

## **Non-Paper submitted by Spain to the Intersessional Working Group on Underwater Cultural Heritage on a draft text of Regulation 35**

6 June 2024

1. On 11 December 2023, Spain submitted to the intersessional Working Group (WG) proposals for consideration on the “term of art” and “definitions” regarding the protection of human remains and cultural heritage in future regulations on exploitation in the Area. On 18 February 2024, Spain submitted a second Non-Paper with proposals on the system of protection of human remains and cultural heritage. All these proposals were discussed by the WG in several meetings.
2. On 29 March 2024, these proposals were again discussed by the WG. During this meeting, two particular concerns arose:
  - The still open question on how to protect “pure” intangible heritage, which particularly concerns the representatives of the Indigenous Peoples and Local Communities; and
  - The delimitation of the concept “interested States” vis-à-vis the terms used in art. 149 UNCLOS (“preferential rights”).
3. In this last meeting of the WG, it was agreed that Spain would have conversations with the facilitator (Micronesia) and some other interested States to receive their comments and to submit to the WG an agreed “term and definitions” and a draft text for future Regulation 35.
4. Spain has had several informal conversations with Australia, Greece and Norway. Several proposals, counter-proposals and improving amendments were discussed. Unfortunately, it was not possible to agree a draft text among these four States.
5. This produced the following proposed text for the “term of art and definitions” and for Draft Regulation 35. The draft-texts included in this Non-Paper are thus the proposals of Spain only.
6. This proposal does not address issues relating to the protection of “pure” intangible cultural heritage (i.e. practices, representations, expressions, knowledge and skills, as defined in the 2003 Intangible Heritage Convention). It addresses only the protection of tangible cultural heritage (including those tangible objects associated with intangible cultural heritage, as mentioned in the aforementioned 2003 Convention). Spain considers that “pure” intangible cultural heritage should be better protected through preventive measures, and that stakeholders’ involvement in intangible cultural heritage needs to be addressed before activity in the area takes place, e.g. through the EIA-process and the corresponding consultation processes. The specifics of the definition of “intangible cultural heritage” and how it can be included in the regulations, need to be further addressed by the Council. A document submitted by the representatives of Indigenous Peoples in May 2024 could be a starting point for the furtherance of discussions.
7. As term of art and definition, it was agreed that the best option should be to retain that proposed by Spain, which aligns with UNCLOS and the already adopted ISA Regulations on prospecting and exploration: “Human Remains and Cultural Heritage”. The reason supporting such election may be found in the first Non-Paper of Spain.
8. As the definition encompassed under that term of art, it is proposed the following text: “All traces of human existence found in the Area which have been underwater for at least 100 years,

having a cultural, historical or archaeological character, or associated with the intangible cultural heritage recognized by communities, groups and, in some cases, individuals, such as human remains, objects of prehistoric character, sites, structures, buildings, artifacts, vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context.”

9. Finally, Spain proposes the following text for Regulation 35:

**Regulation 35. Human Remains and Cultural Heritage**

1. Exploitation activities in the Area shall be conducted in a way that does not negatively affect human remains and/or cultural heritage.
  2. The Contractor shall notify the Secretary-General in writing within 24 hours of any discovery of suspected human remains and/or cultural heritage in the Contract Area, and their location. The notification shall include the provisional mitigation and preservation measures taken by the Contractor to avoid any interference with these human remains and/or cultural heritage and their natural context.
  3. Following the discovery of any such human remains and/or cultural heritage, and in order to avoid their disturbance, no further exploitation shall take place, within a reasonable radius, until the Council adopts a decision in accordance with paragraph 5. Pending any action by the Council, the Secretary-General may suggest to the Contractor further provisional measures to preserve the human remains and/or cultural heritage and their natural context taking into consideration [the applicable relevant guidelines] [generally accepted underwater archaeological standards].
  4. The Secretary-General shall transmit in writing within 48 hours the information concerning the discovery and the provisional measures suggested to the contractor, if any, to all States, the President of the Council, the Director General of the United Nations Educational, Scientific and Cultural Organization, as well as to any other international organization and other stakeholders having asked the Authority to be notified in such cases.
  5. After ascertaining the views of Member States, particularly those with preferential rights under Article 149 of the Convention, and the Contractor, within sixty 60 days of the notification of the discovery by the Secretary-General, the Council shall make a decision as to whether or not exploitation activities shall be terminated within an area surrounding the discovered human remains and/or cultural heritage. The Council may suggest to the Member States any other measure to preserve the human remains and/or cultural heritage and their natural context taking into consideration [the applicable relevant guidelines] [generally accepted underwater archaeological standards].
  6. In taking such a decision, the Council shall also take into account the views of non-Member States, the United Nations Educational, Scientific and Cultural Organization and of the other mentioned international organizations in paragraph 4, as well as of any mentioned stakeholders if so decided by the Council.
  7. The Council shall forward to the Authority’s database all information used in making its decision under paragraph 5. Access to such information shall be decided by the Council under Part IX on ‘Information-gathering and handling’ of this Regulation.
10. It is suggested that this may be the proposed text by the intersessional Working Group, if so agreed. If not, this proposal may be submitted to the Council by Spain.