

# TREATIES MADE IN GOOD FAITH

Sharon H. Venne

## *Introduction*

THIS PRESENTATION is ABOUT the oral understanding of Treaty Six and the treaty-making in 1876 at Fort Carlton and Fort Pitt, located in present-day Saskatchewan. There are no written notes for this talk, only my memory of those words spoken by the Elders and Chiefs to express the rich and vibrant life of our Peoples. I remember the Elders stating that the Treaty will last "as long as the sun shines, the waters flow, and the grass grows."<sup>1</sup> The words "the waters flow" refer, not to a body of water like the North Saskatchewan River, but to the water that breaks when a woman gives birth. Because the Treaty is supposed to last for as long as water flows when women give birth, these words tie Cree women like me to the Treaty process. How that expression came about is an interesting story, but here I want to talk about the oral understanding of treaty-making as I have learned it from my Elders.

## *Treaty-Making*

First, it is important to acknowledge that the University of Alberta is situated on land ancestral to the Papaschase Cree Peoples. I cannot say that it belonged to the Cree because, actually, all the land belongs to the Creation.<sup>2</sup> Under Treaty Six, Cree Peoples agreed to share some of their lands with the Queen's subjects, but certain lands were not to be shared, called "reserved lands." In an abuse of history as well as of the Cree Peoples, the settlers called the areas of land that would not be shared "reserves" and wrote that "Indians" were placed on "reserves."<sup>3</sup> That is a lie. After the treaty-making in 1876 at Fort Pitt, in Cree territory, Chief Papaschase selected the lands that would not be shared for his Peoples

and for the future generations.<sup>4</sup> Those reserved lands were to the south, across the North Saskatchewan River from Fort Edmonton that was occupied by the settlers.

Some twelve years later, in 1888, the settlers decided that they did not like having a reserve so close to them. On 19 November 1888, the land was listed for sale.<sup>5</sup> They had an added economic reason: the railway wanted to come up from the south and Papaschase's Peoples were in the way. The government of Canada rigged it up to keep the settlers happy: when Papaschase's Peoples were away hunting in the North, the Indian Agent arranged for the land to be surrendered without a vote. When Papaschase returned, his reserve was gone.<sup>6</sup>

Today the University of Alberta sits on Papaschase's land. There are stories circulating, based on an Indian Affairs survey, that the reserve was east of the present university site, but at the time of treaty-making the chiefs and Elders selected lands based on landmarks and waterways rather than Indian Affairs surveys. Over at the university's faculty club, there is a room dedicated to Chief Papaschase that gives some acknowledgment of his role in this area. So when you're walking around the University of Alberta, you are walking on his land, on Indigenous land.

Actually, all of North America is Indigenous land. At the time of the treaty-making, Indigenous Peoples never gave up the land. When Indigenous Peoples talk about the land and the making of Treaty,<sup>7</sup> we are talking about our life and the life of the future generations. Land is central to the process. We have a relationship with our Creation based on a legal system designed to protect and honour the land. These are the laws that guided Cree Peoples when the Chiefs negotiated and concluded Treaty Six in 1876.

Over the years, I have heard many people say that non-indigenous people brought treaty-making to Indigenous Peoples. This is totally false. It is not true because Indigenous Peoples living on Great Turtle Island have always had treaty-making. You only have to go back a short way in the history of our Cree Peoples, who made treaties with our neighbouring Indigenous nations. There were wars between the nations so there was a need for peace treaties. Peace treaties are known to the Cree. The Cree made a peace treaty with the Dene that is still in place. The Cree-Dene Treaty—concluded before the coming of the non-indigenous peoples—was to demarcate our territories. The demarcation is known as Peace River: north of the Peace River is Dene land, and south of it is Cree territory. When I cross the Peace River going north into Dene territory, I always give thanks to the Dene for letting me come into their territory.

I say a prayer to the Cree and Dene Elders who said that we could travel

in peace. This is the meaning of a peace treaty. It needs to be lived. It is not an empty phrase or value; it is a living spirit.

When the Cree travel south, the dividing line between the Cree and the Blackfoot Confederacy is a treaty demarcation. Our ancestors said: "From this day forward, we will live in peace with their people; we will not interfere in the Blackfoot territory." It is not for this generation to break the words of the Elders, who made their commitment using their pipes and the prayers before the Creation.

