

BUENOS AIRES DRAFT CONVENTION ON THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE

The Committee [1] has prepared a Convention that provides basic protection beyond the territorial seas of coastal states for a very sensitive and precious heritage that is subject to growing threats of damage and destruction. A second purpose has been to help avoid and resolve jurisdictional issues involving underwater cultural heritage.

We were motivated by a conviction that both supporters and critics of a progressive development of the law share in a responsibility to devise the best means of avoiding further spoliation of the common heritage at sea. To do nothing is to fail, individually and collectively, to shoulder this responsibility.

To help ensure acceptability of the Convention, the Committee solicited views and suggestions from a broad range of persons and institutions. [2] Present and past expressions of opinion by particular States were taken into account primarily as a means of elaborating and amplifying particular points. Particular attention was paid to the 1982 United Nations Convention on the Law of the Sea and the 1992 European Convention on the Protection of the Archaeological Heritage (Revised).

Preamble

States party to the present Convention,

Acknowledging the importance of the underwater cultural heritage as an integral part of the cultural heritage of humanity and a particularly important element in the history of peoples, nations, and their relations with each other concerning their shared heritage;

Noting growing public interest in the underwater cultural heritage;

Perceiving that growing threats to the underwater cultural heritage include increasing construction activity, advanced technology that enhances identification of and access-to wreck, exploitation of marine resources, and commercialization of efforts to recover underwater cultural heritage;

Determining that the underwater cultural heritage may be threatened by irresponsible activity and that therefore cooperation among States, salvors, divers, their organizations, marine archaeologists, museums and other scientific institutions is essential for the protection of the underwater cultural heritage;

Considering that exploration, excavation, and protection of the underwater cultural heritage necessitates the application of special scientific methods and the use of suitable techniques and equipment as well as a high degree of professional specialization, all of which indicates a need for uniform governing criteria;

Recognizing that the underwater cultural heritage belongs to the common heritage of humanity, and that therefore responsibility for protecting it rests not only with the State or States most directly concerned with a particular activity affecting the heritage or having an historical or cultural link with it, but with all States and other subjects of international law;

Bearing in mind the need for more stringent supervision to prevent any clandestine excavation which, by destroying the environment surrounding underwater cultural heritage, would cause irremediable loss of its historical or scientific significance;

Realizing the need to codify and progressively develop the law in conformity with international rules and practice, including provisions in the 1982 United Nations Convention on the Law of the Sea;

Convinced that information and multidisciplinary education about the underwater cultural heritage, its historical significance, serious threats to it, and the need for responsible diving, deep-water exploration and other activity affecting the underwater cultural heritage, will enable the public to appreciate the importance of the underwater cultural heritage to humanity and the need to preserve it; and

Committed to improving the effectiveness of measures at international and national levels for the preservation in place or, if necessary for scientific or protective purposes, the careful removal of the heritage that may be found beyond the territorial sea;

Have agreed as follows:

Commentary

The Preamble to an international agreement is significant. According to the Vienna Convention on the Law of Treaties (Article 31(2)), it may be used as a contextual aid to interpretation. As the last paragraph of the Preamble

suggests, the best way of protecting the underwater cultural heritage is to keep it in place unless its removal is necessary for scientific or protective purposes. Thus, all efforts must be made to prevent unscientific excavation and retrieval of heritage. Other threats include industrial and construction activity, exploitation of marine resources and commercialization of efforts to recover underwater cultural heritage. These are matters that should be of concern to all States and other subjects of international law, not just those directly concerned with a particular activity. Threats to underwater cultural heritage also concern salvors, divers, their organizations, marine archaeologists, museums and other scientific institutions. The public must be educated and informed of these threats in order to appreciate the importance of the underwater cultural heritage to humanity and the need to preserve it as a component of the history of humanity. The Convention on Protection of the Underwater Cultural Heritage seeks to fulfil these objectives and to clarify and amplify pertinent provisions of the 1982 United Nations Convention on the Law of the Sea. Particular attention was paid to Articles 149 and 303 in that Convention. These provisions, inter alia, specifically recognize coastal state jurisdiction beyond the territorial sea and the general duty to protect underwater cultural heritage.

