

# ABORIGINAL PEOPLES AND NAFTA: COLONIZATION CONTINUES TO RUN AMOK

Sharon Venne

On the last day of 1993, the Zapatista Army of National Liberation began the most recent Indigenous Peoples' campaign in the five hundred year battle against the colonizers. In the case of the Mayan, the defensive was against the Mexican Government of President Carlos Salinas de Gortari.

The irony of the last day of 1993 is not lost on Indigenous Peoples. The United Nations had proclaimed 1993 the International Year of Indigenous Peoples, but then undertook to allocate no funds towards the celebration of that year. In fact, 1993 was a "consolation prize" to the Indigenous Peoples who had lobbied hard to have 1992 set aside as the International year, being five hundred years after Columbus' arrival. However, Western state governments including Spain, Portugal, Italy, the United States of America and other states of the Americas did not want to draw attention to surviving Indigenous Peoples. The struggle of the Mayan Peoples in the state of Chiapas, Mexico drew the world's attention to the struggle of Indigenous Peoples. The question is: what propelled the Zapatista to act? Furthermore, what are the effects of the uprising upon the struggle of the Indigenous Peoples of Canada and the United States of America?

In the communiqué issued by the Zapatista, they attribute their actions as a reaction to the coming into force of the North American Free Trade Agreement (NAFTA) on January 1, 1994. NAFTA, which created one large free-trade zone, from Mexico in the south to the Arctic Ocean in Northern Canada, certainly was going to have detrimental effects upon the lives of the Indigenous Peoples. But what is the link between NAFTA and the Mayan Indigenous Peoples?

When the governments of Canada, the United States of America and Mexico signed the Free Trade

agreement, they hailed the agreement as a great victory for free enterprise and trade. For the sake of money, the three populations would be combined to build a huge pool of consumers. In order to bring the agreement into legal force on January 1st, Mexico was required by its trading partners to have amended a few of its laws. One of the principal laws which required amendment was the Mexican constitution, which guaranteed, in Article 27, that Indigenous Peoples could hold their lands communally. By amending its Constitution to remove Article 27, the communally-held lands would be open for access and Mexico would be in legal conformity with its trading partners to the north. The Indigenous lands, which had previously been held communally, would now be open to taxation, private sale, and foreign ownership. As one former Prime Minister of Canada commented: as Canada was open for business so, too, would Mexico be open for business.

Across the Americas, Indigenous Peoples have traditionally held their lands on a communal basis. Communal holdings of land are not conducive to good mainstream business practices — the usual preference is to deal with one owner in order to purchase land and resources. Communally-held lands are a wrench in the machine of industry. The Mexican Government agreed with this proposition and amended its basic governing law, hence, no more communal lands. What are communal lands to the Indigenous Peoples? They are lands held in trust by everyone, and can belong to no one individual. The land is for the future generations. As one Dene Elder has said: "The land does not belong to us, we belong to the land." In saying this, the Elder is not diminishing the effect of the trust which is placed in the hands of the Indigenous Peoples to protect the land. It is merely a different way of viewing the relationship to the land.

The Mayan Peoples, which make up about seventy percent of the state of Chiapas' two and a half million people, made a subsistence living by growing corn and coffee on their communal lands. If their communal lands were taken away from them, their poverty and living conditions would get even worse. The price for their corn and coffee was already low, but with the passage of NAFTA, the large corporations could make the prices drop further. Subsistence living would not even be a possibility for the people. Starvation or moving away from the land would be the only remaining option. The Mayan Peoples chose to survive in the only way they knew how — already having survived five hundred years of colonization.

The Mayan had moved from the coast and lowlands of Mexico to the highlands in order to survive. But now, even this area was not safe for them. It has been widely reported that the highlands are rich in oil reserves. There had been a testing program carried on in the region by PEMEX, the state-owned petroleum company. When NAFTA came into effect, together with the amended Constitution, oil could be extracted to fuel the economy of Mexico. It was necessary to remove the barriers to this exploration and exploitation. In an interview with Subcomandante Marcos, the military leader of the Zapatista Army, it was reported that:<sup>1</sup>

[T]hey [the Zapatistas] believed the federal army, with the trade deal in hand, was set to launch a major offensive against them on Jan. 10 or 11. Says Marcos: 'We know because we have infiltrated the federal army.'

Thus, the Mayan peoples had no choice but to act first to protect their lands and lives against such an action.

