

THE UNITED STATES' PARTICIPATION IN THE WORLD HERITAGE CONVENTION: A RETREAT FROM LEADERSHIP?

James K. Reap *

It would be fitting by 1972 for the nations of the world to agree to the principle that there are certain areas of such unique worldwide value that they should be treated as part of the heritage of all mankind and accorded special recognition as a World Heritage Trust. Such an arrangement would impose no limitations on the sovereignty of those nations which choose to participate, but would extend special international recognition to the areas which qualify and would make available technical and other assistance where appropriate to assist in their protection and management. Statement of President Richard M. Nixon advocating the adoption of the World Heritage Convention, 1971.

At best, world heritage . . . designations give the international community an open invitation to interfere in domestic land use decisions. More seriously, the underlying international land use agreements potentially have several significant adverse effects on the American system of government." Statement of Congressman Don Young introducing the "American Land Sovereignty Protection Act", 1997.

It seems appropriate to examine the participation of the United States in the World Heritage Convention¹ on the thirtieth anniversary of its promulgation and to highlight some of the issues that have affected, and continue to affect, U.S. participation. Some of these issues, should other countries approach them in a similar way, also have the potential to affect the operation of the convention from an international perspective.

What began with such idealism and enthusiasm appears to have become sidetracked by domestic political and parochial considerations. The United States had a major role in the creation of the Convention and became the first nation to ratify it in 1973 by a vote in the Senate of 95-0. The Convention entered into force on December 17, 1975. The United States has served as a member of the World Heritage Committee for much of that body's existence and in 1978 hosted the first Committee meeting that listed sites. Of the 12 sites listed at that time, two were in the United States: Mesa Verde and Yellowstone National Parks. Since that time, implementing laws and regulations have had the practical effect of limiting U.S. participation and pending legislation before Congress could cripple it.

Two years after the Convention entered into force, implementing legislation was established in the U.S. by the 1980 Amendments to the National Historic Preservation Act (NHPA). These amendments gave the Secretary of the

Interior the responsibility of directing and coordinating U.S. activities under the Convention in coordination with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation.²

Regulations setting forth policies and procedures used by the U.S. Department of the Interior to direct and coordinate participation were adopted in 1982 and continue in force. The regulations also address maintenance of the U.S. Indicative Inventory of Potential Future World Heritage Nominations³ and the nomination of sites to the World Heritage List.⁴ They established the Federal Interagency Panel on World Heritage to advise the Assistant Secretary for Fish and Wildlife and Parks, who is delegated responsibility to administer World Heritage activities by the U.S. government.

To date, twenty sites in the United States have been inscribed on the World Heritage List, two of which are sites jointly listed with Canada. Eight listings are cultural sites. However, no properties have been added to the list since 1995.⁵

The relatively small number of U.S. inscriptions on the World Heritage List given the size of the country and its rich resources is due in part to the owner consent requirement included in the 1980 Amendments to the NHPA. The law prohibits any non-Federal property from being nominated unless the owner concurs in writing. The Interior Department has construed this language as requiring *written concurrence from 100 percent of property owners*. Additionally, each owner must pledge to protect the property. No other State Party to the Convention requires either government ownership or 100% private owner consent as a prior condition for nomination. This requirement is also more restrictive than other provisions of the NHPA pertaining to listing properties in the National Register of Historic Places or as a National Historic Landmark. A property may be listed under those programs unless there is a *notarized written objection* from the owner or owners of any single property or *a majority of the owners of such properties within a district*.⁶

Because of this restriction it must be asked whether the United States has unreasonably limited its participation in the Convention. Of the properties listed, most are federally owned. No U.S. cities or historic districts have been listed something quite common for other participating countries.¹

A relevant case in point is that of Savannah, Georgia. In the late 1980s there was increasing interest in listing the Savannah

National Historic Landmark District on the World Heritage List. Through research and documentation, the district was placed on the Indicative List of Potential U.S. World Heritage Cultural Nominations. In 1992, the City of Savannah decided to move forward with the nomination process and a proposal was forwarded to the Federal Interagency Panel after two years of additional research. There was no question of significance or adequate protection, as required by the Convention. The district had been listed as a National Historic Landmark in 1966 and the area was protected against inappropriate development by a strong local historic district ordinance. However, there was the issue of owner consent. Although local historic zoning had been the subject of a referendum which was approved by a three to one vote margin, discussions with the members of the Federal Interagency Panel made it clear that 100% written concurrence would be required. The likelihood of obtaining unanimous written consent from over 1,000 property owners in Savannah, or any other American city, was inconceivable. The decision was therefore made to nominate the main components of the city plan, including the streets, 52 acres of tree-shaded squares, parks and internationally acclaimed public monuments within a 2.2 square mile area. The Savannah city plan has been recognized as a unique artistic achievement in town planning and a masterpiece of creative genius on the part of the city's founder, General James Edward Oglethorpe. This creative solution to the owner-consent barrier proved to be unsuccessful, however. After reviewing the nomination, the ICOMOS World Heritage Coordinator informed the Mayor of Savannah he could not recommend inscription to the Bureau of the World Heritage Committee because the nomination was outside the operational guidelines for implementation of the Convention.⁸ Since the rejection of the Savannah nomination, no further city or district nominations have been forthcoming from the United States.

