

**UN/GA**

## Debate on the Convention on the Protection of Underwater Cultural Heritage\*

– Excerpts from the Proceedings of the 65th and 66th Plenary Meetings (A/56/PV.65 and A/56/PV.66) –

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**The President:** I give the floor to the representative of Brazil to introduce draft resolution A/56/L.17.

\* See pages 149 and 152. See also Environmental Policy and Law Vol. 32 (2002) No. 1 at page 2.

**Mr. Biato** (Brazil): I have the honour, as one of the coordinators, to introduce draft resolution A/56/L.17, entitled "Oceans and the law of the sea".

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Two recent milestones in the ongoing endeavours to progressively enact a comprehensive law of the oceans are equally

noteworthy: the imminent entry into force of the United Nations Fish Stocks Agreement and the adoption last month by the United Nations Educational, Scientific and Cultural Organization of the Convention on the Protection of the Underwater Cultural Heritage.

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Clearly, there is a growing understanding that the problems of the oceans and the seas are interrelated and require a holistic approach. We therefore consider that progress in generating a modern legal framework for regulating their use to be highly positive. The adoption of the United Nations Educational, Scientific and Cultural Organization Convention, as well as the entry into force of the United Nations Fish Stocks Agreement, are, from that perspective, positive trends. We believe that both instruments strike a fair balance between the different and often competing interests involved.

No doubt, these instruments are not seen by all in the same light. It is the challenge ahead to explore the opportunities for cooperation and coordination that they provide, in the spirit of the Convention.

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**Mr. Siv** (United States of America): My delegation is pleased to co-sponsor the draft resolution entitled "Oceans and the law of the sea."

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 I have mentioned a number of times already the excellent international cooperation within the United Nations process and generally on law of the sea matters. It is therefore with regret that I must note the lack of such international cooperation or consensus regarding law of the sea issues in the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection of Underwater Cultural Heritage. Many provisions of that agreement, most notably the annexed rules, will be helpful in addressing underwater cultural heritage.

Unfortunately, the provisions relating to jurisdiction, the reporting scheme, warships and the relationship between the agreement and the Law of the Sea Convention were included without consensus and are problematic. As a matter of international law, the UNESCO Convention, if it enters into force, will apply only among parties to it and cannot be considered in resolving any conflicts involving non-parties or their vessels.

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**Mr. Asadi** (Islamic Republic of Iran): It is indeed a great pleasure for me to speak on behalf of the Group of 77 and China on item 30 (a) of the agenda, entitled "Oceans and the law of the sea". We in the developing world attach great importance to this issue, as it relates to the multifaceted topic of oceans and seas.

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 We note with interest the recent adoption of the Convention on the Protection of Underwater Cultural Heritage by the United Nations Educational, Scientific and Cultural Organization (UNESCO). It will set the framework for future debate on this topic.

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**Mr. Kolby** (Norway): The establishment of a legal order for the seas and oceans in the form of the United Nations Convention on the Law of the Sea represents a major contribution to the strengthening of peace, security, cooperation and friendly relations among nations. The full implementation of the Convention at all levels will promote the economic and social advancement of all peoples of the world. It remains fundamental that the problems of ocean space are closely interrelated and need to be considered as a whole. The Convention is the legal framework within

which all activities related to the oceans must be considered.

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 In October this year, the General Conference of the United Nations Educational, Cultural and Scientific Organization (UNESCO) adopted the Convention on the Protection of the Underwater Cultural Heritage. While Norway remains committed to further strengthening international cooperation for that purpose, we felt obliged to vote against the adoption of the Convention. The Convention does indeed provide useful principles and measures that serve to bring forward and strengthen international cooperation in this respect. 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.

Norway is committed to maintaining the fine balance of the regime of the United Nations Convention on the Law of the Sea. Efforts to further strengthen the protection of underwater cultural heritage should be promoted within that framework. That would ensure broad international agreement and support, and thus the efficiency that such measures deserve. We also believe that while UNESCO certainly is the appropriate body to adopt rules and measures to implement the relevant provisions of the United Nations Convention on the Law of the Sea with regard to the Protection of Underwater Cultural Heritage, UNESCO is not the appropriate body to challenge the Law of the Sea Convention regime. On that basis, Norway was not in a position to support the Convention on the protection of the underwater cultural heritage, and Norway will not participate in any international cooperation based on the provisions of the UNESCO Convention relating to the exclusive economic zone or to the continental shelf.

