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COMMISSION ON HUMAN RIGHTS  
Sub-Commission on the Promotion  
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Working Group on Indigenous Populations  
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**Item 5(b): Protection of the Heritage of Indigenous Peoples**

**Intervention by Les Malezer  
Foundation for Aboriginal and Islander Research Action**

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Mr Chairman, we would like to thank the efforts of Professor Yokota and the Saami Council in producing this progressive paper on the issue of protection of the heritage of Indigenous Peoples.

We take this opportunity to give our strongest support to this example of high utilisation of expertise from human rights experts and the authorities of Indigenous Peoples, and to the pooling of knowledge and ideas. We are certain this is the intended approach in the International Decade of the World's Indigenous Peoples' Program of Action which gives emphasis to our participation at all levels of management and decision-making.

There is a very strong link between the colonization of peoples, the assertion of racial superiority, and the exploitation of the cultural heritage of Indigenous Peoples. We could assert, for example, that doctrines of imperialism and international supremacy which preceded the second world war still survive intact today in the management of Indigenous Peoples' cultural heritage.

A common interpretation of Indigenous cultural heritage, as seen by States, might be fascination over the ancient arts, religious practices or manufactured relics. The living and dynamic nature of our cultures is not appreciated. This was expressed succinctly during this meeting by one participant who said our past is 'something we push ahead of ourselves, not drag behind'.

We are who we are, by defining who we have been.

Do we not seem to have the right, for example, to value our contemporary culture and history noting that western culture can develop also cultural concepts as living human treasures, ambassadors, or even knighthoods? I am trying to point out that for Indigenous Peoples, 'culture' is unfortunately more limited to those things which make us curiosities, rather than those things which make us peoples.

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Having said that, Mr Chairman, it is also important to point out that Indigenous Peoples carry most of the cultural diversity in the world, such as over 90% of the world's languages. Indigenous Peoples, according to UNESCO, hold a significant place in the planetary cultural landscape and are representative of cultural diversity. Indigenous Peoples personify a global vision of the world and of humankind that continues to be intimately linked to nature and the earth to which we all belong.

Western definition and control of cultural heritage also leads to conflicts. As we try and gather the ancestral remains of our Aboriginal Peoples from the museums of the United Kingdom we are trapped in idiotic debate over scientific interest and propriety interest. Three years after starting a government review over the repatriation of our ancestral remains the United Kingdom is still undecided on policy and law. They are concerned that if they give Indigenous remains back to Indigenous Peoples they will have to return the Elgin Marbles back to the Greek peoples, or return their Egyptian treasures. They have now made a stupid arrangement with the Australian Government to remove Indigenous Peoples from any responsibility or negotiations about our ancestral remains.

Why is the Australian Government sponsoring the Aboriginal Art collection outside (for which we thank them very much) yet refusing to assist Aboriginal people to attend this Working Group meeting, not attending the meeting themselves, and refusing to give contributions to the Voluntary Fund. Is this not imperialism at its highest? Who gets to display our culture?

Mr Chairperson, I end my general statements by pointing out the national legislation to protect Aboriginal cultural heritage is the product of the mining and extractive industries. The most important role of the national laws, in Australia, are not to protect our rights but to ensure that our interests do not prevent mining or extractive industry on our lands, waters and sacred sites. One of the strongest methods of control is that the government defines who are the traditional custodians, what is 'heritage' and what importance or significance that heritage holds.

We turn our attention to the recommendations in the expert paper and strongly advocate the recommendations, especially in Para 31, which proposes that the guidelines be developed in the form of a legal instrument. To this purpose we reiterate our support for the 1995 report by the Special Rapporteur for the protection of the heritage of Indigenous Peoples (E/CN.4/Sub.2/1995/26). The report has languished for nine years without further action, yet almost all the information remains relevant today. The only change, as we note, is that WIPO now accepts a role in the protection of Indigenous cultural heritage, for which we are grateful and encouraged.

The justification for an international binding instrument is the continuing procrastination by States over Indigenous rights of ownership and control, and definitions of Indigenous heritage. For thirty years our organization has been advocating regional and national heritage legislation in Australia. We have managed to influence six laws, three at the national level (in 1985, 1993, 1998) and two at the regional level (in 1984 and 2004), but still cannot accept these laws meet more than the most basic principles set out in the Special Rapporteur's 1995 report.

It is a human rights issue, that Indigenous Peoples be able to end the ongoing exploitation and loss and destruction of our cultural heritage. We hope that all Indigenous delegates to this session will, at the minimum, support timely development and implementation of an international instrument for our heritage protection.

**We conclude, Mr Chairman, but confirming our support for the working paper and its recommendations,** and again thanking Mr Yokota and the Saami Council for their presentation of the issues. Thank you.