

UNESCO Draft Convention on Protection of Underwater Cultural Heritage: An Introduction

At present, there is no international instrument to provide significant legal protection to underwater cultural heritage -- shipwrecks, sunken cities, underwater cave paintings, and so forth. Although some nations possess laws to provide protection in their own waters, others don't. This has led to confusion about the rights of a nation to protect its cultural heritage, whether submerged in its own waters or another nation's, or on the high seas.

This could soon change. From October 15 through November 3 of this year, the General Conference of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) will meet to discuss, among other things, the adoption of a draft convention for the protection of underwater cultural heritage. If adopted by a two-thirds majority of UNESCO member nations, the draft convention would become international law, at least for its signatories.

Below is a snapshot of some of the pertinent issues. The full text of the draft convention is available online in PDF format at <http://unesdoc.unesco.org/images/0012/001232/123278e.pdf>.

Main feature of the draft convention: Among signatories, no activity directed at underwater cultural heritage may occur without a permit, no matter where the heritage is located. The draft convention provides guidance on the permitting process, including from which party the permit must be sought depending on the location of the heritage.

What would be covered: The draft convention covers "all traces of human existence having a cultural, historical, or archeological character which have been partially or totally underwater, periodically or continuously, for at least 100 years...." Lyndel Prott, director of the UNESCO Division on Cultural Heritage, explains that the 100-year minimum is primarily a matter of administrative convenience. "[It] corresponds to much national legislation on archeological research on land, which applies to objects more than 100 years old," she said. It also corresponds to customs practice, which has given preferential treatment to antiques, defined as more than 100 years old.

Some of the objectives: The draft convention requires the consideration of on-site preservation of underwater cultural heritage as the first option before allowing any activities directed at it. Responsible non-intrusive access to observe or document on-site underwater cultural heritage "shall be encouraged to create public awareness, appreciation, and protection of the heritage...." Underwater cultural heritage may not be commercially exploited.

Rights of signatory nations: Signatories have the exclusive right to regulate and authorize activities directed at underwater cultural heritage in their territorial sea and contiguous zone, and may enforce this right. On matters in a signatory's exclusive economic zone (out to 200 nautical miles), however, the draft convention does not provide any new enforcement authority. There are several provisions making it clear that the convention must be interpreted consistent with international law, including the UN Convention on the Law of the Sea. Accordingly, enforcement would be allowed, at least among the signatories, to the extent consistent with international law.

Responsibilities of signatory nations: Signatories must require their nationals to report any discovery of underwater cultural heritage (even if discovered in another signatory's waters), and must prohibit them from engaging in activities directed at the heritage without a proper permit.

What it means for MPAs: The convention, as drafted, would strengthen the protection of cultural MPAs. This would come mainly by bolstering the authority of signatories to prescribe regulations for existing and future MPAs, and to enforce those regulations against foreign-flag nationals and vessels, at least in the territorial sea and contiguous zone.

For more information

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