

Statement by Permanent Observer Mission of the Holy See

**Economic and Social Council
9th session of the Permanent Forum on Indigenous Issues**

On Agenda Item 7:

Discussion on the reports “Impact on Indigenous Peoples of the International Legal construct known as the Doctrine of Discovery, which has served as the Foundation of the Violation of their Human Rights” and “Indigenous Peoples and boarding Schools: A Comparative Study”

New York, 27 April 2010

Mr. Chairman,

My delegation takes this opportunity to reply to some of the comments and concerns made today.

Regarding the question of the doctrine of discovery and the role of the Papal Bull *Inter Coetera*, the Holy See notes that *Inter Coetera*, as a source of International Law, the division of lands between Castile-Aragon (Spain) and Portugal was first of all abrogated by the Treaty of Tordesillas in 1494 and that Circumstances have changed so much that; to attribute any juridical value to such a document seems completely out of place.

Similarly, as a source of Canon or Church Law, since the document had called for excommunication *latae sententiae* those who do not respect its dispositions, *Inter Coetera* has also been abrogated by the facts, first and foremost by the unsanctioned immediate expansion of the territory of Brazil to the west well beyond the Treaty of Tordesillas and by the colonization of North America and the Caribbean by the King of France.

In addition, It was also abrogated by other Papal bulls, for example *Sublimis Deus* in 1537 which states, “*Indians and all other people who may later be discovered by Christians, are by no means to be deprived of their liberty or the possession of their property, even though they be outside the faith of Jesus Christ; and that they may and should, freely and legitimately, enjoy their liberty and the possession of their property; nor should they be in any way enslaved; should the contrary happen, it shall be null and have no effect.*” This view was expanded upon and

reinforced in *Immensa Pastorum* of Benedict XIV of 20 December 1741 and a number of other Papal Encyclicals, statements and decrees.

If any doubt remains, it is abrogated by Canon 6 of the Code of Canon Law of 1983 which abrogates in general all preceding penal and disciplinary laws.

As you may gather from the above, this abrogation process took place over the centuries according to the legal maxim: *Lex posterior derogat priori*, i.e. a subsequent law imports the abolition of a previous one. Therefore, for International Law and for the Catholic Church Law, the bull *Inter Coetera* is a historic remnant with no juridical, moral or doctrinal value.

Further, the doctrine of the temporal power of the papacy, upon which *Inter Coetera* rests, was finally overturned by the Second Vatican Council:

Finally, the doctrine of forced conversion of non-Christians was contested and changed by the Junta Teologica de Valladolid (1550-1551), not long after the bull of Alexander VI, and was also condemned by Vatican II. Further, the assertion that wars of conquest are justifiable in order to convert non-Christians was completely overturned by the documents of the second Vatican Council (see above) and by the general condemnations of war.

The fact that juridical systems may employ the “Doctrine of Discovery” as a juridical precedent is therefore now a characteristic of the laws of those states and is independent of the fact that for the Church the document has had no value whatsoever for centuries. The refutation of this doctrine is therefore now under the competence of national authorities, legislators, lawyers and legal historians.

Regarding the concerns raised about the past educational programs of the Church and its boarding schools in different parts of the world, my delegation would like to clarify that the ultimate objective of the church was to offer the indigenous population improved education. Today, many of the leaders of such communities were formed in such education centers and the curriculums in these schools work to preserve indigenous cultures and languages through the grammars and dictionaries compiled by Catholic Missionaries over the centuries. Education is the key to development, especially when different models of development are imposed without respect for the indigenous culture and identity.

The Holy See recognizes the right of the indigenous peoples for education, for development and their traditional beliefs. For the shortcomings and mistakes the Church has sought always means of dialogue and reconciliation. Last year, for example, when Pope Benedict XVI received the representatives of the First Nation in Canada, this issue was discussed. In addition, in a number of meetings and discussions with Indigenous peoples from around the world, Pope John Paul II also reiterated the Holy See's support for the rights of indigenous people while acknowledging and asking forgiveness for past mistakes by missionaries.

With this explanation, I hope the following becomes clear: 1) The Holy See confirms that *Inter Coetera* has already been abrogated and considers it without any legal or doctrinal value; 2) The Holy See, in accordance with Catholic social teaching, is consistently paying particular attention to the relationship of indigenous peoples to their lands and resources; 3) The Holy See, as demonstrated also by our support for the recent Declaration of the Rights of Indigenous Peoples, will continue to be an outspoken moral voice in support of the dignity and rights of indigenous peoples.