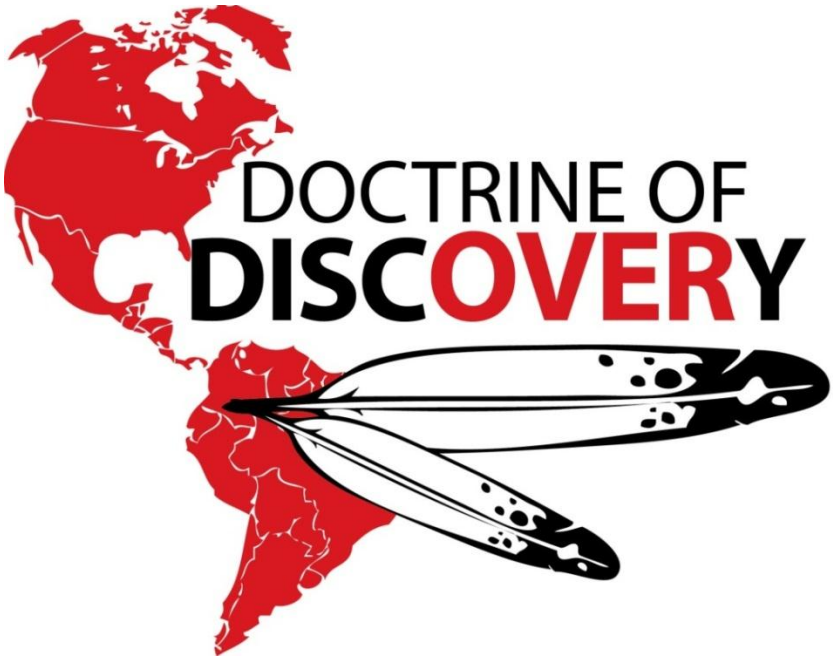

INTERNATIONAL SEMINAR ON THE DOCTRINE OF DISCOVERY
SEPTEMBER 20 and 21, 2012, SECWEPEMCÚL'ECW
Co-hosted by the Shuswap Nation Tribal Council and Thompson Rivers University

Elder Diane Sandy welcomed everyone to Secwepemcúl'ecw, said an opening prayer and sang a Secwepemc honouring song.

Chief Shane Gottfriedson thanked the organizing committee for the conference (Bonnie Leonard, Kelly Connor, Arthur Manuel, Nicole Schabus, Nathan Matthew and Chief Judy Wilson) and Chief Wayne Christian, who had made the commitment to host the conference as the former SNTC Tribal Chair. He welcomed participants to Secwepemcúl'ecw (Secwepemc territory), explaining that the Secwepemc have never signed treaties and that their territory has never been ceded, surrendered, or sold. He commented on how the colonial Doctrine of Discovery was used by colonizers to take indigenous land and violate indigenous rights in the name of another religion. This was followed by the imposition of the paternalistic Indian Act. He then explained how the Chiefs of the Secwepemc, Nlaka'pamux, and Okanagan in 1910 signed the Laurier Memorial to then Prime Minister of Canada, asserting their rights to their land; and how current leaders follow in the footsteps of their ancestors in the fight against the continued denial of their rights. He closed by referring to the commitment of the Southern and Northern Secwepemc Chiefs to work together.

Chris Axworthy, Dean of the Faculty of Law of Thompson Rivers University (TRU) thanked elder Diane Sandy for the prayer and the Secwepemc people for allowing us to be in Secwepemc territory. He said it was a pleasure to be part of this welcome and for TRU to co-host the conference. Noting that the TRU Faculty of Law is the first new law school in Canada in

33 years, he welcomed the conference as serving the important purpose of being part of attempts to find new solution to legal issues. Commenting that the legal profession was part of applying the colonial Doctrine of Discovery, he suggested they should also be part of the solution. He commended the amazing array of speakers for coming to Kamloops to share their thoughts and to contribute to the discussions, constituting a great opportunity for the students to learn and hear from experts. He recognized his colleague Prof. Nicole Schabus for helping with organizing the conference.

Walter Echo-Hawk, Indigenous Litigator, Tribal Judge, Adjunct Professor in Federal Indian Law, litigated for the Native American Rights Fund (NARF) and continues to work for tribes in the US. He extended greetings from his people to the tribal chiefs and elders. He said he is a Pawnee Indian from the state of Oklahoma, where he practices law representing the legislature of the Cherokee Nation, the General Council of the Comanche Nation and other nations in the state. He thanked the Shuswap Nation Tribal Council (SNTC) and TRU for co-hosting the conference and bringing together pre-eminent scholars to lead this very important dialogue to critically examine the Doctrine of Discovery. He said it was very timely to have a conference on this subject now, because we stand at a junction between two vastly different legal frameworks: the current system and the new framework set out under the UN Declaration on the Rights of Indigenous Peoples. He said this is the opportunity to critically examine some of those foundational doctrines and navigate away from them. He said it was also very appropriate to have the conference in British Columbia, which is at the forefront of the battle for indigenous rights. He commended the University for co-hosting the conference to allow participants to take stock and look at the big picture and ways to protect the legal rights of Indigenous Peoples.

He explained that his perspective is that of a long time practitioner of federal Indian law, which provides useful information to help navigate the big issues that confront Indigenous Peoples today and help critically examine the Doctrine of Discovery as it exists in North America today and continues to shape indigenous life in Canada. It contains foundational legal principles that defined Aboriginal political and land rights in the US and Canada. The colonial Doctrine of Discovery was brought to North America by Europeans. It was used to define their relationship with Native Peoples and underlies the legal framework of federal Indian Law in the US and is also very important here in Canada. For many decades, this doctrine has had a pervasive impact on the law and it has left a big footprint. In the US, Native Peoples have lived with this doctrine for many decades and tried to make the best of the legal framework of federal Indian Law. Since 1970 they made many strides despite the doctrine, but the fact remains that a people can only go so far under an unjust legal system and you will surely stall out at the door steps of justice. Indigenous Peoples have tried to make the best of an unjust legal regime, but now is the time to confront it and change it and look at the brand-new legal framework for defining

indigenous law. It can be built on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) which provides a human rights framework for defining indigenous rights.

It is a brand new thing in the US to look at federal Indian rights from the angle that Indigenous Peoples have inherent human rights. Federal Indian Law looked mainly at legal principles, but it did not talk about human rights. UNDRIP contains the right to self-determination, the right to culture, land rights, rights to lands and resources, language, culture, self-government as inalienable human rights that no nation can take away from Indigenous Peoples.

The UN Declaration provides a more just foundation for indigenous rights than the rights that arise from federal Indian Law that come for a 19th century notion of colonialism, ideas of racism, and European ethno-centricity. A body of rights that rest on this dark foundation necessarily makes indigenous rights vulnerable. The paramount challenge is for Indigenous Peoples to strive towards the new framework for indigenous rights that rests on notions of justice, equality, and universal human rights and to repudiate the legacy of colonialism. This is similar to the experience of the desegregation movement in the US, where they initially tried to work under the doctrine of "separate but equal", trying to make the best of it by focusing on the equal component, until they were ready to make a frontal assault on it and managed to strike it down.

Walter Echo-Hawk then proceeded to review the old framework for defining indigenous rights under federal Indian Law. He referred to his recent book: "In the Courts of the Conqueror, the 10 Worst Indian Law Cases Ever Decided", where he studied the dark side of federal Indian Law.

