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NOTE ON THE RECORDS OF THE GENERAL CONFERENCE

The Records of the 31st session of the General Conference are printed in two volumes:

The volume Resolutions, containing the resolutions adopted by the General Conference, the reports of Commissions I to V, the Administrative Commission and the Legal Committee, and the list of officers of the General Conference and of the Commissions and Committees (Volume 1).

The present volume Proceedings (Volume 2), containing the revised and corrected version of the verbatim records of plenary meetings, the list of participants and the list of documents.

Under Rule 53 of the Rules of Procedure of the General Conference, the verbatim records are published in a single edition, in which each intervention is reproduced in the working language in which it was given and interventions given in a working language other than English or French are followed by a translation into either English or French alternately meeting by meeting.

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Стенографические отчеты
пленарных заседаний

المحاضر الحرفية للجلسات العامة

全体会议逐字记录

Vingtième séance plénière

2 novembre 2001 à 15 h.20
Président : M. JALALI (République islamique d'Iran)

Twentieth plenary meeting

2 November 2001 at 3.20 p.m.
President: Mr JALALI (Islamic Republic of Iran)

Vigésima sesión plenaria

2 noviembre de 2001 a las 15.20
Presidente: Sr. JALALI (República Islámica del Irán)

Двадцатое пленарное заседание

2 ноября 2001 г. в 15.20
Председатель: г-н ДЖАЛАЛИ (Исламская Республика Иран)

الجلسة العامة العشرون

٢ نوفمبر/تشرين الثاني ٢٠٠١، الساعة ٣:٢٠ بعد الظهر
الرئيس: السيد جلالى (جمهورية إيران الإسلامية)

第二十次全会

2001年11月2日15时20分
主席:贾拉利先生(伊朗伊斯兰共和国)

16.1 The PRESIDENT:

Thank you very much, Ambassador Villarroel, distinguished Chairperson of Commission IV. We are aware that the agenda of Commission IV really was a particularly difficult one, and you and your colleagues dealt with it very well. Thank you very much for your excellent accomplishment. I would like to congratulate you, and all of your colleagues, again for that.

16.2 Before coming to the adoption of our decision I should like to ask the room if there is any item that you wish to take up separately. But I should remind you that item 8.4, "Draft convention concerning the protection of the underwater cultural heritage", will be examined separately after the adoption of the other decisions recommended to the General Conference in the report since, as you know, the adoption of a convention requires a two-thirds majority. Before I give you the floor, there is a very short point that the Secretary of the General Conference would like to make. Sir, you have the floor.

17. Le SECRETAIRE :

Merci, Monsieur le Président. Je voudrais appeler l'attention des délégués sur une erreur qui s'est glissée dans l'Addendum et Corrigendum au Projet de rapport de la Commission IV. Il s'agit du document 31 C/64 Add. et Corr. A la page 4 de la version française de ce document, et à la page 3 de sa version anglaise, il est indiqué au deuxième paragraphe de la section relative au paragraphe 26 que, dans le préambule du projet de résolution considéré, il convient d'ajouter un troisième alinéa se lisant - je cite - comme suit : "Considérant les formes contemporaines d'esclavage ...". C'est une erreur. Il faut lire : "Condamnant" - "Condemning" en anglais - les formes contemporaines d'esclavage telles que la traite d'êtres humains". Merci, Monsieur le Président.

18. The PRESIDENT:

Thank you very much. Is there any item you would like to consider separately, other than the one I have already mentioned? I see there is not, so I consider that the General Conference takes note of the report of Commission IV and adopts the resolutions that are proposed therein, with the exception of the one that we will consider separately. It is so decided.

POINT 8.4 : PROJET DE CONVENTION SUR LA PROTECTION DU PATRIMOINE CULTUREL

SUBAQUATIQUE

ITEM 8.4: DRAFT CONVENTION CONCERNING THE PROTECTION OF THE UNDERWATER CULTURAL HERITAGE

PUNTO 8.4: PROYECTO DE CONVENCION SOBRE LA PROTECCION DEL PATRIMONIO CULTURAL

SUBACUÁTICO

ПУНКТ 8.4: ПРОЕКТ КОНВЕНЦИИ ОБ ОХРАНЕ ПОДВОДНОГО КУЛЬТУРНОГО НАСЛЕДИЯ

البند ٨,٤: مشروع اتفاقية بشأن حماية التراث الثقافي الغمر بالمياه

议程项目 8.4: 保护水下文化遗产的公约草案

19. The PRESIDENT:

Thank you very much. We now come to item 8.4, "Draft convention concerning the protection of the underwater cultural heritage" (31 C/24) which, as we have decided, we will examine separately. The adoption of this convention by UNESCO requires a two-thirds majority of the Members present and voting at the General Conference. I shall now put the draft resolution in paragraph 31 of document 31 C/64 to the vote. Will you please raise your plates. Mr Secretary, will you please announce the results.

20. Le SECRETAIRE :

Merci, Monsieur le Président. Nombre de voix pour l'adoption du projet de résolution : 87. Nombre de voix contre : 4. Nombre d'abstentions : 15. Merci, Monsieur le Président.

21.1 The PRESIDENT:

Thank you very much, dear colleagues. I now announce that the General Conference has adopted the Convention on the protection of the Underwater Cultural Heritage. Thank you very much.

