

A. D. v. Canada, Communication No. 78/1980, U.N. Doc. CCPR/C/OP/1 at 23 (1984).

Submitted by: - A. D. (name deleted) on 30 September 1980

Alleged victim: The Mikmaq tribal society

State party: Canada

Declared inadmissible: 29 July 1984 (twenty-second session)*

Subject matter: Rights of indigenous peoples in Canada-Right of self-determination

Procedural issues: Competence of the HRC-Standing of the author-Individual opinion-Inadmissibility *ratione materiae*-Concept of "victim"

Substantive issues: Concept of "people"-Right of self determination-Minorities-Interference with family

Articles of the Covenant: 1, 23 and 27

Articles of the Optional Protocol: 1 and 2

1. The author of the communication (initial letter dated 30 September 1980; supplementary information of 9 December 1980; and further submissions dated 26 June, 3 October, 11 November, 1981, 15 July 1982, 3 August 1983, 6 January and 6 February 1984) is A. D., "Jigap'ten of Santeoi Mawa'iomi"-Grand Captain-of the Mikmaq tribal society. He submits the communication on behalf of "the Mikmaq people" who claim as their territory the lands which they possessed and governed at the time when they entered into a protection treaty with Great Britain in 1752, and which are known today as Nova Scotia, Prince Edward Island, and parts of Newfoundland, New Brunswick and the Gaspé peninsula of Quebec.

2.1 The author alleges that the Government of Canada has denied and continues to deny to the people of the Mikmaq tribal society the right of self-determination, in violation of article I of the International Covenant on Civil and Political Rights. It is further submitted that Canada has deprived the alleged victims of their means of subsistence and has enacted and enforced laws and policies destructive of the family life of the Mikmaqs and inimical to the proper education of their children.

2.2 It is stated to be the objective of the communication that the traditional Government of the Mikmaq tribal society be recognized as such and that the Mikmaq nation be recognized as a State.

3. Responding to a request by the Committee for clarification (decision of 29 October 1980), A. D., in a letter dated 9 December 1980, reaffirms that the communication is concerned essentially with the violation of articles I of the Covenant (. . . "article I is our goal, our vision" . . .) and rejects categorically the applicability of article 27 (concerning the rights of persons belonging to minorities). He also submits that he has been authorized by the Grand Council of the Mikmaq people to represent his kinsmen before the Committee. ¹

4. By its decision of 9 April 1981, the Human Rights Committee transmitted the communication under rule 91 of the provisional rules of procedure to the State party concerned, requesting information and observations relevant to the question of admissibility of the communication.

5.1. In its submissions, dated 21 July 1981 and 17 May 1982, the State party objects to the admissibility of the communication *ratione materiae*, on the ground that article I of the Covenant cannot affect the territorial integrity of a State, a principle asserted in United Nations declarations such as the "Declaration on the Granting of Independence to Colonial Countries and Peoples" (General Assembly resolution 1514 (XV) of 14 December 1960), the "Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" (General Assembly resolution 2625 (XXV) of 24 October 1970) and stated in a great number of legal opinions.

5.2. The State party further submits that the communication does not fulfil the requirements of articles I and 2 of the Optional Protocol. It is argued that, in the circumstances of the case, A. D. cannot claim either that his own rights have been violated, since according to article I (1) of the Covenant the right of self-determination is a collective right, or that he is duly authorized under the relevant provisions of the Optional Protocol to act on behalf of the Mikmaq nation.

5.3. The State party also maintains that the remedy sought in the case, namely the recognition of statehood, goes beyond the competence of the Committee.

5.4. Referring to allegations advanced by A. D. relating to self-government, education, enfranchising of aboriginal people, property rights, and subsistence, the State party rejects the claims, with one exception, as inadmissible, contending that these issues derive from the principal issue of the communication, the right of self-determination. The exception in this connection related to the situation of Indian women who marry non-Indians and thereby lose their status as Indians. The State party refers to the Indian Act 1970, which provides for limited self-government of the aboriginal peoples to laws and procedures governing their land claims and to the recently amended Canadian constitution, the Constitution Act 1982, which in its Charter of Rights and Freedoms envisages equal protection of the human rights of everyone and in its section 25 contains specific provisions as to the protection of rights and freedoms of the aboriginal peoples of Canada.

5.5. The State party does not consider the issues raised by the author concerning the legal aspects of the relationship between the United Kingdom, the Mikmaq tribe and Canada to be relevant in the present case, since it considers the communication inadmissible on the issue of self-determination.

6.1. By letters, dated 3 October 1981, 11 November 1981 and 15 July 1982, A. D. submitted his comments to the State party's submissions under rule 91 of the provisional rules of procedure. He refutes the State party's contention that the communication is inadmissible. With regard to the State party's argument based on territorial integrity, he contends that this is inapplicable in the circumstances of the case "because it assumed a disputed fact, viz. whether the territory of the 'Mi'kmaq Nationimouw' ever lawfully became part of the territory of Canada". The author asserts in this connection that the territory never was ceded or surrendered to Great Britain and, therefore, not to Canada.

