INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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HUMAN RIGHTS COMMITTEE
Thirty-ninth session

DECISIONS

Communication No. 205/1986

Submitted by:	Grand Chief Donald Marshall, Grand Captain Alexander Denny and Adviser Simon Marshall, as officers of the Grand Council of the Mikmaq tribal society (assisted by Russel L. Barsh)
Alleged victims:	The authors and the Mikmaq tribal society
State party concerned:	Canada
Date of communication:	30 January 1986 (initial letter)
Documentation references:	Prior decision - CCPR/C/28/D/205/1986 (Rule 91 decision, dated 17 July 1986) - CCPR/C/WG/30/D/205/1986 (Working Group interim decision, dated 20 July 1987)
Date of present decision:	25 July 1990

Decision on admissibility

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1. The authors of the communication (initial letter of 30 January 1986 and subsequent correspondence) are Grand Chief Donald Marshall, Grand Captain Alexander Denny and Adviser Simon Marshall, the officers of the Grand Council of the Mikmaq tribal society in Canada. They allege violations by the Government of Canada of article 1 of the International Covenant on Civil and Political Rights. They submit the communication both as individually affected alleged victims and as trustees for the welfare and the rights of the Mikmaq people as a whole. They are represented by counsel.

2.1 It is stated that the Mikmaqs are a people who have lived in their traditional territories in North America since time immemorial and that they, as a free and independent nation, concluded treaties with the French and British colonial authorities, which guaranteed their separate national identity and rights of hunting, fishing and trading throughout Nova Scotia. The authors give a historial survey of events affecting the sovereignty of the Mikmaq people over their traditional territories, Mikmakik.

2.2 They state that for more than 100 years, Mikmaq territorial and political rights have been in dispute with the Government of Canada, which has claimed absolute sovereignty over Mikmakik by virtue of its independence, since 1867, from the United Kingdom. The authors further state that, although it was argued by the State party in its rule 91 submissions of 21 July 1981 and 10 June 1982 in the case of A.D. v. Canada, No. R.78/1988, that the United Kingdom of Great Britain and Northern Ireland gave Canada plenary legislative authority over the race of "Indians" in North America, it is their view that Mikmakik was never part of Europe's American colonies, but enjoyed, by treaty, the status of a separate and distinct commonwealth under the British Crown and could not have lost its right of self-determination as a result of dealings between Canada and the Crown. They state that the Mikmaqs' right of self-determination has never been surrendered and that their land, Mikmakik, must be considered as a Non-Self-Governing Territory within the meaning of the Charter of the United Nations. In substantiation of the right of the Mikmaqs of self-determination, the authors argue that article 1, paragraph 2, of the Charter, article 1, paragraph 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". As a minimum, the authors submit, this includes the choice of independence, some degree of association or federation with an existing State, or integration with an existing State, cf. General Assembly resolution 1514 (XV) of 14 December 1960.

2.3 Allegedly, in recognition of past injustices, by Constitution Act, 1982, Canada "recognized and affirmed" the "existing aboriginal and treaty rights of the aboriginal peoples of Canada" (art. 35). The authors submit that in accordance with article 37 of the Constitution Act, 1982, the specification of these "existing" rights must be negotiated with indigenous representatives "invited" for this purpose by the Prime Minister of Canada. Such meetings, the authors state, were held in 1984, 1985 and 1987. Their request to participate was allegedly denied, "on the extraordinary grounds that direct discussions with Mikmaqs are not 'practical', and other 'Indians' can negotiate our future political status for us". This allegedly racist position, viz. "that any members of the 'Indian' race can exercise the Mikmaq people's right to self-determination", is the basis of the communication.

2.4 With regard to the question of exhaustion of domestic remedies, the authors state that 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 that Canadian law affords no means of challenging his decision other than by appealing to him personally. This, they state, was done, unsuccessfully.

3. By decision of 17 July 1986, the Human Rights Committee transmitted the communication under rule 91 of the rules of procedure to the State party concerned, requesting information and observations relevant to the question of the admissibility of the communication, in particular details of the remedies available to the alleged victims in the case that domestic remedies had not been exhausted.

