



Briefing Paper 03/2015



SUBMARINE CABLES AND DEEP SEABED ACTIVITIES IN THE AREA

Advancing Common Interests and Addressing “Due Regard” Obligations under the United Nations Convention on the Law of the Sea

On 10-11 March 2015, the International Cable Protection Committee (ICPC) and the International Seabed Authority (the Authority) held a first-of-its-kind workshop in the New York office of the law firm Squire Patton Boggs. The workshop brought together representatives from the submarine cable industry, representatives from a contractor with the ISA as well as delegates from the ICPC, ISA, UN and several governments to address the issues involved in the potential risk of interference between the laying of submarine cables on the high seas and in the Area and the conduct of exploration and exploitation of polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area.

INTRODUCTION

The Authority and the International Cable Protection Committee (ICPC) have been cooperating since 2009 in order to avoid the risk of interference between the laying of submarine cables and activities in the Area. This has resulted in the signature of a memorandum of understanding defining the scope and purpose of cooperation between them. In addition, ICPC was also granted an observer status in the meetings of the Assembly

in 2010 and has been regularly attending the sessions of the Authority since then. The ICPC, which is a non-profit organization with no regulatory competence, comprises 153 members from 64 countries, including major cable owners, cable maintenance authorities, cable system manufacturers, cable ship operators, cable route survey companies and governments. About 97 per cent of cable kilometers laid by about 265 international submarine cable systems and all of the operators of the cable ships that lay and maintain them are ICPC members.



Participants at the ISA/ICPC workshop, New York, 10-11 March 2015



Mr Michael Lodge, (ISA)

The workshop opened with welcome statements by Keith Schofield, General Manager of the ICPC, Neil Rondorf, Chairman of ICPC and Michael Lodge, Deputy to the Secretary-General and Legal Counsel of ISA. The two-day workshop was divided into four sessions consisting of presentations followed by question-and-answer sessions. The first session presented the issues faced by the various organizations concerned; the second introduced the technical framework of submarine cables and of the exploration for polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts; the third featured the legal aspects of that framework and the fourth session was an open discussion on how and what information the

ICPC and the Authority could share on the basis of the technical and legal questions that had arisen out of the previous sessions.

The workshop was convened to discuss the growing risk of interferences between the laying of submarine cables and the conduct of activities in the Area, particularly in light of the increase in the number of exploration contracts issued by the Authority and the perspective of exploitation of polymetallic nodules, of polymetallic sulphides and of cobalt-rich ferromanganese crusts.

The workshop was practically oriented and aimed at considering concrete solutions to avoid conflict between two activities which both represent legitimate uses of the Area under UNCLOS. It was based on two premises – first, that the Convention expressly authorizes both activities in the Area; and second - that the freedom to lay submarine cables is to be exercised with due regard for the rights under the Convention with respect to activities in the Area while activities in the Area are to be carried out with reasonable regard for other activities in the marine environment. The exercise for both activities is subject to the mutual obligation to exercise due regard for each other and other users.

Discussions focused on how to facilitate the exchange of information between cable owners and ISA contractors to practically fulfil the “due regard” obligation under the Convention. Given the absence of provisions on the resolution of conflict of uses, participants considered the best strategy to avoid disputes and define procedures to reduce risks.

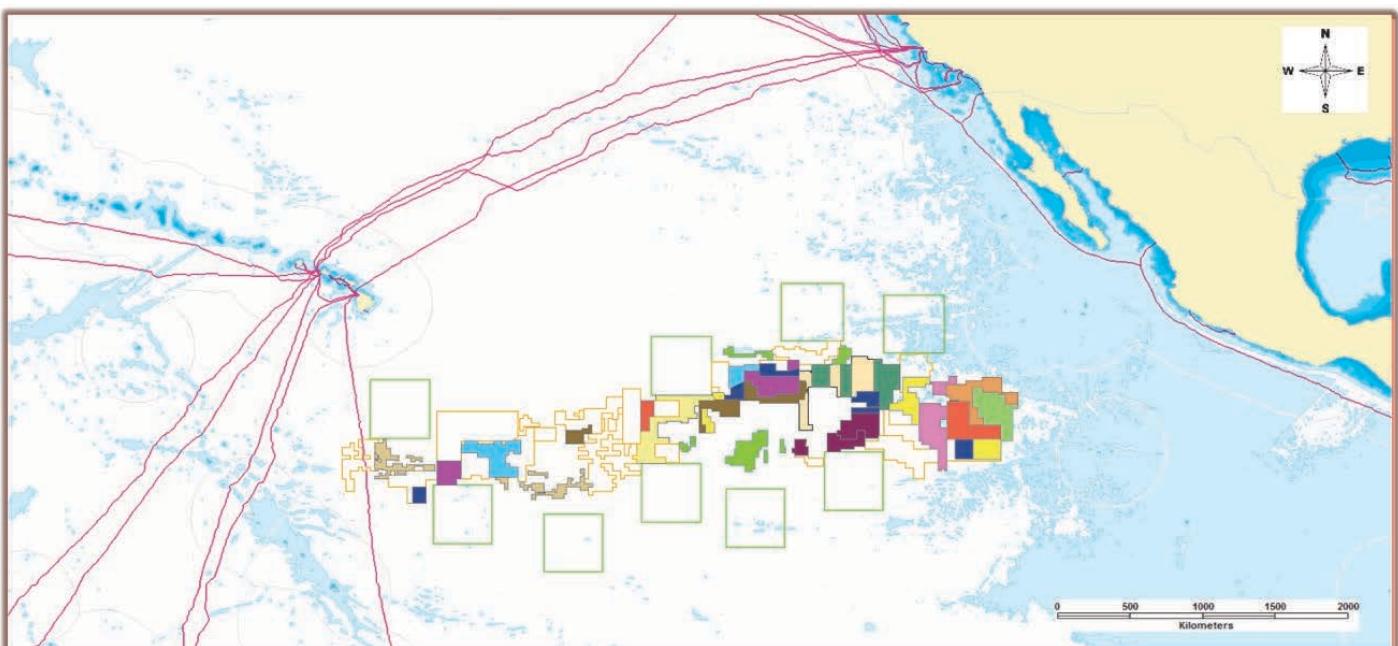


Figure 1: Map of the crossing between cable HONOTUA and the polymetallic nodules in the Pacific Ocean



