

doctrines of superiority, including ‘discovery,’ as a basis for the assumed sovereignty over Indigenous peoples and their lands and resources.”²⁹

In his report to the UN Permanent Forum, Grand Chief Edward John focused on how Canadian courts have dealt with sovereignty issues.

The highest court of Canada has recognized the need for reconciliation of “pre-existing aboriginal sovereignty with assumed Crown sovereignty.” The Supreme Court has taken judicial notice of “such matters as colonialism, displacement and residential schools,” which demonstrate how “assumed” sovereign powers were abused throughout history. The root cause of such abuse leads back to the Doctrine of Discovery and other related fictitious constructs which must therefore be addressed.³⁰

At the thirteenth session of the UN Permanent Forum in May 2014, Haudenosaunee Faithkeeper Oren Lyons spoke about the principles of good governance as they relate to the *United Nations Declaration*. He said,

We recognize the Doctrine of Discovery and its long-term effects on our peoples led to the atrocities we faced in residential and boarding schools, both in Canada and the U.S.... the Doctrine of Discovery has been invoked as a justification for the ongoing exploitation of our lands, territories, and resources and directly violates Article 7 paragraph 2 of the UNDRIP [the *Declaration*].³¹

The Doctrine of Discovery and the related concept of *terra nullius* underpin the requirement for Aboriginal peoples to prove their pre-existing occupation of the land in court cases or to have their land and resource rights extinguished in contemporary Treaty and land-claims processes. Such a requirement does not conform to international law or contribute to reconciliation. Such concepts are a current manifestation of historical wrongs and should be formally repudiated by all levels of Canadian government.

Our intention in so concluding is to highlight that there is an important distinction to be drawn between the Doctrine of Discovery and its related concepts and the several inherently unjust policies, laws, and principles to which they have given rise over the years. It would not be enough to simply repudiate the Doctrine of Discovery, for example, while still maintaining the requirement for Aboriginal people to prove the validity of their existence and territoriality. We would not suggest that the repudiation of the Doctrine of Discovery necessarily gives rise to the invalidation of Crown sovereignty. The Commission accepts that there are other means to establish the validity of Crown sovereignty without undermining the important principle established in the Royal Proclamation of 1763, which is that the sovereignty of the Crown requires that it recognize and deal with Aboriginal title in order to become perfected. It must not be forgotten that the terms of the Royal Proclamation were explained to, and accepted by, Indigenous leaders during the negotiation of the Treaty of Niagara of 1764.