4.1 In its submission dated 9 February 1987, the State party objects to the admissibility of the communication on the following grounds:

4.2 Firstly, with regard to the authors' claim that the Mikmaq tribal society has a right of self-determination, the State party contends that this right cannot be invoked in circumstances that would prejudice the national unity and territorial integrity of a sovereign State, such as Canada, and that the authors' communication should therefore be declared inadmissible pursuant to article 3 of the Optional Protocol to the International Covenant on Civil and Political Rights, as incompatible ratione materiae with the provisions of the Covenant.

4.3 Secondly, the State party argues that the Mikmaq tribal society does not constitute a "people" within the meaning of article 1 of the Covenant. The term "people" cannot apply to a thinly scattered minority dispersed among the majority. Only 14,072 Mikmaqs are registered under the Indian Act, and they are scattered throughout the provinces of Nova Scotia, New Brunswick, Prince Edward Island and Quebec, an area where more than 2,000,000 Canadian residents intermingle with the Mikmaqs. The communication should therefore be declared inadmissible as incompatible rationae personae with article 1 of the Covenant.

4.4 Thirdly, the State party maintains that the right of self-determination is a collective right and cannot, therefore, be available in and of itself to an individual. It cannot be construed as an individual right but rather as providing the necessary contextual background for the exercise of individual human rights. This interpretation is said to be justified by the fact that the rights enshrined in article 1 are set apart from all the other rights in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; furthermore, the inclusion of the same rights at the beginning of the International Covenant on Economic, Social and Cultural Rights, which does not contain an individual complaint mechanism, can also support the claim that article 1 of each Covenant is exclusively structural in nature and not, by itself, amenable to allegations of a breach by individuals. Since the Committee's jurisdiction, as defined by the Optional Protocol, cannot be invoked when the alleged violations concern a collective right, the State party submits that the communication of the Mikmaq tribal society should be dismissed.

4.5 Fourthly, the State party rejects the authors' assertion that a 1752 treaty entered into between British colonial authorities and the Mikmaqs (the "Halifax Treaty") confirms the existence of the latter as a separate national entity. It affirms that international law and Canadian domestic law do not recognize Indian treaties as international documents confirming the existence of tribal societies as independent and sovereign States.

4.6 With regard to the authors' allegation that the denial of their right to participate in the so-called constitutional conference between the Government of Canada and selected indigenous organizations on the status of "aboriginal peoples" in Canada infringed their right of self-determination protected by article 1 of the Covenant, the State party observes "The Government of Canada contends that, even if the authors could bring a communication on the basis of article 1, they have wrongly characterized the constitutional conferences as relating to the right of self-determination. Participation in such discussions has no direct connection with the right of self-determination which the Mikmaq tribal society seeks to enjoy. The communication is therefore incompatible ratione materiae with the provisions of the Covenant and should be declared inadmissible, pursuant to article 3 of the Optional Protocol."

4.7 Finally, the State party contends that the authors of the communication have not, as required by article 5, paragraph 2(b), of the Optional Protocol, pursued to completion all the domestic remedies that were available to it. Thus, when the Supreme Court of Ontario, on 29 March 1985, rejected an application by the Prairie Treaty Nations Alliance for a mandatory order that they be invited by the Prime Minister to the constitutional conference, the Mikmaqs chose not to appeal the judgement although they could have done so.

5.1 Commenting on the State party's submission, the authors, in a submission dated 10 March 1987, contend that their allegations with respect to a violation of article 1 are well founded; they further assert that the State party has violated article 25 of the Covenant and request interim measures in accordance with rule 86 of the Human Rights Committee's provisional rules of procedure.

5.2 In the context of an alleged violation of article 1 of the Covenant, the authors assert that the Mikmaq tribal society is merely proposing an alternative form of federalism and asserting its right of self-determination in a manner consistent with the national unity of Canada; to this extent, no conflict can be said to exist with the Covenant on Civil and Political Rights.

