



## INTERVENTION AT BBNJ IGC 2

### 1 April 2019

Thank you, Mr. Facilitator, for giving the International Cable Protection Committee—ICPC—the floor. I would like to address a number of aspects of Section 5.5 pertaining to the content of EIA reports.

First, as the ICPC has previously noted, the BBNJ instrument should seek to harmonize and streamline EIA processes for proposed activities—particularly trans-boundary ones—regardless of any option chosen in this section. This is particularly critical if states are to administer the conduct of EIAs. As noted with respect to Section 5.4, and consistent with UNCLOS article 206, the ICPC generally supports states administration of the conduct of EIAs. The ICPC therefore generally supports the comments of the European Union regarding the need for clear and concise key elements in EIA reports, and ones that can be implemented in an effective manner.

Submarine cables cross multiple areas of jurisdiction and areas beyond national jurisdiction and could easily be burdened with duplicative and inconsistent requirements that could have the effect of delaying submarine cable installation and repair and rendering them much more expensive. Every landing country for a submarine cable might theoretically conduct an EIA of the same submarine cable project in the same geographic areas beyond national jurisdiction. We do not believe such an outcome likely under the UNCLOS article 206 standard, given the environmentally benign nature of cable materials and methods and the absence of reasonable grounds. Nevertheless, under some of the options, ICPC notes that certain reports and showings could be burdensome in terms of multiplicity and inconsistent requirements. The ICPC seeks to minimize the likelihood of such an outcome.

By way of illustration, if EIA report requirements applied to a submarine cable system like the Southeast Asia-Middle East-Western Europe 5 cable (known as SEA-ME-WE-5), which has 19 owners, lands in 14 developing and developed countries ranging from France to Egypt to Sri Lanka to Singapore, and has a length of approximately 20,000 kilometers, the potential for duplication and inconsistent requirements is considerable. The ICPC therefore supports Option II, as the no-text Option I does not support harmonization or streamlining.

Second, regardless of the option chosen, the BBNJ instrument should provide the project proponent with the flexibility to define the planned activities to include future contingencies such as infrastructure repairs. This is particularly critical for submarine cables, where the timeliness of repair holds great social, economic, and national security importance. Absent a strategic EIA covering submarine cables at a more programmatic level for the exceptional cases where they might exceed the UNCLOS article 206 threshold, we believe this flexibility in defining the planned activities remains

a critical means of avoiding the hamstringing of time-sensitive repair activities with lengthy EIA review processes.

Third, regardless of the option chosen, the BBNJ instrument should permit project proponents or states to designate as confidential certain data in EIA reports that may be competitively sensitive or involves national security considerations and to prohibit the public disclosure of such information so designated.

Fourth, consistent with the ICPC's view that EIAs should consider assessment of certain socio-economic impacts of a proposed activity and its alternatives, the ICPC also supports Option II, Paragraph 1(f), Sub-Option A. The ICPC notes that national laws and practices in many states, including that of the United States, consider socio-economic impacts in EIAs so long as the minimum environmental impact threshold is exceeded and so long as the socio-economic impacts are closely tied to changes in the marine environment, on the grounds that productive harmony between human activities and the environment, and fulfillment of social and economic requirements, are of central concern.

Fifth, the ICPC does not support Option II Paragraph 1(q), which would provide for a review of the business plan of the activity. The ICPC believes that such considerations are beyond the scope of an EIA and do not further a state's ability to assess environmental impacts on marine biodiversity or even closely related socio-economic effects.

Thank you, Mr. Facilitator, for considering the ICPC's preferences for this Section.