

**INTERNATIONAL LAW/THE GREAT LAW OF PEACE**

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By

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## 1. INTRODUCTION

European colonizers, who believed they had discovered the New World were unaware of the political, social, geographical and historical relationships of O:gweho:we<sup>1</sup> who were already living in North America. One of the O:gweho:we nations that existed as a powerful force in North America was the Hodinohso:ni<sup>2</sup> Confederacy, which already had its own governing customary laws provided to them by the Peacemaker. This thesis is intended to explain the traditional customary laws of the Hodinohso:ni in order to provide an analysis and comparison of Hodinohso:ni law with Eurocentric international law.

In this paper, I have had to write in a language that is not my own and the difficulties encountered in writing this way are many. For example, it takes longer to write a thought down and then have to deconstruct it to ensure that it makes sense in English. To intensify the fact that our people do possess our own discourse to describe certain events or words, I will be using some words in the Cayuga<sup>3</sup> language. The purpose of utilizing this discourse in my thesis is part of decolonization. Patricia Monture-Angus also describes this deconstruction as follows:

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<sup>1</sup>It seems that we have to explain reasons why we are using a certain word to describe those people who have originated from Mother Earth. Some writers use descriptive words such as Native, Indian, Aboriginal, Indigenous, Amerindian, North American Indian, etc. All of these terms do not reflect the true meaning of O:gweho:we which means "original or human beings". Thus, this paper will use the term O:gweho:we whenever possible; however, all of the other terms will be used interchangeably throughout this thesis.

<sup>2</sup>Hodinohso:ni translates into "People of the Longhouse". The Hodinohso:ni Confederacy originally represented five separate nations: Cayuga, Mohawk, Seneca, Oneida and Onondaga. The Tuscarora nation joined at a later time. The Hodinohso:ni Confederacy was then also referred to as the Six Nations. Other terms used by historians are Iroquois, Iroquois Confederacy, Six Nations of the Iroquois Confederacy. Hodinohso:ni and Hodinohso:ni Confederacy will be used throughout this thesis.

<sup>3</sup>Although I am from the Mohawk Nation, I was raised learning the Cayuga language (I am not a fluent speaker, but I think it). Because my grandmother (mother's mother) was Mohawk, I am Mohawk; however, I was not taught the Mohawk language because she attended the residential school, The Mohawk Institute, or otherwise known as the "Mushhole" and refused to accept her "Mohawkness". My mother, who was raised for a brief time by her grandmother, followed her teachings and married my father whose family maintained a traditional O:gweho:we life and spoke the Cayuga language.

When Aboriginal People discuss the meaning of self-government and/or self-determination, we are forced to do it in a language that is not our own. We must express our ideas in English or French, both of which epitomize our colonial experiences. It is almost solely Aboriginal energy that fosters the accommodations that are required to carry on both the political and legal dialogues in either of the Canadian colonial languages. This is a particular experience of colonial oppression. At the same time, the languages that were brought into our territories have benefitted Aboriginal people, in an odd kind of way, as we are able to more fully share our ideas beyond Indigenous boundaries.<sup>4</sup>

I agree that through using the English language I am able to “fully share” my ideas; however, as a result of translating my language into the English language, the actual meaning is not as concise because it has to be integrated into a “Eurocentric thought paradigm”<sup>5</sup>. In writing from an O:gweho:we perspective, there is a longer complicated process in having to write this way. This was also confirmed by Anishnabe writer, John Borrows as follows:

Introducing a First Nation perspective into legal narrative is a two step process. First, I write from inside the galaxy of knowledge learned through my experiences as a First Nation person. However, once I have so written, I must then compare and contrast my self understanding with other voices from difference spaces. This process has been referred to as developing a language of perspicuous contrast, or alternatively, to constructing a vocabulary of comparison. In generating this new language or vocabulary, one neither speaks wholly in the language of the dominant society nor does not speak fully in the language of the oppressed. The vocabulary of comparison and contrast incorporates perspectives from both cultures and requires that I question my own perspective while simultaneously challenging the other.<sup>6</sup>

Because traditional O:gweho:we natural laws are theoretically “different” than Eurocentric man-

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<sup>4</sup>Patricia Monture-Angus, Journeying Forward: Dreaming First Nations' Independence (Fernwood Publishing: Halifax, N.S.) 1999 at 22. See also pages 35-36 [hereinafter referred to as Journeying Forward].

<sup>5</sup>Sakej Henderson states: “Existing policies are aimed at assimilating Aboriginal thought into English, French or Spanish -- Eurocentric thought paradigms -- and do not reflect an understanding of the value or complexity of Aboriginal languages in the Americas; they do not encourage a beneficial knowledge or appreciation of the Aboriginal languages or worldviews”. Sakej Henderson, “Governing the Implicate Order: Self-Government and the Linguistic Development of Aboriginal Communities”, Chapter 4 of the Conference of the Canadian Centre for Linguistic Rights [hereinafter referred to as “Implicate Order”].

<sup>6</sup>John Borrows, “Constitutional Law from a First Nation Perspective: Self-Government and the Royal Proclamation” (1994) 28 UBC Law Review, 1 at 6 [hereinafter referred to as “Constitutional Law”].

made laws, the difficulty in comparing, analyzing and contrasting stems from the differences in language. However, I will following the same line of thought as John Borrows in providing this “alternative vision of law”. It may be used to “transform the traditional discourse of [Eurocentric] law and politics”. It may also assist in the “possibility that traditional discourse can be re-translated to create a new vision of First Nations [which has] liberating possibilities for First Nation peoples in their quest for self definition”<sup>7</sup>.

In order to provide a comparison of Hodinohso:ni laws with Eurocentric international law, a discussion of what those Hodinohso:ni laws or O:gwehowehnya<sup>8</sup> will be provided in Chapter One. It will provide the traditional natural laws of Gayanehsragowa (Great Law of Peace), Gaihwiyoy as well as other forms of oral tradition that have been given to the Hodinohso:ni. This will provide a brief look at the complex governing system of the Hodinohso:ni and will also provide the background to the analysis and comparison to international law in Chapter Three and Hodinohso:ni diffusionism in Chapter Four. Chapter One will also provide the historical and political relationships with European colonizers, including the Dutch, French, British and the United States, adhering to the Hodinohso:ni perspective.

Hodinohso:ni laws have been gravely affected as a result of Eurocentric diffusionism<sup>9</sup>.

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<sup>7</sup>Ibid. at 10.

<sup>8</sup>O:gwehowehnya means “our way of life” or all that forms into “our law”. This will be elaborated further in Chapter 1.

<sup>9</sup>J. M. Blaut discussed Eurocentric diffusionism as a “product of European colonialism. It is the colonizer’s model of the world”.

J.M. Blaut, The Colonizer’s Model of the World: Geographical Diffusionism and Eurocentric History (New York: The Guilford Press, 1993) [hereinafter referred to as Colonizer’s Model].



According to Eurocentric beliefs, the Hodinohso:ni belief system, including traditional laws, values and principles of the O:gweho:we have been undermined, downgraded and considered inferior<sup>10</sup>. Over time, and especially since colonization, Hodinohso:ni laws were and have been affected by the violation and infringement of another culture's laws and values as a result of Eurocentric diffusionism. Chapter Two will provide an in-depth analysis of the meaning of Eurocentric diffusionism through the discussion of colonizer's first contact with O:gweho:we, discussion of the goals of assimilation and conversion of Christianity through missionaries and the policies of residential schools, the institutionalization of Eurocentric law and how those laws, including domestic and international law have been created to protect Eurocentric interests. This chapter will also provide a description of how Eurocentric diffusionism has affected O:gweho:wenhya.

Chapter Three will provide an analysis of contemporary Eurocentric international laws and how it has created barriers and limitations for Indigenous peoples to make a claim of sovereignty and self-determination. The "sources" of international law will be discussed and compared. Other issues to be reviewed in this chapter will be the definitions/concepts of customary international law, treaties and treaty protocol, sovereignty, international legal personality, and international human rights law (eg. self-determination).

Chapter Four will provide a description of what I have termed "Hodinohso:ni diffusionism". A definition of Eurocentric diffusionism will be presented in Chapter Two;

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<sup>10</sup>It is important to note here that I acknowledge the non-O:gweho:we scholars (Rupert Ross, Russel Barsh, Roger Carter, Laurence Hauptman, Donald Grinde Jr., Francis Jennings, William N. Fenton, Mary A. Druke, Sally Wagner, Patrick Macklem just to name a few) who have acknowledged the contributions of O:gweho:we people in today's society. However, society, in general does not acknowledge the importance or the influence that O:gweho:we, including the Hodinohso:ni, has had and still has on global issues.

whereas in this chapter the alternative view of Hodinohso:ni diffusionism will be provided. The influences of the Hodinohso:ni culture, including protocol and values, will be provided to demonstrate its impact on Eurocentric culture. Influences of the Hodinohso:ni Grand Council on the creation of the United States Constitution as well as the values and principles of peace within the United Nations Charter will be described in this Chapter. It will also provide the affects of the philosophies of natural law, which includes the concepts within Gayanehsragowa that reflect the rights, duties and responsibilities of Hodinohso:ni women.

In this thesis, I do not profess to speak for anyone but myself through the teachings and experiences that I have gained within my own Hodinohso:ni culture. I have had the privilege to be raised traditionally by my “Longhouse family” and have been able to interact first-hand with many Hodinohso:ni Elders and traditional teachers. I am quite humbled as a result of these experiences and their teachings. I interviewed some Elders and traditional teachers and have integrated these interviews within this thesis. However, the arguments or statements that I make in this paper are based on my own experiences and knowledge as a result of living and abiding by O:gwehowehnya - my worldview. They are also based on my own common sense as well as my traditional values and spirituality. Thus, many of the arguments and discussions throughout this chapter also reflect a Hodinohso:ni spirit.

In writing this thesis, I was reminded how powerful and influential the Hodinohso:ni culture has been and is to the world. In my research, I realized the enormous amount of documents, articles, and published books (in Canada and the United States) regarding the Hodinohso:ni; however, there were not many published articles or books regarding the Hodinohso:ni and contemporary international law. Thus, it was a challenge for me to integrate

Hodinohso:ni traditional values, beliefs and laws into a document that analyzes Eurocentric laws, including domestic and international law. In taking the time to write this thesis, I had to do a lot of self-analysis as well as acknowledge and understand my Hodinohso:ni community regarding the affects of Eurocentric diffusionsim. I have been privileged to listen to and learn from one of our great Elders, Hoyaneh Jake Thomas, who was able to recite the Gayanehsragowa both in our languages as well as in English. I was also able to connect with many of our traditional Elders and teachers, who did not hesitate to provide me with their time and effort. I have learned how very powerful my Hodinohso:ni people were and still are despite the “hacking at our roots.”<sup>11</sup>

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<sup>11</sup>This concept will be further elaborated on in Chapter 1 *infra* at 111.

## **2. CHAPTER 1**

### **SOCIAL, CULTURAL, POLITICAL & HISTORICAL**

#### **ASPECTS OF HODINOHSO:NI:**

##### **2.1 O:GWEHOWEHNYA**

O:gwehowehnya means "our [Hodinohso:ni:] way of life"<sup>12</sup> and all of those traditions, ceremonies, customs, values, and principles that come with it, which forms into "our law". O:gwehowehnya can be described as our traditional laws. Our laws stem from the spiritual messages of the Creator and provide a guideline or a belief system in that this is how we are to live every day. Our laws are natural laws and have been eloquently described as follows:

"The natural law is that all life is equal in the great creation; and we the human beings, are charged with the responsibility (each in our generation) to work for the continuation of life. We the human beings, have been given the original instructions on how to live in harmony with the natural law. It now seems that the natural world people are the ones who have kept to this law."<sup>13</sup>

Hodinohso:ni: traditions and laws originated through an oral tradition where stories and lessons from those stories were passed down from generation to generation. The most important and integral aspect of this oral tradition was (and still is) our Hodinohso:ni: languages. When oral tradition was being transmitted to the people through our languages, the lessons were ingrained within the story and each individual was responsible to interpret the story and determined how it related to him/her. As part of this oral tradition, we have been taught about

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<sup>12</sup>Akwesasne Notes (ed.) Basic Call to Consciousness (Book Publishing Company: Summertown, Tennessee) 1978 at 80, 92 [hereinafter referred to as Notes, Basic Call].

<sup>13</sup>Oren Lyons, "Traditional Native Philosophies Relating to Aboriginal Rights" in Menno Boldt et al (eds.) The Quest for Justice. Aboriginal Peoples and Aboriginal Rights (University of Toronto Press: Toronto) 1985 at 21.

Gayanehsragowah (Great Law of Peace) and Gaihwiyoyo:<sup>14</sup> (Code of Handsome Lake). As part of oral tradition, wampum was formed and utilized for official and ceremonial purposes and has remained exclusively sacred<sup>15</sup>. Every law recited and recorded by the Hodinohso:ni: was passed through the use of a string or belt of wampum<sup>16</sup> and was memorized by those who were capable of memorizing all of the words within the message or law<sup>17</sup>.

The principles and values within Gayanehsragowah and Gaihwiyoyo: are the spiritual centre and underlying morals of the Hodinohso:ni:. Within all of these teachings, it is said and understood that each person must have ganikwiyoyo (a good mind). Having a good mind does not specifically mean describing someone's state of mind, but actually means that one must discipline oneself to think positively and live according to all of those positive realities. The following statement explains the process of discipline in having a good mind:

"Each and everyone has many, many thoughts each day and we are responsible for each one. With discipline you can become aware of each thought, see its substance, realize its intent, then direct that thought, either letting it go - as in negative thoughts, steeped in anger or hurt - or enrich them - thoughts based on a loving purpose, the Good Mind"<sup>18</sup>.

This chapter reiterates Hodinohso:ni: oral tradition through the written English

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<sup>14</sup>Literally translates into "good words" that were sent by Shogwayadihso (The Creator) to a man whose English name translates into "beautiful or nice lake". In English, this message has been termed The Code of Handsome Lake.

<sup>15</sup>Tehanetorens, Wampum Belts, Six Nations Indian Museum, Onchiota, N.Y. (year of publication unknown) [hereinafter referred to as Wampum Belts].

<sup>16</sup>A discussion and explanation of wampum belts is further elaborated, *infra* at n. 17.

<sup>17</sup>Tehanetorens, Wampum Belts, *supra*, note 15 at 4.

<sup>18</sup>Freida Jean Jacques, "Discipline of the Good Mind", Northeast Indian Quarterly, Summer, 1991, at 31.

language<sup>19</sup>. As a result, when explaining O: gwehowehnya in this format, one must focus, think logically and with common sense when reading. One must also read between the lines and determine what is actually being said or written.

### **2.1.1 Gayanehsragowah (The Great Law of Peace)**<sup>20</sup>

The basic principles of Gayanehsragowah are based on peace, power and righteousness. The most important principle of the Great Law is the way in which each person relates to one another and the way the Hodinohso:ni: Confederacy functions internally through the discipline and power of Ganikwi:yo. Gayanehsragowah has "a system that provide[s] for peaceful succession of leadership; it serve[s] as a kind of early United Nations; and it install[s] in government the idea of accountability to future life and responsibility to the seventh generation to come."<sup>21</sup> It is a system that has "established a government of absolute democracy, the constitution of the great law intertwined with the spiritual law."<sup>22</sup>

The most sacred record of the political/governmental organization is set out in the

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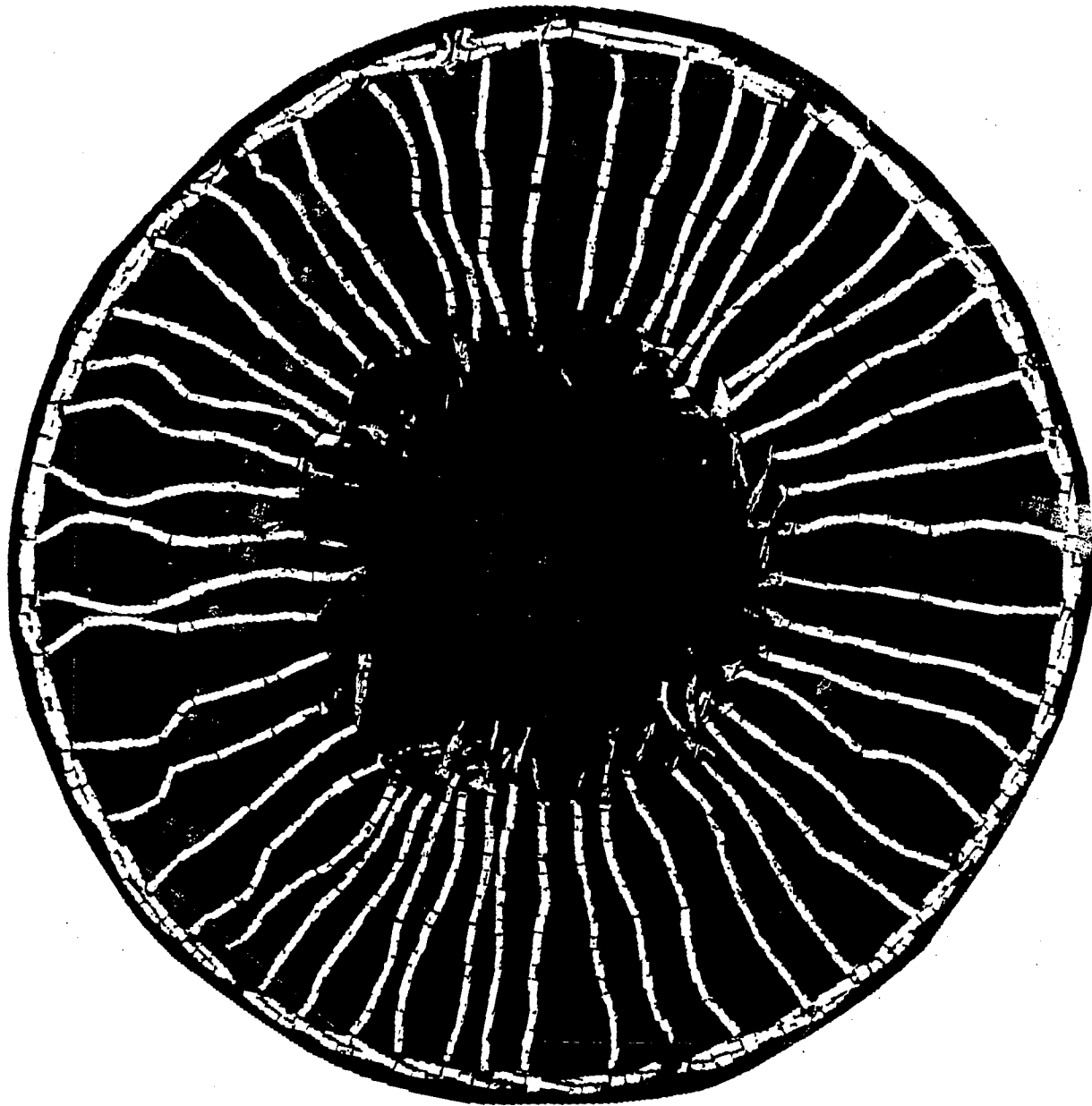
<sup>19</sup>As a result of these translations (first in English and then written), many of the lessons that are spoken in the Hodinohso:ni: languages are distorted and do not respectfully or explicitly explain the lessons being taught. The meaning within the language is lost once it is translated into another language. Therefore, the reader will note the difference in language from this first section on O:gwehowehya in comparison to the rest of the text, which is written in a more complex English and legal language.

<sup>20</sup>When the Great Law of Peace was recited in one of Hodinohso:ni: languages, it usually took about a week to ten days to deliver its messages. Cayuga Hoya:neh Jacob Thomas, who recently passed away, was the deliverer of the message at Six Nations Grand River Territory. He recited it in English as well as in three of the Hodinohso:ni: languages. He recited the Great Law of Peace with Tom Porter for nine days, from September 7-15, 1996 at the Six Nations Grand River Territory, Ohsweken, Ontario [referred to as Great Law Recital].

<sup>21</sup>Oren Lyons, "American Indian in the Past" in Oren Lyons et al, eds., Exiled in the Land of the Free. Democracy, Indian Nations, and the U.S. Constitution (Sante Fe: Clear Light Publishers, 1992) at 33 [hereinafter referred to as Exiled].

<sup>22</sup>Oren Lyon's Statement to the Canadian Parliament. Canada. House of Commons. Indian Self-Government in Canada. Report of the Special Committee (Queen's Printer: Ottawa, 1983) at 9 [hereinafter referred to as Report of the Special Committee].

Wampum Circle of Fifty Chiefs as follows<sup>23</sup> (FIG. 1). The perimeter of the large circle is made



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<sup>23</sup>Picture has been reproduced from:

John Arthur Gibson, Concerning the League: the Iroquois League Tradition as dictated in Onondaga, Memoir/Algonquian and Iroquoian linguistics: Winnipeg, Manitoba, 1992 at Fig.3., p.xxx.

of two wampum<sup>24</sup> strings wrapped together (which represent the Great Peace established amongst the nations) and attached to this circle are 50 strings (which represent each of the original fifty Hodiyanehso<sup>25</sup> belonging to the Hodinohso:ni: Confederacy). This Wampum Circle represents and symbolizes the invitation that was made by the Peacemaker to each of the fifty Hodiyanehso. All of them were to join hands together so that they recognized that they were all equal and that they would never forget their responsibilities to the people.

Oren Lyons describes the relationship of the spiritual and political strength of Hodinohso:ni: as follows:

"My people, the Iroquois, were very powerful people. They had a coalition of forces that was governed by two fires: The spiritual fire and the political fire. The central fire, of course, was the spiritual fire. The primary law of Indian government is the spiritual law. Spirituality is the highest form of politics, and our spirituality is directly involved in government...we are told first to conduct ceremonies on time, in the proper manner, and then to sit in council for the welfare of our people and of all life."<sup>26</sup>

The following explains the formation of the oldest League of Nations in existence<sup>27</sup>. It

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<sup>24</sup>Wampum was made out of shells taken from the fresh water lakes and made into beads. These wampum were used as a means of communication and a means of remembering events and stories that accompanied the event - each string of beads represent a thought or is a representation of a principle or value that is being taught.

Wampum was also used as a means of healing. It was used for cleansing and consoling your mind and spirit and was used as part of the condolence ceremony.

Great Law Recital, *supra*, note 20.

<sup>25</sup>Translates into more than one Hoya:neh, which literally translates into "a man who is of the good".

Tom Porter, "Men Who are of the Good Mind" in Jose Barreiro (ed.) Indian Roots of American Democracy (Cornell University, N.Y.: Akwe:kon Press) 1992 at 12 [referred to as Indian Roots].

<sup>26</sup>Oren Lyons, "Spirituality, Equality and Natural Law" in Leroy Little Bear et al., eds., Pathways to Self-Determination Canadian Indians and the Canadian State (Toronto: University of Toronto Press, 1984) at 5.

<sup>27</sup>The messages provided within the Great Law had joined six separate nations in unity. As a result of the power of unity and the power of a good mind, the oldest League of Nations was formed. This term was used in:



describes some of the underlying principles and values sent by Shogwayadihsoh to Deganewidah (The Peacemaker), who in turn delivered the prophecies and principles within the Gayanehsragowah to all of the Hodinohso:ni:. The Peacemaker was the messenger of Shogwayadihso, the Creator of Mother Earth, the sun, the moon, the thunderers, the winds, the waters, plants, vegetables, medicinal herbs, trees, animals, and all living things<sup>28</sup>.

When the Peacemaker was born, there was bloodshed, violence, murder, pain and anger amongst all O:gwe ho:we and between all nations. The messages that the Peacemaker delivered symbolized that everyone would become united; that all men, women and children of every nation would become one: meaning they will have one mind as though they were a single person with only one body, one head and one life. Love and respect was an integral part of the message of Gayanehsragowa which generated our people to change their way of life. When everyone lived according to the principles of the Gayanehsragowah and Ganikwi:yo, all nations had peace and had strength through the power of unity<sup>29</sup>. These were all of the underlying values and principles that were followed and lived by the people.

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Deskaheh, The New Story of the Iroquois, Rochester: broadcast over Station WHAM, March 10, 1925 cited in Carl Carner, Dark Trees to the Wind (New York: William Sloan Associates, 1949) at 116.

<sup>28</sup>Prior to any ceremonies and any gatherings/meetings, a man is appointed to recite the Ganohonyohk (Thanksgiving Address). Within the speech, we are giving thanks to all creation. We place ourselves, as human beings, as being no different than any other forms of life within the natural world. We give thanks and appreciation to all living things and to the cycle of life. When the Thanksgiving Address is being recited, it flows through a natural sequence from Mother Earth to the sky to the Creator (the source and ruler of health and life).

<sup>29</sup>Symbolisms of unity within the Gayanehsragowah:

- 1) five strings of wampum joined together
- 2) five arrows joined together
- 3) symbol of the Five Nations

Righteousness is one of the principles recited within the Gayanehsragowah, which means that people must respect each other as though they are one person; everyone must believe that they are all related and must stop hurting each other. The young and old must acknowledge the hurt and anger that they are creating amongst each other and they must acknowledge this to the Creator. They must all do this with ganikwi:yo and once this is done, everyone will respect one another amongst all nations.

Power is another principle within the Gayanehsragowah, which means unity; once all nations unite all of their affairs, the group of several nations will become a single unit. The symbolism of power is that they will all join hands. This is the basis upon which they will survive as a group, forming a single family surrounded by the Good Message. This is how peace will remain amongst all of the nations and power will rise for families to continue.

Peace means the end of the massacre of O:gwe ho:we, the end of bloodshed and slaughter amongst themselves and amongst the people of the various nations; the end of pain and anger; the end of hurt. The message reinforces that humans were never to hurt each other or kill each other and once this ends, peace will overcome. When the delivery of Gayanehsragowah and the principles of peace ingrained within it began, the people within the different nation villages whom were neighbours were then able to travel from village to village without danger or terror.

**JIGOHSASE:<sup>30</sup> (The Mother of Nations<sup>31</sup>)**

Along the Peacemaker's journey to deliver the Good Message, he came upon a woman named Jigohsase: who was living along a path<sup>32</sup> used by warriors who were fighting each other. Jigohsase: welcomed the men who travelled on that path to eat and rest. Her home was recognized as a neutral place where the men would gather in peace. The men would tell her stories of their warring, but she did not bother to take sides with any of them; she was there to help them and to feed them. The Peacemaker came to her home and told her that she was just as much a part of the evil of the warring because she enjoyed listening to the men's stories and that she was actually empowering the men to keep killing by feeding them. The Peacemaker advised her of the Good Message and advised her that she, as a woman, had a major role to play in delivering this message. Jigohsase: acknowledged the evil she was participating in and changed her ways. She was the first to acknowledge and accept the good messages within Gayanehsragowah.

The Peacemaker advised Jigohsase: that the women were responsible for holding the clan titles of their Hoya:neh and were to "raise up" their Hoya:neh. This meant that the Clanmother had the responsibility to choose and "horn"<sup>33</sup> her Hoya:neh<sup>34</sup>. Two strings of

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<sup>30</sup>Literally translates into "fat face" and she has been considered as the first Clanmother.

<sup>31</sup>G. Peter Jemison, "Mother of Nations - The Peace Queen, A Neglected Tradition," *Indian Roots of American Democracy*, Northeast Indian Quarterly, 1988: 68-69.

<sup>32</sup>This main road was along the Mohawk River that flowed from east to west and the original area where Jigohsase: lived has been recently referred to as the City of Rochester in New York State.

Great Law Recital, *supra*, note 20.

<sup>33</sup>A gustowah (headress) was worn by all men. However special ones were made for each Hoyaneh representing his nation. Deer antlers were used on their gustowah to demonstrate their responsibility to the rest of the people. Deer antlers symbolized guardian medicine and strength. The clanmother would place these gustowah

wampum were given to each of the female heads of families in which Hoya:neh titles were vested. The right of the title was within the female clan line and the strings represented that the females of the family have ownership to the Hoya:neh title forever.

The lineal descent of families runs in the female line wherein children will follow their mother's clan (a matriarchal system).<sup>35</sup> The following sets out all of the clans within the Hodinohso:ni: eel, beaver, three types of turtle, three types of bear, three types of deer, three types of wolf, heron, snipe (sandpiper) and hawk. Each clan has a distinct responsibility and role to play. All members of a certain clan recognize each other as family or as relatives. Therefore, men and women who are members of the same clan are forbidden to marry. As men, as fathers, as uncles, as grandfathers, they too were responsible to care for all children.<sup>36</sup>

The clanmothers are also responsible for providing clan names to children.<sup>37</sup> When a child is born to a certain clan, that child's clanmother must provide him/her with a name. The men were responsible for singing the welcoming song<sup>38</sup> to greet the newborn child into the

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onto her Hoyaneh's head, which represented the "raising up" of her Hoyaneh.

Great Law Recital, *supra*, note 20.

<sup>34</sup>The decisions made by the clanmothers when choosing their Hoya:neh will be explained further on when discussing the responsibilities of the Hodiyanehso, *infra*, at 22.

<sup>35</sup>Audrey Shenandoah "Everything Has to Be in Balance" in *Indian Roots*, *supra*, note 25 at 36.

<sup>36</sup>Interview with Oneida Hoyaneh, Wendell Froman, November 29, 1998.

<sup>37</sup>Shenandoah, "Everything Has to Be in Balance", *supra*, note 35 at 39.

<sup>38</sup>Songs and dancing were about facilitating honour and respect, which meant holding them in high esteem; whether the songs and ceremonies were for or about man, woman, child, land, water or air, everyone and everything had a responsibility and they cannot function without validation and acknowledgement.

Interview with Norma General and Winnie Thomas, November 10, 1998, Six Nations at Grand River Territory.

Physical world and to give thanks to the Creator for the opportunity to meet that child. The men would also explain to the children who they were, what clan they are from and advise them what their name is. The child was welcomed with love and nurturance. Presently parents who have not been given the opportunity to have a "traditional birth" choose to name their child at a name-giving ceremony at the Longhouse, which is performed two times a year and it is then that the child is given his/her name. A clan name is given to a Hodinohso:ni: child to advise the Creator that it is this name that will be used during medicinal and traditional ceremonies. The name is also used at the time of death as it is this name that the Creator will recognize. It was the the responsibility of the whole community to always remember what his or her name was. This would allow for the affirming and re-affirming of who they are and what their role and responsibility is.<sup>39</sup>

### **UNION OF THE FIVE NATIONS**

Through the determination of the Peacemaker, his Good Message of power and peace enabled five separate nations to unite as one. The Peacemaker began with the Mohawk Nation (People of the Flint) and was able to convince the Mohawk Nation to accept the Gayanehsragowa through the assistance of Hayewahta. Both delivered the Good Message to the Oneida Nation (People of the Standing Stone), the Onondaga Nation (People of the Many Hills), the Cayuga Nation (People of the Pipe) and the Seneca Nation (People of the Great Hill). All five nations accepted the Good Message and formed the Hodinohso:ni: Confederacy<sup>40</sup>.

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<sup>39</sup>*Ibid.*

<sup>40</sup>Three other nations have also joined the Hodinohso:ni: Confederacy and have remained under to protection of the Tree of Peace. These nations are the Tuscarora, the Tutelo and the Delaware. The Tuscarora nation has been the closest to accept all of the laws of Gayanehsragowa, but has never formally been accepted into the Confederacy. This, however, is the reasoning of the Confederacy to also be called "Six Nations".

The following picture<sup>41</sup> (FIG. 2) depicts the Hayewahta wampum belt<sup>42</sup> which symbolizes the union of the Five Nations. The symbol in the middle represents the Tree of Peace and the Onondaga Nation (the heart or the "firekeepers"<sup>43</sup> of the Hodinosoh:ni Confederacy). The first square on the left represents the Seneca Nation (Keepers of the Western Door); the next square represents the Cayuga Nation; the next square to the right of the "heart" or Tree of Peace represents the Oneida Nation and the square on the right represents the Mohawk Nation (Keepers of the Eastern Door).

Before the union of these five nations was actually established, men were selected to be advisors of the people (Hodiyanehso) through the decisions made by their clanmothers. The following sets out the numbers of Hodiyanehso for each nation:

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Great Law Recital, *supra*, note 20.

<sup>41</sup>Picture reproduced from the front cover of:

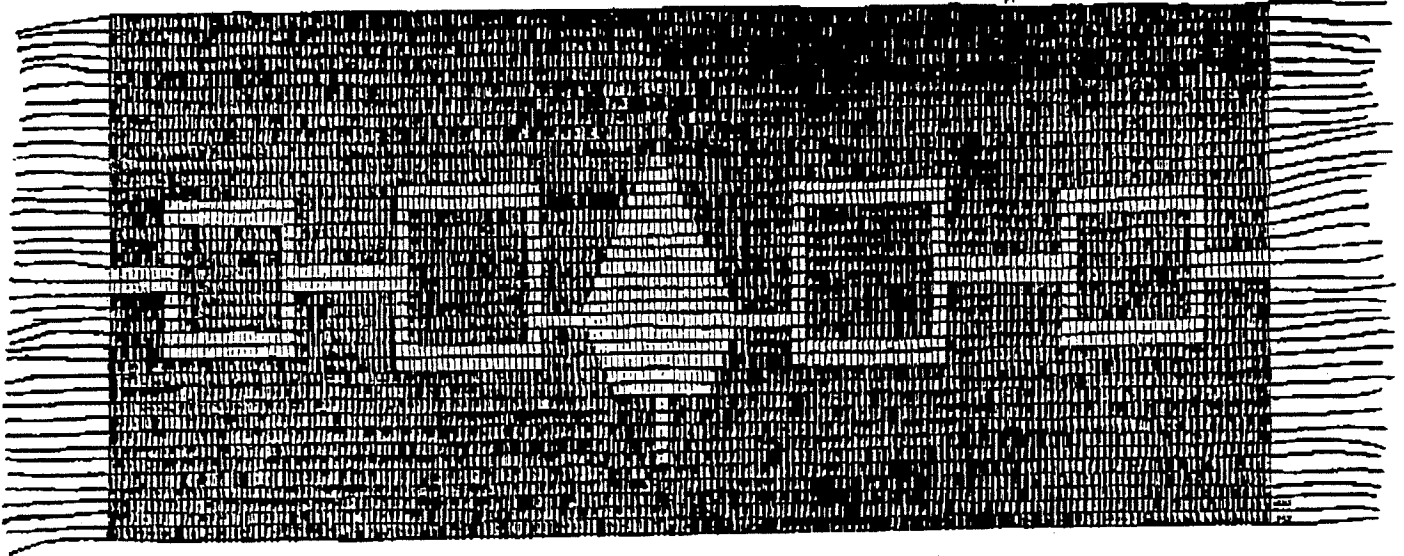
Elisabeth Tooker, Iroquois Culture, History and Prehistory, Proceedings of the 1965 Conference on Iroquois Research, (Albany, N.Y.: The University of the State of New York, The State Education Department, New York State Museum and Science Service, 1967)

<sup>42</sup>Hayewahta belt was also referred to as the territorial belt, which refers to the territory of the Hodinohso:ni. Great Law Recital, *supra*, note 20.

<sup>43</sup>There is a symbolic meaning of fire in that it represents a spirit or something living that draws our people together in assembly. Each individual has a fire which is his/her spirit. From that fire, there is a family fire and parents are responsible to ensure that their fire does not extinguish (which symbolizes that parents are not to divorce. If this were to happen, it would shatter the fires (spirits) of the children). There is a clan fire and when the clan comes together, it is the responsibility of the Hoya:neh and clanmother to ensure that the fire is always lit. It is also the responsibility of the Hodiyanehso to ensure that their Nation's fire is lit. The Grand Council fire is when all Nations meet and it is the responsibility of Tadadaho (Onondaga Nation) to ensure that the fire does not go out. Each person has a responsibility to ensure that the fire does not go out.

This type of fire system was analogized to a federalist system wherein there are various bureaucratic levels (or fires) (eg. municipality, region, province, federal). Fire or place of assembly is in the legislature or chambers.

Interview with Michael McDonald, North American Indian Travelling College, Cornwall, Ontario - February 8, 1996



Mohawk Nation - Nine Hodiyanehso

Oneida Nation - Nine Hodiyanehso

Onondaga Nation - Fourteen Hodiyanehso

Cayuga Nation - Ten Hodiyanehso

Seneca Nation - Eight Hodiyanehso

Representation of the Hodiyanehso were determined by all of the clans of their respective Nation. For example, within the Mohawk Nation, there were three different clans: the bear, the turtle and the wolf. There were also three different types of bear clan, three different types of turtle clan and three different types of wolf clan, which represents nine clans<sup>44</sup>.

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<sup>44</sup>According to Eurocentric values, equal representation within government means relationship to the population of a certain area. However, according to Hodinohs:ni: law, representation of the Hodiyanehso represents all of the clans within their respective nation. Although this may be considered as unequal representation, it is not,

## GRAND COUNCIL

### Procedures and Guidelines

Once the Hodinohso:ni Confederacy Council was established, The Peacemaker and Hayehwahta delivered the rules and procedures established for the Grand Council as was told by the Creator. The picture<sup>45</sup> as shown on the next page (FIG. 3) is a Condolence Cane<sup>46</sup> which symbolizes all fifty Hodiyanehso. Each symbol represents the title name of each Hoya:neh or depicts a story of the titleholder's first encounter with the Peacemaker<sup>47</sup>. It also depicts the seating arrangement of each Hoya:neh during Grand Council.

The next picture (FIG. 4)<sup>48</sup> demonstrates the actual seating arrangement by Nation within the Longhouse during the meetings of Grand Council. As you will note, the Mohawk and Seneca Nations are referred to as the Elder Brothers; the Cayuga and Oneida Nations are referred to as the Younger Brothers; and the Onondaga Nation is referred to as the Firekeepers. The Oneida Nation is referred to as a Younger Brother because originally the Oneida Nation branched off from the Mohawk Nation to form their own Nation (prior to the acceptance of the

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representation, it is not, based on the fact that decisions made by all of the nations within the Hodinohso:ni are determined by all of the people within each clan through consensus. For further explanation of the procedure of consensus, see, *infra* at 22.

<sup>45</sup>Picture reproduced from, *supra*, note 23 at Fig.5, p.xxxvii.

<sup>46</sup>The Condolence Cane has been described as a mnemonic device which means that it is a visual aid in remembering all of the titleholder's names and places of seating within the Grand Council.

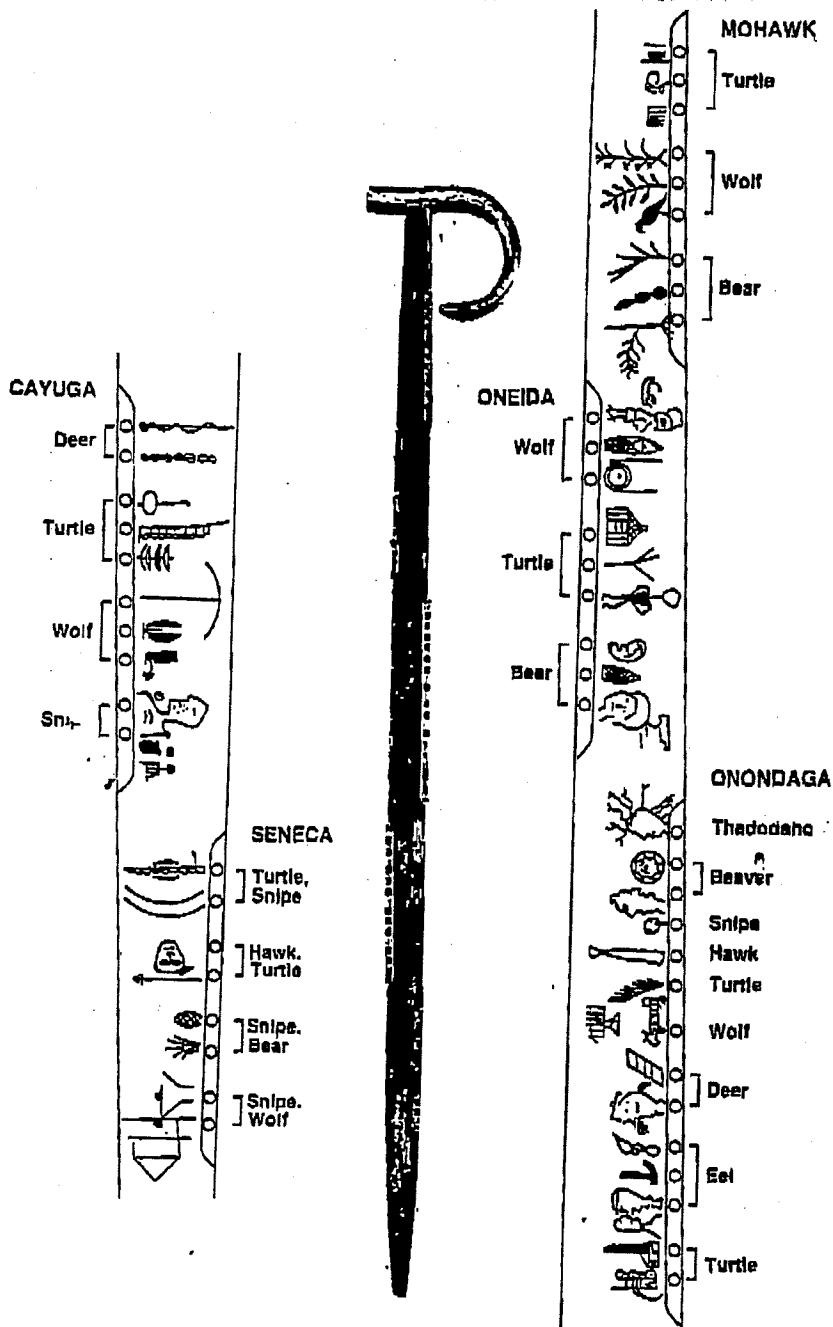
The Iroquois Condolence Cane Tradition, Northeast Indian Quarterly (Cornell University: Ithaca, N.Y.) 1991 at 5-6.

<sup>47</sup>*Ibid.*

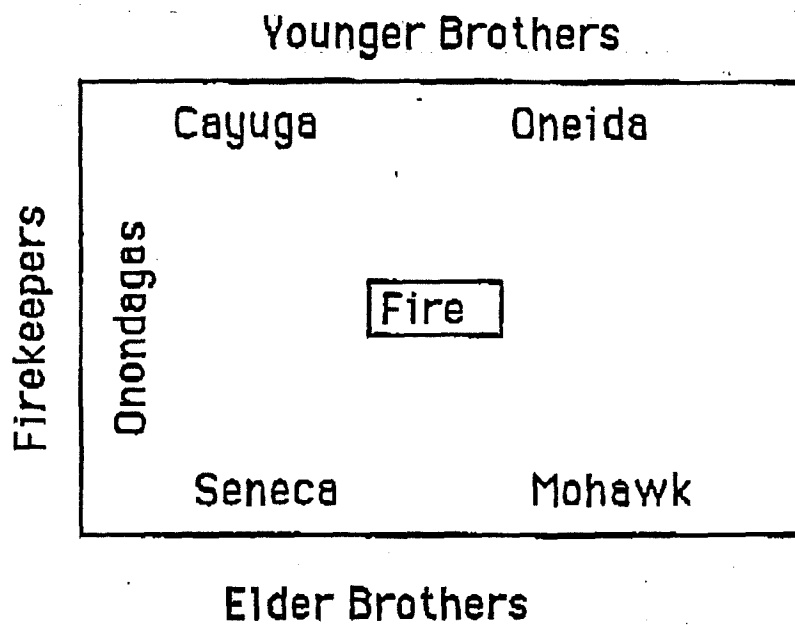
<sup>48</sup>*Ibid.* at 27.



[FIG. 3 - CONDOLENCE CANE]



[FIG. 4 - SEATING ARRANGEMENT]



Gayanehsragowa) and linguistically, are very similar.<sup>49</sup> The Cayuga Nation is also referred to as a Younger Brother because they branched off of the Onondaga Nation.<sup>50</sup> The Onondaga Nation has been referred to as the Firekeepers based on the fact that their Nations is responsible for upkeep of the Council Fire and that they ensure that this sacred fire of the Hodinohso:ni is forever burning.<sup>51</sup>

### **Procedure of Consensus**

As it was (and still is) human nature to encounter problems and difficulties, a protocol for achieving consensus was created. Each individual within his or her clan/nation was to discuss these difficulties amongst his/her clan with Ganikwiyo (a good mind). Once there was a consensus achieved by the clan, the issue was discussed with the clanmother. The clanmother would then advise her respective Hoya:neh and this issue would have to be dealt with in Grand Council, if it was important enough to discuss. In Grand Council, all fifty Hodiyanehso gather, discuss the issues or difficulties and make decisions that benefit and provide for the betterment of all Hodinohso:ni.<sup>52</sup> Prior to the meeting of Grand Council, the Onondaga Hodiyanehso decided whether the issue was important enough and whether it should be discussed and dealt with by the Grand Council. If the issue was important, the Onondaga Hodiyanehso sent messengers with wampum to advise all Hodiyanehso of the meeting of the Grand Council.<sup>53</sup> If

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<sup>49</sup>Great Law Recital, *supra*, note 20.

<sup>50</sup>*Ibid.*

<sup>51</sup>*Ibid.*

<sup>52</sup>*Ibid.*

<sup>53</sup>*Ibid.*

the issue was able to be solved within the clan, it was sent back to the individual clan/nation to solve. All meetings were held at the Onondaga Council Fire as the Onondaga Nation is responsible for the caretaking and watching of the Council Fire. When Council is held, the Onondagas are responsible for addressing the Ganohonyohk (The Thanksgiving Address).

Once Council begins the Onondaga Nation presents the issue to the Elder Brothers. The Mohawk Hodiyanehso discuss the issue first amongst themselves wherein they are divided into three parties. The first party listens only to the discussions of the second and third parties. If an error is made or the proceeding irregular, they are to call attention to it. When the case is right and properly decided by the two parties, they shall confirm the decision of the two parties and refer the issue to the Seneca Hodiyanehso for their decision<sup>54</sup>. When the Seneca Hodiyanehso comes to a consensus with the Mohawk Hodiyanehso, the issue is then "thrown across the fire" or referred to the Younger Brothers, the Cayuga and Oneida Hodiyanehso on the opposite side of the fire or Longhouse. Then, it is their responsibility to come to a consensus. Once all nations have come to a consensus, the issue is then "thrown back across the fire" to the Onondaga Nation who will announce the final decision.<sup>55</sup>

#### **Responsibilities of Hodiyanehso**

When the clanmother selects her Hoya:neh within her clan/nation, she decides on whether he will be able to provide leadership based on the following characteristics: strong-minded, courageous, patient, tolerant, honest, compassionate, responsible. He must be able to manage his own affairs, support his family and prove to be faithful to his Nation and lead by

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<sup>54</sup>*Ibid.*

<sup>55</sup>*Ibid.*

example.<sup>56</sup> When he is not in mind of the welfare of the people, it is the responsibility of the other Hodiyanehso within his nation to warn him of his not performing his duties. He is given three warnings and if he refuses to listen or abide by his responsibilities, it is the clanmothers duty to dehorn him and select another Hoya:neh in his place. A Hoyaneh can be dehorned without warning if he were to do any of the following three things:

- 1) commit murder/manslaughter;
- 2) commit any crime against a woman or child;
- 3) commit theft.<sup>57</sup>

When a Hoya:neh is to be installed or condoled, he is given four strings of wampum one span in length bound together at one end. This is evidence of his pledge to the Creator that he will live and abide by all principles and values of Gayanehsragowah.

A Hoya:neh acts on behalf of the Creator.<sup>58</sup> His duties, responsibilities and thoughts are given to him by the Creator thus must be physically, mentally, emotionally and spiritually strong. When administering his duties, a Hoya:neh must have skin seven spans thick.<sup>59</sup> This means that the Hoya:neh must have the strongest mind to deflect any harmful, hurtful or bad criticisms thrown his way and must not let anything cut through to effect his Ganikwiyo. He must not hold a grudge against anyone and must not show any anger or speak any hurtful words

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<sup>56</sup>Oren Lyons, "Land of the Free, Home of the Brave" in Indian Roots *supra*, note 25 at 32 [hereinafter referred to as "Land of the Free"].

<sup>57</sup>Great Law Recital, *supra*, note 20.

<sup>58</sup>Jacob Thomas, "The Great Law Takes a Long Time to Understand" in Indian Roots *supra*, note 25 at 45 [hereinafter referred to as "The Great Law"].

<sup>59</sup>Lyons, "Land of the Free", *supra*, note 56 at 42.

towards anyone. His heart must be full of peace and good will and his mind filled with the yearning for the welfare of his people. With endless patience, he must carry out his duty with his words and actions marked by calm deliberation. He must act as a teacher and spiritual guider of his people.<sup>60</sup>

With respect to his responsibilities with external nations or those nations who do not abide by the Gayanehsragowah of Peace, a Hoya:neh is capable of forming wampum strings or belts to record matters of national or international importance<sup>61</sup>. These wampum belts are used to record the pledges made with an external nation. It is like an agreement that is binding as soon as the strings are exchanged by both parties.

Hodiyanehso select other men to sit amongst them when they are noticed as having a special ability or they show great interest in the affairs of the Nation. They are called "Pine Tree Chiefs" and must prove themselves wise, honest and worthy of confidence. If one were ever to do anything contrary to the Gayanehsragowah, he would not be deposed, but everyone would be deaf to his voice and his advice. He has no authority to name a successor and his title is not handed down to another within his clan. When he dies, his title as Pine Tree Chief dies.<sup>62</sup>

#### **Responsibilities of a Brave/Protector**<sup>63</sup>

When the last two Seneca war chiefs accepted Gayanehsragowa, the Peacemaker changed their names to their new Hodiyanehso names. This symbolized the end of the warriors,

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<sup>60</sup>Tom Porter, "Men Who are of the Good Mind" in Indian Roots, *supra*, note 25 at 18.

<sup>61</sup>This will be discussed further in this chapter.

<sup>62</sup>Great Law Recital, *supra*, note 20.

<sup>63</sup>Rather than using the English word "warriors", the correct or better term would be "brave" or a "protector". The Ongwehowe word translates into young men who are brave, not warriors.

the end of war and killing, the end of carrying weapons<sup>64</sup> and the beginning of peace. This also symbolized the power of Ganikwiyo wherein the young men who were once considered fierce killers would now be protectors of their Nation<sup>65</sup>.

Some men were responsible for carrying messages to their respective Hoyaneh. They did not participate in the proceedings of the Council, but watched its progress and reported any complaints made by the people or clan of their nation. People who wished to convey messages to the Hoyaneh could do so through these men. It was their duty to present any problems, questions and propositions of the people/clan before the Grand Council.

#### **Ga nya des go wa (Tree of Peace)**

A great white pine (or the Tree of Great Long Leaves) was planted in Onondaga Territory, as the Onondaga Nation was responsible for the Council Fire. It was said that the roots of the Great Tree would spread out in the four directions - the north, south, east and west and the name of these roots are the Great White Roots. The colour white symbolized the pureness of the messages within the Gayanehsragowah. If anyone or any other nation were to follow the roots to its source, they found the laws of the Great Peace. If their minds were clean and they promised to follow the principles within the Gayanehsragowah, they were welcomed to take shelter under the Great Tree. At the top of the tree sat an Eagle who was able to see far distances. It was the Eagle's duty to advise the people of any danger approaching.

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<sup>64</sup>This has been termed as the "oldest historical evidence of an effort for disarmament in the history of the world".

Dr. Gregory Schaaf's Statement to the United States Senate. Hearing before the Select Committee on Indian Affairs, 100th Congress, First Session on S.Con.Res. 76, December 2, 1987, Washington, D.C. at 13. [hereinafter referred to as Hearing before the Select Committee]

<sup>65</sup>Great Law Recital, *supra*, note 20.

When the Peacemaker was travelling to all Hodinohso:ni Nations, he needed to convince the last two Seneca Hodiyanehso of the principles of peace and the power of the Good Mind within Gayanehsragowa. These last two Seneca men were fierce warriors and were very difficult to convince. However, they were convinced by the Peacemaker's message and were then given the responsibility to be the protectors of the Western Door.<sup>66</sup> The Tree of Peace was uprooted and directly beneath the tree an underground stream flowed. The Peacemaker directed that all of those young men who carried weapons were to throw them into the hole and the swift current would carry them away never to be found, dug up or used again.<sup>67</sup>

### **Extending the Rafters**

If conditions arise at any time in the future where an addition is needed, the issue must be considered. If such a change is necessary or beneficial to the people, a new rafter is added, or in other words, an addition must be made. This does not mean that parts of the Gayanehsragowa can be taken apart, but can only be added onto. An excellent analogy was made by a Mohawk man from Akwesasne in which he states:

The idea extended from the creation of the structure of the longhouse - when it extends from the east to the west. As one family of the woman lives in one longhouse - her clan, her daughters also live within one longhouse and when a man marries a daughter, he moves into her longhouse. Each daughter may have kids and as it is still one family, they run out of room and will need to extend the house; add an addition on. These longhouses would keep growing; therefore, the rafters of the longhouse would have to be extended.

From this idea, the term "extending the rafters" became a political one and it became the responsibility of the chiefs to make sure the "house" continues to grow; therefore adding onto it. By doing this, the chiefs made treaties and the

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<sup>66</sup>Great Law Recital, *supra*, note 20.