We consider that the UNESCO Convention is covered by article 311, paragraph 3, of the United Nations Convention on the Law of the Sea. Thus, the UNESCO Convention does not affect the enjoyment by other States of their rights or the performance of their obligations under the United Nations Convention on the Law of the Sea. We will look very carefully into whether the provisions of the UNESCO Convention that relate to the exclusive economic zone and the continental shelf are compatible with the effective execution of the object and purpose of the United Nations Convention on the Law of the Sea and whether they will affect the application of the basic principles embodied therein.

The annex to the UNESCO Convention represents a major achievement and has our full support. We are aiming at unilateral application of the rules set out in the annex and would encourage other States to consider this as well.

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**Mr. Boisson** (Monaco) .....

At its thirty-first session on 2 November, the General Conference of the United Nations Educational, Scientific and Cultural Organization adopted the Convention on the Protection of the Underwater Cultural Heritage. The adoption of that instrument and its annex was the outcome of four years of work in the committee of experts. Filling a legal void, the provisions of the Convention will provide protection against the plundering and destruction of ancient shipwrecks and archaeological sites that

have been under water for at least 100 years.

The underwater cultural heritage will thus be subject to the same ethical and scientific regulations as apply to the archaeological heritage. The Convention rounds out the provisions of the United Nations Convention on the Law of the Sea, which makes no specific provision for the protection of the underwater cultural heritage. As stipulated in article 3, the Convention should be interpreted and applied in compliance with international law and the provisions of the Montego Bay Convention. My delegation is thus very pleased to welcome the adoption of that instrument.

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**Mr. Marechal** (Belgium): .....

The set of legal instruments regarding oceans and the law of the sea continues to grow. In this regard, the European Union takes note of the adoption by the United Nations Educational Scientific and Cultural Organization (UNESCO) of the Convention on the Protection of Underwater Cultural Heritage.

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**Mr. Cappagli** (Argentina): .....

Argentina welcomes adoption by the United Nations Educational, Scientific and Cultural Organization (UNESCO) of the Convention on the Protection of the Underwater Cultural Heritage. The Convention protects sites and objects of cultural value located in the sea from pillage and other illegal acts and thus completes UNESCO's regulatory architecture for protecting the cultural heritage of the entire world. In conformity with the requirements of the General Assembly's relevant resolutions, the UNESCO Convention is in keeping with international law in effect, including the Convention on the Law of the Sea.

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**Mr. Stuart** (Australia): Oceans and law of the sea issues are of critical importance to Australia, which is the world's largest island and has one of the world's longest coastlines and among the world's largest maritime zones and continental shelves.

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 Another positive development was the adoption last month of the Convention on the Protection of Underwater Cultural Heritage, which provides for an international regime to better protect and preserve underwater cultural heritage. Appropriately, this Convention reflects the primary role of the coastal State in bringing about such protection.

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**Mr. Tarabrin** (Russian Federation): The Russian Federation attaches priority to the General Assembly's examination of the marine issue, in view of the importance and relevance of this issue for the entire international community.

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 We consider the Convention to be the basis of national, regional and global action in the marine sector. Unfortunately, we must point out that certain international mechanisms are working on problems related to the law of the sea outside the framework of the 1982 Convention, which is something that detracts from a single order for the entire world. We therefore view as controversial the recently adopted United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection of Underwater Cultural Heritage. Some of the provisions of

that Convention actually undermine the integrity of the regime of the seas and oceans and are therefore unacceptable to the Russian Federation. The Convention could be understood to give extra rights to coastal States, including the right to take any unilateral measures they see fit under the pretext of protecting underwater cultural heritage. The ambiguity of this situation is fraught with the danger of creating conflict situations. We also disagree with the limitation of usual norms of international law regarding the inviolability of sunken warships. We assume that the provisions of this Convention will be binding only on

States parties and that they will not affect ships under the flags of other States or aircraft registered in other countries.

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**Mr. Ascencio** (Mexico): Allow me to begin by thanking, on behalf of my delegation, the coordinators of each of the resolutions related to agenda items 30 (a) and (b). We are grateful for their intense work and dedication in achieving the results we now have before us.

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We note with satisfaction that draft resolution A/56/L.18 takes note of the recent adoption by the United Nations Edu-

cational, Scientific and Cultural Organization (UNESCO) of the Convention on the Protection of the Underwater Cultural Heritage, which is a positive development in keeping with article 303 of the Convention and with the obligation of all States to protect underwater archaeological and historical objects. We note too that the UNESCO Convention provides for a connection with the United Nations Convention on the Law of the Sea. That is of importance for Mexico, because it helps more precisely to identify the areas in which the activities of interested countries and institutions can take place.

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