5.3 With regard to the State party's claim that the Mikmaq tribal society does not constitute a "people" within the meaning of article 1 of the Covenant on Civil and Political Rights, the authors assert that this response is in direct contradiction to the State party's own explicit statement, to the 1986 Sessional Working Group on Economic, Social and Cultural Rights of ECOSOC, that "native people were not considered as a cultural minority but as a distinct people with a unique role in Canada". They point out that the Government of Canada cannot refer to the Indian tribes as a "people" for the purposes of one International Covenant but not the other. The authors further contend that the Mikmaq do not live "thinly scattered" throughout the Canadian national population but in geographically-distinct communities, most of them designed by the Government of Canada itself as "Indian reserves", from which non-Mikmaq persons are explicitly excluded from residence by the Indian Act.

5.4 As regards the State party's objection to the standing of the authors before the Committee, the authors observe that if an earlier communication to the Committee concerning the rights of the Mikmaq (No. 78/1980, A.D. v. Canada) was held inadmissible on the grounds that the author had not proven his authority to represent the Grand Council or the Mikmaq community as a whole, this could only be construed as implying that the Committee considered it possible for individuals to invoke article 1 - with the proviso that they could show they were themselves directly affected and genuinely representative

of the others. The authors further reiterate their view that the right of self-determination has an individual dimension, that it is an individual right exercised through collective means. In their view, the submission of 9 February 1987 by the Government of Canada misconstrues the Human Rights Committee's General Comment on article 1 (CCPR/C/21/Add.3) to the effect that self-determination is an "essential condition for the effective guarantee and observance of individual human rights": this ought to be interpreted in the sense that self-determination is a human right and does not provide a mere "contextual background" for the enjoyment of human rights.

5.5 With regard to the State party's claim that the "Halifax Treaty" of 1752 between British colonial authorities and the Mikmaqs does not confirm the existence of the latter as a separate national entity, the authors allege that this goes counter to international practice and that the reasons adduced by the Canadian Government in this respect, namely that the Mikmaqs are "Indians" and the Grand Council consists of "native chiefs", constitute a discrimination on the basis of race, colour and national origin, and as such are incompatible with article 2, paragraph 1, of the Covenant.

5.6 The authors also reject the Canadian Government's assertion that the constitutional conference and the proposed constitutional accord with Canada's "aboriginal peoples" do not affect the Mikmaq tribal society's rights under article 1 of the Covenant. They maintain that the right of self-determination does include a peoples' right to choose their political status and their own political institutions and that, if the proposed constitutional accord places limits on their right to govern themselves or to determine the nature of their relationship with the Government of Canada, this will necessarily involve self-determination within the meaning of article 1 of the Covenant. At this point in time, the authors expressed their view that, independent of a violation of article 1 of the Covenant, the Canadian constitutional-accord process, as was constituted at the time in question, also violated article 25 of the Covenant, in so far as it was non-representative and deprived a particular racial, ethnic or national class of persons of the right to participate meaningfully in decisions directly affecting them.

5.7 Finally, the authors assert that they have complied with the requirements of article 5, paragraph 2(b), of the Optional Protocol. They point out that this provision does not require the exhaustion of every possible remedy, only a reasonable effort to pursue remedies which are effective and available. In its judgement of 29 March 1985, the Supreme Court of Ontario ruled under virtually identical circumstances that no remedy existed as a matter of law. To suggest, as the Government of Canada had done, to try the same legal issue again, before a different Canadian judge, would go beyond what is required under the Optional Protocol.

6. In a further submission, dated 18 May 1987, the authors inform the Committee that the final constitutional conference between the Government of Canada and selected indigenous organizations (to which the Mikmaq did not belong) met on 26-27 March 1987 but did not reach any agreement. As there is no constitutional authority to convene any further conferences, it is claimed that there is greater need than ever to declare that no legislation affecting the political status of the Mikmaq within Canada should be adopted without prior direct negotiations with the Mikmaq.

7. By interim decision of 20 July 1987, the Working Group of the Human Rights Committee requested the State party to provide the text of the judgment of the Supreme Court of Ontario in the action brought against it by the

Prairie Treaty Nations Alliance, seeking a mandatory order "that they be invited by the Prime Minister to the constitutional conference".