<sup>67</sup>*Ibid.*



treaties became law. By adding rafters, this is what it is supposed to mean. This does not mean you amend the constitution - the constitution is simple -peace power and righteousness.<sup>68</sup>

Therefore, it is important to remember that Gaynehsragowa will never change and no one can make amendments to it; however, additions can be made to accommodate growth.

The above explanation of Gayanehsragowa is just an inkling of all of the laws, principles and values within Gayanehsragowa<sup>69</sup> and really, it can only be fully understood in the Hodinohso:ni languages. As well, Hoyaneh Jacob Thomas stated:

Native culture is something that you keep on learning everyday, you may become knowledgeable, but you are still learning every day, it never stops, right 'till you

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<sup>68</sup>Interview with Michael McDonald, North American Travelling College, Cornwall, Ontario - February 8, 1996

<sup>69</sup>The following are further laws that Gayanehsragowah provides for:

1) Laws of Adoption

Any other clan or nation can be adopted into the Hodinohso:ni Confederacy as long as they abide by principles and values provided within the Gayanehsragowah of Peace;

2) Laws of Emigration

If anyone wants to leave the Confederacy territory, they must advise and if they are requested to come back, they must do so.

3) Rights of Foreign Nations

4) Treason and cessation of a nation

5) Rights of the People;

6) Protection of Religious Ceremonies;

7) Installation Songs;

8) Protection of the House;

9) Funerals.

It is beyond the scope of this paper to get into more detail on all of these issues. The focus of this thesis is on the political and historical formation of the Hodinohso:ni and its relationship with International Law. Therefore, any further expansion on these Hodinohso:ni laws can be examined by reading the various written versions of the Great Law such as: Arthur C. Parker, The Constitution of the Five Nations or The Iroquois Book of the Great Law (Iroqrafts: Ohsweken, Ont.) John Arthur Gibson, *supra*, note 23; North American Indian Travelling College, Traditional Teachings, (North American Indian Travelling College: Cornwall Island, Ont.) August, 1984.

As Paul Williams and Curtis Nelson states, "The Great Law is not based on precise words but on principles. We concluded that it did not matter which version we used as long as the principles remained consistent." Paul Williams and Curtis Nelson, Kaswentha, Research Paper for the Royal Commission on Aboriginal People, 1995 (document received on disk) [hereinafter referred to as Williams and Nelson, Kaswentha].

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### **2.1.2 Gaihwiyoyo: (The Code of Handsome Lake)**<sup>71</sup>

Gaihwiyoyo: (The Good Words) is another part of oral tradition. It is said that the spiritual teachings of the Four Celestial Beings was sent by Shogwayadihsoh (The Creator) to Sganyadaiyoyo<sup>72</sup> (Handsome Lake)<sup>73</sup>. Those Hodinohso:ni: who followed the teachings of Gaihwiyoyo:<sup>74</sup> acknowledge the Good Words as being a part of our O:gwehowehnya - our way of life and how we should be living it every day. Cayuga Hoyaneh Jacob Thomas stated:

"This Good Message would allow the O:gwe ho:we to survive as a people and as a nation. The message included instructions on how to live a good life, maintain the family unit, provide for the young and old, and contribute to the stability and well-being of the community."<sup>75</sup>

The messages were given to Handsome Lake from the years 1798 through to the early

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<sup>70</sup>Thomas, "The Great Law", *supra*, note 58 at 43.

<sup>71</sup>When Gaihwiyoyo: is recited to our people, our traditional "speakers" (those who have the ability to recite it) gather and decide on where it will be recited, who will be reciting, and when it will begin.

<sup>72</sup>Literally translates into "beautiful lake". Handsome Lake was born in 1735 and was a member of the Seneca Nation. He held one of fifty Hoya:neh titles.

<sup>73</sup>Handsome Lake was described as a man who had become an alcoholic, a victim of the times. The Good Words recited by Handsome Lake were transmitted through his dreams, while he was very ill. This occurred during the years 1789 through to the early 1800s after the American Revolutionary War had literally divided Hodinohso:ni:. It was also a terrible time when many Hodinohso:ni: were drinking excessively and were very poor in keeping up with our traditional ceremonies. For further historic details, see Anthony F.C. Wallace, The Death and Rebirth of the Seneca (New York: Alfred A. Knopf, Inc., 1970) [hereinafter referred to as The Death and Rebirth]

<sup>74</sup>Since Handsome Lake's time, cultural and social problems have become excessively controversial and have become more and more disturbing every day. There has been and is controversy between those who follow Gaihwiyoyo: and those who do not. This has been ongoing since the time of the messages given to Handsome Lake. Those who do not abide by Gaihwiyoyo: argue that is too similar to Christianity or they may not understand the teachings that are provided within Gaihwiyoyo: when it is being recited in one of our languages.

<sup>75</sup>Jacob Thomas and Terry Boyle, Teachings from the Longhouse (Toronto: Stoddart Publishing Co. Limited) 1994 at 18 [hereinafter referred to as Teachings from the Longhouse].

1800s during the time of conflict of the Hodinohso:ni with settlers and colonizers. There were detrimental changes and it was a time of moral, social and cultural chaos<sup>76</sup> for the Hodinohso:ni; a time when they were geographically, spiritually, mentally and physically imbalanced. Anthony F. C. Wallace describes the times as follows:

...In two generations the Iroquois had fallen from high estate to low. With the British victory in the French and Indian war, they had lost the respect of the two groups of white men between whom they had for years been able to hold a balance of power. They had seen their towns burned, their people dispersed, and, after the American Revolution, their statesmen and warriors made to seem contemptible because they had supported the losing side. They had lost their lands and were confined to a sprinkling of tiny reservations, slums in the wilderness, lonely islands of aboriginal tradition scattered among burgeoning white settlements. They faced a moral crisis: they wanted still to be men and women of dignity, but they knew only the old ways, which no longer led to honor but only to poverty and despair; to abandon these old ways meant undertaking customs that were strange, in some matters repugnant, and in any case uncertain of success. And so the Iroquois stagnated, bartering their self-respect for trivial concessions from the Americans, drinking heavily when they had the chance and quarrelling among themselves..."<sup>77</sup>

Although it is true that the Hodinohso:ni were going through a lot of social and cultural stress during the terrible time after the American Revolutionary War; however, Handsome Lake did not "construct" this system and it was not believed to be a myth, dogma or ritual as described as follows:

Such a line of thought leads to the view that religious belief and practice always originate in situations of social and cultural stress and are, in fact an effort on the part of the stress-laden to construct systems of dogma, myth, and ritual which are internally coherent as well as true descriptions of a world system and which thus will serve as

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<sup>76</sup>For further reading regarding this era and time of chaos see: Daniel K. Richter, The Ordeal of the Longhouse. The Peoples of the Iroquois League in the Era of European Colonization (University of North Carolina Press) 1992 at 255 - 280

<sup>77</sup>A.F.C. Wallace, Religion: An Anthropological View (New York: Random House, 1966) at 31 [hereinafter referred to as Religion].

guides to efficient action.<sup>78</sup>

Gaihwiyō was given to the Hodinohso:ni similarly to how Gayanehsragowa was given.

The Code of Handsome Lake has also been termed as a "religion" or "new religion"<sup>79</sup> by non-Hodinohso:ni anthropologists<sup>80</sup>. The Code must not be considered as a religion or as a "new" religion. In reviewing the basic dictionary<sup>81</sup> definition of "religion", it means worshipping a god. Gaihwiyō is not about worshipping god, but is about teachings of life and how our people are to remain spiritually, mentally, emotionally and physically balanced.

There are only three sources of the Code of Handsome Lake that are written and translated into English<sup>82</sup> and there are others who have written manuscripts and/or anthropological papers<sup>83</sup> on the Code. The Code, first of all, sets out four major matters<sup>84</sup> that

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<sup>78</sup>*Ibid.* at 30.

<sup>79</sup>*Ibid.*

<sup>80</sup>William N. Fenton (ed.) Parker on the Iroquois (Syracuse, N.Y.: Syracuse University Press, 1968) at 32.

For further anthropological work explaining the "Handsome Lake Religion" see Deardorff, M.H. "The Religion of Handsome Lake: Its Origin and Development" Symposium on Local Diversity in Iroquois Culture in W.N. Fenton (ed.) Bureau of American Ethnology Bulletin 149, Smithsonian Institute (Washington, 1951) No. 5 at 77-107; also see Wallace, Religion, *supra*, note 73 at 30-32

<sup>81</sup>Winston Canadian Dictionary for Schools (Toronto: Holt Rinehart and Winston of Canada, Ltd.)

<sup>82</sup>Thomas and Boyle, Teachings from the Longhouse, *supra*, note 75; also see Arthur C. Parker, The Code of Handsome Lake, the Seneca Prophet (N.Y. State Museum Bulletin No. 163, Albany) 1913; and also see Lewis Henry Morgan, League of the Ho-de-no-sau-nee or Iroquois (Rochester, 1951)

The Bureau of American Ethnology has three unpublished and untranslated manuscript texts (BAE MSS Nos. 449 and 2585 in Onondaga and No. 3489 in Mohawk) as cited in Merle H. Deardorff, *infra*, note 82.

<sup>83</sup>Manuscript of Henry Simmons Jr., a Quaker, was cited and referred to in Merle H. Deardorff, No. 5. The Religion of Handsome Lake: Its Origin and Development, Symposium on Local Diversity in Iroquois Culture, Smithsonian Institution, Bureau of American Ethnology, Bulletin 149 at 77-107.

<sup>84</sup>All are found in Teachings of the Longhouse, *supra*, note 75.

made Shogwayadihsoh hurt and upset and wanted these terrible things to end immediately. These made our people imbalanced and in order to become balanced again, they must change their ways and advise Shogwayadihsoh that they will no longer partake in these types of things. These four things are as follows:

- 1) Deganigohade:nyohs, translates into "mind changer" or those material things that are not given to O:gwe ho:we. Mind changers can be interpreted to mean any addiction such as drugs, alcohol and/or gambling. This can also be interpreted to include the use of money because the whole concept of money was not part of Hodinohso:ni culture. It can be a mind changer to those who are addicted to wanting more.
- 2) Gohtgo translates into "witch craft". There are those people who have been able to use bad medicine<sup>85</sup> to cause death or illness or to cause people to lose their mind. These people are considered as being jealous of others for they either want or desire what others have. This causes them to use their bad medicine to cause harm to those they are jealous of.
- 3) Onon:hwegt translates into "love medicine". The same type of people who use bad medicine to harm others also use bad medicine to control the lives of other people. It has been termed as a "submission medicine" because it conquers and hypnotizes the mind.<sup>86</sup>
- 4) Godadwiyahdo:doh translates into "abortion". It is very much respected that a woman

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<sup>85</sup>There is a major difference between those who use bad medicine and those who use good medicine. Those who use good medicine are considered as medicine healers, medicine men or medicine women. Those that use good medicine were given that as a gift from the Creator and were to use it to cure people who were ill or sick. Most did not charge for this medicine as the Creator will provide them with good things.

<sup>86</sup>Teachings of the Longhouse, *supra*, note 75 at 32.

has the strength and power to bring children into this world. It has been said that it is the children who choose their parents while the children are in the Spirit World. Therefore, we must always respect life and respect future generations. It is said that the Creator has already determined how many children will be born to a woman and if she chooses to have an abortion, it will cause the end of a natural path of providing us with future generations.

Also within the Code, the Good Words speak about relationships and respect such as:

- 1) marriages and the responsibilities of the husband and wife within a marriage; the responsibilities of the parents within their children's marriage. It was the responsibility of the mothers of their children to determine their spouses. The two mothers of the male and female would meet and a decision was made as to whether their children would marry or not. When they were married, the parents of the couple would not interfere with disagreements or arguments they were having; they would only be there to advise them and not interfere. Once married, they were together until death.<sup>87</sup>
- 2) family relationships such as how a man must respect his wife and his children; how a woman must respect her husband and her children; how to discipline children; how to respect our elders, help them and provide for them when they get too old.<sup>88</sup>

The Code also advises our people of the values and morals that must be kept in line or in balance at all times. We are told that we have no right to judge or punish others - only the Creator has that right. We are told that we must not be vain, we must not boast - if we are

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<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*

talented or have been given a gift that no one else has, we must not brag about it and must remain humble. We must not gossip about others, must not be greedy or selfish; we must be as unselfish as possible and always think of helping others when we are able to. In order to keep in balance with ourselves, we must keep all of these lessons in mind and we must remain self-confident in our values and principles and remain faithful to ourselves. This will not only help ourselves, but will help our families and our community.<sup>89</sup>

The Good Message also speaks about maintaining our O:gwehowehnya. We must always give thanks to the Creator for our life and as soon as we wake up in the morning and the sun has risen again, we must give thanks for this also. At the end of the day, we must analyze our thoughts and actions during that day and if anything was imbalanced during that day, we must acknowledge this to the Creator and determine that we will do everything in our power to remain balanced. We were provided with good medicine by the Creator and we must use this medicine for ceremonies and for healing. We have also been given O:yegwao:weh (Sacred Tobacco) which must also be used during our ceremonies to advise our messages to the Creator. The Good Message also advised us of The Four Sacred Ceremonies: Ostowagowah (The Great Feather Dance), Ganeho: (The Skin or Drum Dance), the Ado:wa (personal song of Hodinohso:ni men who honour the Creator for all that what has been provided) and Gayedowa:neh (The Peach Stone Bowl Game)<sup>90</sup>.

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<sup>89</sup>*Ibid.*

<sup>90</sup>For a full detail, see Teachings of the Longhouse, *supra*, note 75.

## **2.2 HISTORICAL AND POLITICAL RELATIONSHIPS WITH EUROPEAN COLONIZERS**

The politics of the Hodinohso:ni Confederacy is very extensive and comprehensive and very few people are aware of the extent or the influence of the Hodinohso:ni upon all lives in North America. The following portion of this chapter will provide an overview of the historical political relationship of the Hodinohso:ni Confederacy, first, with European colonizers, such as the Dutch, French and then, later, with the Thirteen Colonies and with Great Britain focusing on treaty relationships. It will also provide an overview of the relationship prior to and after the Revolutionary War with the American Congress and Great Britain. It will also overview the relationship with the United States as well as with Canada after its Confederation in 1867. The purpose of this historical context is to provide the background and events not only to demonstrate the independence and sovereignty of the Hodinohso:ni Confederacy, but also to affirm the nation-to-nation relationship. An assertion will be made in Chapter 3 that the Hodinohso:ni can be considered as a separate nation/state for the purpose of membership within the United Nations.

Hodinohso:ni Hodiyanehso entered into international treaties with other nations; a process provided for in Gayanehsragowa wherein international relationships were recorded through the use of wampum and creating wampum belts.<sup>91</sup> In 1836, Sir Francis Bond Head, the Lieutenant Governor of Upper Canada recognized the significance of the wampum treaty belts and stated as follows:

An Indian's word, when it is formally pledged, is one of the strongest moral

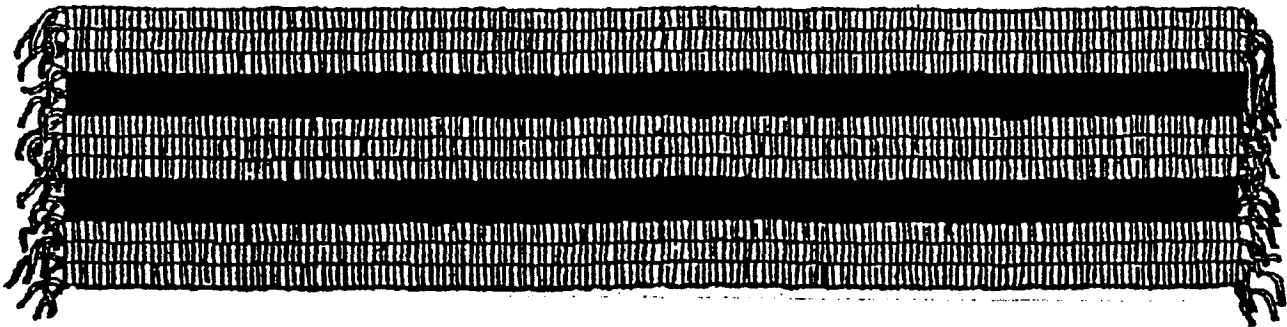
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<sup>91</sup>Wampum Belts, *supra*, note 15.



securities on earth; like the Rainbow, it beams unbroken when all beneath is threatened with annihilation. The most solemn form in which an Indian pledges his word is by the Delivery of a Wampum Belt of Shells; and when the purport of this Symbol is once declared it is remembered and handed down from Father to Son with an Accuracy and Retention of Meaning which is quite extraordinary.<sup>92</sup>

From as early as the 1600s, political relations began with European colonizers and statesmen by creating these wampum treaties between the Hodiyanehso: and those colonialists that represented the British, Dutch, French and American nations. The original treaty that defined the present and future relationship between the colonizers and the Hodino:ni Confederacy was the Gahswehda<sup>93</sup>, Two Row Wampum Belt. The following is a picture of the Two Row Wampum Belt:



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<sup>92</sup>Correspondence respecting Indians between the Provincial Secretary of State and Governors of British North America 1837 (Queen's Printer), p. 128, cited in Darlene Johnston, "Self-Determination for the Six Nations Confederacy", 44 Univ. of Toronto L.R., Spring 1986 1 at 9 [hereinafter referred to as "Self-Determination"].

<sup>93</sup>Literally translated as a River or River of Life.

Interpretation of this treaty belt can be summarized as follows:

There is a bed of white wampum which symbolizes the purity of the agreement. There are two rows of purple, and those two rows have the spirit of your ancestors and mine. There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect.

These two rows will symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other's vessel<sup>94</sup>.

This wampum belt represented separate but equal<sup>95</sup> coexistence between two parties: one being the Hodinohso:ni and the other being the colonizer. The agreement was binding between all parties "as long grass grows green, as long as the water runs down hill, and as long as the sun rises in the east and sets in the west"<sup>96</sup>.

Another symbol of the relationship made in the early 1600s between the same European colonies and the Confederacy was the Silver Covenant Chain which was described as "pure, strong and untarnished" and "bound those who grasped it, binding nations together without causing them to lose their individual characters, or their independence"<sup>97</sup>. It was further described as follows:

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<sup>94</sup>Excerpted from presentations to the Special Committee by the Hodinohso:ni Confederacy, Report of the Special Committee, *supra*, note 22.

<sup>95</sup>Richard Hill, "Oral Memory of the Haudenosaunee: Views of the Two Row Wampum", in Indian Roots, *supra*, note 25 at 159.

<sup>96</sup>None of these things have happened. Therefore, in the eyes of the Hodinohso:ni, those parties who agreed to the terms of this agreement are still bound.

This statement was made by Oren Lyons to the United States Senate, Hearing before the Select Committee, *supra*, note 64 at 7.

<sup>97</sup>Report of the Special Committee, *supra*, note 22 at 31A:8.

The Covenant Chain is designed for expansion, with new links being added as other nations join their arms into the compact. Each Nation with its arms in the chain is equal to each other. Though some nations might have certain functions in maintaining or renewing the Chain, the equality of the nations within the Chain is an important part of its strength. Any nations guilty of a breach of commitments, a lack of faith, or inattentiveness, allows the Chain to 'slip from one's grasp'<sup>98</sup>.

There were many further important treaties and negotiations made between the years 1613 and 1913 involving the Hodinohso:ni Confederacy, other O:gwe ho:we Nations and European colonialists<sup>99</sup>. The most important treaty made after the Two Row Wampum Treaty and the Silver Covenant Chain was the Treaty of Fort Albany made in 1664. This Treaty applied the principles of the Two Row Wampum and provided for peaceful relations and trade as well as for a separate criminal justice jurisdiction between the Hodinohso:ni and the English. The Treaty dealt with situations in which a member of Confederacy harmed a member of the English nation. It was therefore assumed that offences between members of their nation were to be dealt with in its own nation and vice versa. As well, each nation was responsible to the other nation for any wrongs by its members against the members of the other.<sup>100</sup>

There were a number of wars during the mid/late 1600s between the French and the Hodinohso:ni as well as between the British and French.<sup>101</sup> A treaty of neutrality was made in

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<sup>98</sup> *Ibid.*

<sup>99</sup> A list of treaties are reproduced and attached as Appendix A.

Francis Jennings et al (eds.), The History and Culture of Iroquois Diplomacy. An Interdisciplinary Guide to the Treaties of the Six Nations and Their League (Syracuse, New York: Syracuse University Press, 1985) at 157 [hereinafter referred to as Iroquois Diplomacy].

<sup>100</sup> Report of the Special Committee, *supra*, note 22 at 31A:8.

<sup>101</sup> For an excellent historical political analysis of this particular era, see Howard R. Berman "Perspectives on American Indian Sovereignty and International Law, 1600 to 1766" in Exiled, *supra*, note 21 at 126-188 [hereinafter referred to as "Perspectives"].

1701 between the Confederacy and France in which "the British were reassured that the Confederacy regarded continued friendship with their 'brethren' as unaffected by the French treaty".<sup>102</sup> A war broke out only a year later in 1702 between the British and the French and lasted until 1713 (the Confederacy remaining neutral) when the Treaty of Utrecht was created between Great Britain and France. "The Treaty of Utrecht did nothing to change the structural relationships between the Confederacy and Britain and France respectively".<sup>103</sup>

This "triangular relationship"<sup>104</sup> ended with the French colony of Canada ceding to Britain in the 1763 Treaty of Paris (Treaty made between Great Britain, France and Spain). However, this did not change the treaty relationship between Great Britain and the Confederacy<sup>105</sup>. Despite the neutrality relationship with the British, the Royal Proclamation of 1763 was created and was "designed to retain native goodwill by establishing a line between their lands and those of the whites".<sup>106</sup>

In 1775, the American Congress created a neutrality treaty with the Confederacy in Albany, New York<sup>107</sup>. The American Congress also legislated its own "power in matters of war

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<sup>102</sup>*Ibid.* at 175.

<sup>103</sup>*Ibid.* at 180.

<sup>104</sup>*Ibid.* at 175.

<sup>105</sup>*Ibid.* at 184.

<sup>106</sup>E. Brian Titley, A Narrow Vision. Duncan Campbell Scott and the Administration of Indian Affairs in Canada (Vancouver: University of British Columbia Press, 1986) at 2 [hereinafter referred to as Narrow Vision].

<sup>107</sup>Berman, "Perspectives", *supra*, note 101 at 186.

and peace and treaties relating to Indians".<sup>108</sup> With respect to matters of Indian trade and other matters, Congress' authority was limited in two ways:

"First, its authority extended only to Indians 'not members of any of the States.' Second, it was restrained from infringing the 'legislative right of any State, within its own limits'".<sup>109</sup>

When the neutrality treaty was created in 1775 between the Confederacy and the American government, boundary treaties were also being negotiated with Great Britain. Sir William Johnson stated that:

The ascertaining and defining the precise and exact Boundaries of Indian Lands, is a very necessary, but delicate point; I shall do everything in my power towards effecting it when ordered; but I must beg leave to observe, that the Six Nations, Western Indians, etc., having never been conquered, either by the English or French, nor subject to the Laws, consider themselves as a free people. I am therefore induced to think it will require a good deal of caution to point out any boundary, that shall appear to circumscribe their limits too far.<sup>110</sup>

When the American Revolutionary War broke out in 1775, it caused detrimental effects to the Confederacy, but only temporarily. As a result of the neutrality agreements made on both sides of two colonial governments, the Hodinohso:ni were caught in the middle. The political fire had to be covered as all of the six separate nations were unable to agree in their participation in the war; they took part on either the British or French side or remained neutral. Those members of each of the six nations who supported the British moved northward to the original territory of the Hodinohso:ni, namely, the southwestern peninsula of present-day Ontario. Some

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<sup>108</sup>Curtis G. Berkey, "United States - Indian Relations: The Constitutional Basis" in *Exiled, supra*, note 21 at 201 [hereinafter referred to as "The Constitutional Basis"].

<sup>109</sup>*Ibid.*

<sup>110</sup>Berman, "Perspectives", *supra*, note 101 at 372, n. 241.

historians argued that the Confederacy ceased to exist as a result of the American Revolution. The strength of the spiritual fire did not burn out, however, as the Hodinohso:ni's political fire was rekindled again once the Revolution was over and the principles of the Gayanehsragawah were adopted again. Oren Lyons explained that there was those "people who fail[ed] to understand the non-coercive nature of the Confederacy...and the fact that disruption [was] not the equivalent of cessation".<sup>111</sup>

As a result of the move of some members of the Confederacy and in accordance with their support of the British, they were unable to agree with each other and followed different paths. This resulted in the various Confederacy factions on both sides of an international border created by two colonizing countries: the United States and Great Britain. The current Hodinohso:ni communities are within the provinces of Ontario (Tyendinaga, Akwesasne, Gibson, Six Nations of the Grand River) and Quebec (St. Regis, Kanasatake, Kahnawake) and within the states of New York, (Onondaga Nation, Syracuse; Cattaraugus; Tonawanda; Tuscarora; Akwesasne; Ganyangeh; Oneida;) Oklahoma (Cayuga/Seneca Nations) and Oneida, Wisconsin.

## **2.2.1 After the Revolutionary War**

### **2.2.1.1. Relationship with the United States**

The Treaty of Paris (1783) made at the end of the American Revolution acknowledged colonial independence wherein the British had agreed to an international boundary which placed the traditional Hodinohso:ni lands within the territory of the newly created American

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<sup>111</sup>Lyons, "American Indians in the Past", *supra*, note 21 at 39.

republic.<sup>112</sup> The Treaty of Paris did not, however, mention the Hodinohso:ni Confederacy in their loyalty to the United States. Therefore, the United States negotiated a treaty with the Confederacy and created the Treaty of Fort Stanwix (1784) which recognized and guaranteed the independence and sovereignty of the Hodinohso:ni.<sup>113</sup> However, it was unknown to the Confederacy that they were forced to surrender portions of their land and that the treaty gave the United States authority to extinguish title to any other lands.<sup>114</sup>

State control became a problem to the federal government as Hodinohso:ni land was being fought over by the State of New York. The United States government negotiated treaties with the Confederacy to keep their alliances and maintain their neutrality. The American government's policy regarding the disputed land issues with New York was to pass the first of many Trade and Intercourse Acts in 1790. These Acts prohibited the purchase of land by anyone without federal control. New York ignored the act, which prompted the Treaty of Canandaigua in 1794 between the United States and the Confederacy. This treaty completed the policies created by the Treaty of Fort Stanwix (1784) and ended any threat that the Confederacy posed to the United States.

#### 2.2.1.2 Relationship with Great Britain

At the Six Nations Grand River Territory, Sir William Johnson, the Superintendent-

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<sup>112</sup>Robert J. Surtees, "The Iroquois in Canada" in Iroquois Diplomacy, supra, note 99 at 73 [hereinafter referred to as "The Iroquois"].

<sup>113</sup>Berkey, "The Constitutional Basis", supra, note 98 at 205.

<sup>114</sup>Jack Campisi, "National Policy, States' Rights and Indian Sovereignty: The Case of the New York Iroquois" in Michael K. Foster et al., eds. Extending the Rafters. Interdisciplinary Approaches to Iroquoian Studies (Albany, N.Y.: State University of New York Press, 1984) at 98 [hereinafter referred to as "National Policy"].

General of Indian Affairs granted the Haldimand Deed to the members of the Six Nations on October 25, 1784 which provided as follows:

Whereas His Majesty having been pleased to direct that in Consideration of the early Attachment to His Cause manifested by the Mohawk Indians, & of the Loss of their Settlement they thereby sustained that a Convenient Tract of Land under His protection should be chosen as a Safe & Comfortable Retreat for them & others of the Six Nations who have either lost their Settlements within the Territory of the American States, or wish to retire from them to the British - I have, at the earnest Desire of many of these His Majesty's faithful Allies purchased a Tract of Land, from the Indians situated between the Lakes Ontario, Erie & Huron and I do hereby in His Majesty's name authorize and permit the said Mohawk Nation, and such other of the Six Nations Indians as wish to settle in that Quarter to take Possession of, & Settle upon the Banks of the River commonly calls Ours [Ouse] or Grand River, running into Lake Erie, allotting to them for that Purpose Six miles deep from each Side of the River beginning at Lake Erie & extending in that Proportion to the Head of the said River, which them & their Posterity are to enjoy for ever.

According to the members of the Confederacy, this Haldimand Deed was actually a Treaty and it was an important factor in enforcing their sovereign status. They took the following position with respect to their acceptance of this treaty:

"Having been driven from our home lands in that war by the revolting colonies, King George III, in fulfilment of his promise, invited us to accept a home beyond the limits of the new United States, on the banks of the Grand River, in place of our guaranteed home-lands then lost to our people. We, through our great Chief, Joseph Brant, accepted this offer of the King confirmed by his Governor-General of Canada, Sir Frederick Haldimand, whereby the Grand River lands were bestowed upon us and our prosperity forever, under the express condition that we should enjoy them forever as separate people we have ever been and with the assurance of British protection renewed".<sup>115</sup>

Joseph Brant<sup>116</sup> was considered by the British as the leader of the Hodinohso:ni:

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<sup>115</sup>Petition to the Government of Netherlands, PAC, Indian Affairs, (RG 10, Volume 2285, File 57 169-1B Pt. 3) [documents received from the Hodinohso:ni Council at Six Nations Grand River Territory]

<sup>116</sup>There is some controversy as to whether Brant had the authority from the Hodinohso:ni: Council to negotiate and to give land away.



Confederacy as a result of his allegiance to them. He was also associated with the Hodinohso:ni: Confederacy in New York. The British disliked the fact that Brant was associated with the Confederacy on both sides of an international border, so they insisted that Brant promise loyalty to them based on the fact that "Canada was thought to be in danger of attacks by the Spanish and French".<sup>117</sup> Questions were being raised at the time as to the meaning of the Haldimand Grant. Joseph Brant was leasing and selling Confederacy lands to white settlers. Lieutenant-Governor Simcoe became involved, as the British Crown were of the opinion that Brant could not sell or lease the lands within the Haldimand Grant according to the terms of the Royal Proclamation. The lands could only be sold through the Crown. Brant argued that the Royal Proclamation did not apply to the "Six Nations" land, as the land was granted in fee simple by the Haldimand Grant. However, Lieutenant-Governor Simcoe did not agree with this interpretation and issued his "Patent" on January 14, 1793. This Patent included all that was in the Haldimand Grant as well as the terms of the Royal Proclamation that any of the land sold needed the approval of the Crown.<sup>118</sup>

Once the Confederacy at Six Nations Grand River Territory regained their spiritual and political strength through Gayanehsragowah and through the prophecies of Handsome Lake, they were able to govern affairs again. Sovereignty was never forgotten. The Hodinohso:ni: Confederacy "put forward a claim to special status"<sup>119</sup> and adamantly stated that they have never been conquered by the British, but were allies and continued to be allies and not subjects of the

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<sup>117</sup>Surtees, "The Iroquois", *supra*, note 112 at 76, n.59.

<sup>118</sup>*Ibid.* at 77.

<sup>119</sup>Titley, Narrow Vision, *supra*, note 106 at 112.

Crown.

### 2.2.2 After the Confederation of Canada

In 1839, the Confederacy demanded to the British and Canadian authorities that they were governed by their own laws and customs. However, British and Canadian colonialists viewed this as a problem. A report was prepared by a Mr. Justice Macauley to Sir George Arthur in 1839 which stated as follows:

As to the exercise of civilized rights, the resident Tribes are peculiarly situated, being in point of fact naturalized or natural born subjects, and domiciled within the organized portion of the Province, it would be difficult to point out any tenable grounds on which a claim to an exempt or distinctive character could be rested. The Six Nation have, I believe, asserted the highest pretensions to separate Nationality, but in the Courts of Justice they have been always held amenable to, and entitled to, the protection of the Laws of the land...<sup>120</sup>

In 1867, Canadian colonialists followed the British policy and created the British North America Act and s.91(24) wherein the Parliament of Canada had authority over "Indians and lands reserved for Indians". The Indian Advancement Act and the Indian Act were also created based on existing British Policy. All of this legislation was created unilaterally without any Confederacy involvement.

After the British North American Act of 1867 and the Indian Advancement Act of 1869 was passed, the Confederacy Council met with 21 different Nations at the Ohsweken Council House at the Six Nations Reserve to discuss these Acts. It was (and still is ) their position that the Indian Advancement Act "was of no benefit to [the] people and was totally rejected".<sup>121</sup>

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<sup>120</sup>Malcolm Montgomery, "The Legal Status of the Six Nations Indians in Canada" (1963) Ontario History Vol. LV, No. 2, at 96 [hereinafter referred to as "The Legal Status"].

<sup>121</sup>Position Paper on Self-Government from the Hodehosaunee at Grand River, Woodland Culture Centre, February 2-3, 1991 (document received from Hodinohso:ni Council at Six Nations Grand River Territory).

They accepted no part or version of the Indian Act.<sup>122</sup> In a draft letter received by the Secretary's Branch on May 17, 1890, the Department of Indian Affairs wrote as follows:

"I beg to inform you in respect to the subject matter thereof that the Department has no intention of forcing the Indian Advancement Act upon the Six Nation Indians".<sup>123</sup>

In the same year (1890), a petition was forwarded to the Governor General of Canada, whom the Hodinohso:ni Confederacy was willing to negotiate. The petition was to advise Canada of the Confederacy's position of alliance with the British and to respect the terms of the Two Row Wampum treaty and the Silver Covenant Chain. It also advised of the Confederacy's disappointment that Canada was enforcing its laws upon them and that negotiations could not be made between each other. The Confederacy advised of their patience and the former trust that was created between its forefathers and British forefathers at a time when both had seen the sun and the moon and wondered if Canada had lost sight of the same sun and moon. The Confederacy also advised of their distrust in the way Canada was treating them. They also reiterated the terms of the Silver Covenant Chain: that if there was ever anything wrong or if either party was dissatisfied, then they were to "renew, brighten and strengthen the ancient covenant".<sup>124</sup> Within this petition, the Confederacy reiterated its own laws and customs according to Gayanehsragowa and its Wampum Circle of Fifty Chiefs. It advised Canada that they wanted a response immediately and that if they did not hear anything from them, then they

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<sup>122</sup>*Ibid.*

<sup>123</sup>PAC, Indian Affairs (RG 10, Volume 2284, File 57, 169-1) [document received from Hodinohso:ni Council]

<sup>124</sup>PAC, Indian Affairs (RG 10, Volume 2284, File 57, 169-1) #109062 [documents received from the Hodinohso:ni Council at Six Nations Grand River Territory].

would be taking the matter to England, "to Her Majesty the Queen".<sup>125</sup>

In response, a Report of a Committee of the Honourable Privy Council was prepared on November 13, 1890 and the "Superintendent General of Indian Affairs [was] unable to concur in the view put forward in [the] petition and he [was] of the opinion that there [was] no ground on which the same can be supported." The Minister followed the views held in the report of Mr. Justice Macauley and recommended to the Confederacy as follows:

"...that, while the Government fully recognizes and appreciates the loyalty of their forefathers and the continued loyalty of the present generation of the Six Nation Indians, it cannot sanction or hold as valid the claim put forth in the petition, on behalf of the Six Nation Indians, to Special exemption from the effect of the laws of the land, nor to that community being recognized as other than subjects of Her Majesty the Queen".<sup>126</sup>

From this point on the Confederacy stood their ground and kept on with their fight for their unique status within Canada. The Department of Indian Affairs kept a close watch on the Six Nations and tried not to interfere. However, all minutes of the Six Nations Council meetings were forwarded to the Department of Indian Affairs and they had knowledge of all Six Nations internal matters. In a letter dated April 5, 1909, Frank Oliver, from the Department of Indian Affairs wrote to the Confederacy and stated:

"It is the policy of the Canadian Government as I understand it to recognize its relations with the Six Nations Indians of the Grand River as being on a different footing from those with any of the other Indians of Canada...The system of tribal Government [which] prevailed amongst the Six Nations on their coming to Canada was satisfactory to the Government at that time and so long as it is satisfactory to the Six Nations themselves so long it will remain satisfactory to the Government of Canada..."<sup>127</sup>

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<sup>125</sup>*Ibid.*

<sup>126</sup>*Ibid.* See also Montgomery, "The Legal Status", *supra*, note 120 at 97, n.9.

<sup>127</sup>Letter dated April 5, 1909 from the Department of Indian Affairs to Chief J.S. Johnston, Deputy Speaker, Six Nations Council, Ohsweken, Ontario. (PAC, Indian Affairs 254004/32) [documents received from Hodinohso:ni Council at Six Nations]

The Confederacy and the Department of Indian Affairs corresponded continually and again in 1912, the Confederacy Council requested that they meet to "consider [their] claims, proposals and suggestions".<sup>128</sup> It was decided in this year that a delegation of the Confederacy would be taking their grievances to England<sup>129</sup> and the Department of Indian Affairs responded as follows:

"The Superintendent should be advised to inform the Indians that the Department does not favour the proposed visit to England as these matters are recognized as coming within the jurisdiction of the Department under the Indian Act."<sup>130</sup>

The Confederacy forwarded a petition to His Royal Highness Arthur William Patrick Albert, Duke of Connaught. The Deputy General of Indian Affairs responded to His Royal Highness as follows:

"Unfortunately at the time of the American Revolution the League was disrupted and the associations which had so long continued were broken. The members of the League who remained loyal to the Crown were not able to keep the covenant chain bright and the ancient council fire was extinguished. Certain of the Six Nation Indians espoused the American cause and the Western allies of the League who were most important parties to the covenant were separated from their brethren. They never again united fully and the Six Nations after 1793 had no allies in the West... There were no terms in the old covenants or agreements which could not be kept or which would be applicable to the present situation of the Six Nations."<sup>131</sup>

Oren Lyons' words must be reiterated again at this point to accentuate the fact that there were

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<sup>128</sup>Letter dated February 20, 1912 to Hon. R. Rogers, Superintendent General of Indian Affairs, Ottawa, Canada from L.M.W. Elliott and Josiah Hill, Secretary of the Six Nations Council. (PAC, Indian Affairs, R.G. 10, Volume 2284, File 57, 169-1)[documents received from Hodinohso:ni Council at Six Nations]

<sup>129</sup>Council House minutes dated August 14, 1912. (PAC, Indian Affairs File 57,169-1) [documents received from Hodinohso:ni Council at Six Nations].

<sup>130</sup>Letter dated September 20, 1912 by the Office of the Deputy Superintendent General of Indian Affairs. (PAC, Indian Affairs, File 57-169-1) [documents received from Hodinohso:ni Council at Six Nations].

<sup>131</sup>A reply to His Royal Highness from the Deputy Superintendent General of Indian Affairs dated February 21, 1912 (PAC, Indian Affairs, File 57,169-1) [documents received from Hodinohso:ni Council at Six Nations].

those who "fail[ed] to understand the non-coercive nature of the Confederacy...and the fact that disruption [was] not the equivalent of cessation".<sup>132</sup>

On February 11, 1914, the Confederacy Chiefs requested that the Superintendent General meet with them. They finally did meet five years later in Ottawa with the Deputy Superintendent General of Indian Affairs, Duncan Campbell Scott. As a result of this meeting, another study was prepared by the Confederacy's legal counsel, W. D. Lighthall and A. G. Chisholm in which the following statements were made.<sup>133</sup> The statements are provided in full to reiterate the stance of the Confederacy and to substantiate the arguments made in this thesis that the Hodinohso:ni sovereign status had not changed since the time of colonization:

I. Having never been conquered, no title to their lands or allegiance ever went to any European power by conquest.

II. No serious claim was ever made that their status was affected by discovery by any European power;

III. The British authorities in their earliest relations made no serious claim that the Five Nations were subjects of the Crown in any sense, but only allies;

IV. In 168-(year illegible), Governor Dongan, in order to counter the claim of the French Government that they were subjects of France, declared them to be subjects of England, but obviously the claim was a qualified one.

V. From and after 16--(year illegible), they were regarded, with their own consent, as under the protection of Great Britain.

VI. At the opening time of the American Revolutionary War, their well settled status was that of a Protectorate in which they controlled their own territory and also their whole internal affairs, retaining the ancient constitution of their League, with its system of Government by a peculiarly elected Council of Chiefs and certain traditional customs

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<sup>132</sup>Lyons, "American Indians in the Past", *supra*, note 21 at 39.

<sup>133</sup>"The Political Status of the Six Nations Indians of Ontario", PAC, Indian Affairs (RG 10, Volume 2284, File 57,169-1) [documents received from Hodinohso:ni Council at Six Nations].

and usages.

VII. The status has never been altered.

VIII. In consequence of their loyalty to the British during the Revolutionary War, the great majority of Five Nations lost their original territory in New York and were promised full compensation by the Crown.

IX. To carry out that promise and replace their ancient independent territory by a new territory, they were in 1784 granted by Governor Haldimand, the large tract of country six miles wide on both sides of the Grand River, from Lake Erie to Fergus of which their present so-called Brantford Reserve is a part.

X. There they have continued to the present day their ancient system of government, the special ownership and control of their territory and the exercise of their right of independent control of their own internal affairs, as a Protectorate under the British Crown.

XI. By the British North America Act, Sec. 91, the Parliament of Great Britain transferred to the Parliament of Canada the right of making laws concerning "Indians and lands reserved for Indians."

XII. By so doing, however, the Parliament of Great Britain did not alter in any way the status or rights of the Six Nations, but left the Government of Canada under the same obligations towards the latter as the Parliament of Great Britain was under.

XIII. These obligations which include that of respecting the independence of the Six Nations as regards their internal government and affairs, stand upon not merely as good a moral and constitutional foundation as any other Protectorate in the Empire, but on a considerably stronger foundation of services and solemn engagements of the nation.

XIV. They are a "scrap of paper" obligation which the people of Canada will not overlook, underestimate nor encroach upon.<sup>134</sup>

A further petition was made to the Governor-General on March 12, 1920 by Deskaheh (Levi General),<sup>135</sup> the representative Hoyaneh of the Confederacy with the assistance of lawyer,

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<sup>134</sup>*Ibid.*

<sup>135</sup>Deskaheh was also infamous for the activism and work that he did at the League of Nations. Details are provided in Chapter 3.

A.G. Chisholm. This petition again reiterated the Confederacy's alliance with the British Crown and demanded that they were not subjects of the Crown. They had also demanded an answer to their sovereignty by making a claim to the Supreme Court.<sup>136</sup> An Order-in-Council was made on November 27, 1920 and the Privy Council took the following position:

"it would be a hopeless project for the Six Nations Indians to endeavour to judicially establish before the Supreme Court the claim set forth by the petitioners that they constitute an independent, or quasi independent, nation or that in any respect, by reason of their history or circumstances or treaties which they have made or the concession which they have received, they are not subject to the legislative authority of the Dominion, or of the Province of Ontario in matters which it is competent for the Province to legislate upon respecting the property or rights of Indians"<sup>137</sup>

Another petition was made at a meeting on March 8, 1921 and, again, was attacked by the Department of Indian Affairs.<sup>138</sup> Deskaheh did not back down and hired an American lawyer, George Decker to prepare a petition to take directly to the King of England in the August of 1921.<sup>139</sup> Deskaheh arrived in London, in his full regalia, and presented the Confederacy's petition to the Colonial Office. He achieved great attention and sympathy from the media.<sup>140</sup> Further details of Deskaheh's activism in Europe and at the League of Nations will be provided in Chapter 3.

A change in the Canadian government in 1921 meant a change in the bureaucracy of the Department of Indian Affairs. A new Minister of Indian Affairs, Charles Stewart, was in power.

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<sup>136</sup>Titley, *Narrow Vision*, *supra*, note 106 at 114.

<sup>137</sup>Montgomery, "The Legal Status", *supra*, note 120 at 97, n.10.

<sup>138</sup>Titley, *Narrow Vision*, *supra*, note 106 at 115.

<sup>139</sup>*Ibid.*

<sup>140</sup>*Ibid.* at 117-118.



However, Duncan Campbell Scott still remained the Deputy Superintendent General and he governed the bureaucracy. Charles Stewart proposed to the Confederacy that a royal commission be set up "to settle the status question for good".<sup>141</sup> The Confederacy agreed to this process and thought that this commission would be an international board of arbiters.<sup>142</sup> However, the Minister of Indian Affairs advised that the commission was to be composed of three judges of the Supreme Court of Ontario; one to be chosen by the Iroquois, but that person must be a British subject.<sup>143</sup> This was totally rejected by the Confederacy and the issue was taken to the League of Nations by Deskaheh in 1923.

Again as recently as 1983, the Confederacy reiterated its position to the Canadian House of Commons proceedings within the Special Committee on Indian Self-Government in a "Statement concerning the lands and government of the Hodinohso:ni:" and was presented, amongst others, by Bob Antone as follows:

"As you can see by our very existence, we the Hodinohso:ni: have a natural and original right to live freely as a confederacy of nations, with our own political institutions and with a fundamental right to use and occupy our original lands..."<sup>144</sup>

The argument of sovereignty of the Hodinohso:ni: Confederacy has been ongoing since the time of colonization and will be forever ongoing until all members of the Hodinohso:ni: Confederacy are dead or until they are finally recognized and accepted by Eurocentric governments and

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<sup>141</sup>*Ibid.* at 118.

<sup>142</sup>Six Nations Museum Series. Deskaheh, Iroquois Statesman and Patriot, (Rooseveltown, New York: Akwesasne Notes) at 2 [hereinafter referred to as Deskaheh].

<sup>143</sup>*Ibid.*

<sup>144</sup>Report of the Special Committee, *supra*, note 22 at 14.

bureaucrats.

It is also important to note that political and treaty negotiations were being made by the Confederacy long before the countries of Canada and the United States existed. The most important principle to be taken as a result of these negotiations is that it recognized that all of the various treaty making parties were distinct from each other and were very different from each other. "[T]his distinctiveness has been seen as the foundation for mutual respect; and we have therefore always honoured the fundamental right of peoples and their societies to be different".<sup>145</sup> Also, the Hodinohso:ni government has been continuing on with its political decisions and traditional ceremonies. The Confederacy still exists on both sides of an international border which was created through Hodinohso:ni traditional territory. The Confederacy has been consistently asserting their sovereignty and will continue to do so.

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<sup>145</sup>Lyons, "American Indians in the Past", *supra*, note 21 at 42.

## CHAPTER 2

### EUROCENTRIC DIFFUSIONISM

Eurocentric diffusionism is a product<sup>146</sup> of colonization<sup>147</sup> that has affected *O:gwe ho:wenhya*. Blaut stated that Eurocentrism is more than European ethnocentrism. "The word is a label for all the beliefs that postulate past or present superiority of Europeans over non-Europeans."<sup>148</sup> He also defined it as a belief in the "notion that European civilization -- 'The West' -- has had some unique historical advantage, some special quality of race or culture or environment or mind or spirit, which gives his human community a permanent superiority over all other communities, at all times in history and down to the present." Justice T.R. Berger described what can also be termed as Eurocentric diffusionism:

Man put his unique stamp on the world around him. His values, ideas, language and institutions exhibit his understanding of himself and his world. These things are his culture. Any people seek to ensure that these things are transmitted from one generation to another, to ensure a continuity of the beliefs and knowledge that a people hold in common. We sought to erase the collective memory of the native people - their history, language, religion and philosophy - and to replace it with our own.<sup>149</sup>

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<sup>146</sup>Blaut, Colonizer's Model, *supra*, note 9 at 18.

<sup>147</sup>Robert A. Williams, Jr. defined colonization as a form of racial discrimination as follows:

European colonization in the New World normally required displacement of one cultural group in favor of another cultural group seeking to exercise self-determining rights over the same territory and resources. The exploitive goals of European colonization thus entailed a form of racial discrimination denying equal rights of self-determination to those different peoples colonized by the colonizer.

Robert A. Williams, Jr., "Columbus's Legacy: Law as an Instrument of Racial Discrimination Against Indigenous Peoples' Right of Self-Determination", [Fall 1991] Vol. 8, No. 2 Arizona Journal of International and Comparative Law 51 at 54 [hereinafter referred to as "Columbus's Legacy"].

<sup>148</sup>Blaut, Colonizer's Model, *supra*, note 9.

<sup>149</sup>T.R. Berger, "Native Rights in the New World: A Glance At History" [1979] 2 C.N.L.R. 5 at 10 [hereinafter referred to as "Native Rights"].

Another description of Eurocentric diffusionism is that:

Taking from models based on consumer societies, the market economy and alleged intrinsic goodness of 'modern' (Western) social organization, they tend to establish a mythical indisputable superiority of the culture (in particular of the 'political' culture) of the so-called free world, Western Judeo-Christian paradigm, and to consolidate as conventional wisdom the notion that other conceptions in those areas are backward and obsolete and, for that reason, inferior and, if at all, of negligible value.<sup>150</sup>

European diffusionism will be defined through an elaboration of brief historical accounts and an analysis of law that has affected *O:gwe ho:we*. Eurocentric values, ideals, language, laws and institutions are an integral part of diffusionism, which has tried to replace *O:gwe ho:we* history, language, religion, laws and philosophy. This chapter will set out examples of this argument through discussion of colonialists' first contact with *O:gwe ho:we*; missionaries and their goal of assimilation and conversion to Christianity through the enforcement of residential schools; government control - the institutionalization of Eurocentric law (political systems and legislation) and how its rules and procedures have been enforced on *O:gweho:we*; how domestic (American and Canadian) law is part of European diffusionism through its evolution of common law and how it has been used to protect Eurocentric (colonizer's) interests; and how international law is also a part of European diffusionism as its rules and processes are created to protect Eurocentric interests (political power and capitalist interests)

### **3.1 HISTORICAL CONTEXT**

Europeans are seen as the "makers of history" as a result of the written stories made by

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<sup>150</sup>Document E/CN.2/Sub.2/1992/32, First Progress Report Submitted by Mr. Miguel Alfonso Martinez, Special Rapporteur. Discrimination against Indigenous Peoples. Study on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Populations at 4 [hereinafter referred to as Martinez, "First Progress Report"].

Eurocentric historians.<sup>151</sup> Blaut argues that we learned this is the truth. He confronts statements of presumed historical fact, not prejudices and biases and tries to show that these presumptions are wrong and that these statements are false.<sup>152</sup> In law, the courts are to look at the facts, so in reviewing historic facts, judges must make a decision; however, in many court decisions dealing with *O gwe ho:we*, decisions are made based on a judge's own perceptions of Eurocentric history.<sup>153</sup>

### **3.1.1 European Contact - Colonial Statesmen**

It is beyond the scope of this thesis to enter into the enormous historical accounts of the Hodinohso:ni: which date back to first contact with European colonizers.<sup>154</sup> What will be dealt

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<sup>151</sup>Blaut, Colonizer's Model, *supra*, note 9 at 1.

<sup>152</sup>*Ibid.* at 19.

<sup>153</sup>For example, see judgement of MacEachern C.J., in Delgamuuk v. British Columbia (1991), [1991] 3 W.W.R. 97, [1991] C.N.L.R., xiii, 79 D.L.R. (4th) 185, wherein Chief Justice MacEachern discounted oral history based on the fact that it did not "fit" into his historic facts.

<sup>154</sup>A brief history of the *Hodinohso:ni:* has been provided in Chapter 1.

Francis Jennings states:

Their [Hodinohsoni] importance has long been recognized by historians, but their activity ranged so widely, with so many complex developments, that no student has yet attempted to write a full history. The task of searching out all the relevant documents, scattered from California to Paris, has been daunting. Literally thousands of documents exist...Besides what these documents have to say about the Iroquois themselves, they are a mine of information about the struggles of colonies and empires to control North America.

Jennings, Iroquois Diplomacy, *supra*, note 100.

He also states that "[b]ecause of the widely scattered condition of the source materials, research on the Iroquois can be compared to putting a jigsaw puzzle together after assembling the pieces from places hundreds, sometimes thousands, of miles distant from each other. It is not to be wondered at that parts of the puzzle are still missing. No one book contains a comprehensive history of the Iroquois Six Nations." *Ibid.* at 257

For further historical accounts, please see: Francis Jennings, The Ambiguous Iroquois Empire: The Covenant Chain Confederation of Indian Tribes with English Colonies from its beginnings to the Lancaster Treaty of 1744. (New York: Norton, 1984) [hereinafter referred to as Ambiguous Iroquois Empire]; Richard Aquila, The Iroquois Restoration: Iroquois Diplomacy on the Colonial Frontier, 1701-1754. (Detroit: Wayne State University Press,

with in this portion will be a brief account of how contact with European colonizers drastically changed the lifestyle of the *Hodinohsó:ni:*. First contact with European culture was a difficult era for the *Hodinohsó:ni:* as they were unable to understand European life and thought. European colonizers, who believed they had discovered the New World were unaware of the political, social, geographical and historical relationships of those *O:gwe ho:we* who were already living in North America.<sup>155</sup> European contact, itself, caused many deaths<sup>156</sup> and, thus, resulted in the dwindling of the population of *O:gwe ho:we*.<sup>157</sup>

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1983); Bruce G. Trigger, The Children of Aataentsic: A History of the Huron People to 1660. 2 vols. (Montreal: McGill-Queens University Press, 1976); Michael K. Foster, et al, eds. Extending the Rafters: Interdisciplinary Approaches to Iroquoian Studies. Published for the Newberry Library (Albany: State University of New York Press, 1984) [hereinafter referred to as Extending the Rafters]; William N. Fenton, American Indian and White Relations to 1830: Needs and Opportunities for Study Published for the Institute of Early American History and Culture. (Chapel Hill: University of North Carolina Press, 1957); Barbara Graymont, The Iroquois in the American Revolution. (Syracuse: Syracuse University Press, 1972); Daniel K. Richter, The Ordeal of the Longhouse. The Peoples of the Iroquois League in the Era of European Colonization. Published for the Institute of Early American History and Culture (Williamsburg, Va.: University of North Carolina Press, 1992) [hereinafter referred to as Ordeal]; A.F.C. Wallace, The Death & Rebirth of the Seneca: The History and Culture of the Great Iroquois Nation, Their Destruction and Demoralization, and Their Cultural Revival at the Hands of the Indian Visionary, Handsome Lake. (New York: Alfred K. Knopf, Inc.) 1969 [hereinafter referred to as Death and Rebirth]; Paul Williams, The Chain (LL.M. Thesis, York University, Toronto, Ontario 1982) unpublished; Williams and Nelson, Kaswentha, *supra*, note 68.

