U.N. Doc. E/CN.4/Sub.2/1983/21/Add.8, ¶¶578-581.

46. In so far as section 37 of the Constitution Act leaves to a plenary conference of Canadian ministers and invited "Indians" the specification of aboriginal peoples' civil and political rights, it purports to give non-Mikmaqs authority to exercise Mikmaqs' right to self-determination on their behalf. If, as proposed by a House of Commons Special Committee on Indian Self-Government in 1983 and discussed at the 1985 conference, the result will be a constitutional amendment establishing a "third order of government" within Canada to secure limited autonomy for aboriginal peoples, Mikmaqs have an undeniable and inalienable right to be consulted directly.

Competence and admissibility

47. This matter arises under Article 1(1) of the International Covenant on Civil and Political Rights. Canada is a State Party to the Covenant and to its Optional Protocol, which provides, inter alia, that the Human Rights Committee is competent "to receive and consider communications from individuals who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant."

48. The authors are members of the traditional national council of Mikmakik, and their interest in this matter is twofold: as victims

themselves, and as trustees for the welfare and rights of the people as a whole. As explained by the Special Rapporteur, H. Gros-Espiell, the right to self-determination is both individual and collective in nature.

[I]t is important likewise to try to conceptualize the right to self-determination as a right of the individual. The Commission on Human Rights has repeatedly invoked it as such, without giving a precise reason for that conception and without distinguishing self-determination as a right of the individual from self-determination as a condition or prerequisite for the effective exercise of the other rights and freedoms.

"Self-Determination," U.N. Doc. E/CN.4/Sub.2/405/Rev.1, ¶58.

49. Participation in the negotiation of indigenous peoples' political status is entrusted by the Constitution Act to the discretion of the Prime Minister of Canada, and Canadian law affords no means of challenging his decision other than by appealing to him personally. This we have done, unsuccessfully.

Remedies

50. We seek a declaration that the future political status of the Mikmaq people, in relation to Canada, must be based on the freely-expressed wishes of the Mikmaq people themselves, either through the consultative framework established by section 37 of the Constitution Act 1982, or through negotiations and/or plebiscites independently arranged for this purpose.

CERTIFICATION

In our personal capacity and as officers of the Sante' Mawi'omi wjit Mikmaq, we have authorized and directed the communication of the foregoing circumstances, and appointed Russel Barsh our agent and representative in the matter as further to his commission of 3 August 1983.

DONE the 30th day of January, 1986.

Na nike kespiatoksiek aq wikatieken kakayaq. Let us not perish.