Article 1: Definitions

For the purposes of this Convention:

1. "Underwater cultural heritage" means all underwater traces of human existence including:
 - (a) sites, structures, buildings, artifacts and human remains, together with their archaeological and natural contexts; and
 - (b) wreck such as a vessel, aircraft, other vehicle or any part thereof, its cargo or other contents, together with its archaeological and natural context.
2. Underwater cultural heritage shall be deemed to have been abandoned":
 - (a) whenever technology would make exploration for research or recovery feasible but exploration for research or recovery has not been pursued by the owner of the heritage within 25 years after discovery of the technology; or
 - (b) whenever no technology would reasonably permit exploration for research or recovery and at least 50 years have elapsed since the

last assertion of interest by the owner in the underwater cultural heritage.

3. "Cultural heritage zone means all the area beyond the territorial sea of the State up to the outer limit of its continental shelf as defined in accordance with relevant rules and principles of international law.
4. "Charter" means the "Charter for the Protection and Management of the Underwater Cultural Heritage" prepared by the International Council for Monuments and Sites (ICOMOS) and annexed to this Convention.

Commentary

1. The definition of "underwater cultural heritage" is specific, unlike, for example, a more philosophical definition in the 1992 European Convention on the Protection of the Archaeological Heritage (Revised), Europ. T.S. No. 143. It is designed to make it easier for administrators and courts to decide if something is covered by the Convention or not. The cargo and other contents of the vessel are specifically stipulated because there have been disputes covering whether these were part of a shipwreck. Also included are sites, structures, buildings, artifacts, and human remains, together with their archaeological and natural contexts. This is likely to include all aspects of the underwater cultural heritage of significance to the history of humanity. The context in which objects are found is itself specified as part of the underwater cultural heritage. Context is one of the most essential aspects of the archaeological heritage in providing knowledge of life during a particular era.

2. The definition of "abandoned" is intended to stabilize expectations under the Convention by simplifying its scope. The legal concept of abandonment is elusive. Most jurisdictions take the view that there must be both abandonment in fact and the intention to abandon a vessel or its cargo. The latter requirement is particularly difficult, especially when the master and crew of a vessel have actually left it and the owner does nothing within a reasonable period of time to recover it. For example, in *Columbus-America Discovery Group v. Atlantic Mutual Insurance Co.*, 974 F.2d 450 (4th Cir. 1992), a federal appeals court in the United States upheld the 135-year-old

subrogated interests of insurance underwriters in a cargo of gold. The SS Central America sank in 1857 off the coast of South Carolina. On board was a shipment of gold from Californian merchants, bankers and express companies to New York banks. Following the loss, the insurance companies paid out under the policies and, under the doctrine of subrogation, became the owners of the gold that was eventually found in 1989. The lower court held that the claimants' failure to recover the gold for 130 years and destruction or loss of documentary evidence of their payments under the policies meant that they had abandoned the gold. The Court of Appeals remanded the action to the lower court with instructions to take account of the interests of the successor insurers. In November 1993 the lower court awarded 90% of the treasure to salvors and 10% to the insurance companies. N.Y. Times, Nov. 19, 1993, at A13.

Similarly, The Netherlands, as successor in title to all wrecks of vessels that belonged to the Dutch East India Company, claimed gold and silver coins from the wreck of the Akerendam, which was discovered off the coast of Norway in the 1970's. A negotiated settlement between Norway and the Netherlands awarded the latter 10 per cent of the coins. Although some scholarly writing has acknowledged the import of Dutch claims to such treasure, the Agreement noted in the Report between Australia and the Netherlands Concerning Old Dutch Shipwrecks 1972, Aus. T.S. No. 18, was careful not to enshrine any such claim of right. In view of the uncertain nature of the legal concept of abandonment and the effect this ambiguity would have on the scope of the Convention, its definition attempts to define abandonment with more precision but at the same time to preserve the reasonable rights of owners.

3. The Charter is intended to provide a set of criteria whereby States may judge whether activity in respect of the underwater cultural heritage has been, or will be, acceptable. In other words, if material has been excavated or retrieved, States will have a basis for determining whether it has been done in accordance with archaeologically acceptable standards. The Charter has been prepared by the International Committee for the Underwater Cultural Heritage established by the International Council for Monuments and Sites (ICOMOS). It is complementary to the "Charter for the Protection and

Management of the Archaeological Heritage" already produced by ICOMOS, but is modified to take account of the special features of underwater cultural heritage.

