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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 74/03; Petition 790/01  
Session: Hundred and Eighteenth Regular Session (7 – 24 October 2003)  
Title/Style of Cause: Michael Mitchell v. Canada  
Doc. Type: Decision  
Decided by: President: Jose Zalaquett;  
First Vice-President: Clare K. Roberts;  
Second Vice-President: Susana Villaran;  
Commissioners: Robert K. Goldman, Julio Prado Vallejo.  
Dated: 22 October 2003  
Citation: Mitchell v. Canada, Petition 790/01, Inter-Am. C.H.R., Report No. 74/03,  
OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)  
Represented by: APPLICANT: Peter W. Hutchins  
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## I. SUMMARY

1. On November 26, 2001, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission or “the Commission”) received a complaint filed by Mr. Peter W. Hutchins from the firm of Hutchins, Soroka & Grant in Montreal, Canada, on behalf of Grand Chief Michael Mitchell (hereinafter “the petitioners”), a Mohawk of Akwesasne, resident in Canada, in which he alleged that Article XIII of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”) was violated by the Canadian State (hereinafter “Canada” or “the State”). The petition states that on March 22, 1988, Grand Chief Mitchell, accompanied by fellow community members, entered Canada from New York at the Cornwall International Bridge with a number of goods destined for the Mohawk territories of Tyendinaga and Akwesasne. Canadian customs officials charged Grand Chief Mitchell a duty of \$361.64, which he refused to pay, claiming Aboriginal and treaty rights under the Canadian Constitution. The Mohawk territory of Akwesasne lies within the Canadian provinces of Quebec and Ontario and the State of New York in the United States. The petition alleged that Canada incurred international responsibility for failing to recognize the Aboriginal right to bring in goods, duty-free from the United States across the border which divides the territory of this indigenous community.

2. The petitioners alleged that the facts denounced constitute a violation of his “right to culture” set forth in Article XIII of the American Declaration. The petitioners alleged that the “right to culture” includes an alleged Aboriginal right to trade with other indigenous First Nations (which exist on both sides of the Canadian/United States border) without having to pay customs duties to either country. It is alleged that this Aboriginal right is based on historic practices and customs of the indigenous peoples of Canada that existed prior to the arrival of the

European settlers. The petitioners alleged that Mr. Mitchell and the other members of his community are being deprived of the right to bring goods, duty-free, across the Canadian/United State border that divides the Akwesasne territory, and that this prohibition impedes trade among the First Nations in Canada. Trade, it is alleged, is an essential distinguishing element of Mohawk culture and the Iroquois Confederacy, and has historically played a central role in the traditional culture of the Mohawk people. The State responded that the petition should be declared inadmissible in law and in fact. It submitted that the right to take part in the cultural life of the community does not encompass trade as an aspect of culture and the State argues that Article XIII most certainly does not protect duty-free trade.

3. Without prejudging the merits, the Commission concludes in this report that the case is admissible since it meets the procedural requirements set forth in the Commission's Rules of Procedure. The admissibility requirements are set forth in Chapter II of the Commission's Rules of Procedure (Articles 30-37) and are made applicable to member states of the OAS that are not parties to the American Convention by means of Articles 49 and 50 of the same Rules. Consequently, the Commission decides to declare the petition admissible and to open the case, to notify the parties of that decision, and to publish it in its Annual Report to the OAS General Assembly.

