
Assembly of First Nations

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Assemblée des Premières Nations

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SPECIAL CHIEFS ASSEMBLY
December 6,7,8, 2022, Ottawa, ON

Resolution no. 30/2022

TITLE: Call to Formally Repudiate the Doctrine of Discovery

SUBJECT: Justice

MOVED BY: Kúkpi7 Judy Wilson, Neskonlith Indian Band, BC

SECONDED BY: Chief Roberta Joseph, Trondëk Hwëch'in, YT

DECISION Carried by consensus

WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
 - ii. Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.
 - iii. Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.
 - iv. Article 26 (1): Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

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- v. Article 26 (2): Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
 - vi. Article 26 (3): States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
- B.** The Doctrine of Discovery and *terra nullius* are based on the presumed racial superiority of European Christian peoples and has been used to dehumanize, exploit, and subjugate Indigenous peoples and dispossess Indigenous peoples of their lands and rights.
- C.** Canadian courts, such as the case of *St. Catherine's Milling and Lumber Company v. The Queen*, have relied on early United States Supreme Court decisions, such as *Johnson v. McIntosh*, that are based on the discovery doctrine. The Supreme Court of Canada has grounded its interpretation of section 35 of the Canadian Constitution on the racist and unjust legal principles that underlay the Doctrine of Discovery.
- D.** In the landmark *Tsilhqot'in Nation v. British Columbia* ruling, the Supreme Court ruled, "The doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada, as confirmed by the Royal Proclamation (1763)."
- E.** The federal *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 (Canada's Declaration Act) includes a clear statement that "all doctrines, policies and practices based on or advocating the superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences, including the doctrines of discovery and *terra nullius*, are racist, scientifically false, legally invalid, morally condemnable and socially unjust."
- F.** Under section 6 of Canada's Declaration Act, the Minister must, in consultation and cooperation with Indigenous peoples and with other federal ministers, prepare and implement an action plan to achieve the objectives of the UN Declaration and must include specific measures to address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination against Indigenous peoples.
- G.** The very first recommendations of the 1996 Report of the Royal Commission on Aboriginal People are as follows

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1.16.1 To begin the process, the federal, provincial and territorial governments, on behalf of the people of Canada, and national Aboriginal organizations, on behalf of the Aboriginal peoples of Canada, commit themselves to building a renewed relationship based on the principles of mutual recognition, mutual respect, sharing and mutual responsibility; these principles to form the ethical basis of relations between Aboriginal and non-Aboriginal societies in the future and to be enshrined in a new Royal Proclamation and its companion legislation.

1.16.2 Federal, provincial and territorial governments further the process of renewal by:

- a) acknowledging that concepts such as *terra nullius* and the doctrine of discovery are factually, legally and morally wrong;
- b) declaring that such concepts no longer form part of law making or policy development by Canadian governments;
- c) declaring that such concepts will not be the basis of arguments presented to the courts;
- d) committing themselves to renewal of the federation through consensual means to overcome the historical legacy of these concepts, which are impediments to Aboriginal people assuming their rightful place in the Canadian federation; and
- e) including a declaration to these ends in the new Royal Proclamation and its companion legislation.

H. The Truth and Reconciliation Commission of Canada's (TRC) Calls to Action state:

45. We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown [which would include]: [...] (i) repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and *terra nullius*.

46. We call upon the parties to the Indian Residential Schools Settlement Agreement to develop and sign a Covenant of Reconciliation that would identify principles for working collaboratively to advance reconciliation in Canadian society, and that would include, but not be limited to: [...] (ii) repudiation of concepts used to justify European sovereignty over Indigenous lands and peoples, such as the Doctrine of Discovery and *terra*

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nullius, and the reformation of laws, governance structures, and policies within their respective institutions that continue to rely on such concepts.

47. We call upon federal, provincial, territorial, and municipal governments to repudiate concepts used to justify European sovereignty over Indigenous peoples and lands, such as the Doctrine of Discovery and *terra nullius*, and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.

49. We call upon all religious denominations and faith groups who have not already done so to repudiate concepts used to justify European sovereignty over Indigenous lands and peoples, such as the Doctrine of Discovery and *terra nullius*; and

- I. In 2018, the AFN released a paper entitled, "Dismantling the Doctrine of Discovery," which called Canada to act on the following recommendations:
 - i. Acknowledge that this doctrine has had and continued to have devastating consequences for Indigenous peoples worldwide, including First Nations in Canada;
 - ii. Reject doctrines for superiority as illegal and immoral, and affirm that they can never be a justification for the exploitation and subjugation of Indigenous peoples and the violation of human rights;
 - iii. In full partnership with First Nations, examine how Canadian history, laws, practices and policies have relied on the doctrine of discovery;
 - iv. Repudiate all doctrines of superiority in a legislative framework for the implementation of the [UN Declaration], developed together with Indigenous peoples;
 - v. Reinterpret Canadian law in a manner consistent with the [UN Declaration] and other contemporary international human rights standards;
 - vi. Ensure that the violation of First Nations' rights to lands, territories and resources that were taken without their free, prior, and informed consent are effectively redressed; and
 - vii. Ensure that the doctrine is not in any manner invoked in contemporary court cases or negotiations.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

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1. Fully reject the racist and colonial Doctrine of Discovery as a justification for the forceful dispossession of sovereign Indigenous Nations from their territories.
2. Fully support and endorse the findings and recommendations outlined in the Truth and Reconciliation Commission's Calls to Action related to the Doctrine of Discovery and *terra nullius*, recommendations 1.16.1 and 1.16.2 of the 1996 Report of the Royal Commission on Aboriginal people, and the Assembly of First Nations' *Dismantling the Doctrine of Discovery* report.
3. Call on King Charles III to renounce the Doctrine of Discovery and likewise to renounce all doctrines of moral superiority asserted in aid of colonialism, so the Crown does not continue to rely upon or use these doctrines in aid of colonial purposes, especially as the Crown has distinct and lasting fiduciary obligations to the Indigenous peoples in Canada and around the world.
4. Direct the Assembly of First Nations (AFN) to call on the federal Minister of Justice to include formal rescinding and repudiation of the Doctrine of Discovery in Canada's United Nations Declaration on the Rights of Indigenous Peoples Act Action Plan and to ensure the policy and legislation measures in this action plan reflect the rescinding and repudiation of the Doctrine of Discovery.
5. Direct the AFN to continue to call on the Pope to rescind and repudiate the Doctrine of Discovery and *terra nullius* and recognize Indigenous inherent sovereignty, jurisdiction and self-determination.

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