4. Drafting of the Convention involved much discussion of how the "cultural heritage zone" should be defined. Mr. Anderson disagreed with the concept of a cultural heritage zone and considered that the proposal, when read with Article 5, goes beyond the current state of international law as represented by the UN Convention on the Law of the Sea. Some argued that its breadth should be left to the State concerned; for example, the zone might be made co-extensive with the contiguous zone, continental shelf, 200-mile exclusive economic zone, a special 200-mile zone, or any combination of these. Others argued that a regime with multiple options of this sort would create too many problems of delimitation where States with opposing or adjacent coastlines have proclaimed or exercise different options. It was eventually agreed that the area should coincide with the continental shelf.

Article 2: Scope of the Convention

1. This Convention applies to underwater cultural heritage which has been lost or abandoned and is submerged underwater for at least 100 years. Any State Party may, however, protect underwater cultural heritage which has been submerged underwater for less than 100 years.
2. This Convention does not apply to any warship, military aircraft, naval auxiliary, or other vessels or aircraft owned or operated by a State and used for the time being only on government non-commercial service, or their contents.

Commentary

1. The Convention does not cover all underwater cultural heritage within the definition of Article 1(4). According to Article 2, the heritage must have been abandoned for at least 100 years beneath the sea. The 100-year qualification can be found in the domestic legislation and practice of many states. Of crucial importance is the date on which this period commences. It could be the date of creation of the object, but this would mean that some antique objects would qualify as soon as they sank. There is no

scientific basis for the 100-year rule. Some archaeologists work on material of more recent vintage. The best rationale for the rule is administrative convenience. It is an efficient means for separating out material which is more likely to be important from that which is less likely. The Convention does give States the option of extending its coverage to underwater cultural heritage which is less than 100 years old. Thus, a State could specify in its legislation any particular aspect of the heritage--for example, wrecks--that it wanted covered by a shorter time span.

2. The definition of "abandoned requires modification with respect to government owned or operated non-commercial maritime vessels or aircraft. The mere passage of time should not be interpreted to establish abandonment of such material. Many states resist any attempt to interfere with the sites of such material. For example, the first wreck protected under the Australian Historic Shipwrecks Act 1976 was a Japanese submarine sunk in action off Bathurst Island, parts of which a salvor had been planning to raise for scrap. Similarly, the United States has stated that:

... salvors should not presume that sunken U.S. warships have been abandoned by the United States. Permission must be granted from the United States to salvage sunken U.S. warships, and as a matter of policy, the U.S. Government does not grant such permission with respect to ships that contain the remains of deceased servicemen
....

In the absence of an express transfer or abandonment or a U.S. warship sunk in the near past (e.g. in the World War II era), it should be presumed that title to such vessels remains in the U.S. Title to vessels sunk in the more distant past (such as during the 17th and 18th centuries) would, of course, still be determined by the more conventional interpretation of abandonment of that period.

Letter from Department of State to Maritime Administration, December 30, 1980, reprinted in United States Department of State, 8 Digest of United States Practice in International Law 999, 1004 (1980).

Many other States take a similar view and, in light of the firmness with which this view is held, the Convention exempts warships from its scope. A specific concern is that wrecks of warships may contain the remains of service personnel who died in active combat and are regarded by the flag

States as war graves that should not be disturbed.

Article 3: General Principle

States Party shall take all reasonable measures to preserve underwater cultural heritage for the benefit of humankind.

Commentary

This Article encapsulates the principle of Article 149 of the 1982 United Nations Convention on the Law of the Sea. It is cast as a general duty rather than one applying only in a specific maritime area. Moreover, the duty is one of preservation. Thus, no mention is made of disposal of objects, as in Article 149. Necessary disposal of underwater cultural heritage should be done in such a way as to preserve it.

Article 4: Non-Applicability of Salvage Law

Underwater cultural heritage to which this Convention applies shall not be subject to the law of salvage.

Commentary

It should be noted that the law of salvage relates solely to the recovery of items endangered by the sea; it has no application to saving relics on land. For underwater cultural heritage, the danger has passed; either a vessel has sunk or an object has been lost overboard. Indeed, the heritage may be in greater danger from salvage operations than from being allowed to remain where it is. Even if it lies in an area of turbulence, the remedy is to use the provisions of the Convention and Charter rather than rely on criteria drawn from salvage practices. The major problem is that salvage is motivated by economic considerations; the salvor is often seeking items of value as fast as possible rather than undertaking the painstaking excavation and treatment of all aspects of the site that is necessary to preserve its historic value.

