

**Permanent Forum on Indigenous Issues**

**Twelfth session**

**New York, 20 - 31 May 2013**

**Agenda Item 7: Human Rights: Implementation of the UN Declaration on the Rights of Indigenous Peoples**

**Joint Statement of First Nations Summit; Grand Council of the Crees (Eeyou Istchee); Canadian Friends Service Committee (Quakers); Amnesty International; Assembly of First Nations; Federation of Saskatchewan Indian Nations; Chiefs of Ontario; Union of British Columbia Indian Chiefs; Assembly of First Nations of Québec and Labrador/Assemblée des Premières Nations du Québec et du Labrador; Native Women's Association of Canada; Quebec Native Women/Femmes Autochtones du Québec; National Association of Friendship Centres; Hul'qumi'num Treaty Group; International Indian Treaty Council; First Peoples Human Rights Coalition.**

**Speaker: Chief Doug White**

**Implementation of the UN Declaration on the Rights of Indigenous Peoples and the Doctrine of Discovery**

*The UN Declaration on the Rights of Indigenous Peoples* in its entirety is rooted in the principle of racial non-discrimination, a peremptory norm from which no derogation is permitted. Full and effective implementation of the *UN Declaration* is dependent on ensuring that racial discrimination against Indigenous peoples is eradicated.

Last year, the special theme of the Permanent Forum focused on the Doctrine of Discovery, its enduring impacts and the need for redress. In this regard, our organizations look forward to an expert study to be tabled at next year's session. In its 2012 final report, the Forum called on all States to repudiate colonial doctrines such as the doctrine of discovery, and associated legal fictions as the doctrine of *terra nullius*, "as the basis for denying indigenous peoples' human rights."<sup>1</sup>

The *Declaration* unequivocally affirms:

“... all doctrines, policies and practices based on advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic

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<sup>1</sup> *Report on the eleventh session (7 – 18 May 2012)*, Economic and Social Council, Official Records, Supplement No. 23, United Nations, New York, E/2012/43-E/C.19/2012/13, para. 4.

or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust”

Rejection of doctrines of superiority is also found in the *International Convention on the Elimination of All Forms of Racial Discrimination*. Further, in September 2011, the UN Human Rights Council by consensus "condemned" doctrines of superiority "as incompatible with democracy and transparent and accountable governance".

There is no doubt that the doctrine of discovery is based on assertion of racial superiority. Yet developed States, such as Canada, United States and Australia, among many others, continue to shamefully rely upon and perpetuate this debilitating doctrine for their narrow self-interest. Under the doctrine, the ability of the colonializing powers to claim to unilaterally extinguish the pre-existing sovereignty of Indigenous peoples and establish their own dominion over Indigenous peoples' lands, territories, and resources is – as the Special Rapporteur on the rights of indigenous peoples has noted – inextricably linked to “colonial era attitudes toward indigenous peoples that can only be described as racist.”<sup>2</sup>

The doctrine of discovery must not be used as justification for the arbitrary and unilateral denial of the human rights of Indigenous peoples. In this context, we bring to your attention the judgment of the British Columbia Court of Appeal in *Tsilhqot'in Nation v. British Columbia*, rendered on 27 June 2012. This ruling, if not reversed by Canada's highest court, could set a dangerous precedent.

The judgment includes: “European explorers considered that by virtue of the "principle of discovery" they were at liberty to claim territory in North America on behalf of their sovereigns ... While it is difficult to rationalize that view from a modern perspective, the history is clear.”<sup>3</sup>

In the contemporary context of justice, reconciliation and international human rights, the doctrine of discovery must have no place whatsoever in determining Indigenous peoples' title and rights, in international and domestic law. States and courts must not rely on this fictitious doctrine so as to *purportedly* diminish or extinguish Indigenous peoples' sovereignty and title.

True implementation of the *UN Declaration* requires the repudiation of this racist and colonial doctrine.

## Recommendations

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<sup>2</sup> Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, Addendum: The situation of indigenous peoples in the United States of America*, UN Doc. A/HRC/21/47/Add.1 (30 August 2012). Para 16.

<sup>3</sup> *Tsilhqot'in Nation v. British Columbia*, 2012 BCCA 285, para. 166

1. THAT the Permanent Forum reiterate its recommendation that States repudiate the Doctrine of Discovery and fully utilize the *UN Declaration on the Rights of Indigenous Peoples* as a framework for justice and reconciliation.
2. THAT the Permanent Forum reiterate the recommendation of Special Rapporteur James Anaya in his August 2012 report: "courts should discard such colonial era doctrine in favour of an alternative jurisprudence infused with ... contemporary human rights values ... including those values reflected in the United Nations Declaration on the Rights of Indigenous Peoples."
3. THAT States take immediate measures, in conjunction with Indigenous peoples, to ensure that the Doctrine is not invoked in contemporary court cases or negotiations that should be aimed at the affirmation, protection and restitution of Indigenous peoples' lands, territories and resources, consistent with international human rights standards.
4. THAT the Permanent Forum reaffirm that international human rights law is a legitimate and important influence on the development of the common law. Any common law doctrine founded on discrimination in the enjoyment of Indigenous peoples' rights demands urgent reconsideration.
5. THAT for full and effective implementation of the *UN Declaration*, all States must abandon policies that serve to deny the existence of Aboriginal title and unjustly place the burden of proof on Indigenous peoples that have territorial rights based on original occupation.
6. THAT affirmation of Indigenous peoples' title to lands, territories and resources is critical for their survival, dignity, security and well-being. States and domestic courts must reject any use of or reliance on the doctrine of discovery and "extinguishment" of Indigenous peoples' rights. Extinguishment is also a relic of colonialism and such destruction of rights is incompatible with international human rights law.