

## **Statement on the Preliminary Study on the Doctrine of Discovery**

By Tonya Gonnella Frichner  
North American Representative to  
The 9<sup>th</sup> Session of the United Nations Permanent Forum on Indigenous Issues  
19-30 April 2010

Thank you Mr. Chairman,

I am pleased to announce the completion of the Preliminary Study of the Doctrine of Discovery, which was requested by the 8<sup>th</sup> Session of the United Nations Permanent Forum on Indigenous Issues. The preliminary study is now translated and available under the title, "Impact of Indigenous Peoples of the International legal construct known as the Doctrine of Discovery, which has served as the violation of the human rights." (E/c. 19/2010/13)

The Preliminary Study of the Doctrine of Discovery support is mentioned in the Indigenous Peoples' Global Caucus Statement, the Indigenous Women's Caucus Statement, and in the report of the North American Caucus Preparatory Meeting held in the territory of the Alexis Nakota Sioux Nation in Canada. It is also mentioned in the intervention of the Indigenous Youth Caucus, and a number of other interventions.

There is now a great deal of support for the convening of the Expert Group Meeting on the Doctrine of Discovery, and for a Comprehensive Study of the Doctrine to be conducted by a representative from each of the seven regions identified by the Permanent Forum. A recommendation has also been put forward that I be appointed to represent the North American region in the Expert Group Meeting and the Comprehensive Study.

Mr. Chairman, the Preliminary Study of the "legal construct" known as the Doctrine of Discovery identifies an interpretive framework that has resulted and continues to result in the violations of Indigenous Peoples human rights throughout the world. Indeed, the United Nations Declaration on the Rights of Indigenous Peoples is a significant step in the direction of honoring and upholding Indigenous Peoples' human rights, both individual and collective human rights, including the right to and of self-determination. One might say that the Declaration is the product of Indigenous Peoples' working toward solving a common problem they all share. However, the problem that we as Indigenous Peoples have in common is nowhere to be found in the actual text of the Declaration, and this is the importance of the Preliminary Study, for it moves us all toward a holistic understanding of the root problem Indigenous Nations and Peoples all share.

That root problem has two main elements: first, dehumanization, and second, dominance. The first thing Indigenous Peoples on the planet share is the experience of having been invaded by those who have treated us without compassion because they have considered us less than human, or not human. Dehumanization has led to the second thing we as Indigenous Peoples share in common: being treated on the basis of the belief that those who have invaded our territories have a right of lordship or dominance over our existence as Indigenous Nations and Peoples, and, therefore, illegitimately claim the right to take, grant away, and dispose of our lands, territories, and resources bequeathed to us by our ancestors, without our permission and consent. This lack of permission or consent is the reason why a discussion of free, prior and informed consent is critically important with regard to Indigenous Nations and Peoples.

The Preliminary Study is a tentative step toward finally identifying the root problem that the Declaration is intended to address from an Indigenous Peoples' perspective. That root problem can be expressed in various ways but it comes down to the dehumanization and subordination of original Nations and Peoples who are integral to the biological fabric of their specific territories and bioregions. Indigenous peoples are woven into the biological fabric of their traditional territories, which they are charged the sacred responsibility to maintain for future generations. What is now referred to as "biological diversity" is a direct result of Indigenous Nations and Peoples upholding their sacred responsibility to the ecosystems they have successfully maintained for thousands of years. Now, others think they have the right to take, commodify, and even destroy Indigenous Peoples' biosystems.

Claims of the Right of Discovery and Dominance, or subordination, have resulted in the violent uprooting of Indigenous Nations and Peoples from their territories and territorial bioregions. This in turn has resulted in the elimination of the Indigenous presence that maintains the ecological integrity of the traditional territories of Indigenous Nations. Once that Indigenous protection based on ecological knowledge and wisdom is removed, the biological and ecological integrity of the traditional territory of a particular Indigenous Nation is opened to attack from the forces of mining and other forms of exploitation and destruction. The removal of Indigenous Peoples' protection leads to the destruction of the waters, the trees, the animals, and all other life forms intricately interwoven and networked together.

The Preliminary Study on the Doctrine of Discovery focuses on a very specific argument that can be traced back more than five hundred years to the days of Western Christendom. It is an argument traced back to a number of Vatican papal documents of "discovery and conquest" and "discovery and commerce." The argument may be expressed as follows: A Christian monarch who locates or "discovers" non-Christian lands or territories, has the right to claim a superior and paramount title to the lands, territories, and resources of non-Christians anywhere in the world. The lands were considered to belong to no one, because no Christians were living there and no Christian monarch or lord had yet claimed dominion. Once the claim of a right to dominion, sovereignty, or lordship was claimed by some Christian European monarch, that claim was considered transferable by treaty to other political successors without the consent or permission of the Indigenous Peoples.