## II. PROCESSING BY THE COMMISSION

4. On November 23, 2001, Peter W. Hutchins of the law firm Hutchins, Soroka & Dionne (since April 2003 Hutchins, Soroka & Grant) submitted a complaint on behalf of Grand Chief Michael Mitchell to the Inter-American Commission, the pertinent parts of which were transmitted to the State on February 25, 2002. The Commission requested the State to provide a response within a period of two months, pursuant to Article 30(3) of the Commission's Rules of Procedure. On April 15, 2002, the State requested a 60 day extension in order to undertake appropriate consultations. On April 16, 2002, the Commission granted the State the requested extension. On July 12, 2002, the Commission received the response of the State to the petition. The response was transmitted to the petitioners on August 27, 2002, and any observations on the State's response were requested to be filed within 30 days of receipt. On September 4, 2002, the Commission received a request for an extension of thirty days from the petitioners within which to file their observations. On September 6, 2002 the thirty day extension was granted. A second extension was requested on October 15, 2002 until November 29, 2002. On October 23, 2002, the Commission granted the second requested extension. On November 29, 2002, the petitioners submitted their observations on Canada's response to the petition. On April 30, 2003, the Commission transmitted the pertinent parts of the petitioners' observations to the State. No further communications were received.

## III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

### A. The petitioners

5. Grand Chief Michael Mitchell is a Mohawk of Akwesasne, resident in Canada, and is descendant of the polity known as the Mohawk Nation which is part of the Iroquois Confederacy. The Iroquois Confederacy includes the Mohawk, Oneida, Onondaga, Cayuga,

Seneca and Tuscarora Nations. Both the Mohawk Nation and the Iroquois Confederacy pre-date the arrival of the Europeans.

6. The territory of the Akwesasne community lies partly in the Province of Quebec, partly in the Province of Ontario, Canada, and partly in the State of New York, in the United States. It is divided by the international border that divides Canada and the United States. The division caused by the existence of an international border affects the residents of the Akwesasne on a daily basis and allegedly constitutes a profound interference with their ability to live their lives.

7. The Mohawks of Akwesasne have had a longstanding dispute with the Government of Canada concerning their rights across the Canadian/United States border which divides their territory. Specifically, Grand Chief Michael Mitchell and the members of his community allege that they are deprived of the right to bring duty-free goods across the United States-Canada border for the purpose of trade with other First Nations in Canada. On March 22, 1988, Grand Chief Mitchell carried a number of items into Canada from New York State to test the Aboriginal border-crossing rights. He entered Canada at the Cornwall International Bridge with the following items: one washing machine, ten blankets, twenty bibles, used clothing, one case of motor oil, ten loaves of bread, two pounds of butter, four gallons of milk, six bags of cookies, and twelve cans of soup. All of the items were destined for the Mohawk territory of Tyendinaga in Canada, except the motor oil which was destined for a store in the Mohawk territory of Akwesasne on the Canadian side of the border. Grand Chief Mitchell was charged a duty of \$361.64 by Canadian customs officials but he refused to pay. He claimed that customs officials had violated his Aboriginal and treaty rights under the Canadian Constitution, which include the right to trade freely across the international border.

8. Many of the goods brought into Canada by Grand Chief Mitchell were presented as gifts to the Mohawk community of Tyendinaga in a ceremony to signify a renewal of trade ties between the Akwesasne and Tyendinaga Nations. This practice followed the traditional custom between the two peoples who had formed a trading relationship for several generations. The remainder of the goods were brought for trade. Grand Chief Mitchell claimed in the trial division of the Federal Court of Canada the right to bring in goods, duty-free, from the United States across the border which divides the territory of his community. The right claimed was to bring in goods for 1) personal use; 2) use by the members of his community; and 3) trade, not in the commercial mainstream but rather with other First Nations in Canada.

9. The petitioners argue that trade is an integral aspect of Mohawk culture that is protected under Article XIII of the American Declaration. As part of the right to take part in the cultural life of the community, the petitioners contend that the Mohawk people have a right to trade within their own nation and with other member nations of the Iroquois Confederacy, without the imposition of customs and tariffs. Canada's imposition of taxes and duties on goods brought over the border interferes with an activity that is central to Mohawk cultural identity and integrity.