Not many Indigenous or non-indigenous people know about these treaty demarcations because the government of Canada put a map on top of the land and called it "Alberta." Mapping and renaming the lands as an artificial entity created a big mess. However, Indigenous Peoples must not be deterred by these changes but must continue to remember the land and the stories of the land and waters. As Indigenous Peoples, we must remember the treaties and demarcations because we have treaty relations with neighbouring Peoples. The treaties made among Indigenous nations do not cause problems. The treaties made with the settlers are the troublesome ones.

When the Crown's people came to Cree territory to make the treaty, Indigenous Peoples' treaty-making process was well established.<sup>8</sup> It is important to remember that the Crown came to Indigenous Peoples. The Cree did not go to England to make treaty. The Cree Peoples did not go to Ottawa. The Crown sent its representatives to our lands. There was no conquest in Cree territory. There was no war with non-indigenous people. Our territories were not *terra nullius* ("land of no one"), because we were here. As Nations, we had our own governments, our own laws, our own political and legal systems operating in our territories. These were all in place at the time of contact with the colonizers. Our creation stories tell us that there was no *terra nullius*. The Peoples of Great Turtle Island were not living here waiting to be discovered or colonized.

#### *Garden of Eden or Bering Strait?*

The Bering Strait theory does not explain the Indigenous Peoples. Cree Peoples did not come across the Bering Strait. It is a strong belief of mine that Great Turtle Island, and the rest of the lands of our Indigenous brothers and sisters to the south of us, was the Garden of Eden, if you follow the Christian Bible and its theories. Our Great Turtle Island is the Garden of Eden. Those tracks going across the Bering Strait are the people expelled from Great Turtle Island. This theory explains the destruction of Great Turtle Island since the settlers arrived from across the Atlantic Ocean. The settlers returned to the Garden of Eden to try to destroy it since they

had been expelled. Now it is payback time for Indigenous Peoples, the territories, waters, animals, birds, and everything on Great Turtle Island. This is my view of history. I want someone to show me the evidence to contradict my theory. If Indigenous Peoples crossed the Bering Strait, why did we not bring wheeled vehicles? Were our ancestors that impractical to carry everything across the Bering Strait and leave wheeled vehicles on the other side of the strait?

#### *International Law*

Indigenous Peoples were not discovered. There was no *terra nullius*. There were no wars or conquests. These are some of the justifications in international law that would allow non-indigenous peoples to claim our lands and resources. But there is no justification in international law to allow the expropriation of Indigenous lands without our consent. There is only one legal avenue: a treaty must be made with the Indigenous Peoples.<sup>9</sup>

The International Court of Justice decision in the *Western Sahara* case stated that land occupied by a group of people who organized themselves socially and politically could not be considered *terra nullius*.<sup>10</sup> The Court pronounced that the only way for a foreign sovereign to acquire any right to enter into territories that are not *terra nullius* is with the freely informed consent of the original inhabitants through an agreement. This is international law. It has been encoded into British law since the Royal Proclamation of 1763 and Canadian law since the colony was founded.

The colonizers came to the east of Great Turtle Island and gradually moved west. By the middle of the nineteenth century, treaty-making was a necessity.<sup>11</sup> The English monarch sent a Treaty Commissioner, Alexander Morris, to make treaties on behalf of the Crown; he and later Commissioners made similar treaties with the Cree, Saulteaux, Dene, and Assiniboine Peoples. There were no wars and no conquest. The treaty requested by the Crown was for peace and friendship for settlers. The Treaty Commissioner came with these words, "Let our people live in peace. Let us conclude a peace and friendship Treaty."<sup>12</sup> The Crown knew that the Indigenous Peoples would give nothing else. The Cree leaders told the Commissioner that they would not sell their lands. Besides, Indigenous Peoples outnumbered the non-indigenous; only a few non-indigenous people were scattered throughout our territories, and they did not have the military might to conquer us or even go to war against us. The Commissioner came west and held out his hand in 1876. The treaty the Cree made in 1876 with the non-indigenous people was a peace and friendship treaty. Now, what does that treaty mean?

Commissioner Morris said to our Peoples, "We don't want your animals because we are bringing our own. We don't want your birds because we're bringing our own. And we don't want your fish because we're bringing our own. Everything remains yours. We don't want any of that. We don't have enough money to buy your land." These are some of the words passed down by the Elders about the statements made by the Treaty Commissioner at the treaty-making in 1876. Despite these words, the Crown uses all of the land and calls it "Crown land," even if the Crown did not have money to buy it.