(Applause)

21.2 Thank you very much. It was a very long and productive day. I would like to thank Ambassador Villarroel once again. However, I have another point. I do not wish to upset you, because you manifested such an enthusiastic taste for "After Eight", but I feel very sorry that I cannot offer you any according to the "After Eight" Rules of Procedure, because your report was perhaps the longest. The only way that I can make an exception is to suspend the "After Eight" Rules of Procedure. And this can be done only by acclamation if I can have it. I see that the distinguished delegate of the Russian Federation would like to take the floor. You have the floor, sir.

22.1 Г-н СИДОРОВ (Российская Федерация):

Спасибо большое господин Председатель. У меня заявление по мотивам голосования: «Российская Федерация придает большое значение разработке эффективного универсального механизма охраны подводного культурного наследия. Прделанная под эгидой ЮНЕСКО работа привела к весьма важным позитивным результатам, которые, в частности, состоят в согласовании правил обращения с подводным культурным наследием. Российская сторона приветствует эти достижения.

22.2 Вместе с тем ряд положений текста Конвенции в силу принципиальных соображений неприемлем для России. Так, например, статья 10 может быть истолкована как расширяющая за пределы, установленные Конвенцией Организации Объединенных Наций по морскому праву 1982 года, права и юрисдикцию прибрежного государства, в прилегающих морских пространствах. Ее можно рассматривать как предоставляющую прибрежному государству право принятия по своему усмотрению в одностороннем порядке любых мер, не исключая силовые, под предлогом защиты подводного культурного наследия. Мы не можем согласиться с этим. Двусмысленность и неопределенность некоторых статей Конвенции, на наш взгляд, чреваты конфликтными ситуациями.

22.3 Кроме того, проект ограничивает действие установившихся в международном праве обычных норм в отношении неприкосновенности затонувших военных кораблей. Российская сторона исходит из того, что Конвенция, в соответствии с международным правом, будет иметь силу лишь для участвующих в ней государств и, соответственно, не предоставит ее государствам-участникам никаких дополнительных прав в отношении судов под флагом других государств и летательных аппаратов, зарегистрированных в других государствах.

22.4 В то же время российская сторона подтверждает готовность к продолжению и развитию сотрудничества в деле охраны подводного культурного наследия на основе Конвенции Организации Объединенных Наций по морскому праву 1982 года и консенсусных положений Конвенции ЮНЕСКО об охране подводного культурного, содержащихся в приложении к ней».

22.5 Это заявление я прошу обязательно занести в протокол заседания Генеральной конференции. Благодарю Вас за внимание. Спасибо.

(22.1) Mr SIDOROV (Russian Federation) (Translation from the Russian):

Thank you very much, Mr President. I wish to explain my delegation's vote. The Russian Federation attaches great significance to the development of an effective universal mechanism for protecting the underwater cultural heritage. The work done under UNESCO's auspices has led to extremely important and encouraging results, including agreement on rules for dealing with the underwater cultural heritage. The Russian delegation welcomes these achievements.

(22.2) At the same time, a number of provisions in the Convention are, for basic reasons, unacceptable to Russia. Article 10, for example, can be interpreted as broadening, beyond the limits laid down by the 1982 United Nations Convention on the Law of the Sea, the rights and jurisdiction of a coastal State over adjacent maritime areas. It can be regarded as offering a coastal State the right, unilaterally and at its own discretion, to take any measures, not excluding the use of force, on the pretext of protecting the underwater cultural heritage. We cannot agree to this. The ambiguity and vagueness of some articles of the Convention are, in our view, bound to give rise to conflict situations.

(22.3) Furthermore, the draft restricts the effects of the common standards established in international law with respect to the inviolability of sunken warships. The basis of the Russian position is that the Convention, in conformity with international law, will be binding only on the States participating in it and consequently will not confer on its States Parties any additional rights in relation to vessels under the flags of other States and to aircraft registered in other States.

(22.4) At the same time, Russia confirms its readiness to continue and develop cooperation for protection of the underwater cultural heritage on the basis of the 1982 United Nations Convention on the Law of the Sea and the consensual aspects of the UNESCO Convention on the Protection of the Underwater Cultural Heritage, as contained in the annex to it.

(22.5) I must ask you most insistently for this explanation to be included in the verbatim records of the General Conference session. Thank you for your attention. Thank you.

23. The PRESIDENT:

Thank you very much. Your comments are registered. I now give the floor to the distinguished delegate of Japan. You have the floor, sir.

24. Mr TAKAHASHI (Japan):

Thank you very much, Mr President. My delegation would like to make some remarks regarding the Convention on the Protection of the Underwater Cultural Heritage that has just been adopted. We welcome the adoption of the Convention on the Protection of Underwater Cultural Heritage and wish to commend the untiring efforts made by Mr Lund, Chairperson of the meeting of governmental experts on the draft Convention, the Member States, the

Secretariat and all the parties involved in the finalization of this draft Convention. We faced various difficulties in the course of our negotiations but with great patience and cooperation we were able to come up with the final draft Convention. As you all know, the focal-point issue was the relationship between the United Nations Convention on the Law of the Sea and the Convention on the Protection of the Underwater Cultural Heritage. While mindful of the need to maintain conformity between the two, Japan actively participated in the concerted efforts to reach a consensus. Fully convinced of the need to provide for a new international legal framework for the protection of underwater cultural heritage, Japan voted for the Convention as, in its view, such need for conformity has been met. We would like to take this opportunity to confirm that, as provided for in Article 3, this Convention shall be interpreted and applied in the context of and in a manner consistent with international law, including the United Nations Convention on the Law of the Sea. It is our hope that with the implementation of this Convention the precious underwater cultural heritage of humanity will now be effectively protected. Thank you.