10. The petitioners base their claim regarding a violation of Article XIII on historical documentation of the general practice of Aboriginal nations in North America. The evidence indicates that members of the same nation or same confederacy did not pay tolls or tribute when conducting trade with each other. Two international treaties-the Treaty of Utrecht and the Jay

Treaty-are invoked as supporting evidence regarding the nature and scope of the Aboriginal right claimed by the petitioners. The Treaty of Utrecht is a peace treaty signed at the end of the Spanish War of Succession, while the Jay Treaty was signed in 1794 between Great Britain and the United States.

11. The petitioners submit that Article XV of the Treaty of Utrecht and Article III of the Jay Treaty are relevant to the resolution of this case. Article XV of the Treaty of Utrecht guarantees to the Five Nations of Indians and other First Nations who were their allies “the full Liberty of going and coming on account of Trade” without “any Molestation or Hindrance.” Article III of the Jay Treaty guarantees the rights of 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 of the Two Parties on the Continent of America . . . and freely to carry on trade and commerce with each other. . . . No Duty of Entry shall be levied by either party on Peltries brought by Land or Inland Navigation into the said Territories respectively, nor shall the Indians passing and repassing with their own proper Goods and Effects of whatever nature, pay for the same any Impost or Duty whatever.” Although the trial court in Canada concluded that the Jay Treaty did not create rights in favor of the Mohawk people of Akwesasne, since they were not parties to the treaty, the petitioners claim that Canada is obligated to respect these provisions under the rules of international law.

12. The petitioners claim that Canadian courts have recognized that trade is integral to the culture of the Mohawk Nation and the Iroquois Nations, in general. The Federal Court of Appeals and the trial division of the Federal Court of Canada ruled in favor of the petitioners and affirmed the existence of the claimed aboriginal right, but the Supreme Court of Canada overruled their decision.

13. The trial division of the Federal Court of Canada in a judgment dated June 27, 1997, found in favor of Grand Chief Mitchell who sought a declaration that he, as a Mohawk of Akwesasne, resident in Canada, has an existing Aboriginal right which is constitutionally protected and which allows him to pass and repass freely across what is now the Canadian/United States boundary including the right to bring goods into Canada for personal and community use, including for trade with other First Nations, without having to pay any duty or taxes whatsoever to any Canadian Government or authority. It found that “trading and traveling freely across the border made the Mohawk society what it is. The activities of the Mohawks centered around travel, diplomacy and trade.” This activity was integral and not incidental to Mohawk society. Under the test for identifying whether an Aboriginal right exists or not, set out in *R. v. Van der Peet*, [1996] 4 C.N.L.R. 177 (S.C.C.), the Canadian Supreme Court held that a modern practice, tradition or custom must have been integral to the distinctive culture of an Aboriginal people prior to contact with the Europeans. In applying this test, the trial court held that Grand Chief Mitchell and the Mohawks of Akwesasne were entitled to claim the right to pass and repass freely across the Canadian/United States border with goods for personal use, community use and small, non commercial trade with other First Nations. This right, under the meaning of section 35 of the 1982 Constitution Act which accorded constitutional status to existing Aboriginal and treaty rights, is based on Mohawk custom and tradition prior to the arrival of the Europeans in 1609.

14. The Canadian Federal Court of Appeal [1999] affirmed substantially the decision of the trial judge in favor of Grand Chief Mitchell, but disagreed concerning the scope of the Aboriginal right at issue. The Court of Appeal held that Mr. Mitchell's right to bring in goods from the United States for non-commercial trading does not extend to all First Nations' members.