Article 5: Cultural Heritage Zone

1. A State Party to this Convention may establish a cultural heritage zone and notify other States Party of its action. Within this zone, the State Party shall have jurisdiction over activities affecting the underwater cultural heritage.

2. A State Party shall take measures to ensure that activities within its zone affecting the underwater cultural heritage comply at a minimum with the provisions of the Charter.

Commentary

1. The jurisdiction of States over the underwater cultural heritage was briefly discussed at the Third United Nations Law of the Sea Conference (UNCLOS III). In Article 303 of the Convention, a legal fiction was created to give States some control over excavations within but not beyond their contiguous zones. This provision is widely regarded as ineffective and insufficient for protection of the underwater cultural heritage. Moreover, it pays no regard to inconsistencies in the current territorial jurisdiction exercised by States over the underwater cultural heritage. Some States use the contiguous zone as a benchmark (e.g. France); others the continental shelf (e.g. Australia, Ireland, Spain); Denmark uses its 200-mile fishing zone; and yet others use the exclusive economic zone (e.g. Morocco). The Convention allows each State Party to establish a "cultural heritage zone" coextensive with the continental shelf (Article 1). This is compatible with the 1992 European Convention on the Protection of the Archaeological Heritage (Revised).

There is no obligation on a State to adopt a "cultural heritage zone". If a State wants to limit its control over underwater cultural heritage to a three-mile territorial sea, it can do so and still become party to the Convention.

2. Although the coastal State is considered to be the best agent under international and domestic law for protecting the underwater cultural heritage on the continental shelf, coastal States sometimes do not live up to their obligations. Article 5(2) is designed, therefore, to prevent States from simply declaring a cultural heritage zone and then doing nothing more. The provisions of the Charter are regarded as minimum standards for treatment of the underwater cultural heritage.

Article 6: Internal and Territorial Waters

States Party shall transmit a copy of the Charter to all relevant authorities within their jurisdiction, requiring them to take appropriate measures to apply the Charter, at a minimum, to activity within their internal and territorial waters.

Commentary

The Convention does not attempt to control standards of archaeology in internal waters or the territorial sea. A large number of States apply the same rules to underwater archaeology in these areas as they do to land archaeology. Consequently, any attempt to apply the requirements of the Convention in the territorial sea, for example, would require those States either to change their laws or to separate out the underwater aspects of those laws. That would be beyond the stated scope of the Convention. Nevertheless, in an attempt to further the implementation of minimum standards, States Party are encouraged to apply the provisions of the Convention and the criteria of the Charter to internal and territorial waters.

Article 7: Prohibition of the Use of Territory in Support of Activities Violating the Charter

No State Party shall allow its territory or any other areas over which it exercises jurisdiction to be used in support of any activity affecting underwater cultural heritage and inconsistent with the criteria of the Charter. This provision shall apply to any such activity beyond that State's territorial sea but not within a territorial sea or cultural heritage zone of another State Party.

Commentary

The Committee considered a hypothetical excavation by a European group of a wreck outside the "cultural heritage zone of Malaysia. Obviously, for the salvors, the most convenient places for recreation, refuelling, obtaining stores, and so on, would be Malaysia or perhaps Singapore. Without this provision, even if all the countries of the region were party to the Convention, it might impose no constraints on activities violating Charter criteria.

Article 8: Prohibition of Certain Activities by Nationals and Ships

Each State Party shall undertake to prohibit its nationals and ships of its flag from activities affecting underwater cultural heritage in respect of any area which is not within a cultural heritage zone or territorial sea of another State Party. The prohibition shall not apply to activities affecting the underwater cultural heritage that comply with the Charter.

Commentary

This prohibition is a core of the Convention. Past experience indicates that nationality is a principal jurisdictional basis to enforce the Convention. Nationality of the vessel used for a questionable activity is too uncertain; for example, the vessel may be too small to require registration or registration of the vessel in a flag-of-convenience state might also limit effectiveness. An alternative might be universal jurisdiction, but extension of its scope of activities related to underwater cultural heritage is apt to be too controversial.

States have been resorting to the nationality principle of jurisdiction more frequently to deal with situations where territorial jurisdiction is ineffective. One relevant example is the Protection of Military Remains Act 1986, under which the United Kingdom protects the site of British vessels and aircraft that sank or crashed on military service, even if the site be in international waters. It is an offence for British nationals to take any action in respect of such a site without a license.