25. The PRESIDENT:

Thank you very much. Your comments will be recorded. The distinguished representative of Turkey has the floor.

26.1 Mr FIRAT (Turkey):

Thank you, Mr President. I would like to explain my delegation's vote on the Convention that was just adopted. Turkey is one of the countries that voted against the adoption of the draft Convention on the Protection of the Underwater Cultural Heritage. I will explain our position. Each country, including Turkey, participated in the preparatory work on the draft Convention and spared no efforts in order to arrive at a satisfactory, comprehensive and consequently global legal instrument. Turkey has a rich underwater cultural heritage, not only in the seas around her coasts but also in various parts of the world. During negotiations much progress was made, but we observed that no consensus was reached on substantial issues. In other words, the document prepared does not enjoy universal approval. For instance, there is no consensus on the coastal State jurisdiction concerning underwater cultural heritage on the continental shelf and the exclusive economic zone. The balance of rights and obligations between maritime States and coastal States had to be preserved. Some articles of the Convention are still ambiguous and constitute some of the weak points of the Convention. In our view, universal acceptance is the best way to guarantee the application of this Convention. However, universal acceptance is lacking, unfortunately, because some substantive issues have not been resolved.

26.2 Now I will briefly underline Turkey's main difficulty with the Convention. In the text there are several references to the 1982 United Nations Convention on the Law of the Sea, for example in Articles 2, 3, 10 and 25. In fact, the 1982 Convention is mentioned as one of the instruments constituting the legal framework for the new Convention. Turkey is not a party to the 1982 Convention, therefore we cannot agree with these references and interpretations. Article 25 of the Convention on the peaceful settlement of disputes is another matter which we cannot go along with. In paragraphs 3 and 4 of this article, it is stated that, if no agreement is reached on the settlement of disputes between States Parties, Part XV of the 1982 Convention, specifically Article 287, shall apply. Again, for the same reason, as Turkey is not a party to the 1982 Convention, we cannot go along with this. Another issue with which we have a problem is Article 30, which states that, with the exception of Article 29, no reservations may be made to this Convention. This "no-reservation" clause is another reason why it is difficult for us to become a party to this Convention. Our delegation, during the preparatory work, proposed a formula stating that any dispute between States Parties concerning the interpretation or the implementation of the Convention ought to be settled primarily by meaningful negotiations or by any other peaceful means, referred to in Article 33 of the United Nations Charter. Although some delegations were in favour of this, others did not agree with it. Mr President, finally I would like to add that, instead of facing imposed deadlines, if we had more time we believe that a much more balanced text could be prepared. I request that this explanation of our vote be duly included in the verbatim records of the plenary. Thank you.

27. The PRESIDENT:

Thank you very much, Excellency. It will be recorded. Distinguished delegate of Denmark, you have the floor, sir.

28.1 Mr LUND (Denmark):

Thank you, Mr President. Mr Director-General, distinguished delegates, ladies and gentlemen, Denmark wishes to take the floor to explain its position in this matter and its commitment to the Convention on the Protection of the Underwater Cultural Heritage. We voted for the Convention. Although Denmark has not been especially active in the debate during the negotiations on the Convention, that should not be interpreted as lack of interest in the solutions reached. The protection of the underwater cultural heritage is very important to us, as is the maintenance of the integrity of the United Nations Convention on the Law of the Sea and the balance of rights, duties and freedoms encompassed in that text. We find that the new Convention is clearly developing the provisions of the United Nations Convention on the Law of the Sea in a manner fully consistent with that Convention. It effectively fills a gap in the protection of the underwater cultural heritage. We consider it to be urgently needed and we urge fellow

member countries to ratify and implement the Convention as soon as possible. In our view, the Convention strikes a well-founded balance between the different interests presented during negotiations. That is why Denmark voted for the Convention.

28.2 Mr President, allow me to express some more personal remarks. As Chairperson of the intergovernmental committee throughout the negotiations, I take this opportunity to thank all the participating experts. It has been a pleasure, indeed, an honour and also sometimes a challenge to preside over the negotiations. I would also like to thank the Secretariat for their tremendous work. Last but not least, I want to thank the Director-General for his very committed and enthusiastic interest in the work and his wise recommendations to the Committee and to myself. More especially, I thank him for his generosity in allowing us the time we needed to finalize the text by negotiations that pursued every opportunity to reach a consensus. I regret, of course, that a full consensus was not achieved but I am convinced that this was not for lack of time. Thank you, Mr President.

29. The PRESIDENT:

Thank you very much, distinguished observer of Denmark. I now invite the distinguished observer of Sweden, followed by Venezuela, to take the floor. Sweden, you have the floor.

