

May 2024

Submission to the Intersessional Working Group on Intangible Underwater Cultural Heritage

The following is a submission by various Indigenous People representatives to the International Seabed Authority, including:

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Why should the exploitation regulations address intangible underwater cultural heritage?

- Indigenous People should be a part of decision making. The Indigenous People need full participation in all cross cutting issues as participants and not merely being passive consultants.
- The ISA must recognize, protect and preserve our cultural rights and participation in all respects
- Indigenous people must have free, prior and informed consent on matters affecting their intangible cultural heritage
- The rights of Indigenous Peoples are currently recognized in other international instruments.¹

¹ The Universal Declaration of Human Rights (1948), International Covenant on Economic and Social Rights (1966), International Covenant on Civil and Political Rights (1966), UNESCO Universal Declaration on Cultural Diversity (2001), UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore (1989) and United Nations Declaration on the Rights of Indigenous Peoples ([UNDRIP](#)) (2007) all point to a broader recognition of underwater intangible cultural heritage.

- We are talking about our place of creation, the genealogy of beginning, the spiritual beliefs about the beginning of life

The concept of intangible heritage is not a new one. Intangible expressions of culture have been part of international discussions since 1973, with related conversations around ensuring protection of human rights since the 1940s. In 2003, the UNESCO Convention on the Safeguarding of Intangible Cultural Heritage was adopted. Now with 183 state Parties, this Convention protects a wide array of intangible and living heritage, parts of human history that are connected to people and communities from around the world.

According to [UNESCO](#), “Intangible cultural heritage does not give rise to questions of whether or not certain practices are specific to a culture. It contributes to social cohesion, encouraging a sense of identity and responsibility which helps individuals to feel part of one or different communities and to feel part of society at large.”

The [UN Human Rights High Commissioner has said](#) that “States must guarantee meaningful and informed public participation, including free, prior, and informed consent of Indigenous Peoples, in environmental decision making, bearing in mind the barriers to public participation faced by Indigenous Peoples.” He also said that “In doing so, States must also ensure transparent, inclusive, safe and meaningful participation of civil society in environmental negotiations.”

Resolution 52-23 of the UN Human Rights Commission states that everyone has the right to a clean, healthy and sustainable environment. In the preamble it is recognized that “the loss of biodiversity and the decline in ecosystem services may interfere with the enjoyment of a safe, clean, healthy and sustainable environment, and that environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of all human rights” Our overarching concern is that for oceanic peoples (in particular from the Pacific), sediment plumes and contaminants emanating from deep-sea mining will negatively impact marine ecosystems and negatively affect our effective enjoyment of human rights.

Intergenerational equity views the human community as a partnership among all generations. Each generation has the right to inherit the same diversity in natural and cultural resources enjoyed by previous generations, together with equitable access to the use and benefits of these resources.

Defining intangible underwater cultural heritage

A definition can be taken from the UNESCO 2003 Cultural Heritage Convention: “Intangible Underwater Cultural Heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.”

What regulatory language would look like

It is important to have participation throughout the regulations. There needs to be a recognition of Indigenous rights and practices with their protections that are tangible and intangible.

This could be achieved by establishing a Committee on Intangible Underwater Cultural Heritage within the ISA.

The intangible heritage currently protected under the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage inscribes a range of intangible heritage from around the world, including Pacific Island wayfinding and canoe making, the Chinese and Malaysian Ong Chun rituals and related practices for maintaining the sustainable connection between humans and the ocean and Jamaican Reggae among many more.

The current proposals in the intersessional working group span tangible heritage, a predominant focus also seen in archeology, that includes shipwrecks and human remains. This is understandable as a result of the way that international law has been developed and the focus of Article 149 of UNCLOS on archaeological and historical “objects.” However, this begs the question of why, historically, we have prioritized tangible cultural heritage over intangible cultural heritage. Could it be as a result of the history of colonization? Could it be connected with the erasure and exclusion of Indigenous voices and traditional knowledge affecting what is deemed culturally important? The world’s understanding of what is important to protect is changing, supported by increasingly inclusive conversations, the recognition of the right of free prior and informed consent, and archeologists increasingly grappling with how to acknowledge and understand protection of intangible cultural heritage. Protecting intangible heritage keeps cultures alive. As often refrained here in this room, we have a unique opportunity to dedicate time to these important matters. The biggest question is what will we do with this opportunity: will conversations be rushed to meet an arbitrary deadline and a predetermined outcome? Or will we take our time, do our diligence, and work to ensure that conversations here are future proof, inclusive, and brave?