Figure 2: Map of the crossing between cable SAFE and the polymetallic sulphides exploration area in the Indian Ocean

TWO CASES OF CABLES CROSSING AREAS UNDER EXPLORATION

Participants were informed that there were two cases where cables are crossing areas under exploration for polymetallic nodules. These were in:

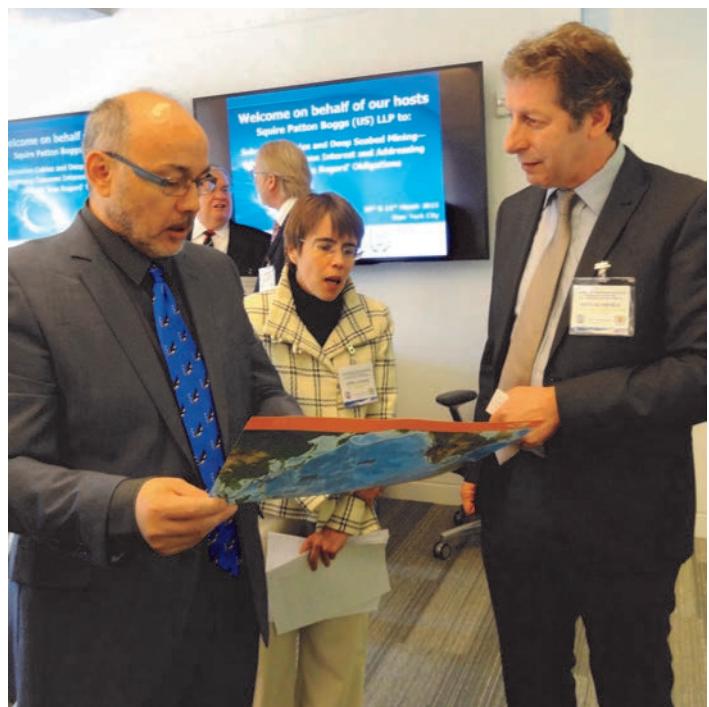
- (1) the Eastern Pacific Ocean, the 4,634 km cable HONOTUA (built in 2009, owned by OPT French Polynesia) links Hawaii with French Polynesia and crosses an exploration area reserved by the Authority for the exploration for polymetallic nodules by developing member States of the Authority or natural or juridical persons having their nationality or being under their effective control and sponsored by them (*Figure 1*).
- (2) the Indian Ocean, the 13.669 km cable SAFE (built in 2002, co-owned by France Telecom, Tata Communications and Telekom SA) links Mauritius, South Africa, India, Malaysia and Reunion (France) and crosses an exploration area allocated to the Government of the Republic of Korea for the exploration of polymetallic sulphides under a contract issued by the Authority on 24 June 2014 (*Figure 2*).

IDENTIFICATION OF AREAS OF COMMON UNDERSTANDING

Participants identified the following key points as areas of common understanding:

- Due regard is not defined in the Convention but can be interpreted as requiring first notice, which can be actual or constructive, and consultation between the cable owners and contractors with the Authority engaged in competing activities in the Area.

- Charting of areas under contract and the location of cables in the Area and in the high seas would facilitate the exchange of notice and consultation.
- Practical ways to avoid interferences could include the development of more accurate techniques.
- Assessment of mutual liabilities of cable owners and contractors with the Authority in the case of a fault to a submarine cable or damage to Contractors' infrastructure would help in resolving potential disputes.



L-R: Dr Sandor Mulsow, ISA; Dr Gwenaëlle Le Gurun, ISA; and Mr Keith Scholfield (ICPC)

- The Authority and the ICPC play an important role in exchanging information and thus assist their members advance common interests and address “due regard” obligations.

RECOMMENDATIONS

Following the identification of areas of mutual understanding, participants recommended several actions:

- The Authority and the ICPC should approach the owners of the submarine cables and entities involved in the two crossings that were identified in the Southern Pacific and Indian Oceans. They should facilitate efficient consultation and possible crossing solutions in the event of exploitation.
- The Authority and the ICPC should exchange focal points and public information such as the location of exploration areas under contract and proposed exploration areas at the stage of application.
- The Authority and the ICPC should attend each others' annual meetings.
- The International Hydrographic Organization (IHO) should be approached to consider the feasibility of charting exploration areas under contracts with the Authority and submarine cables.
- The engineers of both sectors could review risk-reduction techniques as a practical way to explore.
- The Authority and the ICPC should consider a joint code of conduct to guide cable owners and ISA contractors; the ICPC should contemplate an ICPC Recommendation on the laying and maintenance, including repair, of cables in exploration areas under contract and the ISA could consider appropriate guidance to its contractors concerning the conduct of activities in proximity of submarine cables.
- The Authority and the ICPC should convene a follow-up workshop in 2016 to review progress and pursue further dialogue.

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The International Seabed Authority is an autonomous international organization established under the 1982 United Nations Convention on the Law of the Sea and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea. The Authority is the organization through which States Parties to the Convention shall, in accordance with the regime for the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (the Area) established in Part XI and the Agreement, organize and control activities in the Area, particularly with a view to administering the resources of the Area.