30. Mr BERNER (Sweden):

Thank you, Mr President. I wish to register an explanation of vote on the draft Convention on the Protection of the Underwater Cultural Heritage, from which Sweden abstained. Regrettably, the text adopted will not gain support from all States, particularly those that are active in our neighbouring seas. This makes it difficult for Sweden to take part in this novel interpretation of international law. The consensus stumbled over two crucial issues, jurisdiction and State vessels. The United Nations Convention on the Law of the Sea (UNCLOS) does not regulate in a practical manner how the underwater cultural heritage should be effectively protected. The need for international rules supplementing UNCLOS was therefore obvious. In order for such new rules to be regarded as a legitimate, progressive development of international law and, as a result, to create an effective legal regime, consensus is crucial. Our problem lies in the fact that consensus has not been achieved as regards coastal State jurisdiction with respect to underwater cultural heritage located on the continental shelf and in the exclusive economic zone of the coastal State. The fact that it has not been possible to reach consensus means that the Convention is not likely to be ratified by all States. This in turn will prevent the rules contained in the Convention from achieving customary law status. Hence, we will be left with two legal regimes that are likely to clash with each other. Since the Convention is only valid *inter partes*, it will be impossible to implement it against the will of non-States Parties. Sweden regrets the fact that consensus could not be reached, particularly since such consensus, in our view, might have been reached, had we had the chance to continue our work on the text in a constructive manner. Still, we appreciate some important achievements of the Convention. The provisions of the annex on rules concerning activities directed at underwater cultural heritage are most welcome. Sweden will apply the majority of the rules in the annex voluntarily and irrespective of whether or not Sweden is a Party to the Convention. Sweden welcomes the fact that the legal content of the rules concerning the mandate of the coastal State in its declared contiguous zone is clarified in the Convention and regards this clarification as an indication of the present status of customary law. Sweden has noted with satisfaction that there has been overwhelming support for the inclusion of provisions to secure that proper respect shall be given to human remains in maritime waters. Sweden still believes that measures must continue to be taken to protect underwater cultural heritage throughout the world. To this end, Sweden has not excluded adhering to the Convention should it gain wide acceptance from a majority of States representing all categories of concerned States, in particular those States neighbouring the Baltic Sea or States active in the Baltic Sea. In the meantime, Sweden is prepared to explore further other means of international cooperation at a regional level for the protection of the underwater cultural heritage, in particular the Baltic Sea. Thank you, Mr President.

31. The PRESIDENT:

Thank you very much, Excellency. I call our distinguished colleague from Venezuela. You have the floor, sir, to be followed by Norway.

32.1 Sr. DÍAZ (Venezuela):

Gracias, Presidente. Señor Presidente: En congruencia con lo acontecido en la Comisión IV, la Delegación de Venezuela solicitó el uso de la palabra, para explicar las razones que la apartan de la edición recién anotada. En tal sentido, la Delegación de Venezuela reitera su inconformidad con el espíritu de uno de los apartados del Artículo 25 de la Convención recién aprobada. Consideramos, a todas luces, inconveniente tratar de imponer a un Estado no parte de la Convención de las Naciones Unidas sobre el Derecho del Mar de 1982, disposiciones de un instrumento jurídico por el cual no nos encontramos obligados por no haberlo suscrito y, en particular, por la decisión de aplicar la parte decimoquinta de la citada Convención del Mar, que obliga a cualquier Estado, sea o no parte de la Convención citada, a procedimientos conducentes a decisiones obligatorias, por simple petición de una de las partes.

32.2 Además, señor Presidente, insistimos en la ausencia en el texto del espacio para las reservas, tal y como fue mencionado hace unos minutos por la Delegación de Turquía. Por último, la Delegación de Venezuela quisiera manifestar que el voto negativo, como bien dijo el Presidente de la Comisión, por las razones antes aludidas, no significa en materia alguna diferencias fundamentales con respecto a la sustancia del instrumento, condición que fuera expresada en el seno del Grupo de los 77 y del Grupo Latinoamericano y del Caribe. Muchas gracias, señor Presidente.

(32.1) Mr DÍAZ (Venezuela) (Translation from the Spanish):

Thank you, Mr President. Mr President, in light of what has taken place in Commission IV, the delegation of Venezuela wished to take the floor to explain its objections to the text in question. In that regard, the delegation of Venezuela reiterates its disagreement with the spirit of one of the paragraphs of Article 25 of the recently adopted Convention. We consider that, in all respects, it is inappropriate to endeavour to impose on a State which is not a Party to the United Nations Convention on the Law of the Sea of March 1982 provisions contained in a legal instrument by which we are not bound, not being a signatory to it, and, in particular, by the decision to apply Part XV of the aforementioned Convention on the Law of the Sea, under which a State, regardless of whether it is a Party to the said Convention, is bound to carry out procedures entailing binding decisions at the simple request of one of the parties.

(32.2) Moreover, Mr President we wish to stress the absence in the text of any scope for reservations, as just pointed out by the delegation of Turkey. Lastly, the delegation of Venezuela should like to point out that a negative vote, as the Chairperson of the Commission clearly said, for the reasons mentioned above, does not in any way indicate fundamental differences with the substance of the instrument, a position which was expressed within the Group of 77 and the Latin America and the Caribbean Group. Thank you very much, Mr President.

33. The PRESIDENT:

Thank you, distinguished delegate of Venezuela. Distinguished delegate of Norway, you have the floor.