He explained that the old system of federal Indian Law in the United States has to be looked at against the background of European colonialism, which was the predominant legal order for almost 500 years (1492-1960) when nations from Europe competed to colonize as much of the rest of the world as possible. All of the Western hemisphere was colonized, alongside Africa, parts of Asia, Pacific Islands and the circumpolar world, making it a world-wide phenomenon, resulting in the one way transfer of property from indigenous hands to non-indigenous hands. This resulted in very harsh, life-altering experiences for Indigenous Peoples; a result of the invasion of their home lands, appropriation of property, and even acts of genocide and ethnocide. It gave Native Peoples a common fate and set of aspirations for protecting their way of life from the impact of colonialism.

Walter Echo-Hawk asked: "Was colonialism legal?" And his answer was that: yes it was, according to the law of colonial power which attempted to justify acts of colonialism. The purpose was to govern the relationship between nations of Europe by setting forth rules for colonizing non-European nations (through Christianity) but these rules were not accountable to Indigenous Peoples. They were a tool to strip them of their rights; it provided no protection for

Indigenous Peoples. Up until a few decades ago, it was used to justify and legitimize acts of colonialism of European nations, by ways of doctrines of just war, trusteeship, and guardianship; all key components of the law of colonialism. The system was not only embraced worldwide, it was imprinted on legal systems that are still in place today. At the international level there came a time when colonialism was repudiated, by the UN de-colonization resolution (1960) and the decolonization covenants (1966, ICCPR, ICESCR). He noted that Canada was a colony and is still under the Crown today.

He explained that the colonial legacy has left a major influence on federal Indian Law that defines the rights of Native Americans. There are 8 sources of federal Indian Law: International Law, Treaties, US Constitution (recognizing 4 forms of government: Foreign Nations, Federal Government, States, Indian Nations), Supreme Court decisions, Acts of Congress, Executive Orders by the President, Administrative Law, and Tribal Law (traditional laws and laws passed by Indian Nations). Many of these concepts came from international law, including treaty making, the protectorate doctrine, and ideas of trusteeship.

One of those was the case of Johnson v. M'Intosh where the Supreme Court of the United States under Chief Justice Marshall adopted the Doctrine of Discovery in 1823. The Court referred to the federal court system as the court of the conqueror and then went on to define land rights for American Indian Tribes. In it the court expanded the Doctrine of Discovery and held that the act of discovery operated to transfer title to land to Britain and on to the US leaving the tribes just with a right to occupancy that could be extinguished by conquest or purchase. The tribes went from land owners to just being "renters". Later the court ruled that the right of occupancy was not a property right at all and said it was not protected under the 5th Amendment (so there had to be no compensation in cases of expropriation). The court also equated discovery with conquest, but both are legal fiction since neither was true as a fact. There had been no real sale and many of the tribes in the US were able to defend their territories and were at war for a long time. He further explained that the case of Johnson v. M'Intosh did not involve any Indigenous Peoples and was brought forward on a fraudulent basis with tainted evidence. The counsel who brought the case colluded with opposing counsel. Chief Justice Marshall owned 240,000 square miles of land next to where the case was, so the Marshall family fortune depended on it. It was not ethical for him to rule on the issue.

In addition to the principles of colonialism that came into play in the case, the second force at work was racism. The case referred to Indians as an inferior race of people, as "savages", something that would never be allowed in a modern court.

Chief Justice Marshall himself 10 years later rejected the Doctrine of Discovery as absurd and based on legal fiction, in the case of Worchester v. Georgia (1832), but he died 1 year later and then the Supreme Court, now appointed by Andrew Jackson, followed suit with 5 cases that

upheld the doctrine. It is important to note that in these cases, legal fictions have been misused. Their supposed purpose was to secure a just outcome but in these cases they were used to commit unjust acts. Yet the case of Johnson v. M'Intosh is still part of the law of the land today, it has never been reversed. This case constitutes the dark side of federal Indian law. These notions of racism and colonialism make indigenous rights vulnerable and they need to be overturned in court by this generation. The question of whether these decisions can be overturned is the 500 pound gorilla in the room, but Walter Echo-Hawk is convinced that it can be done. Echo-Hawk pointed to the Plessy v. Ferguson (1896) US Supreme Court Decision that upheld state laws requiring racial segregation under the "separate but equal" doctrine and how long it took the civil rights movement and their lawyers to overturn the doctrine in Brown v. the Board of Education (1954).

Commenting on the modern era of federal Indian Law, he noted that great strides have been made in the US courts under the framework of federal Indian Law since the 1970s. Initially the strategy was not to attack it but to accept it and make the best of it by coaxing the courts to adopt or apply the better features. Still he concluded that one can only move so far under an unjust legal regime. He pointed out that since 1985 the US Supreme Court has been cutting down on the recognition they had gained under federal law and that the tribes have lost over 80% of their cases before the US Supreme Court, leading some tribal leaders to question if federal Indian Law is dead. Echo-Hawk concluded that they have stalled out at the doorsteps of justice and have not been able to stride into the light because of the dark side of federal Indian Law.

In turn he pointed to the new framework for seeking recognition for indigenous rights, under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which is rooted in modern international human rights law. He suggested that if UNDRIP was the law of the land, the Supreme Court decision in Johnson v. M'Intosh would have had a vastly different outcome. He said it is the challenge for this generation to move from the current system steeped in colonialism to one based on international human rights standards. He noted that UNDRIP was not self-executing and has to be affirmatively implemented. Pointing out that in the past in the US, they did not look at international law, but human rights based discourse provides an opportunity for dialogue with larger society. He commended the work of Indigenous pioneers who went to the UN for several decades to make UNDRIP a reality. He said it opens a new era of indigenous rights and allows us to define indigenous rights as inherent rights that no nation can interfere with. It opens new pathways to move from the law of colonialism into the realm of human rights. He reiterated that we are at a crucial time in history; at a juncture between two legal frameworks and that we have a great opportunity to craft our own legal framework. He stressed that the paramount challenge now in North America is to implement UNDRIP so

that we might all stand in the light of justice and called for a coordinated movement to lead implementation.

Robert Miller, Tribal Judge and Law Professor at Lewis and Clark Law School, Portland, Oregon, noted that the US Supreme Court decision Johnson v. McIntosh has been frequently cited by Canadian courts. Also, the British Privy Council cited it 3 times regarding Africa and India, it has been used in many Commonwealth countries, and has been the defining case applying the Doctrine of Discovery. Johnson v. McIntosh itself relied on international law, and was the first US Supreme Court case that significantly addressed indigenous issues. Johnson inherited shares from his grandfather from a company that allegedly bought land directly from Tribal People in 1773; this was before US independence, under British law. McIntosh who lived on the land and farmed it had bought it from the US who had signed a treaty with the same tribe. The Court said that Johnson v. McIntosh was a simple case, the central question being: what kind of title do Indian Peoples have in their land and what is the power of Tribal Peoples to sell title? The Court held that the US was settled on this same idea of discovery and conquest. Miller explained that these tribes have not been conquered, but that discovery, as the court holds, means that tribes lost some of their land rights. To this day, American Indian Tribes possess only limited legal title, and cannot sell, lease, or develop their land without the permission of the Secretary of the Interior. Johnson v. McIntosh also immediately limited their sovereign rights, such as international and commercial rights. This dictated that discovered peoples could not engage in relations or trade with a settler Nation. Miller then identified and explained ten elements of the Doctrine of Discovery, based on research he has conducted focusing on 9 countries: England, Spain, Portugal, Canada, USA, Australia, New Zealand, Chile, and Brazil. These are as follows:

1. ***First Discovery: the first European Nation to show up on Indigenous territory claimed preeminent rights.***

Miller explaining how different colonizing countries developed protocols on how to claim first discovery through planting flags, painting rocks, carving trees, holding mass, bringing handfuls of dirt back to the king, etc. — all to prove the transfer of ownership to the European Nations.

