Macedonia: Cultural Right or Cultural Appropriation? By LARRY REIMER*

The dispute between Greece and the Former Yugoslav Republic of Macedonia, with respect to the use of the name Macedonia and the Vergina Sun symbol, serves to highlight lingering issues surrounding the status of culture in international law. This paper represents, in part, a search for regimes with which to make cultural disputes legally intelligible. Setting aside the fruitless historical debates, the author characterizes Macedonia's position as a claim to cultural identity in international law and evaluates this claim within the framework of self-determination, human rights, and peoples' rights. Conversely, Greece's position is characterized as a claim of cultural protection, and is considered under the guise of cultural property law, international intellectual property law and cultural "appropriation," as voiced by indigenous populations. In the end, the Macedonian argument appears almost intuitive, while Greece's claim of a proprietary-type interest in the name and symbol seems to be beyond the scope of both international law and workable international policy.

Le conflit contemporain entre la Grece et l'ancien Republique yougoslave de Macedoine en ce qui concerne l'emploi du nom Macedoine et le symbole du soleil Vergina, sert Á souligner des questions de droit internationale non rÊsolues Á propos du statut lÊgal de la culture. Ce travail reprÊsente, en partie, la recherche pour un rÊgime qui rend les conflits culturels intelligibles. Les dÊbats historiques inutiles de cÆtÊ, l'auteur caractÊrise la position de la MacÊdoine comme demande d'identitÊ culturelle et l'Êvalue sous les aspets de l'auto-determination, le droits humaines, et les droits des peuples. RÊciproquement, la position de la GrÉce est caractÊrisÊ comme demande de la protection culturelle, et est considÊrÊ dans le contexte de la droit des biens culturels, la droit internationale des biens intellectuels, et "l'appropriation culturelle", comme demande surtout exprimÊe par les peuples autochtones. En fin, la demande de la MacÊdoine paraÏt presque intuitive, bien que la demande de la GrÉce d'avoir un intËret materiel dans le nom et le symbole semble Ëtre hors de la portÊe de la loi internationale et contraire Á une politique internationale rÊalisable.

"What's in a name?" Shakespeare, Romeo and Juliet, 2.ii.43

The ongoing controversy between Greece and the Former Yugoslav Republic of Macedonia over the latter's wish to be recognized by a name which allegedly remains a Greek designation, stands as one of the world's more curious conflicts. After breaking off from a disintegrating Yugoslavia with aspirations to achieve full, independent statehood, the would-be Macedonia has experienced considerable difficulty in obtaining international recognition. By objecting to a name which it says remains for the exclusive use of its own northernmost province and amounts to an aggressive claim over Greek territory and an unwarranted theft of Greek national and cultural heritage, Greece has lobbied internationally in the hopes of forcing its young neighbour to reconsider the name Macedonia, along with its flag and certain constitutional provisions.

While perhaps a strange and unnecessary political debate in the eyes of the international community, questions which surround the controversy are nonetheless rather interesting when seen through the lens of international law. Who, for example, owns the name Macedonia? This is a type of question with which international law, to date, has had great difficulty. Although concerns over forms of "cultural appropriation" have recently been voiced by members of the world's indigenous populations, the dispute over the name Macedonia has brought these concerns over the control of cultural intangibles to a new, interstate level. The purpose of this comment is simply to attempt a preliminary exploration of legal structures which might be relevant in addressing the issue of collective interests in cultural intangibles, or "cultural intellectual property," on the international level.

The scope of peoples' cultural rights is unfortunately a manifestly unclear area of international law, and one is ever-conscious that in proposing legal categories which may accommodate these perceived needs one is perhaps running when one ought merely to walk. As yet, international law provides few quick-fix

remedies for disputes between peoples or states. Nevertheless, I press onward and suggest that rights to culture, broadly stated, are bound up with desires for expression of identity or notions of property and preservation of heritage. Legal regimes such as those of self-determination, human rights and peoples' rights provide some justifications for a Macedonian nation seeking to express its cultural identity internationally. Correspondingly, existing cultural property law and international intellectual property law provide frameworks for evaluation of Greek national heritage claims. Admittedly, no current legal category presents immediate or complete answers. The current controversy, ironically, has served in the case of Macedonia to question what was always assumed (i.e. the right to call one's collective self what one wished), and in the case of Greece, to ask new questions hitherto unknown to law (i.e. involving the exclusive control of history and heritage). While the conflict may well be an odd interstate irritation requiring quick resolution, it is hoped that the ensuing debate might be put to constructive use by providing frameworks for and eventual clarification of the content of rights and duties relating to culture in international law.