8.1 In a submission dated 10 August 1987, the authors state, with respect to the issue whether a Canadian court could have directed the Prime Minister to invite representatives of the Mikmaq people to participate in the constitutional conferences, that decisions entrusted to a minister by Parliament can be reviewed by the courts only to the extent that, in exercising his discretion, the minister disregards explicit Parliamentary instructions. The reasonableness or fairness of his decision are not, however, subject to review. This aspect of Canadian law is said to be confirmed by numerous recent court decisions, copies of which the authors provide. They add that the discretion of the Prime Minister in selecting representatives of indigenous peoples (to the constitutional conferences) was not in any way restricted by Section 37 of the Constitution Act. For this reason, it would have been fruitless to ask a Canadian court to review the Prime Minister's decision to exclude the Mikmaq Grand Council from participating in the autonomy negotiations convened under that section of the Act.

8.2 The authors reiterate their view that the State party remains obliged to clarify the legal status of the Mikmaqs through direct negotiations and in ways that reflect the freely-expressed wishes of the Mikmaq people, despite the inconclusive outcome of the final constitutional conference and regardless of whether such national-level discussions may be resumed in the future.

9.1 In a submission dated 7 October 1987, the State party provides a transcript of the court decision requested by the Working Group in its decision of 20 July 1987 and reaffirms its objection to the admissibility of the communication. In particular, it argues that the relief sought by the authors for a seat in the constitutional conference held in March 1987 is now moot; in any event, the constitutional conference represented a domestic political process dealing with a right of self-government within the Canadian federation and, in the State party's view, had no direct connection with the right of self-determination as alleged by the authors. With respect to the authors' claim that the constitutional accord process, as constituted at the time in question, violated article 25 of the Covenant, the State party claims that no evidence or explanations have been put forward to support this allegation and that, accordingly, the communication should be declared inadmissible as being an abuse of the right of submission in this respect.

9.2 It is further submitted that the authors cannot be considered to be "victims" within the meaning of article 1 of the Optional Protocol. The State party claims that what the authors seek in fact amounts to a declaration on the possible implications and administration of future, but presently non-existent, legal provisions. Whereas the notion of "victim" under the Optional Protocol requires that the author of a communication be personally affected, the Mikmaq tribal society is said to have failed to show that it has suffered an actual violation of any rights set forth in the Covenant, and that furthermore it has been unable to single out any existing law or (legal) provision of which it could claim to be a victim. The State party submits that it is not for the Committee to make a declaration concerning the participation of the Mikmaq tribal society in any future (constitutional conference) processes because, at this point in time, any implications for the authors would be no more than a theoretical possibility. In this respect, therefore, the communication is considered incompatible ratione personae with article 1 of the Covenant and should be deemed inadmissible pursuant to article 3 of the Optional Protocol.

9.3 With respect to the question of exhaustion of domestic remedies, the State party contests the arguments of the authors outlined in paragraph 8.1 above. It reaffirms its earlier position that the authors had the responsibility to institute proceedings seeking a seat at the constitutional conference in the courts and if necessary, to appeal the proceedings to the Supreme Court of Canada. It submits that the timing of the constitutional conferences in 1984 and 1987 (i.e. 8 and 9 March 1984 and 26 and 27 March 1987) had been known since the adoption of the Constitutional Amendment Proclamation, 1983, in March 1983. It affirms that the obligation to take appropriate legal proceedings in the domestic courts implies a responsibility to seek domestic remedies in a timely way. In the light of these circumstances, according to the State party, it cannot be said that the decision of a provincial superior court of first instance (i.e. the Supreme Court of Ontario) constitutes a definitive determination of a legal question. Only the Supreme Court of Canada can settle in a definitive manner the issue of whether any particular Indian Band has a right to a seat at a constitutional conference, and thus far it has not been called upon to do so. Finally, the State party disputes the authors' argument that decisions of Cabinet ministers are only subject to review in exceptional circumstances and asserts that, in the light of recent Canadian jurisprudence, including decisions of the Supreme Court, this issue is far from settled.