In another example, he explained that King Henry VII sent off John Cabot's 1496-1498 expedition, to "discover... countries, regions, or provinces of the heathen and infidels... which before this time have been unknown to all Christians".

2. ***Actual Occupancy: Queen Elizabeth I amended the original Doctrine of Discovery to say that the first European "discoverer" had to actually occupy the colony; otherwise it could be settled by another nation.***

Miller gave a number of examples of claims of actual occupancy. For example, throughout North America where England claimed actual occupancy and when the Dutch and Swedish claimed colonies in New York, etc., England opposed them.

Actual occupancy was claimed through filling the land with settlers, but also through symbolic acts of possession. On example Miller used was Mackenzie's claims of occupancy in Bella Coola, which consisted of paintings on rocks. Similarly, Lewis and Clark, on their expeditions, handed out medallions with Thomas Jefferson's image on them.

James Cook got particularly clever. He was ordered by the admiralty to take possession in the name of the King "in convenient situations in such countries he discovered, that have not already been discovered, and to distribute among inhabitants traces that will remain as testimony of his having been there." Basically, he was to set up marks and inscriptions to prove he'd been there. For example, in Alaska he turned dirt and put English coins in glass jars and buried them.

3. ***Preemption/European Title: Though in some cases the European Nation claimed immediate fee simple title, more often it claimed the right of preemption, which is the sole and only right to buy land from Indigenous Peoples; this is a future interest.***

Miller pointed out that all the colonizing powers passed laws on preemptive title, claiming only the first European Nations to discover a territory could buy indigenous land there. This also became embedded in treaties throughout Africa which lasted up until 1885 when the colonizers carved up Africa in the Berlin Treaty. Further, there are similar examples of preemption applied to the Sami in Northern Europe.

4. **Native Title (or Indian Title): Tribes still had the right to occupy and use their lands, though this was a limited right, and not fee simple property ownership.**

Miller explained there are examples of this found everywhere in his research: cases in Canada, Chile, New Zealand, etc., and it forms part of the concept of Aboriginal title here in Canada.

5. ***Sovereign and Commercial Rights: After being discovered, Indigenous Peoples had limited international and commercial rights.***

Colonizers claimed jurisdiction over discovered Indigenous Peoples' trade with other Nations and commercial rights based on their presumed lack of civilized economic systems. This led to forced slavery, enforced labour, and Spain's encomienda system.

Further, Miller mentioned the Royal Proclamation of 1763 and its invocation of the Doctrine of Discovery, including a direct statement of preemption amounting to the principle, "those are my lands, though I have not yet purchased them."

6. ***Contiguity: The size of an area a European country could claim.***

Miller used the example of the Louisiana Purchase, which was a territory defined by Mississippi watershed. Oregon Country, meanwhile, was defined by the drainage system of the Columbia River and spanned from Oregon to Alaska. In other cases, he said, it was defined as 100 English miles around a settlement. This was later expanded to include territory stretching all the way to the Pacific shore.

7. ***Terra Nullius: there are two definitions: one meaning void land and the second based on Native Peoples having a different legal system.***

Miller explained that after the American Revolution, Congress asked George Washington if they should "tell" Indigenous Peoples that they had conquered them. English colonial officials started telling tribes they had forfeited their lands in the war. Washington wrote a letter describing "the savage as the wolf", which will retreat when we claim their territory. The intent was clearly to obtain all the land and assets of Native Peoples.

8. ***Conquest***

Miller referred to two colonial approaches one saying that when one country physically conquered another, private property was still supposed to be respected and inalienable; and second, that discovery was tantamount to conquest.

9. ***Christianity***

Miller explained how the dividing up of the world between Spain and Portugal was justified through various Papal Bulls. For example, the two countries looked to the Pope to settle their competing claim for the Canary Islands. When the King and Queen of Spain sent Columbus west, they said, "we will make you the admiral of any land you discovery for us". Then, upon his discoveries, they sent lawyers to the Pope in search of a new Papal Bull, which then defined the line of demarcation between Spanish and Portuguese colonies.

10. ***Civilization***

Colonial and racist notions that Indigenous Peoples were not civilized pervaded historic documents and were used to justify claiming their territory.

Louise Mandell, QC, Litigator, started off by explaining how she got to this place today, describing it as a story of love, from the first time she appeared in court and exited into a broom closet, to defending a speeding ticket for Grand Chief George Manuel and being hired to work for the Union of BC Indian Chiefs, to litigating Aboriginal Title and Rights issues. She also

connected it to her personal story, growing up in a family of Holocaust survivors, and seeing how it is possible for law to be a vehicle of injustice. She said this drew her to working for Indigenous Peoples and to question how the loss of indigenous homelands could happen under the cover of law. She noted that the Royal Proclamation of 1763 was not followed in British Columbia and although it embeds the colonial Doctrine of Discovery, it also embeds legal recognition of Indigenous Peoples' rights to remain in their homelands, to have their own legal orders and sovereignty through treaty. She concluded that in British Columbia, lands were just stolen "fair and square". She warned against a perspective where all is kept separate by law, which misses encountering each other and collective consciousness, it also justifies talking from another to enrich oneself. She said her talk would focus on the recent dark side of the law in the courts of the conqueror, namely the Tsilhqot'in decision, which was rendered in June 2012, after the court had reserved judgment for 19 months. The court had to deal with two competing theories regarding Aboriginal title, one brought forward by the Tsilhqot'in based on a territorial concept of Aboriginal title; the other by the governments arguing that Aboriginal title has to be proven for each specific area and therefore they could only meet the test for title over small areas (small spots theory). According to the small spots theory, Aboriginal title can only be proven for small specific areas where the test for exclusive occupation can be made. The court determined that for "semi-nomadic Peoples", title can only exist in small, specific sites that are connected across areas by Aboriginal rights. Louise Mandell asked how cultural security could replace the jurisdictional and economic component of title. According to the small sports theory, as soon as the land is used for non-Indigenous purposes the land becomes terra nullius.

The BC Court of Appeal sided with the latter, finding at para 239 that:

> It seems to me that this view of Aboriginal title and Aboriginal rights is fully consistent with the case law. It is also consistent with broader goals of reconciliation. There is a need to search out a practical compromise that can protect Aboriginal traditions without unnecessarily interfering with Crown sovereignty and with the well-being of all Canadians. As I see it, an overly-broad recognition of Aboriginal title is not conducive to these goals.

On the other hand the Crown did not have to provide any evidence of how they claimed the territory. Groberman described the position of claiming indigenous ownership as extreme, which is consistent with the position that he took as a lawyer for the Crown, though they had been unsuccessful making this argument in Delgamuukw. The Court did not take into account the Tsilhqot'in concept of land. The extinguishment debate had taken place from Calder to Delgamuukw, when it was shut down, but clearly when the Crown argued extinguishment they were not talking about small spots. Louise Mandell pointed out that Aboriginal title is more

than a bundle of specific rights, when exercised on specific sites. Yet the Province revived the doctrine of terra nullius by arguing that the onus of proof was with Aboriginal Peoples and applying an exclusive occupation standard that is based on colonial concepts, which was already applied in the Marshall and Bernard cases regarding logging in Mi'kmaq and Maliseet territory. The Crown's policy has always been based on this impoverished version of Aboriginal title, and they now have a court validating it.