A second, though less significant, problem with the U.S. nomination process concerns significance. The implementing statute simply states that "No property may be so nominated unless it has previously been determined to be of national significance."⁹ Interior Department regulations for cultural properties recognize "national significance" as being limited to National Historic Landmarks (or areas of national significance established by the Congress or by presidential proclamation under the Antiquities Act of 1906.) Further, the Department uses theme studies to identify and nominate as Landmarks properties associated with a specific area of American history, such as the fur trade, earliest Americans, women's history, Greek Revival architecture, etc. The nomination may face difficulties if no theme study exists, the theme study is incomplete or outdated, or the property does not fall into a particular theme category. Established Landmark themes and sub-themes must be cited in the World Heritage nomination form, and the nominator must refer to other theme studies (or historic contexts) already prepared

which are relevant for a particular nomination.¹⁰ At best, such a process may impose a lengthy delay and additional administrative hurdles in the nomination process.

Another contributing factor to the U.S. failure to nominate properties for World Heritage listing since the mid-1990s is undoubtedly the chilling effect caused by potentially damaging legislation introduced in Congress. The so-called "American Land Sovereignty Protection Act" (ALSPA)¹¹ would amend the NHPA to make World Heritage nominations significantly more difficult, requiring new administrative procedures and the approval of Congress before a site could be nominated to the World Heritage List or included on the List of World Heritage in Danger.¹²

Supporters of this bill have expressed fear that environmental and cultural advocacy groups and federal agency managers may use World Heritage principles and processes in land management decisions without the knowledge of Congress or use designation to undermine local land use decisions without input from citizens and local governments. Federal regulatory actions, they assert, could have an adverse effect on the value of private property and a negative impact on local economies. However, under its current process, the Interior Department provides open public meetings and congressional notification when considering sites for nomination. The World Heritage Convention does not give UNESCO or the UN any authority over U.S. sites nor does it require changes in domestic law. The Convention does require that signatories protect their listed sites and settings, but that protection is provided under the laws of each state party – in the case of the United States, the Constitution along with federal, state and local laws and procedures. The only way the Convention can affect land management decisions is by influencing public opinion or the decisions of the governing authority through the power of persuasion.¹⁴ Even this is apparently a concern to those who fear limitations on unrestricted development of federal and private land.

These fears seem to have been fueled by a situation involving Yellowstone National Park. In 1995, the Interior Department notified the World Heritage Committee that the park was in danger and requested an on-site visit. After sending a special assessment team and further consultation with U.S. officials, the Committee placed Yellowstone on the List of World Heritage in Danger. Among the threats cited was a proposed gold mine just over a mile from the park. A number of U.S. environmental organizations were very vocal in their opposition to the mine. Much of the mining activity would have been on private land, but some federal land outside the park would have been affected. President Clinton issued orders effectively creating a buffer zone on the federal land prior to the listing. Mining and forest interests along with others opposed to environmental legislation asserted the World Heritage Convention had had a significant role in the federal decisions affecting the mine and seized the issue as

justification for introducing ALSPA.¹⁴ Opponents of the bill contended that the problem with the mine had nothing to do with Yellowstone's World Heritage listing but rather the fact that minning would adversely affect an important national park.

Proponents of ALSPA often try to couple their concerns about the operation of the World Heritage Convention with the withdrawal of the United States from UNESCO in 1984. In fact, it was the policy of the Reagan Administration to retain U.S. participation in the Convention while withdrawing from UNESCO for other reasons.¹⁶ In 1992, under former President Bush, Interior Secretary Manuel Lujan hosted the World Heritage Committee in Santa Fe, New Mexico. Perhaps this argument will have less weight now that the current President Bush has announced his intention that the U.S. rejoin UNESCO.¹⁷

Despite the assertion of its Congressional supporters that the ALSPA only ensures the involvement of the public and elected representatives in decision making and the protection of private property rights¹⁸, the publicity around the issue has apparently tapped a deep vein of American xenophobia. Rumors have spread on talk radio shows that the United Nations controls U.S. National Parks or that the parks are being used as staging areas for UN troops.¹⁹ So many inquiries were received about a foreign takeover of the Great Smokey Mountains National Park²⁰ that the Park Service had to include an article in the official visitors' guide under the title "Park Is Not Run by United Nations" assuring readers that the park "remains the property of the United States government." Politicians have been capitalizing on these conspiracy theories.²¹ In 1996, Rep. Don Young (R-Alaska), the author of the ALSPA, sent a letter to congressional colleagues asking "Is Boutros Boutros-Ghali zoning land in your district?"²² These fears and rumors have even turned to personal attacks. Following his testimony against the ALSPA in 1997, US/ICOMOS Executive Director Gustavo Araoz received a threatening e-mail.²³