Kjisakamow Donald Marshall: *Donald Marshall*

Kjikeptin Alexander Denny: *Alexander Denny*

Putus Simon Marshall: *Simon Marshall*

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NOTES

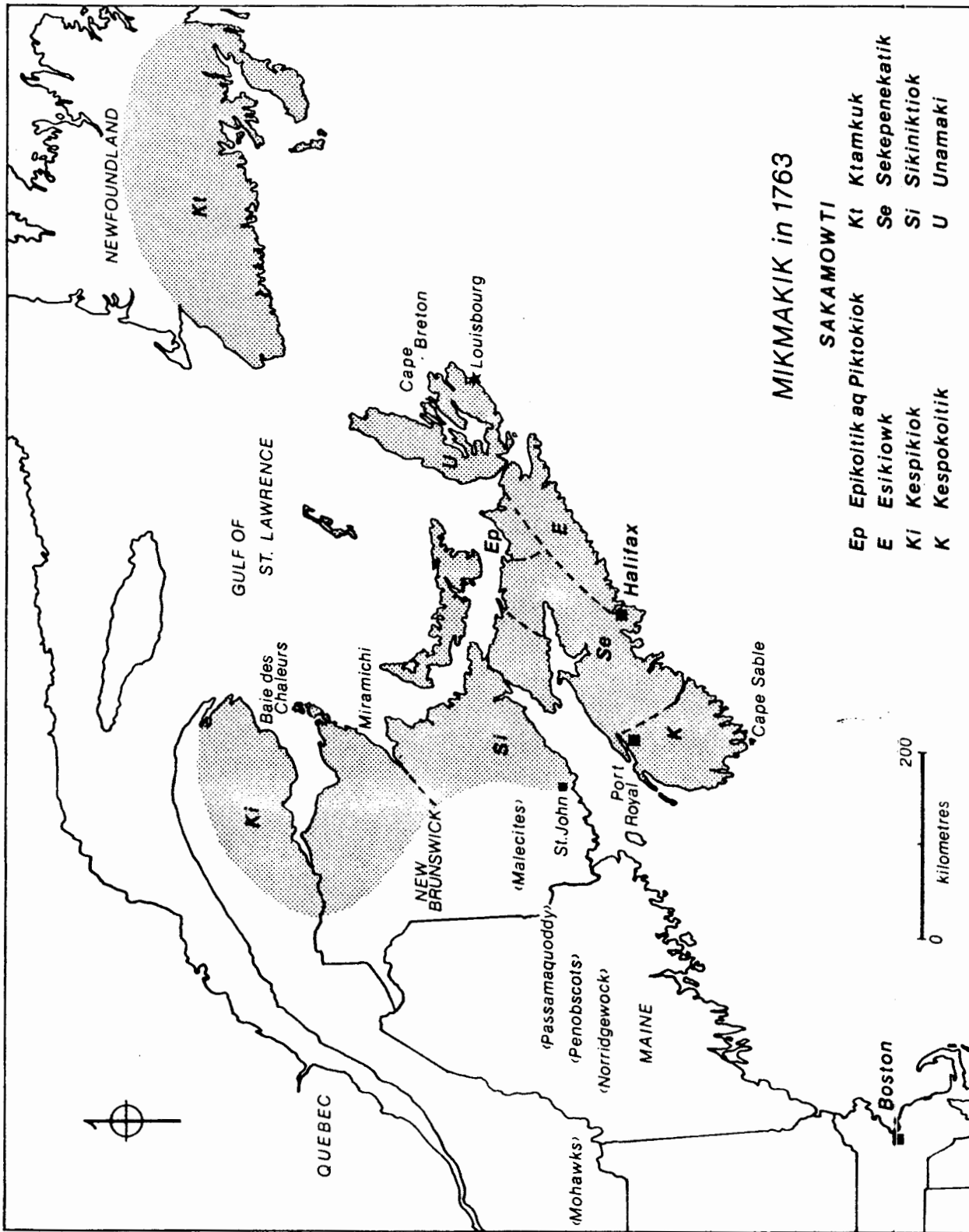
[References are to paragraph numbers. Historical sources are Clark 1968, Reid 1981, Trudel 1973 and Upton 1979 unless otherwise indicated.]

8. See, generally, Biard (1858) for a description of our government in the 17th century.
12. The baptism is detailed in Lescarbot (1611), the belt depicted in D.I. Bushnell Jr., "Native Cemeteries and Forms of Burial East of the Mississippi," Bureau of American Ethnology Bulletin No. 71 (1920), Plate 1.
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ENCLOSURES

MAP--MIKMAKIK IN 1763	E:22
A. THE CONCORDAT BELT (1611)	E:23
B. THE TREATY OF BOSTON (1725)	E:24
C. THE TREATY OF HALIFAX (1752)	E:25
D. PROCLAMATIONS OF 1762 AND 1763	E:30
E. TREATY OF WATERTOWN (1776)	E:34
F. EXCERPTS FROM THIRD-PARTY TREATIES	E:36
G. CANADA'S <u>CONSTITUTION ACT, 1982</u>	E:38
H. REPLY OF THE PRIME MINISTER	E:39

