

Intervention of the Episcopal Church, and the Anglican Church of Canada Offering Suggested
Actions on the Doctrine of Discovery and Domination
Provided to the United Nations Permanent Forum on Indigenous Issues
11th Session May 7-18, 2012

The Doctrine of Discovery illegitimately functions in international law by controlling how colonizing monarchies and states, primarily based in Western Europe, claim the lands, possessions, and human rights of Indigenous Peoples worldwide because those Peoples were not Christians. The successors to those original colonizing states have retained this legal structure to claim domination of the original free Indigenous Nations and Peoples. As Christians, we repudiate the Doctrine of Discovery that originated from the false interpretation and application of the Word of God and call upon the United Nations to expunge it as the basis of international law determining the relationships between Indigenous Peoples and settler states. A growing number of Christians recognize the heinous nature of the Doctrine of Discovery as witnessed by the actions taken by the Episcopal Church in 2009, the Anglican Church of Canada in 2010, and the World Council of Churches in 2012. We have attached each faith community's statement on the Doctrine of Discovery as part of our official submission to the UNPFII 11th session.

We join with the North American Indigenous Peoples Caucus to request that an international expert group meeting be convened to discuss in detail the findings and global implications of the preliminary study of the Doctrine of Discovery published in 2010 and to present its findings to the Permanent Forum on Indigenous Issues at its 13th annual session. We urge the Permanent Forum on Indigenous Issues to ensure such an international expert group includes recognized Indigenous scholars who have done critical research into this issue.

We stand with Indigenous Peoples calling upon the UNPFII to urge states to repeal laws, policies and processes based on the Doctrine of Discovery and jointly develop with Indigenous Peoples laws, policies and processes consistent with Articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples. All negotiations that take place between Indigenous Peoples and settler states to dismantle the Doctrine of Discovery and Domination must observe the principle of free, prior, and informed consent.

Several settler states rely upon the Doctrine of Discovery as the legal authority for their domination of Indigenous Peoples living within their claimed borders. The North American Indigenous Peoples Caucus cites the Canadian Government's reliance on the 1997 ruling *Delgamuukw v. British Columbia* (also known as *Delgamuukw v. The Queen*)ⁱ where the Court made its most definitive statement on the nature of aboriginal title in the context of the "assertion of British sovereignty," and "the assertion of Crown sovereignty." The 1823 United States Supreme Court decision *Johnson v. M'Intosh*ⁱⁱ said that "Christian people" had asserted "ultimate dominion" over lands inhabited by "heathens" whom the Court deemed to possess a mere right of "occupancy."

The Doctrine of Discovery has been relied on by numerous colonizing countries around the world to purport to diminish and ignore the rights of Indigenous Peoples. These include the 1981 Supreme Court of Sweden decision: *North Frostviken Sami Village v. the State*ⁱⁱⁱ; the 1975 Western Sahara Advisory Opinion of the International Court of Justice^{iv}; the 1971 Australian

Court Decision *Miliripum v. Nabalco Party Ltd and the Commonwealth*^v; the 1921 Nigerian decision, *Amodu Tijani v. Secretary*; the 1847 New Zealand High court decision *Regina v. Symonds*^{vi}; and others^{vii}.

We urge the UNPFII to study the *Conference Room Paper on the Doctrine of Discovery 11th Session of the UN Permanent Forum on Indigenous Issues Presented by the Haudenosaunee, the American Indian Law Alliance and the Indigenous Law Institute North America* and act on its recommendations. Additionally, we suggest the UNPFII carefully consider the findings and recommendations of the conference room paper *The Doctrine of Discovery: The International Law of Colonialism* presented by Prof. Robert J. Miller (Lewis & Clark Law School) and a number of other distinguished individuals and organizations. States relying upon the Doctrine of Discovery should demonstrate how they plan to eliminate patterns and claims of domination from all laws, policies and processes pertaining to Indigenous Nations and Peoples.

