

International Journal of Cultural Property (2013) 20:467–493. Printed in the USA.  
Copyright © 2013 International Cultural Property Society  
doi:10.1017/S0940739113000258

# Beyond the Equator (Principles): A Forum on Community Benefit Sharing in Relation to Major Land Alteration Projects and Associated Intellectual Property Issues in Cultural Heritage Held at the Meeting of the Society for American Archaeology, Honolulu, 5 April 2013

John R. Welch\*

Ian Lilley\*\*

Against the backdrop of intensifying international attention to the community benefits flowing—or not—from resource extraction and other land alteration projects, a forum was organized at the 2013 annual meeting of the Society for American Archaeology (SAA) in Honolulu, Hawai‘i. We convened the forum specifically to engage archaeologists—invited discussants and conference attendees—working at or interested in the dynamic interface of archaeology, land and resource management, and intellectual property issues.

Cultural resource management (CRM), most commonly known as cultural heritage management (CHM) outside North America, is generally thought of as archaeology’s commercial branch. It is rapidly assuming expanded roles in the much broader enterprise dedicated to assessing and carrying forward the most significant and useful elements of sociocultural heritage. This enterprise is poised at a critical juncture as CRM emerges from four decades of astonishing growth and diversification, especially in North America, Europe, Australia, and New Zealand. Will CRM practitioners, the vast majority of whom were trained in anthropology and archaeology departments, continue to operate in the intellectual shadow of

---

\*Department of Archaeology and School of Resource and Environmental Management, Simon Fraser University, Burnaby, British Columbia V5A1S6, Canada. Email: [welch@sfu.ca](mailto:welch@sfu.ca).

\*\*Aboriginal and Torres Strait Islander Studies (ATSIS) Unit, The University of Queensland, Brisbane 4072, Australia. Email: [i.lilley@uq.edu.au](mailto:i.lilley@uq.edu.au).

academic archaeology? Will future CRM allocate rewards to practitioners primarily on the basis of contributions to our understandings of the ancient past and of relations among human groups, material objects, and geographic localities? Or will CRM follow trails blazed by geologists, foresters, fishery biologists, and the like, by allocating rewards primarily on the basis of contributions to corporate business performance? In other words, will CRM continue to operate using the “conservation model” or give itself over more completely to the “extractive-consumptive paradigm” that dominates in biophysical resource management?<sup>1</sup>

The forum considered this question in relation to the critical responses from indigenous and other land-based communities to major land alteration proposals (mines, dams, utility and transportation corridors, wind turbines, photovoltaic arrays, etc.). Such critiques continue to emerge despite decades of confrontations, negotiations, and collaborations, as well as many recent advances in environmental protection and mitigation. Historically, archaeologists working for governments and development proponents have recovered tangible cultural heritage threatened by projects and facilitated community consultations. Today, archaeologists also address more persistent and vexing questions regarding intangible cultural heritage and intellectual property embedded in lands, landscapes, and heritage sites.

Recent advances in national and international law and policy, including the Equator Principles, codify lessons learned and illuminate just ways forward to identify, assess, and balance diverse values and interests engaged by major projects.<sup>2</sup> The SAA Forum brought together archaeologists and cultural heritage specialists interested in working beyond political and legal minima by creating tools and practices that harmonize government, community, and proponent interests and expectations. Participants shared views on the community and academic values of legal and broader aspects of intellectual property embedded in cultural heritage and cultural heritage embedded in lands proposed for development. Several participants recommended specific practices for information and benefit sharing; others offered more general strategies for harmonizing and prioritizing corporate, government, and community interests.

In addition to organizers John Welch and Ian Lilley, discussants included (in alphabetical order) Elizabeth Bradshaw (Rio Tinto Services), Joe Ezzo (International Property Law Consultants and University of Arizona), Alvaro Higuera (Simon Fraser University), Andrew Mason (Golder Associates), Christophe Sand (Institut d'archéologie de la Nouvelle-Calédonie et du Pacifique, New Caledonia), and Willem Willems (Leiden University, Netherlands).

Although we were unable to provide for participation from colleagues actively working in Africa, the forum discussants reflect experience in doing and thinking about CRM in many world regions and professional contexts. The discussants represented views grounded in careers working in international organizations and universities (Higuera, Lilley, Willems), in state and indigenous governments (Sand, Welch), in global corporations (Bradshaw), and in consulting companies (Ezzo, Mason). Each discussant gave a brief oral presentation regarding experiences, interests, and suggestions at the interface of CRM archaeology, benefits

sharing, and intellectual property issues (local knowledge, oral traditions, etc.). There followed a discussion of common and divergent interests and aspirations. The overall aim of the gathering was to share views on the community and academic values of intellectual property and cultural heritage linked to lands proposed for development. Time constraints prohibited in-depth examinations of various suggestions relating to successful information and benefits sharing.

All except Bradshaw and Willems were able to contribute written comments to the following report. In a nod to the significant diversity in knowledge and opinions surrounding the issues brought up at the SAA forum, and to the reality that these issues remain far from resolved, we decided the best way to report on the forum was to retain the first-person voices of the individual presenters. Following the gathering in Honolulu, Lilley and Welch encouraged the discussants to think through their oral presentations in light of the exchanges that took place in real time, then submit a written statement conveying their most important and pertinent comments. We have edited these comments for terminological consistency and general clarity and present them as a basis for continued discussion, debate, and practical guidance.

Welch's contribution introduces more completely the intentions and frames for the forum discussion, including a plea for personal commitments from CRM professionals to a conservation model. Lilley reviews the development of international policies bearing on intellectual property and other issues in cultural heritage. Ezzo examines some of the important connections among CRM processes and the articles of the UNDRIP—the United Nations Declaration on the Rights of Indigenous Peoples. Higuera comments on his experience, primarily in Latin America, of witnessing inadequate levels of corporate citizenship and environmental stewardship. Mason reviews some consultant strategies for assuring beneficial outcomes for both local communities and corporate clientele. Sand offers three distinctive case studies in the importance of detailed engagement with local group representatives, raising questions about the compatibility of this level of engagement with CRM archaeology as practiced in most world regions.

The forum had two generous sponsors. The Intellectual Property Issues in Cultural Heritage (IPinCH) Project is an international collaboration, funded by Canada's Social Sciences and Humanities Research Council and dedicated to the culturally appropriate protection and use of intangible cultural heritage. IPinCH is headquartered at Simon Fraser University and directed by George P. Nicholas. Welch is a member of the IPinCH steering committee and Lilley, Welch, and Higuera participate in several IPinCH project working groups. Golder Associates is a global, employee-owned consulting, design, and construction services firm founded in Toronto.<sup>3</sup>

## GLOBALIZING CRM AND CHM

John R. Welch

Essential questions about the core values and mission of CRM and CHM bring to mind an experience I had shortly after taking my first job with a government

land management agency. One of my supervisors there had a placard on the wall immediately behind his desk declaring, CHARACTER IS WHO YOU ARE WHEN NOBODY IS WATCHING. My interest in this apparent assertion of paramount personal integrity grew when a colleague responsible for the office Internet confirmed my own observations: The boss apparently spent much of his workdays online, watching porn and trading baseball cards.

Despite the fact that this supervisor was rapidly promoted and paid very well for very modest contributions to the agency mission—or perhaps because of this—I think there will never be a better time than now to give close attention to CRM and to encourage character-level institutional CRM commitments similar to Lipe's conservation model for archaeology.<sup>4</sup> CRM archaeology in North America, Australia, New Zealand, and Europe is generally regulated and supervised on the basis of institutional arrangements designed with substantial input from archaeologists. In other world regions, where the formal systems of rules and organizations that constitute institutionalization in the West are much less developed, CRM is operating with much less supervision. As is the case for many industries that have been self-exported into less developed countries, self-regulation is common. A CRM version of the conservation model would obligate practitioners, regardless of where they work, to expand and enhance conservation through (a) public education, (b) partnerships with local and descendant communities, (c) engagement in community and regional planning, (d) creation of parks and preserves, (e) proper curation of excavation records and collections, and (f) other efforts to boost the noncommodity values of cultural resources.