10.1 Commenting on the State party's submission of 7 October 1987, the authors, in a further submission dated 14 February 1988, claim that the fact that no agreement was reached at the final constitutional conference of March 1987 does not render their communication moot. The fact remains that they were excluded from participating in every one of these conferences by personal decision of the Prime Minister and that the Committee would be competent to find that a violation of their right to participate in these conferences under, inter alia, articles 1 and 25 of the Covenant had already occurred.

10.2 With respect to the exhaustion of domestic remedies, the authors observe that any further efforts on their part to revise and clarify their legal status or change the provisions of the Indian Act would be ineffective or involve "unreasonable delays" within the meaning of article 5, paragraph 2(b), of the Optional Protocol. In that context, they refer to the written offer, made by the Minister for Indian Affairs and Northern Affairs on 10 August 1987, to discuss the authors' status in a non-constitutional framework. The meeting on this issue which took place on 17 September 1987 and which included, inter alia, representatives of the State party's Government and of the Mikmaq Grand Council, is said to have ended inconclusively. According to the authors, the State party's representatives merely reiterated the position taken since 1980, that Mikmaqs had no political or territorial rights other than what the State party had accorded them under the Indian Act. In the light of the above considerations, the authors request that the Committee declare their communication admissible.

11.1 In a further submission dated 10 February 1989, the authors' counsel recalls that the Supreme Court of Canada, in 1985, ruled favourably on the validity of the 1752 Treaty of Halifax, and that, in the wake of this decision, the authors, as officers of the Mikmaq Grand Council, proclaimed general Mikmaq hunting and fishing regulations. Under these regulations, Mikmaqs who harvest fish and deer for food will be defended by the Grand Council only if they observe Mikmaq laws on conservation and safety. Despite the Supreme Court ruling, members of the Mikmaq community have been arrested and are prosecuted for harvesting fish and wildlife contrary to Federal and provincial regulations. Among them is Donald Marshall. Counsel explains that

in 1988, the Province of Nova Scotia distributed, through a random lottery, licenses to hunt moose on Cape Breton Island, where nearly one third of the Mikmaq live. As the licences were distributed without regard to Mikmaqs who rely on moose hunting for their subsistence, local Mikmaq communities on the island organized their own "Treaty moose harvest", which took place one week before the beginning of the provincial hunting season. Upon their arrival at the hunting grounds, fourteen of the Mikmaq hunters were arrested and charged under the Nova Scotia Wildlife Act for hunting or attempting to hunt during the closed season, possession of a firearm, or possession of a moose. On 27 October 1988, they were arraigned before a Court at Baddeck, Nova Scotia; they requested that the charges be dismissed or the proceedings stayed, on the basis that using criminal prosecutions to solve a question of the interpretation of the 1752 Treaty and the 1985 Supreme Court decision was an abuse of process. The judge denied the request.

11.2 In respect of the violation of provincial fishing regulations, it is stated that the Federal government is prosecuting Mikmaqs for harvesting or attempting to harvest fish from a lake on Cape Breton Island. Out of six Mikmaq fishermen who were caught fishing in waters adjacent to, or flowing through, Indian reserve land, three were found guilty, and their appeals were to be heard in May 1989, while the three others were still awaiting trial. In these cases, the Federal Government has not challenged the validity of the Halifax Treaty but argued that it does not apply to Cape Breton Island, even though it is part of the aboriginal territory of the Mikmaq people.

11.3 In the author's opinion, these prosecutions constitute an abuse of legal process in violation of article 9 of the Covenant, in as much as (a) the dispute between the authors and the Federal Government over the scope of the Halifax Treaty could easily be resolved by civil rather than criminal litigation; and (b) the matter is already before the Committee. They submit that it would be possible for each of the individuals who have been prosecuted to submit a new complaint to the Committee, re-asserting the historical facts and arguments submitted by the authors of the initial communication. This, they assert, "would involve unnecessary burdens and delay for the Mikmaq people, as well as the Committee."