Current Events

As is no doubt customary, the facts, factors, and forces involved in the current Greek/Macedonian controversy are complex and likely only superficially evident at this time. A brief highlight of recent events must then suffice to establish the content of the dispute at hand.

In the final months of 1991, the Republic of Macedonia took steps to formalize its detachment from Yugoslavia and achieve sovereign and independent statehood. Buttressed by seventy-two per cent support in a national referendum, and the passage of a Constitutional Act based on principles of parliamentary democracy, the government of the Republic of Macedonia formally requested international recognition in December, 1991.1 Recognition was, however, neither immediate nor automatic, but was contingent (as was the earlier request) on processes established by the European Community.2 On the 11th of January 1992, the Conference on Yugoslavia Arbitration Commission, established by the European Council, declared that, after recent amendments to the Macedonian constitution which ensured respect for other states' territory and sovereignty, the Republic of Macedonia satisfied the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union3 and the Declaration on Yugoslavia.4 Accordingly, the Commission declared that, given the Republic's renunciation of all territorial claims, "the use of the name Macedonia cannot therefore imply any territorial claim against another State . . ."5

Despite the Arbitration Commission's recommendation, recognition was slow in coming. A European Community member since 1981, Greece consistently vetoed any Council attempt to recognize the state, alleging that any use of the name Macedonia intimated territorial ambitions towards Greece's northern province of the same name and moreover amounted to cultural theft. In June 1992, the European Council bowed to Greek demands, acknowledged its fellow member state's supreme national interest, and declared its willingness to recognize the Republic only under a name which did not include the term Macedonia.6 Not surprisingly, Macedonia refused the European invitation7 and prepared to sit out an oil blockade engineered by Greece after allegations of sanction-busting leakage through the Republic into Serbia.

The year 1993 brought with it some positive news for Macedonia, a nation still diplomatically anonymous and bearing with difficulty UN sanctions against Serbia, formerly Macedonia's largest trading partner. After the matter was referred to the United Nations, the Security Council unanimously recommended that the state be admitted to membership in the United Nations as "the former Yugoslav Republic of Macedonia" (FYROM) pending the settlement of the dispute.8 Recognition by the International Monetary Fund and European financial sources followed.

Domestically, the Greek government nevertheless still responded to popular concern over what was termed the "Skopje" issue (in reference to the capital of the FYROM). Human Rights Watch/Helsinki reports that throughout the summer of 1993, freedom of expression was restricted for ethnic Macedonians in Greece's northern province and some Macedonian rights activists were prosecuted and convicted for peaceful expression of their views.9 Moreover, in October of that year the Socialist party under the leadership of Andreas Papandreou regained control of the Greek government and immediately took a

hardline stance on the Macedonia question despite the assumption of diplomatic relations with Macedonia by six European Council members.10

The events of 1994 did not serve to bring the matter significantly near conclusion. On February 16, perhaps in reaction to the United States' recognition of the Republic, as well as to domestic politics, Greece blockaded Macedonia by refusing it use of its port at Thessaloniki. Angered by Greece's embargo, the European Commission has initiated legal proceedings in the European Court of Justice. Although the Court refused a request for a temporary injunction in June of 1994 on the grounds that while the embargo hindered the movement of goods in Europe, it did not represent serious damage to the European Community, the final decision on the legality of the Greek blockade of Macedonia is still pending. Meanwhile, American peacekeeping troops have been sent under the auspices of the UN to monitor Macedonia's Serbian border in light of fears that the continuing violence in the former Yugoslavia will spill over into the Republic. Although Greece and Macedonia continue to talk, the impasse continues.

The Positions

While common wisdom has suggested that a good name is more desirable than great riches, one is perhaps somewhat surprised that Macedonia has embraced the concept so wholeheartedly. A landlocked nation of just over two million inhabitants, facing Greek sanctions on the south and a closed Serbian border to the north, and geographically located at the crossroads of rival regional nationalisms without a standing army, Macedonia is paying a price for its name and its existence.