ⁱ 3 S.C.R. 1010, which is regarded as the leading decision of the Supreme Court of Canada

ⁱⁱ 21 U.S. (8 Wheat.) 543

ⁱⁱⁱ Supreme Court Decision No. DT 2, Case No. 324/76

^{iv} In answer to a question from the U.N. General Assembly whether the Western Sahara was /terra nullius/ at the time of colonization by Spain

^v FLR 141 (Northern Territory S. Ct. Australia /Privy Council)

^{vi} NZPCC 387

^{vii} In re Southern Rhodesia/, A.C. 211(1918) (Privy Council)

D035 – SUBSTITUTE RESOLUTION

Title: Repudiate the Doctrine of Discovery

Resolved, That the 76th General Convention repudiates and renounces the Doctrine of Discovery as fundamentally opposed to the Gospel of Jesus Christ and our understanding of the inherent rights that individuals and peoples have received from God, and that this declaration be proclaimed among our churches and shared with the United Nations and all the nations and peoples located within the Episcopal Church's boundaries. This doctrine, which originated with Henry VII in 1496, held that Christian sovereigns and their representative explorers could assert dominion and title over non-Christian lands with the full blessing and sanction of the Church. It continues to be invoked, in only slightly modified form, in court cases and in the many destructive policies of governments and other institutions of the modern nation-state that lead to the colonizing dispossession of the lands of indigenous peoples and the disruption of their way of life; and be it further

Resolved, that The Episcopal Church review its policies and programs with a view to exposing the historical reality and impact of the Doctrine of Discovery and eliminating its presence in its contemporary policies, program, and structures and, further, that this body directs the appropriate representatives of the House of Bishops and House of Deputies, to inform all relevant governmental bodies in The United States of its action and suggest similar and equivalent review of historical and contemporary policies that contribute to the continuing colonization of Indigenous Peoples and, further, to write to Queen Elizabeth II, the Supreme Governor of the Church of England, requesting that her Majesty disavow, and repudiate publicly, the claimed validity of the Christian Doctrine of Discovery; and be it further

Resolved, that each diocese within the Episcopal Church be encouraged to reflect upon its own history, in light of these actions and encourage all Episcopalians to seek a greater understanding of the Indigenous Peoples within the geo-political boundaries claimed by the United States and other nation states located within the Episcopal Church's boundaries, and to support those peoples in their ongoing efforts for their inherent sovereignty and fundamental human rights as peoples to be respected; and be it further

Resolved, that the 76th General Convention direct the Office of Government Relations to advocate for the U.S. government's endorsement of the "United Nations Declaration on the Rights of Indigenous Peoples," which the United States has refused to endorse (only the U.S., Canada, New Zealand, and Australia have failed to sign on).



World Council of Churches

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Statement on the doctrine of discovery and its enduring impact on Indigenous Peoples

WCC Executive Committee

14-17 February 2012

Bossey, Switzerland

1. Indigenous Peoples have the oldest living cultures in the world. Three hundred to five hundred million Indigenous Peoples today live in over 72 countries around the world, and they comprise at least 5,000 distinct peoples. The ways of life, identities, well-being and very existence of Indigenous People are threatened by the continuing effects of colonization and national policies, regulations and laws that attempt to force them to assimilate into the cultures of majoritarian societies. A fundamental historical basis and legal precedent for these policies and laws is the "Doctrine of Discovery", the idea that Christians enjoy a moral and legal right, based solely on their religious identity to invade and seize indigenous lands and to dominate Indigenous Peoples.
2. Around the world, Indigenous Peoples are over-represented in all categories of disadvantage. In most indigenous communities people live in poverty without clean water and necessary infrastructure, lacking adequate health care, education, employment and housing. Many indigenous communities still suffer the effects of dispossession, forced removals from homelands and families, inter-generational trauma and racism, the effects of which are manifested in social welfare issues such as alcohol and drug problems, violence and social breakdown. Basic health outcomes dramatize the disparity in well-being between Indigenous Peoples and European descendants.
3. The patterns of domination and oppression that continue to afflict Indigenous Peoples today throughout the world are found in numerous historical documents such as Papal Bulls, Royal Charters and court rulings. For example, the church documents *Dum Diversas* (1452) and *Romanus Pontifex* (1455) called for non-Christian peoples to be invaded, captured, vanquished, subdued, reduced to perpetual slavery and to have their possessions and property seized by Christian monarchs. Collectively, these and other concepts form a paradigm or pattern of domination that is still being used against Indigenous Peoples.
4. Following the above patterns of thought and behaviour, Christopher Columbus was instructed, for example, to "discover and conquer," "subdue" and "acquire" distant lands, and in 1493 Pope Alexander VI called for non-Christian "barbarous nations" to be subjugated and proselytized for the "propagation of the Christian empire." Three years later, England's King Henry VII followed the pattern of domination by instructing John Cabot and his sons to locate, subdue and take possession of the "islands, countries, regions, of the heathens and infidels . . . unknown to Christian people." Thereafter, for example, English, Portuguese and Spanish colonization in Australia, the Americas and New