My research and teaching since moving away from the United States and from government CRM reflects a continuing interest in the variation of CRM policy and practice across different jurisdictions. I am particularly intrigued by the ample capacities archaeologists possess to find and make use of traditional knowledge, traditional ecological knowledge, and other *de facto* intellectual property–rooted knowledges in local and indigenous communities. These capacities are reflected in archaeologists' employment of local knowledge and people to identify important loci of ancient behavior and other cultural resources, to set research agendas, to determine the most effective methods for obtaining data pertinent to these agendas, and to interpret and mobilize data sets in ways that generally prioritize CRM practitioner and client interests. One of the central goals for planning and convening this forum was to encourage discussion about how best to recognize the importance to CRM of traditional knowledge, and *de facto* intellectual property more generally. Basic principles of fairness and academic honesty indicate the need to do more to identify and provide full attributions for all information sources used in CRM, not just academic sources.<sup>5</sup>

Going beyond mere recognition, I think there is a lot to be learned and done in relation to questions relating to how knowledge—better still, the knowledges—embedded in tangible cultural resources can be investigated, used, and perpetuated. Can such work be done in just and culturally appropriate ways? How? Investigating social and intellectual capitals embedded in artifacts and assemblages promises to

augment the ethical stature of research as well as the academic research values of tangible cultural resources, especially museum collections. At least as importantly, such inquiry naturally invites re-perception and re-conception of CRM collections as tangible results of geographically, ecologically, culturally, and historically embedded systems of knowing, feeling, sharing, and (inter)acting. The broadening of CRM to include more community-based research holds the promise of fostering multiple synergistic contexts for intergenerational, interdisciplinary, and cross-community sharing and collaborating. Such work could—and I think should—explore and, where appropriate, revitalize indigenous and place-based knowledge systems as complements and alternatives to Western modes of relating to objects, sites, and land and economic “development.”

### *Balancing Rights and Responsibilities*

Allow me to take a further step by suggesting the time has come, for us as CRM and CHM professionals, to attune our privileged positions in relation to cultural resources by boosting personal and collective commitments to the conservation of these resources in accord with the values and preferences of the people who care most about them. Archaeology's ranks have swelled, and thousands of archaeologists' careers have progressed through initiatives to counter external threats to cultural resources. Archaeologists have positioned ourselves as primary defenders of cultural resources from looting, rampant land modification, rapacious resource extraction, and other forms of misappropriation. We have used our relationships with leaders in government and business to advocate for greater, more careful, and more integrated consideration of cultural resources under threat from land modification. Libraries and museums are bursting at the seams with stockpiles of potsherds and chipped stones and contract reports. We have participated in broadening the definition of cultural resources and cultural heritage, but have yet to recognize archaeology as a CRM subsidiary, not the other way round. We have yet to situate ourselves and our CRM and CHM disciplines as primary arbiters of what will be carried forward for the benefit of future generations.

Nor have we come to terms with threats to cultural resources from within CRM and CHM. Much important work remains to be done to counter threats to cultural resources from land modification and misappropriation, but the substantial rights archaeologists have taken on as the recorders and assessors of the significance of cultural resources need to be more effectively balanced by responsibilities. Perhaps needless to say, many descendant communities have been surprised and dismayed to learn that cultural resources they hold dear are being determined to exist, evaluated in comparison with other resources, and “treated” by archaeologists using foreign epistemologies, terms of reference, and systems of values. The dismay has been exacerbated by standard archaeological operating procedures and compliance practices that privilege archaeologists' knowledges and opinions over those of local people. These same privileges too often lead to disregard for intangible

cultural resources linked to lands and other tangibles and, most damningly, generally facilitate rather than “mitigate” land modification and related resource desecration and destruction.

CRM professionals know much more about cultural resources, tangible and intangible, than we used to. We recognize, for example, that the material remains we refer to as archaeological sites may have significance far beyond region-specific culture histories. Even more to the point, we now understand that material remains are only one of many indices for the cultural significance of a given location. We have begun to see some benefits from relaxing archaeology’s iron grip on cultural heritage and on CRM. Too often acting as if it were ours to give, we have yielded at least some authority over cultural heritage to local and descendant communities, making room for such groups to assert their distinctive interests and values. We have seen that sharing power over cultural resources—in the implementation of the Native American Graves Protection and Repatriation Act (NAGPRA) and the operation of tribal historic preservation offices in the United States—can and often does add value and create mutual benefits.

In short, I think archaeologists are more powerful than we think we are. Even more to the point, our established professional ethical commitments to conserving sites and considering the effects of our work—positive as well as negative—on local and descendant communities obligate archaeologists to use whatever powers we do command, relentlessly, to thwart the destruction of cultural resources prior to consideration and, wherever appropriate, investigation. At the same time, I see an at least equally pressing mandate to critically assess intra-archaeological policies, practices, and customs. We should be building an archaeological culture in which our collective knowledges, skills, abilities, and positions are dedicated first and foremost to the protection of cultural resources. Our disciplinary forebears and benefactors worked hard through the second half of the last century to install the conservation model at the core of CRM archaeology’s operating system. That model remains an apt guide, robust as well as adaptable, for thinking and acting when we are engaged, as most professional archaeologists are most of the time, to deal with cultural resources slated for degradation or destruction as part of land modification intended to create other social goods. The essential question, one that I hope more archaeologists will ask, is whether we are honoring the trust that the world has placed in us—while also discharging the ethical duties we have imposed on ourselves and other archaeologists—to identify, respect, and optimize the full spectrum of values embedded in cultural resources.<sup>6</sup>

### *Reflexive Advancement*

It is worth considering how archaeologists can do a better job of communicating what we do and of retuning our work in general and our conservation in particular to harmonize with the values and preferences of local and descendant communities. This forum provides one means for encouraging critical scrutiny of CRM

archaeology in international contexts, where supervision is typically reduced. The discussants here are expert in the application of the Equator Principles and other authorities and Performance Standards available to guide archaeologists in interactions with both cultural resources and with the communities who care about and derive identity and vitality from these resources and the lands they are embedded in. I close with a set of questions I hope will encourage discussion in this context, as well as debate and action in related fora:

- What factors or conditions foster CRM collaborations among Indigenous and local communities, researchers, and industry representatives—especially in the absence of legal mandates?
- What factors or conditions encourage appropriate attention to intellectual property issues in cultural heritage and community benefits sharing in the course of major land alteration proposals?
- How can local traditional knowledge and other forms of intellectual property be both protected from inappropriate use and employed to maximize the benefits and limit the adverse effects of major land alteration proposals?
- What are the best ways for moving toward just and equitable cultural resource compliance processes and outcomes—again, especially in the absence of top-down legal and contractual requirements to invest in CRM?
- Are there reliable indications that industry associations or other organizations (other than the World Bank, International Finance Corporation [IFC], etc.) are either increasing or decreasing investments in CRM and benefits sharing? Do such investment trends reflect specific organizational tactics or broader institutional strategies or historical trajectories?
- What are tried and true means for assuring that benefits—from CRM, to be sure, but also from land alteration and resource extraction projects in general—are justly or proportionately shared by those individuals and groups who experience losses so others may gain?
- What are tried and true means for assuring that the identified community representatives are, in fact, representing the best interests of their constituents?
- How can companies or consortia maximize comparative advantages from making commitments to CRM and benefits sharing when their competitors do not?
- Are there indications that industry associations or individual companies are treating data relating to CRM, especially archaeological data, as proprietary?
- What can and should be done to assure noncirculation of privileged data and wide circulation of data and perspectives, especially the results of archaeological field work, that should be shared?
- In which jurisdictions are CRM and benefits sharing working well despite lack of strong or centralized law, policy, or enforcement?