Louise Mandell said that when she read this decision, she was "triggered" andit took her back to the entry level decision in the Delgamuukw case, by then BCSC Chief Justice McEachern, who had ruled against similar arguments put forward then and they had to work hard to overturn it. She recalled how the courts have found that the Aboriginal perspective must be taken into account, but in this case it was replaced with the Crown perspective. She noted that the BCCA decision was written by Justice Groberman, who worked at the Attorney General office during Delgamuukw, and now he reverted to the small spots theory.

She recalled seeing secret government documents in the office of George Manuel in 1980, expressing Crown concerns about international embarrassment if First Nations kept fighting for their rights. At the time they organized the Constitution Express, first from Coast to Coast (1980) and then to Europe (1981), demanding internationally supervised negotiations in regard to repatriation of the Constitution. It took them to see the Governor General in Ottawa, the United Nations in New York and the House of Lords in London, UK and onto Europe. During the same time, Section 35 was initially proposed and then again taken out, and following pressure was put back in. The Tsilhqot'in decision went back to consider notions from a rejected version of s. 35, that would have provided that Aboriginal and Treaty rights as they have been or may be defined by the courts are hereby recognized. Louise Mandell recalled how indigenous representatives were at British parliament when the Canada Bill was debated; it was like no other in Canadian history, and 27 of the 30 hours of debate on the Canada bill was about indigenous issues. They secured recognition of the existing Aboriginal and Treaty rights in the final version of s. 35.

The government continued to argue extinguishment of Aboriginal title, based very much on the Doctrine of Discovery, but these arguments were rejected in Delgamuukw, finding that there was a constitutional space for Aboriginal rights. She said to argue that "if you don't prove it, you lose it" is the equivalent of extinguishment through litigation. The Crown's denial approach still underlies their legal position. Although rejected by the courts time and time again, it still forms part of the reality on the ground and it is embedded in legislation. The "postage stamp" theory had also been rejected in Delgamuukw, but it was brought back under the onus of proof argument in Tsilhqot'in, which brought Doctrine of Discovery arguments back all over again and revived the doctrine of terra nullius. The Jules Wilson litigation (Secwepemc, Okanagan logging

cases) challenges forestry legislation, built on the Doctrine of Discovery; the important point is to shift the onus of proof back to the province.

For the Crown, stereotyping is part of their thought structure and legal arguments— they describe themselves as being in charge of the economy and the rule of law, whereas the Tsilhqot'in have trade, custom, and opportunistic roaming practices. This approach actually violates international human rights and indigenous rights. For example the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) affirms in its preamble that:

> all doctrines, policies and practices based on or 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,

She said that, this is actually what happened in the Tsilhqot'in case, where the Tsilhqot'in people were portrayed as not having effective control over their territory, living by custom not rule of law, and the Court bought this racist argument. The case also ruled against domestic law and previous repudiation of the Doctrine of Discovery on multiple fronts. In Tsilhqot'in, the BCCA suggests that Aboriginal rights are good enough to protect culture, and Aboriginal title is not needed for that. Every concept that found favour with the court has also been repudiated at the international level. The court suggests that recognition of rights alone can ensure cultural security, but it does not pay justice to environmental concerns and the economic dimension of Aboriginal title. The BCCA's decision demonstrates a fragmented thought structure, suggesting that Indigenous People are in a permanent state of opposition when asserting Aboriginal title. The court favours exploitation of natural resources and suggests that some areas have to be sacrificed. This will lead to conflict; it suffices to think about the Prosperity Mine. The federal government this year introduced Bill C-38; an omnibus bill to limit environmental assessments and other mechanisms to protect the environment, based on the ideology that things are separate.

Louise Mandell proposed an alternative approach, based on the Laurier Memorial, which would allow for co-existence throughout the territory. Mandell said that we are at a turning point; the dream of justice through the courts is illusive, and as a society we have to figure out how justice can be achieved. Justice reflects our consciousness – injustice is collective unconsciousness. As a lawyer trained in the adversarial system, she cautioned that the courts are not where transformation is going to happen, but as you resist something you become stronger. She suggested that this battle will not be won in court. Rather than fight, we have to build a new model based on indigenous laws and an international human rights foundation. She called for building a new model that is stronger and based on indigenous laws which are the laws of the

universe; the earth still holds those laws and Indigenous Peoples still have those laws in their stories. She suggested this could fit in with a broader shift of consciousness with more focus on local issues and solutions, where indigenous laws hold the transformative possibility because they are based on a different thought structure.

Professor Jeannette Armstrong,Syilx (Okanagan) Traditional Knowledge Keeper and Language Specialist, earned an Interdisciplinary PhD in Environmental Ethics and Syilx Literatures.

Jeannette Armstrong opened by stating that she does not believe in the often-used statement about the subjugation of Indigenous Governance; "we have never been subjugated." This is one of the things she thinks about as an interpreter of the language and oral texts, which contain the laws of the people. This is why she has travelled and spoken about the problem of referring to Indigenous Governance as being subjugated.

Jeannette stated that her presentation is going to be framed the same way as previous speakers of the day, and that her understanding of our challenges as Indigenous Peoples comes from what she learned from her grandparents, an understanding that was later articulated by law. It is this initial understanding she will speak to.

She began by geographically locating the extent of Salishan speaking peoples, explaining that proto-Salishan root words are found in both Interior and Coast Salishan speaking territories, evidencing one common ancestry of Salish speakers which is supported by archaeological evidence. Further, academics/researchers unanimously confirm the Inter-nationalism of the Salish speaking people.

This Inter-nationalism of the Salish Peoples is explained by Jeannette as a 'Construct of Allied Autonomies'. This construct is characterized by the co-utilization of major resources, interlocutory joint-use areas, regulated settlement of inter-group disputes by Chiefs, peaceful congregations of multi-tribal groups, the guaranteed safe passage of other Salishan persons, exchange between tribal groups, intermarriage, and multi-group military actions. This Allied Autonomy supports a larger intergroup culture which allowed for peaceful intermarriage and was founded by the value of reciprocity.

Jeannette Armstrong further explained that the intergroup dynamics were driven by underlying differences in natural environments, using the example of salmon and its characteristic scarcity in some areas, and abundance in others, leading to co-utilization at areas of super-abundance, and trade between areas where salmon nutritional quality would differ. This intergroup dynamic would be supported by important salmon ceremonials based on reciprocity and gifting resulting in the achievement of broad political alignment.

She clarified that co-utilization does NOT mean co-ownership. Co-utilization is not based on exclusivity but sharing: “My autonomy depends on your autonomy, so I’m going to protect your autonomy”.

Jeannette explained that social order was maintained by a political structure, different from a top-down model, and characterized by peaceful lateral cooperation between diverse autonomous local units. It was recognized that local knowledge and control over local resources was critical to sustaining the mutual needs of each unit. It is this mutual respect and reciprocity which sustained the social order. This inter-reliance ensured the careful protection against over-exploitation through lateral alignment of trade and control of access. She went on to state that Salishan people formed huge cooperating sustainable economies by law in strong inter-areal agreements between each group be they linguistic, geographic, or by band which would be implemented by the Chief’s authority at all levels.