This prohibition is not absolute. Activities affecting the underwater cultural heritage as defined can be carried out provided they are done in accordance with the provisions of the Charter. Material excavated under these conditions would be allowed entry into States Party.

Article 9: Permits

A State Party to this Convention may provide for the issuance of permits allowing entry into its territory of underwater cultural heritage excavated or retrieved after the effective date of this Convention so long as the State has determined that the excavation and retrieval activities have complied or will comply with the Charter.

Commentary

Search for and possible excavation of underwater cultural heritage is often expensive in terms of both time and money. Those undertaking such activities need an assurance that any material raised will be allowed entry into a State Party without the possibility of seizure. This Article gives a State

an optional power to issue permits providing for entry of material. Such a permit could be issued before the work begins, subject to a condition that activity be conducted in accordance with the provisions of the Charter. To ensure this, the permit must make provision for supervision of the work. However, the permit could be issued after the work was done, provided the issuing State has been satisfied that the work was conducted in a manner that complied with the Charter. In other words, the essential point is that what is done must be in accordance with Charter. When, and if, the permit is issued is a matter for individual States Party.

Article 10: Seizure of Heritage

1. Subject to Article 9, on the request of any Party or on its own initiative, each State Party, in accordance with its constitutional procedures, shall seize any underwater cultural heritage brought within its territory, directly or indirectly, after having been excavated or retrieved in a manner not conforming with the Charter.
2. A State shall seize underwater cultural heritage known to have been excavated or retrieved from a cultural heritage zone or territorial sea of another State Party only after obtaining the consent of that State.

Commentary

1. The Convention will need the cooperation of a large number of States Party to be truly effective. Moreover, membership will need to include "art market" States and other States whose nationals have access to advanced technology. For example, if Spain were a Party and received notice of a vessel containing cargo that had been excavated in noncompliance with the Charter, for example, beyond the cultural heritage zone of Malaysia, it would be required to seize the excavated material if the vessel entered Spanish territorial waters.

The Convention states that seizure will occur where the heritage has been "brought within its territory, directly or indirectly, after having been excavated or otherwise retrieved...". The "directly or indirectly language

is an attempt to expand the scope of the Convention. An intervening sale of excavated material can create problems. Suppose that European excavators of material excavated off the Malaysian coast proceed directly from the Far East to the Netherlands and suppose that the Netherlands is not a party to the Convention. There the excavated material is sold by auction. One of the purchasers is French and brings his ceramics home. Under the Convention, if France was a Party, it would have an obligation to seize the ceramics. This obligation exists whatever the number of intervening transactions in an object.

It should be noted that if an object has not been "abandoned" according to the definition in Article 1(1), it is not covered by the Convention and therefore need not be seized.

2. The purpose of this Article is to make clear that a State can only seize underwater cultural heritage from the cultural heritage zone or territorial sea of another State Party if the latter requests or acquiesces in the seizure. This is to prevent the seizing State from applying more stringent provisions than the State in whose cultural heritage zone the object is found. A State is not prevented, however, from seizing underwater cultural heritage found in the jurisdiction of a non-Party State.

Article 11: Penal Sanctions

1. Each State Party undertakes to impose penal sanctions for importation of underwater cultural heritage which is subject to seizure under Article 10.
2. Each State Party agrees to cooperate with other Parties in the enforcement of these sanctions. Such cooperation, consistent with national procedures, shall include but not be limited to, production and transmission of documents, making witnesses available, service of process and extradition.

Commentary

1. Committee members recognized that municipal penal laws, particularly within federal or other complex systems of authority, vary widely. As a basic obligation, however, the Convention requires States to undertake to

impose penal sanctions for what, in effect, are activities affecting the underwater cultural heritage in ways contrary to the provisions of the Charter. This provision is, however, expressed specifically in terms of importation, in order to avoid controversy that might cripple any attempt to extend penal sanctions to other aspects of the regime. The nature of the sanctions is left to each State Party.

2. To be effective, cooperation in enforcement of sanctions must, of course, be consistent with national procedures which are often subject to their own legal regimes established by international agreement. It is anticipated that, over time, those regimes would seek to improve the degree of cooperation mandated here. For example, treaties on extradition might include the offense of importing underwater cultural heritage subject to seizure as an extraditable crime.