Zealand proceeded under the Doctrine of Discovery as Europeans attempted to conquer and convert Indigenous Peoples. In 1513, Spain drafted a legal document that was required to be read to Indigenous Peoples before "just war" could commence. The *Requerimiento* informed Indigenous Peoples that their lands had been donated to Spain and that they had to submit to the Crown and Christianity or they would be attacked and enslaved.

5. In 1823, the U.S. Supreme Court used the same pattern and paradigm of domination to claim in the ruling *Johnson & Graham's Lessee v. McIntosh* that the United States as the successor to various "potentates" had the "ultimate dominion" or "ultimate title" (right of territorial domination) over all lands within the claimed boundaries of the United States. The Court said that as a result of the documents mentioned above, authorizing "Christian people" to "discover" and possess the lands of "heathens," the Indians were left with a mere "right of occupancy;" an occupancy that, according to the Court was subject to the "ultimate title" or "absolute title" of the United States. The *Johnson* case has been cited repeatedly by Australian, Canadian, New Zealand and United States courts, and the Doctrine of Discovery has been held by all these countries to have granted European settler societies plenary power (domination) over Indigenous Peoples, legal title to their lands, and has resulted in diminished sovereign, commercial and international rights for Indigenous Peoples and governments. Europeans believed this was proper based on their ethnocentric, racial and religious attitudes that they and their cultures, religions and governments were superior to non-Christian European peoples.

6. Consequently, the current situation of Indigenous Peoples around the world is the result of a linear programme of "legal" precedent, originating with the Doctrine of Discovery and codified in contemporary national laws and policies. The Doctrine mandated Christian European countries to attack, enslave and kill the Indigenous Peoples they encountered and to acquire all of their assets. The Doctrine remains the law in various ways in almost all settler societies around the world today. The enormity of the application of this law and the theft of the rights and assets of Indigenous Peoples have led indigenous activists to work to educate the world about this situation and to galvanize opposition to the Doctrine. Many Christian churches that have studied the pernicious Doctrine have repudiated it, and are working to ameliorate the legal, economic and social effects of this international framework. Starting in 2007, for example, with the Episcopal Diocese of Maine, followed by the Episcopal Diocese of Central New York in 2008, and in 2010 by Philadelphia Yearly Meeting of the Religious Society of Friends, individual churches began adopting resolutions and minutes repudiating the Doctrine. In 2009, at its 76th General Convention, the Episcopal Church adopted resolution D035 "Repudiate the Doctrine of Discovery." In 2010, the General Synod of the Anglican Church of Canada adopted resolution A086 "Repudiate the Doctrine of Discovery." In 2011, various Unitarian Universalist churches and Quaker organizations are adopting and considering adopting resolutions and minutes repudiating the Doctrine. This issue of the Doctrine of Discovery has also been brought to the forefront of world attention by Indigenous Peoples working with international bodies.

7. Considering the fact that the Doctrine of Discovery will be the theme for the 11th session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) in 2012, churches and the international community need to be sensitized on this issue. 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) will be discussed at the UNPFII from 7 to 18 May 2012; this event will bring together representatives of Indigenous Peoples' organizations and networks around the world. Churches and ecumenical networks of the WCC will be mobilized to be part of the 11th session of the UNPFII in 2012.