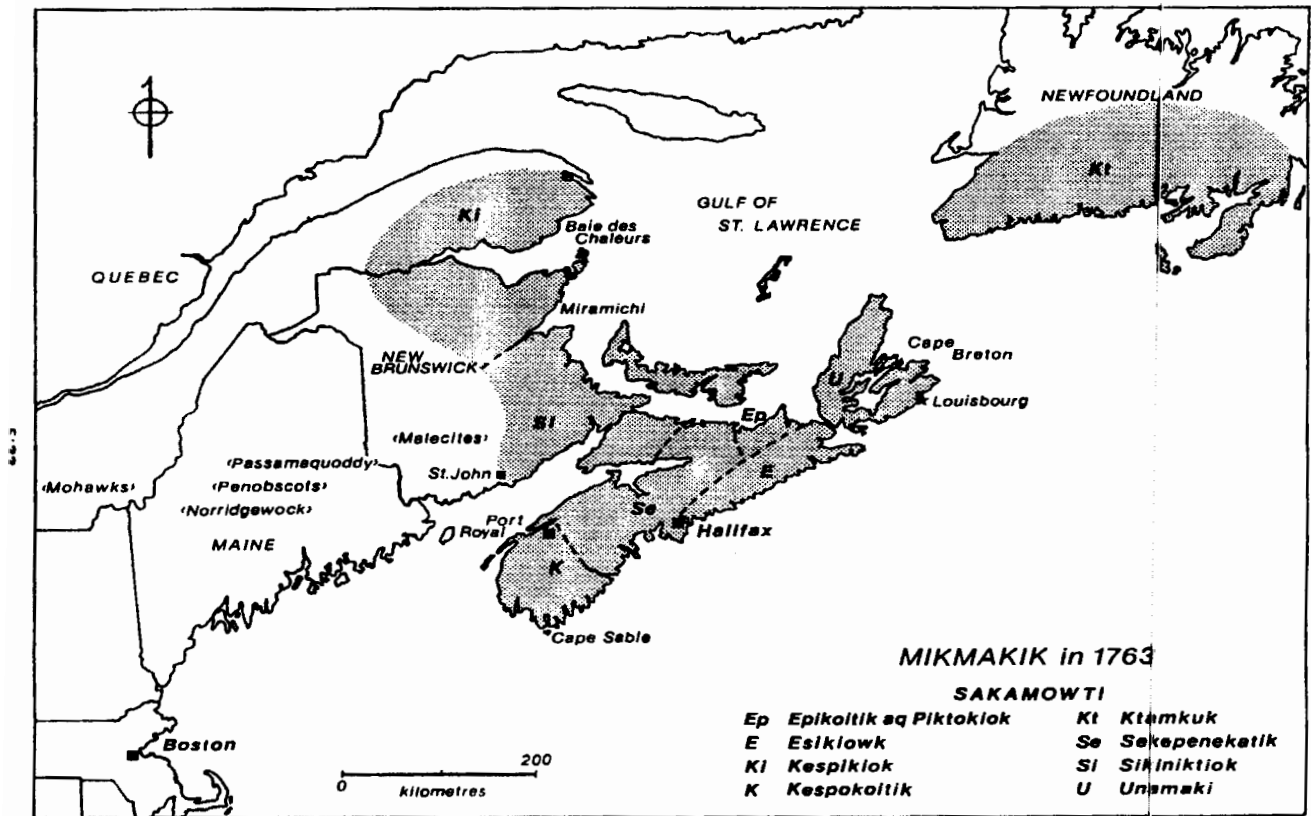


MIKMAKIK in 1763

SAKAMOWTI

- Ep Epiqoitik aq Piktokiok
- E Esiqiowk
- Ki Kespikiok
- K Kespokoitik
- Kt Ktamkuk
- Se Sekepenekatik
- Si Sikiniktiok
- U Unamaki

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ENCLOSURE A
THE CONCORDAT BELT (1611)



ENCLOSURE B

TREATY OF BOSTON (1725)

ARTICLES OF SUBMISSION AND AGREEMENT made at Boston, in New England, by Sanquaaram alias Loron Arexus, Francois Xaver and Meganumbe, delegates from Penobscot, Naridgwack, St. Johns, Cape Sables and other tribes inhabiting within His Majesty's territories of Nova Scotia or New England.

Whereas His Majesty King George by concession of the Most Christian King, made at the Treaty of Utrecht, is become the rightful possessor of the Province of Nova Scotia or Acadia according to its ancient boundaries: We, the said Sanquaaram alias Loron Arexis, Francois Xavier and Meganumber, delegates from the said tribes of Penobscott, Naridgwack, St. Johns, Cape Sables and other tribes inhabiting within His Majesty's said territories of Nova Scotia or Acadia and New England, do, in the name and behalf of the said tribes we represent, acknowledge His said Majesty King George's jurisdiction and dominion over the territories of the said Province of Nova Scotia or Acadia, and make our submission to His said Majesty in as ample a manner as we have formerly done to the Most Christian King.

And we further promise on behalf if the said tribes we represent that the Indians shall not molest any of His Majesty's subjects or their dependants in their settlements already made or lawfully to be made, or in their carrying on their traffick and other affairs within the said Province.

That is there happens any robbery or outrage committed by any of the Indians, the tribe or tribes they belong to shall cause satisfaction and restitution to be made to the parties injured.

That the Indians shall not help to convey away any soldiers belonging to His Majesty's forts, but on the contrary shall bring back any soldier they shall find endeavouring to run away.

That in the case of any misunderstanding, quarrel or injury between the English and the Indians no private revenge shall be taken, but application shall be made for redress according to His Majesty's laws.

That if the Indians have made any prisoners belonging to the Government of Nova Scotia or Acadia during the course of the war they shall be released at or before the ratification of this treaty.

That this treaty shall be ratified at Annapolis Royal.

Dated at the Council Chamber in Boston, New England, this fifteenth day of December, Anno Domini one thousand seven hundred and twenty-five, Annoq. Regni Regis Georgii, Magnae Britanniae, &c., Duodecimo.