In closing, I think it bears mention in the age of WikiLeaks that CRM and CHM have no reasonable expectation of freedom from scrutiny. Regardless of whether anyone else is watching what we do, how we do it, and to whom the benefits of our actions are directed, I invite forum discussants and the broader audience of CRM and CHM stakeholders to continue to ask questions about and to actively define the true character of CRM archaeology.

## THE INTERNATIONAL CONTEXT

Ian Lilley

In my observation, too few archaeologists and cultural heritage managers have even a passing familiarity with the international policy and regulatory environments in which they operate. Some might think that because they only work in country “x” or region “y,” they don’t really need to know about global institutions and their imperatives. Others may believe that such things really only apply to CHM, whereas they do academic research and so do not need to know. Neither of these positions is tenable. International treaties, conventions, standards, protocols, policies, and procedures have substantial direct and indirect impacts on the everyday practice of archaeologists and heritage managers everywhere.

What is the nature of this impact? It is twofold. On the one hand, the international context strongly shapes national, regional, and local practice through its influence on national government legislation and policy regulating archaeological and heritage-management activity. National and even local heritage laws, for instance, generally reflect to some degree the global standards promoted by agencies such as the UNESCO World Heritage Centre (WHC) or the World Bank. On that basis, some understanding of what such standards entail would seem to be important to all archaeologists and heritage managers.

In addition, global institutions—the UN system, the World Bank and other development agencies and lenders, and transnational corporations—generate a large and growing share of archaeological and CHM work undertaken around the world. This occurs in two ways. The first is that the rules of these organizations prescribe what archaeological or heritage work needs to be undertaken in particular contexts, typically in relation to development projects. Alongside the Equator Principles signed by various national and international banks that finance development projects, protocols such as the World Bank safeguard policies and the International Monetary Fund (IMF) Performance Standards require archaeological or CHM input into projects funded by those and similar lenders. In addition, many transnational companies, such as Rio Tinto, have strict policies regarding CHM.<sup>7</sup>

Second, these sorts of global players often promote archaeology and more particularly cultural heritage as a driver of development. In this case, archaeology and heritage are themselves the focus of development projects. The restoration of a famous site—for example, a temple or an ancient market—is framed as a development project that can also provide sustainable social and economic gains



as a tourist attraction after restoration is completed. Various private organizations, such as the Global Heritage Fund, World Monuments Fund, and the Sustainable Preservation Initiative, work in this space in addition to global agencies and institutions. All these private groups, though, operate at a very small scale in relation to the scale of the need. There is not enough space to review such organizations here, but at a general level it is important to understand approaches to heritage as a driver of development. Some familiarity with what is involved would seem to be useful to all archaeologists and heritage managers, as well as those concerned with the consequences and promises of international development.

I should declare my formal interests in some of the organizations mentioned below as well as my connections with the sponsors of this forum. Concerning the latter, like John Welch, I am a member of IPinCH, and specifically co-chair of the project's Working Group on Community-Based Cultural Heritage Research. As regards Golder, I am associated with Andrew Mason through the International Council on Monuments and Sites and the International Scientific Committee for Archaeological Heritage Management (ICOMOS-ICAHM), of which I am Secretary-General, and the International Heritage Group, which I convene. In addition, I am an International Union for the Conservation of Nature (IUCN) Commissioner, Secretary-General of the Indo-Pacific Prehistory Association, and a member of the SAA International Government Affairs Committee. I was Specialist Advisor to Rio Tinto on the corporate guidance project referred to toward the end of the paper. Senior World Bank and Rio Tinto staff are connected with the International Heritage Group.

### *Who's Who?*

There are three main groups of organizations that practitioners need to know about:

- The UN system
- Lenders
- Corporates

### **The UN System**

The UN system is vast and almost unimaginably complex. At the top is the General Assembly. In recent years it has begun to pay increased attention to archaeology and heritage through resolutions regarding the Millennium Development Goals (MDGs), and specifically how the original MDGs left culture (and heritage) out of the picture. The MDGs are a set of goals for human development, broadly defined, and the absence of culture (and heritage) from their formulation is now seen as a major oversight. In this connection, a series of General Assembly resolutions address matters of interest to archaeologists and heritage matters, one in 2011 (A/RES/65/166) promising:

To support national legal frameworks and policies for the protection and preservation of cultural heritage and cultural property, the fight against illicit trafficking in cultural property and the return of cultural property, in accordance with national legislation and applicable international legal frameworks, including by promoting international cooperation to prevent the misappropriation of cultural heritage and products, recognizing the importance of intellectual property rights in sustaining those involved in cultural creativity.<sup>8</sup>

Most of this activity will be channeled through UNESCO, the part of the UN that most if not all archaeologists and heritage managers know about. The themes and programs advancing under UNESCO's banner cover everything archaeologists and cultural heritage managers do, including such things as engagement with indigenous peoples, postconflict and postdisaster responses, cultural/heritage tourism and culture, and biodiversity in protected areas, in addition to the issues just mentioned in the quote above. The UNESCO website provides a comprehensive picture of this great variety of activities.<sup>9</sup>

One UNESCO body of special interest to archaeologists and heritage managers is the World Heritage Centre (WHC), established under the auspices of the 1972 World Heritage Convention. The WHC governs the World Heritage listing process and develops policy and procedure concerning World Heritage management. The WHC is assisted in this endeavor by three independent statutory Advisory Bodies. The one most directly connected with archaeology and cultural heritage is the International Council on Monuments and Sites (ICOMOS), which has national committees in many countries as well as a Secretariat in Paris. ICOMOS promulgates or supports a great many international covenants and charters that impact upon archaeology and cultural heritage, such as the 1964 International Charter for the Conservation and Restoration of Monuments and Sites, or the "Venice Charter." The World Heritage Convention also aims to help countries strengthen their overall national capacity in CHM, not just their capacity to manage World Heritage.

ICOMOS has a range of International Scientific Committees (ISCs), the one of most direct relevance to archaeologists being the International Scientific Committee for Archaeological Heritage Management (ICAHM). ICAHM has its own international charter, the 1990 Charter for the Protection and Management of the Archaeological Heritage. There are many other ICOMOS ISCs, including, for example, those on Cultural Landscapes, Intangible Heritage, Rock Art, and Underwater Cultural Heritage.

The other two Advisory Bodies are the International Union for the Conservation of Nature (IUCN), based in Geneva, and the International Centre for the Study of the Preservation and Restoration of Cultural Property, headquartered in Rome. The latter concentrates on a training function. The IUCN is a large organization, which in place of ICOMOS's ISCs, has myriad commissions and other groupings covering a multiplicity of issues including cultural heritage. The latter is approached from a more North American anthropological standpoint than is evident in ICOMOS, which takes a more European approach to archaeology and culture and is heavily influenced by architecture and, to a lesser extent, art history. ICOMOS and IUCN are

developing better ties than they have had previously, largely because both understand better that cultural and natural heritage are better managed holistically, each integrating the other so that heritage properties are viewed as what Tim Badman (personal communication 2012), head of IUCN's World Heritage program, calls "whole sites."

Other less obvious UN bodies that impact on archaeology and cultural heritage include the World Intellectual Property Organization (WIPO), the International Labour Organization (ILO), the UN Permanent Forum on Indigenous Issues (UNPFII), and the Convention on Biological Diversity (CBD). WIPO has various programs that cover cultural heritage, indigenous intellectual property, museum collections, and other matters of significance to archaeologists. "Digital heritage"—the digitizing of physical archaeological and other cultural heritage items—is a major concern. The ILO has a strong thread of interest in indigenous and tribal peoples. Although primarily concerned with labor rights (e.g., forced labor and child labor), the ILO also supports appropriate local economic development and poverty-reduction programs. These programs overlap with the policies and programs of other international bodies that explicitly concern archaeology and heritage as "drivers of development," and so practitioners are obliged to familiarize themselves with ILO perspectives.