The Commissioner went on to say, "We want to use some of your land so that our people can make a living off of farming." The Commissioner told our Chiefs and Peoples that the settlers wanted to use our land "to the depth of a plough." The concept of "the depth of a plough" was brought to the Cree Peoples by the Commissioner. Cree Peoples did not farm. The concept of the depth of a plough came from the Crown's Treaty Commissioner. Let us be clear: the Treaty Commissioner wanted to use the land to the depth of a plough. There was no request for anything below that depth. The resources below the surface, which this concept does not cover, were taken by the colonizers without Indigenous Peoples' consent.

#### *Treaty Rights*

Let us review the Treaty in the context of rights for each side of the treaty-making. Most discussions fail to mention the treaty rights of non-indigenous people. This is a critical issue. In a treaty relationship, there are two sides and both have rights. Non-indigenous historians and other scholars fail to educate their own people on their rights under the treaties. If you stopped ten people to ask, "What are your treaty rights?" most of them would consider the question irrelevant. "Treaty, what's that?" Every non-indigenous person should know his or her treaty rights. The simple fact is that, without the treaty, no one other than Indigenous Peoples has the right to live in our land. The International Court of Justice in the *Western Sahara* case stated that the only way for non-indigenous people to live in the lands of Indigenous Peoples is through a treaty. Everyone who has come to live on Great Turtle Island since contact is living here as a result of a treaty. To discount the treaty or deny the treaty rights of non-indigenous people is to make illegitimate foreign people's occupancy of Great Turtle Island.

What are the treaty rights of non-indigenous people? The primary right is that non-indigenous people can live in our lands. Indigenous Peoples honour that right; they are not interfering with the treaty rights of non-

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indigenous people. Indigenous Peoples are not walking into the homes of non-indigenous people, opening their fridges, taking food out and eating it. If an Indigenous person did that, he or she could be charged under non-indigenous law with break-and-enter. The reverse, however, is not true. Non-indigenous people have no problem with hunting our animals, taking our fish and our birds. The Commissioner told the Indigenous Peoples in 1876 that the settlers would not need these things, so he did not request that the Cree Peoples extend these rights to the settlers. Therefore, it is not a treaty right to take these things. Yet the settlers continue to violate the treaty in this way.

The question remains: what are the treaty rights of the non-indigenous people? Our Elders agreed that rights could be given to the non-indigenous people coming into our lands. At the time of the treaty-making, the Treaty Commissioner's people said to our people, "We want to live here in peace." This is a treaty right. When non-indigenous people think that their land rights are being violated, they react. They do not see that the right to live in peace is a two-way street. Look at Oka, when Mohawk Peoples said, "We do not want you building a golf course on our cemetery." The Mohawks asked the non-indigenous people to respect those who have passed to the spirit world. In response, non-indigenous people sent in the military—just as they did at Gustafson Lake, when the Indigenous Peoples said, "Don't interfere with our Sun Dance ground." Do Indigenous Peoples react like this, with violence? The Elders always say, "We said that we would let them live in peace." This has a meaning for Cree Peoples. The Elders say, "Honour that treaty we made. We gave our word at the time of the treaty-making that we would let them live in peace in our land." These are the living treaty rights by which we live every day. They are rights that the Elders gave to the Treaty Commissioner, as they were requested. However, the Treaty Commissioner did a poor job conveying the treaty to the colonizing government and to the settlers.

In 1876, the Treaty Commissioner also said, "Our people over there have nothing, they have no place to live; they're poor with very little to eat, their children are dying. Let us bring them over here so that they can live and be healthy; and let us use some of the resources of your land, some of the wood to build houses, so they can put great crops in the ground to grow things for themselves. Let us use some of the hay for their animals." And the Indigenous Peoples, feeling pity for those poor people, said, "Okay, we will let you do that." The first time that I travelled to Europe, I was shocked by what I saw. I expected to see slums and sewers running into streets because of what the Elders were told about

how Europeans lived. I was surprised when I saw great buildings and clean roads. People were not starving on the streets in London, Paris, or Amsterdam. When we were growing up, the stories of the horrible conditions in which Europeans lived were shocking to us—but they made the treaty understandable. The Treaty Commissioner had told us that this was why his people wanted to live in our lands. Our people pitied them and said, "Okay, they are living like that; no human being should be allowed to live like that. They can live in our land. They can use some of our resources, some of the water, some of the wood, some of the ground, so that they can live." Sharing our resources, a treaty right of non-indigenous peoples, has led to the colonizing government assuming control over all the resources above and below the surface. This is a treaty violation. One of the main treaty rights of the non-indigenous person is to respect the land. This is not being done. Our lands are being destroyed by the non-indigenous people. Our animals, our birds, our fish, and all living things are disappearing. The ones that are left behind are suffering. This rich land is being destroyed. This is a violation of the treaty by the non-indigenous people. The non-indigenous people are forgetting to have respect for the land and all its relationships.