<sup>155</sup>Williams, "Columbus's Legacy", *supra*, note 147.

<sup>156</sup>Along with European colonists came their diseases and their deliberate means of conquering *O:gwe ho:we* through alcohol. Both imported diseases and alcohol killed many *O:gwe ho:we*. The effect of the alcohol on *O:gwe ho:we* was known quite well by the colonialists who had used it as a tool of coercion as well as a tool of trade; now it has become a common disease amongst all *O:gwe ho:we* - alcoholism. It is still killing *O:gwe ho:we* either physically, spiritually, mentally and/or emotionally.

Richter, Ordeal, *supra*, note 154 at 86, 196, 263-268 (the relates to the affects of alcohol); also at 2-4, 53, 58-60 (diseases).

<sup>157</sup>Daniel K. Richter writes:

The death toll was appalling: an estimated one thousand died in the 1661-1663 epidemic [small pox] alone, and in those years one Frenchman believed that 'at least two-thirds' of Onondaga children were doomed to 'die before they have the use of reason'...death attacked equally the generations representing the present, the past, the future: the young adults who did most of the community's work, the elderly who provided political leadership and were repositories of native tradition, and the children, who represented hopes that those traditions would survive.

At the time of contact, European culture was a feudal society - "a landlord-peasant, class-stratified, agricultural society"<sup>158</sup>. Those colonizers who were direct descendants of that society forced their class-based system upon those who were not living according to the colonizer's way of life.<sup>159</sup> European society was later based on a capitalistic system which began with the fur trade and has transformed into the individualistic capitalist cash economy.<sup>160</sup> This era of first contact has been described as the initial colonial period of consent and equality when Ojigweh were needed and depended upon by colonists for two reasons: the fur trade and as military allies<sup>161</sup>. It was also during this era that the Hodinohso:ni: Hodiyanehso were creating political relationships with European colonizers by treating with representatives of the British, Dutch, French and American nations<sup>162</sup>.

The "discovery" of a New World created an era of warring and conquest. When European colonists left their home countries, which were already at war with each other, they discovered and continued their wars in a New World.<sup>163</sup> Such colonists included the French, led by Jacques Cartier (who voyaged to North America in 1535) and, later, Samuel de Champlain

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*Ibid.* at 59-60.

<sup>158</sup>Blaut, Colonizer's Model, *supra*, note 9 at 154.

<sup>159</sup>Williams, Columbus's Legacy, *supra*, note 147.

<sup>160</sup>Richter, Ordeal, *supra*, note 154 at 262-263.

<sup>161</sup>David C. Nahwegahbow et al, The First Nations and the Crown: A Study of Trust Relationships prepared in fulfillment of a research contract for The Special Committee of the House of Commons on Indian Self-Government, April, 1983 at 194 [hereinafter referred to as Trust Relationships].

<sup>162</sup>See Chapter 1, *supra*, notes 91-114. The impact of these treaties with Canada and the United States will be further elaborated on in this Chapter. See *infra*, at 68 - 72 and at 92 - 93.

<sup>163</sup>Williams, Columbus's Legacy, *supra*, note 147.

who "discovered" the St. Lawrence River and New France<sup>164</sup> in 1603. Samuel de Champlain's only intention was to war with O:gwe ho:we and he was successfully able to join with the Algonquins and Wyandots to war with the Hodinohso:ni.<sup>165</sup> Champlain stated:

'I had come with no other intention than to make war', he wrote, 'for we had with us only arms and not merchandise for barter, as [the Indians] had been led to understand'.<sup>166</sup>

Dutch colonists "discovered" the New Netherlands (currently New York) in 1609 and brought with them guns, ammunition, cloth and metal tools.<sup>167</sup> Fur trade became the main goal of the Dutch colonists and the O:gwe ho:we were interested in the "new" tools that the Dutch had brought. Their traditional lifestyle of hunting became much easier as they became more and more dependent on European tools.<sup>168</sup>

When the English colonists conquered the Dutch in 1664<sup>169</sup> which was when the New Netherlands became New York, the French were warring with the Hodinohso:ni. This era was termed as the Beaver Wars<sup>170</sup> in which the cause for war was the battle for the fur trade and

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<sup>164</sup>This territory was originally the Wyandot territory which currently includes Quebec. The French named the Wyandots "Hurons".

<sup>165</sup>Jennings, *Ambiguous Iroquois Empire*, *supra*, note 154 at 41.

<sup>166</sup>This quote was cited in Jennings, *Ambiguous Iroquois Empire*, *ibid.* n.35, as follows: Marcel Trudel, "Champlain, Samuel de," in *Dictionary of Canadian Biography*, eds. George W. Brown et al. (Toronto: University of Toronto Press, 1966-), 1:190.

<sup>167</sup>Isabel Thompson Kelsay, *Joseph Brant 1743-1807 Man of Two Worlds*, (Syracuse, N.Y.: Syracuse University Press, 1984) at 5.

<sup>168</sup>Richter, *Ordeal*, *supra*, note 154 at 75.

<sup>169</sup>Jennings, *Ambiguous Iroquois Empire*, *supra*, note 154 at 43.

<sup>170</sup>Richter, *Ordeal*, *supra*, note 154 at 51.



lasted until the early 1700s when the fur trade was diminishing.<sup>171</sup> Through the early 1700s<sup>172</sup>, the Hodinohsoni: Confederacy was stressing a peaceful relationship with European colonizers and remained neutral. There were many wars during this time, between colonists as well as between O:gweho:we nations. There were also many peace treaties made at this time with the Hodinohso:ni:, the Covenant Chain was renewed, and the Hodiyanehso were maintained as mediators and peacekeepers.<sup>173</sup> Their neutrality lasted until the American Revolution (1776) which caused the most detrimental effects to the Confederacy.<sup>174</sup> Some nations took the American side and some took the British side and some still remain neutral.<sup>175</sup>

### **3.1.2 Missionaries and Residential Schools**

Once the warring ended and peace prevailed amongst all nations (including the European nations) within North America, a new era of domination and control<sup>176</sup> began through official plans of civilization.<sup>177</sup> Those O:gwe ho:we who were once military allies and mutual traders became second class citizens and were expected to be civilized and assimilated within the European culture.<sup>178</sup> In addition, the goal of these missionaries was to Christianize and de-

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<sup>171</sup>*Ibid.* at 188.

<sup>172</sup>It was also during this time that the Tuscarora Nation became the Sixth Nation of the Hodinohso:ni Confederacy. Richter, Ordeal, *ibid.* at 239.

<sup>173</sup>Jennings, Iroquois Diplomacy, *supra*, note 154.

<sup>174</sup>*Ibid.* at 57.

<sup>175</sup>*Ibid.* at 58.

<sup>176</sup>Nahwegahbow et al, Trust Relationships, *supra*, note 161.

<sup>177</sup>Wallace, Death and Rebirth, *supra*, note 154 at 196.

<sup>178</sup>*Ibid.* See also Steven T. Newcombe, "Evidence of Christian Nationalism in Federal Indian Law: The Doctrine of Discovery, Johnson v. McIntosh and Plenary Power", Vol. 20, No. 2 (1993) NYU Review of Law & Social Change 303 [hereinafter referred to as Christian Nationalism].

paganize the "savage Indians"<sup>179</sup> who were worshipping the devil and not God.<sup>180</sup> From as early as 1616, Christian missionaries and priests have been working at converting the O:gwewo:we into civilized, Christian people.<sup>181</sup> French missionaries (Franciscans) began their conversion process in Quebec and surrounding the area along the St. Lawrence River (Hodinohso:ni: Mohawk territory).<sup>182</sup> The first boarding school opened its doors in 1620 by the Recollet priests.<sup>183</sup>

During the "Indian wars" (wars between O:gwewo:we) and the wars between the French, the British and the United States (1600s to 1700s), missionaries continued their goal of spreading their word of God.<sup>184</sup> After the American Revolutionary War, the Hodinohso:ni: were not only divided physically by an international border, but were divided politically and spiritually as well. Followers of Joseph Brant who settled along the Grand River were influenced by missionaries and a majority of Mohawks adhered to the Church of England (currently The Mohawk Chapel) and were looked after by the Society of the Propagation of the Gospel<sup>185</sup>. Not long thereafter, a colonial entity calling itself The New England Company lived

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<sup>179</sup>This term, "Indians", is used here to demonstrate the differences of the interpretation of O:gwewo:we by missionaries.

<sup>180</sup>Newcombe, Christian Nationalism, *supra*, note 178. See also Robert A. Williams, Jr., The American Indian in Western Legal Thought: The Discourse of Conquest (New York: Oxford University Press, 1990) [hereinafter referred to as Conquest].

<sup>181</sup>J. Miller, Shingwauk's Vision: A History of Native Residential Schools, (Toronto: University of Toronto Press, 1996) at 39 [hereinafter referred to as Shingwauk's Vision]. See also Newcombe, Christian Nationalism, *ibid*.

<sup>182</sup>Miller, Shingwauk's Vision, *ibid*.

<sup>183</sup>*Ibid*.

<sup>184</sup>*Ibid*. at 39-60.

<sup>185</sup>Charles M. Johnston, "To the Mohawk Station: The Making of a New England Company Missionary - the Rev. Robert Lugger" in Extending the Rafters, *supra*, note 151 at 69 [hereinafter referred to as "The Mohawk Station"].

amongst the Hodinohso:ni: and, in 1827, hired a resident missionary, Rev. Robert Lugger, to educate and civilize the Hodinohso:ni: community.<sup>186</sup> Prior to the invasion of this New England Company, Joseph Brant's grandson, John Brant (who was described by admiring whites as 'very much the gentleman', who was already 'civilized and educated'<sup>187</sup>, and who was later hired as the "Superintendent of the Six Nations"<sup>188</sup>), was already involved in escalating the process of christianizing his Hodinohso:ni: family.

Lugger, Brant and Rev. William Hough (a former missionary within the Society of the Propagation of the Gospels) were responsible for building two schools near the Mohawk Chapel<sup>189</sup>. These schools were built on land that was held in trust for the Hodinohso:ni: Confederacy<sup>190</sup> and were later named the Mohawk Institute (or the "Mushhole"<sup>191</sup>). It became an institution for civilization in which Hodinohso:ni: children would learn "the acts, habits and customs of civilized life, who ... act[ed] as instruments in the hands of the Company"<sup>192</sup>. The institution became a boarding school and in 1835, fourteen students were taught to be like civilized white people by learning agricultural practices and other tasks such as blacksmithing,

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<sup>186</sup>*Ibid.*

<sup>187</sup>*Ibid.* at 70.

<sup>188</sup>*Ibid.* at 73.

<sup>189</sup>*Ibid.* at 75.

<sup>190</sup>This fact was successfully argued by a lawyer named A.G. Chisholm, who represented the Six Nations against the New England Company in Six Nations v. New England Co., Exchequer Court, July 7, 1934 (unreported)

<sup>191</sup>This term was what many of the students named the Mohawk Institute, as the main food that was served to them was mush (porridge).

Elizabeth Graham, The Mush Hole Life at Two Indian Residential Schools, (Heffle Publishing: Waterloo, Ontario) 1997 at 25 [hereinafter referred to as The Mush Hole].

<sup>192</sup> Johnston, "The Mohawk Station", *supra*, note 185 at 78.

carpentry, cabinet-making, etc.<sup>193</sup> By the year 1960, the Mohawk Institute was considered a success based on the numbers of students who became "civilized".<sup>194</sup> They became so civilized that they were taught how not to be O:gwe ho:we;<sup>195</sup> that their traditions and practices were immoral; that their languages were of no purpose or importance and therefore, were forced to learn English.<sup>196</sup> The Mushhole continued to exist until the late 1960s - over 125 years (five or six generations).

### **3.1.3 Government Control**

Once colonial governments formed within the United States and Canada, they worked hand in hand with missionaries to further their goal: assimilation and civilization.<sup>197</sup> Governments passed legislation, which became the ground rules for a legal process of

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<sup>193</sup>*Ibid.*

<sup>194</sup>Miller, Shingwauk's Vision, *supra*, note 181 at 73.

<sup>195</sup>This will be discussed further, *infra*, at Part 3 of this Chapter.

<sup>196</sup>This legacy of residential schools has affected all O:gwe ho:we across North America. There are now many authors who have proven what the impact of residential schools has had on their lives. Such writers to name a few include:

Graham, The Mush Hole, *supra*, note 46. Elizabeth Furniss, Victims of Benevolence. The Dark Legacy of the Williams Lake Residential School (Arsenal Pulp Press: Vancouver) 1992; Linda Jaine, ed., Residential Schools. The Stolen Years (University of Saskatchewan Extension Press: Saskatoon) 1993; Celia Haig-Brown, Resistance and Renewal. Surviving the Indian Residential School (Tillacum Library: Vancouver) 1988; Basil Johnston, Indian School Days (Key Porter: Toronto) 1988; Isabelle Knockwood, Out of the Depths: The Experiences of Mi'kmaw Children at the Indian Residential School at Shubenacadia, Nova Scotia (Roseway Publishing: Lockeport, N.S.) 1992.

<sup>197</sup>Robert A. Williams Jr., "The Algebra of Federal Indian Law: The Hard Trial of Decolonizing and Americanizing the White Man's Indian Jurisprudence" (1986) Wis. L. Rev. 219 at 258 [hereinafter referred to as Algebra].

In this article Williams cites a Report made by the Secretary of Interior in 1873 (fn. 136) which sets out the policy of colonization and assimilation through the use of the reservation system and Christianity as follows:

...On these reservations they can be taught, as fast as possible, the arts of agriculture and such pursuits as are incident to civilization, through the aid of Christian organizations of the country now engaged in this work, cooperating with the Federal Government.

assimilation, in which controlling the "Indian"<sup>198</sup> through European man-made laws was (and still is) legal. The North American "mainstream" political and legal systems were created exclusively by and for a Eurocentric culture. This type of system created a sense of powerlessness in O:gwe ho:we and was created by a culture whose primary purpose was the removal of any cultural identity other than its own.<sup>199</sup> Their goal was to assimilate and civilize O:gwe ho:we - "a task which was thought to consist of converting them from semi-nomadic warlike hunter-gatherers to sedentary, peaceful, Christian agriculturalists"<sup>200</sup>.

As a result of colonialism and the existence of two colonizing countries (first, Great Britain, now, Canada and the United States), the Hodinohsoni have had to deal with two differing although similar powers of control. The relationship of the Hodinohso:ni: with the United States government varies with their relationship with the British and Canadian governments. Although the American governments have acknowledged a government-to-government relationship with the Hodinohso:ni, the Canadian government has not. The American government has acknowledged and recognized the Hodinohsoni Confederacy as a contributor to the development of the United States Constitution and has re-affirmed the government to government relationship.<sup>201</sup> Although the American government has made this acknowledgement, the sovereignty of the Hodinohso:ni: is diminished due to the American common law doctrine of plenary power as well as domestic law's definition of O:gweho:we

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<sup>198</sup>The use of the term "Indian" is used here to suggest that European man-made laws referred to O:gwe ho:we as "Indians".

<sup>199</sup>Berger, "Native Rights", *supra*, note 149.

<sup>200</sup>Campisi, "National Policy", *supra*, note 114 at 99-100.

<sup>201</sup>Hearing before the Select Committee, *supra*, note 64.

nations as domestic dependent nations.<sup>202</sup> Plenary power is described as an "unrestricted authority over Indian nations" in which "Congress can do whatever it pleases with the lands, governments and cultures of Indian nations, with practically no constitutional restraint"<sup>203</sup>. Canadian parliamentary power over "Indians and Indian lands" derives from British policy that had already previously existed and is enacted as s.91(24) of the British North America Act<sup>204</sup> of 1867. British policy's most blatant form of assimilation and racism<sup>205</sup> was enacted as The Indian Act<sup>206</sup>. When this Act was passed in 1876, it was a consolidation of existing legislation<sup>207</sup> to

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<sup>202</sup>Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831) at 17.

<sup>203</sup>Berkey, "The Constitutional Basis", *supra*, note 108 at 225

<sup>204</sup>The British North America Act, 1867, 30-31 Vict.c.3 (U.K.) renamed Constitution Act, 1867 by the Constitution Act, 1982, Schedule B to the Canada Act 1982 U.K. 1982 c.11.

<sup>205</sup>If one were to do an indepth research into the negative affects and violation of rights of Aboriginal people in Canada, one would need only look at this piece of legislation. It is beyond the scope of this paper to detail such violation of rights, but just to note a few examples:

- 1) Intergenerational abuse (physical, sexual, mental, spiritual, emotional, etc.) caused as a result of forcing O:gwé ho:we children to attend residential school;
- 2) condemning and criminalizing traditional ceremonies and dances;
- 3) condemning traditional forms of governments and replacing them with Eurocentric-type governments.

Beverley Jacobs, Beyond Blame - The Residential School Syndrome, paper prepared as a Judicial Research Assistant to the Supreme Court of the Northwest Territories in Yellowknife, NWT (unpublished). For further readings on these issues, see, *supra*, note 196.

<sup>206</sup>The Indian Act, 1876, S.C. 1876, c. 18, s. 2.

- <sup>207</sup>1) An Act for the Gradual Civilization of the Indian Tribes of the Canadas, 1867, enabled full citizenship to an Indian man who was of good character, free of debt and fluent in either French or English.
- 2) An Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordinance Lands, S.C. 1868, c.42, placed jurisdiction over Indian matters with the Secretary of State
- 3) An Act to provide for the establishment of "The Department of Interior, S.C. 1873, c. 4, placed jurisdiction over Indian matters with the Department of Interior. The Minister of Interior was the Superintendent General of Indian Affairs.

control and manage Indians and Indian Affairs.<sup>208</sup>

### **3.2 LEGAL CONTEXT**

Eurocentric law was "brought to the New World by Columbus and the peoples of Europe who followed him in his colonial quest [and that] ... this European derived law of colonization was inescapably and irredeemably racist in its discriminatory application to the New World's indigenous peoples and their tribal systems of self-government".<sup>209</sup> Eurocentric thought and values have been institutionalized within North American legal systems as well as within all federal, state and provincial governments. Ojigwe ho:we were never involved in the process of these institutions but have been forcibly included through the creation and enactment of European man-made laws.<sup>210</sup> Eurocentric law has been described as a continuing legacy of European cultural racism against indigenous people in North American society.<sup>211</sup>

Robert A. Williams, Jr. provides an excellent historical account of medieval European culture and how that culture has transposed into American legal discourse. Specifically, he states that:

...appropriative conquest most easily facilitated the savage's civilization, Christianity denied the beliefs of non-Christians, and the European's man-made Law of Nations could enforce a higher order natural law and punish its

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<sup>208</sup>"They [Department of Indian Affairs] regulate the use and occupation of their lands; the use and administration of their money; the forms and powers of their governments; the education of their children; the distribution of their property upon death; and even membership in their communities." Paul Williams, "Canada's Laws about Aboriginal Peoples: A Brief Overview" [year unknown] Law and Anthropology 93 [hereinafter referred to as "Canada's Laws"].

<sup>209</sup>Williams, Columbus's Legacy, *supra*, note 147 at 52.

<sup>210</sup>Michael Gross, "Indian Control for Quality Indian Education" (1973) 49 North Dakota Law Review cited in Will Kymlicka, Liberalism Community and Culture (Oxford: Clarendon Press, 1989) at 145.

<sup>211</sup>Williams, Columbus's Legacy, *supra*, note 147.

violations.<sup>212</sup>

He condemns the "conqueror's racist and eurocentric legal vision and law which denied respect to the Indian's tribal vision of life and self-determination, which threatened that vision with extermination".<sup>213</sup>

The domestic Eurocentric-based legal system is exclusionary in that it has its own language, structured discipline, procedure and rules of style. As a result of the history of North America and the creation of two colonizing states (Canada and the United States), there are two legal systems that affect the rights of O:gweho:we in North America. Although there are two differing legal systems, the treatment of O:gweho:we are quite similar. Aboriginal people are presumed and considered as being subjects of the Crown. As a result of Eurocentric law being used as an instrument to gain colonialist rule and power<sup>214</sup>, O:gweho:we nations have been oppressed.

American and Canadian law will be analyzed in this part to demonstrate cultural racism<sup>215</sup> and Eurocentric diffusionism that has affected the Hodinohso:ni's status as a sovereign nation. Because the Hodinohso:ni existed as a nation before these two colonizing nations existed, both systems of law has affected Hodinohso:ni. American law is presented first based on the fact that this was the original territory of the Hodinohso:ni and that the first treaties were

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<sup>212</sup>Williams, Algebra, *supra*, note 197 at 251; see also Robert A. Williams, Jr. "Jefferson, The Norman Yoke and American Indian Lands" (1987) 29 Ariz. L.Rev. 165 [hereinafter referred to as Jefferson]; also Williams, Conquest, *supra*, note 180; and also Williams, Columbus's Legacy, *supra*, note 147.

<sup>213</sup>Robert A. Williams, Jr. "Learning Not to Live with Eurocentric Myopia: A Reply to Professor Laurence's "Learning to live with Plenary Power of Congress Over the Indian Nations" (1988) 30 Ariz L.Rev. 439 at 439.

<sup>214</sup>Williams, Columbus's Legacy, *supra*, note 147 at 56.

<sup>215</sup>Williams, Conquest, *supra*, note 180. Williams details, documents and references discussion of the history of European cultural racism directed against Indigenous tribal peoples.



made between the United States and the Hodinohso:ni. The impact that Eurocentric law has had on the Hodinohso:ni will be provided further in this chapter.

### **3.2.1 The United States**

Vine Deloria sets out the historical context of the Constitution and its "systematic exclusion and occasional application to American Indians."<sup>216</sup> He classifies specific clauses of the Constitution that relate to American Indians as follows:

- a) explicit clauses in which Indians are directly mentioned;
- b) implicit clauses where the government assumed that its powers enabled it to deal with Indians because past practices dictated that these were the proper courses of action;
- c) implicit clauses in which the logical analysis of the authority led to the conclusion that the power to deal with Indians was present, and;
- d) clauses which had peripheral importance and were seldom if ever used to deal with Indian matters.<sup>217</sup>

The Constitution divides the United States political power into a national government and its separate state governments. Both federal and state governments divide its authority into three branches (executive, legislative and judicial), thus creating six different branches of government

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<sup>216</sup>Vine Deloria, Jr. "The Application of the Constitution to American Indians" in Oren Lyons, *Exiled, supra*, note 21 at 282. He states that "[a]lthough American Indians are mentioned by name twice in the Constitution of the United States, they were clearly not within the citizenry contemplated by this document...American Indians, however, still stand outside the protections of the Constitution as tribes and only have partial protection as individual citizens...American Indians have been forced to live within a political/legal no man's land from which there seems to be no possibility of extrication."

<sup>217</sup>*Ibid.* at 284.

that Indian nations deal with.<sup>218</sup> There are Constitutional powers or "major constitutional clauses authorizing the federal government to deal with Indians [which] have consisted of powers assumed or implied and not specifically articulated in the document itself."<sup>219</sup> Such major powers include powers of war and peace, treaty-making power, the power to regulate commerce, and the property clause. Also of importance and relevance to American Indians is the Bill of Rights, which did not come into effect until 1924 when Indians were made citizens.<sup>220</sup> Amendments that are of most relevance are: The First Amendment, the establishment of religion, the free exercise clause, and freedoms of speech and assembly; The Fourth Amendment: Search and Seizure; the Fifth Amendment: double jeopardy and due process and just compensation. Later Amendments of "peripheral" relationship, but do not apply to Indians are "the Thirteenth, which abolishes slavery and involuntary servitude; the Fourteenth, which defines national citizenship; the Sixteen, which establishes a federal income tax; and the Eighteenth and Twenty-first, which deal with the prohibition of alcoholic beverages in the United States."<sup>221</sup>

The Articles of Confederation created in 1781 empowered Congress to enter into treaties with Indians. This was ratified in the American Constitution in 1787.<sup>222</sup> Article I of the Constitution provided that "[n]o State shall enter into any treaty."<sup>223</sup> Article II empowered the

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<sup>218</sup>*Ibid.*

<sup>219</sup>*Ibid.* at 290.

<sup>220</sup>*Ibid.* at 303.

<sup>221</sup>*Ibid.* at 309-314.

<sup>222</sup>Statement of Roger A. Jourdain, Hearing before the Select Committee, *supra*, note 64 at 237-239.

<sup>223</sup>*Ibid.* at 238.

President to enter into treaties with Indian nations.<sup>224</sup> Article IV provided that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land."<sup>225</sup> This Treaty Clause became the principal justification for plenary power over Indian nations.<sup>226</sup> The Supreme Court of the United States has asserted that the American Indians lost their "sovereignty" to the federal government as a result of treaty-making.<sup>227</sup> However, from the Hodinohso:ni point of view, this treaty-making power should enhance its sovereign status.

Prior to the evolution of the treaty clause, the Supreme Court of the United States in Worcester v. Georgia<sup>228</sup>, acknowledged tribal sovereignty based on the treaty relationship with the United States. Chief Justice Marshall stated:

From the commencement of our government, congress has passed acts to regulate trade and intercourse with the Indians; which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All those acts...manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United

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<sup>224</sup>*Ibid.*

<sup>225</sup>*Ibid.* at 239.

<sup>226</sup>Steven Paul McSloy, "American Indians and the Constitution: An Argument for Nationhood" [1989] 14 *American Indian Law Review* 139 at 153 [hereinafter referred to as "American Indians"]; See also F. Cohen, Handbook of Federal Indian Law (1982 ed.) at 207.

<sup>227</sup>Mark Savage, "Native Americans and the Constitution: The Original Understanding", 16 *American Indian Law Review* 57 at 105, fn. 179 [hereinafter referred to as The Original Understanding], citing Williams v. Lee, 358 U.S. 217, 218 (1959) ("Through conquest and treaties they [Indian tribes] were induced to give up complete independence and the right to go to war in exchange for federal protection, aid and grants of land.") *cf.* Johnson & Graham's Lessee v. McIntosh, 21 U.S. (8 Wheat.) 543, 581-85 (1823) (discussing treaties among European nations and stating that they ceded title and sovereignty of lands upon which Native Americans lived).

<sup>228</sup>31 U.S. (6 Pet.) 515 (1832).

States.<sup>229</sup>

Marshall also reviewed the "liberal construction" of treaties wherein one must avoid consequences of conceding that treaties were unequal. "Inequality can render treaties void ab initio",<sup>230</sup> therefore in curing the inequality, the treaty must be read in favour of the weaker party. Thus, doubtful expressions in a treaty must be resolved in the Indians' favour as they would have understood it. Therefore, an Indian treaty was interpreted as being no different from any other treaty.

The United States ended treaty-making with Indian nations in 1871 through its creation of the Indian Appropriation Act.<sup>231</sup> By this time, there were over 400 treaties made between the United States and Indian nations.<sup>232</sup> This Act gave Congress further plenary power. In Lone Wolf v. Hitchcock<sup>233</sup>, Congress has the power to unilaterally do violence to any provision, or to abrogate an entire treaty, if it so desires "particularly if consistent with perfect good faith toward the Indians"<sup>234</sup>. This gave Congress the authority to abrogate numerous treaties following this case and throughout the late 19th and early 20th centuries.<sup>235</sup> This case also provided a precedent for a series of cases involving treaties made with the United States. One such case

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<sup>229</sup>*Ibid.* at 556-557.

<sup>230</sup>*Ibid.*

<sup>231</sup>Appropriations Act of March 3, 1871, ch. 120 S.1, 16 Stat. 544 at 566 (codified at 25 U.S.C. S.71 (1982)).

<sup>232</sup>McSloy, "American Indians", *supra*, note 226 at 153. For a list of the treaties made specifically with the Hodinohso:ni:, please see attached Appendix A.

<sup>233</sup>It is also important to note that the treaty referred to in this case was created in 1867, only four years prior to the enactment of the Appropriation Act. The court heard it in 1903 after the enactment of the Appropriation Act thus diminishing any importance of the treaty.

<sup>234</sup>Lone Wolf v. Hitchcock, 187 U.S. 535 (1903) at 566.

<sup>235</sup>Williams, Algebra, *supra*, note 197 at 263.

affected the Seneca Nation<sup>236</sup> which involved the interpretation of the Treaty of Canandaigua of 1794 - a treaty made between the Confederacy and the United States. It created a relationship that could only be altered by both parties. Land was assured to the Seneca Nation in the treaty wherein United States agreed to "never claim the same, nor disturb the Seneca nation...in the free use and enjoyment thereof; but it shall remain theirs, until they choose to sell the same to the people of the United States."<sup>237</sup>

The U.S. Corps of Army Engineers proposed to build the Kinzua dam on the Allegheny River, which in effect, "flooded more than 9,000 acres of top quality farmland, thus destroying the livelihood of the Seneca farmers and a major source of food for those who planted; ruined the old Cold Spring Longhouse, the ceremonial center of Seneca traditional life; caused the removal of 130 Indian families from the 'take area'; and resulted in the relocation of these same families from widely spaced rural surroundings to two suburban-style housing clusters, one at Steamburg and the other at Jimerstown, adjacent to the city of Salamanca."<sup>238</sup> The court, following the ruling in Lone Wolf held that there was sufficient evidence that Congress intended to break the treaty when it appropriated funds for this project. Jack Campisi states that "while it can be argued that the courts displayed questionable judgment in both Seneca cases, the import of the decisions with regard to the issue of a special status for early Iroquois treaties, is painfully clear: Iroquois-federal treaties are like all other Indian treaties, equally fragile and

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<sup>236</sup>Seneca Nation of Indians v. Brucker, 262 F. 2d. 27 (1958).

<sup>237</sup>*Ibid.*

<sup>238</sup>Laurence M. Hauptman, "Congress, Plenary Power, and the American Indian, 1870 to 1992" in Exiled, *supra*, note 21 at 332.

subject to the plenary powers of Congress."<sup>239</sup>

The development of modern United States colonial theory began first with the doctrine of tribal sovereignty which has diminished full inherent sovereignty through the development of the doctrine of discovery<sup>240</sup>; next was the rise of the presumption of the "theory", domestic dependent nations which was used as a means to legitimize conquest and colonization and finally, the assertion of full federal control through its doctrine of plenary powers.<sup>241</sup>

### 3.2.1.1 Doctrine of Discovery

The concept of priority of occupation is derived from European legal theorists creation of an internationally-known European concept of jus gentium or the "Law of Nations"<sup>242</sup> wherein the "practical and effective occupation of discovered lands, defended by the sword if necessary, became recognized as an evident and undeniable source of title and sovereignty to territory inhabited by indigenous peoples".<sup>243</sup> This gave European colonizers (as against other Europeans) the right to occupy discovered lands and once occupied, they had title and sovereignty to these lands, thus diminishing the sovereignty and relationship to land by O:gwhe:we<sup>244</sup>. The concept of the Law of Nations gave the colonizers the right of conquest and

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<sup>239</sup>Campisi, "National Policy", *supra*, note 114 at 107.

<sup>240</sup>This doctrine began the legalized form of racial discrimination. Williams, Columbus's Legacy, *supra*, note 147.

<sup>241</sup>Williams, Algebra, *supra*, note 197 at 252-265.

<sup>242</sup>The origins of this term will be elaborated further in this chapter under "International Law".

<sup>243</sup>Williams, Algebra, *supra*, note 197 at 252-253.

<sup>244</sup>There were many land claims cases in the United States commenced by separate nations of the Hodinohso:ni. However, it is beyond the scope of this thesis to thoroughly discuss land claims. For further reading on this, see Christopher Vescey and William Starna, (eds.) Iroquois Land Claims (Syracuse University Press: Syracuse, N.Y.), 1988; Christopher Vescey states in the introduction of his book, "These land claims issues may be news to non-Indian readers, but they are a long and often-told history among the Iroquois; they are part of

colonization.<sup>245</sup> This concept transformed into the doctrine of discovery and was formulated in an 1823 United States Supreme Court case, Johnson v. McIntosh<sup>246</sup>. It has also been argued that this case was "premised on the ancient principle of Christian dominion and a distinction between paramount rights of 'Christian people' and subordinate rights of 'heathens' or non-Christians."<sup>247</sup>

In Johnson, a group of white plaintiffs purchased land from the Illinois and Piankeshaw Indian Nations. The defendant, McIntosh, purchased the same lands from the United States. The issue was whether the Illinois and Piankeshaw Indian Nation had the power to give title of lands to private individuals.<sup>248</sup> The court held that they did not have the power to give title if that title was not recognizable in a United States court. Chief Justice Marshall relied on the doctrine of discovery which was recognized as part of the Law of Nations by European colonizing nations.<sup>249</sup> The discovery of territory in the New World inhabited by Indigenous nations gave the European nation "an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest."<sup>250</sup> "Conquest gives a title which the Courts of the conqueror cannot deny."<sup>251</sup> Chief Justice Marshall explained the doctrine of discovery as follows:

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the Iroquois heritage." (at 14); see also George C. Shattuck, The Oneida Land Claims: A Legal History (Syracuse University Press: Syracuse, N.Y.), 1988; see also Laurence M. Hauptman, The Iroquois Struggle for Survival World War II to Red Power (Syracuse University Press, Syracuse, N.Y.), 1986.

<sup>245</sup>*Ibid.*

<sup>246</sup>21 U.S. (8 Wheat) 543 (1823).

<sup>247</sup>Newcombe, Christian Nationalism, *supra*, note 178 at 304; Also see Williams, Algebra, *supra*, note 197; and Williams, Conquest, *supra*, note 180.

<sup>248</sup>*Ibid.* at 572.

<sup>249</sup>*Ibid.* at 573-75.

<sup>250</sup>*Ibid.* at 587.

<sup>251</sup>*Ibid.* at 588.

On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendancy...But, as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements, and consequent war with each other, to establish a principle, which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was, that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession.<sup>252</sup>

Marshall, C.J., specifically stated that the doctrine of discovery denied full sovereignty to O:gwe ho:we nations as follows:

the rights of original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired...their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it.<sup>253</sup>

As Robert A. Williams states, the doctrine of discovery "legitimated, energized and confirmed any and all efforts, whether achieved by conquest, broken promises, or the lying and cheating of a superior European-derived sovereign to acquire the lands occupied by human beings regarded as 'brute animals' over whom, in Marshall's own words, 'the superior genius of Europe might claim an ascendancy.'"<sup>254</sup>

### 3.2.1.2 Domestic Dependent Nations

Chief Justice Marshall again defined the status of O:gwe ho:we nations in the United

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<sup>252</sup>*Ibid.* at 572-573.

<sup>253</sup>*Ibid.* at 573-74.

<sup>254</sup>Williams, Columbus's Legacy, *supra* note 147 at 74.



States through the concept of “domestic dependent nations” in Cherokee Nation v. Georgia.<sup>255</sup>

In this case the Cherokee Nation brought a suit against the state of Georgia to prevent it from encroaching upon its treaty-recognized sovereign territory. The Supreme Court denied access to the Cherokee Nation to make a claim against a state of the union as it was not a foreign nation but was referred to as a "ward" of the United States. Marshall, C.J., stated:

They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian.<sup>256</sup>

As a result of these doctrines and cases, the ultimate control over Indian affairs, including title and jurisdiction within tribal boundaries, is with the United States federal government.<sup>257</sup>

Therefore, Congress has sole jurisdiction over Hodinohso:ni lands.<sup>258</sup>

### 3.2.1.3 The Doctrine of Plenary Power

The doctrine of plenary power has been the main factor affecting O:gweho:we since the making of the American Constitution in that it controls every aspect of O:gwe ho:we nations in the United States.<sup>259</sup> The doctrine of plenary powers was created by the United States Supreme

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<sup>255</sup>30 U.S. (5 Pet.) 1 (1831).

<sup>256</sup>*Ibid.*

<sup>257</sup>Campisi, “National Policy”, *supra*, note 114 at 103. See Fellows v. Blacksmith (1856) wherein the court held that only the United States could extinguish Indian title; United States v. Boylan (1920) - the court held that the United States had sole jurisdiction over Iroquois land;

<sup>258</sup>Campisi, *ibid.* at 106-108. Tuscarora Nation of Indians v. Federal Power Authority, 257 F. 2d at 885 - the Court of Appeals for the Second Circuit held that the state had no special rights and that it could take Indian land only with the express consent of Congress; United States v. Forness, 125 F. 2d at 928 - the Court of Appeals for the Second Circuit held that state law was not applicable to Iroquois tribes unless extended by Congress.

<sup>259</sup>Savage, The Original Understanding, *supra*, note 227 at 60.

Court<sup>260</sup> to legitimize colonialists' discovery and control of North America.<sup>261</sup> The Cherokee Tobacco case set the precedent for the doctrine of plenary power in which the United States Supreme Court held:

A treaty may supersede a prior act of Congress and an act of Congress may supersede a treaty. In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, cannot be more obligatory. They have no higher sanctity; and no greater inviolability or immunity from legislative invasion can be claimed for them. The consequences in all such cases give rise to questions which must be met by the political department of the government. They are beyond the sphere of judicial cognizance.<sup>262</sup>

The court was justifying the doctrine of plenary power wherein treaties were considered “obligatory” and that they can be overridden by legislation. The court was also immunizing itself from making decisions on treaties that it decided was decisions that must be made by political departments.

Following this case was a case heard in 1883, Ex Parte Crow Dog<sup>263</sup> wherein the Supreme Court held that criminal laws did not apply to Indians on a reservation. As a result of this case, the United States Congress enacted the Major Crimes Act<sup>264</sup>, in which federal jurisdiction extended seven major crimes<sup>265</sup> to Indians living on reservations. A challenge was

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<sup>260</sup>Memorandum from M. Frances Ayer, Pirtle, Morisset, Schlosser & Ayer to The Honourable Roger A. Jourdain, Chairman of the Red Lake Band of Chippewa Indians dated October 14, 1987, Appendix to the Statement of Roger A. Jourdain, Hearing before the Select Committee, *supra*, note 64.

<sup>261</sup>Williams, Columbus's Legacy, *supra* note 147 at 74.

<sup>262</sup>78 U.S. 616 (1870).

<sup>263</sup>109 U.S. 556 (1883).

<sup>264</sup>Ch. 341, 23 Stat. 362, 385 (1885).

<sup>265</sup>They are: murder, manslaughter, rape, assault with intent to kill, arson, burglary and larceny.

made as to the constitutionality of the Major Crimes Act in the case of the United States v. Kagama<sup>266</sup>. The Supreme Court held that Congress did have the right to pass this legislation and that "Indian tribes are wards of the nation. They are communities dependent on the United States. Dependent largely for their daily food. Dependent for their political rights. They owe no allegiance to the States, and received from them no protection."<sup>267</sup>

In Lone Wolf v. Hitchcock<sup>268</sup>, a further important case heard twenty years later "gave the doctrine its most extensive definition [and] one which has affected the status of American Indian nations and their treaty rights down to the present day".<sup>269</sup> This case involved the Congress's breach of a Treaty of Medicine Lodge Creek of 1867 made between the Kiowa and Comanche Nations with the United States. The Court upheld the breach and stated:

We must presume that Congress acted in perfect good faith in its dealings with the Indians of which complaint is made, and that the legislative branch of the government exercised its best judgment in the premises. In any event, as Congress possessed full power in the matter, the judiciary cannot question or inquire into the motives which prompted the enactment of this legislation.<sup>270</sup>

With respect to plenary power, the court stated that "[p]lenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government."<sup>271</sup>

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<sup>266</sup>118 U.S. 375 (1886).

<sup>267</sup>*Ibid.*

<sup>268</sup>*Supra*, note 234.

<sup>269</sup>Hauptman, "Congress and the American Indian", *supra*, note at 238 at 320.

<sup>270</sup>*Ibid.* at 568.

<sup>271</sup>*Ibid.*

The Supreme Court of the United States declared that the Constitution gives the United States power over O:gwe ho:we nations<sup>272</sup>; however, there was nothing in the United States Constitution that provides this plenary power over Indian nations. There has been a plethora of Supreme Court cases wherein plenary powers were applied to various issues such as:

- a) limiting, modifying or eliminating the powers of local self-government of O:gwe ho:we nations;<sup>273</sup>
- b) determining whether a tribe exists or not and who is a citizen of it,<sup>274</sup>
- c) controlling and managing title to O:gwe ho:we lands including termination of title;<sup>275</sup>
- d) legislating in all matters including their form of government<sup>276</sup> and the power to regulate their internal and social relations.<sup>277</sup>

Further legislation that refers and controls O:gwe ho:we was The (Dawes) General Allotment Act of 1887, only one year after the Kagama case. It was the first statute to extend citizenship to American Indians, whether they wanted it or not.<sup>278</sup> It also provided a process to break up tribal lands and allotments to individual Indians thus creating the individuality of land

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<sup>272</sup>Savage, The Original Understanding, *supra*, note 227 at 59.

<sup>273</sup>Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56-57 (1978)

<sup>274</sup>United States v. Sandoval, 231 U.S. 28, 46, 47 (1913); Delaware Tribal Business Comm. v. Weeks, 430 U.S. 73, 85-86 (1977); United States v. John, 437 U.S. 634, 649-50 (1978).

<sup>275</sup>United States v. Wheeler, 435 U.S. 313, 326 (1978); Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 288-89 (1955); Hynes v. Grimes Packing Co., 337 U.S. 86, 106 (1949); Sioux Tribe of Indians v. United States, 316 U.S. 317 (1942); United States v. Rogers, 45 U.S. (4 How.) 567 (1846); Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831); Johnson & Graham's Lessee v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823).

<sup>276</sup>United States v. Wheeler, 435 U.S. 313 (1978).

<sup>277</sup>United States v. Kagama, 118 U.S. 375 (1886).

<sup>278</sup>Hauptman, "Congress and the American Indian", *supra*, note 238 at 322.

ownership. Following this act was the passage of the Indian Territory Naturalization Act of 1890 wherein an American Indian could apply for citizenship in federal courts.<sup>279</sup> Also an act was passed in 1919 wherein World War I veterans, who had received honourable discharges could become citizens as long as they applied for it in court.<sup>280</sup> Further statutes were created in 1924 called the Indian Citizenship Act and in 1940 called the United State's Selective Service Act,<sup>281</sup> which gave the power of Congress to draft American Indians to serve in the army against their own will.

Members of the Hodinohso:ni never acknowledged or participated in citizenship in which it was "viewed as the first step toward taxation and the loss of their political and territorial sovereignty".<sup>282</sup> They challenged both the Citizenship Act and the Selective Services Act in that they "did not apply to them, since they had never accepted the 1924 law and considered themselves foreign nationals, not United States citizens. Both laws, they maintained, had been promulgated unilaterally by Congress and without their consent. Also, the Confederacy rejected the doctrine of plenary power...insisting they were Six Nations citizens, not United States citizens."<sup>283</sup> The Hodinohso:ni rejected the right to draft its members because they were separate nations, their treaties with the United States forbade either nation from drafting members of the other and because the Hodiyanehso could not, according the

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<sup>279</sup>*Ibid.*

<sup>280</sup>*Ibid.* at 323

<sup>281</sup>55 Stat. 845, 50 U.S.C.A.

<sup>282</sup>*Ibid.* fn.23 citing Vine Deloria Jr. and Clifford Lytle, American Indians, American Justice (Austin: University of Texas Press 1983) at 220-25.

<sup>283</sup>*Ibid.* at 325.

Gayanehsrawgowa, draft their own people.<sup>284</sup> As a result of this the Confederacy brought a case to test their status in Ex Parte Green<sup>285</sup>. An Onondaga man argued that he was not a citizen within the meaning of the Selective Service Act. He also argued that the Citizenship Act and the Nationality Act were unconstitutional based on the historic fact the Six Nations were never conquered by the United States. He further argued that these acts were unconstitutional based on the sovereignty of the Six Nations as concluded in treaties at Fort Stanwix on October 22, 1784, at Fort Harmar on January 9, 1789 and at Canandaigua on November 11, 1794.<sup>286</sup>

The court held that notwithstanding the historic relationship between the United States and the Six Nations, the statutes were valid and applied to Green. Circuit Judge Frank relied on an 1884 case: Head Money Case<sup>287</sup> wherein it was determined that where a domestic law conflicts with an earlier treaty, the statute must be honoured.<sup>288</sup> Therefore the Citizenship Act and the Nationality Act applied to Green and made him a citizen of the United States. As a result, the Selective Service Act applied to him.<sup>289</sup>

In the case of United States v. Claus,<sup>290</sup> the defendant was a Mohawk who was registered under the Indian Act as a member of the Six Nations Reserve of the Grand River in Ontario. Based on a questionnaire that was provided by the Selective Services Board, Claus stated that

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<sup>284</sup>*Ibid.*

<sup>285</sup>(1941), 123 F.2d. 862.

<sup>286</sup>*Ibid.*

<sup>287</sup>112 U.S. 580, 5 S.Ct. 247, 28 L.Ed. 798.

<sup>288</sup>*Ibid.* at 863.

<sup>289</sup>*Ibid.* at 864.

<sup>290</sup>63 F. Supp. 433 (1944).

he was a resident of Buffalo, New York. Therefore, the Board classified him to serve with the military. Claus appealed the decision of the Board and was thereafter charged with failing to appear for the induction contrary to the provisions of the Selective Training and Service Act. His defence was that he was given certain rights under the Jay Treaty (a treaty negotiated between Great Britain and the United States affecting the Hodinohso:ni.<sup>291</sup>) and therefore he was not subject to the provisions of the Selective Training and Service Act. The terms of the Jay Treaty that he relied on were as follows:

It is agreed that it shall at all times be free to his Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America.<sup>292</sup>

He also argued that he was not an "alien" as defined under the Selective Service Act.

The court held that there was nothing in the Jay Treaty that exempted him from being drafted. Even if the treaty did provide exemption for "aliens" (Canadian Indians), it would have been superseded and abrogated by the statute. The court followed the rule in The Cherokee Tobacco<sup>293</sup> case in that:

The effect of treaties on acts of Congress, when in conflict, is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty.<sup>294</sup>

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<sup>291</sup>It is important to note here that the Supreme Court of Canada later held that the Jay Treaty did not apply in Canada because its provisions were never implemented or sanctioned by legislation: Francis v. The Queen (1956) S.C.R. 618.

<sup>292</sup>Jay Treaty, Article 3, 8 Stat. 117.

<sup>293</sup>78 U.S. 616, 11 Wall. 616, 621, 20 L.Ed. 227.

<sup>294</sup>United States v. Claus, *supra*, note 287 at 434.

This is a very conflicting and ambiguous statement because it could also be argued that if a treaty superseded a prior act of Congress and the Jay Treaty was in effect prior to the statute, then the Jay Treaty would exempt him from being drafted as he was registered as a status Indian under the Indian Act in Canada.

Only one year later, a Mohawk member of the Hodinohso:ni: who was born on the Canadian side of the border but lived on the American side was convicted and charged with violating the Selective Training and Service Act by failing to report to the local Board for enlisting in the Army.<sup>295</sup> He also based his defence on the fact that he is a full-blooded Mohawk member of the sovereign independent Hodinohso:ni:. However, the court followed the Green and Claus decisions and held that although Albany was not a citizen, he was a resident and therefore fell under the definition of the Selective Service Act: "every other male person residing in the United States".<sup>296</sup>

### 3.2.2 Canada

Not only has the American law been forced upon O:gweho:we nations, which included the Hodinohso:ni, but the process of Canadian law has done the same. There are currently five Hodinohso:ni communities<sup>297</sup> amongst other O:gweho:we nations in Canada, that are being

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<sup>295</sup>Albany v. United States (1945), 152 F.2d. 267.

<sup>296</sup>55 Stat. 845, 50 U.S.C.A. Appendix S 303(a).

<sup>297</sup>They are all situated in Ontario and Quebec: Akwesasne (Cornwall Island, Ontario and St. Regis, Quebec), Kanasatake, Quebec, Kahnawake, Quebec, Tyendinaga, Ontario, Wahta, Ontario, Oneida, Ontario and Six Nations of the Grand River Territory, Ontario. In the United States, the communities are: Akwesasne, N.Y., Ganienkeh, N.Y., Onondaga (Syracuse, N.Y.), Tonawanda (Akron, N.Y.), Cattaraugus, N.Y., Alleghany, N.Y., Tuscararora, N.Y., Oneida (N.Y. and Wisconsin). There is no definite land base or territory for the Cayuga Nation; however, there is currently an outstanding land claim regarding this Nation. There are Cayuga and Seneca people also situated in Oklahoma.



affected. There are three primary sources<sup>298</sup> of law in Canada that govern Aboriginal people as defined by the Canadian government which are:

- 1) the common law of England, which was imported with the establishment of the British regime in Quebec in 1763;
- 2) the statutes of Canada and its provinces and their colonial predecessors;
- 3) the law as developed through Canadian court cases.

The founding Constitutional document that originally defined the relationship between Aboriginal nations and settlers in Canada was the Royal Proclamation of 1763.<sup>299</sup> In St. Catherine's Milling and Lumber Company v. The Queen<sup>300</sup>, the Privy Council interpreted the Royal Proclamation as being a declaration of sovereignty of the British Crown in which "Indian tribes" then lived under the "sovereignty and protection of the British Crown."<sup>301</sup> This case became the precedent for current case law regarding the rights of Aboriginal people in that it justified sovereignty of the British Crown and diminished the sovereign status of Aboriginal Nations in Canada. The courts in Canada also followed American case law regarding the doctrine of discovery.<sup>302</sup>

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<sup>298</sup>Paul Williams, "Canada's Laws About Aboriginal Peoples: A Brief Overview" Law and Anthropology at 93-94 [hereinafter referred to as Canada's Laws].

<sup>299</sup>Borrows, "Constitutional Law from a First Nation Perspective", *supra*, note 6.

<sup>300</sup>(1888), 14 App. Cas. 46 (P.C.).

<sup>301</sup>*Ibid.* at 54.

<sup>302</sup>Guerin v. The Queen, (1984) 13 D.L.R. (4th) 321 (S.C.C.), ("...although he [C.J. Marshall in Johnson v. McIntosh] acknowledged the Royal Proclamation of 1763 as one basis for the recognition of Indian title, was none the less of opinion that the rights of Indians in the lands they traditionally occupied prior to European colonization both predated and survived the claims to sovereignty made by various European nations in the territories of the North American continent. The principle of discovery which justified these claims gave the ultimate title in the land in a particular area to the nation which had discovered and claimed it. In that respect at least the Indians' rights in the land were obviously diminished..."; R. v. Sparrow, (1990) 70 D.L.R. (4th) 385 (S.C.C.), (Justice Dickson wrote: "It is

The Canadian law similar to the American doctrine of plenary power is the doctrine of parliamentary supremacy, which derives from the Constitution of Canada. The Constitution sets out the division of powers between federal and provincial responsibilities. S. 91(24) of the Constitution provides exclusive power of the federal government over "Indians and lands reserved for Indians." Indians were not included until 1982 in its Constitution Act of 1982<sup>303</sup> wherein Section 35(2) provided that "aboriginal peoples in Canada" includes the Indian, Inuit and Metis. This definition is based on race rather than based on the historical and political differences of all O:gwé ho:wé nations across North America.<sup>304</sup> It also provided the federal government the magical powers of controlling Aboriginal peoples in Canada. The federal Indian Act was legislated "pursuant to its constitutional mandate"<sup>305</sup> and defines only who a "status" Indian is.

The Indian Act caused an enormous amount of distrust amongst the Hodinohso:ni people of the Six Nations Reserve. In 1924, as a result of the enforcement of the elected type of government provided for in the Indian Act, the traditional Hodinohso:ni Confederacy Council purportedly lost its governing powers of the Six Nations. From the time of the upheaval of the Hodiyanehso, there was great animosity and anger between the elected Chief and his councillors

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worth recalling that while British policy towards the native population was based on respect for their right to occupy their traditional lands, a proposition which the Royal Proclamation of 1763 bears witness, there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title to such lands vested in the Crown." (at 404). However, in contrast, Justice Lamer in R. v. Sioui (1990), 70 D.L.R. (4th) 427 at 450, wrote: "The British Crown recognized that the Indians had certain ownership rights over their land, it sought to establish trade with them which would rise above the level of exploitation and give them a fair return. It also allowed them autonomy in their internal affairs, intervening in this area as little as possible."

<sup>303</sup>Schedule B of the Canada Act, 1982, c.11 (U.K.), sec.58; Canada Gazette (Part I), Vol. 116, No. 17 at 2927-28;

<sup>304</sup>Williams, Canada's Laws, *supra*, note 298 at 93.