UNPFII is very active in its interventions regarding cultural heritage, particularly at the World Heritage level. The body has vociferously criticized the World Heritage system for excluding indigenous interests and approaches. In 2013, the Canadian nomination of the Pimachiowin Aki property was deferred by the World Heritage Committee because of problems with meshing World Heritage policies and procedures with First Nations' holistic approaches to heritage, bringing UNPFII's issues with World Heritage to the fore. Critical questions revolve around improving the integration of nature and culture in World Heritage nominations and management. ICOMOS and IUCN are working together to address such questions, which should result in a positive shift in the way UNESCO deals with indigenous archaeology and heritage.<sup>10</sup>

The Secretariat of the CBD is hosted by the UN Environment Program (UNEP). Although principally concerned with the biological world, the CBD recognizes the role of people and culture in the protection of biodiversity. In particular, the CBD's Akwé: Kon Guidelines for impact assessments of developments on indigenous and local community lands has sections specifically dealing with cultural heritage.<sup>11</sup> Tellingly with regard to the profound disconnect between archaeologists and heritage managers and the wider international policy scene, the only time cultural heritage was mentioned in the invited civil society commentary on the IFC's Performance Standards when the latter were first proposed was in relation to traditional knowledge and the CBD.<sup>12</sup> The UNEP—whose motto is "environment for development"—and a related body, the UN Development Program (UNDP), have other agencies and subprograms relevant to archaeology and heritage, but lack of space precludes their further consideration here.

## Lenders

This SAA Forum focused attention specifically on the Equator Principles. They are framed as risk-management guidance for entities that finance development

projects likely to have social and environmental impacts. The principles are now in their third iteration, and some 79 organizations in 35 countries have signed on to them. The Equator Principles refer to cultural heritage in passing but specifically direct attention to the IFC's Performance Standards for more detail on appropriate procedures. Andrew Mason's paper in the present collection discusses the Principles and IFC Standards at some length, so I will not cover the latter here.

The World Bank has a set of 10 Safeguard Policies, one of which specially covers "physical cultural resources," including archaeology. The IFC originally used these policies, before creating its own Performance Standards, and the two are closely aligned (not least because the IFC is actually part of the wider World Bank Group). Technically speaking, the bank actually has an Operational Policy and a Bank Policy for each safeguard issue (OP/BP 4.11 for cultural heritage). The former is to be followed by the country being financed, and the latter guides the bank. What this means for heritage, when it is mentioned at all in the terms of reference of bank finance agreements, is that the organization leaves the execution of heritage impact mitigation and verification of results to "local country systems."

The latter are supposed to come up to international best standards, or be strengthened with the bank's assistance until they do. In practice, though, the bank is very hands-off. Unlike all the other safeguard areas, heritage has no dedicated member of the bank's compliance team to ensure that the bank and its clients follow the rules (though broad oversight is provided by a senior staff member). In addition, civil society groups—that is, professional archaeological and heritage management bodies—have made no effort to engage with the bank (or IFC) to improve matters. At the time of writing, this was about to change, as SAA and other professional groups began discussing appropriate ways to engage effectively with the bank. Given the amount of archaeological and other cultural heritage work generated by the bank around the world, this cannot come too soon.

## Corporates

Most major corporations engaged in development have social and environmental impact policies and procedures. Rio Tinto is unquestionably among the best with regard to explicit concern with archaeology and cultural heritage, not least because an archaeologist committed to professional standards and ethics is a senior member of the company's communities staff. In 2010 the company produced detailed internal guidance on "why cultural heritage matters," which has created a global standard for others to emulate or improve upon (Rio Tinto 2010). The guidance is now available in a number of major languages as well as the English original. Rio Tinto's corporate policy is that the guidelines apply even where national or local legislation, policy, and procedure do not mandate heritage work to the same standard (or at all).

Overarching the mining sector is the International Council on Mining and Metals (ICMM). This industry group is concerned with improving the performance of its members in sustainable development. Rio Tinto was a founding (and is still an influential) member, and the ICMM now has some 22 mining companies and

35 national and regional mining associations under its umbrella. The ICMM's 10 Principles do not specifically mention archaeology or cultural heritage, but these matters are covered by Principle 3 on culture, which is to "Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities."<sup>13</sup> Like the 2010 Rio Tinto heritage guide, major ICMM documents are available in several major languages other than English. The ICMM works with both the IUCN and UNESCO on World Heritage issues. Efforts to better integrate ICOMOS and IUCN should see the former better connected with the ICMM in the future, an issue also being addressed through collaborations between members of the International Heritage Group and the ICMM.

### *Conclusion*

Archaeologists and heritage managers *are* involved in international efforts on many fronts. In addition to ICOMOS and ICAHM, there is the International Union of Pre- and Protohistoric Sciences (IUPPS), as well as the World Archaeological Congress, which spun off from IUPPS for political reasons in the mid-1980s. National and regional professional bodies—such as SAA and the Indo-Pacific Prehistory Association—also have international profiles, as do international heritage research projects such as IPinCH. Some (and sometimes many) of these organizations periodically act in concert to send letters to governments about this or that archaeological or heritage issue. In the main, though, the scene remains highly fragmented and, in comparison with nature conservation, disorganized and ineffective. As far as I can tell, for instance, no archaeological or cultural heritage organization or group thereof has ever participated in the World Bank's bi-annual Civil Society Forums. This is where archaeologists could (and I think should) have a direct impact on bank policy and procedure. We just haven't made the effort. In 1999, international heritage lawyer Patrick O'Keefe observed that archaeology and cultural heritage are simply not on the international radar screen, at least not in any way that counts when major shifts are occurring in global policy and procedure, even if those shifts directly affect archaeological interests right around the world.<sup>14</sup> Nothing has changed in the intervening 15 years, but we are finally starting to make up for lost time. I can't wait!

## THE UNDRIP AS A FOUNDATION FOR BENEFITS SHARING AND ETHICAL CRM IN INTERNATIONAL DEVELOPMENT

Joseph Ezzo

Human Rights Advocate, International Property Law Consultants, Southbank, Australia and Tucson, Arizona. Email: [jaezzo@dakotacom.net](mailto:jaezzo@dakotacom.net).

A cornerstone concept of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is consultation; it encourages states to implement their obligations to

Indigenous peoples under international instruments “in consultation and cooperation with the peoples concerned.”<sup>15</sup> The future of CRM must consider greater involvement from Indigenous peoples in the creation and implementation of plans, whether they focus on mitigation or preservation. More thorough consultation with indigenous stakeholders is critical to this involvement. The reclaiming of cultural heritage is a pathway to self-determination for indigenous peoples, and self-determination needs to become a focal point of CRM planning.

A human rights perspective provides the substantive framework as well as a common language through which archaeologists, land managers, and indigenous peoples can communicate. The Equator Principles call for “free” consultation, defined as “free of external manipulation, interference or coercion, and intimidation.”<sup>16</sup> In particular, Articles 11, 12, and 25 of the UN Declaration on the Rights of Indigenous Peoples reaffirm the rights of indigenous peoples to an ownership of their cultural heritage—including both archaeological and sacred sites—as well as maintaining a spiritual relationship with their traditional lands and territories.

Cultural resource management planning in the 21st century must proceed from a viewpoint of greater mutual respect on the part of the stakeholders. The possibility of bridging the perspectives of Indigenous peoples and Western-trained archaeologists has become more realistic with the increasing number of indigenous archaeologists in countries such as the United States, Canada, and New Zealand. Not only are these trained professionals concerned about the effective protection and preservation of ancient cultural resources, but they focus their management efforts on reclaiming cultural heritage and maintaining and expressing cultural integrity. As mentioned above, these are critical pathways to self-determination, a concept archaeologists are still learning about and coming to terms with.