#### *Who Would Give Away so Much?*

At the time of the treaty-making, it was the Indigenous Peoples who had the upper hand in the treaty negotiations. If you listen to the way the Elders tell it—as I have listened to them—the Elders at treaty-making told the Treaty Commissioners, "We are not selling our land. We cannot sell our land. This land belongs to us. We can let you use some of our land but we will not sell our land. We have a relationship with the land. The Creation placed us here on Great Turtle Island and this is our land. However, we will let you live in our land."

If you listen to the non-indigenous people and read their papers, it's a different story. The non-indigenous people tell us, "Look, it is written down. Peoples ceded, surrendered, and released the land to the colonizers." When you read between the lines, the papers suggest that Indigenous Peoples gave up to the colonizers our governments, our legal systems, our children, our life. This is not honouring treaties made in "good faith." These are lies written on paper and voiced by governments and academics. Lies written on paper are not true for anyone.

Now, seriously, what kind of people would agree to give up these things? There are five thousand Indigenous Peoples camped at Fort Carlton. There are thirty non-indigenous people sitting at the treaty table in their red uniforms, saying, "You put your pen to this paper and you

give up everything." Be logical: does that make any sense? Yet, over and over, government officials say to us, "You gave up everything. You gave up the land, you gave up your law, and you gave up your government."

Even in this century, the non-indigenous government of Canada says, "We will give you a government that we will call self-government." What is our response? "The Creation gave us a government. How can you give us a government? Did the Creation pass on and make you the new Creation?" There is some kind of weird idea operating here: somehow, the treaty-making made Indigenous Peoples and our entire way of living subservient to the colonizers and their institutions. Rather than acknowledge that the treaties mean something to all the Peoples living in our territories, the government of Canada has consistently tried to downgrade the treaties and our governments that made those treaties.<sup>13</sup> Why would Indigenous Peoples want a version of a government that does not seem to work for its own people? Why would an Indigenous nation with a governing process in place before the colonizers came here take on a structure that does not seem to work? Under the treaty, we were to live side by side, to co-exist peacefully on our lands.<sup>14</sup> This is the meaning of the treaty for Indigenous Peoples.

#### *Assimilation Policy: Getting Rid of the Treaties?*

In 1969, Jean Chretien, then Minister of Indian Affairs, came out with a "white paper" that outlined a policy to do away with Indigenous Peoples' rights and reserved lands. The theory behind this white paper was simple: Indigenous Peoples no longer needed their lands and should assimilate into Canadian society. It was not a new idea, but about the sixth such plan that the colonizer had attempted. The first prime minister of Canada, John A. Macdonald—also a minister of Indian Affairs—wanted to eliminate "Indians" by 1896. A later government revised the date to 1920, and then 1950, and then 1970. Chretien's 1969 white paper basically said that Canada hoped to be rid of "Indians" by the year 2000. I guess we're hanging on a tenuous edge here, trying to exist as distinct Peoples when the state of Canada wants to get rid of us so badly.<sup>15</sup>

One of the "Indian" things that Canada wants to get rid of is the treaties. I can understand that. But Canada is a successor state and not the nation that made the treaties with our nations. Canada is a Johnny-come-lately to the process. Canada could not make international treaties until the Statute of Westminster in 1932; before that date, Mother England made all the treaties on behalf of Canada. A Treaty Commissioner representing the Crown concluded the treaties with our nations, and Canada inherited those treaty obligations and responsibilities from Mother

England. It is Canada's obligation to implement the commitments made under those treaties. Canada may want to rid itself of those treaties, but Canada possesses no legal right to change them. This fact has been asserted in recent law.

In 1980-81, while Canada was trying to achieve constitutional independence from Mother England, Indigenous Peoples stirred up some dust in the English courts and the halls of Westminster. The court case, called *The Indian Association of Alberta v. the Foreign and Commonwealth Secretary*, went all the way to the House of Lords, the highest court in England. This was a really critical court case for a couple of reasons. First, no legal firm in Canada would touch the case. The Indian Association of Alberta went looking for legal council for assistance in mounting a case in England. The late Sam Bull, Wallace Manyfingers, and I went to law firms in Vancouver, Toronto, Montreal—you name them; we went to talk to them. And they all told us, "You're nuts; you cannot go to court in England. You have no standing to appear before the Courts in England." But the Elders said, "Go, because the treaties are important. We made treaties with Mother England, and it must mean something." So we found lawyers in England who were prepared to take the case and we did get into court. We did have standing before the courts in England because of the treaties made in the 1870s. And Indigenous Peoples won this case at a number of levels. We learned not to believe the lawyers trained in the law schools of colonial Canada, since they don't know enough about our treaties.