Macedonia has adopted a stubborn position with regard to the name and historical symbol issue, bred of a desire to maintain an identity in the face of its Balkan neighbours. Living for centuries in the ancient region of Macedonia and residing in that part of the ancient territory which remains unclaimed, they are nothing if not Macedonian, they contend. In exercising their right to self-determination and independence they suggest that they, as a people, cannot identify themselves as anything other than Macedonians. The majority of the population of the state consider themselves ethnically Macedonian and speak a Macedonian language.

It is the existence of minorities in Macedonia, however, which has made the Republic even more disinclined to compromise with Greece on the name. Compound names such as Slav Macedonia are considered unacceptable in that they would fan the flames of ethnic tension. Minorities in Macedonia include a large ethnic Albanian population (twenty to thirty per cent), Bulgarian-leaning factions and formerly-privileged and newly-insecure Serbs. Moreover, and related to this, the government argues that the citizens of the country decided in the September 1991 referendum for an independent and sovereign state under the name Macedonia, and any powers-that-be, domestic or international, must respect this fact.

Greece's position on Macedonia is somewhat more clearly articulated. In short, Greece objects to the use of the name Macedonia, the use of the Vergina Sun symbol on the FYROM's flag (a 16-rayed gold star associated with the ancient Royal Dynasty of Macedonia and found on Philip II's tomb), certain Macedonian constitutional provisions, and what it considers continuous hostile and irredentist propaganda directed towards its own northern province which in itself compromises approximately one-half of what was Ancient Macedonian territory. Greece sees this behaviour as both a threat to its own territorial integrity and an appropriation of its history and culture.

The issue of territorial integrity is one with which international bodies are significantly acquainted, and it is not surprising that much of the dialogue and debate has centered around this more tangible concern. While both the UN Security Council and European Community have stopped short of declaring the name Macedonia in itself a threat to peace and security or "good-neighbourly" relations,11 Macedonia has continuously been required to give assurances that it considers its frontiers inviolable, has renounced any territorial claims against its neighbours, and has confirmed that it will refrain from hostile propaganda and meddling in the internal affairs of other states.12 Still smarting from Yugoslav incursions into northern Greece during Greece's civil war period in the 1940s, Greece sees the use of the name and flag as symbols

of continuing expansionist visions and considers discussions of a separate Macedonian identity to be expansionist propaganda. Moreover, constitutional references to traditions and decisions of earlier Macedonian political bodies and similar references to ethnic Macedonians in neighbouring countries, are considered to be further indications of continual yearnings for a super-Macedonian state.13 Greece, like its rival, has objected to proposals for the use of various compound names. The names Northern Macedonia, New Macedonia and Vardar Macedonia all tend to imply recognition of a greater Macedonia and have fuelled Greek concerns over further irredentist claims.

While it is thus prudent to keep in mind that Greece's objections to the name Macedonia must be seen in the context of a Balkan region which has historically experienced its own share of armed strife and territorial ambitions, considerations of whether the existence of a name, symbol, or vaguely-worded constitutional provision might be rightfully deemed threats to another state's territorial integrity are beyond the scope of this paper.14 In fact, as I will allude to shortly, one wonders whether these considerations can ever be dealt with jurisprudentially given the political and historical speculation that is involved. To be sure, relevant legal frameworks do exist. Article 2(4) of the UN Charter and the Declaration on Friendly Relations and Co-operation among States formally outlaw the use of force against other states, and the UN General Assembly's Definition of Aggression attempts to provide guidelines for the identification of prohibited activities.15 However, Article 39 of the UN Charter and international practice has left final determination of the existence of any act of aggression or threat to peace to the discretion of the Security Council. The question of whether Greece's territorial concerns are well-founded is thus perhaps destined to remain within the realm of political discourse.16

The second objection of Greece, and that which is central to this paper, is the concern that the FYROM has appropriated Greece's history and culture through the use of the name Macedonia and the Vergina Sun symbol. It is a concern less tangible internationally than that of territorial integrity and has consequently garnered less serious consideration. Greece contends that the modern FYROM has no historical claim on either the name Macedonia or the Vergina Sun symbol. Arguing that modern Macedonians are little more than an ethnic mish-mash of Albanians, Bulgarians and whatever other power has made incursions into the region, Greece considers Macedonia to be an artificially created state, and Macedonian identity to be a fiction created by propaganda and anti-Greek sentiment. Moreover, domestically Greece denies the existence of a Macedonian ethnic minority in its northern province, recognizing at best the presence of small scattered groups of Slavophone Greeks in the region.17 The use of what is thought to be a historically Greek name and symbol by an "illegitimate" group strikes at the heart of Greek cultural pride. Alternatively, even if the Slavs have been present in Macedonia since the 7th century A.D., as is claimed, the Greeks argue that the modern Macedonians can make no similar claim on names and symbols which flourished centuries before Christ.