Indigenous peoples’ cultures are land-based, a concept that is foreign to Western concepts of real property, especially land ownership and alienation rights. The four great British colonies and common-law nations of the world—the United States, Canada, Australia, and New Zealand—each embraced the Doctrine of Discovery (also referred to as *terra nullius*) during colonization of the land within their national borders. Under the Doctrine of Discovery, title to lands lies with the government whose subjects explored and claimed such lands in the name of their government, providing the occupants of these lands were not subjects of a European Christian monarch. Robert J. Miller describes the Doctrine of Discovery as having been

motivated by greed and by the economic and political interests of European countries to share, to some extent, the lands and assets to be gained in the New World instead of engaging in expensive wars fighting over them.... European countries ... did try to develop a legal principle that would control exploration and colonization and make it as profitable for Europeans as possible.<sup>17</sup>

The effect of the Doctrine of Discovery was to curtail severely the sovereignty and self-determination of indigenous peoples. In 1823, the United States essentially

codified the Doctrine of Discovery into legal legitimacy in the Supreme Court decision *Johnson v. M'Intosh*. Chief Justice John Marshall famously explained how Native Americans could occupy their traditional lands and live in whatever fashion suited them there, but they lacked title to the land; that belonged exclusively to the federal government, which could take the land "either by purchase or conquest." In his judgment, the Chief Justice left no doubt that the Native Americans were conquered people and stood in the way of the march of civilization as Europeans colonized the United States:

But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave a country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.<sup>18</sup>

The Doctrine of Discovery remains a controlling legal precedent of federal Indian law in the United States today. Miller states that the federal government "continues to maintain its Discovery preemption right in tribal lands and to enforce its Discovery sovereign powers over tribal governments."<sup>19</sup>

Legally, the Doctrine of Discovery was rejected by Australia in a 1992 case, *Mabo v. Queensland*.<sup>20</sup> Lacking a clear rejection of it, the doctrine continues to be faint-heartedly applied in New Zealand. In Canada, it continues to be sound legal doctrine, as a long line of Canadian Supreme Court cases, from *St. Catherine's Milling* (1888) to *Little Salmon/Carmacks First Nation v. Yukon* (2010), demonstrates.<sup>21</sup> The landmark ruling in *Delgamuukw v. British Columbia* (1997), in which the Canadian Supreme Court declined to make any definitive statements on the issue of aboriginal land title, powerfully reaffirmed Canada's commitment to the principles of the Doctrine of Discovery.<sup>22</sup>

The reclaiming of cultural heritage by indigenous peoples will not occur independently of other pathways to self-determination, be they social, political, or economic. All of these pathways require access to and freedom to use traditional lands and territories, as well as associated cultural resources. The encumbrances created by the Doctrine of Discovery will continue to slow progress in all of these areas of development. Archaeologists and land managers would do well to understand better the relationship between indigenous peoples and their lands so that more meaningful planning of cultural resource protection and preservation can be realized. A significant phrase in the Preamble to the UN Declaration on the Rights of Indigenous Peoples affirms the link between indigenous interests in land and resource management within their territories and their parallel interests in cultural heritage, stating:

[C]ontrol by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs.

I think archaeologists and land managers should approach planning with a clear recognition that cultural resources (be they archaeological or sacred sites) are part of the land. Cultural resources can seldom be separated from their environs without harms to both the resources and the people who care about and derive benefits from them. Most cultural resources are embedded in landscapes defined and constituted by cultural as well biophysical elements and attributes. In other words, land, resources, and culture are all one, and CRM planning that is sensitive to the well-being of indigenous peoples should proceed from this perspective.

### CLOSING GAPS BETWEEN NATIVE AND SETTLER GROUP INTERESTS IN MITIGATING HARMS FROM RESOURCE EXTRACTION

Alvaro Higuera

SFU Continuing Studies, Simon Fraser University, Burnaby, British Columbia V5A1S6, Canada. Email: alvarohig@yahoo.com.

My participation in this forum confronts two opposed positions on the procedures and consequences of resource extraction projects. There is, first, the tendency to reduce “industrial policies” to particularly positive cases and omit broader views. What I want to know is where and under what circumstances do land modification proponents and their consultants engage affected communities in collaborations (to identify and reduce adverse effects on cultural resources, broadly speaking) and what are the outcomes? How do they surmount the challenges of human populations concerned with their environment and therefore concerned about prospective land alterations? In particular, are mining companies mandated to consider cultural resources and the fate of local populations who rely on these places, objects, and traditions for their livelihoods and vitalities? Do the mining companies do so when it is not mandated? How do consultants plan for, prepare, and deliver the objective advice about prospective land alterations they are hired to produce? How do they report to their clients, and how do they interact with governments? We probably cannot do more than lay out these questions in a forum, but in keeping with the forum focus on CRM activity beyond legal minima, they deserve more discussion. I want to learn about variations in experiences, results, and attitudes in the complex relationship between the actors. On one hand, I am satisfied with the cautionary tales and exemplary case studies laid out by other participants; on the other, it is clear we are traveling different paths.

Some additional reflections on the comments in the forum may be useful. As noted by Lilley, this is a complex field. I see the field occupied by the following players: (1) corporations, which owe, above all, profits to their investors; (2) consultants, who are involved to provide objective opinions regarding risks and impacts of proposed land alterations to corporations and governments; (3) archaeologists (more than just consultants), who have professional duties to concentrate on the evaluation and remediation of prospective project impacts on archaeological



sites and other cultural resources and to pass this information on to corporate clients and state heritage management agencies, as well as colleagues; (4) states, which oversee and sometimes advocate for land modification projects, ostensibly on the part of its citizens; and (5) commentators, who will study projects and processes and (a) commend sustainable endeavors or (b) raise flags regarding projects violations of state resource protection laws or the rights of native populations as their heritage is affected by land modification projects.

One problem worthy of consideration on a larger scope is that major land alterations may concern not only local populations but also people in distant regions. The scale of mining impacts, for example, is often successfully minimized by extraction companies when such impacts are recognized. But such recognitions are often bounded by artificial temporal, spatial, or ecological assumptions. Knowledge that sea currents, rivers, and water tables flow and change; that fauna migrate; and that climates are increasingly volatile—in sum, that ecosystems are highly dynamic and interdependent—would seem to mandate broadened cost-benefit assessments that embrace elements of geographically distant but nonetheless project-affected ecosystems.

To further this concern and put a human face to it, as Christophe Sand suggests, I ask why it often seems that indigenous populations are the people most concerned with environmental and cultural degradation, as well as issues of intangible heritage? Why are not “settler” populations concerned about the same issues, at least environmental ones that will affect them as much as native populations? Why do both groups tend to have distinct views of costs and benefits for different cases? How much is this due to the historical sentiment of the “victor” invader and their “rightful” control, per the Doctrine of Discovery (Ezzo)? I suppose it is the mirage of future economic benefits of profit-driven land alteration, at any scale and in any setting, that blind so many to the biophysical degradation that should concern all. A further concern, of course, is the decay of sociocultural structures in societies grounded in extractive commodification. Welch is correct in his view that archaeology and CRM can and should be part of the solution rather than continuing to be part of the pernicious cycles of biophysical and sociocultural disintegration.

I agree with Lilley that the operational procedures of each actor in major land alteration processes deserve attention. I understand that each of the actors are bound by overlapping but distinctive legal, professional, and customary rules and tend not to exceed these rules. In my experience, each actor tends to do what is required but seldom more. If community relationships need to be established in the process mandated by the rule of the land, they will be, including the minuscule costs of compliance with heritage protection laws and associated consultation and collaboration. What happens in countries where governments do not require such procedures? It is doubtful that the same kind of community relationships will flower in the absence of such requirements. Archaeologists are in a unique position to oblige our colleagues to do more and better in this regard, as a matter of professional ethics, yet we have failed thus far to create such universal requirements.

The gap between the concerns on native and newcomer populations is also problematic. The issues relating to land modification concern me even more than those relating to intellectual property and tangible heritage. Again, it seems obvious to me that concern with biophysical environments and the essential services these provide should be common ground for all populations. Of course, this common ground is often obscured by the mirage of future benefits from land commodification, blinding many to current realities as well as future prospects.