<sup>305</sup>*Ibid.*

and the Confederacy Chiefs. This anger and distrust resulted in legal proceedings that was commenced by the Hodiyanehso in Logan v. Attorney-General of Canada<sup>306</sup> in 1959 and by the elected Council against the Hodinohso:ni Hodiyanehso in Isaac et al v. Davey et al<sup>307</sup> in 1973. As a result of these cases, the Hodinohso:ni became subjects of the Crown and not allies, as they had and still have always argued. These cases set out the status of the Hodinohso:ni in Canada.

On September 3, 1959, the wife of Joseph Logan, Jr., a Mohawk Hoyaneh was nominated by the Hodiyanehso to bring an action on their behalf.<sup>308</sup> The defendants were Clifford E. Styres, chief councillor representing the elected council of the Six Nations Indian Band and R. J. Stallwood, superintendent of Indian Affairs at Brantford, Ontario. The action was for an injunction to restrain the defendants from surrendering 3.05 acres of Six Nations Reserve land and for a declaration that two Orders in Council dated September 17, 1924 and November 12, 1951 are ultra vires the powers of the Governor-General of Canada.<sup>309</sup>

As it was always the position taken by the Hodinohso:ni that they were and continued to be allies of the British Crown, they adamantly argued that they were not subjects of the Crown and therefore, it was ultra vires the powers of the British Parliament to enact section 91(24) of the British North American Act. The Hodinohso:ni then argued that it was ultra vires the powers of the Canadian government to enact the Indian Act, R.S.C. 1952 as it related to the Six Nations Indians. Therefore, the Orders in Council, as above-noted, were also ultra vires as it

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<sup>306</sup>[1959] 20 D.L.R. (2d) 416 [sub nom. Logan v. Styres et al.]

<sup>307</sup>(1974), 38 D.L.R. (3d) 23.

<sup>308</sup>*Supra*, note 306.

<sup>309</sup>*Ibid.*, at 417.

related to the Six Nations Indians.

In the Hodinohso:ni's submissions, they relied on the terms of two documents, namely the Haldimand Deed dated October 25, 1784 and the Simcoe Deed dated January 14, 1793, both of which provided a grant of land to the Hodinohso:ni.<sup>310</sup> Both deeds had provided lands described as being six miles on both sides of the Grand River from its mouth to its source. The Hodinohso:ni's submission to the United Nations on April 13, 1945 was reiterated in that they maintained that they were faithful allies of the British Crown and that they requested that their fundamental rights to the land in the Haldimand and Simcoe Deed be guaranteed and protected.<sup>311</sup>

King, J. stated that because the Six Nations Indians settled on the deeded lands, they did so under the protection of the British Crown. Therefore, by accepting this protection, they then owed allegiance to the Crown and became subjects of the Crown.<sup>312</sup> And therefore, as a result of becoming subjects, the Six Nations Indians were no longer considered as faithful allies. There was no authority for this statement made by King, J. This did not change the Hodinohso:ni's firm stance that they were still independent of Canada and still allies of the British Crown. The action was dismissed. The Hodinohso:ni were not entitled to an injunction and were not entitled to the declaration asked for. King, J. stated that the strongest case for the Hodinohso:ni was to argue that Parliament should not make the Order in Council applicable to

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<sup>310</sup>Details of the Haldimand Deed and Simcoe Deed were provided in Chapter 1.

<sup>311</sup>Johnston, "Self-Determination", *supra*, note 92 at 21.

<sup>312</sup>Logan v. Styres, *supra*, note 306 at 422.

the Six Nations rather than that Parliament cannot make such an Order applicable.<sup>313</sup> If the Hodinohso:ni: were to argue that Parliament should not make an Order in Council, this would legitimize the argument that the Hodinohso:ni: were within the jurisdiction of the Canadian Parliament. However, the argument made by the Hodinohso:ni: was that they were not within the jurisdiction of the British North American Act and therefore, the Indian Act did not apply to them; therefore, any Orders in Council made under the Indian Act provisions were inapplicable to the Confederacy. King, J.'s opinion was as follows:

...the Six Nations Indians are entitled to the protection of the laws of the land duly made by competent authority and at the same time are subject to such laws. While it might be unjust or unfair under the circumstances for the Parliament of Canada to interfere with their system of internal Government by hereditary Chiefs, I am of the opinion that Parliament has the authority to provide for the surrender of Reserve land, as has been done herein and that Privy Council Order P.C. 6015 was not ultra vires.<sup>314</sup>

Although King, J. provided that Parliament had authority under S.91(24) of the B.N.A. Act, he did not provide an answer to the question as to how the Hodinohso:ni: came under the jurisdiction of the British North American Act especially when the only evidence that was provided to the court was the Hodinohso:ni: Hodiyanehso's submissions. Historic evidence was completely ignored<sup>315</sup>.

In June and July of 1970, the Hodinohso:ni: went to the Council House and padlocked the doors prohibiting the elected Band Council from entering. This resulted in legal proceedings

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<sup>313</sup>*Ibid.*, at 424.

<sup>314</sup>*Ibid.*, at 424.

<sup>315</sup>This is very similar to MacEachern's refusal to accept oral evidence in Delgamuukw, *supra*, note 152. However, this was overturned by the Supreme Court of Canada wherein the court held that future courts must accept oral history as valid evidence. Delgamuukw v. British Columbia [1997] 3 S.C.R. 1010.

being commenced in 1973 by the elected Chief Councillor, Richard Isaac against the Hodinohso:ni Hodiyanehso<sup>316</sup> which went to the Supreme Court of Canada in 1977.<sup>317</sup> The issues at trial were whether the lands granted to the Hodinohso:ni in the Simcoe Deed were "lands reserved for the Indians" specified under S.91(24) of the British North American Act, or whether they were lands as defined in the Indian Act: "of which legal title is in the Crown".

The Hodinohso:ni provided two issues in their defence as follows:

- (1) the plaintiffs had no status to bring an action as they acted under provisions of the Indian Act which was unlawfully imposed upon the members of the Six Nations by the Canadian government, and;
- (2) all provisions of the Indian Act were rendered inoperative by the Canadian Bill of Rights.

Osler, J. held that "the Simcoe grant was effective to pass title to all members of the Six Nations Band in fee simple"<sup>318</sup> and not to the Crown. The passing of the Indian Act had no effect to the "quality of the grant or the title held under it."<sup>319</sup> Based on this decision, Osler, J. held that "those sections under which the Governor purported to act had no application to the lands in question"<sup>320</sup> based on the conclusion that the lands as defined within S. 2(d) and (i) were not lands "of which legal title is vested in the Crown". Therefore, the Orders in Council were

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<sup>316</sup>Isaac et al. v. Davey et al., *supra*, note 307.

<sup>317</sup>(1977) 77 D.L.R. (3d) 481.

<sup>318</sup>*Supra*, note 307 at 30.

<sup>319</sup>*Ibid.*

<sup>320</sup>*Ibid.*, at 32.

held invalid. As a result of the invalidity of the Orders in Council, the elected Council had no authority under the Indian Act to occupy or control the Council House. "It was admitted by all parties that the Council House was built in 1886 at a time when beyond all question the Hereditary Chiefs had the management and control of the lands."<sup>321</sup> It was claimed by the elected council that even if they had no statutory rights, they represented all other members of the Six Nations except the defendants. Based on the evidence that was presented, Osler, J. held that "the system imposed by the Indian Act was not supported by more than a small fraction of the population in question but that at least certain of the plaintiffs were elected by a very small fraction of those eligible."<sup>322</sup>

With respect to the challenge made by Logan that the Indian Act was inoperative by the Canadian Bill of Rights, Osler J. applied the reasoning of the majority judgment in the Queen v. Drybones<sup>323</sup> as follows:

...if a law of Canada cannot be sensibly construed and applied so that it does not abrogate, abridge or infringe one of the rights and freedoms recognized and declared by the Canadian Bill of Rights then such law is inoperative unless expressly declared by an Act of Parliament that it shall operate notwithstanding the Canadian Bill of Rights.<sup>324</sup>

Osler J. declared that the Indian Act was inoperative based on its discrimination by reason of race. Therefore, the action commenced by the elected council was dismissed. The only downfall of this case was that Osler, J. followed the decision of King, J. in Logan wherein the

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<sup>321</sup>*Ibid.* at 33.

<sup>322</sup>*Ibid.*

<sup>323</sup>[1970] S.C.R. 282, 9 D.L.R. (3d) 473.

<sup>324</sup>*Supra*, note 307 at 34.

Hodinohso:ni: were not considered a sovereign nation.<sup>325</sup>

The appeal was heard in 1974<sup>326</sup> and a unanimous decision was made wherein Arnup, J.A. wrote the reasons for judgment. The following are the two major issues that the court had to deal with:

- 1) Whether the Indian Act was inoperative by reason of the Canadian Bill of Rights, and;
- 2) Whether the Simcoe Patent, 1793 was granted in fee simple to the Iroquois Confederacy (Hodinohso:ni).

With respect to the first issue, Arnup, J.A., held that Osler, J. was not correct in declaring that the Indian Act was inoperative. He relied on the Supreme Court of Canada case of A-G. Can. v. Lavell<sup>327</sup>; Isaac et al. v. Bedard,<sup>328</sup> in that sections of the Indian Act were not inoperative by reason of the enactment of the Canadian Bill of Rights. With respect to the second issue, Arnup, J.A. followed the reasons in R. v. St. Catherines Milling & Lumber Co.<sup>329</sup> in that Indian title was "a personal and usufructuary right dependent upon the good will of the Sovereign".<sup>330</sup> Therefore, the Crown had underlying title to the Six Nations lands. He held as follows:

It was to confer upon the loyal subjects of the Crown within the Six Nations Confederacy who had come to Upper Canada the same rights as were enjoyed by those Indians who had always been there. Both documents [Haldimand

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<sup>325</sup>*Ibid.* at 31.

<sup>326</sup>(1974) 51 D.L.R. (3d) 170.

<sup>327</sup>Attorney General of Canada v. Lavell, [1974] SCR, 1349

<sup>328</sup>Isaac v. Bedard, [1974] SCR, 1349.

<sup>329</sup>(1885), 10 O.R. 196.

<sup>330</sup>*Ibid.*



Proclamation, 1784 and the Simcoe Grant, 1793] were in accord with and implemented the policy enunciated in the Proclamation of 1763.<sup>331</sup>

In keeping with the policy of the times, the Haldimand Proclamation and the Simcoe Grant were within the same policy accorded in the Royal Proclamation of 1763, as decided by Chancellor Boyd in the St. Catherines Milling case. Therefore, the Hodinohso:ni were "under the [Crown] Sovereign's protection and dominion". As a result of Arnup, J.A.'s conclusion, the Orders in Council were valid, the lands in question were within the definition of "reserve" and "band" within the Indian Act as legal title was vested in the Crown.

When the case went to the Supreme Court of Canada,<sup>332</sup> the question of title to Hodinohso:ni lands was thought to be the most important issue. However, the court did not make a final decision regarding title to the lands in question because the court held that the Order in Council was valid under S.2(1)(a) which provided that a "band" means a body of Indians "for whose use and benefit in common, moneys are held by His Majesty." Evidence was produced wherein it was proven that moneys were held by the Crown for the use and benefit of the Six Nations Indians. Martland, J. stated that it was irrelevant as to the time when the moneys were held by the Crown. He felt that it was necessary to consider the circumstances as to why this case went to court - that being the Council House was padlocked which denied entrance to the elected Council.

Martland, J.'s opinion was as follows:

...when P.C. 6015 [the Order in Council made in 1951] was produced, and was by consent, made an exhibit at the trial, there was a presumption as to its validity

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<sup>331</sup>*Supra*, note 307 at 181.

<sup>332</sup>*Supra*, note 317.

and, if the appellants sought to attack it, the onus rested upon them to prove that it was invalid. This necessitated proof that the Six Nations was not a band [according to the definition of a body of Indians under subparagraph (i), (ii) or (iii) of s.2(1)(a) of the Indian Act].<sup>333</sup>

It was noted in Martland, J.'s judgment that some of the issues that were raised in the appeal court were abandoned in this court, specifically the issue as to the Hodinohso:ni's sovereignty and independence. As a result, the question of sovereignty of the Hodinohso:ni in Canada has never been and may never want to be answered by the courts in Canada.

### **3.2.2.1 Treaties in Canada**

Canada and its courts have held that treaties made with Indian nations are not international treaties<sup>334</sup>. The Supreme Court of Canada has held that treaties are sui generis agreements to which rules of international law do not apply.<sup>335</sup> The Supreme Court has also defined what an aboriginal treaty is as follows:

From these extracts it is clear that what characterizes a treaty is the intention to create obligations, the presence of mutually binding obligations and a certain measure of solemnity.<sup>336</sup>

Early treaties of peace and alliance are not mentioned as treaties by Canada but are described

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<sup>333</sup>*Ibid.* at 486.

<sup>334</sup>A.G. Ontario and A.G. Quebec v. A.G. Canada (1897) A.C. 199 (P.C.);

<sup>335</sup>Simon v. the Queen, [1985] 2 S.C.R. 387, [1986] 1 C.N.L.R. 153.

"An Indian treaty is unique [to British and Canadian law], it is an agreement *sui generis* which is neither created nor terminated according to the rules of international law" (at 404 - S.C.R.).

This definition was confirmed in R. v. Sioui [1990] 1 S.C.R. 1025; [1990] C.N.L.R. 127.

<sup>336</sup>Sioui, *ibid.* at 1044, S.C.R..

as transactions relating to the sale or surrender of land.<sup>337</sup>

### **3.2.3 International Law**

The international system of law is another form of European diffusionism as all of its rules and principles are defined and derived from Eurocentric values and rules of law. International law has only recently been defined within a Eurocentric paradigm since the early 1920s with the creation of the League of Nations. It has "remained rooted in Western European traditions and values and in its concept and content it maintained this European bias".<sup>338</sup> The terms of State/nationhood, sovereignty, self-determination and treaties have all been defined within the precepts and concepts of this paradigm. Rebecca Wallace states that international law "is no longer an exclusive western club" and that the "European bias of international law has been destroyed".<sup>339</sup> However, new definitions of international law gives no regard or respect to Indigenous<sup>340</sup> nations. The doctrine of discovery and the Eurocentric legal definition of "domestic dependent nations" underlies legal discourse within international law as it relates to

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<sup>337</sup>Canada Indian Treaties and Surrenders, (Ottawa: Queen's Printer, 1891) cited in Williams, Canada's Laws, *supra*, note 208 at 98.

<sup>338</sup>Rebecca M. M. Wallace, International Law (2nd Ed.) (Sweet & Maxwell: London) 1992 at 5 [hereinafter referred to as International Law].

<sup>339</sup>*Ibid.*

<sup>340</sup>The term "indigenous" will be used to describe Ojigwe ho:we from this point on as it is a term used (contentiously) within the international forum and is defined as "those groups colonized by Western and other settler states and who have lost their sovereignty while maintaining a distinct cultural identity".

Robert A. Williams, Jr. "Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World" [1990] *Duke Law Journal* 660 at 663 [hereinafter referred to as "Encounters"].

The term Hodinohsoni will be used when specifically referring to their issues.

the status and rights of Indigenous peoples today.<sup>341</sup> These rights have been defined within Eurocentric legal systems through the creation of European legal theory and discourse.<sup>342</sup>

The origins of international law can be traced back to the philosophies of natural law wherein European theorists were "sympathetic to indigenous peoples' existence as self-determining communities in the face of imperial onslaught."<sup>343</sup> However, it has evolved into a state-centred system "strongly grounded in Western world view."<sup>344</sup> The development of international law originated from jus gentium or the Law of Nations. This term originated from Bartolome de las Casas (1474-1566) and Francisco de Vitoria (1486 - 1547). Las Casas was noted as a defender of the rights of Indians<sup>345</sup> as he was a Roman Catholic missionary<sup>346</sup> who personally saw the destruction of Indian nations by the Spanish.<sup>347</sup> Vitoria was a theorist and a professor at the University of Salamanca whose focus was on the legitimacy of title and jurisdiction.<sup>348</sup> The theory of natural law underlined both of their theories.<sup>349</sup> Marks stated:

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<sup>341</sup>*Ibid.* at 667.

<sup>342</sup>*Ibid.* at 666; Williams, Algebra, *supra*, note 197 at 253; see also Williams, Jefferson, *supra*, note 212 at 169.

<sup>343</sup>James Anaya, Indigenous Peoples and International Law (Oxford, Oxford University Press, 1996) at 9 [hereinafter referred to as Indigenous Peoples].

<sup>344</sup>*Ibid.*

<sup>345</sup>G.C. Marks, "Indigenous Peoples in International Law: The Significance of Francisco de Vitoria and Bartolome de las Casas" [1993] Australian Year Book of International Law 1 [hereinafter referred to as "Indigenous Peoples"].

<sup>346</sup>It is ironic that although he was a defender of aboriginal rights, he was "obliged to provide religious instruction for their Indians and to protect them." L. Hanke, Bartolome de Las Casas: An Interpretation of His Life and Writings (1951) at 15, cited in Marks, "Indigenous Peoples", *ibid.* at 21.

<sup>347</sup>Marks, "Indigenous Peoples", *ibid.* See also Anaya, Indigenous Peoples, *supra*, note 343.

<sup>348</sup>Marks, "Indigenous Peoples", *ibid.*

<sup>349</sup>Natural law was described as:

...that part of eternal law which man can apprehend with his unaided reason, but can neither create nor change whether by reason or will; for not man, but God's reason, is the measure of all that is good.

Both asserted the universality of human rights. They assumed the equality of all humans as rational beings, whether Christian or not, and consequently they argued that all peoples have the right in natural law to their own laws and rulers. There are differences between Las Casas and Vitoria however. The differences are significant in the context of indigenous rights.<sup>350</sup>

Las Casas defined clearly the sovereignty of indigenous peoples and their rights in law. Although he supported the rights of indigenous peoples, his writings, his perspectives and his influence regarding these matters was "marginal".<sup>351</sup> Vitoria articulated two theories or a "normative duality" which were that:<sup>352</sup>

- 1) indigenous peoples possessed autonomy and entitlements to land; however,
- 2) indigenous peoples lost these rights through conquest of a just war.<sup>353</sup>

The concept of natural law as it pertained to the Law of Nations, however, transformed from a "universal moral code for human kind" into a system of natural rights of individuals and natural rights of states.<sup>354</sup> Hobbes theory was that individuals lived in a war-like state of nature prior to joining civil society represented by the state. The state was considered analogous to the individual as a holder of natural rights. Pufendorf and Wolff followed Hobbes theory and developed a body of law focussing exclusively on states under the term "law of nations". Vattel defined the Law of Nations as "the science of rights which exist between Nations or States, and

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J. Stone, Human Law and Human Justice (1965) at 61, cited in Marks, "Indigenous Peoples", *ibid.* at 20.

<sup>350</sup>*Ibid.* at 19.

<sup>351</sup>*Ibid.* at 37.

<sup>352</sup>Anaya, Indigenous Peoples, *supra*, note 343 at 12.

<sup>353</sup>Vitoria demonstrated under what circumstances justified a just war. For a detailed account of these circumstances, see Marks, "Indigenous Peoples", *supra*, note 345 at 37-48.

<sup>354</sup>Anaya, Indigenous Peoples, *supra*, note 343 at 13.

of the obligations corresponding to these rights".<sup>355</sup>

According to current principles of international law, Indigenous nations are not considered as a state or nation.<sup>356</sup> The Cayuga Indians Case<sup>357</sup>, which specifically refers to the Hodinohso:ni Cayuga nation, set the precedent for this principle. Treaties made with indigenous nations are not considered as international agreements<sup>358</sup> and according to Canadian domestic law, as noted earlier, treaties made with indigenous nations have been defined as sui generis<sup>359</sup> treaties. Such definitions as these within public international law as they pertain to indigenous peoples have given colonizer states the ultimate power to "spread their imperial power" and to control their internal problems (indigenous people being the problem).<sup>360</sup>

### **3.2.3.1 Cayuga Indians Case (International Arbitral Tribunal)**

At the same period in time that the elected system was forced onto the members of the Six Nations of the Grand River Territory, there were continued matters that were to be dealt with between Great Britain and the United States. An International Arbitral Tribunal was created by

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<sup>355</sup>*Ibid.*

<sup>356</sup>Principles of international law such as sovereignty, self-determination and treaty powers will be elaborated more in Chapter 3.

<sup>357</sup>Cayuga Indians (Great Britain) v. United States (1926), Int. Arb. Awards, Vol. VI 173.

<sup>358</sup>Islands of Palmas Case (Netherlands) v. United States. UNRIAA (1928) 829.

<sup>359</sup>Sui generis was defined in Simon v. The Queen [1985] 2. S.C.R. 387, [1986] 1 C.N.L.R. 153; as follows:

[a]n Indian Treaty is unique; it is an agreement sui generis which is neither created nor terminated according to the rules of international law.

This definition was confirmed in R. v. Sioui [1990] 1 S.C.R. 1025; [1990] C.N.L.R. 127.

<sup>360</sup>Document E/CN.4/Sub.2/1995/27. Second progress report submitted by Mr. Miguel Alfonso Martinez, Special Rapporteur, Study on Treaties, agreements and other constructive arrangements between States and indigenous populations, July 31, 1995 at 5 [hereinafter referred to as Martinez, "Second Progress Report"].

a Special Agreement between Great Britain and the United States on August 18, 1910 to settle claims between the two nations<sup>361</sup>. The arbitrators consisted of seven men; one from France, one from Belgium, three from the United States, and two from Great Britain<sup>362</sup>. In January of 1926, the Tribunal heard a case regarding the interpretation of treaties<sup>363</sup> made between the Cayuga Nation and New York State in 1789, 1790 and 1795. The tribunal also had to decide as to the application of the Treaty of Ghent of 1814 created after the War of 1812. A claim was made by Great Britain on behalf of the Cayuga Nation in Canada to determine that the members of the Cayuga Nation were the rightful recipients of treaty annuities as set out in the treaty made between the Cayuga Nation and New York State.

As a consequence of the American Revolutionary War, the Cayuga Nation divided in its alliance with the British and the Americans. Unfortunately, as a result, there are members of the Cayuga Nation on the Canadian side as well as the American side. The tribunal had to decide whether Great Britain could make such a claim on behalf of the Cayuga Nation as the treaty was made between New York State and the Cayuga Nation. The tribunal held that the Cayuga Nation was not a legal unit of international law by following the American ruling of Cherokee Nation v. Georgia<sup>364</sup>; that "Indian tribes have been treated as under the exclusive protection of the power which by discovery or conquest or cession held the land which they

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<sup>361</sup>Reports of International Arbitral Awards, Vol. VI (United Nations Publications) at 5.

<sup>362</sup>*Ibid.* at 2.

<sup>363</sup>The lawyer representing the United States described the treaties made between New York and the Cayuga Nation as "so-called treaties" or "agreements of the sale of land". American and British Claims Arbitration under the Special Agreement concluded between the United States and Great Britain, August 18, 1910, Report of Fred K. Nielsen, Agent and Counsel for the United States. (Government Printing Office, Washington, 1926).

<sup>364</sup>5 Pet. 1, 17

occupied" and that Indian tribes were said to be "domestic dependent nations". Thus only American domestic law had the jurisdiction to deal with the Cayuga Nation as "no other power could interpose between them".<sup>365</sup> Thus, the tribunal stated that the Cayuga Nation was "dependent upon Great Britain or later upon Canada, as the New York Cayugas were dependent on and wards of New York".<sup>366</sup>

### **3.2.4 SUMMARY**

The purpose of analyzing the American and Canadian domestic law was to provide a broad overview at how limited and narrow the legal system was and still is in defining the relationships between the colonizer nations and O:gwe ho:we nations. International law followed the same precedents of domestic law when it came to making decisions regarding O:gwe ho:we nations. All decisions were confined to the law of its country; those laws that were created after treaties were made with the Confederacy; those laws that interfered with the traditional laws of the Hodinohso:ni; those laws that tried to wipe out the traditional government of the Hodinohso:ni; those laws that have oppressed O:gweho:we nations; those laws that have assimilated and those laws that have tried to assimilate all O:gweho:we. Legal doctrines such as the doctrine of discovery, doctrine of plenary power, the doctrine of parliamentary supremacy and such terms as "domestic dependent nations" and "sui generis" were created to establish the colonizer's legitimacy to dominate O:gwe ho:we.<sup>367</sup> As Williams states:

The racist law which Columbus and other Europeans brought to the New World is still enforced and applied as law of the colonizer and colonized in the United States and in

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<sup>365</sup>*Supra*, note 357 at 176.

<sup>366</sup>*Ibid.* at 177.

<sup>367</sup>Williams, "Columbus' Legacy", *supra*, note 147 at 52-53



other European-derived settler states.<sup>368</sup>

These doctrines are derived from the "medieval crusading era legal tradition of Christian European cultural racism and discrimination against non-Christian"<sup>369</sup> and are still being applied within contemporary domestic law thus perpetuating cultural racism and discrimination against the O:gwe ho:we.

Eurocentric domestic law was used as a tool to gain power over O:gwe ho:we Nations. The historical evolution of colonialist rule was created through the enactment of various legislation, rules and process. The lack of legitimizing and ignoring the nation to nation relationship through the creation of treaties has created a relationship of distrust and has degraded the original treaty protocol that our Hodinohso:ni ancestors believed would benefit seven generations after them. Only those who are willing to acknowledge history and respect the promises that were made in the past will acknowledge the wrongs that have been done to O:gwe ho:we. Man-made laws created by the political and legal systems of Canada and the United States were referred to in the original treaty (Gus-weh-Ta) and in the Silver Covenant Chain. They were referred to as those laws that were to be kept in their ship. They were supposed to work along side<sup>370</sup> the laws and customs of Hodinohso:ni. This, however, has not been the case.

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<sup>368</sup>*Ibid.* at 52.

<sup>369</sup>*Ibid.* at 67.

<sup>370</sup>The details of the Gus-Weh-Ta (Two Row Wampum Treaty Belt) was provided in Chapter 1 which represented separate but equal coexistence between the Hodinohso:ni and the colonizing nations. This treaty symbolized the fact that each nation had its own laws, customs and way of living and that neither nation will interfere with each other. This also meant that both nations would "travel the river together, side by side, but in our own boat."

### **3.3 HOW EUROCENTRIC DIFFUSIONISM HAS AFFECTED O:GWE HO:WE HYA**

The proud Hodinohso:ni: strongly believe and abide by their own traditional laws, values and principles and live by them. The Hodinohso:ni: have been able to adapt their lifestyle to their surroundings based on their respect for all living things and were able to survive any hardships that came by based on their spiritual and ceremonial teachings. As a result of colonization, Hodinohso:ni: had to adapt their lifestyle around European domination and attitudes of superiority. O:gwe ho:wen hya still strongly exists within Hodinohso:ni: territory despite blatant efforts of assimilationists<sup>371</sup> to dispose of their traditional way of life. There are events happening within current Hodinohso:ni: communities wherein they are told that they are actually "living within a prophecy"<sup>372</sup>. As a result of living within this prophecy, there is current turmoil in Hodinohso:ni: communities where Hodinohso:ni: have become confused, angry, hurt and frustrated. Because of the disrespect for and the non-recognition of O:gwe ho:wen hya, generations of Hodinohso:ni: within each community have become imbalanced and/or dysfunctional<sup>373</sup>. Every individual, family/clan, nation and community has been affected by

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<sup>371</sup> Assimilationists are the past colonizers and the current legislators and man-made law-makers who have and still are desperately assimilating and acculturating Hodinohso:ni: into the "mainstream" society.

<sup>372</sup> Gaiwiyo ("Good Words" or Code of Handsome Lake) provided many prophecies. It is beyond the scope of this thesis to detail all prophecies that Handsome Lake had recited to the Hodinohso:ni. However, some of the prophecies that were predicted in the late 1700s include:

- 1) The invention of a vehicle (an object with wheels with no horse pulling it), which will take many lives;
- 2) Many unexplained deaths of elders and children;
- 3) The coming of the early missionaries to implement Christian religion and education;
- 4) Pollution and extinction of animals;
- 5) A place where our people go if they disobey the white man's laws (jail)

For more information regarding these prophecies and other predictions, see Chief Jacob Thomas, Teachings from the Longhouse (Stoddart Publishing Co. Ltd.: Toronto) 1994 [hereinafter referred to as Teachings from the Longhouse].

<sup>373</sup> Interview with Norma General and Winnie Thomas, Awehoade Communications, Six Nations of the Grand River Territory, November 10, 1998.

colonization. The cause of this imbalance has been the generational effects of Eurocentric diffusionism. Discussed further in this section are issues regarding the effects of diffusionism on the Hodinohso:ni: and the current difficulties and issues being dealt with as a result.

### **3.3.1 Effects of the Warring between European Colonists**

During the time when European colonists were "discovering" new lands, warring between European nations was the ultimate determining and deciding factor upon who should be the owners and titleholders of that land. O:gwé ho:we became the pawns used in the Europeans' game in determining who owns what land. First, there were the French, who ultimately used the Wyandot/Hodinohso:ni: differences to their own advantage.<sup>374</sup> The Hodinohso:ni: were caught in the middle of a war between the French and British and were also caught in the middle of the war between the British and the United States. Hodinohso:ni: were following the principles of the Great Law of Peace and then all of a sudden were warring with those who appeared out of the oceans and waters - those historic "explorers" who travelled along the rivers and lakes which were later named after them.<sup>375</sup> The effects of wars on the Hodinosohni devastated the population. "The Senecas, Mohawks, Onondagas, and Oneidas had all seen their towns and crops destroyed by invading armies, and all five nations had been greatly weakened by losses to captivity, death in combat, famine, and disease."<sup>376</sup>

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<sup>374</sup>Richter, *Ordeal*, *supra*, note 154 at 105.

<sup>375</sup>Samuel de Champlain, for example, travelled along the St. Lawrence Seaway, warred with the Mohawks and created Lake Champlain. As well, Henry Hudson, who sailed under the flag of the Netherlands, led his crew along a river now called "Hudson River" near present-day Albany.

Richter, *Ordeal*. *Ibid.* at 51.

<sup>376</sup>*Ibid.* See also Anaya, *Indigenous Peoples*, *supra*, note 343 at 3.

During the time of warring, divisions were being created between Hodinohso:ni: who were unable to agree on their participation or alliances in these wars. They took part on either the side of the British, French, American or they remained neutral; therefore, this resulted in geographical divisions of the Hodinohso:ni: and the political fire of the Hodinohso:ni: Confederacy was temporarily diffused. The strength of the spiritual fire did not burn out as the political fire was rekindled again once the American Revolution was over. The principles of the Great Law of Peace were renewed and the prophecies of Handsome Lake were recited to the people. Oren Lyons further explains this era as follows:

Although this was a dark hour in Hodinohso:ni: history, people who argue that the Confederacy ceased to exist fail to understand the non-coercive nature of the Confederacy vis-a-vis its members and the fact that disruption is not the equivalent of cessation. (No one for example, seems to seriously argue that the United States ceased to exist during or because of the Civil War).<sup>377</sup>

### **3.3.2 Effects of Government Control**

The relationship that was created between European colonizers and the Hodinohso:ni: has not been forgotten by those Hodinohso:ni: descendants who are still living, who are still speaking our languages and who have not forgotten our O:gwe ho:wen hya. Most Hodinohso:ni: are still angry today because their ancestors trusted European colonizers. They look at white people as being descendants of these European colonizers because, as a result of oral tradition, they have not forgotten that they are descendants of those original Hodinohso:ni: Hodiyanehso who created these relationships. This relationship was symbolized within the Two Row Wampum Belt and the Covenant Chain Treaty Belt and is still within the minds and hearts of all Hodinohso:ni: today. The Two Row Wampum Treaty made with Great Britain (The Queen)

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<sup>377</sup>*Ibid.*

and the United States was the basis upon which we (Hodinohso:ni and European colonizers) were supposed to live together on North American land. It provided the process and guidelines within which we were to relate to one another. Great Britain cut its ties with the Hodinohso:ni and gave its responsibilities to Canada. Canada purportedly accepted that responsibility through its Constitution Act; however, there has never been any recognition by the Canadian Government of the terms of the Two Row Wampum or the Silver Covenant Chain, both of which the British were party to. The Canadian Parliament has never taken responsibility for the process and guidelines set out in either of the two Wampum Treaty Belts.

Eurocentric thought, including colonial attitudes, was institutionalized within Canadian and American governments and laws. As a result, this type of thought was (and is) ingrained within contemporary legal discourse. Justice has been defined by a legal system wherein Eurocentric values and beliefs have been forced upon O:gweho:we and, in turn, their own definition of justice and law has been denied. O:gwe ho:we have never been involved in the process of these institutions not only because they were being discriminated against and it did not matter what type of stem existed prior to the integration of them, but because they were forced to abide by and learn Eurocentric laws, values and beliefs. This went totally against the agreement made within the Two Row Wampum Treaty Belt and the Covenant Chain.

Part of the legal discourse that was used in Canada was the creation of the Indian Act, which provided no recognition of the existence of an original treaty relationship. The Indian Act has caused the greatest amount of conflict, division and confusion amongst all O:gwe ho:we. They were divided by colonial man-made definitions and were put into categories. In order to be recognized as an "Indian", one must have status. According to the Act, the terms of status

were based on whether Indians were part of a band and were on a reserve. The term "Indian" meant any male person of Indian blood belonging to a particular band, any child of that person and any woman who was married to such male. The Indian agent (Superintendent of Indian Affairs) determined who would gain status. These terms alone have caused confusion amongst those who are "status Indians", those who are not and those who consider themselves traditional O:gwe ho:we.

The enforcement of the Indian Act on the Six Nations of the Grand River territory (the last reserve in Canada to be governed by an Indian Act government) caused an enormous amount of distrust among the Hodinohso:ni:. In October, 1924, the Canadian government enforced the Indian Act provisions upon the traditional Hodinohso:ni: Confederacy Council based on an ill-informed government report<sup>378</sup> prepared by Lieutenant Colonel Andrew Thompson (who was hired to investigate the Hodinohso:ni: Confederacy Council, and its policies and procedures). As a result of this report, the R.C.M.P. attended at the Hodinohso:ni: Council House and literally threw out those who were in attendance, specifically the Hodiyanehso and the clanmothers. Those who refused to leave were arrested. It was announced by the R.C.M.P. to the Hodinohso:ni: Council and its traditional members that an elected type of government was in power and that this Indian Act system of government would be the only legally recognized council according to the Parliament of Canada.

In 1985, the Indian Act was amended as a result of a Supreme Court of Canada<sup>379</sup> case

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<sup>378</sup>Canada. Report Prepared by Colonial Andrew Thompson [documents received from Hodinohso:ni Confederacy at Six Nations of the Grand River Territory].

<sup>379</sup>*Supra*, notes 327 and 328.

to allow women, who had lost their status by marrying non-Indian men, to apply to gain their status. It allowed those people to apply for status whose parents had enfranchised their children's status without their knowledge or consent. The enactment of Bill C-31 created further problems and divisions amongst community members. Reserve lands were not very spacious and there were people who were entitled to "status" membership and entitled to own reserve land. This has caused tension between those members who grew up and lived on the reserve and those who have just gained (or regained) their status. Those who did grow up on the reserve have become very protective of their land. There is a lashing out against those who have been termed "Bill C-31s".<sup>380</sup>

As a result of these colonialist laws being unilaterally enacted and imposed, it has caused an enormous amount of confusion amongst Hodinohso:ni. They are unsure and dissatisfied as to how these laws relate to Hodinohso:ni values and beliefs. They are unsure as to whether to continue using these laws and court system because they have never provided any type of relief for our people. It is a system that goes against Hodinohso:ni values and beliefs. Courts and governments are demanded to provide answers about land claims and vast amounts of documentation are filed into courts to determine if we rightfully own our land. Those who still believe that the courts are the correct institution to obtain these answers are in for a long, expensive journey to nowhere.<sup>381</sup> They will obtain no answers and will be angered because they will find out that justice is defined by colonialist thought.

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<sup>380</sup> See Monture-Angus, Journeving Forward, *supra*, note 4.

<sup>381</sup> *Ibid.*

### 3.3.4 Effects on Traditional Women

According to one basic principle within the Great Law of Peace, respected and traditional Hodinohso:ni: women were given the primary responsibility of choosing their leader through their clan system. Women were given that responsibility because they were capable of thinking through issues and problems instinctively and carefully. In choosing a leader, they were able to watch a young boy grow up and were able to determine if that young boy had the qualities and the capabilities to be a leader. Women were respected for their spiritual and mental strength and men were respected for their spiritual and physical strength. Women were given the responsibility in bearing children and were given the strength and power to carry that responsibility through. Men had always respected that spiritual and mental strength and women respected the men's physical strength. There was always a balance between men and women as each had their own responsibilities as a man and as a woman.

In a report that was prepared by the Canadian Government to investigate the Hodinohso:ni: Confederacy, it commented on women's roles within the Grand Council as follows:

"...a comparatively small number of old women have the selection of those who are entrusted with the transaction of business of the Six Nations Indians, while the vast majority have nothing whatsoever to say in the choice of their public servants."<sup>382</sup>

It was obvious that the author of this report either ignored or refused to understand the traditional form of government. The roles of our traditional women and clanmothers (those "comparatively small number of old women") were to make decisions that were in the best

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<sup>382</sup>*Supra*, note 378.



interests of their clan, and to reiterate these decisions to their respective Hoyaneh. All Hodiyanehso would then meet in Grand Council and decide on the best solution for their nation. The vast majority of people/clans trusted the solutions being made on their behalf.

This was the traditional role of the clanmothers and chiefs. However, as a result of the influence of European diffusionism (belief in the fact that we needed to think and act like them) and the lack of trust between Hodino:ni: members, a small number of "converted"<sup>383</sup> men took the government report to heart and started to believe in the Eurocentric-type of elected government; that voting for a chief was the most democratic form of selecting a leader. Traditional women's roles were thought of as old-fashioned and became disrespected. The original teachings of the Great Law of Peace that dealt with the position of women were hidden and the responsibilities of the women were overtaken by those men who had lost those teachings.

Once the Indian Act was passed, the responsibilities of our men and women changed drastically. As a result of being confined to a reserve, our traditional men and women lost their responsibilities in using their strengths, either physically or mentally. Women were thought of as property by our O:gwe ho:we men who became acculturated into believing that they had to think like white men. The entitlement to status under the Indian Act itself enabled that to happen, wherein the male would gain status and his wife and his children would gain his status. This paternalistic and patriarchal Act has totally debunked and has flawed the traditional

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<sup>383</sup>The use of the word "converted" used in this context means that there were those Hodino:ni: men at that time whose minds were either corrupted from being in the war or were brainwashed into believing in Christianity as a result of the affects of the "mushhole" (the residential school). They believed that women's places were not in deciding leadership, but that they should just keep quiet and take their places in the kitchen.

matriarchal Hodinohso:ni: clan system.

### **3.3.4 Effects on Traditional Government**

The traditional form of government, its political decisions and traditional ceremonies are still performed by the women and men within the Hodinohso:ni: who exist on both sides of an international border. As a result of the enforcement of the elected type of government provided for in the Indian Act, the division that was created between the Confederacy Chiefs and those men who no longer trusted them became deeper and angrier. From the time of the upheaval of the Confederacy Council, there was an even greater animosity and anger between the Hodinohso:ni followers and the elected Chief and councilors.

At the Six Nations Grand River Territory, anger and distrust still exists between the Hodinohso:ni: Grand Council, its followers and those who abide by the Indian Act system. All of this discontentment between the two councils has resulted in legal proceedings that were commenced by the Confederacy Chiefs in Logan v. Attorney-General of Canada<sup>384</sup> in 1959 and by the elected Council against the Confederacy Chiefs in Isaac et al v. Davey et al in 1973.<sup>385</sup> This case was appealed to the Supreme Court of Canada in 1977 and this court held that the elected Council was the legal governing body of Six Nations of the Grand River territory.<sup>386</sup> The Confederacy has been fighting a lot of legal battles since the time of colonization. The Hodinohso:ni: Council at Grand River has desperately holding onto their traditional form of government.

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<sup>384</sup>*Supra*, note 306.

<sup>385</sup>*Supra*, note 307.

<sup>386</sup>*Supra*, note 317.

### **3.3.5 Effects of Missionaries and Residential Schools**

There are numerous detrimental effects as a result of missionaries' goals to Christianize and as a result of Hodinohso:ni: children attending residential schools. All of them were either physically, mentally, spiritually, verbally and/or sexually abused while residing in this so-called educational institution. The detrimental effects of abuse in residential school impacted upon many lives of O:gwe ho:we children causing a loss of culture, loss of family bonding, loss of life skills, loss of parenting skills, loss of self-respect and a loss of respect for others. It has caused the most social and cultural imbalances of O:gwe ho:we. It has been linked to problems of alcoholism, drug abuse, powerlessness, dependency, low self-esteem, suicides, prostitution, gambling, homelessness, sexual abuse and violence.

Before setting foot into residential school, most of the children were fluent in their own language and were well aware of their traditional ceremonies. Missionaries and those who worked within the residential schools brainwashed those children into believing that their Hodinohso:ni: way of life was the work of the devil. They were brainwashed into believing that they were not worthy of living if they spoke their languages, knew their ceremonies or respected themselves for being O:gwe ho:we. Many Hodinohso:ni: were converted to Christianity - a belief that was and is foreign to our own traditional belief system. They were brainwashed into believing Christianity was their only saviour and were brainwashed into believing that they must become civilized into the white world.

### **3.4 CONCLUSION**

Since the existence of the Eurocentric-type legal systems, O:gwé ho:we have been very critical of the "white man's science"<sup>387</sup>. The courts, as well as governments, in both Canada and the United States do not acknowledge or recognize any of the terms as set out in the traditional wampum treaties made with the Hodinohso:ni:. According to the laws of Canada and the United States, the Hodinohso:ni: is not a sovereign nation. The Hodinohso:ni has always considered itself to be independent and separate from Canada and the United States.

Interpretation of history by European colonizers and the Hodinohso:ni: differs enormously. Paul A. Wallace states within his interpretation of the Tree of Peace and the White Roots of Peace that the French "continued to hack at the roots of the Great Tree".<sup>388</sup> Not only the French but all European colonists have cut at the roots. Those roots that were supposed to spread to all nations were cut or hacked when the colonizers landed on this continent. Therefore, the Message of Peace and Love was unable to get further than those nations who have been part of the Six Nations: such nations as the Delaware, the Tutelos, the Nanticokes and the Wyandots. All of these nations accepted the principles of the Great Law and still exist and live as part of the Hodinohso:ni:.

Colonialism has impacted upon our people quite drastically. Although at this point in time, we cannot specify an exact event in history that has caused our people to become so imbalanced, we do know that the circle of life that surrounds our people has been influenced by

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<sup>387</sup>Robert A. Williams, Jr. "Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Colour" (1987-88) 5 *Law & Inequality* 103 at 110. This is how Williams described law.

<sup>388</sup>Paul A. W. Wallace, White Roots of Peace (Philadelphia: University of Pennsylvania Press, 1946) at 58.

diffusionism. As a result of the enforcement of Eurocentric laws upon O:gwe ho:we, it has violated the terms and agreements made in the Guswentah (Two Row Wampum) in which Hodinohso:ni: definitions of justice has been denied.

### CHAPTER 3

#### INTERNATIONAL LAW

This chapter provides interpretations and analyses of sources, concepts and principles of contemporary international law and analyzes the Hodinohso:ni position in light of those principles. Evidence will be presented to demonstrate the Hodinohso:ni's consistent historic claims to sovereignty and statehood. However, international law has presented barriers and limitations for any Indigenous Peoples to make such claims of sovereignty and self-determination. These barriers and limitations will be refuted based on the fact that the underlying principles of international law in relation to Indigenous Peoples are founded on a racist and discriminating doctrine of discovery<sup>389</sup>.

An example of the difficulties and barriers that exist for Indigenous peoples in international law is provided in the following story of Deskaheh, a representative Hoyaneh of the Hodinohso:ni Confederacy who sacrificed his life in presenting the sovereign status of the Hodinohso:ni. From the time of contact, consistent attempts were made by the Hodinohso:ni<sup>390</sup> to representatives of Great Britain, Canada and the United States that they were governed by their own laws and customs and that they were a sovereign nation. As a result of Canada's position that the Confederacy was not independent and its people were "subjects of the Crown", the Hodinohso:ni took this matter to the League of Nations believing that they had totally exhausted all recourse to domestic law in Canada and the United States.

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<sup>389</sup>This was discussed at length in Chapter 2; see also Sharon Helen Venne, Our Elders Understand our Rights: Evolving International Law Regarding Indigenous Peoples (Theytus Book Ltd.: Penticton, B.C.) 1998 [hereinafter referred to as "Venne, Our Elders"]; see also Williams, "Columbus's Legacy", *supra*, note 147.

<sup>390</sup>See Chapter 1, *supra*, at 43 - 52.

#### **4.1 Deskaheh and the League of Nations**

On December 7, 1922, the Hodinohso:ni Nation through its representative speaker, Deskaheh (Levi General), forwarded a petition<sup>391</sup> to the Government of the Netherlands and requested the Dutch government to bring the matter of the Hodinohso:ni's claim to sovereignty to the attention of the Council of the League of Nations.<sup>392</sup> He strategically went to the Government of the Netherlands because historically, they were the first colonizers to enter into treaties with the Hodinohso:ni Nation.<sup>393</sup> As noted in the appeal to the League of Nations, the historic relationship with the Dutch was set out as follows:

The first contact of the Six Nation peoples with colonizers from Europe was in the case of the Dutch, who in the early part of the seventeenth century established their frontier settlement on the banks of the Hudson as immediate neighbours of the Mohawks. The Dutch officials established friendly relations evidenced by treaties, first with the Mohawks, and later, with the Six Nations, whereby the status of the latter as independent self-governing peoples was formally recognised, and by the terms of the treaties the Six Nations became allies of the Dutch in the case of hostilities. These treaties with the Dutch were very informal, and if evidenced at the time in writing, the documents are not accessible in America at this time. Dutch official records, however, of the transactions nevertheless exist and have been copied in Holland and published by the State of New York in English about 1858, under the title of Documents Relating to the Colonial History of the State of New York, and these records we set forth as Exhibit A.2, annexed hereto.

In the petition to the Netherland Government, the Confederacy reminded its original

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<sup>391</sup>Petition to the Government of Her Majesty The Queen of the Netherlands from The Six Nations of the Grand River Nation, signed by Deskaheh dated December 7, 1922 [hereinafter referred to as The Petition].

<sup>392</sup>Official Journal of the League of Nations, August, 1923 [materials forwarded to the author from the Kahnawake Cultural Centre]

Because the Hodinohso:ni was aware that they were not considered a "state" by the League of Nations, they followed the rules in the Covenant of the League of Nations wherein a member state can bring a matter before the Council of the League of Nations at its request.

<sup>393</sup>Two Row Wampum Treaty - see Fig. 5, Chapter 1.

treaty partner that it was “an organized and self-governing people and the same people, who, on the coming of the Dutch to the Valley of the Hudson in North America, entered into treaties with them and faithfully observed [their] promises of friendship.”<sup>394</sup> The Dutch Minister forwarded the petition to Sir Eric Drummond, Secretary General of the League of Nations. The Secretary General then forwarded the petition to the Canadian government and requested its response, as The League was in the process of circulating the documents to the Members of the Council.<sup>395</sup> The Canadian government responded by stating that the League of Nations had no authority to bring the matter before the Council of the League and it protested against the Netherlands’ Government’s action “in bringing a controversy between the Canadian Government and individuals owing it allegiance, which is entirely of domestic concern, to the notice of the League of Nations, such action it believes finding no warrant in any provision of the Covenant, and being further calculated to embarrass this Government in the due administration of its domestic laws.”<sup>396</sup>

The League responded to the Government of the Netherlands and asked whether they wished to proceed to formally present the document to the Council or whether they should distribute the petition to the then ten Members of Council “for information” purposes.<sup>397</sup> The acting Secretary General stated that there would be “no reaction” by the Council and that it

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<sup>394</sup>The Petition, *supra*, note 391 at 1.

<sup>395</sup>Letter to the Minister of External Affairs, Ottawa from the Secretary General of the League of Nations dated May 3, 1923 [material received from the Kahnawake Cultural Centre].

<sup>396</sup>Canadian government’s response to the Petition. [material received from the Kahnawake Cultural Centre]

<sup>397</sup>Letter to the Government of the Netherlands from the League of Nations dated July 31, 1923 [material received from the Kahnawake Cultural Centre].



would be “most unlikely that any Member of the Council would ask that the matter be put on the agenda”.<sup>398</sup> The Netherlands Government responded to the latter recommendation and wanted to “avoid every additional publicity”.<sup>399</sup> Thus all correspondence was communicated to the Members of the Council for information on August 7th, 1923.

Unaware that the members of the Council were made aware of the Hodinohso:ni’s petition, on August 6th, 1923, Deskaheh made a formal application to the League of Nations, entitled “The Redman’s Appeal for Justice” and requested that the matter be heard at the September League of Nations Meeting. The Six Nations based their appeal on Article 17 of the *Covenant of the League of Nations*<sup>400</sup>, as they were willing to ‘accept the obligations of membership in the League’ for the purposes of their dispute with the Canadian Government”.<sup>401</sup>

It was noted that:

The constituent members of the State of the Six Nations of the Iroquois, that is to say, the Mohawk, the Oneida, the Onondaga, the Cayuga, the Seneca and the Tuscarora, now are, and have been for many centuries, organized and self-governing peoples, respectively, within domains of their own, and united in the oldest League of Nations, the League of the Iroquois, for the maintenance of mutual peace; and that status has been recognized by Great Britain, France, and The Netherlands, being European States which established colonies in North America; by the States successor to the British Colonies therein, being the United States of America and by the Dominion of Canada, with whom the Six Nations have in turn treated, they being justly entitled to the same recognition

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<sup>398</sup>*Ibid.*

<sup>399</sup>Telegram to the League of Nations from the Government of the Netherlands dated August 4, 1923 [material received from the Kahnawake Cultural Centre].

<sup>400</sup>22 Consolidated Treaty Series 195, 28 June 1919.

<sup>401</sup>Letter to Sir James Eric Drummond, Secretary General of The League of Nations, Geneva from the Information Section of The League of Nations dated August 8, 1923 [material received from the Kahnawake Cultural Centre].

by all other people.<sup>402</sup>

The League responded that they did not have the authority to place the matter before the Council except at the request of the member of the League.<sup>403</sup> According to Article 11 of the *Covenant of the League of Nations*<sup>404</sup>, a member state could bring any matter of international importance to the attention and intervention of the League. Thus, Deskaheh was refused the opportunity to present the matter to the September League of Nations meeting.

While in Geneva, Deskaheh managed to gain the assistance of four other member states, namely, Ireland, Panama, Persia and Estonia. At the September Assembly Meeting, the delegates of these four states requested that the President present before the Assembly the complaint of the Six Nations against the Government of Canada. These delegates also suggested that the League Council request an advisory opinion from the Permanent Court of International Justice “as to whether the petition was receivable under Article 17 of the Covenant, which dealt with disputes between ‘a Member of the League and a State which is not a member of the

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<sup>402</sup> Application of the Six Nations of the Iroquois to the Secretary General of the League of Nations dated August 6, 1923 [material received from the Kahnawake Cultural Centre].

<sup>403</sup> Letter to Deskaheh from the League of Nations, Geneva, dated August 14, 1923 [material received from the Kahnawake Cultural Centre].

<sup>404</sup> *Covenant of the League of Nations*, art. 11:

1. Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations. In case any such emergency should arise, the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the council.
2. It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends.

League”<sup>405</sup> The President of the Assembly, after consulting with the General Committee, declined their request.<sup>406</sup>

On December 13th, Prince Arfu-ed-Dowlah, the chief Persian Delegate at the Fourth Assembly sent a telegram to the President of the Council requesting that the statement signed by the four Delegates at the Assembly should be referred to the Council.<sup>407</sup> The President of the Council, after communicating the telegram to the Members of the Council, advised the Persian government that they could not deal with the matter until notice was given to the Canadian government and that “it was not practicable to act on a telegram”.<sup>408</sup> The President did advise the Persian government that if they requested the matter be put on the agenda for the March Meeting of the Council, they would have “no alternative but to conform with its request”.<sup>409</sup>

On December 27, 1923, the Canadian government made a formal response to the petition of the Six Nations, “The Redman’s Appeal for Justice”. They responded by stating that the Six Nations was not a state within the meaning of Article 17 of the *Covenant of the League of Nations*, but were subjects of the British Crown. The Canadian government was quite indignant with the fact that the Six Nations were “embarrassing” them. In fact, they were quite concerned that this matter was gaining the attention of the world, but were concerned, as well, about who

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<sup>405</sup>Richard Veatch, *Canada and the League of Nations* (Toronto: University of Toronto Press, 1975) at 95 [hereinafter referred to as Veatch, *Canada*].

<sup>406</sup>Letter to the Prime Minister Mackenzie King from the League of Nations dated December 28, 1923 [material received from Kahnawake Cultural Centre].

<sup>407</sup>*Ibid.*

<sup>408</sup>*Ibid.*

<sup>409</sup>*Ibid.*

was making all the publicity. In the House of Commons Debates, the following reiterates the Canadian government's concern:

MR. MEIGHEN: Have the Indians got a status in the league yet?

MR. STEWART (Argenteuil): Not that I have heard.

MR. MEIGHEN: Who is over there, - this man Long?

MR. STEWART (Argenteuil): No Deskahe[h].