34.1 Ms WAGLE (Norway):

Thank you, Mr President, I would kindly ask you to ensure that the following explanation of vote is duly recorded: Norway voted against the adoption of this Convention. Norway remains committed to a further strengthening of international cooperation for the protection of underwater cultural heritage. The effective protection of this heritage represents a global challenge which deserves our very best efforts. Accordingly, Norway has supported the development of a convention for this purpose and devoted time and resources to contribute to this end. The Rules provided in the annex to the Convention represent an important step forward in this respect. They deserve and enjoy our full support. The Convention itself also provides appropriate principles and measures that serve to bring forward and strengthen international cooperation for this purpose.

34.2 However, the Convention unfortunately also includes parts which jeopardize the fine balance of jurisdiction achieved through the carefully drafted United Nations Convention on the Law of the Sea (UNCLOS). This applies in particular to provisions relating to the exclusive economic zone and the continental shelf. Norway is committed to maintaining the fine balance of the UNCLOS regime. Efforts to further strengthen the protection of underwater cultural heritage should be promoted within this framework. This would ensure broad international agreement and support and thus the efficiency such methods deserve. Norway regrets that the efforts to develop such a text have been unsuccessful. On this basis, Norway is not in a position to support the Convention on the Protection of the Underwater Cultural Heritage. Norway will furthermore be prevented from participation in any international cooperation based on the Convention in relation to the exclusive economic zone and the continental shelf. Norway will, however, consider unilateral application of the Rules provided in the annex to the Convention on account of the urgent need of improving the protection of underwater cultural heritage. Norway would also encourage other States to consider unilateral application of these Rules. Finally, Norway considers that the Convention is covered by UNCLOS Article 311, paragraph 3. The Convention on the Underwater Cultural Heritage does not affect the enjoyment by States non-Parties to this Convention of their rights or performance of their obligations under UNCLOS. We will look very carefully into whether the provisions of the Convention relating to the exclusive economic zone and the continental shelf are compatible with the effective execution of the object and purpose of UNCLOS or affect the application of the basic principles embodied therein. We reserve our right to revert to this issue in the appropriate forums. Thank you very much, Mr President.

35. The PRESIDENT:

Thank you very much, Madam. Your explanatory statement will be duly recorded, as will the explanatory statements of others who have made such statements and of those colleagues who have yet to speak. I would like now to invite the distinguished delegate of Australia to take the floor.

36. Mr SPYROU (Australia):

Mr President, thank you very much, sir. Australia welcomes with pride the adoption of UNESCO's first normative document in many, many years. We would like to congratulate you, Mr Director-General, for your unfailing support; Mr Lund, Chairperson of the meeting of governmental experts; the Secretariat, in particular Madam Prött; and the Member States. Having been a strong supporter throughout, and given its consistency with the United Nations

Convention on the Law of the Sea, Australia has voted in favour of this Convention. For the record, Australia makes the following declaration of understanding in relation to the Convention: it is the understanding of Australia that in relation to Article 2, paragraph 11, the phrase "shall constitute grounds for claiming, contending or disputing any claim to national sovereignty or jurisdiction" is intended only to be a reference to territorial disputes. Once again, congratulations. I thank you, sir.

37. The PRESIDENT:

Thank you very much, Mr Spyrou. I know that you spent hours and hours working on this Convention during the year 2000, and even before then. Thank you very much. Distinguished delegate from Uruguay, you have the floor, sir.

38.1 Sr. CASTELLS (Uruguay):

Gracias, señor Presidente. El Uruguay es perfectamente consciente, como empieza diciendo la Convención, de la importancia de proteger y preservar el patrimonio cultural subacuático y de que esa responsabilidad, y esa tarea incumben, sin ninguna duda, a todos los Estados. Tampoco tenemos duda alguna en apoyar de forma rotunda cualquier acción orientada a la protección del patrimonio cultural subacuático, como cualquier otro patrimonio de la humanidad. Esta Convención, debemos decirlo, tiene aspectos muy positivos en ese sentido y en muchos otros.

38.2 Sin embargo, es evidente que el texto no contempla totalmente los intereses uruguayos y por eso nos vemos en la obligación de abstenernos y dejar sentada nuestra posición. En primer lugar, porque creemos que no se salvaguardan adecuadamente en esta Convención los legítimos derechos de los países ribereños, en las aguas interiores, en el mar territorial, en las aguas archipelágicas, en la plataforma continental y en la zona económica exclusiva. En segundo término, porque los derechos concedidos a través de esta Convención no son suficientemente compatibles con los derechos adquiridos preexistentes. Gracias, señor Presidente.

(38.1) Mr CASTELLS (Uruguay) (Translation from the Spanish):

Thank you, Mr President. Uruguay is fully aware, as stated at the beginning of the Convention, of the importance of protecting and preserving the underwater cultural heritage and that this responsibility and this task undoubtedly rest with all States. Furthermore, we have no hesitation in fully endorsing any action for the protection of the underwater cultural heritage, as for any other heritage of humanity. The Convention, we are bound to say, has highly positive aspects in this respect and in many others.

(38.2) Nevertheless, it is clear that the text does not fully take account of Uruguay's interests and we are therefore bound to abstain and to explain our position. First, we believe that this Convention does not adequately safeguard the legitimate rights of coastal countries in internal waters, in the territorial sea, in archipelagic waters, on the continental shelf and in the exclusive economic zone. Secondly, the rights set forth in this Convention are not sufficiently compatible with pre-existing acquired rights. Thank you, Mr President.