Turning to the pre-confederation treaties of Douglas, Jeannette Armstrong explained that these existing economies of the Salishan Peoples were kept in mind by the Chiefs and any agreements were without prejudice to the ownership, protection, and use of lands of the respective nations. Further, that in the Interior it was required that passage by non-Salishans or newcomers have an escort or pay a tariff. Further protection measures were taken by Salishans following confederation, like the Confederacy between the Shuswap and Okanagan at Head-of-the-Lake. The establishment of the reserves coincided with further encroachment by settlers. This brought about the proposal for larger reserves by Douglas which were never finalized but oral evidence indicates provisions for the retention of ownership and required revenue sharing for use of resources. The Interior Nations responded with the Laurier Memorial in 1910 expressing the desire to resolve the injustices being experienced throughout the Interior regarding land and resources. Prime Minister Laurier responded by preparing legal questions to present to the courts regarding title and rights in British Columbia, a Dominion Order in Council ordered the Exchequer Court of Canada to begin legal proceedings on behalf of the Indians of BC against the Government of BC as a result of the actions of the Interior Nations. The momentum created was stopped when the Laurier liberal government was defeated by the Conservatives who would scrap the Order in Council and replace it with the McKenna-McBride Royal Commission. Again the Salishans would respond by working with the Allied Tribes led by Andy Paul rallying for continued legal support. The government would continue their assault on Indian rights with a Special Joint Committee of Senate and House of Commons recommendation to bar any land claims activity in 1927. Furthermore, Parliament would amend the Indian Act to make it an offence to collect funds for the purpose of advancing Indian claims and ban the practice of potlatch.

Since those days, the struggle continued with joint and multi-tribal and international solidarity actions and legal battles including the formation of the Union of BC Indian Chiefs (UBCIC), and the rise of leaders such as the late Grand Chief George Manuel, Philip Paul, and many others. Jeannette Armstrong stated that perhaps they could follow the suggestions of Tracy Lindberg and others and revive and strengthen our strategies against the Doctrine of Discovery. She concluded by challenging participants to work on a call for unity and action of the 25 Salishan language groups.

Steven Newcomb, Indigenous Lecturer and Researcher, began by paying his respects to the owners of this land, the Shuswap Nation, Thompson Rivers University, the organizers, and particularly to Arthur Manuel. He said he hoped his talk would provide information to fill in some of the gaps in what he prefers to refer to as the Christian Doctrine of Discovery. Specifically, he said, he would refer to subordination and domination, and suggested calling on the Pope to revoke that Doctrine.

Steven Newcomb recalled that about 20 years ago he realized the next year would be the 500 year anniversary of the Papal Bull. He decided to go on a tour to start the campaign against the Doctrine of Discovery, and to get the Pope to rescind it. Since then, he has made many trips to Italy, the Vatican, and other parts of the world (such as Australia, France, and England), to publicize this information. Now, since the issue has been brought to the UN Permanent Forum on Indigenous Issues (UNPFII), he has been working with Tonya Gonnella Frichner and Chief Oren Lyons to move it forward.

He then moved on to suggest we look more carefully at the language used to understand the meaning and deeper dimension of the Doctrine of Discovery. When you begin to break the language of the Roman Empire apart, you can see how it has been manipulated for purposes of domination and control.

Steven Newcomb commended Jeannette Armstrong for describing indigenous law, which he distinguished from the colonizer's law. He also mentioned Walter Echo-Hawk and Robert Miller's respective presentations on colonial law. He said he would add the concept of the Christian law of discovery to the ten principles Miller identified.

Steven Newcomb said that for thousands of years Indigenous Peoples lived free of any of those assertions of authority. Referencing a book called "Creation of Rights of Sovereignty through Symbolic Acts", he said it outlines the different acts of possession that Miller described in his earlier presentation. In a sense, these acts are like tricks, to magically create sovereignty. In the Canadian case law, they call it the assumption of sovereignty. Newcomb said this is presuming something into existence; that you cannot take thousands of years of cultural and spiritual interaction and have it disappear because of these superstitious rituals they engaged in. He

recommended Indigenous Peoples go to those places where they invented those rituals and reaffirm indigenous law.

Here Newcomb referenced commentators who pointed out that peoples originate in spirit, and there are laws that go with that; in the indigenous tradition, Indigenous Peoples have laws of sustainability. He said these laws are an alternative to the domination/subordination system that is killing the planet. The underlying code of domination and subordination is something that is revealed in historic documents. Referencing his research, Newcomb said that everywhere he looked he saw words like domination, conquest, conqueror, etc., and it occurred to him that these were all synonyms for the same concept. He presented a chart centering on the word "domination" with related words surrounding it. Included was the word "civilization", referring to the act of civilizing, essentially forcing a particular cultural pattern onto a culture that is different. If that culture is a culture of domination, it means forcing domination. In the Papal Bull from 1493, it says "lands not under the domination of any Christian dominator". He then recounted an experience at the Committee on the Elimination of Racial Discrimination, when they asked the Canadian government what was the basis of Canada's claim to underlying title to Indigenous lands, and received no response.

Steven Newcomb said that it is important to understand where international law comes from; it is not a panacea, but has a context rooted in a long colonial history. Webster's dictionary defines "the family of States" as having Christian origin, recognized by other states as on that level. The Elements of International Law from 1836 talks about the natural law, referring to the "old Christian States of Western Europe" as the original family of States, into which newly converted would be received. It was only after Turkey — a predominantly Muslim country — was admitted to the family of States in 1950, that they could no longer make reference to their Christian commonality.

Steven Newcomb then referenced the Papal Bull of 1442, which directed Portugal to go into non-Christian lands, subdue non-Christians, and take all their possessions and property. This was part of the framework of international law. Newcomb suggested that what are called states are actually states of domination. He referred to extinguishment process aimed at Indigenous Peoples, using the analogy of fire. In fact, they are referring to the council fires; when they've put out all the council fires, they would have extinguished title. Newcomb then discussed the concept of terra nullius, saying there is another term called terra nullius, which Lieber identified as lands occupied by heathens, pagans, infidels, or non-baptized persons.

Steven Newcomb then said it is critically important to acknowledge indigenous laws and standards. When they say they planted their royal standards (by planting a flag, for example) that meant they were going to be the ones to judge on that territory. However, colonial claims of domination and subordination will never become rightful or legitimate so long as we

continue to refute that. Newcomb pointed out that Indigenous Peoples have always maintained a connection with their territories and not forgotten who they are. It is hard because there has been a fair amount of conditioning, mental programming, and linguicide through residential schools and boarding schools. But, he said, it is important for Indigenous Peoples to make sure that they are resisting the policies and agenda of domination. He said the whole debate about a reconciliation process is a method of quelling the voices of people resisting domination. If you look up the definition reconciliation, it means to bring back into submission or to bring back to the church. Meanwhile, Indigenous Peoples have an original free and independent existence and a right to a continued existence, which delegitimizes colonial claims to domination. Newcomb concluded by stressing that Indigenous Peoples have thousands of years experience in their territories, which is much deeper than colonizers' pretensions.

Dr. Ronald Ignace, Secwepemc Knowledge Keeper and Language Specialist, who earned a PhD studying Secwepemc Laws, thanked all for the honour of speaking, saying he stood "humbly in the shadow of those who presented yesterday and those to come." He said he hoped to leave a small idea for participants to carry with them on the Doctrine of Discovery. He said he just finished his PhD in 2009, at the age of 63, so it is never too late to start, and thanked his wife Marianne for her help along the way. He then thanked SNTC along with Arthur Manuel and TRU for hosting the seminar.