These observations are informed by considering the comments made in the course of the forum as well as my thoughts of the particular problems facing Amazonian populations in Peru. I think mining operators and their consultants should be held to the highest standards to address the rightful claims of native populations and the rights of all people, today and in the future, to enjoy healthful air, water, and land.

### NORTH OF THE EQUATOR: WHERE POLICY MEETS PRACTICE

Andrew R. Mason

Golder Associates Ltd., Vancouver, Canada. Email: Andrew\_Mason@golder.com.

By way of introduction, I believe I am the sole “pure cultural heritage consultant” discussant in the forum. My livelihood is entirely based on fee-for-service work, often within the context of a project-specific environmental assessment (EA) or environmental and social impact assessment (ESIA). The work I undertake ranges from assessments for modest land development projects (e.g., residential subdivisions) to multibillion dollar projects in the transportation, oil and gas, power, and mining sectors. It is these latter projects that I wish to speak about today. While much of my work takes place in my native Canada, I have also worked across the United States and in several countries in South America and Asia. I am currently working on large-scale development projects in Canada, Mexico, and Mongolia.

In terms of cultural heritage regulation and policy, my work is guided by national legislation, by the IFC Policy on Social and Environmental Sustainability, and by the Equator Principles. The IFC Policy on Social and Environmental Sustainability has eight Performance Standards and Industry-Specific Environmental, Health and Safety (EHS) Guidelines.<sup>23</sup> With respect to safeguarding cultural heritage, Performance Standard 8 (Cultural Heritage) and Performance Standard 7 (Indigenous Peoples) are the most relevant. For the private sector, the Equator Principles were established as a voluntary credit-risk-management framework adopted by the world’s leading financial institutions. The Equator Principles are based on the IFC Performance Standards and EHS Guidelines for the management of social and environmental performance as a means to categorize, assess, and manage environmental and social risk in the context of project finance.

Projects subject to the IFC Performance Standards and Equator Principles are colloquially referred to as “bankable.” With my work in Canada and the United

States, the IFC Performance Standards and Equator Principles are typically not applied, as there is an assumption that regulatory, permitting, and public comment process requirements meet or exceed those of the IFC in these high-income OECD (Organisation for Economic Co-operation and Development) countries. In my experience, this assumption is not always true. For example, laws protecting the environment and cultural heritage in the province of British Columbia, Canada, are largely silent on the protection of paleontological resources, effectively requiring a lower standard for projects than in non-OECD countries, as demanded by the World Bank Group and Equator Principle Financial Institutions.

### *Community Consultation*

In Canada, the Crown has a legal duty to consult with and, where necessary, accommodate aboriginal peoples where there is the potential for projects to impact constitutionally protected rights.<sup>24</sup> For major development projects, there are prescriptive requirements for aboriginal consultation in EA processes, and cultural heritage is often a critical component. These EA processes also include requirements to consult with nonaboriginal persons, but it is in the context of soliciting stakeholder input on the merits of development applications through procedures outlined in provincial and federal EA legislation.

In certain countries, the requirement to consult on matters of cultural heritage is less well defined. While most countries have environmental laws that require stakeholder consultation, cultural heritage may not be discussed unless there is an immediate site of concern to a community (e.g., a village cemetery). More often, discussions focus on job creation, the environment, and community impacts. In my experience, engagement and consultation with communities on matters of cultural heritage occurs later in the project review process, often after a consultant such as myself has been retained to contribute to the preparation of a bankable ESIA report. At this stage in the process, the information gap is identified and considerable effort is expended in an effort to catch up and to demonstrate that meaningful consultation on cultural heritage has occurred.

### *Benefits Sharing*

In Canada, my experience with descendant communities and benefits sharing associated with development projects is limited, as it is largely led by private-sector proponents or government—seldom if ever by CHM professionals. These discussions are typically not public, and in the case of private-sector proponents, the financial terms of resulting benefits agreements, some in the millions of dollars, are not publicly disclosed.<sup>25</sup> Often these benefits agreements are an outgrowth of the consultation process described above, and while most involve a financial dimension (e.g., revenue sharing, employment, economic development, business opportunities, capacity development funding, and/or community investment in services

and/or infrastructure), these agreements can also include a cultural component, such as the protection or commemoration of an important heritage site where conditions allow. For example, in the Vancouver area, the proponent of a multibillion dollar infrastructure project recently went to great lengths to minimize impacts to heritage sites, create employment for First Nations members, and provide treatments for a significant archaeological site adjacent to the project through sympathetic landscaping and interpretative signage.

Internationally, the proponent may be viewed by communities as a proxy for the government in relation to economic and social financing and service provision.<sup>26</sup> In my experience, cultural heritage, while important, is but one concern on a long list of community needs in the developing world, including healthcare, education, employment, and infrastructure.

### *Intellectual Property*

Matters of intellectual property rarely come up in my work. Surprisingly, intellectual property as it relates to cultural heritage only needs to be considered in an IFC Performance Standards–based ESIA if the proponent intends to use it for commercial purposes. If there is no commercial intent to use cultural heritage on the part of the proponent, intellectual property is not considered further. In this context, the IFC Performance Standard should be seen as a minimum standard. Clearly, this shortcoming needs to be addressed through revisions to IFC PS8 that expand the breadth of consideration for both de facto and de jure intellectual property and are aligned with the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage.

### *Concluding Remarks*

In sum, the point I wish to stress is that there is no one-size-fits-all approach to addressing community consultation, benefits sharing, and intellectual property as it relates to cultural heritage assessments and major land development projects. Why doesn't one size fit all? This is largely stating the obvious, but every project and its circumstances are different. The nature of the cultural heritage differs from area to area. The motives and drivers of regulators, proponents, regional and local governments, and communities differ from place to place, and as a result, the approach to achieving a successful outcome also has to differ. The approach to cultural heritage needs creativity and flexibility, and it should be solutions based. Proponents need to recognize the importance of cultural heritage for maintaining healthy communities—particularly those faced with significant change brought by major land alteration projects.

Development proponents should look beyond national or international standards, as inevitably there will be limitations. Proponents would be well served to educate themselves on the value of cultural heritage and the merits of consulting with

affected communities at the earliest opportunity. Not only is it the ethical thing to do, but it is also good business. For its part, the IFC and Equator Principle Financial Institutions should provide leadership and encourage proponents not only to apply the Performance Standard and Equator Principles, but also to embrace their spirit so they may be adapted to suit the specific needs of development projects.

## ARCHAEOLOGY, LOCAL STAKEHOLDERS, AND KANAK GROUPS OF NEW CALEDONIA: A MELANESIAN PERSPECTIVE

Christophe Sand

Director, Institute of Archaeology of New Caledonia and the Pacific (IANCP), Nouméa. Email: christophe.sand@iancp.nc.

This presentation reviews the context of archaeology in an archipelago of Island Melanesia in the South-Western Pacific. The organization I supervise, the Institute of Archaeology of New Caledonia and the Pacific, consists of 11 people, all from the archipelago. I also head ICOMOS Pasifika.

I have been working as an archaeologist on islands in the Western Pacific for nearly 30 years, mainly with the aim of building local consciousness about the long history of the region. Scientific archaeology is a latecomer to Melanesia, arriving mainly after WWII. Indigenous Melanesians have generally been seen as “people without history,” trapped in never-changing customs, traditions, and rituals. In the colonial context of the 20th century, every identified change in material culture was explained by population replacements. This insistence on looking only at culture history, and only seeing culture history in terms of migrations, allowed European colonizers to deny Melanesians their historical birthrights to the islands. Little wonder that indigenous leaders often depict archaeology as tool of colonialism.