Article 12: Notification Requirements and Treatment of Seized Heritage

1. Each State Party undertakes to notify the State or States of origin, if known, of its seizure of underwater cultural heritage under this Convention.
2. Each State Party undertakes to record, protect and take all reasonable measures to conserve underwater cultural heritage seized under this Convention.
3. Each Party undertakes, wherever possible, to keep underwater cultural heritage seized under this Convention on display or otherwise ensure the fullest reasonable access to it for the benefit of the public.

Commentary

1. Article 149 of the 1982 United Nations Convention on the Law of the Sea states that particular regard is to be paid to the preferential rights of the State or country of origin when preserving or disposing of objects of an archaeological or historical nature found in "the Area". These preferential rights will take effect only upon a State's acceptance of the International Seabed Authority, as provided for in the 1982 Convention. While in some cases the State of origin may be easily deduced, in others it would be impossible to determine. For example, an object may be determined

to come from a particular ancient state or region which today is occupied by four or five national States.

2. It is recognized that conservation is very expensive and that this provision could require unforeseen expenditure of money by a State. The primary duty is, however, to record seized material. Moreover, it is unlikely that material which is particularly expensive to conserve, such as wood, would often be seized. Persons raising this kind of material would be more likely to do so in accordance with the provisions of the Charter, with the result that it would not be subject to seizure.

3. Because objects are seized for the public benefit, they should be used for educational purposes, as set out in Article 14. What is actually done with the objects would depend on their condition and the needs of conservation. Public access or even access for specialists may have to be limited if objects are fragile. Nevertheless, the words of a federal court in the United States are persuasive:

A painting has no value except the pleasure it imparts to the person who views it. A work of art entombed beyond every conceivable hope of exhumation would be as valueless as one completely consumed-by fire.

Thus, if the paintings here involved may not be seen, they may as well not exist. (Commonwealth v. Barnes Foundation, 159 A.2d 500, 502 (Pa. 1960)).

The objects recovered from the bottom of the sea, albeit unlawfully, are to be used for both scientific and educational purposes to the greatest extent possible, consistent with what context remains.

Article 13: Collaboration and Information-Sharing

1. Whenever a State has expressed a patrimonial interest in particular underwater cultural heritage to another State Party, the latter shall consider collaborating in the investigation, excavation, documentation, conservation, study and cultural promotion of the heritage.

2. To the extent compatible with the purposes of this Convention, each State Party undertakes to share information with other States Party concerning underwater cultural heritage, such as but not limited to,

discovery of heritage, location of heritage, heritage excavated or retrieved contrary to the Charter or otherwise in violation of international law, pertinent scientific methodology and technology, and legal developments relating to heritage.

3. Whenever feasible, each State Party shall use appropriate international databases to disseminate information about underwater cultural heritage excavated or retrieved contrary to the Charter or otherwise in violation of international law.

Commentary

1. The Committee recognized the serious problems that inhere in determining a single country of origin." Even though it may be impossible to establish a single country of origin when it is evident that seized material has connections with other parts of the world, States should contact other States Party that may have some substantial connection with the material, in order to collaborate in dealing with the material. This may foster international cooperation and harmony as well as higher quality work on the material.

2. Rarely does the underwater cultural heritage beyond the territorial sea concern only a single, still existing State. If a shipwreck, the vessel will often have been making for a port in what is now another State. The site will reveal information about trading routes as well as details of the lives of the crew and passengers, construction of the vessel, and so on. It is essential that this information be distributed as widely as possible among interested parties, not only so that others know of what has been found but also so that their expertise may be brought to bear on interpretation and understanding of the information. It is also essential for the purposes of this Convention that information on illegal excavations be distributed as widely as possible.

3. This paragraph reminds States, to their individual and mutual benefit, of the necessity for rapid dissemination of information and the ability of international databases to achieve this.

Article 14: Education

Each State Party shall endeavour by educational means to create and develop

in the public mind a realization of the value of the underwater cultural heritage as well as the threat to this heritage posed by violations of this Convention and non-compliance with the Charter.

Commentary

Educational means includes formal training but also many other activities, for example, promotion of exhibitions that feature recovered underwater cultural heritage. Other educational activities might include production of leaflets, provision of background material to journalists, and sponsorship of essay competitions among students. It is necessary to combat the characterization of looters as adventurous, colorful persons and archaeologists as dull academics, also the notion that archaeologists are trying to keep everything for themselves while looters are endeavouring to bring beautiful things to the world. Looters must be held up for what they are: destroyers of our past.

