

Statement of Robert C. Blumberg,
U.S. Observer Delegate to the 31st UNESCO General Conference,
to Commission IV of the General Conference,
Regarding the U.S. Views on the
UNESCO Convention on the Protection of Underwater Cultural Heritage

October 29, 2001
Paris, France

-- The United States has actively participated in, and supported in many ways, the UNESCO negotiations on the development of a multilateral instrument to protect underwater cultural heritage.

-- The United States believes the draft Convention reflects substantial progress in certain important areas, notably the annexed rules, the preamble, and most of the general principles.

-- At the same time, the United States wishes to register our serious concern that there is no consensus on other key provisions, and therefore, the convention is not ready for adoption. We note with regret that the largest group of States refused to participate in informal consultations convened at the suggestion of the Director General last week that could have resulted in acceptable compromises on the remaining outstanding issues.

-- These issues include article 2(11), article 3 on the relationship with the UN Law of the Sea Convention (UNCLOS), the reporting scheme in article 9, the protection scheme in article 10, and the warships provisions in articles 7 and 10.

-- In some cases, these provisions are unsatisfactory because they create new rights for coastal states in a manner that could alter the delicate balance of rights and interests set up under UNCLOS. This is the case with Article 9(1)(b)(i), which requires a flag State to give direct prior notification to a coastal State of any activity to be directed at UCH in its exclusive economic zone or on its continental shelf. It is also the case with the protection scheme set out in article 10, which creates a right of the coastal state, acting as the "coordinating State," to take unspecified and apparently unlimited protection measures to prevent immediate danger to UCH located in its EEZ or on its continental shelf. Of particular concern is the fact that the coastal state may take such protection prior to consultations with the other States on whose behalf it is intended to be coordinating. Moreover, the protection measures are expressly not limited to dangers caused by "activities directed at UCH" but rather are extended to any danger "whether arising from human activities or any other cause."

-- In other cases, the provisions of the text are unsatisfactory because they are ambiguous.

-- Article 3 is inadequate to resolve the concerns over jurisdiction and ambiguities in the text, because it includes a vague reference to international law in addition to UNCLOS. Nevertheless, we assume other delegations share the view that such ambiguous provisions must be interpreted in a manner consistent with international law:

-- For example, Article 9(1)(b)(ii) can only be read as an obligation on flag States in regard to its own nationals and flag vessels.

-- Similarly, Article 10(2) can serve only to restate the rights that states already have, as provided in UNCLOS parts V and VI, over the protection of natural resources; it cannot be read to create new rights over such resources.

-- Article 2(11), which was added by a dubious procedure after the debate had concluded in July, also must be read in a manner that does not preclude a challenge to a state's excessive maritime claims based on the provisions of the convention.

-- Finally, the provisions of the convention can only be applied as among Parties to the Convention, and as among the nationals and vessels of such Parties. This is true of article 10 and 12 in particular.

-- The United States is very concerned that the provisions of the convention in regard to State vessels and aircraft are also inadequate, because they do not provide a regime under which the flag State must consent before its vessels can be the subject of recovery. The text places objectionable new restrictions on existing rights of flag States and creates new coastal State rights regarding such vessels located in the exclusive economic zone and on the continental shelf. The text does not provide for appropriate treatment and adequate protection of such vessels, many of which contain the remains of men and women who died in the service of their country.

-- The United States notes that only a broadly ratifiable agreement will actually contribute to the goal we all share: the protection of UCH. We, therefore, hope there will be a future opportunity to revisit these provisions, so that we can build on the progress that has been made in regard to the Rules, the Preamble and other provisions that have commanded consensus.

-- But, because of the serious concerns noted above the United States opposes adoption of the draft Convention in its present form.