GUEST EDITORIAL

PATRICK J. O'KEEFE AND ROBERT K. PATERSON*

RECENT YEARS HAVE SEEN unprecedented activity by indigenous peoples worldwide to organise and make claims to, among other things, cultural heritage. This has been expressed in documents such as the Draft United Nations Declaration on the Rights of Indigenous Peoples, the American Declaration on the Rights of Indigenous Peoples, and the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples. But there is still far to go before such claims are recognised by the international community and particularly by individual states which, in the end, are the final arbiters of recognition.

For example, the Draft United Nations Declaration contains no definition of the term "indigenous peoples." The underlying notion is that the scope of this term should evolve flexibly over time and through practice. There is certainly justification for such an approach. However, it remains to be seen whether this helps or hinders the cause of those it concerns. The more amorphous the concept, the less likely will any claim be regarded as serious. Problems of defining the meaning of "indigenous peoples" under international law are explored by Professor Douglas Sanders in his introductory article.

Indeed, the very use of the phrase "indigenous peoples" attracts objections. Dean Suagee notes that the United States and other governments have objected to its inclusion in the Draft United Nations Declaration in that it implies recognition of collective rights and could also be taken as supporting a right to self-determination.

Many aspects of cultural heritage are affected by the claims of indigenous peoples. The Draft United Nations Declaration refers to archaeological and historical sites, artifacts, designs, ceremonies, technologies, visual and performing arts, and literature. Indigenous peoples want the right to maintain, protect, and develop these manifestations of their cultures. They want the right to revitalize, use, develop, and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems, and literatures and to designate and retain their own names for communities, places, and persons. The right to manifest, prac-

*Dr. Patrick O'Keefe, consultant on art and cultural property law, Paris, and Professor Robert K. Paterson, University of British Columbia, Vancouver, guest coedited this special issue on the subject of cultural heritage of indigenous peoples. Their introduction to the special issue replaces the Editorial. I want to thank them for their contributions and efforts in addressing this timely and critical issue through the pages of the *International Journal of Cultural Property*. [Ed. Note]

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tice, develop, and teach their spiritual and religious traditions, customs, and ceremonies is seen as particularly important. Broadly speaking, indigenous peoples wish to reclaim their past and develop their future, based on that past, as they see fit. As part of this process, indigenous peoples often see the need to regain control of human remains and heritage objects held by outsiders; the right, as the Draft United Nations Declaration states, "to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs."

It will be immediately obvious that these claims run counter to many existing national laws and vested interests, both public and private. To succeed even in part, indigenous peoples will need to adopt a high moral position and engage in astute political operations. In his article in this volume, Dean Suagee explains some of the maneuverings behind the current international documents.

Professor James A. R. Nafziger and other writers in this issue of the *International Journal of Cultural Property* discuss the 1990 Native American Graves Protection and Repatriation Act of the United States, and Professor Nancy C. Carter has contributed a valuable annotated bibliography of this legislation. Under NAGPRA a considerable volume of heritage material has been returned to Native American tribes. But in other countries the issue of repatriation is little considered. In France, for example, the law prevents state museums from being able to return material held in their collections.

Though they lack the comprehensive legislative approach to indigenous cultural objects in museums that exists in the United States, Canada and New Zealand are two countries developing new solutions under their legal systems to issues involving indigenous cultural heritage. Professors Catherine E. Bell and Robert K. Paterson explore the state of these countries' laws and how they suggest fundamental changes in the domestic law surrounding indigenous minorities in these countries.

Other problems abound. How is cultural appropriation to be treated? Should artists be able to appropriate motifs and/or designs from indigenous peoples and use them in their own work? For example, can an American artist produce jewellery utilizing images of the kangaroo or platypus that appear as stylised Aboriginal but are obviously not taken from any particular Aboriginal design?

Religion is closely connected with cultural heritage. It is a central aspect of the heritage of many peoples. The importance of its manifestation in buildings, dress, and ceremonies is obvious in many countries and throughout history. But indigenous peoples often have beliefs that relate to particular land features that carry no human distinguishing marks. The dominant political and legal structures in many cases refuse to recognise the significance of these or give them only partial protection.

It was impossible to address all of the above concerns in this one issue of the

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International Journal of Cultural Property. However, our contributors cover a range of matters of significance to the cultural heritage issues affecting indigenous peoples. Professor Tore Modeen deals with attempts over almost a century by the Lapps in Finland to protect and control their culture, particularly their language, one of the major manifestations of a cultural heritage. Professor Russel Barsh grapples with the problem of indigenous knowledge and its relationship to land in a world that often regards this as a marketable commodity. Professor Victor Montejo describes a related problem of "repatriating ethnography," in connection with the Jakaltek Maya of Guatemala.

The existence of many indigenous peoples is at stake at this moment. Part of their survival lies in their control of their heritage. The world cannot afford to lose their unique contribution to the totality of our humanity. We must have diversity to survive. More significantly, the disappearance of indigenous peoples would be a sin on the part of all of us. As indigenous peoples achieve modest gains in various countries addressing concerns relating to their cultural heritage, their demands at an international level for recognition and protection will gain credibility. We hope that this special issue of the *International Journal of Cultural Property* will inform our readers on at least some of the issues and broaden the debate.

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