

11th Session of the U.N. Permanent Forum on Indigenous Issues
United Nations headquarters, New York, NY

Agenda Item 3: Panel 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 U.N. Declaration on the Rights of Indigenous Peoples)*. May 7, 2012.

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Warm greetings to you -- relatives, special representatives, and Excellencies. I have been invited to speak on the right to redress and the right to recognition, observance and enforcement of treaties and other constructive agreements with reference to Articles 28 and 37 of the U.N. Declaration on the Rights of Indigenous Peoples, at the national/regional and/or global level. With respect for the limited time available to us, and so that everyone has an equal opportunity to speak, I will endeavor to be brief.

The special theme for the 11th session is “The Doctrine of Discovery: Its Enduring Impact on Indigenous Peoples and the Right to Redress for Past Conquests (Articles 28 and 37 of the U.N. Declaration on the Rights of Indigenous Peoples).” When we speak of the “Doctrine of Discovery,” we might instead call it the Doctrine of Domination. This principle of international law began in the 1500s with Christendom – the Christian nations of western Europe – deciding among themselves that people who are Christian have the right to claim land inhabited by non-Christians. When we speak of a Doctrine of Discovery, we focus on the actions of people from Europe, and a moment that is in the past – something that has already happened, and apparently cannot be undone. We forget that this doctrine, this legal construct, established a framework of *domination* or dominion that continues to this day. For example, Dominion Day is observed by the government of Canada. Domination is a behavior, an action. Domination is exhausting not only for those who are dominated but for those who dominate. We need to look at changing that approach, not just for the good of indigenous peoples, who have suffered centuries of violence and discrimination and inequality that they have endured throughout the world, but also for our neighbors, the rest of humanity – our non-indigenous brothers and sisters who share the planet with us. Domination has not been good for the earth, either. We have a lot of things that we need to be thinking about and talking about.

The Doctrine of Domination is incompatible with the U.N. Declaration on the Rights of Indigenous Peoples, and in particular Article 3 (the right to self-determination), Article 28 (the right to redress) and Article 37 (the right to recognition, observance and enforcement of treaties, agreements and other constructive arrangements). The Doctrine is the juridical foundation for the domination of indigenous peoples in areas of European colonialism, and it is the moral foundation for domination in other parts of the world. These effects are not just historical. They are ongoing, with legal systems in place that have negative outcomes for indigenous peoples today, and in particular for indigenous women and children as outlined in the statement from the Global Indigenous Women’s Caucus. The Doctrine of Domination laid the foundation for racism, sexism, and other forms of discrimination based on difference. The U.N. Declaration on the Rights of Indigenous Peoples is the firm foundation on which we can build a better framework of reconciliation, peace and justice. It is for this reason that

we went to Geneva in 1977 and began the process that led to the ratification of the U.N. Declaration on the Rights of Indigenous Peoples in 2007.

A renunciation of the Doctrine of Domination opens up a way for people to come back to the table as truly equal partners. In 1613, the Haudenosaunee and the Dutch came together and made an agreement, a treaty of peace and friendship, based on equality and mutual respect, where they would literally walk and move along this river of life as equal partners, each holding on to their own traditions, their own laws, and their own ways of life, not crossing over and interfering with each other. The treaty takes its name from the image of two parallel, equal paths, and it is known as the Two Row Wampum. This agreement set a high standard, at a very early time: that people could negotiate as equals, with respect on all sides.

Unfortunately, instead of basing its relationship with indigenous peoples on the Two Row Wampum, the United States has based its legal foundation on the Doctrine of Discovery through the U.S. Supreme Court case of *Johnson v. M'Intosh*, decided in 1823. This case is discussed in detail in the Conference Room paper submitted to the U.N. Permanent Forum on Indigenous Issues by the Haudenosaunee, the American Indian Law Alliance, and the Indigenous Law Institute, but in brief, *Johnson v. M'Intosh* asserts the right of "ultimate dominion" or domination by "Christian people" over non-Christian lands and peoples. This clearly violates Articles 3 and 37 of the U.N. Declaration on the Rights of Indigenous Peoples, as further clarified in the *Preliminary Study of the Impact on Indigenous Peoples of the International Legal Construct Known as the Doctrine of Discovery* (E/c.19/2010/13). Now, in the 21st century, we need to come full circle back to the Two Row principal, where we can have discussions based on mutual respect and as equal partners

Repudiating the Doctrine of Domination does not invalidate treaties, agreements and other constructive arrangements that were negotiated by governments and indigenous peoples in good faith. Treaties inherently recognize aboriginal title. The Doctrine of Domination was a legal strategy for claiming land without negotiation or any form of free, prior and informed consent. As recommended by the North American Peoples Caucus in their statement to the U.N. Permanent Forum on Indigenous Issues, we should now evaluate treaties, agreements and other constructive arrangements through the prism of Articles 3, 28, 37 and international law as outlined above.

Redress won't happen overnight. It will take time and commitment from all the parties involved, and there may be regional differences. If we build trust and come to the table as equal partners, that is the way to begin. Repudiating the Doctrine of Domination is the first step in improving the lot of all peoples, not just indigenous peoples.

As recommended in the *Conference Room Paper on the Doctrine of Discovery*, we need an International Study by the U.N. Permanent Forum on Indigenous Issues on the effects of the international construct known as the Doctrine of Discovery upon the health, physical, psychological and social well-being, human and collective rights, lands, titles to such lands, resources, and medicines of indigenous peoples. This International Study should be submitted to the U.N. Permanent Forum on Indigenous Issues in 2014 as an addendum to the U.N. International Decade of the World's Indigenous Peoples, with recommendations addressing the discoveries and findings of this Study.