[Ratified at Annapolis Royal, 30 May 1728]

ENCLOSURE C

TREATY OF HALIFAX 1752 AND ACCESSIONS

Treaty of Halifax (22 November 1752)*

Articles of Peace and Friendship renewed between His Excellency Peregrine Thomas Hopson Esquire Captain General and Governor in Chief in and over His Majesty's Province of Nova Scotia or Acadie Vice Admiral of the same & Colonel of One of His Majesty's Regiments of Foot, and His Majesty's Council on behalf of His Majesty, and Major Jean Baptiste Cope, chief Sachem of the Tribe of Mick Mack Indians, Inhabiting the Eastern Coast of the said Province, and Andrew Hadley Martin, Gabriel Martin and Francis Jeremiah members & Delegates of the said tribe, for themselves and their said Tribe their heirs and the heirs of their heirs forever. Begun made and Concluded in the manner form & Tenor following, viz.

1. It is agreed that the Articles of Submission & Agreements made at Boston in New England by the Delegates of the Penobscot Norridge-work and St. John's Indians in the year 1725 Ratified 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 Ratified at St. John's River, now read over and 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.

2. That all Transactions during the late War shall by 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.

3. 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.

4. It is agreed that the said Tribe of Indians shall not be hindered 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 exchanged 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.

5. 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

*Original published at Halifax in English and French, both equally authoritative.

time to come; and the same regard shall be had to the other Tribes that shall hereafter Agree to Renew and Ratify the Peace upon the Terms and Conditions now Stipulated.

6. 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 Endeavours 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 to 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 & Privileges as any others of His Majesty's Subjects.

Accession of Sikiniktiok sakamaoti (10 March 1760)

I, Michael Augustine, for myself and the tribe of Richebuctou Indians of which I am Chief do acknowledge the jurisdiction and dominion of His Majesty King George, Second over the territories of Nova Scotia or Acadia and we do make submission to His Majesty in the most perfect 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 in their settlements as already made, or that may be hereafter made or in carrying on their commerce or in anything whatever within this the said Province of His said Majesty or elsewhere.

And for the more effective security of the due performance of this Treaty, and for 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, shall, on or before the 24th day of June next reside as hostages at Fort Cumberland, or at such other place in the Province of Nova Scotia or Acadia, as shall be appointed for that purpose by His Majesty's Governor of the said Province which hostages shall 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 Excellency Chas. Lawrence Esq., His Majesty's Governor of the said Province, I do promise for myself and on 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 and seal at Halifax in Nova Scotia this tenth day of March, One Thousand Seven Hundred and Sixty in the Thirty Third year of His Majesty's reign.

Accessions of Unamaki and Epikoitik sakamowti, and renewal by Sikiniktiok sakamowti (25 June 1761)

Treaty of Peace and Friendship concluded by the Honorable Jonathan Belcher Esqr. President of His Majesty's Council and Commander-in-Chief oin and over His Majesty's Province of Nova Scotia or Acadia 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 is 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 known 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 Truck-houses 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 by 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.

[Identical instruments were executed by representatives of "the Tribes of the Mickmack Indians called Mirimichi, Iediack, Pogmouch, and Cape Breton Tribes."]

Renewal by Kespikiok sakamowti (22 September 1779)

Be it known to all men that we, John Julien, Chief; Antoine Arceneau Captain; Francis Julien and Thomas Demagonisbe Councillors of Miramichy and also representatives of and authorized by the Indians of Pagimousche and Restigouche Augustine Michel Chief. Louis Augustine Cobaise, Francis Joseph Arimpf, 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 Enemies 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 to King George, let his Nation or Country be what it will.

And we do also by 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 Inter changeably set our Hands and Seals at Windsor in Nova Scotia this Twenty second day of September 1779.

Renewal by Sikiniktiok sakamowti (17 June 1794)

The Treaty made with the Micmac Indians and the representative of King George III of England on June 17, 1794.

Thus was agreed between the two Kings*--The English King George III and the Indian King John Julian in the presence of the Governor, William Milan of New Brunswick, and Francis Julian (Governor), the brother of said John Julian, on board His Majesty's ship, that henceforth to have no quarrel between them.

* The only extant copy of this instrument indicates it was translated into English from Mikmaq. "King" was probably sakamow in the original.

And the English King said to the Indian King "Henceforth you will teach your children to maintain peace and I give you this paper upon which are written many promises which will never be effaced."

Then the Indian King, John Julian with his brother Francis Julian begged his Majesty to grant them a portion of land for their own use and for the future generations. His Majesty granted their request.

A distance of six miles was granted from Little South West on both sides and six miles at North West on both sides of the rivers. Then His Majesty promised King John Julian and his brother Francis Julian "Henceforth I will provide for you and for the future generation so long as the sun rises and river flows."