MR. MEIGHEN: That is worse.

MR. STEWART (Argenteuil): He is known generally throughout the country around Brantford and he was in London when last I heard of him. Unfortunately this man has created a considerable impression, particularly upon the representatives of the smaller nations. It is amazing, nevertheless, it is a fact that he did have some influence and has given trouble. He is now in England stirring up all the discontent he possibly can.<sup>410</sup>

The Persian government affirmed their request by letter on January 8th, 1924 and requested that the matter be dealt with at the March Meeting.<sup>411</sup> They further stated that "the sole purpose of which was to give a small nation a chance of at least being heard, since it has appealed in all good faith to the League of Nations as the highest authority on international justice".<sup>412</sup>

Canada and Britain over the next few months made insistent attempts with the Panamanian, Persian and Estonian delegates to advise them that they were interfering.<sup>413</sup>

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<sup>410</sup>House of Commons Debates (Canada) 3rd Session 14th Parliament, Vol. IV, P. 3311-3319, June 17, 1924.

<sup>411</sup>Letter to the League of Nations from The First Persian Delegate, Arfa-ad-dowlehn dated January 8, 1924 [material received from the Kahnawake Cultural Centre].

<sup>412</sup>*Ibid.*

<sup>413</sup>Veatch, Canada *supra*, note 405 at 99.

Canada's response to the Six Nations dispute was also distributed to all members of the Council. The matter was put on the March agenda, which was distributed to the Members of the Council. However, the matter was not heard. Insistent that the issues be heard, Deskaheh arranged his own presentation to those who would listen to him.<sup>414</sup> A huge audience was present although there were no representatives of the League of Nations. Although the League of Nations did not listen, Deskaheh's presence in Geneva did not go unnoticed. The Mayor of Geneva in 1977 remembered him:

...In 1924, I remember a meeting that was so crowded that people spilled out onto the streets. I remember a speaker, a very dignified gentleman who was an American Indian and he talked to me. Amongst all the people that were there, he took the time to talk to a ten-year-old boy - me.<sup>415</sup>

Deskaheh returned to the United States before the end of 1924, "a disillusioned and discouraged man".<sup>416</sup> He was exiled from Canada and from his home at the Six Nations of the Grand River Territory because he was forbidden to cross the Canadian border. However, Deskaheh's people were loyal to him and did not think of him as a failure.<sup>417</sup> On June 27, 1925, Deskaheh passed away<sup>418</sup>, but the Hodinohso:ni remember his plight on behalf of the whole

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<sup>414</sup>Deskaheh, *supra*, note 142 at 11.

<sup>415</sup>Remarks by Oren Lyons, Faithkeeper of the Onondaga Nation, American Society of International Law. Proceedings of the 77th Annual Meeting, 1993 at 195.

Proof of the Hodinohso:ni's assertion to sovereignty and independent international identity is the consistent use of the Hodinohso:ni passports, which are carried by most Hodinohso:ni when they are crossing contemporary international borders.

<sup>416</sup>Deskaheh, *supra*, note 142 at 12-13.

<sup>417</sup>*Ibid.*

<sup>418</sup>Deskaheh's family from Six Nations was refused permission to cross the border at Niagara Falls. *Ibid.* at 20.

Confederacy to the League of Nations.<sup>419</sup>

## **4.2 Sources of International Law**

There are probably few fields of international law where confusion and clarity reign more supreme than that of the sources.<sup>420</sup>

This is a fact that must be taken into consideration when reviewing this discussion regarding the sources of international law. First of all, sources of international law have been defined as being either formal or material sources<sup>421</sup> and have been codified in the Statute of the International Court of Justice<sup>422</sup>. Article 38 of the Statute provides that:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
  - (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
  - (b) international custom, as evidence of a general practice accepted as law;
  - (c) the general principles of law recognized by civilized nations;
  - (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for

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<sup>419</sup>He is also remembered by many international legal writers. See Douglas Sanders, "Remembering Deskaheh: Indigenous Peoples and International Law", The Canadian Human Rights Foundation, 485; Veatch, *Canada supra*, note 405; Venne, *Our Elders, supra*, note 389 at 30; see also Johnston, "Self-Determination", *supra*, note 92 at 23.

<sup>420</sup>G.J.H. van Hoof, *Rethinking the Sources of International Law* (Deventer/Netherlands: Kluwer Law and Taxation Publishers, 1983) at 13, 57-60.

<sup>421</sup>Clive Parry, *The Sources and Evidence of International Law* (Manchester University Press U.S.A: Oceana Publications Inc.) 1965 at 1 [hereinafter referred to as Parry, *The Sources and Evidence*]; Wallace, *International Law, supra*, note 338 at 9; See also, D.J. Harris, *Cases and Materials on International Law* at 23-25; See also Ian Brownlie, *Principles of International Law*, (4th ed.) (Oxford University Press: New York) 1990 at 1 [hereinafter Brownlie, *Principles (4th ed.)*]; See also Venne, *Our Elders, supra*, note 389 at fn. 47.

<sup>422</sup>*Statute of the International Court of Justice*, 59 Statute 1031, Treaty Series No. 993, 24 October 1945.

the determination of rules of law<sup>423</sup>.

Some authors argue that treaties, custom and general principles of law are the “sources” of international law, while judicial opinions and writings of the most highly qualified publicists of the various nations are “evidence” of international law.<sup>424</sup> International law is made primarily in one of two ways based on consent<sup>425</sup>: through the practice of states (customary international law) and through agreements entered into by states (treaties).<sup>426</sup>

As noted in the Article 38(1) of the Statute of the International Court, “the general principles of law recognized by civilized nations” is a source of international law<sup>427</sup>. As with any other source of international law, ‘the general principles of law’ are not clearly defined. Shaw analyzes the varying opinions of writers on this complex subject:

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<sup>423</sup>*Ibid.*, Art. 38.

<sup>424</sup>Louis Henkin, International Law: Politics and Values (Dordrecht, The Netherlands: Martinus Nijhoff Publishers, 1995) at 27 [hereinafter referred to as International Law]; see also Venne, Our Elders, *supra*, note 389 at 12.

Brownlie states:

The formal sources “are those legal procedures and methods for the creation of rules of general application which are legally binding on the addressees. The material sources provide evidence of the existence of rules which, when proved, have the status of legally binding rules of general application.”

Brownlie, Principles (4th ed.), *supra*, note 421.

<sup>425</sup>“State consent is the foundation of international law.”

Henkin, International Law, *ibid.* at 27.

<sup>426</sup>Wallace, International Law, *supra*, note 338 at 3.

<sup>427</sup>It was noted by international writer Rebecca Wallace that the term “civilized nations” was dropped “for obvious reasons”. “Its colonial connotations are unacceptable in today’s international community”.

Wallace, International Law, *ibid.* at 22.

Although the term may have been dropped, the actions still occur, as the courts only recognized “civilized nations” as being “states” as defined in contemporary Eurocentric definitions of international law.

Some writers regard it as an affirmation of Natural Law concepts, which are deemed to underlie the system of international law and constitute the method for testing the validity of the positive (i.e. man-made) rules. Other writers, particularly positivists, treat it as a subheading under treaty and customary law and incapable of adding anything new to international law unless it reflects the consent of the states...Between these two approaches, most writers are prepared to accept that the general principles do constitute a separate source of law but of fairly limited scope...<sup>428</sup>

It must be noted here, however, that Arbitral Tribunals have applied general principles of law of municipal systems (or domestic law) when the issues before them concerned Indigenous peoples. In the Cayuga Indians Case<sup>429</sup>, the Arbitral Tribunal followed the American ruling found in Cherokee Nation v. Georgia<sup>430</sup> wherein the Cayuga Nation was said to be a “domestic dependent nation”.

The sources<sup>431</sup> to be focussed on in this thesis are customary international law

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<sup>428</sup>Malcolm N. Shaw, International Law, Fourth Edition, (Cambridge University Press: Cambridge), 1997 at 78 [hereinafter referred to as Shaw, International Law].

<sup>429</sup>Cavuga Indians (Great Britain) v. United States (1926), Int. Arb. Awards, Vol. VI 173.

<sup>430</sup>30 U.S. (5 Pet.) 1 (1831).

<sup>431</sup>Other sources of international law are briefly defined as follows but are not the focus of this thesis:

- a) Judicial decisions, as noted in Article 38(1)(d) of the Statute of the International Court of Justice, is “subject to the provisions of Article 59”. Article 59 states that the decision of the Court has no binding force except as between the parties and in respect of that particular case. Although the International Court is not bound to follow precedent, the Court will follow previous decisions and will take them into account when applying law in certain cases.

Ian Brownlie, Principles of Public International Law (5th ed.) (Oxford University Press: New York) 1988 at 19-24 [hereinafter referred to as Brownlie, Principles (5th ed.)]; See also Wallace, International Law, supra, note 338 at 25; Shaw, International Law, supra, note 428 at 86.

- b) Equity is not a source of law in a strict sense, but “plays a subsidiary role in supplementing existing rules.” (Brownlie, Principles (5th ed.), *ibid.* at 25; Wallace, International Law, ibid. at 23; Shaw, International Law, ibid. at 82) The leading case in applying the principle that “equality is equity” is Diversion of Water from the River Meuse (1937) PCIJ, Ser. A/B, no. 70, in which the court stated:

“The Court has not been expressly authorised by its Statute to apply equity as distinguished from law...Article 38 of the Statute expressly directs the application of ‘general principles of law recognised by civilised nations,’ and in more than one nation principles of equity have an



and treaty law. Other aspects to be discussed are sovereignty, including territorial sovereignty, statehood, treaties and self-determination.

#### 4.2.1 Customary International Law

In any primitive society certain rules of behaviour emerge and prescribe what is permitted and what is not. Such rules develop almost subconsciously within the group and are maintained by the members of the group by social pressures and with the aid of various other more tangible implements. They are not, at least in the early stages, written down or codified, and survive ultimately because of what can be called an aura of historical legitimacy. As the community develops it will modernise its code of

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established place in the legal system...It must be concluded, therefore, that under Article 38 of the Statute, if not independently of that Article, the Court has some freedom to consider principles of equity as part of the international law which it must apply (at 76-77).

- c) The International Law Commission was created by the General Assembly in 1947 "with the declared object of promoting the progressive development of international law and its codification). The Commission is involved in two major sources of law. It prepares drafts of important international conventions which are submitted to states for their feedback and an international conference could emerge. Out of these conferences, international conventions have been passed (eg. Law of the Sea in 1958, Diplomatic Relations in 1961, Consular Relations in 1963, Special Missions in 1969 and the Law of Treaties in 1969). It also issues reports and studies and has formulated other documents such as the Draft Declaration on Rights and Duties of States in 1949 and the Principles of International Law recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal in 1950. Other international organs who are involved in establishing sources of law are the United Nations Commission on International Trade Law, the United Nations Conference on Trade and Development, the Committee on the Principles of International Law, the International Labour Organization as well as the United Nations Educational, Scientific and Cultural Organization (UNESCO).

Shaw, International Law. *Ibid.* at 93 - 95.

- d) Article 53 of the Convention on the Law of Treaties (Vienna Convention) sets out the rule of *jus cogens*: A treaty is void, if at the time of its conclusion, it conflicts with the preemptory norm of general international law. For the purposes of the present Convention, a preemptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. The concept of *jus cogens* has been defined as being similar to the concept of public order or public policy in domestic legal orders. As well, only rules based on custom and treaties may form the foundation of *jus cogens* norms. This rule must also be accepted by all states to be a preemptory norm of general international law.

*Ibid.* at 97.

- e) Considerations of humanity appear in preambles to conventions, United Nations General Assembly resolutions, the United Nations Charter, and in diplomatic practices.

Brownlie, Principles (5th ed.), *supra*, note 431 at 12.

behaviour by the creation of legal machinery, such as courts and legislature. Custom, for this is how the original process can be described, remains and may also continue to evolve. It is regarded as an authentic expression of the needs and values of the community at any given time.<sup>432</sup>

Custom is one of the main sources of contemporary international law and is defined as “any practice or standard accepted into the law that is generally agreed on by states”.<sup>433</sup> There is great confusion and difficulty in trying to interpret the definition of “customary international law” because as noted by Henkin, “every ‘piece’ of customary law is different, develops in different circumstances, at a different rate of growth”.<sup>434</sup> There are also disagreements as to the value of customary international law.<sup>435</sup>

There are four elements of custom: 1) duration; 2) uniformity, consistency of practice; 3) generality of the practice; and 4) *opinio juris et necessitatis*<sup>436</sup>. As to whether or not the time element is a factor, the duration of a particular custom is not required provided that the consistency and generality of the practice of a state is proven<sup>437</sup> which will depend on the circumstances of each case.<sup>438</sup> There is no consistency regarding uniformity of the practice of

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<sup>432</sup>Shaw, *International Law*, *supra*, note 428 at 56-57.

<sup>433</sup>Venne, *Our Elders*, *supra*, note 389 at 12.

<sup>434</sup>Henkin, *International Law*, *supra*, note 424 at 30.

<sup>435</sup>Shaw, *International Law*, *supra*, note 428 at 57.

<sup>436</sup>Brownlie, *Principles (4th ed.)*, *supra*, note 421 at 5 - 9.

<sup>437</sup>*Ibid.* at 5.

<sup>438</sup>Shaw, *International Law*, *supra*, note 428 at 58.

custom.<sup>439</sup> The basic rule concerning uniformity and consistency was set out in the *Asylum*<sup>440</sup> case wherein the International Court of Justice declared that customary law “is in accordance with a constant and uniform usage practised by the States in question”.<sup>441</sup> With respect to the third element, generality of the practice, it is an element that “complements that of consistency”.<sup>442</sup> *Opinio juris* “is the requirement that nations must engage in the identified uniform and general practice out of a sense of legal obligation, as opposed to courtesy, fairness or morality”.<sup>443</sup> In order for a state to prove *opinio juris*, the following conditions must be met:

the acts concerned...must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it...The States concerned must therefore feel that they are conforming to what amounts to a legal obligation.<sup>444</sup>

In order to determine whether a particular customary practice exists for a state, an assessment of fact must be made in which the following must be reviewed:

diplomatic correspondence, policy statements, press releases, the opinions of official legal advisers, official manuals on legal questions, comments by governments on drafts produced by International Law Commission, state legislation, international and national judicial decisions, recitals of treaties and other international instruments, a pattern of treaties in the same form, the practice of international organs, resolutions relating to legal questions in the United Nations General Assembly.<sup>445</sup>

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<sup>439</sup>Brownlie, *Principles (4th ed.)*, *supra*, note 421 at 5.

<sup>440</sup>ICJ Reports (1950) at 266.

<sup>441</sup>*Ibid.* at 276-7; see also Brownlie, *Principles (4th ed.)*, *supra*, note 421;

<sup>442</sup>*Ibid.*

<sup>443</sup>North Sea Continental Shelf Cases, Federal Republic of Germany v. Denmark and v. Netherlands [1969] ICJ Reports 3 [hereinafter North Sea]

<sup>444</sup>*Ibid.* at 49.

<sup>445</sup>Brownlie, *Principles (4th ed.)*, *supra*, note 421 at 5.

In reviewing the complex set of international rules regarding custom, it becomes apparent that it outlines the responsibilities or customs of states and how they relate to each other. When the court determines whether a certain practice is customary international law, it will rely on the certain facts of the relationships between states. As well, there is no consistency within the rules of customary international law that can be specifically set out.

#### 4.2.2 Treaties

Another source of international law is treaty law. According to the contemporary rule of international law, “agreements” made between states and Indigenous peoples were not regarded as a treaties “in the international sense of the term; nor can it be said that such an agreement produces the international legal effects commonly produced by a treaty.”<sup>446</sup> This rule was found in the *Island of Palmas Case (Netherlands v. United States)*<sup>447</sup> which involved American and Dutch claims to the Island of Palmas. The United States’ government argued that their title derived from the “discovery” of the island by their predecessor, Spain. The Netherlands argued that their claim to the island was based on the treaties that they formed with

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<sup>446</sup>Lord McNair, The Law of Treaties, (London: Oxford University Press, 1961) at 52 [hereinafter referred to as McNair, The Law of Treaties].

This Eurocentric view of treaties made with Indigenous peoples, as noted by Special Rapporteur Miguel Alfonso Martinez, was grounded on three assumptions as follows:

- 1) indigenous peoples are not peoples according to the meaning of the term in international law;
- 2) treaties involving indigenous peoples are not treaties in the present conventional sense of the term; and
- 3) these legal instruments have simply been superseded by the realities of life as reflected in the domestic legislation of States.

Document E/CN.4/Sub.2/1999/20, Final report by Mr. Miguel Alfonso Martinez, Special Rapporteur, Study on Treaties, agreements and other constructive arrangements between States and indigenous populations, 22 June 1999 at para. 115 [hereinafter referred to as Martinez, “Final Report”].

<sup>447</sup>(1928) 2 UNRIAA 829.

the Native rulers. The Arbitration tribunal found that:

...as regards contract between a State...and native princes or chiefs of peoples not recognized as members of the community of nations, they are not, in the international law sense, treaties, or conventions capable of creating rights and obligations such as may, in international law, arise out of treaties.<sup>448</sup>

Lord McNair justified this Eurocentric view that a treaty of this character must not be regarded by British courts as an international treaty.<sup>449</sup>

The Hodinohso:ni Confederacy concluded political and treaty negotiations long before the creation of the colonizer states of Canada and the United States existed. The Hodinohso:ni Confederacy had already commenced international relationships with other Indigenous nations through agreements (treaties)<sup>450</sup> prior to colonization thus creating treaty relations backed by the force of law with other nations.<sup>451</sup> Once colonization began, the Confederacy then created further international relationships, now with European nations<sup>452</sup>, specifically through the protocol and symbolism of the Two Row Wampum and Covenant Chain.<sup>453</sup> These relationships

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<sup>448</sup>*Ibid.* at 858.

<sup>449</sup>McNair, The Law of Treaties, *supra*, note 446 at 54.

<sup>450</sup>The term “treaty” was not a word that was used.

<sup>451</sup>Jennings, Ambiguous Iroquois Empire, *supra*, note 154; See also Martinez, “Final Report”, *supra*, note 446 at para. 57.

<sup>452</sup>Jennings, Iroquois Diplomacy, *supra*, note 99.

<sup>453</sup>Berman, “Perspectives” in Exiled, *supra*, note 101 at 151. Berman states:

The Iroquois-British relationship symbolized by the Covenant Chain was at most a consensual alliance of distinct peoples negotiated and maintained in a complex international environment, not a constitutional arrangement.

were established to negotiate and create an “International Treaty Order”.<sup>454</sup> The most important principle to be taken as a result of these negotiations is that European colonizers recognized that Indigenous nations were capable of entering into binding international treaties at the time<sup>455</sup>. Those colonialists were also “aware that they were negotiating and entering into contractual relations with sovereign nations”.<sup>456</sup> The Special Rapporteur, Miguel Alfonso Martinez, appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Commission on Human Rights and the Economic and Social Council stated the following about the Indigenous - European treaty relationship:

Their intrinsic nature, form and content make it clear that the indigenous and non-indigenous parties mutually bestowed on each other (in either an explicit or implicit manner) the condition of sovereign entities in accordance with the non-indigenous international law of the time.<sup>457</sup>

According to contemporary international law principles, treaties made with Indigenous nations were not considered as international agreements.<sup>458</sup> According to Canadian domestic law, treaties that were made with Indigenous nations have been defined as *sui generis* treaties.<sup>459</sup> According to Hodinohso:ni law, however, treaties that were made with European nations were

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<sup>454</sup>James (sakej) youngblood henderson, “The Status of Indian Treaties in International Law” in International Law in Aboriginal Rights and International Law, Proceedings of the 1993 Conference of the Canadian Council on International Law, 1993, Ottawa, Ontario at 126 [hereinafter referred to as “The Status”].

<sup>455</sup>*Ibid.* at 129.

<sup>456</sup>Martinez, “Final Report”, *supra*, note 446 at para. 110.

<sup>457</sup>*Ibid.* at para. 187.

<sup>458</sup>Island of Palmas Case (Netherlands) v. United States, UNRIAA (1928) 829

<sup>459</sup>Simon v. The Queen [1985] 2 S.C.R. 387, [1986] 1 C.N.L.R. 153: “[a]n Indian treaty is unique; it is an agreement *sui generis* which is neither created nor terminated according to the rules of international law. This definition was confirmed in R. v. Sioui [1990] 1 S.C.R. 1025; [1990] C.N.L.R. 127.

binding forever “as long as the grass grows green, as long as the water runs down hill, and as long as the sun rises in the east and sets in the west.”<sup>460</sup> Thus, in following the natural law that included spiritual values, the Hodinohso:ni believed that the original international treaty order was sacred and that the treaties that were signed or agreed to were binding on all parties. This, was, therefore, a more complex notion of following spiritual and sacred practices.

Special Rapporteur, Martinez, was convinced through his research that it was absolutely clear that the European parties were “indeed negotiating and entering into contractual relations with sovereign nations, with all the legal implications that such a term had at the time in international relations.”<sup>461</sup> He also stated that

[T]here was incontrovertible evidence that during the first two and a half centuries of contacts between the European colonizer and indigenous peoples the Europeans recognized ‘both the international (not internal) nature of the relations between both parties, and ... the inherent international personality and legal capacity [of those peoples] ... resulting from their status as subjects of international law in accordance with the legal doctrine of those times.’<sup>462</sup>

The incontrovertible evidence referred to by the Special Rapporteur was the treaties, which also reflected the sovereign status of the Indigenous nations. Nations were defined as “a people distinct from others”<sup>463</sup> and through the use of customary international law, an international treaty order was created as a result of treaties being made voluntarily between two sovereign

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<sup>460</sup>Statement of Oren Lyons, Hearing before the Select Committee, *supra*, note 64 at 10.

<sup>461</sup>Document E/CN.4/Sub.2/1992/32, First Progress Report Submitted by Mr. Miguel Alfonso Martinez, Special Rapporteur, Discrimination against Indigenous Peoples. Study on Treaties, Agreements and other Constructive Arrangements between States and Indigenous Populations at para. 138 [hereinafter referred to as Martinez, “First Progress Report”].

<sup>462</sup>Martinez, “Second Progress Report”, *supra*, note 360 at para. 130.

<sup>463</sup>Worcester v. Georgia 31 U.S. (6 Pet.) 515 (1822) at 559-560.

nations with no compulsory binding rules.<sup>464</sup> Treaties were made through each nation's own free will<sup>465</sup> and through the process of treaty order wherein "treaty-making power is vested by historical practice and customary law".<sup>466</sup> According to the Special Rapporteur, the treaties created between the Hodinosonni and European nations were "the most enlightening examples of both the nature (sovereign to sovereign) and object (trade, alliance attempts from the European party to buttress territorial claims vis-a-vis other European Powers) of the treaties stemming from the early contacts of indigenous and European nations..."<sup>467</sup> Treaties are an attribute of sovereignty and evidence of Indigenous statehood<sup>468</sup> thus, in recognizing the Hodino:so:ni as being capable of entering into treaty relationships, it is obvious that the existence of this relationship contributes to the existence of their claim to sovereignty and evidence of statehood.

Contemporary rules of international law make a distinction made between law-making treaties and treaty contracts.<sup>469</sup> Much of the recent international law principles related to law-making treaties are codified in the 1961 *Vienna Convention on the Law of Treaties* which did

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<sup>464</sup> sakej, "The Status", *supra*, note 454 at 129.

<sup>465</sup> Article 11 of the Vienna Convention on the Law of Treaties states:

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means, if so agreed.

<sup>466</sup> sakej, "The Status", *supra*, note 454 at 129.

<sup>467</sup> Martinez, "First Progress Report", *supra*, note 461 at para. 228.

<sup>468</sup> S.S. Wimbledon (1923), PCIJ Reports, Series A, No. 1 p. 24; *S. S. Lotus*, PCIJ Reports, Series A, No. 10 at 18.

<sup>469</sup> Brownlie, *Principles* (4th ed.), *supra*, note 421 at 632-633.



not enter into force until January 1980 with not less than fifty-eight states being parties to it.<sup>470</sup>

The *Vienna Convention on the Law of Treaties* defines written treaties as follows:

...an international agreement in written form, whether embodied in a single instrument or in two more related instruments and whatever its particular designation (treaty, convention, protocol, covenant, charter, statute, act, declaration, concordat, exchange of notes, agreed minute, memorandum of agreement *modus vivendi* or any other appellation), concluded between two or more States or other subjects of international law and governed by international law.<sup>471</sup>

Brownlie provides a distinction based on Lord McNair's definitions:

...some treaties, dispositive of territory and rights in relation to territory, are like conveyances in private law. Treaties involving bargains between few states are like contracts; whereas the multilateral treaty creating either a set of rules, such as the Hague Conventions on the Law of War, or an institution, such as the Copyright Union, is 'law-making.'<sup>472</sup>

However, Brownlie notes that the International Law Commission "did not consider it necessary to make a distinction between 'law-making' and other treaties."<sup>473</sup> Many of the contemporary Eurocentric rules and principles concerning treaties, as just noted, were not established law at the time that treaties were made with the Hodinohso:ni because all of the treaties were made between the years 1613 and 1867 (Appendix A). It was argued that "[t]hese newly developed distinctions after 1945 rarely apply to older treaties with Indian nations and tribes."<sup>474</sup> This would follow the doctrine of intertemporal law as it was applied in the *Advisory Opinion on Western Sahara* which "require[d] that the legal status or event in the past must be interpreted

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<sup>470</sup>*Ibid.* at 604. See also sakej, "The Status", *supra*, note 454 at 132.

<sup>471</sup>*Ibid.* at 624.

<sup>472</sup>*Ibid.* at 633.

<sup>473</sup>*Ibid.* at 634.

<sup>474</sup>sakej, "The Status", *supra*, note 454 at 132.

according to the law of the period in question.”<sup>475</sup>

The case, *Right of Passage over Indian Territory*<sup>476</sup> involved a dispute between India and Portugal. India was disputing the 1779 Treaty of Poona that was created between Portugal and the Maratha Confederacy. The major issue in this case was whether this treaty was valid. India argued that the treaty was not valid under Maratha law as well as arguing that this treaty was not a treaty at all as the Marathas did not have the power to enter into treaties without the Moghul emperor. Portugal challenged India under the general principles of international customary laws as well as under the terms of the treaty. The International Court of Justice decided:

that the validity of a treaty concluded as long ago as the last quarter of the eighteenth century, in the conditions then prevailing on the Indian Peninsula, should not be judged on the basis of practices and procedures which have since developed only gradually.<sup>477</sup>

Judge Moreno Quintana defined a treaty as “the expression of a common agreement creating mutual rights and obligations between two legal persons recognized as such in their international relationships,” and agreed that the determinative fact was the parties’ intention to be bound at the time of the treaty.<sup>478</sup>

The court held that the Marathas viewed the treaty as binding upon them when it was originally made. The Court applied the doctrine of intertemporal law as it was applied in the *Advisory Opinion on Western Sahara* which “require[d] that the legal status or event in the past must be interpreted according to the law of the period in question” when it interpreted the terms

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<sup>475</sup>Berman, “Perspectives”, *supra*, note 101 at 127.

<sup>476</sup>(1960) ICJ Reports at 6.

<sup>477</sup>*Ibid.* at 37.

<sup>478</sup>*Ibid.* at 91

of the Treaty of Poona. Thus reference had to be made to the point in time when this treaty was made as it had existed in 1779 and the court referred to the system of international law as it had existed at that time. Therefore, the validity of the Treaty had to be determined by the system of international law when it existed in 1779 not by practices and procedures that developed afterwards.

Since many of the contemporary Eurocentric rules and principles concerning treaties were not established law at the time the treaties were made with the Hodinohso:ni between 1613 and 1867 (See Appendix A), an actual customary international treaty order was set in place according to international law and the intentions of the parties at that time. The fact that an international treaty order was already in place prior to the contemporary rules of international law regarding treaties was in fact, totally opposite to the diffusionist comments of Clive Parry as follows::

...in North America man was still in the nomadic stage of existence, and though the newcomers persisted in efforts to make treaties with the inhabitants, these last had little of that consciousness of communal feeling which is the necessary assumption of a system of international relations.<sup>479</sup>

In fact, the treaty protocol of the Hodinohso:ni was so well defined and refined, the European colonizers utilized their procedures.<sup>480</sup>

#### **4.2.2.1 Hodinohso:ni Treaty Protocol**

A typical Hodinohso:ni treaty procedure consisted of the following steps. First, the

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<sup>479</sup>Clive Parry, "The Function of Law in the International Community" in Max Sorenson (ed.), Manual of Public International Law (Macmillan & Co. Ltd.: London), 1968 at 38.

<sup>480</sup>Williams and Nelson, Kaswentha, *supra*, note 69.

Hodiyahnehso met visitors “at the wood’s edge”<sup>481</sup> and a ceremony was opened with a song and a recital of the Ganohonyonk (Thanksgiving Address). The purpose of the meeting was to welcome the visitors. Then, they were fed and advised to rest for the night. The next day was reserved for any serious meetings as it was felt that the peoples’ minds must be clear and good. A written record of this protocol was made in 1535 following Jacques Cartier’s visit to Hochelaga (Hodinohso:ni territory):

The City of Hochelaga is six miles from the riverside, and the road thither is a well-beaten and frequented as can be, leading through as fine a country as can be seen, full of fine oaks as any in France, the whole ground being strewn over with fine acorns. When we had gone four or five miles we were met by one of the great lords of the city, accompanied by a great many natives, who made us understand by signs that we must stop at a place where they had made a large fire, which we did accordingly. When we had rested there some time, the chief made a long discourse in token of welcome and friendship, showing a joyful countenance and mark of goodwill.<sup>482</sup>

The next morning, the usual protocol of reciting the Thanksgiving Address was spoken, as it was sacredly done every morning. The Condolence Ceremony was also performed to open up a treaty council to clear peoples’ minds of any losses they may have experienced during their journey.

Written recordings of the 1768 Treaty of Fort Stanwix provided another example of the treaty protocol of the Hodinohso:ni, which the British learned and used in their interactions with

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<sup>481</sup>This was a welcoming ceremony and borrowed from the Condolence Ceremony. “The two groups arranged themselves on opposite sides of a small fire built just for the duration: this arrangement serves to remind all the participants how they will position themselves at the main council later. A speaker for the hosts expresses his side’s gratitude that the messengers have arrived safely over the ‘long forest path’...There are many things, he says, that could have caused them to stumble and fall. During the colonial period there were physical hardships to contend with.”

Michael K. Foster, “Another Look at the Function of Wampum in Iroquois-White Councils” in Jennings, *Iroquois Diplomacy*, *supra*, note 99 at 104.

<sup>482</sup>Williams and Nelson, *Kaswentha*, *supra*, note 69.

the Hodinohso:ni.<sup>483</sup> Representatives of the British ‘side’ who were present at this meeting were from New York, Pennsylvania, Virginia and New Jersey.<sup>484</sup>

### **4.3 Concept of Sovereignty**

There are differences in the concept of sovereignty between the Hodinohso:ni’s world view and the colonizer’s view of sovereignty. The colonizer’s view of sovereignty stems from their Eurocentric idea of the government and political power. Hodinohso:ni sovereignty stems from the power of the people and the power of the spiritual relationship with natural law<sup>485</sup> and with the spiritual relationship with the Creator. According to the Hodinohso:ni, the notion of sovereignty resides within the people<sup>486</sup> “not in the Crown or some upper class oligarchy”.<sup>487</sup> Relying on the terms created within the Two Row Wampum Belt and the Covenant Chain, as well as with the creation of many other treaties, the Hodinohso:ni Confederacy continues to affirm its independence.<sup>488</sup> The Hodinohso:ni are one of the Indigenous nations whose sovereignty has not been respected by Canadian, American or International laws. The Confederacy has been adamant in its stance of sovereignty since colonization and has made its point clear to the colonizer states of Canada and the United States, as well to the League of

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<sup>483</sup>*Ibid.*

<sup>484</sup>*Ibid.*

<sup>485</sup>It is ironic that the origin of international law can be traced back to the philosophies of natural law. This will be discussed further in Chapter 4.

<sup>486</sup>Statements of Oren Lyons and Donald Grinde Jr., Hearing before the Select Committee, *supra*, note 64. Both statements made reference to the Hodinohso:ni notion of sovereignty.

<sup>487</sup>Statement of Donald Grinde, Jr., *ibid.* at 15.

<sup>488</sup>Berman, “Perspectives”, *supra*, note 101 at 135.

Nations and the United Nations. The Hodinohso:ni have always considered themselves to be independent and separate from Canada and the United States, as noted in Chapter 1. They have never considered themselves as citizens of either country. Bob Antone (spokesperson on behalf of the Confederacy) states as follows:

As you can see by our very existence, we the Hodinohso:ni have a natural and original right to live freely as a confederacy of nations, with our own political institutions and with a fundamental right to use and occupy our original lands...<sup>489</sup>

“[T]he term ‘sovereignty’ has a long and troubled history and a variety of meanings”<sup>490</sup>, which has thus resulted in the concept of sovereignty as having no universal definition<sup>491</sup>. As Oppenheim writes:

[T]here exists perhaps no conception the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception, from the moment when it was introduced into political science until the present day, has never had a meaning which is universally agreed upon<sup>492</sup>.

It is another ambiguous English word which could mean something different to everyone. For example, Kahnawakero:non writer, Taiaiake Alfred, questions whether the concept of ‘sovereignty’ is an appropriate term to use with traditional Indigenous nationhood. He believes that once you use the term sovereignty, you are following the same set of values and objectives that are found in Eurocentric definitions of sovereignty, such as: authority, coercive

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<sup>489</sup>Canada. Parliament. House of Commons. 1st Sess., 32 Parl. 1983 Minutes of Proceedings and Evidence of Special Committee on Indian Self-Government. Issue No. 31 (Ottawa: Queen’s Printer, 1983) at 14.

<sup>490</sup>James Crawford, The Creations of States in International Law (Clarendon Press: Oxford), 1979 at 26.

<sup>491</sup>Hurst Hannum, Autonomy, Sovereignty, and Self-Determination. The Accommodation of Conflicting Rights (University of Pennsylvania Press: Philadelphia) 1990 at 14 [hereinafter referred to as Hannum, Autonomy]

<sup>492</sup>L.F.E. Oppenheim, 1 International Law (London: Longman, 2 vols. 1905, 1906) at 103, cited in Hannum, Autonomy. *Ibid.*

enforcement of decisions, hierarchy, a separate ruling entity, control, etc. He states that “‘sovereignty’ implies a set of values and objectives in direct opposition to those found in traditional indigenous philosophies” and that “sovereignty is an exclusionary concept rooted in an adversarial and coercive Western notion of power.”<sup>493</sup> Since there are no concise rules of international law that define sovereignty, every person or community can define their own sovereignty based on their own world view. Dianne Otto describes Indigenous sovereignty as follows:

Indigenous sovereignty means the power for indigenous communities to imagine themselves, to be creators of themselves as subjects rather than objects of law and history. It enables the reconceptualization of Aboriginal identities as bearers of rights, obligations and unique nationhood, and as agents of their own destinies.<sup>494</sup>

One of the leading authors on Eurocentric definitions of sovereignty states that “the term sovereignty may be used as a synonym for independence”.<sup>495</sup> There is also some agreement amongst other writers that the essential aspect of sovereignty is “constitutional independence”.<sup>496</sup> Hurst Hannum states that, “Sovereignty is the cornerstone of international rhetoric about state independence and freedom of action, and the most common response to initiatives which seek to limit a state’s action in any way is that such initiatives constitute an impermissible limitation

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<sup>493</sup>Taiiake Alfred, Peace, Power, Righteousness. An Indigenous Manifesto. (Toronto: Oxford University Press, 1999) at 55-59[hereinafter referred to as Peace, Power, Righteousness].

<sup>494</sup>Dianne Otto, “A Question of Law or Politics? Indigenous Claims to Sovereignty in Australia, [1995] 21 *Syracuse J. Int’l L. & Com.* 65 at 74 [hereinafter referred to as “A Question of Law or Politics?”].

<sup>495</sup>Brownlie, Principles (4<sup>th</sup> ed.), *supra*, note 421.

<sup>496</sup>Catherine J. Iorns, “Indigenous Peoples and Self-Determination: Challenging State Sovereignty” 24 *Case W. Res. J. Int’l L.* 1992 at 237 [hereinafter referred to as “Challenging State Sovereignty”].

on that state's sovereignty."<sup>497</sup>

There are external and internal aspects of sovereignty.<sup>498</sup> External sovereignty has been defined as "the rights of the state freely to determine its relations with other states or other entities without the restraint or control of another state. This aspect of sovereignty is also known as independence".<sup>499</sup> The internal aspect of sovereignty related to "the state's right to devise its own constitutional and political institutions, enact and enforce its own laws, and to make decisions concerning citizens and residents of the state, concept of territoriality, which is the ability of a state to govern all matters within its territory".<sup>500</sup> Some writers state that the concept of territoriality is a separate aspect of sovereignty<sup>501</sup>.

The Hodinohsonni Confederacy has argued that it has constitutional independence based on its laws and principles within the Great Law of Peace, which has been defined as a constitution. As Howard Berman states, "The Confederacy as a whole, and those communities still governed by traditional laws and institutions, form one of the oldest governments in the world functioning under a continuous set of laws."<sup>502</sup> The Confederacy could argue that it has external and internal sovereignty based on the confederacy's external relationships with other

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<sup>497</sup>Hannum, *Autonomy*, *supra*, note 491 at 14.

<sup>498</sup>Iorns, "Challenging State Sovereignty", *supra*, note 496 at 236.

<sup>499</sup>Nkambo Mugerwa, "Subjects of International Law" in Max Sorensen (ed.), *Manual of Public International Law* (London: Macmillan & Co. Ltd., 1968) at 253.

<sup>500</sup>Iorns, "Challenging State Sovereignty", *supra*, note 496 at 236, fn 165.

<sup>501</sup>*Ibid.*

<sup>502</sup>Berman, "Perspectives", *supra*, note 91 at 135.



states or other entities.<sup>503</sup> Gayanehsragowa has set out a defined, consistent and clear protocol regarding the Hodiyanehso:’s external relationship with other nations<sup>504</sup> and a protocol for the inter-relationships between nations, its members and the natural/spiritual world.

None of the definitions of sovereignty state that a constitution must be written. Gayanehsragowa was never written nor was it translated into English until the late 1800s. This did not mean that the political process and sovereign status did not exist. In looking at the history of the Confederacy and its involvement within the international forum since the 1920s, the actors within international law at that time were unwilling to analyze Indigenous People’s claims to sovereignty - especially the Hodino:ni’s case against Canada lead by Deskaheh.

#### **4.4 International Legal Personality**

According to the rules of international law, there is a barrier to or limitation on Indigenous peoples’ claim to sovereignty or self-determination because the definition of states or nations has not included Indigenous nations.<sup>505</sup> “Yet legal principles supporting the sovereignty of existing states have never been absolute. They have been suspended in accordance with prevailing political considerations and for the protection of human rights.”<sup>506</sup>

When Deskaheh took the Hodino:ni case to the League of Nations in 1922, the League did

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<sup>503</sup> *Ibid.*

<sup>504</sup> See Chapter 1, *supra* at 23-25 regarding Hodiyanehso’s responsibilities. “The [Hodino:ni] consciously created a ‘United Nations’ with a sophisticated structure and explicit ideology. Within that structure, confederate nations enjoy internal sovereignty, with the jurisdiction of the Grand Council of the whole centered primarily around matters concerning inter-nation and external relations”. Berman, “Perspectives”, *ibid.*

<sup>505</sup> *Supra*, note 342; Iorns, “Challenging State Sovereignty”, *supra*, note 496 at 238; see also David Steadman Berry, “Aboriginal Self-Determination Under International Law: Reconciling Distinct Historical Rights with Existing International Law Models” LL.M. Thesis, Queen’s University, Kingston, Ontario, September 1993 [hereinafter referred to as Berry, LL.M. Thesis].

<sup>506</sup> Otto, “A Question of Law or Politics?”, *supra*, note 494 at 79.

not recognize the Confederacy as a member state and denied the Confederacy in making a claim of sovereignty.

A clear definition of state within international law has never been broadly accepted. It has been a common concept that only states can be sovereign. *The Montevideo Convention of 1933 on the Rights and Duties of States*<sup>507</sup> defines a “state” as a person of international law which possesses the following qualifications: (a) a permanent population; (b) a defined territory; (c) a government; and (d) the capacity to enter into relations with other states. Another definition of a state requires only three elements which are described as follows:

- 1) a government (the repository of supreme power),
- 2) a people (over whom that power is exercised), and
- 3) territory (within which defined area the exclusive authority of the government is exercised )<sup>508</sup>

An entity must satisfy all of the above-noted elements in order to be recognized as a sovereign state. Hobsbawm provided a list of “social criteria” that had to be met in order to identify as a nation, which were: “a historic association with a current state or one that was previously well-established; a common literature and language; and a history of imperial and/or military conquest.”<sup>509</sup> Laurence Hanauer stated that in order for these criteria to be met, the nation “had to coincide with the currents of history” and that self-determination only applied to

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<sup>507</sup>Dec. 26, 1933, art. 1, U.S.T.S. No. 881; 165 L.N.T.S. 19.

<sup>508</sup>Rosalie Schaffer (Balkin), “International Law and sovereign rights of indigenous peoples” in Barbara Hocking (ed.) *International Law and Aboriginal Human Rights* (Australia: Law Book Co., 1988)

<sup>509</sup>E. J. Hobsbawm, *Nations and Nationalism Since 1780* at 20, cited in Laurence S. Hanauer, “The Irrelevance of Self-Determination Law to Ethno-national Conflict: A New Look at the Western Sahara Case” (1995) *Emory International Law Review* 133 at 136-137 [hereinafter referred to as Hanauer, “A New Look”].

nations that were large enough to be economically viable. Thus in agreeing with Hobsbawm, nationhood was only legitimate when “scattered groups of population” did not divide a state.<sup>510</sup> International law also “recognizes limited independence and the international personality of limited forms of ‘state’.”<sup>511</sup>

In following the qualifications of a state:

- (A) the Confederacy has a permanent population with membership
- (B) the Confederacy has a defined territory; traditional lands can be defined (21 Hodinohsoni communities within North America).
- (C) the Confederacy has a government - its people, clans, nations, clanmothers and chiefs and is governed by the Great Law of Peace
- (D) the Confederacy has the capacity to enter into relations with other states through the implementation of treaties.

The difference, however, between the Hodinohso:ni definition of state and contemporary international rules of state, is the definition of “power”. Taiaiake Alfred states that the contemporary power of state is “control-power” whereas Hodinohso:ni is termed as “knowledge-power”<sup>512</sup>. As noted above, a government must have a “supreme power” over its people and exercises “exclusive authority” over a defined territory. The defined territory that the “supreme power” has exclusive authority over is actually Ongwehowe land. According to the Great Law, it provides that everyone is equal, that there is no supremacy of any one person or persons and

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<sup>510</sup>*Ibid.* at 137.

<sup>511</sup>Iorns, “Challenging State Sovereignty”, *supra*, note 496 at 238.

<sup>512</sup>Alfred, Peace, Power, Righteousness, *supra*, note 493 at 64.

that there is no power, except for the “supreme power” of Shongwayadiso (the Creator), that is exercised over anyone. The Hodiyanehso and the Clanmothers have more responsibilities in ensuring that their clans/families are being looked after the right way. The territory that the Great Law covers is Mother Earth and there are no territorial boundaries or limitations as to where the Great Law ends.

Arguments have been made to limit an application of a state by claiming that there are “small population numbers, insufficient territorial size, lack of political or economic viability, inability to conduct foreign affairs and such nebulous concerns as the possible ‘negative effect’ upon the international community”.<sup>513</sup> These arguments have been refuted by many who have stated that there does not exist a size limit to deny membership in the U.N. Writer, A. Rigo Sureda states:

...it is difficult to see how any state can be denied membership in the U.N. on the grounds of smallness, since so far the conditions for membership have been interpreted with great flexibility. There is no precedent for a state being refused admission on account of its size.<sup>514</sup>

The *Declaration on the Granting of Independence to Colonial Countries and Peoples* also refuted the argument regarding the lack of political or economic viability, inability to conduct foreign affairs and the negative effect upon the international community by stating that the “inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.”<sup>515</sup>

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<sup>513</sup>Berry, LL.M. Thesis, *supra* note 505 at 32 [citations omitted].

<sup>514</sup>A. Rigo Sureda, The Evolution of the Right of Self-Determination: A Study of United Nations Practice (Leiden: A.W. Sitjhoff Publishers: 1973) at 275.

<sup>515</sup>*Declaration on the Granting of Independence to Colonial Countries and Peoples*, G.A. Res. 1514, U.N. G.A.O.R., 15th Sess., Supp. No. 16, U.N. Doc. A/4684 (1960) cited in Berry LL.M. Thesis, *supra*, note 505

There are currently 192 states within the global system of governments where 183 are members of the United Nations<sup>516</sup>. There are many member states of the United Nations which have Indigenous peoples within their confined boundaries and its political organizations purport to “protect” those Indigenous peoples.<sup>517</sup> Indigenous peoples within some of those states, including Canada and the United States were and have been characterized as minorities. However, in reviewing the relationship of nations at the time of colonization, the Hodinohso:ni were certainly not a “minority”<sup>518</sup> that required protection:

When the Haudenosaunee first came into contact with the European nations, treaties of peace and friendship were made. Each was symbolized by the Gus-Wen-Tah or Two Row Wampum. There is a bed of white wampum which symbolizes the purity of the agreement. There are two rows of purple, and those two rows have the spirit of your ancestors and mine. There are three beads of wampum separating the two rows and they symbolize peace, friendship and respect.

These two rows will symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other's vessel.

The principles of the Two Row Wampum became the basis for all treaties and

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at 34.

<sup>516</sup>Rudolph C. Ryser, “Toward the Coexistence of Nations and States” Remarks before the Moscow Conference on Indigenous Peoples’ Rights, September 13 - 18, 1993, Moscow, Russian Federation (Center for the World Indigenous Studies, 1993).

<sup>517</sup>Russel Lawrence Barsh, “Indigenous Peoples in the 1990s” From Object to Subject of International Law?” (Spring 1994) 7 Harvard Human Rights Journal 33 at 72 [hereinafter referred to as “From Object to Subject”].

<sup>518</sup>Since the establishment of the United Nations, there were problems in defining “minorities” and “indigenous peoples” in whether or not they were entitled to self-determination. There was no mention of minorities in the Covenant of the League of Nations and the United Nations Charter.

Venne, *Our Elders*, *supra*, note 389 at 68-82.

agreements that were made with the Europeans and later the Americans.<sup>519</sup>

Taken from this perspective, the Hodinohso:ni do not like to be called a “minority” because the Hodinohso:ni is a strong and respected nation. They would not like to be considered as “outsiders” within another state’s system but a “besider” on equal footing with other states. If they were to call themselves a minority or they wanted to be an “insider”, it would legitimize the “majority’s” position that the Hodinohso:ni culture was a weaker and subservient culture. This, however, was and is not the case, as demonstrated by their historic relationships with the colonizer states.

Studies that were undertaken by Special Rapporteurs Espiel<sup>520</sup> and Mr. Justice Deschene<sup>521</sup> were implemented by the United Nations. These studies concluded that “minorities and Indigenous Peoples are dissimilar, with different rights under international law”.<sup>522</sup> This was also confirmed by the Home Rule Parliament of Greenland which distinguished between Indigenous Peoples and minorities as follows:

that the world’s indigenous peoples have fundamental human rights of a collective and individual nature. Indigenous peoples are not, and do not consider themselves, minorities. The rights of indigenous peoples are derived from their own history, culture, traditions, laws, and special relationship to their land, resources and environment. Their

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<sup>519</sup>Presentations by the Hodinohso:ni Confederacy to the Canadian Parliament. Canada. House of Commons. Indian Self-Government in Canada. Report of the Special Committee (Ottawa: Queen’s Printer, 1983).

<sup>520</sup>*The Right to Self-Determination Implementation of United Nations Resolutions* (New York: United Nations, 1980) E/CN.4/Sub.2/405/Rev.1

<sup>521</sup>*Promotion, Protection and Restoration of Human Rights at the National, Regional and International Level Prevention of Discrimination and Protection of Minorities, Proposal concerning a definition of the term “minority”*: UN Doc. E/CN.4/Sub.2/185/31 and Corr.1.

<sup>522</sup>Venne, Our Elders, *supra*, note 389 at 82.

basic rights must be addressed within their values and perspectives.<sup>523</sup>

If the Confederacy is recognized as a member state according to the contemporary rules of International Law, they would be able to bring its claims to the International Court of Justice without the difficulties that plagued Deskaheh. It would also ensure that an Indigenous nation is participating and their voice is heard during meetings on all Conventions and Declarations. In that case, the Hodinohso:ni would maintain the nation-to-nation relationship that they had originally intended with Canada and the United States. This would resolve some of the most serious issues that need to be resolved with colonizer governments (e.g. Indigenous sovereignty and self-determination). Internally, the Hodinohso:ni must maintain their traditional indigenous teachings to ensure that they do not follow the same patterns as Eurocentric states and “use” Eurocentric values of power and control to gain authority. For example, Taiiaki Alfred states:

It is in the nature of traditional indigenous political systems that power is not centralized, that compliance with authority is not coerced but voluntary, and that decision-making requires consensus. (In practice, these principles mean that contention is almost a natural state in indigenous politics!) Because traditional systems are predicated on the ideal of harmony and the promotion of an egalitarian consensus through persuasion and debate, leaders must work through the diverse opinions and ideas that exist in any community; because there is both an inherent respect for the autonomy of the individual and a demand for general agreement, leadership is an exercise in patient persuasion.<sup>524</sup>

#### **4.5 International Human Rights Law**

Another alternative for participation of the Hodinohso:ni within the international fora is through the human rights paradigm wherein the concept of self-determination is ensured

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<sup>523</sup>Elsa Stamatopoulou, “Indigenous Peoples and the United Nations: Human Rights as a Developing Dynamic” (1994) 16 *Human Rights Quarterly* at 73, cited in Venne, Our Elders, *ibid.*

<sup>524</sup>Alfred, Peace, Power, Righteousness, *supra*, note 493 at 92.

through the *International Covenant on Civil and Political Rights*<sup>525</sup> and the *International Covenant on Economic, Social and Cultural Rights*<sup>526</sup>, both of which are discussed later in this section. Representatives of the Hodinohso:ni have also participated in other forums within the U.N. such as consultations on the environment. The human rights paradigm is only a recent phenomenon within the international fora beginning in 1945 with the creation of the United Nations.<sup>527</sup> The United Nations human rights system is a hierarchical system wherein there are six principal organs, which are the Security Council, General Assembly, Economic and Social Council, Trusteeship Council, Secretariat and the International Court of Justice<sup>528</sup>. The “parliamentary” body is the General Assembly<sup>529</sup>. The purposes of the United Nations are set out in Article 1 of the United Nations Charter as follows:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

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<sup>525</sup>(1966) 999, United Nations Treaty Series 171, in force 3 January 1976.

<sup>526</sup>993, United Nations Treaty Series 171, in force 23 March 1976.

<sup>527</sup>The Hodinohso:ni also made a presentation to the representatives of the United Nations in its founding conference held in San Francisco in 1945. They continued to assert their sovereign status and stated, “As a nation, we appeal to the conscience of the democratic nations for action to correct the deep injustice under which we are suffering.” As quoted in *Logan v. Styres* (1959) 20 D.L.R. (2d) 416 at 423 cited in Johnston, “Self-Determination, *supra*, note 92; See also Douglas Sanders, “Another Step: The UN Seminar on Relations between Indigenous Peoples and States” [1989]4 C.N.L.R. 37.

<sup>528</sup>Shaw, *International Law*, *supra*, note 428 at 825.

<sup>529</sup>*Ibid.* at 828.



3. To achieve international co-operation in solving international problems of an economic, social cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Eurocentric principles of international and domestic law underlie the principles of international human rights law. For example, the underlying difficulties of self-determination for Indigenous peoples is the concept of the doctrine of discovery. The United Nations follows the colonialist definition of a state which respects its territorial integrity and political independence. These very principles are colonialist attitudes towards the rights and powers of an Indigenous nation. All Indigenous nations within these countries have become oppressed by the colonizer state. All have been fighting for control of their lives and for their rights to be protected.

The Charter does not specifically state that there is an actual “right of self-determination” but that its ultimate goal was to promote human rights<sup>530</sup>. The original *League of Nations Covenant* did not mention self-determination. However, Article 22(1) of the *League of Nations Covenant* did set out the right to self-governance, not as a legal right, but a question of fact: whether nations were “able to stand by themselves under the strenuous conditions of the modern world.”<sup>531</sup> Erica-Irene Daes, the Chairman of the Working Group on Indigenous

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<sup>530</sup>The concept of self-determination was created by an American President Wilson at the end of the First World War, which initially was used “as a means of attaining peace and security by preventing a recurrence of the nationalistic outbursts that precipitated World War I”.

Hanauer, “A New Look”, *supra*, note 509 at 139.

<sup>531</sup>*Ibid.*

Populations, writes:

The principle of equal rights and self-determination of peoples, with all its ambiguity, is referred to only twice in the U.N. Charter. The development of friendly relations among nations, based on respect for the principle of equal rights and self-determination of peoples, is listed as one of the purposes of the United Nations. In addition, the Charter makes preambular mention of the principle of self-determination before enumerating several goals which the Organization 'shall promote' in various fields, including economics, education, culture, and human rights.