Dr. Ignace introduced his talk, saying he would look at the Doctrine of Discovery as a policy of racial subjugation and genocide, but through the eyes of Sk'elep (Coyote), the great Secwepemc transformer. He said he would refer to stories told by Okanagan elder Harry Robinson, which were collected in a book by historian Wendy Wickwire:

> Long ago it was said that Coyote had a twin brother. The Creator came down and gave him tasks related to the creation of the earth for its first inhabitants, which he carried out. The younger twin did not. He stole a written document he had been told not to touch, and when he was confronted about it, he lied and said he had not stolen it. Creator new because when he touched it the earth shook, there was a change in the air. While the older brother was left in the place of origin and became ancestor of the Indians, the younger twin was banished across the ocean, becoming ancestor of the white people. The younger twin was to come back and reveal the contents of the paper he had stolen and put things right, but instead upon his return he started killing his older brother's people and stealing their land.

Ron Ignace described this as an original sin, and then segued into the original Papal Bull, issued in 1452, which directed King Alfonso to put "Saracens, pagans, and other enemies of Christ," into "perpetual slavery" and take their lands and property for the Portuguese. This was followed by Pope Alexander VI's 1493 Papal Bull granting Spain all lands "west and south". These and other Papal Bulls were issued, and these laid down the foundation of the Doctrine of Discovery. From this, in 1942, Christopher Columbus was sent to conquer new lands, find gold, and subjugate heathens. In the Bahamas, he was met by Arawaks, who waded into the sea with gifts. In Columbus's journal, he wrote, "they were the best people in the world, and above all, the gentlest... they love their neighbours as themselves..." From his observations he later concluded, "they would make fine servants. With fifty men we could subjugate them all..." To this end, he ordered the Indians to gather gold for him. Upon failing to meet their quotas, Indians would have their arms hacked off. Both Las Casas and historian Samuel Elliot Morison documented the decimation and violence against the Arawaks.

Ron Ignace then turned back to the Coyote story: Coyote the elder traveled to see the King of England. "Coyote confronts the king and tells him your children is coming; lots of them. They come halfways already for the coast to coast. And they don't do right by my children. Seems to me they're going to run over them. Now we are going to straighten that out. And we are going to make a law. And the law that we are going to make is going to the law from the time finish" (Harry Robinson). By this he meant by the time we finish on this earth. Dr. Ignace then postulated that the law that the Crown of England responded with, after much delay and denial, was the Royal Proclamation.

Dr. Ignace then moved on to talk about how the USA embraced the Doctrine of Discovery. In 1835, Judge Catron of the Supreme Court of the State of Tennessee identified that as part of the law of Christendom, "that discovery gave title to assume sovereignty over, and to govern the unconverted..." He declared that that principle was recognized as part of the Law of Nations.

In regard to Canada, Ron Ignace looked to England, saying that England was an ardent proponent of the Doctrine, for example when the monarchy sent Cabot to take possession of countries unknown to Christian people in the name of the King. Two years later, Cabot discovered North America, and went as far south as Virginia. This establishment of British title traced directly back to long tradition of the Vatican Papal Bulls. Later, the Johnson ruling confirmed that the Cabot charter constituted a complete recognition of the Doctrine of Discovery. Out of this Doctrine, Dr. Ignace added, there came an additional racist armor of terra nullius.

Dr. Ignace then spoke about the work of scholar Francis Leiber who identified doctrine of terra nullius, which referred to land occupied by heathens, pagans, infidels, non-baptized persons,

whom the Christians treated as not existing. This concept of terra nullius led to the view that land occupied by non-Christians was vacant land. This deprived those people of rights which morality considers inherent to each human being. They were instead bound to yield to the superior genius of Europe, and were deemed to gain more than an equivalent for every sacrifice and suffering brought upon them. The Doctrine of Discovery thus became a material force for the destruction of Indigenous Peoples and their lands.

The case of Johnson v. M'Intosh held that private citizens could not purchase lands from Native Americans, which led to small spots theory; a back-door argument for terra nullius. Meanwhile, scholar Lindsay Robertson has stated that the reach of Johnson v. M'Intosh was global. In Canada, this reverberates in the Supreme Court decision Guerin v. the Queen.

Ron Ignace contrasted this to the oral history as told by Harry Robinson, in the story of Coyote's meeting with the King. "Coyote talks of making a law that will govern the relationship between the King's people and Coyote's people. On killing and theft of lands, he said, "it shouldn't be that way. Should be good to one another." The King responds that Coyote's words sound like war, at which point Coyote invited the King to go to his window and look outside, only to see the skyline darkened with warriors. That is Coyote's power. The King said, unlike Coyote, he was not yet ready for war. Coyote then said, if we are not going to fight, we can make a paper.

Dr. Ignace then cited an article by John Borrows, where he wrote that after the article of capitulation by France to England, England was eager to quiet discontent among Natives. The English interpretation of the proclamation straddled contradictory aspirations of the Crown and Indigenous Nations. It outlined Aboriginal rights and their potential removal in a policy designed to extinguish these rights. This was affirmed by three principles:

1) Colonial governments were forbidden to survey or grant any unceded lands;

2) Colonial governments were forbidden to allow their citizens to settle or purchase Native lands; and

3) There was an official system of public purchase developed in order to extinguish Indian Title.

He said the purpose of this was to limit First Nations' ability to freely determine their land use, as evidenced by the Treaty of Niagara. In 1764, about 2,000 Chiefs from 24 nations met in Niagara to discuss a formula for relations between the Crown and First Nations. The meeting was presided over by superintendent for Indian Affairs, Sir William Johnson. At that gathering, they determined they were independent, sovereign nations; the Nation-to-Nation relationship was renewed and extended, and symbolized in the Two Row Wampum. This interpretation was the spirit and intent of the Royal Proclamation, rather than Crown sovereignty over First

Nations. In 1765, Sir William Johnson stated, “I am convinced they never meant anything like it, and they cannot be brought under our laws... neither have they any word which can convey the most distant idea of subjugation”.

Ron Ignace here cited the 1910 Memorial to Sir Wilfrid Laurier, saying “gradually as the whites of this country became more and more powerful, they little by little changed their policy towards us and commence to put restrictions on us. Their governments have taken every advantage of our friendliness, weakness, and ignorance to impose on us in every way. They treat us as subjects without any agreement to that effect and force their laws on us without our consent and irrespective of whether they are good for us or not”.

As the British had privileged its interpretation of how lands were managed, in the ruling of Johnson v. McIntosh, it asserted that “they are of that class who are said by jurists not to be citizens, but perpetual inhabitants with diminutive rights”. It defined Indian title as a mere right of usership and habitation. By the law of nature, this was not a fixed property, with no exclusive use. On this principle, the North American Indians could have acquired no proprietary interest in the vast tracts of territory they wandered over. According to every theory of property, the Indians had no rights to any land, as the lands were not used in such a manner to prevent them being appropriated by cultivators. All existing titles depend on the title of the Crown by discovery.

Going back to the Coyote story, Dr. Ignace commented that he wondered why Coyote left it up to the King to draft the law. He said the reason was that Coyote had lived by laws laid down by the Creator. He requested the King write up the law with regards to the conduct of the King’s people in relation to “his older brother’s people” and not privilege his position over them.

Looking at Coyote’s laws, we see that the foundational law of Secwepemc National Sovereignty was handed down from Creator, founded by Coyote, and passed down through oral stories. This is told through the origin of Coyote:

> At the beginning, the earth was very small, but gradually became larger and larger, emerging more and more from the waters... the people who inhabited the earth during this period partook of the characteristics of both men and animals. They were called stspetékwll. Some were cannibals. At that period, many animals, birds, and fishes did not exist, nor many kinds of trees, plants, and berries. The earth was much troubled with great winds, fires, and floods. In those days the Old-One... sent Coyote to travel over the world and put it right.