15. The Canadian Supreme Court, in a judgment dated May 24, 2001, overturned the recognition of Grand Chief Mitchell's Aboriginal right to trade with other First Nations holding that "the claimed aboriginal right has not been established and that the respondent must pay duty on the goods imported into Canada". The Supreme Court agreed with the lower courts' holdings regarding the centrality of trade to the Mohawk and Iroquois peoples, but it applied the Van der Peet test to conclude that there was not enough evidence supporting the existence of an Aboriginal right to bring goods across the international border for the purpose of trade with other First Nations. The issue in dispute was the geographical extent of the trading rather than the existence of trading itself. The Supreme Court held that although evidence indicates that the Mohawks occasionally traveled north of the St. Lawrence River and that trade was a distinguishing feature of their society, it does not establish an ancestral practice of trading north that was integral to Mohawk culture or vital to Mohawk identity. Pre-contact trade was mainly conducted along an east-west axis.

16. As a guide to applying Article XIII of the American Declaration to this case, the petitioners refer to Article 27 of the International Covenant on Civil and Political Rights (ICCPR) to which Canada acceded in 1976. The petitioners advocate for the flexible and broad approach to the interpretation of culture that has been adopted by the United Nations Human Rights Committee. In its General Comment 23, adopted in 1994, the Human Rights Committee states that the exercise of cultural rights "manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples." It later continues, "[T]hat right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law."

17. Moreover, the U.N. Human Rights Committee affirmed in the case of Chief Ominayak and the Lubicon Lake Band v. Canada that "the rights protected by Article 27, include the rights of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong." Since trading is an economic activity that is central to traditional Mohawk culture, it should be interpreted as a protected cultural right.

18. According to the petitioners, the U.N. Human Rights Committee's test for finding a violation of Article 27 of the ICCPR should be used to test the applicability of Article XIII of the American Declaration to the facts at hand. When determining whether a state has breached its obligation to protect cultural rights, the Human Rights Committee considers the extent to which the state has engaged in consultation with the affected indigenous minority. Following this test, the petitioners argue that Canada has violated Article XIII by not including the participation of the Mohawk people when regulating their economic activity. The petitioners, therefore, advocate for the initiation of a Friendly Settlement process with Canada towards a cooperative regulatory arrangement.

19. In addition to citing the approach of the U.N. Human Rights Committee, the petitioners refer to emerging international norms on indigenous rights with respect to the right to culture. Several existing and emerging international instruments affirm cross-border contact between indigenous peoples. For example, the International Labor Organization (ILO) Convention N° 169 on Indigenous and Tribal Peoples states: “Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.” The petitioners also cite Article 35 of the Draft U.N. Declaration on the Rights of Indigenous Peoples, which recognizes that “indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with other peoples across borders.” It further provides that “states shall take effective measures to ensure the exercise and implementation of this rights.” Furthermore, Article XIV(2) of the OAS proposed American Declaration on the Rights of Indigenous Peoples recognizes that “indigenous peoples have the right to full contact and common activities with their members living in the territory of neighboring states.” Similar provisions are included in the U.N. Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities and the European Framework Convention for the Protection of National Minorities. The petitioners argue that Article XIII of the American Declaration should be interpreted in accord with these emerging international standards on indigenous peoples.

#### B. The State

20. The State requests that the Commission declare the petition inadmissible because “no violation of Article XIII has been substantiated on the facts” and Article 34(a) of the Commission’s Rules of Procedure provide that the Commission shall declare a petition inadmissible that does not state facts that tend to establish a violation of the rights referred to in the applicable human rights instruments.

21. The State first argues that the right to culture, protected under Article XIII of the American Declaration, does not encompass a right to trade across international boundaries in general or a right to trade free of the imposition of customs duties or taxes. Secondly, the State argues that the petition does not disclose facts that support a violation of Article XIII of the Declaration because the supporting documents do not demonstrate that the historical practices of the Mohawk people included the payment of tolls and tributes when crossing territorial boundaries. The State contends that the payment of tolls and tributes at territorial borders was an “aspect of the historic or cultural practices of the Mohawk people even before the arrival of Europeans in North America.”