ENCLOSURE D
PROCLAMATIONS IMPLEMENTING THE HALIFAX TREATY

Royal Instructions of 9 December 1761

WHEREAS the peace and security of Our Colonies and Plantations upon the Continent of North America does greatly depend upon the Amity and Alliance of the several Nations or Tribes of Indians bordering upon the said Colonies and upon a just and faithful Observance of those Treaties and Compacts which have been heretofore solemnly entered into with the said Indians by Our Royall Predecessors Kings and Queens of this Realm,

And whereas notwithstanding the repeated Instructions which have been from time to time given by Our Royal Grandfather to the Governors of Our several Colonies upon this head the said Indians have made and do still continue to make great complaints that Settlements have been made and possession taken of lands, the property of which they have by Treaties reserved to themselves by persons claiming the said lands under pretence of deeds of Sale and Conveyances illegally, fraudulently and surreptitiously obtained of the said Indians;

And whereas it has likewise been represented unto Us that some of Our Governors or other Chief Officers of Our said Colonies of the Duty they owe to Us and of the Welfare and Security of our Colonies have countenanced such unjust claims and pretensions by passing Grants of the Lands so pretended to have been purchased of the Indians.

We therefor taking this matter into Our Royal Consideration, as also the fatal Effects which would attend a discontent amongst the Indians, in the present situation of affairs, and being determined upon all occasions to support and protect the said Indians in their just Rights and Possessions and to keep inviolable the Treaties and Compacts which have been entered into with them,

Do hereby strictly enjoyn & command that neither yourself nor any Lieutenant Governor, President of the Council or Commander in Chief of Our said [Province of Nova Scotia] do upon any pretence whatever upon pain of Our highest Displeasure and of being forthwith removed from your or his office, pass any Grant or Grants to any persons whatever of any lands within or adjacent to the Territories possessed or occupied by the said Indians or the Property Possession of which has at any time been reserved to or claimed by them.

And it is Our further Will and Pleasure that you do publish a proclamation in Our Name strictly enjoining and requiring all persons whatever who may either willfully or inadvertently have seated themselves on any lands so reserved to or claimed by the said Indians without any lawfull Authority for so doing forthwith to remove therefrom

And in case you shall find upon strict enquiry to be made for the purpose that any person or persons do claim to hold or possess any lands within Our said Province upon pretence of purchases made of the said Indians without a proper licence first had and obtained either from Us or any of Our Royal Predecessors or any person acting under Our or their Authority you are forthwith to cause a prosecution to be carried on against such person or persons who shall have made such fraudulent purchases to the end that the land may be recovered by due Course of Law

And whereas the wholesome Laws that have at different times been passed in several of Our said Colonies and the instructions which have been given by Our Royal Predecessors for restraining persons from purchasing lands of the Indians without a Licence for the purpose and for regulating the proceedings upon such purposes have not been duly observed,

It is therefore Our express Will and Pleasure that when any application shall be made to you for licence to purchase lands of the Indians you do forebear to grant such Licence untill you shall have first transmitted to Us by Our Commissioners for Trade and Plantations the particulars of such applications as well as in respect to the situation as the extent of the lands so proposed to be purchased and shall have received Our further directions therein;

And it is Our further Will and Pleasure that you do forthwith casue this Our said Instruction to you to be made Publick not only within all parts of your said Province inhabited by Our Subjects, but also amongst the several Tribes of Indians living within the same to the end that Our Royal Will and Pleasure in the Premises may be known and that the Indians may be apprized of Our determin'd Resolution to support them in their just Rights, and inviolably to observe Our Engagements with them.

*[Identical copies transmitted to Nova Scotia, New Hampshire, New York, Virginia, North Carolina, South Carolina and Georgia.]

Governor Jonathan Belcher's Proclamation (4 May 1762)

His Majesty by His Royal Instruction, Given at the Court of St. James, the 9th day of December, 1761, having been pleased to Signify,

THAT the Indians have made, and still do continue to make great Complaints, that Settlements have been made, and Possessions taken, of Lands, the Property of which they have by Treaties reserved to themselves, by Persons claiming the said Lands, under Pretence of Deeds of Sale & Conveyance, illegally, Fraudulently, and surreptitiously obtained of said Indians.

AND THAT His Majesty had taken this Matter into His Royal Consideration, as also the fatal Effects which would attend a Discontent among the Indians in the Present Situation of Affairs.