39. The PRESIDENT:

Thank you very much, Ambassador. I would now like to invite the distinguished Ambassador of the Dominican Republic. You have the floor, Madam.

40. Sra. DESPRADEL (República Dominicana):

Muchas gracias, señor Presidente. Señor Presidente mi Delegación viene de una mitad de isla con un rico pasado histórico, ligado al tráfico marítimo. Para ella, para esta Delegación, es muy importante esta Convención y queremos agradecer muy especialmente al señor Director General, a su equipo y a todos los expertos, que con inteligencia y espíritu de concertación lograron esta Convención. Pero, muy especialmente, quisiera manifestar nuestra gratitud, en lo que concierne a nuestra región, América Latina y el Caribe, a la Delegación de Argentina, que puso a la disposición del GRULAC y del Grupo de los 77, a un experto excepcional, el señor Abel González. A él va también nuestro cordial agradecimiento. Muchas gracias, señor Presidente.

(40) Ms DESPRADEL (Dominican Republic) (Translation from the Spanish):

Thank you very much, Mr President. Mr President, my delegation comes from part of an island with a rich historical past linked to maritime trade. This Convention is therefore very important for my delegation, and we would particularly like to thank the Director-General, his team and all the experts who drew up this Convention with intelligence and on the basis of concerted efforts. But I should especially like to extend the thanks of the Latin America and the Caribbean region to the delegation of Argentina which placed at the disposal of GRULAC and the Group of 77 an exceptional expert, Mr Abel González, to whom we also wish to express our sincere gratitude. Thank you very much, Mr President.

41. The PRESIDENT:

Thank you, Madam. I now invite the distinguished Ambassador of Colombia to take the floor, to be followed by the Ambassador of Haiti. You have the floor, sir.

42. Sr. GALÁN SARMIENTO (Colombia):

Muchas gracias, señor Presidente. Conforme a lo que nuestra Delegación expresó en las deliberaciones de la Comisión IV, cuando se trató este punto, Colombia desea reiterar su respaldo a la protección del patrimonio cultural subacuático. Sin embargo, diversas autoridades de mi país, tanto del orden ejecutivo como de los órganos de control, albergan inquietudes acerca de los artículos que conciernen a la soberanía nacional, en especial el numeral tercero del Artículo 7. Por esta razón, se abstuvo de votar afirmativamente dicha Convención. Nuestro país se reserva la posibilidad de firmar y ratificar la Convención, una vez que se aclaren en el interior del país las inquietudes antes mencionadas. Muchas gracias, señor Presidente.

(42) Mr GALÁN SARMIENTO (Colombia) (Translation from the Spanish):

Thank you very much, Mr President. In keeping with what our delegation said during the discussions on this item in Commission IV, Colombia would like to reiterate its support for the protection of the underwater cultural heritage. Nevertheless, various authorities in my country, both within the administration and the oversight bodies, have some concerns with regard to the articles on national sovereignty, in particular paragraph 3 of Article 7. It was for that reason that we did not vote in favour of the Convention. Our country reserves the right to sign and ratify the Convention once it has clarified the aforementioned concerns. Thank you very much, Mr President.

43. The PRESIDENT:

Thank you very much, Ambassador. Haiti, you have the floor, sir.

44. M. CHARLES (Haïti) :

Merci, Monsieur le Président. La convention que nous venons d'adopter par vote est le fait d'un long processus de réflexion et de négociations. Aucun effort n'a été épargné pour qu'elle soit adoptée par consensus. Malheureusement, cela n'a pas été le cas. Quand aujourd'hui, j'entends certaines délégations exprimer leurs regrets, expliquer pourquoi elles ont voté contre, je crains que, par leur tonalité, ces explications de vote, certes légitimes, ne viennent fragiliser le principe même du vote démocratique. Ce principe veut que la majorité l'emporte, même en l'absence - si regrettable soit-elle - d'un consensus. En effet, toute recherche d'un consensus impossible risque d'aboutir involontairement - je dis bien : involontairement - à une sorte de veto imposée par la minorité. Ce n'est pas parce que la convention ne répond pas dans toutes ses dispositions aux intérêts de tel ou de tel Etat membre de l'UNESCO qu'il faudrait la rejeter. Ce serait tomber dans le piège d'un tel veto. On le répète assez, nous vivons dans un village planétaire, dans un monde presque sans frontières, et s'il y a mondialisation, si la démocratie se généralise, chacun doit pouvoir accepter les règles du jeu. Au demeurant, de nombreuses autres conventions de l'UNESCO ont été adoptées par vote. C'est vrai, il faut le regretter, mais nous disons aux Etats qui ont voté contre ou qui se sont abstenus que cela ne doit pas les empêcher, dans un avenir proche ou lointain, de se montrer coopératifs dans l'application de cette convention. Certes, il y aura des situations conflictuelles, mais ces Etats devront faire preuve d'esprit de coopération, de solidarité, de compréhension à l'égard des autres Etats membres qui ont voté pour l'adoption de la convention. Par delà les intérêts conflictuels, il y a un devoir de solidarité internationale à l'égard de la majorité qui a décidé de l'adoption de cette convention. Je vous remercie.