The second important thing to remember about the case is that the Court of Appeal decision and findings were not overturned by the British House of Lords. Lord Denning's judgment for the Court of Appeal stated that "No parliament or legislature can change the Treaty without the consent of the Treaty Peoples."<sup>16</sup> Because this decision was handed down before the parliament at Westminster patriated the British North America Act of 1867 to Canada, the court's decision came with the Constitution of Canada. No parliament can change our treaties without our consent, although they have tried to do so. The *Indian Association* case is an important aid to Indigenous Peoples fighting for our treaty rights.

At the time of the 1969 white paper, the Elders saw the path that Canada wanted to follow: Canada wanted the treaties gone. I have no problem with that; I say to people who take that position, "Okay, fine, pack up your duds and get on the first boat out of here. If there are any trees left, cut them down, build yourself a raft, and ship out." If there are no treaties, the colonizers have no legitimate right to be on our lands. Canada would become an international pariah under international law, akin to South Africa or Rhodesia when they declared unilateral indepen-

dence. Without the treaties, what legitimate law can the colonizers use to occupy our lands?

If Canada gets rid of the treaties, what happens to the treaty rights of the non-indigenous people? Those rights to live in peace in our lands and share our resources become null and void. The logical conclusion to terminating our treaties—if that were legally possible—is that the non-indigenous people would have to vacate our territories. Perhaps Canadians need to spend more time thinking about their treaty rights and telling their government to honour the obligations that give them so many benefits.

Instead, the successor state and its institutions are complicit in trying to downgrade the treaties and the treaty-making process; government officials refer to them as "domestic" treaties. Colonization persists to this day, as the idea that treaties do not matter is still taught in many universities. It is in the interests of mainstream institutions to perpetuate these false foundations. Many professors still teach students that treaties with Indigenous Peoples are not relevant, that they cannot be recognized because there is only one sovereign entity in Canada. As a doctoral student, I was shocked and offended when the chair of a political science department told me who the only sovereign in Canada is. I said, "The Cree?" And she said, "No, Canada is the only legitimate sovereign entity and the sooner Indigenous Peoples accept that the better off they will be." Well, being a Cree woman, I refused to accept that position. Our Elders who made the treaty did not pass to the spirit world with lies on their lips. When those Elders said that we never sold the land at the time of the treaty-making, I am not going to say that we did. When those Elders said that we have our own government and our own legal system, it is not up to me to deny that. I do not care how much pressure the colonizers put us under to change our minds. There are many sovereign entities of Great Turtle Island—not one, not the state of Canada. The Indigenous nations are sovereign.

As a doctoral student in political science, I was told that Indigenous history and political history did not factor into discussions about these treaties. The only acceptable academic perspective was from within the Canadian legal framework. Academics constrained me from speaking from an Indigenous perspective. I would have had to assimilate or adopt a mainstream position. To hold to Indigenous perspectives and beliefs, I had to leave the institution and not complete my degree at that university.

#### *The United Nations Recognizes our Treaties*

Because of pressure exerted by Indigenous Peoples, Chretien's 1969 white paper policy was put on the shelf and we got some breathing room.

However, the Elders were not convinced that Canada was going to stop its policies to get rid of the treaties and Indigenous Peoples. The Elders told us, "We can't trust these guys. Definitely, we cannot trust the state of Canada to protect our treaties and our lands and territories. Indigenous Peoples have to do something to protect the lands and resources that were protected under the terms of the treaty. Indigenous Peoples cannot depend on the state of Canada to live up to the honour of the Crown and the obligations and responsibilities of the Crown. These Canadian people are not honourable." As a result, the Elders sent a delegation from Alberta and Saskatchewan to the United Nations in 1974 to find an avenue to protect the treaties.