In this context, the executive committee of the World Council of Churches, meeting at Bossey, Switzerland, 14-17 February 2012,

A. ***Expresses*** solidarity with the Indigenous Peoples of the world and supports the rights of Indigenous Peoples to live in and retain their traditional lands and territories, to maintain and enrich their cultures and to ensure that their traditions are strengthened and passed on for generations to come;

A. ***Denounces*** the Doctrine of Discovery as fundamentally opposed to the gospel of Jesus Christ and as a violation of the inherent human rights that all individuals and peoples have received from God;

B. ***Urges*** various governments in the world to dismantle the legal structures and policies based on the Doctrine of Discovery and dominance, so as better to empower and enable Indigenous Peoples to identify their own aspirations and issues of concern;

C. ***Affirms*** its conviction and commitment that Indigenous Peoples be assisted in their struggle to involve themselves fully in creating and implementing solutions that recognize and respect the collective rights of Indigenous Peoples and to exercise their right to self-determination and self-governance;

D. ***Requests*** the governments and states of the world to ensure that their policies, regulations and laws that affect Indigenous Peoples comply with international conventions and, in particular, conform to the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization's Convention 169;

E. ***Calls*** on each WCC member church to reflect upon its own national and church history and to encourage all member parishes and congregations to seek a greater understanding of the issues facing Indigenous Peoples, to support Indigenous Peoples in their ongoing efforts to exercise their inherent sovereignty and fundamental human rights, to continue to raise awareness about the issues facing Indigenous Peoples and to develop advocacy campaigns to support the rights, aspirations and needs of Indigenous Peoples;

F. ***Encourages*** WCC member churches to support the continued development of theological reflections by Indigenous Peoples which promote indigenous visions of full, good and abundant life and which strengthen their own spiritual and theological reflections.

GENERAL SYNOD 2010

RESOLUTIONS FORM

Resolution Number A086 – R1

Subject **Repudiate the Doctrine of Discovery**

Moved by **The Ven. Larry Beardy, Diocese of Keewatin**

Seconded by **Mrs. Freda Lepine, Diocese of Brandon**

Be it resolved that this General Synod:

1. Repudiate and renounce the Doctrine of Discovery as fundamentally opposed to the gospel of Jesus Christ and our understanding of the inherent rights that individuals and peoples have received from God;
2. Request that every diocesan bishop of the Anglican Church of Canada cause this declaration to be proclaimed in every parish and shared with all the nations and peoples located within their dioceses and request the Primate to share this declaration with the United Nations;
3. Commit to undertake a review of the Church's policies and programs with a view to exposing the historical reality and impact of the Doctrine of Discovery and eliminating its presence in its contemporary policies, program, and structures;
4. Encourage each diocese to reflect upon its own history, in light of these actions and encourage all Anglicans to seek a greater understanding of the Indigenous Peoples within Canada and to support those peoples in their ongoing efforts for their inherent sovereignty and fundamental human rights as peoples to be respected;
5. Request that the General Secretary inform all relevant governmental bodies in Canada of its action and requests that a similar and equivalent review of historical and contemporary policies that contribute to the continuing colonization of Indigenous Peoples and, to write to Queen Elizabeth II, the Supreme Governor of the Church of England, requesting that her Majesty disavow, and repudiate publicly, the claimed validity of the Christian Doctrine of Discovery.

Source **The Anglican Council of Indigenous Peoples**

Submitted by **Anglican Council of Indigenous Peoples**

Does this motion contain within it any financial implications? Yes No ☒

If yes, has the General Synod Expenditures Committee considered the implications? Yes No

EXPLANATORY NOTE/BACKGROUND INFORMATION

The Doctrine of Discovery and the Churches of the West

Although it has touched every aspect of life in North America for centuries, most people are unaware of The Doctrine of Discovery. The Doctrine continues to be the central animating factor in the dispossession and oppression of Indigenous Peoples, in the Americas and around the world. All the Western institutions that now govern so many aspects of Indigenous life see the People of the Land through the distorted lens of the Doctrine of Discovery. This is especially true of the churches that are a part of the Western Cultural framework. Beyond its direct influence on Indigenous Peoples, we can see that this way of thinking is a contributing part of the Western attitude towards Creation and our environment, giving permission to treat this sacred gift as a human storehouse that can be plundered without restraint.