45. The PRESIDENT:

Thank you very much, Ambassador, for your spirit of encouragement. I now invite the distinguished representative of Brazil to take the floor, to be followed by the distinguished delegate of Finland. Madam, you have the floor.

46. Ms ALVAREZ (Brazil):

Thank you, Mr President. I would like to explain very briefly the abstention of Brazil. Like other delegations, Brazil also has reservations in regard to sovereignty, jurisdiction and contradictions with its existing domestic law. Nevertheless, Brazil accepts the resulting text and our national authorities will discuss it with a view to future acceptance, since it represents a step further towards the better protection of the underwater cultural heritage. I would like this to be recorded. Thank you, Mr President.

47. The PRESIDENT:

Thank you, Madam. It will certainly be recorded. I call Finland. Madam, you have the floor.

48.1 Ms HOLMSTRÖM (Finland):

Thank you, Mr President. Finland voted for the Convention. While recognizing its shortcomings my delegation could approve of the draft Convention as a whole and we regret that the Convention could not be adopted by consensus despite the last-minute efforts to that end. Mr President, we are in agreement with the main objectives of the Convention, its substantive approach and the regulatory regime that it establishes for the protection of the underwater cultural heritage. In some of its provisions, however, there is admittedly room for clarification and in some others we would not have had difficulty in adjusting our position with that of those taking a more critical view of the results of the work of the governmental experts.

48.2 Finland wishes to put on record a few observations. In regard to reporting and notification in the exclusive economic zone and on the continental shelf, we think that direct reporting to the flag State, rather than to the coastal State, of a discovery or an activity intended to be directed at the underwater cultural heritage is the best practical way of dealing with the matter. We recognize that this position is intended to be covered by subparagraph 1(b)(ii) of Article 9 and read it accordingly. In regard to paragraph 2 of Article 10, we indicated our willingness to go along with several alternative formulations. All of them should have the same bona fide interpretation. The coastal measures referred to should be objectively justified to prevent interference with the coastal States' sovereign rights or jurisdiction. Similarly, the disclaimer in paragraph 11 of Article 2 cannot be read to authorize whatever coastal claims may be presented. In the preparation of the Convention, my delegation took particular interest in the determination of the status, under the draft Convention, of sunken State vessels at the bottom of the territorial sea. In our view, measures aimed at their protection, like the protection of any wrecks in the territorial sea, come within coastal sovereignty. This is now confirmed by paragraph 3 of Article 7. While my delegation approves the provision as it now stands, we could have seen some of its elements modified. For us, there was no problem in including more mandatory language concerning reports to flag States of sunken State vessels and aircraft. We were also willing to include internal maritime waters within the scope of the provision. That would have been in perfect keeping with the overall goal of international cooperation for the protection of the underwater cultural heritage. Thank you, Mr President.

49. The PRESIDENT:

Thank you very much, Madam. I would now like to invite our colleague from Greece to take the floor. You have the floor, sir.

50.1 Mr RALLIS (Greece):

Thank you, Mr President. Greece, one of the most ecologically rich nations of the world, has a particular interest in protecting the underwater heritage. It therefore attached great importance to the development of cooperation and to the legal regime for the protection of the cultural heritage of the oceans. It should be recalled that back in 1971, it was Greece which proposed the inclusion of archaeological and historical treasures on the seabed and the ocean floor beyond the limits of national jurisdiction in the list of topics for discussion by the United Nations Seabed Committee and later on, in 1979, during the negotiations of the Third United Nations Conference on the Law of the Sea, the protection of archaeological and historical objects found on the continental shelf in the exclusive economic zone. Greece participated actively in the UNESCO negotiations and, in a spirit of compromise, sacrificed positions of importance and accepted, *inter alia*, the qualified exclusion of the law of salvage and the qualified prohibition of the commercial exploitation of the underwater cultural heritage. The Convention adopts protective measures for a cultural heritage found in international waters which would otherwise be unprotected given the limited scope of applications of the relevant provisions of the United Nations Convention on the Law of the Sea of 1982.

50.2 However, the jurisdiction clauses are drafted in such a manner that they will not facilitate – and indeed may even complicate and prevent – their enforcement as far as the continental shelf and the exclusive economic zone are concerned. This lack of precision in jurisdictional clauses is even more problematic in the light of the compromise provisions, for example on salvage and commercial exploitation of underwater cultural heritage. More specifically, Greece's reservations focus on four main points: first, the protection of the underwater cultural heritage found on the continental shelf within the exclusive economic zone which is based on a system of consultations with all States Parties that leaves to the coastal State only a coordinating role on its own continental shelf does not ensure its right to be notified of discoveries of underwater cultural heritage. Second, the introduction of the aforementioned system of consultations into the protective scheme adopted for the contiguous zone is not as perfect as it should be. Third, the exclusion of warships and other State vessels from the obligation to report discoveries of underwater cultural heritage on the continental shelf and in the exclusive economic zone. Greece is also concerned about the requirement in Article 7, paragraph 3, even in a non-obligatory form, to inform the flag State of identifiable State vessels and aircraft found within their archipelagic waters and territorial sea. Fourth, Greece has certain reservations with respect to the accommodation of the interests of the States with a verifiable link, especially a cultural, historical and archaeological link. Greece has throughout these negotiations stressed the fact that this is a very vague concept which is open to different interpretations and controversy. Finally, in the light of the above, Greece had to abstain from voting on the text of the Convention but it does, however, reserve its position for the future. Thank you, Mr President.