12.1 In its reply, dated 26 July 1989, the State party recalls that by virtue of the Constitution Act 1867, the Provinces have jurisdiction over lands and resources, including hunting and inland fisheries. In respect of the 14 Mikmaqs charged with violations under the Wildlife Act and related regulations, the State party explains that a court hearing had been set for 28 August 1989. In respect of the fishermen charged with violations under the Fisheries Act, it points out that three convicted Mikmaqs appealed their sentences to the Nova Scotia Supreme Court - Appeal Division, which was to hear the cases on 21 September 1989. The State party adds that the communicants' allegations "largely concern a dispute over the application of the Treaty of Halifax of 1752 outside of the Shubenacadie Reserve on the mainland of Nova Scotia." It explains the ratio decidendi of the Supreme Court of Canada in the case of Simon v. The Queen 1/ and argues that the Court did not have before it the issue of the application of the Halifax Treaty to the Nova Scotia mainland outside the Shubenacadie Reserve, nor to Cape Breton Island. The State party expresses the view that the above

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1/ [1985] 2 S.C.R. 387

decision does not apply outside the Shubenacadie Reserve and does not settle the issue of the Treaty's application to Cape Breton Island, which, at the time of the Treaty's signature, was not under British control.2/ According to the State party, it is open to the authors to challenge this interpretation in the trials under the Wildlife Act and the Fisheries Act. In fact, several of those charged with violations of the Fisheries Act argue that they enjoy an aboriginal right to hunt and fish in all of Nova Scotia, and that by virtue of this right and Section 35, paragraph 1, of the Constitution Act of 1982, they are immune from prosecution. The State party further contends that the authors could challenge the validity of the charges under the Canadian Charter of Rights and Freedoms, which protects the substance of the rights guaranteed by articles 9 and 14 of the Covenant; in addition, it would be open to the authors to apply to the Nova Scotia Supreme Court for a declaratory judgment on the validity of the Halifax Treaty. Finally, it is pointed out that negotitations between the Province and the Mikmaqs on an interim hunting agreement have resumed, and that an early resolution of the matter is conceivable. The State party concludes that on the basis of the above, the authors should be deemed to have failed to comply with the requirement of exhaustion of domestic remedies laid down in article 5, paragraph 2(b), of the Protocol.

12.2 The State party contends that, contrary to counsel's allegations, Donald Marshall is not being prosecuted under either the Province's moose hunting laws or the Federal Government's fishing laws. Accordingly, he cannot be considered a victim of the violations of the Covenant alleged in the communication of 10 February 1989, and the communication should be declared inadmissible ratione personae pursuant to article 1 of the Optional Protocol.

12.3 Additionally, the State party contends that since the authors' allegations do not fall within the scope of article 9 of the Covenant, the communication should be declared inadmissible ratione materiae with the provisions of the Covenant. In particular, the State party argues that article 9 of the Covenant does not oblige it to give preference to one means of law enforcement over another, if the safeguards and the procedures mandated by the provisions of the Covenant have been met. It points out that none of the authors claims to have been arbitrarily arrested, and that their only argument is that the Federal and provincial governments are obliged, pursuant to article 9, to use a means other than the Wildlife Act and the Fisheries Act to enforce animal and fish protection laws, and to address the application of the Halifax Treaty to territory outside the Shubenacadie Reserve. The State party further notes that the authors' initial submissions had no direct connection to the arguments they now proffer in respect of article 9; it contends that the suggestion that the State party should not prosecute a matter which is already before the Human Rights Committee runs counter to the procedure for determining the admissibility of communications laid down in the Optional Protocol. In its opinion, States parties are not obliged to defer prosecution until a matter has been finally determined by the Committee.

2/ It did not come under British control until after the signature of the Treaty of Utrecht in 1763.

12.4 Finally, the State party expresses concern that the authors' latest submission, alleging violations of article 9 in respect to Federal and provincial hunting and fishing laws, differs greatly from the initial submissions which sought, on the basis of article 1 of the Covenant, a seat at the 1987 Constitutional Conference on Aboriginal Rights. It submits that the allegations pertaining to article 9 concern different domestic law, facts, international standards and people, and that the authors' position could make "every past and future dealing between the Government and the Mikmaq tribal society part of the original communication".