6.2. A. D. disagrees with the State party's contention that the right of self-determination constitutes only a collective right, citing in substantiation the United Nations study on the Right of Self-Determination, 1980,² prepared by Mr. Hector Gros-Espiell, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. A. D. submits that this study shows that the Commission on Human Rights has repeatedly invoked self-determination as the right of individuals as much as a right of peoples collectively.

6.3. The author further challenges the validity of the State party's submissions on the substance of "subsidiary violations of human rights", commenting in detail on the issues of self-government, involuntary enfranchisement, education rights, property and human rights issues relating to the Constitution Act, 1982. He suggests, however, that before more evidence is submitted on these matters, the question of the admissibility of the communication should be decided.

6.4. A. D. finally suggests that the Committee should, if it finds that the present communication falls outside its competence, bring the Mikmaq people's case to the attention of the Economic and Social Council with the recommendation that an advisory opinion be sought from the International Court of Justice.

7.1. Before considering a communication on the merits, the Committee must ascertain whether it fulfils all conditions relating to its admissibility under the Optional Protocol.

7.2. Articles I and 2 of the Optional Protocol provide for the competence of the Committee to receive and consider communications from individuals who claim to be victims of a violation of the rights set forth in the Covenant.

7.3. The communication poses in particular the question whether Canada has violated article I of the international Covenant on Civil and Political Rights. A. D. claims not to represent a minority within the meaning of article 27, but a people within the meaning of article I of the Covenant. In this context he also alleges that the right of parents and families provided for in article 23 in connection with article 18 has been violated, most particularly with regard to the religious education of the children.

7.4. The Committee agreed to clarify first the standing of the author in so far as he claims to represent the Mikmaq tribal society.

7.5. While seeking to clarify the standing of the author, the Committee received a "communiqué" dated 1 October 1982 from the Grand Chief of the Grand Council of the Mikmaq tribal society, D. M., stating that nobody was authorized to speak on behalf of the Mikmaq nation or on behalf of the Grand Council or the Grand Chief, unless the latter "will give this authority in writing to the person or persons for each separate correspondence". Consequently, the Committee requested the Grand Council of the Mikmaq to comment on or clarify A. D.'s authority to act on behalf of the Mikmaq tribe and to provide the relevant information not later than 1 February 1983. In response, R. B., legal counsel for A. D., informed the Committee by telegram of 31 January 1983 that the Mikmaq Grand Council had reaffirmed the authority of A. D. to pursue communication No. 78/1980 before the Committee and that a document signed to this effect by the Grand Council would be transmitted by registered mail.

7.6. Six months later, on 3 August 1983, a letter mandating the legal counsel of A. D., Mr. R. B., to represent the Grand Council was received. This "Commission" was signed by the author of the communication himself and by the Assistant Grand Chief. The content of the "Commission" shows clearly that it is not the Grand Council in its legal entity which authorizes A. D. to act but that it is the author himself who confirms his self-authorization.

7.7. Later submissions of the author dated 6 January and 6 February 1984 referred to the substance of his complaints without providing evidence on his standing in the case of the Mikmaq people.

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

8.2. The Human Rights Committee observes that the author has not proven that he is authorized to act as a representative on behalf of the Mikmaq tribal society. In addition, the author has failed to advance any pertinent facts supporting his claim that he is personally a victim of a violation of any rights contained in the Covenant.

9. The Human Rights Committee therefore decides:
The communication is inadmissible.

Appendix

INDIVIDUAL OPINION

Mr. Roger Errera, member of the Human Rights Committee, submits the following individual opinion relating to the admissibility of communication No. 78/1980 (A. D. v. Canada):

A.D.'s communication is based primarily on a violation of article 1 of the Covenant relating to the right of all peoples of self-determination. The examination of the admissibility of this communication accordingly raises the following questions:

(1) Does the right of "all peoples" of "self-determination", as enunciated in article 1, paragraph 1, of the Covenant, constitute one "of the rights set forth in the Covenant" in accordance with the terms of article I of the Optional Protocol?

(2) If it does, may its violation by a State party which has acceded to the Optional Protocol be the subject of a communication from *individuals*?

(3) Do the Mikmaq constitute a "people" within the meaning of the above. mentioned provisions of article 1, paragraph 1, of the Covenant?

The inadmissibility decision adopted by the Committee does not answer any of these three questions, even though they are fundamental to the interpretation of article 1, paragraph 1, of the Covenant and article I of the Optional Protocol, and to the jurisprudence of the Committee relating to individual communications alleging violation of article 1, paragraph 1, of the Covenant. To my deep regret, therefore, I cannot endorse this decision.

The text of an individual opinion submitted by a Committee member is appended to the present decision.

1 The author states that the Grand Council, whose members are the Grand Chief, the Grand Captain and the Assistant Grand Chief, constitute! "the traditional Government of the Mikmaq tribal society".

2 Document E/CN.4/Sub.2/405/Rev. I.