Going to the United Nations in 1974 started a long process in which we established our identity and status as Indigenous Peoples in international law. Indigenous Peoples were not on the horizon and did not figure into the politics of the UN. Many officials at the UN, thinking Indigenous Peoples were extinct, asked, "Didn't Columbus wipe out the Indigenous Peoples in America?" Well, yes, but despite the attempts at genocide, we are still kicking. I describe the efforts of Indigenous Peoples to organize at the UN and to gain recognition in my book *Our Elders Understand Our Rights*. The main reason that Indigenous Peoples went to the UN was to focus attention on our treaties. It is important to understand that nations make treaties. Individuals do not make treaties. The UN is the body that deals with international legal norms. Our treaty needed to have the attention of the UN because there were all kinds of problems in Canada with the recognition and implementation of the treaties as understood by our Chiefs and Elders. Indigenous Peoples wanted the UN to help us have the treaties recognized as international instruments and to assist Indigenous Peoples with the implementation of those treaties. Indigenous Peoples are organized into nations, and nations, according to the articles of the Charter of the UN, have a right of self-determination.<sup>17</sup> In addition, there are laws under the Vienna Convention on Treaties that apply to treaties between nations, but state governments argue that Indigenous treaties are not covered by the Convention. It was therefore necessary to do a study on treaties, but in order to get a study a forum first needed to be created to bring a resolution to do a study.

This was a long process since Indigenous Peoples had been excluded from the formation of the UN. The Indigenous Peoples lobbied and pushed for the creation of the Working Group on Indigenous Peoples (WGIP). In 1982, the WGIP was created with a mandate to conduct studies. Then, a resolution needed to be moved through the system to get the study. It took until May 1989 for the UN to agree to a study on trea-

ties. The importance of the vote to accept to do a study on treaties made by Indigenous Peoples was that the UN accepted jurisdiction. That our treaties meant something in international law was a giant victory for Indigenous Peoples. To have a study was the first step towards recognition. Although the UN was unsure of its exact status, the purpose of the study was to determine the international nature of our treaties. It took that intensive lobbying from 1974 until 1989. We never gave up. The UN started the study that took until 1999 to complete. The UN did eventually become convinced that our treaties are international treaties.

To enter into a treaty, a party must be a nation. A colonizer is not a nation. When I was lobbying at the United Nations in the 1980s, the colonizers frequently stated that Indigenous treaties were not "real" treaties within international law. Canada's diplomatic staff told UN staff and other governments that Canada uses that word "Treaty" because it makes the Indigenous Peoples feel that they are participating in a seemingly equitable and reciprocal process. This explanation held no water at the UN. According to a UN-approved study on treaties, the concept that the treaties were not "real" was without international validity—just as the concept of apartheid is not a valid one.

In 1989, the United Nations appointed a Special Rapporteur, Miguel Alfonso Martinez, to undertake a study of the treaties of Indigenous Peoples. Martinez looked at treaties not only in Canada but also in the United States, New Zealand, Hawaii, Chile (the Mapuche), and elsewhere. It is important to point out that the Special Rapporteur was an independent legal expert. He is not from North America. He had not been educated in a colonizer's system. Dr. Martinez looked at the legal issues and treaties independently and from an international legal perspective. Dr. Martinez made a lot of important findings in his progress reports and in his final report, which he submitted in 1999. His final report states, "In the course of history, the newcomers [i.e., colonizers/settlers]...attempted to divest Indigenous Peoples...of their sovereign attributes, especially jurisdiction over their lands, recognition of their forms of societal organization, and their status as subjects of international law."<sup>19</sup> Dr. Martinez examined and explicitly condemned the unwillingness of colonizers to uphold the rights and status of Indigenous Peoples.

The United Nations has accepted the Special Rapporteur's report on treaties. The legal experts on the Sub-commission on Prevention of Discrimination and the Protection of Minorities received his report with praise. After ten years of study, Dr. Martinez concluded that the treaties "indeed continue to maintain their original status, and [are] fully in effect and consequently are sources of rights and obligations for all the original

parties to them and their successors who shall fulfill their provisions in good faith."<sup>20</sup> The Special Rapporteur concluded that the treaties negotiated in North America and other parts of the world are in fact international treaties, and that Indigenous nations are subjects of international law. After five hundred years of colonization, Indigenous Peoples were found to be not *objects* but *subjects* of international law. Finally, the UN Special Rapporteur concluded that these treaties need to be honoured by the original signatory nations and their successors, such as Canada.