AND BEING determined upon all Occasions to support and protect the Indians in their just Rights and Possessions and to keep inviolable the treaties and Compacts which have been entered into with them, was pleased to declare His Majesty's further Royal Will and Pleasure, that His Governor or Commander in Chief in this Province should publish a Proclamation in His Majesty's Name, for this special purpose;

WHEREFORE in dutiful Obedience to His Majesty's Royal Orders I do accordingly publish this proclamation in His Majesty's Royal Name, strictly injoining and requiring all Persons what ever, who may either willfully or inadvertently have seated themselves upon any lands so reserved to or claimed by the said Indians, without any lawful Authority for so doing, forthwith to remove therefrom.

AND, WHEREAS Claims have been laid before me in behalf of the Indians for Fronsac Passage and thence to Nartigonneich, and from Nartigonneich to Piktouk, and from thence to Cape Jeanne, from thence to Emchich, from thence to Ragi Pontouch, from thence to Tedueck, from thence to Cape Rommentin, from thence to Miramichy, and from thence to Bay des Chaleurs, and the environs of Canso. From thence to Mushkoodabwet, and so along the coast, as the Claims and Possessions of the said Indians, for the more special purpose of hunting, fowling and fishing, I do hereby strictly injoin and caution all persons to avoid all molestation of the said Indians in their said claims, till His Majesty's pleasure in this behalf shall be signified.

AND if any person or persons have possessed themselves of any part of the same to the prejudice of the said Indians in their Claims before specified or without lawful Authority, they are hereby required forthwith to remove, as they will otherwise be prosecuted with the utmost Rigour of the Law.

Given under my Hand and Seal at Halifax this Fourth Day of May, 1762, and in the Second Year of His Majesty's Reign.

Royal Proclamation of 7 October 1763 [Excerpt]

And whereas it is just and reasonable, and essential to our Interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected, and who live under our protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them or any of them, as their Hunting Grounds —

We do therefore, with the Advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies or Quebec, East Florida, or West Florida, do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be Known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any Lands whatever, which, not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

And We do further declare it to be Our Royal Will and Pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection, and Dominion, for the use of the said Indians, all the Lands and Territories not included within the Limits of Our Said Three New Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;

And We do hereby strictly forbid, on Pain of our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial leave and Licence for the Purpose first obtained.

And, We do further strictly enjoin and require all Persons whatever who have either willfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by Us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

And Whereas Great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the Great Prejudice of our Interests, and to the Great Dissatisfaction of the said Indians; In order, therefore, to prevent such Irregularities for the future, and to the End that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any Purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement; but that, if at any Time any of the said Indians should be inclined to dispose of the said Lands, the same shall be purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for the Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie; and in case they shall lie within the limits of any Proprietary Government, they shall be purchased only for the Use and in the name of such Proprietaries, conformable to such Directions and Instructions as We or they shall think proper to give for the Purpose;

And We do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such Trade from the Governor or Commander in Chief of any of our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any Time think fit, by ourselves or by our Commissaries to be appointed for this Purpose, to direct and appoint for the Benefit of the said Trade:

And We do hereby authorize, enjoin, and require the Governors and Commanders in Chief of all our Colonies respectively, as well those under Our immediate Government as those under the Government and Direction of Proprietaries, to grant such Licences without Fee or Regard, taking especial care to insert therein a Condition, that such Licence shall be void, and the Security forfeited in case the Person to whom the same is granted shall refuse or neglect to observe such Regulations as We shall think proper to prescribe as aforesaid.

And We do further expressly enjoin and require all Officers whatever, as well Military as those employed in the Management and Direction of Indian Affairs, within the Territories reserved as aforesaid for the Use of the said Indians, to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murders, or other Felonies or Misdemeanors, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper Guard to the Colony where the Crime was committed of which they stand accused, in order to take their Trial for the same.

Given at our Court at St. James's the 7th Day of October 1763, in the Third Year of our Reign. GOD SAVE THE KING.

ENCLOSURE E

TREATY OF WATERTOWN (1776)

A Treaty of Alliance and Friendship entered into and concluded by and between the Governors of the State of Massachusetts Bay, and the Delegates of the St. John's & Mickmac Tribes of Indians.

Whereas the United States of America in General Congress Assembled have in the name, and by the Authority of the Good people of these Colonies Solemnly published and declared, that these united Colonies are, and of Right ought to be free and Independent States; that they are absolved from all Allegiance to the British Crown; and that all political connection between them, and the State of Great Britain is and ought to be dissolved; and that as Free and Independent States they have full power to Levy War, conclude Peace, contract Alliances establish Commerce, and to do all other Acts and things which Independent States may of Right do;

We the Governors of the State of Massachusetts Bay do by virtue hereof, and by the powers vested in us enter into and conclude the following Treaty of Friendship and Alliance, viz.,

1st. We the Governors of the said State of Massachusetts Bay in behalf of said States, and the other United States of America on the one part, and Ambrose Var, Newell Wallis, and Francis, Delegates of the St. John's Tribe, John Denaquara, Charles, Mattahu Ontrane, Nicholas, John Battis, Peter Andre, and Sabbatis Netobcobwit Delegates of the Mickmac Tribes of Indians, inhabiting within the Province of Nova Scotia for themselves, and in behalf of the said Tribes on the other part do solemnly agree that the people of the said State of Massachusetts Bay and of the other United States of America, and of the said Tribes of Indians shall hence forth be at peace with each other and be considered as Friends and Brothers united and allied together for their mutual defence Safety and Happiness.