Rep. Bruce F. Vento (D-Minnesota) speaking in opposition to the bill asserted, "The legislation sends a signal around the world that our nation, the United States of America, which forged the policy path to institute these various treaties and protocols, is undercutting the values and benefits of international recognition for important cultural or environmental sites."²⁴

The World Heritage Convention does not threaten the interests or sovereignty of the United States. The recognition brought through listing simply enhances the prestige of sites already protected by existing domestic law and brings economic benefits to local communities.²⁵

In spite of attacks on U.S. participation in the World Heritage Convention from the political right, there is currently a renewal of interest in World Heritage listing from a number of quarters, particularly historic cities.²⁶ Those seeking to nominate

additional sites have their work cut out for them. Action on ALSPA has stalled in the current Congress. However, supporters of congressional action may not feel the same urgency as during the Clinton Administration, since the Bush Administration has given clear evidence of its sympathy for limiting the impact of environmental and land-use regulation. As the United States enters its fourth decade as a signatory of the World Heritage Convention, the question remains whether it will fulfil the vision it gave the world in 1972 and again step forward into a leadership position. U.S. Rep. Bruce Vento has pointedly put the question being asked by many advocates of cultural and natural resource conservation:

When the United States is thrust into a role of dominant power and in the central role as a world leader in so many areas, why would we voluntarily abdicate perhaps the most important leadership position we occupy, that of a leader in an effort to make this life on this planet sustainable? **Statement of Congressman Bruce Vento concerning the "American Land Sovereignty Protection Act," 1999.**

It would be unfortunate indeed if the very country whose inherently American national park ideal formed a philosophical underpinning for the Convention forsook leadership in the World Heritage Program.

Notes

¹ The Convention Concerning the Protection of the World Cultural and Natural Heritage, popularly known as the World Heritage Convention, is truly universal in its scope. Since its promulgation at the General Conference of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) 1972, it has been signed by 175 nations, making it perhaps the most widely accepted environmental and preservation agreement. To date, 733 properties have been inscribed on the list – 563 cultural, 144 natural, and 23 mixed – located in the territories of 125 states parties.

² Public Law 96-515, December 12, 1980, 94 Stat. 3000.

³ The United States was the first nation to prepare such a list, and the current version is a slightly amended version of the document prepared in 1982. This list is intended to be an open-ended or revolving list. James Charleton, "The United States and the World Heritage Convention", a paper presented at the annual symposium of US/ICOMOS in Indianapolis, Indiana in 2000.

⁴ 36 CFR 73.

⁵ Of these sites, two were subsequently placed on the List of World Heritage in Danger: Everglades National Park and Yellowstone National Park. See <http://whc.unesco.org/nwhc/pages/doc/mainf3.htm> and <http://whc.unesco.org/nwhc/pages/doc/mainf3.htm>

⁶ 16 U.S.C. 470(a)(6); 30 CFR 60.6.

⁷ Examples include Islamic Cairo (Egypt); Historic Centers of Venice, Florence and Rome (Italy); Bath (UK) and Quebec (Canada); and the Medina of Fez (Morocco).

⁸ US/ICOMOS Newsletter, No. 4, 1995.

⁹ 16 U.S.C. 470a-1(b).

¹⁰ <http://www.cr.nps.gov/nr/publications/bulletins/nhl/nhlpt1.htm>, accessed 30 September 2002

¹¹ Introduced in the 104th Congress as H.R. 3752 (no vote in the House), in the 105th Congress as H.R. 901 (passed the House, no vote in the Senate), in the 106th Congress as H.R. 883 (passed the House, no vote in the Senate), in the 107th Congress as H. R. 883 (assigned

to committee). Companion bills were introduced in the Senate and assigned to committee, but not sent to the floor for a vote.

¹² It would prohibit the Secretary of the Interior from nominating any Federal lands for inclusions on the World Heritage list unless: (1) commercially viable uses of nominated lands and lands within ten miles will not be adversely affected; (2) the Secretary has reported to Congress on the lands' natural resources and the impact of inclusions on existing and future uses of such lands; and (3) the nomination is specifically authorized by law.

The act further requires the Secretary to object to the inclusion of any property in the United States on the World Heritage in Danger unless the Secretary: (1) has reported to Congress on the necessity for such inclusion, the associated natural resources, and the impact of inclusion on the existing and future uses of the property; and (2) is specifically authorized to assent to the inclusion by a joint resolution of Congress.