In contrast, the principle of sovereign equality, the obligation to refrain from 'the threat or use of force against the territorial integrity or political independence of any state,' and the prohibition against intervention by the United Nations in 'matters which are essentially within the domestic jurisdiction of any state,' were all included among the principles in accordance with which the United Nations was obliged to act. On the basis of reasonable textual construction, the conclusion is that self-determination, in contrast to sovereignty and all that flows from it, was not originally perceived as an *operative* principle of the Charter; the principle of self-determination was one of the *desiderata* of the Charter rather than a legal right that could be invoked as such.

It was not until the 1960 *Declaration on the Granting of Independence to Colonial Countries and Peoples*, that we can say that the "new U.N. law of self-determination"<sup>532</sup> came into existence. As noted in Article 2 of the Declaration, it provided that "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development." In contemporary international human rights law, the right to self-determination has been narrowly confined to peoples living within the territorial boundaries of former European colonies.<sup>533</sup> As Darlene Johnston stated:

This view of colonialism became known as the 'Blue Water' or 'Salt Water' thesis because it insisted on geographical separateness in the form of overseas possessions, as a prerequisite of colonialism. Accordingly, any peoples located within the boundaries of a member state, regardless of their degree of actual subordination, could not be

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<sup>532</sup>Erica-Irene A. Daes, "Some Considerations on the Right of Indigenous Peoples to Self-Determination" [Spring, 1993] 3 *Transnational Law & Contemporary Problems* at 2.

<sup>533</sup>Hanauer, "A New Look", *supra*, note 509 at 134.

classified as 'colonial' and could not exercise the right of self-determination.<sup>534</sup>

There has been a slow movement towards a redefinition of the relationship between Indigenous peoples and "states" within international human rights law. The Hodinohso:ni Confederacy has consistently made a claim of self-determination since colonization:

...[T]he principles symbolized in the Two Row Wampum demonstrate a well-developed indigenous philosophy of respect for what we now call the right of self-determination of peoples as the basis for coexistence already in place at the inception of the Indian-European relationship in this region.<sup>535</sup>

Although concerns of self-determination and recognition of sovereignty were brought to the attention of the international community since the early 1920s by the Hodinohso:ni Confederacy, any concerns at that time were not considered as an international problem, but as an internal problem with the colonizer state.

The United Nations General Assembly finally paid attention to Indigenous issues in 1949. It "invited the Sub-Commission to study the condition of Indigenous Americans in the hope that 'the material and cultural development of these populations would result in a more profitable utilization of the resources of America to the advantage of the world'".<sup>536</sup> The United States objected to their study, which resulted in terminating it as well as temporarily suspending the Sub-commission.<sup>537</sup> The first specialized agency to recognize the rights of Indigenous peoples was the International Labour Organization (ILO), which passed the Indigenous and

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<sup>534</sup>Johnston, "Self-Determination", *supra*, note 92 at 24.

<sup>535</sup>Berman, "Perspectives", *supra*, note 101 at 149.

<sup>536</sup>Russell Barsh, "Indigenous Peoples: An Emerging Object of International Law" Vol. 80, No. 2, *The American Journal of International Law*, April 1986 at 370 [hereinafter referred to as "An Emerging Object"].

<sup>537</sup>*Ibid.*

Tribal Population Convention (No. 107) in 1957. Indigenous peoples criticized and rejected the Convention because they believed that its purpose was to assimilate them into the general population of the state.<sup>538</sup> It was the first time that Indigenous peoples were formally defined in an International Convention; however, by defining Indigenous peoples allowed further assimilation.<sup>539</sup> Venne notes that:

Although Convention 107 makes some move to protect Indigenous rights in a limited way, apparently this was not the main focus. The ILO Convention 107 provided for the recruitment, employment, training and education of Indigenous Peoples. All measures were to last as long as it took to integrate Indigenous Peoples into a state, as set out in Article 22(1). Through Convention 107, the ILO considered it was addressing problems by fitting Indigenous Peoples into their states. The Convention did not protect the right of Indigenous Peoples to remain Indigenous and to determine their way of life. [footnotes omitted]<sup>540</sup>

In 1966, the right to self-determination was integrated into two similar articles of two international covenants: the *International Covenant on Civil and Political Rights*<sup>541</sup> and the *International Covenant on Economic Social and Cultural Rights*<sup>542</sup>. Article 1 stated:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 3 stated:

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<sup>538</sup>Venne, "Our Elders", *supra*, note 389 at 69; see also Iorns, "Challenging State Sovereignty", *supra*, note 501 at 201.

<sup>539</sup>Venne, *ibid*. It must also be noted here that most Indigenous peoples define themselves through their own Indigenous languages; thus, impossible to create a universal definition. I propose that is the reason why it has been so difficult to define. For example, as noted in Chapter 1, the interpretation of "On:gweho:we" is "original human beings" and Hodinohso:ni means "People of the Longhouse".

<sup>540</sup>*Ibid*.

<sup>541</sup>(1966) 999, United Nations Treaty Series 171, in force 3 January 1976.

<sup>542</sup>993, United Nations Treaty Series 171, in force 23 March 1976.

The State Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

In 1970, the United Nations General Assembly adopted the *Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States*<sup>543</sup> wherein the Preamble mentioned “self-determination” as follows:

Convinced that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary International Law, and that its effective application is of paramount importance for the promotion of friendly relations among states, based on respect for the principle of sovereign equality.

As well, the First Paragraph stated:

By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

The Declaration further reminded each state of its duty to respect the right of self-determination as follows:

Every State has the duty to promote...realization of the principle of equal rights and self-determination of peoples...and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle...

With the recognition of the right of self-determination in these Conventions and Declarations, there is no doubt that the right of self-determination does exist. However, according to the Eurocentric rules of international law, self-determination only applies to “states” and not to Indigenous peoples. In 1977, Indigenous organizations presented their concerns at the Non-

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<sup>543</sup>General Assembly Resolution 2625 (XXV) of 24 October 1970.

Governmental Organization Conference on Discrimination against Indigenous Peoples of the Americas held in Geneva<sup>544</sup>. The Hodinohso:ni Confederacy presented documents to the NGOs, which as requested were to describe the conditions of oppression suffered by Indigenous Peoples in the Americas.<sup>545</sup> There were 130 delegates of Indigenous peoples representing many different Indigenous Nations such as the Hopis, Lakotas, Guaimi, Mesquito, Mapuche, Northern Cheyenne, Ojibway, Aymara, Muskogee, Quichua, Schuar, Apache, Nahautl, Quiche and Cree. Twenty-two of those delegates were Hodinohso:ni. The address that was presented by the Hodinohso:ni was a “basic call to conciousness” that “constituted a political statement, presented to a representative world body, pointing to the destruction of the Natural World and the Natural World peoples as the clearest indicator that human beings are in trouble on this planet”.<sup>546</sup> The Hodinohso:ni stressed that along with the destruction of Indigenous cultures and peoples, Eurocentric civilization and its systems were also destroying the Natural World.<sup>547</sup> It was thus emphasized that Indigenous peoples remained true to their own culture and traditions that respected the Natural World. The Hodinohso:ni maintained that a forum was needed in order for Indigenous voices to be heard and in order to “maintain alliances with other peoples of the world to assist in [their] struggle to regain and maintain [their] ancestral lands and to

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<sup>544</sup>Barsh, “An Emerging Object”, *supra*, note 536 at 371; see also Venne, *Our Elders*, *supra*, note 389 at 108. Venne stated that “The 1977 Conference was ‘the fourth such conference organized by the Geneva NGO Sub-committee on Racism, Racial Discrimination, Apartheid and Decolonization of the Special NGO Committee on Human Rights.’ The series of conferences were organized within the framework of the UN Decade for Action to Combat Racism and Racial Discrimination”.

<sup>545</sup>Notes, *Basic Call*, *supra*, note 12.

<sup>546</sup>*Ibid.* at 68.

<sup>547</sup>*Ibid.* at 77.

protect the Way of Life [they] follow.”<sup>548</sup> This was their way of demonstrating that self-determination was needed in order to maintain their Way of Life.

The 1977 NGO Conference “recommended the establishment ‘of a working group under the Sub-commission on the Prevention of Discrimination and Protection of Minorities.’”<sup>549</sup> In 1978, The World Conference to Combat Racism and Racial Discrimination was held at Geneva<sup>550</sup>, which set out goals for the UN to work towards and directed attention to the rights of Indigenous Peoples. Also a second NGO Conference on Indigenous Peoples and Land was held in 1981, which reiterated the recommendations of the first conference: “that the UN act immediately to establish a forum for Indigenous Peoples”.<sup>551</sup>

A Working Group did begin drafting a Declaration on the Rights of Indigenous Peoples in 1985<sup>552</sup> and the members of the Working Group met every year. On April 20, 1994, at the

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<sup>548</sup> *Ibid.*

<sup>549</sup> Venne, *Our Elders*, *supra*, note 389 at 108.

<sup>550</sup> Barsh, “Emerging Objects”, *supra*, note 536 at 371.

<sup>551</sup> Venne, *Our Elders*, *supra*, note 389 at 110.

<sup>552</sup> At the First Meeting of the United Nations Working Group on Indigenous Populations, there were five members: Norway, Yugoslavia, the Sudan, Panama and Syria. Barsh, “Emerging Object”, *supra*, note 533 at 372.

Russel Barsh, who has been involved with the United Nations system since 1981, makes this comment on indigenous involvement within the UN:

If indigenous peoples succeed in harnessing U.N. resources to build their domestic political movements, they may hasten the recognition of other groups’ legal personality within states. This, in turn, may weaken the traditional monolithic conception of independent statehood. If current trends in favor of grassroots democracy continue, the world system may evolve from a club of states into a layer-cake of communities, organizations and federations. The world would be vastly more complex and volatile, and potentially democratic. And perhaps indigenous peoples’ genius for kinship, respect and diplomatic ritual would find its greatest expression.

Barsh, “From Object to Subject”, *supra*, note 536.

Working Group's Eleventh Session, a Draft Declaration on the Rights of Indigenous Peoples was agreed upon and had to make its way through the hierarchy of the UN system to the General Assembly. After general comments were made during the twelfth session of Working Group, the Sub-Commission on Prevention of Discrimination and Protection of Minorities had discussions of the Draft Declaration and sent it to the Commission on Human Rights (CHR)<sup>553</sup> without any changes.<sup>554</sup> The CHR drafted a resolution to establish an "open-ended Intersessional Working Group", an Ad Hoc Working Group to "elaborate" on the Draft Declaration. This Working Group held its first meeting in Geneva in November and December, 1995<sup>555</sup> and will be holding its fifth meeting in the October, 1999 to further elaborate on the Draft Declaration of the Rights of Indigenous Peoples.<sup>556</sup>

As usual, in following Eurocentric control and power within the international forum, the process is being controlled by the procedures that have been created by the Commission on Human Rights and denies any outright participation of any Indigenous peoples. In order for Indigenous Peoples to participate in the Ad Hoc Working Group, they have to apply to the Coordinator of the International Decade to obtain accreditation. Then, their applications are forwarded to state governments and must be approved by them. They can refuse accreditation

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<sup>553</sup>The Commission on Human Rights serves as the principal policy organ in the field of human rights. Venne, *Our Elders*, *supra*, note 389 at 154

<sup>554</sup>*Ibid.* at 153-154.

<sup>555</sup>*Ibid.* at 155-58.

<sup>556</sup>Kenneth Deer, "Indigenous Issues on UN Agenda", Cover Story, *The Eastern Door*, Vol. 8, No. 20 (Kahnawake Mohawk Territory), June 11, 1999.



if they do not want a particular Indigenous group to participate.<sup>557</sup> Sharon Venne notes that

“while states have allowed for an open-ended process for themselves, they have severely restricted access for Indigenous Peoples...Unless the process is changed, the most critical aspects of the elaboration of the Draft are likely to be undertaken without the beneficiaries present to contribute and share their worldview.”<sup>558</sup>

If the Declaration on the Rights of Indigenous Peoples is finally passed without amendments made by state governments, it will be considered as one of the most important international legal documents according to those indigenous peoples who will benefit from it.

Not only could a United Nations Universal Declaration speaking to indigenous human rights be cited as authority in the international legal system, it would command attention and response in many domestic political and legal arenas as well...Perhaps the greatest significance...is its capacity to translate the stories told by indigenous peoples of the human rights they want protected into terms that settler state governments, particularly in the West, will take seriously.<sup>559</sup>

Since the creation of the Working Group on Indigenous Populations was established in 1984, there have been many Indigenous issues discussed at the international level. In 1989, the ILO Convention 169 on Indigenous and Tribal Populations was passed<sup>560</sup>, which revised the ILO Convention 107. In 1992, Hodinohso:ni delegates participated in the Earth Summit in Rio de Janeiro (Agenda 21), in which the Declaration on Environment and Development was created. In 1993, the World Conference on Human Rights was held wherein the Secretariat declared an International Year of the World's Indigenous Peoples as well as an International Decade of the

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<sup>557</sup>Venne, *Our Elders*, *supra*, note 389 at 156-158.

<sup>558</sup>*Ibid.* at 157.

<sup>559</sup>Robert A. Williams, Jr. “Encounters on the Frontiers of International Human Rights Law: Redefining the terms of Indigenous Peoples’ Survival in the World”, (1990) Duke L.J. 660 at 683-4 [hereinafter referred to as Williams, “Encounters”].

<sup>560</sup>As of June 1993, only five states ratified this Convention: Norway, Bolivia, Colombia, Costa Rica and Mexico. Barsh, “From Object to Subject” *supra*, note 517 at 45, n.51.

World's Indigenous Peoples. The General Assembly proclaimed the Decade to officially begin in December, 1994<sup>561</sup>; thus the year 2004 will be the end of the decade<sup>562</sup>. The General Assembly also proclaimed that the Draft Declaration be adopted within the decade.

During the negotiations on the ILO Convention 169, Indigenous participants insisted on references to "peoples" and "self-determination"<sup>563</sup> as they adamantly believe that they are peoples entitled to self-determination as noted in the United Nations Charter. However, state governments refuse to apply these terms to Indigenous peoples as it would affirm that "indigenous peoples are members of the international community who have legal personality under international law - 'subjects' of international legal rights and duties rather than mere 'objects' of international concern."<sup>564</sup> As well, states refuse Indigenous peoples full self-determination because they are afraid that indigenous peoples will maintain their independent status and secede from the state.

#### **4.6 CONCLUSION**

In analyzing all of the sources of international law and international human rights laws, the only consistency found is the struggles made by Indigenous Peoples, including the Hodinohso:ni, to achieve recognition that they are a sovereign self-determining Nation.

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<sup>561</sup>*Ibid.* at 34.

<sup>562</sup>As of yet, there have been few activities funded to commemorate the decade.

Kenneth Deer, "Indigenous Issues on UN Agenda", Cover Story, The Eastern Door, Vol. 8, No. 20 (Kahnawake Mohawk Territory), June 11, 1999.

<sup>563</sup>Barsh, "From Object to Subject" *supra*, note 517 at 44; see also Williams, "Encounters", *supra*, note 559 at 691.

<sup>564</sup>*Ibid.* at 35.

Although there are similarities between the Hodinohso:ni system and the Eurocentric system of international law, the Hodinohso:ni people continue with their responsibilities with the natural and spiritual world, which is not the focus of the Eurocentric international legal system. Although its main purpose is to maintain peace between states, the way that it maintains peace is questionable. Within the Hodinohso:ni system, the main purpose of the Great Law of Peace is to maintain peace. When Hodinohso:ni ancestors of all nations had thrown their weapons of war under the Great Tree of Peace, it meant peace. The weapons of war not only meant their physical weapons, but also their emotional, mental and spiritual weapons of war. Within the Eurocentric international legal system, peace is maintained through military force. This is not peace according to a Hodinohso:ni standard. Seneca professor, John Mohawk, provides an excellent definition of peace, which “is defined much more broadly than living without violence.”<sup>565</sup>

For this plan to work the Peacemaker was required to convince a very skeptical audience that all human beings really did possess the potential for rational thought, that when encouraged to use rational thought they would inevitably seek peace, and the belief in the principles would lead to the organized enactment of the vision.

The test of this thinking is found in the converse of the argument. If you do not believe in the rational nature of the human being, you cannot believe that you can negotiate with him. If you do not believe that rational people ultimately desire peace, you cannot negotiate confidently with him toward goals you and he share. If you cannot negotiate with him, you are powerless to create peace. If you cannot organize around those beliefs, the principles cannot move from the minds of men into the actions of society.<sup>566</sup>

The Eurocentric international legal system is still controlled by states who have the most

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<sup>565</sup>Monture-Angus, *Journeying Forward*, *supra*, note 4 at 41.

<sup>566</sup>John Mohawk, “Origins of Iroquois Political Thought” cited in Patricia Monture-Angus, *Journeying Forward*, *ibid.*

economic power. Therefore, those states which maintain the status quo maintain their “superior” authority over Indigenous Nations. However, in following the analogy of the Two Row Wampum, the Hodinohso:ni Confederacy continues to maintain its stance of being a sovereign and self-determined nation with full powers equal to those of other states in an international legal system.

Within the international human rights sphere and although the system is rooted in Western legal thought, “it is increasingly influenced by non-Western actors and perspectives.”<sup>567</sup> If the Draft Declaration on the Rights of Indigenous Peoples is passed through the General Assembly with no amendments made from any state, this will be a tremendous breakthrough because it will indicate that Indigenous peoples have influenced the development of a new principle of customary international law recognizing Indigenous peoples. Since 1923, when Deskaheh tried to present the Confederacy’s claim of sovereignty, his claim that the Confederacy constitutes an independent state, the Confederacy has believed that international law standards might change. As a result of the League of Nations, and the United Nations’ inadvertent efforts to listen to Indigenous Peoples, the Hodinohso:ni now would be in an excellent position to make a claim of self-determination based on the evolution of international law and its increasing concern for the rights of Indigenous Peoples.

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<sup>567</sup>James Anaya, Indigenous People, *supra*, note 343 at 9.

## CHAPTER 4

### HODINOHSO:NI DIFFUSIONISM

In Chapter Two, Eurocentric diffusionism was described in detail as a product of colonization wherein the model of the world was created through the values, ideals, language and institutions of Western European control and domination. Hodinohso:ni diffusionism is the spread of the Hodinohso:ni worldview and the means by which Hodinohso:ni values, language, philosophy and political processes have influenced<sup>568</sup> modern institutions, governments and political processes. An Aboriginal worldview was described as follows:

Usually, this [Aboriginal worldview] is explained as a view that is closer to the natural world, a view in which people are a part of nature, rather than standing against it or on a holy mission to exploit or dominate it. As well, this humbler view is said to involve different senses of time, of material values and of purpose.<sup>569</sup>

Hodinohso:ni worldview was provided in Chapter One. As a result of Hodinohso:ni diffusionism, contemporary political processes have been affected. As Bruce Johansen states:

The question of American Indian influence on the intellectual traditions of Euro-American culture has been raised, especially during the last thirty years. These, questions, however, have not yet been examined in the depth that the complexity of Indian contributions warrant.<sup>570</sup>

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<sup>568</sup>Robert Venables discussed the influence of the Hodinohso:ni as follows: "The fact of major cultural differences between Indians and European colonists has a vital implication in understanding the Haudenosaunee impact on the Founding Fathers and the Constitution. Because of the cultural contrasts, the replication of one culture's system by another was impossible. Because there could be no replication, influence is all that can be expected. To expect the replication of a Haudenosaunee concept by the Founding Fathers is to deny the vast cultural differences which kept the Haudenosaunee and the generation of Founding Fathers apart, and in a positive sense made each of them distinct peoples."

Robert W. Venables, "The Founding Fathers: Choosing to be the Romans" in Indian Roots, *supra*, note 25 at 68 [hereinafter referred to as Venables, "The Founding Fathers"]

<sup>569</sup>Williams and Nelson, Kaswentha, *supra*, note 69.

<sup>570</sup>Bruce E. Johansen, Forgotten Founders (Ipswich, Mass.: Gambit Incorporated, 1982) at 7 [hereinafter referred to as Forgotten Founders].

The Hodinohso:ni Confederacy was as a prototype for the United States and the United Nations<sup>571</sup>. The Hodinohso:ni Confederacy was also recognized as a “prototype for the League of Nations.”<sup>572</sup> and has been described as the oldest League of Nations in existence.<sup>573</sup>

Unlike the Mayas and Incas to the south, the Longhouse People developed a democratic system of government which can be maintained [to be] a prototype for the United States and the United Nations. Socially, the Six Nations met the sociologist’s test of higher cultures by having given a preferred status to women.’ Reaman added that the Iroquois league in his estimation, ‘was a model social order in many ways superior to the white man’s culture of the day...Its democratic form of government more nearly approached perfection than any that has been tried to date. It is claimed by many that the framers of the United States of America copied from these Iroquois practices in founding the government of the United States.’<sup>574</sup>

This concluding chapter will describe the powerful influence of Hodinohso:ni values, principles and processes within Gayanehsragowa (The Great Law of Peace) upon various aspects of historical and political events.

The Confederacy’s system of international law is profoundly similar to some of the concepts and principles of international law. For example, in the following statement by Henkin, he reveals the similarities between the international system and the system of the Hodinohso:ni, the Gaynehsragowa and the inter-relationships between nations within the Confederacy:

The international system has no government and no institutions of government, but the

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<sup>571</sup>P. Farb, Man’s Rise to Civilization As Shown by the Indians of North America from Primeval Times to the Coming of the Industrial State (1968) at 68. Farb stated, “The League did somewhat resemble the union of the Thirteen Colonies in organization, but it could more accurately be compared to the United Nations.”

<sup>572</sup> Johansen, Forgotten Founders, *supra*, note 570 at 10.

<sup>573</sup> Deskaheh, The New Story of the Iroquois, Rochester: broadcast over radio station WHAM, March 10, 1925, cited in Carl Carmer, Dark Trees to the Wind (William Sloan Associates, N.Y.) 1949 at 116.

<sup>574</sup> Johansen, Forgotten Founders, *supra*, note 570.

functions associated with governance under a legal system are performed. There is no legislature but law is made; there is no executive, and law is not ordinarily 'enforced', but it is generally complied with; there are no courts with comprehensive compulsory jurisdiction, but disputes are resolved, and the law is developed in the process.<sup>575</sup>

The similarities of this statement with the Hodinohso:ni system is that there is no formal government or institution of government. The functions associated with governance under the Hodinohso:ni legal system are performed within the Confederacy by the Hodiyanehso, the Clanmothers, members of clans, etc. Although there is no "legislature, executive or court systems" per se, law is made through the relationships of people, the natural world and the spiritual world. The system of natural law is complied with, disputes are resolved and the law is an ongoing development. For example, through the principle of "extending the rafters", the Confederacy is able to "add" on or create additional developments that are in the best interests of the nation. As well, international law is defined as the "law of peace"<sup>576</sup> which is very similar to the Hodinohso:ni's English translation of Gayanehsragowa (The Great Law of Peace).<sup>577</sup>

It has been extensively argued that the Hodinohso:ni Confederacy influenced the "Founding Fathers" in their creation of the American Constitution<sup>578</sup> and the Hodiyanehso

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<sup>575</sup>Henkin, International Law, *supra*, note 424 at 3.

<sup>576</sup>Brownlie, Principles of Public International Law (2nd ed.) (Oxford: Clarendon Press, 1973) at preface.

<sup>577</sup>Interview with Jake Swamp, March, 1996, Akwesasne Mohawk Territory.

<sup>578</sup>The following writers have argued this fact:

Gregory Schaaf, "From the Great Law of Peace to the Constitution of the United States: A Revision of America's Democratic Roots" (1989) 14 *American Indian L.R.* 323; see also Johansen, Forgotten Founders, *supra*, note 570; see also Venables, "The Founding Fathers", *supra*, note 568 at 67; see also Wallace, The White Roots of Peace, *supra*, note 388 at 3.

As noted by Donald Grinde, "Those scholars that refuse to acknowledge the influence of Native American government on the evolution of American government demean American Indians, the Founding Fathers, and the

insisted that colonists consider greater unity.<sup>579</sup> Many colonists, such as Cadwallader Colden, Sir William Johnson, Conrad Weiser and Benjamin Franklin, to name a few, studied, observed and participated in ceremony with the Hodinohso:ni<sup>580</sup>. Some of these colonists published articles and books which were also read in England and Britain. Benjamin Franklin wrote in 1750/51 as follows:

It would be a very strange Thing, if six Nations of ignorant Savages should be capable of forming a Scheme for such a Union, and be able to execute it in such a Manner, as that it has subsisted Ages, and appears indissoluble; and yet that a like Union should be impracticable for ten or a Dozen English Colonies, to whom it is more necessary, and must be more advantageous; and who cannot be supposed to want an equal Understanding of their Interests.

Where there a general Council form'd by all the Colonies, and a general Governor appointed by the Crown to preside in that Council, or in some Manner to occur with and confirm their Acts, and take Care of the Execution; every Thing relating to Indian Affairs and the Defence of the Colonies, might be properly put under their Management.<sup>581</sup>

The influence of the political processes within Gaynehsragowa with the United States Constitution included the seating pattern of the Grand Council<sup>582</sup>. In analyzing the Wampum

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common sense of the American people. The Founding Fathers did not 'copy' the British Constitution, the Magna Carta, the governments of the ancients, or the Iroquois Confederacy, but they did examine and use European and American Indian ideas in the creation of our American government." Donald A. Grinde, Jr., "Iroquois Political Theory and the Roots of American Democracy" in Exiled, supra, note 21 at 228 [hereinafter referred to as "Iroquois Political Theory"].

<sup>579</sup>Venables, "Founding Fathers", *supra*, note 568 at 82.

<sup>580</sup>*Ibid*; see also Donald A. Grinde, Jr. and Bruce E. Johansen, Exemplar of Liberty. Native America and the Evolution of Democracy (Los Angeles, California: American Indian Studies Center, University of California, 1991) at xxiii [hereinafter referred to as Exemplar of Liberty].

<sup>581</sup>Venables, "Founding Fathers", *supra*, note 568 at 81.

<sup>582</sup>See Chapter 1, Figure 4 .



Circle of Fifty Chiefs<sup>583</sup>, one string of beads was left longer than the others, which represented Tatadaho, the Firekeeper of the Onondaga nation at the heart of the Confederacy. This concept paralleled the presidency of the United States executive branch.<sup>584</sup> In the seating pattern of the Grand Council, the Onondaga nation represented this executive branch. The Mohawk and Seneca nations united as the “Elder Brothers” and the Oneida and Cayuga united together as the “Younger Brothers”, which represented the legislative branch. The branches of the “Elder Brothers” formed the “upper house of the traditional Senate” and the “Younger Brothers” represented the “House of Representatives”<sup>585</sup>. The Albany Plan of Union clearly resembled the Grand Council of the Hodinohso:ni Confederacy.<sup>586</sup> Onondaga Faithkeeper, Oren Lyons stated:

The concept of separation of powers in government and checks and balances of power withing governments are traceable to our constitution. These are ideas learned by the colonists.<sup>587</sup>

The United States government finally recognized the Hodinohso:ni’s influence on the United States Constitution in its Senate in 1988.<sup>588</sup> Therefore, there is no doubt that the roots

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<sup>583</sup>See Chapter 1, Figure 1.

<sup>584</sup>Dr. Gregory Schaaf, The Great Law of Peace and the Constitution of the United States of America (special ed. 1987) (privately printed) at 2. [hereinafter referred to as The Great Law of Peace].

<sup>585</sup>*Ibid.*

<sup>586</sup>“Benjamin Franklin first proposed the creation of a colonial Grand Council in the ‘Albany Plan of Union’: ‘One General Government may be formed in America. ...administered by a president General...and a grand Council to be chosen by the representatives of the people of the several colonies” Benjamin Franklin, “Albany Plan of Union”, (Albany, N.Y., July 10, 1754), Queen’s State Paper Office; cited in Dr. Gregory Schaaf, *ibid*; See also Grinde and Johansen, Exemplar of Liberty, *supra*, note 579.

<sup>587</sup>Oren Lyons, “Elders Circle Communique”. (1986) cited in Schaaf, The Great Law of Peace, *supra*, note 584.

<sup>588</sup>United States Senate. Hearing before the Select Committee, *supra*, note 64 .

of democracy have been traced to the Hodinohso:ni Confederacy<sup>589</sup> wherein the procedures within the Gayanehsragowa allow all people, including individuals, their clans and their nations to have a say in determining the future of their nations.<sup>590</sup> This is done through consensus<sup>591</sup> in much the same way as the contemporary international legal system operates.<sup>592</sup> Gayanehsragowa provided a process and protocol wherein all people and nations were a part of the decision making. The final decision for the whole Confederacy was determined by consensus of all Nations through the negotiations and discussions of all Hodiayahnehso.<sup>593</sup> The protocol of consensus of the Hodinohso:ni Confederacy was described as follows:

Calhoun [a prominent political theorist] believed that the “federal, or general government” of the Six Nations constituted a ‘council of union’, where each member possessed a veto on its decision so that nothing could be done without the united consent of all. But this, instead of making the Confederacy weak, or impracticable, had the opposite effect. It secured harmony in council and action, and with them a great increase of power. The Six Nations became the most powerful of all the Indian tribes within the limits of our country.<sup>594</sup>

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<sup>589</sup>Statement of Dr. Gregory Schaaf, *ibid.* at 11. See also Grinde, “Iroquois Political Theory”, *supra*, note 571 at 228 wherein Grinde stated that “the Confederacy served as a democratic blueprint for the creation of Western democracies, especially influencing the evolution of the American governmental systems.”

<sup>590</sup>Interview with Jake Swamp and Richard Mitchell, March, 1996, Akwesasne Mohawk Territory.

<sup>591</sup>Schaaf, The Great Law, *supra*, note 584.

<sup>592</sup>Wallace, International Law, *supra*, note 338 at 3.

<sup>593</sup>“Implicit in all the procedure of council is the assumption that there is always enough time in this world to do things right. Historical records show councils taking days or weeks, sometimes because not all the required participants had arrived...Consensus was built carefully and slowly, point by separate point. Where British and Canadian parliamentary procedure moves through a series of votes, the treaty procedure build consensus - coming to a single mind - by working on principles shared by the participants, moving those principles onto the fabric of the particular issues being discussed. The relationship between the parties, their respect for one another, their previous agreements and commitments and their commitment to peace and the future generations were part of what kept them moving toward that consensus.”

Williams and Nelson, Kaswentha, *supra*, note 69.

<sup>594</sup>Grinde, “Iroquois Political Theory”, *supra*, note 574 at 273.

The influence of the treaty making protocol upon European colonialists was so great, that the protocol was duplicated:

The process of deliberate maintenance was another element of the Confederacy's legal system that was accepted and adopted by the Europeans in treaties...For two centuries, Haudenosaunee ways were the ways of coming to one mind in the treaty councils of the British and French. And those peoples understood those ways and used them because they worked and because the power of the Haudenosaunee meant that they could not be ignored. Using those processes led to the acceptance of relationships consistent with Haudenosaunee ways, as well.<sup>595</sup>

In formal international councils between European nations and the Hodinohso:ni, the law that was followed was Hodinohso:ni law.<sup>596</sup>

The only authorized representatives of Britain, France and the United States that met with Haudenosaunee delegations did so in ways that showed their acceptance and understanding of Haudenosaunee law and procedure. Each part of such councils carried meaning and purpose. Virtually each part of the international councils was an extrapolation and adaptation of the Great Law of Peace of the Haudenosaunee from its internal functions - governing nations of the Confederacy - to its external ones - regulating relations between nations of the world.<sup>597</sup>

The protocol and presentation of wampum belts was also incorporated into colonialist's customs. The following describes the way the wampum belt represents the relationship of the Pennsylvania government and the Hodinohso:ni Confederacy:

[C]ast your eyes towards this belt, whereon six figures are . . . holding one another by the hands. This is a just resemblance of our present union. The first five figures representing the Five Nations [and] the sixth . . . the government of Pennsylvania, with whom you are linked in a close and firm union. In whatever part of the belt is broke, all the wampum runs off, and renders the whole of no strength or consistency. In like manner, should you break faith with one another, or with this government, the union is dissolved. We would therefore hereby place before you the necessity of preserving your

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<sup>595</sup>Williams and Nelson, Kaswentha, *supra*, note 69.

<sup>596</sup>*Ibid.*

<sup>597</sup>*Ibid.*

faith entire to one another, as well as to this government. Do not separate; do not part of any score. Let no differences or jealousies subsist a moment between Nation and Nation, but join together as one man . . . <sup>598</sup>

One of the main principles of the Gayanehsragowa is unity. "Colonists had partially assimilated the concepts of unity, federalism, and natural rights that existed in American Indian governments. These provided a viable alternative to the prevailing organization of European society."<sup>599</sup> Unity represents the power and strength of many nations able to work together. The Peacemaker demonstrated to his people the strength of unity by using the symbolism of the strength of five arrows. He showed them one arrow and how easy it was to break in half and then gathered five arrows and showed them how difficult the bundle was to break. This symbolized the strength of unity of five nations. American treaty commissioners used this imagery through the following speech:

They said to one another, the Six Nations are a wise people, let us hearken to their Council and teach our children to follow it. Our old Men have done so. They have frequently taken a single Arrow and said, Children, see how easy it is broken, then they have tied twelve together with strong Cords - And our strongest Men could not break them - See said they, this is what the Six Nations mean. Divided a single Man may destroy you - United, you are a match for the whole World.<sup>600</sup>

The concept of unity was also noted by one of the old Hodiyanehso: in his speech to Pennsylvania colonists in 1744 as follows:

Our wise forefathers established Union and Amity between the Five Nations. This has made us formidable; this has given us great Weight and Authority with our neighboring Nations. We are a powerful Confederacy; and by your observing the same methods, our wise forefathers have taken, you will acquire such Strength and power. Therefore,

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<sup>598</sup>Grinde, "Iroquois Political Theory", *supra*, note 575 at 243-44.

<sup>599</sup>*Ibid.* at 231.

<sup>600</sup>*Ibid.* at 251.

whatever befalls you, never fall out with one another.<sup>601</sup>

Hodinoḥso:ni efforts influenced colonial unity through the creation of the United States Constitution.<sup>602</sup> The symbolism of the eagle holding onto five arrows in its beak was used by the United States Government as a symbol of unity amongst their various nations.

Another main principle of Gayanehsragowa was the concept of peace. The Tree of Peace symbolized this concept wherein the four white roots spread out in all four directions - the north, south, east and west. Because the message of the Peacemaker was to spread in all directions, it was intended to spread to all nations of the world. It was asserted by Williams and Nelson that since the Dutch, British and French colonizers followed the processes provided by Gayanehsragowah, they placed themselves under the protection of the Tree of Peace. Williams and Nelson also stated that:

There were those who interpret the Great Law as intending that, once the Great White Roots have spread to the four directions, everyone would be 'under' the Haudenosaunee. It is more consistent that all should be under the Great Law of Peace: the Haudenosaunee did not require any nation inside or outside the Confederacy to give up following the path of peace - they were 'under' Kaianerekowa [Gayanehsragowah] whether they realized it or not.<sup>603</sup>

The Tree of Peace also symbolized unity in which "all are invited to follow the roots to the tree and join in peaceful co-existence and cooperation under its great long leaves."<sup>604</sup> Indigenous writer James Anaya also stated:

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<sup>601</sup>Carl Van Doren and Julian P. Boyd, eds., Indian Treaties Printed by Benjamin Franklin 1736-1762 (Philadelphia: Historical Society of Pennsylvania, 1938), 75 cited in Grinde, "Iroquois Political Theory", *ibid.* at 241.

<sup>602</sup>Venables, "The Founding Fathers", *supra*, note 568 at 68

<sup>603</sup>Williams and Nelson, Kaswentha, *supra*, note 69.

<sup>604</sup>James Anaya, Indigenous Peoples, *supra*, note 343 at 79.

The Great Law of Peace promotes unity among individuals, families, clans and nations while upholding the integrity of diverse identities and spheres of autonomy.<sup>605</sup>

The influences of the concepts of peace and unity within the Gayanehsragowa can be found in the purpose and principles of the United Nations. For example, reviewing some of the articles of the Charter of the United Nations with the Gayanehsragowa, reveals some of the principles of Gayanehsragowa. Relevant portions of the preamble of Charter state:

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and...

AND FOR THESE ENDS

to practise tolerance and live together in peace with one another as good neighbours, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed forces shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,...

As well, Article 1 of the Charter states:

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

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<sup>605</sup>*Ibid.*

3. To achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Like the United Nations, the Gayanehsragowa was established at a time of warring between nations and one of its main principles was to live in peace and harmony amongst one another. As a result of the Good Messages in Gayanehsragowa, six separate nations were able to unify and maintain peace between them. As well, unity was promoted through the strength of peace between nations which is similar to the Preamble of the Charter. The Hodinohso:ni nations were joined together through maintaining peace and security. There was always respect for the principle of equal rights. In fact the rights of the people that were maintained according to Onondaga Faithkeeper Oren Lyons, include freedom of speech, freedom of religion, and the rights of women to participate in government.<sup>606</sup> The purpose to maintain peace, to develop friendly relationships, and to be a centre for harmonizing the actions of all nations to achieve a peaceful coexistence amongst all nations mirrors the principles within Gayanehsragowa.

Article 4 of the Membership section (Chapter II) of the United Nations Charter also reflects the Tree of Peace paradigm. As noted in Chapter 1, Ga nya des go wa (Tree of Peace) was planted in Onondaga Territory as the Onondaga nation was responsible for the Council Fire. If any nation were to follow the roots to their source, they would find the laws of the Great Peace. As long as any nation promised to follow the principles within Gayanehsragowah, they were welcomed to take shelter under the Great Tree. This concept is very similar to Article 4

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<sup>606</sup>Schaaf, The Great Law of Peace, *supra*, note 584 at 4.

in which “membership in the United Nations is open to all other peaceloving States which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.” Part 2 of Article 4 states:

2. The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

This part of the Charter is consistent with the Gayanehsragowa in that the Grand Council had the authority to allow a nation to take shelter under the Gayanehsragowa. Although any nation was able to “join”, each nation maintained its own autonomy through its decision making processes.

The origins of international law can be traced back to philosophies of natural law. Therefore, we must come back full circle to these same philosophies of natural law to discuss how important they are. One such example of that natural law is the Gayanehsragowa, the Great Law, which shares similarities of principle with the natural law arguments of European philosopher, John Locke.<sup>607</sup> As noted by Grinde:

...Locke stated that human beings are in a natural state of equality and so he reasoned that no person has more power and rights than another. Natural laws of tribal people teach that people are equal and independent and that no one should harm another in their life, liberty and possessions. This concept is also a fundamental principle in the Great Law of Peace of the Iroquois.<sup>608</sup>

Where the principles of the Great Law and Locke’s philosophy differ is his concept of individual

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<sup>607</sup>“...Colden [a British colonial leader] incorporated his belief that the Haudenosaunee illustrated an important premise of philosopher John Locke (1690): that American Indians governed themselves in ways which reflect the origins of government among all peoples.”

Venables, “Founding Fathers”, *supra*, note 568 at 75.

<sup>608</sup>Grinde, “Iroquois Political Theory”, *supra*, note 575 at 232.



private property rights. The Gayanehsragowa does not recognize an individual's property right but provides for the peoples' relationships to land. There is actually no "ownership" of land but a relationship, respect and acknowledgement to Mother Earth.<sup>609</sup> In acknowledging this difference of culture, Benjamin Franklin made the following speech, which is provided in full:

Savages we call them, because their manners differ from ours, which we think the Perfection of Civility; they think the same of theirs....

Our laborious manner of Life compared with theirs, they esteem slavish and base; and the Learning on which we value ourselves; they regard as frivolous and useless. An Instance of this occurred at the Treaty of Lancaster in Pennsylvania, Anno 1744, between the Government of Virginia & the Six Nations. After the principal Business was settled, the Commissioners from Virginia acquainted the Indians by a Speech, that there was at Williamsburg a College with a Fund for Educating Indian Youth, and that if the Chiefs of the Six-Nations would send down half a dozen of their Sons to that College, the Government would take Care that they should be well provided for, and instructed in all the Learning of the white People. It is one of the Indian Rules of Politeness not to answer a public Proposition the same day that it is made; they think it would be treating it as a light Matter; and that they show it Respect by taking time to consider it, as a Matter important. They therefore deferred their Answer till the day following; when their Speaker began by expressing their deep Sense of the Kindness of the Virginia Government, in making them that Offer; for we know, says he, that you highly esteem the kind of Learning taught in those Colleges, and that the Maintenance of our Young Men while with you, would be very expensive to you. We are convinced therefore that you mean to do us good by your Proposal, and we thank you heartily. But you who are wise must know, that different Nations have different Conceptions of things; and you will therefore not take it amis, if our Ideas of the Kind of Education happen not to be the same with yours. We have had some Experience of it: Several of our Young People were formerlay brought up at the Colleges of the Northern Provinces; they were instructed in all your Sciences; but when they came back to us, they were bad Runners, ignorant of every means of living in the Woods, unable to bear either Cold or Hunger, knew neither how to build a Cabin, take a Deer, or kill an Enemy, spoke our Language imperfectly; were therefore neither fit for Hunters, Warriors or Counsellors; they were totally good for nothing. We are however not the less obliged by your kind Offer, tho' we decline accepting it; and to show our grateful Sense of it, if the Gentlemen of Virginia will send us a dozen of their Sons, we will take great Care of their Education,

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<sup>609</sup>Oren Lyons, "Traditional Native Philosophies Relating to Aboriginal Rights" in Menno Boldt and J. Anthony Long, The Quest For Justice. Aboriginal Peoples and Aboriginal Rights (Toronto: Univeristy of Toronto Press, 1992) at 21.

instruct them in all we know, and make Men of them.<sup>610</sup>

The education system of the Hodinohso:ni originated with natural law and it was the women who were responsible in teaching all children.

Gayanehsragowa provided for the rights, duties and responsibilities of Hodinohso:ni women<sup>611</sup>. As well, the matriarchal system of the Hodinohso:ni influenced the feminist movement created by European women in the nineteenth and twentieth century<sup>612</sup>. Historical records indicate that early feminists had gained first-hand knowledge of the rights of Hodinohso:ni women and used this knowledge in their continuing fight for equal rights. Sally Wagner researched the history of the feminist movement and found that the first feminists learned from Hodinohso:ni women.<sup>613</sup> European women had been fighting for their rights since the early part of the fourteenth century and found new ammunition for their fight from the Hodinohso:ni matriarchal system. Wagner recalled three women who were major theorists of the women's rights movement, namely, Matilda Joslyn Gage, Elizabeth Cady Stanton and Susan B. Anthony.<sup>614</sup> Gage and Stanton were believed to have been "students of the Haudenosaunee – the Six Nations of the Iroquois Confederacy – and found a cosmological worldview which they

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<sup>610</sup> Benjamin Franklin, "Remarks Concerning the Savages of North-America: in Lemay, ed., *Franklin: Writings*, 969-970 cited in Venables, "The Founding Fathers", *supra*, note 568 at 90-1.

<sup>611</sup> *Ibid.*; see also Audrey Shenandoah, "Everything Has To Be in Balance" in *Indian Roots*, *supra*, note 25 at 36.

<sup>612</sup> Grinde and Johansen, *Exemplar of Liberty*, *supra*, note 580 at 222 - 36; see also Sally Roesch Wagner, "The Iroquois Influence on Women's Rights", in *Indian Roots*, *supra*, note 25 at 115 [hereinafter referred to as "Iroquois Influence"];

<sup>613</sup> Wagner, "Iroquois Influence", *ibid.* at 116; See also Monture-Angus, *Thunder in my Soul. A Mohawk Woman Speaks*, (Fernwood Publishing: Halifax, N.S., 1995) at 231.

<sup>614</sup> *Ibid.*

believed to be superior to the patriarchal one of the white nation in which they lived.”<sup>615</sup>  
Wagner writes, “It comes as no surprise then, that when reformers like Matilda Joslyn Gage looked outside of their culture for a model upon which to base their vision of an egalitarian world, they quickly found their well-known Indian neighbours.”<sup>616</sup>

As noted in the *Gayanehsragowa* in Chapter 1, Hodinohso:ni women had specific duties and responsibilities. Women were the caretakers and nurturers of children; women were the decision-makers; women were the title holders and responsible in “raising up” of a Hoyaneh. Hodinohso:ni women also participated in political decisions in Grand Council as well as in early treaty negotiations. All of these rights and responsibilities were recognized by the early feminists. As Wagner writes, Gage’s most important conclusion in her research of the Hodinohso:ni was that:

Male-rule, or the Eurocentric social/government system she labeled the patriarchy, based its institutions on inequality of rights as exemplified in its long history of women’s oppression. ‘Thus to the Matriarchy or Mother-rule’, she concludes, ‘is the modern world indebted for its first conception of inherent rights, natural equality of condition, and the establishment of a civilized government upon this basis...

For Matilda Joslyn Gage, the Haudenosaunee – the People of the Longhouse – were an example of the political, economic, gender, religious, social system of gynocracy she called The Matriarchy. ‘Never was justice more perfect, never civilization higher than under the Matriarchy.’<sup>617</sup>

### **Conclusion -- A New World Order?**

In a letter to the Mohawk Nation from the Former UN Assistant-Secretary General and Chancellor of the first world University for Peace in demilitarized Costa Rica, Robert Muller

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<sup>615</sup>*Ibid.* at 118.

<sup>616</sup>*Ibid.* at 121.

<sup>617</sup>*Ibid.* at 132.

articulated the following request:

I beg you to help me with my determination to find a new and better way to take good care and wisely govern all peoples of this planet, with utmost love for our Mother Earth and all its living beings. The Iroquois Federation is one of the oldest models for that. Please tell me, please ask your brothers and women how we could best take care and wisely govern this entire Earth and its inhabitants...The time has come to express this hope for all humans. I pray that all indigenous people in the world will tell us our errors in government and show us the new paths we should take, as you have done for the environment. We very much rely on your wisdom and intimacy with the secrets of nature and of the universe.<sup>618</sup>

Richard Falk provided a three-part process to develop a new kind of world order vision, as follows:

- 1) A new world order vision has to be built upon the conception of human nature and potential for human development that encompasses the whole being. This would allow for people to participate as citizens globally as well as communally.
- 2) There must be a process that allows for the basis of “reordering the political framework”.
- 3) A new world order vision must encompass wholeness and thinking globally.<sup>619</sup>

The framework for the new world order already exists within Gayanehsragowa. It allows for individual development within each clan and nation. Hodinohso:ni culture provides for the “whole being” as well as thinking about all of the environment. Gayanehsragowa provides a framework for thinking about all aspects of life including physical, mental, emotional and spiritual aspects. Hodinohso:ni law also provides for the holistic practices and processes that includes human beings, the natural and spiritual world. Not only does a political framework

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<sup>618</sup>Letter dated November 23, 1995 to Chief Jake Swamp, Mohawk Nation from Former UN Assistant-Secretary General and Chancellor of the first world University for Peace in demilitarized Costa Rica, Robert Muller. [copy of letter in author’s possession provided by Jake Swamp]

<sup>619</sup>Richard Falk, Revitalizing International Law (Iowa State University Press: Ames, Iowa) 1989 at 72.

already exist with Gayanehsragowa, but the balance between human beings, nature and spirituality exists also.

Hodinohso:ni processes and principles influenced the establishment of the Constitution of the United States, which in turn influenced the establishment of the United Nations. However, some of the major concepts were bypassed such as the responsibilities of women, the balance between men and women, the moral responsibility of leaders to everyone and everything, the respect for all living things and respect for their environment. Gayanehsragowa also provided for checks and balances that prevented one person or persons to have more “power” than any other. Mohawk writer, Taiaiake Alfred articulates a traditional Indigenous view of the meaning of power:

On the meaning of power, indigenous thought has traditionally focused on questions regarding the legitimacy of the nature and use of power, rather than its distribution. Within indigenous cultures it is recognized that forms and levels of power vary, depending on the spiritual and physical resources available to the individual. There have always been two basic questions: What kinds of power do individuals have? And are they using it appropriately? In other words, the traditional indigenous view of power and justice has nothing to do with competition, or status vis-a-vis others: it focuses on whether or not power is used in a way that contributes to the creation and maintenance of balance and peaceful co-existence in a web of relationships.<sup>620</sup>

James Anaya in his analysis of Gayanehsragowa states:

Such conceptions outside the mold of classical Western liberalism would appear to provide a more appropriate foundation for understanding humanity, its aspirations and its political development than the model of a world divided into exclusive, monolithic communities, and hence a more appropriate backdrop for understanding the subject matter of self-determination.<sup>621</sup>

Thus, in thinking about the concept of a new world order, one would merely have to analyze the

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<sup>620</sup> Alfred, Peace, Power and Righteousness, *supra*, note 493 at 49.

<sup>621</sup> Anaya, Indigenous Peoples, *supra*, note 343 at 79.

concepts of Gayanehsragowa, which has existed long before colonization. It is a foundation for understanding humanity and political organization based on traditional values and beliefs.

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Robert A. Williams Jr., "The Algebra of Federal Indian Law: The Hard Trial of  
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#### **UNPUBLISHED THESES**

David Steadman Berry, "Aboriginal Self-Determination Under International Law:  
Reconciling Distinct Historical Rights with Existing International Law Models" LL.M.  
Thesis, Queen's University, Kingston, Ontario, September 1993

**A P P E N D I X      A**

was often as great as that of a "treaty." Because the formal gradation between such terms may be projections into the past of modern notions, the words have been treated, more or less, as synonyms herein. Difference in importance should be inferred only after careful study of the events.

The calendar is meant to provide points of orientation rather than comprehensive spans of time for each negotiation. To help with orientation, a few events have been noticed that influenced Iroquois history without involving Iroquois participants. For brevity's sake, certain issues that arose constantly in negotiations have been mentioned only occasionally. The presence of French missionaries in Iroquois villages was regularly denounced by the English; the high prices of trade goods were just as regularly denounced by the Indians. These issues may be assumed to have been raised, either formally or in private conversations in almost every one of the councils of the colonial era. Rather than repeat them so often, the editors have chosen to summarize proceedings in such a way as to show the movement of events.

Iroquois treaty-making preceded the earliest documented negotiation with Europeans, and it is said that such intertribal treaties still are being made. The calendar's dates, to repeat, reflect available documentation.

The documents for these and many more treaty events are to be found in the Documentary History of the Iroquois archive at the Newberry Library, Chicago.

- 1613 A treaty of friendship may have been made between some Iroquois and a Dutch trader at "Tawagonshi." The authenticity of the sole document referring to this event is highly questionable. A photostatic copy is in the New York State Library, manuscripts division.
- 1624 Treaty of trade between Iroquois and New France.
- 1624 War between Mohawks and Mahicans who were aided by Fort Orange Dutch.
- 1628 Mohawk victory over Mahicans and Dutch, probably followed by an unrecorded agreement for Mohawk trading at Fort Orange.
- 1633 Treaty for trade between Iroquois and French.
- 1634 Mohawk truce with Canadian tribes.
- 1635 Council at Oneida pertaining to trade between Mohawks, Oneidas, Onondagas, and Dutch.
- 1643 Unrecorded treaty of trade and peace held in Mohawk country between Mohawks and Dutch. An "iron chain" of alliance between "all" the Dutch and the Mohawks was forged at this conference, which is substantiated by later references.