### *New Caledonia*

The misuse and resultant mistrust of archaeology is forcing 21st century archaeologists to reimagine archaeology in decolonizing contexts and to create context-specific research protocols to engage indigenous Pacific Islanders. This experience, working with Kanak and non-Kanak colleagues, has radicalized my thinking on various issues, starting with private archaeology.<sup>27</sup> I want to underscore the differences between French and Anglo-American traditions of salvage archaeology. In the French tradition, the state must be responsible, as a matter of public interest, to study and preserve heritage; in the Anglo-American tradition, the state generally seeks to maximize cost-effectiveness by retaining responsibility for quality control while soliciting competitive bids for specific survey and excavation projects.

In New Caledonia, the collision between these two traditions has led to a crisis. A combination of dissatisfaction with poor quality reports from private contractors, together with suspicions about profit-driven nonlocal consultants studying

local heritage, led to a ban on private archaeology on the archipelago. Since that time, only public servants have been allowed to perform surveys and excavations.

The rules governing cultural heritage empower New Caledonia's three provincial presidents with powers and responsibilities relating to archaeological studies. However, owing to local community assertions of interest concerning local land and resources, our team must also always negotiate research agreements at the local level for each project. Setting aside the administrative rules favoring centralized control, nothing can be started in archaeology without consent from local landowners, including families, clans, and chiefs. This allows our team to deal directly with the most concerned and knowledgeable people; to discuss their expectations even before the start of a project; and to find in each circumstance the proper ways to satisfy their specific demands in terms of the processes and aims of surveys and excavations. Following local custom, the research agreements are oral. We rely on trust and a steady flow of contacts among local group members and our group of archaeologists. It may be useful to note that oral agreements are particularly appropriate because no "compensation measures" are involved. The focus is not on money, but on maintaining a good balance among people, land, heritage, and the jobs and services needed by every community.

### *Three Test Cases*

Some examples may further clarify a few key points. The first case concerns a large development on the west coast of the main island of New Caledonia, a property called Deva. The proposed construction of a series of hotels, along with a golf course and other tourist amenities, threatens archaeological resources at Deva. In preliminary discussions, local representatives of Kanak and other cultural groups forced development proponents to agree to conduct archaeology in advance of every construction project. The agreement included provisions for human remains, making it clear that these were to be excavated but not removed. Instead, a minimum area of 4 square meters would be established to encompass the remains. Any and all construction plans for the affected area were to be altered or relocated to avoid further effects on the remains. On a case-to-case basis, some objects discovered during the excavations were reburied on site as part of an effort to comply with the spirit of the protocol.

The construction at Deva is ongoing, and the essential heritage constraints remain in effect. In 2012, plans to open a 1-hectare sand quarry required the total excavation of surface sediments prior to the sand extraction. This process allowed Kanak representatives to determine the extent of human remains and led to an agreement to exclude from the quarry the zone containing burials. Although the Deva project remains a source of conflict among various stakeholders, the full involvement of local representatives in all decisions affecting their ancestral remains has thus far averted major tensions arising from the archaeological issues.

The second example is a project on one of the outer islands of the archipelago, the small island of Tiga. Although administratively authorized by the Loyalty Islands Province in 1999, it took another seven years of discussions with the local clans to reach an agreement on heritage resource treatments. In particular, we worked with local representatives to find the best way to bridge gaps between oral traditions and archaeological data. In pursuit of this goal, we started fieldwork by recording those oral traditions that individual families were willing to make public. We also conducted a type of cultural landscape survey, recording sites that locals regarded as important historical markers. We then built on the results of the initial research and the recordings to plan and implement additional surveys and excavations. We took care to inform community representatives of each new discovery and to host visits to sites being studied. The individual families retain all intellectual property rights to the oral traditions not granted through permission to use their stories.

The first Tiga report volume is specially written for the community, with each chapter starting with an oral tradition. We provided a prepublication copy of the manuscript to each family and solicited their feedback and final agreement before preparing the last draft. We remain hopeful that this procedure ensures that local community voices and perspectives are included in interpretations of individual or shared land and resource rights, of regional history, and of the archaeological objects that are owned collectively and under provincial custodianship.

The last example concerns mining. New Caledonia is the world's third largest nickel producer. For more than a century, no heritage studies were conducted prior to mineral exploitation. Since the early 1990s, things have changed. Today, as a result of either direct commissions from mining companies or due to demands by Kanak tribes with ties to the mining areas, all proposed project impact areas are assessed by archaeologists. These assessments have identified many sites on the island's acidic and deserted plateaus, including shrines, stone cairns, camps, and residential or ritual wall alignments. In a number of cases, after the archaeological survey, mapping, and dating of sites, specific agreements between the mining company and Kanak leaders resulted in protection of significant heritage areas, while areas of less significance were recorded before being consumed by the mining. The indigenous people did not seek financial compensation for the site losses, believing that the agreement was fair and had provided for the preservation of the most important and culturally sensitive areas. Again, the emphasis here is not ensuring that everybody gets paid, but that balance is achieved among and between people, land, and heritage, and the jobs, goods, and services essential to healthy communities.

## *Conclusion*

These examples show that in New Caledonia, face-to-face discussions and time are the essential ingredients to building trust and long-term, mutually satisfactory relations. This approach is seldom compatible with the short timeframes common in CRM or CHM archaeology elsewhere. Another key point is that, when working

with indigenous people with close ties to land, state laws and regulations must often be considered as secondary authorities. Local reality rules! Giving proper decision-making power to local leaders is, in our experience, not only the surest (if not the shortest) route to project completion but also an excellent way to learn about indigenous people and specific ways of learning, thinking, and deciding in relation to sociocultural and biophysical heritage. Our commitments to working within local and indigenous rationalities suggests that mainstream Anglo-American discourse about First Nations and indigenous groups is, above all, embedded in British common-law legal traditions. The legal frame through which we operate is local tradition, which among other things involves an insistence on exclusive interactions with individual leaders and creates incentives for diverse subaltern groups to subordinate their different values and preferences in order to obtain greater collective political power. Unfortunately, the Anglo-American approach has become nearly universal, thanks to the United Nations. In reality, different indigenous groups think differently, with different words, aspirations, and ways of knowing the right thing to do and reaching agreements to move forward.

In closing, I would thus like to emphasize that the proper path toward lasting trust and cooperation between indigenous communities and archaeologists is dependent on local knowledge, relationships, and sensitivities. This understanding deserves priority consideration ahead of the one-size-fits-all toolboxes and best practices that various organizations seek to promulgate as part of globalized professional practice. Frankly, I see this as the next phase of a colonial agenda. Whether viewed through a political lens of sovereignty, a social lens of diversity, or an economic lens of efficiency, any sincere measure of respect for people and place demands recognition of the diversity in and of indigenous ways of being, relating, and coping with a fast-changing world. What makes native peoples unique as a group is not their supposed difference from Western peoples, it is their diversity.

But this diversity and the diversity of heritage that results from it are today more than ever in a fragile state. As new generations of global corporate interests and strategies emerge, it is increasingly evident that the ethical rules that some multinational companies are beginning to adopt, especially in the mining sector, may create comparative disadvantages in the relentless competition for resources in places like Africa, southeast and northeast Asia, and the Middle East. Few of the fast-growing Asian, Arabic, or South American corporations are indicating intentions to adhere to these rules or otherwise adopt recommended ethical practices for safeguarding cultural resources and cultural heritage. Instead of complaining about the never-perfect attitudes of corporations based in North America, Europe, and Australia—places where laws can always be called to the rescue—we should consider individual and collective dedications of time and energy to assist those who need help to save their heritage, if not their lives, as endangered by political corruption and the ruthlessness of new (and old) multinationals.