Appeals to History

It is not so surprising that much of the popular, if not diplomatic, dialogue in the past years' debate has centered around competing interpretations of history---or to put it another way, the mutual assertions of national myths. In the absence of a clear legal framework, recourse must be made to persuasive moral or historical argument to sway political positions. I do not intend to engage in any evaluation of the merits of either party's claims, however. While recognizing that legal discourse and evaluation is generally a backward-looking process, I admit to being rather suspicious of historical evidence as it relates to culture or peoples' rights. In such situations, what people perceive their history to be may well be more important---and certainly more easily discerned---than any attempt to establish actual historical facts or was eigentlich gewesen ist.18

Of the two countries, it seems Greece is more reliant on arguments for the accuracy of the historical record. In attempting to establish exclusive control over cultural forms, Greece forces itself to prove historical continuity and significant historical links to the cultural symbols. Macedonians, on the other hand, need only to give current expression to their own story or identity. In the absence of legal regimes, these considerations alone may well give Macedonia the edge it needs to rebuff Greek assertions. Although it is not necessary to solve the grand question of the relationship of history to that of cultural

identity at this time, attention ought to be paid to how legal regimes use and understand history when faced with peoples' claims to cultural rights.

International Law and Peoples' Rights to Culture

Evidently, moral and historical claims to rights relating to culture are deserving of international attention. The following questions, however, remain: To what extent is international law able to accommodate these claims and restate them in such a way as to allow any enforcement mechanisms to be effective? To what extent does international law provide protection for a people wishing to call themselves Macedonians? Or conversely, to what extent does international law protect Greeks from the unwarranted appropriation of their culture?

Little has been written on rights relating to culture in international law. There is general confusion not only as to the scope of so-called cultural rights but as to the definition of culture itself. For the purposes of this comment, peoples' rights to culture may be thought of in two ways: first, rights relating to the expression of identity and, second, rights relating to the preservation and protection of heritage or property.19 Macedonia's claims will be considered as claims to rights in cultural expression while Greece's position will be dealt with under the model of heritage protection rights. This paper's primary concern is the question of how cultural intangibles, like names, stories and symbols, might relate to legal regimes within these categories.

Cultural Identity: Macedonia

When considering the FYROM's ability to name itself Macedonia, one finds oneself questioning that which has always been assumed---the right of a nation to call itself what it wants. Traditionally, states, as honourary individuals on the international stage, have benefitted from what seems to be a generally understood right to freedom of expression. This ability for a state to do and say what it desires comes not as an expansion of much newer human rights law, but rather from basic notions of state sovereignty and the equality of states. States' abilities to express or act seem limited only by newer, and as yet fairly narrow, principles such as the prohibition on the use of force across frontiers and on other acts which constitute violations of another's territorial integrity.20 As noted above, I do not wish to deal at this point with the issue of whether the name Macedonia does in fact represent a threat or actual violation of Greece's territorial integrity. I am content, at the moment, to assume that this is not the case and hope to focus rather on whether, all things being equal, the FYROM may be legally justified in selecting the designation Macedonia. Moreover, any Macedonian justification based on state sovereignty assumes that Macedonia is in fact a state. While membership in the UN and a gradual but significant increase in the number of states recognizing the new entity speaks to the likelihood of Macedonian statehood, in 1991 this was certainly less clear. In the absence of full statehood then, what legal justification do nations, such as what is now known as the FYROM, have in selecting a name such as Macedonia? I propose to deal with this problem through discussions of self-determination, cultural rights law proper, and peoples' rights.