- 1645 July and September. Treaty at Three Rivers between Mohawks, French, Algonquins, and Hurons. See proceedings and analyses herein.
- 1645 July. Treaty at Fort Orange between Dutch governor Kieft and Mohawks and Mahicans.
- 1645 August. Treaty terminating war between the Manhattan Dutch and surrounding Algonquian tribes held at Fort Amsterdam in the presence of Mohawk ambassadors who had been asked by the Dutch to act as "mediators."
- 1649 A decisive attack by Mohawks and Senecas effected destruction of the Huron confederation.
- 1653 Peace treaty at Montreal between French and Iroquois, each of the Five Nations treating separately.
- 1657 or 1658 Treaty relations begun between Dutch and "Senecas" i.e., the undifferentiated "upper" Iroquois nations west of the Mohawks.
- 1659 Conference at the First Mohawk "Castle" (Kahnawakeh) between Mohawks and Dutch, renewing alliance made sixteen years earlier.
- 1660 Treaty at Esopus between Esopus Indians and Dutch "at the request and intercession of the Maquaas [Mohawks], Minquaas [Susquehannocks], Mohicans, and other chiefs."
- 1664 September. Surrender of New Netherland to the English. Founding of New York.
- 1664 September. Treaty of friendship, trade, and mutual aid between Mohawks, "Senecas," and English, at Albany (formerly Fort Orange).
- 1665 December. Conference at Quebec between the governor of New France and the Iroquois. Peace proposed by Onondaga chief Garakontié.
- 1666 January. Distrustful French attacked Mohawks.
- 1666 July. Confirmation by Oneidas and Mohawks (Oneidas speaking for Mohawks) of articles of peace negotiated with the French in 1665.
- 1666 September. Dutch at Albany forced Mahicans to be at peace with Mohawks.
- 1667 Council at Montreal between Iroquois and French after Prouville de Tracy's destruction of Mohawk villages. Also discussed was trade in the upper Great Lakes region.
- 1672 Dutch and English officials at Albany compelled Mahicans to keep peace with Mohawks.
- 1673 Ottawas and Iroquois negotiated for peace. Count Frontenac, governor general of new France, tried to discourage consummation of the

- treaty because he feared that it would result in diversion of Ottawa trade from the French.
- 1673-1674** Dutch reconquered New York and restored New Netherland, but the colony was returned to the English by the treaty of Westminster, February 1674.
- 1675** Spring. New York's governor Sir Edmund Andros renewed English protection for Mohawks and Mahicans, apparently separately.
- 1675** August. Andros journeyed to Mohawks' Third "Castle" (Tionondage) to treat with the Five Nations. Iroquois "submitted in an Extraordinary manner, with reiterated promises," according to Andros (no minutes of the proceedings have been found). Iroquois bestowed the title of "Corlaer" upon Andros and subsequent governors of New York.
- ca. 1675** Treaty between Iroquois and Ottawas on border of Lake Ontario.
- 1677** February. Treaty at Shackamaxon [Philadelphia] between Iroquois, Susquehannocks, and Delawares, with participation of English magistrates of Upland [Chester, Pa.]. Most Susquehannocks then went to Iroquoia, some remaining with Delawares.
- 1677** April and May. First of the "silver" Covenant Chain treaties: multi-lateral negotiations involving New York and commissioners from Massachusetts and Connecticut on the one hand, and the Five Nations and "River" Indians of the Hudson valley. No minutes have been found; information is derived from references in other sources.
- 1677** July and August. Second "silver" Covenant Chain treaty. New York's governor and a commissioner representing Maryland and Virginia negotiated at Albany to end the war between the southern colonies and the Five Nations and Susquehannocks. In New York sources the Iroquois were the only Indian parties with formal standing. The Maryland copy of the treaty lists the Delawares also as a party.
- 1679** Treaty at Albany between the Five Nations and the colonies of New York, Maryland, and Virginia.
- 1681** New York amputated for the founding of Pennsylvania. Indians in the new colony's territory pass under its protection; it has no treaty relationship with the Iroquois.
- 1682** August. Peace treaty at Albany between Maryland and the Five Nations.
- 1682** September. Negotiations at Montreal between the Five Nations and the French.
- 1683** September. The Iroquois entrusted the Susquehanna valley to the protection of the governor of New York [Thomas Dongan] thereby forestalling William Penn's attempted purchase.

- 1684** July. Treaty at Albany between the Five Nations and the governors of New York and Virginia. The Iroquois equivocally stated that they were subjects of the English crown, but also a free people allying themselves as they preferred. This statement became the basis for the crown's claim to sovereignty.
- 1684** September. Treaty at La Famine between French governor La Barre and Onondaga chief Garangula [Otreouati]. La Barre had set out on an expedition of conquest, but after disease disabled his army he was forced to make a humiliating peace. Garangula co-opted New France into the Covenant Chain, but the French crown rejected the membership.
- 1685** August. Three chiefs of the Piscataway Indians of Maryland journeyed to Albany to make peace and ally themselves to the Covenant Chain.
- 1685** September. Treaty at Albany between New York's governor Dongan, Virginia's emissary colonel Byrd, and the Five Nations to regulate the passage of Iroquois war parties southward by realigning the Warriors' Path.
- 1686** May. Governor Dongan renewed the Covenant Chain in a treaty with the Five Nations at Albany.
- 1686** September. Governor Dongan told the Five Nations that the king of England had taken them as his "children and subjects." Among other business the Iroquois refused Dongan's "desire" for them to interfere with Pennsylvania's trade.
- 1686** August-September. Governor Dongan sent trading expeditions with Seneca escorts to Michilimackinac. These were captured by the French.
- 1687** July. French governor Denonville destroyed Seneca villages and proclaimed French sovereignty over the Iroquois.
- 1687** September. Treaty at Albany between governor Dongan and the Five Nations. Dongan rebuked them for treating with the French, and notified them of a new peace between France and England.
- 1688** February. Conference at Albany between governor Dongan and the Five Nations.
- 1688** June. Treaty at Montreal between governor Denonville and three Iroquois nations the Onondagas, Cayugas, and Oneidas. The Indians declared themselves sovereign in their own lands and expressed a desire to be neutral between France and Britain.
- 1688** September. Edmund Andros, as governor of the Dominion of New England, treated with the Five Nations at Albany. Against their objections, he addressed them as "children," instead of "brethren," and insisted that they call him "father."

- 1689 May. England declared war on France: The War of the League of Augsburg, known in America as King William's War.
- 1689 May. Treaty at Albany between Mohawks and Connecticut. Covenant Chain renewed.
- 1689 June. Overthrow of New York's government by followers of Jacob Leisler.
- 1689 June. Treaty at Albany of mayor and magistrates with chiefs of Five Nations, Covenant renewed. Iroquois demanded use of "brethren" language. They announced intention of warring against the French.
- 1689 ca. July. Abenakis treated with Mohawks somewhere in Iroquoia. They proposed an alliance to fight against the English. Events show this was rejected.
- 1689 July. Iroquois attacked Lachine (near Montreal).
- 1689 Summer. Senecas made peace with the Ottawas.
- 1689 September. Agents from Massachusetts Bay, New Plymouth, and Connecticut treated with the Five Nations at Albany. They requested Iroquois alliance in war against the "Eastern Indians." Publicly the chiefs demurred. Privately they assured the colonial agents of their intention to march against Pennacooks and Abenakis.
- 1690 January. Messengers from Albany treated with the Five Nations at Onondaga. Ottawa peace confirmed by the whole League. Messengers from Canada's governor Frontenac invited the League to treat at Montreal, but were rebuffed. Alliance with the English reconfirmed.
- 1690 9 February. French troops and Indian allies attacked and destroyed Schenectady. Pursued by Mohawks on their retreat.
- 1690 25 February. Mohawk chiefs treated with mayor and officers of Albany, condoling losses and exhorting renewed belligerence against the French: "This is butt a beginning of the warr."
- 1691 June. Conference at Albany between New York and Oneidas, Onondagas, Cayugas, and Senecas.
- 1691 September. Negotiations at Albany between New York and Senecas and Mohawks.
- 1692 June. Conference at Albany between the Five Nations and New York's commander in chief, Major Richard Ingoldsby. Mutual exhortations to continue fighting against the French. Iroquois distressed because other colonies had not joined the fight.
- 1692 September and October. Shawnee emissaries requested permission from

- New York to bring their people from the west to settle among the Minisinks. Peace treaty with the Iroquois required by New York after Iroquois protests. This done, permission granted. Shawnees joined the Covenant Chain.
- 1693 February. French attacked and destroyed three Mohawk villages. Pursued by New York's governor Benjamin Fletcher.
- 1693 25 February. Treaty at Albany between governor Fletcher and the Five Nations. Provision made for the Mohawks. Fletcher given title Cajenquiragoe, meaning Lord of the Great Swift Arrow, in recognition of his speedy pursuit of the French.
- 1693 June and July. Five Nations chiefs met with governor Fletcher at Albany to renew the Covenant Chain. They informed him of their intention to propose formal peace to the "Dionaondades" [Wyandot/Hurons] allied to the French. Fletcher tried, and failed, to stop informal communication between the Five Nations and New France's governor Frontenac who was trying to woo them away from New York. (During much of the war, Frontenac had been sending messages and wampum belts to the Five Nations in a continuing diplomatic campaign. Many Iroquois were inclined to respond favorably, and the belts were discussed in tribal councils, but information about the discussions is indirect.)
- 1694 February. Treaty at Albany between the Five Nations and Major Peter Schuyler and the magistrates. Onondaga chief Decanisora [Teganissorons] reported the peace belts received from governor Frontenac. Schuyler tried to forbid further communication with the French, but recognized the impossibility of enforcing the ban. A short truce proposed.
- 1694 May. Governor Fletcher met the Five Nations chiefs at Albany. Much strain over the issue of correspondence with Frontenac. Fletcher issued an ultimatum for the Iroquois to meet with him in 100 days to determine who was "for" him and who "against," with an apparent implication that he would regard the latter as enemies to be fought.
- 1694 August. At the term of Fletcher's 100-day ultimatum, the Five Nations chiefs met with him, governor Andrew Hamilton of the Jerseys, and agents from Massachusetts Bay and Connecticut. Fletcher spoke also for Pennsylvania, of which he was then governor as well as New York. Decanisora recited what happened in his negotiations with Frontenac. Much contention. Fletcher refused to treat on Frontenac's terms. Fletcher protected the Delaware Indians in Pennsylvania against Seneca demands for them to send warriors. Iroquois announced that they had made peace with western tribes.



- 1695 January. Frontenac sent messengers to Onondaga with an invitation for the Five Nations to treat in Canada. This was rejected.
- 1695 Spring. Renewal of hostilities between Iroquois and western tribes.
- 1695 August. Inconclusive meeting between governor Fletcher and the Five Nations at Albany.
- 1696 August. French destroyed Onondaga, but its people escaped.
- 1696 September–October. Governor Fletcher renewed the Covenant Chain with the Five Nations at Albany and gave them supplies. They complained because other English colonies were not helping. "We are become a small people and much lessened by the warr."
- 1697 September. Peace treaty of Ryswick between England and France. War continued between Five Nations and New France's Indian allies.
- 1698 June, July, August. Series of conferences at which the Iroquois proposed peace to the French.
- ca. 1698–99 Iroquois abandoned Ontario after heavy defeats by western Indian allies of the French.
- 1669–1700 Winter. Western Indians proposed peace with free access for themselves to Albany's trade.
- 1689 February. Onondaga chief Decanisora informed the magistrates of Albany that Oneidas, Onondagas, and Cayugas intended to treat formally and openly with the governor of Canada.
- 1699 March. Four Iroquois nations, having considered a message from the French, summoned the Mohawks and Col. Peter Schuyler [Quider] and Major Dirk Wessells to a general council in April.
- 1699 April. New York's government sent emissaries to the general council at Onondaga with instructions to break off Iroquois negotiations with the French.
- 1699 August. New York's commissioners for Indian affairs rebuked the Iroquois because some of the latter had been to Pennsylvania to treat for trade "in breach of the Covenant Chain" that required them to trade only with New York.
- 1700 An intense series of negotiations took place involving the Iroquois, the English of New York, the French of Canada, and the Indian allies of the French.
- 1700 Early June. Delegates from three western tribes of the Ojibwa family came to Onondaga to treat for peace.
- 1700 28 June. Chiefs of the Christian Indians of Caughnawaga (Canada) came to Albany to negotiate trade.

- 1700 30 June. Chiefs of the Onondagas, Cayugas, and Senecas complained at Albany of the losses being sustained from attacks by western Indians instigated by the French. Senecas had lost 40 persons during the spring. Speaker Decanisora demanded action to give the Iroquois respite.
- 1700 18 July. Two Onondagas and four Senecas discussed peace proposals with governor de Callière at Montreal.
- 1700 29 July. Sieurs de Maricour and de Joncaire and missionary Father Bruyas came to Onondaga with peace proposals from de Callière.
- 1700 31 July. John Baptist van Eps, an emissary from Albany, arrived post haste to forbid negotiations with the French. He was answered equivocally by Decanisora.
- 1700 27–31 August. New York's governor Bellomont met with chiefs of the Five Nations at Albany, trying once more to prevent negotiations with the French. Failing in this, he obtained permission to build a fort in the Onondaga country.
- 1700 3 September. Nineteen Iroquois, representing all the Five Nations, accompanied de Maricourt, de Joncaire, and Bruyas to Montreal. Also present at the peace negotiations were chiefs of the Hurons, the Ottawas, the Abenakis, the Montagnais, and the Sault Indians. Preliminary articles of peace signed on the 8th.
- 1701 April. William Penn treated with the Indians of the lower Susquehanna and upper Potomac valleys to reserve their trade for Pennsylvanians and to confirm the cession to him of the Susquehanna valley by the Susquehannock Indians, made in September 1700. All this was subscribed by Ahookasoongh "brother to the Emperor" of the Five Nations, purportedly representing his brother. A "Chain of Friendship" declared.
- 1701 June. Emissaries of New France and New York in Onondaga at the same time. Decanisora acted as spokesman for the Five Nations.
- 1701 July. Newly arrived governor of New York John Nanfan met with chiefs of all Five Nations at Albany. Iroquois confessed inability to hinder the French from building a fort at Tioghsaghrondie or Wawyachtenok [Detroit]. Twenty sachems signed a "deed" to the king of England quitting "for ever" all the Five Nations' "right title and interest" to "all that vast Tract of land or Colony called Canagariarchio" 800 miles in length and 400 in breadth and including Detroit, the Iroquois having become "the true owners of the same by conquest." (The Iroquois understood this as putting the land under protection of the English crown.)
- 1701 Late summer or early fall. At a council at Onondaga, the Five Nations

- received an invitation from western Algonquins ["Waganhaes"] to treat for peace at Detroit.
- 1701 August–September. General peace confirmed at Montreal between the Five Nations and the French and their Indian allies. The treaty stipulated Iroquois neutrality between the French and the English.
- 1701 4 May. War declared by the European Grand Alliance, including Great Britain, upon France: The War of the Spanish Succession.
- 1702 July. A grand council at Albany, including Five Nations, Hudson "River Indians," Tightwees [Miamis], and Dionondadies [Wyandot/Hurons] from the region of Detroit, and the newly arrived governor of New York, Lord Cornbury. Five Nations concerned about rumors of Anglo-French war. Western Indians interested in trade. Cornbury renewed the Covenant Chain.
- 1703 July. A party of Schaghticoke Indians ("River Indians") informed the magistrates of Albany of their intention of settling in the Mohawk country. Opposed by the magistrates, they went anyway "in a Passion."
- 1703 November. The Five Nations met at Quebec with the new French governor general, the Marquis de Vaudreuil. Agreement on both sides that they should continue neutral between Britain and France.
- 1704 June. News from Onondaga arrived in Albany that "Far Indians" were warring with Indians in the vicinity of Detroit, and that the latter had come to Onondaga to request aid. Further, that Five Nations Indians who had previously settled near "Cadarachqui" (Fort Frontenac/Kingston, Ontario), had withdrawn to Iroquois country because of fear of the Waganhaes (probably Mississaugas) coming in "who now consist in much greater number than those of the five nations."
- 1704 ca. October. Onondagas and perhaps others of the Five Nations treated and traded at Philadelphia against the wishes of Yorkers.
- 1705 August. Four Iroquois nations met at Montreal with governor Vaudreuil. (Only Senecas are identified.) They demanded that he pacify the western Indians who were attacking them, and that they be given restitution for losses sustained in such attacks.
- 1706 June. Conference at Philadelphia between Pennsylvania council and Conestogas, Shawnees, and Conoys. Conestoga chief spoke also for the Nanticokes who feared danger from the Five Nations. Shawnees also apprehensive.
- 1706 September. Council at Albany between Lord Cornbury and the Five Nations.

- 1706 Before November. Governor Vaudreuil met at Montreal with Iroquois representatives, unidentified except Senecas. They complained of Ottawa depredations and demanded that he join with them to punish the Ottawas. According to his report, he persuaded them to "let go the hatchet."
- 1707 September. Lord Cornbury met the Five Nations at Albany. Iroquois suspected that Virginia, Maryland, and Pennsylvania had withdrawn from the Covenant Chain. Why had they not renewed their alliance in it?
- 1707 Great numbers of Iroquois warred against the "Flatheads" [Catawbas] in the Carolina back country.
- 1708 July, August, September. A series of disappointing conferences at Albany. Lord Cornbury waited eleven days in July for the Five Nations chiefs, then returned to New York City, after appointing a new meeting in September. He failed to appear then when the chiefs waited for him. They had news about negotiations with western tribes for trade, among other business, but received no satisfactory answers from the commissioners of Indian affairs. Much disgruntlement.
- 1709 Spring. A series of informal conferences regarding the expected arrival at Albany of delegates from the "Far Indians," who wanted to treat for trade. These were delayed by Joncaire's assassination of their guide Montour, but chiefs of the Mississaugas and "Nequequents" came to Albany mid-May. Others came early in June.
- 1709 The English planned an invasion of Canada. New York council ordered the Indians of New York and New Jersey to supply warriors. Minisinks refused: "only Squas and no fighting men." Senecas did not respond. Other four Iroquois nations met with New York's governor Richard Ingoldsby at Albany, 15 July 1709, and promised assistance, but the expedition aborted.
- 1709 Summer. Senecas treated for peace with the Ottawas.
- 1710 June. A general council of the Five Nations at Onondaga to ratify the treaty with the Ottawas and negotiate trade. Ottawa chiefs and two invited emissaries from New York present. Ottawas and Senecas journeyed on to Albany where the commissioners of Indian affairs accepted the Ottawas in the Covenant Chain.
- 1710 June. Tuscarora chiefs met with Senecas, Conestogas, Shawnees, and Pennsylvanians at Conestoga to request refuge and peace for the Tuscaroras in Pennsylvania. Answer referred to Five Nations.
- 1710 July. Decanisora led chiefs of the Five Nations to Conestoga for a treaty

ostensibly with only the Indians resident nearby, but also, by subterfuge, with the governor of Pennsylvania. Tuscaroras were offered a welcome. Subterfuge was necessary because of New York's continued hostility to separate treaties between the Five Nations and other colonies.

- 1710 July. New York Commissioners of Indian affairs met with Mohawk chiefs at Schenectady to notify of intended settlement at Schoharie. Mohawks protested that land had been acquired fraudulently and the deed voided.
- 1710 August. New York's governor Robert Hunter renewed the Covenant Chain with the Five Nations at Albany. Unconsummated negotiations with Mohawks for Schoharie lands. Hunter requested end to Iroquois war with Catawbas.
- 1711 January. Five Nations chiefs came to Albany to inform the commissioners of Indian affairs of their intention to war against "Waganhaes" in revenge for the latter's killing their people. (Term is ambiguous and circumstances murky; these Waganhaes may or may not have been the Ottawas.)
- 1711 Spring. Charles Le Moyne de Longueil persuaded the Onondagas to let him build a blockhouse in their country.
- 1711 May. Colonel Peter Schuyler, at Onondaga, persuaded the Indians to let him tear down Longueil's blockhouse.
- 1711 May. Six "Far Indians" from Detroit region came to Albany to renew negotiations begun in 1709.
- 1711 The English renewed their plan to invade Canada.
- 1711 June. The Five Nations chiefs met with governor Hunter at Albany. In public they argued for peace between England and France and neutrality for themselves. This because they had given assurances to that effect to French agents at meetings in Onondaga. In private they told Hunter "that the French always dissemble with them and they therefore returned them the same Conduct," and promised to obey his orders. Hunter sent an order to Pennsylvania chiefs to march with their fighting men to join the Five Nations. With Pennsylvania council's tacit approval, these Indians stayed home. Other New York Indians recruited by Hunter and the commissioners for Indian affairs.
- 1711 August. Iroquois and other Indians marched to Albany to join the Canada campaign, but Decanisora secretly informed Canadian governor Vaudreuil of the campaign plans. As in 1709, the campaign aborted.
- 1711 October. Five Nations met at Albany with governor Hunter and lieutenant general Francis Nicholson. (In September they had declared

themselves so ashamed about the failure of the two Canada expeditions that "we must cover our Faces.") They advised Hunter to fortify his towns.

- 1711-13 The Tuscarora War in the south. Flight of many Tuscaroras to Pennsylvania.
- 1712 April. Governor Hunter sent a demand to Onondaga that the Five Nations "interpose their Interest and Authority" with the Tuscaroras to conclude peace with North Carolina, failing which the Five Nations were to join the attack upon the Tuscaroras. Iroquois agreed to try to make peace.
- 1712 May. Delawares conferred with Pennsylvanians at Whitemarsh while on their way to deliver presents to the Five Nations, as well as a belt entrusted to them eleven years previously by William Penn. ("Presents" lined through in the manuscript report, and "tribute" substituted for it.)
- 1712 May. Canadian Caughnawagas sent a belt to New York to request an open path between Albany and Canada.
- 1712 June. Peter Schuyler in Onondaga to assure Five Nations that Queen Anne acknowledged their ownership of land. Covenant Chain renewed. Schuyler reported back that the Iroquois complained of no answer to their offer to mediate the Tuscarora War. They complained also of high prices in trade.
- 1712 October. Delawares conferred with Pennsylvania council in Philadelphia on return from their negotiations with the Five Nations. They transmitted a message from the Senecas for free trade with Pennsylvania "for they had been ill used by those of Albany." An earlier message from Pennsylvania to the Five Nations had been intercepted by Albany to prevent such a trade.
- 1712 27 October. News arrived in New York of peace between England and France ending England's participation in War of the Spanish Succession.
- 1712 Outbreak of war between the Fox Indians at Detroit and the French and allied Indians, especially Potawatomes. Great slaughter of Foxes. About one hundred fled to refuge among the Senecas.
- 1713 11 April. Treaty of Utrecht signed between English and French. It declared the Five Nations to be "subjects" of Great Britain.
- 1713 7 May. New York council received a letter from governor of North Carolina reporting defeat of Tuscaroras and requesting that no "succour" be given refugees. Subsequently the council heard that Tuscaroras were coming "daily" among the Five Nations. Council wanted to stop this,

- but had no money for presents, and governor refused to treat without presents on grounds that this would be worse than no meeting.
- 1713 13 August. Mohawk chief Hendrick informed New Yorkers secretly that the Five Nations were to have a general council about "making Warr on her Majestys Subjects."
- 1713 September. Governor Hunter sent a three-man mission to Onondaga to renew the Covenant Chain. They formally announced the peace between England and France. Decanisora responded that the Iroquois expected that "the hatchet will be taken out of our hands in the same manner that it was delivered to us," i.e., by the governor personally, in a formal treaty, with delivery of substantial presents.
- 1714 February. Nonbelligerent Tuscaroras treated with governor Spotswood of Virginia, agreeing to "submit to such forms of Government, and be obedient to such rules as the Governor of Virginia shall appoint." Correspondence with the Iroquois forbidden.
- 1714 ca. early June. A general council was held at Onondaga of the Five Nations and "all the Indians bordering upon New Jerseys, Pensilvania, Virginia and Maryland by Deputies." Highly secret; death to informers. Mohawk chief Hendrick reported it to New York's commissioners of Indians affairs, 22 June. The general council agreed to seek closer relations with the French.
- 1714 20 June. Five Nations chiefs conferred with New York's commissioners of Indian affairs regarding rumors of English intentions to "cut off" the Indians. Commissioners denied, and requested delay of the mission to Canada until after the council with governor Hunter.
- 1714 September. Treaty council between governor Hunter and the Five Nations chiefs at Albany. Covenant Chain renewed and large present given. Rumors refuted. Iroquois requested a smith and informed that Tuscaroras had been accepted among them. No response by governor to Tuscarora statement which is in draft records but omitted from Robert Livingston's official minutes forwarded to the crown.
- 1714 1 October. Conestoga Indians informed Pennsylvania council at Philadelphia that Shawnees on the Susquehanna had been without a chief for three years because of their abandonment by chief Opressa. The delegation presented the Shawnees' "new Elected King" who was Carondawana, a chief of the Oneidas. They requested approval of Pennsylvania's government, which was given.
- 1715 April. Yamasee War broke out in South Carolina.
- 1715 June. Claud de Ramezay, governor of Montreal and acting governor

- of Canada, reported to be meeting with the Five Nations at Onondaga. He was campaigning against the Foxes. New York's commissioners of Indian affairs heard that the French had engaged the Senecas to join them against the Foxes.
- 1715 August. New York's governor Robert Hunter met with the Five Nations chiefs at Albany. Covenant Chain renewed. Hunter recruited the Iroquois to help the Carolinians against their Indian foes, but Decanisora demanded recompense in lower prices for goods and outright gifts of ammunition. Following this treaty, Hunter negotiated with a party of "Far Indians" escorted by Senecas to Albany for trading terms.
- 1716 No major Five Nations treaty this year. It was marked, however, by much dialogue with New York's commissioners of Indian affairs, involving sharp complaints about the dearth of goods. In January, Oneida chiefs charged that "Far Indians" coming to Albany "found themselves to scandalously imposed on and Cheated by the Traders that it discouraged them from returning." Ca. September the Senecas sent a delegation to Canada independently of the League.
- 1717 A year of some confusion. Some Senecas killed Catawbas who were negotiating with Virginia's governor Spotswood who then protested to New York in outrage. Frenchmen built a trading post at Irondequoit in Seneca country (Rochester, N.Y.), blocking trade to Albany. Rumors were rife among the Iroquois of English intentions to kill them, and they suspected that an epidemic of smallpox had been caused intentionally.
- 1717 June. Governor Hunter renewed the Covenant Chain at Albany. He defined it explicitly in terms of a mutual assistance pact. Decanisora blamed Albanians for trading with the French and thus supplying them with the goods that the French traded to the Indians, in turn, at Irondequoit. Decanisora also made the point (omitted from the formal minutes) that "we will be Ready and willing to doe to the utmost of our Power [to aid the English militarily against hostile Indians] but if the English act of Pride or malice should be the agressors and fall upon their Indian neighbours without a Cause we must first Consider of it before we offerd any assistance against those Indians."
- 1718 September. New York's Governor Hunter scolded some of the Iroquois who were "but messengers," renewing the Covenant Chain and giving presents. He demanded that the ammunition be used only for hunting and self defense, and not for raids upon distant Indians. Response not recorded.
- 1719 May and June. Indians from various western tribes came to Albany for trade.

- 1719 New York Commissioners of Indian affairs met with sachems of Mohawks and Oneidas to convey protests of southern governors about Iroquois depredations in their back country.
- 1719 July. French started building a fort at Niagara to stop traffic from western Indians to Albany.
- 1719 November. Five Nations chiefs met with Commissioners of Indian affairs at Albany to renew the Covenant Chain. They requested a meeting at Albany with governor of Virginia or his deputies to settle the problem of the southern raids. They insisted also that the best way to hinder French trade with the Indians would be to stop the delivery of English goods from Albany to Montreal "for they get but little Goods themselves from France."
- 1720 May. Myndert Schuyler and Robert Livingston met with chiefs of the Senecas, Cayugas, and Oneidas "in the Senecas country." Requested that the Iroquois lay down the hatchet and keep at peace with western and southern Indians, and that they expel the French. Iroquois willing, but required that Englishman accompany the party sent to order the French out. This was done, but the French at Niagara stood their ground.
- 1720 June. Pennsylvania's secretary James Logan met with the Conestogas, Shawnees, Conoys, and some Delawares at Conestoga. They had suffered casualties among their young men who accompanied Iroquois raiding parties southward. Logan advised them to stop the raids. They confessed fear of the Five Nations.
- 1720 September. Peter Schuyler, as president of New York council, met with Mohawks, Oneidas, Onondagas, and Cayugas in Albany. Senecas arrived later, after Schuyler's departure. Covenant Chain renewed. Iroquois promised not to attack southern Indians allied to the English. Senecas, upon arrival, complained that the French had established themselves at five places in Seneca country. The four nations proposed a joint Iroquois-English party to tear down the French buildings, but Schuyler evaded. They once more complained of Albany merchants selling goods to the French which the French sold later to the Indians.
- 1720 November. Expansionist policy of British Board of Trade began in New York with new legislation to forbid trade between Yorkers and the French, and plans to build new forts and repair old ones.
- 1721 June. French marched a hundred men from Irondequoit to Niagara. Met with Senecas. Promised not to strengthen fort.
- 1721 July. Council at Conestoga between Iroquois party bound southward (Senecas, Onondagas, Cayugas) and Pennsylvanians (governor Sir Wil-

- liam Keith and Secretary James Logan). Seneca Chief Ghesaont on his way to negotiate with Virginia's governor about peace with southern Indians; safe conduct provided by Pennsylvanians. Keith forbade use of Susquehanna Valley as warriors' path. Iroquois complained about traders. Inconclusive discussions about competing claims to the valley.
- 1721 September. New York's Governor William Burnet met with the Five Nations chiefs at Albany. Covenant Chain renewed. Burnet complained about raid into Virginia "last summer" (apparently Ghesaont's party). Discussion of the French threat and trade.
- 1722 August and September. A grand multi-party treaty at Albany, involving the governors of New York, Pennsylvania, and Virginia in negotiation with the Five Nations chiefs. Governors required Iroquois to be responsible that four other tribes not cross a line in Virginia.
- 1723 May. A large body of Indians from Michilimackinac and Detroit came to trade at Albany, negotiating with the commissioners of Indian affairs who received the miscellaneous group as the "Seventh Nation." (Six Nations chiefs were present but unrecorded, and subsequent records say nothing of a seventh nation.)
- 1723 May. Commissioners from Boston treated with the Six Nations at Albany. Covenant Chain renewed. The Bostonians wanted to recruit Iroquois warriors to fight eastern Indians. A St. Francis Indian arrived with a peace message from the eastern nations. Iroquois postponed decision.
- 1723 August-September. Five Nations chiefs journeyed to Boston. Records say that they agreed to take up the hatchet against the eastern Indians if the latter would not make peace with New Englanders. While there, they agreed also to kindle a new "fire" at Deerfield for treaties with Massachusetts—the first formally proclaimed place besides Albany for negotiations between the Iroquois and English colonials. In a historical narrative, the Iroquois speaker mentioned that Massachusetts had earlier linked to them with a "golden" chain.
- 1724 The year was marked again by visits to Albany of parties of western Indians as well as some from the vicinity of Montreal. (Peter Wraxall, Secretary of Indian Affairs from 1750 to 1759, suspected the latter of being carriers for Albany merchants engaged in illegal trade with Montreal correspondents.)
- 1724 Before September. Five Nations chiefs visited Montreal and Caughnawaga to mediate for peace between the eastern Indians and New England.
- 1724 September. New York's governor Burnet and Massachusetts's commis-

- sioner John Stoddard met with chiefs of the Six Nations at Albany. Iroquois denied having promised to war against eastern Indians; asserted only a promise to mediate. Later, in treaty with Burnet, they renewed the Covenant Chain and gave permission for New York to build a trading house at Oswego.
- 1725 ca. May. At Onondaga, Charles Le Moyne de Longueuil obtained Onondaga permission to convert the French trading house at Niagara (in Seneca country) to a building of masonry which became a fort.
- 1725 June. Crown's Board of Trade recommended repeal of New York's legislation against trade between Albany and Montreal. This was done by the assembly, but new legislation substituted with much the same effect.
- ca. 1726 Iroquois chiefs treated secretly with chiefs of Delawares and Shawnees on the Susquehanna River, demanding that all should join in a war against the English because of the English colonials' encroachments on their lands. The demand was rejected.
- 1726 July. Council at Niagara. Iroquois demanded cessation of building on fort. Demand rejected by the French.
- 1726 September. New York's governor Burnet renewed the Covenant Chain with the Six Nations. Chiefs of Senecas, Cayugas, and Onondagas signed a confirmation of the "deed" of 1701. Discussion of raids against the southern Indians. Inconclusive.
- ca. 1727 The Iroquois established a new Warriors' Road to the Ohio country by ordering Shawnees in Pennsylvania to relocate their villages westward. "Since you have nott hearkened to us nor Regarded whatt we have said [by rejecting the proposal to war on the English], now wee will put pettycoatts on you, and Look upon you as women for the future, and nott as men." This was said to Delawares as well as Shawnees, but Delawares were not included in the relocation orders.
- ca. 1727 Iroquois League sent "orders" to "all the tribes as far as Lake Superior" to attack the French in all their posts simultaneously. The "orders" were disregarded.
- 1727 July. Chiefs of Five Nations, but mostly Cayugas, met with Pennsylvania's governor Gordon to propose sale of the Susquehanna valley and to request that colonials settle no higher along the river than already located. The governor renewed William Penn's Chain of Friendship; responding, the Iroquois called it the Covenant Chain, after which the governor used the same term. Offer to sell was rejected on grounds that William Penn had already bought the valley twice: from Dongan and the resident Susquehannocks. Iroquois departed discontent.

- 1727 August. A delegation of eastern Indians arrived in Albany with news of the end of Dummer's War (1722-27) between Massachusetts and the Abenakis, and "to fix a Peace and Friendship" with New York.
- 1727 August. Two Seneca chiefs informed New York's commissioners of Indian affairs that they had been negotiating with western nations and had won four of them to trade and friendship with New York.
- 1727 July to end of year. Canada's new governor, the marquis de Beauharnois demanded withdrawal of the Yorkers from Oswego. Much intrigue by English and French with the Iroquois concerning French efforts to dislodge the English.
- 1728 June. Treaty in Philadelphia between Delaware chief Sassoonan and Pennsylvanians, with Oneida chief Shikellamy present. Shikellamy was identified as supervisor of the Shawnees in behalf of the Six Nations.
- 1728 October. Delaware chief Sassoonan treated with Pennsylvania's governor Gordon in Philadelphia with Oneida chiefs Shikellamy and Carandowana present. Although Sassoonan remarked that "the five Nations have often told them that they were as Women only" and that the Iroquois "would take Care of what related to Peace and War," he did all the recorded speaking and "in the Name and Behalf" of the Shawnees as well as the Delawares.
- 1728 October. New York's new governor, John Montgomery, met with chiefs of the Six Nations at Albany to renew the Covenant Chain. He requested their aid in defending Oswego and got an equivocal answer. As customary, he met separately with the Schaghticoke and "River Indians."
- 1729 June. Chiefs of two nations of "Far Indians" came to Albany to treat for peace, friendship, and trade. Received by commissioners of Indian affairs.
- 1729 July. Oneida delegation told New York's commissioners of Indian affairs of their nation's loss of fifty-five men in combat with Virginia Indians. Commissioners arranged to condole.
- 1729 Summer. Shawnee delegation from a community in Pennsylvania met with governor Beauharnois in Montreal to request reception of their people in New France. They were accepted because the French wanted them, privately, "to be a barrier between the Iroquois and us."
- 1729 November. British Board of Trade recommended repeal by the crown of the acts made since 1725 by New York's assembly forbidding trade with Montreal, on grounds that they were as bad as those repealed in 1725.

- 1730 February. Governor Gooch of Virginia offered, in a letter to governor John Montgomerie of New York, to mediate peace between the Oneidas and Catawbas, though the latter were considered to be in the jurisdiction of South Carolina.
- 1730 May. Oneida chiefs met with commissioners of Indian affairs at Albany. They rejected Gooch's proposal for them to treat with the Catawbas in Virginia, demanding that Gooch should bring the Catawbas and their Oneida prisoners to Albany, and threatening otherwise to war against them with the full force of the Six Nations and their allies.
- 1730 September. Mohawk chiefs met with the commissioners of Indian affairs at Albany to "humbly entreat" New York's governor to forbid future purchases by Christians of the little land remaining to the Mohawks.
- 1730 October. The Fox Indians, who were at war with New France, sent a request to the Senecas for permission to settle among them. By intervention of Louis-Thomas Chabert de Joncaire, the Senecas referred the request to Canada's governor Beauharnois. Also, Joncaire asked for Seneca permission to build a trading post at Irondequoit.
- 1730 November. New York's commissioners of Indian affairs protested to the Senecas against their dealing with Joncaire.
- 1731 May. New York's governor Montgomerie met Five Nations at Albany (Oneidas not there). Covenant Chain renewed. Agreement to forbid colonial settlement south of Lake Ontario.
- 1731 Summer. Sieur de Joncaire escorted a Shawnee band from the Susquehanna valley to settle west of the Allegheny River.
- 1731 August. Pennsylvania council sent invitation to the Six Nations for a treaty, the object being for them to use their "absolute authority" to recall the Shawnee emigrants to Pennsylvania.
- 1731 August. Treaty in Philadelphia between governor Gordon and Delaware chief Sassoonan for cession of Delaware lands. Oneida chief Shikellamy present but silent. Sassoonan granted a tract of land to secretary James Logan; deed witnessed by Shikellamy.
- 1731 Fall. Iroquois chiefs went to the Allegheny River to forbid the French interpreter "Cahichtodo" from building and trading there (which would have been among the Delaware and Shawnee villages). The chiefs asserted that the land belonged to the Six Nations. The Frenchman rebuffed them. They sent a complaint to Montreal.
- 1732 February. Mohawks complained to New York's commissioners of Indian affairs against the continuing issuance of licenses to purchase their lands.

- 1732 April. Mohawk chiefs, at Albany, complained about seizure of a large tract of their lands by Philip Livingston, secretary of Indian affairs.
- 1732 August. Seneca, Oneida, and Cayuga chiefs (authorized to speak for the whole Iroquois League) met with Pennsylvania's proprietary Thomas Penn and secretary James Logan in Philadelphia. Penn and Logan requested the Six Nations to recall Shawnees and Delawares from the Ohio country, and offered to help in the process. They lit a new fire for the Iroquois in Philadelphia, opened a new road, appointed Shikellamy and Conrad Weiser as go-betweens, and proposed a "League and Chain of Friendship and Brotherhood" between Pennsylvania and the Six Nations—the proposal to be confirmed by the League at Onondaga.
- 1732 An epidemic of smallpox among the Iroquois and the Mississaugas, perhaps also among other peoples.
- 1733 September. New York's governor William Cosby met with the Six Nations chiefs at Albany. Covenant Chain renewed. Cosby forbade warring against remote Indians and permitting French to live and build in Iroquoia. Cosby reminded that the Iroquois had put their lands under the king's protection. They acknowledged "having submitted themselves under the protection of the King of Great Britain." (The minutes omitted the land issue as reported in a later letter of Cosby to the Board of Trade, *N.Y.Col.Docs.* 5:960-62: Mohawks accused Albany corporation of defrauding them of their best lands by converting a deed of trust into an absolute conveyance. Cosby tore the deed up.)
- 1734 Onondaga chiefs met with Canada's governor Beauharnois to have him patch up a misunderstanding with the Senecas.
- 1735 August. Caughnawaga chiefs held a solemn treaty with New York's commissioners of Indian affairs to renew peace and friendship with New York and the Six Nations. Commissioners accepted. (Wraxall's comment: the treaty "opened and fixt the Canada trade which I believe was the Chief View our Commissioners had in it.")
- 1735 New York's governor Cosby met with the Six Nations chiefs at Albany to renew the covenant. They argued a contradiction between his ban on outsiders living among them and his acceptance of the Caughnawaga trade proposals. "The Trade and Peace we take to be one thing."
- 1736 September-October. Treaty at Philadelphia between Five Iroquois Nations (no Mohawks) and proprietary Thomas Penn and the Pennsylvania Council. Confirmation of 1732 treaty proposals. Iroquois statement: "It is our earnest Desire this Chain [of Friendship] should continue and be strengthened between all the English and all our Na-

- tions, and likewise the Delawares, Canayes, and the Indians living on Sasquehanna, and all the Nations, in behalf of all whom . . . we now deliver you this Beaver Coat." The lower Susquehanna Valley was ceded finally to Penn. Negotiations afterward by Conrad Weiser "in the bushes" at Shamokin: Iroquois were recognized by Pennsylvania as having the sole right to sell Indian lands in the province and the sole right to speak formally in treaty for the other Indians there. Iroquois requested intercession by Pennsylvania with Maryland to settle their claims to "conquered" lands there. They signed a deed quitting their claim to lands occupied by other tribes in Pennsylvania, which was so written as to make it a deed of cession of those lands to Pennsylvania.
- 1737 ca. May. Senecas gave permission to Sieur de Joncaire to build a trading house at Irondequoit.
- 1737 June-July. Lt. governor George Clarke, of New York, met chiefs of the Six Nations at Albany. Reproved them for permitting French in Irondequoit and made renewal of the Covenant Chain contingent on their rescinding the permission. Iroquois promised "there shall not one French Man settle on our Land," but they reminded Clarke of English inactivity toward Forts Niagara and Crown Point (French Fort St. Frederic). Being told that the Shawnees on the Susquehanna were negotiating to move to Detroit, they denied having sold the land on which the Shawnees lived, and accused Mr. Penn of encroachment on Indian lands. Covenant Chain renewed.
- 1737 September. Thomas Penn organized the "Walking Purchase" of Delaware Indian lands above Tohickon Creek in Bucks County.
- 1738-40 No large conferences because of a smallpox epidemic. Struggles by French and English agents among the Iroquois over French efforts to acquire control of Irondequoit and to make a new settlement on the Wood Creek connecting Lake George and Lake Champlain.
- 1739 August. A Mohawk delegation protested to the French commandant at Fort St. Frederic against settlement on Wood Creek which was in Mohawk territory. Protest referred to higher authority.
- 1739 October. Canadian governor sent a message to the Mohawks that the king of France claimed Wood Creek, but would allow the Indians (including his non-Mohawk allies) to hunt there. He assured them that no French would settle there and that he would not permit any English to settle there.
- 1740 August. Lieutenant Governor Clarke met the Six Nations at Albany. Covenant Chain renewed. He "admitted" all the southern and western nations of Indians to the Chain. He asked the Iroquois to be at

- peace with them all. The Iroquois chiefs "accepted" the other nations (most of which were French allies). They made excuses for some of the Onondaga sachems "who are gone to Canada." Observers from the French mission at Sault St. Louis attended the Albany meeting.
- 1740 September. Representatives of the Five Nations met with Montreal's Governor Beaucourts at Montreal. They rekindled the treaty fire and condoled the death of Louis-Thomas Chabert de Joncaire who had been active as a French agent among them. They requested that his son Philippe-Thomas should be sent to them with a blacksmith. Their message was forwarded to governor general Beauharnois who agreed to their requests and renewed the Tree of Peace. (The text is ambiguous as to whether Onondagas alone were speaking for all the Iroquois.)
- 1741 March. A deputation of sachems from the Six Nations came to New York's commissioners of Indian affairs in Albany to refute rumors and explain the Onondaga chiefs' Canadian conference in 1740. Their explanation: (1) the Iroquois had been bringing into the Covenant Chain some Indian nations allied to New France; (2) the Onondagas' chief aim had been to secure Iroquois neutrality in case of war between the French and English. (The War of the Austrian Succession had begun in Europe, and rumors of potential Anglo-French hostilities were about.)
- 1741 June. Famine among the Iroquois.
- 1741 August. Messages exchanged between governor general Beauharnois, on the one hand, and separate Iroquois parties on the other, including the mission Indians of Sault St. Louis and Lake of Two Mountains; the Onondagas, Cayugas, Oneidas, and Tuscaroras as a group; and the Seneca nation individually. Issues concerning the rival French and English trading posts in Iroquois territories. Professions of friendship. Beauharnois urged continuation of war against southern Indians.
- 1741 August. Onondaga and Cayuga sachems talked with the New York commissioners of Indian affairs. They reported a general meeting of the Six Nations at Onondaga which resolved to protect the trading house at Oswego against French attack. Reported also peace with the French and their Indian allies unless Iroquois blood should be shed. Urged peace between France and England.
- 1741 A Caughnawaga delegation invited by the commissioners of Indian affairs arrived in numbers too few to do business. Commissioners thought them evasive about neutrality in case of Anglo-French War.
- 1742 June. New York's Lieutenant Governor George Clarke met with the sachems of the Six Nations at Albany. He renewed the Covenant Chain and reminded the chiefs of their promise to take other Indian nations



into it, especially the southern nations allied to other English colonies; he named particularly the Catawbas, Cherokees, Creeks, Chickasaws, and Choctaws. The chiefs replied that they were willing but wanted to "see the faces of a few of all the Nations you have named to us with whom we are now in alliance." Afterwards the Seneca sachems acknowledged to the commissioners of Indian affairs that they had sold "the land at Irondequoit" to the commissioners' agent acting for New York's government.

- 1742 July. Some Onondaga and Seneca chiefs conferred with governor Beauharnois. They "repaired the road" between them. The chiefs gave presents to chiefs of the mission Iroquois at Sault St. Louis to ask forgiveness of a murder. Beauharnois urged them to expel the English from Oswego and tried to prevent them from making peace with the southern Catawbas. He sent them a blacksmith as they had been requesting for several years.
- 1742 July. A treaty was held at Philadelphia in accordance with the alliance forged in 1736. Besides Pennsylvania's lt. governor George Thomas and other officials, those present included chiefs of the Oneidas, Onondagas, Cayugas, Senecas, and Tuscaroras; Delawares, and Shawnees. At the behest of governor Thomas, Onondaga chief Canasatego upheld Pennsylvania's "Walking Purchase" of lands in the upper Delaware valley, harshly castigated the protesting Delaware Indians as "women" without authority to sell land, and ordered them to evacuate the territory immediately. He told them to settle in Iroquois territory on the Ninth Branch of the Susquehanna River. (For several years prior to this affair the Mohawks had played an inconspicuous part in Iroquois League diplomacy. In relation to both New France and Pennsylvania, the Onondagas appear to have had the initiative.)
- 1742 Late fall or early winter. A party of Iroquois warriors en route to raid southern Indians became involved in conflict with back country Virginians. Both sides suffered fatal casualties.
- 1743 February. Interpreter Conrad Weiser, as requested by Pennsylvania's governor Thomas, journeyed to Shamokin to initiate settlement of the Virginia-Iroquois conflict by peaceable means.
- 1743 May. New York's commissioners of Indian affairs reprimanded the Iroquois in a message for their "murders" in Virginia. (The commissioners had earlier shown great alarm because of Pennsylvania's intervention in the affair.) The Six Nations chiefs responded with a message that their men had been victimized by Virginian aggression.
- 1743 July-August. Conrad Weiser traveled to Onondaga to "take the hatchet

out of the head" of the Six Nations in a treaty session described by Weiser and his companion John Bartram with rare attention to council rituals. This council laid the groundwork for the grand treaty of Lancaster in 1755.

- 1744 January. Britain went to war against France in the complex War of the Austrian Succession. The American phase was called King George's War.
- 1744 June. Governor George Clinton renewed the Covenant Chain at a council with the Six Nations at Albany. He informed them of the Anglo-French War and asked them to act "offensively and defensively" against the French. They offered to act defensively. They refused to expel the French living among them.
- 1744 June-July. A great treaty at Lancaster, Pa., between Oneidas, Onondagas, Cayugas, Senecas, and Tuscaroras, and the colonies of Pennsylvania, Maryland, and Virginia. With Pennsylvania acting as mediator, the more southern colonies bought off Iroquois claims to lands within colonial jurisdictions that the Iroquois asserted were rightfully theirs "by conquest." But Virginians wrote the deed to include the Ohio country, and much more, in language that deceived the Iroquois. This treaty and deed prepared the way for expansion to the west by means of the Ohio Company of Virginia. Covenant Chain and Chain of Friendship phrases both used.
- 1745 May. The Pennsylvania government sent Conrad Weiser to Onondaga to urge the Six Nations to make peace with the Catawbas. Weiser also informed them that Peter Chartier's band of Shawnees had changed sides to ally with the French.
- 1745 July. Six Nations chiefs met with governor Beauharnois at Montreal. He gave the hatchet to his allied Indians and offered it to the Iroquois. They did not respond, but they brought his war belt of wampum home for consideration, much to the dismay of Englishmen.
- 1745 October. Chiefs of five Iroquois nations (the Senecas not present) met at Albany with governor Clinton and commissioners from Pennsylvania, Massachusetts, and Connecticut. Renewal of the Covenant Chain. Pennsylvania commissioners (two of whom were Quakers) objected to the proposals of the others and met separately with the Iroquois chiefs to confirm the latter in peace and to urge once more a peace with the Catawbas. New York, Massachusetts, and Connecticut asked the Six Nations to join them militarily against the French and French Indian allies. The reply was evasive: the chiefs accepted the hatchet but only to "keep it in our bosom" until they had con-

- sulted further with the French governor. Massachusetts's commissioners were hot to force the issue, but New York's Clinton held back, being unwilling to attract French attacks on his own province.
- 1746 August–September. Governor Clinton and Massachusetts's commissioners met with the Six Nations at Albany to recruit them for an intended conquest of Canada. New York's record says that they accepted the war belt, but Conrad Weiser was informed by Oneida chief Shikellamy, in June 1747, that only the Mohawks had actually declared war and that the other nations thought this to be rash and were busy cementing alliances with various Indian allies of the French. At Albany the Covenant Chain was renewed, and the Iroquois announced that they had taken the Mississauga nation, whose representatives were present, into their League as the Seventh nation.
- 1746 September. William Johnson commissioned as "colonel of the forces to be raised out of the Six Nations of Indians." This marks the beginning of Johnson's ascendancy over Iroquois affairs. Johnson's base was among the Mohawks who re-emerged thereafter into prominence.
- 1746 October. New York's commissioners of Indian affairs resigned in a body and were not replaced.
- 1747 April. William Johnson met with "the Indians" to spur them to action. They temporized, saying they were hopeful of winning over the mission Indians of Caughnawaga and Lake of Two Mountains.
- 1747 June. Conrad Weiser, sent by Pennsylvania to confer with the Iroquois at Shamokin, met them instead at Paxton, Pa., to renew friendship and get intelligence. Oneida chief Shikellamy advised the Pennsylvanians to name a successor to ailing Delaware Chief Olumapies (Sassoonan) by their own authority. (This was later attempted but frustrated by Delaware resistance.)
- 1747 July through September. Onondaga, Oneida, Tuscarora, and Cayuga deputies, plus Indians of Caughnawaga and Lake of Two Mountains, met several times at Montreal and Quebec with the French. Indians warned against intrigues of the Mohawks and English. They requested the return of Indian prisoners who, according to the deputies, had joined war parties against the advice of their villages. The Indians affirmed neutrality between the English and French, but stated that they were at variance with the Mohawks in this respect.
- 1747 October. The Ohio Company of Virginia was formed to colonize the Ohio country.
- 1747 November. Ten Iroquois warriors from the Ohio country met with the provincial council of Pennsylvania in Philadelphia. They informed that

- the old men of the Onondaga council still stood neutral as between England and France, but that the warriors on the Ohio had taken up arms against the French. They asked, "How comes it to pass that the English, who brought us into the war, will not fight themselves?" They were given a present and an excuse. Conrad Weiser advised the Pennsylvania council to follow through with further attention to the Ohio Indians.
- 1747–48 Fall and Spring. Negotiations by the Twightwees (Miami) with the Six Nations to bring the former into alliance with the Iroquois and the English.
- 1748 April. New York's representative William Johnson attended a conference at Onondaga. He encouraged the Indians not to go to Canada to negotiate themselves for return of Indian prisoners, promising that the governor of New York would arrange for the captives' return.
- 1748 July. Governor Clinton treated with the Six Nations and allies at Albany. Covenant Chain brightened and strengthened. Governor William Shirley and commissioners from Massachusetts Bay also present. Much incitement by Clinton and Shirley to keep the Indians belligerent against Canada. Mohawks distressed because of loss of their best men in combat.
- 1748 July. Lancaster, Pa. Pennsylvania commissioners met with chiefs of the Six Nations, Delawares, Shawnees, Nanticokes, and Twightwees, all of the "Ohio country." (The Allegheny River, now considered a tributary, was then understood to be the upper part of the Ohio River, and its valley was part of the Ohio country.) Twightwees applied for alliance and were admitted to Pennsylvania's Chain of Friendship (Covenant Chain terminology not used). Kakowatchiky's Shawnee band asked forgiveness for straying from the right path and were given probation. (Peter Chartier's Shawnee band not present nor represented, but a number of his people had been won back individually by Iroquois persuasion.)
- 1748 August. Royal Proclamation of cessation of Anglo-French hostilities received in Philadelphia.
- 1748 September. Conrad Weiser and Andrew Montour journeyed to Logstown on the Ohio (near Ambridge, Pa.) to make a present to the allied Indians there. They met with Six Nations chiefs, Delawares, Wyandots, Mississaugas, Mahicans, and Shawnees, and opened trade for Pennsylvanians. (Weiser reported that he gave the present in the names of Pennsylvania and Virginia, the Virginians having paid for a share, but they heard later that he had omitted their name.) Covenant Chain language was not used; Chain of Friendship renewed. Weiser recog-

- nized the Delawares as "brethren and countrymen." (He later recommended to Pennsylvania that the Six Nations be persuaded to "take off the petticoat from the Delawares.")
- 1748 November. Conference between the Onondagas, Oneidas, Tuscaroras, Cayugas, Senecas, and French at the Chateau St. Louis in Quebec. The Indians maintained that they were not English subjects, and affirmed their position of neutrality.
- 1749 March. British crown ordered the governor of Virginia to grant the Ohio Company 500,000 acres of land. Land granted centered upon the juncture of the Allegheny and Monongahela rivers where they make the Ohio proper.
- 1749 June–November. Céloron de Blainville led a large French party 3000 miles down the Ohio valley and back to Montreal to reassert France's claims to sovereignty. He buried inscribed lead plates and met with Indian chiefs along the way who gave him an unfriendly reception. They rejected his demand that they cease to trade or traffic with the English.
- 1749 August. Six Nations chiefs met with governor James Hamilton and council in Philadelphia. They complained about encroachments on their lands, but received small satisfaction. Pennsylvania paid for another cession, but it included more than the Iroquois had intended to offer. Much dissatisfaction. Quarreling between Onondaga chief Canasatego and Conrad Weiser.
- 1750 ca. January. Twightwees put themselves under the care of the Six Nations, denoting the Iroquois as Elder Brothers in the Chain of Friendship, and asked for more English traders. Six Nations accepted them.
- 1750 May. Conference of Cayugas with French governor general La Jonquière. Cayugas assured him of their fidelity to the French.
- 1750 ca. August or September. Ohio Wyandots complained of having been left out of peace between England and France, and of being menaced by the French. Asked Pennsylvania and New York to intercede for them.
- 1750 September. Pennsylvania's Lieutenant Governor Hamilton observed that the Iroquois on the Ohio outnumbered those in Iroquoia. Onondaga council as alarmed as the French by this development.
- 1750 September. Representing Virginia, Conrad Weiser journeyed to Onondaga to invite negotiations for peace with the Catawbas. The invitation was rejected. Weiser found pro-French chiefs in control. Canasatego was dead, and Weiser suspected a political assassination.
- 1750–51 September–May. Christopher Gist sent by the Ohio Company to

- map out the Ohio territory for the proposed colony. He invited the various Ohio Indians to a grand treaty at Logstown to receive a large present from the Crown. (Logstown had become the headquarters for the council of the Ohio Iroquois [Mingos], and also a central depot for Pennsylvania's traders, chief of whom was George Croghan.)
- 1750 Philippe-Thomas Chabert de Joncaire sent by Canada's governor to the Ohio country to keep the tribes allied to the French and away from English influence. Joncaire also took up headquarters at Logstown, called by the French Chingué (Ambridge, Pa.).
- 1751 May. Councils at Logstown. Joncaire's demand for expulsion of the English traders was rejected by Six Nations chiefs. Meeting with the Delawares, Croghan asked them to pick a chief (they being without one) and present him to the Six Nations and Pennsylvania "and he so chosen shall be looked upon by us as your King, with whom Publick Business shall be transacted. (To do so would be to bypass Six Nations chiefs speaking in behalf of the Delawares.) Acting for Pennsylvania, Croghan nevertheless recognized the Six Nations as "Head of al the Nations of Indians," and put the Twightwees and Wyandots in their care. Joncaire was reproached by the Iroquois for French claims to the Ohio country. "Is it not our Land . . . ?"
- 1751 July. New France's governor general, the marquis de La Jonquière, met with chiefs of the Onondagas, the Iroquois of Sault St. Louis and Lake of Two Mountains, and groups from Michilimackinac. The Onondagas proclaimed their right to the Ohio country and demanded that La Jonquière call back from there his allies of the Sault, the Two Mountains, the Abenakis, and the Ottawas. La Jonquière suggested that the Onondagas do that themselves. He recognized only their right to hunt in the Ohio country.
- 1751 July. New York's Governor George Clinton, accompanied by commissioners from Massachusetts Bay, Connecticut, and South Carolina, met with the Six Nations at Albany to renew the Covenant Chain. Six chiefs of the Catawbas were with the South Carolinians. Peace negotiations between the Iroquois and the Catawbas got under way at last, conditioned on return of prisoners.
- 1751 October. Negotiations of French Governor General La Jonquière with the Iroquois of Caughnawaga and Lake of Two Mountains. La Jonquière wished to prevent furs from slipping through the Iroquois of those settlements to Albany.
- 1751–53 No major treaties between Iroquois and New York because of the prevalence of smallpox.

