INTERVENTION AT BBNJ IGC-4 OPENING SESSION 7 March 2022

The International Cable Protection Committee (ICPC) is committed to supporting the work of the conference towards the conservation and sustainable use of biodiversity beyond national jurisdiction (BBNJ), specifically as it relates to submarine cables. While we are not permitted to attend this IGC-4 in person, we are available to meet any interested delegation during lunchbreaks and evenings. Please do not hesitate to contact us if you would like to set up a meeting or if you have any question on submarine cables.[1]

For purposes of this opening statement, we would like to share a few thoughts and concerns with all delegations:

- Submarine cable laying and repair activities are the perfect example of a sustainable use of areas beyond national jurisdiction; their benign environmental impacts and their considerable socio-economic benefits are both well established.[2] The legal framework created by the BBNJ instrument should therefore integrate cable laying and repair activities without hindering them—absent exceptional circumstances.

- The ICPC is concerned that a BBNJ instrument hastily adopted during IGC-4 may:
    - be too general, and create an uncertainty on the future legal status of submarine cables in areas beyond national jurisdiction, and thereby discourage investments in the maintenance and expansion of this critical infrastructure; and
    - prioritize the conservation over the sustainable use of areas beyond national jurisdiction, and empower the COP and states parties to

[1] You can reach us via email to acolarossi@reedsmith.com and KBressie@hwglaw.com.
[2] Please find attached a list of references in support of this statement.

adopt conservation measures that are disproportional, especially for activities like submarine cables that are not subject to the jurisdiction of an existing international body.

- The ICPC urges states to consider the adverse impacts that such an instrument would have on the word's global telecommunication networks. Small islands states and remote regions would be particularly affected, as they are dependent on submarine cables to access essential internet, banking and other services. The recent submarine cable break and internet blackout that followed a volcano eruption in Tonga and disrupted aid efforts illustrates this point. At a larger scale, the COVID pandemic would have been much more disruptive if the global community had not remained connected via high-speed international data, 99% of which is transported by submarine cables.

- Even if states are not ready to specifically address the treatment of submarine cables in the BBNJ instrument, the ICPC respectfully submits that they should at least better protect those activities (including, but not limited to, submarine cables) that are not subject to the jurisdiction of an existing international body, especially when the lack thereof is in large part due to the environmentally benign nature of the activity, and especially given that such activities will not be adequately represented in an IGC-4 that is open to states and intergovernmental organizations only.

The ICPC submitted in 2020 five textual proposals that make no mention of submarine cables (except for one) but would address the concerns highlighted in this statement.[3]

To conclude, the ICPC respectfully asks all delegations to remain focused on the BBNJ goal of "sustainable use" and to avoid undermining the UNCLOS goal of "establishing […] a legal order for the seas and oceans which will facilitate international communication." Thank you for your consideration.

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[3] The ICPC's textual proposals are on pages 369-372 of the April 15, 2020 compilation: https://www.un.org/bbnj/sites/www.un.org.bbnj/files/textual_proposals_compilation_-_15_april_2020.pdf.

References on Submarine Cables and Biodiversity Beyond National Jurisdiction

United Nations Publications:

- Resolution of the General Assembly, Oceans and the Law of the Sea, A/RES/76/72, Dec. 20, 2021, paras. 184, 185, 186 and 187, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/124.
- Submarine Cables and Pipelines, Chapter 19 of First World Ocean Assessment, 2017, http://www.un.org/depts/los/global_reporting/WOA_RPROC/Chapter_19.pdf.
- Changes in submarine cables and pipelines, Chapter 14 of the Second World Ocean Assessment, Volume II, 2021. https://www.un.org/regularprocess/sites/www.un.org.regularprocess/files/2011859-e-woa-ii-vol-ii.pdf
- Report of the Secretary General, Oceans and the Law of the Sea, A/70/74, March 30, 2015, paras. 53, 54, 55, https://documents-ddsny.un.org/doc/UNDOC/GEN/N15/093/76/PDF/N1509376.pdf?OpenElement.
- Submarine Cables and the Oceans: Connecting the World, ICPC-UNEP Report, 2009, https://www.iscpc.org/documents/?id=132.
- Submarine Cables and BBNJ – Preparatory Committee established by General Assembly resolution 62/292: Development of an internationally binding instrument under the United Nations Convention of the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, https://www.un.org/depts/los/biodiversity/prepcom_files/ICC_Submarine_Cables_&_BBNJ_August_2016.pdf

Scientific Publications:

- Benn, A.R., Weaver, P.P., Billet, D.S., Van Den Hove, S., Murdock, A.P., Doneghan, G.B. and Le Bas, T., 2010. Human activities on the deep seafloor in the North East Atlantic: an assessment of spatial extent. PloS one, 5(9), p.e12730 ("*The spatial extent of …telecommunication cables… is relatively small*.")
- Carter, L., Burnett, D. and Davenport, T., 2014. The Relationship between Submarine Cables and the Marine Environment. In Submarine Cables (pp. 179-212). Brill Nijhoff.
- Carter, L., Burnett, D., 2017. International Submarine Cables and Biodiversity of Areas Beyond National Jurisdiction: The Cloud Beneath the Sea. Brill Nijhoff.
- Kogan, I., Paull, C.K., Kuhnz, L.A., Burton, E.J., Von Thun, S., Greene, H.G. and Barry, J.P., 2006. ATOC/Pioneer Seamount cable after 8 years on the seafloor: Observations, environmental impact. Continental Shelf Research, 26(6), pp.771-787. ("*Overall, the biological impacts of the presence of this submarine cable are minor*.")
- Kogan, I., Paull, C.K., Kuhnz, L., Burton, E.J., Von Thun, S., Greene, H.G. and Barry, J.P., 2003. Environmental impact of the ATOC/Pioneer seamount submarine cable. Report prepared Monterey Bay Aquarium Research Institute (MBARI) in partnership with NOAAOAR (National Oceanic and Atmospheric Administration-Oceanic and Atmospheric Research) and NOAA-NOS (National Ocean Service).
- *Kuhnz, L. et al., 2015. Potential impact of the Monterey Accelerated Research System (MARS) cable on the seabed and benthic faunal assemblages. MARS Biological Survey Report 33pp*

plus appendices. https://www.mbari.org/wp-content/uploads/2016/02/MBARI-Potential-impacts-of-the-Monterey-Accelerated-Research-System-2015.pdf. "the major conclusion of the study is that the MARS cable has had little detectable impact on seabed geomorphology, sediment conditions, or biological assemblages".

- Kuhnz, L.A., Buck, K., Lovera, C., Litvin, S., Whaling, P.J., Barry, J.P. 2020. Potential impacts of the Monterey Accelerated Research System (MARS) cable on the seabed and benthic faunal assemblages; DOI: 10.13140/RG.2.2.12907.57122; https://www.mbari.org/wp-content/uploads/2020/11/MBARI-Potential-Impacts-of-the-Monterey-Accelerated-Research-System-2020_final.pdf . 13 years after a hybrid power and telecommunications cables was installed, it was found to have *" little detectable impact on seabed geomorphology, sediment qualities, or biological assemblages"*
- Sherwood, J., Chidgey, S., Crockett, P., Gwyther, D., Ho, P., Stewart, S., Strong, D., Whitely, B. and Williams, A., 2016. Installation and operational effects of a HVDC submarine cable in a continental shelf setting: Bass Strait, Australia. Journal of Ocean Engineering and Science, 1(4), pp.337-353. *"the ecological effects of the cable installation on epibiota have been transient and minor for soft sediments".*
- Carter, L., Collins, K., Creese, C., Waterworth, G. 2020. Chemical and physical stability of submarine fibre-optic cables in the Area Beyond National Jurisdiction (ABNJ). SubOptic 2019. Studies of recovered sections of cables from the central Pacific, North Atlantic and Mediterranean Sea that had lain on the seafloor between 38 and 44 years found that the cables were well-preserved and physically intact. The cables had clean outer sheaths with no trace of biological encrustation (note that cables are not coated with antifouling agents), while the stranded steel that provides strength to the cable was free of corrosion. Chemical analysis in the laboratory that subjected cables to different environmental conditions also found that deep-sea cables are chemically inert.
- Kraus, C. and Carter, L., 2018. Seabed recovery following protective burial of subsea cables - Observations from the continental margin. Ocean Engineering, 157, pp.251-261. *"Surveys also suggest that benthic communities recover at rates similar to physical restoration. With few exceptions, the physical presence of a cable and the disturbance caused by its burial have little effect on the benthos studied."*
- *Andrulewicz, E., Napierska, D. and Otremba, Z., 2003. The environmental effects of the installation and functioning of the submarine SwePol Link HVDC transmission line: A case study of the Polish Marine Area of the Baltic Sea. Journal of Sea Research 49, 337–345.* "No significant changes in zoobenthos species composition, abundance or biomass which could have been clearly related to cable installation".
- Albert, L., Deschamps, F., Jolivet, A., Olivier, F., Chauvaud, L. and Chauvaud, S., 2020. A current synthesis on the effects of electric and magnetic fields emitted by submarine power cables on invertebrates. Marine Environmental Research, 159, p.104958. *"Although telecommunication (i.e., fibre optical) cables cover a large area of the seabed, their electric and magnetic emissions are substantially smaller than those of SPCs [submarine power cables]. The total voltage required for a typical 7500 km transatlantic telecommunication cable, equipped with 100 repeaters maintaining the optical signal, is around 10 kV (no magnetic field measurements found)."*