While by now the principle of self-determination is well enshrined in international law,21 it is by no means clear that the international law principle of self-determination inherently contains cultural privileges. Traditionally, self-determination has been considered a political right---a means to potential jurisdiction and control over a wider scope of affairs, rather than an end in itself. Often construed narrowly as applicable only to traditional decolonization, the right of self-determination has been deemed to give peoples the choice to become independent, to integrate into the colonial country in some way, shape or form, or to integrate similarly into another state.22

Many, however, do not consider the concept of self-determination frozen under the political/decolonization model. The International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights as well as the Declaration on Friendly Relations and Co-operation among States all explicitly refer to self-determination as a right available to "all peoples."23 It is clear that if self-determination is to be a relevant principle in this post-colonial era, it cannot be limited by exclusive reference to European colonial conquests of the past four centuries. Moreover, these documents'

reference to cultural development under the banner of self-determination gives rise to renewed questions as to the scope of the right. Similarly worded to the others, the International Covenant of Economic, Social and Cultural Rights states the following:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.24

It seems that implicit at least within self-determination lies an acknowledgement that peoples, at the minimum, may freely pursue their own forms of culture and identity. Moreover, it would follow that it is for these peoples to determine the content of their culture or identity, including their collective name. Thus, for Macedonia, Judge Dillard's famous, albeit somewhat cryptic, words in Western Sahara might bring comfort:

It is for the people to determine the destiny of the territory and not the territory the destiny of the people.25

As a corollary to this, one might propose that it is for a people to determine their history or collective myths and not accepted historical scholarship the identity of the people. While admittedly an exclusive focus on contemporary perceptions and reality can lead to its own dangers,26 outsiders' selective attempts to determine what is and what is not part of a people's "authentic" culture or national heritage once again highlight the difficulties of using "objective" historical "evidence" in the legal context.

It is thus for the people themselves to express and shape their identity. In short, it is for the people to determine who they are. This cultural consciousness may then give rise to political consciousness, as a people seeks to create institutions which reflect its distinctive character. In nation to nation or "external self-determination" situations like that of the FYROM and Greece---where jurisdiction or territorial concessions are not involved---it is quite possible that the legal principle of self-determination would provide justification for the use of the name Macedonia as an expression of cultural and state identity.

Despite their enshrinement in an important international covenant,27 the scope of cultural rights proper suffers from an indeterminacy which makes their relevance to the Macedonia issue rather dubious. Creatures of human rights law, cultural rights as proclaimed in the International Covenant on Economic, Social and Cultural Rights refers generally to the rights of individuals to take part in their own culture. Little attention has been paid to these individual rights beyond their bare assertion. The International Covenant on Civil and Political Rights expands on the notion of individual rights by making reference to minority groups within states, but it again centers on participation and association. Article 27 declares that

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their culture, to profess and practice their own religion, or to use their own language.28

Clearly, international human rights law's exclusive focus on the individual as the subject of its protection provides limited support to a group wishing to assert rights to a name or symbol.

Recent developments in international human rights law might, however, represent a new movement in the protection of group identity. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities adopted by the UN Commission on Human Rights in 1992 would require states to "protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories, and . . . encourage conditions for the promotion of that identity."29 While explicitly intended to deal with minority groups within state structures, the draft's applicability to the Macedonia issue lies in its recognition that cultural identity might be protected within the traditional human rights framework.

Far more relevant to the Macedonia question however is dialogue surrounding what has been termed the third generation of international human rights, namely "collective rights," "peoples' rights," or "Community-Oriented Rights."30 Third generation rights seem both a recognition of existing rights'

collective components or implications and an attempt to reformulate individual and minority rights into rights of peoples. Hence, the principle of self-determination discussed above has been considered a third generation human right, as might the right of minorities to cultural identity proposed by the UN Commission on Human Rights.

What makes talk of third generation rights interesting in international law is both their capacity to give legal rights to entities previously not recognized as subjects of international law and the potential content of these rights. If "all peoples" now have the right to self-determination, might not minorities and other groups have a right to create and maintain their cultural identity? The potential use of collective rights paradigms is virtually endless, although admittedly, discussions of cultural rights under this framework have remained on the fringes of legal discourse. Having said that, however, a proposal which would include a peoples' or a community's right to create and develop its own culture is hardly a radical concept. Its existence is almost intuitive; an explicit formulation does not seem far-fetched. The right of the people in the FYROM to declare themselves Macedonian in the 1991 national referendum seems under existing legal frameworks perhaps not so controversial.

Cultural Protection: Greece

Having argued in favour of a group's ability to create and express a cultural identity, I now turn to the extent a group may protect this cultural expression internationally. Might Greece, whose people also consider the name Macedonia as well as the ancient Vergina Sun symbol to be part of their cultural identity, prevent others from using the same?