2nd. That each party to this Treaty shall, and will consider the Enemies of the other as Enemies to themselves, and do hereby solemnly promise and engage to, and with each other that when called upon for that purpose, they shall, and will to the utmost of their abilities, aid and assist each other against their public Enemies; and particularly, that the people of the said Tribes of Indians shall and will afford, and give to the people of the said State of Massachusetts Bay and the people of the other United States of America during their present War with the King of Britain, all the aid and assistance within their power. And that they the people of said Tribes of Indians shall not, and will not directly or indirectly give any aid, or assistance to the Troops or Subjects of the said King of Great Britain, or others adhering to him or hold any correspondence or carry on any Commerce with them during the present War.

3rd. That if any Robbery, or Outrage happens to be committed by any of the Subjects of said State of Massachusetts Bay, or of any other of the United States of America upon any of the people of said Tribes, the said State shall upon proper application being made, cause satisfaction and restitution speedily to be made to the party injured.

4th. That if any Robbery or outrage happens to be committed by any of the said Tribes of Indians upon any of the Subjects of said State or of any other of the United States of America the Tribe to which the Offender or Offenders shall belong, shall upon proper application being made, cause satisfaction and Restitution speedily to be made to the Party injured.

5th. That in case any Misunderstanding, Quarrel, or injury shall happen between the said State of Massachusetts Bay, or of any other of the United States of America and the said Tribes of Indians, or either of them, no private revenge shall be taken but a peaceable application shall be made for Redress.

6th. That the said Tribes of Indians shall and will furnish and supply 600 Strong Men out of the said Tribes, or as many as may be, who shall without delay proceed from their several homes up to the Town of Boston within this State, and from thence shall march to join the Army of the United States of America now at New York under the immediate command of his Excellency General Washington, there to take his Orders.

7th. That each of the Indians who shall by their respective Tribes be appointed to join the Army of the United States of America shall bring with him a good Gun, and shall be allowed one Dollar for the use of it; and in case the Gun shall be lost in the service shall be paid the Value of it. And the pay of each Man shall begin from the time they sail from Machias for Boston, and they shall be supplied with provisions and a Vessel or Vessels for their passage up to Boston. Each private Man shall receive the like pay as is given to our own private Men. The Indians shall be formed into Companies when they arrive at Boston, and shall engage, or enlist for so long a time as General Washington shall want them, not exceeding the term of three years, unless General Washington and they shall agree for a longer time. And as Joseph Denaquara, Peter Andre, and Sabbatis Netobcobwit have manfully and Generously offered to enter immediately into the War they shall be sent as soon as may be to Gen. Washington to join the Army, and shall be considered as entering into our pay at the time of arrival at New York.

8th. The Delegates above named, who may return to their Homes, do promise and engage, to use their utmost influence with the Passamaquoddy, and other Neighbouring Tribes of Indians to persuade them to furnish, and supply for the said service as many strong men of their respective Tribes as possible, and that they come along with those of the Tribes of St. John's [and] Mickmac. And the said Governor of the said State of Massachusetts Bay do hereby engage to give to such of the Passamaquoddy or other Neighbouring Indians, who shall enter into the Service of the United States of America, the same pay and encouragement, in every particular, as is above agreed to be given to the St. John's, or Mickmac Indians, and to consider them as our friends, and Brothers.

9th. That the said State of Massachusetts Bay shall, and will furnish their Truckmaster at Machias as soon as may be with proper articles for the purpose of supplying the Indians of said Tribes with the necessities and conveniences of life.

10th. And the said Delegates do hereby annul and make void all former Treaties by them or by others in behalf of their respective Tribes made with any other power, State or person so far forth as the same shall be repugnant to any of the Articles contained in this Treaty.

In Faith & Testimony whereof we the said Governors of the said State of Massachusetts Bay have signed these presents, and caused the Seal of said State to be hereunto affixed, and the said Ambrose Var, Newell Wallis and Francis, Delegates of the St. John's Tribe, Joseph Denaquara, Charles, Mattahu Ontrane, Nicholas, John Battis, Peter Andre, and Sabbatis Netobcobwit, Delegates of the Mickmac Tribes of Indians have hereunto put their Marks, and Seals in the Council Chamber at Watertown in the State aforesaid the Nineteenth day July In the year of our Lord One thousand and seven Hundred, and seventy six.