In this Resolution the Church "repudiates and renounces the Doctrine of Discovery as fundamentally opposed to the Gospel of Jesus Christ and our understanding of the inherent rights that individuals and peoples have received from God." The Church pledges to proclaim the Resolution among its congregations and dioceses. Further, the Church promises to "review its policies and programs with a view to exposing the historical reality and impact of the Doctrine of Discovery and eliminating its presence in its contemporary policies, program, and structures."

At least three major church bodies in North America (The Episcopal Church, Quakers, and the Unitarians) have been inspired to promote similar resolutions. Google "General Convention and the Doctrine of Discovery" or "The Episcopal Church and Indigenous Rights" and you will see some of the general excitement of a theologically broad range of commentators.

At the 2001 General Synod of The Anglican Church of Canada we spent a half day of learning about The Doctrine of Discovery and accepted a report and the suggestions from the Anglican Council of Indigenous Peoples about renewing the relationship between the Church and its Indigenous members. The result was *A New Agape*, a work-plan and vision for this new relationship.

The Doctrine of Discovery, a description of a systemic evil that is both well hidden and tenacious, precludes, by its nature, easy comprehension or prompt effective action. The unveiling of the Doctrine of Discovery reveals a camouflaged, pervasive, and damaging strain of thought in Western institutions and culture. The recognition of its presence helps us understand the continuing incapacity of modernity to understand and fruitfully engage Indigenous Peoples.

Unveiling the Doctrine of Discovery

The Doctrine of Discovery is a phrase describing a consistent set of judgments and acts by colonizing Western societies over the past 500 years. It begins with the idea of *Terra Nullius*, an uninhabited land. If such a land is "discovered," the persons or powers that make the discovery have the right of

discovery, meaning that they may own, rule, and exploit this land as they see fit. Indigenous Peoples, in the Doctrine of Discovery, are not seen as inhabiting the land. Since they have none of the institutions of civilization, especially the Church, they are judged to be similar and with the same status as other products of the land. They now are under the jurisdiction of civilized institutions who, "for their own good," may now order their lives as they see fit. Their "primitive" nature is seen to have robbed them of the right to control their lands, their communities, or their destinies. This point of view is still being used against Aboriginal legal claims in court cases around the world. The pace of all of this has been increased in recent years, as Indigenous Peoples Aboriginal use and occupation of land comes into conflict with the accelerated demands of globalizing economic expansion.

Church practice is also influenced by the Doctrine. The capacity of Indigenous Peoples for progress and success in matters of religion and faith is equal to their capacity to mimic the institutions, values, and cultural practices of the West. Proclaiming its desire to help Indigenous Peoples, the Church took a lead role in promoting and overseeing the project of civilizing them along Western lines. There was little engagement of their cultural or religious ideas and practices; their manifestly rich spirituality and religious traditions were treated as impediments to their well-being and progress, even though they were largely monotheistic. The churches persisted in this civilizing project despite the obviously destructive and deadly results. For most of the past 500 years, the underlying assumption appears to be that it is better to be dead than to not be Western. The Church committed itself in earnest to seeing that any trace of Indigenous culture and life would be erased. Without hiding or disguising it, the Church, along with the other colonizing institutions, was committed to the disappearance of Indigenous life in any form (This proposed disappearance was, we admit, less violent than those who called for immediate extermination. The relative moral merit of the different approaches is difficult to evaluate competitively).

Today, things have changed some, but not enough. For virtually all Western institutions, Indigenous life is still to be steered towards the imitation of Western life, though now Indigenous Peoples may be permitted to mimic other minorities as a means of access to the benefits of Western life. The Doctrine of Discovery continues its influence in the myriads of ways that a colonizing culture sets the standards that control and limit the horizon of Indigenous life in our contemporary world. Though the remedies that mass Western society developed and applied have been, at best, ineffective, and, quite a bit more often, disastrous in their impact on Indigenous societies – the more "help" administered, the worse things get – it is only very rarely noticed. Because the assumptions of the Doctrine of Discovery are so well hidden in the mainstream of Western thought the deadly incompetence of Western agencies and institutions remains astonishingly invisible to its perpetrators.