13. In a letter date 24 August 1989, counsel takes issue with the State party's interpretation of the Supreme Court's decision in Simon v. The Queen and notes that the Halifax Treaty itself refers to the "Mikmaq Tribe " and its "Grand Sachem" (Grand Chief) rather than to "Shubenacadie", the name of an Indian reserve encompassing no more than a few square kilometres which did not exist until nearly a century after the Treaty was executed. In counsel's words, the argument that a treaty with the "Mikmaq tribe", which occupies much of five Canadian Provinces, was meant to apply only to a small territory which was not named and did not yet exist, strains credulity.

14.1 Before considering any claims contained in a communication, the Human Rights Committee shall, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

14.2 With regard to the State party's contention that the authors' communication as pertaining to the right of self-determination should be declared inadmissible because "the Committee's jurisdiction, as defined by the Optional Protocol, cannot be invoked by an individual when the alleged violation concerns a collective right", the Committee observes as follows: While article 1 of the Covenant recognizes and protects in the most resolute terms a people's right of self-determination and its right to dispose of its natural resources, as an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights, this provision can neither be invoked by individuals, nor by peoples under the Optional Protocol. Firstly, as observed by the Committee in earlier cases (communications Nos. 167/1984 and 197/1985), individuals cannot claim under the Optional Protocol to be victims of a violation of the right of self-determination, which is a right conferred upon peoples, as such. Secondly, as the Committee has also observed in its views on communication No. 167/1984, the Optional Protocol does not constitute a machinery through which peoples can assert their rights. It provides a procedure under which individuals can claim that their individual rights, as set out in Part III of the Covenant (articles 6 to 27, inclusive) have been violated. The question whether the Mikmaq tribal society constitutes a "people", as asserted by the authors but contested by the State party, is not relevant in this respect.

14.3 The authors' most recent allegations of violations of article 9 of the Covenant (made on 10 February 1989) are far removed from the issue which is the basis of the present communication. The Committee considers them to be an attempt by the authors to illustrate difficulties experienced, in general, by the members of the Mikmaq tribal society in asserting aboriginal rights which they claim to be theirs. They are not, however, considered as giving rise to a claim within the meaning of article 2 of the Optional Protocol in the context of the present communication.

14.4 Notwithstanding the observations in paragraph 14.2 above, the Optional Protocol does not preclude a group of individuals, who claim to be similarly affected, from together submitting a communication about alleged breaches of their rights as set out in Part III of the Covenant. Although initially drafted in terms of an alleged breach of the right of self-determination, the authors, subsequently, and after receiving the State party's objections to the admissibility of the communication as it then stood, asserted that the fact that the Mikmaqs were excluded from participating in the constitutional conferences also reveals a breach of article 25 of the Covenant.

14.5 The Committee further observes that, on the basis of the information before it, court proceedings aimed at challenging the Prime Minister's discretion to select the participants to attend the constitutional conferences would not have constituted an effective remedy within the meaning of article 5, paragraph 2 (b), of the Optional Protocol. This applies also to the notion that the Mikmaqs could have initiated legal proceedings, on their own and in a timely fashion, to secure for themselves a seat at the 1987 constitutional conference.

14.6 The Committee believes that there are certain questions of law and facts relating to article 25 (a) of the Covenant that can only be determined on the merits. The Committee will have to address the issue whether or not the constitutional conferences constitued a "conduct of public affairs" and whether the right under article 25 (a) is available only to individual citizens, or to groups or representatives of groups also. In this context, the Committee would wish to know, in particular, the precise legal nature and scope of competence given to the constitutional conferences, as well as the criteria for participation therein.

15. In the light of the above, the Human Rights Committee decides:

(a) That the communication is inadmissible in respect of article 1;

(b) That the communication is inadmissible in respect of article 9;

(c) That the communication is admissible in so far as it may raise issues under article 25(a) of the Covenant;

(d) That any further explanations or statements which the State party may wish to submit to clarify the matter which remains under consideration, as set out in paragraph 14.6 above, should reach the Human Rights Committee within six months of the date of transmittal to it of this decision, in accordance with article 4, paragraph 2, of the Optional Protocol;

(e) That any further explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure of the Committee to the authors, with the request that any comments which they may wish to submit thereon should reach the Human Rights Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of transmittal; and

(f) That this decision shall be communicated to the authors, their counsel and to the State party.

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