22. The State maintains that Article XIII of the Declaration does not protect trade, with or without the imposition of duties or taxes, as an aspect of culture. The State interprets the level of protection as regards the right to culture under the American Declaration with provisions of other international treaties by which Canada is bound, including Article 27 of the ICCPR, Article 27(1) of the Universal Declaration of Human Rights and Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights. The text of Article XIII differs from the provisions of other international documents that protect cultural rights, in particular Article 27 of the ICCPR.

Whereas Article 27 of the ICCPR refers specifically to the right of ethnic, religious and linguistic minorities “in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their language,” Article XIII of the Declaration more broadly refers to the right of “every person . . . to take part in the cultural life of the community . . .” Thus, the right to culture under Article XIII of the Declaration is not limited to individual members of minority groups, but instead encompasses every individual in an OAS member state. Based on this interpretation, the State contends that all residents of a member state enjoy a right to international trade as a matter of culture when trade is considered an important aspect of community life. The right to trade across territorial borders without paying duties or taxes would likewise apply to all residents of a member state.

23. The State argues that trade, per se, is not an aspect of culture, unless the trade involves culturally significant goods or products of traditional knowledge. The trade goods brought into Canada by Grand Chief Mitchell included consumer goods (i.e. a washing machine, blankets, bibles, used clothing, groceries) intended for resale and as gifts to seal a trade agreement with the Mohawk of Tyendinaga. The items were not brought into Canada for the personal use of Grand Chief Mitchell or his family. The State maintains that the right to trade internationally in these consumer goods extends to every person as part of his or her right to take part in the cultural life of the community under Article XIII.

24. The State further supports its interpretation of Article XIII by referring to the opinions of the U.N. Human Rights Committee with regard to Article 27 of the ICCPR. The Human Rights Committee declared that economic activities must comprise an essential element of an ethnic minority’s culture in order to fall within the right to culture. The State concludes from the U.N. Committee’s observations that trade divorced from essential elements of culture (e.g., language, spirituality, art, music) is not protected under Article XIII.

25. According to the State, the petitioners’ interpretation of Article XIII to include a right to trade across international boundaries without paying taxes or duties is inconsistent with Article XXXVI of the American Declaration, which imposes a duty on “every person to pay the taxes established by law for the support of public services.” The rights of states to impose taxes and duties should not be limited by the right to take part in the cultural life of the community. The State notes that the ability to collect taxes that are intended to protect domestic industries from foreign competition, provide revenue for public services and regulate commercial activity is an attribute of the territorial integrity and sovereignty of states. As supporting evidence, the State references the observations of the U.N. Human Rights Committee, in its General Comment 23 on the rights of minorities, that “the enjoyment of the rights to which Article 27 relates does not prejudice the sovereignty and integrity of a State party.”

26. The State’s second argument is that the petition is inadmissible because a violation of Article XIII has not been substantiated on the facts. While the State recognizes that trade has played a significant role in the traditional culture of the Mohawk people, it challenges the petitioners’ contention that free trade has been an aspect of Mohawk culture. The historic practices of the Mohawk people before the arrival of Europeans in North America included the payment of tolls and tributes upon the crossing of territorial borders. The State notes that the

evidence of historians presented at the Mitchell trial and accepted as fact by Canadian courts, supports this conclusion.

27. The State argues that the requirement to pay duties and taxes on goods brought into Canada does not significantly impede the Mohawks of Akwesasne from participating in trade with other indigenous peoples. Moreover, there is no evidence that the imposition of duties and taxes has severed or substantially impeded the re-established trading links or prevented the Mohawks from trading goods as a matter of commerce or culture. The State claims that freedom from duties and taxes would give the Mohawk people an economic advantage over other persons or corporations that engage in similar trade. This economic advantage, the State contends, is not part of the people's right to take part in the cultural life of the community.

28. As regards the Supreme Court of Canada's decision in Mitchell, the State notes that the trial judge's findings were overturned with respect to his conclusions on the geographical range of traditional Mohawk trade. The Supreme Court held that there is no evidence that supports the claim that the Mohawk traded as far north of what is now Canada.