Ron Ignace explained that Coyote or “Old Coyote” is consistently mentioned as the most ancient of “transformers”. Throughout these stories, Coyote is often associated with glaciers

and mountaintops: Coyote's house is said to be in a glacier; according to others, it is in the "upper world". The latter is described as a "prairie occupying the top of a plateau with steep sides" (Teit, 1898, 1900). Old Coyote (he is called 'Uncle Coyote' by some) was the ancestor of all Indians. He had many wives. From some are descended the Thompson, from others the Okanagan, from still others the Shuswap... At one time they all spoke the same language.

Dr. Ignace then told the story in which Coyote laid down his law of Supreme Court:

> "One day Coyote was confronted by a couple of coastal transformers; as Coyote was sitting on a stone watching them as they approached. They tried to transform him, but were able only to change his tracks into stone. Therefore the marks of the Coyote's feet may be seen on this stone at the present day. Coyote sat with his chin resting on his hand, and stared at them while they were trying to metamorphose him. When they had failed, he cried out to them, "you are making the world right, so am I. Why try to punish me when I have done you no harm? This is my country. Why do you come here and interfere in my work, for I will not interfere in yours? If I wished, I could turn you to stone; but as you have likely been sent into the world, like myself, to do good, I will allow you to pass, but you must leave this country as quickly as you can. We should be friends, but must not interfere with each other's work" (Teit, 1915)

Ron Ignace made the point that here Coyote repudiates the Doctrine of Discovery and lays down a foundation of how we should relate to each other. He then turned to the descendants of Coyote's brother, referencing the Laurier Memorial from 1910. In the Laurier Memorial, the Chiefs of the Okanagan, Thompson and Shuswap stated that when the first Europeans came among them, they reigned supreme among their homelands. They made a powerful connection that all the necessities of life were obtained from their respective territories and the peoples of each tribe had equal access to all they required — there were no boundaries between communities in Shuswap country. The ranch, which they used as a metaphor, was the same as life itself. They talked about having supreme authority within their recognized boundaries; you can see that idea in the coyote story, where the laws were handed down from the Creator. They extended an olive branch to the uninvited guests in their house, and stated they would treat them hospitably, as long as they show no hostile intentions: "we will share equally in everything, half and half in land, water, etc. What is ours will be theirs and what is theirs will be ours and we will help each other to be great and good." They were soon disappointed by their guests, and asked themselves, "what have we got from our good faith and friendliness? They treat us as subjects without any agreement and force their laws on us

without our consent... less than children and allow us no say in anything... This is how our guests have treated us, the brothers we received hospitably in our house."

Because of this, Ron Ignace said, his chiefs of 1910 condemned the policy of the government as "utterly unjust, shameful, and blundering in every way", and asked the audience to embrace this condemnation of government. He said, referencing the Laurier Memorial, our fight is not with the ordinary citizen, but it is the duty of the ordinary citizen to see that governments do the right thing.

In closing, Dr. Ignace said that, most importantly, our stories give us the moral foundation of our society, connected to ancient law, but give us direction for our future as people, communities, and as a nation. The ancestors of the present generation left a legacy of experience and knowledge that provides the moral and spiritual foundation of Secwepemc society and law. The Secwepemc word for paper, before paper, also meant rights and laws. When the government came and started writing up deeds, that's where the meaning transferred to paper. Secwepemc laws show how people act towards one another; how to behave; and what are the social, moral, and natural consequences. They remind us of names and history of places throughout Secwepemc territory, connected to rock paintings and rock formations. The past actions of the stspetékwll or transformers, manifest in connections between stories, place names, and features in the landscape, anchor experience to the land and collective memories and represent Secwepemc "deeds" to the land and law. It is the utilization of one's energy to transform matter that governs the universe. From this day forward, let us pledge that no one's knowledge ought to stand in the shadow of another.

Tonya Gonnella Frichner, Indigenous Lawyer and former North American Regional Representative of the UN Permanent Forum on Indigenous Issues (UNPFII) thanked the Secwepemc people for allowing her to be in their sovereign territory, and TRU for the kind invitation. She thanked Dr. Ron Ignace for pulling it all together to show that Indigenous Peoples have their own governance, constitution and laws, that are embedded in their nations since time immemorial, and how using a different language makes it difficult to describe.

She said that she wanted to share her thoughts regarding the Doctrine of Discovery, based on her first hand experience at the United Nations. She started by providing background history and information about the development of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Noting that UNDRIP is the first instrument to protect a Peoples' cultural rights, she said that it has brought all to a point to understand that the Doctrine of Discovery is a racist doctrine from beginning to end, which is not sustainable, neither for developing countries or developed countries and their institutions, and it cannot sustain a community or nation.

Tonya Gonnella Frichner, said that upon conquest, European nations determined that the western hemisphere was empty land and Indigenous Peoples were virtually non-existent, but Indigenous Peoples have proven (through their survival alone) that this is not true. They called Indigenous Peoples pagans, infidels, and savages, and Indigenous Peoples were deemed not to be human beings because they were not Christians, which was used as their argument to justify the (illegal) appropriation of indigenous lands in the hemisphere. Western nations might have agreed about how to take the land between them, "all done nicely and cleanly on their part", but Indigenous Peoples have not agreed to it. She referred to presentations about the law of nations and the international law, setting up a framework of domination, and how domestically the Supreme Court manufactured the concept of Aboriginal title, still based on the Doctrines of Discovery and the concept of mere occupancy (similar to how you occupy a place when you rent it, but not own it). She pointed out how nation states do not follow those same rules; they claim that they have absolute authority in their territories, based on the concept of territorial integrity of nation states. This is perpetuated by the UN Security Council, still under the control of nation states, currently debating territorial integrity of Syria and what it means for other nations. The Security Council is the only place where five powerful nations have a veto power, when otherwise the UN operates on consensus between member states. Indigenous Peoples still do not have full standing before the United Nations.

Tonya Gonnella Frichner explained that in 1992, Elders issued a statement that the colonial Doctrine of Discovery needs to be addressed at the international and domestic level; they also asked Pope John Paul II to repudiate the Papal Bulls that denied Indigenous Peoples rights. She pointed to cases where the Doctrine of Discovery is applied under current law, and has not been overturned. She pointed to a recent case in 2005 in the state of New York, where the court found that the land had been conquered, and similar cases in Canada. She stressed that this issue has to be addressed now, and welcomed the conference as an opportunity to put energy into making this possible. She recommended producing a legal journal, paper, or document. In 2009, as the North American UNPFII member and Vice Chair, she was appointed Special Rapporteur to produce a preliminary study on the colonial Doctrine of Discovery; it was just the first step and the recommendation was to do a global international study of all the indigenous regions and to produce a document that can be used as a UN Document.

She welcomed that Indigenous Peoples now have several human rights mechanisms. The Haudenosaunee travelled to the UN on their own passports in 1977 and were allowed into Switzerland. Going international has enabled Indigenous Peoples to assert indigenous sovereignty; it is important to reflect on what is it and how it applies to indigenous nations. Tonya Gonnella Frichner said sovereignty is an action/an act: you either act sovereign or you do not; you talk about governments and their violations of indigenous rights at the UN, not in national courts where those rights are considered inferior.

