Russel Barsh
Mikmaq Grand Council

SPEAKING NOTES
Working Group on Indigenous Populations
Third Session - 2 August 1984

Madame Chair,

I am honoured to have this opportunity to speak in support of the proposal just introduced by my colleague from the Blackfoot Confederacy. The Mikmaq Grand Council is of opinion that the proposed text for the Working Group's report of this session is a useful and acuurate summary of the views here expressed by indigenous representatives, and other observers.

We have had an extraordinary opportunity this past few days to review, and learn from the experiences of many different indigenous peoples in many different parts of the world. A few general observations seem justified. Many well-intentioned states fail to meet the full aspirations of indigenous peoples, for the following reasons:

First, they "give" rights to indigenous peoples, rather than agreeing on rights and freedoms with the indigenous peoples themselves. In this regard we should underscore Canada's efforts to develop a new political relationship with indigenous peoples through Cabinet-level conferences. While marred, perhaps, by questions of the adequacy of indigenous representation and willingness of government to accede to many of their reasonable aspirations, the approach is, in general outline, quite sound.

Second, once agreed, a programme for the recognition of indigenous rights needs to be entrenched constitutionally, beyond the power of revocation by hostile political majorities. In general outline, once again, the Canadian approach is on point here. Some of the most important native rights and freedoms, however, have been left to the less permanent medium of national legislation--particularly the right of internal autonomy or self-government.

In the United States, where some form of externally-supervised native self-government has been in place for more than 40 years, legislative and judicial encroachments have been eroding native autonomy considerably, leading to a gradual unravelling of the original political settlement.

Third, a territorial settlement--such as the United States' Alaska Native Claims Settlement Act, Canada's James Bay Agreements, or Australia's Aboriginal Land Rights Act--must assure indigenous peoples sufficient land and natural resources for self-sufficiency and self-development. Settling "cheap" has its political price in the long run. For example, we take special note of Australia's remarks on the large percentage of that country's land recently restored to Aboriginal ownership. While the percentage may be great--as the Aboriginal observers here pointed out, the value and resources of the land is proportionally small. Dividing surface and subsurface rights, or restricting indigenous peoples' access to water, fisheries and other resources, can completely undo the practical value of such a settlement.

Lastly, land protection programmes must involve a significant degree of indigenous autonomy and the recognition of indigenous land-tenure systems. Land means little if indigenous peoples cannot use it as they wish, without interference or restriction. Here we note the problems identified by indigenous observers with the U.S. system of "trusteeship," subjecting all land-use decisions to administrative supervision, or, say, existing U.S. and Canadian laws subjecting indigenous councils of government to administrative review and veto.

I would also like to address, briefly, the problems of enforcement mechanisms within the United Nations system. This issue is most important--it has been alluded to at this session but not discussed in any great detail. Two points, at least, should be made.
First, while indigenous persons have an opportunity to communicate specific grievances to the Human Rights Committee under the Optional Protocol, the Committee has not yet decided whether these communications can allege violations of collective rights, such as the right of an indigenous people to its traditional lands, or to some degree of autonomy. This issue has been raised in Denny v. Canada (R.19/78), and not yet resolved. One very important contribution this Working Group could make to the resolution of specific complaints--which, of course, we realize, cannot be done here--is to express its views on the admissibility of communications involving the kinds of collective rights of indigenous peoples we have been discussing this week. The task of the Working Group is standards, but the Working Group should assure that the standards it evolves can be enforced by existing U.N. review bodies such as the Human Rights Committee.
Second, we reiterate our belief that the most effective means of protecting indigenous peoples rights is for all states to abstain from supporting the military or development activities that threaten native peoples.

Finally, on the matter of definitions, we believe the term "indigenous" in the title of this Working Group was intended to delimit an area of concern, rather than implying a category of rights. That is, the fact that we speak of "indigenous" peoples here does not imply a conclusion that these peoples' rights are any greater or less than other peoples'. We merely acknowledge the unfortunate fact that many groups located within the boundaries of existing states have been subjected to extraordinary discrimination, are not "minorities" in the accepted legal sense, although culturally distinct from their neighbours, and deserve the special attention of the community of nations to achieve their legitimate rights and aspirations.