From an Indigenous Peoples' perspective, to identify this ancient argument is to simultaneously and immediately reject it. Nonetheless, the Christian European claim of a superior and paramount right to Indigenous peoples, and their lands, territories, and resources, has been expressed in various ways in the Latin language, as "dominion," "*dominium*," and "domination." It is based on these Latin root concepts that the Preliminary Study identifies the Framework of Dominance, and the phenomenon of dehumanization associated with the Doctrine of Discovery.

Francisco de Vitoria was one theologian who did not agree with the view that mere Christian discovery could give a Christian European monarch dominion over and title to non-Christian lands. He argued that the Indians has the true dominium from both a public and private standpoint. Other thinkers arrived at the same conclusion. The issue was debated at length by Sepulveda and Bartolome de Las Casas, but no conclusive

decision was arrived at. Also, at that time, in the early 1550's, no Indigenous Peoples' representatives participated in the debate. It was a debate among Christian Europeans about Indigenous Peoples, and the issue was whether the Indians or Indigenous Peoples of the Americas were human. It was not a debate with Indigenous Peoples. Today, clearly Indigenous Peoples have joined the debate by declaring most definitively that we are human beings. However, for more the five centuries, the doctrines of discovery and dehumanization have been institutionalized, and this is the context of the work we are doing on the UN Declaration on the Rights of Indigenous Peoples.

The Preliminary Study is primarily focused on the United States and points out that the Doctrine of Discovery was officially adopted by the United States government in an 1823 U.S. Supreme Court Ruling known as *Johnson v. M'Intosh*. In the *Johnson* decision, the United States Supreme Court expressed and used in its deliberations the argument mentioned above, dating back to the days of Western Christendom. The U.S. Supreme Court referred to that doctrine as the principle, "that discovery gave title to the government, by whose subjects, or by whose authority, it [the discovery] was made, against all other European governments." In his discussion, Marshall referred discovery by "Christian people" notwithstanding the "occupancy of the natives, who were heathens."

United States Supreme Court Chief Justice John Marshall identified the royal charters of Great Britain pertaining to North America as the documentary source of the above argument that "discovery gave title" to the government by whose authority the so-called "discovery" was made. He began with royal charter issues to John Cabot Charter in March, 1496. That charter was issued in imitation of earlier Vatican papal bulls, and authorized John Cabot and his sons to seek out, discover, and find, whatsoever isles, countries, and regions of the heathen and infidel, which before this time have been unknown to all Christian people. It was this and similar language taken from other royal charters that led Chief Justice Marshall to say in *Johnson v. M'Intosh* that the Europeans had asserted the ultimate dominion to be in themselves.

In the *Johnson* ruling, Chief Justice Marshall also cited recognition of the Doctrine of Discovery and assertion of dominion (dominium) by Spain, Portugal, France and Holland, when he said, "The history of America, from its discovery to the present day, proves, we think, the universal recognition of these principles." As Chief Justice Marshall stated, "Spain did not rest her title solely on the grant of the Pope. Her discussions respecting boundary, with France, with Great Britain, and with the United States, all show that she placed it on the rights given by discovery. Portugal sustained her claim to the Brazils by the same title." The chief justice also mentioned the East India Company in relation to the Doctrine of Discovery. France, also, founded her title to the vast territories she claimed in America on discovery. It should also be noted that the Doctrine of Discovery and its concomitant Framework of Dominance as it pertains to Africa, Asia, and North, Central and South America, the Arctic, the Pacific. The Canary Islands, and Northern and Eastern Europe also fall under the scope of the doctrine.

A strong case can certainly be made for the view that the various ills and critical problems and human rights violations faced by Indigenous Peoples are all traced to the Doctrine of Discovery. Some of those problems are related to our economic, social, and cultural rights, to our children and youth, to our lands, waters, territories, and resources are all traced directly to the foundational issue of the Doctrine of Discovery and the cultural framework of Dominance. The "State of the World's Indigenous Peoples" report pinpoints key indicators of they critical conditions faced by Indigenous Peoples as a result. Each and every one of the Caucus statements and Indigenous Peoples' interventions made at the 9<sup>th</sup> Session of the UN Permanent Forum on

Indigenous Issues provides clear documentation of the impacts of the Doctrines of Discovery and Dominance on Indigenous Nations and Peoples in every part of the world.

For all the above reasons, a Comprehensive Study of the Doctrine of Discovery that investigates the global scope of the history and application of that Doctrine as a source of the violation of the human rights of Indigenous Nations and Peoples is very much needed. The issues of discovery, dominance, and dehumanization provide the opportunity to finally understand that all the various struggles that Indigenous Peoples are engaged in are a manifestation of the same root cause, which is dehumanization and resulting the claim by one people of a right of dominance over another, or the claim by one people of a right of dominance over many other peoples and their lands, territories and resources without regard to the biological and ecological limits of Mother Earth.