#### *Treaty Process in Canada ?*

Indigenous Peoples have found that there is no process in Canada to deal with our treaties because the state of Canada has no will to honour them. If state officials do not like the way Indigenous Peoples pursue claims under our treaties, they manipulate their own guidelines to stop or subvert the process. Indigenous Peoples can find no justice within Canada for bad faith or lack of commitment to our treaties. Indigenous Peoples need an international mechanism to assist in the implementation of our treaties. A treaty violation by the state of Canada should be dealt with at an international tribunal, where Canada will have to answer for not honouring treaty obligations. The United Nations is working on such a process. In December 2003, the United Nations Commission on Human Rights, through the office of the High Commissioner for Human Rights, met in Geneva to follow up on the *Study on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples*. This Commission affirmed the need for the treaties to be "understood and implemented in accordance with the spirit in which they were agreed upon."<sup>21</sup> The report was presented to the Working Group on Indigenous Peoples during its session in July 2004, and includes a programme of action for the United Nations and its different bodies to act on for the implementation of the *Study on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Peoples*. Following this report, the United Nations, through the office of the High Commissioner for Human Rights, was mandated by the Economic and Social Council to hold a seminar to follow up on the *Study on Treaties*. This seminar is scheduled to take place within the Treaty Six Territory<sup>22</sup> of Great Turtle Island on 15-17 November 2006. One of the topics to be covered is the work needed to be undertaken for the implementation of the treaties by the United Nations.<sup>23</sup>

This is a big change for Indigenous Peoples. In 1974, the UN did not know that we existed and still took care of our territories. Now, the UN is coming to our territories to hear from our Peoples. As with the treaty-mak-

ing, the effort is being made to come to our homelands. It is a sign of the times. It is a sign of respect for Indigenous Peoples and our Nations.

Indigenous Peoples will not continue to be discounted in our own territories. The Creation placed us on our territories to take care of this land— not only for ourselves but also for the future generations. Indigenous Peoples cannot give up that responsibility because to do so would be to discount our relationship with the Creation. The colonizers have to acknowledge their treaty rights in order to continue living in our lands. They live here because we let them live here—there is no other reason. This is the meaning of the treaty from our point of view.

#### NOTES

- 1 For more information, see Sharon H. Venne (ed.), "Understanding Treaty Six: An Indigenous Perspective"; Sharon H. Venne (ed.), *Honour Bound: Onion Lake and the Spirit of Treaty Six—The International Validity of Treaties with Indigenous Peoples*; and Sharon H. Venne (ed.), "Treaty Doubletalk in Canada."
- 2 Editor's Note: When I asked Sharon Venne about her preference for using the English word "Creation" rather than the more familiar "Creator," which she had used in earlier drafts, Sharon explained, "I changed Creator to the Creation as an Elder told me that it was wrong to refer to a single being as a creator rather than to the bigger picture of the Creation— basically—Indigenous Peoples are a bit brainwashed by the idea of a single 'god' rather than to see that male and female are jointly responsible for life—all life—so it is the Creation— which is a more reflective position of our Indigenous world view" (E-mail to author, 13 Sept. 2006).
- 3 The earliest policies of the administration in British North America were designed to contain the "Indians." Augie Fleras and Jean Leonard Elliott observe that "Many [Indians] were herded onto reserves for protection from lawless elements interested only in profit and amusement" (41). See also Tanner 16-17.
- 4 For more information on the history of Papaschase Cree, see Dwayne Trevor Donald, "Edmonton Pentimento: Re-Reading History in the case of Papaschase Cree."
- 5 Rose Lameman, Francis Saulteaux, Nora Alook et al. u. *Attorney General of Canada* (2004), Alberta Court of Queen's Bench 665, par. 35.
- 6 In February 2001, the descendants of Papaschase filed legal action against Canada for breach of treaty, and for fiduciary, statutory, and trust obligations owed to the Papaschase Peoples. Part of the action asked the court to review the validity of the reserve surrender and the breach of the surrender trust agreement. This legal action was dismissed by Justice Frans F. Slatteron 13 September 2004. See previous note for citation. In an appeal decision handed down at the Alberta Court of Appeal on December 19, 2006, Papaschase Peoples were given leave to have their case heard in court.
- 7 According to the Vienna Convention on the Law of Treaties, a treaty is an agreement freely entered into in good faith between two or more sovereign entities designed to express their intentions for future relations. This is a paraphrase of the Vienna Convention on the Law of Treaties (1969), 1155, United Nations Treaty Series 331, in force 27 January 1980.