While Macedonia's claim to use seems almost intuitive, Greece's argument that others may not use the name and symbol is not yet known to international law. Considering the name Macedonia and the Vergina Sun symbol to be its own form of cultural intellectual property, Greece seeks to assert a type of cop yright or trademark protection or, in the alternative, a personal or proprietary interest akin to various domestic formulations of moral rights law which protect an author's paternity and the integrity of a copyrightable work from mutilations or use by others.31 Greece's claims must then be evaluated through a consideration of what cultural property and international intellectual property rights currently exist in international law.

There is a significant body of international law dealing with cultural property.32 To date, however, this law has concerned itself exclusively with tangible cultural objects or artifacts and remains deaf to cultural intangibles such as names or symbols. A creature of discourse surrounding the laws of war, the Convention for the Protection of Cultural Property in the Event of Armed Conflict33 of 1954 was the "first universal convention to deal solely with the protection of cultural property."34 Convinced that damage to peoples' cultural property meant "damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world," the contracting parties pledged to impose sanctions on "those persons, of whatever nationality, who commit or order to be committed a breach of the . . . Convention."35 The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property36 of 1970 represented a further development to cultural property law. Seeking to prevent "illicit" trade in cultural artifacts and objects, the parties agreed to oppose the "impoverishment of the cultural heritage" of a nation through illegal trade.37 Illegality was to be determined by individual source nations, while once again, the treaty by definition restricted its contemplation of cultural property to that of tangible objects.

Much has been made in the ensuing debate over the interplay between competing notions of cultural universalism and cultural nationalism in international cultural property law.38 In the spirit of the Common Heritage of Mankind [sic] "principle" in international law, cultural universalism sees the protection of cultural property to be ultimately for the benefit of all humankind. Heralding international cultural awareness and interplay as a human good, cultural universalists are particularly impressed by the information that objects and artifacts may provide in regards to particular cultures. Preservation, a concern for authenticity or truth, and easy access are thus seen to be policy goals.39 As a consequence, cultural universalists tend to be somewhat less concerned over the actual location of cultural objects. Placement in a foreign museum which provides for greater preservation and study of an object, for

example, would thus be considered by cultural universalists as a more favourable alternative to a cultural artifact's domestic residence. Cultural nationalists, on the other hand, stress the ongoing importance and relationship of cultural objects to the identity and communal flourishing of peoples. These objects are thus best kept physically within their originating nations. Seeking to identify objects which might qualify as "property for grouphood" and thus, it is proposed, be subject to a regime of "absolute inalienability," cultural nationalists look to objects which are said to be sufficiently bound up with the collective personality of the people. Relevant factors would include the length of time of "ownership," history, the object's contribution to notions of continuity and group pride, as well as the original artist, author, or sculptor's intended use for the object.40

Neither position, however, affords much support to Greek concerns with respect to the use of Macedonia or the Vergina Sun. While cultural universalism considers copying a pollution of truth or authenticity of information, and its additional characteristic focus on the market value of tradeable objects implies the existence of potentially protectable cultural "resources," its roots in Common Heritage of Mankind discourse is obviously quite incompatible with Greek wishes to retain sole control over the alleged property. Moreover, cultural nationalism's push for inalienability rests to a large extent on the sanctity of communal objects which cannot be duplicated effectively or are not possessed in sufficient physical quantity. Neither approach lends itself well to the retention or protection of intangible property.

International intellectual property law, by contrast, has engaged the problem of cultural intangibles to at least a small degree. The Paris Convention for the Protection of Industrial Property and its subsequent revisions41 represents one of the major universal intellectual property agreements. Both Greece and Yugoslavia were considered parties to this convention at the start of the recent Balkan armed conflict. Under the terms of the agreement, nationals of Paris Union countries are entitled to the same intellectual property protection as domestic nationals in the respective party states. Article 6 of the Paris Convention deals with the registration of trademarks; Article 6ter lists prohibitions. Under Article 6ter, countries of the Union agree to invalidate applications for trademark registration which make unauthorized use of "armorial bearings, flags, and other State emblems, of the countries of the Union." Parties to the Convention furthermore agree to communicate, through the International Bureau, "the list of State emblems . . . which they desire . . . to place wholly or within certain limits under the protection of this Article . . . " Domestic Greek legislation includes provisions prohibiting the use of "emblems and insignia of the Hellenic State, Royal emblems, emblems of any authority, religious symbols or their names or devices . . . "42

Although international law thus recognizes the need for international protection of state and national symbols, its narrow application to the market context and its intent to curtail the activities of individuals rather than the state parties themselves, makes the trademark protection as it currently stands inadequate for Greece's purposes.