ENCLOSURE F

EXCERPTS FROM RELEVANT THIRD-PARTY TREATIES

Treaty of Peace and Friendship between France and Great Britain
(Utrecht, 11 April 1713)

XV. Les habitans du Canada & autres Sujets de la France, ne molesteront point à l'avenir les cinq Nations ou Cantons des Indiens soumis à la G.B. ni les autres Nations de l'Amérique, amies de cette Couronne. Pareillement les Sujets de la G.B. se comporteront pacifiquement envers les Américains Sujets ou amis de la France, & les uns & les autres jouiront d'une pleine liberté de se fréquenter pour le bien du Commerce, & avec la même liberté les habitans de ces Regions pourront visiter les Colonies Francoises & Britanniques pour l'avantage réciproque du Commerce sans aucune molestation, ni empêchement de part, ni d'autre. Au surplus, les Commissaires régleront exactement & distinctement, quels seront ceux qui feront ou devront être censez Sujets & amis de la France, ou de la G.B.

[27 C.T.S. 475, at 484]

Treaty of Amity, Commerce and Navigation between Great Britain and the United States of America ("Jay Treaty," 19 November 1794)

III. It is agreed that it shall at all times be free to His Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's bay Company only excepted) and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. But it is understood, that this article does not extend to the admission of vessels of the United States into the sea-ports, harbours, bays, or creeks of his Majesty's said territories, . . . Nor to the admission of British vessels from the sea into the rivers of the United States, . . .

No duty of entry shall ever be levied by either party on peltries brought by land, or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians.

[8 U.S.Stat.L. 116, at 117-118]

Treaty of Peace and Amity between Great Britain and the United States of America (Ghent, 24 December 1814)

IX. The United States of America engage to put an end, immediately after the ratification of the present treaty, to hostilities with all the tribes or nations of Indians with whom they may be at war at the time of such ratification; and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed or been entitled to in one thousand eight hundred and eleven, previous to such hostilities: Provided always, That such tribes or nations shall agree to desist from all hostilities, against the United States of America, their citizens and subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly. And his Britannic majesty engages, on his part, to put an end immediately after the ratification of the present treaty, to hostilities with all the nations or tribes of Indians with whom he

may be at war at the time of such ratification, and forthwith to restore to such tribes or nations, respectively, all the possessions, rights, and privileges, which they may have enjoyed or been entitled to, in one thousand eight hundred and eleven, previous to such hostilities: Provided always, That such tribes or nations shall agree to desist from all hostilities against his Britannic majesty, and his subjects, upon the ratification of the present treaty being notified to such tribes or nations, and shall so desist accordingly.

[8 U.S.Stat.L. 218, at 222-223]

ENCLOSURE G

RELEVANT PROVISIONS OF THE CONSTITUTION ACT, 1982

Part I. Canadian Charter of Rights and Freedoms

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty, or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.

Part II. Rights of the Aboriginal Peoples of Canada

35. (1) The existing 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.

Part IV. Constitutional Conference

37. (1) 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 within one year after this Part comes into force.

(2) The 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.

ENCLOSURE H
REPLY OF THE PRIME MINISTER OF CANADA



PRIME MINISTER • PREMIER MINISTRE

Ottawa, K1A 0A2
April 27, 1985

Dear Mr. Denny:

Thank you for your letter of February 2, 1985 requesting that the Grand Council Mikmaq Nation be invited to participate in conferences on aboriginal constitutional matters.

As you are aware, the four national aboriginal associations (the Assembly of First Nations, the Inuit Committee on National Issues, the Métis National Council, and the Native Council of Canada) have represented Canada's aboriginal peoples in the First Ministers' Conferences on Aboriginal Constitutional Matters since 1983. Their participation in these conferences has led to a continuing and constructive dialogue with the federal government, as we work towards the resolution of aboriginal constitutional matters. In light of the practical limitations of representation, I believe it will be necessary to continue this arrangement.

Mr. Alexander Denny,
Grand Council Mikmaq Nation,
R.R. No. 2,
East Bay,
Eskasoni, Nova Scotia.
BOA 1H0

- 2 -

While I regret that we cannot invite all aboriginal groups to participate formally in constitutional conferences, I have no doubt that the interests of all aboriginal peoples will continue to be adequately represented. In this regard I would encourage you to work out arrangements with the Assembly of First Nations so that your particular interests will be addressed.

I wish you success in your endeavours.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Peter Mulroney".