s On 18 May 2006, Oren Lyons, Faithkeeper of the Onondaga Nation (Haudenosaunee), spoke at the Permanent Forum on Indigenous Peoples held at the United Nations Building in New York City. In a discussion as to why the papal bulls need to be revoked, Mr. Lyons provided a lyrical ancestral memory of life on Turtle Island B.C.—"before Columbus"—as a pristine land of plenty where "peace was prevalent" because everyone understood the basic unwritten law that is the foundation of peace: respect for each other and for the land. Lyons said, "Then our brother came from across the water, and my grand mother said it was like a black cloud rolling towards us, a rolling black cloud coming at us, and it covered us. That's how she described it." According to Lyons, the two sides have "different ideas," so that "even in today's dialogue we still don't quite connect because we're on a different spiritual level. They don't quite understand [the meaning of] relationship. We never gave up our relations with the earth." See the Indigenous Law Institute website at [www.ili.nativeweb.org/ictarticl.html](http://www.ili.nativeweb.org/ictarticl.html), and also the question and answer section at the end of this book, pp. 79-97, for further discussion of the papal bulls.

- 9 For more information on the international status of Indigenous peoples and the legal necessity for treaty-making to access the lands and resources of Indigenous peoples, see Miguel Alfonso Martinez, Special Rapporteur, UN Doc., Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations, First Progress Report, E/CN.4/Sub.2/1992/31; Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations, Second Progress Report, E/CN.4/Sub.2/1995/27; Study on Treaties, Agreements and Other Constructive Arrangements Between States and Indigenous Populations, Third Progress Report, E/CN.4/Sub.2/1996/23; and Study on Treaties, *Agreements and Other Constructive Arrangements Between States and Indigenous Populations*, Final Report, E/CN.4/Sub.2/1999/20. For additional reading in the area of treaties and their international status, see Isabelle Schulte-Tenckhoff, 239.
  - 10 Western Sahara: Advisory Opinion [1975], International Court of Justice Reports 12. See also chapter 2 in Sharon H. Venne, *Our Elders Understand our Rights: Evolving International Law Regarding Indigenous Peoples*.
  - 11 As evidenced by the Royal Proclamation of 1763.
  - 12 These words are a translation of the words used by the Elders.
  - 13 Readers who believe that such misrepresentations of the meaning of treaties do not continue to occur in our own time might consider a document recently released by the Saskatchewan government, which contains the following introduction to treaty rights: "Treaty rights are the rights that First Nations have as a result of special agreements entered into with Canada. In Canadian law, these Treaties are unique: they are not international agreement" (Government of Saskatchewan Guidelines for Consultation with First Nations and Metis People: A Guide for Decision Makers, May 2006). First of all, the treaties under discussion are international agreements as found by the United Nations in their study. The treaties were made with the Crown and not with Canada. This is how history is distorted and leads to disrespect.
  - 14 For more information, see Oren Lyons (ed.), *Exiled in the Land of the Free: Democracy, Indian Nations, and the U.S. Constitution*.
- is There has been a lot of press recently regarding Canada's failure on June 29, 2006, to support the Declaration on the Rights of Indigenous Peoples during the debates at the newly created Human Rights Council. The United Nations Human Rights Council adopted the Declaration in an "embarrassing defeat for Canada." Only two countries, Canada and Russia, voted against this Declaration. It should not be a surprise to anyone, however, that Canada voted against the Declaration. The state has been actively trying to kill the draft since it was first discussed in the United Nations in the 1905. The Canadian delegates have tried various tactics over the years to subvert the declaration, just as they attempted to stop the UN study on treaties.

- 16 The Indian Association of Alberta v. the Foreign and Commonwealth Secretary (1983). All England Reports.
- 17 Supra, note 9, 71-74. is Supra, note 8.
- 19 Supra, note 8 at par. 112 of the final report by the Special Rapporteur.
- 20 Supra, note 8, at par. 271 of the final report by the Special Rapporteur.
- 21 E/CN. 4/2004/111 and par. 2.
- 22 For those who are unfamiliar with the Treaty Six Territory, it is in present western Canada from the Rocky Mountains to Manitoba. The Seminar is scheduled for Samson Cree Territory, near Hobbema, Alberta.
- 23 The UN Seminar will cover the following themes: Indigenous understanding of treaties and consideration of the meaning of constructive arrangements; free, prior, and informed consent as it relates to treaties; implementing treaties and treaty rights, with examples of good practices from around the world; development of effective mechanisms at all levels to defend and uphold treaty rights; the UN and OAS Declarations and Treaty Rights; current work and next steps at the international level to monitor and enforce treaties, agreements, and constructive arrangements.