51.1 The PRESIDENT:

Thank you very much, distinguished delegate of Greece.

(The President continues in Arabic)

٥١,٢ أَدْعُو الآن السيد نائب المندوب الدائم للجمهورية العربية الليبية إلى تناول الكلمة.

(51.2) (Translation from the Arabic) I now invite the Deputy Permanent Delegate of the Libyan Arab Jamahiriya to take the floor.

٥٢ السيد الغالي (الجمهورية العربية الليبية):

شكراً، سيدي الرئيس. إن وفد بلادي يرحب باعتماد نص الاتفاقية، ويرغب في التعبير عن تقديره للجهود التي بذلها المدير العام ومساعد المدير العام للثقافة في سبيل التوصل إلى إعداد صك قانوني دولي لحماية التراث الثقافي المغمور بالمياه. كما نتقدم بالشكر والتقدير إلى السيد رئيس لجنة الخبراء الحكوميين على حنكته وصبره وقدرته على إدارة الاجتماعات. ونحن نمثل إحدى الدول التي تزخر شواطئها الطويلة بهذا النوع من التراث، ونشعر بأهمية حمايته وضرورة وجود مثل هذا الصك حالياً، بالنظر إلى ما يتعرض له من دمار ونهب. ونحن نعتقد بأن هذه الاتفاقية تمثل الحد الأدنى من الحماية التي نطمح إليها. وإننا نقدر توافق الآراء، وكنا نأمل أن نصل إلى الوفاق الكامل بين كافة الدول، ولكن للأسف لم تتفق بعض الدول مع الأغلبية على بعض المواد. ونحن نحترم مواقفها التي عبرت عنها صراحة، سواء أثناء اجتماع الخبراء، أو خلال الاجتماعات التي تلتها. ونأمل ألا يمثل هذا الموقف عاملاً يعرقل تنفيذ هذه الاتفاقية. وشكراً.

(52) Mr ELGHALI (Libyan Arab Jamahiriya) (Translation from the Arabic):

Thank you, Mr President. My country's delegation welcomes the adoption of the Convention, and would like to express its appreciation of the efforts made by the Director-General and the Assistant Director-General for Culture for drafting an international legal instrument on protection of the underwater heritage. Likewise, we extend our thanks and appreciation to the Chairperson of the Committee of Governmental Experts for his great experience, patience and ability in chairing the meetings. We are a State whose long coasts are replete with this kind of heritage, and we are aware of the importance of protecting it and the need for such an instrument at the present time, in view of the destruction and looting to which this heritage is exposed. We also believe that this Convention represents the minimum level of protection to which we aspire. We appreciate the consensus, and would have hoped to attain full agreement among all States, but unfortunately some States did not agree with the majority on some of the articles. We respect their positions, which they stated frankly during the meeting of experts, or during the meetings that followed it. We hope that this position will not be a factor hindering the implementation of the Convention. Thank you.

٥٣،١ الرئيس:

شكراً جزيلاً.

(53.1) The PRESIDENT (Translation from the Arabic):
Thank you very much.

(The President continues in English)

53.2 The distinguished observer of the United States of America has asked for the floor. The floor is yours, sir.

54. Mr WANNER (Observer for the United States of America):

Thank you, Mr President. We note and take satisfaction in the substantial progress that was made in the drafting of the Convention. In particular, agreement on the annexed Rules, the preamble and support of non-intrusive responsible public access to the underwater cultural heritage were substantial achievements. Nonetheless, we regret that we would not be able to accede to the present text because of objections to several key provisions relating to jurisdiction, the reporting scheme, warships, and the relationship of the Convention to the United Nations Convention on the Law of the Sea. We do not believe that the Convention was ripe for adoption: we do believe that, if we had had more time, a broadly ratifiable text could have been arrived at by consensus. And we hope that there will be a future opportunity to build on the progress that we did make in regard to the Rules, the preamble, public access and other provisions. Only a broadly ratifiable text will actually contribute to effective protection of the underwater cultural heritage. We wish to note for the record that, in our view, as a matter of international law and with particular reference to Article 311, paragraph 3, of UNCLOS, the Convention's provisions apply only among parties to it. This is particularly true of the provisions in the article on jurisdiction, on the continental shelf and the exclusive economic zone. It is our assumption that other delegations share this understanding. We ask that these views, which I will present to you in written form, and the views provided in Commission IV, be incorporated into the formal records of this meeting and of the General Conference. Thank you, sir.

55. The PRESIDENT:

Thank you very much, it will be recorded. As I see no other Member State wishing to take the floor, I would like to thank you all. Without your cooperative approach we could not have made such progress today. You are well ahead of the time schedule we had anticipated and this is good news for the interpreters. For all of you it was a fruitful though difficult day, but thanks to your cooperation it has become very easy and very relaxed. Thank you very much and have a good evening. The meeting is adjourned.

La séance est levée à 18 h.05
The meeting rose at 6.05 p.m.
Se levanta la sesión a las 18.05
Заседание закрывается в 18.05
رفعت الجلسة في الساعة ٦.٠٥ مساءً
会议于 18 时 05 分结束