29. The State requests that if the Commission finds the petition admissible, that it address the relevance of the petitioners' reference to the Treaty of Utrecht, 1713, and/or the Jay Treaty, 1794, to a determination of the merits of the petition. In particular, the State further requests the Commission to indicate in its decision on admissibility whether it considers that it may be necessary for it to determine the status of any articles of either treaty and most specifically, on the force and effect of Article III of the Jay Treaty, 1794. The State argues that the treaties are not relevant to the merits of the petition because they are not multilateral treaties dealing with human rights. It notes that the treaties are not self-executing in domestic law and consequently are irrelevant to the question of exhaustion of domestic remedies. Lastly, the State observes that the Commission has no mandate to rule on either the continuing force or the content of these treaties.

#### IV. ANALYSIS

A. Competence of the Inter-American Commission *ratione personae*, *ratione materiae*, *ratione temporis* y *ratione loci*

30. The petitioners claim that the State has violated Grand Chief Mitchell's rights and those of the Mohawk of Akwesasne under Article XIII of the American Declaration of the Rights and Duties of Man. The State is a member State of the Organization of American States but is not a party to the American Convention on Human Rights. Consequently the State is subject to the Commission's jurisdiction as regards the American Declaration of the Rights and Duties of Man, as provided for in Article 49 of the Commission's Rules of Procedure. Canada deposited its instrument of ratification of the OAS Charter on January 8, 1990.[FN1] The events that relate to the petitioners' claim occurred subsequent to the State's ratification of the OAS Charter. The alleged victims are natural persons and the petition was lodged in accordance with Article 23 of the Commission's Rules of Procedure. Consequently, the Commission is competent to examine the petition *ratione personae*.

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[FN1] The Inter-American Court and the Commission have previously determined that the American Declaration of the Rights and Duties of Man is a source of international obligation for the OAS member states that are not parties to the American Convention on Human Rights, as a consequence of Articles 3, 16, 112 and 150 of the OAS Charter. See Charter of the Organization of American States, Arts. 3, 16, 51, 112, 150; Statute of the Inter-American Commission on Human Rights, Arts. 1, 20; Rules of Procedure of the Inter-American Commission on Human Rights, Arts. 23, 27, 28-43, 45-47, 49-50; I/A Court H.R., Advisory Opinion OC-10/89 “Interpretation of the Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights”, July 14, 1989, Ser. A No. 19 (1989), paras. 35-45; I/A Comm. H.R., *James Terry Roach and Jay Pinkerton v. United States*, Case 9647, Res. 3/87, 22 September 1987, IACHR ANNUAL REPORT 1986-1987, paras. 46-49.

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31. The Commission is competent *ratione loci* to consider the petition because it alleges violations of rights protected under the American Declaration which took place within the territory of a state party to the Convention. The Commission is competent *ratione temporis*, because the obligation to respect and ensure the rights protected by the American Declaration was already in force in the State on the date on which the facts alleged in the petition occurred. Finally, the Commission is competent *ratione materiae*, because the petition denounces facts which, if true, could comprise violations of human rights protected by Article XIII of the American Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

32. Article 31(1) of the Commission’s Rules of Procedure specifies that in order for a case to be admitted: “The Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.” In Canada’s internal legal system the instant case reached Canada’s highest court, the Supreme Court of Canada. Consequently, there are no further domestic remedies for the petitioners to exhaust.

2. Deadline for presentation

33. The petition was lodged within six months of the date on which the petitioners were notified of the judgment of the Supreme Court of Canada in the domestic proceedings of *Mitchell v Minister of National Revenue* [2001] 1 SCR 911. The judgment of the Supreme Court of Canada is dated May 24, 2001 and the petition was submitted to the Commission by electronic mail on November 23, 2001.