Article 15: Revision of the Charter

Revisions in the Charter by the International Council for Monuments and Sites shall be deemed to be revisions in the annexed Charter, binding on States Party except for those State Parties that notify their non-acceptance to the Director-General of the United Nations Educational, Scientific and Cultural Organization within six months after the effective date of a revision. Unesco shall inform the States Party of such revisions prior to the effective date of the revision.

Commentary

The criteria of the Charter should evolve as the discipline of archaeology develops and technology changes, but it would not be desirable to subject any Charter amendment to the procedure for amending the Convention. Consequently, this Article establishes, more efficiently, that revision by ICOMOS of its Charter is deemed to be a revision in the annexed Charter that is binding on States Party, subject to specific objections. Activities affecting the underwater cultural heritage will be judged against the version of the Charter existing at the time a particular activity occurred.

Article 16: Dispute Resolution

1. States, on becoming Parties to this Convention, undertake to establish an internal procedure or procedures for resolving disputes concerning whether an activity resulting in excavation or retrieval of the underwater cultural heritage did or did not comply with the Charter.

2. Any dispute between two or more States Party concerning the interpretation or application of the present Convention that is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, the States Party are unable to agree on the organization of the arbitration, any one of those States Party may refer the dispute to the International Court of Justice, or a special chamber thereof, by a request in conformity with the Statute of the Court.

Commentary

Disputes about whether excavation or retrieval of material was done in accordance with the Charter require both domestic and international procedures for their resolution. Article 16(1) does not mandate a court proceeding. Rather, it is left to each State Party to determine how disputes should be resolved in accordance with its own practice.

Article 17: Official Languages

This Convention is drawn up in Arabic, Chinese, English, French, Russian and Spanish, the six texts being equally authoritative.

Article 18: Ratification or Acceptance

1. This Convention shall be subject to ratification or acceptance by States Members of the United Nations Educational, Scientific and Cultural Organization, in accordance with their respective constitutional procedures.
2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 19: Applicability to Territorial Units

1. If a State Party has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may

substitute its declaration by another declaration at any time.

2. These declarations are to be notified to the depository and are to state expressly the territorial units to which the Convention extends.

Article 20: Reservations, Understandings and Declarations

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall receive and circulate to all States Party the text of reservations, understandings and declarations made by States at the time of ratification or accession.
2. A reservation incompatible with the objects and purposes of the present Convention shall not be permitted.
3. Reservations may be withdrawn at any time by notification to that effect addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 21: Accession by Nonmember States

1. This Convention shall be open to accession by all States not Members of the United Nations Educational Scientific and Cultural Organization.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 22: Entry into Force

This Convention shall enter into force three months after the date of the deposit of the tenth instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments of ratification, acceptance or accession on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 23: Denunciations

1. Each State Party to this Convention may denounce the Convention.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations

Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect six months after notification.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its ... session, which was held in ... and declared closed on the ... day of

IN FAITH WHEREOF we have appended our signatures this ... day of

The President of the
General Conference

The Director-General

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NOTES

Note 1:

The members are:

Mr. Justice S.D. Agarwala (India)
Mr. D.H. Anderson (United Kingdom)
Mr. Kaare Bangert (Denmark)
Mme. A. Derradji (Algeria)
Prof. Dr. W. Fiedler (Germany)
Avv. . M. Frigo (Italy)
Ms. M. Haunton (Canada)
Prof. Shigeru Kozai (Japan)
Prof. V. Lamm (Hungary)
Maitre Jean Lisbonne (France) (Alternate Member)
Dr. Helen Moustaira (Greece) (Alternate Member)
Dr. Fernando Munoz B. (Ecuador)
Prof. James A. R. Nafziger (USA) (Rapporteur)
Dr. P.J. O'Keefe (Australia/New Zealand) (Chair)
Dr. L.V. Prott (Australia/New Zealand)
Dr. C.G. Roelofsen (The Netherlands)
Dr. Sabine von Schorlemer (Germany)
Dr. A. Strati (Greece)
Dr. A. Szekely (Mexico)
M. S. de Vilmorin (France)
Mr. Hongye Zhao (China)

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