## ENDNOTES

1. Lipe, “A Conservation Model for American Archaeology”; Welch and Ferris, “We Have Met the Enemy and It Is Us”; Ferris and Welch, “Capacities for a Sustainable Archaeology.”
2. Equator Principles Association, *Equator Principles III–2013*.
3. See IPinCH: Intellectual Property Issues in Cultural Heritage: Theory, Practice, Policy, Ethics, <http://www.sfu.ca/ipinch/>, accessed 3 November 2013; and Golder Associates, <http://www.golder.com>, accessed 3 November 2013.
4. Lipe, “A Conservation Model for American Archaeology.”
5. Here and elsewhere, a distinction is made between de jure intellectual property—including creations protected by copyright, industrial design, patent, trademark, and national and international laws—and de facto intellectual property—including local, traditional, and indigenous knowledge; oral traditions; and other creations that seldom benefit from formal legal safeguards.
6. For example, Society for American Archaeology, *Principles of Archaeological Ethics*; World Archaeological Congress, *World Archaeological Congress Codes of Ethics*.
7. World Bank, *World Bank Operational Policy 4.11*.
8. UN General Assembly, *Culture and Development*.
9. UNESCO, <http://whc.unesco.org/>, accessed 3 November 2013.
10. As an example of IUCN efforts, see Wild and McLeod, *Sacred Natural Sites* and IUCN, *Cultural Heritage Management Capacity*.
11. Secretariat of the Convention on Biological Diversity, *Akwé: Kon Guidelines*.
12. International Finance Corporation, *Performance Standards*, especially standards 7 and 8; Bretton Woods Project, *IFC Consultation with Civil Society*.
13. ICMM, “10 Principles,” <http://www.icmm.com/our-work/sustainable-development-framework/10-principles>, accessed 4 November 2013.
14. O’Keefe, “Archaeology and Human Rights.”
15. UN, *Declaration on the Rights of Indigenous Peoples*.
16. Equator Principles Association, *Equator Principles III–2013*.
17. Miller, *Native America, Discovered and Conquered*, 11.
18. *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543, 5 L.Ed 681 (1823).
19. Miller, *Native America, Discovered and Conquered*, 172.
20. *Mabo v. Queensland*, 175 CLR 1 (1992).
21. *St. Catherine’s Milling and Lumber Company v. The Queen*, [1888] UKPC 70, 14 App. Cas. 46.
22. *Little Salmon/Carmacks First Nation v. Yukon*, [2010] 3 S.C.R. 103.
23. *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.
24. International Finance Corporation, *IFC Policy and Performance Standards*.
25. *Aboriginal Consultation and Accommodation*.
26. Fidler and Hitch, “Impact Benefit Agreements.”
27. International Finance Corporation, *Strategic Community Investment*.
27. “Kanak” is the self-ascribed name of the indigenous peoples of New Caledonia.

## BIBLIOGRAPHY

*Aboriginal Consultation and Accommodation: Updated Guidelines for Federal Officials to Fulfil the Duty to Consult*. Ottawa: Minister of the Department of Indian Affairs and Northern Development, Government of Canada Publications, 2011.

Bretton Woods Project. *IFC Consultation with Civil Society on the Safeguard Review*. <http://www.brettonwoodsproject.org/2005/04/art-194337/> (22 April 2005; accessed 4 November 2013).

Equator Principles Association. *Equator Principles III–2013*. <http://www.equator-principles.com/index.php/ep3/ep3> (accessed 3 November 2013).

Ferris, Neal, and John R. Welch. "Capacities for a Sustainable Archaeology." In *Transforming Archaeology: Activist Practices and Prospects*, edited by Sonya Atalay, Lee Rains Clauss, Randall McGuire, and John R. Welch. Walnut Creek, CA: Left Coast Press, 2014 (in press).

Fidler, C., and M. Hitch. "Impact Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice." *Environments Journal* 35 (2007): 49–69.

International Finance Corporation. *IFC Performance Standards on Environmental and Social Sustainability*. [http://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC\\_Performance\\_Standards.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES) (1 January 2012; accessed 10 December 2013).

———. *IFC Policy and Performance Standards on Social and Environmental Sustainability Review and Update: Overview of Consultation and Engagement Process*. [http://www.ifc.org/wps/wcm/connect/d9f9008049800946a606f6336b93d75f/PPS%2BOverview%2Bof%2BConsultation%2Band%2BEngagement\\_English.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/d9f9008049800946a606f6336b93d75f/PPS%2BOverview%2Bof%2BConsultation%2Band%2BEngagement_English.pdf?MOD=AJPERES) (26 August 2009; accessed 22 July 2013).

———. *Strategic Community Investment: A Quick Guide, Highlights from IFC's Good Practice Handbook*. Washington, DC: International Finance Corporation. [http://www.ifc.org/wps/wcm/connect/ace84b8048855511b57cf76a6515bb18/IFC\\_com\\_inv\\_handbook\\_2.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/ace84b8048855511b57cf76a6515bb18/IFC_com_inv_handbook_2.pdf?MOD=AJPERES) (2010; accessed 3 July 2013).

International Union for the Conservation of Nature (IUCN). *Cultural Heritage Management Capacity and Enhanced Biocultural Resilience in High-Value Landscapes*. <https://portals.iucn.org/2012forum/?q=0092> (2012, accessed 10 August 2013).

Lipe, William D. "A Conservation Model for American Archaeology." *The Kiva* 39 (1974): 213–245.

Miller, Robert J. *Native America, Discovered and Conquered: Thomas Jefferson, Lewis & Clark, and Manifest Destiny*. Westport, CT: Praeger, 2006.

O'Keefe, Patrick J. "Archaeology and Human Rights." *Public Archaeology* 1 (1999): 181–194.

Rio, Tinto. *Why Cultural Heritage Matters: A Resource Guide for Integrating Cultural Heritage Management into Communities Work at Rio Tinto*. Melbourne: Rio Tinto, 2010.

Secretariat of the Convention on Biological Diversity. *Akwé: Kon Guidelines*. Montreal: Secretariat of the Convention on Biological Diversity. <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf> (2004; accessed 4 November 2013).

Society for American Archaeology. *Principles of Archaeological Ethics*. <http://www.saa.org/AbouttheSociety/PrinciplesofArchaeologicalEthics/tabid/203/Default.aspx> (accessed 3 November 2013).

United Nations. *United Nations Declaration on the Rights of Indigenous Peoples*. [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf) (March 2008; accessed 12 August 2013).

United Nations General Assembly. *Culture and Development* (Draft Resolution of 22 November 2010). [http://www.unesco.org/culture/pdf/text\\_unga\\_resolution\\_\\_culture\\_%20and\\_development\\_en.pdf](http://www.unesco.org/culture/pdf/text_unga_resolution__culture_%20and_development_en.pdf) (accessed 4 November 2013).

UNESCO. *Convention for the Safeguarding of the Intangible Cultural Heritage*. Paris, UNESCO, 17 October 2003. URL\_ID=17716&URL\_DO=DO\_TOPIC&URL\_SECTION=201.html (accessed 3 November 2013).

Welch, John R., and Neal Ferris. "'We Have Met the Enemy and It Is Us': Improving Archaeology through Application of Sustainable Design Principles." In *Transforming Archaeology: Activist*

*Practices and Prospects*, edited by Sonya Atalay, Lee Rains Clauss, Randall McGuire, and John R. Welch. Walnut Creek, CA: Left Coast Press, 2014 (in press).

Wild, Robert, and Christopher McLeod, eds. *Sacred Natural Sites: Guidelines for Protected Area Managers*. Task Force on the Cultural and Spiritual Values of Protected Areas in Collaboration with UNESCO's Man and Biosphere Programme. Best Practice Protected Area Guidelines Series No. 16, edited by Peter Valentine. [http://cmsdata.iucn.org/downloads/pa\\_guidelines\\_016\\_sacred\\_natural\\_sites.pdf](http://cmsdata.iucn.org/downloads/pa_guidelines_016_sacred_natural_sites.pdf) (2008; accessed 10 August 2013).

World Archaeological Congress. *World Archaeological Congress Codes of Ethics*. [http://www.worldarchaeologicalcongress.org/site/about\\_ethi.php](http://www.worldarchaeologicalcongress.org/site/about_ethi.php) (accessed 3 November 2013).

World Bank. *World Bank Operational Policy 4.11: Physical Cultural Resources*. <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,contentMDK:20970737~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html> (2006; accessed 4 November 2013).