What then are the prospects for international intellectual property protection for cultural intangibles? So far, little has been accomplished in this field. Traditional notions of originality and the single author/proprietor continue to permeate legal thought.43 Moreover, establishing collective rights to traditional stories, artistic styles and the like flies in the face of pressures to expand the public domain to allow individual expression to flourish in the marketplace of ideas. The most vocal supporters of collective rights in intangibles have been aboriginal groups. These peoples seek to control what they consider to be both a blatant and systemic pirating of their symbols, images, ceremonies, designs, methods, stories, and art by non-aboriginal people in the commercial, literary and artistic realms.44 Success has been limited. Preliminary work as represented in a Draft Declaration on the Rights of Indigenous Peoples points to an attempt to declare internationally that indigenous peoples have "the right to special measures to protect, as intellectual property . . . cultural manifestations, including . . . oral traditions, literatures, designs and visual and performing arts."45 It is, however, unknown how such declarations will ultimately fare in the UN General Assembly.

It appears that Greece's attempt to control as intangible cultural property the use of the designation Macedonia and the Vergina Sun symbol currently has little legal foundation. Absent an agreement, it is

difficult to see how a state's attempts to enforce extra-territorial jurisdiction over other states' or peoples' use of national symbols is legally possible. A final question remains: Is it desirable?

An Evaluation

As mentioned above, from a strictly historical point of view, attempting to objectively determine cultural identity or integral cultural symbols is a questionable enterprise at best. History, the pundits tell us, is all too often written by winners. The relevance of history in the determination of third generation rights moreover remains a matter of debate, particularly with respect to self-determination. Whether such principles are to be seen as remedies for past injustices or expressions of the needs of current and future populations is a matter which requires more consideration. As a result, a project intending to afford nation states with abilities to control the use of their cultural intangibles seems doomed to fail by way of definitional uncertainty.

The project seems equally difficult when looked at from an anthropological point of view. Scholars question whether concepts of possession (and perhaps even of identity) are appropriate in the cultural context. Nations and cultures, they say, "are not bounded, continuous over time, or internally homogeneous." Cultures and groups are, rather, "continually reconstructed, realigned, and reimagined." To argue that cultural property bears witness to a present group, "is to take a present-day understanding of one's collective identity and to naturalize it as if it were an objectively and continuously existent thing."46 As Richard Handler maintains:

[T]he culture that present-day groups claim as belonging to them from time immemorial, embodied in historically particular pieces of cultural property, is likewise the product of a current interpretation and not an objective thing that has possessed a continuous meaning and identity over time.47

One does not wish to engage in a debate over whether, in this particular case, the name and symbol in question might be considered representative of a sufficiently static Greek or Macedonian culture. The anthropological critique suggests rather that, as a general policy, international legal protection of cultural intangibles may well be an illegitimate enterprise.

Finally, the nature of international law itself provides an impediment to such a regime. With binding dispute resolution between states remaining in most cases a consensual operation, it is difficult to see how historical and political claims of this nature could be effectively enforced. While the current status quo with regards to Macedonia appears an all-too-arbitrary exercise in power politics, it is as yet uncertain whether, in this case at least, a reasonable compromise cannot be achieved. Where a resort to the Rule of Law may be most desired is in similar situations where diplomatic dialogue suffers from such a power imbalance as to be completely ineffectual.

Conclusion

The conflict between Greece and Macedonia remains an unfortunate international dispute in a region that needs no further cause for unrest. The realities of politics and power have left it a debate characterized by recourse to the legends of days gone by---a battle of the historians. The brief attempt above at a legal analysis of the situation lends support to a prediction that the Greek-Macedonian conflict will remain a political war of attrition, with a workable interim compromise perhaps struck in the meantime on issues relating to the constitution and acceptable compound names. While Macedonia's position intuitively seems legally sound, Greece's desire to claim a proprietary-type interest in the name as well as in the Vergina Sun symbol seems beyond the scope of current international law and contrary to workable international policy. It is unlikely that Greece would be willing to allow a legal determination of the case's merits in the absence of a declaration by the UN Security Council that non-Greek use of the name Macedonia amounts to a threat to international peace and security.

