

Remarks to the Assembly of the International Seabed Authority

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**Chairman,
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Mr. President, Secretary General Lodge, Delegates, Observers, Colleagues and Friends,

It is a pleasure to join you at this 23rd session of the International Seabed Authority (“ISA”). First, I want to briefly share with you some background about the International Cable Protection Committee (“ICPC”) that shares the seabed in the Area. Second, I want to report on how, since our last report to the 20th Session in 2014, the ICPC and the ISA have jointly progressed the objectives of our 2010 Memorandum of Understanding (“MOU”) between the ISA and the ICPC, and thirdly, advance some comments that can help us all deliver on the mutual promises embodied in that document, that is held in the highest of esteem by the ICPC.

About the ICPC

Formed in 1958, the ICPC currently has over 160 members across more than 60 nations, which include a community of governments¹, submarine cable owners, cable ship operators, submarine cable survey companies and scientific organisations. Together they own or operate over 97% of the world’s submarine telecom cables and almost all the cable ships that lay and repair them. Over these fiber optic cables, 98% of the world’s international voice, data, video, and Internet communications are carried. A significant number of international submarine power cables are also represented within the ICPC. The principal goal of the ICPC is to promote the safeguarding of submarine cables from human and natural hazards. As a service to the world’s seabed users and mariners, the ICPC provides

¹ Australia, Malta, Singapore, and the United Kingdom are current members. CSCAP Memorandum No. 24 calls for each of the nineteen States in the organization to become ICPC members.

professional recommendations related to submarine cable planning, installation, operation, maintenance and protection.

The ICPC and its membership work internationally in collaborative ways including with the ISA, and a large number of international organisations and NGOs.

The ICPC also works hard to understand the impact of submarine cables in the marine environment.

To advance this goal **ICPC has collaborated and supported a new book entitled ‘International Submarine Cables and Biodiversity Beyond National Jurisdiction; The Cloud Beneath the Sea’ by the ICPC’s International Cable Law Advisor (ICLA) and the ICPC’s Marine Environmental Advisor.**²

Working with the ISA

The 2010 MOU between the ICPC and the ISA recognizes the fact that submarine cables and mining operations in the Area share the seabed. **Under UNCLOS the ISA’s authority to administer mining operations in the area is plenary³. But UNCLOS also recognises the freedom to lay and maintain submarine cables on the high seas.⁴ UNCLOS does not however specify how to resolve conflicts or issues between submarine cables and mining operations.** Mining operations and the submarine cable operations must, however, be conducted in the Area with *due regard* to the other activity. The MOU is designed to introduce and foster a practical approach to allow both mining and submarine cable operations to be carried out with minimal tension, harm, or interference. **In planning and conducting operations, each must take account of the activities of the other.**

² The monograph is published in July 2017 as part of the Law of the Sea Series by Martinus Nijhoff Publishers (Brill) and includes a comprehensive at up-to-date review of peer reviewed scientific literature on the topic of fibre-optic submarine cables in ABNJ.

³ Part XI of the UNCLOS and the Agreement relating to the Implementation of Part XI of the UNCLOS adopted on 28 July 1994.

⁴ UNCLOS, articles 87 and 112-115.

The issue of notice is significant. Presently, the International Hydrographic Organization (“IHO”) only recommends that charting authorities chart the position of submarine cables in depths of less than 2000 metres.⁵ In many parts of the Area, there is no means by which the mining operator can determine from charts or other public records the position of the cables that may exist in its mining concession area. Similarly the cable owners may not be able accurately to determine a safe area in which to lay a new cable in an active mining claim. The mining company and the cable owners may (for reasons of security or confidentiality) be reluctant to make these types of data public. **The ICPC and ISA can work together to facilitate reciprocal notice of cable route positions and mining operations in a way that preserves proper confidentiality considerations.** The ICPC is working with the IHO to advance a common understanding on how to address the charting of cables in parts of the Area designated for seabed mining.

The ICPC and ISA can also work on practical ways or recommendations to allow submarine cables to be crossed by mining infrastructure and vice versa. **Following the highly successful ‘Due Regard’ ISA/ICPC workshop in 2015 and the informative ICPC side event at the 22nd Session of the ISA, the ICPC has issued ICPC recommendation 17 to cover the ‘Due Regard’ obligations related to submarine cable and seabed mining activities in the Area, and has passed this recommendation to the Legal and Technical Commission of the ISA for consideration of appropriate measures within the ISA concerning mining contractors. The goal for both organizations is to encourage cable owners and mining contractors to work together in meaningful voluntary consultations to sort out practical solutions to sharing the seabed in ISA mining concession areas.**

⁵ Article B-443 of the Chart Specifications of the IHO.

The future.

But our collective efforts are fruitless if the required meaningful consultation is not happening in practice. **The ICPC urges all States and their contractors to familiarize themselves with ISA Technical Study 14 and ICPC recommendation 17.** The hard work of understanding a framework for communication and consultation has been done by the ICPC and the ISA. **Without this essential communication and consultation, the seabed mining community risks the significant societal, environmental and legal consequences of failing to apply the ‘due regard’ obligations contemplated in UNCLOS between it and other seabed users.** Now that that seabed mining exploration is advancing to exploitation means that the risk of bringing down critical communications between member States and mining contractors must immediately be considered, and these obligations can no longer be parked or ignored. To avoid the potential harm of a significant international incident, **the ICPC urges the ISA to consider effective means to work with the submarine cable community and cable owners as outlined in ICPC Recommendation 17 and, just as importantly, ensure that these are enforced or incentivised to become standard practice.**

The ICPC looks forward to meaningful cooperation with the ISA staff and mining companies to continue to improve the high reliability of international submarine cable communications and to improve the safety for all who work on the seabed in the Area. **After all, which of us in this room, by failing to apply the necessary UNCLOS ‘due regard’ obligations between those with equal protections under UNCLOS, wishes to be the one that allowed access to communications, socio-economic development and the internet to be jeopardized for millions of our citizens around the world?**

Thank you, Mr. President.