

Eleventh Session of the United Nations Permanent Forum on
Indigenous Issues- May 7-18, 2012- New York City

Intervention on behalf of the Pacific Caucus

Item #3: Discussion on the special theme for the year: "The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples)"

Subject: Decolonizing Pacific National Constitutions and Legal Systems

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Thank you Mister Chair and thank you to our indigenous hosts - the Haudenosaunee people. We would also like to thank our sister, Tonya Gonnella Frichner, for her initial leadership in bringing about this critical thematic discussion.

Recommendations

Under Item #3, the Pacific Caucus recommends that the Permanent Forum urge all general assembly member states to:

1. ensure that their respective national legislative bodies decolonize their legal systems and policy frameworks, granting legal recognition of indigenous peoples' sovereign rights to lands and natural resources, by entering into processes for redress under Article 28 of the Declaration on the Rights of Indigenous Peoples.
2. report annually to the Human Rights Council on their progress towards implementing the Declaration on the Rights of Indigenous Peoples with particular attention given to redress and land tenure as per Articles 28 and 37 through an extended process of the Universal Periodic Review .
3. implement national reconciliation processes focused on developing broad national understanding and support for Indigenous Peoples land rights, free prior and informed consent, and other issues of concern to local indigenous populations. These reconciliation processes should be government-funded and co-facilitated by Indigenous-appointed representatives.
4. implement the Declaration on the Rights of Indigenous Peoples in all national legislative and policy processes concerning indigenous land ownership and broader Indigenous rights;
5. provide Indigenous peoples the legal and political mandate to influence and guide the

decolonization of national constitutions and legal systems, especially as it pertains to indigenous land ownership rights.

6. instruct and support the Special Rapporteur on the Rights of Indigenous Peoples as the head of a UN appointed committee focused on decolonization of national constitutions and legal systems.

7. Finally, we recommend that the Permanent Forum be bold in advocating for the dismantling of the Doctrine of Discovery across United Nations member states.

Brothers and sisters, for our native communities across the globe, the trauma of colonization and its associated human rights violations, continue to impede the full expression of our social, political, economic, cultural and spiritual livelihoods as Indigenous Peoples.

Since our initial contact with Christian European colonizers, there has been a concerted effort to evict us from our homelands, disenfranchise us of our inherited roles as guardians of natural and sacred spaces, and simply, the attempt to eradicate us from this earth continues. By definition, the root of colonization - *colo* means 'to remove by filtering, to wash.'¹ The ongoing colonial project across indigenous lands continues to be premised on the removal of Indigenous Peoples.

Through our oral histories and chants, through colonial records and through current scholarship – we as indigenous peoples – clearly understand and are living with the magnitude of one of the greatest crimes ever committed against humanity. The collective Christian European domination and desecration of indigenous peoples and lands through the legal instrument known as the Doctrine of Discovery has forever altered the trajectory of indigenous women, men and future generations.

As a widely accepted, and functioning concept of international public law, the Discovery Doctrine has been operational throughout the Pacific Islands and the broader Pacific region as justification for colonial dominion over lands belonging to sovereign indigenous peoples and nations. Through this Doctrine, title to lands were subsumed by Christian colonizers under the authority and financial support of European nations (including the Vatican). Since its earliest application, the Doctrine has been significantly cited to support legal decisions invalidating or ignoring aboriginal possession of land in favor of colonial or post-colonial governments. For the indigenous peoples of the Pacific region, the Doctrine of Discovery continues to impact our ability to fully develop our indigenous communities. To share a few of our stories:

For **Native Hawaiians**, the Doctrine of Discovery expressed through the Monroe Doctrine of 1823, allowed American missionary colonizers to expand westward to the shores of Hawai'i, beginning an entrenched process of western land tenure, including a simultaneous grab of political and economic power. From 1778 to 1823, the population of Native Hawaiians decreased from 1 million to 123,000. This population collapse of 87%, was initiated through the Doctrine of Discovery, and allowed for and reinforced the concept of genocide and ethnocide of the indigenous Native Hawaiian people through the theft of lands, resources, nationhood, and ultimately the control of and jurisdiction over the Hawaiian Islands. Hawai'i is one of the most densely militarized regions under U.S. control, with the

¹ Steven T. Newcomb. 2008. *Pagans in the Promised Land: Decoding the Doctrine of Christian Discovery*. p 14-15.

military controlling 205,925 acres.² The Hawaiian delegation, requests that all UN member states move forward demilitarization efforts in Hawai'i, as mandated under Article 30 of the UN Declaration on the Rights of Indigenous Peoples. Since the illegal overthrow and occupation of the Kingdom of Hawai'i in 1893 by the descendants of early missionaries, livelihood conditions continue to be deplorable for Native Hawaiians in the areas of economic and cultural development, social welfare, health, land acquisition and title, and political status.

Aboriginal and Torres Strait Islander peoples within Australia have suffered immensely through forcible removal from their lands, segregation and assimilation. At the same time, non-Indigenous peoples have been given immense opportunities to lease, purchase, inherit, and exploit the lands and resources to the detriment of the traditional and sovereign owners. The arrogance of Australia's colonizers has enabled the legal fiction of empty or waste land or 'terra nullius' to remain the law in Australia for 150 years, and even though the notion of terra nullius, has been overturned, when the High Court of Australia in 1992 rediscovered a common law concept of 'native title' in the case of *Mabo v State of Queensland*, the system has not sufficiently compensated and addressed the dispossession and rights of Aboriginal and Torres Strait Islander peoples to their lands and waters.

We, as members of the Pacific Caucus, urgently call on states to overturn the legal philosophies and decisions that have enabled the dispossession of Indigenous peoples from their lands and waters. We request the attention of the Office of the Secretary General on this point for immediate action.

The members of the Pacific caucus respectfully request that our recommendations be incorporated into the final report.

Thank you Mister Chair.

² Kajihiro, Kyle. *Problems in Paradise: Sovereignty in the Pacific*. Cultural Survival Quarterly. (Spring 2000) 24.1