- 1752 May-June. Treaty in Mohawk country between Iroquois and Catawbas. Peace negotiated.
- 1752 May-June Council at Logstown between Ohio Indians and commissioners from Virginia and Pennsylvania. Without authority from Onondaga, the Ohio Iroquois confirmed the deed of cession made at Lancaster in 1744. Their act was kept secret from the Delawares who occupied the land thus ceded. As invited earlier by Pennsylvania, the Delawares presented Shingas as their chief. The Iroquois "half king," Seneca chief Tanaghrisson, professed to "give" Shingas to the Delawares as their "king."
- 1752 June. Charles-Michel Mouet de Langlade, synethnic officer in the Canadian regular army, led a force of Frenchmen and allied Indians in an attack upon the Twightwee town of Pickawillany, killed its chief and an English trader, and took prisoner the other English traders present. News of this exploit reached Logstown during the treaty council there and caused consternation. [Synethnic: descended from mixed ethnic stocks.]
- 1753 February. Advance party left Montreal to prepare the way for a large French campaign down the Ohio valley. It began construction of a series of forts intended by governor general Duquesne to deny the territory to British trade and settlement.
- 1753 February. Andrew Montour was sent by Virginia to Onondaga with an offer to help armed resistance to the French advance. The Six Nations council kept neutral.
- 1753 Spring. Pennsylvania's traders were harried out of the Ohio country by the French and allied Indians.
- 1753 June. Canajoharie Mohawks met with New York's governor Clinton in New York City. Because of the province's failure to redress Mohawk grievances, chief Hendrick declared the Covenant Chain broken and walked out with his men. When reported to the Board of Trade in London, this action caused great alarm. The Board ordered a great treaty of all colonies allied to the Iroquois which became the Albany Congress of 1754.
- 1753 September. Half King Tanaghrisson confronted French Commandant Marin at Fort Le Boeuf to demand evacuation by the French of territory claimed by the Iroquois. He was repulsed.
- 1753 September. A delegation of Ohio Indians led by Oneida chief Scarouady journeyed to Winchester, Virginia, to seek aid against the French. Scarouady declared that "our Kings [sachems?] have nothing to do with our Lands; for We, the Warriors, fought for the Lands, and so the Right

belongs to Us." The term Chain of Friendship was used, rather than Covenant Chain. Scarouady asked the Virginians to desist from making settlements at the Ohio. A present given, but no explicit commitments.

- 1753 October. Same delegation of Ohio Indians went on to Carlisle, Pa., to meet with Pennsylvania's commissioners (who included Benjamin Franklin). Commissioners responded to Indian requests with a present and promises to take up the issues with the governor. Chain of Friendship language used, but not Covenant Chain.
- 1754 June-July. The "Albany Congress" treaty between the Six Nations and the English colonies of New York, Pennsylvania, Connecticut, Massachusetts, Maryland, New Jersey, and Rhode Island. Absent Virginia and South Carolina were "represented" by New York Governor James De Lancey. Renewal of alliance expressed in terms of both Covenant Chain and Chain of Friendship. Mohawks acted as spokesmen for the Iroquois and asserted themselves to be "the head of all the other Nations." They complained about land frauds, exhorted the Yorkers to build defense fortifications, and asked that William Johnson be made manager of Indian affairs. De Lancey promised to investigate the fraud charges. A large present given.

In separate sessions among themselves, the colonial delegates adopted Benjamin Franklin's Plan of Union (but this was not ratified by a single province nor ever submitted to Parliament).

"In the bushes," outside the formal councils, Conrad Weiser found "some greedy fellows for money" and got a deed for Pennsylvania of a vast tract of western lands which overlapped the grant made to Virginia at Lancaster in 1744.

Also outside the sessions, and later challenged by the Onondaga council as fraud, John Lydius got an ostensible deed from some Iroquois for Connecticut's Susquehannah Company, granting the Wyoming valley. (This valley is now in Pennsylvania, occupied by Wilkes-Barre and Scranton, but it was then challenged by Connecticut on the basis of that colony's sea-to-sea charter.)

- 1754 June-July. In the Ohio country, chief Tanaghrisson marched with George Washington and Virginia troops until the Iroquois decided that Washington's refusal to heed advice was leading to certain defeat. Tanaghrisson abandoned him; soon afterward, Washington was surrounded by French troops and forced to surrender Fort Necessity at Great Meadows (4 July). The news arrived at Albany to shock the participants in the Congress there.
- 1754 October. Conference at Montreal between Cayugas, Oneidas, Tusca-

- roras, two Senecas, a few Onondagas observing, "domiciliated Indians," and the Marquis de Duquesne, governor general of New France. Oneidas, Cayugas, and Tuscaroras were favorably disposed toward the French. Senecas and Onondagas were uncommitted. Duquesne threatened to punish the Indians if they would not recall warriors fighting against the French.
- 1754 October. Secret conference at Montreal between deputies of Oneidas, Tuscaroras, Cayugas, Onondagas, Senecas, and Indians of French mission villages. Unity desired. A belt sent to Senecas to cease hostilities against the French had not yet been answered (Duquesne, who wrote the account, apparently got his information from mission Indians.)
- 1755 January. Meetings at Philadelphia between Mohawks and Pennsylvanians at which the deed of Connecticut's Susquehannah Company for land in the Wyoming Valley was condemned.
- 1755 April. William Johnson commissioned by general Edward Braddock as sole Superintendent of the affairs of the Six Nations and their allies. Commissioned also by New York's governor De Lancey as major general of New York's forces with instructions to recruit Iroquois.
- 1755 June-July. Conference at Mount Johnson between William Johnson and the Six Nations and some allied Indians. Johnson renewed the Covenant Chain and preached a recruiting sermon. The Iroquois agreed to war alongside the English, but some Cayuga chiefs privately expressed concern about fighting their kin among the French-allied Caughnawagas. Johnson assured them that the Caughnawagas would be treated as brethren. Protests against land encroachments. Council fire removed from Albany to Johnson's estate. The Iroquois expressed great pleasure at Johnson's mastery of traditional forms of council ritual.
- 1755 July. Defeat and death of general Edward Braddock in the Battle of the Wilderness before Fort Duquesne. Ignominious retreat of his army to the east coast.
- 1755 September. Johnson's troops and Indian warriors fought the French near Crown Point inconclusively, but captured baron Dieskau, the French commander in chief in America.
- 1755 October. Conference between Senecas and the new French governor general the marquis de Vaudreuil [the second by that name]. The Indians requested provisions and complained that Vaudreuil's predecessors had not treated them well. Vaudreuil assured them that they would be treated better if they acted more favorably toward the French.
- 1755 October. French-allied and -led Indians, now including Delawares and

- Shawnees (former Iroquois tributaries), attacked back country settlers in Pennsylvania, Maryland, and Virginia.
- 1755-56 December-March. Johnson had many meetings with chiefs of the Six Nations to urge them to bring their "cousins" (later "nephews"), the Delawares and Shawnees, under control. The Iroquois said they were trying, by negotiations. Covenant Chain brightened and strengthened.
- 1756 February. William Johnson commissioned by the crown to have exclusive supervision of the Six Nations and confederates.
- 1756 April. Conference in Philadelphia between individuals of Six Nations and of the Religious Society of Friends (Quakers). Purpose: to discover why Delawares and Shawnees struck Pennsylvania.
- 1756 June-July. Treaty conferences at Onondaga and Fort Johnson. Baronecy conferred on Sir William Johnson. Participants: Johnson, Six Nations, eastern Delawares and Shawnees, Mahicans.
- 1756 July-August. At a conference with Onondaga and Oneida delegates, on behalf of the Six Nations, Governor Vaudreuil urged the Indians not to engage in hostilities. He denounced the English as deceivers and warned the Indians against them. By a belt he requested that they remove from their villages, but they refused.
- 1756 July and November. Pennsylvania officials and interested Quakers met with the eastern Delawares led by Teedyuscung who charged that proprietary Thomas Penn had defrauded the Delawares in the "Walking Purchase" of Bucks County lands. Teedyuscung thus challenged Six Nations authority. (See 1742 July.)
- 1756 August. Oswego was captured by the Marquis de Montcalm.
- 1756 November-December. Conference at Montreal between Governor Vaudreuil and Cayugas, Onondagas, Oneidas, Tuscaroras, Tutelos, Senecas, Ottawas, Nipissings, Potawatomis, Algonquins. The French attempted to convince the Indians to join them against the English. Iroquois delegates expressed dissatisfaction with the English, and some indicated that they were well disposed toward the French and would offer some support; but neutrality was confirmed for all the Iroquois except the Mohawks, who were fighting strongly alongside the English.
- 1756 December. Pennsylvania's Lieutenant Governor Robert Hunter Morris declared war on the Delawares and offered scalp bounties, against strenuous objection from Quakers.
- 1756 December. Founding of the Friendly Association for Regaining and Preserving Peace with the Indians by Pacific Measures.

- 1757** March. Treaty started at Harris Ferry, Pa. George Croghan, as deputy to Sir William Johnson, met with chiefs of the Six Nations, Nanticokes, eastern Delawares, and Conestogas. Teedyuscung absent. Meeting was inconclusive.
- 1757** May. Pennsylvania's Lieutenant Governor William Denny and councillors met with deputies of Five Nations "with some Senecas, Nanticokes, and [eastern] Delawares." Croghan also present, and unofficial Quakers. Teedyuscung absent. Much talk about why Delawares became hostile. Chain of Friendship brightened. Preparation for another meeting with elusive Teedyuscung. Quakers in dispute with Croghan. (This dispute broadened into a quarrel with Sir William Johnson who insisted on his exclusive prerogative to administer Indian affairs while Quakers insisted equally firmly on their right and duty to bring about peace by doing justice to Indians with grievances.)
- 1757** July–August. Pennsylvania's Lieutenant Governor Denny, George Croghan, and others met with eastern Delaware chief Teedyuscung and made peace for the easterners. Much turmoil still about issues of land fraud, Delaware subordination to Iroquois, Quakers' right to attend and speak. Many Senecas present.
- 1757** July. Negotiations between Five Nations deputies and the French.
- 1757** September. Sir William Johnson met at Fort Johnson with chiefs of Mohawks, Oneidas, Cayugas, Senecas, River Indians, and some Cherokees. Covenant Chain brightened. Though Onondagas were absent, negotiations began in the name of the entire Six Nations for peace with the Cherokees. Oneida Chief Canaghquiesa told the Cherokees to bring their next delegation to Fort Johnson's "fire of the Six Nations and to no other place," and identified Mohawks and Oneidas as "the heads of the Confederacy."
- 1758** March. "A number" of Oneidas, Tuscaroras, Cayugas, (eastern) Delawares, Schoharie Mohawks, "etc.," met with Sir William Johnson at Fort Johnson. Absence of Onondagas emphasized by the request of the Indians present that he not attend the impending general meeting of the Six Nations summoned by the Onondagas at their own fire.
- 1758** Much negotiation in Pennsylvania culminating in the grand treaty at Easton in October. Participants: for the English—governors and councillors of Pennsylvania and New Jersey, and an assembly delegation from Pennsylvania, and Johnson's deputy George Croghan; for the Indians—chiefs of all Six Nations, eastern and western Delawares, Nanticokes and Conoys, Tutelos, Chugnuts, Minisinks, Mahicans, and Pomptons. General peace negotiated. Chain of Friendship bright-

- ened. Some territory restored to Iroquois by Thomas Penn. English promised to restrain colonial settlement in Indian territory. Delegations of western Delawares and Iroquois took the agreements back to the Ohio country for approval by councils there, with the result that the Indians withdrew from defense of Fort Duquesne. Western Delawares resumed tributary relationship to Iroquois. (English agreements led to military orders against western settlement and eventually to the reservation of "crown lands" for the Indians by the Royal Proclamation of 1763.)
- 1758** November. French abandoned Fort Duquesne which was immediately seized by Brigadier John Forbes's expeditionary force and renamed Fort Pitt.
- 1759** January. Conference at Fort Pitt between colonel Hugh Mercer and chiefs of Six Nations, Delawares and Shawnees. In private the Iroquois warned against unreliability of the others, and plotted to deceive them in the public meeting. In public they demanded evacuation by British troops which Mercer refused as previously agreed privately. Transmitting the minutes, Mercer commented that the Iroquois "are by no means that powerfull and Warlike People they were on our first Settling America: and should the Shawanese and Delawares Join in the Confederacy against them, their ruin would soon be compleated, unless a very powerfull aid is afforded them by the English. This Support from us they come now to Supplicate but are obliged to cover this design."
- 1759** April. Sir William Johnson met at Canajoharie with chiefs of all Six Nations, Nanticokes, Shawnees, Saponys, and Conoys. Oneida Chief Canaghquieson spoke for Oneidas, Cayugas, and Tuscaroras as well as the tributaries, identifying them as "the younger branch of the confederacy" and referring to "the Onondags and Senecas who are our Fathers." (Cf. treaty of September 1757.) Covenant Chain renewed. Report of French allies wanting to negotiate for English trade. The whole confederacy now "determined to act" with the English in the war.
- 1759** July. Acting for Sir William Johnson, George Croghan met at Pittsburgh with chiefs of (Ohio) Six Nations, Delawares, Shawnees, and Wyandots, the last named being deputized to speak for eight other nations besides their own. This meeting was sequel to the Easton Treaty of 1758 after which Delaware "King" Beaver crossed the Great Lakes into Canada to invite the French allies into peace and trade with the English. At this meeting the Wyandots responded favorably and promised to recommend confirmation of the peace to their constituents. Beaver was the spokesman for all present, including the Iroquois, who did not speak. Chain of Friendship brightened.

- 1759 July. Fort Niagara taken by the English, a thousand Iroquois Indians participating in the battle. Johnson negotiated with Indians allied to the French to get them to change sides.
- 1759 Sometime prior to December, when Delaware chief Teedyuscung reported it to the Pennsylvania council, a great treaty conference of many Indian nations was held at Assinink on the Chemung River (south central New York). These had responded to Teedyuscung's "halloo," and he brought with him a messenger from eleven western nations who specifically dissociated himself from the Six Nations: "We leave you to Treat with them yourselves." More continuation of the work of peace begun at Easton in 1758.
- 1759 September. English captured Quebec.
- 1759 October. Six Nations, Shawnees, Delawares, Twightwees, and Wyandots treated at Pittsburgh with Croghan and general Stanwix to admit the Wyandots to the Chain of Friendship.
- 1760 February-March. Mohawks complained to Sir William Johnson about encroachments on their lands.
- 1760 April. Conference at Fort Pitt between Indians of the Ohio region, including Iroquois, and the English. George Croghan, representing Sir William Johnson, requested that English prisoners be returned. The Indians asked that traders bring goods to trade with them. A copy of the boundary line established at the 1758 Easton treaty was delivered.
- 1760 April. Conference at Canajoharie between the Six Nations and other Indians. The Iroquois declared that they would assist the English against the French.
- 1760 September. Capitulation of Montreal to general Amherst.
- 1760 September. Conference at Montreal between the Six Nations, Indians of French mission villages, and the English. Declaration of unity of the Six Nations and the "Eight Nations of Canada." (Previously and subsequently the Eight were known as the Seven Nations of Canada. They became Seven again when the Indians of Oswegatchie merged with those of Akwesasne/St. Regis.)
- 1760 December. George Croghan and Major Robert Rogers took possession of Detroit for the English, and renewed the ancient Chain of Friendship between the Six Nations and the Wyandots, Ottawas, and Potawatomis. A Wyandot chief responded for all the Indians.
- 1761 June. Conference at the Wyandot village near Detroit between two Senecas (claiming to be messengers from the Six Nations), Wyandots, Ottawas, Potawatomis, and Ojibwas. The Senecas brought an invita-

- tion to Indians around Detroit to meet with Six Nations chiefs to discuss possible military action against the English.
- 1761 July to October. Sir William Johnson journeyed to Detroit, meeting with Indian tribes along the way, beginning with Mohawks at his own home. Much unrest among the Indians. Johnson accused Senecas of involvement in a conspiracy against the English. September: a great treaty council at Detroit in which Johnson met the Detroit Indians and Six Nations chiefs. General friendship proclaimed, but much intrigue in evidence. Johnson recognized the Hurons as head of the Ottawa confederacy, cautioning them "to keep it in good order, and not to neglect their friends and allies, as the Six Nations have done, notwithstanding all my admonitions." (Johnson later reported that his policy was to provoke jealousy between Six Nations and western Indians.)
- 1761 August. Treaty at Easton, Pa., between Governor James Hamilton and council members and assembly commissioner and others on the one side, with deputies of the Onondagas, Cayugas, Oneidas, Senecas, Mahicans, Nanticokes, Delawares, Tutelos, and Conoys on the other. Indians expressed much dissatisfaction with Sir William Johnson's trade practices (and prices) and general management of Indian affairs. They requested Pennsylvanians to start a competitive trading post at Tioga (Athens, Pa.). Much worried about their lands, especially those on the Susquehanna. "We, your Brethren of the seven Nations [apparently the Six plus Nanticoke-Conoys] are penned up like Hogs. There are Forts all around us, and therefore we are apprehensive that Death is coming upon us." Hamilton defended Johnson, held to the Chain of Friendship, protested that the Walking Purchase was valid.
- 1762 April. Sir William Johnson met the Six Nations at Johnson Hall. Johnson angry about Seneca intrigues. Excuses. Each nation blamed others. Onondagas censured Mohawks for not attending councils at Onondaga. Mohawks retorted they were not invited. Onondagas pointedly replied to Johnson to open the road for "you and the Mohawks." Complaints about trade. All united in anxiety about and opposition to Connecticut's campaign to settle the Wyoming valley (north branch of the Susquehanna). Johnson defended trading practices, promised to try to secure the Wyoming lands. Covenant Chain renewed. Enclosed with Johnson's copy of this treaty is a message of Timothy Woodbridge, in behalf of the Connecticut men, to the Six Nations, demanding that they hold good to the deed some of their men gave to John Lydius in 1754. "Your great men have sold me the Land, and took a great deal of my money for it."

- 1762** June. At Easton, Pa., Sir William Johnson complied with his instructions from the crown by hearing the complaint of Teedyuscung's Delawares concerning the Walking Purchase of 1737. Thomas Penn's officials and Teedyuscung's Quaker allies did battle. Johnson bore down on the Delawares but solved the problem to his and their satisfaction by persuading Teedyuscung to withdraw the charges of fraud, after which Governor Hamilton gave them a large present on behalf of proprietary Thomas Penn. (Quakers protested a miscarriage of justice. Johnson and Penn became political allies.)
- 1762** August. Governor James Hamilton treated at Lancaster, Pa., with Ohio Delawares, Tuscaroras, Shawnees, Kickapoos, "Wiwachtanies," and Twightwees. Hamilton brightened and renewed the Covenant Chain. Beaver replied by holding fast to the Chain of Friendship. Western Indians joined by Senecas, Cayugas, Onondagas, Oneidas, Tuscaroras, eastern Delawares, Nanticoke-Conoys, some Saponies, and "a mixture of Shawnees and Munsees." The chief issue was return of colonial prisoners captured during the war. Some returned. Oneida Chief Thomas King brightened old Chain of Friendship. "He added that the Mohawks and Oneidas were the eldest of the Six Nations and both of a Height." He insisted that messages to the Onondaga council must be sent through the door" of either the Mohawks or the Senecas. He protested against encroachment on lands and made a fire for Teedyuscung at Wyoming to guard against settlers. Indians demanded that soldiers be withdrawn from Shamokin (Fort Augustus) as previously promised. No response.
- 1762** December. Conference at Fort Pitt between Indians of the Ohio region, including Iroquois, and English. Indians complained that English promises to supply Indians with inexpensive trade goods after French defeat had not been fulfilled.
- 1762** December. Conference at Onondaga. Guy Johnson requested that Senecas living in the primarily Delaware village of Kanestio, who had killed two English traders in November, be surrendered. Indians claimed that the murderers had disappeared.
- 1763** February. Peace of Paris. France ceded Canada to Great Britain.
- 1763** May. Outbreak of "Pontiac's War" with participation of many western Indians, including an indeterminate number of Senecas.
- 1763** May. Conference at Hartford between Connecticut and Mohawks, Onondagas, and Cayugas. Issue: Wyoming Valley deed and lands.
- 1763** July. Sir William Johnson met with Five Nations (Senecas absent) at

- the German Flats (Burnetsfield, N.Y.) to rally them against the western Indians.
- 1763** August. Colonel Henri Bouquet lifted the Indians' siege of Fort Pitt after a technical victory at Bushy Run.
- 1763** September. Johnson Hall. Sir William Johnson met with chiefs of the Six Nations and the Canadian Caughnawagas. Senecas were reprimanded. Covenant Chain brightened and renewed. Johnson gave the Caughnawagas a "good English Axe" to use "against Covenant breakers."
- 1763** October. Royal Proclamation issued. Among other matters it forbade the advance of colonial settlement beyond a line to be determined by Indian treaties and colonial surveys. Territory west of the line defined as crown lands reserved for Indians.
- 1764** March-April. Johnson Hall. Senecas came to seek peace, were introduced by Onondagas. All Six Nations present. Senecas ceded land at Niagara. Return of prisoners arranged. Peace treaty signed. Johnson prevailed on all the Iroquois to take up the hatchet against the enemies of the English.
- 1764** July-August. Niagara. Sir William Johnson signed a peace treaty with the Hurons of Detroit and the Senecas of Chenussio (Geneseo, N.Y.).
- 1764** August. Colonel John Bradstreet gave peace terms to western Indians. Bouquet thought them disgraceful and refused to be bound by them; he continued preparations for a march into Indian country.
- 1764** October. Tuscarawas (near Bolivar, Ohio). Colonel Henri Bouquet met Delawares, Shawnees, and Iroquois of the Ohio region. He threatened to destroy them if they did not give up their prisoners as agreed by their treaty with Colonel Bradstreet.
- 1764** November. Colonel Henri Bouquet treated with Senecas, Caughnawagas, Delawares, and Shawnees at the forks of the Muskingum River (Coshocton, Ohio).
- 1765** April-May. Sir William Johnson met with Five Nations (Tuscaroras absent) and the western Delawares at Johnson Hall. He concluded formal peace with the Delawares and negotiated with the Iroquois for the boundary line stipulated by the Royal Proclamation of 1763. (In this and the meetings held previously in 1764, Johnson was noticeably overbearing.) Delawares provisionally taken back into the Covenant Chain of Friendship (an apparent melding of the Covenant Chain and the Chain of Friendship).



- 1765 May. George Croghan and Major William Murray met at Fort Pitt with chiefs and warriors of the Delawares, Shawnees, Senecas, and "Sandyusky Indians." Some prisoners returned. Trade reopened.
- 1766 February. Because of riots, British commander in chief general Thomas Gage began redeploying British troops from Indian territory to eastern towns. Large regions of the west were soon left without garrisons.
- 1766 August. George Croghan journeyed to Kaskaskia and Fort Chartres (ca. 30 miles south of St. Louis on the Mississippi River). He mediated between the western and northern confederacies and persuaded the westerners to acknowledge themselves "younger brothers" of the northern confederacy. A peace confirmed. Indians acknowledged right of the French to cede to Britain lands that had previously been purchased, but denied the validity of French cession of all other lands. Indians recognized the "sovereignty" of the British crown.
- 1766 December. Sir William Johnson reported that 160 Tuscaroras had emigrated from North Carolina to join brethren among the Six Nations.
- 1767 May. Sir William Johnson met with the Six Nations at the German Flats to notify them of the extension survey of the Mason-Dixon line beyond the Alleghenies into Indian territory, and to secure their consent. He initiated peace proceedings between the Iroquois and the Cherokees, and reassured the Indians of the crown's benevolent intentions toward them.
- 1767 October. Conference at German Flats between Sir William Johnson and the Six Nations. Discussion of the proposed boundary line between Indians and colonial settlements. Johnson questioned the Indians about "bad belts" circulating among the Oneidas and Senecas.
- 1768 March. A general congress of the Six Nations "&ca.," Caughnawagas, and the Seven Confederate Nations of Canada, and deputies of the Cherokees, with Sir William Johnson at Johnson Hall. Heavy complaint from the Iroquois of land seizures and murders of Indians. "If you won't keep the people away from the Rivers near Ohio, and keep the Road open making Pennsylvania and Virginia quiet, we must get tired of looking to you, and turn our faces another way." Johnson condoled and compensated for the dead. Peace with the Cherokees who were admitted to the Chain of Friendship.
- 1768 April-May. George Croghan met at Fort Pitt with chiefs and warriors of the Six Nations, Delawares, Shawnees, Munsees, and Mahicans "residing on the Waters of the Ohio"; Wyandots also. Commissioners from Pennsylvania condoled and compensated for murders of Indians. Much Indian complaint about encroachment on lands. A delegation sent to

- order eviction of settlements at Redstone Creek in Indian territory (western Pennsylvania). Indians refused to join the delegation for fear of incurring settlers' ill will personally. Chain of Friendship is brightened.
- 1768 October-November. A treaty at Fort Stanwix (Rome, N.Y.) held by Sir William Johnson with the Six Nations, Shawnees, Delawares, Senecas of Ohio, "and other dependent Tribes." Also present: George Croghan, New Jersey's Governor William Franklin, and Chief Justice Fred Smith, commissioners from Virginia and Pennsylvania, and "sundry Gents: from different Colonies." Boundary between colonies and Indian nations negotiated and deed of cession made. (Map in *N.Y. Col. Docs.* 8:136) Deed signed only by chiefs of the Six Nations though it obligated all the others. Covenant Chain renewed and strengthened. Large presents given. (Johnson was later reproved by the crown for taking too much territory, and instructed to re-cede some.)
- 1769 Sir William Johnson toured through Six Nations country, counciling serially with the Onondagas, Cayugas, and Senecas. Great unrest. Johnson later reported much violence and "licentiousness" among both colonials and Indians. He feared the strengthening of a far western confederacy having clandestine French instigation and support. "All we can do, is to divide their Councils and retain a part of them in our Interest. . . . It is highly necessary to prevent a too general Union amongst them . . . we enjoy the most security when they are divided amongst themselves."
- 1769-70 Winter. Cherokees confirmed peace at Onondaga, but proposed joint war against "several of the Southern and Western Nations who had acted as Enemys to both." Delegation to Johnson to ask summoning of a general congress. He reported to Crown, "we must either agree to permit these people to cut each others throats, or risque their discharging their fury on our Traders and defenceless frontiers."
- 1770 July. Sir William Johnson met with the following Indians at the German Flats: the Six Nations, their "Dependants"—Canaseragas (Shawnees), Nanticokes and Conoys, Oquagas (mixed, mostly Iroquois), Tuteloes—Indians from Canada—Caughnawagas, St. Regis Indians, Algonquins, "Ganagsadagas," St. Francis Abenakis, Hurons of Loretto, Nipissings, Mississaugas, and a Michilimackinac Ottawa chief—two "River Indians," and seven Cherokee deputies. Total: 2,320 Indians. The chief issue was peace with the Cherokees and their demand that the northern Indians join them in war against western enemies. On instruction from the crown, Johnson maneuvered to keep the war demand off the official agenda so that the crown would not be publicly sanctioning such a conflict (a hint that unofficial agreement may have

- been reached). Peace with the Cherokees was confirmed. The 1768 cession of the treaty of Fort Stanwix was ratified. Covenant Chain belt given by Johnson to all the nations present and accepted. (No mention by either Johnson or the Iroquois of the Ohio Indians. The western Indians whom the Cherokees wanted alliance against lived in the Illinois country.)
- 1770 July–August. Sir William Johnson met with the Seven Nations of Canada, the Mississaugas, and the Abenakis of St. Regis at Johnson Hall. He urged them all to work for peace with the western Indians. The Abenakis wanted to stay at St. Regis, but Johnson told them to go back to their own country, the sooner the better, to avoid trouble with the Iroquois there at St. Regis (Akwasasne).
- 1770–71 Uncertain dates. Chief Guastarax of the Geneseo Senecas circulated a war belt among the western Indians to prepare for an uprising against the British.
- 1771 July. Sir William Johnson met with the Six Nations at Johnson Hall to demand an explanation of his intelligence about a conspiracy with the Ohio Indians. They laid all the blame on the Geneseo Senecas who "have very often differed from us in Sentiments and Conduct." They reassured him of their continuing fidelity.
- 1771 November. Conference at Onondaga. The Six Nations had received belts from nations to the south and west inviting them to meet at Scioto (apparently the vicinity of Portsmouth, Ohio). Sir William Johnson recommended that they go to Scioto and manifest their fidelity to the English.
- 1771–72 Reported by Johnson in February 1772. A Six Nations embassy toured through the south (Cherokees and Creeks) and the Ohio region (Shawnees) to break up an anti-English conspiracy.
- 1772 July. Sir William Johnson and New York Governor William Tryon met with the Canajoharie Mohawks and the Oneidas at Johnson Hall. Bitter complaint from the Mohawks about being deprived of all their land. "We have seen that those Officers and Soldiers who served in this Country during the late War, have been rewarded with Tracts of Land in return for their services, and as we were aiding and assisting in the same cause, we must deem it a peculiar hardship in case we are not permitted to hold this little Remnant undisturbed." Promises were given to protect their interest. Tryon: "I shall take such measures as are consistent with my authority."
- 1772 September. British troops evacuated Fort Pitt.

- 1772 October. Sir William Johnson met with the Six Nations at Johnson Hall. They reported formally upon their embassy to the southern and western Indians and turned over to him the "bad" (anti-English conspiracy) belts they had collected during their tour.
- 1772 December. The Crown reprimanded New York's Governor William Tryon severely for sanctioning sales of Indian lands to private persons: "unjustifiable collusion. . . . It is the King's pleasure and positive command that you do not, upon any pretence whatever, sign any Grant or Patent for those Lands."
- 1773 March. Council at Onondaga to discuss reasons for uneasiness among Senecas, who were angered and concerned by Virginians' murder of four of their people in the fall of 1772, among other things. Divided opinions. Most Iroquois wanted to settle the matter peacefully. Others wanted to replace the dead with prisoners or scalps. Report given to Sir William Johnson.
- 1773 April. Sir William Johnson and retinue met with the Six Nations chiefs at Johnson Hall. They confessed fault in having had too many "foreign alliances," and reported that they had summoned back to Iroquoia their people living in the west. Johnson scolded them for delaying punishment of Piankeshaws and Twightwees who had killed some traders. They complained about trade. He overbore the complaint without making concessions. Covenant Chain renewed and brightened. (Since the end of the French regime in Canada, Johnson's behavior toward the Iroquois is conspicuously arrogant in the records.)
- 1773 November. A council at Johnson Hall about the murder of four Frenchmen by Senecas. Sir William Johnson demanded that the murderers be surrendered to him. Hostages were left by the Indians.
- 1774 January–October. Virginians occupied the abandoned Fort Pitt and launched Lord Dunmore's War against the Shawnees.
- 1774 June–July. Sir William Johnson assembled the Six Nations chiefs once more at Johnson Hall to confer about continuing trouble in the Ohio country. Johnson died at the height of the conference.
- 1774 September, October, November. Six Nations returned to Johnstown to condole the death of Sir William and urge appointment of Guy Johnson in his place. Concern about peace and the Shawnee problem. Covenant Chain held fast.
- 1774 November. Meeting of the League at Onondaga between chiefs of the Six Nations and the Shawnees. Six Nations determined policy not to support other Indians in Lord Dunmore's War, and the matrons cen-

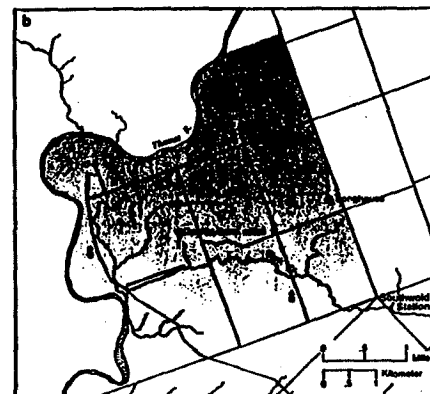
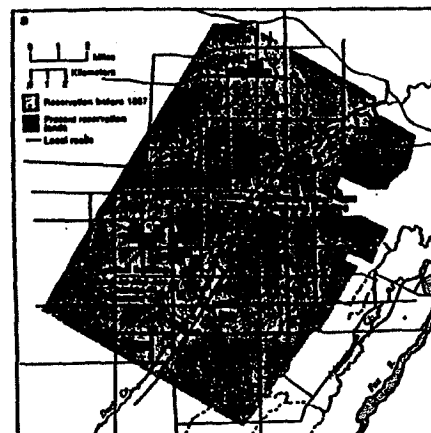
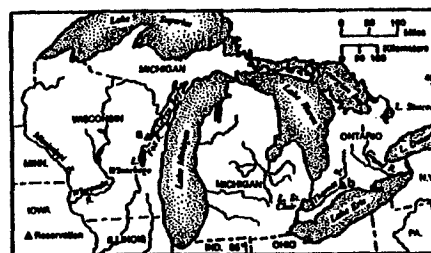
- sured the Cayugas for letting their young men aid the Shawnees without council sanction. The warriors were recalled.
- 1774** December. Representatives of the Six Nations met Guy Johnson, as his uncle's successor, at Guy Park.
- 1775** August and September. At German Flats the commissioners of the Continental Congress met representatives of the Six Nations "at the woods' edge" and invited them to treat at Albany. The treaty was the last to be held at Albany. The commissioners employed the protocol taught them by Canasatego at Lancaster, appealed to Iroquois metaphors, showed a Union Belt and Path Belt of wampum, and urged neutrality upon the Six Nations in the coming struggle.
- 1776** March. James Dean, as agent of Congress, attended a League council at Onondaga and found it fractionated in its loyalties.
- 1776** January, May, and August-September. British representatives held a series of councils with Six Nations chiefs at Niagara to urge loyalty and active support of the Loyalist cause.
- 1776** July. Congress declared American independence.
- 1777** January. Reports reached Fort Stanwix that pestilence had struck Onondaga and toppled some principal chiefs. Disheartened and divided in their minds, the remainder "covered" the great council fire. Missionary and congressional agent Samuel Kirkland urged general Schuyler to condole the bereaved nations and win them to the patriot cause, but the ceremony was not performed. (Thereafter during the Revolutionary War, the League ceased to function as a unit, and the individual nations negotiated independently. Most of the Oneidas and Tuscaroras allied to the United States. Most of the other Iroquois held to their alliance with the British.)
- 1783** September. In the Treaty of Paris, Great Britain ceded sovereignty to the United States over territory east of the Mississippi River. Six Nations omitted from consideration, to their great resentment. (Their post-war political and territorial statuses were determined in negotiations with the governments of Canada and the United States respectively.)
- 1784** October. Treaty at Fort Stanwix (Rome, N.Y.) between representatives of the Six Nations and United States commissioners for Indian affairs. Agents for both Pennsylvania and New York attended and negotiated concessions in the interests of their states. The U.S. commissioners imposed harsh terms based on an assumption of rights of conquest. They exacted territorial concessions and forced unauthorized Iroquois representatives to sign the treaty and leave hostages in lieu of unreturned prisoners. Division in Iroquois ranks. Mohawk Aaron Hill assumed

- role of spokesman for the western nations as well as the Six Nations, but Seneca Cornplanter reserved right of the westerners to speak for themselves. (Cornplanter was severely censured by the Seneca council when he returned home, and the League refused to confirm the treaty.)
- 1784** October. Canadian governor Sir Frederick Haldimand "purchased a tract of land from the Indians situated between the Lakes Ontario, Erie, and Huron" and granted a reserve to the Six Nations in recognition of their service to Britain during the war of the American Revolution. Mohawk Joseph Brant acted as principal spokesman for the Iroquois. (After much attrition, the present Six Nations Reserve on the Grand River in Ontario is the remainder.)
- 1785** June. Herkimer, N.Y. Under duress, Oneida and Tuscarora Indians ceded to the State of New York the land now comprising the counties of Chenango, Broome, and Tioga, rather than to private parties. (This was the first of a series of New York treaties now considered by some parties to have been held illegally because of the provisions of the Federal non-intercourse act.)
- 1788** July. Buffalo Creek, N.Y. The Phelps and Gorham purchase from the Senecas of lands east of the Genesee River adjacent to the Massachusetts pre-emption line.
- 1788** September. Fort Schuyler (formerly Stanwix). At a meeting with New York State commissioners, Onondaga chiefs ceded all the nation's land, but specified a reserve for their people.
- 1788-89-90** Cayuga. Negotiations for Cayuga lands, culminating in a treaty of June 1790. Chief Fish Carrier rebuked the governor of New York for neglecting ancient usages.
- 1789** January. Fort Harmar (Marietta, Ohio). General Arthur St. Clair negotiates separate treaties on the same day with the displaced Iroquois and the other western Indians. The Iroquois treaty confirmed terms of the 1784 Fort Stanwix treaty with the Six Nations. It dealt with the adjudication of crimes, but did not return Seneca lands.
- 1790** October. A confederation of western Indians defeated general Joseph Harmar near present-day Fort Wayne, In.
- 1790** November. Tioga Point (Athens, Pa.). Colonel Timothy Pickering met chiefs of the Seneca nation to take the hatchet out of their head for the murder of two chiefs at Pine Creek. His purpose was to neutralize the Seneca warriors who were the bulk of Iroquois manpower. Pickering was given lessons in Iroquois protocol from chiefs Red Jacket and Farmer's Brother, and he received the clan matrons.

- 1790-91** Winter. Philadelphia, Allegheny Seneca chiefs Cornplanter, Half Town, and Big Tree called on President George Washington for relief of grievances arising from the 1784 Treaty of Fort Stanwix. The President enlisted help of Quakers.
- 1791** July. Newtown Point (near Painted Post, N.Y.). Because of unrest among the Iroquois, and in the hope of recruiting some of their warriors to fight against the western Indians, Washington sent Timothy Pickering to treat. Observing the Indians' disposition—they were mostly Senecas—Pickering violated his instructions by not attempting to recruit, but he did secure a promise of neutrality which his superiors considered a triumph. Among the Senecas, Red Jacket used Pickering as a foil to emerge dominant in his power struggle with Cornplanter. Pickering's efforts to convert Iroquois culture to American-style farming were stalled by Red Jacket's nativist oratory.
- 1791** August. Quebec. Negotiations between the British and representatives of Six Nations, Ottawas, Ojibwas, Potawatomis, Hurons, Shawnees, Delawareans, and Tutelos.
- 1791** November. Territorial Governor Arthur St. Clair was routed at present-day Fort Recovery, Ohio, by warriors of the western confederation.
- 1792** March–April. Despite the opposition of Mohawk chief Joseph Brant, Samuel Kirkland recruited and led a delegation of sixty Iroquois to Philadelphia for discussions of programs in agriculture, manual arts, and education. War Secretary Henry Knox aroused strong antagonism by trying to shift the agenda to diplomatic and military issues vis-à-vis the western confederation, as Brant had predicted. Timothy Pickering brought the conference back to its original purpose, Washington addressed the chiefs, and they were urged to explain to their western brethren the limits of United States claims.
- 1792** Joseph Brant, now ambivalent in loyalties, visited Philadelphia and cooperated with the government, advising that the United States would have to restore some Indian territory.
- 1793** January. Governor John Graves Simcoe gave a deed to the Six Nations confirming their Grand River lands.
- 1793** April. Bay of Quinte (at the mouth of the Trent River, Ontario). Canada conceded a tract of land to the Six Nations that became the basis for the present Tyendinaga Reserve.
- 1793** July. Maumee Rapids (Sandusky, Ohio). An intended treaty between the western confederation, including some Iroquois, and the United States failed because of British interference. Issues were peace, a boundary at the Ohio River, and lands of the Six Nations that had been

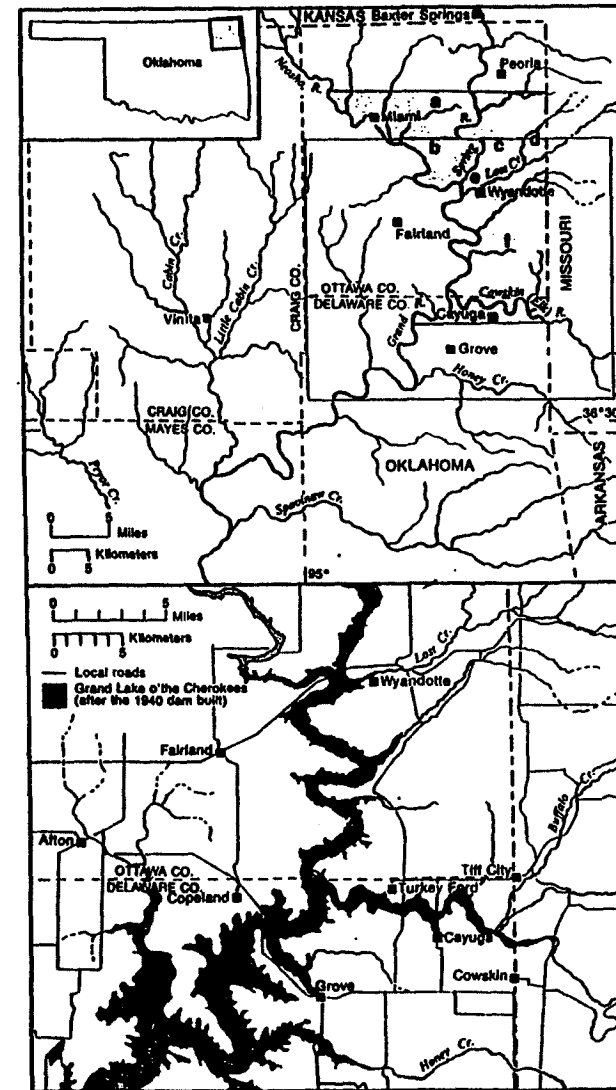
- preempted at Fort Harmar. The failed mission did separate the Six Nations from active participation in the western confederation's war parties. Heavily documented in journals of Quaker observers John Parrish, William Savery, Jacob Lindley, and Joseph Moore.
- 1793-94** Buffalo Creek (vicinity of Erie County, N.Y.) and Presque Isle (Erie, Pa.). A series of councils culminating in a general peace treaty, postponed from Venango and ultimately held at Canandaigua, N.Y. Attended by Israel Chapin for the U.S., John Butler for the British, and the Six Nations chiefs with Joseph Brant. Issues involved offer by western tribes to help the Six Nations recover lands; and the failure by the United States to honor the boundaries that had been established at Fort Harmar. General Chapin made a dangerous journey to Presque Isle to quiet tensions of the Senecas over settlement of the Erie Triangle. An issue also arose over proper place for council—Buffalo or Canandaigua.
- 1794** August. General Anthony Wayne defeated warriors of the western confederation at Fallen Timbers (near Maumee, Ohio).
- 1794** October–November. Canandaigua. Timothy Pickering negotiated a treaty of peace and friendship between the Six Nations and the United States. Though including the Six Nations and all ranks of society it was mainly concerned with the Senecas, the Mohawks being scarcely represented. Provisions: peace and tranquility, neither party to disturb the other, quit claims to lands previously ceded or reserved, an annuity from the United States of \$4,500. Word of Wayne's victory at Fallen Timbers permitted the U.S. to demand and secure the Niagara portage.
- 1794** December. Oneida. Timothy Pickering conferred with Oneidas, Tuscaroras, and Stockbridges to get lands to satisfy land grants to veterans of the War of the Revolution.
- 1795** August. Greenville, Ohio. Treaty between Anthony Wayne and the western tribes, in sequel to the battle of Fallen Timbers. It tacitly rescinded the conquest theory advanced at Fort Stanwix in 1784, recognized tribal rights to territory, and established a definite boundary line between tribal territory and the lands open to settlement by Americans. The United States did not abjure its sovereignty; it secured preemption right to purchase whenever Indians intended to sell land.
- 1796** May. New York City. Treaty by the Seven Nations of Canada, including Iroquois of Caughnawaga (Kahnawaka) and St. Regis (Akwesasne), with the United States and New York State. The Seven Nations ceded their land claims in New York State for a lump sum and perpetual annuity.

- 1797 March. Albany, N.Y. Treaty by Mohawks with the United States and New York State. Conflicting claims of Caughnawaga and Loyalist Mohawks settled in conveyance to New York State.
- 1797 September. Geneseo, N.Y. Treaty at Big Tree between Robert Morris, representing Massachusetts' interest, and Senecas. It extinguished Indian title to lands west of the preemption line, but reserved ten tracts of which the three present Seneca reservations and the Tuscarora reservation are the only survivors. \$100,000 paid in stock of the Bank of the United States, income to be paid as an annuity. (The Bank later failed, and Congress had to appropriate moneys.) Ratified by the United States, this treaty had the effect of establishing reservations.
- 1798 April. Mohawks of Upper Canada relinquished claims to lands in New York State. Under authority of the United States, New York commissioners met Indian spokesmen Joseph Brant and John Deserontyou.
- 1798 June. Oneida, N.Y. At a treaty between the Oneidas and New York State, the State purchased part of the reserved lands of Oneida for \$500 and an annuity of \$700. A United States commissioner was present. (This is but one of about thirty such treaties.)
- 1802 June. Oneida. Treaty between Oneidas and New York State, with a United States agent present. Several parcels of land previously reserved were ceded.
- 1802 June. Buffalo Creek. Chiefs and warriors of the Seneca Nation met with O. Phelps, representing the United States, to cede Little Beard's reservation on the Genesee River for a consideration of \$1,200.
- 1802 August. With a U.S. commissioner present, New York's Governor Clinton met with chiefs of the Seneca Nation of Indians. They ceded a mile strip on the Niagara River, from Buffalo Creek to Black Rock to Stedman's farm, reserving fishing and camping rights. Consideration: \$200 + a further sum of \$5,300 + \$500 worth of chintz, calico, and other goods.
- 1805 May. Buffalo Creek. A council was held between the Six Nations of the Grand River in Canada and the Senecas and other Iroquois of Buffalo Creek. Discussion of relations between the Iroquois in Canada and those in the United States.
- 1806 Continuation of the foregoing council.
- 1810 September. Brownstone (near Detroit, Mich.). A conference between Indians, including some Iroquois, and Americans.
- 1814 July. Greenville, Ohio. Representatives of Wyandot, Delaware, Shawnee, Seneca, and Miami (Twightwee) tribes treated with the United States.



4. Location of modern Oneida lands outside New York: a, in Wisconsin; b, in Ontario. Numbers in a denote neighborhoods: 1. *latihq-lahela?a-kā*. 'gun-laid-on people'; 2. *tekahsokēha-kā*. 'between-the-lips people'; 3. *talq?kowanha-kā*. 'Duck Creek people'; 4. *tiksenha-kā*. 'Dixon people'; 5. *latinatakpha-kā*. 'in-the-village people'; 6. *tatsmenha-kā*. 'Dutchman people'; 7. *ketsyohale?keha-kā*. 'fish-on-a-pole people'; 8. *simoha-kā*. 'Seymour people.'

- 1815 September. Spring Wells (near Detroit, Mich.). A treaty between representative of Wyandot, Delaware, Seneca, Shawnee, Miami, Ojibwa, Ottawa, and Potawatomi tribes and the United States.
- 1817 September. Maumee Rapids near Lake Erie. A treaty between representatives of the Wyandot, Seneca, Shawnee, and Ottawa tribes, and the United States.
- 1818-19 A series of treaties between the Six Nations on Grand River and the government of Canada, held at Ancaster and Hamilton in Ontario.
- 1823 The first party of New York Oneidas emigrated to Wisconsin. They were followed gradually by most of the tribe who eventually set up the Oneida Nation at Oneida, Wisconsin.
- 1826 August. Buffalo Creek, N.Y. With commissioners from the United States and the Commonwealth of Massachusetts present, the representatives of the Seneca Nation gave up their remaining lands on the Genesee River and sold a large portion of the Buffalo Creek reservation to trustees of the Ogden Land Company. Also all but 12,800 acres of the Tonawanda reservation, and eight square miles of the Cattaraugus reservation. In all, 86,887 acres. The treaty was never ratified by the Senate nor proclaimed by the President. Senecas called the treaty invalid and sued in court, but lost.
- 1831 February. Washington, DC. Treaty between the United States and Senecas of the reservation on the Sandusky River in Ohio.
- 1832 December. Seneca Agency on the Cowskin River in Ohio. Treaty between Senecas, Shawnees, and the United States.
- 1838 January. Buffalo Creek, N.Y. With a United States commissioner present, Senecas sold to the Ogden Land Company their four remaining reservations: Allegany, Cattaraugus, Tonawanda, and Buffalo Creek. Compensation \$202,000. There was much dissension among the Senecas because the intent of the treaty was to bring about emigration of all the Senecas to the trans-Mississippi west, and this was bitterly fought by many of the nation. Asher Wright and the Society of Friends produced evidence of fraud, bribery, and forgery, and objections were raised in Congress; but the transaction occurred during the Jackson administration at the height of the clamor for Indian removal, and the treaty was ratified.
- 1842 May. Buffalo Creek, N.Y. A treaty of compromise. With the aid of the Society of Friends and other concerned Euramericans, the Senecas regained Allegany and Catteraugus reservations. Buffalo and Tonawanda were lost, and the Ogden land Company retained the pre-emption right to the lands of the Seneca Nation.



5. Toned area in top map shows bounds of Neosho Reservation in Oklahoma, assigned in 1832 to mixed bands from farther east. Bottom map shows 20th-century Seneca-Cayuga region. Letters in top map identify assignments: a, to Peoria, Kaskaskia, Piankashaw, Wea; b, to Ottawa; c, to Eastern Shawnee; d, to Eastern Shawnee and then in 1875 to Modoc; e, to Wyandot; f, retained by Seneca-Cayuga until allotment, 1888-1903. In 1974, about 1,000 acres of Seneca-Cayuga land remained as tribally owned.

- 1854 Report in the Vermont House of Representatives of Iroquois land claims presented in 1798, 1800, 1812, and 1826 upon the State of Vermont for their hunting ground.
- 1855 November. Report to the Vermont State Legislature of the committee appointed by the governor to investigate the Iroquois land claims.
- 1858 November. Tonawanda, N.Y. Treaty between the Tonawanda Senecas and the United States. The Indians repurchased their reservation land with funds from exchange and sale of Seneca reservation in Kansas.
- 1861-65 War between the United States and the Confederate States of America.
- 1861 October. Park Hill in the Cherokee Nation. Treaty between the Confederate States of America and the Senecas and Shawnees.
- 1867 February. Washington, D.C. Treaty between United States and Senecas, mixed Senecas and Shawnees, and nine other tribal parties.
- 1913 Treaty between Canada and the Indians of Michel's Band, province of Alberta, many of whom were of Iroquois descent. This supplemented Canadian Treaty Number 6, negotiated in 1876 between Canada and the Indians of western Canada.