The important concepts to address include free prior informed consent, protection and safeguarding of intangible underwater cultural heritage for present and future generations.

It is important that intangible cultural heritage is not just taken into account, but actively protected. Over the last year, many Indigenous people with ties to the deep sea have come to this fora and asked for your attention, asked to be heard, and demonstrated that their ways of life, traditions, history, and rights are at risk from this potential unknown, extractive and destructive industry. This body has a chance to be inclusive, by listening to and engaging with perspectives and voices which have previously been ignored or downplayed.

Effectively protecting the intangible cultural heritage of the deep sea requires engagement with Indigenous voices. To that end, the intersessional working group on underwater cultural heritage has seen a proposal by a group of Indigenous representatives. We encourage a discussion based on this proposal. Efforts to protect the marine environment and govern the Area as the Common Heritage of Mankind would be remiss and incomplete without due consideration of and engagement with intangible cultural heritage and the rights of Indigenous people and protecting and safeguarding the rights and cultural heritage of Indigenous Peoples.

Textual Suggestions

The following suggestions represent suggestions to implement the above principles.

Schedule: Use of Terms and Scope

Definition

“Intangible Underwater Cultural Heritage” means the practices, representations, expressions, knowledge, skills, as well as the instruments, objects, artefacts and cultural spaces associated therewith that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. {Convention for the Safeguarding of the Intangible Cultural Heritage Art 2}

Operative Language

Regulation 2: Principles, Approaches and Policies

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After (h) The use of relevant traditional knowledge of Indigenous Peoples and local communities.

Add:

New (i) The protection and safeguarding of intangible underwater cultural heritage including the free prior informed consent of Indigenous People and Local Communities.

After Regulation 4 **Rights [and legitimate interests] of coastal States**

Add: Regulation 4bis

4bis Protection and Safeguarding of Intangible Underwater Cultural Heritage

- 1. Contractors and Applicants shall consult and cooperate in good faith with Indigenous Peoples through their own representative institutions in order to obtain their free prior and informed consent before taking any action that may affect them or their Intangible Underwater Cultural Heritage. {United Nations Declaration on the Rights of Indigenous Peoples Art 19}*
- 2. The Authority shall at all times ensure the protection and safeguarding of Intangible Underwater Cultural Heritage.*
- 3. No application for a plan of work shall be granted which does not protect and safeguard Intangible Underwater Cultural Heritage.*

Add 4 ter

Committee on Intangible Underwater Cultural Heritage

1. A Committee on Intangible Underwater Cultural Heritage (“the Committee”) is hereby established to assist the Council in carrying out its responsibility to assist the Council protect and safeguard Intangible Underwater Cultural Heritage.

2. The Committee shall comprise X members.

3. Without limiting the powers and functions conferred upon another organ of the Authority the Committee shall:

a. Provide recommendations to the Council on matters relating to Intangible Underwater Cultural Heritage

b. Advise the Legal and Technical Commission on all matters relating to Intangible Underwater Cultural Heritage.

c. Liaise with Indigenous Peoples.

d. Perform any other duties that the Council directs in writing.

4. The Committee shall develop its own rules of procedure, which shall be approved by the Council.

5. Decisions of the Committee shall be taken by consensus. If all efforts to achieve consensus have been exhausted, decisions shall be taken by a majority of members present and voting. In the case of a tie, the Chair of the Committee shall have the decisive vote.

6. The Committee shall meet at regular intervals preferably using virtual means,

7. The Secretary-General shall provide such administrative support to the Committee as is required.