Nevertheless, it is hoped that the debate will serve to promote constructive discussion of the content and scope of rights relating to culture in international law. Attempts to clarify what is meant by "peoples' rights" and by "peoples' rights to culture" are certainly welcome in an area of law which suffers from a

serious lack of attention.

Endnotes

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1.See generally, Republic of Macedonia, Independence through Peaceful Self-Determination: Documents (Skopje: 1992) [hereinafter Peaceful Self-Determination].

2.European Community, "Declaration on Yugoslavia and on the Guidelines on the Recognition of New States" (1991) 31 I.L.M. 1485.

3.Ibid. at 1486.

4.Ibid. at 1485. The Declaration on Yugoslavia included the requirement that a Yugoslav Republic "commit itself, prior to recognition, to adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighbouring Community State and that it will conduct no hostile propaganda activities versus a neighbouring Community State, including the use of a denomination which implies territorial claims."

5."Conference on Yugoslavia Arbitration Commission, Opinion No. 6" (1992) 31 I.L.M. 1507 at 1511 [hereinafter Conference on Yugoslavia].

6."European Council declaration on Former Yugoslavia (Lisbon, June 27, 1992)" in Peaceful Self-Determination, supra note 1 at 47. EC support for Greece, it seems, was rather soft, however. (Some suggest that the price for this support included Greece's cooperation in other foreign policy areas). For a colourful example of European journalistic consternation at Greece's policies in general, see "The Sick Man of Europe" The Economist (9 May 1992) 55.

7."Declaration of the President of the Assembly of the Republic of Macedonia (July 3, 1992)" in Peaceful Self-Determination, supra note 1 at 49.

8.UN SCOR, 48th Year, 3196th Mtg., UN Doc. S/RES/817 (1993).

9.Human Rights Watch/Helsinki, Denying Ethnic Identity: The Macedonians of Greece (New York: Human Rights Watch, 1994) at 4 [hereinafter Denying Ethnic Identity].

10.Great Britain, France, Germany, Italy, the Netherlands and Denmark joined about a dozen other nations who had set up diplomatic relations with Macedonia. Journalistic reports suggest that by December 1993 over 40 countries had recognized the Republic.

11.Peaceful Self-Determination, supra note 8.

12.Dialogue between Macedonia and the Arbitration Commission stands as an example of requirements that Macedonia make formal assurances: Conference on Yugoslavia, supra note 5. Journalistic coverage of the issue points to repeated informal assurances by Macedonia.

13.See, especially, the Hellenic Foundation for Defense and Foreign Policy, Memorandum of Greece Concerning the Application of the Former Yugoslav Republic of Macedonia for Admission to the United Nations (New York: ELIAMEP, 1993).

14.Similarly beyond the scope of this paper rests the question of whether Greece's rationale that the existence of an independent state named Macedonia would contribute to friction, tension and instability in the Balkans is more a testament to its own foreign policy than that of any other nation.

15.Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, UNGA Res. 2625 (XXV), UN GAOR, 25th Sess., Supp. No. 28 at 121, UN Doc. A/8028 (1971), adopted by consensus on October 24, 1970 [hereinafter Declaration on Friendly Relations]; Definition of Aggression, UNGA Res. 3314 (XXIX), UN GAOR, 29th Sess., Supp. No. 31 at 142, UN Doc. A/9631 (1974) [hereinafter Definition of Aggression].

16.Although, to be sure, a scholarly, legal analysis of the potential "territorial" implications of the Macedonia dispute would be a most welcome enterprise. While I have expressed skepticism as to international law's ability to deal effectively with such a politically charged aspect of the dispute, I do recognize that deliberate acts affecting a group's cultural and territorial self-awareness might well merit scrutiny in light of international norms. This, however, I leave for future consideration.

17.See Denying Ethnic Identity, supra note 9. For a scholarly evaluation which, in effect, calls into question some of Greece's claims regarding Macedonian identity, see A. Rossos, "The British Foreign Office and Macedonian National Identity, 1918--1941" (1994) 53 Slavic Rev. 369.

18.In reference to historian Leopold von Ranke's famous quest for "What really happened." Oft regarded as the father of modern historical scholarship, Ranke (1795--1886), rightly or wrongly, has been venerated as representative of modern trends towards