In addition to the amendment to Article 27 of the Constitution, the Mexican government has plans to enact legislation which would allow for the appropriation of Indigenous lands. The enactment of such legislation would bring Mexico into line with Canadian and American legislation on the exploitation of Indigenous Lands for public purposes. For example, section 35(1) of the *Indian Act* of Canada allows for the taking of land for public purposes. The section reads as follows:<sup>2</sup>

Where by an Act of Parliament or a provincial legislature Her Majesty in right of a province, a municipal or local authority or a corporation is empowered to take or to use lands or any interest

therein without the consent of the owner, the power may, with the consent of the Governor in Council and subject to any terms that may be prescribed by the Governor in Council, be exercised in relation to lands in a reserve or any interest therein.

As can be seen, this section permits any level of Government, and even corporations, to take Indigenous lands without the consent of the Indigenous Peoples. When Indigenous Peoples fought back to keep their lands and took governments to court, the legislatures changed the rules to "legalize" the governments' and corporations' actions. This is the case of the Lubicon, who attempted to have a *caveat* registered in order to protect their lands. The government of Alberta enacted retroactive legislation to prevent the registration of such a *caveat*.<sup>3</sup> The Mohawks at Oka had to resort to blockades to prevent a golf course expansion in the pines and over their burial ground. A golf course, oil and gas development, dam building, road building, and any number of other projects can be used to justify the unilateral taking of Indigenous lands for the "public good." Which public? What kind of good? Who defines that good? It seems that the "public" has a greater right to our lands and resources than do the Indigenous Peoples — a philosophy which has perpetuated the machinery of colonization for the last five hundred years.

In the United States of America, an act of Congress can extinguish title to the lands of Indigenous Peoples. The Americans, being more "democratic," pass the legislation piece-by-piece in their Congress. But, on many occasions, where no such act existed, the Government acted just the same. As a brief example, take the Western Shoshone, who signed the Ruby Valley Treaty with the United States government in 1863. This Treaty was for peace and friendship, providing both a right-of-way for California-bound gold seekers and recognition by the United States of the homeland boundaries of the Western Shoshones' approximately 24.5 million acres. Their lands formed part of the present states of Nevada, Utah, Idaho, Wyoming and Colorado. There never was a legislative act of Congress expropriating their lands but, nonetheless, the United States has taken their lands without consent and has used the lands for "public" purposes. Part of the Western Shoshone lands form the most bombed-out areas of the United States. More than 650 atomic blasts were set off at the Energy Resource and Development

Administration's Nevada testing site within the territory of the Western Shoshone. The national interest and public good of the United States of America overrode the Ruby Valley Treaty, as well as concern about the health risks of such testing to the Indigenous Peoples, who were exposed to much nuclear contamination.<sup>4</sup>

There is, within the terms of NAFTA, a procedure to settle issues related to the taking of lands and resources. An "independent" NAFTA tribunal may settle any disputes arising from the sale of the Indigenous Peoples' lands and resources. How independent? How fair? Can Indigenous Peoples veto any decision made by this tribunal? No, they cannot. This tribunal is set up to protect the interests of the parties to NAFTA. Indigenous Peoples are not signatories to NAFTA; our lands and resources are merely the fuel for the machine — Indigenous Peoples must be removed to make way for "development." Five hundred years and the struggle continues. The Mayan peoples, through their Zapatista Army of National Liberation, brought home to the world the continuing struggle of Indigenous Peoples to maintain their lands and resources against colonization.

The populations of Canada and the United States feel that NAFTA is not responsible for the actions of the Mayan Indigenous Peoples. NAFTA is only business; it is only making money. But the wealth and use of Indigenous lands means Indigenous peoples will have to step aside or be destroyed. The Mayans chose neither. They are fighting for the future generations and the next five hundred years. They are fighting for survival, as are all Indigenous Peoples. □

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#### Endnotes

1. *Edmonton Journal* (16 April 1994).
2. *Indian Act*, R.S.C. 1985, c.I-5, s.35(1).
3. *The Land Titles Amendment Act, 1977*, S.A. 1977, c.27.
4. This information was provided at the World Uranium Hearings held in Salzburg, Austria in September, 1992. The author of this article was present at the hearings.

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22. Jorge G. Castaneda, "The Other Mexico Reveals Itself" *The Vancouver Sun* (6 January 1993) A13.
23. Joyce Nelson, "Chiapas Crisis Unleashes NAFTA Damage Control" *The Georgia Straight* (28 January-4 February 1994) at 7ff.
24. Marci McDonald, "Gunned Down: An Assassin Kills Mexico's Heir Apparent" *Maclean's* (4 April 1994) at 24-26.
25. AP, "Seven Were Involved in Assassination of Presidential Candidate, Officials Say" *Vancouver Sun* (5 April 1995) A6.

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