The law also prohibits any Federal official from nominating, classifying, or designating any Federal land for a special or restricted use under any international conservation agreement unless specifically authorized by law. Provides that any such nomination classification, or designation of private or State or local lands shall have no force or effect without the owner's consent or specific authorizations by State or local law, respectively.

Similar restrictions would be placed on nominations of Biosphere Reserves under the Man in the Biosphere Program (MAB) established by UNESCO in 1970. Biosphere reserves are internationally recognized areas of terrestrial and coastal ecosystems, and collectively these constitute a world network of reserves. In 1974 the U.S. Department of State established a U.S. National Commission for the MAB Program, although there has been no specific authorizing legislation from Congress.

¹³ Machado, Matthew, "Land and Resource Management: X. Mounting Opposition to Biosphere Reserves and World Heritage Sites in the United States Sparked by Claims of Interference with National Sovereignty," 1997 COLO. J. INT'L ENVTL L.Y.B. 120.

¹⁴ In spite of the fact that the mining company had settled its claims with the government and Congress had appropriated money for that purpose.

¹⁵ Testimony of Brooks B. Yeager, Deputy Assistant Secretary for Policy and International Affairs, U.S. Department of the Interior, before the House Committee on Resources, March 19, 1999, citing letters from Reagan Administration officials in support of the convention and a press release from then Interior Secretary Hodel indicating how proud the department was that the Statue of Liberty could be recognized as a World Heritage site.

¹⁶ Speech before the UN General Assembly, September 12, 2002. However the reasons cited for rejoining have nothing to do with environmental or cultural issues: "The United States is joining with the world to supply aid where it reaches people and lifts up lives, to extend trade and the prosperity it brings, and to bring medical care where it is desperately needed."

¹⁷ "And let's be clear, the goal of this measure is to abandon these programs, not simply to regulate them." Rep. Bruce Vento (D-Minn). Statement before the House Committee on Resources, March 18, 1999.

¹⁸ In the case of Biosphere Reserves, a proposal for the Ozark Highlands Regional Biosphere was scuttled after conspiracy theorists claimed the designation was part of a plot by the UN to seize 55,000 square miles of the Ozarks using UN troops being trained in the Dakotas. One man reported seeing tanks in the woods and a woman asked if she could be shipped overseas and tried as an international criminal for picking wildflowers. "Black Helicopters Invade Ozarks", an editorial appearing in the *St. Louis Post Dispatch*, April 9, 1997.

¹⁹ This park has been designated an international "biosphere reserve", a program which is also a target of the ALSPA.

²⁰ ALSPA opponent Rep. Jay Inslee (D-Wash.) suggested the bill be renamed the "American Land Paranoia Act", and Rep. Mark Udall (D-CO) claimed the bill "is primarily a means for supporters to take a shot at the United Nations and particularly UNESCO, and to demonstrate their solidarity with some who seem to view the U.N. as engaged in a vast multiwing conspiracy to overthrow our constitutional government." See "House Debated U.S. Participation in UNESCO Program and Implications for Americas Sovereignty; Senate Holds First Hearings", United Nations Association of the United States of America, June 1999, <http://www.unausa.org/newindex.asp?place=http://www.unausa.org/policy/NewsActionAlerts/info/alspa3.asp>, accessed September 26, 2002.

²¹ Mann, Jim, "Dealing With Conspiracy Theories and Rumors Is No Walk in the Park", *Los Angeles Times*, September 2, 1966.

²² The text read: "America is "sovereign" soil that belongs to Americans; not the world! You will not confiscate out [sic] sacred soil without a battle ... this is the bottom line! Your Treaty from hell will not succeed; for the Prince of Peace is Sovereign who will destroy you and your NEW WORLD ORDER! For God and County, G.I. Jane P.S. Incidentally, with such a foreign-sounding name; where exactly is your native terrain; the Inferno, perhaps?"

²³ Note 17.

²⁴ During the period 1990-1994 visitation to U.S. World Heritage parks increased 9.4 percent, as opposed to 4.2 percent for all national parks, and there is strong evidence that a significant part is derived from international tourism. Statement of Brooks B. Yeager. Note 15.

²⁵ Charleston, South Carolina, and Baltimore, Maryland are cases in point.

* James K. Reap, J.D.

James K. Reap is an attorney and professor who teaches cultural resources law at both the University of Georgia and Georgia State University in the United States and is a Fellow of the Dean Rusk Center – International, Comparative and Graduate Legal Studies. He chairs the Preservation Law Committee of US/ICOMOS and serves as Secretary General of the ICOMOS International Scientific Committee on Legal, Administrative and Financial Issues. He also serves as editor of the International Legal Committee's pages on the ICOMOS web site and manages the Committee's listserv.



Savannah Plan



Old Faithfullnn. Yellowstone National Park