She explained how the UN Working Group on Indigenous Populations was set up in 1982 and how it developed the first draft of UNDRIP and how Indigenous Peoples fought to get UNDRIP adopted for 30 years. She recalled that there was always a struggle over the language of the declaration and at some stage she thought it would not get passed in her lifetime, especially when they spent 14 years in the UN Working Group on the Draft Declaration. She explained that the biggest struggle was to secure Article 3 of UNDRIP, which is the same as Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). To secure this recognition meant that Indigenous Peoples are to be treated as human beings like everyone else in the world. UNDRIP secured the right to self-determination and other principles that Indigenous Peoples had to fight for as basic minimum standards that apply to Indigenous Peoples, such as the principle of free, prior informed consent (FPIC). She stressed that human rights are universal and supersede domestic law.

Tonya Gonnella Frichner recommended that Indigenous Peoples keep referring to UNDRIP and use it to put an end to racism — racism has no more place in dealing with Indigenous Peoples. The human rights, individual and collective rights of Indigenous Peoples need to be protected. She also stressed the importance of using the term Indigenous "Peoples", since it is the term at international law that the right to self-determination attaches to and that the association with human rights applies to. Populations or groups do not hold the same rights. Indigenous Peoples fought for decades to secure recognition of those rights.

She described the adoption of UNDRIP as a seminal point in indigenous history. Indigenous Peoples are insisting on taking their seat in history sitting with government. On the other hand, the Doctrine of Discovery is rooted in archaic thought, but it is still alive. She said it is time for the world to start listening to Indigenous Peoples regarding the destruction of the environment; Indigenous Peoples are the voices of leadership.

Oren Lyons, Faithkeeper of the Turtle Clan of the Onondaga Nation sitting on the Onondaga Council of Chiefs, part of the Haudenosaunee Confederacy, and co-author of the book “Exiled in the Land of the Free”, presented next. He acknowledged the enormous amount of scholarship and work that goes into all the papers for the conference and the work against the colonial Doctrines of Discovery.

Oren Lyons stated that the traditional leadership of the Onondaga and the Haudenosaunee has been consistent over the years. This was the only leadership he knew of growing up in Onondaga, the site of the traditional fire of the Iroquois or Haudenosaunee. He explained that the Onondaga still have their traditional government, still raise Chiefs the way they have for thousands of years, do not allow police on their lands, they fight and have a long history of

fighting for their rights because that is who they are, enabling them to answer the question: “Who are you?”

He was asked this question by his uncle and teacher, when he had graduated from university and he had rowed him out into the middle of a lake. He tried all kinds of answers, but knew they did not make sense. In the end his uncle told him you are like that tree sitting on top of the cliffs.

Oren Lyons then went on to provide personal background with some stories. Leaving us with some valuable lessons like “you do not know how important things are; they could be a turning point.” He explained that his own important lessons were those learned from his greatest teacher, the woods. The history of the Iroquois recognizes this teacher and brought about the well-known phrases: “No one owns the woods but everyone is responsible.”

He also recalled the building of the first international Indigenous movement under the leadership of Grand Chief George Manuel, who was fighting a strong fight, working with Indigenous Peoples from Central and South America and around the world in the 1970s. The World Council of Indigenous Peoples was founded in 1975 in Port Alberni, where Indigenous Peoples from around the world gathered and part of the debate was how to refer to themselves, as "Indians" or "Aboriginal" peoples and that is when they decided on the term "Indigenous". He said it was important to note that it was their decision to adopt this word, and it was not applied from the outside. This was the term they would take to Geneva in ’77. The Port Alberni meeting was also important as it confirmed the need to get together for a common cause and unity that would compel Indigenous Peoples. All these different nations, where they are, know their lands and know what it takes to survive. They are very, very different — everybody has their own culture and songs, and ceremony is the foundation of our identity and foundational to their arguments today. All Indigenous Peoples are able to answer the question of who they are.

Oren Lyons explained that this is something that Westerners do not understand, how close Indigenous Peoples are to the land, and who they are. No matter where you go or where you are, know who you are and never forget it.

Oren Lyons then reflected on how things have changed since he was a child, and that we have gone on this planet from 2.5 billion people to 7 billion people. These issues we are having as the human race are huge and not about any single race, but one human family. He said that we need to modify our behavior. He posed the question of where should you go in the face of these world problems and answers with the simple answer: ceremonies. Learn again how to be thankful, know you have enough, share, and learn how to share.

He then posed a harder question: how do you instruct 7 billion people? He said the way to modify behavior is to teach the only written lesson of Indians: sharing. Take only what you need and be respectful of that. We need leaders, not pop icons.

Oren Lyons then drove home this lesson about sharing with a story of when he was at the Earth Summit in Rio in 1992, witnessing children sharing the smallest scraps of food and contrasting it against the unwillingness of the American people with their standard of living to share anything at all.

In closing he noted that people are waking up to the need to change and so Indigenous Peoples need to encourage them. He finished with a challenge: that we are decision-makers and we need to choose if we want to make a change or not. And he reminded all not to forget the power of prayer. He closed thanking Arthur Manuel and his late father Grand Chief George Manuel for the work they have done for Indigenous Peoples internationally.

Arthur Manuel, Co-Chair of the North American Indigenous Peoples to the UNPFII, provided the concluding remarks. He explained that his parents were his inspiration to be part of this ongoing struggle that Indigenous Peoples are in. He thanked the Secwepemc, all the people who attended, SNTC, TRU, and especially the guest speakers. He stressed that the issues that were discussed in relation to the colonial doctrines of discovery were very important. He pointed out how many speakers recognized that Indigenous Peoples are at a serious crossroads at this point in history; especially in British Columbia. He said that indigenous issues are making it to the front page of the economic section of the Vancouver Sun, because they cause economic uncertainty. Since the Supreme Court of Canada's decision in Delgamuukw, British Columbia has had to report Aboriginal title as a financial liability and what they are doing about it. He said that Indigenous Peoples in BC are in the balance sheets of one of the richest Provinces in one of the richest countries in the world, yet most Indigenous Peoples are poor, the reason for this lies in the colonial doctrines of discovery. He referred to Walter Echo-Hawk who had laid out the two forces at battle: the old Doctrines of Discovery and the new legal framework under UNDRIP that Indigenous Peoples were instrumental in fighting for. He stressed that it is very important to get educated on this subject and continue educating Indigenous Peoples about these issues. He explained that Indigenous Peoples can use their economic leverage to affect change. Currently the government only offers two avenues, negotiate under the Comprehensive Claims Policy that aims at extinguishment and modification of Aboriginal title, or go to court. Arthur Manuel suggested that the way to change the policy from modification and extinguishment of Aboriginal title is to challenge Crown title and the assertion of sovereignty under the Colonial Doctrine of Discovery. He said the government always argues that Aboriginal title is unclear and undefined, but it really is not Aboriginal title that is uncertain. Indigenous Peoples' ancestors have been buried in their territories for

thousands of years. Crown title is based on symbolic acts by explorers; it is Crown title that is uncertain and undefined. Arthur Manuel said that Indigenous Peoples need to believe in their own land. He referred to the work of Prof. Michael Yellowbird on the psychology of colonialism; how it causes Indigenous Peoples a lot of pain; and how decolonization is a painful process, and maintaining colonialism cannot be defended into the future. He called for an ongoing discussion about the implementation of the UN Declaration on the Rights of Indigenous Peoples.

This report was written and edited by Emma Feltes, Nicole Schabus and Ryan Day for:

INDIGENOUS NETWORK ON ECONOMIES AND TRADE

5836 B Transcanada Highway
Chase BC V0E 1M3
Tel: (250) 3190688
email: amanuel@telus.net

SNTC

Shuswap Nation Tribal Council
680 Athabasca Street W
Kamloops BC, V2H 1C4
Tel: (778) 471-8200
www.shuswapnation.org