The Doctrine and the Church

For centuries, the Western churches have given a privileged status to the trajectory of the Word of God in their constituent traditions, cultures, and societies. Certainly respect is due to the path of Western Christian development, even the pagan philosophies which prepared the way for the Gospel in the Western Tradition. Yet, to demand that the overall path of development that the West has followed is to normative, or even a prerequisite of serious Christianity, is wrong. It voids the trajectories of other cultures. The absurdity expands with the continuing demand that Indigenous Christian leaders submit to contemporary Western patterns and standards of learning, including pagan elements from the past or anti-theistic sentiments from the secularized present. This priority remains even though Western institutions of learning and scholarship are no longer positively correlated with growing and vital orthodox Christianity.

Today, with very few exceptions, Indigenous Christians must place their churches within the trajectory of Western ideas, governance, and sovereignty if they wish to remain full members of churches of the Western cultural framework. This means that there is very little attempt to adapt to the unique cultural and social dimensions of Indigenous communities. The borders and boundaries of colonial occupation remain the enforced borders and boundaries of Indigenous Christians in Western churches, in governance, in theology, in faith. The trajectory of the Word of God in Indigenous life, the vibrant and surprising story of the Gospel's unlikely yet astounding progress among Indigenous Peoples is ignored, trivialized, or denied.

It appears that the Western churches are still saying, in order for the Word to become flesh and dwell among Indigenous Peoples, they must first abandon their culture. Jesus can only become living and real if you see him through Western values and institutions. Such an approach is absurd and heretical. That it has such strong currency among Western churches is a testimony to the systemic power of colonialism and the on-going influence of the Doctrine of Discovery.

A Preliminary Response

A full response to this must unfold over time. We would do harm to predict its outcome and then act on the prediction. We can, however, outline some of the broad steps that would make a robust preliminary response:

- 1) Promote and proclaim the repudiation and renouncing of the Doctrine of Discovery as the Resolution outlines.
- 2) Begin at every level, as soon as possible, an introduction to the damage caused by the Doctrine of Discovery.
- 3) Immediately recognize the primal and aboriginal authority of Indigenous nations, recognizing their right to exist and treating them with the respect and dignity that they deserve as the first and founding nations of North American life.
- 4) Recognize that the Indigenous Nations transcend the borders of colonial occupation. To enforce these borders on Indigenous social development and community is an endorsement of the Doctrine of Discovery (and a violation of the UN Declaration of the Rights of Indigenous Peoples.).
- 5) The living relationship that Indigenous Peoples have with the environment means that the destructive pattern of colonial economic development creates a special risk for the life and life ways of the People of the Land and Seas. To honour and protect this special relationship must be a top priority for the advocacy of Western churches.
- 6) Leadership and congregational development within Indigenous Peoples must be designed with the hidden assumptions of the Doctrine of Discovery exposed and eliminated. Theological formation must include decolonization.
- 7) The church must begin a process that will allow Indigenous church communities decide their own destiny on the basis of their full and aboriginal authority as peoples, tribes, and nations.
- 8) In Indigenous thought, Spirit animates matter. Separating the spiritual from the physical, mental, and emotional, especially in social life is deadly. The way that the West cleaves these can not be imposed on Indigenous nations. Only the life of the spirit is transformative in Indigenous life.

9) Last and most important, The Gospel alone must be the centre point and the vehicle of Indigenous church development. The goal of the Gospel is the Word's incarnation in Indigenous communities.

The scandal of Indigenous poverty in their own lands is rarely given its due weight, even by those who would seek to help them. Poverty reduction, as praiseworthy a project as it is, is not likely to create real change until the real reasons for Indigenous poverty are addressed. The dispossession of their lands, the lack of compensation or reparation, and the continuing assault on their cultures, families, and clans is an injustice that cannot be remedied with well-meaning charity and Western sociology. If there is to be a positive relationship between Western institutions and Indigenous Peoples, it must be built on the foundation of the very real commitment that is imagined in the actions of The General Synod of The Anglican Church of Canada. Without such actions, the churches of the West will live in a prison of systemic evil that is the antithesis of the freedom and life that is promised in the Cross of Christ.

Despite the daunting nature of the struggle to dismantle the Doctrine of Discovery, it is a path that promises much. If truly applied and followed, this could be the beginning of a spiritual reconciliation and awakening that would reach every particle of our spiritual and theological ecology.