3. Duplication of procedures and *res judicata*

34. The petitioners confirm that the subject of their petition is not before any other international body and confirm that their petition does not duplicate a petition pending before, or already examined and settled by, the Commission.

4. Characterization of the acts alleged

35. The Commission considers that if the alleged facts are proven to be true, they may constitute violations of the rights guaranteed in Article XIII of the American Declaration of the Rights and Duties of Man. The Commission considers that it is not necessary at this stage of the proceedings to determine whether or not a provision of the American Declaration has been violated. For the purposes of inadmissibility, the Commission must decide that the petition does not state facts that tend to establish a violation of the rights guaranteed in the American Declaration, as provided in Article 34(a) of its Rules of Procedure.

36. The Rules of Procedure, however, do not state that for the purposes of admissibility the petition must state facts that establish a violation of the rights guaranteed in the American Declaration, especially when the content of that right has never before been determined by the Commission or the Inter-American Court of Human Rights. The Commission must undertake a prima facie evaluation to determine whether the complaint establishes an apparent or potential violation of a right guaranteed by the American Declaration, but it is not required at the admissibility stage to determine whether a violation has in fact occurred. Such an evaluation is a summary review that does not prejudice or offer a premature opinion on the merits. By establishing two distinct phases of admissibility and merits, the Rules of Procedure of the Commission reflect this separation between the evaluation to be carried out by the Commission for the purposes of declaring a petition admissible and that required to determine whether a violation has taken place.[FN2]

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[FN2] See Report N° 31/03, Admissibility, Petition 12.195 Mario Alberto Jara Oñate et al., (Chile), March 7, 2003.

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37. The petitioners allege an Aboriginal right, as an indigenous people, protected under Article XIII of the American Declaration, to bring goods across the Canadian/United States border for the purpose of trade with other First Nations without paying customs duties when crossing the international border. Canada argues in this case that Article XIII does not protect trade as an aspect of culture, and that Article XIII most certainly does not protect duty-free trade. The Commission considers that consideration of the petitioners' allegations requires a more in-depth briefing of the issue involved, specifically, what does the right to culture encompass under the American Declaration, and does the right to culture cover the facts alleged in the petition? In undertaking this analysis, the Commission is not bound by the definition of the "right to culture" as determined by the Canadian courts, or the Van der Peet test, although the analysis and interpretation of these courts may provide certain useful insights for the Commission's interpretation of the substantive content of Article XIII of the American Declaration. In this context, the Commission, since it is not a fourth instance, will not rule on the Treaty of Utrecht or the Jay Treaty in order to determine the merits of the case. The two treaties will be considered

by the Commission, as will the lower court decisions, in understanding the proceedings at the national level.

38. With regard to the instant petition, the Commission considers that it requires a further in-depth substantive briefing as regards the content of the “right to culture” as set forth in Article XIII of the American Declaration, before any conclusions can be drawn. Since this is a case of first impression, the Commission requests that the parties, in presenting their final allegations on the merits, present their views as to what the “right to culture” in the American Declaration signifies, in connection with this case, and why the facts set forth in this case are or are not covered by the characterization of this right. The Commission does not find that the petition is “manifestly groundless” and considers that the petitioners are entitled to a full and fair hearing regarding possible breaches of Grand Chief Mitchell’s rights under the American Declaration.

## V. CONCLUSIONS

39. The Inter-American Commission concludes that it is competent to examine this case and to declare that the petition is admissible, pursuant to Article 37 of its Rules of Procedure. On the basis of the de facto and de jure arguments set forth in this document, and without prejudice to the merits of the petition,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible insofar as it refers to possible violations of rights protected in Article XIII of the American Declaration of the Rights and Duties of Man.
2. To notify the parties of this decision.
3. To continue to examine the merits of the case, and
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human

Rights in the city of Washington, D.C., on the 22 day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vicepresident; Susana Villarán, Second Vicepresident; Robert K. Goldman and Julio Prado Vallejo, Commissioners.