Permanent Forum on Indigenous Issues
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Agenda Item 4(a): Implementation of the UN Declaration on the Rights of Indigenous Peoples
Speaker: National Chief Shawn A-in-chut Atleo

Joint Statement of the
Assembly of First Nations, Chiefs of Ontario, Grand Council of the Crees (Eeyou Istchee),
Amnesty International, Canadian Friends Service Committee (Quakers),
KAIROS: Canadian Ecumenical Justice Initiatives

The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (article 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples)

In addressing the medieval "doctrine of discovery", we wish to begin by highlighting the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP). As a consensus, universal international human rights instrument, the realization of UNDRIP is crucial to the survival, dignity, security and well-being of Indigenous peoples worldwide. UNDRIP 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 or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust"

Similar rejection of doctrines of superiority is found in the *International Convention on the Elimination of All Forms of Racial Discrimination* and in the 2001 Durban *Declaration* on racism and racial discrimination. As recently as September 2011, the UN Human Rights Council by consensus "condemned" doctrines of superiority "as incompatible with democracy and transparent and accountable governance".

As with the discredited notion of "terra nullius", the doctrine of "discovery" was used to legitimize the colonization of Indigenous peoples in different regions of the world. It was used to dehumanize, exploit and subjugate Indigenous peoples and dispossess them of their most basic rights.

Central to the survival of Indigenous peoples everywhere is the issue of land and resources. Based on such fictitious and racist doctrines as "discovery" and "terra nullius", European nations were relentless in their determination to seize and control indigenous lands. Papal bulls, such as *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. Such ideology led to practices that continue unabated in the form of modern day laws and policies of successor States.

The consequences of the past wrongs regarding the taking of Indigenous lands and resources are visible worldwide, through debilitating impoverishment and suffering endured by Indigenous peoples. In Canada, the Royal Commission on Aboriginal Peoples concluded in its 1996 Report: "Without adequate lands and resources, Aboriginal nations ... will be *pushed to the edge of economic, cultural and political extinction*."

In *Mabo* v. *State of Queensland*, in rejecting the doctrine of "terra nullius" in relation to Indigenous peoples, Mr. Justice Brennan ruled in 1992:

If it were permissable in past centuries to keep the common law in step with international law, it is imperative in today's world that the common law should neither be nor be seen to be frozen in an age of racial discrimination.

In regard to the doctrine of "discovery", the same condemnation must now take place within States. While churches have begun to repudiate this racist doctrine, States around the world have not.

Leading cases in Canada, cases such as *St. Catherines Milling and Lumber Company v. The Queen*, have relied upon early U.S. Supreme Court cases such as *Johnson v. McIntosh* that are based on the "discovery" doctrine. Yet, in these and other significant legal cases, the Indigenous peoples affected were not included as direct parties. Such breaches of natural justice serve to further discredit these rulings and the doctrine on which they are based.

As in many countries worldwide, Canada's laws and policies constitute a continuing misinterpretation of international law relating to the doctrine of "discovery" – as well as a denial of the full and effective application of UNDRIP. Such actions by Canada and other States adversely affect Indigenous peoples globally. They are reneging on their international obligations to respect, protect and fulfil Indigenous peoples' human rights.

In the Indigenous context, UNDRIP and other international human rights law are increasingly being relied upon by domestic human rights commissions and courts, as well as by international and regional bodies. Therefore, it is inevitable that the claims and justifications for State sovereignty over indigenous lands, resources and governance will need to be increasingly challenged and rectified.

We recommend the Permanent Forum on Indigenous Issues (PFII) take concrete measures towards redressing past wrongs. Recommendations include that the PFII:

1. Request States, in conjunction with Indigenous peoples, to examine State history, laws, practices and policies and report on their reliance of doctrines of superiority, including "discovery", as the foundation of State claims of sovereignty over Indigenous peoples and their lands and resources. States should complete and provide their reports by the 12th Session of the PFII.

2. Urge States, in conjunction with Indigenous peoples, to establish national plans of evaluation and work, with clear timelines and priorities, to eradicate from existing laws and policies any remnants of doctrines of superiority, including “discovery”, as a basis for the assumed sovereignty over Indigenous peoples and their lands and resources. States should report regularly on the progress of their work to their national legislatures and to the PFII.